

ALERT

DOJ Issues First Resolution Under Department-Wide Corporate Enforcement Policy, Underscoring Benefits of Self-Disclosure and Focus on Individual Accountability

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Last week, the U.S. Department of Justice (DOJ) introduced a new Department-wide Corporate Enforcement and Voluntary Self-Disclosure Policy (“Department-wide CEP” or “Policy”). On Thursday, DOJ announced what it is calling the first corporate resolution under the new policy – declining to prosecute French medical device company Balt SAS in connection with alleged violations of the Foreign Corrupt Practices Act (FCPA). DOJ simultaneously revealed an indictment of two individuals for FCPA violations and related money laundering charges.

The resolution demonstrates the benefits available to companies that voluntarily self-disclose misconduct, fully cooperate with the Department, and timely remediate – such companies may receive a full declination. The corporate declination, coupled with the indictment of individuals, also highlights the Department’s long-standing emphasis on individual accountability over purely corporate resolutions – “[t]he Department’s first priority is to prosecute individual criminals.”

First New Policy Resolution, but a Familiar Application

The Department-wide CEP established a uniform framework to govern how prosecutors evaluate voluntary self-disclosure, cooperation, and remediation by companies in criminal cases. As discussed in our recent Reuters article, *New DOJ Corporate Enforcement and Voluntary Disclosure Policy Brings Uniformity to Cooperation Credit in Federal*

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Criminal Cases, the Policy traces its origins to the Fraud Section's FCPA Pilot Program and Voluntary Disclosure Program, which was launched in 2016.

Accordingly, although this is the first publicly announced resolution under the "Department-wide" iteration of the CEP, it is significant that previous versions of the CEP would have applied to an FCPA resolution handled by the Fraud Section. Thus, while notable as the first resolution under the unified policy, it arises in the very enforcement area that originally gave rise to the CEP, rather than testing the policy's expansion across DOJ components.

Incentivizing Disclosure and Cooperation

DOJ granted Balt a Part I declination, which is the most favorable outcome available under the policy. Declinations under Part I are reserved for those companies that meet a strict set of criteria, which can be broadly summarized as:

1. Voluntarily self-disclosing conduct not known to the Department;
2. Cooperating with the Department's investigation;
3. Timely and appropriately remediating misconduct; and
4. The absence of "aggravating circumstances," such as egregious or pervasive misconduct, serious harm, or corporate recidivism.

Part of the requirement for cooperation (factor two, above) is the identification of all individuals involved in or responsible for the misconduct at issue, including all facts and evidence about their misconduct.

DOJ's announcement of its resolution with Balt – paired with the indictment of individuals – offers a textbook example of how the Department intends to apply the Policy's voluntary disclosure, cooperation, and remediation framework in practice. The resolution appears designed to signal that the Department-wide CEP will deliver on its promise of predictability and transparency.

In announcing the resolution, DOJ highlighted the company's conduct that led to the result, including:

1. Voluntarily self-disclosed the misconduct while its internal investigation was ongoing;
2. Provided full and "proactive" cooperation, including the provision of all known relevant facts about individuals' misconduct;
3. Engaged in timely and appropriate remediation of the misconduct, including disciplinary action against individuals and termination of tainted business relationships; and
4. The absence of aggravating circumstances that, when weighed against the other factors, warranted a different resolution.

The resolution also required Balt to disgorge approximately \$1.2 million, consistent with DOJ's long-standing practice of requiring companies receiving declinations to forfeit ill-gotten gains. In addition, according to DOJ, the company also entered into a parallel resolution with authorities in France, which included the imposition of corporate compliance requirements under the French system.

Predictability Is Key – Part I vs. Part II Resolutions

The Department will promote this resolution as an example of the roadmap that companies can follow to obtain predictable and meaningful benefits. At the same time, the decision whether – and when – to voluntarily self-disclose remains a significant and highly fact-dependent judgment for companies.

DOJ's announcement underscores the uncertainty that can remain even when applying the Department-wide CEP. The announcement notes that the company earned its declination, in part, because it had an "absence of aggravating circumstances that, when *weighed* against Balt's voluntary self-disclosure, cooperation, and remediation," still justified a declination. (emphasis added). Thus, even with a formulaic application of the Policy, the outcome can remain highly fact-dependent. Moreover, it must be noted that the "absence of aggravating circumstances," such as the pervasiveness of misconduct, may not be known at the early stages of an internal investigation when a voluntary disclosure is being considered.

Companies that have aggravating factors or fail to make a timely voluntary disclosure can still earn a favorable resolution under the Department-wide CEP – these are the "Part II" resolutions under the Policy. Under a Part II resolution, a company can receive a Non-Prosecution Agreement (NPA) and a reduction of 50% – 75% off the low end of the U.S. Sentencing Guidelines fine range.

The distinction between Part I and Part II can, in practice, be in the proverbial eye of the beholder. That judgment will often turn on how the Department evaluates the presence and weight of "aggravating circumstances," a concept that encompasses a range of factors, including the nature and seriousness of the offense, the egregiousness or pervasiveness of misconduct within the company, the severity of harm caused, and corporate recidivism – specifically, a criminal adjudication or resolution within the past five years or based on similar misconduct. This inherent subjectivity underscores the importance of robust factual development and careful strategic choices, as those factors may ultimately determine whether a matter falls under Part I or Part II.

Individual Charges Reinforce DOJ's Continued Focus on Accountability

At the same time DOJ announced the corporate declination, it also unsealed indictments against individuals allegedly involved in the bribery scheme.

The timing does not appear coincidental. By pairing a declination with individual prosecutions, DOJ continues to reinforce a core enforcement message: Companies that voluntarily disclose and fully cooperate may receive significant benefits, but individuals responsible for misconduct should expect to face prosecution. The sequencing also underscores DOJ's continued emphasis on individual accountability and reinforces the

practical importance of companies identifying responsible individuals as part of their internal investigation and cooperation efforts.

Early Takeaways from DOJ's First Department-Wide CEP Resolution

Although a single resolution does not establish a trend, the timing and tenor of this first resolution under the Department-wide CEP signal DOJ's intent to incentivize voluntary disclosures. To the extent the Department is focused on promoting the Policy in its early stages, it may approach close questions in assessing eligibility with an eye toward reinforcing the benefits of participation, particularly where a company has made a credible showing of timely disclosure, meaningful cooperation, and remediation.

Furthermore, there is reason to believe that DOJ intends to apply the Department-wide CEP in a manner largely consistent with prior CEP practice and that DOJ now expects the same core principles to apply across components under the unified policy framework. In particular, the resolution reinforces several familiar takeaways:

- Voluntary disclosure still provides the clearest path to a declination.
- Full cooperation includes identifying responsible individuals.
- Remediation remains a critical factor in resolution decisions.
- DOJ continues to pair corporate incentives with individual prosecutions.

In short, while the CEP is now department-wide, the practical incentives it creates for companies – and DOJ's expectations of companies seeking cooperation credit – remain largely unchanged.

For companies evaluating potential misconduct, the resolution reinforces several practical considerations:

- **Timely Disclosures:** Companies should promptly assess potential criminal misconduct and disclosure considerations. A delayed disclosure could preclude the company from receiving a declination under Part I.
- **Aggravating circumstances can be outcome-determinative:** Even assuming that a voluntary disclosure is made, the distinction between more favorable and less favorable outcomes (e.g., Part I vs. Part II) may turn on how DOJ evaluates "aggravating" factors, such as the nature and seriousness of the offense, the egregiousness or pervasiveness of misconduct, the severity of harm, and corporate recidivism. Given the breadth and inherent subjectivity of these factors, careful factual development and strategic advocacy are critical.
- **Disclosure decisions remain complex:** Even with clearer incentives, companies must weigh the benefits of disclosure against the risks, including how DOJ may ultimately assess aggravating circumstances and where a matter may fall within the Policy's framework.
- **Cooperation must be meaningful:** DOJ continues to expect detailed factual cooperation, including facts and evidence that will arm the Department with the information necessary to obtain indictments against culpable actors.

- **Remediation should be demonstrable:** Compliance enhancements and disciplinary measures remain essential. A company must be prepared to discipline its employees, to engage in meaningful review and improvement of its compliance programs, and to terminate tainted business relationships.