European CEI

Compliance 101

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Why Develop an Ethics & Compliance Program?

- Promotes a culture of ethical behavior and commitment to compliance with the law

- Prevents and detects wrong-doing

- Communicates organizational expectations and commitment

- Provides "safe" mechanisms for reporting and seeking help

- Raises awareness

- Enables compliance with governing standards, laws and guidelines

- Makes good business sense/provides a competitive edge – benefits of having an effective ethics and compliance program

- Positive impact to corporate reputation/culture; public image
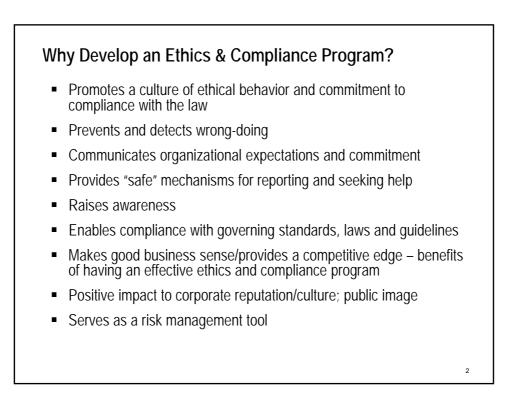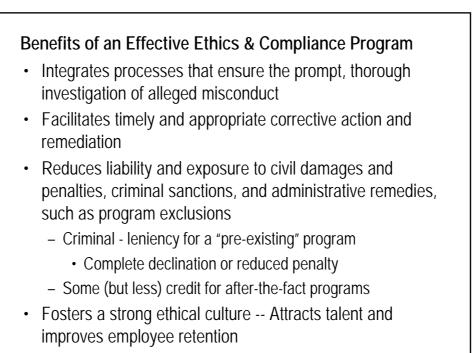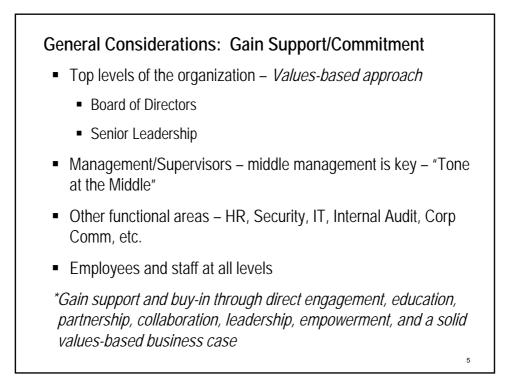
- Serves as a risk management tool

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Ethics & Compliance Programs: How Comprehensive?

- Employment/Labor Law
- Anti-Trust/Competition
- Anti-Corruption/Bribery – Fed prosecutors are looking outside the US
- Intellectual Property Protection/Confidential Information
- Information Technology
- Conflicts of Interest
- Laws which pertain specifically to the organization
- Federal Sentencing Guideline Standards
- Ethics and Compliance Programs – encourage the "right" culture
- Other Federal and/or State laws
- International considerations - GLOBAL
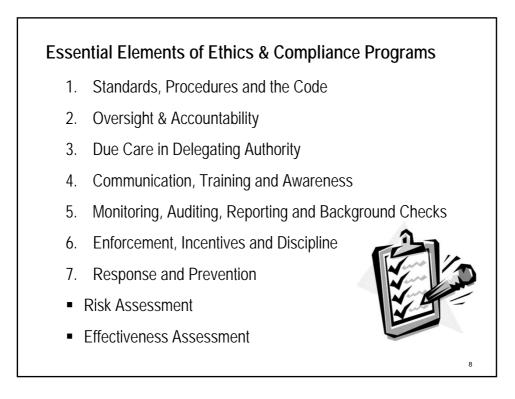- Everywhere you do business…

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Benefits of an Effective Ethics & Compliance Program

- Integrates processes that ensure the prompt, thorough investigation of alleged misconduct
- Facilitates timely and appropriate corrective action and remediation
- Reduces liability and exposure to civil damages and penalties, criminal sanctions, and administrative remedies, such as program exclusions
  - Criminal - leniency for a "pre-existing" program
    - Complete declination or reduced penalty
  - Some (but less) credit for after-the-fact programs
- Fosters a strong ethical culture -- Attracts talent and improves employee retention

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General Considerations: Gain Support/Commitment

- Top levels of the organization – *Values-based approach*
    - Board of Directors
    - Senior Leadership

- Management/Supervisors – middle management is key – "Tone at the Middle"

- Other functional areas – HR, Security, IT, Internal Audit, Corp Comm, etc.

- Employees and staff at all levels

*Gain support and buy-in through direct engagement, education, partnership, collaboration, leadership, empowerment, and a solid values-based business case

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General Considerations: Support Needs…

- Development/Beginning Stages
    - Program and Risk Assessment/Program Plan
    - Resources (people, budget, etc.)
    - Infrastructure needs, i.e., education/communications platform & mechanisms, marketing resources, reporting mechanism, printing services, etc.
    - Establish capabilities and protocols for issue management, tracking & trending, gathering program effectiveness metrics, etc.
    - Partner with other key functional areas; leverage existing resources

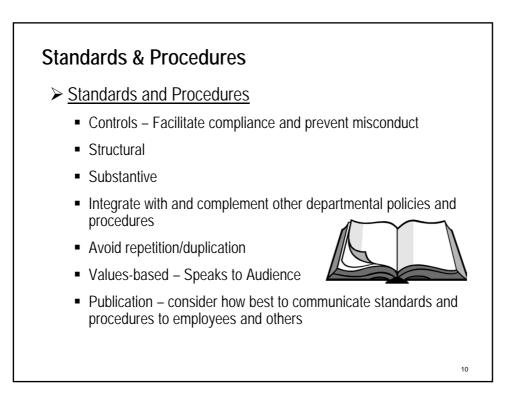- Ongoing operational needs and considerations

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General Considerations: Governance & Staffing

- Establish organizational governance & infrastructure
    - Reporting structure defined ("Tone at the Top")
    - Charters, roles, responsibilities, etc.
- Ethics & Compliance Officer Appointment
    - High-level individual w/overall responsibility
- Develop job functions/job descriptions for staff, i.e., Education/training, auditors, hotline and issue management, policy and procedure development, etc.
- Partner with Counsel (internal and external)

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Essential Elements of Ethics & Compliance Programs

1. Standards, Procedures and the Code
2. Oversight & Accountability
3. Due Care in Delegating Authority
4. Communication, Training and Awareness
5. Monitoring, Auditing, Reporting and Background Checks
6. Enforcement, Incentives and Discipline
7. Response and Prevention
- Risk Assessment
- Effectiveness Assessment

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Standards & Procedures

➢ <u>Code of Conduct</u>

- Keep it real – Values-based and avoid legalese

- Tailor to organization's culture, ethical attitude, business, and corporate identity

  - Get lots of input - focus groups, senior execs., etc.

- Guidance on seeking help and reporting concerns

- High-level concepts and key policies

- Scenarios and FAQs

- Endorsement by CEO

- Clearly stated expectations

- Primary language – watch translations

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Standards & Procedures

➢ <u>Standards and Procedures</u>

- Controls – Facilitate compliance and prevent misconduct

- Structural

- Substantive

- Integrate with and complement other departmental policies and procedures

- Avoid repetition/duplication

- Values-based – Speaks to Audience

- Publication – consider how best to communicate standards and procedures to employees and others

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Oversight and Accountability

- Governing Authority – Knowledgeable of program w/reasonable oversight (*Board of Directors)*

- High-level personnel – Ensures effective program is in place

- Ethics & Compliance Officer – Overall responsibility
  - Strong leader – Independent, empowered, effective

- Designated individual(s) responsible for day-to-day operations
  - Access to Board with periodic reporting responsibilities
  - Shall have adequate resources and authority

- Other: Compliance Committees, Regional liaisons, Program Staff, etc.

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Due Care in Delegation of Authority

- Don't give responsibility or authority to those you should have known are criminals

- Do hiring and promotion systems screen out those likely to break the law or who have a history of unethical behavior?
  - Use care when placing individuals in positions of substantial authority, i.e., hiring, promotions – *Substantial Authority Personnel*

- Could you have a Board Member, executive or other manager who had served time for armed robbery without knowing it (e.g., Smith and Wesson)?
  - CEO resigned, served time – "Nobody asked"

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Communications, Training and Awareness

- Communication and Training Effectiveness – *Continual review*

- Internal vs. External

- Mandatory vs. Voluntary – Audience & Risk Considerations

- General vs. Specific – Content Considerations

- Training Methods
  - Blended & Interactive approach is most effective

- Attestations

- Other Communications Media
  - Publish disciplinary cases and "good news" stories as learning tools

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Monitoring and Auditing

- Essential for effectiveness
  - Serves to prevent and detect criminal conduct and wrongdoing

  - Monitoring - Real time reviews

  - Audits - Independent/objective – use of subject-matter experts

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Monitoring and Auditing (cont)

- Monitoring & Auditing Planning

    - Understand/define the difference between auditing and monitoring

    - Leverage what is already available

    - Scalable to risks and resources

    - Range of tools, e.g., deep dives, self assessments, internal audits, external audits, exit interviews, employee engagement surveys, etc.

- Outputs used to create and support "effectiveness" metrics and improve program

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Reporting

- A Reporting System (hotline, helpline, etc.)

    - Essential program resource for reporting wrong-doing and/or seeking help and guidance

    - Consider differing country laws for operation

    - Anonymous & confidential to extent allowed by law

    - Need strong, publicized and enforced non-retaliation policy

    - Fear of retaliation and perceived inaction are key reasons for non-use

    - Continually market and publicize reporting mechanism

    - Internal vs. external systems?

- Address matters in a timely and consistent way

- Use reporting systems metrics to improve program

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Enforcement, Incentives and Discipline

- Failure to take reasonable steps to prevent or detect criminal conduct heightens organizational liability and negatively impacts effectiveness determinations

- Incentives

  - Incentives aligned

  - Performance reviews & compensation

- Consistency in enforcement

  - Support from Sr. Mgmt; Board

  - Understanding by all members of organization

  - Fairness and consistency is key

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Response and Prevention

- Timely response
- Triaging and handling investigations
  - Investigations should be professional – train investigators
  - Reports – to whom, how, when?
  - Decision-making on outcomes of concerns
- Action is comprehensive related to the potential/real concern
  - Is it really a problem?
  - How serious is it?
  - Are their enough facts to investigate?

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Response and Prevention (cont)

- Outside support & resources considered (outside counsel, etc.)
  - Attorney-client privilege?
- Preventative measures
  - Resolution of Issues – Root cause analysis/checklist
  - Education and Awareness
  - Policies and Procedures
- Remediation efforts are timely and adequately address the program gaps, identified risks, etc.
  - Prevents likelihood of reoccurrence
  - Majority of the time are related to lack of

  Knowledge or expectations aren't clear (policy)

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Risk Assessment

- Why conduct a risk assessment? Timing?
- Risk Identification considerations – Internal/External Inputs
  - Industry and organization specific risks
  - Legal and regulatory requirements
  - Current challenges, past findings, incidents, etc.
  - Management Judgment – What keeps them up at night
  - Program Benchmarking
- Risk Assessment & Prioritization Phase
  - Impact and Likelihood
- Risk Management Plans & Clear Ownership
- Test, Audit and Monitoring Activities

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Ongoing Improvement

Evaluating Effectiveness:

- Considerations & Approaches:
    - Program metrics (hotline calls, incidents, etc.)
    - Surveys
    - Focus Groups
    - Testing
    - Self Assessments
    - Exit Interviews
    - Periodic risk assessment, Internal Audit reports, etc.

Is program working as designed and implemented? Impact?

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Industry Practice and Benchmarking

- The findings of this year's survey paint a picture of a global business environment fraught with high and mounting risks and repercussions; increasing complexity in the types of risk, perpetrators, and means of attack; and adoption of risk mitigation policies and procedures to help build corporate resilience. The incidence of fraud continued to climb markedly.

- Over 82% of surveyed executives reported falling victim at least one instance of fraud in the past year, up from 75% in 2015, 70% in 2013 and 61% in 2012.

- An astounding 85% of surveyed executives said that their company experienced a cyber attack or information theft, loss, or attack in the last year.

- Nearly 8 out of 10 respondents (79%) cited one of the following categories as the key perpetrator:
    - Senior or middle management employees of our own company
    - Junior employees of our own company
    - Ex-employees
    - Freelance/temporary employees

SOURCE: Kroll Global Fraud & Risk Report: Building Resilience in a Volatile World, Annual Edition 2016/17.

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Global Compliance Executive Survey

- 35% anticipate the bribery and corruption risks to their company will increase
- 49% felt they did not have enough resources to support their organization's anti-corruption efforts
- There was a 20 percent increase from 2016 in the number of Honorees that now cover anti-bribery and corruption concerns during their ethics and compliance program updates with the board.
- Respondents believe that the top risks to their anti-bribery and corruption programs will come from third party violations (40 percent), a complex global regulatory environment (14 percent), and employees making improper payments (12 percent).
- Not only do a majority (57 percent) of survey respondents expect no improvement in their organization's risks in 2017, fully 35 percent expect increased risk; only 8 percent expect decreased risk this year.
- 70 percent of those who did not have an actively involved CFO felt they did not have enough resources to manage anti-bribery and corruption risk (as opposed to the overall rate of 49 percent).

2017 Anti-Bribery and Corruption Benchmarking Report.

Industry Practice and Benchmarking

- The bottom line: The cost of implementing an ethics and compliance program are a small fraction of the potential costs of damage to your reputation or bottom line due to an ethics or compliance violation.

- http://www.globalcompliance.com/Resources/Understanding-Ethics-and-Compliance/About-Ethics-Compliance.aspx#sthash.6hhFmSjn.dpuf

Enforcement Efforts Continue…

- Enforcement environment – Heightened scrutiny

- Enforcement activity – Recoveries are paying for the investigations

- Enforcement weapons – Forensic data mining, tracking/trending, etc.

- International – Global enforcement!

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"Characteristics" of an Effective Program

- Buy-in from the "top"
- Sufficient resources
- Program authority or "clout"
- Program independence
- Sufficient program "reach" and embedding in the company's operations
- Meaningful management knowledge of and involvement in the program
- Program's focus on corporate culture and ethics, not just compliance

www.kaplanwalker.com   26

Sources

- SCCE   www.corporatecompliance.org

- Murphy, *501 Ideas for Your Compliance and Ethics Program,* (SCCE; 2008)

- SCCE Complete Compliance & Ethics Manual

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QUESTIONS???

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