Topics for discussion

- The Chief Ethics and Compliance Officer (CECO) and his/her department
- The board and senior management
- Liaisons and other staff
- Practical considerations

Who is responsible for compliance?

- Strategy and support functions
- Individual employees
- Executive management
- Internal Audit
- Compliance
- Human Resources
- Operations and Business Units
- Board of Directors
- Audit Committee
Why have a compliance and ethics program?

» In any company, an **effective** compliance and ethics program can help achieve three principal objectives:
  - To prevent, detect and respond to non-compliance
  - To help build and enhance a culture of ethics and compliance
  - To help the company execute its business strategies and achieve its business objectives more efficiently

» In addition, the Federal Sentencing Guidelines make clear that an **effective** compliance and ethics program can help an organization avoid indictment and reduce penalties post-conviction. “**Effective**”:
  - Exercise due diligence to prevent and detect criminal conduct
  - Otherwise promote a culture that encourages ethical conduct and a commitment to compliance

» The structure of a company’s compliance and ethics program – and clarity about who is responsible for what – is critical to **effectiveness**

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What do the Guidelines say about structure and roles?

<table>
<thead>
<tr>
<th>Function</th>
<th>Roles</th>
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<tbody>
<tr>
<td>Organization’s governing authority</td>
<td>Be knowledgeable about the content and operation of the compliance and ethics program</td>
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<td></td>
<td>Exercise reasonable oversight of the implementation and effectiveness of the compliance and ethics program</td>
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<tr>
<td>High-level personnel of the organization</td>
<td>Ensure that the organization has an effective compliance and ethics program</td>
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<td>Specific individuals within high-level personnel</td>
<td>Overall responsibility for the compliance and ethics program</td>
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<tr>
<td>Specific individuals with operational responsibility</td>
<td>Day-to-day operational responsibility for the compliance and ethics program</td>
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<td>Report periodically to high-level personnel and the governing authority (subgroup) on the effectiveness of the compliance and ethics program</td>
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<td>Shall be given adequate resources, appropriate authority and direct access to the governing authority (subgroup)</td>
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</table>
What else do the Guidelines suggest we consider when thinking about structure?

- Compliance and ethics program structure should be commensurate with an organization's risks
  - Nature of the organization's business
  - Industry practice
  - Applicable governmental regulation
- Compliance and ethics program structure should be tailored to an organization's size
  - "Large Organizations" – more formal operations, greater resources
  - "Small Organizations" – same degree of commitment, but less formal operations and fewer resources
  - Examples include training employees through informal staff meetings, and using available personnel rather than employing separate staff to carry out the compliance and ethics program

Structure and roles – issues to consider

- Reporting relationship for the compliance and ethics function
  - Independence required but can be achieved in many ways
  - Alignment with the business doesn’t necessarily compromise independence
- Internal structure and roles within the compliance and ethics team
  - Degree of alignment with the company's structure
  - Balance between decentralization and centralization
  - Depending on company's structure, may require decentralized approach to compliance and ethics advice and support (i.e., compliance officers embedded within lines of business)
  - Consider centralizing certain compliance and ethics functions and processes where there are efficiencies to doing so, including policy development, training, investigations, and surveillance/monitoring
  - Even if some functions are decentralized, consider how to assure coordination across functions, lines of business and geographies

Roles and responsibilities – issues to consider

- Consider "role clarity" exercise with other control functions, including legal, risk, government affairs, human resources and internal audit
  - Aligned missions and clear articulations of roles help drive efficiency
  - Coordination (i.e., on policy development, on surveillance and monitoring) can help drive efficiency
- Consider how best to engage the business
  - In people-centric organizations, incorporate key compliance roles into advancement and development planning (i.e., rotational assignments)
  - Consider developing liaison roles in the business and forming a compliance leadership team
  - Senior level colleague from each function/line of business: Compliance coordinates liaison for two channels of communication
    - From the function (risk assessment, feedback on policies and training)
    - To the function (compliance initiatives, messages)
Compliance mission and roles – one view

- **Mission:** to prevent, detect and respond to non-compliance, and to help [Company] achieve its objectives while effectively managing compliance risks
  - **Prevent**
    - Conduct compliance risk assessments
    - Develop policies, procedures and other controls
    - Develop annual compliance plans
    - Provide reporting to regulators, executive management, the Board and employees
  - **Detect**
    - Operate the hotline
    - Maintain other reporting mechanisms
    - Conduct compliance auditing, monitoring and surveillance
    - Measure effectiveness of compliance program and controls
  - **Respond**
    - Investigate allegations of non-compliance
    - Advise management on disciplinary action
    - Drive continuous improvement in compliance program, processes and controls

Compliance roles and responsibilities – another view

- **Design, implement and enhance an effective compliance program**
- **Design, implement and enhance core compliance processes**
  - Conduct risk assessments
  - Develop or enhance policies, procedures and guidance
  - Design and implement additional controls
  - Provide training and communications
  - Conduct monitoring, surveillance, auditing and evaluation
  - Conduct investigations
  - Develop metrics and measure compliance program effectiveness
- **Develop and implement an annual compliance plan**
- **Manage regulatory examinations and inspections**
- **Provide compliance support to business clients to help them achieve business objectives while effectively managing compliance risks**
- **Manage the hotline**
- **Report on compliance matters and compliance program effectiveness to regulators, executive management, the Board and employees**

Practical considerations

- ”The beginning of wisdom is to struggle with this.” – Anonymous General Counsel
- 千里之行, 始於足下 – or
- ”A journey of a thousand miles begins with a single step.” – Laozi
- Whether your program and structure is new, evolving or a bit dated, your program will benefit from beginning the journey
- Pick a starting point (i.e., compliance and ethics team’s role) and achieve internal agreement
- Share your work product with a friendly function or colleague (i.e., Legal, HR) and incorporate feedback
- Expand the circle outward (other control functions) and incorporate feedback
- And then further outward still (the business) and incorporate feedback
- Integrate role clarity into your training and communications
- Reinforce agreed-upon role clarity when “teachable moments” occur
- Keep track of, and start telling, stories – when things worked well, and when things didn’t
**Who is responsible for compliance?**

- Board of Directors
- Audit Committee
  - Executive management
- Operations and business units
- Strategy and support functions
  - Compliance
  - Legal
  - Internal Audit
  - Human Resources
  - Individual employees

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**Questions?**

**Speaker contact information**

Jack Holleran  
Senior Vice President, Compliance  
Moody’s Corporation  
250 Greenwich Street  
7 World Trade Center  
New York, NY 10007  
jack.holleran@moodys.com  
(212) 553-4398