

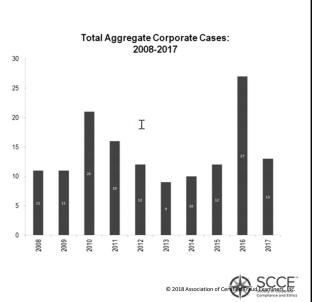


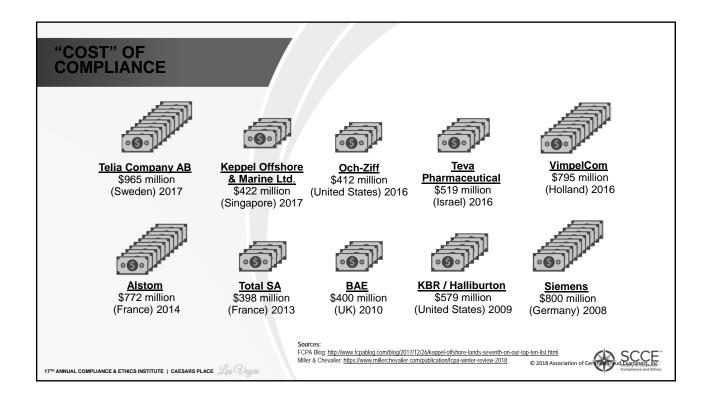
### CORPORATE FCPA CASES 2008–2017

- Public DOJ declinations under FCPA Pilot Program
- Excludes Las Vegas Sands enforcement action, which mirrored the SEC enforcement action brought in 2016
- The cases of Contoguris, Finley, Kohler, Zuurhout, and Barnett are outgrowths of the corporate enforcement action against Rolls-Royce. For purposes of this note, in particular the geographic distribution of enforcement actions, these are treated together with Rolls-Royce.

Source: Shearman & Sterling: https://shearman.symplicity.com/files/32a/32ae4f446d680242c4eb148b7af145eb.pdf

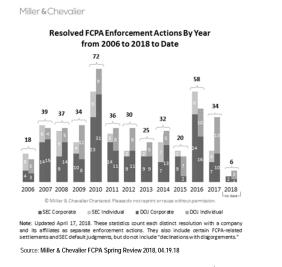
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### FCPA ENFORCEMENT TRENDS Q1 2018

- Enforcement of the FCPA was relatively slow during Q1 2018 with only two individual enforcement actions and three fairly low-value corporate enforcement actions.
- This relatively slow quarter continues the reduced pace of reported enforcement decisions under the Trump Administration.
- It remains an open question whether this decrease in enforcement announcements truly reflects a less aggressive posture by the DOJ and SEC with some statistics suggesting a more nuanced picture.



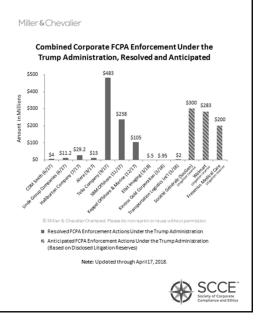
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### THREE SETTLEMENTS LOOM ON THE HORIZON

- Despite this quiet Q1, a handful of potentially large FCPA-related settlements loom on the horizon.
- Several of these cases have dragged on for years, likely due to their size and complexity.
- Notably, over the past six months, at least three companies have publicly announced sizable reserves to settle long-running investigations:
  - ✓ Fresenius Medical Care
  - ✓ SocGen
  - ✓ Walmart
- Assuming these companies have correctly predicted the timing and amount of any upcoming settlements, we should see at least some sizeable settlements this year on par with last year's Telia, SBM Offshore, and Keppel Offshore resolutions.

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### PANASONIC PAYS \$280 MILLION TO RESOLVE FCPA OFFENSES

- April 30, 2018—Panasonic Avionics agreed to pay \$280 million to resolve FCPA offenses for payments to consultants of its U.S. in-flight-entertainment unit in the Middle East and Asia.
- Osaka, Japan-based Panasonic Corporation will pay \$143 million in disgorgement to the SEC.
- Its U.S. unit—Panasonic Avionics Corporation—will pay \$137 million in criminal penalties to the DOJ.

"Those bemoaning the lack of FCPA enforcement activity can cease. With the Dun & Bradstreet Inc. declination and this enforcement action involving Panasonic Avionics Corporation (PAC) and its parent Panasonic Corporation (Panasonic); US regulators at the DOJ and SEC have roared back with not only significant enforcement actions but more importantly for the compliance practitioner, important information about how the DOJ will consider enforcement actions under the new FCPA Corporate Enforcement Policy, announced last November"

Tom Fox, The FCPA Evangelist

Panasonic



Source: Tom Fox, FCPA Compliance & Ethics Blog. <u>http://fcpacompliancereport.com/2018/05/15845/</u> & The FCPA Blog <u>http://fcpablog.squarespace.com/blog/2018/4/30/panasonic-pays-280-million-to-resolve-fcpa-offenses.html</u>

# DOJ CORPORATE ENFORCEMENT POLICY

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- If a company voluntarily discloses wrongdoing, the DOJ will not require appointment of a monitor if the company has implemented an effective compliance program.
- The DOJ evaluates an appropriate compliance program and notes that hallmarks of an effective compliance and ethics program include:
  - ✓ Fostering a culture of compliance,
  - ✓ Dedicating sufficient resources to compliance activities, and
  - Ensuring that experienced compliance personnel have appropriate access to management and to the board.



### DOJ CORPORATE ENFORCEMENT POLICY

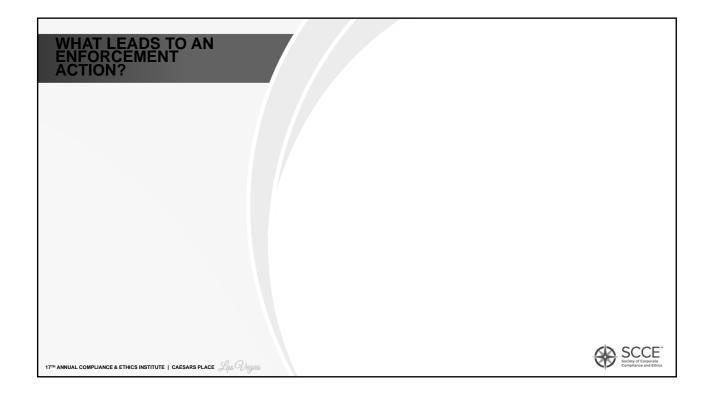
# DOJ TO APPLY THE PRINCIPLES OF ITS FCPA CORPORATE ENFORCEMENT POLICY TO ALL OF ITS CORPORATE CRIMINAL INVESTIGATIONS

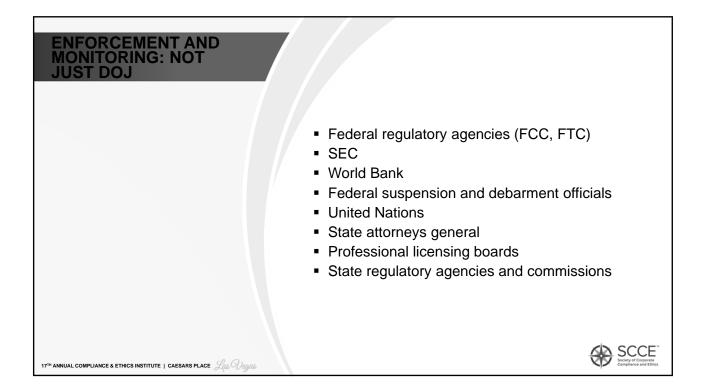
- March 1, 2018: Acting Assistant Attorney General John Cronan announces that DOJ's FCPA Corporate Enforcement Policy will now be applied in corporate cases beyond FCPA violations
- March 2, 2018: DAG Rod J. Rosenstein announces that rather than insisting on parentlevel criminal resolutions, DOJ will reward companies with strong compliance programs
- This extension of the policy, which lays out the expectations for an effective compliance program, rapid investigation, and remediation, should be welcome news for all companies.
- Companies with effective compliance programs will have added confidence of a favorable outcome and thus be in a better position to make decisions about voluntary disclosure to and cooperation with DOJ.

Source: Kathleen McGovern, EY. https://americas.ey-vx.com/126/13917/landing-pages/fcpa-dod-client-alert-kathleen-mcgovern-042418.pdf

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### ALTERNATIVE SETTLEMENT PROLIFERATING WORLDWIDE

### WHAT:

- Deferred/non-prosecution Agreements
- Administrative agreements
- Settlement agreements

# WHERE:

- DOJ, USG agencies, states
- United Kingdom
- Singapore
- France
- Germany
- Australia
- Brazil

Common element: Effective Compliance Programs

### EVALUATION OF CORPORATE COMPLIANCE PROGRAMS

- Analysis and remediation of underlying misconduct
- Senior and middle Management
- Autonomy and resources
- Policies and procedures

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Risk assessment

- Training and communications
- Confidential reporting and investigation
- Incentives and disciplinary measures
- Continuous improvement, periodic testing, and review
- Third-party management

Source: https://www.justice.gov/criminal-fraud/page/file/937501/download

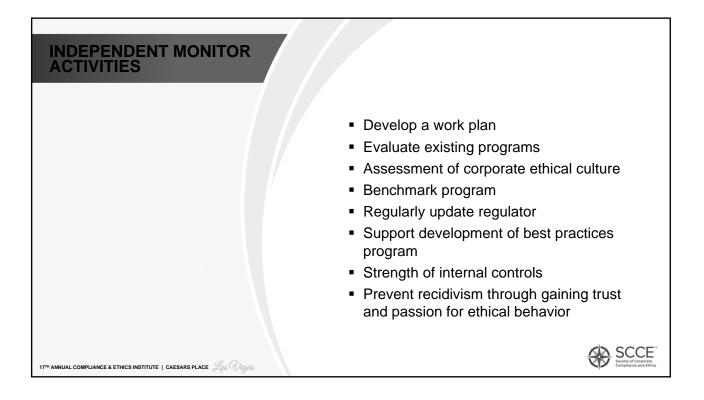




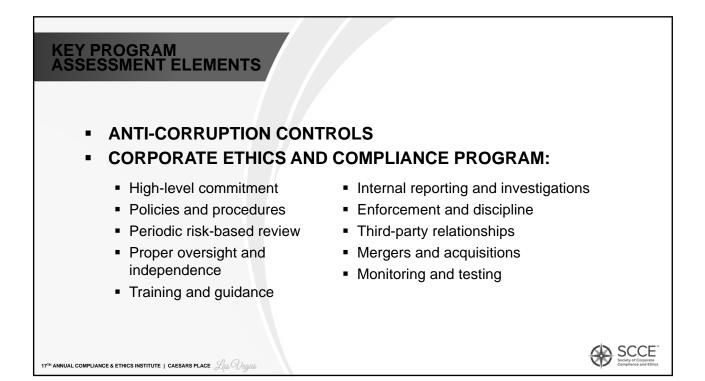
### HOW GOOD IS YOUR PROGRAM?

- Beware of the "unknown unknowns"
- Don't assume there are no problems – even if there are no issues, independent oversight is a good thing!
- Is there a culture of compliance similar to health and safety?
- Ensure the culture is consistent at all levels of the organization
- Consistent and fair accountability
- Are the policies and procedures fit for purpose?
- Communication!

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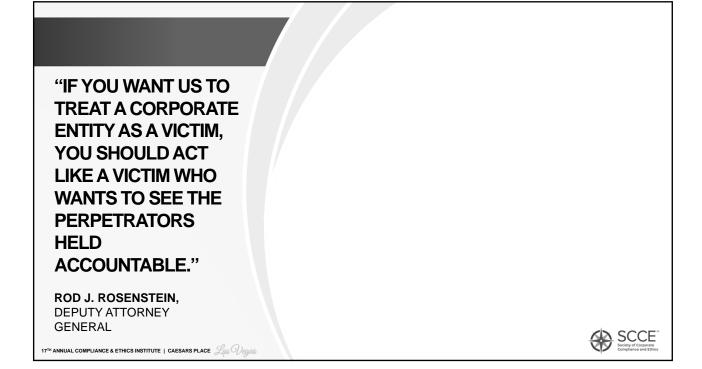
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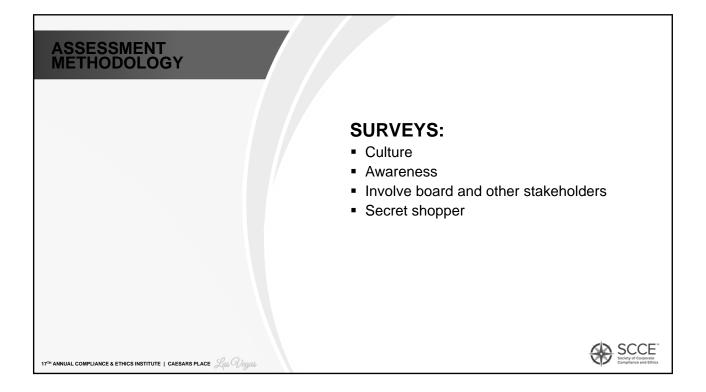
### MOST COMMON ANTI-FRAUD CONTROLS

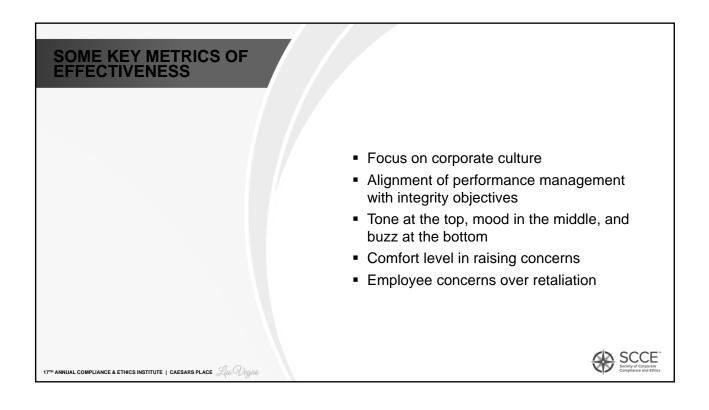
Code of conduct		Anti-fraud policy		
	80%		54%	
External audit of financial statements	_	Fraud training for employees		
	80%		53%	
Internal audit department		Fraud training for managers/executives		
	73%		52%	
Management certification of financial statements		Dedicated fraud department, function, or team	4404	
	72%	Formal fraud risk assessments	41%	
External audit of internal controls over financial reporting			41%	
Management review	67%	Surprise audits	41/6	
managament correct	66%		37%	
Hotline		Proactive data monitoring/analysis		
	63%		37%	
Independent audit committee		Job rotation/mandatory vacation		
	61%		19%	
Employee support programs		Rewards for whistleblowers		
	54%		12%	
Source: The Association of Certified Fraud Examiners 2018 Report to the Nations: Global Study on Occupational Fraud and Abuse			50	SCCE
annual compliance & ethics institute   caesars place Las Vegas			X X X	Society of Corporate Compliance and Ethics

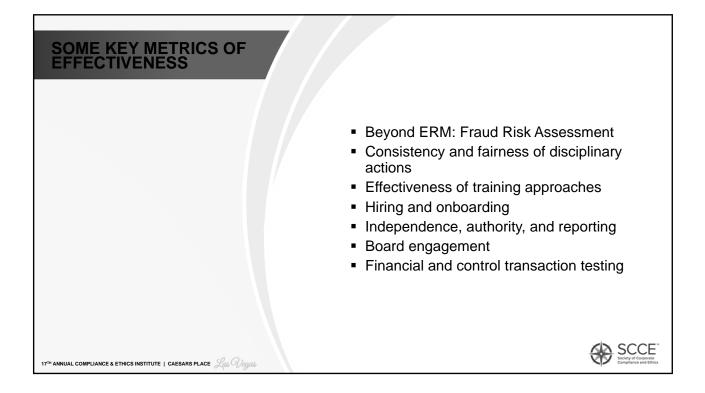
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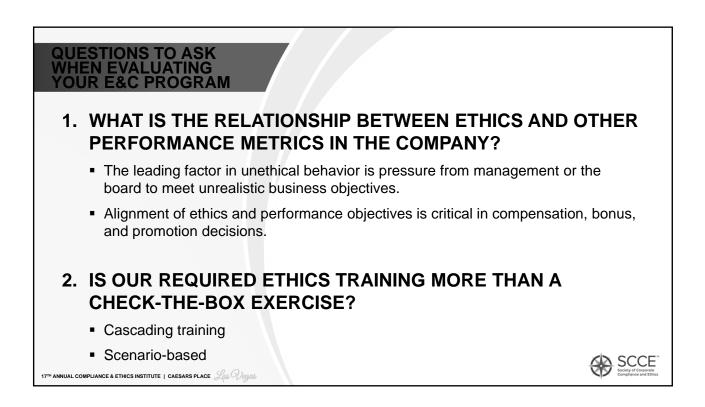












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### **10 QUESTIONS TO ASK** WHEN EVALUATING



- Communicating the ethics message.
- Proactive and consistent engagement.
- CECO independence, authority, and resources.
- Taking visible and decisive actions against violations of the code of conduct.
- Don't forget about the Board!
- 6. WHAT IS THE MOOD IN THE MIDDLE AND THE BUZZ AT THE BOTTOM?
  - Immediate supervisors have greatest impact.
  - Leadership skill represents a key asset/vulnerability.
  - Leadership accountability or "executive protection program"?



### QUESTIONS TO ASK WHEN EVALUATING

# 7. WHAT IS THE TONE AT THE TOP?

- Senior leadership intentions don't always reflect reality.
- How are ethics incorporated into day-to-day business decisions?
- Active ethics messaging is a must.

# 8. WHAT IS THE MOOD IN THE MIDDLE AND THE BUZZ AT THE BOTTOM?

- Is it referenced beyond new-employee orientation?
- Is it customized to our business?
- Has it been updated?

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### QUESTIONS TO ASK WHEN EVALUATING

# 9. ARE OUR EMPLOYEES FAMILIAR WITH AND COMFORTABLE USING REPORTING MECHANISMS?

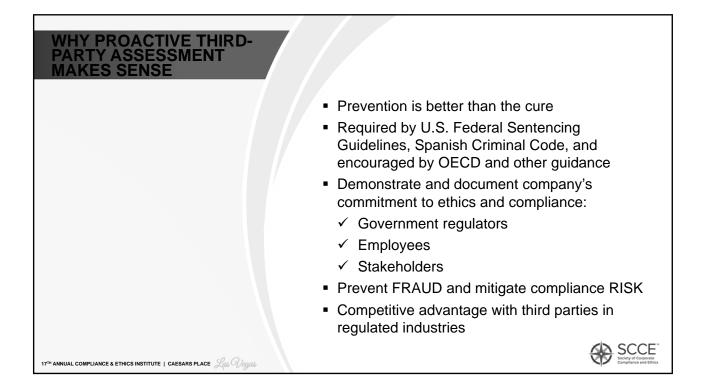
- Is there a fear of retaliation?
- Is the Hotline or Helpline used regularly?
- Are reporting trends analyzed and used to strengthen the program?

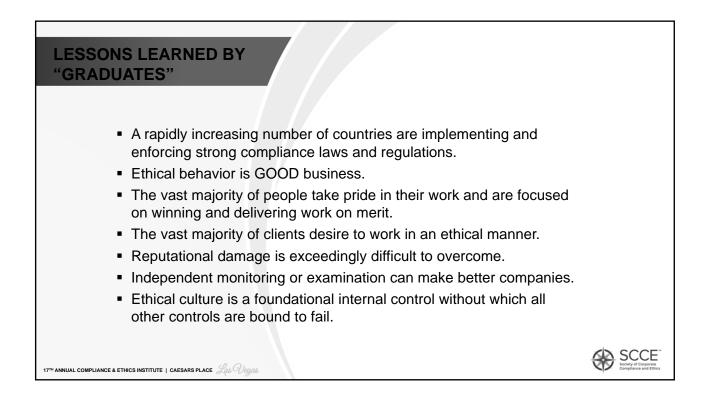
# 10.ARE WE PAYING ADEQUATE ATTENTION TO THE ETHICAL POSTURE OF THIRD-PARTIES?

- Third-party risks are high; due diligence is necessary.
- This is often the weakest area in ethics assessments.

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### **QUESTIONS?**



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