

Clients & Friends Memo

To Disclose or Not to Disclose? SDNY Provides Increased Incentives Under Revised Corporate Enforcement and Voluntary Self-Disclosure Program

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On February 24, 2026, the U.S. Attorney for the Southern District of New York (SDNY), Jay Clayton, [announced](#) a revised Corporate Enforcement and Voluntary Self-Disclosure Program for Financial Crimes (the “Program”) for the SDNY U.S. Attorney’s Office (the “Office”). The revised Program is largely consistent with the Department of Justice’s (DOJ) Corporate Enforcement and Voluntary Self-Disclosure Policy (CEP) and provides that a company will receive a declination if the company voluntarily self-discloses, fully cooperates, and timely and appropriately remediates misconduct, for which there are no aggravating circumstances. However, there are some significant differences from the CEP. The Program is more lenient than the CEP in that it provides for a conditional declination at the outset and makes clear that the existence of a whistleblower report – even one only sent to the government – does not disqualify a company from eligibility. The Program is also more restrictive in that it only applies to fraud and financial misconduct and specifically excludes certain crimes, such as the Foreign Corrupt Practices Act (FCPA).

Like the CEP, the Program is yet another example of DOJ’s renewed emphasis on timely self-disclosure and cooperation, as well as its increased focus on individual accountability. Attempting to encourage companies to self-disclose, the Office warns that consequences for failing to disclose include a “strong presumption” against a declination and a presumption in favor of a guilty plea, a deferred prosecution agreement, or a non-prosecution agreement with a statement of facts and monetary penalties. The Office further emphasizes that prompt corporate self-disclosures allow SDNY prosecutors to focus on holding individuals accountable.

Program Eligibility Requirements

The new [Program](#) provides companies that voluntarily self-disclose eligible misconduct a clear path to a declination. Specifically, the Office states that shortly after receiving a qualifying self-report, it will issue a [conditional declination letter](#), and once the company fulfills its obligations, it will issue a final declination notice and close the matter without criminal charges, fines, forfeiture, or a monitor. According to its press release, the Office has already extended a conditional declination to a self-reporting company within one month of its voluntary disclosure.

The eligibility criteria for a declination under the Program include:

- (1) Qualifying Conduct:** The Program applies to the following types of fraud or financial misconduct: (a) fraud by a company or corporate entity, or an employee, officer, director, or agent of such an entity; (b) fraud in connection with a securities, commodities, or digital asset offering, or the trading or brokering of securities, commodities, or digital assets; (c) false statements or fraud upon an auditor or federal regulator of financial markets; and (d) other willful violations of the Securities Act of 1933, Securities Exchange Act of 1934, the Commodity Exchange Act, Investment Advisers Act of 1940, and Investment Company Act of 1940 that undermine the integrity of financial markets or harm customers, competitors, or market participants.
- (2) Timely and Voluntary Disclosure:** A company must promptly report misconduct upon discovery and prior to learning of an existing government investigation or receiving a grand jury subpoena or document requests from a law enforcement agency or a regulator, such as the DOJ, the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), or a state attorney general. The existence of (a) a whistleblower claim to the company or government agency; (b) press regarding the illegal activity (so long as there is no mention of a government investigation); or (c) disclosure to another agency will not disqualify a company from the Program. However, delaying self-reporting for self-serving or strategic reasons may disqualify a company from the Program.
- (3) Full Cooperation:** Companies must provide timely, truthful, continuing, and full cooperation. Examples of such cooperation include: (a) the timely and truthful disclosure of all relevant non-privileged facts; (b) identification of responsible individuals; (c) sharing non-privileged factual results of internal investigations; (d) prompt production of relevant documents; and (e) using best efforts to make current and former personnel available for interviews and testimony. Notably, the Program obligates companies to continue reporting any credible evidence or allegations of criminal conduct by the company or its employees to the Office for a period of three years following a disclosure. A company making a report pursuant to this obligation will not be disqualified from receiving a declination or non-prosecution agreement for the new misconduct, but the decision on how to resolve the matter will be subject to the Office's discretion.

(4) Remediation and Restitution: Before receiving a conditional declination, a company must commit to remediating the harm caused by the misconduct and making restitution to all injured parties. To receive a final declination, companies must complete remediation and make restitution. Remediation may include strengthening the company's compliance program and terminating or disciplining personnel where appropriate.

(5) Disqualifying and Aggravating Circumstances: A company is ineligible for a declination if the misconduct has "any nexus to terrorism, sanctions evasion, foreign corruption, sex trafficking, human trafficking and smuggling, international drug cartels, slavery, forced labor, or physical violence, including the knowing or reckless financing of these activities or laundering of funds in support of these activities." That being said, unlike the CEP, the seriousness of the offense, the pervasiveness of the misconduct, the severity of harm, prior criminal adjudications, or the involvement of senior leadership will not serve as aggravating or disqualifying circumstances.

Key Takeaways

The Office's revised Program provides strong incentives to companies that choose to timely self-disclose misconduct, including a conditional declination at the outset of the investigation and a pathway to a full declination. The Program also increases the risk for companies choosing not to disclose, providing a "strong presumption" against a declination.

In light of the revised Program, companies should assess the effectiveness of their internal reporting systems, third-party helplines, and investigation protocols. Companies should also continue to carefully weigh any decision to timely disclose misconduct, especially in light of the Program's fulsome obligations. Self-disclosure remains a difficult strategic decision as the Program requires participating companies to provide extensive cooperation and commit to significant compliance and other obligations.

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If you have any questions, please feel free to contact any of the following Cadwalader attorneys.

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