

CEP Magazine – January 2018 Compliance developments and concerns for 2018

By Rebecca Walker

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With the start of a new year, we instinctively look back to review developments of the year behind us and forward to make predictions (and perhaps resolutions) for the year ahead. With respect to those predictions, however, we would likely do well to recall an old saying, frequently attributed to Mark Twain, that “it is difficult to make predictions, especially about the future.” Difficult and, when the predictions are in writing in a professional journal, perhaps a bit perilous. But given that one of my resolutions for 2018 is to take a few more risks (a tough task for a naturally risk-averse compliance lawyer), what follows are some prognostications about likely compliance developments and concerns in the year ahead.

Those of us who have been in the compliance and ethics (C&E) field for a while can attest that the field was—in the old days of the ‘90s and early 2000s—somewhat sleepy, with significant developments relatively few and far between. In more recent years, this sleepy profession has become quite vibrant, with government pronouncements (from governments all over the world), new standards, and new developments occurring increasingly frequently. For example, in February of 2017, the Fraud Section of the Department of Justice released a set of questions regarding compliance and ethics programs,^[1] which provide detailed guidance regarding criteria the government may utilize in evaluating a compliance program. And in November, the Justice Department announced a Foreign Corrupt Practices Act (FCPA) Corporate Enforcement Policy,^[2] which similarly contains guidance regarding government evaluations of programs. We also witnessed numerous important developments outside the United States, including a number of enforcement agencies publicizing their intent to consider programs in enforcement actions. There was an increased focus on metrics in the field, numerous developments in the areas of data privacy and anti-corruption, and—on the ledger under “negative developments that highlight the importance of compliance”—enormous failures in ethical leadership in both private organizations and the public sector. And these represent just a fraction of the many important developments of 2017.

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