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FCPA Declination Highlights the Importance of Pre-Acquisition Due Diligence
and Post-Acquisition Compliance Integration

As we have [observed](#), in its early days, the Trump Administration has stressed its intention to maintain continuity in white-collar enforcement, including through its recent [extension](#) of the FCPA Pilot Program. Consistent with that approach, the first FCPA action under the new administration was a Pilot Program declination, closing an investigation without enforcement action other than disgorgement.

This investigation focused on a bribery scheme at Spectra Gases, a Linde Group subsidiary, which began before Linde acquired Spectra in 2006 and continued for three years thereafter. As part of the scheme, foreign officials in the Republic of Georgia received a share of profits from Spectra's Georgian operations in exchange for the selection of Spectra as the purchaser of valuable Georgian assets.

The DOJ [declination letter](#) identified a number of determining factors consistent with the Pilot Program's requirements, including Linde's timely self-disclosure upon discovering the scheme when it dissolved Spectra; thorough internal investigation, full cooperation, and remediation; improved compliance and internal audit controls; and agreement to both disgorge profits and forfeit proceeds that Linde withheld from Georgian officials after discovery of the scheme.

In addition to demonstrating DOJ's commitment to the FCPA Pilot Program, this declination highlights the challenges companies face in ferreting out misconduct at acquired entities — challenges that DOJ appeared to recognize in awarding a declination despite the scheme's continuation post-acquisition. But more fundamentally, the matter serves as a stark reminder of the importance of careful pre-acquisition due diligence and thoughtful post-acquisition compliance integration, tailored to the FCPA risks presented by the acquired company's business. Such efforts will place an acquirer in the best possible position to identify, remediate, and resolve issues in a timely and effective manner.

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