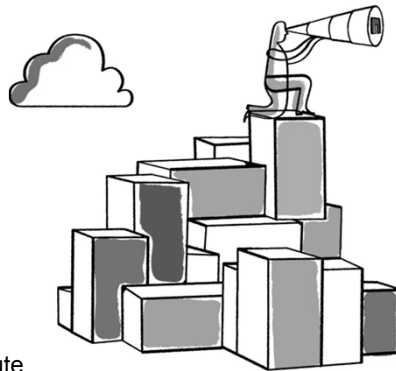




Go further, faster®



Anti-Bribery Update and Challenges of a Global Anti-bribery Programme



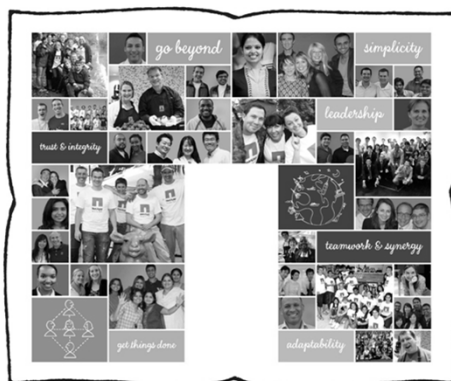
Claire Halligon
May 20th 2014, London
SCCE European Compliance & Ethics Institute

©2014 NetApp, Inc. All rights reserved.

1



About NetApp



NetApp Employees Around the World

NetApp is a \$6.3B Fortune 500® company that creates innovative storage and data management solutions

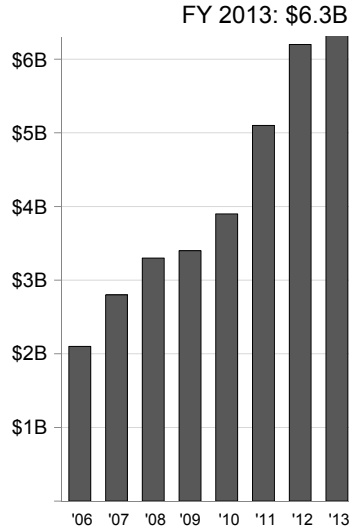
©2014 NetApp, Inc. All rights reserved.

2



Customer and Partner Success Fuels Our Growth

- Recognized as a FORTUNE 500® Company, 2012¹
 - 77% of Fortune 500 are NetApp customers²
- Creator of Data ONTAP, the industry's #1 branded storage operating system³
- #1 Storage Provider to the US Government⁴
- #3 World's Best Multinational Workplaces 2012⁵
- #6 FORTUNE's 2013 Best Companies to Work For¹



1. From FORTUNE® Magazine, Feb. 4, 2013, and May 21, 2012 © Time Inc. FORTUNE, FORTUNE 100 Best Companies to Work For, and FORTUNE 500 are registered trademarks of Time Inc. and are used under license. FORTUNE and Time Inc. are not affiliated with, and do not endorse products or services of, NetApp.
 2. Based on NetApp customer bookings and NetApp AutoSupport users in FY 2011 and FY 2012.
 3. From IDC Worldwide Quarterly Disk Storage Systems Tracker 2013 Q3, December 2013 (Open Networked Disk Storage Systems revenue)
 4. Federal agencies must report all contracts valued at \$3,000 or more. Based on FPDS-NG reports FY2009-2011, NetApp is the top storage provider.
 5. Copyright © 2013 GREAT PLACE TO WORK® INSTITUTE, INC.
 6. From Forbes, September 24, 2012 © 2013 Forbes. All rights reserved. Used by permission and protected by the Copyright Laws of the United States. The printing, copying, redistribution, or retransmission of this Content without express written permission is prohibited. <http://www.forbes.com/special-features/innovative-companies.html>

©2014 NetApp, Inc. All rights reserved.

3

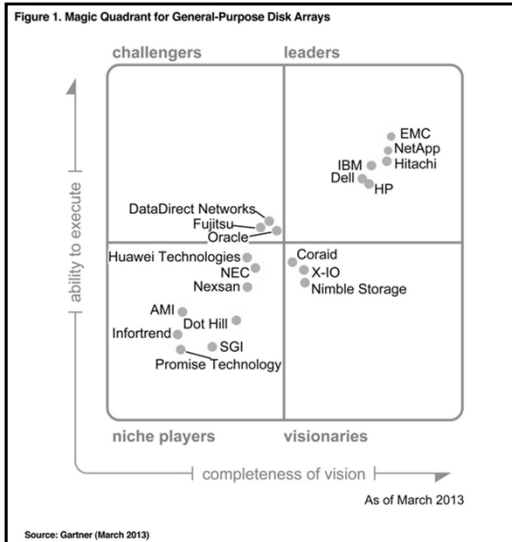


Recognized for Industry Leadership

Gartner Magic Quadrant For General-Purpose Disk Arrays

Source: Gartner, Inc. March 2013
 Stanley Zaffes, Roger W. Cox, Valdis Filks
 This Magic Quadrant was published as part of a larger research note and should be evaluated in the context of the entire report. The full report is available [here](#).

Gartner does not endorse any vendor, product or service depicted in its research publications, and does not advise technology users to select only those vendors with the highest ratings. Gartner research publications consist of the opinions of Gartner's research organization and should not be construed as statements of fact. Gartner disclaims all warranties, expressed or implied, with respect to this research, including any warranties of merchantability or fitness for a particular purpose.



©2014 NetApp, Inc. All rights reserved.



Partnerships with the Industry's Top Companies

Services	accenture CSC BT at&t T-Systems amazon web services
Applications/ Databases	ORACLE cloudera Quantum Microsoft SAP IBM whamcloud
Virtualization	Microsoft citrix redhat FUJITSU vmware ORACLE
Operating Systems	hp ux AIX redhat Windows Server ORACLE
Network	BROCADE CISCO
Data Management	NetApp

©2014 NetApp, Inc. All rights reserved.

5



Legislative developments

©2014 NetApp, Inc. All rights reserved.

6



Anti-Bribery laws: update on some major laws

- US FCPA (1977)
- UK Bribery Act (2010)
- Russian Law (Dec. 2012)
- Brazil Law (Aug. 2013)



Anti-Bribery laws: update on some major laws

- US FCPA (1977)
 - Resource Guide Nov. 2012
- UK Bribery Act (2010)
- Russian Law (Dec. 2012)
- Brazil Law (Aug. 2013)



Anti-Bribery laws: update on some major laws

- US FCPA (1977)
- UK Bribery Act (2010)
 - Crime and Courts Act 2013 allowing DPA
- Russian Law (Dec. 2012)
- Brazil Law (Aug. 2013)



Anti-Bribery laws: update on some major laws

- US FCPA (1977)
- UK Bribery Act (2010)
- Russian Law (Dec. 2012)
- Brazil Law (Aug. 2013)



RUSSIA

- **New Bribery Law** (Article 13.3 of a broader 2008 Law on Combatting Corruption and entitled “The Requirement of Organizations to Take Measures to Prevent Corruption”), effective January 2013, requiring implementation of Compliance Programs.

Companies must:

- Designate departments and structural units and officers who will be responsible for the prevention of bribery and related offenses;
- Develop and implement standards and procedures designed to ensure ethical business conduct;
- Adopt a code of ethics and professional conduct for all employees;
- Implement means for identifying, preventing and resolving conflicts of interest; and
- Prevent the creation and use of false or altered documents.



Anti-Bribery laws: update on some major laws

- US FCPA (1977)
- UK Bribery Act (2010)
- Russian Law (Dec. 2012)
- Brazil Law (Aug. 2013)



BRAZIL

- New Anti-Corruption Law in August 2013, effective Feb 2014 - The “Clean Company Act”
 - Imposes administrative and civil liability on legal entities
 - Fines from 0.1 to 20% of the company’s gross revenues
 - The Authority will take into account the effective implementation of a compliance program
 - Possibility of leniency agreements if cooperation and self-disclosing
 - National Register of Wrongdoing



Convergence of requirements

as regards

Anti-bribery programmes



Enforcement Trends

©2014 NetApp, Inc. All rights reserved.

15



Global enforcement trends

- 2013: the year in which enforcement started to be global
 - Enforcement outside of the US
 - Enforcement by international authorities
 - Cooperation between enforcement authorities
- Industry Sweeps
 - Oil and Gas continue being vulnerable under the FCPA
 - Petrochemical and Pharmaceutical
 - Financial industry, retail
 - IT
- Voluntary disclosure (DPA)
- Third parties
- US remaining the strongest enforcer

©2014 NetApp, Inc. All rights reserved.

16



FCPA Enforcement

- Biggest FCPA Fines and Penalties in 2013
 - \$398 million (*Total*)
 - \$252 million (*Weatherford* – of which \$100 million relates to trade sanctions violations)

- In both cases: lack of an effective program (contrarily to Morgan Stanley in 2012)



Business courtesies

- Focus on all-expenses paid international trips
 - Example of Weatherford
 - Angolan oil official being paid 1 week in Italy and Portugal with only 1 day of business related training
 - Religious trip paid for a state employee and his family
 - Honeymoon paid for the daughter of a public official

- China & pharmaceutical industry: smaller amounts as well



UK enforcement

- Words of the Director of the SFO David Green in 2012 (“We are not the Serious Champagne Office”).
- The SFO has indicated its primary role is not to advise companies, but to prosecute.
- David Green indicated in Oct. 2013 that he favoured a "sector sweep" approach to enforcement; he identified the construction industry as a prime target, along with public procurement, oil and gas, and the extractive industries.
- Significant number of investigations in 2013 (e.g. Rolls Royce, Olympus and Gyrus – mainly related to UK pre- Bribery Act legislation, *Prevention of corruption Act 1906*) – incl. some against individuals.
- Still no foreign bribery criminal conviction under the UK Bribery Act.



Enforcement in China

- Arrests of individuals in healthcare and pharmaceutical industries
- Investigations on large Western companies

GSK

Novartis

Sanofi

Eli Lilly

- Investigations targeted at Chinese-based companies as well
- 182,038 officials disciplined for corruption in 2013 (increase of 13% from 2012)
- Bribery record for pharmaceutical industries



Charitable donations

- Eli Lilly in Poland: Mind your charitable contributions and make proper due diligence!



Third Party risk

- Remains the highest risk
- Example of Frederic Bourke – improper payments in Azerbaijan by third parties: Bourke’s knowledge that corruption was pervasive in Azerbaijan resulted in a supposed knowledge of improper payments.

High risk country
+
Presence of third parties
=
“Supposed knowledge” of possible bribery for the prosecutor.



Anti-Bribery Program: challenge of a rollout in a global environment

©2014 NetApp, Inc. All rights reserved.

23



The basis of our Anti-bribery programme

- The FCPA and UK Bribery Act have been the guiding principles for our anti-bribery program
- We also take into account specific requirements of local laws (e.g. 231 in Italy)

©2014 NetApp, Inc. All rights reserved.

24



Global Anti-Bribery Program



Risk Assessment	Policies- Anti-Bribery Policy, Code of Conduct & others	Compliance Training & Certifications
Travel & Expenses Internal controls	MDF & EBC Controls & Reviews	Third Party Compliance Program
Gifts and Entertainment Process	Due Diligence	Order Reviews
Third Party Training and certifications	Specific regional efforts	Monitoring, reviewing - surveys

©2014 NetApp, Inc. All rights reserved.

25



Summary of the Anti-Corruption and Anti-Bribery Policy

- Scope and Principles
- Internal rules on gifts and entertainment
- Charitable and political contributions
- Solicitation and extortion
- Facilitating payments
- Mergers and acquisitions
- Financial record keeping
- Local laws (UK Bribery Act and other laws)
- Violations

©2014 NetApp, Inc. All rights reserved.

26



Gifting and Entertainment Limits: Private Entities

Gifts

< \$100

Entertainment /
Business Courtesies*

< \$150 / person
or
< \$750 / event (5+)

Receiving Gifts or
Entertainment

< \$100

*includes meals

©2014 NetApp, Inc. All rights reserved.

27



Gifting and Entertainment Limits: Public Officials

- For public officials or employees of state-owned entities, the principle is not to offer anything (gift or invitation) without the approval of the Integrity & Compliance Office (ICO).

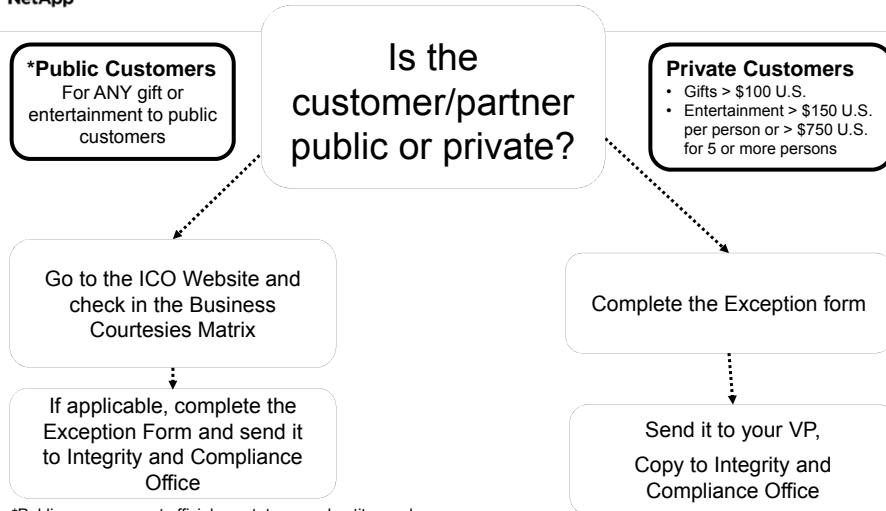


©2014 NetApp, Inc. All rights reserved.

28



Gifts and Entertainment Exception Process



*Public = government officials or state-owned entity employees

©2014 NetApp, Inc. All rights reserved.

29



Business Courtesies – the challenges

- Value of \$100 and 150 in the different countries
- Definition of public officials

©2014 NetApp, Inc. All rights reserved.

30



Business Courtesies – the challenges - 2

- Workload → automation / outsourcing
- Cultural differences? - Invitation of spouses/significant others and other relatives



Inviting customers and partners to demos of our products and execs meetings

- « EBC visits »: bringing our customers to our Executive Briefing Centers
- Influencing the customer with the quality of our products and our strategy, not with invitations.
- Looking at the circumstances to decide if we can pay for the travel, accomodation and/or any meal.



What is acceptable entertainment?

Promoting NetApp goodwill

Trying to influence a specific decision, or
to reward someone for a decision taken



Sales incentives Programs (1)

- « SPIF »: Sales incentives offered to employees of third parties (resellers, distributors, agents ...)
 - For training they attend,
 - Sales they perform.



Sales incentives Programs (2)

- Risk under the FCPA: mainly related to end user employees (if non-US government)
- Risk under other anti-bribery laws forbidding private bribery: related as well to intermediary (reseller ...) employees. SPIFs influence the behaviour of individuals who could decide to act for their own benefit, and not the one of their employer
- Other issues



Facilitation Payments (1)

In a global company, should you:

- Indicate how they would be handled and documented, in order to comply with the FCPA,
- Or forbid them completely in order to comply with the laws forbidding them?

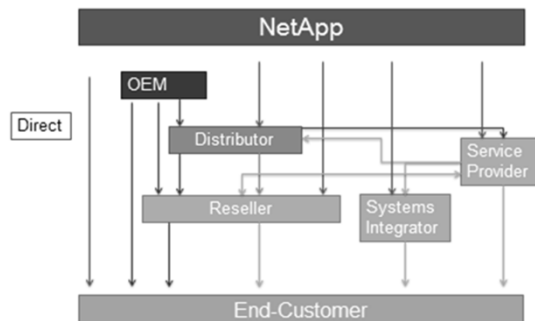


Facilitation Payments (2)

- Our choice: FP are « forbidden without the prior explicit authorization from the Integrity and Compliance Office ».



NetApp Go-To-Market Model



1. NetApp sells directly to the Customer
2. NetApp sells to the Customer via a T1 Reseller
3. NetApp sells to the Customer via a distributor and a T2 reseller
4. NetApp sells to the Customer via a distributor, a T2 reseller and a T3 reseller

... TOMORROW!



Some suggestions

- Surveys / focus groups, a quick win?
- « Liaisons » or Compliance « champions »
- Compliance Day / Compliance week



Closing thoughts

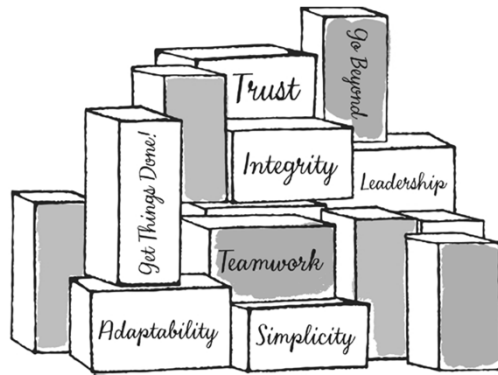
Trust... does not exclude control



NetApp

Thank you

This presentation and my comments reflect my personal views and opinions, and do not represent any company policy positions.



©2014 NetApp, Inc. All rights reserved.

41