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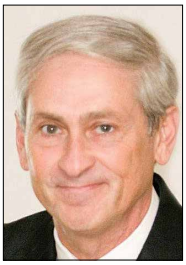
by Jeffrey M. Kaplan

How much is enough?

Companies often struggle to define "how much" compliance they need. It comes up in various everyday decisions C&E officers face. It also arises when undertaking a C&E program assessment, the first step of which is deciding what standards they want utilized for the process.



Kaplan

Presumably everyone should include the bare legal minima in their assessment criteria, and—at least in the U.S.—that starts with the Federal Sentencing Guidelines for Organizations. For companies with non-trivial exposure to the Foreign Corrupt Practices Act, the Resource Guide published by the Department of Justice and Securities and Exchange Commission[1] should be included in this list. Increasingly, global companies should also include other countries' C&E standards in their assessment and other criteria.

But is the legal minimum by itself enough? I once was asked by a company if I could help them create a "C minus" program. I replied that while I thought it could be done in theory, I wouldn't want to do it as a matter of practice, since the ultimate "grader" would be the government (not me) and how a prosecutor might see the difference between a "C minus" and a "D" or "F" would be hard to predict.

When asked how much is enough for companies seeking to choose an assessment standard, I often recommend that they utilize "strong." This is more than the legal minima, but less than "best practice." I have nothing against the latter in theory, but in practice, it is often applied to practices that are not in fact the best in their class. Strong is, in my view, good enough for most companies and avoids an element of hype that can diminish the overall credibility of an assessment report.

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But not all companies have the same needs when it comes to setting assessment criteria. For instance, businesses whose customers are compliance-sensitive—such as governmental entities or companies in highly-regulated industries—may have a strong *commercial* imperative for going beyond what most other companies do C&E-wise. The same is true for organizations that have had one or more serious criminal/regulatory charges brought against them in the past and can expect particularly harsh treatment in any future brush with the law. For entities that have special vulnerabilities of these or other sorts, assessing against a truly high standard may be warranted. ✳

1. U.S. Department of Justice and Securities and Exchange Commission, A Resource Guide to the U.S. Foreign Corrupt Practices Act (2012). Available at: http://bit.ly/crim-fraud

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