COMPLIANCE 2.0
RAND’S CONTRIBUTION TO THE EVOLUTION OF CORPORATE COMPLIANCE AND NEXT STEPS

PREPARED FOR:
RAND CENTER FOR CORPORATE ETHICS AND GOVERNANCE ADVISORY BOARD

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Introduction

Goal:
To review the annual RAND Symposia Series on Compliance & Ethics Topics and its impact on policy-making and more effective Compliance approaches in the US and around the world
WHERE WE STARTED – COMPLIANCE 1.0
THE LEGACY MODEL OF CORPORATE COMPLIANCE

- First Generation – Companies responded to the Federal Sentencing Guidelines ("FSG") by assuming that Legal or the General Counsel should manage compliance.
- The compliance profession began creating best practices in the trenches to respond to the FSG.
- This first model often resulted in flawed programs. Failed to “prevent and detect” misconduct
  - Third parties (media, investigators, prosecutors and whistleblowers) found the misconduct instead. This led to huge fines, criminal charges, blacklisting, court appointed monitors, class actions, private lawsuits, and damage to brand & reputation.
- Many programs failed.
COMPLIANCE 1.0 FAILURES
THE RAND’S SYMPOSIUM SERIES ON COMPLIANCE & ETHICS 2009-2014 – A NEW SYMPOSIUM FORMAT

- Developed over six years between the Compliance profession and RAND CCEG (Michael Greenberg)

- **Concept:** Dialogue facilitated by RAND on key topics in the Compliance field including key thought leaders from the academic, government, private industry, nonprofit and Board communities.

- Each symposium averaged about nine months of development

- **Key features:**
  - Invitation only
  - 18 maximum participants
  - Three invited White Papers
  - Two 90-minute discussion threads
  - Robust dialogue, OECD style protocol
  - Closing Dinner with speaker
THE RAND’S SYMPOSIUM SERIES ON COMPLIANCE & ETHICS
SIX ANNUAL SYMPOSIA

- For Whom the Whistle Blows: Advancing Corporate Compliance and Integrity Efforts in the Era of Dodd-Frank (2011)
- Directors as Guardians of Compliance and Ethics Within the Corporate Citadel: What the Policy Community Should Know (2010)
THE RAND’S SYMPOSIUM SERIES ON COMPLIANCE & ETHICS THOUGHT LEADERSHIP

- Presented at various compliance conferences and distributed through our networks.
- Symposium reports became highly anticipated and regarded as sources of thought leadership in compliance & ethics.
- Circulated throughout major organizations – OECD Anti-bribery Working Group, UK House of Lords, Canada Competition Bureau, bipartisan committees of U.S. Congress, SEC, DOJ, and the Supreme Court of the United States.
- Used in various corporate training programs for Boards of Directors.
THE RAND’S SYMPOSIUM SERIES ON COMPLIANCE & ETHICS
NATIONAL IMPACT

- DOJ hires Compliance Counsel Expert Hui Chen (2015)
- Evaluation of Corporate Compliance Programs, DOJ (2017)
- Whistleblowers and Corporate Compliance, Presentation to the Senate Whistleblower Caucus (2017)
- Various Federal and State Criminal Settlement Agreements and Deferred Prosecution Agreements
THE RAND’S SYMPOSIUM SERIES ON COMPLIANCE & ETHICS INTERNATIONAL IMPACT

- Good Practice Guidance on Internal Controls, Ethics, and Compliance, OECD (2010)
- UK Bribery Act, Ministry of Justice (2010)
- Compliance matters What companies can do better to respect EU competition rules, Directorate-General for Competition (European Commission) (2013)
- Corporate Compliance Programs, Canadian Competition Bureau (2015)
- Whistleblower Protection Act, Serbian Anti-Corruption Agency (2015)
- Guidelines – Competition Compliance Programs – Guidelines on the Structuring and Benefits of Adopting Competition Compliance Programs, CADE (2016)
- General Data Protection Regulation (GDPR), European Union (2018)
The field remains a rich and complex area in evolution, with a clear need for ongoing debate and research.


- Significantly impacts corporate whistleblower programs and what companies should do to respond in order to ensure their compliance programs are effective and “work” as intended.

Foley & Lardner, LLP, April 18, 2018:

- “[T]he U.S. Supreme Court in Digital Realty Trust . . . ruled that, for purposes of the Dodd-Frank Act, only those individuals who have provided information about a securities law violation to the U.S. Securities and Exchange Commission (SEC) qualify as “whistleblowers” who are protected under the Act . . . The decision underscores the importance of implementing compliance programs and a culture that encourages employees to report internally to employers, rather than externally to the SEC.”
RECOMMENDED READING

- *When In-House Lawyers Run Amuck*, Michael Volkov
- *The Empowerment of the CCO: Old Ways Die Hard*, Michael Volkov
- *The Revolution in Ethics and Compliance*, Michael Volkov with foreword by Donna Boehme
- *3 Nails in the Coffin of 'Compliance 1.0'*; Donna Boehme
- *GM’s DIY Compliance: #WhatCouldPossiblyGoWrong?*, Donna Boehme
- *HSBC’s Indiana Jones Compliance*, Donna Boehme
- *4 Steps Boards Should Take Toward Compliance 2.0*, Donna Boehme & Michael Volkov
- *Volkswagen Emissions Scandal – Another Compliance 1.0 Train Wreck*, Donna Boehme
- *Mike Scher talks with the ‘Lion of Compliance’*, Mike Scher & Donna Boehme
THE RAND’S SYMPOSIUM SERIES ON COMPLIANCE & ETHICS
SAMPLE PARTICIPANTS

- Scott Killingsworth, Partner, Bryan Cave LLP
- Ann McLaughlin Korologos, former U.S. Secretary of Labor
- Peter Jaffe, Chief Ethics & Compliance Officer, AES Corporation
- Michael Diamant, Partner, Gibson Dunn LLC
- Karen Bertha, Chief Ethics & Compliance Officer, MCR, LLC
- Stephen Cohen, Associate Director, Enforcement Division, U.S. Securities & Exchange Commission
- Keith T. Darcy, Senior Advisor, Deloitte
- John DeLong, Director of Compliance, National Security Agency
- Paula Desio, former Deputy General Counsel, U.S. Sentencing Commission
- Patrick J. Gnazzo, Principal, Better Business Practices LLC
- Ellen Hunt, Director, Ethics & Compliance Office of General Counsel, AARP
- Jack B. Jacobs, Justice, Supreme Court of Delaware
- Joseph Murphy, Senior Advisor, Compliance Strategists
- Bradley Lucido, SVP and Chief Compliance Officer, and Deputy General Counsel, Mass Mutual Financial Group
- Cindy Moehring, SVP and Global Chief Ethics Officer, Wal-Mart Stores Inc.
- Edward A. Ryan, EVP and General Counsel, Marriott International, Inc.
- Alan Yuspeh, SVP and Chief Ethics & Compliance Officer, Hospital Corporate of America (HCP Holdings, Inc.)
- Stanley R. Soya, Partner, Pepper Hamilton LLP
- Ruben Castillo, U.S. District Court Judge, Northern District of Illinois
- Larry Thompson, former U.S. Deputy Attorney General; former SVP and General Counsel, PepsiCo
- Mary R. Henderson, Director, CNO Financial Group; Director, Walter Energy (NYSE)
- John P. Hansen, VP and Corporate Ethics Officer, RBS Citizens Financial Group
- John Steer, former Vice Chair, U.S. Sentencing Commission; former General Counsel, U.S. Sentencing Commission
- Carlo di Florio, U.S. Securities and Exchange Commission, Office of Compliance Inspections and Examinations
- Richard Thornburgh, Of Counsel, K&L Gates LLP; former U.S. Attorney General; former Governor of Pennsylvania
- Harold J. Tinkler, former Chief Ethics and Compliance Officer, Deloitte LLP and the Deloitte U.S. Firms
- Kathryn Turner, Chief Executive Officer, Standard Technology; Director, Conoco-Philips, Schering Plough, and Carpenter Technology
- Sean McKessy, Head of Whistleblower Office, U.S. Securities and Exchange Commission
- J. Troy Beatty, Branch Chief for Comparative Law and Regulation and Lead FCPA Counsel, Office of International Affairs, U.S. Securities and Exchange Commission
- Matthew Lepore, Senior Vice President, Chief Counsel — Corporate Governance, and Assistant General Counsel, Pfizer Inc.
- Roxanne Decyk, Executive Vice President, Global Government Relations, Shell Oil Company
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