



THE CHAMBER OF COMMERCE

Staying Ahead of Compliance Challenges

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Chairman of ACC Compliance Club

Trends

- Focus on the adequacy of compliance systems in charging decisions
- Corporations must cooperate fully in DOJ investigations
- Focus on prosecution of individuals (Yates Memo)
- Coordination with foreign counterparts in the effort to hold corrupt individuals and companies accountable
- Company's cooperation against individuals
- Violations that might have gone uncovered in the past are now more likely to come to light

Deputy Attorney General Sally Yates “Yates Memo” September 9, 2015

Deputy Attorney General Sally Yates

Individual Accountability for Corporate Wrongdoing



Deputy Attorney General Sally Yates “Yates Memo” September 9, 2015

- ❑ applicable to criminal as well as civil enforcement matters
- ❑ applied to both future investigations and pending matters

- ❑ individuals as a main TARGET - one of the most effective ways to combat corporate misconduct. Department attorneys should not resolve matters with a corporation without a clear plan to resolve related individual cases.

- ❑ in order to obtain credits, company should disclose all relevant facts about responsible individuals
 - ❖ cannot pick and choose what facts to disclose
 - ❖ must identify all individuals involved in or responsible for the misconduct at issue, regardless of their position, status or seniority

Deputy Attorney General Sally Yates “Yates Memo” September 9, 2015

- ❑ ongoing requirements that companies continue to provide relevant information about any individuals implicated in wrongdoing
- ❑ companies must also “investigate up” to determine if supervisory personnel or management had any role in the misconduct in order to get the same credit for cooperation.
- ❑ if there is a concern that senior management was involved in or had knowledge of misconduct, the company should rely on independent board members to lead the investigation.

FCPA Enforcement Plan and Guidance. The “Pilot Program” OR “Weissmann Memorandum” (5 April 2016)

Andrew Weissmann - Chief of the Criminal
Division’s Fraud Section, DOJ

The Fraud Section’s Foreign Corrupt Practices
Act Enforcement Plan and Guidance.



The Pilot Program

Self reporting program:

three areas for credits:

(1) Self-disclosure, (2) Cooperation, (3) Remediation;

early self/reporting, cooperation and appropriate remediation together can lead up to a 50% reduction off the bottom end of the fine range;

should not require appointment of a monitor if a company has, at the time of resolution, implemented an effective compliance program

cooperation only can lead up to a 25% reduction.

The Pilot Program

Voluntary Self-Disclosure

- will determine whether the disclosure was already required to be made - prior to an imminent threat of disclosure or government investigation.
- reasonably prompt time after becoming aware of the offense
- all relevant facts known to it, including all relevant facts about the individuals involved in any FCPA violation

Timely and Appropriate Remediation in FCPA Matters

- Implementation of an effective compliance and ethics program
- Appropriate discipline of employees

The Pilot Program

Full Cooperation in FCPA Matters

- ❑ Proactive cooperation - the company must disclose facts that are relevant to the investigation, *even when not specifically asked to do so*, and must identify opportunities for the government to obtain relevant evidence not in the company's possession and *not otherwise known to the government*
- ❑ Disclosure of *overseas* documents, *the location* in which such documents were found, and *who found* the documents;
- ❑ Upon request, making available for Department interviews those company officers and employees who possess relevant information; this includes, where appropriate and possible, officers and employees *located overseas* as well as *former officers and employees*
- ❑ Disclosure of all relevant facts gathered during a company's independent investigation,
- ❑ Unless legally prohibited, *facilitation of the third-party production of documents and witnesses* from foreign jurisdictions; and
- ❑ Where requested and appropriate, provision of *translations of relevant documents in foreign languages*

Effective compliance program

An effective compliance program includes:

- “a culture of compliance, including an awareness among employees that any criminal conduct” will not be tolerated;
- sufficient resources to the compliance function;
- quality and experience of the compliance personnel in terms of risk assessment;
- independence of the compliance function;
- effective risk assessment and tailored compliance program based on that assessment;
- compensation and promotion of compliance personnel compared to other employees;
- auditing of the compliance program to assure its effectiveness;
- reporting structure of compliance personnel within the company.

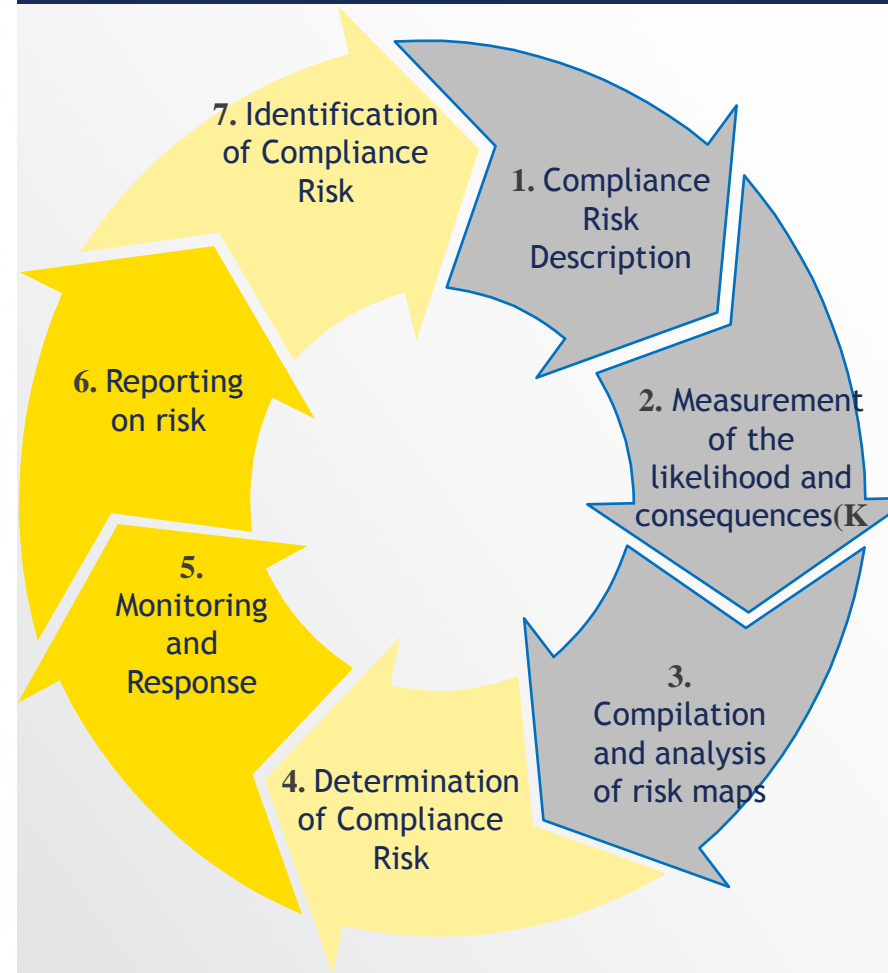
Effective compliance program

FROM policies, procedures and training TOWARD corporate resources dedicated to compliance

Two new elements:

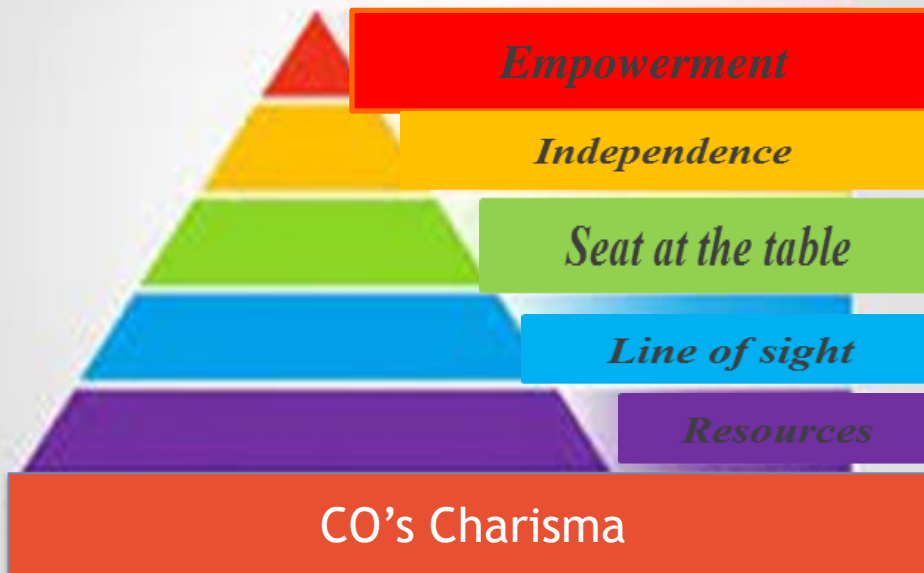
- (1) “The quality and experience of the compliance personnel such that they can understand and identify the transactions identified as posing a potential risk”; and
- (2) “How a company’s compliance personnel are compensated and promoted compared to other employees.

Elements of Compliance Program/Risk Management Methodology



Pyramid of Compliance Officer's efficiency

5 Elements of Effective Compliance Officer +1 Ukrainian Lesson



- top-level position, clear mandate
- independent budget, absence of pre approvals, ability to escalate any issues
- have experience and understanding of the business, participate in meetings
- unlimited access to information - an independent opinion
- resources (human and technical) according to company's locations and activities

The Anti-Bribery Management Systems Standard ISO 37001, 15 October 2016

- Plan-Do-Act-Check” approach
 - ❖ *adopting anti-bribery policy*
 - ❖ *appointing a person to oversee anti-bribery compliance*
 - ❖ *appropriate training*
 - ❖ *risk assessments*
 - ❖ *due diligence on projects and business associates*
 - ❖ *implementation of financial and commercial controls and*
 - ❖ *investigation procedures*
 - ❖ *anonymous reporting systems for whistleblowers*
 - ❖ *monitoring compliance*
 - ❖ *ensuring business associates have implemented anti-bribery controls*
- Active and Passive Bribery
- Public and Private Sector



International
Organization for
Standardization

The Anti-Bribery Management Systems Standard ISO 37001, 15 October 2016



International
Organization for
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- establish no binding legal requirements*
- facilitation payments are prohibited*
- certification will not establish a defense to prosecution for bribery in U.S. courts*
- AT THE SAME TIME, certification will provide evidence in court that a company has taken reasonable steps to prevent bribery*
- no clear definition of “bribery” (in order to extend application)*
- rights to skip requirements that conflict with applicable/domestic law*
- a slight difference from from the guidance available from the UK Ministry of Justice, the US Department of Justice, the OECD*

Thank you!