



Ethics and Compliance Training

Reporting to the Board

By Susan Cutright

Experienced counsel know to report to the Board about the organization's ethics and compliance training initiatives so that the corporation is protected under the Federal Sentencing Guidelines. The Guidelines require that the Board of Directors be knowledgeable about the content and operation of the program, and exercise reasonable oversight with respect to program implementation and effectiveness. The operational program manager must periodically report on program effectiveness to high-level personnel, and as appropriate, to the Board or a Board Committee. In addition, the organization must take reasonable steps to periodically evaluate the effectiveness of the company's compliance program.

Reporting is also critical for the protection of the Directors themselves, whose potential exposure is starkly evidenced by the substantial settlement payments recently made by individual Directors from Enron and

WorldCom. Under traditional standards of due care, good faith and loyalty, the Directors should verify that management is maintaining appropriate systems to prevent and/or detect and timely report, violations.

The following discussion offers practical suggestions for protecting the corporation and Directors by outlining steps to periodically report key ethics and compliance training information to the Board in a simple, accessible format. This approach applies equally to a standalone training report, as well as to a report on training in the context of a broader report on the compliance program as a whole. However, the significant considerations of privilege and discoverability presented by the latter type of omnibus report, are beyond the scope of this writing.

Step 1: Succinctly Identify the Specific Reasons Why the Board Is Being Asked to Consider This Information

Your Board has to oversee an entire corporation, so you should explain the very good reasons why the Board should also direct its attention to reviewing this particular program. Determining the standards that will be most meaningful to your Board is, of course, one of the black arts of experienced corporate officers, but the Federal Sentencing Guidelines should resonate at all organizations.

Draw special attention to the Board's unilateral mandate, consistent with the general corporate mission, to require that the organization observe high ethical standards. Take advantage of every opportunity to reinforce the fundamental point that your company is committed to ethics, and is not simply checking some externally imposed compliance box.

Step 2: Summarize the Highlights of Your Program During the Reporting Period

This is a chestnut from Board Relations 101: Get to the point fast, and cover the core information right out of the gate. Recognize that some Directors may not necessarily read the entire report, and may instead refer to the report attachments on a selected basis in the context of specific inquiries. Complete information should be available for review in the attachments, but a substantive executive summary is critical.

This is an ideal place to present a scorecard illustrating the measures that drive program performance. Since "what you measure is what you get," the program metrics you choose to track should tie in to the behavior you wish to influence. This may include qualitative measures such as audit findings or employee survey results, as well as quantitative measures such as the number of calls to the hotline, or

Susan Cutright is a Compliance Services lawyer at Integrity Interactive Corp., a provider of ethics and compliance solutions. She is a former general counsel and has assisted dozens of major companies in developing their ethics and compliance programs. Ms. Cutright can be reached at scutright@i2c.com.

ethics-related disciplinary actions taken during the reporting period.

Typical “hard” measures of effectiveness in communicating standards, and in either preventing violations, or detecting and timely reporting them, include, for example:

- The number of employees participating in ethics training;
- The number of training courses completed;
- The training test results;
- The number of employees confirming familiarity with the code of ethics and related policies;
- The number of potential conflicts of interest disclosed by employees enrolled in training; and
- The number of potential violations reported by employees enrolled in training.

Step 3: Provide Supporting Detail for Each Significant Element of Your Compliance Program

Take advantage of your training and reporting database(s) to present key program data in clear, straightforward summaries. As veterans of the Sarbanes-Oxley § 404 process can attest (!), documentation is critical to establishing that the program is executing as designed, and that it is functioning as an effective component of the company's internal control environment.

This documentation requirement is a major driver of the growing trend to outsource ethics training to service providers who provide comprehensive training administration and reporting as part of their program service. If you are not currently able to access, sort and retrieve program data, then find a program host that offers this capability. Otherwise, you are going to have your work cut out for you as you try to support the Board's need for regular compliance reporting.

The excerpted sample (*see* Excerpted Sample Report) represents the type of high-level information that might be

presented with respect to the training component of a compliance program. The underlying statistical data should also be presented in the format that best supports your program structure and goals.

Step 4: Identify Program Objectives Going Forward

Certainly, a case can be made that the highest and best service of any Board is to guide the future activities of the company. What a waste it would be to limit the Board's oversight capabilities to a reactive

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consideration of historic data! Be clear about your ethics and compliance training program's strategic direction, and make sure you miss no opportunity to share with your Board how you are performing against agreed goals. Most of all, communicate all information necessary and appropriate to enable your Board to exercise meaningful oversight, and shape program direction going forward.

Step 5: Involve Your Board

Of course, the whole point in reporting to the Board is to make sure that the Board is actively involved in the program. The company will benefit from the Board's collective experience and insight, and from compliance with relevant Federal Sentencing Guidelines. The Directors

will be protected against potential liability by fulfilling their duty of care. Indeed, you may benefit professionally by being actively engaged with the Board. How can you involve your Board in a compliance report? That obviously depends on the dynamics within your company and your boardroom, but here are some options:

- Identify company compliance personnel and provide contact information.
- Include a color printout of the corporate governance section on the company's Web site — do not assume every Director will independently access the site.
- Provide the intake script callers hear when they dial into the company hotline.
- Encourage your Directors to initiate an inquiry to the hotline, so that they can personally experience the process.
- Encourage your Directors to sample the company's online training, and maintain personal access codes for each Director.

This straightforward approach will protect the organization and the Board through efficient reporting about ethics and compliance training initiatives. More than that, it will position the Board to give strategic input on a key element of company-wide controls, and thereby drive value from compliance.



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Excerpted Sample Report on Ethics and Compliance Training

This report constitutes a high-level summary of the status of the Company's ethics and compliance training program, and is presented as a resource to the Board of Directors to assist the Board in exercising informed oversight of the Company's overall ethics and compliance program. A balanced scorecard of key program metrics follows this summary, and detailed enrollment, completion and exception reports are attached as exhibits.

Training Requirements

Numerous legal, policy and listing requirements collectively establish the contours of a defensible compliance program. In particular, the Federal Sentencing Guidelines set program standards that carry significant weight with prosecutors contemplating filing charges against an organization, and have the effect of reducing fines applicable to any organization that has established an effective program.

As per Section 8B2.1(b) of the Guidelines, to have an effective compliance and ethics program:

- The Board must be knowledgeable about the program and exercise reasonable oversight of it;
- Compliance officers with operational responsibility for the program periodically must report on the effectiveness of the program to high-level personnel, and as appropriate, to the Board or relevant Board committees; and
- The organization must conduct effective training programs appropriate to the respective roles and responsibilities of the Board, management, employees, and as appropriate agents.

Independently of these and other external standards, the Company's ethics and compliance activities flow from the Company's longstanding commitment to doing business with integrity, as currently expressed in the Code of Ethics and Business Conduct.

Training Content

We have partnered with an outside company to provide online ethics and compliance training to Company employees worldwide. In-house staff will continue to provide focused, in-person training with respect to the

legal implications of business activities within the Company.

Our initial goal was to enroll approximately 5000 management employees (exempt from the hourly wage rules of the Fair Labor Standards Act) and 20,000 non-exempts in a general ethics course that would communicate our corporate commitment to ethics; identify the Company's ethics resources; encourage employees to report ethics issues or concerns; and underscore the significance of our Code of Ethics and Business Conduct. Our tentative rollout deadline was June 1.

Working with our outside vendor, we were able to customize the off-the-shelf training course at no charge to incorporate existing in-house training materials; address issues of specific concern to the Company; and incorporate our Code. We were also able to complete the initial enrollment ahead of schedule, and the employee response has been overwhelmingly positive.

Access Codes

The following Access Codes have been established to assist members of the Board in exercising informed oversight of the Company's ethics and compliance program by sampling the training courses provided to Company employees.

Director	Code
Chairman Washington	AB123
Ms. Allende	CD456
Mr. Bardani	EF789
Mr. Finelli	GH012
Ms. Miyoshi	IJ345
Mr. Pringle	KL678
Ms. Prochnow	MN910
Mr. Zeiss	OP234
Mr. Zurn	QR567

An employee would receive his Access Code in an e-mail from the CEO, explaining the training initiative, and reinforcing the strategic importance of the ethics and compliance program. If necessary, the employee would receive a series of increasingly stern reminder e-mails until he completed the required training.

To sample our online training, please go to our outside provider's Web site and log in with your access code.

Completion Reports

We deployed the general Code of Ethics and Business Conduct training to the entire target group of 5000 exempt and 20,000 non-exempt employees during the week commencing Monday, May 16. Within 2 weeks, we reached an aggregate completion level in excess of 30%, even though this is the first time we have asked employees to participate in online training, and notwithstanding the overlap with the Memorial Day holiday.

The completion rate climbed steadily as a series of prepared reminder messages were emailed automatically to employees who had not completed the required training. As of Aug. 1, we can account for 100% of the 25,000 individuals participating in the program, with 97% having completed the training, and the remaining 3% having experienced a change in employment status (transfer, disability, termination, etc.).

Our outside provider maintains records of the exact content of each course; employees participating in the program; enrollments in particular courses; course completions; and employees who have not completed training and have been placed in hold status. We have secure access to the outside provider's tracking and administration system to perform online inquiries, run desired reports and download program data into our internal reporting systems.

Next Steps

Based on the results of the Company's risk assessment initiatives, we are now evaluating expansion of the training pool, and deployment of additional risk-based training. The attachments to this report include a spreadsheet reflecting risk assessment findings as of August 1; a matrix of training groups derived from these findings; pro forma curricula of ethics and compliance courses responsive to different risks presented by each of these groups; and an estimate of the costs to source this training.