Modern Board Training, Reporting & Engagement

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The Board is the Ultimate Overseer of Culture

- Average CEO tenure 8.4/4.9 years*
- Tone at the top => Talk at the top?
- The Board must own culture and hold the CEO/execs’ feet to the fire
- The Board needs to be “knowledgeable” about compliance program and exercise “reasonable oversight”

* 2012 Conference Board CEO Succession Practices & 2010 Booz Allen CEO Succession Study
Polling Question #1

In my company, the Board receives ethics and compliance “training” (distinguished from governance training)

1) less than annually
2) annually
3) 2-4 times a year
4) has never received formal training
5) no idea, but how can I get a slot?
6) other

Polling Question #2

In my company, the chief ethics and compliance officer (CECO) reports on the status of the C&E program:

1) annually to the full Board
2) periodically to the full Board
3) annually to a Board committee
4) periodically to a Board committee
5) never - another exec (s) reports on C&E
6) other
Current Landscape & Increased Expectations of Board Role: Serious Frauds Office on UK Bribery Act

- Board level commitment is critical. Entire Board must be committed to antibribery compliance agenda, not just subcommittee.

- A specific Director must be accountable and ensure anticorruption is on the agenda of every full Board meeting.

SFO Director Alderman, September 2010

UK Bribery Act & Adequate Procedures

- “The board of directors or equivalent body has formally approved the program”

- “… provides oversight to the programme”

- “… have received written guidance on their responsibilities... and personal integrity”

- “… is knowledgeable about the programme”

- “Antibribery is a standing item on the board agenda”

- “… familiar with provisions of the Bribery Act”

- “… provides an example of transparency & integrity”
Current Landscape & Increased Expectations of Board Role: US Justice Prosecutor Guidelines

➢ “Do the directors exercise independent review of the company’s compliance program?”

➢ “Are directors provided information sufficient to enable the exercise of independent judgment?”

U.S. Department of Justice Prosecutor’s Manual
USAM Chapter 9-28.000

Current Landscape & Increased Expectations of Board Role: SEC on Board Oversight

➢ “The SEC will focus most intently on firms where we sense that senior management and the board are not setting the appropriate tone and are failing to support key risk and control functions with adequate resources, independence, standing and authority.”

Carlo di Florio, head of SEC office of inspections
January 31, 2012
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Increased Scrutiny of Board’s Role

- Enron & WorldCom accounting fraud
- Combined Code on Corporate Governance
- Sarbanes-Oxley
- 2004 & 2010 US FSG Amendments
- US Department of Justice Charging Memos
- Other industry guidance (eg health care)
- 2010 OECD Good Practice Guidance
- 2010 GSK $3Bn settlement
- UK Bribery Act & Adequate Procedures
- Barclays, HSBC, Siemens, Daimler, Satyam, Pfizer, AstraZeneca, Parmalat, Lernout & Hauspie et. al.
- Gov’t agencies speeches and pronouncements

The bar has been raised ...
Ripped from the headlines

“Boardworthy” lessons

JP Morgan, HSBC, Barclays, HP, WalMart

Are Directors Prepared to Oversee Compliance & Ethics?

- Does current Board orientation/training prepare Directors for C&E oversight role?

- 2010 RAND Symposium Report: “Directors as Guardians of Compliance and Ethics Within the Corporate Citadel”

- 2009 Association of Corporate Counsel Survey (1600) only 50% of Boards have received compliance & ethics training
  22% of companies conduct ethics risk assessment

- 2006 Conference Board Survey
  58% of Boards had compliance and ethics training
  Of those, 31% trained annually for an hour or less
What do today’s boards need to know about c & e?

Role, responsibilities & risks

Oversight of program implementation & effectiveness

Knowledgeable of program content & operation

“training”

“reporting”

Evolving Standards for Board Training & Reporting

OLD PRACTICE

- One time or annual briefing
- 1 way PPT show
- Mile high ethics review & the ‘state of the world’
- Statistics without context
- Scare factor: what happens in “other” companies

BEST PRACTICE

- Planned curriculum – regularly scheduled sessions covering successive topics
- 2-way dialogue about Board’s role/responsibilities & the program - scenarios
- Focus on highest risk areas - metrics that matter - real stories
- Effectiveness/Impact of program on organization
- Direct support of Board’s legal responsibilities
Modern Board training

- Compliance & Ethics training is not the same as governance training
- Board should take same Code of Conduct training that is mandatory for all employees (part of being “knowledgeable” about the Company’s program)
- Board must understand its own job related risks (conflicts of interest) & practice resolving
- Board must understand best practice C&E before it can oversee it- what an effective program looks like
- “Deeper dives” on specific areas of high risk

Modern Board C&E reporting

- The right data, from the right sources, at the right time (JP Morgan)
- Not just “fighting the last war”
- Continuous year-round reporting of significant C&E incidents and other dashboard stats
- CECO can break down silos; provide holistic picture
REALITY CHECK

- Board time is at a premium & hard to get/hold
- A Board “self-assessment” may help
- “Training” and “Reporting” may have to share a slot
  - “stealth training” can be very effective
- Compliance and ethics officer as the “dean” of the Board curriculum

Strategies for Board Engagement

- Know your board
  - individual background & hot buttons
  - previous board training & presentations
- Develop a long-term plan
- Avoid “overselling” - you are not the guarantor of ethics
- Objective, fact based reporting
- Tell the story
- Use of C&E dashboard
Strategies for Board Engagement

- Stats (eg helpline/training) don’t give whole picture
  - consider a dashboard/report card system
  - useful metrics + anecdotal data
  - context & platform for meaningful discussion

- Support proactive mindset - acting on red flags

- “Don’t scare the horses” vs educate & inform

- Collaboration with other functions to increase effectiveness, avoid redundancy and conflicting information

- Difference between ‘filtering’ and ‘accuracy checks’

  Evolving conversation that should become richer with each successive session
What about Subsidiaries & JVs?

- Organizations with multi-country operations should also run country-level programs for BOD’s of subs which also address requirements.
- Some companies run “Director & Officer” training and make completion a requirement before appointment as a director or officer of a subsidiary.
- JV’s and minority interests: including these is often even more significant from a risk-management perspective.

What Does a Good Board-CECO Relationship Look Like?

- Shared understanding of Board’s oversight responsibility & CECO’s direct support of that role.
- Direct, unfiltered access both planned & ad hoc.
- R&R of directors & officers are understood; D&O are adequately trained & counseled.
- Valued-added data/stats provided in proper context.
- An interactive conversation/briefing that gets richer and more valuable over time.
Scenarios

Scenario A
You are on “The Company’s” Board

• Your son-in-law’s company has developed a specialized services offering that would be perfect for “The Company” to use in its new strategic federal space.

• What should you do?
  1. Provide him the name and phone number of VP, Procurement, but nothing else.
  2. Introduce him to the head of Procurement.
  3. Let John know that you have recommended a good company (your brother-in-law) to Procurement.
Scenario B
You are on “The Company’s” Board

- Your daughter has just been asked to be on the Board of the Ronald McDonald House. She would like “the Company” to support the charity.

- What do you do?
  1. Provide her the name and phone number of the head of Community and Public Affairs, but nothing else.
  2. Introduce her to the head of Community and Public Affairs, and ask him/her to support the good cause.
  3. Ask the CEO to support this great cause.
  4. Ask your fellow Board Members to support this great cause.
  5. Nothing.

Final thoughts ...
- Bar has been raised
- Board must understand its role in order to discharge it
- Focus on real risks and issues, with examples
- Have a plan of action, engage supporters
- Each Board and company is unique
- Every Board is ultimate overseer of program

*Challenge is to deliver fit for purpose training, reporting & engagement to empower Board in its oversight role*
Recommended Reading (1)

- Boehme, “The Shredder Ate My Culture Report: 5 Questions the Barclays Board Should Have Asked” (Corporate Compliance Insights Feb 14, 2013)
- “FSA to Step Up HSBC Group Governance” (MoneyMarketing Dec 11, 2012)
- Boehme, “Chief Compliance Officer -An Undervalued Asset” (FT’s Board IQ Jan 24, 2012)
- Fox/Morgan, “Board Responsibility Under the FCPA” (European Business Review 2011)
- Greenberg, Directors as Guardians of Compliance and Ethics in the Corporate Citadel (RAND Symposium Report 2011)

Recommended Reading (2)

- Greenberg & Boehme, “Boards Have an Important Role as Guardians of Ethics and Compliance” (NACD Directorship, Jan 2011)
- “Raising the Bar: Evolving Expectations on Boards of Directors and Management teams in Assuring Corporate Compliance” (Arnold & Porter May 2009)
- “Questions that Boards should consider asking regarding compliance and ethics” (Deloitte 2009)
Questions?

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(named by ComplianceX to “Who Compliance Professionals should follow on Twitter in 2013”)

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