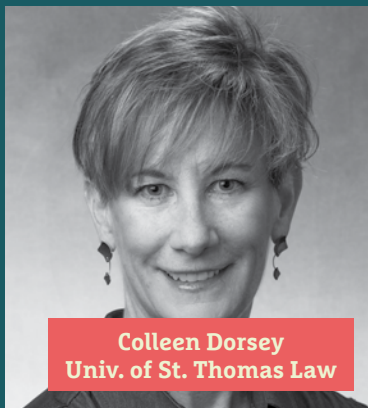


COMPLIANCE WEEK



Stephanie Davis
VW Group of America



Colleen Dorsey
Univ. of St. Thomas Law



Lynn Haaland
PepsiCo

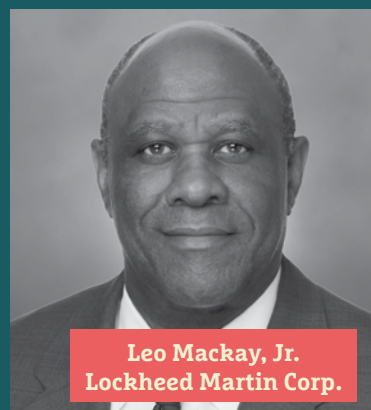


Stephen C. King
Mastercard



Fabiana Lacerca-Allen
Aimmune

TOP MINDS 2019



Leo Mackay, Jr.
Lockheed Martin Corp.



Jim Massey
AstraZeneca



Matthew Pachman
FTI Consulting



Steven Pearlman
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Chuck Senatore
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TOP MINDS 2019

Compliance Week is pleased to announce the 12 recipients of the Top Minds 2019 award. Launched in 2016, Top Minds is an annual recognition of the best and brightest thought leaders in the fields of governance, risk, compliance, and ethics. Read on for in-depth features on how these GRC greats view their jobs and the importance of compliance to the companies they serve.

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STEPHANIE Davis

Leading a team effort to weather the scandal caused by “Dieselgate” is just part of the path forward envisioned by Volkswagen Group of America Chief Ethics and Compliance Officer Stephanie Davis. It’s also about tying culture, compliance, and integrity together with business strategy.

BY JACLYN JAEGER

Chief Ethics & Compliance Officer

Volkswagen Group of America

The culture converter

Imagine you've just been recruited by a global company to take on the formidable task of establishing a compliance department for its North American operations. Now imagine also having to do that under the watchful eye of an independent monitor.

Stephanie Davis doesn't have to imagine it. She's living it.

Formerly a director in the national forensic practice at KPMG and a compliance leader at two previous companies, Davis joined Volkswagen Group of America as its first chief compliance officer in May 2017. She came on board one month after Volkswagen pleaded guilty and agreed to a \$2.8 billion penalty following the company's decade-long scheme to sell diesel vehicles containing software designed to cheat U.S. emissions tests. In total, Volkswagen has paid more than \$30 billion in fines and settlements.

The U.S. Department of Justice appointed an independent corporate compliance monitor and auditor to Volkswagen until June 2020, assuming the monitorship is not extended. The majority of changes the monitor wants to see fall within the compliance, risk, and integrity space—the mission and day-to-day activities of Davis' department.

"They are there to ensure that we've put cultural changes, policies, and procedural changes in place to ensure that this doesn't happen again," Davis says.

Among Volkswagen's four companies named as co-defendants in the emissions-cheating scandal—Volkswagen; Audi; Volkswagen Chattanooga; and Volkswagen Group of America—Davis is responsible for two of them: Volkswagen Chattanooga and Volkswagen Group of America.

"Many changes are being implemented that will affect our approximately 640,000 people worldwide," Davis says. "But we're a much smaller team and company in the United States, so it's quite a bit of work. I truly appreciate the partnership the monitor has been willing to give to us and believe they're here to make the company better. I've really seen some major change since I got here, and I'm very grat-



ified by it. We hope to satisfy the monitor's requirements and continue our evolution of change in the organization after the monitor has left."

Davis is also responsible for directing a compliance strategy that empowers group-wide objectives.

"Across all levels of the organization, we've found that the same behaviors and values that enable outstanding performance also drive the principles of our culture, and compliance is but one critical outcome," she says. "Tactics of our strategy include empowering people from across different areas of the organization to work together, communicate honestly, and experience our leadership being involved and listening. In turn, we're seeing more effective root cause analyses and a more diverse array of ideas."

At the same time, in many positive ways the scandal also



marked a turning point for Volkswagen. “It forced the company to change,” she adds.

A team effort

The diesel scandal has played a crucial role in reshaping Volkswagen's culture of ethics and compliance, as well, serving as a harsh lesson—not just for Volkswagen but for all companies—as to why compliance is everyone's job.

For any ethics and compliance officer to truly be able to fix an issue at its source before it becomes an enormous problem requires employees trusting that they can speak up, not being afraid to raise their hands—even when they suspect something might be wrong but can't pinpoint what it is, exactly. Davis says she tries to instill in employees that “they are the lynchpin of compliance.”

Having candid conversations with employees about what integrity means and why acting with integrity should be the foundation for everything they do is an important part of that message. “If your company operates on a culture of fear, you're asking for trouble,” Davis says. “Bad things happen when people are afraid to come forward for fear of retribution. I find many times that decisions are not malicious, just uninformed, and so I always advocate a strong message of training and open, safe environments for raising concerns.”

Davis' philosophy is that compliance is there to protect

employees by giving them guidelines and guardrails. Compliance is not intended to make employees' jobs harder but in fact much easier.

“If you know the company is behind you and wants you ... to act with integrity in making business decisions, it should make business decisions easier for employees, because they don't have to agonize over having to make unethical ones,” she says.

Fostering relationships with the business units and understanding their strategic goals, so that compliance can help them achieve those goals in an ethical manner, is a crucial part of that strategy. That is why, within the first month of becoming chief compliance officer of Volkswagen Group of America, Davis made it a point to meet or call every key executive.

“If I did not already know them, I would introduce myself, explain what I was trying to accomplish and ask for their support and assistance. Not only did this help establish or strengthen my relationship with them, it helped me get their buy-in,” she says. “It all goes back to understanding the business. If I understand the business, I can help identify the risks and potential pain points. Instead of compliance being perceived as the Department of No, we can diplomatically say that can't do it the way they proposed but we know what their end goal is. So let's try to work together and come up with a

“Tactics of our strategy include empowering people from across different areas of the organization to work together, communicate honestly, and experience our leadership being involved and listening. In turn, we're seeing more effective root cause analyses and a more diverse array of ideas.”

solution. We have to be incredibly close to the business units, or that philosophy doesn't really work."

Business unit heads who work closely with Davis vouch for her leadership style. "Steph works hard to balance the serious root causes of breaches in compliance with an accessibility that makes the broader team comfortable in engaging with her at all levels," says Cian O'Brien, executive vice president and chief operating officer of Audi of America, who interacts with Davis as part of the leadership team.

"The journey that is required means a level of cultural change, and this is only deliverable with the right approach. Steph handles this perfectly," O'Brien says. "She is dynamic, empathetic, and constantly wants to make the organization a better place to be."

Davis says this support trickles down from the top. "We are really lucky in that Scott Keogh, our CEO at Volkswagen Group of America, really understands that culture, compliance, and integrity are all tied together," she says. "If we don't have a good culture, then it doesn't matter how good our strategy is."

Ultimately, it's really the managers and senior managers who are responsible for the culture of an organization, because that's who the employees see on a day-to-day basis. "If they're not living a culture of compliance and integrity, we're going to have a much harder time changing that culture," Davis says. Our company has some great partners throughout the business and senior leadership."

Training and education

As with any robust ethics and compliance program, communication is another big part of trust-building. For her part, Davis sends out to the entire company each month a personal e-mail, what she calls "The Compliance Chronicles," that provides a fictionalized scenario—but inspired by real-life events—describing misconduct that was uncovered, how the investigation was conducted, what the outcome was, and the lessons learned.

"We started in January 2019, and they are, by far, the best received thing we've done," Davis says. "About a week after I send them out, I get emails from all levels of the company asking questions, saying they're enjoying them, or 'Keep it up.'"

"We've also seen a spike in compliance consulting questions after each 'Chronicle' is sent," she says. "For example, if we send out a gifts 'Chronicle'—which we do around December when the holidays are coming and that's when vendor gifts spike—we tend to see a spike in questions and clarifications around the gifts policy, so it serves as a helpful reminder to people."

"I believe there's also a bit of the gossip factor," Davis adds.

STEPHANIE DAVIS

Title: Chief Ethics and Compliance Officer,
Volkswagen Group of America

About Volkswagen Group of America: VW is a wholly owned subsidiary of global automobile manufacturer Volkswagen. The company has approximately 8,000 employees in the United States.

Location: Herndon, Va.

Years of experience: 10+

Areas of expertise: Ethics and compliance development

"I find many times that decisions are not malicious, just uninformed, and so I always advocate a strong message of training and open, safe environments for raising concerns."

"Because the scenarios are fictionalized, they're not harmful, but it also helps employees understand what's happening inside the compliance space when they do report an issue. Since we can't follow up on every report, especially since most are anonymous, it is helpful for employees to read about real cases that happen so they understand our process better."

Additionally, Volkswagen Group of America now produces four mandatory, Web-based compliance trainings annually. These 30-minute training sessions alternate every year between training on the Code of Conduct and training on matters of ethics and integrity.

Volkswagen now also coordinates a series of integrity workshops on an annual basis. Though voluntary, the workshops were attended by 80 percent of Volkswagen's managers last year. "They give people the opportunity to discuss what needs to change in the organization, what is working, and what isn't," she says.

Davis believes that within the next 10 years ethics is going to be the piece that people focus on most. "Compliance with rules and regulations and policy is good, and you need that baseline," she says, "but I really think that compliance as an industry is turning much more toward an industry of ethics and focusing on doing the right thing." **TM**

COLLEEN Dorsey



Colleen Dorsey's experience as counsel for Land O'Lakes has taught her what goes into the role of successful CCO.

BY NEIL HODGE

Director of Organizational Ethics
and Compliance

University of St. Thomas School of Law

The pragmatist

If the compliance profession is going to thrive in the coming decade, it needs to come up with practical, proactive solutions that managers and employees can get behind. So says Colleen Dorsey, whose two decades working in compliance and legal have seen her leading from the front in Fortune 500 companies.

Dorsey has spent more than 18 years working as in-house counsel. She spent almost 16 years at agribusiness Land O'Lakes, Inc. (some of them as senior counsel), where she developed the company's original compliance and ethics program. In this role, she reported directly to the audit committee and was expected to think strategically about the ethics and compliance function and how it might tie to the company's overall long-term strategy and plan. In developing the compliance program, Dorsey designed a decentralized structure/process across the organization, reporting into the compliance function through formalized documentation and reporting along with oversight committees.

Her length of service at Land O'Lakes saw Dorsey get involved in a wide range of different aspects of in-house legal and compliance and ethics work. She took the lead on a number of antitrust matters across the whole business, such as price fixing, price discrimination, and resale price maintenance. She also helped with staff training to improve their awareness of anti-competitive practices, such as setting up online training modules that could also be used by third-parties to ensure that their teams were also well-versed in antitrust and compliance issues. Dorsey had a deep involvement in working on commercial contracts (ensuring that the organisation's intellectual property was properly protected), merger & acquisition matters, corporate governance issues, and checking that the company's marketing and advertising was in line with regulatory standards, best practice, and the law.

Dorsey's experience illustrates the need for compliance



professionals to be flexible, multi-skilled, and "solutions-focused." She also believes that compliance needs to be "realistic" and understand how people operate.

"I am a practical person and I've always believed that compliance professionals need to be realistic about what they want people to do, and how likely they are to do it," says Dorsey. "It is much better to introduce protocols, policies, and procedures as part of the way that people in a business already work, than just add tasks to their workload that they will forget about, ignore, or leave until they have finished everything else that's on their desk. You also need to start small and build up: If people are prepared to follow one of your recommendations without any pushback, then they are likely to go further, especially if they can see or appreciate the results."

Dorsey believes that compliance officers need to look more closely at the behavioral aspects of risk. "Sometimes compliance focuses too much on 'what has happened' and 'what has gone wrong' rather than ask why something happened. The profession needs to understand why employees do not always follow rules, and under what circumstances or what kind of environment they might deliberately break them. It is no good saying to management that 'we put in a lot of procedures and protocols but nobody followed them.'"

Following her years at Land O'Lakes, Dorsey worked in the legal department at another agribusiness, Syngenta Seeds, Inc., before taking up her present role as director of the Organizational Ethics & Compliance (OEC) Program at the University of St. Thomas School of Law in Minneapolis in November 2015.

Dorsey leads all aspects of the graduate degree program and is responsible for six different degree offerings in the compliance and ethics discipline, two of which are housed entirely online (a first for the university). The course is mainly taught in the evening after working hours, and students are typically already working in compliance and ethics roles

for their employers.

In just a few years the OEC program has grown significantly under Dorsey's leadership. It currently has 40 students and more than 100 alumni. Added to that, when the program started there were just four companies offering internships—now there are over 40.

Since her appointment, Dorsey has built consensus around the program's direction and curriculum—both within the schools involved in it (the law and business schools) and with its 23-strong corporate advisory board (which she leads), comprised largely of chief compliance officers from the likes of major companies such as Delta Airlines, internet domain registrar GoDaddy, and several Fortune 500 companies located in and around the Twin Cities.

The OEC program is the only one of its kind in the United States that is accredited by the Association to Advance Collegiate Schools of Business (AACSB) for its focus on ethics and compliance. Dorsey is responsible for all aspects of this accreditation process and has been instrumental in ensuring that the learning objectives and curriculum associated with the program excels at all levels. She also leads a unique

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externship program that places students interested in a career in ethics and compliance in semester-long placements at companies all over North America (including Delta, Target, and 3M).

Dorsey's energy, drive, and enthusiasm have helped cement the program's continuing success and growing reputation, says Robert Vischer, Dean and Mengler Chair in Law at the University of St. Thomas School of Law.

"Colleen has an uncanny ability to convene conversations that are at the leading edge of the field. That's absolutely crucial for a university," says Vischer. "We cannot just impart current best practices to our students; we also have to help equip our students to meet coming challenges. That is an inescapably collaborative project, and Colleen leverages her own expertise in the field to build relationships that expand the conversation in important ways."

Outside of her normal day job, Dorsey sits on the board of the university's Center for Ethics in Practice, as well as the editorial board of the Society of Corporate Compliance & Ethics' magazine Ethikos. She is also a member of standard setter IEEE's Ethics & Compliance Initiative (ECI), which includes sitting on a working group on the ethical concerns of AI, and she regularly hosts and presents at key ethics and compliance conferences around the United States.

Dorsey believes that networking is "vital" for people's professional development, but particularly so for compliance officers if the profession is going to raise its profile.

"A large part of our job is to get people to follow our recommendations for the interests of the organization, so we need to go out there and explain what we're doing and why we're asking them to follow our procedures in a certain way," she says. "You can try dictating to people the way they should do something all you want, but you'll always find persuasion and talking people through your thinking a much more effective tool for getting people on board."

Networking is also important to help compliance officers get a better understanding of the business, says Dorsey. "Compliance needs to understand the business, the way it operates, and its risks if it is going to make valuable suggestions as to how controls and policies can be updated and improved. You need to see that the steps you want to put in place make sense and become part of normal day-to-day work, rather than be a bureaucratic frustration that slows the whole process down."

To illustrate the point, Dorsey's networking and leadership skills have resulted in the launch and successful curating of two popular forums for discussion and benchmarking in ethics and compliance—The Twin Cities Roundtable for Artificial Intelligence and the Emerging Compliance &

COLLEEN DORSEY

Title: Director, Organizational Ethics and Compliance, St. Thomas School of Law

About University of St. Thomas School of Law:

Founded in 1999, the University of St. Thomas School of Law is an ABA-accredited law school.

Location: Minneapolis, Minn.

Years of experience: 23

Areas of expertise: Antitrust; compliance & ethics program management; mergers & acquisitions; cross-functional collaboration; legal strategy; corporate policies and procedures; online education; business and board acumen; licensing; corporate governance; marketing/advertising/law; strategic problem solving; change management

"The compliance profession is continuing to develop in a positive way and its work is having a greater impact on corporate governance and the long-term future of organizations than ever before. But we can always achieve more, and to do that, compliance needs to get closer to the business so that it understands it and can come up with practical solutions."

Ethics Leaders (ECEL) networking group. Both groups meet regularly and are attended by executives and entry-level to mid-level professionals. The ECEL group has more than 200 members and continues to grow at a steady pace.

Dorsey is optimistic about the future of compliance and believes that there are opportunities for compliance functions to get involved in new areas and achieve even more.

"The compliance profession is continuing to develop in a positive way, and its work is having a greater impact on corporate governance and the long-term future of organizations than ever before," says Dorsey. "But we can always achieve more, and to do that, compliance needs to get closer to the business so that it understands it and can come up with practical solutions." **TM**

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LYNN Haaland

“Super determined and tough” are two traits that propelled Lynn Haaland in her multifaceted role at PepsiCo and will continue to aid the compliance practitioner as she seeks new challenges.

BY KYLE BRASSEUR

SVP, Deputy General Counsel

Global Chief Compliance and Ethics Officer

and Chief Counsel, Cybersecurity

PepsiCo

The compliance compass

A collegiate champion rower, Lynn Haaland knows how to stay the course.

Which is why in January 2016, when she left the U.S. Department of Justice after nearly 13 years to join PepsiCo as its global chief compliance and ethics officer and chief counsel for cybersecurity, she didn't dwell when a landmark case she helped launch took an unexpected turn.

Ardit Ferizi, a Malaysia-based hacker who stole the personal information of approximately 1,300 U.S. military members and other government personnel and sold it to the Islamic State of Iraq and the Levant (ISIL), was extradited to the United States on Jan. 22, 2016. Haaland had charged Ferizi via criminal complaint in October 2015—the first cyber-terrorism case ever brought by the United States.

Ferizi was later sentenced to 20 years in prison, with the case prosecuted by Haaland's former colleague, Brandon Van Grack. She had pushed for him to take over, "so I knew my baby was in good hands," and she had only positive thoughts about the outcome.

"Is there some part of me that thinks, 'Wow, I only had to wait three months to get that done'?" she asks. "Yeah, and maybe then who knows what could have happened after that. I don't waste too much time on it."

"One thing I have learned about myself is that I'm as competitive as the next person, and I absolutely want to win, I want to do the best job, but I want my team to win."

Vain isn't a word those who know Haaland use to describe her. Her parents were of Scandinavian descent, though she grew up in New England. Her father, Gordon, was the first member of the family to go to college and would go on to earn his doctorate, becoming the president of the University of New Hampshire and later Gettysburg College.

From that background, there wasn't any question Haaland and her brother would go to college, and she studied comparative literature at Princeton. It was there that she helped the women's varsity crew team to a national title.



"You try not to live in the past, but whenever anybody brings that up, I'm not going to deny it," she laughs. "You don't have to be particularly athletically talented [to row], which is good in my case—you just have to be super determined and tough."

Harnessing those traits, as well as the discipline and teamwork learned from all those hours on Carnegie Lake, she took a job as a paralegal in Washington, D.C., out of college. There she found a new passion, one that prompted her to return to school and earn her law degree from George Washington University.

"What appealed to me was the practical side of it," Haaland said. "You would have clients from lots of different industries, lots of different businesses. I wanted to learn about all of that. I liked the idea that you wouldn't have just

one client; you'd have different clients and see a range of different industries and different problems.

"Also, for a woman, I liked the idea that you pass your bar exam and it's objective. Once you've earned that credential, nobody could take that away."

Just out of law school, Haaland worked in Washington, D.C., and then the Paris office of the law firm White & Case as a junior associate. She subsequently was recruited by her GW Professor Thomas Buergenthal to an arbitration tribunal in Switzerland, helping to adjudicate claims to the dormant Swiss bank accounts from World War II, before returning to the United States to work at Freshfields Bruckhaus Deringer and the United Nations in New York City.

Following her return to the United States, Haaland decided to focus on her other main interest: criminal law. Which is why, when she saw an opportunity to work in such a role at the Justice Department, she decided to take a shot.

"By then I'm late 20s, and I'm thinking, 'No one is going to hire a 40-year-old trial attorney who's never been to trial. That's not how it works. So I better go someplace where I can be the one in court,'" Haaland said. "As soon as I paid off my law school loans, I immediately put in my application to a couple of U.S. attorney's offices, and it worked out for D.C."

Haaland worked as an assistant U.S. attorney for the District of Columbia and then the Eastern District of Virginia (EDVA), later becoming deputy chief of the national security & international crime unit. The Ferizi case came along—"At the time, you're not necessarily thinking about it being the first, you just want to get it right" Haaland said—and just a few months later, so did an offer from Tony West, then-general counsel at PepsiCo and now chief legal officer for Uber, to join him at PepsiCo.

"I loved those cases," Haaland said of her time at the EDVA. "I would go back tomorrow. But prosecutions are, by their nature, reactive. It's not always the best way to prevent something bad from happening. Haaland explained that at the time, she was working on several cases relating to the conflict in Syria.

"I thought, 'There are a lot of super smart people like [former PepsiCo Chairman and CEO] Indra Nooyi and Tony West who get up every day and don't think about Syria. So maybe I should go to PepsiCo to learn about business and the world in new ways,' and so I did."

West was new to PepsiCo himself after also working for the Department of Justice, where he was No. 3 in the department, and his focus was to "double down on compliance and ethics." He sought someone who could be a strong compliance chief but also a deputy general counsel and a boon to the company's legal acumen. Haaland, whom he did not know at the time, had been referred to him, and she emerged as the clear choice for the job.

"In many ways, it was an easy choice for me to choose Lynn," West said. "Because of Lynn's style and because of the ability she had to quickly gain the trust of key board members, the audit committee, and other members of the C-suite, most important the CEO, I think she was able to emerge as a leader very quickly in ways that others had not been able to do."

With PepsiCo, Haaland inherited what she believed to be an already strong compliance program. "My job was to make it better," she said. She felt the food and refreshment giant could use some refreshing of its own, so she implemented the following:

- » A new annual code training for the company's global population of 265,000 employees.
- » A new anti-corruption, anti-bribery vetting program of outside partners.
- » Multiple tools to better track compliance procedures.
- » A plan to bring the company's global average days to close to within 70 days—in line with the Speedy Trial Act.

On the latter, Haaland's compliance team—numbering approximately 50 people, including the IT legal team, which she co-managed—got the average below 60 days.

"If you have a problem, you want to get in and figure it

"PepsiCo has been an incredible experience. I tried to be very thoughtful about how to challenge the team, bring in the right people, hire the right people, but also challenge the folks that were there to try to think in new ways and be the best we could be. All that I feel that we've done—we have a great program in place—and what I'd like to do now is go build one somewhere else and not be necessarily the person maintaining."

out and fix it. If you don't have a problem, and this was always my talking line to the business, you want to get in and figure that out and get out," she said. "Let people get back to work. So I'm proud of that."

Also a point of pride to Haaland is a compliance and ethics app at the company, along with a redesign of the department's web presence. Launched in December, the site now includes "Cautionary tales and words of wisdom," anonymized, real-life cases that are added every two weeks to engage employees in thinking about how to do things the right way.

"I was asking for an app from the day that I arrived; we finally got it done, and I'm super excited," Haaland said. "Initially we didn't get the word out, and now we are getting the word out."

Working at a global company, Haaland drew on her previous international experience and background to better connect with her colleagues. For Shana Cappell, senior legal director and chief anticorruption/investigations counsel at PepsiCo, the fact that Haaland had that kind of track record helped her settle into her role after nearly 14 years as an outside counsel.

"I think there was a bit of a learning curve for both of us, which we kind of did together," said Cappell. "She always, as a manager, has been open with her communication."

"Lynn doesn't sugarcoat things. If there is an issue, you'll know that there is an issue, but she's not alarmist. ... Personally for me, I wouldn't have been able to do my job with somebody who was alarmist. It would have been horrible."

Haaland's work has also earned her recognition outside the company, including a finalist nod for Chief Compliance Officer of the Year (large-sized company) and giving the keynote address at the Women in Compliance Awards in London in March. In addition to her role at PepsiCo, Haaland is the company's representative on the board of directors at WIN, an organization that works to transform the lives of homeless women in New York City.

Those passions helped connect Haaland with Amy Conway-Hatcher, a partner at law firm Baker Botts who has invited Haaland to speak with her on panels geared toward women in the field.

"It's been a great working relationship in terms of our collaboration, not just on the matters that we work on together but in doing outreach to women at our level and figuring out how we can help support and sponsor each other," Conway-Hatcher said.

After three-plus years at PepsiCo, the course has once again shifted for Haaland. She leaves the company after agreeing to stay through the first quarter of 2019. Though she is departing the company, she'll remain its representative on the board

LYNN HAALAND

Title: SVP, Deputy General Counsel, Global Chief Compliance and Ethics Officer, and Chief Counsel, Cybersecurity, PepsiCo

About PepsiCo: PepsiCo is an American multinational food, snack, and beverage corporation with products sold in more than 200 countries and territories and 22 brands that generate more than \$1 billion each in estimated annual retail sales.

Location: Purchase, N.Y.

Years of experience: 20+

Areas of expertise: Investigations; cyber-security; global anti-bribery and anti-corruption; problem solving

"One thing I'm comfortable saying about myself is that I'm as competitive as the next person, and I absolutely want to win, I want to do the best job, but I want my team to win."

at WIN, something she "couldn't be happier" about.

"PepsiCo has been an incredible experience," Haaland said. "I tried to be very thoughtful about how to challenge the team, bring in the right people, hire the right people, but also challenge the folks that were there to try to think in new ways and be the best we could be. All that I feel that we've done—we have a great program in place—and what I'd like to do now is go build one somewhere else and not be necessarily the person maintaining."

As someone who left PepsiCo to do the same, West understands and appreciates Haaland's desire for a new challenge. And, given her experience, he expects nothing but big things from his former recruit.

"She is so talented and skilled at the way she is able to work with others and move the needle in a very positive direction, particularly within a bureaucracy or within a situation where she needs to gain the consensus of other stakeholders," he said. "I think those skills will be valuable to her and will benefit anyone with whom she works in the future." **TM**

STEPHEN C. King

In an effective, disarming style, this Top Mind is using investigations to guide compliance, not just club noncompliance.

BY TAMMY WHITEHOUSE

SVP, Counsel, Investigations
and Compliance
Mastercard

The intrepid investigator

Stephen C. King doesn't mean to intimidate people simply by asking questions. It just seems to go with the job.

As a career investigator, he's dealt with some true life-and-death issues. That was more during his days as a government investigator, however.

Now he's in charge of a global compliance investigations team at Mastercard, where he takes great care to ask questions that will elicit the right information without unduly unnerving his interview subjects.

"In a nonthreatening way, we've got to remind people to do the right things the right way," he says. "Especially when we're looking at policy violations, these are not criminals. Most of the time, it's people overstepping or getting ahead of their skis."

He's really trying hard not to pursue questioning like a prosecutor trying to convince a jury or a judge to convict. "This is not just about going after bad guys. It's about being an educator as well—helping people, being a counselor, identifying issues and where there are problems. It's about being an advocate to fix problems. We're just trying to remind people that integrity matters."

From his first position out of Columbia Law School in 1990, King has been developing and refining his investigative skills. He began with a law firm and was first assigned to bank regulatory compliance matters, but from there he soon transferred to civil litigation and corporate investigations.

King would quickly discover that investigatory work suited him. "I really, really liked it," he says. He seized an opportunity to serve as an assistant U.S. attorney with the Department of Justice, which included a detail assignment to serve as director of investigations and law enforcement for the White House after the Sept. 11 terrorist attacks.

For the DOJ, King would conduct complex investigations into white-collar crime around securities fraud, election



fraud, bribery, solicitation, kickbacks, mail and wire fraud, embezzlement, and much more. He had the chance to serve under, among others, Loretta Lynch, now a former U.S. attorney general, and Andrew Weissman, chief of the DOJ's criminal fraud section who served on the Robert Mueller team investigating allegations of Russian interference in the presidential election.

King accepted the Justice Department position expecting it to last roughly three years. "I stayed for 10," he says. "It was a great experience." It would even include some classified activity on behalf of the newly formed Office of Homeland Security, he says. While he can't describe the work he was doing at that time, he was involved in at least one terrorist matter, he said.

King eventually transitioned into internal corporate work

when he went to Raytheon in 2008 as senior counsel, then to PepsiCo as legal senior director and chief compliance investigator.

One of the ways for internal investigators to evaluate and improve their work is through benchmarking, says King, especially as the compliance space is becoming more competitive. “Not everyone is doing this, but you have to get in that room and have conversations and talk about what are the best practices,” he says. “We have to continue tweaking the system to make sure we have quality and validation in place.”

An efficient way to perform that kind of benchmarking is to network at professional conferences, says King. Through that process, he met someone at Mastercard who proved to be an important contact.

“I was not looking to leave PepsiCo, but after about 15 minutes, we were finishing each other’s sentences,” King says. A few months later, he was attending another conference—Compliance Week’s, in fact—when he bumped into the same Mastercard contact. “She made me an offer I couldn’t refuse,” he said.

At Mastercard, King has two major areas of responsibility. He manages the company’s business conduct office, which oversees conflicts of interest, the code of conduct, the supplemental code of conduct for senior officers, and professional conduct policies for the company’s attorneys and others who manage conduct policies. He’s also in charge of compliance training throughout the organization as part of business conduct.

In addition, King also runs the global compliance investigations team, which looks into allegations of misconduct either by Mastercard or other third parties. The team consists of individuals with expertise in other corporate entities, the federal government, and law firms, along with an analyst. The group’s work is closely coordinated with regional investigative units throughout the world.

Reporting directly to the chief compliance officer, who reports to the audit committee, King says the company’s commitment to compliance is apparent. “Here at this company, they get compliance,” he says.

He sympathizes with his colleagues in the compliance profession who sometimes lament they work for organiza-

tions that do not take compliance as seriously. It’s one of the big challenges he sees still facing compliance professionals. “We’re still seeing breakdowns at senior levels,” he says. “If that’s the tone that is set in the organization, as compliance professionals you’ve got to be able to work with senior executives so they get it.”

As an investigator, King sees it as his duty to telegraph compliance even through his work looking into reports of misconduct. Rather than approaching an investigation as a way to punish wrongdoers, King wants to start from a perspective of making people understand the guardrails around their work.

“Companies are under a great deal of pressure these days to perform and grow,” says King. “But too much pressure with the wrong kinds of incentives will beget bad behavior.”

Sometimes the investigative process serves to remind people that policies exist for good reason. Sometimes it exposes weaknesses in policies that need to be addressed. And sometimes it exposes bad actors who must be called out.

Compliance investigators need to be careful not to force a one-size-fits-all approach into every inquiry, says King. “You have to be flexible on how you get to understand what a situation is,” he says. “Our job is to figure out the facts and provide legal advice. It’s about helping people remember that policies are in place to protect people and the company, and that’s why you shouldn’t violate policies, because they make sense.”

Some investigators with more of a prosecutorial mindset have trouble making that transition into corporate investigations, says King. “Some people get into it because they just want to catch the bad guys,” he says. “If you just have the mindset in compliance that you’re the sheriff, you’re going to have trouble in compliance.”

Stephen Naughton, a senior adviser at advisory firm Stone Turn and fellow Top Mind (2016), crossed paths with King when they both worked for PepsiCo. “He’s got one of the best analytical minds,” says Naughton of King. “He’s probably the best investigator I’ve ever seen.”

King has a knack for being not only an outstanding investigator but also an approachable person, says Naught-

“He’s got one of the best analytical minds ... He’s probably the best investigator I’ve ever seen.”

Stephen Naughton, Senior Adviser, Stone Turn

ton. That enables him to put those he questions at ease. “He performs very disarming interviews,” Naughton says. “People will tell him things they might be uncomfortable telling other people. They could trust him easily and quickly.”

To share experiences across the organization, King holds investigation summits within Mastercard, bringing together investigative teams from throughout the company to compare notes. “You’ve got different teams spearheading different things—corporate controllers, human resources, audit special investigations—so it helps to get all those people into a room and talk about best practices,” he says.

The different groups find there’s plenty they can learn from one another and leverage across the organization, especially with respect to uses of systems and technology. “We analyze a lot of metrics here, tracking almost everything, so we gather a lot of data working with other investigative functions,” he says. “That simple administrative step goes a long way to helping you see where you are.”

In addition, King finds it of the utmost importance to interact with other investigative teams without relying entirely on technology. “You can’t do this job from a desk,” he says. “You have to go out and talk to people. You have to make yourself present.”

One of the challenges King still navigates, despite all of the efforts that have been undertaken the past several years to set a positive tone in business, is fear. “People fear retaliation for raising their hand,” says King. They see the investigative process as a black hole with no transparency, he says.

Transparency with respect to corporate investigations is a legal mine field, especially in the modern legal era where companies are navigating voluntary disclosure programs, U.S. Sentencing Commission Guidelines, attorney-client privilege, and work-product doctrine. There are plenty of complicated legal reasons why the results of investigations can or should be disclosed, or not, although much of that debate focuses on whether to disclose findings to the government authorities, regulatory agencies, or other third parties.

Still, investigators need some means to help their stakeholders within understand how the investigative process works and what the company learns, he says. Employees and other potential whistleblowers might be more willing to come forward if they better understood what happens when they do, says King.

“More companies are putting out reports of what we do, what we are seeing, what areas or topics are a concern, so employees know we take this seriously,” he says. “That goes

STEPHEN C. KING

Title: Senior Vice President, Counsel, Investigations, Mastercard

About Mastercard: Mastercard is a global payments processing company that connects consumers, financial institutions, merchants, and governmental entities in more than 210 countries and territories.

Location: Purchase, NY

Years of experience: 29

Areas of expertise: Corporate internal investigations

“This is not just about going after bad guys. It’s about being an educator as well, helping people, being a counselor, identifying issues and where there are problems. It’s about being an advocate to fix problems.”

a long way to making employees comfortable.”

Mastercard’s report is shared with employees twice a year, says King. “This is the most widely read report in the company,” he says. “It’s getting messaging out to employees so they know they’re being heard, that when they report things, the company takes action.”

When King is not overseeing conduct or investigations at Mastercard, he enjoys unwinding with his wife and his four children, who are at various stages of college and high school study. The entire family is active in scouting, including his two sons who are Eagle scouts and a daughter who has joined the rebranded Boy Scouts, which is now co-ed. She likes it better than traditional scouting for girls, says King, because she can pursue the “extreme scouting” activities, which includes things like learning to use a knife and an ax.

The Mastercard exec is also a recreational musician, playing bass guitar in a band that explores everything from jazz and blues to country, ‘80s, and new wave music. They call themselves “Quadrasaurus,” or “four ancient dinosaurs,” he says. **TM**

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FABIANA Lacerca-Allen

Three kidnapping attempts, including one at the age of six, have taught the Argentina native how to stay calm in the face of a crisis.

BY DAVE LEFORT

SVP Compliance

Aimmune

The crisis queen

Bring up risk with most chief compliance officers, and they'll talk apprehensively about data breaches, shady third parties, supply chain vulnerabilities, or any one of a growing list of things practitioners need to worry about these days.

Not Fabiana Lacerca-Allen.

It's not that the cool-headed compliance chief for California-based biopharmaceutical company Aimmune doesn't have a lot on her plate. It's that she's got a unique perspective thanks to a childhood that taught her about real, life-or-death risks.

Lacerca-Allen grew up in Argentina in the late 1970s, when the country was run by a military dictatorship. Lacerca-Allen's father, Carlos, helped to overthrow that dictatorship in the early 1980s and was a politician in the country's first democratic regime. That made Fabiana a target.

"They tried to kidnap me three times," she explains. "The first time, I was just six years old."

Decades later, when she ponders the compliance challenges of a young biotech firm in a Silicon Valley office 6,000 miles from her native Argentina, she does so in the context of the weighty experiences of her childhood.

"My boss once told me, 'I like how you handle crises Fabiana, you stay very calm,' " she says, repeating a story she's told in the past. "And I said, 'Listen, if they're not shooting at me, I'm having a good day.' "

How's that for perspective?

It turns out, her perilous childhood prepared her well for a career in compliance, where she's considered by peers to be one of the best crisis managers in the business.

"In Argentina, those days, the stakes were life or death. The stakes were high-impact for you, your family, your loved ones," she says. "You don't have a big margin of error. Compliance is more or less the same, but the stakes are a lot less, especially personally. You have the ability to react to them in a different way, and I think that's one of the reasons I am



successful today.

"I have the ability to be very strategic in difficult times. It's easy to be a compliance officer when everything is rolling the right way. The really successful ones are the ones that can keep their heads when everyone else is losing theirs. They can have a strategic view, they can really lead teams to make a difference and to address a crisis. I think my childhood prepared me for that. Nothing I've seen as an adult comes even close, especially not here [in the United States]."

Compliance journey takes her far from home

She knew from an early age that she wanted to help people, and it didn't take long for her to hone in on exactly how she wanted to make a difference.

"When I was six years old, after the first [kidnapping attempt], in school they were asking us what we wanted to do when we are adults," she says. "The teacher asks me, and I say I want to be a queen. And she goes, 'What do you mean?' And I say, 'I'll put the bad people in jail, I'll get the right people out. I'm going to make a difference and help people.' She asks, 'If you cannot be a queen, what would you be?' I said, 'Well, I'd be a lawyer for the same reasons.' Today I can tell you compliance is second only to being the queen."

And so began Lacerca-Allen's journey, not just from Argentina to the United States, but also from an adolescent afraid for her life to a leader in an industry whose purpose is doing the right thing for the right reasons.

She attended college in Buenos Aires and then ventured north, earning a Master of Laws degree from UCLA. From there, she had a decision to make after getting her first job offer in the United States.

"I remember I had a long conversation with my parents," she recalls. "I was saying, 'I want to go back home,' and they said, 'Do not collect regrets. You cannot make a decision without having tried something for 6 months.' So they said, 'Work for six months, and then you can make an informed decision.' And that was 28 years ago."

Before long she found herself in the pharmaceuticals industry, cutting her teeth at Merck, Bristol Myers & Squibb, Mylan, and Elan (acquired by Perrigo in 2013). She provided legal and compliance advice to business units around the globe and developed into a specialist in making compliance reliable in areas in which it was truly a foreign concept.

"Compliance is very U.S.-centric," she explains. "I speak several languages, and in many there is no one word to define compliance. As such, many of the principles are hard to understand outside of the U.S. FCPA [Foreign Corrupt Practices Act], for example, allows for grease payments—payments that are small in nature that do not change the outcome but are done to facilitate a situation.

"But if you say that in Spanish, for example, it can be construed as a bribe. Many of the things that for us in the U.S. are clear and understood are very different because of the law or because of the culture outside of the U.S. So hav-

ing the ability to bridge the gaps, to understand a different culture, and to bring solutions that are practical and are applicable outside of the U.S. has been one of my strengths," Lacerca-Allen says.

She also developed a reputation as practical and strategic leader, sought by companies that found themselves in compliance crises.

At Elan in 2010, Lacerca-Allen helped negotiate and implement a corporate integrity agreement as part of a settlement with the Department of Justice. The agreement required the company to implement a robust compliance program, which she led.

In late 2013, she was brought in as a director at medical device company ArthroCare, which had been fined \$30 million and agreed to a 2-year deferred prosecution deal with the Justice Department to settle charges of fraud. Lacerca-Allen was named to the board of directors at the company just a month before the deal was announced.

"Fabiana was the person that companies hired when they were in real trouble and had significant compliance failures and needed to bring someone in who has credibility and experience to either enhance an existing program or build a new one," said John Kelly, a managing partner at the law firm of Bass, Berry & Sims who worked with Lacerca-Allen as outside counsel at both Elan and ArthroCare. "If I had a company call me that was in deep compliance trouble, she would be at the top of the list of people that I would call. It's not even close."

Kelly explained that the ArthroCare board of directors added Lacerca-Allen as a compliance voice because it was looking for someone with "boots-on-the-ground," real-world experience.

"She was the one interfacing with the Department of Justice," Kelly says, "and having to make decisions about whether certain conduct is a reportable event. It's hard to find someone who had that level of experience—that global expertise and compliance expertise combined."

After putting out fires at Elan and ArthroCare, Lacerca-Allen took her talents to compliance consultancy Ethiprax, which specialized in implementing compliance programs for

"One of the pieces of advice I would give people coming into compliance is find your village—surround yourself with those people who want to see you succeed and want to do the right thing. Second, follow your instinct. At an early age I learned that nobody loves your life more than you. So it's up to you to do what you have to do."

life sciences and healthcare companies.

"She really connected with the business well," says Jeanine Jiganti, who brought Lacerca-Allen in while she was CCO at kidney care company DaVita. "She built a strong immediate relationship with the business leaders, which was unusual for someone coming in on a temporary basis. With one business leader, she made him think in a different way when we were looking at FCPA and which jurisdictions were risky and which were not ... and we adjusted our thinking because of it."

Making a difference 'from the ground up'

After four-plus years as president of the consultancy, Lacerca-Allen decided in late 2018 she was going back in-house at biotech firm Aimmune, a fairly young company that specializes in developing treatments to help children with food allergies.

"The reason I chose them is because their vision and mission is so unique, but totally aligned with my own personal mission to make a positive difference for people" she says. "It's helping kids in an area in which there's no medicine at this point. So it's an unmet need, which could help so many kids in the world and a key reason I wanted to join this fantastic team."

"The vision of making a difference is aligned with my personal mission and vision. That's what I wake up every morning for."

A small biotech doesn't have the resources Lacerca-Allen enjoyed at some of the giant pharmaceutical programs she worked with early in her career, but she sees that as an opportunity rather than a challenge.

"You're building the car before you're running it, and that's a great opportunity that most people don't get," she says. "Everybody else already has established programs. I love it because it's an opportunity to truly make a difference from the ground up."

When asked what advice she'd like to impart to the younger generation of compliance professionals, she speaks with the confidence and assurance of someone who's navigated a mine field—and wants to show others the way.

"One of the pieces of advice I would give people coming into compliance is find your village—surround yourself with those people who want to see you succeed and want to do the right thing," she says. "Second, follow your instinct. At an early age I learned that nobody loves your life more than you. So it's up to you to do what you have to do to survive, succeed, and make a positive impact in other people's lives. I also learned that doing the right thing for the right reasons is a reward in itself. Be careful of what you say and who you

FABIANA LACERCA-ALLEN

Title: SVP, Compliance, Aimmune

About Aimmune: Aimmune is a clinical-stage biopharmaceutical company developing proprietary product candidates and advancing a therapeutic approach for the treatment of peanut and other food allergies.

Location: Brisbane, Calif.

Years of experience: 28

Areas of expertise: Managing compliance during crises; team-building; fostering open channels of communication; international compliance

"I learned one thing at a distance: It takes years to learn to live in a democracy, just like it takes years to learn how to live in a compliance environment. The same people that tried to kidnap me [in Argentina] are still alive. Time has passed, but it has not been enough. There is still a lot of corruption, there are still a lot of issues. The people that only know how to operate in one way can only operate in one way."

say it to, because everything has a consequence. Have a plan. Otherwise someone else might have a plan for you, and you might not like it. Be prepared, and train, because you're going to react the way you were trained."

Got all of that?

For Lacerca-Allen, it all comes back to perspective, perhaps the greatest gift from her tumultuous childhood in Argentina. Failures, for example, are just "difficult positive experiences" that are meant to be learning opportunities. And adversity?

"My saying about that is, 'If you're going to walk through hell, walk like you own it,' " she says. "You learn from it, you come out strong. And that's maybe [influenced] by what I've been through. After that, almost anything else looks easy. I had a lot of difficult situations that I learned a lot from, both professionally and personally. I learned to know that I am stronger than I know." **TM**

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LEO Mackay, Jr.

A large aircraft carrier is shown from a low angle, sailing on the water. The ship's complex superstructure, including various masts, radar domes, and antennas, is prominent against a blue sky with scattered clouds. An F-35 fighter jet is visible on the deck, its distinctive stealthy shape clearly defined. The ship's hull is a dark grey color.

The former Navy pilot brings military tenets into business ethics and compliance.

BY TAMMY WHITEHOUSE

SVP Ethics and Enterprise Assurance

Lockheed Martin Corp.

The compliance commander

Leo S. Mackay Jr. got his first taste of compliance when, as a midshipman at the U.S. Naval Academy, he was asked if he would serve as an honor representative.

“That’s essentially the ethics system for the Academy,” says Mackay. It was his duty, on top of his studies and his training to become a fighter pilot, to serve as an advocate for fellow midshipmen who lapsed in conforming with the code of conduct.

“Just about everything I learned about leadership and organizational dynamics, in one way or another, I learned in the U.S. Navy,” says Mackay. People tend to think of the military culture as being dominated by discipline, he says. Instead, it’s the sense of teamwork and collaboration that really defines how the military works.

In a small infantry unit, for example, someone’s in charge of taking a tactical lead, everyone is watching everyone’s back, communication flows freely, and people flex as necessary to get the mission accomplished. “Talk about teamwork,” says Mackay. “Maybe it’s masked by the uniforms and the haircuts, but the qualities that make it an effective fighting force are the same qualities you want in a business organization.”

That view of organization and teamwork would serve Mackay well in his journey to becoming senior vice president of ethics and enterprise assurance at defense contractor Lockheed Martin Corp.

Mackay’s current role covers a great deal of space. He’s the chief compliance and ethics officer, the chief audit executive, and the chief sustainability officer. He’s responsible for far more than regulatory compliance, which in itself is a significant responsibility in a highly regulated defense contracting business.

Mackay oversees all audit functions, all aspects of ethics, including procurement integrity, anti-corruption protections, and compliance training. He’s also in charge of



environmental/health/safety issues, governance, social partnering, charitable activities, and product innovation, to name a few.

Lockheed Martin is among the large companies that want to integrate multiple functions tied to compliance and assurance under a single reporting structure, says Mackay. Functions like audit, compliance, ethics, risk management, health and safety, privacy trade controls, and more are often managed as separate functions in many organizations. The movement to bring them more comprehensively under a single leader is evolving.

“There’s a reason to organize them with a common reporting structure, to pull some threads, mainly the risk management thread, through the organization,” says Mackay. “It’s also to look for synergies, better data flow,

“If you can’t understand accountability and hold yourself accountable, excuses are like armpits. Everyone has them, and they all stink. Senior executives get paid an awful lot of money, and I think there ought to be more of a willingness to understand things from that perspective.”

collaboration, so you’re not going through departmental boundaries.”

After graduating from the Naval Academy as a fighter pilot, Mackay served in deployments to the Mediterranean, North Atlantic/Norwegian Sea, and Indian Ocean. He is a veteran of Operation Earnest Will, the late 1980s U.S. campaign to protect Kuwaiti oil tankers from attack.

Mackay advanced to lieutenant commander, where he served as military assistant to the assistant secretary of defense, coordinating an organization of 200 people responsible for the U.S. defense policy with respect to nuclear forces, export licensing, counterproliferation, defense conversion, and arms control policy. He also earned his master’s degree in international security and his Ph.D. in public policy at Harvard while in the Navy.

After 12 years in the Navy, Mackay accepted a position as vice president and general manager at Bell Helicopter. He soon returned to government service, however, when he received a presidential appointment in 2001 to deputy secretary of Veterans Affairs, where he initiated a governance process and oversaw reorganization and leadership changes.

Ultimately, Mackay made his way to Lockheed Martin, where he first served as president of a joint venture with Northrop Grumman to oversee a modernization of the U.S. Coast Guard. He moved into business development and then into ethics and sustainability when invited by then-CEO Robert Stevens to take up a new area of responsibility.

Stevens had some specific ideas in mind for how he wanted Mackay to lead ethics and sustainability, said Mackay. “The conventional career dynamic is when the chief executive asks you to do a job, you should do that job,” he says.

It wasn’t an area that Mackay necessarily aspired to, but he assumed he would institute some organizational changes Stevens envisioned and then rotate back into another area of the business after a few years. “Then life intervened,” says Mackay.

In 2012, while Mackay was head of ethics, the company got a tip that its intended successor to the CEO position was involved in an extramarital relationship with a subordinate employee. Working with the general counsel’s office, Mackay was responsible for addressing the situation, which ultimate-

ly led to the senior leader’s departure rather than his installment as the company’s highest executive.

That, combined with Mackay’s achievement in establishing what would become a model sustainability program, cemented him in his role. “I create an image or a reputation for myself as an ethics professional,” he said.

After the dust settled on the CEO transition crisis, the new CEO, Marillyn Hewson, asked Mackay to expand his role to include internal audit. Then in 2018, he gained further responsibility as the company sought to bring all of its risk and compliance activities under one structure.

Today, Mackay says, he’s overseeing four distinct work streams that are generally organized as internal audit, ethics, ERM and sustainability, and safety. He linked ERM and sustainability because, “sustainability ought to be the first order reducer of enterprise risk, so I wanted a close collaboration of what ERM was finding and the shape of sustainability,” he said. “The tools are pretty similar. That’s been a successful collaboration.”

According to the company’s latest sustainability report, the more coordinated approach to ERM and sustainability assures that risk assessments probe specifically for sustainability factors, not just profitability factors that often dominate corporate ERM approaches. That means sustainability goal tracking feeds back into risk mitigation planning. The company’s risk assessments and sustainability performance enable management teams to better perform scenario planning, enhancing strategy elements like personnel and manufacturing.

The benefits extend throughout the business, the company reports, to everything from talent recruitment and development to supplier engagements, security, efficiency, and more. The sustainability program is a particular point of pride for Mackay.

“It was built on my watch, and it’s garnered a lot of awards,” he says. The company wrote a supplier code of conduct that has become a model for the defense industry, Mackay said. The company’s ethics awareness training has become licensed.

While he’s proud of what’s been accomplished, he’s also looking ahead. The next challenge Mackay is determined to

tackle is navigating a path forward in leveraging technology. Especially with respect to internal audit, technology is becoming a significant disrupter of traditional business activities, he says.

“Around internal audit, it calls into question things like how does the three-lines-of-defense system work when some of the tools let you do real-time or continuous monitoring?” Mackay says. “Is that a compliance function or an internal audit function?”

It’s just that kind of visionary thinking that makes Mackay a standout leader, says Blair Marks, vice president of ethics and business conduct at Lockheed Martin. “Leo’s mind never stops,” she says. “He’s always thinking about where do we go next? What do we do next?”

In bringing so many functions under an enterprise assurance organization, Mackay is constantly challenging his people to pursue the next challenge on the horizon, says Marks, without dictating answers at the front end. “Leo will paint a broad vision and challenge us to figure out how to do it,” she says. “He engages everyone on the team and other stakeholders in that thought process. It’s very much a conversation.”

Perhaps the most significant attribute Mackay brings from his military experience into his leadership approach is accountability. He developed a strong sense of accountability in his earliest days at the Naval Academy, where plebes, or first-year students, learn early in their training how they are permitted to respond to questions.

“You’re limited to four answers,” explains Mackay. Those are: yes, sir or ma’am; no, sir or ma’am; no excuse, sir or ma’am; and I’ll find out, sir or ma’am. “You learn excuses are interesting, but they don’t really matter.”

The idea is to focus new recruits on getting the job done without having to make excuses, he says. As an example, when sailors are expected to have the landing deck of an aircraft carrier ready for a plane to land, there are no acceptable reasons for failing to have that deck ready as a plane is landing. “If you have to push an aircraft overboard to make the deck ready, that’s what you have to do,” he says.

Business in general, especially from a compliance mindset, could benefit from a greater sense of that kind of accountability, says Mackay. Business leaders who are simply not effective should recognize that in themselves and voluntarily step aside, he believes, especially amid evidence of plain failures.

“An excuse doesn’t exculpate responsibility,” he says. “If you can’t understand accountability and hold yourself accountable, excuses are like armpits. Everyone has them and they all stink. Senior executives get paid an awful lot of money, and I think there ought to be more of a willingness to un-

LEO MACKAY, JR.

Title: Senior Vice President, Ethics and Enterprise Assurance, Lockheed Martin

About Lockheed Martin: A global security and aerospace company, Lockheed Martin is focused on the research, design, development, manufacture, integration, and sustainment of advanced technology systems, products, and services.

Location: Bethesda, Md.

Years of experience: 36

Areas of expertise: Ethics; assurance; compliance; enterprise risk management; sustainability

“If I have a pet peeve, it’s when people misunderstand what the real strength of military culture and leadership rudiments are. If you look at the chief executives of Fortune 500 companies, many of them come from service academies. I don’t think that’s an accident.”

derstand things from that perspective.”

In addition to his role at Lockheed Martin, Mackay serves as an independent director for USAA Federal Savings Bank and Cognizant Technology Solutions. He’s also a strategic advisor for Pegasus Capital Advisors. Outside of business, he’s active in his church and its school, taking on leadership and governance roles at both the local and denomination levels.

While Mackay may not have aspired to a compliance role at Lockheed Martin initially, he’s come to appreciate what ethics and compliance has to offer for people in all areas and at all levels of business. Compliance may not yet rank among firefighters and police officers as the kind of hero jobs that young school children hope to do one day, but that shouldn’t discourage compliance officers from toeing the line, he says.

“The stuff we do in ethics and sustainability—trying to provide for responsible growth, be a good neighbor, develop responsible corporate systems—that’s all aspirational work,” he says. **TM**

JIM Massey

As a sustainability leader and a fighter for equal access to healthcare, Jim Massey doesn't just talk the talk; he walks the walk. "It's about doing the right thing all the time," he says.

BY JACLYN JAEGER

Global VP of Sustainability Strategy
and Engagement
AstraZeneca

The life coach

When Jim Massey started his career in the biopharmaceutical industry as a sales and marketing representative more than two decades ago, he never dreamed that he'd one day be driving health-care change on the global stage. But that is exactly where his life path has led him, and he wouldn't have it any other way.

Massey says the "turning point" of his career began in March 2007, when he joined pharmaceutical company AstraZeneca as associate director of sales training and development for corporate compliance. It was that job that led him into a continuing career in compliance, evolving 18 months ago into his current role as global vice president of sustainability strategy and engagement, in which he oversees sustainability efforts across the six continents where AstraZeneca operates (sorry, Antarctica).

As a sustainability leader, Massey says that his life's purpose is "to remove barriers for those willing to be who they need to be in the world. It is absolutely who I am, and it's what I do every day. When you're working your life's work, it doesn't matter what your title is, it's more about the impact."

In fact, Massey devotedly lives by the philosophy that work-life balance is one in the same. "When I wake up in the morning, it doesn't matter if I'm helping AstraZeneca or I'm helping the person I happen to meet at the canteen in the morning," he says. "I'm here to help everyone. It's about doing the right thing. It is at the very crux of being authentic, being genuine."

For Massey, his time with AstraZeneca has been as much a personal journey as a professional one. Prior to assuming his current role, his boss, Executive Vice President of Sustainability and Chief Compliance Officer Katarina Ageborg, had asked him in November 2015 if he'd like to assume responsibility for Safety, Health & Environment (SH&E). "I said: 'Yes,' because I knew I could [take on the role], but I remember hav-



ing some self-doubt," Massey candidly admits.

That self-doubt had nothing to do with his professional acumen and everything to do with his appearance. "I was morbidly obese," Massey says. Health isn't a privilege in other countries like it is in America, he says, and—as someone who would be leading a geographically dispersed team of 90 people operating across six continents—"What would people think about a fat American running health?"

That was a significant inflection point for Massey in both his personal and professional life. "I had to remove my own self-induced barriers," he says. "Since that time, I have lost 90 pounds."

But his journey toward a healthier future didn't stop with just himself. As leader of the company's global health strategy, "I need every team member to be at their peak perfor-

mance. That's a requirement this year," Massey says. What that means in practice is that line managers have been asked to support their employees on their individual journeys to good health, however they define it—mind, body, and soul. "Everyone gets to come to work at their best and then leave work at their best, so they can pursue their life's work," he says.

Massey speaks especially passionately about matters of inclusion and diversity. As part of that effort, one of Massey's first priorities as a compliance leader was to transform the company's Code of Conduct and condense it into a Code of Ethics, with a core focus on the company's values. One of the core principles, as stated in the Code, is to "promote a culture of diversity, respect, and equal opportunity."

Massey doesn't just talk the talk; he walks the walk. "He embraces diversity and inclusion around the clock, for real," Ageborg says. And he doesn't do it because he has to or because he should. It's woven into the fabric of who he is as a person. By way of example, Massey is executive sponsor for the local Network of Women chapter, and he has been a member of the Women's Summit Planning committee since 2016.

Massey stresses the importance of having in place a "feedback culture" to ensure the business stays aligned with its values. If people have the fortitude to speak their minds and be heard, and they feel safe and empowered to do so, they are also more likely to tell you when they see bad or unjust behavior, he says.

That's much different than a purely policy-driven, "if you see something, say something" compliance program, Massey adds. "We're saying, 'Speak up. It's part of our culture.'"

Ageborg describes Massey as a "visionary" who saw opportunities in a much broader sense than anyone else had done before him as a member of her leadership team—such as how AstraZeneca could influence the broader safety and health agenda; how business functions can better network with one another and share best practices; and how to reach out to people and address tough issues that the company hasn't addressed in the past.

SH&E, much like compliance, used to be seen as a "necessary function," Ageborg says. Thanks to Massey's efforts, now it's seen as a function that can positively influence the company for the greater good, "so he has definitely changed that part of how we operate," she says.

Toward a greater good

Doing things for the greater good is a philosophy that extends across AstraZeneca's broader global enterprise and its entire global footprint, more generally. In 2018, AstraZeneca brought teams together leading the areas of sustainability strategy, environment, safety and health and compliance into a new Global Sustainability function to reflect the company's intent to focus not just on ethical culture, but broader corporate stewardship as well.

By bringing these key areas and programs under one umbrella department, compliance no longer plays the role of a strictly defensive function, but rather one guided by ethics and transparency. "That was a major mind-shift for us," Massey says.

From a governance standpoint, these functions report into Ageborg, who reports directly to CEO Pascal Soriot. This global initiative is driven by AstraZeneca's sustainability strategy team, which Massey describes as an "interconnected matrix," whose purpose is to inspire, advocate, and govern as needed over sustainability issues that an independent assessment conducted in 2018 found to be material to AstraZeneca, it's employees and external stakeholders. Massey's team focuses on three core priorities:

- » Strategy to drive access to healthcare for patients around the world;
- » Awareness and action for the health and well-being of AstraZeneca's workforce and the environment ; and
- » Training and engagement among the company's 60,000 colleagues on ethics and transparency; the importance of the company's Code of Ethics and how to use it for sound judgment.

"I don't think anyone who meets [Massey] will forget him, because he has that way about him in terms of engagement and connecting with individuals. He is genuinely one of the best leaders I have worked with. And he has been instrumental in defining our sustainability strategy."

Katarina Ageborg, Executive Vice President of Sustainability and Chief Compliance Officer, AstraZeneca

"I don't think anyone who meets [Massey] will forget him, because he has that way about him in terms of engagement and connecting with individuals. He is genuinely one of the best leaders I have worked with," Ageborg says. "And he has been instrumental in defining our sustainability strategy."

Another area where Massey and his team have been instrumental, Ageborg says, is the work they have done in producing the company's annual sustainability report. Now in its fourth year, the sustainability report describes both the progress the company has made, as well as the struggles it still faces under the company's three core priority areas: access to healthcare, environmental protection, and ethics and transparency.

"We're not just hiding behind words in a policy," Massey says in speaking on the importance of the sustainability report. "We're sharing with the world what we're doing to have an impact and be a good company."

In talking about AstraZeneca's commitments, Massey says he is also personally committed to breaking down barriers to healthcare for those who live in countries where economic inequality makes it challenging to afford certain medicines, see a healthcare provider, or take time off work to get treatments.

AZHealthConnect is an example of just one initiative. It allows AstraZeneca employees to support families in Kenya by making voluntary donations that directly help families receive basic healthcare needs, such as medicines and appointments with healthcare professionals. AstraZeneca matches the amount of all employee donations to provide even more families with healthcare.

All of these sustainability issues—like inclusion and equal access to healthcare—have everything to do with corporate ethics at a global pharmaceutical company like AstraZeneca, because maybe the one person who comes up with an innovative solution "to save the planet for my boys' future," Massey says speaking as a father, happens to be a young woman in a low-income country.

"If you don't address her healthcare, she may not have the same benefits that my children do living in the United States, and that's not fair. That's why I fight every day," Massey says.

Moving forward

It is it not inconsequential that AstraZeneca is focusing on sustainable initiatives at a time when the ethics and compliance profession is facing a war for talent, and prospective employees are now asking these types of questions. "The millennials we are recruiting want to know about our diversity

JIM MASSEY

Title: Global Vice President, Sustainability Strategy and Engagement, AstraZeneca

About AstraZeneca: Founded in 1999, AstraZeneca is a global, science-led biopharmaceutical company that focuses on the discovery, development, and commercialization of prescription medicines, primarily for the treatment of diseases in the areas of oncology, cardiovascular, renal & metabolism and respiratory.

Location: Cambridge, United Kingdom

Years of experience: 20+

Areas of expertise: Sustainability; safety; health; environment

"When you're working your life's work, it doesn't matter what your title is, it's more about the impact."

and inclusion strategy. They want to know about our carbon footprint," Massey says.

Simultaneously, innovations in technology, too, are turning the compliance profession on its head. "We're in one of the most dynamic periods of humankind," Massey stresses. Some call it the "fourth industrial revolution," and others call it the "trans-human revolution." Whatever its name, it's transforming the compliance profession in remarkable and dramatic ways and at such a rapid clip that it has made it impossible for laws and regulations and company policies to keep up.

Compliance officers have wanted that proverbial seat at the table for so long, but if compliance with laws and regulations is strictly all that they worry about today during this time of rapid change, "You won't even be in the room anymore," Massey says. "You will work yourself out of a job and will no longer be relevant."

That's why focusing on matters of ethics, diversity and inclusion, and other sustainable initiatives is so important, because those values will always remain relevant. "We've got to make sure employees know the values and behaviors we expect," Massey concludes, "so that they can be agile in addressing the business needs today and not worrying about what the policy may say tomorrow." **TM**

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MATTHEW Pachman

The secret to rebuilding corporate culture after a scandal? It involves the people left behind.

BY JOE MONT

Vice President, Chief Risk
and Compliance Officer
FTI Consulting

The phoenix

It sometimes takes a Top Mind to spot a kindred spirit. In this case, it was Ellen Hunt, ethics and compliance officer at AARP and a 2016 recipient of the Compliance Week award. It was her nomination that would help earn the same accolade for Matthew Pachman, vice president, chief ethics and compliance officer and chief risk officer at FTI Consulting.

Hunt reached out to us about Pachman, granting him a nickname that may very well start to stick throughout his career: “The phoenix.”

“At every company that he had been at he has taken the ethics and compliance program and raised it from the ashes to be a world-class program,” she explained.

“Besides being brilliant, Matt is an effective executive that gets things done no matter how tough the situation or small the budget,” Hunt told us. “His personal style of infusing humor and storytelling into his interactions makes him a person that everyone trusts and gives him the ability to get those that seem miles apart to be on the same path. He builds where there were silos; he helps end territorial fights and eliminates the confusion that often exists in the investigation process.”

We will get to those organizations that inspired the mythological bird comparisons in just a bit, but first more about Pachman.

As chief ethics and compliance officer, Pachman is responsible for overseeing FTI Consulting’s ethics and compliance programs globally. In his capacity as chief risk officer, he oversees all aspects of the company’s risk management and compliance functions.

FTI Consulting is a global business advisory firm that helps organizations manage change, mitigate risk, and resolve disputes involving financial, legal, operational, political and regulatory, reputational, and transactional. The company has more than 4,700 employees located in 28 countries.



Prior to joining FTI Consulting in 2012, Pachman served as the vice president and chief compliance officer at Altegrity, a position he held until 2010. He was also chairman of the Ethics & Compliance Officer Association and director of the Ethics Resource Center.

In Pachman’s current role at FTI, he has a responsibility not many in the compliance world have on their plate: overseeing certain insurance policies.

“At a financial institution, the risk function might be divided among several people, each responsible for a different kind of risk,” he explains. “In my case, it’s a little bit closer to the traditional compliance role where I’m responsible for doing annual risk assessments for the entire company and brought in to talk about different types of risk, if we’re thinking about a particular new piece of work or a

“Besides being brilliant, Matt is an effective executive that gets things done no matter how tough the situation or small the budget. His personal style of infusing humor and storytelling into his interactions makes him a person that everyone trusts and gives him the ability to get those that seem miles apart to be on the same path.”

Ellen Hunt, Ethics & Compliance Chief, AARP

new business line.”

“Lastly, I am responsible for insurance. Not things like health- or employee-type insurance, but professional liability and other types of products, like directors’ and officers’ liability insurance. That’s something I’ve had to learn,” Pachman says.

“Insurance may be one more thing to do, but it does not have that sort of philosophical tension that you get when you talk about ethics versus compliance, or ethics and compliance versus the legal department. There’s always been discussion about compliance versus ethics,” he adds. “A lot of people have the title of chief ethics and compliance officer and, yet, there’s always people that will say, ‘hold on ... compliance is more legalistic, in some ways it’s black-and-white-type rules.’ Ethics is more about doing the right thing and company culture. That debate has gone on for a long time.”

Another interesting compliance debate is the transformation of compliance officers. Many now tackle corporate culture measures and absorb ethics and risk management demands.

Pachman says that among the forces that helped create and professionalize compliance in the 1990s was the Department of Defense’s focus on ethics known as the Defense Industry Initiative. It currently exists as a nonpartisan organization comprised of representatives from nearly 80 member companies, primarily from the aerospace and defense industry, that perform U.S. government contracting. The DII’s mission is the continued promotion and advancement of a culture of ethical conduct in every company that provides products and services through government contracting.

Still evolving Federal Sentencing Guidelines and a focus on the Federal Corrupt Practices Act by the Department of Justice further charged-up a focus on corporate ethics.

The FCPA, is “the poster child” for compliance departments growing and being stretched to their limits in those

days, Pachman says. “This became much more and more of a worry for companies. Indeed, I used to have to remind people that compliance isn’t just about anti-corruption, compliance, or FCPA compliance, because it was for a while several years ago. It was easy to lose sight of these other things.”

With once distinct functionary lines redrawn, how does Pachman conduct compliance- and ethics-related employee training?

“I do a lot of live training. We have locations in many countries. I try and travel around and visit the offices,” he says. “I want the people there to get to know me. Having people get to know you is a way to establish trust, so that they’re more likely to contact you if they have a question or, more importantly, a problem.”

“When I do live training, I try to make it funny,” Pachman added. “When you get up there, everybody’s expecting to see Ben Stein from Ferris Bueller’s Day Off. If you can work in some humor, your audience will be pleasantly surprised.”

Pachman also mixes in “true, but sanitized stories about things that have happened at a company.”

“There’s usually at least one good story in each of the areas,” he says. “That’s where you get people’s attention. People don’t think these things can happen where they work. They assume that you’re not going to talk about it in blunt terms, or you’re going to be generic. You have to sanitize it appropriately, but it gets people’s attention. And, if you can make it a little bit funny, because you make fun of either yourself or something dumb the bad guy did, it gets people laughing a little bit throughout. They stay awake, and they stay engaged.”

From the ashes

Now, back to Pachman’s view of building a new and improved compliance program out of the ashes of a scandal.

On two occasions he has been asked to decontaminate

toxic cultures.

One was MCI, the former WorldCom. In 2003, it settled accusations of fraud by the Securities and Exchange Commission by paying a \$500 million penalty. The penalty was the largest ever sought by the Commission, and was, in large part, a reaction to the accounting scandal that rocked an earlier MCI and WorldCom merger. Pachman served as chief ethics officer at MCI Inc. after being appointed to that position by its general counsel in August 2002 following the revelations of fraud by former WorldCom executives.

His next stop was reshaping yet another scandal-ridden company, Freddie Mac, where he served as VP, compliance-ethics and business practices. Prior to his arrival, the mortgage finance company and top executives were fined by the SEC for fraudulently misstating earnings by more than \$5 billion over a four-year period. Pachman led enterprise-wide ethics and compliance functions and managed the team responsible for the code of conduct program, including maintenance of code-related policies, development and implementation of training programs, internal investigations, and certifications.

"At a high level, what I would say is that you've got to understand the employee base and other stakeholders of the entity for which you're trying to build or rebuild culture," he says. "Where I think people make a mistake is in relying too heavily on cookie-cutter solutions. Unlike when I started doing this kind of work at MCI, you can now find really great literature on how to build an ethics and compliance program on the internet."

Those blueprints and building blocks may work great in generalities, but they fail to take into account the range of emotions experienced by affected employees.

"In the wake of a leadership failure and criminal-type activity, some companies' employees will react like, 'Oh, my gosh, we need a shower as a company.' They are more than happy to do whatever you ask of them from an ethics and compliance standpoint, because they feel like, 'Yes, we need this, we need this to improve our own reputation.' They believe that they are getting slammed in the press unfairly, just because they work for the company. They internalize that and they are happy to wave the banner of ethics and integrity," Pachman said.

"There are other companies, however, where the employee base may feel that either they or the company are being unfairly impugned, that they do good work, and that they do important work," Pachman adds. "Just because a couple, or a handful of people at the top have done something wrong, they're being not only dragged through the mud, but they also now have to do all this ethics and com-

MATTHEW PACHMAN

Title: Vice President, Chief Risk and Compliance Officer, FTI Consulting

About FTI Consulting: A global business advisory firm with more than 4,700 employees located in 28 countries, FTI Consulting is dedicated to helping organizations manage change, mitigate risk, and resolve disputes: financial, legal, operational, political & regulatory, reputational and transactional.

Location: Washington, D.C.

Years of experience: 17

Areas of expertise: Global ethics and compliance programs; online and in-person training; rebuilding corporate cultures

"There's always been a lot of discussion about compliance versus ethics. A lot of people have the title of chief ethics and compliance officer and, yet, there's always people that will say, 'hold on ... compliance is more legalistic, in some ways it's black-and-white-type rules.' Ethics is more about doing the right thing and company culture."

pliance training and everything else. 'Why should we have to do that when we didn't do anything wrong? Make the bad guys do it.' "

Those two extremes, both of which are from real life, that mean you're going to approach your culture change differently," Pachman says. "For the first group, you want to encourage them that it's a new day, and you appreciate their help."

"For the second group, it's a different approach," Pachman adds. "I think you want to say to them, 'Look, you guys have been good employees and, unfortunately, in order to restore faith in the company, we need to do these things, and everybody needs to be part of it. We'd really appreciate your help.' It's only a slightly different message, but it resonates with the people that are receiving it. If you mess that up, on either side by the way, you can turn off people to the whole program." **TM**



STEVEN Pearlman

When it comes to tackling whistleblower cases, Steven Pearlman has the skills, expertise, and legal acumen “in spades.”

BY NEIL HODGE

Labor & Employment Lawyer

Proskauer Rose

The whistleblower's ally

As all compliance professionals know, whistleblowing is a powerful tool to help uncover wrongdoing and should be viewed as an opportunity (if possible) to help steer the organization back on track before the misconduct gets worse. But it can be a tricky process and one that can be badly mishandled—especially if the person speaking up is not listened to or feels so unsafe that he or she goes public. As such, you need an experienced hand to guide you through what can be a terrible journey—and Steven Pearlman is one of the best.

Recognized as one of five U.S. lawyers selected by Law 360 as a “Rising Star Under 40” in the area of employment law, Pearlman has successfully tried cases to verdict in Illinois, Florida, and California, and defended the largest Illinois-only class action in the history of the U.S. District Court for the Northern District of Illinois. He also served as a special assistant AG for the State of Illinois in employment litigation matters.

As a partner in the Labor & Employment Law Department in the Chicago office of law firm Proskauer Rose, Pearlman's expertise covers the full spectrum of employment law, and one of his main areas of focus has become investigating a myriad of whistleblowing cases. Indeed, he is also co-head of the firm's Whistleblowing & Retaliation Group and he has often spoken about how to establish best practice whistleblower programs at a variety of top-level conferences and symposiums.

The work involves him reporting to boards of directors, their audit committees, and corporate counsel to help root out the problem areas, settle any regulatory or enforcement action, and get the organization back on track—often testifying in defense of these whistleblowing investigations in federal court.

It is not easy work and it requires a particular set of unique skills, says colleague Joseph Baumgarten, partner and co-chair of Proskauer's labor and employment law department. Pearlman, however, has these necessary attributes “in spades.”

“If I had to describe Steve's day-to-day approach in a few words it would be: Relentless. Thorough. Detail-orientated.



Practical,” says Baumgarten.

“Steve is an absolute professional and is a leader in his field. He is able to get to the roots of a problem quickly, take a multi-disciplinary approach, and reach out to those who can help—whether they work in our firm, another law firm, or for the client. He understands the need to build bridges with different teams, such as compliance, HR, internal audit, in-house legal, and to work together for the best interests of the client. Such an ability should not be underestimated.”

According to Baumgarten, “what makes a ‘good’ lawyer stand apart from just an ‘OK’ lawyer is the aptitude to understand a client's business quickly. You also need to understand and anticipate what other risks may impact the organisation as a result of a whistleblowing complaint or labour dispute, for example—such as PR risks, reputational risks, financial

risks, and people risks.”

“Furthermore, you need to be honest with the client about the possibility of these risks emerging and how seriously they could potentially impact the business. You need to advise clients that all options have risks attached to them, but also reassure them that some of these risks are highly manageable. Steve can do all this and more.”

Flexibility is another aspect of his work. Pearlman says that when he approaches a whistleblowing case, he often wears three different hats:

- » The first is his “legal” hat: Did a violation of the law take place?
- » The next is his “compliance” hat: Was there a compliance failure (either through non-compliance or a failure to even establish a policy or appropriate protocols) and does the organization comply with the law now?
- » And the third is his “HR” hat: Is the person who blew the whistle being adequately protected?

Pearlman believes that whistleblowing is a “force for good” for organizations, as it highlights bad practices and provides a good opportunity for managers to take corrective action quickly. He believes that compliance has a strong role in shap-

ing whistleblowing policies, procedures, and hotlines, as well as helping to promote an “open environment” where people feel they can raise concerns without reprisal.

“I think it is very important for companies to create a culture that encourages ‘good faith’ complaints internally,” he says. “It is in the best interests of all organizations—and their employees—to have workers feel that they can raise complaints alleging unethical and unlawful activity internally because it shows that they believe that their complaints will be listened to, that they are taken seriously, that the complaint will be escalated, that an investigation and appropriate action will follow, and that they will not face any kind of retaliatory action.”

Contrast that approach with a whistleblower complaint being raised externally, either to a regulator or to the press. “If people don’t feel that they can raise their concerns internally without them being taken seriously—or without risking their jobs—then the process can become more difficult and more expensive. Organizations experience delay in conducting investigations and the opportunity to take corrective action quickly also disappears,” he says.

He adds: “A whistleblower complaint raised externally means that external lawyers will be involved, raising costs and potentially lengthening the timeframe of any investigation, and there is the added possibility that you may also need



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to deal with regulators, enforcement agencies, and the press at the same time.”

In Pearlman’s opinion, establishing good corporate culture is the key to improving governance, and is also an essential component of encouraging people to “speak up” about poor behavior or unlawful activity. “Updating codes of conduct is not enough. Employers need to communicate from the top down the kinds of behavior they want, as well as those that they will not tolerate,” he says.

“Whistleblower policies are not just pieces of paper. They need to be evidence of a culture that encourages people to come forward and do what they think is the right thing with the promise in return that they will be safe from being retaliated against.”

He adds that it is also important for organizations to remember that whistleblowers are protected under certain laws, even if their complaints turn out to be unfounded (provided that they have a reasonable belief). “What might look suspicious or dangerous to people unfamiliar with the situation can often be standard practice; the person has simply misinterpreted what s/he has seen,” he says.

Pearlman stresses that all complaints need to be reviewed—they should not be simply dismissed straightaway. He also believes that organizations need to keep whistleblowers informed about the progress of their complaint, how it is being dealt with, by whom, and how it will be resolved. This should also take place even when no further investigation is deemed necessary.

“Some complaints turn out not to require any further action,” says Pearlman. “Where practicable, there should be follow up communication with the whistleblower. Some whistleblower programs fall short, because they do not retain communication with those who raise an alarm or explain the process. Instead, employees simply think that they have got it wrong or that they have been ignored—and companies should avoid making whistleblowers feel they have not been taken seriously,” he says.

Consequently, Pearlman believes it is a good idea for organizations to have liaisons to whistleblowers to keep people informed about the complaints they have raised.

Pearlman also works on workplace harassment and discrimination cases. He says that there has been a “strong uptick” in complaints since the #MeToo movement gained momentum.

“Sexual harassment and discrimination cases in the workplace have always been on compliance’s radar,” he says. “But there has been a noticeable increase in such complaints since the #MeToo movement gained attention and shone a spotlight on the kinds of behavior and attitudes that should not be tolerated but which can be commonplace in some organizations.” As such, it could be an important area of focus for

STEVEN PEARLMAN

Title: Partner, Labor & Employment Department and co-head of the Whistleblowing & Retaliation Group, Proskauer Rose

About Proskauer Rose: Proskauer Rose is an international law firm headquartered in New York City.

Location: Chicago

Years of experience: 21

Areas of expertise: Whistleblowing & retaliation; class actions; employment litigation & arbitration; non-compete & trade secrets; discrimination, harassment; employment counseling & training

“Some whistleblower programs fall short, because they do not retain communication with those who raise an alarm or explain the process. Instead, employees simply think that they have got it wrong or that they have been ignored—and companies should avoid making whistleblowers feel they have not been taken seriously.”

compliance in the future.

Pearlman’s work has frequently brought him into contact with compliance functions of all shapes and sizes. Generally, he says, he is impressed by their approach, their expertise, and their ability to demonstrate their subject matter expertise.

He believes that compliance functions are continuing to develop and are a vital resource for ensuring good corporate practice. And he thinks that compliance’s future could be well-served if it worked more closely with other assurance functions.

“In some organizations in particular, functions like compliance, internal audit, HR, and legal work in silos: they each do their own work and take their own approach. For the most part, that works well enough. But there are some circumstances where it would be better if they pooled their knowledge, experience, and expertise and collaborated more frequently as they are collectively aiming to achieve the same goal: to ensure that the organization continues to operate effectively and in accordance with regulations, laws and best practice.” **TM**

CHUCK Senatore

Fidelity's Chuck Senatore has learned something from his 22 years of experience as a compliance officer: It's all about teamwork, the ability to influence, and innovation.

BY BARBARA BOEHLER

Head of Risk Oversight

Devonshire Investors

Fidelity Investments

The creative influencer

One of the underlying themes of Chuck Senatore's 22-year career as a compliance officer is that through collaboration, great things are possible—from his in-house compliance work at Merrill Lynch and Fidelity Investments to the founding of the Boston RegTech meetup, the hallmark of Senatore's career is collaboration and inclusion.

Senatore describes his reaction to his first foray into a compliance role as somewhat less than enthusiastic. After spending several years as the director of the Southeast Region of the U.S. Securities and Exchange Commission he was asked, upon assuming a legal role at Merrill Lynch, if he wanted to manage the compliance program of a major business unit. Senatore wasn't sure that compliance was something he wanted to take on. At the time, the compliance role at the firm was a bit removed from the business. The legacy view (familiar to many compliance officers) was that compliance was often seen in the industry as the "anti-business department."

Instead, Senatore saw his role as one of trusted partner to the business, bringing a different skill set and focusing on compliance in common sense ways that made it understandable to his peers in the business units. Drawing from his experience working for a life insurance company to pay for college expenses, Senatore was able to connect with brokerage management as to how hard it can be to build a business.

Approaching issues from the point of view of his internal partners at Merrill Lynch, Senatore endeavored to work with them on repairing the optics of the role of the compliance officer. Recognizing the importance of communication and access, Senatore told them, "I will try my darnedest to get to 'Yes' and only say 'No' if I can't do it ... and in exchange I want to be introduced to the management team."

Senatore was the first compliance officer to be invited to the business' recurring managers' meetings. Over the next three years he moved from attendee to participant, ultimately joining the business unit's operating committee working with the most senior people at the firm.



Since 2002, Senatore has been an active volunteer for the non-profit National Society of Compliance Professionals ("NSCP"), an organization dedicated to serving the needs of financial services compliance professionals. He has spoken at every NSCP national conference since 2002. Additionally, Senatore served two terms as an NSCP board member—2008-2011 and 2011-2014—and was board chair from 2010-2011. Lisa Crossley, executive director of the NSCP, has worked closely with Senatore since assuming her role in 2010. She counts him as a friend and a mentor and credits him with encouraging the board and its subcommittees to work more closely together.

"Some people in the industry who get to senior executive positions only want to deal with senior executives. Senatore is interested in everyone's story," Crossley explains, "Like a

master chess player, Senatore connects those who need to be connected.”

In 2003, Senatore began his Fidelity Investments career by assuming the role of head of corporate compliance and ethics. Fidelity has always enjoyed a strong tone from the top and robust culture of compliance. Senatore, however, enhanced and restructured the compliance program to evolve into one in which there was role clarity and respect for the roles of each constituent business unit compliance program. This was key to creating a seamless partnership across the firm’s compliance function. The compliance program was ultimately designed to work closely with its partners in “the business” and be viewed as a trusted advisor.

“With a large compliance program, whatever the reporting structure, it’s all about influence,” he says. “You need to make sure that you honor and support each compliance officer’s particular role, especially in a complex organization; avoid unproductive turf issues; and create an executive partnership.”

Further demonstrating his philosophy of the importance of executive partnership, when Senatore was asked to provide professional contacts to Compliance Week for this article, rather than select compliance professionals, Senatore chose to have the leaders of Fidelity’s Enterprise Risk Management group and its Enterprise Services business speak on his behalf.

“Senatore is someone in compliance who is thinking outside of the box when sometimes the compliance department is the very definition of the box,” says Michael Wilens, head of Fidelity Enterprise Services. “Senatore redefines the box to get things done in a collaborative way; he can get the right parties in the room and reframe the problem and come up with non-traditional solutions that people haven’t thought of.”

Robert O’Neill is Fidelity’s head of Enterprise Risk Management and started his career at Fidelity at the same time as Senatore. O’Neill was often in the position of auditing Senatore’s compliance program.

“Senatore understands the intersection of risk, law, the business, and reputation; he knows the business and that we are trying to serve customers and the law and the importance of people, processes, and systems,” O’Neill says. “... Senatore is naturally a collaborator and a facilitator; he will bring other ideas forward in a crowd. He is open, authentic, and unafraid.”

Described by more than one of his peers as “a teacher at heart,” Senatore is an adjunct lecturer at his alma mater, the University of Chicago Law School. He travels from Boston to Chicago once a week during the semester to teach a course in compliance and regulatory strategy.

“I want students to have a feel for compliance,” he explains. “I want to teach them to embrace key bedrock principles and values, to have the courage to escalate if they must,

and to develop the sensitivity to partner if they can, in order to put themselves in the position to be that credible voice business leaders will listen to.”

Thomas Miles, dean of the University of Chicago Law School, raved about the feedback he gets from Senatore’s students.

“Students are incredibly enthusiastic,” he says. “I hear three things about the course: (1) that the depth of his knowledge on compliance is unmatched; (2) that he is a tremendous presence in the classroom; he is a compelling and an engaging speaker; and (3) Senatore’s creativity and teaching methods—from lecture and Socratic dialogue to group and role-playing exercises—add to engagement [and] enthusiasm and create that spark in the classroom.”

Senatore not only shares his enthusiasm for the subject matter but also seeks to share the practical aspects of the discipline of compliance that have made him a success. In fact, he endeavors to teach his law students the importance of collaboration to a compliance program.

“He develops exercises for the students to work together to come up with solutions—in legal education we have historically focused only on the Socratic method,” Miles says. “However, once people are in practice they work in teams. It has been terrific that he can work this kind of experiential learning into his pedagogy.”

After the SEC, Senatore worked as an in-house regulatory lawyer before moving to a compliance role. His personal code of ethics remains consistent no matter where he works. Even though it was a change in role, there wasn’t a change in focus.

“At the end of the day, my mission at Fidelity or Merrill Lynch was the same as it was at the SEC: fostering the interests of the investor and the integrity of the capital markets. The missions are perfectly aligned,” he says. “Having a firm and a compliance program with this focus is table stakes in order for our markets to be sound and for the firm to earn the marketplace’s trust.”

In addition to his compliance work, his volunteer work with the NSCP, and his teaching, Senatore has given back to the investing public by working closely with the Financial Industry Regulatory Authority (FINRA), including chairing the FINRA National Adjudicatory Counsel (NAC).

Robert L.D. Colby serves as EVP and chief legal officer of FINRA, which is the self-regulatory organization charged with safeguarding the markets by its regulation of firms registered as broker-dealers. The NAC is a FINRA committee that reviews initial decisions rendered in FINRA disciplinary and membership proceedings, hears appeals, and renders judgment. While a decision is on appeal, the sanction is not actively enforced against the firm or individual.

“Senatore is thoughtful and fair-minded; he gave everyone fair process whether or not he agreed with their views, and he often introduced new ideas and approaches to get consensus,” Colby says. “Senatore was the ideal NAC member.”

The Boston RegTech Meetup

Senatore recognized the need for others in the industry to come together to connect on issues surrounding technology. He recalls being asked to speak at a FinTech event.

“Initially, I was unsure as to what I would say to a group of entrepreneurs pushing the envelope of new technology solutions. What ultimately became clear was, at the heart of any new FinTech or RegTech solution, there were timeless principles underlying what innovators needed to consider with respect to regulatory expectations, governance, and risk management,” he says. “Once I became involved in the space, I soon realized that we had a FinTech sandbox in Boston and no one had done the same thing for RegTech. Then I started to connect with startups.”

The famous line from the popular movie *Field of Dreams* seems particularly apropos in the creation of the Boston RegTech Meetup—“If you build it, they will come.” Senatore founded the Meetup by simply starting a Boston RegTech Meetup page on meetup.com and launched an invitation to an initial meeting.

“For our first event I was fully prepared to have more beer than people!” he recalls.

Senatore built it, and they came: In fact, almost 200 people from the financial services community attended the first meeting. Attendees were from financial services firms, startups, software vendors, and regulators. Senatore describes the dialogue between these groups as collisions.

“In pulling this community together, we seek to create an environment where the order of the day is to bring together the various RegTech stakeholder perspectives, points of view, and insights to tackle these issues and set the stage for positive change,” he says. “The idea is to promote ‘extreme collaboration.’”

The extreme collaboration concept at the heart of the Boston RegTech Meetup has the potential in a grassroots way to move the dial for the RegTech community. The Meetup has already facilitated industry-moving collaboration, such as “office hours” for startups to obtain industry advice and bringing RegTech’s various stakeholders together to explore and dissect issues. The Meetup also provides a forum bringing together the compliance community and RegTech companies to discuss best practices for engaging with regulators.

And it has the interest of the regulators. Senatore’s meetup work has spawned roles working with the Massachusetts

CHUCK SENATORE

Title: Head of Risk Oversight, Devonshire Investors

About Devonshire Investors: Devonshire is the private investment arm of the owners of Fidelity Investments, one of the largest financial institutions in the world with over \$1.5 trillion in assets under management.

Location: Boston

Years of experience: 22

Areas of expertise: Securities and RegTech

“At the end of the day, my mission at Fidelity or Merrill Lynch was the same as it was at the SEC: it is one of investor protection; it is identical. It’s table stakes for the integrity of our markets to be sound, to have that trust in the marketplace.”

Secretary of State’s office and FINRA to help develop practices to promote innovation.

“I marveled at how Senatore has transformed himself from old style lawyer/compliance guy to a RegTech expert,” Colby says. “He is very interested in transforming technologies and how it makes it possible for compliance to more effectively transform, for brokers to conduct themselves fairly, and even how FINRA might use tech.”

The Boston RegTech Meetup may very well serve as a model for these types of collisions that might be possible all over the country.

Senatore’s advice for up-and-coming compliance officers? “Never let your job description define what you do. We are in a brave new world, scary, maybe, but full of opportunity. Be at the front of the line in terms of development; the issues are timeless even if the application is new.”

Whether wearing the hat of an in-house compliance officer, a regulator, a teacher, a mentor, an industry expert, or the founder-facilitator of a method for RegTech innovation, the resounding hallmark of Senatore’s career so far has been one of extreme collaboration.

“The challenges facing compliance departments are considerable, and we need to address them together lest they overwhelm us.” **TM**

MARY Shirley



Her compliance career has been (literally) all over the map, but Mary Shirley remains fixed on a few key principles: aiming high, helping colleagues advance their careers, and making compliance sexy.

BY ERIN LYNCH

Senior Director

Ethics and Compliance

Fresenius Medical Care

The great empowerer

Mary Shirley, senior director, ethics and compliance at healthcare concern Fresenius Medical Care, has lived and worked on four (4!) continents. The native Kiwi, who grew up in Wellington, New Zealand, and studied law at Victoria University, also worked in an ethics capacity in Singapore, Dubai, and Hong Kong before settling in Boston.

That's a lot of laws, world views, and cultural idiosyncrasies. And given her role developing training for more than 60,000 regional employees, that *could* be terrifying.

But if you're Mary Shirley, you relish the challenge.

Shirley's global experience helps her understand the people she's laying out compliance programs for. "One of the reasons I have specifically sought out roles in other areas is that it really allows you to walk a mile in the shoes of your internal clients," she says. "Accounting for the differences means understanding that no way is necessarily better than another" she says.

Since moving to the United States in 2017, Shirley has come to some amusing conclusions about the work culture. For one, "Cursing in the business context in America is nowhere near as standard and accepted as in New Zealand." That's bleeping right. And perhaps New Zealanders are more blunt: Sometimes, she says, "I find it's necessary to try to read between the lines in the U.S. for what the message is, because being too direct is not as acceptable."

Overall, though, "Generally everyone is turning up at the office every day with good intentions," despite different social norms or approaches, she says.

A passion for compliance

Shirley got her start in 2005 as an investigator for New Zealand regulators and government authorities, which laid the foundation for her role as a compliance officer, where she conducts investigations, develops staff training, and leads the company's internal compliance marketing team.

At Fresenius, Shirley led her team in implementing a project management system for the compliance department and



is currently working to implement an enterprise-wide policy management system. She also manages a weeklong Fresenius compliance training program for tens of thousands of staff.

"Mary truly has a passion for compliance that is inspiring," says Lisa Fine, Shirley's co-host on the "Great Women in Compliance" podcast. "Her intellect is strong, but she also makes compliance understandable and relatable."

Similarly, Shirley's former boss Mark Stanley has found her to be "inventive, driven, and enthusiastic with an extraordinary empathy." Stanley, general counsel of Fresenius Medical Care Asia Pacific, says Shirley has an innate "desire to make compliance and compliant behavior part of the DNA of the business She supports the mantra that if the business or other functions have to think about compliance, we've failed."

To that end, Shirley knows the value of staff buy-in on

the compliance department's overall objectives. "Explaining the bigger picture of what our work is contributing to is key," Shirley says.

Shirley's former direct report Samantha Sinclair has seen this in action. "I cannot explain what a supportive boss she was and how she constantly strived to teach me as much as possible about compliance," says Sinclair, who is compliance communications and operations manager at Fresenius Medical Care Asia Pacific. "She always makes you feel like a valued employee, no matter how junior you are."

Even in challenging situations, Sinclair says Shirley "never appeared stressed and would have a cool, calm, and collected approach to finding solutions to the problem."

"Mary was all about making compliance sexy," Sinclair says. "She wanted to push through the stigma around compliance and start using more modern communication techniques to find new ways for people to become more engaged with our policies and brand."

Shirley predicts the way forward for compliance officers is "seeing yourself as an innovator and challenging yourself to create a compliance 2.0 or even 3.0 environment," while "truly embedding a culture of integrity into the DNA of the business." This means taking stock of things like how educated your board is on compliance, what the company is doing with data analytics, and how your program benchmarks itself.

On the staffing front, "It's important to recruit for holistic coverage of skill sets," Shirley says, as companies are realizing that a compliance department full of just lawyers "can leave a few gaps."

Empowerment is also a priority for Shirley. "Mary is always open to different points of view and encourages her team members to speak up when they disagree. She fosters a positive work environment where you feel like your thoughts and opinions are heard and matter," says Shirley's colleague Julia Basha, associate compliance specialist at Fresenius.

Connecting the compliance community

One thing that stands out right away about Shirley is her desire to bring people together. So when she found herself a New England newbie without many connections, she decided to do just that.

Shirley helps organize informal Boston-area meetups for compliance professionals, where they discuss vendor solutions, share notes on upcoming professional development courses, and help each other job-hunt when needed.

"It can be lonely starting out afresh in a new country, and meeting people in compliance is typically quite easy because we already have something in common," Shirley says.

Interestingly, Shirley labels herself a "huge introvert,"

which seems at odds with... well, all the mingling. After all, she says, "You wouldn't expect the super shy girl to actively go about organizing networking meetings." In fact, Shirley says, "I still feel nervous when I am in a room with mostly strangers and I'm expected to mingle with them."

But on the whole, her role is a good fit. "Compliance can offer a real sweet spot for introverts, because you often find yourself in one-on-one counseling and advisory discussions." And focusing on someone else's workplace objectives to help people find resolutions is "deeply satisfying."

Additionally, being shy herself reminds Shirley that quiet people have things to say. "Too often the louder voices seem to command the spotlight and those not jousting for the talking stick can be the ones with the most valuable opinions to share."

Sending the elevator down

Another area in which Shirley has widened the compliance community is the "Great Women in Compliance" podcast, founded by Shirley and Lisa Fine in late 2018.

"Lisa and I noticed a lot of the current thought leaders on compliance podcasts were men, and we wanted to increase the diversity of views" while giving talented women in the field a place to shine.

At the same time, "Women have unique challenges in the workplace that can really only be addressed fully by open dialogue," Shirley says. "Acknowledge that the 'pink elephant in the room' issues exist, and support each other to advance."

To her delight, Shirley has encountered many women in compliance "with the commitment to sending the elevator back down," referencing the popular Jack Lemmon quote, "When you get to the top floor, don't forget to send the elevator down for someone else."

"I honestly don't think we expected the reception and volume of listenership that the podcast has garnered," Shirley says. (Each episode gets more than 1,000 listens, she says, and it's growing steadily.) "What a privilege it is to be able to have a positive effect on other people's lives through what is essentially a hobby and labor of love."

One common theme among the interviewees? "They have a really lovely air of confidence about them—not stepping into arrogance but quietly knowing their worth," Shirley says.

Fresenius team member Basha says, "Mary's desire to improve the careers of the women around her is a rare quality. Mary is more than a boss to me. She is a mentor, an inspiration, a role model, and an unwavering support system." In fact, "One of the first things [Shirley] said to me was, 'my goal as your manager is to make you better than me,'" says Basha.

Shirley says that overall, the state of women in compliance is ... better than it was. "Compliance has traditionally

been viewed as the poor cousin of legal practice,” so women were “often relegated to compliance roles or advised that failed lawyers should practice compliance.”

This has changed in recent years. “Not only are more women getting their time in the sun, but finally and most deservedly, compliance is too,” Shirley says. “What I’m seeing currently is an industry where we have very impressive male thought leaders and high-exposure women who can hold their own.”

Shirley says the #MeToo movement has also had an impact on women in compliance, leading to an increased emphasis on “speaking up and speaking out. We have a voice, and the more we support each other, the louder and more difficult to ignore that voice becomes.”

To women looking to make their mark in compliance, Shirley advises to simply “Know your worth as a woman in business.” And she doesn’t have to look further than her home country to provide an example of strong female leadership following the New Zealand mosque shooting in March: “If there is one thing my country’s prime minister, Jacinda Ardern, has shown the world recently, it’s that traditionally feminine traits can make for a phenomenally effective leader.”

Too often in times of crisis, Shirley explains, leaders resort to divisive language and an “us versus them mentality, as well as a focus on capturing/denouncing the attackers.”

Ardern’s approach of unity following the tragedy in Christchurch, which demonstrated that “we are in this together as well as caring for the communities left behind in the devastation, rather than giving any attention to the perpetrator” has shown that “compassion, empathy, and kindness at a time where history would have dictated power moves and promises of retribution were the way forward.”

“I have never been prouder to be a Kiwi.” She says.

A new wave of compliance practitioners

As women evolve in compliance, doors are also opening for young talent to pursue GRC careers. Shirley advises them to do their homework. “Subscribe to and be dedicated about reading blogs on compliance. I’ve learned so much from the publicly available information out there,” she says.

And if you’re joining Shirley’s team, don’t expect kid gloves. “Oftentimes I think we coddle new graduates,” she says. “I believe in giving staff as much substantive work as early as possible and carefully watching for any indicators that they may be in over their heads.”

The payoff is usually worth it, she says. “We need to trust our instincts for hiring potential and give credit to the intelligence of our staff to do a fine job.”

At the same time, she is careful to convey there is “never any shame in saying, ‘Hey I’m now at capacity; I can’t take on

MARY SHIRLEY

Title: Senior Director, Ethics and Compliance, Fresenius Medical Care

About Fresenius Medical Care: Fresenius is a provider of products and services for people with chronic kidney failure.

Location: Boston

Years of experience: 14

Areas of expertise: Anti-bribery and corruption; antitrust; investigations; creating and implementing global compliance programs; cultures of integrity

“If there is one thing my country’s Prime Minister, Jacinda Ardern, has shown the world recently, it’s that traditionally feminine traits can make for a phenomenally effective leader.”

new work for a week,’ or for them to ask questions without feeling stupid.”

Shirley wants to give new hires the chance to get from Point A to Point B on their own. After all, “They’re adults with different strengths; they can choose their approach.”

Shirley says, “I’m always there if they need me, but I trust them to make the start.”

Finding balance

Outside work, Shirley enjoys personal travel (yes, more travel), and is a self-described foodie. So how does she maintain a good work/life balance? “Specifically putting time I need for me in my calendar and respecting that time is now blocked, as I would if I had plans with a friend.” That rule applies to anything from writing her Christmas cards, binge-watching *How to Get Away With Murder*, or going to the spa.

Another time-maximizing tip: Shirley uses social media—with a twist. “I use the voice recording function within those apps to leave messages for friends to listen to,” she says. “It’s more personal than sending a text or e-mail and a very economical way to maintain ties with my friends in other countries.”

Preserving these relationship is key, Shirley says. “We know that the strongest correlation for a long life is the quality of our social connections.” **TM**

JOHN Walsh

From helping establish the SEC's Office of Compliance Inspections and Examinations to his more recent legal career, John Walsh has had a front-row seat to the evolution of compliance.

BY JOE MONT

Partner

Eversheds Sutherland

The regulatory architect

John Walsh's road to success in the legal world—he is currently a partner with the law firm Eversheds Sutherland—was a tour of duty in the Securities and Exchange Commission.

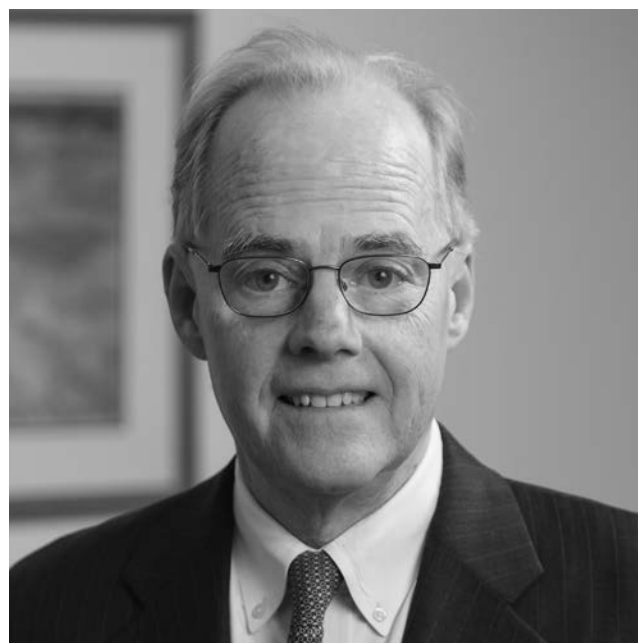
Walsh joined the above-mentioned law firm in October 2011, after departing the SEC as a 23-year veteran. He describes his work at the law firm as a “compliance-centered practice.”

“My practice covers the whole spectrum, from working with clients to help prevent problems to working with them when a problem has materialized and they are asking what they should do about it. Finally, the backend is helping clients deal with the regulators—SEC or the Financial Industry Regulatory Authority—when a problem has grown or mature to the level that it involves regulatory intervention. It's sort of the compliance process from soup to nuts,” Walsh says.

With his deep, insider's experience and perspective regarding the SEC, Walsh represents broker-dealers, hedge funds, investment advisers, and other securities firms in compliance and regulatory issues involving the agency. He counsels clients on the full spectrum of securities issues from development and compliance to cooperation in examinations and defense in enforcement proceedings.

Much of his legal approach—from soup to nuts—was undeniably shaped by Walsh's experiences at the SEC. He was special counsel to legendary SEC Chairman Arthur Levitt from 1993-1995. Earlier, from 1990-1993, he worked in the SEC Division of Enforcement, serving first as senior counsel and then as chief of the branch of regional office assistance, where he regularly appeared before the Commission's closed meetings to present and discuss regional office enforcement cases. He also advised the commissioners and staff on securities laws and agency policy.

Most important, in many ways, was his role in helping create the Office of Compliance Inspections and Examinations (OCIE). It administers examinations of U.S.-registered secu-



rities entities. Walsh designed and implemented the SEC's securities compliance examination practices, first as a senior advisor for compliance policy and then, most recently, as associate director-chief counsel. He also served as OCIE's acting director and led a massive retraining of examination staff on antifraud techniques.

“I loved my time at the SEC; it was a great experience,” Walsh says. “One of the nice things about the SEC, is that it is a relatively small agency—bigger now than it used to be, but it's still relatively small. Depending on where you are, you can actually have a role in a lot of different things.”

Levitt's leadership left an indelible mark on Walsh.

“He taught me a lot of things. I think he's brilliant—a visionary,” he says. “Because of his experience in business, he has a very good sense of where an organization needs to

be pushed, where it needs to be encouraged, and how to get things done. I actually have a collection of Arthur Levitt-isms that I still pull out from time to time and think, 'Well, you know, Arthur said something about this.' He had a huge, huge impact on my life and career."

That influence is evident in the creation of OCIE.

"In a nutshell, Arthur said that 'everybody else had a compliance program, why don't we?' It made sense to do something on a holistic basis, not a little piece here and a little piece there," Walsh says. "He sent over his then-chief of staff, Lori Richards, to be the director. I was his special counsel and became a legal and policy person. We pulled in pieces from all around the agency, some from Market Regulation, now known as Trading and Markets, some from Investment Management, and so on, to create the holistic compliance office we envisioned. That's what Arthur wanted, and that's what we tried to deliver."

OCIE lives on as an integral part of the SEC. It is currently the second largest office inside the Commission.

Reminiscing about the inception of OCIE, Walsh compares it to the exciting time in the 1990s where compliance started to become a professionalized business function. "It's really been fabulous watching OCIE develop and also watching compliance in general develop over the last several decades," he says.

As both OCIE and compliance continue to evolve, one thing that stays the same is the bad behavior confronted. "There are certain fundamental issues I don't think are ever going to change much—like fraud, lying, cheating, and stealing," Walsh says. "A key role for the SEC is to look for people who are committing bad behavior. One of the things that's often shocking to people who don't have regulatory experiences is just how bad behavior can be, and how it can be packaged in a way that hides it very successfully."

An often-unrealized dilemma for both regulators and compliance professionals is adequately addressing different levels of "bad."

"What do you do about conduct that is against a rule? For example, perhaps, it's a violation but where no one is hurt? I think that's an area where there's been a fair amount of movement over the years. Do you police those problems primarily through the SEC's examination program? Do you say, 'Look, this is a problem, fix it. If we come back and you haven't fixed it, you will talk with enforcement,'" Walsh says. "Of course, people almost invariably fix it. That's one approach. With the other approach, the agency went through a period where it was bringing actions for nearly everything. They called it 'broken windows.' We can still debate whether that was a good idea or not. I think it masked a lot of the good work being done by the examination program by focusing exclusively on enforcement."

Walsh pointed to another compliance evolution that has already proven to be revolutionary: the availability of data, data tools, and data analytics. "I think regulation and oversight has fundamentally changed," he says.

Better tools for regulators and enforcement, unfortunately, equate to innovative ways for bad apples to be bad.

Walsh recalled, from some years ago, a swindler who conducted a multimillion-dollar fraud. "He basically ran his own fake broker dealer, with fake accounts, fake returns, and fake statements," he says. "He managed to do the whole thing on a laptop, a printer and a fax machine. When you look at this, you say, 'wow, one guy, is doing what not that long ago would have required a whole operational department and a whole accounting department.' And yet he could do it. That was a wakeup call for everyone."

"We're in a very brave new world. We're all struggling to keep up," Walsh says, stressing, optimistically, that "luckily, the bad guys don't have a monopoly on innovation."

As compliance has matured as a function, responding to whistleblowers has become a more refined practice, and one that now comes with bounties (\$50 million was the total of one recent award) and retaliation protections.

Walsh shared his thoughts on the importance of being

"What is the old saying, 'What's sauce for the goose is sauce for the gander'? Compliance professionals may look at their situation and say, 'Well, they keep promising me the budget, but I never get it. I keep making recommendations about problems that need to be addressed. And there's never any follow through.' On both sides of the equation, people need to ask: When is it enough? When is it time to move on? Both sides need to be thoughtful and careful and not act in haste to repent at leisure."

able to establish a speak-up culture at firms.

"I think most firms, certainly the folks that I'm aware of, take internal complaints really seriously," he says. "I think what causes some concern is the anonymity that covers the SEC's whistleblower process and the fact that huge dollar awards are being handed out and everything about them is anonymous. I do think that is worrisome. One would think that when the federal government starts handing out large amounts of money there would be some publicity. Also, having spent my career at the SEC, I'm a big believer in the benefits of full disclosure. I worry about what could happen in a process that is cloaked in secrecy, like the whistleblower process, when even at the very end, when someone is getting 10s of millions of dollars, everything is cloaked in secrecy."

Nevertheless, concerns aside, he sees the value of "people taking it seriously, trying to be responsive, and giving respect and credibility to their internal whistleblowers to make sure they're responding appropriately," Walsh says. "The person who comes forward should be satisfied that they're being taken care of within their firm and that they're being listened to. That's the takeaway for firms. You're getting free information from these people. They're saying, 'Hey, we've got a problem.' You should listen to them, figure out what the problem is, and then fix it."

Browsing through some of the anonymized case studies spotlighting Walsh on the Sutherland Asbill & Brennan Website, one involved a company that needed advice on how to fire a current chief compliance officer.

Walsh chose not to elaborate on the facts of that case. It did, however, inspire a broader narrative.

"Let's start with what makes a good CCO," he says. "First, and most importantly, I've always liked the phrase 'compliance professional.' Once you start talking about a profession, as opposed to a craft, it's not simply a body of knowledge, and it's not simply the fact that you control a certain toolbox. Most importantly, being a compliance professional involves judgment and—just as a lawyer does, just as a doctor does—you bring professional judgment to a situation. I think that if I were to design the perfect CCO—and there are a lot of them out there who are really good—I would say it starts with expertise and knowledge of the tools. Then, most importantly, it's having good judgment."

Sometimes, however, CCOs just do not perform. "I think a firm should always view turnover in the CCO position as a significant matter that needs to be handled carefully," Walsh says. "The company needs to think about things like, 'should we call our regulator?' But firms should not feel that they have to stay with a CCO who's not working out."

JOHN WALSH

Title: Partner, Eversheds Sutherland

About Eversheds Sutherland: The law practice provides legal advice and solutions to a global client base ranging from small and mid-sized businesses to the largest multinationals. It provides the full range of legal services, including corporate and M&A; dispute resolution and litigation; energy and infrastructure; insurance and financial services; human capital and labor law; intellectual property; real estate and construction; and tax.

Location: Washington, D.C.

Years of experience: 30

Areas of expertise: Legal, compliance, and regulatory services to financial service firms; securities enforcement and litigation; cyber-security and privacy; insurance, private investment funds; mutual funds; investment advisers

"There are certain fundamental issues I don't think are ever going to change much—like fraud, lying, cheating, and stealing. A key role for the SEC is to look for people who are committing bad behavior. One of the things that's often shocking to people who don't have regulatory experiences is just how bad behavior can be and how it can be packaged in a way that hides it very successfully."

The flip side of that situation is when a company is itself a bad fit for a CCO. "What is the old saying, 'what's sauce for the goose is sauce for the gander'? Compliance professionals may look at their situation and say, 'Well, they keep promising me the budget, but I never get it. I keep making recommendations about problems that need to be addressed. And there's never any follow through.' On both sides of the equation, people need to ask: When is it enough? When is it time to move on? Both sides need to be thoughtful and careful and not act in haste to repent at leisure." **TM**

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