



## The DOJ's Revised FCPA Corporate Enforcement Policy: A New Blueprint for Corporate Cooperation and Credit

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**12.15.2017**

On November 29, 2017, Deputy Attorney General Rod Rosenstein announced the issuance of a revised FCPA Corporate Enforcement Policy (the "Policy"). Rosenstein announced that the "new policy enables the Department [of Justice] to efficiently identify and punish criminal conduct, and it provides guidance and greater certainty for companies struggling with the question of whether to make voluntary disclosures of wrongdoing." The new Policy grew out of the Department's year-long experience implementing its so-called "Pilot Project," the heart of which was to provide companies with significant and measurable incentives to voluntarily disclose and remediate corporate misconduct involving corrupt foreign payments. The Policy now will be incorporated into the United States Attorneys' Manual and applied throughout the Department as well as in the ninety-four (94) separate U.S. Attorneys' offices around the country.

Under the new Policy, the incentives available for companies and the conditions for obtaining them are now, for want of a better term, "codified" in the following four rules:

1. When a company satisfies the DOJ's standards of voluntary self-disclosure, full cooperation, and timely and appropriate remediation, there will be a presumption that the Department will resolve the company's case through a declination, i.e. a public announcement that the Department is declining to prosecute the case.
2. That presumption may be overcome only if there are aggravating circumstances related to the nature and seriousness of the offense, or if the offender is a criminal recidivist.
3. If that presumption is overcome, the Department will recommend to the sentencing court a reduction of 50% off the low end of the applicable fine range and generally will not require appointment of an independent corporate monitor.

4. If a company has not voluntarily self-disclosed the violation but does thereafter provide full cooperation and engage in timely and appropriate remediation, the Department will recommend to the sentencing court a reduction of 25% off the low end of the applicable fine range.

The Policy also provides some explanation regarding how the Department evaluates a company's compliance program, which will vary depending on the size and resources of a business, in judging whether the company has sufficiently remediated the violation. While new ground is not broken here, these principles were set out in somewhat greater detail in the Department's FCPA Resource Guide (published jointly with the Securities and Exchange Commission in November 2012). The existence of formal Department policy confirming the "one size does not fit all" approach to evaluating compliance programs is beneficial.

Among other notable aspects of the DOJ announcement is the potential for future expansion of the Policy to corporate conduct outside the scope of the FCPA. In announcing the Policy, Deputy Attorney General Rosenstein noted that the incentives in the Policy are designed to promote "ethical corporate behavior." His announcement suggests that the Department views the goals and incentives promoted under the Policy more broadly than simply to suppress corruption, but also to other forms of "corporate misconduct" and "wrongdoing." While the Policy will only have immediate application in dealing with potential FCPA violations, companies and their counsel will no doubt identify how steps outlined in the Policy may serve as possible road maps to argue for declination and leniency in a variety of other types of investigated matters including financial fraud, securities disclosure, international sanctions and environmental policy.

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