

What do we mean when we talk about “compliance”?



Normal Scenario for Business Wrongdoing

- Employee commits crime
- *Respondeat superior*: employer is responsible based on
 - Scope of employment
 - Employer benefit



Add to that the inherent suspicion of “big business” by most people (i.e., jurors)



Result:

Big damages/criminal penalties



So what if
you '*tried
real hard*' to
do the right
thing?





Can this ever be enough to overcome the normal employer liability for acts of employees and skepticism of prosecutors and juries about corporations?

Yes

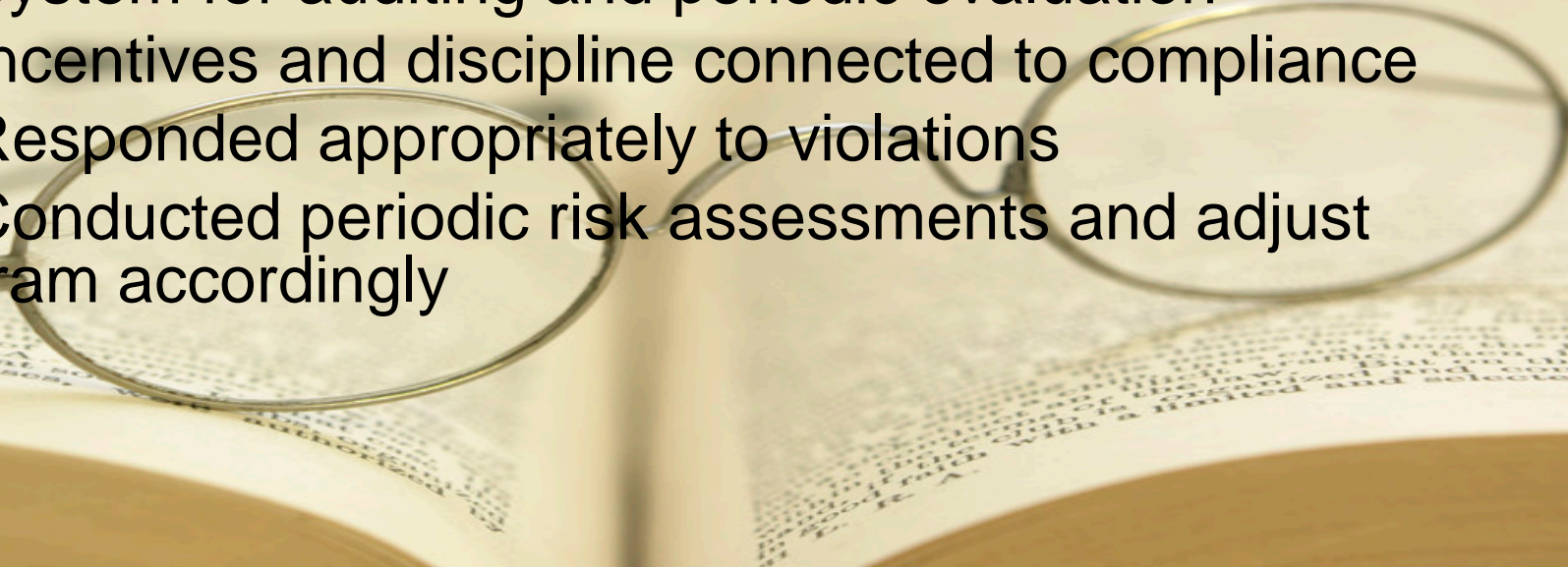
- By following the roadmap in Chapter 8 of the United States Sentencing Commission Organizational Sentencing Guidelines and company can show that it had an effective compliance program reflecting due diligence to promote a culture of compliance.
- Doing so may result in a significant reduction in penalties or even a decision not to prosecute.

Most Importantly . . .

Establishing a compliance and ethics program that meets the Federal Sentencing Guidelines criteria will reduce the chances that your company will have a compliance problem in the first place.



What are those requirements?

1. Established standards & procedures based on risk
 2. Knowledgeable management and board oversight
 3. Senior officers direct the program, with sufficient resources to do it right
 4. Procedures in place not to hire bad guys
 5. Effective, practical training of board, management, other employees, and agents, based on roles & responsibilities
 6. Anonymous, confidential method to report wrongdoing
 7. System for auditing and periodic evaluation
 8. Incentives and discipline connected to compliance
 9. Responded appropriately to violations
 10. Conducted periodic risk assessments and adjust program accordingly
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- A pair of gold-rimmed glasses with thin temples is resting on an open book. The book's pages are visible, showing some text and a small illustration. The background is a warm, golden-brown color, suggesting a desk or a study area.

Remember: Directors or Officers May be *Personally* Liable for Violations

1. Delaware law: the *Caremark* decision

“[A] director's obligation includes a duty to attempt in good faith to assure that a corporate information and reporting system, which the board concludes is adequate, exists, and that failure to do so under some circumstances may, in theory at least, render a director liable for losses caused by non-compliance with applicable legal standards.”

2. Federal law: the responsible corporate officer doctrine.



But a compliance failure can severely damage the corporation, as Wal-Mart found out



Improper payments to help stores get built in Mexico, even if zoning is in the way . . .

The stock market usually doesn't like compliance failures



April 20: 62.44 April 24: 57.36 -8.15% -\$17 bn market cap

What do we do?

- Help organizations develop or improve compliance and ethics programs to reduce their risk of criminal and civil liability.
Including: risk assessment, policies, training, business controls, communications, assessment, hotlines, investigations
- Key to success: developing a program that works in the real world, not just one that looks good on paper.

For more information:

Ted Banks

compliancelaw@comcast.net

847-431-8207

