Corporate Compliance

What is it and why have it?
Corporate Compliance Overview

Origins of Corporate Compliance

Seven Elements of a Compliance Program

Corporate Compliance Infrastructure

FCPA & Compliance
Regulation
Compliance
Management
Privacy
Governance
FCPA
Legal
HIPAA
Risk
Background:

- Morgan Stanley
- Garth Peterson - Former Managing Director for Morgan Stanley’s real estate business in China
- Conspiracy to evade internal accounting controls
  - Paid $1.8M to himself and a Chinese official
  - Acquired a valuable Shanghai real estate interest from Morgan Stanley’s fund.
Most Recent FCPA Settlement

Verdict:

- Peterson faces up to 5 years in prison and has agreed to pay a fine of $250,000
- Relinquishment of his interest in certain Shanghai real estate worth $3.4M
- Lifetime ban from the securities industry
Why have a Corporate Compliance Program?

- Prevent, Detect and Deter issues of non-compliance
- Communicate Organizations Commitment
- Impact on Company’s Reputation
- Raises Awareness
- Trends: Mandatory Requirements – SOX, NYSE, NASDAQ, FCPA, Dodd Frank, etc.
Compliance Program is Comprehensive

- Employment/Labor Law
- Anti-Trust
- Anti-Corruption (esp. outside the US)
- Federal Sentencing Guidelines
- Other Federal and State Laws
- International Considerations - GLOBAL
Benefits of an Effective Compliance Program

- Encourages employees to report potential problems
- Initiate immediate & appropriate corrective action
- Reduces exposure to civil damages, penalties, criminal sanctions and administrative remedies
- Strong ethical culture – easier to attract employees
Corporate Compliance Overview

**Origins of Corporate Compliance**

Seven Elements of a Compliance Program

Corporate Compliance Infrastructure

FCPA & Compliance
Origins of Corporate Compliance - US

- Evolved since the 70’s – (FCPA – 1977)
- Insider trading scandals in 80’s – Insider Trading and Securities Fraud Enforcement Act
- Sentencing Guidelines for Organizations in the 90’s
- Sarbanes Oxley Act – ’02
- US Patriot Act – ’01 – anti-money laundering compliance
In some countries – Corporate Compliance is an unfamiliar concept
- Less developed capital markets
- Low liquidity
- Strong concentration of capital in family enterprises
- Lack of “Board of Directors” culture
Poor Compliance Environment

- Recurrent Economic Crises
- Lack of Regulatory Guidance
- Compliance Not In Government Agenda

Low Perceived Value of Compliance
Effective November 1, 1991

- Controls sentencing of organization for most federal criminal violations
- Sentencing credit for “Effective programs to prevent and detect violations of law”
  - Detect, Deter, Prevent
Report of Ad Hoc Advisory Group on the Organizational Sentencing Guidelines

- Published October 7, 2003
- http://www.uscc.gov/guidelines/index.cfm
- Effective November 1, 2004
Key Recommendations

- "Culture" of ethics and compliance
- Defining ethics and compliance standards and procedures
- Spelling out compliance obligations
- Adequate resources
- Clarifying employee screening practices
- Training as an essential element
- Means of anonymous reporting
- Ongoing risk assessments
Recent Changes to Sentencing Guidelines

- November 1, 2010 – Revisions included:
  - Requirements for establishing an “Effective Compliance Program”
  - Expands eligibility for reduced culpability IF it has an effective program
    - Enhanced Autonomy for Compliance Personnel
      - Direct reporting/express authority
    - Effective in detecting criminal conduct
Corporate Compliance Overview

Origins of Corporate Compliance

**Seven Elements of a Compliance Program**

Corporate Compliance Infrastructure

FCPA & Compliance
Seven Elements

1. Standards and Procedures
2. Oversight
3. Education and Training
4. Monitoring and Auditing
5. Reporting
6. Enforcement and Discipline
7. Response and Prevention
Monitoring and Auditing

- Essential for effectiveness
- Designed to “Detect Criminal Conduct”
- Audits – Independent/objective – use Subject Matter Experts
- Monitoring – real time reviews

Audit and Monitoring Plan
  - Leverage what is already available
  - Scalable to risks and resources
  - Tools are important – self assessments, internal audits, external audits, exit interviews, etc.
Monitoring
Corporate Compliance Overview

Origins of Corporate Compliance

Seven Elements of a Compliance Program

Corporate Compliance Infrastructure

FCPA & Compliance
What is Infrastructure?

- A set of interconnected structural elements that provide the framework supporting an entire structure.
- Provides structure and support for the program.
- Internal Framework.

Wikipedia encyclopedia
Positions Vital to the Infrastructure

- Board of Directors
- Oversight Committee
- Senior Management
- General Counsel
- Chief Compliance Officer (“CCO”)
- Supporting Staff
Vital Functions of Compliance Committee

- Advises the Chief Compliance Officer
- Assists in implementation
  - Development of standards of conduct and policies and procedures
- Reviews reports and recommendations from Chief Compliance Officer
- Conducts annual review of the Compliance Program
- Analyzes legal requirement and specific risk areas
Reporting Structure

- Separation of compliance from Legal and Finance
- Independent and objective
- At a minimum, CCO has a “dotted line” to the Board of Directors
The Wrong Structure

Board of Directors

Legal Counsel

Chief Compliance Officer

Compliance Committee
Effective Reporting of CCO
Corporate Compliance Overview

Origins of Corporate Compliance

Seven Elements of a Compliance Program

Corporate Compliance Infrastructure

FCPA & Compliance
What Your Business Sees
What the Regulators See
Transparency International’s Corruption Perceptions Index 2011

The Best
- New Zealand (9.5)
- Denmark (9.4)
- Finland (9.4)
- Sweden (9.2)
- Singapore (9.2)
- Norway (9.0)
- Netherlands (8.9)
- Switzerland (8.8)
- Australia (8.8)
- Canada (8.7)

The Worst
- North Korea (1)
- Somalia (1)
- Afghanistan (1.5)
- Myanmar (1.5)
- Sudan (1.6)
- Chad (1.6)
- Uzbekistan (1.6)
- Turkmenistan (1.6)
- Iraq (1.8)
- Haiti (1.8)
What is a Bribe?

- Giving **anything** of value (directly or indirectly)
- To an individual
- With intent to obtain an improper benefit
- Bribes take many forms:
  - Cash, gifts, entertainment, meals
  - Travel and events
  - Preferred hiring
  - Charitable and political donations
Red Flags

- Warning signs of possible corrupt payments or bribes
  - Unusual, vague or complex contracting, sourcing, accounting, payment or billing practices
  - Travel and expense and gifts and entertainment, particularly of government officials
  - Government officials request company to use a particular partner or vendor
  - Payments disproportionate to the services performed at the particular location
  - Payment for services not performed
Red Flags

- Multiple single sourced contacts to the same third party rapidly increasing in value over several months or years
- Recurring identical amounts from the same third party
- Unusual even dollar or high value disbursement amounts for routine odd dollar or low value purchase
- Unusual payment methods like Cash, or numbered account payments, payment through third countries or in another currency
What is a Foreign Official?

- Anyone in government
- Includes State-Owned Enterprises (“SOE”) or National Oil Companies (“NOCs”)
- Includes public international organizations (e.g. World Bank)
- Candidates for political office
- Political parties
Bribery Examples

- Medical device testing
- Employing a relative of an Official
- Use of equipment
- And of course......MONEY!
FCPA Cases in Recent Years…

U.S. v. Vetco International Ltd. - $26M fine

Background:

- Vetco subsidiaries admitted to violating the FCPA by making corrupt payments of approximately $2.1 million to Nigerian Customs Service officials over a two-year period through a major international freight forwarding and customs clearance company.
U.S. v. KBR, Inc. & Halliburton Co. - $402M fine & $177M disgorgement of profit

Background:

- KBR was part of a four-company joint venture that was awarded construction contracts valued at approximately $6B between 1995 and 2004.
- KBR paid more than $182M to two agents and admitted that it had intended for these agents’ fees to be used, in part, for bribes to Nigerian government officials.
U.S. v. Siemens AG – $450M fine & $350M disgorgement of profit

Background:

- Siemens Argentina made over $31 million in corrupt payments to various Argentine officials
- Siemens Middle East (4 subsidiaries) paid over $1.7 million in kickbacks to the Iraqi government
- Siemens Venezuela made over $18 million in corrupt payments to various Venezuelan officials
- Siemens Bangladesh admitted to making corrupt payments of over $5M to Bangladeshi government officials and senior employees of the state-owned Bangladesh Telegraph & Telephone Board (BTTB)
Questions??
The Department of Justice commended Morgan Stanley for:

- **Employee Training**: Over 54 trainings were given to Asia-based employees.
- **Compliance Personnel**: Employed over 500 dedicated compliance officers.
- **Regional Compliance Personnel**: Employed regional compliance officers who specialized in particular regions, including China, in order to evaluate region-specific risks.
- **Audit**: Randomly audited selected personnel in high-risk areas and regularly audited and tested Morgan Stanley’s business units.
- **Hotline**: Provided a toll-free compliance hotline 24/7, staffed to field calls in every major language, including Chinese.
Morgan Stanley: The De Facto “Adequate Procedures” Defense

- **Written Compliance Materials:** Distributed written training materials specifically addressing the FCPA.

- **Frequent Compliance Reminders:** Distribution of the Morgan Stanley Code of Conduct, reminders concerning policies on gift giving and entertainment and guidance on the engagement of consultants.

- **Written Certifications:** Required employees to certify their compliance with the FCPA.

- **Disclosure of Outside Business Interests:** Required employees to annually disclose their outside business interests.

- **Review and Update Policies:** Conducted a formal review annually of each of the firm’s anti-corruption policies.
Thank You!

Sam Carr
scarr@morgangarris.com
(713) 256 - 2320