In today’s presentation, we will discuss the first of these features – design – and the last – measurement.

Design elements for program effectiveness
1. Basis of authority
2. Understanding of purpose and target
3. Risk analysis
4. Mandatory nature and sanctions
5. Method of communication
6. Cultural considerations

Measurement methodology
1. Specific tools and techniques for each of the design elements will be presented
2. A note on Data Analytics and Interpretation will be presented as an endpiece

Basis of authority for the program

Governance of an effective ethics and compliance program requires:
- Senior level knowledge and support for the program
- Assignment and acceptance of program accountability

Example 1 – A HelpLine program

FDIC Sec8B2.1(b)(5)(C) calls for a reporting system for employees and agents

Example 2 – Referring reported concerns to the Audit Committee

Sarbanes-Oxley requires publicly listed company audit committees to create a system to receive and manage reported concerns

Measurement Types

Effective bases of ethics and compliance program authority:
- Written program oversight responsibility in Board or Board committee charter
- Written accountability at most senior level
- Assignment of specific program accountability
- Uninhibited access by accountable officer to the Board or Board Committee
- Application of sufficient resources to the program
## Understanding purpose and target

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<tr>
<th>Measurement Types</th>
<th>Answers to these questions will reveal program effectiveness:</th>
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<td></td>
<td>Are sufficient resources allocated reasonably to allow accomplishment of program goals?</td>
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<td>Do the specific programs, e.g. training, have clearly identified target audiences and outcomes such as specific learning objectives?</td>
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<td>Are monitoring systems in place to link program purposes and outcomes?</td>
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<td>Does the company have subject matter expertise (employees or contractors) to design and implement its ethics and compliance programs?</td>
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### Example 1 – Codes of Conduct
- Sarbanes-Oxley and Exchange listing standards contemplate codes of conduct for senior and financial executives AND for as broad a base of employees as possible

### Example 2 – Accurate financial records
- Foreign Corrupt Practices Act specifies record keeping and documentation requirements for facilitation payments

## Risk analysis

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<th>Risky Questions:</th>
<th>Example 1 – Conflict of Interest issues review and documentation</th>
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<tr>
<td></td>
<td>What risks are inherent to the nature of my business?</td>
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<td>What is the history of unethical conduct in my company or in my line of business?</td>
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<td>What is the nature of the unethical conduct that might occur?</td>
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### Example 3 – Conflict of Interest issues review and documentation
- NASDAQ and other exchange listing standards require companies to review related party transactions for potential conflict of interest situations.

### Example 2 – Background checks of agents operating in high-risk countries
- FOSG requires that the company take reasonable steps to prevent and detect unethical conduct appropriate to the nature of its business.

## Mandatory nature of programs and sanctions for non-compliance

### Industry practice has developed to a point where these types of programs are considered to be mandatory for all employees:
- Ethics and compliance training
- Conflict of interest disclosures
- Agreements covering confidential and proprietary info
- Code of Conduct acknowledgement

### Example 1 – Code of Conduct and Ethics/Compliance program training
- Industry practice and FOSG stipulate that companies conduct employee training programs on these topics.

### Example 2 – Penalties for employees who fail to complete required training
- Industry practice and FOSG both speak to using incentives and discipline to enforce the elements of a company’s ethics and compliance program

### Measurement Types
- Examples of sanctions for non-compliance
  - Removal of privileges or services, e.g. email, for non-completion of required training, after multiple reminders
  - Warnings and ultimately termination for EEs who refuse to acknowledge Code of Conduct or confidentiality agreements (may require union agreement)
Method of Communication

Key concepts requiring communication to all employees of the organization:
- company policies and applicable laws
- how to report unethical behavior
- employee protection from workplace retaliation
- principles of ethical and compliant behavior/code of conduct
- organizational values

Example 1 – Communicate by practical, understandable means

Industry practice and FOSG stress importance of practical and accessible communications

Example 2 – Make communication relevant to specific job functions, e.g. FCPA awareness and training

FOSG and FCPA Guidelines speak to job specific communication and training

Measurement Types

What are indicators of effective communication?
- Employee Survey Responses
- Convergence of employee behavior with communicated standards
- Feedback through the HelpLine or advice resources
- Use of multiple means to communicate

Cultural Considerations

Popular notion that “Ethical Culture trumps Compliance” is arguably true in considering the general direction of employee behavior, but documented and measured compliance practices are a necessary component in defending a company under investigation.

Nevertheless, a strong ethical culture drives ethical behavior.

Example 1 – Credible communication about the company’s culture

Multiple national and global surveys, including the NBES, identify cultural elements that can be communicated.

FOSG holds culture as equivalent to criminal behavior prevention and detection

Measurement Types

What are the indicators of a strong ethical culture?
- Employee Survey Responses
- Content of Senior Management and Governance Level communications
- Active use of Helpline or similar reporting system
- Widespread use by employees of advice and counseling resources
- Well communicated and understood organizational values

A note on data analytics and interpretation using Helpline data.

If Helpline data shows these attributes:
- Volume in contacts/100 EEs/year exceeds national benchmarks
- Percent of contacts choosing to remain anonymous is fairly low, say, less than 30%
- Percent of issues that are wholly or partially substantiated approaches 50%
- Spikes in complaint categories correlates to training on the same categories

It is probably fair to conclude that:
- EEs awareness on Helpline system and its mechanics is high
- There is a relatively lower level of fear of retaliation among EEs
- EEs are bringing real issues to the Helpline.
- Training is effectively increasing awareness about workplace issues and potential problems