Grow up:
Ways to Increase Your Investigation Program Maturity

Goal
Provide an investigation assessment tool that will facilitate the growth and maturity of your investigation program

Agenda
• Define effective organizational investigations
• Develop an investigation program assessment
• Discuss three ways to increase investigation program maturity
## Two Types of Investigations

<table>
<thead>
<tr>
<th>External Investigations</th>
<th>Internal Investigations</th>
</tr>
</thead>
</table>

- Conducted by regulator or external law enforcement.
- Examples investigators include:
  - Office for Civil Rights,
  - Ohio Ethics Commission,
  - State and Federal Inspector General’s Office, and
  - Federal Bureau of Investigation

- Conducted by organization employees or outside counsel.
- Examples of investigators include:
  - Human Resources,
  - Internal Audit,
  - Compliance,
  - Outside law firms, and
  - Specialized consultants.

---

### What constitutes an effective internal investigation?

**Wells Fargo goes out to abuses**

Wells Fargo & Co. has jettisoned a longtime strategy of grooming its own leaders in favor of importing them as part of the effort to clean up its image.

**MSU: Nassar internal probe report doesn’t exist**

Lansing — Michigan State University cannot release an "investigative report" on an internal probe into its handling of criminal activity by former ... Dec 8, 2017

---
Effective Organizational Investigations

- Promote a culture of integrity and appropriately engage leadership
- Stop misconduct and identify systemic issues and process breakdowns
- Mitigate risk and demonstrate internal control to external regulators

U.S. Sentencing Guidelines §8B2.1

- Implementing written policies, procedures, and standards of conduct
  - Leadership Engagement and Appropriate Delegation
  - Diligence in Hiring
  - Communication and Training
  - Testing and Monitoring
  - Alignment of Incentives
  - Responding promptly to detected offenses and undertaking corrective action
Effective Compliance Program: Maturity Assessment

<table>
<thead>
<tr>
<th>RATING</th>
<th>OVERSIGHT/GOVERNANCE</th>
<th>CONTROL DESCRIPTION</th>
<th>REPEATABILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Optimized</td>
<td>Leadership oversight is pre-active</td>
<td>Controls in place; regular risk-based testing</td>
<td>Strategies to make processes more efficient</td>
</tr>
<tr>
<td>Managed</td>
<td>Leadership oversight is active</td>
<td>Controls in place; ad hoc testing</td>
<td>Evaluation and updating of methods</td>
</tr>
<tr>
<td>Defined</td>
<td>Leadership oversight is continuous</td>
<td>Controls in place to cover requirements; retesting</td>
<td>Uniform, process and repeatable</td>
</tr>
<tr>
<td>Repeatable</td>
<td>Leadership oversight is sporadic</td>
<td>Some, but not all controls in place; some controls outdated</td>
<td>Highly dependent on actions; knowledge of people close to the issue</td>
</tr>
<tr>
<td>Initial</td>
<td>No leadership oversight</td>
<td>No institutional controls</td>
<td>Initial</td>
</tr>
</tbody>
</table>

Compliance Program Development Assessment

List current status for each process

List next steps for each process

Baseline
Current Status

OSU © 2019
DOJ Evaluation of Corporate Compliance Programs

Confidential Reporting Structure and Investigation Process

Effectiveness of the Reporting Mechanism

Properly Scoped Investigations by Qualified Personnel

Investigation Response

Resources and Tracking of Results

Investigation Program Development

Effective Investigation Program: Framework

<table>
<thead>
<tr>
<th>Leadership Engagement</th>
<th>Reporting Mechanism</th>
<th>Planning/Scope</th>
<th>Qualified Personnel</th>
<th>Response</th>
<th>Tracking</th>
<th>Communication</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Leadership notified and updated • Decisions framed effectively for leadership</td>
<td>• Anonymous reporting mechanism publicized • Compliance function has full access</td>
<td>• Complaints assessed consistently • Protocol to determine investigator • Interview/Reporting protocols</td>
<td>• Regular investigative training • Independent skilled investigators with appropriate expertise</td>
<td>• Timing metrics implemented • Evidence analyzed consistently • Corrective actions implemented consistently • Root cause analysis performed</td>
<td>• Information gathered used/analyzed effectively • Corrective actions are tracked/audited</td>
<td>• Outcomes are communicated internally and externally if necessary • Value of concern reporting communicated/demonstrated</td>
</tr>
</tbody>
</table>

Effective Compliance Program: Maturity Assessment

<table>
<thead>
<tr>
<th>RATING</th>
<th>OVERSIGHT/GOVERNANCE</th>
<th>CONTROL DESCRIPTION</th>
<th>REPEATABILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Optimized</td>
<td>leadership oversight is pro-active</td>
<td>controls in place; regular risk-based testing</td>
<td>Strategies to make processes more efficient</td>
</tr>
<tr>
<td>Managed</td>
<td>leadership oversight is active</td>
<td>controls in place; ad-hoc testing</td>
<td>Reevaluation and updating of methods</td>
</tr>
<tr>
<td>Defined</td>
<td>leadership oversight is continuous</td>
<td>controls in place to cover requirements; no testing</td>
<td>Uniform processes and repeatable</td>
</tr>
<tr>
<td>Repeatable</td>
<td>leadership oversight is specific</td>
<td>some but not all controls in place; some controls outdated</td>
<td>Highly dependent on actions and input of people close to the issue</td>
</tr>
<tr>
<td>Basic</td>
<td>no leadership oversight</td>
<td>no institutional controls</td>
<td>ad hoc</td>
</tr>
</tbody>
</table>
Three Ways to Increase Investigation Program Maturity

1. Create an organization-wide investigation protocol with metrics in mind

2. Leverage concern reporting to drive culture

3. Effectively communicate outcomes
## Investigations Rating Methodology & Protocol

### Materiality Ratings

<table>
<thead>
<tr>
<th>Rating</th>
<th>Public Interest</th>
<th>Subject Position</th>
<th>Regulatory</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Major reputational topic; of immediate interest to the general public</td>
<td>Concerns unit or senior leader</td>
<td>Regulatory debarment or shutdown</td>
</tr>
<tr>
<td>4</td>
<td>Potential for significant publicity; of interest to the general public</td>
<td>Concerns management of some seniority</td>
<td>Regulatory probation/ongoing supervision</td>
</tr>
<tr>
<td>3</td>
<td>Potential for publicity; could be of interest to the general public</td>
<td>Concerns staff or faculty</td>
<td>Regulatory warning letter or equivalent</td>
</tr>
<tr>
<td>2</td>
<td>Small potential for publicity; no known interest to the general public</td>
<td>Concerns staff or faculty</td>
<td>Advisory letter or other indication of ongoing interest</td>
</tr>
<tr>
<td>1</td>
<td>No potential for publicity; no known interest to the general public</td>
<td>Concerns staff or faculty</td>
<td>No regulatory enforcement interest</td>
</tr>
</tbody>
</table>

### Action Steps Summary

1. **Major reputational topic; of immediate interest to the general public**
   - Investigations Team Member: Consult ODU, investigation TBD
   - ODU Responsibility: Notify Senior VP & General Counsel, coordinate investigation
   - Additional Responsibility: Senior VP & General Counsel to inform key stakeholders as appropriate
   - Appropriate Senior Leader Identified: Prior to investigation by ODU

2. **Potential for significant publicity; of interest to the general public**
   - Investigations Team Member: Consult ODU, investigation TBD
   - ODU Responsibility: Notify Senior VP & General Counsel, exercise investigation
   - Additional Responsibility: Senior VP & General Counsel to inform key stakeholders as appropriate

3. **Potential for publicity; could be of interest to the general public**
   - Investigations Team Member: Consult ODU, perform investigation themselves
   - ODU Responsibility: Monitor
   - Additional Responsibility: None

4. **Small potential for publicity; no known interest to the general public**
   - Investigations Team Member: Notify ODU, perform investigation themselves
   - ODU Responsibility: Monitor
   - Additional Responsibility: None

5. **No potential for publicity; no known interest to the general public**
   - Investigations Team Member: Notify ODU, perform investigation themselves
   - ODU Responsibility: Monitor
   - Additional Responsibility: None

---

**How could rating and tracking have made a difference?**

*Images and articles from various sources are shown, illustrating how investigations and ratings have impacted public and regulatory perspectives.*
Using Surveys to Measure and Improve Culture

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
</tr>
</thead>
<tbody>
<tr>
<td>68.4%</td>
<td>64.0%</td>
<td>64.9%</td>
<td>43.4%</td>
<td>43.4%</td>
</tr>
<tr>
<td>78.8%</td>
<td>64.3%</td>
<td>62.1%</td>
<td>55.6%</td>
<td>64.1%</td>
</tr>
<tr>
<td>75.9%</td>
<td>69.0%</td>
<td>72.4%</td>
<td>55.2%</td>
<td>69.0%</td>
</tr>
<tr>
<td>78.3%</td>
<td>60.9%</td>
<td>60.9%</td>
<td>47.8%</td>
<td>69.6%</td>
</tr>
<tr>
<td>70.8%</td>
<td>69.7%</td>
<td>64.8%</td>
<td>53.6%</td>
<td>59.1%</td>
</tr>
<tr>
<td>74.0%</td>
<td>68.5%</td>
<td>63.8%</td>
<td>59.1%</td>
<td>66.4%</td>
</tr>
<tr>
<td>68.4%</td>
<td>66.2%</td>
<td>61.0%</td>
<td>51.8%</td>
<td>64.7%</td>
</tr>
<tr>
<td>93.8%</td>
<td>75.0%</td>
<td>68.8%</td>
<td>68.8%</td>
<td>75.0%</td>
</tr>
<tr>
<td>68.3%</td>
<td>71.2%</td>
<td>67.2%</td>
<td>54.8%</td>
<td>65.9%</td>
</tr>
<tr>
<td>70.0%</td>
<td>80.0%</td>
<td>80.0%</td>
<td>40.0%</td>
<td>40.0%</td>
</tr>
<tr>
<td>63.6%</td>
<td>81.8%</td>
<td>72.7%</td>
<td>54.5%</td>
<td>45.5%</td>
</tr>
<tr>
<td>75.0%</td>
<td>83.3%</td>
<td>91.7%</td>
<td>91.7%</td>
<td>91.7%</td>
</tr>
<tr>
<td>100.0%</td>
<td>84.6%</td>
<td>76.9%</td>
<td>100.0%</td>
<td>100.0%</td>
</tr>
<tr>
<td>79.2%</td>
<td>79.2%</td>
<td>66.7%</td>
<td>66.7%</td>
<td>79.2%</td>
</tr>
<tr>
<td>62.4%</td>
<td>49.0%</td>
<td>47.5%</td>
<td>48.0%</td>
<td>58.4%</td>
</tr>
<tr>
<td>55.6%</td>
<td>50.0%</td>
<td>50.0%</td>
<td>55.6%</td>
<td>50.0%</td>
</tr>
<tr>
<td>81.3%</td>
<td>71.0%</td>
<td>77.4%</td>
<td>40.6%</td>
<td>43.8%</td>
</tr>
<tr>
<td>73.3%</td>
<td>80.0%</td>
<td>73.3%</td>
<td>33.3%</td>
<td>44.8%</td>
</tr>
</tbody>
</table>

A. I know the policies that apply to my job.
B. If laws are broken, I know how to report them.
C. If policies are broken, I know how to report them.
D. People are comfortable reporting concerns.
E. I am comfortable reporting concerns.

Communicating about Concern Reporting and Retaliation

**EEOC guidance to managers regarding retaliation:**

- Avoid publicly discussing the allegation;
- Do not share information about the EEO activity with any other managers or subordinates;
- Be mindful not to isolate the employee;
- Avoid reactive behavior such as denying the employee information/equipment/benefits provided to others performing similar duties;
- Do not interfere with the EEO process;
- Provide clear and accurate information to the EEO staff, EEO Investigator, or Judge; and
- Do not threaten the employee, witnesses or anyone else involved in the processing of a complaint.
How could effective concern reporting mechanisms have made a difference?

Effectively Communicating Outcomes

**Leadership/Board**
- Designated point of contact for investigations
- Regular high-level reporting
- Tracking information/data available upon request

**Investigation Participants**
- Public reports
- Follow-up calls/emails/messages
- Communicate corrective action

**Organization Community**
- Public reports
- Public data
- Communicate corrective action
How could effectively communicated outcomes have made a difference?

Questions?

Jessica Tobias
tobias.80@osu.edu
Citations