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## Demystifying Declinations

The last few weeks have seen the DOJ closing three FCPA investigations without charges – the brass ring for companies under government scrutiny. The cases spanned three different industries and regions, but all involved self-reporting, cooperation and remediation. They also serve as a message from the DOJ that the Corporate Enforcement Policy’s presumption of declination, which we [examined in-depth](#) earlier this year, is not just lip service.

Guralp Systems, a U.K.-based maker of seismic testing equipment, received its declination letter on August 20, 2018. The investigation was related to payments to the director of an earthquake research institute in South Korea who was convicted for money laundering last year. The DOJ cited the SFO’s parallel investigation in its letter, perhaps stepping back as part of its efforts to avoid [“piling on” penalties](#) for the same actions in this climate of [international cooperation](#). The SFO, which has already charged two Guralp employees in the case, is now under the leadership of FBI and DOJ alumna Lisa Osofsky who promised in a speech on September 3 to be a “different kind of director” and to revitalize the [agency](#).

The second case involved Insurance Corporation of Barbados Limited (ICBL) and is related to payments by high-level corporate officers to a Barbadian government official, who has been arrested and charged with money laundering. The ICBL settlement included approximately \$94,000 in disgorgement. The August 23 resolution was the first [“declination-with-disgorgement”](#) under the Policy (or “NPA-lite” as some have characterized this type of declination).

Finally, U.K.-based drill-rig operator Ensco announced in a September 4 SEC filing that it received letters from both the DOJ and SEC stating they were closing investigations related to Pride International (not a stranger to FCPA resolutions - in 2012, [the DOJ released Pride](#) early from a DPA related to bribery in Venezuela, India and Mexico). This declination was related to payments from Pride’s third-party marketing consultant to Petrobras employees in Brazil. The payments were made before Ensco acquired Pride in 2011. This summer, [we analyzed](#) new DAAG Matthew Miner’s comments that the Corporate Enforcement Policy applies to corruption in newly acquired or merged companies.

We will continue looking at how the Department is implementing the Policy and how companies can enhance their compliance programs to optimize their chances of grabbing that brass ring if the DOJ calls.

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