

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

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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

- 35% anticipate the bribery and corruption risks to their company will increase
- 49% felt they did not have enough resources to support their organization's anti-corruption efforts
- There was a 20 percent increase from 2016 in the number of Honorees that now cover anti-bribery and corruption concerns during their ethics and compliance program updates with the board.
- Respondents believe that the top risks to their anti-bribery and corruption programs will come from third party violations (40 percent), a complex global regulatory environment (14 percent), and employees making improper payments (12 percent).
- Not only do a majority (57 percent) of survey respondents expect no improvement in their organization's risks in 2017, fully 35 percent expect increased risk; only 8 percent expect decreased risk this year.
- 70 percent of those who did not have an actively involved CFO felt they did not have enough resources to manage anti-bribery and corruption risk (as opposed to the overall rate of 49 percent).

2017 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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