Global Issues Forum:
Global Compliance – Best Practices

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Practical issues associated with structuring and operating compliance programs in accordance with laws within the US and globally.
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PART I:

Compliance Program Best Practices
The Compliance Program – Basic Elements

- Requirements for an Effective Compliance Program (USSG Section 8B2.1):
  - Written policies and procedures
  - Designated compliance officer (and often compliance/risk committee)
  - Effective training and education
  - Effective lines of communication (including a hotline)
  - Internal monitoring and auditing
  - Enforcement of standards through well-publicized disciplinary guidelines
  - Prompt response to detected problems through uniformly applied corrective actions
The Three Purposes of a Compliance Program

1. Prevention
   - Written policies/code of conduct
   - Compliance officer and oversight
   - Training/education

2. Detection
   - Reporting hotline
   - Monitoring/auditing and internal reporting
   - Non-retaliation
The Three Purposes of a Compliance Program

3. Correction

- Investigations/remediation
- Disciplinary policies
PART II:

Application of Best Practices
Life Cycle of Compliance Risk

Compliance Investigation

Risk Assessment & Identification

Investigation

Reporting to the Board/Management

Reporting to the Government/Disclosure

Remedy/Mitigation

Regulations/laws in this presentation will be US-focused, with sections addressing foreign jurisdictions where appropriate/important/key
Hypothetical

▪ “Company” is a US-based public company, traded on NYSE, that manufactures products
  ▪ Company maintains operations and sells products around the world

▪ In 2010, Company acquired a number of foreign subsidiaries
  ▪ The newly acquired subsidiaries were required to adopt Company’s Revenue Recognition Policy
  ▪ Company’s corporate finance group delegated revenue recognition decision-making authority to the subsidiaries

▪ The Company has received an anonymous hotline report that beginning in 2011, the VP of Sales for Company’s foreign subsidiary initiated a scheme to inflate the foreign subsidiary’s revenue numbers at or near the end of the reporting periods
  ▪ There is also a general concern regarding large undocumented payments by the subsidiary that have been going on for years – even before the merger
Risk Assessment & Identification
Risk Assessment & Identification

- What are the first steps in response to the hotline report?

- How do you prioritize and address each concern?
  - Role of internal audit
  - Review internal metrics and data
  - Review prior risk assessment and audits

- Do you report the concerns immediately? If so, to whom?
Investigation
Investigation – Preliminary Considerations

- Once the decision is made to investigate the concerns:
  - Issuance of document hold and initiation of review
  - Application of global privacy laws?
  - Interplay between legal and compliance roles?
    - Who will control and direct the investigation?
    - Important to trigger and protect the Company’s privilege
Investigation – Managing the Investigation

- How do you manage local witness interviews?
  - Upjohn warnings
  - Local law and other employee protections

- Do you have an investigation report generated?
  - If not, how do you report out the results of the investigation?
  - To whom are the results of the investigation reported?
Reporting to the Board/Management

Risk Assessment & Identification

Investigation

Reporting to the Government/Disclosure

Remedy/Mitigation
Reporting to the Board/Management

▪ How and when do you communicate with each of these internal stakeholders?

▪ Board

▪ Management

▪ Compliance or Risk Committee
Reporting to the Board/Management – Oversight and Responsibility

- What is the Board or Audit Committee’s role?
  - Direct line to compliance function
  - Periodic reports

- What is management’s role?
  - Overall responsibility
  - Operational authority

- What is role of Compliance or Risk Committee?
Reporting to the Government/Disclosure

- Risk Assessment & Identification
- Investigation
- Reporting to the Board/Management
- Reporting to the Government/Disclosure
- Remedy/Mitigation
Reporting to the Government/Disclosure

- How and when do you communicate with each of these external stakeholders?
  - Law enforcement or regulatory body
  - Outside auditors
  - Shareholders
  - Market
Reporting to the Government/Disclosure

- How do you make the decision to self-report or otherwise disclose the results of the investigation?
  - Leniency for timely disclosures to DOJ
  - US Sentencing Guidelines § 8C2.5(g)
  - DOJ’s Criminal Division to model policy after FCPA Corporate Enforcement Policy
  - Cooperation credit for SEC investigations
  - Credit for existing compliance programs
  - DOJ Antitrust Division credit for first party to report conspiracy
Reporting to the Government/Disclosure

- How to determine benefits of self-reporting?

- How to determine when, how to self-report?
  - If self reporting, how to preserve privilege?

- How to best manage difficult public disclosures?
Remedy/Mitigation – Analysis and Remediation

- How do you determine the appropriate employee discipline?
- How do you identifying faulty or circumvented internal controls?
- How do you implement and test remedial measures?
- What other steps should the Company take to mitigate risks?
Key Takeaways

- The Company will be judged on the way it responded to the issue from the moment it was identified (or should have been identified)
- Companies must have a reasonably designed compliance program – with adequate resources – in place before a crisis or issue arises
- Must take proactive steps to detect misconduct (e.g., compliance audits, data analytics)
  - Including easily accessible and multiple reporting mechanisms to raise concerns
- Must undertake prompt and appropriate response to potential problems
  - Investigation, or
  - Adequate documentation of reason for no investigation
- Company must then take appropriate action based on what was identified
  - Both internally and externally
Key Takeaways

- Mitigation and Remediation must include:
  - Discipline of wrongdoers
  - Changes to affected systems/processes
  - Changes to compliance program

- Important to proactively use the compliance program to:
  - Communicate expectations and awareness of applicable laws and regulations
  - Develop program metrics to measure and improve the program
  - Partner with the business and internal audit
  - Strengthen controls
  - Prevent future bad conduct
  - Tailor training and job specific communications

- When done right, a compliance program can be invaluable in protecting the Company
  - But the standards are very high and ever evolving
Handouts

- Summary of DOJ’s Revised FCPA Corporate Enforcement Policy
- DOJ Evaluation of Corporate Compliance Programs
- USSG Section 8B2.1
- JPMorgan Non-Prosecution Agreement (NPA)
  - The non-prosecution decision was based in large part on the effectiveness of the Company’s compliance program; in fact, “compliance” is mentioned 80+ times in the NPA itself.
QUESTIONS?