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The Ethics and Compliance Experts

RESEARCH WHITEPAPER

Top Ten Ethics & Compliance Predictions and Recommendations for 2014

As 2013 comes to a close, it's time once again to step back, review the past year and identify key trends with an eye towards planning for the year ahead.

To help, we've asked industry experts, our colleagues at NAVEX Global and ethics and compliance officers from across our more than 8,000 clients to identify key events and topics from 2013 that will likely have an impact on ethics and compliance in the months ahead – and what you can do to prepare.

1 Third party risk – still the ethics and compliance 'Achilles heel'

Once again, third party risk tops our list for 2014 – and it's number one again for several reasons:

- Baseline screening of all your third parties, along with enhanced due diligence have become the "new normal." The public – including investors, but also employees and consumers - are increasingly demanding transparency and corporate social responsibility throughout the manufacturing and distribution process.
- Tragedies, such as the Rana Plaza factory collapse in Bangladesh, galvanize public opinion and human rights organizations worldwide to keep up pressure – especially on retailers and manufacturers.
- The most recent figures from the U.S. Department of Justice (DOJ) show that over 90 percent of its anti-corruption actions involved a company's use of third parties.
- The proliferation of guidelines and requirements is accelerating. Consider, for example, the OECD's Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.
- One sign that the new normal is here to stay: the Wall Street Journal reported that, sensing continued demand, "more than a half-dozen universities have recently introduced undergraduate majors, M.B.A. concentrations and even entire degree programs dedicated to… global supply-chain strategy."
- To underscore the need for action, a recent survey conducted by NAVEX Global found that only 36 percent of respondents track information on their most critical third party relationships and an additional 35 percent do not track third party information at all.
- Finally, in an independent 2013 study of more than 300 ethics and compliance senior executives conducted by a global market research firm for NAVEX Global, more than 25 percent of respondents indicated that their budget to address third party risk would grow by 20 percent or more in 2014 – the fastest growth area of all ethics and compliance solutions.

Every company, and especially those with global supply and distribution networks, needs to assess the adequacy of its third party risk management systems. Unfortunately, many companies are inconsistent in their application of standards or they rely on manual processes that are time consuming, difficult to audit and lack the ability to be benchmarked for industry comparisons.

Given the pressures placed on organizations to know and understand the risks posed by all their various – often thousands – of third parties, in the coming year it's prudent for companies to consider implementing a system with standardized questions for third parties together with automated systems for processing responses, generating auditable reports and flagging third parties that require follow up attention. In addition, companies should also consider the following steps:

- Assign managers within your organization with the responsibility to ensure that third parties are aware of their responsibilities and your expectations.
- Make your code of conduct available to third parties and consider ways that you can assist your business partners in developing or accessing relevant training and other ethics and compliance resources.
- Collect due diligence results about your third parties from across your organization for review and ongoing assessment.
- Ensure that you're continuously monitoring your third parties for red flags; there's no credit given for an issue found the day after you performed your due diligence.
- Do a baseline assessment of all third parties (entity identification, financial background checks, sanctions and watch lists checks, media and reputation audits, adverse affiliations or involvement with politically exposed persons (PEPs), and then concentrate more intensive diligence on those organizations presenting higher levels of risk.
- Be specific in contracts regarding ethics and compliance requirements and ensure that your contracts allow you to periodically audit third parties on a schedule of your choosing.
- Have a specific process for onboarding third parties as part of potential merger and acquisition activity.
- Hold third parties accountable if they do not meet their responsibilities.

2 Navigating the myriad anti-corruption and bribery laws

In recent years there has been dramatic change to the global anti-corruption landscape. While the U.S. FCPA and the U.K. Bribery Act are well known, at least 26 countries have their own anti-corruption laws and nearly all of them include some degree of extraterritorial jurisdiction, which means their laws can apply to individuals who are resident in the jurisdiction but commit acts of bribery elsewhere. And, while there is no international anti-corruption law or standard, more and more countries are modeling their laws and/or are agreeing to abide by international conventions including the OECD Anti-bribery Convention and the United Nations Convention against Corruption. We have also begun to see novel approaches to combatting corruption such as the website launched by Kenyan's President Kenyatta to allow citizens to anonymously report bribes.

The result of all this activity is that the global business landscape is now covered by a quilt of overlapping anti-corruption and bribery standards, many of which have subtle and not-so-subtle differences as to how they interpret what is an offense, who is liable, the penalties for offenses and what are the prescribed defenses.

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The good news is that increasingly, national laws and global standards are converging on one common defense for organizations. Like the U.S., the U.K. includes language that encourages organizations to create policies and procedures to prevent corruption. Similarly, in Italy and Portugal, an organization can reduce penalties if it can prove that an employee acted contrary to established corporate rules. And in Russia, the law has been updated to require companies to put in place anti-bribery procedures.

The value of being proactive was evident earlier this year when Ralph Lauren Corporation was not prosecuted after FCPA violations were uncovered in the Argentinian operations. From the SEC press release:

> "The SEC took into account the significant remedial measures undertaken by Ralph Lauren Corporation, including a comprehensive new compliance program throughout its operations. Among Ralph Lauren Corporation's remedial measures have been new compliance training, termination of employment and business arrangements with all individuals involved in the wrongdoing, and strengthening its internal controls and its procedures for third party due diligence. Ralph Lauren Corporation also conducted a risk assessment of its major operations worldwide to identify any other compliance problems. Ralph Lauren Corporation has ceased operations in Argentina."
>
> RALPH LAUREN

In light of these developments on the anti-corruption front, it is vitally important that all organizations are familiar with the relevant laws governing their operations wherever they do business – and that they help employees and business partners navigate the terrain and know where to go to get answers. In addition, the best defense is to be proactive in assessing risks, and to create an ethics and compliance program that treats anti-corruption and bribery as a key risk area through:

- Codes of conduct
- Policies
- Oversight
- Communications
- Training
- Internal reporting systems
- Investigations
- Audits
- Monitoring
- Consistent follow-up when problems are discovered

3 Whistleblowing and retaliation: both on the rise

Though the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd Frank) was passed three years ago, the definition of 'whistleblower' under the law is still working its way through the courts. An appeals court ruling in 2013 (Asadi vs. GE Energy) reversed earlier rulings and narrowed the court's interpretation of who is entitled to 'whistleblower' protection. This and other related rulings could discourage employees from bypassing their company's internal reporting channels to go directly to the government. But if the court ruling is reversed, more employees may instead be encouraged to 'go external,' making them eligible for lucrative bounties, and potentially undermining our in-house efforts to address wrongdoing.

In a related development, we've seen the rewards for external reporting continue to increase. In October, the SEC announced that it had given a $14 million award to a single (anonymous) whistleblower whose information led to an enforcement action by the commission.

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These trends bear watching, but it is important to remember that Dodd Frank isn't the only government language incentivizing whistleblowers to report outside their organization. Protections under the False Claims Act (FCA) and other industry-specific safeguards also offer rewards for external reporting. In November 2013 we saw a jaw-dropping $167.7 million award – one of the largest whistleblower awards in U.S. history – given in a pharmaceutical case under the FCA. It will be divided among an unspecified number of whistleblowers in three states.

Regardless of how the legal landscape shakes out, from a practical perspective, employers should ask themselves what they can do to both help insulate their organizations from whistleblower claims, as well as continue to encourage early, internal reporting.

Key steps for organizations to take include:

- Continue to communicate to employees about their duty to speak up, but also take the time to explain and de-mystify how the reporting process works.
- Assure employees that the company will follow up on their concerns and will enforce a policy of no tolerance for retaliation.
- Publish sanitized examples of reports and the company's response to demonstrate the process.
- Train managers on their role in maintaining an open culture without fear of retaliation (including monitoring for peer-to-peer retaliation).
- Create a centralized system to track and investigate claims of retaliation.

Retaliation continues to be a huge issue for organizations to address. It remains the top charge levied by the EEOC and has retaliation claims have more than doubled between 2007 and 2012. We've conducted our own research on how retaliation claims are handled and those findings show that 35 percent of executives or high performers are merely "coached" after they engage in retaliation, as opposed to "fired," "penalized" or subjected to other disciplinary action. To combat this, seventy-four percent of respondents to our survey viewed training and awareness programs as most effective in minimizing retaliation claims.

Last year we encouraged organizations to be on the lookout for a new form of retaliation: whistleblower retaliation using social media. While there is no definitive study yet on how prevalent this new form of retaliation may be, we are encouraged to see a number of companies being proactive and adding language to their Codes and policies as well as creating training that addresses the topic.

A recent study conducted by the Ethics Resource Center uncovered a fascinating but puzzling connection between active social networking and retaliation. According to the study, "the more active the social networker, the more likely they are to encounter ethics risks (witness misconduct, feel pressure to compromise standards, and experience retaliation for reporting misconduct)" It appears that, not only will social networking be a vehicle for retaliation, but those using social networks may be more likely to experience retaliation.

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4 Insider trading and the return of organizational culpability

After a lengthy investigation, 2013 saw a record-breaking U.S. $1.8 billion insider trading penalty levied against the hedge fund, SAC Capital Advisors. The case was the most publicized example of a trend that has been on-going for several years; the last four years have seen the U.S. Securities and Exchange Commission (SEC) file more insider trading actions than in any comparable period in its history.

Ethics officers too often make the mistake of thinking that the risk of insider trading is limited to "a handful of corporate insiders" or only applies to publicly traded companies. If your employees have access to information about any company – their own, a business partner, a supplier, a customer – and that information is not yet public and could impact share price, then they are an insider trading risk. If they trade on that information or leak it to someone else, they've crossed the line. It's hard to imagine any company of any size, public or private, that doesn't have this type of exposure. And, given that governments have made insider trading an enforcement priority, it's clear that you really need to get ahead of this risk in 2014.

- Updating your Code of Conduct and policies is a good first step, but, as with any risk area, the next step is to identify employees who might be at heightened risk. And remember, these employees don't have to be 'insiders' or executives to be exposed. Employees in purchasing or supply chain management, legal or accounting may be especially well positioned to hear about material, inside information regarding your company or other companies.
- Once you've identified the high-risk employees, provide additional training to them. You may even want to consider requiring annual acknowledgement that they understand and abide by your insider trading policy.
- Don't forget to also be on the alert for third parties who have access to your company's information. If a supplier is dragged into an insider trading investigation it may implicate your employees and, even if it doesn't, it can still damage your organization's reputation – and, ergo, the bottom line.

Finally, and perhaps the most important lesson from the SAC case is that for the first time since the indictment of Arthur Andersen in 2002 – which destroyed the firm and penalized thousands of innocent employees – the government once again seems willing to hold organizations culpable. In the SAC case, no one, at least so far, is going to jail; the finding was against the organization. Prosecutors pointed to "institutional failures" and they announced that they are once again willing to seek indictments of organizations despite the impact on employees and others who may have had nothing to do with the wrongdoing.

It may be time to dust off your copy of the U.S. Sentencing Guidelines for Organizations.

5 Privacy issues come with their own Top Ten list

When ethics and compliance officers are asked to list their biggest worries, "privacy" is always near the top of the list – and for good reason. The nature of privacy concerns and the perceptions of employees and others are changing so rapidly that it is hard to keep pace. And, the range of topics that fall under the general heading of 'privacy' make up their own Top Ten list of issues to tackle in the coming year, which certainly includes the following:

I. **Securing helpline and investigation data**. This is especially critical in jurisdictions including the E.U. that have imposed strict data privacy and security requirements.

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II. **Employee use of company technology for personal use.** Most companies have now shifted to a more realistic policy that allows employees to use company email and the internet for limited personal use. But while the policy has changed, knowing how to enforce it and establish limits is still a challenge.

III. **Social Media policies.** Many companies have added such policies in the last year or so, but employees are still often unclear about their responsibilities if they see what they believe to be information about the company that is either wrong or damaging. Should they respond? To whom should they report the matter? With social media technologies rapidly evolving (think Instagram), and with the line between work and personal life continuing to blur, employees are also often unclear where the boundaries lie between acceptable and unacceptable behavior. Policies need to be brought to life with compelling and contemporary training.

IV. **Surveillance of employees.** Software, cameras and GPS tracking devices are all ways companies can monitor employee use of technology and their productivity, but at what point do the methods go too far and create an obtrusive, Big Brother work environment?

V. **Maintaining secure and confidential company information.** Sharing passwords, using unauthorized storage devices and moving materials off-site create challenges for security experts and expose confidential company information to inadvertent loss, theft and hacking. Companies that have a bring-your-own-device policy as well as those using cloud technologies may have additional security issues. Safeguarding customer information may be the biggest potential privacy risk area, especially for retailers.

VI. **Technology transfers.** Inappropriate transfers can be a serious compliance breach when it involves transmissions to recipients or countries that have not been adequately vetted. And, as the data privacy laws across the globe continue to mature and evolve, it will be critical for companies to stay abreast of competing mandates.

VII. **Competitive technology.** The internet is full of low cost devices that can turn anyone into James Bond. Do your employees know how far they should go to gather competitive intelligence? And is your own organization secure against the prying eyes of others?

VIII. **Recruitment and promotion ethics.** Is there a limit to how far a company should go in screening prospective employees? Is it appropriate for employers to use personal information that they gather from social media when making employment decisions? Should the latest photos you posted to Facebook limit your prospects for a promotion?

IX. **Personal information.** Does your company have a policy on what personal information it will and will not collect? If you conduct drug testing, is there any prohibition in place on collecting and storing samples or using the samples to conduct genetic screening?

X. **Social responsibility.** Revelations of government eavesdropping drew intense criticism from activists and shareholders over companies' level of cooperation. If you are in the high-tech or communications industry are you prepared to articulate your company's position on privacy and government surveillance?

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6 The arrival of next generation Codes & communication strategies

Get ready for major changes in how companies document and communicate their standards and policies. After years of discussion, we seem to have reached a "tipping point." In increasing numbers, companies are now starting to make better use of technologies to revamp how they develop, design and distribute their Codes of Conduct and how they manage their policies. For many it's become clear that the time has come for the typical corporate Code to be placed on the shelf along with paperback copies of thesauruses and bound volumes of encyclopedias.

Rethinking the design of the Code from the user's point of view is the first step to repositioning the Code as a meaningful portal for employees. It should not only provide links to policies, but also engage the user with video and Burst Learning vignettes, inform them with infographics and examples, – all the while simplifying the interface. The new approach transforms the Code into a tool for awareness and training that is actually used by the employee when they have a question – which is when they are most open to learning – and saves valuable employee and management time in the long run.

Once it's integrated with a platform that includes searchable policies and training resources, the Code itself can be greatly simplified from a wordy document of "dos and don'ts" to a brief, high-level summary of principles and aspirations. It is also easier to update on a regular basis, and becomes a cornerstone asset to elevate visibility around the overall ethics and compliance program.

Lean, linked and integrated Codes may not be right for every company at least not yet but look for elements of this new approach to become available and more common in the year ahead.

7 Have perceptions of gender and leadership turned a corner?

The spirited debate over Sheryl Sandberg's and Nell Sovell's book *Lean in – Women, Work and the Will to Lead* was clear evidence last year that gender and corporate leadership still remain contentious issues.

While the debate on strategies and leadership styles continued in 2013, unfortunately progress toward breaking the glass ceiling seems to have stalled. Less than 5 percent of Fortune 500 companies have a woman at the helm, and only 14 percent of executive officer positions at these companies are held by women. At the highest levels of the American workforce, less than 20 percent of the top leadership jobs are held by women overall, according to a new national study, Benchmarking Women's Leadership in the United States.

The similar lack of progress in Board representation has led California, the city of Philadelphia, the European Commission, Norway, India and others to increase pressure on corporations to add more women to boards. It's likely that such government actions will become more common in 2014.

On the positive side, there was some evidence that 2013 may have been the year that perceptions of women leaders began to turn a corner. We note that stories about newsmakers including Janet Yellin at the U.S. Federal Reserve, Christine Lagarde at the IMF, Mary Jo White at the SEC, as well as CEOs Mary Barra at GM, Meg Whitman at HP, Virginia Rometty at IBM, Patricia Woertz at ADM and Marissa Mayer at Yahoo were, for the most part, about their policy decisions, experience, mistakes and achievements – and not about their gender. It's a subtle change, but one worth noting.

Also of note, while women hold only one in eight of the executive and board positions in California's top 400 public companies, an annual UC Davis study shows incremental progress -- the percentage of women in these top decision-making posts has increased, and the number of companies with no women executives and board directors at all is dropping.

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Looking ahead, another development to watch is the already large and growing percentage of women in ethics officer positions. According to the Society for Corporate Compliance and Ethics (SCCE) the percentage of their members who are women is approaching 60 percent. This could have interesting ramifications for our profession and is an area worth studying. We encourage our readers to work with industry associations and think tanks to research this trend and its consequences.

Some questions to consider:

- Are there discernible differences between men and women's approach to business ethics, especially with respect to management style, collaboration and communication?
- Is there evidence that the ethics office has become the new HR – a safe place to park female high-achievers, while keeping them off the CEO track?
- Is there pay equity between men and women who hold comparable ethics and compliance positions? Is their clout also comparable as measured by title or level in the organization, to whom they report and who comprises their in-house network?
- Are there any identifiable differences between how employees view the ethics and compliance function if it is headed by a man or a woman? Are the findings the same in all industries? In all countries?

8 Refocus on the importance of leadership and culture

Leadership has always been vital to defining organizational culture and setting a positive, productive tone. In the absence of such leadership – or worse – when leaders seem dysfunctional, employees and others become more and more cynical and disengaged.

For the last twenty years, NAVEX Global's advisory team, the Ethical Leadership Group (ELG), has conducted employee focus groups to assess perceptions about leadership, culture and ethics. Over the years we've heard employees express doubts about their leaders' understanding and commitments to values and ethics. One common theme is that leaders give lip service to ethics while continuing to apply pressure to meet goals and "do whatever it takes." Another is that the ethics message gets lost as it travels down through the organization and that the "tone in the middle" is quite different from the "tone at the top." As a result, employees often confide that they feel their leaders are being hypocritical when speaking about ethics and – as a result – employees "tune them out."

Reiterating that lack of trust, less than one in five respondents in the 2013 Edelman Trust Barometer believe a business or governmental leader will actually tell the truth when confronted with a difficult issue.

Picking up on these themes, a recent Forbes article, *A Crisis of Leadership – What's Next?* argued that 2013 was a particularly bad year for perceptions about leadership. There were far too many examples in politics and beyond of finger pointing and passing the buck. In fact, the author makes the case that we're in the midst of a crisis so profound that we've "forgotten what leadership looks like." If true, the consequences go beyond politics and may even affect our perceptions of leadership in general, and in our organizations. A leadership vacuum and the resulting rise of cynicism can impact organizations and undermine our efforts to build effective ethics and compliance programs.

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While it's good advice any year, 2014 may be an especially important time to pay attention to ethical leadership:

- Conduct a candid examination of the how your employees perceive company leadership at the top and the middle.
- Work with leaders to be sure they understand how their words and actions are being interpreted and what they can do to combat cynicism and the perception of hypocrisy.
- ELG's focus groups have identified one additional recommendation: employees appreciate unscripted face time with their leaders. For many there's still nothing better than "managing by walking around."

9 Proving the ROI of ethics and compliance

PWC's third annual State of Compliance Survey found that ethics officers are under increased pressure to provide evidence of program effectiveness and ROI. And yet, according to a study conducted by Compliance Week and Deloitte, 30 percent of compliance executives say that they make no effort to measure their program's effectiveness and those that do often assess separate components of their programs and struggle to get a clear picture of the effectiveness of the program as a whole.

The inability to demonstrate a clear ROI can leave disconnects between ethics professionals and senior leadership. In a recent video from NAVEX Exchange, a peer-to-peer online learning resource for senior executives, one executive explained the problem this way: "In our view, compliance professionals believe that their programs are adding more value than executives in their organizations realize."

Proving the ROI for ethics and compliance has always been a challenge, but with tight budgets and increased scrutiny from regulators and Boards, the importance of making a compelling business case for ethics is more critical than ever. NAVEX Global survey data shows that, despite the external validation that strong internal programs are necessary, budgets remain relatively flat (40 percent of respondents said budgets would remain flat in 2014; another 40 percent showed that they would increase less than 10 percent). Meaningful measurement of program effectiveness will be even more important, and compliance officers will continue to need to do more with less.

Our discussions with executives have revealed some common mistakes to avoid in the coming year as well as some possible solutions to consider:

Common mistake: Allowing the ethics and compliance function to be labeled as the "people who say 'no'" or the "sales prevention police."

Solutions:

- Take an active role in repositioning and even selling your program as an ally that assists managers to reduce and manage risks, helps them work more efficiently by building teamwork and creates a culture that identifies problems before they become costly mistakes.
- Emphasize and demonstrate the role of the ethics and compliance office in being proactive and identifying emerging risks, especially those that may be consequences of the organization's strategic plans.

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Common mistake: Providing reports and metrics to Boards and executives that portray ethics and compliance as a limited function; for example, reports that present a piecemeal picture or seem to reduce the scope of the office's function to counting and tracking helpline calls or collecting annual code certifications.

Solutions:

- Spend time identifying new metrics to measure how well the organization's specific risks are being addressed so that the compliance function can be appreciated as supporting the organization's strategic goals and risk management processes.
- When supplying metrics, always include context – how the data compares to industry norms or how the data is trending over time.
- Avoid the trap of delivering multiple metrics that measure distinct program elements without the ability to show how the various elements add up to an effective whole. Remember: if presented in a silo, data can be meaningless; integration and context is critical. For example, link data on the frequency of helpline call topics to the delivery of training on those topics. Or, demonstrate the effectiveness of your third party due diligence efforts by showing improvements in your supplier compliance audits.
- Share these metrics one-to-one with the executives of the affected organizations to discuss potential trends in their departments and collaborate on ways to address any developing concerns.
- Ensure that ethics and compliance data sources are combined to get the most accurate picture of risk. For example, understand how the hotline/case management reports interplay with policy updates and training that needs to occur to minimize emerging risks.

Common mistake: Assuming that the Board and executive team fully understand the changing ethics and compliance landscape and their oversight responsibilities.

Solutions:

- Understand the importance of "managing up." Identify and leverage key executives who can champion your program and influence their peers.
- Develop and deliver targeted training for your Board and executive leadership tailored to their specific roles and responsibilities as well as the unique risks their actions – or inactions – could bring to the organization.
- Data is critical here. Your organization already collects significant amounts of data about your ethics and compliance activities. Be sure you have a system in place to aggregate this data and demonstrate the trends that are important for senior management to know and address.

10 Expanding use of DPAs and NPAs

PREPARING FOR THE WORST IS THE BEST ADVICE TO ENSURE IT NEVER HAPPENS

Since they were first used in 2000, the U.S. DOJ has disclosed 257 Deferred Prosecution Agreements (DPAs) and Non-Prosecution Agreements (NPAs). These agreements allow prosecutors to require corporate reforms and penalties in exchange for delaying the filing of charges with the opportunity to avoid charges altogether with satisfactory completion of agreed upon requirements.

In 2012, the DOJ entered into a record 37 agreements. While the pace of such agreements by the DOJ has slowed a bit in 2013, other enforcement bodies have now begun using them. The DOJ's Antitrust Division

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entered into its first DPA in February, settling with the Royal Bank of Scotland. The U.S. Attorney's Office for the District of Puerto Rico also signed its first DPA with LLC Wholesale Supply. In April, the SEC used an NPA for the first time in its settlement with Ralph Lauren in an anti-bribery case centered on illicit payments in Argentina. Also in April, DPAs were created for the first time in the United Kingdom, under the U.K. Crime and Courts Act 2013. The British version will be applicable only to economic offenses, such as fraud, money laundering and bribery and the government still must finalize guidance on the process before they go into effect, probably in 2014.

And in healthcare, the Corporate Integrity Agreement (CIA) has been a similar enforcement tool used by the Office of the Inspector General of the U.S. Department of Health and Human Services since the late 1990s. The use of such agreements has had its critics over the years, with some arguing that they are applied inconsistently, that key details included in the agreements have not always been readily available – thus limiting their potential positive impact as "teachable moments" for other organizations – and that they may be sending the wrong message by letting some wrongdoers off the hook.

On the other side, these agreements are typically quite costly to implement, often requiring the use of expensive third party monitors that can be disruptive to the organization and are viewed as difficult to challenge. Further, these agreements have very tight timelines for actions such as implementing extensive training and ongoing reporting to government agencies, which diverts significant high-level resources into management of the agreement.

But in spite of the criticisms and implementation challenges, the expansion of the use of DPAs and NPAs in 2013 is a clear signal that they are here to stay.

Co-directors of enforcement for the SEC agree: "We recognize that insisting upon admissions in certain cases could delay the resolution of cases, and that many cases will not fit the criteria for admissions," Andrew Ceresney and George Canellos outlined in a letter to SEC staff." For these reasons, no-admit-no-deny settlements will continue to serve an important role in our mission and most cases will continue to be resolved on that basis."

While the chances of being the target of a government investigation and agreement are still relatively low, the fear of it – even as a distant possibility – has focused the attention of many organizations who are preparing for the worst case scenario. Interestingly enough, it turns out that preparing for the worst may be the wisest course to ensure that the worst will never happen.

Additionally, we have seen from recent DOJ and SEC announcements around DPAs and NPAs that a paper program is no longer acceptable. More components and robustness are expected around specific ethics and compliance program requirements in order to qualify for the benefits that DPAs and/or NPAs allow. In many ways, these agreements provide a blueprint of regulators' expectations when it comes to effective ethics and compliance programs.

One approach to prepare for the worst is to conduct a "stress test" or an assessment to determine how the program would survive a government or third-party review. Such a test will help to develop a prioritized list of opportunities for improvement and result in a plan to engage leadership and other corporate functions to proactively address gaps.

At a minimum, the stress test should include a review of:

- The existing – or a new – ethics and compliance risk assessment
- Standards, policies and procedures
- Oversight, structure and leadership
- Alignment with HR practices
- Communications and training
- Reporting and response
- Monitoring and assessment
- Culture

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As a bonus, a stress test will also help organizations identify and collect program documentation, which is often scattered throughout the company – not only in the ethics and compliance office but also in HR, audit, security, legal and elsewhere. Without clear and complete documentation it may be difficult to prove what program elements you have in place and what steps you've taken. But, if the worst happens, that is precisely what you'll need to do – so always best to be prepared.

Conclusion

At NAVEX Global, we rely on the insights we gain from research and from continuous discussions with our 8,000 clients – the largest ethics and compliance community in the world. We will continue to provide thought leadership, facilitate open dialog and encourage the sharing of best practices to grow and strengthen the ethics and compliance function. Our experience tells us the best insight and the most valuable advice comes from conversations with our clients. In the year ahead, we urge you to join the NAVEX Global conversation. Participate in our webinars, visit with us at conferences, join our email and newsletter lists and let us know what you see as emerging trends and challenges – and how we can help.

ABOUT THE AUTHORS

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Shanti Atkins is president and chief strategy officer for NAVEX Global. She has been an innovator in the governance, risk and compliance space for more than a decade, designing powerful ethics and compliance solutions for employers that maximize defenses while creating a culture of ethics, inclusion and respect. A former attorney, Shanti regularly advises clients regarding strategic risk management initiatives and workplace compliance. In her role, Shanti is also keenly involved in the strategic direction of product and learning services, as well as the company's M&A and major partner relationships.

Shanti received her Masters of Law (LL.M.) from Harvard University, specializing in alternative dispute resolution (ADR) and corporate risk management. At Harvard she was a Viscount Bennett Fellow and served on the Harvard Negotiation Law Review. Shanti received her J.D. from Queen's University (Canada) and her B.A. (Film) from Queen's University (Canada) where she was a Queen's National Scholar.

Well-known in the legal, ethics and HR communities, Shanti has been a featured expert for a wide variety of media outlets, including the *New York Times, Wall Street Journal, CNN, Corporate Counsel, Inside Counsel, Compliance Week* and *HR Magazine*, among others. Shanti is also a frequent lecturer and writer for several prominent professional associations.

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Ed Petry joined the Ethical Leadership Group, NAVEX Global's team of expert advisors, in 2004 after almost ten years as executive director of the Ethics and Compliance Officer Association (ECOA). Ed also previously served on the Advisory Panel to the U.S. Sentencing Commission, which was responsible for the 2004 revisions, and on the Ethics Oversight Committee for the U.S. Olympics. Earlier in his career he was a tenured professor of philosophy and a prolific author and researcher. While others may claim to know best practices, Ed's work with the ECOA and the Sentencing Commission actually helped establish those practices as well as the standards by which they are measured.

In his current role, Ed applies his more than 25 years of experience to help companies assess their ethics and compliance programs. He has also written many of the most admired codes of conduct for companies worldwide and representing nearly every industry.

ABOUT NAVEX GLOBAL

NAVEX Global helps protect your people, reputation and bottom line through a comprehensive suite of ethics and compliance software, content and services. The trusted global expert for more than 8,000 clients in 200+ countries, our solutions are informed by the largest ethics and compliance community in the world.

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