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U.S. Department of Justice Releases Framework for Evaluating Corporate Compliance Programs

Earlier this month, without a press release or any public statement, the U.S. Department of Justice's ("DOJ") Criminal Division's Fraud Section published a new framework on evaluating corporate compliance programs in the context of criminal investigations (available [here](#)).

The "Evaluation of Corporate Compliance Programs" ("**Evaluation Framework**") sets forth categories of "sample topics and questions" that the DOJ "has frequently found relevant in evaluating a corporate compliance program." The DOJ did note that these topics and questions are not a checklist or formula, and not all may be relevant depending on the particular facts of a given case.

The Evaluation Framework is comprised of 11 sections:

1. **Analysis and Remediation of Underlying Misconduct** – Has the company done a root cause analysis? What were the findings? Were there prior indications or opportunities to detect the misconduct in question that were missed? If so, why? What remedial steps has the company taken to prevent similar misconduct in the future?
2. **Senior and Middle Management** – Has leadership encouraged or discouraged the type of misconduct in question? How has it demonstrated commitment to compliance? How much oversight do the board of directors and senior management exercise relating to compliance?
3. **Autonomy and Resources** – Was compliance involved in training and decisions relevant to the misconduct? Do the compliance and relevant control personnel in the field have reporting lines to headquarters? If not, how has the company ensured their independence? How have decisions been made about the allocation of personnel and resources for the compliance and relevant control functions in light of the company's risk profile?
4. **Policies and Procedures** – What has been the company's process for designing and implementing new policies and procedures? How has the company communicated these policies and procedures to relevant

- employees and third parties? What controls failed or were absent that would have detected or prevented the misconduct?
5. **Risk Assessment** – What methodology has the company used to identify, analyze, and address the particular risks it faced? What information or metrics has the company collected and used to help detect the type of misconduct in question? How has the company’s risk assessment process accounted for manifested risks?
 6. **Training and Communications** – What training have employees in relevant control functions received? How has the company measured the effectiveness of the training? What has senior management done to let employees know the company’s position on misconduct that might have occurred? What resources are available to employees to provide guidance relating to compliance policies?
 7. **Confidential Reporting and Investigation** – How has the company collected, analyzed, and used information from its reporting mechanisms? How has the company ensured that investigations have been properly scoped, and were independent, objective, appropriately conducted, and properly documented?
 8. **Incentives and Disciplinary Measures** – What disciplinary actions did the company take in response to the misconduct? Who participated in making disciplinary decisions for the type of misconduct at issue? Have the disciplinary actions and incentives been fairly and consistently applied across the organization? How has the company incentivized compliance and ethical behavior?
 9. **Continuous Improvement, Periodic Testing and Review** – What types of audits would have identified issues relevant to the misconduct? Has the company reviewed and audited its compliance program, including testing of relevant controls, collection and analysis of compliance data, and interviews of employees and third parties?
 10. **Third Party Management** – How has the company’s third party management process corresponded to the nature and level of the enterprise risk identified by the company? How has this process been integrated into the relevant procurement and vendor management processes? How has the company monitored the third parties in question? How has the company incentivized compliance and ethical behavior by third parties?
 11. **Mergers and Acquisitions (M&A)** – Was any misconduct or risk of misconduct identified during due diligence? How has the compliance function been integrated into the merger, acquisition, and integration process? What has been the company’s process for tracking and

remediating misconduct or misconduct risks identified during the due diligence process?

These topics and questions will not surprise the majority of seasoned practitioners, as they are largely derived from existing guidance, including, among other things, the United States Attorney's Manual, the United States Sentencing Guidelines, the SEC and DOJ's Resource Guide to the U.S. Foreign Corrupt Practices Act, the Good Practice Guidance on Internal Controls, Ethics, and Compliance adopted by the Organization for Economic Cooperation and Development ("**OECD**"), and the Anti-Corruption Ethics and Compliance Handbook for Business published by the OECD, United Nations Office on Drugs and Crime, and the World Bank.

Nevertheless, the Evaluation Framework does provide more transparency by specifically identifying the factors that the Fraud Section will likely consider when evaluating compliance programs. And, perhaps more importantly, by gathering these considerations into a single source, the Evaluation Framework may prove a useful tool for benchmarking companies' corporate compliance programs and otherwise succinctly setting forth relevant considerations, which may prove helpful to practitioners looking to educate their clients.

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