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*Cultivating a*  
**Culture of Compliance**

## COMPLIANCE WEEK

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# Five Years Past Dodd-Frank, Culture Needs Work

By **Alix Stuart**

**F**ive years ago, the Dodd-Frank Act set off a flurry of new rules governing everything from derivatives trades and mortgage lending to disclosures about executive compensation and conflict mineral usage. With many of those regulations now in place, are corporate executives doing a better job of promoting a culture of compliance?

“Compliance really starts at the top, no matter what regulatory regime you put into place,” says Charles Elson, head of the Weinberg Center for Corporate Governance at the University of Delaware. The trouble is that measuring tone at the top is notoriously difficult. Almost every business—including everyone’s favorite example, Enron—says the right thing on paper, via a code of conduct or business ethics, regardless of what ethical train wrecks might be happening in the real world. And positive actions such as honesty, transparency, and integrity are almost impossible for outsiders to gauge.

JPMorgan Chase addressed this conundrum in a report it issued last December about how it is trying to be a better corporate citizen, in response to shareholder requests after a series of well-publicized disasters such as the 2012 London Whale incident. “It is not enough to have well-articulated standards,” the report acknowledges. “They must be embedded in the values of each and every employee through continued training and reinforcement and must guide and be evident in our actions.”

One of the chief criticisms of the bank, in fact, was that it didn’t follow its own (or regulators’) rules. “The whale trades exposed a bank culture in which risk limit breaches were routinely disregarded, risk metrics were frequently criticized or downplayed, and risk evaluation models were manipulated by bank personnel,” a Senate sub-committee report on the \$6 billion-plus in derivatives trading losses, said. The report also criticized executives specifically for condoning the excessive risk-taking and for dodging regulators who expressed concerns.

As such, the first chapter of JPMorgan’s 100-page document focuses on how the company is reshaping its corporate culture. Beginning in 2013, under the leadership of CEO Jamie Dimon, two top executives interviewed other senior managers to understand where the corporate culture was and where it should be, the report says. They also developed case studies involving past mistakes, including various breakdowns in corporate controls, which led to aggressive payday lending practices and wrongfully foreclosing on the homes of members of the military.

They shared those case studies (and presumably how to avoid them) with 200 of the highest-ranking executives, and then more broadly through firm-wide discussions led by the company’s CEO and other executives. This approach aimed

for the domino effect, stressing “the importance of company leaders carrying these messages to their teams so employees throughout the company would understand their importance.”

The second phase of the culture shock was to re-articulate and re-commit the firm to a set of 20 business principles, which include broad moral directives such as “Do not compromise our integrity,” “Face facts,” and “Have fortitude,” along with more practical ones such as “Focus on the customer” and “Build teamwork, loyalty, and morale.”

The revised principles were published and distributed to every employee; they are now embedded into recruiting, training, and performance management. To help employees understand how to apply these directives in everyday life, the company also refreshed its Code of Conduct to make it easier to understand. All together, the actions “help our people internalize the company’s values, show up at work each day committed to living our mission,” the report says.

“Senior management in some cases was just not engaged in any real discussion about the controls.”

Andrew Ceresney, Enforcement Director, SEC

The bank seems to be on the right path, says Seamus Finn, investment leader of the Missionary Oblates of Mary Immaculate (OMI), the investor group that pressed JPMorgan Chase officials to issue the report. Corporate culture was a key area of interest for the group, as it represents the bank’s “moral compass,” he says. Yet, he is hesitant to pass judgment on it too quickly. “The proof of the efficacy of this document is how it will be rolled out in terms of training and for new employees,” he says. “On an ongoing basis, we’d look for a decrease in the headline-grabbing stories about their inappropriate trading or illegal activities.”

## A Cultural Change

**O**MI just negotiated a similar report from Bank of America, which is forthcoming, and it is aiming to get one from Wells Fargo, as well. Goldman Sachs published a report in 2011 about planned changes to its business standards as a result of the conversations with OMI, Finn says. “Most in the sector have lost the trust of shareholders as well as customers,” Finn says. “We felt a model that had them do a top-to-bottom examination of practices, policies, and gaps was a way to move forward.”

Regulators are also continuing to push for cultural changes at banks. The Treasury Department’s Financial Crimes Enforcement Network (FinCEN) published an ad-



visory noting that “a poor compliance culture” was at the root of the many recent enforcement actions related to the Bank Secrecy Act and anti-money laundering failures. “For a BSA/AML program to be effective, it should have the demonstrable support of leadership,” it notes, “as such commitment influences the attitudes of others within the organization.”

Across industries, governance experts say top executives are generally more willing to spend time and money on cultivating a culture of compliance. “We have seen a concerted effort on the part of companies we advise to look at tone at the top and be thoughtful about how they can better ensure the right tone is set,” says Christopher Garcia, a partner with law firm Weil, Gotshal & Manges. Often, that involves elevating the compliance officer to the C-suite, with at least a dotted line to the CEO. “

“Compliance is being seen not just as a cost but as a protection,” says Ellen Odoner, a partner at Weil. It also entails securing more independent and better-qualified directors to oversee and challenge management on their decisions and tone, she says.

#### HOW JPMORGAN CONDUCTS BUSINESS

Below, JPMorgan describes some steps it has taken to improve.

We have taken great care to re-articulate and re-emphasize our cultural values and corporate standards consistently and clearly so they can be internalized by employees and result in the kinds of observable, ethical behaviors that we expect. High standards, strong values and a commitment to doing first-class business in a first-class way must remain ingrained in our company’s DNA. We do this by setting the tone from the top; hiring and retaining great, diverse employees; training our people at each stage of their career; disciplining employees for doing the wrong thing; building teamwork and morale; communicating honestly, clearly, and consistently; and striving to be good leaders.

We also have invested an extraordinary amount of money, technology, and focus on our control agenda to provide the necessary infrastructure and support. We have hired thousands of personnel, invested hundreds of millions of dollars in new technology, and implemented training and education programs that have touched every single one of our roughly 240,000 people working in more than 60 countries and 2,100 U.S. cities.

As with everything we do, one of the most important goals for us throughout has been to enhance the customer experience.

Source: JPMorgan.

Some executives have become more enthusiastic about compliance activities. While companies used to push back on suggestions to, for example, run trainings more frequently, now “we get inbound calls from companies saying they want to do more,” Garcia says. Benchmarking compliance programs and standards against peers became more popular in recent years. Audit committees are also paying closer attention to both large and small complaints filed through whistleblower hotlines.

#### Can a Culture of Compliance Get You Off the Hook?

Another sign of change: A number of companies, including Ralph Lauren Corp., and Goodyear, have recently avoided Foreign Corrupt Practices Act charges by putting Code of Conduct commitments to transparency into practice and self-reporting their employees’ illegal actions. Morgan Stanley was one of the most outstanding examples, as the Justice Department cited its comprehensive compliance system and culture as a reason the bank did not get in trouble when former managing director Garth Peterson pled guilty to violating the FCPA in 2012.

In its press release about the case, the regulator noted that Morgan Stanley “maintained a system of internal controls meant to ensure accountability for its assets and to prevent employees from offering, promising, or paying anything of value to foreign government officials.” These controls included regularly updated internal policies, frequent FCPA trainings and reminders (specifically to Peterson), random audits, and tight controls on payments made to business partners.

Conversely, at many companies where the SEC has brought accounting charges recently, it’s clear that executives were not as focused on compliance as they should have been. “Senior management in some cases was just not engaged in any real discussion about the controls,” Enforcement Director Andrew Ceresney said in a March speech. “As a result, employees did not properly focus on them and the firm, and its shareholders are put at risk.”

Ceresney cautioned against taking a “check the box” mentality and urged executives to ask regular and unexpected questions about controls to “send a powerful message that you want these issues to be on your employees’ minds.”

As JPMorgan and others readily acknowledge, creating a culture of compliance is an unrelenting task. In an era where companies are tasked with doing more with less, it is easy for employees to forget corporate messaging, especially when the stakes are high. Has Dodd-Frank made a difference in reshaping a culture of compliance? Yes and no. “The law has made people more aware of [the importance of culture than they were],” which is good, says Elson. But “I don’t think it’s made the country more ethical.” ■

# Developing Strong Internal Controls

The ACFE says occupational fraud resulted in \$3.7 trillion in fines in 2013; what can you do to protect your company?

By Karen Kroll

**H**igh ethics and corporate values count for a lot in cultivating a strong culture of compliance, but let's not kid ourselves—so does a strong, effective, visible set of anti-fraud controls, too.

After all, fraudulent acts by employees are not trivial. Around the globe, occupational fraud resulted in \$3.7 trillion in fines during 2013, according to a report prepared by the Association of Certified Fraud Examiners (ACFE). The median loss was \$145,000, the study says, Losses topped \$1 million in more than 20 percent of frauds.

Companies can, and must, implement controls that can reduce the risk of employee fraud, with a strong culture of compliance as an essential starting point. A tone at the top focused on integrity and ethics can instill in employees a sense of their responsibility to prevent fraud and report it if it occurs, says Matt Birk, a partner with Deloitte who specializes in fraud prevention and detection. “You can always circumvent controls, but if you have the right employees and they know to do the right thing, that goes a long way in mitigating fraud,” he says.

“Fraud occurs when a series of errors in detecting red flags and a lack of oversight takes place,” says Scott Borden, Ethics and Compliance at AECOM. For instance, an organization may have failed to segregate duties appropriately and implement a conflict-of-interest policy to help employees make the right decisions.

It's also common to find that employees either didn't know how to report suspicious activity, or were unaware of the resources available to them such as a hotline, available for doing so, Birk says.



Ratley

How is it that fundamental control principles—after all, segregation of duties is drilled into business and accounting majors—too often come up short? It's human nature at work, experts say. People tend to get complacent, notes James Ratley, ACFE president. If everything appears fine, it's easier not to raise questions. And any time a business is working in crisis

mode or is under deadline pressure—that is, when your ethical culture is being tested—controls often sink to the bottom of the priority list, he adds.

## Tracking Down the Perps

**T**hree factors must converge for fraud to occur. One is opportunity. An employee has to be in a position in which he or she can steal the organization's funds or abuse its resources. Next, is motivation—for example, an employee is trying to live above his or her means or to support an addiction.

Finally, there's rationalization. An employee has to see his actions as reasonable. “I've never had one [fraud perpetrator] admit that they stole the money,” Ratley says, referring to his conversations with perpetrators. Many argue that they were underpaid and taking money was simply a way to rectify the matter.

It's often difficult for companies to reduce employees' motivation for stealing and their ability to rationalize their actions, points out David Pollino, senior vice president and enterprise fraud prevention officer with Bank of the West. “You have to reduce the perceived opportunity,” he says, and one way is by creating an environment of control with a focus on integrity.

“Fraud occurs when a series of errors in detecting red flags and a lack of oversight takes place.”

Scott Borden, Ethics and Compliance, AECOM

## Connecting the Dots

**O**ne of the fundamental and most effective controls is requiring that more than one employee must be involved in high-risk transactions or the movement of cash, Pollino says. “It significantly reduces the opportunity for an individual to be successful in stealing from the institution.”

Appropriately vetting vendors is a critical part of the process. Bridget Berg, a fraud expert with CoreLogic, a provider of information for financial and real estate organizations, provides an example: During the housing crisis, many lenders took ownership of foreclosed properties and then had to maintain the houses until they were resold.

Given that some lenders' properties were scattered

**“You can always circumvent controls, but if you have the right employees and they know to do the right thing, that goes a long way in mitigating fraud.”**

Matt Birk, Partner, Deloitte

across the country, it was almost impossible for them to have first-hand knowledge of all the lawn mowing or cleaning services hired. That created opportunities for employees to set up—and pay—fictitious vendors. “Coming up with a process to vet the vendors was very important,” Berg says. It could be as simple as having an employee from the lender’s organization (who wasn’t involved in engaging vendors) check the vendors’ online presence and call their home offices.

Indeed, simply checking that an invoice was approved isn’t enough. You have to ask, “Why did we use this vendor, and why is the invoice this amount?” Birk says.

### Detecting and Deterring Fraud

On average, fraudulent activities can last for up to 18 months before they are discovered, according to the ACFE “Occupational Fraud and Abuse Report.” “There are no small frauds, but only frauds that haven’t had time to reach maturity,” Ratley says. Most start with an employee tiptoeing across the line between ethical and unethical behavior. Those who aren’t caught, often figure it’s safe and repeat their actions—usually for higher amounts.

Perpetrators of frauds seem to grow accustomed to the lifestyles their actions afford them, more than to the activity itself, Ratley says. “I don’t think it’s the adrenaline rush,” that can come from engaging in fraudulent activities he says. “I think it’s the money.”

Creating a culture of compliance that encourages employees to come forward is important. The ACFE report found that tips are the most common method for tracking fraud, accounting for about 40 percent of detections, the report found. Employees accounted for roughly half the tips that were filed.

An external, anonymous fraud hotline, accessible via a toll-free number can help overcome employees’ concerns of retaliation. The study found that organizations with hotlines detected frauds 50 percent more quickly, and the frauds they experienced were 41 percent less costly than those of other organizations.

Management also needs to emphasize that employees are protected under anti-retaliation policies, Borden says.

“While there is a legitimate concern for employees who intend to blow the whistle on shoddy practices, senior leaders must stress that there are other options than silence.”

### Who Should Be Included in an Investigation?

When an allegation of fraud is made, it must be investigated carefully. Employees who take the risk of bringing forward information deserve to know that they’re taken seriously. At the same time, it’s critical that investigations protect all parties involved and not unfairly malign an employee who may be innocent.

To start, just a small group needs to know the allegations. This may include compliance, legal, internal audit, and human resources. The IT department may be needed to access and preserve data.

The individual overseeing the investigation should be a fraud expert. The title isn’t as important as the individual’s expertise, Borden says. He or she should have several years of experience gathering and collecting data and documents, and conducting investigations and interviews, including some that have resulted in admissions of guilt, he says.

While intentional sabotaging of investigations is uncommon, rookie sleuths can make mistakes that undermine everyone’s efforts. For instance, they might start asking their own questions and inadvertently tip off a perpetrator to the investigation.

One internal corporate investigation that went notoriously wrong occurred at Hewlett-Packard. According to the charges, individuals hired to investigate leaks to the media by executives within the firm misrepresented their identity to gain access to these individuals’ telephone records, Social Security Numbers, and other confidential data—an unlawful activity known as pretexting. Among other repercussions, H-P’s board chair, Patricia Dunn, was fired and at least one of the investigators earned jail time.

Before any questioning, the team should review e-mails and transaction records. “Start with the data,” Birk says.

Borden believes that assessing controls is important in this process as well. Once the information is gathered, he advises that the investigator look for potential pitfalls, and one way to do this is by asking if, “This environment is conducive to fraudulent behavior, or if a rogue employee saw an opportunity.”

Berg cautions that remaining open-minded about the reasons for anomalies is important. “Vet all possible explanations before you approach the person.”

Reducing the risk of fraud across an organization requires solid controls, a culture of integrity, and effective investigations. The investments are worthwhile. “When fraud happens, lives are ruined,” Ratley says. ■

# Implementing a Culture of Compliance

Elevating the importance of the compliance program can help turn a firm around, even after a scandal

By Aarti Maharaj

Here is one uncomfortable truth about the phrase “culture of compliance”: Nobody has ever defined quite what that is.

The concept has been kicked around for years, at least as far back as 1991 when the U.S. Sentencing Commission released the U.S. Sentencing Guidelines to explain how companies can build robust compliance programs that prevent, detect, and deter criminal conduct. The guidelines articulate seven minimum requirements that provide a basic framework for compliance programs. Over the years, as the regulatory landscape evolved, so did the guidelines; they provided more context around corporate culture.

Current language in the guidelines call for companies to “promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.” If a strong culture of compliance exists, helping to drive a more effective compliance program, the company might win reprieve from prosecutors investigating misconduct.

## DOING THE RIGHT THING AT TYCO

Tyco’s Code of Conduct explains and defines the values embedded in the company’s corporate culture. It identifies how employees should behave and sets the framework for its global network of employees to follow. See below for an excerpt from Tyco’s Code.

Our Guide to Ethical Conduct, together with our business-specific policies, defines what is expected of each of us in our locations around the world. In everything we do, we must strive to act with honesty, fairness and integrity, and to obey the laws and regulations wherever we operate.

Our role begins but doesn’t end with understanding Tyco’s Vital Values and Guide to Ethical Conduct. We are obligated to act. If an issue raises a question in your mind, you have a responsibility to Speak Up. Reports of suspected misconduct are confidential, and Tyco will not tolerate retaliation against anyone for reporting suspected misconduct or providing information as part of an investigation.

Source: Tyco.

Still, you need to know what that is if you want to inculcate it into your compliance program.

Brent Synder, assistant attorney general for the Justice Department’s Antitrust Division, gave a speech titled, “Compliance Is a Culture, Not Just a Policy.” He insisted

“When senior management takes a lax approach to questionable competitor contacts or bosses make jokes about reaching agreements with competitors, they increase the likelihood that employees will treat compliance as optional.”

Brent Synder, Assistant Attorney General, Justice Department

that if executives uphold a strong culture of compliance, so will employees. “When senior management takes a lax approach to questionable competitor contacts, or bosses make jokes about reaching agreements with competitors, they increase the likelihood that employees will treat compliance as optional,” he said.

Synder said a true culture of compliance must be cultivated within an organization and reinforced by senior leaders. “For senior management, supporting compliance efforts means being fully knowledgeable about those efforts, providing the necessary resources and assigning the right people to oversee them.”

## Tending to Culture

April marks three years since allegations of widespread bribery at Walmart’s international operations came to light. Walmart is one of many companies that subsequently faced widespread criticism for a so-called “toxic” culture. The scandal resulted in the departure of several high-ranking executives, including its general counsel, as well as a long-running investigation that has cost Walmart at least \$500 million—plus many more millions installing a new, much more robust compliance program.

The outline of Walmart’s mistakes at the time is now well-known: The company’s CEO and general counsel in Mexico orchestrated bribes and doctored records for clearance to open new stores across the country in the early 2000s. One whistleblower complaint in 2005 sparked an investigation that ultimately did not amount to any significant cleanup. A few years later, as the company’s business in Mexico expanded, the *New York Times* investigated the retailer’s operations and uncovered the truth behind its sudden growth:



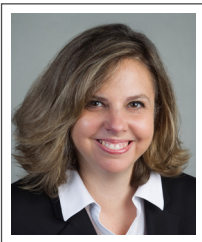
widespread bribery.

While the regulatory investigations have been painfully expensive (and they are still not complete), the Bentonville, Ark.-based retailer took advantage of the opportunity to re-create its global compliance program. The company started by adding 30 percent more compliance staff. Next was dealing with its culture of silence: Walmart rolled out new initiatives such as mandating that potential foreign corruption violations be reported to its corporate headquarters and the board—a move to thwart senior managers trying to conceal bribes.

Last year Walmart emerged from the ashes with a Global Compliance Report that explained its various efforts to improve ethics & compliance. The company split legal and compliance into separate functions; it hired a battalion of compliance officers and anti-fraud investigators, and spent \$100 million on various IT improvements. Jay Jorgensen, who joined Walmart in 2012 as its global chief compliance officer, did a virtual world tour in 2014 to tout its compliance report and talk up Walmart’s efforts to right the ship.

### Every Employee as Compliance Officer

At the core of a company’s culture are its values, which dictate how employees should act. At the same time, however, each business has its own unique objectives to pursue and risks to avoid. Nurturing a strong culture of compliance, then, requires a compliance officer to understand the objectives of the business, its employee base, social demands, operating environment, and legal obligations.



Vitalie

“A company’s business model can change at any time, such as when it acquires a new business or expands to new areas,” says Donna Vitalie, senior director of business conduct, compliance, and records management at AOL. “Compliance programs are

always evolving to meet the growing needs of the business and its employees. Ensuring that everyone is on the same page is key to promoting a strong culture.”

One key to help employees navigate ethical situations is effective messaging, Vitalie says. Legal departments often get carried away with terminology that can make compliance difficult to comprehend, especially for employees whose native language is not English. Companies should stress the importance of doing the right thing by creating compliance buzzwords that reflect core values.

Matthew Heiman, chief compliance and audit officer at Tyco International, believes that elevating the importance of compliance can help turn a company around, even af-

ter a scandal. A clear compliance message should include words that employees are familiar with, Heiman says. “You need to have a set of defined principles that everyone can understand to achieve consistent behavior across all operations.”

At Tyco International, Heiman oversees the day-to-day compliance operation. He says that effective compliance

“Every employee must think like a chief compliance officer.”

Damien Atkins, Chief Compliance Officer, AOL

communication begins with everyday phrases such as “accountability,” “teamwork,” “integrity,” and “excellence,” which motivate employees to do the right thing. While creating the message is one thing, Heiman says that execution is critical; companies should ensure that this message is communicated from the top and reinforced by middle management.

“When you have a global employee base, you should look for common words that resonate in every region, which all employees can relate to and understand—in turn this cultivates a culture of compliance,” he says.

AOL, for example, has put considerably more muscle behind its compliance messaging. The Internet legend has been through its fair share of acquisitions, and to facilitate the employee onboarding process, the legal department has taken compliance on the road—a pilot program the company’s compliance department launched to help employees assimilate to its culture.

This year, the compliance messaging tagline is “Seeing Transparency Clearly.” Employees are provided with resources for handling ethical dilemmas. This is one way to “drive awareness and for our employees to own compliance” says Damien Atkins, deputy general counsel and chief compliance officer of AOL. Altogether, the company provides live in-person sessions for employees throughout the ranks, to meet with a business facilitator or the company’s compliance officer to discuss any issues of concern.



Atkins

“We’ve noted that some employees may not feel comfortable speaking up if their boss is in the room, Atkins says. “So we provide smaller focus groups for senior-level executives to ensure that everyone is on point and can think like a chief compliance officer, when needed.” ■

# Paths to Globalizing Your Code of Conduct

By Jaclyn Jaeger

A thoughtful and well-drafted Code of Conduct is the cornerstone of any strong corporate compliance program. Making that cornerstone strong enough to support a compliance program worldwide, spanning all manner of cultures—that’s the tricky part.

Some companies take a values-based approach, where they lay out a set of principles in their Code as a guide that maintains flexibility for distinct local cultures. Others follow a more prescriptive approach, spelling out both the company’s core values and then delving into specific rules of law. (Highly regulated businesses may not have much choice but to adopt the latter.)

“We follow a values-based guide, the idea being that compliance is more than just about rules and regulations. It’s about doing the right thing,” says Christine Stickler, chief compliance officer for global technology giant TE Connectivity, which has more than 80,000 employees around the world.

TE builds its Guide to Ethical Conduct, which is translated into 20 languages, on four core values: teamwork, integrity, accountability, and innovation, Stickler says. “Being that we have employees from all around the world ... we feel that having a unified system of values brings us together,” she says. “Those values are the foundation of our policies and

procedures articulated in our guide.”

Newell Rubbermaid, which revamped its Code in 2011, takes a similar values-based approach. Many perceived the old Code of Conduct as too “U.S.-centric,” says Robyn Farmer, chief ethics and compliance officer at Newell. Therefore one aim of the revised code was to give it global relevance, she says.

Newell came up with a set of values that it wanted to apply in every country where the company operates, Farmer says. To help make the code more relevant to its global employees, Newell incorporated interactive elements into its Code, such as real-world examples and Q&As.

Scott Gilbert, chief risk and compliance officer of Marsh & McLennan Cos., agrees that “what people really want are examples,” he says. “Broad abstract principles are not enough.”

“One thing we learned through focus groups, and through talking with people, is that they really want to see examples in the Code of the kinds of situations that are likely to present themselves, and some suggested outcomes for those situations,” Gilbert adds.

## Supplemental Training

Compliance and ethics officers stress that a written Code of Conduct is only one component to implementing a set of values that resonates on an enterprise-wide level. “Anything that helps bring the Code and the messages in it to life

### NEWELL RUBBERMAID’S CODE OF CONDUCT

Below is a summary of Newell Rubbermaid’s Code of Conduct.

#### THE CODE APPLIES TO ALL OF US.

Our Code is designed to provide guidance for the kinds of ethical situations you may encounter and to guide you to resources you can access when you’re not sure of the proper course of action. The Code applies to:

- » All employees of Newell Rubbermaid;
- » All members of our board of directors when acting in their capacities as directors;
- » Agents, representatives, independent contractors and consultants, where applicable, when conducting business with, or on behalf of, Newell Rubbermaid.

#### EACH OF US HAS A SET OF RESPONSIBILITIES.

We encourage all of our employees to take responsibility, to take action and to grow with integrity.

**Take Responsibility:** As an employee, you have a responsibility to yourself, your co-workers and our Company to conduct business legally and ethically. Make sure you read the Code and understand the rules that apply to you. If you are not clear on your responsibilities, just ask.

**Take Action:** Sometimes you can prevent misconduct just by taking action early and speaking up if you see someone about to do something questionable. If you see a co-worker about to do something which may violate the Code, try to stop it. If something has already happened which may violate our Code, we need to deal with it, so let someone know. [W]e have many resources available to you. Ignoring problems only makes them worse and can damage the trust we’ve built with our stockholders, consumers, customers and with each other. When you take action, you help us address problems.

#### MANAGERS HAVE A GREATER RESPONSIBILITY.

Managers set the tone for an ethical workplace. If you’re a manager, we look to you to set a good example and be available to your employees when they have concerns. You have a responsibility to read and be familiar with the Code and the laws and policies that apply to your team. When ethical issues are brought to your attention, we rely on you to report concerns through the appropriate channel. As a manager, you also have a duty to make sure your employees know about the Ethics Hotline and other resources available to them for speaking up about potential misconduct. You must never respond in a retaliatory manner or allow retaliation by others.

Source: Newell Rubbermaid.

are incredibly important,” Moriarty says.

Marsh & McLennan has a training documentary, for example, that it produced itself and runs 50 minutes. The film helps give the Code global relevance, Gilbert says. Subtitled in 12 different languages, the film spotlights the daily experiences of employees in London, Santiago, Tokyo, Dubai, and New York.

Threaded throughout the film in subtle ways are specific messages about issues such as insider trading, contractual limitations of liability, and the importance of individual responsibility. The documentary is followed by guided discussions about how each issue applies to employees’ daily work activities.

In a similar vein, TE and Newell also supplement their Codes with both online and live training. “Part of the live training we do is through our Ethical Connections program,” Stickler says. “The Ethical Connections program engages managers in dialogues with their employees about ethical dilemmas.”

How that works in practice; once a quarter during a staff call, routine meetings, or a “lunch and learn,” managers will introduce a prepared scenario that sets up a hypothetical ethical dilemma, Stickler says. “The team has a chance to talk for 10 or 15 minutes about how to manage a difficult issue. The goal is to make sure our employees are empowered and well informed, so they will know how to address ethics and compliance issues and where to go for help.”

Farmer stresses that having the support of middle management is just as important (if not more important) than tone at the top. “One of our key areas of focus right now is how to better support direct line managers so that they feel more comfortable providing guidance with respect to the Code of Conduct and sharing ethical messages with employees,” she says.

Some of the ways Newell provides better context around its core messages is by incorporating “more regional messaging in the training we give to employees by using regional managers,” Farmer says. In part, that involves listening to the feedback offered by those regional managers on what unique issues and concerns they face, she says.

“We’re constantly trying to figure out better ways to deliver our message, while keeping the message consistent, taking into consideration all of those differences—cultures, legal obligations, mindsets—everywhere that we operate,” Farmer says.

### Lost in Translation

Ensuring that the Code and training materials are conveyed in a way that all employees understand is a work in progress for many companies. “Translation is really an art,” Stickler says. “We always seek to get the message right, and we always encourage feedback so that, if we’re not getting it right, we can do better.”

In addition to enlisting the help of a third-party translation service, for example, both TE and Newell also have a

thorough internal review process for quality purposes.

“Making sure you have a multinational, multicultural team helping with the review of the Code is incredibly important,” Moriarty says. “You want to make sure you have somebody who is reading your Code translations who understands the purpose of it and has been involved enough in the initiative to understand the tone and message you’re trying to get across.”

At Newell, the ethics and compliance team—made up of leaders who sit in the company’s Asia Pacific, Latin America, Europe, and North American offices—reviews the Code and takes a deep dive to assess, “Does this translate well? Does this make sense?” Farmer says. From there, the Code is circulated to middle managers in various parts of the world, “who are very supportive of our program and are willing to read over the messages that we are delivering,” to make adjustments as needed. ■

### IMPROVING CODES OF CONDUCT

Below is an excerpt from a recent CW story on making codes of conduct usable and engaging.

Not too long ago, many company’s codes of conduct read like a “thesaurus,” running for pages and filled with complex words, says Diane Brown, vice president and head of operations for advisory services at NAVEX Global. Little consideration was given to how often employees actually used them. “They were the book end on the book shelf,” she says.

Perhaps that was to be expected. Many early codes were written from a legal perspective in response to the Federal Sentencing Guidelines, which urged companies to promote a culture that encourages ethical conduct and a commitment to compliance with the law.

Although the Guidelines don’t require a code of conduct, its wording “has been widely understood to mean establishing a code of conduct and related compliance program policies and procedures,” says Timothy Hedley, partner in KPMG’s forensic services and global leader for the firm’s fraud risk management service network.

Today, however, companies are no longer viewing codes of conduct as a protective legal document and they want employees to actually use them. As Brown points out, employees now can go outside their organizations and report misconduct to regulatory authorities. Social media can turn even inadvertent mis-steps into sinister-seeming affairs that harm organizations’ reputations.

—Karen Kroll

# Creating a Culture of Ethics, Integrity & Compliance

## Seven Steps to Success

Mary Bennett, R.Ph., Vice President, Advisory Services, NAVEX Global & Bob Conlin, President & CEO, NAVEX Global

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

An effective compliance program consists of several core elements that operate to prevent, detect, and correct problems. These elements have become the gold standard for compliance programs in all industries and have been embraced by standard-making bodies worldwide.

A culture of compliance must start with an understanding of the legal, compliance, and reputational risks facing an organization. Risk assessment should be a formal process that leverages the experience and expertise of internal leaders and subject matter experts in developing a comprehensive risk list. This list can then be prioritized based on likelihood and magnitude of potential problems.

Once the risk assessment is complete, organizations need to:

### 1. Designate a Compliance Owner

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

The program should also include a

high-level compliance committee. Chaired by the compliance officer, the committee's role is to advise the compliance officer and assist with program implementation.

The work of the committee includes:

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

### 2. Implement Written Standards and Procedures

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

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

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

### 3. Conduct Appropriate Training and Awareness

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

The process for building an effective training and communication plan begins with the list of risk areas from the risk assessment. Determine the audiences need-



ing education in each risk area and the depth and frequency of training needed based on their jobs and risk exposure. Then determine education methods and establish a training calendar.

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

#### 4. Develop Open Lines of Communication

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

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

Combat skepticism and improve workplace culture by publishing anonymized or sanitized reports of issues that have been addressed. Not only does this demonstrate that the organization hears and takes such reports seriously, it also provides another way to educate staff on

what is and is not accepted behavior—and how the organization will handle conduct that steps over the line.

#### 5. Centrally Manage All Reports and Allegations

Reported concerns should all be added to a centralized database. That database should also collect the helpline and/or Web-reported cases, plus those that come directly to compliance staff and managers.

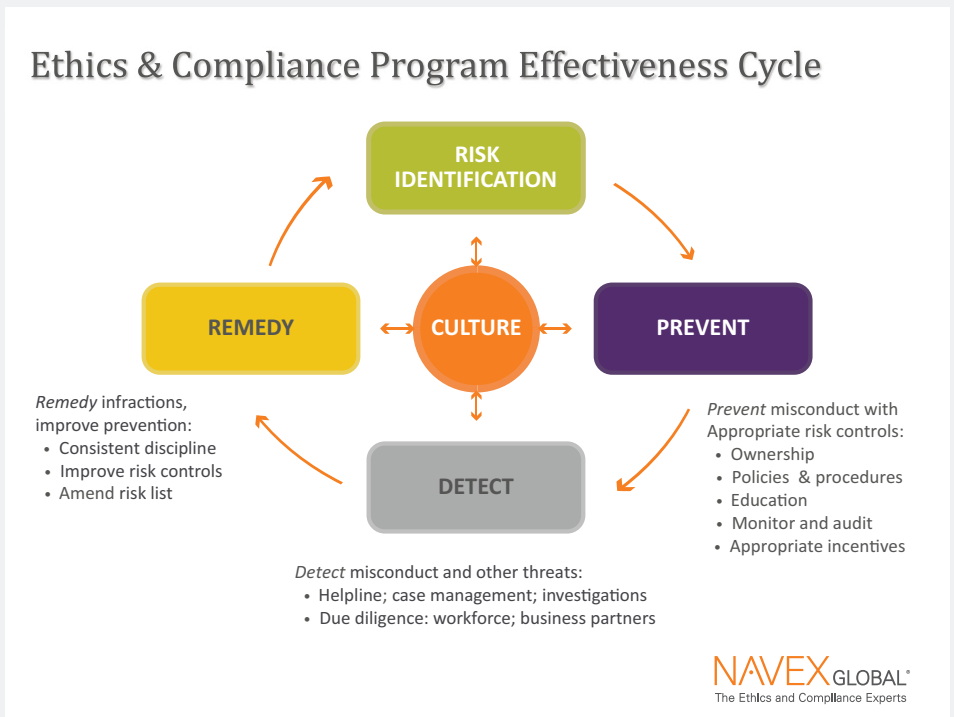
A good case management system enables consistent data collection from multiple departments, geographies, and people. This allows compliance professionals to complete an aggregate analysis of the

issues so that data trends can inform improvements in policies, training, or processes. Connecting data from various parts of the organization can also be an important tool in detecting and correcting broader problems.

#### 6. Respond Consistently and Appropriately to Alleged Offenses

Another important element of a compliance program is appropriate response to reports and findings of misconduct. Such reports cannot be ignored, discounted without inquiry, or left to languish for long periods of time.

Case managers must respond to all re-



## DEEPER DIVE FROM NAVEX GLOBAL

## Common Characteristics of Organizations With Culture-Changing E&amp;C Programs

Compliance programs are effective only to the degree that they help build and support a strong organizational culture. So what are key characteristics of a strong corporate culture? And what ethics and compliance tools can best support it?

Following are some essential characteristics we have observed in companies whose ethics and compliance program and corporate culture are delivering significant value.

**Clear and consistent limits of acceptable behavior.**

Cultures focused on doing the right thing have clear, written standards of behavior. These standards include codes of conduct, employee handbooks, and policies and procedures that clearly articulate what is and is not acceptable business conduct—and the consequences for stepping outside the limits.

To manage these policies and procedures, leading companies employ policy management solutions to automate and track the development, deployment, and employee attestation and certification. Best-in-class policy management tools enable comprehension quizzing, automated reminders, and links to required training—or even embedded training. These efficiencies gained through policy management strengthen the standards as a risk control while lifting the enormous time burden of manual processes off of the compliance staff.

**Board and management are committed to ethics and compliance.**

From the top leader to the lowest-level supervisor, all company leaders actively support the program. They look for opportunities to talk about ethics and compliance issues with their staff and often use brief training and awareness tools to guide discussion. They are the first to complete policy and training requirements and they ensure their people do it too. These leaders advocate speaking up about concerns and promote the use of open door reporting, Web reporting, and anonymous hotlines to make sure employees understand their options for raising concerns.

**No marginalization of ethics, compliance, and legal requirements—or staff.**

Compliance professionals must involve staff outside of the traditional “rulemaking” functions to build and sustain a strong corporate culture. Ethical business practices must remain an integral part of everyone’s responsibilities.

Technical tools can help with this in several ways. Policy management software can ensure that appropriate functional staff is involved where it makes sense with creating, reviewing, and submitting standards for final approval. Training and awareness educates employees on business values, ethics, and compliance and legal responsibilities, and it can keep up a cadence of reinforcement.

Those that work with third parties can play an important role by vetting and monitoring these partners with an automated third-party management system that continuously monitors for red flags in a proactive, rather than reactive manner. And rather than tightly limit access to the case management tool, include human resources, security, risk management, and other functions that may field employee reports or conduct investigations.

**Employees can comfortably ask questions and raise concerns.**

The most common reasons employees do not speak up are (1) fear of retaliation and (2) the belief that nothing will be done about the issue. Our extensive benchmarking studies have shown that fear of retaliation greatly outweighs actual reports of retaliation. And often, raised issues are appropriately handled, but the reporter is never informed of the outcome, even in summary fashion.

These two hurdles to speaking up can be mitigated by education—for managers and employees. Online training (such as our course “Reporting and Anti-Retaliation”) and awareness solutions help management understand their responsibilities regarding proper handling of complaints.

Employees also benefit from education by learning about their own obligation to speak up. The thorny subject of retaliation—what it looks like, what to do about it, and protecting against it—is a critically important learning topic. Education works to prevent these speak-up inhibitors from taking root in the culture, and a comprehensive hotline and case management solution provides a way to detect and track correction of retaliation and non-action when it is reported.

**Goals and incentives do not exert pressure on employees to step over the line.**

Human resource professionals may create balanced performance objectives for all employees that make it clear that the company cares not just that goals are achieved, but how they are achieved. But how do you know if management or peers are exerting subtle pressure or offering incentives to bend the rules in pursuit of the numbers? Again, training and awareness plays a preventative role. When combined with hotline and case management tools to remediate reports and detect patterns, it creates a strong safety net against the subtle influence of “Do whatever it takes to meet the numbers.”

**Poor conduct is not tolerated.**

Nothing sows cynicism faster in the workplace than a senior leader or sales superstar getting away with misconduct. Employees consider fair or unfair treatment to be a reflection of the organization’s level of integrity. This makes it especially important to discipline misconduct consistently and advertise that the organization takes misconduct seriously by publishing redacted cases internally. A good case management system, used by all staff who implement discipline and other corrective actions, is an indispensable tool for ensuring consistency for similar violations—and for reporting outcomes that can be shared broadly to promote desired conduct.

**Bottom line:**

Technical tools can aid ethics and compliance efforts by increasing efficiency, creating documentation, and connecting with each other to enable just-in-time training, database inquiry, and policy consultation. The ultimate benefit is increased program effectiveness that supports a strong organizational culture of integrity.

ports within a short time frame to make sure the reporting employee knows that the complaint was received and is under review. Case managers will typically triage cases based on type of issue and determine—often along with the compliance officer or others—whether the issue can be handled directly, or if an investigation is warranted. All investigations should follow a written protocol or process to ensure consistency and to alert, consult, and involve the right people.

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

A written policy should guide disciplinary action for misconduct and for potentially failing to detect a violation due to negligence. Employees should trust that any discipline will be applied fairly and consistently no matter the role or level of employee. Any necessary disclosures to outside law enforcement or government agencies must be done within a reasonable time period. Other corrective action, such as changes to control mechanisms (policies, training, monitoring, etc.) should also be implemented in a timely fashion.

## 7. Audit, Monitor, and Adapt as Needed

Compliance programs should include auditing and monitoring for violations of laws, policies, and standards of conduct. They should also include audits of compliance program processes to ensure effectiveness and identify areas for improvement.

Audit plans should be re-evaluated an-

nually to ensure that they are focused on appropriate areas of concern with consideration of prior audit findings as well as new risk assessments. Results of the audits should be shared with the organization's compliance officer to allow analysis of the compliance risk environment and implementation of any needed improvements.

*The seven-step framework has the advantage of integrating rules and controls into a larger whole that includes communications, training, and support.*

### Conclusion:

Achieving an effective ethics and compliance program requires more than simply adding rules and additional layers of controls. There must be an integrated effort that aligns financial and compliance requirements with the organization's mission and values.

Too often, employees can feel that rules and controls are a burden, rather than protective guardrails with a rationale and a purpose. The seven-step framework outlined above has the advantage of integrating rules and controls into a larger whole that includes communications, training, and support. Positioned this way, employees are much more likely to understand and accept the necessity of compliance—and to do so while staying true to everyone's commitment to creating a strong culture of ethics, integrity, and compliance. ■

### About the Authors

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Mary Bennett, R.Ph. is vice president of Advisory Services and a pharmacist by training. She previously served as vice president in the Compliance and Integrity office at Caremark, where she implemented the requirements of one of the first government agreements in healthcare. Mary works across all industries for the Advisory Services team, creating and facilitating award-winning training programs, conducting large and small program assessments, developing compliance communications and helping clients develop best practice programs from the ground up.

*Bob Conlin, President & CEO, NAVEX Global*



Bob leads the executive team, leveraging more than 20 years of senior management experience in operations, sales, marketing, product management and business development. During his tenure at NAVEX Global, Bob has served as chief products officer and chief operating officer. Before joining the organization, Bob served as senior vice president of marketing and business development at Accero, a global provider of human capital management solutions. Prior to Accero, he served as the chief marketing officer at Boston-based Centive, where he led the successful transformation of the company from a traditional software provider to a pure-play SaaS provider and created a new product category—On-Demand Sales Performance Management. Prior to Centive, Bob held senior sales and marketing management positions at Infinium Software, a publicly traded ERP software vendor, Cort Directions and Myriad/OrCom Systems.

A close-up photograph of two hands interacting with a tablet device. The hands are positioned as if they are about to touch or are touching the screen. The background is blurred, showing what appears to be a person's face in profile, looking towards the tablet. The lighting is warm and focused on the hands and the device.

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