

THE REVIEW OF  
**SECURITIES & COMMODITIES  
REGULATION**

AN ANALYSIS OF CURRENT LAWS AND REGULATIONS  
AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

Vol. 57 No. 13 July 17, 2024

## THE IMPACT OF DOJ'S NEW INDIVIDUAL DISCLOSURE AND WHISTLEBLOWER PROGRAMS ON ENFORCEMENT

*DOJ recently announced new policies aimed at incentivizing individuals to disclose misconduct, including potential immunity for individual wrongdoers and financial rewards for whistleblowers. These new policies raise a number of serious questions and policy considerations for companies, defense counsel, and the government.*

By Daniel S. Kahn \*

During the past three administrations, the Department of Justice (“DOJ”) has expended considerable effort attempting to incentivize corporations to voluntarily self-disclose misconduct involving corporate crime. Although this originally took the form of an informal practice of rewarding companies that voluntarily self-disclosed misconduct with greater discounts off of penalties and more favorable resolutions, in 2016 DOJ launched a “Pilot Program” to offer an increased likelihood of declinations (i.e., DOJ would not bring an enforcement action) for those companies that voluntarily self-disclosed in a timely and full manner, fully cooperated with DOJ’s investigation, and appropriately remediated. This program became permanent in 2017, and since that time DOJ has sought to increase the “carrots” for companies that report misconduct to DOJ.

More recently, however, DOJ has been focused on the “stick” side of the equation, attempting to ratchet up the pressure on companies to voluntarily self-disclose. The primary method is a concerted effort by DOJ to increase the likelihood that it will discover the misconduct on its own, including through the use of data analytics to identify new cases, increasing cooperation with foreign authorities, and most recently, creating programs and policies designed to encourage *individuals* to disclose misconduct related to their corporate employer.

One such example was the announcement on March 7, 2024, of a “whistleblower pilot program” designed to compensate whistleblowers who provide actionable information to DOJ relating to corporate crime. Although the details of this program are still being examined by DOJ during a “90-day sprint,” DOJ did make clear that in order to recover, the whistleblower must not have been “involved in” the criminal misconduct.

More recently, on April 15, 2024, DOJ’s Criminal Division announced a new self-disclosure pilot program for individuals that essentially guarantees a non-prosecution agreement (“NPA”) for those individuals who voluntarily disclose criminal conduct meeting specific conditions to DOJ’s Criminal Division. Unlike the whistleblower program, the self-disclosure pilot program is aimed at those individuals who were or are “involved in” the criminal misconduct.

These programs seem to be premised on the suspicion by DOJ that there is a significant amount of corporate misconduct that is going undetected, and that these new programs will either help unearth the misconduct or at least convince companies that they are better off disclosing to DOJ than waiting for one of its employees to do so. The programs, however, raise a number of

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