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Ethical Decision-Making:  
Managing the Grey Area  
Between “Legal” and “Right”

Agenda
- What are Ethics?
- Ethics v. Compliance
- Why are Ethics Important?
- Challenges to Ethical Decision-Making
- Guidelines for Ethical Decision-Making
- Identifying Ethical Challenges
- Establishing/Reinforcing Ethics

What are Ethics?
- A set of moral principles; a theory or system of moral values.
- The discipline dealing with what is good and bad and with moral duty and obligation.  
  Merriam Webster
- [Objective ethics] The view that a person’s action can always properly be seen as right or wrong, regardless of the situation or the consequences.  
  Black’s Law Dictionary
- A systematic approach to moral judgments based on reason, analysis, synthesis, and reflection.
- [Business Ethics] The application of ethical principles to issues that arise in the conduct of business activity; it pertains to situations in which individuals are in an organizational position and act as (responsible) agents of the company and its owners.  
  D.R. Baron, Business and its Environment  
  (Prentice-Hall, Inc, 2000)
What are Ethics?

When sociologist Raymond Baumhart asked business people "[w]hat does ethics mean to you?", their replies included the following:

- Ethics has to do with what my feelings tell me is right or wrong.
- Ethics has to do with my religious beliefs.
- Being ethical is doing what the law requires.
- Ethics consists of the standards of behavior our society accepts.
- I don't know what the word means.


Ethics v. Compliance

- Compliance entails:
  - Understanding laws, regulations, and relevant regulatory or legal interpretations;
  - Establishing policies, procedures, and processes reasonably designed to comply with these laws, regulations, and guidance; and
  - Implementing a compliance program through risk assessments, testing, review, and training.

  » Compliance is fairly straightforward/objective, and success can be effectively measured.

Ethics v. Compliance

- Ethics/Ethical Decision-Making, by contrast:
  - Does not rely on a body of concrete law or guidance to inform appropriate action and decision-making;
  - Requires adherence to general principles, and a process for consistent and deliberate application of those principles to any situation;
  - Is difficult to "test" or "assess" in the manner of compliance, but ethics may be learned (and trained); and
  - Helps a person or organization make appropriate decisions in the absence of clear regulatory or legal guidance.

Are Compliance and Ethics/Ethical Decision-Making at odds?

- No. Ideally they should work hand-in-hand by mutually reinforcing each other.
- Legal compliance can enhance ethics, while an ethical culture can support a compliance program.
- For example, a Code of Conduct:
  - Ties compliance and ethics together; and
  - Helps guide an organization’s personnel when laws and regulations do not provide clear guidance.
- However, something can be legal but not ethical, and vice versa.

Ethics are important because they:

- Give us a baseline for understanding right and wrong;
- Help us – and our business partners – to understand how to react to situations and people;
- Support – and are directly linked to – our compliance programs;
- Are a focal point of numerous laws, regulations, standards, and best practices; and
- Are good for business.
Challenges to Ethical Decision-Making

Causes of unethical choices include:

- Ignorance/misinformation
- Willful blindness
- Environment/culture
- Entitlement/insulation
- Bad actors

Guidelines for Ethical Decision-Making

Key Questions to Help Ensure Ethical Choices:

- What FACTS impact my decision?
- What are the ALTERNATIVES?
- Who are the STAKEHOLDERS?
- How do the alternatives impact SOCIETY AS A WHOLE?
- How do the alternatives impact MY BUSINESS FIRM?
- How do the alternatives impact ME, THE DECISION MAKER?
- What are the ETHICS of each alternative?
- What are the PRACTICAL CONSTRAINTS of each alternative?
- What COURSE OF ACTION should be taken and how do we IMPLEMENT it?

Identifying Ethical Challenges

- Key ways to identify ethical challenges within your firm include:
  - Knowing your business . . . and your business people
  - Establishing effective business relationships
  - Having an effective Ethics Reporting Program
  - Evaluating your firm’s culture
  - Conducting a comprehensive ethics risk assessment
  - Centralizing – and reviewing – customer issues/complaints
  - Establishing metrics
Establishing/Reinforcing Ethics

› Walk the walk
  • Act ethically
  • React appropriately – and consistently – to unethical situations
  • Live – and reinforce – the corporate values

› Establish an effective team
  • Place the right person in charge
  • Ensure that he/she is surrounded by qualified people
  • Continually evaluate the size, strength, and resources of the team against your organization’s needs

Establishing/Reinforcing Ethics

› Actively promote a strong ethical culture
  • Encourage the right “Tone at the Top”
  • Actively engage business partners (esp. those with decision-making authority)
  • Identify areas with vulnerability and put safeguards in place (risk assessment)
  • Create, implement, and maintain a strong ethics and compliance program
  • Embed ethics into all facets of your organization

Establishing/Reinforcing Ethics

› Establish a strong ethics & compliance program
  • Incorporate legal and regulatory requirements, guidance, best practices, and industry “developments”
  • Recognize and address the unique challenges of your industry and firm
  • Emphasize the importance of ethics through policies, procedures, and practices
  • Effectively communicate ethical standards/expectations
  • Establish meaningful disciplinary procedures and an escalation process
  • Implement an effective ethics reporting program
  • Build in effective monitoring and auditing functions
Establishing/Reinforcing Ethics

Remember – ethics are supported within the business environment by:

- Laws/regulations
- Codes of Ethics/Conduct
- Internal policies/procedures
- Ethics reporting programs
- Ethical leadership
- Equitable reward/punishment

Conclusion

Questions?

Thank you for your time and participation!