WHO’S THE BOSS OF COMPLIANCE?
A Conversation Worth Having

A PLI One-Hour Briefing
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Background and Context

- A dynamic and evolving profession for 20+ years
- Increasing regulation and risk; heightened enforcement
- Federal Sentencing Guidelines
- Now international reach (e.g. OECD Good Practice Guidance, Canadian Competition Guidelines, UK Bribery Act adequate Procedures)
- Highly multidisciplinary in nature - many in the role are “transitioning’
- Mike Scher, senior editor on popular FCPA Blog says: “Compliance 1.0 “offshoot of Legal” + moving to Compliance 2.0
- Many legal commentators offering informed commentary on Compliance
- Last 5+ years=> Momentum for independent, empowered Compliance function and Chief Compliance Officer (CCO)
- Tenet Healthcare + big pharma trends, plus Financial Services – Wal-Mart
Why Does It Matter? (Duh.)
Audience Poll #1

I rank my company’s CECO role as:

a) Very well structured- an A+
b) Good Structure, but lacking a few bells + whistles
c) Fair - just the basics, needs more development
e) Below average – not that well structured
f) Not sure
Why This Conversation is Worth Having

#1  General Motors Delayed Ignition Recall
#2  WalMart’s Mexican FCPA/Bribery Mess ($1Mn/Working Day)

Every Company Has Exactly The Compliance Program It Wants

Reporting line is only one indicia

- Who should have oversight of Compliance?
  - GC
  - CEO
  - Board

- What are the criteria for an effective compliance program that “works”? 
5 Essential Features

- Empowerment
- Independence
- Strong CECO
- Seat at the Table
- Line of Sight
- Resources
Empowerment

• Clear and broad mandate
• Flows from the Board
• Understood by all
• Supported by management
Strategies for Empowerment

- Board Resolution
- Program Charter (Tenet)
- Delegations of Authority
- Interface Charts
- Robust Job Description
Independence

• Separate but equal
• Can speak truth to power
• Unfiltered, objective opinions
• Check and balance
• Subject matter expert, not “DIY Compliance”
• Protected from retaliation
Strategies for Independence

- Correct positioning
- Relationship with the Board
- Unfiltered reporting
  - scheduled & ad hoc
- Levers of independence
- Nondiscretionary
Seat at the Table

• Formal & informal
• Voice in the C-Suite
• Peer level with other key functions (HR/Legal)
• Trusted advisor
Strategies for Seat at the Table

- Ask: where does Compliance need a presence?
- At which meetings are peer functions represented?
  - Senior management annual meetings/dialog
  - HR disciplinary/promotion
- What message is being sent?
Line of Sight

• No carve-outs => all key risk areas
• Recognized as SME & leader of C&E
• Formal & informal mechanisms
• Can be dotted line
Strategies for Line of Sight

- Map out all key risk areas
- Map out solid & dotted line
- Interface charts to clarify & mollify
- Written roles in the C&E program
- Input to annual performance review & compensation
Resources

- Budget
- Internal resources (within function)
- Company resources (outside function) with role clarification
- Peer networks
- Outside experts
Strategies for Resources

- Seek existing compliance assets & leverage
- Use compliance mandate to give them roles
- Leverage outside networks
- FCPA & other guidances
- Outside evaluation
Audience Poll #2

Of the 5 key features, the one I feel is missing most in my company’s CECO role is:

a) Empowerment
b) Independence
c) Seat at the table
d) Line of sight
e) Resources
f) None are missing - our CECO role is awesome!
What the Effective CECO Brings to the Table

- Integrity
- Gravitas
- Business savvy
- Subject Matter Expertise
- Leadership
- Engagement Skills
- Communication Skills
- Project Management
- Collaboration
- Problem Solving
- Courage

- Team Management
- Crisis Management
- Change Management
- Know What You Don’t Know
- Ethical Culture Leader
- Humility
- Political Savvy
- Judgment
- Perseverance
- Credibility
- Role Model
Recommended Reading (1)

- **Five Essential Features of an Effective Chief Ethics & Compliance Officer**
  (Boehme, Compliance & Ethics Professional 2012)

- **An Independent CCO is a Compliance Program Requirement**
  (Volkov, Corporate Counsel 2013)

- **The Business Case for Creating a Standalone Chief Compliance Officer Position**
  (Yuspeh et al, Ethisphere 2009)

- **The Real Happy Marriage Between the GC and the Chief Compliance Officer**
  (Boehme, Corporate Counsel 2012)

- **The Chief Ethics & Compliance Officer - A Test of Endurance**
  (Gnazzo, Business & Society Review 2011)

- **JP Morgan Chase Takes a Giant Step on CCO Independence**
  (Volkov & Boehme, Corporate Counsel 2013)
Recommended Reading (2)

- Big Banks Give the CCO a Seat at the Table (Boehme, Corporate Counsel 2012)
- An Independent CCO is a Compliance Program Requirement (Volkov, Corporate Counsel 2013)
- Empowering the Chief Compliance Officer (Volkov, JD Supra News 2013)
- The Person of the Year - The Chief Compliance Officer (Volkov, JD Supra News 2011)
- Perspectives of Chief Ethics & Compliance Officers on the Detection & Prevention of Corporate Misconduct (Greenberg, RAND 2009) (3 Invited RAND White Papers)
- Fitting a Square Peg in a Round Hole (Tabuena, Corporate Secretary 2009)
Recommended Reading (3)

- When Legal and Compliance Don’t See Eye to Eye (Boehme, Corporate Counsel 2014)
- GM’s DIY Compliance  
  Boehme, Corporate Counsel (2014)
- When In-House Lawyers Run Amuck  
  Volkov (2014)
- What’s Your Chief Compliance Officer’s Line of Sight?  
  Boehme (Compliance Strategists Blog 2014)
- WalMart Rolling Out Big Compliance Reforms  
  Boehme (Corporate Counsel 2014)
- "Upcoming=≥ The Rising CECO Lifts All Boats (Boehme + Volkov)  
  Five Rookie Mistakes to Avoid in Your Compliance Program (Boehme + McGrath)
Questions?

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