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Harnessing an ethical and compliant culture:

Challenges & Opportunities

An e-Book publication sponsored by NAVEX GLOBAL® The Ethics and Compliance Experts

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Inside this e-Book

Resolving compliance and HR turf wars

Jaclyn Jaeger looks at ways to foster cooperation between compliance and HR.

At many firms, gaps in communication and collaboration between Compliance and HR persist. "If HR and Compliance could come together and realize and accept that they're on the same team, and that each is really critical to identifying and managing, investigating, and responding to employees' concerns, it could be a really powerful alliance," says Carrie Penman, CCO of NAVEX Global and senior vice president, Advisory Services.

New research conducted by LRN finds a strong correlation between companies with highly effective compliance programs and the degree to which compliance officers in those companies use HR data to further their ethics and compliance goals. "There is a significant difference between less effective programs that don't use that data nearly as much," says Wayne Brody, senior knowledge leader for LRN.

Brody adds that firms with highly effective ethics and compliance programs are more than twice as likely than those with less effective programs to use HR data when conducting an enterprise-wide risk assessment, or when assessing the efficacy of the program.

One example is employee turnover data, which can often be a powerful clue for CCOs. "The places where you have very high turnover often suggests that there is a management issue that has to be dealt with," Brody says. In that particular business unit, employees may not be speaking up, which may be contrary to the goal of the compliance function, he says.

Without communication and collaboration among all departments (not just Compliance and HR) the company lacks a unified view of several processes important to building a strong, ethical culture. In a previous compliance role, Penman says, "I used to meet every two weeks with Audit, Security, Legal, and HR, and we used to review every case that came to us at the corporate level."

By looking at issues together, Penman says, "we started to pick up patterns and trends a whole lot quicker, which would help us identify if we had a location or business operation that might have had a management issue, a leadership challenge, some brewing problem, or hot spot that we needed to focus more corporate attention on."

"Particularly in settings where you have less effective compliance programs, those functional silos create obstacles toward building an ethical culture," Brody says. "Where you don't have those obstacles, you see all kinds of meaningful results."

The results of exit interviews also can provide a wealth of information, and even more so when Compliance can participate in the design of the exit interview questionnaire, Penman says. Some questions to consider, for example: Did you observe any misconduct? Did you raise an issue without fear of retaliation?

Compliance and HR also have an opportunity to compare side-by-side their overall objectives and think about where they can cooperate. "Are they going after the same objective, but with a separate policy?" says Mike DiClaudio, director at Towers Watson. The opportunity is there, he says, to put both groups in the same room to understand what they're trying to solve, what legislation and corporate policies they're trying to comply with, "and come up with a shared view on how they're actually going to achieve that," he says.

Both functions can take the same approach when it comes to their respective reporting requirements by understanding where overlaps might exist in that area as well, and finding ways to share data. "It helps illuminate the governance between these two functions," DiClaudio adds. "It'll give you a pretty good line of sight into where some opportunities might be to streamline that relationship and really define boundaries a little bit more closely."

Training and development is another area where both functions share common goals. This means training not just employees, but also middle managers to ensure they know what to do when an employee reports a problem or concern. Furthermore, "a Code of Conduct course may have HR elements that would supplement some of the other HR-related training," Penman says, so sharing feedback about employee training is helpful, she says.

Compliance and HR should also have equal oversight of the company's whistleblower hotline. "HR is sometimes reluctant to share outcomes of cases, even cases that come directly from the hotline," Penman says. That can put Compliance in a bad spot, because employees are going to hold Compliance accountable for resolving any issues that come into the hotline, "so they have to stay involved in the outcome," she says.

Compliance can be equally reluctant to share data of its own, such as in the case of internal probes. As Debra Torres, chief ethics and compliance officer for PepsiCo, said at the Compliance Week 2015 conference, "HR has wanted to get access to our system, but we've been somewhat resistant to that."

The hesitation, she explained, is that "the majority of allegations are not substantiated. To protect the confidentiality of people who ultimately aren't found to have done anything wrong, we don't want people outside Compliance to have access to that material."

Monitoring for issues like retaliation, however, is one important objective that can be achieved if Compliance and HR can learn to collaborate, "because there's an opportunity to get a much more holistic view of what's happening in the organization," Penman says. For example, what are the types of issues Compliance and HR see? Where are those issues arising? Do those issues collectively signal a leadership issue?

"It's just going to take some hard work on building a relationship and understanding that there's an organizational need for these two groups to get along," Penman says. "We have to get over the turf battles and recognize that we're working for an organization where we're accountable for dealing with employee concerns and responding to them and investigating them—and we can do it together." ■

ALIGNING HR, ETHICS & COMPLIANCE

Below is an excerpt from NAVEX Global's "Five Key Steps to Aligning HR, Ethics, and Compliance."

Recognize the stakes: Assess your current status. Identify the risks—legal, ethical, and reputational—that are increased by a continued lack of efficient cooperation. Also, understand that your board and government regulators will have little sympathy if your turf battles result in a compliance failure.

Assess the current structure: Identify and map all the various parties in your company that have assigned ethics and compliance responsibilities—it's probably more than you think. You can't improve the status quo until you know who the players are. Once you're done, ensure the structure promotes the ability to work in an integrated and coordinated fashion.

Learn the lingo: It's essential that all parties have a working knowledge of the key laws, requirements, and acronyms commonly used by each function. Start by creating a glossary. It's an easy way to avoid misunderstandings later and helps to ensure consistency across all related policy documents.

Leverage communications & training expertise: Consider developing a "curriculum map" for ... key training areas—a comprehensive training plan that defines appropriate target training groups, sequences the training to cover necessary topics, and ensures adequate refresher courses, while at the same time not overwhelming the learners or your resources.

Ensure there are multiple avenues for employees to raise concerns: Don't fall into the turf battle trap on "whose issue" it is. Instead, appreciate that the employee raised it internally and not to a regulator. What is most important is having a combined case management system that provides leadership visibility of cases from all of the available reporting avenues.

Source: NAVEX Global

Mitigating third-party risks

Many companies struggle with how to achieve full transparency into the breadth and depth of their third parties, exposing themselves to significant legal and compliance risks, says **Jaclyn Jaeger**.

Most companies by now understand the escalating risks that third parties pose to their business and are ramping up their third-party risk management efforts accordingly. Even still, many struggle with how to achieve full transparency into the breadth and depth of their third parties, exposing themselves to significant legal and compliance risks.

Global companies must closely monitor thousands—if not tens of thousands—of third parties to ensure each one adheres to the company's business practices. It should come as no surprise, then, that many still get stuck on the first step toward effective vendor governance—identifying all the vendors the company uses. According to a third-party risk management benchmark report conducted by NAVEX Global, 11 percent of 321 respondents polled said they still don't know how many third parties they manage.

"As a first step, you've got to figure out who your third parties are," says Randy Stephens, vice president of advisory services for NAVEX Global. "If you don't know who is representing your company, then you cannot possibly assess risk accurately."

This means paying attention to not just traditional third-party relationships—agents, suppliers, distributors, and joint ventures, for example—but virtually anyone who represents the company. These third parties might include consultants, service providers, suppliers' suppliers, dealers and resellers, sub-contractors, and more.

At many companies, different departments, units, and locations all have preferred vendors and suppliers, so it makes sense to pull together an inter-departmental team that includes regional and business leaders—risk, compliance, legal, HR, and procurement, for example—to identify the size and scope of your third-party universe. Assembling an initial inventory of third parties involves leveraging multiple databases from multiple business units.

Develop a matrix

After compiling a master list, the next step is to separate high-risk third parties from low-risk third parties to better manage the third-party risk management process.

Criteria used to assess and rank the risks associated with each third party will vary by company and may include:

» Country of operation where service is provided
» Nature of third-party relationship and services provided
» Type of industry
» Length of the third-party relationship
» Degree of involvement with foreign government officials

While many companies are still building a comprehensive third-party risk management program, most (68 percent) are conducting at least basic screening of their third parties prior to engaging with them, according to the NAVEX Global report. Furthermore, companies that use an outsourced provider to help manage their third-party due diligence programs also reported significantly higher program satisfaction ratings than those who do not.

These higher satisfaction ratings apply across multiple areas, including:

» Compliance with legal and regulatory demands: 78% compared to 65%
» Ensuring a culture of compliance: 65% compared to 44%
» Documentation management: 49% compared to 41%
» Program defensibility: 52% compared to 41%
» Overall program: 53% compared to 32%

According to the NAVEX Global report, the top external challenge relating to third parties—cited by 51 percent of respondents—is getting them to certify compliance with the company's policies. The second and third top challenges were "training third parties on our policies and compliance requirements" and "getting third parties to enforce our ethics and compliance policies in their organizations," cited by 48 percent and 41 percent of respondents, respectively.

> "If you don't know who is representing your company, then you cannot possibly assess risk accurately."
>
> Randy Stephens, VP of Advisory Services, NAVEX Global

Stephens recommends selecting a sample of your highest-risk third parties and asking them to provide a syllabus of the types of training they provide their employees. "To the extent that they don't conduct their own training, provide them with online training," he says.

An effective third-party risk management program, the NAVEX Global report stated, should include standardized documentation, recordkeeping methodology, timelines, well-defined expectations in terms of behavior and communications, and an ability to reassess engagements on a continuous basis.

Once a company has mapped out its total universe of third-party relationships, it's important to continuously monitor third parties to ensure that you are catching and addressing any new risks.

"You don't want to do that with all your third parties," says Todd Boehler, vice president of product strategy for GRC software provider ProcessUnity. "You only want to do that with the ones that you deem as posing the most risk to your business."

Companies generally discover "red flags" or other potentially negative third-party information via multiple channels, but the most common way is through internal due diligence monitoring, as cited by 62 percent of respondents in the NAVEX Global report.

Ranking second, 41 percent said they discover such issues through regulatory or legal action, "which may indicate that many organizations fail to use screening mechanisms and safeguards," the report said.

Some third-party risk-management solutions automate the assessment and monitoring of a company's third parties, screening for issues related to sanction and watch lists, politically exposed persons lists, and adverse media, for example. "It would be very difficult for individuals to look through that amount of data," says Stephens.

Even when organizations get all of their third parties to certify compliance with their policies, those same organizations go back to square one when new service providers come on board, says Stephens. That's where an automated process can best serve companies with respect to monitoring and auditing.

Furthermore, the NAVEX Global report found that companies that use an outsourced third-party due diligence provider discover more "red flags" or other potentially negative third-party information than those who don't. They uncovered, for example, more politically exposed persons, government investigations, adverse media reports, and more.

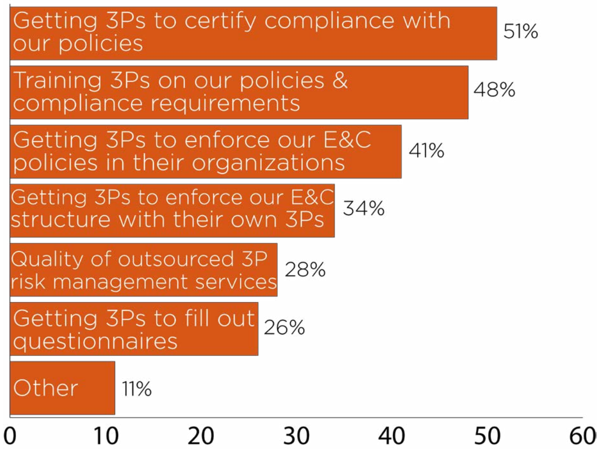
Other avenues of continuous risk mitigation may include performing additional due diligence, exercising audit rights, providing third-party training on topics such as anti-bribery and conflicts of interest, and requesting annual compliance certifications.

One area where there is significant room for improvement is getting Ethics and Compliance better aligned with advances in analytics and technology, whether that means other parts of the business working closer with the compliance department, or seeking the help of outside experts to drive analytics. "It's the biggest challenge, but it's also the biggest opportunity," says Don Fancher, national and global leader for Deloitte's forensic services.

An emerging best practice in this space is being able to effectively track and analyze both internal data—such as financial information and contracts—with external data, including from third-party vendors or third-party suppliers, says Fancher. Organizations that analyze all this data combined can better identify specific risks "not only as they may be happening, or historically as they have happened, but, hopefully, you can actually begin to see predictive scenarios of where risks may emerge," he says.

By using analytics to predict what risks an organization company may face, Fancher says, "that can go a long way toward averting a bigger problem, or even avoiding a problem altogether." ■

What are the top external challenges for your third-party risk management program?



Source: NAVEX Global

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Creating an organizational culture of ethics, integrity & compliance: 10 steps to success

By **Mary A. Bennett**, R.Ph. | Vice President, Advisory Services, NAVEX Global

A culture of integrity must be intentionally shaped. A strong ethics and compliance program, built on an organization's values and principles, is the bedrock for creating a culture that is focused on outstanding quality and business outcomes.

An effective E&C program consists of several core elements that operate together to prevent, detect and correct problems.

Eight of these elements have become the gold standard for compliance programs in all industries and have been embraced by standard-making bodies worldwide.

Two others have emerged in practice as key additions to boost program effectiveness.

1. CONDUCT AN ETHICS & COMPLIANCE RISK ASSESSMENT

The ability to create and maintain a culture of integrity starts with identifying and understanding the risk factors that may threaten that culture. Such a risk assessment should be a formal, repeatable, comprehensive, forward-looking process that leverages the experience and expertise of internal leaders and subject matter experts across the organization.

Some risks—like the risk of unethical employee behavior—are common to all organizations. But each organization also needs to look at those risks that are unique for a particular industry, geography or other factors.

This risk assessment process should also reveal any weaknesses in the control environment that must be addressed to strengthen the prevention of misconduct.

After an assessment, risks should be prioritized based on likelihood and magnitude of potential misconduct, and viewed through the filter of current risk controls.

While an E&C assessment can be completed by the compliance team alone, there are advantages to it being part of an enterprise risk management (ERM) assessment process. But whether the E&C team completes the risk assessment on its own or as part of ERM, compliance officers must play a key role in the work to ensure that ethics and compliance risks are surfaced, understood and addressed.

2. CREATE STRUCTURE, OVERSIGHT & OWNERSHIP

The E&C program must have a designated owner. This owner is often called the "compliance officer" or, even better, the "compliance and integrity officer" to denote that the program is about doing the right thing, not just legal compliance. This person should be a well-qualified and respected member of senior management with direct access to the organization's governing body, and with reporting responsibility to the top tier of executive management.

Note that naming a compliance officer as program owner does not mean the program belongs to one person. Every person in an organization bears some responsibility for ethics and compliance, especially all levels of management, but the compliance officer is in charge of creating an effective program structure and procedures and for being a key resource to the workforce on all E&C matters.

The program should also include a high-level management compliance committee. Chaired by the compliance officer, the committee's role is to advise the compliance officer and assist with program implementation. The work of the committee includes:

» Analyzing the industry environment and specific risk areas
» Assessing and recommending improvements in the system of risk controls (e.g. policies, training, monitoring and risk ownership)
» Developing a system to solicit and respond appropriately to problems
» Other activities related to the strategy and operation of the program

A program designed specifically to prevent, detect and mitigate employee misconduct in a variety of risk areas is a high stakes endeavor. It must be overseen for effectiveness at the top level, which is generally the organization's governing body or board of directors. The compliance officer must have access to the board or board committee and periodically report to this group on the status of the E&C program and related matters. It is the duty of the board to ensure that the E&C function has appropriate resources to maintain an effective program and that the compliance officer's responsibilities and authorities are formally established, typically through a board-approved charter.

3. IMPLEMENT WRITTEN STANDARDS & PROCEDURES

As the highest level set of standards in an organization, a code of conduct lays out the risks, rules, responsibilities and resources that govern workplace behavior. The code applies to all employees, and to those who do work on the organization's behalf. It is an important vehicle for communicating executive management's clear commitment to a culture of ethics, integrity and compliance. The document should state the organization's mission, goals, values and behavioral standards—plus the requirement for applicable staff to adhere to their professional codes of conduct. The risks that are addressed in the standards and related documents should track with the organization's risk profile, with more attention being given to the organization's unique high-risk topics, such as harassment, health and safety and conflicts of interest.

An organization must also have written policies and procedures that address specific risks and expected behaviors for each function or department. Crafting and updating policies—especially those that must be adapted to different risk groups—is not an easy task. Many organizations use a software solution to partition policies by department, and for easy policy retrieval, authoring, review, approval, distribution and user attestation. Such a system can track and report on tools for evaluating and reinforcing policies, such as:

» Quizzes
» Surveys
» Non-compliance alerts
» Disclosures
» Reviewer/approver tasks
» Exception requests
» Policy versions and updates

A 2016 survey[1] has shown that E&C programs with automated policy management systems are significantly more likely to rate their program as more effective than those who manage this process manually.

4. CONDUCT APPROPRIATE TRAINING AND AWARENESS

Organizations should require specific compliance training on a periodic basis for all employees and appropriate contracted staff. This is essential to communicate and reinforce values and standards, to meet legal obligations and to mitigate legal, reputational and operational risks. And training can help change behavior and reduce instances of wrongdoing through prevention.

The process for building an effective training and communication plan begins with the list of risks and related policies identified by the risk assessment. Determine the audiences needing education in each risk area, and the depth and frequency of training needed based on their jobs and risk exposure. Then determine education methods and create a multi-year training calendar. In many cases, training is not a "one size fits all" endeavor and the most effective training is tailored to the different audiences' roles and functions. For example, FCPA training for an hourly cashier in a Nebraska retail location will be less risk-related than that training for supply chain managers with contacts in China.

A typical curriculum may include a blend of live and online training, supplemented with newsletter articles, staff meeting reminders, posters and/or short-form training, such as five-seven minute interactive videos. Online or mobile device training can also be linked directly to policies and vice versa through policy management software.

5. INTEGRATION WITH HUMAN RESOURCES

The leaders of successful organizations are keen to make sure the people they hire are ethical, abide by the law and are not incentivized to behave otherwise. This is why Human Resources ("HR") is an important E&C partner. HR will conduct pre-employment background checks and will typically assist E&C staff with conducting specialized checks, depending on industry. In the best situations, these checks are repeated for promotion candidates along with a deep review of the candidate's internal organizational history.

Additionally, HR generally works with E&C to add compliance and ethics elements to performance criteria and also to ensure that incentive compensation programs do not motivate misconduct. At the conclusion of employment, HR-administered exit interviews can be used as tools to detect previously unreported misconduct.

6. DEVELOP OPEN LINES OF COMMUNICATION

It is critical to offer employees a confidential, safe way to report problems and issues. Fear of retaliation is one of the most common reasons that staff refuse to speak up about poor care or other misconduct.

Organizations should encourage open-door reporting to management. There should also be an open line of communication directly to the compliance officer and the management compliance committee. Some staff may feel more comfortable taking issues straight to the compliance professionals. Additionally, anonymous routes of reporting should be provided in areas where anonymity is permitted. This is commonly a toll-free helpline and a web-based reporting system, which complies with local data privacy laws.

Combat skepticism and improve workplace culture by publishing anonymized or sanitized reports of issues that have been addressed. Not only does this demonstrate that the organization hears and takes such reports seriously, it also provides another way to educate staff on what is and is not accepted behavior—and how the organization will handle conduct that steps over the line.

7. CENTRALLY MANAGE ALL REPORTS & ALLEGATIONS

Reported E&C concerns should all be added to a centralized database. That database should also collect the helpline and/or web-reported cases, plus those that come directly to compliance staff, organizational managers and other functions such as HR or Legal.

A good case management system enables consistent data collection from multiple departments, geographies and people. Use of one central system allows compliance professionals to complete an aggregate analysis of the collective compliance issues across the organization so that data trends can inform improvements in policies, training, monitoring or processes. Connecting data from various parts of the organization can also be an important tool in detecting and correcting broader problems.

8. RESPOND CONSISTENTLY & APPROPRIATELY TO ALLEGED OFFENSES

When questions or concerns of misconduct are raised, it is critical to address them in a consistent and timely manner. Such reports cannot be ignored or discounted without inquiry or left to languish for long periods of time, otherwise reporters may assume it is useless to speak up because nothing will be done. Case managers must respond to all reports within a short timeframe to make sure the reporting employee knows that the complaint was received and is under review.

Case managers will typically triage cases based on the type of issue and determine—often along with the compliance officer or others—whether the issue can be handled directly, or if an investigation is warranted. All investigations should follow a written protocol or process to ensure consistency and to alert, consult and involve the right people. The best protocols include steps to acknowledge the report and to notify reporters when a matter has been closed.

Investigators should have the training, expertise and subject matter knowledge to conduct an effective investigation. Depending on the allegation, organizations may consider engaging outside resources—such as lawyers or auditors—to assist with certain investigations.

A written policy should guide disciplinary action for misconduct and for potentially failing to detect a violation due to negligence. A consistent, impartial approach to discipline sends the key message that disciplinary action is fair, no matter the role, relationships or level of employee. Any necessary disclosures to outside law enforcement or government agencies must be done within a reasonable time period. Other corrective action, such as changes to control mechanisms (policies, training, monitoring, risk ownership) should also be implemented in a timely manner, as well.

9. AUDIT, MONITOR & ADAPT AS NEEDED

Auditing and monitoring for violations of laws, policies and standards is an important way to detect weaknesses in the compliance risk control environment. Findings from these reviews provide the essential blueprint for strengthening the controls that prevent misconduct. Assessments of the compliance program itself also must be part of the annual internal audit plan. An annual review will enable continuous improvement to ensure effectiveness of the E&C program.

Audit plans should be re-evaluated annually to confirm that they are focused on appropriate areas of concern in light of prior audits and monitor findings as well as new risk assessments. Results of annual and ad hoc audits are typically shared with the organization's compliance officer to allow analysis of the compliance risk environment and to drive implementation of any needed improvements.

10. MANAGE PROGRAM DOCUMENTATION

This is perhaps the most underappreciated aspect of an effective E&C program. Quite simply, if you cannot produce written proof of your program activities, in a regulator's eyes, they did not happen. And if they are scattered in forgettable places, they are difficult to produce. Therefore, it is critical to create an internal methodology for organizing and maintaining all E&C program-related documents. This could be something simple such as a SharePoint site or as robust as a partition in a policy management software system.

Documentation should reflect all program related activities by year including (but not limited to) the compliance risk assessment and action plans, the Code of Conduct and key policies in effect at the time, a summary of training conducted, Hotline statistics, important communications to employees, and activities related to third parties. The purpose of this documentation is to be able to demonstrate the status of the program for any given year if needed in the future.

ORGANIZATIONAL CULTURE

Creating and maintaining a culture of integrity that prevents, detects and remedies misconduct is the ultimate goal for an E&C program. "Culture" has moved from the list of soft organizational buzz words to the halls of justice as something measurable that can save or condemn a company caught in the crosshairs.

The characteristics of a culture of integrity found in companies with an effective E&C program are defined variously by different sources, but common factors include:

» Whether there is consistency and clarity regarding the limits of acceptable behavior
» Whether there is understanding of the compliance roles and responsibilities within the company
» The extent to which the board and all managers act in accordance with their responsibilities to build and sustain a commitment to ethics and compliance
» Whether directors, executives and managers are ethical role models
» Whether ethics, compliance or even legal requirements—or the people responsible for them at a company—are marginalized
» Whether performance goals and incentives encourage and put unreasonable pressure on employees to act contrary to ethics and compliance standards
» The ease with which employees can ask questions or raise concerns
» Whether bad conduct is tolerated—especially at the senior level
» Whether sub-cultures of the organization (e.g., a branch office, a specific department or function) that resist the corporate culture are identified and addressed[2]

CONCLUSION

Many fear that a compliance program becomes the Department of "No." This should never be the impression created by the E&C program. Compliance is as much about effectively supporting the strategic goals and mission of an organization as any other department or function. Achieving an effective ethics and compliance program requires more than simply adding rules and additional layers of controls. There must be an integrated effort that aligns financial and compliance requirements with the organization's mission and values.

Too often, employees can feel that rules and controls are a burden, rather than protective guardrails with a rationale and a purpose.

The 10-step framework outlined above has the advantage of integrating rules and controls into a larger whole that includes communications, helpful processes and support.

Positioned this way, employees are much more likely to understand and accept the necessity of compliance—while at the same time staying true to everyone's commitment to a strong culture of ethics, integrity and compliance.

[1]NAVEX Global's 2016 Policy Management Benchmark Report

[2] http://www.finra.org/industry/2016-regulatory-and-examination-priorities-letter#sthash.jQ9C7yrw.dpuf

The smart money is on corporate social responsibility

Corporate social responsibility isn't just a feel-good exercise. It pays off huge dividends in the problems it prevents, writes **Jaclyn Jaeger**.

Nine years ago, I raised an idea to Compliance Week's founder and publisher at the time, Scott Cohen, about creating a sister publication on compliance-related coverage devoted exclusively to corporate social responsibility issues (CSR). Although we discussed the idea for several days, ultimately nothing came of it. In the end, the hesitation was that companies don't care enough about CSR to sustain an entire publication devoted to it.

Personally, I'd like to think that's not true. Many ethics, compliance, and risk professionals do care about CSR and acknowledge the real value that such a program, done right, brings not just to a company's bottom-line, but its corporate values, as well. Many best-in-class companies already know that truly effective corporate responsibility isn't about brand strategy; it's about business strategy.

Companies that have yet to figure that out are the ones reaping the consequences of their actions, as demonstrated by the numerous CSR failures of catastrophic proportions that continue to surface:

- April 2010: The Deepwater Horizon oil spill erupts—the largest history of marine oil drilling operations, resulting in 11 casualties and the continuing long-term devastation of local marine and wildlife;
- November 2012: A fire engulfs a garment factory in Bangladesh, resulting in more than 100 casualties;
- December 2012: Another fire engulfs a second garment factory in Bangladesh, resulting in another 112 casualties;
- April 2013: A third garment factory in Bangladesh, Rana Plaza, collapses, resulting in more than 1,100 casualties in the worst disaster in the history of the garment industry;
- September 2015: Volkswagen is caught cheating emissions tests in millions of vehicles, deceiving regulators and consumers, and poisoning the planet for decades to come.

If these events collectively impart any lesson at all, it's that chief compliance officers and chief risk officers have a vital role to play in their company's CSR program. Each one of these disasters—the Deepwater Horizon oil spill, the garment factory tragedies in Bangladesh, Volkswagen's emissions-cheating scandal—occurred on account of red flags that went ignored for far too long.

Leading up to the fires and the building collapse of the garment factories in Bangladesh, for example, global retail companies with contractors in those buildings—Walmart, J.C. Penney, Abercrombie & Fitch, and more—repeatedly had passed safety audits. Right away, such failures in oversight bring up several questions that compliance and risk personnel at other global retail companies should think seriously about:

- Do you have a CSR consultant who sub-contracts audits to local inspectors? If so, what policies and procedures are in place to ensure those inspectors are qualified and that no conflicts-of-interest exist?
- Does the company train and educate its factory workers—those with the greatest knowledge of

daily work hazards—in how to handle and report ongoing building or plant health and safety issues?

» Do human rights issues come up when discussing business decisions, such as choosing low-risk suppliers, and whether certain contracts should get extended or renewed?

BP similarly ignored numerous safety violations leading up to the oil spill, due in part to a culture that was as toxic as the disaster itself. In addition to ignoring red flags that pointed to a pending disaster for years, BP management also reportedly ignored the warnings of internal whistleblowers. In interviews with CNN, rig survivors said, "It was always understood that you could get fired if you raised safety concerns that might delay drilling. Some co-workers had been fired for speaking out."

In 2010 Congressional testimony before the House Energy and Commerce Committee, Henry Waxman, the committee chairman, noted, "There is a complete contradiction between BP's words and deeds. You were brought in to make safety the top priority of BP. But under your leadership, BP has taken the most extreme risks."

Other oil and gas companies should heed this warning, given that Waxman's testimony pointed to a systemic issue across the entire industry. "[O]ther oil companies are just as unprepared to deal with a massive spill as BP," he said. "We are seeing in the oil industry the same corporate indifference to risk that caused the collapse on Wall Street."

Then comes the emission-cheating scandal that plagues the auto industry, with Volkswagen as the poster child. In November 2016, Audi Chief Executive Rupert Stadler came under yet more questioning amid fresh discoveries by the California Air Resources Board of more emissions-cheating software installed in Audi cars.

Who knew what and when is difficult to say. Even if VW senior management had no knowledge of the "defeat devices" themselves, they certainly played an indirect role by setting overly ambitious goals and forcing employees to meet them, no matter the cost.

The overarching message from these CSR failures is that a corporate sustainability program cannot be treated as a stand-alone or one-off exercise and certainly should never be treated merely as a marketing ploy to gain an unfair advantage over competitors. A robust sustainability program means thinking beyond short-term gain and more altruistically about how the firm can sustain itself well into the future.

To do that, however, requires a cross-functional approach. It requires open and transparent decision making and the sharing of pertinent information across business units. It requires training and education of employees who know directly what's happening at the ground-level of plants and factories. It requires open dialogue and debate that encourages the reporting of health and safety issues, encouraged and rewarded by senior management.

CSR as a global issue is not going away and, in fact, will continue to become an increasingly important issue for investors, regulators, and consumers alike. The greater the role that chief compliance and risk officers play in their company's CSR efforts, the greater the long-term rewards for all. ■

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Fostering an ethical culture with training

Culture is one area that E&C officers struggle with the most. **Jaclyn Jaeger** explores today's innovative solutions.

"Do as I say, not as I do" is not an explicit policy one would find in a corporate code of conduct, and yet it's an adage by which too many senior leaders and middle managers still operate by today.

The trouble with that leadership style is that corporate culture doesn't work that way. The way that the business is run is the way that business is done, which means that no matter how many policies and procedures a company implements, all of it is for nothing if the corporate culture itself is toxic at its core.

Culture is the "holy grail" of ethics and compliance programs, but it's also the one area that ethics and compliance officers struggle with the most, said Carrie Penman, chief compliance officer of NAVEX Global and senior vice president, Advisory Services during the 2016 Ethics and Compliance Virtual Conference.

Findings from NAVEX Global's *2016 Ethics & Compliance Training Benchmark Report* further demonstrate the extent to which ethics and compliance officers are struggling to ensure E&C programs positively influence culture. Over the last three consecutive years, when asked what training objectives were most important to them today, the majority of ethics and compliance professionals surveyed selected "creating a culture of ethics and respect" as their top priority.

Following culture, other top training objectives selected by the majority of respondents in NAVEX Global's training benchmark report were "complying with laws and regulations" and "improving employee understanding of compliance priorities and obligations."

While a top priority, many still don't appear to give culture enough attention. "When curriculum maps on training are put together, they almost always focus on hard and fast laws and regulations," said Randy Stephens, vice president of advisory services at NAVEX Global. "You don't see that same level of investment, often times, in what is perceived as a softer skillset."

NAVEX Global still gets approached by many companies that say, "'I want to talk about organizational culture and respect, and I want to do it in 10 minutes or less,'" Penman said. A check-the-box mentality cannot only send mixed messages to employees about the importance that the company places on culture, but also has the potential to create cynicism, she said.

Several obstacles, however, continue to hamper the success of training, including limited hours available and keeping content up-to-date with changes in regulations, each cited by 36 percent of ethics and compliance professionals in the training benchmark survey. Measuring training program effectiveness (30 percent) and not enough budget to create desired program (26 percent) also pose significant challenges.

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>
> Carrie Penman, Chief Compliance Officer, NAVEX Global

Budget and time constraints are driving companies to get creative with their ethics and compliance training techniques. In fact, maturing and advanced training programs realize far more benefits than programs that train only on basic topics, or are reactive in nature, according to the training benchmark report.

Common characteristics of maturing training programs include having a plan for the year that covers a variety of topics; limited risk and role-based topic assignments; and effectiveness measures that are limited to completion rates and qualitative feedback.

Advanced training programs, on the other hand, tend to have sophisticated multiyear training plans that cover a variety of topics assigned to specific audiences based on need and risk profile that includes live and e-learning; short-form and long-form courses and a variety of engaging formats; a disciplined approach to reporting; and measuring training effectiveness that focuses on training outcomes.

Examples of benefits realized by maturing and advanced training programs include more effective execution of training programs and clearer identification of gaps and an ability to cover more risk topics. Demonstrating the connection between training program maturity and desired outcomes may help E&C officers advocate for investment in initiatives designed to drive program maturity, the report stated.

When measuring training program effectiveness, carefully crafted surveys and focus groups are cost-effective solutions. According to a NAVEX Global white paper, some questions to ask employees include:

» Was the training relevant to your job?
» Did you find the training engaging and enjoyable?
» Has it helped you make better decisions?
» Were the lessons clear and understandable?
» Has the training improved your opinion about our commitment to ethics and compliance?
» Are you able to apply what you learned on the job?

Another way to improve the effectiveness of training and create a culture of ethics is through peer-to-peer learning. Penman pointed to recent findings from the 2016 Edelman Trust Barometer, which showed that the views of peers and employees are perceived to be more credible than CEOs when forming an opinion of a company. Specifically, respondents said they're more likely to trust an employee compared to a CEO on treatment of employees (48 percent versus 19 percent) and information on business practices and crises handling (30 percent versus 27 percent).

From a practical standpoint, "it gives us an opportunity to think about how to tap into peer-to-peer learning as part of the way we communicate within the organization," Penman said. Some are already achieving this by supplementing their training with other learning tools, such as peer-to-peer video clips.

Having local ethics and compliance liaisons is also helpful. "If they're well respected, they can play a really strong role in communicating and being a conduit for both delivering and receiving concerns and resolving them promptly," Stephens said. Employees often times are more comfortable approaching a local compliance liaison than management, he said.

A transparent culture also cultivates ethical behavior. Do you report on a periodic basis to your employees the types and numbers of reports that have come over the hotline? Do messages to employees match behaviors? Do you find ways to help employees identify and address behaviors that breed cynicism?

Ethics and compliance officers may also want to consider the following employee actions in their companies to help identify where pockets of employee cynicism and, therefore, cultural concerns exist:

» Can employees speak up without censorship?
» Do employees have the ability to help lead, advocate and influence?
» Are employees treated—and do they treat each other—with respect?
» Does training feel like a check-the-box exercise?

Peer-to-peer relationships also help build culture. "Peer-to-peer retaliation often is one of the most insidious types of retaliation, personally, I've witnessed in an organization," Penman said. "So build that trust peer-to-peer, and have those conversations, as well."

The significant obstacles E&C professionals must overcome to keep training relevant and effective—too little time, too little budget, a complex regulatory environment—aren't likely to subside anytime soon. So the more creative you can be in making content as timely, innovative, and engaging as possible, the more successful you can ultimately be in creating a culture of ethics and respect. ■

Former Southwest CEO: Harnessing an ethical culture

During a recent NAVEX Global conference, Howard Putnam, former CEO of Southwest Airlines, spoke candidly about harnessing the business value of an ethical culture.

For best-in-class ethics and compliance programs, tone-at-the top isn't just a mantra; it's a way of life.

During a keynote address at NAVEX Global's Ethics and Compliance Virtual Conference, Howard Putnam, former CEO of Southwest Airlines and Braniff International Airways, spoke about harnessing the business value of an ethical culture. "People, ethics, and integrity are the three greatest assets you have," he said.

That people-centric philosophy began in 1971, when Herb Kelleher and Rollin King founded the firm. Their leadership style, Putnam said, has always been: "Number one is our employees and their families. If we take care of the employees and their families, they'll take care of the customers. And if we take care of the customers, they'll take care of the shareholders. It's very simple. Just turn the equation upside down."

It would appear that putting its employees first is what has propelled Southwest to reach new highs, achieving record traffic, record revenues, record profits, and a record year-end stock price in 2015. "It was our 43rd consecutive year of profitability, an unprecedented achievement in the domestic airline industry," stated Southwest's One Report.

Southwest's message is loud and clear: A strong culture starts with its people.

Long before joining Southwest in 1978 as the company's second-ever chief executive officer, Putnam, himself, came from humble beginnings. "I started my aviation career on a farm in Southwest Iowa. My dad got the urge to learn how to fly, so he sold enough cows and pigs to get $600 to buy a Piper Cub."

Recalling that day, Putnam said: "I'm standing there thinking as a little kid, 'That's kind of strange, we don't have any electricity. We don't have any plumbing. We don't have any hot water, but we have an airplane. That's where my passion began." The entire foundation of his business career, however, began with his parents, who taught him the value of "ethics, accountability, and responsibility," Putnam said, adding that his two older sisters also were like mentors.

From that foundation, Putnam rose through the ranks in the aviation industry. The tools and professional expertise that many E&C officers have today, however, didn't exist at that time, he said.

Nor did Southwest have an ethics and compliance officer. There was an internal auditor and a CFO. "We had a very open culture, and we fostered that." Having that open culture helped build trust, he said.

"People often ask me what leadership style I have," Putnam said. Taking what he has learned throughout his career in the airline industry, he offered this advice to other senior management:

- Lay out the vision. Lay out the flight plan. Make it clear for everyone to see.
- Don't have any secrets. Communicate and foster an open culture.
- Make the goals that you set for your team realistic. "That's where a lot of companies get into trouble," he said.
- Challenge your team to take ownership and be part of the flight plan. Let them take a few risks, within reason. Once in a while, mistakes need to be made

for innovation to be achieved.

» Be honest and candid and embrace suggestions. If possible, try to involve stakeholders, customers, and investors.

Fostering an ethical corporate culture starts with having the right people. "Hire attitudes," Putnam advised. "Develop skills." Look for employees who share the following characteristics:

» Positive, cheerful, optimistic attitudes;
» Great decision-making skills;
» Great communication skills;
» Great team spirit; and
» A love for customers.

Recognizing and rewarding employees—and having fun in the process—also goes a long way toward fostering a strong ethical culture. On one occasion, for example, Southwest ran a contest for its employees, in which the city that boarded the most passengers over the course of the 60-day contest won a steak dinner, while the losing team had to eat beans and serve the winning team. "The employees loved that," he said.

Having a sense of humor also goes a long way. Take it from Gary Kelly, the current CEO of Southwest Airlines. For the last 16 consecutive years, Kelly has dressed up for Halloween, with employees and customers getting to choose what sort of elaborate costume he wears each year.

This year, Kelly was George Washington; last year, Snow White. In other years, it was the Mad Hatter, Gene Simmons from KISS, Jack Sparrow, Dorothy from the Wizard of Oz, and Frankenstein, to name a few. Referring to some moments at Southwest, Putnam said, "When the CEO makes an ass out of himself once in a while, [employees] get a kick out of that."

After three successful years with Southwest, having tripled the airline in size and profitability, Putnam made the risky move in September 1981 to lead and revitalize ailing Braniff International Airways.

Braniff is an example of a company that soared too high, too fast, and essentially was in the middle of a nosedive when Putnam came on board. At that time, unbeknownst to Putnam, the company had spent $175 million paying off payables in the previous three weeks before he joined the company, leaving Putnam with just 10 days to clean up the rest of the company's financial mess.

"In those situations, you don't have time for committees. You don't have time for consultants," Putnam said. "We had to work really quickly to gain the trust of the employees."

The company's debts were sky high. The first day on the job, Putnam had a call from Bill Marriott, chairman of Marriott Hotels, saying that "Braniff owed $70 million for food and liquor, and if we didn't pay up in 24 hours, he was going to cut it off." Luckily, Putnam said he was able to smooth that situation over.

In addition to its financial troubles, Braniff's corporate culture was also out of control. An hour after the phone call with Marriott, the FBI showed up and said they were there to arrest the director of petroleum purchases, who was taking bribes under the table, Putnam said.

But that wasn't the firm's only ethical dilemma. Putnam was approached by the head of security who had reported a theft ring at Dallas-Fort Worth Airport involving baggage handlers who stole from people's luggage. Ultimately, a tip from a baggage handler led to the arrest of 22 people that Christmas Eve.

"The point is that when the leadership has gone awry and you lose sense of the cost, and you lose a sense of control, and you lose sense of the vision and the flight plan, the people are going to take advantage of it," Putnam said. "We were able to turn around the morale."

Ultimately, however, Braniff couldn't escape its turbulent times. "After seven months, we had to file for bankruptcy," Putnam said.

The broader lessons learned from Braniff, however, apply to everybody. "Turbulence is inevitable, but misery is optional," he said. You have to figure out. 'How can I do something constructive and make the turbulence work for me instead of against me?' "

Sometimes you have to clear the clouds before reaching the blue skies ahead. ■