



310 Navigating Global Compliance: Establishing Rules for Taking the High Road in the Borderless Corporation

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Faculty Biographies

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James T. Bellerjeau is general counsel and secretary of Mettler-Toledo International Inc., a Fortune 1000 US public company headquartered in Greifensee, Switzerland. Mettler-Toledo is the world's largest manufacturer and marketer of weighing and analytical instruments for use in laboratory, industrial and food retailing applications.

Prior to joining Mettler-Toledo, Mr. Bellerjeau worked at the law firms Cleary, Gottlieb, Steen & Hamilton in Frankfurt, Germany, and Fried, Frank, Harris, Shriver & Jacobson in New York City. His practice included securities, structured finance, mergers & acquisitions, and corporate law.

Mr. Bellerjeau is member of the BOD of the ACC's European Chapter. He also serves on the Legal Committee of the Swiss American Chamber of Commerce.

Mr. Bellerjeau received a B.A. from Clark University, an MBA from Rensselaer Polytechnic Institute, and a J.D. from Albany Law School.

Michael A. Dillon

Mike Dillon serves as Sun's general counsel, executive vice president and corporate secretary. In this role, Mike leads a worldwide organization consisting of three functions: legal, international trade services and business conduct.

Mr. Dillon has worked in the Sun Microsystems legal organization twice during his career. He provided legal support to Sun's microprocessor and software businesses. He rejoined Sun and was responsible for legal support for Sun's product engineering organizations. A couple of years ago he was appointed to his current role as Sun's general counsel. Prior to, he was general counsel and corporate secretary of ONI Systems Corporation, a publicly traded manufacturer of optical networking equipment. Earlier in his career he was an associate and partner at several Bay Area law firms.

Mr. Dillon is currently a member of the ACC's Board of Directors.

He completed his B.A. at the University of California, San Diego. He received his J.D. from the University of Santa Clara.

Patrick Gnazzo

Patrick J. Gnazzo is senior vice president, business practices and chief compliance officer at CA, responsible for developing and implementing a comprehensive compliance and ethics program. He also oversees government regulatory compliance and the establishment of a records and information management program.

Prior to joining CA, Mr. Gnazzo served as chief compliance officer at United Technologies Corporation (UTC) for ten years. As vice president for business practices at UTC, he built and led an ethics program that is among the best in the world. He managed more than 260 business practices officers worldwide who supported the implementation of the company's ethics and compliance programs for all of its 200,000 employees in 180 countries. Mr. Gnazzo held several other significant positions at UTC, including vice president for contracts and deputy general counsel at Pratt & Whitney; vice president and government liaison in Washington, D.C.; president of United Technologies International; vice president and litigation counsel; and vice president for government contracts and compliance. He joined UTC after serving as the chief trial attorney and director of the U.S. Department of the Navy's litigation division.

He has also served on the board of directors of the Ethics Officers Association and is a frequent lecturer on ethics and compliance. He is currently on the Board of the Ethics Research Center.

Mr. Gnazzo received his undergraduate degree from John Carroll University. He earned his law degree from Cleveland State University.

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the GLOBAL COMPLIANCE LANDSCAPE:

A Resource File

If you're the chief compliance officer, you know how important it is to keep the company's ethics and compliance program current with the law, including the recent changes in the United States Sentencing Guidelines for Organizational Defendants (the "Guidelines"). But if your company is a multinational, it isn't enough just to keep up with US law—you also need to know how developments in other countries affect your compliance program.

And international compliance is a big issue. Compliance is difficult enough when a company operates in just one country. Keeping up with the myriad of laws, regulations, and industry-specific standards is a significant ongoing burden, as is keeping your employees up-to-date about changes in your firm's compliance policies. But the difficulties

become much greater when a company does business in multiple countries. For instance, acts that might violate the laws of one country might be accepted or even preferred behavior in another.

In this article, we examine some of the challenges facing multinational firms in developing and implementing global ethics and compliance policies and offer you resource files on the following topics:

- Developments around the world affecting corporate compliance and ethics programs in certain (but by no means all) countries of particular current interest to global compliance officers. (See "Mapping Global Compliance Developments," on p. 44.)
- Two hot topics: efforts to eliminate corruption in business dealings and the use of hotlines to enable whistle-

blowers to report questionable business activities. (See "International Anticorruption" on p. 42 and "Whistleblower Hotlines" on p. 36)

- Creating an effective global compliance program that supports your company's business goals. (See "Tips for Global Compliance Programs," on p. 40.)

The business case for compliance is a strong one. Even given the complexities it involves, global compliance is good business. It will keep your company out of hot water—and more than that, it can provide your company with a competitive advantage in the market.

By Alan Greenwood
and Steven Lauer



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THE FORCES DRIVING GLOBAL COMPLIANCE STANDARDS

Until recently, the US government followed a laissez-faire approach to business, and the EU countries similarly trusted companies to act responsibly. Recent events, however, have exposed the vulnerabilities of these approaches. In the United States, scandals at Enron, WorldCom, Adelphia, and other corporations over the past five years have proved to many that business does not deserve unquestioning

trust. More recent corporate scandals involving European companies, such as Parmalat, Ahold, Royal Dutch Shell, and Adecco, have increased pressures on regulators in the EU countries to be more active in monitoring and regulating corporate conduct.

In parallel with this growing international concern over corporate behavior, the integration of global capital markets has fueled a growing international consensus that companies need well-defined governance practices. Every country with a stock market—including China, Mexico, and Zimbabwe—has adopted corporate governance codes in which codes of ethics and/or compliance programs for the board and members of the organization are either explicitly mandated or strongly recommended as a central component of good governance. Supranational entities such as the OECD (Organization for Economic Co-operation and Development) and OAS (Organization of American States), together with a variety of nongovernmental organizations (NGOs), including Transparency International and the Fair Labor Association, monitor the activities of governments and private business and highlight failures to adhere to governance and compliance standards. (See "Look Who's Watching You Now," on this page.)

The internationalization of compliance standards has also been fueled by recent globalization. If a company is subject to the compliance rules of a government or supragovernmental organization, the company is usually expected to satisfy these standards in all of its locations throughout the world. Business leaders have generally supported these trends because they tend to promote similar standards and values and thus avoid confusion about what behavior is expected of employees no matter where they are working.

US government agencies have played a key role in this internationalization of standards. The Guidelines, promulgated by the United States Sentencing Commission in 1991 and modified greatly in 2004, have served as one of the primary catalysts for the development and increasing maturity of corporate ethics and compliance programs. Because the Guidelines apply to organizations based in the United States and so many of the world's largest companies are domiciled there, the Guidelines have had a huge impact on corporate ethics and compliance programs worldwide,

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YOU KNOW HOW TO WHISTLE, DON'T YOU?

The United States leads the way in the use of hotlines and similar mechanisms to promote whistleblowing, but over the past dozen years, there has been a growing international trend towards protecting whistleblowers. Nearly all common law countries, including Australia, Canada, New Zealand, South Africa, and the United Kingdom, have

adopted national or local rules that protect whistleblowers in many parts of society. "Whistleblower protections are also gaining ground in Europe, Asia, and Latin America. Several international instruments, including multilateral treaties, institutional regulations and codes of conduct now include protections for whistleblowers."³

| COUNTRY | STATUTE | DESCRIPTION |
|-------------|--|---|
| Australia | Workplace Relations Act of 1996 (as amended) §170CK Available at www.austlii.edu.au/au/legis/cth/consol%5fact/wra1996220/s170ck.html | Protects a worker from termination of employment that is based, at least in part, on the employee's having filed "a complaint, or . . . participat[ed] in proceedings, against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities." Provides remedies in the event of a retaliatory discharge, an administrative process for the issuance of implementing regulations, and a judicial process by which terminated employees might seek redress for violations of the statute. |
| New Zealand | New Zealand's Protected Disclosures Act of 2000 §§ 6(1)–9 Available at www.legislation.govt.nz/browse_yw.asp?content-set=pal_statutes | Provides that an employee may disclose information in the manner provided by the Act if (a) the information is about serious wrongdoing in or by that organization; and (b) the employee believes on reasonable grounds that the information is true or likely to be true; and (c) the employee wishes to disclose the information so that the serious wrongdoing can be investigated; and (d) the employee wishes the disclosure to be protected. Requires that the disclosure be made according to the organization's internal procedures "for receiving and dealing with information about serious wrongdoing." However, disclosure may be made to "an appropriate [governmental] authority" if the employee believes that "the head of the organization is or may be involved" in the wrongdoing, that exceptional circumstances require immediate reference to an appropriate authority, or no response to an earlier disclosure has occurred and at least twenty days have passed. |

WHISTLEBLOWER HOTLINES

LOOK WHO'S WATCHING You Now

- Transparency International and Amnesty International each monitor private actors in the international arena.
- Worldwide Responsible Apparel Production describes itself as "an independent, non-profit corporation dedicated to the certification of lawful, humane and ethical manufacturing throughout the world."
- The Fair Labor Association works "to promote adherence to international labor standards and improve working conditions worldwide."
- The International Council of Toy Industries has developed ethics guidelines intended to ensure safe and humane workplace environments for all workers in toy factories.

And of course in the United States, Sarbanes-Oxley has had an effect. A survey conducted in July 2003 (one year after the enactment of the statute) found that 79.2 percent of the responding companies had established some type of hotline that enabled employees to anonymously raise ethics or compliance issues.⁴ Moreover, the 2004 changes to the Guidelines have created an additional incentive for companies to encourage whistleblowing. The Guidelines (§8B2.1

(b)(5)(C)) provide that a company's sentence can be reduced if it has established a method that lets the organization's employees and agents anonymously "report or seek guidance regarding potential or actual criminal conduct without fear of retaliation."

| COUNTRY | STATUTE | DESCRIPTION |
|----------------|--|--|
| South Africa | The Protected Disclosures Act, 2000 §3 | An employee is guarded against "occupational detriment" on account of having made a protected disclosure. Such a protected disclosure can be, in certain enumerated circumstances, a revelation to someone other than that employee's employer, such as a public official or a third party. The term "occupational detriment" covers discipline, transfer, suspension, harassment, intimidation, and other types of harmful actions. |
| United Kingdom | Public Interest Disclosure Act of 1998 Available at www.opsi.gov.uk/acts/acts1998/80023-b.htm#2 | Any worker is protected who makes a "qualifying disclosure" in good faith to his or her employer, or in certain situations to another person, about a crime or a failure to satisfy a legal obligation, among other subjects. The worker is protected against "any detriment by any act" so long as his "qualifying disclosures" are made in the manner prescribed by the law. |
| United States | The Sarbanes-Oxley Act of 2002 15 U.S.C. §78f(m)(4), as added by §501 of the Sarbanes-Oxley Act of 2002, Pub. L. 107-204. Congress had earlier adopted the Whistleblower Protection Act of 1989, but that statute protects only federal employees, not employees in private industry. See 5 USC §§1201-1222. | Audit committees of publicly traded companies must "establish procedures for . . . the receipt, retention, and treatment of complaints received by the [company] regarding accounting, internal accounting controls, or auditing matters; and . . . the confidential, anonymous submission by employees of the [company] of concerns regarding questionable accounting or auditing matters." These mandated procedures are largely intended to encourage whistleblowing. |

WHISTLEBLOWER HOTLINES

NOTES

- i. R. Vaughn, T. Devine, and K. Henderson, *The Whistleblower Statute Prepared for the Organization of American States and the Global Legal Revolution Protecting Whistleblowers*, 35 GEO. WASH. INT'L L. REV. 857, 861 (2003) (footnotes omitted).
- ii. "Business Ethics and Compliance in the Sarbanes-Oxley Era: A Survey by Deloitte and Corporate Board Member Magazine," available at www.deloitte.com/dtt/cda/doc/content/us_assur_ethicsCompliance%281%29.pdf.

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and have become a de facto global standard. To the extent that there is an EU approach to this issue, it has been much less up-front and less legalistic: The EU Commission actively supports the development of CSR (Corporate Social Responsibility), but it has stopped short of promoting compliance programs.

The definition provided by the Guidelines of when an ethics and compliance program can be called "effective" has animated many countries' efforts to elevate corporate behavior. In some countries, the authorities have not adopted any of the Guidelines per se, but have just suggested or strongly recommended that business organizations adopt higher standards of conduct through better ethics and compliance programs. The specifics of how to achieve this goal are left to businesses, with the expectation that those businesses will use the Guidelines as a template.

THE BUSINESS CASE FOR COMPLIANCE

Compliance programs can serve a variety of business purposes. For instance, the training that your company provides for compliance purposes should help employees perform their jobs, and should not focus merely on satisfying their compliance responsibilities.

Quality control. Information gleaned from hotline submissions can help improve business operations. As one prominent consultant has noted, organizations

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For more information and to register for the meeting, visit www.acca.com/am/05.

"are making greater efforts to listen for feedback and signs of trouble, just as one might monitor quality on a production line."¹ Since the quality of a business process that consists entirely, or almost entirely, of a service can be difficult to measure (unlike the output of a production line), a hotline might in fact serve as the best means of assuring such quality.

Risk management. The same prominent consultant has also observed that "[o]verall, existing business ethics activities are perceived to improve business performance, not hinder it." Business ethics protect companies from risks involved in violating the law, legal regulations, or company policies—including the risk of damage to a company's reputation. Business ethics can thus even help to create competitive advantage.²

Stock performance. There is also evidence that good corporate governance procedures are strongly correlated with above-average stock returns. A study of stock prices in the 1990s found that

[a]n investment strategy that purchased shares in the lowest-G firms ("Democracy" firms with strong shareholder rights) and sold shares in the highest-G firms ("Dictatorship" firms with weak shareholder rights) earned abnormal returns of 8.5 percent per year...

The results for both stock returns and firm value are economically large and are robust to many controls and other firm characteristics.³

The self-interest of corporations thus counsels a strategy that takes ethical concerns into account in their business activities.

Stakeholder expectations. Finally, compliance programs also serve companies' broader interests by helping them meet the expectations of internal and external stakeholders. Whether those stakeholders are the company's employees, shareholders, government agencies, extranational organizations, or NGOs, a business that incorporates certain behavioral norms into its day-to-day operations will fare far better. With fewer concerns for adverse publicity on account of ethical lapses and a deeper fund of societal goodwill to draw from, such a business should enjoy a smoother journey.

A WORLD OF COMPLIANCE

As chief compliance officer, how should you (continued on page 49)

SEVEN WAYS TO IMPROVE YOUR GLOBAL PROGRAM

Be globally conscious. When implementing a compliance program or developing compliance policies and procedures covering multiple countries, make sure to remember your company's international status. Avoid policies focused on the United States that ignore the needs and practices of other countries where your company does business. Company encouragement for whistleblowers, for instance, is widely accepted in the United States and other common law countries, but it is looked upon with great suspicion in France and Italy, where people have unpleasant memories of collaborators during World War II. For example, in June 2005, McDonald's was told by La Commission Nationale de l'Informatique et des Libertés of France that it must excise from its code of conduct references to its reporting hotline, which the French government would not allow. East Europeans are even more hostile to the idea of anonymous reporting because of their recent experiences of life under a spying, totalitarian system.

Create consensus. Create a consensus throughout your company on the goals for the compliance effort and take the time to gain understanding and support for your program, especially in countries with works councils and labor unions. Some of these bodies may consider whistleblower and hotline procedures as infringing on bargained-for grievance procedures and may raise issues such as those raised in the Wal-Mart case cited below. (And see "Mapping Global Compliance Developments," on p. 44.) One useful approach is to form a group whose mission is to provide direction for the program. The group should include personnel from multiple countries and business units, to better reflect the interests of all significant parts of the company.

Identify shared values. With the assistance of a multinational coordinating employee group, identify the ways in which all employees share values. Make sure to highlight these shared values in the ethics and compliance program. This helps foster a greater sense of community among your far-flung employees, helping them to focus on what they have in common, rather than their differences.

Emphasize resource diversity. Distribute your com-

pany's ethics and compliance resources throughout various countries where your company does business. This helps ensure that your compliance procedures are sensitive to local needs. For the same reason, ethics and compliance positions should be staffed by people from a variety of countries.

Translate carefully. Make compliance and ethics materials available in multiple languages. But be aware that terms commonly used in the United States, such as "ethics," may not readily translate into some other languages. As one commentator notes, because the term "ethics" often does not translate well, some organizations reframe the concept through other terms such as integrity, business practices, or responsible business conduct. (See Nathan Hurst on Corporate Ethics, as cited in "From this point on," on p. 48.) All translations should appropriately reflect the vocabulary and idioms used by local people. This might require translation into a locally used dialect or language. For example, the Spanish spoken in some countries in South America varies from Castilian Spanish.

Train. Do not simply distribute the code of conduct and expect all employees to properly follow its rules. Particularly in light of linguistic complexities, some training and assistance must accompany the code.

Publicize the benefits. Business units often resent new initiatives that emanate from corporate with little apparent regard for the exigencies of the operating businesses. Hostility can be even more pronounced when initiatives from the company's headquarters affect employees in a distant country that has a very different social milieu. (Such resentment may have fueled the opposition to Wal-Mart's implementation of its corporate code of conduct. See www.dw-world.de/dw/article/0,1564,1519102,00.html.) To minimize such resistance to compliance rules, show the employees that compliance rules help your company's business and are not just another time-wasting corporate exercise. Make sure that the business units have an investment in the program and that they recognize the benefits they will gain from an effective compliance effort.

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THE GROWING GLOBAL EFFORT AGAINST CORRUPTION

Many countries have adopted anticorruption legislation in accordance with a growing international effort to eliminate corruption. (For more information, see "From this point on," on p. 48.) Those

laws usually make it a criminal offense to accept bribes, but fail to punish those who give bribes. But there is growing demand for stronger anticorruption compliance policies.

| ENTITY | CONVENTION OR LAW | DESCRIPTION |
|--------|---|--|
| EU | 1998 Joint Action on corruption in the private sector, arts. 2.1 and 3.1 Available at http://europa.eu.int/eur-lex/pri/en/oj/dat/1998/L_358/L_3581_9981231en00020004.pdf | Criminalizes both active and passive corruption conducted "in the course of business activities," even if no public figure or government action is involved. "Passive" corruption is (generally speaking—see the Joint Action definition) violating a duty by requesting or receiving an undue advantage in exchange for performing (or not performing) an act, whereas "active" corruption is offering or giving such an undue advantage. |
| OAS | The Inter-American Convention Against Corruption in 1996 (art. III, §10) Available at www.oas.org/juridico/english/fighcur.html | Includes identified "mechanisms to ensure that publicly held companies and other types of associations maintain books and records which, in reasonable detail, accurately reflect the acquisition and disposition of assets, and have sufficient internal controls to enable their officers to detect corrupt acts." |
| OECD | Convention on Combating Bribery of Foreign Officials in International Business Transactions, Art. 1, §1 Available at www.oecd.org/document/21/0,2540,en_2649_34859_2017813_1_1_1_1,00.html#text | The contracting nations agree to criminalize giving "any undue pecuniary or other advantage... to a foreign public official... in order that the official act or refrain from acting in relation to the performance of official duties," in order to gain improper advantage in the conduct of international business. |
| UN | The United Nations Declaration against Corruption and Bribery in International Commercial Transactions, adopted by the General Assembly in 1996 | Covers both the private and public sectors. This document, more of a political commitment by the voting nations than a legal one, is part of an international effort to promote transparency in business transactions. |
| US | Foreign Corrupt Practices Act (FCPA), 15 U.S.C. §78dd-3 | Prohibits firms that are registered in the United States and foreign corporations the shares of which are traded on United States stock exchanges from offering or giving anything of value to foreign officials or other specified persons, except for certain types of payments. |

October 2005

SIX COMPLIANCE HOTSPOTS

CHINA

Some might be surprised to learn that in China, certain types of compliance programs have entered the landscape, in spite of—or in the absence of—any lead from the state. The chief drivers have been the compliance certification programs of the global business supply chain in the industries where China is playing an increasingly dominant role, such as textiles and garments.

For the central government, the task of combating corruption remains the primary focus. Thousands of officials are prosecuted each year for corruption, but the problem remains massive, because the number of officials employed by all levels of government in China exceeds the populations of many countries.

Another government priority—induced by China's accession to the WTO in 2001—has been to abolish more than 2,600 laws and regulations and, in a number of areas, to publish new laws providing for greater transparency. China's commitments to the WTO include opening its capital markets to foreign competition by 2007, which serves as a powerful stimulant for further regulatory transparency.

Even though (with the exception of the annual anticorruption drives) there is no prospect of any domestically sponsored initiative to promote compliance programs, China is no stranger to focused compliance programs, certifications, and audits, many driven, as stated above, by the global supply chains of industries in which China now plays such an important role. The standards endorsed by international NGOs have therefore been introduced into a number of industries, such as clothing and garments.

EUROPE

United States and European multinationals have served as active propagators of codes of conduct in many countries. Such efforts often are driven by nongovernmental factors, particularly the desire to create a common set of values throughout the organization. The deployment of such codes is not always smooth sailing, however, especially in civil law countries. France and

Germany, for example, have strong traditions of labor contracts and collective agreements. Wal-Mart, which operates more than 90 stores in Germany, recently discovered this in the venue of the Labor Court (Arbeitsgericht) of Wuppertal. The Arbeitsgericht Wuppertal is reported to have recently granted an injunction filed by the group works council of Wal-Mart against parts of Wal-Mart's Code of Conduct for employees. The court said in its decision that certain guidelines (concerning the love life of employees or the telephone ethics hotline which employees are asked to use to report code violations) contradict German labor law. It ordered the company to delete from its Code guidelines relative to relationships between coworkers that prohibited "any kind of communication that could be interpreted as sexual." (The Arbeitsgericht Wuppertal has yet to issue a written decision, and this description is based on various newswire reports. See, for example, www.indexonline.org/en/indexindex/articles/2005/2/germany-wal-mart-ethics-code-blocked-by-court.shtml.)

IRELAND

Ireland has become an increasingly attractive location for corporations in the United States that wish to enter the EU market, because Ireland is the EU member closest to the United States geographically and shares many attributes with the United States. In December 2004, Ireland's Office of the Director of Corporate Enforcement (ODCE) issued regulations of great potential interest to such companies. These regulations are designed to help companies comply with the Companies (Auditing and Accounting) Act of 2005.

Section 45 of the Companies (Auditing and Accounting) Act of 2005 requires company directors (a title that applies to corporate officers who would be considered senior management in the United States) to prepare a "compliance statement" that specifies the company's "(a)...policies respecting compliance with its relevant obligations; (b) its internal financial and other procedures for securing compliance with its relevant obligations; (c) its arrangements for implementing and reviewing the effectiveness of the policies and

COMPLIANCE HOTSPOTS (CONT'D)

procedures referred to in paragraphs (a) and (b)." (See www.oireachtas.ie/documents/bills28/acts/2005/a4405.pdf.) The ODCE guidance—much like SEC pronouncements on securities statutes in the United States—provides guidance to companies subject to the statute on how to prepare the required statements. (It can be found at www.odce.ie/_fileupload/publications/Revised_Guidance_on_Directors_Compliance_Statements_Final.doc.)

The statute also requires company directors to issue an annual statement in which they affirm the ongoing effectiveness of the procedures for assurance of compliance. The annual statement seems to resemble the certification required by § 302 of Sarbanes-Oxley.

JAPAN

Japanese society has long frowned on those who expose unpleasant facts, and Japanese business has a long tradition of sweeping corporate misconduct under the rug. In 1998, for instance, a bond trader at Daiwa Bank incurred \$1.1 billion in losses, but the bank's directors withheld disclosure of the losses from US bank regulators until the directors had completed their own internal assessment. The bank was later required to shut down its US banking operations.

After lengthy deliberations, the Japanese Diet in March 2004 enacted the Whistleblower Protection Act (law No. 122 of 2004). This law does not come into effect until April 2006 and is reported to have been substantially inspired by and modeled on the UK Public Interest Disclosure Act (1998). In contrast to some of the many other countries with whistleblower laws, including Ghana, Israel, and Australia, the Japanese law applies to disclosures in the private as well as public sectors.

In another interesting private sector development, the Japanese Pharmaceutical Manufacturers Association (JPMA) has expanded on its Charter for Good Corporate Conduct by issuing the JPMA Compliance Program Guidelines. These 2001 guidelines provide guidance for JPMA members on how to meet appropriately high ethical standards of behavior. According to these guidelines, the compliance pro-

grams of all JPMA member companies should at minimum satisfy the eight requirements for an effective compliance program set out in the US Guidelines. (Available online at www.jpma.or.jp/12english/publications/guide/02.html.)

KOREA

Since the Korea Independent Commission Against Corruption (KICAC) began operating in 2003, this government-established organization has been working to protect whistleblowers and to encourage their activities by providing "appropriate rewards." The KICAC has had reasonable success in uncovering corruption. In one case, for instance, a high official of IBM Korea Inc. was prosecuted for offering bribes to government officials and illegally colluding with competitors in order to obtain government contracts worth 66 billion won (approximately \$55 million).

UNITED KINGDOM

Corporate failures in the 1980s led the UK government to establish a series of groups to study business governance and other issues. Those groups issued reports that recommended a variety of corporate reforms. (One such report, which proved very influential, is known as the Cadbury Report. It is available online at <http://rru.worldbank.org/Documents/Papers/Links/1253.pdf>.) The government responded by issuing the Combined Code, which incorporates the reports' recommendations on corporate governance and internal control. (The Combined Code is available online at www.fsa.gov.uk/pubs/ukla/lr_comcode.pdf.)

Among other things, the Combined Code "contains the corporate governance principles and code provisions applicable to all listed companies incorporated in the United Kingdom." In addition to setting out specific best practices, the Combined Code contains principles that underlie those practices, so as to provide guidance for situations for which specific answers might not exist in the Combined Code itself.

From this point on . . .
Explore information related to this topic.

ACC RESOURCES ON INTERNATIONAL COMPLIANCE

ACC's committees, such as the International Legal Affairs Committee, are excellent knowledge networks and have listservs to join and other benefits. Contact information for ACC committee chairs appears in each issue of the *ACC Docket*, or you can contact Staff Attorney and Committees Manager Jacqueline Windley at 202.293.4103, ext. 314, or windley@acca.com or visit ACC OnlineSM at www.acca.com/networks/committee.php.

- *Doing Business Internationally*, an ACC InfoPAKSM, available on ACC Online at www.acca.com/infopaks/intbus.html.
- E. Scott Gilbert, 605: *Globalized Risk: Internal Investigations Outside the US*, ACC 2004 Annual Meeting course material, available on ACC Online at www.acca.com/am/04/cm/605.pdf.
- *The Global Law Department*, an ACC InfoPAK, available on ACC Online at www.acca.com/infopaks/global.html.
- *Leading Practices in Global Law Department Design and Service Models: What Companies Are Doing*, an ACC Leading Practices Profile, available on ACC Online at www.acca.com/protected/article/international/lead_globallaw.pdf.
- Richard Mosher and Owen Warnock, "All For One and One for All: Navigating Trade Unions and Work Councils in Europe" ACC DOCKET 23, no. 2 (February 2005): 48–67, available on ACC Online at www.acca.com/protected/pubs/docket/feb05/union.pdf.
- Lori Shapiro and Philip Weis, 805: *Codes of Conduct for Multinational Corporations*, ACC 2004 Annual Meeting course material, available on ACC Online at www.acca.com/am/04/cm/805.pdf.

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If you have questions or need assistance in accessing this information, please contact Senior Staff Attorney and Legal Resources Manager Karen Palmer at 202.293.4105, ext. 542, or palmer@acca.com. If you have resources, including redacted documents, that you are willing to share, email electronic documents to Julienne.Bramesco@acca.com, director of Legal Resources.

FOR ADDITIONAL INFORMATION

- Anticorruption Resources
 - Anticorruption efforts in countries belonging to the Anti-Corruption Gateway for Europe and Eurasia, available at www.nobribes.org/en/country_information/default.asp.
 - "Combating Corruption: OGP Progress Report," Report No. 1.21/334 (December 2002), p. 7, issued by the International Association of Oil and Gas Producers, available at www.ogp.org.uk/pubs/334.pdf.
 - "First to Know: Robust Internal Reporting Programs," by Trace International, ISIS Asset Management, and The International Business Leader Forum (2004), available at www.isisam.com/uploadfiles/co_gsi_first_to_know_jul_2004.pdf.
- T. Dworkin, *Whistleblowing, MNCs and Peace*, 35 VANDERBILT J. OF TRANSNAT'L L. 457, 461 (2002).
- Nathan Hurst, *Corporate Ethics, Governance and Social Responsibility: Comparing European Business Practices to Those in the United States*, The Markkula Center for Applied Ethics, Santa Clara University, Spring 2004, p. 6, available at www.scu.edu/ethics/publications/submitted/hurst/comparative_study.pdf.
- R. Vaughn, T. Devine, and K. Henderson, *The Whistleblower Statute Prepared for the Organization of American States and the Global Legal Revolution Protecting Whistleblowers*, 35 GEO. WASH. INT'L L. REV. 857, 861 (2003).

(continued from page 58)

approach your company's international compliance procedures? You should start by closely reviewing recent compliance-related developments in those countries where your company either does business or contemplates doing business in the near future.

Once you have digested that information, you should outline the international trends that you have identified in ethics and compliance programs. You should highlight how these growing expectations are already satisfied by your company's program. To the extent your program doesn't fully meet these emerging standards, you should determine how to revise the program in the near future. You will also need to be prepared for foreseeable future developments that might create new challenges for the company's compliance rules.

With all that done, you'll be on top of the international compliance issues that face your company, including the issues that arise under

the Sarbanes-Oxley Act and the revised Guidelines. Finally, you'll be able to sit back and relax, and enjoy your view of the global compliance landscape. ☒

NOTES

1. *Ethical concerns and reputation risk management*, Arthur Andersen and London Business School, 1999, p. 12, available at www.globalethics.org/andersonrpt.pdf.
2. *Id.*
3. Paul Gompers, Joy Ishii, and Andrew Metrick, *Corporate Governance and Equity Prices*, Quarterly J. of Econ. 118(1) (Feb. 2003): 107, available at <http://finance.wharton.upenn.edu/%7Emetrick/gov.pdf>.

LEADING PRACTICE PROFILES SERIES:

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



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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.¹

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.²

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.³ 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:⁴

- 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.⁵ 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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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.

Practice Highlights

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

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.

Law Department
Program Themes

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 it 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

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

Leading Practices

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.

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.

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.

International Paper

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

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/PDF%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

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>

Resultor

http://www.resultor.com/_Home/

Shareholder.com

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

Softscape Grievance Tracking Module

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 InfoPAKSM 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

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

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

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

ACC InfoPAKSM 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 Nonlegal Managers About Their Compliance Responsibilities (ACC 2003 Annual Meeting)

<http://www.acca.com/education03/am/cm/711.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/docket/apr05/toolkit.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/docket/nd04/compliance.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/docket/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/docket/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/jsp/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/docket/s02/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/docket/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/librarysearch/librarysearch.html>

Defense Industry Initiative
www.dii.org

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

Ethics Officers Association
www.eoa.org

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

International Business Ethics Institute
www.business-ethics.org

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

KPMG's Audit Committee Institute
www.kpmg.com

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

PharmaCongress Audio Conferences
www.pharmaaudioconferences.com

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

The Conference Board's Council on Corporate Compliance
http://www.conference-board.org/memberservices/councilsDetails.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/cg/links.htm>

*Denotes ACC Alliance Program partner. See 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 InfoPAKsMat <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/compliancecthing.pdf>

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

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For more ACC Leading Practices Profiles, go to www.acca.com/vl/practiceprofiles.php

Company Resources

Altria Group, Inc. and its Family of Companies Compliance & Integrity Website
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

Checklist of Legal Risks for Quarterly Reviews
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
 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>

Endnotes

¹Information 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 InfoPAKSM 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/compliancecthing.pdf>

²See 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.

³For 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>.

⁴See U.S.S.G. §8B2.1, which may be found at <http://www.uscc.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 ³, *infra*.



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The in-house bar associationSM

August 2003

LEADING PRACTICES IN CODES OF BUSINESS CONDUCT AND ETHICS: What Companies are Doing

Part of an Ongoing Series of
ACCA's "Best Practices Profiles"SM
<http://www.acca.com/vl/practiceprofiles.php>

Corporate compliance and ethics programs, including codes of conduct, are receiving more attention these days. Recent highly publicized cases involving allegations of corporate excess and ethical failures have increased internal corporate focus and external scrutiny on governance systems. Companies that haven't traditionally had formal codes of conduct are developing them. Many companies that do have codes of business conduct are re-evaluating and refreshing them. Companies are making codes of conduct available to the public, and are emphasizing the importance of employee training to help improve awareness.

Both privately-held and publicly-traded companies may increasingly view strong corporate governance and ethics programs as important business assets. Recent legal developments, including the Sarbanes-Oxley Act of 2002 (Sarbox), the related Securities and Exchange Commission's rules,¹ Corporate Governance Rule Proposals filed by the New York Stock Exchange,² and Corporate Governance Proposals filed by NASDAQ,³ add regulatory focus and consequences to this issue for publicly-traded companies. Additional factors emphasizing the importance of governance programs for both private and public companies include reforms to state corporate responsibility laws, possible investor and bank scrutiny in connection with financing decisions, and potential consideration given by prospective directors and other senior executives in deciding whether to serve on a company's board.⁴

All of this energy around self-governance programs sends a strong message that codes and standards of business conduct are more than collections of policy statements that employees may be required to periodically read and sign. Instead, a well-placed emphasis on adopting and adhering to a code is an important signal to stakeholders that codes are a key part of corporate

¹ SEC Release No. 33-8238 (June 5, 2003), effective date August 14, 2003.

² NYSE Rule Filing on Corporate Governance Rule Proposal Reflecting Recommendations from the NYSE Corporate Accountability and Listing Standards Committee submitted to SEC on August 16, 2002 (sections 9 & 10 include proposed corporate governance standards); See also Amendment No. 1 to NYSE Corporate Governance Rule Proposals submitted to SEC on April 4, 2003 (both filings available on NYSE website at www.nyse.com).

³ See <http://www.nasdaq.com> for information on recent corporate governance proposals and pending corporate governance rule filings.

⁴ ACCA's Susan Hackett authored an article on the increasing impact of Sarbox reforms on private companies, available on ACCA's Corporate Responsibility homepage: <http://www.acca.com/legres/corresponsibility/index.php>.

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governance and ethics programs that help establish a corporate culture of ethical conduct, integrity, and trust.

Just adopting a "model" code of conduct isn't enough. Educating employees about what it means, when to ask questions, who to go to for help, and the importance of ethical conduct to the company is critical to programmatic success. Indeed, for public companies that will need to certify that internal controls and programs are working, it is especially important to ensure that employees understand and embrace the message and can report concerns.

This leading practices review explores the issues of corporate governance and ethics within seven selected companies, describing the program contents at each company and the process used to develop them. Featured in this article are code programs for: **Intelsat Ltd. Group; Lockheed Martin Corporation; McDonald's Corporation; Olin Corporation; Pfizer Inc.; PricewaterhouseCoopers; and the Robert Wood Johnson Foundation**. Four of these companies are publicly-traded companies. Two are privately-held companies. One is a philanthropic nonprofit foundation.

The seven companies shared information on the key elements of their programs and how they developed them. Company views on leading program practices, and critical success factors are also explored. Companies also shared how the Sarbox and/or NYSE proposed rules have factored into program reviews or enhancements.

Resources that the seven companies used to develop their programs are listed in the sidebar. Many of the web sites included on the resource list also have links to additional resources. ACCA's Corporate Compliance InfoPAKSM is also an excellent resource, and includes information on establishing compliance programs, program structure and control, communications and training. The InfoPAKSM also includes forms and policies, and lists additional resources relating to corporate compliance.

Many of the codes reviewed are posted on the companies' public websites, and this article provides links to access them. Additional sidebar resources include an electronic version of one company's code, and a white paper titled: *The Framework For Corporate Self-Governance: An Effective Ethics and Compliance Program*, written by Scott MacKay, Lockheed Martin's Associate General Counsel Litigation & Compliance.

Section I below summarizes key themes and program insights gathered from discussions with representatives from each company. Section II describes the programs at each of the seven companies in more detail.

I. SUMMARY OVERVIEW OF PROGRAMS, PROCESSES & THEMES

PROGRAMS

Each of the seven companies has invested energy and effort into developing a program that its senior leaders believe in. Many Codes begin with a letter from the company's senior executive emphasizing the importance of ethical conduct. Several also include a statement of company ethics or values in the beginning section of the Code.

The Codes vary in length, style, and subject matter content. Some companies shared that it was important to "brand" their Code to reflect the company's culture. Some Codes include practical questions and answers that illustrate possible situations that may arise. All identify contacts or resources to call with questions.

Companies have designated individuals or groups as corporate resources to help educate employees on code contents, serve as resources for questions, and monitor compliance. Some companies also have ethics or compliance committees, and one has established a compliance liaison program. Many of the companies have established toll-free help lines that employees can call to report issues.

Education and training was cited by nearly all company representatives as a key program element. Many programs include innovative training modules, which are mandatory for employees. Several of the programs require successful completion of training modules evidenced by a test. Most training programs also allow compliance personnel to track training efforts electronically to monitor who has received and successfully completed the program training. One company program identifies training as an important implementation standard and empowers its firms around the world to develop training methodologies best suited to that firm's needs. A U.S.-based training module for that company includes a virtual consultation component to help with decision analyses and omits by design a testing component on the theory that ethical dilemmas may be gray.

Program-related communications are a prominent feature and take many forms. Websites, pamphlets, posters, hard copy versions of the Codes, magnets, wallet cards, electronic communications from senior leaders, articles on ethics in various company newsletters, all provide opportunities for the companies to communicate their Codes and demonstrate the importance attached to complying with them.

PROCESS FOR DEVELOPING CODES

Most of the Code programs were developed primarily in-house. Some of the seven companies also used outside consultants to help develop the Codes. Some reviewed other companies' codes posted on public websites. Many companies involved business leaders in program development efforts. One company shared the importance of creating an international group of individuals from company firms around the world to help develop its Code. Most of the companies that have on-line or web-based training programs consulted outside resources to help develop their training modules. Many developed customized training modules on a variety of governance issues.

REGULATORY IMPACTS

Many companies evaluated their existing code and governance programs in light of Sarbox and/or NYSE requirements. Some made adjustments to their Codes or governance programs. Below is a summary list of changes.

Code Additions:

- Adding prominent statements concerning application of the Code to all finance people and directors
- Emphasizing provisions in sections addressing the need to report conflicts of interest
- Adding a Code section on making accurate public disclosures to give more prominence to this requirement
- Adding a Code section on accountability
- Adding a Code section on how to contact the audit and ethics committee
- Adding a Code section on disclosure of waivers
- Adding language on internal controls and improper auditor influence

Program Changes:

- Posting the Code on the company website

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- Developing separate Codes for Board of Directors and for senior executives and financial officers
- Creating a Business Integrity Line program component
- Changing Board guidelines and Committee Charters
- Delegating to Audit Committee
- Re-timing Committee meetings to help achieve required disclosure schedules

THEMES

Although each company reviewed has its own distinct program, some general themes emerged:

- **Codes as Part of the Corporate Culture:** Some shared that the Code should be "baked into their culture;" some viewed the Code as a "culture-setting activity;" others shared that the Code reflects a culture of ethical business conduct and trust. Several Codes are printed in many languages.
- **Top Level Management Support is Key:** All of the companies shared that having top-level management support is critical to program success.
- **Compliance Training:** Education about the code and what it means is a critical program component. How training occurs varies broadly. Many companies offer on-line or web-based training modules. Some companies have made certain training modules mandatory. Some training programs include a test or certification that can be tracked by corporate compliance personnel.
- **Help Lines:** Most of the companies have toll free help lines staffed 24/7. Most help lines have translators available. The help lines allow callers to remain anonymous if they wish. Many refreshed codes have given more prominence to the help line component of their program.
- **Corporate Compliance/Business Ethics Office:** Many of the companies have established separate offices that have responsibility for overseeing implementation and compliance with company policies and standards. These offices are staffed by individuals devoted full-time to working on ethics issues and programs for the company.
- **One Code:** Most of the companies have developed a single Code that applies to everyone in the company. One company has developed two additional Codes for its Board and Executives: a Code of Conduct for its Board of Directors, and a Code of Ethics for Senior Executives and Financial Officers
- **Certifications:** Many companies require that employees certify annually that they have read, understand and agree to abide by the Code. Some require employees to complete on-line training modules that include tests or quizzes to certify successful completion.
- **Leveraging Internal Company Resources:** Alliances with other company groups such as human resources, internal audit, and corporate security can help facilitate effective use of ethics and code program resources.

LEADING PRACTICES

The companies were asked to identify aspects of their programs considered to be leading or best practices. Below is a list of program elements that companies viewed to be leading or best practices for their programs. Individual program summaries in Section II provide additional detail on these and other practices and program elements.

- **On-Line or Web-Based Training:** Clear training modules that are user-friendly, reflect practical business situations, and help raise awareness of program issues. Some companies have customized training programs. One company's U.S. training modules program excludes the test feature by design and instead includes a virtual consultation component.

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- **Pull-out Wallet Card:** A pull-out wallet card included within the company Code was identified by one company as a leading program practice helping to give more prominence to the company's Help Line resource.
- **Feedback Postcard:** A tear-out postcard (postage pre-paid) giving employees another outlet to provide feedback and report issues to the company's Corporate Ethics Office was identified by one company as a leading practice.
- **Open Door Guidelines:** An "Open Door Guidelines" booklet that includes both a section to colleagues describing the company's open door policies and a section that defines steps that supervisors should take to appropriately implement the guidelines is a leading practice identified by one company. This company also has a specialized training program and a website dedicated to this aspect of its program.
- **Linking Code-related Communications to Business Communications-a good practice:** Linking Code-related communications to communications about what is going on in the company's business is a good practice identified by one company.
- **Global approach to Developing Code and Implementing Standards:** Using a process that includes an international team of individuals from company firms around the globe and allows flexibility to develop methodologies to implement defined standards is identified as a good practice by one company.
- **Carefully Defining the Roles of Other Company Groups:** Another program component considered a good practice by one company is the definition of distinct roles played by various company groups, including its Ethics Office, Human Resources group, and General Counsel's Office.

II. COMPANY PROGRAM SUMMARIES

Following are summaries from discussions with the seven companies about their programs.

Intelsat, Ltd. Group

Intelsat's corporate compliance program was developed during the spring of 2001 in anticipation of its transition from an intergovernmental organization to a privatized, privately-held company. The program was developed in-house by Intelsat's Assistant General Counsel and Corporate Compliance Manager, Stephen Chernow. Key program components are: Intelsat's Corporate Compliance Intranet site, Code of Business Conduct and Ethics, on-line training modules, and additional live training sessions for executive committee members. Intelsat's Code is posted on its intranet site and Intelsat employees must certify annually that they have read, understand, and agree to abide by company policies, including the Code. In late 2002, Intelsat rolled out its new on-line compliance training program, which Chernow considers to be a best practice. The training is mandatory for all employees, and the system allows Chernow to track compliance with the training requirements.

PROCESS FOR DEVELOPING INTELSTAT'S CODE

Chernow started virtually from scratch. He researched other companies' codes by looking at their websites, performed on-line research, talked to outside counsel and reviewed samples of redacted codes, and then pulled the information together to develop Intelsat's Code of Business Conduct and Ethics (see sidebar for reprint of the Code). The Code is around 8 pages in length and includes an introductory section emphasizing that Intelsat's Senior Management fully embrace the Code, and an acknowledgement section stating that all personnel will be required to certify annually that they have read, understand and will comply with the policies set forth in the Code.

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ON-LINE TRAINING MODULE-A LEADING PRACTICE

Chernow met with several vendors that offer on-line training packages, and selected an off-the-shelf package developed by Midi Inc. that was rolled out as a mandatory training program towards the end of last year. Chernow is the contact for questions on the Code and training, and shares that the program has received kudos from many who have completed the courses. Chernow also said that he has noticed an increased sensitivity to the issues addressed in modules based on questions received on these subject areas. "I don't expect everyone to understand the subtleties of these issues," says Chernow. "What I want to have happen is for a bell to go off and have a call placed to the relevant lawyer—if that has happened, then the program is working."

Each training module is about an hour long. The training modules are clear, user-friendly, utilize audio and video, and reflect practical business situations, says Chernow. Employees can begin a module, put it on hold while turning to work, and then come back to it when it's convenient to devote the time. Each module has a test at the end, and employees are expected to pass the test to complete the training. No limits on how many times they take the test, so long as they pass at the end.

The initial roll-out was handled via an all staff email from Intelsat's General Counsel and Senior Vice President for Regulatory Affairs, David Meltzer. The roll-out set a required completion date giving staff about 30 days to complete the required training modules. What happens if folks don't complete the required training? They have been advised that the training is part of their job responsibilities, may be a factor in their evaluation, and that managers will be advised of those individuals who haven't completed the training and passed the tests.

Mandatory for employees and contract staff are modules on harassment, export control and insider training. Antitrust training is also required for all salaried (non-hourly) workers. Training on Foreign Corrupt Practices Act is required for a narrower group based on business area. Executive Committee members receive in-person training from Chernow and, with respect to U.S. export controls, Patrick Donovan, Director of Import/Export Controls, on all these, plus other relevant topics.

UPDATES

Chernow shared that the Code has essentially remained the same following enactment of Sarbox. Intelsat's Corporate Secretary, Rick Nash, stated that some changes have been made to Intelsat's Board Guidelines, delegations to the Audit Committee, and Committee Charters. These changes also contemplate anticipated New York Stock Exchange guidelines as a matter of good practice. Like the development of the Code and the entire Corporate Business Conduct and Ethics Program, these latter changes have been primarily in-house efforts. Nash, together with Intelsat's General Counsel, David Meltzer, have developed and delivered briefings and training sessions for Intelsat's Board and related committees on these developments. They have also brought in an insurance broker to provide more specialized overviews.

CHALLENGES

For Intelsat, a key challenge is to familiarize its international Board with issues and requirements in this area, says Nash. "The international composition of our Board brings great strength, but also places a premium on training," Nash shares. Another challenge noted by Nash has been transforming the company from a treaty organization to a privately-held company. An additional challenge is educating and sensitizing Intelsat's workforce to the Company's Code, particularly since a large percentage of the staff were not raised in the U.S. legal environment.

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CRITICAL SUCCESS FACTORS

Support from Intelsat's General Counsel and management has been important to the program. "Managers talk about the program during meetings with their groups and mention the training requirements," says Chernow. Having non-legal company managers publicly embrace the program and communicate its importance is very helpful

Lockheed Martin Corporation

Lockheed Martin Corporation's self-governance program was developed following the company's formation in 1995 through a merger of Lockheed Corporation and Martin Marietta Corporation. Scott MacKay, Lockheed Martin's Associate General Counsel Litigation & Compliance, shares that Lockheed Martin's Code of Ethics and Business Conduct was developed internally with some help from outside consultants. Lockheed Martin's Code was updated in 2003 to incorporate requirements of Sections 301 and 406 of the Sarbanes-Oxley Act. MacKay shares that the Code was initially distributed to each of Lockheed Martin's 125,000 employees during live ethics training sessions, and is provided in hard copy form to all new employees. The Code is a pocket-sized booklet, and versions are printed in English and 13 other languages. The Code is also available to Lockheed Martin employees via its intranet site and is posted on the Investor Relations portion of Lockheed Martin's public website (www.lockheedmartin.com). In addition, a detailed description of Lockheed Martin's self-governance program included in an excellent White Paper written by MacKay; that white paper is included as an attachment to this document (see *The Framework For Corporate Self-Governance: An Effective Ethics and Compliance Program*, by Scott MacKay (February 11, 2003)).

MacKay's view is that a good Code should address both ethical behavior and compliance. Lockheed Martin's Code includes an introductory message from its Chairman and CEO, Vance D. Coffman, and its President and COO, Robert J. Stevens, stating its ethics principles and emphasizing that the Code "applies to all Lockheed Martin employees, members of the Board of Directors, agents, consultants, contract labor, or others, when they are representing or acting for the Corporation." Code elements are headlined in active verbal tense (e.g., "Obey the Law," "Promote a Positive Work Environment," "Work Safely...", etc.). Lockheed Martin's Code also includes a list of interactive multimedia training modules together with a link to access them, a list of "Warning Signs" ("*You're on Thin Ethical Ice When You Hear...*"), a "Quick Quiz" ("*When in Doubt, Ask Yourself*"), information on the company's Ethics HelpLine, and a receipt and acknowledgment statement for employees to sign.

PROCESS

MacKay shared that much of Lockheed Martin's compliance training modules were originally modeled after General Electric's modules, using Code principles from within Martin Marietta's acquired GE Aerospace unit as a template. The majority of the development effort was managed in-house with some outside consultant help. Interactive, multimedia web-based training modules were developed with the help of an external consultant, Midi, and are customized for Lockheed Martin.

TRAINING

MacKay believes that training is an important part of an ethics and compliance program and views Lockheed Martin's training program as a leading practice. Lockheed Martin's Code lists 27 separate compliance and training modules available to employees. Some subjects are mandatory

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for all employees. Business units can also set their own training requirements for other modules and have flexibility to decide what delivery options to use. In his White Paper, MacKay describes the broad range of training delivery options available to Lockheed Martin employees, including: web-based interactive multimedia and CD ROM's, hand-held mobile learning (PDA's), linear videos, all-hands meetings, staff meeting discussions, classroom training, training bulletins, and pamphlets. Lockheed Martin's training program includes a web-based tool called "Qwizard" that allows employees to flexibly take training courses and certify compliance via quizzes taken at the end of the modules.

SARBOX CHANGES

"For Lockheed Martin, Sarbox was not as big of a challenge to meet with regard to Code requirements because Lockheed Martin is used to operating in a highly regulated industry," explained MacKay. Some changes to the Code were made earlier this year though, including: prominently stating that the Code applies to all finance people and directors; re-evaluating and emphasizing provisions in the section addressing the need to report conflicts of interest (to confirm consistency with Section 407 of Sarbox); adding a section on "Making Accurate Public Disclosures" within the headlined section on Keeping Accurate & Complete Records to give more prominence to the subject; posting the Code on Lockheed Martin's web (rather than appending it to the 10K); adding a section on Accountability; and adding a section on How to Contact the Audit and Ethics Committee.

HELP LINE

Lockheed Martin's HelpLine is available 24 hours a day, seven days a week, and is staffed and managed internally.

ETHICS OFFICE AT LOCKHEED MARTIN

Lockheed's program includes its Office of Ethics and Business Conduct that is staffed by individuals devoted full-time to working on ethics issues and programs for the company. The Vice President of Ethics and Business Conduct leads this Office and reports directly to the Office of the Chairman and to the Audit and Ethics Committee of Lockheed Martin's Board. A Corporate Ethics and Business Conduct Steering Committee, chaired by Lockheed Martin's President & COO, was also created and consists of senior corporate officers. The mission of this Steering Committee is to provide "guidance, counsel, and strategic direction on Lockheed Martin's ethics and business conduct programs." Additional ethics and business conduct steering committees have also been created within each business unit.

CRITICAL SUCCESS FACTORS

MacKay emphasizes, "If a company doesn't have emotional and budgetary top level management support, its program will be doomed to fail." MacKay firmly states that Lockheed Martin has the total commitment of senior management to make its program work.

McDonald's Corporation

McDonald's refreshed Standards of Business Conduct prominently quote a 1958 statement made by Ray Kroc, the founder of McDonald's Corporation: "The basis for our entire business is that we are ethical, truthful and dependable." The tone for an ethics program must be set at the top. McDonald's efforts to refresh its Standards began over a year ago, with the full endorsement of the Senior Management Team. In addition to updating its Standards, McDonald's developed separate Codes for its Board of Directors and for its Senior Executives and Financial Officers.

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These Standards and Codes will be posted on McDonald's website (<http://www.mcdonalds.com>) as well as on its intranet. Carol Vix, Senior Counsel at McDonald's, shared that the initial effort to review the Standards was rooted in a desire to re-write them in plain English. The Sarbanes-Oxley developments provided yet another reason to focus on its Standards.

PROCESS FOR DEVELOPING ITS STANDARDS

Vix began by holding meetings with management to determine direction for the effort. Vix then enlisted the help of Steve Priest, an outside consultant with the Ethical Leadership Group, to assist with McDonald's efforts. Vix and Priest met with upper management to set the overall direction for the effort. They then met with representatives from Legal (Vix), Internal Audit, Human Resources, Communications, and Supplier Compliance to develop "scattergrams" of what is important to McDonald's culture to help align the effort with company interests, and held additional meetings over a period of about 18 months to develop the refreshed program. The process also included benchmarking and evaluating other model programs. Vix says the process took longer than she thought it would, but is pleased with the results.

NEW ELEMENTS

As part of this effort and to satisfy requirements of Sarbanes-Oxley and the anticipated New York Stock Exchange requirements, McDonald's added five key program elements: Business Integrity Line; Corporate Compliance Office; separate additional Codes for its Board of Directors and for its Senior Executives and Financial Officers; and provisions on disclosure of waivers within the Standards. A fifth new element, on-line training, will be rolled out in 2004, and will be mandatory.

The refreshed Standards will be distributed both in hard copy and electronically. The roll-out will begin in the U.S. with subsequent roll-outs in international locations. Annual certifications will be lotus notes-based and will provide individuals with an opportunity to report issues. Additional roll-out materials include a magnet with relevant phone numbers, and a business card for Compliance contact information.

REPORTING CONCERNS; BUSINESS INTEGRITY LINE

The hotline is new and will be monitored by an outside vendor. It includes an 800 number and will be available 24 hours a day, 7 days a week. It allows callers to remain anonymous if they wish and has translators available. The existing system for reporting concerns to direct supervisors or other appropriate management remains in place. The Standards include a chart mapping out the process for reporting concerns.

CORPORATE COMPLIANCE OFFICE

McDonald's General Counsel, Gloria Santona, determined that she needed dedicated staff to support the compliance function and established the Corporate Compliance Office, which includes an attorney and a staff member devoted full-time to compliance issues, and has a separate email address, fax number, and phone number. The Compliance Director reports directly to Santona. The Standards include a statement defining the Office's mission: "the Corporate Compliance Office is responsible for overseeing the implementation of, and compliance with, McDonald's standards and policies."

ADDITIONAL CODES

McDonald's refreshed program includes two new additional Codes: Code of Conduct for Board of Directors, and Code of Ethics for Senior Executives and Financial Officers. These Codes will be posted on its website.

DISCLOSURES OF WAIVERS

The Standards include a specific provision to address the issue of waivers and the need to disclose them on the company's website and in SEC filings.

TRACKING SUCCESS

Vix says that the best way to track the success of the program will be through the types of questions that employees start asking and the issues that they identify. "They're already asking questions, but as the program rolls out the types of questions that are raised will be a good indicator that folks are reading, understanding, and trying to apply the program," says Vix.

Olin Corporation

Olin's Code of Business Conduct begins with a letter from Olin's President & CEO, Joseph D. Rupp, communicating the importance of Olin's Code and calling the Code "a valuable roadmap for making sound business decisions." With the Code's roots over 25 years old, today's Code has grown from a 12-page pocket pamphlet to a 40-page document that is available on Olin's website under the tab about Olin ethics (<http://olin.com>). Olin's Code was recently refreshed as part of its continuous improvement efforts in this area as well as to address the recent requirements of the Sarbanes-Oxley legislation.

The Code's design includes sidebar boxes with Questions and Answers providing real-life examples of questions that may arise in day-to-day business. New Code features described as leading practices by Olin's Vice President, Auditing, Business Ethics and Integrity, Robert K. Gebing, include a pull-out wallet card featuring information about Olin's Help-Line, and a tear-out postcard (postage pre-paid) giving employees yet another outlet to provide feedback and report issues to Olin's Corporate Ethics Office, headed by Gebing.

Gebing exudes passion for his responsibilities and for the value and importance of Olin's ethics and compliance program to the company's business success. "As good corporate citizens, we also have a responsibility to share our thoughts and ideas with others – something which we are more than happy to do!"

Gebing emphasizes that Olin's program is much broader than just a Code of Business Conduct. It includes Olin's Values, which are prominently stated in the beginning sections of the Code. The program also includes a broad range of communications, including a creative poster campaign designed to maintain interest and awareness of the program and single subject pamphlets to provide substantive resources on Code and other policy compliance areas. Also key to the program are its training component and its internal ethics resources: the Corporate Ethics Office, its business unit Ethics Officers, and the numerous Ethics Coordinators located at each location.

PROCESS FOR UPDATING CODE

Gebing shared that Olin's updated Code was developed internally, with the assistance of a consultant who has been helping him full-time with the many aspects of Olin's Ethics program. Gebing shared that Olin has been following about a three-year cycle of refreshing its Code. This

latest iteration took about five months to complete. The process began by soliciting input from many sources on new areas to be addressed or areas needing additional clarification. Details of Olin's Help-Line calls were also a source for new questions. With the necessary changes in mind, Gebing met with Olin's Ethics Steering Committee, which consists of Olin's President & CEO, its Chief General Counsel, its Vice President of Corporate Affairs – Human Resources, and Gebing. Once vetted through the Steering Committee, the proposed Code revisions were then sent to senior level business leaders for comment and then to the ethics coordinators at the plant level. This was an iterative process requiring many reviews as changes were incorporated.

CHANGES

Key Code changes include: Help-Line, Financial Reporting and Communications section updates; a tear-out feedback postcard (considered a leading practice by Gebing); and inclusion of a Help-Line wallet card.

Gebing shared that Olin already had a Help-Line in place and it was also referenced in a prior version of the Code. Olin's Help-Line is operated by an independent third-party service (Pinkerton Compliance Services) that can handle multilingual calls and is available 24 hours a day, 7 days a week. In response to Sarbanes-Oxley, the new Code gives the Help-Line resource more prominence, by placing it towards the front of the Code, and specifically states that "all calls are forwarded to Olin's Corporate Ethics Office for resolution with appropriate levels of management, up to and including the Audit Committee of the Board of the Directors for matters involving accounting, internal control or auditing issues." The wallet card is new, and adds to the prominence attributed to the program.

Sarbanes-Oxley requirements were also a factor in adding language to the Records and Information section. More specifically, the subsection on Financial Reporting and Communications includes language on internal controls and improper auditor influence.

TRAINING

Another strength of Olin's program demonstrating its depth is web-based training programs for a broad range of compliance issues. The programs are provided by Integrity Interactive. Olin pays an annual per employee fee for access to the courseware and Integrity administers the program, which includes employee emails, follow-up notices and completion reporting. Gebing estimates that the completion rate is running at 98%. Although many of the modules are off-the-shelf, the front end of all courses are customized to the company so that employees hear messages from Olin executives, and there are also links to Olin's many policies and procedures.

CHALLENGES

Gebing notes that developing a good Code takes time and requires input and consensus from many functional areas. He cautions against drafting Codes that are "overly legalistic." Says Gebing, "If you don't keep it simple and relevant to your audience, the Code will not serve its real purpose – being a key employee resource. At the end of the day, the goal is to ensure that issues are addressed before they become problems. At Olin we believe that a written code will go a long way in helping ensure that the standards of business conduct are understood and complied with."

Pfizer Inc.

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Pfizer considers itself to be a leader in the area of corporate governance and corporate compliance, and in March 2003 received a "Best Corporate Governance award" given by *Investor Relations Magazine*. The company describes its compliance program as extensive and notes that it has been in place for a long time. Not resting on its laurels, Pfizer's Senior Vice President, General Counsel and Corporate Compliance Officer, Jeffrey Kindler, shared that he thinks it's important to always be looking at ways to improve and enhance it. "We've got the right culture here, and that's a critical element. We are always looking for ways to rethink our approaches and further enhance the corporate compliance program to build on that culture."

One place that Pfizer is rethinking its approach to compliance is its Code of Conduct. Kindler believes it's time that Codes of Conduct change. Pfizer is overhauling its Code to be "more interactive." Kindler wants to entice colleagues to be interested, and believes that readers need to be attracted to reading the Code to help raise awareness. Pfizer's *Summary of Pfizer Policies on Business Conduct* is accessible to all via the internet (www.pfizer.com).

Stay tuned though, because Pfizer's Code is changing and will be updated and rolled out mid-September 2003, together with a companion website for employees. Pfizer's plan is to leverage internet-age practices. The company is planning a more accessible printed version of the Code. The associated website will allow for opportunities to "drill deeper" and access more detailed policy documents and FAQs, perform searches, and link to articles. The updated vision for the program was originated in-house through the company's Corporate Compliance Group, a staff of four attorneys dedicated solely to compliance. The group, which reports into Kindler, is managing the project and utilizing an outside consultant, Towers Perrin, to help with the effort.

Pfizer's program includes its Code, the Pfizer Compliance Hotline, web-based customized training modules, and its Open-Door Guidelines. Additional key program elements include its Corporate Compliance Committees and processes and its new Compliance Liaison Program. Internal communications about its program are plentiful, and the program has top management support.

"Pfizer's CEO Hank McKinnell, and our entire senior management team are extremely committed to our program," says Kindler, "and that makes my job as Corporate Compliance Officer a lot easier." What is Kindler's job in this regard? It's assuring that the company's compliance programs are maintained and that compliance issues are prevented to the fullest extent possible.

TRAINING; TRACKING COMPLIANCE

Kindler says that Pfizer is fully convinced that organizations need to train their people on the Code requirements, and Pfizer (with the help of outside vendor LRN) has developed on-line custom training modules on its Code of Conduct. The course takes around 45 minutes to complete, includes a quiz at the end, and provides a system link to certify compliance. The system also allows Pfizer to track training progress and certifications.

Until recently, Pfizer employees received a copy of the Code each year and were asked to certify that they read, understood, and would comply with it. Kindler was concerned that the program lacked an element of interactivity. With this new training program, Pfizer employees will receive an email informing them that they need to complete the training course within three weeks, and the email will include a link to the on-line Code of Conduct training course. Employees will be required to take the course, pass it, and certify via email within the allotted time frame. What

happens if employees don't do it? Kindler says that company policy warns they will be subject to discipline if they don't complete the course.

CORPORATE COMPLIANCE COMMITTEES; MEETINGS RE-TIMED FOR SARBOX

Pfizer's program also includes a Core Corporate Compliance Committee that determines what issues are presented to senior management and the Board, and two additional tiers of committees that bring matters up to the Core Committee: the Matters Committee (reviews and investigates matters; goes through each significant matter), and the General Compliance Committee (group is composed of 21 individuals representing every compliance-related function of Pfizer; provides a forum and opportunity for raising issues; decides what issues go to the Core Committee). Kindler shared that, as a result of Sarbanes-Oxley, Pfizer has re-timed its Compliance Committee meetings to help achieve the required disclosure schedules and precede Sarbox's Section 302 and 906 certification requirements. All of this is part of recent changes implemented by Kindler. "We really wanted to rethink the way the Committee functioned, with an emphasis on how we could make it even more useful and effective," said Kindler. He emphasized that he believes the tiered system ensures that all significant issues in a company of Pfizer's size are properly captured and brought to the Core Committee's attention.

COMPLIANCE LIAISONS PROGRAM; NEW ELEMENT

This element of Pfizer's program is also currently under development. The liaisons will number over 50, and every region will eventually have one. They are held accountable to Kindler for ensuring that he learns about "referable compliance issues." Kindler defines these as significant violations of law or company policy and shared that the liaisons are advised to use their judgment but are also given a list of examples. How does one get to be a liaison? By appointment, and training requirements go with the role. To help reinforce the importance of this role, the Corporate Compliance Group sends periodic emails to the liaisons reminding them of their responsibilities in this area.

PFIZER COMPLIANCE HOTLINE

Pfizer's hotline is operated by an external vendor, Pinkerton, and is a 24-hour, 7 day per week hotline. Individuals have the option of reporting issues anonymously or identifying themselves. If anonymous, a control and PIN number are assigned and individuals can call back to communicate. In addition to a "massive poster campaign" promoting the hotline, Kindler indicates that Pfizer promotes its hotline through the home site of its intranet and mailings to colleague's homes.

OPEN DOOR GUIDELINES; A LEADING PRACTICE

Kindler considers Pfizer's Open Door Guidelines to be a leading practice. The company's Open Door policy allows colleagues to approach any manager with suggestions or concerns and provides a practical way to address issues within the office context. If for any reason an individual is uncomfortable with this approach, the hotline remains an alternative for raising issues. Says Kindler, "We wanted to take our open door program to the next level by making sure that employees know what the policy really means and how it is supposed to work, and that supervisors know what to do when an employee walks through the open door. The Open Door guidelines help us do this."

The guidelines booklet was developed in conjunction with Pfizer's Corporate Human Resources leadership. It includes both a front section describing the open door guidelines to colleagues and

a second section that defines the steps that supervisors should take to appropriately implement these guidelines. An innovative aspect of this is the transparency of the process: employees can see the company's policies on expected supervisor behavior. Pfizer is in the process of training on this program. The training is mandatory for human resources professionals and supervisors, but each business division will decide whether to make it mandatory for colleagues. There is also a website dedicated to the Open Door Guidelines that will soon be available on the company's intranet.

CRITICAL SUCCESS FACTORS

Doug Lankler, Pfizer's Deputy Corporate Compliance Officer, and a former federal prosecutor who pursued non-compliant companies, credits much of Pfizer's compliance program success to senior management. "The reason that the program works," according to Lankler, "is that Pfizer's CEO and its General Counsel believe in this stuff, they make no bones about it, and they regularly emphasize how important compliance is." In addition, Lankler, who heads Pfizer's Corporate Compliance Group and reports to Kindler, shares that "Pfizer isn't afraid to terminate a good performer for compliance failures, and that's a message that comes down directly from our CEO." Another key success factor is establishing internal alliances with other groups, such as Pfizer's human resources, internal audit, and corporate security departments. "Having a close alliance with the business units is also critical." Lankler shares that these internal alliances facilitate the effective use of program resources and enable his group to leverage his management's powerful pro-compliance messages using existing in-house communications tools.

PricewaterhouseCoopers

A November 19, 2002 PricewaterhouseCoopers' press release describes its Code of Conduct as "the accounting profession's first global 'Code of Conduct'." The Code, available in 11 languages, applies globally and can be accessed via PwC's website (<http://www.pwcglobal.com/ethics>).

"The Code is broad by design so that it can be relied upon and implemented around the world," says Barbara Kipp, Partner, Global Ethics and Business Conduct Leader. Kipp shares that PwC has firms in 142 countries and the Code is implemented in and by these firms in a way that is flexible and tailored to each firm. Annual certifications are a part of the Code process, and are transmitted electronically in most places around the world. Asked about Sarbanes-Oxley requirements and whether PwC made any assessments or adjustments relating to Sarbox, Kipp shared that PwC broadly reassessed its Code because "Sarbanes has good guidance whether you're a public company or not." The assessment concluded that no major changes to the ethics program were indicated.

Critical success factors for PwC's program identified by Kipp include: engaging a multi-disciplinary team; linking the Code program to business strategies and issues; getting the global-local balance right; tailoring the program to the kind of people and cultures in the organization and staying away from the "ivory tower syndrome"; and embedding what you do into normal business processes. On embedding into normal business processes, Kipp suggested that asking relevant questions in employee surveys and possibly making embracing and implementing the Code part of the rewards system as ways to demonstrate importance of the program. Most critical of all according to Kipp is the demonstrating the importance of the program through senior leadership support—"you can't get anywhere without this."

PROCESS

PwC's current Code was developed in-house by an international group of individuals from PwC firms around the world. The group decided that it was important "to do more than just have a Code," says Kipp, "we needed to make sure that it is baked into our culture." The Code was rolled out in fall 2002 and took around nine months to develop.

As part of this process, the group identified key standards for implementing the Code program, including: need for leadership support; need for new hires to get trained on the Code; need for current employees to get trained on what it means to raise awareness of ethical decision-making; need for channels to voice questions and concerns; and the need for employees to know about those channels. Each PwC firm around the world has the flexibility to decide how to address these criteria and develop programs to make that happen.

TRAINING

PwC identified training as a key program element for building skills to use its Code. Although each PwC firm has the flexibility to decide who needs to be trained and to develop its own training method and tools for the Code, Kipp shared that a core central team of PwC individuals developed a training tool that PwC firms could use as a starting point. This training toolbox kit was produced in-house and burned onto a CD-Rom with a video embedded into the program.

"An overseas PwC firm of eight people might decide to deliver training via live sessions that include debate and discussion of various case studies, while a larger firm location might choose to develop a CD-Rom training course," notes Kipp. Both methods satisfy the need to have appropriate training on the Code.

In the U.S. where PwC has 23,000 employees, PwC has developed a CD-Rom training course that each person is required to take. It's customized to PwC's Code and was developed with assistance from an outside vendor. Unlike some other on-line training modules, PwC's U.S. module does not include a quiz at the end. Kipp shares that this is by design "because ethical dilemmas don't necessarily have a right or wrong answer; ethical dilemmas are gray." The U.S. training module also has a number of scenarios built into the program that allow for "virtual consultation" with different decision paths built into its capabilities. PwC's firm in the United Kingdom is about to rollout its e-learning training program on the Code. The UK training program was developed entirely in-house by PwC resources.

CHANNELS OF COMMUNICATION; HELP LINE

PwC's program in the U.S. includes a toll-free Help Line. This feature was implemented to help create an environment for people to raise questions or concerns. "Even if there is an open culture and an organization wants people to raise concerns through a normal work group, there may be situations where an alternative is needed" says Kipp.

GOOD PRACTICES

Kipp identifies the decision to link communications relating to the Code to business communications as a "good practice" at PwC. "Regular communication is critical. Communications about the Code need to be tied to what is going on in the business." Noting that people are busy and can be inundated with reading material, Kipp emphasized that she believes that people are more likely to read communications from business leaders than stand-alone newsletters about a company's Code.

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Another good practice in Kipp's view is the global approach taken by PwC to develop its program. The ability to flexibly develop methods to deliver the standards of implementation has helped to allow people in PwC locations around the world embrace the program.

Carefully defining the roles of various company groups is also a good practice identified by Kipp. The Ethics Office, Human Resources, and the General Counsel's Office at PwC all have something to contribute, but their roles are distinct. More specifically, HR's roles include: providing ethics liaison support in the field to help investigate issues; intervening, as necessary, and implementing disciplinary actions; and assisting in rollout of program activities. Kipp explains that the role of the General Counsel's Office is to advise on legal matters that arise in connection with the program. This can include advising on situations that are identified through the Help Line, and also include advising on program development or implementation issues. In Kipp's view, having a corporate general counsel's office drive an ethics program isn't a good idea since it can be too easy to take a legalistic approach to the effort. For Kipp, implementing and embracing an ethics program is a "culture-setting activity."

Robert Wood Johnson Foundation

The Robert Wood Johnson Foundation's Code of Conduct is currently under development, and its author, Warren Wood, Vice President, General Counsel & Secretary of the Foundation, shares that he is nearing production of the first draft. Wood describes the process for developing the Code as a "natural evolution," bringing existing policies together and codifying additional ones. "Although the Foundation does not have shareholders and the requirements of Sarbanes-Oxley don't apply, Sarbox has helped to focus the attention of the Foundation's management and Board on the need to address programs in this area," says Wood.

PROCESS

The Code development effort has been an in-house effort spearheaded by Wood. Resources evaluated as part of the process include ACCA website materials, and other company Codes posted on their public websites. The Code's design will most likely be a broad general statement that will include a Statement of Integrity with the ability to link to separate policy statements for more detail. In addition, Wood will likely incorporate a decision-making diagram that highlights and emphasizes the capacity and need to critically think about issues that may arise. The initial draft will be reviewed first at the Staff level and then vetted with the Foundation's Board prior to finalizing.

CERTIFICATIONS AND TRAINING WILL BE COMPONENTS

For over 15 years, the Foundation has annually distributed its Conflicts of Interest policy to employees and trustees together with a request that individuals certify that they have read, understood and agree to abide by the same. Wood expects to continue to attach the Conflicts certification request as part of the Code. In addition, although the form of training hasn't been determined yet, there will be training as part of the rollout.

CHALLENGES

Wood shares that, since the Foundation is a philanthropic organization without shareholders, "it has been a challenge to adapt and apply the tenor of the Sarbox legislation to the Foundation." Another key challenge has been to develop the Code "as a useful tool that is understandable and

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easily applicable without being so overly mechanical that the formal structure takes the life out of it.”

INDICATORS OF SUCCESS

Wood views the Code as a way of truly impacting corporate culture. He shared that he “can conceive of his office fielding questions and inquiries about the Code-- and that will be the Foundation’s first set of indicators.” A survey may be another key way to monitor program success.

ACCA thanks Renee Dankner, former senior counsel at Mobil Oil Corporation, for her work on this profile.

RESOURCES

Please note that this listing does not constitute a recommendation or endorsement for any product, service or company. Please find below a list of companies and resources identified by companies interviewed or by ACCA as possible resources that may be helpful in developing or assessing records retention programs.

CONSULTANTS

Towers Perrin
<http://www.towers.com>

Ethical Leadership Group
<http://www.ethicalleadershipgroup.com>

ONLINE AND WEB-BASED TRAINING

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

LRN
<http://www.lrn.com>

Midi Inc.
<http://www.midicorp.com>

WeComply*
www.wecomply.com

* WeComply is an ACCA Alliance partner and members using this service are entitled to special ACCA member opportunities. For more information on this or other Alliance benefits, see <http://www.acca.com/practice/alliance.php>.

ORGANIZATIONAL RESOURCES

American Corporate Counsel Association
<http://www.acca.com>
 [See ACCA's Virtual Library for sample codes of conduct and more information on this subject:
<http://www.acca.com/vl> (and enter the search term "code of conduct")]

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

Defense Industry Initiative
<http://www.dii.org>

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

Executive Officers Association
<http://www.eoa.org>

International Business Ethics Institute
<http://www.business-ethics.org>

KPMG's Audit Committee Institute
<http://www.kpmg.com>

PharmaCongress Audio Conferences
<http://www.pharmaaudioconferences.com>

PricewaterhouseCoopers
<http://www.pwcglobal.com>

ATTACHED WHITE PAPER (FROM PROFILED COMPANY LOCKHEED MARTIN)

The Framework For Corporate Self-Governance: An Effective Ethics and Compliance Program, by Scott MacKay, Associate General Counsel Litigation & Compliance, Lockheed Martin Corporation (February 11, 2003)

THE FRAMEWORK FOR CORPORATE SELF-GOVERNANCE:
AN EFFECTIVE ETHICS AND COMPLIANCE PROGRAM

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February 11, 2003

I. Introduction

Until very recently, corporations had become increasingly willing voluntarily to accept responsibility for monitoring their own activities. This trend, in part, was induced by the promotion and encouragement of corporate self-governance by government law enforcement authorities and regulators as well as by corporations' realization that their economic self-interest is served by preventing and detecting employee misconduct.⁵ With the recent proliferation of corporate scandals, however, Congress and the Securities and Exchange Commission ("SEC") have imposed a variety of reforms, most notably the Sarbanes-Oxley Act of 2002 and its implementing regulations, to ensure that corporations strengthen their commitment to ethical conduct and improve their corporate governance practices and their financial and other public disclosures.⁶

Yet despite the rash of new regulatory requirements, self-governance remains critical to a corporation's successful operations. Self-governance is designed to ensure that a corporation aspires to and insists on uncompromising ethical behavior in its activities. Self-governance at its core involves the development of a "corporate ethic" or "corporate culture" of ethical conduct. A vigorous and effective ethics and compliance program provides two critical components of corporate self-governance: it causes a corporation to conduct its business in strict accordance with all applicable laws, rules, and regulations and it persuades corporate employees at all levels that operating within the bounds of the law is in the corporation's interest and, more importantly, in the interest of all of the corporation's employees.

⁵ See e.g., Pendergast & Gold, "Surviving Self-Governance: Common Interests Approach to Protecting Privileges under the DoD Voluntary Disclosure Program," 22 *Public Contract Law Journal* 195-97 (1993); Perry, Dakin & Gharakhanian, "State Attorneys General Encourage Voluntary Corporate Compliance Programs," *Corporate Conduct Quarterly*, Vol. 2, No. 4 (Spring 1993) at 49 - 54; Obermaier, "A Practical Partnership," *The National Law Journal*, November 11, 1991 at 1.

⁶ Pub. L. 107-204, 116 Stat. 745 (July 30, 2002)

This paper will discuss corporate ethics and compliance programs in three respects. First, it will identify the benefits and potential problems associated with developing and implementing a corporate ethics and compliance program. Second, it will outline the minimum elements necessary for an effective ethics and compliance program. Third, it will discuss the experience that Lockheed Martin Corporation has had with the development and implementation of its self-governance program.

II. Benefits And Potential Problems Associated With An Ethics and Compliance Program

A. Benefits of an Ethics and Compliance Program

The development and implementation of an effective ethics and compliance program offers a corporation a number of advantages.⁷ As a fundamental matter, the true value of an ethics and compliance program lies in its ability to detect and prevent criminal and other improper activity by corporate employees. In other words, an effective ethics and compliance program will foster and encourage ethical conduct by employees in all aspects of the corporation's business. Constant reminders (and examples) to employees that it is the corporation's policy to abide by the law and to punish violators discourage and deter criminal behavior and other unethical conduct, discourage employee tolerance of improper activity, and encourage employees to report misconduct to management. The early detection of misconduct maximizes a corporation's ability proactively to respond to and address the causes of wrongdoing and to minimize its consequences.⁸

The financial savings resulting from the prevention or early detection of criminal and other improper conduct are substantial. A corporation can avoid criminal, civil, and administrative fines, penalties, offsets, civil judgments in *qui tam* and class action private securities lawsuits, and the significant legal fees associated with litigation with either the government or private parties. Moreover, an effective ethics and compliance program may prevent the loss of business which will result from suspension or debarment from government contracting, denial of export licenses, the loss of customer confidence, or a damaged reputation. In addition, prevention or early detection of misconduct will avoid the employee morale and productivity disruptions that often accompany an investigation of, or legal action involving, allegations of corporate impropriety.

One of the more significant advantages of a corporate ethics and compliance program is avoiding altogether prosecution for the criminal acts of corporate employees. While an effective ethics and compliance program will not absolve a corporation from criminal liability, the existence

⁷ See generally, "Seven Steps May Help Corporations Avoid Criminal Liability," *BNA Corporate Counsel Weekly*, Oct. 21, 1998, at 7-8; Webb & Molo, "Some Practical Considerations in Developing Effective Compliance Programs: A Framework for Meeting the Requirements of the Organizational Sentencing Guidelines," 71 *Washington University Law Quarterly* 375 (1993); Sandler & Klubes, "The Organizational Sentencing Guidelines: Increased Criminal Penalties for Corporations and the Implications for Corporate Self-Governance," *The Lawyers Brief* (Feb. 29, 1992).

⁸ See "Programs for Employees Keep Companies on Track Ethically," *BNA Corporate Counsel Weekly*, Dec. 9, 1998 at 5 (reporting view that business professionals behave unethically due to pressure to achieve management objectives, with top pressures including: (1) meeting overly aggressive financial priorities; (2) meeting schedule priorities; (3) helping the organization to survive; and (4) rationalizing other peoples' often unethical behavior).

of an effective compliance program is a factor upon which a Federal prosecutor may base his or her decision not to bring criminal charges against a corporation. In a memorandum dated January 20, 2003, Deputy Attorney General Larry D. Thompson includes corporate compliance programs among a variety of factors Federal prosecutors should consider in deciding whether to pursue criminal charges against corporations (the "Thompson Memo").⁹ After noting that the Department encourages the "corporate self-policing" inherent in compliance programs, the Thompson Memo points out that "... the existence of a compliance program is not sufficient, in and of itself, to justify not charging a corporation for criminal conduct undertaken by its officers, directors, employees, or agents." The Thompson Memo acknowledges that "no compliance program can ever prevent all criminal activity by a corporation's employees" but advises prosecutors that the fundamental questions they should ask are: is the compliance program well-designed and does it work?

To answer those questions, the Thompson Memo identifies indicia of an effective compliance program: its comprehensiveness; the extent and pervasiveness of the criminal conduct; the number and level of the corporate employee involved; the seriousness, duration, and frequency of the misconduct; and any remedial action taken by the corporation including restitution, disciplinary action, and revisions to the compliance program. The Thompson Memo identifies the promptness of a corporation's disclosure of wrongdoing to the government and its cooperation with the government's investigation as important factors. High level involvement by the corporation's directors is viewed as critical to the effectiveness of a compliance program, as the Thompson Memo advises prosecutors to evaluate a corporation's compliance program in light of the seminal *Caremark* decision by the Delaware Chancery Court:¹⁰ "... have the directors established an information and reporting system in the organization reasonable [sic] designed to provide management and the board of directors with timely and accurate information sufficient to allow them to reach an informed decision regarding the organization's compliance with the law." Finally, the Thompson Memo directs prosecutors to determine whether a corporation has provided for "a staff sufficient to audit, document, analyze and utilize the results of the corporation's compliance efforts . . . and whether the corporation's employees are adequately informed about the compliance program and are convinced of the corporation's commitment to it."

⁹ Memorandum dated January 20, 2003, To: Heads of Department Components and United States Attorneys, From: Larry D. Thompson, Deputy Attorney General, Subject: Principles of Federal Prosecution of Business Organizations, posted at http://www.usdoj.gov/dag/cftf/corporate_guidelines.htm Other factors identified by the Thompson Memo include: the nature and the seriousness of the offense, including harm to the public; the pervasiveness of the wrongdoing within the corporation, including the complicity in, or condonation of, the wrongdoing by corporate management; the corporation's history of similar conduct; the corporation's timely and voluntary disclosure of wrongdoing and its willingness to cooperate in the investigation, including, if necessary, the waiver of corporate attorney-client and work product protection; the corporation's remedial actions; collateral consequences, including disproportionate harm to shareholders, pension holders, and employees not proven personally culpable and impact on the public arising from the prosecution; the adequacy of the prosecution of individuals responsible for the corporation's malfeasance; and the adequacy of remedies such as civil or regulatory enforcement actions.

¹⁰ *In Re Caremark International, Inc. Derivative Litigation*, 698 A.2d 959 (Del.Ch. 1996); see text at notes 11-12, *infra*.

Even if an effective ethics and compliance program does not prevent prosecution, it can minimize the severity of a corporation's sentence upon conviction. The Organizational Sentencing Guidelines reduce a corporation's "culpability score" by three points if an offense occurred "despite an effective program to prevent and detect violations of the law."¹¹ This reduction can result in substantial mitigation of the sentencing fine range and the corporation's sentencing exposure (in some instances up to eighty percent).¹² In addition, an effective ethics and compliance program may prevent imposition of a burdensome and intrusive sentence to a term of organizational probation.¹³

Aside from having a role in avoiding or mitigating criminal prosecution, an effective ethics and compliance program will reduce the potential for suspension or debarment from government contracting, a serious administrative action that poses a substantial threat to the economic viability of a corporation. The Federal Acquisition Regulation ("FAR") provides, and experience shows, that suspension and debarment authorities will favorably consider an ethics and compliance program in assessing the present responsibility of a corporation.¹⁴

Finally, the creation and implementation of an effective ethics and compliance program may shield company directors from personal liability arising from the wrongdoing of employees. The Delaware Court of Chancery in *In re Caremark International Inc. Derivative Litigation*, in the context of approving a settlement of a derivative action, held that Caremark's directors did not breach their duties to shareholders because they took steps to ensure that the corporation had a compliance system (an "information and reporting system") to assure the board that appropriate information would come to its attention in a timely manner as a matter of ordinary operations.¹⁵ Some of these steps include naming the chief financial officer as the corporate compliance officer, creation of an internal audit plan monitored by a board committee designed to assure compliance with business and ethics policies, and the compilation of an employee ethics handbook concerning compliance policies (including the requirement for all employees to report illegal conduct to a toll-free confidential ethics hotline). The court made two interesting observations. First, it noted

¹¹ U.S.S.G. § 8C2.5(f). The three-point reduction is lost if a "high level individual" or an "individual responsible for administration or enforcement" of the compliance program participated in, condoned, or was willfully ignorant of the offense." *Id.*

¹² See U.S.S.G. §§ 8C2.6 and 8C2.7.

¹³ See U.S.S.G. § 8D1.1(a)(3). In 1996, 96 companies were placed on probation, nearly twice as many as in 1993. "Corporate Monitors Form a New Industry," *The Wall Street Journal* (December 1, 1997) at B12. In some instances, companies have found particularly onerous and disruptive, the conduct of outside monitors appointed by the sentencing court as a condition of probation in order to provide the court with continuing authority over the day to day operations of the corporation.

¹⁴ See FAR subparts 9.406-1(a)(1) and 9.407-1(b)(2); 48 C.F.R. §§ 9.406-1(a)(1) and 9.407-1(b)(2). The FAR is available at <http://www.arnet.gov/far>

¹⁵ *In Re Caremark International, Inc. Derivative Litigation*, 698 A.2d 959 (Del.Ch. 1996). The derivative action before the court arose from a 1994 federal indictment of Caremark, which led in 1995 to Caremark pleading guilty to a single felony charge and its payment of \$250 million in criminal fines, civil penalties, and civil damages.

that any corporate self-governance effort must take into account the requirements of the organizational sentencing guidelines.¹⁶ Second, it pointed out that no rationally designed information and reporting system will remove the possibility that the corporation will violate laws or regulations, or that senior officers or directors may nevertheless sometimes be misled or otherwise fail reasonably to detect acts material to the corporation's compliance with the law.¹⁷

B. Potential Problems Associated with an Ethics and Compliance Program

Although outweighed by the benefits, there are potential problems associated with the implementation of an ethics and compliance program.¹⁸ Once a corporation establishes compliance standards, it must devote the necessary resources to ensure that the standards are met or risk having the compliance program deemed "non-effective" due to lack of enforcement. In some instances, a corporate ethics and compliance program may be used as a sword against the corporation. For example, a prosecutor or plaintiff's counsel may try to use a corporation's ethics and compliance program as the standard by which employee conduct should be judged in a civil or criminal trial, arguing that any failure to meet the program's requirements is indicative of fraudulent intent, a knowing act, or negligence.¹⁹

An ethics and compliance program may generate through reporting procedures and an internal investigation damaging evidence that, if obtained by government investigators or private litigants, will assist in the development of a criminal or civil case against the corporation and could ultimately lead to the corporation's prosecution. Reporting procedures or an internal investigation may also alert corporate employees to suspected wrongdoing and these employees may take advantage of such information and file lawsuits against the corporation under the *qui tam* provisions of the Civil False Claims Act. In that regard, taking disciplinary action against employees may not only cause them to become *qui tam* relators, but can serve as a "roadmap" for government investigators by providing insight into the corporation's assessment of relative culpability among sanctioned employees through a comparison of the varying severity of discipline imposed.

Although the results of an internal investigation are normally protected by the attorney-client privilege, prosecutors and private litigants in some instances nonetheless may obtain access to the information. A corporation may elect to disclose to the government portions of an internal investigation's findings in an effort to avoid indictment, mitigate sentencing exposure or avoid suspension or debarment. Such disclosure, however limited, creates a substantial risk that the corporation will waive the attorney-client or work product privileges, not only with respect to the internal investigation's findings, but to all information related to the same subject matter.²⁰

¹⁶ *Caremark* at 970.

¹⁷ *Id.*

¹⁸ Webb & Molo, "Some Practical Considerations in Developing Effective Compliance Programs: A Framework for Meeting the Requirements of the Organizational Sentencing Guidelines," 71 *Washington University Law Quarterly* 379 (1993).

¹⁹ *Id.*, citing Pitt & Groskaufmanis, "Minimizing Corporate Civil and Criminal Liability: A Second Look at Corporate Codes of Conduct," 78 *Geo.L.J.* 1559, 1605-14 (1990).

²⁰ See e.g., *United States v. Massachusetts Institute of Technology*, 129 F.3d 681 (1st Cir. 1997); *In re Steinhardt Partners*, 9 F.3d 230 (2d Cir. 1993); *Westinghouse Electric Corporation* v.

III. Elements Of An Effective Ethics and Compliance Program

Aside from the substantial volume of literature and websites generated by law firms, consultants, and commentators discussing ethics and compliance programs,²¹ corporations can look to several sources from which to derive the essential elements of an effective ethics and compliance program. The first is the Sarbanes-Oxley Act of 2002 (the "Act") and its implementing regulations promulgated by the SEC. The Act and the SEC regulations provide a mandatory, albeit limited, compliance baseline, at least for public companies that are issuers under the Securities Exchange Act of 1934. However, an effective compliance program includes many elements not mandated by the Act or the SEC. The principal source of those elements are the Organizational Sentencing Guidelines at Chapter 8 of the United States Sentencing Guidelines. Other sources exist, however, particularly for corporations doing business with the Department of Defense ("DoD"). The Defense Federal Acquisition Regulation Supplement ("DFARS") establishes for DoD contractors the general requirement for ethical conduct, defines broad program elements, and provides examples of what a system of management controls should include.²² The Defense Industry Initiative on Business Ethics and Conduct ("DII") principles provide another source for ethics and compliance program elements.²³ Yet another source for the elements of a compliance program for those companies in the health care industry may be found at a website published by the Department of Health and Human Services, Office of the Inspector General ("HHS OIG").²⁴

A. Sarbanes-Oxley Act of 2002

The Act generally addresses securities and public accounting issues raised by the financial reporting scandals involving publicly held companies and their accountants such as Enron, Arthur Andersen, Adelphia, WorldCom, and Tyco. The Act's stated purpose is to improve corporate governance, public auditing, and SEC oversight so that the investing public will be adequately protected. Several of the Act's provisions are relevant to a corporation's self-governance efforts.

Section 406 of the Act requires the SEC to issue rules requiring public companies to disclose whether they have a code of ethics for senior financial officers and that any change to or

Republic of Philippines, 951 F.2d 1414, 1428-29 (3d Cir. 1991); *In re Martin Marietta Corporation*, 856 F.2d 619 (4th Cir. 1988), *cert. denied*, 490 U.S. 1011 (1989); *United States ex rel. Mayman v. Martin Marietta Corporation*, 886 F. Supp. 1243 (D.Md. 1995); *In re Leslie Fay Companies, Inc. Securities Litigation*, 152 F.R.D. 42 (S.D.N.Y. 1993).

²¹ E.g., <http://www.business-ethics.org/links.asp>; <http://eoa.org>; James A. Dobkin, "Fundamental Principles for Organizational Compliance Programs: A Practitioner's Perspective," *Federal Contracts Report*, Vol. 68, October 13, 1997, at 416; Rakoff, Blumkin & Sauber, *Corporate Sentencing Guidelines: Compliance and Mitigation*, Law Journal Seminars-Press (1993).

²² DFARS Subpart 203.70, 48 C.F.R. § 203.70. The DFARS is posted at <http://www.acq.osd.mil/dp/dars/dfars.html>

²³ The DII homepage is at <http://www.dii.org>

²⁴ <http://oig.hhs.gov/fraud/complianceguidance.html>

waiver of a corporation's code be disclosed in a Form 8-K. The Act does not require that a public company have a code of ethics, although the reason for not having one must be disclosed. On January 23, 2003, the SEC released its final rules implementing Section 406 of the Act.²⁵ The SEC rules require a public company to disclose in its annual report on Form 10-K whether the company has adopted a code of ethics for its principal executive officer, senior financial officer, principal financial officer, principal accounting officer or controller, or persons with similar functions. If it has not, the SEC rule requires the company to explain why. The SEC rule defines "code of ethics" as a "codification of such standards as are reasonably designed to deter wrongdoing and to promote": (1) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships; (2) full, fair, accurate, timely, and understandable disclosure in reports and documents the company files with or submits to the SEC; (3) compliance with applicable governmental laws, rules, and regulations; (4) prompt internal reporting to an appropriate person or persons identified in the code of violations of the code; and (5) accountability for adherence to the code. The SEC declined to set forth specific language, procedures, or sanctions required for a code, noting that companies must have the freedom to establish codes of ethics that suit their particular needs and structures.

Section 301 of the Act, among other things, requires that the audit committee of a public company establish procedures for: (1) the receipt, retention, and treatment of complaints received by the company regarding accounting, internal accounting controls, or auditing matters; and (2) the confidential, anonymous submission by employees of the company of concerns regarding questionable accounting or auditing matters. In its proposed rule implementing Section 301 issued on January 8, 2003,²⁶ the SEC did not amplify the statutory language and advised that it would not mandate specific procedures in order to provide companies and their audit committees with the flexibility to develop and utilize procedures appropriate for their unique circumstances. The SEC appears to contemplate a reporting system using a hotline designed to ensure and protect the confidentiality of internal whistleblowers. The SEC rule notes that the establishment of formal procedures for receiving and handling complaints could serve to facilitate disclosures, encourage proper individual conduct and alert the audit committee to potential problems before they have serious consequences. The SEC believes that since the audit committee is dependent to a degree on the information provided to it by management and internal and outside auditors, it is imperative for the committee to cultivate open and effective channels of information. The SEC rule further explains that management may not have the appropriate incentives to self-report all questionable practices and a company employee or other individual may be reticent to report concerns regarding questionable accounting or other matters for fear of management reprisal.

Although not explicitly addressing elements of a compliance program, the certification requirements of Sections 302 and 906 of the Act, as implemented by the SEC,²⁷ will necessarily encourage senior managers to make internal corporate disclosure processes – the so-called "disclosure controls" – subject to or an integral part of the corporation's compliance program. Sections 302 and 906 of the Act require the chief executive officer and chief financial officer of a public company to certify that their company's annual and quarterly reports to the SEC "fairly present," in all material respects, the company's financial condition and results of operations. The SEC rule also requires the chief executive and financial officers to certify that: (1) they are

²⁵ SEC Release 33-8177 (<http://www.sec.gov/rules/final/33-8177.htm>)

²⁶ SEC Release 34-47137 (<http://www.sec.gov/rules/proposed/34-47137.htm>)

²⁷ SEC Release 33-8124 (<http://www.sec.gov/rules/final/33-8124.htm>)

responsible for establishing, maintaining and regularly evaluating the effectiveness of disclosure controls and procedures; (2) they have disclosed to the company's outside auditors and to the audit committee: (a) all significant deficiencies in the design or operation of internal controls which could adversely affect the company's ability to record, process, summarize and report financial data; (b) any material weakness in internal controls; and (c) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls; and (3) they have included information in the quarterly and annual reports about their evaluation and whether there have been significant changes in the internal controls or in other factors that could significantly affect internal controls subsequent to the evaluation.²⁸

The SEC rule defines "disclosure controls and procedures" as controls and other procedures of a corporation that are designed to ensure that information required to be disclosed by the corporation in its periodic reports filed with the SEC is recorded, processed, summarized and reported in an accurate and timely manner to the corporation's management, including the chief executive and chief financial officers. There is a remarkable similarity between this requirement and the touchstone of an effective compliance program identified by the *Caremark* decision: an "information and reporting system" designed to assure the board of directors that appropriate information will come to its attention in a timely manner as a matter of ordinary operations.

B. Organizational Sentencing Guidelines

The Organizational Sentencing Guidelines specify the type of corporate compliance effort that is required for mitigation of a corporation's sentence upon conviction.²⁹ As a practical matter, however, the real benefit to corporations of instituting an effective ethics and compliance program will not be at sentencing, but will be in its role in preventing crime in the first place.

The Guidelines provide that an "effective program to prevent and detect violations of law" means a program that has been reasonably designed, implemented, and enforced so that it generally will be effective in preventing and detecting criminal conduct.³⁰ The hallmark of an effective program to prevent and detect violations of law, according to the Guidelines, is that the

²⁸ As used in the rule, the SEC's concept of internal controls addresses a company's controls and procedures for financial reporting purposes that are currently required to be in place under Section 13(b) of the Securities Exchange Act of 1934 and that are addressed in AICPA Auditing Standard § 319 as follows:

Internal controls is a process . . . designed to provide reasonable assurance regarding the achievement of objectives in the following categories: (a) reliability of financial reporting; (b) effectiveness and efficiency of operations; and (c) compliance with applicable laws and regulations.

On the other hand, the SEC rule intends the concept of disclosure controls and procedures "to cover a broader range of information than is covered by an issuer's internal controls related to financial reporting."

²⁹ U.S.S.G. § 8A1.2. (n.3(k)); The United States Sentencing Commission provides a comprehensive overview of the Organizational Sentencing Guidelines on its website at <http://www.ussc.gov/orguide.htm>

³⁰ *Id.*

organization exercised **due diligence** in seeking to prevent and detect criminal conduct by its employees and other agents.³¹

The Guidelines articulate the minimum steps that the organization must take to establish that it exercised due diligence:³²

- (1) The organization must establish compliance standards and procedures to be followed by its employees and other agents that are reasonably capable of reducing the prospect of criminal conduct.
- (2) High-level individuals within the organization must have been assigned overall responsibility to oversee compliance with such standards and procedures.
- (3) The organization must use due care not to delegate substantial discretionary authority to individuals whom the organization knew, or should have known through the exercise of due diligence, had a propensity to engage in illegal activities.
- (4) The organization must take steps to communicate effectively its standards and procedures to all employees and other agents, *e.g.*, by requiring participation in training programs or by disseminating publications that explain in a practical manner what is required.
- (5) The organization must have taken reasonable steps to achieve compliance with its standards, *e.g.*, by utilizing monitoring and auditing systems reasonably designed to detect criminal conduct by its employees and other agents and by having in place and publicizing a reporting system whereby employees and other agents could report criminal conduct by others within the organization without fear of retribution.
- (6) The standards must be consistently enforced through appropriate disciplinary measures, including, as appropriate, discipline of individuals responsible for failure to detect an offense. Adequate discipline of individuals responsible for an offense is a necessary component of enforcement; however the form of discipline that will be appropriate will be case specific.
- (7) After an offense has been detected, the organization must take all reasonable steps to respond appropriately to the offense and to prevent further similar offenses -- including any necessary modifications to its program to prevent and detect violations of law.

The Guidelines explain that the precise actions necessary for an effective program to prevent and detect violations of law will depend upon a number of factors:³³

³¹ *Id.*

³² U.S.S.G. § 8A1.2. (n.3(k)(1)-(7)).

³³ U.S.S.G. § 8A1.2. (n.3(k)).

- (1) Size of the organization -- The formality of a compliance program will vary with the size of the organization. Larger organizations must have more formal programs with established written policies defining the standards and procedures to be followed by its employees and other agents.
- (2) Likelihood that certain offenses may occur because of the nature of its business -- If the nature of an organization's business engenders a substantial risk that certain types of offenses may occur, the program must focus on those offenses.
- (3) Prior history of the organization -- An organization's prior history may indicate types of offenses that it should take actions to prevent.
- (4) An organization must incorporate and follow applicable industry practice or the standards called for by any applicable governmental regulation.

The Guidelines reward self-reporting and cooperation by sentence mitigation.³⁴ The Guidelines urge an organization to take responsibility for its actions as soon as it detects an offense. The organization must disclose wrongdoing to government authorities and its cooperation must be both timely and thorough. The Guidelines require that the organization must begin cooperating at the time it receives notice of an investigation and the organization must disclose all pertinent information sufficient for law enforcement officials to identify the nature and extent of the offenses and the responsible individuals.

B. DFARS Subpart 203.70

DFARS Subpart 203.70 articulates policy and procedures applicable to government contractor ethics programs that are directly relevant to establishing and implementing a compliance program and, in general terms, complement the compliance requirements established by the Organizational Sentencing Guidelines. The DFARS policy statement is straightforward: government contractors must conduct themselves with the highest degree of integrity and honesty.³⁵ To meet this goal, the DFARS requires that contractors have standards and internal control systems that:

- (1) Are suitable to the size of the company and the extent of their involvement in government contracting.
- (2) Promote such standards.
- (3) Facilitate the timely discovery and disclosure of improper conduct in connection with government contracts.

³⁴ U.S.S.G. § 8C2.5(g).

³⁵ DFARS Subpart 203.7000; 48 C.F.R. § 203.7000.

- (4) Ensure corrective measures are promptly instituted and carried out.³⁶

The DFARS identifies elements that a contractor's system of management controls should provide for:

- (1) A written code of business ethics and conduct and an ethics training program for all employees.
- (2) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with standards of conduct and the special requirements of government contracting.
- (3) A mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.
- (4) Internal and/or external audits as appropriate.
- (5) Disciplinary action for improper conduct.
- (6) Timely reporting to appropriate government officials of any suspected or possible violation of law in connection with government contracts or any other irregularities in connection with such contracts.
- (7) Full cooperation with any government agencies responsible for either investigation or corrective actions.³⁷

C. DII Principles

In 1986, representatives of eighteen defense contractors drafted six key principles of business ethics and conduct. The principles, which became known as the DII principles, pledge the signatory companies to implement policies, procedures, and programs in six areas.

- (1) Company codes of ethics.
- (2) Ethics training for employees.
- (3) Internal reporting of alleged misconduct.
- (4) Self-governance through the implementation of systems to monitor compliance with federal procurement laws and the adoption of procedures for voluntary disclosure of violations to the appropriate authorities.
- (5) Responsibility to the industry through attendance at Best Practices Forums.
- (6) Accountability to the public.

³⁶ *Id.*

³⁷ DFARS Subpart 203.7001; 48 C.F.R. § 203.7001.

The DII principles generally reflect the policies and procedures of corporate self-governance and effective ethics and compliance programs articulated by the Organizational Sentencing Guidelines and the DFARS.

D. Healthcare Compliance Guidelines

The creation of compliance program guidance is a major initiative of the HHS OIG. The HHS OIG believes that development of compliance program guidance will assist a health care provider in using internal controls more efficiently to monitor adherence to applicable statutes, regulations and program requirements and thereby reduce waste, fraud and abuse.³⁸ HHS OIG has issued compliance guidance on a variety of specific areas including the hospital industry, home health agencies, clinical laboratories, third-party medical billing companies, and hospices.

In general, HHS OIG has identified the following as elements for an effective compliance program:

- (1) Implementing written policies, procedures and standards of conduct;
- (2) Designating a compliance officer and a compliance committee;
- (3) Conducting effective training and education;
- (4) Developing effective lines of communication;
- (5) Enforcing standards through well-publicized disciplinary guidelines and developing policies addressing dealings with sanctioned individuals;
- (6) Conducting internal monitoring and auditing; and
- (7) Responding promptly to detected offenses, developing corrective action, and reporting to the Government.³⁹

IV. Lockheed Martin's Self-Governance Program

Lockheed Martin Corporation was formed on March 15, 1995, through the merger of Lockheed Corporation and Martin Marietta Corporation. While each company brought with it a commitment to ethical conduct and compliance programs, the merger afforded Lockheed Martin Corporation a unique opportunity to emphasize core ethical principles central to the new corporation and a self-governance program designed to ensure that those core ethical principles became an integral part of doing business throughout the corporation.

Fundamental to Lockheed Martin's self-governance program is the establishment and promulgation of a strong corporate culture of ethical conduct. In a videotape shown to all new employees, the President and Chief Operating Officer of Lockheed Martin makes it clear that the Corporation is committed to the highest standards of ethical conduct in every aspect of its dealings with all its constituencies: employees, customers, communities, suppliers, and shareholders. The videotape highlights the Corporation's guiding ethical principles:

- (1) Honesty: to be truthful in all our endeavors; to be honest and forthright with one another and our constituencies.
- (2) Integrity: to say what we mean, to deliver what we promise, and to stand for what is right.

³⁸ See 64 Fed.Reg. 61893 (November 15, 1999) at

<http://oig.hhs.gov/fraud/docs/complianceguidance/111599.pdf>

³⁹ *Id.*

- (3) Respect: to treat one another with dignity and fairness, appreciating the diversity of our workforce and the uniqueness of each employee.
- (4) Trust: to build confidence through teamwork and open, candid communication.
- (5) Responsibility: to speak up -- without fear of retribution - and report concerns in the workplace, including violations of laws, regulations and company policies, and seek clarification and guidance whenever there is doubt.
- (6) Citizenship: to obey all the laws of the United States and the foreign countries in which Lockheed Martin does business and to do our part to make the communities in which we live a better place to be.

A key element of Lockheed Martin's ethics and compliance program is high-level program management. To develop and implement its self-governance program, the Corporation established the Office of Ethics and Business Conduct and the position of Vice President of Ethics and Business Conduct. The Vice President of Ethics and Business Conduct reports directly to the Office of the Chairman and to the Audit and Ethics Committee of the Board of Directors. The Vice President of Ethics and Business Conduct attends meetings of and has unrestricted access to the Audit and Ethics Committee of the Board of Directors and reports on matters of ethics, compliance, and business conduct.

The Corporation has also created the Corporate Ethics and Business Conduct Steering Committee. The Committee is chaired by the Corporation's President and Chief Operating Officer, and is further comprised of senior corporate officers including the Vice President of Ethics and Business Conduct, the Senior Vice President and Chief Financial Officer, Senior Vice President and General Counsel, Senior Vice President of Human Resources, Vice President of Internal Audit, Vice President of Business Development and, on a rotating basis, one Business Area Executive Vice President and four Business Unit Presidents representing the other business areas of the Corporation. The Committee meets quarterly to provide guidance, counsel, and strategic direction on the Corporation's ethics and business conduct programs to include monitoring compliance with applicable laws, regulations, and business practices policies, oversight of corporate-wide ethics education and awareness programs, reviewing ethics and compliance program performance of business units (including foreign locations), and reviewing ethics helpline statistics, trends, and survey data.

Each business unit within Lockheed Martin has established a steering committee with similar responsibility for management and oversight of its ethics and business conduct program. A business unit committee is chaired by the business unit president and includes, at a minimum, the senior human resources, legal, internal audit, and finance executives, and the business unit ethics officer.

The Corporation has developed and distributed to each of its more than 125,000 employees a code of conduct designed to ensure that every employee understands and adheres to the Corporation's principles of integrity and ethical behavior as well as its policies and procedures. Lockheed Martin's Code of Ethics and Business Conduct, entitled "Setting the Standard," updated in 2003 to incorporate the requirements of Sections 301 and 406 of the Sarbanes-Oxley

Act, provides a common source of reference for general ethical guidance for all employees at every level of the corporation. The code initially was distributed to each employee individually by his or her immediate supervisor during annual live ethics training and is provided to all new employees. All employees must acknowledge receipt of the code in writing or via electronic acknowledgment. The code, published in English and 13 other languages, is a pocket-sized, spiral-bound booklet, which articulates the Corporation's core ethics principles of honesty, integrity, respect, trust, citizenship, and responsibility, as well as general standards of conduct and principles to guide employees in their daily activity. The code is also available for viewing by all employees, suppliers, or any other interested party at the Ethics Home Page at the Corporation's website: www.lockheedmartin.com/about/ethics/code_of_ethics.html. Those general standards of conduct include:

- (1) Treat in an ethical manner all those to whom Lockheed Martin has an obligation.
- (2) Obey the law - Compliance with the law does not comprise our entire ethical responsibility, it is a minimum, absolutely essential condition for performance of our duties.
- (3) Promote a positive work environment.
- (4) Work safely.
- (5) Keep accurate and complete records.
- (6) Record costs properly.
- (7) Strictly adhere to all antitrust laws.
- (8) Know and follow the law when involved in international business.
- (9) Follow the rules in using or working with former government personnel.
- (10) Follow the law and use common sense in political contributions and activities.
- (11) Carefully bid, negotiate, and perform contracts.
- (12) Avoid illegal and questionable gifts or favors.
- (13) Steer clear of conflicts of interest.
- (14) Maintain the integrity of consultants, agents, and representatives.
- (15) Protect proprietary information.
- (16) Obtain and use company and customer assets wisely.
- (17) Do not engage in speculative or insider trading.

To ensure complete and effective implementation of its ethics and compliance program, Lockheed Martin has created a corporate-wide ethics and business conduct organization. The

Office of Ethics and Business Conduct is responsible for the overall administration of the Corporation's ethics and business conduct program. The Vice President of Ethics and Business Conduct and business area executive vice presidents have appointed business area ethics directors while business unit ethics officers have been appointed by their respective business unit presidents in consultation with the Office of Ethics and Business Conduct. The business unit ethics officers report directly to their business unit presidents. Ethics officers are responsible for coordination and oversight of ethics programs and processes and serve as primary points of contact between the business unit and the Office of Ethics and Business to assure effective implementation of ethics awareness and reporting processes. The ethics officers advise and support business area executive vice presidents and business unit presidents in evaluating ethics issues and establishing and enforcing ethics policies and practices. In addition, ethics officers initiate investigations into allegations of misconduct and assure appropriate review and disposition, to include coordination necessary for discipline or corrective action.

Important components of the Corporation's self-governance program are its reporting and information hotlines, or "HelpLines." Ethics officers and confidential ethics helplines are available to all employees at both the operating business units and corporate level. Employees are urged via training, in the code of conduct, and by poster to use these resources without fear of retribution whenever they have a question or concern that cannot be readily addressed within their work group or through their supervisor. It is Lockheed Martin policy to foster a free and open atmosphere that allows and encourages employees to make inquiries, express work-related concerns regarding ethics issues, and to report business ethics violations or violations of law, regulations, policies, or procedures without fear of retribution or retaliation for making such reports or inquiries. Posters placed on bulletin boards throughout the Corporation identify the appropriate ethics officer by name, provide a photograph, and include his or her telephone number, as well as toll-free Helpline numbers.

Ethics awareness and compliance training of each employee is an essential element of the Corporation's self-governance program. Training programs are centrally developed and locally administered and are designed to ensure that all employees are sensitive to ethical issues and standards. Moreover, the training programs are designed to ensure that all employees are aware of applicable laws, regulations, and standards of business conduct both in general and as they pertain to the employee's specific job function, as well as the consequences both to the employee and the company that may result from violations.

A key element of Lockheed Martin's ethics and business conduct program is a requirement that each employee receive live ethics awareness training from his or her supervisor on an annual basis. In 2000 and 2001, the training tool was *Ethic Daily*, a *USA Today*-style newspaper. *Ethic Daily* training focused on the application at work of the ethics principles of honesty, trust, respect, integrity, responsibility and citizenship. During the training, employee teams analyzed selected scenarios, styled as newspaper articles, and patterned on real workplace situations that occurred in the Corporation. Employees developed appropriate actions based on an article's facts, identified the applicable ethical principles that these actions entailed, and created headlines to describe the article. In 2002, the training tool was called "Perspectives – Lockheed Martin Ethics Challenge." Employee teams were presented with different fact situations in which each team was assigned a separate role. The training was designed to emphasize the different perspectives people bring to a situation, the different conclusions that result, and that different conclusions do not necessarily imply unethical behavior. Managers and supervisors, who personally conduct the training for their employees, facilitate ethics awareness training sessions. The training begins with the Lockheed Martin Chairman and Chief Executive Office conducting training with his senior staff. Ethics awareness training then cascades from the top down to the business areas and business units throughout the Corporation.

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The Corporation believes that for its ethics program to be effective, supervisors and managers must link their dialogues on performance to reminders about the Corporation's values emphasizing mission success, teamwork, and a commitment to the highest standards of ethical business conduct. All employees at Lockheed Martin are part of the ethics program, and supervisors and managers are responsible for leading the annual ethics awareness training sessions.

Compliance training related to business conduct is the complement of ethics awareness training in the Corporation's self-governance program. Compliance training is developed and implemented locally based on broad guidance from corporate elements. Designated corporate staff ("responsible executives") is charged with ascertaining training needs in their areas of responsibility, ensuring that compliance areas are identified, and that appropriate training materials and curricula are developed and implemented. The corporate responsible executives name corporate subject matter experts to support the compliance effort.

Every three years, corporate elements as well as business areas and business units, develop or update a compliance training plan tailored to their respective organizations, consistent with guidance from the Office of Ethics and Business Conduct. Each business unit names its own responsible officials and subject-matter experts for each area identified for training. To ensure that each employee is knowledgeable about applicable laws, regulations, and standards of business conduct pertinent to his or her particular job function, the plans include a training matrix detailing the training to be provided, how it will be conducted, who will receive the training, and how it will be tracked and reported.

Compliance training is provided locally at business units through a number of delivery options, including: web-based interactive multimedia and CD ROM's, hand-held mobile learning (PDA's), linear videos, all-hands meetings, staff meeting discussions, classroom training, training bulletins, and pamphlets. Business units have the flexibility to determine which combination of delivery options offers the most effective and efficient manner in which to conduct compliance training. Web-based training available includes, among others, Antitrust, Diversity, Domestic Consultants, Environment Safety and Health, Ethics, Ex-Government Employees, Export Control, Foreign Corrupt Practices Act, Harassment in the Workplace, Insider Trading, International Consultants, Kickbacks and Gratuities, Labor Charging, Material Cost, Organizational Conflicts of Interest, Procurement, Procurement Integrity, Product Substitution, Protecting Classified Information, Records Retention, Sensitive Information Protection, and Truth-in-Negotiations. The web-based training and its record management is completely automated. Employees can view their own training records, automatic email notification of training completion are sent to employees and their supervisors, and management has instant access to employee training records and can assign required training.

In an effort to increase the efficiency and lower the costs of compliance training, the Corporation has implemented a web-based tool called Qwizard. Qwizard allows employees to take compliance training quizzes, the same quizzes taken at the end of a training module, on-line at their desks. Qwizard enables employees who know the material in the training modules to reduce significantly the amount of time they spend on recertification compliance training without compromising the Corporation's ability to say with absolute certainty that employees demonstrate the compliance knowledge and competency they need.

The Corporation believes that continuous reinforcement of the commitment to ethical business conduct is an essential component of its self-governance efforts. To that end, there are frequent ethics columns in *Lockheed Martin TODAY*, the corporate-wide newspaper. Each *TODAY* ethics column focuses on current activities of the Office of Ethics and Business Conduct

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or addresses issues of general interest. A periodic guest ethics column by corporate executives is published as tangible evidence of senior management's involvement in and support of the ethics process at the Corporation. Moreover, current ethics and compliance related materials and items of interest, together with links to other ethics sites, are available to employees not only on the Corporate Business and Ethics Conduct Office's website, but on a variety of websites maintained or supported by Lockheed Martin company ethics offices across the Corporation.

Three final elements are essential to Lockheed Martin's self-governance program. First, internal audit each year creates an audit plan for and audits the Corporation's operations for compliance with its ethics and compliance program. This audit effort is in addition to internal audit's more traditional compliance-related focus on internal controls and compliance. Included in this audit coverage is a review of the Corporation's progress in completing compliance training requirements. Second, all Lockheed Martin employees are surveyed bi-annually on a voluntary and confidential basis. The surveys are done on-line and on paper and the findings assist management in understanding the ethics perspectives of its employees and identifying adjustments necessary to ensure the continued effectiveness of the ethics and business conduct program. Third, as part of its self-governance program, Lockheed Martin has adopted a policy of voluntarily disclosing to responsible governmental authorities violations of law or significant employee misconduct. Lockheed Martin has found that employee awareness and appreciation of the Corporation's policy to disclose improper behavior to the government is an extremely effective method of communicating to employees the unequivocal nature of the Corporation's commitment to ethical behavior and is a powerful deterrent against improper behavior.⁴⁰

V. Conclusion

Like many corporations, Lockheed Martin Corporation has taken responsibility for self-governance because it is the right thing to do and because ethics and compliance programs are a good business practice. Lockheed Martin's self-governance program goes beyond a mere focus on rules that is associated with many compliance programs, to a broader focus on ethical values and conduct as a way of business. In doing so, Lockheed Martin seeks to prevent employee misconduct before it happens and thereby successfully measure up to the intense scrutiny and high standards to which the government, shareholders, industry, and the public hold Lockheed Martin in all its operations.

Lockheed Martin's efforts in that regard were formally recognized on September 8, 1998, when the American Society of Chartered Life Underwriters & Chartered Financial Consultants announced that it had awarded to Lockheed Martin Corporation its 1998 American Business Ethics Award ("ABEA") in the public company category. Awarded annually since 1994, the

⁴⁰ The Organizational Sentencing Guidelines reward self-reporting and cooperation, U.S.S.G. § 8C2.5(g), and require, as part of an effective program to prevent and detect violations of law, that a corporation adequately discipline an employee responsible for a violation of the law. U.S.S.G. §8A1.2. (n.3(k)(6)). Companies confronted with employee misconduct are becoming increasingly willing to disclose that misconduct to government law enforcement agencies and to cooperate with the government's investigation of the employee. See "Pollution Case Highlights Trend To Let Employees Take the Rap," *The Wall Street Journal* (October 9, 1997) at B8. In response to *The Wall Street Journal's* article, one commentator has advised that turning against an employee may not always be the optimal course of action for a company, as the company may need the cooperation of such employees for its defense and casting individual employees aside may hasten their turning against the company. Richard M. Cooper, "Is It Always Smart for a Company to Let Employees Take the Rap?" *Business Crimes Bulletin*, Vol. 4, No. 9 (October 1997) at 1.

ABEA recognizes companies from three categories -- public company, private company, and small business -- that demonstrate a firm commitment to ethical business practices in everyday operations, management philosophies, and response to crisis or challenges.



LEADING PRACTICE PROFILES SERIES:

**LEADING PRACTICES IN CORPORATE GOVERNANCE PROGRAMS
FOR REPORTING CONCERNS**

DECEMBER 2005



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LEADING PRACTICES IN CORPORATE GOVERNANCE PROGRAMS FOR REPORTING CONCERNS: WHAT COMPANIES ARE DOING

Featured in this Profile are LEADING PRACTICES implemented and under development by law departments at the following six companies:

Baxter International, Inc., Pharmaceuticals and Medical Equipment, Deerfield, IL..... Page 9
General Electric, Aircraft Engines, Locomotives, Appliances, Financial Services, Fairfield, CT..... Page 13
Honeywell, Aerospace, Automation and Control, Specialty Materials, Morristown, NJ..... Page 16
Motorola, Wireless Communications and Software, Schaumburg, IL..... Page 20
ServiceMaster Company, Housecleaning, Pest Control, Landscaping, Downers Grove, IL..... Page 24
Fortune 500 Company..... Page 25

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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Rationale

Creating an effective program for reporting and responding to concerns is about much more than having a helpline and distributing glossy brochures, posters, and wallet cards. While designating communications channels and advertising their availability are important program components, more fundamental and absolutely vital to the success of these programs is setting the right 'tone-at-the-top' and creating an overall corporate mindset and culture that values compliance, acting with integrity, and doing the right thing.

Effective programs make asking questions and reporting concerns easy. They also clearly communicate how that can be done, clarify the company's expectations of individuals regarding these activities, provide training to help individuals recognize when they have a question and when reports of concerns are being made to them, establish processes for investigating and resolving questions and concerns, and communicate the company's position regarding non-retaliation for reports made in good faith. In-house lawyers can play leading roles in helping to develop and implement these policies and programs.¹

Some refer to these programs as whistleblower programs - mechanisms that allow employees to report suspected wrongdoing without fear of retaliation. Indeed, recent highly publicized cases involving allegations of fraud and corporate excess have highlighted the roles individuals can play in exposing misconduct and failures. Others take a broader view of the scope, impact, and character of these programs, and characterize them as mechanisms for asking questions, getting help, and reporting concerns. This latter view shifts these programs from hotline-type complaint vehicles to helpline integrity and compliance mechanisms.

Why create reporting mechanisms - what is the business case? The answer for most corporate counsel is that it makes good business sense to have designated channels and resources available for communicating and resolving questions and concerns. Getting help before questionable actions are taken or concerns become problems (or larger problems) is more efficient and cost-effective than investing resources to address problems after they occur. Another compelling reason for adopting these programs? Reporting systems are considered by the U.S. government to be one of the minimum criteria of an effective compliance and ethics program—a factor considered by federal prosecutors in deciding whether to criminally prosecute an organization and in evaluating any credit that may be available in the sentencing phase.² In addition, local laws and/or stakeholder requirements may mandate corporate mechanisms for asking questions and reporting concerns. And for public companies and those traded on the New York Stock Exchange or NASDAQ, the Sarbanes-Oxley Act of 2002 and all exchange listing standards impose additional, more specific requirements for having confidential procedures for handling complaints regarding accounting or auditing matters.³ These latter requirements have created challenges for multinational companies and left unsettled questions of how best to implement these programs on a global basis - particularly for companies doing business in some countries in Europe.⁴

Featured in this Profile are programs and practices for reporting concerns implemented by the following seven companies: Baxter International; GE; Honeywell; Motorola; ServiceMaster; a Fortune 500 Company; and a Multinational Diversified Manufacturing Company Headquartered in Europe. Company representatives provided information on policies, channels, and methods for reporting concerns, and on their processes for evaluating and responding to concerns. In addition, representatives provided thoughts on elements of their company's practices they consider to be leading practices.

Section I below summarizes key themes and program insights gathered from discussions with representatives from the companies, including their thoughts on elements of their programs that they consider to be leading practices. Section II describes the programs of each of the seven 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 policies and programs for reporting concerns for their companies.

I. SUMMARY OVERVIEW OF PROGRAMS & THEMES

Companies interviewed for this Profile have developed programs for reporting concerns that are part of broader corporate governance and compliance and ethics initiatives. Included within each company's governance codes or guideline documents are provisions summarizing what to do to ask for help and/or to report concerns. These provisions identify a number of channels and methods available for communicating concerns. In addition, the provisions include statements regarding confidentiality and the ability to provide information anonymously. Statements regarding prohibitions on retaliation against individuals reporting concerns in good faith are also included.

Channels For Reporting Concerns

Several companies identify an individual's supervisor or manager as the preferred channel for reporting concerns. Companies also provide a broad range of additional options, including identifying as possible resources: functional managers, local business resources or subject matter experts (such as legal, human resources, etc.), the company's Corporate Responsibility Office/ Office of Compliance and Ethics/ Corporate Ombudsman (or other function with similar role), Helplines, regional business practice committees or regional ombuds resources, corporate support departments, and the company's audit committee. Several companies specifically list the legal department as an available channel for reporting concerns. Some companies also identify their corporate investigations group or the Head of Internal Audit as an available channel. One company described an annual certification of integrity and compliance process that provides opportunities to raise issues or concerns.

Range Of Standards For Reporting Concerns

The provisions developed by the companies for reporting concerns and asking questions are all different. Some provisions describe reporting as a requirement or obligation; others describe it as an expectation. Among the types of standards used by the various companies are descriptions of:

- Requirements to report any suspected or known violations;
- Obligations to raise concerns regarding possible violations of company policy or the law;
- Requirements to report suspected violations of the Code or company policies or procedures promptly;
- Expectations for employees to report concerns regarding possible violations or unethical conduct, with additional responsibilities for managers described as having to diligently look for indications that unethical or illegal conduct has occurred and report it;
- Statements that the company encourages and expects reporting of violations of laws, rules, regulations, the Code and company guidelines; and

- Provisions regarding the employees' responsibility for bringing to management's attention any questions or concerns regarding compliance with law, the company's policies or the Code.

Themes

While the specifics of the programs vary, below is a summary of some themes and practices that emerged from discussions with company representatives.

Code Provisions on Reporting Concerns: Companies have included provisions on reporting concerns within their codes of conduct/ business practice standards or other similar integrity and ethics governance documents. For several companies, these provisions may be found in sections with titles such as: "Raising Integrity Concerns," "What to Do if You Have A Concern About Business Practices," "How to Get Help," or "Who Can Answer My Questions or Concerns." Some companies include these provisions within code sections that describe employee responsibilities. The provisions generally describe the companies' standards for reporting concerns and identify avenues and methods for reporting.

Additional Policies/Guidelines Relating to Financial Integrity: Some companies described having additional policies or guidelines with specific provisions for reporting accounting, auditing, and financial-related concerns.

Helplines: Companies described having helplines as available channels for asking questions or reporting concerns. Three companies described administering their helplines internally; four described using an outside service provider to initially receive helpline communications. Internally administered helplines are generally answered during certain specified business hours, and telephone communications outside those hours are received by voice mail. Representatives shared that their helplines are available 24/7 and include language support services. Provisions describing helpline channels identify whether helpline communications may be made anonymously.

Two companies described having more than one helpline, with one company having both an EthicsLine and an Audit Committee Line and another company having multiple helplines at the corporate, business, country-specific, and local levels.

Form of Helpline Communications: Information received by helpline administrators includes contacts via telephone, email, and postal service. Some companies described receiving written reports of helpline communications from their outside helpline administrators. One company described receiving recordings of helpline communications with voices disguised so that they cannot be identified.

Guidelines for Outside Helpline Service Providers: Some companies described developing and providing to outside helpline service providers guidelines on who within the company should receive information on certain types of matters, together with reporting time frames for forwarding various types of information, and escalation guidelines.

Initial Company Contacts for Receiving Helpline Communications: For companies that administer their helplines internally, individuals within their business standards or ethics functions or ombuds networks are described as being on point for initial intake of these communications. For companies that have externally administered helplines, several of these companies described having their Compliance and Ethics Office initially receive information from the external administrators or be copied on transmittals of information to other designated company contacts. One company shared that its Head of Internal Audit is on point for receiving information from its outside helpline administrator; another described having helpline coordinators within the business units receive the information from the helpline vendor, with copies to the Vice President of

Compliance & Ethics.

Matter Tracking Systems: Several companies described practices involving database systems for tracking helpline matters. Some shared that individuals within their compliance and ethics or similar offices are on point for entering information into the system. One company described having its Vice President, Litigation, Policy and Compliance on point for oversight responsibility for the ombuds database. Another company described practices that utilize a case management system provided by its external helpline provider whereby the external provider creates the initial case files from matters received, and certain authorized individuals within the company may add information on findings and case closure. Representatives shared that matter management systems include features that allow for sorting and evaluating data.

Regional and Business Unit-Level Resources: Some companies described having regional business practices committees or regional ombuds who play a role in programs for reporting of concerns. In addition, at the business unit level, some companies described having business unit integrity and compliance officers, business unit helpline coordinators, or business unit ombuds. One company described having a global ombudsperson network of around 400 individuals who serve as points of contact for integrity questions or concerns and also help assess, investigate, determine appropriate actions, improve processes, and provide feedback on matters reported pursuant to the company's programs.

Internal Investigations: Several companies described having or developing policies and procedures for performing internal investigations relating to reported concerns. Some companies shared that their integrity and compliance offices play a leading role in evaluating reported information and determining next steps. A sample internal investigation policy for one company may be accessed via link in the Resource List in Section III of this Profile.

Role of In-House Lawyers: Companies described various roles performed by in-house lawyers in connection with their programs. One company noted that in-house lawyers play leading roles as committee members on the company's Business Practice Standards and Regional Business Practices Committees. Some companies shared that the leader of their compliance and ethics function reports organizationally to the General Counsel. One company noted that some of its in-house lawyers also serve as business unit-level corporate compliance officers. In addition, some companies specifically listed in-house lawyers as available or required channels for reporting information/certain types of information. In-house lawyers were also described as playing key roles in program and policy development and in advising on steps to take relating to developing reports and conducting investigations.

Ability to Submit Concerns Confidentially or Anonymously: Several companies described program provisions for submitting concerns in an anonymous or confidential manner. Some companies also described limitations on the ability to keep information confidential.

No Retaliation Statements: Companies described code provisions and company policies emphasizing that retaliation for reports made in good faith is impermissible and would not be tolerated.

Training: Some companies described specialized training for personnel playing roles in their companies' systems for reporting concerns. Among the types of training offered, are training for managers on when to recognize that a student is making a complaint or expressing a concern.

Leading Practices

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

Leadership's Commitment and Message: the company's leadership's ability to create and sustain the message and set the mindset for integrity as something that is important to uphold and protect is emphasized as being a leading practice that sets the overall tone for the Company's integrity programs.

Managers' Roles in Compliance and as Role Models: requiring business leaders to acknowledge compliance accountability by their words and actions and to 'own' responsibility for compliance and be "leaders by example" is described as a leading practice by one company representative. In addition, another representative shares that having managers serve as role models and keeping the company's expectations in the forefront helps to create an environment where employees can come forward and feel comfortable.

Bottoms-up Reporting Culture: having a culture and environment where people are comfortable with bottoms-up-reporting is described as a leading practice that includes as cornerstone components helping employees to understand their obligations with regard to compliance and what to do when there are questions, and communicating the Company's desire to know.

Organizational Structure for Reporting Ethical Business Practices: identified as a leading practice that includes having a Corporate Responsibility Office and Regional Business Practice Committees that have rotating business leadership—a program element described as being "critical to the success of these functions and to emphasizing fundamental business buy-in to the company's overall program."

Direct Reporting Structure of Business Practices Leader to the Public Policy Committee of the Board: described as a leading practice that helps emphasize the connection between the Business Practices function and the company's Board.

Business Conduct Leader Network: a network of approximately 250 to 300 employees around the world that plays important roles in responding to and investigating employee integrity and compliance inquiries and concerns.

Communications Regarding Availability of the EthicsLine and the Audit Committee Line: identified as a leading practice that provides information about the availability of these two internally administered helplines with separate toll-free phone numbers, emails and postal mail boxes.

Annual Certificate of Integrity and Compliance: a leading practice described as involving approximately 25% of the company's global workforce, including all employees at the manager level and above and all sales representatives. The process is web-based, and includes asking individuals to certify that they have read, understood, and followed the company's standards during the past year. The certification questionnaire also provides the opportunity to raise issues of concern and includes a question on the ability to raise questions without fear of retaliation.

Matter Management System & Training: a system administered by the company's Integrity and Compliance Office that includes reports of information both received by the company's helpline vendor and by other sources within the company. The matter management database is described as being an important part of the company's overall program that enables a "company-wide view of issues, and an accurate picture of trends." Because information may be input by individuals in

Leading Practices

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addition to those within the Integrity and Compliance Office, the company has provided training to key personnel on documenting and reporting concerns that are received locally. In addition to using the database for managing program implementation relating to reporting of concerns, the company also uses the database for information on accounting and financial controls.

Use of Helpline Provider's Case Management System Services; Escalation Guidelines for Financial Concerns: identified as leading practices relating to information intake and management. The system includes the ability to enter an initial report (performed by the helpline provider), document findings and resolution (encrypted), input follow-up information on related calls and helpline responses to callers, and utilize a 'data miner' to review cases and customize reports. Notification of system entries is sent to company helpline coordinators with a copy to the company's Vice President of Compliance & Ethics. The company has developed and provided to the helpline provider an escalation protocol for matters involving financial concerns.

Relationship with Helpline Service Provider: including participating on a client services advisory committee consisting of selected representatives from 25 of around 1500 clients of the company's service provider. Participating on the committee is described as a leading practice that helps shape the future and direction of services of the company's external helpline provider.

Training Video on Compliance & Ethics Awareness: a video created in-house for the company's Executive Action Team of senior business leaders, the video demonstrates the ability to take broad concepts regarding compliance and ethics and communicate them in a meaningful, memorable and interesting way to employees.

Single Complaint Reporting Procedure: identified as a leading practice that allows the company to be compliant and using simple technology to gain efficiencies. The procedure involves having all complaints by email and via phone submitted to a single mailbox for review and action. The associated training for managers on how to recognize the type of complaint and escalate them via appropriate channels is also described as a leading practice.

Global Code of Business Conduct: described as a leading practice by one company representative.

Baxter International Inc.

II. COMPANY PROGRAM SUMMARIES

Following are summaries from discussions with seven companies about their policies and programs for asking questions and reporting concerns.

Baxter International Inc.

Baxter International Inc. operates in over 100 countries and has approximately 48,000 employees worldwide. The company's business practices program has been in place since 1993, and Gretchen Winter, Vice President and Counsel-Business Practices, shares that the company's program included many of the now-required corporate governance elements under Sarbanes-Oxley Act well before the legislation was introduced. Describing the company's commitment to ethical conduct and operating with integrity, Winter explains that the Baxter's ethics program is 'values-based,' and notes that its compliance initiatives are consistent with the company's shared values and commitment to operating with integrity.

The company's policies and practices include numerous avenues for asking questions and report-

ing concerns, including a Business Practice Standards Helpline that is administered internally by the company's Corporate Business Practice function led by Winter. Summarized below are some of the key aspects of the company's programs and practices in this area, including an overview of Baxter's organizational structure for supporting the company's ethics and business practice programs and descriptions of the provisions for raising business practice issues included within the company's Global Business Practice Standards manual and the company's annual certification process for compliance and integrity.

Organizational Structure For Business Practices Program

The Public Policy Committee of the company's Board of Directors is responsible for overseeing the company's ethics and business practice standards. Also playing key roles in carrying out these duties are the company's Corporate Responsibility Office (CRO), Regional Business Practices Committees (RBPCs), and the Corporate Business Practices function (currently led by Winter).

Corporate Responsibility Office (CRO): Created in 1993 to assist the Board of Directors in carrying out its oversight responsibilities for the ethics and business practice standards, the CRO consists of 5 members, including by position the company's General Counsel, the Vice President of Audit, and the Vice President & Counsel-Business Practices. In addition to these members by position, are two senior business unit leaders who each serve 2-year terms and who lead the team as the Chair and the Vice Chair of the CRO. Winter emphasizes the significance of having business leaders at the helm of the CRO noting that it "underscores the importance of having business unit leaders driving the commitment to doing business with integrity." Additional information on Baxter's CRO, including its four-prong mission statement, may be accessed via Baxter's website at http://www.baxter.com/about_baxter/sustainability/our_values_and_standards/cro.html.

Regional Business Practice Committees (RBPCs): Established by the CRO in 1996, these four committees exist to help carry out the CRO's activities on a global basis. More specifically, Baxter has RBPCs for each of the following four regions: Asia-Pacific, Europe, Latin America, and U.S.-Canada-Caribbean-Costa Rica. Composition of the RBPCs follows the same general model as the CRO, with several members by function (including representatives from legal, human resources, finance, and Business Practices) and senior business leaders who hold positions on the RBPCs. This element of the company's organizational structure for supporting ethics and business practices is described by Winter as "invaluable and unique," and a practice that allows the company to "consider and implement global initiatives and standards locally." The RBPCs are also described as being instrumental in helping to train people using relevant examples of situations that may arise around the world.

Corporate Business Practices Function: This function provides the CRO with day-to-day resources to accomplish its mission. In this capacity, Winter reports organizationally on a solid-line basis to the company's Public Policy Committee of the Board of Directors and on a dotted-line basis to the company's General Counsel. The Corporate Business Practices function is on-point for administering the company's Business Practice Standards Helpline and for managing the annual certificate of compliance process (described below). Members of this function also serve as members of the various RBPCs, and serve as general resources to both management and employees on questions or concerns relating to the company's business practice standards.

Raising Issues Is A Responsibility Of All Employees

The company's Business Practice Standards state that reporting wrongdoing is everyone's individual responsibility. The standards provide that employees should inform their supervisor

or another suitable company representative of any departures from the company's policies, and guide employees to follow the section of the Standards titled "What to Do if You Have a Concern About Business Practices." Baxter's Business Practice Standards may be accessed via link at http://www.baxter.com/about_baxter/sustainability/our_values_and_standards/global_business_practice_standards/standards.html.

Avenues For Raising Concerns

Employees seeking guidance on business practice issues are encouraged to first discuss questions or concerns with their manager or supervisor. The company's Standards provide other resources as available alternatives if an employee is not comfortable with this approach. Additional resources include:

- Functional Manager
- Local Business Resource (such as contacts within the legal, human resources, quality, audit or finance department or other designated functional resources)
- Regional Business Practice Committee
- Corporate Responsibility Office
- Business Practice Standards Helpline

Country and plant managers are asked to develop and distribute via email or post customized contact charts with names and contact information of available channels for asking questions or reporting concerns. In addition, Winter explains that the company also has an internal management policy on business practices that addresses procedures for raising 'significant business practice issues.' The company's policy relating to these latter issues requires that concerns be raised to the Regional Business Practice Committee and the CRO.

Methods For Raising Concerns

Concerns may be raised using a broad range of methods. Listed below are some of the methods available to employees for asking questions or raising concerns:

- Speak to manager or other individuals in above-listed channels (in person or on phone)
- Email directly any of the contacts in the above-listed channels
- Mail directly to any of the contacts in the above-listed channels
- Business Practice Standards Helpline
- Website links (both intranet and internet) to the CRO/Business Practices function
- Regional Business Practices Committee website links
- Post Office Box for the CRO
- Fax to the CRO
- Annual Certificate of Integrity and Compliance (described below)

Business Practice Standards Helpline

Available 24/7, toll-free telephone calls may be made to this helpline, which is administered internally by members of the company's Corporate Business Practices function. Calls may be made in English or language support is available for callers preferring to communicate questions or concerns in their native language. Calls received on days or hours other than standard business

hours at the company's headquarters are directed to voice mail. Winter shares that the telephones that receive helpline calls do not have the caller identifier feature, which allows callers to make calls anonymously if they so choose. Calls to the helpline may be made confidentially or anonymously.

Communications And Awareness About Avenues For Reporting Concerns

The company uses a broad range of methods to help communicate its policies in this area and the availability of numerous channels and methods for asking questions or reporting concerns. Among these methods are: training, posters, tent cards, distribution and availability of the Business Practice Standards, plasma screens with rotating brightly colored ethical sayings, contact charts (including phone numbers and e-mail addresses), Intranet websites, quarterly newsletter in Japan, and corporate-wide employee survey (includes integrity questions).

In addition to the above, Baxter is providing online business practice training in 2005 to all employees with email addresses using an outside provider. Although new hires have received this training in recent years, Winter shares that making the training more broadly available will help reinforce to a wider audience the importance of the business practice standards and the availability of avenues for raising issues and concerns.

Certificate Of Integrity And Compliance

Each year, approximately 25% of Baxter's global workforce, including all employees at the manager level and above and all sales representatives, participates in an annual web-based certification process. In 2005, the CRO sent out over 11,000 certificates in 10 languages to employees in 55 countries.

As part of this process, a series of questions regarding the Business Practice Standards are distributed electronically and individuals are asked to certify that they have read, understood and have followed these standards during the past year. The certification questionnaire also provides individuals with the opportunity to raise issues of concern. More specifically, the certification questionnaire asks the following questions:

- Do you understand our business practice standards?
- Have you complied with the standards?
- Do you communicate the importance of the standards?
- Have you been involved in raising or resolving a business practice issue?
- Does the environment allow you to raise issues without fear of retaliation?

The process is administered and results are reviewed by the Corporate Business Practice function on behalf of the CRO and the Public Policy Committee of the Board. Information on this process is shared with the company's Public Policy Committee, the CRO, and the Regional Business Practice Committees. In addition, during the past two years, information gleaned through this process was also shared in summary form with senior managers or specific business units. This year, the company also plans to share results with Baxter's Operations Committee.

Supplier Business Practice Standards And Ethics Kit

Baxter has developed business practice standards for suppliers and expects that suppliers will comply with them. The standards are available on Baxter's website, and address:

- Access and Use of Baxter's Electronic Media
- Accuracy of Business Records
- Confidential Information
- Conflicts of Interest
- Employment Practices Guidelines
- Environment Health & Safety
- Gifts and Entertainment
- Prohibition of Corrupt Practices
- Fair Competition and Antitrust.

Additional information on these standards may be accessed via link at http://www.baxter.com/about_baxter/sustainability/our_stakeholder_engagement/suppliers/sub/supplier_ethics.html#ethics.

In addition, the company developed an "EthicsKit" to help guide suppliers through the design and implementation of their own business ethics programs. Developed through a collaborative effort with Northwestern University's Center for Learning and Organizational Change, the "EthicsKit" includes an overview of business ethics and why it's important, as well as information on creating a code of ethics and an internal reporting system for raising issues. Additional sections included in the toolkit include information on communicating and maintaining the program together with links to external ethics resources and organizations. The company's EthicsKit may be accessed via Baxter's website at http://www.baxter.com/about_baxter/sustainability/our_stakeholder_engagement/suppliers/sub/supplier_ethics.html#ethics.

Leading Practices

Asked for thoughts on which elements of the company's practices she would consider to be leading practices in this area, Winter describes the company's organizational structure for supporting ethical business practices, including the design of the Corporate Responsibility Office and the Regional Business Practice Committees. In particular, she emphasizes the importance of having a rotating membership of leadership as being critical to the success of these functions and to emphasizing fundamental business buy-in to the company's overall program. She also highlights her and the Corporate Responsibility Office's direct reporting relationships to the Public Policy Committee of the Board of Directors as a leading practice. In addition, Winter describes the company's annual Certificate of Integrity and Compliance as a leading practice, and emphasizes the inclusion of a question on the ability to raise questions without fear of retaliation as a practice that helps to distinguish Baxter's practice as leading in this area.

General Electric (GE)

GE's Chairman of the Board and Chief Executive Officer, Jeffrey Immelt, describes the Company's worldwide reputation for integrity and high standards of business conduct as "an asset of incalculable value." Indeed, GE has received accolades for its corporate governance practices, including: being named the World's Most Admired Company in a February 2005 poll of business leaders conducted by "Fortune" magazine; receiving a perfect governance score from Governance Metrics International, an independent service evaluating corporate governance; and being rated in November 2004 the world's most respected company for corporate governance and the most respected company overall in a poll of global CEOs conducted by the "Financial Times" and PricewaterhouseCoopers.

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A cornerstone component of the Company's integrity programs is an integrity guide known as "The Spirit & The Letter." All GE employees, officers and directors worldwide receive a copy of "The Spirit & The Letter" and are asked to commit personally to upholding its policies. This integrity guide is made available to all Company employees via GE's intranet and may also be accessed via GE's public website via the following link: <http://ge.com/files/usa/en/commitment/social/integrity/downloads/english.pdf>.

Included within "The Spirit & The Letter" are GE's Code of Conduct, information on who must follow GE policies, and statements on leadership responsibilities and on GE employees' personal commitments to integrity. Also prominently included within "The Spirit & The Letter" is information on how to raise an integrity concern and what happens when a concern is raised. In addition, "The Spirit & The Letter" includes a summary of each GE integrity policy directing employees to GE's integrity website for additional information and guidance.

Importance Of Raising Concerns; Available Options

As noted above, "The Spirit & The Letter" includes a section addressing what to do when an employee has a concern about a possible violation of law or GE policy. As a preliminary matter, employees are reminded that raising a concern about a possible violation of GE policy or the law is an "obligation," and "one of their most important responsibilities" as a GE employee. Employees are also assured that there will be no retaliation for having raised a concern. Concerns may be raised orally or in writing, and may be submitted anonymously.

How can employees get answers to questions on integrity issues or raise concerns? The Company makes available a broad range of options, including contacting:

- Supervisor or Manager
- Compliance/Auditing Resource
- Business or Regional Ombudsperson
- Legal Counsel
- Next Level of Management within the business unit
- Business Integrity Helpline
- GE Corporate Ombudsperson

Global Ombuds Process

The Company has developed a network of approximately 400 ombudspersons located around the world. The global ombuds network is led by the Company's Corporate Deputy Ombudsman, a position currently held by an individual with a finance background and which reports organizationally to the Vice President of Corporate Audit Staff. The ombuds network also includes additional representatives at the corporate headquarters level as well as ombuds at the local business unit and regional levels.

More specifically, in addition to the GE Corporate Ombudsman, there are 10 regional ombudspersons, with the remaining 300 plus ombudspersons being at the local business unit level. Regional ombuds are identified for the following areas around the world: Europe/MiddleEast/Africa; Canada; Mexico/Central America; South America; India; China; Japan; Southeast Asia; Korea; and Australia/New Zealand.

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“The ombudspersons help set the Company’s integrity culture and serve as points of contact and coordinators to help encourage reporting of any compliance concerns,” explains Mark Nordstrom, Senior Labor & Employment Counsel for the Company. Key roles played by the ombudspersons include serving as points of contact for integrity questions and concerns and helping with the overall process of assessing, investigating, determining actions, improving processes, and providing feedback. Ombudspersons also play a key role in helping to administer the corporate integrity helpline as well as the business unit level and regional helplines (described more fully below).

How may employees contact an ombudsperson? Ombudspersons may be contacted in a variety of ways, including in person, or via helpline, telephone, fax, postal, or email. Information on how to contact a local, regional, or the corporate ombudsperson is included within “The Spirit & The Letter,” and may also be found on the Company’s intranet site, business unit websites, and through a variety of other methods.

Ombuds Training And Networks

Training is an important component of the overall ombuds processes. The Company has developed an Ombuds 101 training program that provides basic training for persons in the ombuds function on how to receive concerns, facilitate objective investigations and on other aspects of the integrity processes and practices. In addition, the Company has developed training for the ombuds on using GE’s Compliance database, an internal database for tracking information relating to integrity questions or calls received via the Company’s helplines. Nordstrom shares that the system is designed with strict security and access controls to protect the confidentiality of employee concerns. Typically, the Ombuds 101 course - including training on the use of the database - is offered monthly throughout the year. An example of the outline for the Ombuds 101 training course may be accessed via link in the Resource List in Section III of this Profile.

In addition to the above training sessions, the ombuds representatives generally meet as a group annually and participate in regularly scheduled conference calls. During these calls and meetings, ombuds best practices are shared, compliance trends are highlighted and training updates are provided on a variety of subjects. Ombudspersons also participate in regional council meetings that provide the opportunity for local business unit ombudspersons to meet with other ombuds in their regions to discuss issues of interest and reinforce ombuds practices.

Another networking and learning experience for ombudspersons is through participating in the company’s “Session D” compliance reviews held once every 18 months for each major business unit. The Session D reviews are conducted by GE business and compliance leaders and are the culmination of a “bottoms up” process in which employees have been asked to help identify potential compliance risks. Specific action plans are developed to address substantial compliance issues as necessary.

Helplines

The Company has created a number of helplines to serve as avenues for asking questions or reporting concerns. In addition to an overall corporate helpline, there are local business, country, and language-specific helplines. All of the helplines are administered internally by Company ombudspersons.

The helplines are available 24/7, with calls outside of normal business hours being captured by voice mail. Information on the helplines and how to use them is made available to employees in

the section on ‘Raising Integrity Concerns’ within “The Spirit & The Letter,” and employees are directed to the Company’s intranet site for integrity issues to find specific contact information for local business, country and language integrity helplines.

Intake And Investigation Process

As described above, there are a number of avenues for communicating questions or concerns. Once information is received by the ombuds network or an integrity helpline, an assessment is made and an entry is made in the ombuds data base. Depending on the issue, it may be assigned to another group within the Company (such as legal, human resources, audit staff, etc...) for taking the lead on investigating and resolving the concern. Following the investigation, information on findings and corrective action would be included in the tracking system. Nordstrom advises that the database was developed internally, and that the Company’s Vice President- Litigation, Policy & Compliance has overall responsibility for managing administration of the database.

Role Of In-house Lawyers

Nordstrom describes the role of in-house counsel in the overall process as being “very involved,” and explains that in-house lawyers have “played a fundamental role in how the Company’s policies and processes have evolved.” He notes that the Company’s compliance program has been in existence for a very long time and that the compliance function has historically and continues to report organizationally to the Company’s Vice President- Litigation, Policy & Compliance.

Leading Practices

Honeywell

Asked for thoughts on which elements of the Company’s practices in this area he would consider to be leading practices, Nordstrom describes three key areas.

Bottoms-up Reporting: creating a culture and environment where people are comfortable with bottoms-up-reporting is a leading practice identified by Nordstrom. He identifies as critical success factors in this area, “weaving these principles into the fabric and core of every employee, and helping them to understand their obligations with regard to compliance, what to do when there are questions, and communicating the Company’s desire to know.”

Managers’ Roles in Compliance: emphasizing the importance of managers’ roles in compliance-namely, that business leaders’ own’ responsibility for compliance and need to be “leaders by example” and demonstrate integrity and other Company values. They must acknowledge compliance accountability by their words and actions.

Leadership’s Commitment and Message: GE leadership’s ability to create and sustain the message and set the mindset for integrity as something that is important to uphold and protect is emphasized as being a leading practice that sets the overall tone for the Company’s integrity programs.

Honeywell

“In order for compliance and ethics programs to have meaning, there needs to be a strong commitment from the top. We have this at Honeywell, and through this culture employees understand that matters involving integrity and compliance are taken seriously, and are handled and

resolved appropriately,” explains Tom Larkins, Vice President Corporate Secretary and Deputy General Counsel for the company.

Honeywell's Code of Business Conduct includes the company's Integrity and Compliance Program. The Integrity and Compliance Program includes a range of organizational features and networks designed to assist with the leadership, management, and implementation of the program. Playing a leading role in the operational management of the company's Integrity and Compliance Program, including its ACCESS Integrity and Compliance Helpline, is the Integrity and Compliance Office. Led by Jeffrey Cottle, the Integrity and Compliance Office is also responsible for managing the investigation process for integrity concerns and serving as a resource generally on the company's Code and integrity matters. The Corporate Governance and Responsibility Committee of Honeywell's Board of Directors regularly reviews the company's policies and programs related to compliance with its Code of Business Conduct.

Within the Code section on Integrity and Compliance, are provisions relating to communicating suspected violations of the Code, company policy, or law. The Code describes channels of access for reporting concerns or asking questions, and describes the company's policy on prohibiting retaliation. The Code also describes the helpline and the investigation process. Honeywell's Code of Business Conduct may be accessed via link at <http://www.honeywell.com/sites/honeywell/codeofconduct.htm>.

Organizational Structure Supporting Integrity And Compliance

As stated above, the company has established a number of organizational structures and networks for helping to manage and implement its integrity and compliance programs. Key features of these networks and structures include:

- Corporate Integrity and Compliance Council: provides leadership for the company's program and is comprised of senior Integrity and Compliance Officers from each of the company's business units and key functional groups. It is chaired by the company's Director, Global Compliance, who leads the Integrity and Compliance Office.
- Business Unit-level Integrity and Compliance Officers: responsible for determining the appropriate oversight structure for assuring effective implementation of the compliance and integrity program within that business unit.
- Integrity and Compliance Office: led by Jeffrey Cottle, Director, Global Compliance, the Integrity and Compliance Office is responsible for the operational management of the program, including administering the company's ACCESS Integrity and Compliance Helpline and managing the investigation process of reported concerns. The Integrity and Compliance Office is organizationally situated within the Legal Department, and Cottle reports directly to the company's General Counsel.
- Business Conduct Leader (BCL) Network: established by the Corporate Integrity and Compliance Council, this network of approximately 250 to 300 employees around the world, plays important roles in responding to and investigating employee integrity and compliance inquiries and concerns. The Code states that employees may identify their BCL by consulting with the Human Resources department, the Office of Integrity and Compliance, or by viewing the company's intranet website on integrity and compliance.

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Channels For Reporting Concerns And Asking Questions

The Code outlines a number of channels for reporting concerns and asking questions. Listed below are these channels:

- Normal Reporting Channels (e.g., Supervisor or Manager--encouraged as first place to turn)
- Business Unit Integrity and Compliance Officer
- Member of the Corporate Integrity and Compliance Council
- Law Department
- ACCESS Integrity and Compliance Helpline

Standards For Reporting Concerns; Non-retaliation

Honeywell requires employees to report suspected violations of the company's Code or its policies and procedures. More specifically, the Code states “[e]ach employee... shall communicate any suspected violations [of the Code or of company policies and procedures] promptly.” Concerns may be reported via telephone, email, regular mail, via the ACCESS Integrity and Compliance Helpline, or in person. The Code also refers employees to the company's policy manual, which includes its Operating Policy for Integrity and Compliance.

Both the Code and the Operating Policy include statements on Honeywell's prohibition on retaliation against employees who “report a suspected violation and communicate the information in good faith.” This Code provision also describes protections for confidentiality and notes that information will be protected “to the extent possible consistent with law and corporate policy and the requirements necessary to conduct a corporate investigation.” In addition, the Code states that any supervisory personnel that retaliate against an employee as a result of her/his reporting, will be subject to disciplinary action, including termination.

Access Helpline

The company's helpline is administered by a third party vendor. The helpline is a toll-free telephone number available worldwide on a 24/7 basis. Translation services are available for callers who prefer to communicate in a language other than English. The company's Manager, Integrity & Compliance, Kate Olive, has worked closely with the vendor to develop matter intake forms. Information received through the helpline is logged on these forms and forwarded to the Integrity and Compliance Office. Once received, data from these reports is entered into a matter-tracking database using a Business Conduct Incident Report template form. An example of the Business Conduct Incident Report form may be accessed via link in the Resource List in Section III of this Profile.

Database For Tracking Business Conduct Incidents

As noted above, information on business conduct incidents is tracked within a database managed by the Integrity and Compliance Office. In addition to incident reports received by the Integrity and Compliance Office from the company's helpline vendor, the database also includes reports from other sources, which are then input into the database. Because the company envisioned that individuals at the locations in addition to those within the Integrity and Compliance Office may be receiving reports of concerns, Honeywell provided training to key personnel with regard to documenting and reporting of such concerns that are received locally to the Integrity and Compliance Office to ensure appropriate processing and tracking. This was part of the company's larger roll-out of its finalized revised governance process in March 2004.

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"The database is an important part of our overall program. It enables us to have a company-wide view of issues, and an accurate picture of trends," explain Olive and Cottle. Analysis of these trends allows the Integrity and Compliance Office to determine if any problem areas exist in a particular business, with a particular individual, or across the company. This allows the Office to focus its remedial actions on the locus of the problem. In addition to using the database for managing program implementation relating to reporting of concerns, the company also uses the database for information on accounting and financial controls.

Internal Investigations

What is the procedure for evaluating and responding to inquiries and reports relating to the company's integrity and compliance program? The company's Integrity and Compliance Program Operating Policy is available to all employees via the company's policy manual and is posted on the company's intranet.

The Operating Policy provides guidelines on Honeywell's process for investigating and resolving allegations of integrity and compliance violations. Issues are categorized at the discretion of the Office of Integrity and Compliance (with input from other groups) as belonging to one of 3 levels, depending on the seriousness of the allegation. Summaries of the definitions of these issue levels are provided below:

Level 1 Issue: includes allegations of violations by any Director, officer or senior management; allegations likely to result in significant damage to the company's reputation; accounting/controls issues involving defalcation over \$100,000; any allegation of fraud that involves management or other employees with a significant role in internal control over financial reporting; or allegations deserving special attention as determined by the Office of Integrity and Compliance.

Level 2 Issue: any allegation that isn't a Level 1 but which involves more serious allegations than Level 3 (examples include complaints involving discrimination and harassment claims, workplace violence or security issues, intellectual property matters and quality control matters).

Level 3 Issue: issues involving complaints concerning compensation, benefits, staffing, morale, employee satisfaction or other similar human resources matters. In addition, certain other issues determined by the Office of Integrity and Compliance as requiring investigation in accordance with the Level 3 procedures.

In addition to categorizing issues by level there is an additional identifier for accounting and control issues:

Accounting/Controls Issue: any allegation that involves any type of fraud, defalcation, and/or record-keeping or controls irregularities relating to the company's accounting, internal controls or auditing activities.

Management regularly reviews allegations regarding Accounting/Control Issues and the investigation and resolution of these matters with the Audit Committee of Honeywell's Board of Directors.

The Operating Policy also includes procedures for conducting investigations, including both procedures relating to investigations generally and those relating to investigations based on the type of issue raised.

Role Of In-house Lawyers

In-house lawyers are described as having an "active role" in connection with developing and helping to implement the company's policies in this area. "Honeywell's in-house lawyers helped to structure the company's programs in this area, and helped ensure that these programs comply with the myriad of compliance obligations relevant to our company. Importantly, our view is that these policies are written in such a way that they have practical information that is easy to understand, which maximizes the likelihood that people will use them," explain Cottle and Tom Larkins, Vice President, Corporate Secretary and Deputy General Counsel for the company.

In addition to playing important roles in helping to develop policies and practices, in-house lawyers also take an active role in implementation of these policies.

Leading Practices

Asked for thoughts on elements of their company's practices that they consider leading practices in the industry, Cottle, Larkins, Olive, and Michael Ferrans, Assistant General Counsel-Labor & Employment, cite the company's policy on reporting obligations, the company's matter management tracking tool, and the scope and quality of the company's effort on training and awareness. In addition, they highlight the design of the company's Business Conduct Leader Network as a leading practice.

Motorola

Motorola's Code of Business Conduct serves as a guide to help its employees live up to the company's high ethical standards. Included at the end of the Code is a Section titled "How to Get Help," which provides guidance on what to do when there are questions about the Code. Employees are encouraged to first turn to their supervisor or manager for help. This section of the Code also includes information on two help lines that may be used to discuss concerns or problems: the EthicsLine and the Audit Committee Line. Additional information on the company's programs and procedures for reporting and investigating concerns is summarized below. Motorola's Code of Business Conduct may be accessed via link at <http://www.motorola.com/content/0,,75-107,00.html>.

Channels For Reporting Concerns And Asking Questions

The Code outlines a number of channels for reporting concerns and asking questions. Listed below are these channels:

- Supervisor or Manager (encouraged as first place to turn)
- Another Member of Management
- Human Resources
- Law Department
- Motorola's EthicsLine or Audit Committee Line

Standards For Reporting Concerns

Motorola expects and encourages employees to report concerns using any of the above listed

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channels. More specifically, the Code states “[i]f you see possible unethical or illegal conduct, you are expected to report your concerns.” Managers have additional responsibilities in this regard, and the Code states that managers “must diligently look for indications that unethical or illegal conduct has occurred and report it.” Concerns may be reported to each of the EthicsLine and Audit Committee Line (both described more fully below) via telephone, email, fax, regular mail, or in person.

Communications Regarding Channels For Reporting Concerns; Training

Information on available channels for asking questions and reporting concerns is communicated primarily via the company's intranet and external web site, and is also included in posters located in company facilities around the world. In addition, the company's Office of Ethics and Compliance periodically sends out email communications regarding reporting. Additional methods for informing employees about the Code's provisions regarding reporting concerns is included in an ethics training course that all salaried employees are required to complete every three years. Senior management training also includes scenario-based classroom case study exercises regarding receiving information on concerns and how to approach these issues.

Ethicsline

The EthicsLine is managed by the company's Office of Ethics and Compliance and is available 24/7 to report concerns or call with questions. The EthicsLine is answered live from 6:30am to 2pm Pacific Standard time and may be accessed by calling a toll-free number. Calls made outside of these hours will be forwarded to a voice mailbox and answered during the next business day. The company has contracted with an external translation service, and callers preferring to converse in a language other than English may utilize that service.

The EthicsLine may be contacted by phone, email, voice mail, regular mail, fax or personal visit. It is available globally to all Motorola employees worldwide, and to others outside the company as a means to communicate directly with Motorola's Office of Ethics and Compliance.

Motorola's EthicsLine has been in place in its current form since 1999, and evolved into an ethics help line from a government contracts hotline that was first created around 20 years ago. On administering the EthicsLine in-house, Janice Solarz, Ethics Program Manager for the company, explains “we strongly favor managing the help line in-house because it helps to encourage calls to the line for any question or concern. Often times, the person on point for administering the EthicsLine can answer the question during the call. People are comfortable speaking with someone who knows the company, is familiar with the business, and can quite often answer the question.”

Calls may be made anonymously. The Code provides “that anonymous callers will be advised if additional information is required before an effective investigation can take place.” For callers who don't specifically request to remain anonymous, the Code provides that “[c]onfidentiality for all others who report concerns will be maintained to the fullest extent possible.”

Audit Committee Line

The company also makes available to employees and others outside the company an Audit Committee Line. This line has a separate toll-free phone number and email and postal mailboxes separate from the EthicsLine, but is administered by the same individual within the Office of Ethics and Compliance who administers the EthicsLine. As with the EthicsLine, calls may be made 24/7, and are answered during the same hours as the EthicsLine with calls outside of that

time period being answered by voice mail.

As noted above, this line allows access to the Audit and Legal Committee of the company's Board of Directors for any concerns about the company's accounting, internal controls or audit matters. Concerns relating to accounting or auditing matters are referred to the General Counsel and the Director, Office of Ethics and Compliance, who bring substantive matters to the attention of the Chair of the Audit and Legal Committee of the company's Board. Reports concerning Audit Committee Line calls are provided to the Chair of the Audit and Legal Committee on a monthly basis. Notifications regarding certain designated matters are made to the Board on a more frequent basis, including a requirement to report any suspected fraud within 24 hours.

“Although many companies use a single help line for all calls, including those relating to accounting or audit matters, we decided to create a separate intake mechanism and develop corresponding policies and procedures for reporting calls to this channel directly to the Audit and Legal Committee of the Board,” explains Solarz.

Reporting Concerns Via Email

Reports and questions may be submitted to the EthicsLine or Audit Committee Line via email. Solarz shares that communications are being made using this channel with increasing frequency. As with reporting via phone, reports made via email to the EthicsLine or Audit Committee Line each go to a separate email address which is monitored by the individual on point for receiving all communications to these help lines. In addition, email communications may be submitted to each of these email addresses in an anonymous fashion by clicking on a web link that transmits the emails without identifying the sender's email address.

Ethicsline And Audit Committee Line Administration Policy

The company has developed a policy for administering the EthicsLine and Audit Committee Line. Key sections within the policy include:

- Purpose of the EthicsLine and Audit Committee Line
- Commitment to Anonymity and Confidentiality
- Referral Standards
- Investigation Standards
- Follow-up Standards
- No Retaliation
- General Procedures (outline information on answering telephone calls, procedures for email, voice mail, regular mail, fax and personal visits, documentation, and on referral of matters).

An example of Motorola's policy for EthicsLine and Audit Committee Line Administration may be accessed via link in the Resource List in Section III of this Profile.

Database For Tracking Concerns

Information received via the company's EthicsLine or Audit Committee Line is tracked within a database administered by the company's Office of Ethics and Compliance. The database allows the OEC to include updates on matter referral, investigations, and outcomes. Data included within the system may then be sorted and evaluated for information on trends and for internal monitoring and reporting purposes.

Investigations; Referrals

The company's EthicsLine and Audit Committee Line Administration Policy includes guidelines on referral standards for matters coming into these channels. The policy notes that matters that cannot be answered directly by the EthicsLine administrator will be referred to/consulted on by the appropriate functional group within the company. For matters reported to the EthicsLine relating to accounting, internal controls and auditing, the policy requires that these matters be referred to the General Counsel and the Director, Office of Ethics and Compliance. Matters received via the Audit Committee Line will be logged by the administrator and reported on a monthly basis to the Chair of the Audit and Legal Committee. These concerns will also be referred to the General Counsel and the Director, Office of Ethics and Compliance. The policy states that investigations must be performed in accordance with the Motorola Guidelines for Internal Investigations. An example of these guidelines may be accessed via link in the Resource List in Section III of this Profile.

Role Of In-house Lawyers

In-house lawyers have played important roles in connection with helping to develop the company's governance policies and providing support to the company's Office of Ethics and Compliance. In addition, in-house lawyers are identified as available channels for asking questions or reporting concerns, and the General Counsel is identified as a point person for receiving information from the help line administrator on accounting, auditing, and internal controls matters reported into the EthicsLine or Audit Committee Line. The company's policy on EthicsLine and Audit Committee Line administration also includes information on consulting with in-house counsel in determining whether a matter should be subject to a privilege against disclosure.

No Retaliation

The Code states "[r]etaliation against any employee who honestly reports a concern to Motorola about illegal or unethical conduct will not be tolerated." Similar language is also include within the policy for administering the EthicsLine and Audit Committee Line. Here the language states, "[r]etaliation in any manner for raising issues and concerns honestly to the EthicsLine or Audit Committee Line will not be tolerated." In addition to these statements on no retaliation, both the Code and the policy include language stating that it is unacceptable to file a report knowing it is not accurate or that it is false.

Leading Practices

Asked for thoughts on which elements of the company's program she would consider to be leading practices, Solarz describes both the global Code and the company's communications regarding the EthicsLine and the Audit Committee Line, and about how to properly treat employees and role-modeling behavior as leading practices. She emphasizes, "keeping the company's expectations in the forefront and having managers serve as role models helps to create an environment where employees can come forward and feel comfortable."

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ServiceMaster

The ServiceMaster Code of Ethics and Business Conduct ("Code") states that employees are responsible for bringing to management's attention any questions or concerns regarding compliance with law, the company's policies or its Code. Included within the Code is guidance on who to go to within the company with questions or concerns as well as information on contacting the company's Compliance Helpline, a service administered by an independent company. The ServiceMaster Code may be accessed via link at http://media.corporate-ir.net/media_files/nys/svm/CorpGov/code_of_conduct_v2.pdf.

On point for day-to-day responsibility for the company's compliance and ethics program planning and implementation is Randy Corley, Vice President Compliance & Ethics for the company. Corley reports organizationally on a solid-line basis to the company's General Counsel and on a dotted-line basis to the Audit Committee of the company's Board of Directors. Prior 2003, Corley's position was organizationally situated within the company's Internal Audit Department. Corley describes the organizational transition from the audit to the legal department as "reflecting increased awareness of compliance and ethics generally, and resulting in enhanced practices for improving controls, coordinating and focusing efforts, and receiving information and providing follow-up."

Channels For Reporting Questions Or Concerns

Within the Code, the company identifies a number of reporting channels for asking questions or expressing concerns. These channels include:

- Supervisor/Chain of Command
- Subject Matter Experts (Ex: HR for a human resources matter)
- Helpline
- Corporate Support Departments (Code lists two pages of contact information)

Employees are encouraged to begin with their supervisor or business unit chain of command. "We encourage employees to start with their chain of command because this is most often the most effective and efficient way to resolve issues," says Corley.

Compliance Helpline

The company has had helpline services available to employees for over 5 years. Since April 2004, the company has utilized the services of Global Compliance Services ("GCS") to administer call intake and case management system services. The helpline is accessible 24/7 and translators are available for callers who prefer to speak in a language other than English. Contacts may be made with the helpline service administrator via telephone, email or regular mail.

The Code provides that information will be relayed to senior management and routed to the appropriate support group within the company to address the issue. The Code also provides that the information will be kept confidential but that limited disclosure may be necessary where required by law or to investigate and adequately respond to a question or concern. In addition, the Code describes the ability to submit concerns anonymously. The company's no retaliation policy for questions or concerns raised in good faith is also stated in the Code.

ServiceMaster

Process For Receiving And Responding To Helpline Communications; Case Management System

The company has elected to utilize a level of service that also includes the service provider's case management system. Accordingly, in addition to receiving information on questions or concerns, the service provider also is on point for opening within the system an appropriate case file and performing initial input to the system of relevant data received from the caller.

Who within the company is the point of contact for receiving information submitted to the helpline? Each business unit within the company has a helpline coordinator who is the point of contact for receiving communications regarding contacts to the helpline relating to that business unit. Once a case is opened the helpline service provider sends an email to the relevant helpline coordinator, with a copy to Corley. The email includes a web link to the case report within the system, and the helpline coordinator is responsible for reviewing the report and assigning (via the web-based system) the matter to the appropriate contact within that business unit for investigation. After completing the review and resolving the matter, the investigator documents the findings in the case management system and closes the case.

The company has developed and communicated to the helpline service provider an automatic escalation protocol for financial-related concerns. In general, if the matter involved accounting, internal accounting controls, auditing or fraud concerns, the protocol requires the helpline service provider to escalate the matter directly to Corley with a copy to the Chairman of the Audit and Finance Committee of the Board of Directors. In addition to the escalation protocol, the company has identified and provided to the helpline service provider key contacts within certain support groups so that calls that aren't true helpline calls but rather customer or payroll or benefits questions may be re-directed to the appropriate company contacts.

"A key benefit of using the GCS case management system is to provide a single point of contact allowing our company to track matters from the initial helpline contact to resolution. The system includes the ability to enter an initial report of the contact, documentation on what was found and how it was resolved, and information on follow-up related calls and helpline responses to callers. Data entry on matter resolution is encrypted and is available only to authorized personnel within the company but not to the service provider," explains Corley.

Additional benefits described by Corley relating to the case management system, include the ability to use a 'data miner' that allows Corley to review cases and customize reports based on data within the system. For example, he uses this system to create an "aging" report to track whether helpline reports are being investigated and resolved on a timely basis. GCS also submits monthly reports to Corley which include for each business unit information on the number of calls for the month and year-to-date, the category of allegation, the number of anonymous calls, a summary of the class of the matters (e.g., initial calls, referrals, follow-up), and number of calls received during business hours vs after hours. Summary reports of audit and finance-related matters are prepared by Corley and provided to the Audit and Finance Committee on a quarterly basis.

Communications

How does the company communicate its policies regarding reporting questions or concerns? Corley shares that the company's Code was most recently rolled out in fourth quarter '04 and first quarter '05. Due to the distributed nature of the company and its employees (over 40,000 employees in more than 800 locations), the roll-out was accomplished using 'toolkits' provided to each branch. The toolkits included:

- Copies of the Code (in both English and Spanish)
- Wallet Cards with information on reporting questions or concerns
- Posters
- Instructions on holding a branch meeting to review and discuss policies and practices

In addition to the above, the company also provides ongoing periodic awareness training on the Code and its relevant provisions in this area.

Role Of In-house Lawyers

In-house lawyers play important leadership and supporting roles. More specifically, Corley notes that he reports organizationally to the company's General Counsel. Each business unit has identified a corporate compliance officer, and in-house lawyers fill this role in some units. In addition, in-house lawyers have played roles in investigating and helping to resolve issues depending upon the nature of the matter. Currently under development is an internal investigation policy, and lawyers are playing an important role in reviewing and helping to shape and finalize the policy.

Leading Practices

Asked for thoughts on which elements of his company's practices in this area he would consider to be leading practices, Corley identifies use of the case management system, the company's escalation guidelines, and its relationship with the helpline service provider as leading practices. With regard to the latter point, Corley explains that the company has been selected among the helpline provider's 1500 or so clients to participate in a client services advisory committee consisting of representatives from 25 clients. The committee meets twice each year to discuss experiences and improvement opportunities and Corley sees this as an opportunity to help shape the future and direction of services received by the company in this area.

In addition, Corley describes as a leading practice the ability to take broad concepts regarding compliance and ethics and communicate them in a meaningful, memorable and interesting way to employees. For example, a training and awareness video was created in-house for the company's Executive Action Team, a team of around 250 senior business leaders throughout the company. The video focused on safety, compliance and ethics failures and was designed to stimulate entertaining and interactive discussion as employees were asked to identify and discuss what they saw. The video has been well received and has since been incorporated into the core training curriculum of one of the company's business units. It is also being used as the centerpiece of the 2005 compliance and ethics awareness training across the company.

Fortune 500 Company

This company's policy on reporting of concerns is described by its Ethics and Compliance Officer as having been in place for many years, with both a compliance helpline and associated controls in place long before associated requirements in Sarbanes-Oxley required many companies to do so. Included within the company's Code of Conduct are separate provisions for its compliance helpline and for reporting concerns. The company's Code of Conduct is made available to employees worldwide, and employees are required to provide an annual certification regarding understanding the Code, how to seek guidance regarding it, and how to report violations of it (except where prohibited locally by law from providing such certification).

Fortune 500 Company

Fortune 500 Company

In addition to reporting requirements within the company's Code, there are also reporting expectations included within the company's Open Door Policy (encouraging employees to report to their leader any concerns), and within the company's Financial Integrity Policy, which provides a separate means to report any suspected financial or accounting misconduct to the company's Audit Committee via an external website. This website mechanism for reporting is available to both employees and to third parties.

Reporting Concerns

The company's Code of Conduct provision on reporting of concerns requires employees to report any suspected or known violation of law or company policy. How may reports be made? Reports must be made to either:

- Employee's Leader
- Office of Ethics and Compliance
- Compliance Helpline
- Legal Department
- Corporate Investigations

The Code provision also states that the company prohibits discrimination or retaliation against employees for making good faith reports. Also included in the Code is a situational Q&A designed to reinforce an employee's obligation to report and reminding employees of the company's non-retaliation policy.

Compliance Helpline

The company has outsourced administration of its compliance helpline to an external vendor who provides intake services on a 24/7 basis. The company's Code of conduct includes information on how to contact the compliance helpline and describes the process for making and handling these calls. The number is a toll-free number, and there are directions for how to make calls originating from outside of the United States to reach helpline operators with facility in a variety of languages.

Callers may choose to be anonymous when making calls to the helpline, although the company encourages individuals to identify themselves. The Code provision also discusses confidential treatment of information reported through the helpline, with an objective of keeping the information confidential to the extent reasonably possible.

Employees are provided in the Code a description of the helpline call intake process, including information on who answers the helpline, the types of questions that might be asked, and on what the outside company does with the information as part of the overall process of responding to the question or investigating the concern. In addition, this section of the Code includes a reminder of the company's commitment to prohibit retaliation.

Who within the company receives information taken by the Ethics Helpline and what happens to it? Information is received by the company in the form of a summarized report submitted in English translation. The company has submitted to the helpline vendor a set of directives on how to handle information received based on the nature of the concern or allegation. These guidelines identify required timing for transmitting the information and contact persons within the company to receive the information. All information received via the helpline is also sent to the Of-

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fice of Ethics and Compliance where it is tracked in an internal database. Access to the database is limited to the Office of Ethics and Compliance and to certain in-house lawyers of the company.

Reporting Concerns Directly To The Office Of Ethics And Compliance

As noted above, calls seeking advice or to report concerns may be made directly to the Office of Ethics and Compliance. The Code of Conduct identifies this channel as an available mechanism for seeking help, and a separate intake phone number is listed for making calls directly to the company's Office of Ethics and Compliance. Leading the Ethics and Compliance Office is the company's Ethics and Compliance Officer, who reports directly to the company's General Counsel.

Handling Of Concerns; Investigations

Asked who is on point for determining how to handle and staff internal investigations that may flow from reported concerns, the Ethics and Compliance Officer explains that the Office of Ethics and Compliance would generally make these determinations. Depending on the nature of the concern or complaint, additional groups within the company (such as Finance, the Labor & Employment or Litigation practice groups within the legal department, the Internal Investigations Group, etc.) may be included or even take the lead in conducting an internal investigation.

Financial Integrity Policy

In addition to policies and requirements within the Code of Conduct for reporting of concerns, the company has also included within its Financial Integrity Policy specific provisions for reporting any suspected accounting or financial concerns. These concerns may be submitted via any of the above methods for reporting concerns generally, or may be sent via email to a web address for ultimate reporting to the company's Audit Committee.

Communication To The Board

The Ethics and Compliance Officer notes that annual reports are provided to the Board summarizing total call volume, percent of calls categorized by nature of concern, and information on the number of substantiated calls. In addition, information relating to suspected financial misconduct of any business leaders would be reported to the Board at least quarterly.

Leading Practices

Asked for thoughts on which elements of the company's practices may be considered leading practices, the Ethics and Compliance Officer emphasizes that the company's compliance helpline and controls have been in place for many years. Although in some cases formalized and updated in connection with related Sarbanes-Oxley requirements, these practices and procedures are described as being long-standing.

Multinational Diversified Manufacturing Company Headquartered in Europe

This Multinational Diversified Manufacturing Company operates in 35 countries around the world. In January 2005, the company rolled out updated policies and procedures for reporting concerns. Driving the initiative to evaluate and enhance these practices were two key factors: an

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effort to ensure compliance with the Sarbanes-Oxley Act requirements for procedures to receive and handle certain types of complaints; and an internal review of company procedures in light of Sarbanes-Oxley and as part of investigating an internal whistleblower complaint.

Leading the company's program evaluation and development efforts was the company's General Counsel & Secretary. Also playing important roles in the overall development efforts were the company's Audit Committee and outside counsel.

As part of these initiatives, the company has updated its Code of Conduct to include a revised provision on reporting accounting and auditing concerns, and has developed a new internal guideline for reporting of fraudulent activities and other accounting or audit matters. In addition, the company has streamlined the methods for reporting and channeling information on concerns, and has developed and implemented a number of training programs on the company's policies and on how to recognize and respond to a complaint. Examples of a sample Code provision and an internal guideline on reporting accounting, audit and fraudulent matters may be accessed via link in the Resource List in Section III of this Profile.

Reporting Of Violations Is Encouraged And Expected; Separate Guidelines For Accounting, Internal Controls Or Audit Complaints

The company's Code provides that employees are encouraged and expected to report suspected violations of laws, rules, regulations, the Code, or company guidelines to their supervisor, general manager or the Head of Internal Audit. The Code also states that employees should submit complaints regarding accounting, internal accounting controls or auditing matters, as well as concerns generally regarding questionable accounting or auditing matters, and includes information on how to make these submissions. The Code states that retaliation for reports made in good faith will not be permitted, and notes that submissions on financial matters may be made confidentially and/or anonymously. As noted above, an example of a sample Code provision on reporting of concerns may be accessed via link in the Resource List in Section III of this Profile.

Guideline For Reporting Of Fraudulent Activities And Other Accounting Or Audit Matters

In addition to the general provision included within the company's Code, the company has also developed a specific guideline for addressing steps to be taken by an employee for reporting a "reportable matter," which is a defined term in the Guideline. Also included within the Guideline are provisions for:

- Definitions of fraud and financial fraud;
- Notification of reportable matters (contacts may be made via mail or email to the Board of Directors or the Head of Internal Audit, and confidentially and anonymously via telephone or email to the Audit Committee of the Board of Directors);
- Actions to be taken upon notification (describes actions for recipients of information on reportable matters); and
- Overview of Process for Accounting or Auditing Complaints

What types of actions should be taken upon notification of a reportable matter? The Guideline requires any manager who receives a notice of a reportable matter to immediately contact the Head of Internal Audit, who should in turn promptly notify the General Counsel. The company's General Counsel is on point for providing further instructions on how best to follow-up on

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the notification. Also included within the Guideline is information regarding how to treat the information, protecting records, employee interviews, no retaliatory action, and the need to receive instruction from the General Counsel or Head of Internal Audit on next steps.

The Guideline also includes procedures that apply to accounting or auditing complaints received from employees, service providers or third parties. As with notifications of reportable matters, these types of complaints should be immediately brought to the attention of the Head of Internal Audit. The Head of Internal Audit is then on point for informing the General Counsel, the independent auditors and the Audit Committee of the Board of Directors. The Guidelines also require that these complaints be logged and tracked in a docket maintained on behalf of the Audit Committee by the Head of Internal Audit, and that status reports be delivered at least quarterly to the Audit Committee. As noted above, an example of an internal guideline on accounting and audit matters may be accessed via link in the Resource List in Section III of this Profile.

Options For Confidential And Anonymous Reporting

Among the methods for reporting matters, is the ability to report anonymously via email or telephone. A toll-free telephone number is provided, and calls are received by an outside service provider. The General Counsel shares that recordings of the calls are disguised so that voices cannot be identified, and that the recordings are transmitted to the Head of Internal Audit for evaluation and follow-up. In addition, any emails received through the outside provider are also forwarded to the Head of Internal Audit for follow-up.

Decisions on next steps for processing notifications or reports are generally made collaboratively among the company's Chief Financial Officer, the Head of Internal Audit and the company's General Counsel, as appropriate. Depending on the nature and severity of the matter, the General Counsel shares that the Audit Committee and the company's external auditors may also be involved in the initial determination of how best to proceed.

Program Roll-out; Communications

The company's General Counsel participated in the overall program roll-out describing the company's new policies and guidelines and practices for receiving and responding to concerns. Hard copies of the updated Code were provided to the largely decentralized business unit general managers and controllers, and these individuals were asked to certify that they read and understand the provisions in the Code. These individuals were asked to roll-out and implement as necessary and appropriate the program within their business units. The General Counsel shares that the Code was translated into a number of key languages (including Chinese, English, French, German, and Spanish), and business unit managers were asked to use their discretion as to whether additional translations of the Code or the Guidelines were necessary.

In addition to providing hard copies of the Code and the Guidelines to selected management and financial personnel, they are available to all employees on the company's Intranet. Information on these practices was also discussed during quarterly conference calls among the company's general managers and controllers. The company's General Counsel participated in those calls and played a leading role in describing the updated program and manager responsibilities.

Training Is A Key Element

The company's General Counsel emphasizes that training is a key element of the company's overall program and is important to program success. "Training is important to recognize when

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a complaint is being received, to help understand how to respond to the person providing the information, and to communicate information for follow-up within the company," explains the General Counsel.

As part of program roll-out, training was provided to the company's Audit Committee, business unit managers, unit controllers, and individuals within the Internal Audit department. Training for the Audit Committee included a discussion and presentation that included a summary of the regulatory underpinnings of requirements for having a program for reporting concerns as well as a discussion of the company's program for receiving and addressing concerns. An example of an excerpt of the power point presentation may be accessed via link in the Resource List in Section III of this Profile.

Training for business unit managers includes explanations of the Guideline document as well as sensitivity training on how to recognize when an individual is making a complaint and how to respond. Also included in the training is a description of steps to take depending upon the type of matter, including which types of matters need to be reported up within the company and on how to conduct an investigation for a matter that may not need to be escalated.

Leading Practices

Asked for thoughts on which elements of the company's practices he would consider to be leading practices, the company's General Counsel shares that its updated program works well for this company. He emphasizes his desire to adopt practical approaches that allow the company to be compliant and to use easy, simple technology to gain efficiencies. As an example of this program component, he highlights the practice of having all complaints by email and via phone be submitted to a single mailbox for review and action. In addition, he describes as a leading practice the company's use of a single complaint reporting procedure with training for managers on how to recognize the type of complaint and the appropriate channels to use to funnel information as quickly as possible to high levels within the company.

ACC thanks Renee Dankner, former Senior Counsel for Mobil Oil Corp., for her work in preparing this profile.

III. RESOURCE LIST

Please note that inclusion on this list does not constitute a recommendation or endorsement for any product, service or company, nor is the absence of any product, service, company, or resource from the list an indication that it is not worthy of your attention. The following are simply resources identified by companies interviewed or by ACC as items of interest that may be helpful to you if you wish to pursue this topic further.

COMPANY RESOURCES

Baxter International, Inc.

Business Practice Standards
http://www.baxter.com/about_baxter/sustainability/our_values_and_standards/global_business_practice_standards/standards.html

Supplier Business Practice Standards

http://www.baxter.com/about_baxter/sustainability/our_values_and_standards/global_business_practice_standards/index.html#supplier_standards

EthicsKit for Suppliers

http://www.baxter.com/about_baxter/sustainability/our_stakeholder_engagement/suppliers/sub/supplier_ethics.html#ethics

GE

The Spirit & The Letter
<http://ge.com/files/usa/en/commitment/social/integrity/downloads/english.pdf>

Ombuds 101 Training Outline

<http://www.acca.com/protected/reference/governance/integrity.pdf>

Honeywell

Code of Business Conduct
<http://www.honeywell.com/sites/honeywell/codeofconduct.htm>

Sample Business Conduct Incident Report Form

<http://www.acca.com/protected/forms/conduct/honeywell.pdf>

Motorola

Code of Business Conduct
<http://www.motorola.com/content/0,,75-107,00.html>

Sample EthicsLine and Audit Committee Line Guidelines
<http://www.acca.com/protected/forms/audit/guidelines.pdf>

Sample Guidelines for Internal Investigations
<http://www.acca.com/protected/forms/governance/investigatepolicy.pdf>

ServiceMaster

Code of Ethics and Business Conduct
http://media.corporate-ir.net/media_files/nys/svm/CorpGov/code_of_conduct_v2.pdf

Sample Compliance Helpline Policy

<http://www.acca.com/protected/forms/compliance/helpline.pdf>

Multinational Diversified Manufacturing Company Headquartered in Europe

Sample Code Provision

<http://www.acca.com/protected/forms/ethics/conduct.pdf>

Sample Internal Guideline on Reporting Accounting, Audit & Fraud Matters

<http://www.acca.com/protected/forms/ethics/fraudreport.pdf>

Sample Audit Committee Training Materials

<http://www.acca.com/protected/forms/governance/complaint.pdf>

Non-Profiled Company Resource

Sample Procedures for Complaints Regarding Accounting, Internal Accounting, Controls or Auditing Matters
<http://www.acca.com/protected/policy/corpresp/complaints.pdf>

Non-Profiled Company Resource

Sample Whistle Blowing Policy and Procedures
<http://www.acca.com/protected/policy/corpresp/procedures.pdf>

Non-Profiled Company Resource: Wachtell Lipton Rosen & Katz LLP

Sample Audit Committee Whistleblower Procedure
<http://www.acca.com/protected/forms/audit/whistleblowerclause.pdf>

HELPLINE SERVICE PROVIDERS

Clearview Strategic Partners

http://www.clearviewpartners.com/services_overview.htm

Confide

<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>

Resultor

<http://www.resultor.com/direct.htm>

Shareholder.com

<http://shareholder.com/home/Solutions/Whistleblower.cfm>

The Network

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

Wackenhut

<http://www.ci-wackenhut.com/S2S%20Compliance%20Hotline.htm>

WHITEPAPERS; PRESENTATIONS; PUBLICATIONS; ARTICLES

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

Publication: Compliance Week (Includes Page Listing Whistleblower, Fraud Reporting Services)

<http://www.complianceweek.com/index.cfm?fuseaction=page.viewPage&pageID=104&nodeID=1>

Whitepaper: "Lawyers as Whistleblowers: The Emerging Law of Retaliatory Discharge of In-House Counsel" (July 2004)
http://www.acca.com/protected/article/governance/wrong_discharge.pdf

Webcast Transcript: "Whistleblower Anonymous Hotlines and SOX - Dealing with the French and German Decisions"
<http://www.acca.com/networks/webcast/transcript/whistleblower.pdf>

Article: "Blowing Whistles & Climbing Ladders: The Hidden Insurance Issues Behind Sarbanes-Oxley and Recent Corporate Governance Reform," by John C. Tanner and David E. Howard (ACC Docket April 2005)
<http://www.acca.com/protected/pubs/docket/apr05/ladder.pdf>

Article: "What To Do When The Whistle Blows: Do's and Don'ts of Internal Investigations," by Deborah J. Edwards and Mark T. Calloway (ACC Docket May 2004)
<http://www.acca.com/protected/pubs/docket/may04/whistle.pdf>

Article: "Audit Committees Under the New Sarbanes-Oxley Act: Establishing the New Complaint Procedures," by Marian Exall and John D. "Jack" Capers, Jr. (ACC Docket July/Aug 2003)
<http://www.acca.com/protected/pubs/docket/ja03/audit.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/docket/ma03/whistle1.php>

Article: "Sarbanes Oxley Augments Whistleblower Protection" (Seyfarth Shaw Management Alert- August 5, 2003)
<http://www.seyfarth.com/db30/cgi-bin/pubs/080503.pdf>

Article: "Sarbanes-Oxley: The Whistleblower Provisions" (IT Business Edge, March 10, 2005)
<http://www.itbusinessedge.com/content/3Q/3qpub9-20050310.aspx>

Article: "Whistleblower Provisions of the Sarbanes-Oxley Act: Some Practical Considerations" (Perkins Coie- May 15, 2003)
<http://www.perkinscoie.com/content/ren/updates/corp/051503.htm>

Article: "Whistleblower Protections of the Sarbanes-Oxley Act" (Ballard Spahr Andrews & Ingersoll LLP- December 2002)
<http://www.ballardspahr.com/press/article.asp?ID=633>

WEBSITES: MISC.

Association of Corporate Counsel
<http://www.acca.com>

(For resources and sample policies on whistleblower topics or programs for reporting concerns, search ACC's virtual library and enter search term or key word 'whistleblower' or other more specific search term key words.)

OSHA

Fact Sheet
http://www.osha.gov/OshDoc/data_WhistleblowerFacts/whistleblowers_corporatefraud-factsheet.pdf

WhistleblowerLaws.com

<http://www.whistleblowerlaws.com>

Endnotes

1 Note also that in-house lawyers can also play key roles in evaluating the sufficiency of and negotiating provisions in D&O and other insurance policies, which may seek to include exclusions of coverage for matters relating to whistleblower-type claims. While this topic is beyond the scope of this Profile, readers may be interested in a recent ACC Docket article titled "Blowing Whistles & Climbing Ladders: The Hidden Insurance Issues Behind Sarbanes-Oxley and Recent Corporate Governance Reform," by John C. Tanner and David E. Howard (ACC Docket, April 2005) at <http://www.acca.com/protected/pubs/docket/apr05/ladder.pdf>.

2 See US Department of Justice Criminal Resource Manual, Chapter 162, entitled, "Federal Prosecution of Business Organizations" at sections II and VII (http://www.usdoj.gov:80/usao/cousa/foia_reading_room/usam/title9/crm00162.htm); see also Section 8B2.1(b)(5)(C) of the Federal Sentencing Guidelines for Organizations, at <http://www.ussc.gov/2004guid/tabconchapt8.htm>. In addition, 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 White Paper titled "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>.

3 See Sections 301 and 1107 of the Sarbanes-Oxley Act of 2002. Section 301 requires Audit Committees to "establish procedures for the (A) receipt, retention, and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters; and (B) the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters." Section 1107 sets forth provisions prohibiting and punishing retaliating against informants, making it a federal crime, punishable by imprisonment of up to 10 years, a fine, or both. See also NYSE Listing Manual, Section 303A.07(c)(iii) at http://www.nyse.com/Frameset.html?displayPage=/lcm/lcm_section.html?number=1&ssnumber=102.00, and NASD Rule 4350(d)(3) at [http://nasd/display/display.html?rbid=1189&element_id=1159000652](http://nasd.complinet.com/nasd/display/display.html?rbid=1189&element_id=1159000652).

4 See "Whistleblower Hotlines Ruled Unlawful" (Eversheds August 2005 - Data Protection Briefing) at <http://www.acca.com/chapters/program/sandiego/whistlebrief.pdf>; "Conflict Between Sarbanes-Oxley Whistleblower Provisions and EU Data Protection Law (Hunton & Williams June 2005 Client Alert)" at http://www.hunton.com/files/tbl_s10News/FileUpload44/11860/Sarbanes-Oxley_EU-Data_Alert.pdf; and "Whistleblowing Lines: Conflicting Obligations" (Morrison & Foerster- July 2005) at <http://www.mfo.com/news/updates/files/update02035.html>. For a whitepaper asserting a failure of whistleblower laws in Australia, New Zealand, South Africa, Ireland and the United Kingdom, see "Common Law-Common Mistakes: The Dismal Failure of Whistleblower Laws in Australia, New Zealand, South Africa, Ireland and the United Kingdom," by Dr. William De Maria at http://www.uow.edu.au/arts/sts/bmartin/dissent/documents/DeMaria_laws.pdf.

ACC ANNUAL MEETING 2006- SESSION 310:**“Navigating Global Compliance: Establishing Rules for Taking the High Road in the Borderless Corporation”**

The following resources are included within these course materials:

Law Department’s Role in Developing & Implementing Compliance and Ethics Programs (Leading Practice Profile)

<http://www.acca.com/resource/v5909>

Corporate Governance Programs for Reporting Concerns (Leading Practice Profile)

<http://www.acca.com/resource/v6527>

Codes of Business Conduct and Ethics (Leading Practice Profile)

<http://www.acca.com/resource/v5895>

The Global Compliance Landscape: A Resource File (ACC Docket Article Oct 05)

<http://www.acca.com/resource/v6590>

For additional reading, consider the following resources available via ACC’s Virtual Library:

ACC Virtual Library Search “globalization”

<http://www.acca.com/vl/index.php?action=search&full=yes&anytext=globalization>

ACC Virtual Library Search “compliance”

<http://www.acca.com/vl/index.php?action=search&full=yes&anytext=compliance>

Structuring a Corporate Compliance Function (ACC Europe 2006 Annual Conference Materials)

<http://www.acca.com/resource/index.php?key=7434>

Global Harmonization of Codes of Conduct (ACC Europe 2005 Annual Conference Materials)

<http://www.acca.com/resource/v7216>

Compliance Training & e-Learning InfoPAK

<http://www.acca.com/resource/v6384>

Tips & Insights: International SOx Compliance (ACC Docket Article May 06)

<http://www.acca.com/resource/v7184>

The Acid Test for Your Compliance Program (ACC Docket Article April 06)

<http://www.acca.com/resource/v7110>

Going Global: Legal Risk Analysis (ACC Docket June 2006)

<http://www.acca.com/resource/v7238>