

One Minute Memo®



Much-Needed Certainty and Transparency Created by DOJ's New FCPA Corporate Enforcement Policy

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Seyfarth Synopsis: After many years of criticism, the Department of Justice recently announced a revised FCPA Corporate Enforcement Policy aimed at incentivizing—and providing substantially more certainty and transparency to—the FCPA voluntary disclosure process. The Policy, which has been incorporated into the U.S. Attorneys' Manual, sets out an important FCPA prosecutorial enforcement **presumption**, namely, that the government will **decline** to prosecute non-recidivist companies whose FCPA conduct is not particularly egregious and that meet certain specified standards in an effort to concretely incentivize companies to come forward and self-report their misconduct. Those particular standards include voluntary self-disclosure, full cooperation, disgorgement of ill-gotten profits, and timely and appropriate remediation. The Policy also offers staggered sentencing benefits to companies that fall short of satisfying all of the criteria for receiving the full incentives of the new FCPA Policy, but who still deserve some concrete and pre-ordained sentencing credit.

Under those staggered benefits, a company that voluntarily self-discloses its FCPA misconduct but whose conduct is particularly aggravating will qualify for a 50% reduction off the low end of the applicable U.S. Sentencing Guidelines fine range and generally not require appointment of a monitor, assuming in the case of the latter that the company has an effective compliance program in place at the time of the resolution. In those matters where a company does not make a voluntary self-disclosure to the government, but otherwise fully cooperates with the government in its investigation and upholds the other standards of the Policy, the DOJ will recommend a sentencing reduction of up to 25% off of the low end of the applicable Guidelines range.

The new DOJ FCPA Corporate Enforcement Policy can be found [here](#).

For the full version of this article, which originally appeared in *Bloomberg Law White Collar Crime Report*, 12 WCR 999 (Dec. 8, 2017), please [click here](#).

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