

DOJ's FCPA Pilot Program Keeps Heat on Individuals

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Joseph W. Swanson

In April, the Department of Justice (DOJ) announced a one-year pilot program offering certain violators of the Foreign Corrupt Practices Act (FCPA) the possibility of reduced sanctions on top of any credit provided for by the U.S. Sentencing Guidelines. The FCPA generally prohibits payments to foreign government officials that are made to secure business.

Under the pilot program, companies that (i) voluntarily self-disclose misconduct, (ii) fully cooperate, and (iii) remediate in a timely and appropriate manner, qualify for up to a 50-percent reduction from the bottom of the fine range under the Sentencing Guidelines, as well as avoidance of appointment of a monitor. The guidance also indicates that, if all of the program's conditions are met, the DOJ may exercise its discretion not to prosecute at all. A company that does not voluntarily self-disclose – but that fully cooperates and remediates – is eligible for at most a 25-percent fine reduction.

The DOJ's guidance outlines factors bearing on whether a company's self-disclosure of FCPA violations is truly "voluntary." Those factors include timely notification and disclosure of all known "relevant facts" regarding the individuals involved in any violation. The guidance provides additional factors as to what it means to "fully cooperate" and engage in "timely and appropriate remediation."

The program aims to promote transparency and predictability for companies, while continuing DOJ's efforts to focus on individuals, as reflected in the so-called "Yates Memo" on which we previously reported. See "Executives in Crosshairs for Corporate Violations" in the Fall 2015 issue of *Expect Focus*. By reserving the greatest credit under the pilot program for companies that, among other things, disclose all relevant facts about the individuals involved, the DOJ seems to have kept the heat on those individuals.

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