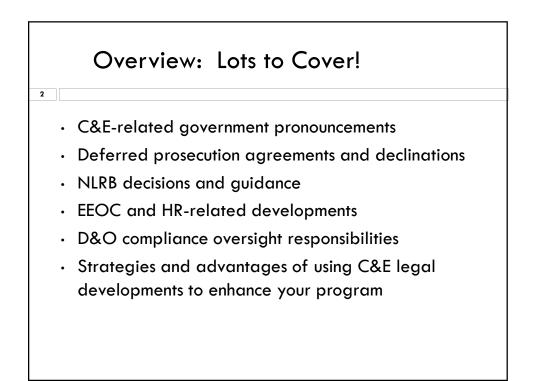
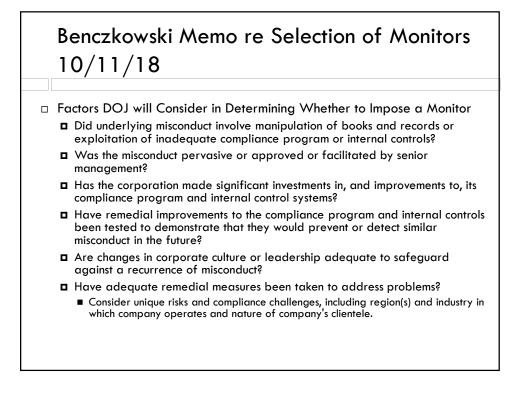
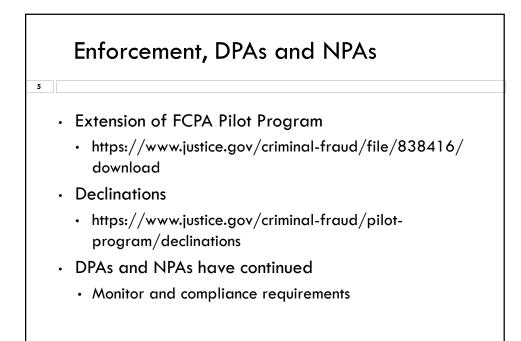
SESSION 505: LEVERAGING RECENT DE THE LAW TO ADVANCE Y	
Society of Corporate Compliance and Ethics Compliance and Ethics Institute	
October 23, 2018	
Joseph Murphy Compliance Strategists	Rebecca Walker Kaplan & Walker LLP

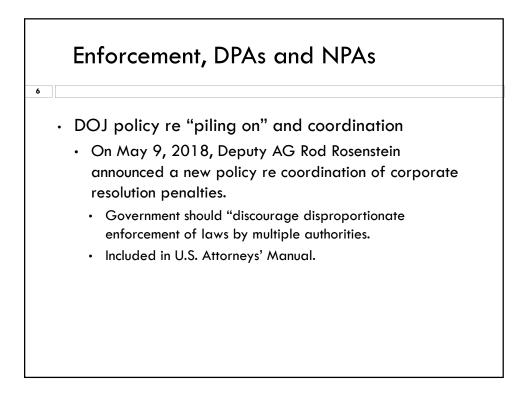


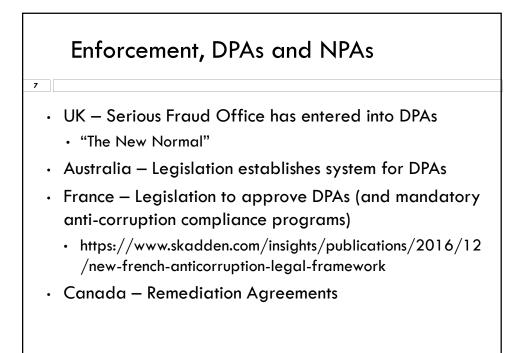
## Recent Comments of AAG Brian Benczkowski (10/12/18)

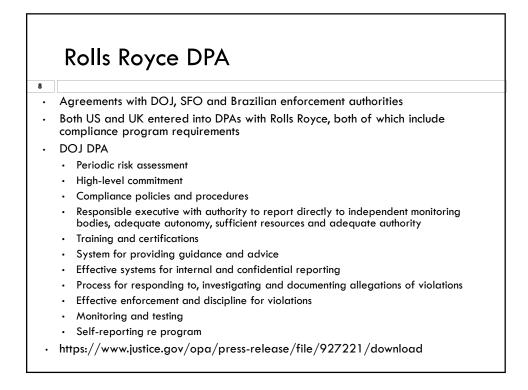
- □ Discontinue role of Fraud Section E&C Expert
- Instead, intent is to build compliance expertise throughout the various Sections of DOJ
- Prosecutors should consider compliance at the same time as other factors, such as remedial actions and self-disclosure
- "[E]very case will at some stage require a deep look into the sufficiency and proper functioning of the subject company's compliance program. As companies continue to grow in size, scope and complexity, and as international business becomes the norm rather than the exception, compliance is of ever greater importance in ensuring that companies operate efficiently and within the bounds of the law."
  - https://www.justice.gov/opa/speech/assistant-attorney-generalbrian-benczkowski-delivers-remarks-nyu-school-law-program









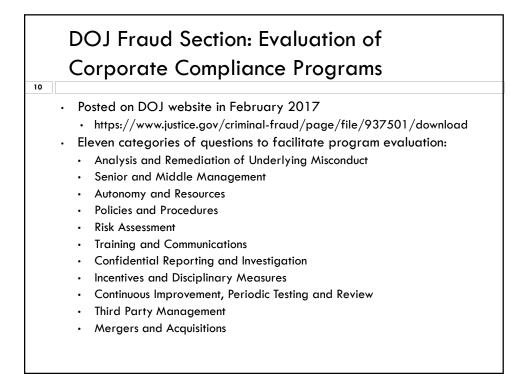


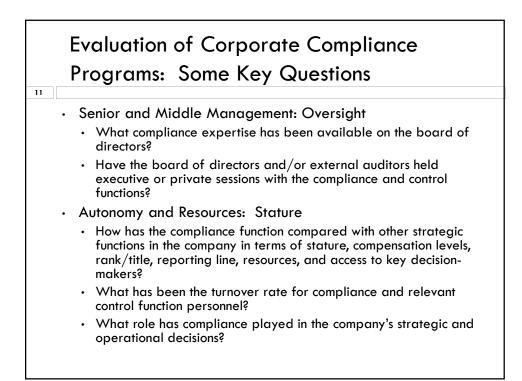
Fraud Section: Hui Chen – what impact and what learning?

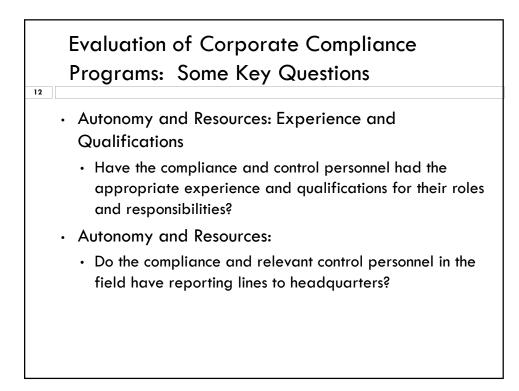
Helped DOJ understand compliance

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- The Fraud Section evaluation questions
- Little known fact: The Canadian Competition Bureau started this before DOJ





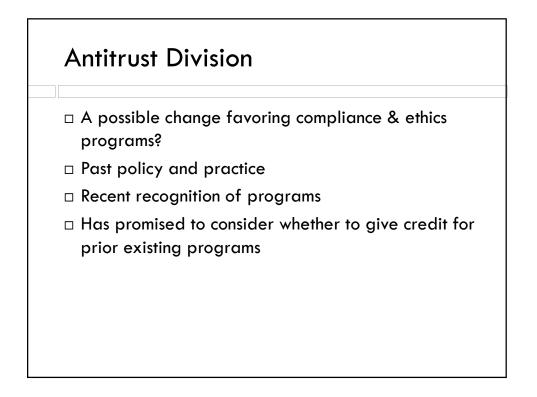


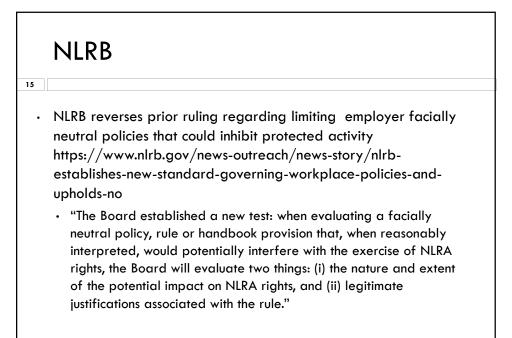
## Evaluation of Corporate Compliance Programs: Some Key Questions

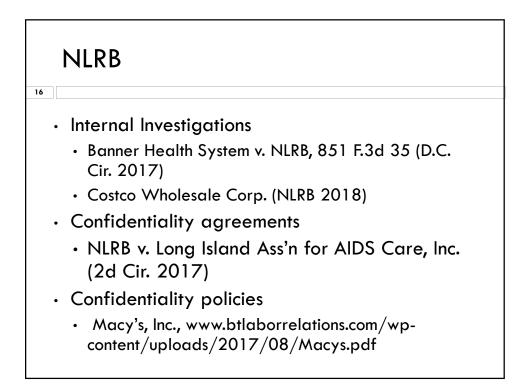
Incentives and Disciplinary Measures

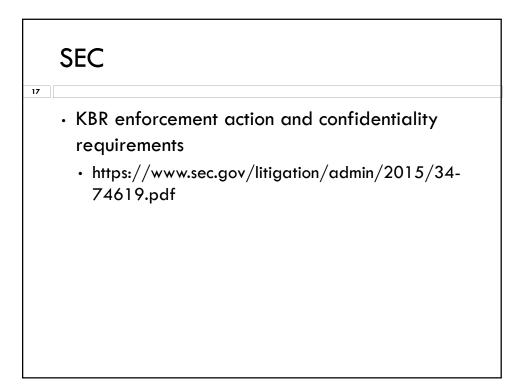
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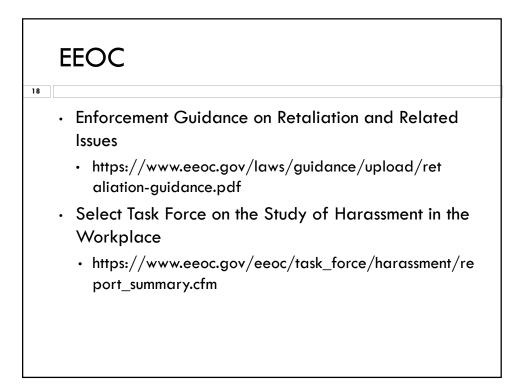
- Were managers held accountable for misconduct that occurred under their supervision?
- Did the company's response consider disciplinary actions for supervisors' failure in oversight?
- How has the company incentivized compliance and ethical behavior?
- How has the company considered the potential negative compliance implications of its incentives and rewards?





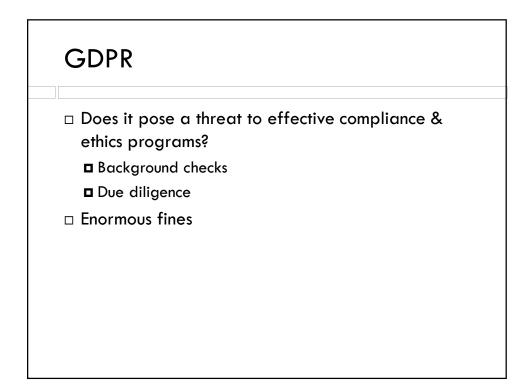






## #MeToo

• What does it mean for compliance programs?

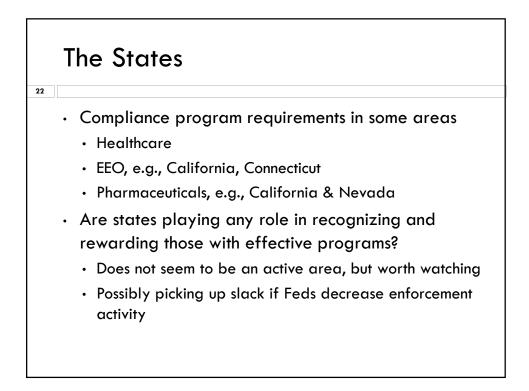




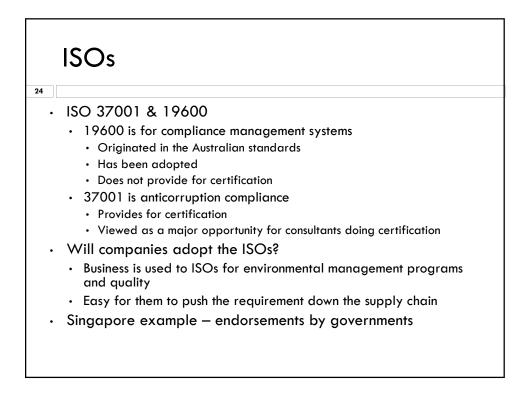
- Directors owe shareholders a fiduciary duty of care, which includes "a duty to attempt in good faith to assure that a corporate information and reporting system, which the board concludes is adequate, exists."
- Court endorses Corporate Sentencing Guidelines system of board oversight.
- Court recognizes that boards are not expected to manage C&E programs.
  - Stone v. Ritter (2006), In re Caremark International Derivative Litigation (1996)
- The bar for liability is high.

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• Horman v. Abney (Del. Ch. 2017)







## Using Developments to Advance Your Program – Example of Investigations

- DOJ Evaluation Guidance
  - · How has the company ensured that the investigations
    - have been properly scoped
    - were independent and objective
    - appropriately conducted
    - properly documented?
  - Has the company's investigation been used to identify root causes, system vulnerabilities, and accountability lapses, including among supervisory manager and senior executives?
  - What has been the process for responding to investigative findings?
  - How high up in the company do investigative findings go?
  - Rolls Royce

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- · Effective and reliable process
- Sufficient resources
- · Respond to, investigate and document allegations of violations