

## CLIENT ALERT

### DOJ's FCPA Pilot Program Issues First Public Declination Under Trump Administration

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Last Friday, the Department of Justice publicly disclosed another declination under its FCPA pilot program. This is the sixth public declination by the Department since first launching the program in April 2016 (as previously discussed in a [Crowell & Moring alert](#)). It also represents the first public declination since the Department [announced the temporary extension of the pilot program](#) on March 10, 2017, and the first under the new administration.

#### The Facts

In its June 16th [letter to counsel](#) for Linde North America Inc. and Linde Gas North America LLC, the Department outlined a series of factual findings related to Linde's FCPA violations. It attributes the offending conduct to Spectra Gases, Inc., a New Jersey company acquired by Linde in October 2006, and states that between approximately November 2006 through December 2009, Linde—through Spectra—"made corrupt payments to high-level officials at the National High Technology Center (NHTC) of the Republic of Georgia, a 100 percent state-owned and -controlled entity, in connection with its purchase of certain income-producing assets from the NHTC." The alleged scheme involved three high-level Spectra executives agreeing to a profit-sharing arrangement with high-level NHTC officials. Namely, in exchange for the officials' assistance in ensuring that Spectra was selected as the purchaser of key NHTC assets, the Spectra executives agreed to share profits resulting from future sales with those officials. Ultimately, the NHTC officials "received approximately 75 percent of the profits generated by" Spectra's arrangement with NHTC. Prior to discovering the misconduct, Linde dissolved Spectra, became its successor-in-interest, and continued to benefit "as a result of the corrupt conduct."

#### Cooperation, Cooperation, Cooperation:

Consistent with prior declinations, the Department credited a number of examples of Linde's cooperation that factored into the declination, including: "Linde's voluntary self-disclosure of the matter;" "the thorough, comprehensive and proactive investigation undertaken by Linde;" "Linde's full cooperation in the matter (including its provision of all known relevant facts about the individuals involved in or responsible for the misconduct) and its agreement to continue to cooperate in any ongoing investigations of individuals;" "the steps Linde has taken and continues to take to enhance its compliance program and its internal accounting controls" and "Linde's full remediation" described as "including terminating and/or taking disciplinary action against the employees involved in the misconduct, including the Spectra Executives and lower-level employees involved in the misconduct," withholding certain payments from the executives, and terminating a management agreement with and withholding payments from "companies owned or controlled by the NHTC Officials."

#### About the Money

Although Linde successfully avoided criminal prosecution, it also agreed to disgorge \$7.8 million (representing profits and benefits received by Spectra and, subsequently, Linde) and to forfeit an additional \$3.4 million (representing "corrupt proceeds

owed to companies owned or controlled by the NHTC Officials"). Linde's agreement to continue cooperating means that the financial costs may yet increase, and the Department is at least telegraphing that it intends to continue investigating the individuals involved.

### **Cautionary Tale**

Linde got to the right result in this matter, but the cost of getting there was not cheap. Like other matters, this FCPA declination is a stark reminder of the importance of pre-acquisition due diligence.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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