

# Compliance & Ethics

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### TOP STORIES INSIDE

- 4 Compliance program management: Measuring for success
- 6 Brazil: Tackling corruption in the private sector
- 22 Three ethical myths about company policies and e-mail
- 28 Compliance and the Board: New survey by the HCCA and SCCE
- 30 The value for interpreting risk within the GRC framework
- 34 A well-conducted internal investigation: An interview with Al Gagne



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## **4** Compliance program management: Measuring for success (CEU)

*BY KATHIE HARVEY*

Seven action steps to help you identify and develop meaningful performance measures.

## **6** Brazil: Tackling corruption in the private sector

*BY TATIANA PETRY*

The government, private sector, and civil society are working hard to create a trustworthy economic environment.

## **7** Newly certified CCEPs

## **12** Frankly Speaking

*BY FRANK DALY*

On My Oath

## **14** Feature Interview: Meet Dan Roach

An interview by Roy Snell

## **18** Letter from the CEO

*BY ROY SNELL*

Grieving over the best practice for the compliance officer reporting relationship

## **20** OIa: The SCCE comes to Brazil

*BY ADAM TURTELTAUB*

A compliance workshop in Sao Paulo found an audience eager to learn and meet new challenges.

## **22** Three ethical myths about company policies and e-mail

*BY PHYLLIS A. WILSON*

Employee expectations often differ from company policies, even after they have signed the attestations.

## **28** Compliance and the Board: New survey by the HCCA and SCCE

*BY ADAM TURTELTAUB*

A look at how privately held and publicly held companies compare.

## **30** The value for interpreting risk within the GRC framework

*BY LUIS RAMOS*

Understanding potential risks and trends is essential for managing compliance strategies in the long run.

## **34** In the Spotlight: A well-conducted internal investigation: An interview with Al Gagne

Attending hands-on training is the best way to build investigative skills.

## **36** FCPA compliance and continuous controls monitoring (CEU)

*BY THOMAS FOX*

The answers to three key questions will determine the effectiveness of your compliance program.

## **38** Promoting an ethical culture: The organizational ombudsman (CEU)

*BY CHARLES HOWARD*

Workers who are unsure how to report misconduct or fear the consequences may need a guiding hand.

## **44** Global Compliance: Argentina

*BY GREGORY UNRUH AND FERNANDA ARREOLA*

Five compliance and ethics issues to consider before doing business in this emerging market.

## **50** New Members

# Compliance program management: Measuring for success

By Kathie Harvey, CCEP

So, you have created a compliance program for your organization. You made sure to cover all of the elements outlined in the Federal Sentencing Guidelines for Organizations and other regulatory-, industry-, or company-required criteria. Now, how will you know it's working? How will you know the program is living up to the expectations of your employees, management, stockholders, and other stakeholders?

Answer: you start measuring the performance of each key component of your program.

Measures should assure that you are staying in compliance and have no major uncontrolled risks. Or, results of the performance measures—the statistics you end up with—need to help identify gaps or point out trends that generate change for improvement. These changes could be to your program itself, to a specific process related to your program, to work activities supporting compliance, or in other areas.

## The approach

One problem companies often have with performance measures is that inadequate or ineffective measures are developed when the process is started. The resulting measurement data is reviewed and you ask, “So what?” No insight is gained; no trends are seen that cause you to say, “We better do something about that

before we get into trouble.” Information from performance measures needs to be quantifiable, which is not always easy or intuitive to accomplish. Additionally, your measures should be relatively simple and provide fuel for making decisions or taking action in the future.

Lack of meaningful information from performance measures is usually the result of a failure to use a systematic approach when initially determining what is going to be measured. The key to using a systematic approach is thoughtful identification of the objectives and results. Over time, you will probably refine and improve the measures, but one sure way to hit your target or get close to measuring the right thing to begin with is to know what it is you want to verify or “prove.”

Let's look at an example of just one likely component of your program. The Federal Sentencing Guidelines for Organizations provides that “standards and procedures” encompass “standards of conduct and internal controls that are reasonably capable of reducing the likelihood of criminal conduct.” In response to this, many or most organizations include in their compliance program the establishment of a code of conduct and corresponding training to ensure employees understand the code.

Ask yourself: Why is a code of conduct part of our compliance



KATHIE HARVEY

program? The answer is probably because you want to ensure that all employees understand the company's expectations for conduct and behavior and want personnel to “follow the rules.” You also might ensure that the entire organization takes annual training and attests to understanding the Code and agrees to follow company policies.

## Selecting measures

Two measures you might use are “scores” for the number of individuals who are trained and the number of attestations completed. There is nothing wrong with these being performance measures. They tell you whether or not everyone has done what they are supposed to. However, what it doesn't tell you is whether or not the requirement to train and complete an attestation is of value to the organization.

In answer to the question: Why is a code of conduct part of our compliance program?, your objective is to know that the annual training and verification make a difference in behavior and conduct. To determine this, you need one or more additional performance measure objectives for your compliance program.

For example, you might measure how many disciplinary actions are taken within the organization based on code of conduct violations. You may want to also measure the number of employee concern investigations or ethics questions that are submitted that have to do with topics covered in the code of conduct.

Or, you might use a survey to ask employees about behavior they have observed in the workplace. If personnel are assured of anonymity, they may be willing to report actual breaches of expected conduct, which will offer additional information for potential action.

Based on the disciplinary performance measure or data from a survey, corrective actions can be considered, such as making improvements to your code of conduct. Maybe you have not emphasized a certain topic well enough or didn't address the topic at all in your Code. Maybe you have not explained or given a clear enough example for employees to understand expectations. Or, maybe you need to communicate to the organization that you are serious about misconduct and have had to terminate an employee who did not adhere to the Code. Training also may need to be altered based on performance measure results.

### Action steps

The following steps are useful in the identification and development of meaningful performance measures. The example discussed above is used again to help explain the steps.

- 1. Purpose.** Why is the area to be measured of value to the organization. Is there a critical outcome? Example: To track the effectiveness of the code of conduct.
- 2. Objective.** What business objective does this measure support? Example: All employees conduct themselves in a manner that aligns with the company's values.
- 3. Formula.** What is the quantifiable calculation that will be performed? Example: The number of disciplinary actions involving code of conduct violations divided by the total number of disciplinary actions taken.
- 4. Goal or target.** What will be an acceptable number of violations to the organization? Example: Less than 0.1.
- 5. Source of data.** Where will you get the data to compute the formula? Example: Human Resources department Disciplinary Action database.
- 6. Frequency.** How frequently will the data be computed and reported? Example: Quarterly.
- 7. Corrective action.** At what point will action be taken to make a change? Example: If the quarterly target is above 1.0, corrective action will be taken.

### Summary

Measuring the expectations established in your compliance program helps to emphasize company values, identify potential risks, improve the program, and communicate its importance.

As you start to review and understand the data coming from your performance measures, it will become clear whether or not your measures are adequate and meaningful. You may need to add measures to one component of your program or another. Or perhaps you should stop using a particular measure because the information does not result in program improvements, process changes, or the identification of control risks.

If the program measures developed are beneficial, they will help to "tell your story" and convey the value of maintaining a compliance program. Employees, management, stockholders, and other stakeholders will understand its importance and support the compliance program as one they want to have in place, not a program that exists to simply satisfy requirements. ✦

*Editor's Note:* Kathie Harvey is the Compliance Manager at Alyeska Pipeline Service Co., the operator of the Trans Alaska Pipeline. She has worked at the company for over 20 years in many capacities. She has taught "Organizational Theory and Behavior" at the University of Alaska and was a copresenter at the SCCE's first Utilities and Energy Conference in March 2009. She may be contacted at [Kathie.Harvey@alyeska-pipeline.com](mailto:Kathie.Harvey@alyeska-pipeline.com).

# Brazil: Tackling corruption in the private sector

By *Tatiana Petry*

Supporting and encouraging businesses to do their part in tackling corruption has increasingly been a governmental priority around the world, bringing countries to share efforts on the matter through their participation in international treaties to combat and prevent corruption. It is possible that entrepreneurship, private economic activity, and markets have never been more important and intertwined in economic prosperity and political stability than they are at present, as the financial problems and the economic turmoil triggered by the 2008 crisis have proven. In this context, the Brazilian federal government has been increasing its efforts to establish alliances with the private sector and society, aiming to stimulate enterprises to implement integrity policies in their institutions.

Corruption in the private sector represents an obstacle to economic and social development around the world. It hinders economic growth, restrains development, and impairs institutions, which contribute to the aggravation of social problems. In this sense, this misconduct is of concern to governments, civil society, and the private sector itself, and should therefore, be prevented and combated collectively through the building of systematic and constructive efforts towards the implementation of measures of integrity within enterprises.

Corruption represents a threat to companies, either for the undesirable consequences it may yield in the case of bribing public officials to win public contracts, circumvent regulations, or speed up services; or due to the harm it may cause. In a survey of over 1,000 executives by Transparency International,<sup>1</sup> almost one in five affirmed they had missed business opportunities because of the bribes paid by a competitor. The risks of corporate corruption are therefore beyond legal consequences, but include losses due to the possibility of organizational fraud and creative accounting, which distorts fair and impartial competition, discourages new investments, and erodes ethics in business.

The international community is stepping forward in this matter through the strengthening of international treaties, such as the United Nations Convention against Corruption (UNCAC), the InterAmerican Convention Against Corruption (OAS Convention) and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention). All these treaties set out obligations to prevent and combat corruption in governments, enterprises, and civil society of the signatory nations. Following this world tendency, the Brazilian government has ratified these three international agreements and



*TATIANA PETRY*

reinforced its anti-corruption efforts, promoting alliances with the private sector and civil society with the aim of assuring its commitment.

## **Integrity enhancement in the private sector**

Through its anti-corruption agency, the Office of the Comptroller General (CGU), the federal government of Brazil has been developing policies for the promotion of ethics, integrity, transparency, and accountability in both the public and private sectors, with a view to preventing and combating corruption. The CGU, thus, is the Brazilian federal government's agency in charge of formulating proposals to amend current Brazilian legislation which governs the prevention of corruption in the corporate

*CONTINUED ON PAGE 9*

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## COMPLIANCE & ETHICS

### INSTITUTE *Preview*

#### **Session 705: Antitrust and Competition (Tuesday, September 14th from 3:00 – 4:00 p.m.)**

I've heard this before: "Antitrust is dull stuff, and nobody in our company would ever do anything wrong." Well, you may think antitrust is dull, but prosecutors don't. The Justice Department continues to indict companies that thought they were too smart

to get caught—or too dumb to realize that what they were doing could be a felony. Rumor has it that more than 100 grand juries are sitting now, investigating a wide variety of suspected antitrust offenses. Could they be looking at your company? And, there is more cooperation than ever before between antitrust enforcement agencies all over the world. At this session, we'll bring you up to date on the latest developments in antitrust liability, both civil and criminal. We'll discuss the latest training techniques, and cover what you can do with technology to reach the employees who may present the highest risk of an antitrust violation. If you are faced with a consent decree or deferred prosecution agreement that requires a compliance program, learn how you can turn that program into something that will actually work in your organization. You'll hear from Millie Calhoun, head of global antitrust compliance for BP, Roxane Busey, from Baker & McKenzie and former Chair of the ABA Antitrust Section, and Ted Banks, antitrust and compliance author, formerly Chief Counsel for Global Compliance Policy at Kraft Foods. Antitrust should be a part of every company's compliance program. Have you looked at yours lately?

**Theodore L. Banks, President, Compliance & Competition Consultants, LLC and Counsel, Schoeman, Updike, Kaufman & Scharf**  
**Roxane C. Busey, Partner, Baker & McKenzie LLP**  
**Mildred L. Calhoun, Senior Counsel, BP America, Inc.**

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THEODORE L. BANKS

## COMPLIANCE & ETHICS

### INSTITUTE *Preview*

#### **Session 804: Corporate Values: Choosing Values That Build Trust (Tuesday, September 14th from 4:30 – 5:30 p.m.)**

So, your organization has a corporate values statement, maybe even mission and vision statements too. Whoohoo! Bet you a dollar, if you stopped ten people in the hall and asked them to close their eyes and recite the corporate values, your dollar would be perfectly safe. How sad, how typical. You'll likely get a similar reply if you asked the same ten people about the last business meeting where the outcome was driven by the corporate values. Why is this so typical and why is it such a damning indictment of business values? More importantly, how do you fix it, what is lacking, and where do you start? Credibility. Congruence. Clarity. Commitment. Every link in the chain of four Cs is vital to success. Why should employees believe management's words about values if they are not trustworthy; their words and actions are inconsistent; the stated values don't align with corporate actions, reward systems and policies; and the values are poorly communicated and likely to change next year? Most of us can smell hypocrisy when we encounter it. Credibility is where we start the journey to understand the problem and find the fix—with trust. What is trust, how are trust-based cooperative relationships formed, and what is most important in the relational/transactional mix to build trust. And after that, what must you do with the trust that is established? Come to Chicago on Tuesday afternoon, September 15, to find out.

**John Hannesson, CEO, White Stone Ethics**

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JOHN HANNESSON



environment, and of mobilizing institutions in the private sector to adopt anti-corruption measures and programs with a view to promoting institutional integrity.

To fully accomplish its obligations, the CGU has established a partnership with Ethos Institute for Business and Social Responsibility, a Brazilian non-governmental organization created with the mission of mobilizing and helping companies to manage their businesses in a socially responsible fashion. In this context, the CGU supported the launch of the Business Pact for Integrity against Corruption by Ethos, which aims at promoting greater coordination between enterprises and improving and enhancing private-public sector relations. The Pact has been signed by over 500 private enterprises and follows international guidelines, such as the OECD's Guidelines for Multinational Enterprises and the Business Principles of Transparency International.

The CGU has also supported the creation of the Pact's Working Group, of which it is part, along with the Ethos Institute and 15 enterprises. The Pact has been established in order to mobilize business leaders and to develop strategies to provide support to signatories for the implementation of integrity and anti-corruption.

The federal government of Brazil has therefore been strengthening relations with the private sector and building an atmosphere of trust and cooperation in the public and the private environments. The government's aim is to combat and promote the prevention of corruption, which is of concern not only to these actors, but also to Brazilian society and the

international community. The Pact and its Working Group contribute to the implementation of the Brazilian international commitments, serve as an ideal platform of cooperation between the public and the private sectors, and build renewed relationships between them.

### **Raising awareness actions**

Due to the popular belief that corruption only affects governments, despite the fact that the whole society pays its price, raising awareness actions are especially important. Thus, in order to achieve effective measures of prevention and to combat corruption, the society and the private sector must recognize themselves as important players in this arena. Enterprises can act as passive or active agents in the corruption process, turning them into a determining factor in the pursuit of effective anti-corruption policies across the globe. In this light, the CGU spends much of its effort on the creation of a culture of sharing responsibilities among the government, the private sphere, and society in the fight against corruption.

For those purposes, the CGU and Ethos Institute developed and published in June 2009 the handbook *Business Social Responsibility in Combating Corruption*,<sup>2</sup> which elaborates good practices for the achievement of high integrity standards within enterprises. The handbook gives instructions for the implementation of programs, such as developing internal controls, formulating procedures to disseminate information on issues related to corruption, implementing internal mechanisms to report acts of

corruption, and ensuring transparency in the support and financing of political campaigns and parties, among others.

The CGU and Ethos Institute, along with the United Nations Office on Drugs and Crime (UNODC), through a Memorandum of Agreement (MoA) which aims at developing some actions in the area of prevention and combat of corruption, have decided to promote workshops in ten different Brazilian states to publicize and work on the content of the handbook. Five of those workshops took place in 2009, reaching a public of approximately 300 enterprises, and the other five workshops are scheduled to take place in the second semester of 2010. The MoA also stipulates the construction of distance education training on the handbook, which is being developed to be offered to interested enterprises.

Besides following these same purposes, in July 2010, the CGU, in partnership with the Organization for Economic Co-Operation and Development (OECD), promoted the Latin American Conference on Corporate Responsibility for Promoting Integrity and Fighting Corruption. The Conference gathered public officials, private sector representatives, professional organizations, and civil society to discuss the risks and consequences of corruption in commercial transactions. The discussions aimed at assisting companies to avoid these risks in regional and global businesses, and contributed to raising awareness of governments about the necessity of tightening legislation to

*CONTINUED ON PAGE 10*

criminalize corporate corruption in Latin American countries.

### Stepping forward

The Brazilian federal government aims at proceeding in the fight against corruption from the awareness-raising stage to a concrete action-oriented phase. This advance often leads to legal drafting of initiatives and to focusing on the promotion of an incentives-driven approach with the view to bringing companies to adhere to the combat of corruption.

### Legal advances

The CGU, along with the Brazilian Ministry of Justice and with contribution from the Office of the Attorney General of Brazil and the Civil House, formulated a bill<sup>3</sup> on Liability of Legal Persons for Acts of Corruption and presented it to the National Congress at the beginning of 2010. It is thus estimated that Brazil will have a federal law on the subject in the next few years.

The bill stipulates civil and administrative liability for acts of corruption committed by persons against the national and international administration, not excluding the prosecution or conviction of the natural persons who are responsible for the illicit act. In addition, it stipulates that companies will not be able to escape liability through the incorporation, transformation, or merger of the institution.

The sanctions specified vary according to the gravity of the illicit act committed. The companies may be obliged to pay fines, which may range from 1% to 30% of the gross income of the institution, and may

suffer sanctions such as the suspension of activities, revocation of operating privileges, prohibition of participation in public procurement bids and to contract with public agencies, prohibition of official financing, and dissolution.

The stipulation of sanctions will also consider whether the enterprise cooperates with the investigation process and whether it has implemented mechanisms and internal procedures in the company regarding integrity, auditing, incentives to reporting, and the effective application of a code of ethics/conduct.

### CEIS and the Pro-Ethics List

In an attempt to create incentives-driven approaches in the corporate environment, the CGU has developed and maintained the Registry of Ineligible or Suspended Companies (CEIS), which can be consulted freely at the CGU site.<sup>4</sup> CEIS is a single database with constantly updated information provided by Brazilian federal institutions, states, and municipalities on suppliers punished for irregularities in tenders or public contracts. These amount to 1,500 at present. The list enables all the entities that are part of the complex Brazilian public service to check whether the company they might contract with has been sanctioned by another public entity.

In addition, the information offered by CEIS warns citizens and other enterprises about the illicit actions committed by the sanctioned companies, turning it into a reference for the choice of clients, suppliers, and potential partners in commercial relations. In this sense,

the transparency of information not only causes embarrassment but also financial losses for the enterprises, which works as an incentive for them to avoid corruption.

The CGU, in partnership with Ethos Institute, is currently focused on creating another tool to stimulate enterprises to commit to integrity. Besides publicizing sanctioned enterprises, the CGU aims at creating the Pro-Ethics List, which would be a list of companies that prevent and combat corruption through the implementation of measures to avoid the practice of fraud and illicit actions by their employees.

With the creation of this list, the CGU expects to disseminate good practices to promote integrity, transparency, and accountability in order to serve as examples to stimulate enterprises to adopt similar practices. The Pro-Ethics List is still an embryonic project, but its main ideas are currently open for public consultation at the CGU site,<sup>5</sup> with the view to collecting opinions from the civil society and interested companies.

According to the preliminary stipulations, to be part of the list, companies would have to prove that they have a code of ethics implemented and also an Ethics Committee to guide and define sanctions for the non-observance of rules, whenever necessary; that they have an effective education and training program; that they have a reporting system and procedures for complaints; that they have a non-retaliation policy toward the employees who report; and that the companies make their partners aware of their rules on ethics, thus

stimulating them to adopt similar guidelines.

In addition, the companies would have to specify whether they submit their institutions to internal and external independent auditing; whether they adopt a risk assessment program; and whether they publicize information of interest to employees, stakeholders, and investors to promote transparency. The relations of the companies with the public sector will also be analyzed. Among other things, the enterprises will be questioned about whether they publicize a list of political donations made, indicating beneficiaries, motives, data, and value of transactions.

The Pro-Ethics List represents a step forward in the improvement of the relations between the Brazilian public and private sectors towards the construction of a trustworthy economic atmosphere. It indicates that the federal government of Brazil, more than just discouraging enterprises from practicing fraud and illicit actions by publicizing the list of those who have been sanctioned by CEIS, aims at encouraging the private sector to adopt integrity programs through positive incentives and by disseminating good practices and their resulting benefits. This initiative brings development to the companies themselves and to the national economy.

## Conclusion

The Brazilian federal government is serious about promoting integrity in the private sector. It is the responsibility of each enterprise to voluntarily implement programs that consolidate values and policies to promote ethics and integrity. Despite this fact, the federal government

has embraced this cause and assumed its core role in the encouragement of these practices in the corporate environment, following the tendency among governments around the world, and innovating through projects such as the Pro-Ethics List. Despite the array of challenges that this mission poses, the hard job has begun, and by working collectively, the government, the private sector, and the civil society of Brazil will contribute even more to the achievement of a trustworthy national and international economic environment. ✦

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## On My Oath

By Frank Daly



“The Bible, the Koran, early Christianity, the Romans—everyone learned the perils of debt. What happened to that wisdom? Business schools.” This comment from Nassim Nicholas Taleb, author of the New York Times bestseller, *The Black Swan: The Impact of the Highly Improbable*, or sentiments like it, may well have been the impetus for the MBA Oath, a very worthwhile effort that has received a lot of press lately. Two members of the 2009 Harvard MBA class enlisted classmates and others in creating an oath for MBAs which they hope will provide a standard for business leaders similar to that which the Hippocratic Oath provides for physicians. Max Anderson and Peter Escher lay out the oath and expound on its elements in their recently published book *The MBA Oath, Setting a Higher Standard for Business Leaders*. The book and the oath are not an isolated step, but a catalyst for an organization that will carry forward the oath’s ideals. (See more at [www.MBAOath.org](http://www.MBAOath.org).)

Their intent is to return to the original purpose of business school, namely to professionalize management. Somewhere along the way, that intent got narrowed to the pursuit of profit. As they point out, pursuit of profit is a worthy goal. It’s just not the all encompassing one for a business professional who wants to be successful while living up to the tenets of the MBA Oath.

Not unlike the ethics and values statements of companies that many of us are familiar with and have worked on over the last 25 years, the MBA Oath has eight elements. Briefly, they include, in order:

- Act with integrity
- Safeguard the interests of stakeholders
- Manage in good faith
- Uphold laws and contracts
- Take responsibility for my actions
- Develop myself and others
- Strive to sustain sustainable prosperity, and
- Be accountable to peers

The book gives evidence that the order of the eight was carefully thought out. So, as you can see, those for whom their program goal is to reach a level of compliance acceptable to regulatory authorities (as set out in the fourth element) are seriously underestimating the challenge and comprehensiveness of the task. “In essence, we mean treating the written law as a minimum duty to guide our actions. Instead of referring to the law as a maximum code of conduct, under which all other unarticulated activities are allowed, we view the law as a minimum hurdle for conduct.” (page 161)

Despite their lateness to the game and an apparent insularity that gives little or no evidence of their awareness of the hundreds, if not thousands, of companies and millions of employees

who have engaged in a similar effort over the last quarter century, they see the MBA Oath as a meta-norm or one that is “... even deeper than the culture of a particular local organization.” (page 52) The oath could serve to provide an anchor in a professional promise for the manager that helps reinforce the code of his or her individual company. The work already done by multiple companies provides an environment where that combination can be especially effective. I find this to be a particularly powerful idea.

Frankly, the book has much to recommend it. It takes a broad look that dovetails nicely with much of the work that has been done in the business ethics movement. It addresses itself to business leaders and their special obligation to set a high standard of behavior. It is welcome thinking, coming on the heels of the appearance of major corporations (e.g., Toyota, Morgan Stanley, and BP) before Congress recently for actions that were considered seriously at odds with the public interest. Business is an important institution in our society, and it is seriously in need of upgrading its behavior and the public perception of it. Much has been done, but much more needs to be done, and the MBA oath is a welcome addition.

An interview with Nassim Nicholas Taleb is available at [www.newyorker.com/go/currents](http://www.newyorker.com/go/currents). ✦

## Dear Fellow Compliance Professional

Editor's note: Frank Daly is a Kallman Executive Fellow at the Center for Business Ethics at Bentley University in Waltham, Massachusetts. Frank was the Corporate Ethics Officer for a \$30 billion Fortune 500 Corporation since the compliance program's inception in 1986 until his retirement in 2004. Frank has been a dedicated contributor to **Compliance & Ethics Professional Magazine** for several years, and we welcome his unique perspective and insight. Frank can be contacted at [fdaly@netzero.net](mailto:fdaly@netzero.net).

Given the relative youth of compliance and ethics as a profession, most of us have had the experience of wondering how or where to go next. Now that we are firmly established as a profession, we have a new challenge—helping others who wish to make compliance and ethics their profession. I frequently receive e-mails from students who are enrolled in university and law school programs that focus on compliance (most of which have been certified by the Compliance Certification Board) looking for summer jobs, internships, and entry-level positions in the compliance and ethics industry.

In this difficult economic environment, it is more important than ever that we do what we can to help these students and recent graduates find growth opportunities. I would encourage you to work hard to create opportunities for those who are trying to break into our profession.

Roy Snell, the SCCE CEO, agreed that we could create a spot on the SCCE job websites where you could list opportunities for interns and students, and that such positions could be posted without the normal fee. Please take advantage of this opportunity to post your positions to this site. In addition, I would encourage all of you to do what you can to create opportunities wherever you can.

Thanks for your help.

Dan Roach, Co-Chair, SCCE Advisory Board

Vice President, Compliance & Audit, Catholic Healthcare West

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# Meet Dan Roach, Vice President of Compliance & Audit, Catholic Healthcare West and SCCE Advisory Board Co-Chair

By Roy Snell

**RS:** Tell us a little about your background.

**DR:** Currently I am the VP of Compliance & Audit for Catholic Healthcare West (CHW), a system of hospitals and clinics with 55,000 employees, 10,000 medical staff physicians, and roughly \$9.5 billion in revenues. Prior to coming to CHW in 1998, I spent 14 years as in-house counsel for a large health system in the Midwest.

**RS:** Tell us a little about how the concept of the SCCE came about.

**DR:** Odell Guyton (the Director of Compliance for Microsoft) and I were talking after a Health Care Compliance Association (HCCA) meeting in Las Vegas in 2004. It was shortly after Odell had moved to Microsoft, and we began to talk about the need for a platform to bring together compliance professionals from all kinds of business. We literally sketched out our ideas on a cocktail napkin. The next day, we presented the idea to the HCCA board. With input from Joe Murphy and many others, the Society of Corporate Compliance and Ethics was born before we left Las Vegas.

**RS:** What sets the SCCE apart?

**DR:** I think the thing that sets the SCCE apart from other organizations is our commitment to promote

compliance and ethics and to help those who lead those efforts. Our goal is to bring together as many ethics and compliance professionals as we can and promote collaboration, the sharing of our experience and best practices, with the goal of raising the bar for both industry and the ethics and compliance profession. We have hundreds of experienced members (like Joe Murphy, Marjorie Doyle, Sheryl Vacca, Odell Guyton, Cheryl Wagonhurst, Ed Petry, and many others) who volunteer their time and expertise to helping others and promoting the profession. Committed volunteers, coupled with an exceptional staff and no bureaucracy to slow things down, have fueled our rapid growth—and the SCCE is growing rapidly. Our Advisory Board has a very diverse representation of leading experts from academia, enforcement, compliance, governance, ethics, audit, vendors, consultants, and the legal profession. We are not a group of elites. Our board, staff, and volunteers have built an open, positive, and inclusive atmosphere. We are most proud of our culture. There is no “back of the bus” in our organization. If you have something to contribute or we can help you in the field of compliance and ethics, you are welcome to join us. You will be treated on an equal basis.

We are growing in membership, revenue, and thought leadership



DAN ROACH

projects, even in a down economy. Our certifications are becoming so widely accepted that, in many cases, they are preferred or required for employment. We have invested over \$1,300,000 in our credentialing process. All the major disciplines are represented in our membership, conferences and training programs: audit, legal, risk, academia, vendors, consultants, board members, etc. We give many opportunities to our members to speak. We have over 1,000 speaking opportunities each year. We have 60% to 70% speaker turnover each year at our annual meeting. We publish 200 member and non-member articles each year. We do whatever we can to create the best educational and networking environment for anyone interested in compliance and ethics.

**RS:** How many members does the SCCE now have?

**DR:** SCCE has 1,835 members, and we are growing at a rate of 23% a year.

**RS:** What industries are represented in the SCCE?

**DR:** The SCCE's members represent at least 55 different industries and a host of different government organizations. Most of our members are compliance and ethics professionals. However, we welcome anyone who plays a role in the development of and implementation of effective ethics and compliance programs. We have members from academia, legal, consulting, vendors, government, boards and management.

**RS:** Do you have members from outside the U.S. and if so, do they share the same interests?

**DR:** We have members from about 25 other countries. It is a very small portion of the overall membership. The main thing is that we are all trying to learn from each other. It also helps our members whose companies are multi-nationals. It is a real challenge to address the diverse and sometimes conflicting regulatory and ethical environments, but our international presence helps those who face that challenge.

**RS:** What have you done to serve the needs of other countries' compliance and ethics professionals?

**DR:** We have conducted conferences in Canada, Brazil, Switzerland and England. At each meeting, we have brought together speakers and attendees from many countries. The education and networking is very powerful. Also, many of our foreign

members are fluent in English and for those, our website and social network are very helpful. We have also translated our Code of Ethics booklet into several languages, including English, Spanish, Portuguese, French, German, Italian, Serbian (Cyrillic), Serbian (Latinist), Korean, Chinese, and Japanese. Joe Murphy, our Public Policy Director, has traveled all over the world and worked with many countries on compliance. Most recently, he worked with the OCED [the Organization for Economic Cooperation and Development, a group of free market democracies, based in France] to include the basic elements of a compliance program in their 38-country coalition to better manage their anti-bribery efforts.

**RS:** Please tell us more about the social network.

**DR:** SCCE has its own social network called SCCE NET, where people can share information 24/7. Since we started, we have had almost 6,000 unique users. We have had tens of thousands of contributions to SCCE NET. There is a great deal of information available. We have also opened the SCCE NET to non-members. This is a benefit to members who have many people in their organization who could benefit from the SCCE NET but, because of resource constraints, may not be able to become a member. They can sign up their employees for groups and list serves. They can also keep leadership and board members apprised of the current news and activities of compliance and ethics efforts from around the world. We also attract experts from other industries, who could not justify becoming members, but have

valuable expertise to contribute, such as audit, legal, academia, government, etc. Finally, we have opened it up to students at no charge.

**RS:** Do you work with other social networks such as LinkedIn?

**DR:** We have two groups in LinkedIn that total about 6,000 members. It is more limited than SCCE NET, but it is a great way to connect our profession. We also have over 20,000 followers on three Twitter feeds. We use Twitter to pass on breaking compliance news. We have done some work in Facebook, but those numbers are only around 1,000. When news breaks or other important information becomes available, we can get it out to thousands of our members and partners in minutes. These tools, coupled with the efforts of a full-time social networking manager, make it all very exciting.

**RS:** You do frequent surveys. Please tell us a little about those.

**DR:** Rather than large, cumbersome annual surveys, we send out short surveys that allow for a quick response. We do this several times a year. We can time it with breaking news. For instance, we just conducted a survey about the number of compliance and ethics professionals who report to their board of directors. This occurred when the USSC [United States Sentencing Commission] recently proposed changes that are currently being approved by Congress. We have done a recent survey on our members' policies and procedures for dealing with employees who use social media. All these surveys have been very timely and helpful to our members. They take

*CONTINUED ON PAGE 17*

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## Meet Dan Roach Esq. CONTINUED FROM PAGE 15

a couple minutes to complete, and therefore, our response rates are high. We can move quickly. We can go from an idea, to a survey, to a completed report in a very short time. On another occasion, I was speaking at a board conference and was asked a question about the industry standard for a certain practice. I told the participant and audience that I didn't know the answer, but would see what I could find out. I called the staff after the presentation, an hour later they posted the question, and less than 24 hours later I was able to share with the attendees the response of over 600 people.

**RS:** You recently submitted comments during the open comment period for the USSC update of Chapter 8 of the Federal Sentencing Guidelines. Tell us about that process.

**DR:** We reviewed their suggestions. We recommended inclusion of some changes and exclusion of others that had been proposed. We were also asked to testify before the Commission about the proposed changes. We feel that the majority of our advice (and the advice of many others) was heeded and that the resulting language is excellent. We have had a great relationship with the Commission. Commission members have spoken at our conferences and audio conferences. They have contributed articles to our journals. Some are involved in the social network. We have had a commissioner on the SCCE Advisory Board.

**RS:** Tell us a little more about your education efforts.

**DR:** We have taken this very seriously. In total, we have over 50 conferences a year. We have very inexpensive education and networking in many cities around the country. We also have subspecialty compliance conferences. We have a large annual meeting. We have several week-long academies that some people use to get ready for the certification exam. We work very hard to have significant turnover in our speakers. We want fresh ideas and perspectives and more opportunities for our members. We have 30% to 40% non-member speakers. We will go anywhere and do almost anything to get the right expert. The only faculty that are kept fairly constant are our Compliance Academy faculty. We want to give a lot of people the ability to participate. We also do about 40 audio conferences a year. We are keeping an eye out for other tools we can use to fulfill our educational mission. We have a staff that excels in the administrative component of our conferences. They create a positive and effective work environment for our conference selection committees, attendees, vendors, and speakers. ✦

# Grieving over the best practice for the compliance officer reporting relationship

By Roy Snell

Before I start into this article about reporting relationships (and get all the e-mails), I want to make sure you understand that I agree there are exceptions. I agree any reporting relationship for a compliance officer might work. I agree one size does not fit all. I agree compliance professionals don't need independence from others all the time. What I am concerned about is: What is the best practice? There is a preferred reporting model. It's also important for compliance professionals to have independence during a few key events each year. By definition, you can't report to someone (someone who does your annual review and has the ability to hire and fire you) and have independence when you need it. I understand all of the aforementioned exceptions. I am amazed how many people are in denial about what the best practice is. I am amazed at how many organizations could implement an effective model but don't, not because they can't, but because they don't agree or they don't think it's an important distinction.

I attended a conference. A short conversation I had, just before the luncheon speaker started, made the luncheon speaker's presentation all the more interesting. For some reason, I got into another controversial conversation with a person at my

table about compliance personnel reporting to the General Counsel (GC). After these conversations get started, I always regret it. I wonder how I keep getting into them. I am sure that it's my fault. I am the common denominator in all these controversial conversations after all.

Essentially, I mentioned that the government didn't feel the compliance officer should report to the GC. It seemed to come as a surprise to this compliance professional. After further conversation, it clearly wasn't something he wanted to hear. I tried to make peace by saying it was controversial, and he was quick to agree. Given other nonverbal indications, I needed to get out of this conversation as soon as possible. Luckily, the luncheon speaker was soon introduced. He started his presentation by talking about the recently updated Federal Sentencing Guidelines (FSG). He is a very well respected and knowledgeable individual in a position of authority. I knew what was coming. He stated it more blatantly than I did. Paraphrasing, "You can still get a break in penalties, even if senior leadership is involved in the crime. There is a catch, however. Your compliance officer must report to the Board to get credit for an effective compliance program."

The person I had been talking to looked at me and mouthed, "That's what you were talking about." We picked up the conversation again later (another big mistake on my part). By now I am already convinced that the individual was either a General Counsel or a compliance professional reporting to the General Counsel. The individual said, "He said this wasn't his rule," or something to that effect, implying that it really wasn't a big deal. I don't recall him implying that he didn't support the changes to the FSG. That would have startled me. After all, his department had involvement in the process to change Chapter 8 of the FSG. I recall him saying, "You better pay attention to the perspective of the enforcement community." But then again, maybe we were both hearing a "spin" we wanted to hear.

Forget the fact that the speaker thought it was so important that he brought it up in the beginning of his talk. Forget the fact that enforcement agents in this country use the FSG to determine a settlement. Forget the fact that judges use the FSG to make decisions. Forget the fact that we have Senators making comments like, "It doesn't take a pig farmer



from Iowa to smell the stench in that conflict.” Forget the fact that compliance professionals, by definition, need independence. Forget the fact that we have the recent Pfizer Corporate Integrity Agreement, in which the government demanded that the compliance officer no longer report the GC because they are “filtering the reports.” On the plane ride home, it crossed my mind that these conversations often sound like conversations with people who were grieving. The five stages of grief are:

- Denial (This isn’t happening to me!)
- Anger (Why is this happening to me?)
- Bargaining (I promise I’ll be a better person if...)
- Depression (I don’t care anymore)
- Acceptance

This is what I have seen over and over for the last 15 years: People doing something the wrong way and hanging onto it. It’s astounding that a compliance professional had not yet even heard about the proposed changes to the FSG, let alone any of the other reasons why the reporting relationship should be independent. They don’t want to admit it’s a problem. They are told in no uncertain terms that it is perceived as a problem by many people in the enforcement community. And yet, they still rationalize. Maybe they don’t think the FSG or any of the other documents matters. That would be odd on its own merits, but it is even stranger now that other countries are adopting the basic elements of a compliance program as described in the FSG (i.e., the Organization for Economic

Cooperation and Development, OECD.)

I have a story that really sums this all up. It is an instance in which a Board member ended up telling a compliance officer what the best practices were. It was a highly unusual example of the tail wagging the dog. I had one acquaintance that held the title of chief compliance officer (CCO) and GC. His form of denial/rationalizing was legendary. He got a professional association (of in-house and outside counsel) to write a “white paper” saying it was okay to report to the GC. They asked our organization to participate. After a we saw where it was heading, we bowed out. Their advice to their members was contrary to the all of the other information on the subject. It really has not gotten a lot of attention. This was a case of a whole profession being in denial. This isn’t a test of wills, it’s a question of what is the best practice.

Oddly, shortly after the document was done, the CCO/GC approached me and said he was no longer going to do both jobs. He said a board member had picked up one of the many government documents suggesting it was a bad idea. The board member cornered him in the hallway and asked why they were not following the government’s recommendation. If the rationalization he gave the board member was the same as he gave me, my guess is that the board member’s blood pressure rose a little. It was one of those rationalizations that started with a bunch of words, had a bunch of words in the middle, and ended with a bunch of words. It left me thinking of just a few words, “Run that by me again?”

Apparently his answer was not satisfactory and the board member asked him, “Why would you expose our organization like this?” The board member had the jobs separated shortly thereafter. Oddly enough, that was about five years ago and we are still having this conversation.

Like my discussion at the lunch table, when people are told what they are doing is wrong, they Deny that there is a problem. When the evidence becomes overwhelming they become Angry. They begin to Bargain by trying to explain that what they are doing is OK. When the board member lowered the boom on my colleague, I am sure my colleague was Depressed. The last time I saw him, he was Accepting his fate.

These are very nice people. They really want to make a difference. Most of them eventually come around. Compliance is a young profession. Many, who were lost souls before, are now some of the best and brightest in our profession. ✦

# Olá: The SCCE comes to Brazil

By Adam Turteltaub

Mariana Chaves Barcellos Teixeira has a challenge few compliance and ethics professionals would envy. Working for Brazilian steel manufacturer GERDAU, there is no long-established compliance program to draw upon. “American subsidiaries usually receive training and materials from their corporate headquarters, but Brazilian companies like us have to learn how to implement and manage a compliance program ourselves from zero.”

Fortunately for Mariana, SCCE brought a great deal of compliance learning to Sao Paulo, Brazil on April 29 and 30. The association conducted a two-day workshop designed to help compliance professionals from Brazil and elsewhere in Latin America gain the knowledge they need and couldn't find locally. The leaders of the workshop were long-time SCCE Academy faculty members Debbie Troklus, Sheryl Vacca, and Joe Murphy.

The event was brought about because of the advocacy of SCCE board member Shin Jae Kim Hong, who is a partner at the law firm TozziniFreire Advogados in Sao Paulo. Shin had identified the growing demand among compliance professionals in Brazil to network and learn best practices. The demand she spoke of was clearly there. More than 50 people attended the program. They represented Brazilian companies, local operating units of US companies, and there was even an attendee from the Brazilian government.

In retrospect, the success of the program was not surprising. Brazil has undergone explosive development over the past few years. Growth in 2010 is expected to be at approximately 7% according to *The Economist*.<sup>1</sup>

At the same time the government is emphasizing the need for compliance, even sponsoring the OECD-Latin America Conference on Corporate Responsibility for Promoting Integrity and Fighting Corruption. SCCE will be a participant in this event, which brings together government and business leaders from across Latin America.

Brazil has also undergone two waves of compliance, observed workshop attendees Claudio Scatena and Pyter Stradioto of AES Corporation, a global power company based in Virginia. According to both, the development of compliance was similar to that found in the U.S., with one wave after Enron, Worldcom, and the implementation of the Sarbanes-Oxley Act (SOX). The second wave, they report, came as a result of the Siemens corruption scandals which, “made it clear that companies needed really effective compliance programs.”

Yet, despite efforts such as these, there is still much to do. For one, corruption remains a challenge. The country ranks 75th on the 2009 Transparency International Corruption Perceptions Index.



ADAM TURTELTAUB

In addition, according to Fernando Ribeiro of the bank Grupo Santander Brasil, there is very little for compliance professionals to draw from. The banking industry has a compliance training program, but universities are filling a part of the void. There is also a small, nascent Brazilian compliance group. But, on the whole, compliance officers have had to learn where they can.

“We have built our knowledge by reading foreign literature, doing courses abroad, sharing experiences with peers from other companies, doing benchmarking visits/survey, as well as from the common sense of people in the company who work in related activities,” reports Teixeira. The desire for more information led her to sign up for the SCCE workshop. “We have just initiated the implementation of a compliance program in our company. We are still getting familiar with certain compliance issues and the more prepared we can be the better.” She went on to note, “It is also important for us to have a certified professional who has been through the training materials

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**Win Swenson, Partner, Compliance Systems Legal Group**

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and who can access further resources through SCCE, considering the challenges we have ahead."

Challenges or not, there is clearly a need to integrate compliance into companies operating in Brazil.

"Santander, as much as other banks, is no longer regional nor local but global," notes Ribeiro. "No matter what the cultural differences are among countries, there is only one way of doing this: the right one." And, Ribeiro was surprised by how much consensus there is in the way to do things right. In fact, for him one of the key pieces of learning from the workshop was "that despite the different regulatory environments, financial institutions and corporations share the same concerns and pretty much the same type of compliance programs."

It was a thought similar to one of Scatena's, "All in all, whether you are in the U.S., Brazil, Europe, or China, prevention, detection and correction are what compliance is all about."

But despite this commonality, the participants expressed a strong need to also recognize the differences between countries. Scatena warned that something as simple as a training scenario using a business person playing golf may be an issue. Golf is not commonly played in Brazil.

More profound differences must also be acknowledged. Teixeira notes that Brazilian law, except in the area of antitrust, does not have the same legal requirements for compliance that are found in the U.S. As a result, she reports, "Our main argument to prove its values is the company's commitment to integrity." GERDAU has a long history of emphasizing

integrity, with a code of ethics dating back to 2001.

Judging by the enthusiasm in the classroom, the attendees will soon be joined by many others. That will not only swell the ranks of the compliance profession but could lead to some real innovation. Debbie Troklus saw benefits to the entire compliance community in this enthusiasm, "In the U.S., people become complacent. We must remember to keep an open mind and always look for avenues to learn. The excitement I saw in Brazil was very encouraging. Being excited about compliance keeps the program fresh."

Keeping it fresh will be critical as new challenges emerge. "The world is changing, and the business community can no longer ignore that," said Santander's Ribeiro. "Products, no matter what business we are talking about, need not only be in compliance with regulatory rules, law, and regulations, but above all, they must be socially and ethically acceptable."

As the workshop in Sao Paulo demonstrated, businesses worldwide are starting to come to that same realization and are upping their compliance and ethics commitment accordingly. ✦

**Notes:**

- 1 Brazil's booming economy: Flying too high for safety. *The Economist*, May 20, 2010. Available at <http://www.economist.com/node/16167612>

**Editor's note:** Adam Turteltaub is the Vice President, Membership Development for SCCE. He may be contacted at [adam.turteltaub@corporatecompliance.org](mailto:adam.turteltaub@corporatecompliance.org).

# Three ethical myths about company policies and e-mail

By Phyllis A. Wilson, MS

You don't have to go far to see that things are happening in the workplace and around us every day that are causing some folks distress. I'm not talking about layoffs or downsizing, but the office politics or day-to-day workings in an office. As I was doing some recent research, I discovered that employees don't really know much about their rights within organizations. The real truth is being hidden from employees with "little fine print" or lack thereof. If you want to be able to face today's ethical challenges, beware of these three myths.

## **Myth 1: I can use my personal e-mail and social networks on my company computer.**

**Fact:** The ability to control what information one reveals about oneself over the Internet, and who can access that information, has become a growing concern. These concerns include whether e-mail can be stored or read by third parties without consent, or whether third parties can track the websites someone has visited. Electronic media (E-everything) has become the predominant method of communication in the workplace... "click" and "send". These tools can enhance productivity and speed business developments; however, the immediate availability and impersonal nature can also lead employees to send and say things over an e-mail system that in years past they would

only have thought to themselves. With the high volume of communications transmitted via e-mail, the employee needs to know that their E-everything is being monitored—probably by someone who was hired exclusively for this purpose. Employees who have abused the employer's computers and Internet systems with offensive e-mails, instant messages (IMs), or the like have been subjected to disciplinary actions, including termination.

In 1986, the Electronic Communications Privacy Act (ECPA) was instituted. The ECPA "prohibits the intentional or willful interception, accession, disclosure, or use of one's electronic communication," such as e-mail. Nevertheless, as with any good thing, three exceptions limit its applicability to employer monitoring:

- The provider exception
- The ordinary course of business exception
- The consent exception

Most employers justify monitoring employee e-mail via the first and third exceptions. For example, employers who provide their employees with e-mail service through a company-owned system are exempt from the ECPA under the "provider exception." It should be noted, however, that private employers may not be protected under the ECPA if they use a third-party service provider.



PHYLLIS A. WILSON

The "consent exception" applies when "one party to the communication has given prior consent, actual or implied, to the interception or accession of the communication." Employees will be deemed to have consented to e-mail monitoring by their continued use of an employer's e-mail system or computer after being informed of a monitoring policy with regard to e-mail.

## **Here is a scenario:**

A pregnant employee who was working in the city manager's office was told that she would not be promoted due to an undocumented hiring "freeze." However, the plaintiff presented evidence challenging that justification—an instant message communication sent, when the alleged hiring freeze already was in place, reflecting the employer's desire

*CONTINUED ON PAGE 24*

## COMPLIANCE & ETHICS

### INSTITUTE *Preview*

#### **Session 603: Making the Grade: A Case Study on the Transformation of Bausch & Lomb's Code of Business Conduct and Ethics (Tuesday, September 14th from 1:30 – 2:30 p.m.)**

“Why should I even care? Most of it doesn't really apply to me anyway.” If you are in the process of, or are thinking about, updating your Code of Conduct, you can expect objections of this sort from your employees. Codes of Conduct are often the centerpiece of compliance and ethics programs, but many companies fail to effectively engage employees in the subject matter and draft something that employees actually want to use and can be proud of. Codes are only worth the paper they're printed on if you can't engage the enterprise to bring its values to life. This session is an in-depth case study of how Bausch & Lomb transformed its Code of Business Conduct and Ethics from a failing grade to best in class through the use of global employee focus groups. By sharing their systematic and collaborative approach, Courtney and Susan will show you how it is possible to engage employees at all levels of the organization in the drafting process and drive cultural change by employing line managers in implementation, training, and certification.

**Susan Roberts, Corporate Vice President and Chief Compliance Officer, Bausch & Lomb**  
**Courtney Barton, CCEP, Compliance Manager, Bausch & Lomb**

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SUSAN ROBERTS



COURTNEY BARTON

## COMPLIANCE & ETHICS

### INSTITUTE *Preview*

#### **Session 506: Government Contracts and Relationships (Tuesday, September 14th from 11:00 a.m. – 12:00 p.m.)**

Confused about the government's new mandatory fraud reporting requirements? Wondering what federal agencies and the Department of Justice plan to do with all of this new information? Clueless about exactly how the government will be assessing your ethics and compliance program as part of the new FAR requirements and future prosecution decisions? This session, presented by Eric Feldman from the National Reconnaissance Office and Steve Linick from the Department of Justice, will briefly trace the history of business ethics in the U.S.; federal government efforts to encourage voluntary contractor disclosure of fraud and illegal activities; the impetus behind the new FAR requirements for mandatory disclosure and the increased emphasis on effective ethics and compliance programs; and a new paradigm being pursued by several federal agencies to encourage more robust ethics and compliance activities and to better manage risk. You will also receive the latest updated information on DOJ's management of fraud disclosures and the government's efforts to promote corporate transparency.

**Steve A. Linick, Director, National Procurement Fraud Task Force, U.S. Department of Justice**  
**Eric R. Feldman, CFE, CIG, Senior Advisor to the Director for Procurement Integrity, National Reconnaissance Office**

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ERIC R. FELDMAN

to promote someone other than the plaintiff and asking for recommendations. Based on this e-mail and other evidence at trial, the court found that a jury might reasonably conclude that the plaintiff's gender and/or pregnancy were motivating factors in the city's decision not to promote her.

**Myth 2: All company policies and codes of conduct are the same. I do not have to read them, just sign them.**

**Fact:** So often, employees begin working at an organization and they are given the employee handbook and told they will need to sign to certify and/or acknowledge that they have read the policies contained within. This acknowledgement signifies that, by signing the form, you have read and understood the company's rules and consequences of violation. Reviewing a policy is more than just reading and understanding; it involves asking questions for clarification.

Excited and anxious to start working for XYZ Company, the employee signs the form after casually glancing through the book. The typical employee has worked at other organizations and will blindly feel they know the "Do's and Don'ts". It is not until something goes wrong that an employee begins to hurriedly search for the policy and procedure manual to understand their rights.

**Here is a scenario:**

A recent college graduate accepts her first role as a pharmaceutical representative for a top pharmaceutical company. Prior to her first day of reporting, her manager contacted her

and notified her that on the evening of her first day at work, she would be required to travel out of town to attend the new representative training for two days. The company would be issuing her an American Express credit card to cover her expenses, while ensuring her flight and hotel accommodations were paid. Excited about her new position, the employee gladly agrees to travel. Upon returning to the company after training, her manager calls her in the office and a representative from HR is seated in the room. The manager informs the new associate that her employment at the company has been terminated. Disoriented and confused, the employee asks the reasons for termination. The manager explains the company policy regarding corporate card use, which the new representative had signed the first day. Specifically, the rules state that employees are forbidden from taking cash advances on the corporate card. The new rep tried to explain the reasons for the cash advance (to make ends meet until her first paycheck). Needless to say, the new representative left the company after four days of employment.

Additionally, each year an organization may (or should) ask for re-certification of all employees to be sure they understand the company policies and/or code of conduct and address any changes or concerns. The employees will again sign the form, thinking they know the policies. These acknowledgements typically state that if you do not understand a policy, or if you have questions, to speak with your supervisor or line manager. Employees reluctantly recertify for one of several reasons:

They don't want to question the policy and draw attention to themselves.

They don't think their supervisor/line manager knows any more about the policies than they do.

They, like many others, feel the rules are irrelevant and issues the rules address will not likely directly affect them, contingent upon good work performance or "common sense."

**Myth 3: It's okay if my co-workers send out sexually-explicit or dirty joke e-mails and texts.**

**Fact:** Time and time again in today's workplace, company e-mail is commonly used by employees to transmit jokes, pictures, communications regarding side businesses or personal artistic endeavors, gossip, humor, rumors, and romantic or pornographic content—some of which may be offensive, hostile, discriminatory, or worse. Although a single sexually suggestive comment or joke might offend someone and/or be inappropriate, it may not be sexual harassment. However, a number of relatively minor separate incidents may add up to sexual harassment if the incidents affect the work environment.

In 2006, Congress enacted electronic discovery amendments to the Federal Rules of Civil Procedure (E-Discovery law).<sup>1</sup>

Employers are now being told to implement policies regarding the retention of electronically stored information to avoid being sanctioned for discovery abuses. Electronic discovery refers to any process in which electronic data is sought, located, secured, and searched with the intent

*CONTINUED ON PAGE 26*



# The Complete Compliance and Ethics Manual (2ND EDITION)

From its introduction in 2004, *The Complete Compliance and Ethics Manual* has been serving SCCE's membership and the compliance and ethics industry by providing straightforward and practical advice and resources that support compliance and ethics professionals in the implementation and management of their compliance, ethics and risk management programs.

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of using it as evidence in a civil or criminal legal case. The nature of digital data like e-mail makes it extremely well-suited to investigation because it can be electronically searched with ease. It is also difficult or impossible to completely destroy, particularly if e-mail is sent over a network. Employers now have a duty to preserve potentially discoverable documents, such as e-mails.

**Here is a scenario:**

A police officer was allegedly disciplined following his employer's discovery of many personal (and sometimes sexual) text messages sent from his work-issued pager. The nature and frequency of the text messages were discovered during an investigation to determine why the officer had repeatedly exceeded the monthly text character limit. During that investigation, the city reviewed transcripts of the officer's messages for a period of two months. The city asserted the investigation was not motivated by a need to uncover wrongdoing, but rather to determine the appropriateness of the character limit (i.e., was the character limit too low to accommodate work-related messages, or were the overages due to personal use). The officer alleged this as a violation of his Fourth Amendment rights and those with whom he had been communicating and sued the city. The District Court<sup>2</sup> held that employees can have reasonable expectation of privacy as to the content of the messages but that, in light of the motivation for the search, namely to determine the efficacy of the text character limits, the search was reasonable and did not violate the Fourth Amendment. On appeal, the Ninth Circuit reversed in

part and held that the search was not reasonable in scope and thus violated the Fourth Amendment.

The US Supreme Court recently addressed this case regarding whether a government employer's search through an employee's text messages, sent and received on a work-issued pager, violated the Fourth Amendment. The Court found that the search was reasonable and that the employee's Fourth Amendment rights were not violated. The Court held that the search was justified because "there were reasonable grounds for suspecting that the search was necessary for a non-investigatory work-related purpose," namely to determine the sufficiency of the character limit on text messages. The Court further held that the extent of the search was reasonable "because it was an efficient and advantageous way to determine whether the officer's overages were the result of work-related messaging or personal use" and because the review was not "excessively intrusive." Accordingly, the search did not infringe on his Fourth Amendment rights. Additionally, the Court held the rights of those with whom the police officer was communicating were not violated.

The take-away message is: Know your company's policies and code of conduct. Ask questions and be informed. ✦

**Notes:**

- 1 Available at <http://www.ediscoverylaw.com/2006/12/articles/news-updates/ediscovery-amendments-to-the-federal-rules-of-civil-procedure-go-into-effect-today/>
- 2 Available at <http://www.ediscoverylaw.com/2010/06/articles/case-summaries/government-employers-search-of-employees-text-messages-on-employer-issued-pager-did-not-violate-fourth-amendment/>

Editor's note: Phyllis A. Wilson is a consultant Houston, Texas for companies across various industries, including oil and gas, financial services, and food and beverage. She is a frequent speaker on ethics and compliance topics and the author of *Top Ten Things to Consider - All in a Day's Work*. She can be reached by telephone at 832-451-8483 or by e-mail at [phyllis.a.wilson@gmail.com](mailto:phyllis.a.wilson@gmail.com).

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## COMPLIANCE & ETHICS

### INSTITUTE *Preview*

**Session 103: Driving from Good to Great: One Ethics & Compliance Department's Three-Year Strategy for a Successful Journey (Monday, September 13th from 11:00 a.m. – 12:00 p.m.)**

Ethics and compliance departments across the country are in a state of constant evolution – a journey of continuous improvement and development. We all have “good” programs. The real question is how we take a “good” program and drive it to “great.” This session discusses how one company is approaching this journey by answering three simple questions: Where are we going? How will we get there? and How will we know we are on the right path? We will explore how a low-tech risk assessment can systematically evolve into comprehensive improvement initiatives that include reorganization, enhanced operations, and greater connectivity with business partners. In addition, the session will discuss the tactical steps employed to revitalize and refocus an ethics and compliance team, and how the use of metrics can help to both measure and drive improvements. We are all on a journey. This is one company's real life story.

**Steve Koslow, JD, SVP, Chief Ethics & Compliance Officer, CUNA Mutual Group**



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## COMPLIANCE & ETHICS

### INSTITUTE *Preview*

**Session 301: Working with Uncle Sam: Compliance Issues that Arise When Working Among Federal Employees (Monday, September 13th from 3:00 – 4:00 p.m.)**

Do you have a contract or sub-contract with the government? Do you sell products or services to any government facility or agency? Do your employees, subcontractors, consultants, or agents interact with government employees? Do any of them regularly visit government facilities?

Do they even have an office in a government building? Do any of your employees ask you about giving or receiving gifts from a government employee? Are they invited to government parties or asked to contribute for a gift to a retiring government official? Have they had access to proprietary or classified government material? Have they received e-mails with nonpublic government documents attached? Were they told of future government actions that have not been officially announced? If you faced any of these situations, you should attend this session. It not only addresses the myriad problems resulting from the blended private-public workforce, but provides suggestions and remedies.

**John Szabo, Senior Counsel for Ethics, U.S.**

**Nuclear Regulatory Commission**

**Steve Epstein, Chief Counsel, Ethics and Compliance, The Boeing Company**



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# Compliance and the Board: New survey by the HCCA and SCCE

By Adam Turteltaub

The proper relationship between the board and the chief ethics and compliance officer (CECO) is critical to an effective compliance program. Without board access, the compliance officer may be impeded in his or her efforts to prevent, identify, and correct wrongdoing, especially if laws or policies are violated by senior management.

From a legal perspective, the Federal Sentencing Guidelines call for an organization's governing authority—typically the board—to "...exercise reasonable oversight with respect to the implementation and effectiveness of the compliance and ethics program." Without that oversight, a company may face much larger penalties when wrongdoing is uncovered.

In addition, the U.S. Sentencing Commission recently sent changes to Congress which would enable organizations to get credit for having an

effective compliance program, despite wrongdoing by senior leadership, if the individual with operational responsibility for compliance in the organization has direct reporting authority to the board level.

To assess the level of interaction between the board and the compliance team, a survey was conducted among compliance and ethics professionals. A total of 481 responses were collected from private and public companies, as well as from non-profits. Approximately three-quarters of the responses were from the healthcare industry.

## Key Findings

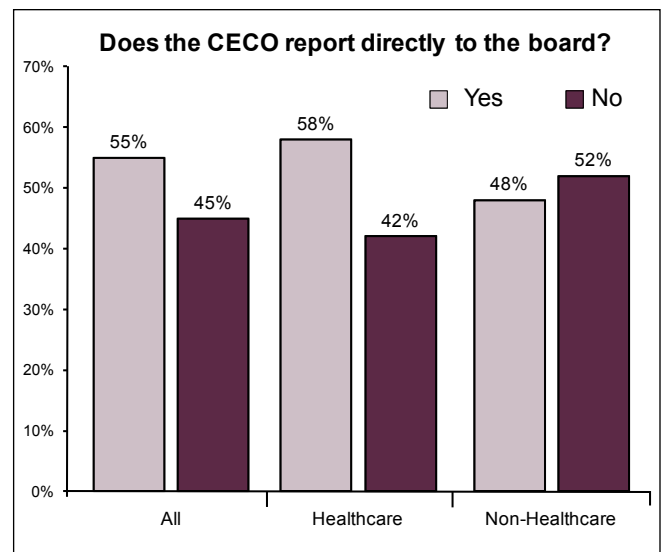
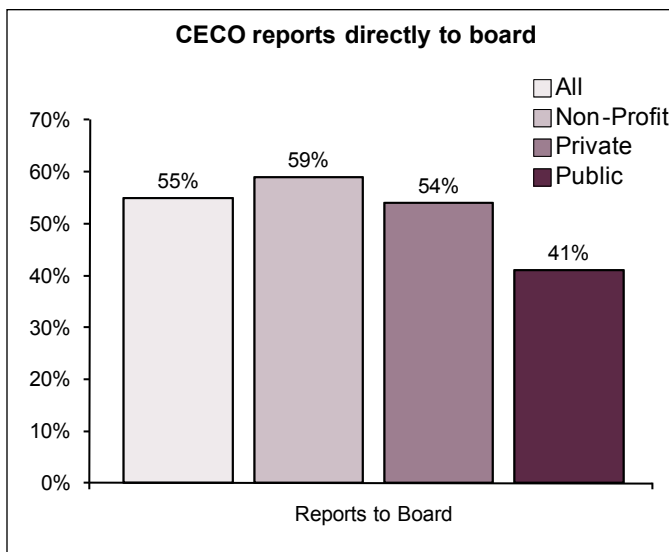
Publicly traded companies were far less likely than privately held and non-profit organizations to have a compliance officer reporting directly to the board. Just 41% of respondents at publicly traded companies reported



ADAM TURTELTAUB

directly to the board, compared to 54% for privately held companies and 59% in non-profit industries.

Healthcare, by contrast, which is dominated by non-profits, was more likely than the rest of industry to have a compliance officer reporting directly to the board. Among healthcare respondents, 58% reported a



board relationship, compared with just 48% from all other industries.

As for those companies where the CECO does not report to the board, just 32% of respondents at publicly traded companies reported that their CECO reports to the CEO. Another 36% responded that they reported to the General Counsel, and 7% reported to the CFO. By contrast, for non-profit and privately held companies, a majority reported to the CEO: 61% and 54%, respectively.

The lack of a reporting relationship to the board does not necessarily mean a lack of active board exchanges with the compliance officer. Across all respondents, 65% reported that the CECO has four or more regularly scheduled meetings with the board per year. Once again, the data showed

higher numbers for board interaction for healthcare organizations.

Surprisingly, less contact with the board and senior management did not leave publicly traded company CECOs dissatisfied with the number of contacts with the board. Almost two out of three (60%) reported that they were satisfied with the amount of interaction. This was lower, but not by much, than the 70% of non-profit respondents who reported that they were comfortable with the quantity of contacts.

When it comes to getting their reports in front of the board without screening and editing, publicly traded companies fall short. More than a third (35%) of respondents from publicly traded companies answered that reports by the CECO to the board are always screened and/

or substantively edited by the General Counsel or some other executive. Such was the case for just 15% of respondents from privately held companies and 12% from non-profits.

The full results of the research can be found on the SCCE website under Surveys in the Resources section. ✦

*Editor's note:* Adam Turteltaub is the Vice President, Membership Development for SCCE. He may be contacted at [adam.turteltaub@corporatecompliance.org](mailto:adam.turteltaub@corporatecompliance.org).

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# The value for interpreting risk within the GRC framework

By Luis Ramos

Today, risk comes in all forms. The management of risk has moved from a tidy corner of business operations previously reserved for insurance-based disciplines, and evolved into an organization-wide initiative targeted at governance, risk, and compliance (GRC) in recent years. Spurred in large part by the financial crisis, risk management has made its way to the executive offices, obliging decision makers to scrutinize their business practices, processes, and competencies to better mitigate organizational risk, increase compliance, and foster growth.

Up to now, separating governance and compliance activities from risk management was the cultural norm for most organizations, but planning and managing these activities in silos has led to duplication of resources. Uncovering the impact of silos of risk in organizations, Deloitte<sup>1</sup> found that nearly half the Global 1000 dropped in value of 20% or more in less than a month, and in 80% of these cases, this failure originates from multiple risk factors, creating a greater risk environment where risks are managed autonomously in different parts of the organization.

To avoid duplicating resources, organizations such as the Open Compliance and Ethics Group (OCEG) promote a holistic view of GRC issues to effectively manage risk within every department of the organization.

According to OCEG, effective risk management involves:

- Addressing and continually identifying GRC opportunities, obstacles, and threats in a holistic fashion;
- Assessing the potential impact of threats;
- Ensuring risk-intelligent decisions; and
- Implementing structures to enable the organization to appropriately pursue opportunities while addressing obstacles and threats.

Organizations looking to improve business practices should review their current approach to risk and compliance, uncover areas for integrating GRC initiatives, and move toward a framework that provides good governance, mitigates risk, and demonstrates a commitment to compliance.

## **Governance: Tone from the top—and middle**

Corporate boards and executive teams are increasingly interested in governance-related issues, due to an influx of interest from shareholders and a variety of stakeholders, in addition to pressures from stricter regulatory scrutiny. Defining and communicating corporate controls, policies, and expectations for conduct all fold into the organization's strategy for good governance. This oversight role should be comprised of people



*LUIS RAMOS*

who fully support the commitment to the GRC framework, because they are responsible for defining and communicating the governance message for the organization.

The governing authority must lead by example and set the tone at the top—and the middle—because this group is not only comprised of members of management or the executive team, but also personnel outside of management from different levels of the organization. Having representation and buy-in from members throughout the organization facilitates the adoption and acceptance of the importance of an organization's GRC initiatives.

When defining the policies and processes that drive corporate governance, a collaborative effort by multiple departments is absolutely necessary. Integrating information from different areas helps create

policies that span the entire organization. Without this, policies may inadvertently miss an important facet of the organization. For example, personnel representing the IT department may identify the need to include policies for information and network security, but overlook the need to include the physical security of the building.

Policies and processes set forth by an organization are subject to change as new regulations are mandated. Having a well-planned system for handling how an organization keeps up with multiple regulatory changes that impact it and its operations is essential for protecting it from undiscovered risk. For example, the U.S. Sentencing Commission recently submitted proposed amendments to the Federal Sentencing Guidelines regarding sentencing and the possibility of reducing penalties when effective compliance programs are in place. One part of the amendment obliges organizations to structure their program so the person operating the compliance program reports directly to the board. For an organization to comply with the new guidelines, it may have to reorganize the reporting structure. If this is the case, the timing of the change in compliance program operations could be critical, if the organization later needs to prove that it exercised due diligence.

Tools, such as policy management solutions, provide thorough documentation that this policy change occurred and was implemented within the appropriate time frame. However, according to a recent OCEG poll, only 31% of respondents use technology for routing policies to ensure effective regulatory policy management. Many

organizations may not have an effective system for keeping policies up to date with regulatory changes. When reviewing the policy management process, it is a recommended best practice to also ensure these policies are reflecting the right tone at the top and are in tune with the organization's strategy for good governance.

### **A closer look at mitigating risk**

Executives and members of the board now require greater visibility into all areas of risk. In an economic recovery, near-misses need to be more closely examined to proactively identify and assess potential risks and understand trends across the organization—whether they represent financial, operational, IT, brand, or reputation-related risk. Comprehending such multi-faceted risks is essential for effectively managing the organization's long-term strategies.

Having an effective case management solution in place can provide insight into an organization's strategic risks by providing at-a-glance situational visibility into identified issues and incidents that can adversely impact the business. Through thorough and consistent investigative processes, the organization can better handle issues across the board—from the moment an event is reported to the final resolution of the case. The result of identifying issues across multiple areas in an organization and closing investigations quickly and accurately can have a huge financial impact, especially when the average company lost \$15.2 million to fraud over the past three years, according to the Kroll Global Fraud Report.<sup>2</sup>

Driven by policies and procedures, predetermined rules and established work flows provide a solid, defensible framework for handling issues in a uniform manner while promoting a collaborative environment. For instance, an organization's policy may be that all brand and reputational risk issues are to be automatically triaged and sent to the Public Relations department, while all matters relating to financial risk are to be routed directly to the Audit and Compliance department. Despite departmental ownership, stakeholders from different areas of the organization collaborate on and contribute to a thorough review of the issue.

Issues that arise are often investigated by more than one person. However, some cases involve sensitive information and thus require discretion. GRC ecosystems should be able to facilitate this entire process and have security controls in place that protect confidential information by allowing users to see the information they need to see to do their job. Tracking and monitoring people and processes provide the visibility needed to ensure proper oversight.

### **Demonstrating compliance**

Compliance programs for many organizations were developed in reaction to mandates such as the Federal Sentencing Guidelines and Sarbanes-Oxley. Almost a decade later, programs that started out as hotline programs evolved into something much more comprehensive by utilizing communications to foster ethical cultures. By continuing to take these proactive steps, organizations now

*CONTINUED ON PAGE 33*

# SCCE'S UPCOMING 2010 EDUCATIONAL OPPORTUNITIES

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SCCE is the premier provider of compliance and ethics education. Faculty includes industry experts from around the world and professionals from the corporate environment, academia, government, and the law. Attracting hundreds of compliance professionals a year, SCCE events provide unparalleled networking opportunities. Programs are offered in the following formats to meet the diverse needs of this evolving profession.

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These four-day intensive training programs are designed to help those new to the profession quickly get up to speed and learn directly from experienced ethics and compliance professionals. The examination to be a Certified Compliance and Ethics Professional (CCEP) is offered on the fifth day.

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November 8–11 • Orlando, Florida

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September 12–15 • Chicago, Illinois

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November 11–12 • Orlando, Florida

Taught by experienced practitioners, this intensive program will cover essential information for anyone charged with conducting and supervising internal investigations.

## SCCE WEB CONFERENCES

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*Dates and locations are subject to change. Please visit [www.corporatecompliance.org](http://www.corporatecompliance.org) or call +1 952 933 4977 or 888 277 4977 for final dates and locations.*



see the need to propagate compliance initiatives to cover all areas of the organization and to demonstrate compliance with mandates and internal policies.

Understanding where areas of non-compliance may present a potential risk issue for an organization is essential for demonstrating compliance. For instance, an organization may have an information security policy that prohibits downloading certain software to employee workstations. When one or more individuals do not comply with the internal policy, they open the entire organization to risk of a security breach. Those accountable for their organization's GRC initiatives are responsible for auditing and evaluating the impending areas of non-compliance and prioritize the remediation process across the enterprise. Through the ongoing process of analyzing information, organizations will continue to enhance GRC initiatives and promote integrity.

GRC initiatives can help organizations have a more holistic understanding of risk issues and how these issues play into the organization's long-term strategies. GRC can also help preserve an organization's brand, reputation, and ensure that operations have been reviewed to ensure efficiency. While organizations navigate their way through implementing and reassessing the framework for good governance, they must see it as a journey rather than a race to reach the final destination. ✦

## COMPLIANCE & ETHICS

### INSTITUTE *Preview*

#### **Session 102: In House Counsel and Compliance Officer: Can Both Hats Sit on the Same Person? (Monday, September 13th from 11:00 a.m. – 12:00 p.m.)**

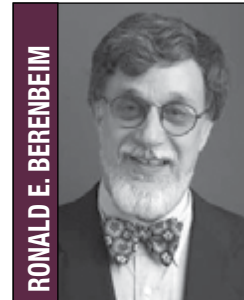
In order to economize, in-house counsel are often also asked to serve as compliance officers. They may be editing a contract or defending litigation in the morning, and investigating an allegation of misconduct in the afternoon. The roles of an attorney who is a "zealous advocate" in representing a company, and a compliance officer who exercises due diligence "to prevent and detect violations of law" are different and, occasionally, at odds. This session will explore an attorney's ethical rules (using the Model Rules of Professional Conduct) and how they affect the attorney who acts as a company's compliance officer. We will explore this in practical ways using video and hypothetical situations. We will look at such things as the aims and limits of investigations, and how attorneys and compliance officers might view those differ-

ently. Among other things, we will also explore duties of confidentiality and communication, and how those affect each role. Finally, we will look at ways to protect the attorney and both of the roles he or she plays by being both an attorney representing a company and its compliance officer.

**Russ Berland, JD, Of Counsel, Stinson, Morrison Hecker LLP**  
**Ronald E. Berenbeim, Principal Researcher, Business Ethics, The Conference Board**



RUSS BERLAND



RONALD E. BERENBEIM

Attend SCCE's 9th Annual Compliance & Ethics Institute in Chicago to hear more! Visit [www.complianceethicsinstitute](http://www.complianceethicsinstitute) for complete conference and registration information.

#### Notes:

- 1 Deloitte: Global Risk Management: Formulas for Success in Financial Services. Available at [http://www.deloitte.com/assets/Dcom-Sweden/Local%20Assets/Documents/se\\_global\\_risk\\_mgmt\\_130608.pdf](http://www.deloitte.com/assets/Dcom-Sweden/Local%20Assets/Documents/se_global_risk_mgmt_130608.pdf)
- 2 April 2010 edition of Kroll's Global Fraud Report. Available at <http://www.kroll.com/about/library/fraud/>

Editor's note: Luis Ramos is the Chief Executive Officer of The Network, a leading provider of governance, risk

and compliance solutions to nearly half the Fortune 500. He oversees the company's Information Technology, Contact Center Operations, Product Development, HR, Finance, and Sales and Marketing departments. Luis can be reached in Norcross, Georgia at [luisramos@tnwinc.com](mailto:luisramos@tnwinc.com).

## A well-conducted internal investigation

**CEP:** This is the first time the SCCE has offered a two-day conference on internal investigations (November 11-12, 2010 in Orlando). Are most compliance professionals comfortable in conducting these investigations? What can happen if internal investigations are not conducted properly?

**AG:** Many newcomers to the Compliance and Ethics (C&E) profession often find themselves at a loss when it comes to conducting an internal investigation. Investigation skills are learned behaviors and can be mastered over time through trial and error. This conference will help eliminate a lot of the error that comes from conducting investigations on your own, because participants will learn firsthand from experienced professionals who have been conducting internal investigations for several years. In addition, conference attendees will have the opportunity to develop investigation plans based on real scenarios. This hands-on experience will provide the participant with skills that can be quickly implemented in the workplace. Failure to properly conduct an investigation can damage the integrity of the company's ethics and compliance program, present legal and financial risk to the company, tarnish the credibility and reputation of the investigator, and hamper productivity through lost time or non-value added work to the company.

**CEP:** What is one of the most critical components in conducting an investigation?

**AG:** One of the most critical components in conducting an investigation is developing a good investigation plan. Consider an investigation like going on a trip to a remote destination. What do you want to see and do when you get there? What documents do you need to see to help you get to the right places and activities you want to experience? Who do you need to help you get it all done? You certainly don't want to get lost or end up in questionable or unsafe places; so goes it with an internal investigation. Good investigation planning will help you focus on what is critical to achieving a successful outcome and will help eliminate most of the risk associated with an investigation. A thorough plan will help the investigator work through a process of identifying critical documents, conducting interviews, gathering facts, documenting evidence, and preparing reports for management.

**CEP:** What critical information will attendees learn at this conference?

**AG:** Attendees will benefit from this intensive educational program as they learn from seasoned investigators the critical elements of a comprehensive investigation program including developing a solid investigative framework, aligning the investigation process to critical compliance risk areas, collecting the reported information, determining the precise allegation you need to investigate, planning an effective strategy and



**AL GAGNE**

interview style, identifying your paper trail, how to gather documentary evidence, evaluating the evidence, and reporting the results. Attendees will also gain insight on what to do when a good investigation goes bad.

**CEP:** What are the high points of this conference?

**AG:** I think one of the high points of the conference will be the workshops where attendees will be given the opportunity and challenge to work in small groups through various scenarios depicting real-life situations that involve allegations of ethics and compliance lapses by employees. Another high point will be the "Investigations Roundtable" featuring many seasoned C&E professionals who have many years of experience conducting internal investigations. Attendees will have an excellent opportunity to ask questions and learn from the experts.

**CEP:** Why has internal investigations become such an important issue?

**AG:** Increasing oversight by several government regulatory agencies, along with recent changes in the Federal Sentencing Guidelines,

INSTITUTE *Preview***Session 201: Writing Policies, Making Sense (Monday, September 13th from 1:30 – 2:30 p.m.)**

A compliance program is not effective unless it's based on written policies that are fully

understood by all who need to know them. After all, people can't "play by the rules" if they don't know what the rules are. But many organizations' compliance policies are a shambles: too complicated, poorly written, full of jargon and legalese. They are often outdated, hard to find, or inconsistent with each other. Some may not even exist. This session will teach proven techniques for writing policies that make sense and are easy to understand. It will also discuss how to improve your policy-management system and communicate important compliance standards throughout the organization.

**J. Stuart Showalter, JD, MFS, is a lawyer, author, and former compliance officer for two large health care systems.**

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J. STUART SHOWALTER

make it almost an absolute necessity for companies to take responsibility for investigating allegations of unethical or illegal behavior by their employees and business partners and for taking appropriate corrective and disciplinary actions against violators.

**CEP:** Why is this conference so critical?

**AG:** I believe this conference is critical to any C&E professional whose company's C&E program does not have a formal investigation process in place. Today, it's just not enough to develop and communicate a code of conduct, conduct risk assessments, develop and deliver ethics and compliance training, maintain helplines and metrics, and report periodically to the board of directors. A good, comprehensive C&E program will require timely, effective, and thorough investigations along with the implementation of appropriate corrective and disciplinary actions that can be demonstrated to employees, customers, and shareholders. Clearly, the actions a company takes against those who violate the company's code of conduct or law, regardless of their position, will resonate with every stakeholder.

**CEP:** What are some of the key issues facing internal investigators? There's been a lot of talk of late about privacy issues.

**AG:** Yes, investigators do need to be concerned about how any personal information received during the course of an investigation is protected from any unnecessary or improper disclosures. The investigator must make every reasonable effort to keep sensitive employee information confidential. Other key issues facing internal investigators have to do with the efficacy

of conducting a comprehensive and speedy investigation into allegations that involve potential fraud. Failure to investigate in a timely manner can expose the company to potential criminal and civil actions. The best defense is a strong offense when it comes to protecting the company's reputation and preserving the integrity of a sound C&E culture.

**CEP:** The conference was designed specifically to help people conduct internal investigations by not relying solely on outside counsel. What are some of the key benefits of keeping the investigation in house?

**AG:** True, the focus of the workshop is to provide attendees with the skills needed to conduct effective internal investigations, thus giving the company more control over the investigation and eliminating the high costs associated with retaining outside counsel or other external investigators or subject matter experts. Most allegations of unethical behavior can be investigated internally. However, there may be unique or extremely complicated situations where it will be necessary to engage outside counsel with the specialized expertise, not available internally, to lead an investigation. Skilled investigators should know their limitations, anticipate problems, and have the discretion to bring in any external support when needed. †

*Editor's Note:* This interview with Al Gagne, CCEP, Director, Ethics & Compliance, Textron Systems Corporation, took place in June 2010. Find workshop registration information at [www.internalinvestigations.org](http://www.internalinvestigations.org)

# FCPA compliance and continuous controls monitoring

By Thomas Fox

In a 2008 speech to the Texas General Counsel Forum, former United States Deputy Attorney General Paul McNulty provided his perspective on the Foreign Corrupt Practices Act (FCPA) compliance investigations and the Department of Justice (DOJ) enforcement actions. From his experience as the former second highest-ranking official in the DOJ and the chairman of the President's Corporate Fraud Task Force, Mr. McNulty opined that there were three general areas of inquiry the DOJ would assess regarding an enforcement action. First: "What did you do to stay out of trouble?" Second: "What did you do when you found out?" And third: "What remedial action did you take?"

Mr. McNulty went on to further define that in the first area of inquiry ("What did you do to stay out of trouble?"), the DOJ would look into what systems a company had in place (e.g., a code of conduct, policies and procedures to implement any code of conduct, and a company-wide and anonymous hotline). However, more than just having the policies, procedures, and processes in place, did the company provide training on these? Were they actively used in business going forward, such as in the area of due diligence on foreign business partners, including agents, resellers, distributors, and vendors? Lastly, Mr. McNulty stated that the DOJ would

look to see if a company had tested its FCPA compliance systems, for instance:

- Was a test case sent up through the hotline?
- Was training in FCPA compliance confirmed or at least tested?
- Were FCPA compliance audits conducted of both employees and foreign business partners?
- Were the results of the monitoring catalogued and maintained?

Most companies have a code of conduct, with attendant implementation policies and procedures in place, training thereon, and a hotline. However, many companies have yet to implement any type of self-audit program to measure FCPA compliance program performance. One of the concepts to emerge out of the Sarbanes-Oxley Act (SOX) is that of continuous controls monitoring for SOX compliance. This author believes that the experiences beginning to come out of continuous controls monitoring programs could portend a powerful tool to assist companies in their ongoing FCPA compliance program.

A recent survey by KPMG (published in its white paper titled "What is Driving Continuous Auditing and Monitoring Today?")<sup>1</sup> indicated that a large number of US companies were successfully using continuous controls monitoring in the following areas:



THOMAS FOX

- Regulatory compliance
- SOX 404 compliance
- Fraud prevention and detection

These findings highlight the transportability of the continuous controls monitoring concept for use as a tool in the area of FCPA compliance.

One of the leading proponents of continuous controls monitoring is Norman Marks, who writes his own blog ([www.normanmarks.wordpress.com](http://www.normanmarks.wordpress.com)) on the subject. Mr. Marks describes continuous controls monitoring as more than simply an application of a monitoring program. In his white paper entitled "A Look Into the Future: The Next Evolution of Internal Audit Continuous Risk and Control Assurance," Marks describes it as a top-down model that begins with "understanding enterprise goals and objectives" and

then moves to “determine the potential risks to those objectives” and finally, goes on to “the assessment and testing of the controls required to manage the risks.”<sup>2</sup>

In a recent article, entitled, “Magic Quadrant for Continuous Controls Monitoring,”<sup>3</sup> French Caldwell and Paul Proctor of Gartner described three ways in which continuous controls monitoring contributes to overall risk management and compliance initiatives. First, continuous controls monitoring can lower audit costs by eliminating manual sampling. Second, continuous controls monitoring can improve financial governance by increasing the reliability of transactional controls and the effectiveness of anti-corruption controls. Third, continuous controls monitoring can improve actual operational performance by monitoring key financial processes.

There are many examples available on the use of continuous controls monitoring. One company, Visual Risk IQ, which produces a software product which performs continuous controls monitoring, has published anonymous case studies on its website.<sup>4</sup> These studies presented were not performed in connection with any FCPA compliance audits. However, the case studies are useful examples of how tools such as continuous controls monitoring can be utilized by corporations in an overall FCPA compliance program and will assist a company in answering the first question McNulty posed above, “What did you do to stay out of trouble?”

The Visual Risk IQ studies<sup>5</sup> include a case study of both accounts payable and of purchase card spending

to determine if there was fraud and misuse of the cards. The key in both of these reviews, involving continuous controls monitoring situations was that of data review. This same type of testing can be utilized in reviewing foreign business partners, including agents, resellers, distributors and joint venture partners. All foreign business partner financial information can be recorded and analyzed. The analysis can be compared against an established norm which is derived from either a business’ own standard or an accepted industry standard. If a payment, distribution, or other financial payment out or remuneration into a foreign business partner is outside an established norm (thus creating a red flag), such information can be tagged for further investigation.

Many companies have yet to embrace post-FCPA compliance policy implementation as a standard part of their compliance program. They have found that if it is difficult to test behavioral aspects of a FCPA compliance policy, such as whether an employee will follow a company’s FCPA-based code of conduct, other testing can be used to form the basis of a thorough review. For instance, it can be difficult to determine if an employee will adhere to the requirements of the FCPA. However, continuous controls monitoring can be used to verify the pre-employment background check performed on an employee, the quality of the FCPA compliance training an employee receives after hire, and then to review and record an employee’s annual acknowledgement of FCPA compliance. For a multi-national US

company with thousands of employees across the world, the retention and availability of such records is an important component, not only of the FCPA compliance program, but it will also go a long way to a very positive response to McNulty’s inquiry of “What did you do to stay out of trouble?” ✦

#### Notes:

1. KPMG: “What is Driving Continuous Auditing and Continuous Monitoring Today?” March 20, 2010. Available at: <http://www.kpmginstitutes.com/insights/2010/what-is-driving-ca-cm-today.aspx>
  2. Available for download at <http://www.iaa.nl/SiteFiles/CRCA%20Final.pdf>
  3. Available for download at <http://www.gartner.com/technology/media-products/reprints/approva/article3/article3.html>
  4. Website at <http://visualriskiq.squarespace.com>
  5. Case Study: Account Payable Spend Analysis. Available for download on the Visual Risk IQ website.
2. Available for download at <http://www.iaa.nl/SiteFiles/CRCA%20Final.pdf>

**Editor’s Note:** Thomas Fox has practiced law in Houston for 25 years. He is now assisting companies with FCPA compliance, risk management, and international transactions. He was most recently the General Counsel at Drilling Controls, Inc, a worldwide oilfield manufacturing and service company. He may be contacted at [tfox@tfoxlaw.com](mailto:tfox@tfoxlaw.com).

# Promoting an ethical culture: The organizational ombudsman

By Charles Howard

The last decade is replete with examples of organizations in which people have not been comfortable raising workplace concerns and reporting misconduct or have been punished for doing so. Not surprisingly, the number of employees who observe misconduct and who fail or refuse to report it remains stubbornly high, and the 2009 recession exacerbated the situation. Indeed, the Supplemental Research Brief for the 2009 National Business Ethics Survey® documents the correlation between the cost-cutting measures taken and the significant increases in the number of employees who observed misconduct in companies that were prompted by the recession to adopt cost-cutting measures. In light of the findings of this report, now may be an appropriate time to reexamine both how we analyze the problem of employee reporting and the effectiveness of some of the tools that have been developed to encourage employee reporting. The organizational ombudsman is a tool that is particularly well adapted to address this issue.

My perspective on the issue of employee reporting comes from almost 20 years of experience in representing organizational ombudsman programs and from serving on the ad hoc advisory group that recommended revisions to the Federal Sentencing Guidelines in 2004. In researching

and writing a book recently published by the American Bar Association, *The Organizational Ombudsman: Origins, Roles, and Operations—A Legal Guide*, I was struck by just how profound the changes have been in our work environment over the past half century. Although many of us are aware generally of the demographic, technology, and globalization forces that have transformed our society and work places, a brief review of just a few of these facts helps to inform the analysis. Consider, for example:

In 1950 the population of the United States was 90% white. By 2005, whites constituted only 67% of the population; and they are forecast to represent less than half by 2050.

Immigration has had a huge impact on our society. By 2000, over 30 million foreign-born persons had arrived in the United States in the previous few decades—with over one third of them in the prior decade alone—with the result that foreign-born Americans and their children represent approximately 1 in 5 Americans.

The role of women in the workforce has grown remarkably over the past 50 years—increasingly in management and professional roles—and combined with a generational shift that has brought with it changes in the aspirations and expectations of younger workers.



CHARLES HOWARD

These facts demonstrate that the demographics of the workforce have been under strain from many directions.

Added to the pressures from demographic change have been pressures on the workforce from the greater use of technology and the competition for knowledgeable workers. Gone are the days when one could reasonably expect a career of employment at one firm. Indeed, as of 2004 (and the number would certainly be higher today), a surprisingly high one in four workers had a “nonstandard work arrangement” in which they were on a flexible work schedule, part-time workers, or self-employed rather than a traditional “employee.” With the advances in technology and remote access to work computer systems, approximately 80% of workers either work off-site themselves or work with others who work remotely.

Certainly, the workforce reductions that have occurred in the past two years have only increased this phenomenon and the sense of separation or alienation that many people feel between themselves and the organizations for which they work.

All of these forces of change have come together in the increasingly global nature of many of our businesses. Not only do many organizations have to bridge first- and third-world countries with their products and services, they have to link their first- and third-world workers in a common culture that is conducive to protecting their brand and reputation. As both recent history and examples over the years demonstrate, a disaster or breakdown in compliance in one location can have worldwide implications.

What is the point of all of this? It demonstrates that we have an unprecedented amount of diversity; pressure on both people and institutions from the need to compete globally; and a sense that while we may be connected 24/7 with our work, we are less invested in it or perceive our tenure to be short term or subject to forces beyond our control. At the same time, over the past 50 years, our organizations have had increasing pressure placed on them from developments in criminal law, corporate governance, and employment law. The pressures from all of these developments have converged to require organizations to develop codes of conduct, encourage reporting of misconduct, and to investigate and take corrective action where misconduct is uncovered.

Given the forces that have been exerting themselves on our workplaces, it is not surprising that workers still observe misconduct and fail or refuse to report it. This context also helps explain why some of the most common tools for combating misconduct (e.g., compliance officers, hotlines, and whistleblower laws and policies)—while necessary and appropriate—need to be supplemented. This context also suggests two additional observations or insights into the analysis of the problem of reporting misconduct.

The first relates to how we look at the problem. Organizations have tended to focus on reporting misconduct, rather than the broader category of concerns that workers often have. Moreover, institutional responses have often followed existing corporate structure and reporting lines. As a result, there has been a management tendency to view issues through “silos” of categories, such as, for example, “compliance” or “HR,” because each of these issues has a different management and reporting structure in most organizations. In other words, organizations have addressed the problem from the top down through existing management structures, rather than looking at the issues from the perspective of the worker. With the current workplace being redefined by demographic and cultural diversity, remotely performed work, and new workers in new positions, it should not come as a surprise that there is anxiety and uncertainty among workers about issues such as:

- What resources are available to deal with problems?

- How can information about reporting workplace misconduct be obtained confidentially?
- How do we resolve disputes with co-workers or supervisors?
- What is the process for investigating or resolving a matter?

From the perspective of a worker, these issues are often intermingled and not seen as distinct, as many reporting structures would seem to require.

Efforts to promote ethical cultures go a long way in addressing these concerns, but organizational culture is a “macro” response, whereas the issues that often must be addressed before a person is willing to make a “report” are essentially the “micro” concerns of an individual in a particular circumstance. Before some people are willing to take action, they may simply want to find out some information without alerting management or HR that they are looking for it, or they may need to be able to talk through their concerns with someone else. Finally, they may need or want to discuss what would be involved if they were to make a report and how it may affect them before they are willing to come forward. If their only choice is to go to an official channel that also starts an investigation or results in official action, at least some of the people with questions or concerns will not come forward, out of fear that they will become embroiled in an unknown process that could adversely affect them. Indeed, this is only human nature and illustrates a limitation in viewing a failure to report as primarily a compliance issue.

*CONTINUED ON PAGE 40*

The second observation on why people do not report misconduct stems from limitations of the current best practice methods for dealing with a problem. Compliance officers are necessary and have evolved to become a critical element in our corporate world, but they are still the “police.” No matter how much they may try to encourage reporting, there will still be those who are reluctant to start the investigative machinery rolling. This may be because they come from a cultural background where reporting on others is discouraged, because they are uncertain whether their suspicions are correct, or for a variety of other reasons. Hotlines do help people raise issues anonymously and confidentially, but the experience of many organizations, documented in a variety of survey results, is that hotlines are used by a very small percentage of workers and rarely for the types of compliance issues that prompted their establishment. In fact, hotlines often receive complaints concerning workplace relationships that are more appropriately within the scope of HR, rather than Compliance, and calls that are ill-suited to the “report and investigate” assumption underlying hotlines.

Likewise, while it has become imperative for organizations to have whistleblower policies (and there are over 250 whistleblower laws in the United States), most of these policies have not really protected whistleblowers. There is very little that such policies can do to address the essentially feudal nature of our workplaces (most people still work for a “boss” even though their paycheck may come from the organization). There is also the problem of retaliation by peers, and the fact that

whistleblower policies are hard to reconcile with the acculturation process that we have all gone through (and in some cultures more than others) of not being the “rat.” The data from a variety of sources indicate that whistleblowers pay a high price for coming forward; and even if that were not the case, there is a widespread perception that they suffer adverse consequences most or some of the time from making a report. This, of itself, inhibits whistleblowing activity. And finally, even when whistleblower laws do provide coverage, the remedies often come after the damage is done to the whistleblower’s reputation and working relationships—damage that cannot easily be undone. Indeed, a study recently published in *The New England Journal of Medicine*<sup>1</sup> reported similar findings for whistleblowers—particularly inside employee whistleblowers—who had successfully used the False Claims Act to obtain recoveries in the pharmaceutical industry.

For all of these reasons, an organizational ombudsman program can be a good tool to fill the gap resulting from the limitations of the other best practice tools. If it is created to be an independent, neutral, informal, and confidential resource, it is a place where workers can go to get information and learn about options for raising issues or reporting misconduct, without having to categorize first it and without compromising the confidentiality of their concerns or starting the investigative process. Organizational ombudsmen help individual workers identify options to deal with any workplace issue, and thus do not require workers to make a decision on their own about whether their issue is a compliance problem, an HR issue,

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## INSTITUTE *Preview*

or something else. In this sense, they are an ideal first stop for many people who would not otherwise come forward with a concern, whether out of fear or lack of information.

Organizational ombudsmen are also much better suited to deal with the kinds of coaching, counseling, and mediation that is responsive to many of the non-compliance concerns brought to hotlines. Moreover, by being knowledgeable about the formal channels for dealing with compliance or HR problems—without being the reporting or resolution channel themselves—organizational ombudsmen can help workers find a formal channel to address their concerns with a better understanding of the process. And, since the ombudsmen do not themselves conduct investigations or make management decisions or policy, they supplement existing resources, such as compliance officers, hotlines, and whistleblower policies. They can, in short, be a very effective additional tool in helping to create and preserve an ethical culture. ✦

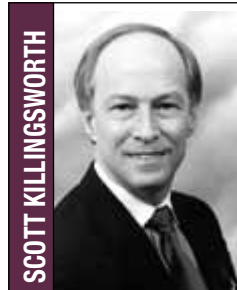
### Notes:

- 1 Kesselheim AS, Studdert DM, Mello MM: Whistle-blowers' Experiences in Fraud Litigation against Pharmaceutical Companies. *N Engl J Med* 2010; 362(19):1832-4

Editor's note: Charles Howard is a Partner of Shipman & Goodwin LLP, a Connecticut law firm, where he was Chair of the Litigation Department from 1985 to 2000. He has served as independent counsel for ombudsman offices at major corporations, universities, research facilities, and other organizations throughout the United States for almost 20 years. He may be contacted at [choward@goodwin.com](mailto:choward@goodwin.com).

### Session 204: Culture and the Science of Compliance: Behavioral Science Weighs in on Corporate Culture (Monday, September 13th from 1:30 – 2:30 p.m.)

You know that corporate culture is crucial, but how do you convince other C-level executives and the Board that investing in the promotion of ethical culture is a sound use of scarce compliance resources? How can your organization develop a positive ethical culture? How can you be sure what cultural factors are most influential and what initiatives will produce the best return on investment?



You do not have to rely on your instincts or tell your Board “My experience tells me this is important.” A number of rigorous behavioral science studies show that an ethical corporate culture, which engages employees’ ethical values and activates individual self-regulation, is the single most effective, measurable driver of compliant behavior. Unlike many command-and-control techniques, a strong ethical culture works “when no one is looking.” Scott will explore research findings on the effect of a positive ethical culture on compliance; examine specific cultural traits and organizational behaviors that most effectively contribute to positive results; and address how to develop these traits within your organization.

**Scott Killingsworth, JD, Partner, Bryan Cave LLP**

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# GLOBAL COMPLIANCE: Argentina

By Gregory Unruh and Fernanda Arreola

Argentina is a country of diverse European heritage merged with South American roots, creating a unique cultural mix with evident national pride. The nation has struggled through many tumultuous changes, at times rapidly advancing economically and at other times experiencing economic crisis and backsliding. The country today is leveraging its natural and societal resources to regain global stature and, through adversity, exhibiting the obvious pride that characterizes the Argentinean character. As an emerging market, however, Argentina has to again show that it can overcome the current global financial downturn and continue its economic progress.

## The ethical climate for commerce

Since its independence from Spain in the early 19th century, Argentina has relied on a vast agricultural sector, a rich petrochemical industry and a growing tourism industry for economic growth.

From the time of President Perón, the country has faced cycles of prosperity followed by economic disruption, with downturns accompanied by political shifts. For example, economic growth in the 1990's under the government of Carlos Menem hailed Argentina as the first "developed" nation in Latin America, only to tragically be followed by the



country's worst financial crisis. After a period of growth, today President Christina Fernandez de Kirchner is again confronting economic challenges brought on by the worldwide financial crisis.

However, with signs of recovery there is renewed interest among investors in Argentina. Due to policy reforms and international agreements, foreign investors enjoy the same rights as locals when investing in productive or financial assets. The country is party to several Free Trade Agreements with European and Asian countries, as well as the Mercosur treaty which was signed in 1995 by Argentina, Brazil, Uruguay and Paraguay as a common market agreement and is often seen

as the starting point for a wider Latin American trading area.

Still, political risk concerns are an important consideration. According to the World Bank's Doing Business Report, Argentina ranks 118 out of 183 countries in terms of "ease of doing business," largely due to concerns about bureaucracy. The report notes the difficulty of starting a business, obtaining construction permits, paying taxes and registering property as key issues. Foreign investors have also voiced disquiet about current President Christina Fernández's recent decisions concerning soccer television transmission rights, influence in the telecommunications industry and policy positions that

could facilitate and increase money laundering.

### Five compliance and ethics issues to consider

#### Corruption

Ranking 106th out of 180 countries in the 2009 Transparency International Corruption Perceptions Index, corruption in Argentina is generally perceived as widespread, affecting not only public but private organizations. Allegations reach the highest levels, with current President Fernandez and her husband, former President Kirchner, accused in 2007 of inappropriate allocation of funds.

#### Deal with it

Dealing with corruption in Argentina is not just an important business issue, it is also a larger social challenge for the entire country. The national Anti-Corruption Agency has labored to improve the judicial process and involve the general public in anti-corruption efforts. This agency has improved the agility of the investigation system and the efficacy of prosecution and is a place business people can turn to for assistance. In addition to the agency, several non-profit organizations have established regular programs that can assist in anti-corruption efforts.

#### Tax Evasion

It can be common to find that taxation of services is irregular. In the informal business sector, you may be asked at the time of payment if you want VAT tax added to your invoice or not. In Buenos Aires province

alone, authorities estimate this practice leads to a loss of over \$1 billion in tax revenues each year.

#### Deal with it

Dealing with this problem is a key priority in the country given Argentina's troubling fiscal situation. Argentinean tax authorities have therefore been working creatively to find new ways of confronting this behavior as well as fostering cultural change. In 2006, for example, authorities confiscated TVs owned by tax evaders right before the World Cup quarterfinals match between Argentina and Germany. If you suspect tax evasion is occurring in your business affairs you should report it to Argentina's tax authority.

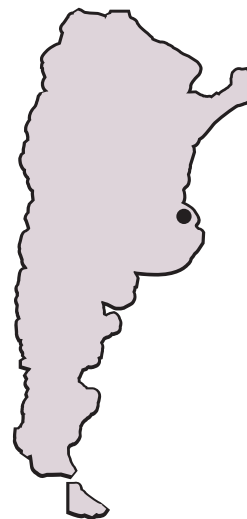
#### Unions Argentina

Unionized workers can be an important force in Argentine business. The U.S. multinational Kraft Foods, Inc., for example, found their Argentinean plants blocked by protestors after announcing a series of layoffs to cope with declining sales in the region. Kraft has struggled to defend its legal right to justifiably fire workers, which has undermined the reputation of Argentina's legal system with some business people. Some foresee more disputes in the future as companies react to the economic downturn.

#### Deal with it



Companies considering major layoffs should consult with government authorities. The government has signaled it is aware of the damage that these situations create

### General Country Facts



**Capital:** Buenos Aires  
**Population:** 40,913,584  
**Life Expectancy:** 76.56 years  
**Languages:** Spanish (official), Italian, English, German, French  
**Literacy Rate:** 97.2%  
**GDP (PPP):** \$575.2 billion  
**GDP (Real Growth Rate):** 6.8%  
**Inflation:** 8.6%  
**Major Industries:** food processing, motor vehicles, consumer durables, textiles, chemicals and petrochemicals, printing, metallurgy, steel

#### Top Import Partners

 Brazil	31.3%
 China	12.4%
 U.S.	12.2%
 Germany	4.4%

#### Top Export Partners

 Brazil	18.9%
 China	9.1%
 U.S.	7.9%
 Chile	6.7%
 Netherlands	4.2%

Source: CIA World Factbook

CONTINUED ON PAGE 46

for industrial relations. Also, avoiding practices such as temporary hiring or abusing the Employment Contract Law's 3-month trial period will strengthen a company's relations with employees. Over time, the current social unrest should ameliorate as the financial crisis recedes.

### Financial system

Argentina's banking system remains state dominated with the largest bank in the country, Banco de la Nación Argentina, a state-owned institution. Although the system has mostly recovered since the 2001 debt default, there is still investor concern about the reliability of established regulations.

### Deal with it

With memories of the Argentina's US\$95 billion debt default debacle eight years ago, public and private institutions are scrutinizing the Argentine banking system closely. Argentina is trying to renegotiate outstanding debt and the government has worked to improve the financial system in an effort to regain access to capital markets. The increased presence of foreign banks is also helping to strengthen loan and banking standards. The financial sector expanded by over 20 percent in 2006 and offered signs of improvement, with mortgages and personal loans rising, and non-performing loans declining.

### Cooking the books?

In 2007, the Argentine government was accused of manipulating economic indicators. It has been suggested that then president Néstor Kirchner interfered to make the inflation rate appear lower than it actually was. In response, the employees of the national statistics institute (INDEC)

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Foreign investors have voiced disquiet about current president Christina Fernandez's recent decisions concerning soccer television transmission rights, influence in the telecommunications industry, and policy positions that could facilitate and increase money laundering.

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went on strike, claiming their work and independence had been discredited by government intervention.

### Deal with it

Although it is thought that INDEC is the national reference for most indicators, Argentineans are generally aware of inconsistencies with regards to public information. Many therefore turn to other sources of data, such as consulting agencies, universities and private organizations. For companies interested in investing in Argentina, it is prudent to be skeptical of statistics and seek multiple sources for confirmation of decision making data.

### Additional Facts:

International Living Magazine placed Argentina number 13 on its

2008 Quality of Life Index. This index gave Argentina a higher placement than countries such as Canada, Japan and the United Kingdom.

Reporters Without Borders ranked Argentina number 47 on its 2009 Press Freedom Index, an annual report ranking countries by the level of freedom enjoyed by journalists.

This places Argentina higher than countries such as Brazil, Israel and Italy, and below countries such as Poland and Jamaica.

### Five etiquette tips you should know before you go

### Greetings

In Argentina, relationships are extremely important and represent the nexus of social and business life. Initial introductions tend to be informal with a simple greeting followed by a handshake. If people are acquainted, they might kiss on the cheek as well. If someone is introduced with a title, such as "Mr." or professional titles like "professor" or "doctor," it is best to use that title when referring to the person in subsequent conversations or meetings. Importantly, Argentineans appreciate using Spanish as the language of conversation. Even when business partners are fluent in English, they tend not to switch from Spanish in most business environments.

### Business meetings

Business meetings usually take place at the office. Although you



*Buenos Aires skyline*

should always show up on time, you may find that your counterparts are delayed. First impressions in terms of professional appearance are very important and dressing well in any venue will be an excellent way to begin a business relationship.

Business people should expect long lasting meetings or several encounters before reaching an agreement. Argentine business people are frequently very thorough and often like to discuss every point in detail prior to closing business deals. Keep this in mind if you feel that your negotiation is moving slowly or that there is growing friction as your impression might be a response to a normal, meticulous negotiating style.

### **Business cards**

Business cards are exchanged during introductions and presented with no special formality. If you are planning to do business continuously in the country, you should print your business cards in both English and

Spanish with up-to-date contact and international dialing information.

### **Gift giving**

Gift giving is not common in Argentinean business meetings or gatherings. If you have established a relationship or you have been invited to celebrate a special event you can show your appreciation by bringing simple gifts such as flowers, candy, pastries or imported liquor. Avoid personal items such as clothing and imported leather or knives. You should also avoid extravagant or expensive items as they can be perceived as a bribe.

### **Dinner and social events**

Dinners and social events, unless specifically for business, are for socializing and relaxing. As a guest, you should avoid ordering imported liquor as the taxes are high and you may be seen as abusing the host's hospitality. Mannerisms such as using toothpicks, blowing your nose, or clearing your throat at the table are not acceptable. Also, pouring

the wine at the table is often ritualistic and as a foreigner you will likely fail to do it properly. When conversing, it is wise to avoid topics like the differences between Brazil and Argentina, the Falkland Islands (Malvinas), soccer player Maradona's personal problems and former President Peron, as these can arouse emotional responses. If you are hosting dinner it is important that you insist on paying and arrange payment prior to the event. Argentines are proud of their national produce and meat, so it is a good idea to order some for your event and compliment the quality. Plan to bring cash since most credit card points of sale do not allow you to include tips. Tipping etiquette suggests bringing enough currency to leave around 10-15 percent, depending on the service.

During your visit to Argentina it is likely that you will attend a live tango show. Be aware that most shows are not considered a tourist attraction and are frequented by locals and aficionados. Tango is considered an elegant and refined dance and you should demonstrate respect and interest by avoiding unnecessary talking and dressing elegantly for the event. When dancing, you should move to the middle of the room as the outer lanes are for faster, more experienced dancers. Be sure and leave the dance floor if you are not dancing. ✦

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- Wayne W. Lockwood, Norfolk Southern Corporation
- Matthew McGonegle, Coastal Training Technologies

- Maxine A. Cosbert, Coastal Training Technologies
- Kimberley Davis, Deltek, Inc.
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- Lawrence Pennino, CFE CFS CFI, Norfolk Southern Corporation
- Lauren Price, Coastal Training Technologies

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- Susan Puz, The Garden City Group, Inc.
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- Angela G. Small, Seattle City Light
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- Christian Scheibl, EADS Deutschland GmbH

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- Ashwini Kandlikar, Matrix Laboratories Limited
- Manjinder Singh, Compliance Consulting Services

#### ITALY

- Zhanar Zhakeyeva, Agip KCO

#### KUWAIT

- Emad Mousa, Agility Logistics
- Abdullah Obaid, Agility Logistics

#### MALAYSIA

- Azamin Nordin, Trade Serve Resources

#### NETHERLANDS

- Dalina Gjunkski, KCI Medical Europe

## PEOPLE ON THE MOVE

### Received a Promotion? Have a New Hire in your Department?

*Shelia Garrison, is assuming the position of Corporate Compliance Officer for the Charles Lea Center in Spartanburg, SC as of July 1st.*

*Lenovo has named C.Lee Essrig, Esq., CCEP, to the position of Chief Ethics and Compliance Officer and Director, Governmental Affairs. The global technology firm's U.S. offices are in Morrisville, NC.*

If you have received a promotion, award, 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 let the compliance community know when you have moved on to, or who has joined the compliance team. Send your job change information to [peoplemove@SCCE-info.org](mailto:peoplemove@SCCE-info.org)

# SCCE Advisory Board



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## Professionals representing a broad range of industries make up this board.

The level of diverse experience and professional accomplishment is impressive. These industry leaders are enthusiastic and poised to lead the Society of Corporate Compliance and Ethics into the future. SCCE promotes the compliance profession by offering valuable programs and tools to enhance knowledge and expertise in the compliance and ethics field.

We are very excited to have such a diverse and experienced group of people leading this organization.

*Roy Snell, CEO*

# Your SCCE Staff

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# SCCE's 2011 Educational Opportunities

SCCE is a premier provider of compliance and ethics education. Faculty includes industry experts from around the world and professionals from the corporate environment, academia, government, and the law. Attracting over 1,000 compliance and ethics professionals a year, SCCE events provide unparalleled networking opportunities, all with special discounts for members. Programs are offered in the following formats to meet the diverse needs of this evolving profession.

## COMPLIANCE & ETHICS ACADEMIES

These four-day intensive training programs help those new to the profession quickly get up to speed and learn directly from experienced ethics and compliance professionals. The Certified Compliance and Ethics Professional (CCEP) examination is offered on the fifth day.

February 14–17 • Scottsdale, Arizona

April 18–21 • Orlando, Florida

August 15–18 • Location TBA

November 7–10 • San Francisco, California

## REGIONAL CONFERENCES

SCCE's regional compliance conferences provide a forum to interact with local compliance professionals, share information about compliance successes and challenges, and create educational opportunities for compliance professionals to strengthen the industry.

April 29 • Midwest • Chicago, Illinois

May 13 • Upper Northeast • New York, New York

June 24 • West Coast • San Francisco, California

October 14 • Southeast • Atlanta, Georgia

November 4 • Southwest • Houston, Texas

## SCCE WEB CONFERENCES

SCCE Web Conferences explore current hot topics for compliance professionals, providing instant and up-to-date education from the convenience of your own office. New conferences are announced regularly, and prior sessions are available for purchase on CD-ROM. Visit [www.corporatecompliance.org](http://www.corporatecompliance.org) for the latest updates.

## Utilities & Energy

### Compliance & Ethics Conference

February 27–March 2 • Houston, Texas

Take advantage of the opportunity for in-depth discussion and education with your colleagues in the utilities and energy industries.

## 10th Annual Compliance & Ethics Institute

September 11–14 • Las Vegas, Nevada

SCCE's annual Institute is the primary education and networking event for professionals around the world in compliance and ethics. Expert presenters share their latest methods and strategies for developing and improving compliance programs in this rapidly evolving profession.

## Conference for Effective Compliance Systems in Higher Education

June 12–15 • Austin, Texas

Compliance professionals in higher education gather with peers to discuss emerging issues, share best practices, and build valuable relationships.

## How to Conduct Effective Internal Investigations

Date and Location TBA

Taught by experienced practitioners, this intensive program covers essential information for anyone charged with conducting and supervising internal investigations.



SOCIETY OF CORPORATE  
COMPLIANCE AND ETHICS

DATES AND LOCATIONS ARE SUBJECT  
TO CHANGE. FOR UPDATES, VISIT  
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# How to Conduct Effective Internal Investigations

**A TWO-DAY  
WORKSHOP**

**FIRST  
TIME  
OFFERED**

**NOVEMBER 11-12, 2010  
ORLANDO, FLORIDA**

A well-conducted internal investigation can help compliance and ethics officers quickly find and fix problems. A poorly conducted one can lead to morale issues, lost faith in the company's integrity, and even litigation. This intensive educational program will cover the critical components that compliance and ethics officers need to know to conduct effective internal investigations. Topics planned are:

- How Investigations Fit Into the Context of Compliance Programs
- Setting Policies and Guidelines for Conducting Internal Investigations
- How to Plan an Investigation
- Conducting Effective Interviews
- Gathering Documentary Evidence
- Forensics and Electronic Documents
- Investigation Pitfalls and How to Avoid Them
- Preparing the Report
- Discipline, Follow-Up, and Closing the Loop

The faculty will be made up of experienced internal investigators and outside experts.



*To learn more and register, visit  
[www.internalinvestigations.org](http://www.internalinvestigations.org)*



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