



709 Firespotting Key Compliance Issues for Your Company

Andrea Bonime-Blanc

Senior Vice President, Chief Ethics & Compliance Officer
Bertelsmann, Inc.

Keith T. Darcy

Executive Director
Ethics Officer Association

Martha Ries

Vice President, Ethics & Business Conduct
Boeing Corporation

Faculty Biographies

Andrea Bonime-Blanc

Andrea Bonime-Blanc joined Bertelsmann in New York City as the company's first chief ethics and compliance officer. Ms. Bonime-Blanc oversees global business ethics and compliance for Bertelsmann and works closely with all the divisions on the creation and implementation of business conduct programs. Bertelsmann is the German-based, \$22 billion global media company with 76,000 employees in 60 countries and operations covering books (Random House), music (Sony BMG), magazines (Gruner & Jahr), radio and television (RTL), book and music clubs (BMG Direct), and media services (arvato).

Ms. Bonime-Blanc previously served as general counsel and chief compliance officer of the global power division of PSEG, a leading U.S. energy company. Prior to that, she practiced international transactional law at Cleary, Gottlieb, Steen & Hamilton and King & Spalding. As a graduate student, she served as a political risk analyst for Bankers Trust Co., specializing in East Asian affairs.

Ms. Bonime-Blanc serves on the board of directors of the Ethics Officer Association and is chair of its external relations committee and member of its executive committee. She is also a member of the Conference Board's global council on business conduct, the council on foreign relations and director, and corporate secretary of the American Association for the International Commission of Jurists. She also serves as adjunct clinical associate professor for global affairs at New York University's School for Continuing and Professional Studies' Masters in Global Studies Program.

She holds a J.D. and a Ph.D. from Columbia University.

Keith T. Darcy

Keith T. Darcy is currently serving as executive director and CEO of the Ethics Officer Association (EOA) located in Waltham, Massachusetts. Mr. Darcy also teaches ethics and leadership in the executive programs at The Wharton School, University of Pennsylvania.

Previously, Mr. Darcy served as executive vice president and a member of the office of the president of IBJ Whitehall Bank & Trust Company. He was also a senior executive at Marine Midland Bank, N.A. (now HSBC) where he headed both consumer banking and corporate finance groups and was a key advisor to the president of Marine Midland Bank in New York. Mr. Darcy also served as chief executive officer of IGM, an insurance company, and served as CEO of a related derivatives trading company.

Mr. Darcy is also executive-in-residence at University of Maryland University College, a teaching fellow at the R.H. Smith School of Business, University of Maryland, and executive-in-residence at Manhattanville College, Purchase, New York. Mr. Darcy also serves as executive fellow and vice chairman of the center for business ethics at Bentley College in Waltham, Massachusetts. In addition, Mr. Darcy currently serves on the board of directors of E*Trade Bank, is a director of New York National Bank, and is chairman of the board of the Better Business Bureau Foundation.

Mr. Darcy holds a B.S. from Fordham University's College of Business, an M.B.A. from the Hagan Graduate School of Business at Iona College, and has done additional post-graduate study at New York Theological Seminary.

Martha Ries

M. Martha Ries is vice president, ethics and business conduct, office of internal governance of Boeing Corporation. She is responsible for companywide internal policies and procedures, regulatory tracking, operational activities, and compliance related to the ethics and business conduct organization. Ms. Ries is an experienced business and litigation attorney, who has served in various legal capacities at the company. Now based in Chicago, she was appointed to her current assignment in March 2004.

In 1997, she joined Boeing in Seattle as litigation counsel, where she focused on commercial litigation and investigations. She was later named chief counsel of commercial aviation services within Boeing Commercial Airplanes and then was appointed to lead the attorneys representing the Army Systems group within Integrated Defense Systems in Philadelphia and obtain defense experience. Ms. Ries began her law career as a judicial clerk at the Missouri Supreme Court. She then served as a trial attorney in the Commercial Litigation Branch, Civil Division, U.S. Department of Justice, in Washington, D.C., where she litigated international trade and customs law issues before going into private practice in a large Seattle law firm. For almost a decade, she focused on litigation and international regulatory work and represented various corporations.

She earned a B.A. from Boston College and a J.D. from St. Louis University School of Law.



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**BUSINESS ETHICS:
THE PERFECT STORM**

Keith T. Darcy
Executive Director
Ethics Officer Association

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1990's

	<u>1Q/1991</u>		<u>1Q/2000</u>
DJIA	2,700		11,750
NASDAQ	453		5,132

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1990's

De-regulation

- energy
- utilities
- financial services
- telecomm

Executive compensation

- stock option boom

Analyst/marketers

“Creative” accounting

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Ethics in the News

Corporate Scandals

- | | |
|------------------|-----------------------|
| - Enron | - Arthur Anderson |
| - WorldCom | - Tyco |
| - Xerox | - Adelphia |
| - Rite-Aid | - ImClone |
| - Martha Stewart | - Aurora Foods |
| - K-Mart | - Ahold |
| - Parmalat | - Tenet Healthcare |
| - Healthsouth | - Boeing |
| - Shell | - Computer Associates |

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Ethics in the News

Financial Services

Merrill Lynch
Citigroup
Morgan Stanley
CSFB
JP Morgan Chase

Group of 10 - \$1.4 billion

NYSE/Grasso

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Ethics in the News

Financial Services

- Bank of America
- Janus Capital
- Canary Capital
- Strong Capital Mgmt.
- MFS
- Pimco
- Pilgrim Baxter
- Putnam
- AIM
- Invesco
- American Express Advisors
- Quick & Reilly
- Piper Jaffray
- American Funds
- Edward Jones

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Ethics in the News

Financial Services

- Marsh & McLennan
- Aon
- Ace
- AIG
- ING
- ULR
- Met Life
- Prudential
- Zurich Financial

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Ethics in the News

Pharmaceuticals

- Bayer
- AstraZeneca
- Merck
- Pfizer
- Bristol-Myers Squibb
- Abbott Labs

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Ethics in the News

THE WALL STREET JOURNAL

June 1, 2005

The Wall Street Journal

“AIG Reduces Profits by \$4 Billion”

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Ethics in the News



November 2004

“Marsh Plans to Cut 3,000”



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Ethics in the News



May 2004

**“Former Air Force Official Druyun
Pleads Guilty to Conspiracy”**



U.S. AIR FORCE

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Ethics in the News THE WALL STREET JOURNAL

December 16, 2004

**“Fannie is Directed to Restate Results
After SEC Review. Raines Ousted.”**



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Ethics in the News

THE WALL STREET JOURNAL

December 16, 2004

“Time Warner Expected to Settle AOL Inquiries for \$510 Million”



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Ethics in the News

THE WALL STREET JOURNAL

December 27, 2004

“Ernst & Young Settles Charges for \$125 Million”



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Ethics in the News



December 19, 2004

“Celebrex Costs Pfizer”



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Ethics in the News

THE WALL STREET JOURNAL

December 22, 2004

“Tenet is Set to Pay \$395 Million to Settle Bogus-Surgery Suits”



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Ethics in the News



December 19, 2004

**“Edward Jones Fined \$75 Million.
Chief to Leave”**



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Ethics in the News



October 26, 2004

“Citigroup Extends Apology to Japan”



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Ethics in the News



May 19, 2005

**“Judge Approves \$715 Million
Adelphia Settlement”**



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Ethics in the News



May 29, 2005

**“Judge Approves \$750 Million
WorldCom Settlement”**



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Ethics in the News



April 13, 2004

**“Calpers To Oppose
Citigroup and Coke Bosses”**



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Ethics in the News

The New York Times

April 7, 2004

**“Angry Investors of Eurotunnel Move
to Replace Its Directors”**



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Ethics in the News
THE WALL STREET JOURNAL

December 6, 2004

“TIAA-CREF Faces Questions on Governance”



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Ethics in the News
The New York Times

September 13, 2004

“China Executes Bank Staff for Fraud”



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What Happened?

1. Irrational exuberance + uninhibited self-interest
2. Arrogance
3. Fraud
4. Conflicts-of-interest
5. Preferential treatment
6. Accounting arbitrage
7. Failure of independent auditors
8. Failure of analysts
9. Failure of rating agencies
10. Failure of regulators
11. Failure of board oversight
12. Culture of greed

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In Response

- 1991 U.S. Sentencing Commission – Ch. 8
- 1996 Caremark Decision
- 1999 The Holder Memo (DOJ)
- 2002 Sarbanes-Oxley Act
- 2002 NYSE Governance Recommendations
- 2003 The Thompson Memo (DOJ)
- 2004 U.S. Sentencing Commission Revision

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U. S. Sentencing Commission

Comprehensive Crime Control Act of 1984

Nov. 1, 1991

USSC Raised 2 New Risks:

1. Personal threat
2. Corporate threat

Mitigations exist through a comprehensive 'ethics compliance' program.

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Caremark Decision

September 15, 1996

Caremark pleaded guilty to mail fraud and for kickbacks to physicians for patient referrals, and paid fines of \$250 million. Shareholders brought suit alleging Caremark directors bore personal responsibility for failure to supervise.

Delaware Chancery opined that “by establishing and maintaining an effective compliance program, board members can protect themselves from personal liability suits.” ***Failure to do so, however, may “render a director liable for losses caused by non-compliance.”***



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Holder/Thompson Memos

June 16, 1999 and January 20, 2003

“Bringing Criminal Charges Against Corporations”

1. Seriousness of offense
2. Pervasiveness of wrongdoing
3. History of similar misconduct
4. Timely and voluntary disclosure
5. Existence & adequacy of compliance
6. Corporate remedial actions
7. Collateral consequences of conviction
8. Adequacy of non-criminal remedies

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Sarbanes-Oxley Act 2002

Public Accounting Reform & Protection Act

Accountants	-Create Gov't Oversight Board -Limit auditor consulting -Require auditor rotation
Executives	-Requires codes of ethics -Certification of financials (CEO/CFO) -Disclose stock sale in 2 days -Ban personal loans -Easier criminal prosecution
Boards	-Require majority independent -Receipt, retention, treatment of complaints

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New York Stock Exchange Corporate Governance Standards

1. Independent majority on the company BOD
2. Stricter definition of director independence.
3. Regular executive sessions of non-management directors.
4. Appoint a lead director.
5. Require shareholder approval for any equity compensation plans.
6. Ban on all broker votes for such plans.



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US Sentencing Commission Revisions

November 1, 2004

1. Made standards more rigorous.
2. Put **greater responsibility on BOD's and top management** to take active leadership in promoting *ethical conduct*.
3. "Under the revised guidelines, if companies hope to mitigate criminal fines and penalties, they must also promote an *organizational culture* that encourages commitment to compliance with the law and *ethical conduct*..."

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**The risks of doing business
have never been greater!**

Legislating Trust

You can't legislate trust.

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Which do you prefer?

**Self regulation?
or
More regulation?**

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**BUSINESS CONDUCT RISK MANAGEMENT:
STRATEGY, TACTICS, TOOLS**

***Andrea Bonime-Blanc, Esq.
S.V.P. & Chief Ethics & Compliance Officer
Bertelsmann AG***

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What is Effective “Firespotting”?

- Having a *framework* in place that allows for the timely and well organized anticipation, discussion and resolution of key business conduct issues
- *Identifying* your company’s key business conduct risks before they hit the proverbial fan



The Framework for BC Risk Management

So, what is Business Conduct (BC) Risk Management?

- A science?
- A discipline?
- An oxymoron?
- A wise business practice?



Defining the Business Conduct Risk “Space”

***LAW + GOVERNANCE + ETHICAL
CULTURE = BUSINESS CONDUCT***

● LAW

- National and international legal & regulatory requirements

● GOVERNANCE

- Corporate governance requirements

● ETHICAL CULTURE

- Company policy – codes of conduct, policies, procedure
- Company culture (Mission, Vision, Values)

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Why Do BC Risk Management?

- **Good business sense:**
 - Adds to the Enterprise Risk Management (ERM) Big Picture
 - Helps identify downsides no one was thinking of
- **Good fiduciary sense:**
 - Protects shareholder value
- **Good reputational sense:**
 - Risk prevention and mitigation
 - Better stakeholder/external relations
- **Good legal sense:**
 - The Revised US Federal Sentencing Guidelines
 - Other global legal and governance developments

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Revised Federal Sentencing Guidelines of 2004

New Risk Management Requirements:

The Revised FSGs now make it a requirement that companies conduct periodic assessments of their ethics and compliance risks and follow up on the implementation of appropriate solutions

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BC Risk Management: The Big Picture

- The trend toward *ERM*
- How does BC Risk Management fit in?
 - Break it down:
 - Legal & Regulatory Compliance
 - Corporate Governance
 - Ethical Culture
 - Build it back up:
 - Integrate BC Risk Management into ERM
 - Requires integrated Risk Management Team: Legal, Audit, Ethics & Compliance, Accounting, Operations, Others...

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BC Risk Management: Components

- The Infrastructure of BC Risk Management:
 - The Revised Federal Sentencing Guidelines
 - Best Practices from the U.S. and abroad
 - Hotlines, HelpLines, Auditing, Root Cause Analysis
- The Substance of BC Risk Management:
 - Create a comprehensive checklist of possible BC risk areas
 - Conduct a senior management/board BC risk brainstorming session
 - Collect substantive data from all sources

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The Infrastructure of Business Conduct

1. A Focused Program of Policies & Guidelines
2. Dedicated Ethics & Compliance Personnel
3. Senior Management & Board Oversight & Education
4. Due Care with Discretionary Financial Authority
5. Communication & Training of All Employees
6. Monitoring & Auditing of Policies & Programs
7. Enforcement of Disciplinary System
8. Internal Reporting System and Improvement
9. Periodic and Continual Risk Management
10. Measuring effectiveness of your business conduct program

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The Substance of Business Conduct: Issues

Corporate Structure	Internal Relationships & Behavior	External Relationships & Behavior
Corporate Governance	Discrimination & Harassment	Government Investigations
Accounting & Disclosure	Whistleblower Protection	Antitrust & Unfair Practices
Money Laundering	Confidentiality & Information Security	Corruption & Bribery
Fraud	Email & Internet Use	False Advertising
Insider Trading	Environment, Health & Workplace Safety	Business Due Diligence
Records Management	Privacy	Political Lobbying

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Conducting a BC Risk Assessment

Who conducts It?

- Internal resources

- Audit
- Compliance
- Task Force

- External resources

- Auditors
- Specialists/Consultants

How is it done?

- Initial:

- As an audit
- As an assessment
- As a self-assessment

- Follow-Up:

- Periodic
- Mix it up!

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Drilling Down Deeper: BC Self-Assessments

- Not an *audit*
- A *partnered self-evaluation*
- Follows a *diplomatic* approach
- *Senior management* support and participation
- *Identify key players* in a business unit and *gain their confidence*
- Create an *open, mutually trusting dialogue*
- *In-depth, narrowly focused or broad scope*
- As much *educational and didactic* as it is evaluative
- Not just a review, a *symbiotic* process
- A chance for corporate *introspection*
- *Organic: ideas and recommendations implemented concurrently*

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The BC Self-Assessment Process

1. Initial “*getting to know you*” *meetings* with top HR, Legal and Financial representatives from each company
2. Follow-up mailing of “*Toolbox*” *matrix and checklists*
3. Numerous *phone calls* to explain and discuss
4. *1-2x Self-assessment meetings* with key Company Representatives
5. Preparation of *draft Report*

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The BC Self-Assessment Process cont'd

6. Share Draft *Report with Key Company Representatives*
7. Allow for *corrections, comments and reconciliation* of recommendations
8. Agree on *final report*
9. Issue *Final Report as a working document* to key Company representatives
10. Issue *Executive Summary* to Senior Leaders of Company & Division

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The BC Self-Assessment Toolbox

- The BC Self-Assessment Matrix:
 - Focused around the Federal Sentencing Guidelines
- The BC Self-Assessment Checklists:
 - Policies Checklist
 - Risk Assessment Checklist
 - Ethics & Compliance Training Disclosure
 - Litigation & Investigations Disclosure
 - Audit & Assessments Disclosure

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Excerpt from a BC Self-Assessment Checklist

<i>Does your Company have a Policy in any of the Following Areas?</i>	Yes/No Comments
1. The Corporate Structure: How We Are Organized <ul style="list-style-type: none"> ■ Delegation of Approval Authority ■ Corporate Governance Guidelines ■ Crisis Management/Business Continuity 	
2. Internal Relationships and Behaviors: The Employee - Employer Relationship <ul style="list-style-type: none"> ■ The U.S. Regulatory Framework (list multiple policies) ■ Confidentiality and Information Security ■ Workplace Violence 	
3. External Relationships & Behaviors: Guidelines for Conducting Business <ul style="list-style-type: none"> ■ Antitrust ■ Corrupt Payments ■ Political Lobbying 	

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The BC Risk Assessment Report: Overview

1. **Identification of key ethics & compliance risk issues** for each business to focus on – The “Substance of Compliance”
2. **Indirect benchmarking** of the company against U.S. Compliance Best Practices Guidelines – The “Infrastructure of Compliance”
3. **Recommendations** to improve both the infrastructure and the substance of the Company’s existing compliance program
4. **Follow-up** to ensure recommendations are being implemented in a timely and effective manner

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Collateral Benefits: BC Risk Task Forces

Crisis Management & Business Continuity	<ul style="list-style-type: none"> • Develop Plans and Checklists • Comply with workplace health & safety laws • Mitigate crisis and business continuity risks
Whistleblower Protection	<ul style="list-style-type: none"> • Recommend viable option for anonymous reporting • Comply with Sarbanes Oxley • Mitigate Whistle-Blower retaliation liability
Records Management & Retention	<ul style="list-style-type: none"> • Develop Policy Template & Checklists • Comply with Sarbanes Oxley • Mitigate dangers of criminal misconduct
Privacy	<ul style="list-style-type: none"> • Develop Policies & Checklists • Comply with new U.S. Employee Privacy Laws • Mitigate privacy non-compliance liability

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Lessons Learned from BC Risk Self-Assessment

- **Work with your company culture** not against it
 - Centralized or decentralized, unitary or diverse
- **Define the focus** of your assessment up front
 - Why are you doing it? Who is the audience?
 - Will the scope be broad or narrow, focused on process, substance or both?
- **Enlist key support** up front
 - Get Senior Management support
 - Connect with top HR, Legal & Financial counterparts
- This is a **partnered effort not an audit**
 - Don't let the process slip into an audit
- Provide **extra value** by educating and sharing
 - Make meetings an educational experience
 - Share knowledge across your companies

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Company Testimonials on our Self-Assessments

- “The self-assessment ... helped us to identify areas in need of attention...we are currently working to improve our compliance effort.”
- “The most important aspect of the program so far has been the dialogue (it) has generated. It provides a sounding board for top level executives ... to “ask the experts” in situations of uncertainty.”
- “An excellent resource to provide preventive tactics and avoid problems before they occur.”

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So, What About “Firespotting”?

- BC Risk Management is not a panacea
- Watch out for what is not said
- When in doubt, dig deeper
- Stay on the cutting edge of:
 - Your company’s business practices
 - Your industry’s business practices
 - Benchmarking with your peers
 - Scandals in general

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The Single Most Important Lesson Learned

Whatever else you do concerning
BC Risk Management...

**...the single most useful thing you can do is
to conduct periodic senior management
BC risk brainstorming sessions...ask
probing questions and benchmark with
your peers**

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CASE STUDY: THE BOEING CORPORATION

***M. Martha Ries
Vice President, Ethics & Business Conduct
The Boeing Corporation***

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Integrity is the foundation of Boeing values.

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Independent Reviews: Rudman I, II/Ethical Leadership Group/IDE Report

- Found Strong Foundation
 - Best Practices in some areas
 - Employee Survey responses
- Ethics Recommendations
 - Change Structure and Reporting Relationships
 - Increase Senior Management Involvement
 - Communicate More To Employees
 - Enhance Training and Investigations
 - Conduct More Monitoring and Oversight

More than 200 actions implemented.

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Improved Administration of Ethics and Business Conduct Organization

Established the Office of Internal Governance


- Ethics reports directly to OIG
- Increased staff
- Operational excellence
 - Program Reviews, Cycle Time, Data Integrity
- Proactive Strategy
 - Employees' Personal Responsibility
 - Management Leadership Role

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Increased Awareness of Standards of Conduct

- Code of Conduct
- Guidelines Booklet
- Ethics Line
- Ethics Report 
- Ethics Resource Information for Managers

Company-wide Commitment to Standards.

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Enhanced Ethics Training

- Ethics Challenge
- Boeing Leadership Center
- New Employee Orientation
- Recommitment Events
- Determine to Make a Difference!! Workshops
- Procurement Integrity/Trade Secrets

Informed employees make better decisions.

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Increased Management Involvement and Oversight

- Senior management reinforces key messages
- Lead Ethics Training and events
- Internal
 - Compliance Assessment Team/Compliance Review Board
 - Ethics & Business Conduct Committee
 - Corporate Audit
- External
 - Audit Committee
 - Audits/Reviews

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Case Analysis

- Ethics Advisors/Ethics Line
- Investigations – volume, source, types of cases, substantiated rate, discipline
- Assessment of risk in cases – trends and root cause analysis

Source: National Business Ethics Survey 2003, Ethics Resource Center

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Lessons Learned

- Tone at the top matters
- Integrated risk management
- No room for complacency
- Cultural change takes time

From Compliance to Leadership

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Summary

- Strengthened ethics processes, procedures, and people
- Heightened employee awareness and increased number of inquiries
- Increased management ownership

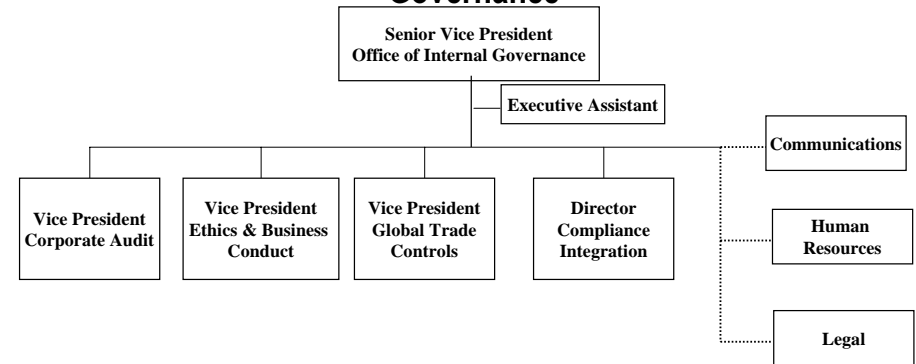
Boeing is committed to the highest business conduct and compliance.

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The Boeing Company Office of Internal Governance



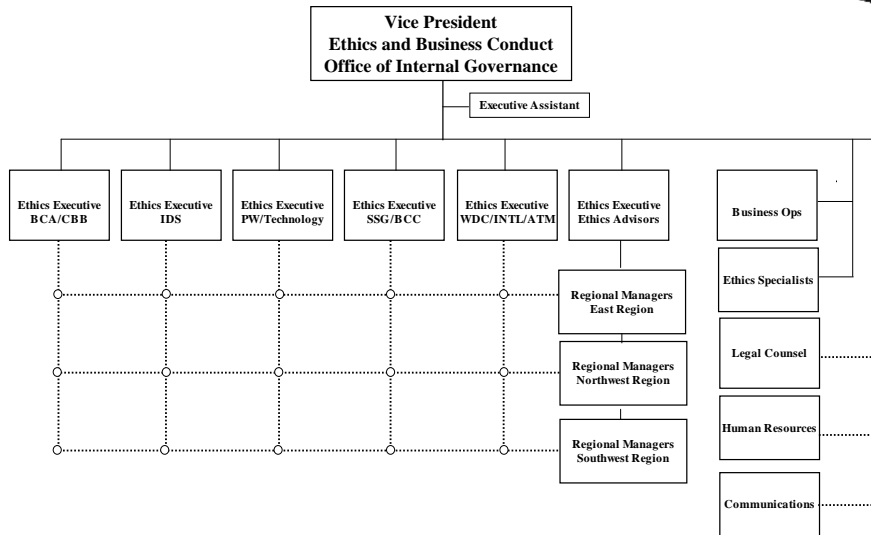
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**The Boeing Company
Ethics and Business Conduct**



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Ring of Truth

- Employee left her two carat diamond ring in the restroom. Posted \$1K reward signs
- Founder chose not to accept reward saying, “I’m just glad you have your ring.”
- The employee's honesty and integrity built a sense of trust with her co-worker. For all who heard about this episode, there is a feeling of pride in the integrity of the Boeing team.

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Can I go? Please!

- A procurement agent received an offer of deeply discounted tickets from a supplier to attend a highly publicized European professional soccer match. Unsure of the proper course of action, the procurement agent contacted an Ethics Advisor for guidance.
- The procurement agent wisely did not accept the invitation to purchase the discounted soccer tickets. The procurement agent is in a position to influence the allocation of business to this supplier and must be careful to avoid actions that create the appearance of favoritism or that may adversely affect the company's reputation for impartiality and fair dealing.

