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NOVEMBER 30, 2017



## DOJ releases new FCPA Corporate Enforcement Policy

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The Department of Justice (DOJ) has incorporated a new FCPA Corporate Enforcement Policy (“Policy”) into the *United States Attorneys’ Manual*. The new Policy builds upon the FCPA Pilot Program, which was implemented in April 2016. The Pilot Program urged companies to self-disclose bribery in exchange for vastly reduced criminal fines and federal oversight. The Policy, which can be found [here](#), builds upon the Pilot Program. Perhaps most importantly, it enables companies to better predict when self-disclosure will be rewarded with a declination.

Key takeaways from the Policy include:

- A presumption that the DOJ should decline to prosecute companies that voluntarily self-disclose, fully cooperate, and timely and appropriately remediate wrongdoing unless aggravating circumstances exist, such as involvement by executive management, significant profit to the company, pervasiveness of the misconduct, or criminal recidivism;
- Even if aggravating circumstances exist, the DOJ will agree to resolve the matter for a 50% reduction off of the low end of the Sentencing Guidelines’ fine range for companies that voluntarily self-disclose, fully cooperate, and remediate wrongdoing, unless the company involved is a repeat offender. Companies that have in place an effective compliance program will generally avoid the appointment of a compliance monitor as well;
- The DOJ will agree to resolve the matter for up to a 25% reduction off of the low end of the Sentencing Guidelines’ fine range even if the company involved does not self-disclose the misconduct, so long as it fully cooperates and appropriately remediates its wrongdoing;
- A company may still receive cooperation credit under the Principles of Federal Prosecution of Business Organizations if it attempts but fails to meet the requirements for full cooperation credit under the Policy;
- A company’s size and resources will be taken into consideration in assessing the appropriateness of the company’s anti-bribery and anti-corruption compliance program; and;

- Declinations under the Policy will be made public.

Because a declination is appropriate for first-time offenders that uncover an isolated incident of bribery by a low-level employee, the Policy may affect how companies approach an internal investigation. Facts may exist that enable an investigator to quickly rule out the involvement of executive management, or to quantify the profits of the alleged misconduct. By answering those questions in the early stages of an investigation, a company will be better positioned to make an informed decision concerning the possible benefits of self-disclosure within the time allotted by the Policy to receive full cooperation credit, including a declination.

The Policy's effect on cooperation and self-disclosure decisions remains to be seen, and will be driven largely by how the DOJ implements the Policy in specific cases going forward. We will continue to monitor developments. In the meantime, if you have questions concerning the new Policy, please contact your Nixon Peabody attorney, or:

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