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Regulatory and Enforcement Alert

DOJ's Department-Wide Corporate Enforcement Policy

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Earlier this week, the Department of Justice ("DOJ") released the first DOJ-wide corporate enforcement policy ("CEP") for criminal matters. The CEP builds on a broader, historical effort by the DOJ—described in our May 14, 2025 Alert—to provide companies that self-report misconduct with what DOJ has described as concrete and predictable benefits for doing so. Deputy Attorney General Todd Blanche stated in accompanying remarks that the CEP is intended to "create[] incentives for companies to come forward" because companies will "know that, across the Department, they will be rewarded when they self-disclose wrongdoing, cooperate with our investigations, and remediate the misconduct."

Perhaps most notably, in the press release accompanying the CEP's publication, the DOJ stated that the CEP "applies to all corporate criminal cases across the Department (aside from those relating to antitrust)" and "supersed[es] all component-specific or U.S. Attorney's Office [('USAO')]-specific corporate enforcement policies currently in effect." The CEP also indicates, however, that DOJ components and individual USAOs retain some discretion, because it states that all resolutions under the CEP must be approved by the Assistant Attorney General for the relevant component "and/or" the U.S. Attorney for the relevant district, "in coordination with the Office of the Deputy Attorney General." And, under the CEP, prosecutors retain discretion to "decline prosecution" consistent with the Justice Manual.

As described in further detail below, the new CEP otherwise largely mirrors the updated guidance released by DOJ's Criminal Division in May, setting out the circumstances under which companies may be eligible for declinations or reduced penalties for self-reporting misconduct.

Declinations

Under the CEP, the DOJ will decline to prosecute if the following four factors are met:

1. The company **voluntarily discloses** misconduct to the appropriate DOJ component. To satisfy this condition, the disclosure must, among other things, be made reasonably promptly after learning of the misconduct, be made prior to an imminent threat that the DOJ would learn of the misconduct, and relate to misconduct not already known to the DOJ. Notably, if a whistleblower makes an internal report and also submits a report with the DOJ, the company may still qualify for a declination if it self-reports to the DOJ within 120 days of receiving the whistleblower report and the company meets the other conditions for voluntary disclosure.

2. The company **fully and proactively cooperates** with the DOJ. For companies to satisfy this condition, the cooperation must include the timely preservation and disclosure of all facts and non-privileged evidence related to the misconduct.
3. The company **timely and appropriately remediates** the misconduct. That means a company must, among other things, analyze and address the underlying causes of the misconduct, implement an effective forward-looking compliance and ethics program, and discipline implicated employees.
4. There are no **aggravating circumstances** related to the nature and seriousness of the offense, egregiousness or pervasiveness of the misconduct at the company, severity of the harm to victims, or evident recidivism (defined as a criminal adjudication/resolution within the last five years or prior misconduct that resembles the current misconduct).

Should a company satisfy all four requirements, it must still pay all disgorgement/forfeiture as well as restitution/victim compensation payments resulting from the misconduct at issue.

Resolutions Involving "Near Miss" Disclosures or Aggravating Factors

Also largely mirroring the May guidance, the CEP provides meaningful incentives to companies with "near miss" disclosures. That is, if a company would otherwise qualify for a declination under the CEP, but falls short solely because (1) the company self-reported in good faith but did not meet the CEP's conditions for voluntary self-disclosure, or (2) there were other aggravating factors that call for a criminal resolution, the CEP directs the DOJ to:

1. Provide a non-prosecution agreement ("NPA") (absent particularly egregious or multiple aggravating circumstances);
2. Allow a term length for the NPA of fewer than three years;
3. Not require an independent compliance monitor; and
4. Reduce the fine range provided by the Sentencing Guidelines of at least 50 and no more than 75%. The DOJ's May guidance had stipulated a reduction of up to 75%; the new guidance provides additional predictability by providing a 50 percent floor—at a minimum, eligible companies will receive a 50 percent reduction.

Other Resolutions

For companies ineligible for either declinations or near-miss resolutions, the CEP provides that prosecutors "maintain discretion to determine the appropriate resolution including form, term length, compliance obligations, and monetary penalty." For these resolutions, DOJ will not recommend a reduction in the Guidelines fine of more than 50%.

Nationwide Application

As described above, DOJ has stated that the CEP "supersed[es] all component-specific or U.S. Attorney's Office-specific corporate enforcement policies currently in effect," except for those relating to antitrust (the Antitrust Division has its own policy).

This is especially notable because, just last month, the USAO for the Southern District of New York ("SDNY") had announced its own enforcement policy, which differed in certain meaningful respects from the new CEP. For instance, under the SDNY policy, companies were not disqualified from self-reporting even if the misconduct had already been publicly reported (unless the public reporting disclosed the existence of a government investigation). Additionally, under the SDNY policy, the seriousness of the offense, pervasiveness of misconduct, severity of harm, and prior criminal adjudications were not automatically disqualifying for a declination; instead, the SDNY policy treated certain categories of misconduct as disqualifying aggravating factors (*e.g.*, misconduct involving "international drug cartels"). SDNY's policy also provided for conditional declinations, which companies were told to expect "within two to three weeks of making a self-report."

Takeaways

The CEP is another effort by DOJ to encourage and incentivize corporate self-reporting by laying out what are presented as specific benefits of self-reporting. However, whether and when to self-report remains a complex decision that involves a range of considerations, including, now, whether a company will meet the requirements under the CEP for a declination or other leniency. In addition, companies that self-report and meet these requirements will still face the possibility of potentially significant financial consequences (*e.g.*, disgorgement) as well as public disclosure and the collateral reputational and civil litigation risks, among other costs and considerations. Further, while DOJ has stated that the CEP is intended to synchronize all DOJ criminal components (besides the Antitrust Division) with respect to the policies governing self-reporting, the new CEP of course does not bind other regulators. As a result, agencies with overlapping jurisdiction such as the Securities and Exchange Commission, as well as state Attorneys General and other federal state and foreign regulators, are not bound by the CEP.

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