

December 1, 2017

DOJ Announces FCPA Corporate Enforcement Policy, Increasing Opportunities
for Corporate Declinations

In a [speech on Wednesday](#), Deputy Attorney General Rod Rosenstein announced a new [FCPA Corporate Enforcement Policy](#), making permanent the core principles of the 2016 FCPA Pilot Program and enhancing the incentives for corporations to self-disclose potential Foreign Corrupt Practices Act misconduct. As anticipated in our [prior memorandum](#), the decision to make the Pilot Program permanent resulted from a significant uptick in the number of corporations making FCPA self-disclosures to the DOJ over the past year.

The new FCPA Corporate Enforcement Policy codifies into the U.S. Attorneys' Manual the key incentives of the Pilot Program, with some significant changes. Most importantly, where the Pilot Program offered only an *opportunity* for declination of prosecution for corporations that satisfied the Program's requirements, the new FCPA Policy establishes a *presumption* that DOJ will decline prosecution against all companies that voluntarily and promptly self-disclose FCPA misconduct, make proactive efforts to cooperate, adopt appropriate remediation programs, and disgorge any ill-gotten profits (absent aggravating circumstances, such as particularly serious offenses or recidivism). This enhanced incentive represents a positive step toward greater clarity around the benefits of self-disclosure and greater predictability regarding DOJ charging decisions.

Even when DOJ requires a criminal resolution, the new Policy provides some important incentives to companies. Those incentives operate on two levels: first, they provide for a fine reduction of 50% off of the low end of the Sentencing Guidelines range, along with a presumption that no monitor will be required, for a corporation that voluntarily and promptly self-discloses FCPA misconduct, makes proactive efforts to cooperate, adopts appropriate remediation programs, and disgorges any ill-gotten profits; and, second, an alternative provision promises corporations that fail to voluntarily self-disclose FCPA misconduct, but otherwise meet the policy's requirements, a form of "limited credit," including up to a 25% reduction below the bottom of the Sentencing Guidelines range. As in the Pilot Program, the new FCPA Policy sets forth detailed expectations concerning cooperation and timely remediation.

For years, we have suggested that law enforcement programs would function more effectively if they operated with greater transparency and clearer guidance to the corporate community and accorded more concrete benefits for corporate self-

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disclosure and cooperation. We therefore welcome the FCPA Corporate Enforcement Policy as DOJ's latest incremental step in that direction, and we urge the SEC to adopt a parallel and complementary FCPA policy that encourages corporate self-disclosure and cooperation. Continued progress will also require expansion of this approach beyond the FCPA realm into other areas of white-collar criminal law and regulatory enforcement.

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