



## 104 Creating a Culture of Compliance

**Simon A. Fish**

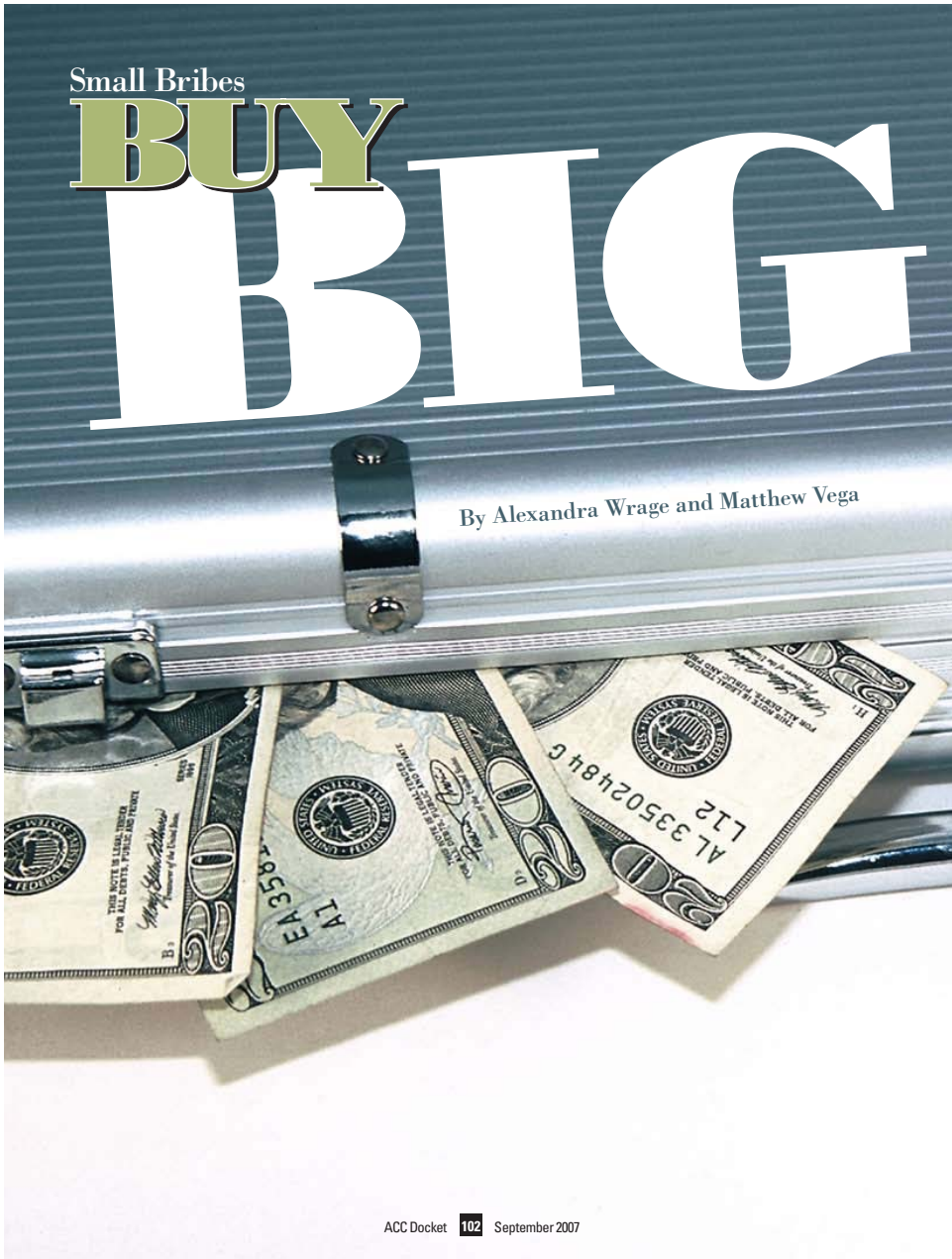
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The United States leads the world in fines, jail terms, and other penalties for the payment of bribes overseas. An aggressive prosecutorial climate, fuelled by reporting requirements under Sarbanes-Oxley, has moved this issue to center stage for in-house counsel and compliance officers. Companies spend a fortune vetting their third party intermediaries and reviewing any gifts or meals provided to foreign government officials lest the latter be deemed an "inappropriate payment." Yet, the United States is also one of the few countries that raises no objection to the payment of what it euphemistically calls a "facilitating payment" overseas. These are typically small payments to prompt a low-level government official to do what he or she is supposed to do anyway: stamp your passport, provide police protection, clear your goods through customs, or hook up your phone. The US

anti-bribery law, the Foreign Corrupt Practices Act (FCPA) expressly carves out these payments as an exception to its otherwise onerous anti-bribery law. A relic from the days when companies thought there wasn't much they could do to avoid paying these bribes, these payments linger on in a sort of legal limbo. The enforcement authorities now lag behind many US corporations which have abolished these payments. Companies are beginning to see facilitating payments for what they are: a violation of foreign law (no country permits you to bribe their officials regardless of what the bribe is called), an invitation to books and record violations (few employees can bring themselves to record these bribes accurately), and corrosive of good governance more generally (companies are uncomfortable leaving definitions of permissible versus impermissible bribes in the hands of their employees).

Most multinational companies have made progress toward eliminating traditional bribes from their business practices. They have done this by implementing comprehensive compliance programs, by training local and foreign employees and business intermediaries, and by rigorous internal enforcement. Now some of these companies are taking steps to eliminate "facilitating payments" from their business practices as well. These small bribes, permitted under the FCPA, are made to foreign government officials to encourage them to perform or expedite routine, nondiscretionary governmental tasks.

In this article, we will illustrate how making "facilitating payments" leads to problems, and provide suggestions on how companies can implement and enforce their own internal policy against bribes of any kind, both large and small. Much of the following guidance was developed from a recent TRACE survey in which 42 companies engaged in international business were interviewed to learn how they have stopped paying small bribes to government officials. Many of the companies interviewed have found that it is possible—occasionally even easy—to refuse to participate in bribery schemes. There are certain techniques that work and certain practices to avoid.

**The Problem**

In many companies, a distinction has long been drawn between major bribes and mere "facilitating payments." The distinction has been confusing. Bribes and "facilitating payments" are both payments, gifts to, or favors for, government officials—in their personal capacity—in exchange for a desired outcome or relief from an undesirable situation. The legal distinction under the FCPA is supposed to be whether the benefit bestowed was within the official's discretion to grant or whether it was due to the payer as a matter of course. The fact remains, however, the company is almost always seeking better treatment than a non-paying company would expect to receive. If companies make these payments willingly, they are bribes. If companies pay them because they believe they have no choice, they are a form of extortion.

"A corporate policy allowing facilitating payments, except where prohibited by local law, doesn't really work for a global company with global employees. There are



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The views expressed in this article are the authors' own and are not being expressed on behalf of their companies.

so many local prohibitions that the overall policy becomes like Swiss cheese. Add to that the agony of explaining to employees that big bribes are bad but little bribes are okay. End result—"the employees are confused and anxious and are distracted from doing their real job," said Rebecca (Riv) Goldman, VP, commercial law, Rockwell Automation.

*Double Standard*

Of the handful of countries that permit these small bribes overseas, none permits them at home. A Canadian or American who makes a "grease payment" to a foreign customs official would face criminal penalties for making the same payment to an official at home. Permitting the citizens of one country to violate the laws of another on the grounds that it is "how they do business there," corrodes international legal standards that otherwise benefit multinational corporations. "The cost to businesses of making facilitating payments in emerging markets is more than a nominal fee when such payments undermine the rule of law and good corporate governance," said Susan M. Ringler, senior counsel for international compliance, ITT Corporation.

*A Slippery Slope*

The mixed message of permissible small bribes versus impermissible large bribes creates a risky arena for business activities. Many companies interviewed complained that small bribes involving routine governmental tasks are both difficult to define and impossible to control. They found that some employees, responding to pressure to ensure timely contract performance, paid bribes for distinctly non-routine services. Furthermore, it is difficult to convey to employees that the payment of large bribes to foreign government officials is likely to cost the employee his job and possibly his freedom, but that the payment of small bribes is acceptable.

"Facilitating payments are often a 'slippery slope' toward outright bribery. In addition to being an unnecessary expense, even when de minimus, these payments are seldom declared by the recipients and thus frequently misrepresented in the books of the providers. In all respects, they can create a non-transparent business environment, particularly when encouraging preferential treatment. We are encouraged to see that international

**It is difficult to maintain a good reputation within a local business community when your company is believed to buy its way past the administrative obstacles that local citizens and companies must endure.**

conventions and private sector firms have started to take a hard line against this practice," said Suzanne Rich Folsom, counselor to the president and director of institutional integrity, The World Bank Group.

*Loss of Local Community's Confidence*

It is difficult to maintain a good reputation within a local business community when your company is believed to buy its way past the administrative obstacles that local citizens and companies must endure. When a bureaucratic delay is legitimate, rather than trumped-up by the bribe-taker, purchasing preferential treatment for your company bumps others further down the waiting list.

*Inherent Illegality*

Every bribe of a government official—regardless of size—breaks the law of at least one country. The host country outlaws payments to its government officials in any amount and for any purpose. Of course, regardless of the statutory language, the interpretation and enforcement of the law varies widely from country to country. Local officials often have inside knowledge about the correct fees, or have the authority to change them locally, giving the officials improper leverage to extract bribes. This legal landscape is further complicated by the fact that officials in many countries are poorly paid and a gratuity is treated as an informal but integral part of

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**“It is simpler to do the right thing—to get the response right—on the small issues and, by so doing, to set the tone for the issues that carry the greatest risk for the company.”**

their salary. Regardless, there is no country anywhere with a written law expressly permitting the bribery of its officials. A lack of resources, political will or interest has meant violations are rarely prosecuted, but that is changing. Countries, like China, that are eager to be seen to be combating corruption, are prosecuting the payment of small bribes with increased frequency.

As a result, there is widespread concern amongst the companies that TRACE interviewed that small bribes could lead to costly legal complications. “The fact that facilitating payments are permitted under US law doesn’t make them a good idea. These payments are inherently risky and a willingness to make them can be an indication of larger problems with internal controls,” according to Deborah Gramiccioni, vice president, TRACE, and former assistant chief of the fraud section at the US Department of Justice.

*Accounting Dilemma*

The laws of countries that permit the payment of these bribes abroad also require companies to maintain detailed and accurate records of each transaction. Many businesspeople interviewed expressed reluctance to record on company books a “payment to government official for routine task”—creating a record of a violation of local law. Yet failure to keep accurate records of the expense violates US law even if the underlying payment does not. Consequently, companies making these payments must choose between falsifying their records in violation of their own laws or recording the payment accurately and documenting a violation of local law.

*Foreign Subsidiaries*

With the implementation in many countries of new laws criminalizing the payment of bribes to foreign gov-

ernments, there is also an increasing risk that a multinational company with foreign subsidiaries will violate the laws of the country where the subsidiary is based. Companies with offices in more than one country expressed concern that if they do not abolish the use of small bribes altogether, they must undertake different compliance programs based not only upon the location of each office, but the citizenship of the people working there.

*International Security*

In addition to the legal issues, there is a growing concern regarding national security. One US company reported that the terrorist attacks of September 2001, put a new face on the practice of paying small bribes. That company had routinely paid foreign officials for processing work permits and visas, but is now very uncomfortable promoting corruption in this area. If visas can be bought, borders won’t be safe. The practice of bribing immigration officials can lead to serious entanglements with the enhanced security laws of the company’s home country.

*Bad for Business*

Paying small bribes is poor legal practice, but more to the point, it is bad business practice. Widespread small bribes set a permissive tone, which invites more and greater demands. Every company that TRACE interviewed expressed dissatisfaction with these small bribes. They told us that they amount to a hidden tax on business, they tend to proliferate, they buy an uncertain, unenforceable advantage and—the most common complaint—they are simply irritating. Well-run businesses seek clear, dependable terms and enforceable contracts. Small bribes introduce uncertainty, risk, and delay.

*Reputation as a “Soft Touch”*

The standard argument in defense of bribery is that it is impossible to conduct business successfully overseas without paying bribes to ease the bureaucratic and regulatory burden. If true, business should be more efficient for companies paying bribes, but this argument is not supported by research or anecdote.

Two World Bank researchers studied the premise that small bribes reduce red tape and found that “contrary to the ‘efficient grease’ theory, ...firms that pay more bribes are also likely to spend more, not less, management time with bureaucrats negotiating regulations and face higher, not lower, cost of capital.”

**Decide and Commit**

“It is simpler to do the right thing—to get the response right—on the small issues and, by so doing, to set the tone

for the issues that carry the greatest risk for the company,” according to the compliance officer of one British oil and gas company.

Several companies reported that the most difficult part of eliminating the practice of paying small bribes was actually focusing attention on the issue and committing to stop. Once a company decides that it wants to eliminate the practice, it must commit itself to spending the time and money needed to carry out its goal through:

- a clear written policy;
- an internal audit;
- training employees and intermediaries;
- a robust internal reporting program; and
- enforcement.

It is crucial that the decision to eliminate the practice have the full support of and formal endorsement by the highest level of management in the company.

**Adopt a Clear Policy**

The essential core of any successful anti-bribery strategy is a clear and consistent message to employees, intermedi-

aries, and bribe-takers that bribes of any kind will not be paid. “The direct or indirect offer, payment, soliciting, or acceptance of bribes in any form is unacceptable. Facilitating payments are also bribes and should not be made.” The Shell General Business Principles. Such a message is most effectively conveyed through a clear written policy that includes assurances that no employee or intermediary will be penalized for delayed performance that can be directly tied to his or her refusal to pay bribes. If corruption is widespread in your industry or in the countries in which you operate, it is also critical to establish a clear mechanism for reporting demands for bribes to senior management so that appropriate countermeasures can be developed to alleviate the pressure on employees in the field.

*Medical and Safety Emergency Exception*

Employees of multinational companies are occasionally asked to travel and live abroad in countries where the standard of living is lower than their own country and the risks to health and safety are higher. Many companies currently rely on the good judgment of their employees in these situations,

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but some have created a formal medical and safety emergency exception. The situation should be a true emergency and the payment should be accounted for appropriately and reported through management channels both to conform to books and records requirements, and to ensure that management is apprised of and can track the risks to personnel in that country.

## ACC Extras on... Bribery

### ACC Docket

- *Bribes, Borders, and Bottom Lines: Why a Strong Antibribery Policy Is Essential* (2006). US authorities are tirelessly pursuing companies that break antibribery laws, and the rest of the world is not far behind. Develop an antibribery program before your company is forced to pay millions or adopt extensive reparatory measures. Find out how to reduce your company's risk. [www.acc.com/resource/v7523](http://www.acc.com/resource/v7523)
- *Business Ethics—Awaken the Zombies!* (2006). There are few cures for insomnia more potent than a good old-fashioned compliance and ethics training session. Mind-numbingly boring topics like antitrust, bribery, labor laws, and SEC regulations anesthetize all but the most caffeinated. Even the hearty souls who manage to keep their eyes open soon become inattentive zombies with glazed looks and wandering minds. [www.acc.com/resource/v7316](http://www.acc.com/resource/v7316)

### Sample Forms and Policies

- *Antibribery and Foreign Corrupt Practices Act—Employee Guideline* (2002). Provides guidance on situations involving international sales or international operations, assuring compliance with the Foreign Corrupt Practices Act. [www.acc.com/resource/v3642](http://www.acc.com/resource/v3642)
- *Prohibited Practices Under Foreign Corrupt Practices Act* (2003). The FCPA has been codified as Section 30A of the Securities Exchange Act of 1934, and prohibits companies and their executives from paying bribes to foreign government officials. This checklist provides an outline of what the antibribery rules are, what penalties are involved for violating the rules, and defenses to a bribery accusation. [www.acc.com/resource/v3457](http://www.acc.com/resource/v3457)
- *Recognising Improper Payments* (2001). Violations are most likely to occur in countries with a wide spread history of corruption. Learn more about how Middle Eastern, Latin American, Asian, and Former Soviet Union countries have traditionally been the leading candidates for antibribery rules violations. [www.acc.com/resource/v3201](http://www.acc.com/resource/v3201)

### Assess

A comprehensive inventory of past payments will enable companies to address each risk area appropriately. This assessment should include a review of the company's areas of operation that pose a high risk of exposure, any past legal or ethical problems, existing policies, procedures and compliance efforts, and all relevant laws and regulations.

A key aspect of the internal assessment is the employee interview. It is crucial that those conducting the assessment speak to the right people. The companies that TRACE interviewed stressed this point more emphatically than any other. Employees in the field understand the local challenges better than the head office; their participation in a change of policy will be critical to its success. They can identify situations for which a small bribe has been useful, help devise alternative approaches, and can tell when a small bribe is not necessary.

The last point is important. Most of the people interviewed recounted stories of employees, new to a foreign assignment and primed with rumors about corruption in the local business community, thrusting money at a government official at the first mention of delay. Employees will be part of the company's solution and report this information only if they are given clear guidance and training in advance and only if they believe they'll be supported if a refusal to pay results in delays or administrative obstacles.

### Types of Payments

Payments identified during the assessment are likely to fall into one of four categories and a different response may be required for each.

*Traditional Commercial Bribes* are payments to obtain an improper business advantage and are not permitted under any legal exception for small bribes. The suggested response to a traditional commercial bribe:

- If a bribe is paid in order to obtain an improper business advantage, the employee involved should be sanctioned and the company protected from the consequences to the extent possible by prompt remedial action. The company's broader policy on bribery of foreign government officials should be invoked to address these situations.

*Expediting Payments* are usually demanded by entrepreneurial government officials who threaten delay and renege if they are not paid small amounts at regular intervals. This category includes payments to secure licenses, to overcome unwarranted delays at customs, to resolve disputes over inflated taxation, and to end harassment by local police or military. Suggested responses to demands

for expediting payments include:

- Meet with the individual in question and explain the change in policy.
- Avoid the embarrassment of including superiors in discussions unless it is clear that it is necessary or that they are a part of the problem. If the junior official has been required to funnel a portion of the bribes he collects to a superior, the superior will have to be included in the conversation. The superior official is often more receptive to offers to provide needed technical and financial assistance to the government in lieu of unlawful payments to the individual officials. For example, one TRACE member has worked with a number of governments to help automate customs functions and thus remove many opportunities for corruption. Whenever possible, these automated systems are configured in such a way as to minimize the opportunity for the inappropriate exercise of official discretion, face-to-face contact between the government officials and company employees and the physical handling and transfer of funds. Automation or computerization can also increase the level of accountability and provide an

- audit trail for later monitoring and review of administrative decisions and the exercise of official discretion.
- Acknowledge that small payments have been a part of the business relationship until now, but that these will no longer be made. Again, explain the change in company policy. In order to avoid having their efforts undermined by competitors continuing to make the payments in question, one TRACE member invites its competitors to participate in the discussions with officials. This approach has successfully achieved industry-wide change in Vietnam, Thailand, and India.
- Prepare to reject suggestions on how things might be structured to reach the same end by different means such as re-characterizing the payment or channeling payments through third parties.
- Prioritize shipments or administrative tasks where possible so that the least urgent requests are presented immediately after a change in company policy.
- Maintain records of additional expense resulting from a refusal to make payments and provide copies to senior officials of the relevant government ministry. If the gov-



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ment is either a partner or the customer, pass along a portion of the cost of refusing the bribe, together with a detailed explanation. Companies that have done this report a significant reduction in demands for bribes.

*Additional Services Charges* are generally made for a legitimate service that is being purchased through inappropriate channels. Services may include overtime work, work during local holidays, or duties outside the scope of the official's job description. It is important that real value be provided and that these payments do not simply become a way to legitimize bribery. Suggested responses to requests for additional services include:

- Assess the value of the service that has been provided and formalize the relationship. One company stopped paying overtime directly to border guards and began working through the border guard office, requesting a formal agreement and invoices. The result was the same service at the same price, but with new control and transparency.
- Recognize that in some countries, certain government officials receive no pay at all from their government. Instead, they are expected to create their own income—and supplement their superiors' income—through corruption. By formalizing and documenting the arrangement with the responsible ministry, the official is paid for his service, but the haggling and secrecy are brought to an end.
- Seek the approval of the official's superior, where feasible, to hire him under a separate agreement. In some countries, government officials are permitted to hold second jobs. The goal is not to impoverish already badly paid officials.

*Extortion Payments* amount to clear, criminal extortion—for example, an employee held at a security checkpoint and released only upon payment. Things to consider when an extortionate demand is made:

- If a demand is clearly extortionate and criminal, the employee's safety must be the paramount consideration.
- Once an emergency has passed, companies should advise their embassy and ask that it pursue the matter at the responsible level of government.
- These situations are of real concern, but the embarrassment they can generate for the host country can result in unexpected leverage for companies. Most companies agree that the best response is to manage the situation in the short term and publicize it in the long term.

#### Train

After management commitment, training is the most critical step in abolishing small bribes. An effective anti-bribery

policy must include comprehensive training for employees. Employees should also be required to sign a statement verifying that they have participated in the training and that they will comply with the company's anti-bribery policy.

#### Business Intermediaries

A company can be held responsible for the actions of its business intermediaries—sales agents, consultants, suppliers, contractors, and local partners. Consequently, intermediaries should receive the same rigorous anti-bribery training and a copy of the company's anti-bribery policy. Their contract should include a requirement that they comply with the company's policy.

**Employees should also be required to sign a statement verifying that they have participated in the training and that they will comply with the company's anti-bribery policy.**

#### General Training Guidelines

The points that follow apply regardless of the type of bribery being addressed:

- The anti-bribery policy should be disseminated to every employee and business intermediary.
- Employees and intermediaries should be assured that they will not be penalized for diminished productivity directly attributable to their refusal to pay bribes.
- Employees who are posted overseas or whose jobs require frequent travel should receive training on the company policy and on how to deal with demands for bribes. This training should include an opportunity to meet with employees who have worked in the territory to which they will be sent.
- Employees affected most directly—those in the international sector, marketing, operations and finance—should have an opportunity to ask specific questions about the situations they expect to face.
- Company auditors should be alerted to the possibility that rogue employees and intermediaries may attempt to circumvent the new policy by mischaracterizing small bribes as permitted expenses.

- Auditors, in-house lawyers or compliance officers should ensure that payments made under the medical and safety emergency exception are reviewed for potential abuse.

#### Robust Internal Reporting Program

Although this issue has become quite controversial in light of concerns about privacy and "big brother" tactics, a well-organized, secure means by which to report problems within a company when all other channels of communication fail is essential to a sound anti-bribery program. The reporting program should:

- be accessible to all employees;
- provide for either anonymous or confidential reports, as appropriate, to protect the reporting employee;
- include screening by a neutral party to safeguard against frivolous or malicious reports; and
- permit collection and tracking of data over time for reporting to senior management.

A well-run reporting program, where permitted under local law, will assist management in its assessment of the success of its anti-bribery policy and will identify the points at which the program is breaking-down.

**Addressing all forms of business corruption at the same time with a single, coherent message is preferable to laboring under an equivocal policy and waiting until some future ideal time to tackle small bribes.**

#### Enforce and Follow-up

It is important for management to stay focused during the implementation and transition period. Anticipated difficulties have proven to be short-lived. Dire warnings that profitability will plummet and business will grind to a halt are not supported by the experiences of any of the companies interviewed. Most of the 42 companies that TRACE interviewed reported delays and unusual additional bureaucratic steps in the first 30 to 60 days after abolishing small bribes. After this period, business "more or less returned to normal."

#### Relief is on the Way

The private sector is working to reduce the payment of facilitating payments, but too little attention is being paid to demand-side bribery. There is currently little cost to the government officials who extort payments as an illegal tax on business.

Real transparency would be enhanced by an international hotline through which corporations could report these demands anonymously. Companies know where many of the problems lie. Within every government, there are officials who are notorious for demanding their share and wreaking havoc if it isn't forthcoming. Currently, companies do nothing with this information. They may decline to pay, but they're unlikely to risk alienating the government officials who are their customers.

BRIBELINE ([www.bribeline.org](http://www.bribeline.org)), launched earlier this year, is just such a hotline—publicly available and free of charge—through which companies can report demands, voluntarily and anonymously. The information will not be used for prosecution. It will simply be collated and reported in the aggregate, by country and by government department: customs, defense, health, transportation, mining, etc. When these reports are published annually, they will alert government officials that their demands are being tracked, and will reinforce the idea that these demands are illegitimate. The information will not be used to intervene in individual transactions, but instead will be provided to the public at large, encouraging governments to pursue remedial action, alerting civil society to troubling trends, and providing companies an additional tool in support of efforts to assess risk accurately.

Addressing all forms of business corruption at the same time with a single, coherent message is preferable to laboring under an equivocal policy and waiting until some future ideal time to tackle small bribes. Many companies have adopted strong policies against the payment of small bribes and the consensus has been that the transition has been simpler, faster, and less painful than was expected. The short-term result for many of the companies interviewed has been relief from constant demands for small bribes; the long-term results will be reduced bureaucracy, enhanced predictability, and a more stable business environment. ■

Have a comment on this article? Email [editorinchief@acc.com](mailto:editorinchief@acc.com).

#### NOTES

1. Daniel Kaufmann and Shan-jin Wei, "Does 'Grease Money' Speed up the Wheels of Commerce?" Paper presented at the American Economic Association Meeting, Chicago, IL, 1998.



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**Participants' Briefing Materials**

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**SUMMARY/OUTLINE: THE CLO'S ROLE IN CORPORATE GOVERNANCE & COMPLIANCE**

The following outline is intended to highlight some of the issues at the heart of this discussion topic. There may be other issues we've not identified or perspectives on the identified issues that are not represented in the outline: you should feel free to raise these additional thoughts, as you like. *The outline is merely intended as a starting point to help you identify discussion topics and is submitted for collaborative consideration by the participants.*

- I. **Fundamental Considerations for the Chief Legal Officer- CLO's Role in Governance & Compliance Generally (See Tab 1)**
  - A. Should the CLO be the Chief Compliance Officer (CCO)? Principal business model options:
    - 1. **CLO as CCO:** CLO formally has title or role of CCO and has direct oversight of general compliance duties throughout the company
    - 2. **CCO Reports Organizationally to CLO or law department:** Law department coordinates with or supports a chief compliance officer (or other internal controls function personnel) which officer is charged with direct responsibility for general compliance throughout the company
    - 3. **CCO and Compliance Function as a separate business function without organizational reporting relationship to the law department:** Law department advises the company's CCO and compliance function and/or respective business units that otherwise have direct and independent compliance function responsibilities but compliance leaders (such as a CCO) report directly to the CEO or a board committee, but not to the CLO
    - 4. **Other models...**
  - B. Pros, Cons and Other Issues Implicated by the Several Compliance Models
    - 1. If the CLO is the CCO, what are the CLO's personal fiduciary responsibilities in that capacity? Is the CLO-CCO the "client" with another lawyer advising in this functional role? If so, what are the professional responsibility implications? If not, what are the implications of losing the attorney-client privilege? What steps does the CLO-CCO take to communicate which 'hat' is being worn during sensitive compliance discussions?
    - 2. What are the likely market or "industry" implications of which model is adopted? If each model can be effective, is one better or worse than the others in terms of public and market perceptions?



3. What are the principal implications of the respective models for cross-border operations?

## II. The role of the CLO with respect to Continuous Disclosure (See Tab 2)

- A. The new regime of Part XXIII.1 of the *Ontario Securities Act*
- B. Protections Against Liability
1. Due diligence defense best practices
    - (i) **Disclosure committee** - As CLO, are you a member of the Disclosure Committee or do you perform an advisory role to the committee with a member of your staff having an official role as member of the committee? How often does the committee meet? What is the charter or scope of the committee's functions?
    - (ii) **Internal certifications and sub-certifications**- Do you provide written internal certifications? Do other lawyers within your law department provide certifications or sub-certifications? What is the certification process? What is the scope of/ types of limits on the certification you and/or your lawyers provide?
    - (iii) **Press release and conference call protocols**- What processes does your law department implement and what role(s) do lawyers perform as part of the public disclosure process? How has your role as CLO changed in recent years with respect to this process?
    - (iv) **Communications policies**- Has your law department helped to develop policies regarding disclosure communications? What role do lawyers and you as CLO play as part of the overall communications strategy?
    - (v) **Tools, databases, software**- Does your organization/law department use technology or tools as part of internal controls and the disclosure process? Have you identified tools or processes that you view to be best or leading edge practices?
  2. Forward-looking statement cautionary language challenges
    - (i) **Keeping the material up-to-date**- What processes have you implemented to help address this challenge? What types of practices is your law department implementing to help ensure that in-house lawyers have the requisite financial expertise to spot issues?
    - (ii) **Describing all material factors and assumptions**- What processes does your organization use to help ensure material factors and assumptions are described? What role do you as CLO or your in-house lawyers play in this process?



3. Opinions of experts-Guideline (AuG-44 of the CICA): auditors written consent and the practical problems related thereto (See Tab 3)

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## V. Role of the CLO with respect to Board Composition, Assessment, Education and Processes (See Tab 8)

- A. Role of the CLO in helping the Board assess the independence of directors
- B. Role of the CLO with respect to Director Nomination/Recruitment Processes
- C. Board and Individual Director Assessments
1. Internal processes
  2. Outside programs





3. Should the results of the assessments be kept in file (potential liability following a seizure)

D. Ongoing Director Education Programs

1. Internal processes, including role of CLO and outside counsel
2. Outside programs
3. Potential for collaborative programs among several companies

E. Meetings of Independent Directors Only

F. Relationships of the CLO with Prescribed Standing Committees of Independent Directors – e.g., Audit Committee, Compensation Committee and Nominating Committee

G. Recordkeeping of Board and Board Committee Deliberations

1. Proper content and level of detail in minutes
2. Disposition of preliminary drafts of minutes
3. Note-taking by individual directors at meetings – disposition and other issues

H. Functionality of “Board Books” and Other Information Delivery Systems for Directors

1. How much is enough? Too much? CLO’s role in deciding?
2. Security and confidentiality protocols
3. Disposition of drafts items that are not delivered
4. Post-meeting disposition of board books

VI. The relationship between the CLO and the internal and external auditors (See Tab 3)

A. Internal Auditors

1. **Organizational considerations-** Does the internal audit group have an organizational reporting relationship to the law department? To whom does the head of internal audit report (to the CFO, CEO, CLO, Board, combination, other...)? How does your law department provide staffing or support to the internal audit group?
2. **Requests of internal auditors to the legal department-** What is the process for receiving and responding to requests? Are there designated in-house lawyers on point for receiving requests and providing support?
3. **The impact of privilege considerations on internal audit-** Is privilege a consideration in establishing policies for staffing and conducting internal audits? If so, for all internal audits or for those that meet certain criteria? How have privilege considerations impacted the process for conducting internal audits (staffing, development of written reports, dual reports—one

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for public disclosure and one with internal legal impressions, etc.)? What steps does your organization take to create and maintain privilege protections for audits? Has your organization experienced an increase in requests for privileged audit-related documents? What strategies have you implemented in response to these requests?

B. External Auditors

1. **Changes to the engagement letters in recent years-** What types of changes have you seen, and are there certain types of provisions that you view as most controversial and problematic? What types of successful strategies have you implemented to address these changes?
2. **New requirements on auditor independence-** How have these requirements impacted practices and services provided by external auditors?
3. **Role of external auditors-** Has the role of external auditors expanded in recent years? Do external auditors regularly attend Board and Audit Committee meetings? Are they present for executive sessions? Do you or members of your law department participate in periodic face-to-face meetings with external auditors?
4. **Information provided to external auditors and “bring-down” certificates-** What mechanisms does your law department use to provide information to external auditors: periodic face-to-face meetings, written bring-down reports, etc.? Do external auditors request different information or certifications from in-house and outside counsel?
5. **Guideline AuG-44 and the related implementation problems**
6. **Timing issues regarding the posting and issuance of shareholder material-** How do you deal with the challenge of ensuring timely posting and accuracy of shareholder materials?
7. **Access of external auditors to privileged documents-** Is protecting privilege an issue in providing information to external auditors? What types of strategies have you implemented to successfully provide the information requested by auditors?
8. **Threats by external auditors to withhold audit letter or to send a cautionary letter to the audit committee chair in case of disagreement with management-** Has your law department encountered these types of situations? What has your role as CLO been in helping to resolve them? What types of strategies has your law department implemented to address these situations?

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**VII. Role of the CLO with respect to Policies and Channels for Reporting Concerns (Whistleblowing)** (See Tab 9)

A. Policies

1. Policies in place regarding the reporting of financial concerns or allegations of financial fraud
2. Separate policy for these matters vs broad policy for reporting concerns generally
3. Obligation/requirement vs expectation/encouragement to report such concerns
4. Communication of policies to employees (through governance policies, code of ethics, etc.)
5. Separate codes of conducts for directors, executives and employees vs unified approach

B. Channels for reporting concerns

1. Channels for reporting concerns generally- Does an external service provider receive initial reports and transmit them to contacts within the organization or do reports come directly to an individual or group within the organization (or a combination)?
2. Channels available for reporting financial concerns
3. Direct line to the audit committee
4. Direct line to the CLO
5. Opportunities to submit a confidential or anonymous report?
6. Different mechanisms in place for different parts of the company or different countries where the company operates

C. Process for investigating concerns

1. Internal process for receiving concerns and investigating reports alleging financial misconduct or fraud
2. Processes in place for investigating other misconducts
3. Respective roles of the internal audit, audit committee, law department and human resources department
4. Early report of such matters to CLO?
5. Who should take the lead (audit committee, internal audit, law department, etc.) in investigating a reported concern?

D. Role of Law Department/CLO

1. Is law department on point for initially receiving reports of concerns?
2. At what point in the process are reported concerns shared with the law department?

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3. Does your organization have guidelines on what channels to use and who should be notified of certain types of concerns?
4. As CLO, how much information (and in what form) do you generally receive on reported concerns?

E. Privileges

1. Considerations in determining the process for conducting internal investigations
2. Ensuring confidentiality while at the same time obtaining sufficient information and avoiding frivolous complaints

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## Compliance Training and e-Learning Programs - Leading Practices in Design, Implementation, and Supporting Risk Assessment and Communication Strategies

AUGUST 2007

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This InfoPAK<sup>SM</sup> is designed to provide corporate counsel with a general overview of compliance training and e-learning programs and to suggest useful practices for the handling of such training in the corporate setting. This information should not be construed as legal advice or legal opinion on specific facts, or representative of the views of ACC or any of its lawyers, unless so stated. This is not intended as a definitive statement on the subject but a tool, providing practical information for the reader. We hope that you find this material useful. Thank you for contacting the Association of Corporate Counsel.

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**Consent to Release Information**

**Consentement pour divulgation de renseignements**

I, \_\_\_\_\_

Je, \_\_\_\_\_

hereby authorized the Royal Canadian Mounted Police (RCMP) to release:

consen, par la présente à ce que la Gendarmerie royale du Canada (GRC) divulgue

\_\_\_ my Criminal Record Search Results

\_\_\_ Criminal Record Search Results

\_\_\_ my Pardoned Criminal Record

\_\_\_ Pardoned Criminal Record

\_\_\_ my Young Offender's Record

\_\_\_ Young Offender's Record

\_\_\_ my Security Clearance Results

\_\_\_ Security Clearance Results

to the third party listed below.

à la tierce personne/l'organisme suivant.

I understand that I have the right to receive these results directly from the RCMP, and that the assistance of a third party is not necessary to obtain these results.

Je comprend que je peux recevoir ces résultats directement de la GRC et que l'entremise d'un tiers n'est pas nécessaire pour l'obtention des résultats.

Please release results to:

Prière de faire parvenir les résultats à:

Name & Address / Agency:

Personne & Adresse /Organisme:

Person, Franchise Recruitment  
 Company, Inc.  
 Address  
 Ontario, XXX XXX

Personne, Franchise Recruitment  
 Organisme, Inc.  
 Adresse  
 Ontario, XXX XXX

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Witness

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Témoin

\_\_\_\_\_  
 Date



It is important to be cognizant of turnover in the IT department, as it is often higher than in other departments. The person who built the current system or who oversaw its implementation may no longer be at the organization. The IT contact whom you deal with in the normal course may not be the person who is still around when litigation or an investigation arises. As stated above, having the IT liaison set up based on position and not by person, as well as communicating awareness of electronic discovery issues, can help alleviate the impact of turnover in the IT department.

**(2) Understand Your Company's Data Management System(s)**

Organizations may deploy hundreds of different systems where data ultimately resides. These are systems that store user files (e.g., Microsoft Word, email, and Excel), financial data, and sales data in a central repository. Ironically, one of the reasons for implementing such systems is to have the ability to control data and records (such as archiving and retention). Unfortunately, when you have numerous data management systems working simultaneously, it can be more challenging to control data. By familiarizing yourself with your company's data management system(s), you will understand how and where your company keeps data. Ask yourself:

- How often are the hard drives backed up?
  - How often are the hard drives defragmented?
  - Where are the back up tapes? Where are the potential sources for data (e.g., desktop computers, work-issued laptops, personal computers, PDAs)?
  - What are the security measures your company takes to protect the system and its users (e.g., password protection and network monitoring procedures)? One important issue is how many employees work from home (or from some other remote location) almost exclusively. How does the company organize, store, and monitor this data?
- (For a more comprehensive list of questions, see **Where's My Data? A Checklist for Discussion** on p. 28.)

By knowing what data you have and where it is stored, you will be better prepared to issue a hold letter when you receive an electronic document request. Note that being familiar with your system doesn't mean you



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have to be an expert in each of the information systems that your organization deploys (nor do you want it to come to that in a litigation context). Information technology systems are set up to perform specific business functions and are managed by IT professionals for that purpose. Logical data diagrams and high-level flow charts are generally sufficient to teach yourself how your company manages data. But in either an operational or litigation context, not knowing what your IT systems do can spell disaster.

**(3) Understand Your Company's Data Retention Policy**

An organization's data retention policy may be a combination of various retention schedules, depending on the type of information being retained and laws requiring that certain information be retained for a fixed period. If you do not know already, this is a good time to review what business information your organization retains, where it stores it, and what laws govern your organization's retention of data. Is your organization impacted by HIPAA, Sarbanes-Oxley, or other laws with specific data retention requirements? Depending on what you learn, you may want to revise the policy's retention periods for various kinds of electronic data. For example, legacy data from predecessor organizations should not be kept unless required by law. But in any event, knowing the provisions of your data retention policy is important for your being able to quickly and effectively order a suspension of that policy when you receive an electronic data request.

**(4) Assemble an Ediscovery Team and Create a Response Plan**

Before a claim is asserted or a subpoena is served, have your ediscovery team in place. Team members should generally include individuals with both legal and technical knowledge: in-house counsel, internal IT staff, outside counsel, and an electronic discovery service provider (probably an outside vendor).

At this point, it will pay off to have already established a working dialogue with the IT department. The IT department, including the liaison, should be familiar with you and the issues that you are concerned about and should be able to assist in the assembly of the

team. Further, your liaison will know the key individuals in the IT department who need to be contacted once a claim is asserted against the organization.

Once the ediscovery team is assembled, create a plan that sets forth protocol for your response process, including an outline of document preservation measures, data-gathering procedures, and a project plan for electronic document review (see **Representative Plan for Data Assembly and Review/Analysis** on p. 25 and **Project Plan for Case-specific Data Collection** on p. 30).

**Creating a Litigation Hold**

Your organization has a duty to preserve relevant electronic data (as well as hard copies of documents) once you are put on notice that:

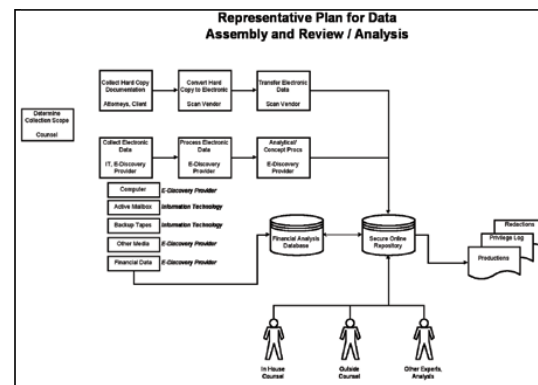
- A claim may be or has been asserted against your organization;
- An investigation involving your organization may commence or has commenced; or
- A subpoena will be or has been issued to your organization.

To comply with this duty, consider taking the following steps.

**Communicate and Meet**

As soon as possible, arrange a meeting of your ediscovery team. You should inform your IT team liaison that the organization now has a duty to preserve all relevant electronic data that currently exists (regardless of the data retention policy) and all relevant electronic data that will be created in the future.

To know which data are relevant, of course, you will need to review the scope of the document request to determine who and what is covered and to determine what data you have. In an ideal world, you will have been able to make the advance preparations discussed above. You will already know your organization's data retention policy and understand your organization's data management system. Whether you've been able to make these advance preparations or not, you will need to work quickly with your team to identify all data sources that may contain responsive information.



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After identifying the sources of data, work with your ediscovery team to determine how to preserve the requested data, keeping in mind that you must maintain the data's integrity. Altering the data's integrity is unfortunately very easy; simple computer operations such as copying files, forwarding emails, etc., can alter characteristics of the files (e.g., file metadata) that are meaningful in a litigation or investigation context and lead to charges of evidence destruction or tampering. Carefully examine your preservation methods or consult an expert prior to engaging in preservation and collection activities. Other preservation considerations include:

- Removing backup tapes from circulation to prevent potentially responsive data that may reside on backup tapes from being overwritten by a subsequent backup. (Normal IT disaster recovery procedures generally call for the reuse of backup tapes on a periodic basis to eliminate needless redundancy and minimize costs. In the case of electronic discovery, normal efficient business operations can jeopardize your discovery efforts.)
- Suspending automated IT procedures, such as routine auto-defragmentation of data stored on hard drives and servers.

- Removing data custodians' access to the preserved data to prevent intentional or unintentional alterations of the data. If you have not done so already, finalize the ediscovery team members that will be responsible for data preservation and for collecting data. Last, review the costs for retrieving relevant electronic data.

#### Send the Hold Letter

After your initial meeting with the ediscovery team, send a litigation hold letter in hard copy and via email to your IT manager and the manager's direct supervisors requesting that they suspend any data retention policy, preserving all electronic data and saving all relevant information on the company hard drive and backup tapes. You should also send this instruction via voicemail, as you may later need to demonstrate that the company has done everything possible to make its employees and agents aware of the need to preserve electronic data. It is important that the individuals in the IT department who are contacted have sufficient authority to order a suspension of the data retention policy and preservation of all relevant documents.

You should also send a copy of the hold letter to all individuals who are likely to have information relevant to

One method that **companies** have deployed to **maximize the probability** for compliance is to **issue litigation hold reminders**.

the claim or investigation. Compiling this list requires a detailed delineation of the claim's facts and issues. We recommend that you identify the individuals with any connection, even if somewhat tangential, to the claim, and err on the side of being overinclusive. It is easier to remove names later than it is to add new ones who may have already inadvertently destroyed data. Recognize that as the claim develops, new facts will come to light, requiring you to add additional names to the list.

In general terms, the hold letter should explain the claim (or impending claim) and direct all individuals to cease from deleting, destroying, overwriting, or cleaning out any electronic data that may be contained on the individuals' desktop or hard drive or on disk, CD-ROM, DVD, or back up tapes.

#### Monitor Compliance

One key lesson from the case law, and a principle supported by the recent Amendments to the Federal Rules of Civil Procedure (effective December 1, 2006), is that counsel needs to take affirmative steps to monitor compliance with legal hold letters (see Fed. R. Civ. Pro. 16, 26, 33, 34, 37, and 45.) In other words, issuing a letter and even getting signoff may not be enough. To better track receipt and reading of legal hold letters, request a notification when each person has received both the letter and email, and ask each person to send you an email confirming that they have read the letter and email. If you have particular concerns about employees' compliance—because the case is, for example, very large or complex or has continued over a long time—you may also need to conduct spot checks or otherwise confirm compliance with the hold letter.

The litigation hold letter can be reissued periodically to remind people of their duty to preserve. How often, of course, will depend on circumstances such as the rate of turnover in the affected departments. One method that companies have deployed to maximize the probability for compliance is to issue litigation hold reminders. Also, the litigation hold letter process can be performed electronically via email. Automated technologies allow the use of voting buttons and reminders to be sent in the event of nonresponse or potential noncompliance with the instructions in the letter.

#### Memorialize

Ask your IT liaison to draft a letter to you memorializing the initial meeting(s) (i.e., explaining all of the characteristics of both your current system and other data sources, as well as any older systems that may contain responsive documents). In most organizations, the IT department should already have a chart detailing the information about the company's systems. It should be a relatively simple process to adapt this existing chart to be responsive to the current claim. If your organization does not have such a chart, preparing one now (and ensuring that it is kept up to date) is an inexpensive prophylactic step. Explain to your

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## Speaking the Lingo

**Metadata:** Metadata is information about files stored on computers—not the files themselves. For example: emails and user files have different attributes provided by the computer operating systems, such as From, To, Date Last Modified, Subject, and Author, that are separate from the actual file contents. Metadata is key evidence to many litigations, investigations, and disputes.

**Deleted Files:** Many users believe that when they delete a file on their computer, that file is immediately deleted from the computer. In fact, deleted files like to hang around on the computer for a while, though the users of the computers may not see them. When the operating system deletes a file, the directory entry (the logical location identifier) for that file is removed. However, the file remains on the hard drive of the computer until it is overwritten. This may happen quickly or may never happen at all, depending on the configuration and use of the computer. Computer forensic professionals use sophisticated tools that enable them to find and recover such files (in whole or in part) if the files have not been overwritten.

**Computer Forensics:** Computer forensics is the application of computer investigation and analysis techniques to gather

evidence suitable for presentation in a court of law. The goal of computer forensics is to perform a structured investigation while maintaining a documented chain of evidence to find out exactly what happened on a computer and who was responsible for it. The emphasis of computer forensics is on reconstructing events based on artifacts located on computers and other media.

**Electronic Discovery:** Electronic discovery refers to any process in which electronic data is sought, located, secured, and searched with the intent of using it as evidence in an investigation or a dispute. The emphasis of electronic discovery is frequently the review of documents and information about documents (metadata) versus forensic reconstruction of events on a computer.

**MD5 Hash:** The MD5 hash is, simply, a unique identifier—the equivalent of a digital fingerprint. In computer terms, the MD5 Hash is created by a 128-bit algorithm that can operate on any file or set of files. The MD5 hash allows professionals to ensure chain of custody as well as, in some cases, determine exact file matches from different data locations (i.e., different networks or computers).

## Where's My Data? A Checklist for Discussion

The following is a list of some of the questions that should serve as a starting point for this discussion:

- o How long has the system been in place?
- o How far back in time does the current system go?
- o How often is the system backed up?
- o How often are the back up tapes recycled in accordance with the company's data retention policy?
- o How often are computer hard drives defragmented?
- o Where are the backup tapes stored?
- o How can you retrieve information from individuals' computers?
- o What was the prior system used by the company?
- o Where are the backup tapes for the prior system?
- o How much would it cost and how long would it take to retrieve potentially responsive documents that are on the old system?
- o Which employees have PDAs and/or smartphones?
- o Are there laptop computers and home PCs that are not linked to the company network?
- o How are voicemails saved?
- o Who has home computers that might contain work information?
- o What are other sources for company data?
  - Peripheral devices and backup/storage media (external hard drives, zip drives, CDs, DVDs, floppy disks, flash drives, etc.)
  - User-assigned and shared network drives
  - Email servers
  - Erooms
  - Document management systems
  - ERP servers
  - Web servers
  - IM records
- o What former employees may have relevant information?

IT liaison that at the end of the production, you may need to ask her to certify that all systems, hardware, tapes, and disks have been preserved from the date of the notice of the claim and subsequently searched for responsive documents.

### Negotiate

With outside counsel, explain what information can and cannot be produced to the opposing side, including how

much it will cost, in dollar amount and effort. Be prepared to bring your IT liaison and/or outside vendor into the conversations if the opposing side wants a technical explanation. Keep in mind that you cannot negotiate effectively if you do not know what data you have and where the data is stored. However, as stated, it can be very difficult to figure out what data you have in the heat of receiving the document/production request. If you have followed the better practices outlined above, you should be familiar with the data that your organization retains and where such data is stored. This can put you in a stronger position to negotiate with the other side. You will be prepared to make compelling negotiation arguments regarding what data can be produced on the basis of cost and benefit, expediency, and common sense.

Armed with a good understanding of your data and where it resides, there are several points that you can use to better leverage your position during the negotiations. The first is that (in most instances) the opposing party should be a rational actor. They want to receive substantial amounts of irrelevant data no more than you want to produce it. Whatever data you produce will have to be reviewed and stored by the opposing party, which can be very expensive. Similarly, you can easily explain to the opposing party that if they demand production of electronic documents that reach into every nook and cranny of your organization, they can expect to receive reciprocal production requests. The "mutually assured destruction" aspect of this issue tends to limit the scope of requests. Additionally, the courts have demonstrated a willingness to shift the costs of discovery from the producing party to the requesting party when the producing party can demonstrate that the marginal utility (i.e., the likelihood that the data sought will produce relevant information) is disproportionate to the cost of production.

There are also several points of agreement that can be reached to reduce the burden and costs of ediscovery for both parties. For example, the parties can agree to restore and review a randomly chosen selection of back up tapes. If those back up tapes contain relevant information, it may demonstrate that it is necessary to restore all of the tapes or to select additional tapes. If no relevant information is discovered, then the cost of restoring the tapes can be avoided. A common practice is for the parties to jointly develop a list of keywords that will be used to cull the data.

Other points to explore include the degree of redundancy across data sources. For instance, backup tapes are a known source of redundant data from one tape to another, and much of the data that exists on a PDA is often, but not always, redundant against email server data. While there may be compelling and specific reasons why backup tapes from certain time frames are discoverable, or why data on

**If you've already developed documentation of where the relevant data resides, that will significantly help you control costs in this phase of the process.**

a PDA should be reviewed in addition to respective email data, calling for all backup tapes or all PDAs may represent an onerous request.

Also, there are out-of-pocket considerations associated with preserving, collecting, processing, and reviewing data. Preserving data means ensuring that it is set aside and not tampered with, whereas collecting data is the act of physically bringing it to a secure facility (and may well be required for effective preservation). Processing and reviewing data triggers a different set of out-of-pocket costs for electronic discovery vendors and attorneys. From a negotiation perspective, if the relative values of different data populations are in question, one tactic may be to preserve and collect (but not process or review) lower priority data populations until it becomes clear that the data population requires review, if ever.

For companies that have responded to discovery requests in the past, there are frequently stores of data maintained exclusively for the purposes of complying with litigation holds. While the requirement to maintain the data should be addressed through appropriate legal channels, if you have already collected the data, you may be able to leverage that data for use with future discovery requests (and thus save on additional collection costs). To echo an earlier refrain, this option works when you know what you have.

### Collect

Work with outside counsel, the outside vendor, and your IT liaison to gather and retrieve responsive, nonprivileged electronic data in a cost-effective fashion. If you've already developed documentation of where the relevant data resides, that will significantly help you control costs in this phase of the process. This allows you to avoid searching unnecessary sources; it also serves to eliminate the risk of reviewing the same sources multiple times. Many organizations often elect to have their own internal IT staff perform the actual collection of the electronic data to reduce costs. While this will often serve to lower costs, you should keep in mind that the method and thoroughness of the data retrieval may become a critical point in the dispute. Using an outside vendor can provide some additional assurance that the collection will be accomplished in an appropriate and defensible manner. It also provides the organization with a professional witness, rather than internal personnel, who can testify about the collection.

Your usual vendor management and procurement strategies can also work in the electronic discovery space. For instance, selecting a few vendors for consulting, collecting, processing, and hosting can enable a company to drive higher volume to those fewer vendors, resulting in potential pricing discounts. Also, selecting your vendors early allows you to make the best-quality decisions and not force your hand in a rushed situation.

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**ACC Extras on... Data Management and Improving Communication**

**InfoPAKs:**

- Records Retention: [www.acc.com/resource/v5206](http://www.acc.com/resource/v5206)

**Virtual Library Sample Forms and Policies:**

- Sample forms and policies available via ACC's Virtual Library™ ([www.acc.com/vl](http://www.acc.com/vl)) include the following:
- Sample outsourcing agreement for personnel/consultants: [www.acc.com/resource/v7093](http://www.acc.com/resource/v7093)

**ACC Alliance:**

- The following ACC Alliance partner offers electronic discovery services. To receive your ACC discount, be sure to mention that you are an ACC Member when inquiring about services.
- Fios provides electronic discovery services to corporate counsel and their law firms, enabling them to reduce costs. Fios may be reached at [alliance@fiosinc.com](mailto:alliance@fiosinc.com).

**Verify**

Ask your IT manager or outside vendor to document in writing each search that was performed to gather and retrieve electronic data (i.e., back-up tapes, hard drives, desktops, disks, CD-ROMs) and what was done to maintain the integrity of all of it. Ideally, this product would be a step-by-step summary of all things done by anyone on behalf of the company to recover electronic data that may be responsive. The goal is to create an audit trail so that the other side will not be able to claim that you have not performed a thorough search of your data. Removing the other side's ability to argue that you have not produced data in good faith will decrease the threat that the court will sanction your organization for failing to produce all relevant data (see **Representative Chain of Custody Tracking for Original Evidence** on p. 32).

**Certify**

In some cases, such as an investigation by the US Department of Justice, the government will ask you to certify that all responsive data has been produced. Draft a final certification (i.e., an affidavit) for your IT liaison's signature, in which he affirms that all systems, hardware, tapes, disks, and CD-ROMs containing

electronic data have been preserved from the date of the notice and subsequently searched for responsive documents. This task can also be completed by an outside vendor who can validate the procedures followed and testify to their completeness.

**Produce the Documents**

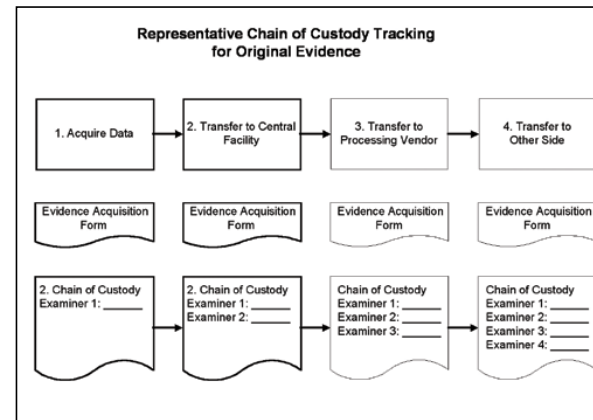
The final step in the process is the production itself. The format for producing the documents is something that should be worked out with the opposing party during the negotiations. The Federal Rules of Civil Procedure now allow parties to require that information that is kept in electronic

format be produced electronically. This is generally easily done via electronic load files with most litigation document management and ediscovery platforms. Parties often insist that documents be produced in native format, rather than as tiffs or PDFs, so that the metadata can be reviewed. It is also important to carefully document exactly what is produced, as electronic documents do not lend themselves to Bates labeling as easily as hard copy documents.

Your records of what was reviewed and what was produced can also be important. Although it will vary depending on the circumstances, often you will also want to keep both the media and data collected. Doing so can assist in keeping a clear audit trail and enable you to replicate search and processing procedures for the current matter. It can also provide a data source for scope increases and a repository that can be made accessible for future discovery requests. But beware: keeping such a repository can also create an obligation to review data that is potentially discoverable for future litigations.

**Proactive Approach Preps Company**

No one wants an ediscovery request to land on their desk, but proactively reviewing and addressing your organization's information technology conventions can help. While implementing leading electronic records management practices can be a multiyear project, taking some initial steps to know who manages your IT system, where the IT system's data is located, and how that data is managed, can help you mitigate the very real risks associated with electronic discovery response. ☒

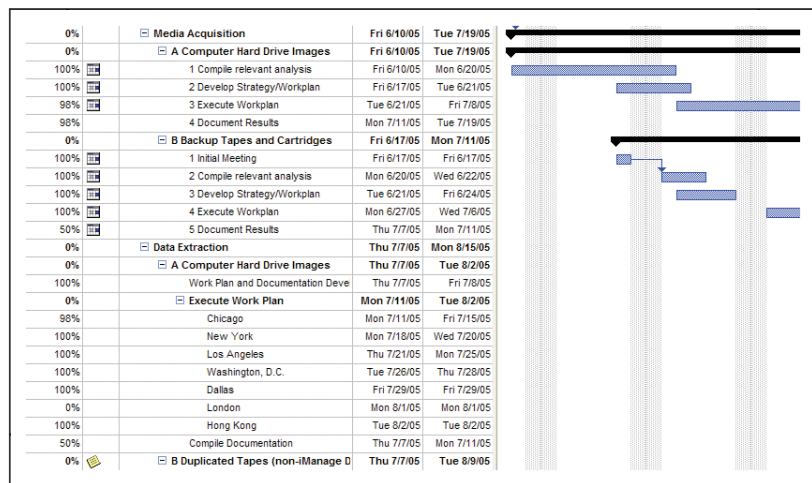


Have a comment on this article? Email [editorinchief@acc.com](mailto:editorinchief@acc.com).

**NOTE**

- Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*, Case No. 2005 CA 005045, 15th Judicial Circuit (Fla.) (J. Maass) (unpublished opinion). *In re Telson Corporation Securities Litigation*, 2004 U.S. Dist. LEXIS 27296 (N.D. Ohio July 16, 2004). *Zubalake v. UBS Warburg LLC et al.*, 2004 U.S. Dist. Lexis 13574 (S.D.N.Y. 2004).

**Project Plan for Case-specific Data Collection**





LEADING PRACTICE PROFILES SERIES:

## The Law Department's Role In Developing And Implementing Compliance And Ethics Programs



Association of Corporate Counsel  
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2. Leading Practice Profiles Series: July 2005

### Rationale

It seems simple: corporate compliance and ethics programs are about doing the right thing. But just having written codes, policies, or values statements isn't enough. Effective compliance and ethics programs help embed into a corporation's culture expectations for ethical and lawful conduct by clearly communicating management's expectations, educating employees on job responsibilities and accountabilities, providing mechanisms for getting guidance and reporting concerns, and implementing oversight, measurement metrics, and checks to help ensure that systems are working and continuously improved.

Recent highly publicized cases involving allegations of ethical failures and corporate misconduct underscore the importance of having effective compliance and ethics programs. More than ever before, regulators, stakeholders, and the public are examining what goes on in the inner workings of companies, and scrutinizing programs for corporate governance and for compliance and ethics. Corporations around the world are dedicating time, resources, and energy to help ensure their compliance and ethics programs succeed, and in-house lawyers are playing leading roles—some performing dual roles as lawyers and Chief Compliance Officers; others as key players in program development and implementation.<sup>1</sup>

What constitutes an effective compliance and ethics program? Certainly a number of provisions in recently passed Sarbanes-Oxley regulations in the United States, and counterpart governance regulations and standards issued in the European Union, Australia, New Zealand, and elsewhere provide plenty of requirements as well as "direction" for the development of programs. ACC's previous Leading Practice Profile on governance trends around the world provides some additional background on this issue as well.<sup>2</sup>

For organizations based in or with operations in the United States, guidelines created by the United States Sentencing Commission and titled the "Federal Sentencing Guidelines for Organizations" ("Guidelines") serve as an important resource since they are really the only 'governmental definition' of the elements of an effective compliance and ethics program.<sup>3</sup> Even for companies with no nexus to the United States, the criteria set forth in the Guidelines may be of interest in evaluating program components. As set forth in the Guidelines, the seven elements of an effective compliance and ethics program include criteria regarding:<sup>4</sup>

- Standards and procedures to prevent and detect criminal conduct.
- Personnel with oversight and day-to-day operational program responsibility, including criteria for the organization's governing authority, high-level personnel, and persons with day-to-day operational responsibility for the program.
- Due diligence on substantial authority personnel (defined in the guidelines).
- Communications and training.
- Mechanisms for monitoring, evaluation, reporting, and guidance.
- Enforcement, including incentives and discipline.
- Response following detection of criminal conduct.

If you don't plan to get into trouble (!), why have a formal compliance and ethics program (rather than relying on more informal ethics based training and employees' common sense)? Because having an effective corporate compliance and ethics program makes good business sense for supporting day-to-day operations important to a company's survival and success. More importantly, a solid corporate compliance program provides guidance and structure for helping people do the right thing—thus avoiding the pitfalls that can lead to trouble. It can also help strengthen employer-employee relations and can be valuable from a public relations standpoint.<sup>5</sup> In addition, as described above, the existence of an effective ethics and compliance program can play an important defensive role and perhaps help avert criminal indictment of the corporate entity and/or minimize corporate penalties if violations or failures of some kind occur.

Section I summarizes key themes and program insights of company representatives, including their thoughts on elements of their programs that they consider to be leading practices. Section II describes the programs of each of the six companies in more detail. Section III provides a list of resources identified by company representatives and ACC as resources that may be of interest or helpful to others in evaluating and developing law department practices in support of corporate compliance and ethics programs.

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**THE LAW DEPARTMENT'S ROLE IN DEVELOPING AND IMPLEMENTING COMPLIANCE AND ETHICS PROGRAMS**

Featured in this Profile are compliance and ethics initiatives implemented and under development by law departments at the following six companies:

**Altria Group, Inc. and Its Family of Companies, Consumer Packaged Goods, New York, NY** ..... Page 10  
**Computer Associates, Management Software, Islandia, NY** ..... Page 14  
**International Paper, Paper, Packaging and Wood Products, Memphis, TN** ..... Page 17  
**The Home Depot, Inc., Home Improvement Retail, Atlanta, GA** ..... Page 21  
**Major Wholly-Owned U.S. Manufacturing Subsidiary of Foreign Multinational** ..... Page 24  
**Global Financial Services Company** ..... Page 26

Representatives of these companies provided information on the structure of their compliance and ethics organizations, and on selected compliance and ethics program components, including their Codes and Standards documents, training programs, risk assessment processes, and helpline resources and practices. In addition, these representatives submitted their thoughts on what elements of their law department's practices they consider to be leading practices.

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**I. SUMMARY OVERVIEW OF PROGRAMS & THEMES**

**Organizational Design**

Each of the six law departments shared information on the organizational structure of their compliance and ethics programs and on the alignment and roles of in-house lawyers. Summarized below are some compliance and ethics program organizational structures utilized by the featured companies. Additional information on organizational structures and the role of in-house lawyers is found in the individual program summaries in Section II of this Profile.

**Office of Compliance & Integrity** in parent company with subsidiary compliance officers, staffs and councils. Led by a Senior Vice President & Chief Compliance Officer who is charged with the oversight and implementation of compliance and integrity programs for the parent and its three principle subsidiary operating companies, this company's Office of Compliance & Integrity includes around a dozen compliance and records management professionals. The Senior Vice President & Chief Compliance Officer is a member of the company's Corporate Management Committee (the company's most senior management group), and reports directly to the Audit Committee of the Board of Directors. A Senior Assistant Counsel & Chief Compliance Counsel is on point for providing support to the Chief Compliance Officer, and day-to-day working relationships among compliance office personnel and in-house lawyers are described as very strong.

In addition, each of the subsidiary operating companies has a chief compliance officer together with a staff of around 10 compliance professionals. Each of the subsidiary operating companies also has a Compliance Council that plays an important role in connection with annual compliance risk assessments and operating plans, and in-house lawyers that support the compliance functions.

**Office of Ethics & Business Practices** plus functional and subject matter group structures. The company's Director of Ethics & Business Practices leads the Office of Ethics & Business Practices (OEBP), which includes an additional professional. The Director of Ethics & Business Practices reports organizationally to a Vice President & Deputy General Counsel for the company, and also has responsibilities (but not organizational reporting relationships) to two committees of the company's Board of Directors: Public Policy & Environment Committee (responsible for oversight of the company's compliance program), and Audit and Finance Committee.

In addition to the OEBP, there are numerous groups on point for supporting compliance efforts by subject matter. The company also has a Disclosure Committee that plays a key role in connection with reviewing and providing internal certifications of financial information. The company's Senior Vice President, General Counsel & Corporate Secretary plays the lead role in overall compliance management and oversight, and performs the role of Chief Compliance Officer for the company. The law department's organization includes lawyers who work closely with each of the functional and business groups.

**Corporate Compliance Group and Corporate Compliance Council** (chaired by company's General Counsel) play key roles. A Director Legal for Corporate Compliance who reports to the company's General Counsel leads this organizational model of the corporate compliance department. The corporate compliance group includes around seven individuals, including four compliance specialists, a compliance manager, a records/standard operating procedures manager, and an in-house attorney. The company's Corporate Compliance Council is chaired by the General

Counsel who plays a key role in providing operational oversight for compliance. The Nominating & Corporate Governance Committee of the company's Board of Directors has ultimate oversight for the compliance and ethics programs.

**Compliance Committee, Compliance Director, and Compliance Officers.** To help support compliance initiatives and facilitate open communications on compliance within this subsidiary and with the parent organization, this company has defined a number of organizational compliance positions, roles, and committees. At the uppermost levels is a Compliance Committee that includes the subsidiary company's General Counsel and other senior-level executives. The organizational structure also includes a Compliance Director, who is currently a member of the company's human resources department. In addition, each of the company's business groups has designated Compliance Officers who are on point for performing compliance roles both within their business groups and vertically as liaisons with the compliance organization within the parent company.

**Federated model with regional compliance officers** for each regional operating organization plus global subject matter coordination and oversight by executive management and Board of Directors. Pursuant to this model, each of the company's six regional operating organizations is responsible for compliance within their regions and has designated compliance officers. The executive management and Board of Directors provide global coordination and oversight. The company's Executive Vice President & General Counsel is also the Chief Compliance Officer, and a Senior Vice President & Senior Counsel is on point for providing global guidance on matters relating to the Code and for evaluating and managing any calls received through the company's whistleblower hotline.

**Central compliance function.** Under this organizational structure, which is still under development, the new central compliance function for this company is led by a Senior Vice President of Business Practices & Chief Compliance Officer, who reports to both the company's General Counsel and to the Audit and Compliance Committee of the company's Board of Directors. The Senior Vice President of Business Practices & Chief Compliance Officer is also a member of the company's Leadership Team. The central compliance function will be situated within the law department. Plans for the central compliance group include a total staff of around a dozen individuals, including lawyers and non-lawyer compliance professionals.

### Practice Highlights

Listed below are some practice highlights from the various programs that illustrate the spectrum of practices implemented by the companies as part of their compliance and ethics programs. Additional information on these and other compliance and ethics initiatives implemented by the law departments is found in the individual program summaries in Section II of this Profile.

**Annual Employee Compliance Certification.** An on-line questionnaire and certification tool asks around 18,000 associates to provide information on compliance. The questionnaire includes 14 questions and solicits responses regarding potential conflicts of interest and whether associates are aware of any ongoing activity that should be reported. The tool also reminds associates that the company has a confidential reporting mechanism.

**Annual Enterprise Compliance Reviews (AECRs).** Conducted each year by the company's Corporate Compliance Council, the AECRs involve compliance reviews of business units and various functional units. Teams consisting of a business partner, the divisional business officer, and the attorney assigned to the relevant area work collaboratively with the company's compliance department to develop a relevant risk assessment, identify gaps in operating procedures, determine process improvements and/or training needs to eliminate gaps, and develop an action plan to present

### Practice Highlights

to the Corporate Compliance Council. The action plan becomes a scorecard for the relevant unit, and progress is tracked by the corporate compliance department.

**Annual Risk Assessments and Compliance Plans.** One company described a process for performing annual risk assessments and developing compliance plans. The process includes reviewing a list of over one hundred areas and evaluating future possible risks and potential impacts. As part of this process, in-house lawyers and compliance professionals interview senior management at each subsidiary company, and compliance plans are required to be approved by senior management for the relevant company, and also by the Chief Compliance Officer for the parent company.

**Derivative Codes of Conduct.** Some companies develop derivative codes. One company customized its enterprise-wide Code of Conduct for Compliance & Integrity to produce derivative codes of conduct for its manufacturing employees and for its office employees. Another company described a process that included management's adoption of a global Code of Conduct that was adopted and 'tweaked' by its regional operating organizations.

**Customized Business Ethics/Compliance Code training.** Several companies have customized web-based training modules on their Codes, including some that include hyperlinks to relevant sections of their Codes.

**Disclosure Committee Processes.** Comprised of key individuals involved in the securities-related disclosure process, the Committee meets several times each quarter to review financial disclosure information and provide certifications regarding accuracy and completeness. Committee members include the Chief of Accounting, Head of Corporate Audit, General Counsel, Controller, Treasurer, Head of Executive Compensation, Head of Investor Relations, and the Chief Counsel-Securities, Governance & Compliance.

**Employee Survey on Compliance & Integrity.** Executed by an outside firm, the survey has around 17 questions (some multi-part) and allows respondents to submit information discretely. An example of the survey may be accessed via link in the Resource List in Section III of this Profile.

**Law Department Sub-Certifications Regarding Contingent Liabilities and Issues That Could Affect the Financial Interest of the Company.** A practice described by one law department as involving certifications from all of the General Counsel's direct reports and quarterly meetings among lead business lawyer, business leaders, and the controller for each of the relevant business division to discuss the adequacy of reserves.

**Legal Risk Assessments for the Law Department.** A risk assessment that is performed at the law department level, this practice involves quarterly meetings among the parent company's General Counsel and operating company General Counsel, a discussion of legal risks and delegating to in-house (and possibly to outside lawyers) responsibility for follow-up. An example of the checklist of legal risks reviewed as part of this process may be accessed via link in the Resource List in Section III of this Profile.

**Standard Operating Procedures (SOP).** Developed by business and functional units, the SOPs are designed to communicate specific performance expectations. Many SOPs support operational issues, but SOPs are also used to describe how to execute compliance with the company's corporate policies. The corporate compliance department works with units and provides guidance and training on how to develop SOPs. Once approved, the SOPs are published and tracked by the corporate compliance department.

**"The Compliance Zone" Play.** Developed in-house with some assistance from outside consultants, the interactive play is part of the company's training initiatives and has been performed

around 20 times to date before groups of 50 to 400 people located around the world. The play includes about seven scenes, each of which is followed by dialogue with the audience regarding the situation presented in the scene.

### Law Department Program Themes

The following general themes emerged:

**Compliance as Shared Responsibility.** A theme described by company representatives emphasizes that compliance is a shared responsibility, and everyone has a role. Employee roles include understanding their jobs, reporting concerns and problems, and being accountable. Management responsibilities include communicating expectations and helping to create an ethical culture. Compliance function responsibilities include serving as a resource, helping to develop programs and processes to get matters sorted out and acted on, and serving as checks.

**Chief Compliance Officer.** Most of the companies interviewed have a Chief Compliance Officer. For some, the General Counsel also serves as the Chief Compliance Officer. For others, the Chief Compliance Officer position is a separate senior-level position within the company.

**Chief Compliance Officers Report Organizationally to the Board.** Some of the companies have organizational reporting structures where the Chief Compliance Officer reports organizationally to a committee of the company's Board of Directors. For some of these companies, the Chief Compliance Officer also reports to the company's General Counsel.

**Central Compliance Functions.** Several of the featured companies have corporate compliance functions led by their Chief Compliance Officer or a Director Legal for Corporate Compliance. Staffing in the central compliance functions ranged from two to around a dozen in the core group.

**Compliance Officers/Liaisons.** Some of the companies have compliance liaisons or compliance officers located within business groups and subsidiaries, and/or around the world that play important roles as part of the companies' internal compliance networks.

**In-House Lawyers Play Key Roles.** In all of the companies, in-house lawyers play key roles in connection with their compliance and ethics programs. For some companies, their General Counsel also serves as the company's Chief Compliance Officer. For other companies, the Chief Compliance Officer has an organizational reporting relationship to the General Counsel. In some companies, in-house lawyers serve as leaders of corporate compliance functions and/or as key points of contact for guidance on the company's Code or Standards. In-house lawyers also serve as points of contact for calls received by the company's compliance hotline or play important roles in helping to investigate and follow-up on issues from such calls. Additionally, in-house lawyers provide substantive compliance guidance by subject area, help to develop and deliver training, participate on multifunctional teams to develop company Codes/Standards, and provide support in connection with internal compliance and certification processes.

**Code/Standards of Conduct as Cornerstone Components.** Some companies have an enterprise-wide Code or Standards document that serves as a cornerstone for their corporate compliance and ethics programs. Some companies translate their Codes into as many as 18 to 25 languages. As noted above, some companies also have derivative codes.

**Code Training Modules.** Company representatives emphasized the importance of training on their programs. Most companies have (or are developing) customized web-based training modules specifically designed to train on their Codes or Standards. One company also described

developing an advanced Code course, and all employees that receive the Code will be required to take the course every few years.

**Compliance Training a Key Program Element.** In addition to Code-specific training, company representatives are also exposed to a broad range of training initiatives. One company described its development of an enterprise-wide learning management system that allows employees a significant role in managing their learning experience within the company. Another company has developed an interactive play as part of its training initiatives. Training for the Board of Directors for many companies is accomplished by in-person training in which in-house lawyers play an important role.

**Helplines.** Companies described various types of mechanisms for providing guidance and receiving information or reports of compliance matters. Four companies use an outside vendor to receive calls. Two companies administer their helplines internally (and one also described using an outside vendor for calls outside of the U.S. where employees prefer to provide information in their native language and/or for calls received outside of normal business hours).

For many of the companies, primary responsibility for receiving information from calls (either directly or from the outside vendor) is with the corporate compliance group or Chief Compliance Officer. One company shared that both the Chief Compliance Officer and the Chief Compliance Counsel are on point for reviewing and evaluating helpline information. Another explained that its Senior Vice President & Senior Counsel is on point. One company noted that its human resources department has primary responsibility for receiving information from the outside vendor that administers its AwareLine.

**Oversight Provided by the Board.** Many of the companies described the important roles played by their Boards in connection with their programs. Some companies' programs place responsibility for program oversight with more than one committee of the Board where a designated committee (such as the Public Policy & Environment Committee or the Nominating and Corporate Governance Committee) provides overall program oversight, and the Audit Committee plays additional key oversight roles. Three companies have reporting structures that include a direct reporting relationship between the Chief Compliance Officer and the Audit Committee of the Board of Directors.

**Risk Assessments; Compliance Plans.** Some companies have annual processes for performing risk assessments and preparing compliance plans that require approval by the company's Chief Compliance Officer or Corporate Compliance Council. These companies also explained the related roles of the corporate compliance department and in-house lawyers in the process and mechanisms for tracking progress.

### Leading Practices

The interviewees were asked to identify aspects of their programs they considered to be leading or best practices. A list of some of the components appears below. Individual program summaries in Section II provide additional detail on these and other practices and program elements.

**Codes and Standards Relating to Compliance, Ethics & Integrity.** Several companies as leading practices identified these elements.

**Code Training.** Noted as a leading practice for one of the companies that has developed "from a blank sheet of paper" a customized training module on its Code, and is in the process of developing an advanced training module on the Code. In addition, company representatives describe as

Law Department  
Program Themes

Leading Practices

a leading practice an interactive play titled “The Compliance Zone” that was developed internally with some assistance from outside consultants. The play has been performed around 20 times to date before audiences ranging from 50 to 400 people located around the world to further the company’s compliance training initiatives.

**Chief Compliance Officer as Senior Management-Level Position.** Having a Chief Compliance Officer that is an executive officer of the company and “can move mountains if need be” is described as a leading practice by one company. The Chief Compliance Officer for this company is also a member of the company’s Corporate Management Committee (the company’s most senior management group), has regular contact with the company’s Chairman and CEO, and enjoys a direct reporting relationship to the company’s Audit Committee.

**Annual Enterprise Compliance Reviews (AECR’s).** A leading practice identified by one company representative, AECRs are compliance reviews of business units and various functional units of the company. As part of these reviews, teams that include an in-house attorney supporting the relevant unit work collaboratively with the company’s compliance department to develop a risk assessment and develop an action plan. The compliance action plan serves as a scorecard and the corporate compliance department tracks progress.

**Training Module on Respect and Dignity in the Workplace.** Described as a leading practice by one company and as including information on EEO matters and beyond. The training is delivered using a person-to-person training model that includes certifying hundreds of employees to deliver the training. The module is required as part of orientation for all new employees and has also been used in a more focused way where appropriate.

**Internal Helpline.** Reengineered from using an external vendor for hotline calls to receiving calls internally, this company’s renamed Helpline is staffed by its Office of Ethics and Business Practice and receives calls during normal business hours. Important to the transition was communication to employees emphasizing that the Helpline is a mechanism by which employees can get advice as well as an avenue for reporting unacceptable behaviors in the workplace. The Helpline, which is advertised and operates globally, is also available to company stakeholders who are not employees. Representatives note that call volume has been consistently higher than the benchmark call volume data published in multi-company studies and believe that the volume and use by company employees demonstrates their belief that the Helpline is a fair and safe place to bring concerns.

**Disclosure Committee Processes.** Consisting of key individuals involved in the securities-related disclosure process, this company’s disclosure committee process for reviewing and certifying financial information is described by company representatives as “robust” and a leading practice.

**Quarterly Law Department Sub-Certifications.** One company identified as a best practice a procedure that takes internal certifications a step further. Pursuant to this process, the direct reports of the General Counsel provide certifications regarding knowledge of contingent liabilities and issues that could affect the financial interest of the company. Further sub-certifications are provided by business and specialty counsel throughout the law department. As part of this process, every lead lawyer for a business unit is responsible for meeting quarterly with the business leader and controller for that division to discuss open litigation matters and whether financial reserves are appropriate.

**Web-based and Face-to-Face Compliance Training.** Described as leading practices by representatives for one company. The overall program is described as “extensive in scope” and includes 14 modules. Employees are required to include completion of training as part of their annual objective-setting process to help reinforce the importance of compliance awareness and training. A customized module on Business Ethics includes hyperlinks to relevant portions of the company’s

Code and Standards.

**Business Compliance Officers.** The framework for incorporating business compliance officers to help perform compliance roles within business groups and also perform vertical liaison roles with the compliance function in the parent company is a leading practice described by one company. This practice is an evolving mechanism that helps facilitate coordination and information flow with the parent company.

## II. COMPANY PROGRAM SUMMARIES

This section contains summaries of the compliance and ethics structures and programs of the six companies participating in this Leading Practice Profile.

### Altria Group, Inc. and Its Family of Companies

Compliance and integrity is truly viewed as a business discipline within Altria Group, Inc. and its family of companies. Following a leading practices study spearheaded by the company’s General Counsel, Altria created an Office of Compliance and Integrity in August 2001. David Greenberg was appointed to lead this office as Senior Vice President and Chief Compliance Officer, Altria Group, Inc., and charged with the oversight and implementation of compliance and integrity programs for Altria and its three principle subsidiary operating companies (Kraft Foods, Philip Morris USA, and Philip Morris International).

To demonstrate the company’s sincere commitment to compliance and integrity, Altria empowered the Chief Compliance Officer position with the company’s highest level of authority: Mr. Greenberg is a senior executive with the parent company, is a member of the company’s Corporate Management Committee (the company’s most senior management group), has regular contact with the company’s Chairman and CEO, and enjoys a direct reporting relationship to the company’s Audit Committee.

Highlighted below are some of the key components of Altria’s overall compliance and integrity program. Chief among these components are two enterprise-wide program centerpieces: Altria’s *Standards for Compliance and Integrity* and its *Code of Conduct for Compliance and Integrity*. Also featured are practices relating to risk assessment and compliance planning processes, compliance training programs, a 24/7 Helpline, and programs for evaluating and monitoring compliance. Additional information on Altria’s compliance and integrity programs may also be accessed via its website link at [http://www.altria.com/responsibility/04\\_01\\_complianceandintegrity.asp](http://www.altria.com/responsibility/04_01_complianceandintegrity.asp).

### **Organizational Structure for Compliance and Integrity**

As noted above, the parent company has an Office of Compliance and Integrity that is led by Greenberg as Chief Compliance Officer and includes a dozen compliance and records management professionals. Similarly, each of the three subsidiary operating companies has a chief compliance officer together with a team of around 10 compliance professionals. In addition, each of the operating companies has a Compliance Council that plays an important role in connection with required annual compliance risk assessments and operating plans (described further below). With regard to organizational alignment with in-house lawyers, Greenberg explains “we have a

very strong working relationship with the in-house lawyers supporting our function. Although the lawyers report to the legal function, our day-to-day working relationships are very much a partnership.”

#### Standards for Compliance and Integrity

Altria's Standards for Compliance and Integrity are enterprise-wide standards that define steps Altria and its operating companies must take to meet overall compliance and integrity commitments. The Standards address:

- Organizational compliance and integrity structures;
- Accountabilities and objectives (at both the employee and business levels) ;
- Compliance operating plans and risk assessments, including legal and reputational risks;
- Training;
- Mechanisms to report issues and answer questions;
- Setting explicit and fair standards for investigations and sanctions;
- Monitoring, auditing and evaluation practices;
- Documentation;
- Sanctions; and
- Oversight and progress review by the Board of Directors.

The Standards, which were adopted by Altria's Board of Directors, were developed by a Compliance Leadership Team comprised of chief compliance officers for each of the companies, their lawyers, and senior representatives from the rest of the corporate functions. “One of the keys to the success of our program is the collaborative effort from the very beginning in developing both the Standards and the Code of Conduct,” explains Greenberg. A copy of Altria's Standards for Compliance and Integrity may be accessed via link in the Resource List in Section III of this Profile.

#### Code of Conduct for Compliance and Integrity

Another core component of Altria Group, Inc. and its companies' compliance and integrity program is the Code of Conduct for Compliance and Integrity. As with the Standards, development of the Code was very much a collaborative process, and included feedback and ideas received through numerous employee forums around the world. The foundation of the Code encourages employees to ask four key questions before acting:

- Is it legal?
- Does it follow company policy?
- Is it the right thing to do?
- How would others understand or view the actions?

In addition, derivative Codes, such as a Code for manufacturing employees and one for office employees, have been developed to highlight the most relevant components for those groups. This customization enhances the relevance of the Code and integrates it into employees' day-to-day activities. These Codes have been translated into 25 languages. The base Code may be accessed via Altria's website at: [http://www.altria.com/responsibility/04\\_01\\_05\\_CodeOfConduct.asp](http://www.altria.com/responsibility/04_01_05_CodeOfConduct.asp).

Altria Group, Inc. and Its  
Family of Companies

#### Compliance Plans; Risk Assessments

Each year, Altria Group, Inc. and its operating companies prepare compliance plans and perform risk assessments. The risk assessments are driven by the business function and are meant to identify legal, policy, and reputational risks that require attention and action as part of the overall business planning process. Greenberg describes the overall effort as a “bottom up” approach to assessing risks and developing plans to address them.

The risk assessment process for each company includes reviewing over one hundred compliance areas and evaluating future possible risks, probable risks, and potential impacts. As part of this process, senior management at the companies is interviewed by in-house lawyers and compliance professionals to obtain views on potential risks.

A second important step in this process includes prioritizing risks and developing compliance plans to ameliorate them. In developing these plans, companies are encouraged to determine whether the necessary action plans require, among other things, changing business processes, implementing training, or developing new structures. The compliance plans must be approved by senior management for the relevant company, and by Greenberg as Chief Compliance Officer for the parent company. Greenberg also reviews the compliance plans with Altria Group's Audit Committee.

#### Legal Risk Assessment For Law Department

The parent company's General Counsel has implemented practices to perform a legal risk assessment at the law department level. “As part of this process, during regular quarterly meetings with the General Counsel of the operating companies, the General Counsel of the parent company includes on the agenda a robust discussion of legal risks,” explains Gary Glass, Senior Assistant General Counsel and Chief Compliance Counsel for Altria Group, Inc. Following these discussions, follow-up activities are delegated to in-house lawyers (and possibly to outside lawyers), and information is reported back. An example of a checklist of legal risks reviewed as part of this process may be accessed via link in the Resource List in Section III of this Profile.

#### Training

Training is another cornerstone component of the companies' compliance and integrity program. “In my view, you can't just write a Code and send it out. Employees have to live inside of it,” explains Greenberg. Accordingly, in order to communicate and implement the Code, a web-based training program was developed and all employees who receive the Code are required to complete the training program. Decisions on who receives the Code and the associated training are made at the operating company level. A second, advanced course on the Code is also being developed, and all employees who receive the Code will be asked to complete the second training course every few years.

In addition to training on the Code, Altria Group, Inc. and its operating companies also require employees to take web-based training in a variety of subject areas, including financial integrity, antitrust, insider trading, information protection, records management, foreign corrupt practices act, privacy, anti-harassment, and government affairs. Additional training modules are also under development.

How was the training developed? Greenberg and Glass share that the training modules were developed using outside vendors working with in-house teams staffed by subject matter experts. For the Code modules, the training was developed from “a blank sheet of paper.” The develop-

ment teams typically include an in-house lawyer, and the resulting modules are generally sent to outside counsel for final review. "In some cases, in-house lawyers may take the lead on developing the training modules, and in others their role may be better described as participating and reviewing," says Glass. Training on the Code modules was developed "whole-cloth from a blank sheet of paper" using an outside vendor, and training on the more specific subject areas was developed by modifying off-the-shelf content from an outside vendor.

On training for the Board of Directors, Greenberg and Glass share that they are currently in the process of developing additional training. "Our philosophy is to develop training programs that are tailored to the Board's oversight responsibilities," they explain. As part of the development effort, they are developing a schedule of oversight responsibilities and evaluating areas to emphasize to help further the engagement of the Board.

#### "The Compliance Zone" Play Furthers Training on Compliance and Integrity

As part of the companies' training initiatives, individuals from within Altria and outside consultants developed an interactive play titled "The Compliance Zone". Greenberg shares that the play has been performed around 20 times to date, for groups of 50 to 400 people located around the world. The play includes about seven scenes involving a fictitious company where everything goes wrong. Following each scene, there is dialogue with the audience relating to the situation.

#### Worldwide Integrity Helpline

The company has a Worldwide Integrity Helpline administered by an outside vendor, Global Compliance Systems. The Helpline allows people to call in their questions, comments, or complaints and remain anonymous if they so choose. All information received through the Helpline is reviewed by Greenberg and Glass, and responsibilities for responding to the claims is delegated to the appropriate operating companies, which sometimes draw on resources from the parent company's audit department.

#### Monitoring and Evaluation

The compliance and integrity program includes a number of mechanisms for evaluating how the companies are doing with respect to compliance and integrity. These initiatives include audits performed by the Compliance & Integrity Unit of operating company compliance departments, as well as the parent company's Corporate Audit Department and employee focus groups. In addition, the company recently implemented its first major employee survey on compliance and integrity. The survey is executed by an outside firm and allows respondents to submit information discretely. An example of the employee survey may be accessed via link in the Resource List in Section III of this Profile.

Other important aspects of overall monitoring efforts include monthly conference calls among the operating company chief compliance officers and Greenberg. In addition, Greenberg and Glass have separate calls with the compliance officers to discuss issues and evaluate progress. Greenberg and Glass also have periodic meetings or calls with the General Counsel for the parent company and the Chiefs of the Auditing and Investigations functions to discuss issues and efforts.

Are there guidelines for the types of issues that need to be reported-up within the companies? Greenberg and Glass identify two sets of reporting guidelines: one for management and one for the law department. The former includes a list of around a dozen areas. Any issues that fall within these areas are required to be reported to Greenberg, and, if there is also a legal issue, to

the General Counsel. Reporting up guidelines for members of the law department have been established by the law department. Glass points out that the policy imposes standards that are more stringent than those set by Section 307 of the Sarbanes-Oxley Act.

#### Leading Practices

Asked for thoughts on which elements of the companies' practices they would consider to be leading practices, Greenberg and Glass identify practices relating to the Code of Conduct for Compliance and Integrity and the Standards for Compliance and Integrity as leading practices. In addition, they note that the company recently won an award for its training program for the Code. Greenberg also shares his view that creating a Chief Compliance Officer position that is a senior officer position within a company and is empowered to "move mountains if need be" is a leading practice. Another leading practice that they consider to be unique is "The Compliance Zone" play and its approach to providing training on compliance and integrity issues. "At the end of the day, no one person owns compliance and integrity. Our objective is to communicate the importance of these behaviors to the companies' employees and help provide processes to get matters sorted out and acted on," explains Greenberg.

#### Computer Associates

Computer Associates is in the process of developing a new comprehensive ethics and compliance program. Leading the effort are its Senior Vice President of Business Practices and Chief Compliance Officer, Patrick Gnazzo, and its Executive Vice President and General Counsel, Ken Handal. Both Handal and Gnazzo are relatively new additions to the Computer Associates team, having joined the company with significant program-building experience from their former positions. Gnazzo, who holds a law degree, was the Chief Compliance Officer for United Technologies Corporation for ten years prior to joining Computer Associates in January 2005. Handal was counsel to Altria Group, Inc.'s compliance program development efforts prior to joining Computer Associates. He played a key role in negotiating Computer Associates' deferred prosecution agreement, which includes a requirement to develop a comprehensive new ethics and compliance program.

One of the hallmarks of the new program is the dual reporting relationship that Gnazzo has as Chief Compliance Officer: he has solid line reporting relationships both to Handal as General Counsel and to the Audit & Compliance Committee of the company's Board of Directors. Handal shares that the requirement of a dual reporting relationship is included in the deferred prosecution agreement and was an important factor to the government in the negotiations. "Having a dual reporting responsibility with a solid line relationship directly to the Audit & Compliance Committee truly reflects the importance and strength of the Chief Compliance Officer function within our company and helps bring the responsibilities of this position full circle," says Gnazzo.

#### Chief Compliance Officer

The Chief Compliance Officer position was a new position created for Computer Associates. As noted above, both the position and the organizational reporting structures were key elements of the deferred prosecution agreement. Prior to the creation of this position, the company's compliance efforts were supported through the combined efforts of the law and the human resources departments.

The selection process for the Chief Compliance Officer involved interviews with the company's Chairman, its CEO, and members of the Board of Directors as well as Handal. "With Pat



Gnazzo on our team, we now have a very well recognized and experienced Chief Compliance Officer. Pat is a member of the company's leadership team, which is another indication of the very high level and importance attributed to this position," says Handal.

Before Gnazzo was hired, the qualifications and responsibilities criteria for the position were discussed with the Board and company management. Following are some of the key job responsibilities for the Chief Compliance Officer position:

- Developing, in conjunction with company management and the Board, a comprehensive Code of Conduct and Ethics;
- Ensuring that the company has clear compliance policies that are clearly communicated;
- Ensuring that the company offers training programs so that employees understand compliance responsibilities;
- Ensuring that there are appropriate controls in place with regard to the policies;
- Bringing compliance matters to the attention of management; and
- Ensuring that compliance matters get resolved.

Gnazzo explains that his background as a lawyer is "helpful but not necessary" for serving as a Chief Compliance Officer. "In situations where the Chief Compliance Officer reports to a company's General Counsel, having a legal background may help to provide the General Counsel with more of a comfort factor on the ability to distinguish real ethics and compliance matters; however this doesn't mean that the Chief Compliance Officer has to be a lawyer," explains Gnazzo. He also notes his preference for keeping the roles of Chief Compliance Officer and General Counsel separate. That way, the Chief Compliance Officer can focus on compliance and ethics issues, rather than the broader range of issues most General Counsel need to cover, and can evaluate compliance from a business perspective.

Computer Associates

#### Compliance Function

The company is currently in the process of creating a central compliance function that will report to Gnazzo. The team will consist of around 12 individuals who will focus on compliance as their job responsibilities. The team currently includes two in-house lawyers, and Gnazzo shares that additional team members will include a mix of non-lawyer compliance professionals.

Gnazzo explains that everyone has a role in compliance: "Management's role is to communicate compliance expectations and be accountable; employees must understand their jobs, report any concerns or problems, and be accountable for their actions; and compliance function personnel need to serve as a resource for both management and employees in helping to develop, provide guidance on and check the process."

#### New Code Of Conduct

Part of the company's efforts to develop a new comprehensive compliance and ethics program includes reviewing the company's existing Code of Conduct and policies and developing an enhanced Code. How are they doing this? According to Gnazzo, the company is reviewing other Codes from companies in similar industries to determine whether there are any missing pieces that they would like to incorporate. The effort is being led by the compliance function and is primarily staffed internally. Gnazzo shares that the company's Board is an essential part of the approval process, and that employee focus group sessions may also be held as part of the overall design effort.

"All Codes have different styles, and companies have different cultures. With regard to overall design, my philosophy is that the Code doesn't have to detail compliance activities and requirements but should reference policies that do," explains Gnazzo. Once the Code is developed and approved, the company's "launch" of the Code will be a two-prong process: disseminating and communicating the Code, and then providing training on the Code's provisions.

#### Training

The company currently has around 16 compliance training modules that are web-based and interactive. As part of broader efforts to refine its compliance program, the overall number of modules will likely be reduced to around six, and a specific module on the Code will be designed and added. The Code module will be required for all employees as part of the two-prong program launch.

On training for the Board, Gnazzo notes that it is difficult to be sure how the government will interpret the board training provisions in the revised organizational sentencing guidelines. Gnazzo shares that he testified in front of the United States Sentencing Commission on this issue, and explains his view that the Board should be aware of the Code and the company's policies and should be an active participant in discussions and oversight relating to them.

#### Helpline

Until recently, the company's helpline program was administered internally. The company's current program includes an outside vendor, Global Compliance Systems, that administers a 24/7 helpline. All information received through the helpline is forwarded to Gnazzo for review and evaluation, and is assigned to appropriate subject matter experts for follow-up. While the company has not established guidelines for the types of matters that need to be reported to the Board, Gnazzo shares that Sections 301 and 302 of the Sarbanes-Oxley Act set a floor for reporting certain types of matters. He adds that he is working with the Board to develop additional criteria on internal standards for reporting matters to the Board beyond those that are required by law.

#### Role Of The Law Department

Handal describes the role of the law department as essential to the overall support of the company's compliance program development efforts. As Gnazzo's supervisor, Handal provides both legal support and helps the compliance function achieve its objectives. Essentially, every lawyer in the law department has, as a part of their responsibilities, a compliance component; and each of them assists, as a subject matter expert, in supporting the compliance organization. A Deputy General Counsel is also on point for advising on compliance with the deferred prosecution agreement and is the main contact for the independent examiner assigned by the government to oversee the company's progress and compliance with the agreement.

#### Success Factors

Asked to identify key success factors in developing a compliance program, Gnazzo emphasizes the importance of management's commitment to the program and of having a communications plan to convey management's resolve to maintain and enforce the program. "Communication can occur through a broad range of avenues, including direct communications from the CEO, company policies, training, supervisor and senior manager communications, and through staff meetings."

explains Gnazzo. "While it is useful to say we want to hear about issues and will deal with them, it has more impact to communicate how we deal with issues when they arise," he says.

Handal and Gnazzo feel that Computer Associates has a good start on building a world-class compliance and ethics program that will be rolled out to the company's 15,000 employees around the world.

#### International Paper

International Paper established an Office of Ethics and Business Practice in 1998 to help manage and coordinate compliance matters with the company's worldwide Code of Business Ethics. Led by Jim Berg, Director of Ethics and Business Practices, the Office of Ethics and Business Practice includes a small core staff of two individuals including Berg, who in turn reports to Mark McGuire, Vice President & Deputy General Counsel for the company. Berg also has reporting responsibilities to, but not an organizational reporting relationship with, two committees of the company's Board of Directors: the Public Policy & Environment Committee, which is responsible for general oversight of the company's compliance program, and the Audit & Finance Committee.

"The size of the ethics office is small by design," Berg explains, "and reflects the company's operating philosophy that everyone needs to participate in and be responsible for ethical conduct and compliance instead of concentrating compliance responsibilities as the personal domain of only a few individuals." In keeping with this overall philosophy, the Office of Ethics and Business Practice reaches out to managers, supervisors, and employees around the world to help with program communications, training, and matter investigations.

The company's compliance program was created in 1998 by a multifunctional task force led by two members of the legal department. As part of this effort, the task force brought in outside experts and made a series of recommendations to the Board of Directors. One such recommendation was to create an Office of Ethics and Business Practice; another was to provide a separate focus and organizational structure for financial compliance matters. Although originally established as part of the human resources department, since 2003 the Office of Ethics and Business Practices has been centered in the legal department. Following are highlights of some of IP's compliance program initiatives, including descriptions of its Helpline, the role of the company's Board of Directors, its training and learning management system, and disclosure committee and internal reporting practices.

#### **General Counsel's Role As Chief Compliance Officer**

The company's Senior Vice President, General Counsel & Corporate Secretary, Maura Abeln Smith, plays the lead role in overall compliance management and oversight and performs the role of Chief Compliance Officer.

#### **Organizational Approach; Law Department Alignment**

As noted above, the company expects compliance to be the responsibility of every employee. In addition, within the company there are numerous groups on point for supporting compliance efforts by subject matter, such as environmental health and safety, human resources, import/export, internal audit, and others. Similarly, the law department's organization includes lawyers who work closely with each of the functional and business groups to support compliance initiatives in a broad range of areas including: environmental health & safety, human resources/workplace,

intellectual property, corporate governance and securities, international trade, and antitrust compliance and overseas competition law.

#### **Role Of Board Of Directors**

The company's Board of Directors played a key role in shepherding the creation of the Office of Ethics and Business Practices, and in approving the company's governance policies and Code of Ethics. In addition, the Board played an important role in implementing practices relating to disclosures and in establishing risk analysis systems. "International Paper's Board members have been active partners in designing and implementing the overall approach and in providing program oversight," explain Berg and McGuire. As mentioned above, the full Board adopted the company's Code of Business Ethics and has delegated responsibility for general oversight of the compliance program to the Public Policy and Environment Committee of the Board. In addition, the Board has delegated responsibility for providing oversight on financial and accounting matters to the Audit & Finance Committee.

#### **Code Of Business Ethics**

The company's Code was reissued in 2003. . Published in 18 languages, the Code includes introductory sections that emphasize its applicability to all employees worldwide and describes what the Code is. It also describes responsibilities employees have to each other and to shareholders; it defines employees' duties with regard to health and safety, protecting the environment, and for honoring compliance with law. The Code also contains sections on policies of special relevance to specific types of work, a section on where to find assistance, and a section on points to consider in making ethical decisions, and a short list of questions and answers on types of scenarios. Following is a link to International Paper's Code of Business Ethics: <http://www.ipaper.com/Our%20Company/Ethics%20and%20Business%20Practice/Code%20of%20Business%20Ethics.html>.

#### **Helpline**

In 1999, the company reengineered its process for receiving information on compliance and ethics matters. For about five years prior to that time, the company had used an external vendor to field calls relating to compliance on a 24/7 basis. Following management's review of best practices, the company decided to internalize these calls and rename the hotline a Helpline. The transition was facilitated by communication emphasizing that the Helpline is a mechanism by which employees can get advice and have access to an avenue for reporting unacceptable behaviors in the workplace.

The Helpline is currently staffed by the Office of Ethics and Business Practice, and receives calls during normal business hours. An outside vendor provides support after hours and on holidays and weekends, and receives calls outside the United States from callers who prefer to provide information in their native languages. All information on calls received from the outside vendor is forwarded to Berg for review and evaluation. Any information on accounting or other financial irregularities is forwarded directly by Berg to the Audit & Finance Committee. The Helpline mechanism allows callers to provide information on an anonymous basis, but International Paper has been experiencing a consistent decrease each year in the percentage of anonymous contacts.

Call volume for the Helpline has been consistently higher than the benchmark call volume data published in multi-company studies, most recently under the auspices of the Ethics Officer Association. Berg believes that this consistent high volume use by company employees demonstrates

International Paper

their belief that the HelpLine is a fair and safe place to bring their concerns. International Paper's HelpLine is also available to company stakeholders who are not employees, such as contractors, customers, community members, shareholders and interested members of the public. It is advertised and operates on a global basis.

"The transition to internalizing call intake has resulted in a dramatic increase in the call volume, and we consider our HelpLine to be among the leading practices for our program," shares Berg.

### Training

The company's compliance training programs are described by Berg and McGuire as "robust and including a mix of face-to-face sessions and web-based training modules." Training for the Board of Directors generally occurs in conjunction with regular meetings and is often provided in-person. In-house lawyers play an important role in supporting these training initiatives. Training for employees generally includes a mandatory training module on ethics and compliance, and course completion is monitored by the Office of Ethics and Business Practice. In addition, the company offers a broad range of training courses on subjects such as antitrust, environmental health & safety, employment/workplace issues, trade secrets, and others.

In recent years, International Paper introduced an enterprise-wide learning management system that allows employees a significant role in managing their learning experience in the company. Two online ethics and compliance courses - the first dealing with the Code of Business Ethics and the second with antitrust compliance - were the lead courses for this new system. Berg says that IP's enterprise-wide system is evolving into a repository for all corporate and business-unit sponsored training, including those courses which are offered online and those which will continue to be delivered in person. International Paper has a multi-year plan for its ethics and compliance training, and the enterprise learning management system will be the key delivery system for this training.

One of the training modules identified by Berg and McGuire as a leading practice is a module titled "Respect and Dignity in the Workplace." The module includes information on EEO matters and beyond, and is delivered using a person-to-person model that certifies hundreds of employees to deliver the training. This module is required to be completed by all new employees as part of overall orientation, and has also been used in a more focused way where appropriate.

### Corporate Governance Compliance & Law Department Support

As noted above, one of the areas where the law department has identified in-house lawyers as being on point to provide compliance expertise is in the area of corporate governance and securities. Leading the law department's efforts in this area is Andrea Dulberg, Chief Counsel, Securities, Governance & Compliance for the company. Reporting to Dulberg is a Senior Counsel for Compliance, who is on point for overseeing compliance for these areas from the legal perspective. A sample job description for the Senior Counsel for Compliance may be accessed via link in the Resource List in Section III of this Profile.

As part of the company's overall Corporate Governance Compliance initiatives, International Paper amended and restated its corporate governance principles in 2003. Dulberg shares that the Corporate Governance Principles were developed in-house and that the law department played a major role in this effort. Following is a link to the Corporate Governance Principles: [http://www.ipaper.com/PDF/PDFs%20for%20Our%20Company/governance\\_principles-2004.pdf](http://www.ipaper.com/PDF/PDFs%20for%20Our%20Company/governance_principles-2004.pdf).

### Disclosure Committee

The company has established a Disclosure Committee consisting of key individuals involved in the securities-related disclosure process, including the Chief of Accounting, Head of Corporate Audit, General Counsel, Controller, Treasurer, and the Head of Executive Compensation, Head of Investor Relations, as well as Dulberg. These individuals meet several times each quarter to review disclosure information and to provide certifications regarding accuracy and completeness of financial filings. The Disclosure Committee's charter includes descriptions of the key responsibilities of committee members and a listing of types of information reviewed together with timeframes for reviewing the relevant information.

#### Key responsibilities of committee members:

- Make inquiries and conduct investigations to support financial certifications on accuracy and completeness;
- Review contingent claims and/or potential losses and determine adequacy of financial reserves;
- Review any reported deficiencies or material weaknesses in internal controls and report on the same to the CEO or CFO;
- Oversee 8-K process; and
- Review any reported (whether or not material) fraud involving management or other employees who have a significant role in the company's internal controls and report on the same to the CEO or CFO.

#### Additional types of information reviewed by committees:

- Draft SEC filings;
- Monthly reports to the Executive Office;
- QR-16 certifications;
- Management presentations or correspondence presented to analysts, ratings agencies, or lenders;
- Report of corporate ethics and compliance committee;
- Internal audit reports;
- Draft earnings announcements; and
- Press releases, ratings agency, and lender/debt market presentations that provide financial information, updates, or guidance.

### Sub-Certification Process For Law Department

As noted above, the company has developed a certification and sub-certification process to support certifications of financial statements required by the CEO and CFO pursuant to the Sarbanes-Oxley Act. In addition to the broader company process, the law department has also implemented a sub-certification process. Pursuant to this process, all of the General Counsel's direct reports provide certifications regarding knowledge of contingent liabilities and issues that could affect the financial interest of the company. Business and specialty counsel throughout the department provide further sub-certifications.

In general, those signing sub-certifications are required to certify that, with respect to their area of responsibility, they have reported "all pending or threatened claims" over a minimum threshold to the appropriate financial controller, including "the amount of recommended reserves, if any, for any pending or threatened claims." McGuire describes the law department certification

process as a best practice and explains that, as part of this process, every lead lawyer for a business unit is responsible for meeting quarterly with the business leader and controller for that division to discuss open litigation matters and discuss whether financial reserves are appropriate.

#### Leading Practices

Asked for thoughts on which elements of their company's practices they would consider to be leading practices, Berg, Dulberg, and McGuire describe the company's ethics and compliance literature, its internalized Helpline procedures, robust Disclosure Committee, and the training module for Respect and Dignity in the Workplace as leading practices. In addition, as noted above, McGuire believes that the law department's quarterly sub-certification process, championed by General Counsel Smith, is a practice that takes internal financial certifications a step further and can be considered a best practice.

#### The Home Depot, Inc.

Home Depot's corporate compliance department is led by Bryan Granger, Director Legal for Corporate Compliance, and reports organizationally to the company's General Counsel, Frank Fernandez. The corporate compliance department also includes four corporate compliance specialists, a compliance manager, a standard operating procedures/records manager, and an additional in-house attorney. The department is on-point for providing overall strategic guidance and support on compliance and ethics practices and also facilitates large-scale compliance-related project management.

The Home Depot, Inc.

"Our organizational model of having the corporate compliance department report directly to the company's General Counsel is a very strong one that enables us to enact programs and obtain necessary commitments expeditiously from senior management. We have a robust program and an open and direct line to the company's General Counsel, who is both personally an avid supporter of the program and also the Chair of the company's Corporate Compliance Council which plays a key role in providing operational oversight for compliance," explains Granger.

Keystone program components include the company's Business Code of Conduct and Ethics and its "Value Wheel" (described below). Additional program practices highlighted below include Annual Enterprise Compliance Reviews, and Standard Operating Procedures (SOPs) development and enforcement. Also described are practices relating to the company's Corporate Compliance Council, corporate compliance certifications, training for the Board of Directors, and the company's AwareLine hotline.

What drives program success for Home Depot? Granger identifies the Value Wheel as a key driver, and emphasizes the importance of strong executive and Board leadership and that body's expectations for ethical behavior and operating in compliance with the company's programs and policies.

#### **Business Code Of Conduct And Ethics; Value Wheel**

"What drives compliance and ethical behavior for our company is the very strong commitment to integrity and doing the right thing, and our cultural emphasis on performing our jobs consistent with the ethical framework identified in the company's value wheel," says Granger. Home Depot's Business Code of Conduct and Ethics (BCCE) includes in the introductory section a description and graphic of the company's Value Wheel, which identifies the following core values:

- Doing the right thing;
- Respect for all people;
- Strong relationships;
- Taking care of our people;
- Giving back;
- Providing excellent customer service;
- Encouraging entrepreneurial spirit; and
- Strong shareholder returns.

In addition, the BCCE includes a section on Compliance with Laws, Regulations, and Corporate Compliance Policies. The policy also states where additional information on the compliance policies and standard operating procedures can be found. Home Depot's BCCE may be viewed via link at <http://ir.homedepot.com/governance/ethics.cfm>.

#### **Annual Enterprise Compliance Reviews**

Described by Granger as a leading practice, enterprise compliance reviews are conducted each November by the Corporate Compliance Council, a leadership team comprised of executive vice presidents of the company and the president of the company's supply subsidiary business. The company's General Counsel is the Chair of the Council. Through this process, compliance reviews of business units and various functional units are conducted, action plans and scorecards are developed, and progress and performance are tracked.

How do these reviews work? Teams consisting of a business partner, the divisional business officer, and the attorney assigned to the relevant divisional, subsidiary, or functional area present information on the unit's compliance performance. The evaluation looks at the past year's performance, operational changes that may have occurred, and changes in the law that may affect compliance.

Through this process, the teams work collaboratively with the compliance department to develop a relevant risk assessment, identify any gaps in operating procedures, and determine process improvements and/or training needs to eliminate any gaps. An action plan for the upcoming year is developed, and the plan is presented to the Council, which then becomes a scorecard for that unit. Progress is tracked by the corporate compliance department and is made available electronically via the department's intranet page to relevant units on a quarterly basis.

"The Annual Enterprise Compliance Reviews emphasize the importance of executing on compliance programs and provide an accountability mechanism for compliance as a function of the business," says Granger. "The reviews also emphasize the importance of being open about performance and help to ensure that business and functional groups have the support necessary to execute on compliance initiatives."

#### **Standard Operating Procedures (Sops); Program Enforcement**

Business and functional units develop standard operating procedures (SOPs) designed to communicate to associates, specific performance expectations. Many SOPs support purely operational issues, but they are also used to describe how to execute compliance with the company's corporate policies. The corporate compliance department works with these units to providing guidance and training on how to develop the SOPs, which Granger describes as "always evolving." Guidance on SOP development includes a Style Reference Guide developed in-house by the corporate compliance department, and approved SOPs are ultimately published and tracked through the department.

### Annual Compliance Certifications

Each year, the company reaches out to over 18,000 associates using an on-line questionnaire and certification tool that asks associates to provide information on compliance. The questionnaire includes 14 questions and solicits responses regarding potential conflicts of interest and whether associates are aware of any ongoing activity that should be reported. The tool also reminds associates that the company has a confidential reporting mechanism should any associate feel more comfortable with that option.

### Awareline Hotline

The company has made available to associates a hotline that receives on a 24/7 basis calls or reports on compliance matters. The hotline, or AwareLine, is administered by an outside vendor. The company's human resources department has primary responsibility for Awareline management and makes determinations on next steps and follow-up in conjunction with other department partners depending on the particular issues raised.

### Board's Role And Training

The Nominating and Corporate Governance Committee of the Board has ultimate oversight responsibility for the company's compliance and ethics program. In addition, the Board's Audit Committee is on point for matters relating to compliance with Section 404 of the Sarbanes-Oxley Act. The company's General Counsel plays a key role in providing updates and information to the Board on compliance and ethics matters. Granger explains that as part of this process, he regularly meets with the General Counsel to help ensure that the Board has the information it needs. Granger is also a member of the Disclosure Committee, which is chaired by the General Counsel. The Disclosure Committee was formed to make sure controls and procedures are being complied with, and to guarantee full disclosure and transparency in the financial statements of the organization.

On training for the Board, Granger emphasizes that the company has the tremendous privilege of having a Board that is very engaging. In addition to having a formal orientation program which includes training on a broad spectrum of matters, Directors also conduct "store walks" and operational reviews, and actively inquire about how the company is doing and what is being done to help ensure that the compliance and legal functions are providing the necessary level of support.

### Leading Practices

Asked for his thoughts on which elements of the company's program he would consider to be leading practices, Granger shares his view that the Annual Enterprise Compliance Reviews are a leading practice. He notes that the law and compliance departments play important roles in facilitating the overall review process but emphasizes that business owners are ultimately responsible for their compliance processes. The reviews provide an excellent vehicle for embedding the importance of compliance into everyday business operations.

### Major Wholly-Owned U.S. Manufacturing Subsidiary of Foreign Multinational

Compliance within this subsidiary of a foreign multinational is described by this company's General Counsel as "fundamentally ...the responsibility of everyone within the company." To help support compliance initiatives and facilitate open communications on compliance both within the subsidiary company and with the parent organization, a number of organizational compliance positions, roles, and committees have been defined.

At the uppermost levels of the subsidiary, the company has created a Compliance Committee, which includes a number of senior-level executives such as the company's Chief Financial Officer, the Head of Human Resources, and the General Counsel. In addition, the company has a Compliance Director who reports to the Compliance Committee. That position is currently held by an individual in the human resources department. The company's Chief of Internal Audit also participates in Compliance Committee meetings and plays an important compliance role. Finally, each of the company's business groups have designated Compliance Officers who are on point for performing important compliance roles both within the subsidiary and also vertically as liaisons with the compliance organization within the parent company.

Additional program components highlighted in this Profile include practices relating to the company's confidential hotline, compliance training initiatives, compliance monitoring, and regulatory certification processes.

### Business Group Compliance Officers; Role Of Lawyers

As stated above, the company's organizational framework for compliance includes identifying individuals within each of the business groups to serve as compliance officers. These individuals essentially wear two hats: they perform their day-to-day business or functional roles and also serve as the compliance officer for their designated business group. In addition to working as part of a compliance network within the subsidiary company, the compliance officers function as liaisons with the compliance organization of the parent company.

Asked whether lawyers are generally tapped for the compliance officer role, an Assistant General Counsel for the company explains, "being a lawyer is not a pre-requisite for serving as a compliance officer, but in my case it has worked out that way. I think it is useful to have a lawyer in this role-both to help address internal disclosure issues that may arise and to help serve as a resource and information pipeline for compliance personnel in the parent organization." The Assistant General Counsel also notes that many of the chief compliance personnel within the parent organization are lawyers although they are not members of the legal staff.

### Confidential Hotline

The company has had a hotline in place for many years. The hotline is administered internally, and calls are received on a 24/7 basis by the office of the Director of Compliance, which is organizationally situated within the company's human resources department. "The decision to administer the hotline within the human resources function evolved over the years and is in large part due to the fact that a number of the calls generally involve human resources-related issues or allegations. The law department is very much involved in investigating issues and follow-up," explains the company's General Counsel.

### Training

The company has implemented a web-based compliance training program consisting of multiple modules, some of which are required for all employees (such as the modules on Business Ethics and on Harassment), and some of which are more focused depending on the role of the employee (such as training on the Foreign Corrupt Practices Act). Described by the General Counsel as "extensive in scope," the overall program includes 14 modules, and employees are required to include completion of training as an objective within the annual objective-setting process to help reinforce the importance of compliance awareness and training.

The company's General Counsel participated on a selection committee organized to evaluate and select the vendors who would provide the training products and services. A number of the compliance training modules are "off-the-shelf" and were developed by an outside vendor, some have been customized with input from the company, and some have been developed primarily or entirely by the company. Of particular interest is a customized module on Business Ethics that includes hyperlinks to relevant portions of the company's code of conduct and standards and procedures.

Training for the Board of Directors is described by the company's General Counsel as both ongoing and a combination of web-based and in-person sessions. The law department and the General Counsel play key roles in developing and delivering training for the Board.

### Monitoring; Evaluation

Following are descriptions of three high-level practices implemented by the company to monitor compliance with its standards and policies. The first relates to the internal audit's role in monitoring compliance with the company's anti-fraud directives; the second summarizes practices implemented to monitor authorizations for contracts; and the third practice involves a periodic outside global compliance review.

**Internal Audit; Anti-Fraud Policy.** The company's internal audit department is on point for monitoring compliance with the company's standards and policies, including its anti-fraud policy that includes directives on when the law department should be contacted and involved. "A successful compliance program requires a well-run internal audit function which works closely with the legal function in the company," explains the General Counsel for the company. As part of its overall internal monitoring efforts, the company uses a compliance software tool that allows internal audit to track and assess disbursement data fields and helps to identify unusual activities that may require further follow-up and evaluation.

**Contract Management and Monitoring.** The company has developed a stringent internal process for monitoring who can enter into written agreements on behalf of the company. The overall process requires individuals to obtain appropriate sign-off, including approval from the law department, prior to entering into any agreements. The process also includes preventive law training programs through "lunch-and-learn" sessions and other hands-on training sessions to help reinforce the need for and importance of these procedures.

**External Global Compliance Review.** These top-down reviews are performed every few years and include a review of the parent company and its subsidiaries' practices. The General Counsel shares that the company's law department is intimately involved in this process, which also includes a lawyer from the parent company.

Major Wholly-Owned U.S.  
Manufacturing Subsidiary of  
Foreign Multinational

### Certifications; Internal Reporting Up

The company has developed an internal certification process to support quarterly certifications as part of regulatory compliance under the Sarbanes-Oxley Act. As part of this process, inquiries are made to business unit leaders and internal certifications are provided. In addition, in-house lawyers are asked to make certifications indicating that they are not aware of any antitrust or other violations. The company's General Counsel also notes that there are several channels and chains for at least monthly reporting-up of compliance-related matters within the company, including chains within business units, the law department, internal audit, and the company's compliance committee.

### Leading Practices

The company's General Counsel and Assistant General Counsel describe the web-based and face-to-face training programs that the company has implemented as some of the company's leading practices. In addition, the business compliance officer framework is identified as an evolving mechanism that helps facilitate coordination and information flow with the parent company.

### Global Financial Services Company

This global financial services company pursues a "federated" model approach to compliance aligned with its regional corporate structure. Each of the company's six regional operating organizations is responsible for compliance within their regions and has designated regional compliance officers, with global coordination and oversight provided by the executive management and the Board of Directors. A keystone component of the company's program is its new Code of Conduct that was approved by the company's Board of Directors and rolled out to each of the six regional operating organizations for implementation around a year ago. Additional information on the company's approach to developing its Code of Conduct together with highlights of additional compliance program components, including a 24/7 whistleblower hotline, global compliance coordinated by subject matter groups, and the role of in-house lawyers in supporting compliance initiatives, are set forth below.

### Code Of Conduct

The Code of Conduct was developed by a team of individuals from various functions within the company, including the legal, internal audit, human resources, and corporate relations departments. "The fact that the company is a multinational company and has a decentralized organizational and operating structure presented some initial challenges in developing the global Code of Conduct. A core objective was to develop a meaningful Code of Conduct that would allow for 'tweaking' by the regional operating organizations to accommodate differing local customs and laws, yet still be adequately stringent," explains a Vice President & Counsel for the company. As noted above, following approval of the Code by the company's Board of Directors, each of the six regional operating organizations reviewed and adopted the Code-some with modifications as necessary for that region.

The Code's overall design includes descriptions of standards on key subject areas with associated accountabilities and responsibilities identified for each area. "Since the company is not subject to regulatory listing standards, industry best practices adopted by large financial services institutions in the United States as well as large institutions in Europe served as a guiding force in developing the Code," says a Vice President & Counsel for the company.

In-house lawyers played a major role in helping to develop the Code and an associated web-based training course. Outside counsel was also consulted and provided external legal review. Each year, employees worldwide are required to complete a web-based training course on the Code and to certify review of the Code and completion of the course. The Code and each of the six regional adoptions of the Code are available on the company's intranet site.

#### Law Department's Role; Chief Compliance Officer

The law department has a prominent role in the company's compliance initiatives. More specifically:

**Executive Vice President & General Counsel is also the Chief Compliance Officer** for the company. While the General Counsel's title does not include formal mention of status as the company's Chief Compliance Officer, company documents identify the General Counsel as having this role.

**Law Department on point for guidance on the Code.** Consistent with the law department's leadership role in compliance, responsibility for providing global guidance on matters relating to the Code has recently been transitioned from the human resources department to a Senior Vice President & Senior Counsel within the company's headquarters law department.

**Law Department on point for managing and oversight on whistleblower process.** The in-house attorney on point for providing global guidance on the Code generally is also on point for evaluating and managing any calls received through the anonymous whistleblower hotline.

Global Financial Services  
Company

#### Anonymous Whistleblower Hotline

The company's whistleblower hotline is administered on a 24/7 basis by an outside entity. Information received through the hotline is relayed to the company's Senior Vice President & Senior Counsel for evaluation and follow-up. Depending on the nature of the information, additional functions within the company as well as the relevant regional compliance officers are generally included in the follow-up team.

#### Role of Board of Directors

The Board of Directors approved the company's overall compliance program, a core component of which is the new Code of Conduct. In addition, the Board receives reports at least annually from the law department on compliance matters. In-house lawyers also play an important role in providing training on the Code of Conduct and compliance topics for Board members.

#### Global Subject Matter Coordination

Asked whether there is a central function on point for compliance, the Vice President & Counsel explains that each of the regional organizations is responsible for compliance within that organization and regional compliance officers have been identified for each organization. In addition, he notes, there is global coordination on compliance by subject area for a range of matters, including those relating to anti-money laundering and information security. Relevant group leaders would be on point for helping to manage compliance initiatives for those areas.

ACC thanks Renee Dankner, former senior counsel for Mobil, for her work in preparing this profile.

## III. RESOURCE LIST

Please note that this listing does not constitute a recommendation or endorsement for any product, service or company. Please find below a list of resources identified by companies interviewed or by ACC as possible resources that may be of interest in evaluating and developing practices for providing legal support for corporate compliance and ethics programs.

#### Anonymous Non-Profiled Company

Form: Job Description for Ethics and Compliance Manager  
[http://www.acca.com/protected/forms/jobdescription/ethics\\_mgr.pdf](http://www.acca.com/protected/forms/jobdescription/ethics_mgr.pdf)

#### Compliance Systems Legal Group

Form: Sample Board Resolution Adopting Compliance Program  
<http://www.acca.com/protected/forms/compliance/boardresolution.pdf>

#### Compliance Training Private/Commercial Resources

Integrity Interactive  
<http://www.integrity-interactive.com>

#### LRN

<http://www.lrn.com>

#### Midi Inc.

<http://www.midicorp.com>

#### PLI-Corpedia Compliance eLearning

<http://www.pli-corpedia.com/>

#### WeComply\*

<http://www.wecomply.com>

#### Working Values

<http://www.workingvalues.com/>

#### Helpline Resources

##### Compliance Concepts

<http://www.complianceconcepts.com/>

##### Confide Services Inc.

<http://www.confideinc.com/>

#### EthicsPoint

<http://www.info.ethicspoint.com/en/main.asp>

#### Global Compliance Services

<http://www.globalcomplianceservices.com/company/history.html>

#### National Hotline Services

<http://www.hotlines.com/operations.htm>

#### Resulitor

[http://www.resulitor.com/\\_Home/](http://www.resulitor.com/_Home/)

#### Shareholder.com

<http://shareholder.com/home/index.cfm>

#### Softscape Grievance Tracking Module

[http://www.softscape.com/us/pd\\_corp\\_ap\\_grievance.htm](http://www.softscape.com/us/pd_corp_ap_grievance.htm)

#### The Network

<http://www.tnvinc.com/services/reportline.asp>

#### White Papers/ Presentations/ Publications/ Articles

ACC InfoPAK<sup>SM</sup> on Corporate Compliance  
<http://www.acca.com/vl/infopak.php>

ACC Practice Profile: "Leading Practices in Codes of Conduct and Business Ethics: What Companies are Doing"  
[http://www.acca.com/protected/article/ethics/lead\\_ethics.pdf](http://www.acca.com/protected/article/ethics/lead_ethics.pdf)

ACC Practice Profile: "Leading Practices in Board Governance and the Role of In-house Lawyers: What Companies are Doing"  
[http://www.acca.com/protected/article/governance/lead\\_governance.pdf](http://www.acca.com/protected/article/governance/lead_governance.pdf)

ACC Practice Profile: "Leading Practices in Providing In-house Support for Corporate Governance Initiatives: What Companies Around the World are Doing"  
[http://www.acca.com/protected/article/governance/lead\\_global.pdf](http://www.acca.com/protected/article/governance/lead_global.pdf)

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30 Leading Practice Profiles Series: July 2005

ACC Practice Profile: "Emerging and Leading Practices in Sarbox 307 Up-the-Ladder Reporting and Attorney Professional Conduct Programs: What Companies and Firms are Doing"  
[http://www.acca.com/protected/article/corpresp/lead\\_sarbox.pdf](http://www.acca.com/protected/article/corpresp/lead_sarbox.pdf)

ACC InfoPAK<sup>SM</sup> on In-house Counsel Standards Under Sarbanes-Oxley  
<http://www.acca.com/infopaks/sarbanes.html>

White Paper: "The New Federal Sentencing Guidelines for Corporations: Great for Prosecutors, Tough on Organizations, Deadly for the Privilege" (ACC March 2005)  
<http://www.acca.com/protected/article/attyclient/sentencing.pdf>

White Paper: "Corporate Compliance: Now They're Getting Serious" (Bryan Cave LLP)  
<http://www.acca.com/protected/legres/corpresp/corp-compliance.pdf>

White Paper: "Corporate Compliance and Ethics Program Checklist" by Dwight Howes  
<http://www.acca.com/protected/reference/compliance/ethicscheck.pdf>

White Paper: "Development of a Best Practices Compliance Program" (Compliance Systems Legal Group)  
<http://www.acca.com/protected/reference/compliance/bestpractice.pdf>

Presentation: Codes of Conduct for Multinational Corporations (ACC 2004 Annual Meeting)  
<http://www.acca.com/am/04/cm/803.pdf>

Presentation: Best Practices in Compliance Programs for Privately-Held Companies (ACC 2004 Annual Meeting)  
<http://www.acca.com/am/04/cm/802.pdf>

Presentation: Automated and On-Line Compliance Training: The Future is Now (ACC 2004 Annual Meeting)  
<http://www.acca.com/am/04/cm/105.pdf>

Presentation: Workplace Law Training: A Key Affirmative Defense for Small Law Departments (ACC 2004 Annual Meeting)  
<http://www.acca.com/am/04/cm/702.pdf>

Presentation: Defining the Role of In-House Lawyers in Governance (ACC 2004 Annual Meeting)  
<http://www.acca.com/am/04/cm/711.pdf>

Presentation: Whistle While You Work: Ethical, Fiduciary, and Other Dilemmas Facing Over-SOXed In-House Lawyers (ACC 2004 Annual Meeting)  
<http://www.acca.com/am/04/cm/308.pdf>

Presentation: Corporate Governance: One Year Later (ACC 2004 Annual Meeting)  
<http://www.acca.com/am/04/cm/708.pdf>

Presentation: Conflicts of Interest in the Corporate Environment (ACC 2004 Annual Meeting)  
<http://www.acca.com/am/04/cm/710.pdf>

Presentation: Management Compliance Training (ACC 2004 Annual Meeting)  
<http://www.acca.com/protected/forms/compliance/training.pdf>

Presentation: Developing a Code of Conduct for Your Organization (ACC 2003 Annual Meeting)  
<http://www.acca.com/education03/am/cm/111.pdf>

Presentation: Code of Conduct: Now What? Running an Effective Compliance Program (ACC 2003 Annual Meeting)  
<http://www.acca.com/education03/am/cm/811.pdf>

Presentation: Managing the Disclosure Process (ACC 2003 Annual Meeting)  
<http://www.acca.com/education03/am/cm/511.pdf>

Presentation: New Ideas in Compliance Strategies: Educating Non-legal Managers About Their Compliance Responsibilities (ACC 2003 Annual Meeting)  
<http://www.acca.com/education03/am/cm/711.1.pdf>

Presentation: Global Regulatory Compliance and Ethical Business Conduct (ACC 2002 Annual Meeting)  
<http://www.acca.com/education2k2/am/cm/107.pdf>

Presentation: Implementing Compliance Programs for the Small Law Department (ACC 2001 Annual Meeting)  
<http://www.acca.com/education2k1/am/cm/403CD.pdf>

Publication: Compliance Weekly  
<http://www.complianceweekly.com>

Article: "Conquering On-line Compliance Training: How Three Companies Use On-line Programs for Better Results" (ACC Docket April 2005)  
<http://www.acca.com/protected/pubs/doctet/apr05/toolkitr.pdf>

Article: "About That Compliance Thing...Creating and Evaluating Effective Compliance Programs" by Teresa T. Kennedy, Seth M. Cohen, and Charles A. Reipenhoff, Jr. (ACC Docket Nov./Dec. 2004)  
<http://www.acca.com/protected/pubs/doctet/nd04/compliancehing.pdf>

Article: "Risk Analysis: Your Key to Compliance" by Bao Q. Tran and Jonathan Tomes (ACC Docket Nov./Dec. 2003)  
<http://www.acca.com/protected/pubs/doctet/nd03/risk.pdf>

Article: "Navigating the Civil and Criminal Whistleblower Provisions of the Sarbanes-Oxley Act" by Le Hammer, Nick Linn, Laurence E. Stuart, and Suzanne K. Sullivan (ACC Docket March 2003)  
<http://www.acca.com/protected/pubs/doctet/ma03/whistle1.php>

Article: "Global Best Practice Indicators: Legal Risk and Compliance" (PLC Law Dept article from Global Counsel July/Aug. 2003)  
<http://ld.practicallaw.com/fjp/binaryContent.jsp?item=11061118&tab=3>

Article: "Business Interruption: Are You Prepared?" (PLC Law Dept article)  
<http://ld.practicallaw.com/0-102-6018>

Article: "Corporate Compliance: If You Don't Ask, They May Not Tell You" by Arlene B. Finkelstein, Peter W. Lilienthal, Gerald L. Maatman, Jr., and Carol A. Spink (ACC Docket Sept. 2002)  
<http://www.acca.com/protected/pubs/doctet/so02/compliance1.php>

Article: "Online Compliance Training: Lessons from the Front Line" by Philip P. Crowley (ACC Docket Oct. 2001)  
<http://www.acca.com/protected/pubs/doctet/on01/online1.php>

Article: "Global Counsel Best Practice Indicators: Legal Risk and Strategy" (PLC Law Dept Article from Global Counsel July/Aug. 2003)  
<http://ld.practicallaw.com/4-102-3777>

### Websites/Additional Resources

Association of Corporate Counsel  
<http://www.acca.com> (For resources and sample forms on compliance generally or on specific topics, search ACC's virtual library and enter search term or key word 'compliance' or other more specific compliance-related topic.)

American Society of Corporate Secretaries  
<http://www.ascs.org>

Center for Business Ethics at Bentley  
<http://www.ecampus.bentley.edu/dept/cbe/librarisearch/librarisearch.html>

Defense Industry Initiative  
[www.dii.org](http://www.dii.org)

Ethics Resource Center  
<http://www.ethics.org>

Ethics Officers Association  
[www.eoa.org](http://www.eoa.org)

European Corporate Governance Institute  
<http://www.ecgi.org/index.htm>

International Business Ethics Institute  
[www.business-ethics.org](http://www.business-ethics.org)

International Corporate Governance Network  
<http://www.icgn.org/>

KPMG's Audit Committee Institute  
[www.kpmg.com](http://www.kpmg.com)

National Association of Corporate Directors  
<http://www.nacdonline.com>

PharmaCongress Audio Conferences  
[www.pharmaaudioconferences.com](http://www.pharmaaudioconferences.com)

RealCorporateLawyer.com  
<http://realcorporatelawyer.com>

The Conference Board's Council on Corporate Compliance  
[http://www.conference-board.org/memberservices/councils/Details.cfm?Council\\_ID=170](http://www.conference-board.org/memberservices/councils/Details.cfm?Council_ID=170)

The Corporate Library  
<http://www.thecorporatelibrary.com/Governance-Research/default.html>

The World Bank Group  
<http://www.worldbank.org/html/fpd/privatesector/eg/links.htm>

\*Denotes ACC Alliance Program partner. See [www.acca.com/program/alliance.php](http://www.acca.com/program/alliance.php) for a description of professional products and services offered by ACC Alliance Program partners.

1 Information for in-house counsel on developing corporate compliance programs, including background information on legal obligations and a discussion of the benefits of having a corporate compliance program, can be found in ACC's Corporate Compliance InfoPAK<sup>SM</sup> at <http://www.acca.com/protected/infopaks/compliance/INFOPAK.PDF>. See also "About That Compliance Thing...Creating and Evaluating Effective Compliance Programs" by Teresa T. Kennedy, Seth M. Cohen, and Charles A. Reipenhoff, Jr. (ACC Docket Nov./Dec. 2004) <http://www.acca.com/protected/pubs/doctet/nd04/compliancehing.pdf>

2 See [http://www.acca.com/protected/article/governance/lead\\_global.pdf](http://www.acca.com/protected/article/governance/lead_global.pdf) for this profile, and <http://www.acca.com/vl/practiceprofiles.php> for other profiles that may touch on this subject.

3 For an excellent resource describing the impacts of the new Federal Sentencing Guidelines (e.g., amended and effective as of November 1, 2004) for organizations issued by the United States Sentencing Commission, including the seven elements of an effective compliance and ethics program defined in the guidelines, and providing links to the Guidelines and background information, see ACC's Whitepaper, "The New Federal Sentencing Guidelines for Organizations: Great for Prosecutors, Tough on Organizations, Deadly for the Privilege" at <http://www.acca.com/protected/article/attyclient/sentencing.pdf>.

4 See U.S.S.G. §8B2.1, which may be found at <http://www.uscc.gov/2004guid/fabonchapt8.htm>. See also ACC's White Paper, "The New Federal Sentencing Guidelines for Organizations: Great for Prosecutors, Tough on Organizations, Deadly for the Privilege," cited in note 3, *infra*.

5 See footnote 1 *infra*, for a more in-depth discussion of the benefits of a commitment to a sound compliance and ethics program.

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For more ACC Leading Practices Profiles, go to [www.acca.com/vl/practiceprofiles.php](http://www.acca.com/vl/practiceprofiles.php).

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Resource List 31

Law Department's Role In Developing And Implementing Compliance And Ethics Programs

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### Company Resources

Altria Group, Inc. and its Family of Companies  
Compliance & Integrity Website  
[http://www.altria.com/responsibility/04\\_01\\_complianceandintegrity.asp](http://www.altria.com/responsibility/04_01_complianceandintegrity.asp)

Standards for Compliance & Integrity  
<http://www.acca.com/protected/policy/compliance/altria.pdf>

Code of Conduct for Compliance & Integrity  
[http://www.altria.com/responsibility/04\\_01\\_05\\_CodeOfConduct.asp](http://www.altria.com/responsibility/04_01_05_CodeOfConduct.asp)

Checklist of Legal Risks for Quarterly Reviews  
[http://www.acca.com/protected/reference/compliance/altria\\_inventory.pdf](http://www.acca.com/protected/reference/compliance/altria_inventory.pdf)

Employee Survey on Compliance & Integrity  
<http://www.acca.com/protected/Surveys/compliance/altria.pdf>

International Paper Company  
Code of Business Ethics  
<http://www.ipaper.com/Our%20Company/Ethics%20and%20Business%20Practice/Code%20of%20Business%20Ethics.html>

Corporate Governance Principles  
[http://www.ipaper.com/PDF/PDFs%20for%20Our%20Company/governance\\_principles-2004.pdf](http://www.ipaper.com/PDF/PDFs%20for%20Our%20Company/governance_principles-2004.pdf)  
Form: Job Description for Senior Counsel for Compliance  
<http://www.acca.com/protected/forms/jobdescription/compliance.pdf>

The Home Depot, Inc.  
Business Code of Conduct and Ethics  
<http://ir.homedepot.com/governance/ethics.cfm>

For more ACC Leading Practice Profiles, go to [www.acca.com/vl/practiceprofiles.pp](http://www.acca.com/vl/practiceprofiles.pp)

## Endnotes

<sup>1</sup>Information for in-house counsel on developing corporate compliance programs, including background information on legal obligations and a discussion of the benefits of having a corporate compliance program, can be found in ACC's Corporate Compliance InfoPAK<sup>SM</sup> at <http://www.acca.com/protected/infopaks/compliance/INFOPAK.PDF>. See also "About That Compliance Thing...Creating and Evaluating Effective Compliance Programs" by Teresa T. Kennedy, Seth M. Cohen, and Charles A. Reipenhoff, Jr. (*ACC Docket* Nov./Dec. 2004) <http://www.acca.com/protected/pubs/docket/nd04/compliance/creating.pdf>

<sup>2</sup>See [http://www.acca.com/protected/article/governance/lead\\_global.pdf](http://www.acca.com/protected/article/governance/lead_global.pdf) for this profile, and <http://www.acca.com/vl/practiceprofiles.php> for other profiles that may touch on this subject.

<sup>3</sup>For an excellent resource describing the impacts of the new Federal Sentencing Guidelines (e.g., amended and effective as of November 1, 2004) for organizations issued by the United States Sentencing Commission, including the seven elements of an effective compliance and ethics program defined in the guidelines, and providing links to the Guidelines and background information, see ACC's Whitepaper, "The New Federal Sentencing Guidelines for Organizations: Great for Prosecutors, Tough on Organizations, Deadly for the Privilege" at <http://www.acca.com/protected/article/artyclient/sentencing.pdf>.

<sup>4</sup>See U.S.S.G. §8B2.1, which may be found at <http://www.usc.gov/2004guid/tabconchapt8.htm>. See also ACC's White Paper, "The New Federal Sentencing Guidelines for Organizations: Great for Prosecutors, Tough on Organizations, Deadly for the Privilege," cited in note <sup>3</sup>, *infra*.



## 2007 Compliance Program and Risk Assessment Benchmarking Survey

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Association of Corporate Counsel  
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## 2007 Compliance Program and Risk Assessment Benchmarking Survey

### Executive Summary

The Association of Corporate Counsel (ACC) and Corpedia, Inc., jointly administered the 2007 Compliance Program and Risk Assessment Benchmarking survey during February and March of 2007.

The survey was “opt-in” and 458 inside corporate counsels participated in the survey. In terms of demographics, over 45 percent of the respondents were from organizations that are publicly traded on a major U.S. stock exchange, and 70 percent of the represented organizations conduct business operations outside of the United States.

The following key topics were covered in the survey:

- Compliance program leadership, staffing and spend
- Ethics and compliance awareness and training
- Challenges, privilege and the Board of Directors
- Risk assessments
- Hotlines, reports and organizational health surveys

### Key Findings

- In terms of compliance program leadership, 58 percent of all organizations have a Chief Compliance Officer while 28 percent have a Chief Ethics Officer.
- Over one-third (35 percent) of all organizations revealed that the individual with daily operational responsibility for the compliance program reports directly to the CEO.
- The majority of organizations have fewer than five full-time equivalents (FTEs) dedicated to managing the ethics and compliance program.
- Thirty-seven percent of organizations with between 25,000 and 49,999 employees spend between \$1 million and \$5 million annually on their compliance program.
- About a quarter (26 percent) of all organizations rate their workforce awareness of ethics and compliance issues as “Average” while close to half (42 percent) believe their workforce maintains a “Good” level of awareness and understanding of ethics and compliance issues. Fewer than one in six organizations (17 percent) classify their workforce’s level of awareness as “Excellent.”
- Seventy-six percent of all organizations provide formal Code of Conduct training to employees and of those that do, 69 percent train more than 90 percent of their employees.
- More than half (54 percent) of the organizations surveyed are subject to Sarbanes-Oxley, and yet less than a quarter have formal training programs on “Financial Integrity” or “Sarbanes-Oxley.”
- According to 68 percent of all organizations, the most significant challenge they face when managing their compliance program is the “complexity of the legal and regulatory

environment.”

- Twenty-eight percent of organizations felt that attorney-client privilege protections no longer exist in the context of a government investigation.
- In over half (54 percent) of companies that are publicly traded in the United States, the person with daily operational responsibility for the compliance program reports to the Board of Directors quarterly.
- For organizations that are not subject to Sarbanes-Oxley, only 26 percent offer training to their Board of Directors in compliance matters.
- Seven out of every ten organizations conduct periodic risk assessments. Publicly traded organizations are more likely to do so than non-public ones (79 vs. 63 percent, respectively).
- Almost one quarter (23 percent) of all organizations conduct risk assessments at least twice a year.
- When conducting risk assessments, slightly more than half of all organizations quantify their risks and close to 80 percent of them prioritize risks using both the likelihood of occurrence and severity of impact.
- Forty-six percent of all organizations offer a telephone-based anonymous reporting system. Email and websites were the next most common mediums (24 and 20 percent, respectively).
- Forty-three percent of all organizations outsource their anonymous reporting systems to a third party, whereas 38 percent handle it in-house.
- A high majority of organizations (71 percent) do not conduct regular organizational health surveys, which aim to evaluate the ethical culture of an organization and gauge employee perception of organizational commitment to ethical business conduct.

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# 1. About ACC and Corpedia, Inc.

## About ACC

The Association of Corporate Counsel is the in-house bar association<sup>SM</sup>, serving the professional needs of attorneys who practice in the legal departments of corporations and other private sector organizations worldwide. The association promotes the common interests of its members, contributes to their continuing education, seeks to improve understanding of the role of in-house attorneys and encourages advancements in standards of corporate legal practice. Since its founding in 1982, the association has grown to more than 21,600 members in more than 73 countries who represent 9,416 corporations, with 48 Chapters and 14 Committees serving the membership. Its members represent all of the Fortune 50 companies and Fortune 100 companies. Internationally, its members represent 42 of the Global 50 and 74 of the Global 100 companies.

The Association of Corporate Counsel promotes the common professional and business interests of attorneys who are employed to practice law by corporations, associations and other private-sector organizations by developing and disseminating information, providing educational initiatives, facilitating networking opportunities, supporting collegiality and engaging in advocacy on behalf of the in-house bar. For more information, go to [www.acc.com](http://www.acc.com).

## About Corpedia, Inc.

Corpedia, Inc., founded in 1998, is a leader in ethics and compliance e-learning, risk assessment, code of conduct services and many other areas of ethics and compliance consulting. Corpedia specializes in creating and implementing comprehensive and highly integrated compliance and ethics programs and solutions that exceed the requirements of Federal Sentencing Guidelines and Sarbanes-Oxley. Corpedia programs and services are provided in exclusive partnership with the Practising Law Institute (PLI), the premier provider of continuing legal education.

Corpedia serves on the Ethisphere Council and is a co-publisher of Ethisphere Magazine in partnership with the Practising Law Institute (PLI), the National Association of Corporate Directors (NACD) and LexisNexis . Ethisphere Magazine's circulation of 65,000 consists of CEOs, members of Boards of Directors, General Counsels and senior executives. Ethisphere also publishes the annual World's Most Ethical Companies<sup>TM</sup> ranking.

Corpedia prides itself in providing measurable and tailored solutions to companies to help them resolve complex compliance problems, allowing them to focus more clearly on the business at hand. To find out more about how Corpedia's expertise and tailored solutions can help your organization resolve complex compliance issues, please visit the Corpedia website [www.corpedia.com](http://www.corpedia.com) or call toll-free (877) 629-8724.

## 2. About the Survey

### 2.1 Survey Breakdown

The ACC-Corpedia Compliance Program and Risk Assessment Benchmarking Survey was administered online during February and March of 2007. The survey was “opt-in,” and 458 individuals participated in the survey. A breakdown of participants by industry is as follows:

Aerospace & Defense	3%	Healthcare Products: Devices & Equipment	3%
Agriculture, Forestry, Fishing & Hunting	1%	Healthcare Services & Social Assistance	5%
Banking	2%	Industrial Manufacturing	9%
Beverages: Alcoholic	1%	Insurance	9%
Chemicals	3%	Leisure (Lodging, Restaurants, Entertainment)	3%
Computer Hardware, Software & Services	8%	Media	2%
Construction	2%	Non-Profit	3%
Consumer Products Manufacturing	3%	Pharmaceuticals and Biotechnology	4%
Consumer & Business Services	2%	Professional, Scientific & Technical Services	3%
Education	1%	Real Estate	1%
Electronics	5%	Retail	5%
Energy, Oil & Gas: (Exploration, Refinement & Distribution)	4%	Telecom Equipment & Services	4%
Environmental Services	1%	Transportation & Logistics Services	3%
Financial Services	7%	Utilities	3%
Food Product Manufacturing	1%	Wholesale Trade	1%

Over 70% represented organizations conduct business operations outside of the United States, including:

Africa	7.12%
Asia-Pacific	15.66%
Canada	15.73%
EU	16.05%
Europe - Non-EU country	11.00%
Latin America/Caribbean	13.66%
Middle East	9.64%
South Asia	11.13%

In terms of the size of the organization, the respondent breakdown was as follows:

Fewer than 50 employees	3.06%
50-249 employees	11.35%
250-999 employees	17.90%
1,000-4,999 employees	25.33%
5,000-9,999 employees	12.23%
10,000-24,999 employees	14.41%
25,000-49,999 employees	6.55%
Over 50,000 employees	9.17%

Participating organizations that are subject to the Sarbanes-Oxley Act:

Yes	53.90%
No	46.10%

Participants that are publicly traded on a U.S. stock exchange (NYSE, NASDAQ, AMEX):

Yes	45.90%
No	54.10%

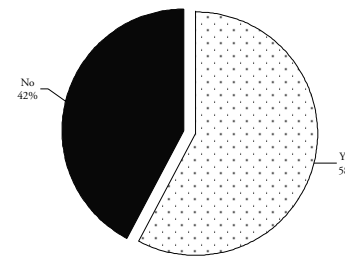
## 3. Compliance Program: Leadership, Staffing and Spend

### 3.1 Compliance Program Leadership

- Fifty-eight percent of all organizations have a Chief Compliance Officer, with this person also serving as the General Counsel in slightly fewer than half of the organizations (43 percent). While this “dual-role” is more prevalent in smaller organizations, it is also common in larger ones.
- Twenty-eight percent of all organizations have a Chief Ethics Officer, and 33 percent of those hold the title and role of Chief Compliance Officer.
- In 35 percent of organizations, the individual with daily operational responsibility for the compliance and ethics function reports directly to the CEO.

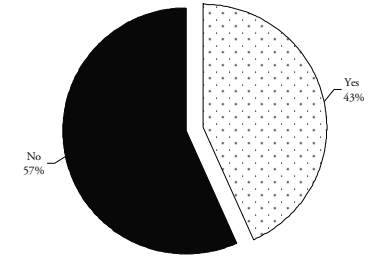
All Survey Participants

Does your organization have a Chief Compliance Officer?



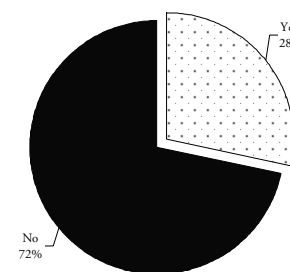
All Survey Participants

Does the same person serve as both Chief Compliance Officer and General Counsel?



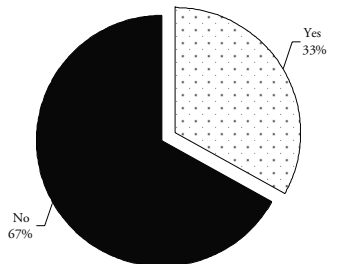
All Survey Participants

Does your organization have a Chief Ethics Officer?



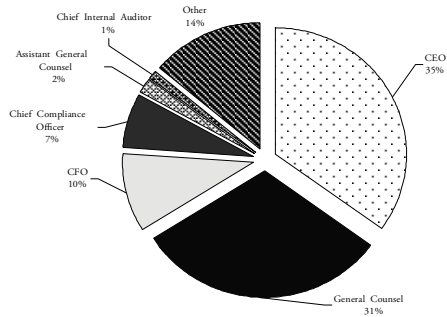
All Survey Participants

Does the same person serve as both Chief Compliance Officer and Chief Ethics Officer?



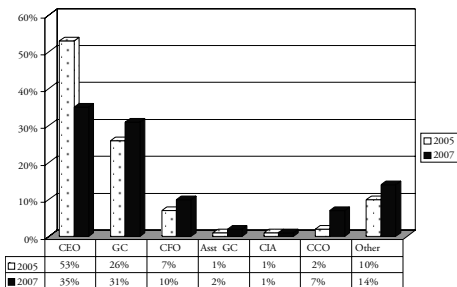
**All Survey Participants**

To whom does the person with daily operational responsibility for the compliance program report?



**Year 2005 vs. Year 2007**

To whom does the person with daily operational responsibility for the compliance program report?

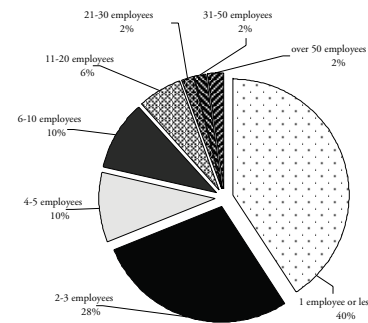


**3.2 Compliance Program Staffing**

- Overall, the majority of organizations have fewer than five full-time equivalents (FTEs) dedicated to managing the compliance and ethics function.
- A full 86 percent of compliance and ethics programs at organizations with 5,000-9,999 employees have less than five FTEs.
- Thirty percent of all organizations with workforce sizes of 25,000 to 49,999 employees have a minimum of 10 FTEs dedicated to the compliance and ethics function, with this percentage rising to 41 percent for companies having more than 50,000 employees.
- However, more than a third (36%) of companies with more than 50,000 employees have five or fewer FTEs dedicated to the compliance and ethics function.

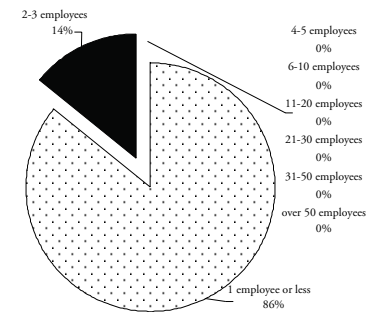
**All Survey Participants**

What is the full-time employee equivalent in your organization dedicated to compliance and ethics activities or a formal compliance and ethics function?



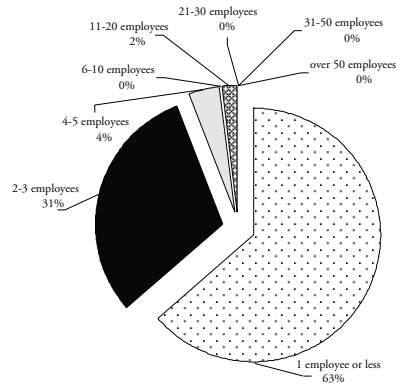
**Organizations with less than 50 Employees**

What is the full-time employee equivalent in your organization dedicated to compliance and ethics activities or a formal compliance and ethics function?



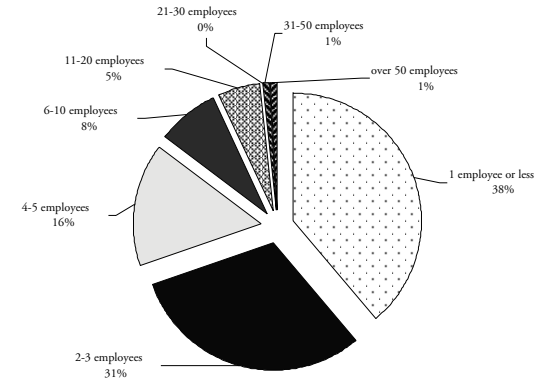
**Organizations with 50-249 Employees**

What is the full-time employee equivalent in your organization dedicated to compliance and ethics activities or a formal compliance and ethics function?



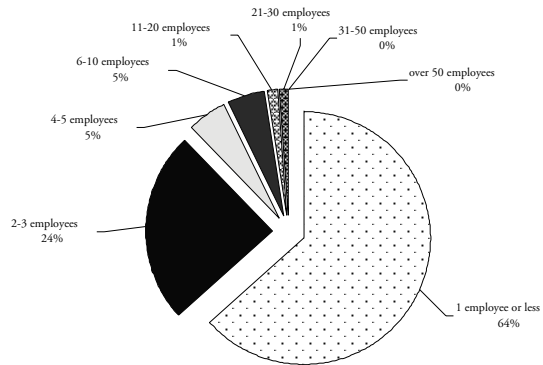
**Organizations with 1,000-4,999 Employees**

What is the full-time employee equivalent in your organization dedicated to compliance and ethics activities or a formal compliance and ethics function?



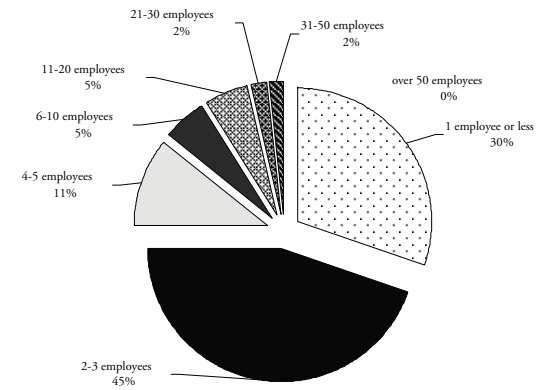
**Organizations with 250-999 Employees**

What is the full-time employee equivalent in your organization dedicated to compliance and ethics activities or a formal compliance and ethics function?



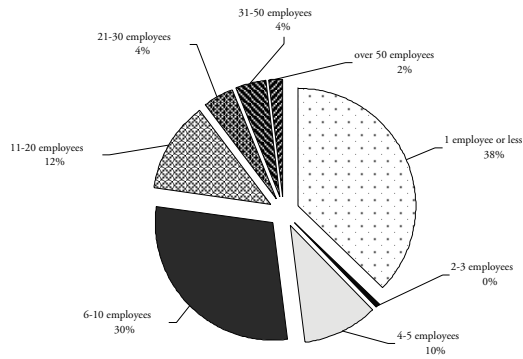
**Organizations with 5,000-9,999 Employees**

What is the full-time employee equivalent in your organization dedicated to compliance and ethics activities or a formal compliance and ethics function?



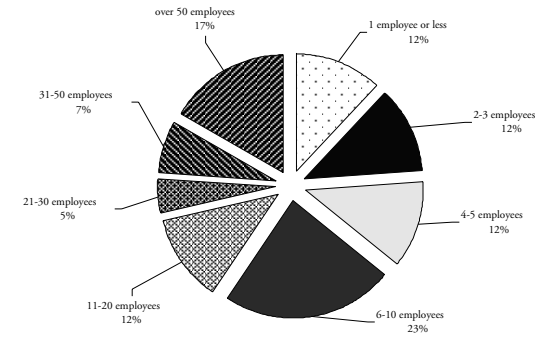
**Organizations with 10,000-24,999 Employees**

What is the full-time employee equivalent in your organization dedicated to compliance and ethics activities or a formal compliance and ethics function?



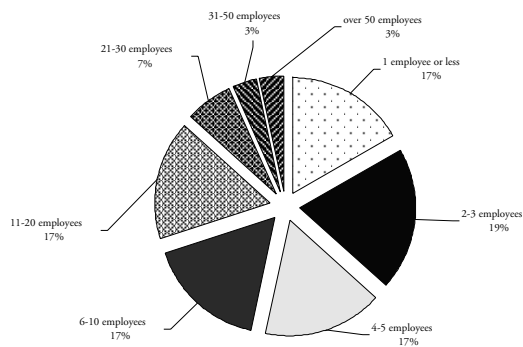
**Organizations with 50,000+ Employees**

What is the full-time employee equivalent in your organization dedicated to compliance and ethics activities or a formal compliance and ethics function?



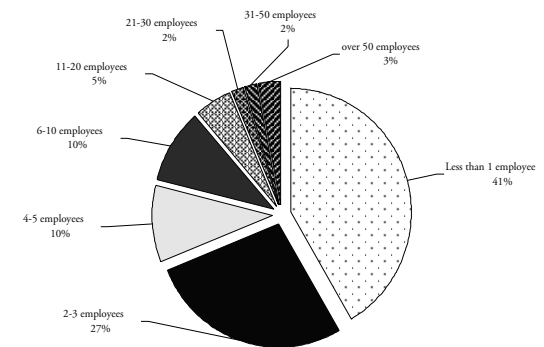
**Organizations with 25,000-49,999 Employees**

What is the full-time employee equivalent in your organization dedicated to compliance and ethics activities or a formal compliance and ethics function?



**Organizations with Operations Outside USA**

What is the full-time employee equivalent in your organization dedicated to compliance and ethics activities or a formal compliance and ethics function?

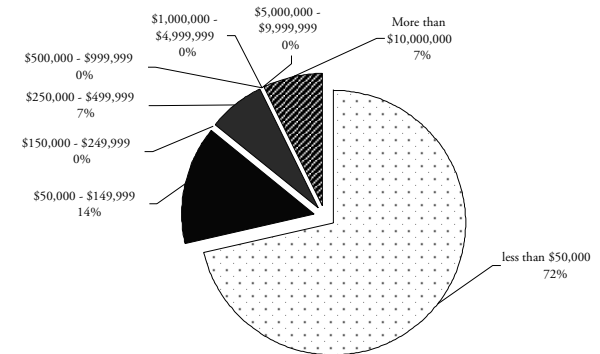


### 3.3 Compliance Program Spend

- While it is not surprising that larger organizations spend more money annually on the compliance ethics function than smaller organizations, it is interesting to note that the amount spent on compliance and ethics programs is more a function of industry type rather than the size of an organization.
- Two thirds of organizations (67 percent) spend up to \$250,000 annually on their ethics and compliance function, which is an increase of 17 percent from year 2005.
- Over one-third (37 percent) of organizations with workforce sizes of 25,000-49,999 employees spend between \$1 million and \$5 million annually on their compliance and ethics programs.

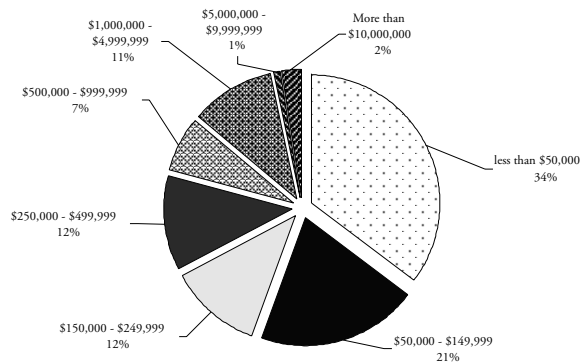
#### Organizations with Less than 50 Employees

What is the approximate annual spend on your organization's legal compliance and ethics activities (excluding personnel)?



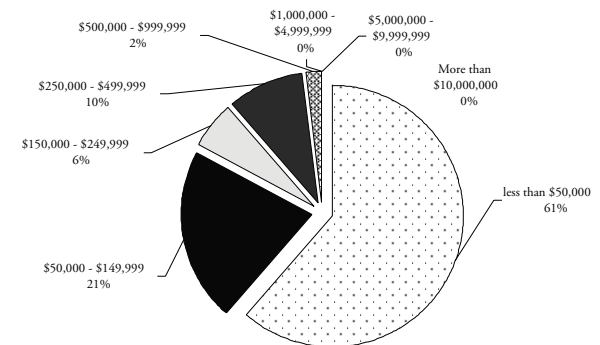
#### All Survey Participants

What is the approximate annual spend on your organization's legal compliance and ethics activities (excluding personnel)?



#### Organizations with 50-249 Employees

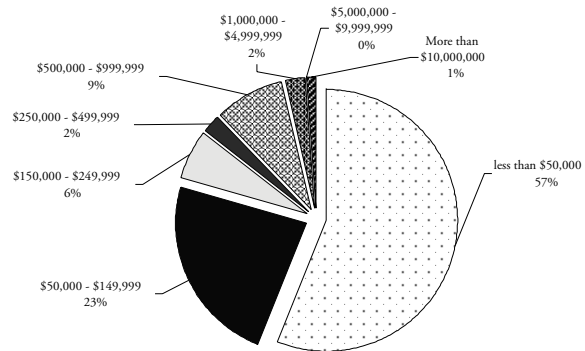
What is the approximate annual spend on your organization's legal compliance and ethics activities (excluding personnel)?





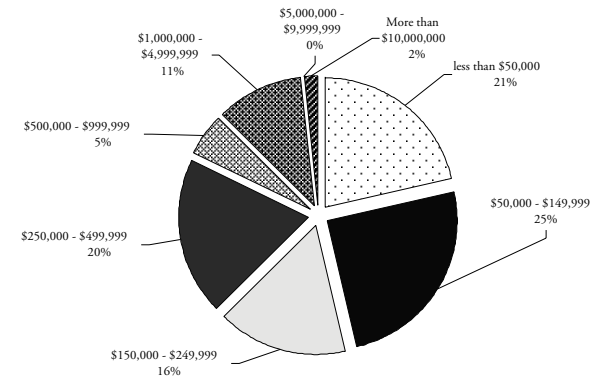
**Organizations with 250-999 Employees**

What is the approximate annual spend on your organization's legal compliance and ethics activities (excluding personnel)?



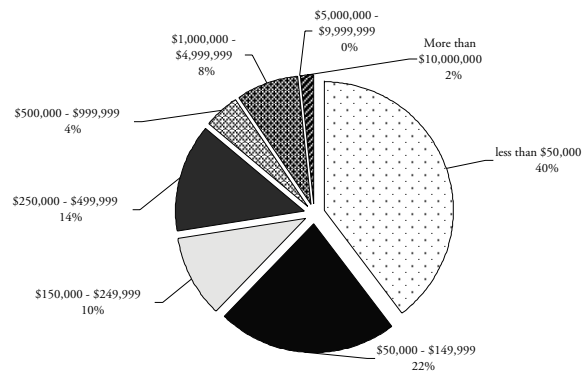
**Organizations with 5,000-9,999 Employees**

What is the approximate annual spend on your organization's legal compliance and ethics activities (excluding personnel)?



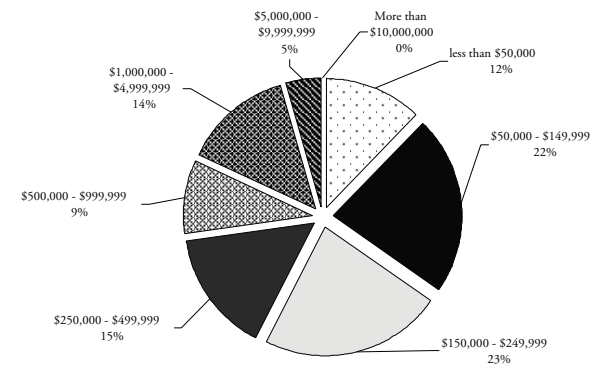
**Organizations with 1,000-4,999 Employees**

What is the approximate annual spend on your organization's legal compliance and ethics activities (excluding personnel)?



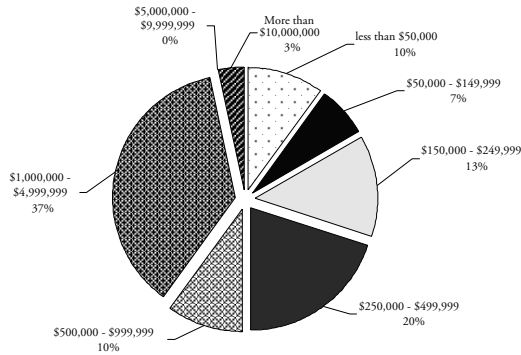
**Organizations with 10,000-24,999 Employees**

What is the approximate annual spend on your organization's legal compliance and ethics activities (excluding personnel)?



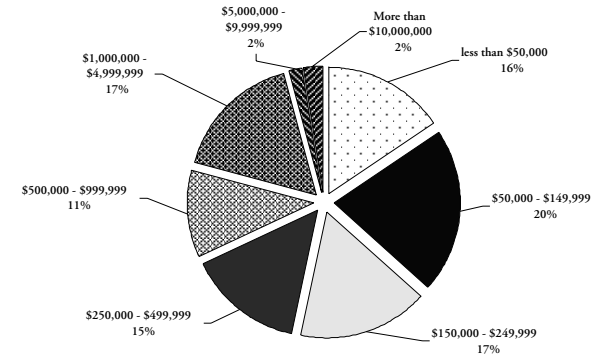
**Organizations with 25,000-49,999 Employees**

What is the approximate annual spend on your organization's legal compliance and ethics activities (excluding personnel)?



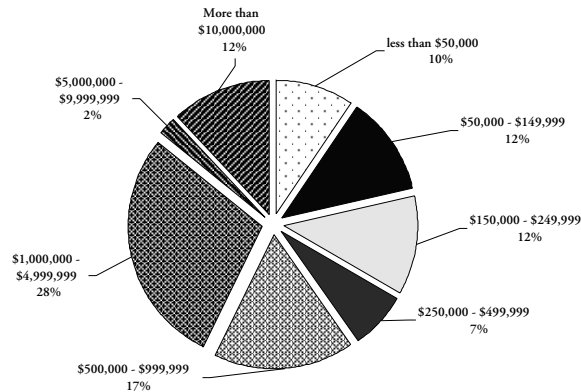
**Publicly Traded Companies (USA)**

What is the approximate annual spend on your organization's legal compliance and ethics activities (excluding personnel)?



**Organizations with 50,000+ Employees**

What is the approximate annual spend on your organization's legal compliance and ethics activities (excluding personnel)?

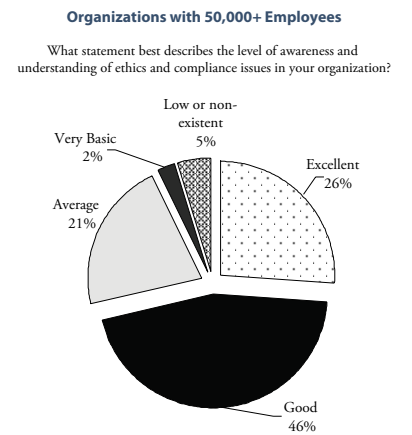
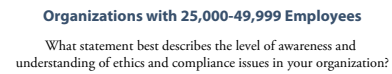
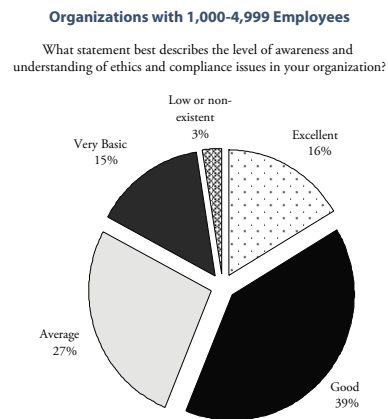
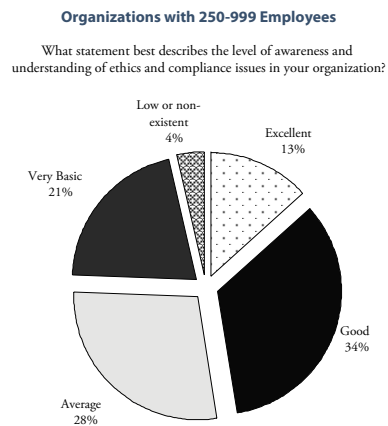
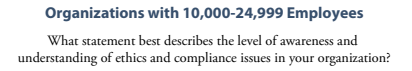
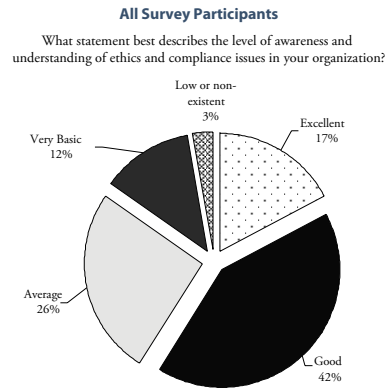


## 4. Ethics and Compliance Awareness and Training

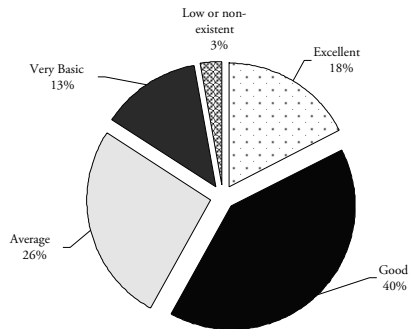
### 4.1 Workforce Awareness of Ethics and Compliance Issues

- For the typical organization, the level of awareness among the workforce about ethics and compliance issues is "Average" for over a quarter of all organizations (26%). While percent say that their workforce maintains a "Good" level of awareness and understanding of compliance and ethics issues, only 17percent of all organizations classify their workforce as having an "Excellent" level of awareness and understanding of the issues.
- There is a definite correlation between the size of an organization and the level of workforce awareness of compliance and ethics issues. Only 15 percent of smaller organizations (with fewer than 1,000 employees) rate their workforce as having an "Excellent" understanding of the issues, and 34 percent report a "Good" understanding of the issues. However, among larger organizations (with more than 10,000 employees), the levels of "Excellent" and "Good" understanding of the issues jump to 21 percent and 47 percent, respectively.
- The higher levels of awareness and understanding among employees at larger organizations may be attributed, in part, to the fact that larger organizations tend to have a formal Code of Conduct training program in place for employees. While 87 percent of larger employers (with

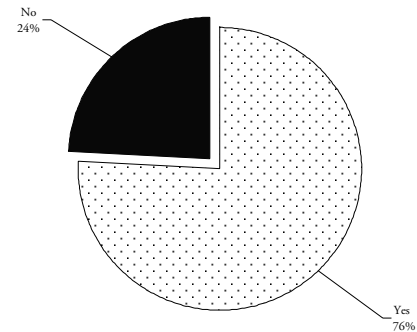
10,000 or more employees) have a formal Code of Conduct training program in place, only 60 percent of small employers do (under 1,000 employees).



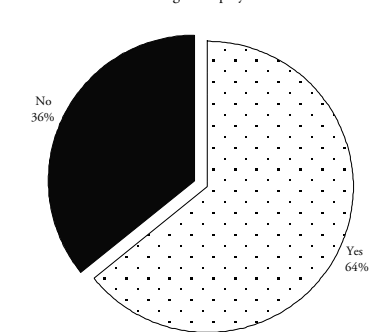
**Organizations with Operations Outside USA**  
 What statement best describes the level of awareness and understanding of ethics and compliance issues in your organization?



**All Survey Participants**  
 Does your organization provide formal Code of Conduct training to employees?



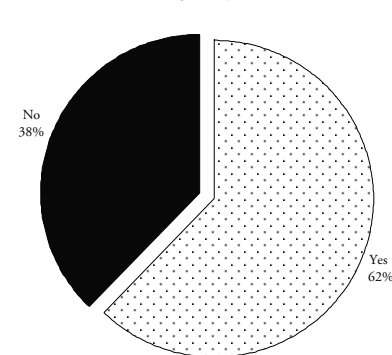
**Organizations with less than 50 Employees**  
 Does your organization provide formal Code of Conduct training to employees?



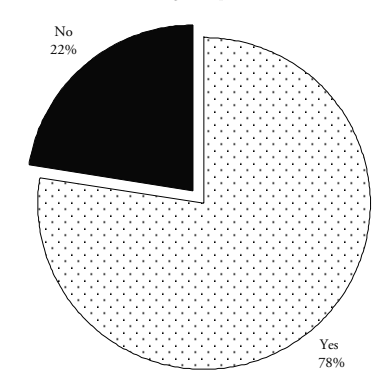
**4.2 Formal Code of Conduct Training**

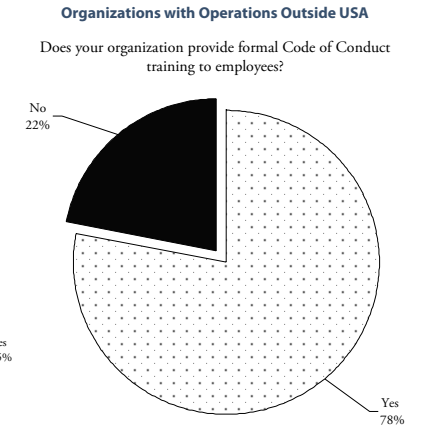
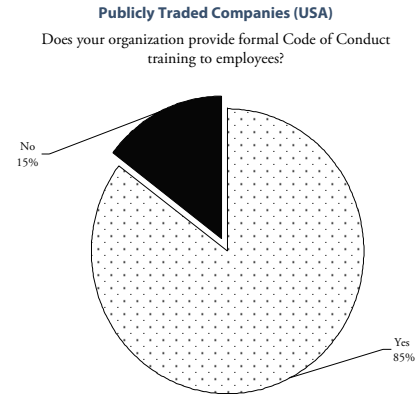
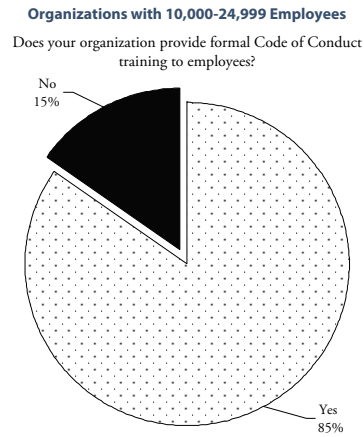
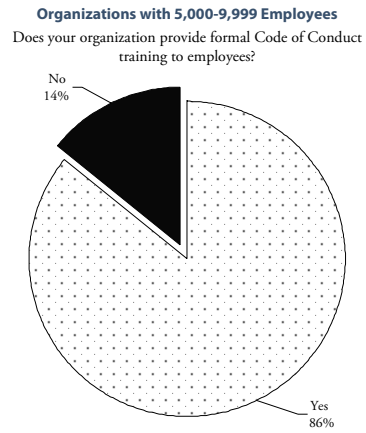
- Overall, 76 percent of organizations provide formal code of conduct training to employees.
- Of organizations that are publicly traded in the United States, 85 percent provide formal code of conduct training to employees. Yet only 68 percent of non-publicly traded companies provide such training.
- For those organizations that conduct business operations outside of the United States, 78 percent provide formal code of conduct training to employees.
- Of organizations that have formal code of conduct training programs in place, the majority of such organizations (69 percent) train virtually the entire workforce (more than 90 percent of employees).
- Of organizations that have formal code of conduct training programs in place, the percentage of the workforce that is trained is relatively consistent regardless of the size of the organization, with only organizations with workforce sizes between 10,000-24,999 employees training a materially smaller proportion of the workforce.

**Organizations with 250-999 Employees**  
 Does your organization provide formal Code of Conduct training to employees?

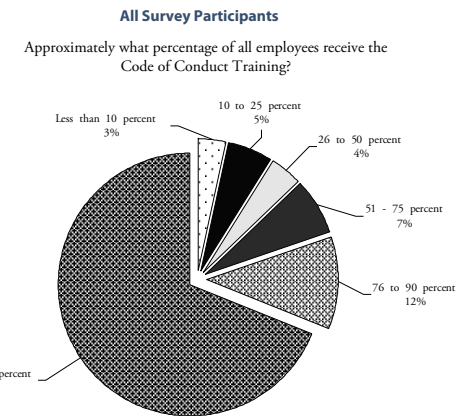
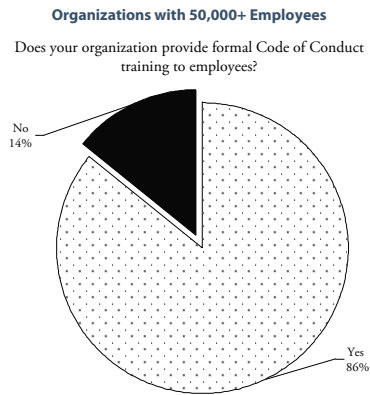
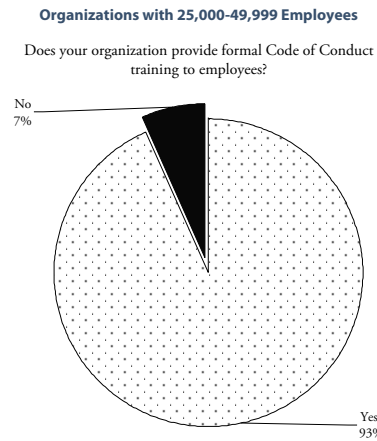


**Organizations with 1,000-4,999 Employees**  
 Does your organization provide formal Code of Conduct training to employees?



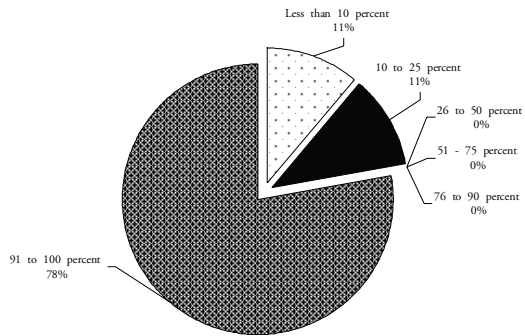


**4.3 Percentage of Workforce Trained in Code of Conduct**



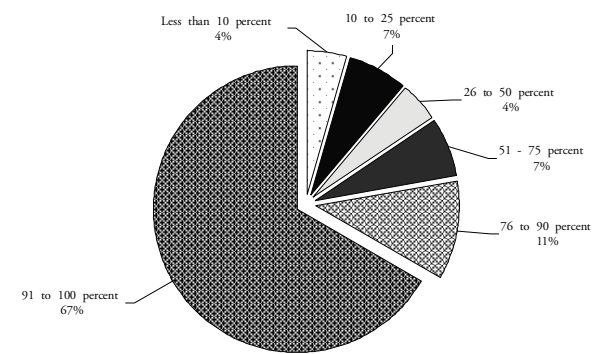
**Organizations with less than 50 Employees**

Approximately what percentage of all employees receive the Code of Conduct Training?



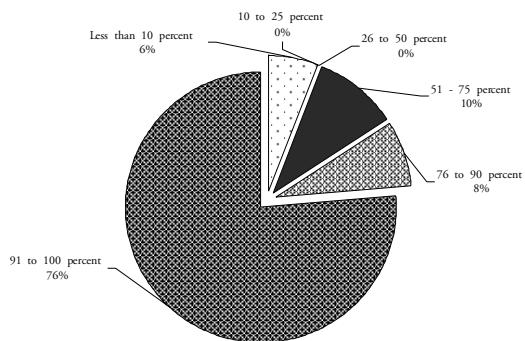
**Organizations with 1,000-4,999 Employees**

Approximately what percentage of all employees receive the Code of Conduct Training?



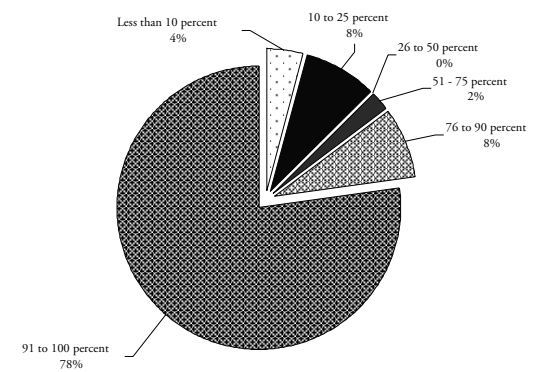
**Organizations with 250-999 Employees**

Approximately what percentage of all employees receive the Code of Conduct Training?



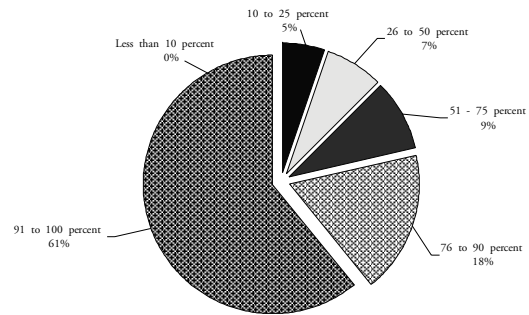
**Organizations with 5,000-9,999 Employees**

Approximately what percentage of all employees receive the Code of Conduct Training?



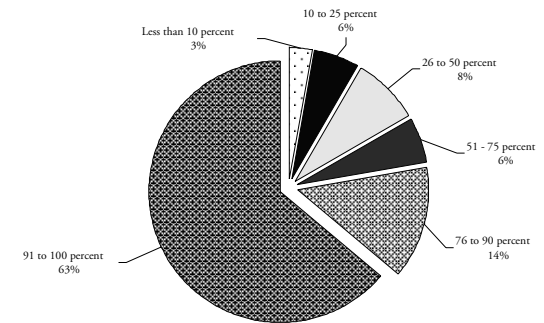
**Organizations with 10,000-24,999 Employees**

Approximately what percentage of all employees receive the Code of Conduct Training?



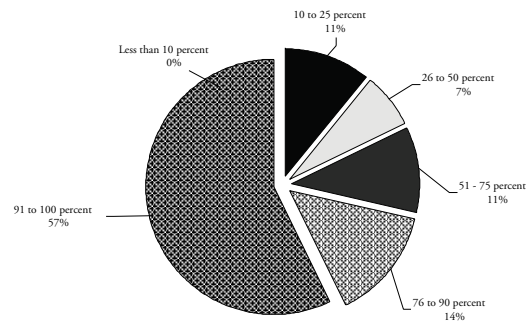
**Organizations with 50,000+ Employees**

Approximately what percentage of all employees receive the Code of Conduct Training?



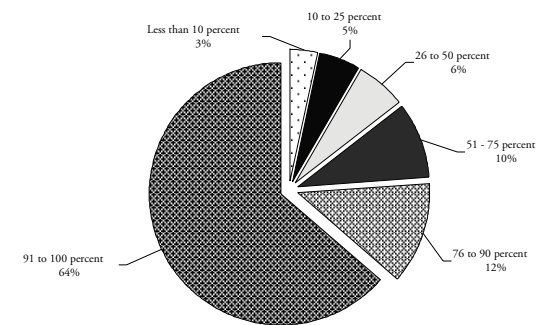
**Organizations with 25,000-49,999 Employees**

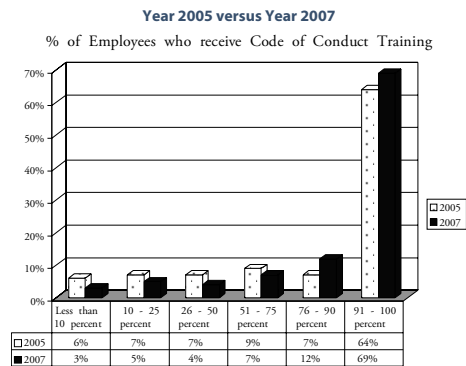
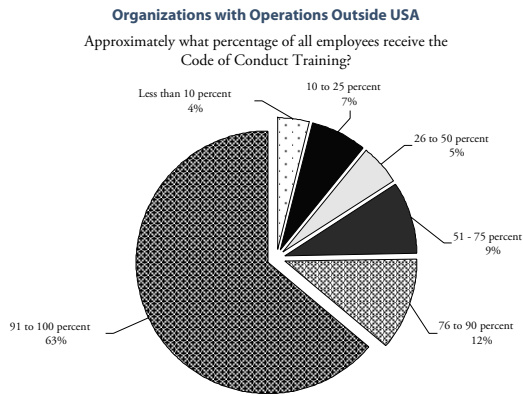
Approximately what percentage of all employees receive the Code of Conduct Training?



**Publicly Traded Companies (USA)**

Approximately what percentage of all employees receive the Code of Conduct Training?





**4.4 Formal and Mandatory Training Topics Beyond Code of Conduct**

- For all organizations, the top three topics of formal and mandatory training beyond the Code of Conduct include sexual harassment (66 percent), workplace harassment (53 percent) and conflicts of interest (53 percent).

- While 70 percent of survey respondents conduct business operations outside of the United States, only 39 percent of those organizations had a formal and mandatory training program in Foreign Corrupt Practices Act (FCPA), bribery and corruption.
- While 54 percent of all survey respondents are subject to the Sarbanes-Oxley Act, only 25 percent have formal and mandatory training programs in financial integrity, and only 21 percent offer training on compliance with the Sarbanes-Oxley Act.

TOPIC	%	TOPIC	%
Sexual Harassment	66%	Substance Abuse / Drug-Free Workplace	25%
Workplace Harassment	53%	Ethical Sales & Business Practices / Fair Dealing	24%
Conflicts of Interest	53%	Contracts & Contract Management	21%
Confidential Information Protection	53%	Intellectual Property	21%
Ethics	50%	Sarbanes-Oxley	21%
Equal Employment Opportunity / Discrimination	46%	Employee Privacy	19%
Gifts & Entertainment	42%	Export Controls	18%
Workplace Safety/OSHA	35%	Corporate Governance	18%
Antitrust/Competition	32%	Workplace Violence	16%
Whistleblowing and Investigations	31%	Political Activities/Lobbying	14%
Customer / Consumer Privacy	31%	Environmental Protection	14%
Diversity	30%	Government Contracting	14%
Foreign Corrupt Practices Act (FCPA) / Bribery & Corruption	29%	Money Laundering	12%
Industry-Specific Regulations	26%	Corporate Social Responsibility	12%
Insider Trading / Securities Law	26%	FLSA/Wage & Hour Rules	11%
Document / Record Management	26%	OFAC Regulations	9%
Employment Law for Managers	25%	Marketing/Advertising Law	9%
Financial Integrity	25%	Vendor Compliance	8%
		Product Liability	5%

**5. Challenges, Privilege and the Board of Directors**

**5.1 Top Challenges Encountered in Planning and Implementing Compliance Programs**

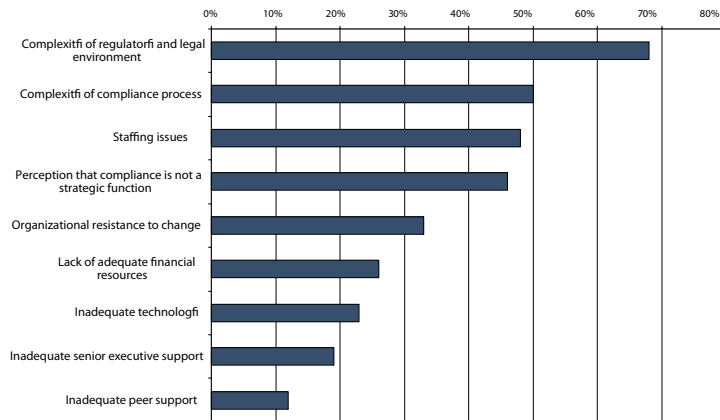
- Not surprisingly, the two most common challenges encountered by those responsible for the compliance and ethics function are “Complexity of Regulatory and Legal Environment” (cited by 68 percent) and the “Complexity



- of the Compliance Process” (cited by 50 percent).
- Hiring and retaining qualified individuals for the ethics and compliance function is the third greatest challenge for nearly half of all organizations (48 percent).
- Only one in five respondents (19 percent) cited “Inadequate Senior Executive Support” as a significant challenge for their compliance and ethics program efforts. This figure is down 5 percent from our 2005 findings.

**All Participants**

What are the top challenges you have dealt with or are likely to deal with when planning or implementing your company's Compliance and Ethics function?



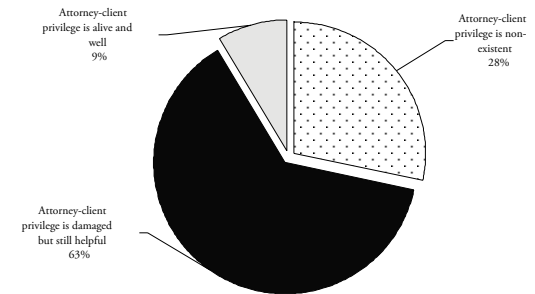
**5.2 Attitude Toward Attorney-Client Privilege Protections**

- The in-house corporate counsel believes that attorney-client privilege protection has been severely damaged in recent years. Close to one-third (28 percent) of survey respondents feel that attorney-client privilege no longer exists in the context of a government investigation. On the other hand, 63 percent feel that privilege is damaged but still helpful, while only 9 percent believe that attorney-

- client privilege in the context of a government investigation remains alive and well.
- There is little difference of opinion regarding the presence of attorney-client privilege whether the respondent works for a private company or public company.

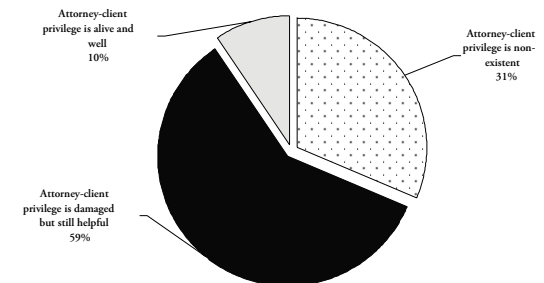
**All Survey Participants**

In the context of a violation of federal or state law where government authorities investigate, do you believe that attorney-client privilege protections continue to exist in a meaningful way?



**Publicly Traded Companies (USA)**

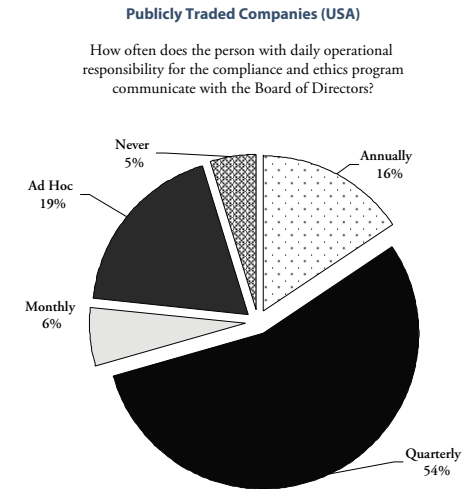
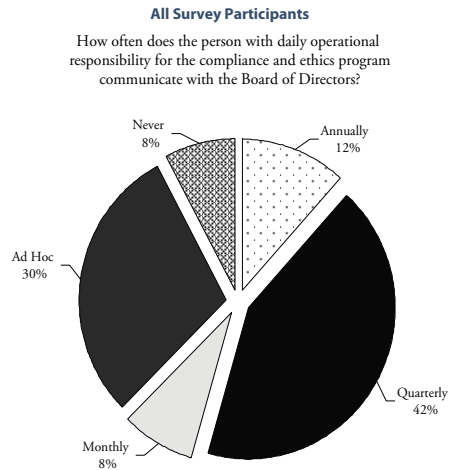
In the context of a violation of federal or state law where government authorities investigate, do you believe that attorney-client privilege protections continue to exist in a meaningful way?



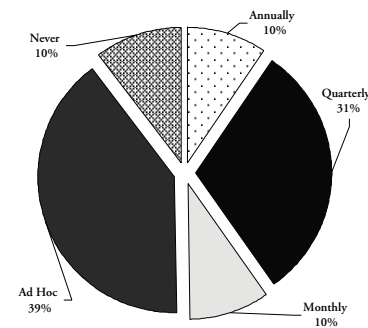
### 5.3 Board of Directors Involvement

#### Communication with the Board of Directors

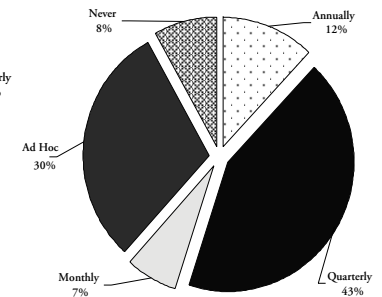
- The person who has daily operational responsibility for the compliance and ethics program has high exposure to the Board of Directors. This is particularly significant at publicly traded companies, where 54 percent of ethics and compliance officers communicate with the Board of Directors at least quarterly.
- Only 8 percent of the persons who have daily operational responsibility for compliance and ethics never communicate directly with the Board of Directors.
- In organizations not subject to Sarbanes Oxley, communication with the Board of Directors tends to occur most often on an as-needed basis (39 percent).
- In organizations that conduct business operations outside of the United States, 43 percent report communication with the Board occurs on a quarterly basis while another 30 percent do so on an as needed basis.



**Organizations Not Subject to Sarbanes-Oxley**  
How often does the person with daily operational responsibility for the compliance and ethics program communicate with the Board of Directors?



**Organizations with Operations Outside USA**  
How often does the person with daily operational responsibility for the compliance and ethics program communicate with the Board of Directors?

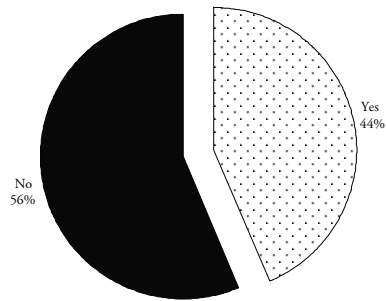


**Board Training**

- Nearly 44 percent of organizations confirmed that their Board of Directors has been trained in compliance consistent with Federal Sentencing Guidelines (FSG) criteria. Of that percentage, 73 percent provide 2 hours or less of training.
- For those respondents who work for a publicly traded company, 62 percent acknowledged that the Board has been trained in compliance with FSG criteria.
- For organizations that are **not** subject to Sarbanes-Oxley, only 26 percent offer training on compliance matters to the Board of Directors.

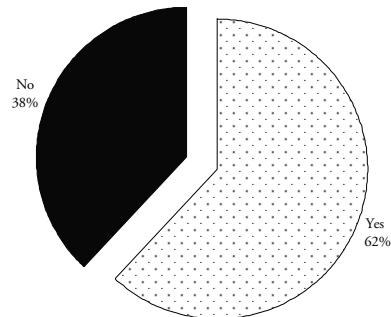
**All Survey Participants**

Has your Board of Directors been trained in compliance consistent with Federal Sentencing Guidelines criteria?



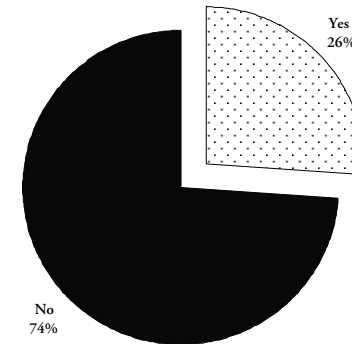
**Publicly Traded Companies (USA)**

Has your Board of Directors been trained in compliance consistent with Federal Sentencing Guidelines criteria?



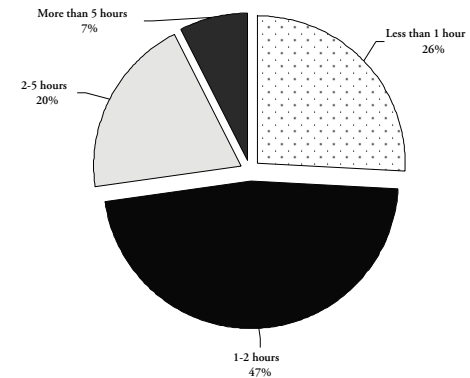
**Organizations Not Subject to Sarbanes-Oxley**

Has your Board of Directors been trained in compliance consistent with Federal Sentencing Guidelines criteria?



**All Survey Participants**

How many hours of compliance training does the Board of Directors receive on an annual basis?



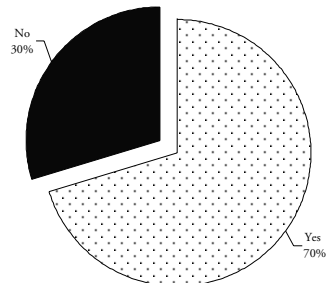
## 6. Risk Assessments

### 6.1 Prevalence of Risk Assessments

- A majority (70 percent) of all organizations conduct periodic risk assessments, regardless of organizational size. This is an increase of 12 percent from our 2005 findings. Publicly traded organizations are also more likely to conduct a periodic risk assessment than private organizations (79 percent vs. 63 percent).
- While smaller organizations are likely to conduct a periodic risk assessment (42 percent), the larger the organization, the higher the odds that it will conduct such an assessment. Four out of every five organizations (80 percent) with more than 25,000 employees conduct periodic risk assessments.

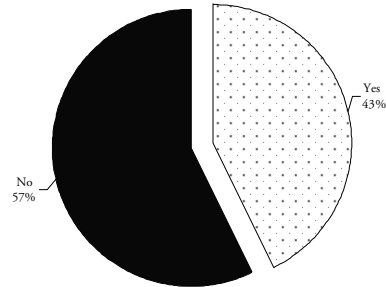
All Survey Participants

Does your organization conduct periodic Risk Assessments?



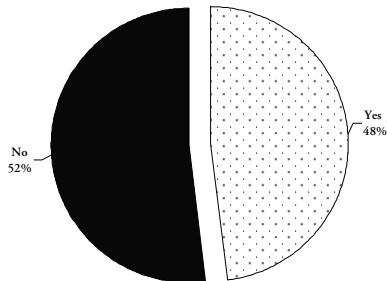
Organizations with less than 50 Employees

Does your organization conduct periodic Risk Assessments?



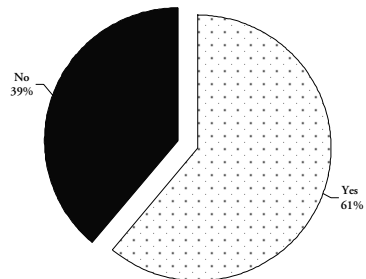
Organizations with 50-249 Employees

Does your organization conduct periodic Risk Assessments?



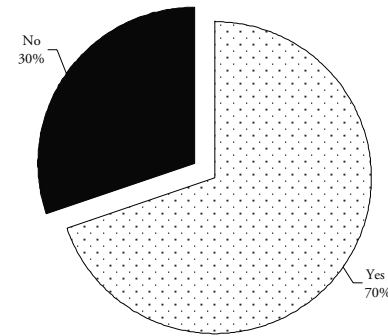
Organizations with 250-999 Employees

Does your organization conduct periodic Risk Assessments?



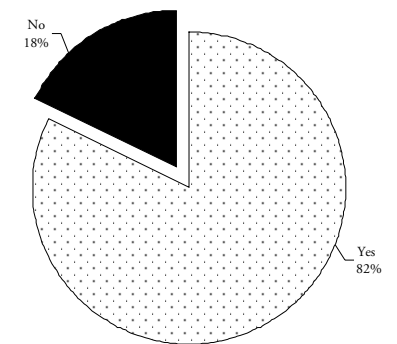
Organizations with 1,000-4,999 Employees

Does your organization conduct periodic Risk Assessments?



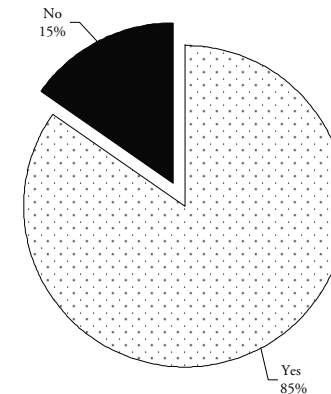
Organizations with 5,000-9,999 Employees

Does your organization conduct periodic Risk Assessments?



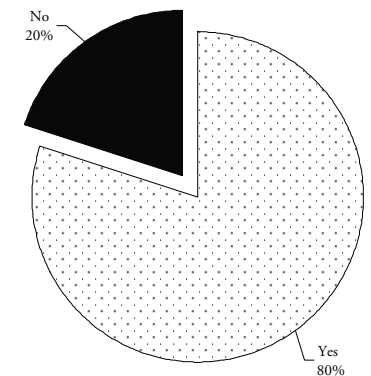
Organizations with 10,000-24,999 Employees

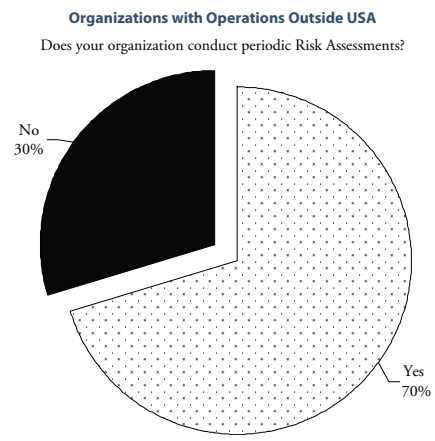
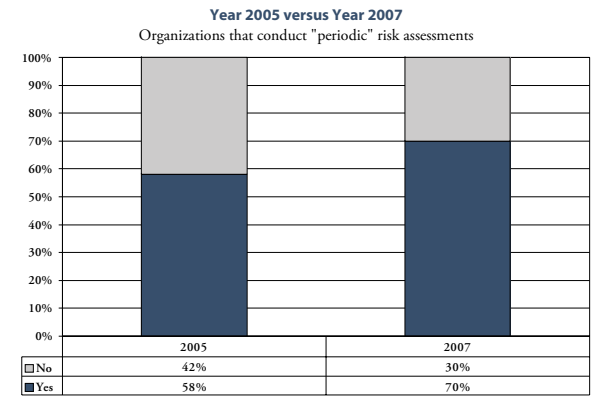
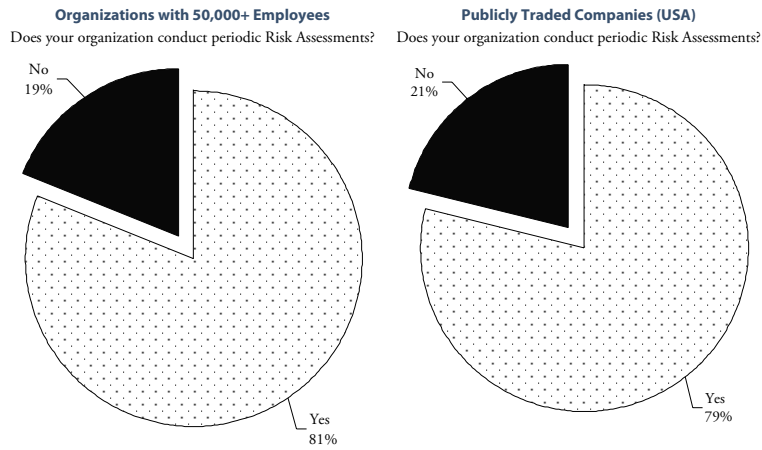
Does your organization conduct periodic Risk Assessments?



Organizations with 25,000-49,999 Employees

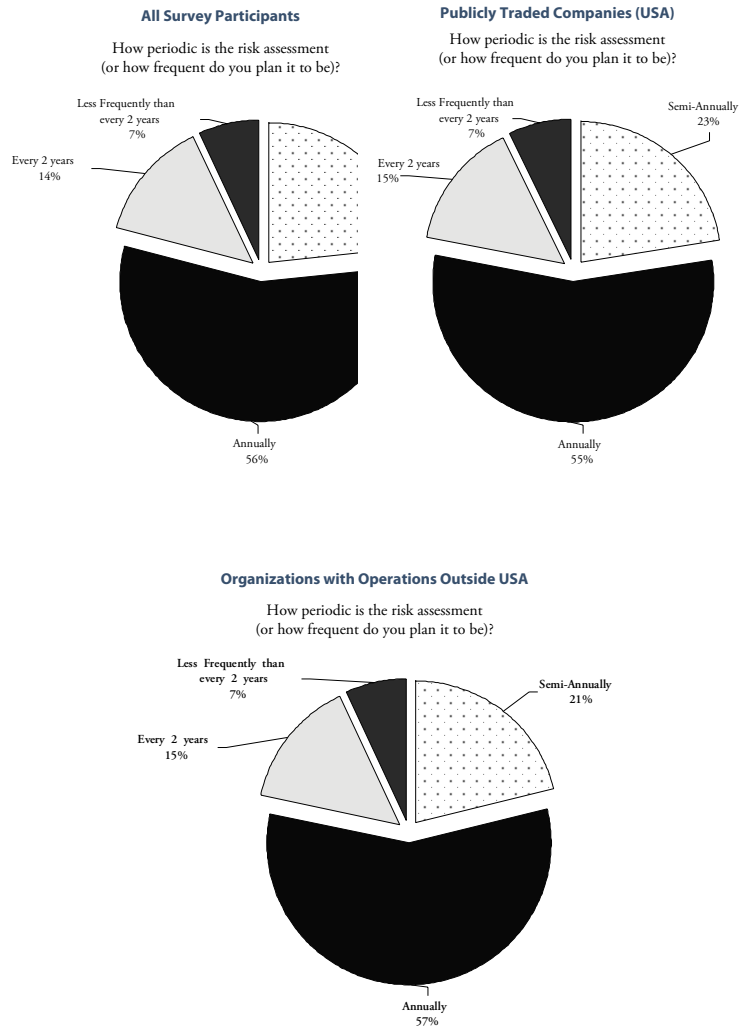
Does your organization conduct periodic Risk Assessments?





**6.2 Frequency of Risk Assessments**

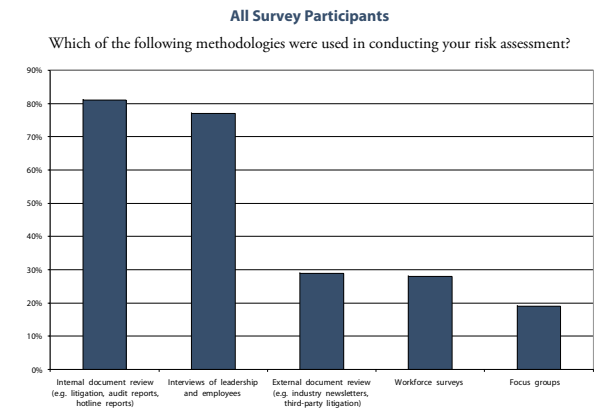
- A slight majority (56 percent) of organizations conduct risk assessments on an annual basis, while just over 23 percent of organizations conduct them at least twice each year.
- There were no significant differences between public and private companies.
- For those organizations that have business operations outside of the United States, 57 percent conduct risk assessments annually.



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### 6.3 Risk Assessment Methodologies

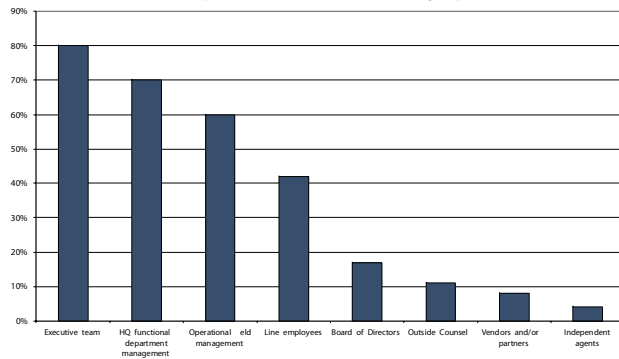
- The two most popular methodologies used in conducting risk assessment are “Internal Document Review”, such as litigation, audit and hotline reports, which were used by 81 percent of respondents, and “Interviews with Leadership and Employees”, which were used by 77 percent.
- Overall, only 28 percent use workforce surveys and even less (19 percent) employ focus groups as part of the risk assessment process.



- For organizations that conduct employee interviews as part of the risk assessment process, the three most commonly interviewed groups are Executive Team (80 percent), HQ Functional Department Management (70 percent) and Operational Field Management (60 percent). However, significantly fewer companies interview additional lower-level employees in the risk assessment process, specifically, only 42 percent.
- The Board of Directors is typically omitted from the interview process in most organizations. Only 17 percent of organizations that conduct interviews as part of the risk assessment include the Board of Directors in the interview pool.
- The areas that are most often reviewed in risk assessment interviews are “Internal policies & processes” (96 percent), “Employee awareness & understanding” (78 percent) and the “Anonymous reporting system” (71 percent).

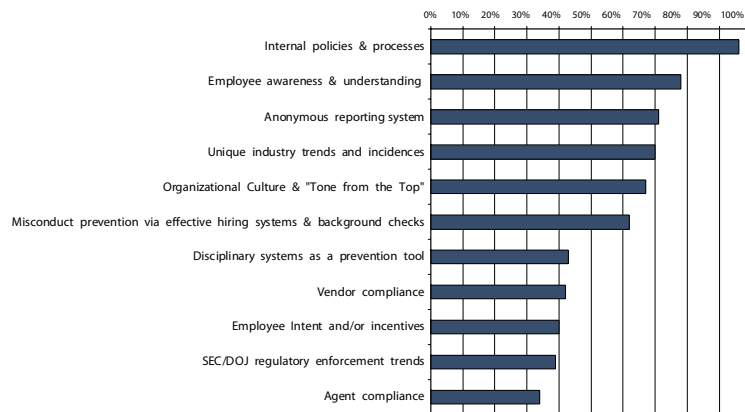
**All Survey Participants**

If you conducted interviews, surveys or focus groups in your risk assessment, which parties were represented in the interviews or focus groups?



**All Survey Participants**

Does the risk assessment take into account one or more of the following?

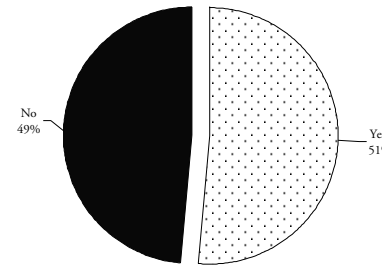


**6.4 Prioritization and Quantification of Risks**

- The majority (78 percent) of companies that conduct risk assessments prioritize risk using both the probability of occurrence and the severity of impact. This statistic does not vary significantly regardless of the size of the organization or whether it is publicly traded or private.
- Fifty-one percent of all organizations actually quantify their risks, up 7 percent from our 2005 findings. Publicly traded companies are more likely to quantify risk (59 percent) versus foreign or private organizations.

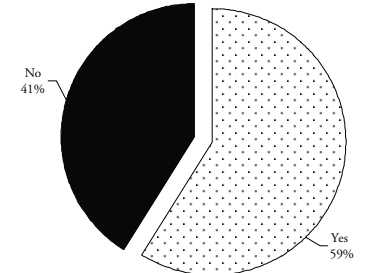
**All Survey Participants**

Does your organization's risk assessment prioritize risk in a quantitative way?



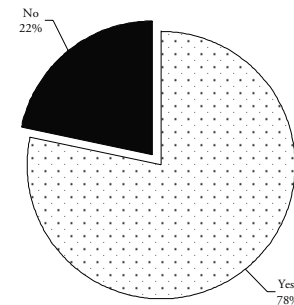
**Publicly Traded Companies (USA)**

Does your organization's risk assessment prioritize risk in a quantitative way?



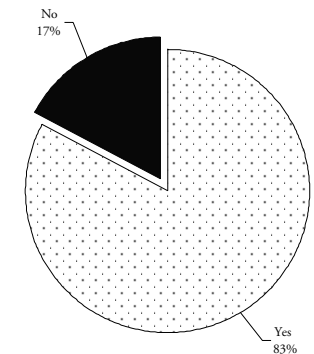
**All Survey Participants**

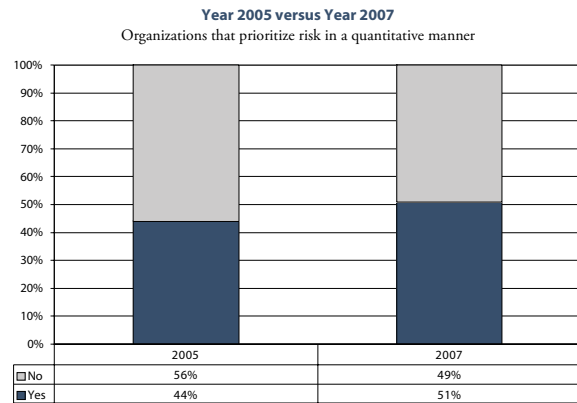
Is the risk prioritized from BOTH the likelihood and the impact of violation standpoints?



**Publicly Traded Companies (USA)**

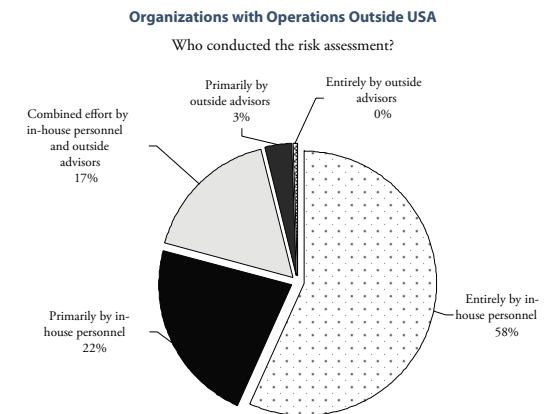
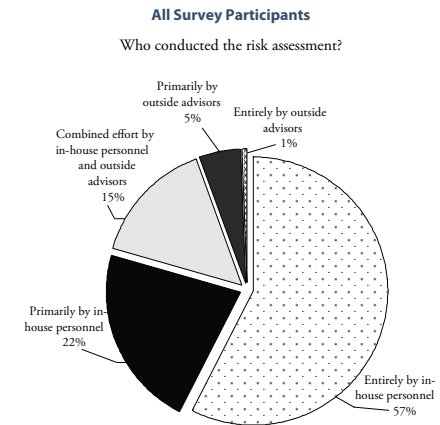
Is the risk prioritized from BOTH the likelihood and the impact of violation standpoints?





### 6.5 Primary Parties to Risk Assessment

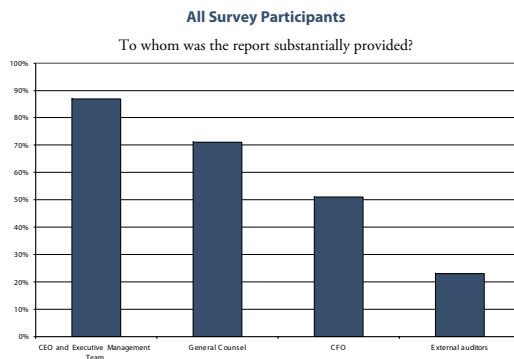
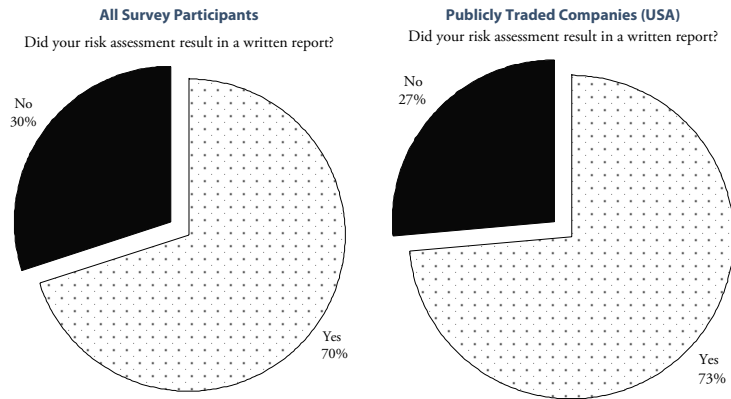
- Over half (57 percent) of all organizations handle risk assessments entirely in-house, while 21 percent use an outside advisor in the process.





### 6.6 Form and Distribution of Final Risk Assessment Report

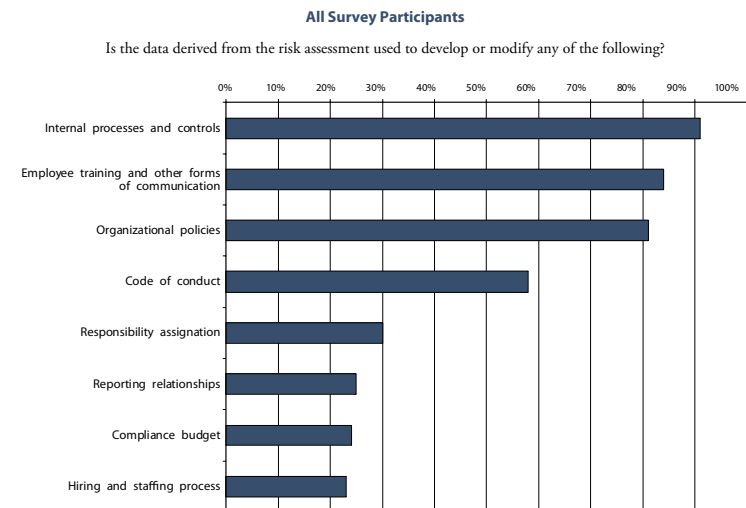
- Seventy percent of all organizations confirmed that their risk assessment resulted in a written report, with companies publicly traded in the United States reporting a slightly higher percentage.
- Not surprisingly, the top audience for the final risk assessment report is the CEO and Executive Management Team (87 percent). In contrast, only 23 percent of all organizations provide the results of their risk assessment to external auditors.



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### 6.7 Risk Assessment Outcomes

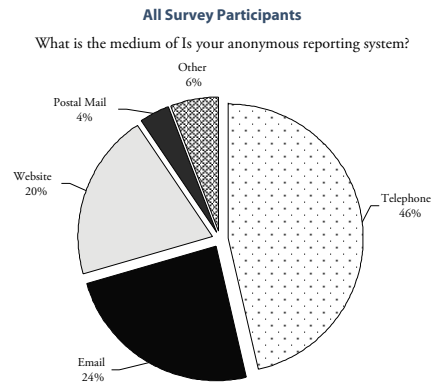
- For those organizations that conduct risk assessments, the most common outcomes were the development or modification “Internal Processes and Controls” (91 percent), “Employee Training and Other Forms of Communication” (84 percent), and “Organizational Policies” (81 percent).
- Risk assessments are also used by 58 percent of organizations to modify (or develop) the organization’s written code of conduct.
- Infrequently, risk assessments may affect “Reporting Relationships” (25 percent), “Organizational Compliance Budget” (24 percent) or “Hiring and Staffing Process” (23 percent).



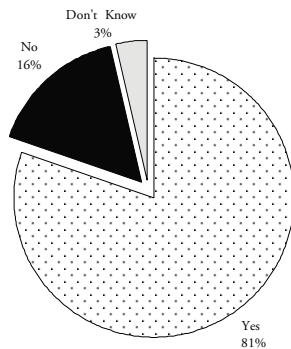
## 7. Hotlines, Reports and Organization Health Surveys

### 7.1 Anonymous Reporting Systems

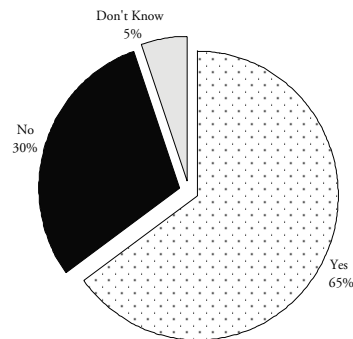
- The vast majority (81 percent) of organizations provide an anonymous reporting system for employees to report suspected misconduct.
- It is interesting to note that, while anonymous reporting systems are required for organizations subject to the Sarbanes-Oxley Act, a majority (65 percent) of organizations that are **not** subject to the Act also have such reporting systems in place. This may be due to the requirement (under Federal Sentencing Guidelines) of having such a system in order to capitalize on the affirmative defense available under FSG criteria for having an “effective compliance and ethics program.”
- Of the organizations that provide an anonymous reporting system, 46 percent indicated the use of telephone-based hotlines, while 24 percent mentioned email, and another 20 percent offered a website.
- In terms of how organizations manage such anonymous reporting systems, 38 percent of all organizations operate their systems internally, 43 percent outsource the systems to an independent third party and 17 percent employ a blend of both insider- and outsider-operated systems. These statistics are relatively consistent across all sizes of organizations.



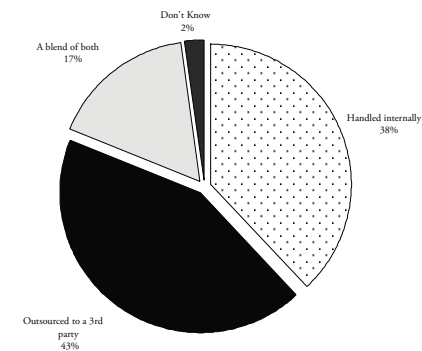
**All Survey Participants**  
Do you have an anonymous reporting system where employees can report misconduct or raise concerns about illegal behavior or code violations?



**Organizations Not Subject to Sarbanes-Oxley**  
Do you have an anonymous reporting system where employees can report misconduct or raise concerns about illegal behavior or code violations?



**All Survey Participants**  
Is such system handled internally or outsourced to a 3rd party?

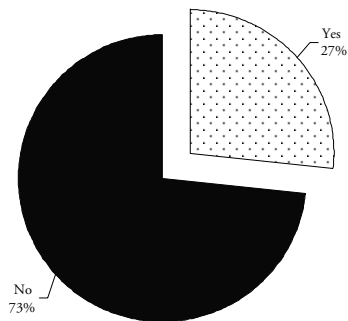


### 7.2 Ethics Guidance Line

- Only a minority (27 percent) of organizations maintain a separate resource to provide advice or guidance on ethics issues in addition to anonymous reporting hotline.
- Publicly traded organizations are slightly more likely to maintain a separate ethics guidance line (32 percent).

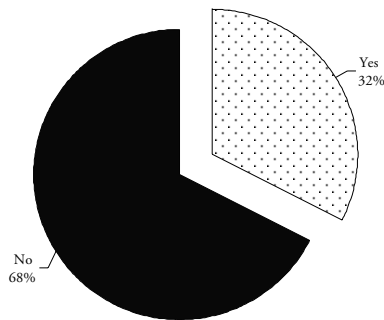
**All Survey Participants**

Do you maintain an "Ethics Guidance" line, separate from the hotline, where employees can seek advice on ethical dilemmas?



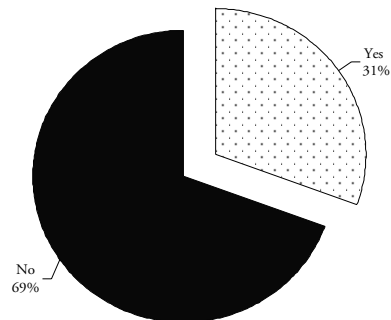
**Publicly Traded Companies**

Do you maintain an "Ethics Guidance" line, separate from the hotline, where employees can seek advice on ethical dilemmas?



**Organizations with Operations Outside USA**

Do you maintain an "Ethics Guidance" line, separate from the hotline, where employees can seek advice on ethical dilemmas?



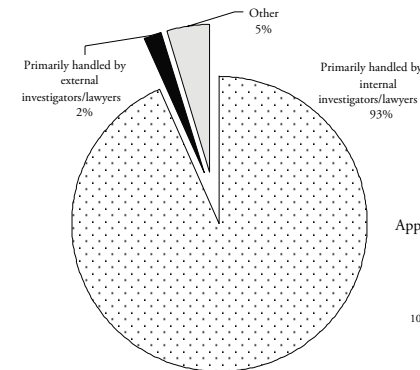
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### 7.3 Managing Cases and Reports of Misconduct

- The vast majority (93 percent) of all organizations assign responsibility for managing reports of misconduct, disclosures and related issues to internal investigators or lawyers.
- Overall, 76 percent of all survey participants deal with fewer than 50 reports or cases of misconduct each year. Not surprisingly, there is a direct correlation between size of the organization and the number of cases or reports handled. Smaller organizations, with under a thousand employees, typically deal with fewer than 50 cases a year, while organizations with more than 25,000 employees handle between 250 and 499 reports or cases annually.

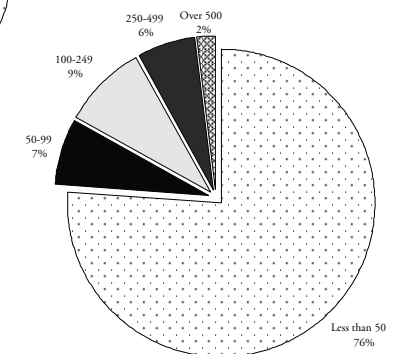
**All Survey Participants**

How are employee reports of misconduct, code disclosures and associated reports handled?



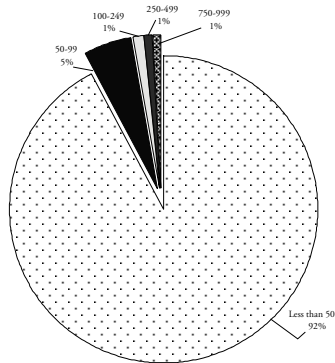
**All Survey Participants**

Approximately how many cases/reports of misconduct does your organization handle annually?



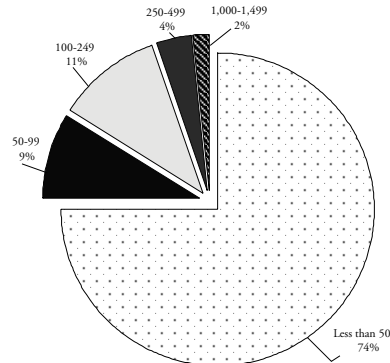
**Organizations with 1,000-4,999 Employees**

Approximately how many cases/reports of misconduct does your organization handle annually?



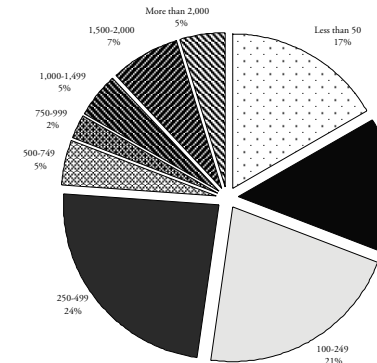
**Organizations with 5,000-9,999 Employees**

Approximately how many cases/reports of misconduct does your organization handle annually?



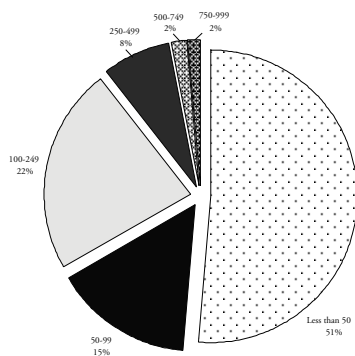
**Organizations with 50,000+ Employees**

Approximately how many cases/reports of misconduct does your organization handle annually?



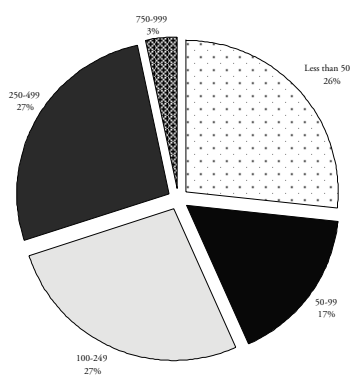
**Organizations with 10,000-24,999 Employees**

Approximately how many cases/reports of misconduct does your organization handle annually?



**Organizations with 25,000-49,000 Employees**

Approximately how many cases/reports of misconduct does your organization handle annually?

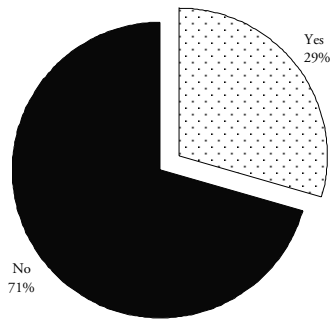


**7.4 Organizational Health Surveys**

- Only 29 percent of all respondent organizations reported that they regularly conduct organizational health surveys. However, in organizations with operations outside of the US, this number increases to 31 percent. In terms of publicly traded companies, this number jumps to 38 percent.
- For organizations that regularly conduct such surveys, the topics that are commonly measured include "Awareness of the organization's code of conduct" (76 percent), "Executive commitment" (74 percent) and "Supervisor commitment" (71 percent).
- Somewhat surprising is that not many organizational health surveys attempt to measure "Perceived accountability for misconduct" (41 percent) or actual "Misconduct observed in the workplace" (43 percent).

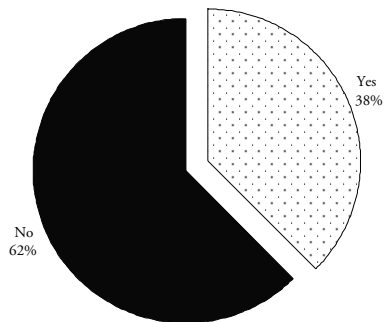
**All Survey Participants**

Does your organization regularly conduct an organizational health or ethics survey of employees?



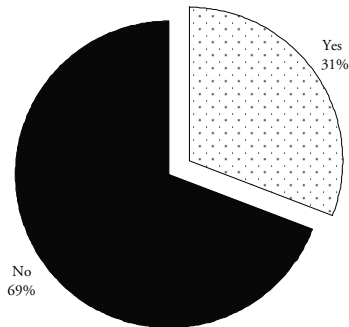
**Publicly Traded Companies (USA)**

Does your organization regularly conduct an organizational health or ethics survey of employees?

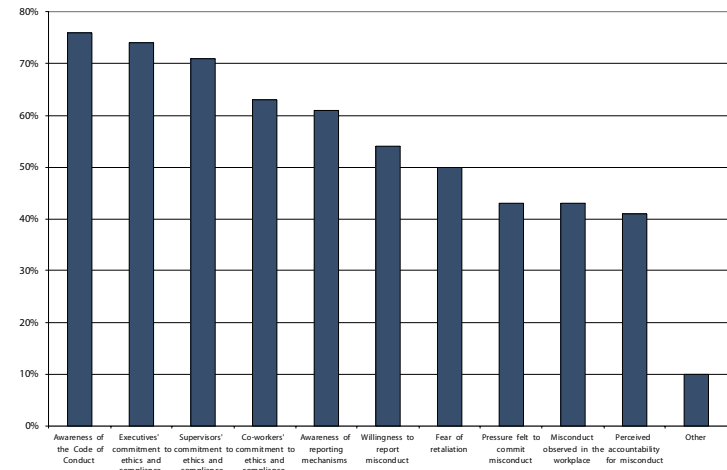


**Organizations with Operations Outside USA**

Does your organization regularly conduct an organizational health or ethics survey of employees?



**Organizations that regularly conduct organizational health surveys address the following topics:**





www.acc.com

**Top Ten Things  
Your Board Needs to Know About Effective Compliance and Ethics Programs**

**Deborah House, Vice President and Deputy General Counsel, Association of Corporate Counsel**

**August 2006**

“Any rational person attempting in good faith to meet an organizational governance responsibility would be bound to take into account [the US Sentencing Guidelines]...” stated the Delaware Court of Chancery in the landmark Caremark case. And your company’s board of directors (Board) needs to understand this given the Guidelines charge them with oversight and participation in corporate compliance programs. As in-house counsel you should understand these requirements as well and make sure your Board is aware of them.

Make no mistake however---this isn’t just about criminal misconduct and sentencing. Rather, whether an organization has an effective compliance and ethics program (Program) that meets the Guidelines is an important consideration utilized by the Department of Justice, the SEC, and other regulators to determine whether or what type of action should be taken for corporate misconduct.

Here is what your Board needs to know about what the Guidelines require.

**1. The Board Needs to Know About and Oversee the Program**

The Board is charged with being knowledgeable about the content and operation of the Program, and reasonably overseeing its implementation and effectiveness. Basic information should be made available to the Board about its responsibility for the Program. Regular reports should be supplied about the Program’s operations, resources and effectiveness.

**2. There Must Be An Appropriate “Tone at the Top”**

The company must have an organizational culture that encourages ethical conduct and commitment to compliance with the law by establishing an appropriate “tone at the top.” A paper program just won’t do it. Companies must not only “talk the talk” but “walk the walk.” Establishing this culture begins with the Board. It also requires making sure that corporate leaders behave appropriately or are held accountable by the Board.

3. Individuals Responsible for the Program Must Have Effective Authority and Access  
“High level” corporate personnel (i.e., those who have “substantial control over the [company] or who have a substantial role in making policy”) should be assigned overall responsibility for the Program. Otherwise it is likely to undercut the Program and the establishment of an appropriate “tone at the top.” Lower level individuals in the company may be delegated day-to-day operational responsibility for the Program, but should have access to the Board or the subgroup responsible for oversight of the Program (e.g., Audit Committee).

4. The Program Must Have Adequate Resources

What is adequate? Resources should be sufficient to reasonably prevent and detect misconduct and promote an organizational culture that encourages a commitment to compliance with the law. Factors which might be considered in determining resource adequacy could include: (a) size of the company (by number of employees or assets); (b) whether the company is highly regulated; (c) complexity of the company’s transactions; (d) geographic range (i.e., local v. international); (e) benchmarks in the industry; (f) nature of the company’s activities; or (g) potential areas of significant risk/liability and the need to address them.

5. The Company Must Adopt Compliance Standards and Procedures

An employee code of conduct is essential. Required standards common to all companies address such matters as conflicts of interests, entertainment and gifts, prohibition against insider trading, and non-compliance reporting mechanisms. Other compliance standards are tailored to the nature of the company’s business activities such as antitrust, the Foreign Corrupt Practices Act, or reports related to government contracting. Sarbanes Oxley requirements such as up-the-ladder reporting for attorneys under Section 307 should also be addressed. Finally, standards peculiar to the job duties of particular employees (e.g., those handling hazardous wastes) should be included.

6. Companies Need to Have Effective Compliance Training Programs and the Board Should Participate

The Guidelines require that companies have effective training programs that communicate their compliance standards and procedures to the Board, all levels of employees, and the company’s agents if appropriate. The purpose of the training is not just to educate employees about the compliance requirements, but also to motivate them to comply with them. Training should be tailored; there is no template. Small organizations could provide training at orientation, staff meetings, or even one on one. Larger companies should have a formally documented program with sufficient dedicated resources and tools to measure its effectiveness.

7. The Program Should Be Regularly Evaluated

Programs should not stagnate. They should be evaluated regularly and appropriately modified. This analysis may be internal (review by internal audit, self assessment, employee surveys, etc.), but periodic measurement by an outside third party is highly recommended. Evaluations of the program should take into consideration new business activities and updated corporate risk assessments.

8. The Approach to Compliance Should Be Both Carrot and Stick.

The Program should be promoted consistently within the company with incentives provided for compliance with the Program and disincentives provided for engaging in misconduct. For example, whether managers participate in the Program (e.g. take training), properly administer compliance activities in their department, and set an example that contributes to the appropriate “tone at the top,” should be considered in their performance evaluation and resulting compensation. Similarly, misconduct should be met with appropriate sanctions regardless of corporate position.

9. Company “Hotlines” with Anonymity Features Are Required

The Guidelines also require the implementation of a mechanism that allows employees to anonymously report potential misconduct without fear of retaliation. For those companies that operate outside the United States, special care should be taken in addressing this requirement. The availability of the hotline needs to be communicated to employees. Evaluation of the hotline should be part of the regular assessment of the Program.

10. Risk Assessment Drives the Program

The elements of a company’s Program will be driven by an analysis of the laws and regulations applicable to the operations of the company and the risks potential non-compliance creates. Periodically the company must reassess this risk and modify the Program accordingly.

Additional Resources

Text of the Federal Sentencing Guidelines for Organizations  
[http://www.ussc.gov/2005guid/8b2\\_1.htm](http://www.ussc.gov/2005guid/8b2_1.htm)

Report of the Ad Hoc Advisory Group on the Organizational Sentencing Guidelines (October 7, 2003) <http://www.ussc.gov/corp/advgrprpt/advgrprpt.htm>