The Business Case: Ethics, Compliance and Risk

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“Never, ever, think outside the box.”
Our Journey…

Key areas of focus:
- How ethics and compliance supports achievement of organizational business goals
  - The link and relationship
  - Better performance
- Building a case for a program and setting expectations
  - Benefits and outcomes of effective ethics, compliance and risk programs
- Challenges associated with management resistance and resource limitations

Setting Expectations…

Example Job Description: Ethics & Compliance Director
- Responsible for promoting and enhancing company-wide ethics and compliance culture including: (1) Developing "tone at the top" communications, (2) Establishing policies, standards and procedures to prevent illegal, unethical and improper conduct, (3) Ensure policies, standards and procedures are communicated and institutionalized throughout the company, (4) Provide ethics and compliance training for directors, management and employees, (5) Train the businesses to effectively identify, assess and prioritize risk. (6) Work with leaders to develop corrective action plans/processe improving improvements to mitigate risk; conduct ongoing test; audit and monitoring activities
- Responsible for development and day-to-day management, administration and operation of the company’s Ethics & Compliance and Enterprise Risk Management (ERM) Programs
- Establish, develop and lead the company’s ERM Program; develop and implement processes and methodologies for risk identification and assessment and set in place and monitor management controls
- Develop, initiate, maintain, and monitor policies, procedures and processes designed to avoid or minimize company risks
- Evaluate, interpret, and lead review and update of the company’s Code of Conduct to ensure continuing currency and relevance in providing guidance to management and employees
- Design and implement education and training programs, including specialized training for functions or responsibilities that involve compliance with global laws around standards of conduct, including SOX, Anti-Corruptions/Anti-Bribery, etc.
- Establish and maintain system and process for consistent, measurable response to alleged violations or rules, regulations and policies, including anonymous reporting mechanisms
- Manage operation of a confidential disclosure and reporting mechanism process (e.g. ethics hotline) for employees to report and seek guidance regarding potential wrongdoing
- Oversee and manage ethics and compliance investigations and issue handling; ensure proper reporting on all compliance program-related investigations, violation issues, resolution, and corrective action to relevant executive, Audit and/or Ethics and Compliance Committee
- Keep executive and relevant committees informed aware of evolving regulatory and governance issues and trends, including best practices outside of the organization
- Ensure vendors, contractors, agents and third parties are aware of compliance program with respect to contracts, billing practices, ethical behavior, etc.
- Monitor and identify applicable changes in regulations, laws or other standards and trends relevant to the ethics and compliance program and, make necessary modifications
- Monitor the effectiveness and performance of the ethics and compliance program on a continuing basis including periodic assessment, audits or other appropriate evaluations; provide periodic and on-going reporting and metrics to senior management and board of directors
- Respond to, or assist in response to, government inquiries or investigations, as appropriate
- Actively participate in industry groups, professional organizations and informal networking groups that enhance the ethics and compliance program
Considerations….

- What is the right level of staffing and budget for success?
- What recommendations do you make to management with respect to resources? How do you frame it?
- How do you establish the business case and need?
- How do you deal with and address management resistance and budget constraints?
- When to walk away….

Establishing the Business Case…

Success means:

- Setting the right expectations up-front
- Providing a model and plan that is scalable and reasonable
- Calling out benefits and positive outcomes
- Communicating requirements and needs
- Gaining shared vision and support from leadership
- Effectively addressing resistance and challenges
- Maintaining on-going communication and engagement
BUILDING THE CASE

Strategic Proposal - Example
Strategic Proposal - Example

Overview

• Proposal Purpose
• Strategic Objectives and Goals
• Outcomes and Benefits
• Steps for Successful Implementation
• Proposed Implementation Timeline
• Staffing and Resources

Proposal Purpose

• Present strategic vision for Ethics, Compliance and Risk Program function that reflects the value proposition for the organization that includes desired outcomes and benefits

• Assure proposed strategic plan for year one aligns with the short and long-term vision and objectives of the leadership team and organization

• Gain shared vision regarding strategic plan, high-level expectations, proposed timelines and agreement on staffing, resources and partnerships
### Strategic Proposal - Example

#### Objectives and Goals

**Ethics, Compliance and Risk Program will operate to accomplish the following high-level strategic objectives and goals:**

- Develop, enable and manage a framework that promotes an ethical culture and a commitment to compliance with the law; establish, manage and monitor mechanisms and infrastructure that prevent and detect wrongdoing.

- Establish a framework to identify, prioritize and enable the effective and efficient management of compliance risks facing the organization.

- Align and integrate compliance risks into other programs that address operational, financial and strategic risks; partner with risk management function and Internal Audit to establish and manage enterprise portfolio view of risks.

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#### Outcomes and Benefits

**Ethics & Compliance Framework:**

- Encourages and reinforces a culture of ethical behavior and compliance with the law and corporate policies.

- Helps prevent and detect wrongdoing.

- Meets or exceeds requirements of the U.S. Federal Sentencing Guidelines, Sarbanes-Oxley, EU laws & standards, and other governing guidelines and mandates.

- Reduces risks and liabilities associated with government inquiries and prosecution.

- Limits exposure to lawsuits, financial losses, sanctions and fines while remaining compliant with laws and standards.

- Promotes good controls and integrity in financial accounting/reporting.

- Fosters respect and admiration from the business community including customers, business partners, competitors, and shareholders.
Outcomes and Benefits

Compliance Risk Management Framework

• Portfolio view of compliance risks; allows for effective identification, prioritization and management of risks

• Shared-vision with leadership on top risks, resource allocation, focus and ownership; promotes dialogue and synergies among business leaders in managing risk

• Facilitates stronger change management effectiveness across the organization from a compliance and operational view

• Improves and enhances regulatory compliance and risk responses both internally and externally; reduces operational losses and surprises

• Integrates and assures key compliance risks are managed and an input to corporate strategies and operational objectives

• Assures the organization is working on the right stuff, at the right time, and with the right resources; protects brand, reputation and assets

Steps for Successful Implementation

• Learn the corporate culture, leadership vision, people, and business strategies; establish and build relationships

• Assure value and importance of Program is supported at highest levels; assure shared vision on objectives and direction of Program

• Assess current programs and infrastructure for effectiveness and opportunities for improvement

• Develop, build and implement centralized Ethics & Compliance Framework infrastructure and foundation

• Create, build and implement Compliance Risk Management Framework infrastructure and foundation

• Manage and administer day-to-day activities related to overall Ethics, Compliance and Risk Program

• Monitor, audit and report on ethics, compliance and risk effectiveness
### Strategic Proposal - Example

#### Proposed Implementation Timeline

**Ethics, Compliance and Risk Program – Year 1**

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### Strategic Proposal - Example

#### Staffing and Resources

**Staffing:**

- 3 FTE’s. One director-level position and two staff-level FTE’s with skills in project management, audit, compliance and/or risk. One FTE dedicated to Ethics & Compliance framework objectives and one FTE dedicated to Compliance Risk framework objectives
- Dedicated administrative support to facilitate implementation efforts

**Resources:**

- Leverage other corporate partners such as: Risk Management, Internal Audit, Human Resources, IT, Legal, Corporate Communications, etc.
- Budget for consulting services, outside counsel, industry memberships, training/conferences, and awareness materials
- Technology and software programs as needed to monitor programs and to manage portfolio of risks

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*Minimum level of resources recommended to develop a baseline infrastructure during year one. Assumes no significant ethics and compliance issues and a moderately sized organization; no existing program in place.*
"It's an amazing coincidence, isn't it, that we all served on the same board of directors?"
Overcoming Resistance

“It’s not in our budget”

- Most program elements are already in place – what’s needed is coordination of efforts
  - May result in initial savings
  - Will result in more effective efforts, less duplication, everyone on the same page
  - Will address employee confusion/annoyance over duplication
  - Opportunity to reprioritize using a risk-based approach, opportunity to rebrand
- Cost of program vs. cost of incident – Don’t forget reputational costs

Overcoming Resistance

Senior leadership has told you:

- “We have a thorough Enterprise-Wide Risk Management process. If there were a need to do more in this area it would have been indicated.”
- “Doing a focused ethics and compliance risk assessment would create a roadmap of our deficiencies. It could be discovered at some point.”
- “If we find something then we’ll have to fix it.”
- “Our international subsidiaries manage their own operations. They are very successful and we are not going to impose our ‘US-centric’ requirements on their business.”
Making the Case…

Are your existing risk assessment efforts enough?

Are you taking into account:

- Performance pressure
- Incentives to engage in wrongdoing
- Lack of appreciation of applicable legal/ethical standards
- Third parties acting on behalf of the organization
- Actual company violations as well as near misses
- Reputational hits
- Violations, near misses and reputational hits among others in the industry

Making the Case…

Are your existing risk assessment efforts enough?

Are you taking into account:

- Applicable laws/rules/ and evolving industry standards (benchmarking?)
- Enforcement initiatives in the industry
- Company and department performance objectives
- Organizational structure and control points
- Significant audit findings and investigative reports and other information that may help define risk or show how risk has been mitigated in the organization
Overcoming resistance

Senior Leadership has told you:

– “The Guidelines aren’t relevant anymore.”

– “Not ready for an upgrade to our efforts…maybe next year…it would raise too many expectations.”

– “We already have a good idea about what’s working and what’s not. Our annual survey tells us all we need to know – and it tells us that, with a few exceptions, everything is fine…why rock the boat?”

– “Audit has agreed to take a closer look at the E&C operations – let’s wait to see what they recommend.”

Making the Case: What you don’t know...

Questions you need to ask:

• Is the ethics/compliance message actually reaching employees? Do they understand their responsibilities?

• Do employees believe that it is possible to behave ethically and achieve objectives?

• Is unethical behavior clearly seen as out of bounds?

• Do employees know about and trust the upward communications channels available to them?

• Is the ethics and business conduct program viewed as a paper program or as a genuine commitment?
Making the Case: What you don’t know… (Cont.)

- Is there consistency and clarity on limits of acceptable behavior?
- Does the Board and all managers understand their role in building and sustaining a commitment to ethics and compliance?
- Is ethics and compliance (including the people responsible for it) marginalized?
- Do goals/incentives encourage and put unreasonable pressure on employees to violate standards?
- How easy is it for employees to ask questions/raise issues?
- Is misconduct tolerated – especially at the senior level?
BUILDING BLOCKS

Foundational Materials, Planning, Example Tools, etc.

Foundational Materials & Planning

Ethics & Compliance Program Objectives & Elements

- Effective ethics and compliance programs exist to:
  - Promote a culture encouraging ethical conduct and commitment to compliance with the law
  - Prevent and detect wrongdoing
  - Enable and facilitate compliance with applicable laws, standards and corporate policies

- Key elements and indicators of “effective” programs include:
  - Standards and Procedures
  - High-level Oversight & Accountability
  - Due care in Delegation of Authority
  - Training & Communication
  - Monitoring, Auditing and Reporting
  - Consistent Enforcement & Incentives to promote Compliance
  - Consistent Response & Remedial Measures
  - Periodic and on-going Risk Assessment & Continuous program improvement
**Foundational Materials & Planning**

Effective Ethics, Compliance and Risk Programs generally include a strategic plan for implementation and management. On your way to a mature program, be sure the basics are in place:

- Assure Tone at the Top support
- Assess and understand the existing culture
- Understand and apply governing standards and guidelines
- Benchmark other programs and network with peers
- Conduct a comprehensive program risk assessment
- Start with a solid Code of Conduct...

When developing a Program plan, an understanding of governing standards and a comprehensive risk assessment are essential as a starting point

At a minimum, the following key standards, directives and guidelines should be considered:

- Federal Sentencing Guidelines for Organizations
- Sarbanes-Oxley Act of 2002
- EU and other governing laws, guidelines and standards abroad
- NYSE & NASDAQ Listing Requirements
- COSO
- Thompson, Holder, & McNulty Memorandums (DOJ)
- Caremark and Stone Decisions

Risk assessment is essential to understanding the current state of your program and helps establish the roadmap needed to get you to best practices

- Identify key program elements and risk areas
- Assess program infrastructure and identify gaps
- Develop strategic plans and implement
- Test, audit and monitor
Example Tools

Ethics & Compliance Legal Requirements Summary

Example Tools

Ethics, Compliance and Risk Program Plan