



White Collar, Government & Internal Investigations ADVISORY ■

DECEMBER 10, 2019

Revisions to FCPA Corporate Enforcement Policy Ease Self-Disclosure Burden

by [Edward Kang](#), [Brian Frey](#), and [Debolina Das](#)

On November 20, 2019, the Department of Justice (DOJ) released a revision to its [Foreign Corrupt Practices Act \(FCPA\) Corporate Enforcement Policy](#). The changes—which are subtle but nonetheless significant—continue the DOJ’s trend of incentivizing companies to self-report FCPA violations to the government. This latest update comes just months after the DOJ made extensive revisions to the policy [earlier this year](#). The most recent revisions clarify the steps that companies must take to obtain the full benefits of the policy and further demonstrate the DOJ’s desire to encourage prompt voluntary disclosure and proactive cooperation by companies.

The Revisions to the Policy

First, the DOJ clarifies what companies must do to satisfy the policy’s “voluntary self-disclosure” element. With these revisions, companies are now required to disclose only “all relevant facts known to it *at the time of the disclosure*.” This new phrase reflects a recognition by the DOJ that a company may not have knowledge of all the relevant facts and circumstances when disclosure is made. The DOJ emphasizes this point in a new footnote:

The Department recognizes that a company may not be in a position to know all relevant facts at the time of a voluntary self-disclosure, especially where only preliminary investigative efforts have been possible. In such circumstances, a company should make clear that it is making its disclosure based upon a preliminary investigation or assessment of information, but it should nonetheless provide a fulsome disclosure of the relevant facts known to it at that time.

Second, the policy has been revised to require companies to disclose facts regarding “*any* individuals substantially involved in or responsible for the *misconduct at issue*.” Companies are no longer required to disclose facts as to “*all* individuals,” as previously required. Moreover, whereas the policy previously stated that companies needed to disclose information relating to “violations of law,” the revisions now require disclosure related to “*misconduct at issue*.”

This advisory is published by Alston & Bird LLP to provide a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.

Third, the revisions to the policy ease one of the burdens imposed on companies under the prior version of the policy. Previously, a company had to timely disclose evidence when the company “is *or should be aware* of opportunities for the Department to obtain relevant evidence not in the company’s possession *and not otherwise known to the Department.*” The revised requirement simplifies this language and omits the “should be aware” phrase. This change reflects a recognition that a company can only identify evidence it is actually aware of. The new streamlined provision reads: “Proactive cooperation, rather than reactive; that is, the company must timely disclose all facts that are relevant to the investigation, even when not specifically asked to do so. *Additionally, where the company is aware of relevant evidence not in the company’s possession, it must identify that evidence to the Department.*”

Lastly, the final revision adds that the “presumption of a declination” applies when a company discovers misconduct by “the merged or acquired entity” during or after a merger or acquisition. The language clarifies that the focus is on the entity being merged or acquired and protects the acquiring entity from potential successor liability.

Takeaways

These welcome and pragmatic revisions highlight the DOJ’s desire to encourage companies to make FCPA disclosures at preliminary stages of internal investigations. The revisions may make it easier for companies to obtain the maximum credit possible by simplifying requirements and encouraging good compliance practices that uncover misconduct. Nevertheless, the decision on whether and when to voluntarily self-disclose FCPA misconduct to the DOJ is fact-specific, and companies should consult with counsel before going down this path.

You can subscribe to future *White Collar, Government & Internal Investigations* advisories and other Alston & Bird publications by completing our [publications subscription form](#).

If you have any questions or would like additional information please contact your Alston & Bird attorney or any of the following:

White Collar, Government & Internal Investigations

Edward T. Kang
202.239.3728
edward.kang@alston.com

Jenny Kramer
212.210.9420
jenny.kramer@alston.com

Mark T. Calloway
704.444.1089
mark.calloway@alston.com

Paul N. Monnin
404.881.7394
paul.monnin@alston.com

Brian D. Frey
202.239.3067
brian.frey@alston.com

Jason D. Popp
404.881.4753
jason.popp@alston.com

Michael R. Hoernlein
704.444.1041
michael.hoernlein@alston.com

T.C. Spencer Pryor
404.881.7978
spence.pryor@alston.com

William H. Jordan
404.881.7850
202.756.3494
bill.jordan@alston.com

Thomas G. Walker
704.444.1248
919.862.2212
thomas.walker@alston.com

Meredith Jones Kingsley
404.881.4793
meredith.kingsley@alston.com

ALSTON & BIRD

WWW.ALSTON.COM

© ALSTON & BIRD LLP 2019

ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777
 BEIJING: Hanwei Plaza West Wing ■ Suite 21B2 ■ No. 7 Guanghua Road ■ Chaoyang District ■ Beijing, 100004 CN ■ +86 10 8592 7500
 BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719
 CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111
 DALLAS: Chase Tower ■ 2200 Ross Ave. ■ Suite 2300 ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899
 LONDON: 5th Floor, Octagon Point, St. Paul's ■ 5 Cheapside ■ London, EC2V 6AA, UK ■ +44.0.20.3823.2225
 LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100
 NEW YORK: 90 Park Avenue ■ 15th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444
 RALEIGH: 555 Fayetteville Street ■ Suite 600 ■ Raleigh, North Carolina, USA, 27601-3034 ■ 919.862.2200 ■ Fax: 919.862.2260
 SAN FRANCISCO: 560 Mission Street ■ Suite 2100 ■ San Francisco, California, USA, 94105-0912 ■ 415.243.1000 ■ Fax: 415.243.1001
 SILICON VALLEY: 950 Page Mill Road ■ Palo Alto, California, USA 94304-1012 ■ 650.838.2000 ■ Fax: 650.838.2001
 WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.239.3300 ■ Fax: 202.239.3333