

Evaluating FCPA Pilot Program: Declinations On The Rise

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In this article, Marc Alain Bohn* and James Tillen discuss the state of Department of Justice (DOJ) Foreign Corrupt Practices Act (FCPA) declinations after one year of the agency's enforcement "pilot program," which sought to promote greater accountability for companies and individuals who violate the FCPA, while rewarding those who voluntarily self-disclose violations and cooperate with investigations and remediation efforts. "Based on a combination of public disclosures, press reports, and personal involvement, we have identified a record 15 DOJ declinations in 2016, along with another six DOJ declinations in 2017 to date, which puts the department on pace for another record year. By comparison, the DOJ has averaged around 10 declinations a year since 2010," Bohn and Tillen wrote. In March 2017, Acting Assistant Attorney General Kenneth A. Blanco announced that the pilot program would continue in full force after the end of the initial pilot period on April 5, 2017. The impact of this decision on declinations, as well as the overall outlook of FCPA enforcement under Attorney General Jeff Sessions, remains to be seen. Despite these unknown factors, a review of open FCPA investigations points to a likely increase in DOJ FCPA declinations. "We are currently tracking over 100 open FCPA investigations reportedly being conducted by the DOJ, including more than 40 initiated since 2016," the authors said. "Given these numbers, it seems likely that the DOJ will sustain its recent uptick in declination decisions as the department seeks to resolve or close out these investigations in years to come."

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