

SCCE 6th ANNUAL EUROPEAN COMPLIANCE & ETHICS INSTITUTE

March 25 – 28, 2018 Frankfurt, Germany

Corporate Responsibility & Liability: A Global Perspective

Gabriel L. Imperato, Managing Partner Broad and Cassel Fort Lauderdale, FL gimperato@broadandcassel.com



United States Sentencing Commission- Federal Sentencing Guidelines

- ☐Effective November 1, 1991
- ☐ Control sentencing of organizations for most federal criminal violations
- ☐ Sentencing credit for "effective programs to prevent and detect violations of law"

2



Essential Elements of a Compliance Plan*

- $\hfill \square$ Standards and Procedures
- ☐ Oversight
- ☐ Education and Training
- ☐ Monitoring and Auditing
- ☐ Reporting
- $\hfill \square$ Enforcement and Discipline
- ☐ Response and Prevention
- ☐ Risk Assessment
- ☐ Promotion of Organization Culture for Ethics and Compliance
- * Federal Sentencing Guidelines, Chapter 8, 1991

Amendments to FSG's, 2004 Report published October 7, 2003 http://www.ussc.gov/corp/advgrprpt/advgrprpt.htm Effective November 1, 2004 Key Recommendations: *"culture" of ethics and compliance * Defining ethics and compliance standards & procedures * Spelling out compliance obligations * Adequate resources Clarifying employee screening practices * Training as an essential element * Means for anonymous reporting * Ongoing risk assessments.

Amendments to FSG's, 2010 Expands an organization's eligibility for a reduced

culpability if it has an effective program

- $\hfill \square$ Effective in Detecting Criminal Conduct
 - The ethics and compliance program must detect the offense before its discovery outside the organization or before such discovery was reasonably likely
 - The organization must promptly report the offense to the proper governmental authorities
 - No person with operational responsibility in the program participated in, condoned, or was willfully ignorant of the offense.

_

2010 Changes (Cont'd.)

- $\hfill \square$ Enhanced Autonomy for Compliance Personnel
 - "direct reporting" channel between compliance personnel and the organization's governing authority
 - "express authority" for the "individual or individual with operational responsibility for the compliance and ethics program" to communicate "personally" with the governing authority
 - promptly on any matter involving criminal conduct or potential criminal conduct
 - no less than annually on the implementation and effectiveness of the compliance and ethics program

☐ If these requirements are met, corporations may receive credit for their ethics and compliance program.

Individual Accountability for Organization Misconduct $\hfill \square$ "One of the most effective ways to combat corporate misconduct is by seeking accountability from the individuals who perpetrated the wrongdoing. ☐ "Such accountability is important for several reasons: it deters future illegal activity, it incentivizes changes in corporate behavior, $\ensuremath{\clubsuit}$ it ensures that the proper parties are held responsible for their actions, and $\ensuremath{ \diamondsuit}$ it promotes the public's confidence in our justice Oversight and Accountability ☐ Governing Authority – Knowledgeable about compliance program with reasonable oversight (*Board of Directors*) $\hfill \square$ Ethics & Compliance Officer – high level individual * Reporting structure clearly defined "direct to the top", no buffers Strong leader – independent, empowered, effective Shall have adequate resources and authority * Access to Board with periodic reporting responsibilities $\hfill \square$ Compliance Committee, Regional liaisons, Program Staff, The Principles of Federal Prosecution of



The Principles of Federal Prosecution of Business Organizations in the United States Attorneys Manual

- ☐ Specific factors for Department of Justice prosecutors to consider in conducting an investigation of an organization;
- ☐ Determining whether to bring charges against the organization;
- $\hfill \square$ Negotiating resolution of criminal and civil matters with organization;
- ☐ The factors include "the existence and effectiveness of the organization's pre-existing compliance program and efforts to implement an effective compliance program;
- ☐ Deferred Prosecution and/or Corporate Integrity Agreements.



☐ Risk Assessment

☐ Training and Communications

☐ Confidential Reporting and Investigation

☐ Incentives and Disciplinary Measures

☐ Continuous Improvement, Periodic Testing and Review

☐ Third Party Management

☐ Mergers and Acquisitions (M&A)

International Standards for **Compliance Programs**

☐ United States Sentencing Guidelines ("USSG")

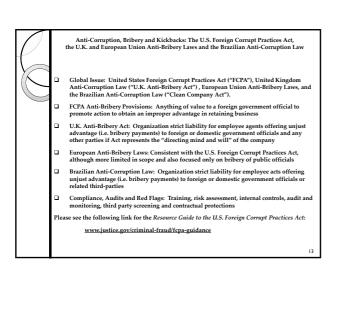
☐ United States Attorney's Manual ("USAM")

- ☐ A Resource Guide to the U.S. Foreign Corrupt Practices Act ("FCPA Guide")
- ☐ Good Practice Guidance on Internal Controls, Ethics and Compliance by the Organization for Economic Cooperation and Development ("OECD") Council
- ☐ Anti-Corruption Ethics and Compliance Handbook for Business (OECD Handbook) by OECD, United Nations Office on Drugs and Crime and the World Bank.

Reference Material on Link to SCCE European **Compliance and Ethics Institute 2018**

- ☐ Department of Justice Criminal Division Evaluation of Corporate Compliance
- ☐ White Paper The Seven Elements of an Effective Compliance and Ethics Program
- Practical Guidance for Health Care Governing Boards on Compliance Oversight
- United States Securities and Exchange Commission Statement on Cooperation and Agency Enforcement Decisions
- ☐ Corporate Integrity Agreement between the Office of Inspector General of Health and Human Services and South Miami Hospital
- Non-Prosecution Agreement between the General Cable Corporation and United States Department of Justice Non-Prosecution Agreement between Tenet HealthSystem Medical, Inc. and
- United States Department of Justice Compliance and Governance for Health Care Organizations by Gabriel L. Imperato, Esq. and Anne N. Branan, Esq.
- Department of Justice Increases Focus on Organizational Compliance by Gabriel Imperato, Esq.

_				
_				
_				
_				
_				



THE END

4851 0586 9151