

# COMPLIANCE WEEK

THE LEADING INFORMATION SERVICE ON CORPORATE GOVERNANCE, RISK, AND COMPLIANCE

May 2017 | [www.complianceweek.com](http://www.complianceweek.com)



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# TOP M NDS 2017

# DID YOU MISS SOMETHING?

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**Bill Coffin**  
Editor in Chief

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Bill Coffin is a nationally recognized and award-winning business journalist and editorial director specializing in insurance, risk management, and compliance. His work has appeared in *National Underwriter*, *Claims*, *Risk Management*, *Best's Review*, *Captive Review*, and *New European Economy*, as well as *The Wall Street Journal*, *BusinessWeek*, and *Forbes*.

{COFFIN ON COMPLIANCE}

# What makes a Top Mind?

When we launched the Top Minds project last year, we were excited by the prospect of calling out the best and brightest professionals in the compliance, risk, governance, and ethics space. This year, our roster of nominees was nearly quadruple what we got in 2016 and, as we narrowed down our selections for the 2017 Top Minds, we noticed some common qualities that united all of our nominations. These were the things that seemed, time and time again, to set people apart in their field and establish them as real heavy hitters. The more we noticed this, the more we realized that these characteristics form a kind of roadmap for success. Top Minds are:

**Effective.** Most nominees could illustrate how effective their compliance program had been. What is the ROI on their program? What are the results they delivered? They could somehow quantify what their program did, which is easier said than done. There is no one way to do this, but it's a hallmark of a strong compliance program, and of a strong compliance officer, to be able to do that.

**Collaborative.** A lot of our most compelling entries showed that compliance does not live in a bubble. For compliance to be truly effective, it has to live across the organization, contend with or break down silos, and create a holistic system of risk management of which compliance is an integral part.

**Communicative.** Whether it's exporting compliance expectations across the organization, broadcasting visions and values, starting an organizational conversation ... the most successful nominees use their compliance efforts as a bullhorn to make sure that the rest of the organization understands what it means to bring best compliance practices to everyday operations and what it means to build value through compliance.

**Constrictive.** A lot of compliance officers learn the hard way that when they simply act as a hall monitor, they get shut down. Many of the most successful nominees had figured out how not to just say no all the time, but to use their compliance program to empower what the company was trying to accomplish. Business is always trying to move faster and reach higher. For compliance, it's a matter of saying, "we know you want to do these things, but how can we do them in a way that accomplishes your goals yet remains compliant with our internal and external standards?" They're using compliance not as a way to hold the business back, but as a way to build value for the business.

**Visionaries.** A lot of our most compelling Top Minds had a vision not just for themselves as a professional, but for their organizations. These people are true believers in the discipline. Compliance isn't something they do, it's something they are. When they truly give themselves over to their roles and responsibilities, that's what really elevates their abilities as compliance professionals from merely good to truly great ... from a sharp mind to a Top Mind.

With that, I'll leave you to enjoy the various profiles we have prepared for this year's Top Minds. Please join me in congratulating them, and be sure to say hello when you meet them at the Compliance Week 2017 annual conference later this month in Washington, D.C. Until then! ■

# BRIAN Beeghly

Brian Beeghly uses his experience in building better ethics and compliance programs to create technology solutions that could be at the forefront of changing the discipline of compliance itself.

BY JACLYN JAEGER

CEO

Informed360

# The change agent

Fostering a culture of ethics and integrity is not an easy feat for any company, but such a task can be even more daunting during times of great change and uncertainty, when the need to amplify ethical leadership is needed most. Faced with a dynamic and changing environment, few individuals have been as instrumental in achieving significant enhancements in the ethics and compliance space as Brian Beeghly, co-founder and chief executive officer of Informed360 and former vice president of compliance at Johnson Controls.

In his role at Johnson Controls, Beeghly had overall responsibility for the company's global ethics and compliance, enterprise security, and risk management programs. He also led the company's executive compliance committee and was a key member of the company's enterprise risk committee, disclosure committee, global environment and sustainability committee, and cyber-security steering committee.

In January 2017, Beeghly left Johnson Controls and formed a new company, Informed360, which is building a comprehensive technology solution to help ethics and compliance officers better manage their corporate compliance programs, but not before transforming Johnson Controls' ethics and compliance program, itself, in a significant way. Among his many achievements, Beeghly has been credited with developing and implementing an innovative Ethical Leadership Model to bridge the critical link between culture and behavior by focusing on the importance of personal integrity, role modeling, and leadership accountability.

When Beeghly first took on the role as vice president of compliance in October 2013, after serving three years as executive director of risk management, the ethics and compliance team was already in the process of reassessing its ethics and compliance program as part of its continuous program improvement.

As part of that process, Beeghly explains, the global ethics and compliance team decided to structure its program



around, and take a deep dive into, the following nine core elements of its ethics and compliance program:

- » Leadership and culture;
- » Organizational structure;
- » Risk management (i.e., risk assessments and third-party due diligence);
- » Policies, procedures, and controls;
- » Communication of values;
- » Training on policies and procedures;
- » Whistleblower reports and investigations;
- » Remediation; and
- » Monitoring and measurement.

"Going through that process with the ethics and compli-

ance team helped build trust and teamwork,” Beeghly says. “It also put a formal structure in place so that we could start to evaluate the elements of the program both independently and as a combined whole.”

What that process ultimately revealed is that “we understood and were making significant investments in every element,” he says. “However, we recognized that we needed to put more focus and attention on leadership and culture, because of its importance to the company and to the other program elements.”

“Like most companies, we had a hotline. We had training. We felt comfortable about our policies and procedures, risk-management processes, and third-party due diligence,” Beeghly explains. “Where we really wanted to better understand and leverage our program was around leadership and culture—what many companies refer to as tone at the top.”

The need to elevate ethical leadership came at a time when the company was conducting an internal investigation into potential violations of the Foreign Corrupt Practices Act concerning its marine business in China dating back to 2007. In June 2013—just four months prior to Beeghly assuming his new role as vice president of compliance—Johnson Controls self-reported to the U.S. government a potential FCPA violation, the company said in a Form 10-Q filing with the SEC.

Johnson Controls ultimately resolved the matter by receiving a declination from the Department of Justice and reaching a \$14.4 million settlement with the SEC in July 2016. Both agencies credited the company with its voluntary disclosure, thorough investigation, full cooperation, remediation, and additional enhancements to the company’s internal accounting controls and compliance program.

In conversation, Beeghly speaks about the lessons learned. His message: “Going through lots of change and uncertainty was the right time for really doubling down in the areas of leadership and culture.”

To better understand leadership and culture, the process involved spending “a fair amount of time digging into the academic literature and research into culture, ecosystems, behavioral psychology, and leadership.” In particular, the ethics and compliance team relied heavily on the research by Dr. Linda Trevino at Penn State University and other research conducted by the members of EthicalSystems.org.

Beeghly explains that one of the biggest underpinnings of the Ethical Leadership Model is the distinction between formal systems and informal systems. The former is all the formal structures a company puts in place to create a corporate culture and to guide employee behavior, such as a company’s mission, vision, values, policies, and procedures.

Informal systems, on the other hand, are local, cultural

ecosystems that are more nuanced and “heavily dictated and influenced by the immediate management and the peers within that working group,” he says. Informal systems include local customs and business practices, history, and culture.

“Companies today spend a significant amount of time and resources on building and maintaining their formal systems,” Beeghly says. And clearly the elements of a formal system are important and necessary. “They define the corporate culture and help guide employees and the organization.”

It’s the informal systems, however, that actually dictate human behavior on a day-to-day basis, Beeghly adds. “At the end of the day, if you’re not influencing those informal systems, and bringing those informal systems into closer alignment with the formal systems, it means that employees are getting mixed messages. The potential for misconduct is greater.”

In building the Ethical Leadership Model, one of the guiding principles of the compliance team was not to create anything new, Beeghly says. Instead, the goal was to embed ethical leadership messaging and activities into existing processes, business activities, and training.

For example, the team worked with business leaders to embed ethical leadership messaging into existing training curriculum instead of creating another formal training system around ethical leadership. The team also worked with the talent acquisition team to embed ethical leadership questions into the competency-based selection process.

That’s a model that other ethics and compliance professionals can adopt, as well. “The idea is to piggyback off the existing formal systems within an organization to embed ethical leadership into the informal systems, Beeghly says.

To build the Ethical Leadership Model and bridge the critical link between culture and behavior, Beeghly created an internal leadership development model that focused on three major components of ethical leadership:

- » **Personal integrity.** How you act, who you are as a person, what values you bring to the company. “Personal integrity is all about being honest, trustworthy, caring, and compassionate and respecting fairness for others.”
- » **Role modeling.** How others perceive you. Are your actions as a leader or an employee authentic, ethical, and consistent with company values and formal systems?
- » **Ethical management.** How you manage your organization for ethical behavior. Does management promote a speak-up culture? It’s about setting standards and expectations for ethical behavior, and holding people accountable for ethical lapses.

The objective with the Ethical Leadership Model is twofold: “First, create a ‘pull’ versus ‘push’ model for ethical behavior and compliance with a company’s values and policies,” he says. “Second, bring the formal and informal cultural systems within an organization into closer alignment, thereby reducing the potential for misconduct.”

“To be effective, a big emphasis of ethical leadership needs to be on rewarding people for doing the right thing, which is something companies tend to fail to do,” Beeghly says. “We’re very good at punishing people when they screw up, but we don’t do as good a job of recognizing people when they make the right decision.”

At a high-level, the aim is to embed the concept of ethical leadership at the point of normal business activities. Thus, when employees are engaging in different business activities, living the values of the company becomes a natural part of doing their job, he says.

After seven years with the company, Beeghly is now moving on to his newest endeavor, as co-founder and CEO of Informed360, a technology company that provides comprehensive technology solutions to support effective ethics and compliance programs.

In his compliance role, Beeghly said the one thing he was struck by across many organizations was “the amount of time and resources being expended by the compliance team and, more importantly, by employees and business leaders when interfacing with the compliance program through multiple technologies and channels.”

Beeghly described it as “death by a thousand cuts,” a matrix of Word docs, Excel spreadsheets, in-house systems, and lots of external systems for a one-off solution—such as policy management or conflict-of-interest disclosure. That’s a major burden for compliance officers, who are constantly having to turn to multiple data points to identify emerging risks or developing trends, or in evaluating the effectiveness of the compliance program itself.

Beeghly left Johnson Controls with a vision “to create a more robust, comprehensive, cloud-based platform to help chief ethics and compliance officers manage their compliance programs.”

The solution will contain a configurable dashboard, core functionality to support day-to-day compliance activities, third-party interfaces for external ethics and compliance program data, and robust reporting and benchmarking capabilities. Combined, this solution will allow chief ethics and compliance officers to have a much greater visibility into their programs.

The tool will be based on the common elements of an effective ethics and compliance program, enabling com-

## BRIAN BEEGHLY

**Title:** Chief executive officer of Informed360; former vice president of compliance at Johnson Controls

**About Informed360:** An innovative technology company intended to provide ethics and compliance professionals with a comprehensive technology solution that supports effective ethics and compliance programs.

**Years of experience:** 30+

**Areas of expertise:** Building and leading world-class governance, risk, and compliance programs

### Quote:

“To be effective, a big emphasis of ethical leadership needs to be on rewarding people for doing the right thing, which is something companies tend to fail to do.”

pliance officers to aggregate the data across multiple compliance activities and multiple compliance risks. The first beta version of the platform is expected to be available by mid-summer.

Beeghly cites his experience in the risk management profession for his vision. Twenty-five years ago, in a typical risk management department in a Fortune 500 company, you would not have had a comprehensive risk management information system, he says. Nor would you have found someone doing data analytics. More likely, it would have been outsourced to an insurance broker. Today, most Fortune 500 risk management programs utilize a cloud-based information system and have seasoned data analysts on staff.

Beeghly says he anticipates a similar transformation will occur in the ethics and compliance industry over the next five years: “What I see happening in ethics and compliance is the rollout of cloud-based solutions that will allow ethics and compliance officers to have a more robust view and greater visibility into their program,” he says. “The role of the compliance data analyst will also become more prevalent across organizations.” **TM**

# RICHARD Bistrong



Nobody understands better than Richard Bistrong how personal pressure, performance incentives, and temptation can come together in bad ways. But he has since become one of the compliance world's most outspoken voices on how companies can build better and more ethical businesses.

BY BILL COFFIN

CEO

Front-Line Anti-Bribery

# The great communicator

**R**ichard Bistrong never wanted to get into sales; he had plans to become a foreign policy professor. But after he got his first postgraduate degree in 1987, he joined his family business which made bulletproof vests, and from there joined a publicly owned defense contractor. Bistrong had sold to the U.S. military and law enforcement markets, which are stable, high-integrity, and low-risk. In 1997, when he took an opportunity to become an international sales vice president, he suddenly had a much different experience, traveling around the world for some 250 days a year, dealing with clients for whom bribery was not just an occupational hazard, but a way of doing deals. From 1997 to 2007, Bistrong began bribing foreign officials to gain and retain business. In 2012, he would pay for his actions, as well as turn the page on a new career promoting compliance and business ethics. Today, he is one of the compliance communities most outspoken voices on how to manage incentives and anti-bribery efforts.

**You have seen up close and personal what anti-bribery enforcement looks like. Can you share your experience with us?**

Starting in 1997, my strategy [in international sales] was to build a network of intermediaries, agents, and distributors. That's how I was going to grow international sales and that's where I would spend most of the next 10 years. That was my route to market.

A lot of people probably remember the United Nations Oil for Food investigation [in 2004]. In the wake of that investigation, the United Nations formed something called the Procurement Task Force, which was charged with investigating United Nations contract fraud.

In 2006-2007, one of those intermediaries [in my network] was investigated on a food contract for catering services for the United Nations, and the UN was investigating a poten-



tially corrupt relationship between that intermediary and a UN procurement official in New York. The UN investigators noticed that same intermediary held a defense contract with me and my former employer for armored systems for United Nations peacekeepers. So the UN investigators turned their attention to me. They shared their findings with my former employer and that was the reason why I was terminated.

But they also turned over their findings to the United States Justice Department. In 2007, shortly after being dismissed from my former employer, I got a call that I was the target of a criminal investigation by the United States Justice Department over an FCPA violation. The Department gave me an opportunity to cooperate. Now, I had engaged in corrupt behavior, and I was certainly a corrupt person. I hadn't thought

about the implications of my conduct, or the ethical implications of my conduct on society, on my former employer, and regrettably not on my family. I'm thinking, I'd like to come clean and change the trajectory that I had been on for the last 10 years, so I decided to cooperate. That decision led to five years of cooperation with the United States and United Kingdom law enforcement and prosecutors. I would come to find out that I was also targeted in the United Kingdom, so I became an undercover cooperator not only for the FBI but for the City of London police as well.

When the undercover cooperation ended, then I became a cooperating witness. It all ended with me getting sentenced in U.S. federal court as part of my plea agreement. The judge acknowledged the substantial value of my cooperation with the DoJ, so he departed from what could have been a five-year sentence and he gave me 18 months, of which I served 14. I came home in December of 2013.

#### **How did that experience transition into what you're doing now as the CEO of Front-Line Anti-Bribery?**

When I got home in December 2013, I took a deep dive into the compliance world. What I found was a very well-sourced, well-experienced, well-educated discourse of practitioners. But I didn't see a deep perspective on what this all looks like from the business viewpoint. If you look at other individuals who have violated the FCPA and anti-bribery laws, like myself, they're for the most part not individuals who had to risk their personal liberty to be successful. So I started thinking, is there a voice in this field that should talk about what people are actually thinking when they're working in remote offices, far away from the compliance suite, thinly supervised, when a remote office might just be a hotel room that night? We're talking about people who are in what are often called "frontier markets," where lucrative business opportunities and corruption risk are intertwined. People who work in public company environments, like I did for 10 years, who have commercial objectives that are usually measured on a quarterly basis, often with lucrative incentive opportunities. What does that look like? What is it like to work in environments where you're working with third parties and intermediaries that may not embrace or respect anti-bribery laws, ethical conduct, and behavior the way we see it?

In 2014, I started a simple Wordpress blog and I began posting. First, I wanted to see if this perspective brought any value to what was already a to what was already an experienced field. But there was a very personal element for this, as well.

Part of me said, this was a self-inflicted wound. There was no one else responsible for Richard Bistrong going to prison and getting in trouble other than Richard Bistrong. I wasn't a fall guy. Cheating is a choice and just because I had a license to succeed, that wasn't a license to cheat. I said if sharing my own rationalizations—talking about the temptations, how I made compliance decisions on the fly without reaching out to the support networks that were there to help me, those decisions that led to a very dark conclusion—could just help one person to hit the pause button and to think twice when faced with an ethical dilemma, then perhaps this experience was worth it as bringing value to someone else who faces the same pressures.

The other part was helping companies and compliance teams understand the real-world risk that their teams face and to help audit teams understand that a risk-based audit process can miss a whole lot of risk. What started out as sharing my experience led to being asked to speak at events like Compliance Week, and then over time individuals from legal, audit, and compliance asked me to come speak at their corporate events. That is how Front-Line Anti-Bribery has evolved from Richard Bistrong at his desk blogging once or twice a week.

#### **You have said that compliance needs to get the attention and support of business leaders, especially those with profit and loss responsibility. Can you elaborate?**

Sometimes, the toughest person to speak up about is ourselves. If you're rationalizing something like, "if I don't pay a bribe someone else will," and you share that with your compliance leaders and your business leaders, we can all unpack those rationalizations together. We can reframe them in a way as positives for the business.

I had rationalized, what does the company really want, compliance or sales? Because I can't deliver both. I didn't speak up about that. That's a debate I kept in my own mind and I took that compliance position into my own hands.

Before I took my first flight, my company provided me with a copy of the FCPA and told me to read it. If I didn't understand it, they would get me resources that would help me. I didn't need any resources. I understood that conspiring to bribe or bribing a foreign official to gain or retain business was illegal. What happened to me was very shortly in my travels, I started to figure out risk while I was in the middle of it. I started to make decisions on my own and to make calculations on my own.

I can't say for sure that anything would have stopped me, but imagine if someone who had a say in my performance review would have said, "Richard, you have been working in your career in some of the safest markets in the world. Now, we're getting ready to put you in harm's way. It is inevitable that you will come into contact with corruption and corrupt offers. We want to prepare you for that before it happens, because it *will* happen. The company's perspective is no and never, but more important, we want you to understand the resources that are here to support you and we want you to understand how we expect you to engage. In some parts of the world, if you're dealing with an intermediary over police and military contracts, saying no right there on the spot might not be the safest thing for you as an individual, so we want to give you a roadmap to engagement that gets you back home safely. And, we're going to incentivize you in a way that promotes a long-term ethical and sustainable business model. We're not going to pay you on an 'eat what you kill' performance plan. We're going to incentivize you based on corporate and group performance, so take a deep breath. This is going to take some time, and we want to make sure that you are prepared."

That's what I call business leadership. When compliance messages are delivered through business leadership, particularly through mid-level management, that message comes through loud and clear because it's coming from the people who are conducting performance reviews and who are responsible for promotions.

#### **To that point, how can compliance work more productively with the C-Suite and the board?**

Lately, I have been asked more and more by compliance leaders and officers to talk to CEOs and the board to try to help them get more engaged on business leadership; that anti-bribery dilemmas, and ethical and compliance decision making, are not a compliance responsibility in itself. It's a leadership issue. Depending on what the background of the CEO or board might be, they might or might not have firsthand understanding of how these issues look from the front lines of business. Those meetings help business leadership and board leadership understand the support that compliance needs to help people with those ethical struggles where they work.

#### **It must be hard to appreciate that when you're not on the front lines of the business, though.**

At the end of the day, compliance challenges are business

## **RICHARD BISTRONG**

**Title:** CEO, Front-Line Anti-Bribery

**About Front-Line Anti-Bribery:** Front-Line Anti-Bribery is a consultancy designed to complement existing legal & regulatory compliance efforts to focus on front-line behavioral and third-party risks that can lead to corrupt behavior.

**Years of experience:** 30

**Areas of expertise:** The Foreign Corrupt Practices Act, anti-bribery, anti-corruption

#### **Quote:**

"At the end of the day, compliance challenges are business leadership challenges. The business has the risk. Compliance doesn't have the risk. Compliance is there to help manage it, but the risk is created at the business level."

leadership challenges. The business has the risk. Compliance doesn't have the risk. Compliance is there to help manage it, but the risk is created at the business level.

In a globally dispersed workforce, we have people who are working in new territories and with new responsibilities, under jet-legged, sleep-deprived performance pressures, who might be away from their families for an extended period of time. I think that both business and compliance leadership has a responsibility to look at their workforce as individuals.

When you have people working in frontier markets where there is corruption risk, where cultures could be very different than home, I think we always have to look after people as individuals to keep them close to their network of family and loved ones. Even if they want to continue to make more and more sales calls, bring them home.

I lost my network of people who cared about Richard Bistrong not for his paycheck, but for him. I abandoned those relationships for business success. So I always encourage people in the commercial workforce to stay close to home. If you're struggling with a decision, before you call compliance, call your loved ones. **TM**

# MARA Davis

As the chief of compliance for one of the world's biggest media companies, Mara Davis has taken a communications-based approach to building a strong Code of Business Conduct, and cultivating an ever-stronger speak-up culture at a company where what people say to each other really matters.

BY JACLYN JAEGER

SVP & Associate General Counsel,

Chief Compliance Officer

Univision Communications Inc.

# The media mind

Univision Communications Inc. (UCI), is the leading media company serving Hispanic America and consumers across the multicultural spectrum that makes up America's diverse mainstream. Its mission, according to Chief Compliance Officer Mara Davis, is to inform, entertain, and empower its audiences and the communities UCI serves.

UCI engages consumers via its portfolio of 17 broadcast, cable, and digital networks and partnerships, including UDN, Fusion, and a minority stake in El Rey Network, as well as 126 local TV and Radio stations, and a growing digital portfolio of mobile and video properties—including Univision.com, Univision Now, Uforia, The Root, as well as iconic digital-first platforms Gizmodo, Jalopnik, Jezebel, Deadspin, Lifehacker and Kotaku, and a stake in The Onion. UCI reach about 106 million unduplicated media consumers across its portfolio each month.

Davis's role is to make sure that UCI's compliance program is at least as good at communicating the organization's core values and compliance expectations as UCI is itself at broadcasting quality media programming to its vast audience.

## **What are your role and responsibilities as associate general counsel and chief compliance officer at Univision?**

I'm in charge of managing our compliance program on a day-to-day basis. That means ensuring that we've implemented a compliance program that is consistent with the Federal Sentencing Guidelines and other leading standards and promoting a culture of ethical business conduct and a commitment to compliance with the law throughout the organization.

## **How is Univision's compliance department structured?**

Compliance has always been critical to our business, and that's why our company created the chief compliance officer role and brought me in to build a robust compliance program



from the ground up.

At Univision, collaboration is one of our values, and that really goes to the core of our corporate culture. As chief compliance officer, I formed a cross-functional corporate compliance committee, which is comprised of divisional and functional leaders throughout the company.

The committee meets on a quarterly basis with the goal of collaborating to ensure that our compliance program is responsive to our compliance risks, is accessible to our employees and is well-implemented throughout the company. The committee also reviews compliance metrics and initiatives. I meet with the committee members on a regular basis to discuss our compliance risks and opportunities for collaboration

and support and to ensure that our program is working in their respective business.

Also, in terms of structure, we have established a local compliance leaders program. That's a program whereby management nominates employees in our local markets to serve in a liaising capacity with our compliance department and to further advance the goals of the compliance program on a local level.

**You have been credited with implementing several compliance initiatives at Univision, including helping to launch UCI's new Learning Management System. Tell us about that.**

Our Learning Management System is a tool that makes sure we have accountability around compliance learning, and communication. When I joined Univision and I worked with stakeholders across the company to develop a compliance learning and communication strategy, we decided that we wanted to develop customized, Web-based content that leverages our internal production and creative capabilities.

We did this because we wanted to make compliance easy for our employees to digest. The information is critical, so our strategy helps to ensure that our content is accessible and interesting to our employees and is consistent with how our internal stakeholders consume content. Bear in mind that our internal stakeholders are sophisticated content consumers and creators for linear and digital media platforms, so our bar is pretty high.

Our strategy is very helpful when it comes to internal engagement, because employees really are involved in all facets of our creative and production process, so the outcome is something our employees really look forward to seeing. The content-agnostic Learning Management System allows us to track employee completion of compliance assignments, including attendance at instructor-led trainings, and completion of Web-based assignments—such as watching video shorts and completing policy attestations.

The LMS helps us to follow up with supervisors and linking in the human resources department, when necessary. We facilitate that follow-up based on our policy on compliance learning requirements, which also helps to reinforce the importance of timely completion of compliance learning and communication assignments.

**You and your team recently revamped UCI's Code of Busi-**

**ness Conduct. Can you describe that process?**

I wanted our Code to be a source of pride. I also wanted people to view our Code as an extension of our mission and our values and as an easily accessible resource. Working in close collaboration with a number of stakeholders, we developed a code that is visually appealing, and leverages our brand story in a very visual way.

We communicate about our mission and our values throughout our Code, and we explain our compliance topics in an accessible language in both English and Spanish. Our Code is provided to our employees in hard copy. The hard copy of our Code is very beautiful; it looks like a very nice magazine.

We also make our Code available in a digital format. The digital format contains links to company policies and scenarios that bring compliance topics to life.

In determining what topics we wanted to cover in the Code, we based those on compliance risks that are relevant to our company and our industry. Again, we collaborated very closely with a number of internal stakeholders in our legal department, in our corporate communications department, and in our corporate marketing department, as well as with the broader compliance committee.

**How did you and your team then work to generate excitement around the new code?**

We launched an internal campaign that really tapped into the best of what Univision represents. We tapped into our people. We tapped into our content and our strengths around our ability to reach our audience.

Our internal campaign consisted of a Code booklet desk drop. We had an intranet presence, and posters and life-sized cardboard cutouts that drove engagement with the Code. The look of the overall launch was very colorful and fresh. The strategy made the content understandable in different scenarios.

We did this because compliance doesn't need to be boring; it can be fun, and it can be interesting. Our goal has always been to make compliance engaging and ensure that our employee population is informed.

**Tell us about "Univision Listens" channels: In what ways does the company foster a speak-up culture?**

Compliance is a top company-wide priority, and our lead-

ership does an amazing job of fostering compliance as a priority by setting the right tone at the top. It all starts with our CEO. One of the key responsibilities of the chief compliance officer role is to make sure that all of our employees understand that they have a role in making sure that we are a good corporate citizen. That means that they need to feel comfortable with using the channels without fear of retaliation.

We talk about our channels in many ways. We talk about our channels on posters that are displayed throughout the company, and the posters are visually engaging. We developed an animated video short using our talent. That video short talks about our channels.

We also discuss the channels in instructor-led training. We tell our employees in our Code that they should come to us to report suspected violations of the law, or about our Code, or company policies through any of the channels. Because of that, we need to make sure our employees are not only aware of our channels, but that they feel comfortable asking a question or raising a concern. We developed our channels to give our employees a menu of options so that they could ask questions or raise concerns using the channel that feels most comfortable to them.

We do a good job of getting into the field and visiting our different offices. That's important so that we can build relationships with our employees, so that they are familiar with the compliance department and they feel comfortable contacting us or using any of our channels to ask questions or raise concerns.

#### **How do you ensure business leaders are accountable for handling reports and addressing issues that are reported?**

What is great about our compliance committee is that I have routine meetings with committee members to discuss trends and issues, and I work very closely with business leaders to address issues. They, themselves, are very good about having an open dialogue and an ongoing conversation.

When it comes to our leaders, they help with setting the tone at the top by participating in training sessions, for example, and working with my team to conduct training. When we talk about compliance topics, that conversation is not only coming from the compliance department, but it's also coming from the business leaders, as well. They are very engaged.

### **MARA DAVIS**

**Title:** Associate General Counsel and Chief Compliance Officer, Univision

**About Univision:** A media company serving Hispanic America and consumers across the multicultural spectrum.

**Years of experience:** 15

**Areas of expertise:** Domestic and international experience in leading the design, strategic development, and implementation of corporate compliance programs

"Sometimes organizations are very quick to look externally, when I think they can look at some of their strengths and resources internally to build up the compliance program."

#### **What initiatives has Univision implemented that, perhaps, other companies could benefit from implementing as well?**

You have to really know your internal audience. Your implementation should be very relevant and tailored to your employee population. For us, visual content resonates. Putting recognizable faces, like our talent and our leadership, into our content—such as our videos—is engaging and very well-received.

It's important to make sure that your learning and communication-based content is relevant and engaging and customized in a way that's relevant to start.

#### **Are there any final thoughts that you would like to leave for your fellow compliance professionals?**

Sometimes organizations are very quick to look externally, when I think they can look at some of their strengths and resources internally to build up the compliance program. That's another point that I think is valuable. By looking internally, often times you can find really great ways to make content relevant, and it can also be cost-effective, as well. **TM**

# KURT Drake

Kurt Drake's road to becoming the chief ethics & compliance officer for consumer product giant Kimberly-Clark, has had plenty of stops along the way, including nine years working abroad. A common denominator at each company he has worked for: building world-class compliance programs.

BY JOE MONT

Chief Ethics & Compliance Officer

Vice President

Kimberly-Clark

# The integration master

**B**efore joining Kimberly-Clark as its chief ethics and compliance officer in 2016, Kurt Drake already had more than 20 years of global ethics and compliance and finance experience. He has been the chief ethics & compliance officer for GE Aviation, Mubadala Development Co., PPG Industries, and General Cable. In these roles, he has successfully built and led global ethics and compliance programs and teams in a range of industries. For more than nine years of his career, he took his talents overseas to China, Italy, and the Middle East. A common denominator at each company: building a world-class compliance program unique to each entity, eschewing the easy route of a cookie-cutter, check-the-box approach.

Drake is a former board member of the Ethics & Compliance Officer Association, now known as the Ethics & Compliance Initiative.

Highlights of his career include cutting his teeth with Deloitte, as well as GE's finance team. At the latter company, he was selected to work directly with Jack Welch as CFO for one of GE's major business units in China.

Among Drake's notable challenges, and an enduring success story, was righting the ship at General Cable, a wire and cable manufacturer he previously interned for during college. At the time Drake took on the role of senior vice president and chief compliance officer (also taking on responsibility for internal audit), the company was in the midst of cooperating with the Securities and Exchange Commission and Department of Justice on a review of its business units in Asia and Egypt for potential violations of the Foreign Corrupt Practices Act.

Within 14 months, a comprehensive compliance program was developed under Drake's careful watch. In crafting the program, communication and cooperation with senior business leaders and managers was crucial, he says, explaining the need for top-down buy-in and enthusiasm.

The results speak for themselves. The new compliance program was among the first to pass muster under a new Department of Justice program where the agency's internal



compliance expert worked alongside a company to assess its submitted compliance program's merits and effectiveness.

Noted FCPA expert and Compliance Week columnist Tom Fox noted that General Cable's enforcement action and dealings with the Justice Department "may well be one of the most significant for the compliance practitioner as it clearly states the need to operationalize a compliance program ... It could be the case which portends the most significant step in doing compliance forward."

"Kurt had performed his due diligence and understood the areas where our Internal Audit function needed to improve," a former colleague says. "He had a clear vision for where internal audit needed to be, but trusted the team to engage and execute on that vision while still being intimately involved, driving for the best possible results."

**You've described yourself as fortunate in having mentors who helped inspire you and focus your talents.**

I've been lucky to have two great mentors who have been really instrumental throughout my career.

My early mentor was Kenneth Meyer. He was a former two-star general in the Air Force who also set up the compliance program at GE Aviation. Very early on in my career, he taught me a lot about leadership and change management.

When I went over to China, I reported to the CFO, as well as Ken, as the compliance leader. He instilled into me the leadership aspect of how to deal with people and change. He excited me about how to connect my expertise to compliance and keeping the company safe. He remained very instrumental throughout my career.

My other mentor is Keith Darcy [former executive director of the Ethics & Compliance Officer Association, now known as the Ethics & Compliance Initiative]. He was really helpful to me in terms of ethics and compliance in general, but also in terms of thinking about how to build culture and a world-class program at a company. I initially met Keith at various conferences and got to know him very well. He took time to really invest in me and has been very helpful over the years. Frankly, both mentors saw a lot of things in me that I didn't always see in myself.

I've also been very lucky to work at companies with business leaders of high integrity.

**You have had significant overseas experience, including time in Shanghai with GE. Tell us about leaving that company for an opportunity in Abu Dhabi.**

I spent 12 years at GE and then moved on to a sovereign wealth fund, Mubadala, headed up by the United Arab Emirates' most senior public and private sector officials.

Mubadala was a greenfield opportunity that involved establishing an entire compliance program for them, including writing their first code of conduct. It was very unique in the sense that, for starters, I had to define the vision and build

a program and team across the various industries in more than 20 countries.

I loved the challenge of building a brand-new program that covered various industries and countries, but it wasn't easy. It wasn't just going in and implementing a best practice program. It was customizing a best practice program into their business operating rhythm and one that connected with their company's vision.

When I reflect on my career, it is all about making compliance integrated into the company's DNA, globally and locally.

Early in your career, the focus is on the ins and outs of compliance. You are more focused on the technical side. As I gained more experience living overseas and setting up global programs, I realized the real challenge—and I would say the fun part—is evaluating that company's culture and how integrity plays a vital role in it. Where are they located in the world? How regulated are they? What industries are they focused on? How do the business leaders think? How do they talk about integrity?

Putting all that together is what it takes to build a world-class program. As we always say in compliance, one size does not fit all.

**Lessons learned from your international experience?**

They all provided a nice toolbox of experiences for how to think about, customize, and implement compliance. Part of the evaluation is understanding the maturity level of the company's compliance program. Where are they in the life-cycle? To help build an effective compliance program, you need to know where you are starting.

I was very fortunate to start my career at a great company like GE that had very mature processes. I was able to grow up and be trained the right way. When I left to travel to other companies and other countries, they were at different points in the maturity curve. With each new experience, I had the opportunity to customize the program to fit that company's needs and culture.

When I go to different companies in different countries, I de-

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One of the things that makes compliance so rewarding is helping a company win business while doing things the right way.

velop strong relationships with the business leaders and try to understand where they and the company are coming from. How do they think about compliance?

At any company, making compliance natural and part of the corporate DNA is always a continuous challenge. The fun part is making it our compliance program. It is the company's compliance program, not the compliance officer's compliance program.

### Can you tell us about your time at General Cable?

When I started there, I was the company's first standalone chief compliance officer. I was there to establish and build a program while it had open and ongoing SEC and Justice Department investigations under the Foreign Corrupt Practices Act.

There were multiple priorities. There was building a world-class compliance program, including recruiting a new team, engaging the employees, dealing with the ongoing investigations, and doing all of it quickly. You can imagine how people think about their company when they are in the headlines. You need to engage with employees globally to make them feel part of the new compliance program by partnering with them and the senior leaders.

If you do it right—if you set the program up right—people will be engaged and they will speak up. So, we were also responding to employees' questions, which allowed us to make real-time improvements into the program. By listening to their inputs, it helped us to build 'their' program versus an off-the-shelf, textbook program.

### What advice might you share, based on your experiences, with younger professionals entering compliance?

To be in compliance, you need to be a student of change management.

One of the things that makes compliance so rewarding is helping a company win business while doing things the right way. That sounds very simple, but it can be very challenging because things are very dynamic and always changing.

Rules change and regulations change; businesses change and people change. Technology is always changing. I love the dynamic aspect of navigating continuous change while maintaining the standards of a culture of integrity. That's the piece that gets me up every morning, wanting to help the

## KURT DRAKE

**Title:** Chief Ethics & Compliance Officer,  
Vice President, Kimberly-Clark

**About Kimberly-Clark:** An American, multinational personal care corporation that produces consumer products. Its well-known global brands, sold in more than 175 countries, include Kleenex, Scott, Huggies, Pull-Ups, Kotex and Depend.

**Years of experience:** 22

**Areas of expertise:** Compliance, audit, finance, and Six Sigma

### Quote:

"When I reflect on my career, it is all about making compliance integrated into the company's DNA, globally and locally."

company do the right thing.

Not only is the environment dynamic, but in compliance, you personally need to be dynamic in understanding the company culture. You need to understand the business leaders, the industry, and previous issues they have had and then you need to put it all together so it sticks in the way they operate.

Nearly every business leader wants to do the right thing; it is all about how to translate it and make it natural for them as part of winning business. For example, tone at the top can mean many different things. One CEO might send out five communications a year, but then never talks about it. Another leader might not send out any integrity-related communications, but every time he or she visits the plant they are so authentic, natural, and comfortable when talking about integrity and what affects the company's reputation that his or her approach is far more valuable than any formal communication they could ever write and send out.

As a CCO, we are measured on how we operationalize compliance with the leaders and into the business. The core, however, is making your ethics and compliance program genuine and authentic. That's better than any poster or the best-looking code of conduct out there. **TM**

# PETER Driscoll

A nighttime photograph of a cityscape, featuring the Washington Monument prominently on the right side. In the foreground, a multi-level highway interchange is visible with light trails from moving vehicles. The sky is dark blue, and city lights are scattered throughout the scene.

The challenge for the SEC's Office of Compliance Inspections and Examinations: keeping pace with the ever-growing number of investment advisers, broker-dealers, and others it oversees, as well as the emerging technologies they rely on. The solution: a data-driven process for risk analysis.

BY JOE MONT

Acting Director  
Securities and Exchange Commission's  
Office of Compliance Inspections  
and Examinations

# The risk detective

**P**eter Driscoll was named acting director of the Securities and Exchange Commission's Office of Compliance Inspections and Examinations (OCIE) in January 2017. The OCIE conducts the SEC's National Examination Program through examinations of SEC-registered investment advisers, investment companies, broker-dealers, municipal advisers, self-regulatory organizations, clearing agencies, and transfer agents.

The OCIE, under his guidance, uses a risk-based approach to examinations to fulfill its mission to promote compliance with U.S. securities laws, prevent fraud, monitor risk, and inform SEC policy.

The Investment Adviser/Investment Company examination program is responsible for the examination of over 12,000 investment advisers with more than \$48 trillion of assets under management—and more than 800 registered investment company complexes—to determine their compliance with the federal securities laws, particularly the Investment Advisers Act and the Investment Company Act.

The Broker-Dealer Examinations program is responsible for examining the approximately 4,100 broker-dealers in the United States. The program also coordinates with the New York Stock Exchange, NASD, and other SROs on regulatory issues.

The Clearance and Settlement examination program is responsible for examining clearing agencies and coordinating with the 11 regional offices the examination program for approximately 450 transfer agents.

Driscoll stepped into the new role after serving as the



OCIE's first chief risk and strategy officer, beginning in March 2016. The office was created to consolidate and streamline OCIE's risk assessment, market surveillance, and quantitative analysis teams. It provides operational risk management and organizational strategy for the OCIE.

Driscoll was previously the OCIE's managing executive from 2013 through February 2016. He joined the Commis-

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We certainly don't want to stand in the way of technology development. A lot of these technologies could help save fees, and that's a good thing for investors. We are making sure that firms address some of the risks of disclosures, client testing, stress testing, customer data protection, and recordkeeping.

sion in 2001 as a staff attorney in the Division of Enforcement in the Chicago Regional Office and was later a branch chief and assistant regional director in the OCIE's investment adviser and investment company examination program.

Prior to the SEC, Driscoll began his career with EY and held several accounting positions in private industry. He holds a B.S. in accounting and a law degree from St. Louis University. He is licensed as a certified public accountant.

### **Can you tell us a little bit about your career and past experience? What path brought you to the SEC?**

As an undergrad I studied accounting and moved on to Ernst & Young. That was my first job as an auditor. I was there for about three years and then went to work as a controller for a client.

Later, I had a friendly interaction with an assistant U.S. attorney who was an alumnus of my high school. He was telling me about his job, and I saw him as someone who was really making a difference. I hung up the phone and decided to go to law school that same day. It was something I had been thinking about for a while, but what he was doing as a federal prosecutor struck me in terms of making the most of your career while helping society.

I stayed in the accounting field for four more years, while going to law school at night. Then, when I was getting close to finishing my last year, I ended up doing an internship at the SEC's Chicago Enforcement Division.

The reason I selected the SEC was that I was a financial reporting accountant, as opposed to a tax accountant. The SEC, to me, was the pinnacle of financial reporting for all of the publicly reporting companies. I thought it would be a very interesting job if I could get it.

Fortunately, I ended up getting the internship and joined the following year as a staff attorney in enforcement. I had looked at the Division of Corporation Finance, but the Enforcement Division was more appealing because I had a desire to litigate.

### **The Office of Risk and Strategy, the OCIE, and SEC in general, have focused on data-driven approaches. How does this fit with very notable investments in technology and data analysis undertaken by the Commission in recent years?**

One of the big challenges we have is being resource-con-

strained. We are tasked with examining an ever-growing population of registrants and have roughly 1,000 folks in OCIE to cover more than 12,000 investment advisers, 11,000 mutual funds and ETFs, 4,000 broker dealers, and 600 municipal advisers that are newly registered with us. We continue to take on more and more responsibilities with clearing firms, FINRA, and exchanges. We can't do it all on a regular basis.

We moved to a risk-based approach several years ago, particularly as the investment adviser space had grown so much.

Last year, we were around 11 percent coverage with IAs, in terms of what we did with exams. With that backdrop, we have had to be much more careful about how we use our resources, and that drives the risk-based approach. We are not only looking at risk in terms of who we do exams of; we are also taking a risk-based approach to, when we execute an exam, the areas we are going to focus on.

When I joined the program in 2004, we would do almost full-scope exams. At the time, there were some significant new rules, including the compliance rule and a code of ethics rule. There was a lot to look at.

When I think back to my public accounting days, from an audit perspective you are doing full-scope audits. You may have multiple visits in a year where you do a week of planning and inventory observation at year's end, then you execute out on an audit after the year has ended. You may also have the same staff year after year. We don't have that luxury. We have 600 or so IA staff covering 12,000 IAs and 11K mutual funds. We need to do limited scope and a risk-based approach in terms of where we spend our resources. That is something that has really driven our approach here within OCIE.

One of the things we have been very fortunate about is that our future is going to be driven by technology, as opposed to hiring more and more staff. We obviously need more staff; there is no question about that. Our assumption, however, is that while we will hopefully get some growth, we need to use the tools we have in place and develop technology to look at not only one firm at a time, but 300 firms at a time.

### **What are your views on evolving technology and risks, such as cyber-security, blockchain, bitcoin, robo-advisers, and FinTech? How can a regulator best straddle the fine**

## line between maintaining safe and fair markets without stifling innovation?

Electronic advice is a big area for us and a priority. We publish our priorities every year. This year, we talked about one of our initiatives being electronic investment advice, the robo-adviser world. What we are seeing is that it started with technology companies that weren't registered entities before and did not have a history of regulatory compliance. Now that industry is shifting to large firms that have a history with the SEC, developing a compliance program, and knowing the regulatory regime. They are branching out into having some electronic advice. It is certainly a challenge in trying to ensure that the firms are satisfying the requirements of the laws while adapting to technology.

We certainly don't want to stand in the way of technology development. A lot of these technologies could help save fees, and that's a good thing for investors. We are making sure that firms address some of the risks of disclosures, client testing, stress testing, customer data protection, and recordkeeping.

Frankly, we have to adjust along with the industry and learn about these new programs. Most of our examiners are not technologists, so we have to continue to educate our own teams on where the market is going.

If you look at what we did in cyber-security, it's a different approach to what we have historically taken. We knew it was a high-risk area for all of our firms.

For our first initiative, we put out a risk alert and said we were going to examine around 100 firms. We published our request list, which we thought was an effective way to get out to all 12,000 investment advisers and 4,100 broker-dealers the types of information we were looking for. It is also a great way for a CCO who is on the other side of one of those risk alerts to ask, "OK, do I have this information? Is my IT department looking at this information?"

We went about our exams and published what we found. It wasn't meant to be a "gotcha," it was meant to educate the industry. Internally, we were able to see trends, what best practices were, and push all that out so the industry could see what we found on our exams. We thought that was an excellent way to move the needle in terms of putting cyber-risk as a top priority.

## PETER DRISCOLL

**Title:** Acting Director, Securities and Exchange Commission's Office of Compliance Inspections and Examinations

**About OCIE:** The Office of Compliance Inspections and Examinations conducts the SEC's National Examination Program. Its mission is to protect investors, ensure market integrity and support responsible capital formation through risk-focused strategies that improve compliance, prevent fraud, monitor risk, and inform policy.

**Years of experience:** 25

**Areas of expertise:** accounting, legal, compliance, regulatory examinations

### Quote:

"Personally, I want to have a lasting impact with what I do. Professionally, I want to move the needle on compliance."

We ended up following through with a deeper dive into a number of areas in our second cyber-security initiative. They include governance and risk assessment, access rights and controls, vendor management training, data loss and prevention, and incident response.

Cyber is a tough issue for firms. In many cases they are victims, but they also need to adhere to certain requirements to make sure they are protecting their investors and client information.

## What is your guiding philosophy and approach to your role at the SEC?

Personally, I want to have a lasting impact with what I do. Professionally, I want to move the needle on compliance. There is a lot we can do from a collective action standpoint to really help the industry move the needle on protecting investors. I firmly believe in our mission and it is a joy to come to work every day and do the work we do. **TM**

# ROB Easton

Robert Easton has enjoyed a productive career on both sides of the insurance industry—working within major brokerages and with the New York Department of Financial Services. His experience both as a regulator and among the regulated gives him a keen understanding of the special compliance needs facing the insurance industry.

BY JACLYN JAEGER

Chief Compliance Officer

Risk and Insurance Segment

Marsh & McLennan Companies

# The crossover expert

**R**obert Easton didn't plan on landing in the insurance space. Yet, he would go on to become one of the most highly respected insurance regulators serving in one of the nation's most powerful insurance agencies before ultimately making the transition to the legal and compliance profession.

Easton, who most recently joined global professional services firm Marsh & McLennan Cos. (MMC) in March 2016 as CCO of its Risk and Insurance Services segment, is a lawyer by training. Earlier in his career, he worked as a commercial litigator at the New York office of Sidley & Austin for three years.

From Sidley & Austin, he moved to the New York State Attorney General's office, where he served as deputy solicitor general in the Division of Appeals and Opinions. In addition to managing the Division's New York City office, he supervised and reviewed all aspects of appellate litigation in federal and state courts in suits brought by and against the State of New York.

Several of those cases involved the New York Insurance Department, which would serve as a catalyst for joining the agency later in his career. Following a change in administration in New York and a new governor assuming office, Easton says he went in-house and became general counsel at the New York State Department of Insurance, the predecessor agency of the Department of Financial Services (DFS).

After a few years in that role, Easton became deputy chief counsel and chief compliance officer at Integro Insurance Brokers, a global insurance brokerage firm. "I was there for a couple of years when I was asked to join the DFS," he says.

From 2011 to 2015, Easton served as executive deputy superintendent, Insurance Division, the state's highest ranking official dedicated to insurance regulation. In that capacity, he provided oversight to more than 1,700 property and casualty, life, and health insurance companies operating in the state.

At the time Easton joined the DFS, the regulator was going through a transition. It was combining the New York Insurance Department and New York Banking Department and becoming a unified financial services regulator.



From the DFS, Easton would move on to become senior vice president and chief compliance officer of then-McGraw Hill Financial, which changed its name to S&P Global in April 2016. But his time at the DFS, and the lessons learned along the way, would help mold his compliance career.

Recalling his years with the regulator, Easton discusses the many challenges he faced along the way. "One challenge was dealing with Dodd-Frank in the wake of the financial crisis," he says.

Questions swirled around how regulators should oversee these large multinational globally operating insurance firms. "There was a lot of flux around the development of capital standards and trying to address the supposedly systemic risk from insurance companies and non-bank financial institutions," he says.

Secondly, a lot of discussion at the DFS concerning proper

life insurance standards also posed obstacles. “New York was in a spirited discussion with other states around appropriate standards for life insurance products, and the extent to which life insurers could set their reserves, the amount of money they set aside to pay future claims,” Easton explains.

But those were not the only challenges during Easton’s time at the DFS. Another task that posed its difficulties, he says, was ensuring that New York’s health insurance exchange, established in the wake of the implementation of Obamacare, got up and running. It did, and now the “NY State of Health,” as the exchange is named, is one of the most robust exchanges in the country. As of February, more than 3.6 million New Yorkers enrolled in comprehensive health coverage through the exchange, a 28 percent increase from 2016.

It was those sorts of experiences at DFS, however, that Easton says helped him in the compliance space. When you’re in government, as in compliance, many times the goal is to achieve a certain outcome, he says, “but you need to make sure that there is sufficient stakeholder engagement and buy-in to get there.”

“Think about where you want to end up, and then work backward from there to figure out what kind of engagement, what kind of campaign—awareness, education, and otherwise—that you need to conduct,” he says. “That is critical to ending up in the place where you want to be.”

Easton is now taking many of the lessons he has learned and applying them to the compliance space. At MMC, he is not only a chief compliance officer for Marsh, but he also covers the firm’s reinsurance brokerage operation, Guy Carpenter, as well. In this capacity, he reports to Jim McNasby, general counsel for MMC’s Risk and Insurance Services segment, and to Carey Roberts, MMC’s deputy general counsel and CCO.

As the scope of the chief compliance officer role continues to evolve, so do the demands and expectations of those in the field, and one of those emerging issues is cyber-risk. “It’s a little bit cliché, but cyber certainly today is not simply an IT issue,” Easton says. “It’s not a back-office, or even a legal and compliance issue. It is an enterprise-risk issue that starts at the C-suite.”

“It’s incredibly challenging, of course, because cyber-risks are constantly changing,” Easton says. “They are ever-evolving, and there is no silver bullet out there that can batten down every hatch and eliminate the risk entirely.”

What’s unique about cyber-risk, however, is that it simultaneously affects both the insurance and compliance space. In other words, one way that firms can address cyber-risk is to purchase insurance, Easton says, adding that Marsh is the leading cyber-broker. “But even with insurance coverage, there are no guarantees that cyber won’t remain a threat,” he says.

Many of the issues in the insurance space don’t always

## ROBERT EASTON

**Title:** Chief Compliance Officer, Risk and Insurance Services segment, Marsh & McLennan Cos.

**About Marsh & McLennan Companies:** A global professional services firm offering clients advice and solutions in the areas of risk, strategy, and people.

**Years of experience:** 20+

**Areas of expertise:** Insurance regulation, commercial litigation, risk, and compliance

### Quote:

“One challenge was dealing with Dodd-Frank in the wake of the financial crisis.”

translate to the broader financial services sector. That, too, can pose unique compliance issues.

“In many ways, insurance is a special breed,” Easton says. “There are special rules that apply to the oversight of insurance that don’t apply elsewhere in the financial services sector. Insurance has an entirely separate solvency regime, for example.” In the United States, insurance is also regulated state-by-state, rather than nationally. That means that a large operation such as Marsh must maintain relationships with every single state’s Department of Insurance, which quickly adds up to a costly and time-intensive compliance effort. Not all of those states harmonize their rules with each other, either, which makes a difficult task even more so. There is a Federal Department of Insurance, but its role is advisory.

“Also, when we’re dealing with regulators around the globe and other policymakers, there sometimes is confusion about the difference between insurance brokers and insurance companies,” Easton adds. “Insurance companies take balance-sheet risk. They’re guarantors of certain liabilities, whereas an insurance broker, like Marsh, is a risk adviser and risk consultant.” For companies like Marsh, this distinction is an important one to be made; the largest insurance brokers are often mistaken for carriers.

“Marsh may assist with the placement of insurance, but we are not the guarantors of the very insurance we are placing,” Easton says. “Sometimes there is a lack of appreciation of the distinction between the two roles.” **TM**



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# CINDY Fornelli

Cindy Fornelli's legal career positioned her to lead the Center for Audit Quality at a time of great transformation for the audit profession. Acting as a chief compliance officer for auditing in general, Fornelli stresses the importance of truly proactive and strategic compliance efforts for audit, rather than a check-the-box mentality.

BY TAMMY WHITEHOUSE

Executive Director

Center for Audit Quality

# The auditor's CCO

From the earliest days in her legal career, Cindy Fornelli was most interested in litigation, but not for the kind of courtroom drama normally associated with such proceedings.

Fresh out of law school in 1990, Fornelli remembers spending her first year as an associate at law firm Fried Frank rotating through various legal departments to get exposure to many areas of the practice. "You would rotate through government contracts, litigation, transactions, mergers, and acquisitions, just to see where you fit and where your skills and interests were," says Fornelli. "I was drawn right away to litigation, but what I really enjoyed was helping companies build compliance programs."

Call it prophylactic compliance, if you will, but Fornelli says she found much greater satisfaction on the front end of the compliance curve, trying to prevent companies from ending up in courtrooms. She liked learning about companies and their culture and helping them prevent problems rather than fixing problems after they erupted.

"When you are helping a company defend against the Securities and Exchange Commission or the Department of Justice, they are already back on their heels," she says. "It seems much better to me and much more enjoyable to help companies build up a compliance program so they don't get into litigation trouble later down the line."

Now as executive director of the Center for Audit Quality, Fornelli is doing much the same kind of work on behalf of the entire audit profession. The CAQ is committed to advocating for high-quality audits in capital markets as a way to build and improve investor confidence and public trust in audited financial statements, a cornerstone of efficient, properly functioning capital markets.

So how did an attorney end up becoming an advocate for audit quality? It goes back to the early foundation of her career, says Fornelli. After Fried Frank, she spent a few more years at another law firm helping investment advisers, hedge



funds, and mutual funds set up compliance processes or prepare for inspections and examinations by the SEC. Eventually, that led to a jump into public service in the SEC's Division of Investment Management.

It was a "sleepy little division" at that time, says Fornelli, until scandal erupted in the early 2000s around mutual funds engaging in illicit late trades and market-timing activities. Suddenly the division got very busy writing new rules and regulations to guard against such maneuvers. "Until that time, the SEC had never issued more rules or regulations than it did immediately after that time," she says.

After working through that burst of regulatory activity, Fornelli was attracted to the challenge of a new position at Bank of America in 2004. Her task was to create a program to protect against conflicts of interest across the organization.

"It was about helping the bank look across the organization holistically or horizontally, rather than vertically, looking for conflicts of interest," she says.

While Fornelli was deep into compliance concerns in the financial services sector in the early 2000s, capital markets were beginning to reel over the dot-com collapse, accounting scandals at companies like Enron and WorldCom, and the prosecution and collapse of Arthur Andersen. Congress was rolling out the Sarbanes-Oxley Act to transform the financial reporting process for public companies and rescue investor confidence.

CEOs and CFOs would be required to certify financial statements. Companies would be required to report on the effectiveness of their internal control over financial reporting. And auditors would be required to pass judgment on those reports.

Even more, auditors would no longer be left to the self-regulation they had enjoyed for decades under the American Institute of Certified Public Accountants. They would still be licensed as they always had been under state law, but now they would be subject to regulation under a new body formed by Sarbanes-Oxley: the Public Company Accounting Oversight Board.

For public companies, the early years of Sarbanes-Oxley compliance were marked by an unprecedented flurry of activity to document hundreds, even thousands, of internal controls. Their activity was driven largely by demands from auditors, who had new marching orders of their own under the PCAOB's new Auditing Standard No. 2 telling them how to conduct an internal control audit.

The outcry over the effort required (not to mention the cost) was deafening. The PCAOB eventually right-sized AS2 with a more risk-based approach in Auditing Standard No. 5, intended to do away with burdensome busy work and steer internal control focus to the areas where they could do an organization the most good.

As part of the audit profession's effort to acclimate to the new regulatory era where their work was subject to massive new scrutiny, the AICPA spearheaded the creation of the CAQ. It would serve as an autonomous public policy body supported by the audit firms themselves to galvanize the profession by fostering and promoting audit quality.

As it has evolved over the past decade, it can be seen today as a kind of compliance office for the audit profession, with

Fornelli as its chief compliance officer. She brings multiple points of view to the table to assure the auditor's role is both understood and leveraged.

"We wanted to make sure we had the perspectives of investors, academics, preparers, boards of directors, audit committees, and regulators so when we take a position on a policy, we get informed," she says. "We don't call that compliance, but there's an element of compliance to that. How do you comply with the rules or regulations to benefit the marketplace?"

But it's more than strict compliance Fornelli is after. She's looks to bring those stakeholders together to engender a genuine sense of playing by the rules for the benefit of everyone involved. "Throughout my career, I always had a sense that compliance gets a bad name or is misunderstood," she says. "Some hear the word 'compliance' and think of a check-the-box mentality."

That's as true of the audit profession as anywhere in capital markets, where auditors have been called out by the PCAOB for failing to bring an adequately skeptical mindset to their work—or checking boxes on checklists rather than seeing red flags and investigating more deeply.

"When you step back and look at what a compliance function is, it's looking to make sure you're adhering not only to the black-and-white rule or regulation but also the spirit of it as well," says Fornelli. "We're talking about the letter of the law as well as the spirit of the law, whether that's a policy, a procedure, or a regulation or law. I think that gets lost sometimes when we talk about the compliance function."

Indeed, gathering together all the various players in the financial reporting supply chain to bring about improvements in the audit process is much more complex than any checklist could achieve. Sarbanes-Oxley put into place a new environment where a checklist mentality would not cut it for the audit profession. And it was an adjustment for the profession, to say the least.

"Sarbanes-Oxley was a sea change for the auditing profession and the whole supply chain of financial reporting," she says. "It wasn't aimed at just the audit function, but that was a piece of it." With CEOs and CFOs certifying financial statements and audit committees compelled to enhance their oversight, auditors faced new demands and new expectations that would change the profession.

And Fornelli believes auditors have stepped up to the plate.

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Finish what you start. And give it your all. If you're going to do something, do your best ... Always give whatever you do 100 percent.

The CAQ keeps a pulse on investor confidence through an annual survey, and it finds in recent years that investor confidence has rebounded. After a spike in financial statement restatements following Sarbanes-Oxley, where reporting and auditing improvements flushed through the system to wring out a historic number of errors and misstatements, restatement levels have dropped both in size and number. "Audit quality is higher," she says. "Higher than it's ever been."

That's not to say the work of the CAQ or the audit profession is finished. The Public Company Accounting Oversight Board still turns out inspection results on audit firms that many would agree are not yet acceptable. And auditors, along with everyone else in the reporting supply chain, are bracing for an onslaught of new accounting rules that will ripple through corporate America over the next few years bringing massive change.

Public companies are in the throes this year of adopting new requirements for how to recognize revenue in financial statements, which replaced hundreds of historical accounting rules that had accumulated piecemeal over decades. The new five-step method for how to recognize revenue means new policies, procedures, processes, and internal controls that touch potentially every area of operations for many companies.

While the new revenue rules were published in 2014, companies received a long runway, until 2018, to begin following the rules to give them plenty of time to prepare. But the change doesn't stop there.

The very next year, public companies will also be required to adopt new methods for how to account for leases, bringing them for the first time out of the footnotes of financial statements and on to the face of the balance sheet. That means companies need more centralized processes for tracking their leases and more extensive accounting policies and processes to gather and report the information required under the new standard.

And the change for financial services is a bit different but equally daunting. They face new requirements for how to measure and classify financial instruments and even more significant change in how to measure and report on signs of distress in debt instruments, such as loan portfolios.

As auditors prepare themselves for those changes they will soon face, they also are getting up to speed on drastic changes in technology and how it is affecting their work, says Fornelli. Technology is changing the way companies prepare their financial statements, but it's also changing the way auditors can dig into that work and look for problems or anomalies that merit further study.

"Technology will profoundly shape the audit," she says. While some muse over the possibility that technology may

## CINDY FORNELLI

**Title:** Executive Director, Center for Audit Quality

**About CAQ:** An association formed in the aftermath of Sarbanes-Oxley to foster high-quality performance by public company auditors as a way to enhance investor confidence and public trust in the global capital markets.

**Years of experience:** 27

**Areas of expertise:** Leveraging legal and compliance background to advocate for audit quality

### Quote:

"Some hear the word compliance and think of a check-the-box mentality.. When you step back and look at what a compliance function is, it's looking to make sure you're adhering not only to the black-and-white rule or regulation but also the spirit of it as well."

even displace auditors—with technology performing checks not just on samples of transactions or but on entire populations of data, and with continuous monitoring and continuous auditing becoming more real—Fornelli believes the human eye will always have a role to play in auditing.

"Auditors are going to need different skill sets perhaps, but what's exciting about technology is that it can free up people's space of mind to look in and see where the anomalies are," she says. "Where are things not quite right? Why is that so? Is there a problem there, or is it something with policies and procedures that needs to be changed? It's going to demand a lot more judgment and analysis. That's exciting. It makes the profession that much more dynamic."

As Fornelli girds up for the next phase of compliance in the auditing profession, she remembers the sage advice she learned from a young age in her own home life. "My parents made it very clear to me that it's just as easy to be nice and pleasant as it is to be disagreeable," she says. "Finish what you start. And give it your all. If you're going to do something, do your best, whether that's loading the dishwasher, vacuuming the carpet, volunteering at your kids' school, taking care of the dog—or building a compliance program or advocating for the public company auditing profession. Always give whatever you do 100 percent." **TM**

# MARY Gentile, Ph.D

Mary Gentile, Ph.D, is one of the compliance and ethics field's most renowned educators for her results-based ethics training that doesn't ask: "What is the right thing to do," but instead asks: "How do we get the right thing done?"

BY BILL COFFIN

Creator/Director, Giving Voice To Values  
and Professor of Practice  
University of Virginia Darden  
School of Business

# The practical ethicist

**M**ary Gentile, Ph.D.'s professional career began with her work at Harvard Business School, where she helped put together the school's first MBA programs around values-driven leadership, ethics, and decision making. When she left Harvard in 1995, she started consulting with companies and business schools around the same issues of values and leadership, and became disillusioned with the general approach of ethical training. Whether it was training business students or academics, Gentile saw that the standard was to give students ethical scenarios and ask them to figure out what the right thing to do would be. And what she saw over and over again was that even if people came in to these training sessions with an idea of what the right thing to do was, the conversation usually led to the most skeptical or cynical positions being the ones that held sway. She felt ethical training had become counterproductive, and there had to be a different way to think about this. What began as an effort to make more productive ethics training would become Gentile's path to becoming one of the compliance and ethics field's most respected educators.

## **Once you saw a problem with the orthodoxy in ethics training, what was your next step?**

When I was at Harvard Business School, they asked me to talk to professionals from a number of different areas, such as the medical school and the public health school, and ask them how they address ethical issues in their teaching. I remember interviewing this guy who was a professor at the school of public health. And he said that when you're in the field, you absorb these professional rationalizations for why it's impossible to do the ethical thing. They tried to teach people to recognize those professional rationalizations and be proof against them. But he worried that the business school actually taught the professional rationalizations. That was a slap, and not what we intended to do.



I started to see that there was increasingly a lot of research in psychology, neurosciences, and other fields that suggested if you want to have an impact on other people's behavior, rehearsal and practice is a very important way to do that. The folks who study the field of what's often referred to as positive deviance—people who deviate from the norm in a positive direction—have a nice way of phrasing it: If you want to have an impact on people's behavior, rather than asking them to think their way into a different way of acting, it's more effective to have them act their way into a different way of thinking.

The breakthrough moment for me was when I was taking a self-defense class. Most self-defense classes teach you physical moves and then you practice them so that hopefully you'll be prepared if anyone ever attacks you. But in this particular

course, after you learned those moves, they bring in a guy in a padded suit and he would attack you and you would have the chance to respond full force because he was protected. If you rehearse something in the same physiological, emotional, and cognitive state that you'll be in when you need to use it, even if you freeze, your body will remember. You're creating a muscle memory, a default behavior. That led me to think maybe we could create a moral muscle memory.

Instead of presenting so-called ethical dilemmas, we should focus on situations where most of us would know what the right thing to do is but we just don't think it'll be successful, possible, feasible, or even well-received in the context where we're working. So instead of asking people to determine what's right, we ask, "how would you get the right thing done?" I call this the Giving Voice to Values (GVV) thought experiment, because we know now that if you ask people what they would do, and they think it's going to be impossible to do what they think is right, they will unconsciously rationalize why it's not necessarily the wrong thing to do. People react

emotionally and give reasons for it post-hoc. I wanted to disrupt that unconscious process before that pre-emptive rationalizing kicked in and just say, look, I'm not asking whether you would do this. I'm asking what if you *wanted* to do this, and then we get people to work together to script and action-plan and rehearse so by the time they actually have to face the question, they feel like they have a real choice because they have some options.

Sometimes, we speak about speak-up culture. This is way beyond that. This is not about shaking your fist and stamping your foot and speaking truth to power. It's about asking a question. Speak-up culture over-simplifies and makes it sound like a matter of moral courage. It's more a matter of moral competence. This is really about leadership, because it's about figuring out how to communicate messages that may be difficult and communicating them in a way that people will actually hear them.

#### Can you provide an example of what GVV looks like in action?

One of the scenarios we work with—and these are all based on real situations—is an individual who is working for a firm that manages the portfolios of high-net-worth investors. She's fairly new in the firm and her boss is also fairly new in the firm. She comes into the office one day and he says, "I'm meeting with one of our clients this afternoon. His portfolio significantly underperformed the benchmark that we had set for it in this last period. I want you to come up with an alternate benchmark that makes it look like it's performing better and create a deck of slides and a script for me to use for this meeting this afternoon. He's an unsophisticated investor. He's an elderly gentleman. These are his business profits, and he's managing this portfolio for his children. And it happens that he's a good friend of one of the senior partners of the firm." She walks out and thinks, "This doesn't feel right, but I don't have a lot of time." She wasn't really sure what to do. Is this what they always do in this firm? She goes to a colleague and asks, "Am I crazy? Does this feel off to you?" The colleague says, "Yes, it feels off, but if you say no, he's just going to ask one of us to do it. You'll be ruining your relationship with him and you won't really be helping the client." So, she's not sure what to do.

In the GVV conversation, what we would say is she's already decided this is not what she wants to do, so people have to think about what might work. And we have them come back and share their scripts of things they would say. We have a set of questions we work them through where they anticipate

### WHAT IS GIVING VOICE TO VALUES (GVV)?

Despite all the internal and external pressures surrounding ethical decision making, some people do voice and act on their values, and do so effectively. So, what makes them effective? What do they do differently? They strategize and prepare. And then, they practice.

Much like athletes practice their sport, strengthening their muscles, improving their abilities and bolstering their chances of success, those who are effectively voicing their values in the workplace often rehearse different scenarios and script their conversation in advance. Like runners or weight lifters, they practice what they would say—out loud—building a sort of "ethical muscle memory," ready to face future ethical dilemmas.

This is exactly the kind of thinking that inspired Darden Professor Mary Gentile to create Giving Voice to Values, <http://www.darden.virginia.edu/ibis/initiatives/giving-voice-to-values/>.

Source: University of Virginia, Darden Business School

objections—we call those the reasons and rationalizations—and they also generate responses to them. We ask them to think about what's at risk for everyone involved. Not because they're doing a stakeholder analysis. They've already decided what they think is right. But rather so they can come up with a script that will help mitigate the risks of the people they're asking to behave in a different way.

**When dealing with thorny ethical situations at work, how often does a presumed need to call somebody out for being unethical create its own set of problems?**

There are degrees here. Having to rub someone's face in the fact that they're being evil is kind of a non-starter. If you wanted to simplify what GVV is about, it's about transforming these ethical challenges into problem-solving exercises so that everybody is involved with solving the same problem. Sometimes, I give these talks and there's someone who will raise his hand at the end and say, "I never have any problem voicing my values. I always speak up when something is unethical. Nobody ever listens, but I always speak up." If your goal is to feel righteous, that's fine. But if you really want to make change, then we need to frame these issues in a way that everybody is involved in solving the same problem together.

**Do you feel that there are any kinds of ethical challenges facing today's business environment that might be a little different from years past?**

Certain issues probably always are going to be with us. I always talk about the audience as [being on] the bell curve. On the one tail end, folks characterize themselves as opportunists, people who are motivated by their own self-interest, and it's not really about their values. And on the other tail end of the bell curve are folks who are idealists, motivated by acting on their values regardless of their self-interest. The majority of us fall under the bell. We define those folks as pragmatists who would like to act on their values as long as it doesn't put them at a systematic disadvantage.

The opportunists will always be with us. I'm really trying to target the pragmatists and give them the skills, scripts, practice, and positive examples so they feel more able and empowered to act on their values more often. The premise is that if enough of the pragmatists and the idealists get more skillful, it changes the water the opportunists are swimming in. Therefore, the calculus they do to determine what's opportunistic may change as well.

**MARY GENTILE, PHD**

**Title:** Creator, Director, Giving Voice to Values; Professor of Practice, University of Virginia Darden School of Business

**About the employer:** The Darden School of Business is the graduate business school associated with the University of Virginia. Giving Voice to Values is a curriculum piloted in nearly 1,000 schools, companies, and other organizations that offers practical exercises, scripts, and teaching plans for handling ethical conflicts in the workplace.

**Years of experience:** 32

**Areas of expertise:** Values-driven ethical and leadership training

**Quote:**

"Instead of presenting so-called ethical dilemmas, we should focus on situations where most of us would know what the right thing to do is but we just don't think it'll be successful, possible, feasible, or even well-received in the context where we're working. So instead of asking people to determine what's right, we ask, how would you get the right thing done?"

**Do you feel that those who get into this field specifically to become ethics and compliance professionals bring with them a more results-driven ethical awareness?**

In general, we seem to have a generation of folks who feel motivated to make a positive impact and have a kind of social mission motivation. That's great, and it's something we can tap into. A lot of times people say you can't do anything about [ethical challenges] until you're the CEO or in a senior leadership position. I used to hear that all the time from business school students. We would point out if you wait, you are assuming you are going to get to be CEO, which is a pretty big assumption. And, you're not going to be the same person if you behave differently for all of those years before you get to that senior position. There has to be a way to act early on. There are different strategies to use when you're in different positions, but you don't have to abdicate everything. **TM**

# MICHAEL Hershman



Michael Hershman, Group CEO of the International Centre for Sport Security, has fought corruption for his entire career, but nowhere is the challenge greater—or more rewarding—than in his quest to bring honesty and transparency to the world of professional sports.

BY BILL COFFIN

Group CEO

International Centre for Sport Security

# The game changer

**M**ichael Hershman's professional record speaks to a long history of fighting corruption in the halls of government and on the fields of international development. His journey started with roles at both the New York City Department of Investigation and the New York State Special Corruption Prosecutor's office looking into crooked police, judges, and corrections officers. After that, he worked as an assistant general counsel for the Senate Watergate Committee investigating corruption in the highest office of the land, as well as in campaign finance. After that, he became the chief investigator for the Federal Election Commission, but that is where his domestic anti-corruption work ended and where the next phase of his career—his international phase—began.

## **At what point did your career shift to an international fight against corruption?**

It changed when I accepted the position as the deputy inspector general at the Agency for International Development, in charge of investigations, audits, and security. This was at the time of the passage of the Foreign Corrupt Practices Act, so I was in government talking to the people in Congress while they were formulating the FCPA. At the same time, I was traveling around the world and looking at development projects and noticing that much of the money that was going toward development was being diverted into the hands of crooked politicians and government officials. The system was contaminated by corporations that wouldn't think twice about bribing to get a foreign construction or telecommunications contract. It really was an eye-opening experience for me because for the first time, I witnessed the devastating impact of this type of corruption on the daily lives of people in desperate need of health services, education, and jobs. These were folks that often were never getting the benefit of economic development funds from the United States, United Kingdom, Japan,



and elsewhere. Millions of dollars would be spent to build a hospital, and I would go there and find a hole in the ground.

## **Was the level of corruption you witnessed internationally something you expected, or did it come as a surprise?**

I had been through the Watergate affair as well as a House investigation, which became known as Koreagate. So, it's not like I was naïve. But what really blew me away was the impact it had on the everyday lives of people who were very unfortunate in terms of their standard of living. At that point I decided to see if I could improve the fight against corruption from the outside. So, I formed a company called the Fairfax Group that consulted with governments and businesses on compliance and governance. But that still wasn't enough, so

I came together with a group of friends from around the world and, in 1993, we formed Transparency International, which has become one of the leading NGOs on issues related to anti-corruption, transparency, accountability, governance, and compliance, with more than 100 chapters around the world.

I got into a cycle where I spent half my time on commercial work—working with governments and businesses on issues related to transparency, accountability and anti-corruption—and half my time on NGO activities. But I had never worked in the area of sports. In fact, I didn't even think about the possibility of corruption in sports. Of course, I had read stories about individual sports figures getting in trouble, but I never really looked at sports as big business.

When I was asked to join the independent governance committee at FIFA [the Fédération Internationale de Football Association] in 2012, I figured, I'll go in and help reform FIFA as I did with other organizations. But much to my surprise, I ran into a bit of a brick wall, because here was a multibillion organization with no incentive to reform.

**It seemed like at that time, FIFA had become so used to bribery as a business model that it didn't even think it was doing anything wrong.**

Sports organizations in general regard autonomy as their most precious possession. And they are very reluctant to take advice from outsiders. The other thing I began to realize working at FIFA is that sports is a trillion-dollar industry and, in many instances, sports organizations have no oversight and very few regulations governing their operations or behavior. FIFA's scandals really led them to circle the wagons and say look, we can self-regulate and reform ourselves. That was so atypical of the organizations I'd worked for in the past. They did not have the technical expertise nor the willingness to reform. And so, after two years, our committee simply dissolved itself. Of course, the following year, over 40 [bribery] indictments came down. But this is what opened my eyes to the world of sports, and I decided then and there to bring a greater degree of transparency and accountability to sports.

After my experience at FIFA, I was asked to join the advisory board of the International Centre for Sports Security. They were doing a lot of work on safeguarding major sporting events, but because of the evolving scandal, they wanted me to help devise a program to improve honesty within sports—match fixing, doping, a series of ills that are infecting the sports community. I recommended that they create the set of

global principles and standards that is now called the Sports Integrity Global Alliance. That is an independent non-profit that has its own board of directors and over 80 members, including sponsors like MasterCard, Dow Jones, and the Commonwealth Games. Last year, after serving for two years on the board of advisers, the founder of ICSS asked me if I would step in to the role of global CEO.

**Does the unique relationship between people and sports make it more challenging to promote ethics, transparency, and accountability within sports itself?**

The largest constituency in the sports industry are the fans. Fans need sports. They love sports. In many respects, they live for sports. Unlike in a typical corporation where you have stakeholders that can choose whether to buy your product based on if they think you are a good corporate citizen, you don't see a lot of fans turning the television set off because they read in the headlines about the latest match-fixing scandal or administrative corruption. They might find themselves a bit disillusioned, but it doesn't really stop them from enjoying the sport or from supporting their favorite athletes.

Here's why it's critically important. Look, I played sports as a kid, and sports helped me develop a set of values: teamwork, fair play, not always about winning and losing. The world of sports has changed through commercialization. We're not going to be able to take the money out of sports. But I'd like to see a little bit of those values—and the purity of sports—brought back into the game. I'm finding it to be an uphill battle, but one that I've dedicated myself to.

**Do some sports have a more inherently honest culture than others?**

The sports where I see the biggest problems are the ones where I see the biggest money. Football (soccer), cricket, basketball, baseball, [American] football. The sports that are most influenced by big money are the ones that seem to have lost the greatest amount of purity or have a broken ethical compass. Sports like running, it's not like they've been immune to controversy. There's been doping and cheating in major races, but by and large, it's not one of the big money sports.

I was at Rio for the Olympics. I'll never, ever, ever forget the scene where the two women runners collided. A New Zealand runner and an American runner, and the New Zealand runner stopped to pick up the American runner and help her. That's what sports are supposed to be about. Neither one of them

could make it to the finish line in time to qualify, but it was such a stunning moment, they were both allowed to advance to the finals. That scene will remain in my mind forever.

**A lot of ethics and compliance officers fight their own uphill battles within their organization or their industry. What would you say to them?**

There is hope, but let me give you an illustration of where we have been our own worst enemy. The worst phrase that has been invented in compliance, in my judgment, is “tone from the top.” Every top executive understands what he or she must say to give a good impression of transparency and accountability. But it’s not about tone from the top. It’s about actions from the top. Because to say the right words and to turn around and do the wrong thing is a catastrophe when you’re trying to change or promote a certain culture within a corporate environment.

Where do I see us as having success? There is a new breed of corporate executives coming up that wants to do the right thing not because they’re afraid of the FCPA or the SEC, but because it’s the right thing to do. And you can tell by looking at not only the support for their compliance programs, but the support for their corporate social responsibility programs, which are run professionally and independently, without influence from senior managers. You know you’re dealing with companies that really do care.

Also, I see a lot of college students [at speaking engagements] around the country. Ten years ago, when I saw students getting ready to graduate, they would come up to me asking if they could send me their résumé; they’re looking for a job on Wall Street, they spent a lot of money on school, and it’s time for a little payback. Now, when I go up to the same students, they ask me how can they can be assured that the company they work for has the same high standards and values that they hold dear. That is a sea change in attitude.

**At what point can the presence of big money in sports actually help to make things more honest?**

I think that in general, sponsors have a critical role to play to promote integrity, transparency, and honesty in sporting organizations, whether it be FIFA, the IOC, the NFL, the NBA, etc. If the sponsor has a relationship with an athlete like Tiger Woods or Lance Armstrong, and they go wrong, the first thing they do is pull their contract under a general morality clause. But if FIFA goes wrong, where are the voices of the sponsors? Let’s not forget, all of these sponsors—Coca-Cola, Nike, and so on—have these wonderful compliance programs

**MICHAEL HERSHMAN**

**Title:** CEO, International Centre for Sport Security

**About ICSS:** The ICSS handles security for large sporting events and is also dedicated to increasing the levels of honesty and transparency within professional sports.

**Years of experience:** 45

**Areas of expertise:** Governmental and organizational fraud and corruption

**Quote:**

“The worst phrase that has been invented in compliance is ‘tone from the top.’ Every top executive understands what he or she must say to give a good impression of transparency and accountability. But it’s not about tone from the top. It’s about actions from the top.”

that make sure their partners uphold the same level of standards. But because of the huge economic gains [of major sporting events], they’ve been reluctant to put pressure on the sports federations, teams, and associations.

The sponsors need to come together in a collective fashion, because they’re always more powerful in a group than alone. And that’s what we’re doing with the Sports Integrity Global Alliance: bringing together all stakeholders, including the sponsors, to agree to a global set of principles and to use their influence to promote and implement those principles.

**Still, that can’t be easy. Nobody likes calling out their favorite sport for being dishonest.**

The work that we do in anti-corruption is lonely work. No one wants to be our friend. I understand and realize that there can be huge frustrations, and that people in this industry can get a feeling of hopelessness. The support circle surrounding our anti-corruption community has been growing steadily, though. Talk to your colleagues. Find out what they do to move the ball forward (no pun intended). But don’t ever expect that the work you do will make you the most popular person in the company. **TM**

# SEAN McKessy



Sean McKessy spent several years at the SEC building its whistleblower protection program, putting in place an incentive program for paying whistleblowers, and creating a new way for the SEC to break cases.

BY TAMMY WHITEHOUSE

Partner

Phillips & Cohen

# The whistleblower king

**T**he popular view may hold that companies and regulators are on opposing sides of most issues, but their interests really are not all that different, says Top Mind Sean X. McKessy.

“The idea that regulators and regulated entities are somewhat at loggerheads is a little overstated,” says the whistleblower attorney, who is a partner at law firm Phillips & Cohen. In fact, both sides have a vested interest in combatting fraud and facilitating capital formation. Both sides want to see investors emerge as the winners in capital markets.

McKessy would know. After building the whistleblower program at the Securities and Exchange Commission as mandated under the Dodd-Frank Act, he now represents whistleblowers who want to come forward and expose corporate wrongdoing. Before that, he began his career as a litigator at the SEC, then spent several years at different companies acting as in-house counsel. So, he’s quite familiar with looking at compliance from both sides of the regulatory desk.

“In my experience, people working in-house really have the same objective as regulators,” he says. “We all want markets to work on a level playing field so that fraud does not become the norm.”

That may form the baseline of what unites regulators and the regulated, but that common view was not on most people’s minds when McKessy was hired in early 2011 to serve as the first chief of the SEC’s Office of the Whistleblower. Instead, he remembers a great deal of “apocalyptic rhetoric” saying that a program that would pay bounties to whistleblowers would be ruinous.

“You had corporate America saying the SEC was trying to destroy the compliance programs they had mandated be created under Sarbanes-Oxley,” he said. “And you had the whistleblower counsel saying if the SEC decides to mandate internal compliance reporting, no whistleblower will ever come forward. But it seemed to me things weren’t as black and white as that.”



McKessy considered it a “fascinating opportunity” to form a brand-new program that had the potential to be a game-changer in terms of the ability of both regulators and regulated entities to sniff out wrongdoing. When he began his job at the SEC to assemble a whistleblower program, he remembers the puzzlement he encountered.

“Friends and people of goodwill wondered if I’d lost my mind to take on a challenge like this,” he says. “But there were two ways it could go—really well or maybe not get off the ground.”

## Getting off the ground

When McKessy began his work to form a whistleblower program that would pay bounties as directed under Dodd-Frank, he knew he had his work cut out for him in terms of answer-

ing the concerns of all the critical players. The SEC wanted to incentivize tipsters, but companies did not want to see tipsters incentivized to bypass internal corporate compliance processes to win rewards.

"I was securities counsel at a public company when Sarbanes-Oxley was passed into law, so I had a front-row seat" on what it meant to build up a compliance function in accordance with the new law, he says. "So I understood some of the rhetoric around concerns about destroying internal compliance. Companies had invested financial and emotional capital into trying to build state-of-the-art compliance functions."

That told McKessy it would be important to structure potential rewards in a way that would incentivize whistleblowers to first report internally before taking their allegations directly to the SEC. Ultimately, the program as enacted allows someone to report wrongdoing internally while still preserving their right to a bounty, he says, making it one of the first government-sponsored programs to do so.

That answered the criticisms of skeptics on both sides of the regulatory aisle. "The SEC did a nice job of threading the needle between two forces," he says. "Not mandating reporting, but building in powerful incentives."

Another somewhat controversial feature of the program is the awarding of bounties even to wrongdoers themselves who report. On one side of the coin, it seems counter-intuitive to reward people who come forward confessing to illicit behavior. On the other hand, it may draw out tips that would otherwise remain concealed.

"If someone at a company where you have a significant investment is participating in wrongdoing, would you prefer they come forward, or keep it secret and have your stock become as valuable as WorldCom or Enron?" he asks. "It's a truism that sometimes the way to get to the real bad guys is to get people at the lower end of the fraud who were somehow forced to participate in it. I had an appreciation for both sides of the story."

Again, the SEC managed to thread the needle, McKessy says, by enabling low-level players to report wrongdoing but not permit absurd outcomes where masterminds of elaborate schemes would beat the rap and collect monetary rewards for doing so. "The prosecutorial reality is, sometimes to get the big fish, you have to get the little fish to come forward."

### **Payouts and confidentiality**

After various proposals and deliberations, the SEC settled on a program that would pay whistleblowers from 10 percent to 30 percent of the money collected when the monetary sanctions as a result of a successful enforcement exceeded \$1 million. Payments are made out of an investor protection

fund established by Congress and financed entirely through sanction proceeds.

It was clear early on, McKessy says, that to win over skeptics, the program had to go from start-up to first payout as quickly as possible. That's no small task when it comes to the investigative and procedural realities of enforcement activities. Quick is not an adjective often used to describe the litigation process in the United States.

"I could talk until I was blue in the face about the benefits of the SEC whistleblower program, but if there wasn't any money going out the door, my talk would become cheaper and cheaper," he says. When he would speak in public in the early days of the program, the first question he would hear was "How come you haven't paid anyone yet?"

It only took a little more than a year for the first award to be paid, McKessy said. "One year, one week, and two days," from the tip being given to the SEC to an enforcement order being issued and an award being paid. "I was acutely aware of the timing," he says.

Indeed, that would be a quick result by anyone's measure of the normal pace of legal actions, but that didn't stop the questions. "Then, when I would speak in public, the first question I would hear was 'When will you pay someone else?'" It was a major achievement but, once you feed the beast, it needs to continue to be fed."

In addition to fast payouts, the program had to ensure confidentiality for whistleblowers, says McKessy. Dodd-Frank required it, in fact. "One of the things we heard early on is the biggest currency you give to a whistleblower is not money, but a way that they can report something and not be fired or ousted inappropriately."

That meant significant controls and procedures around how information provided by whistleblowers would be used and shared. "There were a number of procedural things that had to be built and internalized across the agency," he says. "We spent a lot of time internally making sure the staff understood, although they were not cavalier about identifying the source of information provided to them, now they had a statutory mandate."

### **Measuring success**

McKessy says he wasn't sure exactly how to measure the success of the whistleblower program as it got started, but he believed over time it could be measured intangibly by the amount of attention the awards would receive.

He expected plenty of attention to the early awards, and he was not wrong there. The early awards under the program received heavy media attention, he recalls.

But he knew the types of awards had to evolve to keep

the momentum going. There needed to be awards not just for those in the know, but also for those who had some culpability to demonstrate the full scope of the program. There also needed to be actions against retaliation under the anti-retaliation provisions of the program. When the SEC brought its first enforcement against a company that punished a broker for making allegations, that sent a message, McKessy believes.

There are still additional steps that could be taken to further incentivize whistleblowers, he says. If the timing could be reduced to shorten the time it takes to go from tip to settlement, that might encourage more to come forward. If the transparency around the process could be improved to give tipsters and the general public more insight into what happens to tips, that might also encourage more calls to the whistleblower line, he says.

Ultimately, McKessy says, he believed the program would be considered a success when awards would begin to get less attention. "We will know the program has arrived when the SEC announces a whistleblower award and it gets little to no publicity," he says. "That will show that awards are becoming part of the common thought process."

When McKessy left the position in mid-2016, the SEC was putting out notices of "what I thought were fairly significant message cases," and they received almost no publicity. "This is exactly where we wanted to be. We wanted to be in a position where it became routinized—that the whistleblower program is there and they pay people."

### Where to next?

Indeed, the SEC whistleblower program has been plenty active in rewarding those who report information that leads to successful enforcement actions. By early 2017, six years after McKessy began his work, the SEC had vetted tips that led to awards of nearly \$150 million among 41 whistleblowers.

It's impossible to say if any of those enforcement actions might have occurred if not for whistleblowers stepping forward under the program, but that's 41 actions the SEC attributes directly to the incentivized tip-sharing process created under McKessy's leadership.

McKessy left the SEC in mid-2016 for reasons that had nothing to do with the program or the SEC. "My son is off to college next year, and I have two more in high school, in the college pipeline," he says. "Economically, I needed to be in a position to make more than I was making." He's the prototypical active dad shuttling kids from soccer to ballet and everything in between—even doing some coaching along the way.

With significant defense bar experience, he decided to ex-

## SEAN MCKESSY

**Title:** Partner, Phillips & Cohen

**About Phillips & Cohen:** A nationally and internationally recognized firm representing exclusively whistleblowers under programs with the Securities and Exchange Commission, the Commodity Futures Trading Commission, and the Internal Revenue Service, as well as cases under the False Claims Act.

**Years of experience:** 30

**Areas of expertise:** Applying federal securities law by leveraging and protecting the contributions of whistleblowers

### Quote:

"You had corporate America saying the SEC was trying to destroy the compliance programs they had mandated be created under Sarbanes-Oxley. And you had the whistleblower counsel saying if the SEC decides to mandate internal compliance reporting, no whistleblower will ever come forward. But it seemed to me things weren't as black and white as that."

plore some new career options. Now McKessy is a partner at law firm Phillips & Cohen, which is focused on casting light on whistleblower allegations. The firm has a long track record of airing the information provided by whistleblowers as a means of promoting compliance and investor protection. He represents whistleblowers to assure their tips are appropriately investigated while guarding against retaliation.

As an attorney now in private practice, the essence of his work is really no different than it was at the SEC, he says. "It seemed like a hand-in-glove philosophical fit," he says. "It was exciting to think that this was a phase of my career where I could continue to help what I'd started."

He's hopeful history will look back on his work and see it as having a lasting impact on compliance. "Maybe the SEC whistleblower program can have as one of its long-term legacies that it changed the way people think about whistleblowers—bringing them out of the shadows and removing the stigma," he says. "I want to continue to be part of that story." **TM**



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