



Tuesday, May 1
9:30 am - 10:45 am

How Do I Convince My CEO That We Need a Robust and Effective Compliance Program?

Erika Ahern
General Counsel
CNA National Warranty

Keith Henderson
Compliance Officer & VP Ethics & Compliance
Capital Access Network, Inc.

Timothy Kuhman
General Counsel
The Kingdom Trust

Faculty Biographies

Erika Ahern

Erika Ahern is general counsel of CNA National Warranty Corporation. Ms. Ahern joined CNA as the company's first general counsel. Her objective was to design and establish a team responsible for implementing a comprehensive compliance program, encompassing all regulatory and legislative activities.

Ms. Ahern began her career as a litigator and later joined a national insurance company as in-house corporate attorney.

Keith L. Henderson

Keith Henderson is compliance officer and vice president, ethics and compliance for Capital Access Network, Inc. Mr. Henderson manages the day-to-day operations of the compliance program. He conducts and oversees investigations into violations of company policy such as fraud, theft, conflicts of interest, privacy, and misappropriation of company property or assets. He also manages the corporate-wide training and education on compliance and business ethics matters. Mr. Henderson's practice covers a broad spectrum of compliance related law involving Sarbanes Oxley, FCPA and various domestic and international privacy laws.

Prior to joining Capital Access Network, Mr. Henderson managed the compliance program for Turner Broadcasting System, Inc., including its CNN, TBS, TNT, TruTV and Cartoon Network business divisions. He also practiced as senior counsel at Hewlett Packard in Atlanta, Washington, D.C. and Colorado. At HP, Mr. Henderson handled the sale, licensing, and procurement of information technology products and services and represented the consulting, customer support, and managed services business units.

Mr. Henderson is the author of *"The Tax Treatment of Corporate Sponsorship Payments and the Aftermath of the Cotton Bowl Ruling"* (Exempt Organization Tax Review, May 1996). He serves on the board of directors of the ACC Georgia Chapter; ACC Compliance and Ethics Committee, secretary; and a board of director of the Atlanta Compliance and Ethics Roundtable.

Mr. Henderson holds a BA from Howard University, a JD from Texas Southern University School of Law, and a Masters of Laws in Taxation from Georgetown University Law Center.

Timothy M. Kuhman

Timothy M. Kuhman serves as vice president of compliance and general counsel of The Kingdom Trust Company, a South Dakota chartered trust company that provides

custodial services to the financial services industry. While the company custodies traditional assets, it specializes in the acquisition and divestiture of non-traditional ones. Its client base consists of RIAs, broker-dealers, private equity firms, hedge funds and family offices as well as individuals who own self-directed retirement accounts in which they wish to hold assets traditional custodians will not hold. Mr. Kuhman is responsible for all legal and compliance matters of the company.

Prior to joining The Kingdom Trust Company, Mr. Kuhman was the general counsel for Equity Trust Company and Mid Ohio Securities, Inc. He was responsible for legal matters facing both companies, oversaw the work of outside counsel and all regulatory matters. He assisted in the building and refinement of the company's compliance function including BSA/AML (KYC/CIP/OFAC) and the company's red flag system and suspicious activities reporting. He also served as the subject matter expert on self-directed retirement accounts for the executive team, customer service and sales conducting required trainings and answering day-to-day questions for the groups.

Mr. Kuhman completed his undergraduate degree at Southwest Missouri State University and attended the University of Toledo, College of Law.



By in-house counsel, for in-house counsel.®

How Do You Convince your CEO That You Need Robust Compliance Program?

Erika Ahern, General Counsel

CNA National Warranty Corporation

Keith Henderson, Compliance Officer

Vice President Ethics & Compliance

Capital Access Network, Inc.

Tim Kuhman, General Counsel

The Kingdom Trust Co

2012 Compliance & Ethics Training Program | May 1-2 • New Orleans, LA



By in-house counsel, for in-house counsel.®

Establish Whether Your Compliance Program is Working

2012 Compliance & Ethics Training Program | May 1-2 • New Orleans, LA

Know Your Organization

- Understand the business
- Learn each department's objectives
- Ask about roadblocks
- Find out where the historic information exist
- Identify compliance SMEs outside of your department
- Accept additional accountabilities
- Network within the organization

Interact with the Organization

- Be visible to the entire organization
- Maintain an open door policy
- Employee Lunch and Learns – request feedback

Understand the Company's Approach to Compliance

- C-Suite approach to Compliance
- What, when and how information is relayed to officers, managers and employees
- Process to identify and address non-compliance issues

Do your Due Diligence

- Where and in what form are the library of laws and regulations?
- What is the annual outside counsel expenditure?
- What on-going education is available internally and externally?
- Where does documentation exist outside of the Legal/Compliance Team?
- Are the employees from top to bottom familiar with the pertinent laws and regs?
- What type of follow up audits are performed and how often?

Conduct Compliance Surveys and Risk Assessments

- Identify key areas of potential risks
- Develop and implement risk assessment and measurement tools
- Determine the likelihood of misconduct based on the nature of your business and industry
- Identify all risks to operations, not just legal risks. Provide stats on key risk areas that have corporate-wide impact
- Understand the company's history of prior conduct and corporate culture
- Conduct RAs with Internal Audit and IT auditing functions when possible
- Survey and analyze relevant current and regulatory initiatives
- Cost Benefit – Highlight value of early detection of compliance and ethics threats and allowing the company to correct problems before they are discovered by regulators, investors, potential acquirers/buyers, the media or potential plaintiffs.
- Who conducts RA's – Over 70% of entities polled conduct periodic risk assessments.

2012 Compliance & Ethics Training Program | May 1-2 • New Orleans, LA

Establish the Strength of the Program

- Is the Program a set of written documents that all employees have in their desk drawer or something that all employees know and refer to?
- What is the revision date?
- Is the Program relevant to your organization? How current is it?
- What process is in place to remain current as to new legislation and regulations?
- Are employees aware of how to identify a non-compliance and what to do if they identify one?
- Is the response process established and followed?
- What is the monitoring process to ensure on-going compliance once a solution is implemented?

2012 Compliance & Ethics Training Program | May 1-2 • New Orleans, LA

Understand the Potential Consequences of Not Having a Robust Compliance Program

2012 Compliance & Ethics Training Program | May 1-2 • New Orleans, LA

Enhance Awareness Cross business Key issues

- DOJ – FCPA enforcement (fines and penalties increasing)
- FCC – Crack down on CAN-SPAM and Junk Fax.
- SEC – SOX compliance generally
- FINRA – FinCEN enforcement and awareness
- FTC – FCRA and FACTA reporting and compliance
- DOL – Wage and Hour (misclassification and Equal Pay)
- PCI DSS and ISP 27002 Information Security requirements and State specific requirements (i.e. Massachusetts)
- Records Management
- State regulations pertaining to industries; may even overlap with Federal Regulations
- Review overall stats on top issues that most companies irrespective of their industry that could benefit from compliance oversight

2012 Compliance & Ethics Training Program | May 1-2 • New Orleans, LA

Cross-Boarder Transactions and International Compliance Requirements

- Entities with global operations will benefit from compliance management
- Understand Corruption Perception Index and its impact of business operations, costs of goods/services, risks of loss, litigation, fines, and likelihood of positive outcomes in the event of a dispute
- Analyze legal, business and regulatory issues of Cross-Boarder transactions that impact your business and condense them down to high level areas of concern for the CEO such as Antitrust, Anticorruption, Taxation, Securities regulations, Data Protection, Trade requirements and restrictions, Intellectual Property, Labor and Employment and Information Technology
- Analyze cultural resistance to whistleblowing, not reporting misconduct or even the perception that an activity is inappropriate (Giving of gifts in connection with business dealing in some cultures may be a way of life where the refusal may be considered and insult)

2012 Compliance & Ethics Training Program | May 1-2 • New Orleans, LA

Federal Sentencing Guidelines

- Shorter or eliminated criminal sentences for effective compliance programs
- Seven "pillars" of an effective compliance program
 - Standards and Procedures
 - Oversight
 - Education and Training
 - Auditing and Monitoring
 - Reporting
 - Enforcement and Discipline
 - Response and prevention
- In today's enforcement environment, the fact that the Sentencing Guidelines contemplate giving points for an effective compliance program should give you pause.
 - Effective program can lessen the penalty
 - Ineffective or non-existent program can add to the penalty

2012 Compliance & Ethics Training Program | May 1-2 • New Orleans, LA

SEC 2011 Enforcement Actions

- Resulting in penalties of approximately 930 million dollars
 - Approximately 1.9 billion dollars in disgorged gains
 - Approximately 600 formal investigations
 - Approximately 130 criminal investigations
 - Referred approximately 600 issues to SROs, state and foreign authorities for investigation
- Promise of increased focus on compliance programs

Key risk areas

- Financial reporting
- Anti-corruption/fraud
- Ethics and Business Conduct
- Insider Trading
- Internal Reporting
- Adequate Training
- Adequate oversight

2012 Compliance & Ethics Training Program | May 1-2 • New Orleans, LA

FINRA Enforcement Actions

- Highest level in 4 years
- Fines (in dollars assessed) up almost 50%
- FINRA itself criticized by SEC for its own compliance issues

2012 Compliance & Ethics Training Program | May 1-2 • New Orleans, LA

AML/BSA Fines and Penalties for failure to comply

- August 2011 – 10.9 million civil penalty violations of BSA
- March 2011 – 7 million civil penalty SAR and BSA violations
- February 2011 – 8 million civil penalty failure to monitor, inadequate processes, failure to comply with policies and procedures
- May 2010 – 500 Million civil BSA violations, criminal information filing dismissed based on remedial actions taken
- March 2010 – 110 million failure to implement adequate policies, procedures or monitoring controls
- Many smaller fines and penalties

2012 Compliance & Ethics Training Program | May 1-2 • New Orleans, LA

Review the FSG Seven Pillars of an effective Compliance Program

- Does every pillar have corresponding established, written guidelines or processes?
- How are the guidelines established within the organization and culture?
- If not, where are you weak? Are there compensating factors in place?

2012 Compliance & Ethics Training Program | May 1-2 • New Orleans, LA

Other Good Reasons to have a Robust and Effective Compliance Program

- Lower reputational risk
- Lower Insurance Profile
- Better business management
information available to the enterprise

Convey Your Findings to your CEO

Identify in Advance Potential Arguments

-
-
-

Considerations


- What were your stated objectives when you took the role
- What is the current corporate culture?
- Where does the Board/CEO want the compliance program to look like?
What do they know and what do they need to know?
- How (if at all) were compliance program objectives described to you as you took on the role you are in?
- Is the discussion being held due to on-going work that you were asked to perform or did you identify weak areas during your due diligence?

 *By in-house counsel, for in-house counsel.®*

Approaches Vary

-
-
-

2012 Compliance & Ethics Training Program | May 1-2 • New Orleans, LA

 *By in-house counsel, for in-house counsel.®*

Conversation Starters and Tips

- Set an agenda in a meeting notice
- Start an informal conversation
- Host a lunch and learn or offer to present on a topic
- Present the information as an educator not as an enforcer
- Be Positive

2012 Compliance & Ethics Training Program | May 1-2 • New Orleans, LA

Cost Effective Ways to Establish Your Compliance Program

2012 Compliance & Ethics Training Program | May 1-2 • New Orleans, LA

Cost of Compliance Programs

- Cost will reflect company size, regulatory requirements and industry (Pharmaceuticals spend more than 3 times the amount of Retailers)
- Dedicated employees to manage compliance and overall organizational structure stats on compliance
- Understand key cost centers in your business (Data Security, Regulatory Requirements)
- Understand training costs and ways to minimize those expenses. Training online vs. in-person, leveraging existing training tools such as a company Learning Management System or cross-training with other groups (Quarterly Departmental Mtgs).
- Compliance Costs vs. Non-Compliance Costs - Mitigate costs with an awareness of the costs of non-compliance (fines, penalties, loss of reputation or market position) Review the costs variances. Sentencing Commission Data Reports on enforcement actions

2012 Compliance & Ethics Training Program | May 1-2 • New Orleans, LA

Establish Compliance Standards and Procedures

Document Department Procedures

- Explain what items you are concerned with documenting and why
- Consider having your department act as the scribe
- At the very least, provide the business with a template to follow
- Use face to face meetings to discuss the project

Auditing and Monitoring

- Regularly review processes for current application
- Inform and follow up as laws and regulations change
- Use anonymous surveys to establish level of understanding

Educate and Train

- Lunch and Learn Programs – senior staff, management, employee base
- Use the employee bulletin board, newsletter or intranet
- Host a break or sweepstakes for the organization

Foster a Culture of Due Diligence by every Employee

- Regularly remind the entire organization that the organization needs non-compliances reported
- Anonymous mailbox
- Establish an open door policy for every member of your team
- Wall Posters Emphasizing Compliance
- Ask your senior staff and managers to regularly communicate about compliance

Engage Enforcement

- Make use of employee goals and objectives
- QA with regard to legal compliance requirements by the business unit
- Can be done as the employee is performing the task

Be a part of the business process with solution based advice (not “this is what the law is” but, “this is what the law says, this is what it means for you and these are your options in light of that information.”)

Recognize that it can be a long
road

Questions?