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DOJ Adopts Risk-Based Approach in FCPA & White-Collar Enforcement Policy Shift

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On June 9, 2025, the U.S. Department of Justice ("DOJ") issued guidelines governing investigations and the enforcement of the Foreign Corrupt Practices Act (FCPA), following through on commitments made in President Trump's February 10, 2025 Executive Order to reconsider the DOJ's approach towards investigating and prosecuting the FCPA.[1] The February 10 Executive Order had suspended the initiation of new FCPA investigations for an initial period of 180 days and directed the DOJ to re-evaluate its approach to ensure alignment with U.S. national security and economic interests. As anticipated, these guidelines reflect a shift away from expansive interpretations of the FCPA and toward a more targeted, risk-based enforcement model aligned with the Administration's views on U.S. national interests. The guidelines instruct prosecutors to focus enforcement on cases involving serious misconduct — particularly those implicating national security, foreign policy or demonstrable harm to U.S. economic competitiveness.

Per the new guidelines, prosecutors are now instructed to assess whether an FCPA investigation or enforcement action aligns with the DOJ's strategic priorities, based on four non-exhaustive considerations:

1. **Connection to Cartels or Transnational Criminal Organizations (TCOs)**: Whether the alleged misconduct involves individuals or entities engaged in bribery, money laundering or other support activities on behalf of cartels or TCOs.
2. **Impact on U.S. Commercial Interests**: Whether the conduct distorts international markets or undermines fair competition by disadvantaging law-abiding U.S. companies.
3. **National Security Risks**: Whether the misconduct implicates sectors critical to U.S. national security, such as defense, intelligence or critical infrastructure, resulting from the bribery of corrupt foreign officials involving key infrastructure or assets.
4. **Nature and Seriousness of Misconduct**: Whether the conduct involves significant criminal activity, rather than minor, low-value or routine practices

commonly accepted in the relevant foreign jurisdictions. To prioritize cases that warrant U.S. enforcement, the DOJ also instructs prosecutors to consider the likelihood that a capable foreign law enforcement authority is willing and able to prosecute the same matter locally.

These priorities represent a targeting of FCPA enforcement and signal that the DOJ will be taking a "risk-based approach" in pursuing those matters it considers as most critical to U.S. interests. The new guidelines also continue to emphasize the importance of individual accountability but create a window where such focus can allow for enhanced leniency with respect to corporations. Prosecutors are directed to focus "cases in which individuals have engaged in criminal misconduct and not attribute nonspecific malfeasance to corporate structures." Finally, prosecutors are expected to consider potential collateral consequences throughout the investigation phase, and not just at a matter's resolution, including disruption to lawful business operations and the impact that prolonged investigations can have on employees.

The June 9 FCPA guidelines complement and build upon the DOJ's recent May 2025 updates to its corporate enforcement framework, signaling a strategic shift towards greater transparency, efficiency and a clearer path for companies to receive declinations. [2] The changes, unveiled by the Head of the Criminal Division, Matthew R. Galeotti, during a speech at SIFMA's[3] Anti-Money Laundering and Financial Crimes Conference on May 12, 2025, are detailed in a new White Collar Enforcement Plan[4] and updated policies regarding corporate enforcement, voluntary self-disclosure and the selection of monitors.[5]

The new framework aims to provide more certainty for companies navigating potential misconduct, strongly incentivizing voluntary self-disclosure, full cooperation and timely remediation. Mr. Galeotti emphasized that the revisions are designed to "*strike an appropriate balance between the need to effectively identify, investigate and prosecute corporate and individuals' criminal wrongdoing while minimizing unnecessary burdens on American enterprise*."[6]

Key Revisions and Focus Areas:

Taken as a whole, the May and June guidelines constitute key elements of the DOJ's broader white-collar enforcement framework and reflect a dual emphasis (i) incentivizing compliance and voluntary disclosure and (ii) aligning FCPA enforcement with U.S. national interest considerations as articulated in the June 9 guidelines. The DOJ's revised approach is encapsulated in its "*Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime*" enforcement plan (hereafter, the "**Enforcement Plan**").[7] This Enforcement Plan, along with the updated Corporate Enforcement and Voluntary Self-Disclosure Policy (hereafter, the "**CEP**" or the "**Revised Policy**")[8] and a new Memorandum on the Selection of Monitors in Criminal Division Matters (hereafter, the "**Memorandum on the selection of monitors**"),[9] introduces several key changes:

Clearer Path to Declination: A significant development is the move from a "*presumption*" of a declination to a more direct path to a declination.[10] According to the revised policy, the Criminal Division will decline to prosecute a company for criminal conduct when the following factors are met: the company (i) voluntarily self-disclosed the misconduct, (ii) fully cooperated with the DOJ's investigation and (iii) engaged in timely and appropriate remediation, (iv) provided there are no aggravating circumstances. A CEP declination requires the company to pay all disgorgement or forfeiture and provide full restitution or victim compensation related to the misconduct. The revised CEP includes a flowchart to visually clarify the decision-making process.[11] The June 9 guidelines do not alter the existing Criminal Division declination standards under the May 12 policy; rather, they appear to narrow the situations in which FCPA matters will be investigated or enforced in the first place.

"Near Miss" Scenarios: The updated policy introduces provisions for companies that may not meet all the stringent requirements for a voluntary self-disclosure declination but have acted in good faith. These "*near miss*" situations — where a company self-reported in good faith but the report did not qualify as a voluntary self-disclosure, or where aggravating factors warrant a criminal resolution despite full cooperation and remediation — can still result in significant benefits, such as a Non-Prosecution Agreement ("NPA") with a reduced term (fewer than three years), a fine reduction of up to 75% and potentially no requirement for an independent compliance monitor.[12]

Emphasis on Timely and Appropriate Remediation: The DOJ continues to stress the importance of robust compliance programs and thorough remediation efforts. Companies are expected to conduct root cause analyses of misconduct and implement effective measures to prevent recurrence.[13]

Revised Monitor Selection Policy: The updated Memorandum on the selection of monitors aims to ensure that monitors are imposed only when necessary and that their scope is appropriately tailored to address the specific risks identified.[14]

- The revised policy thus reflects a more restrained approach to monitorships, emphasizing that they should be used only in limited circumstances where the benefits clearly outweigh the costs. Prosecutors are now directed to assess whether the risk of recurring misconduct — particularly conduct that significantly impacts U.S. interests — can be mitigated without a monitor, and to consider the company's regulatory environment, the efficacy of its existing compliance program and the maturity of its internal controls.
- To ensure proportionality of a monitor's costs, the DOJ has introduced cost-control measures, including caps on hourly rates, required budget approvals and biannual meetings between the DOJ, the monitor and the company.
- Additionally, any decision to impose a monitor must receive high-level approval within the Criminal Division.
- The DOJ also reaffirmed its commitment to reviewing existing monitorships for potential narrowing or early termination, signaling a broader shift toward more targeted and cost-effective oversight.[15]

Streamlined Investigations: The Enforcement Plan directs prosecutors to conduct investigations efficiently, minimizing unnecessary disruption to businesses and avoiding overly lengthy investigations.[16]

Focus on High-Impact Areas: The DOJ will prioritize enforcement efforts in areas deemed to have the greatest impact, including fraud against U.S. investors, individuals and markets, complex money-laundering, bribery and misconduct by cartels, hostile nation-states and foreign terrorist organizations. Other highlighted areas include healthcare fraud, trade and customs violations (including tariff evasion), elder securities fraud and complex money laundering schemes.[17]

Expanded Whistleblower Incentives: The Corporate Whistleblower Awards Pilot Program (the "**Whistleblower Pilot Program**") is being expanded to cover new areas, such as cartel financing, sanctions violations, procurement fraud and corporation support for terrorism, with whistleblowers potentially receiving financial incentives for tips leading to significant asset forfeitures.[18] The CEP also mentions that, in application of the Whistleblower Pilot Program launched on 1 August 2024 by the DOJ, companies still qualify for a declination even if a whistleblower reports to the DOJ first, provided the company self-discloses within 120 days of the internal report and meets other voluntary self-disclosure requirements.[19] Following the revision of the CEP, the DOJ also revised its guidance on the Whistleblower Pilot Program on 12 May 2025.[20]

Implications for Corporations:

These policy revisions underscore the DOJ's continued focus on corporate accountability while providing clearer incentives for companies to proactively identify, report and remediate misconduct. Key takeaways for corporations include:

- **Assess Activities with a U.S. National Security Lens:** Given the focus on U.S. national security interests in the June 9 FCPA guidelines, companies should be assessing whether and to what extent they operate in sectors that could be considered as implicating such interests. This may be obvious for companies active in defense, critical minerals, ports or key infrastructure projects, but it may also impact companies operating in sectors such as energy, IT (including cloud providers), transport and construction. Companies operating in geographic areas that may present heightened risk with respect to cartels should also be assessing their diligence efforts, including whether they have controls in place to safeguard against corruption but also money laundering risks that could derive from cartel or TCO activities.
- **Enhanced Pressure on Voluntary Self-Disclosure:** The shift away from a "presumed" declination to one that is presented as a more certain outcome — assuming all stated conditions are met – may place even greater pressure on companies to make a voluntary self-disclosure, particularly in circumstances where it has taken prompt remedial steps and is prepared to cooperate with the government. Boards of Directors must assess whether it is now more in the best fiduciary interests of the organization to make a self-report, given the perceived greater likelihood of the company receiving a declination. This could come at the expense of individuals deemed responsible for such misconduct, since the DOJ has indicated that prosecuting individuals is its "first priority" and that it will do so "relentlessly."

- **Focus on "Aggravating Circumstances":** The DOJ indicates that companies will receive a declination if they make a voluntary self-disclosure, cooperate and remediate, *and* if there is an absence of "aggravating factors." These could include the nature and seriousness of the offense, its egregiousness and pervasiveness, the harm caused, as well as prior criminal resolutions by the company. Given the fact that these factors could be assessed with significant discretion, companies considering a voluntary self-disclosure will have to closely assess whether they consider any such aggravating circumstances to be present, and, if so, whether their existence could weigh against receipt of a declination.
- **Expanded Areas of Focus (and Implications on Compliance Programs):** As noted above, the DOJ intends to focus its resources on what it considers to be "high-impact" areas. While many of these — such as bribery, money laundering and economic sanctions violations — are likely already areas of focus of many corporate compliance programs, others — including trade, customs or tariff fraud, and interactions with cartels or terrorist organizations — may require further reflection in company-wide risk assessments or mappings. Companies should give fresh thought to their compliance policies, programs and procedures to ensure that they are considering areas of potential risk associated with these new priorities and addressing them accordingly.
- **Critical Importance of Robust Internal Reporting and Investigation Protocols:** The CEP now formally incorporates an exception tied to the ongoing Whistleblower Pilot Program. This provision allows companies to potentially maintain eligibility for a declination even if a whistleblower has already reported to the DOJ, provided the company then self-discloses the same misconduct within 120 days of receiving the internal whistleblower report and meets all other voluntary self-disclosure requirements. While this 120-day window was previously introduced as a temporary amendment, its explicit inclusion in the revised CEP underscores the critical need for companies to have highly effective internal reporting channels and robust and expeditious investigation protocols. This ensures they can quickly assess allegations and make informed decisions about voluntary self-disclosure to meet this tight 120-day deadline, particularly if they suspect a parallel report has been made to the authorities.

Conclusion: Navigating a Shifting Enforcement Landscape

The May 2025 revisions to the DOJ's white-collar corporate enforcement policies represent a significant effort to enhance transparency, encourage proactive corporate compliance and streamline the resolution process. By offering a clearer route to declinations and substantial benefits for voluntary self-disclosure, full cooperation and robust remediation, the DOJ is sending a strong message: it values and will reward companies that take responsibility for misconduct and partner with the Criminal Division to address it.

Despite what appears to be a narrower, risk-based approach towards investigating and prosecuting FCPA-related issues, companies — particularly those operating in areas considered as implicating U.S. national security interests — should remain incentivized to rapidly responding to potential alerts of misconduct and remediating wrongdoing. The sharpened focus on specific high-impact areas and the expanded whistleblower program announced in May 2025 signal that scrutiny will remain intense. Companies must be vigilant in maintaining and continuously improving their compliance programs, fostering a culture of ethical conduct and ensuring they have effective mechanisms to detect, investigate and respond to potential wrongdoing.

The DOJ has laid out a clearer roadmap; it is now incumbent upon companies to follow it diligently to mitigate risks and demonstrate their commitment to corporate integrity.

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Annex: Comparison of Previous and Revised Policies

The following table highlights some of the key changes based on the revised May 2025 Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy. Enforcement of FCPA matters remains subject to the criteria outlined in the June 9 guidelines.

Feature	Previous Policy (January 2023)	Revised Policy (May 2025)
Declination Standard	Presumption of a declination if a company voluntarily self-disclosed, fully cooperated, and timely and appropriately remediated, absent aggravating circumstances.	A company will receive a declination if it voluntarily self-discloses, fully cooperates, timely and appropriately remediates, and there are no aggravating circumstances.

Feature	Previous Policy (January 2023)	Revised Policy (May 2025)
***"Near Miss"* Voluntary Self-Disclosure**	Not explicitly addressed in the same structured way.	Provides for an NPA, term length fewer than three years, no monitor, and up to 75% fine reduction if ineligible for declination solely due to a good faith self-report not meeting voluntary self-disclosure definition OR aggravating factors exist (absent particularly egregious or multiple aggravating circumstances).
Fine Reduction (Voluntary Self-Disclosure, Cooperation, Remediation, but Aggravating Circumstances)	At least 50% and up to 75% reduction off the low end of the U.S.S.G. fine range (with discretion for recidivists).	Up to a 75% reduction off the low end of the U.S.S.G. fine range (prosecutors have discretion to determine the starting point for recidivists).
Fine Reduction (No Voluntary Self-Disclosure, but Full Cooperation & Remediation)	Up to a 50% reduction off the low end of the U.S.S.G. fine range (with discretion for recidivists).	Not more than a 50% reduction off the fine under the U.S.S.G. (prosecutors have discretion for the specific percentage and starting point for recidivists).
Whistleblower Impact on Voluntary Self-Disclosure	Temporary Amendment to the Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy provided that if a whistleblower both reports internally and to the DOJ, the company still qualifies for declination presumption if it self-reports to the DOJ within 120 days after receiving the internal report and meets other voluntary self-disclosure criteria.	In application of the Whistleblower Pilot Program, if a whistleblower both reports internally and to the DOJ, the company still qualifies for declination presumption if it self-reports to the DOJ within 120 days after receiving the internal report and meets other voluntary self-disclosure criteria.
Policy Scope	Applied to all FCPA cases nationwide and all other corporate criminal matters handled by the Criminal Division.	Explicitly states this policy applies to all corporate criminal matters handled by the Criminal Division, including FCPA cases.
M&A Due Diligence	Presumption of declination if misconduct uncovered via due diligence or post-acquisition audits is voluntarily self-disclosed and other policy requirements met.	The Department-wide M&A Policy applies to misconduct uncovered in M&A pre- or post-acquisition due diligence, which is a subset of circumstances addressed by this Policy.

Feature	Previous Policy (January 2023)	Revised Policy (May 2025)
Public Release of Declinations	All declinations under the CEP will be made public.	All declinations under the CEP will be made public.

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[1] U.S. Department of Justice, Office of the Deputy Attorney General, Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act (9 June 2025), available at: https://www.justice.gov/dag/media/1403031/dl

[2] Office of Public Affairs, U.S. Department of Justice, *Head of the Criminal Division, Matthew R. Galeotti Delivers Remarks at SIFMA's Anti-Money Laundering and Financial Crimes Conference* (12 May 2025), *available at* https://www.justice.gov/opa/speech/head-criminal-division-matthew-r-galeotti-delivers-remarks-sifmas-anti-money-laundering.

[3] Securities Industry and Financial Markets Association.

[4] M. R. Galeotti (Head of the Criminal Division, DOJ), *Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime* (12 May 2025), *available at* https://www.justice.gov/criminal/media/1400046/dl?inline.

[5] Revised 9-47.120 – Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy (12 May 2025), *available at* https://www.justice.gov/d9/2025-05/revised_corporate_enforcement_policy_-_2025.05.11_-_final_with_flowchart_0.pdf. *See also* M. R. Galeotti (Head of the Criminal Division, DOJ), *Memorandum on Selection of Monitors in Criminal Division Matters* (12 May 2025), *available at* https://www.justice.gov/criminal/media/1400036/dl?inline.

[6] M. R. Galeotti (Head of the Criminal Division, DOJ), *Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime* (12 May 2025), page 2, *available at* https://www.justice.gov/criminal/media/1400046/dl?inline.

[7] M. R. Galeotti (Head of the Criminal Division, DOJ), *Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime* (12 May 2025), *available at* https://www.justice.gov/criminal/media/1400046/dl?inline.

[8] Revised 9-47.120 – Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy (12 May 2025), *available at* https://www.justice.gov/d9/2025-05/revised_corporate_enforcement_policy_-_2025.05.11_-_final_with_flowchart_0.pdf.

[9] M. R. Galeotti (Head of the Criminal Division, DOJ), *Memorandum on Selection of Monitors in Criminal Division Matters* (12 May 2025), *available at* https://www.justice.gov/criminal/media/1400036/dl?inline.

[10] Revised Policy, page 1.

[11] Revised Policy, page 3.

[12] Revised Policy, page 2.

[13] Revised Policy, page 6.

[14] Memorandum on the selection of monitors.

[15] Enforcement Plan, page 8. *See also* Office of Public Affairs, U.S. Department of Justice, *Head of the Criminal Division, Matthew R. Galeotti Delivers Remarks at SIFMA's Anti-Money Laundering and Financial Crimes Conference* (12 May 2025), *available at* https://www.justice.gov/opa/speech/head-criminal-division-matthew-r-galeotti-delivers-remarks-sifmas-anti-money-laundering.

[16] Enforcement Plan, page 7.

[17] Enforcement Plan, pages 4-5.

[18] Revised Policy, page 4; Enforcement Plan, page 5.

[19] Revised Policy, page 4.

[20] Department of Justice Corporate Whistleblower Awards Pilot Program (revised, 12 May 2025), for internal use only, *available at* https://www.justice.gov/criminal/media/1400041/dl?inline. The DOJ temporarily amended the CEP to include this Whistleblower Pilot Program, which was a three-year initiative effective 1 August 2024 — *see* https://www.justice.gov/criminal/media/1362316/dl?inline.

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