

White Collar Update: Deputy Attorney General Rod Rosenstein Announces New FCPA Corporate Enforcement Policy Establishing a Category of Presumptive Declinations

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On November 29, 2017, Deputy Attorney General Rod Rosenstein announced a new Department of Justice FCPA Corporate Enforcement Policy, in his remarks at the 34th International Conference on the Foreign Corrupt Practices Act near Washington, D.C. The policy has been added to the U.S. Attorneys' Manual and modifies elements of the Department's FCPA [Pilot Program](#) enacted in April 2016.

Most notably, the new policy establishes a presumption that a company will receive a declination from the Department if it satisfies the policy's specified voluntary self-disclosure, cooperation, remediation, and disgorgement requirements. In his speech, Mr. Rosenstein made clear that this presumption "may be overcome only if there are aggravating circumstances related to the nature and seriousness of the offense, or if the offender is a criminal recidivist." Where the presumption is overcome and a criminal resolution of some form is warranted, the Department will accord a 50% reduction off the low end of the U.S. Sentencing Guidelines, except in the case of a criminal recidivist, and generally will not require appointment of a monitor if the company has implemented an effective compliance program. The policy also provides for more limited reduction where a company has not voluntarily self-disclosed, but engages in full cooperation and timely and appropriate remediation. In addition to clarifying the potential benefits available to companies, the policy also sets out in detail the steps companies must take in order to receive credit for voluntary self-disclosure, cooperation, and remediation.

Mr. Rosenstein also [continued to emphasize](#) the Department's focus on individual liability and said, "[i]t makes sense to treat corporations differently than individuals," and that the Department, "expect[s] the new policy to reassure corporations that want to do the right thing." Mr. Rosenstein stated that the Pilot Program had proven to be "a step forward in fighting corporate crime," and characterized the revised policy as an "opportunit[y] for improvement" that "will increase the volume of voluntary disclosures, and enhance [the Department's] ability to identify and punish culpable individuals."

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