

Effective Compliance Programs

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Ethics vs. Compliance

- Ethics: a set of organizational values and principles that guide decision making and actions, even in the absence of prescribed rules or policies.
- Compliance: the organizational structures, business processes, and internal control environment that foster adherence to law, regulations, and company ethics policies.

Good Compliance is Good Business

- **Higher quality information**—integrating governance, risk & compliance (GRC) information allows management to make faster and better decisions
- **Process optimization**—waste, duplication, and inefficiency eliminated and other activities are streamlined to help reduce lag time and undesirable variation
- **Better capital allocation**—efficiencies gained allow financial and human capital to be allocated more effectively
- **Better prevention, detection and remediation of compliance failures**— activities are directed to the right people and the right business processes
- **Protected reputation**—when risks are managed more effectively, company reputation is safeguarded
- **Reduced costs**—lower costs of compliance related activities

It's Not Just Good Business...

Good Compliance is required by law:

- DOJ – FCPA enforcement (UK Bribery Act)
- SEC – SOX & Dodd-Frank Act (whistleblower)
- FCC – CAN-SPAM & Junk Fax
- FINRA – FCRA & FACTA
- DOL – Wage & Hour
- PCI DSS/ISP 27002 Information Security requirements & state-specific requirements
- Delaware corporate law (e.g., *Caremark* decision)
- NYSE listing rules
- U.S. Federal Sentencing Guidelines

In Case You Needed More

- SEC, 2011:
 - \$930 million in penalties
 - \$1.9 billion in disgorged gains
 - 600 formal investigations
 - 130 criminal
- Dodd-Frank whistleblower bounty program
- FCPA, 2012:
 - \$1.74 billion in penalties & disgorged profits
 - 2 guilty pleas by execs; facing prison time
- FINRA
 - Highest level of enforcement actions in 4 years
 - Fines up 50%

Federal Sentencing Guidelines

- Seven “pillars” of an effective compliance program:
 - ✓ Standards and Procedures
 - ✓ Oversight
 - ✓ Education and Training
 - ✓ Auditing and Monitoring
 - ✓ Reporting
 - ✓ Enforcement and Discipline
 - ✓ Response and Prevention

Standards & Procedures

- A.K.A. Code of Conduct
 - Lay out the rules
 - Communicate their high importance
 - Should cover all aspects of your business
 - Compliance considered as part of employees' performance evaluations

Oversight

- Designate a champion for your program – responsible for all aspects of the program
 - Compliance Officer vs. General Counsel
 - Debate – trend toward moving outside the GC’s office
 - Compliance Department/Committee
 - Due diligence required!
 - Key Considerations: seniority, influence, visibility, stature, independence (in appearance and in fact)
 - People at the top are often the worst offenders

Education and Training

- Not enough to just distribute
 - Ongoing training, tailored to organization & industry
 - Tailored to employees' roles, location, etc.
 - Evaluate completion and performance
 - Refreshers
 - Regular evaluation of training re: effectiveness
- Doesn't have to break the bank
- Third party firms/vendors (e.g., ACC Alliance Partner, WeComply)

Auditing and Monitoring

- Schedule regular audits to monitor compliance
 - Third-party vendors & contractors
 - Finances
 - All other applicable laws & regulations
- Internal or external auditors
- Compliance officer reports findings internally on regular basis
 - And externally, as necessary

Reporting

- Create employee-friendly reporting mechanisms for allegations or concerns
- GC & CFO reporting discouraged by DOJ
- **NO RETALIATION!!!**
 - Educate your managers
 - Have procedures in place to respond to reports
 - Ensure that employees feel comfortable reporting
- Third-party telephone hotline/web services

Enforcement and Discipline

- Define consequences noncompliance
- Enforcement should be consistent with appropriate disciplinary action
 - Apply them consistently, without bias
- Debates:
 - “...up to an including termination”
 - Making definite consequences public

Response and Prevention

- Respond to the offense
- Act to prevent similar future misconduct
 - Educate your employees re: what went wrong
 - And what went well!
 - Adjust training program

Federal Sentencing Guidelines

- Sentencing, fines, and probation for offenses re: antitrust, bribery, securities, money laundering, fraud, extortion, criminal business activities, embezzlement, etc.
- Will affect a potential penalty
 - Effective program can shorten or eliminate criminal sentences;
 - Ineffective program can add to penalty

How ACC Can Help You

- Compliance Training Portal – *ACC.com/compliance*
- Compliance & Ethics Committee
- Legal Resource Center: InfoPAKs, QuickCounsels, Top Tens, Webcasts (CLE), ACC Docket articles, etc.
- ACC's 2nd “Protecting Your Company: Training Your Employees to Comply with the Law”
 - Spring 2013
 - 2012 materials available through Compliance Portal