

**Topic: "Creating & Sustaining an Ethical Culture in a Global Company: Key Considerations & Role of the CLO"**

**Organizational Issues:** What is the organizational structure for business ethics and compliance within your company? Is there an ethics function that is separate from compliance? Does the company have a centralized compliance function and/or department? What is that group's overall responsibility and reporting structure? Does the company have a chief compliance/ethics officer? What is the scope of that person's role? Who does that person report to? Does the compliance officer have direct access to the Board? What role does the Board play in ethics and compliance oversight? Who advises the Board on compliance and ethics? Is compliance-related risk analysis a separate function and, if so, where is it housed? What (if any) is the reporting relationship between the compliance function and the CLO? Are there other groups/departments that play a role in creating an ethical culture and how do they interact with the CLO and the Board?

**Role of CLO & Law Department:** Is the CLO the chief compliance/ethics officer? Is this a de facto role or a formal designation? What are the pros and cons of having the CLO as the chief ethics officer? If not the CLO, is another lawyer within the law department the chief compliance/ethics officer? Is this a full-time assignment or does that lawyer wear another hat? What is the role of the law department in developing and implementing business conduct, compliance and ethics policies and programs? What are the CLO's responsibilities when it comes to compliance program success measurements (effectiveness and efficiency), communication, updates and implementation? What role does the CLO play in assisting the Board in overseeing the strategic direction of the company's compliance and ethics programs? Does the legal department assess its own overall compliance and ethics performance? If there is an issue within the legal department, is there a reporting line around the CLO?

**Policy & Approach for Creating, Measuring and Publicizing an Ethical Culture:** Who is/was involved (what departments and staff) in creating your compliance and ethics program? Who sets the success indicators for these programs? Who is responsible for reviewing the effectiveness of the program and measuring success? How do you show or rate effectiveness—what are your key performance measurements and controls and evaluation criteria? Are those measurements and controls periodically updated as new risks are identified because of the nature of your business or because of developments in enforcement activity? How is the success of the compliance and ethics programs communicated to the Board? How do you get executives and the Board to model and show they are personally invested in the programs? How is the effectiveness of the program communicated throughout the company? Who analyses and assesses if the corporate compliance and ethics program is not working and identifies areas of improvement? Have the Board and management

agreed on a set of things to track (such as quality improvements, environmental compliance, etc.) which are strategic issues for the company? Has the company instituted any policies and requirements that go beyond just the minimum compliance and ethics standards dictated by Sarbox and regulations? What role should management and/or the legal department play in assisting the Board to fulfill its fiduciary duties and properly monitor your company's compliance and ethics practices? How do the various committees, such as audit and compensation committees, function to provide oversight? How does the CLO or Board members know when things aren't right?

**Selling Good Compliance to Business Partners (Vendors, Partners, Mergers, Joint Ventures):** Do you have a compliance and ethics due diligence process in place when assessing the ethical culture of your new business partners? Who manages that process? How do you promote and transfer your ethical culture/compliance programs to your business partners? How do you survey and/or assess effectiveness of compliance programs of your business partners? How do you control and make clear to your accountants and outside lawyers that you do not want them cutting corners and that you want an ethical culture? Is there a role for the auditor in this process? Who manages your vendor relationships? What types of training programs or policies do you have on providing legal guidance to subsidiaries or joint venture partners? Do your in-house lawyers sit on the Boards of company subsidiaries and/or outside company Boards? What types of liability risks are associated with these additional roles and how does the company approach providing protections? Have you analyzed the nature of your influence and control over your business partners and their effect on your books and records in designing your compliance program? Do you have a process of selling/communicating the importance of ethics and compliance to your clients as well as new hires?

**Communication, Training and Implementation:** How is your compliance and ethics program communicated to all departments of the company? Are there company-wide compliance and ethics training programs/tools/modules? Is there a designated communication/training function specific to compliance and ethics? Are people in your company equipped to recognize and resolve moral dilemmas? What types of ethical conduct policies and/or training do you provide for in-house lawyers and legal staff? Who receives training—everyone, including the C-Suite and the Board? What is your training certification process? Do they use electronic training and certification? Do you survey your training programs – what the retention level is, how to best update them and utilize technology? Do all corporate contracts and business agreements with others include compliance and ethics provisions (anti-corruption law provisions) and consequences for misconduct? Does your company conduct compliance training and education programs for business partners, vendors, agents, and consultants? Are these programs tailored to respond to specific issues in each geographic location where you operate? Do your own gift policies the same as those of government officials here and abroad?

**Mechanisms for updating ethics and compliance programs:** How does your company keep track of compliance and ethics developments within your industry, new rules/laws in countries where you operate and developments in enforcement activity? What are the timelines, processes and procedures for updating your compliance programs? Who manages the process of updating and reviewing your programs? What is the review and updating mechanism for improving or changing the compliance and ethics functions and programs? Is the CLO and Board involved? What are the company's objectives for the coming year(s) with regard to ethics management?

**Anti-corruption global compliance:** What are the challenges associated with developing and implementing a single unified approach to ethics and compliance for your global operations? How does the company harmonize varying expectations and standards of conduct around the world? How do you ensure that there is uniform treatment of these issues through various foreign subsidiaries and what is the role of CLOs and legal departments in this process? How does the company measure effectiveness of all these programs? What role does the law department play in measuring program effectiveness? How does the company communicate the effectiveness of its global programs to the Board? Where does ethics fit into the overall strategy for expansion or working in corrupt environments or countries that have different ethics/compliance standard? Have you established a compliance and ethics model that incorporates the OECD Treaty requirements as implemented by local law in the countries where you do business? Do your company's compliance procedures reflect other local law issues in a foreign environment? How do you keep them current? Does your company have a dedicated compliance function with an effective monitoring system in place for FCPA/OECD, anti-trust, export control and other compliance issues faced by multi-national organizations? How does the company reconcile its own global business practices and guidelines with local law and custom? In your experience, do you think you can have different ethics in different places? Can/should a global company have localized ethics and compliance programs? Taking into consideration privacy and other laws in various locations, how do you survey and set indicators for success as far as compliance in each jurisdiction where you operate? Does your company have policies in place that address the propriety of sponsoring foreign officials on seminars, training, and other trips? Do you also have strict gift policies in place as far as gifts, awards, and contributions to foreign officials/governments? Does your company have strict procedures for contributing to foreign charities and nationalization programs?

**Mechanisms for Reporting Concerns:** Do your corporate procedures worldwide include a mechanism to bring problematic issues immediately to the attention of the legal department? What role does the law department play in receiving, evaluating and investigating compliance-related questions or concerns? How are these inquiries filtered and investigated? Does the company have a global policy and mechanisms for allowing employees, contractors and/or others to report concerns? What systems do you currently have in place to foster

and monitor reporting? What controls and programs do you have in place to ensure compliance reporting on a global level? How are they differ in different cultures/countries? How effective are they? How do you document implementation? Is there a reporting system -- helpline, reporting tools, interview and complaint procedures, including confidential, anonymous submissions -- that lets employees easily bring attention to potential violations and/or other criminal conduct? Are there self-reporting systems in place for violations? What channels/departments are included? Do these channels include using an outside vendor for information intake? Are your compliance and ethics measurement systems adequately designed to uncover red flags, warning the CLO of impending disasters in areas such as accounting and regulatory compliance? What checks and balances exist between the Board's committees, CLO and outside experts such as accountants and consultants?

**Internal Investigations:** What is the role of the law department in connection with internal investigations of ethical conduct violations (e.g., does the law department generally lead these investigations or otherwise play a coordinating role)? How do you deal with legally mandated disclosures or voluntary disclosures? Does your company have a crisis management team or developed and documented procedures for investigating alleged violations? What is the decision process for instigating an audit or an investigation? Who generally manages audits/investigations within the company? How are decisions made in regard to bringing in outside counsel to assist or handle audits and/or investigations? If the law department is not managing the investigations-- do they interface with who is? In light of the Board's fiduciary duty of care and loyalty, what quality controls does your Board institute to ensure that it understands and effectively performs its oversight role and management of investigations? What role does the CLO play as far as communicating investigation outcomes to the board and/or managing risk? Does your company have appropriate policies concerning document retention and litigation freezes in connection with potential suits, government inquiries, and internal investigations? Have you developed policies and procedures concerning payment of attorney fees for employees under investigation?

**Remedial Actions:** Does your company have up to date disciplinary procedures to address violations of the compliance and ethics programs? How consistent is your company in applying remedial actions? Do your remedial actions vary and depend on the level of the culpable individual? What types of processes and practices has the company implemented to help promote and to admonish ethical wrongs? How does the company communicate its actions to its employees and to the Board? What do you view as best practices in this area?

**Managing Secrets & Responsibility to the Company:** As a CLO, you receive important information from executives that they may wish to keep confidential until a situation more fully develops—how do you balance your role as lead legal

advisor for the company with requests to maintain confidentiality made by individual executives?

**Cost of an Ethical Culture:** Do you think that having an effective program of doing the right thing provides your company with a competitive edge? How do you budget for compliance functions, including outside counsel, investigations, audits, reporting, etc.?