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# The Chief Compliance & Legal Officer As Culture Leaders

**MCCA Creating Pathways to Diversity  
October 16, 2019**

**Presented by the National Association for Diversity  
in Compliance (NADC)**

# Panel

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Executive Vice President and General Counsel



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***Tenneco Inc***  
Chief Ethics & Compliance Officer



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***CSAA Insurance Group, a AAA Insurer***  
VP & Associate General Counsel, Compliance & Employment

# Ethical Cultures Have Stronger Business Performance

Comfort Speaking  
Up Connected  
to Stronger  
Financial  
Performance

Higher Integrity  
Cultures  
Perform Better  
Operationally  
and Financially

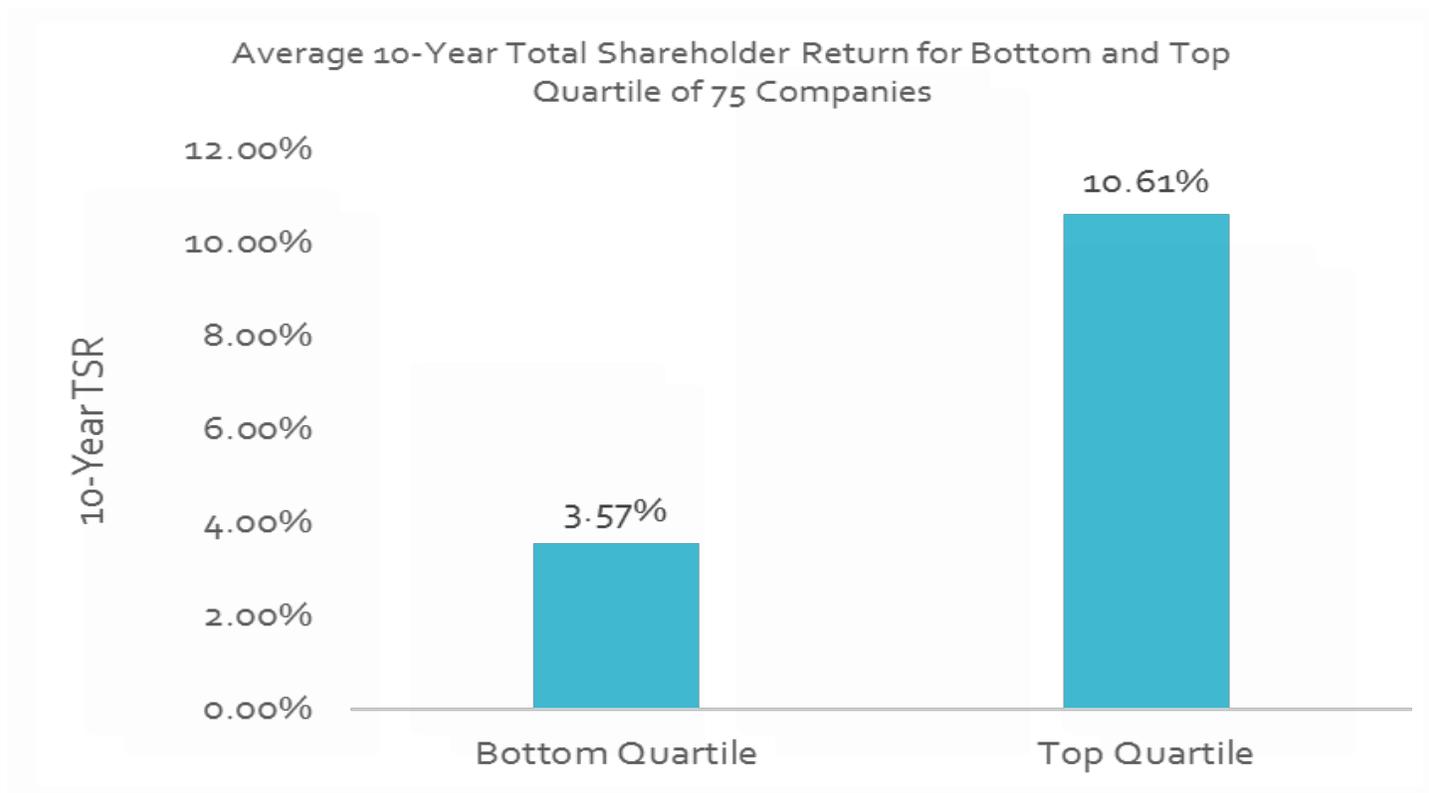
For every 0.2-point increase in the comfort speaking-up score, companies tend to see a five-percentage point increase in average 10- year total shareholder return.



According to CEB based on a sample of 75 multinational companies, there is a significant correlation between companies with high Integrity Index scores and 10-year total shareholder returns and overall financial performance.

# Culture Helps the Bottom Line

Organizations with a strong culture of integrity experience 10-year total shareholder returns that are 7 percentage points higher than those with a weak culture of integrity.



$n = 75$ .

Source: Gartner RiskClarity: A Corporate Integrity Service™ 2009–2016 Benchmark.

Note: Results of Pearson Correlation:  $r = 0.25$ ,  $p < 0.05$ .

# Recent High-Profile Cases of Culture Failure

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n = 33,297 (2018)  
Source: 2018 RiskClarity Benchmark

# The DOJ Emphasizes Culture

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In 2019, the DOJ released guidance that placed an increasing emphasis on corporate culture and cultural assessment in its evaluation of compliance program effectiveness.<sup>1</sup>

Under the guidance, compliance teams are expected to ask themselves the following questions regarding culture:

1. How often does the company measure its culture of compliance?
2. Does the company seek input from all levels of employees to determine whether they perceive senior and middle management's commitment to compliance?
3. What steps has the company taken in response to its measurement of the compliance culture?

<sup>1</sup>Source: [Department of Justice Evaluation of Corporate Compliance Programs](#)

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# **Guardian Life's Safe to Say Program**



# Here at Guardian, It's Safe to Say

## Spot Issues

Examples of issues you may have experienced

"A colleague sent an email with confidential information to the wrong recipient."

**Privacy**

"I have an issue with a colleague."

**HR**

"Someone selected a vendor based on a personal relationship."

**Ethics**

"I think a colleague may be stealing from the company."

**Fraud**

"I need to report a dangerous situation."

**Safety**



## Speak Up

Choose any method to report



**Talk**

to your manager,  
[HR](#) or [Compliance Officer](#)



**Call**

EthicsPoint 24/7 at  
1.866.384.4277



**Report**

an issue at  
[www.ethicspoint.com](http://www.ethicspoint.com)



Guardian will...



**Understand your concerns**



**Protect confidentiality and treat your matter seriously**

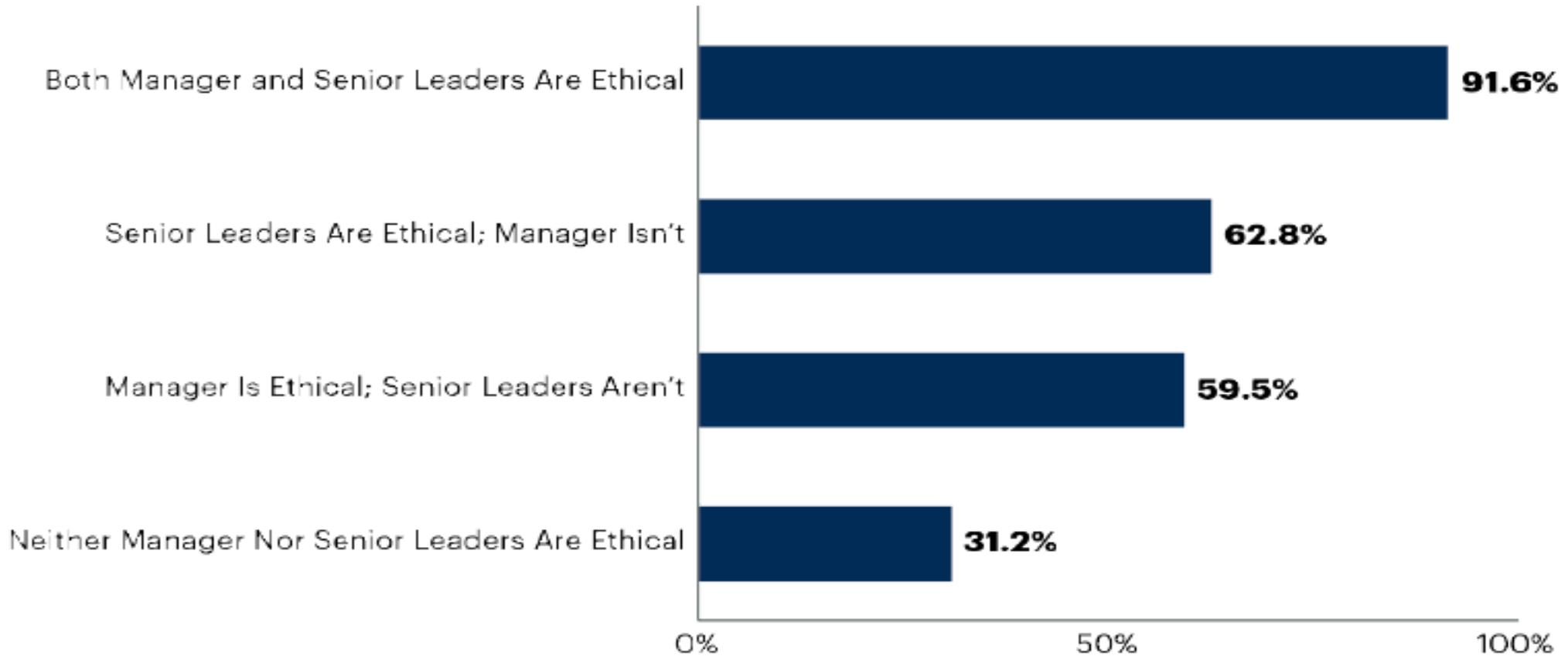


**Provide guidance and coaching and take actions as appropriate**

# Ethical Leaders Drive Ethical Culture

## Employees Comfortable Reporting Misconduct by Perception of Leaders

Percentage of Employees



n=282,485

Source: 2017 Gartner RiskClarity

# CBRE – Building Tone at the Top

## COMPLIANCE CORNER

January 2017

Previous editions of Compliance Corner are archived [here](#).

### The 100th Edition of the Compliance Corner



Pull up a chair and listen... You'll never believe what happened to me over the holidays.

Moments after I hit "SEND" on December's Compliance Corner, I grabbed my flip-flops, snorkel and board shorts—oh, and my wife, two sons and some zinc oxide—and took off for a long overdue family trip to Mexico.

The first night, we feasted on enchiladas, chips and guacamole, and more than a few Don Julio margaritas. I was already in full-on vacation mode. After dinner, we retired to our hotel room, my belly full of Mexican food and feeling a bit tipsy. Head on a very comfy pillow, staring up into the ceiling fan, I had an epiphany...

I am done with the Compliance Corner. Forever.

It's hard to write this stuff. It's not in my job description. I don't get paid any more to do it than if I didn't. Cushman doesn't have a Compliance Corner, and they are apparently doing fine... just ask them. To be sure, our monthly compliance newsletter had given our CBRE colleagues a few chuckles while learning about our RISE values and Standards of Business Conduct. But, there's just too much pressure! I have to outdo myself every month, coming up with ever more interesting stories, more relevant topics, more laugh-lines and a poignant message, all while being "politically correct." And to make matters worse, some of the reader feedback frankly hurts my feelings—e.g., "too long" or "you must have a thing against Canadians" or "Trump again? Let it go, Larry!" As I drifted off, all I could think about was "Good riddance and humbug to the Compliance Corner."

Deep into my slumber, I was awoken by the sounds of dragging chains. Worse, I had a strange feeling I was being watched. Pulse racing, I climbed out of bed and there, in the corner of the room, was Enron founder [Kenneth Lay](#), who was sentenced to 45 years in prison... AND DIED IN 2008!

## News Detail

### Compliance Corner

# So You Think You Can Dance? – Diversity and Inclusion

March 27, 2019

Share 5 Comments 22



**Larry Midler**  
Executive Vice President  
and General Counsel

The first time I met Bobby Griffin, CBRE's head of Diversity & Inclusion, he shared a simple metaphor to illustrate the difference between the two key elements of his title. His sage words have stuck with me. "Diversity is being invited to the dance," he stated. "Inclusion is being asked to dance." But, what Bobby said next was most striking and inspiring to me. "Truly belonging is being taught the dance."

The next time I saw Bobby, last month in Dallas at our AANG Conference, I had the opportunity to see his words come to life.<sup>1</sup> Following the keynote address after dinner, a band kicked up the beat to get the

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# Compliance Training & Communications

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# Tenneco – Compliance & Ethics Training & Awareness Programs

# What Would You Do?

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You are excited about your new product launch coming up next week. It is really going to improve gross margin. Your phone rings and it is outside counsel who tells you he can't find the plant manager. He explains that he forgot to tell the plant manager that there is a new regulation that will require product changes. You complain that there is no time to make those changes and hit your targets. He says that actually, the fines are low and enforcement is unlikely, so it is reasonable for you to proceed. What do you do?

1. Proceed and take the risk, since it is minimal.
2. Delay the launch and implement the changes.
3. Run a pilot launch and make the changes later if the revenues justify it.

# Kahoot!

Join at [www.kahoot.it](http://www.kahoot.it) or with the **Kahoot! app**  
with Game PIN:

**928431**

Kahoot!

0  
Players

Start

Waiting for players...



Why do we need a "Know Your Customer/Vendor" process with background checks?

12



Skip

0  
Answers

We love paperwork

To protect & defend the company

The lawyers made us

Nothing better to do



# Tenneco Speakeasy Campaign Event

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# Measuring & Reporting on Culture





# Building Tone at the Top Through Leadership Action



## Overview

Employees are more likely to exhibit positive compliance behaviors — and generally be happier at work — if they are confident in the honesty and integrity of their manager and company’s senior leaders. Compliance and ethics leaders should urge C-suite executives to demonstrate a visible commitment to ethics and integrity.

### Key Findings

- Employees are more likely to feel comfortable reporting misconduct when they are confident in the honesty and integrity of their manager and company’s senior leaders.
- Employees are happier with their jobs when managers and senior leaders are seen as ethical.
- 86.1% of employees believe their managers are honest and ethical, but only 73.3% feel the same way about their company’s senior leaders.

### Recommendations

Compliance and ethics leaders in charge of corporate ethics and integrity should:

- Encourage senior leaders to publicize their commitments to ethical behavior by explicitly defining and making commitments to behaviors that promote compliance and ethics on the job.
- Connect senior leaders’ behavior to ethical expectations by showing senior leaders in communications designed to encourage ethical conduct and aligning senior leaders’ messages with initiatives that employees can take part in.

CEOs might be the public face of companies, but most employees will never have an opportunity to shake hands with them. Employees' direct managers and coworkers play a more direct role in shaping their experiences at work. Although an employee may never meet them, CEOs still have tremendous cultural influence, most notably when they make formal statements to the employee population. These messages usually take one of several forms.

For instance, institutional investors have pushed publicly traded companies to make commitments to environmental and social good.[1] These priorities are reflected in many CEO pronouncements and initiatives. A CEO might create a video espousing core company values as part of the rollout of the company's code of conduct. An employee might also hear from a CEO in the wake of a public scandal or event.

Over the past year, negative headlines about issues ranging from financial misconduct and data privacy to sexual harassment and racism have engulfed the CEOs of Nissan, Facebook, CBS and Papa John's.[2,3,4,5] These public pronouncements set a standard for expected corporate behavior.

## Employee Perceptions of Senior Leaders

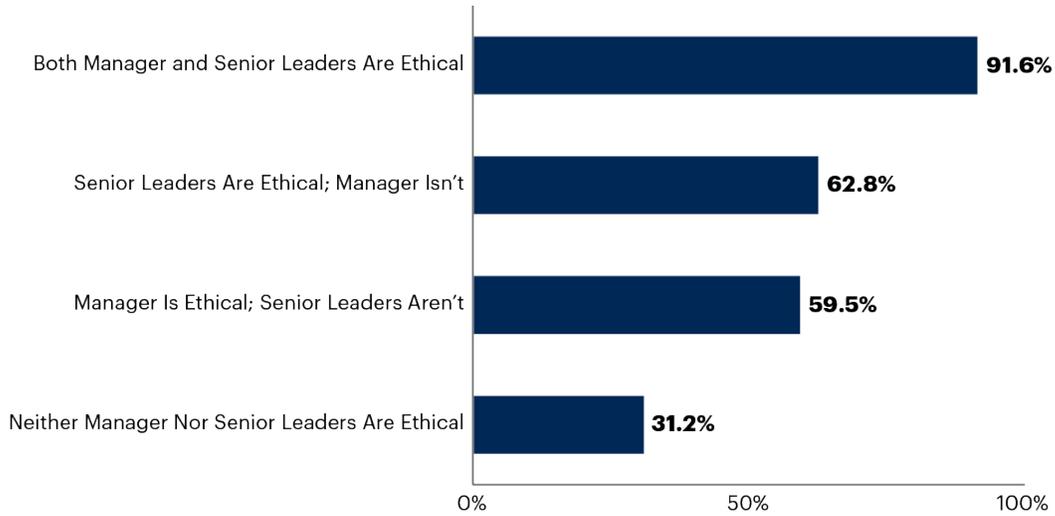
The contrast between CEOs' ethically minded public statements and the sobering headlines can be jarring. Employees are left wondering if CEOs' actions truly reflect the values they promote in their public statements. This disconnect is reflected in the reduced trust employees place in senior leaders; only 73.3% of employees agree or strongly agree senior leaders at their company are honest and possess integrity, compared to 86.1% who feel this way about their own manager.

The relatively lower standing of senior leaders may be linked to public perceptions that CEOs are overpaid, but it is likely also rooted in the fact that managers are simply more visible than senior leaders, and employees are more likely to have directly experienced managers acting ethically. Employees who have witnessed misconduct at their organization in the past year take especially dim views of senior leaders; only 45.9% of these employees view senior leaders as honest and possessing integrity, compared to 79.6% of employees who have not witnessed misconduct.[6]

Even when senior leaders are not personally perpetrating misconduct, their standing in employees' eyes is closely linked to matters of ethics and integrity. This somewhat skeptical belief in senior leaders matters. Our data shows employees need to have confidence in the honesty and integrity of their manager *and* the company's senior leaders to feel comfortable reporting misconduct (see Figure 1). Belief in your direct manager is simply not enough for an employee to risk raising a concern.

Figure 1: Employees Comfortable Reporting Misconduct by Perception of Leaders

**Employees Comfortable Reporting Misconduct by Perception of Leaders**  
Percentage of Employees



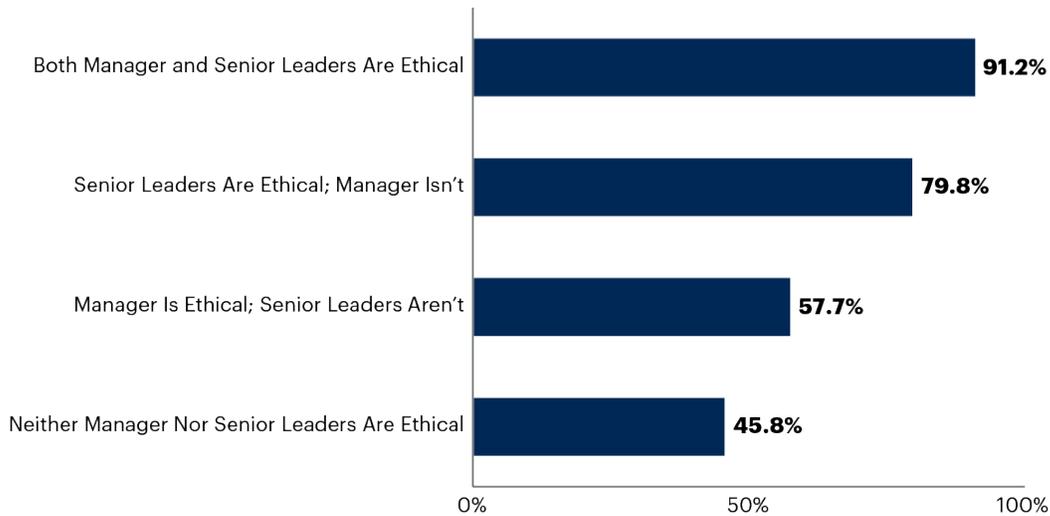
n = 282,485  
Source: 2017 Gartner RiskClarity  
705682

Employees are most confident they can report when they believe their manager and senior leaders are ethical.

The benefits of employees' confidence in the integrity of their manager and senior leaders extend beyond compliance issues to fundamental aspects of employee morale (see Figure 2).

Figure 2: Employees That Enjoy Their Job by Perception of Leaders

**Employees That Enjoy Their Job by Perception of Leaders**  
Percentage of Employees



n = 40,724  
Source: 2017 Gartner RiskClarity  
706482

Employees most enjoy working for their company when they believe their manager and senior leaders are ethical.

In turn, happy employees are more likely to exhibit high discretionary effort. According to our 2017 Global Culture Assessment, happy employees are more than twice as likely as other employees to volunteer for additional duties and frequently help others who have heavy workloads.[7] Belief in senior leaders' integrity translates into increased discretionary effort from employees.

## Helping Senior Leaders Live Out Ethics

The stakes of employees' perceptions of senior leaders are clearly high. The situation is further complicated by the fact that compliance leaders' ability to influence senior leaders' behavior is limited. Fortunately, almost all senior leaders recognize the importance of ethical conduct and seek to ethically conduct themselves. The task facing compliance leaders, therefore, is to bridge the gap between the reality of senior leaders' behavior and skeptical employee perceptions. A concerted effort to publicly demonstrate senior leaders' ethical commitments can achieve this.

Compliance leaders can make senior leaders' positive ethical commitments more visible by clarifying ethical expectations of senior leaders and publicly connecting senior leader behavior to those ethical expectations.

# Two Steps for Clarifying Ethical Expectations

## Step 1: Document Visible Role-Specific Behaviors

Medtronic, a medical technology company, has made a concerted effort to ensure employees' ethical conduct is visible to rank-and-file employees. Groups of employees are given examples of what varying levels of success at modeling ethical behavior would look like. At the most senior levels — vice presidents and above — an employee who does an excellent job of modeling ethical behavior would be a person who:

- Models consistently and notably promotes adherence to the letter and the spirit of the code of conduct, applicable laws and company policies
- Creates opportunities for people to speak up and share their concerns with an open door, and supports those who have the courage to raise issues
- Models, and is an ambassador for, the highest standards of honesty, ethics and integrity, and proactively leads efforts to enhance the culture of ethics and integrity

After implementing this policy, Medtronic held focus groups that confirmed impact and efficacy. Employees reported that in addition to valuing the concept of senior leaders modeling ethics, they felt the policy had helped to open up space for them to speak up about ethics and voice alternative views more generally.

## Step 2: Encourage Senior Leaders to Participate in Team Behavior Change

The health technology company Philips encourages its teams to hold open discussions of how well they are living the company's General Business Principles. Employees discuss what they can do, or not do, to model ethical behavior; these commitments are posted publicly on the company's intranet. The pledges are effective because they refer to actionable steps an employee can take and are not simply reiterations of general ethical principles.

Philips encourages influential managers to be among the first to make these public ethical commitments. While managers are critical role models, senior leaders should also be encouraged to make visible ethical commitments and reference the pledges and what they have done to live up to them in future communications.

# Two Steps for Connecting Senior Behavior to Ethical Expectations

## Step 1: Make Senior Leaders Visible in Compliance Communications

Before senior leaders' messages on ethical conduct can be connected to concrete action, they must first be produced. Compliance leaders cannot simply order a CEO to give a speech on ethics. However, they can take steps to ease senior leaders into playing a role in ongoing assurance initiatives.

Most compliance programs regularly communicate with employees in one capacity or another (e.g., posters to promote the hotline, emails reminding employees to complete required training, events to celebrate "Compliance Week"). These items and events represent opportunities to make senior leaders visible parts of the company's commitment to ethics and integrity.

For example, a hotline poster that includes a picture of the CEO and a quote attesting to the hotline's importance is likely to prove more impactful than a poster that simply publicizes a phone number. These "endorsements" represent relatively modest asks of senior leaders, and their potential benefits are significant.

## Step 2: Help Coordinate Senior Leaders' Statements and On-the-Ground Action

Senior leaders cannot be everywhere at once; it is inevitable that in some situations, the role they play will involve making statements more than executing initiatives. Senior leaders' words must be properly backed up with action, even when the senior leaders cannot be directly involved in all aspects of the action.

For example, Starbucks showed how to achieve this alignment after a store manager in Philadelphia called the police on two African-American men who did not immediately make a purchase after entering. CEO Kevin Johnson released a statement apologizing for the incident and emphasizing the store manager's actions "are not representative of our Starbucks Mission and Values."<sup>[8]</sup> The chairman and founder of Starbucks, Howard Schultz, also released a video reaffirming the company's commitment to establishing a welcoming environment.<sup>[9]</sup>

Crucially, the company did not stop there. It also coordinated initiatives to affirm the senior leaders' words would be backed up. 8,000 stores were closed on a Tuesday afternoon for employees to receive anti-bias training.<sup>[10]</sup> Employees were given group

workbooks to facilitate discussions of realistic scenarios in which bias and prejudice might influence employees' perceptions of customers.[11]

Senior executives' statements and ordinary employee's perceptions were thus aligned in a coherent narrative that reinforced the gravity with which the company was treating the incident and its ethical implications. It is a lesson in the importance of coordination with senior leaders to ensure their ethical statements are backed up with visible action.

Of course, closing 8,000 establishments is an admittedly costly proposition not all companies can emulate. But companies can learn from the connection of senior leader statements to employee experiences. Starbucks employees were made acutely aware of the link between the initial incident, the statements by Johnson and Schultz, and the programs in which the employees took part.

## Conclusion

Employees do not view senior leaders' commitments to ethics and integrity as highly as those of managers. Our analysis shows it is only when managers *and* senior leaders are viewed as ethical that the most desirable outcomes occur, in terms of employee behavior and productivity.

Compliance leaders should work to connect senior leaders' endorsements of ethical principles to concrete action and ensure senior leaders are issuing or are connected to communications that stress the importance of ethics. Once these communications are underway, they should be linked to initiatives that touch employees' experiences to demonstrate the senior leaders' commitments to ethics are not mere lip service. The ultimate goal is for all employees at the organization to be linked in a coherent narrative emphasizing integrity is fundamental to success.

## Recommended by the Authors

- ["Visible Role-Specific Behaviors \(Medtronic\)"](#)  
Learn how Medtronic explicitly coaches employees at all levels of the organization to ensure their ethical conduct sets a public example for their colleagues.
- ["Team Behavior Change Commitments \(Philips\)"](#)  
Find out more about how Philips encourages creative thinking about how to live the company's ethical principles and supports public commitments to ethical behavior.

## About This Research

This research draws upon data from our 2017 RiskClarity global benchmark survey. RiskClarity helps organizations quickly target specific areas of employee risk within

their companies by allowing them to perform an enterprisewide cultural assessment and uncover root causes of employee misconduct. This research also draws upon data from our compliance and ethics 2017 Global Culture Assessment, which surveyed over 5,000 employees across 20 industries and 15 countries.

## Endnotes

[1] "Institutional Investors Drive Corporate Social Responsibility, Study Shows," Folio.

[2] "Tokyo Prosecutors Indict Nissan's Ex-Chairman Ghosn for Financial Misconduct," CNBC.

[3] "As Facebook Raised a Privacy Wall, It Carved an Opening for Tech Giants," New York Times.

[4] "The Year of Reckoning at CBS: Sexual Harassment Allegations and Attempts to Cover Them Up," New York Times.

[5] "Papa John's Founder Resigns as Chairman After Using N-Word on Conference Call," CNN.

[6] "Americans and CEO Pay: 2016 Public Perception Survey on CEO Compensation," Stanford Graduate School of Business.

[7] 2017 Gartner Global Culture Assessment

[8] "Starbucks CEO: Reprehensible Outcome in Philadelphia Incident," Starbucks.

[9] "Howard — Who We Are, Who We Aspire to Be," YouTube.

[10] "Starbucks Anti-Bias Training: Why the Coffee Chain Closed 8,000 Stores," USA Today.

[11] "The Philadelphia Incident Was Terrible; Starbucks' Response Was Admirable," Forbes.



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# U.S. Department of Justice Criminal Division

## Evaluation of Corporate Compliance Programs

Guidance Document  
Updated: April 2019

**U.S. Department of Justice  
Criminal Division  
Evaluation of Corporate Compliance Programs  
(Updated April 2019)**

**Introduction**

The “Principles of Federal Prosecution of Business Organizations” in the Justice Manual describe specific factors that prosecutors should consider in conducting an investigation of a corporation, determining whether to bring charges, and negotiating plea or other agreements. JM 9-28.300. These factors include “the adequacy and effectiveness of the corporation’s compliance program at the time of the offense, as well as at the time of a charging decision” and the corporation’s remedial efforts “to implement an adequate and effective corporate compliance program or to improve an existing one.” JM 9-28.300 (citing JM 9-28.800 and JM 9-28.1000). Additionally, the United States Sentencing Guidelines advise that consideration be given to whether the corporation had in place at the time of the misconduct an effective compliance program for purposes of calculating the appropriate organizational criminal fine. See U.S.S.G. §§ 8B2.1, 8C2.5(f), and 8C2.8(11). Moreover, the memorandum entitled “Selection of Monitors in Criminal Division Matters” issued by Assistant Attorney General Brian Benczkowski (hereafter, the “Benczkowski Memo”) instructs prosecutors to consider, at the time of the resolution, “whether the corporation has made significant investments in, and improvements to, its corporate compliance program and internal controls systems” and “whether remedial improvements to the compliance program and internal controls have been tested to demonstrate that they would prevent or detect similar misconduct in the future” to determine whether a monitor is appropriate.

This document is meant to assist prosecutors in making informed decisions as to whether, and to what extent, the corporation’s compliance program was effective at the time of the offense, and is effective at the time of a charging decision or resolution, for purposes of determining the appropriate (1) form of any resolution or prosecution; (2) monetary penalty, if any; and (3) compliance obligations contained in any corporate criminal resolution (e.g., monitorship or reporting obligations).

Because a corporate compliance program must be evaluated in the specific context of a criminal investigation, the Criminal Division does not use any rigid formula to assess the effectiveness of corporate compliance programs. We recognize that each company’s risk profile and solutions to reduce its risks warrant particularized evaluation. Accordingly, we make an individualized determination in each case. There are, however, common questions that we may ask in the course of making an individualized determination. As the Justice Manual notes, there are three “fundamental questions” a prosecutor should ask:

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(Updated April 2019)**

1. “Is the corporation’s compliance program well designed?”
2. “Is the program being applied earnestly and in good faith?” In other words, is the program being implemented effectively?
3. “Does the corporation’s compliance program work” in practice?

See JM § 9-28.800.

In answering each of these three “fundamental questions,” prosecutors may evaluate the company’s performance on various topics that the Criminal Division has frequently found relevant in evaluating a corporate compliance program. The sample topics and questions below form neither a checklist nor a formula. In any particular case, the topics and questions set forth below may not all be relevant, and others may be more salient given the particular facts at issue.<sup>1</sup> Even though we have organized the topics under these three fundamental questions, we recognize that some topics necessarily fall under more than one category.

**I. Is the Corporation’s Compliance Program Well Designed?**

The “critical factors in evaluating any program are whether the program is adequately designed for maximum effectiveness in preventing and detecting wrongdoing by employees and whether corporate management is enforcing the program or is tacitly encouraging or pressuring employees to engage in misconduct.” JM 9-28.800.

Accordingly, prosecutors should examine “the comprehensiveness of the compliance program,” JM 9-28.800, ensuring that there is not only a clear message that misconduct is not tolerated, but also policies and procedures – from appropriate assignments of responsibility, to training programs, to systems of incentives and discipline – that ensure the compliance program is well-integrated into the company’s operations and workforce.

**A. Risk Assessment**

The starting point for a prosecutor’s evaluation of whether a company has a well-designed compliance program is to understand the company’s business from a commercial perspective, how the company has identified, assessed, and defined its risk profile, and the degree to which the program devotes appropriate scrutiny and resources to the spectrum of risks.

Prosecutors should consider whether the program is appropriately “designed to detect the particular types of misconduct most likely to occur in a particular corporation’s line of business” and “complex regulatory environment[.]” JM 9-28.800.<sup>2</sup> For example, prosecutors should consider whether the company has analyzed and addressed the varying risks presented by, among other factors, the location of its operations, the industry sector, the competitiveness

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of the market, the regulatory landscape, potential clients and business partners, transactions with foreign governments, payments to foreign officials, use of third parties, gifts, travel, and entertainment expenses, and charitable and political donations.

Prosecutors should also consider “[t]he effectiveness of the company’s risk assessment and the manner in which the company’s compliance program has been tailored based on that risk assessment” and whether its criteria are “periodically updated.” *See, e.g.*, JM 9-47-120(2)(c); U.S.S.G. § 8B2.1(c) (“the organization shall periodically assess the risk of criminal conduct and shall take appropriate steps to design, implement, or modify each requirement [of the compliance program] to reduce the risk of criminal conduct”).

Prosecutors may credit the quality and effectiveness of a risk-based compliance program that devotes appropriate attention and resources to high-risk transactions, even if it fails to prevent an infraction in a low-risk area. Prosecutors should therefore consider, as an indicator of risk-tailoring, “revisions to corporate compliance programs in light of lessons learned.” JM 9-28.800.

- Risk Management Process** – What methodology has the company used to identify, analyze, and address the particular risks it faces? What information or metrics has the company collected and used to help detect the type of misconduct in question? How have the information or metrics informed the company’s compliance program?
- Risk-Tailored Resource Allocation** – Does the company devote a disproportionate amount of time to policing low-risk areas instead of high-risk areas, such as questionable payments to third-party consultants, suspicious trading activity, or excessive discounts to resellers and distributors? Does the company give greater scrutiny, as warranted, to high-risk transactions (for instance, a large-dollar contract with a government agency in a high-risk country) than more modest and routine hospitality and entertainment?
- Updates and Revisions** – Is the risk assessment current and subject to periodic review? Have there been any updates to policies and procedures in light of lessons learned? Do these updates account for risks discovered through misconduct or other problems with the compliance program?

**B. Policies and Procedures**

Any well-designed compliance program entails policies and procedures that give both content and effect to ethical norms and that address and aim to reduce risks identified by the company as part of its risk assessment process. As a threshold matter, prosecutors should examine whether the company has a code of conduct that sets forth, among other things, the

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company's commitment to full compliance with relevant Federal laws that is accessible and applicable to all company employees. As a corollary, prosecutors should also assess whether the company has established policies and procedures that incorporate the culture of compliance into its day-to-day operations.

- Design** – What is the company's process for designing and implementing new policies and procedures, and has that process changed over time? Who has been involved in the design of policies and procedures? Have business units been consulted prior to rolling them out?
- Comprehensiveness** – What efforts has the company made to monitor and implement policies and procedures that reflect and deal with the spectrum of risks it faces, including changes to the legal and regulatory landscape?
- Accessibility** – How has the company communicated its policies and procedures to all employees and relevant third parties? If the company has foreign subsidiaries, are there linguistic or other barriers to foreign employees' access?
- Responsibility for Operational Integration** – Who has been responsible for integrating policies and procedures? Have they been rolled out in a way that ensures employees' understanding of the policies? In what specific ways are compliance policies and procedures reinforced through the company's internal control systems?
- Gatekeepers** – What, if any, guidance and training has been provided to key gatekeepers in the control processes (*e.g.*, those with approval authority or certification responsibilities)? Do they know what misconduct to look for? Do they know when and how to escalate concerns?

**C. Training and Communications**

Another hallmark of a well-designed compliance program is appropriately tailored training and communications.

Prosecutors should assess the steps taken by the company to ensure that policies and procedures have been integrated into the organization, including through periodic training and certification for all directors, officers, relevant employees, and, where appropriate, agents and business partners. Prosecutors should also assess whether the company has relayed information in a manner tailored to the audience's size, sophistication, or subject matter expertise. Some companies, for instance, give employees practical advice or case studies to address real-life scenarios, and/or guidance on how to obtain ethics advice on a case-by-case basis as needs arise.

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Prosecutors should also assess whether the training adequately covers prior compliance incidents and how the company measures the effectiveness of its training curriculum.

Prosecutors, in short, should examine whether the compliance program is being disseminated to, and understood by, employees in practice in order to decide whether the compliance program is “truly effective.” JM 9-28.800.

- Risk-Based Training** – What training have employees in relevant control functions received? Has the company provided tailored training for high-risk and control employees, including training that addresses risks in the area where the misconduct occurred? Have supervisory employees received different or supplementary training? What analysis has the company undertaken to determine who should be trained and on what subjects?
- Form/Content/Effectiveness of Training** – Has the training been offered in the form and language appropriate for the audience? Is the training provided online or in-person (or both), and what is the company’s rationale for its choice? Has the training addressed lessons learned from prior compliance incidents? How has the company measured the effectiveness of the training? Have employees been tested on what they have learned? How has the company addressed employees who fail all or a portion of the testing?
- Communications about Misconduct** – What has senior management done to let employees know the company’s position concerning misconduct? What communications have there been generally when an employee is terminated or otherwise disciplined for failure to comply with the company’s policies, procedures, and controls (*e.g.*, anonymized descriptions of the type of misconduct that leads to discipline)?
- Availability of Guidance** – What resources have been available to employees to provide guidance relating to compliance policies? How has the company assessed whether its employees know when to seek advice and whether they would be willing to do so?

**D. Confidential Reporting Structure and Investigation Process**

Another hallmark of a well-designed compliance program is the existence of an efficient and trusted mechanism by which employees can anonymously or confidentially report allegations of a breach of the company’s code of conduct, company policies, or suspected or actual misconduct. Prosecutors should assess whether the company’s complaint-handling process includes pro-active measures to create a workplace atmosphere without fear of retaliation, appropriate processes for the submission of complaints, and processes to protect whistleblowers. Prosecutors should also assess the company’s processes for handling

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investigations of such complaints, including the routing of complaints to proper personnel, timely completion of thorough investigations, and appropriate follow-up and discipline.

Confidential reporting mechanisms are highly probative of whether a company has “established corporate governance mechanisms that can effectively detect and prevent misconduct.” JM 9-28.800; *see also* U.S.S.G. § 8B2.1(b)(5)(C) (an effectively working compliance program will have in place, and have publicized, “a system, which may include mechanisms that allow for anonymity or confidentiality, whereby the organization’s employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation”).

- Effectiveness of the Reporting Mechanism** – Does the company have an anonymous reporting mechanism, and, if not, why not? How is the reporting mechanism publicized to the company’s employees? Has it been used? How has the company assessed the seriousness of the allegations it received? Has the compliance function had full access to reporting and investigative information?
- Properly Scoped Investigations by Qualified Personnel** – How does the company determine which complaints or red flags merit further investigation? How does the company ensure that investigations are properly scoped? What steps does the company take to ensure investigations are independent, objective, appropriately conducted, and properly documented? How does the company determine who should conduct an investigation, and who makes that determination?
- Investigation Response** – Does the company apply timing metrics to ensure responsiveness? Does the company have a process for monitoring the outcome of investigations and ensuring accountability for the response to any findings or recommendations?
- Resources and Tracking of Results** – Are the reporting and investigating mechanisms sufficiently funded? How has the company collected, tracked, analyzed, and used information from its reporting mechanisms? Does the company periodically analyze the reports or investigation findings for patterns of misconduct or other red flags for compliance weaknesses?

**E. Third Party Management**

A well-designed compliance program should apply risk-based due diligence to its third-party relationships. Although the degree of appropriate due diligence may vary based on the size

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and nature of the company or transaction, prosecutors should assess the extent to which the company has an understanding of the qualifications and associations of third-party partners, including the agents, consultants, and distributors that are commonly used to conceal misconduct, such as the payment of bribes to foreign officials in international business transactions.

Prosecutors should also assess whether the company knows its third-party partners' reputations and relationships, if any, with foreign officials, and the business rationale for needing the third party in the transaction. For example, a prosecutor should analyze whether the company has ensured that contract terms with third parties specifically describe the services to be performed, that the third party is actually performing the work, and that its compensation is commensurate with the work being provided in that industry and geographical region. Prosecutors should further assess whether the company engaged in ongoing monitoring of the third-party relationships, be it through updated due diligence, training, audits, and/or annual compliance certifications by the third party.

In sum, a company's third-party due diligence practices are a factor that prosecutors should assess to determine whether a compliance program is in fact able to "detect the particular types of misconduct most likely to occur in a particular corporation's line of business." JM 9-28.800.

- Risk-Based and Integrated Processes** – How has the company's third-party management process corresponded to the nature and level of the enterprise risk identified by the company? How has this process been integrated into the relevant procurement and vendor management processes?
- Appropriate Controls** – How does the company ensure there is an appropriate business rationale for the use of third parties? If third parties were involved in the underlying misconduct, what was the business rationale for using those third parties? What mechanisms exist to ensure that the contract terms specifically describe the services to be performed, that the payment terms are appropriate, that the described contractual work is performed, and that compensation is commensurate with the services rendered?
- Management of Relationships** – How has the company considered and analyzed the compensation and incentive structures for third parties against compliance risks? How does the company monitor its third parties? Does the company have audit rights to analyze the books and accounts of third parties, and has the company exercised those rights in the past? How does the company train its third party relationship

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managers about compliance risks and how to manage them? How does the company incentivize compliance and ethical behavior by third parties?

- Real Actions and Consequences** – Does the company track red flags that are identified from due diligence of third parties and how those red flags are addressed? Does the company keep track of third parties that do not pass the company’s due diligence or that are terminated, and does the company take steps to ensure that those third parties are not hired or re-hired at a later date? If third parties were involved in the misconduct at issue in the investigation, were red flags identified from the due diligence or after hiring the third party, and how were they resolved? Has a similar third party been suspended, terminated, or audited as a result of compliance issues?

**F. Mergers and Acquisitions (M&A)**

A well-designed compliance program should include comprehensive due diligence of any acquisition targets. Pre-M&A due diligence enables the acquiring company to evaluate more accurately each target’s value and negotiate for the costs of any corruption or misconduct to be borne by the target. Flawed or incomplete due diligence can allow misconduct to continue at the target company, causing resulting harm to a business’s profitability and reputation and risking civil and criminal liability.

The extent to which a company subjects its acquisition targets to appropriate scrutiny is indicative of whether its compliance program is, as implemented, able to effectively enforce its internal controls and remediate misconduct at all levels of the organization.

- Due Diligence Process** – Was the misconduct or the risk of misconduct identified during due diligence? Who conducted the risk review for the acquired/merged entities and how was it done? What is the M&A due diligence process generally?
- Integration in the M&A Process** – How has the compliance function been integrated into the merger, acquisition, and integration process?
- Process Connecting Due Diligence to Implementation** – What has been the company’s process for tracking and remediating misconduct or misconduct risks identified during the due diligence process? What has been the company’s process for implementing compliance policies and procedures at new entities?

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**II. Is the Corporation's Compliance Program Being Implemented Effectively?**

Even a well-designed compliance program may be unsuccessful in practice if implementation is lax or ineffective. Prosecutors are instructed to probe specifically whether a compliance program is a “paper program” or one “implemented, reviewed, and revised, as appropriate, in an effective manner.” JM 9-28.800. In addition, prosecutors should determine “whether the corporation has provided for a staff sufficient to audit, document, analyze, and utilize the results of the corporation’s compliance efforts.” JM 9-28.800. Prosecutors should also determine “whether the corporation’s employees are adequately informed about the compliance program and are convinced of the corporation’s commitment to it.” JM 9-28.800; *see also* JM 9-47.120(2)(c) (criteria for an effective compliance program include “[t]he company’s culture of compliance, including awareness among employees that any criminal conduct, including the conduct underlying the investigation, will not be tolerated”).

**A. Commitment by Senior and Middle Management**

Beyond compliance structures, policies, and procedures, it is important for a company to create and foster a culture of ethics and compliance with the law. The effectiveness of a compliance program requires a high-level commitment by company leadership to implement a culture of compliance from the top.

The company’s top leaders – the board of directors and executives – set the tone for the rest of the company. Prosecutors should examine the extent to which senior management have clearly articulated the company’s ethical standards, conveyed and disseminated them in clear and unambiguous terms, and demonstrated rigorous adherence by example. Prosecutors should also examine how middle management, in turn, have reinforced those standards and encouraged employees to abide by them. *See* U.S.S.G. § 8B2.1(b)(2)(A)-(C) (the company’s “*governing authority* shall be knowledgeable about the content and operation of the compliance and ethics program and shall exercise reasonable oversight” of it; “[*h*]igh-level personnel ... shall ensure that the organization has an effective compliance and ethics program” (emphasis added)).

- **Conduct at the Top** – How have senior leaders, through their words and actions, encouraged or discouraged compliance, including the type of misconduct involved in the investigation? What concrete actions have they taken to demonstrate leadership in the company’s compliance and remediation efforts? How have they modelled proper behavior to subordinates? Have managers tolerated greater compliance risks in pursuit of new business or greater revenues? Have managers encouraged employees to act unethically to achieve a business objective, or impeded compliance personnel from effectively implementing their duties?

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- **Shared Commitment** – What actions have senior leaders and middle-management stakeholders (*e.g.*, business and operational managers, finance, procurement, legal, human resources) taken to demonstrate their commitment to compliance or compliance personnel, including their remediation efforts? Have they persisted in that commitment in the face of competing interests or business objectives?
- **Oversight** – What compliance expertise has been available on the board of directors? Have the board of directors and/or external auditors held executive or private sessions with the compliance and control functions? What types of information have the board of directors and senior management examined in their exercise of oversight in the area in which the misconduct occurred?

**B. Autonomy and Resources**

Effective implementation also requires those charged with a compliance program’s day-to-day oversight to act with adequate authority and stature. As a threshold matter, prosecutors should evaluate how the compliance program is structured. Additionally, prosecutors should address the sufficiency of the personnel and resources within the compliance function, in particular, whether those responsible for compliance have: (1) sufficient seniority within the organization; (2) sufficient resources, namely, staff to effectively undertake the requisite auditing, documentation, and analysis; and (3) sufficient autonomy from management, such as direct access to the board of directors or the board’s audit committee. The sufficiency of each factor, however, will depend on the size, structure, and risk profile of the particular company. “A large organization generally shall devote more formal operations and greater resources . . . than shall a small organization.” Commentary to U.S.S.G. § 8B2.1 note 2(C). By contrast, “a small organization may [rely on] less formality and fewer resources.” *Id.* Regardless, if a compliance program is to be truly effective, compliance personnel must be empowered within the company.

Prosecutors should evaluate whether “internal audit functions [are] conducted at a level sufficient to ensure their independence and accuracy,” as an indicator of whether compliance personnel are in fact empowered and positioned to “effectively detect and prevent misconduct.” JM 9-28.800. Prosecutors should also evaluate “[t]he resources the company has dedicated to compliance,” “[t]he quality and experience of the personnel involved in compliance, such that they can understand and identify the transactions and activities that pose a potential risk,” and “[t]he authority and independence of the compliance function and the availability of compliance expertise to the board.” JM 9-47.120(2)(c); *see also* JM 9-28.800 (instructing prosecutors to evaluate whether “the directors established an information and reporting system in the organization reasonably designed to provide management and directors with timely and accurate information sufficient to allow them to reach an informed decision regarding the organization’s compliance with the law”); U.S.S.G. § 8B2.1(b)(2)(C) (those with “day-to-day operational

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responsibility” shall have “adequate resources, appropriate authority and direct access to the governing authority or an appropriate subgroup of the governing authority”).

- Structure** – Where within the company is the compliance function housed (e.g., within the legal department, under a business function, or as an independent function reporting to the CEO and/or board)? To whom does the compliance function report? Is the compliance function run by a designated chief compliance officer, or another executive within the company, and does that person have other roles within the company? Are compliance personnel dedicated to compliance responsibilities, or do they have other, non-compliance responsibilities within the company? Why has the company chosen the compliance structure it has in place?
- Seniority and Stature** – How does the compliance function compare with other strategic functions in the company in terms of stature, compensation levels, rank/title, reporting line, resources, and access to key decision-makers? What has been the turnover rate for compliance and relevant control function personnel? What role has compliance played in the company’s strategic and operational decisions? How has the company responded to specific instances where compliance raised concerns? Have there been transactions or deals that were stopped, modified, or further scrutinized as a result of compliance concerns?
- Experience and Qualifications** – Do compliance and control personnel have the appropriate experience and qualifications for their roles and responsibilities? Has the level of experience and qualifications in these roles changed over time? Who reviews the performance of the compliance function and what is the review process?
- Funding and Resources** – Has there been sufficient staffing for compliance personnel to effectively audit, document, analyze, and act on the results of the compliance efforts? Has the company allocated sufficient funds for the same? Have there been times when requests for resources by compliance and control functions have been denied, and if so, on what grounds?
- Autonomy** – Do the compliance and relevant control functions have direct reporting lines to anyone on the board of directors and/or audit committee? How often do they meet with directors? Are members of the senior management present for these meetings? How does the company ensure the independence of the compliance and control personnel?

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- Outsourced Compliance Functions** – Has the company outsourced all or parts of its compliance functions to an external firm or consultant? If so, why, and who is responsible for overseeing or liaising with the external firm or consultant? What level of access does the external firm or consultant have to company information? How has the effectiveness of the outsourced process been assessed?

**C. Incentives and Disciplinary Measures**

Another hallmark of effective implementation of a compliance program is the establishment of incentives for compliance and disincentives for non-compliance. Prosecutors should assess whether the company has clear disciplinary procedures in place, enforces them consistently across the organization, and ensures that the procedures are commensurate with the violations. Prosecutors should also assess the extent to which the company's communications convey to its employees that unethical conduct will not be tolerated and will bring swift consequences, regardless of the position or title of the employee who engages in the conduct. See U.S.S.G. § 8B2.1(b)(5)(C) ("the organization's compliance program shall be promoted and enforced consistently throughout the organization through (A) appropriate incentives to perform in accordance with the compliance and ethics program; and (B) appropriate disciplinary measures for engaging in criminal conduct and for failing to take reasonable steps to prevent or detect criminal conduct").

By way of example, some companies have found that publicizing disciplinary actions internally, where appropriate, can have valuable deterrent effects. At the same time, some companies have also found that providing positive incentives – personnel promotions, rewards, and bonuses for improving and developing a compliance program or demonstrating ethical leadership – have driven compliance. Some companies have even made compliance a significant metric for management bonuses and/or have made working on compliance a means of career advancement.

- Human Resources Process** – Who participates in making disciplinary decisions, including for the type of misconduct at issue? Is the same process followed for each instance of misconduct, and if not, why? Are the actual reasons for discipline communicated to employees? If not, why not? Are there legal or investigation-related reasons for restricting information, or have pre-textual reasons been provided to protect the company from whistleblowing or outside scrutiny?
- Consistent Application** – Have disciplinary actions and incentives been fairly and consistently applied across the organization? Are there similar instances of misconduct that were treated disparately, and if so, why?

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- **Incentive System** – Has the company considered the implications of its incentives and rewards on compliance? How does the company incentivize compliance and ethical behavior? Have there been specific examples of actions taken (*e.g.*, promotions or awards denied) as a result of compliance and ethics considerations? Who determines the compensation, including bonuses, as well as discipline and promotion of compliance personnel?

**III. Does the Corporation’s Compliance Program Work in Practice?**

The Principles of Federal Prosecution of Business Organizations require prosecutors to assess “the adequacy and effectiveness of the corporation’s compliance program at the time of the offense, as well as at the time of a charging decision.” JM 9-28.300. Due to the backward-looking nature of the first inquiry, one of the most difficult questions prosecutors must answer in evaluating a compliance program following misconduct is whether the program was working effectively at the time of the offense, especially where the misconduct was not immediately detected.

In answering this question, it is important to note that the existence of misconduct does not, by itself, mean that a compliance program did not work or was ineffective at the time of the offense. See U.S.S.G. § 8B2.1(a) (“[t]he failure to prevent or detect the instant offense does not mean that the program is not generally effective in preventing and deterring misconduct”). Indeed, “[t]he Department recognizes that no compliance program can ever prevent all criminal activity by a corporation’s employees.” JM 9-28.800. Of course, if a compliance program did effectively identify misconduct, including allowing for timely remediation and self-reporting, a prosecutor should view the occurrence as a strong indicator that the compliance program was working effectively.

In assessing whether a company’s compliance program was effective at the time of the misconduct, prosecutors should consider whether and how the misconduct was detected, what investigation resources were in place to investigate suspected misconduct, and the nature and thoroughness of the company’s remedial efforts.

To determine whether a company’s compliance program is working effectively at the time of a charging decision or resolution, prosecutors should consider whether the program evolved over time to address existing and changing compliance risks. Prosecutors should also consider whether the company undertook an adequate and honest root cause analysis to understand both what contributed to the misconduct and the degree of remediation needed to prevent similar events in the future.

For example, prosecutors should consider, among other factors, “whether the corporation has made significant investments in, and improvements to, its corporate compliance

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program and internal controls systems” and “whether remedial improvements to the compliance program and internal controls have been tested to demonstrate that they would prevent or detect similar misconduct in the future.” Benczkowski Memo at 2 (observing that “[w]here a corporation’s compliance program and controls are demonstrated to be effective and appropriately resourced at the time of resolution, a monitor will not likely be necessary”).

**A. Continuous Improvement, Periodic Testing, and Review**

One hallmark of an effective compliance program is its capacity to improve and evolve. The actual implementation of controls in practice will necessarily reveal areas of risk and potential adjustment. A company’s business changes over time, as do the environments in which it operates, the nature of its customers, the laws that govern its actions, and the applicable industry standards. Accordingly, prosecutors should consider whether the company has engaged in meaningful efforts to review its compliance program and ensure that it is not stale. Some companies survey employees to gauge the compliance culture and evaluate the strength of controls, and/or conduct periodic audits to ensure that controls are functioning well, though the nature and frequency of evaluations may depend on the company’s size and complexity.

Prosecutors may reward efforts to promote improvement and sustainability. In evaluating whether a particular compliance program works in practice, prosecutors should consider “revisions to corporate compliance programs in light of lessons learned.” JM 9-28.800; *see also* JM 9-47-120(2)(c) (looking to “[t]he auditing of the compliance program to assure its effectiveness”). Prosecutors should likewise look to whether a company has taken “reasonable steps” to “ensure that the organization’s compliance and ethics program is followed, including monitoring and auditing to detect criminal conduct,” and “evaluate periodically the effectiveness of the organization’s” program. U.S.S.G. § 8B2.1(b)(5). Proactive efforts like these may not only be rewarded in connection with the form of any resolution or prosecution (such as through remediation credit or a lower applicable fine range under the Sentencing Guidelines), but more importantly, may avert problems down the line.

- **Internal Audit** – What is the process for determining where and how frequently internal audit will undertake an audit, and what is the rationale behind that process? How are audits carried out? What types of audits would have identified issues relevant to the misconduct? Did those audits occur and what were the findings? What types of relevant audit findings and remediation progress have been reported to management and the board on a regular basis? How have management and the board followed up? How often does internal audit conduct assessments in high-risk areas?

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- Control Testing** – Has the company reviewed and audited its compliance program in the area relating to the misconduct? More generally, what testing of controls, collection and analysis of compliance data, and interviews of employees and third-parties does the company undertake? How are the results reported and action items tracked?
- Evolving Updates** – How often has the company updated its risk assessments and reviewed its compliance policies, procedures, and practices? Has the company undertaken a gap analysis to determine if particular areas of risk are not sufficiently addressed in its policies, controls, or training? What steps has the company taken to determine whether policies/procedures/practices make sense for particular business segments/subsidiaries?
- Culture of Compliance** – How often and how does the company measure its culture of compliance? Does the company seek input from all levels of employees to determine whether they perceive senior and middle management’s commitment to compliance? What steps has the company taken in response to its measurement of the compliance culture?

**B. Investigation of Misconduct**

Another hallmark of a compliance program that is working effectively is the existence of a well-functioning and appropriately funded mechanism for the timely and thorough investigations of any allegations or suspicions of misconduct by the company, its employees, or agents. An effective investigations structure will also have an established means of documenting the company’s response, including any disciplinary or remediation measures taken.

- Properly Scoped Investigation by Qualified Personnel** – How has the company ensured that the investigations have been properly scoped, and were independent, objective, appropriately conducted, and properly documented?
- Response to Investigations** – Have the company’s investigations been used to identify root causes, system vulnerabilities, and accountability lapses, including among supervisory manager and senior executives? What has been the process for responding to investigative findings? How high up in the company do investigative findings go?

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**C. Analysis and Remediation of Any Underlying Misconduct**

Finally, a hallmark of a compliance program that is working effectively in practice is the extent to which a company is able to conduct a thoughtful root cause analysis of misconduct and timely and appropriately remediate to address the root causes.

Prosecutors evaluating the effectiveness of a compliance program are instructed to reflect back on “the extent and pervasiveness of the criminal misconduct; the number and level of the corporate employees involved; the seriousness, duration, and frequency of the misconduct; and any remedial actions taken by the corporation, including, for example, disciplinary action against past violators uncovered by the prior compliance program, and revisions to corporate compliance programs in light of lessons learned.” JM 9-28.800; *see also* JM 9-47.120(3)(c) (“to receive full credit for timely and appropriate remediation” under the FCPA Corporate Enforcement Policy, a company should demonstrate “a root cause analysis” and, where appropriate, “remediation to address the root causes”).

Prosecutors should consider “any remedial actions taken by the corporation, including, for example, disciplinary action against past violators uncovered by the prior compliance program.” JM 98-28.800; *see also* JM 9-47-120(2)(c) (looking to “[a]ppropriate discipline of employees, including those identified by the company as responsible for the misconduct, either through direct participation or failure in oversight, as well as those with supervisory authority over the area in which the criminal conduct occurred” and “any additional steps that demonstrate recognition of the seriousness of the misconduct, acceptance of responsibility for it, and the implementation of measures to reduce the risk of repetition of such misconduct, including measures to identify future risk”).

- Root Cause Analysis** – What is the company’s root cause analysis of the misconduct at issue? Were any systemic issues identified? Who in the company was involved in making the analysis?
- Prior Weaknesses** – What controls failed? If policies or procedures should have prohibited the misconduct, were they effectively implemented, and have functions that had ownership of these policies and procedures been held accountable?
- Payment Systems** – How was the misconduct in question funded (*e.g.*, purchase orders, employee reimbursements, discounts, petty cash)? What processes could have prevented or detected improper access to these funds? Have those processes been improved?

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- Vendor Management** – If vendors were involved in the misconduct, what was the process for vendor selection and did the vendor undergo that process?
- Prior Indications** – Were there prior opportunities to detect the misconduct in question, such as audit reports identifying relevant control failures or allegations, complaints, or investigations? What is the company’s analysis of why such opportunities were missed?
- Remediation** – What specific changes has the company made to reduce the risk that the same or similar issues will not occur in the future? What specific remediation has addressed the issues identified in the root cause and missed opportunity analysis?
- Accountability** – What disciplinary actions did the company take in response to the misconduct and were they timely? Were managers held accountable for misconduct that occurred under their supervision? Did the company consider disciplinary actions for failures in supervision? What is the company’s record (*e.g.*, number and types of disciplinary actions) on employee discipline relating to the types of conduct at issue? Has the company ever terminated or otherwise disciplined anyone (reduced or eliminated bonuses, issued a warning letter, etc.) for the type of misconduct at issue?

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<sup>1</sup> Many of the topics also appear in the following resources:

- Justice Manual (“JM”)
  - JM 9-28.000 Principles of Federal Prosecution of Business Organizations, Justice Manual (“JM”), *available at* <https://www.justice.gov/jm/jm-9-28000-principles-federal-prosecution-business-organizations>.
  - JM 9-47.120 FCPA Corporate Enforcement Policy, *available at* <https://www.justice.gov/jm/jm-9-47000-foreign-corrupt-practices-act-1977#9-47.120>.
- Chapter 8 – Sentencing of Organizations - United States Sentencing Guidelines (“U.S.S.G.”), *available at* <https://www.ussc.gov/guidelines/2018-guidelines-manual/2018-chapter-8#NaN>.

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- Memorandum entitled “Selection of Monitors in Criminal Division Matters,” issued by Assistant Attorney General Brian Benczkowski on October 11, 2018, *available at* <https://www.justice.gov/criminal-fraud/file/1100366/download>.
- Criminal Division corporate resolution agreements, *available at* <https://www.justice.gov/news> (DOJ’s Public Affairs website contains press releases for all Criminal Division corporate resolutions which contain links to charging documents and agreements).
- A Resource Guide to the U.S. Foreign Corrupt Practices Act (“FCPA Guide”) published in November 2012 by the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) *available at* <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf>.
- Good Practice Guidance on Internal Controls, Ethics, and Compliance adopted by the Organization for Economic Co-operation and Development (“OECD”) Council on February 18, 2010 *available at* <https://www.oecd.org/daf/anti-bribery/44884389.pdf>.
- Anti-Corruption Ethics and Compliance Handbook for Business (“OECD Handbook”) published in 2013 by OECD, United Nations Office on Drugs and Crime, and the World Bank *available at* <https://www.oecd.org/corruption/Anti-CorruptionEthicsComplianceHandbook.pdf>.

<sup>2</sup> As discussed in the Justice Manual, many companies operate in complex regulatory environments outside the normal experience of criminal prosecutors. JM 9-28.000. For example, financial institutions such as banks, subject to the Bank Secrecy Act statute and regulations, require prosecutors to conduct specialized analyses of their compliance programs in the context of their anti-money laundering requirements. Consultation with the Money Laundering and Asset Recovery Section is recommended when reviewing AML compliance. See <https://www.justice.gov/criminal-mlars>. Prosecutors may also wish to review guidance published by relevant federal and state agencies. See Federal Financial Institutions Examination Council/Bank Secrecy Act/Anti-Money Laundering Examination Manual, *available at* [https://www.ffiec.gov/bsa\\_aml\\_infobase/pages\\_manual/manual\\_online.htm](https://www.ffiec.gov/bsa_aml_infobase/pages_manual/manual_online.htm)).



January 2017

Previous editions of Compliance Corner are archived [here](#).



Larry Midler

## The 100th Edition of the Compliance Corner

Pull up a chair and listen... You'll never believe what happened to me over the holidays.

Moments after I hit "SEND" on December's Compliance Corner, I grabbed my flip-flops, snorkel and board shorts—oh, and my wife, two sons and some zinc oxide—and took off for a long overdue family trip to Mexico.

The first night, we feasted on enchiladas, chips and guacamole, and more than a few Don Julio margaritas. I was already in full-on vacation mode. After dinner, we retired to our hotel room, my belly full of Mexican food and feeling a bit tipsy. Head on a very comfy pillow, staring up into the ceiling fan, I had an epiphany...

I am done with the Compliance Corner. Forever.

It's hard to write this stuff. It's not in my job description. I don't get paid any more to do it than if I didn't. Cushman doesn't have a Compliance Corner, and they are apparently doing fine... just ask them. To be sure, our monthly compliance newsletter had given our CBRE colleagues a few chuckles while learning about our RISE values and Standards of Business Conduct. But, there's just too much pressure! I have to outdo myself every month, coming up with ever more interesting stories, more relevant topics, more laugh-lines *and* a poignant message, all while being "politically correct." And to make matters worse, some of the reader feedback frankly hurts my feelings—e.g., "too long" or "you must have a thing against Canadians" or "Trump again? Let it go, Larry!" As I drifted off, all I could think about was "Good riddance and *humbug* to the Compliance Corner."

Deep into my slumber, I was awoken by the sounds of dragging chains. Worse, I had a strange feeling I was being watched. Pulse racing, I climbed out of bed and there, in the corner of the room, was Enron founder [Kenneth Lay](#), who was sentenced to 45 years in prison... AND DIED IN 2006!



“Larry, through all eternity I will be bound by these chains and haunted by guilt. Tonight, I have come to you from purgatory. From the looks of it, I think I like Mexico better. Anyway, heed my warning. You and CBRE have yet a chance to avoid my unspeakable fate. Over the next three nights, you will be haunted by three spirits... and you will know of that which I speaketh.”

Really, Ken Lay? A ghost? And he used the word, 'speaketh?' Incredulous, I protested, “You’re not real. I must have eaten some bad guac.” But Lay didn’t reply; instead, he floated upward and disappeared through the ceiling. I went back to bed, convinced that this was just a bad dream brought on by Mexico’s finest.

The next day was great, 85 degrees and sunny. The whole family played on the beach, rented jet skis and soaked in the sun all day. But late that night, just as Ken Lay predicted, I was awoken by the ringing of bells. I wandered down to the resort’s game room. There, at the other end of a ping-pong table, was Audrey Hepburn.



I asked the legendary Ms. Hepburn (for whom we named the Compliance Corner’s most prestigious award, The Audrey) what the *hell* she was doing in the game room of a Mexican hotel and, more importantly, whether she wanted to play a game of ping-pong. “I am the Spirit of

Compliance Corner Past,” she replied. “Put down your paddle and walk with me.” I touched Audrey’s hand and we were instantly transported... to San Francisco... 1907.

There, a young Colbert Coldwell was helping his fellow Bay Area citizens rebuild their city after it was razed by the Great Earthquake of 1906.

“Wait a minute,” I said. “I started writing the Compliance Corner in 2004. That was like 98 years after the quake. What does Colbert Coldwell’s service to his people have to do with CBRE now?”

Audrey turned and looked at me, “Why, this is where it all started: the roots of the RISE values, the Standards of Business Conduct and even the Compliance Corner. It’s all here in the selfless and ethical acts of Mr. C. following the big earthquake. Do you think Coldwell’s fledgling firm could have survived its first years without the imprint of ethical leadership by its founder? Larry, do you think that same firm could survive without ethical leadership now?”

Before I could answer, I was back in my room, drenched in sweat. I thought about what Audrey had said, but I was stubborn. There was no way I was going to write the 100th issue. No chance. Humbug.

The next day of our vacation was even better. My family was together, the sun was shining and nobody from work was trying to reach me. We snorkeled by a rock formation and saw the most colorful fish. Dinner that night was awesome. But my experience with Audrey the night before was still gnawing at me. I wondered whether I would be visited again that night.

As the moon rose high into the Mexican sky, I was once again awoken from my deep sleep by the chime of a bell. I rose from the bed, donned the hotel bathrobe and reached for the room door. As I held the knob, I heard a strange voice say, “Enter.”

Then, I opened the door and found myself in a large banquet hall, exquisitely decorated, tables set with white tablecloths, fine china and crystal glassware. Ice sculptures. Caviar. As my eyes dilated from the bright light of the ballroom, I began to make out the revelers... they were all the people I had written about in past issues of the Compliance Corner! At the front of the room, pop sensation Justin Bieber was lip synching. At one table sat Jerry Maguire, Bill and Ted, Lucy Van Pelt, and James Bond. At another table Cheech and Chong were holding court with Socrates, Ron Burgundy and serious politicians like Rob Ford, the former Mayor of Toronto. Towards the back of the room were Compliance Corner heroes Alfred Wallace, Ellen DeGeneres, Raoul Wallenberg, Laura Bush, my late Grandpa George and the U.S. Olympic women’s soccer team. And at a table in the center, engaged in a food-fight, were all of the [Wally Award](#) winners from the past seven years.

“He’s here,” said a voice from the other side of the room, which had now quieted to a hush.



"Are... you... real?" I asked. And then Socrates spoke, "Oh Larry, we are very real. We think. We think, therefore we are. We exist because you wrote about us. Through our thoughts, actions, successes and, yes, our failures, we are examples of what to do and what not to do. Tonight, this is your banquet. *We are your banquet.*"

Still confused, I peered at the other end of the room and noticed some empty tables. "Why aren't those seats filled?" I asked [Alfred Russel Wallace](#), the namesake of the "Wally Awards." Wally thought for a moment and said, "Those seats were for all of those with a valuable ethical lesson to share with CBRE employees but cannot. They cannot because you have stopped writing the Compliance Corner."

"Yeah, whatever," I said. "But I'm still not going to write that stupid newsletter!" And then, instantly, I was back in my hotel room.

I still had fun the next day. But I just couldn't shake the feeling that the bartender had been putting some extra Don Julio in my margaritas.

That night I already knew to expect a visit. So I hunkered down in the hotel room, fighting the urge to fall asleep. But as my eyelids drew closed, I began levitating up above the bed and found myself hovering beside a ghoulish phantom in a deep, black shroud, nothing visible save for outstretched bony hands. The apparition made no sound.



“Am I... in the presence of... the Spirit of Compliance Corners... Yet to Come?” I asked in a quivering voice I hardly recognized. The spirit did not reply, but phased through the wall and onto the balcony. I opened the balcony door to follow. Below me in the resort plaza was a man and a woman speaking to one another. The bony hand pointed toward them and I knew my job was to listen in... to the future.

“I can’t tell what is really happening in my office, but something doesn’t seem right,” began the woman. “My procurement manager is taking vacations with one of our vendors. The vendor even took him and his kids on a private jet last year to see the Giants beat the Patriots again in the 2022 Super Bowl! And then my manager selects that same vendor for every client assignment, even though they are not the low bidder. I don’t know if we have any policy about that at CBRE and, even if we did, I don’t know whether anyone would do anything about it.”

“Oh, you think that’s bad?” replied the man. “Ever since Congress voted to repeal all U.S. laws prohibiting conflicts of interest, and since the President took executive action to abolish all real estate zoning regulations, my boss spends more time doing real estate deals for his own company than he does on his CBRE work.” Dejected, the man said, “But I don’t even know if we have any policies on such things.”

“Well if we did,” retorted the woman, “I wouldn’t tell anyone. You know, they summarily fire employees who complain. And if you try to be anonymous, they’ll find out who you are.”

“Well, I suppose it doesn’t matter anyway,” said the man. “CBRE’s performance has been so abysmal since 2019, our stock is worth only a few pennies, and it has been years since we abandoned our ‘world class’ aspiration. I wouldn’t be surprised if CBRE went BK within the next year. Our time is much better spent working on our resumes.”

I thought I would go into anaphylactic shock. “HOW IS THIS POSSIBLE?” I yelled into the plaza. But the man and woman didn’t hear me. I shouted even louder, “HOW CAN THIS BE!!!????!!!”

I turned to see the spirit float away, and then I was back in bed. The sun was shining into the room through the curtains. My beautiful wife was stirring from her slumber and the kids were watching gangsta rap videos on their laptops.

“Do I have time?” I stammered repeatedly, “Do I still have time? What day is it? What is CBRE’s stock price?”

“Why it’s Christmas Day, and CBRE’s stock is the same envious price as it was yesterday,” she replied. “Are you sure you’re okay, Larry?”

“I AM! In fact, I’m as light as a feather, happy as an angel, merry as a schoolboy...”

Now my wife looked worried. “What is going on with you?”

"99 Compliance Corners. I stopped at 99," I mumbled under my breath. Then I said it out loud, "I stopped at 99!" Then even louder, "I STOPPED AT 99! Oh Ken Lay... you're a sly devil, you! But I have TIME! CBRE is still a strong company that lives by its RISE values and Standards of Business Conduct. Because I write the Compliance Corner every month, our employees know about our standards and feel empowered to come forward when they see wrongdoing. Without it, we are navigating in a ship with no compass. With enough misconduct, the fines and lawsuits can pile up and our clients will lose faith and trust in CBRE. I know what I have to do. Thank you, Ken Lay!"

I jumped up, grabbed my laptop and ran for the door.

"Where are you going?" asked my wife.

"I'm off to the business center... to write next month's Compliance Corner!" I replied excitedly as I charged out of the room. "It's going to be the 100th, you know."

And so it was. That Christmas day I wrote the *true story* that you just read. And all was good in the world. And the 100th Compliance Corner is done. Merry Christmas and Happy New Year, CBRE. And as Tiny Tim once said, "God Bless Us, Everyone."

And don't forget the moral of our story... if you ever have any concerns regarding our business practices or believe someone is violating our policies or the law or acting unethically while representing CBRE, you should raise the issue through any of the multiple resources available to you, including the CBRE Ethics HelpLine at +1 800 799 6523 or the [EthicsPoint](#) website. You can be assured, we will act.

Thank you, sincerely, for reading the 100th edition of the Compliance Corner. If you have any thoughts or comments, please reply to this email (just don't "reply all").

Larry,

A handwritten signature in black ink that reads "Larry". The signature is written in a cursive, flowing style.The logo for CBRE, consisting of the letters "CBRE" in a bold, green, sans-serif font.

## News Detail

Compliance Corner

# So You Think You Can Dance? – Diversity and Inclusion

March 27, 2019

✉ Share 5 Comments 👍 22



**Larry Midler**  
Executive Vice President  
and General Counsel

The first time I met Bobby Griffin, CBRE's head of Diversity & Inclusion, he shared a simple metaphor to illustrate the difference between the two key elements of his title. His sage words have stuck with me. "*Diversity is being invited to the dance,*" he stated. "*Inclusion is being asked to dance.*" But, what Bobby said next was most striking and inspiring to me. "*Truly belonging is being taught the dance.*"

The next time I saw Bobby, last month in Dallas at our AANG Conference, I had the opportunity to see his words come to life.<sup>1</sup> Following the keynote address after dinner, a band kicked up the beat to get the

evening activities started. I looked on, even tapped my feet to the rhythm, but stayed safely on the sidelines. Given my lack of experience or training on the dance floor—you'd never mistake me for Travolta—I wasn't comfortable staking the dignity of the General Counsel's office on my two left feet.

I was spying the nearest exit sign and about to leave when, out of nowhere, a colleague who I did not know took me by the hand and said, "Come on Larry, I'll show you the Electric Slide!" Fully aware that all eyes were now on the "Compliance Corner guy," I had no choice. It took me the first time through the paces to figure out what the heck everyone was doing. But, with some simple instruction from my new dance partner, I was able to mimic the basic steps. The second time, I awkwardly fumbled through the pattern. The third time, I did it without messing up. By the fourth go 'round, this guy was gaining some flow. Then, by some miracle, it clicked. By the end of the song, I was feeling the music and riffing to the moves.



*Still hoping there were no videos taken of my attempt at the Slide!*

After the song and feeling light as a feather, I rushed directly over to Bobby Griffin and with a big smile I said, “Now, I get it.”

So let’s review:

**Being invited to the dance.** That’s diversity. We should not take this for granted; building a fully diverse workforce that represents the communities in which we work requires focused effort—finding resumes from a wide variety of sources, conducting a merit-based hiring and promotion process that checks and eliminates inherent biases, etc. While we still have work to do, I am proud of CBRE’s efforts to develop a more diverse talent pool as a priority on our own electric slide towards world class. We are investing more than ever in sourcing and attracting diversity in experienced hires, recruits and intern programs as well as in mentoring and training programs. Last year in the U.S., we achieved a *136% year-over-year increase* in the rate at which we hired ethnically diverse applicants and a *162% year-over-year increase* in the rate at which we hired female applicants such that we are now hiring female applicants at a 20% higher rate than male applicants.

**Being asked to dance.** It is not enough to have a diverse workforce. Truly great companies offer broad opportunities to succeed to *all* employees, and this requires intentional effort and investment. An inclusive work environment is one that values and integrates all our differences, ideas and experiences and provides the opportunity for everyone to contribute their full potential. Inclusion is less about big programmatic initiatives or grand gestures and more about “everyday inclusion,” i.e.,

each of us intentionally being inclusive every day on an ongoing basis. In an inclusive workforce, everyone is asked to dance.

**Being taught the dance.** Getting someone onto the dance floor (or even into the boardroom) is inclusion. But, as Bobby said, “You’ve got to teach them to dance.” Belonging is a higher level of inclusion where all employees are not only welcome to join the group, but they *are* the group. Belonging is not about merely being invited but already being a full-fledged member. A culture of “belonging” can supercharge a company’s success. If we want to be known for having this culture at CBRE, we all have a responsibility to “teach our colleagues to dance,” especially those who have traditionally not had a spot on the dance floor.

Each of us can do something today to make a colleague feel a true sense of belonging at CBRE. Don’t be a wallflower... engage at the virtual or office water cooler with colleagues from all levels of the organization, and folks who have different backgrounds than you. Intentionally seek out ideas and insights from people who may not look at or see the world the same way you do. Look for patterns in team dynamics; for example, take note of whose ideas are acknowledged, built upon and adopted versus ignored or appropriated. When you are making a decision or seeking advice, stop and ask yourself, “Who did I miss and should have asked? And, why?”

Will I ever be Baryshnikov? Not a chance. But, now that I know how to do the dance, I can do my part to teach it. If you develop a bad case of dance fever after reading this... or if you have any

concerns or believe someone is violating our policies or the law or is acting unethically, contact me directly. Or, you can also raise the issue through any of the multiple avenues available to you, including the CBRE Ethics HelpLine at +1 800 799 6523 or the **EthicsPoint** website. You can count on us to act.

Thank you for your support of the Ethics and Compliance Program.



Larry

1. Click **here** to learn more about the African-American Network Group (AANG) and how you can engage this year. For information about CBRE's other network groups, click **here**.

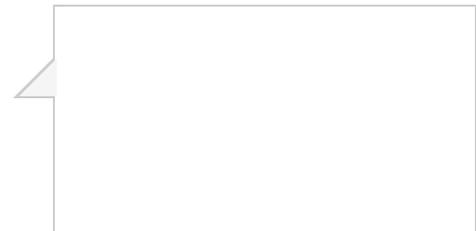
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**5 Comments**

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**Erica Gharibian**



**POST COMMENT**

**Veronica Arvizu**

4/10/19 10:12 AM

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*This is fantastic perspective on D&I. I can truly understand what Bobby means by "teaching to dance" and how important a sense of belonging is to our organization. Both of you were at the recent HOLA Conference in California and I learned so much from you and appreciate hearing you both speak on D&I and the initiatives we're taking at CBRE, together.*

**Viviana McCurdy**

4/5/19 1:35 PM

[Reply](#) [Report](#)

*I love this. I have a different background and completely agree with your words.*

**Peter Avitabile**

4/4/19 7:59 AM

[Reply](#) [Report](#)**PA**

*Diversity is the acknowledgement of differences of people's often immutable characteristics. Inclusion is the seamless integration of a diverse group of individuals into a cohesive social and professional environment. For example, diversity is CBRE's employee body of differing race, sexual orientation, and creed. Inclusion is their impartial treatment in the workplace and being invited to social engagements such as business after hours.*

**Michael Moyers**

4/4/19 7:33 AM

[Reply](#) [Report](#)

MM

*Are you comin' with me? Come let me  
take you on a party ride And I'll teach  
you, teach you, teach you I'll teach you  
the electric slide*

**Shana Franklin**

3/29/19 10:23 AM

[Reply](#) [Report](#)



*love this analogy!*

