Building an Effective Compliance and Ethics Program

Challenges & Strategies

Facilitators
C. Lee Essrig, JD, CCEP, Chief Ethics and Compliance Officer, Lenovo
Greg Triguba, JD, CCEP, Principal, Compliance Integrity Solutions, LLC
Jason Lunday, Principal Consultant, The Ethical Element

Today’s Journey

- Program Essentials - Building a Foundation
- Case Study - Making the Case
  - Setting Expectations
  - Establishing the Business Case
  - Strategic Proposal - Sample
- Gaining Program Support
  - Overcoming Resistance
  - Addressing Program Challenges
- Interactive exercises
- Group Discussion and Q&A
Program Essentials

Building a Foundation
Program Essentials: Building a Foundation

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

• Key elements and indicators of “effective” programs include:
  – Clear and applicable 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

Program Essentials – Building a Foundation

Fundamentals...

Governing Standards - Keen Understanding and Application
• Federal Sentencing Guidelines for Organizations
• Sarbanes-Oxley Act of 2002
• NYSE & NASDAQ Listing Requirements
• EU and other International governing laws, guidelines and standards
• Regulatory and legal requirements and standards unique to the business
• Thompson, Holder, & McNulty Memoranda (DOJ)
• Caremark and Stone Decisions

Risk Assessment - Current State and Roadmap Development
• Identify risk areas and key program needs
• Assess program infrastructure and identify gaps
• Develop strategic plans and implement
• Audit, monitor and continually improve
Program Essentials – Building a Foundation

Taking your program to the next level...

- Assess program support and acceptance
- Evaluate and understand the existing culture
- Understand and apply governing standards and guidelines
- Benchmark other programs and network with peers
- Always keep the uniqueness of your organization in mind
- Evaluate and leverage risk assessment findings
- Ensure a solid Code of Conduct, effective reporting mechanism and issue management infrastructure
- Develop and implement a strategic plan

Sample Tools

Ethics & Compliance Legal Requirements Summary
Sample Tools

Ethics, Compliance and Risk Program Plan

Case Study - *Making the Case*
Setting Expectations...

Sample 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 business to effectively identify, assess and prioritize risk, (6) Work with leaders to develop corrective action plans/process 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 executives and relevant committees informed and 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?

- Risks and liabilities of the ethics and compliance role...
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
**Strategic Proposal - Sample**

**Overview**

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

---

**Strategic Proposal - Sample**

**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
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 wrong-doing

• 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

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
Strategic Proposal - Sample

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
Proposed Implementation Timeline
Ethics, Compliance and Risk Program – Year 1

<table>
<thead>
<tr>
<th>Jan-10</th>
<th>Feb-10</th>
<th>Mar-10</th>
<th>Apr-10</th>
<th>May-10</th>
<th>Jun-10</th>
<th>Jul-10</th>
<th>Aug-10</th>
<th>Sep-10</th>
<th>Oct-10</th>
<th>Nov-10</th>
</tr>
</thead>
<tbody>
<tr>
<td>Learn Culture, Strategy and Corp Vision; Build Relationships</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assess Existing Programs and Infrastructure</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ethics &amp; Compliance Framework - Design, Build &amp; Implement</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compliance Risk Management Framework - Create, Build &amp; Implement</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Day-to-Day Management - Ethics, Compliance and Risk Program</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Monitor, Audit and Report - Progress &amp; Effectiveness</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

*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.*
Gaining Program Support

Overcoming Resistance and Addressing Challenges

Challenge Considerations

- Resistance from leadership (e.g., they doubt its value, cost/benefit issues)
- Resistance from employees (e.g., will not use program)
- Staffing and resource squeezes (e.g., restructuring, cost cutting)
- Crises (e.g., oil spill; other major industrial accident; product defect or event causing personal injury, death, or property destruction; harm to customers, public, and/or employees; release of private customer or other data; financial irregularities)
### Leadership Resistance - Challenges

- “We support the idea but don’t have enough resources.”
- “The program’s value looks dubious.”
- “You’ll have to sell it yourself.” (meaning: “Senior leadership is too busy/preoccupied to show its support.”)
- “Ethics is too fuzzy to manage. You really mean compliance, right?”
- “We are a very ethical company with a great reputation. There is no need to spend much time or money on this.”
- “Our employees know right from wrong.”
- “We haven’t had any problems yet.”
- “We don’t want to create greater liabilities by what we might find out.”

### Employee Resistance - Challenges

- “I know right from wrong.”
- “I am ethical and honest. Are you saying that this company or its employees are unethical?”
- “We don’t have time to take away from our jobs to attend all this training. And besides, we don’t need it.”
- “We don’t believe senior management supports the program.”
- “Senior management is the problem.”
- “Why report wrongdoing? No one will do anything about it anyway.”
- “I wouldn’t dare use the helpline. I might lose my job or at a minimum be retaliated against in some way by my manager and/or co-workers.”
- “We say ‘Yes’ to anything our manager asks whether we intend to do it or not.”
### Addressing Resistance

- Use knowledge about organization to identify likely types of resistance and design response
- Know the culture
- Use monitoring activities to identify and assess resistance and whether it is growing
- Develop key relationships throughout organization to identify possible resistance
- Resources
  - Other compliance and ethics officers/peer companies
  - Internal and external research, studies, surveys
  - External frameworks, benchmarking, best practices
  - Envisioned future ("We can become...")

### Benefits may include...

- Greater ability to prevent, detect, mitigate, and respond to misconduct
- Better risk management
- Importance/value of greater reputation for integrity
- Value of stronger, more aspirational workplace culture; reduced employee turnover; greater employee loyalty
- Ability to show meaningful program to regulators
- Enhanced ability of Board to meet duty to ensure effective program
- More robust management accountability system
- Better relations with stakeholders
**Staffing and Resource Squeezes - Options**

- Identify internal functions with ability to help
- Investigate “staff sharing” with other functions
- Look into less expensive alternatives (e.g., lower-cost providers, do more in-house)
- Investigate how to utilize business units (e.g., manager-led vs. facilitator-led training)
- Work with leadership to lengthen plan timeline or scale back objectives, activities and/or metrics
- Investigate new approaches to meet program objectives
- Brainstorm with other chief compliance and ethics officers
- Benchmark

---

**Crises**

**Characteristics**

- Crises are, by nature, unexpected
- Potential to “take over the program” when they occur
- Crisis itself may be bad but response can make all the difference

**Crisis Management**

- Many crises can be anticipated
- Crisis preparedness plan helps
- Important to respond not only to crisis effects but also to likely cause(s)
- Revisit compliance and ethics program plan and objectives to address crisis and to improve program
Interactive Exercises

Q&A