Advanced Program Objectives

- Embed, monitor and promote ethics and compliance culture
- Design, implement and enforce effective financial and compliance controls
- Maintain an effective ethics and compliance program that evolves in response to changing business conditions and risks
Dual Tracks: Culture and Controls

Culture
- Define
- Communicate
- Conduct
- Measure
- Remediate

Controls
- Risks
- Design
- Implement
- Measure
- Remediate

Effective Compliance

Global Ethics and Compliance Programs

- Multi-layered: headquarters, regional and local
- Risk profiles vary depending on:
  - Geographic footprint and business
  - Government regulation
    - Domestic
    - International
Challenges of Global Compliance Organizations

- Promoting and monitoring culture through levels of organization and across cultures
- Tension sometimes occur between global organization controls and local requirements
- Monitoring of program requires new strategies and effective use of automation and data analytics

Changing the Mindset from Reactive to Proactive

- **Proactive Priorities**
  - Focus on culture and risk profile
  - Identifying risk factors
  - Monitoring incidents, reporting, and control violations
  - Monitoring culture
  - Interventions
  - Remediation and prevention

- **Reactive Priorities**
  - Response to potential misconduct
  - Investigations
  - Root cause analysis
  - Remediation: Post-event assessments and modifications
The Importance of Corporate Culture

An effective E&C program often results in greater profitability.

“Culture causes performance, not vice versa.”

Companies with an “ethical culture” outperformed those that made no such claims in three important financial measures: (1) market value added; (2) economic value added; and (3) price/earnings ratio.

“The best corporate citizens list, which includes Hewlett-Packard, Intel, General Mills, I.B.M. and Kimberly-Clark, had a total return on shareholder value of 2.37 percent over three years. But the 30 worst had a negative 7.38 percent return.”
-Stephanie Clifford, “Magazine to Publish a Corporate ‘Black List’,” 2010, NEW YORK TIMES.

Ethics and Profitability
**Ethics in the Workplace: Statistics**

- Compliance can promote this message to gain buy-in from corporate stakeholders.

- Survey of 1,900 CEOs and CFOs + 19 interviews found that:
  - 92% of senior executives believe that improving culture will increase firm value.
  - 85% believe that a poorly implemented, ineffective culture increases the chance an employee may act unethically or illegally.
  - 79% of senior executives place culture among the top 3 or 5 value drivers of the company.
  - 69% believe "leadership needs to invest more time in the culture."

*Corporate Culture: Evidence from the Field, National Bureau of Economic Research
John R. Graham, Campbell R. Harvey, Jillian Popadak, Shivaram Rajgopal, NBER Working Paper No. 23225, 2017

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**Ethics in the Workplace: Statistics**

- 2013 Survey\(^1\) found that misconduct rates declined in companies with strong ethical cultures (88 to 20 percent).
  - Two-thirds of companies (67 percent) include ethical conduct as a performance measure in employee evaluations, up from 60 percent in 2011.

- 2016 Study\(^2\) shows 97% of values-based entities demonstrate better performance than their competitors in all of the 17 countries represented in the study.
  - This compares to 80% and 30%, respectively, for more traditional command-and-control or rules-based organizations.

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1. The Value of Corporate Culture, National Bureau of Economic Research

Ethics in the Workplace: Statistics

- NBER 2013 Survey found that misconduct rates declined in companies with strong ethical cultures (88 to 20 percent).
- Code of Ethics training is increasing (74 to 81 percent)
- Two-thirds of companies (67 percent) include ethical conduct as a performance measure in employee evaluations, up from 60 percent in 2011.
- Almost three out of four companies (74 percent) communicated internally about disciplinary actions when wrongdoing occurs.

Culture Currency: Reputation

“Lose money and I will forgive you. Lose even a shred of reputation and I will be ruthless. …… Wealth can always be recreated, but reputation takes a lifetime to build and often only a moment to destroy.”
A List of Culture Questions

- Does the organization provide clear guidance to the employee concerning expected conduct?
- Would the employee report misconduct committed by another employee?
- Does the employee’s supervisor set a good example of ethical behavior?
- Does the Board and senior management set a good example of ethical behavior?
- Is the employee asked to complete tasks that conflict with company values and expectations?
- Does the employee work in an environment in which everyone treats each other with respect?
- Is management aware of unethical and/or illegal conduct and report and correct?
- Is management receptive to employees’ opinions about work assignments and ethical conduct?
- Does management reward and recognize employees for ethical conduct?
- Does management punish employees fairly for unethical or illegal conduct?

DOJ & Culture of Compliance

- Has senior management clearly articulated company standards, communicated them in unambiguous terms, adhered to them scrupulously, and disseminated them throughout the organization?
  - What words and actions have senior management taken to promote or reflect company culture?
  - What concrete actions have senior leaders taken to demonstrate commitment to compliance (and remediation)? Words alone are not enough!!
  - Is the culture of compliance reinforced in middle management and among all employees in the company?
- Begs the question of C-Suite Compliance -- Does the company include C-Suite and performance in risk assessment?
- Assessment of tone at the top focuses on operationalizing program
  - What shared commitment and specific actions taken by senior leaders and key stakeholders (business and operational managers, Finance, Procurement, Legal, Human Resources)?
  - How is information shared among these functions?
CCO + CE(thics)O = Separate Functions?

- Chief compliance officers have served as chief ethics
- Is dual hat outdated?
- What coordination concerns exist?
- Walmart Model
  - Chief Ethics Officer
  - Chief Compliance Officer
  - Chief Legal Officer
- Many companies creating separate chief ethics officer
- Responsible for culture
- Walmart example: Internal investigations
- Ethical conduct is distinct from compliance with code and legal requirements?

Changing Your Dashboard
Compliance Data and Analytics

- Compliance programs generate large amounts of data
- Data analytics is a tool that can be used to identify “anomalies” in compliance and finance-related controls
- Specific data should be collected and monitored beyond “standard” categories that are not insightful (e.g. annual certifications, number of training programs)

Developing a New Dashboard:
Watching the Information Flow

- Report quarterly on culture
- Report quarterly on compliance with controls
- Monitor employee concerns and incident management
  - Number and types of reported concerns (slice and dice information)
- Report on internal investigation function
  - Number and types of code of conduct violations
- Train and test middle managers and employees
  - Is the message understood?
- Ongoing compliance monitoring, reviews and remediation status
- Risk profiles and continuous updates
- Policy Management
Information and Action

- **Manager and Employee Surveys**
  - Easy to conduct
  - Focus on regions, lines of business, high risk countries and activities
  - Keep questions to minimum and make completion easy

- **Focus Groups**
  - Maintain confidentiality – assure employees that no one will be identified

- **Proactive confidential interviews: senior managers, middle managers and cross-section of employees**

- **Establish exit interview program with Human Resources**

- **Measure and sample senior management communications on ethics**

- **Internal audits include culture measurement/questions**

There are many ways to gather information – what is best for your company? What does your company already do?

Measure ethical culture
Risk Assessment and Continuous Process

- Risk Assessment
- Updated Risk Information
- Gap Analysis Risks and Controls
- Remediation Plan
- Implement

Continuous Risk Monitoring: Information

- Risk assessment is the **foundation** of your compliance program
- Update risk assessment from regional and local sources
- Conduct targeted surveys: divide as needed to update information annually
- Focus on specific risk factors
  - FCPA (foreign official interactions)
  - Antitrust: Interactions with competitors
  - Healthcare Fraud: Billing, Quality of Care, Reimbursement
  - Sanctions: Geographic and customer risks
  - AML: If non-financial institution, 3P payments
- Identify and update risk profile
- Schedule update process
Leveraging Middle Managers

- CEO requires direct reports and all managers to communicate compliance message
  - Each year senior managers commit to specific task to promote compliance and ethics
  - Each year senior managers evaluated based on the compliance and ethics program factor
- Compliance and ethics modules distributed throughout organization to local offices (in foreign language) and promoted by local management
- Leadership development programs emphasize importance of compliance and ethics

Pushing Tone Throughout Organization
Spreading the Word

- Communicate proactive message
- Encourage reporting concerns
- Ensure system responds to concerns
- Creating messages/talking points
- Tailor to function (e.g. sales, operations/manufacturing, logistics)
- Embed with managers
  - Managers are on the front line, give them the tools they need

Creating Responsive and Knowledgeable Managers

- Train managers to encourage and respond to employee concerns
  - Give them kits (talking points, suggested topics/messages)
  - Encourage them to tailor message to their comfort level
- What to do with concern?
- How to treat the employee?
- Importance of no retaliation
- Reward managers for their open door policy
  - Leverage results of surveys to reward managers who strengthen corporate culture
  - “Would you feel comfortable reporting a concern to your manager?”
Embedding Compliance in the Business

Creating Compliance Partnerships with Business Operations

- Most effective E&C programs are embedded in business.
- Compliance officers and business managers are joining together to address compliance requirements.
- Value-add of compliance and need to compete in marketplace consistent with company’s values, culture and compliance requirements
- Compliance commitment is fast becoming part of sales marketing pitches and documents
- Trusted relationships with customers, vendors and suppliers
Critical Role of Local Compliance Officer

- Local compliance officers play an indispensable role in developing on-the-ground compliance operations.
- LCOs have to engage business counterparts, meet and communicate constantly with business counterparts, and bring compliance solutions to the table:
  - Knowing how to say “No,” but offering alternative solutions
  - Making compliance transparent and communicating expectations
  - Develop checklists, cover sheets and other “go-bys” to make compliance for business easier
  - Consistent line-drawing between prohibited and permissible activities
  - Avoid “best friend” role of business and maintain integrity
- LCOs require strong support from regional counterparts to develop best practices and address local risks and conditions
- Sum of the parts of corporate-regional-local compliance operations cannot succeed without effective performance at every level

Incentivizing Supervisors and Managers to Own Compliance

- Positive rewards for ethics and compliance responsibilities
- Evaluation process should include this factor
- Cutting-edge companies are making bonus and bonus levels dependent on specific evaluation on ethics and compliance performance
Financial and Compliance Controls

Compliance and Internal Controls

- DOJ and SEC risk of accounting controls enforcement has increased
- Companies face conflicting incentives
- Companies are creating their own internal “statutes” for civil and criminal prosecution
- Benefit of a specific internal control may be outweighed by risk of civil or criminal prosecution
Taking a Seat at the Controls Table

- Global companies maintain robust accounting internal controls
- Guidepost is “materiality”
- Compliance interest is frequently non-material transactions
- Legal and compliance need to address enforcement risks

Breaking Down Silos and Barriers to Cooperation

- Cross-functions
  - Procurement
  - Materials supply
  - Vendor onboarding
  - Accounts payable
  - Contract management
  - Compliance and Legal
- Information sharing capability
- Danger of silos and technology bars
Third-Party Risk Management: 
Contract-Invoice-Payment Process

- Standardize contracting, invoice and payment systems:
  - Invoice received
  - Contract matched with invoice
    - Require contract to have detailed scope of work
  - Verification of services provided
  - Appropriate payment amount
    - No unexplained charges
  - Eliminate segregation of duty conflicts

Standardizing Vendor/Supplier Onboarding Process

- Starts with vendor onboarding process
  - Different procurement functions at risk for non-standard onboarding process
- Define information needed for types of risk management systems
- Ends with coordination of legal, procurement and financial risks
Third-Party Risk Management and Automation

- Business sponsorship
- Risk ranking (assign weights and factors (e.g. country CPI, financial)
- Anti-Corruption
  - Identifying PEPs
    - Example: JV partner owns 10% of a venture and a government official owns 1% of that 10%; the arrangement may be a screen for bribery
- Sanctions Compliance (OFAC 50 percent rule)
- AML/KYC Requirements
  - Third party payments
  - Bank account verification
  - Use of shell companies – obtain beneficial ownership
- Reputational risks

Contract Management and Representations

- Contracts versus Purchase Orders rules
- Consistent contracting protocols
- Risk mitigation practices and provisions
  - Develop specific representations and warranties beyond standard
  - Address all risks – Anti-corruption, AML, sanctions
  - Description of services
  - Participation in training
  - Payment terms and invoice requirements
  - Robust auditing and termination
  - Comparable compliance program
  - Integrate code of conduct or rely on supplier, distributor codes
Internal Compliance Review Function

- Separate, independent unit
- Responsibility for conducting compliance "reviews"
- Independent of internal audit function
- Culture and controls expertise
- Focus on non-material compliance controls
  - Third party risks and payments
  - GMET
  - Financial issues under materiality standard
Automation Generates Valuable Data

- Consistent means of improving program
- Emerging area in compliance
- Many automated platforms for:
  - Initial diligence screening
  - Continued monitoring
  - Third party management
  - Clearance process regarding expenses
    - Including tracking of GMET recipients
  - Policy Management
  - Training
  - Incident tracking and monitoring
  - Hotline reporting and recordkeeping

Potential Areas of Focus

- Tone at the top
- Training
- Due diligence
- Vendor/supplier onboarding
- Business Gifts, Meals, Entertainment
- Discounts, Rebates, Pricing
- Sponsorships and Events
- Tenders and Competitive Bidding
- Research and Development
- Interactions with HCP
- Healthcare Providers (hospitals, doctors) incentives, coding and billing (Medicare/Medicaid), quality of service
- Charitable/Political Contributions
- Hotline and Reporting
- Data Security
- Mergers & Acquisitions
- Joint Ventures
- Investigations
- Culture of Compliance
Compliance Review Tools

- Culture and controls compliance
- Desk-Top audits
- Transaction Testing
  - Internal and External (Agents, Distributors)
- Issue Spot-Checks
- Country, division, region compliance documentation and sampling
- Risk assessment and culture survey compliance
- Training compliance

Promoting Organizational Justice and A Speak Up Culture
Organizational Justice

- A justice system that is fair and consistent
- Role of Chief Ethics Officer?
- Separate internal investigations unit
- Committee to review investigations and respond (legal, human resources, internal audit)
- Track and report – timely resolutions for routine investigations -- 60 to 90 days
- Internal investigations protocols
- Publicize discipline in numbers to avoid privacy problems

People want to know what happened – COMMUNICATE!

Incident Management and Data

- Important trends in incident management and data collection
- Data on incidents expands beyond “investigations”
- Demonstrates management commitment to culture
- Positive encouragement of reporting employee concerns
- Protection of whistleblowers (increasing retaliation)
- Timely responses to employee concerns
- Routine incident response in no more than 2-3 weeks
- Routine investigations within 60 days
Confidential Reporting and Investigation

- Mechanism for employees and others to report misconduct on confidential basis (anonymous hotlines or ombudsmen)
- Efficient, reliable, and properly funded investigation process to document company’s response, including any disciplinary or remediation measures taken.
- Lessons learned should be used to update their internal controls and compliance program and focus future training on such issues, as appropriate.
- Compliance has full access to reporting and investigative information
- How does company assess effectiveness of confidential reporting system and investigative function?
  - Investigations properly scoped and conducted
  - Investigation function is independent and objective, and properly documents investigations?
- Has the company’s investigation function been used to identify root causes, system vulnerabilities, and accountability lapses, including among supervisory manager and senior executives?
- What has been the process for responding to investigative findings?
- How high in company are investigative findings reported?

Do You Need an Independent Ombudsman?

- Companies are suffering from higher rates of retaliation
- Retaliation occurs in immediate three-week period after report
- Independent Ombudsman can address these issues and promote reporting of concerns
Enlisting Managers to Receive and Respond to Concerns

- Designate Ethics Ambassadors or Ombudspeople in organization
- Receive information
- Interact with employee
- Enter data into incident management system
- Generates valuable database for monitoring concerns and conduct

Internal Investigation Program Structure

- **Supervisory Committee**
  - Reviews and monitors internal investigations
  - Resolves investigations

- **Internal Investigation Unit**
  - Where is IIU located? Audit, Legal, Compliance?
  - Depending on size of company, (1) centralized versus local; and (2) Hotline investigators/case management

- **Collectors/Receptors**
  - "Ombudspeople"
  - Located throughout Company
Internal Committee Oversight and Consistent Discipline

- Internal committee to oversee internal investigation program
- Review internal investigations
- Routine investigations 60-90 days
- Progress of longer investigations
- Decision to continue, close, resolve and discipline
- Mete out prompt, fair and consistent discipline

Incentives and Discipline

- Clear disciplinary procedures, applied reliably and promptly, and commensurate with the violation.
  - What is company’s record on imposing discipline (especially to similarly situated individuals)?
  - Are managers and supervisors held accountable? Important emphasis!!
  - Is discipline consistently meted out?
- Who is involved in disciplinary procedures? Human Resources? Committee of key stakeholders?
- What positive incentives does the company offer to encourage ethics and compliance?
  - Positive incentives: personnel evaluations, bonuses and promotions, rewards for improving and developing a company's compliance program, and rewards for ethics and compliance leadership.
  - Recognition for compliance professionals and internal audit staff. Promotions?
- Working in compliance a way to advance an employee’s career.
Targeted Training of Responsible Persons

Targeted Training

- Training and certification for all directors, officers, relevant employees, and, where appropriate, agents and business partners
- Mix of web-based and in-person training (topics: company policies and procedures, instruction on applicable laws, practical advice to address real-life scenarios, and case studies.)
- How does company determine who should be trained and for what subjects?
  - Who are “relevant control people” – e.g. accounts payable, third party due diligence responsibility, internal investigations
  - Risk-based or targeted training now expected, not just mass, company-wide code of conduct training
- Format/Content (e.g. sales or accounting personnel) appropriate
- Language appropriate for audience
- Has the company measured effectiveness of training?
Questions?

The Volkov Law Group

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