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## THE NEW DEPARTMENT OF JUSTICE FCPA CORPORATE ENFORCEMENT POLICY

*Building on a 2016 pilot program, the DOJ's latest guidelines are an effort to provide more certainty for corporate defendants in FCPA cases as to the benefits from self-disclosure, cooperation, and remediation. The author discusses key components of the pilot program and the changes made in the current guidelines. She notes that while there is more certainty as to benefits, the DOJ reserves a measure of prosecutorial discretion.*

By Claire N. Rajan \*

In late 2017, U.S. Deputy Attorney General Rod Rosenstein announced at a Foreign Corrupt Practices Act conference near Washington, D.C. that the Department of Justice was adopting new corporate enforcement guidelines in an FCPA Corporate Enforcement Policy.<sup>1</sup> The Policy provides corporate defendants in FCPA matters with the opportunity for up to a 50% reduction in financial penalties and a presumption that the company will receive a declination (an official decision to decline to pursue a case) where the company discloses the conduct, cooperates with the DOJ's investigation, and remediates the conduct. While the purpose of the new Policy is to provide more concrete measures of certainty to companies considering whether to disclose and cooperate, ultimately, the

prosecutor maintains discretion to determine whether any presumption or benefit is warranted in a particular case. The principles of the Policy should be considered by companies where any potentially criminal conduct is identified.

The new guidelines adapted a Pilot Program that had been introduced in April 2016 to encourage companies to self-disclose potential FCPA conduct and to cooperate with DOJ investigations.<sup>2</sup> At its inception, the Pilot Program was intended to be implemented for one year, following which its effectiveness would be evaluated. Having conducted that analysis, Mr. Rosenstein explained that the Pilot Program had resulted in an increase in the number of cases disclosed to the DOJ by companies and a corresponding benefit to those

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<sup>1</sup> Deputy Attorney General Rosenstein Delivers Remarks at the 34th International Conference on the Foreign Corrupt Practices Act ("Rosenstein Remarks") (Nov. 29, 2017), *available at* <https://www.justice.gov/opa/speech/deputy-attorney-general-rosenstein-delivers-remarks-34th-international-conference-foreign>.

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<sup>2</sup> DOJ, Criminal Division, The Fraud Section's Foreign Corrupt Practices Act Enforcement Plan and Guidance ("FCPA Enforcement Plan and Guidance") (Apr. 5, 2015), *available at* <https://www.justice.gov/archives/opa/blog-entry/file/838386/download>.

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