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by Shawn Washington, MPA

Confused about ethics

- » Being untruthful in how much you fail makes you an unethical failure.
- » Support positive change by removing the fear of unknown consequences.
- » Encourage responsibility by demonstrating responsible behavior yourself.
- » Become a role model and justice advocate.
- » Accept ethical failure and teach others to do the same.

Ethics is an important consideration in many aspects of our lives. We might seek an ethical emotional relationship where each party behaves with mutual trust and honesty. Business professionals might seek to engage in ethical business transactions where the



Washington

plausibility of fair and equitable trade of products and services exists. A mother even attempts to provide her child with ethical training as an inherent foundation to a greater moral character. It is clear that this concept can appear in many forums.

The following conversation on ethics considers the administration of what is commonly known as “ethical behavior.” More specifically, the discussion focuses on the role of the securities compliance officers in managing the unethical practice of cheating on securities licensing exams.

Two examples

In January 2015, the Financial Industry Regulatory Authority (FINRA) took action against an individual who altered the official report of a Series 7 examination. The Series 7 test is the qualifying examination for stock brokers.

The individual who altered the official report changed the score on the test and presented it to his employer.

As a result of the alteration, the registered representative was fined \$5,000 and suspended from associating with FINRA in any capacity for two months for the misconduct. Let’s examine this particular misconduct.

When an individual takes his exam at the testing center there is no requirement by FINRA for the test participant to provide the paper results to the firm. Unless this is a policy of the firm, the individual would not need to bring the computer printout to his employer. Why would the employer need a copy? The exam score gets reported directly to the sponsoring firm. In fact, the information typically appears the following day in the registration system administered by FINRA. FINRA has dedicated millions of dollars to improving technology so that systems are able to communicate through a regulatory network interfacing with broker-dealers through a web-based platform. As compliance professionals, why the heck are we giving a person another reason to screw up, because the temptation to alter a score on an unrequired piece of paper was too much to control?

Now, I know what you are thinking. The representative was embarrassed that he failed, and he wanted to prove to his employer that he passed the exam, not realizing that the firm would have access to his score. Maybe you are right—except, the representative made a 58, and changed his score to a 68 for his employer when he needed a 72 to pass.

Altering your low failing grade to a higher failing grade is a violation of ethical standards under FINRA Rule 2010.

The definition of ethics does not change by industry. The word still means “doing the right thing.” Behaving ethically means to cultivate virtues in good social practices. The act of altering documents is a dishonest one.

In the second example, in October 2014, the SEC took enforcement action against a compliance officer for altering her notes on an insider trading review, after she discovered that there was an ongoing investigation regarding one of the firm’s representatives. Her actions were interpreted as a willful and abetted aid in distorting the facts of the investigation.

What these two cases do not show is the “why” individuals go to such lengths to alter records to illustrate an exaggerated effort of a failed attempt. The representative exaggerated his failing score and the compliance officer altered her notes on a case already sanctioned as insider trading.

Research conducted by Mazar, Amir, and Ariely¹ shows that people, in general, value honesty and maintain high beliefs about their own moral actions. However, people have a tendency for self-preservation. In this orientation, a person will alter their thinking about unethical actions to a justifiable step necessary for their success. Even those individuals who think highly of themselves will allow themselves a certain level of dishonesty while maintaining their flawless self-perception. Our two cases suggest that

people will also alter their thinking to place themselves at an acceptable failure rate, rather than being a mediocre failure.

As humans we find internal reasons to defend our behavior even when they are indefensible. So what can we do to improve our ethical culture?

My mother used to tell me that it is better to tell the truth now, than to lie about it and have her discover it later. Of course, I learned this the hard way...

Support courage

It takes courage for a person to admit that they have made a mistake. The fear is in the punishment. Although the punishment is often stated in policy, it is still the unknown of the actual action that causes the most anxiety. To encourage courage, one must remove the fear. In training employees to come forward with their problems, it is important to explain the difference between burying the problem and identifying a problem. In most cases, when a problem is addressed at the time, there are opportunities for corrective actions.

In the case of the individual who did not pass his exam, the scenario would have been completely different if the representative felt at ease with telling his boss that he was simply not ready to take the exam. Or maybe he felt confident that he would pass, but failed to have a conversation about the true consequences of him not passing. Often our written supervisory procedures include a caveat for exceptions that are unknown. Could there have been an exception to allow the individual to make a 58 on his test and still keep his job? He was comfortable in altering the test to 68, or a higher failing grade. What negative factors did he perceive to rationalize that it is better to risk regulatory sanction than tell his employer the truth about his test scores?

Encourage responsibility

Taking responsibility for our actions decreases the temptation to place the blame on something else or others. The compliance analyst taking responsibility and admitting that she did not take enough notes to document her concern was the best that she could do. Giving in to the temptation that led to her action of back-documenting her steps was justifiable by some unknown rationale at the time, which was better than risking her career with an SEC enforcement action. If employees are willing to take the risk with regulators, rather than be truthful to their managers, then it is time to ask yourself about the current cultural environment.

Be a role model and justice advocate

In an effort to encourage employees to speak up, you must be willing to speak up yourself. When the compliance officer is viewed as an advocate for justice who presents controversial ideas to other C-level executives, then he opens the door for those who want to report unethical behavior, but are afraid to do so. If you are unable to influence those within the organization to be more courageous, then you can always be their conduit and sounding board. Make time to hear out those with concerns about how certain activities do not seem right. Assure them that you will take action, even if they do not see any immediate changes. And then follow up to communicate how the situation will be handled. Most of the time, people just want to be heard and taken seriously. Other times, employees have an insight to potential compliance gaps and can be very valuable

as a resource for information during annual reviews of compliance policies.

Accept ethical failure

You will not be able to change everyone. In December 2015, a representative was barred from association with any FINRA member in any capacity. The individual told her employer that she took the Series 7 exam on two separate occasions and failed both times,

when in fact she never showed up. However, she did create two failing reports for the exams to give to her employer.

Conclusion

We are lying about failing when we have not yet begun to

try. How do you enforce policies for those individuals who are willing to be dishonest about failing? We must teach our employees to accept honest failures. It is a new concept in teaching individuals that being untruthful is unethical, even when you are untruthful about failing or untruthful about the extent of your failures. This is a new paradigm shift in itself—to conceptually alter the purpose of being dishonest for the perception of honesty, to the perception of being dishonest to cover the extent of the dishonesty. This would mean that our broker-dealer chief compliance officers must add another qualifying skill as a moral philosopher or psychologist to fulfill their challenging duties. *

1. Nina Mazar, On Amir, Dan Ariely: "The dishonesty of honest people: A theory of self-concept maintenance" *Journal of Marketing Research*, December 2008, pp. 633-644. Available at http://bit.ly/people_duke

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Make time to hear
out those with
concerns about how
certain activities do
not seem right.