BUILDING AN EFFECTIVE COMPLIANCE AND ETHICS PROGRAM

IN THE BEGINNING ...

Building an Effective Compliance and Ethics Program

1. Why have a compliance and ethics program?
2. What are the critical building blocks?
3. How does the work get done and who does it?
AGENDA

- Format of presentation
- Goals to achieve here today
- Introductions
- Definition of a Compliance and Ethics Program
- Reasons to have a Compliance and Ethics Program
- How should I structure the program to ensure I am covering all of those reasons?
- Identify staffing requirements and staffing options
- How we manage the program day-to-day

FORMAT OF PRESENTATION

- Led by Us – Moderators
- We will open topics and share about our program and experience
- Others will share
GOALS TO ACHIEVE HERE TODAY

- Identify various reasons to have a compliance and ethics program
- Identify different areas of compliance and ethics
- Share experiences in creating/building a compliance program
- Share information about program structure and staffing

INTRODUCTION

- Presenters (Moderators)
  - Who we are
  - Who we aren’t
- Audience – Our group here today - Who are you?
  - Your Company and the Type of Business
  - Role in compliance program
  - Function – attorney, paralegal, specialist, manager, officer
  - Experience building a compliance program from the beginning, scratch, blank page
DEFINITIONS

• Definition per the U.S. Sentencing Guidelines:
  "Compliance and ethics program" means a program designed to prevent and detect criminal conduct.

• Recent FCPA Guidance states further:
  "An effective compliance program promotes an organizational culture that encourages ethical conduct and a commitment to compliance with the law."

• For a compliance and ethics program to be "effective," a corporation shall:
  1. exercise due diligence to prevent and detect criminal conduct; and
  2. otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

WHY HAVE A COMPLIANCE & ETHICS PROGRAM?

• Foreign Corrupt Practices Act - and related Guidance document
• US Federal Sentencing Guidelines
• The Department of Justice
• Deferred Prosecution Agreement
• UK Bribery Act
• Other local or country laws
• Corporate governance
• Protection of investor value and confidence
• Good business practice
• Corporate policy
• Company brand
• Risk management
• Others .....
HOW SHOULD WE STRUCTURE OUR PROGRAM TO ENSURE WE COVER ALL THESE REASONS?

• In keeping with our obligations to have an effective compliance program, we/Transocean chose the following structure:
  – Policies / Standards / Guidelines
  – Training / Certifications / Communications
  – Auditing / Monitoring / Due Diligence / Investigations
  – Response and Follow Up

• All of our efforts fall into one of these categories – and perhaps from time to time in several at the same time

• Recent FCPA Guidance from the DOJ notes a compliance program should not be “check the box” – there is no “one size fits all”

• What structure have you followed?

STAFFING REQUIREMENTS TO ACCOMMODATE OUR STRUCTURE

What needs to be accomplished in the categories of our program structure?

• Creation and enforcement of policy
• Updating policies and guidelines
• Communication of policies and compliance program initiatives
• Training
• Legal opinions and legal advice
• Self-audits and risk assessments
• Intranet maintenance
• HelpLine management, reporting, testing and continual update of access
• Agent Due Diligence and Agent Training
• Investigations and follow up
STAFFING REQUIREMENTS TO ACCOMMODATE OUR STRUCTURE

Who can accomplish that work? Attorney, non-attorney?

- Certainly an attorney or attorneys
- Who better supports an attorney than a paralegal?
- An auditor, an accountant
- Perhaps we need to use outside assistance – such as training vendors, due diligence investigators, outside counsel

STAFFING REQUIREMENTS TO ACCOMMODATE OUR STRUCTURE

What skills are required to accomplish the work?

- Legal degree – and often expertise in certain areas of law
- Audit or accounting background
- Information management skills – experience with databases
- Communications expertise
- IT expertise
- Effective interpersonal communications/engaging customer service skills
- Though not a skill, flexibility and adaptability are important
- Home-grown or off-the-shelf solutions
- EXCELLENT proof-reading skills
Transocean LCE Program Structure

**HOW DO WE MANAGE THE PROGRAM DAY TO DAY?**

**PROGRAM STRUCTURE:**
- Policies / Standards / Guidelines
- Training / Certifications / Communications
- Auditing / Monitoring / Due Diligence / Investigations
- Response and Follow Up

**BUILDING PROCESS:**
How did we build our program around this structure?
We followed these simple steps:

PLAN → IMPLEMENT → REVIEW → IMPROVE
HOW DO WE MANAGE THE PROGRAM DAY TO DAY?

Policies / Standards / Guidelines

• Why have policies, standards and guidelines?
• Our role
• Policy maintenance checklist
  ✓ Policies scattered across the organization
  ✓ Policies available in “hard copy” only
  ✓ Policies, standards and guidelines outdated
  ✓ Policy lifecycle
  ✓ Consistent style
  ✓ Effective and consistent communication of policies

Code of Conduct – or at Transocean the “Code of Integrity”

• Foundation upon which a compliance program is built
• Emphasis on:
  – People Integrity
  – Financial Integrity
  – Transactional Integrity
  – Operational Integrity
• Easy to read and understand
• Delivered in onboarding packet for new employees
• Easily accessible to all employees globally – onshore and offshore
• Translated into local languages
HOW DO WE MANAGE THE PROGRAM DAY TO DAY?
Auditing / Monitoring / Due Diligence / Investigations

• Audit and monitor compliance program
• Third-party due diligence; other due diligence
• Investigation process

• Operate under a Management of Change process
• Audit processes; audit databases
• Analyze internal reviews and investigations
• Analyze relevant government actions or settlements
• Review program information gathered through training and investigations
• Identify areas for improvement
HOW DO WE MANAGE THE PROGRAM DAY TO DAY?

Due Diligence

- Clearly defined process
- Communicated throughout company; training given on process
- Know who you are doing business with
- Understand the qualifications of third parties
- Risk based
- Rationale to use a third party
- Clear contract terms
- Training – in-person and online
- Audit plans
- Ongoing monitoring – updated due diligence

HOW DO WE MANAGE THE PROGRAM DAY TO DAY?

Training / Certifications / Communications

The Federal Sentencing Guidelines state that, to have an effective compliance and ethics program, the company must:

- Take reasonable steps to communicate periodically and in a practical manner its standards and procedures to its officers, employees, and, as appropriate, its agents, conducting effective training programs and otherwise disseminate information.
HOW DO WE MANAGE THE PROGRAM DAY TO DAY?

Communications

- Branding the compliance program
- Tone at the Top – manager driven cascading emails
- Corporate communications
- Other resources – intranet, corporate website, HelpLine print material
- Tracking
- Reporting

HOW DO WE MANAGE THE PROGRAM DAY TO DAY?

Training

“Effective Training Programs”

- In-Person
- Electronic (online, CBT)
HOW DO WE MANAGE THE PROGRAM DAY TO DAY?

Training

In-Person Training

- Training Presentations
- Who gets trained
- Tracking and reporting

HOW DO WE MANAGE THE PROGRAM DAY TO DAY?

Training

Electronic Training

- Who participates, what courses are required
- Administration
- Reporting and tracking
- Interface with training vendors
HOW DO WE MANAGE THE PROGRAM DAY TO DAY?

Certifications

- Annual
- Board of Directors, employees and third parties
- Follow up, investigation, tracking and reporting

Investigations

- Confidential reporting by employees, third parties and others
- HelpLine
- Who to lead investigation?
- When to enlist outside counsel?
- Clear communication of policies – know when policy violations occur
- Tracking and reporting
HOW DO WE MANAGE THE PROGRAM DAY TO DAY?
Response / Follow Up

- As issues are identified, respond timely and appropriately
- Develop and ensure implementation of remedial steps relating to any anti-corruption law or policy violation

Now our presentation is complete.

We are not truly running in circles day-to-day!
Our day-to-day tasks require us to constantly view our program in cycles:

WE PLAN $\rightarrow$ WE IMPLEMENT $\rightarrow$ WE REVIEW $\rightarrow$ WE IMPROVE