

## EFFECTIVE ETHICS AND COMPLIANCE TRAINING

“Conducting effective training programs” is listed in the 2005 Federal Sentencing Guidelines as one of the factors the Department of Justice will take into account when a company accused of an Foreign Corrupt Practices Act (FCPA) violation is being evaluated for a sentence reduction. The Sentencing Guidelines mandate, “(4) (A) The organization shall take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program, to the individuals referred to in subdivision (B) by conducting effective training programs and otherwise disseminating information appropriate to such individuals’ respective roles and responsibilities.” In addition to the Sentencing Guidelines, compliance professionals have also noted the importance of training to handle ethical and compliance issues which arise. In its results of its 2009 Survey on “Anticipating and Planning for the Next Big Compliance Issue”, the SCCE participants responded that effective training was “an essential part of the solution.”

### I. APPROACHES

But what is an “effective training program”. Andrea Wrage has written, in her blog *Wragblog* and in *Ethisphere Magazine* that she believes there are two general approaches to ethics and compliance training. The first approach focuses on knowledge of the rules “as clear and sharp as barbed wire” so that the cowboys in the company will not run wild. This is the approach most US in-house lawyers feel is required for their company’s operations and sales teams and is generally designed to help avoid criminal liability.

The second approach focuses training on ethical values and is more prevalent in Europe where ethics and compliance are more designed to communicate a company’s underlying corporate values in its operations. This approach anticipates that most employees are decent and law-abiding and will not knowingly engage in bribery and corruption. Additionally, you can never create enough rules to govern every situation and train each employee on every rule so a company must hire trustworthy people and give them sufficient information to make the correct ethical and compliant decision. Ms. Wrage characterizes the two different approaches as “ethics” vs. “values”.

Both approaches have merit but both can catastrophically fail without the other components of an effective compliance program. For instance, having a “Gold Standard” Code of Compliance and Ethics alone is not enough. Although it was not brought down by an FCPA violation, the Enron Code of Ethics was viewed (at least at one time) as one of the strongest in the energy industry. And not to focus on US companies only, Siemens had one of the most robust Codes of Ethics for a European company before its multi-billion dollar (or euro-take you pick) fine and profit disgorgement. So the training on both of these company’s “Gold Standard” codes of ethics did not turn out to be too helpful. But as pointed out by Kerri Grosslight, in her article “*Minimize Risk by Maximizing Accountability*” in *Security Leadership*, training is one of the key components.

So what should a company's training focus on to be "effective" under the Sentencing Guidelines? It appears that effective ethics and compliance training should emphasize both approaches. Americans are long taught what the rules are in whatever life they choose. They expect to be told what the rules will be so that they know where the line is drawn that they should not step over. Probably the single comment, I have heard the most when putting on ethics and compliance training in the US is "Just tell me what I can and can't do". However, really effective training requires that employees be able to apply the rules to the incredibly wide and ever-changing situations which confront them in the real world. This is where communicating a company's values are important. In other words, how would your conduct look if it was plastered on You Tube the next week.

## II. TYPES OF TRAINING

What type of training is most effective in the ethics and compliance arena. The consensus seems to be that there are three general approaches to ethics and compliance training which have been used successfully. The first is the most traditional and it is in-person classroom training. This gives employees an opportunity to see, meet and speak directly with a Compliance Officer, not an insignificant dynamic in the corporate environment. Such personal training also sends a strong message of commitment to compliance and ethics when training is held away from a corporation's home office. It gives employees the opportunity to interact with the Compliance Officer by asking questions which are relevant to markets and locations outside the United States. Lastly it can also lead to confidential discussions after such in-person training.

An important part of in-person training is the opportunity to interact with the audience through Q&A. There are a couple different approaches to Q&A. The first is to solicit questions from the audience. However many employees are reluctant, for a variety of different reasons, to raise their hands and ask questions in front of others. This can be overcome by soliciting written questions on cards or note pads. A second technique is to lead the audience through hypothetical examples in which the audience is broken down into small (up to 5 person) discuss groups to discuss a situation and propose a response.

The second approach is on-line training. Rick Chapman, Assistant General Counsel for Halliburton in its Compliance & Ethics Practice Group, has said that online training is a one of several training approaches used by Halliburton in ethics and compliance training. On-line training can be a helpful adjunct to live training because it can permeate a globally distributed organization and lends itself to automatic recordkeeping, tickling, and expiration management. He discussed this approach and its use by Halliburton to enable it to "effectively reach every employee at Halliburton worldwide" in *Ethisphere Magazine, June 7, 2007 "Expert Corner"* Ethics and compliance courses are tailored to different categories of Halliburton employees and provided in multiple languages to ensure that all Halliburton employees will participate in ethics and compliance related learning activities at least once every two years by taking our general ethics and compliance training and/or issue-specific courses such as FCPA.

A third option has been suggested in *Wrageblog*. It is a combination of live in-person training followed by a live Q&A session filmed. Such a program can then be shown at other company offices around the world. Such a presentation should be lead in-person by a Compliance Officer who can follow up the filmed presentation by conducting a Q&A teleconference with the Compliance staff in the company's home office. *Wrageblog* believes that this approach can be a "very robust and inexpensive way to reach a large number of employees with a clear, tailored and forceful compliance message."

All three ethics and compliance training approaches should be coordinated and both the attendance and result recorded for the combined approach, online training and traditional training for all types of employees in all countries. Results can be tabulated through short questionnaires immediately following the training and bench-marked through more comprehensive interviewing of selected training participants to determine overall effectiveness.

Whatever approach is used, one of the critical factors is the length of time of the training session. While lawyers and ethics and compliance professionals can (sometimes) sit through 8 hours of such training, it is almost impossible to keep the attention of business and operations employees for such a length of time. The presentation must be kept to a manageable length and number of PowerPoint slides before eyes start to glaze over. My experience in all types of legal and compliance training has led me to believe that 3 hours is about the maximum length of in-person training which can hold the attention of business and operations employees for ethics and compliance training. For on-line training I would suggest a maximum length of one hour.

### **III. THE OPENING**

As noted in Part I, a company's ethics and compliance training may well comprise several different audiences and different cultures around the globe. Top notch training should be able to reach all of the learners at such training sessions. One way to do so is to grab the audience's attention early by demonstrating the commitment of top management to ethics and compliance and make clear to each audience member how compliance laws such as the FCPA pertain directly to them. In his blog, the *FCPA Professor* has put forward a suggestion in his posting, "FCPA -- The First Few Minutes" by proposing that an FCPA training session begin with an opening such as:

"Today, I will be talking about a U.S. law that applies to all of you - regardless of whether you are in the sales and marketing department, the executive office suite, the finance and audit department, or the logistics department. This law can cover a wide range of payments the company makes, or could make, either directly or indirectly, in doing business or seeking business in foreign markets. Your understanding of this law and how it may relate to your specific job function will best

ensure that the company remains compliant with this law and is able to achieve its business objectives."

Another technique to get the attention of the audience simply might be remind the them that hardly anyone looks good in a prison-orange jumpsuit and that you are here to present training to keep them out of such clothing.

#### **D. THE END OF THE DAY**

At the end of the day, an effective training program will incorporate all learning tools available to reach the widest target audience possible. An individual's understanding of the rules is always important but it should be grounded in a company's ethical corporate culture. Coupled together, these Approaches listed in Part I, together with types of training discussed in Part II, should embolden employees to make the right decision even if they cannot remember a specific rule governing a situation. More importantly, such effective training provides knowledge about what an employee can and cannot do when confronted those 'grey areas' that exist in the real world of international business.