

Engage and Education: A Different Model for a Compliance Risk Assessment

One of the panels I attended this week at Compliance Week 2011 was co-chaired by Andy Hinton, Chief Compliance Officer (CCO) of Google, and Leonard Shen, CCO of PayPal. In this presentation Shen discussed an interesting manner in which to structure the risk assessment to encompass several different compliance tasks. This approach is not the right approach for every company but for those initiating their compliance journey, or a company considering a significant upgrade due to some systemic issue; this approach may be a more effective approach than the traditional risk assessment where a team of lawyers, CPAs and internal auditors assess a company's compliance environment.

In a company which is initiating its compliance program, it can be perceived as a sea change of culture. However, Shen indicated that he had used an approach which worked to alleviate those types of concerns which also provided enough information to perform a robust assessment which could be used to form the basis of an effective compliance program. He termed this type of approach as one to "engage and educate." While the approach had a two word name, it actually had three purposes; (1) to engage the employees in what would form the basis for an enhanced compliance program; (2) to educate the employees generally in compliance and ethical behavior; and (3) through the engagement of employees, to gather information which could be used to form the basis of a risk assessment.

A. Engagement

Shen and his compliance team traveled to multiple company locations, across the globe, to meet with as many employees as possible. A large number these meetings were town hall settings, and key employee leaders, key stakeholders and employees identified as high risk, due to interaction with foreign governmental official touch-points, were met with individually or in smaller groups. Shen and his team listened to their compliance concerns and more importantly took their compliance ideas back to the home office.

From this engagement, the team received several thousand employee suggestions regarding enhancements to the company's compliance program. After returning to the US, Shen and his team winnowed down this large number to a more manageable number, somewhere in the range of a couple of hundred. These formed the basis of a large core of the enhancements to the existing company compliance program.

After the enhanced compliance program was rolled out formal training began. During the training, the team was able to give specific examples of how employee input led to the changes in the enhanced program. This engaged the employees and made them feel like they were a part of, and had a vested interest in, the company's compliance program. This employee engagement led to employee buy-in.

B. Education

During the town hall meetings, and the smaller more informal group meetings, Shen and his team were doing more than simply listening, they were also training. However, the training was not on specific compliance provisions; it was more generally on overall ethics and how the employees could use compliance as a business tool. As pointed out by another speaker at Compliance Week 2011, K.C. Turan, CCO of Dun & Bradstreet, most ethical standards of a company are not found in an existing compliance program, they are found in the general anti-discrimination guidelines and ethical business practices such anti-competitiveness and use of customer confidential information prohibitions. Often these general concepts can be found in a company's overall Code of Conduct or similar statement of business ethics; workplace anti-discrimination and anti-harassment guidelines can be found in Human Resource policies and procedures. Concepts such as anti-competitiveness and use of customer and competitor's illegally obtained confidential information may be found in anti-trust or other business practice focused guidelines.

Shen and his team's aim on the education component of "Engage and Education" was to have the company employee's start thinking about doing business the ethical way. It was ethical concept based training designed to be in contrast to a rules based approach, where employees believe they are taught the rules, and then try to see how close they can get to the line of violating the compliance rule without actually stepping over the line. Moreover, by having this general ethical business training, it laid the groundwork for the enhancement of the company's compliance program and the training that would occur when the enhancement was rolled out.

C. Risk Assessment

A third key component of the "Engage and Educate" program is the risk assessment component. Shen's approach here was not the traditional control testing model, where documents are pulled and tested against a standard. Shen and his team listened, listened and listened. They listened to their employees concerns and they listened to the compliance issues they raised. As they were listening they began to ask questions about what was done and why. The questioning was not in an adversarial, interrogation mode but ferreting out the employees concerns while having the employees educate the team on the actual procedures that were used in several areas identified as key high risk areas.

Shen emphasized that this was an assessment and not an audit so no detailed forensic work was needed or used. However, by listening, and gently questioning, Shen and his team were able to garner enough information to create a risk assessment profile which informed and became the basis of their compliance program enhancement. Shen and his team did not identify to the company employees that they were engaged in a formal risk assessment. He believed that in many ways, he and his team were able to garner more useful information with which to inform their compliance program enhancement.

Shen's "Engage and Educate" approach worked for his company at that point in time. It may not work for other companies as a traditional risk assessment but it does provide a different model if your company is beginning to create their compliance program, or is looking into a major enhancement. I recommend that you consider it.

This publication contains general information only and is based on the experiences and research of the author. The author is not, by means of this publication, rendering business, legal advice, or other professional advice or services. This publication is not a substitute for such legal advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified legal advisor. The author, his affiliates, and related entities shall not be responsible for any loss sustained by any person or entity that relies on this publication. The Author gives his permission to link, post, distribute, or reference this article for any lawful purpose, provided attribution is made to the author. The author can be reached at tfox@tfoxlaw.com.

© Thomas R. Fox, 2011