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## NEWS ARTICLE

### ***Continuous Monitoring and FCPA Compliance***

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The steady drumbeat of FCPA enforcement continues -- now the pharma and medical device industries are on the target list, and tobacco companies recently reached plea agreements with the government.

The enforcement horizon looks like more of the same -- companies hope to escape the enforcement eye of the Justice Department and the Securities Enforcement Commission.

More and more companies are asking the fundamental question -- is the cost of proactive compliance steps justified in light of the risk of enforcement?

Even considering that the cost of an internal investigation can easily reach the millions of dollars, some companies are choosing to avoid the proactive compliance cost, and instead rely on bare bones programs and reactive strategies, citing costs.

Reactive approaches are clearly a mistake. DOJ and SEC investigators know what they find -- either a legitimate commitment to compliance or a reactive strategy by a company seeking to cut corners.

DOJ and SEC investigators always ask one important question -- what did the company do in advance to prevent a possible FCPA violation? In this respect, investigators examine what systems a company had in place, for example: a Code of Conduct; policies and procedures to implement any Code of Conduct; and a companywide (and anonymous) hotline.

However, more than just having the policies, procedures and processes in place, did the Company provide training on these and were they actively used in business going forward, such as in the area of due diligence on foreign business partners, including agents, resellers, distributors and vendors?

One important aspect to this proactive approach -- what steps did the company take to test its FCPA compliance systems? For example, did the company conduct a test case through the hotline?

Did the company conduct FCPA training on an ongoing basis, or test employees on such training issues? Were FCPA compliance audits conducted of both employees and foreign business partners, and how were the results of such tests maintained, reviewed and catalogued?

It is important for a company to continuous controls monitoring of a FCPA compliance program. While most companies have a Code of Conduct, with implementation policies and procedures in place, training and a hotline; many companies have yet to implement any type of self-audit program to measure FCPA compliance program performance.



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Continuous controls monitoring programs are a powerful tool to assist companies in their ongoing FCPA compliance program.

More specifically,

- Continuous controls can lower audit costs by eliminating manual sampling.
- Continuous controls monitoring can improve financial governance by increasing the reliability of transactional controls and the effectiveness of anti-corruption controls.
- Continuous controls monitoring can improve actual operational performance by monitoring key financial processes.
- Continuous controls monitoring can be used to verify the pre-employment background check performed on an employee; the quality of the FCPA compliance training an employee receives after hire and then to review and record an employee's annual acknowledgement of FCPA compliance.

There is no question that proactive compliance strategies are a must but now more and more companies are employing continuous monitoring techniques as they seek to avoid the attention of enforcement agencies and any FCPA issues.