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Benchmarking Ethics and Compliance Programs

One of the questions asked most frequently by those involved in corporate ethics responsibility is “How are we doing?” The question raised is how an organization stacks up in comparison with what it should do. Intended to form the basis of best practices in

ethics and compliance, *Foundation Guidelines “Red Book”: Application Draft, April 2005*, is an online document published by the Open Compliance and Ethics Group (OCEG). This framework document, available at www.oceg.org, details the essential components of an integrated compliance and ethics program and is intended to provide guidelines and benchmarks for:

- ◆ Integrated Governance, Compliance, Risk Management, and Ethics
- ◆ Mission, Vision, Values
- ◆ Compliance and Ethics Programs
- ◆ Whistleblower Hotlines
- ◆ Codes of Conduct/Ethics
- ◆ Compliance and Ethics Training Programs
- ◆ Program Audit, Assessment, and Benchmarking

Publication of the OCEG guidance is especially timely considering that the U.S. Sentencing Commis-

sion raised the bar on ethics and compliance programs last year by upgrading the necessity for organizations to monitor and oversee the effectiveness of their program to the board of directors level. The Sentencing Commission amendment applies to nonprofit organizations as well as public and privately held corporations.

The OCEG framework document demonstrates how to integrate good governance practices, risk management, ethics, and compliance into normal business operating practices. According to the OCEG, benefits from an effective ethics and compliance program include avoidance of social, reputational, and economic risks and civil liability as well as possible criminal penalties. The six principles that permeate the framework are:

1. Integrate Compliance and Ethics. The set of core values intrinsic to the

company should be mirrored in its commitment to ethics and compliance as well as the design of the program and how it operates.

2. Embed Compliance and Ethics Management Processes into the Business.

3. Demonstrate Leadership. The tone at the top is critical, so senior management should consistently put the organization’s values into practice and clearly communicate the program’s expectations to all employees. Periodic appraisal of employee integrity and ethical behavior should be included as part of the normal performance evaluation process.

4. Require Accountability and Ownership. The compliance and ethics program should motivate a culture within the organization that recognizes the premise that individuals should be responsible for their actions.

5. Provide an Open Culture. Opportunities must be provided for employees to speak up about sensitive issues without being afraid of negative reaction.

6. Measure Performance and Results. Results of periodic evaluation of the program’s performance should be

used to make improvements.

The components of the OCEG guidance framework structure include four elements: culture, planning, responding, and evaluating. Culture is the central aspect of an ethics and compliance program, according to OCEG, and it is surrounded by the other three. When establishing a new ethics and compliance program, the first step should be for management to have a full understanding of the organization's culture. Typically, elements within culture are deeply embedded behaviors that may not be easy to change. But making necessary changes in the culture of an organization can be the key factor in ensuring success of an ethics and compliance program. The four types of culture that must be considered are ethical culture, governance culture, risk culture, and human capital culture.

The OCEG framework lists the other three components—planning, responding, and evaluating—as necessary to implement. The planning step outlines the objectives of the ethics and compliance program and helps align the program with the objectives of the organization. The responding step defines the elements in the program that are necessary to reacting properly to risks and opportunities. The evaluation step provides for continuous-loop feedback that allows for improvements to be made when and where necessary. Evaluation should be the first step when modifying an existing ethics and compliance program.

Each component of the OCEG framework contains a number of topics, and each topic may contain as many as six entries. These can include:

- ◆ Description: the context and im-

portance of a particular guideline

- ◆ Legal Requirements: actions required by law or regulation
- ◆ Standards/Guidance: actions required or recommended in key documents of other organizations
- ◆ Core Practices: recommended ways to satisfy requirements or recommendations
- ◆ Advanced Practices: enhanced methods appropriate for some organizations
- ◆ Sources: citations to the source of requirements, recommendations, or actions

As another part of its efforts, OCEG has published a questionnaire titled *Does the Company Get It?* This 20-question document, available on OCEG's website and presented with their permission, is designed to determine whether a company has an effective process and culture in place to control and mitigate compliance and ethics-related risks. Included with each of the 20 questions are answers to why the question should be asked, potential answers to the question, and potential difficulties or red flags. The 20 questions are:

1. What does your organization say about compliance, ethics, and values in its formal mission and vision statement?
2. How do your board and management set the "tone at the top" and communicate compliance and ethics values, mission, and vision?
3. How do you know if your employees and other stakeholders are "convinced" that the organization is serious about its compliance and ethics responsibilities?
4. What is the scope of your compliance and ethics program, and how does it integrate with your overall business strategy?
5. How do you assess compliance and ethics risks, and how does this

process integrate with enterprise risk management (ERM)?

6. What position in the organization provides oversight and leadership in the compliance/ethics function, and where does this position fall in the organizational chart?

7. What is the organizational structure of your compliance and ethics management team?

8. How are resources allocated for compliance and ethics management activities—both routinely and to address significant issues that arise?

9. What does your Code of Conduct address, and who receives it?

10. How do you distribute your Code of Conduct and confirm that employees both receive and understand the Code and other policies?

11. What is your process for updating policies/procedures?

12. Can any requirements established by the Code of Conduct and other policies be waived or overridden, and, if so, what is the process for doing so?

13. How often and by what methods does your management communicate the values, mission, and vision of the compliance and ethics program to employees and other stakeholders?

14. Do you provide comprehensive training and conduct performance evaluations for each job role to ensure compliance and ethics responsibilities are understood and followed and that necessary skills are learned and employed?

15. How do employees, agents, and other stakeholders raise issues regarding compliance and ethics-related matters?

16. How do you handle compliance and ethics issues that arise and scrutinize the sources of compliance failures?

17. How consistently and in what

way have you taken action against violators of the Code and programs?

18. What is the process for determining which issues are escalated to the board and for informing the board when issues are resolved?

19. What ongoing processes are in place to monitor the effectiveness of the compliance and ethics program?

20. Does the organization engage an external law firm or consultant to audit compliance and ethics program elements?

Question:

Does your organization have an effective ethics and compliance program? ■

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