Stress Testing Your Ethics and Compliance Program

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NAVEX Global provides an array of GRC services to capture and respond to business risk, improving the economic and social value of organizations around the world.

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Worked with 25% of F200.
Consulted in 40 countries.
Served clients in almost every industry.

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Just because budgets are tight...

The need for an effective program is not going away.

Great organizations. Great brands. Great people.

What is the value of a reputation for integrity?
And now this happens...

The Department of Justice just issued a document request to evaluate your program before making a charging decision...

Would you be prepared to respond?

Why stress test?

Learn what is expected from your program by third parties including:
- US Attorneys
- Government agencies
- Customers
- Business partners
- Third-party assessors

Objectives of stress testing

Determine how the program would survive a third-party review
Provide additional benefits:
- Define current program elements and organizational culture
- Develop a prioritized list of opportunities for improvement
- Identify training needs
- Result in long-range plan to incorporate opportunities
- Identify needs from other organizations such as HR, Audit, etc.
Keep in mind...grading will vary

- What is expected of a Fortune 50 healthcare or defense company will be different from what is expected of a small privately held business
- Because risk areas vary, the level of importance of each program component will not be the same for every organization
- Newer programs will not have the same level of information or detail as more mature programs

Start with reality...

If your program was stress-tested today by the government or a major customer, how do you think it would do?

1. Excellent—we are a leader in every aspect
2. Very well—we generally meet best practices
3. Well—we meet all standards and exceed some of them
4. Passing—we can show that we meet standards
5. Not well—a skeptical third party would not find us to have an effective program

Your organization’s assessment experience

Has your organization conducted a comprehensive ethics/compliance program assessment?

1. Yes, more than once
2. Yes, once
3. I don’t know
4. No
Reasons for not doing an assessment:

If you haven’t done one recently, why not?

1. It is not a priority
2. Budget
3. Won’t tell me anything I don’t already know
4. May tell me something I don’t want to know
5. Other

Getting started: considerations

Who authorizes? Who conducts?
- Board
- Senior Management
- General Counsel
- Compliance Officer
- Ethics/Compliance
- Audit
- External consultants
- Legal

Conduct under privilege or not?
What are the pros, cons, and deciding factors for each of these options?

What should be tested?

Program elements and implementation
Effectiveness of implementation
Organizational culture
Why is it important to assess the ethical culture?

Culture wins.
- When a rule or a policy or a Code conflict with an organization’s culture, the culture prevails most of the time.
- Therefore, in order to have an effective ethics and compliance program, a company needs to pay as much attention to culture as to policies, training, auditing, etc.

Our big idea

Corporate goal:
Strengthen the culture so that it stands for integrity—inside and outside the Company.

A culture of integrity is one where:
- Employees know the standards and rules that apply to them in their roles.
- Employees believe that their managers—and senior management—are committed to integrity.
- Employees raise concerns about misconduct because they do not fear retaliation and they believe their concerns will be addressed.
- Employees are held accountable to act consistently with the Code and standards, and are disciplined consistently if they fail to do so.
- Suppliers and others who expose the company to risk are held accountable to high ethical standards.
- Doing the right thing is the expected practice every day, and unethical or non-compliant behavior stands out and is called out.
How do we approach the review?

Document request and reviews
Interviews
Focus groups
Surveys
Comparison against best practices

Stress testing should include a review of:

- Risk Assessment
- Standards, Policies, and Procedures
- Oversight, Structure and Leadership
- Alignment with HR Practices
- Communications and Training
- Reporting and Response
- Monitoring and Assessment
- Culture

Today we will describe each element in three ways:

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<th>What we ask for:</th>
<th>What we look for:</th>
<th>What we find:</th>
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<td>Documents, etc.</td>
<td>Outcomes</td>
<td>Stay tuned</td>
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Worksheet for the session

Risk Assessment

Risk Assessment: What we ask for

- Description of the risk assessment processes used
- Results of any risk assessments previously conducted by, or on behalf of, the company
- Documents reflecting incorporation of the results of the risk assessment into Program modifications
- Risk assessment outcome and activity reports to senior management and the Board of Directors
Risk Assessment: What we look for

- Does the organization periodically assess the risk of criminal conduct and take appropriate steps to design, implement or modify each ethics program element to reduce the risk of criminal conduct identified through this process?
- Does the organization comprehensively define high risk areas including the potential for reputational risks and ethics risks?
- Does the organization deploy the respective programs' resources in a risk-sensitive manner?
- If appropriate, does the company have groups within various business units assigned to address unique issues and ethics risks faced by the specific business units?

Risk Assessment: What we find

- ERM versus compliance, ethics, and reputational risk assessment
- Involvement of SME's and operational personnel in risk identification
- Focus on reputational risks
- Curiosity and imagination in risk identification
- Coordination of risk assessment findings with ethics and compliance initiatives
- Board awareness/involvement in outcome review or mitigation oversight
- Recognition of emerging issues/trends

Risk Assessment:

Is your company Red, Yellow or Green?

1. Red
2. Yellow
3. Green
Oversight, Structure, and Leadership

What we ask for

- Written overview of the Program
- Responsibilities/job descriptions (both oversight and administrative) of directors, officers, line management, employees, under the Program
- Governance Committee charter and any other governance documents relating to Board Program responsibilities
- Program and/or committee operational charts and procedures
- Organizational charts for the Program
- Budgets and resources assigned to the Program
- Application of the Program to third parties (e.g., temporary employees, agents, suppliers, distributors, joint venture partners or others)
- Any in-force Administrative or Corporate Integrity Agreements

What we look for

- Is the Board of Directors knowledgeable about the content and operation of the ethics program?
- Does the Board exercise reasonable oversight of the implementation and effectiveness of the Program and the organization’s culture?
- Does the organization have a high-level person and a person with day-to-day responsibility assigned to manage the program? Is there a defined relationship to the Board of Directors?
- Is the Board (or a committee thereof) accessible to individuals with day-to-day responsibility including meeting with them in executive session?
- Does the Board (or a committee thereof) receive timely reports of significant issues and investigations involving the company or any elected officers?
Oversight, Structure, and Leadership:
What we look for

- Does senior leadership understand and exercise their responsibilities to create and maintain a culture that supports compliance with the law and ethical conduct?
- Is there an Ethics Committee or Council of company management that receives information from the high-level person or the person with day-to-day responsibility and also provides practical input into the program?
- If appropriate, are there committees or councils designated to ensure that ethics initiatives are appropriately deployed in regional areas where significant differences in requirements or culture could leave certain risk areas unaddressed?
- Have ethics responsibilities been assigned to line management? Are they knowledgeable about the content and operation of the ethics program?

Oversight, Structure, and Leadership:
What we find

- Board knowledge and oversight of the Program
- Senior management knowledge of, or engagement in, the Program
- Effectiveness and clout of high-level and day-to-day persons responsible for the Program
- Integration of the Program with business operations
- Implementation and focus in U.S. versus international operations
- Resources tied to risk assessment
- Line management knowledge and comfort level with their responsibilities

Oversight, Structure & Leadership:

Is your company Red, Yellow or Green?
1. Red
2. Yellow
3. Green
Standards

Standards: What we ask for

- The company's Code of Conduct
- Other ethics and compliance policies and procedures—company-wide
- Any documents reflecting the process by which ethics and compliance policies are developed and disseminated
- Document retention policies relating to the Program
- Application to third parties

Standards: What we look for

- Do the Code and policies establish standards designed to prevent and detect criminal conduct? Do they require compliance with company policies, values, and applicable governmental laws, rules and regulations?
- Does the Code emphasize prompt internal reporting to an appropriate person identified in the code of any potential violations of the code?
- Does the Code establish accountability for adherence to the code and is it applicable to directors, officers and employees?
- Does the company have policies and procedures that provide specific guidance to employees—especially in high risk areas?
- Are the Code and company policies periodically reviewed and updated to meet the specific ethics risk areas as defined by the risk assessment?
Standards: What we find

- Codes: language, style, presentation, readability, and relevance to employee jobs
- References or links to applicable policies and procedures
- Accessibility of Code, policies, and procedures
- Explanation of reporting processes and how they work
- Explanation of additional responsibilities of leaders and managers
- Standards for high-risk areas

Is your company Red, Yellow or Green?
1. Red
2. Yellow
3. Green

Alignment with HR Practices
Alignment with HR Practices: What we ask for

- Personnel evaluations reflecting the use of ethics and compliance criteria
- Anything else reflecting the use of ethics and criteria for promotions or compensation-related purposes such as:
  - 360 degree review process
  - Promotion procedures, especially to management
  - Info on background checking, other new and ongoing screening
  - Exit interview protocols

Alignment with HR Practices: What we look for

- Are there any incentives or disincentives built into the goal setting or review process that could force employees to make a bad choice?
- Is strong ethical conduct included as part of the promotion criteria?
- Are potential new hires and third parties working on behalf of the company screened?
- Is there a defined performance evaluation process to ensure that all management is meeting their responsibilities?
- Do exit interviews have an ethics and compliance component?

Performance appraisals

Does your organization formally evaluate managers (in performance appraisals) on whether they live up to ethics and compliance responsibilities?

1. Yes, it is a critical part of our appraisals
2. Yes, but it is closer to “check the box”
3. Yes, but not universally
4. No
Alignment with HR Practices: What we find

- Objectives and performance measures versus Program responsibilities
- Background checking processes — particularly in internal promotions and third-party personnel
- Performance appraisal component for managers regarding their Program responsibilities

Is your company Red, Yellow or Green?
1. Red
2. Yellow
3. Green

Communications and Training
Any communications to employees, and others, concerning ethics, values, or compliance (include: executive letters and speeches, posters, e-mails, mailings, newsletters, and brochures with the defined audience receiving each form of communication)

Materials for related, recent training programs (include both general ethics/compliance training and risk area-specific training as well as audiences receiving each type of training)

Documentation of participation in required training

Feedback/evaluation summaries on ethics/compliance training

Ethics and compliance-related communications/training plans

Communications and Training: What we ask for

- Are the Code, policies, and procedures understandable, communicated, and easily accessible?
- Do managers play a key role in delivering the message?
- Does the company have and use an ethics communication strategy that incorporates the organization’s risk assessment?
- Does the company have and use a training plan that defines the training required for various levels and groups of employees as well as contractors and agencies based on the company’s risk assessment process?
- Does the company communicate, to all levels of employees, lessons learned from ethical issues the organization has confronted?

Communications and Training: What we look for

- Do the Board and management receive periodic and relevant training on their ethics responsibilities?
- Does employee training address key concerns of employees such as fear of retaliation?
- Are employees who are working in a high-risk environment (as defined by the risk assessment) receiving training in sufficient detail to help them identify problem situations and avoid the violation of company standards and the law?
- Does the company assess the effectiveness of the training?
Communications and Training:
What we find

- Board briefings on Program status versus real Board training
- Communications and training tied to the risk assessment
- Job relevant and memorable training
- Focus and rigor in defining and training high-risk personnel
- Leadership messaging
- Manager awareness of responsibilities and how to respond to issues raised
- Communication of lessons learned

Communications and Training:

Is your company Red, Yellow or Green?
1. Red
2. Yellow
3. Green

Reporting and Response
Reporting and Response: What we ask for

- **System for encouraging reports** of possible violations and expressing ethics and compliance concerns
  - Policies and procedures relating to this system
  - Documents describing or reflecting the publicizing of this system
  - Reporting system call/email reporting statistics (numbers, trends, types, outcomes) from the prior three years
- **Ethics and compliance-related investigations**
  - Policies/procedures for assigning responsibility for conducting and for overseeing such investigations
  - Reports of ethics and compliance investigations (to be reviewed on-site)
- **Ethics and compliance-related discipline**
  - Discipline policy/procedures
  - Records of ethics and compliance-related discipline (to be reviewed on-site)

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**Reporting and Response: What we ask for**

- Does the company **encourage and support** employees and others to report known or suspected wrongdoing?
- Does the company **explain the reporting system and processes** to all employees including information on how the process works?
- Does the company have an appropriate **escalation process**?
- Do employees believe they can raise issues to management or the 800 number **without fear of retaliation**?
- Does the company use a **tracking system** for all reports and issues received? Does the company review reporting and outcome data to determine potential problem areas? Is this information provided to senior management and the Board?

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**Reporting and Response: What we look for**

- Does the company investigate issues in a **timely way while protecting confidentiality**?
- Do the investigations conducted help determine the **root cause of misconduct**, and meet the requirement that a company “take reasonable steps to respond appropriately to such misconduct and to prevent further similar [violations], including making any necessary modifications to the organization’s ethics program”?
- Is disciplinary action administered **appropriately and consistently** for violations of the Code, values, policies or the law?
- Does the company enforce policies **prohibiting retaliation or retribution against individuals who report suspected or actual violations of Company policy or the law**?
Reporting and Response:
What we find

- Employee understanding of reporting process
- Fear of retaliation
- Case closure times
- Escalation processes
- Tracking of disciplinary actions for consistency
- Focus on root cause analysis
- Focus on Program modifications based on issues raised
- Data tracking, trending, and reporting to leadership and the Board

Is your company Red, Yellow or Green?
1. Red
2. Yellow
3. Green

Monitoring and Assessment
Monitoring and Assessment: What we ask for

- Plans and audit protocols for conducting ethics and compliance-related audits and the results of the auditing
- Auditing process for adherence to Program procedures (as opposed to standards), e.g. to ensure that the Program is functioning as intended (e.g., that all mandated training has taken place, etc.)
- Assessments/evaluations, conducted internally or externally, of the Program including data from any surveys/focus groups
- Any other information reflecting a view of the Program by others (including employees, agents, competitors, suppliers, customers or governmental bodies)

Monitoring and Assessment: What we look for

- Does the company conduct audits to ensure that Program elements are functioning as intended?
- Does the company perform qualitative assessments (culture) to show that the Program overall is having the desired impact?
- Does the Company utilize exit interviews to ask departing employees if they are aware of any actual or suspected violations of Company policy?
- Does the Company follow industry best practices?
- Does the Company ensure continuous Program improvement?

Monitoring and Assessment: What we find

- Focus on assessment of process implementation versus focus on how the Program is received at all levels of the organization
- Opportunities for partnering with Internal Audit and other subject matter experts who are regularly visiting the businesses
- Culture assessment
- Use of employee surveys
- Continuous improvement
- Use of exit interview process as a monitoring tool
**Monitoring and Assessment:**

Is your company Red, Yellow or Green?

1. Red
2. Yellow
3. Green

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**Culture**

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**Culture: What we ask for**

- Any documents relating to efforts to ensure that the company's organizational culture promotes law abidance and ethical conduct
- Any documents reflecting the results of these efforts, or which otherwise reflect the impact of the organization's culture on the company's efforts, to promote law abidance and ethical conduct
**Reporting and Response: What we look for**

- Do employees believe that it is possible to behave ethically and achieve objectives at the Company? Is unethical behavior clearly seen as out of bounds?
- Do employees believe they can raise issues to management or the 800 number without fear of retaliation?
- Do employees believe that management will take appropriate action if misconduct is communicated to them?
- Do employees believe that others who violate Company standards get promoted to positions of increased authority?
- Is the Program viewed as a paper program or as a genuine commitment?
- Is the Program – or the people responsible for it – denigrated or marginalized?

**Reporting and Response: What we find**

- Connection between what the company has communicated and what employees have heard and believe to be true
- Priorities on objectives and pressure to compromise standards to meet objectives
- Trust in the processes and systems
- Whether employees believe that top performers who violate the code are tolerated or promoted
- Varying cultures within a company, business unit, and geographic locations

**Culture:**

Is your company Red, Yellow or Green?

1. Red
2. Yellow
3. Green
Some other observations

- Levels of management commitment
- Document production after the draft report
  - OK with us as long as schedule can be delayed
  - Few second chances to produce additional documents for the government

*Employees know when the company gets it, means it, and lives it.*

Document requests

If you had to respond to a government document request, how quickly could you pull together all the documents we discussed?

1. Within two days
2. Within a week
3. Within a month
4. By the fifth of never

Take a few minutes...

- Finalize the questionnaire
- Summarize:
  - Program strengths
  - Program weaknesses
  - Barriers to program success
How did you do?

How many "red" answers did you have?
1. 0 to 5
2. 6 to 10
3. 11 to 18
4. 19 to 25
5. 26 to 35
6. Call the doctor!

Assessment cautionary notes

- Do not rely on any one process/measure. Good assessments are mosaics.
- Be careful with surveys—employees tell us that they often do not respond with the whole truth.
- Remember Albert Einstein:
  "Not everything that can be counted counts, and not everything that counts can be counted."

What is your weakest link?

1. Risk Assessment
2. Standards, Policies, and Procedures
3. Oversight, Structure and Leadership
4. Alignment with HR practices
5. Communications and Training
6. Reporting and Response
7. Monitoring and Assessment
8. Culture
After the stress testing...

- Describe your culture and areas of attention needed
- Integrate the program with company risk assessment
- Develop and implement a 2-3 year ethics and compliance work plan
- Align program with company performance objectives and strategic goals
- Communicate, communicate, communicate
- Periodically reassess the program
- Build an ethics and compliance culture that is understood by all to be a strategic, business asset

Questions?

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