Compliance/Ethics Programs Risk Assessments
– Internal/External and Linking to eLearning

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About PLI-Corpedia

Practising Law Institute
One of the most respected organizations in legal training.
- Not-for-profit founded in 1933
- 200 leading corporations and law firms are ‘privileged members’
- Leading provider of continuing legal education
- Leading legal publisher

Corpedia
“Best of the Web for corporate eLearning.”
- Forbes.com
- Compliance/Ethics eLearning and risk assessment firm founded in 1998
- Exclusive faculty of internationally recognized individuals and institutions
- One of the oldest and most experienced online education firms
- Created risk framework behind OCEG
Bernard Sainte-Marie, a former banker at Lazard, lashed out at Bruce Wasserstein in an email message to his colleagues as he left the firm last week. "I am leaving on the high note of the IPO of Lazard with the knowledge (i) that I will be contributing to the stated intent of reducing the employment costs at Lazard by a total of more than US$ 180 million per year and (ii) that I will not have to comply with the non-disparagement provisions contained in the agreement between Lazard and the "Historical Partners,"" he wrote. [Editor’s Note: If you have a copy of an internal communication at your firm that you think is newsworthy or if you have other tips, please pass them along to dealbook@nytimes.com.]

Topics of Discussion

- Why conduct risk assessment - LEGAL
- Objectives and goals - OPERATIONAL
- Underlying components
- Current processes
- Outcomes
Does your organization conduct periodic Risk Assessments?

Source: Corpedia ECERA™ Database

Why assess risk? Legal and culture
Why assess risk? – Legal...

FSG
“organization shall periodically assess the risk of criminal conduct...[and] prioritize their compliance and ethics programs to target those potential criminal activities that pose the greatest threat in light of risks identified... to be effective this process must be ongoing.”

SEC PCAOB – 404
Guidance Standard #2...
“strong indicators of the existence of a material weakness include an ineffective regulatory compliance function in regulated companies, where violations of the law could have a material effect on financial reporting.”

A view from the “inside” on FSGO §8B2.1(b)(4)

“Here is what I can absolutely guarantee you... some employee is violating, however obscure, some state, local and heaven forbid, possibly federal law some place in our company every single day... The key is prioritizing and determining which laws we need to make sure that employees obey first – and build a culture of ethics to help us towards the rest”

- Statement to CEO and Audit Committee Chair by Chief Compliance & Ethics Officer of diverse, $10 billion corporation with more than 50,000 employees
46% of employees observe one or more specific types of misconduct

1 in 3 employees respect peers who success is based on unethical conduct

Younger & newer employees are most vulnerable
- 2x the pressure to commit misconduct but less than half as likely to report

Of those who witness misconduct, 44% don’t report it due to belief: (1) no corrective action will be taken; (2) information will not be confidential
- Systems awareness is NOT the same as systems credibility

What is Your Workforce’s Awareness?

48% feel there is a good understanding of compliance throughout company
42% feel there is only basic understanding and have little or no training

Source: Corpedia ECERA™ Database

Why Assess Risk - The problem with corporate culture
Why assess risk? Operational

- Cost-effective ROI application of limited compliance and ethics budgets
  - Including prioritization and budgeting of training
- Reduction of “events”
- Protect company reputation and brand
- Relationships with customers, suppliers and partners
- Link between ethical companies and superior performance
  - Productivity
  - Lower cost of risk
  - Lower turnover
  - Focused on competitiveness
Why assess risk? Reporting and Communications

Why Conduct Risk Assessment?

- The report audience
  - General Counsel
  - CEO and Executive Team
  - Board of Directors
  - DOJ
  - SEC
  - NY State

- Corporate Citizenship Report

- Internal communications strategies and resources beyond training
Who’s Driving the Program?

61% say driven by legal department

35% driven by Board (7%), Chairman/CEO (20%) or CFO (8%)

Source: Corpedia ECERA™ Database

It starts by defining risk…
What is “Enterprise Impact Risk?”

Does the risk assessment examine ethical and/or reputation risks?

Source: Corpedia
ECERA™ Database
Does risk assessment examine risks of law violations (criminal/non-criminal conduct)?

- Yes: 86%
- No: 14%

Source: Corpedia ECERA™ Database

Measurement of “Enterprise Impact Risk”

- Civil/Criminal Penalties
- Employee & Intellectual Property
- Customer/Market Reputation
- Systemic Business Model Impact
- Increased Future Cost of Compliance

Collectively, these have 10-40x proven long-term economic impact on the organization out of the SAME EVENT

but...

Headlines & highest profile
Manifestation of “Enterprise Impact Risk”

**Example - Marsh**

- Problem: Bid Rigging Incidents
  - Estimated Cost of Settlement: $1 billion
- Other Impacts:
  - Systemic change in business model
  - Loss of market share
- Market Capitalization Loss: $10+ billion

**Example - Merck**

- Problem: Vioxx Product Liability
  - Est Cost of Settlement: $5-10+ Billion
- Other Impacts:
  - Top sales & researchers left
  - Expensive employee retention plan
- Market Capitalization Loss: $40 billion

Last 200 corporate “scandals” resulted in permanent loss of $800 billion in market cap

Prioritized by likelihood & impact

Yet >60% do not quantify risk

Source: Corpedia ECERA™ Database
Underlying components to risk assessments

To be effective a risk assessment must:
- Be objective
- Be comprehensive on risks
- Engage division and functional leadership in the dialogue
- Engage "line" employees (at least statistically)
Processes that we typically observe

Audit Committee
Vetting Council (GC, CFO, etc...)
Primary Responsible Party
>50%
Industry Trade Review
Interviews & Workshops (>50%)
Books, Records, Evidence Review
Division Leadership
Division Leadership
Division Leadership
>10%
Line Employee
Line Employee
>70%
Independent Advisor

Regularly conduct organizational health surveys?

Source: Corpedia ECERA™ Database

73% say that they do – but are they integrated to risk assessment and actionable?
Some measured metrics

- Knowledge
- Controls, policies and procedures
- Corporate/organizational culture
- Awareness
- Effectiveness of tone from the top
- Measurement against peers
- Legislative trends and prosecutorial guideline
- Gap analysis – where things could break

Who Runs Risk Assessment?

- Entirely by in-house personnel (e.g. lawyers and finance)
- Primarily by in-house personnel with help from outside advisors
- It was a combined effort by in-house personnel and outside advisors
- Primarily by outside advisors with help from in-house personnel
- Almost entirely by outside advisors

Source: Corpedia
ECERA™ Database
Where can risk assessments help drive the compliance program?

Outcome from risk assessment may affect:

- Compliance department structure and staffing
- Compliance department budgets and priorities
- Board reporting
- Code of conduct
- Training curriculum
- Disclosures and reporting systems
- Enterprise compliance training curriculum
- Workforce communication strategies and resources
Is there Code of Conduct Training?

- Code of Conduct Training?
  - 32% have none
  - Source: Corpedia ECERA™ Database

- If Code Training Exists, What % of Workforce?
  - 21% train < 50% of workforce

Supporting Communication Strategies

- Dedicated resource center on corporate intranet
  - Case studies and resources
- “Good, Bad, and Ugly” newsletter; posters, table tents, speakers
- Get the leadership team to visibly talk and live it
  - nCompass PLI-Corpedia interviews
  - www.LeadersOnEthics.org

Goal: to keep the dialogue going...and support a culture of credibility surrounding the program and executive tone from the top
www.leadersonethics.org

David Brennan, CEO
Michael Capellas, CEO
Ray Gilmartin, CEO
Knight Kiplinger, Editor-in-Chief
Bob Stevens, CEO
Bill Swanson, CEO
And many more…

Should your organization’s leader be here?

LOE Interviews

Collected interviews address such topics as:
- Conflicts of interest
- Competitive intelligence
- Trade secrets
- Antitrust & collusion
- Retaliation for reporting misconduct
- Gifts & gratuities
- Sexual harassment
- Financial misreporting; &
- Many more…
Common problems to avoid

✘ DISCOVERY AND DOCUMENTATION
✘ "IVORY TOWER" INTIMIDATING FORMAT
✘ CLOSING COMMUNICATION LOOP
✘ REAR-VIEW MIRRORS DON’T SHOW HAZARDS AHEAD
✘ LIMITED ACCOUNTING FOR CONTROL/PROCESS IMPACT

Summary considerations for an “Effective Risk Assessment”

Objective
Repeatable, systematic methodology
Examines all risk areas
Takes into account both internal and external factors
Measures effectiveness
Engages Executive Leadership