Compliance & Ethics Professional®

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www.corporatecompliance.org

Meet Ryan Meade

Director, Center for Compliance Studies
Loyola University Chicago School of Law

See page **16**

by Roy Snell, CHC, CCEP-F

The FBI arrested a compliance professional???

Please don't hesitate to call me about anything any time.
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@RoySnellSCCE *in /in/roysnell*


Snell

I was told by someone that I might get a call from a reporter because the FBI just arrested a compliance professional from VW relating to the emissions scandal. I said…

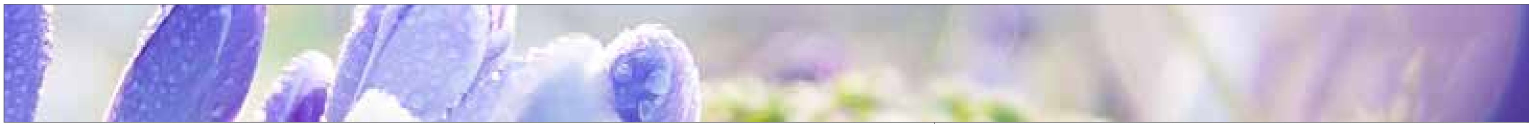
I hope I get a call. I will ask what evidence they have that this is an organizational compliance professional and not someone who was in operations that had the word compliance in their title. I see no evidence that he has had any education or experience in the operation of a compliance program. This compliance title gets tossed around like candy. Some dog catchers are called a compliance officer. No disrespect, I love those who serve and keep us safe, but the two jobs have nothing in common. People who fill out forms in the finance industry to comply with government regulations are called compliance professionals. They have no responsibility for using the seven elements of a compliance program to prevent, find, and fix compliance and ethics issues, which is what the organizational compliance professional does. In fact, like those who make attestations to the government, such as those who file taxes, they should be reviewed by the Compliance department, not in the Compliance department. Otherwise it's a clear conflict of interest.

People who fill out forms in the finance industry to comply with government regulations are called compliance professionals.

So, don't tell me you put an organizational compliance professional in jail unless you can prove this guy had a role in running a compliance program. You should say you put a guy in jail who has the word compliance in his title. If you have no training in running a compliance program, no experience in helping run a compliance program, and you haven't networked with and learned best practices from other organizational compliance professionals, you just might not be an organizational compliance professional. ✳

Contents

March 2017



FEATURES

DEPARTMENTS

COLUMNS

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> Our professors don't just teach compliance, they live it in their day jobs.

See page 19

ARTICLES

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Compliance & Ethics Professional®

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OSHA issues tips to promote workplace anti-retaliation programs

The Occupational Safety and Health Administration (OSHA) recently issued guidance to help employers create an environment in which workers feel comfortable voicing their concerns without fear of retaliation. Titled "Recommended Practices for Anti-Retaliation Programs," the recommendations are intended to apply to all public and private sector employers covered by whistleblower protection laws that OSHA enforces. The document details five key elements of an effective anti-retaliation program: (1) management leadership, commitment, and accountability; (2) system for listening to and resolving employees' safety and compliance concerns; (3) system for receiving and responding to reports of retaliation; (4) anti-retaliation training for employees and managers; and (5) program oversight. For more details, download the guidance: *http://bit.ly/OSHAantiretaliation*.

Report: Third-party risk threat remains high for global firms

Despite widespread recognition that the use of third parties presents compliance risks, 42% of global firms fail to even keep a record of all third parties, according to a recent survey of compliance professionals by global business law firm Hogan Lovells. Its recent study, "Steering the Course: Navigating third party bribery and corruption risk," relies on a survey of 604 chief compliance officers and heads of Legal departments at organizations with more than $350 million annual revenues. Among respondents, 65% say use of third parties is among their biggest challenges. But according to their responses, many do not take even minimal steps to curb those risks. In addition to failing to keep clear records, 47% fail to perform desktop due diligence on third parties, 44% fail to ask third parties to complete a questionnaire, and 46% do not include anti-bribery and corruption clauses in their third party contracts. For more details, download the report: *http://bit.ly/HLthirdpartysurvey.*

Investigation: Bribes bore a hole in US border

As the new Trump administration continues to develop its strategy for border security, a recent *New York Times* investigation highlights a form of persistent corruption that will need to be addressed. As stated in the news report: "A review by *The New York Times* of thousands of court records and internal agency documents showed that over the last 10 years almost 200 employees and contract workers of the Department of Homeland Security have taken nearly $15 million in bribes while being paid to protect the nation's borders and enforce immigration laws…. Although Homeland Security employees who have been caught taking bribes represent less than 1 percent of the more than 250,000 people who work at the department, investigators say the bribes and small numbers of people arrested and charged with bribery obscure the impact corruption can have on border security and immigration enforcement." For more details, view the news story: *http://bit.ly/NYTborderbribes.*

Read the latest news online ▶ www.corporatecompliance.org/news

Regulatory

NIST releases update to Cybersecurity Framework

The U.S. National Institute of Standards and Technology (NIST) recently issued a draft update to its guidance for effective cybersecurity measures, the "Framework for Improving Critical Infrastructure Cybersecurity." Also known as the Cybersecurity Framework, it was established in 2014 through a collaborative process involving industry, academia, and government agencies, as directed by a presidential executive order. While the original goal was to develop a voluntary framework to help organizations manage cybersecurity risk in the nation's critical infrastructure, the framework has been widely adopted by many types of organizations across the country and around the world. The update provides new details on managing cyber supply chain risks, clarifies key terms, and introduces measurement methods for cybersecurity. The 2017 draft "Framework for Improving Critical Infrastructure Cybersecurity Version 1.1," incorporates feedback since the release of the original framework. For more details, see the draft: http://bit.ly/NISTcyberdraft.

Britain weighs tougher laws to curb corporate crime

The UK Ministry of Justice recently announced that in an effort to crack down on corporate misconduct, it plans to strengthen current laws and create more options for prosecuting economic crimes. It has established a call for evidence to determine "whether further reform is needed to combat corporate criminality, following fraudulent, dishonest activity by some banks and other commercial organisations." Presently, companies can only be found guilty of misconduct if it can be proved that senior executives had condoned the misconduct. The Ministry will consider alternatives to proving such "directing mind" complicity, such as a US-style standard of "vicarious liability," which allows companies to be found liable for the actions of its staff or through the addition of laws against corporate criminal negligence and a "corporate failure to prevent option." Public input will be collected until March 24. For more information, see the Ministry's press release: http://bit.ly/UKJusticeEvidenceCall.

EU proposes more privacy and data protection regulations

The EU recently proposed new regulations that would give online users more control over their use of online services. The rules would extend EU's ePrivacy Directive from traditional telecom operators to include "new providers of electronic communications services, such as WhatsApp, Facebook Messenger, Skype, Gmail, iMessage, or Viber." The proposal would guarantee privacy for content and metadata of electronic communications, standardize the manner in which cookie requests are made, strengthen protection against electronic spam, and strengthen the enforcement of all privacy regulations. The Commission has requested the EU Parliament and Council have the regulations passed and operational by May 25, 2018. For more information, see the Commission's press release: http://bit.ly/EUmoreprivacy.

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SCCE *conference news*

Basic Compliance & Ethics Academy Netherlands

15 - 18 May 2017 | Amsterdam, Netherlands

www.corporatecompliance.org/academies

SCCE's Basic Compliance & Ethics Academy comes to Amsterdam for the first time the 15-18 of May 2017. Centrally located and easily accessible, Amsterdam is a great destination for us to reach the European community. The highly sought after academies have been selling out nearly every session and location year over year. Making the Academy available in multiple global destinations around the world is helping to ensure the same compliance and ethics education is within your and your team's reach. Our one-of-a-kind program features highly experienced faculty, consistent from location to location, covering the fundamental topics in compliance. The Academy creates an opportunity for our international audiences to not only hear the latest regarding critical compliance topics, but also allows participants to take the certification exam at the conclusion of the Academy.

You can register or learn more about the Netherlands Academy, as well as view a list of other SCCE Basic Compliance & Ethics Academies, online at *www.corporatecompliance.org/academies.* Registration to each Academy is limited. We accept only 75 participants for each to ensure an effective and engaged classroom with more access to the faculty and your fellow participants, thus creating an invaluable networking opportunity! Questions can be directed to the conference planner, *Lizza.Catalano@corporatecompliance.org* ✷

Find the latest conference information online ▶ www.corporatecompliance.org/events

SCCE *website news*

Contact Tracey Page at +1 952 405 7936 or email her at tracey.page@corporatecompliance.org with any questions about SCCE's website.

Top pages last month

About Membership | Why Join? | Academies | Join SCCE | Home Page

Number of website visits last month

59,492

Advertise with us

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Video of the Month

What are some of the generational issues compliance and ethics programs are facing?

Paul E Fiorelli, JD, CCEP, MBA, Professor of Legal Studies and Co-Director, Cintas Institute for Business Ethics, Xavier University, discusses the conditions that cause tension between different generations of workers. See the video here: *http://bit.ly/sccevotm-2017-03.*

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SCCE *social media news*

Contact Stephanie Gallagher at +1 952 567 6212 or email her at stephanie.gallagher@corporatecompliance.org with any questions about social media.

Facebook — *www.facebook.com/scce*

We're on Facebook. Like our page for compliance news and networking. Here's a favorite recent post:

Society of Corporate Compliance and Ethics (SCCE)
Published by Hootsuite [?] · December 22, 2016 at 2:38pm

Thinking big and very, very small - Today on the blog

Thinking Big and Very, Very Small

By Adam Turteltaub adam.turteltaub@corporatecompliance.org There's a surprising new street scene going on in Sweden. What's surprising about it is...

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SCCE @SCCE · 21 Dec 2016

U.S. sanctions companies, people over Russia actions in Ukraine

U.S. sanctions companies, people over Russia actions in Ukraine

The United States on Tuesday targeted more Russian businessmen and companies over Russia's annexation of Crimea and the conflict in Ukrai...

reuters.com

Podcasts — *complianceandethics.org/category/podcasts*

Ever wish you could get compliance insights and expert interviews right from your phone? Now you can! SCCE's podcast, "Compliance Perspectives," brings the experts to you.

Tom Fox on Leadership [Podcast]

January 4, 2017 by SCCE — Leave a Comment (Edit)

Tom and Kortney sit down in Minneapolis to discuss Tom's new ambassadorship and his newest venture, his leadership podcast – 12 O'Clock High. They also discuss the impact of generations on leadership styles,

LinkedIn — *corporatecompliance.org/Linkedin*

Join us on LinkedIn—a business-oriented network with more than 300 million active users. With more than 20,000 members, our LinkedIn group fosters many new discussion posts every week. Here's a recent highlight:

Steve Harrison
Partner at Consilium Executive Search • Compliance Recruiter • Edito...

3 REALITY CHECKS FOR COMPLIANCE AND RISK MANAGEMENT IN 2017

PREDICTIONS FOR THE NEW YEAR

3 Reality Checks for Compliance and Risk Management in 2017

In a Trump presidency, enterprise risks and threats may not change much. These predictions may guide regulated companies through...

Find the latest SCCE*net* updates online ▶ www.corporatecompliance.org/sccenet

PEOPLE *on* *the* MOVE

- Balmoral Resources Ltd. in Vancouver, BC announced that **Frances Petryshen** has joined the company as an officer in the position of Corporate Secretary.

- Pennar Engineered Building Systems in Telangana, India announced that **Gopal Ladda** has been appointed as Company Secretary and Compliance Officer of the company.

- Lawson Products, Inc. in Chicago, IL, a distributor of products and services to the MRO and automotive marketplaces, announced the appointment of **Rick Pufpaf** as Chief Compliance Officer and Vice President of Compensation & Benefits.

- **Jonathan Wright** has received an internal promotion from General Counsel to Chief Legal Officer at QPharma, Inc. in Morristown, NJ.

RECEIVED A PROMOTION?
Have a new hire in your department?

If you've received a promotion, award, or degree; accepted a new position; or added a new staff member to your Compliance department, please let us know. It's a great way to keep the Compliance community up-to-date. Send your updates to:

liz.hergert@corporatecomplaince.org

GET TO KNOW SCCE STAFF

John Gilje, Chief Financial Officer

What's your main responsibility at the association?

I have primary day-to-day responsibility for managing all financial-related activities of the Association. This includes responsibility for accounting, finance, budgeting, strategic planning, investments, payroll, benefits, and insurance.

Gilje

How long have you been working here?

My employment began in August 2014.

What did you do before joining the association?

Immediately before joining the Association, I worked for Persolvent, a family-owned merchant payment solutions provider that focuses primarily on the online retail and school transaction payment space. I also worked for Simek's, a company that markets its own brand of frozen meatball and lasagna products.

For much of my career, I worked for Marsden Holding, LLC, a janitorial and security guard services provider, as it grew from a local $20 million operation to a $200 million multi-state company. My first job was with Arthur Andersen & Co.

What's the most rewarding part of your position?

I enjoy finding areas that can be improved and then taking the necessary action. The types of improvements include reducing the time to perform a process, finding cost savings, and making reports more user-friendly and meaningful. It is very rewarding to hear someone say, "Thanks for your efforts. This change is really helpful."

What was your most memorable moment working with the membership?

I did have an "epiphany" of sorts during last year's annual CI event as I was manning the Plinko game at the Association's booth. I am a believer that one of the key ingredients that must be present for success professionally and personally is a good support system, as the moral and psychological endurance required to reach a personal or career goal usually takes more skill and resources than one single individual can possess.

As I was observing the conference attendees chatting with each other while waiting in line for a chance to win at my game, I realized that success in the compliance and ethics field is heavily dependent on the relationships and support systems built by these professionals.

The breaks between sessions are not just strictly for catching up on emails, checking out vendor booths, or winning a USB connector, but rather they also allow attendees the time to develop the needed supporting relationships.

How would you describe people who work in Compliance?

Energetic, courageous, and collaborative.

What do you find most motivating or inspiring about your work here?

I am most motivated by the fact that the Board, CEO, staff, and members are not just satisfied with what we have today, but rather are interested in where the Association and profession can get to 5, 10, and 20 years down the road.

What else should the members know about you?

Last year I started swimming laps as a result of a new family membership. My first initial exhausting 25-meter swim has now turned into a one-and-a-half mile relaxing swim 2-3 times per week. "Good things come in good time." *

SCCE *blog highlights*

Contact SCCE at +1 952 933 4977 or email helpteam@corporatecompliance.org with any questions about SCCE's blog.

Chandler Bing and the CEI

By Nicole Cannis-Collins

"Compliance? Compliance with what…?" asks everyone with whom I've engaged in small talk at any point in the past five years. I'm used to it by now, and my automatic explanation does little to squelch the questioning.

Among friends, I am jokingly referred to as Chandler Bing, a reference to the now-classic episode of "Friends" where Rachel and Monica lose a bet when they couldn't summon a response to the question, "What is Chandler Bing's job?" In a desperate attempt to win, Rachel exclaims that he is a "Transpondster".

This has been my experience. The response, my perpetual monologue for so long that when, today, for the first time, someone didn't question me, I hardly knew how to react. And then, something rather remarkable happened. It dawned on me that, for the first time, I was surrounded by people who knew what I did for living; that I would have a three day respite from giving long-winded self-explanatory responses regarding my career.

Thirty minutes later, Roy Snell stood on the stage, looked out at the CEI 2016 attendees and said, "We understand you. We understand."

I looked around the room and observed the many, many faces of my fellow compliance professionals, my peers, and, if I may quote the inimitable Taylor Swift, my #*squad*.

I looked around and could have sworn I witnessed the same sense of solace etched on their faces, the strength of comradery, the ease of knowing we were among our kind.

We understand you.

When I go back to the real world, leaving behind this safe haven of my fellows, when asked what I do for a living, I will think fondly of my days at CEI and proudly respond, "Trandspondster". ✳

For more compliance news and insights, visit ***The Compliance & Ethics Blog*** *at complianceandethics.org and don't forget to subscribe to the daily digest at http://bit.ly/SCCEBlogSubscribe*

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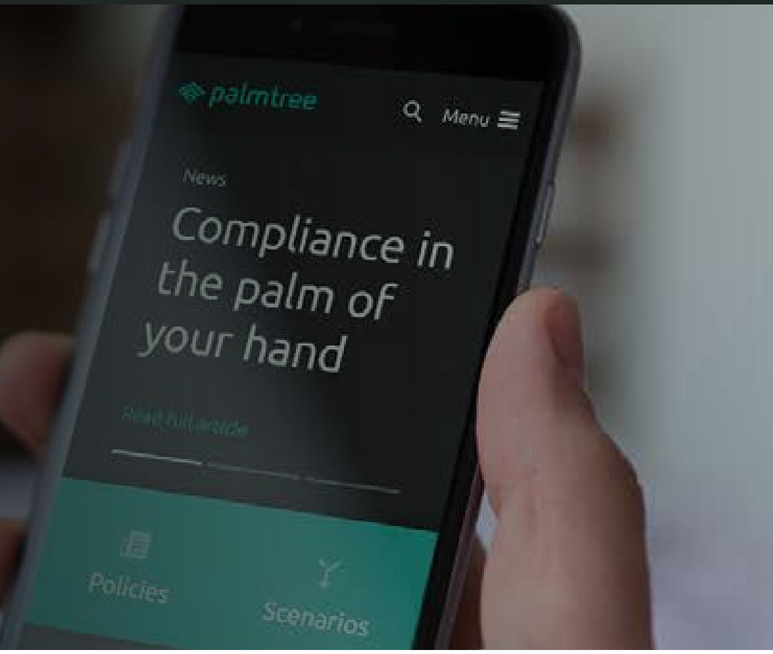
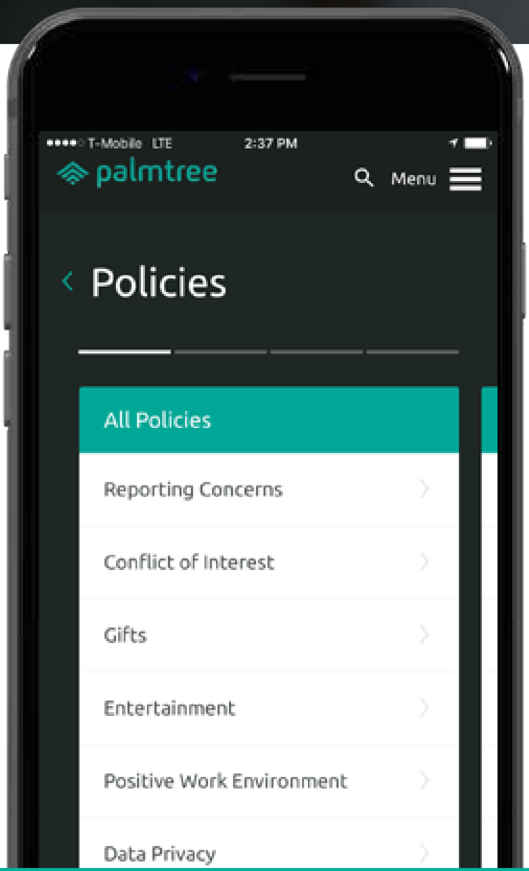
Your employees are mobile… is your compliance program?





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- Gift registry
- Stream videos

an interview by Art Weiss

Meet Ryan Meade

Ryan Meade (rmeade@luc.edu) was interviewed in December of 2016 by **Art Weiss** (art_weiss@tamko.com) Chief Compliance & Ethics Officer at TAMKO Building Products in Joplin, MO.

AW: Please give us some background on yourself.

RM: I am a law professor at Loyola University Chicago School of Law where I direct the Center for Compliance Studies and oversee the curriculum for our compliance-related courses. We have over 40 courses now, between the on-campus and online programs. I teach a variety of classes, including a basic compliance course, advanced compliance, privacy and security, and other regulatory and administrative law-related courses. I also am a managing director at Aegis Compliance & Ethics Center, LLP, and I still practice law through Meade, Roach & Annulis, LLP. I went to college at Northwestern in Evanston, Illinois and law school at Cornell in Ithaca, New York.

AW: What positions have you held inside organizations?

RM: Within my law and consulting career, I have held the usual positions of associate and partner. I was an associate at Mayer Brown, a large international law firm based in Chicago, and a partner at Katten Muchin Rosenman, another large law firm based in Chicago. In 2004, I helped form a boutique law firm and consulting firm focused on compliance. At Loyola I am Director of Regulatory Compliance Studies. I have taught at Loyola since 1998 when I began as an adjunct and, a few years ago, I transitioned to the full-time faculty in order to lead Loyola's Compliance Studies initiative. I work with the on-campus JD students who are taking the Compliance concentration track, as well as our online Masters program students who are taking the Compliance concentration. We have an online Master of Jurisprudence (MJ) program for non-lawyers and a Master of Laws (LLM) for students who are already lawyers.

I have taught at Loyola since 1998 when I began as an adjunct and, a few years ago, I transitioned to the full-time faculty in order to lead Loyola's Compliance Studies initiative.

AW: Tell me a bit more about the Center for Compliance Studies. Students are actually studying Compliance for a degree?

RM: Yes! It's remarkable how far Compliance has come in 20 years. We have dozens of on-campus law students in the Compliance concentration, and we have about 150 online MJ and LLM students who are focusing on Compliance. Our MJ and LLM programs are broader than just Compliance, but Compliance makes up about one-half of our online students. If they wish, the compliance students can narrow their studies to one of five "areas of focus": corporate compliance, healthcare compliance, privacy compliance, life sciences compliance, and global compliance.

We've divided the courses into two types. The first type deals with compliance program structures, such as the basic elements and how to use the elements to manage legal and regulatory risk. We have a number of courses related to compliance and ethics programs that are focused on specific elements, such as Compliance Training, which gives students exposure and practice in training, and Drafting Policies and Procedures, which gives students training in taking complex regulations and writing them in plain language for the workforce. The second type of courses involves a deep dive into specific regulatory areas and tying them to compliance programs. For example, we have several courses on privacy, a number on life sciences that extensively teach FDA law, as well as securities, antitrust, and international law courses and a big bundle of regulatory courses focusing on the healthcare industry.

AW: So is the Center for Compliance Studies just focused on courses?

RM: Oh no, not at all. We have a lot of activity happening. Of course, our primary focus is on the students. First and foremost, I am a teacher, so the students come first, but the Center has an overall mission of making Compliance an academic discipline. It's a tall order, but we are well on our way. Compliance is firmly established as a profession, and now it needs to be studied and be recognized as an academic discipline. To that end, we have established a law review dedicated to Compliance, the first of its kind. It's called the *Loyola Journal of Regulatory Compliance*, and I'm Editor-in-Chief. I have a large student board that assists in the editing and production, the usual way a law review works. We publish scholarship on Compliance and Ethics, both practical and speculative, though the publications tend to be more focused on theory. We want to fill the gap in journals that look at regulations and compliance theory.

The Center also runs a blog, *Inside Compliance*, which the students maintain and write on. The blog allows the students to tackle timely topics, and they are able to build a public identity as someone on top of an issue. It contributes to compliance commentary and it helps students get visibility in the Compliance community.

We also have an annual symposium that brings together scholars from all over the country to discuss compliance, ethics, and regulations. Our first symposium was a great success in the fall and, as far as I am aware, it was the first academic symposium dedicated to Compliance.

AW: Why do you think there is a need for Compliance to be an academic discipline?

RM: That's simple—because people want to make Compliance their profession, and they are interested in sustained study of Compliance. People now want degrees in Compliance to show their accomplishments and distinguish themselves. I never would have thought this would be the case even 10 years ago, and especially 20 years ago, when I first started working with compliance and ethics programs. But it makes sense. Before there were law schools, there were lawyers; before there were medical schools, there were physicians; and so on. Compliance professionals are a permanent part of business, and now we need the academy to study and train for the role.

If we look over the history of professions, we see the same patterns. The market needs something and people fill that need, professionalize the skill, organize themselves, and pretty soon we see that a new profession has taken hold organically. Then the next question comes when people start wondering, "How do I enter that profession?" One way is to study the profession and train in the skills; that's what we do for the students at Loyola and why Compliance needs to be recognized as an academic discipline. There are other reasons too, of course, that Compliance needs to develop as an academic discipline in that Compliance deals with speculative and practical ethics, organizational theory, psychology, finance, behavioral theory, and law. We need people who will help tie together the themes.

> Our students must take a certain number of credit hours in the accredited courses, and then they can sit for any of the CCB certifications.

AW: Are Loyola's students able to sit for any of the Compliance certifications (CCEP, CHC, CHPC, CHRC)?

RM: Yes, our program is one of the academic programs accredited by the Compliance Certification Board. Our students must take a certain number of credit hours in the accredited courses, and then they can sit for any of the CCB certifications. Many of our students take the certifications that give them a leg up in the job market. There is a fairly extensive process for accreditation. All of the Compliance-related courses are reviewed by the CCB and an on-site visit occurs. Our students greatly appreciate the accreditation because it gives the program instant recognition in the Compliance field.

AW: Does studying Compliance for a degree mean we are entering a new era of compliance?

RM: Most definitely. Everyone working in Compliance today has fascinating stories on how they got to be a compliance professional. Some of them are usually pretty amusing stories—last-person-standing, drew-the-short-straw, the CEO-stopped-me-in-the-hallway type stories. I always tell my students the best way to network with compliance officers is to ask them how they got into Compliance! I think it's fair to say that most people working in Compliance today got into their first compliance job not knowing what compliance was all about and then grew to like it, but before they liked it, there was probably first a lot of wandering in the desert. I think those ways of getting into the profession will always be there for Compliance, but now there is a new narrative taking shape. People are studying Compliance, doing internships in compliance programs, and getting a much better sense of what the job is about before they start. My students aren't landing in compliance jobs by default; they are purposefully studying Compliance in order to get compliance jobs and make it a career.

Everyone working in Compliance today has fascinating stories on how they got to be a compliance professional.

If you turn the clock back 10 or 20 years, most compliance officers likely didn't know if being a compliance officer was a long-term position for them or they were simply filling a corporate role for a while. We now have students wanting Compliance as a career. I'd say that is a new era for Compliance. We are also seeing compliance programs maturing enough that there are many entry-level opportunities for graduating students.

AW: How do you get professors who can teach Compliance if it has only been an academic discipline for the past five minutes?

RM: That's the easiest part of my job. I find compliance professionals are excited to impart their knowledge to a younger generation coming into the profession. It's really remarkable how much compliance officers like teaching students. Because Loyola's MJ and LLM programs are online, our professors can be anywhere in the world. Our professors are mostly compliance professionals, some are compliance officers of major organizations, and they take the time out of very busy schedules to teach. Our professors don't just teach compliance, they live it in their day jobs. We are lucky to have a talented and generous faculty. Professors who are not compliance officers are lawyers and government officials working in the compliance and regulatory space and consultants who advise companies on compliance. In fact, a number of my students are being hired by major consulting firms after finishing their degrees.

AW: Speaking of consultants, you've been one. What is the role of a consultant?

RM: Consultants serve a lot of roles. It's probably best to list a few of the roles; the only way I can tie the roles all together is to say that consultants are helpers. The different roles show how a consultant provides short-term help. One role is to fill a gap. In Compliance we see organizations needing in-house compliance professionals faster than they can be hired or recruited, so consultants fill the gap by serving in interim roles. This is a big part of the compliance consulting business right now.

Another role is to be an outside voice. Sometimes organizations need a third party to take a look at a situation and give some advice on whether things are on the right track or adjustments need to be made. It's the same reason we all need to regularly go to the doctor for a physical, even if we are feeling OK—everyone needs a checkup. Just like it's not good to diagnose yourself, you also can't audit yourself.

In Compliance we see organizations needing in-house compliance professionals faster than they can be hired or recruited, so consultants fill the gap by serving in interim roles.

A third role is to help an organization implement complex rules and regulations. When there is a new law or regulation or a major corrective action that needs to be implemented, organizations sometimes need extra help in operationalizing the regulation—maybe that's adjusting business practices to conform to the regulation or developing training material or helping to establish and write policies. As a consultant, you see how other organizations are trying to achieve compliance, and you bring that cumulative experience to bear on an engagement. My students find consulting a great practical training ground for going into in-house compliance positions, because they see a lot of different situations and organizations quickly.

AW: You tell your students to ask people how they got into Compliance. So, how did you get into Compliance?

RM: Although I have always been on the outside of regulated entities as their lawyer or consultant, I fell into Compliance the same way most compliance officers today got to their job. I was in the right meeting at the right time. When I was out of law school and an associate, I worked mainly on regulatory issues for healthcare organizations, especially health insurance issues and False Claims Act-related government audits and investigations. One day in 1997, I was meeting with the general counsel of a client on some regulatory issues, and he had just come back from a meeting in which he was asked to help build the organization's compliance program. He asked me, "Do you know anything about compliance programs?" I said I didn't, and he said, "It doesn't seem like anyone does. Do you want to learn?" He gave me a project to help develop their compliance program, and 20 years later, here we are. I've been fortunate since then to serve as legal counsel or as a consultant for some fantastic clients who want to do the right thing by developing structures to help comply with complex regulations and establish business ethics frameworks.

I've mostly counseled or advised healthcare organizations, higher education institutions, and organizations in the life sciences arena. But now, with Loyola my portfolio is much wider, and I interact with just about every type of major industry from manufacturing to aviation to energy and even athletics compliance. Believe it or not, I have a number of students right now who are going into athletics compliance, mostly for universities.

AW: A difficult question for everyone is how to assess an organization's compliance and ethics program? That seems well worth academic study.

RM: It is, indeed. The Federal Sentencing Guidelines and many administrative agencies expect "effective" compliance and ethics programs. The trouble is, the word "effective" is not defined. Everyone does this a bit differently, because there is a lot to debate over what "effective" means. It can't mean never having non-compliance—that's an impossible standard. Until there is a good definition of "effective" that is measurable and either set out by the government or agreed upon by industry, we need to start with the basics of the seven elements. Personally, I look at whether the organization has the seven elements, whether the elements are "dynamic" in that they are revised and improved based on experience, how the organization responds to suspected or real non-compliance, and then I study the expectations of the government agency that regulates the entity. For deeply regulated organizations, this can involve hundreds of questions; we live in a world of heavy regulation and high compliance and ethics expectations by the government and the public.

The Federal Sentencing Guidelines and many administrative agencies expect "effective" compliance and ethics programs. The trouble is, the word "effective" is not defined.

AW: You mentioned earlier that ethics is part of the Center for Compliance Studies' mission, but you haven't talked much yet about that. How does ethics play into compliance programs?

RM: Ethics is one of the most understudied areas of Compliance. We shouldn't forget that the Federal Sentencing Guidelines refer to "Compliance and Ethics Programs." It puts "ethics" in the title, but we often don't know what to do with the "and ethics" part. Ultimately, a compliance program is about doing the right thing, whether that means conforming to the law or doing right by the workforce and public. Regulations can be difficult to figure out and comply with, but ultimately there is something in black and white to analyze. The same goes for a policy. When a company adopts a position and issues a policy, then there is something in black and white—and hopefully it is clear enough for the workforce members to follow. Ethics on the other hand is challenging in compliance programs. Ethics isn't written down anywhere, though I certainly hope the relevant law and policies are informed by ethics! Ethics fills the gap when law and policy do not give a compliance program direction.

Compliance programs and those of us studying and teaching Compliance need to do a better job of grappling with the "and ethics" piece. How do we know what the right thing to do is? The circumstances and facts change, but in my view, the framework of doing the right thing doesn't change. In my classes I tend to throw out all the modern books on ethics and go back to the classics. In one compliance course I teach, we go straight back to Aristotle and read the *Nicomachean Ethics*. The course takes age-old wisdom and then sees how the principles apply to modern facts. Most compliance programs are based on Aristotle's approach to ethics, and they don't even know it! Aristotle identified four basic virtues of ethics: justice, fortitude, prudence, and temperance. He and his later commentators broke them out into lots of sub-categories. Today we still know justice by its name and the definition that Aristotle gave to justice—giving every person what is rightfully due them. We still use the other virtues today, but we usually refer to them with different names such as balancing risk, self-respect, loyalty, humility, courage, integrity, and honesty. We don't need to make up new virtues, but we do need to study how they play out in our current age and in organizations under tough business and legal pressures.

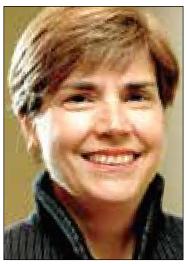
Exploring ethics today is a big part of the Center's mission. But when it comes to a compliance program, sure, the compliance professional needs to be ethical and advise ethically, but it's just as important to develop a culture in which the workforce members are empowered and encouraged to make ethical choices. How we do this today is what we hope to study and explore in the coming years.

AW: Thank you, Ryan for sharing your insights with us. *

by Sally March

Simplicity is a virtue

"Due diligence" is the buzz-word *du jour*. We need to know who we are doing business with—both as a compliance requirement and to protect our organization's reputation. Out-sourcing and partnering are practical necessities for global companies. And when our businesses depend on an "ecosystem" of suppliers and partners, unneeded complexity is not welcome.



March

Global organizations are really webs of entities in many countries. Some of the subsidiaries may be legacies of acquisitions and never integrated into the group. Some may have been set up for tax purposes and never traded. In one company where I worked, the legal team undertook a rationalization project which weeded out dozens of companies in our group that no longer served any legitimate business purpose. Our general counsel recognized that simplicity is a virtue. This is especially true when our own customers have to do "due diligence" on us, and when our communities question the ethics of over-engineered tax avoidance.

Why shouldn't we also ask our partners to explain to us how their group of companies is structured, and if it is complex, why such complexity is appropriate?

When I first started working in Russia, there were many good reasons why Russians used off-shore companies to hold their investments. Years of arbitrary actions of governments had spawned suspicion of any authority, and an unstable currency drove a dash for dollars. And as Bill Browder learned, where there is wealth, there is danger.[1] In the early days, a simple joint venture might involve one shareholder in Cyprus, because Russians could travel to Cyprus without a visa, and it was important to them to see and meet with the people who would hold their money. Recently, I came across a chart of the corporate structure of a Russian partner. I gave up trying to untangle the exceedingly complex web of companies and jurisdictions for what should have been a straight-forward domestic business. I was left wondering "What are they hiding? And why?" Imagine how your colleagues would assess a partnering opportunity with such red flags.

When I first started working in Russia, there were many good reasons why Russians used off-shore companies to hold their investments.

That brings up another point. We need to have an honest conversation about use of tax haven structures. The Panama Papers reveal the extent to which these are used for illegitimate purposes. We are on notice so, arguably, "due diligence" requires more than just asking who the beneficial owner is. Clearly we cannot dictate to our partners how they organize themselves, but we can always ask why. *

1. Bill Browder is the founder and CEO of Hermitage Capital Management, the driving force behind the Magnitsky Act, and author of *Red Notice: How I Became Putin's No. 1 Enemy*. Available at http://www.billbrowder.com

Sally March *(sjmarch10@gmail.com) is Director, Drummond March & Co, in London, UK.*

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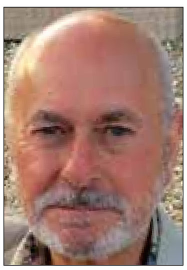
by Robert Bond, CCEP

Will the EU Model Clause survive?

Since the fall of the Safe Harbor regime in October 2015, and notwithstanding Privacy Shield, we have seen a rise in the popularity of the EU Standard Contractual Clauses (SCCs). Presenting clients with Data Processing Agreements alongside SCCs has become standard practice for major US-based service providers.


Bond

But the SCCs are now under threat in the European Court of Justice (CJEU) and challenged by the same arguments that brought down Safe Harbor.

The legal challenge

To explain the background to the legal challenge of the SCCs, the European Charter of Fundamental Rights (Charter) gives individuals certain rights, such as the rights to:

- respect for private life and family life, home, and communications under Article 7;
- the protection of personal data under Article 8; and
- an effective remedy for violation of Charter rights under Article 47.

Safe Harbor was brought down by the argument that there was significant over-reach of indiscriminate state surveillance practices in the U.S. without appropriate safeguards. Such practices were inconsistent with Articles 7, 8, and 47 of the Charter, and the U.S. was held not to provide adequate protection of the personal data of EU citizens. The same arguments form the basis of the complaint against the SCCs. The SCCs are a contract that guarantees adequate safeguards for EU citizens' personal data in any country.

Safe Harbor was brought down by the argument that there was significant over-reach of indiscriminate state surveillance practices in the U.S. without appropriate safeguards.

What can we expect next?

Depending on what the courts decide, we might see the following changes to the SCCs:

- more detailed contractual provisions about EU citizens' rights and recourse mechanisms;
- rights directly enforceable by EU citizens;
- submission of the non-EEA data importer to the jurisdiction by EU authorities;
- mandatory notification of SCCs and register of data importers;
- mandatory use of encryption for data in transit;
- a list of countries which are deemed by the Commission as not providing adequate protection due to excessive surveillance; and
- bilateral treaties in relation to the safeguarding of EU citizens' personal data with third countries. ✳

__Robert Bond__ (robert.bond@bristows.com) Partner & Notary Public, Bristows LLP in London, UK.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by Craig Thomas, MBA and Monica Locklear

11 tips for engaging middle managers on compliance

» Middle management teams have close relationships with employees and significant oversight roles that make them key culture communicators that compliance professionals can often overlook or underutilize.

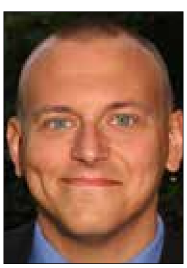
» Ethics and compliance professionals need to make the case to leadership that middle managers play a cost-effective role in creating real culture change that can serve the business in a variety of ways.

» The best way for Compliance to help support managers as culture and ethics ambassadors is by providing ready-made training, activities, and tools that managers can easily share with their team.

» A direct call from Compliance lets managers know Compliance is an advocate when there is pressure to be non-compliant and reinforces the partnership between managers and compliance professionals in preventing abuse and unethical behavior in the organization.

» Middle managers are the means by which compliance objectives and company culture change can actually happen, and they are a key resource that organizations can't afford to ignore.

Ethics and compliance (E&C) professionals cannot create an ethical culture by themselves. They can only invite their employees to create that culture, and middle managers are a critical step in making this "ask." The close relationship managers have with their employees makes them the real culture communicators in your organization.



Thomas

Locklear

Moreover, managers play a significant role in many key systems of oversight. They review timecards, approve expense reports, hire new employees, and are often the first to receive reports of ethical violations. They are the first line of defense against most forms of misconduct within an organization.

Yet compliance professionals often underutilize these important team members. Tone at the top is important; however, messaging from E&C and leadership can often ring hollow if not backed up by so called "mood in the middle." Strong E&C messaging can even be seen as hypocritical and actively harm an organization when employees do not see that ethical culture reflected in their daily lives.

Tone at the top is important; however, messaging from E&C and leadership can often ring hollow if not backed up by so called "mood in the middle."

Although it can seem daunting, there are several simple, concrete steps that compliance professionals can take to enlist the help of managers in creating an ethical culture.

Getting started: Making the case to leadership

Engaging managers means an additional time investment in resources for a compliance program, not to mention the time busy managers will have to take away from their day-to-day work to be trained on and implement compliance activities. Before compliance professionals can unlock the potential of their managers, they will need to secure buy-in from leadership. Pulling managers away from their primary role will never be an easy "ask." However, middle managers provide a cost-effective opportunity to create real culture change, which can serve the business in a variety of ways. Furthermore, involving managers in the process sooner rather than later will help with employee engagement and retention and provide development opportunities for these resources. Training these individuals could also create a pipeline of talent that could be used to fill other managerial or compliance-related roles.

When making the case to leadership, outline the financial benefits of an ethical culture. Ethical organizations enjoy fewer legal costs, lower employee turnover, and more satisfied customers. Middle managers can also be a powerful tool for breaking down departmental silos and ensuring compliance messaging is disseminated throughout an organization. In addition to outlining the benefits, make sure you outline management-specific risks in your risk assessment. This includes the roles managers play in financial oversight, hiring, confidential information, employee reports, retaliation risks, etc.

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You will rarely be given all the resources you need. So, start with changes that provide the most benefit with the least commitment from your employees and managers. Usually, this means starting with an organizational culture assessment. This assessment measures employee perceptions of an organization's program and culture. Assessment findings can often highlight problem areas and help you gain traction internally for spending more time and resources on compliance needs. An assessment can also help you pinpoint what areas you particularly need to focus on in the immediate future and assist in exploring whether the "tone at the top" is understood and accepted by managers and employees on the front lines.

1. Provide ready-made training and activities for managers

You will undoubtedly have many requests and initiatives you ask managers to undertake in their role as culture and ethics ambassadors to their teams. However, Compliance can avoid being just another department making demands of managers. Instead, E&C professionals can position themselves as partners by providing tools and ideas that help make managers' jobs easier and their teams stronger. Turnkey training and activities are one way you can contribute to any E&C efforts you want managers to undertake. Usually, these are short, discussion-based scenarios managers can talk through with their teams to help reinforce E&C messages. You can also provide managers with talking points to share with their teams via newsletters, group Q&A sessions, or one-on-one meetings. These tools allow E&C managers to utilize a train-the-trainer model that ensures consistent messaging across the organization and allows a small E&C team to have a large impact without an exorbitant travel budget or countless hours spent training.

2. Provide tools that make their job easier

Ensure managers have the tools to make their day-to-day work as E&C ambassadors that much easier. Provide a checklist of what to do when an employee reports an ethics violation. This makes the process easier for them and ensures managers follow all appropriate steps when caring for an employee's concern. Provide a simple and intuitive method for managers to submit employee concerns. Considering that 35% of ethics violations are reported to a manager first, this can be a powerful tool in collecting the information you need.[1] E&C teams can also provide sample interview questions and scoring rubrics that help managers hire for integrity.

Clearly laying out expectations and backing them up with tools and materials to make life easier demonstrates a strong commitment from E&C and the executive team. Consider what managers need and how you can improve their day-to-day work. This will position Compliance as a strategic partner and make managers more willing to help with E&C requests in the future.

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3. Reinforce messaging to managers throughout the year

Once you have trained managers in an E&C initiative, reinforce this and continue to engage those managers throughout the year to keep momentum going. This demonstrates that E&C is an ongoing effort, not something to simply pay attention to once in a while or when an issue arises. Staying in touch with managers can be tricky, but being creative about how and when to reach them can help. If you have the resources, an E&C newsletter for managers might be perfect for sharing Q&A, conversation starters with employees, or the latest on an industry regulation change. It can also offer tips on E&C webinars they might want to attend and other relevant E&C information or initiatives the organization is participating in. Look for articles that provide practical guidance you can share to help managers deal with the day-to-day challenges of leading a team ethically.

Consider providing an intranet portal or social media page exclusively for managers. This can provide a space for collaboration and a confidential outlet for managers to share and learn from each other under the guidance of the E&C team.

If you cannot take on all these initiatives yourself, consider using preexisting methods for reaching managers. If a newsletter is already in circulation, ask for space for E&C

topics. If you already have a web or intranet page for managers, perhaps you could add a monthly E&C topic.

4. Advocate to include ethics and compliance topics in new manager training

Many companies offer new manager training, ensuring that new hires as well as current employees moving into management roles live up to the expectations of the organization. Manager onboarding allows organizations to set the tone for managers right from the beginning. Compliance teams should take advantage of any set manager training time and ask to be included in this process. Supplement this training with an onboarding kit that contains links, documentation, and resources that can help managers in their role as culture ambassadors. New managers are attentive and impressionable, and this is a perfect time to help them understand their role as a culture and ethics ambassador, as well as get them familiar with the E&C team. Setting the tone with new managers from the start can pave the way for a partnership moving forward.

> Manager onboarding allows organizations to set the tone for managers right from the beginning. Compliance teams should take advantage of any set manager training time and ask to be included in this process.

5. Provide messaging from other managers

Although messaging from executive leadership and the Compliance department is important, allowing fellow managers to deliver messaging can make a stronger, more lasting impression. Fellow managers can make the case that being ethical and compliant applies to them and that they have role models and resources in other managers. Include current managers in new manager training or have them walk other managers through "real world" scenarios and discuss relevant topics. You can even provide real-life examples from your own organization, as long as that information is confidential and anonymous.

6. Have managers create their own messaging

Consider having managers create their own compliance messaging based on material or talking points you provide. Give them ready-made talking points, but encourage them to tailor these to their team's unique situation and needs. Creating their own content allows managers to craft messages that they believe in and will share with their teams with genuine enthusiasm. Furthermore, managers typically understand employee lingo more so than others, so letting them craft their own messaging in a way that makes sense to their employees is critical to their success and being trusted as a leader versus being considered just another voice from corporate.

7. Advocate for managers when there is pressure to be non-compliant

When pressure to meet unrealistic or poorly created goals is not checked by effective systems of oversight, managers may be tempted to cut corners. Rather than giving in to this pressure, managers can play a key role in preventing abuse and unethical behavior in these situations. Let managers know you will be an advocate and partner to them when there are pressures in the business to act unethically. Let them know they can come to you if they believe or see that pressure in the organization. This will help diffuse potentially disastrous situations and reinforce E&C's role as a strategic partner to managers.

8. Create feedback channels for managers

Change is almost always difficult. Asking managers to be E&C communicators means asking even more of an already overworked segment of your workforce. However, proactively asking managers to provide input on E&C matters can encourage buy-in and reinforce that Compliance is a partner. Closed door sessions, survey questions, or intranet portals that allow managers to provide feedback will provide valuable insight and ensure that managers are more receptive to the changes and new initiatives that result. Consider having members of the E&C team call managers once a quarter to ask how things are going and how the E&C team can help. This will provide valuable feedback to your team and reinforce that Compliance is there to help. Chances are you will be the only team proactively reaching out to make manager's lives easier.

Change is almost always difficult. Asking managers to be E&C communicators means asking even more of an already overworked segment of your workforce.

9. Help create/drive messaging from leadership to middle managers

Petition leadership to create messaging just for managers. If they are already doing this, encourage them to include compliance topics. This can reinforce your message and show that managers have the support of leadership. If the CEO or other leaders can join a webinar or training for managers, even better. Again, it is important to have messaging to managers be consistent regardless of who it comes from. This consistency and alignment on messaging demonstrates that the organization is not just paying lip service to compliance efforts.

10. Outline clear expectations around reporting

Managers often make up the front line in any open door policy a company may have. Compliance teams need to ensure managers know exactly what to do if an employee brings a concern forward to them and, most importantly, how to spot potential issues based on conversations with employees. Ensuring managers feel equipped and confident to take reports can be vital to employees feeling confident that their report will be cared for in an organized, confidential manner and increase the likelihood they will report to the manager again if needed. Coaching, training, and education for managers is key, along with providing them tools to effectively take the report. Ensuring there is a clear process for submitting a report goes a long way in supporting managers and creating a consistent process for reporting across the organization.

11. Utilize preexisting materials

Maintaining regular messaging and communication with managers, especially if you have thousands of employees, can be time consuming and difficult. Compliance teams often have a lot on their plate, even without the added responsibility of constantly creating new, impactful content for managers. Save time by leveraging resources that you can send to managers with little-to-no modification. Leverage industry websites and blogs for information, statistics, and case studies that you can send to managers. Share anonymized incident management case metrics that you are already reporting to leadership. Providing this team with insight into case volume, anonymity rates, and other data will make them feel as if they are part of the process.

Conclusion

Compliance resources are often spread thin in an organization. There will always be more risks than there are staff and resources to address them. In this context, it would be easy to see engaging middle managers as just another To Do on a long list, something that would be great if only compliance teams could get around to it. However, managers are not just another compliance objective. They are the means by which compliance teams can achieve their objectives. Because of their close proximity to employees and the relationship they have with their teams, they are a key resource that compliance teams cannot afford to ignore. ✷

1. Ethics Resource Center: National Business Ethics Survey of the U.S. Workforce, 2014. Available at http://bit.ly/ethics-survey

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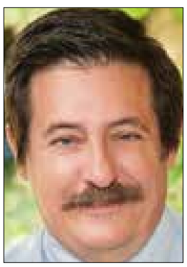
Society of Corporate Compliance and Ethics

by Thomas R. Fox

Hui Chen impacts compliance programs

2016 was certainly a year for the record books in the international fight against bribery and corruption. From the stunning amount of the Odebrecht settlement of up to $4.5 billion, split among the United States, Brazil, and Switzerland, to the forfeiture actions filed in the VimpelCom and 1MDB corruption scandals, the US government has once again led the global fight against the scourge of corruption.


Fox

The Foreign Corrupt Practices Act (FCPA) enforcement actions resolved at the end of 2016 regarding Odebrecht and Teva Pharmaceutical both required corporate monitors. The traditional reasons for requiring a monitor have been that the Justice Department did not have confidence in the charged party to follow through with the implementation of a best practices compliance program it agreed to in the settlement documents and/or subsequent violation reports. However, these two cases and several others have raised another reason that has been present all along but is now coming back to the fore. It is that the Justice Department is leading the discussion of what constitutes a best practices compliance program. More importantly, by requiring these monitorships, the Justice Department and SEC are leading the development and implementation of more effective compliance programs.

I believe this newfound effort is a direct result of the Justice Department's Compliance Counsel Hui Chen. Compliance professionals and lawyers who have gone before her to represent clients before the Justice Department have uniformly spoken about her knowledge and expertise in *doing compliance* and understanding what a paper program is. She is also leading the discussion about how best practices are evolving as well.

Yet this dialogue is not a one-way street. Companies are using new tools to demonstrate that effective remedial measures are being implemented. These new and innovative techniques employed by compliance professionals to increase the efficiency and the effectiveness of corporate compliance programs are then referenced by Chen and her Justice Department colleagues when known enforcement actions arise. It is a synchronous loop that provides the regulators with a manner to determine current and evolving standards and then communicate that information back to the greater Compliance community.

While this loop has certainly existed for some time, I do not think it is a coincidence that the increase in corporate monitorships seen in 2016 was a direct result of the hiring of Hui Chen as the Justice Department's in-house compliance expert. The rising tide of compliance best practices, as set by the Justice Department, is certainly lifting all corporate compliance programs. *

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by Kirsten Liston, CCEP and Meghan Daniels, JD

Five tactics to dramatically improve your Code of Conduct

» Consider the Code a marketing project: Increasingly, companies are realizing that a Code should be an attractive, effective, persuasive document, not a contract look-alike.

» Give your Code an infrastructure: Use an inspired organization scheme to ground it in topics and ideas that are meaningful to your audience.

» Talk like a human: Use clear, direct language—the simpler, the better.

» Tell people what to do: Forget the philosophy or history of the law; focus on practical, relevant guidance.

» Aim to connect: Above all, look for ways to engage with your audience; people are better persuaded when they feel connected to you.

Is your Code of Conduct feeling a little tired? Maybe you liked the graphics once, but now they look kind of…dated? Or maybe the language seems stilted, even impersonal? Do you wonder if it's really reaching people? You're not alone.


Liston


Daniels

Over the past five or so years, there's been a quiet revolution in what a Code looks like and what it's expected to do. When large-scale compliance programs were getting started, 10 or 15 years ago, just having a Code (at all!) was enough. Because lawyers wrote them, they looked like contracts, written in Microsoft Word with numbered sections. And because Codes often reflected the organization's most recent risk assessment (formal or informal), they tended to be presented as a list of risk areas: bribery, respect, competition law, and so on.

The message? *Here's a lot of rules we all have to follow.*

Perhaps not surprisingly, many organizations are realizing that this approach is less persuasive than it could be. And, increasingly, compliance programs at leading companies are borrowing tactics from marketing or social media to catch employee attention.

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Five key areas

Over the past five years, Meghan and I have written around 25 Codes of Conduct, many for companies that were looking to move from a "check the box" Code to a more modern approach. Along the way, we've identified five key areas to focus on when you update your Code. Implementing even just two or three of these can dramatically improve your Code and make it a far more attractive, effective, and persuasive document.

1. Rethink how your code is organized

Traditionally, the people creating Codes didn't give much thought to the overall organization of the document beyond reflecting the compliance officer's mental checklist of key topics: bribery, insider trading, conflicts of interest, etc. But if your goal is persuasion, you'll do better if you ground the Code in language that's compelling and relevant to employees. See if you can establish an overall theme that's bigger than any one individual topic. This might be your values or an aspect of the company's history, culture, or branding that really resonates with employees.

You'll know you've found the right approach when it lends itself well to a tagline, like the pharmaceutical company whose Code tagline is: "To be as brave as the people we help." Or the steel company that uses: "Created with integrity. Built to Win."

Once you've picked a theme, find ways to tie other parts of the document back to that central theme. If you connect the Code to larger business initiatives or culture points, it will help with the positioning. Following the Code is not separate from doing your job well; it's *part* of it.

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2. Talk like a human

It wasn't that long ago that corporate boilerplate was the norm. You know the kind of writing I'm talking about – communications written from the point of view of an organization, not a person, such as "Commitment to ethical professional conduct is expected of everyone" or "The Code is intended to serve as a basis for ethical decision making."

These are sentence structures and words you would never use in a conversation. And yet, for a long time this was the acceptable way to approach writing for a mass audience. For people who have spent their careers creating legal documents, sentences like these can even *seem* conversational, or at least very easy to write. But the average person finds them dense and hard to read. In this digital age, we've all gotten used to a communication style that is far more personal, brief, and conversational.

Psychologists have even developed a term for this: The fluency heuristic. Research has found that when we can process information quickly and effortlessly, we like and trust it more. And when communications are harder to read, readers tend to tune it out. It might sound simple, but switching from disembodied formal corporate language to targeted, conversational "I-We-You" sentences can have a huge impact on whether or not employees engage with your Code—or even finish reading it.

3. Think in layouts

In addition to writing simple, easy-to-follow body copy (see #2), great Codes amplify and expand on that material, using callouts, Q&As, and resource guides. Using this type of supporting material can:

- **Draw attention to specific points**–Emphasize what you really want to highlight, perhaps common misconceptions or everyday examples of how this topic applies.
- **Add visual interest**–New, separate content elements create the opportunity to vary the visual styling, creating a page that looks pleasing and balanced.
- **Keep the content conversational**–Don't include details like protected characteristics in the main text; break them out as standalone bulleted lists.
- **Bring Code standards to life**–By giving real-life examples or answering FAQs, you can help employees see how these principles and standards can apply to their actual work.

Breaking the content into short, easy-to-digest chunks creates a document that's easier to read now, and that's also optimized for reference later.

Finally, consider enlisting a professional designer for the page layouts. Putting visible effort into the Code sends a clear message that this is an important topic and the company takes it seriously.

Put simply, the purpose of a Code is to set standards and guidelines for how employees should act at work and when they represent the company.

4. Focus on practical, relevant guidance

Put simply, the purpose of a Code is to set standards and guidelines for how employees should act at work and when they represent the company. But, too many Codes focus on abstract principles without ever getting specific about how these concepts might play out in an employee's day-to-day work. Yes, it's impossible to cover every situation that might come up, but it is possible to help employees answer the question: "So, what does this mean for me?"

As a former colleague of ours used to say: "You don't need to tell people what the law says. You need to tell people what the law *means*." The more you can keep your Code focused on practical, relevant guidance for your employees, the more interested they will be. Some approaches we've found to be useful are:

- Within each section, try to provide a bulleted list of specific actions employees should take or avoid, given the requirements in this area.
- Try to use the word "you" when giving specifics. This will force you to give guidance, as opposed to just outlining legal principles.
- If you're explaining legal concepts and definitions, keep them separate from the main body text and from the guidance you give employees (use sidebars and callouts).

Clients often ask us what's behind the change in Code standards. We attribute it to a few trends in Compliance and the wider world:

- **Proof of effectiveness**: Increasingly, regulators/prosecutors are looking beyond "perfect paper programs" and are asking: Are your efforts really working? How do you know? Have you measured the impact of your compliance efforts? Can you show that employees are responding? In turn, compliance teams are asking what might actually change behavior versus a tick box approach.
- **Technology-driven communication**: In the last decade, the way we communicate has changed substantially. Attention spans have shortened and multi-tasking is common. The average employee has acclimated to a world in which communication is short, personal, and highly engaging, and they increasingly tune out material not up to these standards.
- **Design and brand expectations**: Technology has made design tools inexpensive and widely available. Any 11-year old can design an attractive website, brochure, or logo, and we all are increasingly exposed to beautiful, professional-level design as part of everyday life. Consumer brand companies (Nike, Google) lead the way, but companies in all industries are increasingly focused on the style, tone, appearance, and design of compliance program materials.

5. Connect

Research shows people are more easily persuaded by people they like and trust. And they feel more connected to people who show a clear understanding of them and their situation. So, once you've taken the other steps here, the final step to take is to look for ways to build a connection with employees. Can you invite them to share input? Can employees submit art for potential Code covers and vote on the winner? Can you personalize some of the people in the compliance program, so employees feel like they're reaching out to a person and not a faceless department?

Another way to connect is to give employees an identity to feel connected to: "We are like this." Or you might just try rewriting the communications that announce the elements of your compliance program to be simpler and more direct, more like the way you would write to a colleague.

Conclusion

As we said at the beginning of this article, the standards for Codes are changing quickly, driven in part by digital communication, changes in design and brand expectations, and even what regulators are looking for in a compliance program. Implementing some or all of these tactics can dramatically change your Code and turn it into a tool that can help you better engage employees in your compliance efforts. *

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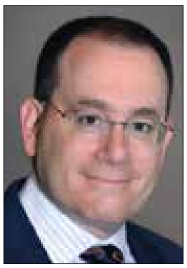
by Meric Craig Bloch, CCEP-F, CFE, PCI, LPI

Flexible investigations

A wise man once told me that an investigation needs to be the output of a programmatic activity that yields a defensible conclusion. This means that the value of the investigation to the organization and the investigation subject is minimal when the inquiry consists of well-intentioned efforts of colleagues exploring a matter in some ad hoc way.



Bloch

The programmatic activity of investigating arises from having an investigation infrastructure to establish your authority and operating standards. These consist of an investigation policy, standard operating procedures for report intake and preliminary assessment, an investigations protocol, and template documents. Focused investigator training completes the picture.

The investigator protocol is key to the success of an investigation's function. The protocol creates the baseline standard for how the investigation should be conducted. It is more than a how-to or a nuts-and-bolts list of steps. It should address areas such as confidentiality, competence, and procedural fairness. It gives details about the extent of your investigations authority and the limits of it. To the investigator, the protocol gives an organizational "safe harbor" that essentially approves his/her actions within the protocol.

But this creates some challenges. Every investigation is unique in some way. Investigative issues are not widgets that get treated the same way, like an assembly line. Even cases within the same category type, such as conflicts of interest, will each have a nuance.

The protocol is a baseline standard. Investigators are generally free to select what seem to be the most effective methods of collecting, analyzing, and recording all relevant information. You may use any lawful method you think is most effective to complete your fact finding.

The protocol likely states that the subject of an investigation is generally interviewed last so he/she may be confronted with the proof. However, there are times when the organization requires that person to be interviewed first, such as when the issue is sensitive and you hope the subject will admit the behavior without needing to expose the issue to a larger group, or where you fear the subject will immediately quit or destroy proof once he/she learns of the investigation.

So if your company has an investigation protocol, follow it. But remember that the protocol is not a straightjacket. It is only a default set of investigation standards your company wants you to follow. Deviations are expected when a particular investigation requires them.

Be prepared, however, to defend any deviation from the protocol. Any deviation must be an informed decision that will hopefully result in a better investigation result for the company and a result which remains fundamentally fair to the employees involved. Sooner or later, you'll have to explain your decision and justify it.

As an investigator, you remain accountable to the organization for following a programmatic activity to obtain a defensible result. Make the investigative infrastructure support your efforts and not hinder them. A religious adherence to the process is not more important than a proper result. ✳

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by Laurie Burgett, CCEP

Product integrity: Some compliance principles for engineering organizations

» Market competition is driving faster engineering cycles and pressure for innovation.

» Decreased cycle times and business pressures may inhibit product realization that meets promises to consumers and regulatory requirements.

» ISO standards or engineering processes may not be enough to prevent fraudulent behavior or misleading promises about a product's capability.

» Diligence in reviewing engineering designs includes the concept of a separation of duties.

» An environment where engineers and technicians can and will express concerns in meeting promises to customers or regulations is critical.

In today's market, the drive to be the first company with a new product or a product enhancement is vital. Engineering cycles are now faster than ever, with less time to assess concepts and perform comprehensive testing. This can place engineering groups and individual engineers under great pressure to produce results. Without oversight and controls in place, this situation may lead to exaggerations in performance capability or even fraud and potential regulatory issues. Worse yet, promises made to customers by the business will not be fulfilled.


Burgett

Volkswagon's unfulfilled promises

The premier case for this is the Volkswagen emissions scandal, where software with a "defeat device" was used in the design verification process to manipulate data that made emissions appear to meet specifications on diesel cars. The situation at Volkswagen was complicated with a strong and ambitious managerial structure (often described as "empire-like" and without diversity) trying to break into the North American market, pressure for success from German government officials due to Volkswagen's huge financial impact to their economy, and labor pressures for profitability. To top it off, the culture at Volkswagen was one where management was known to terrify and intimidate engineers with termination to get results. These external pressures for results influenced a small team of engineers to make bad decisions to adjust the software used to track emissions. They were able to do this undetected for many years.

Even after the realization of misdeeds within the company, Volkswagen management did not take action until tests performed by third parties exposed data contrary to Volkswagen's performance promises. The details of the case are still being unraveled, because not just one, but two groups of engineers at different sites appear to have created or used a software program to fraudulently make emissions seem within specification. As *Fortune* magazine describes:

> "…instead of telling management that they couldn't meet the parameters, the decision was taken to manipulate. No one had the courage to admit failure. Moreover, the engine developers felt secure because there was no way of detecting the deceit with the testing technology that existed at the time. It was, the whistleblower said, "an act of desperation."[1]

Volkswagen is blaming a team of rogue engineers, but there is strong evidence that the Volkswagen culture from the top was one of success at any price and an unwillingness to copy known technologies, thus putting serious pressure on their engineering staff for difficult technological breakthroughs.

The role of culture

Even in large companies, many Engineering departments are somewhat insular, especially in business sectors where design verification, such as qualification testing, may be determined by the same organization involved with creating the design. Issues may be undetected due to the nature of the beast where the staff on the business end is often unable to interpret highly technical engineering processes or results. There may even be product already promised or sold to customers with a new technology that is actually still in development, thus putting the expectation on technical staff to perform rapidly. It is, however, important that this rush to perform does not compromise the product integrity.

Engineering groups are not immune to enabling or reacting to the "seven deadly sins"[2] that are often precursors to unethical behavior. A few of the dangers in the engineering environment are that some engineering groups perceive themselves as state of the art or best in class, and some are eager to be seen as innovators. This can lead to "conceit" and "cult" qualities in engineering organizations where arrogance can lead to exaggeration of accomplishments rather than objective results based on statistically sound data. In companies, such as Volkswagen, where there is strong pressure to perform, "dread" and "desperation" may be felt by individual engineers who know about or participate in abuses or short cuts, because they feel they can't speak up or even that they may lose their jobs. They may falsify information or kludge the design or testing in extreme cases. Other engineers may know that something is wrong or doesn't make sense, but they keep silent due to fear of retaliation or reaction from the greater group. Perhaps they are never asked by management as to their opinion about the quality of the design parameters, the design itself, or the testing quality and assume their opinion would not be valued. Sales and other management structures may promote "cronyism" for their supporters in the

Engineering groups are not immune to enabling or reacting to the "seven deadly sins" that are often precursors to unethical behavior.

technical world who are prematurely willing to say that the design is great and ready to go to market. "Disregard" or perhaps "distain" may be shown for those who disagree that the product has been shown to meet requirements when there is an eager market waiting.

So, as compliance professionals, what can we do to understand risks in meeting our company's code of conduct and our promises of integrity and quality regarding product performance? Although many companies follow ISO standards or other basic processes in fulfilling designs, this may not be enough to ensure compliance, because evaluating designs relies on human interaction and evaluation. Therefore, a deeper scrutiny may be mandated of the engineering process, including assurance of a distinct separation of duty in reviewing and validating designs.

Many companies have robust engineering processes, but it is important for the sake of speed that these are not shortchanged.

As in most topics regarding compliance, process is king. Risk is greatly reduced if critical thought and oversight are exercised throughout the design cycle(s). Designing a product is a complex process, because engineering a new innovation or product, even if based on an existing product design, is iterative. Knowledge is gained through cycles of requirement development, design proposals, modeling/prototyping, and testing to refine a design; through those, the product is advanced and improved. A Compliance function, working with the business, can oversee and periodically audit that a documented process with appropriate separation of duty is in place and followed for product realization. Ideally, the designers and design reviewers would have enough separation that an independent review of the design, unfettered by politics, expectations, or relationships, would be ongoing at points along the design journey.

The engineering process

Many companies have robust engineering processes, but it is important for the sake of speed that these are not shortchanged. In fact, it's not uncommon to overrun the design cycle schedule and then compress the schedule as other functions such as tooling, manufacturing, and testing, are engaged to do their part of the build and verification cycle. With full system testing at the end of the cycle, it's critical that some minimum standards are adhered to with a subsequent, thorough design review. There are many philosophies on successful design processes, but the following are some fundamental steps that should be included in any design process.

Requirements

Clear and detailed requirements and criteria are the basis for any good design. What is the problem that the company is solving through the design and what will customers ultimately be promised if they buy a company's solution?

Test plan

From the detailed requirements, a qualification test plan should be designed to evaluate the ability of the product to meet those objectives. Depending on the type of product, this test plan should be statistical in nature and show that the product works to specification within any promised environmental tolerances (e.g., temperature, humidity, altitude). Once in production, an acceptance test criteria may be necessary to show that the product still meets design requirements as manufacturing variations are introduced.

Design review process

Evaluations held through design reviews are needed at various intervals throughout the design process. As the design progresses, assumptions, calculations, logic, and other factors should be reviewed periodically but, at minimum, through a preliminary and final (or end state) design review. It's important for engineering groups to validate that individual engineers did their homework, that they performed necessary calculations upon which to base assumptions, and that they did not guess or blindly copy other designs. Especially in insular engineering groups, exuberance or pressure to perform can be a potential conflict of interest that leads to an overly positive and optimistic interpretation of a small data set or single test.

This is where a second set of eyes by technical experts who do not work directly on that project are critical. For a more complex product, different types of engineers may need to evaluate the thoroughness of the design at interfaces and throughout different systems. This would also include the ability to physically build the design into a viable product and may include suppliers. Companies should do their best to find knowledgeable but neutral third parties to oversee major reviews. Where the government is the customer or in highly regulated industries, such as aerospace, this separation of duties is usually a robust part of the process. In commercial markets where due diligence is internally developed, neutral reviews will need to be built into the design process to ensure the product's ability to meet requirements—no more and no less. Some body of test results will likely need review as well.

> As the design progresses, assumptions, calculations, logic, and other factors should be reviewed periodically but, at minimum, through a preliminary and final (or end state) design review.

Documentation

Detailed documentation by engineering should be kept of assumptions, calculations, and tests— both qualification and acceptance tests. This is especially important in companies that tend to replicate or scale elements of designs for new designs.

There should be an organized configuration management structure to the product. Configurations should be tracked in some manner, such as by serial number or by production date, so that any product issues may be resolved with a fix or a recall, especially if product safety is a factor. If a part number is called out in an assembly, then any part with that part number should be interchangeable in that assembly, if it meets the specifications of the engineering drawing. If a part does not meet the engineering drawing specification and is used in a product, there should be additional documentation by a qualified internal organization as to why the part was acceptable for use (i.e., a material review process). This insures the design intent will be preserved for customer satisfaction.

Raising concerns

Although it may be difficult with business pressures, as well as other cultural aspects, there should be a means for engineers or technicians who feel the design does not meet regulations or performance promises to customers to feel comfortable raising their concerns. This may include reservations about the quality of the design requirements, the design, or the testing quality. Management must make these engineers and technicians feel their opinion is being solicited and is valued by the business and, at minimum, their concerns will be answered or addressed. This essential element is another reason why a diverse group should be invited to design reviews, which should be a forum for such items to be considered. Design reviews should be documented and open items tracked for follow up.

If an engineer or technician is not comfortable speaking up in a public setting, private meetings, hotlines, or other means should be encouraged. The third-party aspect of working through the Compliance function may help facilitate honest feedback if the environment in a company has cultural qualities that inhibit employees from speaking up. It is essential to make sure there is follow up and response to any concerns.

Conclusion

The financial effects of the fraud at Volkswagen are currently estimated at $20 billion to compensate consumers and for fines and, clearly, Volkswagen's business and reputation have sustained ongoing negative publicity and public outrage. It's also clear that, while a set of rogue employees is blamed for the problems, the whole culture, starting at the top, was a factor in this situation. Volkswagen says they are taking steps to change the culture away from blind obedience and have brought in new outsider executives to promote dialog and alternative points of view.

Although a compliance organization should not be a watchdog for engineering a product, it can facilitate review and audit of engineering processes and documentation in order to evaluate process integrity and adherence.

Although a compliance organization should not be a watchdog for engineering a product, it can facilitate review and audit of engineering processes and documentation in order to evaluate process integrity and adherence. Compliance organizations can validate that there is segregation of duty for those reviewing the design versus those creating or validating the design. It can also provide a forum for whistleblowers if the corporate culture does not allow public discussion. Risk of not meeting customer and regulatory expectations can be reduced with a strong and inclusive process so that all critical aspects of the design are considered and verified. ✷

1. Geoffrey Smith and Roger Parloff: "Hoaxwagon: How the massive diesel fraud incinerated VW's reputation" *Fortune* magazine, March 7, 2016. Available at http://bit.ly/vw-diesel-fraud
2. John Cross: "The seven deadly sins of unethical organizations" *Compliance & Ethics Professional*, April 2014, pp. 19-23

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by Scott Killingsworth

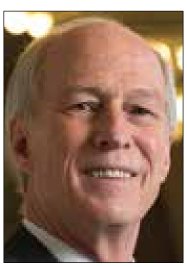
Behavioral ethics: From nudges to norms

- Nudges are simple interventions designed to promote desirable choices—including compliance choices—by taking advantage of psychology.
- Nudges are products of the new field of behavioral ethics, which studies how people make ethical decisions in real life as systematically fallible human beings who are easily swayed by social and situational factors.
- Effective compliance nudges require predictable risk situations where a small psychological push can be applied at just the right time to encourage ethical decision-making.
- Unlike nudges, organizational culture is "always on," and it influences behavior pervasively and on a large scale.
- Laser-targeted nudges are fascinating and can be useful, but applying behavioral science at the level of organization culture is a more efficient way to improve overall compliance.

Don't get me wrong, I'm all for nudges. But it's time for a closer look, and a broader perspective.

What are nudges?

Nudges are simple interventions designed to promote desirable choices, such as compliance choices, by taking advantage of psychology. (The term "nudge" was popularized by Richard Thaler and Cass Sunstein.)[1] Researchers have identified a growing list of mental shortcuts, cognitive biases, and psychological quirks that subconsciously influence, and often sabotage, our decisions. Nudges are designed to either harness or neutralize these tendencies and help us make better decisions by subtly altering the decision-making process or the mental context in which the decision is made.



Killingsworth

Probably the best-known example of a compliance nudge is the use of employee certifications with a signature at the top, rather than at the bottom.[2] For example, in your antitrust or contracting integrity compliance process, you might ask an employee to certify that she has properly followed a list of do's and don'ts for competitive bidding. You're more likely to get honest answers if the signature is at the top of the form rather than at the bottom. Researchers tell us that signing the certification amplifies awareness of one's honesty or dishonesty just at the moment when it's needed—*before* the form is filled out—and that small mental nudge towards truth can influence what the employee reports. If the signature and certification are at the bottom of the form, then by the time the employee is ready to sign, the damage may already have been done: the ink may be dry on fudged responses. At that delayed "moment of truth" the employee is more likely to rationalize what she's already written than to correct the form.

Behavioral ethics

Nudges are probably the best-known products of the new field of behavioral economics and its even newer spinoff, behavioral ethics: the use of behavioral science to understand ethical and unethical behavior and to promote the former. The core principle of behavioral ethics is that most misconduct is not committed by the stereotypical "bad apples," but by people who are psychologically normal, who value morality and consider themselves ethical, and yet regularly fail to resist temptation, or even to recognize that particular decisions have moral or legal implications.[3] The recipe for misconduct by ordinary people is simple: Start with an everyday motivator like temptation, pressure, the desire to fit in with a group, or the quest for money, recognition, or power. Combine with a situational factor (such as a conflict of interest), stir in a cognitive bias (such as motivated reasoning), and simmer until you've rationalized, justified, or overlooked behavior you would normally be ashamed of. For most of the workforce—those who are neither incorruptible saints nor irredeemable sinners—context is as important as character and morality is malleable.

The promise of behavioral ethics is that understanding how good people end up doing bad things can point the way to more effective countermeasures. If small differences in the social or psychological framing of a situation can change behaviors, the door is open to taking advantage of or overcoming psychological traits so as to promote ethical choices in predictable compliance-risk situations.

Strengths and limitations of nudges

Nudges come in various forms based on different methods of influence. They may use economic or social incentives to encourage beneficial choices, pre-commitment strategies to enforce a person's adherence to their own good intentions, built-in defaults that make a decision for you unless you make the effort to opt out, or timely reminders of accepted values (like honesty) or of group norms. Nudges have already proved effective in increasing organ donations; decreasing teen pregnancies; improving saving habits; stopping smoking; encouraging exercise and weight loss; increasing tax, license fee, and fine payments; and reducing energy usage. Based on these successes, it is easy to get excited about potential compliance applications: the experimental evidence is compelling, the interventions are simple, the effects are substantial, and their promise for compliance seemingly unlimited. And there is no taint of coercion either. With a well-designed nudge, no mandate, argument, or restriction is required; the brain persuades itself.

Nudges are a nice addition to the compliance toolbox, but it's a big toolbox for good reason. No single tool does the whole job.

Nudges are a nice addition to the compliance toolbox, but it's a big toolbox for good reason. No single tool does the whole job. Every tool (i.e., policies, controls, monitoring, training, audits, and deterrence) has its strengths and all have their limitations. Nudges are no exception. The signature-at-the-top example is a useful illustration of both the value and the limitations of nudge techniques. This technique is effective only because the situation is completely predictable: You are asking someone to fill out and sign a standardized certification in connection with a recurring type of event that has identifiable compliance risks, and the manipulation is simply to locate the signature where it is most likely to have an effect on behavior—in this case, the truth of the certification.

But the situation-specificity of nudges is also a weakness that makes it difficult to apply them broadly to promote compliance in the workplace. The major implication of the fact that situational details strongly influence behavior is this: In order for a psychological intervention to be effective, it has to be applied with surgical precision, in the right circumstances, and at the right time. Signing a certification at the top is an easy application, because the compliance officer is creating the certification process, controls it, and has the opportunity and the power to manipulate its characteristics.

It follows that nudges are most promising in situations that are highly structured, recurring, and can be predicted or detected and manipulated consistently by the organization.

It follows that nudges are most promising in situations that are highly structured, recurring, and can be predicted or detected and manipulated consistently by the organization. The situation must also involve the opportunity to engage in misconduct, and there must be a known psychological principle or cognitive bias that can be exploited to encourage good conduct or that needs to be neutralized in order to reduce the motivation to misbehave. And the intervention has to be somehow built into the system so that it will be presented at the right time. This just-in-time application of cognitive manipulations that are just right for a particular situation is an extraordinarily difficult task. Consider that the typical first-time embezzler, inventory thief, or kickback recipient has had the opportunity to commit these offenses for months or years without previously having done so. How would you know when a nudge is needed? In sum, it is hard to find situations that meet all the required criteria for an effective nudge. In most organizations, most of the time, the situational target doesn't stand still.

Even for routine transactions, nudge architecture has its limitations. One of the most promising fields for applying decisional nudges may well be the financial services industry, where transactions are highly replicable and very often automated through transaction-processing systems. The potential clearly exists to modify these systems to incorporate behavioral nudges. But consider the following: First, if the situation (including the specific temptation to misbehave) is that predictable, you have to ask whether it might be easier to implement conventional "hard" controls that simply prevent the misconduct or pointedly monitor for it. If so, that probably beats trying to get inside the employee's head so you can re-wire his decision-making process. Second, if the situation is predictable and replicable, and you insert an equally predictable and replicable behavioral nudge, how long will it take before that nudge becomes stale and completely ineffective, just another mindless click-through, another useless bureaucratic step on the way towards completing the transaction? Not long, I would guess. (I would love to see some research on the ongoing effectiveness of the "signature-at-the-top" technique in contexts where the certification is obtained weekly or monthly, as is likely to be the case with a competitive-bidding checklist.)

One overlooked distinction between the realm of compliance and those of the governmental, employment, and social contexts, where nudges have been notably successful, is that misconduct usually occurs in secret. The familiar nudge success stories tend to occur in transparent contexts where others know whether you've paid your taxes, lost weight, or stopped smoking. The fact that people are watching these behaviors (and may be controlling your incentives) is part of the nudge system. Needless to say, monitoring for compliance is an imperfect and costly process. If we always knew when misconduct had occurred, Compliance would be a much less challenging field, deterrence would work a whole lot better, and we wouldn't be worrying about subtle psychological interventions.

The familiar nudge success stories tend to occur in transparent contexts where others know whether you've paid your taxes, lost weight, or stopped smoking.

Finally, while many discoveries in the psychology of compliance identify and explain increased risks of misconduct, not all of these nuggets point to an obvious remedial intervention. In part, this is because many of the environmental elements that amplify compliance risks are standard features of the business setting, such as competition, performance pressure, authoritarian chains of command, binary risk/reward situations with high stakes, and diffusion of responsibility and of harm. For example, Dan Kahneman and Amos Tversky won a Nobel Prize for explaining the lopsided behavioral impact of our irrational aversion to losses: We typically hate a loss about twice as much as we love an equivalent gain, and we take extraordinary risks, including legal and moral risks, to avoid what we perceive as losses.[4] But while it is easy to understand how excessive loss aversion can fuel and escalate misconduct, it is hard to figure out how to keep people from thinking of their long-expected bonus as an "asset" that may be "lost" if a sale doesn't go through by next Tuesday.

Behavioral ethics, compliance, and organizational culture

Because of these practical limitations on the use of laser-targeted mental shoves, I believe that the most important compliance-program benefits of behavioral ethics research can be found elsewhere. I believe that at our current state of the art, it is more useful if we shift our analysis (and our efforts to apply behavioral science to compliance) upwards a couple of levels in the psychological hierarchy, away from the cognitive-processing level to the levels of social group effects and organizational culture. At those levels, behavioral science is easier to apply and the results are more pervasive.

Experimentally and experientially, we know the effects of group commitment and conformity to group norms, and we know how powerfully the right kind of leadership can promote employee engagement and establish strong norms of conduct within work groups. At the culture level, we have large-population studies[5] that show a powerful linkage between compliance outcomes, ethical-culture markers, and leadership behaviors. Specific practices that can contribute to these outcomes have been identified and their effects measured.[6,7] We can encourage those practices, especially with organizational leadership and managers.

And the great strength of group norms and cultural "how we do things around here" signals is that they're turned on almost all the time. They are expressed by everyday feedback; by pats on the back or disapproving glances; by inclusion or exclusion; and most of all, by the day-in, day-out conduct of group members and leaders. These are the everyday backdrops that frame expectations and behavior in the workplace. They define what it means to belong in the group, and group members reinforce those signals when norms are violated. Unlike precise cognitive interventions, group norms and cultural expectations don't have to be artificially injected into a specific, predictable situation in order to affect behavior; they are the very context in which behaviors are conceived and carried out. They are, in fact, cognitive bias manipulations on a grand scale. Because we are social animals, they influence our behavior without our even being aware of it. And they are ubiquitous. The healthier the culture, the stronger the group norms, the more ever-present they are, and the more likely they are to be present and influential at the very moment they are needed. There is no need to aim them at a moving situational target; they've got it surrounded.

Behavioral ethics can also play a big role in securing corporate leaders' commitment to any needed reshaping of organizational culture. It can help leaders understand how easy it is for good people to fall prey to temptation or pressure; how misconduct can occur anywhere, at any time; and how the person behind it may well be someone who has justly earned the organization's trust right up to the moment of betraying it. Business leaders need to know that compliance is not all about rooting out a few inherently "bad apples," but is more about creating an environment where good apples are less likely to rot and will have an opportunity to thrive. The growing body of solid science in this field provides the kind of compelling, objective evidence that can persuade boards and executives to support ethical-culture efforts based on principles more ambitious than "hire good people." That support, both in terms of leaders' commitment of their own time and energy and in terms of institutional resources, is a prerequisite for any meaningful program of culture change.

Behavioral ethics can also play a big role in securing corporate leaders' commitment to any needed reshaping of organizational culture.

Now, no set of norms and no culture can prevent misbehavior by a determined criminal. Someone who plans and executes a scheme to enrich themselves or gain power, a true rational calculator whose only constraint is the likelihood of getting caught, is not going to be deterred by culture any more than by a cognitive intervention. Likewise, someone who originally made a small misstep (such as "borrowing" company funds with the intention of repaying) and has become trapped in a vicious cycle of escalating misconduct is not likely to confess just because they're in a good culture. For these people, we will always need a bigger toolbox than culture alone.

Conclusion

But one of the great things about an ethical culture is that whether or not it is effective against a particular wrongdoer, it still has the power to influence the much larger group who work with the wrongdoer. We know that in an organization with a strong ethical culture, people are much more likely to report misconduct that comes to their attention. And that's the secret sauce of culture: what it doesn't prevent, it can help uncover. We can never prevent all misconduct, but with ethical leadership and a strong ethical culture, we can build a workplace where people feel comfortable speaking up when they know something is wrong. If we succeed, it not only reduces the damage from the particular misconduct that is reported; on a broader scale, it creates a risky and inhospitable environment for bad apples.

So let's use nudges when the situation is right. But we'll miss a much larger opportunity if we fail to take advantage of what psychology tells us about building an ethical workplace. We know what it takes to put a compliance-positive culture in place; we know that it's efficient and works across a wide variety of compliance situations; and when it doesn't prevent misconduct, it can function as its own backstop by encouraging whistleblowing. It's hard work, it takes time, and it requires complete commitment from leadership, but the rewards are enormous. ✳

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2. *See* Lisa Shu, Nina Mazar, Francesca Gino, et al: "Signing at the beginning makes ethics salient and decreases dishonest self-reports in comparison to signing at the end" *Proceedings of the National Academy of Sciences*, vol. 109, No. 38, p. 15197. Available at http://bit.ly/dishonest-self-reports
3. *See* Max H. Bazerman and Francesca Gino: "Behavioral Ethics: Toward a Deeper Understanding of Moral Judgment and Dishonesty" *Annual Review of Law and Social Science*, 2012; vol. 8, pp. 85-104. Available at http://bit.ly/annual-reviews
4. *See* Daniel Kahneman: *Thinking, Fast and Slow*, New York: Farrar, Straus and Giroux, 2011.
5. Linda K. Treviño, Gary R. Weaver, David G. Gibson, et al: "Managing Ethics and Legal Compliance: What Works and What Hurts" *California Management Review*, 1999; vol. 41 pp. 131-151. Available at http://bit.ly/cal-manag-rev
6. Idem.
7. Scott Killingsworth: "Modeling the Message: Communicating Compliance through Organizational Values and Culture" *Georgetown Journal of Legal Ethics*, Fall 2012; vol. XV, no. 4; pp. 961, 971-77.

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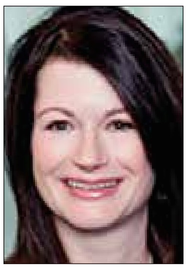
by Erica Salmon Byrne

Signaling governance

"Governance"—a word originally derived from Middle English—is broadly defined as "the action or manner of governing." In a business context, it generally means the framework by which a board balances the company's relationship with all of its stakeholders. It will usually include rules on distribution of rights and responsibilities, processes for addressing conflicting interests, and procedures for supervision, information flows, and other tools that ensure a system of checks and balances.[1]



Salmon Byrne

There are obviously a number of ways that a board can choose to "signal" its governance structure. The one that gets less attention than it is due, however, is the organizational chart. It is a clear signal to anyone reviewing it of who—or which roles—truly matter inside the company, and the reporting lines are governance channels, whether they are intended to be so or not.

Think about this. In cultural survey after cultural survey, employees say their manager is their most important ethical role model. In our 2016 data, employees who witnessed misconduct raised it with their manager approximately 74% of the time (compared to only 2% who took their concern to the hotline). That makes sense; they know their manager, and they are respecting the organizational hierarchy transmitted to them via the organizational chart. Misconduct occurring inside the organization is a key piece of the "information flow;" therefore, by setting up reporting lines, you have set up information flows.

If you look at this issue through the eyes of the regulators, you can see that they too see an organizational chart as a kind of signal. Why else ask whether a compliance officer can be fired without the board being notified, as Seth Cohen (then of the SEC) and Andrew Weissman of the DOJ both noted they always consider in public keynote remarks last year. Those kind of governance signals—often sent via the "who reports to whom" lines in an organizational chart—matter tremendously when an outside set of eyes is evaluating your program.

Think about this. In cultural survey after cultural survey, employees say their manager is their most important ethical role model.

Now, an organizational chart is not going to tell you everything; we've all worked at companies where there were back-channel reporting lines, long-standing relationships between colleagues that meant information flowed in unexpected ways, or "dotted line" reporting structures that were anything but fragmented. But they are a good place to start. So pull yours out and ask: "Am I sending the right signals?"

1. Read more: http://bit.ly/corp-gov

Erica Salmon Byrne (erica.salmonbyrne@ethisphere.com) is the Executive Vice President of The Ethisphere Institute. @esalmonbyrne

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Eileen Sanchez, CCEP
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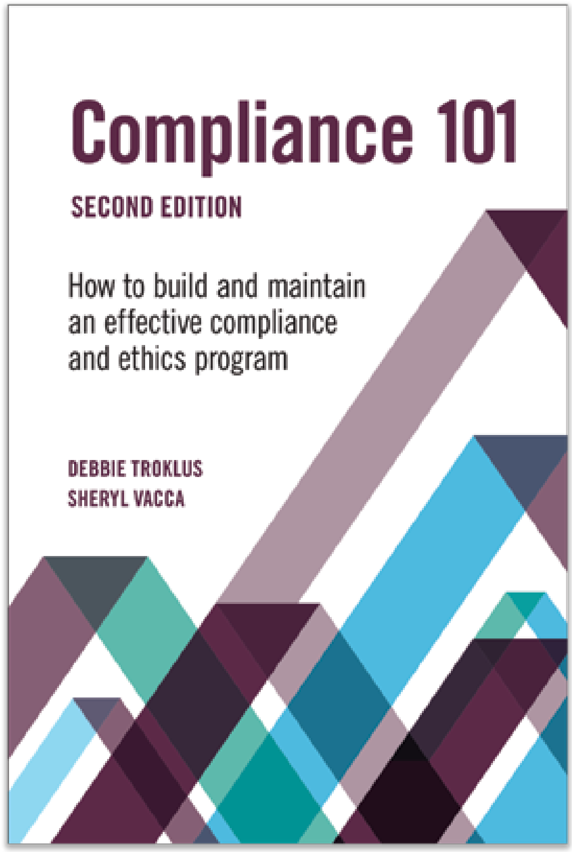

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by Patrick W. Kelley, JD, LLM, MBA

Compliance renaissance in the federal government?

» OMB's recently revised guidance on risk management and internal controls in the Executive Branch requires federal agencies to implement ERM programs and policies similar to those found in the private sector.

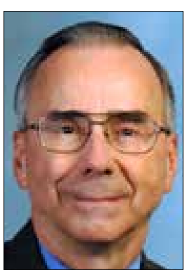
» Risks must be analyzed and managed in relation to an agency's strategic, operational, reporting, and compliance objectives in a formal manner that provides reasonable assurance that agency objectives will be achieved.

» Few agencies will have to start from scratch, but many will need to devise and implement a compliance program, because comparatively few agencies currently have such programs in place.

» OMB gives agencies wide latitude in determining how best to implement ERM, but it's likely that there will be a growth in the number of compliance programs throughout the government.

» Government should and will look to the private sector for help and guidance in establishing compliance programs.

One of the small ironies of the Compliance profession is that, although the United States Sentencing Commission's Sentencing Guidelines provide a foundation for judging the adequacy of corporate compliance programs, the Guidelines don't apply to the federal government itself. That's not to say that the government has no internal controls, codes of conduct, or oversight mechanisms. On the contrary, the government, as we would expect of any institution founded upon a constitutional system of checks and balances, has a wide variety of such measures. Executive Branch employees, for example, are subject to a detailed code governing personal and professional conduct in the *Standards of Ethical Conduct for the Executive Branch*,[1] and there are comprehensive financial disclosure reporting requirements covering most senior employees in all three branches of the federal government. But some features common to most corporate compliance programs, such as compliance risk assessments, are not found in many government agencies. That, however, is about to change.



Kelley

That's because, on July 15, 2016, the Office of Management and Budget (OMB) issued revised *Circular No. A-123*, titled "Management's Responsibility for Enterprise Risk Management and Internal Control" (A-123).[2] A-123 requires federal agencies to implement an "Enterprise Risk Management (ERM) capability coordinated with the strategic planning and strategic review process established by [the Government Performance and Results Act Modernization Act] and the internal control processes required by [the Federal Managers' Financial Integrity Act]." The goals of this "integrated governance structure" are to "improve mission delivery, reduce costs, and focus corrective actions towards key risks."

Technically, A-123's requirements apply to federal "agencies," which are typically large departments, such as the Department of Justice, not to its components. But to implement the circular's requirements, the various departments of the Executive Branch will certainly expect their many components to both cooperate in the department-wide implementation of ERM and to implement ERM within their respective management structures. Thus, for all intents and purposes, most components are bound by A-123's dictates.

OMB requirements

A-123 requires agencies to integrate risk management and internal controls at the enterprise level and to implement an assessment process based on Government Accountability Office (GAO) standards in order to assess and improve operations, reporting, and compliance. The basic requirements are to: (1) establish a governance structure to implement, direct, and oversee ERM in the enterprise; (2) leverage existing offices and capabilities; (3) develop a "maturity model" approach to build capabilities over time; and (4) annually evaluate the effectiveness of internal controls using GAO standards.

A-123 further requires risks to be analyzed in relation to an agency's strategic, operational, reporting, and compliance objectives, as described below (see Table 1).

Agencies are given wide latitude in how to satisfy these mandates, but A-123 does promulgate some specific requirements. (see Table 2).

Agencies are encouraged (not required) to develop an approach to implement Enterprise Risk Management (ERM), which may include:

- a planned risk management governance structure,
- a process for considering risk appetite and risk tolerance levels,
- a methodology for developing a risk profile,
- a general implementation timeline, and
- a plan for maturing the comprehensiveness and quality of the risk profiles over time.

Table 1: Risk Areas

Risk Areas/Objectives	Relating to:
Strategic	The strategic goals aligned with and supporting the agency's mission US
Operational	The effective and efficient use of agency resources in support of administrative and major program operations, including financial and fraud objectives
Reporting	The reliability of agency reporting
Compliance	The agency's compliance with applicable laws and regulations

Table 2: Requirements

Deliverable	Due Date
Develop Implementation Approach	As soon as practicable, but prior to June 2017
Develop Initial Risk Profile	June 2, 2017
Integration with Management Evaluation of Internal Control	September 15, 2017
Updated Risk Profile	Annually by June 3rd

Agencies must complete their initial risk profiles in coordination with agency Strategic Reviews. Key findings should be made available for discussion with OMB by June 2, 2017 as part of the agency Strategic Review meetings. This initial risk profile will inform the development of each agency's new strategic plan and the President's FY 2019 Budget.

For those risks for which formal internal controls have been identified as part of the initial risk profile in FY 2017, all agencies must present assurances on internal control processes in the FY 2017 Agency Financial Report (AFR) or the Performance and Accountability Report (PAR), along with a report on identified material weaknesses and corrective actions. Until an agency has fully implemented an ERM approach to risk management, it may continue to provide the existing risk assurance statements to its Inspector General's Office and/or private accounting firms, as appropriate. No less than annually, all agencies must prepare a complete risk profile and include required risk components and elements required by the OMB guidance.

Central to successful implementation of ERM is the creation of a risk register (i.e., a comprehensive listing of all substantive agency risks) and a risk profile to assist with identifying, assessing, and managing risks across the enterprise in a formal manner that provides reasonable assurance that agency objectives will be achieved. The primary purpose of a risk profile is to provide a thoughtful analysis of the risks an agency faces toward achieving its strategic objectives arising from its activities and operations and to identify appropriate options for addressing significant risks.

The risk register and risk profile are used in the annual strategic review process and as a basis to determine the overall risk appetite and risk tolerance of the agency. Risk appetite is defined as the broad-based amount of risk an organization is willing to accept in pursuit of its mission/vision. It is established by the organization's most senior leadership and serves as the guidepost to set strategy and select objectives. Risk tolerance means the acceptable level of variance in performance relative to the achievement of objectives. It is generally established at the program, objective, or component level and aligns risk tolerance with risk appetite.

The risk register and risk profile are used in the annual strategic review process and as a basis to determine the overall risk appetite and risk tolerance of the agency.

Implementation

Thus, A-123 requires agencies to build an ERM governance structure that leverages existing risk-management offices and processes using a model that will mature over time while simultaneously using GAO standards to evaluate the effectiveness of internal controls on an annual basis. Put simply, agencies have to work with what they have and start where they are.

Few agencies will have to start at "ground zero" since, as noted above, all have some elements of an ERM system, even if they don't call it that. On the other hand, many agencies do not have systems in place to identify and mitigate strategic, operational, reporting, and compliance risks. All agencies, for example, have ethics programs because they are mandated by law and regulation, particularly the *Ethics in Government Act of 1978*, but relatively few have a compliance program. Those that do will, consequently, be well along the path to ERM implementation.

The Federal Bureau of Investigation (FBI), for example, has a number of divisions and offices, including an Office of Integrity and Compliance (OIC), which individually and collectively perform a variety of risk-management functions that cover the four areas of objectives/risks identified by A-123. The FBI Resource Planning Office (RPO) has a Performance and Strategy Section that develops the enterprise strategy for achieving the FBI mission and assists divisions with developing and coordinating their individual strategies to advance the overall FBI strategy. RPO also helps ensure the FBI's operational resources are dynamically aligned against threats.

Similarly, the FBI Finance Division develops the FBI's annual assurance statement, which assesses the adequacy of internal controls against GAO standards; prepares continuously for annual audits of FBI financial systems, statements, and processes; and uses a variety of means to ensure the integrity of FBI financial reports. The office of the FBI Chief Information Officer, through its "life-cycle management" program, manages the risks inherent in the development and deployment of major IT systems. And, OIC manages a robust compliance program that regularly presents senior FBI management with compliance risk analyses and mitigation plans.

A-123 gives agencies wide latitude in determining how best to implement its mandates, so different agencies will adopt different methods as the deadlines specified by OMB approach.

Even if an agency has a solid foundation for establishment of an ERM governance program, it will need to ensure that the various discrete elements of that foundation are merged into a unified, integrated whole. Agencies will find that they need a process by which the varied outputs of any existing risk-management offices and functions can be measured, presented, and reviewed in a consistent, repeatable, and unified manner. Agencies that lack such offices and functions will have to create them.

A-123 gives agencies wide latitude in determining how best to implement its mandates, so different agencies will adopt different methods as the deadlines specified by OMB approach. A-123 does not, for example, require creation of any new positions, but it strongly recommends designation of an agency chief risk officer (CRO), both to serve as a focal point for implementation of the program and to repose responsibility for its day-to-day operation in an executive.

Similarly, A-123 recommends, but does not require, the creation of an agency risk council. The council would be responsible for:

- providing the overall strategic direction for the agency's risk-management efforts;
- defining the agency's organizational risk tolerance;
- reviewing the totality of enterprise risks (the risk register) in the four areas identified by OMB (i.e., strategic, operational, reporting, and compliance);
- prioritizing them in a risk profile; and

- overseeing mitigation or avoidance of, or other response to, the greatest risks in a coordinated, enterprise-wide manner.

Establishment of a council also encourages open and candid conversations about the organization's risks and allows executive leadership to understand the overall risk profile and how it impacts their respective areas of responsibility.

> Compliance has been a growth profession in the private sector for a number of years; we can expect that trend to continue in the government sector…

Conclusion

Whether or not agencies choose to appoint CROs and create risk councils, it seems reasonably safe to predict that we will see a growth in compliance programs throughout the Executive Branch. This development may be greeted by some in the profession with an utterance of "It's about time," but we should view it from a more nuanced perspective. We should expect, of course, that agency compliance programs will reduce—not totally eliminate, but reduce—the number of government non-compliant practices, programs, and incidents. That alone will be worth the effort.

In the author's view, however, OMB's mandate will, over the long haul, have three consequences that aren't readily apparent from a quick read of A-123. First, the number of compliance professionals in the federal government will significantly increase. Compliance has been a growth profession in the private sector for a number of years; we can expect that trend to continue in the government sector now that OMB has mandated compliance risk management to become part of the fabric of the governance of government.

Second, government, in a bit of an ironic twist, will look to the corporate sector for help and guidance in establishing robust compliance programs. The corporate sector has, after all, had well-established and well-run compliance programs for years. And, if the author's personal experience is indicative of how the Corporate Compliance profession will react to such requests for assistance, government will find corporate compliance professionals extremely generous with their time, talent, knowledge, and experience and be happy, if somewhat bemused, to help their government counterparts institute compliance programs in their taxpayer-funded agencies. Third, government compliance practitioners will find what their private sector peers have known for years: There's great satisfaction in doing well while doing good. ✳

Disclaimer: The views expressed in this article do not necessarily represent the views of the FBI or the United States.

Special Thanks: The author wishes to thank Timothy Growley, Management Program Analyst at the FBI, for his assistance in preparing this article.

1. U.S. Office of Government Ethics: Standards of Ethical Conduct for Employees of the Executive Branch. Codified in 5 C.F.R. § Part 2635, as amended at 81 FR 48687 (July 26, 2016). Available at http://bit.ly/oge-ethics
2. Office of Management and Budget: OMB A-123 2016 Update. Available at http://bit.ly/agadc-changes

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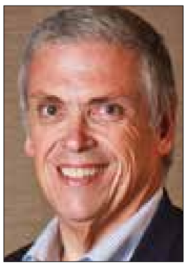
by Art Weiss, JD, CCEP-F, CCEP-I

HELP…Is anyone listening?

An essential element of every compliance program is guidance. The U.S. Sentencing Guidelines and common sense both call for it. Best practices generally include a central repository for an organization's policies and procedures. This includes guidance on how the policy is applied, to whom it's particularly applicable, who "owns" the policy, its last revision date, and to whom employees should go for guidance or help in interpreting or following the policy.



Weiss

Some organizations are able to meet this need simply by publishing detailed information accessible to all. Others give a brief summary and list a contact person to whom employees go, or whom to call, for answers to questions.

Whichever system, combination of systems, or something totally different you use, you must make certain your route to answers to employee requests for help is clear and useful. This calls for a system far better than most offered by companies for customers to receive help. Don't let your employees fall into this type of convoluted black hole of "customer service":

Ring, ring, ring…

Company: *"Press one to continue."* (If I didn't want to continue, I wouldn't have called, you moron!)

Company: *"For identification purposes, please insert your PIN."*

Company: *"What street did your third grade teacher grow up on?"*

Company: *"What is the name of your parole officer's favorite pet?"*

Company: *"Which of the following banks turned you down for a credit card in 1973?"*

Company: *"Did your prom date let you kiss him/her on your first date?"*

Company: *"What is your great, great grandmother's maiden name?"*

Company: *"What are the last ten transactions that have posted to your bank account?"*

Whichever system, combination of systems, or something totally different you use, you must make certain your route to answers to employee requests for help is clear and useful.

Get the picture? While these are (slightly) exaggerated, you get the idea. I'm sure you've all had frustrating experiences trying to get through to someone for help answering your question. Unlike most of these telephone black holes, hitting "0" over and over again won't help. Have a comprehensive and easy-to-navigate method for your employees to seek guidance. ✳

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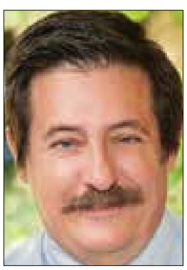
by Thomas R. Fox

How doing Compliance makes companies great

» Doing compliance makes businesses run more efficiently.
» Doing compliance brings better return on investment.
» Doing compliance makes businesses more profitable.
» Doing compliance improves business processes.
» Doing compliance is doing business.

The Compliance community needs to understand that a Trump Administration is not the end of compliance. The reason is that good compliance is good business, and any process that helps businesses to be more efficient and do business more profitably is not going to diminish in size or importance. Companies understand that compliance and business ethics have a role in not only driving business strategies and initiatives, but that more compliant companies are better run companies and, at the end of the day, more profitable because they have better controls.



Fox

The Compliance profession is where the magic happens in a corporation. Whether it is the specific tasks of making sales, vetting relationships, or the spade work of creating policies and procedures, it is compliance that drives the discussion of how we should do business. The corporate Compliance profession fulfills the business obligation in doing things the right way for, at the end, it will be the Compliance profession that implements the requirements of compliance, whether those requirements are anti-corruption laws such as the Foreign Corrupt Practices Act (FCPA), the UK Bribery Act, Anti-Money Laundering (AML), export controls, anti-trust regulations, or any other regulation that you can name. Equally importantly, the Compliance profession is teaching corporations how to evaluate risks, and the Compliance profession leads that discussion. It is the Compliance profession that is the most innovative in not only protecting corporations, but in actually helping corporations do business, do business more efficiently, and do business more profitably.

> The most bottom-line of all business reasons for the continuation of compliance is that doing compliance is good for business profitability.

Doing compliance increases return on equity

The most bottom-line of all business reasons for the continuation of compliance is that doing compliance is good for business profitability. This was aptly proven by Paul

M. Healy and George Serafeim in a paper entitled, *"An Analysis of Firms' Self-Reported Anticorruption Efforts."*[1] The authors looked at the issue of not simply profitability of companies that had more robust anti-corruption compliance programs, but also the direct effect on their return on equity (ROE) in countries that were perceived to have a high incidence of corruption.

Having been raised in an academic household, when quantitative types say, "The magnitudes of the estimated coefficients are economically interesting," it is a *huge* deal. These findings are equally large and important for the Compliance profession for three reasons. First, the authors demonstrate that companies with more robust compliance programs are from countries that have more robust enforcement and monitoring by government authorities and regulators. Second, the more robust your compliance program is, the lower your sales growth may be, but your overall return in a high-risk country will be higher going forward. Finally, even if a company sustains high sales growth in a high-risk country, if it does not have a robust compliance program, the sales will drop off dramatically and may well lead to negative ROE.

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Doing Compliance improves business processes

The evolution of compliance programs arises from both the business and legal enforcement perspective. Just as compliance programs sprang up, grew, and began to evolve and mature in the middle of the last decade, the sophistication of the regulators has also increased. We most clearly see this in the appointment of the Department of Justice (DOJ) Compliance Counsel Hui Chen.

With her initial public remarks, in November 2015 at the New York University Program on Corporate Compliance and Enforcement, Chen provided insight into how she would consider the effectiveness of a compliance program. Her key point was that your company should operationalize its compliance program by tying it to functional disciplines within your company. This means that Human Resources (HR), Payment, Audit, Vendor Management, and similar corporate disciplines should be involved in the operation of your compliance program in their respective areas of influence. Then, in April 2016, under the remediation prong with the initiation of the DOJ Pilot Program around FCPA enforcement, the DOJ once again emphasized the operationalization of a company's compliance program as a key metric in determining benefits under the program. You must actually be *doing* compliance going forward.

This evolution in the DOJ's thinking and its sophistication of compliance program analysis is in clear response to how the market initially responded to the requirement to have a compliance program back in the 2004 timeframe. Each deferred prosecution agreement (DPA) in Schedule C, under the details of a *best practices* compliance program, has required the company to take "into account relevant developments in the field and evolving international and industry standards" in upgrading their compliance program. This requirement has led companies to keep abreast of best practices and continually evolve their compliance program forward. The DOJ in turn has upped its game and now requires companies to operationalize compliance.

Doing compliance means doing business

There are multiple types of risks in a business: operational, regulatory, and reputational, just to name a few. The effort to measure and then manage each of these risks can be led by the Compliance function. The more efficiently these risks are measured (i.e., assessed), the more easily and efficiently these risks can be managed. This means that the business is not faced with a binary 1/0 or Go/No Go decision on risk, but if Compliance moved into measuring and managing risk through the operationalization of compliance into the business unit, the process would help you to do business more efficiently and with greater profitability.

> Compliance is a platform to make your company not only a better run organization, but can also demonstrate the thoughtfulness and effectiveness of your compliance program if a regulator ever comes knocking.

Compliance is a platform to make your company not only a better run organization, but can also demonstrate the thoughtfulness and effectiveness of your compliance program if a regulator ever comes knocking. This is because if you operationalize compliance into the fabric of your organization, compliance internal controls will touch every aspect of the employment experience in a way that is not obtrusive and will not slow down what you are trying to achieve.

In the discipline of HR, at every point in the talent management cycle, HR can insert compliance. Those points include the pre-employment interview and screening; the interview process with progressively higher senior management; the initial on-boarding process; the quarterly, semi-annual, or annual performance review; annual bonus review, assessment, and award; promotions; and even the employee exit interview. The platform of Compliance can record each of these touch points, and you now have an internal compliance control burned into HR internal controls. Further, if there is any attempt to circumvent or over-ride one of these HR internal controls that involves hiring the son or daughter of a foreign governmental official, a red flag can be raised and sent to the Compliance function for further review.

Compliance is a marketing platform. Some attention has been paid to the use of Compliance as a recruiting and hiring tool for millennials. One of the facts of their generation is they want to work at companies that are seen to be doing business ethically, all the while making money. Moreover, as the Ethisphere Institute demonstrates annually with its World's Most Ethical Company awards, businesses that win those awards, on average, exceed the New York Stock Exchange (NYSE) blue chip average for profitability.

Compliance embraces public advocacy. The Volkswagen (VW) emissions-testing scandal is one of the largest corporate scandals of the past few years. One thing that makes the VW scandal so unique is that it is one of the few scandals where a company's actions were so transgressive, it damaged the reputations of its competitors. As a response to the VW scandal, Ulrich Grillo, President of the German manufacturing industry association BDI, recognized that compliance is the answer. He urged companies to check their management processes, including compliance and control systems. He suggested one of the key questions to ask should be: "Are we doing everything right?" When you have the president of a national industrial association saying compliance is the answer, you need to sit up and take notice.

As a response to the VW scandal, Ulrich Grillo, President of the German manufacturing industry association BDI, recognized that compliance is the answer. He urged companies to check their management processes, including compliance and control systems.

Conclusion

As we move from the legal-based model of compliance to the more mature understanding that compliance may best be thought of as a business process, we begin to see how compliance can fit seamlessly into a business. This integration will allow a business to move more nimbly and with greater acumen. Compliance has been driven largely by legal requirements. The enactment of the FCPA in 1977, the implementation of the 1992 Federal Sentencing Guidelines, the passage of Sarbanes-Oxley (SOX) in 2002, and Dodd-Frank in 2010 have all led to development and innovation in compliance. Now the DOJ is upping the bar again by talking about the operationalization of compliance, and this shift will continue to advance the corporate Compliance function. When the regulators come to recognize and indeed advocate the business application of a legal solution, that solution will not go away, but will continue to grow. ✳

1. Paul M. Healy and George Serafeim: "An Analysis of Firms' Self-Reported Anticorruption Efforts" *The Accounting Review,* March 2016, vol. 91, issue 2. Available at http://bit.ly/accounting-review

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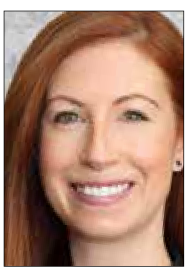
by Lisa Hawke, JD, CCEP, PMP

Compliance at a tech startup

- If you are considering joining an early-stage startup in a compliance role, make sure you know why they are hiring for this role and whether you have the support of the CEO and team.
- Do not assume that the staff understands your compliance role and why you are there—be approachable, explain what you are doing, and learn about their roles.
- The importance of spending time with the team in order to establish camaraderie, trust, and credibility can't be overstated.
- Don't be afraid to reflect the company culture and tone in the materials you create as part of the compliance program; observe what is effective in other business contexts.
- Be prepared to do a bit of everything!

In July 2016, the health technology company Theranos made news when it hired a chief compliance officer and created a Compliance and Quality committee after being sanctioned by federal regulators.[1]

It is a familiar outcome for companies on the wrong side of a government investigation, and a situation that many of our compliance colleagues find themselves addressing as the professionals brought in to get the house in order. As the Director of Policy and Compliance at a Berkeley, California-based startup company, I'd like to share my perspective about developing a compliance program at a technology startup and offer some tips to others who may join startups in the future.



Hawke

Everlaw is a legal technology startup dedicated to developing cutting-edge technologies that improve the practice of law, including a litigation platform that combines intuitive design and advanced computer science to help lawyers win their cases. In January 2016, Everlaw landed $8.1 million in Series A funding led by Andreessen Horowitz. I joined as employee number 25 in May 2016, and now we are up to a staff of 34. In this article, I will share my experience in creating and implementing a compliance program at a small but growing tech company.

> I built my career in the oil and gas industry, serving in regulatory, compliance, and project management roles at Direct Energy and BP.

Getting into the tech industry

When I joined Everlaw, I didn't come from another startup or larger tech company. I built my career in the oil and gas industry, serving in regulatory, compliance, and project management roles at Direct Energy and BP. Although software development and the SaaS business model were new to me, I had lots of experience working as a functional partner in a fast-moving business faced with the challenges that many compliance leaders and teams grapple with—tone from the top and compliance culture (or a lack thereof), internal and government investigations, and developing strong relationships with commercial teams while maintaining the necessary independence of a compliance professional.

So, if you are interested in getting into the tech industry in a compliance role, it is likely that your "old guard" industry experience will be applicable if you are game for learning a new business model. If you are considering joining an early-stage startup, my first tip is to make sure that you know why they are hiring for the role and establish whether you will have access to external resources (e.g., outside counsel, independent auditors) when required. Is the position open to fix something that is already broken, or is it a proactive move in support of growing the business the right way?

In my case, it was the latter. Although some corners of the tech industry have a temerarious reputation, it is not the case with all startups. Everlaw had already successfully become certified by an independent auditor as SOC 2 Type I compliant in Security and Availability (an evaluation concerning policies and procedures in operation at a specific moment in time).[2] By hiring a compliance director, the company would be able take the next step in the SOC 2 framework of testing the operational effectiveness of its security policy infrastructure, as well as broadening the compliance program in support of its business goals.

What about the tone from the top? I knew that whether or not I could be successful in starting a compliance program from the ground up would be dependent on the CEO and his view on compliance. Everlaw's CEO (and my boss), AJ Shankar, made it quite clear that the new role was squarely tied to the company's established values. In an Everlaw policy, Shankar states:

> We do not "move fast and break things." We don't release a feature before it's ready. We don't overpromise to make a sale. This is a normative position. It's a stance that puts us in contrast to most startups—most successful startups, even. But we're in a space where the challenges and the customers demand long-term attention. Long-term planning makes good business sense, reduces the variance in our outcomes, and gives us the deep satisfaction of building something of lasting value.

I also met with four additional team members prior to starting and was able to sense-check their interpretation of Everlaw's values. I encourage anyone considering joining a tech startup to talk to as many potential team members as possible to better understand their commitment to company values, how they observe the values operating on a daily basis, and their openness to improving policies and procedures.

OK, I'm here for the right reason. Where do I start?

Once you've determined that a compliance role in a startup in tech aligns with your interests and expectations, there are a few things you can do to set yourself up for success.

Get to know the team

This is really important. At an early-stage technology startup, there are a few things to remember. First, most of the staff are probably going to be engineers. Other functions likely to be up and running are operations and sales teams. As a department of one, you will be heavily reliant on your wider team to learn the product, industry, and company culture.

Many of your colleagues may not know what goes into a compliance program, because they haven't been exposed to a compliance team before. This is the biggest difference from a large company where your colleagues see you coming and have notions about what the Compliance department will ask of them (for better or worse). The importance of spending time with the team in order to establish camaraderie, trust, and credibility can't be overstated. It will be tempting to want to hit the ground running and start delving into how you'll build the program, but my advice is to first focus on relationships with the team.

Take every opportunity you can to ask questions and learn from everyone, ask for their input regarding your plans and ideas, and eat lunch with them as often as possible! This will help you communicate the value of setting up the compliance program to the broader team, as well as provide you the opportunity to gain support. At Everlaw, I learned quickly that just mentioning what I was working on over lunch garnered interest in compliance and risk management in general (especially from those very early in their careers) and also led to team members volunteering to assist me with audit preparation and other documentation tasks.

> Take every opportunity you can to ask questions and learn from everyone, ask for their input regarding your plans and ideas, and eat lunch with them as often as possible!

Take advantage of the ability to design from the beginning

If you've ever thought that you would have done things differently when setting up a compliance program—well, at a startup, this is your chance. Although it may seem daunting at first, it is a really exciting opportunity for a compliance professional to create a new program from scratch. If you have many years of experience, you will be able draw on and use it. If you are newer to the field or entering a new industry, it is a great opportunity to do research on what has and hasn't worked for other companies and use your network for ideas. I was already a SCCE member, but I recently joined Tech Ladies and Women in Security and Privacy (WISP) to expand my network in the tech, security, and privacy fields.[3]

Once you've spent some time with your colleagues learning about what they do, the product, and how the business operates, you'll be ready to start brainstorming. In my case, Everlaw had some short-term priorities, including a SOC 2 Type II certification audit, as well as pre-existing policies and procedures that I could use as a starting point. One thing that really helped me get started in the program design process was a 30/60/90-day plan that AJ asked me to put together prior to starting at Everlaw. Of course, it changed drastically as I got going and learned the business and regulatory environment for SaaS providers, but it functioned as an overarching framework that I could return to and helped me focus and prioritize all of my ideas.

Know your risks and make a plan

Many resources can provide guidance on how to set up a compliance program, including *Compliance 101* by Debbie Troklus and Sheryl Vacca. I drew upon my past experience as well as referencing *Compliance 101* and other SCCE resources, but quickly determined that a risk assessment needed to be my first step. In previous roles, I had experience contributing to risk registers, rankings, and responses, but never led the assessment.

At a startup, you learn by doing! When it comes to assessing risks, what is important is that you have the right people in the room to discuss potential and actual vulnerabilities and risk response actions. At Everlaw, I include the heads of each department in the assessment meetings (e.g., Engineering, Sales, Operations), but also make sure the whole team has the opportunity to raise and document potential risks. I tailored the risk register to our business, and each quarter we reassess the risks we've recorded as well as the assessment method so that it can grow and change with the business.

The initial risk assessment helped me to clarify Everlaw's critical needs and the "nice to haves." It led to several policy and procedure updates, as well as creation of new policies, procedures, and training documents. We recently had our first face-to-face team compliance training, which highlighted all the new and updated information. I also sit down one-on-one with each new hire for a policy and compliance onboarding session. There is still a lot to do, but now we have a compliance roadmap.

At Everlaw, I include the heads of each department in the assessment meetings (e.g., Engineering, Sales, Operations), but also make sure the whole team has the opportunity to raise and document potential risks.

Be prepared to wear all the hats

If you are a regular reader of this magazine, you've heard before that compliance requires a working knowledge of about seven or eight professions (e.g., audit, education, risk, legal, investigations, ethics, policy development). At a startup, expect to do all of that and more, and come ready take initiative and be a leader. It will be up to you to chart a course, educate the team, and gain the support you need to implement your plan. My role at Everlaw includes privacy and information security, as well the "traditional" side of corporate compliance. This is a great opportunity to grow your own subject matter expertise, but remember to speak up when you need help and make it clear when you need assistance from external resources such as outside counsel.

In addition to spending time with the team in order to learn before you do, don't be afraid to reflect the company culture and tone when you are designing and implementing the compliance program. Everlaw's values of Attention to Detail, Belief in Process and Commitment to Growth, Deep Not Broad, Respect for Users, and Egoless Communication and Mutual Respect align with my goals and objectives for the compliance program, and it was easy to weave them into educational materials. Instead of the types and methods of training I had experience with at my previous company, I used my observations on how the Everlaw team takes in and learns new information to develop the material, which consists of a mix of conversational, written narratives with examples, and also face-to-face meetings with a gaming element. Would I have taken this specific approach at a bigger company? Probably not, but it is effective here, and that is what matters!

Conclusion

In my first eight months at Everlaw, I developed the risk assessment and register, updated our information security policies and procedures, created a Security Wiki website, created new business policies and investigation guidelines, developed and rolled out training, presented to our board of directors, completed a third-party independent audit, created an online system for tracking compliance and audit documentation, and learned how to play *One Night Ultimate Werewolf*.[4] I now have a plan and roadmap, and although I have a lot more to do at Everlaw as we continue to grow, we believe that building in a robust compliance program early can be a strategic advantage for a startup.[5] By having a scalable program in place now, we will be able to adapt as we grow, respond to the security and compliance needs of our clients, and respond to the changing regulatory environment for cloud-based SaaS companies. ✳

1. Gilbert Carrillo, and Edmund Tyrrell: "Theranos: New Compliance Program Hopes to Save the Company" *Inside Compliance*, Loyola University School of Law, October 3, 2016. Available at http://bit.ly/loyola-blog
2. For more information on SOC 2, see: http://bit.ly/aicpa-report
3. For more information on Tech Ladies and WISP, see: www.hiretechladies.com and www.wisporg.com.
4. For more information, see: http://bit.ly/ult-werewolf
5. Patricia Fletcher: "What Your Compliance Program (or Lack of It) Says About Your Startup" *Inc.*, July 21, 2015. Available at http://bit.ly/patricia-fletcher

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by Jason L. Lunday

Managing values: A vital element of culture, ethics, and success, Part 2

» Early experiences with an employer that promote and support corporate values can have a profound influence on an employee.

» Corporate values come in many types, each with a unique role in a company.

» Common values types are reflective, aspirational, historical, and connectedness.

» One values type an organization should avoid are "window dressing" values that serve no useful purpose.

» Corporate values also have a profound role in reinforcing ethics and compliance management.

This is the second installment of a three-part series. The first part appeared in our January 2017 issue. Part I of this article addressed the functions corporate values serve, benefits they provide and the challenges in working with corporate values.

Lunday

As mentioned in Part 1 of this article, companies are challenged with communicating their values to their workforces. A recent survey by Eagle Hill Consulting found that 47% of American workers do not know or are unsure of their employers' core values.[1] Clearly, unnoticed or misunderstood values have no real chance of making the impact that leadership would want. To borrow from marketing theory, leaders should promote values with their employees along a continuum—through awareness, knowledge, understanding, appreciation, and finally, application. Expecting employees to immediately apply values that they do not understand or appreciate is both unproductive and disingenuous.

Early exposure to organizational values

My first experience with corporate values came early in my career. Three years before I joined Goldman Sachs in the mid-1980s, *Institutional Investor* profiled the firm's culture and its impact on the firm's success.[2] According to the article, central to the firm's strong culture were Goldman's fourteen Business Principles, written by one of its longtime senior partners, John Whitehead. My own experience mirrored this assertion. The firm provided the Business Principles to all prospective and new hires. Leadership frequently communicated about them in management pronouncements. I often observed management, in company memos or policy documents, describe how a Principle reinforced the firm's commitment to certain business practices. (Goldman was well known for eschewing services related to hostile takeovers at this time.) I found that the Principles served as touchstones for conducting business and were handled with reverence. The Business Principles were a source of pride for my colleagues and certainly for myself. Because I worked in the Compliance function, the fourteenth principle resonated the most to me:

> Integrity and honesty are at the heart of our business: We expect our people to maintain high ethical standards in everything they do, both in their work for the firm and in their personal lives.[3]

I found it not insignificant that this was the final listed Principle—as if to say, if we don't get integrity right, nothing else matters. Several times I watched leadership take action against staff who appeared to violate this tenet.

Much has changed at Goldman Sachs since I left in 1991, and I cannot speak to the changes over the intervening years: a public offering, Wall Street's scandals, and significant shifts toward proprietary trading. But I imagine that with each new challenge it faces, Goldman's people ultimately still measure their success against how they do or do not demonstrate the Business Principles.

> Values are like fingerprints. Nobody's are the same, but you leave them all over everything you do.
>
> – *Elvis Presley*

Types of values

Values come in different forms. I have identified five basic types of values.

Reflective values

Reflective values are echoed in a company's activities through its employees' commensurate behaviors. (These are similar to what Freeman and Auster term as *historical values*.[4]) Reflective values typically are easier to manage than others, because employees have traditionally acted according to them, so less effort is needed to ensure operational congruence with them. Consider DuPont's value of safety: Early catastrophic problems in manufacturing gunpowder led the company to commit to an almost religious fanaticism on safety. Today, the company's preeminent mantra is safety above all else—a commitment endemic in the company's culture and, as I learned in talking with company employees, one that is always top of mind. Sit down for a meeting in a company facility and typically the first agenda item is the location of fire exits—for your safety.

Aspirational values

Aspirational values are those that leadership finds as critical to the company's continued success, but they are not necessarily well ingrained into the company culture. An aspirational value may be relatively new to the company's culture, but it will be one that the organization has shown by recent example to hold in high regard. When I worked at healthcare group purchasing company Premier, Inc., our CEO Rick Norling clarified that the company's fourth value of "innovation," while important to the company's success, was not fully ingrained in our culture—in effect, innovation was a value that we aspired to imbue. For many years, Levi Strauss & Co. promoted its "Statement of Aspirations" (a listing of several core tenets at the company). Although one tenet, diversity, had been a hallmark of Levi Strauss for many years, this aspirations statement also demonstrated the company's recognition that diversity still was a principle that the company continually aspired to achieve.

Introspective values

Freeman and Auster identify two additional value types, introspective and connectedness values. Introspective values are those that, after leadership's thoughtful reflection, are determined as important to the company's success. Identifying introspective values involves taking a step back from daily business and giving careful thought to what works for or detracts from the company meeting its long-term objectives.[5] In doing so, leadership may find that certain beliefs it has held dear for many years actually do not promote the company's interests; or vice versa, it should adopt new beliefs that will foster the company's success.

Connectedness values

Connectedness values involve beliefs that recognize and promote a company's connections with others—often, but not always, its recognized stakeholders—that help to build the company's success. Freeman and Auster clarify that this involves a sharing among parties, with each interested in encouraging the others' development and success. This important concept reinforces an idea I have heard Prof. Freeman promote for many years—that fundamentally, business success is about *cooperation* more than *competition*.

Window dressing values

A final type of corporate values can be labeled as *window dressing*, or those articulated values that have no semblance to anything that employees' actions truly reflect or want to aspire to, but rather are intended to create a "public relations face" for the company. The danger with window dressing values is that they likely will engender employee skepticism about leadership's management style and cynicism about leadership's integrity. And as other stakeholders watch the company act in contrast to these values, distrust and a diminished reputation are likely to follow. My former colleague Frank Navran tells the story of, when visiting a prospective client, he was impressed by banners in the office lobby that trumpeted the company's values. When he mentioned this to his host, she remarked that the banners really were "just for show," since employees used the back entrance near the parking lot; the lobby was for visitors.[6]

Aspects of Strong Corporate Values

- The values are deeply and widely shared by employees. Employees throughout the organization would list the values as highly regarded by company staff.
- The values are regularly and meaningfully demonstrated in employees' actions and company operations.
- The values support the company's mission and other core objectives.
- Practice of the values is reinforced and even pronounced during the company's difficult times or decisions.

Values' role in ethics and compliance

A central function for corporate values is reinforcing and strengthening a company's ethics and compliance efforts. Values do this in many ways. First, most values statements include at least one ethics-related value. The Booz Allen Hamilton/Aspen study[7] found that 89% of responding executives noted that their corporate values statement included a value akin to ethics, integrity, honesty, or openness. Interestingly, among financial leader companies, 98% include an ethics-related value. A Notre Dame Deloitte Center for Ethical Leadership survey[8] of the university's business school alumni working in 150 multinational companies found that "integrity" was included in 111 of the companies' values statements, the most often-included value by a large margin. Ethics-related values are the most prevalent of any category of value.

Second, values, ethics, and compliance standards work interdependently. Ethical standards ultimately are based on principles of good conduct, a commonality with at least some of the company's values. This idea of overarching principles as guiding employee conduct is paramount. Even such values as innovation, excellent customer service, and financial strength come from and serve larger principles concerning responsible business practices. As with ethics and compliance, this heightened focus on principles-based management promotes a more holistic, accountable, and long-term perspective of business.

Third, values reinforce the aspirational nature of ethics and compliance—that it is not just about following the law; it also can be about higher-level conduct. Consider codes of conduct for The World Bank ("Living Our Values")[9] and the Millennium Core Values handbook (now part of Takeda Pharmaceuticals).[10] Both publications structure the organizations' standards around their values. The standards then describe how adherence to them demonstrates commitment to the values. I have found many other codes of conduct designed to support their companies' values. When an ethics & compliance program leverages the company's strong values initiative, it sets a tone that ethics and compliance are about principled, aspirational conduct, not just about following rules or legal minimums. It encourages employees to consider the overriding value, not just the policy. In doing so, the values help to keep employees away from the legal minimum, because the goal is not simply compliance, but higher-order conduct.

Finally, strong values can help a company to avoid overly detailed policies to manage employee conduct, because employees are guided by a value's overriding principle and its rationale and less by the precise letter of the policy. The corporate values serve as "touchstones" that employees use to check potential actions with. Even where a company may adopt more detailed policies, likely less time is spent on quibbling over whether an employee breached the letter of the policy if it is clear that he/she did not live up to a value. And when an employee cannot easily access the code of conduct or other policies, an easily-remembered value provides guidance. ✳

Part 3 of this article will appear in our April issue.

1. Eagle Hill Consulting, press release: "Nearly Half of U.S. Workforce Unsure of Employers' Core Values" November 30, 2016. Available at http://bit.ly/eagle-hill
2. Beth McGoldrick: "Inside the Goldman Sachs Culture" *Institutional Investor*, January 1984.
3. Goldman Sachs, Inc.: *Business Principles.* Available at http://bit.ly/goldman-bus
4. R. Edward Freeman and Ellen R. Auster: *Bridging the Values Gap: How Authentic Organizations Bring Values to Life.* Berrett-Koehler Publishers, Inc., 2015.
5. Idem.
6. Frank J. Navran: "Off the Wall Ethics" *Compliance & Ethics Professional*, October 2014, pp 51-58.
7. Reggie Van Lee, Lisa Fabish, and Nancy McGaw: "The Value of Corporate Values" *strategy+business*, Booz & Co., Issue 39, Summer 2005. Available at http://bit.ly/strat-bus
8. Notre Dame Deloitte Center for Ethical Leadership: "Do Corporate Values Make a Difference?" Newsletter, undated. Available at http://bit.ly/corp-values
9. The World Bank, Office of Ethics and Business Conduct: Living Our Values. Available at http://bit.ly/wb-office
10. Takeda Pharmaceuticals: "Millennium Core Values" Available at http://bit.ly/takeda-pharm

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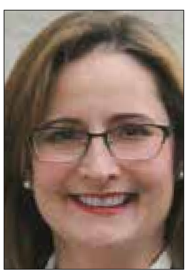
by Leona Lewis

Design reporting for executive compliance ownership

» Reporting can be designed towards building trust with executives.
» Executives need to trust the Compliance department to be engaged.
» Executives take ownership over things they make decisions about.
» Design reporting to make executives feel smart and supported.
» Design reporting to show that the compliance team is a resource.

Building a company culture in which business executives and operational teams take ownership in compliance can begin with how these same individuals experience working with the compliance team on a routine basis. In this article, I do not discuss the interaction with Compliance that business people have during a (hopefully) rare compliance emergency or government investigation. Rather, this article clarifies how regular compliance reporting can be leveraged to build a company culture of business leaders who take ownership in the compliance program.



Lewis

Actions and decisions

Company culture is based on actions, not on intentions. Many are familiar with a corporate workshop exercise where participants show support for a set of company values, or a project charter, or a list of principles by signing their name to a poster emblazoned with the "core values" or "top ten principles" of the group. Most recognize that this exercise does not create company culture. Similarly, if executives state an intention to support compliance, that does not mean any culture of engagement with the compliance program exists. Executives need to take action, regularly, to create an engaged compliance culture.

> Once an executive decides the specifics of the company compliance program will apply to the operations and they take responsibility for those specifics, the executive has a stake in the success of those decisions.

How executives take action is by exercising their decision-making role in the company. Once an executive decides the specifics of the company compliance program will apply to the operations and they take responsibility for those specifics, the executive has a stake in the success of those decisions. Executive ownership is built, decision-by-decision, over time. No single whiteboard session or abstractly stated "support" is a substitute.

To some degree, compliance reporting escalates decisions that need to be made by executives. As information about compliance is escalated to executives, they settle on choices that are basic for the compliance program to work. By making decisions, executives take ownership. Sounds simple. However, decision-makers need to trust the information and proposals they get from the compliance team and operations. Executives may attend a presentation, but trusting the people and information is a different matter. Ultimately, decision-making cannot be forced. Building understanding and trust between the compliance team and executives requires clear communication and time.

Reporting needs to be deliberately designed by the compliance team toward engagement with decision-makers. Reporting is the most routine way that company leaders experience the Compliance function and their role in it. Beyond valuable education about compliance risks the company faces, trust can also be built by:

- designing reporting to build trust that the compliance team is helpful;
- designing the reporting process to build trust, allowing executives to make decisions; and
- designing reporting to give executives confidence in the compliance team as a resource.

Reporting is the most routine way that company leaders experience the Compliance function and their role in it.

Building trust that the compliance team is helpful

The first step in designing compliance reporting for engagement is to understand how executives feel about compliance and how the compliance program can be helpful. Below are a sample of some of the statements that business executives may say, and how the statements translate to how executives feel about the compliance.

- "Compliance takes too much time from my job running the business." (Translation: "Compliance is not my job. The compliance team does not understand how valuable my time is.")
- "I don't like surprises!" (Translation: "I don't like being asked questions I cannot answer. I don't like looking stupid.")
- "Why can't I just have a list of all the rules?" (Translation: "The compliance team is not helpful to me.")
- "There are too many laws to comply with them all." (Translation: "Compliance is mysterious and scary.")

Elements of the reporting experience can be designed to be helpful to the executives. Position regular meetings with executives, not simply to inform them, but to help them with something in their jobs that they could be concerned about, such as looking good to superiors.

No one likes looking stupid. Compliance reporting should make people feel like they have answers to questions they may get about risks in their operations. One of the easiest meetings that many compliance professionals can get with operational executives is before the information goes to higher levels in the organization. The best and most useful time to report to executives is before information about compliance issues that impact their operations is reported to their higher-ups (i.e., C-suite executives or the board of directors). In many companies, compliance reports are part of quarterly reports. The specifics about the risks, controls, and projects that are relevant to each executive should be discussed with them before reporting is finalized to go to the board.

Compliance departments have reputations that they are "chicken littles," claiming that the sky is falling at every opportunity.

Building trust, allowing executives to make decisions

Executives need to trust that the decisions on proposals that are brought before them are "ready" to consider, because their teams have vetted the proposals and they are important to the company as a matter of compliance risk. Compliance departments have reputations that they are "chicken littles," claiming that the sky is falling at every opportunity. It is common for business people to be peppered with problems continually. The reputation of Compliance as a continual distraction erodes executives trust in what the compliance team proposes.

The executive cannot know what the most important and urgent issue to be attended to is when every issue is an "emergency du jour." Having pre-scheduled, regular meetings on the calendar with decision-makers allows the compliance team to create an experience with executives that is more global, looks at risks with greater context, and avoids an "emergency du jour" approach to compliance issues. Emergencies will still happen, but most issues that need decision-making from executives can be put into the one quarterly meeting. Creating and limiting matters that need executives' attention shows the value the compliance teams place on their time.

Encourage people lower than the executive to solve as many issues as possible before the annual meeting, so they can be seen resolving issues and escalating only those which the executive needs to consider.

Building confidence in the compliance team as a resource

Executives do not feel as exposed to unwanted surprises when they can rely on the compliance team to have the latest information. It may sound too simple, but often compliance teams can increase engagement with executives with more frequently updated reports. If a company creates reports annually or on an ad hoc basis, increasing the frequency of reports to quarterly increases the compliance team's ability to have quality discussions with executives more often and on short notice. Annual or ad hoc production of presentation materials and reports does not have the same impact.

Updated, presentation-ready materials support the compliance team as a resource for executives. Keep reports and presentation materials up to date and use graphs and charts as much as possible. It also instills confidence when presentation materials are routinely updated and are good looking.

Some qualities of well-designed reports:

- ***At-a-glance:*** Design reports with diagrams and tables whenever possible. Also, give underlying detail in a concise, easy-to-read manner with the diagrams and charts. Materials do not just relay information; they also need to be a visual aid for discussion with the business.
- ***Specific actions:*** The report needs to provide specifics on what actions are being taken. Use every communication as an opportunity to educate executives on the specifics of risks and their impact on the company.
- ***Consistency:*** Use the same report format for every quarter to avoid training executives' multiple times to read and understand the changing report formats. Ensure that risks that appear in working documents appear in the final report.

I prefer mapping compliance risks with a "heat map" reporting template that serves as an excellent visual aid to discuss with high-level executives how high risks may be managed and lowered.

I prefer mapping compliance risks with a "heat map" reporting template that serves as an excellent visual aid to discuss with high-level executives how high risks may be managed and lowered. (Samples of reporting templates can be obtained by contacting me directly at leonalewis@complyethic.com.) A heat map does not simply document information; graphic depiction of what you want the audience to understand helps viewers visualize their role in risk priorities. Risks can be added as regulations change or the business changes. The underlying documentation of risk registers is important to provide for status information, but is less useful for discussion purposes.

Conclusion

Empathy with business executives' feelings about compliance is important to improve executive engagement with the compliance team. Designing executives' experience with the compliance team to address these fears, preconceptions, and needs goes a long way toward increasing the effectiveness of the compliance team to make meaningful progress within the company. Executive ownership is built through executives making decisions about compliance in their operations, giving them a stake in the success of the program. Often, simple measures, such as designing the process of delivering reports to business executives in a manner they find helps them do their jobs, increases trust and confidence in the compliance team. ✳

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by Kristy Grant-Hart

How to build instant rapport

The dictionary defines rapport as an "especially harmonious or sympathetic relation." A study from the Georgia Institute of Technology found that job seekers who created rapport early in their interactions with the interviewer scored higher overall than those who performed equally as well in the technical part of the interview but failed to generate an early sense of connection. So how does one build that elusive sense of rapport?


Grant-Hart

Find common ground

The fastest way to build rapport is to find common ground. Let's say you are meeting the new manager of sales and you need to find a way to interest her in compliance. Prior to the meeting, you can view her LinkedIn, Facebook, or Twitter profile to find out information about her history and preferences. Where did she go to school? Where did she grow up? Does she list any volunteer activities that might show her interests? Do you have any connections in common? Any of these small pieces of information can build an instant connection between you and the person you're meeting, especially if you bring them up early in the conversation.

Notice the details

When you meet someone in person, look for details which could conjure commonalities. What photo is the person using for his screensaver? Is it his children, pets, or vacation photo? Are there mementos or pictures in her office which show that she has an interest in a certain sports team, outdoor activity, or the arts? Try to find something to comment on where you have a shared interest or passion. This will immediately give the listener the feeling that you understand them, which immediately builds rapport.

Are there mementos or pictures in her office which show that she has an interest in a certain sports team, outdoor activity, or the arts?

Compliments

If you can't easily find something in common to discuss, try starting with a compliment. For example, "I heard from [name of boss or co-worker] that you did a great job on [thing], well done!" If you're in a new office or location, try praising the city, building, artwork, or anything else that catches your eye. Beginning with a compliment or positive statement lets the listener know that you have already associated good things with them.

Rapport-building is the art of making someone feel at ease and as if they already know you. Highlighting common experience or interests, noticing the little details, and giving genuine compliments can ensure that the listener comes away from your conversation saying, "I like you. You remind me of me." ✷

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by Joe Murphy, CCEP, CCEP-I

Factors to consider in imposing discipline

In a previous column, I discussed the range of options for discipline. In this column, I address factors to consider in imposing discipline.

The prior column mentioned that there is value in toning down the inherently emotional aspect of disciplinary decisions. Considering a range of disciplinary options helps with this process. But how do you know which options to choose? This column adds some elements to consider in determining the level of discipline. Again, the idea is not to have a rigid formula or to limit the process; quite the contrary, it is to stimulate the thinking process in dealing with the difficult issue of imposing discipline.

Murphy

These are all aggravating factors:

- Seriousness of violation
- Damage caused by violation
- Level in management – The higher the level, the higher the penalty. This can be tough for people to understand but is essential. Leaders set the tone for others, and more should be expected of them.
- Role in the violation (e.g., initiated, assisted, etc.)
- Knowing violation – But ignorance of the rules is not a defense or mitigating factor. Ignorance in this context needs to be carefully assessed. It is fair to expect people in responsible positions to ask first before engaging in new activities. But given the complex nature of some regulations, there may well be instances when ignorance was legitimate. Always be skeptical on this point; you do not want to provide an incentive to avoid training.
- Lying during or otherwise obstructing investigation
- Pattern of misconduct
- Retaliation against whistleblowers – This one is especially serious and merits severe treatment, given employees' inherent fear of retaliation.
- Prior violations
- Deliberately or carelessly failing to obtain advice to determine if conduct was permissible
- Deliberately or carelessly failing to get compliance training

There are also mitigating factors to apply:

- Voluntarily reporting violation – This is a key consideration, and one the government certainly understands. It is essential to learn about problems, so there is value in mitigation for those who report.
- Cooperation in investigation
- Isolated, one-time violation

One other factor to consider is what happens if you fail to discipline an executive. Under SEC rules implementing Sarbanes-Oxley, failure to discipline senior financial officers (which includes the CEO) for code violations constitutes a reportable waiver. So this is one factor also to be considered at the executive level for publicly-traded companies.

It is also worth noting factors *not* to consider, such as the person being likeable or having achieved sales objectives.

I am always interested in learning from others' experiences. If you have other factors you have used effectively, please pass them along. ✳

Joe Murphy *(joemurphyccep@gmail.com) is a Senior Advisor at Compliance Strategists, SCCE's Director of Public Policy, and Editor-in-Chief of* Compliance & Ethics Professional *magazine.*

Takeaways

March 2017

Tear out this page and keep for reference, or share with a colleague. Visit www.corporatecompliance.org for more information.

11 tips for engaging middle managers on compliance

Craig Thomas, and Monica Locklear (page 29)

- Middle management teams have close relationships with employees and significant oversight roles that make them key culture communicators that compliance professionals can often overlook or underutilize.
- Ethics and compliance professionals need to make the case to leadership that middle managers play a cost-effective role in creating real culture change that can serve the business in a variety of ways.
- The best way for Compliance to help support managers as culture and ethics ambassadors is by providing ready-made training, activities, and tools that managers can easily share with their team.
- A direct call from Compliance lets managers know Compliance is an advocate when there is pressure to be non-compliant and reinforces the partnership between managers and compliance professionals in preventing abuse and unethical behavior in the organization.
- Middle managers are the means by which compliance objectives and company culture change can actually happen, and they are a key resource that organizations can't afford to ignore.

Five tactics to dramatically improve your Code of Conduct

Kirsten Liston and Meghan Daniels (page 39)

- Consider the Code a marketing project: Increasingly, companies are realizing that a Code should be an attractive, effective, persuasive document, not a contract look-alike.
- Give your Code an infrastructure: Use an inspired organization scheme to ground it in topics and ideas that are meaningful to your audience.
- Talk like a human: Use clear, direct language—the simpler, the better.
- Tell people what to do: Forget the philosophy or history of the law; focus on practical, relevant guidance.
- Aim to connect: Above all, look for ways to engage with your audience; people are better persuaded when they feel connected to you.

Product integrity: Some compliance principles for engineering organizations

Laurie Burgett (page 45)

- Market competition is driving faster engineering cycles and pressure for innovation.
- Decreased cycle times and business pressures may inhibit product realization that meets promises to consumers and regulatory requirements.
- ISO standards or engineering processes may not be enough to prevent fraudulent behavior or misleading promises about a product's capability.
- Diligence in reviewing engineering designs includes the concept of a separation of duties.
- An environment where engineers and technicians can and will express concerns in meeting promises to customers or regulations is critical.

Behavioral ethics: From nudges to norms

Scott Killingsworth (page 51)

- Nudges are simple interventions designed to promote desirable choices—including compliance choices—by taking advantage of psychology.
- Nudges are products of the new field of behavioral ethics, which studies how people make ethical decisions in real life as systematically fallible human beings who are easily swayed by social and situational factors.
- Effective compliance nudges require predictable risk situations where a small psychological push can be applied at just the right time to encourage ethical decision-making.
- Unlike nudges, organizational culture is "always on," and it influences behavior pervasively and on a large scale.
- Laser-targeted nudges are fascinating and can be useful, but applying behavioral science at the level of organization culture is a more efficient way to improve overall compliance.

Compliance renaissance in the federal government?

Patrick W. Kelley (page 61)

- OMB's recently revised guidance on risk management and internal controls in the Executive Branch requires federal agencies to implement ERM programs and policies similar to those found in the private sector.
- Risks must be analyzed and managed in relation to an agency's strategic, operational, reporting, and compliance objectives in a formal manner that provides reasonable assurance that agency objectives will be achieved.
- Few agencies will have to start from scratch, but many will need to devise and implement a compliance program, because comparatively few agencies currently have such programs in place.
- OMB gives agencies wide latitude in determining how best to implement ERM, but it's likely that there will be a growth in the number of compliance programs throughout the government.
- Government should and will look to the private sector for help and guidance in establishing compliance programs.

How doing Compliance makes companies great

Thomas R. Fox (page 69)

- Doing compliance makes businesses run more efficiently.
- Doing compliance brings better return on investment.
- Doing compliance makes businesses more profitable.
- Doing compliance improves business processes.
- Doing compliance is doing business.

Compliance at a tech startup

Lisa Hawke (page 73)

- If you are considering joining an early-stage startup in a compliance role, make sure you know why they are hiring for this role and whether you have the support of the CEO and team.
- Do not assume that the staff understands your compliance role and why you are there—be approachable, explain what you are doing, and learn about their roles.
- The importance of spending time with the team in order to establish camaraderie, trust, and credibility can't be overstated.
- Don't be afraid to reflect the company culture and tone in the materials you create as part of the compliance program; observe what is effective in other business contexts.
- Be prepared to do a bit of everything!

Managing values: A vital element of culture, ethics, and success, Part 2

Jason L. Lunday (page 79)

- Early experiences with an employer that promote and support corporate values can have a profound influence on an employee.
- Corporate values come in many types, each with a unique role in a company.
- Common values types are reflective, aspirational, historical, and connectedness.
- One values type an organization should avoid are "window dressing" values that serve no useful purpose.
- Corporate values also have a profound role in reinforcing ethics and compliance management.

Design reporting for executive compliance ownership

Leona Lewis (page 83)

- Reporting can be designed towards building trust with executives.
- Executives need to trust the Compliance department to be engaged.
- Executives take ownership over things they make decisions about.
- Design reporting to make executives feel smart and supported.
- Design reporting to show that the compliance team is a resource.

Upcoming Events

March 2017

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
5	6 Basic Compliance & Ethics Academy® New Orleans, LA	7	8	9 CCEP Exam	10 Regional Compliance & Ethics Conference Minneapolis, MN	11
12	13	14	15	16	17	18
19	20	21	22	23	24 Regional Compliance & Ethics Conference Boston, MA	25
26	27	28	29	30	31	1

April 2017

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2 International Basic Compliance & Ethics Academy® Prague, Czech Republic	3	4 WEB CONFERENCE: Responding to Global Compliance Risk in Our Supply Chains	5 WEB CONFERENCE: The Importance of Understanding Ethical Risk to an Organization's Reputation and Integrity; CCEP-I Exam	6	7 Regional Compliance & Ethics Conference Scottsdale, AZ	8
9	10	11	12 WEB CONFERENCE: What Content Marketing Techniques Can Teach Us About Building a Compelling Compliance Program	13	14	15
16	17	18	19	20	21	22
23	24 Basic Compliance & Ethics Academy® Chicago, IL	25	26	27 CCEP Exam	28 Regional Compliance & Ethics Conference Chicago, IL	29
30	1	2	3	4	5	6

European Compliance & Ethics Institute
April 2–5 | Prague, Czech Republic

Higher Education Compliance Conference
June 4–7 | Baltimore, MD

Internal Investigations Compliance Conference
June 15–16 | Orlando, FL

Compliance & Ethics Institute
October 15–18 | Las Vegas, NV

Board Audit Committee Compliance Conference
November 6–7 | Scottsdale, AZ

Basic Compliance & Ethics Academies
March 6–9 | New Orleans, LA SOLD OUT
April 24–27 | Chicago, IL SOLD OUT
May 1–4 | San Francisco, CA
August 7–10 | New York, NY
September 11–14 | Philadelphia, PA
October 2–5 | Nashville, TN
November 13–16 | Orlando, FL

International Basic Compliance & Ethics Academies
15–18 May | Amsterdam, Netherlands
10–13 July | Singapore
21–24 August | São Paulo, Brazil
25–28 September | Madrid, Spain

Regional Compliance & Ethics Conferences
March 10 | Minneapolis, MN
March 24 | Boston, MA
April 7 | Scottsdale, AZ
April 28 | Chicago, IL
May 5 | Miami, FL
May 19 | San Francisco, CA
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