



UT LAW CLE THE UNIVERSITY OF TEXAS SCHOOL OF LAW

Miller & Chevalier

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Sample Sources of Government Compliance Expectations
and Best Practices

- U.S. Sentencing Guidelines
- 21a Report of the U.S. Securities and Exchange Commission
- DOJ/SEC FCPA Resource Guide
- Yates Memo
- DOJ Evaluation of Corporate Compliance Programs

Essential Elements: Sentencing Guidelines

- Compliance standards and procedures
- Oversight by high-level personnel
- Due care in delegating substantial authority
- Communications must be effective
- Reasonable steps to achieve compliance
- Consistent enforcement of compliance standards
- Reasonable steps upon detecting a violation

Essential Elements: Sentencing Guidelines

- “Culture” of “ethics and compliance”
- Adequate resources and staffing
- Periodic risk assessment and adjustment
- Periodic program audits
- Training of independent agents “as appropriate”
- Compliance program as prerequisite to business relationship

Essential Elements: SEC Sec. 21a Report

- Effective or lax compliance culture?
- Misconduct isolated or systemic?
- How was misconduct discovered?
- What was the response? Investigation? Discipline?
- Speed in implementing an effective response?
- New and more effective internal controls?

Essential Elements: FCPA Resource Guide's General Overview

- DOJ and SEC have “no formulaic requirements”
- Make inquiries related to 3 basic questions:

①

Is the company's
compliance
program well
designed?

②

Is it being
applied in good
faith?

③

Does it
work?

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