Corporate governance is the policies, processes, structures, and controls used within an organization by all involved (board of directors, management, auditors, and employees) to achieve its objectives in an ethical manner.

– Institute of Internal Auditors

- Key Criteria for an Effective Program
- Expanded Objectives (Nov. 1, 2004)
  - Broad mandate: an effective program to prevent and detect violations of criminal law
  - Violations of any law or regulation (criminal or non-criminal), for which the organization is, or would be, liable
7 Steps of Effective Compliance

- Establish standards and procedures to prevent and detect criminal conduct
- High-level personnel of the organization shall ensure that the organization has an effective compliance and ethics program
- Exercise due diligence and not place individuals with questionable backgrounds into positions of substantial authority.
- Communicate the standards and procedures of its compliance and ethics program to all of its employees and ensure that the program’s followed
- Periodically evaluate the effectiveness of its program and must include
- Publicize a confidential system for the reporting of suspected wrongdoing
- Promote and enforce compliance and ethics program consistently throughout the organization
- Take reasonable steps to respond appropriately to criminal conduct

Structured View of Compliance

Changing Business Environment: Scrutiny in All Corners of the World

- U.S. and Global Environment – Public Demand for Corporate Governance
- Anti-Corruption/Bribery
- US Federal Sentencing Guidelines
- Sarbanes-Oxley Requirements
- NASDAQ Listing Requirements
- SEC Regulations
- State Attorneys General
- Responsible Business Practices
- Board of Directors Accountability
- CEO-CFO Accountability
- Management Accountability
- Culture of Compliance / Tone at the Top
- Investor Confidence
Enforcement Priorities of the New OBAMA Administration

- Expansion of regulations governing corporate behavior while regulatory agencies increase enforcement to prove their effectiveness
  - Financial Regulation
  - Transparency and accountability
  - Anti-corruption and Bribery
  - Antitrust Enforcement
  - Government Contracting
  - Consumer Safety
  - Environmental Protection

Computer Associates: Special Litigation Committee Report (4-13-07)

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<th>Failure of Leadership &amp; A Culture of Corruption</th>
<th>Organizational Weaknesses</th>
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<td>A Board of Directors in the Dark</td>
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DOJ Prosecution Guidelines

In evaluating compliance programs, prosecutors may consider whether the corporation has established corporate governance mechanisms that can effectively detect and prevent misconduct.

...do the corporation's directors exercise independent review over proposed corporate actions rather than unquestioningly ratifying officers' recommendations; are the directors provided with information sufficient to enable the exercise of independent judgment, are internal audit functions conducted at a level sufficient to ensure their independence and accuracy and have the directors established an information and reporting system in the organization reasonable designed to provide management and the board of directors with timely and accurate information sufficient to allow them to reach an informed decision regarding the organization's compliance with the law. In re: Caremark, 698 A.2d 959 (Del. Ct. Ch. 1996).
**Microsoft Culture and Values**

**Corporate Values**
- Integrity & Honesty
- Open & Respectful
- Big Challenges
- Passion
- Accountable
- Self-Critical

**Non-Negotiables**
- Obeying The Law
- Compliance
- Microsoft Policies

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**Collaboration and Cooperation**

**Internal Audit**
- Highlight and document areas of non-compliance which can clarify and better communicate policies or tighten enforcement.
- Evaluate and ensure that the compliance program is effectively adopted and raise visibility to instances of potential fraud which was dealt with outside the Investigative Framework.
- Establish the design, implementation, and effectiveness of the organization’s ethics-related objectives, programs, and activities.

**OLC**
- Collaborate to identify regulatory requirements, compliance risks.
- Engage with business to develop compliance plans with:
  - Clear ownership
  - Documented business processes
  - Ongoing monitoring and process improvement
  - Legal and compliance training and awareness
  - Investigation and Response
  - Consistent Discipline

**Synergies between IA and OLC**

**Collaboration in Audit Planning**

- Effectively incorporating compliance risks in annual audit process.
- Compliance audits.
- OLC review of audit findings.
- Close partnerships between IA & OLC in compliance risk assessment and response planning.
- Risk recognition and assessment.

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**Governance Framework**

Importance of strong Ethics and Values
- IA and OLC - Culture of Compliance
- IA and OLC - Collaboration
Collaboration in Fraud and Integrity Investigation Cycle

- Data collection
- Analysis
- Inv. Technique
- Interviewing
- Reporting
- Recovery
- Restitution
- Prosecution
- Cost Efficacy
  - Process improvements
  - Compliance program
  - Fraud auditing
  - CCM
  - Fraud Risk Assessment
  - Hotline
- Background checks
- Code of Conduct
- Training & communication
- NDO
- NMO

Benefits of Collaboration

IA/OLC association makes each better
Mutually supportive
Close coordination and cooperation are hallmarks
Ensures a strong governance foundation and structure
IA evaluates OLC compliance training programs and surveys

Developing Roles of IA-OLC Collaborative Effort

- Created the Financial Integrity Unit to develop fraud prevention, detection and investigation capabilities
- Conduct annual overall fraud risk assessments
- Perform engagement-level fraud and Standard of Business Conduct risk assessments and procedures
- Perform overall corporate compliance program reviews and detailed audits of specific program aspects
  - e.g., Employee background check process
- Quarterly external financial reporting audits, with focus on significant estimates/JE’s and disclosure processes
- Quarterly spend abuse audits
- Continuous Control Monitoring (CCM) initiative
- Vendor compliance audits
Future State – What is next?

- Further alignment of risk assessment
- Stronger integration between IA and OLC
- Net effect of strong collaboration between internal audit and OLC results in and enhances governance, culture of compliance, and the performance and effectiveness of both organizations
- Future: enhance productivity of collaboration and bring other parts of community into the same level of communication

Governance Framework
Importance of Strong Ethics and Values
IA and OLC - Organization
IA and OLC - Culture of Compliance
IA and OLC - Collaboration

Siemens: USDOJ Criminal Charges

- Siemens AG: two counts
  1. Violation of FCPA’s internal control provisions
  2. Violation of FCPA’s books and records provisions
- Siemens Argentina: conspiracy to violate the books and records provision
- Siemens Bangladesh and Siemens Venezuela: conspiracy to violate FCPA’s antibribery provisions and books and records provisions.

Siemens: SEC Complaint

- Claims (based on Security Exchange Act)
  1. Offer/promise/authorization of corrupt payments
  2. Failure to maintain accurate books & records
  3. Failure to maintain effective system of internal accounting controls
- Use of slush funds, cash desks, and commission accounts for corrupt payments;
- China:
  - Hospital radiology chief sentenced to 14 years for accepting a $60,000 bribe in connection with the sales of an MRI system;
  - Use of HK intermediary to fund “study trips” for doctors in vacation spots such as Miami and Las Vegas
Siemens Highlights

- $1.6 billion combined fine
- $100 million billable hours by Debevoise and Deloitte
- Four year government oversight
- Key findings
  - Evidence of corruption spanned decades
  - Knowing failure to implement and circumvention of controls
  - Comprehensive, clear polices are ineffective if there are control weaknesses
  - A "paper" compliance program

Siemens: Penalty to Date

- US DOJ: $450 million fine
- US SEC: $350 million disgorgement of profits
- Munich Public Prosecutor's Office:
  - October, 2007: €201 Million (fine + disgorgement of profits) for Telecom Group
  - December 2009: €395 Million (fine + disgorgement of profits) for Siemens AG other than Telecom Group
- Combined total to date: $1.6 Billion
- Managers, executives, and board members arrested and convicted

FCPA Internal Control Provisions

15 U.S.C. 78m(b)(2)(B): "devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that"

i. transactions are executed in accordance with management's general or specific authorization;
ii. transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;
iii. access to assets is permitted only in accordance with management's general or specific authorization; and
iv. the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences;
Siemens: DOJ–Cited Internal Control Failures

- “Using off-books accounts for corrupt payments...”;
- Sham “consulting agreements”;
- “Justifying payments to purported business consultants based on false invoices:”
- “mischaracterizing corrupt payments...as consulting fees...”
- “limiting the quantity and scope of audits of payments to purported business consultants...”
- Circumvention of approval signature requirements
- “Changing the name of purported business consulting agreement to ‘agency agreement’ or similar titles to avoid detection.”

Siemens: SEC–Cited Internal Controls Failures

- “Knowing falsification of books and records": false invoices, mis-recording of illicit payments (as management fees, consulting fees, supply contracts, commission, etc.)
- Routine circumvention of internal controls: no central record of bank accounts, violation of signatory policies, failure to review documents before approval.
- Inadequate due diligence on consultants
- Payments made without adequate proof of services rendered
- Lack of control over cash disbursements
- Allowed payments without documentation
- Compliance office lacked independence and severely understaffed

Siemens: Plea Agreement with USDOJ

- Guilty pleas to the charges
- Total criminal penalty of $450,000,000
- Continuing cooperation with prosecutors
- Implementation of rigorous compliance enhancement, including periodic testing
- Four-year external compliance monitor
Siemens: Internal Investigation
- 1.5 million billable hours by Debevoise and Deloitte;
  - Debevoise: 100 lawyers + 100 support staff
  - Deloitte: 130 forensic accountants and support staff
- 34 countries, 1,750 interviews, 800+ informational meetings
- 100 million+ documents collected and preserved (over 24,000 documents – over 100,000 pages – submitted to DOJ)
- $100 million on document collection, review, processing, and storage
- Internal amnesty program for information

Siemens: Remediation Efforts to Date
- More than 500 full-time compliance personnel worldwide
- All 450 audit staff required to reapply for their jobs
- New compliance and improved financial controls initiative: “Anti-Corruption Toolkit.”
  - External cost (PwC) to date: $150 million.
- New consultant due diligence: “interactive computer system”
- Centralized and reduced company bank accounts and payments to third parties.

Skill Development: Reflections from the Compliance and Ethics Field-- Multi-national CEO
- CEO’s are looking for someone with a very broad business perspective as opposed to being ethics & compliance centric;
  - They don’t have to understand all the segments of the business, but at least have an appreciation for all that is going on.
Reflections from the Compliance and Ethics Field: World-wide

- A keen understanding of diversity and global sensitivity
  - (the various cultural backgrounds of the stakeholders add a level of complexity that will trip up those unaware of the variables.)
- Speak truth to power
- One of the most difficult things in our jobs is to not look the other way when seriously difficult issues come up at the senior most levels

Essential skills that will never make it to a job description

- A top performer, well respected in one’s prior field (so that one comes into the job with a reputation for excellence that will survive the inevitable backstabbing that occurs when one makes unpopular decisions)
- Diplomatic – The ability to tactfully and discreetly help people make necessary course corrections and still save face
- Judgment – the ability to recognize which issues are important enough to fight for (or as one of our colleagues once described it: “knowing which hill to die on”)
- And the most important one: the ability to get another job any time. You have to be ready to leave the company rather than tolerate or rationalize unethical behavior.