Voluntary Disclosure Under the Foreign Corrupt Practices Act

2024

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When a company discovers that it may have violated the Foreign Corrupt Practices Act (FCPA), it has several options. Faced with the possibility of high fines and other penalties, many companies opt to voluntarily disclose their possible violations to the U.S. government—typically, the Department of Justice (DOJ), Securities and Exchange Commission (SEC), and/or Commodity Futures Trading Commission (CFTC).

In most instances, there is no legal requirement to disclose FCPA violations to the government, though some companies have discovered that there may be significant benefits to doing so.[*] But disclosing potential FCPA violations to the U.S. government is not without risk. This paper will provide an overview of the voluntary disclosure process and address the cost-benefit analysis a company can undertake together with its legal counsel when determining whether and when a voluntary disclosure is in its best interest.

What is a Voluntary Disclosure?

The DOJ defines a voluntary disclosure as a disclosure made "prior to an imminent threat of disclosure or government investigation," to the government "within a reasonably prompt time after becoming aware of the misconduct."[1] The government also expects that a company making a voluntary disclosure will report "all relevant, non-privileged facts known to it, including all relevant facts and evidence about all individuals involved in or responsible for the misconduct at issue."

There are no prescribed procedures for making a disclosure. "Many companies elect to contact the [DOJ] Fraud Section through counsel, set up a meeting, and provide in person a detailed oral overview of the known facts to DOJ attorneys and, in some instances, FBI agents."[2] Publicly held companies, including those with American Depository Receipts, will often make a similar disclosure to the SEC's FCPA Unit. Companies involved in the derivatives

[*] There are some instances when a disclosure to the government may be mandated by statute or regulation (e.g., Sarbanes-Oxley Act of 2002 or the Federal Acquisition Regulation's mandatory disclosure rule). Mandatory disclosure obligations are beyond the scope of this paper, which will focus exclusively on voluntary disclosures.

markets (including commodities futures, options, and swaps) might also contact the CFTC. In many instances, the presentation may be made at a joint meeting with multiple agencies. During the presentation, the government will expect companies to disclose information about the potential wrongdoing, culpable individuals, who investigated the misconduct and the degree of their independence, efforts to preserve evidence, and what disciplinary and remedial measures the company took in response to the misconduct. The government may also be particularly interested in how the company or board responded once it learned of the allegations.[3]

Cost/Benefit Analysis of Voluntary Disclosures

A. Benefits

The primary advantage to voluntarily disclosing a potential FCPA violation is the "cooperation credit" a company may receive for doing so. When certain conditions are met, the government will decline to prosecute the company. Even if the circumstances do not warrant a declination, companies may still receive other tangible benefits, such as a non-prosecution agreement or deferred prosecution agreement,[**] a reduction of fines and penalties, and the avoidance of a corporate monitor.

For the past two decades, the government has repeatedly claimed that it rewards companies that make these disclosures. In 2016, the DOJ memorialized these promises by creating a pilot program that detailed the benefits companies would receive in return for their voluntary disclosures, cooperation and remediation.[4] In 2017, the DOJ made that pilot program permanent, creating what is now known as the Corporate Enforcement Policy (CEP), which became part of the DOJ's Justice Manual.[5] The CEP was revised in 2023 to further incentivize cooperation.[6]

The CEP makes clear that "[w]hen a company has voluntarily self-disclosed misconduct in an FCPA matter, fully cooperated, and timely and appropriately remediated … there will be a presumption that the company will receive a declination absent aggravating circumstances involving the seriousness of the offense or the nature of the offender." To qualify for a declination, a company is still expected to "pay all disgorgement, forfeiture, and/or restitution" resulting from the misconduct at issue.

[**] SEC officials previously indicated that a voluntary disclosure is required for companies to be eligible for a deferred prosecution agreement or a non-prosecution agreement with the agency.

In the past, the presence of certain aggravating circumstances,[***] such as involvement by senior executives in the misconduct, precluded qualifying for a declination. With the 2023 revision, declinations would still be possible if the company voluntarily disclosed "immediately" upon becoming aware of the allegation of misconduct, had an effective compliance program at the time of the misconduct, and demonstrated "extraordinary" cooperation and remediation. Further, where the prior CEP provided that a company with aggravating circumstances may receive up to a 50 percent reduction off the low end of the U.S. Sentencing Guidelines fine range, fines under the 2023 CEP could be reduced between 50 and 75 percent.

The presence of aggravating circumstances effectively shortens the time frame in which a company must act to receive full credit, and raises the bar for cooperation. While timing parameters are not defined, practitioners interpret "immediate" disclosure to occur within a handful of weeks (as opposed to "reasonably prompt" disclosure being made in several months where aggravating circumstances are not present). Similarly, while "extraordinary" cooperation is not defined, companies should aim to provide consistent, impactful documents and analyses in rolling production cycles, have recorded or ephemeral communications available, make records and witnesses available even if located outside the U.S., translate documents to English, and/or provide information that leads to additional convictions or other investigations within the industry.[7] Companies should also consider measures that will allow it to withhold bonuses or claw back pay for bad actors.

The CEP does explain several of the terms used in the policy. For example, for a company to receive credit for "full cooperation," they must, among other things, disclose all facts relevant to the wrongdoing on a timely basis; proactively cooperate, rather than reactively; preserve, collect and disclose relevant documents and information in a timely manner; and when requested make relevant company officers and employees available to the DOJ for interviews.

[***] The FCPA CEP defines "aggravating circumstances" as including but not limited to "involvement by executive management of the company in the misconduct; a significant profit to the company from the misconduct; pervasiveness of the misconduct within the company; and criminal recidivism."

A company may receive credit for "timely and appropriate remediation" if it demonstrates that it has:

- conducted an analysis to determine the root causes of the misconduct;
- implemented an effective compliance and ethics program;****
- taken disciplinary action against employees who engaged in the misconduct;
- preserved relevant business records and prohibited the destruction of business records; and
- taken any other steps "that demonstrate recognition of the seriousness of the company's misconduct, acceptance of responsibility for it, and the implementation of measures to reduce the risk of repetition of such misconduct, including measures to identify future risks."

A voluntary disclosure may also place the company in a stronger position with other agencies scrutinizing the company's activities.

The purported benefit of voluntarily disclosing a violation—a declination—is a very attractive prospect considering that many FCPA violations result in seven-figure fines and penalties. Indeed, even a 75 percent reduction off the low end of the U.S. Sentencing Guidelines is an appealing outcome. In contrast, if a company fails to voluntarily disclose the violation, the best it can hope to see is a 50 percent reduction—if it provides the "most extraordinary levels" of cooperation and remediation. Thus, the monetary consequences of disclosure versus non-disclosure are quite stark. Further, whereas certain outcomes are presumptive under voluntary self-disclosure, prosecutors have considerable discretion if disclosure is not voluntary; this removes the modicum of predictability a company might otherwise have.

A voluntary disclosure may also place the company in a stronger position with other agencies scrutinizing its activities. For example, if the company is a government contractor, a suspension and debarment official may show more forbearance if the wrongdoing was voluntarily disclosed, coupled with remediation and cooperation, than if the company had failed to engage proactively with the government. Similarly, if government licenses are essential to a company's business, a disclosure can improve its posture with licensing authorities.

**** The DOJ has disclosed what it views as an "effective compliance and ethics program" in the "Evaluation of Corporate Compliance Programs" document, available at https://www.justice.gov/criminal-fraud/page/file/937501/download. TRACE also has an abundance of resources available to companies seeking additional information regarding ethics and compliance best practices. See, for example, https://traceinternational.org/publications, https://traceinternational.org/eLearning and https://traceinternational.org/resource-center.

There are also intangible benefits associated with voluntary disclosure. For example, a company that voluntarily discloses a potential FCPA violation is better positioned to control the narrative. Indeed, it is far easier for a company to frame a story when the government hears its side first, rather than learning about it from a potentially aggrieved source, such as a whistleblower or competitor. Consequently, many companies prefer a proactive posture when engaging with the government, rather than expending significant resources defending against an FCPA investigation launched by the government.

B. Costs

Although the potential benefits associated with voluntary disclosure may be significant, the process carries some risk and cost. Indeed, the possible downsides of disclosure are so significant that companies should seriously consider all consequences and determine the appropriate course of action given the scope and duration of the misconduct they've uncovered.

As the CEP encourages disclosure "at the earliest possible time, even when a company has not yet completed an internal investigation," these decisions must be made in the context of significant time pressure and knowledge gaps. A company may need to elect voluntary disclosure before it has complete information about the scope of senior management involvement or knowledge, the possibility of related control failures elsewhere in the organization, or the scale of any profit or gain connected to the allegations—all of which may constitute aggravating circumstances. As such, it is important that an organization has a tailored investigation plan in place, particularly with an eye towards looking at these factors, before any allegations or suspicions of wrongdoing arise. In addition, organizations should begin to weigh the disclosure decision concurrent with the investigation, instead of waiting for the investigation to conclude.

The SEC has echoed the call for prompt disclosure, saying "you can even self-report when you think there is a *possible* securities law violation. You don't have to be certain that there is one" (emphasis original).[8] However, any disclosure, even a false positive, will likely prompt the regulator to look across to other areas for potential control failures, and still incurs the costs associated with investigation and program enhancements.

Further, every company that voluntarily discloses an FCPA violation should be prepared for the possibility of waiving certain privileges and defenses. Specifically, when a company first meets with the government at the outset of the voluntary disclosure process, it may be asked to agree to toll the statute of limitations in the matter so that the government and company can thoroughly investigate the allegations and negotiate a settlement. Because these agreements often eliminate the time pressure on prosecutors, companies often find that a resolution of the matter in the voluntary

disclosure scenario can take a very long time. In 2023, the median length of time that companies took to resolve FCPA enforcement actions was roughly five years.[9]

In addition to the statute of limitations, companies often waive attorney-client privilege in order to meet the government's expectation of "full cooperation." Although the Justice Manual makes clear that "a company is not required to waive its attorney-client privilege or attorney work product protection to be eligible to receive cooperation credit,"[10] there is often a fine line between making required factual disclosures and protecting privileged material. The risks for a company increase significantly if it faces related litigation, such as a shareholder suit, or enforcement actions brought by other U.S. agencies or foreign governments. Moreover, other litigants—such as defendants in related DOJ prosecutions of individuals—often seek access to the evidence collected during voluntary disclosures, so companies must take steps to protect the information without jeopardizing cooperation credit.

Along with these risks, companies will incur financial costs from the voluntary disclosure, beyond restitution and disgorgement. Professional fees and expenses associated with cooperation, including fees for attorneys, accountants, data scientists, and translators, can quickly add up. Viewed against the length of many FCPA investigations, the sums often exceed any disgorgement or penalty amounts by multiples.[11] However, this is mitigated to the extent that some of these costs will also be in the form of program enhancements, which can have net positive effects downstream.

A voluntary disclosure may also result in significant collateral litigation costs. If a company is publicly held, once they disclose the potential allegations and voluntary disclosure in their SEC filings, shareholder lawsuits are likely to follow.[12] In some instances, these suits may be brought within days of a company's disclosure.[13] Companies also sometimes face parallel civil litigation brought by other harmed entities, including competitors or even victims of the bribery.[14]

Companies should consider the decision carefully and would be wise to take into account the experience of FCPA voluntary disclosures by other companies.

Although a voluntary disclosure is viewed favorably by some regulators, it can have the opposite effect of inviting regulatory scrutiny, not only by various U.S. government agencies but by foreign authorities as well. For example, if a company's actions implicate U.S. trade or export control laws, a disclosure might prompt scrutiny by relevant enforcement agencies. Similarly, given the increase in global anti-bribery enforcement, an FCPA disclosure made to U.S. authorities will undoubtedly increase the risk of follow-on prosecutions brought by other countries. Law enforcement agencies in different countries routinely share information with each other regarding potential and ongoing enforcement actions, which has substantially increased the risk of multi-jurisdictional enforcement actions. Although this risk can be managed through careful planning by experienced outside counsel, such as global settlements or offsetting fines and penalties, the risk of expensive follow-on litigation or enforcement activity is quite high.

In addition to these tangible risks and consequences associated with voluntary disclosure, companies must be prepared for other intangible harms. For example, once the public learns of a voluntary disclosure, the company is bound to suffer from negative publicity and some reputational harm. Declination letters issued pursuant to the CEP are released publicly in furtherance of DOJ's goal to increase transparency in the evaluation process.[15] Although the DOJ has indicated it may be open to keeping a declination private where public release is not warranted, the decision remains within the agency's discretion. Thus, companies should assume, at least for now, that any disclosure made to the government—even if it results in a declination—will become part of the public domain. And while the harm to a company's reputation from such a disclosure may be incalculable, the consequences that stem from such harm are very real and have tangible financial consequences, including reduced stock price, jeopardization of merger and acquisition activity, and delayed or reduced business activity.

Finally, companies must keep in mind that although the DOJ and SEC have touted the benefits of voluntary disclosures, and created certain conditional presumptions, the process still creates significant uncertainty. As the DOJ has made clear, the policy does not commit the agency to any

particular outcome and does not extend to the SEC's enforcement actions. As then-Deputy Attorney General Rod Rosentein said, "The new policy, like the rest of the Department's internal operating policies, creates no private rights and is not enforceable in court."[16] Thus, while the CEP may help a company to weigh the advantages and risks associated with a voluntary disclosure, it is important to keep in mind that the policy leaves significant room for government interpretation and that no particular outcome is guaranteed.

Voluntary Disclosure in Practice

The decision to voluntarily disclose an FCPA violation to the government is unique to each company that must consider its particular facts, the potential benefits and the possible consequences. The government's further attempts to incentivize disclosure in recent years through the CEP revisions have made voluntary disclosure a more attractive option than previously. Nevertheless, companies should consider the decision carefully and would be wise to take into account the experience of FCPA voluntary disclosures by other companies.

In recent years, the DOJ has highlighted its commitment to awarding credit to companies that voluntarily disclose potential violations, cooperate with the government, and remediate in a thorough manner. In a 2023 speech, Acting Assistant Attorney General Nicole Argentieri described a CEP declination with disgorgement to Corsa Coal, whose employees and agents had bribed Egyptian government officials to obtain lucrative contracts. Factors cited in granting the declination included the company's provision of evidence against individual wrongdoers, leading to criminal charges against two individuals. The speech also explained that cases against two insurance brokers were possible in part because of facts learned in an earlier CEP declination granted to different company.[17]

In contrast, the government has demonstrated that companies will pay significantly higher fines and penalties when they do not disclose violations and fail to cooperate fully. For example, in December 2019, Ericsson paid over $1 billion to settle an FCPA enforcement action with the U.S. government and was required to retain an independent compliance monitor for three years.[18] The misconduct "involved high-level executives and spanned 17 years and at least five countries." The government cited several factors that played into its decision to impose an exceedingly high penalty, including the company's failure to voluntarily disclose the misconduct to the government, the involvement of senior executives in misconduct,

> **Neither disclosure nor non-disclosure is risk-free.**

and the seriousness of the offense. Although the company received some credit for its cooperation with the government's investigation—through a thorough internal investigation, making factual presentations to the government, making foreign-based employees available for government interviews—the government made clear that the company did not receive full credit for cooperation and remediation because it "did not disclose allegations of corruption with respect to two relevant matters; it produced certain materials in an untimely manner; and it did not fully remediate, including by failing to take adequate disciplinary measures with respect to certain employees involved in the misconduct." For these reasons, the company only received a 15 percent reduction off the bottom of the applicable U.S. Sentencing Guidelines fine range. Similarly, Trafigura only received a 10 percent discount because "in particular during the early phase of the government's investigation, [it] failed to preserve and produce certain documents and evidence in a timely manner and, at times, took positions that were inconsistent with full cooperation."[19]

The examples above demonstrate that a company may be rewarded for voluntarily disclosing violations, cooperating and remediating, yet still may be financially penalized for its actions. By deciding not to voluntarily disclose, a company may face even harsher financial consequences, particularly if its actions do not meet the government's definition of "cooperation" or "remediation." In sum, neither disclosure nor non-disclosure is risk-free.

Voluntary Disclosure and Timing

One lesson from many voluntary disclosures is that timing matters. As previously noted, the DOJ expects that a company will disclose violations "within a reasonably prompt time after becoming aware of the misconduct."[20] Moreover, companies bear the burden of demonstrating timeliness. The DOJ has not defined "reasonably prompt time," and the timing demands vary depending on whether or not aggravating circumstances are at play.[21] Companies will need to balance sufficient factfinding against prompt action, bearing in mind that if a look-across later reveals similar misconduct in other geographies or sectors, this may preclude a finding of timeliness.[22]

External factors might also impact the "timeliness" of a company's disclosures. If a company is under investigation by other authorities, or if the corruption allegations are already publicly reported, disclosing violations to the U.S. government after the fact will not be considered voluntary. To illustrate, Airbus did not receive "voluntary disclosure" credit when it disclosed its misconduct to the DOJ because it did so only after the UK's Serious Fraud Office made public its investigation into the company.[23] This was so, even though the DOJ noted that the company disclosed its conduct within a "reasonably prompt time of becoming aware of corruption-related conduct that might have a connection to the United States." Consequently, while the disclosure was appreciated and noted

by the DOJ, it was not enough to receive disclosure credit. Similarly, ABB was not given voluntarily disclosure credit even though its lawyers contacted the DOJ to schedule a disclosure meeting very shortly after learning of misconduct, because the underlying allegations were reported in the press in between the time that the meeting was scheduled and when it actually took place.[24]

Companies also should be aware of the potential impact of whistleblowers on timing and cooperation considerations. Programs like the SEC's whistleblower program incentivize employees to report misconduct, including potential FCPA violations, to the government.[25] Since the program's inception in 2011, the SEC has awarded over $1 billion in rewards for tips resulting in successful enforcement actions.[26] A whistleblower in the Ericsson case was awarded $279 million in 2023.[27] Similarly, in April of 2024, the DOJ launched a pilot program granting immunity to certain wrongdoers if the come in as whistleblowers, broadening the range of potential informants. The potential rise in individual disclosure activity increases the risk to companies that the government will eventually learn about allegations of misconduct, potentially tilting a company's decision in favor of prompt voluntary self-disclosure. Moreover, given that a disclosure is no longer "voluntary" if the government already knows about it from a whistleblower (who is, in turn, only afforded credit by being the first to come forward with that information), the possibility of a potential whistleblower disclosure impacts timing considerations as well.

In addition to these practical considerations, companies should weigh how well-positioned they are after disclosing a potential violation to the government. For example, has the company fully remediated the misconduct? Have they terminated or disciplined employees involved in the misconduct? Is the compliance program adequate? Is it robust and consistently applied? Has the company conducted a root cause analysis to determine the cause of the wrongdoing and attempted to remedy any deficiencies in its compliance program? Has the company implemented enhancements designed to prevent, detect and mitigate future misconduct? Is the company prepared to fully cooperate? Make witnesses available, including those who are not in the United States? Provide all necessary factual information and turn over all relevant (non-privileged) documents, in translation? Has the company consulted with, and is it represented by, experienced FCPA legal counsel? If the company cannot answer yes to these questions, or know when it can do so, it may find itself in a situation where a voluntary disclosure at that moment is not to their benefit. While regulators might try to reassure companies that "[i]t's okay to come in before you know all the facts,"[28] most organizations will still want to understand how it will meet all the government's expectations regarding disclosure, cooperation, and remediation before it makes a call to enforcement officials.

Risks of Non-Disclosure

Should a company ultimately decide against voluntary disclosure, it should be aware of the risks associated with this decision. As previously noted, a company that does not voluntarily disclose its misconduct to the government will not receive "voluntary disclosure" credit under the CEP. If the government ultimately learns of the misconduct, this will result in the company receiving, at best, a 50 percent reduction off the low end of the U.S. Sentencing Guidelines.[*****] Although it is possible that the government will never find out about the misconduct, robust government whistleblower programs, increased global anti-bribery enforcement, increased information sharing among jurisdictions, disclosures by competitors, and targeted industry-wide investigations increase the likelihood that the government will eventually learn about violations of the FCPA.

Nevertheless, if a company ultimately decides against voluntary disclosure, there are steps it should take to reduce its exposure should the allegations come to light. First, and most importantly, a company must be sure that the decision has been thoroughly considered and well documented. If the government eventually learns about the misconduct and decision against self-reporting, the company must be prepared to demonstrate that it has a robust compliance program that detected the misconduct; that it conducted a thorough, well-documented investigation; that it remediated the issue and disciplined or terminated the employees engaged in misconduct; and that it made necessary compliance enhancements to prevent or mitigate future misconduct. The company must also be able to demonstrate that its leadership, including the board of directors, responded appropriately once they learned of the allegations. The company should be prepared to defend the reasonableness of its decision not to disclose the violation to the government.

Companies must remain vigilant about their compliance with the FCPA and the potential impact of violations. Understanding the advantages and risks associated with the voluntary disclosure process is one step in helping companies craft an appropriate response should potential violations come to light. Although this white paper provides helpful guidance for individuals seeking to learn more about the FCPA, it is general in nature and should be supplemented by guidance and specific advice from a company compliance officer and legal counsel. For additional information about this issue and others, please contact **info@TRACEinternational.org**.

***** This also assumes that the company is still fully cooperating with the government and remediated the misconduct.

Endnotes

[1] *Justice Manual*, Corporate Enforcement Policy Section 9-47.120, DOJ (March 2024), https://www.justice.gov/criminal/criminal-fraud/file/1562831/dl. Notably, the burden is on companies to demonstrate "timeliness."

[2] Robert Tarun & Peter Tomczak, *The Foreign Corrupt Practices Act Handbook (Fifth Edition)–A Practical Guide for Multinational General Counsel, Transactional Lawyers, and White Collar Criminal Practitioners* (2018), p. 320.

[3] *Id.*

[4] "The Fraud Section's Foreign Corrupt Practices Act Enforcement Plan and Guidance," DOJ (April 5, 2016), https://www.justice.gov/opa/file/838386/dl.

[5] *Justice Manual*, FCPA Corporate Enforcement Policy Section 9-47.120 (March 2019), https://www.justice.gov/criminal-fraud/file/838416/download.

[6] "Assistant Attorney General Kenneth A. Polite, Jr. Delivers Remarks on Revisions to the Criminal Division's Corporate Enforcement Policy," DOJ (Jan. 17, 2023), https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-remarks-georgetown-university-law.

[7] *See id*. *See also* John Davis, "Self-Reporting and Cooperation: The DOJ's New Incentives and Expectations," 2024 TRACE Forum (published March 27, 2024), https://www.millerchevalier.com/publication/john-davis-discusses-dojs-incentives-and-expectations-self-reporting-traces-bribe.

[8] Gurbir S. Grewal, "The Five Principles of Effective Cooperation in SEC Investigations," SEC (May 23, 2024), https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-remarks-georgetown-university-law.

[9] Mike Koehler, "Like Prior Years, The Gray Cloud Of FCPA Scrutiny Lasted Too Long In 2023," FCPA Professor (Jan. 3, 2024), https://fcpaprofessor.com/like-prior-years-gray-cloud-fcpa-scrutiny-lasted-long-2023.

[10] *Justice Manual,* § 9-28.700 (citing JM 9-28.720), https://www.justice.gov/jm/jm-9-28000-principles-federal-prosecution-business-organizations#9-28.700.

[11] *See* Mike Koehler, "Checking In On Wal-Mart's Pre-Enforcement Action Professional Fees And Compliance Enhancements," FCPA Professor (Aug. 18, 2017), https://fcpaprofessor.com/checking-wal-marts-pre-enforcement-action-professional-fees-compliance-enhancements-2/.

[12] *See, e.g.*, *In re Titan Inc. Securities Litigation*, No. 04-0676 (U.S. Dist. Ct. S.D. Cal., Sep. 27, 2005). *See also* Nathan Vardi, "Plaintiff Lawyers Join The Bribery Racket," Forbes (Aug. 16, 2010), https://www.forbes.com/sites/nathanvardi/2010/08/16/plaintiff-lawyers-fcpa-bribery-racket/.

[13] *See* James Tillen and Lauren Torbett, "Multiplying the Risks: Parallel Civil Litigation in FCPA Investigations," Bloomberg Law Reports (2010), https://www.millerchevalier.com/sites/default/files/news_updates/attached_files/miller_chevalier_tillen_torbett_article.pdf.

[14] *Id.* (describing the various types of parallel civil litigation a company may face after disclosing an FCPA investigation). *See also* Ericsson, "Ericsson announces settlement with impact in second quarter 2021," Press Release (May 12, 2021), https://www.ericsson.com/en/press-releases/2021/5/ericsson-announces-settlement-with-impact-in-second-quarter-2021.

[15] "Deputy Assistant Attorney General Matt Miner Delivers Remarks at The American Bar Association, Criminal Justice Section Third Global White Collar Crime Institute Conference," DOJ, (June 27, 2019), https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-matt-miner-delivers-remarks-american-bar-association. The DOJ publishes the declinations at https://www.justice.gov/criminal/criminal-fraud/corporate-enforcement-policy/declinations.

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

[17] "Acting Assistant Attorney General Nicole M. Argentieri Delivers Keynote Address at the 40th International Conference on the Foreign Corrupt Practices Act," DOJ, (Nov. 29, 2023), https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-keynote-address-40th.

[18] "Ericsson Agrees to Pay Over $1 Billion to Resolve FCPA Case," DOJ (Dec. 6, 2019), https://www.justice.gov/opa/pr/ericsson-agrees-pay-over-1-billion-resolve-fcpa-case.

[19] *U.S. v. Trafigura Beheer B.V.*, Case 1: 23-cr-20476-KMW (March 29, 2024), https://www.justice.gov/opa/media/1346006/dl. The discount was off the fifth percentile above the low end of the Sentencing Guidelines fine range.

[20] *Justice Manual*, Corporate Enforcement Policy Section 9-47.120 (March 2024), https://www.justice.gov/criminal/criminal-fraud/file/1562831/dl.

[21] *See* Davis, *id*.

[22] Non-Prosecution Agreement between U.S. DOJ and Albemarle (Sep. 28, 2023), https://www.justice.gov/opa/file/1316796/dl (refusing to treat Albemarle's disclosure as voluntary, which would have entitled the company to a presumption of a declination). After learning of potential misconduct in one market, and taking roughly seven months to confirm it, the company took remedial action and expanded the investigation to cover other geographies. Having found misconduct in three other markets, Albemarle disclosed all its findings at once, 16 months after the initial allegations.

[23] *U.S. v. Airbus SE*, Case 1:20-cr-00021-TFH (Jan. 31, 2020), https://www.justice.gov/opa/press-release/file/1241466/download.

[24] *U.S. v. ABB Management Services Ltd.*, Case 1:22-CR-221 (Dec. 2, 2022), https://www.justice.gov/opa/file/1556891/dl.

[25] SEC Office of the Whistleblower, https://www.sec.gov/whistleblower.

[26] SEC Office of the Whistleblower, https://www.sec.gov/page/whistleblower-100million.

[27] Mengqi Sun, "Record $279 Million Whistleblower Award Went to a Tipster on Ericsson," Wall Street Journal (May 23, 2023), https://www.wsj.com/articles/record-279-million-whistleblower-award-went-to-a-tipster-on-ericsson-5af40b98.

[28] Grewal, *id*.