



811: You Have a Code of Conduct—Now What? Running an Effective Compliance Program

Theodore L. Banks
Associate General Counsel
Kraft Foods North America, Inc.

Donna C. Boehme
Global Head of Compliance
BP p.l.c.

Theresa A. Szeliga
Director, Ethics & Business Conduct
The Boeing Company

Faculty Biographies

Theodore L. Banks

Theodore L. Banks is associate general counsel at Kraft Foods in Northfield, Illinois. At Kraft, his group is responsible for corporate matters, antitrust, mergers & acquisitions, compliance programs, and supervising litigation. He also coordinates computer applications used in the law department.

Throughout his career, Mr. Banks has been involved with many substantial corporate transactions and litigated cases. He supervised the \$19 billion acquisition of Nabisco by Kraft and the \$8.7 billion IPO of Kraft Foods Inc. He successfully coordinated the defense of the challenge by the State of New York to Kraft's acquisition of the Shredded Wheat cereal business in one of the few modern fully-litigated merger cases.

Mr. Banks has written numerous articles on antitrust and legal management topics and a multi-volume treatise on distribution law, published by Aspen Law & Business. His text on corporate compliance programs was published in 2002. He has been involved in the design of computer networks for the Kraft law department, including development of Kraft's internet and intranet sites.

Donna C. Boehme

Donna C. Boehme is global head of compliance for BP p.l.c based in London. As a member of the group leadership team, she is responsible for the development of a comprehensive compliance capability for the BP Group globally, including the identification of areas of risk and the implementation and maintenance of the company's overall compliance strategy. Ms. Boehme leads a global compliance team responding to BP's operations in Europe, North and South America, Australasia, and Africa.

Prior to joining BP, Ms. Boehme was vice president & general counsel – global compliance for BOC plc, the British-based industrial gases multinational, where she established the company's office of global compliance and led a senior global multi-functional and cross-business team in developing and implementing BOC's global compliance program, "BOC Code of Conduct – Living Our Values." During her tenure at BOC, Ms. Boehme was also responsible for the development of number of significant compliance programs including the establishment and sponsorship of the BOC Export Compliance Council and BOC's integrated global competition compliance program, "Competing Fairly." Ms. Boehme started her legal career as a corporate transactional lawyer with a large Wall Street firm, specializing in mergers & acquisitions and corporate finance.

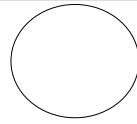
Ms. Boehme is a sponsoring member of the Ethics Officers Association and a frequent industry speaker on matters of ethics and compliance.

She obtained her JD from New York University School of Law.

Theresa A. Szeliga

Director, Ethics & Business Conduct

The Boeing Company



Compliance Programs and Risk
Management
Prioritizing for Effectiveness
Ted Banks
Kraft Foods North America

“Did you ever expect a corporation
to have a conscience when it has no
soul to be damned and no body to
be kicked?”

Edward, First Baron Thurlow (1731-1806), quoted in *Securities
and Exchange Commission v. John Adams Trust*, 697 F. Supp.
573, 579 n.6 (D. Mass. 1988).

Targeting and Prioritizing

- ❖ Risk Analysis
- ❖ Risk Alignment
- ❖ Risk Management

Risk Analysis

- ❖ Identify risks that relate to business
 - ❖ Criminal
 - ❖ Civil
 - ❖ NGOs
- ❖ Quantify
 - ❖ Likelihood of violation
 - ❖ Extent of injury
 - ❖ Monetary
 - ❖ Reputation

Risk Alignment

- ❖ Enterprise-wide risks
- ❖ Role-specific risks
 - ❖ Identify individuals in role
 - ❖ Events (RIF)

The "Risk Grid"

Compliance Risk Grid

<i>Subject</i>	<i>Responsible Party</i>	<i>Jobs Covered</i>	<i>Training & Control Methods</i>	<i>Risk (H/M/L)</i>	<i>Next Steps</i>	<i>Timing</i>
Antitrust and Unfair Competition	Banks					
Fair Competition / Antitrust	Banks/Eisner	Sales, Mktg	Intranet information, live training	High	Refine messages to specific job roles	Ongoing
Collusive Conduct (e.g., price-fixing, market allocation)	Banks/Eisner	Sales Sr. Mgt.	Intranet information, live training	High	Refine messages to specific job roles	Ongoing
Monopolization	Banks/Eisner	Sales Mktg.	Intranet information, live training	High	Refine messages to specific job roles	Ongoing
Unfair practices/business torts (e.g., disparagement, inducing breach of contract, commercial bribery)	Herst	Sales, Purchasing	Intranet information	Med	Refine messages to specific job roles	Ongoing
Price Discrimination	Banks/Eisner	Marketing Consumer Promotion Sales	Intranet information, live training, review by Sales Finance, CAP control system	High	Refine messages to specific job roles	Ongoing
Acquisition/Divestiture	Banks	Corp. Strat. Seg. Strat.	Intranet information, live training	Med	Update list of employees involved in strategy	Ongoing
Interlocking Directorates	Banks	Corp. Sec.	Counseling	Low	Review candidates if presented	Ongoing
State Below-Cost Pricing Laws	Banks	Sales Mktg.	Counseling	Low	Review defense plans as presented	Ongoing
Environment	McAndrew					

Risk Management

- ❖ Communications
 - ❖ Training
 - ❖ Reference
 - ❖ Reporting
 - ❖ Inquiring
- ❖ Control Systems
 - ❖ Removal of incentives
 - ❖ Removal of opportunity
- ❖ Testing
 - ❖ Individual
 - ❖ Systemic

Communications

- ❖ Targeted
 - ❖ LMS: each person knows obligation
 - ❖ Tracking
- ❖ Effective
 - ❖ Live or CBT: make it good
- ❖ Ubiquitous
 - ❖ Easy to get answers
 - ❖ Relationship with law staff
 - ❖ Intranet
 - ❖ Easy to report problems (hotline)

Know What to Know

- ❖ Goal: every employee knows key compliance information, or where to find it, and is motivated to comply
- ❖ Intranet: basic info, where to go for questions
- ❖ Create a risk-role database
- ❖ Learning Management System
- ❖ Computer portal

Repositioning “Compliance”

- ❖ **Code of Conduct**
 - ❖ Comprehensive
 - ❖ Clear
 - ❖ Relevant
- ❖ **Branding:**



Intranet Information Based on Job

Legal Knowledge Checklists

Post Division

To do your job in the Post Division, you need to learn many Kraft policies and procedures, and to master a body of information and ideas. Among these are some legal principles that relate directly to your job performance.

The responsibility to understand these principles is yours. The Kraft Foods Law Department has provided "Legal Education Checklists" in the following areas:

- ◆ Advertising
- ◆ Antitrust
- ◆ Business Ethics
- ◆ Confidential Information
- ◆ Consumer Promotions
- ◆ Contracts
- ◆ Document Creation and Retention
- ◆ Employment
- ◆ Food Labeling
- ◆ Trademark and Copyright

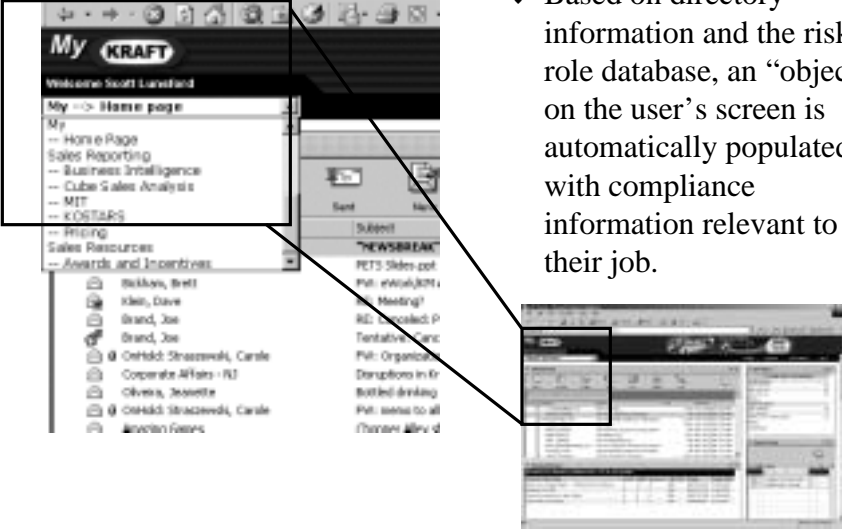
The checklists are the starting point for you to gain some basic knowledge about the areas of law most essential to your work at Kraft Foods. In the course of your work, you will need more information about many of the principles and legal counseling about their application to specific situations. The checklists therefore provide links to Kraft Intranet sites which contain additional information about the topics and, most important, the names of the company lawyers best able to provide legal advice and services on each topic.

Learning Management Systems

The screenshot shows a 'Choose Qualification' window with a table of qualifications. The 'Fork-Lift License' row is circled in red.

Name	ID	Code	Valid from	Valid to
Qualifications catalog (Internal)				
Safety & Health Certifications	Q 6000798	Safety & Hea	01.01.1900	Unlimited
<input type="checkbox"/> First Aid Certificate (Pie)	Q 6000799	First Aid Ce	01.01.1900	Unlimited
<input type="checkbox"/> First Aid Certificate (Res)	Q 6000800	First Aid Ce	01.01.1900	Unlimited
Apprenticeship	Q 60001654	Apprenticeship	01.01.1900	Unlimited
<input type="checkbox"/> Maintenance Mechanic	Q 60001655	Maintenance	01.01.1900	Unlimited
<input type="checkbox"/> Electrician - Apprentice	Q 60001656	Electrician	01.01.1900	Unlimited
<input type="checkbox"/> Instructor, Apprenticeship	Q 60001676	Instructor,	01.01.1900	Unlimited
Information Systems	Q 60001657	Information	01.01.1900	Unlimited
Desktop Applications	Q 60001661	Desktop Appl	01.01.1900	Unlimited
<input type="checkbox"/> Word	Q 60001663	Word	01.01.1900	Unlimited
<input type="checkbox"/> Excel	Q 60001664	Excel	01.01.1900	Unlimited
<input type="checkbox"/> Access	Q 60001665	Access	01.01.1900	Unlimited
ERP	Q 60001662	ERP	01.01.1900	Unlimited
Certificates & Licenses	Q 60001658	Certificates	01.01.1900	Unlimited
<input type="checkbox"/> Fork-Lift License	Q 60001659	Fork-Lift Li	01.01.1900	Unlimited
<input type="checkbox"/> Truck License	Q 60001660	Truck License	01.01.1900	Unlimited
Language	Q 13000103	Language	01.01.1900	Unlimited

The Portal



The screenshot shows a web browser window with the title "My KRAFT". The main content area is titled "Welcome Scott Landford". On the left, there is a navigation menu with the following items: "My -> Home page", "My", "Home Page", "Sales Reporting", "Business Intelligence", "Cube Sales Analysis", "MTP", "e-CRM/PS", "Pricing", "Sales Resources", and "Awards and Incentives". Below these are several user profile icons and names, including "Bilko, Brett", "Klein, Dave", "Brand, Joe", "Brand, Joe", "Orshold Straszewski, Carole", "Corporate Affairs - RJ", "Oliver, Jeanette", "Orshold Straszewski, Carole", and "Invitation Forms". On the right side, there is a "NEWSBREAK" section with a "Submit" button and a list of news items, including "PETS Sides col", "Meeting?", "RD: Canceled P", "Tentative Canc", "PH: Organiza", "Danzon/In K", "Bottle/drink", "PH: sent to all", and "Thursd 11/14 d". A smaller inset screenshot shows a detailed view of a news item or report.

- ❖ Based on directory information and the risk-role database, an “object” on the user’s screen is automatically populated with compliance information relevant to their job.

Leverage

- ❖ Build a team with SMEs outside of the law staff
 - ❖ Substantive experts
 - ❖ Delivery experts
- ❖ Incorporate compliance messages in existing training
 - ❖ Sales training with subtle antitrust messages

Effective Training

- ❖ Goal is retention of key information
 - ❖ Use a variety of tools: print, live, CBT, intranet, video, audio, webinar, email
 - ❖ Do it from client's POV, not lawyer's (focus group)
- ❖ Improve your presentation skills
- ❖ Training in conjunction with control systems

One-Page Rule/Controls

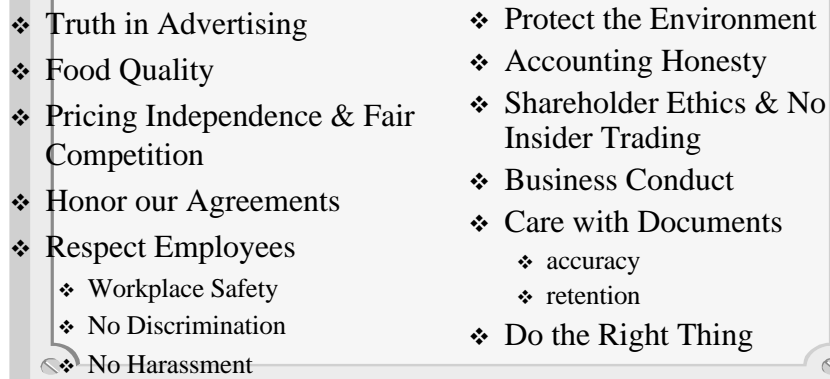
Checklist: Trademarks

- **Trademark's**
 - **Are:** Words, Symbols, Sounds, Smells, Shapes which distinguish "us" from "them"
 - **Creates:** "Brand Equity" which we need to use and protect
 - **Are:** Worth more than our plants, equipment, and real estate together
 - **Can:** Be lost by misuse
- The **Law Department** should review:
 - Brand names, fanciful names, slogans, premium names, recipe names, designs and taglines
 - Agreements which grant Kraft rights to use third party owned trademarks (and vice versa)
- **Clearance Process**
 - The trademark you select affects protectability – generally the more descriptive, the less we can protect it
 - Timing depends on Degree of Exposure
 - ◊ FSI's, Recipes: 1-2 days for scans
 - ◊ Labeling: 5-6 days for full searches
 - ◊ Investigation: licensing and purchase of TM's may take longer

Rules of Thumb in Using a Mark	
Do	Don't
Use a mark as an adjective	Use a mark as a noun (e.g., don't leave it standing alone, or use in plural or possessive form)
Distinguish a mark from surrounding copy by use of caps, Italics, or™ or ®	Use a mark descriptively or generically
Use the trademark consistently	Mutilate a mark Make puns or create new words with a mark

For more information: Check the intranet or contact Jackie Leimer 6-3277, Doug Cherry 6-2879, or Susan Hanaway Frohling 6-8657

The One-Page Rule for Everything

- 
- ❖ Truth in Advertising
 - ❖ Food Quality
 - ❖ Pricing Independence & Fair Competition
 - ❖ Honor our Agreements
 - ❖ Respect Employees
 - ❖ Workplace Safety
 - ❖ No Discrimination
 - ❖ No Harassment
 - ❖ Protect the Environment
 - ❖ Accounting Honesty
 - ❖ Shareholder Ethics & No Insider Trading
 - ❖ Business Conduct
 - ❖ Care with Documents
 - ❖ accuracy
 - ❖ retention
 - ❖ Do the Right Thing

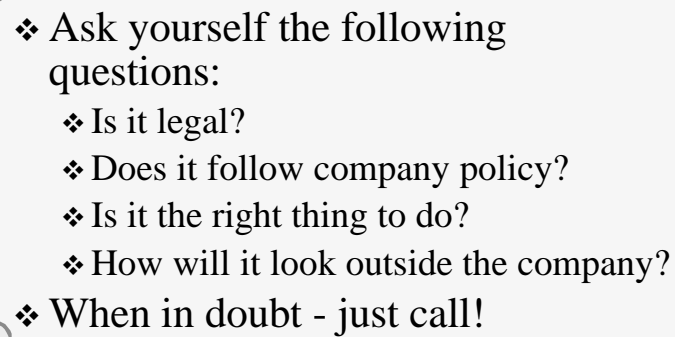
Evaluate

- ❖ Is your compliance system effective?
- ❖ Track delivery (LMS or similar)
- ❖ Analyze every failure and fix problems

Simplicity

- ❖ Emphasize upbeat message, pride
- ❖ Key rules
- ❖ Where to go for information, help
- ❖ We're in this together

The Key Guidance

- 
- ❖ Ask yourself the following questions:
 - ❖ Is it legal?
 - ❖ Does it follow company policy?
 - ❖ Is it the right thing to do?
 - ❖ How will it look outside the company?
 - ❖ When in doubt - just call!

Tbanks@Kraft.com

Compliance Training On-Line

Examples from Cognitive Arts and
Integrity Interactive
Ted Banks, Kraft Foods North
America

CognitiveArts®

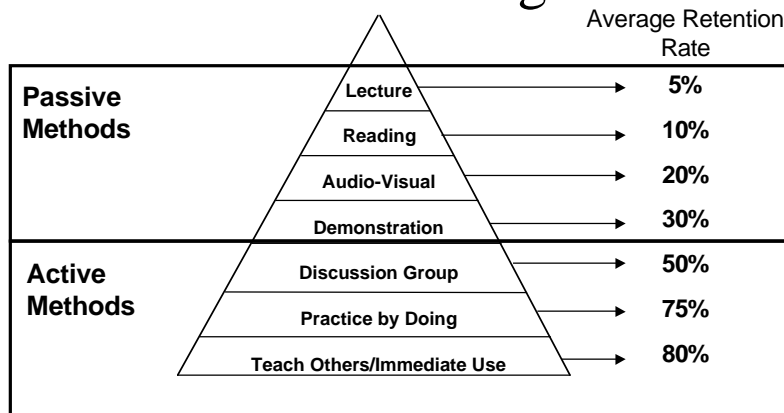
Cognitive Arts: Approach to Compliance Training

For more information: Rachel Herman
rherman@cognitivearts.com

Teaching what Matters: Critical Mistake Analysis

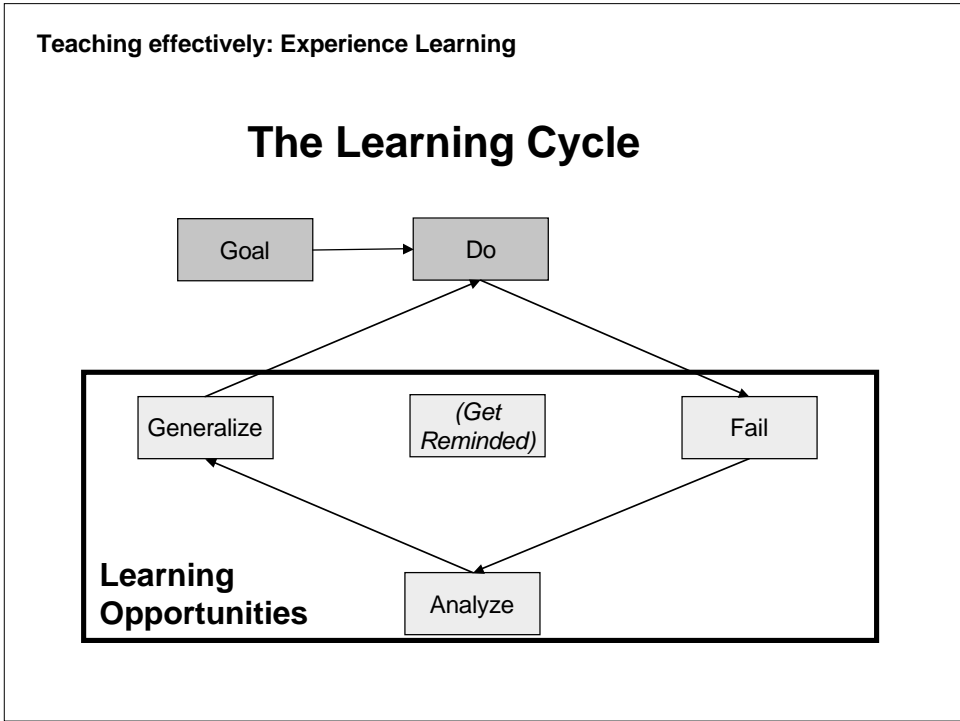
- Expert performance of a skill is systematically different from novice performance.
- We can identify the key differences. We call these *critical mistakes*.
- Cognitive Arts' learning solutions target these critical mistakes.

Teaching effectively: Experience Learning



How do people actually learn? E-learning will be effective if it allows practice by doing, but won't do much if it is nothing more than lecture and reading.

The Learning Pyramid taken from 'Corporate Universities' Jeanne Meister - 1998



Teaching Effectively: Experience Learning

Design & Development – The Experience Learning Solution™

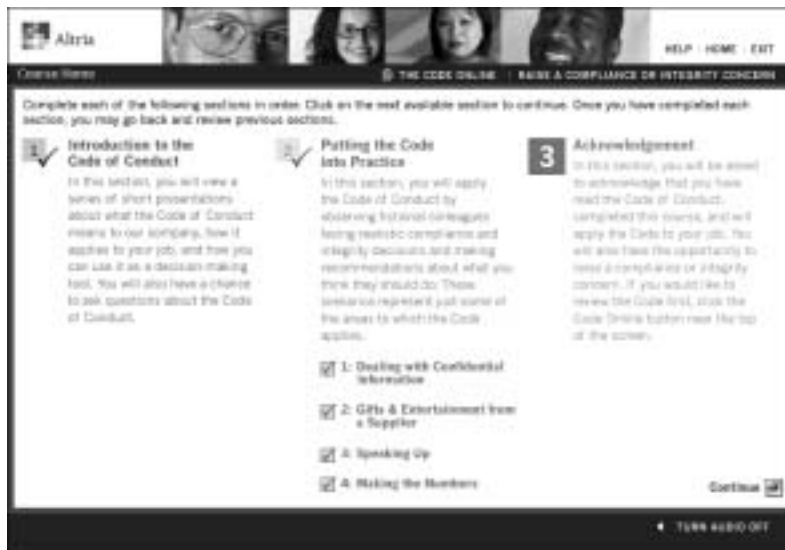
Design Principles

<ul style="list-style-type: none"> • How we learn > Goal: We want to do something > Do: We try it > Fail: The unexpected occurs > Analyze: We try to explain it > Do: We try again > Generalize: We draw conclusions 	<p>Experience Learning Design Principles</p> <ul style="list-style-type: none"> > Give the learner a mission > Provide an opportunity for practice > Create meaningful challenges > Coaching and advice only when relevant > Make failures safe > Provide an appropriate series of hurdles
--	---

Scenario-Based Training

- Cognitive Arts delivers training in the form of learn-by-doing scenarios
- We analyze the root causes of critical mistakes:
 - Situations
 - Critical Decisions
 - Underlying beliefs
- We build scenarios that expose learners to the situations in which critical mistakes occur, and confront learners with critical decisions in those situations

Training Example: Altria and Kraft Code of Conduct



Altria Code of Conduct - Microsoft Internet Explorer

Altria

Speaking Up: Decision 1 of 2

THE CODE ONLINE RAISE A COMPLIANCE OR INTEGRITY CONCERN

HELP | HOME | EXIT

Should Su-Jung bring the test results to the attention of Priscilla, Christophe's supervisor?

Su-Jung: Christophe, I've just been reviewing the latest test results on the diet shake for my presentation. Have you seen them yet?
Christophe: No, not yet. I just received them last night and haven't had a chance to take a look at them. Is something wrong?
Su-Jung: I think there is. Some of the people in the long-term study developed vitamin deficiencies while using the shake. They continued to lose weight, but these deficiencies worry me. We didn't see anything like this in earlier tests. What do you make of it?
Christophe: Vitamin deficiencies? That doesn't sound right. (sighs) I'm sorry, I don't mean to imply that you misinterpreted the results. I just can't believe that people would develop any vitamin deficiencies using this shake. It's full of nutrients, and we haven't seen any results like this during the other rounds of testing.
Su-Jung: Well, it's all here in black and white.
Christophe: There must be some mistake. There must have been some flaw in the testing method or something.
Su-Jung: Go about the presentation I'm working on... How should we treat these test results?

Make Your Recommendation

TURN AUDIO ON

Altria Code of Conduct - Microsoft Internet Explorer

Altria

Speaking Up: Decision 1 of 2

THE CODE ONLINE RAISE A COMPLIANCE OR INTEGRITY CONCERN

HELP | HOME | EXIT

Make Your Recommendation

Should Su-Jung bring the test results to the attention of Priscilla, Christophe's supervisor?
 Click one of the links below to make your recommendation.

No, Su-Jung should not bring the test results to Priscilla's attention.

Yes, Su-Jung should bring the test results to Priscilla's attention.

If you need help deciding, review the conversation or explore the Guidance section below.

Review the Conversation

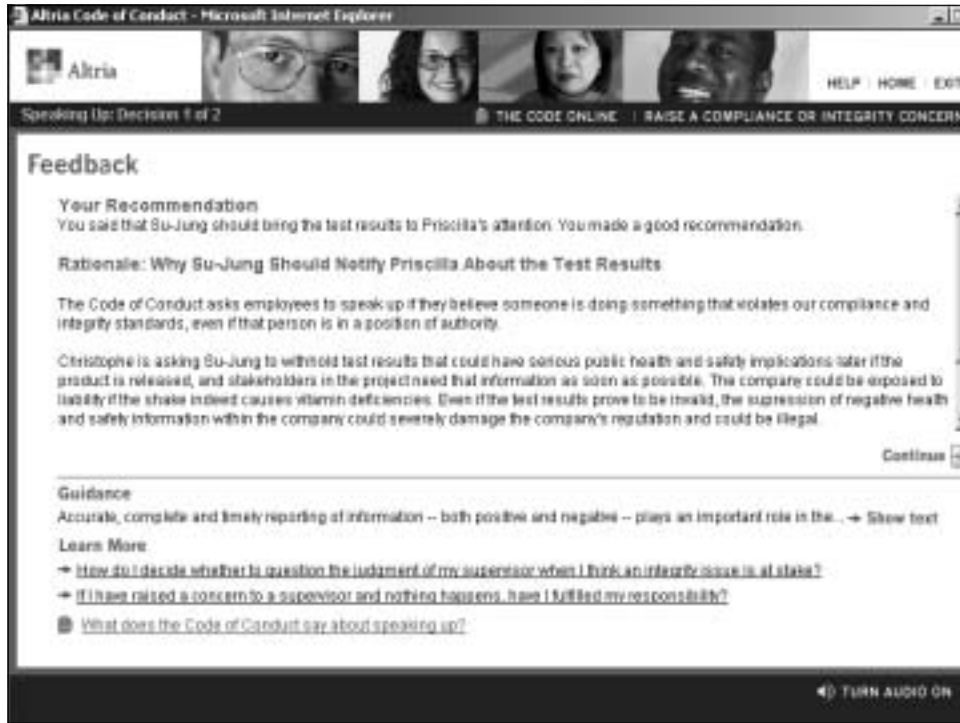
Guidance

Accurate, complete and timely reporting of information – both positive and negative – plays an important role in the... → Show text

Learn More

- How do I decide whether to question the judgment of my supervisor when I think an integrity issue is at stake?
- If I have raised a concern to a supervisor and nothing happens, have I fulfilled my responsibility?
- What does the Code of Conduct say about speaking up?

TURN AUDIO ON



Issues with Compliance Training: Design

Employees don't understand application of rules to real life	Build training around real-world scenarios
Employees don't see how compliance relates to their specific responsibilities	Make scenario issues realistic and relevant to the job
Employees don't see why compliance matters to them	Show consequences of non-compliant behavior
Employees don't believe compliance actually matters to the company	Introduce training with personal messages from key company officials
Employees don't retain knowledge after training	Make training scenarios dramatic and memorable
Generic training doesn't adequately reflect the company's culture and processes	Create company-specific training scenarios

Issues with Compliance Training: Process

SME time is expensive and difficult to get	Leverage time effectively
Valid Signoff is critical	Bullet-proof signoff processes
Demonstration of course delivery may be a legal necessity	Verifiable tracking and version control
Rules, regulations and situations change over time	Pro-active maintenance policy
Achieving maximum impact with minimal training time is vital	Empirically-based prioritization of training targets
Projects need to come in on time and within budget	SEI-CMM Level 5 Project Management Processes
Systems need to be reliable	Dedicated QA group; extensive testing

Integrity Interactive

For more information:

Russell Gee
 rgee@i2c.com

Doing Business with Integrity **Antitrust Course** ? Help Exit

Welcome

Welcome to the Antitrust course. To begin, click on "Introduction."

① **Introduction**

Friendly Competition

How a conversation became a crime

Learn how to avoid common antitrust pitfalls that could sink your career.

② **Begin Course**

Library

Visit the library for important information.

Glossary
Cases & Examples
Red flag
D.A.'s Don'ts
Handbook
Competitive Information
Internet Resources
Q & A

Friendly Competition *How a conversation became a crime* **Antitrust** Back Library Help Exit

Read the text below, then click on "Story."

Ryan Wilson

Age: 32
Wife: Kim
Occupation: Account Manager for Globetack Industries
Golf Handicap: 7
Drives: Black BMW 325
Favorite Expression: "When they say it's not about the money, it's about the money."

 Michael Perault VP of Sales, Globetack Industries	 Tom Burns Account Manager, Allco Corporation
 Gloria Davies Contract Officer, Globetack Industries	 Emily Kaplin Account Manager, Hercon Corporation
 Dan Levinger Corporate Counsel, Globetack Industries	 Mary Thomas Corporate Counsel, Allco Corporation

Introduction

The antitrust laws protect free markets and customer choice. You need to know about the antitrust laws, especially if you have any contact with any of your company's competitors.

During this course, you're going to follow the story of Ryan Wilson, an ordinary salesman who works at a fictional company called Globetack Industries.

On this page you can see Ryan and some of the other people in this story. Now, click on the "Story" button below.


Start
Next

Friendly Competition
How a conversation became a crime

Antitrust

Back Library Help Exit

Read the text below, then click on "Story."




Ryan is called in to talk to his boss...

Ryan has a disastrous meeting with his boss.

You're about to sit in on a meeting between Ryan and his boss, Michael Perault. When Ryan got the call to come to Michael's office, he expected a pat on the back—after all he'd just closed the biggest sale of his life with Zyco Industries. But Ryan quickly found out that it wasn't going to be that sort of meeting.

Click on the "Story" button to see what happened:




Story

Don't let this happen to you.

In the rest of this course, you'll *go back in time* to see what Ryan did wrong. Along the way, you'll learn about the antitrust rules that apply any time you have contact with a competitor. When you're finished, you'll be able to protect yourself and your company from what happened to Ryan Wilson.

Click on the "Next" button to learn Ryan's story:



Next

Antitrust Course Menu

Antitrust

Back Library Help Exit

Click on instructions. Then complete all menu items. A checkmark will appear beside each menu item when completed.



Instructions

- 

Price Discussions
Ryan talks with a competitor about pricing.
- 

Discussing Competitive Issues
Ryan's discussion turns to discounts.
- 

Trade Association Dangers
Ryan speaks "off-the-record" with a competitor.
- 

Bid Rigging & Allocation
Ryan and a competitor agree to allocate bids.
- 

Working with Suppliers
Ryan discusses competitive information with a supplier.
- 

E-mail Is Forever
Ryan sends his associate a dangerous e-mail.
- 

Conclusion
Review, Test, Certificate

Price Discussions

Antitrust

Back Library Help Exit

Directions: Read the text, click underlined words, and complete items 1-5.

Under the antitrust laws, a price-fixing agreement between competitors is a felony punishable by prison time and huge fines.



It takes only two things to make the government's case that an agreement exists in violation of the antitrust laws: communication and common action by competitors. Even vague or general discussions about "price wars" can look suspicious. Telling a competitor something as simple as: "Gee, we should all avoid price wars, to avoid killing each other off in the marketplace" is a very dangerous discussion.

The potential penalties for antitrust crimes are severe, including prison terms and fines. The law provides for fines up to \$350,000 for individuals and multi-million dollar fines for companies. Hopefully, these fines are enough deterrent for any individual thinking about committing an antitrust violation.

In order to avoid crossing the line, you should never discuss price or any competitive issues with a competitor.

At the trade show, Ryan talks about prices with his competitor, Tom Burns...



1 The Story

2 Take Note!

3 Q & A

4 Checkpoint Question

5 The Right Way

6 Return to Menu

PART II
APPLYING THE LAW
EFFECTIVE CORPORATE
COMPLIANCE PROGRAMS

CHAPTER 8
COMPONENTS OF AN
EFFECTIVE COMPLIANCE
PROGRAM

- § 8.01 Ethics and the Corporation
- § 8.02 Selling the Program to Employees: Creating or Fitting the Corporate Culture
- § 8.03 Demonstrating an Effective Compliance Program
- § 8.04 The Compliance Risk Analysis
- § 8.05 The Structure of the Compliance Program
- § 8.06 Who Is the Compliance Officer?
- § 8.07 The Role of Other Departments
- § 8.08 Compliance with Consent Decrees

Excerpt from Corporate Legal Compliance Handbook, T. Banks & F. Banks (eds), published by Aspen Law & Business, (c) 2002.

THE EFFECTIVE COMPLIANCE PROGRAM**§ 8.01****§ 8.01 ETHICS AND THE CORPORATION**

There is no one way to establish an effective compliance program that will work for every corporation. Except for newly formed corporations, or very small businesses that have grown suddenly, most counsel will find themselves in the position of enhancing an existing program rather than starting from scratch. Whatever the situation, there are certain basic principles that should be part of any compliance program to ensure that it is effective. The goal is to establish a program that will prevent and detect violations of law, and will be demonstrably effective under the Federal Sentencing Guidelines (FSG).¹ This chapter will outline some of the considerations that go into designing and delivering an effective compliance program.

From the highest level, an effective compliance program must have two major components. First, there must be training in specific areas of legal compliance so that business functions of the corporation will be conducted in compliance with the law. This may require changes to certain business practices or internal processes, as well as substantive training and communication programs.

The second major component of an effective compliance program is the change of attitude that is really the key to making a compliance program succeed.² A key part of every compliance program is the establishment of a corporate ethics system. This may be called by a variety of names (e.g., “code of conduct”), but it should serve to establish that there are certain ethical core values that the corporation holds dear that cannot be compromised. Establishment of the ethics system is part of the process of creating a corporate culture of compliance. The goal is that employees understand that the corporation is committed to a system that adheres to the ethical standard, rather than something driven by slavish adherence to a notebook full of technical rules. Certain rules may, of course, derive from the ethical standards, but when employees understand that the technical rules are just a way to implement the corporate ethics, rather than an end in themselves, they can feel more comfortable being part of an ethical system, rather than

¹ Although perfection is not required, the program must be one that has is likely to succeed, or a court may deem it to be non-effective. FSG § 8A1.2, comment note 3(k)(5).

² In educational parlance, the substantive training in specific legal subjects would be considered the “cognitive” component. The attitudinal or value training would be considered the “affective” component.

§ 8.01 CORPORATE LEGAL COMPLIANCE HANDBOOK

paranoid about violating a technical rule whose origin they do not understand.

The mere existence of a code of conduct may have some value in a litigation context by establishing the corporate policy of compliance.³ But it is not an insurance policy against litigation.⁴ As noted in Chapter 1, the code of conduct or other corporate rules cannot serve as a shield against corporate liability.⁵ In litigation, there should be some consideration of whether the illegal act had any connection with employee's duties.⁶ Even if the illegal conduct was unrelated to the employee's job, if it was prohibited by company rules, this may serve as some indication that it was anticipated and therefore the company may still be liable.⁷ But, in close cases, a clear prohibition in a code of conduct may be evidence that the challenged act was beyond the scope of employment.

The sad reality is that even in corporations that have an ethics program in place, there are no guarantees that it will be effective.⁸

³ For example, in *Harrison v. Dean Witter Reynolds, Inc.*, 715 F. Supp. 1425 (N.D. Ill. 1989), *rev'd.*, 79 F.3d 609 (7th Cir. 1996), the company's internal rules were presented as evidence to contradict the plaintiff's assertion that he was authorized to engage in illegal acts.

⁴ A compliance program, no matter how extensive, does not immunize a corporation from liability when employees fail to comply with the law. *United States v. Twentieth Century Fox Film Corp.*, 882 F.2d 656 (2d Cir. 1989).

⁵ A forbidden act may still be within the scope of employment for purposes of tort liability. *Deuchar v. Foland Ranch, Inc.*, 410 N.W.2d 177 (S.D. 1987); Restatement 2d of Agency § 230.

⁶ A corporation can be liable for the criminal acts of its employees if they were acting within the scope of their actual authority or apparent authority and for the benefit of the corporation, even if the action was against corporate policy or express instructions. *United States v. Basic Construction Co.*, 711 F.2d 570 (5th Cir.), *cert. denied*, 464 U.S. 956 (1983).

⁷ The code of conduct may be used by a plaintiff in a tort case as evidence of a standard of care to which the corporation did not adhere. *Schneider v. D.C. Transit System*, 188 F. Supp. 786 (D.D.C. 1960).

⁸ There is some indication that compliance with ethical standards may be most likely in situations where companies are experiencing high profits. When business conditions are difficult, the tendency to compromise ethical standards becomes more pronounced. S. Sethi & L. Sama, *Ethical Behavior As a Strategic Choice by Large Corporations*, 8 *Business Ethics Quarterly* 85 (Jan. 1998). There is a contradiction in how the various dimensions of ethical behavior are analyzed. A corporation with market power may achieve high profits through reduced competition. Its profits allow it to be generous to charities, enlightened in its workplace programs, and produce a high quality product. Yet it may engage in activities, contrary to the antitrust laws, to preserve its market power. In

THE EFFECTIVE COMPLIANCE PROGRAM**§ 8.01**

Employees may feel pressure to violate internal rules (if not laws) in order to meet financial goals,⁹ and they are reluctant to report wrongdoing for fear that their complaints will not be heeded, or will result in retaliation. Employees often engage in dishonest or criminal behavior, particularly when they feel that their company does not have any commitment to ethical conduct.¹⁰ Companies that have a written ethics program, but no commitment to enforcing it, generate a cynical attitude that may generate more dishonest conduct than if there were no policy at all.¹¹ Senior management in some corporations believe that devoting funds to an "ethics" policy will do nothing to improve business and will only result in employees concentrating on how to entrap the company and get a whistleblower's windfall rather than doing their own job. Companies also need to be careful that they do not go too far in implementing an ethics policy. A clearly articulated legal compliance policy will guide employees on what to do to avoid violations of law, but will also be sufficiently realistic that it will not require the adoption of procedures that are excessively conservative and result in an unnecessary loss of business opportunities.

But evidence is mounting that effective ethics programs benefit business, and U.S. corporations are recognizing this. The number of corporations with a dedicated ethics officer is growing, and corporate directors are now increasingly involved in determining the ethics policy.¹² Corporations understand the legal incentives that encourage a commitment to ethics, and for companies with consumer products, one way to start countering the inherent suspicion of corporations is with an ethics policy that demonstrates a commitment to doing the right thing. Illegal or unethical behavior by employees drops when senior manage-

the antitrust dimension, it may not be acting ethically, but in the social dimension it may represent exemplary corporate behavior. There needs to be a balancing of these considerations in every ethical schema.

⁹ Abuse is most likely to occur in a situation where overly aggressive financial goals are combined with a lack of ethics training. 1997 Society for Human Resource Management/Ethics Resource Center Business Ethics Survey, www.shrm.org/press/releases/980128.htm (Jan. 28, 1998).

¹⁰ K. Robinson, Employees Engaging in Deceptive Behaviors at Alarming Rates, HR News Online, www.shrm.org/hrnews/articles/072100a.htm (July 21, 2000).

¹¹ S. Wells, Turn Employees Into Saints?, 44 HR Magazine No. 13 (Dec. 1999).

¹² A. Zipkin, Getting Religion on Corporate Ethics: A Scourge of Scandals Leaves Its Mark, N.Y. Times, Oct. 18, 2000, at C23.

§ 8.01 CORPORATE LEGAL COMPLIANCE HANDBOOK

ment and direct supervisors set a good example of ethical behavior.¹³ Companies with an active ethics program have a better chance that their employees will identify and report wrongdoing,¹⁴ so there is every reason to implement such a program and work to make it more effective.¹⁵

Part of the campaign to instill a culture of ethics in a corporation should be an appeal to the best side of your employees. The company should stress that it wants to be the best of its class, and will only hire the best people to work there. Employees should be reminded that the company expects the best of them in their job performance, and this includes a commitment to ethical behavior.¹⁶ This means that they are expected to resist the common rationalizations that might be used to justify questionable behavior. For instance, if compliance with a company policy would be inconvenient, an employee's natural tendency might be to question the validity of the rule. Where its purpose is not obvious, the self-rationalizing employee may simply decide that the rule is not worth following. To avoid this, the company should explain to its employees that every rule is adopted for a reason and that the company is very careful not to adopt rules that might interfere with business operations unless absolutely necessary. So, for every rule where the reasons are not obvious, the company should make sure that employees are encouraged to ask about the rule, and know whom to ask.¹⁷

¹³ Results of Ethics Resource Center telephone survey in November 1999 reported BNA Daily Labor Report (June 14, 2000), www.shrm.org/hrnews/articles/bna0614c.htm.

¹⁴ As observed in a survey of 4000 employees conducted by the Ethics Resource Center in 1994. See D. Kunde, Ethics Violations Thriving at Work, Dallas Morning News, Nov. 4, 1994, at 1D.

¹⁵ Lucas Aerospace implemented a comprehensive ethics program after it was convicted of violations of federal procurement laws. The program was directed by site ethics officers, most of whom were from the human resources department. The company reported that the program was well-received by employees. T. Johns, Don't Be Afraid of the Moral Maze, People Management, Oct. 5, 1995, at 32.

¹⁶ Ethics in personal behavior should also be emphasized, particularly those attributes that make for the most valuable employees, such as punctuality, responsiveness, and ease of communications.

¹⁷ This is particularly easy to do on intranet sites. Simply make certain that no page can go on a company site without having a way to communicate with a subject matter expert for that page. The goal is to make it as painless as possible to get an answer, so a "one click" ability to send an e-mail to, for example, the attorney responsible for a legal area can be a helpful reinforcement of the overall compliance program.

THE EFFECTIVE COMPLIANCE PROGRAM**§ 8.01**

The ethics program is the foundation of the compliance program, and in order to make compliance training effective, the process must be institutionalized. Management from each part of corporation must ensure that employees participate in compliance activities, including attending classes, reading written materials, following procedures, and completing computer-based training. The process should begin with policy statements that outline standards of ethical conduct (i.e., compliance) that are expected. In order to inculcate these principles as values observed by all employees, there must be a commitment of resources on a corporate level. If a "live" training program is employed, then the people who are designated as trainers should themselves be trained, and all written materials (including electronic media) should be prepared so that they are understandable by every employee. This also means separate (and protected) budget items for compliance and the inclusion of this training as part of people's goals.

Ethical codes need to be sufficiently concise so that they will make an impression on employees, but there must also be explanatory material available as part of the communication and education process. Some of the key concepts that could be included in an ethics code would include

- Responsibility: every employee has a responsibility to act in an ethical manner and report wrongdoing if observed.
- Fairness: the company will endeavor to be fair in its dealings with employees, customers, suppliers, agents, and consumers.
- Legality: the company must comply with applicable laws and have systems in place to provide answers about legal compliance so that no employee has any reason to take a risk of violating a law.
- Honesty: the company stands by what it says.
- Respect: the company respects its customers, suppliers, employees, and government agents, and treats everyone with the respect it would like, in return.
- Business: employees should bear in mind that all of these principles enable the company to provide customers with high quality products at fair prices while allowing shareholders a good return on investment.
- The Long View: the company is in business for the long term, not just for today, and sometimes it is appropriate to do something that may

§ 8.02 CORPORATE LEGAL COMPLIANCE HANDBOOK

not have an immediate benefit, but is part of our commitment to do the right thing. This may mean going beyond what the law requires in a given situation, and doing things that consumers may expect (or not doing things that would lead to adverse publicity — even if legal).

The emphasis on an ethics program is a bit of a change from earlier compliance programs, which were adopted in response to violations of specific laws. These tended to focus on very narrow subjects and relied on following specific procedures to avoid legal violations. While companies still need to have procedures in place that limit the chance of legal violation (and supply the proper financial controls), there is no way to predict and cover every possible legal situation that an employee might encounter. In fact, it is counterproductive to give too many detailed instructions, since employees may simply stop paying attention. After all, they were hired to conduct business, not to be lawyers, and as part of a program to encourage and motivate employees, the company should focus on the value of integrity and the company's trust in each person. While a company may need specific legal compliance procedures in certain areas, a general communication encouraging employees to seek legal guidance if something "smells" wrong may suffice.

§ 8.02 SELLING THE PROGRAM TO EMPLOYEES: CREATING OR FITTING THE CORPORATE CULTURE

Making the program work in a corporation requires both a firm commitment in the face of opposition and a sensitivity to specific attributes of the corporate environment that might signal the right way (and the wrong way) to communicate a message. For example, outside of the United States, the policy should be expressed in words that reflect the right corporate values.¹⁸

An examination of the motivations of human behavior inside and outside the corporate setting reveals that people may not intentionally choose unethical behavior, but because their focus is directed elsewhere,

¹⁸ Before implementing a program, use of employee questionnaires or focus groups may be very helpful in learning how to communicate the ethics program. For instance, before rolling out its ethics program in France, Arco Chemical learned that use of the word "ethics" may refer to sexual morality, and the language was modified accordingly. J. Packard, Prepare to Make a Moral Judgment, *People Management*, May 4, 1995, at 22.

THE EFFECTIVE COMPLIANCE PROGRAM**§ 8.02**

they lose sight of the ethical dimension of what they are doing.¹⁹ Thus, it has been suggested that the correct orientation for a corporate employee is not profit maximization in every situation, but the notion of “satisficing” — obtaining acceptable or “satisfactory” profits within constraints placed on business operations by laws, customer expectations, and other factors.²⁰ The ethical education program in a corporation must identify and communicate certain core values that cannot be sacrificed for the sake of enhanced profits, make certain that employees remember these concepts during their business activity, and ensure that senior management supports the possible moderation of profit maximization to incorporate these values in business activities.

Values can be imposed by dictate from top management, and this may work to establish certain basic principles. The success of this type of culture building will depend on the extent to which it is supported by corporate practices and procedures, and the extent to which employees understand how to apply the policy in their daily operations. There is always the risk of resentment (and resistance) if a person is ordered to do something, particularly if there is no input into the new direction, and no real understanding of why the order is being given. So, in addition to making certain that appropriate procedures are in place to enforce a policy, there should be some effort to explain the reasons for the new policy, and, if possible, employee involvement in developing the policy and the related procedures. When employees feel that they are participants in a process, and that a policy represents their values, compliance is more likely.

While the corporate culture may dictate the way in which a compliance program is communicated, the lack of a predisposition to compliance in an existing culture cannot be used as an excuse for not imposing a program. If the culture treated compliance in a cavalier fashion, then top management needs to start the process of ensuring that henceforth things will change. Unfortunately, often the most powerful tool to do this may be the criminal conviction of the company or its employees. Whether imposed by the government or not, a conviction provides a natural opportunity to establish a new system of compliance to make certain that the violations do not recur.

¹⁹ R. Nielsen and J. Bartunek, *Opening Narrow, Routinized Schemata to Ethical Stakeholder Consciousness and Action*, 4 *Business & Society* 483 (Dec. 1996).

²⁰ *Id.*, quoting H. Simon, *Administrative Behavior* 272 (1945).

§ 8.02 **CORPORATE LEGAL COMPLIANCE HANDBOOK**

Without a dramatic incident of criminal behavior, management may use other companies in the same industry with comprehensive compliance programs as examples of “best in class.” The success of those companies can be used as an example to show that compliance programs not only do not impede financial success, but may be a key to it. Management needs to understand, and in turn needs to emphasize to employees, that compliance is the key to long-term success. Even if an employee thinks that a legal violation will benefit the company, that is not the way the company chooses to do business. The violation itself is wrong, and it will catch up with the corporation eventually, so any short-term gain will be lost when the damage to reputation and legal penalties are considered. Criminal or civil violations result in media attention, which hurts the image of the company, hurts the sales of its products, and hurts its ability to recruit and retain employees.

Even if there is not a government prosecution that receives a lot of attention or a private lawsuit that results in a large damage award, employees can be jolted into awareness by actions that demonstrate the company's commitment to compliance. One way to do this is by publicizing the discipline (up to termination) of employees who violate company rules. This needs to be done carefully of course, to avoid creating employment law or defamation liability. But it may be possible to publicize the fact of the discipline without disclosing the identities of the employees who were disciplined and still get the message across. In some cases, there may be a failure of a product, cancellation of a project, or closure of a facility due to a failure to follow company procedures. Again, to create sensitivity to facts that might give rise to litigation, these examples may be helpful. The sad experiences of other companies in the same industry may also have some power to convince employees of the value of compliance, and when such stories appear in the press, they should be used as part of the compliance education process.

Employees should be conditioned to analyze a questionable business practice. If the public became aware of the practice, would it embarrass the company? If it seems “funny” to an employee, he or she needs to ask whether the practice is legal or ethical. If an employee is uncertain, he or she needs to seek legal advice. So employees will need to know where to go for that legal advice and feel comfortable contacting a company lawyer. Employees who contact the law department with questions should always get positive reinforcement. They should be encouraged and reminded that “there is no such thing as a dumb

THE EFFECTIVE COMPLIANCE PROGRAM**§ 8.02**

question.” The law department should exist as a service department like other parts of the corporate staff, with no special clearance necessary before a contact is made.

It may not be obvious where legal compliance fits in the corporate culture. This is where it may be helpful to do some fact-finding to determine what kind of attitudinal education may be necessary. The analysis process may begin with a survey to a cross section of employees to try to determine how they perceive the corporation's commitment to legal compliance. This can be supplemented with focus groups where the employees are encouraged to discuss their understanding of the importance of legal compliance in their careers, and whether they feel that compliance is an impediment or an enhancement to their careers. The survey and focus group techniques can reveal where there are areas of weakness in communicating the compliance commitment. And the analyses can be repeated periodically to see if the perception of the compliance commitment is strengthening or weakening.

The process of establishing the right corporate culture begins with new employees. This is the chance to set the tone for their employment. Each employee hired by the corporation should receive a written communication from the president or chairman of the company stressing the company's commitment to legal compliance, along with a copy of the code of conduct. In the interim period between receiving a job offer and actually starting the job, employees are most likely to actually read policy statements. On the first day of employment, when the employees are receiving orientation about benefit plans and other details, there should also be a presentation about the company's commitment to legal compliance. This can be from a senior officer of the corporation, either live or by video.²¹ A member of the law staff can deliver a live presentation about some of the key elements of compliance, with an emphasis on the commitment to ethics, and how to obtain legal advice, rather than a focus on specific laws or procedures.

One aspect of a comprehensive compliance program that may be problematic to implement in the corporation is the establishment of a hotline for the anonymous reporting of wrongdoing. Employees may not understand what the hotline is for and may use it to report every issue of dissatisfaction on the job (sort of a complaint box). Or they may not be entirely comfortable that their report will be anonymous. Or they may

²¹ See “newemploy.doc” in the appendix for a sample script.

§ 8.02 CORPORATE LEGAL COMPLIANCE HANDBOOK

believe that it is acceptable to ignore wrongdoing that they observe. All of these ideas need to be attacked in a variety of ways, and the proper use of the hotline should be publicized in a variety of venues.²² If there are incidents that were reported via the hotline that resulted in the elimination of improper activities, these should be publicized to the extent they can be reported without creating additional legal liability. But failure to aggressively support the enforcement of company policies leads to cynicism on the part of the employees and a belief that there is not a real commitment to compliance.

One way to think of a compliance program is as part of a corporation's program to improve the quality of all of its processes.²³ In companies that have already established a commitment to "total quality management," explaining the compliance program in these terms should help sell the program to management. Quality-based management is designed to prevent manufacturing defective products by identifying and analyzing each step of all processes that go into the final output. An inspection system that "catches" defective products is not the objective here. Rather, the quality improvement process is designed to identify the cause of problem (or of a possible problem), and fix the system to prevent the problem from occurring (or recurring).

A legal compliance program is the quality improvement program designed to prevent defects in legal compliance (which is one aspect of the process used to produce the company's product output). Thus, the optimal compliance program should involve a constant involvement in the company's processes to ensure legal compliance, as opposed to periodic audits, which may only catch problems (i.e., legal violations) after they have occurred.

Ideally, the legal compliance system will be integrated into normal business processes and will become second nature to employees.²⁴ Employees will be trained in "DIRFT" (do it right the first time) and will realize that just as a defect in manufacturing may cause business problems and hurt the company's reputation, a defect in legal compliance may give rise to legal liability and hurt the company's reputation. Thus, the focus is on preventing problems from occurring, not on fixing them

²² See "hotlinepromo.doc" in the appendix for a list of suggestions for promotion.

²³ R. Gruner and L. Brown, Justice: Recognizing and Rewarding the Good Citizen Corporation, 21 Iowa J. Corp. L. 731 (1996).

²⁴ See M. Goldblatt, Institutionalizing Compliance with Company-Wide Training Programs, Insights (Jan. 1992).

THE EFFECTIVE COMPLIANCE PROGRAM**§ 8.02**

after they have happened. This means that there needs to be a review of company procedures for compliance with legal requirements. If some portion of the company deviates in any meaningful way from a policy or procedure, it must have a justification — or systems should be in place to prevent the deviation from occurring in the first place without legal approval.

As legal compliance becomes more a part of everyday corporate processes, employees will stop thinking about “legal” activities separately and will simply consider them a normal part of business operations. Legal compliance information should be incorporated into “non-legal” training programs²⁵ and be made a part of communications from corporate executives.

At the same time, the process of obtaining legal information should be made as painless as possible. Employees should know which attorneys to contact for information²⁶ and should become accustomed to seeing the attorneys at business meetings, or working as part of the business “team.” Employees should understand the role of the law department as facilitating accomplishment of their jobs and protecting the company from legal exposure. Company attorneys should realize that it is part of their job to sell themselves, sell the law department, and sell the validity of the concept of legal compliance. To do this, they must be approachable and responsive to every employee question. They must be highly knowledgeable about the business, and they must appear confident but not arrogant. Before giving a presentation on a legal subject, they should have training in how to make a presentation interesting and educationally effective. A common tale in corporations is how a dull or irrelevant²⁷ speech by a lawyer sets back a compliance program by widening the gulf between lawyer and client rather than bringing them closer together.

There is no one system that will fit every company. The program chosen should be one that is most likely to be effective in each company's specific setting. The FSG recognizes that larger companies

²⁵ For example, in a training program aimed at improving sales techniques, instructions can be given on what to do if you run into a competitor (e.g., do not discuss prices) without interrupting the flow of the training.

²⁶ Information on whom to call should be available on the intranet as well as being part of new employee training.

²⁷ The examples used to illustrate legal points should be based on business situations to which every employee in the audience can relate.

§ 8.03 CORPORATE LEGAL COMPLIANCE HANDBOOK

will have a more formal and elaborate program than smaller companies.²⁸ The fact that employees or management might resist a legal compliance program, however, is not justification for the lack of a program. Resistance means that the corporate lawyer must be persistent to establish the right programs and environment that will support compliance. The language of the program must be such that it will not generate resistance among the employees, and there must be something to which every employee can relate.²⁹

§ 8.03 DEMONSTRATING AN EFFECTIVE COMPLIANCE PROGRAM

There are certain commonly accepted features of compliance programs that, unless there are strong corporate culture reasons why they would be impediments to success, should be part of any compliance program. One feature is an annual circulation of the overall corporate "code of conduct" (i.e., the basic statement of ethical and legal principles) to all employees. Management employees should be required to certify that they have read the policy and agree to abide by it. The distribution of the code of conduct should also include suppliers, distributors, brokers, and other agents of the corporation, since their improper activities may subject the corporation to liability. The certification process can be accomplished with a return postcard in the back of a brochure, or, if the policy is distributed electronically, an electronic certification to a central database. For non-employees, agreement to abide by the code in their dealings with or on behalf of the corporation can be made part of their contract.

The ethics principles need to be part of a total compliance package with training, reporting, education, information, and enforcement. Merely reciting the principles in a vacuum will only serve to convince employees that the corporation is not sincere. While specific compliance policies may only apply to certain departments or employees (e.g., the environmental compliance policy can be summarized in one sentence for a salesperson who is not involved in manufacturing), the broad policies,

²⁸ See FSG § 8A1.2 Application Note 3(k)(7)(I).

²⁹ For example, while using a term like "corporate university" may sound like an impressive way to refer to a training program, Dow Chemical observed that this approach may "turn off" some employees by creating an elitist image. L. Sherman, *Sustainable Learning, Knowledge Management*, July 1999, at 18.

THE EFFECTIVE COMPLIANCE PROGRAM**§ 8.03**

such as an ethics statement or a code of conduct, should cover (and be distributed) to all employees.

In order to succeed, support for these policies must come from the top—the board of directors and senior management. While the board must be able to feel that it will not be facing liability for directing activities that may sacrifice immediate business returns, corporate law in most states provides that directors may make business decisions that protect the interests of groups other than shareholders (e.g., employees) if, in their business judgment, it is appropriate for the corporation. Indeed, under the *Caremark*³⁰ decision, part of a board member's duties is to ensure that there is an adequate legal compliance program in place. So there is no legal reason for any director to hesitate to strongly support compliance.

The senior management must also be sincere in their support and must communicate that commitment to all employees. This commitment should be demonstrated starting with every employee's first day on the job: as part of the new employee orientation, new hires should be educated about the company's compliance program and should receive periodic reminders in several formats (classes, e-mail, brochures, bulletin board notices, intranet information) that the policy is a foundation of the corporation's culture and a key to its success.³¹

All employees must understand that there will be no tolerance for noncompliance. As specified in the FSG, compliance with the policies must be enforced through discipline.³² While there is no specific type of discipline that is specified for this purpose, and the company does retain significant flexibility in this area, the program should not be a sham. Employees should understand that consequences for violation are serious, including even discharge from employment. Employees should understand that compliance is extremely important, but the emphasis on compliance and reporting of wrongdoing should not be carried to the point where employees become paranoid that they might be punished for failing to detect/report any violation when they were not directly at fault.

³⁰ In re Caremark International Inc. Derivative Litigation, 698 A.2d 959 (Del. Ch. 1996).

³¹ If a form is used to certify that an employee has read and agreed to abide by a policy, the text of the form should be reviewed carefully so that a contract of employment is not inadvertently created.

³² FSG § 8A1.2 comment n.(3)(k).

§ 8.03 **CORPORATE LEGAL COMPLIANCE HANDBOOK**

One powerful, but potentially dangerous, way to do this is to make certain that employees are aware when other employees are disciplined for policy violations. This must be handled carefully. As noted, if the discipline does not rise to the level of publicly acknowledged criminal prosecution, then steps should be taken to make sure that the identity of the disciplined employee is concealed to protect his or her privacy (and avoid defamation charges against the company).

Since it is essential to secure the support of top management and the board of directors, particularly if new investment is needed, the attorney presenting the program may need to do so in a politically astute fashion. This may require one-on-one conversations or presentations about the subject with key officers before a formal presentation is made. The presenter must learn what key factors are persuasive to management and make certain that the presentation is consistent with overall corporate goals (or at least uses the language of the corporate goals). It is always helpful to develop allies from other departments. Human resources can stress the importance of training. Finance can stress the importance of compliance to maintain the integrity of the financial statements.

Senior management must also be willing to make the commitment to adequately fund compliance expenses. This includes both capital expenditures (e.g., installation of equipment to ensure that a plant will not violate the environmental laws) the training expenses that are part of a compliance program. Part of the challenge of the counsel is to use the tools of the corporation and the language of its culture to obtain the funding. Counsel must understand the budgeting process (including the necessary forms and the timing of submissions), and be able to justify expenditures. To condition management to be willing to accept these expenditures, the law staff should be prepared with a financial analysis of the cost of prior legal violations. Criminal fines, civil damages, lost sales, the cost of defense — and some estimate of the damage to good will — should be presented to management to remind them of the need to invest in compliance. At one level, managers should understand that insufficient investment in compliance can leave their business unprepared to compete, just as insufficient investment in manufacturing plants, sales staff, advertising, or any other item will eventually cripple any corporation.

But any funding request should be kept in perspective so that the words of a proposal do not come back to haunt the attorney. A training program will not guarantee that there will be no violations of law, only

THE EFFECTIVE COMPLIANCE PROGRAM**§ 8.03**

help reduce the likelihood of violation. If an elaborate training program is being proposed, starting with a pilot program is a good method to both demonstrate the capabilities of the program and to work out any kinks. Support from training professionals in the corporation (or a joint proposal from the legal and human resources staffs) will add credibility to the proposal.

The compliance program design should start with a review of the current program, identify gaps, and suggest ways to improve the existing processes. The proposal should have a rationale for each element, together with a timetable for development and an estimate of costs. One way to illustrate the value of the investment in a compliance program is to simulate every aspect of a legal violation. The example can be based on any one of several sad experiences of other companies. Start out by illustrating how the violation could arise through the activities of an uneducated employee, or one unregulated by appropriate control processes. The costs to the company would begin with the damage to the good will of the company and its products by association with illegal behavior (even if there are only accusations at the early stage of a case). Elaborate on the costs of defense — attorney fees, management time lost for depositions, trial preparation, and court appearances. Identify the elements that a criminal prosecutor or a plaintiff's lawyer would use as evidence. Then consider the type of criminal (jail, fines) or civil (damages, including punitive) penalties that could be imposed. Illustrate how the compliance program would be designed to prevent any of this from happening by educating employees, establishing proper procedures, and removing the behaviors that lead to legal violation.

Development of a compliance program need not go from concept to completion immediately. It may be appropriate to work on a pilot program involving only one legal subject or one small part of the corporation. After the pilot program is implemented, the employees involved can be surveyed to obtain their impressions on its effectiveness, and to solicit suggestions for improvement. While this may delay the full roll-out of the program, it is preferable to implement an effective program that is well-received by the employees than to find out that a program that has been spread throughout the corporation at a significant cost needs to be redone — at a significant cost.

§ 8.04 CORPORATE LEGAL COMPLIANCE HANDBOOK

§ 8.04 THE COMPLIANCE RISK ANALYSIS

Some companies appear to have developed their compliance program in a “shotgun” fashion. The announcement of a legal calamity of some sort is often followed by announcement of a comprehensive compliance program, covering every possible legal issue that the company might encounter. Strong written policies are adopted and publicized and shoved at employees in mass meetings, so there is clear public evidence that the company now has a policy of doing the “right” thing. This may reflect the need to correct the failings of—or the absence of—a prior compliance program, and certainly adoption of compliance policies is an appropriate part of a comprehensive approach.

For many companies, this may not be the right approach, since this tactic simply may not be effective in bringing about the kinds of behavior that a compliance program is supposed to encourage. Instead, there should be a more deliberate approach. The process of revising or enhancing a compliance program should focus on an analysis of what kinds of training and communications tools will be effective, and a risk analysis to determine which substantive legal areas should be covered, and in what priority. Ideally, a task force can be created to evaluate the current compliance situation, with representatives from key departments (legal, audit, human resources, finance) to provide a broader perspective. The risk analysis will include asking the following kinds of questions:³³

- What particular legal risks are implicated by each part of the company and the nature of its business, and which are potentially the most serious?
- What prior legal problems has the company encountered?
- What kind of legal problems have the company's competitors encountered?
- Is there a general code of conduct or ethics policy in place that covers the basic principles?
- What business processes are connected to specific legal risks?³⁴ Where are legal problems most likely to occur, based on the nature of

³³ See “Compliance Goal-Setting Questions” in the appendix.

³⁴ For example, instead of training everyone on “antitrust,” the nature of the business activities in a department will indicate what type of antitrust training is needed. The sales department would need to know about antitrust aspects of selling products (such as price

THE EFFECTIVE COMPLIANCE PROGRAM**§ 8.04**

the work being performed? Are there specific regulations or statutes that apply to the Company's specific industry (e.g., health care) or job function (e.g., human resources)? Is there training focused on specific jobs?³⁵

- Have there been changes in the law that necessitate updates to compliance training and procedures? Is there a way to incorporate into the compliance program changes in the law as they occur?
- Are there procedures in place to ensure that key employees with important compliance responsibilities are identified and adequately trained? If these people leave their jobs, do these procedures make sure that a suitable replacement is identified and trained?³⁶
- Is there an established procedure to review the compliance policies and histories of companies that are acquired, and to extend the policies of the new owner to the newly acquired business?

fixing and price discrimination), while the purchasing department focus would be different (inducing a discriminatory price, commercial bribery). It would not be particularly important to talk about mergers to either the sales or purchasing department, although that antitrust subject would be a key part of the training for the corporate strategy department.

³⁵ Software has been developed, with much of the initial work being done for the systems industry, that attempts to correlate needed skills and training to functional job descriptions. These "learning management system" tools may also be used to provide an automatic way to track what legal compliance knowledge an employee should possess for a given position, and these are discussed in greater detail in Chapter __. See, e.g., "Knowledge, Skills and Abilities Online" from Gyrus Systems, Inc., <http://www.gyrus.com/>, and other products listed in the appendix, "Compliance Sites on the Web."

³⁶ As companies go through various "downsizing" activities, this can become very important, since often the employees that receive incentives for early retirement are the middle managers with significant experience in the industry and knowledge about compliance procedures. Even if there is not a system in place to identify key employees with compliance-related activities, in any case where there is a reduction in force, there should be a review of the list of all of the employees who have been let go to see if any had compliance responsibilities, and whether adequate provisions have been made to cover those responsibilities. If this review can be conducted before the reduction in force is implemented, it may also be discovered that there is no way to handle compliance responsibility with a reduced work force, and certain employees may not be dispensable after all.

§ 8.04 CORPORATE LEGAL COMPLIANCE HANDBOOK

- Have the tools traditionally used for communications (e.g., brochures) been upgraded to be effective in the current corporate environment?
- Is there a way for employees to report wrongdoing? Do employees know how to do it?
- Do employees know where to go for legal advice or where company policies can be found?
- Does senior management support both the concept of compliance and the specific programs necessary to implement an effective program?
- Are procedures in place to satisfy the good faith requirements established by the USSG as hallmarks of an effective compliance program?
- Are there unique legal risks based on where the company conducts its activities, such as unique state or local laws?³⁷
- What violations of law are most likely to lead to criminal prosecutions of the company or its employees?
- What violations of law are likely to lead to injury of customers or consumers?
- What violations of law are likely to lead to civil litigation?
- Are the features and performance of the compliance program documented in some place or in some form so that the good faith of the program can be proved if necessary?³⁸
- How are new employees informed about the importance of the company's compliance policies?

The compliance risk analysis will lead to a compliance plan that outlines in written form the identified risks of each job or department, and the method for establishing compliance. This would be a combina-

³⁷ For example, the California Corporate Criminal Liability Act, Cal. Penal Code § 387, provides that corporations and managers are liable for knowingly concealing serious dangers from employees or concealing harmful defects in consumer products from authorities. Thus, there is an additional set of risks for corporate management who may have no direct involvement in or knowledge of the activity giving rise to corporate liability.

³⁸ See "summarysheet.doc" in appendix.

THE EFFECTIVE COMPLIANCE PROGRAM**§ 8.04**

tion of corporate policies and procedures and ways to educate employees about proper conduct, focusing on the subjects that are relevant to each employee, with procedural controls aimed at critical points where the decision to comply (or not comply) with the law is made.³⁹ This approach is supported by the Sentencing Guidelines—and will be helpful in obtaining a sentence reduction as part of established compliance standards and procedures if it is done before a problem arises.⁴⁰ Still, a company need not try to cover everything—even if other companies are doing it that way. It is important to remember that the primary goal is to establish an *effective* compliance program. An attempt to cover everything, including subjects that are not key to the corporation's activities, will dilute the overall program and make its effectiveness less likely.

Where to start? One good place is to think about all of the types of activities in which the company is involved, and what legal areas might be implicated. These considerations might lead to a list that looks like this:

TABLE 8.1

Activity	Legal Area
Setting prices	Antitrust, advertising
Attending trade associations	Antitrust
Managing employees	Equal opportunity, sexual harassment
Dealing with customers, consumers	Racial discrimination, respect for privacy of consumer financial records, price discrimination
Construction	Substitution of inferior materials

³⁹ Approaching compliance from a risk analysis basis is consistent with government regulatory regimes that recognize the power of “total quality management” programs. Although traditional quality control relied on post-manufacturing inspection, or inspection at every step of a process, it is now recognized that quality can be more effectively improved by looking for critical points in a process. For example, the United States Department of Agriculture encourages companies under its jurisdiction to use a system of inspection at “hazard analysis critical control points” (HACCP) to detect possible sanitation problems, rather than a process that uses inspections of many additional areas that are unlikely to pose any risk or where the inspection process itself may introduce contamination.

⁴⁰ FSG § 8A1.2 comment note 3(k)(7)(ii).

§ 8.04 CORPORATE LEGAL COMPLIANCE HANDBOOK

Activity	Legal Area
Accounting, handling company funds	Shifting activities to different periods, effective auditing protocols, money laundering
Selling products to government	Compliance with acquisition regulations including set asides, guarantee of pricing
Handling or processing food	Sanitation, labeling rules
Advertising products or services	General advertising rules, industry-specific advertising controls, trademark law
Creating new products	Patents, trade secrets, copyrights

To ensure that all relevant legal exposures are covered, organization charts and lists of job titles and job descriptions (if they exist) should be reviewed.⁴¹ Independent contractors or other agents who are working on behalf of the corporation should also be included. As outsourcing becomes a more common practice, companies should expect to find non-employees who are intimately involved in the business operations of the company—and who can get the company into serious trouble.⁴²

This examination will allow a company to develop a system to focus the communications message. It will indicate the outlines of a system that will indicate the “legal competence” each employee is expected to have and a tracking (learning management) system to record when each employee has received training or communication regarding a compliance subject. The subjects outlined in Table 8.2 are quite broad, and the specific program for each company should be refined to reflect the seniority of the employees and the specific nature of the job responsibility.

⁴¹ You may discover that different departments may describe the same position with different titles, or that the same title may be used to describe very different jobs in different departments. As you get further in to the process of assigning legal compliance responsibilities by job, you may find that you have allies in your human resources department that have been trying for years to establish a consistent system across the corporation for job titles.

⁴² The corporation’s compliance program should cover persons authorized to act on behalf of the corporation. *See* FSG § 8A1.2 comment note (3)(d).

THE EFFECTIVE COMPLIANCE PROGRAM

§ 8.04

TABLE 8.2

Title	Legal Training Required
Marketing Director	Advertising, antitrust, trademark
Personnel Director	EEO, labor relations, wage-hour
Sales Representative	Price fixing, price discrimination, commercial bribery
All managers	Sexual harassment, equal opportunity
Plant manager	Environmental, worker safety
All employees	Ethical conduct, document management
Senior management	Insider trading
Suppliers ⁴³	Purchasing ethics

The risk analysis should collect all instances of civil or criminal matters that might be connected to compliance, with suggested training (*see* Table 8.3). The sweep should include all company records and research into the kinds of legal problems experienced by companies engaged in similar businesses. The cause of each legal problem should be identified, including what might have been done to prevent it.⁴⁴ Even if the company has a fairly good legal record and few examples of legal problems, rather than assuming that this is the result of a good compliance program, there should be an examination of what might happen and whether, in fact, the company has just been lucky to escape more frequent prosecution or lawsuits. Indeed, some of the most difficult clients to convince of the value of a comprehensive compliance program

⁴³ Consider which non-employees you should reach with your compliance program by analyzing where interaction with outside parties may trigger legal risks for the company. Suppliers are targets for communication of company policies regarding commercial bribery. Suppliers should be advised how to report any solicitation of a bribe or other improper conduct by the company employees charged with purchasing responsibilities. Distributors and brokers should be educated on price fixing and price discrimination. Independent contractors should be trained in the company's ethics policies in general, with the specific subjects to be determined by the nature of their assignment, but rules regarding trade secrets and confidentiality are almost always appropriate. If any non-employee is given access to the company's computer system, then training in the proper use of the system (such as e-mail rules) is indicated.

⁴⁴ Formal review of what caused a legal problem should be made a part of an annual legal review of compliance or might be built in to a "lessons learned" session when a legal incident arises.

§ 8.04 CORPORATE LEGAL COMPLIANCE HANDBOOK

are those that have not personally experienced the embarrassment and costs of being involved in legal turmoil.

TABLE 8.3

Type of Case	Training/Procedures Needed
Products liability	Better instructions, product testing protocol
On the job injury	Workplace safety, no modification of equipment
Sexual harassment	Proper management behavior
Breach of contract	Contract management
Price fixing	Antitrust
Unauthorized discharge of pollutants	Environmental laws, proper engineering systems and testing

A company's analysis should also consider what legal changes have occurred, or are likely to occur. Do the policies that were adopted in the past reflect current law and the current litigation environment? Corporate affairs and government relations staffs should be consulted to identify trends that may result in legislation or regulation that will need to be addressed by compliance programs.

TABLE 8.4

Legal Change	Implication
Court decision expanding vicarious liability of employers	More training of employees
New regulations regarding handling of waste	Review of training and established procedures
Judicial decision that takes compliance program into consideration	Review of compliance programs to see how they stack up
Evolving society's concerns (e.g., online privacy)	Evaluate procedures and anticipate needed changes
Laws enacted after Sept. 11, 2001, attacks	Enhanced government inspections, new employee recordkeeping requirements

The focus of a compliance program should not be determined solely based on where the company has had litigation problems. Surveys and focus groups can be used to judge the attitudes of employees about legal compliance, whether they have pride in the reputation of the company for

THE EFFECTIVE COMPLIANCE PROGRAM**§ 8.04**

being ethical, and whether they are comfortable contacting the law staff about legal questions. Inside and outside auditors may also be able to provide information on the level of legal compliance, and suggestions for improvement. Spot checks to see if employees have specific elements of legal knowledge can be helpful, although they can also be misleading. A test may reveal little or no knowledge about the specific aspects of the law, but there may still be an underlying positive attitude that will lead to compliant behavior. If there is any sampling to determine substantive knowledge, it should go to the broadest principles and not to minutiae.⁴⁵ While implementing a new program, testing can also be used to determine if the right information is getting to the right employees. This may provide valuable information about whether the company's methods are effective. A company may be able to track certain types of civil litigation to see if the number of claims or suits has declined after implementation of a compliance program. (Hopefully, there will never be a sufficient number of criminal matters to do any sort of tracking.) The concept, of course, is that the program will incorporate a system for continuous improvement to address any problems that have been discovered, and incorporate new compliance methods or changed legal requirements.

It is possible to get an idea as to the sufficiency of a company's compliance program by doing some benchmarking against the programs of other companies in the same industry. The Sentencing Guides encourage companies to follow applicable industry practices or the standards called for by specific governmental regulations.⁴⁶ Materials from the ABA or American Corporate Counsel Association should be scrutinized, and the Total Quality Management tool of "stealing shamelessly" should be employed where you see a good idea that will work in your company. In fact, this is one area where contacting competitors is a good idea. Although there is the theoretical risk that competitors could agree to set their standards so low as to facilitate illegal practices,⁴⁷ this would be so obvious that it would be apparent to any judge evaluating the program that an effective compliance program

⁴⁵ For example, you might ask a question like "Can you agree on prices with a competitor?" rather than "When was the Sherman Act enacted?"

⁴⁶ FSG § 8A1.2 comment note 3(k)(7).

⁴⁷ See, e.g., M. France, *Are Telecoms Discussing Compliance or Colluding?*, Natl. L.J., Jan. 30, 1995, at b1. If there is truly a concern, then antitrust lawyers can supervise the meetings to make sure nothing bad happens.

§ 8.04 CORPORATE LEGAL COMPLIANCE HANDBOOK

was not in place. Rather, industry-wide meetings often yield compliance programs that are particularly appropriate and effective for that industry,⁴⁸ since no company wants to be singled out as the only one to be punished for an ineffective compliance program. The benchmarking activities can examine implementation of training, communications effectiveness, and causes of wrongdoing.

Outside counsel may be able to provide helpful insight in the evaluation of a compliance program, based on his or her familiarity with the substantive legal area and exposure to the programs (and problems) of other companies. External review also provides an additional level of validation to the program that helps ensure that the program will not be perceived as a sham.

The specifics of the risk analysis process will necessarily be different for each company, and there is no substitute for the hard work of looking in detail at each operation of the company, each job, and each area of law, to determine what must be done. But without this thorough analysis, a company may run the risk of overlooking an area that may result in serious legal exposure merely because nobody thought of it before.

The risk analysis should begin with a formal request from senior management to provide a legal analysis of the status of compliance in the company. The process should result in a report to the board or senior management, and it should be prepared by an attorney to maintain the attorney-client privilege. The report should summarize the requirements of the Sentencing Guidelines, highlight the kinds of legal exposure the company faces (through illustrative examples of the disasters that befell companies without adequate compliance programs), outline the status of compliance by legal area or company business unit, and suggest steps to improve the compliance program, with an emphasis on those areas that provide the highest risk. Ideally, the report will go to the full board of directors or to the audit committee, which now must adhere to SEC⁴⁹ and NYSE rules that require the audit committee to be independent and competent.⁵⁰ The program approved by the board should thereafter be

⁴⁸ For example, the Defense Industry Best Practices Forum, first held in 1986, was a response to various procurement scandals.

⁴⁹ SEC Rel. No. 34-42266 (Dec. 22, 1999).

⁵⁰ Proxy statements must disclose whether the audit committee has a written charter, and the stock exchanges have standards that determine whether the audit committee is deemed to be independent. The proxy statement must contain an audit committee report

THE EFFECTIVE COMPLIANCE PROGRAM**§ 8.05**

presented to lower-level managers so that they understand the parameters of the corporate mandate as the board has now directed.

§ 8.05 THE STRUCTURE OF THE COMPLIANCE PROGRAM

Although the primary motive behind of any compliance program should be to create something that is effective in ensuring compliance with law, a review of statements by judges, prosecutors, legislators, regulators, and jurors, makes it clear that there are some things that *they* consider important indicators of effective compliance. Whether or not everyone would agree that these aspects are crucial toward achieving effective compliance, it is important to remember that perceptions of a corporation's commitment to compliance can play an important role in reducing (or enhancing) legal liability. Therefore, a company should keep the "public face" of the program in mind as it is being constructed.

The official commentary on the Federal Sentencing Guidelines states that the hallmark of an effective compliance program to prevent and detect violations of law is that the organization exercised due diligence in seeking to prevent and detect criminal conduct by its employees and other agents. The Guidelines outline seven steps as the minimum necessary to indicate due diligence in a compliance program, and these should certainly be a part of every program.

- (1) The organization must have established 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) Specific individual(s) within high-level personnel of the organization must have been assigned overall responsibility to oversee compliance with such standards and procedures.
- (3) The organization must have used 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.

that outlines whether the audited financial statements have been reviewed with management and with the outside auditors, and whether the committee has recommended that the financial statement be included in the annual report.

§ 8.05 CORPORATE LEGAL COMPLIANCE HANDBOOK

- (4) The organization must have taken 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 have been consistently enforced through appropriate disciplinary mechanisms, including, as appropriate, discipline of individuals responsible for the 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 have taken 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.⁵¹

But while these steps are necessary, they are probably not, in and of themselves, sufficient to ensure an effective program. The precise actions necessary to establish an effective program depend on a variety of factors that are often lumped under the term “corporate culture.” Larger corporations should have a more formal program, including detailed written policies. As noted above, the nature of the business will also indicate the legal risks encountered and the kind of compliance program that should be implemented. But the program must be a real attempt at compliance. The Sentencing Guidelines attempt to ensure that a company

⁵¹ FSG § 8A1.2 Application Note 3(k)1. The Guidelines do not require that compliance systems be perfect, only that the corporation used due diligence to attempt to detect and prevent criminal wrongdoing. *See* Chapter 2.

THE EFFECTIVE COMPLIANCE PROGRAM**§ 8.05**

adopts a bona fide compliance program, and not just something that looks good on paper.⁵²

Some attorneys agonize over what to call their programs. Some of the names that have been used as comprehensive titles for compliance programs include "Preventive Law," "Compliance," "Corporate Integrity," "Ethics," "Code of Conduct," and "Do the Right Thing." There is no indication that the name of the program makes any difference to enforcers, as long as the program is a bona fide attempt at compliance. The key determinant of the name for the program (or whether there is even a name) should be what is most effective in the corporate culture in reducing the prospect of criminal conduct. The name should be chosen based on what will be most readily accepted and understood by employees.

Beyond names, there are some attributes of compliance programs that must have real substance. The compliance policies and the programs used to implement them must be validated and supported by the board of directors and senior management. In addition to formal validation of the programs through policy statements, there should be periodic reports by employees responsible for compliance, and directions regarding compliance coming from the top of the company. Senior management should understand the consequences of failures of compliance, and should be directing those in the corporation with operating responsibilities to continue to ensure that their programs are effective and to look for ways to improve those programs, whether or not there are violations or other triggers of concern.

Employees should be required to know what they must do to comply with the laws relevant to their job. This starts with distribution of basic company policies and an acknowledgement by the employees that they have read the policy and will abide by it. The policies should be in a form that is easily understood, and should be concise enough so that employees will actually read it.

Management styles and structures vary from company to company, but it seems that once a company reaches a size sufficient to justify

⁵² See *In re Holland Furnace Co.*, 341 F.2d 548 (7th Cir. 1965), *cert. denied*, 381 U.S. 924 (1965), a criminal contempt action against a firm that intentionally violated an order prohibiting certain sales practices. The court determined that the compliance program to comply with the original order was a sham, since the violations were attributable to the policies established by top management, and there was no effort to change the sales practices after the original order.

§ 8.05 CORPORATE LEGAL COMPLIANCE HANDBOOK

specialized regulatory employees, there should be an officer designated with responsibility for compliance. While this may or may not be an attorney (as discussed below), the employee should have real expertise in compliance, and not be just a “name” on a piece of paper. This officer need not actually conduct compliance training, but should be knowledgeable about compliance activities throughout the company. He or she may direct regional or division compliance officers, or may direct a corporate-wide task force or committee responsible for compliance. The responsible officer should be charged with implementing the corporate policy (as adopted by the board), with a sufficient budget to accomplish the job, and should have bottom-up reporting from the operations as to all compliance activities and their effectiveness.

Because the Sentencing Guidelines require that companies not hire known violators, companies must coordinate compliance efforts with the human resources staff, since inquiring about a job applicant's criminal background may raise new legal issues in the civil rights or libel areas. Yet there should be a clear policy directed to the human resources staff that people convicted of violating laws related to the area of employment must not be hired. Furthermore, human resources should be advised to remove current employees from regulated programs once they have been convicted of a violation on the job. There must also be a strong program to ensure that violation of legal standards will be met with discipline up to and including discharge.

Speeches by enforcers and the texts of compliance orders make it apparent that formal training classes and distribution of written policies are viewed as part of an effective communication program. Yet it is clear to anyone who has worked in a corporation that sending out a written policy or making an employee attend a legal speech is no guarantee that legal behavior will result. While it is obvious that more should be done to ensure effective communications, compliance programs should start with the basics (written policies, meetings, etc.), the absence of which would be hard to explain to persons outside of the specific corporate environment. All of these elements are “structural” (which is a nice way of saying on paper), and will help prove good faith while possibly avoiding an indictment or mitigating a sentence. While they do not address whether the communication program really works, the program's structure is a place to start, after which there must be a commitment to do more to get truly effective.

The compliance program that is developed as a product of the comprehensive risk analysis will identify the legal areas to cover, and

THE EFFECTIVE COMPLIANCE PROGRAM**§ 8.06**

what kind of training methods and materials to use. Compliance structures such as a hotline for reporting wrongdoing and a compliance section on the company intranet should also be created.

Compliance programs should also include several elements that might be considered part of a “quality control” program. Such programs incorporate continuous review to identify improvement opportunities. Internal auditors should be enlisted to check the effectiveness of the program as part of their financial audit. The auditors can be involved in monitoring any calls that come in on the hotline, both to ensure that complaints are addressed promptly, and to determine if the nature of the complaints reveals any gaps in compliance coverage. It is particularly important that there be a formal procedure to take corrective action should an offense or a violation of company policy occur. This procedure would look for the cause of the compliance failure and ensure that proper action is taken against the employees involved (e.g., discipline), appropriate reports are made, and corrections are aimed at preventing a recurrence. While a perfect compliance program is not required to obtain mitigation,⁵³ if a high-level individual or a person with compliance responsibility is involved, or if the company unreasonably delayed reporting the offense, then the opportunity to obtain mitigation in sentencing will be lost.⁵⁴ Therefore, one cannot lose sight of the importance of reaching high-level employees and making certain that they understand all legal requirements and will reliably follow the program. The consequences of a high level violation will be much more severe to the organization than a violation by a lower-level employee.

§ 8.06 WHO IS THE COMPLIANCE OFFICER?

Many companies have found that the most effective way to implement a compliance program is to assign an employee to direct these activities as a full-time job, and not to depend on employees tending to compliance in addition to their regular jobs. The Federal Sentencing Guidelines encourage the assignment of a high-level employee to direct compliance activities.⁵⁵ This employee should have substantial control over the organization, which would suggest the ability to formulate

⁵³ FSG § 8A1.2, comment note 3(k).

⁵⁴ FSG § 8C2.5(f).

⁵⁵ FSG § 8A1.2 comment note 3(k)(2).

§ 8.06 CORPORATE LEGAL COMPLIANCE HANDBOOK

policy and the ability to take action to implement those policies.⁵⁶ This employee should also have access to senior management and the board of directors so that policy suggestions are formally adopted, and so that there is no question that the compliance officer is acting with the highest levels of corporate authority. The person in charge of compliance will usually supervise a variety of programs communicated by others rather than performing all of the training him or herself. Part of the responsibility in this role would include the need to obtain regular reports on compliance activities, and, if necessary, perform periodic audits to verify effectiveness of training in various areas.

To many outsiders, it is very impressive to have a full-time ethics or compliance officer in charge of making certain that the legal rules are followed. The person designated to be responsible for compliance should be someone who fits most appropriately into the corporate culture — and whether the job is full-time would depend on the training infrastructure and culture that exists. The compliance officer could be the general counsel, another lawyer, or a non-lawyer. The question to ask is who would be most effective in establishing a compliance system and getting employees to follow rules that are established.

Placing a lawyer in charge of compliance raises the issue of the inability to shield a lawyer from testifying should it become necessary to prove the effectiveness of the program.⁵⁷ What is done to establish the program may be hard to distinguish from legal advice, and thus it may become necessary to reveal privileged communications. Investigations to determine if laws were violated may result in the collection of potentially damaging evidence, and the attorney will naturally want to use the attorney-client privilege to protect that information from discovery.⁵⁸ But if that information is voluntarily disclosed, the privilege may be lost.⁵⁹ So, it may be appropriate to use persons other than attorneys to supervise

⁵⁶ FSG § 8A1.1 comment Note 3(c).

⁵⁷ The attorney's role in compliance activities should not undermine the attorney-client privilege, since it is clear that this is a proper role for attorneys. "[T]he attorney-client privilege encourages organizational clients to have their agents confide in lawyers in order to realize the organization's legal rights and to achieve compliance with law." Restatement of the Law Governing Lawyers § 123 comment b.

⁵⁸ *Westinghouse Electric Corp. v. Republic of the Philippines*, 951 F.2d 1414 (3d Cir. 1991).

⁵⁹ *See, e.g., In re Subpoenas Duces Tecum*, 738 F.2d 1367 (D.C. Cir. 1981).

THE EFFECTIVE COMPLIANCE PROGRAM**§ 8.06**

compliance, and use in-house or outside attorneys to conduct investigations or render legal advice apart from the compliance program.

In some companies, however, the corporate law staff has the clout within the organization to give an order and make it happen. The attorneys often have a great deal of influence within the corporation and are knowledgeable about legal compliance requirements. Nobody else may be able to ensure that a compliance program is put in place, and employees will know that if they do not follow the program precisely it will have serious consequences. The only way to ensure that a compliance program will be effective in corporations of this kind is to make certain that all employees know that it is coming from the law department. Particularly if the company has suffered a recent major legal defeat, a compliance program driven by the legal staff may be particularly effective. The lawyers will find audiences willing to be guided, since they have little trouble illustrating the painful costs of noncompliance.

But a different culture may prevail elsewhere. Effectiveness in the role of compliance officer will depend upon a variety of personal attributes, as well as corporate authority. In many companies, lawyers may simply be ignored, or tolerated as a nuisance that can be placated with empty gestures. If this is the situation then, although there needs to be a serious effort to change the corporate culture, the implementation of a compliance program cannot wait until attitudes change. It may then be best to utilize a highly respected manager, or a lawyer acting in a nonlegal capacity, as a compliance officer. Whether this person comes from an operating unit or corporate headquarters, he or she should be given an adequate budget to do the job, which is not subject to cutbacks if profit targets are being missed. The key is to select the right person: one who understands how to get things done in the corporation, and one whom the employees (including — and especially — other managers) will follow. Although sometimes an outsider is brought in who has expertise with compliance programs, if a qualified internal candidate can be located that person will have the benefit of knowing how the corporation works so that he or she will be able to know what type of technical programs are needed as well as what style of approach will be most effective in the corporate culture. An internal auditor or a professional trainer may be appropriate for the compliance position. An internal auditor is accustomed to checking for compliance already, and it is clear that when an auditor discovers wrongdoing, it is not the fault of

§ 8.07 CORPORATE LEGAL COMPLIANCE HANDBOOK

the auditor but of the person who failed to follow the law or company policy. The compliance officer also needs to be an effective communicator, and while an attorney may have legal knowledge, he or she may not have the skills of a professional trainer to implement the education component.

The compliance officer — whether a lawyer or not — also needs to serve as the symbol of compliance for the company. The compliance officer may need to be the spokesman who deals with reporters or appears on television. Thus, part of the job should include training in how to deal with the media.⁶⁰ Management of legal issues includes control, to the extent possible, of how the public perceives the company. The impact of a legal problem can be magnified by loss of business if the public perception is of a non-repentant organization that does not care about the consequences of its illegal behavior. On the other hand, damage may be minimized by quick remedial action, communicated by a person representing the corporation who has the presence that conveys an image of concern and trust to the public.

§ 8.07 THE ROLE OF OTHER DEPARTMENTS

One key to the success of a compliance program is making it the responsibility of everyone — not just the legal staff or a compliance officer. Involving everyone in compliance is the best way to make it part of the corporate culture. Each employee should have no doubt that achieving success at compliance is synonymous with achieving success in the company. To get to this state of mind there must be active communication among all of the groups responsible for implementing compliance, both as to the substance of the compliance message and the method for communicating it. A compliance task force or committee with representatives from different departments is often an effective way to help ensure that the program that is adopted will address the varied business activities of the corporation.

Under this ideal scenario, everyone will be a stakeholder in achieving successful compliance, but certain departments will have

⁶⁰ An otherwise effective compliance officer who is not particularly “telegenic” or who is extremely reluctant to appear in any public venue may wish to have a designated spokesperson for compliance issues. Effectiveness within a corporate setting is not necessarily translatable to communications with the public at large, and the two should not be confused.

THE EFFECTIVE COMPLIANCE PROGRAM**§ 8.07**

specialized roles. Some departments will have a technical connection to a compliance function, such as the environmental engineering staff. They will be a key to making certain that company operations systems (e.g., manufacturing, transportation) are able to comply with the legal requirements, but will need to work together with other groups, such as the lawyers, to make certain that their program satisfies applicable laws and regulations, and with human resources, to make certain that training methods for employees are effective.

The human resources staff can play an important role in ensuring the effectiveness of a compliance program in several ways.⁶¹ They will have a strong interest in the areas of employment law—equal opportunity, labor-management relations, wage-hour—where they are the technical experts. They can also be facilitators of the delivery of compliance in other areas. Companies recognize the value of intellectual capital and are devoting more resources to training and development. The human resources or training staff can provide assistance to the legal staff to make certain that training programs are effective, or they can be made responsible for the implementation of compliance training as part of overall training responsibility. In fact, this can be one of the most powerful tools to ensure effective communication of compliance training, and it can start with new employee orientation.

The human resources department may also be able to supply adult education experts to help prepare materials, to help train lawyers to be better presenters, or to actually do the training on behalf of the law department. Not all lawyers are effective teachers in an adult education context, and there should be an honest evaluation of whether a lawyer has the right skills to do a good job in this area. Legal subjects are not particularly interesting, and a boring presenter will not only fail to communicate a key compliance message but may create a negative attitude on the part of the audience, which will make it even more

⁶¹ As noted previously, one attribute of an effective compliance program is the use of due care not to delegate substantial discretionary authority to individuals likely to violate the law. This requires careful work by the personnel staff to screen employees for a history of violations without violating any other laws. There should be some check for an individual history of violation in the legal areas related to the specific job. For example, someone should not be hired to sell securities after being convicted of stock fraud. But the examination must be done in such a way that employees are treated in a nondiscriminatory fashion, and so that any intrusions into the privacy of the employee are limited to those questions objectively necessary to determine job suitability.

§ 8.07 CORPORATE LEGAL COMPLIANCE HANDBOOK

difficult to obtain the right kind of compliance behavior in the future. Professional trainers can help work with the legal staff to tailor presentations to each employee's job and to illustrate principles with relevant examples.

Most companies require new employees to spend some time being oriented to many of the details of life in the corporation — how to file a medical claim, how many days of vacation, etc. This is the time during which employees are most receptive to any sort of message from the company. They are eager to do well on a new job and do not need to “unlearn” negative impressions about the company that current employees may have developed. Since new employees are most likely to read company policy statements, sending a letter to their home about the company's commitment to compliance so that they can read it before they arrive for their first day on the job may be the best opportunity to ensure that the message is received and read.

Lawyers can help with this “cooperative” approach to compliance by reviewing all training programs used by every department, with two main objectives. First, the programs should not misstate the law or send a message contrary to overall compliance objectives. Second, the law staff can build in legal compliance messages to “non-legal” training so that the employee will get the compliance message without even being conscious of it. For example, a training program on effective sales techniques can also include information on what to do if a sales representative is approached by his or her counterpart from a competitor. While this is part of antitrust compliance training, it is presented in the context of normal on-the-job training. The employee learns the correct rule of legal behavior as part of general training in proper business behavior, and compliance becomes automatic. If all employees understand a powerful corporate-wide commitment to training and development, and legal compliance is seamlessly incorporated into that training ethic, there will be less chance that the legal compliance activities will be dismissed as somehow less important and unrelated to business success.

Every department should make sure that its employees have the requisite legal knowledge so that all of their activities are conducted in compliance with law. Employees should have the acquisition of this knowledge as part of their goals. Department heads should be held accountable for ensuring that all of the processes they utilize to conduct their business activities have been reviewed for compliance with applicable laws, and appropriate systems for legal review have been implemented.

THE EFFECTIVE COMPLIANCE PROGRAM**§ 8.08**

As noted in Chapter __, the internal auditors can also be enlisted to make sure the compliance message is being followed. An effective compliance system should have monitoring and auditing systems to detect criminal conduct, and the auditors may be able to include a legal compliance check along with their activities to ensure financial regularity. More auditing attention should be focused on those areas of highest risk, such as areas where the corporation has been found in violation in the past or where a current violation would have particularly harsh consequences. Specialized auditors should be employed to ensure compliance with technical regulations, such as those relating to pollution or sanitation. Reporting of misconduct can be facilitated by the use of an anonymous reporting system or ombudsperson (as discussed in Chapter __), and the corporate affairs staff responsible for internal communications should be enlisted to work with the law staff to make sure that all employees know how to get information on applicable corporate policies or have their legal questions answered.

§ 8.08 COMPLIANCE WITH CONSENT DECREES

Special problems are presented when a company must comply with a consent decree. As noted in Chapter __, these often include specific compliance requirements that must be followed. Just as with the Sentencing Guidelines, following the specifics of the decree is necessary, but it may not be sufficient to ensure compliance. The kind of mechanical practices specified in many consent decrees (distribution of written policy, distribution of the text of the decree, annual compliance meetings) may not effectively communicate to employees, but if there is any subsequent legal problem, a prosecutor or plaintiff will scrutinize the terms of the decree to see if there was any failure to follow the requirements as evidence of an intentional violation.

A corporation operating under a continuing decree is usually faced with the problem that proving a violation of the decree is much easier than proving a violation of the underlying crime that gave rise to the decree.⁶² Following the compliance portions of a decree should demonstrate good faith on the part of the corporation, but the corporation

⁶² “Thus, proof beyond a reasonable doubt that a managerial employee of Fox willfully violated the consent decree while acting within the scope of his or her authority establishes all the necessary elements of criminal contempt against Fox.” *United States v. Twentieth Century-Fox Film Corp.*, 700 F. Supp. 1246, 1248 (S.D.N.Y. 1988).

§ 8.08 CORPORATE LEGAL COMPLIANCE HANDBOOK

faces the same problem that it faces in all cases where an employee disobeys company policy: the corporation will be held liable.⁶³

So, it is particularly important for a company with a continuing decree or order to make certain that it communicates the specific terms of the order to all employees who might be impacted, and establishes procedures that will prevent violations or detect deviations from policy that might lead to a legal violation. Although it may not be required by the consent decree, the company should emphasize the personal and financial costs that it and its employees suffered as a result of the violation that resulted in the consent decree, since this will help make the communications “real” to employees who were not otherwise involved in the earlier legal problems. Although the decree may require certain actions to be taken, rather than following them literally, they should be done in such a way that employees will understand the significance of the action.⁶⁴

⁶³ See, e.g., *United States v. Automated Medical Laboratories, Inc.*, 770 F.2d 399, 404 (4th Cir. 1985) (“Even if Partucci had testified that no officer or director directed him to engage in unlawful practices, such testimony would not have exonerated AML because AML’s conviction was based not on the actions of its officers or directors but on the fact that its corporate agents, acting within the scope of their authority, committed criminal acts for which AML is liable as a matter of law.”); and *United States v. Basic Construction Co.*, 711 F.2d 570, 573 (4th Cir.), cert. denied, 464 U.S. 956, 104 S. Ct. 371, 78 L. Ed. 2d 330 (1983) (Basic argued that it had a longstanding, well known, and strictly enforced policy against bid rigging, but to no avail. The court noted that the cases dealing with corporate criminal liability “hold that a corporation may be held criminally responsible for antitrust violations committed by its employees if they were acting within the scope of their authority, or apparent authority, and for the benefit of the corporation even if . . . such acts were against corporate policy or express instructions.”).

⁶⁴ For example, the consent decree in *United States v. Playmobil*, supra note Civ No. 95-0214, 1995 U.S. Dist. Lexis 19888, 1995-1 Trade Cas. ¶ 71,000 (D.D.C. May 22, 1995), required the use of actual examples of prohibited conduct as part of the program to comply with consent decree provisions. This type of requirement should be satisfied in such a way that, were it to be standing alone, it would be an effective part of a compliance program and not just a step necessary to fulfill the obligations of a consent decree.

Kraft Foods Code of Conduct for Compliance and Integrity



Building
performance
with
integrity

Building
performance
with
integrity

Kraft Foods
Code of Conduct
for
Compliance and Integrity



Integrity: Doing What Is Right

Ask Before Acting

- Is it legal?
- Does it follow company policy?
- Is it right?
- How would it look to those outside the company?
For example, how would it look to our customers, the people in the communities where we work, and the general public?

Remember These Rules

- Know the legal and company standards that apply to your job.
- Follow these standards — always.
- Ask if you are ever unsure what's the right thing to do.
- Keep asking until you get the answer.

Kraft Foods is a member of the Altria family of companies, which is the world's largest manufacturer and marketer of consumer packaged goods. The principal Altria operating companies include Kraft Foods Inc., Philip Morris International Inc. and Philip Morris USA.



Kraft Foods

April 2003

From the
Chairman of the Board
and Co-CEOs

To Kraft Foods Employees:

At Kraft Foods, we are proud of our strong commitment to the highest ethical standards in the conduct of our business around the world. We are focused on complying with the law and acting with integrity at all times.

To reinforce our commitment to compliance and integrity, we have prepared this new **"Kraft Foods Code of Conduct for Compliance and Integrity"**. The development of this Code is part of a broader initiative by Altria Group, Inc. to create a consistent compliance and integrity framework for its family of companies. The Kraft Foods Code of Conduct is consistent with the policies contained in the Altria Code of Conduct.

Our new Code of Conduct replaces and expands upon our Business Conduct Policy in a way that we hope is more helpful in your day-to-day work. It reaffirms but also strengthens the basic requirements for our businesses and the behavior expected of each employee. We have developed our Code of Conduct to ensure that we act with integrity and respect the trust placed in us by our customers, consumers, fellow employees, shareholders, regulatory agencies, supply chain partners and communities where we live and work.

For quite some time, Kraft Foods has had a formal and comprehensive compliance program in place. In 2001, to establish a clear line of responsibility for both Kraft Foods International and Kraft Foods North America on compliance issues, we appointed a Chief Compliance Officer at each of our operating companies. They are responsible for the development and implementation of our compliance and integrity programs. In this way, we are confident that our compliance programs will not only meet, but also exceed, the expectations placed on us by our stakeholders and society.

We ask that you read this Code carefully and understand our fundamental message: Nothing is more important than our commitment to integrity — no financial objective, no marketing target, no effort to outdo the competition. No desire to please the boss outweighs that core commitment. Our commitment to integrity must always come first.

Kraft Foods has a long legacy of operating its businesses with integrity. To protect and enhance this reputation that we have worked so hard to earn, we must continue to work together on a daily basis in a manner that is consistent with our long-standing values. The way we treat each other and how we conduct our business is a responsibility we all share.

Sincerely,

Louis C. Camilleri
Chairman of the Board
Kraft Foods Inc.

Betsy D. Holden
Co-CEO, Kraft Foods Inc.
President and CEO
Kraft Foods North America

Roger K. Deromedi
Co-CEO, Kraft Foods Inc.
President and CEO
Kraft Foods International

Table of Contents

What You Should Know About The Kraft Foods Code Of Conduct

- 2 What Is The Code For?
- 2 Who Should Follow This Code?
- 3 Your Personal Commitment To Do The Right Thing
- 3 What About Those Who Supervise Others?
- 3 Does The Code Explain All The Standards I Need To Know?
- 4 What About Different Laws In Different Countries?

Asking Questions And Raising Concerns

- 4 Your Duty To Speak Up

Where To Go For Help

- 5 Whom Should I Contact For Help?
- 5 The Integrity HelpLine
- 6 What Happens When I Call?
- 6 We Will Not Tolerate Retaliation
- 6 Can I Call Anonymously?

Kraft Foods Compliance And Integrity Programs — What Do They Do?

- 7 Compliance Structure

Work Environment

- 8 What We Aim For
- 8 Equal Employment Opportunity And Diversity
- 8 Harassment-Free Work Environment
- 9 Health, Safety And Security Of Employees
- 9 Employee Confidentiality
- 10 Drugs And Alcohol In The Workplace

Conflicts Of Interest, Gifts And Entertainment

- 11 What We Aim For
- 11 Conflicts Of Interest
- 13 Receiving Gifts And Entertainment
- 16 Offering Gifts And Entertainment

Conducting Business

- 17 What We Aim For
- 17 Competition And Antitrust Laws
- 20 Information About Competitors
- 21 Money Laundering And Contraband
- 22 Trade Restrictions, Export Controls And Boycott Laws
- 23 Customs
- 24 The Government As Our Customer
- 25 International Bribery And Corruption
- 26 Confidential Information, Intellectual Property And Copyright
- 27 Unfair Business Practices

Dealing With Consumers

- 28 What We Aim For
- 28 Product Quality
- 29 Advertising And Promotion Of Products
- 30 Marketing To Children
- 31 Privacy Of Customer Or Consumer Information

Company Information, Resources And Financial Disclosure

- 32 What We Aim For
- 32 Accurate Books And Records, And Financial Disclosure
- 33 Company Time
- 33 Company Property And Resources
- 33 Proprietary Information
- 34 Corporate Opportunities
- 34 Computer Use And Network Security
- 35 Company Funds
- 35 Insider Trading
- 36 Investor Relations
- 37 Media
- 37 Records Management
- 37 Unsolicited Ideas

Communities And Society

- 38 What We Aim For
- 38 Environmental Compliance And Excellence
- 39 Political Activity
- 39 Child Labor And Forced Labor
- 40 Government Inquiries Or Investigations
- 40 Disclosure Of Sponsorship/Attribution

41 Employee Training And Acknowledgment**42 Index****44 Kraft Foods Internal Contact List****45 Kraft Foods Integrity HelpLine Numbers**

The Code does not alter the terms and conditions of your employment. Rather, it helps each of us to know what is expected of us to make sure we always act with integrity. The most current version of the Code can be found on the Kraft Foods intranet.

What You Should Know About The Kraft Foods Code Of Conduct

What Is The Code For?

Kraft Foods is firmly committed to conducting business in compliance with the letter and spirit of the law and other accepted standards of business conduct reflected in corporate and operating company policies.

Laws and standards for business conduct are more demanding than ever. Failing to meet these standards could expose Kraft Foods to very serious harm. Moreover, it is wrong.

Integrity means living up to the standards — laws and our own company policies — that we commit to. Nothing is more important at Kraft Foods.

The *Kraft Foods Code of Conduct for Compliance and Integrity* provides an introduction to important laws and policies that everyone working for Kraft Foods must follow. The Code is designed to help each of us:

- **Understand and follow the basic Compliance and Integrity rules that apply to our jobs; and**
- **Know when and where to ask for advice.**

The Code is not entirely new. It organizes, summarizes and updates, into one convenient guide, policies that have been in place for years. As explained below, it is a starting point — other corporate and operating company policies supplement the Code and may apply to your job.

Who Should Follow This Code?

All employees and officers worldwide who work for Kraft Foods must adhere to the standards contained in this Code and should consult the Code for guidance when acting on behalf of Kraft Foods. Further, employees who engage vendors, consultants and temporaries must monitor their work for Kraft Foods so that they act in a manner consistent with the principles in the Code. Those dealing with vendors, consultants or temporaries should contact their supervisor, Compliance Officer or Law Department for guidance.

Your Personal Commitment To Do The Right Thing

This Code represents a commitment to doing what is right. By working for a Kraft Foods company, you are agreeing to uphold this commitment. Understand the standards of the Code and the policies that apply to your job — and always follow them. Those who fail to follow these standards put themselves, their co-workers and Kraft Foods at risk. They are also subject to disciplinary action up to and including termination.

What About Those Who Supervise Others?

Those who supervise others have additional responsibilities under the Code to:

- Set an example — show what it means to act with integrity;
- Ensure that those they supervise have adequate knowledge and resources to follow the Code's standards;
- Monitor compliance of the people they supervise;
- Enforce the standards of this Code and all other related company standards;
- Support employees who in good faith raise questions or concerns about compliance and integrity. This means there should never be any form of retaliation against an employee who raises such questions or concerns; and
- Report instances of noncompliance to the proper management level.

Does The Code Explain All The Standards I Need To Know?

The Code is the cornerstone of our commitment to integrity. But the Code is not intended to describe every law or policy that may apply to you. Make sure you know the rules that apply to you. For example:

- Each operating company has policies and procedures to further implement the standards in the Code. In some cases, these rules may be stricter than the standards in this Code, and you should follow those stricter rules.
- The country in which you work may have additional laws or rules that apply to you.

To learn more about the laws, policies and procedures that apply to you, see the additional resources identified throughout the Code with the **I** symbol, ask your manager, or contact the Compliance Officer in your operating company.

What About Different Laws In Different Countries?

Kraft Foods does business all over the world, and that means employees may be subject to the laws of different countries and organizations such as the European Union. Each of us has an important responsibility to know and follow the laws that apply wherever we work.

Kraft Foods Inc. and our parent company, Altria Group, Inc., are corporations organized in the United States. For this reason and others, U.S. law may apply even when business activities are conducted outside the U.S. Other countries may apply their laws outside their boundaries too.

i If you have questions about the laws that apply to your activities, always contact the Law Department where you work for advice.

Asking Questions And Raising Concerns

Your Duty To Speak Up

Our company cannot live up to its commitment to act with integrity if we, as individuals, do not speak up when we should. That is why, in addition to knowing the legal and ethical responsibilities that apply to your job, you should speak up if:

- You are unsure about the proper course of action and need advice.
- You believe that someone acting on behalf of Kraft Foods is doing — or may be about to do — something that violates the law or our compliance and integrity standards.
- You believe that you may have been involved in misconduct.

Where To Go For Help

Whom Should I Contact For Help?

What should you do if you have a question or concern about compliance and integrity standards? We work hard to foster an environment of open, honest communication. So if you have a concern about a legal or business conduct issue, you have options. **The most important thing is that you ask the question or raise the concern.** Confidentiality will be maintained to the extent consistent with the best interests of the employees involved, our companies, and our companies' obligations under the law.

Your supervisor is usually a good place to start with a compliance or integrity issue.

You may also get help or advice from:

- Your supervisor's supervisor.
- The head of your department, location or business unit.
- Your operating company's Law or Human Resources Department.
- Your operating company's Compliance Officer.
- The Chief Compliance Officer for Altria Group, Inc.

Other reporting mechanisms established by your company may also be available. In addition, throughout this Code, resources are identified **i** where you can get help or guidance about that particular section of the Code. At the end of this Code (p. 44), you will find internal contact information for offices and departments referenced by the **i** symbol.

Integrity HelpLine

If after you have raised a concern with the contacts suggested above and have not been satisfied or are unsure about where to go, uncomfortable about using one of the other resources identified in the Code, or wish to raise an issue anonymously, call the **Integrity HelpLine** number listed for your operating company.

The **Integrity HelpLine** is operated by an independent company that reports the call to your company to enable it to respond to your concerns about compliance and integrity. It operates 24 hours a day/seven days a week to report your concerns in any language.

i Please refer to page 45 for dialing instructions and the list of **Integrity HelpLine** numbers, by country.

What Happens When I Call?

If you call our **Integrity HelpLine**, a call specialist will listen and make a detailed summary of your call. The information will then be forwarded to the appropriate individual in your company (for example, the Law Department, Human Resources Department or your operating company's Compliance Officer) to look into the matter.

Every effort will be made to give your call a quick response, especially when circumstances make that important. If an investigation is undertaken, we will look into the issue promptly and, whenever called for, see that corrective action is taken.

We Will Not Tolerate Retaliation

Any employee who, in good faith, lawfully and truthfully, seeks advice, raises a concern or reports misconduct is following this Code — and doing the right thing. Kraft Foods will not allow retaliation against that person. Individuals engaging in retaliatory conduct will be subject to disciplinary action, which may include termination. If you suspect that you or someone you know has been retaliated against for raising a compliance or integrity issue, immediately contact the **Integrity HelpLine**, your local Law or Human Resources Department, or your operating company's Compliance Officer.

We take claims of retaliation seriously. Allegations of retaliation will be investigated and appropriate action taken.

Can I Call Anonymously?



Q: *I think my supervisor is doing something that the Code says is wrong. I'm afraid to report her because she might make my job more difficult for me. What should I do?*

A: *If you don't feel comfortable talking to your supervisor about it directly, you can try one of the other resources listed on page 5. This is also an ideal situation for calling the **Integrity HelpLine**. Kraft Foods and its operating companies will not tolerate retaliation against you in any form.*

The **Integrity HelpLine** allows you to raise concerns anonymously. It assigns tracking numbers so that employees who do not want to give their name can still check back to receive a response or provide more information. Of course, giving your name can often help us look into the matter, and as explained above, Kraft Foods has a firm policy against retaliation for raising a good faith concern under this Code.

Kraft Foods Compliance And Integrity Programs — What Do They Do?

Compliance Structure

This Code is more than just a description of our standards. It is the centerpiece of a company-wide Compliance and Integrity program supported by our Board of Directors, senior officers, and our parent company, Altria Group, Inc.

The compliance program is administered by a Compliance Steering Committee, a Compliance Council and a Compliance Officer at each operating company.

These programs are reviewed for adherence to Kraft Foods and Altria Group, Inc.'s standards for Compliance and Integrity programs with the Chief Compliance Officer for Altria Group, Inc.

Together, the Compliance Officers and Kraft Foods management monitor the Kraft Foods Compliance and Integrity program. This responsibility includes:

- Assigning roles and responsibilities for the program;
- Overseeing compliance training and communications;
- Overseeing compliance auditing and monitoring;
- Overseeing internal investigation processes;
- Reviewing disciplinary procedures for Code violations; and
- Monitoring the resources available for raising issues and reporting concerns.

Work Environment

What We Aim For

Kraft Foods is committed to fostering workplaces that are safe and professional and that promote teamwork, diversity and trust. This includes the strongest commitment to providing equal employment opportunities for all persons.

Equal Employment Opportunity And Diversity

Our businesses have long been culturally diverse and desirable places to work. Our operating companies recruit, hire, develop, promote, discipline and provide other conditions of employment without regard to a person's race, color, religion, sex, age, national origin, sexual orientation, disability, citizenship status, marital status, or any other legally-protected status. This includes providing reasonable accommodation for employees' disabilities or religious beliefs and practices.

There may be additional protections provided to employees based on local laws or regulations. For example, in the United States, discrimination based on certain veteran status is prohibited.

i If you have further questions on equal employment opportunity or employment equity, contact your local or regional Human Resources representative.

Harassment-Free Work Environment



Q: *I am a female employee. A male co-worker frequently makes personal comments about my appearance that make me uncomfortable. I've asked him to stop but he won't. What can I do about it?*

A: *You can — and should — contact your supervisor, your Human Resources Department, or call the Integrity HelpLine.*

Having a professional work environment also means that our companies will not tolerate any form of harassment. Harassment can be verbal, physical or visual behavior where the purpose or effect is to create an offensive, hostile or intimidating environment. Sexual harassment, in particular, can include sexual advances, requests for sexual favors, unwanted physical contact or repeated and unwelcome sexual suggestions. Other prohibited conduct includes: offensive racial, ethnic, religious, age-related, or sexual jokes or insults; distributing or displaying offensive pictures or cartoons; and using voicemail, e-mail or other electronic devices to transmit derogatory or discriminatory information. This kind of behavior will not be tolerated at Kraft Foods.

Information and Reporting — Harassment Concerns

i If you observe or experience any form of harassment, you should report it to your supervisor, department manager, your Human Resources representative, or call the **Integrity HelpLine**. Other reporting procedures established by your operating company may also be available. We strictly prohibit any form of retaliation against anyone making such a good faith report.

Health, Safety And Security Of Employees



Q: Our work safety standards far exceed what is required in the country where I work and our competitors only follow local requirements. Shouldn't we do the same?

A: No. We must adhere to our company safety policies. The Altria family of companies is committed to providing our workers with a safe and secure environment everywhere we operate, even if this means we exceed local requirements.

Employee Confidentiality

Kraft Foods is committed to providing our employees with a safe and secure work environment. Safety is especially important in manufacturing locations, which are subject to significant workplace safety regulations. Each work location has safety rules that must be followed. Our companies comply with all health and safety laws, as well as our own health and safety policies that go beyond what the law requires.

Having safety rules is not enough, though. Our commitment to safety means each of us needs to be alert to safety risks as we go about our jobs.

All of our employees, and the employees of other companies working on our premises, must know the health and safety requirements associated with their jobs.

A safe and secure work environment also means a workplace free from violence. Threats (whether implicit or explicit), intimidation and violence have no place at any Altria company and will not be tolerated. **Weapons are not allowed in the workplace without authorization.**

i You should be familiar with and follow your company's policies regarding health, safety and security. Employees are urged to bring any unsafe practices — including threats or intimidation — to the attention of their supervisor or manager, local safety representative, Human Resources Department, or to call the **Integrity HelpLine**.

Kraft Foods believes in respecting the confidentiality of our employees' personal information. This means that access to personal records should be limited to company personnel who have appropriate authorization and a clear business need for that information. Employees who have access to personal information must treat it appropriately and confidentially.

Personal employee information is never provided to anyone outside of Kraft Foods and the Altria group of companies without proper authorization.

Our companies' commitment to employee confidentiality is not a license to engage in inappropriate personal activities at work. Company computers, for example, are intended only for official use, not for outside business activities. Kraft Foods, as governed by local law, has the right to access and review all communications, records and information created at work or with company resources. This may include such things as intranet or Internet activity, e-mail, voicemail and telephone conversations.

i Employee confidentiality is subject to laws or regulations by a number of governmental bodies. If you have questions, you should contact your company's Privacy Officer, Compliance Officer or Law Department.

Drugs And Alcohol In The Workplace



Q: *I have noticed that my supervisor's breath often smells of alcohol, even early in the morning, and he seems impaired. I am afraid that if I confront him or tell anyone, it may cause a scene or he may try to get me fired. What should I do?*

A: *There is enough evidence to believe a problem may exist, so speak right away with another supervisor, a representative from Human Resources or call the **Integrity HelpLine**. A safe, secure work environment is absolutely critical at our companies. Your company will not tolerate retaliation against you and will take steps to protect you from any retaliation.*

Work requires clear thinking and often the ability to react quickly — the safety of fellow employees and consumers depends on it. Being under the influence of alcohol or drugs, or improperly using medication, diminishes an employee's ability to perform at his or her best.

This is why our rules strictly forbid abuse of drugs and alcohol. Violations of these rules are taken very seriously.

i If you observe any drug or alcohol abuse, you should report it to your supervisor, your Human Resources Department, or call the **Integrity HelpLine**.

Conflicts Of Interest, Gifts And Entertainment

What We Aim For

Conflicts Of Interest



Q: We need to contract a firm to provide cleaning services locally and are spending a lot of time looking for the right one. Couldn't we save the company a lot of time and effort by hiring my brother's cleaning firm because I know that they can be trusted to do the job right?

A: No. Simply hiring a firm because you trust your brother is not a sound business practice and it contravenes our procurement policies. Further, this creates a conflict of interest between your desire to help your brother and your objectivity in selecting the most competitive supplier. However, if you make a proper disclosure to your Compliance Officer and remove yourself from the selection process (and no one who reports to you is involved), your brother's company can compete for the work with other qualified vendors.

As employees of Kraft Foods, we work together to meet our common goals — with loyalty and objectivity, and avoiding conflicts of interest.

Our employees have many activities in their lives outside the company. A “conflict of interest” arises when an employee’s personal, social, financial or political activities have the potential of interfering with his or her loyalty and objectivity to the company. Actual conflicts must be avoided, but even the appearance of a conflict of interest can be harmful.

Common Ways That Conflicts Of Interest Can Arise

Outside Employment and Affiliations. If you have a second job with, are performing services for, or are serving as a director or consultant for an organization that is a competitor, customer or supplier of goods or services, this raises an actual or possible conflict of interest. (The same point applies to working for an organization that is seeking to become a competitor, customer or supplier.)

Some arrangements of this kind are never permissible — for example, working for or providing services to anyone you deal with as part of your job for your company.

No outside affiliations with competitors, customers or suppliers are permitted unless you: Obtain the written approval of your supervisor and your local Human Resources Department, who will consult with your operating company’s Compliance Officer.

Jobs and Affiliations of Close Relatives. The work activities of close relatives can also create conflicts of interest. If you learn that a “close relative” (defined at the top of p. 13) works or performs services for any competitor, customer or supplier, promptly notify your supervisor, local Human Resource and Law Departments. They will work with you and the operating company Compliance Officer to determine if any action is required to address the situation. In general, a relative should not have any business dealings with you, with anyone working in your business unit or with anyone who reports to you. Exceptions require the approval of your company management and operating company’s Compliance Officer. You must also be careful not to disclose any confidential business information to any relative.

Conflicts Of Interest (continued)

Boards of Directors. Occasionally, an employee may be asked to serve on the board of directors of another organization. This can, in some cases, raise a conflict of interest or even a legal issue. Before accepting a position as a board member (including nonprofit organizations), always get written approval from your local Human Resources Department, who will consult with your Law Department and your operating company's Compliance Officer.

Investments. Employees and their close relatives need to be careful that their investments do not create conflicts of interest, impairing the employee's ability to make objective decisions on behalf of an operating company.

Conflicts can occur if investments are made in competitors, suppliers or customers. Any "substantial interest" in a competitor, supplier or customer requires the prior written approval of your supervisor, local Human Resources and the Law Department, who will notify the operating company's Compliance Officer.

A "substantial interest" means any economic interest that might influence or appear to influence your judgment. It does not usually include an investment that is less than 1 percent of the value of the outstanding equity securities of a public company or an interest worth less than \$25,000 in a privately-owned company. Publicly-traded mutual funds, index funds and similar poolings of securities, when the individual investor has no say in which investments are included, do not present conflicts.

Some investments are always wrong:

- Never invest in a supplier if you have any involvement in the selection or assessment of, or negotiations with, the supplier, or if you supervise anyone who has such responsibility; and
- Never invest in a customer if you are responsible for dealings with that customer or supervise anyone with such responsibility.

Usually, however, whether an investment creates a conflict of interest is a matter of good judgment. When deciding whether an investment might create a conflict, **ask yourself these questions:**

- Would the investment affect any decisions I will make for my company?
- How would the investment seem to others inside my company, such as my co-workers — would they think it might affect how I do my job for the company?
- How would it look to someone outside, such as a customer, supplier, stockholder or even the media?

Other Considerations On Conflicts Of Interest

Close Relatives. As the previous sections show, the activities of a close relative can create a conflict of interest. This happens when an employee's loyalty becomes divided — or may appear to be divided — between loyalty to the close relative (who has one set of interests) and loyalty to Kraft Foods (which may have different interests). "Close relative" includes a spouse, parents, stepparents, children, stepchildren, siblings, stepsiblings, nephews, nieces, aunts, uncles, grandparents, grandchildren, in-laws and a same or opposite sex domestic partner. On conflict questions you are not responsible for learning about the activities of family members who do not reside with you. For family members outside your home, you need only be concerned with those circumstances that you know about.

Potential Suppliers, Customers and Competitors. For conflicts of interest, a "supplier," "customer" or "competitor" also includes both actual and potential suppliers, customers or competitors.

If you think you may have a conflict of interest, or that others could possibly believe an activity or relationship you are engaged in is a conflict of interest, you must promptly disclose the situation in writing to your operating company's Compliance Officer.

Receiving Gifts And Entertainment

Kraft Foods has many suppliers, and suppliers are vital to our company's success. That is why relationships with suppliers must be based entirely on sound business decisions and fair dealing. Business gifts and entertainment can build goodwill, but they can also make it harder to be objective about the person providing them. In short, gifts and entertainment can create their own conflicts of interest.

"Gifts and Entertainment" means anything of value, including discounts, loans, cash, favorable terms on any product or service, services, prizes, transportation, use of another company's vehicles or vacation facilities, stocks or other securities, participation in stock offerings, home improvements, tickets, and gift certificates. The potential list is endless — these are just examples.

NOTE: In some functions or business units, more restrictive standards on gifts and entertainment may apply. Employees must not accept any gift or entertainment that violates those standards.

Receiving Gifts And Entertainment (continued)



Q: *A supplier's sales representative offers you a cleverly designed pen that his company uses in signing contracts, but there is one catch to the offer. He says you may have the pen only if you help him make his case to the rest of the procurement team. Since the pen is probably worth less than \$250, can you accept it?*

A: *No, because there is a "quid pro quo," an expression meaning "something for something." He will only give you the pen if he gets something in return. Even though this may seem like a small matter, these "quid pro quo" arrangements are on the list of conflicts that are "Always Wrong."*

Gifts and entertainment offered to Kraft Foods employees and their close relatives fall into three categories:

USUALLY OK

Some gifts and entertainment are small enough that they do not require approval. Gifts or entertainment with a combined market value of \$250 or less from any one source in a calendar year are in this category (as long as they do not fall into the "Always Wrong" category, below). This means that as long as the following do not total more than \$250 from a single source in a calendar year they do not require approval:

- Occasional meals with a business associate.
- Ordinary sports, theatre and other cultural events.
- Other reasonable and customary gifts and entertainment.

Similarly, accepting promotional items of nominal value, such as pens, calendars, and coffee mugs which are given to customers in general, does not require approval.

ALWAYS WRONG

Other types of gifts and entertainment are simply wrong, either in fact or in appearance, so that they are never permissible, and no one can approve these. Employees may never:

- Accept any gift or entertainment that would be illegal or result in any violation of law.
- Accept any gift of cash or cash equivalent (such as gift certificates, loans, stock, stock options).
- Accept or request anything as a "quid pro quo," or as part of an agreement to do anything in return for the gift or entertainment.
- Participate in any entertainment that is unsavory, sexually oriented, or otherwise violates our commitment to mutual respect.
- Participate in any activity that you know would cause the person giving the gift or entertainment to violate his or her own employer's standards.

ALWAYS ASK

For anything that does not fit into the other categories, it may or may not be permissible to proceed; but you will need to get written approval from your supervisor and your local Human Resources and Finance Departments, or your operating company's Compliance Officer. Examples in this category include the following, when paid by a current or potential supplier or customer:

- Gifts and entertainment from a single source with an annual fair market value over \$250.
- Special events — such as tickets to a World Cup match or Super Bowl game (these usually have a value of more than \$250).
- Travel or entertainment lasting more than a day.

In determining whether to approve something in the "Always Ask" category, supervisors and company Compliance Officers will use reasonable judgment and consider such issues as:

- Whether the gift or entertainment would be likely to influence your objectivity.
- Whether there is a business purpose (for example, business will be discussed as part of the event in question).
- What kind of precedent it would set for other employees.
- How it would appear to other employees or people outside the company.

Other Considerations on Gifts and Entertainment

Notifying Suppliers and Customers. You should inform all persons with whom you are doing or seeking to do business of this policy.

What to Do if You Receive an Impermissible Gift. You must immediately return any gift of cash or cash equivalent such as a bank check, money order, investment securities or negotiable instrument. For other types of gifts over the "Usually OK" amount, if your operating company's management and Compliance Officer determines that returning the gifts is impractical or undesirable, you should turn the gifts over to the Compliance Officer for company use, sale or donation. Gifts such as a picture, desk set or the like may be used in your company office with the written permission of your management and Compliance Officer but will remain company property. If appropriate, a letter should be sent to the donor explaining your company's policy with respect to gifts.

i If you have questions or concerns about gifts and entertainment policies, contact your supervisor, local Human Resources, Finance or Law Department. Your division, or the business unit you work in, may have additional requirements. Be sure you know and understand them.

Offering Gifts And Entertainment



Q: *I want to give one of our best customers a special gift to say thanks. I have access to some tennis tournament tickets that I know she would appreciate, but I think it is against her company's policy for her to accept them. If she doesn't care about the policy, can I give her the tickets?*

A: *No. If you know that giving a gift will violate the policy of the recipient's company, you may not give the gift. Just as we want others to respect our standards, we will respect theirs.*

Just as we have strict rules for receiving gifts and entertainment (see "Receiving Gifts And Entertainment" on pp. 13–15 in this Code), we must also be careful how we offer them. Offering social amenities or business courtesies of a nominal value such as modest gifts, meals and entertainment is common in the commercial world and is meant to create goodwill and enhance business relationships.

Using good judgment and moderation, occasionally exchanging entertainment or gifts of nominal value with a non-Governmental individual or entity is appropriate unless the recipient's employer forbids the practice. Any courtesy should always comply with the policies of the recipient's organization.

Offering Gifts

You must always follow local, regional, functional or operating company policy on gift giving.

Some conduct is always off-limits — no exceptions. Never offer or provide a gift, entertainment or anything of value if it is:

- Illegal.
- Known to be in violation of the rules of the recipient's organization.
- Cash or other monetary instruments (such as bank checks, traveler's checks, money orders, investment securities or negotiable instruments).
- Unsavory, sexually oriented, or otherwise violates our commitment to mutual respect.
- A "quid pro quo" (offered for something in return).
- A gift over \$1,000 — unless presented in a public presentation making it clear that the recipient is being given the gift, for example, pursuant to a sales incentive program that is known and acceptable to the recipient's employer.
- Not recorded properly on company books.

Gifts and entertainment to Government officials raise special risks.

Never offer, provide or approve such gifts, gratuities or entertainment without prior written approval of your Law Department, your responsible operating company management, and the Compliance Officer.

i If you would like additional guidance on offering gifts and entertainment to non-Government individuals or entities, contact your Law Department. For more information on the risks of offering gifts and entertainment to Government officials, see these sections in this Code: "Political Activity" (p. 39), "International Bribery And Corruption" (p. 25) and "The Government As Our Customer" (p. 24).

Conducting Business

What We Aim For

In all our business dealings, our companies strive to be honest and fair. We will vigorously compete, but do so fairly, complying with all laws protecting competition and the integrity of the marketplace.

Competition And Antitrust Laws

Kraft Foods strictly adheres to what are called "competition" laws in many countries and "antitrust" laws in the U.S. — laws that protect markets around the world from anticompetitive behavior. Competition laws prohibit anticompetitive agreements, such as price-fixing and predatory efforts to eliminate competitors. Each operating company has competition policies. You should become familiar with the policies that apply to your job.

Facts About Competition Laws:

- **Competition Laws Vary Around the World.** Many countries, the European Union and individual states in the U.S., have laws prohibiting anticompetitive behavior. The laws that apply to you may vary depending on where you work.
- **They Can Cover Conduct Outside the Country.** Some competition laws — such as those in the U.S. and EU — may apply even when the conduct occurs outside the country's borders.
- **Penalties Are Severe.** In the U.S., individuals convicted of price-fixing often receive prison sentences, and some companies have been fined hundreds of millions of dollars; customers and competitors can sue for three times the harm caused. In the EU, fines for anticompetitive behavior can be ten percent of worldwide turnover (i.e., sales).
- **Careless Conduct Can Violate the Law.** What might appear to be ordinary business contacts, such as a lunch discussion with a competitor's sales representative or a gripe session at an industry trade association, can lead to competition law violations.

Competition And Antitrust Laws (continued)



Q: *During a trade association meeting, I chatted with representatives of competing manufacturers. One representative said, "I don't know about the rest of you, but our profit margins aren't as good as they used to be." Another said, "I wish we could do something about all those deep discounts." I nodded my head, but never said anything. Over the next few weeks the companies whose representatives were present during the conversation raised their prices. Was the discussion a problem? What should I have done?*

A: *Yes, this discussion definitely was a problem. A court might conclude that everyone present during the conversation, whether they said anything or not, had engaged in price-fixing even though there was never an explicit agreement. Because of this risk, if you find yourself present during a discussion of prices with competitors, immediately break away from the discussion in a way that makes it clear you consider this improper, and promptly call your Law Department.*

Basic Rules To Know:

Certain agreements almost **always** violate competition laws. **Never** talk with or exchange information with competitors to:

- Fix prices — this can include setting minimum or maximum prices, or “stabilizing” prices.
- Fix terms related to price, pricing formulas, trade promotions, credit terms, etc.
- Divide up markets, customers or territories.
- Limit production.
- Rig a competitive bidding process, including arrangements to submit falsified bids.
- Boycott a competitor, supplier, customer or distributor.

Because of the risk, **do not discuss competitive matters with competitors** — at any time or any place — without authorization of your Law Department.

Other activities may raise competition law issues. Always consult with your company's Law Department before:

- Discussing joint ventures, mergers, acquisitions, marketing, purchasing or similar collaborative arrangements with competitors.
- Establishing exclusive dealing arrangements (e.g., contracts that require a company to buy only from or sell only to an Altria company).
- Tying or bundling together different products or services (e.g., contracts that require a buyer who wants one product to also buy a second “tied” product).
- Engaging in activities involving trade associations or setting industry standards.
- Serving as a director or officer in a company that competes with us.
- Setting resale prices with resellers (in the U.S. and some other countries).

Monopolizing, trying to monopolize markets and abusing a dominant position are illegal.

Some competition laws make it illegal to monopolize or attempt to monopolize a market, while others regulate the conduct of companies that hold a "dominant position." A company with a dominant position, for example, must not try to prevent others from entering the market, or to eliminate competition. Usually, competitors set prices to cover their costs — below-cost pricing may appear to be "predatory." If there is a reason to price below cost, this should be reviewed with your Law Department to ensure that it is not predatory or in violation of any law.

Charging different prices to customers who are competitors may be illegal.

In the U.S., a complex law called the "Robinson-Patman Act" in some cases prohibits charging different prices on sales of goods to customers who compete with one another. There are a number of exceptions to this law. Similar laws apply in many international jurisdictions. In the EU, differential pricing may raise issues where a company has a dominant position or where such pricing is done by agreement with a third party. Employees with authority to set prices need to learn the requirements of these laws and should consult their Law Department for guidance.

i If you have questions or concerns about your responsibilities under the competition laws, consult your operating company policies or your Law Department.

Information About Competitors



Q: *I have just been hired from another company. I have a box of materials from my former employer that would be very helpful in developing marketing plans for my company. May I bring this with me?*

A: *No, you should not bring materials that may contain confidential information to Kraft Foods from a prior job. Just as it would be wrong for someone to take our confidential information, we should not use the confidential information of others.*

To compete in the marketplace, it is necessary and legal to gather competitive information fairly. But some forms of information-gathering are wrong and can violate the law — in the U.S., one such law is the Economic Espionage Act.

Kraft Foods is committed to avoiding even the appearance of improper information-gathering, so it is important to know what you can and cannot do, and what you must be careful about.

Legitimate sources of competitive information include:

- Newspapers and press accounts.
- Other public information, such as annual reports or published sales materials.
- Talking with customers — but not to obtain confidential information.
- Customers giving you a competitor's proposal, but only if it is not confidential. If it is a Government bid, always consult your Law Department first.
- Trade shows (but not information from competitors — see "Competition And Antitrust Laws" on p. 17).
- Information publicly available on the Internet.
- Industry surveys by reputable consultants.

Never use the following:

- A competitor's confidential or proprietary information or something similar belonging to anyone else — consult your Law Department if you have such information. Even if confidential or proprietary information just shows up on your desk, get legal advice.
- Confidential or proprietary information in any form possessed by new hires from prior employers.
- Information about a competitor's bid if you are involved in bidding, especially on Government contracts. If you come into possession of such information, call your Law Department.
- Information on a competitor that someone offers to sell.

i If you have a question about whether it is appropriate to accept or have certain competitive information, contact your Law Department.

Money Laundering And Contraband



Q: *An export customer calls from Brazil and says he wants to double the number of confectionery products he buys each year. He is also changing banks and wants to pay for his next shipment in cash because his new account won't be opened in time. What should I do?*

A: *Get suspicious and report the situation to your Law Department. First, Kraft Foods and Altria companies do not sell products to customers in amounts that will exceed legitimate demand in the relevant local market. Sudden increases in demand without an adequate explanation could signal a contraband problem. Second, the Fiscal Policy allows cash payments only in limited circumstances. Cash payments — along with third-party checks or multiple payments — are sometimes used by criminals to circumvent money-laundering laws.*

Trading in products in violation of customs or fiscal laws has different names — “contraband,” “smuggling” or “tax evasion” are among them. Law enforcement officials around the world are increasingly concerned about contraband and its connection with another criminal activity — “money laundering.” The policy for all Altria companies is clear: We will not condone, facilitate, or support contraband or money laundering; and we will help Governments prevent illegal trade involving our companies’ products.

What Is Contraband? Contraband — sometimes called “smuggling” — is the illegal trading of goods in violation of customs or tax laws.

What Is Money Laundering? Money laundering is the process by which individuals or entities try to conceal illicit funds, or otherwise make the source of their funds look legitimate.

Kraft Foods and Altria have developed a *Policy Statement on Compliance with Fiscal, Trade and Anti-Money Laundering Laws* (“Fiscal Policy”), which should be reviewed for more information. Two important topics in the Fiscal Policy are receipt of payments and “know your customer” guidelines.

Receipt of Payments. Each Altria company supports anti-money laundering policies by using certain procedures to avoid receiving cash or cash equivalents that are the proceeds of crime.

The Fiscal Policy:

- Specifies acceptable forms of payment. In most cases, cash is not acceptable.
- Requires that all payments be in the currency of the invoice.
- Prohibits third-party payments except in limited circumstances.
- Requires compliance with all reporting and recording rules, such as reporting cash transactions over \$10,000 in the U.S.
- Requires that payments for each invoice or group of invoices be made by a single instrument.
- Mandates careful scrutiny of any request for an overpayment.

“Know Your Customer” Guidelines. To help make sure that we only do business with firms or individuals that share our standards for compliance and integrity, the Fiscal Policy sets standards for selecting and approving customers and other business partners.

The Guidelines require employees to:

- Assess the integrity of potential customers.
- Communicate with customers about our compliance expectations.
- Continue to be aware of and monitor customers’ business practices.
- Refuse to do business with and provide no assistance to those suspected of wrongdoing related to our products in particular.
- Report any violation of the Fiscal Policy to your Finance and Law Departments, who will consult with the operating company’s Compliance Officer.

Kraft Foods Code of Conduct

Money Laundering And Contraband (continued)

Trade Restrictions, Export Controls And Boycott Laws

Promptly report suspicious transactions or activities by any customer to your Law Department.

i For more information, consult the Kraft Foods or Altria Group *Policy Statement on Compliance with Fiscal, Trade and Anti-Money Laundering Laws*. You can find the policy on your company's intranet site or ask your local Law Department. Remember that suspicious transactions or activities by any customer should be reported promptly to your operating company's Law Department or Compliance Officer.

Trade Restrictions and Export Controls. The United Nations, the EU, Switzerland, the U.S., and a number of other jurisdictions periodically impose prohibitions or other restrictions on export and trade dealings with certain countries, entities and individuals. Trade restrictions take many forms, including bans on:

- **Exports** to a sanctioned country.
- **Transshipments** through a non-sanctioned country to a sanctioned country, or vice versa.
- **Imports** from, or dealings in property originating in, a sanctioned country.
- **Travel** to or from a sanctioned country.
- **New investments** in a sanctioned country.
- **Financial transactions and dealings** involving a sanctioned country or designated individuals and entities.

These restrictions also impose licensing requirements for export of certain products or technology.

The reach of these laws varies. They can restrict the activities of citizens or residents (including companies), with regard to certain countries, or the Governments, financial institutions, firms or individuals resident in or identified with those countries.

An "export" is not only the transfer of a physical commodity — it can include the transfer of services or technology (such as technical data or other information) to a national of another country by:

- E-mail.
- Face-to-face discussions, either in the U.S. or abroad.
- Visits to any company facility.



Q: *I want to send certain products to a sanctioned country. Is it OK if I arrange to transfer them to a company in a country without this restriction who will then sell them to the sanctioned country?*

A: *No. As is true with many laws, what might seem like a clever way around the law is also illegal.*

U.S. trade restrictions on consumer products companies have recently been in force with respect to the following sanctioned countries and individuals or entities:

- UNITA (Angola)
- Cuba
- Iran
- Iraq
- Libya
- Myanmar (Burma)
- North Korea
- Sudan
- Specially Designated Nationals
- Narcotics Traffickers
- Terrorist Organizations (including the Taliban)

In all international dealings be sure you know and comply with all export controls and trade restrictions.

U.S. Anti-Boycott Act. Under U.S. law, Kraft Foods is required to report to the U.S. Government, and not to cooperate with, any request concerning boycotts or related restrictive trade practices. Employees may not take any action, furnish any information, or make any declaration that could be viewed as participation in an illegal foreign boycott. These laws were originally designed to respond to the boycott of Israel by certain Middle Eastern countries, but they apply to any boycott of countries friendly to the U.S., such as, for example, the Pakistani boycott of India. There are severe penalties for violation of these laws.

According to the U.S. Government, the following countries may require participation in a prohibited international boycott:

- Bahrain
- Iraq
- Kuwait
- Lebanon
- Libya
- Oman
- Qatar
- Republic of Yemen
- Saudi Arabia
- Syria
- United Arab Emirates

There are several other countries that may require participation in a prohibited boycott, including: Algeria, Bangladesh, Indonesia, Iran, Morocco, Malaysia and Pakistan.

You should immediately notify your Law Department if you receive boycott-related requests for information, whether oral or written. This includes requests that are part of an actual order, as well as those that do not concern a specific transaction.

i If you need further information on trade restrictions and export controls, contact your Law Department.

Customs

As a general rule, importation of our companies' products or any other goods is subject to various customs and fiscal laws and regulations. In particular, physical importation of products into a country must usually comply with either:

1. regulations that specify the import duties, value added tax, excise tax and the like, that may be payable in relation to our products; or

Kraft Foods Code of Conduct

Customs (continued)

The Government As Our Customer



Q: *We do business in a number of countries where many of the businesses and organizations are run by the state. How do I know if the person I am dealing with is a Government official?*

A: *The term "Government official" or "representative" is defined very broadly. You should assume that all employees of state-owned organizations or companies, and their agents, are Government officials. Numerous local and national laws apply when the Government is involved, so ask your Law Department for help.*

2. tax, bonding or other similar regulations that govern "tax or duty free" shipments.

You must be sure that all imports comply with these requirements, and that any information provided to customs and tax officials is accurate and truthful.

i If you need further information, contact your Law Department or appropriate Customs Department.

Each year, Kraft Foods does substantial business with the U.S. and other Governments. While integrity is the foundation for all dealings with customers, special rules apply when a Government is our customer — rules that are in some cases very different from those that apply in dealing with a commercial customer. Violations can result in criminal and civil penalties.

Those involved in bidding on or providing service under a Government contract need to know these rules.

Basic Rules Include:

- Never seek or accept confidential bid information.
- Never offer or provide gifts, gratuities or entertainment without prior written approval of the Compliance Officer and the Law Department of your company.
- Know and follow anti-kickback rules, including restrictions on gifts by those seeking business from the Government and from Government contractors.
- Understand "most favored customer" pricing and verify compliance.
- Conform strictly to the contract's quality, quantity and testing requirements.
- Billings must always be accurate, complete, and in full compliance with all rules and regulations, including time and cost allocations.
- Be truthful, accurate, and complete in all representations and certifications.
- Know your customer's rules and regulations.
- Don't initiate any employment discussions with any current or former Government employee until first consulting with your Law Department.

i If you have questions about proper business relationships with the Government, contact your Law Department. For more specific information about dealings with Government officials outside the U.S., see the "International Bribery And Corruption" section in this Code (p. 25).

International Bribery And Corruption



Q: *I was told that I could hire a consultant to take care of getting all the permits we need from a foreign Government. He requested a \$40,000 retainer and said that he would use the money to "help move the process along." Since we don't really know where the money is going, do we have to worry about it?*

A: *Absolutely. You must know where that money is going and for what purpose it is being used. Moreover, the company is required to take steps to ensure that this money is not used as a bribe. You must seek the advice of your manager or your Law Department.*

The laws of virtually all countries in which Altria companies operate, as well as important extra-territorial laws, such as the U.S. Foreign Corrupt Practices Act and similar laws, prohibit bribes to foreign Governments and other officials (such as political candidates, political parties and their officials, employees of Government-owned businesses, United Nations officials, etc.). A violation is a serious criminal offense for both companies and individuals, which can result in fines, loss of export privileges and imprisonment for individuals.

Bribery and Corruption Laws:

Apply to all Kraft Foods employees, agents and representatives worldwide.

Forbid:

- Offering or giving anything of value to a foreign official for the purpose of obtaining or retaining business, or for any improper purpose. This includes payments to reduce taxes or customs duties.
- Making improper payments through third parties — so companies must be diligent in selecting agents and partners. Additional care is needed if the prospective agent is — or is in association with — a Government official.

Require that companies keep accurate books and records so that payments are honestly described and not used for unlawful purposes.

Kraft Foods requires more of employees — bribes are prohibited to anyone, anywhere in the world, for any reason. Remember that it is your responsibility to avoid these prohibited actions.

NEVER:

- Make an unauthorized payment, or authorize an improper payment or gift (cash or otherwise) — directly or through an agent — to a government official.
- Induce a foreign official to do something illegal.
- Ignore or fail to report any indication of improper payments, gifts or entertainment.
- Establish an unrecorded fund for any purpose.
- Make a false or misleading entry in company books.
- Do anything to induce someone else to violate these rules, or look the other way when there might be a violation.

International Bribery And Corruption (continued)

Facilitating Payments. U.S. law permits certain "facilitating payments" to foreign Government employees. Kraft Foods discourages these payments, and a payment may be made **only in these limited circumstances**:

- You obtain approval from your Law Department.
- It is legal in the country in question.
- It is necessary to obtain or expedite the performance of routine, non-discretionary, legitimate, customary duties, such as mail delivery, scheduling inspections or customs clearance.
- It is requested by the Government employee.
- The payment is small (below \$250 on an annual basis) and is fully and accurately recorded on the company's books.
- It does not involve a decision to award business to, or to continue doing business with, the company.

In some countries all such payments are considered illegal and therefore should never be made. Payments may never be made to any U.S. Government employee.

i If you are involved in international business, contact the Law Department where you work to make sure you understand the standards that apply to your business activities, including the laws on international bribery.

Confidential Information, Intellectual Property And Copyright

Just as we protect our own confidential information (see "Proprietary Information" on pp. 33-34 in this Code), we respect the proprietary and confidential information of others. This includes written materials, software, music and other "intellectual property."

Basic rules to follow:

- Do not bring to Kraft Foods, or use, any confidential information, including computer records, from prior employers.
- Do not load any unlicensed software on any Kraft Foods computer.
- Do not accept or use anyone else's confidential information except under an agreement approved by your Law Department.
- Do not use or copy documents and materials that are copyrighted (including computer software, portions of audio, video and off-the-Internet or off-the-air recordings) without specific permission from the copyright owner — consult your Law Department on whether "fair use" rules or existing licenses may allow it.

i If you have questions about intellectual property or copyright rules, contact your Law Department.

Unfair Business Practices



Q: *I just received my primary competitor's business plans for the coming year in an unmarked envelope, but with a postmark that indicates that it was mailed from the competitor's headquarters city. Although this is obviously a confidential internal document, I didn't do anything to get it, so can I keep it?*

A: *No. This document contains trade secrets that were sent to us by someone with access who violated his or her obligation of confidentiality. At worst, sending it is a violation of law; and at best it creates a situation where we cannot explain how we obtained it. Do not use or make copies of such documents. Consult with your Law Department on the proper way to dispose of this document.*

Kraft Foods competes vigorously for business, but some conduct in the name of competition is not consistent with the law or our commitment to integrity.

Never compete by engaging in unfair practices such as:

- Disparaging or making false statements about competitors or their services.
- Stealing or misusing competitors' trade secrets.
- Cutting off a competitor's sources of supply.
- Inducing customers to break contracts with competitors.
- Requiring someone to buy from your company before we will buy from them.
- Paying bribes to help your company's business or to hurt a competitor.

Dealing With Consumers

What We Aim For

Product Quality



Q: *A shift supervisor has told us to skip a quality control procedure. I think this violates company policy, but he is the supervisor. Should I just follow orders and ignore this?*

A: *No. If you think that the supervisor is breaking the rules and you do not feel comfortable talking with your supervisor directly, contact your supervisor's supervisor, your company's Quality Assurance Department, or call the Integrity HelpLine.*

To be successful, Kraft Foods must consistently strive to treat consumers fairly and honestly. Product quality, responsible marketing practices, and paying attention to issues relating to children and consumer privacy are critical parts of what Kraft Foods is expected to do.

Maintaining the high quality of products is critical to the success of Kraft Foods — because it is what customers and consumers have come to expect from each of our outstanding businesses. So that we consistently meet these expectations, and meet or exceed all Governmental safety and company quality standards for products produced, employees must act in accordance with these company quality and safety commitments.

Kraft Foods Will Consistently Work To:

- Follow all Government requirements and all company standards on product quality.
- Strictly adhere to company production and quality control procedures.
- Strictly follow all procedures for the storing, handling and shipping of products.
- Ensure that any new product has satisfied all applicable standards for quality before being offered to the public.
- Ensure that monitoring systems are in place to detect potential product defects and violations of laws and company policies.

i Every day, our company's reputation for quality is in the hands of employees. If you learn of a product quality issue or problem, report it immediately to your supervisor, the management of your department or business unit, your company's Quality Assurance Department, or the **Integrity HelpLine**.

Advertising And Promotion Of Products

The reputation of our company is a critically important asset. To maintain the ongoing trust of consumers, marketing, advertising and sales activities must describe products fairly, honestly and legally. Before we make a claim about a product, we must be able to substantiate it.

Each Kraft Foods business unit has procedures in place to comply with applicable advertising standards. All advertising and promotions must be approved by its management and are subject to monitoring by them for compliance.

i Employees involved in advertising or marketing must know and follow the applicable policies. Make sure you check with your Law Department if you need guidance on advertising policies.

Marketing To Children

Kraft Foods will market and promote its products in ways that respect the status of children, avoiding any marketing activity that might take advantage of children's limited ability to process information and make rational choices.

If you are an employee involved in marketing activities, you are responsible for playing your part to see that your company lives up to these obligations and that specific marketing standards your company has developed are followed. This means reviewing all activities for conformance to these standards and to relevant marketing codes. It also means instructing our advertising agencies and marketing consultants to follow these guidelines in making any proposals to Kraft Foods and in executing any programs.

Privacy Of Customer Or Consumer Information

Kraft Foods has a responsibility to protect the privacy of information that customers or consumers entrust to them. Employees who do not have a business reason to access this information should never seek to do so, and those who do have legitimate access should take steps to protect against the unauthorized release or use of private customer information. Outside parties who are given access to this information are also responsible for protecting it, and they should be monitored for their compliance.

Customer and consumer privacy is an important area where rules are still developing — both within and outside the United States. Kraft Foods is committed to monitoring evolving privacy standards and may, from time to time, develop additional policies in light of them.

Company Information, Resources And Financial Disclosure

What We Aim For

Accurate Books And Records, And Financial Disclosure



Q: *It is the last week in the quarterly reporting period. My boss wants to make sure we meet our numbers for the quarter, so he asked me to record a sale now that won't be finalized until next week. I guess this won't hurt anyone — should I do what he says?*

A: *Definitely not. Costs and revenues must be recorded in the right time periods. The sale has not officially been completed until there is evidence of a sales agreement, title has passed, and the sales price can be determined and is reasonably collectible. Until then, it would be a misrepresentation to include it in an earlier period.*

Our employees seek to create shareholder value by working hard to achieve superior financial results. In pursuing this goal, each operating company and its employees must produce honest and accurate reports and records, and must be forthright in measuring and reporting financial performance, must protect company assets and resources, and must never engage in insider trading. You are expected to act with honesty and integrity in the performance of your duties. Simply put, fraud of any kind with respect to business information or company resources will not be tolerated.

A company's credibility is judged in many ways — one very important way is **the integrity of its books, records and accounting**. Kraft Foods Inc. and its parent the Altria Group, Inc. are committed to providing shareholders with full, accurate, timely and understandable information, in all material respects, about the company's financial condition and results of operations. In meeting this commitment, Kraft Foods Inc. and Altria Group, Inc. are required by securities laws to report in accordance with generally accepted accounting principles in the U.S., and to maintain books and records that accurately and fairly reflect all transactions.

But this obligation includes more than financial information. Every employee of an Altria company must help ensure that reporting of any business information of whatever kind (financial or otherwise) and in whatever form (computerized, paper or otherwise) is accurate, complete and timely. This requires, among other things, accurately recording costs, sales, shipments, time sheets, vouchers, bills, payroll and benefits records, test data, regulatory data and other essential company information.

All employees of Altria companies must:

- Follow all laws, external accounting requirements and company procedures for reporting financial and other business information.
- Never deliberately make a false or misleading entry in a report or record.
- Never establish an unrecorded fund for any purpose.
- Never alter or destroy company records except as authorized by established policies and procedures.
- Never sell, transfer or dispose of company assets without proper documentation and authorization.
- Cooperate with and do not take any action that would mislead our internal and external auditors.
- Contact your accounting or auditing organization with any questions about the proper recording of financial transactions.

Senior financial officers and other managers responsible for accurate books and records, and accounting and disclosure of financial information have a special duty to ensure that these standards are met.

i The goal of accurate accounting and financial reporting requires compliance with rules from the U.S. Securities and Exchange Commission, the Financial Accounting Standards Board and other regulatory organizations. The Kraft Foods financial organization reviews new accounting standards and interacts with these standard-setting organizations. If you have any questions about new or proposed accounting and financial reporting standards, contact the Kraft Foods Vice President and Controller, or your company's Finance Department.

Remember, if you wish to raise concerns about accounting or auditing matters on an anonymous basis, call the **Integrity HelpLine**. Confidentiality will be maintained to the extent consistent with the best interests of the employees involved, our companies, and our companies' obligations under the law.

Company Time

To be successful, every employee must make the best use of his or her time and that of co-workers. All employees are expected to fulfill their job responsibilities and devote the necessary time to their work, while pursuing their individual work-life goals. Those required to report the hours they work must do so truthfully and accurately.

Company Property And Resources

All employees are responsible for using good judgment so that their company's assets are not misused or wasted. Company assets are intended to help employees achieve business goals. Careless, inefficient or illegal use of company property hurts all of us. Remember that all records you create as part of your work for the company are company property and are not part of your "personal records."

i For more information on our policies regarding the use of company property, see your supervisor. For information on the use of company computers, see the *Electronic Communications Policy* on your operating company's intranet site.

Proprietary Information

Our companies regularly produce valuable, nonpublic ideas, strategies and other kinds of business information. This information is called "proprietary information," which means that the company owns the information, just as it does other kinds of property. Because it is the product of the company's own hard work, various laws allow the company to protect this information from use by outsiders. Some examples of company proprietary information are:

- Sales, marketing and other corporate databases.
- Marketing strategies and plans.
- Personnel records.
- Research and technical data.
- Proposals.
- New product development.
- Formulas.
- Trade secrets of any sort.

Kraft Foods Code of Conduct

Proprietary Information (continued)

All employees must protect the confidentiality of their company's proprietary information so that we reap the benefits of our own hard work.

Sometimes an employee may need to share proprietary information with outside persons — for example, so that a commercial business partner the company has selected to work with can be an effective partner for us. However, even when there may seem to be a legitimate reason to share proprietary information, never disclose such information without management's prior approval and a written confidentiality agreement approved by your Law Department.

Corporate Opportunities

Kraft Foods employees and officers are prohibited from using company property or information, or their position within a company, for personal gain, such as profiting from business opportunities that they learn about through their work. Employees and officers are also prohibited from competing with Kraft Foods. Competing with the company could include:

- Engaging in the same line of business.
- Taking away from Kraft Foods opportunities for sales or purchases of products, services or other interests.

i If you have any question about whether a particular opportunity is covered by the above prohibition, or any question regarding local policies on proprietary information, contact your Law Department.

Computer Use And Network Security

Computer technology — hardware, software, networks and the information that runs on them — is critical to business success. And everyone who uses a computer plays a role so that these resources operate as they should. This means all employees must:

- Use these computers responsibly and primarily for legitimate business purposes — any personal uses should be reasonable and kept to a minimum.
- Protect the security of computer systems.

Good judgment should guide your use of computers, but these rules can help:

NEVER:

- Engage in electronic communications that might be considered offensive, derogatory, defamatory, harassing, obscene or otherwise vulgar.
- Use company electronic communications systems to improperly disseminate copyrighted or licensed materials, or proprietary information.
- Use company electronic communications systems to transmit chain letters, advertisements or solicitations (unless authorized).
- Visit inappropriate Internet sites.

Kraft Foods Code of Conduct



Q: *I sometimes e-mail my spouse to make personal plans, such as who will pick up the kids after work. Am I allowed to use the company's computer for this kind of thing?*

A: *Yes, as long as personal use is reasonable and kept to a minimum.*

ALWAYS:

- Protect information used to access company networks, including IDs and passwords, pass codes and building-access key cards.

Your electronic communications at work, depending on local law, may not necessarily be private. Records of your electronic communications may be made and used for a variety of reasons, and may be monitored to verify that company policies on computer use are being followed. Keep this in mind and exercise care when you use electronic mail.

i For more information on the use of computers, see the *Electronic Communications Policy* on your operating company's intranet site.

For questions on whether a particular kind of information may be sent by e-mail, check with your department's management. For information on computer and network security, contact your company's information services department.

Company Funds

How each employee uses company funds impacts profitability, so follow a simple rule: Protect company funds as you would your own, guarding against misuse, loss or theft. This includes making sure that all claims, vouchers, bills and invoices are accurate and proper.

Company funds include both cash and its equivalents, such as checks, postage, charge cards, bills, vouchers, reimbursement claims and negotiable instruments.

Insider Trading

In order to protect the investing public, securities laws make it illegal for those with "inside information" to buy or sell securities (stocks, bonds, options, etc.).

"Inside information" means information that:

- is not available to the public; and
- is "material."

"Material information" means information that a reasonable investor would likely consider important in deciding whether to purchase or sell a security. Chances are, if you learn something nonpublic that leads you to want to buy or sell stock, the information may be considered material. Material information is not necessarily information that is certain; information that something is likely to occur, or even that it "may happen," may be considered material.

Many of our employees may have inside information simply by virtue of their positions.

Inside information might include, for example:

- Introduction of an innovative new product.
- Negative views about a new or existing product.

Kraft Foods Code of Conduct

Insider Trading (continued)



Q: *A supplier sold my company a software system on a trial-run basis. I have heard the trial run was a success and we are going to buy this company's system. I bet other companies will follow our lead. My sister-in-law invests in tech stocks and knows a lot about them. Can I tell her about this and let her decide whether she thinks this company is a good investment?*

A: *Absolutely not. The information you have about our plans to use this company's product is confidential inside information. If you convey it to your sister-in-law, you are violating our policy not to divulge confidential proprietary information. If you or your sister-in-law use the information to invest, you may also be violating the securities laws.*

Investor Relations

- Significant new contracts.
- Changes in dividends.
- Mergers, acquisitions and joint ventures.
- Major developments in litigation.
- Earnings statements and forecasts.
- Expected Governmental actions.

Information About Another Company. Inside information can also be information you obtained confidentially during the course of your work about another company — for example, from a customer or supplier.

If you have knowledge of any of these kinds of information — and the information is nonpublic — this is inside information, and no employee of an Altria company may buy or sell securities using it.

No "Tips." This means you must never give someone else (your spouse, co-worker, friend, broker, etc.) a "tip" regarding nonpublic inside information; this includes discussions on Internet "chat rooms."

Securities law violations are taken very seriously and can be prosecuted even when the amount involved was small or the "tipper" made no profit at all. Government agencies regularly monitor trading activities through computerized searches.

Employees (and outsiders with whom they are associated) who have inside information can lawfully trade in the market once the information is made public through established channels and enough time has passed for the information to be absorbed by the public. Employees who have regular access to inside information must generally limit their trading of company securities to specified "window periods."

i If you have questions or concerns about your responsibilities under the insider trading laws, contact your Law Department.

Shareholders, financial analysts, creditors and others count on us to provide reliable information on our companies' operations, performance and outlook.

To protect the integrity of the information:

- Personnel who are authorized to speak to investors and analysts on behalf of Kraft Foods or Altria may not provide "special" or favored treatment to some. We must provide all members of the public equal access to honest and accurate material information.
- Only those employees specifically authorized to do so may respond to inquiries from members of the investment community (e.g., shareholders, brokers, investment analysts, etc.). All such inquiries must be forwarded promptly to the Investor Relations Department.

Media

Records Management



Q: Does “disposal suspension” mean the same thing as “records management”?

A: No. Records management is a system of policies and procedures designed to ensure that company records are created, managed and disposed of in accordance with legal record-keeping requirements or business needs. Disposal suspension is the manner in which the company satisfies its legal duty to preserve potentially relevant evidence that might be asked for in litigation or investigations. When company records are subject to disposal suspension, they may not be disposed of. Importantly, some company records are subject to both records management and disposal suspension policies.

Unsolicited Ideas

Media or press calls require careful consideration. No employee should talk about company matters with a reporter, either on or off the record, without first contacting the Corporate Affairs Department at your company.

Managing records and recorded information is essential to the work of all our companies, and care must be taken to ensure that this information is managed properly.

Four Principles Should Guide Us:

- **Maintain Records as Required by Law.** Some laws have specific record-keeping requirements. Each business unit must faithfully manage and maintain all records required by law.
- **Be Alert to the Need for Accuracy.** Employees should always maintain accurate records. Providing false or misleading records, or altering them, is wrong under any circumstances and could constitute a serious violation of law.
- **Retain Any Records Related to Litigation or an Investigation.** If an investigation or litigation is pending or anticipated, certain records, including electronic records, may be subject to “disposal suspension.” This means they must be retained and must not be altered, deleted, concealed or destroyed. Be sure to obtain advice from your company’s Compliance Officer, Records Manager or Law Department.
- **Know and Follow Company Records Management Policies.** Every business needs an orderly process for retaining records and documents. Consult your company’s record retention policies for further guidance.

i For more information on records management policies, contact your operating company’s records management group or Compliance Officer.

Employees of Kraft Foods are sometimes approached by persons outside our companies with ideas or suggestions they think we should use. These ideas can involve products, flavors, ingredients, packaging, promotions, advertising, processes, equipment, business methods and other topics.

Unfortunately, if these “unsolicited ideas” are not properly dealt with, our companies risk liability. For this reason, do not accept, or in any way encourage, offers of unsolicited ideas.

This important rule does not generally apply to certain suppliers, such as advertising agencies and some other consultants under contract with the company. Our companies also operate consumer feedback mechanisms that receive suggestions and comments according to special procedures. But if you are unsure whether an unsolicited idea falls into one of these categories, always seek advice.

i If you are approached about an unsolicited idea, immediately notify your Law Department. Kraft Foods Code of Conduct

Communities And Society

What We Aim For

Kraft Foods strives to respect society's values and honor our commitment to address society's expectations of us as a global family of businesses, employers and citizens.

Environmental Compliance And Excellence



Q: *We use a contractor to dispose of spent oil. I know the contractor's crew chief and I get the feeling that they may not be disposing of the oil the right way, at least not according to what the law says. Should I care about this? After all, it's not my company, and they are probably saving everyone money.*

A: *Yes, you should care. What the contractor is doing might make your company liable. But even if there would be no liability, we still care. Improper waste disposal is inconsistent with our commitment to reduce the environmental impact of our activities. Doing things the right way means not looking the other way if you have any reason to think someone we work with is doing something wrong. Not all substances are equally harmful, but all must be properly disposed of. And we should never "second guess" the law. Do the right thing. Talk with your supervisor, environmental department, or call the Integrity HelpLine.*

Kraft Foods expects full and complete compliance with all applicable environmental laws and regulations wherever we do business, but this is only the starting point of our environmental commitment. We are also committed to reducing the environmental impact of our activities and promoting the sustainability of the natural resources on which we depend, while providing quality products that meet the needs of our consumers. This commitment requires the participation of everyone.

Consistent with Altria Group, Inc.'s Environmental Policy and Principles, every employee of an Altria company is required to:

- Conduct business in accordance with all applicable environmental laws, regulations, requirements and corporate commitments. In addition to legal compliance, this means acting consistently with the environmental commitments and goals of your operating company, as well as the Altria Group, Inc.'s Environmental Policy and Principles.
- Understand that the goal is to move toward environmentally sustainable practices where feasible — this means we must all know the environmental consequences of what we do, and look for ways to reduce or eliminate those consequences.
- Follow specified procedures, notify management of potential environmental concerns, and share ideas for continuous performance improvement.

i If you have questions or concerns relating to our environmental compliance requirements or activities, contact the Law Department or your operating company's environmental department.

Political Activity



Q: *I am running for the local school board. I want to use the office copier to make copies of my campaign flyer. Is that OK?*

A: *No, company property and equipment may not be used for a political purpose without authorization from your company's Compliance Officer or Law Department. Running for a public office, even the school board, is a political purpose.*

Child Labor And Forced Labor

The laws of the U.S. and certain other countries set strict limits on contributions by corporations to political parties and candidates, and violators are subject to very serious penalties — including imprisonment in the case of individuals.

Corporate Political Activity. Employees may not make any direct or indirect political contribution or expenditure on behalf of Kraft Foods unless authorized by the Kraft Foods Corporate General Counsel (or designee) and the responsible operating company management in writing in accordance with established procedures. Political contributions or expenditures over \$5,000 also require the written approval of the Kraft Foods Inc. Chairman and the Chief Executive Officers (or designee) in writing. This includes contributions to candidates, officeholders and parties. Lobbying activities and contributions can include such things as:

- Buying tickets for a political fund-raising event.
- Providing meals, goods, services, travel, accommodations or tickets for sporting and entertainment events.
- Lending personnel during working hours for fund-raising activities.
- Paying for advertisements and other campaign expenses.

Personal Political Activity. Kraft Foods encourages political activity by employees in support of candidates or parties of their choice. Should you engage in the political process, you must do so on your own time, with your own resources. Do not use company time, property or equipment for personal political activities without authorization from your operating company's Compliance Officer or Law Department.

Lobbying. Lobbying requires disclosure, is subject to specific rules and covers many kinds of activity. You may be engaged in lobbying if your work involves:

- Contacts with legislators, regulators, executive branch officials or their staffs.
- Government contract sales.
- Efforts to influence legislative or administrative action.

You must discuss these activities with your company's Compliance Officer or Law Department to determine whether disclosure and other rules apply.

i If you need further information on permissible political activities in the U.S., consult the Federal and State Government Affairs compliance manuals and contact the Government Affairs office or the Law Department. For activities concerning officials of countries other than the U.S., contact your Law Department.

Kraft Foods will not engage in or condone the unlawful employment of children in the workplace or engage in or condone the use of forced labor. Our company is pledged to work proactively with others — including

Kraft Foods Code of Conduct

Child Labor And Forced Labor (continued)

Government Inquiries Or Investigations

Disclosure Of Sponsorship/Attribution

suppliers, interest groups, and Governments — to progressively eliminate these abuses in the labor markets related to our business supply chain.

Kraft Foods has a minimum age for employment that is the highest of 15 years, the local minimum age or the mandatory school age. Beyond that, we want contract laborers who work in our facilities to meet these standards. And each operating company is pledged to work with direct suppliers and with licensees and joint ventures who produce branded products to implement appropriate minimum age/forced labor standards.

With regard to other suppliers down the supply chain — whether in the agricultural sector or otherwise — each operating company is expected to look for areas where there are child labor or forced labor problems and to work proactively with others to address these issues.

i Each employee of Kraft Foods and the Altria group of companies is expected to be aware of these commitments.

The business activities of Kraft Foods and the Altria companies are regulated and this means that from time to time our personnel may come into contact with Government officials responsible for enforcing the law. Dealing honestly with Government officials is required.

If circumstances arise involving contact with Government officials with respect to your duties, any information provided must be completely honest and truthful.

At the same time, care must be taken in dealing with any representatives of Government agencies so that all appropriate steps are taken. Accordingly, you should always contact your Law Department immediately upon receiving a request for information from a Government agency. Also, be sure that records relevant to the Government inquiry are preserved.

There is a principle of disclosure that is part of our fundamental corporate policies: When individuals or organizations publish (or otherwise make public) the results of work that has been funded, directly or indirectly, by us relating to health implications of our products, there should be disclosure of the company's financial support. This company-wide policy of disclosure also applies when third parties act on our behalf and at our expense in presenting data or views in order to influence other policy issues of immediate interest to our company. The precise manner or format of attribution will often depend on the specific context (e.g., an article, a seminar, a conference, etc.). However, when such activity is undertaken by an industry trade association or other group, Kraft Foods Inc. may not require specific attribution if the activity is appropriately attributed to the trade association and the company's membership in the organization is publicly disclosed.

i If you have any questions, please contact your Law Department.

Employee Training And Acknowledgment

As the *Kraft Foods Code of Conduct for Compliance and Integrity* makes clear, adherence to the law and highest standards of integrity is critical to Kraft Foods and Altria's family of companies — our very success depends on it.

Compliance does not just happen, however. It requires a commitment by every one of us. That is why Kraft Foods is asking those who receive this Code to take a web-based training course on the Code. At the end of the Code training, you will be asked to confirm your individual commitment to act responsibly on behalf of your company by:

- Adhering to the standards of conduct contained in the Code.
- Participating in additional training courses on compliance and integrity topics relevant to your job.
- Seeking guidance if you are ever in doubt as to the proper course of conduct.
- Using one of the options that has been made available to report any action that appears inconsistent with these standards.

Sample Focus Group Survey

Thank you for taking the time to complete these questions. Your input is valued highly. Answers to this survey will be carefully reviewed and treated confidentially with results aggregated to get an overall view of focus group feedback.

Your job / function _____
Your business unit _____

Structure of Code

1/ How easy is the Code to navigate?

Easy	<input type="checkbox"/>
Average	<input type="checkbox"/>
Difficult	<input type="checkbox"/>

Are there any ways navigation could be improved? _____

2/ How easy is it to access key issues and answers?

Easy	<input type="checkbox"/>
Average	<input type="checkbox"/>
Difficult	<input type="checkbox"/>

Are there any ways accessibility could be improved? _____

3/ Are the Code's standards clear and unambiguous?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

If not, what needs to be clarified? _____

4/ Are there any broad areas of concern not covered?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>
Not sure	<input type="checkbox"/>

If so, what are the gaps? _____

Support and endorsement

5/ Is there a clear message of senior management support and commitment to the programme?

Strong message	<input type="checkbox"/>
Average	<input type="checkbox"/>
Weak message	<input type="checkbox"/>

How could we further strengthen the message from the top? _____

6/ Is it clear how the programme will be communicated to the organisation?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>
Not sure	<input type="checkbox"/>

What other communications should we be doing? Anything missing? _____

7/ Are employees' obligations to act consistently with the Code stated clearly?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>
Not sure	<input type="checkbox"/>

8/ What will you do personally to support the Code? _____

Processes to follow

9/ Does the Code clearly describe the various channels for asking questions, seeking guidance and expressing concerns?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>
Not sure	<input type="checkbox"/>

If not, how can this be improved? _____

10/ If you had a question or concern, which channel/s would you be most likely to use?

Your manager or supervisor	<input type="checkbox"/>
Your supervisor's supervisor	<input type="checkbox"/>
Your head of division or business unit	<input type="checkbox"/>
Human resources	<input type="checkbox"/>
Business assurance audit / risk management	<input type="checkbox"/>
Your local safety, health, environment and quality (SHEQ) officer	<input type="checkbox"/>
Company SHEQ department	<input type="checkbox"/>
Company's existing alternative dispute resolution programmes	<input type="checkbox"/>
Legal services	<input type="checkbox"/>
Global compliance	<input type="checkbox"/>
The global Code of Conduct working group	<input type="checkbox"/>
Company Helpline.	<input type="checkbox"/>
Other – please specify	<input type="checkbox"/>

What are the key reasons for your choices? _____

11/ Is the message on 'personal responsibility' clear?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

If not, how can we improve it? _____

12/ Is the message on 'enforcement' clear?

Yes

No

If not, how can we improve it? _____

13/ Is the message on 'non-retaliation' clear?

Yes

No

If not, how can we improve it? _____

14/ Are the messages on the Helpline clear?

Yes

No

If not, how can we improve it? _____

Awareness Workshop communications

15/ Are the Awareness slides easy to understand?

Yes

No

If not, how can we improve them? _____

16/ Are there any key messages missing from the Awareness slides or workshop?

17/ Do you have any suggestions for strengthening or enhancing the awareness cascade process?

18/ Are the workshop 'scenarios' a useful and instructive format?

Yes

No

If not, how can we improve it? _____

19/ What other subjects would you like to see explored in further scenarios?_____

20/ Was the breakout session useful in helping you understand and resolve issues raised by the Code?

Yes

No

If not, how can we improve it? _____

Communications

21/ What method of receiving the Code would work best?

Intranet

Internet

CD

Hard copy

Any other comments? _____

22/ Do the posters effectively communicate the right messages?

Yes

No

Any further suggestions? _____

23/ Does the Code pamphlet clearly communicate the key messages? (What is the Code, why do we need one, how can we access it, how can we get additional guidance, any express concerns, etc?)

Yes
No

If not, how can we improve it?

24/ Is the Code intranet site effective?

Yes
No

If not, how can we improve it? _____

25/ Our intention is to produce a brief video summarising the Code and its importance to us all. What do you think this should include?

26/ How should we aim to distribute this video?

27/ Are there any other ways you think we should be communicating the Code's programme to the organisation?

28/ Do you have any other questions, concerns or comments regarding the Code of Conduct programme?

Thank you again for taking the time to complete this important survey. Please make sure you hand this in to the focus group facilitator. The more detailed and candid the feedback we get, the more we can improve the Code and its delivery.

Yours sincerely,
The global Code of Conduct working group

Sample Focus Group Agenda

- 0900 - 0930 Introduction
- 0930 - 1030 Awareness Workshop presentation
- 1030 - 1040 Break
- 1040 - 1100 Review sample scenario
- 1100 - 1130 Intranet demonstration / posters / pamphlet / video review
- 1130 - 1230 Discuss overall communications materials and complete survey
- 1230 Close

SAMPLE LAUNCH CHART**Minimum actions and responsibilities for Code launch**

Launch item	Driven by Group i.e. produced, owned and championed	Driven by BU i.e. produced, owned and championed	Cascaded / communicated by all*
Code intranet goes live	✓		✓
Code on Company internet goes live	✓		
Code linked to 'social responsibility' section of Company internet web site	✓		
Code goes live on other company sites	✓	✓	
Global Helpline goes live	✓		✓
Printable Code available	✓		✓
Code overview (brochure) distributed to Implementation Managers	✓		✓
BUHs and Implementation Managers to ensure that their key enabling function managers are prepared for the 'go live' date with regard to their departmental responsibilities, possible employee queries and how they will manage the reporting of compliance and non-compliance		✓	
Implementation Managers to have local implementation teams, deputies and support structures in place - on a BU, country and site basis, and by key enabling function – as deemed necessary		✓	
Implementation Managers produce detailed business Implementation Plans by [date] for review and adjustment with finalised versions distributed on Launch Date		✓	
Implementation Managers activate and oversee their local Implementation Plans including start of Awareness Workshops and business communication cascades i.e. BUH letters to employees, posters, etc, until the plan is fulfilled		✓	✓

Ensure that the communications cascade starts as soon as possible after Launch Date, ideally led by the first Awareness Workshop	✓	✓	✓
Implementation Managers to report Awareness Workshop attendance to global compliance – so we can track progress		✓	
Management news release	✓		✓
LoB CE letters to executive teams	✓	✓	
[sub] MD letters to executive team	✓	✓	
[sub] letters to executive team	✓	✓	
BUH letters to employees		✓	✓
Functional heads send letters to their teams	✓	✓	
E-mail cascades from BUHs		✓	✓
Deployment of posters in places of prominence and in central locations		✓	✓
Use of Q3 results presentations to reinforce executive support for Code	✓	✓	✓
Company internal videos and CDs carry CEO message forward	✓		✓
Article in Company newsletter – using above as news hook	✓		
Article in Enewsflash – using above as news hook	✓		
Phased articles in regional company magazines	✓	✓	✓
Article in [Sub] magazine		✓	
Article in [Sub] magazine		✓	
Installation of links to Code intranet on BU intranets		✓	✓
Installation of Code and Helpline links on employee portals	✓	✓	✓
Inclusion of the Code programme and its progress in the next BU executive meeting		✓	

* Group, enabling functions and businesses.

Thank you for your support.



Globalising the Programme: Challenges & Solutions for Multinational Corporations

Donna Boehme
Head of Compliance
BP p.l.c.

global business needs a global approach

The current corporate environment:

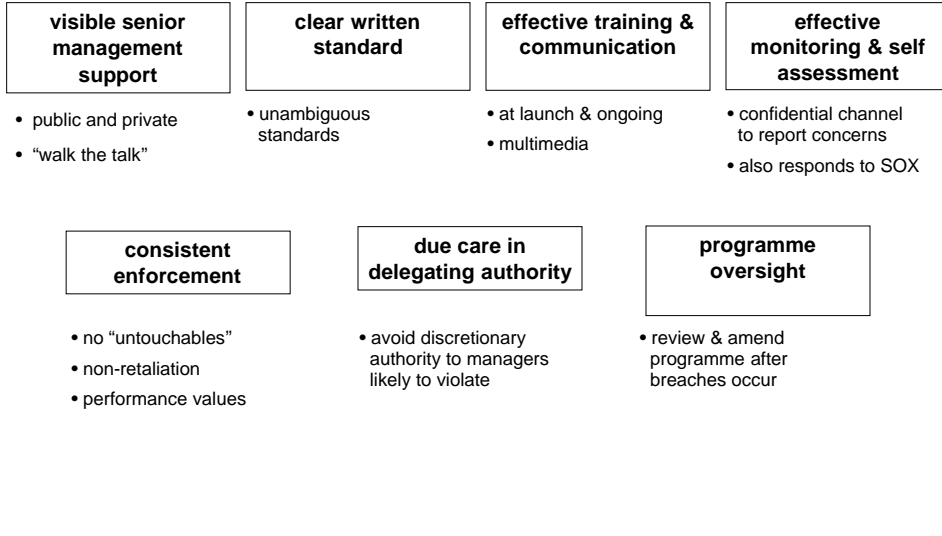
- Global trends for criminalisation of corporate wrongdoing
- Dramatically increased sanctions
- High scrutiny on corporate social responsibility
- Accountability for directors and individual managers
- Cooperation & sharing of information among agencies
- New enforcement initiatives & tools
- Extraterritoriality

How multinationals operate:

- Often a matrix organisation
- Employees moving across jurisdictions and businesses
- Multi-jurisdictional transactions & decision-making
- Sharing of information, electronically & otherwise

starting point- 7 elements for an effective programme

To avoid an Enron-style "paper programme"



globalising – it's more than just geography!

- The "one size doesn't fit all" rule **times 10!**
- Ask:
 - What is the organisational structure?
 - What is the company culture?
 - How do key messages get disseminated?
 - Where are the known issues?
 - What are the likely barriers?
- Think **global**, act **local**

going global – the challenges

- Creating a universal standard that can be understood and implemented worldwide
- Avoiding the perception of 'yet another corporate initiative' from corporate HQ
- Avoiding a "western-centric" approach
- Diversity of cultures, language & business practices
- Other competing business initiatives & priorities
- Resources – never enough!
- Achieving true business ownership

going global - some solutions

- The obvious: active & visible senior management support
- Getting critical input - global sensing
- Highlighting the business case
- Translations
- Addressing local concerns
 - being realistic
- Understanding the business culture and how information is disseminated
- Integrating the Code into existing business processes and identifying champions
 - creating ownership & sustainability

4 phases of global implementation – one approach

- Phase 1 - Focus group (global sensing)
- Phase 2 - Implementation planning
- Phase 3 - Launch (rollout)
- Phase 4 - Ongoing maintenance, monitoring & self- assessment

phase 1 - focus groups

- **Dual function**
 - Global sensing
 - “Beat the drum” (create awareness & ownership)

focus group process

- Development of focus group materials
 - awareness slides
 - sample launch materials
 - pre-reading
 - survey
 - facilitator's package
- Secure sponsor & organise sessions
- Follow-up & assess/incorporate results

focus groups – lessons learned

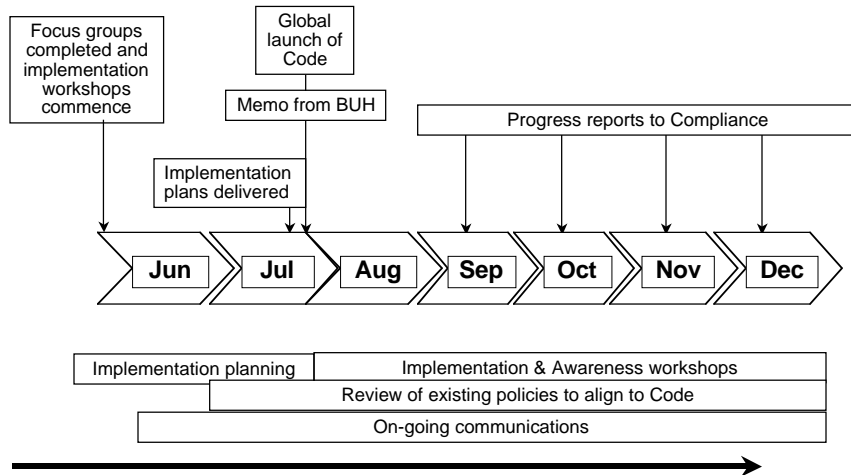
- Advance planning – invitation list & sponsor introduction
- Reach for broad spectrum
- The value of pre-reading
- Opportunity to spotlight the process in company publications
- Follow up is key- don't squander opportunity!

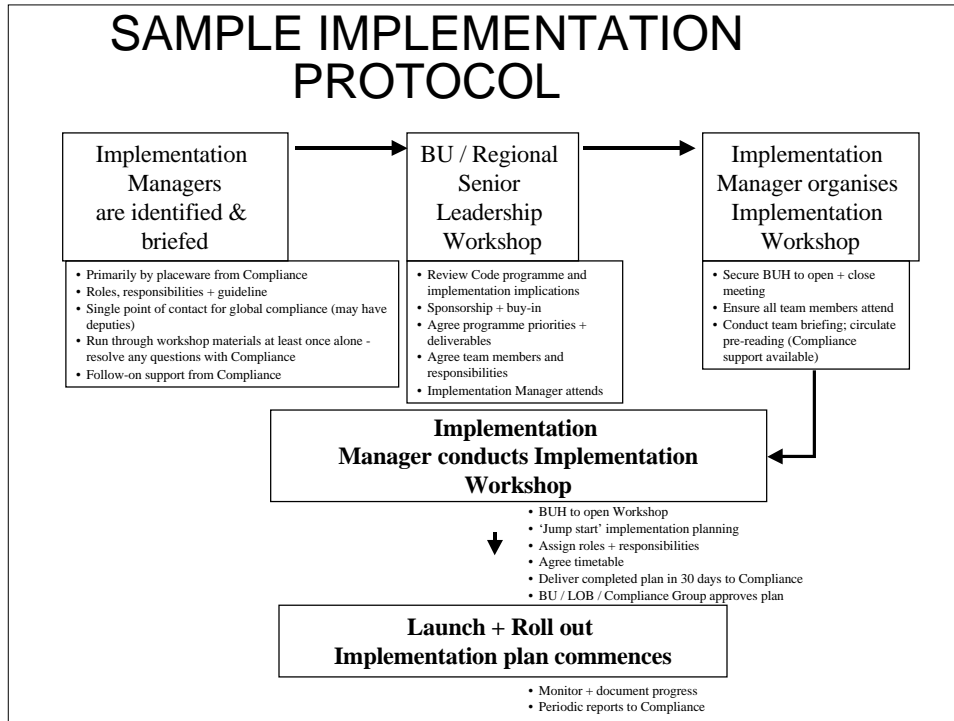
phase 2 - implementation planning

- Develop implementation tools and facilitator's package
- Identify & prepare sponsors, champions, and supporters within the organisation
- Identify and train implementation managers
- Schedule & complete workshops
- Address and follow up on any issues

Key mechanism for creating business ownership!

sample implementation timetable





implementation planning – lessons learned

- Don't forget to obtain senior management support & buy-in -especially on timing
- One word: **Pilot!**
- Be clear on roles & responsibilities
- Provide adequate training & support
- Set realistic deadlines
- Be flexible – bend but don't break

phase 3 – the launch

- Develop a clear plan for how the messages will be delivered and when
- For consistency, create minimum deliverables
- Consider chart indicating deliverables, timing & responsibilities
- Determine launch event
- Flexibility + consistency

phase 4 – monitoring & self-assessment

- Mechanisms for follow up go live (eg helpline)
- Encourage ownership by incorporating into ongoing business processes
- Continuing reports to senior management
- Avoid perception that the job is “done”
 - keep programme vital and alive
 - adequate resources
- Ongoing awareness- a marketing campaign
- Continuous feedback (consider 2nd focus group)
- Continuous benchmarking & risk assessment

final thoughts for a multinational programme

- Balance between consistency and flexibility
- Integration, integration, integration!
- Always a work in progress
- Think **global**, act **local**



[Policies and Procedures](#)

[Values](#)

[Ethics Challenge](#)

Boeing is comprised of many leadership businesses, each with a long and diverse heritage. Whether the Boeing business has its roots in McDonnell Douglas, Rockwell or Boeing, ethics is deeply ingrained in our culture. Strong commitments to integrity, fairness, quality, and excellence have long been guiding principles.

Ethics and Business Conduct Program

The Ethics and Business Conduct Committee is responsible for oversight of the ethics program. The committee is appointed by the Boeing Board of Directors and its members include the company chairman and chief executive officer, president and chief operating officer, presidents of the operating groups, and senior vice presidents. The vice president of Ethics and Business Conduct administers the ethics and business conduct program.

The purpose of the Ethics and Business Conduct program is to:

- Communicate the Boeing Values and standards of ethical business conduct to employees
- Inform employees of company policies and procedures regarding ethical business conduct
- Establish companywide processes to assist employees in obtaining guidance and resolving questions regarding compliance with the company's standards of conduct and the Boeing Values
- Establish companywide criteria for ethics education and awareness programs and to coordinate compliance oversight activities

How to Reach the Boeing Ethics Line

The Boeing Ethics Line listens to and acts on concerns expressed by employees and others about possible violations of company policies, laws, or regulations such as improper, or unethical business practices, and health, safety, and environmental issues. Employees are encouraged to communicate their concerns, as well as ask questions about ethical issues. The Ethics Line is available to all Boeing employees, in all payrolls, from anywhere in the company, including subsidiaries. It is also available to concerned individuals outside the company.

Toll free telephone	1-888-970-7171
TDD/TTY	1-800-617-3384
Fax	1-888-970-5330

Business Ethics Advisors

Each Boeing operating segment has a business ethics advisor to provide guidance and answer questions regarding proper behavior in the workplace, business ethics issues, and the Boeing Values.

<http://www.boeing.com/companyoffices/aboutus/ethics/>