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The Ongoing Self-Reporting Dilemma

In a speech in New Orleans last week, DOJ Criminal Division head Brian Benczkowski highlighted the transparent benefits of voluntarily disclosing violations, citing the Department's recent decision to decline prosecuting Cognizant Technology Solutions in part because of its disclosures. Assistant Chief of the FCPA Unit Ephraim (Fry) Wernick echoed this at a Dow Jones event in New York yesterday. But, despite this emphasis, are companies voluntarily self-reporting FCPA matters less frequently than before?

Thomas Firestone, a partner at Baker McKenzie, told me he thinks self-reports are indeed declining. At last week's Trace Forum in Washington, D.C., he observed that this may be because more former DOJ officials are now in private practice and they realize how hard it is for the DOJ to detect and pursue violations. Further, because of the increasing activity of foreign regulators, self-reporting means that "you may have bought yourself investigations in four more countries," Charles Duross, a partner at Morrison Foerster and former Chief of the DOJ's FCPA Unit, said at the event, notwithstanding the DOJ's emphasis on not "piling on" penalties among and within jurisdictions.

We have examined the many factors involved in the crucial decision about whether to self-report from various angles over the years, such in our detailed analysis of the Corporate Enforcement Policy and its predecessor, the Pilot Program, as well as in guest articles. In fact, I wrote an article series on the decision to self-report in our inaugural issues in June 2012. More recently, Megan Zwiebel's series of interviews with prominent members of the FCPA bar delved into the details of what to do after the decision to self-report has been made.

Has your approach to self-reporting changed over time? We would love to hear what motivated any shift in your reasoning.

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