

DECLINATIONS IN WEEKS: SDNY'S NEW VOLUNTARY SELF-DISCLOSURE REGIME

Date: 2 March 2026

US Policy and Regulatory Alert

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On 24 February 2026, the US Attorney's Office for the Southern District of New York (SDNY) unveiled a new Corporate Enforcement and Voluntary Self-Disclosure Program for Financial Crimes (SDNY CEP). Under the new approach, SDNY promises qualifying companies a formal declination—even releasing a standard form declination letter—which it commits to provide companies on a conditional basis within two to three weeks of the self-report.

The SDNY CEP is framed as a way to accelerate investigations, identify culpable individuals, and provide restitution more efficiently. According to SDNY, the program “builds on years of experience with corporate self reporting, a focus on individual accountability, and a commitment to the interests of victims,” and it is intended to protect investors, accelerate detection of wrongdoing, and bolster market integrity by encouraging prompt disclosure and swift remediation.¹ The move furthers SDNY's push to align prosecutorial incentives with voluntary disclosure, rapid cooperation, and victim restitution, and it follows the US Department of Justice (DOJ) May 2025 update to its Corporate Enforcement and Voluntary Self Disclosure Program² (DOJ CEP), which similarly clarified benefits for timely self reporting—offering companies greater predictability and assurance when they come forward.³

This alert (i) summarizes the key features of the SDNY CEP, (ii) highlights its differences from the current DOJ CEP, and (iii) offers practical guidance (including pros and cons) for companies considering voluntary self disclosure under the new regimes.

KEY FEATURES OF SDNY PROGRAM

Crimes Covered

Stated Purpose

SDNY's policy is available to companies who self-disclose conduct involving fraud or financial misconduct that affects market integrity.

Broad View of Fraud

SDNY defines fraud “expansively” to include all manners of deceptive conduct, including false statements, forgery, embezzlement, misappropriation, spoofing, insider trading, and market manipulation. SDNY's specific listing of insider trading and market manipulation are notable given SDNY US Attorney Jay Clayton's stated interest in policing prediction markets.

Securities Emphasis

The SDNY program specifically reaches all willful violations of the Securities Act of 1933, the Securities Exchange Act of 1934, the Commodity Exchange Act, Investment Advisers Act of 1940, and the Investment Company Act of 1940.

Eligibility Requirements

Timely and Voluntary Disclosure

A company must self-disclose promptly, including before it has knowledge of a government investigation. However, a company will not be disqualified from the program if they disclose after learning of a whistleblower submission, press reporting of misconduct, or a prior self-report to another agency.

Full Cooperation

Eligibility for a declination requires “timely, truthful, continuing, and full” cooperation with SDNY. Such cooperation includes disclosure of all relevant, nonprivileged information known to the company relating to the conduct, identifying responsible individuals and witnesses, sharing results of an internal investigation, providing documents and other materials, preserving records, and consenting to disclosures to other government agencies.

Full Remediation and Restitution

A company must commit to full remediation and restitution of victims before it can receive a conditional declination letter, and it must reasonably remediate and make reasonable best efforts toward restitution before it can obtain a final declination.

Three-Year Reporting Obligation

For three years after the voluntary disclosure, a company must disclose all credible evidence or allegations of criminal conduct by the company or its employees.

No Protection for Individuals

Declinations provide no protection to individuals, and declination awards are predicated on a company's willingness to cooperate and share nonprivileged information identifying individuals involved in the misconduct.

Offered Incentives

Declination Letters

The SDNY policy includes a model conditional declination letter, which eligible companies will receive upon a successful self-disclosure.⁴ Such letters are intended to enhance clarity and finality following the self-disclosure process.

Speedy Resolutions

A company should receive a conditional declination letter from SDNY within two to three weeks of self-disclosure.

No Fines or Forfeitures

SDNY will not seek criminal fines or forfeitures as long as a company makes reasonable best efforts to provide prompt and full restitution to injured parties.

No Monitors

A company will not be required to employ or be supervised by a monitor as part of any resolution with the SDNY.

COMPARISON OF SDNY AND DOJ CORPORATE ENFORCEMENT PROGRAMS

Topic	DOJ CEP	SDNY CEP
Relevant Conduct	All corporate misconduct handled by the Criminal Division.	Limited to fraud and financial misconduct affecting market integrity. “Fraud” is defined expansively and includes all manner of intentionally deceptive conduct, specifically including: <ul style="list-style-type: none"> ▪ False statements ▪ Spoofing ▪ Misappropriation ▪ Embezzlement ▪ Insider trading ▪ Market manipulation
Voluntary Disclosure and Timeliness	Self-reporting companies are not credited with a fully voluntary disclosure if: <ul style="list-style-type: none"> ▪ Reported conduct was previously known to DOJ. ▪ Disclosure occurs prior to imminent threat of DOJ learning of misconduct. ▪ Reporting company already had preexisting obligation to disclose. ▪ Report was not reasonably prompt following the company's awareness of the conduct. 	Companies must self-disclose promptly upon discovery of conduct and before learning of a government investigation. Companies are <i>not</i> disqualified from a declination if their self-report comes after press reports of misconduct or whistleblower submissions to DOJ.
Cooperation	Requires full cooperation, which	Full cooperation is largely similar to the

<p>Requirements</p>	<p>includes:</p> <ul style="list-style-type: none"> ▪ Disclosure of all relevant nonprivileged facts. ▪ Timely disclosure of those facts. ▪ Proactive cooperation and disclosure independent from DOJ formal requests. ▪ Preservation/production of documents. ▪ De-conflicted investigative steps. ▪ Making officers and employees available for interviews. 	<p>DOJ CEP, with the added three-year obligation to report any new credible allegations against the company or individuals within it.</p>
<p>Restitution, Forfeiture, and Disgorgement</p>	<p>To receive a declination, a self-reporting company must pay disgorgement/forfeiture and make all restitution/victim-compensation payments resulting from the misconduct at issue.</p>	<p>SDNY <i>will not</i> seek any form of financial penalty (including criminal fine or forfeiture) as long as the company makes “reasonable best efforts” to provide prompt and full restitution to all injured parties.</p> <p>A company must <i>commit</i> to making restitution to all injured parties before receiving a conditional declination, and it must <i>make</i> restitution before receiving a final declination.</p>
<p>Aggravating Circumstances</p>	<p>Aggravating circumstances make a company ineligible for declination.</p> <p>Aggravating circumstances may include:</p> <ul style="list-style-type: none"> ▪ The nature and seriousness of the offense. ▪ Egregiousness or pervasiveness of the misconduct within the company. 	<p>Aggravating circumstances make a company ineligible for declination.</p> <p>Aggravating circumstances <i>only</i> include:</p> <ul style="list-style-type: none"> ▪ Nexus to terrorism. ▪ Sanctions evasion. ▪ Foreign corruption. ▪ Sex trafficking.

	<ul style="list-style-type: none"> ▪ Severity of harm caused by the misconduct. ▪ Criminal adjudication or resolution within the last five years based on similar misconduct. 	<ul style="list-style-type: none"> ▪ Human trafficking and smuggling. ▪ International drug cartels. ▪ Slavery. ▪ Forced labor. ▪ Physical violence. ▪ The knowing or reckless financing of these activities or laundering of funds in support of these activities. <p>Aggravating circumstances <i>will not</i> include:</p> <ul style="list-style-type: none"> ▪ The seriousness of the offense. ▪ The pervasiveness of the misconduct within the company. ▪ The severity of harm caused by the misconduct. ▪ Past criminal adjudications. ▪ The involvement of senior leaders.
<p>Near-Miss Program</p>	<p>Yes—existence of aggravating circumstances or incomplete disclosure may still leave a company eligible for “near-miss” resolution, which awards a more lenient non-prosecution agreement.</p>	<p>No—existence of aggravating circumstances or incomplete disclosure will render a company ineligible for a declination.</p>
<p>Declination Letter</p>	<p>All declinations made public, but no specific guidance regarding declination letters.</p>	<p>Qualified companies will receive a conditional declination letter stating that the SDNY is declining to prosecute the company for the illegal activity, provided that the company satisfies the conditions set forth in the letter.</p> <p>The SDNY provided a standard model</p>

		of a conditional declination letter.
Timing	No specific timeline for a declination. Declinations require approval by the Assistant Attorney General (Criminal Division).	Qualifying companies that self-report can expect such a conditional declination letter within two to three weeks of making a self-report. Final declination issued after satisfaction of cooperation, remediation, and full restitution.
Ongoing Reporting Obligation	Companies eligible for declination have no ongoing reporting requirement. Companies eligible for near-miss resolution receive a non-prosecution agreement for a term of less than three years, which may include an ongoing reporting requirement.	Declinations include a three-year obligation to report to SDNY all credible evidence or allegations of the company or its employees violating US law. The obligation to report such conduct will not disqualify the company from receiving a declination or non-prosecution agreement following future self-reporting.

PRACTICAL CONSIDERATIONS

Scope and Speed Are Critical

A rapid, focused, well documented investigation that identifies root causes and corrective actions increases chances of favorable treatment. To secure declination or credit, expect demands for prompt production, witness interviews, preserved evidence, and transparent briefing of investigative findings.

Jurisdictional Limitations

Signed declinations, like non-prosecution and deferred-prosecution agreements, are binding only on the US Attorney's Office that enters into the agreement. While not routine practice, one office could theoretically bring their own enforcement actions despite the agreements made by another office. Alternatively, agreements under the DOJ CEP offer the potential for broader resolution, given the involvement of the Justice Department and the proximity of the Assistant Attorney General. Weighing these jurisdictional risks are an essential component of any disclosure strategy.

Privilege and Litigation Risk

Thoughtful privilege preservation is essential; waiving privilege selectively may be necessary to obtain cooperation credit, but it increases civil liability exposure.

Remediation and Compliance Enhancements

Concrete remediation (e.g., policy changes, discipline, training, compliance upgrades, independent review) should be implemented and documented before or concurrently with disclosure.

Coordination and Counsel

The premium placed on prompt disclosures puts significant pressure on companies to engage experienced criminal and regulatory counsel at the earliest stages of when problems are identified. Key decisions will include managing disclosure strategy; negotiating timing, scope, and conditional declination terms; and coordinating parallel regulatory or civil risks.

Tailored Tradeoffs

SDNY's local practices and points of emphasis (e.g., victim remediation, speed, no forfeiture) may favor disclosure in some matters; in others, the broader DOJ framework may yield different tradeoffs.

Individual Referrals

Declinations are conditioned on a company's willingness to cooperate in identifying culpable individuals. Even with corporate declination or credit, companies must be prepared for the potential of individual referrals and potential collateral actions.

FOOTNOTES

¹ See [Southern District of New York | SDNY Announces Corporate Enforcement And Voluntary Self-Disclosure And Cooperation Program For Financial Crimes | United States Department of Justice](#) (24 Feb. 2026).

² See [DOJ Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy 9-47.120](#).

³ For a detailed discussion of update to the DOJ Corporate Enforcement Policy, see K&L Gates, [Clearer Carrots and More Restrained Sticks: Key Updates to DOJ Corporate Enforcement Policies](#) (15 May 2025).

⁴ See [SDNY Model Conditional Declination Letter](#).

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