Corporate Enforcement and Voluntary Self-Disclosure Policy[1]

Background

The Department of Justice (Department) is committed to prosecuting corporate criminal conduct firmly, fairly, and efficiently. To do so, the Department seeks to incentivize responsible corporate behavior, encouraging companies to invest in effective compliance programs, voluntarily self-report potential misconduct, meaningfully cooperate with law enforcement, and make good-faith efforts to rectify wrongdoing. This aligns the Department's interest in swift criminal justice with the interests of companies, shareholders, and other stakeholders in good corporate governance and the public's interest in rooting out fraud and misconduct.

The Department's Corporate Enforcement and Voluntary Self Disclosure Policy (CEP) applies to all corporate criminal matters handled by the Department, except for violations of 15 U.S.C. §§ 1-38.

The CEP draws on decades of experience across the Department and creates incentives for companies[2] to disclose misconduct to the Department, enabling the government to investigate and hold wrongdoers accountable more quickly. This policy is designed to: (1) drive early, voluntary self-disclosure of criminal conduct; (2) promote timely and effective enforcement of criminal laws, including holding culpable individuals accountable; (3) reduce harm; (4) facilitate prompt remedial action, including requiring companies to compensate victims and address corporate deficiencies; (5) help ensure consistency across the Department; and (6) transparently describe the Department's policies and decisionmaking.

All resolutions under this provision must be approved by the Assistant Attorney General for the relevant Division and/or the United States Attorney for the relevant district, or the individual serving in that capacity, in coordination with the Office of the Deputy Attorney General, as required by the Justice Manual (JM), and the Criminal Division where specifically required by JM.[3]

To minimize uncertainty for companies that self-report, prosecutors must endeavor to obtain relevant facts and circumstances about the disclosure in order to make a determination as to eligibility for Part I and Part II of this Policy, and, where appropriate, are encouraged to inform the company as soon as practicable.

Part I. Declination Under the CEP

The Department is committed to transparently describing the benefits a company may earn through voluntarily self-disclosing misconduct. The Department will decline to prosecute a

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[1] This policy is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any person.

[2] The terms corporation and company apply to all types of business organizations, including but not limited to partnerships, sole proprietorships, government entities, and unincorporated associations. *See* JM § 9-28.200 n.1.

[3] Nothing in the CEP is intended to prohibit the exercise of prosecutorial discretion to decline prosecution consistent with JM §§ 9-2.020, 27.260, & 28.300, *et al.*

company for criminal conduct when the following factors[4] are met:

1. The company voluntarily self-disclosed the misconduct to an appropriate Department criminal component.[5]
2. The company fully cooperated with the Department's investigation;
3. The company timely and appropriately remediated the misconduct; and
4. There are no aggravating circumstances related to the nature and seriousness of the offense, egregiousness or pervasiveness of the misconduct within the company, severity of harm caused by the misconduct, or corporate recidivism, specifically, a criminal adjudication or resolution either within the last five years or otherwise based on similar misconduct by the entity engaged in the current misconduct.

If there are aggravating circumstances, prosecutors retain the discretion to nonetheless recommend a CEP declination based on weighing the severity of those circumstances and the company's voluntary self-disclosure, cooperation and remediation. As part of the CEP declination, the company will be required to pay all disgorgement/forfeiture as well as restitution/victim compensation payments resulting from the misconduct at issue.[6] All declinations under the CEP will be made public.

Part II. "Near Miss" Voluntary Self-Disclosures or Aggravating Factors Warranting Resolutions

If a company fully cooperated and timely and appropriately remediated but it is ineligible for a declination under Part I of this policy solely because (1) it acted in good faith by self-reporting the misconduct but that self-report did not qualify as a voluntary self-disclosure, as defined in Appendix B, and/or (2) it had aggravating factors that warrant a criminal resolution, the Department shall:

1. Provide a Non-Prosecution Agreement (NPA)—absent particularly egregious or multiple aggravating circumstances;
2. Allow a term length of fewer than three years;
3. Not require an independent compliance monitor; and
4. Provide a reduction of at least 50% but not more than 75% off the low end of the U.S.

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[4] Factors one through three are defined in Appendix B.

[5] Under this Policy, disclosure must be made to the appropriate component of the Department. Good faith disclosure to one component where the matter is later brought to another appropriate component for investigation will also qualify. Disclosures made only to federal regulatory agencies, state and local governments, or civil enforcement agencies generally do not qualify. However, good faith disclosures to such entities may qualify if appropriate under the circumstances. This will be determined based on the particular facts and at the discretion of the Department. In all cases, such disclosures may be considered as part of a company's cooperation and remediation.

[6] *See also* Coordination of Corporate Resolution Penalties in Parallel and/or Joint Investigations and Proceedings Arising from the Same Misconduct, Justice Manual 1-12.100, and Evaluating a Business Organization's Inability to Pay a Criminal Fine or Criminal Monetary Penalty, October 8, 2019.

Sentencing Guidelines (U.S.S.G.) fine range.

Part III. Resolutions in Other Cases

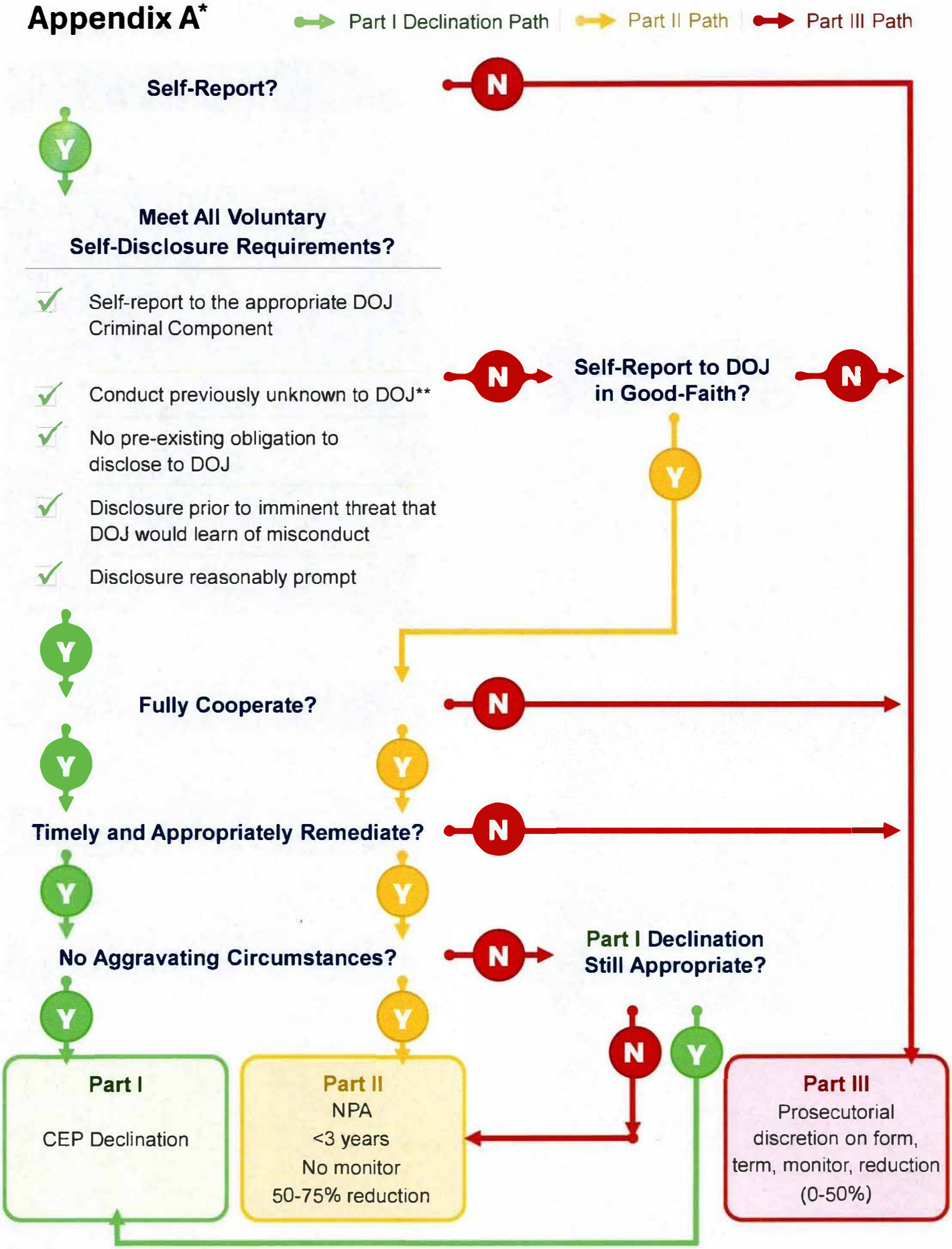
If a company is not eligible for Part I or Part II set forth above, prosecutors maintain discretion to determine the appropriate resolution including form, term length, compliance obligations, and monetary penalty. With respect to the monetary penalty, the company will not receive, and the Department will not recommend to a sentencing court, a reduction of more than 50% off the fine under the U.S.S.G. Prosecutors will have discretion to determine the specific percentage reduction but there will be a presumption that the reduction will be taken from the low end of the U.S.S.G. range for companies that fully cooperate and timely and appropriately remediate. Otherwise, prosecutors will determine the starting point in the range based on the particular facts and circumstances of the case, including (but not limited to) the company's recidivism.[7] In exercising discretion to determine the monetary penalty, prosecutors will consider the factors under U.S.S.G. § 8C2.8.

[7] The Department-wide Merger & Acquisition (M&A) Policy, *see* Justice Manual 9-28.600 and 9-28.900, applies to misconduct uncovered in the context of M&A pre- or post-acquisition due diligence, which is a subset of circumstances addressed by this Policy.

APPENDIX A - CEP Flow Chart

APPENDIX B - Definitions, Notes, and Comments

Appendix A*



* This chart is provided solely as an aid for interpreting the CEP, the language of which controls.

** *See* Appendix B Exception for Corporate Whistleblower Awards Pilot Program

APPENDIX B

Definitions, Notes, and Comments

Voluntary Self-Disclosure	The Department of Justice encourages voluntary self-disclosure of potential wrongdoing at the earliest possible time, even when a company has not yet completed an internal investigation, if it chooses to conduct one. For the purposes of the CEP, the Department defines voluntary self-disclosure as follows: 1. The company must make a good faith disclosure of the misconduct to the appropriate Department component; 2. The misconduct is not previously known to the Department; 3. The company had no preexisting obligation to disclose the misconduct to the Department; 4. The voluntary disclosure occurs "prior to an imminent threat of disclosure or government investigation," U.S.S.G. § 8C2.5(g)(1); and 5. The company discloses the conduct to the Department within a reasonably prompt time after becoming aware of the misconduct, with the burden being on the company to demonstrate timeliness. *Corporate Whistleblower Awards Pilot Program Exception:* If a whistleblower makes both an internal report to a company and a whistleblower submission to the Department, the company will still qualify for a declination under the CEP—even if the whistleblower submits to the Department before the company self discloses—provided that the company: (1) self-reports the conduct to the Department as soon as reasonably practicable but no later than 120 days after receiving the whistleblower's internal report; and (2) meets the other requirements for voluntary self-disclosure and a declination under the policy.
Full Cooperation	In addition to the provisions contained in the Principles of Federal Prosecution of Business Organizations to satisfy the threshold for any cooperation credit, *see* JM 9-28.000, a company fully cooperates when it: 1. Timely, truthfully, and accurately discloses all facts and non-privileged evidence relevant to the conduct at issue, including: i. facts and evidence gathered during a company's internal investigation, if the company chooses to conduct one; ii. facts and evidence about all individuals involved in or responsible for the misconduct at issue, including individuals inside and outside of the company regardless of their position, status, or seniority; iii. attribution of facts to specific sources rather than a general narrative of the facts; iv. timely updates on a company's internal investigation, if

the company chooses to conduct one, including but not limited to rolling disclosures of information;

v. identification of all individuals involved in or responsible for the misconduct at issue, regardless of their position, status, or seniority, including the company's officers, employees, customers, competitors, or agents and third-parties, and all non-privileged information relating to the misconduct and involvement by those individuals;

2. Proactively cooperates; that is, the company must timely disclose all facts that are relevant to the investigation, even when not specifically asked to do so, and, where the company is aware of opportunities for the Department to obtain relevant evidence not in the company's possession and not otherwise known to the Department, it must identify those opportunities to the Department;

3. Timely and voluntarily preserves, collects, and discloses relevant documents and information relating to their provenance, including: (i) disclosure of overseas documents, the locations in which such documents were found, their custodians, and individuals who authored and/or located the documents; (ii) facilitation of third-party production of documents; and (iii) where requested, provision of translations of relevant documents in foreign languages;

4. Note: Where a company claims that disclosure of overseas documents is prohibited or restricted due to data privacy, blocking statutes, or other reasons related to foreign law, the company bears the burden of establishing the existence of such a prohibition or restriction and identifying reasonable and legal alternatives to help the Department preserve and obtain the necessary facts, documents, and evidence for its investigations and prosecutions.

5. De-conflicts witness interviews and other investigative steps that a company intends to take as part of its internal investigation to prevent the company's investigation from conflicting or interfering with the Department's investigation;

   a) Note: When the Department makes a request to a company to defer investigative steps, such as the interview of company employees or third parties, such a request will be made for a limited period of time and be narrowly tailored to a specific investigative purpose (*e.g.*, to prevent the impeding of a specified aspect of the Department's investigation). Once the justification dissipates, the Department will notify the company that the Department is lifting its request. Although the Department may, where appropriate, request that a company refrain from taking a

specific action for a limited period of time for de-confliction purposes, the Department will not take any steps to affirmatively direct a company's internal investigation efforts.

b) Note: Nothing herein is intended to prohibit a company from taking steps that it is otherwise under an obligation to take under applicable laws and regulations. Where, however, such an action may conflict with the Department's investigation or a de-confliction request, the company is expected to notify the Department in advance of taking such an action with sufficient time to allow the Department to take reasonable steps in its discretion.

6. Subject to the individuals' Fifth Amendment rights, makes company officers, employees, and agents who possess relevant information available for interviews by the Department, including, where appropriate and possible, those located overseas as well as former officers and employees, and, where possible, the facilitation of interviews of third-parties.

Providing Cooperation Credit

The Department encourages and rewards cooperation. Credit for cooperation takes many forms and is calculated differently depending on the degree to which a company cooperates with the government's investigation and the commitment the company demonstrates in doing so. Where a criminal resolution is warranted, the extent and quality of a company's cooperation will be an important part of the Department's overall analysis of the case and may impact the proposed form of the resolution, as well as the fine range and fine amount.

Once the threshold requirements for cooperation set out at JM 9-28.700 have been met, the Department will assess the scope, quantity, quality, impact, and timing of cooperation based on the circumstances of each case when evaluating a company's cooperation under this Policy. A cooperating company must earn credit for cooperation. In other words, a company starts at zero cooperation credit and then earns credit for specific cooperative actions (as opposed to starting with the maximum available credit and receiving reduced credit for deficiencies in cooperation).

To fairly and meaningfully distinguish between companies that provide differing levels and qualities of cooperation, prosecutors should consider, *inter alia*, (i) varying starting points in the U.S.S.G. guidelines range for calculating a fine and (ii) varying percentage reductions from the Guidelines range as set forth herein. A corporation that fails to demonstrate full cooperation at the earliest opportunity might reduce its ability to earn cooperation credit. Prosecutors should also include in their corporate resolution agreements information sufficient to outline why a particular company received a particular amount of cooperation

	credit. As set forth in JM 9-28.720, eligibility for any benefits under this policy is not in any way predicated upon waiver of the attorney-client privilege or work product protection, and none of the requirements above require such waiver. The Department will take into consideration the size, sophistication, and financial condition of the cooperating company when assessing the scope, quantity, quality, impact, and timing of cooperation.
Timely and Appropriate Remediation	Timely and appropriate remediation means the company has: 1. Demonstrated thorough analysis of the causes of underlying conduct (*i.e.*, a root cause analysis) and, where appropriate, remediated to address those root causes; 2. Implemented an effective compliance and ethics program. The program's criteria for effectiveness may vary based on the size and resources of the organization and the risks related to the businesses in which the organization is engaged, and may need to be periodically updated, but may include: a) The company's commitment to instilling corporate values that promote compliance, including awareness among employees that any criminal conduct, including the conduct underlying the investigation, will not be tolerated; b) The resources the company has dedicated to compliance; c) The quality and experience of the personnel involved in compliance, such that they can understand and identify the activities that pose a potential risk; d) The authority and independence of the compliance function, including the access the compliance function has to senior leadership and governance bodies and the availability of compliance expertise to the board; e) The effectiveness of the company's compliance risk assessment and the manner in which the company's compliance program has been tailored based on that risk assessment; f) The reporting structure of any compliance personnel employed or contracted by the company; g) The compensation and promotion of the personnel involved in compliance, in view of their role, responsibilities, performance, and other appropriate factors; and h) The testing of the compliance program to assure its effectiveness. 3. Appropriately disciplined employees, including those identified by the company as responsible for the misconduct, either through direct participation or failure in oversight, as well as those with supervisory

	authority over the area in which the criminal conduct occurred; 4. Appropriately retained business records and prohibited the improper destruction or deletion of business records. This includes implementing appropriate guidance and controls on the use of personal communications and messaging applications, including ephemeral messaging platforms, that may undermine the company's ability to appropriately retain business records or communications or otherwise comply with the company's document retention policies or legal obligations; and 5. Any additional 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.