

## White Collar Defense and Investigations

### DOJ Incorporates FCPA Pilot Program into U.S. Attorneys' Manual Providing Permanent Incentives for Strong FCPA Compliance

**Action Item: The U.S. Department of Justice (“DOJ”) recently included the principles of its Foreign Corrupt Practices Act (“FCPA”) Pilot Program into the U.S. Attorneys’ Manual (“USAM”), and reinforced its message to companies of the significant benefit of implementing a meaningful corporate compliance policy. Companies should be cognizant of this policy and the importance of having a robust compliance program.**

On November 29, 2017, DOJ Deputy Attorney General Rod Rosenstein announced that DOJ would permanently include the core principles of its FCPA “[Pilot Program](#),” which was launched in April 2016, into the USAM. This corporate enforcement policy strongly incentivizes companies to voluntarily disclose potential misconduct, fully cooperate with the government’s investigation, and remediate the alleged misconduct through a robust compliance program and disgorgement of ill-gotten gains. Significantly, companies that fully satisfy these three criteria will now be entitled to a *presumption*—which was not previously available under the Pilot Program—that the government will decline to prosecute the company for the alleged misconduct. This provides a very real benefit to companies with a robust anti-corruption

program to catch any issue and avail themselves of a potential declination of prosecution under the USAM. It also confirms Rosenstein’s efforts to [incorporate guidance previously issued through policy memos into the USAM](#).

The goals of DOJ’s revised FCPA Corporate Enforcement Policy include increasing the volume of voluntary disclosures; enhancing DOJ’s ability to identify and punish culpable individuals; and providing greater transparency with respect to the prosecutorial decision-making process, including the benefits available to businesses that satisfy the policy’s stated criteria. Under the policy, the presumption of non-prosecution available to companies that voluntarily disclose, fully cooperate with the government’s investigation, and remediate the alleged misconduct, may only be overcome in limited circumstances if the company is a repeat offender or if the offense involves other aggravating conditions. Moreover, companies that do not voluntarily disclose potential misconduct, but choose nevertheless to cooperate with the government’s subsequent investigation and remediate the wrongdoing, are still entitled to significant reductions in the potential penalties they may face. Notably, remediation requires both the implementation of a compliance program

pursuant to specific criteria set forth under the policy (which vary depending on the size and resources of a business) as well as disgorgement of ill-gotten profits.

While companies may succeed under the new policy in avoiding prosecution entirely or, at a minimum, in benefiting from significantly reduced penalties, DOJ is not offering the same relief to individuals. Indeed, DAG Rosenstein's announcement sent a pointed message that the government will continue, and likely intensify, its aggressive prosecution of corporate executives associated with FCPA violations.

DOJ's FCPA Corporate Enforcement Policy provides companies with clear expectations of prosecutorial outcomes based upon how companies choose to respond once they have been made aware of potential FCPA violations. With the implementation of this policy, companies should be utilizing counsel to evaluate the strength of their compliance programs already in place and, when they become aware of potential misconduct, to fully and timely consider how best to proceed.

**Conclusion:** Under DOJ's FCPA Corporate Enforcement Policy, companies have the opportunity to avoid prosecution entirely depending upon how they respond to potential FCPA violations. In this regard, companies are also well-served to be mindful of the importance of implementing a robust compliance program and remediating potential misconduct designed to detect potential violations.

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