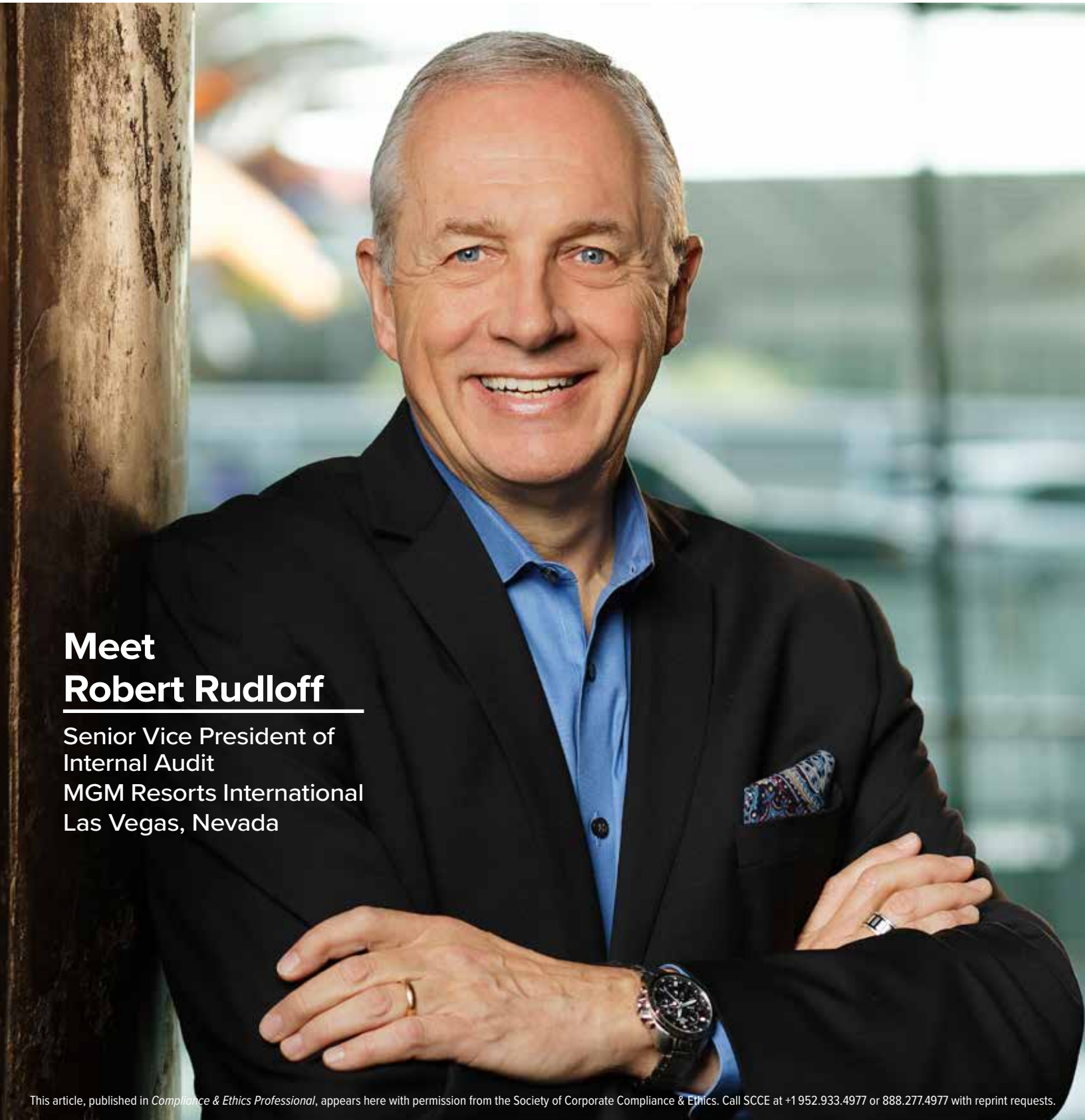
SCCE™
corporatecompliance.org

Compliance & Ethics PROFESSIONAL®

A PUBLICATION OF THE SOCIETY OF CORPORATE COMPLIANCE AND ETHICS

JULY 2018



Meet Robert Rudloff

Senior Vice President of Internal Audit
MGM Resorts International
Las Vegas, Nevada

by Ibrahim Yeku Esq., LLB, BL, CCEP-I, CAMS, DDC

Cosmetic compliance and the anti-money laundering debacle

» Organizations must adopt ethical best practices as part and parcel of their business culture.

» The best way to establish commitment is to allow individual units or departments to be the primary risk owners.

» Using ethics and compliance to drive performance among employees is an antidote to compliance violations.

» The little things must matter if an ethical culture is to be developed and sustained within an organization.

» Organizations must learn to celebrate ethical achievements and provide special incentives for people who achieve results within the framework of acceptable ethical values of the organizations.

Ibrahim Yeku *(yekuduke@yahoo.com) is a Barrister & Solicitor at the law firm of Solola & Akpana in Old GRA, Port Harcourt, Nigeria.*

The phrase "cosmetic compliance" describes an organization's compliance program that is not informed or inspired by ethical practices or a culture of compliance but by regulatory demands or sanction conditions. The big question is, why do organizations comply with anti-money laundering legislation? Any organization that is unable to answer this question satisfactorily can be adjudged to run a cosmetic compliance program. To these types of organizations, compliance is not a culture and is not embedded in their business processes. Compliance is compelled by reason of regulatory enforcement or necessity for regulatory compliance. Therefore, it is inappropriate to assess the effectiveness of an organization's compliance program by reference to absence of sanction.

The fact that an organization has no history of sanction or violation does not make the organization compliant. This is because you can have violations without sanctions, whereas you cannot have sanctions without violations. When sanctions are imposed by regulators, the sins of the violating organizations are exposed to the world, and the spotlight will be on the effectiveness of the defaulting organizations' compliance programs, if there are any. Why is this? It must be noted that there are many financial institutions and designated non-financial businesses and professions whose violations are unknown to the regulators and members of the public. This does not by any stretch of the imagination imply that these organizations' anti-money laundering (AML) compliance programs are effective.

Yeku

There are four ways to assess effectiveness in the absence of sanctions.

Compliance as a business culture

Firstly, organizations must adopt ethical best practices as part and parcel of their business objectives. The goal of organizations must not

be to make a profit at all cost or at the expense of good ethical conduct. Organizations must be interested in knowing how set business objectives are actualized by laying emphasis on "how," which explains the processes, what was done, and what was not done. In organizations where results are celebrated over and above the processes that produce the result, inculcation of ethical practices in business is often viewed as problematic.

The little things must matter if ethical culture is to be developed and sustained within an organization. Simple erosion of ethical values must not be overlooked or indulged by any organization. Organizations must learn to celebrate ethical achievements and provide special incentives for people who achieve results within the framework of acceptable ethical values of the organizations. In a situation where desperate bankers trade their human dignity for big-ticket accounts without any form of condemnation or query from their organizations, a foundation is laid for total decay or collapse of ethics within the organizations. It is recommended that organizations should have a higher ethical standard beyond their statutory obligations. If an organization does what is right because of the law, then it means the organization has no ethical values. Organizations should give equal importance to compliance as they give to their core businesses.

Transparent implementation of compliance policy by top management

Secondly, the posture and commitment of the top management in an organization goes a long way in entrenching a culture of compliance. It is very easy for employees to know when top management is only paying lip-service to compliance and ethics. The tone from the top is very important; it underscores the commitment of employees to the organization's compliance program.

Compliance of convenience is not compliance. What is common in recent times is that organizations are quick to enforce non-compliance with ethical conducts when the stakes are low or where the issues involved do not affect the turnover of the organization. The action or inaction of the management board to violations of the ethical code of doing business is a major yardstick for measuring the vulnerability of the organization to compliance violations. So, using ethics and compliance to drive performance among employees and grow profits is an antidote to compliance violations. The sacred cow syndrome and scapegoat system of compliance enforcement must be discouraged by all means. Nobody within an organization should be seen as above reproach, and nobody should be made a scapegoat in order to convey the message of compliance to employees. Management should win the employees' trust through honest and transparent implementation of its compliance program.

Compliance evaluation system

Thirdly, an organization must have a means of evaluating its compliance program through a self or third-party audit. This is a means of measuring results with performance. In order to credit the absence of violations to the organization's compliance program, a third-party audit must be able to validate the effectiveness of the compliance program independently. It is not the number of controls or mitigation measures that you have in place that matters, but the effectiveness of the controls or mitigation measures.

Employee feedback

Fourthly, feedback from employees equally helps in assessing the effectiveness of a compliance program outside a sanctioned regime. The value employees place on compliance program implementation in

terms of participation and ownership of compliance risk responsibilities is an indicator of an effective compliance program. Where employees do not show enough commitment to the compliance program, the risk of violation will be very high. The best way to establish commitment is to allow individual units or departments to be the primary risk owners (first-line respondents) to compliance risk prevention and detection. Individuals working in the various departments or units must have clearly defined roles with respect to the peculiar compliance risk that may be associated with that unit's or department's functions.

Conclusion

All may not be well that appears well. As compliance professionals, we need to look beyond the absence of sanctions or violations to determine the true health of our organization's compliance program. Before you issue a clean bill of health on your compliance program or that of any organization, you must ask the following questions based on the points discussed above:

- Is a culture of compliance entrenched as part of the business process?
- What is the tone from the top?
- What is the commitment to compliance program evaluation, and how are evaluation reports treated?
- What is the level of employee cooperation (buy-in)?
- How transparent is the compliance program?

When the questions raised above can be answered satisfactorily, then the compliance program can be adjudged as genuine and not cosmetic. ✳