Why Develop an Ethics & Compliance Program?

- Promotes a culture of ethical behavior and commitment to compliance with the law
- Prevents and detects wrongdoing
- 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…
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

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

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
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)

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

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
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

Oversight and Accountability

- Governing Authority – Knowledgeable of program with 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.

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”
### 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

### 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

### 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
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

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

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 their enough facts to investigate?
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)

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

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?
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 79% in 2015, 76% 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


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 25 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).


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#hash.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!

“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

Sources

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