Department of Justice ("DOJ") Corporate Enforcement Policy ("CEP") Comparison Chart[1]

Foreign Corrupt Practices Act ("FCPA") Corporate Enforcement Policy[2]	Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy (2023)[3]	Key Changes
Applicability		
• Due to the unique issues presented in FCPA matters, including their inherently international character and other factors, the FCPA Corporate Enforcement Policy is aimed at providing additional benefits to companies based on their corporate behavior once they learn of misconduct in an FCPA matter.	• This policy—previously known as the FCPA Corporate Enforcement Policy—applies to all FCPA cases nationwide and all other corporate criminal matters handled by the Criminal Division.	• The CEP now applies to all corporate criminal matters handled by the Criminal Division, including cases by the Fraud Section (which includes the Health Care Frauds Unit, Market Integrity and Major Frauds Unit, and the FCPA Unit) and the Money Laundering and Asset Recovery Section.
Criteria for Declination and Other Credit Given Voluntary Self-Disclosure, Full Cooperation, and Timely and Appropriate Remediation		
<u>Declination</u> • Presumption of declination for a company that voluntarily self-disclosed, fully cooperated, and timely and appropriately remediated, absent any aggravating circumstances such as company executive management participation in the misconduct or criminal recidivism. • To qualify for a declination, the company is required to pay all disgorgement, forfeiture, and/or restitution resulting from the misconduct.	<u>Declination</u> • Presumption of declination for a company that voluntarily self-disclosed, fully cooperated, and timely and appropriately remediated, absent any aggravating circumstances such as company executive management participation in the misconduct or criminal recidivism. • Company with aggravating circumstances *can still qualify for a declination* if it meets three criteria: 1. Voluntary self-disclosure immediately after becoming aware of misconduct. 2. At the time of misconduct and disclosure, the company had an effective compliance program and internal accounting controls that led to the voluntary self-disclosure. 3. Extraordinary cooperation and remediation.	<u>Declination</u> • Companies with aggravating circumstances can qualify for a declination if they: (1) voluntarily self-disclose immediately after becoming aware of misconduct; (2) had an effective compliance program and internal accounting controls at the time of misconduct and disclosure that led to the disclosure; and (3) show extraordinary cooperation and remediation.

[1] The criteria listed below restate and paraphrase portions of the CEP and are not intended as a supplement for the CEP.
[2] FCPA Corporate Enforcement Policy, *available at* https://www.justice.gov/criminal-fraud/file/838416/download.
[3] Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy, *available at* https://www.justice.gov/opa/speech/file/1562851/download.

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	• To qualify for a declination, the company is required to pay all disgorgement, forfeiture, and/or restitution resulting from the misconduct.	
Criminal Resolution • If a criminal resolution is warranted, due to aggravating circumstances or otherwise, DOJ will recommend a 50% reduction off the low end of the U.S. Sentencing Guidelines (U.S.S.G.) fine range, except in the case of a criminal recidivist. • DOJ will generally not require the appointment of a monitor if the company has implemented an effective compliance program at the time of resolution.	Criminal Resolution • If a criminal resolution is warranted, DOJ will recommend *between a 50% and 75% reduction* off the low end of the U.S.S.G. fine range. *In the case of a criminal recidivist*, a reduction of at least 50% and up to 75% will generally not be from the low end of the U.S.S.G. fine range, and prosecutors will have discretion to determine the starting point for the reduction based on the particular facts and circumstances of the case. • DOJ will generally not require the appointment of a monitor if the company has implemented an effective compliance program at the time of resolution. • DOJ will *generally not require a corporate guilty plea*, even for criminal recidivists.	Criminal Resolution • The reduction off the low end of the U.S.S.G fine range has increased from up to 50% to up to 75% for non-recidivists. • Criminal recidivists will receive a 50-75% reduction, but the reduction will not be off the low end of the U.S.S.G fine range. • DOJ will generally not require a corporate guilty plea, even for a criminal recidivist, absent particularly egregious or multiple aggravating circumstances.
Limited Credit for Full Cooperation and Timely and Appropriate Remediation Without Voluntary Self-Disclosure		
• If a company does not voluntarily self-disclose but later fully cooperates and timely and appropriately remediates, DOJ will recommend up to a 25% reduction off the low end of the U.S.S.G. fine range.	• If a company does not voluntarily self-disclose but later fully cooperates and timely and appropriately remediates, DOJ will recommend *up to a 50% reduction* off the low end of the U.S.S.G. fine range. *In the case of a criminal recidivist*, the up-to-50% reduction will not be off the low end of the fine range.	• The reduction off the low end of the U.S.S.G fine range has increased from a 25% cap to a 50% cap. • The revised CEP also mentions reductions for criminal recidivists (also up to 50%, but not off the low end of the U.S.S.G fine range).

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M&A Due Diligence and Remediation		
• A company that discovers misconduct via thorough pre-acquisition diligence or, in some cases, post-acquisition audits or compliance integration efforts, and voluntarily discloses this misconduct, will receive a presumption of declination (subject to other requirements of the CEP).	• A company that discovers misconduct via thorough pre-acquisition diligence or, in some cases, post-acquisition audits or compliance integration efforts, and voluntarily discloses this misconduct, will receive a presumption of declination (subject to other requirements of the CEP). • *Even if the acquired entity's misconduct includes aggravating circumstances*, a declination may still be available to the acquiring company.	• The revised CEP allows for declinations even if the misconduct discovered through M&A diligence includes aggravating circumstances. • The revised CEP moves the presumption of declination for voluntarily self-disclosure of misconduct discovered through M&A diligence from the "comment" section to its own section in the CEP.
Definition of "Voluntary Self-Disclosure"		
• The company discloses "prior to an imminent threat of disclosure or government investigation" (U.S.S.G. § 8C2.5(g)(1)); within a reasonably prompt time after becoming aware of the misconduct; and discloses all relevant facts known to it, including relevant facts about individuals substantially involved in the misconduct.	• The company discloses "prior to an imminent threat of disclosure or government investigation" (U.S.S.G. § 8C2.5(g)(1)); within a reasonably prompt time after becoming aware of the misconduct; and discloses all relevant facts *and evidence* known to it, including relevant facts about individuals substantially involved in the misconduct, *regardless of their seniority*. • The voluntary disclosure must be made to the Criminal Division. • The company had no preexisting obligation to disclose the misconduct. • DOJ encourages companies to *disclose "at the earliest possible time," including before an internal investigation is completed*.	• The new definition for voluntary self-disclosure requires disclosure of evidence, not merely facts; it also explicitly requires companies to provide evidence without regard to the seniority of employees involved in the misconduct. • The revised CEP clarifies that disclosing "at the earliest possible time" could include disclosing before an internal investigation is completed.

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Definition of "Full Cooperation"		
• Timely disclosure of all facts relevant to the wrongdoing at issue, including facts gathered during a company's internal investigation and identification of individuals involved in the misconduct. • Proactive instead of reactive cooperation, including affirmatively disclosing relevant facts and obtaining relevant evidence not currently in the company's possession. • Timely preservation, collection, and disclosure of relevant documents. When access to overseas evidence is restricted due to data privacy laws, the company must establish that this restriction exists and identify reasonable alternatives to help DOJ obtain the necessary facts and evidence. • De-confliction of witness interviews and other investigative steps that must be taken to prevent a company's internal investigation from conflicting with the DOJ's. • Make company officers and employees available for interviews and, where possible, facilitate the interviews of relevant third parties.	• Timely disclosure of all *non-privileged* facts relevant to the wrongdoing at issue, including facts gathered during a company's internal investigation and identification of individuals involved in the misconduct. • Proactive instead of reactive cooperation, including affirmatively disclosing relevant facts and obtaining relevant evidence not currently in the company's possession. • Timely preservation, collection, and disclosure of relevant documents. When access to overseas evidence is restricted due to data privacy laws, the company must establish that this restriction exists and identify reasonable alternatives to help DOJ obtain the necessary facts and evidence. • De-confliction of witness interviews and other investigative steps that must be taken to prevent a company's internal investigation from conflicting with the DOJ's. • Make company officers and employees available for interviews and where possible, facilitate the interviews of relevant third parties.	• The definition for full cooperation remains largely unchanged, except for narrowing the requirement to disclose all relevant facts to disclosure of only non-privileged facts.
Definition of "Timely and Appropriate Remediation"		
• Demonstration of thorough analysis of causes of underlying misconduct (*i.e.*, a root cause analysis), and remediation to address root causes of misconduct if appropriate. • Implementation of an effective compliance and ethics program that is tailored to the company and periodically updated, including: 1. The company's culture of compliance, including awareness among employees that any criminal conduct, including the conduct	• Demonstration of thorough analysis of causes of underlying misconduct (*i.e.*, a root cause analysis), and remediation to address root causes of misconduct if appropriate. • Implementation of an effective compliance and ethics program that is tailored to the company and periodically updated, including: 1. The company's *commitment to instilling corporate values that promote* compliance, including awareness among	• The new definition for "timely and appropriate remediation" updates language related to the criteria of an effective compliance program, including changing "culture of compliance" to a company's "commitment to instilling corporate values that promote compliance"; adding the "access the compliance function has to senior leadership and

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underlying the investigation, will not be tolerated; 2. The resources the company has dedicated to compliance; 3. The quality and experience of the personnel involved in compliance, such that they can understand and identify the transactions and activities that pose a potential risk; 4. The authority and independence of the compliance function and the availability of compliance expertise to the board; 5. The effectiveness of the company's risk assessment and the manner in which the company's compliance program has been tailored based on that risk assessment; 6. The compensation and promotion of the personnel involved in compliance, in view of their role, responsibilities, performance, and other appropriate factors; 7. The auditing of the compliance program to assure its effectiveness; and 8. The reporting structure of any compliance personnel employed or contracted by the company • Appropriate discipline of employees that participated in or supervisors that failed to prevent misconduct. • Appropriate retention of business records, including implementing controls and policies regarding ephemeral messaging platforms. • Any additional steps that demonstrate recognition of the seriousness of the company's misconduct, acceptance of responsibility for it,	employees that any criminal conduct, including the conduct underlying the investigation, will not be tolerated; 2. The resources the company has dedicated to compliance; 3. The quality and experience of the personnel involved in compliance, such that they can understand and identify the transactions and activities that pose a potential risk; 4. The authority and independence of the compliance function, *including the access the compliance function has to senior leadership and governance bodies* and the availability of compliance expertise to the board; 5. The effectiveness of the company's *compliance* risk assessment and the manner in which the company's compliance program has been tailored based on that risk assessment; 6. The reporting structure of any compliance personnel employed or contracted by the company; 7. The compensation and promotion of the personnel involved in compliance, in view of their role, responsibilities, performance, and other appropriate factors; and 8. The *testing* of the compliance program to assure its effectiveness • Appropriate discipline of employees that participated in or supervisors that failed to prevent misconduct. • Appropriate retention of business records, including implementing controls and policies regarding ephemeral messaging platforms. • Any additional steps that demonstrate recognition of the seriousness of the company's misconduct, acceptance of responsibility for it, and the implementation of measures to reduce the risk of repetition of such misconduct, including measures to identify future risks.	governance bodies" as part of the authority and independence of the compliance function; and revising "auditing" of a compliance program to "testing" of a compliance program to assure its effectiveness.

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and the implementation of measures to reduce the risk of repetition of such misconduct, including measures to identify future risks.		
Comment on "Cooperation"		
• Once the threshold requirements set out at JM 9-28.700 have been met, DOJ's evaluation of a company's cooperation will include an assessment of the scope, quantity, quality, and timing of cooperation. • Remediation: In order for a company to receive full credit for remediation and avail itself of the benefits of the FCPA Corporate Enforcement Policy, the company must have effectively remediated at the time of the resolution.	• Once the threshold requirements set out at JM 9-28.700 have been met, DOJ's evaluation of a company's cooperation will include an assessment of the scope, quantity, quality, and timing of cooperation. • A company *starts at zero cooperation credit*; all cooperation credit must be earned. • Prosecutors could consider the varying starting points for calculating a fine within U.S.S.G. as well as the varying reduction percentage ranges set out in CEP. *Substantial reductions will be reserved for extraordinary levels of cooperation and remediation.* • Remediation: In order for a company to receive full credit for remediation and avail itself of the benefits of this Policy, the company must have effectively remediated at the time of the resolution. • *Under this policy, a voluntary self-disclosure must ordinarily be made to the Criminal Division. However, the Criminal Division will also apply the provisions of this Policy where a company made a good-faith disclosure to another office or component of the Department of Justice and the matter is partnered with or transferred to, and resolved with, the Criminal Division.*	• The comment to cooperation under the new CEP contains a reminder that companies must earn cooperation credit. It also clarifies that prosecutors will use the full range of credit reductions available depending on degree of cooperation, only using substantial reductions for extraordinary cooperation and remediation. • The comment explicitly states that, although voluntary self-disclosure must ordinarily be made to the Criminal Division, the CEP will apply where a company has made a good-faith disclosure to another section of the Department so long as the matter is ultimately resolved with the Criminal Division.

Attorneys
Ryan Rohlfsen
María González Calvet
Amanda N. Raad
Alex Rene
Nathalia Sosa
Jeel Oza