What Every Leader Should Know about Compliance Officers and Compliance Programs

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Concerns

As a result of ethical and legal issues going undiscovered and unresolved in business, the press, public, politicians and prosecutors are concerned

Addressing concerns

• They are suggesting self-regulation, such as the use of a compliance professional and compliance program

• This presentation describes what is involved in the effective implementation of a compliance officer and compliance program

Preventing, finding, and fixing infractions

- To be effective at preventing, finding, and fixing regulatory, ethical, and policy infractions, an organization will:
  - Hire a Compliance and Ethics Officer
    - Give independence and adequate resources
  - Implement a compliance program
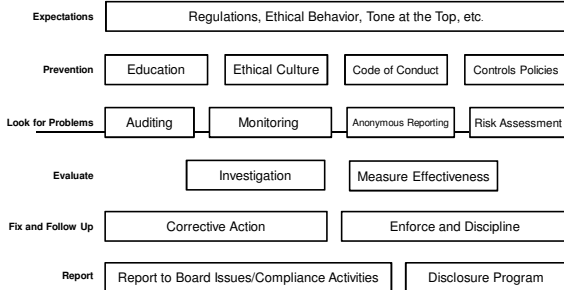   - All risk areas and all compliance program elements

Generally Accepted Compliance Principles

Expectations	Regulations, Ethical Behavior, Tone at the Top, etc.
Prevention	Education / Ethical Culture / Code of Conduct / Controls Policies
Look for Problems	Auditing / Monitoring / Anonymous Reporting / Risk Assessment
Evaluate	Investigation / Measure Effectiveness
Fix and Follow Up	Corrective Action / Enforce and Discipline
Report	Report to Board Issues/Compliance Activities / Disclosure Program

GACP Description

- General Accepted Compliance Principles consist of the basic elements of a compliance program:
  - Taken from Chapter 8 of the U.S Sentencing Guidelines
  - Supported by the enforcement community, including but not limited to the Department of Justice
  - Supported by experienced compliance professionals
  - Understood and supported by other professions such as audit, legal, risk, and HR

Myths about Compliance Officers

- **Myth:** Compliance Officers are cops or prosecutors

  - **Fact:** Compliance Officers are neutral, unbiased, and unconflicted

  - **Impact:** Rather than just receiving information supporting guilt, leadership receives all the facts regarding a potential compliance issue, allowing leadership to make an informed decision

- **Myth:** Compliance Officers defend the company

  - **Fact:** Compliance Officers are neutral, unbiased, and unconflicted

  - **Impact:** Rather than just receiving information supporting innocence, leadership receives all the facts regarding a potential compliance issue, allowing leadership to make an informed decision

Myths about Compliance Officers
(continued)

- **Myth:** Compliance is all about the law

  - **Fact:** compliance programs are not about the law, but rather about processes, procedures, and controls to ensure the rule of law is followed

  - **Impact:** Rather than just focusing on legal analysis, compliance professionals implement the elements of a compliance program to prevent, find, and fix regulatory and ethical issues

- **Myth:** Compliance is all about ethics

  - **Fact:** Building an ethical culture (and ethical behavior) is very important, but it is an outcome, not a process

  - **Impact:** Compliance programs are a process that produces an outcome of compliance with the rule of law and a strong ethical culture

Myths about Compliance Officers
(continued)

- **Myth:** Compliance is all about risk

  - **Fact:** Risk points to where problems might be

  - **Impact:** Compliance programs go beyond risk to investigating and resolving issues

- **Myth:** Compliance programs are expensive

  - **Fact:** Effective compliance programs make use of many existing resources

  - **Impact:** Compliance programs result in fewer fines, penalties, and PR crises

Myths about Compliance Officers
(continued)

- **Myth:** Compliance is a Human Resources function

  - **Fact:** Compliance Officers do not get involved in management decisions, employee complaints about how they are supervised, etc., unless the issue relates to a regulatory, policy, or ethical infraction

  - **Impact:** Management manages their processes and people, and compliance professionals help them comply with the rule of law

- **Myth:** Compliance is a lower standard than ethics

  - **Fact:** Compliance programs include efforts to build an ethical culture—compliance and ethics are not mutually exclusive or alternatives, but rather partners

  - **Impact:** Rather than just talking about doing the right thing, compliance programs assure leadership that the right thing is being done

Myths about Compliance Officers
(continued)

- **Myth:** Compliance Officers obstruct business

  - **Fact:** Compliance Officers who find a compliance issue ask the department what impact compliance will have on their department

  - **Impact:** Compliance Officers help individuals achieve their business objectives while removing the risk of a regulatory infraction

- **Myth:** Compliance programs are punitive

  - **Fact:** The government uses punitive measures to resolve issues

  - **Impact:** By catching issues early, compliance prevents their colleagues from suffering punitive outcomes

Myths about Compliance Officers
(continued)

- **Myth:** Compliance programs are a check-the-box process

  - **Fact:** Checklists are used by those who don't know what to do and are not considered by compliance professionals to be a compliance program

  - **Impact:** Effective compliance programs use all the elements of a compliance program to prevent, find, and fix ethical and regulatory problems

- **Myth:** Compliance Officers make up rules

  - **Fact:** Laws are determined by the government, and principles/policies are determined by the organization

  - **Impact:** Compliance Officers help employees comply with the rule of law, organizational policies, and ethical expectations

Beyond Implementing an Effective Compliance Program

- **Effective Compliance Professionals:**

  - Help their organization ensure the rules are followed using incentives rather than just punitive measures

  - Are great collaborators, negotiators, and mediators

Effective COs *continued*

- Try to understand the impact of compliance on a department, and help them find a way to implement the change with minimal impact on operations

- Explain the problems COs are trying to solve, and the potential impact if the problem isn't solved, rather than mandating change in an overbearing manner

Effective COs *continued*

- Just like Audit, we are to find the problem and work with the department to fix the problem

- If the department refuses to fix the problem, COs should do what Audit does and include the unresolved problem in their report to the Board

What a Compliance Officer Doesn't Do

- Compliance professionals do not make up rules. Organizations create policies, principles, values, and ethical expectations, and the government creates the law

- COs don't make demands and leave a department to resolve those demands by themselves

- Effective compliance programs don't just use a checklist. They manage a compliance program

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Doesn't Do *continued*

- Compliance professionals do not get involved in issues outside their departments that are unrelated to preventing, finding, and fixing ethical or legal problems, such as HR issues

- Compliance programs don't lower the bar. They support the highest possible ethical culture

- Effective compliance programs are not adversarial

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10 Principles of being a CO and maintaining an effective program

1. Implement the elements of a compliance program as described in Chapter 8 of the USSG (see the generally Accepted Compliance Principles)

2. Respond to concerns and complaints related to ethical and legal violations

3. Never compromise when faced with resistance to fixing a serious problem, and never overreact to small problems

10 Principles *continued*

4. Remain unbiased, unconflicted, and neutral during problem investigation and resolution

5. Have independence, authority, and responsibility for finding and fixing legal and ethical issues

6. Report to the Board significant unresolved ethical and legal problems, implementing an effective compliance program without being filtered by any employee or department in the organization

10 Principles *continued*

7. Compliance professionals ensure compliance problems are fixed rather than just advising they be fixed

8. Delegate to other departments the appropriate elements of a compliance program in a collaborative manner without giving up the authority to ensure the task is completed

10 Principles *continued*

9. Facilitate regular substantive support for the compliance program from upper management and the Board

10. Collaborate with the leadership to resolve problems in as positive a manner as possible

Sample list of questions the governing body should ask the compliance and ethics officer

- Is there anyone interfering with your ability to implement any of the elements of an effective compliance program?

- Is there anyone interfering with your ability to prevent, find, or fix this organization's legal, policy, or ethical issues?

Leadership Questions *continued*

- Do you have any responsibilities outside of compliance and ethics that could cause you to have a conflict?

- Do you report to anyone who has any responsibilities that could cause conflicts of interest for the compliance program?

- Is anyone with a conflict of interest guiding or directing the compliance and ethics program?

Leadership Questions *continued*

- Are there any issues that have been reported to you that are not being addressed?

- Has any issue been outstanding beyond a reasonable amount of time?

- Have we ever had an outside evaluation of our compliance and ethics program?

- Are we staying abreast of current trends in enforcement and effective compliance program management?

Leadership Questions *continued*

- Are we anticipating any potential new legal risks in the near future?

- Are there any substantive compliance issues currently under investigation?

- What issues are the enforcement community currently reviewing/investigating in our industry and where do we stand on those issues?

- How do you evaluate our organization's ethical culture?

Leadership Questions *continued*

- Is there anything that leadership can do to help further develop, maintain, or support the compliance and ethics program?

- Is there any further compliance and ethics education that you think leadership should attend?

- Do we need more compliance and ethics expertise on our governing body?

Leadership Questions *continued*

- Do you have a good working relationship and independent access to internal and external legal counsel, consultants, and auditors?

- Are you getting cooperation on compliance training, and what type of feedback are you getting from the training?

- What are you most concerned about?

Leadership Questions *continued*

- Do you feel that everyone in this organization feels comfortable reporting potential issues, and do they have a reasonable opportunity/mechanism to share their concerns about a policy, legal, or ethical infraction with you?

Leadership Questions Conclusion

- The governing body and leadership can engage in an effective dialogue with the compliance professional with some version of the suggested leadership questions

- Once your organization develops this best practice, the leadership question list can further evolve into a more effective tool for maintaining an effective relationship with leadership in the future