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WHITE COLLAR CRIME

SDNY Announces New Corporate Self-Reporting Program for Certain Financial Crimes

By Stephanie Brooker, Nick Hanna, F. Joseph Warin, Winston Chan, Barry Berke, Reed Brodsky, Jordan Estes, Dani James, Michael Martinez, Karin Portlock, Oleh Vretsona, Sam Raymond, and Jonathan Seibald

On February 24, 2026, the US Attorney's Office for the Southern District of New York (SDNY) announced a new, voluntary self-disclosure program in which corporations that timely self-report certain types of financial crimes, and subsequently cooperate with SDNY's investigation, remediate the misconduct, and provide restitution to victims, will promptly receive a letter from SDNY declining to criminally prosecute the corporation.¹ Jay Clayton, US Attorney for the SDNY, had previewed this new program in a fireside chat in December when he told a New York City Bar Association audience that SDNY was planning to offer "real benefits" to companies that quickly self-report misconduct, cooperate with the government, and rapidly compensate victims.²

SDNY's new program, which differs in several key (and often favorable) respects from self-disclosure programs previously announced by other US Attorneys' Offices and Department of Justice (DOJ) divisions, provides corporations with a clear outline of the steps necessary to obtain a criminal declination. At the same time, SDNY has made clear that failure to timely self-report or attempt to self-report will result in a presumption that the corporation will

not receive a declination, regardless of its cooperation. With the greater certainty of declination should the corporation follow the prescribed steps, and of the consequences of failing to timely self-report, SDNY's new program may lead to an increase in corporate self-reporting of covered financial crimes to SDNY. SDNY's program also may serve as a model for other US Attorney's Offices to adopt similar programs.

Categories of Crimes Eligible for Self-Reporting

The new SDNY program only applies to certain categories of financial crimes. Specifically, it applies to any fraud committed by a corporation or any of its employees, officers, directors, or agents. This includes any fraud in connection with securities, commodities, or digital assets, any false statements to auditors or regulators, and any other willful violations of federal securities laws that undermine the integrity of financial markets or otherwise cause harm, such as insider trading and market manipulation.

The SDNY program will not apply to any corporate crimes that have a nexus to terrorism, sanctions evasion, foreign corruption, drug or human trafficking, or other crimes involving violence or forced labor, nor to crimes involving the financing or laundering of money in connection with those crimes. For most corporations, the biggest impact will be that the SDNY program will not apply to the Foreign Corrupt Practices Act (FCPA) and associated internal controls, and books and records violations.

Importantly, eligibility for the program will not depend on the seriousness of the offense, the pervasiveness of the misconduct, the severity of harm

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caused by the misconduct, past criminal history, or the involvement of senior leaders. This is in stark contrast to other federal government self-disclosure programs, including among others the DOJ Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy, which treated these as aggravating factors disqualifying corporations from receiving declination.³

For that reason, the SDNY program both opens a wider number of crimes to declination if self-reported, and, importantly, offers corporations considering whether to self-report much greater certainty that, if self-reported, the illegal conduct they identified will not result in a criminal prosecution depending on the facts learned during the investigation. The SDNY program may therefore yield a higher rate of self-reporting than other government self-reporting programs.

Timely Self-Reporting

If a crime is eligible for potential declination, the corporation must promptly report it to SDNY, prior to receiving a government subpoena or document request, including from a regulatory agency or state government, and prior to the company learning of the existence of a government investigation. Critically, a corporation will not be disqualified even if the corporation self-reports after it learns of a whistleblower submission to the government or there are press reports regarding the illegal activity, provided there was no public reporting of a government investigation into the misconduct.

This again is in contrast to other government self-disclosure programs, which require self-reporting prior to the misconduct being publicly disclosed or known to the government, and even before there is an imminent threat of disclosure or government investigation.⁴ In other words, unlike other programs, the SDNY program appropriately assesses the timeliness of self-reporting based on when the company learned of a government investigation, not based on when the government knew or was about

to learn of the alleged misconduct. The SDNY program therefore makes it easier for a company's self-report to qualify as timely and, thereby, eligible for declination.

If a company decides to self-report, it should not wait to complete its internal investigation before reporting. Delay in self-reporting, especially where SDNY views it as strategic or self-serving, may disqualify a company. The company's self-report must include all known facts about the misconduct, the individuals involved, and any affected parties, and must be updated promptly as the company learns new information.

Conditional Declination

After a company self-reports, SDNY will determine whether the company is eligible for declination pursuant to the program. If SDNY determines that the company is eligible, SDNY will promptly grant the company a conditional declination. The conditional declination letter will explain that SDNY will decline to prosecute the company for the illegal conduct if it satisfies certain conditions set forth in the letter, including committing to cooperate with the government's investigation, conduct remediation, and provide restitution to those harmed.⁵ SDNY expects that conditional declination letters will be issued to qualifying companies within two to three weeks of self-reporting.

Other self-reporting programs have not offered such a prompt, conditional declination, waiting until the investigation runs its course to determine whether declination is appropriate.⁶ As SDNY emphasizes, its new approach of prompt conditional declinations is designed to give the company, its management, and its shareholders crucial clarity regarding the likely outcome of the investigation at the outset, further incentivizing self-reporting.

Even if a company that timely self-reports is deemed ineligible for conditional declination based on the nature of the crime reported, it is possible that SDNY may still treat the company more favorably for having timely self-reported.

Still, executives should approach the program with caution. SDNY historically has focused on charging high-level executives, rather than companies, so SDNY may view the provision of information and evidence against executives as a key component of cooperation. Companies also should be prepared to assess whether a conditional declination is worthwhile if it means a key executive could later be charged criminally.

The early need to make a decision whether to self-report and agree to a conditional declination, especially if the conduct potentially involved company executives, may accelerate and increase Board of Director involvement, including through the creation of a Special Committee to help assess and determine a course of action.

Cooperation

As with other self-disclosure programs, the corporation must fully cooperate with the government's investigation in order to receive declination. This cooperation must include, among other things: (1) accurate disclosure of all relevant, non-privileged information known to the company relating to the misconduct; (2) identifying individuals involved in or responsible for the conduct, as well as witnesses with material information; (3) sharing the non-privileged factual results of internal investigations; (4) producing all relevant documents, including documents located abroad, and making efforts to mitigate barriers to production caused by data privacy laws and foreign blocking statutes; (5) specifically identifying documents that are material to individual culpability; (6) subject to individuals' Fifth Amendment rights against self-incrimination, using best efforts to make current or former company employees or representatives, including those located overseas, available for interviews or testimony; (7) using best efforts to ensure that these witnesses are truthful; (8) coordinating with SDNY to ensure that the company's internal investigation does not interfere with SDNY's investigation; and (9) preserving records,

including relevant custodians' communications on ephemeral messaging apps.

The company also must agree to self-report to SDNY for three years all credible evidence or allegations of violations of US laws. Importantly, a company will not be disqualified from potentially receiving a declination for any misconduct that it subsequently self-reports pursuant to this continuing obligation. Nevertheless, this broad disclosure requirement may serve as a deterrent to self-reporting for some companies.

Remediation

The corporation must remediate the harm caused by the criminal conduct to obtain declination. Remediation may include implementing changes to the company's compliance program and terminating or disciplining any company employees, officers, directors, agents, customers, or investors knowingly and directly involved in the misconduct.

The remediation required by the SDNY program differs from that required by other government self-reporting programs in multiple respects. First, certain other programs have required companies to conduct a root cause analysis to determine the cause of the misconduct, and to implement an effective compliance program.⁷ The SDNY program more narrowly only states that remediation may require implementing changes to the compliance program, without any reference to a root cause analysis or implementation of an effective compliance program. It remains to be seen how meaningful a distinction this will be in practice. Second, whereas SDNY only requires disciplining individuals knowingly and directly involved in the misconduct, other programs also have required disciplining individuals who failed in oversight or had supervisory authority over the area in which the criminal conduct occurred, even if those individuals did not participate in the misconduct.⁸ By requiring a narrower remediation than other self-disclosure programs, the SDNY program may encourage greater self-reporting.

Restitution to Injured Parties

As a condition of declination, the SDNY program requires companies to pay restitution to all injured parties. To the extent the corporation pays restitution through a resolution with a regulator such as the Securities and Exchange Commission (SEC), SDNY will credit that restitution.

Notably, other disclosure programs additionally require corporations to disgorge or forfeit profits that they earned from the illegal conduct.⁹ The SDNY program, however, explicitly disclaims forfeiture so long as the company provides full restitution, and does not mention disgorgement. To the extent a corporation earned profits from criminal conduct for which there are no victims meriting restitution, a corporation may be able to retain those profits and still receive an SDNY declination letter for self-reporting. Of course, another regulator may still require disgorgement as a condition to settlement, so in practice a company may not be able to retain any profits associated with the criminal conduct.

Final Declination

At the conclusion of the government's investigation, after the company has fulfilled its cooperation, remediation, and restitution obligations, SDNY will issue a final declination notice, concluding the case without criminal charges. Importantly, the declination letter will not protect individuals, including company employees, from prosecution for the crimes the company self-reported.

The declination letter also has limits: “[it] cannot bind any state, local, or foreign prosecuting authority, or any other federal authority including regulators.” But SDNY pledges to bring to the attention of any such agencies the company's self-reporting, cooperation, and remediation. As additional incentives to self-report, SDNY will not require payment of any fine or forfeiture as a condition of declination, provided the company makes “reasonable best efforts to provide prompt and full

restitution to all injured parties.” Nor will SDNY require a company to employ a monitor in order to receive declination.

Summary of Key Differences with Other Programs

As shown above, the SDNY program differs materially from that of other US Attorney's Offices and DOJ corporate disclosure programs, including most notably the DOJ Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy, in several key respects:

- The SDNY program does not treat the seriousness of the offense, the pervasiveness of the misconduct, the severity of harm caused by the misconduct, past criminal history, or the involvement of senior leaders as aggravating factors precluding declination.
- The SDNY program assesses the timeliness of self-reporting based on when the company learned of a government investigation, not when the government knew or was about to learn of the alleged misconduct.
- The SDNY program offers companies that timely self-report covered misconduct a prompt, conditional declination at the outset of an investigation, rather than wait until the investigation concludes to determine whether declination is appropriate.
- As part of remediation, the SDNY program requires companies to implement necessary changes to their compliance programs, but does not expressly mandate that companies conduct a root cause analysis or demonstrate the implementation of an effective compliance program.
- As part of remediation, the SDNY program only requires disciplining individuals knowingly and directly involved in the misconduct, whereas other programs more broadly require disciplining individuals who failed in oversight or had supervisory authority over the area in which the criminal conduct occurred, even

if those individuals did not participate in the misconduct.

- The SDNY program requires full restitution to all injured parties, but, so long as there has been restitution, does not require forfeiture or disgorgement of profits in order to receive a declination.

Conclusion

The SDNY's new self-disclosure program seeks to deliver on US Attorney Clayton's promise to offer "real benefits" to companies that timely self-report applicable financial crimes. The program appears designed to provide a clear, structured pathway to achieve declination. The prompt conditional declination provides companies with the promise of a higher degree of certainty at the outset of an investigation regarding the ultimate outcome of what could potentially be a years' long government investigation.

In addition, by disclaiming the aggravating factors that other self-reporting programs use to disqualify corporations from eligibility for declination, the SDNY program is intended to provide companies with assurance that the conditional declination they received will not change as the facts develop during the course of the investigation. The SDNY program also appears to offer certain clearer benefits for self-reporting than comparable government disclosure programs, including narrower remediation and payments limited to restitution.

The SDNY program has incentives designed to change the calculus for many corporations regarding whether to self-report—and indeed to whom to self-report. As a result, there may be an increase in corporate self-reporting of eligible offenses to SDNY, and we will continue to closely monitor developments.

Notes

1. See United States Attorney's Office for the S.D.N.Y., "Corporate Enforcement and Voluntary Self-Disclosure Program for Financial Crimes" (Feb. 24, 2026), available at <https://www.justice.gov/usao-sdny/media/1428811/dl?inline>.
2. See "SDNY Head Backs Good Deals for Quick Cooperation by Cos.," *Law360* (Dec. 2, 2025), available at <https://www.law360.com/pulse/articles/2417296>.
3. See U.S. Dep't of Justice, Criminal Div., Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy (May 12, 2025), available at https://www.justice.gov/d9/2025-05/revise_corporate_enforcement_policy_-_2025.05.11_-_final_with_flowchart_0.pdf; United States Attorney's Office for the E.D. Pa., Corporate Transparency Initiative (Sep. 3, 2025), available at <https://www.justice.gov/usao-edpa/corporate-transparency-initiative>; U.S. Dep't of Justice, Nat'l Security Div., NSD Enforcement Policy for Business Organizations (Mar. 7, 2024), available at <https://www.justice.gov/nsd/media/1285121/dl>.
4. See Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy; E.D. Pa. Corporate Transparency Initiative; NSD Enforcement Policy for Business Organizations; U.S. Dep't of Justice, Antitrust Div., Leniency Policy and Procedures (June 2022), available at <https://www.justice.gov/atr/page/file/1490246/dl?inline>.
5. SDNY published a model conditional declination letter, available at <https://www.justice.gov/usao-sdny/media/1428826/dl?inline>.
6. See Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy; E.D. Pa. Corporate Transparency Initiative; NSD Enforcement Policy for Business Organizations.
7. See *id.*
8. *Id.*
9. *Id.*

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