The Importance of Being Earnest …

About Your Program Evaluation!

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Why Program Evaluation?

◆ External expectations: key element of an effective program -- evaluating against evolving standards & risks

◆ Risk profile can change:
  - business model
  - industry
  - technology
  - regulation/law/guidance
  - acquisition/merger/third parties

◆ Sound business practice
  (Plan→ Do→ Check→ Act) -- continuous improvement

◆ Demonstrates serious approach to compliance(document it!)
Relevant Guidance

U.S. Federal Sentencing Guidelines for Organizations
“to evaluate periodically the effectiveness of the organization's compliance and ethics program”

OECD Good Practice Guidance for Internal Controls, Ethics and Compliance
“periodic reviews of the ethics and compliance programmes or measures, designed to evaluate and improve their effectiveness in preventing and detecting foreign bribery, taking into account relevant developments in the field, and evolving international and industry standards”

UK Bribery Act
“The commercial organisation monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.”

RIPPED FROM THE HEADLINES

What can companies learn from program evaluation?
First Step: Scope*

- **Design**
  Is the program designed to “detect and prevent misconduct” consistent with relevant guidelines & best practice?

- **Implementation**
  Has the program been implemented effectively as designed? Are you doing what you said you would do?

- **Impact**
  Has the program had the desired impact on culture and behavior? Does it “work”?

* Scope should be geared to program maturity, context & corporate transactional history
Start with the Basics

management commitment & resources
- “walk the talk”
- high level personnel
- structured for success
- resources
  - enforcement, discipline & incentives
    - no “double standard”
    - no retaliation
    - performance alignment
  - substantial personnel authority
    - avoid discretionary authority to managers likely to violate
    - background checks
    - promotions & new hires

standards, controls & procedures
- clear, written, accessible
- beyond “legalese”
- internal controls

training & communication
- job related & relevant
- multimedia/blended
- board training

monitoring, evaluation & reporting
- metrics & measurement
- confidential report lines
- reports to senior management & board
- review & modify program
  - ongoing risk assessment
  - including after breaches

But does it “work”?

- All compliance program elements must be effectively “implemented” and “work” together in a manner that actually does the job …
  → and drives the right culture

Design + Implementation + Impact

Beyond “check the box”!
The Critical Ingredient: Culture

- Culture trumps Compliance, every time*
- All findings should be analyzed within context of Culture
- Focus groups -- a key tool

* At SAC, Culture Trumped Compliance By 38:1

Tool Kit for Program Evaluation

- Desk audits
- Focus groups
- Individual interviews
- Surveys
- Deep dives
- Random testing (e.g. mystery shopper)
- Risk area audits
- Inputs & Outputs (e.g. hotline, training, investigations)
- Dry run (mock presentation)

*Many more!
A Word on Inputs & Outputs

“Not everything that can be counted counts, and not everything that counts can be counted.”

- Albert Einstein

5 Common Mistakes …
#1 Waiting for Godot

- Not a once every 3 - 5 year epic event*
- Internal, peer review or outside experts
- An ongoing process of improvement that can be achieved in bite-sized pieces, and documented

Why Do You Put Things Off?

Why Do You Put Things Off?

- Don’t feel like it
- Not sure what to do
- No time
- It’s just not urgent

*A Quick Start to Program Evaluation

#1 Waiting for Godot (ii)

- Ideas for some “small bites”:*
  - Annual helpline test/audit (mystery caller)**
  - Investigations spot assessment
  - High risk or new risk area assessment
  - Site visits/evaluation at a few remote offices
  - Document management surprise evaluation
  - Trade association audit
  - Peer review visits (Allstate)
  - Mock presentation to regulators

* Each should be documented with follow-up plan
** But see: About That Confidential Hotline
#2 Not Setting the Table

- Management must be engaged and ideally sponsor program evaluations
  - Tell 'em what you're going to tell 'em
  - Make line management part of the process but maintain independence & avoid “conditioning”

- Desk research review of existing data
  - Audit reports
  - Risk assessments
  - Survey results
  - Other inputs i.e. fraud reports, helpline data, training
  - Investigations
  - HR promotions/disciplinary data/exit interviews*

*Ode to the Exit Interview

#3 Using a Check the Box Approach

- Checking off the 7, 10 or 47 program elements is not a program evaluation

- An “evaluation tool” is not a substitute for robust & in the trenches evaluation

- See the program as prosecutors + regulators would see it

- How do program elements rank against your peer group and consider best practices in the field across industries

- Access views of those who are or have been in the trenches e.g. peer groups or outside experts
#4 About that Focus Group

- Focus groups are art + science
  - first rule: “Do no harm.”
- 60-70% of the work is the set-up
- Consider e-voting
- Confidentiality & trust drive candor
- Follow-up to management should not = confidentiality breach

#5 About that Employee Survey

- All surveys are not created equal
- Methodology matters
  - as in political polls, the wording of the questions always drives the answers
- Implementation matters
  - What are the rules for management?
  - How are the rules enforced/monitored?
  - What behavior is being rewarded?
- Be alert to unintended consequences…
Biggest Mistake: Failure to Follow-Up

- An evaluation can be a powerful tool, but not if followed by inaction

- Review with Board & senior management (this is why senior sponsorship is key)
  - Strategic mechanism for getting Board & management to focus on structure, resources & gaps in the program

- Develop short & long term plan of action* (quick hits can produce early wins & address serious gaps)

- Document, document, document!

  * Compliance Officers Need a Plan

Recommended Reading (1 of 3)

- A Quick Start to Your Program Evaluation (Murphy 2013)
  compliancestrategists.com/csblog/2013/12/20/skydiving-compliance-eyes-wide-open/

- Compliance Officers Need a Plan (Boehme 2013)

- At SAC, Culture Trumps Compliance 38:1 (Boehme 2014)
  compliancestrategists.com/csblog/2013/07/29/sac-culture-trumps-compliance-381/

- Five Essential Features of the Effective Compliance and Ethics Officer Position (Chapter 2 of SCCE Manual)
  compliancestrategists.com/csblog/2014/04/01/structuring-chief-ethics-compliance-officer/
Recommended Reading (2 of 3)

- Ode to the Exit Interview (Boehme 2014)
  compliancestrategists.com/csblog/2014/03/17/ode-exit-interview-early-warning-system-compliance/

- 2013 RAND Symposium Report – Corporate Culture and Ethical Leadership Under the Federal Sentencing Guidelines
  http://www.rand.org/pubs/conf_proceedings/CF305.html

- Federal Sentencing Guidelines for Organizations
  uscc.gov/Guidelines/Organizational_Guidelines/guidelines_chapter_8.htm

Recommended Reading (3 of 3)

- OECD Good Practice Guidance for Internal Controls, Ethics & Compliance
  oecd.org/investment/anti-bribery/anti-briberyconvention/44884389.pdf

- About That Confidential Helpline (Boehme 2009)

- UK Bribery Act
  justice.gov.uk/legislation/bribery
Comments or Questions?

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