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# DOJ’s Revised Self-Disclosure Policy May Offer Companies More Certainty

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*Cal Stein, a litigation partner at Troutman Pepper Locke, highlights the latest updates to the DOJ Criminal Division’s Corporate Enforcement and Voluntary Self-Disclosure Policy and discusses how these updates can improve self-disclosure outcomes and benefit companies that discover potential misconduct.*

Last month, the DOJ Criminal Division (Division) revised its Corporate Enforcement and Voluntary Self-Disclosure Policy (CEP), introducing several potentially significant changes intended to further incentivize companies to self-disclose criminal conduct.

Changes to the policy include:

1. **Criteria for Declination:** The prior policy gave the Division extensive discretion to determine whether a qualifying self-disclosure would result in declination of criminal prosecution. Now, the Division has stated that it “will decline to prosecute a company for criminal conduct” if: (1) the company self-discloses; (2) the company fully cooperates with the Division’s investigation; (3) the company timely and appropriately remediates the misconduct; and (4) there are no “aggravating circumstances.” While the Division retains some discretion — particularly with respect to the last factor — the new policy purports to offer a more concrete basis for parties to self-disclose.

2. **Discretion in Evaluating Aggravating Factors:** The updated policy also provides prosecutors with greater discretion to recommend a CEP declination even when aggravating circumstances are present by allowing them to weigh the severity of aggravating circumstances against the company’s cooperation and remediation efforts. Under the prior policy, the burden was on the disclosing party to demonstrate that its cooperation and remediation warranted declination notwithstanding the existence of aggravating factors.

3. **Resolution Options for “Near Miss” Cases:** The updated CEP also introduces a new resolution option for certain “near miss” cases where a company acts in good faith by self-disclosing but does not meet all criteria for declination. A “near miss” resolution includes a non-prosecution agreement (NPA) with a term of less than three years (assuming there are no egregious or multiple aggravating circumstances) and a reduction in monetary penalties, in addition to the company not being subject to a compliance monitor.

4. **Monetary Penalty Reductions for “Near Miss” Cases:** The updated policy specifies potential reductions in monetary penalties in “near miss” cases, offering 75% off the low end of the U.S. Sentencing Guidelines

(USSG) fine range. In addition, companies that failed to self-disclose but properly cooperate and remediate are eligible for up to 50% reduction off the USSG fine range.

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