

U.S. ATTORNEYS' OFFICES VOLUNTARY SELF- DISCLOSURE POLICY WATCH OUT FOR THE NEXT LOGICAL STEP – *ENFORCEMENT*

It is safe to assume that the United States Attorneys' Offices [Voluntary Self-Disclosure Policy](#) announced on March 2, 2023 is intended to decrease wrongdoing and impose rehabilitation and recovery for victims.

But announcing voluntary disclosure is only half of the equation. The other half is vigorous law enforcement.

Simply put, companies must be made afraid of being caught. This is the foundation for the successful voluntary disclosure policy of the Antitrust Division of the Department of Justice (DOJ).

But the antitrust analogy is not complete. Antitrust violations, particularly of the [Sherman Act](#), require a partner, or in these cases a co-conspirator. Rather than "honor among thieves," co-conspirators worry that their partner or worse, partners, will beat them in the race to the Antitrust Division.

Is there such an analogy with other criminal conduct? Most of the crimes prosecuted by the DOJ do not require a partner and, indeed, many are skillfully kept within the confines of the company. So, where is the pressure to confess? Too many corporate meetings where a decision on voluntary disclosure is being made, start and end with questions which begin with the phrase "What is the likelihood...."

The answer to the likelihood of being caught is to have vigorous law enforcement.

It is not too late. When I ran the Criminal Division in the U.S. Attorney's office in the Southern District of New York, there were times that we brought numerous indictments at one time or in bunches to deter specific criminal activity. Tax evasion being a perfect example.

This same approach is likely to be undertaken so that the balance of the equation is in favor of the government and not those who hide in the weeds. Otherwise, the result of the voluntary disclosure policy may unintentionally undermine the value of deterrence by providing a path out of trouble after the crime has been committed.



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