

# Remediation Assessment Framework

**The Government stresses the importance of remedial measures and other procedures to prevent further recurrence of misconduct in determining whether to file criminal charges or enforcement proceedings, impose a monitor, and seek fines and other penalties. The Government, however, provides no detailed guidance for prosecutors, regulators, compliance officers and counsel on the criteria they should consider and the procedures they should perform to assess the effectiveness of the remediation and other corrective measures.**

StoneTurn Group's assessment sets forth key criteria, which we draw from the DOJ, *Principles of Federal Prosecution of Business Organizations* (2008); SEC, Enforcement Division, *Enforcement Manual* (2012); DOJ and SEC, *Resource Guide to the U.S. Foreign Corrupt Practices Act* (2012); *U.S. Sentencing Guidelines, Chapter 8* (2012); FINRA, *Sanction Guidelines* (2011); Committee of Sponsoring Organizations (COSO) of the Treadway Commission, *Internal Control – Integrated Framework* (2013); and DOJ and SEC settlement agreements.

**For detailed procedures and guidance on conducting these assessments, please contact:**

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TIMELINESS	TEAM COMPETENCE	INDEPENDENCE	ROOT CAUSE ANALYSIS	OTHER MISCONDUCT
<i>Did the organization...</i>				
Commence remediation promptly after discovery of misconduct?	Include experts in risks, controls, forensic analytics and audit on its remediation team?	Engage an outside professional adviser as recommended by the U.S. Sentencing Guidelines?	Employ a structured process to conduct an analysis of why and how the misconduct occurred?	Conduct audit procedures to detect other misconduct by the perpetrator(s)?
Actually implement steps to prevent recurrence or just state that it will take future steps to implement?	Seek experts in prevention and detection, and not just investigation?	Independently assess and audit the remediation program?	Use a risk assessment to identify risks? How did flawed incentives and corporate culture contribute?	Conduct audit procedures to detect similar misconduct by others in the organization?
DISCIPLINARY MEASURES	PROCESSES & CONTROLS	RESTITUTION	SELF-REPORTING	ASSESSMENT & AUDIT
<i>Did the organization...</i>				
Employ a fair and consistent disciplinary process? (e.g., Did high producers or senior personnel receive special dispensation?)	Implement new or enhanced processes and controls to prevent and timely detect recurrence of similar misconduct?	Take appropriate steps to quantify the loss, and identify, notify and make full restitution to the victims?	Consider (on the advice of counsel) whether to self-report misconduct to the authorities?	Engage an independent, third party to assess the remediation process and implementation of corrective measures?
Take appropriate disciplinary measures for failing to prevent, detect and report misconduct?	Consider the use of forensic analytics and other technology tools to prevent recurrence?	Make restitution voluntarily or was it court-ordered?	Self-report voluntarily or was it required to do so by rules or regulations?	Periodically audit the new and enhanced processes and controls?



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# “Pre-Existing” Compliance Program Assessment Framework

**Prosecutors and regulators must assess the effectiveness of an organization’s “pre-existing” compliance program to determine whether to file criminal charges or enforcement proceedings, impose a monitor, and seek fines and other penalties. The Government, however, provides no detailed guidance for prosecutors, regulators, compliance officers and counsel on the criteria they should consider and the procedures they should conduct to assess the effectiveness of the compliance program at the time of the violation.**

StoneTurn Group’s assessment of the existing compliance program will draw key criteria from a variety of relevant authoritative literature including but not limited to the DOJ, *Principles of Federal Prosecution of Business Organizations* (2008); SEC, Enforcement Division, *Enforcement Manual* (2012); DOJ and SEC, *Resource Guide to the U.S. Foreign Corrupt Practices Act* (2012); *U.S. Sentencing Guidelines*, Chapter 8 (2012); FINRA, *Sanction Guidelines* (2011); Committee of Sponsoring Organizations (COSO) of the Treadway Commission, *Internal Control – Integrated Framework* (2013), and DOJ and SEC settlement agreements.

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CONTROL ENVIRONMENT	RISK ASSESSMENT	CONTROL ACTIVITIES	INFORMATION & COMMUNICATION	AUDIT & MONITORING
<b>Did the organization...</b>				
Promote a culture that encourages ethics and compliance with the law? Did it demonstrate a commitment to a culture of compliance?	Use a risk assessment as a fundamental component of the compliance program, and periodically assess and document risk of misconduct?	Promulgate visible and clear policies, standards and procedures?	Communicate policies effectively to directors, employees, joint venture partners, agents, suppliers, and other relevant third parties?	Review its ethics and compliance standards and procedures no less than annually?
Assign effective oversight and day-to-day responsibility over the compliance program? Did it provide adequate resources and direct Board access?	Implement an ongoing risk assessment, and update the assessment with company and industry developments?	Have controls to ensure fair and accurate books, records and accounts?	Provide adequate training, including annual certifications, and a resource to provide advice?	Equip audit and operational personnel with adequate detection tools and training?
Have an incident response process? Did the process provide for taking steps to remedy harm and avoid future misconduct? Did the organization take those steps?	Identify the violation as a risk? If not, why?	Have controls to ensure that assets could not be acquired, used or disposed to commit or conceal misconduct?	Make adequate use of technology including forensic data analytics and security systems?	Conduct forensic audit procedures to detect misconduct, including the identified misconduct?
Assess how the corporate culture and control environment impacted the occurrence and detection of the misconduct?	Look at how the risk process impacted the occurrence and detection of the misconduct?	Examine how the policies, procedures and controls impacted the occurrence and detection of the misconduct?	Evaluate how information and communication issues impacted the occurrence and detection of the misconduct?	Look at how the audit and monitoring impacted the occurrence and detection of the misconduct?



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