

New Study Finds That Voluntary Disclosure of FCPA Violations Does Not Measurably Reduce Penalties

The Department of Justice (DOJ) and Securities & Exchange Commission (SEC) have long promised that companies will receive a tangible benefit for voluntarily disclosing violations of the Foreign Corrupt Practices Act (FCPA). Not so, says a recent draft study by New York University (NYU) School of Law professors Stephen J. Choi and Kevin E. Davis, which examined FCPA enforcement actions from 2004 through 2011. Their study found no discernible evidence that voluntary disclosure of FCPA violations resulted in lesser penalties.

The study's authors restricted their data set to cases by the DOJ and SEC involving alleged violations of the FCPA's anti-bribery provisions by corporate defendants from 2004 to 2011; fines imposed against individual defendants were not considered. They then applied statistical models to the data to measure whether the total monetary penalty imposed (including fines and disgorgement of profits) was affected by engaging in activities consistent with the United States Sentencing Guidelines' mitigating factors, e.g., remediation, cooperation and voluntary disclosure. The results showed no evidence that engaging in mitigation activities correlated with a reduced penalty for FCPA defendants.

The scope of the study notably did not include any effect on the FCPA defendant's business activities or share prices. Nor did it attempt to quantify whether engaging in mitigating activities, such as remediation, cooperation or voluntary disclosure, had an impact on the level of scrutiny and control by the DOJ and SEC over the company's internal investigation.

The study's authors acknowledged that there may be other benefits to voluntary disclosure which they did not address. When asked about the results of the study, co-author Kevin E. Davis reportedly commented that "[w]e cannot rule out the possibility that disclosure does result in some form of leniency, but the fact that we could not find any evidence of the benefits of voluntary disclosure suggests that current enforcement practices are not creating clear incentives."

Lawyers in Squire Sanders' global anti-corruption and white collar practices regularly counsel clients on FCPA compliance and enforcement issues. If you have any questions about the impact of this information upon your existing compliance program or business activities please contact one of the individuals listed in this Alert.

Contact

Rebekah J. Poston
Partner
T +1 305 577 7022

Joseph Walker
Partner
T +1 202 626 6725

Gabriel Colwell
Senior Associate
T +1 213 689 5126

rebekah.poston@squiresanders.com

joseph.walker@squiresanders.com

gabriel.colwell@squiresanders.com