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CLO CLUB SUMMARIES- ACC’S 2007 ANNUAL MEETING

Following are summaries from ACC’s CLO Club sessions held on October 31, 2007, during ACC’s Annual Meeting in Chicago. This year’s CLO Club series included two sessions: CLO1 was titled “Designing a ‘Best Practices’ Plan to Ensure Financial Compliance;” CLO2 was titled “Board Emergency Response Preparedness ‘Best Practices’.” CLO Club participants received hypothetical examples in advance of the sessions. The hypotheticals and the reference lists for each session may be accessed via ACC’s CLO Club web page: <http://www.acc.com/php/cms/index.php?id=267>.

CLO1: Designing a ‘Best Practices’ Plan to Ensure Financial Compliance

Session Hosts: Dennis Schoff (Lincoln National Corporation)
 Danette Wineberg (The Timberland Company)

SESSION FORMAT: A hypothetical example was provided to session participants. The hypothetical presented a business scenario involving financial compliance issues with allegations of wrongdoing on the part of a company’s Director of IT and on the part of the head of a regional business unit. Session participants discussed in roundtable format key issues, challenges and best practices. Highlights of reports shared with the broader group are included below.

TOP ISSUES

Report to the Board: As CLO faced with this situation, what would your Report to the Board include?

- Top-to-Bottom Review of internal controls
- Review of policies/training on financial compliance
- External input may be needed (law department would engage this input)
- Need to decide who takes the lead in investigation & remedial action—financial group or another group such as compliance
- Coordinate functional compliance groups
- Longer term: assess compliance programs generally

Training & Communications- what types of components/initiatives would you implement?

- Compliance training—this includes ‘tone-at-the-top’ & ensuring management visibility on the importance of these issues (both senior management and mid-level management)
- Communicate and constantly update and re-communicate important messages (including reporting and training messages)

- Extend training on financial compliance to vendors
- Implement a process and training for product returns
- Set the proper ‘Tone-at-the-Top’—inculcate within the company’s culture; include the Board
- Additional systems to support compliance initiatives include:
 - helpline
 - certifications
 - ombuds programs

CHALLENGES & BEST PRACTICES

Challenges

- Finding the right financial control systems (one idea for this scenario: have a secondary sign-off)
- Relationship between Information Technology and Finance and understanding the process (one idea for this scenario: evaluate financials to note data differences/spikes for follow-up assessment and discussion)
- Independence
- Detecting fraud
- Experts may not always be readily available to help assess a situation early on; need for CLO to step in
- Who should be on the investigating team? Who has the right to hire outside lawyers?
- Law firms may be concerned about expertise/lack of in accounting matters if law firms are selected for outside expertise and assistance
- Tensions between legal and accounting functions
- Finding the right auditing firm (example of accounting partners escalating issues to their national office and delays)
- Accounting firms resisting change because of concerns regarding possible impact on their other clients
- Quality of accounting services (suggestion by participant to consider firms beyond the big 4; suggestion to consider other auditors within the same firm; notion that relationships are ‘everything’)

Best Practices

- Importance of follow-up communications: make sure the problem is solved, reinforce empathy for whistleblowers, send message of value and underscore importance of trust
- Secondary sign-off
- Evaluate budget versus plan/swings and divergence can suggest that additional evaluation or scrutiny is necessary
- Prepare and implement a strong limits of authority policy
- Create Steering Committees/other leadership teams to oversee large functional areas
- Implement an Enterprise Risk Management focus to ‘see’ problems before they occur
- Create and implement a strong Code of Conduct
- Consider dual organizational reporting of the CLO—both to the CEO and to the Board
- Ensure that corporate expertise functions understand their roles
- Schedule regular executive sessions with the audit committee at every live meeting so that there is a process in place and isn’t simply a focus on whether a problem exists
- Have communication lines open with the Board of Directors
- CLO plays role of mediator between accounting, versus legal versus SEC reporting
- Cultivate and nurture relationships
- Consider accounting firms beyond the Big 4 to enhance attention and quality of service if these are issues
- Change partners at accounting firms before trying to change firms – replace the relationship partner if there are significant issues

CLO2: Board Emergency Response Preparedness “Best Practices”

Session Hosts: Mary Kennard (American University)
Sheffield Hale (American Cancer Society)

SESSION FORMAT: A hypothetical example was provided to session participants. The hypothetical presented a business scenario involving allegations of substandard care and abuse (and related media attention) for a company that operates nursing home facilities. Session participants discussed in roundtable format key issues, challenges and best practices. Highlights of reports shared with the broader group are included below.

TOP ISSUES

Communications Strategies- what types of components/initiatives would you implement?

- Process: identify a spokesperson (perhaps for each site) with credibility and establish the proper team (factors to consider in assessing credibility include: intelligence, good character & good will)
- Find the problem, understand and articulate it
- Understand what the company stands for (this can involve a deep self-examination)
- Understand who the recipients of the company’s message(s) are and whether the audience (e.g., general public or media) requires involving additional groups
- Contact interviewees within the company; contact families of impacted persons
- Determine whether any disclosure obligations exist; consider privacy issues
- Determine the company’s message and take the initiative to present this message
- Consider involving a third party (maybe a retired judge) to oversee the crisis response efforts
- Consider including a public relations firm
- Communicate with authenticity
- Communications should be a ‘conversation’—not just a one-time statement; the message should be consistent (e.g., as appropriate: the company is taking this situation seriously, the company is cooperating, working quickly to investigate and respond, taking privacy considerations into account, etc..)
- Conduct rehearsals
- Obtain executive support for the notion that the company needs to prepare for communications strategies and response initiatives in the event that a crisis situation arises

Conducting Internal Investigations—factors to consider:

- Will the investigation be led by in-house lawyers or outside lawyers?
- Consider including a consultant with expertise to evaluate the company’s practices and provide a ‘state-of-the-union’ on how the company is doing
- Consider privilege (if using an outside law firm, consider having them engage any consultants)
- First priority is to: Identify the Facts
- Timing: decide which actions will be taken within the first 24 hours and which actions should be taken in the following days and months
- Do not be confrontational—consider having someone with experience in criminal investigations lead the investigation
- Consider appointing a special committee of the Board for the investigative team to report to

Response to Government Investigations/Suits-factors and actions to consider:

- Notify insurance carriers
- Get the company’s message to regulators
- Reach out to potential plaintiffs and engage them early:
 - find out who the potential plaintiffs are
 - what the damages may be

-possibly avoid litigation

- Involve specialists—particularly if they have relationships with the regulators
- Consider privilege issues and make tactical decisions up front as to situations in which privilege applies (challenges associated with need to establish credibility quickly and desire for information plus the importance of considering privilege up front)
- Consider evidentiary issues: try to manage and control appropriately (e.g., litigation holds, identify witnesses both good and bad, identify defendants)
- Try to manage communications and to educate the communications team so that they don't make harmful communications
- Admissions—what admissions are being made: this can be through statements or actions/sensitize to this
- Get a litigator on board early
- Set the team: consider including the CLO, specialists, insurance, external investigator
- Investigation Report: ensure the CLO reviews the government's report for accuracy; try to negotiate working with the investigators/regulators up front so can point out errors or inaccuracies
- Implement an IT lock-down (security videos, email retention, litigation holds)
- Develop and deliver patient safety communications
- Consider roles for the following emergency response groups: call center, group dealing with patients, group dealing with the regulators

ADDITIONAL IDEAS ON BEST PRACTICES

- Consider appointing a special committee of the Board for the investigative team to report to
- Disaster plan needs to be in place before a disaster occurs
- Appoint a person who employees can report concerns to
- Engage a media consultant
- Create an emergency response team and ensure that employees know how to reach the team; include internal and external resources on the team
- Have executives take media training—it's good for them to know what to do even if they're not the primary spokesperson
- Set communications strategies (described more fully above)
- Don't wait until there is a problem to be a good corporate citizen--establish good relationships with diverse groups within the community in advance—it's good to be able to point to the company's good corporate citizenship track record
- Demonstrate good faith—the company's response will be under a microscope; take care to build credibility both inside and outside the organization