

“The Compliance Profession...
facts, myths and things leaders
need to know.”

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Concerns

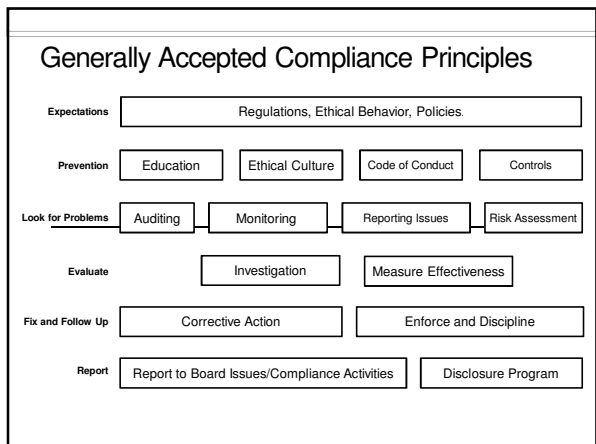
As a result of ethical and legal issues going undiscovered and unresolved in business, the press, public, politicians and prosecutors are concerned

They are suggesting self-regulation, such as the use of a compliance professional and compliance program

This presentation describes what is involved in the effective implementation of a compliance officer and compliance program

Preventing, finding, and fixing infractions

- To be effective at preventing, finding, and fixing regulatory, ethical, and policy infractions, an organization will:
 - Hire a Compliance and Ethics Officer
 - Give independence and adequate resources
 - Implement a compliance program
 - All risk areas and all compliance program elements



GACP Description

- General Accepted Compliance Principles consist of the basic elements of a compliance program:
 - Taken from Chapter 8 of the U.S Sentencing Guidelines
 - Supported by the enforcement community, including but not limited to the Department of Justice
 - Supported by experienced compliance professionals
 - Understood and supported by other professions such as audit, legal, risk, and HR

Myths about Compliance Officers

- **Myth:** Compliance Officers are cops or prosecutors
 - **Fact:** Compliance Officers are neutral, unbiased, and unconflicted
 - **Impact:** Rather than just receiving information supporting guilt, leadership receives all the facts regarding a potential compliance issue, allowing leadership to make an informed decision
- **Myth:** Compliance Officers defend the company
 - **Fact:** Compliance Officers are neutral, unbiased, and unconflicted
 - **Impact:** Rather than just receiving information supporting innocence, leadership receives all the facts regarding a potential compliance issue, allowing leadership to make an informed decision

Myths about Compliance Officers (continued)

- **Myth:** Compliance is all about the law
 - **Fact:** compliance programs are not about the law, but rather about processes, procedures, and controls to ensure the rule of law is followed
 - **Impact:** Rather than just focusing on legal analysis, compliance professionals implement the elements of a compliance program to prevent, find, and fix regulatory and ethical issues
- **Myth:** Compliance is all about ethics
 - **Fact:** Building an ethical culture (and ethical behavior) is very important, but it is an outcome, not a process
 - **Impact:** Compliance programs are a process that produces an outcome of compliance with the rule of law and a strong ethical culture

Myths about Compliance Officers (continued)

- **Myth:** Compliance is all about risk
 - **Fact:** Risk points to where problems might be
 - **Impact:** Compliance programs go beyond risk to investigating and resolving issues
- **Myth:** Compliance programs are expensive
 - **Fact:** Effective compliance programs make use of many existing resources
 - **Impact:** Compliance programs result in fewer fines, penalties, and PR crises

Myths about Compliance Officers (continued)

- **Myth:** Compliance is a Human Resources function
 - **Fact:** Compliance Officers do not get involved in management decisions, employee complaints about how they are supervised, etc., unless the issue relates to a regulatory, policy, or ethical infraction
 - **Impact:** Management manages their processes and people, and compliance professionals help them comply with the rule of law
- **Myth:** Compliance is a lower standard than ethics
 - **Fact:** Compliance programs include efforts to build an ethical culture—compliance and ethics are not mutually exclusive or alternatives, but rather partners
 - **Impact:** Rather than just talking about doing the right thing, compliance programs assure leadership that the right thing is being done

Myths about Compliance Officers *(continued)*

- **Myth:** Compliance Officers obstruct business
 - **Fact:** Compliance Officers who find a compliance issue ask the department what impact compliance will have on their department
 - **Impact:** Compliance Officers help individuals achieve their business objectives while removing the risk of a regulatory infraction
- **Myth:** Compliance programs are punitive
 - **Fact:** The government uses punitive measures to resolve issues
 - **Impact:** By catching issues early, compliance prevents their colleagues from suffering punitive outcomes

Myths about Compliance Officers *(continued)*

- **Myth:** Compliance programs are a check-the-box process
 - **Fact:** Checklists are used by those who don't know what to do and are not considered by compliance professionals to be a compliance program
 - **Impact:** Effective compliance programs use all the elements of a compliance program to prevent, find, and fix ethical and regulatory problems
- **Myth:** Compliance Officers make up rules
 - **Fact:** Laws are determined by the government, and principles/policies are determined by the organization
 - **Impact:** Compliance Officers help employees comply with the rule of law, organizational policies, and ethical expectations

Beyond Implementing an Effective Compliance Program

- **Effective Compliance Professionals:**
 - Help their organization ensure the rules are followed using incentives rather than just punitive measures
 - Are great collaborators, negotiators, and mediators
 - Try to understand the impact of compliance on a department, and help them find a way to implement the change with minimal impact on operations
 - Explain the problems COs are trying to solve, and the potential impact if the problem isn't solved, rather than mandating change in an overbearing manner

Effective COs *continued*

- Just like Audit, we are to find the problem and work with the department to fix the problem
- If the department refuses to fix the problem, COs should do what Audit does and include the unresolved problem in their report to the Board
- Try to understand the impact of compliance on a department, and help them find a way to implement the change with minimal impact on operations
- Explain the problems COs are trying to solve, and the potential impact if the problem isn't solved, rather than mandating change in an overbearing manner

What a Compliance Officer Doesn't Do

- Compliance professionals do not make up rules. Organizations create policies, principles, values, and ethical expectations, and the government creates the law
- COs don't make demands and leave a department to resolve those demands by themselves
- Effective compliance programs don't just use a checklist. They manage a compliance program

Doesn't Do *continued*

- Compliance professionals do not get involved in issues outside their departments that are unrelated to preventing, finding, and fixing ethical or legal problems, such as HR issues
- Compliance programs don't lower the bar. They support the highest possible ethical culture
- Effective compliance programs are not adversarial

10 Principles of being a CO and maintaining an effective program

- 1. Implement the elements of a compliance program as described in Chapter 8 of the USSG (see the generally Accepted Compliance Principles)
- 2. Respond to concerns and complaints related to ethical and legal violations
- 3. Never compromise when faced with resistance to fixing a serious problem, and never overreact to small problems

10 Principles *continued*

- 4. Remain unbiased, unconflicted, and neutral during problem investigation and resolution
- 5. Have independence, authority, and responsibility for finding and fixing legal and ethical issues
- 6. Report to the Board significant unresolved ethical and legal problems, implementing an effective compliance program without being filtered by any employee or department in the organization

10 Principles *continued*

- 7. Compliance professionals ensure compliance problems are fixed rather than just advising they be fixed
- 8. Delegate to other departments the appropriate elements of a compliance program in a collaborative manner without giving up the authority to ensure the task is completed
- 9. Facilitate regular substantive support for the compliance program from upper management and the Board
- 10. Collaborate with the leadership to resolve problems in as positive a manner as possible

Sample list of questions the governing body should ask the compliance and ethics officer

- Is there anyone interfering with your ability to implement any of the elements of an effective compliance program?
- Is there anyone interfering with your ability to prevent, find, or fix this organization's legal, policy, or ethical issues?

Leadership Questions *continued*

- Do you have any responsibilities outside of compliance and ethics that could cause you to have a conflict?
- Do you report to anyone who has any responsibilities that could cause conflicts of interest for the compliance program?
- Is anyone with a conflict of interest guiding or directing the compliance and ethics program?

Leadership Questions *continued*

- Are there any issues that have been reported to you that are not being addressed?
- Has any issue been outstanding beyond a reasonable amount of time?
- Have we ever had an outside evaluation of our compliance and ethics program?
- Are we staying abreast of current trends in enforcement and effective compliance program management?

Leadership Questions *continued*

- Are we anticipating any potential new legal risks in the near future?
- Are there any substantive compliance issues currently under investigation?
- What issues are the enforcement community currently reviewing/investigating in our industry and where do we stand on those issues?
- How do you evaluate our organization's ethical culture?

Leadership Questions *continued*

- Is there anything that leadership can do to help further develop, maintain, or support the compliance and ethics program?
- Is there any further compliance and ethics education that you think leadership should attend?
- Do we need more compliance and ethics expertise on our governing body?

Leadership Questions *continued*

- Do you have a good working relationship and independent access to internal and external legal counsel, consultants, and auditors?
- Are you getting cooperation on compliance training, and what type of feedback are you getting from the training?
- What are you most concerned about?

Leadership Questions *continued*

- Do you feel that everyone in this organization feels comfortable reporting potential issues, and do they have a reasonable opportunity/mechanism to share their concerns about a policy, legal, or ethical infraction with you?

Leadership Questions Conclusion

- The governing body and leadership can engage in an effective dialogue with the compliance professional with some version of the suggested leadership questions
- Once your organization develops this best practice, the leadership question list can further evolve into a more effective tool for maintaining an effective relationship with leadership in the future
