

European CEI

Compliance 101

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Why Develop an Ethics & Compliance Program?

- Promotes a culture of ethical behavior and commitment to compliance with the law
- Prevents and detects wrong-doing
- Communicates organizational expectations and commitment
- Provides “safe” mechanisms for reporting and seeking help
- Raises awareness
- Enables compliance with governing standards, laws and guidelines
- Makes good business sense/provides a competitive edge – benefits of having an effective ethics and compliance program
- Positive impact to corporate reputation/culture; public image
- Serves as a risk management tool

Ethics & Compliance Programs: How Comprehensive?

- Employment/Labor Law
- Anti-Trust/Competition
- Anti-Corruption/Bribery – Fed prosecutors are looking outside the US
- Intellectual Property Protection/Confidential Information
- Information Technology
- Conflicts of Interest
- Laws which pertain specifically to the organization
- Federal Sentencing Guideline Standards
- Ethics and Compliance Programs – encourage the “right” culture
- Other Federal and/or State laws
- International considerations - GLOBAL
- Everywhere you do business...

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Benefits of an Effective Ethics & Compliance Program

- Integrates processes that ensure the prompt, thorough investigation of alleged misconduct
- Facilitates timely and appropriate corrective action and remediation
- Reduces liability and exposure to civil damages and penalties, criminal sanctions, and administrative remedies, such as program exclusions
 - Criminal - leniency for a “pre-existing” program
 - Complete declination or reduced penalty
 - Some (but less) credit for after-the-fact programs
- Fosters a strong ethical culture -- Attracts talent and improves employee retention

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General Considerations: Gain Support/Commitment

- Top levels of the organization – *Values-based approach*
 - Board of Directors
 - Senior Leadership
- Management/Supervisors – middle management is key – “Tone at the Middle”
- Other functional areas – HR, Security, IT, Internal Audit, Corp Comm, etc.
- Employees and staff at all levels

**Gain support and buy-in through direct engagement, education, partnership, collaboration, leadership, empowerment, and a solid values-based business case*

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General Considerations: Support Needs...

- Development/Beginning Stages
 - Program and Risk Assessment/Program Plan
 - Resources (people, budget, etc.)
 - Infrastructure needs, i.e., education/communications platform & mechanisms, marketing resources, reporting mechanism, printing services, etc.
 - Establish capabilities and protocols for issue management, tracking & trending, gathering program effectiveness metrics, etc.
 - Partner with other key functional areas; leverage existing resources
- Ongoing operational needs and considerations

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General Considerations: Governance & Staffing

- Establish organizational governance & infrastructure
 - Reporting structure defined (“Tone at the Top”)
 - Charters, roles, responsibilities, etc.
- Ethics & Compliance Officer Appointment
 - High-level individual w/overall responsibility
- Develop job functions/job descriptions for staff, i.e., Education/training, auditors, hotline and issue management, policy and procedure development, etc.
- Partner with Counsel (internal and external)

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Essential Elements of Ethics & Compliance Programs

1. Standards, Procedures and the Code
2. Oversight & Accountability
3. Due Care in Delegating Authority
4. Communication, Training and Awareness
5. Monitoring, Auditing, Reporting and Background Checks
6. Enforcement, Incentives and Discipline
7. Response and Prevention
 - Risk Assessment
 - Effectiveness Assessment



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Standards & Procedures

➤ Code of Conduct

- Keep it real – Values-based and avoid legalese
- Tailor to organization's culture, ethical attitude, business, and corporate identity
 - Get lots of input - focus groups, senior execs., etc.
- Guidance on seeking help and reporting concerns
- High-level concepts and key policies
- Scenarios and FAQs
- Endorsement by CEO
- Clearly stated expectations
- Primary language – watch translations



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Standards & Procedures

➤ Standards and Procedures

- Controls – Facilitate compliance and prevent misconduct
- Structural
- Substantive
- Integrate with and complement other departmental policies and procedures
- Avoid repetition/duplication
- Values-based – Speaks to Audience
- Publication – consider how best to communicate standards and procedures to employees and others



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Oversight and Accountability

- Governing Authority – Knowledgeable of program w/reasonable oversight (*Board of Directors*)
- High-level personnel – Ensures effective program is in place
- Ethics & Compliance Officer – Overall responsibility
 - Strong leader – Independent, empowered, effective
- Designated individual(s) responsible for day-to-day operations
 - Access to Board with periodic reporting responsibilities
 - Shall have adequate resources and authority
- Other: Compliance Committees, Regional liaisons, Program Staff, etc.

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Due Care in Delegation of Authority

- Don't give responsibility or authority to those you should have known are criminals
- Do hiring and promotion systems screen out those likely to break the law or who have a history of unethical behavior?
 - Use care when placing individuals in positions of substantial authority, i.e., hiring, promotions – *Substantial Authority Personnel*
- Could you have a Board Member, executive or other manager who had served time for armed robbery without knowing it (e.g., Smith and Wesson)?
 - CEO resigned, served time – “Nobody asked”

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Communications, Training and Awareness

- Communication and Training Effectiveness – *Continual review*
- Internal vs. External
- Mandatory vs. Voluntary – Audience & Risk Considerations
- General vs. Specific – Content Considerations
- Training Methods
 - Blended & Interactive approach is most effective
- Attestations
- Other Communications Media
 - Publish disciplinary cases and “good news” stories as learning tools



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Monitoring and Auditing

- Essential for effectiveness
 - Serves to prevent and detect criminal conduct and wrongdoing
 - Monitoring - Real time reviews
 - Audits - Independent/objective – use of subject-matter experts

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Monitoring and Auditing (cont)

- Monitoring & Auditing Planning
 - Understand/define the difference between auditing and monitoring
 - Leverage what is already available
 - Scalable to risks and resources
 - Range of tools, e.g., deep dives, self assessments, internal audits, external audits, exit interviews, employee engagement surveys, etc.
- Outputs used to create and support “effectiveness” metrics and improve program

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Reporting

- A Reporting System (hotline, helpline, etc.)
 - Essential program resource for reporting wrong-doing and/or seeking help and guidance
 - Consider differing country laws for operation
 - Anonymous & confidential to extent allowed by law
 - Need strong, publicized and enforced non-retaliation policy
 - Fear of retaliation and perceived inaction are key reasons for non-use
 - Continually market and publicize reporting mechanism
 - Internal vs. external systems?
- Address matters in a timely and consistent way
- Use reporting systems metrics to improve program

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Enforcement, Incentives and Discipline

- Failure to take reasonable steps to prevent or detect criminal conduct heightens organizational liability and negatively impacts effectiveness determinations
- Incentives
 - Incentives aligned
 - Performance reviews & compensation
- Consistency in enforcement
 - Support from Sr. Mgmt; Board
 - Understanding by all members of organization
 - Fairness and consistency is key



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Response and Prevention

- Timely response
- Triaging and handling investigations
 - Investigations should be professional – train investigators
 - Reports – to whom, how, when?
 - Decision-making on outcomes of concerns
- Action is comprehensive related to the potential/real concern
 - Is it really a problem?
 - How serious is it?
 - Are there enough facts to investigate?



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Response and Prevention (cont)

- Outside support & resources considered (outside counsel, etc.)
 - Attorney-client privilege?
- Preventative measures
 - Resolution of Issues – Root cause analysis/checklist
 - Education and Awareness
 - Policies and Procedures
- Remediation efforts are timely and adequately address the program gaps, identified risks, etc.
 - Prevents likelihood of reoccurrence
 - Majority of the time are related to lack of Knowledge or expectations aren't clear (policy)



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Risk Assessment

- Why conduct a risk assessment? Timing?
- Risk Identification considerations – Internal/External Inputs
 - Industry and organization specific risks
 - Legal and regulatory requirements
 - Current challenges, past findings, incidents, etc.
 - Management Judgment – What keeps them up at night
 - Program Benchmarking
- Risk Assessment & Prioritization Phase
 - Impact and Likelihood
- Risk Management Plans & Clear Ownership
- Test, Audit and Monitoring Activities



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Ongoing Improvement

Evaluating Effectiveness:

- Considerations & Approaches:
 - Program metrics (hotline calls, incidents, etc.)
 - Surveys
 - Focus Groups
 - Testing
 - Self Assessments
 - Exit Interviews
 - Periodic risk assessment, Internal Audit reports, etc.

Is program working as designed and implemented? Impact?

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Industry Practice and Benchmarking

- The findings of this year's survey paint a picture of a global business environment fraught with high and mounting risks and repercussions; increasing complexity in the types of risk, perpetrators, and means of attack; and adoption of risk mitigation policies and procedures to help build corporate resilience. The incidence of fraud continued to climb markedly.
- Over 82% of surveyed executives reported falling victim at least one instance of fraud in the past year, up from 75% in 2015, 70% in 2013 and 61% in 2012.
- An astounding 85% of surveyed executives said that their company experienced a cyber attack or information theft, loss, or attack in the last year.
- Nearly 8 out of 10 respondents (79%) cited one of the following categories as the key perpetrator:
 - Senior or middle management employees of our own company
 - Junior employees of our own company
 - Ex-employees
 - Freelance/temporary employees

SOURCE: Kroll Global Fraud & Risk Report: Building Resilience in a Volatile World, Annual Edition 2016/17.

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Global Compliance Executive Survey

- 40% anticipate the bribery and corruption risks to their company will increase
- One in four of those surveyed expressed no confidence in the ability of their company's current controls to detect third party violations of anti-corruption laws.
- The degree of board and senior executive engagement regarding anti-bribery and corruption matters is increasing, with over half of respondents stating that their board of directors plays an active role in program development, and 48 percent saying the same of their CEO.
- 54% of respondents felt their business was not appropriately prepared to comply with global bribery and corruption risks
- 47% felt they did not have enough resources to support their organization's anti-corruption efforts
- 86% identified the Chief Financial Officer and 66% identified the Chief Compliance Officer as the internal stakeholders primarily responsible for driving program development.

2016 Anti-Bribery and Corruption Benchmarking Report.

Industry Practice and Benchmarking

- The bottom line: The cost of implementing an ethics and compliance program are a small fraction of the potential costs of damage to your reputation or bottom line due to an ethics or compliance violation.
- <http://www.globalcompliance.com/Resources/Understanding-Ethics-and-Compliance/About-Ethics-Compliance.aspx#sthash.6hhFmSjn.dpuf>

Enforcement Efforts Continue...

- Enforcement environment – Heightened scrutiny
- Enforcement activity – Recoveries are paying for the investigations
- Enforcement weapons – Forensic data mining, tracking/trending, etc.
- International – Global enforcement!

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“Characteristics” of an Effective Program

- Buy-in from the “top”
- Sufficient resources
- Program authority or “clout”
- Program independence
- Sufficient program “reach” and embedding in the company’s operations
- Meaningful management knowledge of and involvement in the program
- Program’s focus on corporate culture and ethics, not just compliance

www.kaplanwalker.com

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Sources

- SCCE www.corporatecompliance.org
- Murphy, *501 Ideas for Your Compliance and Ethics Program*, (SCCE; 2008)
- SCCE Complete Compliance & Ethics Manual

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QUESTIONS???

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