

# FINAL TRANSCRIPT

**Thomson StreetEvents<sup>SM</sup>**

## **\*\*ACC - Effective Training under the Revised Corporate Sentencing Guidelines**

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## PRESENTATION

### **Unidentified Company Representative**

Hi, everyone. This is Karen (ph) again. This is 1:00. We can go ahead with the program.

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### **Jim Brennan** - *Midi - Chief Ethics Officer and Legal Counsel*

Hello. Welcome and thank you for joining us for today's ACC Web cast, Effective Training under the Revised Sentencing Guidelines. I'm Jim Brennan, Chief Ethics Officer and Legal Counsel with Midi. Midi is the leading provider of effective compliance and ethics writing solutions. Combined with our global services, we help companies develop world class programs to reduce risk and enrich culture. Now, for our program. While the organization sentencing guidelines mandate effective training, organizations are challenged to define effective training and to develop programs that meet this criteria.

During this Web cast, we will discuss the goals of effective training, how to differentiate learning from remembering, the importance of reinforcing the messages periodically and a case from Aon Corporation regarding how that company has responded to the effective training mandates. I'd like to introduce our speakers, Jeff Kaplan, J. C. Kinnamon and Rick Kulevich.

Jeff Kaplan is vice president of law, ethics and compliance for Midi and is also a partner at the law firm of Stier Anderson. Jeff specializes in all aspects of assisting companies in developing, implementing and reviewing corporate compliance programs including conducting risk analysis, writing and editing codes of conduct and other policy documents, counseling companies in matters regarding training, developing compliance audit protocols and reporting systems, establishing compliance and ethics offices, counseling compliance committees and assisting boards of directors in meeting their fiduciary duties under the Caremark case. Mr. Kaplan also chairs Midi's law and ethics advisory board.

J.C. Kinnamon is Midi's vice president of instructional design and development. J. C. has been involved with e-learning product management and development for nearly 20 years. His educational credentials make him particularly well qualified to assure the appropriate application of human learning principles to online learning courses. Dr. Kinnamon earned his Ph.D. from Columbia University in Educational Psychology. He also holds a BA degree in psychology from Salisbury University, MA in psychology from Teachers College, Columbia University as well as an MA in computing in education, also from Columbia.

Mr. Kulevich is associate general counsel, deputy chief compliance officer for Aon Corporation, a global risk management, consulting, insurance brokerage and underwriting company, headquartered in Chicago. He has the global responsibilities for the implementation and management of a corporate compliance program at the company, including legal risk assessment and management, internal investigations, compliance policies and compliance training. Prior to joining Aon, Rick was assistant general counsel for compliance at Sears Roebuck & Company.

Just a few housekeeping points before I begin today's program. The slides will not advance automatically. So, please hit the next button as we proceed through the presentation. We invite your questions and have reserved time at the end of the

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presentation to address them. If you do have any questions, could you please them to Leslie Peters at lpeters@midicorp.com. That's l-p-e-t-e-r-s@m-i-d-i-c-o-r-p.com. A replay of the event will be made available at www.acca.com. It will be on in approximately one hour and will be up for a year.

Now, to Jeff Kaplan. Jeff?

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**Jeff Kaplan** - *Midi - VP, Law, Ethics and Compliance*

Okay. Thank you very much, Jim, and as Jim indicated, the way we'll proceed with the slides is to let you know what page we're and when we're changing a page. So, I guess if you could all turn to page three and this - we will begin the presentation with a discussion of the corporate sentencing guidelines for which I'm sure most or all of you know are the leading set of standards, not only in the U.S., but have been increasingly used throughout the world by a number of foreign governments, articulating the elements of an effective compliance and ethics program. And I'll be talking about those, in particular how they relate to training.

So, in thinking about training and not just training really any aspect of the sentencing guidelines, I think it's important to consider, as well as the letter, the spirit of the law. And the spirit of that law, as I'll get into in a moment, is promoting due diligence, requiring good faith effort and, I think, above all, getting companies to try to achieve compliance and ethics results.

So, turn now to slide four. And in counseling companies, one of the things - actually overarching question I ask them to ask themselves is whether they are attempting to promote law abidance and ethical conduct with the same degree of thoughtfulness and commitment that they do more traditional. That is, revenue generating aspects of business, whether it's R&D, marketing and sales. And that's not to say that companies need to spend the same amount of money and time on compliance and ethics that they do other aspects of their business. But they should pursue these goes with the same degree of resolve, the same degree of thoughtfulness and just attempting to achieve results, as I indicated.

Next slide, please. And one of the things - I think, sort of a way of thinking about the guidelines, one of the things that one should consider in trying to achieve compliance and ethics results is whether one uses the same types of tools for achieving compliance and ethics results as one does more traditional business goals. And really, one way to look at the sentencing guidelines is an attempt to get companies to do just that.

So, for instance, in requiring additional responsibilities for boards or board committees to oversee the effectiveness of a compliance and ethics program and, perhaps, more significantly for top management to actually ensure the program's effectiveness, what the guidelines are doing is using a traditional business tool and applying it to compliance and ethics. The same is true in the area of risk assessment. The same is true in the requirement that companies need to consider the use of incentives to achieve compliance and ethics results. And to the new provision in the sentencing guidelines requiring companies to evaluate the efficacy of their program.

Next slide, please. So, what all of those are - traditional business elements or business tools and attempting to use them - or get companies to use them to achieve strong compliance and ethics programs. And that is what I refer to as the spirit of the law. Now the letter of the law, and we're on - once again, on page six - really breaks down into two areas, vis- -vis training. One is elements that speak directly to training requirements, which I'll touch on in a second, and then in those are - which bear indirectly on training, but are still important.

Now, on page seven. I think, perhaps, the most important thing to say about training is that, under the new guidelines, it is now mandatory. Certainly, companies trained before the revisions to the guidelines and the guidelines did refer to them, but - refer to training -- but under the new guidelines, training is a must. Next page, page eight. The second point about training is that it must be "effective." J.C. Kinnamon, who Jim Brennan mentioned a second ago, will address more specifically some of the

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instructional design elements of that. But I think the important thing, in terms of achieving compliance and ethics results is to consider the need to really have a strong mental shelf life for compliance training.

Nobody, after all, is asked to commit a crime - at least I don't think - right after receiving training. The question, in terms of the effectiveness of training, is will it stay in the mind to be sufficiently top of mind so that it will help an employee avoid the temptation or pressure that could give rise to an unethical or an illegal act months after the training occurred.

Next slide, please. Now this - sort of a second way to think about the effectiveness of training relates not to the sentencing guidelines, but to the Department of Justice's 2003 Guidance on Prosecution of Business Organizations, which is sometimes referred to at the Thompson Memo. And it's a very important document, which articulates standards that federal prosecutors are to use in determining whether to indict an organization for the offenses of its employees or agents. And one of the elements of that - of the Thompson Memo is - requires prosecutors to ask whether employees are aware of a company's program and are convinced of their company's - meaning, really, the management's commitment to it. Now, obviously, there is more to that than having training, but certainly good training will help a company meet that element of the Department of Justice's standards.

Next page, please. So, now we're on page 10. A word about DOJ. The other thing I want to mention about DOJ is that while the sentencing guidelines set of standards are, in a way, broader than what's in the Thompson memo, a high-ranking DOJ official said - did say at a conference a year ago that these same set of standards, the guideline standards, which are the focus of our presentation, would be considered in determining whether to indict companies for the offenses of their employees. So, in a way, they - not in a way - very clearly, these standards that we're talking about today go beyond the sentencing of organizations to the much more consequential issue of whether a company will be indicted.

Next slide, please. So, on page 11. In addition, it's, I think, important to point out the training is not - training does not stand alone. It has to be part of a larger communications effort, which includes periodic communications to communicate - or to transmit information about standards and procedures and other aspects of a compliance and ethics program. So, the guidelines do contemplate a broader communications effort.

Next slide, page 12, please. Who must be trained? The guidelines are very explicit about this. It includes, for corporations, the board, or for other organizations, other types of governing authority, high-level personnel, substantial authority personnel. And there's a whole definition for that in the guidelines. But it's kind of a broad category of management and, indeed, some other people, too. The rest of an organization's employees and, as appropriate, the organization's agents, meaning independent agents.

Next slide, please. And I just wanted to spend a second talking about agents because, I think, when one considers compliance in ethics vulnerabilities - program vulnerabilities, this is one that's too often under appreciated. And that is the types of problems that agents can cause companies if they don't address or seek to remediate agent-related risks. As a matter of law, an agent acting within the scope of her authority and intending, at least in part - and it doesn't have to be much - even if it's only a small part, to benefit a company, can create liability no less than an employee can.

And I think this is a principle that's just not often understood. And for that reason, whether through training - not or, but and other aspects of compliance and ethics program, including auditing, a company should consider effective steps to mitigate agent-related risks. And certainly, as one looks back over, I guess, what could be called compliance history, cases involving the Department of Justice - I'm sorry, Department of Defense -- procurement issues in the 1980s, insurance issues in the 1990s. There are numerous instances of agents causing compliance and ethics serious liability. And so, from a risk assessment perspective, this is something a company needs to consider, both in deploying, training, communications and some of the other measures.

Next slide, please. We're on page 14. What are the subjects of compliance and ethics training? This is driven by the risk assessment. And the risk assessment is a whole another topic that's beyond the scope of what we're discussing today. But, for example, for sales agents, risks typically are those that have to do with sales - antitrust, corruption-related risks, misrepresentation-related

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risks. So some risks are - and therefore some training - are specific to job functions. Others, however, are often considered universal within a company - conflicts of interest-related risks, to some extent, confidential information-related risks.

And so, that's another type of way of looking at risks. It relates to looking at some categories. Certainly, executives should be trained, not only on the risks that they deal with as individuals, but the areas that they - but based on the areas they oversee. And then, lastly, there are special issues for boards of directors. And I know Midi's having a Web cast on that in a few days.

So, now we're on page 15. Another thing that's pretty important and perhaps underappreciated about the new sentencing guidelines, compliance and ethics standards, is the articulation and some inclusion of ethics as part - as something that companies need to consider. In other words, companies now can no longer view or should no longer view their efforts as bounded by what the law requires, but should think more broadly in terms of ethical standards and ethical decision making as well. And that - had their broad ramifications for that, but in terms of our topic today, it is something which should be the subject of training.

To some extent, a company's ethics related risks and, therefore, perhaps, it's training, are driven by the risk assessment. And interestingly, in a survey conducted last year among members of the Ethics Officers Association, a majority of respondents did say that they assessed ethical as well as law-related risks. So it's something that companies are dealing with, at least many, but certainly not all, and an important thing to consider from a training perspective and otherwise.

Next slide, please. Page 16. The guidelines do require the training be ongoing. Communication must be periodic and other aspects of the compliance and ethics program should be as well. And that includes periodic updates to certainly high-risk areas. And then, we turn to page 17. And in terms of the frequency of compliance and ethics training, I think there one refers back to the risk assessment. Certainly, if a subject matter is complex, if the degree of potential legal peril is significant, and depending upon sort of the mix of other risk issues, whether it's controls, pressures, temptation, organizational culture issues, all of those things might suggest the need for relatively frequent training. Absent those issues, maybe less frequent training.

That's, of course, in the absence of a specific legal mandate. There are, increasingly, some laws that deal specifically with the frequency of compliance and ethics training. California's anti-harassment law is one of them. FERC has a law for energy companies. Obviously, requiring compliance and ethics or training in that subject, based on a schedule, terms set forth in the law.

Next page and we're on page 18 now. So, I've been talking about sort of specific provisions of the guidelines relevant to training. The last part of what I have to say, before turning it over to J.C., addresses indirect provisions of the sentencing guidelines that, nonetheless, are - they're indirect vis- -vis training, but nonetheless important. And the first one is the top management must ensure the effectiveness of the compliance and ethics program. And the word ensure is a very strong word and certainly used in any legal context.

And I mention this and try to stress this whenever I speak about the guidelines because I think it's a useful tool for getting the attention, if you're having difficulty getting the attention of senior management who may not be as supportive of training or any other compliance initiative. And I think they fully understand that it's - the obligation is on them and, in a way, the buck stops with them to ensure the effectiveness of training. Then that will help focus the mind.

Next page, page 19, a second and related provision of the guidelines relevant for training is the board must reasonably oversee the effectiveness and implementation of the program and, among other things, that means the board needs to ensure that training is taking place - compliance and ethics training. Interestingly, even before the new guidelines, many boards were doing that. And this is based on a 2004 conference board benchmarking study. And one of the things that, at Midi, we found is that increasingly, boards are asking to see the training and that's, I think, a useful thing from all sorts of perspective.

A third indirect provision, as I'm calling it, of the guidelines, that the compliance and ethics program must have adequate resources. Certainly a useful thing to know in considering deploying training. And that, among other things, is one of the things that top management must ensure takes place. That there is - there are adequate resources devoted to compliance and ethics program.

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Next slide, please, on the role of organizational culture. A whole other complicated, demanding and fascinating topic, really, is that companies now must not only have effective policies and procedures - really, what the guidelines are principally about, but as well, must have a culture that promotes law abidance and ethical conduct. And there are many, many aspects to this. But one of the things to consider is whether one's training is consistent with that mandate.

And so, just to sum up before turning it over to J.C. and I think one can certainly see the guidelines as expanding in, perhaps, the most comprehensive way ever done - the articulation of what good corporate citizenship means. Training plays a key role in that. Obviously, there are other elements, too, but it certainly is a key role. And effective training is something which helps one meet not only the letter of the law, but the spirit and that is the spirit of achieving compliance and ethics results. So, with that, let me turn it over to J.C.

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**J.C. Kinnamon** - *Midi - VP, Instructional Design and Development*

Thank you, Jeff. Again, for my portion of the program, I'm going to address the topic of how to ensure that your program is effective, that your training is effective. So, if you can fast forward, I guess, to - or clip forward to slide number 24, it should be a chart entitled training effectiveness research. It's been said that people remember 10% of what they read, 20% of what they see, 30% of what they hear, 50% of what they see and hear, 70% when they're involved in collaboration and 80% when they're involved in doing something hands on. And this is a chart that has circulated around the Internet recently, but it's also been in the literature for the last 20 years.

But if you want to go onto the next slide, slide 25, what I have to tell you is that that chart is mythical and there actually is no empirical evidence to support that that chart and it's one of those unfortunate sorts of things that these - this kind of misinformation does in fact re-communicated around a particular topic in this capacity. And there's more myths and I want to expose a couple more of those beyond this training effectiveness chart.

So if you want to move forward to slide number I guess 26 which is blank and then slide number 27, I'm going to bring up four myths that I'm going to talk to you and talk about why I think that they are actually mythical.

The first one on slide 27 is learners know what's good for them. And the idea there is if you put it out there that adults will decide what they need - will take what they need and they'll help engage in themselves in terms of the training and they'll something. And the fact of the matter is that there's lots of evidence to indicate that adults as well as kids are notorious at overestimating what they know and they will in fact skip material that they need to know. So one of the things you need to think about in terms of creating a course is to ensure that everyone who needs to see certain material does in fact see it and you build in comprehension checks and make sure that they know what they know before they finish the training and they go off and have to make some decisions in a compliance and ethics world.

Next slide is slide number 28, and the second myth is don't bore learners with repetition. This is somewhat related to the first, but again, what you'll hear from adults is don't train me. I don't have time to be trained. Give me the information that I need because that's all I really need to know. And again the fact of the matter is that repetition has been shown to be probably the number one learning principle -- the number one strategy in terms of ensuring that people actually do learn the material, and part of that is training. Part of that is following up with a very good communication plan. Having the two work together but getting the message out and really hammering your compliance and ethics message in a way that does in fact repeat some of the key points.

All right, next slide is slide number 29. Now the third myth I'd like to expose is boil training down to its essentials so it's simple to understand. And that sounds on the surface like a good idea doesn't it? I mean it's basically taking something that's very complex and complicated and boiling it down so everybody can understand it. But the problem is that what we know about humans is we need context and we need to understand what these principles and concepts mean in a particular context. So a particularly good way to ensure that your training is effect is to not strip it from the context but in fact to take some of the

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concepts and principles in terms of how you want them to behave and embed it in either a case or study or some sort of scenario so that there are cues in that situation in that training environment that also then can be picked up on when the individual is in a real world situation and can use those cues and use those context tips in order to respond appropriately.

Okay the next slide - the last slide says behaviorism fully accounts how people learn. The last myth I'll talk about. B.F. Skinner I think most of you remember from college days and your introductory psychology class, the father of American behaviorism. And they used pigeons and rats and dogs to do studies and try to expose how people actually learn and try to generalize how those animals to humans. And what we've found over the last 25 years is a lot of those lessons that were learned in the lab with animals do not translate well to humans. Humans are smarter than those animals, and there is actually a new camp called the cognitive approach which I'll talk about later which is using the principles from the cognitive approach as really a better way to ensure that our training is effective.

So the next slide that's slide number 31 just a quick recap. There are myths about what works. In some cases there's bad information that lacks an empirical basis and also there are I guess these four myths you could describe as conventional wisdom. Sound like a good idea on the surface but in fact have been exposed as having some serious shortcomings in terms of when you test them and you try to find an empirical basis or for those four myths. And again we're really just now start to learn I think really now it has been almost two decades now but for some reason it's been difficult in some cases to push aside some of the conventional wisdom and to incorporate some of the new thinking in terms of how to make training effective.

Let's go on to the next slide which is slide 32 and what I'd like to do for the remainder of my presentation is to talk to four things I think you ought to do in your training to ensure that your training is effective and to be effective I described four things that the training needs. One is it has to engage the learners. It has to motivate them. The training has to consider the capabilities and limitations of how people really learn and finally we have to prepare learners to apply what they know and training that just as good - that works in the training environment is worthless to us if people can't transfer to the real world.

Lets go on to the next slide and let me talk to engagement first. This is slide 33 and for one thing engaging in engagement is one of those terms in the online learning world that really just gets thrown around. It's almost meaningless. Everybody's course ware changes as described as engaging but what I think engaging means is - let me try to describe what engaging really does mean. First of all it's obvious when training is not engaging. That's when someone is sitting at their desktop they're clicking on next, next, next or the page forward button, they're taking a phone call. They may be reading their email on a window and they're not actively processing the material.

So what we want to do in terms of providing for an engaging training program you first of all have to make sure that people are paying attention. You need to attend in order to learn and you need to attend in order to think about the material. We've all seen the science fiction movies or films in which someone puts on some headphones hooks up the audio recorder and wakes up in the morning knowing how to speak German. It doesn't work that way. Learning can actually be hard work. There is some active engagement in processing that needs to take place in order learn but engagement is absolutely a necessity and if your training isn't engaging its a very good chance that people aren't going to learn from it.

Next slide is slide - let me post a question. What do you think is the best way to engage a learner? Is it through providing interactivity, providing relevant subject matter, or using media effectively? I'm going give you a second to think about it. Well the fact of the matter is there really is no answer to this question. All three of these things are a way to engage the learner but -- and in part this is an illustration. By throwing a question at you and processing the stem of the question and then analyzing the three choices is an example of the kinds of things a course needs to do. The fact that you were considering what I meant by interactivity, what I meant by relevant subject matter, maybe what I meant by media and how to use it effectively meant that you were actively involved in processing material as opposed to doing something else at that instant in time.

So and the fact of the matter is that all three of these things can be ways of achieving engagement in terms of a course but in fact a very basic way is to stop and ask questions and make sure that just, as I said before, people need to check to make sure

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that they know the material and they're learning the material. So stopping and asking a question is very good form of interactivity that will provide for a more effective course.

Obviously a relevant subject matter is important. We all don't want to sit through a training session that we don't think is relevant for us, so making sure that the points covered in the training are relevant so the day to day experiences of the individuals taking the course is very important. And finally using media effectively. I'm a big proponent of using dramatic scenarios. Unfortunately given our context today I can't really show you what we do, but the idea is that you want to put people in a situation where they're watching and experiencing what others are experiencing in terms of either a basic ethics situation or a harassment situation, protecting your company's confidential information, you name it. But the idea is that some way either through audio or video you sort of bring someone into a first hand experience with the material and then move on and ask questions about it and you -- just use the media as a way to simulate as much as possible the real world context.

Let's go on to the next slide, slide 35. Let me next turn to learner motivation. Any effective course has got to pay attention to the motivation of the learner. And in compliance you have that external push if you will to get someone to the training environment. They have to get certified, maybe it's an LMS that shows them a profile that indicates which courses that they have to take and they have a deadline in term of taking those courses. Well that's fine and good and that's great that you do something to drive them to the course, but we also find that it's necessary to do things that are pulling people through the course to ensure that they actually are actively engaged in the course. And you might want to describe that as the pull. And the pull is one aspect of motivation I think is often overlooked.

When I sit down to design a course I'm thinking of it from the point of view of the learner out there is not motivated to learn this material. They're there and I need to do something that gets them through this. And one way to do that - a popular way to do that is to tell a good story, pull someone through by a good teaser in terms of if someone looks like they're in trouble, processing in what the details are, in the end what happens to the individual who maybe did the wrong thing. So building in basic story elements in terms of a linear path through the course but ensuring -- what you're doing is trying to ensure that any unmotivated learner is going to continue and get closure going through the very end. And if someone is motivated they still will enjoy the experience and will certainly take something away from an effective course that does a very good job of keeping them actively engaged and motivated.

The next slide is slide 36. I've mentioned already telling a good story. I mean that's important. You do need to make sure that it's something that's relevant to the person's job functions and what they're going to need to do with the information and I think being relevant is an important aspect of learner motivation. If it is something that they can't relate to they're going to tune out fairly quickly.

Just in the same way that a good novel is hard to put down or when you're watching a good movie you're not staring at your watch wondering when this is going to get over. I mean you're actively engaged in the experience and you're part of it and that's what we want our training to do.

Next slide is slide 37. I just want to mention one more thing about learner motivation and that is that the dynamics for an in person training experience and e-learning are different and in a class situation you will be polite to the presenter. You're not going to talk. You're not going to take phone calls and maybe process emails in front of the presenter but with an online course that kind of thing can go on all the time so there's an added burden in terms of any learning course that you have to deal with in terms of making sure that the course is very powerful in terms of the motivational aspect, in terms of keeping that individual focused on the course.

Let me turn now to slide 38 and talk about learner capabilities and how people really learn according to the cognitive theory of learning and the behavior is considered the brain or the mind a black box and didn't want to deal with it but behaviors only want to look at real behaviors - observable behaviors and about 25 years ago scientists started to look at what can we do to indicate how people do in fact process information and what's evolved is a very robust literature now called the cognitive

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literature and I can't go into a lot of detail of what that entails at this point but let me throw out I guess three basic principles to give you a sense of what we do know about how people process information.

If you go on to the next slide, slide 39. Principle number one from the cognitive theory of learning is that humans use two channels to learn with and one is the visual channel for processing visual information and the second is the auditory channel for processing auditory information and there's actually research now to indicate the training that does make use of both channels is in fact more effective and that's something that ought to be considered in terms of doing your courses. Just reading text or just listening maybe through a pod cast or some other forms of training that are out there we know we can make the training more effective if we are doing things that are actively involved in a coordinated way both the visual and the auditory channels.

Next slide is principle number two. There's a limit to how much information can be processed in each channel at a time. And one approach is to throw out as much information at the learner as possible and hopefully some percentage of that will stick. But in fact we know that the idea is that you really out to mete out the material over time. Make sure that people learn the key points before you move on to something else and in fact we call this the human bandwidth issue that really is important when we're rolling out the learning you need to incorporate - you need to consider the enterprise in terms of the corporate networks.

But there's another bandwidth issue that needs to be considered beyond the network architecture of your enterprise, and that is how humans learn and these limitations in terms of our bandwidth. Most courses now are limited to 45 minutes which is about the limit to which most people can stand in terms of sitting and concentrating on a course and I think that's a good thing.

The other thing to do is to consider that you can actually spread out some of this material overtime, again in order to accommodate the fact that there is a finite amount of material that someone can process in a single session, and I'm going to talk a bit more about that in a few minutes.

Principle number three on the next slide, slide number 41. Humans are active processors of information not passive receptors. And you probably heard the analogy in terms of our brains are empty vessels and it's just a matter of pouring content into our brains. And that's really a very over simplified approach in terms of training and instruction and in fact people really do need to be actively engaged.

You just can't throw things at them. You need to consider the fact that in fact whatever you're going to try to train people in they're going to forget things - we can go on to slide number 42 by the way - they're going to forget things. You want to maximize how much they actually transfer in terms of their knowledge to a real world situation. It's not just a matter of filling them up with content. And one of the ways you can do that is being very careful about constructing in your training the learning objectives, a very basic approach.

A second thing is providing lots of practice during the training. Again reinforcing trying to minimize the amount of forgetting that goes on by providing practice. We know that practice will strengthen some of those connections and make it easier for people to apply what they've learned in a real world context.

And finally the last point is in fact you need to be thinking about how to simulate that real world context. I've mentioned stories. I've mentioned media. The more that you can do to provide a rehearsal, if you will, in your training for what the individuals are going to need to do in terms of the real world application, the better off you're going to be and the more effective your training is going to be.

Next slide - next to the last slide is slide 43. More than learn remember and apply. And when I do this in-person presentation I actually have a cup with holes punched in it and I demonstrate to people -- it's a very memorable sort of experience and people talk about that and they remember that. It's a kind of thing as a model if you think about your learners in terms of - it's what you need to do to plug up those holes and what do you need to do to keep the training content in them so that they can use

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it, and what can we do to plug up those holes? Well I've mentioned some of these already. One is repetition and another related to that is space the learning out over time.

We now have in most organizations the architecture, the network capacity to spread training out over multiple sessions instead of doing it in a single 45 minute session and there's a very robust finding in the literature that that spaced learning approach is much more effective in terms of making sure that it sticks with the learn.

We've also mentioned practice already. Practice - making sure that your training is in fact a rehearsal if you will for real world applications as opposed to just trying to dump a lot of material into the learners and then hoping some of it sticks.

And then finally consider the context and I think I've probably beat that one to death. I mean the idea that the training can closely simulate a real world context is very powerful. In some cases that can be done in media. In other cases it can be done in terms of text descriptions in terms of text case studies but the point is to make sure that people are thinking about it and from the point of view of the kinds of situations that they're going to perhaps find themselves in when it comes to compliance or ethics situations.

So for the last slide let me just summarize. I guess what we've covered today is effective training needs to do four things.

It needs to engage learners so that they're paying attention. They're actively processing the information. It needs to motivate them to ensure that they're actually going through all the content. They are staying involved in the material. They're not disengaging and finally we need to help learners not only learn it for the sake of - and the training situation but also that they remember it later. They don't forget the material and they're able to apply it when they have to. And finally, good training needs to be based on some of these things I've described as compared to base principals of human learning and structural design and not based on conventional wisdom or some bogus data that we know, in fact, is not true.

That concludes my portion of the presentation. I'm going to now turn it over to Rick Kulevich of Aon.

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**Rick Kulevich** - Aon Corporation - Associate General Counsel and Deputy Chief Compliance Officer

Thanks, J.C. Very helpful. I thought I'd just spend the last few remaining minutes we have just giving you a brief overview of how we've been thinking about training here and some of the things we've done and some of the things we hope to do. Before getting into that, I don't want to skip past page 45, which designates me as the Associate General Counsel and Chief Compliance Officer, it's actually Deputy Chief Compliance Officer, and I want to correct that so I'm not accused of promoting myself after this process.

But by way of a little bit of background about who is Aon, slide 46. I can give you a little bit about who we are in case you don't know. A lot of insurance brokerage and consulting, both on a risk side and on human capital, a wide range of businesses, fairly substantial size company in terms of revenue and number of employees and a large geographic reach as well, being in over 100 countries and a similar number of languages spoken by employees.

On 47, along those lines, as J.C. and Jeff both, I think ,did quite a nice job of pointing out some of the challenges inherent in training in and of itself, and each of us in-house have very similar such challenges, and I've listed some of the ones that we feel day in and day out, but these are by no means unique to Aon and frankly, these would be similar to any global company and even domestic company in many cases.

But one of our biggest challenges being in over 100 countries -- and in such a varied set of business units -- is our extremely diverse audience that we're trying to reach. First with the geographic spread, we do have language issues which are kind of the most obvious, but you have significant cultural issues. Some things play differently in different parts of the world, and that's always a challenge. Not listed but part of that are the different statutory regimes you're working within.

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In the UK, there is the FSA which is kind of a Sarbanes-like legislation that affects our business units. It has its own training requirements and some provisions we need to deal with, and we have to be cognizant and aware of that as we're implementing training programs -- that make sure we're not overlapping and we're consistent with those requirements. There are also privacy concerns that we have to deal with coming out of Europe and elsewhere in terms of what data is shared about employees in terms of where they are in training, et cetera.

Varied business models, varied education levels, Aon, again, not unlike a lot of other companies, we've got a wide range of business offerings and a wide range of employees supporting those business offerings. We have an underwriting division that includes field agents that are kind of on one end of the spectrum, and on the other end of the spectrum, we might have some of the most sophisticated reinsurance catastrophe modeling actuarials that you can come across, so -- and a lot of folks in between. So, when you're trying to develop a course across all those business units that has application across all those business units, it's hard to tailor it. You run into some challenge there.

Aon is a company that has grown rapidly through acquisition. So, as a result, you've got a lot of companies are now operating under an Aon banner and pulling them together, but you do have somewhat of a decentralized organization that's being pulled together, and that creates its own set of challenges. And then the one that, again, obviously everyone has is the competition limited time. Everyone's trying to get a message in front of the employees constantly, and -- some doing it more effectively than others, but in any event, there are all these messages bombarding employees in addition to what they're being paid to do day in and day out. So competing for that limited time is a real challenge.

Again, briefly, in terms of kind of our approach and how we attempt to deal with some of these challenges. We have together sort of an ad hoc global working group that includes representatives from each of these businesses, including the organization with the field agents to the reinsurance division, every region of our global operations are involved in this global working group, and they provide a lot of good feedback.

As a result of some of some of these challenges, we tend to gravitate more towards custom courses. A lot of the off the shelf courses we found just don't resonate as well with our employees and don't enable us to do the kind of things we want to do. And this global working group is very involved in assuring that these courses do resonate with our employees. They have good examples. They have examples that are engaging to employees, and they ask the tough questions -- the things that are likely to make our employees think.

As J.C. pointed out, I think, quite well, I think there is a tendency to try to oversimplify these things, and I agree that's a mistake. Some of these issues are complicated, and I don't think you want to leave employees with a false sense of security that it's a simple answer they can resolve themselves. If you're providing anti-trust training for example, I think it's a potential disaster to leave people with the impression that after taking this course, they know what they need to know about anti-trust and should start solving those problems on their own. I think the idea is to, frankly, point out that it's quite a complicated area and that they do need help and the real learning message is more about here are some red flags where you could help. So we try to do some of those things.

With respect to our overall approach, it's more of a building block approach. Everything for us centers off of our code of business conduct. We think we've done a pretty decent job with that in terms of capturing the waterfront of compliance and ethics issues that our organization faces and from that, it's been a -- which there's a graphic of on the screen here on page 48 of our code of conduct course that provides a general overview and highlights a number of key concepts from that code. And each of our training courses kind of leaps from concepts addressed in the code, that course, et cetera, and we do come back again to the general training on the code periodically to, again, kind of bring back the big picture, and it's part of the repetition that I think J.C. stressed and, again, I agree is so important.

In terms of designing the curriculum and when and which courses to hit, that is risk-based, which Jeff pointed out is required and extremely important. We are focusing on the issues that we see as potential issues. Either there's been a regulatory issue

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in an area or we've seen a pop in a particular issue in our helpline calls or based on our independent assessment of the risk, we've identified some other areas we need to address. We're focusing on those and prioritizing based on those risk areas.

And we do try to, again, to kind of change things up, engage people, personalize the courses wherever we can. We use varied delivery models, and we take a broader view of what is training. Training is not just that online course that's delivered to people that we track through our LMS. Training is anything where we're communicating a compliance or ethics message to an employee in a way that we intend for them to stick and resonate with them. So it includes the email notifications, the code of conduct certifications we require, the online training obviously.

But we also do a good bit of getting out and about and meeting with or adding onto business unit meetings wherever we have an opportunity. We add onto their agenda. In addition, they're going to talk about what we do and priorities. We add wherever we can compliance-related training topics. We can get across the message, reinforce themes, and hit it from as many avenues as possible.

The very last slide is page 49, just a screen shot of another course that we're about roll out, an anti trust compliance that we're in the process of rolling out currently. Again, the idea is different look, different feel, and we are pushing it out as we speak, and the only thing I would close with is to reiterate the theme that Jeff and J.C. both hit, which is this is difficult stuff.

This is not - and there are plenty of vendors that will sell you online courses. You can slap your logo on, push it out, and congratulate yourself for having conducted compliance training, but the question is whether you've really accomplished anything. And thinking that it can be solved that way I think is the wrong way to think about it, and I think we've attempted to take a more holistic approach, and I would suggest that's probably the right way to do it, if I may say so. But those are all of my comments.

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**Jim Brennan** - *Midi - Chief Ethics Officer and Legal Counsel*

Thank you, Rick, and thank you, Jeff and J.C., for an excellent presentation. We have had a few questions come in, so we'll address those at this point, and you are free to add to that list of questions. If you like, again, they should be sent to Lpeters@medicorp.com.

## QUESTIONS AND ANSWERS

**Jim Brennan** - *Midi - Chief Ethics Officer and Legal Counsel*

The first question is for Jeff Kaplan, and that is, does the obligation to ensure compliance and ethics effectiveness create a new fiduciary duty for officers?

**Jeff Kaplan** - *Midi - VP, Law, Ethics and Compliance*

An interesting topic. It's sometimes said by courts and commentators that fiduciary duties don't change, but in adding this element to the sentencing guidelines, whether you call it a new fiduciary duty or not, I do think the sentencing commission has created a new responsibility and potentially new exposure for officers who now have this obligation. And should they fail to meet this obligation, then under the Caremark (ph), the 1996 Delaware Chancery Court decision dealing with directors' and officers' liability, arguably, they could be responsible personally for the consequences thereof.

So to be more - just to give an example, if whether it's in a sentencing or a decision to prosecute or some other civil or regulatory setting, an officer's failure to ensure that his company's compliance program is effective led to a large loss for shareholders, then the failure to meet that duty, I think, would be considered to be a breach of the fiduciary duty of care, which is what

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Caremark was about and would create exposure. So, whether it's a new duty or a new articulation of a duty, it may not matter. I think that the key thing about it is that it's a new obligation with some very real potential consequences.

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**Jim Brennan** - *Midi - Chief Ethics Officer and Legal Counsel*

Next question is for J.C. -- when you mention interactivity as a way to engage learners, are there certain forms that are more effective than others?

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**J.C. Kinnamon** - *Midi - VP, Instructional Design and Development*

I think this question is getting at, I mean, you may see in some cases, straightforward multiple choice questions and drag-and-drop kinds of exercises, those kinds of things on the one hand. And you see something more elaborate when you see sort of complicated interfaces in terms of migrating through a three-dimensional world. And - I mean, the literature basically says that the point is the interactivity ought to be focusing on the content and making the individuals thinking about the content.

So it doesn't really matter if it's some kind of elaborate drag-and-drop or a simple multiple choice question or maybe several checkboxes and they need to be checked to indicate the right answer. I mean, the point is the interactivity needs to be focusing the individuals on processing meaningful material, because the point of any good question is to really make someone stop and think about the material.

I'm not a big fan of complicated interfaces that put someone in an imaginary 3-D world. I mean it's just so far from the real world context and it adds what's called an added cognitive load, in terms of you've got to understand how to navigate this elaborate 3-D world, and it's taking away from the individual's processing of the contents that we want to get across to them and make them think about.

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**Jim Brennan** - *Midi - Chief Ethics Officer and Legal Counsel*

Okay. And another question for J.C., how does testing fit into a training program?

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**J.C. Kinnamon** - *Midi - VP, Instructional Design and Development*

Well, most compliance courses, first of all, include some sort of testing function. We -- I advocate trying to separate the testing from the learning because people for in fact actually can learn by picking the wrong answers and seeing what the responses are to wrong answers, and I don't want to do anything to discourage that. So for instance when you're asking comprehension questions throughout the course to just sort of provide comprehension checks on what the individuals are learning, I don't want to track that. I don't want to do anything to sort of make someone feel like they can't learn in the best way that they want to learn.

So we're very -- I think you need to be very good about separating the testing function from the instructional piece and do something very clear to the learner so that they know what's learning and they know what's testing. And it's interesting, over the years -- I've been doing this for a number of years now and it's -- just one more comment -- and that is when I first started doing this about 14 years ago, it's interesting to know how low the passing criteria was for passing these tests. And now, several companies are having very elaborate testing functions and very high criteria for passing, in some cases 100% on the test. And if the individuals do not reach 100%, they have to take the test again, getting an alternate bank of questions until they can demonstrate the knowledge of the material.

With that said, also keep in mind that providing feedback during testing is certainly a way that some people are going to learn. So, again, for the same reasons that you build in questions in terms of the instructional portion of the program, you have to

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acknowledge that by the fact of taking the test and getting explanations and feedback on their answers, that is actually another way to teach people.

**Jim Brennan** - *Midi - Chief Ethics Officer and Legal Counsel*

And a question for Rick -- does your training consist solely of compliance training or do you address ethics as well?

**Rick Kulevich** - *Aon Corporation - Associate General Counsel and Deputy Chief Compliance Officer*

I -- it does include both, in part because I think it's, in my opinion, hard to disentangle the two. It's hard to have a course on conflict of interest, for example, that addresses only the potential legal risks without also addressing the ethical risk. Plus, I think the ethics allows you to focus on a potentially more positive message. So it's less about a lawyer giving a lecture to all the employees, but it's more about kind of the message of what we want to be as a company, and that is an ethical company, and this kind of fits into that whole process. So the courses, I'd like to think, include both a compliance and an ethics component.

**Jim Brennan** - *Midi - Chief Ethics Officer and Legal Counsel*

Okay. Thank you, Rick. On behalf of Jeff, J.C., Rick and Midi, we're glad you were able to join us today for this presentation. We hope it's been both enjoyable and valuable for you, and we thank you for your time and attention. If you have any requests for additional information or any other question about today's presentation, please send them, again, to Leslie Peters at LPeters@medicorp.com. That's l-p-e-t-e-r-s@m-i-d-i-c-o-r-p.com. Thanks again. We wish you a good day.

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