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DOJ'S NEW GUIDANCE FOR VOLUNTARY SELF-DISCLOSURES OF WILLFUL EXPORT CONTROLS AND SANCTIONS VIOLATIONS

Under DOJ's new guidance, a company seeking full credit for voluntary cooperation in export control and sanctions matters must make full disclosure both to regulatory authorities and to DOJ's National Security Division.

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Companies faced with possible export or sanctions violations that voluntarily self-disclose to a regulatory agency may now find themselves in a double bind thanks to new guidance from the Justice Department. On October 2, 2016, the Justice Department's National Security Division ("NSD") issued guidance regarding voluntary self-disclosures, cooperation, and remediation in export control and sanctions investigations (the "Guidance"). A key feature of the Guidance is an expectation that companies will file voluntary self-disclosures concurrently to NSD's Counterintelligence and Export Control Section ("CES")¹ and the appropriate regulatory agency. Companies who choose not to make the second disclosure to CES for willful or knowing conduct in violation of export control or sanctions laws risk the determination by DOJ that their

disclosure was not voluntary, should the matter merit criminal review. But companies who choose to make such a disclosure to secure the "voluntary" credit may have that disclosure viewed as an admission of guilt that leads to enhanced regulatory sanctions.

PART OF A TREND TOWARDS INCENTIVIZING SELF-DISCLOSURE

The Guidance brings the DOJ's position on export control and sanctions violations enforcement in line with the September 2015 Memorandum of the Deputy Attorney General on Individual Accountability for Corporate Wrongdoings (the "Yates Memorandum")² and appears to be modeled on the April 2016 guidance supplied by the DOJ Fraud Section's Foreign Corrupt

¹ The CES investigates and prosecutes cases involving the export of military and strategic commodities, technology, and information.

² Sally Quillian Yates, U.S. Dep't of Justice, Individual Accountability for Corporate Wrongdoing (2015).

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