THE REVIEW OF
SECURITIES & COMMODITIES REGULATION
AN ANALYSIS OF CURRENT LAWS AND REGULATIONS AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

Vol. 59 No. 13 July 15, 2026

THE DISCLOSURE CALCULUS: NAVIGATING THE EVOLVING DOJ LANDSCAPE ON VOLUNTARY SELF-DISCLOSURE

Whether to voluntarily self-disclose potential corporate criminal misconduct to the DOJ has long been among the most consequential decisions a company may face. This article traces the evolution of the DOJ's CEP from its origins in the 2016 FCPA Pilot Program through the first Department-wide CEP issued in 2026, which extends the voluntary self-disclosure framework across virtually all DOJ components and U.S. Attorney's Offices. This article examines how the criteria for voluntary self-disclosure, the incentives available to qualifying companies, and the treatment of aggravating circumstances, such as corporate recidivism, have been refined over time. The article also provides practical guidance on navigating the new self-disclosure calculus and concludes that, despite greater transparency and more favorable incentives, the decision to self-disclose remains a complex, fact-specific judgment that demands careful weighing of the benefits of coming forward against the potential costs.

By Courtney Hague Andrews, Darryl Lew, Gregg Marmaro, and Jasmine Chen *

I. INTRODUCTION

U.S.-domiciled or listed companies have long faced a critical question upon discovering potential corporate wrongdoing: Should they proactively report potential legal violations to enforcement authorities before those authorities possibly discover the misconduct themselves? As reflected in the evolution of the U.S. Department of Justice's ("DOJ" or the "Department") Corporate Enforcement Policy ("CEP"), the most recent version of which was published in March 2026, the DOJ has sought to incentivize companies to voluntarily self-disclose potential corporate misconduct by offering increasingly concrete benefits for companies that do so, and then fully cooperate with the Department's investigation and timely and appropriately remediate the misconduct, and by making clear that more severe outcomes await companies that do not self-disclose and whose conduct is later found out.[1] Still, the voluntary

* *COURTNEY HAGUE ANDREWS is a partner and GREGG MARMARO is counsel at White & Case LLP's Los Angeles office. DARRYL LEW is a partner at the same firm's Washington, DC office, and JASMINE CHEN is a law clerk at the firm's office in New York City. Their e-mail addresses are courtney.andrews@whitecase.com, gregg.marmaro@whitecase.com, dlew@whitecase.com, and jasmine.chen@whitecase.com.*

[1] Other US government entities like the Securities and Exchange Commission, the Office of Foreign Assets Control within the Department of the Treasury, and the Bureau of Industry and Security within the Department of Commerce, have their own voluntary self-disclosure programs that have evolved over time. Notably, in 2026, the SEC's Enforcement Division updated its Enforcement Manual for the first time since 2017, which provides detailed guidance to companies on the steps they can take to potentially receive cooperation credit. Press Release, U.S. Sec. & Exch. Comm'n, *SEC's Division of Enforcement Announces Updates to Enforcement Manual*, Rel. No. 2026-20 (Feb. 24, 2016), https://www.sec.gov/newsroom/press-releases/