Compliance in Troubled Times

Sally March
Global Director of Compliance and Corporate Security
Nortel

ACC Europe Annual Conference 2009
Geneva
Table of Contents

• The Nortel Story
• Organization Structures for Compliance
• Different Departments for Compliance issues
• Working with Legal
• Systems for reporting complaints
• Systems and processes for managing an internal investigation
The Nortel Story

- Founded in 1895 as Northern Electric and Manufacturing, Nortel traces its history back to the mechanical department of Bell Telephone of Canada.
- Nortel has a long record of innovation in the telecommunications industry, developing the first digital PBX (private exchange), the first digital key telephone system, and pioneering fibre optics. Nortel’s current strategy on “hyper-connectivity” aims at a true broadband experience for users of any application on any device in any location.
- Headquartered in Toronto, Nortel does business in 150 countries.
- Listed on the Toronto Stock Exchange and the NYSE with revenue in 2007 of $10.95 billion.
- Early adopter of a Corporate Code of Conduct.
- In Q3 2003, Board Audit Committee raises first questions on quarterly filings, suspecting reserves had been used to adjust revenue. The Board commenced an independent investigation which ultimately resulted in four restatements and investigations by the SEC and Ontario Securities Commission.

INVESTIGATION INITIATED BY THE BOARD
The Story Continues….

- April 2004, the CEO, CFO, Controller and senior finance executives were terminated. The business unit presidents and the president of global operations were ultimately terminated along with 2 regional controllers and 5 business unit finance leaders. Other employees involved in the accounting irregularities were moved and/or disciplined.
- Finance function restructured and US GAAP skills strengthened in Finance and Internal Audit. Extensive mandatory training program implemented.
- New Office of Compliance created with Chief Compliance Officer reporting directly to the Audit Committee of the Board and to the CEO.
- In 2007, Nortel settles all claims of the shareholders, the OSC and SEC. Moody’s recognizes the Compliance structure as “best practice” and notes that the settlements indicate the regulators accept the company has taken “comprehensive and substantive” steps to reduce risk of future violations.
- January 14, 2009, Nortel files for creditor protection.
Compliance challenges define the Corporate Compliance structure and its objectives

- **Scope of the Program**
  - Limited to FCPA or other particular industry risk?
  - Broader Compliance program including fraud, corporate governance, competition, conflicts of interest, etc.?
- **Risk Assessment**
- **Focusing on highest risks**
- **Where does Compliance add the greatest value?**
- **Helping to bridge the gaps between other functions**
- **What requires continuous monitoring?**
Build a “Virtual” Compliance Team

• As cost constraints increase, it is even more important to leverage the “virtual” team
• Many functions have a role to play in Compliance:
  Legal
  Finance, Control, Tax, Treasury
  HR, Employee Relations, Works Councils
  Procurement
  Logistics
Co-ordinating a “Virtual” Compliance Team

• Compliance Committees bring the support functions together with people from the business units and sales & marketing.

• Communicate, Communicate, Communicate!

• Functions like Finance and HR are more likely to have people on the ground than Legal and can be a good early warning system as well as allies in monitoring and enforcement.

• Other functions must “buy in” to objectives and priorities
<table>
<thead>
<tr>
<th>Case Category</th>
<th>Ethics</th>
<th>Corporate Security</th>
<th>HR</th>
<th>Compliance</th>
<th>Legal</th>
</tr>
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<tbody>
<tr>
<td>Anti-trust and Competition</td>
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<td>Laws</td>
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<td>Code of Business Conduct</td>
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<td>Competitive Information</td>
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<td>Gathering/Confidential</td>
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<td>Information</td>
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<td>Compliance/Regulatory</td>
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<td>Conflicts of Interest</td>
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<td>Corruption</td>
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<td>Harassment</td>
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<td>Fraud</td>
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<td>Gifts &amp; Entertainment</td>
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<td>IPR Infringement</td>
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Working with Legal

• Partnership – identify areas of overlap and agree clear accountability
• Monitoring and approval of transactions – identify areas of significant compliance risk
• Collaboration on investigations – Privilege
• Employment Legal – partnering on initiatives, navigating among local regulations
• Anticipate that restructuring increases compliance risks!
Emphasis on reporting complaints

• Call volume on the Action Line will probably fall during restructuring
  – Employees may be concerned about retaliation or simply drawing unwanted attention to themselves
  – Employees may be alienated by the process

• So senior management needs to be very visible in supporting compliance
Corporate Compliance - A Global Challenge -

Dr. Stefan Heissner

Association of Corporate Counsel Europe
Geneva, June 2009
What we are hearing about compliance

Keep Us Out of Trouble

EXTERNAL FACTORS
- International Mandates and Voluntary Codes
- Legal/Regulatory Requirements
- Stock Exchange Listing Rules
- Stakeholder Expectations
- Ratings Agencies
- Public/Political Pressure

INTERNAL FACTORS
- Transactions / M&A
- Global market expansion
- Outsourcing
- New product launches
- Overlapping compliance responsibilities

Executive Removals
- Bigger Fines and Settlements
- Stiffer Sanctions
- Criminal Indictments
- Catastrophic Reputational Consequences (Personal and Corporate)

The traditional mindset of ‘keep us out of trouble’ is changing to include the expectation of ‘make our business better’
What we are hearing about compliance

Global viewpoint
Among the top seven “megatrends” of 2009:

- A move toward greater, more globally consistent regulation
- Increasing environmental, social and ethical obligations

Analyst viewpoint
Compliance rated 2nd most critical business risk for 2009, based on views of 100+ analysts and 20+ academic disciplines.

The Top 10 Risks For Business
1. Credit crunch
2. Regulation and compliance
3. Deepening recession
4. Radical greening
5. Non-traditional entrants
6. Cost cutting
7. Managing talent
8. Executing alliance and transactions
9. Business model redundancy
10. Reputation risks

Source: Ernst & Young Global Megatrends, 2009

Source: Ernst & Young and Oxford Analytica 2009 – The Top 10 Risks for Business

Government viewpoint
“When a company cuts compliance, violations will occur. And if violations occur, punitive actions should and will be taken. In the current environment, that is true now more than ever. There will be no favor granted because a company made a cost-cutting decision to minimize their compliance budget.”

Source: Address by SEC Chairman to the 2008 CCO OutReach National Seminar, November 13, 2008

Internal and external stakeholders continue to demand effective compliance and ethics risk management
Compliance Risk Universe*

<table>
<thead>
<tr>
<th>LEGAL / REGULATORY REQUIREMENTS</th>
<th>BUSINESS REQUIREMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>COMPETITIVE PRACTICES (FTC, DOJ)</strong></td>
<td><strong>INTERNALLY-FOCUSED REQUIREMENTS</strong></td>
</tr>
<tr>
<td>Antitrust</td>
<td>Mission</td>
</tr>
<tr>
<td>Customer, Competitor, Supplier Relations</td>
<td>Values</td>
</tr>
</tbody>
</table>

| **CORPORATE GOVERNANCE (SEC)** | **EXTERNALLY-FOCUSED REQUIREMENTS** |
| Board Structure and Processes | Corporate Social Responsibility |
| Audit Committee Structure and Processes | Sustainability |
| Ethics | Public Commitments |

| **EMPLOYMENT (EEOC, DOL)** | **VOLUNTARY STANDARDS** |
| Executive Compensation | US Federal Sentencing Guidelines |
| Compensation | Industry Codes |
| Benefits | Trade Associations |
| Hiring | |
| Employee Info Privacy | |
| Reductions in Force | |
| Whistleblower Protection | |
| Harassment Prevention | |
| Accommodation (Discrimination Prevention) | |
| Workplace Violence | |
| Global Migration (Immigration) | |
| Contingent Workforce | |
| Labor | |
| Leave | |
| Employment Torts | |

| **ENVIRONMENTAL (EPA)** | **EMERGING ISSUES** |
| Management Systems | Aside from mandatory requirements, organizations make choices regarding their brand, their values, and the commitments they make to customers, business partners, employees, and other stakeholders. Although voluntary, consequences for non-compliance could be more serious than non-compliance with mandatory requirements |
| Reporting | |
| Hazardous Material Management | |
| Laboratory Practices | |
| Permit Management | |

| **FINANCIAL (SEC)** | |
| Tax | |
| Treasury | |

| **FRAUD and CORRUPTION (DOJ)** | **INDUSTRY SPECIFIC** |
| Insider Transactions | **ASSET MANAGEMENT** |
| Anti-Money Laundering | **AUTOMOTIVE** |
| Foreign Corrupt Practices Act (FCPA) | **BANKING AND CAPITAL MARKETS** |
| Financial Statement Fraud | **BIOTECHNOLOGY** |
| Occupational Fraud (Intellectual Property, Trade Secrets) | **CONSUMER PRODUCTS** |
| Corruption | **INSURANCE** |
| Revenue and Expense Recognition | **MEDIA AND ENTERTAINMENT** |
| **GOVERNMENT CONTRACTS (DOD, OMB)** | **OIL AND GAS** |
| US Government Contracts | **PHARMACEUTICAL** |
| Other Jurisdictions (State and Country) | **REAL ESTATE** |
| **INFORMATION MANAGEMENT** | **TECHNOLOGY** |
| Data and Record Classification | **TELECOMMUNICATIONS** |
| Information Access | **UTILITIES** |
| Information Availability and Recovery | **STANDARD SECTORS** |
| Information Management Monitoring | |
| Information Disposition | |
| Litigation Discovery Rules | |
| Data Protection and Privacy | |

| **INTELLECTUAL PROPERTY (DOJ)** | |
| Copyright | |
| Trademark | |
| Trade Secret | |
| Patent | |

| **INTERNATIONAL DEALINGS / TRADE (FTC, DOJ)** | |
| Boycott | |
| Import | |
| Export | |

| **WORKPLACE HEALTH / SAFETY (OSHA)** | |
| Employees | |
| Contractors | |

| **PRODUCT QUALITY / LIABILITY** | |
| Quality Management System | |

* Illustrative US example (note: US regulatory agency listing)

Many industries are regulated by one or more agencies that mandate specific compliance requirements. In some industries, these requirements can be more complex than general legal and regulatory risks
Ernst & Young Compliance Framework
Our point of view on sustainable compliance

CULTURE

Compliance Requirements
- Mandatory
- Voluntary
- Legal / Regulatory
- Business

Compliance Program
- Effective
- Integrated

Keep Us Out of Trouble
- Prevent and detect non-compliance

Make Our Business Better
- Enhance business performance
- Drive competitive advantage

Aligned and Coordinated Compliance Risk Management Activities

<table>
<thead>
<tr>
<th>Compliance Function</th>
<th>Information &amp; Technology</th>
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</thead>
<tbody>
<tr>
<td>People</td>
<td>Process</td>
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<tr>
<td>Organizational Charter</td>
<td>Strategic Planning</td>
</tr>
<tr>
<td>Organizational Structure</td>
<td>Risk Assessment</td>
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<tr>
<td>Resources and Accountabilities</td>
<td>Controls, Policies &amp; Procedures</td>
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<tr>
<td>Competency Development</td>
<td>Training and Education</td>
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</tbody>
</table>

Corporate Governance and Oversight

<table>
<thead>
<tr>
<th>Compliance Risk Management Functions</th>
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<tr>
<td>Strategy and Support Functions</td>
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<tr>
<td>Operations and Business Units</td>
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Individual Employees
Additional materials

- Compliance role model
- Roadmap for achieving sustainable compliance
- EY’s Fraud Investigation & Dispute Practice
- Your Speaker
Compliance role model
Who is responsible?

Mindset: Zero Tolerance

Corporate Governance and Oversight
- Executive Management
- Board
- Audit Committee
- Risk Committee

Objective: Integrated and Effective Compliance Infrastructure

Compliance Risk Management Functions
- General Counsel
- Chief Compliance/Ethics Officer
- Internal Audit Department

Execution: Embedded into the Business

Strategy and Support Functions
- Legal
- Corp Soc Resp
- HR
- Tax

Operations and Business Units
- Operations
- Research and Development
- Manufacturing
- External Affairs
- Transactions
- Finance
- IT
- Sales
- Marketing
- Supply Chain *

Individual Employees

* Includes extended enterprise compliance through contractors and suppliers
Roadmap for achieving sustainable compliance
A practical approach

Ernst & Young recommends performing a compliance risk assessment and reviewing current compliance risk management performance levels to determine areas where incremental improvements in compliance risk management would provide greater benefit to the business.

**Compliance Risk Assessment**
Assess and prioritize key compliance risks to achieve business objectives.

**Compliance Performance Assessment**
Evaluate compliance infrastructure and processes for managing compliance risks.

**Improve and Monitor the Effectiveness of Compliance Processes and Controls**
Define and prioritize opportunities to:
- Improve the effectiveness of compliance processes and controls
- Enhance integration of compliance processes and controls into existing functions and processes
- Mitigate and monitor significant compliance risks
- Align and coordinate risk management processes and controls across the business
Roadmap for achieving sustainable compliance
Compliance Risk Assessments

Assess

Compliance Risk Assessment
Assess and prioritize key risks to achieve business objectives

Compliance Risk Assessment
Objectives

Identify and prioritize the significant enterprise and functional compliance risks, and emerging compliance issues

Assess the extent to which Compliance Risk Assessment outcomes are integrated into strategic, internal audit, and compliance monitoring and evaluation planning and implementation plans

Compliance Risk Assessments:

- **Provide insights** on significant compliance risks from an industry perspective and link these to objectives, initiatives, and business processes

- **Validate and prioritize key risks** and define opportunities for improvements to compliance processes and controls and for testing and monitoring controls

- **Assess resource allocation** to validate that resources and control activities adequately address the more significant compliance risks identified from the risk assessment

- **Serve as the foundation** for aligning and coordinating compliance risk management processes across the business (e.g., strategic planning, ERM, internal audit plan, compliance training)
Compliance Performance Assessment

Objectives

Assess the design and operation performance of the compliance infrastructure - including the compliance function and processes - relative to legal/regulatory requirements and leading practices.

Provide insight into overall effectiveness of activities for assessing, monitoring, and improving the way compliance risk is managed across the organization.

Compliance Performance Assessments:

- Offer a review of responsibilities for key compliance risks across functional activities and business processes.
- Help management identify opportunities to embed and sustain risk management activities throughout the organization.
- Help management to identify and prioritize opportunities to enhance an organization’s compliance infrastructure.
- Establish a baseline for assisting management with ongoing compliance monitoring and continuous improvement.
- Help management to identify opportunities for greater compliance infrastructure integration, alignment, and coordination across organizational boundaries.
Roadmap for achieving sustainable compliance

Compliance Performance Assessments

The Framework focuses on five areas that affect compliance program effectiveness: Compliance Requirements, Culture, People, Process, and Information and Technology.

Compliance Requirements

- Legal/Regulatory
- Business

Culture

- Vision
- Values
- Code of Conduct
- Mission
- Tone at the Top
- Business Strategies

Compliance Function

<table>
<thead>
<tr>
<th>People</th>
<th>Process</th>
<th>Information and Technology</th>
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<tbody>
<tr>
<td>Organizational Charter</td>
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<tr>
<td>Resources and Accountabilities</td>
<td>Controls, Policies and Procedures</td>
<td>Performance Reporting</td>
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<td>Competency Development</td>
<td>Training and Education</td>
<td>Decision Support</td>
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<td>Process</td>
<td>Information and Technology</td>
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<td>Preparedness and Practice</td>
<td>Measures and Metrics</td>
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<td>Monitoring and Evaluation</td>
<td>Information Management</td>
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<td>Incident Response</td>
<td>Performance Reporting</td>
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<td>Communications and Reporting</td>
<td>Decision Support</td>
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June 2009  Page 11  Corporate Compliance – A Global Challenge
Roadmap for achieving sustainable compliance
Compliance Performance Assessments

For each element of the compliance infrastructure, we have developed varying levels of maturity based on our global compliance experience.

Maturity Model

<table>
<thead>
<tr>
<th>Compliance Infrastructure Element</th>
<th>Initial (compliance policy is in place)</th>
<th>Inevitable (compliance policy is implemented and operational)</th>
<th>Established (compliance policy is effective and compliant with applicable regulations)</th>
<th>Advanced (compliance policy is proactive and continuously improved)</th>
<th>Optimized (compliance policy is integrated into the business strategy)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compliance Leadership</td>
<td>Legal &amp; regulatory requirements defined and operational</td>
<td>Acknowledgement of risks and regulatory requirements</td>
<td>Management and alignment to organizational strategy</td>
<td>Compliance measures and risk identification and mitigation strategies</td>
<td>Knowledge of regulatory requirements and operational alignment with organizational strategy</td>
</tr>
<tr>
<td>Process</td>
<td>Voluntary behavior aligned with regulatory requirements</td>
<td>Voluntary behavior aligned with regulatory requirements and related policies</td>
<td>Compliance measures and risk identification and mitigation strategies</td>
<td>Compliance measures and risk identification and mitigation strategies</td>
<td>Knowledge of regulatory requirements and operational alignment with organizational strategy</td>
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ASSESS
Elements of Compliance Infrastructure

Management validation and prioritization of gaps

Input into

IMPROVE
Action Plan

MONITOR
Work Plan

June 2009
Page 12
Corporate Compliance – A Global Challenge
Roadmap for achieving sustainable compliance
Compliance Improvement and Remediation

**Improve**

Improve the Effectiveness and Efficiency of Compliance Processes and Controls
Define and prioritize opportunities to improve the effectiveness of compliance processes and controls

Compliance Improvement and Remediation Objectives

Focus on risk mitigation by enhancing the effectiveness and efficiency of compliance processes and controls
Assist management to develop and implement a written plan to mitigate specific compliance risks and/or enhance an organization’s compliance infrastructure

Compliance Improvement and Remediation:

- **Assist management to deliver improvements** by working with the business as an advisor, facilitator of change, and source of industry knowledge and experience
- **Help to align operational performance** with compliance risk and control requirements
- **Assist management to enhance the design and operating effectiveness** of a company’s existing compliance infrastructures, processes, and controls
- **Assist with the integration of compliance risk and performance assessment outcomes** into other corporate risk management activities (e.g., strategic planning, ERM, ongoing monitoring, and periodic evaluation)
Roadmap for achieving sustainable compliance
Compliance Evaluation and Monitoring

**Monitor**

Monitor the Ongoing Effectiveness and Efficiency of Compliance Controls
Conduct real-time, ongoing monitoring of compliance processes and controls for ongoing relevance and effectiveness

Compliance Evaluation and Monitoring Objectives

- **Define the review process** used to evaluate compliance with legal, regulatory, and business requirements
- **Define ongoing monitoring activities** to help validate that the program is operating within defined tolerances
- **Facilitate coordination and alignment** with other assessments conducted by the organization (e.g., strategic planning, ERM, ongoing monitoring, and periodic evaluation)
- **Define thresholds for escalating incidents** of noncompliance for investigation, resolution, and remediation
EY’s Fraud Investigation & Dispute Services
Global Network

- Argentina
- Australia
- Austria
- Bahrain
- Belgium
- Brazil
- Canada
- China
- Croatia
- Czech Republic
- Egypt
- France
- Germany
- Greece
- Hungary
- India
- Indonesia
- Iran
- Ireland
- Italy
- Japan
- Jordan
- Korea
- Kuwait
- Lebanon
- Luxembourg
- Malaysia
- Mexico
- Namibia
- Netherlands
- New Zealand
- Norway
- Peru
- Philippines
- Poland
- Qatar
- Russia/CIS
- Saudi Arabia
- Singapore
- Slovakia
- Slovenia
- South Africa
- South Korea
- Spain
- Sweden
- Switzerland
- Syria
- Turkey
- United Arab Emirates

= EY FIDS Network
= no FIDS Professionals

June 2009  Page 15  Corporate Compliance – A Global Challenge
EY’s Fraud Investigation & Dispute Services
Advisory Service Portfolio

Fraud Investigation & Dispute Services

Anti Fraud Management
- Ethics Management
- Anti-Fraud Program Assessment
- Fraud Risk Assessment
- Anti-Fraud Controls Monitoring
- Fraud Response Plan

Compliance
- Compliance Program Implementation
- Compliance Program Assessment
- Compliance Audits
- Compliance Due Diligence
- Business Partner Screening

Investigation & Disputes
- Investigations
- Embezzlement
- Corruption
- Financial Statement Fraud Disputes
- Contract Disputes
- Litigation Support
- Antitrust
- Transaction Disputes
- Arbitration

Forensic Technology & Discovery Services
- Computer Forensics
- Forensic Data Analytics
- Forensic Data Monitoring
- Electronic Discovery
Dr. Stefan Heissner

Education
- Diplom-Ökonom (diploma in Business and Economics)
- Dr. rer. Pol. (PhD in Economics)
- Kriminalkommissar a.D. (detective superintendent ret.)

Professional development
- 15 years police
- 10 years forensic accounting at Big 4
- 5 years Partner

Specialized fields
- Fraud Investigation
- Fraud Prevention
- Compliance Management
- Dispute Services

Industries
- Manufacturing industry
- Banking and Insurance
- Public Services
- Media
- Real Estate

Reference projects
- Engagement Partner of investigations in international corruption cases in the manufacturing industry on behalf of supervisory boards
- (Co-) Engagement Partner of investigations in corruption and money laundering cases in the banking industry on behalf of the German Financial regulator and Law Enforcement agencies
- Co-Engagement Partner of international arbitration and litigation cases, in one case on behalf of the government of a European member state
- Engagement Partner of several Anti-Fraud & Compliance Management Engagements for mid-size and large multinational Companies
Thank you!