Cutting-Edge Third Party Risk Management

SCCE
Utilities & Energy Compliance & Ethics Conference

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Third Parties – What Are They?
The Spectrum
Customer to Third Party Representative/Agent

Attributes

- Ultimate purchaser of product or service
- Buys products from multiple manufacturers
- Passively sells company products
- Buys company product to make into separate branded product
- Enhances own product and sells as branded product
- Prime bidder on project, subcontracts various scope
- Enhances product and sells as solution
- Authorized VAR
- Facilitates sale of company product/service
- Sales commission on sale

Risk Consideration

- Money Laundering
- Prohibited Countries
- Intellectual Property
- Int'l Trade Controls
- Conflicts of Interest
- Kickbacks
- Conflicts of Interest
- Improper Payments
- Bribery
- FCPA
- Working With Gov't
- Competition Laws
- Bid-Rigging
- Price Fixing

End User

Retail/Catalogue Seller

OEM Panel Builder Aggregator EPC

Value Added Reseller

Distributor Reseller

Sales Rep

Treat as a Customer (KYC policy)

Treat as a 3rd Party (3P process)

3rd Party Characteristics

Distributor/Reseller

- Business entity
- Takes title to company product
- Receives no direct compensation from company, but derives income from discount
- Has discretion with respect to prices, T&Cs for resale of purchased product
- Distributor holds stock/reseller does not

Value Added Reseller

- Takes title to company product
- Adds some features to the product or enhanced package
- Receives no direct compensation from company
- Derives income from adding features to company products or services and reselling to customer as an integrated product or enhanced package
- Has discretion as to prices, T&Cs for resale of the purchased products

Sales Representative

- Reimbursed on a commission basis
- Provides assistance in the expectation of making a profit from any transaction involving the sale of goods or services
- Promotes sale of specific products and services to assigned customers or within a specific territory
- Normally, Company contracts with end-user customer

✓ Authorized by Company
✓ Holds itself out in the market as having a formal relationship with Company
3rd Party Characteristics

✓ Working on behalf of the company

Sales Marketing Consultant (SMC)
- does not take title to GE products
- compensated on a fixed fee basis
- is not paid contingent upon an order or other event
- provides services and assistance to facilitate the sales and marketing of GE products and/or services
to assigned customers or within a specific territory
Not directly responsible for soliciting individual orders from end-user customer
GE contracts with end-user customer

Administrative Service Provider (ASP)
Acts on companies behalf seeking official administrative action

Third Party Challenges: Why do we Care?
What makes TPs special? Why do we care?

Companies can be held liable for the actions of its independent third parties and intermediaries!

- TP must have actual or apparent authority to facilitate a sale of the company’s products or services or must be authorized to act on the company’s behalf in seeking official administrative action for the company’s benefit.
- Transacting business on the company’s behalf or for the company’s benefit poses significant risks.
- Risks include:
  - Reputational
  - Financial (fines, penalties)
  - Legal (choice of law, venue, jurisdiction)

What are the risks?

- Reputational vs. Financial
- Other Risks:
  - Security & Crisis Mgmt
  - Human Rights
  - Data protection
  - Country risks
  - Contract Risks
    - Expired agreements
    - Evergreen

Similar risks faced by direct sales
What are the Challenges?

- Headlines!
- Bribery, corruption, and fraud remain widespread
- Rapid investment and growth in new global markets
- “Lumpy” economic environments
- Expectations and increased focus of enforcement agencies
Regulations and Regulators

- Dodd-Frank Whistleblowers
- UK Bribery Act
- Proposed legislation
  - India
  - Brazil
  - China
  - Russia?

Components of a TP Risk Management Process
“Invest in partners for mutual profit. Companies can no longer afford to treat third-party partners as a second-class channel. In many cases, a partner is the best or only way to reach the fastest-growing markets.”

(Sales Growth Insights from Leading Sales Executives, McKinsey & Company 2011)
Go To Market Strategy

• What is Your “Go to Market Strategy?”

• Will TPs and Intermediaries help you carry out that strategy?

• Factors may include:
  • Coverage strategy
  • Product segmentation
  • Price & margin expectation
  • Capabilities – technology, solution, price/value, resources, type of partner, product fit
  • Local legal requirements/termination/agency

Why Use TPs?

• **Coverage**: Can partnering extend the Company’s reach into existing and new markets with addition of distribution locations, proximity to customers or access to decision makers.

• **Competitiveness**: Can partnering help the Company serve its customers better by enhancing its offerings, adding complimentary value to customers, and bring efficiency to order fulfillment.

• **Customer**: In cases where partnering is required by customers, and the customer has a preference on who can best address their buying process, will working with third parties enhance the customer experience.
Hiring TPs: Factors to Consider

- **Business Model:** Do we need third parties to reach our customers or can we build the organization ourselves?
- **In-house Capabilities:** Do we already have the organization in place to handle these capabilities?
- **Overlap:** Do we already have a TP in the region/country that can handle our needs?
- **Volume of Business:** How much business will this TP bring?
- **Compliance Risk:** Where is the TP located? Will they interact with government officials? Do they have the same commitment to compliance?
- **Regulatory Environment:** Simple or strict? Chances of regulatory violations?
- **Reputation:** What is the TP’s Reputation in the market?

Onboarding

- Must have a rigorous onboarding process including:
  - Business need analysis
  - Financial analysis
  - Verified partner information (from all parties)
  - Thorough due diligence/screening
  - Balanced risk analysis

“Businesses may reduce the FCPA risks associated with third-party agents by implementing an effective compliance program, which includes due diligence of any prospective foreign agent”

- FCPA Guidelines pg. 23
Leadership defines Go To Market Strategy
- Direct vs Indirect analysis
- Regional GTM Overview
- Ideal 3P Profile

Appointment Process

Appointment
- Partner fill out the Application for Appointment
  - 3P Manager fill out the Recommendation for Appointment

Risk Score
- Generated Automatically from Application & Recommendation for Appointment
  - System determines DD & DOA path and generates notifications to approvers

Due Diligence
- Dedicated due diligence team
  - Documentation review by compliance manager
  - Repository Management

Agreements
- Have anti-bribery language
  - Express compliance with FCPA
  - Training

Approvals / DOA
- Weekly calls scheduled
  - Low Risk DOA
  - Significant Risk DOA including higher level approval
  - Rejection Process
  - Reporting & audit trail

Compact Model Requirements?
- Rank by risk – low, medium, high
- Internet search
- Watch List Screening
- Reference Checks
- Interview TPs
- Agreement to abide by bribery, and anti-corruption laws
- Contract terms
**Luxury Model**

- Prioritize by risk level
- Require business sponsor and accountability
- Obtain written detailed application
- Electronic search
- Independent screening
- Reference checks
- Site visit and interviews
- Require written acknowledgement of Code of Conduct
- Ethics training
- Internal business, legal, compliance review of high risk partners
- Contract terms
- Internal and external audits
- Annual updates
- Quarterly re-screening

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**Approaches Adopted in Managing TP Relationships**

*E&Y 2012 Survey*

<table>
<thead>
<tr>
<th>Approved supplier database</th>
<th>59%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Background checking system</td>
<td>56%</td>
</tr>
<tr>
<td>Check on ownership of the third party</td>
<td>50%</td>
</tr>
<tr>
<td>Audit rights/regular audits of the third party</td>
<td>45%</td>
</tr>
<tr>
<td>Use external provider to run checks</td>
<td>34%</td>
</tr>
<tr>
<td>Use software – technology based check of third party</td>
<td>30%</td>
</tr>
</tbody>
</table>
Risk Analysis - Process

- Low Risks – limited review and analysis
- High Risks – escalated review and analysis
  - Compliance Leader/Officer analysis
  - Legal review
  - Business Leadership review
  - Finance review/input
- High Level Internal Review Approval Process

Risk Score Drivers

- Country channel is located in or sells into
- Experience with channel
- Type of TP
- Commission rate – standard v. non-standard
- Sub-dealers
- Sell to government entity or instrumentality
- Principal, Officer or Agent work for government, entity or political party
- Mandated by customer/end user
- Contract duration
- More than one project
- Historical compliance issues
- Percent sales with products or services
- Annual revenue
Risk Analysis - Red Flags

- Excessive commissions to TPs
- Unreasonable discounts
- Vaguely described services
- TP in a different line of business than that for which it has been hired
- Close association with a foreign official
- TP required to be used by foreign official
- TP is a shell company incorporated offshore
- TP has an offshore bank account

Risk Scoring - Quantifying Risk

The Corruption Perception Index (CPI) measures the perceived level of Public Sector Corruption in 178 countries around the world.

2010 CPI Examples
- Sweden 9.2
- Germany 7.9
- Japan 7.8
- UK 7.6
- US 7.1
- UAE 6.2
- S. Africa 4.7
- Saudi Arabia 4.5
- S. Africa 4.5
- Brazil 3.7
- China 3.5
- Nigeria 2.4
- Russia 2.1
- Iraq 1.5

Example Scoring factors considered in evaluating risk in 3P relationships:

<table>
<thead>
<tr>
<th>Low Risk</th>
<th>Significant Risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk Score ≤ xx</td>
<td>Risk Score &gt; xx</td>
</tr>
</tbody>
</table>
Compliance

• TPs must agree to:
  • Commit to compliance standards of company
  • Stay current and obey all applicable legal and regulatory provisions
  • Comply with all contractual provisions
  • Grant audit rights (define scope of rights)
  • Agree to report violations
  • Certify compliance on a regular basis
  • Site visits
  • Complete compliance training

Relationship Management

• Assign relationship manager/TP Manager
• Establish ongoing communications
• Provide ongoing training
  • Face to face training and online
  • Product/compliance/sales/services/EHS
• Provide platform for business improvement

Welcome to Channel Connect...
Your one-stop resource for information to support your business. The easy-to-use interface is your gateway to a host of resources, including:
• Online courses to enhance your product and service knowledge to improve your sales
• First quarter to access all resources and training videos
• New ways to communicate, including webinars, chats, forums and a suite of communication tools that will be introduced later this year
• A comprehensive catalog with information and tools to improve face-to-face customer interactions and product knowledge
• A direct link to print-on-demand ordering of sales collateral and product literature

Visit our website or contact the GE Energy Sales Support Center for additional information.

GE Energy | Channel Connect
Monitoring/Improving/Refining

- Processes in place to
  - Refresh due diligence
  - Review and Renew Agreements
  - Conduct and document regular site visits
  - Conduct periodic audits
  - Rationalization of TPs

When is Enough Enough?

- When you can show the government agency asking that you have taken appropriate steps to design, implement, and enforce a compliance program that is generally effective in preventing and detecting criminal conduct.

§8B2.1 U.S. Federal Sentencing Guidelines
Thank you.