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Compliance officer pay: The government speaks

In describing what pay for performance means, no one has ever improved on this bit of dialogue from the Marx Brothers' *Monkey Business*:



Kaplan

Groucho: Just how tough are you?

Chico: You pay little bit, we're little bit tough. You pay very much, very much tough. You pay too much, we're too much tough.

Compliance and ethics (C&E) officers are, of course, expected to be tough—as well as knowledgeable, diplomatic, and otherwise virtuous. But companies do not always do what they should to make sure these expectations are met. In some companies, C&E quality is an unfunded mandate.

In April of this year, the Department of Justice (DoJ) issued a new pilot policy to encourage self-reporting of FCPA violations.¹ Much has been written about the self-reporting aspects of the policy, but for me, of greatest interest is the definition of an effective C&E program, which includes the following two elements (among others):

- ▶ The quality and experience of the compliance personnel such that they can understand and identify the transactions identified as posing a potential risk.
- ▶ How a company's compliance personnel are compensated and promoted compared to other employees.

This official nod to economic reality is an important step forward for the profession.

Hopefully, it will give C&E officers a more solid foundation (i.e., one based on an important legal standard) for securing reasonable compensation.

The expectation is more important than ever before, as this part of the new standard should be read in tandem with another section which says C&E programs must include:

Appropriate discipline of employees, including those identified by the corporation as responsible for the misconduct, and a system that provides for the possibility of disciplining others with oversight of the responsible individuals, and considers how compensation is affected by both disciplinary infractions and failure to supervise adequately.

Note that the requirement of discipline for failure to supervise, as appropriate, is not new. In fact, it was part of the original Federal Sentencing Guidelines for Organization. But it has been widely ignored in the nearly quarter century since then, and many C&E officers have not wanted to push back against the status quo in their respective companies.

By including it in this new formulation, the DoJ clearly expects companies to step up to the plate on what could be some very difficult decisions. And for that, the C&E officer will need to be “very much tough” indeed. *

1. U.S. Department of Justice, The Fraud Section's Foreign Corrupt Practices Act Enforcement Plan and Guidance, April 5, 2016. Available at: <http://bit.ly/fcp-act>

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