

CEP

MAGAZINE

A PUBLICATION OF THE SOCIETY OF
CORPORATE COMPLIANCE AND ETHICS

CARL HAHN

CHIEF COMPLIANCE OFFICER
NORTHROP GRUMMAN

ASSESSING THE WHOLE GLOBAL BUSINESS ENVIRONMENT (P14)



Going from shame to change (P20)

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The purpose of a healthy company's
culture: The Volkswagen example (P36)



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Some things can't be rushed

by Gerry Zack

"You can't rush relationships, you can't rush trust, you can't rush the culture."

Who said this? It is a quote from National Basketball Association (NBA) coach David Fizdale, and he said it as part of a discussion explaining why he had been fired from his previous coaching job. Often, our past failures provide us with the most important lessons in life. And sometimes compliance lessons come from unexpected sources.

Just like an NBA coach can rush the implementation of certain plays, processes, policies, and sometimes even broader elements of strategy, a compliance professional can fast-track certain aspects of a compliance program. Some policies and procedures can be implemented quickly, although we've seen instances in which a few too many people get involved and bog down the entire process. Other parts of our compliance responsibilities can also be expedited — risk assessments, auditing and monitoring, even investigations can sometimes be done quickly to meet deadlines, even though they may require a lot of care along the way.

But the things that are most important to the success of a compliance professional, indeed a compliance program, are those that cannot be rushed. Relationships,

in particular, are critical to our success. We have got to have strong relationships with other units in order for our compliance programs to be effective. And trusting relationships can't be established quickly. Not only that, we need to recognize that everyone is different, and it's going to take longer to develop this trust with some people than others.

It's similar, but even more complex, with culture. Although it can take very little to ruin a culture, it always takes time to build it. And we have to account for culture disruptors all the time, like mergers and acquisitions, new locations, reorganizations, and simply growth. Compliance plays an important role in building a strong culture. But it's often a very slow road, with no way of speeding up the process.

The purpose of this column is not simply to caution people that some things take time. It's more to anticipate these things and to factor them into your short- and long-term planning for your compliance activities in your organization.

Just like we develop and document plans for our auditing and monitoring, try developing a plan for building relationships and trust, as well as for the role you see the compliance function playing in building a strong culture. It's not easy, but it's worth your time. 



Gerry Zack
CCEP, CFE, CIA

*Please feel free to contact me
anytime to share your thoughts*

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“ I try and avoid assumptions about what employees understand—I’ve been mistaken more than once. ”

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Internal survey reflects Facebook's morale issues

A bi-annual employee survey seen by *The Wall Street Journal* reveals plummeting morale at Facebook, due to at least two years of missteps and turmoil. Since 2016, when Facebook was accused of allowing hateful messages and fake news to proliferate on its platform, and potentially influence major political events, several large crises have rocked the social media giant. According to *The Wall Street Journal*, "[a] year ago, 84 percent of Facebook employees said they were optimistic about the company's future. At the time, Facebook had just disclosed that Russian-backed actors had purchased ads and spread disinformation on Facebook using fake identities. That fell to about 67 percent in April, shortly after the company disclosed that an academic broke Facebook's rules and shared user records with the political analytics firm Cambridge Analytica. It now stands at 52 percent."

<https://on.wsj.com/2Tfalch>

California and the Environmental Protection Agency seek common ground over emissions

Emissions standards for cars and light trucks have been a bone of contention between California and the US federal government,

but the Environmental Protection Agency (EPA) recently signaled its support of stricter standards on pollution from commercial trucks, bringing the two more in line with each other. Earlier this year, after the EPA issued new standard recommendations for automobiles and light trucks that were far less strict than California's, the state sued the federal government. The EPA then unveiled a proposal to remove California's special status, which allows the state to enact its own emissions standards. The federal government's willingness to implement stricter standards on nitrogen oxide, however, may result in common ground with California, facilitating a move toward inclusive federal standards.

<https://on.wsj.com/2K6llVf>

US targets Chinese economic espionage

The U.S. Department of Justice announced a new initiative to combat Chinese economic espionage. On Nov. 1, the Department of Justice charged a Chinese state-owned company, a Taiwanese company, and three individuals with economic espionage. The initiative comes amid a growing chorus of voices from within the US government and industries calling for safeguards against cybertheft and espionage. The US and China are engaged in a trade war that involves billions in tariffs as well as multiple bans against Chinese companies for a variety of reasons — including sanctions violations and economic espionage. Cybersecurity is the newest front in the growing conflict.



<http://bit.ly/2zWwxiA>

<http://bit.ly/2PXLrDY>

UK cabinet backs draft Brexit deal

British Prime Minister Theresa May's cabinet backed a draft Brexit deal for leaving the European Union. The agreement now requires approval from the European Commission, although it also faces opposition at home, where several British ministers have resigned over the deal.

Some details of the draft have already been released, including the UK's commitment to the European Convention on Human Rights; to a data protection framework on par with the General Data Protection Regulation; and to zero tariffs, fees, or charges across all goods sectors. The agreement provides some certainty in a process that has been plagued with indecision and uncertainty. Compliance professionals have been either preparing for the worst or hoping for the best. Now, after the deal was agreed upon, there is a road map for what type of Brexit compliance professionals can expect. ^{CEP}

<https://bbc.in/2QSkXMo>

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- ◆ Becoming "Invited In": Creating Compliance "Addicts" Globally
- ◆ Compliance Officer Dilemmas: Making Tough Decisions in the International Business Arena
- ◆ Global Compliance Programs — Applying the Positive: How to Remove the Complexity, Mystery, and Negative Stigma Around Your Program
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A humbling and inspiring image

by Adam Turteltaub

Eons and another job ago, I learned that SCCE was planning on starting a certification program for compliance people through the Compliance Certification Board (CCB)[®]. I was skeptical. Why would compliance people want that? Who would bother?

I subsequently learned that most every other related profession had a certification. Internal auditors, HR professionals, fraud examiners, risk management, and many others all had certification letters after their name. Compliance and ethics professionals: nothing.

That was a disadvantage. I learned that in other fields, professionals had a way to demonstrate that they truly knew what they were talking about. They had their designation right on their business card.

As importantly, certification programs help ensure that individuals in a profession truly understand what the best practices are. Given that compliance was growing like a weed and much of the training was homegrown — or you just figured it

out as you went along — it would be helpful if there was a way to ensure that all those people claiming to be compliance and ethics officers truly knew what best practices are.

So there was definitely value in having a certification.

But would compliance people invest both time and money in certification? The answer has proven to be a definitive “yes.” More than 4,500 compliance and ethics professionals in 85 countries have made the choice to become certified. They span the globe from countries large and small, advanced and developing.

SCCE has helped that process by offering more and more academies outside the US. In 2018, there have been or will be academies in the United Arab Emirates, Netherlands, Singapore, Brazil, and Spain. In 2019, Hong Kong will be added to the list. In 2020, we plan on adding still more.

This growing academy list has helped build out the CCB certification numbers in these countries and the regions that surround them,



Adam Turteltaub

*(adam.turteltaub@corporatecompliance.org),
Vice President, Strategic Initiatives &
International Programs at
SCCE & HCCA.*

but what's extraordinary is that you can find people holding a Certified Compliance & Ethics Professional (CCEP)[®] or Certified Compliance & Ethics Professional-International (CCEP-I)[®] in places

far from our meetings. There is even a compliance professional with a CCEP-I in Mongolia.

One day, in the not too distant future, it's likely that virtually every country on the map will

be shaded green. When that day comes, it will be a great one for compliance and a humbling (but satisfying) one for me. ^{CEP}



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Ethikos newsletter will be published monthly in a user-friendly format, and will continue to feature articles by compliance professionals, case studies, and interviews with leaders who are innovating today's corporate ethical cultures.

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Questions? margaret.martyr@corporatecompliance.org



PEOPLE *on* *the* MOVE



WHERE'S YOUR CAREER TAKING YOU?

If you've received a promotion or industry award, accepted a new position, or added a new staff member to your compliance department, let us know! It's a great way to keep the compliance community up-to-date.

To submit your news, visit <http://bit.ly/2snNxdJ>
or email

margaret.martyr@corporatecompliance.org

- ◆ **Trent Tappe** has been promoted to SVP of general counsel and chief compliance officer for Warner Music Group in New York City, USA.
- ◆ San Francisco Equity Partners in San Francisco, USA, has hired **Mary Kayser** as their chief financial officer and chief compliance officer.
- ◆ **Marilyn Tarrant** will now act as chief compliance officer for Michigan State University located in East Lansing, Michigan, USA.
- ◆ In New York City, USA, **Asahi Pompey** has been promoted to chief compliance officer for investment banking at Goldman Sachs.
- ◆ The National Association for the Advancement of Colored People has hired **James Badue-El** as its new compliance officer in Minneapolis, Minnesota, USA.
- ◆ **Kenya Mann Faulkner** has been named the new chief ethics and compliance officer at Pennsylvania State University in State College, Pennsylvania, USA.
- ◆ Harmony Capital Services Ltd. in Mumbai, India, has appointed **Kamal Soni** as the company secretary and compliance officer.
- ◆ **Jeremie Kanter** has joined SBTech as its new chief compliance officer at the company's office in Douglas, Isle of Man.

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*Compliance Director
Iberdrola Distribución Eléctrica, S.A.U.
Bilbao, Spain*

Why did you decide to get certified?

I decided to get certified to test my knowledge and to have credentials in compliance and ethics issued by a prestigious entity.

How do you feel your certification has helped you?

I think that the most important part of certification is the knowledge acquired attending the SCCE Basic Compliance & Ethics Academy to prepare for the certification exam. The certification verifies what I've learned.

Would you recommend that your peers get certified?

Yes, absolutely.



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A professional portrait of Carl Hahn, a middle-aged man with dark hair, wearing glasses, a dark suit jacket, a light blue dress shirt, and a striped tie. He is smiling and looking towards the camera. The background is a blurred office setting with vertical lines.

ASSESSING THE WHOLE GLOBAL BUSINESS ENVIRONMENT

Meet

Carl Hahn

Chief Compliance Officer
Northrop Grumman
Falls Church, Virginia

an interview by Adam Turteltaub

Carl Hahn (carl.hahn@ngc.com) was interviewed in October 2018 by **Adam Turteltaub** (adam.turteltaub@corporatecompliance.org), Vice President, Strategic Initiatives & International Programs at SCCE & HCCA.

AT: First, how did you end up a member of the Northrop Grumman compliance team?

CH: In the summer of 2014, I was taking a break from running around the world doing internal investigations for my prior employer when I learned that Northrop Grumman needed a chief compliance officer. I was intrigued, one conversation led to another, and I found myself interviewing for the job. I determined that Northrop Grumman, its leadership, and its employees have a very strong commitment to ethics and integrity, so I thought the role was a good fit for me.

AT: Is there some particular aspect of your prior experience that prepared you for the chief compliance officer role? When thinking about that, what advice would you offer our members as they seek to develop their skills and careers?

CH: Adam, that's a great question. I'd emphasize the diversity of my background. I've had at least seven distinct jobs as a corporate lawyer (including an international assignment in Japan) that allowed me to engage with varied environments and cultures. One aspect of my experience that I have found particularly valuable is from negotiating and closing large, complex transactions with customers from many industries and geographies. I would encourage your members to seek opportunities, even short-term assignments, to sit with business teams and live through the reality of what they do on a daily basis. If you've, for example, helped close a contract under enormous time pressure and where the stakes

for the company are high, you'll have a different and important appreciation for why people act the way they do in such situations and what incentivizes their behavior. These are the kind of insights upon which you can help build a truly effective compliance program.

AT: Before we go further, it's probably good if you give an overview of Northrop Grumman. As I learned when I was fortunate enough to speak at your meeting in Amsterdam — still an amazing coincidence that it happened at the same time and in the same hotel as our Academy — it's quite a complex and global organization.

CH: Adam I'm smiling at the memory of our respective groups sharing the same floor of the hotel in Amsterdam. You had great attendance at your Academy, which is such a wonderful resource for our compliance community. And we greatly appreciated hearing your insights for our team. As you know, I was there to help train our global team of Business Conduct Officers (BCOs). I should explain that BCOs are employees with day jobs who volunteer their time to promote our values and support our compliance program. They are such an important part of our efforts, so I make it a priority to spend time with them.

As for Northrop Grumman, we are a leading global security company providing innovative systems, products, and solutions in autonomous systems, cyber, C4ISR [Command, Control, Communications, Computer, Intelligence, Surveillance, and Reconnaissance], space, strike, and logistics and modernization to customers worldwide. As a prime contractor, principal subcontractor,

partner, and preferred supplier, we participate in many high-priority defense and government programs globally. As you might expect, we conduct most of our business with the US government, principally the Department of Defense and intelligence community. We also conduct business with foreign, US state, and local governments, as well as commercial customers.

We do all this while remaining true to our long-standing and tested corporate values along with a powerful commitment to corporate social responsibility. I can sincerely say that Northrop Grumman has a very strong and robust culture of ethics and integrity, and I am privileged to be part of the team.

AT: How is the compliance team organized to support the business?

CH: I report to the general counsel of the company. I chair the Corporate Compliance Council, which consists of senior leaders from across the company, at which we address not only issues, such as trends in enforcement, regulation, and risk management, but also a broad range of operational topics such as developments in behavioral science or analytics. I'm also a member of the company's Enterprise Risk Management Council, which evaluates the significant risks facing our company and the strategies to mitigate and address those risks. Much of my job involves building effective and positive relationships across the company and working hard to spot areas where we need to connect the dots to drive further enhancements to the program.

AT: How you do engage with the board of directors? What do you find is most effective

It is important we do business with companies that share our values and commitment to compliance.

for maximizing the board's time and getting the support you need from the board?

CH: I provide periodic updates to the Audit Committee of the Board. Presentations to the committee should be very concise and focused on what the directors need to know so they have confidence that risk is being effectively managed and there is a strong culture promoted by a robust compliance program. One thing I also try to accomplish is identifying the risks of greatest significance, providing the appropriate context around those risks, and how the company is mitigating the risk.

AT: Northrop Grumman has a very long history in ethics and compliance. How has that helped the program evolve to meet business needs?

CH: Some of your readers may remember that the aerospace and defense industry created the Defense Industry Initiative (DII) in the 1980s. Northrop and Grumman (separate companies back then)

were founding members of DII, and we've been involved ever since. I spoke at the DII conference this past June, and many others on our team presented as well. To me, this legacy has fostered a bedrock culture built on fundamental values of ethics and integrity. I don't take that for granted, and it is a testament to our team that we continue to honor and respect what the company has stood for over the years.

AT: Now, when it comes to risk, few organizations have the degree of risks that a defense contractor has. Can you outline what some of the key risk areas are?

CH: Sure, we are a company operating in a highly regulated industry, which means we need to continuously comply with a host of complex government laws and other requirements. That's a daily task for us. In addition, I closely watch trends and developments in a number of areas. Working effectively with our supply chain is one example. It is important we do business with companies that share our values and commitment to compliance. Finally, I've spent years supporting international operations in various roles, and I'm very attentive to facilitating our efforts to build a global business operating model that effectively manages the risks you can encounter outside of the US in a disciplined fashion.

AT: How do you go about structuring your efforts to meet those risks?

CH: I place great emphasis on effectively teaming and collaborating with functions

and units across the company to (1) identify risk, (2) understand the nature and potential consequence of the risk, (3) facilitate coordinated action to address and mitigate the risk, and (4) monitor developments. This effort often involves forming small, agile teams that can effectively address particular issues in the needed time frame.

AT: How do you get people globally to recognize that even though they may be thousands of miles away, American laws apply to them? It would seem to be the case that they would realize that if they're working for a big US defense contractor, they have to do so, but I know from others in the field that's not always so.

CH: I try and avoid assumptions about what employees understand — I've been mistaken more than once. Moreover, for employees based outside the U.S., we feel an obligation to explain to them that, yes, certain US laws do apply to their conduct and our operations, but also—and this is critical—why that is the case. Likewise, the issue also goes the other way; that is, we need to fully understand the global business and legal environments that may impact our operations. I've learned over the years that you need to listen very closely to and engage frequently with your global teams to understand their world and environment so that you can collaborate on effective compliance.

AT: Metrics are going to be key to keep tabs on a program like yours. What metrics have you found are most valuable?

CH: Well-designed and implemented employee surveys

are very helpful to understand your culture and tone and to spot organizational hot spots. Specifically, I've found it helpful to work with behavioral scientists to understand effective questions. It is quite interesting how questions are read (e.g., Is a question intended to elicit responses based on personal experience, or on how others in the work unit are affected?) We look closely at the submissions we get through our hotline and other data sources, such as internal audit reports, to spot trends or areas that may need further enhancement. We are also considering how to leverage descriptive or predictive analytics to improve our ability to learn from our data and, ultimately, to proactively spot and mitigate risk.

AT: Obviously, compliance doesn't have access to all the data that you need. What do you need from other parts of the enterprise, and how do you go about getting it?

CH: Data resides across the company and in many different systems — enterprise resource planning (ERP), expense claiming, and supplier information, among just a few. Compliance doesn't typically control or necessarily have the expertise to effectively manage significant volumes of complex data. To me, it is increasingly important that companies work to assess and map data, identify the critical data elements needed to make good decisions (including effective risk management and compliance) and then establish strong governance over the management and sustainment of your data processes.

AT: One of the challenges with data is getting it into a form that is usable. What do you find works



best in terms of turning raw data into something that can help move the compliance program forward?

CH: I can answer that, from the standpoint of a large company, you really need to connect with data scientists. As the trend toward digital enterprises accelerates, strong data science capability is fundamental to completing the task of mapping data, assessing data, and preparing data to be in a form where it can be analyzed in many different ways. For smaller firms, this may not be as much of an issue if your volume of data is relatively manageable and is less complex to find and analyze.

AT: Let's move outside the company. You have a lot of vendors and suppliers, many of whom are smaller companies that may not have much of a compliance

program. That can be a challenge, given the risks of third parties.

CH: First, how do you assess your third parties? For important areas such as anti-corruption, we have a robust procedure to help ensure that appropriate risk-based due diligence is conducted, and periodically refreshed, on third parties providing goods or performing services on behalf of the company. We also have a variety of processes in our supply chain organization to assess our suppliers and to test their capability to comply with the regulatory and other requirements they will need to fulfill to perform work, often on our highly sensitive programs.

AT: How do you help improve their compliance efforts if they don't already have a strong program?

CH: The defense industry has, through organizations such as DII, developed template codes of conduct and other materials designed to help suppliers, particularly smaller companies, to develop compliance programs. Northrop Grumman has hosted supplier forums to help companies develop better compliance. We also train third parties on our expectations regarding ethical practices, which are fundamental to doing business with our company.

AT: Finally, how do you see the practice of ethics and compliance evolving over the coming years?

CH: I see a continuing trend away from programs defined by reactions to regulators and toward programs that are embedded in the operations of the company. The compliance function will increasingly facilitate this activity: how to effectively manage risk in a disciplined fashion that not only meshes with the values of the company, but also supports the overall strategic plan. The use of sophisticated IT tools and analytics will also become more important as a way to test and enhance program effectiveness. Through all this, the personal touch should not be forgotten:

compliance and ethics officers should often be standing up in front of leaders and employees talking about values, positive behaviors, and accountability. We are, I think, entering a fascinating time where we'll see significant transformation to our companies and jobs, and I'm excited to be a part of it.

AT: Thank you, Carl, for sharing your insights with us. 

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Unexplained wealth

by Sally March

The first unexplained wealth order (UWO) has been upheld in a UK court. This new tool for law enforcement came into effect last January. British authorities have long had the power to seize proceeds of crime, but a UWO shifts the burden of proof. Now the asset owner must prove that property was acquired with money that was obtained legitimately.

This first case looks like textbook corruption. The wife of Jahangir Hajiyev, a bank official from Azerbaijan, owns a golf course near Ascot, a private jet, and an £11.5 million home right around the corner from Harrods, where they spent £16 million over ten years. The properties are owned by companies registered in offshore tax havens that have come under pressure to be more transparent. Mrs. Hajiyev now has an opportunity to prove that her husband was, as she says, “very well-off” when they married.

Mr. Hajiyev was chairman of the International Bank of Azerbaijan and had been a state employee since 1993. The National Crime Agency’s case was helped significantly by the fact that Mr. Hajiyev was charged with fraud and jailed in 2016. He and his co-defendants were accused of embezzling around \$120 million. The

money-laundering operation may have taken as much as \$9 billion out of Azerbaijan.

As someone at Transparency International (TI) once said, corrupt officials don’t do it to buy another Lada. TI-UK claims to have identified £4.4 billion of “unexplained” assets across the UK and has pressured the government to do more to confiscate the proceeds of crime. Other cases may be more difficult, however, if the politically exposed person hasn’t been convicted of a crime. The long-term effectiveness of UWOs has to be proven, but anti-corruption campaigners hope the welcome mat is being taken up in London.

Meanwhile, the British visa of Roman Abramovich, the Russian billionaire owner of Chelsea Football Club, was not renewed. He has also given up trying to obtain residency in Switzerland after the Swiss authorities indicated that he would be rejected. His lawyers say any suggestion of money laundering or links to organized crime are unfounded. Abramovich, who has split his time between Moscow and London, has been granted Israeli citizenship. Fortunately for Abramovich, Israeli citizens can travel to the UK without a visa. 



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GOING FROM SHAME TO CHANGE

by Richard Bistrong



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Dorie Clark, in *Reinventing You* (a book that I read in prison that moved me from despondency to hope about my future), shares how “reinvention, and overcoming past perceptions, can be a daunting process.” She addresses how “dramatic and painful events can lead to true growth, and a meaningful change in how you, and others, see yourself.”¹ I thought of Clark’s counsel when I read a recent article in *The New York Times*, “Volkswagen’s Effort to Stop Scandals Needs More Work, Report Says,” where Hiltrud D. Werner, a member of the Volkswagen AG Board of Management for Integrity and Legal Affairs, stated during a press event how “it’s not easy going from shock to shame to change.”²

The journey that both Clark and Werner describe can affect individuals as well as corporations. But looking back on our enforcement feeds and reporting of corporate and/or personal

misconduct, can those moments of ethical collapse be embraced by compliance and business leaders as an opportunity to spark what might be difficult and awkward conversations about what happened? In other words, can we collectively use such moments as learning and leaning-in opportunities, not just for a region or limited group, but for an entire enterprise?

I am often asked, “Richard, why not put your experience in the rearview mirror? Why do you keep reliving it?” And I’d like to share the “why,” as to widen the discussion about my own journey from “shame to change,” and what it might mean for corporate and compliance leaders whose organizations have been through an ethics and compliance failure, or who might want to use other real-world examples to strengthen their own integrity initiatives.

The start of my journey

The decision to share my story started in early 2014, when I was released from 14 months in prison for violating the Foreign Corrupt Practices Act (FCPA) and other trade laws. I was counseled during the seven years prior by the Justice Department (DOJ) not to read anything about the FCPA or compliance, so as not to prejudice my testimony as a cooperating witness. Upon my release, it was like emerging from a news blackout. It was an incredible and unforgettable experience to deep dive into what was clearly an experienced and resourced field. It was intimidating as well, and I started to ponder, "What possible value could I bring to the discourse?" I remember writing to one compliance provider who blogged about my case and asking him if he wanted to chat about what happened. I wanted to share my first-hand perspective with him, and he responded, "Thanks, but no thanks." I still remember that comment so clearly, and while I certainly appreciated and respected his decision, I thought, "Well, if that's the reception, better to just move on." As Clark's book warned me in prison, be prepared for the "daunting."

And if you did an online search for "Richard Bistrong" circa 2014, you would have seen a very robust stream of news about a failed government sting where I was the cooperator, with stories of drug addiction, inappropriate text messages with my FBI handlers, and a rehashing of my criminal conduct in legal/compliance blogs as well as traditional print media, including *The New York Times*, *The Wall Street Journal*, and *The Washington Post*. It

wasn't a pretty story, even if it was a self-inflicted one.

And that's when I realized that by embracing that past instead of running from it, including those personal and professional crucibles, that by addressing the "good, bad, and ugly," I could deep dive into what happened, with the hopes of sparking conversations about real-world risk and real-world lessons. By being transparent and thorough, as opposed to minimizing a 20-year journey from a high-flying international sales VP to federal inmate, a world of possibilities could open up. I thought about how elements of my story might provide value to commercial and compliance teams that face similar risks — not based on a hypothetical story board, intranet message, or wall poster, but on what actually happens.

But the path to get there was not an easy one

Without realizing it in 2014, the foundation to consult, write, and speak about my experience reflected back to a decision in 2007 to cooperate with law enforcement authorities, when I was informed that I was the target of a criminal investigation in both the US and UK for violating foreign bribery and trade laws, respectively. And although there's a robust debate about people pleading out for the wrong reasons — such as to avoid what could be an embarrassing trial or to save protracted legal expenses — for me it was quite simple, and exactly why the plea process exists: I was guilty. And from the moment my attorney received the "target" call from the DOJ, I was determined to tell the prosecutors and investigators everything, including crimes they

knew about, and a long list of ones they didn't know about. In other words, that admission of guilt, of coming clean, without my knowing it at the time, would provide me with fortitude later on when I would share my voice with the compliance world. It would teach me about the true meaning of thoroughness, humility, and transparency. As the FBI shared with me at those opening plea meetings, you don't get credit for cooperating halfway. Either you do it, or you don't.

That admission of guilt...would provide me with fortitude later on when I would share my voice with the compliance world.

But why not put a little spin on it?

As Roy Snell once shared on a podcast, "Cheating is always a choice." That's one of the first subjects I address in my corporate work. Although I felt commercial and financial pressures, giving in quickly to rationalizations and temptations, those struggles were ones that I kept to myself. It wasn't my former employer that led me down a path of misconduct, or even the high-risk environments in which I operated. There were always choices, and a world of

alternatives existed, other than going down a road that was a catastrophe of my own making, especially for my family and my health.

I never thought of myself as a fall guy or having been thrown under the bus, which allows me the freedom to share my story, to be vulnerable and transparent, and then to ask colleagues, wherever they might work, for one small favor: "As I share my story, challenge yourselves as to what would guide you under similar circumstances. Ask yourself how this could happen at your organization, on your team, and, yes, how this could happen to you." I can then take my journey, and the decisions that occurred along the way, and lay them out for others to see, without being defensive or engaging in ethical spinning or distortion.

When that happens, I have experienced some of the most introspective and engaging — even if sometimes awkward — conversations among compliance and commercial leaders as to how failure can present learning moments to address challenges that are still a part of our international business world. More often than not, as I walk attendees through the "what actually happens," it prompts discussions and exchanges among compliance, commercial, and support personnel around how similar challenges exist in their organizations. And those conversations, at some level, all address the goal of making sure that people in the workforce understand that they never have to go it alone when facing an ethical dilemma. Some examples of those conversations include:

- ◆ When there's inevitable tension between the pressure to comply



and the pressure to perform, does that get addressed promptly by leadership and mid-level management, through dialog and action?

- ◆ Are compliance leaders present during the planning process to ensure that objectives and targets — and their side effects — are aligned with compliance, ethics, and integrity?
- ◆ Are compliance leaders building consistent and clear relationships with the workforce, focusing on unresolved gaps between stated and operational values, encouraging everyone to embrace and speak up about uncertainty?
- ◆ Does the workforce appreciate that compliance, ethics, and integrity affect society, good governance, and human rights?

That's a discussion around the "why" of compliance.

- ◆ Are integrity and compliance initiatives anchored and intertwined with the real-world work and risks that employees face? Are ethics, integrity, and compliance viewed as a partner to the needs of business growth and success at the front lines via the corporate narrative, not just the compliance one?

But be careful before you start

Roy Snell wrote an article about my work after he heard me speak a few years ago in Minneapolis. The post was titled "We Are All Victims... Except Richard Bistrong," and as Roy well shared, "Victimization is a generally accepted excuse for many of our problems, and that is wrong. We need to understand that victimization is interfering with our ability to be a principled

base society.”³ And that’s the cathartic part of starting a presentation or workshop (I like to think of them as “growthshops”) with the preamble that while I certainly was subjected to all sorts of pressure points and biases, justifications and rationalizations, the outcomes — where I took ethics and compliance into my own hands — well, that’s on me.

When organizations take that same level of responsibility — to embrace what happened, how it could have been prevented, and how might it have been better detected — then difficult dilemmas become discussable, and those moments can become true pivot points and teachable moments for organizations. It’s back to “shame to change.” And some of those conversations start with compliance leaders sharing with commercial teams that they appreciate how:

- ◆ Compliance and ethics might look complex and gray at the front lines, especially in emerging markets where local practices might conflict with the rules.
- ◆ In the pursuit of top-line growth and achieving objectives,

values can get challenged, and the pressures to succeed can sometimes feel in tension with the pressures to comply.

- ◆ It’s critical to identify and address the often-subtle influences and financial pressure points on decision-making that can lead personnel astray and obstruct turning principles into practice.

And when multinationals drill deep into those complex issues (among others), showing vulnerability, humility, and humanity, growth and learning abound. We know it’s not always easy or intuitive to look inward to truly grasp what happened where there was an ethical failure, and even to ask, “Why did this person think what he/she did was permissible,” with all of the embarrassment and discomfort that it might bring upon individuals and the corporation as a whole. But when we do so, then perhaps those

who face similar challenges — and those who are tasked with keeping them successful and safe — might see what went wrong and how it can be avoided, mitigated, and addressed in the future. In other words, if we want to help people understand and address the behavioral, social, and commercial risks that they face in their work, first we have to have a very deep understanding of what they are, and it’s not a one-size-fits-all problem or solution.

Dorie Clark was kind enough, to my great surprise, to mention my work in the paperback version of *Reinventing You*, which was published in 2017. Clark shared, “If Richard can reinvent himself, so can you,” but as she states thereafter, “Reinvention can be terrifying or exhilarating.” From my experience, the more you are willing to be terrified by what you might find from the past, the more possibilities there are about being exhilarated by the future! 

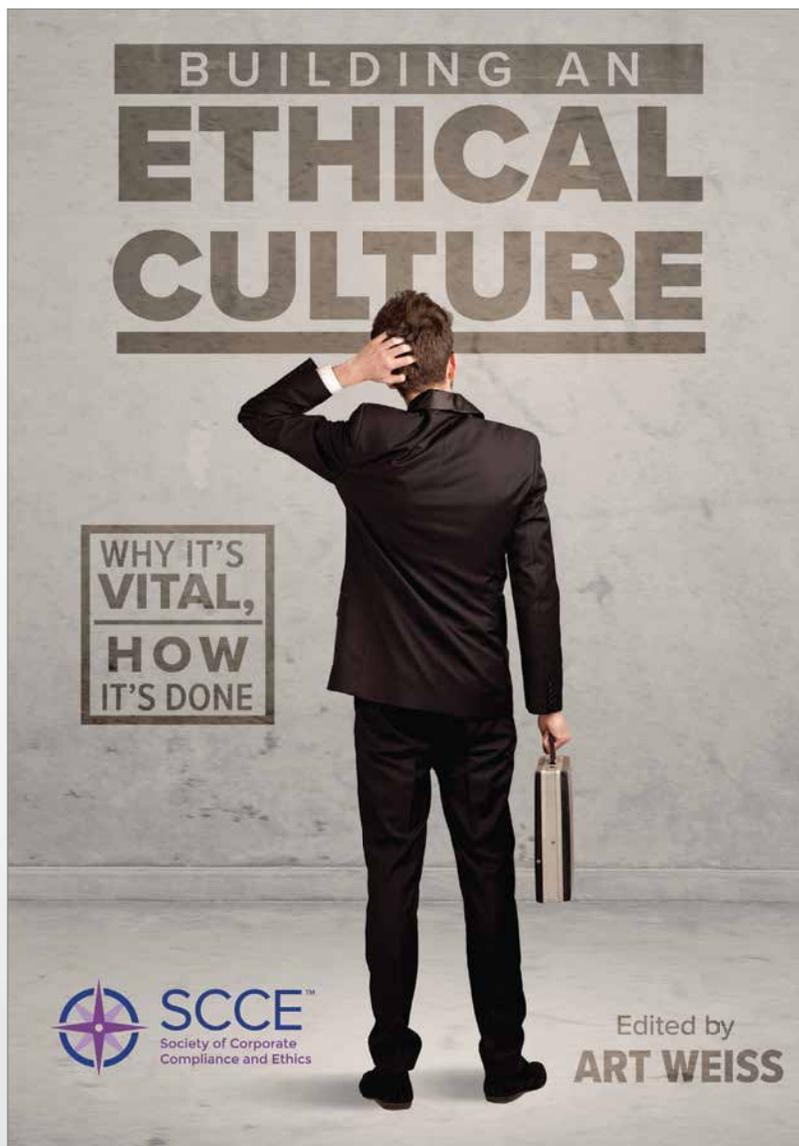
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1. Dorie Clark, *Reinventing You: Define Your Brand, Imagine Your Future*, Gildan Media LLC, April 2, 2013, <https://amzn.to/2QEvk6J>
2. Jack Ewing, “Volkswagen’s Effort to Stop Scandals Needs More Work, Report Says,” *The New York Times*, August 27, 2018, <https://nyti.ms/2RSkMku>
3. Roy Snell, “We Are All Victims... Except Richard Bistrong,” *The Compliance & Ethics Blog*, May 3, 2016, <http://bit.ly/1OdgjjU>

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- ◆ Lessons learned by individuals may also apply to organizations.
 - ◆ Compliance leaders can use real-world examples of ethical conflict to drive home the importance of facing challenges as a team.
 - ◆ Having awkward and difficult discussions about real-world risk can help employees see that they are not alone when facing ethical dilemmas.
 - ◆ It’s important to discuss ethical dilemmas and the possible consequences of decision making “in a safe place,” so as to reduce the element of surprise.
 - ◆ Organizations need to look at the financial pressures of targets and incentives that may lead employees to go astray.

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The journey to key performance indicators for your program

by Erica Salmon Byrne

In October, I had the opportunity to present at SCCE's Compliance & Ethics Institute on key performance indicators (KPIs) for the ethics and compliance program. If the crowd in the room and the questions I received are any indication, this is a topic of tremendous interest, so I wanted to dedicate this first column of 2019 to summarizing my key points for those who are getting pressure from their board to report on KPIs.

Traditionally used in the finance or sales space, KPIs are measures of business performance against quantifiable goals. In the ethics and compliance space, they can be used to help measure the progress of your program, and give insights into the relative effectiveness of your efforts (as opposed to relying on the mantra, "Nothing bad happened today so my program must be working"). KPIs are not, however, activity metrics. Activity metrics can help inform KPIs, but metrics are objective, quantifiable measures that are used to track the status of specific business processes (e.g., training completion rates).

In the context of an ethics and compliance program, your KPIs should be built on these four cornerstones:

1. A defined program element
2. Its goal or objective
3. The components needed to reach the goal
4. Defining success

For illustrative purposes, let's use written standards. The defined program element from the Federal Sentencing Guidelines for Organizations is "reasonable steps to communicate periodically and in a practical manner its standards and procedures." The goal is to make sure that the company has provided sufficient guidance to employees on how to conduct business on behalf of the organization in accordance with the law and company values. The components needed to reach that goal could include an accessible code of conduct and relevant policies — both linguistically and literally. Success could look like click metrics on policies that are trending up across all jurisdictions and relevant languages, a Flesch-Kincaid score on readability that is appropriate for the employee population, a solid score on a culture survey on employee perceptions of company ethics and compliance resources, and perhaps audit results showing that managers around the world know how to access and use the resources the company has provided.

Lastly, KPIs need to be highly customized to your organization and the maturity of the program you currently have in place. Be realistic, and know that the KPIs you set today are just the beginning of a journey. 



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PRO BASKETBALL TO ADOPT COMPLIANCE PROGRAMS: A CASE STUDY

by David D. Dodge



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Whether it was by design or happenstance, the Dallas Mavericks and the National Basketball Association (NBA) responded quickly earlier this year to an explosive story about the corrosive culture in the Mavericks' front office. The results are remarkable. Not only did the Mavs promptly engage an independent law firm to investigate all allegations of wrongdoing, but the NBA seized the opportunity to put its stamp of approval on the recommendations in the investigators' report. The NBA soon followed up by directing all of its league members to develop programs that have many of the essential elements of a model compliance and ethics program. Here's the story.

What happened

On February 20, 2018, *Sports Illustrated (SI)* published an article, "Exclusive: Inside the Corrosive

Workplace Culture of the Dallas Mavericks." The article chronicled multiple allegations of sexual harassment and other workplace misconduct by current and former employees on the business side of the Mavericks.

In the article, allegations were made against the Mavs' former president and CEO, its then senior VP of Human Resources (who was subsequently suspended), its then beat writer (who was immediately terminated), its former VP of Marketing, and its former senior ticket sales employee.¹

The Mavs' response

Within days of the article's publication, the Mavericks retained an outside law firm to conduct an independent investigation into these allegations and any other allegations of serious workplace misconduct the firm might uncover. Ultimately, the

investigation included a review of misconduct spanning the past 20 years.

In conducting the investigation, the law firm reported it had received the full cooperation of the Mavericks and its owner, Mark Cuban. Throughout the investigation, the law firm was in regular communication with the NBA and its outside counsel, which had been retained to lead the NBA's oversight function. Near the end of the investigation, investigators met with NBA Commissioner Adam Silver to review their findings.

The law firm's report

Following its seven-month investigation, the law firm released its report of the independent investigation on September 19, 2018. The 43-page report contained 13 key recommendations as referenced below:

1. Increase the number of women throughout the organization, including in leadership and supervisory positions.
2. Improve formal harassment reporting processes and create new paths for victims to report misconduct. (Note: the NBA, shortly after the SI story broke, announced that it had established a league-wide "Respect in the Workplace" hotline.)
3. Evaluate, and hold accountable, all executives, managers, and supervisors on their efforts to eliminate harassment and improve diversity of all kinds throughout the organization.
4. Conduct anonymous workplace culture and sexual harassment climate surveys on a regular basis to understand the culture of the organization and whether problems exist.
5. Establish clear hierarchies and lines of decision-making authority within the organization.
6. Clarify what role team owner Mark Cuban will play in the business organization. If Cuban intends to hold a management role, he and the CEO should explicitly define what his role will be, along with rules for when and how Cuban engages on issues.
7. Strengthen and expand Human Resources, and implement clear protocols and processes for evaluating and adjudicating workplace misconduct issues. This should include providing clear communication to employees on the anti-harassment policy and how to report harassment.
8. Provide "prompt and proportionate" and "consistent" discipline across the organization when harassment or misconduct has been substantiated.
9. Provide regular training for all employees on sexual harassment (including bystander intervention training), and special training directed at managers and supervisors. Leaders across the company should participate in the trainings and take an active leadership role in providing trust and safety in the workplace.
10. Adopt clear, transparent, office-wide processes for hiring, onboarding, promotions, lateral transfers, performance evaluations, salary increases, and discipline within the organization. This should include centralizing key

employment functions within the Human Resources department.

11. Collect and use data to add value to the company and to identify weaknesses.
12. Require that all leaders, managers, and supervisors engage in efforts to improve workplace culture and to ensure a diverse, inclusive workplace.
13. Employ a full-time, in-house general counsel.

The law firm's investigation substantiated numerous instances of sexual harassment and other improper workplace conduct within the Mavs' organization...

Summary and conclusions

The law firm's investigation substantiated numerous instances of sexual harassment and other improper workplace conduct within the Mavs' organization over a period spanning nearly 20 years. Since the investigation began, the Mavericks have implemented several organizational, personnel, and structural changes that overlap the investigators' recommendations.

Although the investigators did not specifically recommend

that the Mavs establish a formal compliance/ethics/integrity program, their recommendations and actions already taken by Mavs' management reflect in many respects the essential elements of a compliance program, notably:

1. The employment of a full-time, experienced, professional chief ethics and compliance officer.
2. The creation of a new code of conduct.
3. Formalization and expansion of their employee training program.
4. Establishment of an "Ethics Line" (hotline) staffed by a third-party company that allows employees to report their concerns anonymously.
5. The creation of policies and procedures for investigating, evaluating, and adjudicating workplace misconduct issues.
6. Formalization of their plans to conduct anonymous workplace culture and sexual harassment climate surveys.
7. Implementation of clear protocols and processes for evaluating misconduct issues.

Following the conclusion of the investigation and the release of the law firm's report, Commissioner Silver sent a memo to the league's 30 teams, asking all of them to adopt the 13 recommendations put forth by the investigators.



The memo also reminded teams of the steps the league took in February, in the wake of the *SI* story, detailing allegations of sexual harassment and misogyny in the Mavs' organization. These included the league-wide confidential hotline, an updated "Respect in the Workplace" policy, and mandatory small-group meetings with professional experts on issues related to sexual harassment and proper workplace conduct. It also "strongly encouraged teams to organize discussions to go over the investigation's findings to create better dialogue on the issue." Silver went on to say that his expectation was that all NBA teams would adopt those policies. "I had a strong desire to move very quickly and

take advantage of an otherwise ugly moment to laser-like focus on teams on these issues," he said. "It is my expectation every one of our teams will follow these guidelines. My sense is, having sent that memo out, to the extent that they are not exactly compliant in substance, they will be."

As the sports industry in the US has grown and prospered over the past few decades, what's remarkable is that the professional leagues have not yet established effective compliance programs designed to protect their employees, their assets, and their reputations. What's also remarkable is that the NBA responded as quickly as it did to make it clear to its teams that now is the time for change. 

Endnotes

1. Jon Wertheim and Jessica Luther, "Exclusive: Inside the Corrosive Workplace Culture of the Dallas Mavericks," *Sports Illustrated*, February 20, 2018, <https://on.si.com/2z2IzHx>.

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- ◆ The Dallas Mavericks (Mavs) responded quickly to the *Sports Illustrated* story by engaging an independent law firm to conduct an investigation.
 - ◆ The Mavs and the NBA were in close communication during the investigation.
 - ◆ The law firm's report included 13 key recommendations addressing allegations of wrongdoing within the Mavs' front office.
 - ◆ The Mavs hired its first chief ethics and compliance officer.
 - ◆ The NBA commissioner established a hotline for member teams and directed them to adopt the policies included in the law firm's report.

Ethics and data privacy

by Robert Bond

Although there has been much attention on data protection as a result of the European Union General Data Protection Regulation as well as the flurry of similar legislation in other parts of the world, including California, Brazil, Bahrain, Kenya, and South Africa, the focus for the most part has been on compliance with law and regulation.

Ethics has been a central issue for many sectors for a while, but the increasing use of technology raises concerns about not only compliance with law and professional standards, but also ethics and personal data.

The 40th International Conference of Data Protection and Privacy Commissioners has released a Declaration on Ethics and Data Protection in Artificial Intelligence. In it, the conference endorsed several guiding principles as “core values” to protect human rights as the development of artificial intelligence continues apace.

Recently the well-known analyst Gartner named digital ethics and privacy as one of their top 10 strategic technology trends for 2019.

As businesses become used to concepts such as privacy by design and make effective use of privacy impact assessments, so the notion that “just because we can, doesn’t always mean we should” is becoming a norm.

Recent well-publicized data breaches and fines are having an

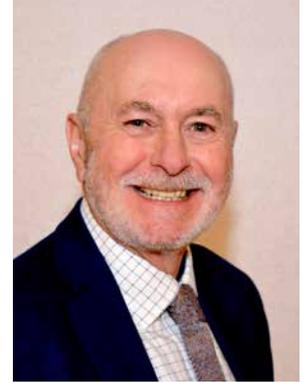
impact on organizations in regard to damage to their brand and their position of trust in the eyes of both shareholders and consumers.

The European Data Protection Supervisor (EDPS) recently published a summary of outcomes from its public consultation on digital ethics, and the topic was also discussed at length at the 2018 International Conference of Data Protection and Privacy Commissioners.

The EDPS publication indicated that more than 80% of respondents to their survey affirmed that ethics relating to new technologies is, or will soon be, on the agenda of their organization, many of them considering it “important,” “extremely relevant,” or even “mandatory” and “a priority.”

Many of the respondents to the survey acknowledged that ethics is more than a tick-the-box exercise and goes beyond merely complying with the law and that “failing in the transparent and fair processing of data can have disruptive effects on the business.”

Even if Scott McNealy was right in 1999 (when he reportedly said, “You have zero privacy anyway — Get over it.”), individuals deserve respect for their privacy. This respect does not always have to be imposed by law, but should be a matter of integrity and ethics. 



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CFIUS AND FIRRMMA: PROTECTING TECHNOLOGY AND INTELLECTUAL PROPERTY

by Michael Rose and Steve Siemborski



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This is the first article in a three-part series on foreign investment regulations.

Heightened US sensitivity to the potential national security ramifications of sales, mergers, or other transactions with foreign parties is a significant potential complication for cross-border deals. Both US companies and foreign entities that are contemplating a transaction must follow a rigorous process to counter any potential threats.

The Committee on Foreign Investment in the US (CFIUS) was formed to evaluate transactions where the acquiring entity is foreign. CFIUS was formed in 1975 to address a fear that technology or funds from an acquired US business might be transferred to a sanctioned country as a result of being acquired by a foreign entity.

CFIUS is focused on deals with US companies that:

- ◆ **Produce, design, test, manufacture, fabricate, or develop critical technologies.** Critical technologies are those subject to new export control provisions designed to protect emerging and foundational technologies.
- ◆ **Own, operate, manufacture, supply, or service critical infrastructure.** Critical infrastructure companies own, operate, manufacture, supply, or provide services in industries like telecommunications, utilities, transportation, financial services, healthcare, and government services, among others.
- ◆ **Sensitive data companies.** These companies maintain or collect sensitive data on US citizens that may be exploited in a manner that could threaten national security.

Updates to CFIUS were made under the Foreign Investment Risk Review Modernization Act of 2018¹ (FIRRMA) that went into effect in August 2018. FIRRMA expands CFIUS oversight to include non-passive, minority position investments in critical technology or infrastructure; joint ventures involving technology transfers to a foreign entity; and real estate investments near military or other national security facilities. FIRRMA also includes a provision about acquisition of early stage technologies by unspecified “countries of special concern” that pose a significant national security threat. FIRRMA would nearly double the list of national security factors for CFIUS to consider in its risk reviews and lengthen the review period. As a

result, companies considering deals with foreign entities could face and should prepare for a significant CFIUS compliance process.

Safeguarding technology and intellectual property

A key CFIUS focus is technology and its underlying intellectual property, which are assets with both monetary and strategic value. America is an incubator for new technology. Some of our most successful companies — like Apple, Google, Microsoft, Facebook, and Amazon, to name a few — have proprietary technology that started as an idea in their creators’ heads. New, potentially lucrative start-ups regularly emerge, and the Holy Grail for a young technology company is to attract private equity investment, which comes in stages as a company develops. Early stage investment is critical for future success and growth. At this point, companies are particularly vulnerable to cash infusions and/or acquisition by foreign entities because of their desire for growth funding.

Foundational technologies are especially attractive to foreign exploitation and are a focus for CFIUS scrutiny. These can be stand-alone products or can serve as a building block that enables progress and applications in multiple areas, including military applications. Some examples that are getting a lot of attention include self-driving cars and trucks, machine learning, artificial intelligence, IT processing and storage, mobile computing and communications, social computing and networking, synthetic biology, wearable technology, robotics, cloud computing, big data, and neuroscience.

The CFIUS compliance process

In a covered transaction, the compliance process generally ranges from 30–90 days and includes:

- ◆ An initial 45-day review following CFIUS’ receipt of the notice, with an optional 15-day extension.
- ◆ An investigation period of up to 45 days for transactions requiring additional scrutiny.
- ◆ A 15-day period for transactions referred to the president for review.

At the end of that period, a National Security Agreement (NSA) will be entered into between the acquirer and CFIUS. The NSA will set out the terms on which the covered transaction will be allowed to take place. The NSA can be very broad and cover a wide range of conditions, which depend on the security risk of the transaction. Examples of some provisions that have been included in NSAs are:

- ◆ Appointment of a third-party monitor.

Foundational technologies are especially attractive to foreign exploitation and are a focus for CFIUS scrutiny.

- ◆ Communications infrastructure must be located largely or exclusively in the US.
- ◆ Transaction data related to domestic communications is stored largely or exclusively in the US.
- ◆ US customers' records and data are stored largely or exclusively in the US.
- ◆ Outsourcing to non-US entities is restricted or prohibited (unless part of an agreement with the Department of Homeland Security).
- ◆ Guarantee that any third-party contractor performing a function covered by the NSA will comply with its terms.
- ◆ US government inspections of US-based facilities.
- ◆ US government interviews of US-based personnel on very short notice.

FIRRMA expanded CFIUS' jurisdiction, plus it included a provision addressing concerns about acquisition of early stage technologies by unspecified countries of special concern that pose a significant national security threat. It nearly doubles the list of national security factors for CFIUS to consider in its risk reviews.

Navigating the CFIUS compliance process

Any foreign company acquiring or investing in a US company with national security concerns is required to get CFIUS approval. For companies that are unsure about whether CFIUS compliance applies to them, here are four important things to consider:

1. Does the target company work with export-controlled technologies?
2. Does its activity include testing, design, production, manufacturing, fabrication, or development of critical technologies?
3. Does it own, operate, manufacture, or supply any critical infrastructure?
4. Does it maintain, collect, or otherwise access sensitive information about US citizens?

Foreign entities contemplating or executing a covered transaction are required to first proactively file a notice with CFIUS. These transactions include mergers, acquisitions, and takeovers by or with any foreign entity that could result in foreign control of a US business. CFIUS has the authority to compel a filing if it determines that a

transaction poses a potential risk to national security, so it makes sense to file the notice as soon as possible. The acquirer must agree to an NSA that outlines the restrictions and controls that CFIUS will impose as a condition of consenting to the transaction, and CFIUS must approve the NSA.

For those companies that are already in the process, there are some important things to consider. It goes without saying that responses to any ongoing CFIUS requests must be timely and complete. During the process, CFIUS can make changes that add to or end a deal completely. These include adding deal conditions or adding a mitigation agreement to address security risks. Efficiently working with CFIUS may help avoid or influence the conclusions presented for presidential review, if the process gets that far. The current administration has been more likely to reject deals, so thorough preparation and compliance is crucial.

Readiness measures will help avoid CFIUS findings that an application is incomplete. Typical deficiencies include:

- ◆ **Unclear business lines description.** The notice must provide a clear and detailed

Figure 1: Filing steps

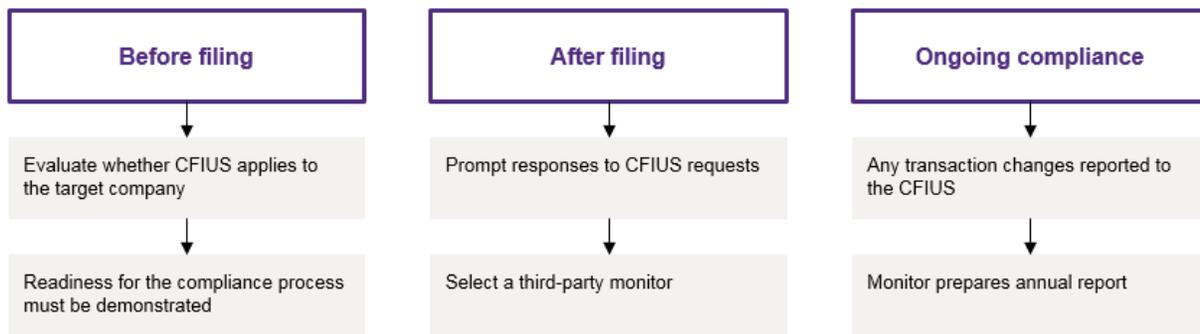
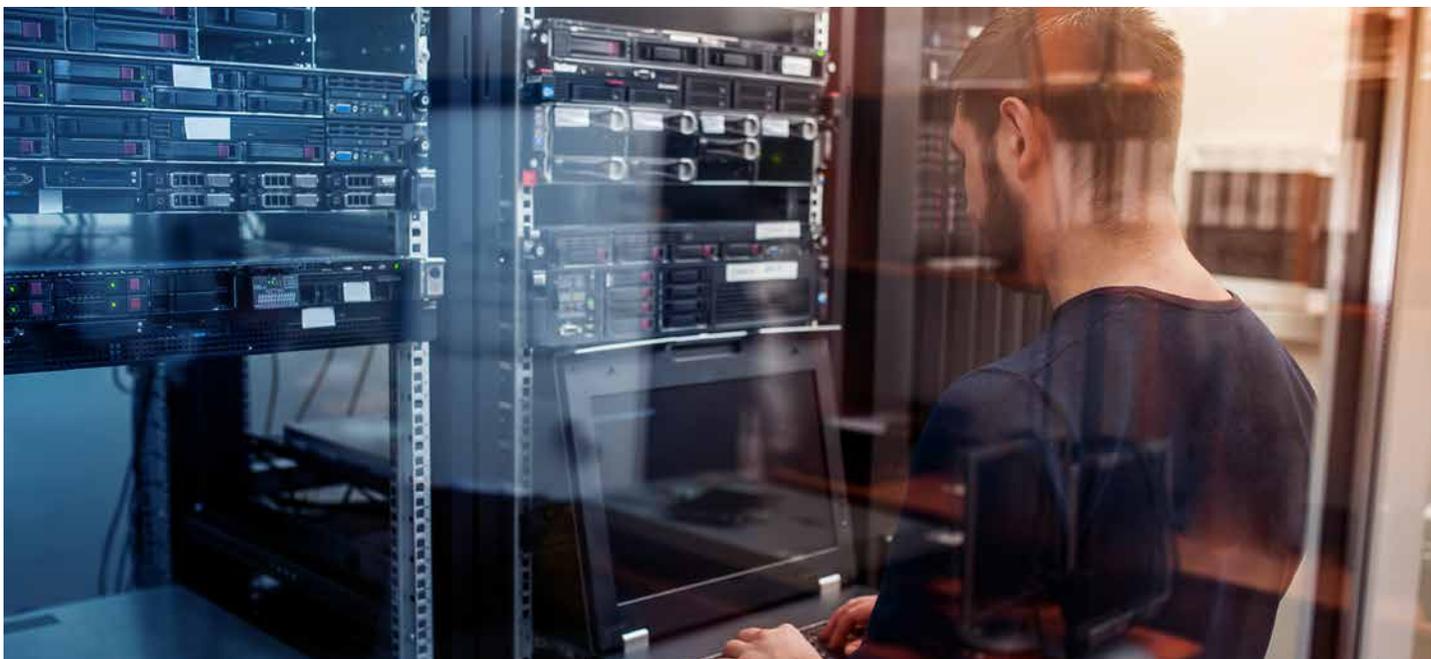


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account of each company's products and services.

- ◆ **Unclear transaction description.** The notice must clearly describe all entities involved in the transaction and the nature and structure of the transaction.
- ◆ **Not specifically naming geographic location(s) of the US business.** The notice must clearly describe the US business with addresses and/or geographic

coordinates for all US properties and facilities.

- ◆ **Absence of a certification.** All notices must be certified correctly to be deemed complete.

To avoid deficiencies, many deal participants work with third-party professionals experienced in the CFIUS compliance process.

Another important point is that the compliance process is ongoing. After a deal is approved,

a third-party monitor is often required under the terms of the NSA to prepare an annual report of compliance with the terms of the agreement.

Conclusion

For entities that are considering a transaction subject to CFIUS review, getting ahead of CFIUS requirements is essential. Preparation should include understanding both CFIUS and proposed FIRRMA requirements. Preparation will pave the way for a smooth process, if handled proactively. ^{CEP}

Endnotes

1. "The Committee on Foreign Investment in the U.S. (CFIUS)," U.S. Department of the Treasury, August 2018, <http://bit.ly/2PrfYFR>

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- ◆ Committee on Foreign Investment in the United States (CFIUS) preparation is vital for US or foreign entities considering a transaction subject to CFIUS review.
 - ◆ Early stage, foundational technology companies are a particular focus for foreign entities looking to exploit their intellectual property.
 - ◆ The current administration has heightened CFIUS scrutiny.
 - ◆ Deal participants can be required to have a monitor and provide the annual audit/monitoring report in compliance with the agreed-upon provisions of the National Security Agreement.
 - ◆ Preparation will pave the way for a smooth process, if handled proactively.

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Succession planning

by Walter E. Johnson

Are you developing a succession plan? If not, I recommend that you begin developing one. A nonexistent succession plan is an organizational risk. It's almost like a will — you are inviting chaos after your departure without one. Consider all the executives who abruptly resigned from their positions in the past year, due to alleged unethical behavior. It's too many to name. Therefore, succession planning is important. Here's a historic succession planning story.

In 1919, Edsel Ford became the president of the Ford Motor Company at age 25.¹ As Henry Ford's only son, this succession plan made perfect sense. Well, Henry had no intention of relinquishing control of the Ford Motor Company. Edsel was president without decision-making authority. This was Henry's strategy to dilute his company's stock value and buy out the minority stockholders. These stockholders included the Dodge Brothers, who were former Ford employees and contributed to the success of the Model T.² Feeling undervalued and unappreciated, they decided to start their own car company, Dodge.

This is one of history's famous succession plans, and it was dysfunctional. The components to establish a quality succession plan were in Henry Ford's grasp, but his intentions prevented that. According to historians, Henry was stubborn and antiquated, while Edsel was innovative and embraced change. Edsel's ideas were dismissed constantly, and employees who supported his ideas were terminated. Top talent was not retained, and those who stayed were often harassed, humiliated, or mistreated — including Edsel. This affected Ford's image and market share.

According to Forbes contributor Aileron, the following tips lead to efficient succession planning:

1. Utilize your board.
2. Write down and share your succession plans.
3. Build the rest of your succession planning team.
4. Take steps to create the legacy you want.³

Although broad, these tips allow the planner with internal controls to be creative by identifying the duties, skill set, experience, desired personality, and other resources for the successor. 



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Endnotes

1. Ron Osborn, "Edsel B. Ford," 1989, <http://bit.ly/2B5djZN>
2. *The cars that made America – Part 2*, History, A&E Television Networks LLC, August, 14 2017, <http://bit.ly/2NC1wM1>
3. Aileron, "4 Tools To Create A Strong Succession Plan," *Forbes*, February 6, 2017, <http://bit.ly/2B357t4>



THE PURPOSE OF A HEALTHY COMPANY'S CULTURE: THE VOLKSWAGEN EXAMPLE

by Ana-Sabina Ciceala



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Nowadays there is more and more emphasis on the importance of a company's culture and the role organizational culture plays in overall business conduct. Through time, different types of companies appeared and developed based on the decision-making process, such as autocratic/centralized, technical-leveled structure, egalitarian/flat based, or auto-managed structure. Nevertheless, all these can be one by one combined, which leads us to a large variety of organizational typologies.

We need to be able to use the shifting approach perspective while analyzing each type of cultural behavior, because from one company to another, both processes and interests can be different. One must consider that there is no unique solution, because this variety of organizations reaches an even broader range if we take into account

yet more factors than the ones from above, such as impact on the market, purpose of activity, complexity, legal implications, labor structure, resources required, geographical area, stage of development, etc. Therefore, at all times, we must consider that for a culture to effectively exist and be implemented, it has to sustain and enhance the business and its goals, at the same time creating value for the company's stakeholders. Over time, many organizations either improved or changed their culture due to different stages in the company's development and/or the level of maturity of the organization.

A company that offers a relevant example on the importance of culture is Volkswagen (VW), which was incorporated 81 years ago in 1937 in Germany. No description or motto was required for the company, its name being self-explanatory:

Volkswagen translates as “people’s car,” a car made by people, for people.

VW was incorporated and developed mainly in Germany; therefore, it embraced and absorbed the national business culture, which was based on laws and strictly regulated. However, one of the pillars of any company is its responsibility toward society. As VW’s name declares, companies are made by people for people. The main instrument of addressing this responsibility is the code of conduct (CoC), which is made up of policies, procedures, and education.

What follows is a comparative analysis of two examples of CoC implemented by VW at different critical moments in its history. This analysis gauges the impact these two CoCs had on the company and considers the larger social context that inadvertently influenced their content.

Historical precedent

The main challenges of a multinational company include assessing the risks associated to its activity, and determining its core values and formulating them in a manner that allows their implementation among different countries and cultures without interfering with the respective national legal provisions. VW implemented a general group CoC for the early years. To have an effective CoC, a company doesn’t just need to have text; they need to provide a coherent and logical approach for the values promoted that must set a direction for the company and defend its reputation in case of a breach. The company needs to be able to track breaches and prevent them through continuous improvement

and adaptation of the CoC and its implementation.

In 1987, VW, as published at that moment, shocked the market with the announcement that they had to record a provision of approximately \$259 million to cover a foreign-exchange fraud. They raised charges of fraud, breach of trust against external parties, and accused a possible collusion of VW’s employees.¹

In 2005, 18 years later, VW was the subject of a series of scandals revolving around bribery (involving a VW executive), and the situation escalated on a broader scale.² In 2006 the bribery incidents continued, when some executives were accused of having received bribes from suppliers. At that time, VW’s representatives declared, “We clarified and reinforced our policies.” It seems that not even the creators and enforcers of the CoCs believed in their effectiveness in stopping illegal conduct in the company. After two similar events, with bribery, corruption, and fraud as common denominators and the same outcome, a pattern concerning both the effectiveness of VW’s response and of the measures taken seemed to emerge, namely managers stepping down and the CoC being rephrased but not enforced.

In 2007, VW adopted the motto, “Das Auto,” which translates as “The Car.” We can consider this a reinforcement of the power position of VW on the market and an attempt to strengthen its damaged image.

Rewording the CoC and making the text stronger is one consideration, but this does not represent treating the cause, educating the personnel, and changing the tone at the top, which

we can observe, because both events implicated executives.

When we analyze each situation, at all times, we need to consider the timing of the incidents. What was the stage of development of society? If it has ethical values and beliefs, is it still in the process of defining relevant indicators for bribery and corruption? Such scandals affect the company’s brand, sales, and overall perception, and these have a direct effect on shareholders, employees, and customers, and an indirect effect on the credibility of corporations. Best indicators of these effects are fluctuations in share prices and the sales flow.

One of the pillars of any company is its responsibility toward society.

The Volkswagen scandal (2015)

After only nine years, a new scandal hit VW, this time perhaps the most damaging for its image. At that moment, the socio-political context had undergone changes, the international legal framework had evolved in complexity, and the market’s expectations in respect to integrity and morality were higher. Parallel to corruption and anti-bribery legislation, another

topic was regulated — namely, environmental protections. From 2004 to 2009, new legal measures in respect to diesel emissions were adopted, recognizing these as an important pollution factor.

The number of participants in the diesel scandal was larger than expected: nine managers from the supervisory board were suspended, together with other managers and mid-managers.

- ◆ What led them to this decision? The impossibility of achieving the standards imposed by the US in respect to emissions, in the short-term and under the allocated budget.
- ◆ Who is to blame? The doctrine considers that VW's corporate culture was at fault; the employees were forced to comply with environmental protection standards and, at the same time, meet the business' expectations and forecasts.
- ◆ The Center for Automotive Research's Ferdinand Dudenhofer stated that VW stands out in respect to other competitors by being an autocratic company that has a culture oriented to its origins rather than to international expansion, and that limits the liberty of speech and suggests to employees that their inability to fulfill a task will lead to their replacement.³

The Labor Leader of VW, Bernd Osterloh, publicly declared that both culture and practices of VW were unethical; therefore, certain values needed to be adapted and adopted, and staff needed to be able to speak freely and express themselves in front of management.⁴ The CoC was replaced, yearly compliance reports started to be issued, and a



disclaimer was inserted in respect to the inaccuracy of the data included in the compliance report from 2014.

In 2017, the Volkswagen Group Sustainability Report regarding nonfinancial results was first issued. This report generally includes labor issues, environmental issues, social issues, customer issues, respect for human rights, and combating corruption. In addition, VW gave up the usage of the motto "Das Auto," which could be considered a direct result of misconduct and faults. It seems that on this occasion, VW did not follow the old pattern by just adjusting existing procedures. For the first time, they acknowledged the errors and started to implement a new culture and compliance system.

2015 CoC vs. 2017 CoC

After the scandal, the CoC was massively changed. Relevant

changes were brought, described below.

1. In respect to the *style* of the CoC:
 - ◆ The 2015 CoC had a general *stipulative* style. This language was used to set expectations and describe the expected behavior of individuals. Based on results, this appears to have had a harmful effect on employees.
 - ◆ The 2017 CoC has a *commitments* style. This sets the position of the company based on the principle of leading by example. The code offers guidance instead of enforcement.
2. In respect to the *target audience* of the CoC:
 - ◆ The 2015 CoC had as general target audience of the *employees* and appeared more like an enumeration of rules.
 - ◆ The 2017 CoC has as target audience of the *board of*

directors and employees, a common guide for all categories that creates a nondiscriminatory environment.

3. In respect to the *visual impact* of the CoC:
 - ◆ The 2015 CoC had *no particular visual impact*. It had the look of an official document. This appearance was not an incentive to carefully read and acknowledge the code.
 - ◆ The 2017 CoC has a *visual element*. It appears more self-explanatory by providing a visual clue to each value described in the code.
4. In respect to the *information structure* in the CoC:
 - ◆ The 2015 CoC has an *abrupt* approach and only briefly touches on subjects such as human rights and corporate culture, choosing to focus more on the interest of the corporation in respect to business. It included no message from the board of directors.
 - ◆ The 2017 CoC has a *uniform* structure that allocates enough explanations for both human and corporate interest. In addition, the board of directors provided a message on VW values. An important section was added related to the support offered to the employees, including the whistleblower options.

Considering the differences between the two CoCs and analyzing the style and language of the 2015 CoC, it is safe to say that it reflected the corporate culture at the time, a culture that might justify the employees' and

managers' behavior. It is also clear that the new CoC has an approach that is aligned with the declarations of Bernd Osterloh over the changes required in the corporate culture, and this new code is the first step in changing it.

Conclusion

A code of conduct cannot be effective by itself, no matter how proficiently it is drafted or how ethical it seems to be. In order to discuss the effectiveness of a code, one needs to establish the relevance and accuracy of the values described therein, how they are implemented with the help of auxiliary methods, and how those are sustained by the subjects.

The present VW CoC shows the desired culture of the organization and describes accurately the values and the conduct expected. Still, it has to be considered that it will take time and education to be able to say that it reflects the real culture of the company. The standards of the CoC are expressed clearly, because they have the form of a commitment to values such as trust, responsibility, and engagement, and they promise to engage in moral and ethical conduct. The employees will be able to use this CoC as a decision-making tool, because the support section will be easier to implement based on past events.

Society nowadays is more educated. It is determined to fight over its rights. I believe compliance systems are evolving together with society and are borrowing its values. A person is judged harder if he or she doesn't comply with ethical principles, rather than the legal principles.

For some, the law can be considered unfair; ethics cannot.

It is easy to observe society's pressure on VW. If the second scandal made them adopt the slogan "Das Auto," the third one made them give up on it.

A code of conduct cannot be effective by itself, no matter how proficiently it is drafted or how ethical it seems to be.

The response to situations like this should show how culture should be tailored to mitigate risks, to reduce exposure, and to avoid vulnerabilities so the company can create growth and value for shareholders and stakeholders, while having sustainable development. Through this, we can see how the decision-making process needs to be improved, who will be the risk owners, and how they should position themselves in respect to the other stakeholders. There are no defined methods on how to determine incidental risks, either for the entire company or for its organizational divisions. Considering the increased relevance of culture within the essence of a company, we should expect adjacent efforts in explaining the real necessity of change and new



processes, because there will always be a strong resistance in respect to change among the people in a company.

We might wonder, “How do we measure culture?” The answer

we might get is, “Measure what?” Nevertheless, the answer should be defined by the company’s future ideal state based on the corporate strategy and values. It should be attained by raising self-awareness

on what the day-to-day procedures are, and the gap between must be identified.

As author and poet Hans Magnus Enzensberger said, “Culture is a little like dropping an Alka-Seltzer into a glass — you don’t see it, but somehow it does something.” It is up to the organization to use this power and direct what kind of effect it will have. 

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1. John Tagliabue, “VW Fraud May Total \$259 Million,” *The New York Times*, March 11, 1987, <https://nyti.ms/2Teh99T>
2. Leah McGrath Goodman, “Why Volkswagen Cheated,” *Newsweek*, December 15, 2015, <http://bit.ly/2QDrP0d>
3. Nazanin Mansouri, “A Case Study of Volkswagen Unethical Practice in Diesel Emission Test,” *International Journal of Science and Engineering Applications*, Volume 5, Issue 4, 2016, 211-216, <http://bit.ly/2Dlazcf>
4. M. Odell, “Volkswagen: a history of scandals,” *Financial Times*, September 23, 2015, <https://on.ft.com/2zT8t00>

-
- ◆ A healthy organizational culture empowers the company to reach its general purpose to create growth and value for shareholders and all stakeholders.
 - ◆ By adopting new behaviors and defining the new emerging culture, we can determine how to increase staff engagement and responsibility and the correlative customer loyalty.
 - ◆ A company needs to embrace change and define its purpose, while assigning competent resources to employ/perform due diligence, thus implementing a healthy culture.
 - ◆ Culture should represent a strength; nevertheless, it is up to the organization to enhance it and manage what kind of effect it will have.
 - ◆ Organizational culture should be tailored to mitigate risk, reduce exposure, and avoid vulnerabilities to reach the company’s purpose of ensuring a sustainable development.

Three commitments to make for a fabulous New Year

by Kristy Grant-Hart

Happy New Year! Welcome to the clean slate. 365 days of opportunities for growth. It's all too easy for this year to end up exactly the same as the last. To avoid this, make the following three commitments to yourself.

Commit to using all of your vacation days

Start planning your vacation time immediately. It's estimated that American workers lose \$66 billion in unused vacation time per year. And although other cultures value holiday time more, the trend for busy professionals is to eschew time off in favor of working harder. The truth is, vacation time allows you to work smarter throughout the year.

Commit to using your vacation time. Even if you don't know where you want to go yet, or if you're going to have a staycation, plan the days off, request them, and block them out on your calendar. You'll be amazed how much a single week off can recharge your batteries and bring you back better.

Commit to meeting one new person in the industry each quarter

Inspirational guru Charlie "Tremendous" Jones reminds us that, "You will be the same person

in five years as you are today, except for the people you meet and the books you read." Commit to meeting one new person in the industry each quarter. Put a deadline on your calendar and set a reminder every two weeks to ensure you stick to the schedule. By the end of the year, you'll have four new contacts. That doesn't sound like much, but if you extrapolate that number to the contacts of your new contacts, your network will have expanded dramatically. Where can you meet at least one of these four new people?

Commit to going to a conference this year

Decide that you're going to go to at least one conference this year. If you have no conference budget, contact the technology, legal, and consulting vendors/firms you use, and see if they are having a conference this year. Many host free events in an effort to solidify their relationships with their clients, and it's a great way to meet others in the industry in your area.

There is no greater gift you can give yourself this year than committing to your growth and health. Welcome the new year correctly. You'll thank yourself in December! 



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ANTICORRUPTION ON THE EMERALD ISLE

by Eric Brotten



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In the summer of 2018, the Criminal Justice (Corruption Offences) Bill passed through the houses of Ireland's parliament, the Oireachtas, and was enacted on June 5 and commenced July 30.¹ The Criminal Justice (Corruption Offences) Act (the Act) modernizes and consolidates Irish laws previously covering crimes such as bribery and corruption [e.g., The Prevention of Corruption Acts (1889 – 2010) and the Criminal Justice (Theft and Fraud) Offences Act, 2001].² The Act has roots in earlier initiatives proposed by the Irish government to tackle corruption in response to the Mahon Tribunal, the Organisation for Economic Co-operation and Development (OECD), and European Union recommendations.³

Overview of the Act

The Act is broader in scope than previous legislation and creates several new corruption offenses, such as:

- ◆ Criminalizing direct and indirect corruption in both the public and private sector, where:
 - "Corruptly" is defined as "acting with an improper purpose personally or by influencing another person,"⁴

- A "bribe" is considered "a gift, consideration, or advantage" given to "any person doing an act in relation to his or her office of employment, position or business,"⁵ and
- The bribe can be given or accepted, or agreed to be given or accepted⁶
- ◆ Holding corporations (and potentially directors and management) liable for corruption offenses committed by staff, agents, or subsidiaries when reasonable steps were not taken to avoid commission of the offence,⁷ and
- ◆ Including a presumption of corruption in certain circumstances.⁸

Additionally, the Act is extra-territorial,⁹ extending beyond Ireland, and in many ways, emulates similar provisions of the United Kingdom's Bribery Act 2010 (UKBA).¹⁰ Lastly, the Act increased penalties to up to 10 years imprisonment and unlimited fines.¹¹

A detailed list of crimes in the Act includes¹²:

- ◆ **Active and passive corruption:** Bribe giving and bribe taking.

- ◆ **Active and passive trading in influence:** Exerting or claiming to exert influence over a public official's decision making.
- ◆ **Corruption in relation to office, employment, position, or business:** As an Irish official, corruptly receiving a bribe or using confidential information to receive a bribe.
- ◆ **Giving gift, consideration, or advantage** that may be used to facilitate offense under the Act ("bribe"): Giving a bribe, where the giver knows or ought to reasonably know that it will be used to commit a corruption offense.
- ◆ **Creating or using a false statement in a document:** Corruptly creating or using a document that the person knows or believes to contain a statement which is false or misleading, with the intent of inducing another person to do an act to his or her prejudice or that of another person.
- ◆ **Intimidation:** Corruptly threatening harm to a person with the intention of influencing that person or another to carry out an act in relation to his or her office, employment, position, or business.

Practical steps to ensure compliance

If your firm has operations, does business, or has staff in Ireland, there are several quick-hit tasks you can perform to assess compliance status. For many firms that conduct business in or with other firms in the US or UK, a compliance program likely already exists to support compliance with the US Foreign Corrupt Practices Act (FCPA) and the UK's Bribery Act (UK BA).¹³ Depending on the robustness of your FCPA or Bribery Act compliance programs, there's a good chance you are already highly compliant with the Act, and you can implement a supporting compliance program with minimal scope and minimal resource requirements.

Above any baseline compliance achieved from existing US or UK programs, good practices could start with a risk-based

proportionality review of policies and procedures, noting where the Act could or should be mentioned alongside US and UK peers. Next, a compliance program could conduct an awareness and training program (e.g., a concise slide presentation on the Act) for management, sales, finance, and accounting employees; and for general staff, a top-down communication with brief overview of the Act and practical steps on what the firm is doing or has already done to address compliance. Last, any existing contracts, trainings, or vendor diligence documents that reference either the FCPA, the Bribery Act, or both should be updated to include reference to the Act. Unfortunately, if your firm does not already have a baseline anticorruption compliance program, you will have a much larger implementation scope and resource requirement. 

Endnotes

1. See Criminal Justice (Corruption Offences) Act, 2018 (Act No. 9/2018), Pt. 1, at 5 (Ir.), <http://bit.ly/2ymRF1h>
2. Criminal Justice (Corruption Offences) Bill, 2017 (Explanatory Memorandum), at 1 (Ir.), <http://bit.ly/2QDIsc1>
3. *Idem*.
4. Criminal Justice (Corruption Offences) Act, Pt. 1, at 6.
5. *Idem*, Pt. 2, at 8 – 9.
6. *Idem*.
7. *Idem*, Pt. 5, at 21.
8. *Idem*, Pt. 4, at 13 – 17.
9. *Idem*, Pt. 3, at 11 – 13.
10. See Ministry of Justice, The Bribery Act 2010 Guidance, at 9 (2011), <http://bit.ly/2aKo0CD>
11. Criminal Justice (Corruption Offences) Act, Pt. 5, at 17 – 20.
12. See *idem*, Pt. 2.
13. See generally Ministry of Justice, *supra* note 10 (includes an appendix of case studies explaining examples of compliance measures and approaches).

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- ◆ In summer 2018, Ireland consolidated its anticorruption laws into a single law, the Criminal Justice (Corruption Offences) Act (the Act).
 - ◆ The Act criminalizes direct and indirect corruption in both the public and private sector.
 - ◆ The Act holds corporations liable for offenses committed by staff, agents, or subsidiaries when reasonable steps were not taken to avoid commission of the offense.
 - ◆ The Act is extra-territorial, extending beyond Ireland, and, in many ways, similar to the United Kingdom's Bribery Act 2010 (UKBA).
 - ◆ Compliance requirements and accompanying compliance implementation programs for the Act will be similar to those for anticorruption laws in other nations, such as the US Foreign Corrupt Practices Act and the UK's Bribery Act.

HOW TO CREATE A COMPLIANCE AND ETHICS COMMITTEE

by Edye Edens



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Whether the creation of a compliance and ethics committee is required by regulation, a result of audit findings, or a proactive idea to reinforce an ethical and compliant culture in the workplace, bringing the committee to fruition is a massive undertaking. Often individuals have fantastic visions of the gap this committee can fill, but don't know where to begin or haven't accounted for all the gritty details that come with the creation and oversight of such a mechanism. This article aims to pare down some of these gritty and cumbersome details in a realistic fashion to provide a strong starting point for professionals who are tasked with such an assignment.

What is your purpose? Be honest.

Is this committee being created to provide you, as the compliance professional, with resources and

depth? Or is the committee intended to resolve an existing problem? Is the creation of this committee a politically charged situation? What's the institutional history behind committees such as this one?

I could spend the entire article peppering you with questions, but I'm guessing you understand my premise. Providing honest context to the creation of this committee will guide you through answering all the following questions in a productive fashion that keeps your goals in check and realistic for your given industry and situation.

How much support do you have?

Performing a transparent evaluation as to how much support is needed versus how much you currently possess tells you not only what your scope and expectations look like for this committee, but also how much marketing you will need to wrap into

building your committee. Ask the hard questions, and know your answers, such as whether your committee truly has teeth, and how big said teeth are or are not. Don't view the need of more support as daunting or uphill. Rather, no project can ever conjure enough support, and that's just a given component to your work. Again, focus on classifying your support into groups such as "must-have" versus "bonus," and view this entire list of questions as merely a fact-finding mission. You don't have to make any heavy and hard decisions until all the data is gathered.

Who are your stakeholders?

This step will be more specific depending on your industry, and even more specific to your role, then most specific to your individual organization. Stakeholders can be anyone from the literal client to the business, and you must be clear about each and every one of them as they tie to your committee. For example, my industry is research compliance, so if I was in-house at an organization conducting research, my stakeholders could be everyone from providers, researchers, subjects, patients, fellow compliance colleagues, and so on. If you are in any way a visual learner, I sincerely recommend drawing out these relationships and their connections to the mission of your committee. Completing this step fully ensures you can then best move on to the appropriate model and membership.

What models exist already?

Admittedly, if you spend time around my work, you'll find I am a bit of a broken record about this next point, but it truly saves you every single time. Hit the library and do your research on your

industry regulations! Always head to the "regs" for ideas on models, as well as bullet-proofing your committee. The regulations really do spell out expectations if you read them carefully. Chances are a compliance or ethics committee in your given niche isn't novel, and your organization isn't the first to do it. Why waste time and resources reinventing an already round wheel?

The key is to determine where ethics or compliance committees in your industry are mandated, and if you research regulatory structure surrounding those committees, the oversight agencies likely have requirements. You might even find, for example, stipulations for varied affiliations, subject matter expertise, ethnicity, gender, etc., stated in the very regulations. Once you evaluate the rationale for the stipulations, and how closely the regulation applies to your committee's true purpose, you may find the parameters for your model come together quite easily.

Regulations certainly aren't the only place to research, and some compliance areas may not utilize the committee approach as frequently, but I do always suggest starting there. If you find yourself at a bit of a loss, I would then begin researching other like-minded organizations that you know have implemented a type of ethics or compliance committee similar to that which you seek. Don't make the hallmark mistake of only researching the successful ones! You need to know as much about why certain ones worked as you do about the ones that fell short. And remember, armchair research will only take you so far — ask around; a wee bit of networking will take you the extra mile to garner the deep dive information. People

always love to speak endlessly about their successes or complain to a sympathetic ear as to why something failed.

No project can ever conjure enough support, and that's just a given component to your work.

Be prepared

You'll need resources, administrative assistance, standard operating procedures (SOPs), education, and training. If I had a dollar for every board or committee I've sat on that couldn't have been more enthusiastic to accomplish the intended purpose, but which never took flight because of poor planning...well, I'd be retired! This component certainly isn't the shiniest, but man is it important. Think of these steps as your skeleton, bones, joists, and frame to your home. Without these pieces solidified, the rest will tumble.

This phase and the membership one directly below will inevitably overlap as you need membership to accomplish some of these steps. However, if you are the one charged with creating this committee, be prepared to lead the effort and keep the committee focused. Start asking all of the necessary

questions and collecting answers before you recruit members. Here are examples of questions you likely need addressed:

◆ **Will you be taking minutes?**

If so, in what medium and who will be responsible? Will there be deadlines for circulating the prepared minutes and approving them? Who will store the minutes and for what retention period? Is there a regulatory agency or document that governs details such as these?

◆ **How often does the committee need to meet?**

For how long? And where? Will it need catering resources or technology provided? Who will arrange all this scheduling and these determined arrangements?

◆ **Will there be attendance requirements?**

How will you remind and verify attendance for members? Who will note who was present at the meetings and should it be documented? How?

◆ **What education and training do members need to possess upon membership?**

What education will need to be provided in a continuing fashion? Who will provide it, including expertise, coordination, CEU paperwork, and validation?

Again, these are just examples to highlight my point, but you can easily see that although these more mundane details seem simple, the workload and need for assistance and coordination increases quickly. The more of these details you have prepared prior to recruitment, the better you demonstrate your committee's legitimacy to potential members. Likely many of the individuals you hope to recruit are already quite busy, but your committee membership invitation is much harder to decline

Pick your members carefully, have term limits, and rotate regularly. Don't overlook diversity, politics, and conflicts.

when it's obvious you have a solid infrastructure that simply requires the member's expertise.

Membership recruitment

Pick your members carefully, have term limits, and rotate regularly. Don't overlook diversity, politics, and conflicts. As if the ending to my point above wasn't foreshadowing enough, I'm reiterating. The more infrastructure you have fully developed before you recruit members formally, the more success you'll find in the recruitment process. Sure, you will have organic situations whereby someone phenomenal crosses your path and you jump to mention the committee you're forming. Certainly. Don't miss opportunities, but also, don't get ahead of yourself.

Once you've arrived at formal recruitment, you should be reading and re-reading the membership requirements you've forged from the aforementioned model steps as you brainstorm. Remember, term limits are a must for success, so tap your membership lightly and strategically so you will continue to have a pool to draw from as you rotate. Term limits ensure your committee remains active, diverse, and current, and prevents power vacuums and burnout.

If members can serve multiple purposes, and there's no regulations forbidding it, create intentional overlap. Seek out members for

different types of expertise. For example, you need individuals who are subject-matter experts as much as those who are bringing leadership and board experience. Be reasonable — if you know a great individual who will never say no to membership, but is likely already overcommitted, wait until another time on that person.

Likewise, ensure political diversity within your organization and that your committee isn't merely a group of your favorite colleagues. Challenge the committee and yourself to represent all potential stakeholders and all views on the issues this committee will tackle. Even if you have to grit your teeth through recruiting certain members due to personal differences, keep the goal to think global and best represent the stakeholders. The staunch other side of this coin is that no one enjoys being on a committee known for bickering, so know the limits of this challenge, and again, handle your membership delicately so you work with the grain, not against it, in your intra-organizational politics.

Call your committee into action and hand it over

Believe me, I know handing over your "baby" after all the love and care you've provided to create this committee is synonymous with handing over your child to

the babysitter for the first time. But, it must be done. You will guide, oversee, manage, advise, administrate, and otherwise continue to likely be a huge presence within this committee. However, if you refuse to allow them to do the intended purpose, or if you continue to do all the work and guide them in only selfish directions, they will never thrive. I'm in no way trying to understate how hard this step is, but rip off that bandage and keep truckin', or all your hard work up to now actually *will* be wasted.

Maintenance and monitoring — think short — and long-term

This phase shouldn't be entirely ignored until the committee is formed and meeting, and likely you couldn't complete your pre-recruitment preparations without some questions being raised as to sustainability. Note, however, I do intend to review oversight in this section more than

resources, as I presume, again, that component was previously determined.

I struggle to write terribly specific steps here, because this phase is the most industry-specific piece, and it's tailored exclusively to the purpose of your committee. Instead, I will relay my experience. When dealing with committees that are regularly audited by a regulatory authority of some sort, I typically see better infrastructure and management, but also much less efficiency. The opposite is usually true when the committees in question are less regulated and don't face monitoring. Your goal, in my opinion, is to fall somewhere in between the two. Capitalize on the fact you're creating the committee's existence and skip inefficient controls. But, don't allow so little ongoing oversight that the committee is in want of a fire beneath their seats. Determine maintenance and monitoring mechanisms that assure integrity, but also are realistic for your

resources and won't subvert your recruitment efforts.

Conclusion

As previously discussed, creating a compliance and ethics committee is no small feat, and you should allot the appropriate time and resources to ensure success. The committee's success relies not only on solid infrastructure and utilizing the appropriate model, but also on continued oversight and management as the committee grows and evolves. Although this article focused primarily on the infancy stages of your creation process, I still urge you to view your committee as a living and breathing entity that absolutely should develop over time. Continue to revisit the process outlined in this article to re-evaluate your committee over time, and you should be well equipped for managing the progression of your creation.

Best of luck to each of you tasked with such an adventure, and happy committee building! 

-
- ◆ To create an effective compliance and ethics committee, you must determine what information and resources you will require by asking important fact-finding questions.
 - ◆ Models for your specific type of committee are likely already in existence within your regulatory structure or other like-minded organizations.
 - ◆ Determining your purpose and resources will heavily influence your process, and there are several questions one must answer to make these determinations.
 - ◆ You can learn just as much from ineffective implementation of a committee as you can from a successful one.
 - ◆ The creation process can be tedious, but the task is not insurmountable, and you should adjust your timelines and expectations accordingly so they remain realistic.

COMPLIANCE BY WANDERING AROUND

by Joseph Agins



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I will admit the term “wandering around” may not relate to what most of us agree to be productive workplace habits. Even Webster’s primary definition for “wander” is to *move about without a fixed course, aim, or goal*. So, I get it. I understand the inherent need for the compliance-minded business professional to scoff at the thought of aimless wandering. However, what if wandering around is exactly what your compliance program needs to bring it to the next level?

For those familiar with the management philosophy of management by wandering around (MBWA), you may guess where this article is going. For those unfamiliar with this concept, and as a refresher for the others, let us first recall the core concepts of this popular method.

Management by wandering around MBWA means managers are putting aside emails, meetings, and spreadsheets to get out of their offices and engage employees by talking with them, asking questions, and listening.

Bill Hewlett and David Packard used such an approach in their open management style at Hewlett Packard (HP). Tom Peters and Robert Waterman later highlighted “The HP Way” in their best-selling management book, *In Search of Excellence: Lessons from America’s Best-Run Companies* (1982).¹ It was here Peters and Waterman coined the MBWA term. The premise was simple—for managers to have their finger on the pulse of their organizations, they needed to wander around and talk to their employees.

The HP executives learned information received through formal

channels was filtered and diluted once it reached them. Telling the boss what they wanted to hear, and minimizing and leaving out details were an unfortunate fact of chain of command. Therefore, managers were not getting a full picture of the problems employees and their organization faced. However, by wandering around, talking to employees, asking questions, and listening, they had a better understanding of their concerns and were better able to fix them.

Compliance by wandering around

Compliance by wandering around (CBWA) may seem like an obvious attempt at a spin-off of the aforementioned philosophy, and it is just that! Because when aligning these core principles to the challenges we face as compliance professionals, CBWA makes good sense!

Employees often view the compliance office or officer as cold, unapproachable, and even scary. At the least, they may view the function as dry, boring, and a likely impediment as opposed to a partner. Although I understand (but disagree with) the dry and boring perception, we know the rest is untrue, and such assumptions are harmful to our programs. However, if we wait for folks to approach us to learn these are not the case, we will wait a long time. In addition, our compliance programs will suffer for it. CBWA helps us to fix this problem!

Peters later penned another book, *A Passion for Excellence*, in which he further argued the MBWA philosophy as a core component of successful leadership.² In this book, Peters outlined three primary components required for a successful MBWA strategy.

When managers use MBWA, they needed to:

1. Listen to people.
2. Use these discussions as an opportunity to communicate the company's values.
3. Be ready to provide on-the-spot assistance.

Now let us translate these three concepts to CBWA and the role of the compliance officer/professional.

Listening

We think we are great listeners, and I am sure many reading this are. However, I will posit a guess that most of us can improve in this important area.

The more we are out from behind our desks, engaging, understanding, and listening, the more *trust* we build and the more opportunities we create for employees to report concerns. In addition, the more we understand these employees and their roles, the better we can understand their concerns and assist them.

Have you ever given a presentation and afterwards an employee pulled you aside, wanting to discuss a compliance concern with you? I know I have, and by practicing CBWA, we create even more opportunities for such interactions.

As compliance professionals, we need open and honest communication with employees. For this to happen, we must be accessible and able to listen.

Emphasizing the company's values

We can memorize the organization's values, include them in our codes of conduct, and add them to our email signature blocks. However, our experience tells us: Employees do not turn to written statements for cues about

how to behave—they look to one another. This truism applies to all employees from top to bottom. Employees and managers will behave the way they see others behaving.

The more we are out from behind our desks, engaging, understanding, and listening, the more trust we build.

Therefore, stating values is important, but emphasizing the values through our actions is how we get the greatest lift. I can think of no better way to demonstrate these values than by leveraging CBWA. Employees will not trust that we are exhibiting the values until they see it, and CBWA creates opportunities for employees to have conversations and witness our values in action. When employees realize our values comport with their own, this increases the likelihood they will bring issues forward.

Compliance professionals should incorporate the organizational values into the compliance message at every opportunity, and this message is most powerful when delivered in person!

Providing assistance

Learning the areas of the organization and witnessing the problems employees are experiencing are key for providing help. Waiting for these issues to bubble up to the compliance office may never happen, and allowing them to fester results in decreased morale and exacerbated problems.

Genchi Genbutsu, or “go and see,” is a management philosophy embraced by Toyota. Rather than learning of concerns and then making edicts from the boardroom, *Genchi Genbutsu* requires one to experience the problem firsthand and only then make suggestions for improvement. Quality management guru W. Edwards Deming also said, “If you wait for people to come to you, you’ll only get small problems. You must go and find them. The big problems are where people don’t realize they have one in the first place.”

Being on-site and willing to assist gives employees a stronger appreciation for our role, and they will be that much more apt to reach out. We may hold the solutions to fix their problems then, or we may need to get back to them later. Either way, the on-the-ground

I have always said the most important skill of the compliance professional is being able to articulate the value proposition for compliance.

support helps build trust and relationships.

Conclusion

I have always said the most important skill of the compliance professional is being able to articulate the value proposition for compliance: helping others understand why compliance is important to their success and that of the organization. As compliance professionals, we get this. We know where compliance fits into the success puzzle. However, most do not, and it is up to us to educate them.

What is in it for me? Why does compliance matter? What are the consequences of noncompliance? How will this affect my role or the institution? Employees need answers to these questions, and CBWA creates these opportunities! If they do not understand what is in it for them and why compliance is important, they will not buy in. Without this buy-in, even the most competent and passionate compliance program will realize limited success.

So go ahead. Get out there and wander around! 

Endnotes

- 1 Thomas J. Peters and Robert H. Waterman Jr., *In Search of Excellence: Lessons from America's Best-Run Companies*, New York City: HarperCollins Publishers, 1982, <https://amzn.to/2B5I5BX>
- 2 Nancy Austin and Thomas J. Peters, *A Passion for Excellence: The Leadership Difference*, New York City: Grand Central Publishing, 1989, <https://amzn.to/2QGNncu>

- ◆ Relationships are key to successful compliance programs.
- ◆ Some compliance concerns will make their way to your desk, but many will not. As compliance professionals, we must also go out and find them.
- ◆ Meeting directly with employees and understanding their roles helps us to better understand and/or identify compliance concerns.
- ◆ In order to buy in to compliance programs, employees need to understand how compliance ties in to their own goals and objectives.
- ◆ No one can better articulate the value proposition for compliance than you can, but you need to go to the employees.



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COMPLIANCE ADOPTION IN YOUR ORGANIZATION

by Jacque and Tony Niderost



Jacque Niderost



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In speaking with professionals in the compliance community, I often hear the desire to engage others in their organization and change the conversation of compliance being a necessary “burden” they have to complete as an employee to one where all individuals see the value the profession brings to an organization. One end goal in compliance is protecting the brand, but ideally everyone in an organization, whether in marketing or development, should know how the compliance profession can help them achieve their professional goals.

Until recently, compliance has historically reported into the board of directors. Compliance is critical to brand management and managing risks for a company. Today, they are becoming more a part of the daily operations of a company, often reporting into finance or legal. If the brand and risk aspects are not managed well, they can affect a company’s bottom line, both near-term and in the future.

Aside from enacting policies, regulations, and managing corporate risk, compliance teams must integrate

their policies with their employees, work processes, and workflows throughout the organization. The organization’s governing board should also put in place adequate enforcement mechanisms, and educate and monitor employees to ensure they adhere to the stated company policies. The governing board should also have an in-depth understanding of the legal and statutory requirements of the policies enacted, and should also periodically review the associated regulations to ensure conformity with the dynamic work environment.

But what about the rest of the organization? Especially those who are not part of the board? Today there remains ambiguity within an organization about the role of compliance and how it may help other roles within the organization. If a compliance product (or any software product for that matter) is not designed with the optimal user experience in mind, it will lead to user frustration, and eventually, they will just disengage. Below are three areas to focus on to help increase overall understanding and engagement with compliance in your organization.

Design compliance tasks for your organization to be timely, relevant, and personal

I will admit, I learned this phrase from my marketing counterparts throughout my career. Why is this important to marketing? That discipline has been hyper-focused on how and when to reach customers. They have studied the best time to send offers to maximize responses from the target audience(s) over the years, and also to increase the relevance and timeliness for targeted communications. They understand the fine line between a user opening an offer and permanently opting out or “shutting off the white noise” on further communication.

You may be thinking, “I offer eLearning for compliance, which is targeted at roles within my organization, so I do this already.” Do you understand the best time to send a communication to employees to maximize the open and course completion rates? When employees receive the initial communication, do they understand the relevance of training and what it means to them and the organization, or is it just annual certification and training time again?

Extend the above to other compliance policies and tasks across the organization. Do individuals understand the importance of the annual conflict-of-interest certification and what it means to them? Do they have the flexibility to take the training on a mobile or tablet device, or start the certification process, save it, then pick it up where they left off? That way you are providing options for employees to complete certification on their own time, while still measuring completion rates.

In today’s environment, hotlines have once again emerged as an

Do you understand the best time to send a communication to employees to maximize the open and course completion rates?

important solution for managing corporate wrongdoings. However, employees in an organization are still hesitant about using a hotline solution, as they may have witnessed retaliation against others in similar situations. Although retaliation may not be legal, it happens. How does your solution help alleviate fears in the organization so people feel comfortable about coming forward?

Embrace analytics to guide your compliance program

Today, it is increasingly easy to use analytics to understand behavior and how individuals are engaging with your content. One such solution (out of many) is Google Analytics, and it is free. Google offers many free training sessions, as well. Using analytics allows you to understand how people are engaging (or not) with your content and identify areas you need to change.

This may also require you to look at the organization structure within compliance teams. For large corporations, it may justify hiring for an analytics role to provide you with the metrics you require.

Leverage technology as a catalyst to streamline traditional compliance tasks

I started this article talking about the importance of good software design. Software design is a profession with specific roles that

specialize in designing the UI/UX. If you plan on purchasing software to run your program, see if you can get a free trial. Use the software to complete tasks just as you would be asking people in your organization to do.

The solution should support and be responsive to mobile and/or tablets. If I told you mobile is catching on, it would be like saying the sky is blue. The convergence of technology has occurred, and people expect to complete actions via a desktop or mobile. Mobile data needs to be encrypted in transit and at rest, and individuals can access their information from a location they choose.

This is also an exciting time as artificial intelligence continues to grow as a way to address business challenges. This means a normal gift and travel policy cannot only track pre-approval expenses, but you can train your company algorithm to identify any previous infractions against policies. You will now have a “look back” as well as a “look forward.”

Blockchain technology is another solution that offers promise for the compliance industry. You can use blockchain ledgers to track the compliance transactions between you and your partner organizations, knowing that they are tamperproof and the source of truth. If any change occurs on an individual transaction, that is reflected as well so you will always have the



latest information for parties with whom you are doing business. You can use blockchain to ensure that the transactions are meeting local, state, and federal laws.

More next month about artificial intelligence and blockchain in compliance, and how they are positioned to cause disruption in business verticals.

Personally, I view this as a very exciting time for compliance. With technology becoming more of a

With technology becoming more of a necessary component to manage compliance...you should see a welcome change in adoption and engagement rates.

necessary component to manage compliance, and with a few recommended changes previously

highlighted, you should see a welcome change in adoption and engagement rates for your program. 

- ◆ Compliance adoption, critical to preserving a company's brand and profits, can be improved through organizational changes and technology adoption.
- ◆ Compliance does not have to be perceived as a burden through education of its importance and streamlining and automation of processes.
- ◆ Intuitive and straightforward workflows and user experience is key to adoption of compliance programs.
- ◆ Analytics can provide both information on the effectiveness of your compliance program and adherence to the program itself.
- ◆ Technology such as artificial intelligence or blockchain can be an effective enabler of compliance needs.

Revised and updated!

Compliance 101

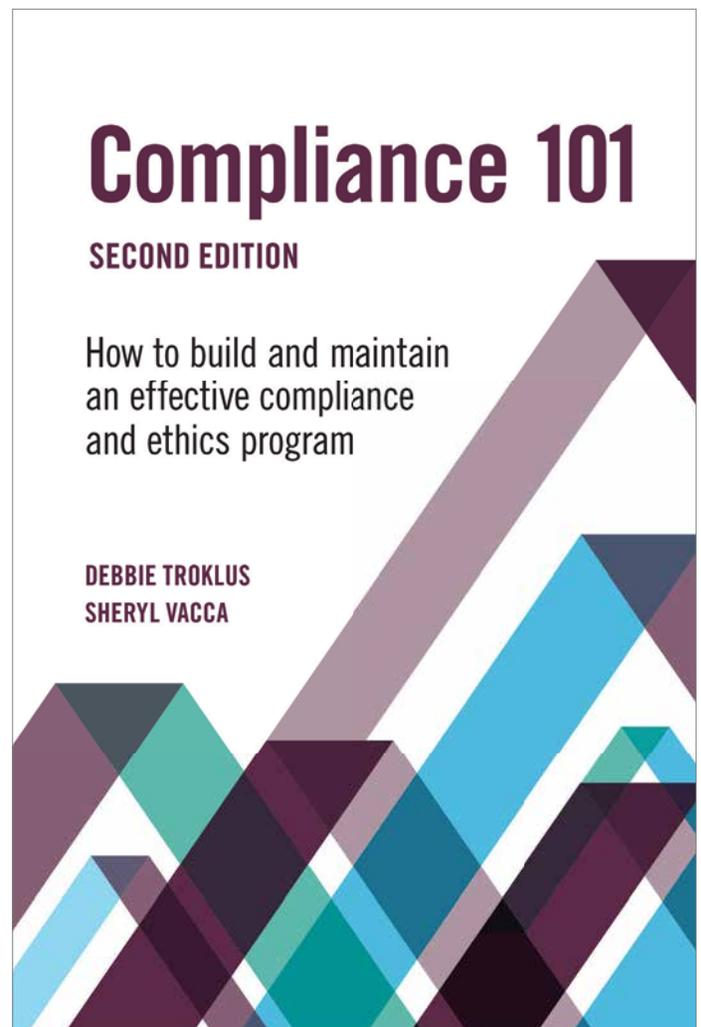
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MANAGING COMPLIANCE AND ETHICS BUSINESS RELATIONSHIPS WITH S.T.Y.L.E.

by Natalie N. Gunn



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There's no shortage of science touting the benefits of systematic, formalized, consistent actions — essentially, corporate habits — to create productive relationships and impart long-term sustainable impact and change. As compliance and ethics professionals, we are in the business of developing, training/educating, and enforcing policies within our organizations at large. We regularly evaluate our policies, request feedback, and implement changes to better serve anyone who is subject to the policies. Although this work accounts for much of our time, we would be remiss not to create similar processes aimed at managing our business relationships. Well-developed business relationships are essential to our work of effectuating policy, influencing our colleagues, and paving a path toward positive culture shifting.

As the manager of Global Compliance and Ethics for a multinational jewelry, apparel, and skin care company, I use STYLE: Systematic, Team driven, Y (the why), Leadership, Every day to manage internal and external business relationships. Compliance and ethics work is complex, but doing it with STYLE will lighten the load and make you look good (bonus points!).

SI like to use what I call the "Power of 3 on repeat" as the basis for my personal Systematic relationship building policy. I email or hand write a note, call (I actually pick up the phone — imagine that!), and do in-person visits with key leaders. Then repeat. This method of engagement works well in most cases. The email or note is a soft touch letting them know I will be reaching out about a specific matter. Specificity is important — no

one has time to waste! I follow up with a phone call to set up a time to meet. The call also helps to build a rapport with colleagues so they are comfortable enough to engage on the phone if necessary in the future.

The third touchpoint — a meeting — can be a quick coffee, office meeting or, my personal favorite, an after-work cocktail. In the meeting, you have three goals. Goal 1: Learn about your target — how they think about compliance as it relates to the company, something personal, and their preferred method of communication. Goal 2: Share something about yourself — something memorable and pertinent to your role in compliance and something personal. Goal 3: Set up another time to meet. Do not leave your meeting without a follow-up meeting.

You want to learn how your business partner thinks, what makes them tick (e.g., goodwill, money, social or moral standing) and use that when you have to secure their buy-in. Learning something personal about them (e.g., do they have kids, a spouse, love cars, do yoga) gives you something to start building a person-to-person relationship rather than just a work relationship. People work for people and go out of their way for people, not positions — be personable. Sharing something memorable about yourself that pertains to your role develops the work relationship and the person-to-person relationship. My go-to sharable is telling people I have always wanted to be in compliance, which is usually followed by “(gasp!) Compliance?! Why?” I tell them that I wanted to be in the FBI, that I passed the first rounds to become a FBI Field Agent,

People work for people and go out of their way for people, not positions—be personable.

and that I only stopped because, at that time in my life, I couldn't do a single push up! Again, depicting yourself as a person makes you and your agenda palatable. Capitalize on your momentum and schedule another meeting to ensure that you continue your relationship building.

T We have already established that people are the power and the nexus for change, so creating teams of people who support you and your plan is the next logical step. In large organizations, there may be many compliance professionals who understand your daily work, can help advance ideas, and provide qualified assistance and support. In smaller organizations or remote branches of companies, it is likely that you are the only compliance professional, which can be very lonely and isolating. No matter what situation you find yourself in, it would behoove you to find a team or two. The first team would be other compliance professionals in the organization. If that isn't an option, other compliance professionals in the area or online could give you situational support.

The second team, and perhaps the more important team in exercising the power of persuasion, should be your key business stakeholders. Your stakeholder team should trust you and your advice, be willing to align with you, and lend you their support and

voices when you have to advance ideas and concepts to a larger, more recalcitrant group. Developing this team is more challenging, because oftentimes you may have differences in opinions based on competing priorities, but if you have developed a personal relationship and gained their confidence, they will at least listen to your guidance and many times will take it.

Y (why)

The Y (why) is probably the most important factor in getting people to comply with the organization's plan and to see you as a worthy business partner. If you can compellingly articulate the why of something to your intended audience, you are halfway to ensuring their compliance. The why is important in developing your business relationships, because it goes back to trust. Business stakeholders want to be confident that you understand and have factored their own why into any recommendation you make to them. By incorporating their why into your recommendations and solutions, you are communicating that you have heard them and, in doing so, make your recommendations more palatable and much more likely to be implemented.

L

Leadership looks and feels different in every environment and for



every leader. Regardless of what your leadership style is, your goal must be to ensure that your business partners see you and your department as trustworthy, helpful, and knowledgeable. These traits should be magnified and reflected by instilling these characteristics in your staff. Encourage them to emulate your model as they interact with others in the organization. Even if you do not have a staff, your leadership will be recognizable in your ability to build your business stakeholder team as mentioned above.

E Every day. If you employ some of these strategies every day, you will set yourself up for success

If you can find a small way to do all the tactics every day, you will find yourself successful and in STYLE.

in establishing business partner relationships. If you can find a small way to do *all* the tactics every day, you will find yourself successful and in STYLE.

Conclusion

Using STYLE to manage and create corporate habits of developing productive relationships will successfully

lead you in your mission as a compliance professional in instituting change, swaying the masses, and evolving corporate philosophy. The work you do is valuable and important. Developing rituals of relationship building pays tribute to and, enhances your efforts, and doing it with STYLE makes it easy. 

- ◆ Relationships are the key to your success.
- ◆ Building and maintaining relationships require work, but investing in this work is a worthwhile venture.
- ◆ Create teams of relationships to further advance your causes.
- ◆ Share the “why” to increase your success rate.
- ◆ By developing relationships, you are exemplifying leadership.

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Corporate culture and tone at the top

by Joe Murphy



Joe Murphy

(joemurphyccep@gmail.com) is a Senior Advisor at Compliance Strategists, SCCE's Director of Public Policy, and Editor-in-Chief of Compliance & Ethics Professional magazine.

If you wondered whether to avoid this column because you expected a buzzword fest, that is understandable. There is quite a bit of talk about these two subjects, as if they were mystical concepts, but they can be fairly simple.

First, tone at the top is not talk at the top. It is action. You can have the CEO parrot the compliance officer's words about ethics, but what matters is what the CEO does. The same goes for culture. The executives sequestered to write the company's values may look cool, but all that matters is what they actually do.

Here is one example. Years ago I participated in reviewing a company's compliance program. We went to a remote facility and talked with people there. (Listening is one of the best things any compliance and ethics professional can do.) One of the first stories we heard was how the local unit president went on the regular safety walkthroughs with the safety managers. The president had a clipboard, just like the rest of the safety team, looking for issues.

Did this executive need to give safety lectures? Did the unit's leaders need to develop a values statement including safety? Sure, it might be useful. But everyone there already

knew safety mattered because of what they saw the president do. Culture comes through the day-do-day actions of the leaders at all levels. Workers are smart enough to see past the buzzwords; they know from experience to watch what the leaders actually do.

So if your CEO cares about tone, and you want to help mold the culture, try this. Have your CEO conduct an ethics and compliance session with a group of workers in a location outside of headquarters. No script for this, because the CEO gives no presentation. Instead, the goal is to ask the workers what they think about the company's values, how they would describe the culture, what they think really matters. And what does the CEO do? Listen — really hard.

How does this shape culture? Just try it. Have the CEO show real humility and spend some time with the workers. Do this a few times. Word gets around. People will know what the real values are when the CEO cares what the workers think. You will set your culture in the right direction and have tremendous tone at the top. Plus your CEO will learn some useful things about the company. 

Tear out this page and keep for reference, or share with a colleague. Visit www.corporatecompliance.org for more information.

Going from shame to change

Richard Bistrong (page 20)

- » Lessons learned by individuals may also apply to organizations.
- » Compliance leaders can use real-world examples of ethical conflict to drive home the importance of facing challenges as a team.
- » Having awkward and difficult discussions about real-world risk can help employees see that they are not alone when facing ethical dilemmas.
- » It's important to discuss ethical dilemmas and the possible consequences of decision making "in a safe place," so as to reduce the element of surprise.
- » Organizations need to look at the financial pressures of targets and incentives that may lead employees to go astray.

Pro basketball to adopt compliance programs: A case study

David C. Dodge (page 26)

- » The Dallas Mavericks (Mavs) responded quickly to the *Sports Illustrated* story by engaging an independent law firm to conduct an investigation.
- » The Mavs and the NBA were in close communication during the investigation.
- » The law firm's report included 13 key recommendations addressing allegations of wrongdoing within the Mavs' front office.
- » The Mavs hired its first chief ethics and compliance officer.
- » The NBA commissioner established a hotline for member teams and directed them to adopt the policies included in the law firm's report.

CFIUS and FIRRMA: Protecting technology and intellectual property

Michael Rose and Steve Siemborski (page 30)

- » Committee on Foreign Investment in the United States (CFIUS) preparation is vital for US or foreign entities considering a transaction subject to CFIUS review.
- » Early stage, foundational technology companies are a particular focus for foreign entities looking to exploit their intellectual property.
- » The current administration has heightened CFIUS scrutiny.
- » Deal participants can be required to have a monitor and provide the annual audit/monitoring report in compliance with the agreed-upon provisions of the National Security Agreement.
- » Preparation will pave the way for a smooth process, if handled proactively.

The purpose of a healthy company's culture:

The Volkswagen example

Ana-Sabina Ciceala (page 36)

- » A healthy organizational culture empowers the company to reach its general purpose to create growth and value for shareholders and all stakeholders.
- » By adopting new behaviors and defining the new emerging culture, we can determine how to increase staff engagement and responsibility and the correlative customer loyalty.
- » A company needs to embrace change and define its purpose, while assigning competent resources to employ/perform due diligence, thus implementing a healthy culture.
- » Culture should represent a strength; nevertheless, it is up to the organization to enhance it and manage what kind of effect it will have.
- » Organizational culture should be tailored to mitigate risk, reduce exposure, and avoid vulnerabilities to reach the company's purpose of ensuring a sustainable development.

Anticorruption on the Emerald Isle

Eric Brotten (page 42)

- » In summer 2018, Ireland consolidated its anticorruption laws into a single law, the Criminal Justice (Corruption Offences) Act (the Act).
- » The Act criminalizes direct and indirect corruption in both the public and private sector.
- » The Act holds corporations liable for offenses committed by staff, agents, or subsidiaries when reasonable steps were not taken to avoid commission of the offense.
- » The Act is extra-territorial, extending beyond Ireland, and, in many ways, similar to the United Kingdom's Bribery Act 2010 (UKBA).
- » Compliance requirements and accompanying compliance implementation programs for the Act will be similar to those for anticorruption laws in other nations, such as the US Foreign Corrupt Practices Act and the UK's Bribery Act.

How to create a compliance and ethics committee

Edye Edens (page 44)

- » To create an effective compliance and ethics committee, you must determine what information and resources you will require by asking important fact-finding questions.
- » Models for your specific type of committee are likely already in existence within your regulatory structure or other like-minded organizations.
- » Determining your purpose and resources will heavily influence your process, and there are several questions one must answer to make these determinations.
- » You can learn just as much from ineffective implementation of a committee as you can from a successful one.
- » The creation process can be tedious, but the task is not insurmountable, and you should adjust your timelines and expectations accordingly so they remain realistic.

Compliance by wandering around

Joseph Agins (page 48)

- » Relationships are key to successful compliance programs.
- » Some compliance concerns will make their way to your desk, but many will not. As compliance professionals, we must also go out and find them.
- » Meeting directly with employees and understanding their roles helps us to better understand and/or identify compliance concerns.
- » In order to buy in to compliance programs, employees need to understand how compliance ties in to their own goals and objectives.
- » No one can better articulate the value proposition for compliance than you can, but you need to go to the employees.

Compliance adoption in your organization

Jacque and Tony Niderost (page 52)

- » Compliance adoption, critical to preserving a company's brand and profits, can be improved through organizational changes and technology adoption.
- » Compliance does not have to be perceived as a burden through education of its importance and streamlining and automation of processes.
- » Intuitive and straightforward workflows and user experience is key to adoption of compliance programs.
- » Analytics can provide both information on the effectiveness of your compliance program and adherence to the program itself.
- » Technology such as artificial intelligence or blockchain can be an effective enabler of compliance needs.

Managing compliance and ethics business relationships with STYLE

Natalie N. Gunn (page 56)

- » Relationships are the key to your success.
- » Building and maintaining relationships require work, but investing in this work is a worthwhile venture.
- » Create teams of relationships to further advance your causes.
- » Share the "why" to increase your success rate.
- » By developing relationships, you are exemplifying leadership.

SCCE upcoming events

JANUARY

**January
7-9**

Internal Investigations Compliance Workshop
San Diego, CA

**January
13-16**

Basic Compliance & Ethics Academy
Dubai, UAE
CCEP-I Exam

**January
17**

Regional Compliance & Ethics Conference
Dubai, UAE

**January
21-24**

Basic Compliance & Ethics Academy
Lake Buena Vista, FL
CCEP Exam

**January
25**

Regional Compliance & Ethics Conference
Costa Mesa, CA

**January
8**

Web Conference
Navigating and Understanding Corporate Integrity Agreements ("CIA")

**January
17**

Web Conference
Disaster Recovery and Business Continuity

**January
22**

Web Conference
Why is the Code of Ethics important

FEBRUARY

**February
4-7**

Basic Compliance & Ethics Academy
Scottsdale, AZ
CCEP Exam

**February
10-12**

Utilities & Energy Compliance & Ethics Conference
Houston, TX

**February
11-14**

Basic Compliance & Ethics Academy
Hong Kong
CCEP-I Exam

**February
18-19**

Board & Audit Committee Compliance Conference
Scottsdale, AZ

2019

Internal Investigations Compliance Workshops

January 7-9 • San Diego, CA

Utilities & Energy Compliance & Ethics Conference

February 10-12 • Houston, TX

Board & Audit Committee Compliance Conference

February 18-19 • Scottsdale, AZ

European Compliance & Ethics Institute

10-13 March • Berlin, Germany

Higher Education Compliance Conference

June 9-12 • Orlando, FL

Basic Compliance & Ethics Academies

January 21-24 • Orlando, FL

February 4-7 • Scottsdale, AZ

March 18-21 • Chicago, IL

April 15-18 • San Diego, CA

May 13-16 • Minneapolis, MN

June 3-6 • Washington, DC

August 5-8 • New York, NY

INTERNATIONAL

13-16 January • Dubai, UAE

11-14 February • Hong Kong

6-9 May • Amsterdam, Netherlands

15-18 July • Singapore

Regional Compliance & Ethics Conferences

January 25 • Southern California

February 21-22 • Anchorage, AK

March 1 • Minneapolis, MN

March 15 • New York, NY

March 29 • Boston, MA

April 12 • Scottsdale, AZ

April 26 • Tampa, FL

INTERNATIONAL

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Tampa, FL • April 26

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Richmond, VA • May 10 **NEW!**

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Atlanta, GA • June 7

Nashville, TN • June 21 **NEW!**

Bangkok, Thailand • July 12 **NEW!**

Singapore • July 19

Columbus, OH • August 16

Santiago, Chile • August 21 **NEW!**

Buenos Aires, Argentina • August 23 **NEW!**

São Paulo, Brazil • August 30

Sarajevo, Bosnia & Herzegovina • Sept 30

Washington, DC • October 11

Dallas, TX • October 25

Seattle, WA • November 15

Philadelphia, PA • December 6

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