AUDITING ETHICS PROGRAMS TO ADDRESS CULTURE AND CONDUCT

2018 Utilities & Energy Compliance & Ethics Conference
February 6, 2018

Pamela Verick, Director
Protiviti Forensic
pam.verick@protiviti.com

© 2018 Protiviti Inc. An Equal Opportunity Employer M/F/Disability/Veterans. Protiviti is not licensed or registered as a public accounting firm and does not issue opinions on financial statements or offer attest services. All registered trademarks are the property of their respective owners.

TODAY’S LEARNING OBJECTIVES

1. Understand hot topics impacting Ethics, Culture and Conduct.
2. Prepare to successfully plan an Ethics Program Audit.
3. Understand interdependent relationships between performance strategies.
4. Distinguish between ethics and compliance for internal control purposes.
5. Articulate frameworks for review of ethics programs.
6. Provide case study as a learning tool in executing an Ethics Program Audit.
2018 HOT TOPICS IMPACTING ETHICS, CULTURE AND CONDUCT

Key Issues to Watch In the Year Ahead

- #metoo + #timesup impact on corporate culture, ethics, hotline activity, etc.
- Technology tools affect connections and the way employees feel about their environment
- Awaiting Supreme Court decision in Digital Realty Trust vs. Somers
- Intersection of data privacy (GDPR), anti-fraud and anti-bribery initiatives

SETTING THE STAGE: FOUNDATIONAL CONCEPTS
FINDING INSPIRATION

"In looking for people to hire, you look for three qualities: integrity, intelligence, and energy. And if they don't have the first, the other two will kill you.”
-- Warren Buffet

"In failing circumstances no one can be relied on to keep their integrity.”
-- Ralph Waldo Emerson

"Real integrity is doing the right thing, knowing that nobody’s going to know whether you did it or not.”
-- Oprah Winfrey

"Honesty is the first chapter in the book of wisdom.”
-- Thomas Jefferson

"The truth of the matter is that you always know the right thing to do. The hard part is doing it.”
-- Gen. Norman Schwarzkopf

RENEWED FOCUS

Over the last five years, events have led to renewed focus on ethics, culture, conduct and compliance.

2012
- Penn State University fine of $60M + 4-yr post-season ban
- Scott Thompson, Yahoo CEO, resigns over embellishment of resume

2013
- Libor market manipulation
- Misleading advertising
- FX manipulation

2014
- Emision test cheating
- FIFA corruption scandal
- HIV/AIDS drug price gouging
- Brand scandals involving corporate culture, living wage and unpaid overtime

2015
- The Panama Papers data leak and secret offshore accounts
- Fraudulent customer account scandal
- Epipen pricing gouging
- Airline customer service

2016
- The Paradise Papers data leak and secret offshore accounts
- Systemic sexual harassment
- Disrespectful/CEO behavior, use of "unethical / illegal" tools and IP infringement lawsuit

2017
- Genetically engineered wheat scandal
- Illegal credit card billing practices
- Allegations of racial profiling by retailers
- Silicon Valley love triangle
THE SILVER LINING
Excerpted from 2017 World’s Most Ethical Companies List – www.Ethisphere.com

6 Honorees from Energy & Utilities Industry

RELATIONSHIP BETWEEN “E” AND “C(s)” STRATEGIES

Ethics
Principles, standards and values of an organization that govern strategic decision-making, operations and conduct.

“Personality” of an organization that develops from shared principles, values, beliefs and conduct.

Alignment with laws, regulations, principles and standards of an organization that govern strategic decision-making, operations and conduct.

Behavior of an individual or organization expressed in action, reaction or inaction.

Establish desired corporate culture, and assess current state against desired state to reinforce adoption of ethical behaviors, practices, internal controls/compliance mechanisms that are conducive to limiting opportunities for misconduct and non-compliance.

Implement key controls across first and second line functions and monitoring mechanisms with actionable metrics and reporting to identify and address conduct risk.

Strong mechanisms and desired behaviors for a robust ethical culture with proactive identification of potential for culture, conduct and compliance risks.
The purpose of an Ethics Program is to establish a set of values and culture that encourages ethical decision-making, as compared with a Compliance Program which prevents and detects criminal conduct and promotes an organizational culture that is committed to ethical conduct and compliance with the law.

While some organizations have separate and distinct programs, many have combined these interdependent functions into a single, “Ethics & Compliance Program.”

Objectives of Ethics Programs Vary

- Conduct
- Culture
- Decision-Making
- Governance
- Compliance
- Responsibility
- Transparency
- Policies
UTILITIES & ENERGY INDUSTRY:  
WHAT'S THE SCOPE OF YOUR ETHICS PROGRAM?

ETHICS PROGRAM:  
THREE LINES OF DEFENSE  
Some Examples of Ethics Program Activities by Lines of Defense

- **Board of Directors**  
  - Management establishes ethical climate  
  - Management promotes / demonstrates ethical "conduct at top"  
  - Employees "live values" and advocate ethics  
  - Positive personnel practices  
  - Appropriate compensation strategies  
  - Consistent disciplinary actions

- **Compliance / Risk Management**  
  - Coordinate development of Code of conduct and P&Ps  
  - Provide / confirm annual training activity  
  - Obtain annual affirmations / certifications  
  - Periodically assess ethics and compliance risk  
  - Survey / measure ethical culture  
  - Evaluate / investigate reported complaints  
  - Validate compliance with policy requirements  
  - Assess adequacy of Ethics Program  
  - Provide reporting to Board of Directors

- **Internal Audit Department**  
  - Independently test effectiveness of Ethics Program and related controls  
  - Conduct 3rd party audits (include E&C topics)  
  - Report results to Audit Committee
ETHICS AUDIT: PLANNING CONSIDERATIONS

ASK YOURSELF

Given recent ethical failures across a variety of industries, has there been ongoing dialog within your organization related to Ethics? Have there been any discussions with the Audit Committee, Senior Management and the Ethics Officer relative to assessing the Ethics Program?

Do you already assess the organization's Ethics Program as a part of existing compliance audits or as a stand alone audit? Do other departments conduct such audits?

Has your organization defined internal controls across the first and second line of defense in order to establish, promote and manage the Ethics Program?
**EXAMPLES OF FRAMEWORKS FOR EVALUATING ETHICS PROGRAMS**

1. Federal Sentencing Guidelines for Organizations (Chapter 8.B.2)
2. Organization for Economic Co-operation and Development Good Practice Guidance on Internal Controls, Ethics and Compliance
3. IIA Practice Guide – Evaluating Ethics-Related Programs and Activities + Auditing Culture – A Hard Look at the Soft Stuff
4. Department of Justice – Evaluating Corporate Compliance Programs + Hallmarks of Effective Compliance Programs (published w/SEC)
5. Open Compliance & Ethics Group’s Redbook 3.0
6. Committee of Sponsoring Organizations Entity Level Control - COSO 2013 – Control Environment / Principle 1 / Points of Focus

**NOTE:** Also consider regulatory and industry-specific guidance

---

**CASE STUDY: WORK PLAN OVERVIEW**

**Phase I:**
- Conduct Project Kickoff Meeting with Project Sponsor and designees
- Define roles and responsibilities
- Define objectives, key success factors, and milestones
- Develop communication protocols
- Establish basic timelines and critical path

**Phase II:**
- Review and inventory documentation related to the current state of E&C Program
- Facilitate individual and/or group interviews to discuss:
  - E&C Program Framework and control components
  - Specific questions and/or challenges related to:
    - Board oversight, conduct / tone at top, ethical culture, program structure, resource model, goals and metrics, etc.
- Conduct follow-up interviews with other designated persons
- Conduct entity-wide survey

**Phase III:**
- Conduct review with project sponsor
- Identify and document the key attributes of Ethics Program
- Compare key attributes with authoritative guidance and leading practices
- Using the Capability Maturity Model, evaluate E&C practices to identify opportunities to improve capabilities
- Identify opportunities for enhancement to E&C Program ("roadmap")

**Phase IV:**
- Review results with Project Sponsor
- Discuss key issues / gaps requiring management attention
- Develop written report
- Communicate results to Management, as requested
- Participate in Project Closeout Meeting with Project Sponsor and key stakeholders

---

© 2018 Protiviti Inc. An Equal Opportunity Employer M/F/Disability/Veterans. Protiviti is not licensed or registered as a public accounting firm and does not issue opinions on financial statements or offer attestations services. All registered trademarks are the property of their respective owners.
DESCRIPTION OF CAPABILITY MATURITY MODEL FRAMEWORK: ETHICS & COMPLIANCE PROGRAM

Capability Maturity Model – Stages of Capability (IIA)

Overview:
Internal Audit may consider the six (6) key elements of an effective Ethics and Compliance Program as outlined in: Internal Auditing: Assurance and Consulting Services (IIA Research Foundation)

OVERCOMING CHALLENGES

1. Ethics, culture and conduct are sensitive topics.
2. Mindset against investment in auditing “soft stuff.”
3. Measuring effectiveness of “value internalization.”
4. Perception vs. reality (or is it really the same)?
5. Documentation of gaps and weaknesses.
OPEN DIALOGUE

QUESTION & ANSWERS

Q&A