

Compliance 101

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Why Compliance Programs Are Essential

- Communicate Organization's Commitment
- Reduce Risk of Probation and Court-Imposed Programs
- Reduce Imposition of Government-Designed Programs
- Reduce Risk of Exclusion from Governmental Programs
- Reduce Threat of Qui-Tams
- Reduce Imposition of Fines and Sentences
- Raise Awareness
- Makes Good Business Sense
- Public Image

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Compliance Programs

How Comprehensive Should They Be?

- Employment/Labor Law
- Anti-Trust
- Laws which pertain specifically to the organization
- Federal Sentencing Guidelines
- Privacy
- SEC
- Other Federal &/or State Laws

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How to Prevent Qui Tam Suits

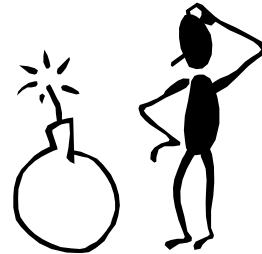
- Create an atmosphere that encourages compliance
- Set up a hotline
- Listen to employees



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A Compliance Program Provides:

- Education
- Prevention
- Early Detection
- Collaboration
- Enforcement



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What Is a Compliance Program?

- Recommended by the Government
- Ethical and proper way to do business
- Commitment
- Encourage problems to be reported
- A process with constant monitoring
- A process which prevents, detects or deters non compliant behavior

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Who Needs a Compliance Program?

- Private Businesses
- Publicly Traded Companies
- Foundations and other Non-Profit Organizations
- Government Agencies
- Schools/Universities
- Any company doing business which serves the public
- Others

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Basis for all Compliance Programs

- Federal Sentencing Guidelines (United States Sentencing Guidelines Ch. 8, §8B2.1. app. nt. 2.(B))
- ✓ Applicable to all industries
- ✓ 7 elements of an effective compliance program (paraphrased):
 1. Oversight
 2. Policy and Procedures (standards, code of conduct)
 3. Education and Training
 4. Communication and Reporting
 5. Monitoring and Auditing
 6. Enforcement, Discipline and Incentives
 7. Investigation, Response and PreventionAmended 2004 – annual evaluation of program emphasized (risk and effectiveness)

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Federal Sentencing Guidelines (1991)

“An effective program to prevent and detect violations of law means a program that has been reasonably designed, implemented, and enforced so that it generally will be effective in preventing and detecting criminal conduct [DESIRED EFFECT]. . . The hallmark of an effective program . . . is that the organization exercised due diligence in seeking to prevent criminal conduct by its employees and other agents. Due diligence requires at a minimum that the organization must have taken the following types of steps: [seven elements are then enumerated]

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OIG’s HHS - Compliance Program Guidance (1998+)

“The existence of benchmarks that demonstrate implementation and achievements are essential to ANY effective compliance program.”

. . .

“An effective compliance program should also incorporate periodic (at least annual) reviews of whether the program’s compliance elements have been satisfied, e.g., whether there has been appropriate dissemination of the program’s standards, training, ongoing educational programs . . . This process will verify actual conformance by all departments with the compliance program.”

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United States Sentencing Guidelines – Chapter 8

An organization’s failure to incorporate and follow applicable industry practice or the standards called for by an applicable governmental regulation weighs against a finding of an effective compliance and ethics program.

United States Sentencing Guidelines ch. 8, §8B2.1. app. nt. 2.(B).

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GAO Report on Effectiveness (1999)— OIG Response

“ . . . there appears to be widespread agreement from both the Government and private sector that compliance programs *are indeed effective*, i.e., that these programs are worth their cost both to the provider and to the Government programs. Therefore, it may well be that the only inconclusiveness lies with respect to (1) Government and provider experiences in determining the particular elements of compliance programs that demonstrate effectiveness or (2) the difficulty in empirically demonstrating causality.” (emphasis added)

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GAO Report on Effectiveness (1999)— OIG Response

OIG's List of Objectives and Benefits [DESIRED EFFECTS]:

- Increased employee awareness of laws/rules/risk areas
- Creating central source for disbursement of new rules
- Facilitating prompt/consistent investigation of impropriety
- Methodology that encourages reporting impropriety
- Identifying and preventing misconduct
- Demonstrating commitment to proper conduct
- Mitigating against bad intent (& reduced sanctions)
- Limiting corporate director liability

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Eric Holder Memo, Bringing Criminal Charges Against Corporations (June 16, 1999)

“ . . . the critical factors in evaluating any [compliance] 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 to achieve business objectives . . . The fundamental questions any prosecutor should ask are: ‘Is the corporation’s compliance program well designed?’ and, ‘Does the corporation’s compliance program work?’ ”

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Seven Essential Elements of a Compliance Plan

- Oversight
- Standards and Procedures
- Education and Training
- Monitoring and Auditing
- Reporting
- Enforcement and Discipline
- Response and Prevention



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Element: Compliance Oversight

- Compliance Officer
 - Appropriate authority
 - Adequate resources
 - High level individual
- Oversight Committee
- Other Committees/Task Forces
- Board



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Element: Oversight (cont)
Gain Support and Commitment

Involvement of Key Stakeholders:

- Board
- Management/Supervisors
- Key Professionals
- Staff
- Shareholders
- Investors

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Element One: Oversight (cont)
Gain Support and Commitment

Financial Support

- Development/Start-up
- Educational Materials
- Staffing
- Ongoing Operations

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Element: Oversight: Identify Staffing Needs

- Appoint compliance officer
- Develop job descriptions for staff
 - Education/training, auditors, hotline/communications, screening, reporting, policy and procedure development
 - Supply vs. demand
- Oversight Committee
 - Charter
 - Representatives
- Counsel (internal and external)

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Element: Standards

- Develop Mission and Goals
 - Achievable
 - Measurable
 - Communicate
- Develop programmatic policies and procedures, ie: communications, hotlines, auditing and monitoring protocols, etc.
- Develop Compliance Plan



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Element: Standards

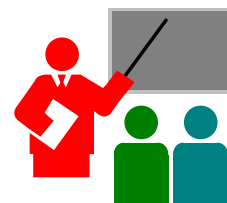
- Code of Conduct
 - Keep It Simple
 - Tailored to the organization's culture, business, and corporate identity
 - Attestation
- Organizations ethical attitude
- Address weak areas by providing guidance/guiding principles
- Letter of endorsement
- Chain of command



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Element: Education and Training

- Communication Process
- Internal Vs. External
- Mandatory Vs. Voluntary
- General Vs. Specific
- Method for Training
- Sanctions
- Attestations



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Element: Monitoring and Auditing: Develop the plan

- Conduct Risk Assessment
 - What is an risk assessment?
 - Employee interviews/Focus groups
- Identify risk areas
 - What is currently occurring?
 - Who is responsible?
 - What is the information flow?
 - What are areas for concern?



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Element: Monitoring and Auditing: Develop the plan

- Prioritize risks
 - What is critical to the organization: internal, external activities, public image, etc.
 - What resources are available to address risks in the monitoring and auditing plan
 - What is scaleable?

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Element: Monitoring and Auditing: Develop the Plan

- Program Effectiveness – credible, independent, SME coupled with sound methodology
- Identify what is currently happening in the organization
 - Internal “Audits”
 - Compliance “Reviews”
 - Day to day monitoring
 - Monitoring
 - Staff Training
- Develop Draft Plan based on information and
 - Obtain Senior Management and Board Ownership
 - Feedback
 - Approval
 - Budget and Resources



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Element: Monitoring and Auditing: Executing the Plan

- The Plan is “Dynamic” and needs to be reassessed for priorities at least quarterly with involvement and communication from management
- Ongoing process, may consider attorney client privilege
- Tracking and trending is ongoing – also information for next risk assessment.
- Once an audit is begun, there is always a follow up action, ie: validation, monitoring, or reauditing
- #1 problem with plan implementation is usually in management follow through on remediation – must be tracked and communicated when remediation not occurring

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Element: Reporting and Investigation

- Anonymous
- Triaging and handling investigations from concerns
- Reports – to whom, how, what?
- Hotline
 - Policies and Procedures
 - Internal vs. External
- No Retribution for Reporting
 - Privacy and confidentiality



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Element: Enforcement and Discipline

- Sanctions for non-compliant behavior
- Consistency in enforcement
- Stand firm
- OIG sanctions reviews
- Considerations for communication



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Element: Response and Prevention

- Internal Investigation
 - Is it really a problem?
 - How serious is it?
 - Are there enough facts to investigate?
- Contact Counsel
- Interviews – experience nec.
- Create Policy



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Evaluating the Elements

- Determine Rationale
- Identify Relevant Issues
- Implementation
- Evaluation and Measurement
 - Effort
 - Outcome

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Effectiveness

- EFFORT:
 - Usually can only look at process “effectiveness” – 1st year
- OUTCOMES:
 - Usually look at these year 2 on with some degree of review of “efforts” as well

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Questions Used by SEC to Evaluate Compliance Programs

- What are the compliance functions at the firm? Do they cover all businesses?
- Is compliance independent from business, both in reporting and compensation? Do they have access to top management and the board?
- Does compliance have adequate resources, systems, and reports?
- Do compliance personnel have appropriate expertise and experience? How are they trained? Are they adequately compensated?

The Vital Role of Effective Comprehensive Compliance Controls at Broker-Dealers,
Speech by Mary Ann Gadziala, Assoc. Dir., US Securities & Exchange Commission,
February 4, 2004

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Questions Used by SEC to Evaluate Compliance Programs

- Does compliance have the ability to respond to and coordinate with all relevant regulators?
- How are new compliance issues and requirements communicated to all personnel?
- How are the concerns of compliance and breaches addressed?

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Examples of SEC Findings of Deficiency

- Material compliance breaches were not reported to top management;
- The compliance function was limited to an advisory role;
- Compliance and supervisory procedures were inadequate and not updated;
- Surveillance reports did not cover major business areas or were too broad to permit identification of problems;

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Examples of SEC Findings of Deficiency

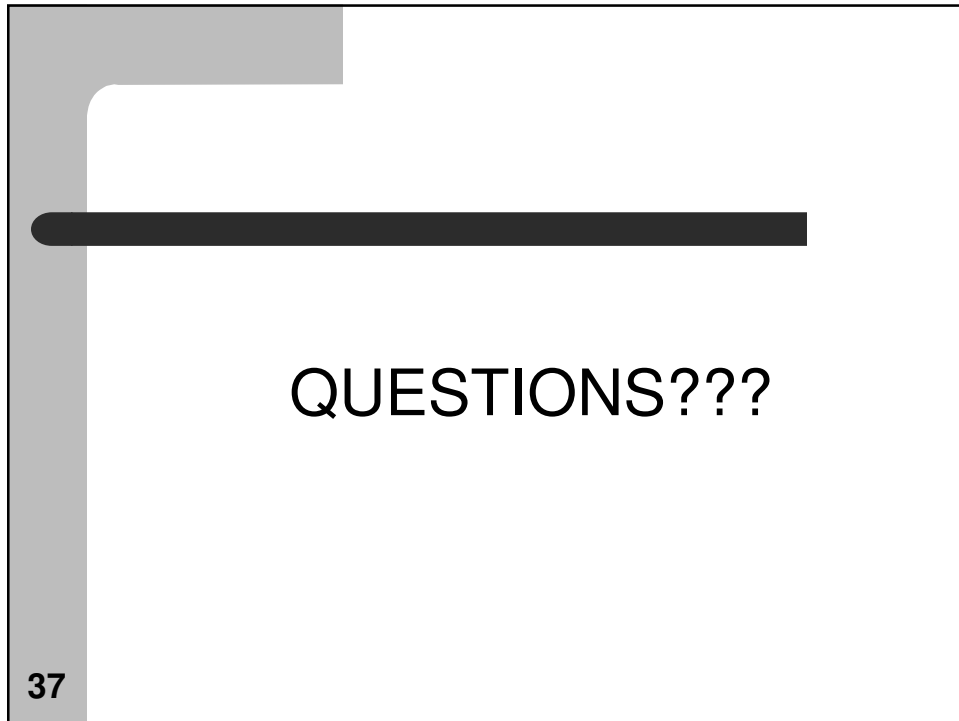
- Follow-up on exceptions was inadequate and not tracked;
- No compliance review was undertaken for new products

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Fraud Efforts Continue

- Enforcement environment -- heightened scrutiny
- Enforcement activity – Recoveries
- Enforcement weapons

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QUESTIONS???

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