

The Risks of Overkill in Adoption of FCPA Compliance Policies

We often advise our clients of the importance of adopting Foreign Corrupt Practices Act (FCPA) compliance policies that are appropriate to the size, complexity and risk profile of the business. The Department of Justice (DOJ) recognizes that when it comes to compliance, there is no one-size-fits-all program. A recent Securities and Exchange Commission (SEC) penalty announcement shows in dramatic fashion the risks of failure to comply with the compliance policies that a company adopts.

On July 27, 2017, the [SEC announced a penalty against Halliburton Company in excess of \\$29 million](#), for violations of the books and records and internal accounting provisions of the FCPA. The essence of the violation Halliburton committed was that it “circumvented important internal accounting controls to get the deal done quickly.” As is often the case, the facts described in the [SEC Order](#) seem to imply that the SEC was suspicious of the underlying payments, but the alleged violation of the FCPA was simple: Halliburton adopted internal control policies, and then failed to comply with its own policies.

The creation of FCPA compliance policies involves difficult choices for an organization. There is a reasonable fear that the adequacy of compliance policies will be second guessed by authorities if a violation occurs. At the same time, the more complicated and burdensome a compliance program becomes, the more likely it is that compliance failures will occur. It is important that a compliance program be tailored to the specific operations of an individual company.

The answer to what is a good compliance program will be different for each company. A good place to start in designing the right program for a company is to conduct an internal risk assessment. Benchmarking is also a useful tool. Building on a commitment from senior management, a company should be able to make sound decisions regarding the adoption and implementation of an appropriate FCPA compliance program that works within the Company’s operational dynamics.

Finally, periodic review of a compliance program is essential. Companies grow, and move into new areas. The risk profiles of countries change. And DOJ expectations and industry standards for compliance evolve. A commitment to periodic review can help ensure that a compliance program remains up to date with business risks and external standards. It also enables a company to identify and take steps to mitigate weaknesses in program implementation such as training needs, or procedures that do not work as expected when put into practice.

John Symington and Joe Page in our Houston office and others in the firm have substantial experience in designing and implementing FCPA compliance programs and can be consulted with any further questions you may have regarding these matters.

John Symington

August 3, 2017