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Questions to Help Board Members Evaluate Their Capacity to Prevent and Detect Fraud

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These questions were developed by Martin Biegelman, managing director and investigations practice leader at SunHawk Consulting LLC in Phoenix, Arizona, and a former U.S. Postal Inspector. “Boards need to do a much better job of enhancing corporate culture,” he said (see story).

- Does the board demonstrate appropriate oversight of the organization’s compliance program to ensure it is well-designed and effective as per the U.S. Federal Sentencing Guidelines?
- Does the board provide appropriate oversight of management to ensure that the organization has an effective fraud risk management program and process and conducts periodic fraud risk assessments?
- Do board members have risk management, compliance program and anti-fraud experience and expertise?
- Does the organization’s chief compliance officer have either direct or dotted-line reporting to the board or a committee of the board, such as the audit committee?
- Does the board assess the organization’s internal audit function to ensure it has a robust audit plan to determine fraud and overall misconduct risk?
- Does the board conduct independent investigations using experienced outside counsel and forensic consultants when management is involved in misconduct and other serious violations of its code of conduct?
- Do board members have experience directing independent investigations?
- Does the board look at the compliance failures of other business organizations for possible similar issues at their company?
- Does the board ensure the organization evangelizes the value of a speak-up culture of compliance and implements a strong, leave-no-doubt nonretaliation policy?
- Does the board assess the organizational culture to ensure it encourages ethical conduct and a commitment to compliance?
- Does the board have a separate code of conduct specific to the role and actions of board members that includes conflicts of interest, related party transactions, affiliations with shareholders, independence, insider trading and more?
- Do board members receive periodic training in fraud and corruption issues including when management is involved in misconduct, such as financial accounting fraud, corruption and bribery, sexual harassment and other serious violations of the organization’s code of conduct?

- Has the board separated the frequently joint role of CEO and chairman of the board?
- Does the CEO view the board as just a check-the-box necessity but not as a source of guidance for enhancing the organization?
- Does the board know when to be the skunk in the room and ask the hard questions? For example, the Theranos board didn't ask if was possible to perform 200-plus tests with a single drop of blood. Tesla's board has been unable to rein in Elon Musk, who at times is his own worst enemy.
- Do board members serve on multiple boards, limiting their attention to the needs of each board and company?
- Are boards dominated by friends, family and others who may lack independence? For example, Blue Bell Creameries pled guilty to charges that they distributed adulterated ice cream products. The board was dominated by friends and family of the CEO and were under control of the CEO.

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