TABLE OF CONTENTS

CHAPTER 1

Characteristics of Corporate Crime

§ 1.01		1	1-4			
§ 1.02		orporate Crime	1-7			
§ 1.03		al Significance of Corporate Crime				
§ 1.04	Public Injur	ries from Corporate Offenses	1-12			
§ 1.05	Relationship	Between Corporate Crime and				
	Corporat	e Management	1-14.1			
§ 1.06	Sources of	Corporate Crime	1-16			
V	[1] Indi	vidual Offenders	1-17			
		porate Environments	1-20			
		agement Policies and Practices	1-22			
	[a]	Offenses Consciously Desired by				
	£3	Managers	1-23			
	[b]	Policies and Practices				
	[0]	Unintentionally Encouraging				
		Illegal Conduct	1-27			
	[c]	Constraints on Information Transfers	1 - 7			
	[0]	and Decision Making	1-29			
	[d]	Crime Prevention Measures	1-30			
	[e]	Incentive Compensation Encouraging	1 50			
	[0]	Criminal Risk Taking	1-30			
§ 1.07	Distinctive	Features of Corporate Crime	1-30.2			
3 1.07		cealment	1-30.2			
	[a]	Secrecy Concerning Legitimate	1 30.2			
	["]	Business Activities	1-30.2			
	[b]	Secrecy in Corporate Law	1 30.2			
	[٥]	Compliance Programs	1-31			
	[c]	Secrecy in Defending Against	1-31			
	[c]	Corporate Prosecutions	1-31			
	[d]	Corporate Control over Information	1-31			
	լայ	-	1 22			
	r.1	Sources	1-32			
	[e]	Dispersion of Relevant Evidence	1-33			
	[f]	Internal Corporate Pressures				
		Discouraging Disclosures	1 22			
	F 3	of Misconduct	1-33			
	[g]	Uncertain Illegality of Corporate	1.25			
		Behavior	1-35			

		[h]	Overcoming Pressures to Conceal	
			Offenses	1-36
		[i]	Disparities in Enforcement and	
			Compliance Resources	1-36.2
	[2]	Diffu	se Responsibility	1-36.3
		[a]	Specialization Effects	1-36.3
		[b]	Information Barriers	1-37
		[c]	Incentive Systems	1-38
		[d]	Measuring Culpability	1-39
§ 1.08			Agency Relationships Constraining	
		orporate	e Crime	1-41
	[1]		Managers as Law Enforcement Agents	
	503		erving Corporate Shareholders	1-42
	[2]		ating Employees as Law Enforcement	
	F2.7		gents of Corporate Principals	1-44
	[3]		orate Managers as Agents of Law	1 45
			nforcement Officials	1-45
§ 1.09		suring C	Corporate Crime	1-47
	[1]	Broad	d Range of Affected Firms	1-47
	[2]		ral Offenses	1-48
		[a]	Types of Offenses Prosecuted	1-48
		[b]	Sanctions Imposed	1-50
		[c]	The Relationship Between Corporate	
		F 13	and Individual Prosecutions	1-51
	507	[d]	Prosecutorial Discretion	1-52
	[3]		Offenses	1-53
	[4]		omic Crime Patterns	1-56
		[a]	Crime Levels	1-56
		[b]	Types of Crimes	1-57
		[c]	Victim Losses	1-58
		[d]	Civil and Criminal Penalties	1-58
		[e]	Collateral Damage	1-58.1
	[5]		Study: Financial Consequences of	4 50 6
	F 63		e BP Oil Well Blowout	1-58.2
	[6]		equences of Corporate Convictions:	
			mpirical Research on Penalties	
			nreatening Corporate Survival	1-58.4
§ 1.10			pective: Evaluating Corporate Crime as	
			able Defect in Corporate Performance	1-56.7
	[1]		ponents of a Performance Defect	4
			terpretation of Corporate Crime	1-58.8
		[a]	Viewing Managers as Potential	
			Architects of Corporate Law	4
		Et 3	Compliance	1-58.8
		[b]	Measuring Corporate Fault and	1.50
		F 3	Liability	1-59
		[c]	Evaluating Corporate Crimes as	
			Defects in Cornorate Performance	1-60

			TABLE OF CONTENTS	XXI		
	[2] A Taxonomy of Corporate Crime in Terms of Performance Defects and Prevention Methods					
		[a]	Offenses Resulting from Management	1-61		
		[b]	Misdirection	1-61		
		[o]	Provisions for Law Compliance	1-62		
			[i] Inadequate Identification of			
			Compliance Behaviors	1-62		
			[ii] Failures to Properly Reward			
			and Motivate Employees	1-63		
			[iii] Failures to Properly Select			
			or Advance Employees	1-63		
			[iv] Failures of Control Measures	1-63		
		[c]	Offenses Resulting from Poorly			
			Organized Offense Responses	1-64		
			[i] Distinguishing Common			
			and Special Causes	1.64		
			of Corporate Offenses	1-64		
			[ii] Responses to Offenses	1 65		
			from Special Causes	1-65		
			[iii] Responses to Offenses	1-65		
		[d]	from Systemic Causes Additional, Unpreventable Offenses	1-65		
		լսյ	[i] Offenses by Rogue Employees	1-67		
			[ii] Offenses from Justifiably	1-07		
			Tolerated Systemic	1 (7		
	[2]	The	Sources	1-67		
	[3]		Role of Compliance Programs in orporate Criminal Law	1-67		
§ 1.11	Case		s in Corporate Misconduct: Corporate	1-07		
8 1.11			ng Fraud	1-74		
	[1]		acteristics of SEC Enforcement	1 / 4		
	[+]		ctions	1-74		
	[2]		es of Corporate Misconduct Involving	1,.		
			ccounting Fraud	1-75		
		[a]	Improper Revenue Recognition	1-75		
		[b]	Improper Expense Recognition	1-76		
		[c]	Improper Accounting Regarding			
			Business Combinations	1-77		
		[d]	Other Types of Improper Activities	1-78		
	[3]		ons Involved in Misconduct	1-78.1		
	[4]		eloping Characteristics of Corporate			
			ffenses: Changing Patterns of Corporate	4 -0 -		
			inancial Reporting Fraud	1-78.7		
		[a]	Financial Reporting Fraud in the	1 70 7		
		[1.]	Early 1990s	1-78.7		
		[b]	Financial Reporting Fraud	1 70 0		
			After 2000	1-78.9		

xxii	CORPORATE CRIMINAL LIABILITY				
§ 1.12	[c] Lessons from the COSO Studies Patterns in Corporate Law Compliance and	1-78.10			
	Ethical Conduct	1-79			
	[1] The Compliance and Ethics Climate	1-79			
	[2] Absence of Employee Reporting	1-80			
	[3] Concerns About Futility and Retaliation	1-80			
	[4] Elements of Successful Compliance and Ethics Programs	1-80			
	[5] Enhancing Law Compliance: Building an	1-60			
	Ethical Culture	1-81			
	[6] Ethical Culture Promotes Law				
	Compliance	1-81			
	[7] Complimentary Impacts of Ethical				
	Cultures and Compliance Programs	1-81			
	[8] Recommendations for Program				
	Improvements	1-82			
§ 1.13	Conclusion	1-83			
	CHAPTER 2				
	Rationales for Corporate Criminal Liability				
§ 2.01	Why Punish Inanimate Corporate Entities?	2-3			
§ 2.02	Historical Roots of Corporate Criminal Liability	2-7			
O	[1] Irrelevance of Corporate "Personhood"	2-7			
	[2] Rejection of Organizational Fault as a Basis				
	for Corporate Criminal Liability	2-10			
§ 2.03	Policy Justifications for Corporate Criminal				
	Liability	2-13			
	[1] Corporate Fault Rationales	2-13			
	[a] Finding Organizational Fault:				
	The Misguided Search for a				
	Corporate Personality	2-14			
	[b] Advantages of Fault Limitations on				
	Corporate Criminal Liability	2-18			
	[c] Whose Fault Should Matter?	2-20			
	[i] Fault of Operating	2.20			
	Employees	2-20			
	[ii] The Need for Further	2.21			
	Managerial Fault	2-21			
	[d] What Fault Should Be Sufficient?	2-22			
	[i] Intentional Misconduct	2-22			
	[ii] Preventive Fault	2-24			
	[iii] Consent	2-26 2-28			
	[iv] Group Fault	2-28			
	[e] The Need for Corporate Liability as a Supplement to Individual Liability	2-28			
	Supplement to marriaga Liaomty	2-20			

	TABLE OF CONTENTS			
		[i] Corporate Liability as a Reflection of Management Contributions to Employee		
		Offenses [ii] Corporate Liability as a Means to Properly Allocate Managerial and Individual Accountability for Corporate	2-29	
		Crimes	2-31	
[2]	Incer	ntive Rationales	2-36	
[4]		Encouraging Crime Prevention	2-36	
		[i] Effective Techniques for		
	[b]	Corporate Deterrence Promoting Post-Offense Assistance to	2-41	
	[-]	Public Authorities [i] Balancing Corporate and	2-42.1	
		Individual Prosecutions	2-42.3	
[3]		omic Rationales	2-42.4	
	[a]	Influencing Returns on Investment for Alternative Corporate Ventures		
	[b]	and Practices	2-43	
	[c]	Poor Compliance Practices Investor Discipline of Firms with	2-43	
		Poor Compliance Practices	2-45	
		[i] Impacts on Stock Prices	2-45	
		[iii] Bankruptcy [iiii] Shareholder Monitoring and Discipline of Corporate	2-46	
	[d]	Managers	2-47	
F 43	α.	Irreducible Risks	2-48	
[4]	Signa [a]	Signals Promoting Corporate	2-49	
	[b]	Differentiation	2-49 2-50	
	[c]	Signals Promoting Follow-Ups to		
		Misconduct	2-51	
		Liability, and Punishment [ii] Identifying Corporate Practices Needing Review	2-51	
		and Repair	2-52	

xxiv		CORPORATE CRIMINAL LIABILITY	
		[iii] Clarifying the Seriousness of Misconduct	2-53
	[5]	Retributive Rationales	2-53
	[6]	Reformative Rationales	2-58
	[7]	Compensatory Rationales	2-60
§ 2.04		traints on Corporate Criminal Liability	2-62
3	[1]	Constraints Derived from Individual	
		Liability Principles	2-62
		[a] Promoting Respect	2-63
		[b] Focusing Prosecutions	2-63
		[c] Ensuring Sentence Consistency	2-65
		[d] Aiding Planning	2-66
	[2]	Economic Constraints	2-66
§ 2.05	Crim	inal Liability for Corporations Closely	
	Al	ligned with Their Owners	2-69
§ 2.06	Conc	elusion—The Need for a Corporate	
	Ju	risprudence	2-71
		CHAPTER 3	
	Corpor	rate Criminal Liability Under Federal Law	
c 2.01	_	•	
§ 3.01		s of Corporate Criminal Liability Under	3-4
§ 3.02		ederal Law	3-4
8 3.02	[1]	Corporate Provisions of the Federal	3-3
	Γī]	Dictionary Statute	3-5
	[2]	Grounds for Excluding Corporations from	3-3
	[2]	Criminal Statutes	3-7
		[a] Exclusions for "Impossible"	5 1
		Corporate Crimes	3-7
		[b] Determining the "Impossibility" of	5 ,
		Corporate Crimes	3-7
		[c] Defendant Features Not Possessed	
		by Corporations	3-8
		[d] Offense Conduct Not Generally	
		Undertaken by Corporations	3-9
		[e] Punishments Not Applicable to	
		Corporations	3-10
§ 3.03	Respo	ondeat Superior Bases for Corporate Criminal	
		ability under Federal Law	3-11
	[1]	History of Respondeat Superior Standards	
		for Corporate Criminal Liability	3-11
	[2]	Generally Applicable Standard for	
	_	Corporate Criminal Liability Under	
		Federal Law	3-19
	[3]	Goals of Respondeat Superior Liability	3-20
		[a] Crime Control Benefits	3-20

			TABLE OF CONTENTS	XXV
		[b]	Equal Treatment of Corporate and	
			Individual Actors	3-22
		[c]	Balancing of Benefits and Burdens of	
			Unlawful Corporate Activities	3-23
	[4]	Orga	nizational Failure to Satisfy	
		N	ondelegable Law Compliance Duties	3-24
		[a]	Nondelegable Duties as a Basis for	
			Corporate Criminal Liability	3-24
		[b]	Recognizing the Importance of	
			Criminal Law Compliance	3-27
		[c]	Avoiding Liability Variations Based	
			on Differences in Work	2.20
		F 43	Delegation Patterns	3-28
		[d]	Clarifying Management Control over	2 20
§ 3.04	Eastu	ros of	Legal Risks	3-30
8 3.04			Corporate Criminal Liability Controlled <i>undeat Superior</i> Principles	3-32
	[1]		iting Conduct	3-32
	[1]	[a]	Evaluating Offense Conduct	3-32
		[b]	Identifying Corporate Activity	3-32
		[c]	Defining Corporate Duties	3-32
		[d]	Determining Corporate Accountability	5 5 2
		[4]	for Factual Representations by	
			Employees	3-33
		[e]	Establishing Jurisdiction	3-33
		[f]	Interpreting Indictments	3-34
	[2]		iting Mental States	3-35
		[a]	Willfulness	3-35
		[b]	Special Knowledge	3-37
		[c]	Specific Intent	3-39
§ 3.05			nployment Limitations on Corporate	
			Liability	3-40
	[1]		of the Scope of Employment in	
			etermining Corporate Criminal	
	503		iability	3-40
	[2]		oses Underlying Scope of Employment	
			imitations on Corporate Criminal	2 42
		Li F-3	iability	3-43
		[a]	Establishing Minimum Managerial	
			Culpability Thresholds for Corporate Criminal Liability	3-43
		[b]	Defining the Limits of Partial	3-43
		[Մ]	Managerial Responsibility for	
			Employee Offenses	3-43
		[c]	Creating Criteria for Preventive	J- 1 J
		٢٠٦	Fault Evaluations of Corporate	
			Crimes	3-44
		[d]	Defining Crime Prevention Goals for	2
			Corporate Managers	3-44

xxvi CORPORATE CRIMINAL LIABILITY

	[3]		Scope of Acts Au	of Corporate Employment	3-46 3-47
				When AuthorizedActs Not Understood	3-47
			[iii] A	to Be Illegal When Authorized Acts Not Intended	3-48
			[]	to Be Authorized But Reasonably Perceived	
		[b]	Implied	by Corporate Employees as Authorized	3-49
		լսյ	Nece	essary or Highly Effective ns to Complete Expressly	
		[c]	Unauth	orized Tasks	3-49
			Auth	seeable Deviations from corized Conduct to Pursue corate Interests	3-50.1
				llegal Means Toward Legitimate,	3-30.1
			[ii] I	Assigned Endsllegal Extensions	3-50.4
			[iii] I	of Assigned Duties llegal Actions Within an Employee's Apparent	3-50.6
		[d]		Authority	3-50.9
				ertaken with Authorized	2.51
		[م]		duct	3-51 3-52
		[e]		ted But Foreseeable Acts Result the Employee Was Assigned to Produce	3-54
			[ii] (Customs of the Enterprise	
			[iii] C	or Other Like Enterprises Capabilities of the Person Undertaking	3-55
				an Assignment	3-55
§ 3.06	Corp	[f] orate Be		ted and Unforeseeable Acts mitations on Corporate	3-55
	Č1			for Corporate Criminal	3-57
	[2]	Lia Purpo	bility ses Und	erlying Corporate Benefit	3-57
				on Corporate Criminal	3-58
		1/10	iiity		5 50

		TABLE OF CONTENTS	xxvii
		[a] Withholding Corporate Crin	ninal
		Liability for Firms That	Are
		Victims of Employee Cri	mes 3-58
		[b] Tailoring Crime Prevention	
		Incentives	
		[c] Establishing Fair Limits on	_
		Self-Policing Obligations	
		[d] Recognizing Circumstantial	
		of Corporate Fault	
		[e] Establishing Boundaries on	
	[2]	Responsibility	
	[3]	Sufficient Types of Corporate Ben	
		[a] Intended and Realized Gains	
		[i] Incremental Revenues	
		[ii] Cost Savings	
		[iii] Improved Legal Posit	
		[iv] Monitoring Cost Savi	
		[b] Intended But Unrealized Ga	
		[c] Unintended But Realized Ga	
	F 47	[d] Gain to Sole Shareholder	
	[4]	Time Period for Assessing Corpora	
	5.53	Benefit	3-66
	[5]	Corporate Criminal Liability Abser	
		Corporate Gain	3-66
		[a] Offenses Facilitated by an	
		Individual's Corporate Po	
		[b] Foreseeable Offenses	
		[c] Offenses Involving Breach	
		Corporate Duty to Take	
		or Achieve Results	
	[6]	Insufficient Corporate Benefit for	
		Criminal Liability	
		[a] Offenses Injuring Corporation	
		[b] Offenses Neither Benefiting	
		Harming Corporations	
		[c] Offenses Involving Personal	
		Motivations or Objective	
		Unrelated to Corporate In	
	[7]	Potential Impact of Corporate Law	
		Compliance Programs on Offen	
		Benefit Assessments	
§ 3.07	Rejec	ted Limits on Respondeat Superior L	
	[1]	Managerial or Supervisory Fault N	leed Not
		Be Shown	
	[2]	Authorization to Complete Illegal	Conduct
		is Not Needed	
	[3]	Policies or Instructions Prohibiting	
		Conduct Will Not Prevent Liab	ility 3-76

xxviii		CORPORATE CRI	MINAL LIABILITY	
	[4]	Does Not Preclud	Responsible Individuals de Corporate Criminal	
			the Scope of Conduct	3-80
		and Know	ledge Considered ons of Liability to	3-81
§ 3.08	Corn	Reflect Rel	ative Blameworthiness y Based on the Actions	3-82
y 5.00				3-85
	[1]		Agents to Undertake	2.05
	[2]		t	3-85 3-86
	[3]	Ratifying Offenses (Employees Outsi	Committed by	3 00
		of Employment.		3-86
§ 3.09		ving the Clarity and I minal Liability Based	Fairness of Corporate on Respondeat	
	Su	perior		3-88
		CHAPT	TER 4	
	C	orporate Criminal Collective Knowle	Liability Based on edge and Action	
§ 4.01	Colle	tive Knowledge and	Action as a Basis for	
	Co	porate Criminal Liab	ility	4-2
	[1]		T 1 117	4-2
	[2]	[a] Recognizing	Liability	4-3
			Due Care	4-3 4-4
§ 4.02	Offer		Be Established Through	7.7
			nd Action	4-6
	[1]		ge Based on Group	4.7
	[2]		ction Based on Group	4-7
	[2]		· · · · · · · · · · · · · · · · · · ·	4-13
		[a] Willful Actio	n Based on	
			nicated Legal	
		_	nts	4-15
		[b] Willful Actio	n Based on nicated Factual	
			n	4-16
	[3]		ntent	4-10
	ا د ا		t Based on Group	
		Knowledge	· · · · · · · · · · · · · · · · · · ·	4-22
			t Based on Distributed	
		Intent		4-24

		TABLE OF CONTENTS	xxix
	[4]	Corporate Entity Liability Without Agreement on the Responsible Individuals.	4-24.1
§ 4.03		Boundaries of Corporate Liability Based Collective Knowledge and Group Action	4-25
	[1]	No Liability for Failure to Collect	4.25
	[2]	Information	4-25
		Compliance	4-26
	[3]	Collective Knowledge is Limited to Material Information	4-28
§ 4.04	Impli	cations of the Collective Knowledge Doctrine	4-20
Ü		Corporate Criminal Law	4-29
		CHAPTER 5	
		Special Sources and Limitations of	
	Corpor	ate Criminal Liability Under Federal Law	
§ 5.01	Corpo [1]	orate Conspiracy Liability	5-2
	[2]	Conspiracy Statute	5-3
	[2] [3]	Corporate Conspiracies to Restrain Trade Corporate Conspiracies Under Other	5-6
§ 5.02	Corpo	Statutes	5-8
Ü	of	Parties Outside of Corporate Organizations	5-9
	[1]	Corporate Liability for Offenses by Independent Contractors and Other	
		Independent Agents	5-9
		[a] Strict Liability Offenses	5-9
		[b] Other Criminal Standards	5-11
	[2]	Corporate Criminal Liability Based on	
		Conduct of Employees of Corporate	5-14
		Subsidiaries	5-17
		Liability	5-14
		[b] Unitary Enterprise Basis for Parent	5 15
	[3]	Company Liability The Minimum Unit for Measuring Liability:	5-15
	r ₂ 1	Criminal Liability of Corporate Divisions	
		and Other Independently Managed	
		Corporate Subcomponents	5-17
§ 5.03		nal Liability for Offenses of Dissolved	F 10
	Co	prporations	5-19

XXX		CORPORATE CRIMINAL LIABILITY					
§ 5.04	Crim	inal Liability for Offenses of Predecessor					
	Corporations						
	[1]						
		Corporations in Mergers and					
		Consolidations	5-22				
	[2]	Liability of Successor Companies for					
		Offenses of Acquired Firms	5-23				
	[3]	Liability of Companies Based on					
		Acquisition of Stock of Corporate					
		Offender	5-24				
	[4]	Liability of Companies Based on					
		Acquisition of Assets of Corporate					
		Offender	5-24				
		[a] General Standard	5-24				
		[b] Exceptions to General Rule	5-25				
		[c] Accomplice Liability	5-25				
	[5]	Prosecutorial Discretion Principles					
		Limiting Successor Liability for	5.06				
		Corporate Crimes	5-26				
		[a] Underlying Successor Liability	5-26				
		[b] Criteria for Withholding Charges	5 26 1				
		Against Successor Corporations	5-26.1				
		[c] Remaining Types of Successor	5-26.2				
		Liability	3-20.2				
		Liability	5-26.3				
		[i] Obtaining an Opinion	5-26.3				
		[ii] Procedures for Pre-Acquisition	3 20.3				
		Due Diligence Studies	5-26.5				
§ 5.05	Corpo	orate Criminal Liability After Bankruptcy	5-27				
3 0.00	[1]	The Status of Corporate Criminal Fines in	0 = 7				
	[-]	Bankruptcy Proceedings	5-27				
	[2]	Corporate Criminal Fines as "Debts"	5-28				
	[3]	Limits on Dischargeability of Fines					
		Imposed on "Individual Debtor"	5-30				
	[4]	A Case Study in Discharge of Corporate					
		Criminal Fines	5-31				
§ 5.06	Const	titutional Limitations on Corporate Criminal					
	Li	ability	5-33				
	[1]	Due Process and Equal Protection	5-33				
	[2]	Procedural Protections	5-33				
	[3]	Search and Seizure Limitations	5-34				
	[4]	Self-Incrimination	5-35				
	[5]	Grand Jury Indictment	5-36				
	[6]	Speedy Trial	5-36				
	[7]	Jury Trial	5-39				
	[8]	Right to Counsel	5-41				
	[9]	Vagueness	5-42				
	[10]	Ex Post Facto Laws	5-43				

		TABLE OF CONTENTS	xxxi
	[11] [12]	Cruel and Unusual Punishment	5-43 5-44
		CHAPTER 6	
		upport for a Due Diligence Defense to rate Criminal Liability Under Federal Law	v
§ 6.01	Autho	ority for Due Diligence Defense	6-2
	[2]	RareJudicial Support for Due Diligence	6-2
	[3]	Defense	6-3
		Corporate Criminal Liability Standards	6-6
		[a] Negating Corporate Intent	6-6
		[b] Defining Scope of Employment[c] Identifying Crimes for Corporate	6-7
		Benefit	6-7
		Compliance Programs	6-8
	[4]	Based on Managerial Fault An International Comparison: UK Bribery Act Defense for Adequate Procedures	6-9
		to Prevent Bribery	6-10.1
§ 6.02	Possi	ble Reasons to Reject a Due Diligence	0 10.1
§ 0.02		efense to Corporate Criminal Liability	6-11
	[1]	Punitive Arguments Against a Due	0 11
	[-]	Diligence Defense	6-11
	[2]	Incentive Arguments Against Due	
		Diligence Defense	6-13
§ 6.03		Corporate Due Care Defense to "Controlling erson" Liability Under Federal Securities	
	La	ws	6-14
§ 6.04		uring Due Diligence in Detecting and	
	Pr	eventing Crimes by Corporate Employees	6-19
	[1]	Due Diligence in Advance of Offenses [a] Avoiding the Encouragement of	6-19
		Employee Offenses	6-19
		[b] Implementing Crime Prevention Measures	6-20
	[2]	Due Diligence in Monitoring to Detect	0-20
	[-]	Offenses	6-23
§ 6.05	[3] Three	Due Diligence in Reacting to Offenses e Case Studies in Measuring Due Diligence	6-24
,		ompliance	6-27
	[1]	Baking Co	6-27
			(Rel. 35)

xxxii		CORPORATE CRIMINAL LIABILITY				
	[2] [3]	[a] Compliance Direction and Control	6-27 6-28 6-28 6-29 6-31 6-31 6-32 6-32			
§ 6.06	Conc	clusion	6-34			
		CHAPTER 7				
	Corpo	orate Criminal Liability Under State Laws				
§ 7.01 § 7.02		s and Limitations	7-2			
§ 7.03	Corp Ba	acorporating <i>Respondeat Superior</i> Standards 7-8 sorate Criminal Liability Under State Standards ased on Kinship of Agent Authority and				
§ 7.04		ffense Conductorate Criminal Liability Under State Laws	7-11			
	Ba [1]	ased on Model Penal Code Standards Origins of Model Penal Code Standards for	7-15			
		Corporate Criminal Liability	7-15			
	[2]	Code Standards	7-16			
	[3]	Properly Categorizing Offenses Within	7 17			
	[4]	the Code	7-17			
		Penal Code	7-18			
		Agents	7-18			
		[b] Managerial Toleration of Crimes	7-19			
	[5]	[c] Range of Offenses Covered Corporate Respondeat Superior Liability Under Model Penal Code	7-20 7-21			
			7-21			
		[b] Criteria for Applying Respondeat				
		Superior Standards	7-22			
	[6]	[c] Due Diligence Defense	7-24			
	[7]	Duties	7-25			
	F03	Strict Liability Offenses	7-27			
	[8]	Does the Code Achieve Its Goals?	7-28			

	TABLE OF CONTENTS	xxxiii
§ 7.05	Corporate Criminal Liability Based on Managers' Inattention to Concealed Hazard— The California Corporate Criminal	
	Liability Act	7-31
§ 7.06	Roster of State Standards for Corporate Criminal Liability	7-35
§ 7.07	State Penalties for Corporate Fraud and	
§ 7.08	Other Offenses	7-65 7-67
	CHAPTER 8	
	Corporate Sentences for Federal Offenses: An Introduction to	
	The Organizational Sentencing Guidelines	
§ 8.01	Transformation of Corporate Sentencing Under	0.6
§ 8.02	Federal Sentencing Guidelines	8-6 8-6.3
8 8.02	[1] Pre-Guideline Practices	8-6.3
	[2] Changes in Corporate Sentencing Under the	0 0.5
	Sentencing Reform Act of 1984	8-6.4
	[3] A Precursor to Organizational Sentencing	
	Standards: Sentencing Guidelines for	8-7
	Individuals[4] Developing Sentencing Guidelines for	0-7
	Organizations	8-8
§ 8.03	Overview of Organizational Sentencing	
v	Guidelines	8-13
	[1] Underlying Principles	8-13
	[2] Sentencing Covered by Guidelines	8-13
	[a] Entities Covered	8-13
	[b] Offenses Covered	8-14
	[3] Federal Sentencing Procedures for	
	Corporate Offenders	8-16
§ 8.04	Determining Recommended Corporate Sentences	0.01
	Under Guidelines	8-21
	[1] Corporate Fines	8-21
	[a] General Standards	8-21
	[b] Antitrust Offenses	8-22
	[c] Bribery Offenses	8-23
	[d] Impact of Organizational	0 24
	Culpability on Corporate Fines	8-24
	[i] High Culpability Organizational Offender	8-24
	[ii] High Culpability	0-24
	Organizational Offender with	
	Post-Offense Cooperation	8-25
	1 ost Offense Cooperation	0 23

xxxiv	CORP	ORATE CRIMINAL LIABILITY	
		[iii] Typical Organizational	
		Offender	8-25
		[iv] Organizational Offender with a	
		Weak Compliance Program	8-25
		[v] Model Organizational Offender	
		with an Effective	
		Compliance Program	8-26
		[vi] Organizational Offender with	
		No Compliance Program,	
		but Effective Post-Offense	
		Response	8-26
	[2] Other	Corporate Sentences: Restitution,	
		medial, and Probation	
	Red	quirements	8-27
§ 8.05		t of the Guidelines on Corporate	
		Liability	8-28
		cutorial Impact	8-29
	[a]	More Numerous Prosecutions	8-29
	[b]	Expanded Prosecutions	8-31
	[c]	Changing Prosecutorial Discretion	0.22
	F 13	Patterns	8-32
	[d]	Prosecutorial Trends Under	0.22
	r.1	Guidelines	8-33
	[e]	Corporate Experience with Deferred	0 11 1
	[f]	Prosecution Agreements Enforcement of Deferred and	8-44.1
	[f]		8-46.36
	[g]	Non-Prosecution Agreements Increasing Use of Deferred and	0-40.30
	[8]	Non-Prosecution Agreements	8-46.53
		[i] Corporate Monitors	8-46.55
		[ii] Payments	8-46.55
		[iii] Compliance Programs	8-46.55
		[iv] Agency Assistance	8-46.56
		[v] Privilege Waivers	8-46.56
		[vi] DOJ Cooperation	8-46.56
		[vii] DOJ Termination	8-46.57
		[viii] Possible Abuses	8-46.57
	[h]	The Aftermath of Deferred	
		Prosecution Agreements: State	
		Regulatory Responses to	
		Admissions in Agreements	8-46.61
	[i]	Ongoing Fact Finding by	
		Corporate Monitors	8-46.62
	[j]	Selection and Use of Corporate	
		Monitors	8-46.72
		[i] Considerations in Seeking	
		Monitors	8-46.72
		[ii] Procedures for Approval of	0 /
		Corporate Monitors	8-46.74

	TABLI	E OF CONTENTS	XXXV	
	[iii]	Continuing Review of Monitors Concrete Costs of Monitoring	8-46.75	
		Under DPA and NPA Agreements	8-46.76	
	[v]	Increasingly Extensive Monitors' Powers	8-46.78	
	[vi]	Unanticipated Risks of Corporate Monitors	0.46.02	
	[vii]	in Practice	8-46.83	
F1-1	The I	Monitors	8-46.84	
[k]			8-46.85	
[1]		loping Roles of Corporations	0.46.07	
F7		Assisting Prosecutors	8-46.87	
[m]		ple Corporate Monitors in		
		ses of Systemic Compliance		
		ismanagement in Specialized		
		elds: Examples from the BP	8-46.89	
		ea Agreement	8-46.89	
	[i]	Resources Provided	0-40.09	
	[11]	to the Monitors by BP	8-46.90	
	riii)	Powers of the Monitors	8-46.91	
		Monitors' Reviews	0-40.71	
	[IV]	and Reports	8-46.91	
	[v]	Implications of Divided	0-40.71	
	[v]	Monitoring Arrangements	8-46.92	
[n]	DOI	Considerations in Using	0-40.92	
[11]		eferred Prosecution		
		greements	8-46.93	
	[i]	Increased Corporate	0-40.73	
	[1]	Accountability	8-46.93	
	[ii]	Consequences of Systematic	0-40.73	
	[11]	Flaws	8-46.94	
	[iii]	Criminal Justice Impacts	0-40.74	
	[111]	of a DPA	8-46.95	
	[iv]	Lack of Individual Liability	0 40.75	
	[11]	Reductions	8-46.96	
	[v]	Increasing Prosecutorial	0 10.50	
	۲,1	Choices and Corporate		
		Justice Options	8-46.96	
	[vi]	Changes in Case Resolutions	0 .0.50	
	[,-]	with NPAs and DPAs	8-46.97	
[o]	Comr	parative Guidance on Deferred	0 .0.5 /	
۲۰٦		osecution Agreements—		
		e UK Experience	8-46.98	
	[i]	DPA Consultation	8-46.98	
	[ii]	DPA Guidelines	2 . 2.2 0	
	[,,]	for Prosecutors	8-46.102	
			(Rel. 38)	

xxxvi CORPORATE CRIMINAL LIABILITY

		[iii] UK Criminal Procedure	
		Rules Regarding DPAs	8-46.110
		[iv] UK Serious Fraud Office	
		Updated Provisions on	
		Deferred Prosecution	
		Agreements	8-46.112
	[p]	Refining DPA and NPA Practices	8-46.114
		[i] Targeting Agreements	8-46.115
		[ii] Considerations in Negotiating	
		Agreements	8-46.117
		[iii] Adjusting Corporate Leniency to Promote Individual	
		Accountability and	
		Deterrence	8-46.119
		[iv] Targeting Results in DPAs	
		and NPAs	8-46.121
	[q]	Shifts in Corporate Crime Policing	
		Under DPAs and NPAs	8-46.123
	[r]	Evaluating the Impacts of DPAs	
		and NPAs on Criminal	
		Prosecutions of Individuals	8-46.125
	[s]	Assessing the Results of the Era of	
		Deferred Prosecutions	8-46.126
	[t]	Limitations on Judicial Review	
		of DPAs	8-46.130
	[u]	Reasons Behind DPAs and NPAs	
		Without Individual	
		Prosecutions	8-46.135
	[v]	Expanding DPA and NPA Enforcement	
		to Include CEO and CCO	
		Certifications	8-46.136
	[2] Corp	orate Impact	8-46.139
		oyee Impact	8-46.142
§ 8.06		al and Statutory Restrictions on	
		tional Sentencing Guidelines	8-46.145
		titutional Restrictions	8-46.145
	[a]	Authority to Issue Guidelines	8-46.145
	[b]	Jury Trial Limitations	8-48
	[c]	Other Constitutional Challenges	8-49
	[d]	Remaining Constitutional Issues	8-50
	[2] Statu	tory Restrictions	8-57
§ 8.07	Unresolved	Policy Questions Underlying	
	Organizat	ional Sentencing Guidelines	8-64
	[1] Gove	rning Sentencing Rationales	8-64
	[a]	Reconciling Divergent Sentencing	
		Principles	8-64
	[b]	Just Deserts	8-64
	[c]	Utilitarian Deterrence	8-64.4
	[d]	Preventive Incentives	8-64.5

	TABLE	OF CONTENTS	xxxvii
	[e] Combin	ning Sentencing Proposals	
	fron	Multiple Viewpoints	8-64.7
		Versus Charged Offense	
	Sentencing		8-65
		idual Sentencing Patterns	8-67
§ 8.08	Effect of Guidelines		
		orporate Organizations	8-69
		as Public Trustees Concerning	
		and Detection of Internal	0.60
			8-69
		ysis of Criminal Law	
		nt Through Corporate	0.70
		D: 4 D 1:	8-70
		Private Policing in Corporate	0.71
		ons	8-71
		gerial Relationships Following	
		tion of Corporate Law	8-73
		orporate Legal Practice	8-76
		acts of Organizational	0-70
		Guidelines	8-77
		led Governmental Criteria for	0-77
		d Compliance Practices	8-77
		ned Impact of Compliance	0-77
		grams on Corporate Liability	8-80
		Broadened Impact	0 00
	[-]	on Criminal Penalties	8-80
	[ii]	Consideration in Charging	
	[]	Decisions	8-81
	[iii]	Impacts on Regulatory	
		Enforcement Actions	
		and Penalties	8-81
	[iv]	Reductions in Corporate	
		Civil Liability	8-81
	[v]	Criteria for Civil Liability	
		of Corporate Directors	
		and Officers	8-82
		g Involvement of Federal	
	Pros	secutors in Corporate Reforms	
		Crime Prevention	8-82
§ 8.09		ties Concerning Corporate	
			8-86
§ 8.10		izational Sentencing Guidelines:	
		ients	8-87
		Guidelines: A 20th Anniversary	0.07
			8-87
		g as a Model for Prosecutorial	0.00
		Regulatory Standards	8-88
	[b] Interna	tional Impacts	8-88

xxxviii	CORPORATE CRIMINAL LIABILITY	
	[c] Focusing Attention on Compliance	0.00
	Programs	8-88 8-89
	[d] Increasing Expertise	8-89
	[3] Sentencing Commission Evaluation of	0 07
	Guidelines Impact: A 30th Anniversary	
	Assessment	8-91
§ 8.11	Comparative Sentencing Approaches Outside the	
	United States: International Corporate	
	Sentencing Standards	8-92.1
	[1] United Kingdom Guidelines on Corporate	0.00.1
0.012	Sentencing	8-92.1
§ 8.12	Research on Public Perceptions of	8-99
	Organizational Sentencing Factors	0-99
	CHAPTER 9	
	Offense Severity Characteristics	
	Determining Corporate Fines	
§ 9.01	Introduction	9-2
§ 9.02	The Impact of Offense Severity Measures on	
	Corporate Fines	9-4
§ 9.03	Fines Based on Illegal Gains	9-5
	[1] Rationales for Varying Corporate Fines	
	Based on Illegal Gains	9-5
	[2] Limits on Gain-Based Deterrents	9-6
	[a] Economic Irrationality in	9-6
	Organizational Behavior [b] Low Prosecution Rates	9-0 9-7
	[c] Reduced Multipliers Based on) - 1
	Corporate Culpability Measures	9-10
	[3] Measuring Offender Gains	9-11
	[a] Realized Gains	9-11
	[b] Anticipated but Unrealized Gains	9-13
	[c] Strategic Gains	9-14
	[d] Compliance Cost Savings	9-15
	[e] Agent Monitoring Cost Savings	9-17
§ 9.04	Fines Based on Victim Losses	9-20
	[1] Rationales for Varying Corporate Fines	0.20
	Based on Victim Losses.	9-20
	[2] Limits on Loss-Based Incentives	9-23
	[a] Separation of Accountability for	
	Corporate Fines	9-23
	Corporate Fines	9-23 9-24
	[b] Low Prosecution Rates	9-24 9-24
	[3] Loss Measurement	9-24 9-27
		7-41

			TABLE OF CONTENTS	xxxix
		[a]	Immediate Loss	9-28
		[b] [c]	Consequential Losses Further Intended but Unrealized	9-31
	F 43	C	Losses	9-33
	[4]		ial Loss Measures for Specific Offense	9-35
		[a]	ategories	9-33
		رما	and Access Devices: Purloined	
			Numbers and Codes	9-35
		[b]	Government Benefits	9-35
		[c]	Davis-Bacon Act Violations	9-35
		[d]	Ponzi and Other Fraudulent	,
		F3	Investment Schemes	9-36
		[e]	Other Unlawful Misrepresentation	
			Schemes	9-36
		[f]	Bribery Offenses	9-36
		[g]	Antitrust Offenses	9-37
		[h]	Tax Offenses	9-37
§ 9.05	Fines		on Offense Levels	9-39
	[1]		slating Offense Levels into Corporate	
			nes	9-39
	[2]		onsidering Gains and Losses in	
	507		etermining Offense Levels	9-39
	[3]	Type	es of Corporate Fines Governed by	0.40
	F 43		ffense Levels	9-40
	[4]		rmining Offense Levels for Group	0.41
0.06	Tu aan		onduct	9-41
§ 9.06			ng Fines for Criminal Purpose	0.42
	[1]		tionsonale for Incapacitating Fines	9-43 9-43
	[2]		nds for Imposing Incapacitating Fines	9-43
	[4]		Repeated Offenses	9-44
		[b]		7-44
		[o]	Impacts	9-47
§ 9.07	Gans	in Sev	erity Measures: Some Illustrative	, , , ,
3				9-51
	[1]		tory Fine Caps as Limits on Corporate	
			nes	9-51
	[2]	Estin	nating Losses from Altered Conduct:	
		Tl	he Special Treatment of Antitrust	
			ffenses	9-53
	[3]	Meas	suring the Value of Information	9-58
	[4]		and Drug Offenses: Distinguishing	
			etween Economic Fraud and Health	
			nd Safety Threats	9-61
	[5]		ronmental Crimes: Future Challenges	
			Measuring Harm and Setting	0.65
		C	orporate Fines	9-65

xl		COR	PORATE CRIMINAL LIABILITY	
		[a]	Measuring the Seriousness of	
			Environmental Offenses	9-65
		[b]	Proposed Environmental Offense	
			Sentencing Guidelines for Organizational Offenders	9-68
§ 9.08	Conc	lusion.	Organizational Officiacis	9-76
			CHAPTER 10	
		Offen	der Culpability Characteristics	
			etermining Corporate Fines	
§ 10.01			Corporate Culpability in Federal	10.2
	[1]		ng	10-2
	[1]		rganizational Culpability	10-2
	[2]	Unde	erlying Test for Organizational	
e 10.02	01.		ulpability	10-3
§ 10.02			of Varying Corporate Fines Based on tional Culpability	10-7
§ 10.03	Corp	orate C	Culpability Indicators	10-10
Ü	[1]		agerial Fault	10-10
		[a]	Executive Involvement	10-10
		[b]	e e	10-12
		[c]		10-13
		[d]	Multiple Types of Managerial Involvement in a Single Case	10-15
	[2]	Prev	entive Fault.	10-15
	[-]	[a]	Failure to Implement Preventive Law	10 12
			Compliance Programs	10-16
			[i] Compliance Standards	10-18
			[ii] Program Leadership	10-18
			[iii] Avoiding Irresponsible	
			Delegation of Authority	10-19
			[iv] Communicating Standards	10.10
			and Procedures	10-19
			[v] Monitoring, Auditing, and Evaluation	10-19
			[vi] Promoting and Enforcing	10-19
			the Program	10-20
			[vii] Offense Responses	10-20
		[b]	Failure to Prevent Repeated	10 20
		[-]	Misconduct	10-21
		[c]	Commission of an Offense in	
			Violation of a Judicial Order or	
			Probation Condition	10-23
	[3]		tive Fault	10-25
		[a]	Acceptance of Responsibility	10-26

		TABLE OF CO	NTENTS	xli
§ 10.04	Limit [1]	[c] Willful Obstru	Authorities	10-27 10-30 10-31
	[2]			10-31
	[3]	Promoting Compli	ance	10-32
				10-34
§ 10.05		Sentencing Process L sion: Critical Function	imitations	10-35 10-38
	C	not and stick senter	icing	10-38
		CHAPTI	ER 11	
			: Sentencing Discretion and Fine Reductions	n,
§ 11.01 § 11.02	Consi	erations in Setting Fir		11-4
				11-5
	[1]		retion	11-5
	[2]	Fine Adjustments Ba Sentencing Goals	sed on Federal	11-7
	[3]	Fine Adjustments Ba	sed on an	
	[4]		le in an Offense	11-8
	[4]	Fine Adjustments Ba Consequences of a	a Conviction	11-9
	[5]	Fine Adjustments Ba	sed on Nonpecuniary	
	[6]	Losses		11-9
	[6]	Fine Adjustments Ba of a Vulnerable V	ictim	11-10
	[7]	Fine Adjustments Ba	sed on the Prior	
		Criminal Record of		11 10
	[8]	Fine Adjustments Ba	sed on Prior Civil or	11-10
	[0]	Criminal Miscond		11-11
	[9]	Fine Adjustments Ba	sed on Exceptionally	
	[10]		pability Scores	11-13
	[10]	Fine Adjustments Ba Presence of a Culi	pability Indicator	11-14
	[11]	Fine Adjustments Ba		11 11
		Factors		11-15
			come, Earning	
			nd Financial	11-15
			lens on Defendant	11-15
			lens on Persons	-1 10
			on Defendant	11-17

xlii		CORI	PORATE CRIMINAL LIABILITY	
		[d]	Pecuniary Losses	11-17
		[e] [f]	Restitution Need to Deprive Defendant of	11-18
			Illegal Gains	11-19
		[g]	Ability of Defendant to Pass Expense of a Fine on to Customers or	
			Other Persons	11-20
		[h] [i]	Organization Size	11-21
			Measures	11-22
	[12]	C	Adjustments Based on Factors onsidered in Determining	
			ecommended Fine Ranges	11-23
§ 11.03	Depa:		From Recommended Fine Ranges ral Standards for Guideline	11-24
			epartures	11-24
	[2]		fying Guideline Departures	11-26
	[3]		ors Supporting Downward Departures	11-28
		[a]	Substantial Assistance to	11.00
		F1 3	Authorities	11-28
		[b]	Public Entities	11-28.1
		[c]	Members or Beneficiaries of	11-29
		[d]	Organization Victimized	
		[e]	Corporate Gain	11-29
			Culpability	11-29
		[f]	Wrongful Conduct by Victim	11-30
		[g]	Avoiding Greater Harm	11-31
		[h]	Coercion and Duress	11-32
		[i]	Diminished Capacity	11-32
		[j]	Voluntary Self-Reporting of	11 22
	F43	East	Otherwise Undetectable Offenses	11-32
	[4]		ors Supporting Upward Departures	11-33
		[a]	Death or Bodily Injury Threats to National Security	11-33 11-35
		[b] [c]	Threats to the Environment	11-35
		[d]	Threats to a Market	11-35
		[e]	Official Corruption	11-36
		[f]	Operation of Required Law	11 50
		[+]	Compliance Program	11-36
		[g]	Exceptionally High Organizational	
		[0]	Culpability	11-37
		[h]	Extreme Psychological Injury	11-38
		[i]	Property Damage or Loss	11-39
		[j]	Disruption of Governmental	
			Function	11-39
		[k]	Criminal Purpose	11-40
		[1]	Endangerment of Public Health	
			or Safety	11-40

	xliii		
[5]	[m] Addi [a]	Violent Conduct	11-40 11-41
	[b]	Influencing Court Discretion Factors Influencing Sentencing for	11-41
	[c]	Other Types of Offenses Departure Criteria Not Specified in	11-42
[6]		the Guidelinestional Guideline Departures on	11-42
[0]		onstitutional Grounds	11-43
	[a]	The Court's Analysis in <i>Booker</i>	11-43
	լայ	[i] Jury Trial Guarantees and Sentencing	11 44
		Evaluations [ii] A Remedy Retaining Portions	11-44
	[b]	of the Guideline System The Modified Impact of the Sentencing Guidelines After	11-44.1
		Booker	11-44.2
	[c]	Beyond the Guidelines: Additional Considerations in Sentencing	11-44.4
	[d]	Results Under Post-Booker	11 44 6
	[e]	Sentencing Standards	11-44.6
	[C]	Guidelines' Impact	11-44.6
		[i] Diminished Influence	11-44.0
		of Prosecutors in Plea	
		Bargaining Negotiations	11-44.7
		[ii] Ability of Courts to Reduce Sentences for Cooperation	
		Without Concurrence	
		of Prosecutors	11-44.7
		[iii] Expanded Grounds	
		for Sentence Reductions	11 44 0
		and Increases	11-44.8
		[iv] Increased Complexity of Sentencing Proceedings	11-44.9
	[f]	Continuing Importance of the	11-44.7
	[1]	Organizational Sentencing	
		Guidelines	11-44.9
		[i] Primary Predictors	,
		of Sentencing Results [ii] Bases for Prosecutorial	11-44.9
		Discretion	11-44.10
		[iii] Incorporation in Charging and Penalty Standards	
		for Civic Offenses	11-44.11
	[g]	Compliance Program Evaluations	
		After Booker	11-44.12

xliv	CORPORATE CRIMINAL LIABILITY					
	[h] Implementing Booker: The Suprem Court Clarifies the Impact of the Advisory Sentencing Guidelines [i] Rita v. United States [ii] Kimbrough v. United States [iii] Gall v. United States	11-44.13 11-44.13 11-44.16				
§ 11.04	Fine Reductions to Accommodate Limited					
	Corporate Resources	11-44.23				
	[1] Lowering Fines to Reduce Impact on					
	Corporate Viability					
	[2] Procedures for Fine Reductions [a] Preliminary Assessment of	11-44.23				
	Defendant's Ability to Pay a Fine	11-44.23				
	Payment Impact Following Complete Sentencing Analysis . [c] Reassessment of Fine Payment	11-45				
	Impact During Term of					
	Deferred Payment Plan	11-45				
	[3] Fine Reduction Amounts					
	Payments	11-46				
	Businesses	11-47				
	Justifying Fine Reductions	11-47				
	[d] Measuring Firm's Ability to Pay	11-48				
	[4] Payment Terms Allowing Deferred Fine	11.50				
	Payments[a] Measuring Firm's Ability to Make					
	Immediate Payment of Fine					
	[b] Installment Payment Arrangements[5] DOJ Guidance on Fine Modifications					
	Based on Corporate Inability to Pay					
	[a] Information Required					
	[b] Factors Considered by Prosecutors					
	[c] Special Reviews Within the DOJ					
§ 11.05	[d] Implications for Corporate Fines Corporate Fine Reductions to Offset Fines Paid b	by				
	Owners of Closely Held Firms					
§ 11.06	Conclusion	11-59				
	CHAPTER 12					
	Beyond Fines: Innovative Corporate Senter	ices				
§ 12.01	Innovative Sentencing Options	12-2				

			TABLE OF CONTENTS	xlv
	[1]	Signi	ficance of Nontraditional Corporate	
		Sa	nctions	12-2
	[2]	Role	of Nontraditional Sanctions in	
			orporate Sentencing	12-4
§ 12.02	Reme	edial Sa	nctions	12-6
	[1]	Imme	ediate Restitution	12-6
		[a]	Judicial Discretion Concerning	
			Restitution	12-9
		[b]	Eligible Victims	12-12
		[c]	Compensable Injuries	12-18
			[i] Damage to or Loss	
			of Property	12-18
			[ii] Bodily Injury or Death	12-19
			[iii] Excluded Damage	12-19
			[iv] Judicial Authority to Order	
			Additional Restitution	12-20
		[d]	Withholding Restitution Due to	
			Complication and Prolongation	
			of the Sentencing Process	12-21
		[e]	Constitutional Limitations on	
			Restitution Sentences	12-21
	[2]	Defe	red Restitution	12-23
	[3]	Reme	edial Orders	12-25
	[4]	Comi	nunity Service	12-27
	[5]		es to Crime Victims	12-30
§ 12.03	Preve	entive S	anctions	12-33
	[1]	Crim	e Prevention Through Corporate	
		Pr	obation Sentences	12-33
		[a]	Statutory Standards for Corporate	
			Probation Sentences	12-33
		[b]	Guideline Provisions Concerning	
			Probation Sentences	12-36
		[c]	Lessons from Past Corporate	
			Probation Sentences	12-37
	[2]	Manc	latory Offender Reforms	12-39
		[a]	The Proper Role of Compelled	
			Reforms	12-39
		[b]	When Reforms Are Required	12-40
		[c]	Types of Required Reforms	12-41
			[i] Mandatory Compliance	
			Program Changes	
			and Monitoring	12-41
			[ii] Business Practice Reforms	12-42
		[d]	A Strategy for Imposing Reform	
			Requirements	12-44
			[i] Voluntary Compliance	12-45
			[ii] Enforced Self-Regulation	12-46
			[iii] Mandated Restrictions	

xlvi	CORPORATE CRIMINAL LIABILITY	
	with Enforcement Discretion	12-48
	or Presumed Sanctions [e] An Example of Probation-Imposed	12-48
	Reforms	12-49
	[3] Enhanced Offense Disclosures	12-52
	[4] Adverse Publicity	12-53
	Compelling Adverse Advertising [5] Punitive Probation Terms	12-56 12-58
	Terms	12-59
	Sanctions	12-60
§ 12.04	Conclusion	12-62
	CHAPTER 13	
	Collateral Consequences of Corporate Crime	
§ 13.01	Introduction	13-6
	the BP Oil Well Blowout	13-6.1
	[a] SEC-Imposed Penalties [b] Additional Civil Liability to the	13-7
	Federal Government	13-7
	[c] Private Damage Lawsuits	13-8
	[d] Shareholder Derivative Suits	13-9
	[e] Private Securities Fraud Actions [f] ERISA, RICO, and Contractual	13-9
	Claims	13-10
	[g] Miscellaneous Litigation Among Platform Owners, Operators, and	
	Working Interest Holders [h] Summary of Collateral Consequences	13-10
	of the BP Well Blowout	13-11
§ 13.02	Civil Penalties for Criminal Conduct	13-12.1
	[1] Relationship to Criminal Penalties [a] DOJ Policy on Coordination of Penalties in Parallel Investigations	13-12.1
	and Proceedings	13-12.2
	[2] SEC Penalty Standards	13-12.4
	[a] Harm to Shareholders	13-12.4

		TABLE OF CONTENTS	xlvii
	[b]	Direct Benefit to Corporation from	
		Offense	13-12.5
	[c]	Whether Penalties Will be Used to	
		Compensate Injuries to	12 12 5
	r.an	Shareholders	13-12.5
	[d]	Need for Deterrence	13-12.5
	[e]	Injuries to Innocent Parties	13-12.5
	[f]	Scope of Participation in the Violation Within the Corporation	13-12.6
	[g]	Replacement of Corporate Personnel Responsible for the Violation	13-12.6
	[h]	Level of Intent Underlying an	
		Offense	13-12.7
	[i]	Difficulty of Offense Detection	13-12.7
	[j]	Remedial Steps Prior to SEC	
		Enforcement Actions	13-12.7
	[k]	Cooperation with Law Enforcement	40.400
	F13	Efforts.	13-12.8
	[1]	Additional SEC Penalties for Material	
		Misstatements After Major	
		Corporate Misconduct: Investigations and Sanctions	
		Following the BP Well Blowout	13-12.9
	[m]	SEC Enforcement Actions	13-12.9
	[111]	Responding to Weak Compliance	
		Programs Prior to Offenses	13-12.12
	[n]	SEC Assessment of Compliance	10 12.12
		Program Quality Indicators	13-12.13
[3]	SEC	Whistleblower Incentives	13-12.17
	[a]	Building on Past Whistleblower	
		Revelations	13-12.17
	[b]	Creating Strong Whistleblower	
		Incentives	13-12.18
	[c]	Nature of Information Triggering a	
		Reward	13-12.18
	[d]	Determining Amounts for Payments	13-12.19
	[e]	SEC Discretion Regarding the	10 10 10
	r.ca	Amount of Payments	13-12.19
	[f]	Parties Barred from Receiving	12 12 20
	[~]	Bounty Payments	13-12.20
	[g]	Anti-Retaliation Provisions	13-12.20
		[i] Supreme Court Interprets Whistleblower Protections	
		NT 1	13-12.21
	[h]	Problems Raised by the Bounty	13-12.21
	[11]	Provisions	13-12.22
		[i] Emphasis on Rapid External	1.0 12.22
		Disclosures	13-12.22
			-

xlviii CORPORATE CRIMINAL LIABILITY

			[ii] Undercutting Incentives	
			of Corporate Fact Finders	13-12.24
			[iii] Encouraging Conduct	
			that Enhances Corporate	
			Penalties	13-12.24
		[i]	Numbers and Impacts of SEC	10 12.2 .
		[-J	Whistleblower Reports	13-12.25
		[j]	Special Ethical Considerations	15 12.25
		וח	Regarding Whistleblower Reports	
				13-12.29
		F1-3	by Corporate Attorneys	13-12.29
		[k]	SEC Whistleblower Changes	12 12 22
	E 43	ar.a	in 2020	13-12.32
	[4]		Use of Prosecution Agreements	13-12.34
		[a]	SEC Standards for DPAs and	
			NPAs	13-12.34
			[i] Criteria for SEC Leniency	
			in Corporate Cases	13-12.35
			[ii] NPA Standards for SEC	
			Agreements	13-12.36
			[iii] DPA Standards for SEC	
			Agreements	13-12.37
		[b]	Examples of SEC NPAs	13-12.37
		[O]	[i] Carter's Inc	13-12.37
		[c]	Examples of SEC DPAs	13-12.37
		[C]	•	
	F. 6.7	CEE	[i] Tenaris S.A	13-12.39
	[5]		C Whistleblower Incentives	13-12.41
		[a]	Procedures for Submitting	
			Information and Claims	13-12.42
		[b]	Information Required to be	
			Disclosed by a Whistleblower	13-12.43
		[c]	Volume of Whistleblower Activity	
			Anticipated by the CFTC	13-12.44
§ 13.03	Suspe	ension	and Debarment	13-12.46
	[1]		ness Impacts of Suspension and	
	. ,		ebarment	13-12.46
		[a]	Characteristics of Suspension and	
		[44]	Debarment	13-13
		[b]	Restrictions on Contracting	15 15
		[Մ]	Opportunities Due to Suspension	
				12 14
		r 1	and Debarment	13-14
		[c]	Additional Consequences of	12 14
		. .	Suspension and Debarment	13-14
	[2]		inal Conduct as a Basis for Suspension	
			nd Debarment	13-15
		[a]	Crimes Supporting Suspension and	
			Debarment	13-15
		[b]	Relationship of Crimes to Contractor	
			Fitness	13-16
				10 10

	TABLE OF CONTENTS				Xl1X
		[c]		ating Responses to Corporate	12 17
	[3]		lards o	imes f Proof Governing Suspension arment Following Criminal	13-17
					13-18
		[a]		ension	13-18
		[b]	Deba	rment	13-18
		[c]	Judic	ial Review	13-19
	[4]	Susp	ension	and Debarment Under State	
		an	d Loca	l Standards	13-20
		[a]	Varia	tions in State and Local	
				andards	13-20
		[b]	Impa	ct of ABA's Model Code	13-20
	[5]			s of Corporate Suspension and	
				nt Based on Criminal Activity	13-21
		[a]		dcom/MCI	13-21
		[b]		ng	13-22.2
		[c]		ır Anderson	13-22.3
		[d]		1	13-23
		[e]		Suspension and Debarment	10.01
				eviews	13-24
			[i]	Sprint	13-24
		r.ca	[ii]	Qwest	13-24.1
		[f]		Doet DD Incidents I soding	13-24.1
			[i]	Past BP Incidents Leading	12 24 2
			F;;7	to Suspension	13-24.2 13-24.3
			[ii] [iii]	EPA Suspension of BP BP Efforts to Avoid	13-24.3
			[111]	and Limit Suspension	13-24.4
			[iv]	Potential Impacts on BP	13-24.4
			[v]	Resolution of BP's Debarment	13-24.3
			[v]	and Suspension	13-24.6
			[vi]	Distributed Culpability	13-24.0
			[11]	Underlying the Deepwater	
				Horizon Blowout	13-24.7
§ 13.04	Exclu	sion fr	om Go	vernment Programs	13-25
3 10.0.	[1]			ommon Rule"	13-25
	[2]			Suspension or Debarment from	
	[-]			urement Programs	13-25
	[3]			uspension or Debarment from	
				urement Programs	13-26
§ 13.05	Loss				13-28
§ 13.06	Const	itution	al Limi	tations on Civil Penalties for	
	Cri	iminal	Miscor	nduct	13-29
	[1]	Doub	le Jeop	oardy	13-29
	[2]	Exce	ssive P	unishment	13-30
	[3]			S	13-32
§ 13.07		linating	g Crimi	inal and Civil Sanctions	13-35
	[1]	Need	for Co	oordination	13-35

and Officers' Duties of Care.....

13-76

		[1]	Beyond Caremark: Standards for	
			Compliance Due Care in Delaware	
			Corporations	13-76.5
			[i] Lower Court Interpretations	
			of the Stone Standards	13-76.14
			[ii] Assessing Breaches	
			of the Ongoing Duty	
			to Monitor Compliance	
			Systems	13-76.14
			[iii] Assessing Breaches of Duty	
			to React to Evidence	
			of Possible Misconduct	13-76.17
			[iv] Sufficient Director Actions	13-76.18
		[j]	Understanding What Caremark	
			Demands: Further Guidance	13-76.20
			[i] Components	
			of the Caremark Test	13-76.21
			[ii] Reconciling Enterprise Risk	
			Management and Compliance	
			Management Failures	
			under Caremark	13-76.25
	[3]	Civil	Damage Liability of Corporations and	10 , 0.20
	[2]		ompany Officials Based on Inadequate	
			isclosures of Illegal Corporate	
			onduct	13-76.28
	[4]		pliance Management in Context:	15 70.20
	ניין		essons from the Corporate Director's	
			uidebook	13-76.29
		[a]	Actions of New Directors	13-76.31
		[b]	Ongoing Responsibilities	13-76.31
		[c]	Compliance Information Systems	13-76.31
		[d]	Oversight of Risk Management	13-70.32
		լայ	Systems	13-76.33
		[6]		13-76.33
		[e]	Oversight of Compliance Programs Specific Compliance Program	13-70.33
		[f]		13-76.33
		[~]	Elements	13-70.33
		[g]	Quality of Information Reviewed	12.76.24
		F1. 1	by the Board	13-76.34
		[h]	Interactions with Legal Counsel	13-76.34
		[i]	Responsibilities of Audit	10.76.24
		F:3	Committees	13-76.34
		[j]	Impact of the Guidebook's	
10.10		٠	Standards	13-76.35
3 13.10			ll Claims	13-77
3 13.11			arm from Adverse Offense Publicity	13-78
§ 13.12			ability of Individuals in Connection	
			porate Offenses	13-81
	[1]		lity of Individuals for Participation in	
		Co	orporate Offenses	13-81

		TABL	E OF CONTENTS	liii
	[irements for Compliance	
			ograms of Other Health Care	
		Pı	oviders	14-16
	[4] Ii	nfluencing	Charging Decisions	14-17
	[:	a] Limi	tations on Revelations of	
	_	Pı	rosecutorial Consideration of	
		C	ompliance and Ethics Programs	14-20
	[5] R		Criminal Penalties	14-22
			Regulatory Auditing and	
			nt	14-25
	[7] A		Advantages of Law Compliance	
	[,]		S	14-27
	ſ:		icing Civil Penalties	14-27
	_		petitive Gains	14-29
			fying Corporate Governance	112)
	L		bligations	14-31
	Γ.		noting Ethical Values	14-31
			ifying for Government Contracts:	14-32
	Ľ			
			ompliance Program Standards	14 22
			r Federal Contractors Code of Business Ethics	14-33
		[i]		14.25
		r	and Conduct	14-35
		[ii]	Practices Promoting	14.25
		F	Compliance with Code	14-35
		[iii]	Code Awareness and Compliance	1126
		F: 3	Control Systems	14-36
		[iv]	Display of Hotline Posters	14-38
		[v]	Contractor Self-Reporting	
			of Evidence of Criminal	
			Violations	14-39
		[vi]	Implications of the Federal	
			Contracting Standards	14-40
		[vii]	•	
			Disclosure Rules	
			on Corporate Value	14-40.6
		[viii	Potential Government Uses	
			of Information Submitted	
			by Contractors	14-40.8
		[ix]	Opportunities to Assess	
			Broader Management	
			Practices	14-40.10
	[f] Othe	r Potential Impacts of	
		C	ompliance Programs	
		OI	1 Liability	14-40.12
	[rational Advantages of	
			ompliance Programs Beyond	
		Li	iability and Penalty Reductions	14-40.13
14.02	Evaluatii		ance Programs Under the	
			ing Guideline Standards	14-40.16

CORPORATE CRIMINAL LIABILITY

[1]		ortance of the Guidelines' Standards	
	fc	or a Generally Effective Compliance	
		rogram	14-40.16
[2]	Gene	eral Criteria for an Effective Program	14-40.17
[3]	Due	Diligence	14-40.19
[4]		geting Principles	14-40.20
	[a]	Organization Size	14-40.20
	[b]	The Nature of the Organization's	
		Business	14-40.21
	[c]	History of Offenses or Misconduct	
	[-]	Within the Organization	14-40.21
[5]	Disa	ualifying Program Characteristics	14-40.22
[0]		Departures from Industry Practice or	11 10.22
	լայ	Governmental Regulations	14-40.22
	[b]	Patterns of Misconduct	14-40.22
	[c]	Systematic Failures to Prevent or	14-40.22
	լԵյ	Detect Violations	14-40.22
	[4]		14-40.22
	[d]	Offense Features Indicating	14 40 22
	r.1	Program Weakness	14-40.23
	[e]	Failures to Self-Report Known	14 40 24
F 6 7	D	Offenses	14-40.24
[6]	_	uired Program Components	14-40.24
	[a]	Compliance Standards and	
		Procedures	14-40.24
	[b]	High-Level Management Leadership	
		of a Compliance and Ethics	
		Program	14-40.30
		[i] Board Responsibilities	
		Regarding Corporate	
		Compliance and Compliance	
		Programs: Lessons	
		from the NACD Key	
		Agreed Principles	14-40.32
	[c]	Responsible Authority Delegation	14-43
	[d]	Steps to Communicate Standards	
		and Procedures	14-45
	[e]	Monitoring, Auditing, and	
		Evaluation	14-47
	[f]	Discipline, Incentives, and	
		Enforcement Actions	14-52.1
	[g]	Active Organizational Responses to	
	[6]	Misconduct	14-52.2
[7]	Ongo	oing Risk Assessments	14-52.3
L' J	[a]	Additional Considerations Regarding	1.02.0
	լայ	Risk Assessments	14-52.5
		[i] Goals of Risk Assessments	17-54.5
		in Compliance System	
		Design and Management	14-52.5
		Design and Management	14-34.3

		[g]		onding to Compliance Risks in	
				ormulating and Implementing	
		F1 7		ogram Elements	14-52.23
		[h]		nating the Completeness of	
				ompliance Risk Assessment	14-52.24
		[i]		ents of Compliance Risk	
				nalysis: Lessons from	
				BI Techniques	14-52.26
			[i]	Management of the Risk	
				and Response Process	14-52.26
			[ii]	Sources Used for Risk	
				Assessments	14-52.28
			[iii]	Criteria for Prioritizing	
				Risks	14-52.28
			[iv]	Administrative Follow	
				Up to Identified Risks	14-52.29
		[j]	Proce	dural Steps for Risk	
			As	ssessments	14-52.30
			[i]	Background	14-52.30
			[ii]	Risk Assessment Steps	14-52.31
			[iii]	Advantages	
				of an ERM-Compatible	
				Process	14-52.32
	[8]	2010	Amen	dments to Compliance	
				Standards	14-52.33
		[a]		rtunities for Sentence	
				eductions Despite Senior	
				anagement Involvement	14-52.33
		[b]		edial Steps	14-52.34
		[c]		enting Further Offenses	14-52.35
		[d]		ation Terms	14-52.35
§ 14.03	Evalu			ance Programs Under Other	
3 1				atory, Judicial, and	
				ds	14-52.38
	[1]			ests	14-52.38
	[-]	[a]		Money Laundering Programs	14-52.38
		[b]		er Trading Prevention Systems	14-52.39
	[2]			Standards	14-52.39
	[2]	[a]		Money Laundering Systems	14-52.39
		رما	[i]	Policies, Procedures,	17 52.57
			[1]	and Internal Controls	14-52.40
			[ii]	Designated Compliance	14-32.40
			[11]	Officer	14-52.40
			[iii]	Education and Training	14-32.40
					14-32.41
			[iv]	Independent Testing	14 52 41
			[]	of Program Adequacy	14-52.41
			[v]	Compliance Program Elements	1.4.50.40
				Aimed at Agents	14-52.42

	TABLE OF CONTENTS	lvii
[b]	Health Care Compliance Systems [i] Codes of Conduct	14-52.42 14-54.1
	[ii] Compliance Officers and Committees	14-54.1
	[iii] Compliance Policies	
	and Procedures [iv] Open Lines	14-54.2
	of Communication [v] Appropriate Training	14-54.2
	and Education [vi] Internal Monitoring	14-54.3
	and Auditing	14-54.4
	[vii] Responses to Detected Compliance Deficiencies	14-54.5
	[viii] Enforcement of Disciplinary Standards	14-54.5
	[ix] Adequacy of Self-Reporting	
	of Detected Misconduct [x] HHS Standards for Prescription	14-54.6
	Drug Providers	14-54.7
[م]	Care Programs	14-54.10
[c]	Environmental Compliance Systems	14-54.14
[d]	Securities Law Compliance Systems	14-55
	[i] SEC Evaluation of Outsourced Compliance	
	Functions	14-57
r.1	Operations	14-61
[e] [f]	SEC Standards for Codes of Ethics Occupational Health and Safety	14-64
	Systems	14-65
[g] [h]	Munitions Export Control Systems Commodity Futures Trading Commission's Enforcement	14-66
[i]	Standards	14-68
[j]	Framework for Compliance Commitments	14-70
ניו	Guidelines on Compliance Programs for the Virtual Currency	
[k]	Industry	14-74
	Export Compliance Systems	14-79

[3]		ecutorial Discretion Provisions Federal Guidelines for Corporate	14-81
	[a]	Prosecution	14-81
		[i] Disclosures Needed to Gain Favorable Treatment	14-86
		[ii] Extensive Consideration of	
		Past Corporate Misconduct	14-91
		in Leniency Decisions [iii] Insights into DOJ Prosecution	14-71
		Analyses for Corporate	
		Criminal Cases	14-96
		[iv] DOJ Reviews of Compensation	
		Structures	14-98.1
		[v] DOJ Reviews of Personal	
		Devices and Applications	14-98.3
	[b]	Corporate Amnesty Standards for	
		Antitrust Offenses	14-98.5
	[c]	Compliance Program Standards	
		from the DOJ's FCPA	14 00 7
	[d]	Resource Guide	14-98.7
	լայ	Compliance Programs	14-98.10
		[i] Initial Reliance on Compliance	14-70.10
		Counsel (2015-2018)	14-98.10
		[ii] Shift in DOJ Management	
		Away from Reliance	
		on Compliance Counsel	14-98.13
		[iii] Return to Reliance on	
		Specialized Compliance	
		Expertise	14-98.14
	[e]	DOJ Policy on Corporate FCPA	
		Prosecutions and Other Criminal	140015
	r.ca	Division Cases	14-98.15
	[f]	DOJ Compliance Program	14 00 10
	[g]	Evaluation Criteria Standards for Obtaining Cooperation	14-98.19
	[8]	Credit in Federal False Claims	
		Act Cases	14-98.29
		[i] Voluntary Disclosure	14-98.29
		[ii] Other Forms of Cooperation	14-98.30
		[iii] Remedial Measures	14-98.31
	[h]	Prosecutorial Guidelines for	
		Corporate Violations of Export	
		Controls and Sanctions Laws	14-98.32
	[i]	Prosecutorial Benefits from Antitrust	
	E.3	Compliance Programs	14-98.36
	[j]	U.S. Attorneys' Offices Voluntary	14.00.41
		Self-Disclosure Policy	14-98.41

	[k]	DOJ Criminal Division's Pilot	
		Program Regarding Compensation	
		Incentives and Clawbacks	14-98.44
[4]	Judio	cially Developed Criteria	14-99
	[a]	Assessing Good Faith Compliance	
		with Anti-Discrimination Laws	14-99
[4A]	Com	pliance Program Evaluation Criteria	
		Ised by Court-Appointed Monitors	14-105
	[a]	Evaluation Criteria from Apple	
		Monitor's Reports	14-105
[5]	Indu	stry Standards	14-110
r. 1	[a]	New York Stock Exchange Standards	
		for Corporate Conduct Codes	14-110
	[b]	Health Care Compliance Association	
	F - J	Standards	14-110
	[c]	OCEG Criteria for Diagnosing	
	[-]	Compliance and Ethics	
		Program Problems	14-114
	[d]	Interpreting Results of Compliance	
	[4]	and Ethics Program Performance	
		Measurements	14-123
[6]	Priva	ately Developed Standards	14-125
[,]	[a]	OCEG Foundation Guidelines	14-125
	[b]	ECI Panel Report on Principles	1.120
	[-1	and Practices of High-Quality	
		Ethics and Compliance Programs	14-128
	[c]	OIG-HCCA Compliance Program	1.120
	[-]	Resource Guide	14-132
	[d]	Society of Corporate Compliance	1.102
	[4]	and Ethics Small Business	
		Compliance Program	14-136
[7]	Inter	national Standards	14-136
[,]		OECD Guidance on Compliance	11 150
	[]	Program Elements	14-136
		[i] Purposes of the Guidelines	14-137
		[ii] Program Features	1. 10,
		Recommended by OECD	14-140
		[iii] General Lessons	11110
		from the OECD	
		Guidelines	14-142
	[b]	Compliance Program Guidance	11112
	[0]	from the Canadian Competition	
		Bureau	14-142
		[i] Aims of a Successful	11172
		Program	14-143
		[ii] Benefits of a Successful	11113
		Compliance Program	14-143
		Comphance Hogiani	1-1-1-13

		[111] Major Requirements	
		for a Credible and Effective	
		Compliance Program	14-144
	[c]	Compliance Program Templates from	
		the Australian Competition and	
		Consumer Commission	14-147
	[d]	Competition Commission of India	
	[4]	Recommendations on Compliance	
		Programs	14-148
	[6]	Israel Antitrust Authority Model	17-170
	[e]		14 140
	E.CI	Compliance Program	14-148
	[f]	Compliance Program Criteria from	
		the Ministry of Justice of the	
		United Kingdom	14-149
	[g]	Compliance Program Guidance from	
		the Office of Fair Trading of the	
		United Kingdom	14-151
	[h]	UK Guidance on Compliance	
		Programs in DPA Code	
		of Practice	14-152
	[i]	French Anti-Corruption Legislation	14-153
	[j]	Brazilian Ministry of Justice	
	נטו	Guidelines for Competition	
		Programs	14-157
	[k]	Canadian Competition Bureau Bulletin	17 137
	[ĸ]		14-158
	F13	on Compliance Programs	14-136
	[1]	UK Serious Fraud Office's Corporate	14 150
		Cooperation Guidance	14-158
	[m]	UK Serious Fraud Office's	
		Compliance Program Evaluation	
		Criteria	14-159
	[n]	Brazilian Office of the Comptroller	
		General Guidelines for Integrity	
		Programs	14-161
	[o]	Colombian Transnational Corruption	
		Act Compliance Guidelines	14-162
	[p]	Mexican Criteria for Anti-Corruption	
		Programs	14-163
	[q]	Peruvian Standards for Anti-Bribery	
	[4]	Compliance Programs	14-163
	[r]	Argentine Criteria for Anti-Corruption	1.100
	[1]	Programs	14-164
FQ1	State	Standards	14-165
[8]			14-103
	[a]	State Standards for Compliance	
		and Ethics Programs in Health	14 165
		Care Providers	14-165
		[i] Connecticut	14-165
		[ii] New York	14-166

		TABLE OF CONTENTS	lx1
	[b]	Regulators' Criteria for Evaluating	
	[c]	Programs	14-169
		from the New York State Department of Financial Services	14-172
[9]		tional International Standards for orporate Compliance and Ethics	111/2
		rograms	14-174
	[a]	Asia-Pacific Economic Cooperation	
	F1 1	Anti-Corruption Code	14-174
	[b]	International Chamber of Commerce Rules on Combating Corruption	14-175
	[c]	Transparency International's Business	14-1/3
	[-]	Principles for Countering	
		Bribery	14-177
	[d]	United Nations Global Compact's	
	[a]	Ten Principles	14-178
	[e]	World Bank Group's Integrity Compliance Guidelines	14-179
	[f]	World Economic Forum's Principles	14-1/)
	r-1	for Countering Bribery	14-181
	[g]	ISO 37001 Anti-Bribery System	
	F1 3	Standards	14-181
	[h]	ICC Antitrust Compliance Toolkit	14-184
	[i]	Latin Lawyer Guide to Corporate Compliance	14-185
	[j]	APEC Guidebook on Monitoring and	11 100
		Supervising Effective Compliance	
		Programs	14-185
		CHAPTER 15	
Constru	ıcting	and Operating Compliance Program	ns
§ 15.01 Desig	gn Prin	ciples Governing Compliance	
		S	15-6
[1]		ting Compliance Programs as pecialized Performance Quality	
		ontrol Systems	15-6
[2]		Importance of Agency Process in	
	L	aw Compliance Programs	15-10
[3]		ntial Sources of Compliance System	
[4]	D Goal	esigns	15-10.1
[+]		esigns	15-10.1
	[a]	Interpreting and Evaluating	10.1
		Compliance Practices from	
		Impacts, Not Efforts	15-10.3

	[b]	Indicators of Organizational	
		Cultures Promoting Misconduct	15-10.4
[5]	Reac	eting to Compliance "Hot Spots":	
	C	ompliance and Ethics Programs as	
		olutions to Complex Corporate	
		onstraints	15-10.6
[6]		sed COSO Internal Control	
		ramework: Implications for	
	C	ompliance Programs	15-10.8
	[a]	Features of the COSO Framework	15-10.8
	[b]	Management Advantages of	
		Applying the Framework	15-10.11
	[c]	Applying the Framework to	
		Compliance Programs	15-10.11
	[d]	COSO Fraud Risk Management	
		Guide	15-10.13
[7]		cting Indicators as Compliance	
		letrics	15-10.14
[8]		Analytics in Compliance Programs	15-10.16
	[a]	General Features of Compliance	
	F1 7	Analytics	15-10.16
	[b]	Examples of Compliance Analytics	
		Techniques	15-10.17
		[i] Frameworks for Misconduct	15 10 15
		Detection	15-10.17
		[ii] Data Mining	15-10.18
		[iii] Predictive Analytics	15-10.19
	[c]	Government Use of Data Analytics	15 10 20
		to Detect Misconduct	15-10.20
		[i] Fraud Detection	15-10.21
		[ii] Antitrust Enforcement	15-10.23
		[iii] Healthcare Claims	15 10 22
		Monitoring	15-10.23
		[iv] Environmental Offense	15-10.24
		Detection [v] Securities Offense	13-10.24
		Monitoring	15-10.25
	[d]	Private Use of Data Analytics in	13-10.23
	լսյ	Compliance Programs	15-10.25
		[i] Examples of Compliance	13-10.23
		Analytics Applications	15-10.26
		[ii] Steps for Expanding Use of	13-10.20
		Compliance Analytics	15-10.28
		[iii] Potential Problems with	15 10.20
		Compliance Metrics	15-10.29
		[iv] Testing Compliance Metrics	15-10.30
[9]	Inter	preting Compliance Effectiveness as	15 10.50
r. 1		Changing Operational Target	15-10.31
	-*	5 5 - r	

			TABLE OF CONTENTS	IXII
	[10]		tructing Compliance Programs to roduce Behavioral Results	15 10 22
	[11]	Cons	tructing Compliance Programs to sure Individual Accountability for	15-10.33
§ 15.02	Oner	0:	rganizational Law Compliance Features of Effective Law Compliance	15-10.36
3 15.02	_			15-11
	[1]	_	preting Compliance Programs as	
			anagement Systems	15-11
		[a]	Indicators of a Strong Compliance	
			and Ethics Program	15-12
		[b]	Special Challenges in Managing	
			Compliance Systems	15-13
	[2]	Orga	nizational Practices Furthering Law	
			ompliance—A General Framework of	
		A	Iternatives	15-14
		[a]	Directing Employees Regarding Steps	
			Needed for Law Compliance	15-14.1
		[b]	Ensuring That Legal Issues Are	
			Addressed	15-15
		[c]	Planning for Law Compliance	15.00
		F 13	Activities	15-20
		[d]	Control Processes for Ensuring Law	15 22
		[م]	Compliance	15-23
		[e]	Personnel Practices Promoting Law	15-29
			Compliance	13-25
			Compliance Program	
			Discipline	15-29
		[f]	Measuring the Effectiveness of a	15 2)
		[-]	Law Compliance Program	15-33
		[g]	Positions of Compliance and Ethics	10 00
		[6]	Officers in Corporate Management	
			Structures	15-34
			[i] Reporting	15-35
			[ii] Shared Duties	15-35
		[h]	Questions for Employees in	
			Compliance Program	
			Assessments	15-35
		[i]	Interpreting Corporate Duties	
			Regarding Compliance	
			Programs	15-37
		[j]	Recommendations from HHS	
			Workshop on Compliance	
			Programs in Pharmaceutical	15.40
			Companies	15-40
			[i] Board Oversight	15-41
			[ii] Integrating Programs	15 41
			with Business Activities	15-41

		[k]	Defining the Compliance Leadership Role of Chief Compliance and	
			Ethics Officers	15-42
	[3]	Tren	ds in Compliance and Ethics Program	
	. ,		nplementation	15-43
		[a]	Compliance and Ethics Program	
		F3	Investments Increased	
			Following a Crisis	15-44
		[b]	Companies Suffering Reputational	10 11
		ΓοΊ	Damage Spent Heavily on	
			Compliance and Ethics Program	
			Activities	15-44
		[c]	Rules Versus Values	15-45
		[d]	Proactive Versus Reactive	15-45
			Setting Program Objectives	15-46
	[4]	[e]	stleblower Protections Under the	13-40
	[4]			15 46
			arbanes-Oxley Act	15-46
		[a]	Criminal Whistleblower Protections	15-46
		[b]	Civil Whistleblower Protections	15-47
			[i] Persons Protected	15-47
			[ii] Protections Afforded	15-48
			[iii] Remedies for Retaliation	15-48
			[iv] Procedures for Pursuing	
			a Complaint	15-49
		[c]	Developing Issues Regarding	
			Whistleblower Protections	15-52
			[i] Application to Overseas	
			Employees	15-52
			[ii] Relationship Between Fraud	
			and Financial Reporting	15-52
			[iii] Subjective Belief in Illegality	15-53
			[iv] Materiality of the Reported	
			Misconduct	15-53
			[v] Whistleblower Protections	
			for Persons Only Reporting	
			Misconduct	
			Within Companies	15-54
		[d]	Significant Growth of SEC	10 0 1
		լայ	Whistleblower Program	15-56
§ 15.03	Targe	ting of	Law Compliance Programs: The	13 30
y 13.03			ce of Risk Assessment	15-59
			ponents of a Risk-Oriented Approach	13-39
	[1]			
			Compliance Program	15.60
0 15 04	C	Α	dministration	15-60
§ 15.04		-	Encountered Problems in Compliance	15.62
				15-63
	[1]		ncing Retrospective Compliance	
			spections and Forward Looking	15.63
		C	ompliance Processes	15-63

		TABLE OF CONTENTS	lxv
	[2]	Program Administration Problems	15-64
	[3]	Problems in Planning Compliance Efforts	15-66
	[4]	Agendas for Legal Auditing	15-66.1
		[a] Bank Auditing Standards as	
		Templates for Legal Audits	15-66.2
	[5]	Compliance Records	15-66.5
	[6]	Change Management	15-67
	[7]	System Verification Studies	15-67
	[8]	Lessons from Boeing Company	
		Compliance Failures	15-68
		[a] Boeing's Background of Compliance	
		System Failures	15-69
		[b] Events Leading to Boeing's 2006	
		Consent Agreement	15-71
		[c] Key Compliance System	
		Requirements Under the	
		Consent Agreement	15-71
		[i] New Compliance Program	
		Leader	15-72
		[ii] Outside Special Compliance	
		Official	15-73
		[iii] Enhanced Compliance	
		Activities	15-74
		[iv] Outside Legal Audits	15-74
		[d] Unannounced Onsite Audits by	15 75
	[9]	Department Officials	15-75
	[9]	Program Auditing Techniques and Criteria: Lessons from the FBI	15-75
		[a] Auditing Goals	15-76
		[b] Fact-Finding Methods	15-76
		[c] Findings	15-78
		[i] Efforts Implemented	15-79
		[ii] Risk Reduction Results	
		Achieved	15-79
		[iii] Program Weaknesses	15-80
		[d] Experience with the Compliance	
		Program at the FBI	15-81
	[10]	Common Compliance Program Problems	
		to Avoid	15-83
	[11]	Repeated Misconduct as an Indicator of	
		Ongoing Problems—Lessons from BP	4.5.04
	F103	Well Blowout Incident	15-84
	[12]	Corporate Experience with	15.00
	[12]	Compliance Metrics	15-88
	[13]	Critiquing a Compliance Program Design	15-88.1
	[14]	The "Compliance Trap" of Efforts Without Tooted Paguits	15 99 2
§ 15.05	Λ M ₂	Without Tested Resultsdel Compliance Program.	15-88.3 15-89
§ 15.05 § 15.06		rved]	15-89
§ 15.00 § 15.07		Inherent in Law Compliance Programs	15-91
y 15.07	INISKS	innerent in Law Compilative Programs	15-72
			(D. 1. 20)

lxvi CORPORATE CRIMINAL LIABILITY

[1]	Disclosure	Risks	15-92
	[a] Sour	ces of Disclosures	15-92
		ted Applicability of the	
		ttorney-Client Privilege	15-94
		ow Protections of the Attorney	
		Vork Product Doctrine	15-101
		ertain Scope of Self-Evaluative	15 101
			15-102.3
		rivilege Under Federal Law	13-102.3
		Statutes Recognizing	15 106
		elf-Evaluation Privileges	15-106
		Resistance to Recognition of	
		Self-Evaluation Privilege	15-109
	[g] Pract	tical Problems in Retaining	
	th	e Confidentiality of Compliance	
	In	formation	15-110
	[i]	Define and Clarify	
		the Purposes	
		of Fact Finding	15-111
	[ii]	Avoid Reuse of Regular	
	[11]	Auditors for Compliance	
		Assessments	15-112
	[iii]	Failures to React to Apparent	13-112
	[111]	Problem Create	
			15 112
	F33	New Problems	15-113
	[iv]	Communications to and from	
		Counsel Must Clearly Relate	15 11 4
		to Legal Advice	15-114
	[v]	Importance of Care	
		in Targeting Audit Reports	
		and Other Compliance	
		Evaluations	15-115
	[vi]	Affirmative Use	
		of Compliance Evaluations	
		May Waive Protections	15-116
	[vii]		
	[]	May Press for Waiver	
		of Protections	15-117
[2]	Damage fro	om Defective Compliance	13 117
[2]			15-117
F21		Incomplete Degranges to	13-11/
[3]		Incomplete Responses to	15 110
F 4 7		Misconduct	15-118
[4]	Inadequate	Compliance Efforts Creating	15 110
		ounds for Liability	15-118
[5]		verreporting of Offenses	15-119
[6]		s Based on Inaccurate	
	Statemen	nts	15-119
[7]	Waste in O	perating Compliance	
	Program	S	15-119

		TABLE OF CONTENTS	lxvii
	[8]	Promoting Undue Risk Aversion Among	
	[9]	Managers Increasing Employees' Mistrust of	15-120
	[10]	Corporate Managers	15-120
	[10]	Counsel	15-121
		[a] Dual Representation Problems	15-121
		[b] Obligations Not to Mislead Public	15 122
		Officials	15-123
		Statements	15-125
		[ii] Duty to Avoid Incomplete	
		Disclosures	15-126
		[c] Obligations to Discontinue	15 120
		Representation	15-129
		Compliance and Ethics	
		Programs	15-130
		[i] Activities of Counsel Outside	
		Privilege and Work Product	
		Protections	15-131
		[ii] Potential Misconduct by Counsel	15-132
	[11]	Potential Impacts of Corporate Investigations	13 132
	[]	in Coercing Individual Testimony in	
		Violation of Personal Rights	15-133
		CHAPTER 16	
	R	educing Corporate Criminal Liability Through Post-Offense Responses	
§ 16.01	The I	importance of Proper Post-Offense Responses	
3		Illegal Corporate Conduct	16-3
	[1]	Evaluating the Seriousness of Compliance	
		Program Failures	16-4
		[a] Indicia of Serious Compliance	16 / 1
		Program Failures	16-4.1
		Construction	16-4.1
		[ii] Failures to Follow	
		Up on Past Errors	16-4.1
		[b] Other Indicators of Serious Program	16.43
§ 16.02	Tymes	Failuress of Post-Offense Responses Affecting	16-4.2
y 10.02		orporate Criminal Liability	16-4.4
	[1]	Required Responses	16-4.4
		-	

lxviii CORPORATE CRIMINAL LIABILITY

	[a]	Response Requirements Under				
		Narrowly Targeted Statutes	16-4.4			
	[b]	Required Responses to Concealed				
		Hazards bonses Avoiding or Limiting Corporate	16-4.4			
[2]						
	C	16.5				
	01	16-5				
	[a]	Avoiding Corporate Criminal Liability				
		Through Diligent Responses to	16.5			
	F1. 1	Employee Offenses	16-5			
	[b]	Reducing Corporate Criminal				
		Sentences through Post-Offense	16-6			
		Responses	10-0			
		Compliance Programs	16-7			
		[ii] Responses Outside of Law	10-7			
		Compliance Programs	16-8			
[3]	Resn	onses Expanding Corporate Criminal	10 0			
[-]		iability	16-8			
	[a]	Responses Enhancing Penalties for	10 0			
	[]	Present Offenses	16-8			
		[i] Condoning or Tolerating				
		an Offense	16-9			
		[ii] Obstruction of Justice	16-10			
	[b]	Responses Constituting Additional				
		Offenses	16-10			
	[c]	Responses Increasing Liability for				
		Subsequent Offenses	16-11			
		[i] Responses Establishing				
		Willful Misconduct				
		Regarding Subsequent				
		Activities	16-11			
		[ii] Responses Creating Patterns				
F 43	-	of Offenses	16-11			
[4]						
	Under the DOJ's Prosecutorial Standards					
	for Corporations					
	[a]	Impacts of Investigations, Disclosures	16 12			
	[h]	and Remedial Actions	16-12			
	[b]	Privilege Waivers and Sufficient Information Disclosures	16-14			
	[c]	Problems in Applying Prosecutorial	10-14			
	[c]	Discretion Standards	16-15			
[5]	Resp	10 13				
[2]		16-19				
	[a]	nder Other Governmental Standards Amnesty for Antitrust Offenses	16-19			
	[]	[i] Standards for Granting	-0 17			
		Amnesty	16-19			

			TABLE OF CONTENTS	lxix
			[ii] Limits on the Protective Impact of Amnesty	16-21
			[iii] Amnesty in Action: Some	
			Examples	16-22
		[b]	Offenses by Defense Contractors	16-27
		[c]	Environmental Offenses [i] Federal Prosecutorial	16-28
			Standards[ii] EPA's Criminal Referral	16-28
			Policy	16-28.1
		[d]	Securities Offenses	16-28.3
		[e]	Cooperation Standards Under CFTC Self-Reporting Policy	16-28.3
		[f]	Prompt Disclosures Encouraged Under DOJ Criminal Division	
			Corporate Enforcement and Voluntary	
			Self-Disclosure Policy	16-28.6
§ 16.03	Colla	teral C	onsequences of Post-Offense	
· ·			es	16-29
	[1]		Liability	16-29
	[2]	Deba	rment from Government Contracting	16-31
	[3]	Impa	ired Corporate Reputations	16-33
§ 16.04			gement Techniques for Developing	
		-	ementing Post-Offense Responses	16-34
	[1]		siderations in Responding to	
	~		orporate Liability Crises	16-36.1
§ 16.05			or Managing Post-Offense Responses	16-37
	[1]		ons Before an Offense	16-37
		[a] [b]	Assessing Offense Threats Selecting an Offense Response	16-37
			Team	16-38
		[c] [d]	Identifying Resources Establishing Post-Offense Response	16-39
			Policies	16-40
		[e]	Defining Contingency Plans	16-41
		[f]	Testing Contingency Plans	16-42
	[2]	Actio	ons Comprising the Immediate	
		R	eaction to an Offense	16-43
		[a]	Conducting Internal Investigations of	
			Detected Misconduct	16-43
		[b]	Harnessing Available Resources	16-45
		[c]	Defining and Controlling Offense	
			Responses	16-45
	F. 6. 7	[d]	Overseeing Public Disclosures	16-47
	[3]		ons After an Offense	16-48
		[a]	Monitoring and Evaluating Offense	1 6 40
			Responses	16-48

lx	X	CORPORATE CRIMINAL LIABILITY	
		 [b] Improving Corporate Operating Procedures Following	16-48
		the BP Oil Well Blowout and Plea Agreement	16-48.1
		Management	16-48.1
		Improvements [iii] Enhanced Public	16-48.2
		Transparency [iv] Agreement Adherence	16-48.3
		Auditor	16-48.3
§	16.06	Self-Reporting Decisions	16-48.4
		Sentence Reductions [a] Sufficient Disclosures Under Other	16-48.4
		Governmental Standards [b] Examples of Past Disclosures	16-48.4
		Gaining Favorable Results	16-52
		[2] Considerations in Deciding Whether to	
		Disclose Detected Misconduct	16-54
		CHAPTER 17	
		The Future of Corporate Criminal Law	
§	17.01	Expanded Emphasis on Organizational	
§	17.02	CulpabilityClarifying Standards for Organizational	17-1
		Culpability	17-7
§	17.03	Strengthening Prosecutors' Commitments to Rewards for Corporate Self-Policing	17-9
§	17.04	Developing Operating Paradigms for Law	
		Compliance Systems	17-13
		Proven Control Processes	17-13
		[2] Reconceiving Law Compliance as Performance Quality Control	17-14
§	17.05	Creating a New Jurisprudence for an Organizational Age	17-16

I-1

INDEX