



### **ADMINISTRATIVE LIABILITY**

- *Fine* .1% 20% of the gross income of the fiscal year prior to the institution of the administrative proceedings or the benefit gained, whichever is greater
- Public Naming & Shaming Publication of adverse judgment in wide-circulation/ national circulation press (and at company's cost) and 30-day or more public posting of notice of adverse judgment in the business

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# CRITERIA FOR CALCULATION OF PENALTY

- Seriousness of the violation
- Benefit gained or sought
- Extent to which the violation was completed
- Degree of injury or "negative effect" of the violation
- "Financial position" of violator
- Cooperation in the investigation
- Effectiveness of any internal controls, policies, and procedures

## JUDICIAL LIABILITY

- Loss of assets, rights, or amounts gained from illegal conduct
- Suspension/partial prohibition on operations
- Dissolution (if company was "habitually" used to facilitate or promote illegal acts or was used to conceal interests/identity
  of beneficiaries of the acts committed)

## NOTES CONCERNING INDIVIDUAL LIABILITY

- Not excluded by Clean Companies Act
- Manager/administrator liability based on personal culpability

#### • NOTES CONCERNING COMPANY LIABILITY

- Successor liability generally limited to fine and restitution
- Liability not extinguished by change in corporate form/ merger/divestiture
- Joint and several liability for misconduct by subsidiary/ parent/affiliate
- "Leniency agreements" based on company's cooperation