



Legal Risk Management Tip February 2012

PRACTICAL CONSIDERATIONS FOR THE CHIEF COMPLIANCE OFFICER - ETHICS AND THE ROLE OF COMPLIANCE

The role of the Chief Compliance Officer is multifaceted – complex – and endless. The professional who holds this role needs to be able to understand the complexities of the financial firm, the conflicts and risks within the organization, and the fundamental needs of the business amidst the regulatory framework governing the securities industry today.

Ethics is critical to the role of compliance. In a speech last year, Carlo di Florio, the Director of the U.S. Securities and Exchange Commission's Office of Compliance Inspections and Examinations ("OCIE") addressed the importance of ethics to federal securities laws: "Ethics is a topic of enormous significance to anyone whose job it is to seek to promote compliance with the federal securities laws. At their core, the federal securities laws were intended by Congress to be an exercise in applied ethics."¹ For compliance professionals, this means applying ethics to help set the tone throughout the organization, whether through trainings, formulating policies and procedures or oversight of the firm's compliance program. Anti-fraud provisions, fair dealing, good faith and fiduciary duty to clients are pivotal considerations when providing regulatory compliance guidance to a financial firm.

Having sound ethics throughout an organization also is good for business. Honest business practices help to bolster goodwill and reputation, which in turn, will lead to referral business and potential increase in market share. Internally, employee retention may increase and morale typically will stay higher at an ethical organization. Moreover, strategic business partners will want to continue in that role as ethical practices are essential for maintaining long-term relationships.

Fundamentally, Chief Compliance Officers appreciate the role that ethics play in helping them to oversee policies and procedures within the organization. As more and more regulations are promulgated within the securities industry, it is important to consider how these rules are designed to promote ethical conduct and what you may want to consider for advancing ethics within your own compliance program. To get started, the following are ten areas as outlined by the Director of the SEC's Office of Compliance Inspections and Examinations which he believes makes an effective compliance program.

1. *Governance.* The board of directors and senior management must set a tone at the top and provide compliance and ethics programs with the necessary resources, independence, standing, and authority to be effective.
2. *Culture and values.* This includes leadership promoting integrity and ethical values in decision-making across the organization and requiring accountability.

¹ See <http://www.sec.gov/news/speech/2011/spch101711cvd.htm>.

3. *Incentives and rewards.* This includes incorporating integrity and ethical values into performance management systems and compensation so the right behaviors are encouraged and rewarded, while inappropriate behaviors are firmly addressed.
4. *Risk management.* This includes ensuring effective processes to identify, assess, mitigate and manage compliance and ethics risk across the organization.
5. *Policies and procedures.* This includes establishing, maintaining and updating policies and procedures that are tailored to your business, your risks, your regulatory requirements and the conflicts of interest in your business model.
6. *Communication and training.* This includes training that is tailored to your specific business, risk and regulatory requirements, and which is roles-based so that each critical partner in the compliance process understands their roles and responsibilities.
7. *Monitoring and reporting.* This includes monitoring, testing and surveillance functions that assess the health of the system and report critical issues to management and the board.
8. *Escalation, investigation and discipline.* This includes ensuring there are processes where employees can raise concerns confidentially and anonymously, without fear of retaliation, and that matters are effectively investigated and resolved with fair and consistent discipline.
9. *Issues management.* This includes ensuring that root cause analysis is done with respect to issues that are identified so effective remediation can occur in a timely manner.
10. *On-going improvement processes.* This includes ensuring the organization is proactively keeping pace with developments and leading practices as part of a commitment to a culture of ongoing improvement.

Conclusion

It is one thing to say that you have an ethical organization; it is another thing to practice ethics on a day-to-day basis and have that as the foundation of the business culture. To help set the tone, consider perhaps naming a committee or having a title which incorporates “ethics” as a descriptive. If your firm has not adopted an “ethics” policy, propose this to senior management. It is important to discuss ethics openly in key senior management communications and in employee trainings. This will help to advance the culture of compliance and bring ethics to the forefront of the organization.

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