THE ART OF GOVERNANCE

INSPIRATION AND INSIGHT FROM BOARDROOM LEADERS

FEATURING: MCDONALD'S, BOOZ ALLEN HAMILTON, TARGET, CONAGRA FOODS, INGREDION AND MORE

ETHISPHERE®

GOOD. SMART. BUSINESS. PROFIT.® Q2 // 2016

Guest Editor: Paula Loop, Leader of PwC's Governance Insights Center

ETHISPHERE // QUARTER 2 // 2016

Essential reading for Directors, CEOs, General Counsel and Ethics & Compliance Professionals who see opportunity in ethical leadership www.ethisphere.com

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Our Mission Statement

The Ethisphere® Institute is the global leader in defining and advancing the standards of ethical business practices that fuel corporate character, marketplace trust and business success. We have a deep expertise in measuring and defining core ethics standards using data-driven insights that help companies enhance corporate character. Ethisphere believes integrity and transparency impact the public trust and the bottom line of any organization. Ethisphere honors superior achievements in these areas with its annual recognition of The World's Most Ethical Companies®, and facilitates the Business Ethics Leadership Alliance (BELA), an international community of industry professionals committed to influencing business leaders and advancing business ethics as an essential element of company performance. Ethisphere publishes *The World's Most Ethical Companies Executive Briefing* and *Ethisphere Magazine*, and hosts ethics summits worldwide.

SPEAKING UP

THIS QUARTER'S LETTER FROM THE EDITOR

Dear Readers,

Welcome to the Q2 Governance-themed issue of *Ethisphere Magazine*. As Guest Editor, I am honored to present articles from and about corporate directors and leading governance professionals who explored high-level topics such as the unexpected consequences of executive compensation, the role of internal controls in financial reporting, the role management plays in driving board performance, setting the tone at the top, the board's role in risk management, an examination of ethical skills, and the impact boards and corporate secretaries are having in institutional investor engagement.

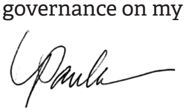
As the Leader of PwC's Governance Insights Center, I work closely with boards and investors on governance matters. One of the top issues I hear from my interactions with directors and investors is the importance of board performance. Many other governance topics relate closely to how well a board is actually performing its oversight duties. If the board is falling down on the job, the company could be at risk.

One of the board's biggest responsibilities is executive compensation, which continues to be a focus for investors and boards. Some investors believe there needs to be a better alignment of compensation with individual and company performance. Boards, in particular, audit committees, play a critical role in ensuring accurate and transparent disclosure as it pertains to financial reporting and risk management. This is more important today than it has ever been—and effective internal controls are a key component of the financial reporting process. In addition, I have found that more directors are becoming comfortable with direct investor communications around corporate governance issues like these. Boards and corporate secretaries have also made strides establishing protocols and practices to structure their communications with investors. There is a lot to learn from investors—their insights may offer a fresh look at how your boards perform.

These are just a few of the issues that I hear are top of mind for boards. Clearly, the board's job is more difficult and challenging than ever. With their board agendas continuing to expand and their oversight responsibilities multiplying, directors have their hands full. As such, directors have to maintain a healthy relationship with management. The most effective board-management relationships I see are those where management provides a focus on the right topics and better, more digestible board materials.

PwC's Governance Insights Center supports boards and investors with the governance knowledge they need to answer tough questions and tackle complex challenges. The Center has built a network of subject-matter experts, business leaders, and experienced peers who share insights and their latest thinking on current issues. PwC is pleased to count Ethisphere as a key member of this network that works to improve business ethics, compliance, and corporate governance.

I hope you enjoy this issue and welcome any feedback you may have. I also invite you to follow the latest issues and trends in corporate governance on my LinkedIn blog.

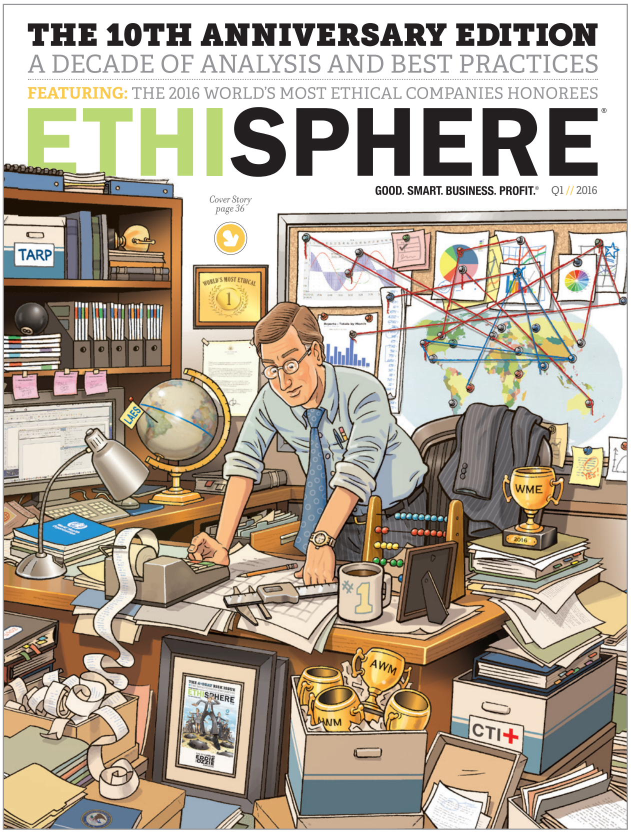


Paula Loop
Leader for PwC's Governance Insights Center
PwC

MOUTHING OFF

» THIS QUARTER'S LETTERS TO THE EDITOR «

Have something to say? Write to us at: info@ethisphere.com or at *Ethisphere Magazine*, 6263 N. Scottsdale Rd, Suite 205, Scottsdale, AZ, 85250



MIDDLE EAST ETHICS AND COMPLIANCE SUMMIT

I reside in Dubai and am interested in attending the Middle East Ethics and Compliance Summit this year. Can you provide information on the dates, venue and cost?
- Cathy

Ethisphere Response: *The inaugural Middle East Ethics and Compliance Summit will take place in Abu Dhabi, UAE on September 20-21st.*

Accommodations, registration and session information are available on the event website at ***http://middleeastethicssummit.com/****. Watch for agenda and speaker updates in the months to come.*

EVENTS & WEBCASTS

Feedback from the 2016 Global Ethics Summit (March 9-10):

"All of the speeches and discussions were valuable as was the networking."

"It is so valuable to hear a different viewpoint from a wide-range of industries, regarding best practices."

"The programming was more relevant to current events. I'm going back to the office with news I can use to benefit my company in a much richer way than before."

Feedback from the webcast: The Department of Know: Processes and Practices of Leading Compliance Programs – And How to Move Your Own Company Forward (April 26th):

"I enjoyed this webinar! We are in the process of developing our compliance and ethics program and appreciated the input you shared on taking the next steps. There's just so much to focus on; having a way to prioritize our approach is huge."

PARTICIPATING IN ETHISPHERE MAGAZINE

I have an interest in participating in the magazine. Are you welcoming individual contributions at this time?
- Richard

Ethisphere Response: *Ethisphere Magazine recognizes the value of each and every contributor. Subject matter experts who have an interest in making a meaningful contribution to Ethisphere Magazine are encouraged to please contact Les Prendergast at* ***les.prendergast@ethisphere.com****.*

Ethisphere Magazine is proud to offer the insights of a diverse range of contributors including but not limited to: CEOs, general counsel, board members, corporate secretaries, CECOs, chief legal officers, faculty, government officials, chief sustainability officers, risk management directors, and thought leaders.

BY THE NUMBERS

DIVERSITY IN THE BOARDROOM

A ROOM DIVIDED

Diversity encompasses a number of factors including: race, gender, ethnicity, age, personality-type, education, background, and much more. For obvious reasons, organizations equipped with diverse boards possess a compelling business advantage. Nonetheless, while organizations seem to recognize the value of a diverse board; there is still a long way to go on the road to equality. Below are some telling stats courtesy of ***PwC's 2015 Annual Corporate Directors Survey***:

62%

62% of directors with less than one year of board service "very much" agree that having diversity on the board is important

74%

74% of female directors "very much" agree that board diversity leads to enhanced company performance, and **4 out of 5** female directors "very much" believe that diversity leads to enhanced board effectiveness

84%

84% of directors at least "somewhat" agree that diversity leads to enhanced board effectiveness

39%

Only **39%** of directors who have tenure of greater than ten years "very much" agree that having diversity on the board is important

31%

Only **31%** of male directors "very much" agree that board diversity leads to enhanced company performance and **2 out of 5** male directors "very much" believe that board diversity leads to enhanced board effectiveness

29%

Only **29%** of directors believe there are no significant impediments to increasing board diversity

** For more information on this subject we encourage you to visit pages 20-21. You will find Timothy Olson's insights on this very topic.*

THE GOOD AND THE BAD

PAPER BAGS AND PROFIT PROPELLERS

HOW IT WORKS

Paper Bags are given to companies and organizations that are involved in, or have attempted to cover up, scandals, violations or other embarrassing events.

Profit Propellers are awarded to companies and organizations that have recently done something interesting, innovative or brave in the area of ethical leadership.

KB Home gets a **profit propeller** after receiving two distinguished 2016 ENERGY STAR Partner of the Year Awards. The company earned its sixth consecutive sustained Excellence Award in 2016 for its ongoing efforts. KB Home has also earned an ENERGY STAR Climate Communicator Award for its tremendous focus on climate change. This impressive run is unparalleled in the home building industry.

Hanlong Mining gets a **paper bag** as the former managing director, Steven Xiao, has been sentenced to eight years and three months of jail time for insider trading. The sentence is the largest ever in Australia for insider trading. To make matters worse, the company has been recently linked to one of the largest corruption cases in China's history.

Olympus gets a **paper bag** after agreeing to pay more than $632 million to settle criminal charges and civil claims pertaining to a scheme involving the payment of kickbacks to doctors and hospitals. Olympus entered a three-year deferred prosecution agreement to avoid criminal conviction if it complies with the reform and compliance requirements of the agreement.

American multinational technology company, **Google**, earns a **profit propeller** this quarter after offering $20 million in Google.org grants to 29 winners of its Google Impact Challenge: Disabilities. The program was launched last May to invest in non-profit organizations using technology to increase independence for disabled people around the world.

United we stand. **Profit propellers** go to a group of executives from **GE**, the **Dow Chemical Company**, **PepsiCo**, **Hewlett Packard Enterprises**, **Hyatt Hotels Corporation**, **Choice Hotels International, Inc.**, **Levi Strauss & Co.**, and **Whole Foods Market** signed a letter to repeal House Bill 1523, aka the "Religious Accommodation" Act. HB 1523 was signed into effect on April 5th and offers businesses the right to deny service to members of the LGBT community.

A **paper bag** goes to **Goldman Sachs**, which has agreed to pay more than $5 billion to settle claims that it misled mortgage bond investors during the financial crisis.

*Do you know of a recent news story you feel should be awarded a Paper Bag or Profit Propeller? Send your ideas to **les.prendergast@ethisphere.com***

HELPING CLIENTS SUCCEED IN COMPLEX ENVIRONMENTS

Control Risks' diverse suite of intelligence-guided solutions assists companies and counsel in identifying, evaluating and minimizing integrity risk when facing regulatory, operational and strategic challenges around the world.

Control Risks brings diverse expertise within one practice group to provide unique and coordinated business intelligence and risk management solutions for our clients. From internal fraud investigations to advice on the risks posed by unscrupulous third-party relationships, we have the experience, connections and expertise needed to see complex projects through to a successful conclusion.

With 36 offices worldwide and an on-the-ground presence in more than 100 countries at any one time, Control Risks is a trusted advisor to companies large and small on every continent.

AROUND THE CIRCUIT

NEW YORK, NEW YORK: 2016 GLOBAL ETHICS SUMMIT

On March 9-10, 2016, the Ethisphere Institute hosted the 8th annual Global Ethics Summit (GES) in New York. Hundreds gathered as CEOs, C-level Executives, board chairs, general counsel, corporate secretaries, chief legal officers, compliance and ethics professionals, senior faculty, and government and regulatory officials joined together to advance the discussion around corporate ethics, performance, and so much more.

For the individuals present, the 2016 GES was an opportunity to learn and to share, to network and to contribute, and to walk away with meaningful takeaways. Subject matter experts from varying industries and organizational roles shared their insights on the past, the present, and the future of compliance and ethics.

Alex Dimitrief, General Counsel and Senior Vice President of GE, kicked things off by providing an inspiring opening keynote. Alex discussed the evolution of ethical achievements, while offering perspectives on the need to tap into even greater business practices. Alex shared his vision with Neal Hochberg, Senior Managing Director and Global Leader, Forensic & Litigation Consulting, FTI. The two discussed how ethics can power the future of company performance. Dimitrief spoke about simplifying compliance and how this method can drive transparency and value across business divisions. Dimitrief also shed light on how GE assesses its employees to gain an understanding of critical employee perceptions, such as comfort level in reporting. In his own words, "No assumption can be taken for granted."

During the two-day event, speakers took a deep dive into the world of corporate governance by discussing the board's perspective, director compensation, and plans for developing the board of the future.

Speakers also lit up the room by focusing on topics we grapple with each and every day. Focus was consistently placed on strategy. Specifically, how to: enhance shareholder value, embrace diversity, create an open door environment, assess and develop strong organizational culture, manage third party risk, combat corruption, and prevent data breaches. In a modern world complicated by ever-evolving regulations, the GES was a welcome opportunity to take on these challenges and collaborate as a community. For those who are passionate about compliance and ethics, the content was relevant, and quite often inspirational.

Speaking of relevant content, the news headlines are continuously littered with tales of bribery and corruption. The question is not, "if" but "when." Erica Salmon Byrne proved to be a significant contributor as she tackled this very topic. She discussed the recently released 2016 Anti-Bribery and Corruption Benchmarking Report, the result of a joint effort between Kroll and Ethisphere. The report shed a number of key insights, including the fact that 40 percent of all compliance officers surveyed believe their company's bribery and corruption risks will increase in 2016. Moreover, survey respondents are seeing more and more engagement from the board and CEOs as bribery and corruption issues have reached the boardroom agenda. For more information visit the Stats & Data Department on page 24 of this issue.

The closing keynote featured Patrick Quinlan, CEO, Convercent and other top CEOs including Stanley M. Bergman, Chairman of the Board and CEO, Henry Schein, Inc; V. Ann Hailey, Independent Director and Chair of Audit Committee, Realogy; and Richard Davis, Chairman, President & CEO, U.S. Bancorp. During this session, the speakers all agreed that one thing is certain: ethics is the differentiator, the innovator and "the mover and shaker for the next decade".

The 9th annual Global Ethics Summit will take place March 15-16, 2017 at the Grand Hyatt, New York. Watch for details on next year's speakers and agenda at globalethicssummit2017.com in the months ahead.

Participants are welcome to take advantage of early bird discounts for pre-registering now at globalethicssummit2016.com/pre-register-for-2017.

LEGALLY SPEAKING

TOPICS COVERED
// *Governance & Strategy*

MANAGING PRIORITIES

The Key Aspects of Organizational Health

Written by Nancy Laben

How healthy is your organization? What's the interplay between the brain leading the body and the body *reacting* to the deluge of confusing, tempting and ever-increasing stimuli?

A healthy organization has a superior, fully functioning "nervous system"— that is, the corporate governance structure— that prioritizes three things: transparency, diversity and Ethics & Compliance. It starts at the top. The Board of Directors and senior leadership team must clearly set the tone by defining the organization's core values, which nourish and guide their people, who in turn define the organization's culture through the thousands of decisions they make and actions they take each day. Healthy organizations provide confidence to all stakeholders: employees, clients, suppliers, communities, competitors and regulators. The goal is to hear, "Our people walk their talk."

To achieve this state of balance, everyone needs to know what is expected of them. Leaders need to know how their individual behavior and messages impact not only each other (that is, between the Board and the leadership team), but also the entire organization. Employees also need to understand that every decision they make and action they take affects the organization. That clarity ensures that the company is fulfilling its mission in a way that meets the needs of its clients and does so in line with its core values.

Such is the power of transparency. However, without diversity of thought, transparency is a window into mediocrity. Recent research from Kellogg School of Management and Scientific American shows that teams make better decisions when members contribute judgment, perspective and intuition fed from wide-ranging experiences. Simply put, diverse executive teams achieve materially superior financial results. In the UK, US and India, Grant Thornton has concluded that the profit foregone—or opportunity cost—by companies with male-only boards is $655 billion. In other words, collective GDP in those economies would grow three percent if the Boards of companies on the S&P 500 and FTSE 350 were more diverse.

My own firm, Booz Allen Hamilton, is on the journey towards optimal diversity in our organization's "brain." But one thing's for sure: our strategic perspective is far from tunnel-vision. We cast our net beyond traditional talent pools for leadership and have been rewarded with top executives of wide cultural backgrounds and life experiences. Our Board has one Asian American, two African Americans, one Hispanic and three women. Our CEO is Hispanic and our CFO (as of July 1) is African American. Women serve as our Chief Legal Officer, Chief Personnel Officer and head two of our three business groups. In other words, two-thirds of our leadership team is diverse.

Diversity of thought enriches our decision making because problems are approached from multiple directions, assumptions and taxonomies. For example, I don't play a strict lawyer role at the leadership table—"defending" the company, and ensuring the conversation is privileged. Instead, I contribute my judgment based on an engrained professional background and wide-ranging practice. Others do the same. Many of our senior leadership have military experience. They inject a uniquely powerful and disciplined mindset into our corporate problem solving and risk management. This point is crucial. A truly well-functioning leadership team solves the organization's most critical issues by approaching them not just as an analytical science, but as a multi-dimensional collaborative art.

And We Quote

"Most of us spend too much time on what is urgent and not enough time on what is important."

– Stephen Covey

Successful companies understand that their Ethics & Compliance programs have evolved from their organization's skeletal system—the bones holding everything together—to the organization's nervous system: the brain that instructs behavior, absorbs feedback from the body and then responds in a continuously improving, virtuous cycle that actually gets healthier over time.

However, while transparency and diversity are the first two organizational priorities, they succeed only when ethics and compliance is part of an organization's Enterprise Risk Management (ERM). A solid ERM process not only considers financial, strategic and operational risk, but also ethics, compliance and reputational risk. Given recent scandals, business ethics issues may be even more important than issues of financial planning and business strategy. The top three enforcement actions for violations of the Foreign Corrupt Practices Act total $3.27 billion: Bonny Island ($1.7B in 2012), Siemens ($800M in 2008) and Alstom ($772M in 2014). Clearly, the consequences of ethics failures can be more severe than failing Sarbanes-Oxley.

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The execution of a successful Ethics & Compliance program begins with the Board of Directors who must oversee the Ethics & Compliance function. They must be thinking about ethics all the time and asking regularly these four questions, as noted in a report by the Conference Board Global Council on Business Conduct:

1. Are we as leaders identifying and prioritizing the company's ethics and compliance risks?
2. Are the company's standards, policies and procedures linked to the prioritized ethics and compliance risks?
3. Are we as leaders receiving the information we need to provide appropriate oversight of the Ethics & Compliance program?
4. How do we use performance management processes and tools to ensure that all employees are held accountable for creating an ethical, values-based culture?

The answers to these questions should circulate throughout the organization in a continuously improving system, refining and emphasizing the organization's culture and values.

So, how healthy is your organization? Is the brain leading the body through these turbulent times of ever-increasing risks and temptations? Do your people know the right thing to do because you have the right leaders making the right decisions and modeling the right behavior?

Personally, I never stop thinking about this.

Author Biography

***Nancy Laben** is Executive Vice President and Chief Legal Officer and Secretary for Booz Allen Hamilton, where she leads the firm's Law Department spanning numerous functions, including corporate governance, government contract law, employment law, securities law and investigations.*

TOPICS COVERED
// *Governance & Diversity*

LEADING BY EXAMPLE

An Interview with Gloria Santona of McDonald's

Interview by Emily Rochefort

Ethisphere recently had the chance to catch up with Gloria Santona, Executive Vice President, General Counsel and Secretary at McDonald's Corporation. In the following interview, she highlights the importance of diversity and inclusion and how it all relates to corporate governance and transparency. In the ever changing world of corporate governance, Santona provides thoughtful insight into corporate governance, which comes, in part, from her roles on the Boards of Directors for other businesses and organizations. She is a member of the Board of Directors of Aon, the Constitutional Rights Foundation of Chicago, and The Chicago Network and a trustee of Rush University Medical Center.

Tell us a bit about your career and what are some developments you've seen over the years on the corporate governance front?

GS I started at McDonald's out of law school and started out as a Corporate and Transactional lawyer. I became the company's Corporate Secretary in 1996 and have served as General Counsel since 2001.

During that period and over the years, clearly there have been changes with how the boards engage with shareholders. If you look at the industry as the whole, about 20 years ago, when I was a Corporate Secretary, I've noticed that no one paid attention to governance. But that's no longer the case. McDonald's was one of the first companies and early adopters of solid corporate governance practices and we have always found transparency is helpful in promoting a culture of integrity. Governance has evolved so much over the years that all companies have to disclose their principles. Again, there is a great opportunity that exists to engage with shareholders and it has made my job interesting.

Over the years, technology and social media has become a major part of corporate governance. How does the legal team at McDonald's utilize this channel?

GS Technology and social media are a good way for us to share news and hear from our customers and we use this avenue to externally share information. Our customers all use social media and so listening and responding to them is a way to share more about our global brand across 120 countries. Social media, for us, remains an important platform.

In my view, technology has certainly influenced corporate governance over the years and it has created more transparency. In the boardroom, you get to know what your shareholders think about you and receive feedback as a result of technology.

What are some opportunities that exist with being a female General Counsel and can you share some advice for those looking to embark on this career path?

GS The great thing about being a female General Counsel is you get to role model and demonstrate that you could be effective in the job and the challenges are the same for both males and females. I don't

The great thing about being a female General Counsel is you get to role model and demonstrate that you could be effective in the job and the challenges are the same for both males and females. I don't see any particular challenges other than the opportunities to excel in your role.

see any particular challenges other than the opportunities to excel in your role.

For those looking to take this career path you need to have an open mind that gets you there; you can't believe that there is one direct path, which leads you to the General Counsel role. You have to be agile and willing to move around and this gives you more opportunity to spend time with business leaders.

When it comes to the legal profession, how do you promote women and diversity initiatives and what are some best practices you've implemented?

GS I regularly speak on this issue and I was one of the first members of the Chicago Network, an organization that connects female leaders and promotes women executives and I have the opportunity there to contribute and advance the dialogue in this space as well.

When it comes to diversity and inclusion, McDonald's is a good place to be. In our legal department we get the ability to directly spend on minorities and women at firms. We also survey our major law firms to make sure that they are thinking about diversity and inclusion.

The diversity and inclusion committee in McDonald's legal department was formed after I became General Counsel. It has been a two-way street and I am lucky to have a diverse legal department. It was a good marriage of our intent and desires to have a department comprised of diverse and unique individuals and you want to maintain it. Law firms and corporations are grappling with this issue and corporations have made pretty significant strides in recent years and we are committed to this initiative.

When I started at McDonald's there were 13 lawyers. Back in 1996, I was the fourth woman and second Hispanic. This shows that diversity and inclusion has always been part of the McDonald's culture. I was lucky to come into an organization that had the idea of diversity. Back then, our General Counsel created an environment that was comfortable and there were many opportunities for lawyers to excel in their roles.

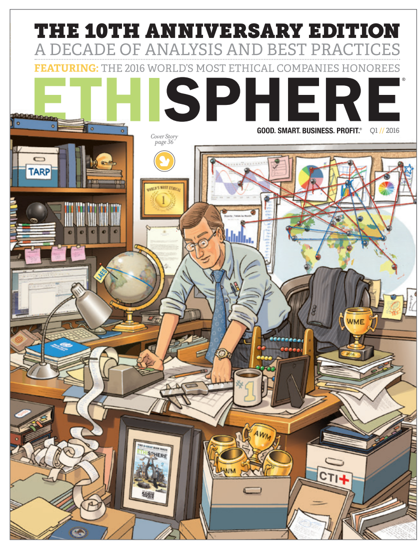
Expert Biography

Gloria Santona is the Executive Vice President, General Counsel and Secretary at McDonald's Corporation. Tasked with anticipating conflicts and protecting the McDonald's brand across the globe, Santona oversees the company's global legal, compliance and regulatory teams. She also works closely with McDonald's independent Board of Directors as their liaison to senior management.

Widely respected in the legal profession, Santona was named an Outstanding General Counsel by the National Law Journal in 2014. Among other awards, she has been recognized as one of America's Top General Counsels by Corporate Board Member magazine. Under Santona's leadership, McDonald's legal department has been recognized for its commitment to women and diversity.

Be sure to follow @ethsiphere on Twitter for updates regarding #legallyspeaking

Did you know the Q1 2016 issue of Ethisphere Magazine was our 10th anniversary and we celebrated 10 years of helping organizations reach new heights.



WHAT ELSE HAVE YOU MISSED?

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TOPICS COVERED
// *Program Advice & Strategy*

A BRIDGE TO DIVERSITY

How Board Succession Planning Will Improve Diversity

Written by Timothy Olson

Board diversity is of increasing importance for many boards today. However, the effort seems to end in the board room.

White males continue to hold approximately three out of every four public company board seats. In 2015, women directors at Fortune 1000 companies held less than 20 percent of the board positions, and ethnic minority directors of S&P 500 companies held approximately 13 percent. At smaller companies, those percentages are lower. Despite active promotion from national campaigns, like 2020 Women on Boards, the percentage of women and ethnic minorities on boards of directors is gaining little traction.

While typically focusing on gender and ethnicity, the term diversity also encompasses many other characteristics, such as age, geography, skills, and experience. For a board, the overarching goal with respect to diversity should be to assemble directors that deliver a diversity of thought.

One strategy to increase diversity is to plan for it. Boards can readily identify areas of improvement for diversity by implementing an effective board succession plan. Using a process that thoughtfully considers the board's desired skills and diversity facets will define what diversity means to your company, identify areas of need and forecast the timing of those needs. With that knowledge, you will build a bridge to increased diversity for your board.

What does diversity mean to you?

The first question your board needs to answer as part of its succession planning process is: What does diversity mean to your company? The answer will identify the types of diversity needed to help your board carry out its duties.

Without question, seeking gender and ethnic diversity for your board is of primary importance to develop the diversity of thought, but do not overlook the richness of perspectives from directors who offer insights from other industries, who are in different stages of their careers or who live in different parts of the country or world. Your organization will derive a tremendous value for your stakeholders from board members who draw on varying perspectives to direct management.

At NorthWestern Energy, a regional gas and electric utility, our board relies on many facets of its diversity to direct our business – female and minority directors,

Photo Credit: Susan Malee, NorthWestern Energy

utility executives, utility regulators, executives from other industries, directors from both around the country and who live in our service territory. The diversity of these qualities are important to our board, and at any given time a particular quality may gain prominence depending on the issue under consideration.

How diverse is your current board?

Once your board has defined diversity and determined the facets of diversity that are important, it should compare those facets to the characteristics of its current members. You may find it helpful to incorporate an annual skills matrix analysis into this discussion to help identify and target specific gaps in your board's composition.

Many diversity characteristics likely already are or would be reflected in your board's skills matrix. In addition to a simple breadth of skills assessment to determine a board member's qualifications, this is an ideal opportunity to appraise the depth of skills. For each director, measure not only whether a skill is possessed (the breadth of skills) but also the depth of each skill possessed (*e.g.*, rating from 1-10; or proficient / highly skilled / master).

Board discussion of the skills matrix analysis will identify the gaps that exist on your board's current roster and enhance the development of its board succession planning process. Perhaps more importantly, it leads to a discussion of the timing of future needs.

What are the needs of your future board – and when?

To help build a bridge to increased diversity, your skills assessment also needs to be forward looking and evaluate which skills and diversity facets will be important for your company in the future. How will your industry look in five years or 10 years? Is it changing slowly or rapidly? How will your strategic plan change your diversity needs over time? Will your current board composition address those changing needs or do you need to plan for membership rotation?

When you are able to answer these questions, you will have laid the foundation for addressing your board's future diversity and skill gaps. Equally important is an understanding of the timing of when current directors may be resigning.

Check director age limits. Review term limits. Attempt to gauge longevity through discussions with directors. Use this information to develop a timeline of potential departures. It's worth noting that public companies should be cautious with longevity discussions and provide a reminder of disclosure obligations at the outset of each discussion. Your obligation to publicly disclose a director resignation arises at the time the director provides definitive notice (written or verbal), even if the date of resignation is many weeks or months away.

Understanding the timing allows you to paint a more accurate picture of what future diversity facets and skills your board will have and need, what facets and skills will be lost and when gaps will exist. This picture of the future will guide your director succession planning process.

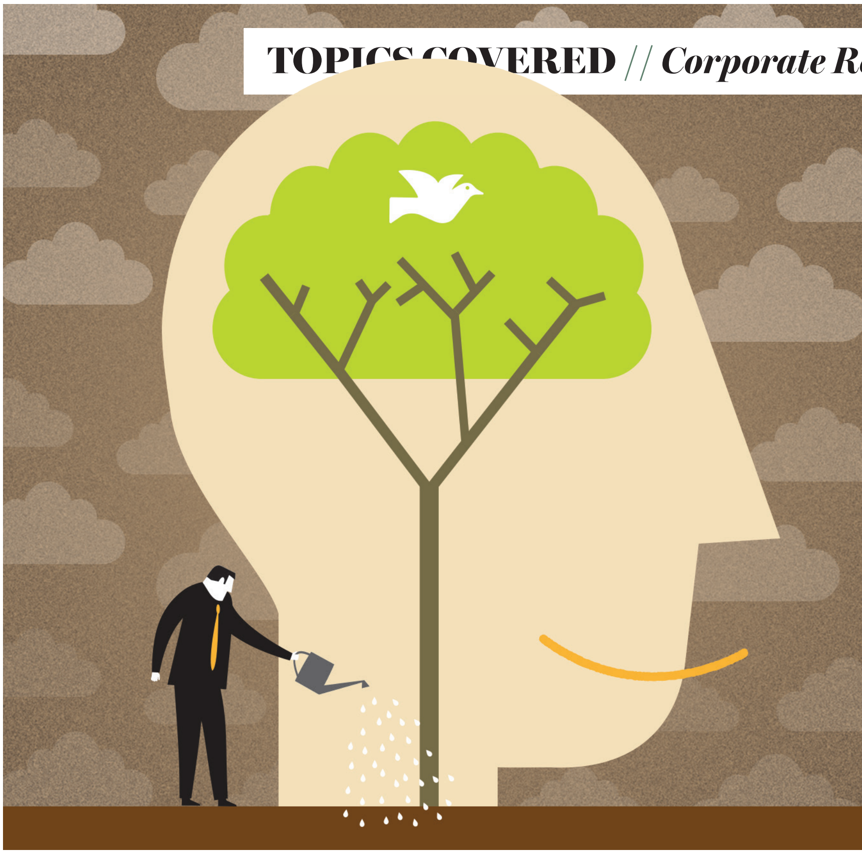
Bridging the gaps

Now that you have identified what diversity means to your board and its potential diversity gaps, your board succession plan will be able to outline your board's specific needs. It will be able to forecast when gaps will arise. Moreover, your plan will be able to serve as an enhanced roadmap for recruiting new board members with the specific diversity characteristics and skills to bridge your gaps. Armed with this knowledge, your board will be in a position to stop discussing and start implementing a succession planning process to bridge the gap and increase diversity.

Author Biography

__Timothy Olson__ is Senior Corporate Counsel and Corporate Secretary for NorthWestern Energy and a former Skadden Chicago attorney. He oversees NorthWestern's corporate governance and board of directors meetings. Tim also leads NorthWestern's proxy statement which, in June 2015, received the NYSE Governance Services award for Exemplary CD&A, and in November, 2014 Corporate Secretary's award for Best Proxy Statement (Small to Mid-Cap). He holds an AB from the University of Chicago and a JD from DePaul University.

TOPICS COVERED // *Corporate Responsibility & Strategy*



NURTURING SUSTAINABILITY

Where Lawyers Fit in on the Triple Bottom Line

Written by John Page

In-house lawyers are always looking for ways to go beyond legal-as-usual, whether it's by learning more about the business, counseling the board of directors or becoming involved in strategic planning. To that end, more and more corporations are putting corporate social responsibility (CSR) initiatives at the top of their agendas, as a way to further engage with communities and/or lower their carbon footprint. With increasing business actions to address social issues, it is time for the legal community, and specifically, the chief legal officers (CLOs) who lead corporate law departments, to pay attention and get involved.

A recent report by Boston College's Center for Corporate Citizenship, The State of Corporate Citizenship 2014, reveals that a majority of executives for corporations headquartered in the United States, Canada, and Western Europe confirm that CSR initiatives help them achieve strategic business goals, from returning value to shareholders to contributing to overall success. These perspectives go beyond the western business community. A global survey by MSL Group revealed that a vast majority of millennials in China (92 percent), those born between 1984 and 1996, demand business involvement in addressing social issues.

Legal departments are not ancillary bystanders in CSR efforts. They ensure compliance, infuse ethics into the decision-making process, weigh legal risks and protect the company's reputation. For example, when a company partners with a foundation/charity or decides to start its own, there are numerous considerations, including brand management, administration of corporate funds, and taxation that must be taken into account, especially as businesses expand across the globe.

Regardless of whether a company's CSR program involves partnering with a foundation or working with its own, the most successful projects generally involve engaging employees. Golden State Foods has a foundation, established in 2002 and dedicated to assisting schools and charities across the United States, and associates are actively involved. Between 2011 and 2014, the foundation donated over 176,000 backpacks to schools. As many as 80 percent of our employees who participate continue to further its mission to improve the lives of children and families.

As our Chairman and CEO, Mark Wetterau says, "corporate social responsibility must be a part of a company's culture and visible strategy. At GSF, that starts with every associate within our organization. We expect it of our executives, managers, associates, and suppliers. We encourage and support our lawyers, HR, finance team and other groups beyond operations to lead and be involved in our CSR efforts."

Similarly, specifically within the in-house counsel community, LinkedIn initiated the LinkedIn "Legal Eagles" Pro Bono Program in which employees lend their skills to under-resourced members of the community in need of legal assistance.

The company also hosts company-wide "InDays," where employees participate in organized community service and created a global charitable operation, LinkedIn for Good.

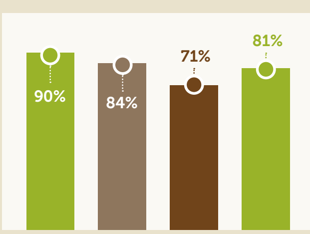
Although many large law departments have entrenched pro bono programs, smaller departments may have trouble determining how to balance providing legal assistance with their many business demands. "Law department too small" (67 percent) and "legal staff stretched too thin" (57 percent) were the top reasons selected by CLOs who do not encourage their staff to participate in pro bono work, according to the Association of Corporate Counsel CLO 2016 Survey. Across companies of all sizes, 33 percent of the more than 1,150 CLOs who answered said that they actively encourage their staff to participate in pro bono work, while 67 percent do not. Looking at a regional breakdown, 41 percent of CLOs in Latin America said they encourage their staff to participate in pro bono work, compared to 34 percent in the United States and Asia Pacific, 27 percent in Europe and 26 percent in Canada.

Even in instances when legal departments cannot participate in extensive pro bono programs, the guidance they provide for company-wide CSR plans or ethical business practices is invaluable to the success of those programs.

> *Commitment to a workplace culture that values the lives of employees while enriching local communities is one way to retain top talent.*

Facts & Figures

The 2015 Cone Communications Global CSR Study



*The 2015 Cone Communications Global CSR Study of more than 10,000 consumers in nine countries found that **90%** of the consumers would switch to brands that supported responsible causes, and **84%** bought responsible products when available. **71%** of respondents indicated they would pay more for socially responsible goods and services, and **81%** said they'd limit wasteful spending if it would have a positive impact on environmental and social issues.*

CLOs have another reason to value corporate CSR efforts – law department retention.

As evidenced in a recent ACC survey, the Global Work-Life Balance Report, organizations that do not prioritize work-life integration struggle with retaining employees, particularly those from underrepresented groups. Commitment to a workplace culture that values the lives of employees while enriching local communities is one way to retain top talent.

On the business development side, Starbucks is well known for its C.A.F.E. Practices guidelines designed to ensure the company sources sustainably grown and processed coffee by evaluating the economic, social, and environmental aspects of coffee production. Focusing on higher principles beyond the bottom line has suited the company, which is consistently on "best places to work for lists" and was recently named by Fortune as the fifth most admired company in the world.

Small Ripples in Your Neighborhood

Robust CSR programs move beyond the workplace environment and offer transformative services to neighboring communities. Connecting activities to a larger strategic vision is key. Most legal departments have a broad, long-term goal of increasing diversity. This goal can start with making the smallest ripple — increasing avenues of access to professional careers for students in underserved communities by mentoring or donating school supplies. Other companies are equipping the next generation with the tools needed to reach their highest potential.

In its manufacturing plants, Asia Cement is using advanced technology to generate electricity without the use of fossil fuels. Through a program called 25 Renewable Energy School Project, the company plans to build 25 renewable energy schools around its cement plants in Thailand by the end of 2016. Participating schools will serve as learning centers on renewable energy and Asia Cement has prepared handbooks on various scientific topics for distribution as study materials.

Corporate Karma Around the Globe

Reaching beyond local communities can be a challenge, but since the majority of companies operate in the global arena, so too should their CSR efforts. When it comes to social and environmental impact, aligning CSR strategy with the corporation's risk assessment and management procedures is a way to not only ensure compliance, but to go beyond the requirements of the law by protecting the environment and bettering the lives of people.

Regularly assessing and reporting on company policies, including the fair treatment of all workers in the supply chain is vital. By bringing quality systems and workplace accountability to business locally and abroad, companies are able to further infuse a values-driven perspective into their workplace culture, ensuring that contractors on the supply chain are treated with respect and held to the same standard as associates at their corporate offices.

Tackling systemic social and environmental issues cannot be the responsibility of government alone. Consumers and industry leaders have sounded the call — how we as legal professionals choose to answer will determine our legacy.

Author Biography

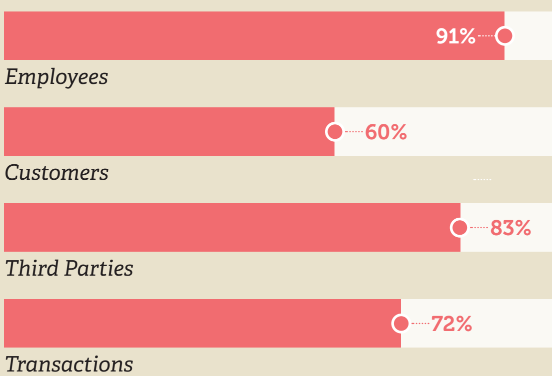
John Page currently serves as Senior Corporate Vice President, Chief Corporate Social Responsibility and Chief Legal Officer at Golden State Foods Corp., $7.5 Billion food processor and distributor headquartered in Irvine, California. He was the 2014-2015 Chairman of the Board of Directors for the Association of Corporate Counsel, a global bar association representing more than 40,000 in-house counsel in more than 85 countries. John serves today as Chairman of the Board of Trustees of Tuskegee University.

STATISTICS & DATA

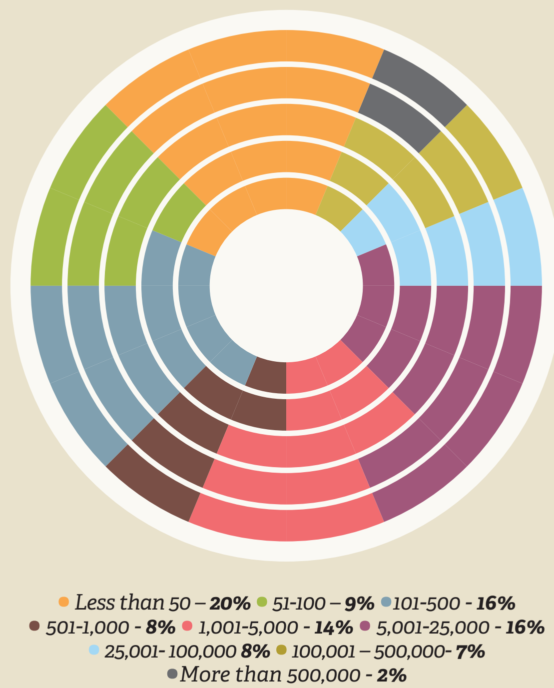
FIGHTING CORRUPTION

Each issue of *Ethisphere Magazine* features data and insights from our research and databases. In this issue, we highlight data from the recently released Kroll-Ethisphere *2016 Anti-Bribery and Corruption Benchmarking Report*.

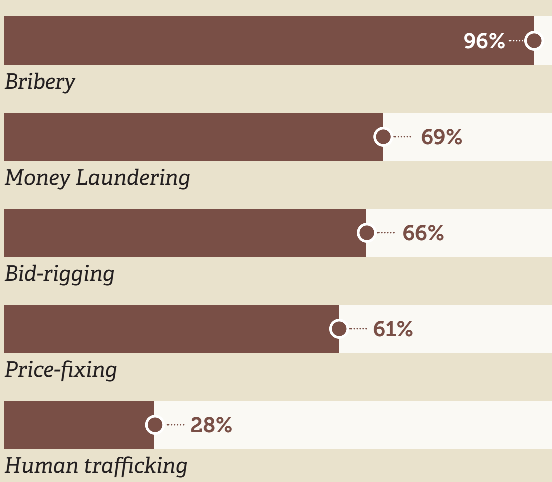
For which of the following areas of business operations do you have anti-corruption programs in place?



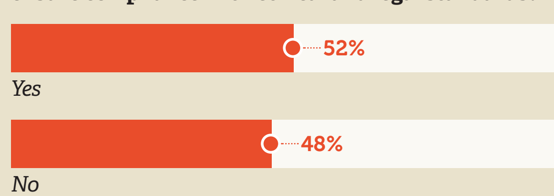
How many third parties do you do business with in a given year?



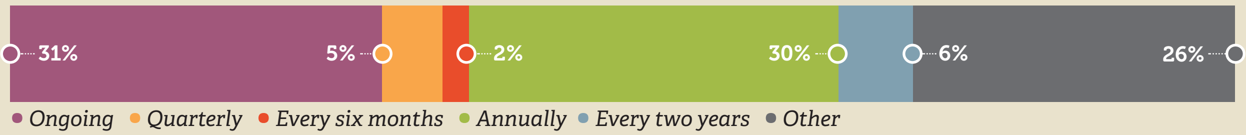
What are the top five types of misconduct your company labels 'corruption,' that the Chief Compliance Officer is responsible for policing?



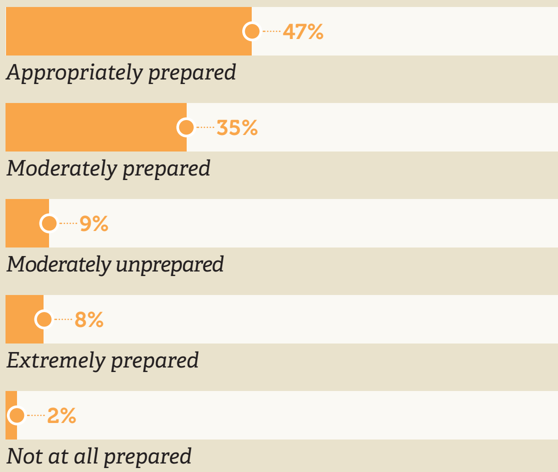
Does your company conduct audits of third parties to ensure compliance with ethical and legal standards?



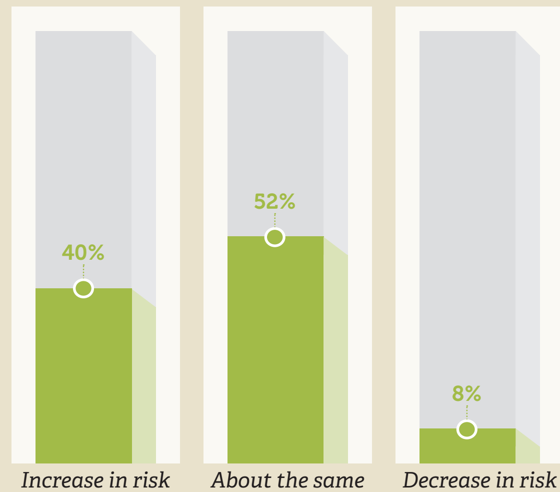
How often do you conduct the audits or monitoring?



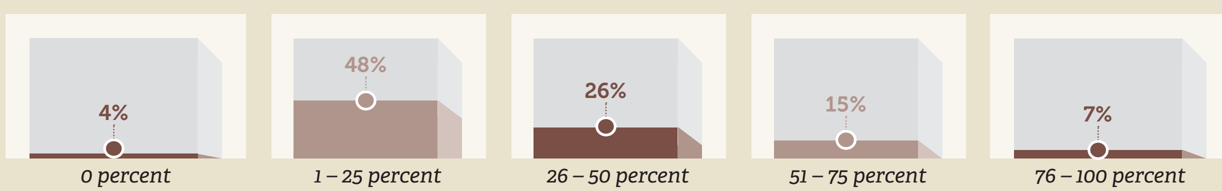
How well prepared do you believe your business is to comply with the global anti-bribery risks that exist? (self-assessed)



How do you believe your organization's anti-bribery and corruptions risks will change in 2016?



How much of your compliance program is dedicated specifically to anti-bribery programs and issues?



What are the top five types of information you collect as part of your anti-bribery and corruption risk assessment process when determining the risk profile for third parties? (in ranked order)

1. *General reputation and integrity*
2. *Ownership information*
3. *Political exposure / state ownership or control*
4. *Regulatory compliance and litigation record*
5. *Employee training program*

What are the top five most prevalent activities your organization utilizes as part of it's periodic auditing or monitoring process in an effort to combat the corruption risk associated with third parties? (in ranked order)

1. *Review of policies and procedures*
2. *Screening of compliance watchlists and news*
3. *Refresh of due diligence reports*
4. *Review of books and records and financial payments*
5. *Annual compliance training for the third party*

The data was collected from 267 respondents participating in the 2016 Kroll / Ethisphere Anti-Bribery and Corruption Benchmarking survey. Interested in benchmarking your company against Ethisphere's data sets? Contact Sarah Neumann at ***sarah.neumann@ethisphere.com***

TOPICS COVERED
// *Program Advice & Strategy*

RAISING THE BAR

In Conversation with Jackie Rice

Interview by Les Prendergast

With over 18 years of experience, Jackie Rice is part of the team that has led Target to become an eight-time World's Most Ethical Company® Honoree. In this interview, Jackie Rice shares insights regarding Target's strategy, corporate culture, compliance and ethics oversight, and the organization's unwavering commitment to delivering against the brand promise.

Describe a typical day in the life of Jackie Rice.

JR Coffee, CNBC and well, that is about it in terms of what's the same every day, and I like it that way. It is one of the things I love most about my job – each day is different, with unique issues and conversations. There is no shortage of interesting, novel issues that we address.

What projects are you and your department working on these days?

JR Our themes this year are integration and simplification. Last year we focused on continuing to evolve our programs. In 2016, we are optimizing and simplifying to make it easier for the business, while still meeting our obligations. Part of that simplification is understanding how best to integrate our requirements into existing business process, rather than as a standalone. It is crucial for any compliance professional to have a deep understanding of the business he/she supports so that creative and practical solutions can be introduced. This in turn creates credibility and trust with the business.

What are the special challenges of an Executive Vice President and Chief Risk and Compliance Officer for a large organization like Target?

JR They're probably not dissimilar to what my peers experience and also what makes us love our jobs! Everything we do at Target is focused on our guest and ensuring that we continue to deliver against our "Expect More. Pay Less." brand promise. Our brand is so important to our business, which is complex – with over twenty compliance domains, across 14+ countries. It is imperative to stay on top of what is happening internally, but also to remain vigilant about emerging issues and risks across a broad spectrum of topics.

The organization has really embraced what we are doing and I genuinely feel like the business is fully engaged in our processes. They trust us as the subject-matter experts, but are active participants and help ensure our program works for our guests and team members alike.

Also, regardless of industry, businesses are continually reinventing themselves through innovation, new business models and markets, and new products and services. The compliance and risk functions need to adapt to these changes and scrutinize how support should change given the new landscape.

Finally, my team is critical to me – I am constantly thinking about how to keep them motivated, energized and part of the overall organizational priority.

This role also has some unique benefits, too. It puts Risk & Compliance at the leadership team table – as a <u>combined</u> function – with direct reporting to the CEO, and has a special Board committee focused on helping Target think strategically about Risk & Compliance. That amount of leadership priority put on the function means we're not asking to be heard, but asked for our point of view... and that makes all the difference in how we work and what we can accomplish.

Do you feel there are certain qualities or values that make Target's program and corporate culture unique?

JR Our intense focus on the guest and how best to meet their expectations is no doubt a differentiator. The guest is at the core of every discussion and decision we make, whether you work in our stores, our headquarters or one of our field locations. It helps us stay focused on what matters most and drives us to be innovative and creative in our approach to ensure we exceed their expectations.

How do you stay current with legislation and topics such as privacy that are constantly evolving?

JR Part of our team spends a significant amount of time scanning and investigating external trends and ensuring the appropriate internal stakeholders are considering them. We of course look at what is happening across the retail industry, but it is important we track emerging issues more broadly and consider the impact to Target. Additionally, we leverage our industry groups to stay on top of emerging issues and developments.

With respect to third parties, can you offer any suggestions for organizations that are looking to enhance their risk management process?

JR Be sure you know what third parties you have...easier said than done for large organizations. Then, partner with the business, determine who should own the relationship and understand why it is important to manage the risk presented by the third party. Also, talk to the third party so they understand why this is important and what the expectations are – this isn't a one-time discussion, rather it should happen on a regular basis.

How may you have partnered with other job functions as part of your overall effort to mitigate risk and promote compliance?

JR You can have the best risk or compliance program, but if your stakeholders and partners don't support it and feel a sense of ownership, it will never be effective. In the compliance world, every function from Internal Audit to Human Resources to Information Security is a key partner and must be part of the program. Same concept for the business – if they don't understand why things are done, they won't feel as empowered to make sure things are done appropriately.

You have an extensive legal and compliance background. What initially inspired you to take on this work?

JR I wish I could say I had some incredible intuition but the reality is I was working with a business unit that was focused on e-commerce and suddenly found myself becoming an expert in risk and compliance...and I'm hooked!

It is crucial for any compliance professional to have a deep understanding of the business he/she supports so that creative and practical solutions can be introduced. This in turn creates credibility and trust with the business.

Facts & Figures

*According to Thomson Reuters' 2015 Cost of Compliance Survey, a combined **38%** of the financial services firms that responded, indicated their compliance team invests at least one whole day every week to tracking and analyzing regulatory developments.*

Can you share a success story or significant accomplishment at Target that you are proud of?

JR I am incredibly proud of two things – first, how the Risk & Compliance team has really stayed focused and energized through a series of changes and iterations around how we work together. They are an incredible group and I am lucky to work with them.

Second, the organization has really embraced what we are doing and I genuinely feel like the business is fully engaged in our processes. They trust us as the subject-matter experts, but are active participants and help ensure our program works for our guests and team members alike.

If you weren't working in ethics and compliance at Target, what would your dream career be?

JR Well, growing up I really wanted to be a Rockette, but I'm afraid that ship has sailed!! I also really love my job, so it's tough to think about not being in my role. But I would say teaching at the college level would be great fun and something I always thought I would do. I love the feel and energy of a college environment; I love working with people and I love to teach and learn from others.

What's the worst job you've ever had?

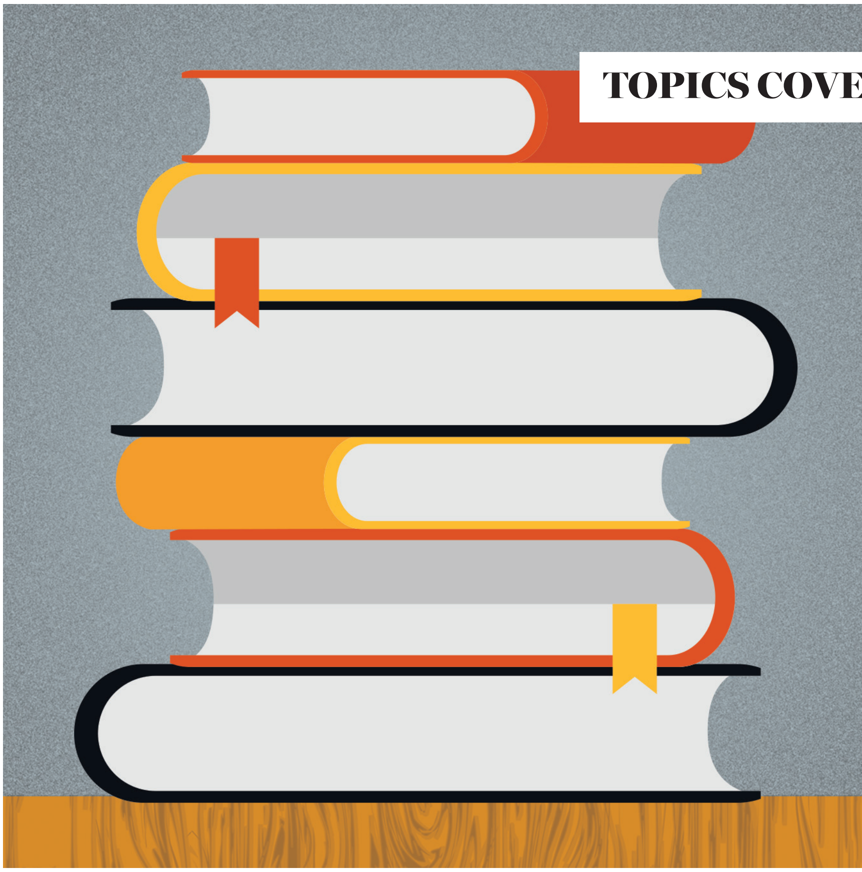
I haven't had a bad job... I mean that! I certainly had some doozy experiences at some of my jobs but they were all worthwhile. I know that is not a fun answer but it is the truth.

What do you do outside of the workplace for enjoyment?

JR Spending time with my husband and my family is what makes me happiest. I also love to travel to tropical locations, sit near the water and read. Oh, and I adore to shop...at Target of course, and a few other places!

Expert Biography

__Jackie Rice__ is Executive Vice President and Chief Risk and Compliance Officer for Target, and a member of its executive leadership team. She is responsible for the centralized oversight of enterprise risk management, compliance, vendor management and corporate security. She leads a team focused on evolving and enhancing enterprise risk and compliance standards to protect Target and its stakeholders, including guests, team members and vendors. Jackie also possesses more than 18 years of legal and compliance experience.



TOPICS COVERED // *Corruption & Strategy*

A NEW STANDARD

A preview of ISO 37001 - Anti-Bribery Management Systems

Written by Leslie A. Benton and Worth D. MacMurray

A noteworthy new business tool designed to fight bribery is nearing completion: the ISO 37001 - Anti-bribery management systems standard. Designed by businesses and other stakeholders from around the globe, this standard, when it is formally adopted by the International Organization for Standardization (ISO), has the potential to reduce corporate risk and costs related to bribery by providing a manageable business framework for preventing, detecting and addressing bribery.

ISO 37001 is being developed as a "requirements standard." As such, companies will be able to obtain certification from accredited third parties that their anti-bribery management systems meet the standard's criteria. As happened with the ISO 9001 – Quality management systems standard, many businesses will likely place a high value on ISO 37001 certification, and may look for their value chain participants to do the same.

The standard builds on guidance from various organizations, such as the International Chamber of Commerce, the Organization for Economic Cooperation and Development, Transparency International and various governments representing a global consensus on anti-bribery leading practices. It is intended to apply to organizations of all sizes, wherever they may do business.

Significantly, ISO 37001 is written in plain English, not "legalese," largely by business people for use by business people. With its operational emphasis and risk-based approach, it fills an existing void by specifying a series of required anti-bribery measures and controls—reasonable and proportionate to the organization and its risks—and also provides practical guidance on how to design and implement the system. Notably, it contains a level of detail not covered in existing guidance.

What it is not

It is important to understand that ISO 37001 is not an anti-bribery "silver bullet" or panacea. Adherence to ISO 37001 will not be a bar to liability, but it can provide some evidence that an organization has taken reasonable steps to prevent wrongdoing, and may be taken into consideration by prosecutors should a bribery-related event occur. Enforcement authorities regularly emphasize the importance of having an effective anti-bribery program. Several countries have recently passed laws requiring or incentivizing organizations to adopt effective anti-bribery compliance programs as well.

Similarly, certification under ISO 37001 is not a guarantee that bribery has never occurred or will never occur. Humans are creative and even the strongest standards can be circumvented at times, or "gamed." But where competent, credible independent third parties review a company's design and implementation of its ISO 37001-based anti-corruption management system, the chances of bribery should be reduced. A subcommittee of

Among the new and positive aspects of 37001 are its business-oriented 'management systems' approach, its transparency and its non-legalistic language.

the ISO 37001 committee is developing detailed auditor competence requirements applicable to those conducting the certification activity.

In addition, the standard should not be viewed as the "same old, same old," nor as a mere repetition of what exists elsewhere. Among the new and positive aspects of 37001 are its business-oriented "management systems" approach, its transparency and its non-legalistic language.

Business advantages

Business people are naturally more comfortable with business terms like "revenue," "costs" and "financial statement impact" than they are with the arguably less precise legal references to matters related to anti-bribery such as "regulatory priorities," "legal grey areas" or "potential successor liability." This is one of ISO 37001's great benefits: It provides companies with a framework that is in the context of key business drivers—revenue growth, cost reduction and corporate responsibility.

- **Revenue growth and cost savings:** Larger companies, for their own anti-bribery risk management reasons, are increasingly placing anti-bribery management obligations on their value chain participants. These obligations, which are costly to both the large organization and the value chain partner, take a variety of forms (e.g., certifications, verification audits, independent agent due diligence and/or the wholesale adoption of the requesting company's anti-corruption policy) and their scope often makes it difficult for other companies, particularly small and medium-sized businesses, to accept them and therefore be eligible to be a business partner.

  Because draft ISO 37001 is a business-oriented management system, it has the potential to be viewed and used as an anti-bribery "common language." Companies can then use the standard to engage business partners or to simplify or enhance their existing individual requirements, thus reducing their costs and making it easier for others also applying ISO 37001 to participate in that value chain. At the early stages, standard adoption by a company can also be a marketing differentiator, with certification demonstrating that the entity has gone the extra mile to affirmatively address anti-bribery risk.

- **Cost avoidance and risk reduction:** When a company has an enhanced ability to prevent and detect bribery, there is less risk that inappropriate behavior will occur, and an increased likelihood that if it takes place, it will be identified and managed at earlier stages than would otherwise be the case. In addition to the potential benefits related to revenue and profit, noted above, there are direct and indirect cost benefits. Directly, corporate funds and other assets are less likely to be applied to illegal bribery-related purposes. Indirectly, with less risk of governmental investigations related to bribery allegations, expensive outside service providers (e.g., lawyers, forensic accountants and e-discovery specialists) may not be needed to help determine what went wrong and negotiate a resolution. And identification and mitigation of issues at the early stages is typically less complex, time-consuming and costly than time-pressured and cost-is-no-obstacle late-stage responses.

- **Corporate social responsibility:** In addition to reducing risk and potential liability, anti-bribery programs are an integral component of a company's commitment to good corporate citizenship or "corporate social responsibility (CSR)." In today's global economy, companies are accountable to a wide range of stakeholders. Calls for increased disclosure of both financial and non-financial information, pressure from investor communities, increased customer scrutiny and the desire to create sustainable business models are all driving the CSR movement. By aligning with ISO 37001, a company can demonstrate to stakeholders that it embraces the standard's operational emphasis and a commitment to ethical practices.

The standard has wide application and applies to public entities and non-profits as well, as they face many of the same bribery risks as do businesses.

Draft ISO 37001's path forward

Experts from companies, governments and non-governmental organizations, drawn from 34 participating countries, 18 observer countries and seven liaison organizations, comprise the committee drafting the standard. Publication of the standard is expected in September 2016.

In conclusion

Many companies have already invested significant time and resources into developing internal systems and processes for preventing bribery. The new ISO standard is designed to support and broaden those efforts, while providing transparency and clarity on the measures and controls that companies should be putting in place and how to implement them most effectively and efficiently.

ISO 37001 has the potential to be a powerful new tool for all organizations to combat bribery risk in their own operations and throughout their global value chains. To learn more, we encourage you to read about the standard on the ISO website:

www.iso.org/iso/catalogue_detail.htm?csnumber=65034.

Author Biographies

Leslie A. Benton *is the Vice President of Advocacy and Stakeholder Engagement of the Center for Responsible Enterprise And Trade (CREATe.org), a non-governmental organization dedicated to helping companies prevent corruption and protect intellectual property. Ms. Benton previously led the anti-corruption and compliance communications practice at Levick Strategic Communications and was the Senior Policy Director for the US chapter of Transparency International.*

Worth D. MacMurray *is the Senior Vice President - General Counsel & Chief Compliance Officer of GAN Integrity Inc. in McLean, Virginia. Previously, he consulted on anti-corruption and cyber-governance matters at PwC and served as general counsel and chief compliance officer of several technology sector public companies.*

TOPICS COVERED // *Corruption & Strategy*

ON ROCKY GROUND

The Emergence of Corruption as a Driver of Political Upheaval

Written By Michael Moran

For most of the past 39 years – the period since enactment of the US Foreign Corrupt Practices Act (FCPA) – multinationals with exposure to the US market have dreaded the thought that some failure of process or principle in their far-flung global operations would bring the US Justice Department's criminal division knocking at their door.

"It was not terribly long ago," the chief counsel of one of the world's largest agribusinesses told me recently, "that we looked at corruption as a regulatory risk – something anchored in our desire not to run afoul of the FCPA. It was basically a defensive posture, and we developed processes to manage it."

But the events of the past five years have demanded a more strategic approach, he said.

"We look at what's happening in China and Russia, in Brazil, in Malaysia, and even in our own (US) politics, and it's clear that corruption, or at least a public perception that the fix is in, is eating away at the status quo all over the world."

Redefining the risk

Corruption remains an enormous regulatory risk, of course – arguably looming larger today than ever before thanks to the passage of FCPA-like statutes in the UK, Brazil, the EU, and high-profile anti-corruption drives from Shanghai to Santiago. As Control Risks noted two years ago in our annual RiskMap forecast in 2013, as the global boom in commodity prices began to end, "rent seekers" around the world – those who live off of government largesse and graft – were set to redouble their efforts to compromise supply chains and extract bribes wherever possible. That forecast is now playing out in Brazil, Malaysia, South Africa, Russia and even in the developed world.

In the emerging markets (EM), however, that long commodity boom did wonders before petering out starting in 2013, creating jobs, new industries and trade relationships, and millions of middle-class consumers obtained opportunities in places where previously few existed. But it also raised expectations. The world's new urban middle class, newly influential and with high expectations, demand decent schools, accountable government and basic services. The recent EM downturn has dashed expectations, however, fueling outrage in particular at corruption and transforming anti-corruption sentiment into a decisive factor in elections, an existential threat to governments, a rallying point for populist movements and, as in China, a rationale for crackdowns that carry serious political as well as economic overtones.

And this phenomenon is not confined to the EM. In the advanced economies of the US and Europe, the fallout of the 2008 financial debacle and the Eurozone crisis that followed stoked a similar mass reflex – a sense among many, especially blue-collar industrial workers displaced by cheap overseas labor – that the game is rigged against the average person.

In the United States, this has manifested in sharp divisions in the two major political parties, each of which is riven in this presidential election year by insurgent factions, Bernie Sanders on the Democratic side, Donald Trump for the Republicans, who are challenging by outright renouncing decades of party dogma on issues as serious as national security, free trade, immigration and the proper role of government in the economy. Income inequality and anger at elites is common to both dissident movements. If you're having trouble spying political risk in this mix, you need to get a new pair of glasses.

In Europe, the revelation that many governments, with the Greeks' especially egregious, had cooked their books and were effectively insolvent shattered public faith in the institutions of the European Union. The result has been a wholesale change of EU governments since the crisis began, with only one governing coalition, German Chancellor Angela Merkel's CDU-SDP coalition, surviving its next appointment with voters following the onset of the crisis in 2010. Since then, populists movements, all of them bent on either leaving or sharply constraining the EU, have gained ground, remaking the continent's politics and forcing governments to bow in their direction. Just one example: Britain plans to hold a referendum on June 23, 2016 to decide whether to stay in the EU, and polls say a "yes" is anything but guaranteed.

Did You Know?

*There were 11 corporate FCPA resolutions by the SEC and DOJ in 2015, totaling approximately **$140 million** in penalties and disgorgement.*

Together, in economies all over the world, the forces of public disaffection set in motion by the near universal disgust over corruption and financial scandals are shattering the global political status quo – and with it, the assumptions upon which corporate strategy and risk management programs are based.

Together, in economies all over the world, the forces of public disaffection set in motion by the near universal disgust over corruption and financial scandals are shattering the global political status quo – and with it, the assumptions upon which corporate strategy and risk management programs are based. It's time to take a new look at political risk.

From regulatory snake to macro-political hydra

This will be deeply disconcerting for many corporate risk managers, chief counsels and strategy groups. Since the millennium, most companies have reinvented their internal compliance and risk assessment procedures many times over, reacting to the successive demands of such milestones as Sarbanes-Oxley (2002), Dodd-Frank (2009), the rush to find yield in the Emerging Markets (EM) when Lehman Brothers' collapse sparked the Great Recession, and a myriad of fickle privacy, labor, data management and currency laws in local jurisdictions.

But the emergence of corruption as a source of geopolitical risk can no longer be ignored. The list of governments that have fallen, been threatened by mass movements or voted out of office due at least in part to corruption backlash is long and growing longer.

Factoring political risk into compliance program and strategy calculations

The uncertainties or outright policy changes wrought by political upheavals produced major changes to the business environment. In a few instances, in Myanmar for example and Argentina, the changeover appears likely to lower business risk. But in the vast majority of cases, the political movements often seem to catch multinational corporations by surprise with the result that their global brand and local operations have become associated with the imperiled status quo.

Business leaders that study the political environment before entering a new market maximize their chance of success, whether their goal is expansion, transaction, or joint venture. The same analysis can help their compliance program succeed as well. For instance, our Economic and Political Risk Evaluator, a service Control Risks produces jointly with Oxford Economics, factors corruption and four other political indicators in with classic macroeconomic risk factors. When we compared EPRE ratings with those of the three global credit rating agencies in January 2016, EPRE identified significantly more risk in South Africa, Russia, Brazil and Turkey than Moody's, Fitch or S&P. Their performance since, both economically and politically, has borne us out.

Happily, many of our clients bought into this holistic approach early. Since 2001, we have found that companies who do intensive market entry analysis and who regularly assess the changing political environments they operate in are less likely to have their Licence to Operate (LTO) revoked or to sleepwalk into third-party or other corruption problems. Most importantly, we have found that the firms under the most scrutiny – those with US and UK exposure, for instance – are boldly seeking opportunities in regions that they formerly might have blacklisted because they have boots and sensors on the ground.

Author Biographies

Michael Moran is New York-based Managing Director for Global Risk Analysis at Control Risks, the international business risk consultancy.

Feature

THE ART OF GOVERNANCE*

Drawing Inspiration from Industry Leaders

Illustration by RJ Matson

Corporate governance is not just about avoiding perils, it's about setting the right tone for the entire organization. Thanks to the advance of technology and social media, boards are faced with a whole new set of challenges and even more demanding shareholder expectations.

The following pages take a deep dive into a number of fascinating and enlightening aspects of corporate governance in the 21st century. On this journey, corporate directors and governance professionals will address key aspects of the corporate director role with a spotlight on best practice standards, and key recommendations.

CREATING SUCCESS

Management's Role in Continuing to Drive Board Performance

Written by Paula Loop

Boards have a lot on their plates today. Their agendas continue to expand and evolve to address the changing global business landscape amidst increased scrutiny from investors, regulators, and other stakeholders. Management can play a vital role by helping the board focus on the right topics, presenting directors with digestible board materials, and fostering deeper and more candid boardroom discussions.

Engaging with the board on compliance

Board time is at a premium. Directors need to control their agendas to ensure they prioritize their time to focus on the most critical and relevant matters. Numerous and competing priorities, information overload, and lack of coordination with management can make this a challenge.

According to our 2015 Annual Corporate Directors Survey, based on responses from over 780 public company directors, directors wanted to spend more board time and focus on areas impacting long-term shareholder value creation. These areas include: strategic planning, mitigating IT risk, succession planning, and talent management. In particular, directors responding to the survey indicated the following:

- *Strategic planning*: Two-thirds of directors want at least "some" additional boardroom time and focus on strategy, and one-in-five want "much more" time and focus.
- *IT risks*: 65% of directors want at least "some" additional time and focus on IT risks, like cybersecurity.
- *Succession planning and talent management*: About half of directors want at least "some" additional time and focus on succession planning and talent management.

While boards want to spend more time in these areas, they can't lose sight of their other important oversight responsibilities. Compliance being one of them. The board's audit committee generally oversees this responsibility.

Compliance is a challenging area with today's constantly evolving regulations across national and international borders, the pervasive threat of fraud and other economic crimes and the heightened scrutiny and pursuit of enforcement actions by regulatory organizations. Frequent news headlines highlight its significance as being in the crosshairs of alleged infractions that can have major implications on a company's reputation and the bottom line - ultimately destroying shareholder value.

Management, particularly those in the compliance function, need to ensure they are proactively engaging and meeting with the board or audit committee on the company's key compliance activities. Additionally, our survey results indicate that directors want management to help them do their jobs better by enhancing the content and format of board materials and becoming more comfortable with natural and unstructured dialogue at board meetings.

Providing board materials that are easily digestible

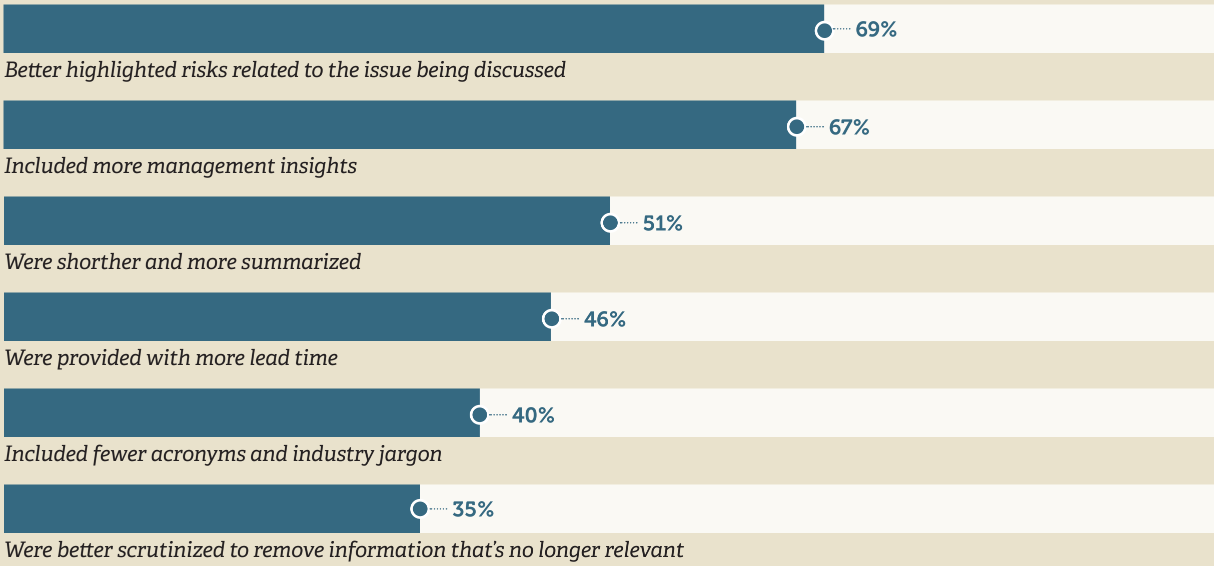
Boards need the right information, in the right format, and in a timely fashion to deliberate effectively and provide sound oversight. But board materials can be overwhelming at times. The sheer volume of information and level of detail provided may exceed what a director really needs. Too much information can lead to a director's inability to focus on what's important. Often, there is also a tendency for management to share with directors the same detailed reporting that they receive for their purposes versus prioritizing and summarizing information at a higher-level.

Our survey results indicate that directors are looking for improvement in the materials received from management. Consider that more than two-thirds of directors "somewhat" or "very much" wish their materials better highlighted risks. A similar percentage wish they included more management insights. Additionally, directors

Facts & Figures

BOARD PERFORMANCE: ROOM TO IMPROVE BOARD MATERIALS

With regard to your boardroom materials do you wish they:



Source: *PwC, 2015 Annual Corporate Directors Survey, September 2015*

indicated that the format and timing of board materials could be improved. More than half of directors at least "somewhat" wish the materials were shorter and more summarized and 46% at least "somewhat" wish they were provided with more lead time.

Management, including those in the compliance function, will want to consider these perspectives and assess whether any of the information provided to the board needs to be enhanced, changed, or possibly eliminated. For example, a high-level compliance dashboard that shows a summary of upward and downward trends for the company's top compliance risks and activities (e.g., allegations of fraud, bribery and corruption, whistleblower activity and other violations of laws or company policies) can be impactful.

Boards want management to provide them with reporting information that:

- Has an executive summary, allowing for greater focus and understanding of the key issues;
- Highlights significant risk issues upfront, versus burying them in the body of the report;
- Highlights any changes from period-to-period for ease of review, particularly for standardized reporting provided each period;
- Addresses management's perspectives and insights on the IT data, versus simply sharing data;
- Provides easy to understand information in a logical manner - dashboards and graphics can be useful;
- Is circulated well before the meeting, to allow for review in advance; and
- Has been reviewed by senior management before being sent to the board.

Today, directors also have the challenge of it being too easy to provide too many board materials. In the past, management was mindful to limit board materials based on a "weight test" - an evaluation of how heavy the board materials would be for directors to carry to the board meeting. Board materials couldn't be too heavy and unmanageable, which was an easier task to perform when they were in hard copy format. Now, with the efficiencies of electronic board portals, management can upload as much information as they believe is necessary. Some boards have addressed this issue by setting a limit to the number of pages management can upload, which forces them to be more concise and thoughtful in their messaging.

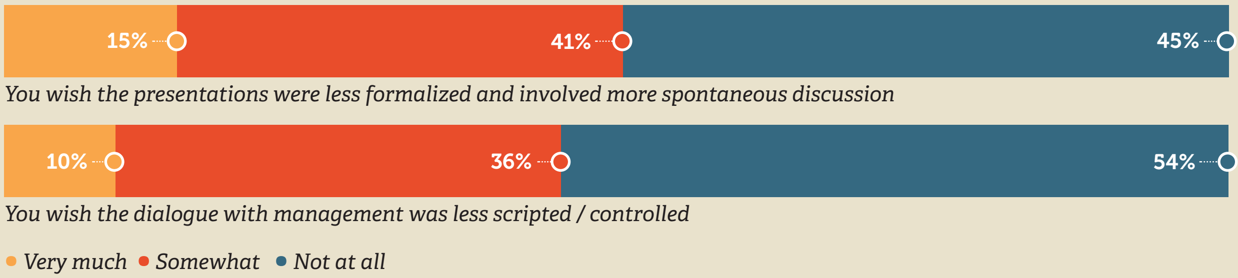
Delivering better board presentations

Directors are expecting management to deliver candid and insightful presentations that provide commentary, analysis, and perspective to supplement pre-read materials. This puts them in the best position to make effective decisions.

But our survey results indicate that many directors (56%) at least "somewhat" wish management presentations were less

Facts & Figures

AN INSIDE LOOK AT BOARD PREFERENCES



Source: *PwC, 2015 Annual Corporate Directors Survey, September 2015*

Our survey results indicate that directors want management to help them do their jobs better by enhancing the content and format of board materials and becoming more comfortable with natural and unstructured dialogue at board meetings.

formalized and involved more spontaneous discussion. And nearly half of directors at least "somewhat" wish the dialogue with management was less scripted and controlled. There is clearly room for improvement by management in this area.

With regard to boardroom discussions, directors indicated:

Management should take a "fresh look" at their presentations and interactions with the board.

They will want to consider how they can provide boards with dialogue that:

- Uses plain English and avoids industry and technical jargon;
- Delivers specific responses to questions versus vague answers;
- Focuses on the "value proposition" of initiatives, expenditures, and proposals; and
- Creates a candid dialogue with directors that encourages a discussion of concerns.

It can be helpful for management to get early input and feedback from the board to accomplish these objectives. A one-on-one pre-meeting with the audit committee chair to preview proposed board materials and agree on the expectation for effective board communications is invaluable.

Making the most of your time in the spotlight

Presenting to the board is a great opportunity for management to demonstrate their considerable talents. However, making the best use of this time can be challenging. Frequently, management will provide long memos or reports on their subject matter areas as pre-reads and then use their time in the board meeting to walk the board through all of the provided materials. Sophisticated board members will attempt to steer the presenter to revise their tactic by saying – "Please present your materials to the board, but remember that we have read them in advance of the meeting."

Board members do not want to spend time in meetings being presented information that has already been provided. A leading practice is for presenters to provide a quick summary of the materials and data provided as a pre-read and then focus their presentation on sharing insights and providing color on the key issues. The presenter should also leave plenty of time for questions and discussion with the board. The most impactful presentations to the board are the ones where the presentation stimulates a robust, engaging, and substantive discussion between the board and the presenter. And, these discussions give management the opportunity to demonstrate the depth of their knowledge and their ability to think on their feet. What could be better than that?

Author Biography

Paula Loop *is the leader for PwC's Governance Insights Center, which aims to strengthen investor confidence and provide resources for directors and investors addressing new and traditional challenges. She can be reached at:* ***paula.loop@pwc.com***

SUNLIGHT THROUGH THE CLOUDS

Internal Control over Financial Reporting: Weathering the Storm

Written by Cindy Fornelli

From a high level, we can easily make two observations regarding the complex issue of internal control over financial reporting (ICFR). First, effective ICFR is a keystone of investor confidence. Investors depend on reliable financial information and ICFR helps reduce the risk that financial statements will contain material errors or misstatements.

Second, ICFR is challenging. The design, implementation and oversight of effective controls demand attention and effort from senior management, boards, auditors, regulators and others. What's more, given the dynamic and evolving nature of our financial markets, these challenges are both shifting and persistent.

The good news? In the face of these challenges, stakeholders from across the financial reporting supply chain have elevated the debate and dialogue around ICFR to new heights. Through this interaction, they are taking control of internal control—identifying ways to enhance our approach to this critical safeguard for investors.

Policy Context

Before discussing any efforts towards enhancements, however, it helps to get situated in the policy landscape surrounding ICFR.

Since 1977, federal law has required public companies to establish and maintain a system of internal control that provides reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with generally accepted accounting principles. In the wake of Enron and other turn-of-the-century accounting scandals, the Sarbanes-Oxley Act of 2002 (SOX) added a requirement, SOX 404 (a), that management at most public companies annually assess the effectiveness of the company's ICFR and report the results to the public. SOX 404(b) requires most large public companies to engage their independent auditor to audit the effectiveness of the company's ICFR.

Another key milestone: Following the implementation of SOX 404 internal control reporting, the Public Company Accounting Oversight Board (PCAOB) in May 2007 adopted its Auditing Standard No. 5 (AS 5). This standard required that public company auditors take a top-down, risk-based approach to their assessment of management's report on ICFR. AS 5 was designed to be scalable to the size and complexity of businesses. The following month, the SEC issued management guidance that instructed companies on their ICFR responsibilities.

ICFR's "Perfect Storm"

Despite the adoption of AS 5 and the SEC's management guidance, concerns have simmered around ICFR. "We are currently in a 'perfect storm' in the area of internal control over financial reporting," declared PCAOB Board Member Jeannette Franzel in March 2014.

Indeed, for several years, the PCAOB repeatedly has expressed concerns about the number and significance of deficiencies identified in firms' ICFR audits. Many of the PCAOB's recent inspection findings focus on a failure of the auditor to provide persuasive evidence that ICFR is operating effectively. For its part, the SEC also has drawn attention to management's role in the effective execution of ICFR.

Meanwhile, ICFR concerns and frustrations also have simmered at companies. Frustrations reached a peak in May 2015 when the US Chamber of Commerce sent a letter on behalf of the preparer community to PCAOB Chairman James Doty and the SEC Chief Accountant James Schnurr. The 19-page letter raised issues about the extent of testing being performed and level of documentation being requested by the auditor, specifically with respect to management review controls. In addition, the letter highlighted the preparer community's view that audits of ICFR are being conducted with a checklist mentality, resulting in management and auditors spending time testing non-key controls and performing and documenting unnecessary procedures.

Another concern voiced by the preparer community is a lack of clarity on what is sufficient in terms of management review controls, their precision, and documentation, as well as a disconnect between SEC guidance for management for ICFR and the requirements of the auditor under AS 5.

Rays of Sunlight: Recognition that Communication is Essential

Yet in this perfect storm, we've seen shafts of sunlight breaking through the clouds recently. One has been a renewed commitment to improving the communication that is essential—and achievable—in tackling ICFR challenges. Following the US Chamber's letter, all parties came together with regulators to voice concerns, share ideas and reignite robust conversation around ICFR.

A key point: auditors must be able to articulate the "why" of what they are doing. The auditing profession is dedicated to making sure their professionals are prepared to communicate with management and provide answers about their testing methodology that make sense, are not overly technical, and describe how it contributes to the quality of the audit.

In turn, this communication can facilitate a beneficial conversation between management and the auditor—one in which both sides can learn something. What is a particular control trying to accomplish? What evidence is the auditor trying to obtain with respect to testing the control?

Audit committees can facilitate this dialogue, as can chief audit executives (CAEs) or internal audit executives. With their unique appreciation for both the processes and controls of the company as well as their own testing approach for them, CAEs can serve as a useful third-party contributor in these conversations—whether by helping the external auditor explain something to management (e.g., why there is a need to test lower-level controls, why the documentation management has for a specific control may be insufficient for audit purposes), or by helping the auditor understand management's processes and control environment.

Rays of Sunlight: Recognition of the Proper Use of Checklists

About those checklists: As noted, some preparers have criticized auditors for overreliance on checklists and applying the same level of procedures and requiring the same amount of evidence for all controls in a company's ICFR environment, regardless of the risk of material misstatement that the control is designed to prevent or detect—or without consideration of other controls that are designed to address the same risk.

However, it's important to note that in developing a standardized approach for auditing internal controls, auditors have found checklists and templates to be a helpful tool for engagement teams. Likewise, PCAOB inspectors have confirmed that the use of checklists and templates has contributed to improvements in recurring areas of audit deficiencies.

The takeaway? Templates and checklists can be very effective to understand management's process—when used appropriately. However, they are not a substitute for applying judgment on the persuasiveness of audit evidence to suit the level of risk. Audit strategy with respect to ICFR—and generally speaking—should be scaled, top-down, and risk-based. This approach can be supplemented by templates and checklists, which can help drive good audit practices when used based on the weight of an individual area and its importance to the entire audit.

Rays of Sunlight: Leveraging the Audit Committee

The financial reporting process is one characterized by intersecting roles among key parties. Given their role in overseeing the financial reporting process, audit committees can act as useful intermediaries in managing expectations and facilitating communication. On several topics—including differing views on risk assessment, the population of controls, the nature and extent of documentation for management review controls—the audit committees may want to engage in the conversation. This dialogue will be especially necessary and helpful when differences arise between the views of auditors and management.

Simple Ways to Address a Complex Issue

We can end where we began: with the simple observations that ICFR is (1) critical for investors and (2) challenging. Equally simple are strategies that can help all of us weather ICFR storms, perfect or otherwise: communicating robustly, prioritizing judgment over one-size-fits-all approaches, and leveraging key players (like audit committees and chief audit executives) in the financial reporting process. All of these are steps towards effective ICFR and the maintenance of healthy companies and capital markets.

Did You Know?

*Did you know that on March 10, 2016, the Securities and Exchange Commission (SEC) settled proceedings against the oil company Magnum Hunter Resources Corporation (MHR), its Chief Financial Officer (CFO), Chief Accounting Officer (CAO), audit engagement partner and a consultant, due to alleged failures to properly implement, maintain, and evaluate internal control over financial reporting. Due to rapid growth, MHR lacked adequate personnel to complete all required tasks on a timely basis. MHR agreed to pay a penalty of **$250,000**, while the CFO and CAO agreed to pay penalties of **$25,000** and **$15,000** respectively. The enforcement reinforces the need to thoroughly assess ICFR.*

Author Biography

*A former Deputy Director of Investment Management at the SEC and Senior Vice-President at Bank of America, **Cindy Fornelli** has served as the Executive Director of the Center for Audit Quality since its establishment in 2007.*

TAKING CONTROL

How Organizations Can Gain Governance Engagement

Written by Brendan Sheehan

Effective shareholder engagement has become one of the most important, and oft heard, mantras among corporate management and investors. Institutional investors are demanding – and expect – regular, proactive communication with company management and in many cases the board of directors. To put it simply, ongoing communication is one of the fundamental hallmarks of good governance.

We have seen several examples of how high-quality engagement can circumvent shareholder activism, defeat shareholder proposals and, perhaps most importantly, create long-term shareholder value. So with everyone looking to engage, many companies are examining their investor communication process and raising the question about who should be responsible for this important outreach and "own" the governance conversation. Traditionally the task has fallen to the investor relations office but as governance has become more important and more complicated, the corporate secretary is becoming more involved in the process.

In large part, governance engagement is being driven by the rise in shareholder activism. We are seeing more active engagement from investors of all varieties demanding greater insight into how the board functions, its role in strategy and oversight and its suitability as stewards of owners' investment dollars. This surge in activism has put board governance under the microscope and required a change in approach from corporate management. The range of topics being discussed has increased and is dominated by the most fundamental of board responsibilities – executive compensation and corporate performance. Proxy access, environmental and social issues (CSR) and risk management are replacing the more structural issues as the most important matters for consideration.

Governance is no longer limited to determining which items appear on the proxy statement and securing the vote. It is rapidly becoming a fundamental driver of investment decisions and an important strategic consideration. This is obvious from the now famous "Vanguard Letter" authored by CEO/Chairman William McNabb in 2015, "We believe that our active engagement demonstrates that passive investors don't need to be passive owners. Through engagement, we're able to put issues on the table for discussion that aren't on the proxy ballot. In essence, we continually strive to provide constructive input that will, in our view, better position companies to deliver sustainable value over the long term for all investors." This is supported by a 2015 study from Rivel Research Group of 374 institutional portfolio managers in which 88% say they believe corporate governance affects a company's valuation.

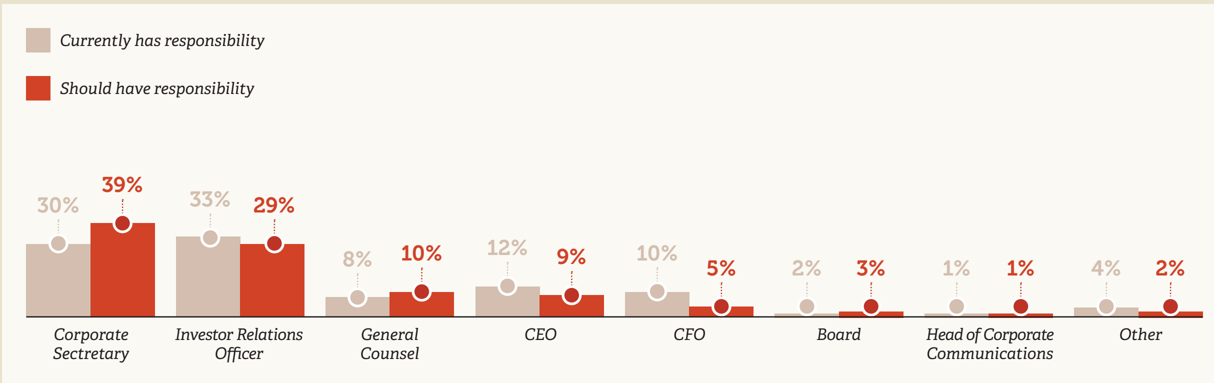
As such, companies are recognizing the need to present their governance story to all sides of the investment community – namely the special proxy analysts and the portfolio managers of their institutional holders. And that story needs to incorporate strategic and structural considerations.

In an attempt to shed some light on the role of the corporate secretary in engagement, Rivel Research Group reached out to corporate secretaries at 278 companies in North America. The findings are very revealing and highlight that while the corporate secretary is, for the most part, getting more involved, significant gaps in governance communication exist.

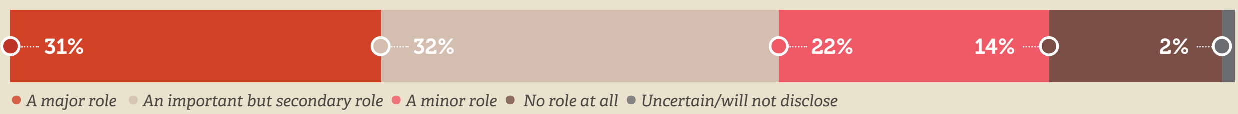
While most corporate secretaries (63%) acknowledge having a governance engagement role, their enthusiasm for direct engagement with investors on governance matters appears to be less than enthusiastic. According to the study, 39% of corporate secretaries believe they should be the primary point of contact with investors on governance topics. Interestingly exactly 50% also admitted that they do not want greater responsibility when it comes to governance communication with investors.

Facts & Figures

WHO *HAS* PRIMARY RESPONSIBILITY FOR CORPORATE GOVERNANCE COMMUNICATIONS WITH INVESTORS VERSUS WHO *SHOULD HAVE* THE RESPONSIBILITY



ROLE OF CORPORATE SECRETARIES IN COMMUNICATING/ENGAGING WITH INVESTMENT PROFESSIONALS ABOUT COMPANY'S CORPORATE GOVERNANCE PRACTICES



This a compelling issue considering that 72% also say that engagement is becoming a greater priority for their companies and 40% attest to receiving more governance-related questions from investors in the past 12 months. The degree and type of engagement are heavily dependent on the size of the company. Generally, corporate secretaries at the largest companies have much more direct contact with investors. This makes sense since these companies are generally in the spotlight more but also because the secretariat function is usually better staffed. There appears to be a significant resource problem for all but the largest companies. Only 17% of corporate secretaries speak directly with investors at least quarterly.

So while the corporate secretary is not exactly at the forefront of the conversation neither is the investor relations officer (IRO). Three-quarters of IROs say they discuss governance matters with investors but 63% said they would rather not. So with neither the IRO nor corporate secretary clamoring to lead the conversation, companies risk falling short of investor expectations and thus opening themselves up to misunderstandings and potential activist story telling.

It should be noted that the corporate secretary does "own" one very important aspect of communication – the proxy statement. Many investors highlight the written disclosures as among the most important vehicles for communication. Seventy-six percent of corporate secretaries have control in this area.

Perhaps the most important function of the corporate secretary is as an internal educator. Most board members and IROs view the secretary as the subject matter expert and the "first port of call" for all things governance.

With the increased focus on shareholder engagement, there is a clear opportunity for companies to extend outreach efforts. There is also a clear opportunity for corporate secretaries and IROs to present a more holistic and sophisticated view of corporate governance matters. It is likely this effort will require a shift in attitude from senior management and also a boost in resources, support and training for those involved in governance communications. As with most aspects of corporate life, functional ownership is important. Someone needs to be ultimately responsible and in many instances that someone will be the corporate secretary. It is worth noting that according to Rivel's 2015 IRO compensation study, IROs who engage regularly on governance matters get paid 17% more than their colleagues who don't.

As the governance conversation continues to evolve and as investors increasingly incorporate advanced governance considerations into investment decisions, it is vital that engagement focuses more on the corporate governance value proposition. Who is telling the company story and how does that story improve the understanding of the board in these volatile and complicated times?

Author Biography

*As Managing Director of Corporate Governance at Rivel Research Group, **Brendan Sheehan** provides Rivel's clients detailed insight into the minds of institutional investors. He works with the board and management to gain a sophisticated understanding of complex local and global governance issues and how they relate to voting and investment decisions.*

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BEYOND LEADERSHIP

21st Century Governance

Written by John Dalla Costa

Earlier this year, BlackRock's chief executive Larry Fink wrote a letter to CEOs of large corporations, including all those on the S&P 500, decrying the "short-termism afflicting corporate behavior." As the world's largest investor, Mr. Fink was using his $4.6 trillion megaphone to demand that leaders eschew quarterly reports, and instead demonstrate the visionary proficiency needed to realize long-term growth during uncertain times.

Many of us have sympathy with Mr. Fink's critique. However, it may be that he aimed his missile at the wrong target. While CEOs have considerable power, the quandary of balancing short-term outcomes with longer-term imperatives belongs to boards. Leaders are responsible for extracting excellence from their organizations, including outstanding results, but boards have the duty to set the parameters for that excellence, so that it endures, and creates value for society as well as investors.

As a founding faculty member of The Directors College, I've had the opportunity over the last dozen years to interact with over 1,500 leaders, many of whom already sit on boards. Accomplished as they are, the distinction between leadership and governance is not one they've much considered. They understand that there are legal and technical duties to learn, without necessarily recognizing that the process of governing requires a very different orientation and mindset.

Governance is not a synonym for leadership. It is materially different because it is an institutional responsibility as well as an organizational one, aiming not simply to enhance results, but also upholding the norms of care and loyalty that represent the public good. In fact, governors don't lead *per se*. They are instead entrusted with the more important task of creating stability from perspective, insight, and purpose, within which the leader and executives of the organization can best succeed and thrive.

Since most directors are elected onto boards because of what they've accomplished as leaders, the assumption is that they will be using those same attitudes and aptitudes at a higher level of influence or authority. There is a fundamental and not always easy transition to navigate: from being *the* executive to becoming *a* legislator; from owning the responsibility to decide alone, to sharing responsibility for deciding together; from issuing directives, to representing different interests and negotiating with others, to get to more balanced outcomes.

Lest we forget, governance was a statutory innovation for providing assurance. As fiduciaries - literally, as trust-makers - board members are duty-bound to exercise those ethical qualities of honesty, fairness, justice, and even-handedness that fulfill expectations for integrity while overseeing the operations of the organization.

Leaders are accountable for making things happen, for as long as they are CEO or President. The accountability for boards is to make sure things happen the right way, so that the asset grows in both resilience and value, over a much longer time horizon than the tenure of a single CEO.

Part of our confusion is semantic. It used to be that persons appointed or elected to governance roles were often called "trustees." We now more commonly designate a board member as a "director," which fudges the role two ways. First, as a descriptor, director detaches the board member from the explicitly ethical nature of the trust holder's job. Second, directing implies an overriding prescience, turning the accountability of board members inside-out so that they are defined more by their decisiveness rather than by their duty.

This conflation of leadership with governance has proven hazardous to shareholders and stakeholders. One reason reformers and legislators have been insisting for the role of CEO and Chair be split on boards is to ensure that each of these crucial yet different responsibilities is exercised with the autonomy that meets due diligence.

Figure 1

	LEADERSHIP	GOVERNANCE
1	*Sets direction, with daily guidance for maximizing results.*	*Sets destination, with visonary purpose for maximizing resilience.*
2	*Operates vertically - from the top of a hierarchy, using planning and cultural tools to build organizational momentum.*	*Operates horizontally - as a democratic execise amoung peers, using debate and differences to realize checks and balances.*
3	*Focused on delivering strategy and results.*	*Focused on delivering ethical assurance, including oversight of plans and values.*
4	*Pursue competitive advantage through efficiencies and innovation.*	*Earn and protect social capital (the public "charter to operate").*
5	*Accountability for building operational capacities as well as results.*	*Accountability for auditing the future with the same rigour as financial audits.*

Source: *Centre for Ethical Orientation - 2016*

Without exhausting the growing literature on leadership and governance, we can summarize the differences on five dimensions involving:

1. Scope;
2. Process;
3. Task;
4. Core Competence; and
5. Accountability.

Of course, there are overlaps, and, while the distinctions shown in **Figure 1** above are painted with a broad brush they aim to make a point. Governance is not leadership on steroids, but rather a group mechanism for representing varied interests with the open-minded sense of discovery and discipline that earns moral authority.

Diversity is increasingly valued on boards for exactly this reason: not only for more representative composition by gender, race, ethnicity or other demographics, but to ensure that new perspectives, inputs, objections, and options, representing new issues, threats, and opportunities, are attended to via thoughtful debate.

Listening to directors and working with boards, I believe there is a growing recognition that governance is under-delivering its promise. A recent survey indicates that two-thirds of directors believe they spend too much time on current issues and have too little opportunity to engage the longer-term forces impacting the organization. Good leaders though they may be, the terms of good governance remain for many hard to discern.

Scholars have taught us that governance, in fact, changes over time. Because we seem to be at one of those inflection points when the oversight theories and structures last designed in the 1970s and 1980s are proving inadequate for 21st-century complexities, we all need to rethink our assumptions.

Any moment of renewal or reform requires both getting back to basics while applying new lessons to get ready for future demands. For governors - that is, for directors or trustees - this means retrieving the fundamental ethical nature of assurance, while using curiosity, experimentation, and dreaming to engage today's most difficult and dangerous ambiguities.

Asking ethical questions is an art as well as discipline. While codes for boards may be a start, these documents are all too often prescriptive, based - like audits - on oversight from looking back on past performance. At The Directors College, we fashioned a living code for board members to look ahead, to in a sense destabilize the volatility of what is happening in the world by honing the skills for improvising with integrity.

Beyond technical skills, this code invites new behaviors - to grow both the personal capacities for discovery and dialogue, and the behaviors that build the high levels of trust in the boardroom needed to tackle our most difficult problems.

None of us really know what's next. Oil prices, real estate values, and interest rates are not where experts supposed them to be. Globalization is fissuring in ways neither advocates nor critics expected. Politics everywhere are more divisive, with even former bastions of free trade contemplating walls and trade barriers.

In such a milieu, the only real source of assurance and guidance comes from exercising ethical principles with such dedication and audacity as to tame the paralysis or fears from uncertainty.

Author Biography

John Dalla Costa *is the Founding Director of the Toronto-based Centre for Ethical Orientation. The author of five books exploring ethics, trust, integrity and governance in business, John has worked with boards and executives all over the world. He has spoken on business ethics at the Vatican as well as on Wall Street. He is a founding faculty member of The Directors College and teaches ethics.*

PAY FOR PERFORMANCE

It's About Collaboration, Strong Corporate Governance

Written by Niel Ellerbrook

While Total Shareholder Value (TSV) is the ultimate measure of a publicly held company's worth, modern investors are also highly concerned about corporate governance, transparency and business ethics. For evidence of this, look no further than the rise of Socially Responsible Investing, or SRI. Today more than $6.5 trillion dollars under professional investment management in the US is invested according to SRI strategies.

As an Old National Bancorp Board member, and Chair of the company's Compensation and Management Development Committee, I'm pleased to say that Old National passes the corporate governance and ethics test, as evidenced by five straight years on the Ethisphere World's Most Ethical® companies list and seven consecutive years of earning the Ethisphere Certification®. But national recognition and awards aside, one of the clearest signals that any organization is ethical, transparent and trustworthy is how it chooses to structure and manage its executive compensation.

At the risk of being obvious, informed investors value an executive compensation structure that is fair, transparent and decidedly performance-driven. And investors aren't the only ones paying attention. When a company's employees recognize that their senior-most leaders are focused on performance and being compensated accordingly, they are more apt to be mindful of their own performance, which then helps fuel organizational success.

It wasn't always this way. An article in the March/April 1990 edition of the Harvard Business Review stated the following: "In most publicly held companies, the compensation of top executives is virtually independent of performance." Today, however, many publicly-traded companies have a performance-based compensation structure. There is also a greater understanding of how performance-based compensation, when structured and managed properly, correlates positively with long-term value for shareholders.

As a publicly held company, Old National (ONB: NASDAQ) is squarely in the performance-based compensation camp. Equity grants for CEO Bob Jones are 100% performance-driven, and about 70% of his total compensation is performance-based. Compensation for other senior executives is also heavily tied to performance, specifically to TSV relative to Old National's peer group. And operating results and measurable company results help drive incentives at virtually every level of management.

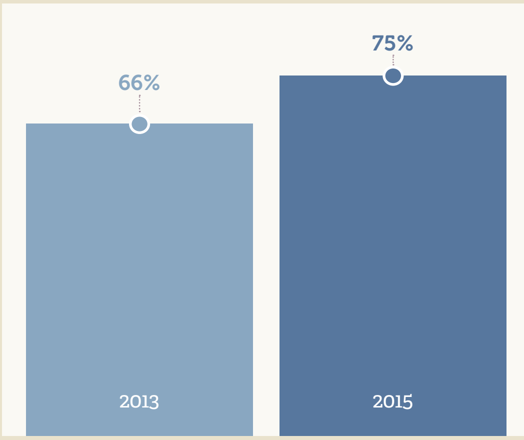
There is admittedly risk associated with a performance-based compensation structure. An executive in a position of control might be tempted to manipulate results and/or make decisions that are not in the best long-term interest of a company or its owners. So how does Old National address and mitigate these risks? In a number of important and interconnected ways.

1. **A STRONG commitment to Compliance and Enterprise Risk Management**

While there is no denying that financial compliance has become more challenging in the wake of the Great Recession, Old National chooses to view compliance not as a burden, but as an integral part of its corporate culture. Company leaders go above and beyond what is required by being aware of trends and emerging best practices related to executive compensation and director compensation, and adopting them in advance of any regulatory requirement to do so.

From a Risk Management perspective, the key is collaboration. Throughout the year, the Compensation and Management Development Committee that I'm honored to chair works very closely with Old National's Chief Risk Officer Candice Rickard, Associate Engagement and Integration Officer Kendra Vanzo, Chief Audit Executive and Ethics Officer Dick Dubé, and independent executive compensation consultant Sandy Godwin, who is not afraid to challenge our committee when needed.

Facts & Figures



*In 2015 **75%** of directors believe it is at least "somewhat" appropriate to directly discuss executive compensation with shareholders compared to just **66%** in 2013. Taking a deeper dive, Directors of mega-cap companies are much more likely to agree it's "very" appropriate to discuss executive compensation with shareholders than directors of small and micro-cap companies.*

***Source:** PwC's 2015 Annual Corporate Directors Survey*

"I really enjoy my time with Old National," said Godwin, a consultant with Pearl Meyer who has worked with Old National since 2002. "The leadership team is thoughtful and thorough, and there is a culture of doing the right thing. What that means in practice is that they are willing to make tough decisions and they are completely transparent about those decisions. Not every company, or every leadership team, takes that approach – especially with regard to executive compensation."

Dubé says that ultimately it comes down to strong Corporate Governance. "Ethics, Risk Management, Auditing ... these are all facets of strong, enterprise-wide Corporate Governance," he said. "Whether you want to call it a value or say it's part of our culture, Corporate Governance, and the transparency that is inherent in strong Corporate Governance, is a key part of who and what we are as a community bank."

2. Establishing an appropriate peer group

For community banks like Old National, another major factor in structuring a performance-driven compensation plan that works well and accounts for potential risks is establishing a solid peer group. Old National's peer group, which includes 31 banks that have certain similarities to Old National, helps the Compensation and Management Development Committee properly align compensation with the market.

A well-chosen and well-defined peer group allows a bank to strike a proper balance between underpaying employees and potentially losing or missing out on top talent, and overpaying employees and therefore not being good stewards of its owners' capital.

For community banks like Old National, another major factor in structuring a performance-driven compensation plan that works well and accounts for potential risks is establishing a solid peer group.

"The peer group is the foundation of all the analysis I do as an executive compensation consultant," explained Godwin. "Therefore, it's incredibly important to get it right."

3. Tone (and approach) at the top

As a former CEO, I have tremendous appreciation for a leader like Old National CEO Bob Jones who insists that as much of his compensation as possible be tied to company performance, regardless of how that may affect his personal earnings in a given year. In so doing, he has established a powerful tone at the top that is modeled by every other executive leader at Old National.

"Not only does it send a message to other company leaders, it signals to current owners and potential investors that the company truly values and is focused on long-term performance," noted Dubé.

Ultimately there is an art to structuring and managing an effective performance-based executive compensation plan, no matter the industry or business type. It requires a leadership team and Board of Directors who are committed to transparency, strong collaboration and doing the right thing every time. I am fortunate to find myself affiliated with an organization that not only believes in these principles but also puts them into practice.

Author Biography

***Niel Ellerbrook** is Chairman of the Compensation and Management Development Committee for Old National Bancorp and former Chairman and CEO of Vectren Corp., a publicly held energy company based in Evansville, Indiana. He has served on the Old National Board of Directors since 2002.*

Mr. Ellerbrook holds a BS in Accounting from Ball State University and currently serves on the Board of Trustees for the University of Evansville. In addition to his more than 30 years of experience in the energy industry, he has held numerous leadership positions with nonprofit and civic organizations.

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NOTES FROM THE FIELD

Risk May Not Be Inherent in Pay Designs

Written by Roger Brossy

One would be hard-pressed not to be slack-jawed over the revelation of fraud at Volkswagen in late 2015. The audacious scale of the perpetration—11 million cars, over 8 years, in 36 countries—was hard to fathom. Bad acting on both this and a lesser scale drives observers of corporate governance to reflexively ask, "What's going on at the top?"

One of the specific questions one might ask is what could be in such an errant company's strategic objectives? In how performance is measured and communicated? In how executives get paid? In the shaping of the culture itself? What dysfunction could foster the kind of pre-meditated behavior that has now led to the tarnishing of VW's great global brands, dismissal of key executives and according to recent estimates, $45 billion of potential liability in the US alone?

Executive compensation is a particular and obvious target of blame when corporate scandals like this erupt. In an "I told you so" sort of way, people will remark, "You get what you pay for." But decades of experience in working with companies on the design and administration of pay programs suggests pay is not the obvious culprit. The reality of such situations is more nuanced.

For starters, pay has been under the microscope for years, so a lack of pay scrutiny does not make sense as the main driver of indiscretions. Boards of companies in the US have been required to address shareholders directly on the topic of pay programs and their potential for driving excessive risk taking since 2010. That was a result of widespread belief that the financial crisis was at least in part a product of corporate compensation programs. One of the proof points of this belief was the case of AIG Financial Products, a unit of the large insurer. AIG Financial employed a small fraction of AIG's workforce but it used the parent company's balance sheet to create, sell and trade financial derivatives. That balance sheet imploded during the financial crisis due to the cratering of the derivatives market. The US government put $182 billion into AIG to stabilize it.

So today we have a mandate requiring boards to report in the annual proxy statement whether the company's incentive programs "*are* reasonably likely to have a material adverse effect on the company." Not surprisingly, it's impossible to find a proxy statement today that says, "We believe our company's pay programs *are* reasonably likely to create risks that could be material and adverse to the corporation." Nonetheless, the new regulatory regime has pressed companies to take stock of their programs and obliged boards to review them to state the opposite. While the reviews have prompted some tweaks, in our experience, few companies have found enough problems with their pay designs to compel them to make a real overhaul.

We think the reason for this is that the hard-coded design and terms of pay programs rarely have inherent risk. Instead, it is the soft stuff that makes for excessive risk taking. It's important to make the distinction between the "hardware" of pay programs and the "software" that goes into them.

To illustrate, let's look at two companies with similar annual bonus plans whose outcomes were going to be highly dependent on each management team hitting an annual profit target. The "hardware" in these incentive plans was similar. Both had the same minimum "cut in" of profit required before the plan paid, the same slope of the payout schedule once minimum profit was achieved, and the same overall payout opportunity for each executive. But the "soft" processes that went into the plans was quite different, and that's what made all the difference in executive behavior.

For Company "A," setting the profit target at the beginning of the year followed months of planning and dialogue among top management to balance a top-down view with a bottom-up perspective. The top-down view reflected long-term strategic

In our experience, few companies have found enough problems with their pay designs to compel them to make a real overhaul. We think the reason for this is that the hard-coded design and terms of pay programs rarely have inherent risk. Instead, it is the soft stuff that makes for excessive risk taking. It's important to make the distinction between the "hardware" of pay programs and the "software" that goes into them.

goals, the expectations of investors, and growth prospects for the industry. The bottom-up process required business leaders within the company to propose what they would "sign up for" in terms of sales, costs, investments for the future, and ultimately, the coming year's profit. The process of putting these two perspectives together was not without stress and a few bruises. A realistic take on human nature would easily explain that the CEO and her CFO wanted a little more profit than predictably cautious, self-protective business-unit heads collectively put in for. But an engaged process with "eyes wide open" led to a negotiated goal to which everyone ultimately agreed.

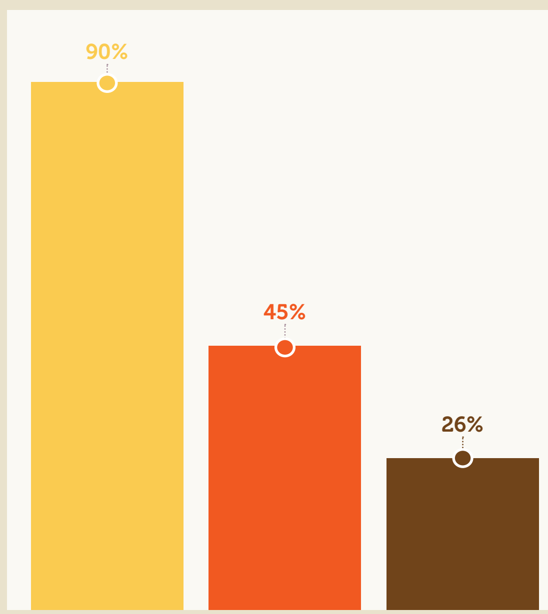
In Company B, the hard-charging CEO set the numbers. A master of the facts, she entered each discussion with her business-unit heads armed with data and analysis she hadn't shared with them beforehand—a dynamic which put them at a disadvantage in the discussion. Business-unit heads no longer had the tough, full-disclosure discussions with their boss, and so she often didn't have realistic forecasts of the future. The business-unit heads had learned that what had seemed a sensible dictum of "no surprises" had warped over the years into an unwritten rule of "never be the bearer of bad news." Harsh career consequences had been dispensed to those who had brought bad news forward before. Unsurprisingly, the goals for Company B were pushed down from the top and hardly "owned" by the business leaders.

Thus, we have two companies with very similar incentive plans for top management, but very different ways of getting to the numbers that would govern plan payouts. The behavior and tone that went into setting the goal itself and how the players behaved as the year went on could not have been more different. That's the software. And while no wrongdoing occurred, when Company B faltered in the second half of the year—because it failed to perceive changes in increased capacity at its competitors that in turn caused a downward shift in pricing—it should not have been too much of a surprise. Managers in Company B had their heads down and were trying to stay out of trouble with their boss. The market intelligence that could have been gained in a more open environment was simply unavailable.

Which brings us back to Volkswagen. Hardware or software? We would have to be insiders to have insight into what really occurred at VW. But consider this: Prior to the revelation of wrongdoing, Volkswagen publically disclosed in multiple places its "Group Strategy 2018." This strategy declared an aspiration for the company to be a "global economic and environmental leader among automobile manufacturers." The strategy was broken down into four goals— a model of balance by almost anyone's standards. One was a measure of customer satisfaction, which was reported on annually since 2007. A second was employee satisfaction, which was similarly measured and reported. A third was to achieve a long-term return on sales of "at least eight percent so as to ensure that the Group's solid financial position and ability to act are guaranteed even in difficult market periods." Finally, the fourth was to generate unit sales of more than ten million vehicles a year and to "capture an above-average share of growth in the major growth markets."

A skeptic would seize on this last goal and suspect it was the real driver of executive pay outcomes—the customer and employee satisfaction objectives likely being window dressing. VW's pay disclosure suggests this is not the case. While the German disclosure regimen for pay is different from that in the US, the substantial long-term incentive (LTI) plan at VW is based on performance

Facts & Figures



*The overwhelming majority (**90%**) of audit committees get a sense of the company's tone and ethical culture by having frequent, informal discussions with the CEO, CFO, and other senior executives. Only half as many (**45%**) interact with employees below the C-suite and only **26%** conduct employee surveys.*

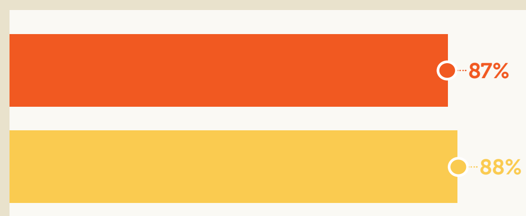
***Source:** 2014 KPMG Global Audit Committee Survey.*

against each of the four objectives of the strategy. To an experienced eye, this suggests that more of executive pay at VW was subject to customer satisfaction (measured at the dealer level, and to end users in terms of new cars and service levels) and to employee satisfaction than would be typical in US companies. Yes, the annual bonus plan appears to have been tied to meeting short-term profit goals, and the long-term incentive would be zeroed out if the company failed to hit a threshold level of profit of 1.5% of sales (well below its goal of "at least 8%). But investors would surely want to know threshold levels of profit were being achieved before executives received performance-based pay.

So from the required disclosures, whatever happened at VW does not appear to be driven by the hardware of their executive pay programs. Courts, commissions, and investigative reporters will hopefully give insight over time into what was up with the software. At this stage, the Volkswagen story illustrates the nuanced role of executive pay in driving behavior. Pay programs may play supporting roles when bad behavior shows up, but it is more likely the soft stuff of culture is the culprit.

Boards would be well advised not to rely solely on the review of incentive plan hardware when looking for inherent risk in their company's pay programs. Instead, they should consider how the soft factors—such as the so-called "tone at the top"— might mix with pay design to create an otherwise imperceptible yet toxic environment where risks are either excessively taken, or in other cases, not even perceived.

Facts & Figures



87% percent of respondents rated reputation risk as "more important" or "much more important" than other strategic risks their companies are facing. In addition, 88% indicated their companies are explicitly focused on managing reputation risk.

***Source:** The 2014 Reputation@Risk Survey conducted by Forbes Insights on behalf of Deloitte Touche Tohmatsu Limited*

Author Biography

__Roger Brossy__, co-founder of Semler Brossy Consulting Group, has been a consultant on executive and management compensation for over twenty-five years. Over the span of his career, Mr. Brossy has focused on developing effective and innovative reward programs for both executives and high-impact contributors. He is particularly effective in working with management and corporate boards to reach agreement on the best means of managing, assessing and implementing executive performance plans.

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GDPR

Global Feature

CHANGE ON THE HORIZON

General Data Protection Regulation: Are You Prepared?

Last year the EU approved its General Data Protection Regulation, or GDPR, the latest regulation designed to protect citizens' privacy amidst a seemingly endless flood of data breaches worldwide. This new regulation reinforces Europe's reputation as today's toughest watchdog on privacy and creates new risks (and potential penalties) for companies operating across the globe. The following pages shed some light on the scope of the GDPR and help outline what businesses can do to ensure they're prepared.

Let's step back in time. In 1995, the Data Protection Directive (DPD) was passed to protect the processing of personal data and its associated transferal within the countries that comprise the European Union (EU). In summary, the DPD was designed to accomplish two goals; to protect the privacy of individuals while allowing personal data to be shared within the EU. In order to achieve these goals, the DPD established criteria for the collection of personal data while affording rights to data subjects.

While the DPD was helpful, it was far from perfect, and technological changes soon outpaced the regulations. One of the largest flaws of the DPD was the inconsistency that resulted as each member state had its own set of rules. Compliance with numerous and varying regulations proved challenging, protection and enforcement were inconsistent and it was costly to manage. While it offered a good foundation, laws from 20 years ago weren't created with the rise of social networking sites, cloud computing, and smart cards in mind.

It became increasingly evident that a new framework for data protection in the EU was needed, and quickly at that. In 2012, the European Commission proposed a new regulation called the General Data Protection Regulation (GDPR) in order to provide better controls in an era that required it. Its primary intent was to provide stronger and more consistent data protection for EU citizens while also protecting personal data housed within the continent by global companies.

After years of negotiation on the scope of the GDPR, new regulations were agreed upon in December of last year. With the GDPR implementation date approaching and an abundance of new requirements coming with it, here is what companies will need to do in order to ensure their data protection programs are ready.

Applicability

The GDPR is expected to go into effect by the summer of 2018 and shall apply to all 28 member states of the EU. Having said that, its impact will be far greater than just European businesses, and will apply to all companies that use or house personal data for Europeans. The data itself does not need to be housed in Europe.

As a result, all companies with operations in the EU in addition to those based outside of the EU that process the personal data of EU residents will need to carefully evaluate the GDPR's requirements. Such organizations should determine how information security and data protection programs will need to be updated in an effort to prepare for the new rules. It cannot be stressed enough that the reach of the GDPR extends far beyond the boundaries of the EU.

Key Changes

Some of the key changes of the GDPR as compared to the DPD are as follows:

1. Response to Data Breaches

Over the next two years, organizations will need to develop a system to:

a) Create a data breach response plan to evaluate the risk of harm to consumers;

b) Build into that plan provisions to notify the Supervisory Authority within 72 hours of discovering a breach (if the event is deemed to be high risk); and

c) Be prepared to notify data subjects without delay (unless security measures in place shall prevent an event from being high risk)

Under the GDPR, personal data includes any information relating to an identified person (data subject). In addition to public authorities, organizations that handle sensitive data like health information, require the personal information of customers as a central aspect of the business, or those which process large amounts of personal data, are at considerable risk and will require a Data Protection Officer (DPO).

Simply put, DPOs are privacy experts, and because of the GDPR they will soon be in demand across the globe. These experts are primarily tasked with protecting privacy and handling personal data; it's all about protecting the people. Finding one may prove to be a challenge as there is not an abundance of DPOs. For this reason, organizations may look to train existing employees as an alternate option. DPOs will monitor compliance, train internal staff, and conduct internal audits. They will also respond to inquiries submitted by data subjects, handle matters of consent, and process requests to be forgotten, among other responsibilities.

The ramifications of the GDPR are quite impactful. If any party has access to organizational data, they can contribute to a breach. Organizations will need to ensure the protection of such data, and this extends to third parties such as cloud providers as well as to business partners that might have access to company systems. Consequently, robust due diligence measures will need to be implemented prior to entering into a business relationship with third parties and as part of the ongoing monitoring and auditing process once a relationship has been established.

2. A Right to Be Forgotten

Europeans will have the right to request information be erased if:

a) The data is no longer necessary for the reason it was initially collected;

b) Data subjects wish to remove their consent;

c) Data subjects object to the processing of their personal data;

d) Data was illegally processed;

e) A law requires data controllers (organizations that own the data) to erase the data; or

f) The data was collected as part of an offering to children

Under the right to be forgotten, EU residents may also choose to have their information removed from a search engine if the information is incomplete or irrelevant. As a result, businesses

Facts & Figures

890,000,000

*There have been nearly **890 million** records breached and over 4,800 data breaches made public since 2005.*

***Source**: Privacy Rights Clearinghouse.*

will need to be sensitive to the rights of the data subject, and be prepared with a process to fulfill requests to be forgotten.

3. Clear and Detailed Privacy Policies

Organizations must offer individuals information regarding the use of their personal data in a clear and explicit manner. Moreover, data controllers need to provide a reason for the data collection. Thanks to the GDPR, standardized icons will help create more transparency by serving as a highly visible and easily interpreted means of informing individuals.

4. Consent

If companies wish to process special personal data, consent to process data must be freely given and explicit. Such consent must come in the form of a signed statement as opposed to a pre-clicked box. As a result, the data subject will have the opportunity to decline and refuse to proceed.

Children are also protected under the law. When services are offered to children under the age of sixteen, a parent will be required to provide consent. There is one exception as member states have the option of lowering the age limit to as young as thirteen years of age.

Examples of special personal data, for which a consent is required, include the following categories:

- Associations;
- Biometric/genetic information;
- Clothing;
- Criminal convictions;
- Foundations/trade-union memberships;
- Health/sex life;
- Personal security measures;
- Philosophical/religious beliefs;
- Political opinions; and
- Racial/ethnic origin

Did You Know?

With far more aggressive penalties, the GDPR will have the potential to achieve more effective enforcement than the current DPD. The current fines are too weak to impact organizations with large amounts of revenue. For instance, in December of 2013 and January of 2014, Google was charged with data protection violations that took place in Spain and France respectively. Google faced fines totaling a mere $1.1 million, a fraction of the $2.3 billion fine the company could have been forced to pay if the GDPR was in effect at the time.

> A good starting point is to audit existing data and gain answers to vital questions. What is the data used for? Where is it stored – and on how many systems? Who has access? Are all of those individuals company employees, or do you have third parties with access to some or all of your system?

5. Right to Transfer Data to Another Service Provider

Companies may not transfer data to countries outside the EU that do not provide a strong enough level of protection, even within the same enterprise. One interesting aspect of transfers is the regulations provide individuals with the opportunity to transfer data between services. For instance, users could choose to move emails from one provider to another. This particular change is quite astounding in its potential applicability and will undoubtedly need to become clearer as time unfolds.

6. Penalties

Sizable fines of up to four percent of organizations' total annual revenue or more than $22.6 million, whichever is greater, can be imposed for breaking the rules. This figure is a dramatic increase, as the approaching penalty is 40 times the current maximum penalty. With this in mind, data controllers may seek to accommodate requests to remove information, simply to avoid the potentially severe consequences of failing to comply.

When we look at other pieces of legislation such as the UK Anti-Bribery Act for instance, there was tremendous hype that accompanied its enactment. Yet in the years to follow, there were no corporate prosecutions. One could infer that awareness was raised and subsequent program improvements led to the reduced likelihood that violations would occur. Or, since we are seeing prosecutions now, such as the Sweet Group PLC, sentenced in February of 2016, it's quite possible that the development of cases took time.

In the case of the GDPR, the substantial increase in requirements, combined with the fact that individuals take their personal data quite seriously, certainly leads to the significant possibility of elevated levels of enforcement in the foreseeable future. Do not become complacent if, like other regulations, it takes some time to see the first GDPR violation case. After all, nothing is more painful than being turned into a global example of failure.

Lastly, the GDPR opens the door for data subjects to take a right of action and potentially seek compensation. Companies should keep an eye on this as the regulation evolves.

> It cannot be stressed enough that the reach of the GDPR extends far beyond the boundaries of the EU.

Recommendations for Organizations

Since the GDPR will not come into play until 2018, now is the time to prepare. A good starting point is to audit existing data and gain answers to vital questions. What is the data used for? Where is it stored – and on how many systems? Who has access? Are all of those individuals company employees, or do you have third parties with access to some or all of your system? Data map now, and if nothing else, you may be able to get rid of data you don't need to store or clear up systems you no longer require.

IT can host meetings to determine how long data should be retained, remove duplicate data, ensure data is complete, review permissions and classify data accordingly. Chief information officers and chief ethics and compliance officers (CECOs) can work together to oversee this process.

In accordance with the new regulation, CEOs will need to make the GDPR part of the long term strategy for the organization, and work with board directors to make it part of their agendas and a component of short and long term plans. Key aspects such as staffing, budget, internal controls, resources, and risk management will need to be considered. There are also implications for stakeholders; companies will have to disclose operational costs associated with GDPR compliance to investors.

Key functions including IT and HR will need to partner with compliance to develop strategies to acquire a data protection officer (DPO) or train existing staff.

Organizations should focus their efforts on written standards by developing a clear and comprehensive GDPR policy and related resources, and updated privacy policies that are easily understood by their target customer base. Focus on your consents, including those for children under the age of sixteen. Training programs will also be needed to educate employees about their new obligations. Moreover, CECOs should provide assurance that the proper systems are in place to maintain compliance, and ensure employees are following the newly adopted policies and procedures. CECOs will need to collaborate with the internal audit, risk, HR, procurement, and legal functions in particular.

As expected, new breach detection and response systems will need to be implemented and tested well in advance of the GDPR going into effect. If a breach should occur, having a solid foundation in place will help mitigate the consequences when questioned by regulators.

Due to the high prevalence of data breaches, organizations should also look to protect themselves by obtaining insurance coverage and inserting language regarding ownership of responsibility into the contracts of data processors (i.e. cloud providers).

Lastly, updates concerning internal controls over information security and ERM results may be shared with the audit committee of the board. Observations and key findings should be included.

Closing Thoughts

In the modern era, the question is "when" and not "if" the next data breach will occur. The GDPR was long overdue and is certainly a step in the right direction. It will be imperative for organizations to become familiar with the new requirements and begin to develop successful strategies to ensure compliance is met.

Looking ahead, more information will become available. Organizations would be served well to learn as much as possible by following the guidance that European regulators will continue to share on the new regulation.

On a similar note, updates are expected in the near future regarding the EU-US Privacy Shield (EU-US PS), the proposed replacement for the invalidated Safe Harbor agreement. The EU-US PS, allowing data to be transferred between the EU and the US, has received quite a large amount of criticism. With the GDPR set to arrive in 2018, even if an approved version of the EU-US PS is passed in 2016, it will more than likely undergo future revisions in order to comply with GDPR requirements.

As we can see, a lot of changes in the world of data protection are on the horizon. While laws change each and every day, the GDPR in particular carries with it a whole series of new demands. Perhaps the most important question is, "How ready are you?"

Did You Know?

*According to a report by the International Association of Privacy Professionals (IAPP), companies in Europe alone will need to appoint over **28,000** DPOs before the GDPR goes into effect in 2018. These DPOs will need to possess "expert knowledge of data protection law and practices."*

Author Biography

__Les Prendergast__ is VP and Managing Editor at The Ethisphere Institute with more than eight years of experience in the ethics and compliance field. He's dedicated to using Ethisphere Magazine as a platform to help organizations strengthen their ethics and culture, including enhancing their governance and compliance practices, and to share best practices among corporate leaders.

His primary areas of expertise include overall compliance program assessment, culture and knowledge assessment, risk assessment, training and communication planning, and benchmarking. See his full bio in the leadership section at __www.ethisphere.com__.

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CORPORATE CULTURE

TOPICS COVERED
// ***Program Advice & Strategy***

CULTURE SHOCK

How to Create a Compliance First Culture

Written by Keith Read

Not even a decade ago, compliance was seen as the business prevention department. It can be argued that even though the industry has rapidly evolved thanks to ever-increasing resources, authority, and technology, it still carries a stigma. This may be partially due to the stigma the word "compliance" still carries; one that is synonymous with wrongdoing and hefty fines, not a business enabler that actually *helps* the business make money or safeguards it against wrongdoing (something every compliance officer knows to be true).

But yet, despite these lofty ideals that CCOs and even the DOJ have for compliance, there remains a large chasm between culture and compliance. Compliance will never be effective or perceived differently unless it's embedded in an organization's cultural fiber. This requires putting action behind words – that is, demonstrating how you are doing what you say you will do. With that, compliance is finally in a position to flip the switch to the ON position and earn the permanent seat at the strategy table it so rightly deserves.

I realize, however, that all of this is easier said than done. Industry-wide, culture assessments remain on the bottom of CCOs' priority lists for the second consecutive year, 2015 survey results from Deloitte and *Compliance Week* found.

When I joined British Telecom, changing the culture wasn't some lofty, intangible vision; it was my singular mission.

In a few weeks of taking the job, I laid out the three ways we were going to create a culture of compliance:

1. We would be a demonstrably compliant company.
2. We would be so good at it we were going to be recognized for it.
3. We would turn our expertise into a revenue for the company, thereby making compliance, at a minimum, a cost-neutral business unit.

These goals required that we develop an understanding of, partnership with and integration with other executives and their business units. We evolved from a team that was perceived to get in the way of business to *expected* partners at the table. It created a relentless commitment to a compliance-first culture.

The opportunity for CCOs to influence culture is more within reach now than ever before. Today, CCOs participate in strategic discussions regularly briefing the board on culture, compliance, and ethics—which the Deloitte and Compliance Week survey found that a majority of CCOs are doing. Admittedly, there's still room for improvement: while 32 percent of CCOs say that compliance is seen as a business partner across the entire organization, only 55 percent see compliance as such "in only some respects."

In short, all of the pieces to the puzzle are finally readily available. Now for the hard part: putting it all together. Pairing persistence with innovation, the next decade of compliance will be fruitful for not only compliance professionals, but for the business, the bottom line, and corporate reputations.

Turn Compliance Push into Employee Pull

Every compliance officer in the world, no matter the industry or location, spends all of their time pushing stuff out. They push out training, policies, communication campaigns and so much more. Not surprisingly, this leads to compliance fatigue, tune out and, in some cases, *push back*.

A compliance-first culture turns this model on its head, relying on employee pull instead of compliance push. With this model, employees genuinely are engaged with compliance and ethics-related materials because they are important to them and the jobs they do. Similar to how when you have a desire to read an online tutorial or attend a conference to learn something because it *matters* to you because it's *important* to you in one way or another. The challenge is to create that same appetite with compliance and ethics.

Culture is to compliance what your neck is to your head – without it, your head would fall off.

The recent position taken by *Harvard Business Review* writers Jay Lorsch and Emily McTague, who argue culture is not a culprit when organizations get into big trouble, is not entirely valid, in my opinion. I counter that argument by examining takeaways I've gathered from recent news coverage of culture-driven compliance failures:

1. Growth at all costs.
2. If nobody asks, don't say anything.
3. What they don't know, wouldn't hurt them.

Compliance will never be effective or perceived differently unless it's embedded in an organization's cultural fiber.

These messages are the fertilizer for highly toxic cultures, and as such, we see CEOs bowing out, major manufacturing and US GDPs under scrutiny and in decline and major economic impact. All of which create larger-scale risks for society and the world.

Goldman Sachs, who recently paid $5 billion to settle with the federal government for the 2008 US Financial Mortgage crisis, appeared on the front page of the *New York Times* Business page with a provocative headline "A Gay, Latino Partner Tests Goldman's Button-Down Culture." Culture stories are energizing the paper's printing press in full-color for a reason: while culture may not be the one to blame in every bad situation, it's impossible to create a sustainably compliant culture, or allow a company to turn itself around, without it.

While the writing on the wall seems clear to some – create a compliance-first culture and the rest will follow – challenges related to doing so appear to persist. With continued emphasis on culture from the regulators down and more exposure on the organizations that use culture for the betterment of compliance surface, compliance-first cultures will no longer be a best practice, but a standard one.

Author Biography

Keith Read is an award-winning thought leader and expert in compliance, ethics, culture, bribery, supply chain and risk management. He was formerly the Group Director of Compliance and Ethics for BT (British Telecom) with responsibility for compliance, ethics and regulatory risk management, covering 150,000 employees and contractors operating in some 176 countries.

He is a past winner of the Compliance Register's Best Compliance Officer award, when he also won the Best Compliance Company award; he was subsequently the subject of a full-page Daily Telegraph national press article - 'Compliance and Science'.

Keith is a frequently-requested international speaker, drawing on his wide-ranging practical experience of compliance, risk and governance, including the Bribery Act, Anti-Bribery and Corruption and the Modern Slavery Act.

TOPICS COVERED
// Program Advice & Strategy

MAKING THE CONNECTION

Corporate Culture and Overseas Business

Written by Richard Bistrong

In the Q1 Edition of *Ethisphere Magazine*, Erica Salmon Byrne writes, in *Culture Matters*, that "employees at organizations with strong cultures feel less pressure to compromise company standards to achieve company goals." In other words, as Ms. Bryne well states, "a company is better protected from the risks of misconduct when its culture is ethically strong." As to the definition of culture, Ms. Byrne pivots to Scott Killingsworth who in Modeling the Message: *Compliance through Organizational Culture*, shares that culture is, in part, "the set of enduring and underlying assumptions and norms that determine how things are actually done in an organization."

While fundamental, it does have its own set of challenges with respect to how corporate culture impacts those who operate on the front-line of international business, often in remote and thinly supervised locales. Conventional wisdom dictates that the influence of culture can have a tremendous impact, especially for employees who work in offices which are well resourced and supervised. In such cases, the lines of communication are clear and travel in a straight line up and down the organizational chart.

In addition, employees in structured and well-staffed offices have the luxury of face to face training, interaction with peers, and often have the opportunity to see their supervisors in day-to-day work. Thus, all of those behavioral "assumptions and norms" to which Mr. Killingsworth affirms, are for the most part, out in the open. If there is a positive culture, it's going to get through quickly and unfiltered and vice versa. We are seeing the curtain pulled back on the "bad" in recent news of misbehavior in the financial services sector; including money laundering, rate-fixing and sanctions violations.

So for those on the front-lines of international business, who are entitled to the same benefit that a strong corporate culture might provide to those closer to the "home office," what's a company to do?

First, in many corporations with overseas operations, the face of the corporation to a forward positioned employee is often the regional manager. That's the person with the direct reporting relationship. That individual manager, be it through email, face-to-face visits and/or phone calls, has enormous influence on how such employees view the company and corporate culture. Very often those interactions revolve around sales forecasts, projections and call reports. In most organizations, particularly in public companies, quarterly forecasts and projections are a way of corporate life. For those in the field, they usually get articulated to management through scheduled calls and visits, and that's where and how the spoken and unspoken culture message gets delivered.

Are those calls replete with "making your numbers," or do they address things like, "how are you making your numbers, and are you encountering any ethical or com-

As I heard a CEO from a Fortune 500 company share at a compliance event, are "employees ready to sacrifice sales for compliance if that moment arises," and when that moment arises, it won't be a compliance manual that provides the behavioral tipping point, it will be the organization's culture.

pliance challenges which are causing you to struggle?" That single question reflects more about an organization's culture than any online training course, wall poster, or corporate ethics email. It's about a company encouraging a speak-up mentality when there is an issue, and articulating that income projections take a second seat to compliance and ethics. Such an environment embraces the dynamic that not every ethical dilemma can be found in a compliance manual, and that's the make or break moment of corporate culture.

If you are doing business in frontier markets, where commerce and corruption often collide, there will be problems. It's key for those in the field to consider themselves "corporate culture ambassadors." In other words, does the front-line believe they are empowered to deliver and embrace a strong corporate culture no matter how remote their locale and regardless of performance pressures? Do they grasp the organization's corporate culture as on a higher level than any forecast or quota, or does the pressure to meet objectives speak to a "win above all else" mentality. That's how culture gets embraced or discarded far away from home.

As I heard a CEO from a Fortune 500 company share at a compliance event, are "employees ready to sacrifice sales for compliance if that moment arises," and when that moment arises, it won't be a compliance manual that provides the behavioral tipping point, it will be the organization's culture.

Not everyone thinks highly of corporate culture

Corporate leadership would also be well advised to remember that field personnel work in environments where many third parties, intermediaries and agents might look at corporate culture as an "oddity." In some of these regions, what we might think of as ethically abhorrent, some might simply regard as "how things get done around here." Combatting those local pressures to "bend the rules" in order to succeed is somewhat akin to bicycling uphill, it requires constant and vigilant effort.

While most of us understand what "going local" means, fewer have operated in these environments; some of which we would rather not visit at all. This can be a point of great peril, as "going local" often results in what theorists call the "cocoon of corruption," where front-line personnel start to think, "corporate doesn't understand what I'm up against." Where that mentality exists, field personnel will contemplate how to "get the job done" in lock-step with their local agents and foreign officials, discounting the value and prominence of corporate culture in the decision making process.

When that dynamic grabs hold, corporate culture starts to look like business prevention, and that presents a great liability to all. To prevent a problem before it starts, think about bringing your front-line teams home, and encourage them to stay connected with their personal networks, including friends and family. That keeps culture and values fresh and strong. Visit them when you can, show them that you care about their work and let them know that they are a valuable part of your team.

News travels fast and not with accuracy

Finally, it's important to remember that news, including gossip, travels quickly and with the risk of inaccuracy. The power of this information should not be underestimated. It is a very impactful, if not necessarily reliable, source of corporate culture.

Whether it be stuffing a distribution channel at quarter end or other "stretches" to the earnings statement, they all deliver the same message: rules can be distorted, diluted or discarded to the needs of the business. Thus, anti-bribery corporate culture and related messages, for instance, are about much more than anti-bribery issues, as culture does not exist or thrive by subject matter. It touches all parts of the organization. Knowing that a supervisor is padding expenses, isn't an FCPA violation, but the message is the same: Our culture is *flexible* when necessary. That's bad for everyone, and that much I know.

More to Explore

For more on this subject we encourage you to revisit the Q1 2016 issue of Ethisphere Magazine. In the Corporate Culture section (pages 30-31) you will find Erica Salmon Byrne's insights as referenced in this article.

Author Biography

Richard Bistrong *is the CEO of Front-Line Anti-Bribery LLC. Richard spent much of his career as an international sales executive and currently consults and speaks on foreign bribery, ethics and compliance issues from that front-line perspective.*

Richard can be reached via e-mail at ***richardtbistrong@gmail.com*** *or through his website at www.richardbistrong.com. Richard was named one of Ethisphere's 100 Most Influential in Business Ethics for 2015.*

TOPICS COVERED
// *Risk and Strategy*

MEGAN BELCHER ON ENDURING CULTURE

Bringing Impact and Imagination to Your Privacy and Cybersecurity Culture

Written by Megan Belcher

There is no compliance topic that has more firmly shifted itself to center stage in the C-suite and for ethics and compliance professionals than cybersecurity. Concurrently, there is no compliance topic that is evolving as quickly or demands as much agility from ethics and compliance officers as protecting their company's information security. As companies look to their compliance professionals for leadership, support, and protection in those spaces, those compliance leaders should continue to look to the long held adage of "Culture eats strategy for breakfast." for inspiration.

In 2015, Ari Kaplan Advisors and the technology company Nuix published a survey entitled, "Defending Data: Turning Cybersecurity Inside Out With Corporate Leadership Perspectives on Reshaping Our Information Protection Practices." That survey revealed that it was not complex and unpredictable technology failings that gave most businesses the greatest concern when it came to cybersecurity threats. It was employee behavior.

It is no surprise to those who work to ensure their organizations' information security that human behavior remains the largest obstacle to information security. In the Kaplan/Nuix survey, 93% of respondents claimed human behavior was the biggest threat to their organizations' security, up from 88% the year prior. Combine that data with the increased prevalence of practices that rely heavily on individual human decisions to ensure security protocols are followed, like BYOD policies and cloud usage, and you quickly recognize the importance of driving a culture of compliance and integrity around cybersecurity and information governance practices.

What does that mean to you as you seek to drive a robust culture of cybersecurity in your organization? Your employees and their behavior are the first line of defense. To that end, you must not only enable them with the knowledge they need to protect the integrity of your systems, but also drive the desire and discipline to implement that knowledge. In short, you must create the culture that will support your strategy. How do you do that? This author shares key steps and food for thought below.

Move beyond the concept of an insider threat

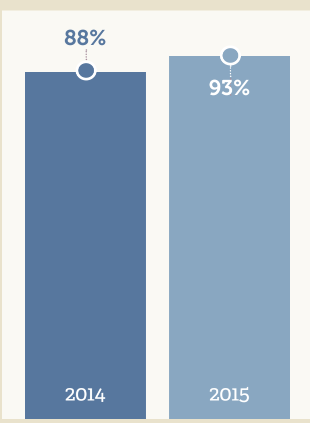
When you start thinking about shifting your culture to support your cybersecurity compliance program, it is important to move beyond just thinking about insider threats. An insider threat is someone who is within your organization and is actively working with mal intent to expose your confidential information or the integrity of your systems. However, while very damaging, those are the rarer threats with a discrete solution, namely locating and cauterizing the threat.

However, when undertaking truly impactful culture change, you need to look at the broad behavior of your employee population that is neither intentionally malicious nor part of a master plan. When you think about strengthening your culture, you need to think about the behaviors your employees exhibit as part of their muscle memory. What are the casual technology behaviors in which they engage in their day to day work? What outcomes are the product of mere sloppiness? What are the business behaviors that are driving the failures in your best practices? In short, think more broadly about your negligent neighbor, not your sinister nemesis.

Understand your base

You also need to understand the population of people you are trying to co-opt into your culture shift. Are they all your employees? Do you have a significant contractor or vendor population that you are trying to also influence? Do you have other third parties accessing your systems or interacting with your employees through your systems? By determining who your audience is, you can begin to be thoughtful about how you will influence their behavior.

Facts & Figures



In 2014, 88% of respondents claimed human behavior was the biggest threat to their organizations' security vs 93% in 2015. Source: Nuix and Ari Kaplan Advisors Study, "Defending Data: Turning Cybersecurity Inside Out With Corporate Leadership Perspectives on Reshaping Our Information Protection Practices."

By taking the time to thoughtfully understand your culture, your priorities, and your desired future state, while bringing the right dose of imagination to your process, you will be on the path to driving the culture and behaviors you aspire to build.

Separately, you need to understand how your population performs their work and interacts with your technology. Are they primarily white collar workers that are incredibly mobile and leverage VPN access? Do you have a heavy manufacturing workforce that is using computers to run your lines, while also checking their personal email through a web browser on those same computers? Is it a mix with diverse issues across your organization? A holistic way to undertake both a big picture and granular view of how your employee population works, as well as any third parties who use your systems, is through a cybersecurity culture survey. You can not only assess how those populations work and leverage your technology, but also their beliefs and understanding about what they should be doing from a best practice cybersecurity perspective.

Know where you need to plug the dam

Once you assess your population and understand the behaviors that are creating drag on the culture you want to achieve, begin taking an inventory of the behaviors you want to shift. These may range from the hyper-technical (e.g., individual security configurations in the set-up of a SharePoint site) to very mechanical behaviors (e.g., connecting to unsecured wireless networks). You can then leverage that inventory as a platform to prioritize where you will focus your education and behavior expectation efforts, as well as your resources.

Don't go it alone

Compliance professionals experienced in leading the charge on any culture shift know how valuable their cross functional partners can be. A cybersecurity focused culture shift is no different. Ensure you are establishing a team that includes your internal IT team, your HR partners, your communications subject matter experts, the right players from your legal team, and a representative from your corporate security team. In addition, if your company has the benefit of an organizational change group, tap into their expertise to help deliver against your culture change goals. Separately, do not forget to leverage your own internal and external network for lessons learned on culture change, and unofficial benchmarking on best practices and most likely potholes.

Find diverse and imaginative avenues to communicate and tell stories

No culture shift will hinge on a company's standard suite of annual training. To drive change in behaviors as imbedded as the day to day practices of your employees' interaction with your technology, you have to find multiple and impactful ways to reach them. And those avenues must resonate with them in an authentic way.

That is not to say that you should not use your periodic training programs through your LMS. You should. However, you should also find the right regular drumbeat of communications for your organization that are focused on your overall communication strategy, using the priorities you identified in your initial assessment. Send visually engaging emails with key lessons and stories. Develop short films you can deploy on your company portal. Leverage your leaders as cause champions to talk about how they are changing their behavior, and why they care about the issue. Ask your Board to talk about the importance of employee behavior in furtherance of cybersecurity at your annual meeting. The options available to you are only limited by your creativity.

Which leads us to the final critical reminder, namely that you should not forget to bring your imagination to the table as you seek to deploy your culture strategy. Your employees are always looking for new and creative ways to engage with their employer, and particularly in the compliance space. Most employees want to do the right thing, they simply need to understand the "what", but more importantly need you to inspire the "how."

There is no compliance topic that has more firmly shifted itself to center stage than cybersecurity.

To that end, be thoughtful about how you can catch employees' attention and engage with them real time. Create a competition to "catch" employees in the act of engaging in a cybersecurity best practice and leverage your internal social media outlet to celebrate the success. Create a false "breach" where you have managers who print confidential information, so they can be "caught" by employees to test understanding of your polices and your reporting systems. Create a system of employee issued rewards for those who are witnessed heading off a cybersecurity failure, like deploying a phishing email immediately to the IT cybersecurity team. In short, do not use the same old strategies, or you will get your same old culture.

By taking the time to thoughtfully understand your culture, your priorities, and your desired future state, while bringing the right dose of imagination to your process, you will be on the path to driving the culture and behaviors you aspire to build. Without leveraging those steps and the key stakeholders in your organizations, you leave your employee population unprepared and your company ripe for a cybersecurity breach. If you bring a strong game on the culture front, your strategy will thrive.

Author Biography

__Megan Belcher__ joined ConAgra Foods' legal department in 2007 and was promoted to be the company's Chief Employment Counsel in 2009. Megan has been the Vice President & Chief Counsel – Employment Law and Compliance at ConAgra Foods since 2014. In that role, she established and launched the company's first enterprise-wide compliance initiative, Integrity First. Before joining ConAgra Foods, Megan practiced with Am Law 200 firm Husch Blackwell LLP in its labor and employment department. Megan has over 15 years of experience in the compliance, litigation, and labor and employment spaces.

EXECUTIVE BRIEFING

ALL EYES ON SAFETY

How Ingredion Has Made Safety a Top Priority

Written by Ilene Gordon

Having spent most of my career in the manufacturing sector, I have become a steadfast advocate for safety. As a young executive in the paper and package industry, I was struck by the number of manufacturing employees who were missing parts of their fingers. It was unsettling and unnecessary.

At Ingredion, safety has been one of my highest priorities. A global provider of ingredient solutions, Ingredion employs 11,000 people and operates more than 40 manufacturing plants around the world. As CEO, I want employees to go home in the same condition that they came to work in – a single injury is one too many. That also goes for contractors and others who visit our facilities. It's just the right thing to do.

We believe that accidents are preventable. We are committed to creating and maintaining a safe working environment, and we strive to achieve an accident-free workplace. Our goal is to achieve a world-class safety performance by creating a culture that puts safety first. Over the past six years, we have developed and implemented a comprehensive safety program as a component of our overall sustainability plan.

Our strategy to embed safety into Ingredion's culture is built on several platforms: core principles, ownership and accountability, communications, metrics, and continuous improvement. To strengthen our focus on safety, we added it to our core values and codified it in our Policies on Business Conduct, along with rules on conflicts of interest, political contributions, legal compliance, and the like.

Most ethics-related changes start at the top of the house, and Ingredion's safety program is driven from the C-suite. The senior vice president of operational excellence, sustainability, and supply chain is on the executive team and he integrates the sustainability program into the business through an operating leadership team. In terms of safety administration, our organization is relatively flat, with only four levels of management in place:

VP, Safety & Health > Regional/Country Safety Manager > Plant Manager > Plant Safety Manager

This structure not only ensures ownership and accountability, it promotes effective, two-way communication and allows us to be nimble in implementing and enhancing policies. Plants or regions with challenging performances implement specific action plans, with measurable objectives. Moreover, improvement programs often are adopted across the organization.

For example, in 2013, a manufacturing facility in Mexico developed a hand-safety program, “Manos Seguras” (Safe Hands) in response to a study that showed the primary cause of plant injuries was hand related. The five-step approach to hand protection has since been adapted across North America to further drive hand-safety awareness and has significantly reduced the frequency of injuries.

Additionally, every employee is held accountable. Each one of us makes a personal pledge to place the safety, health, and well-being of our colleagues, contractors and visitors among our highest priorities. In addition, all employees, in both operations and non-manufacturing roles, have a safety objective in their annual goals that counts for 20 percent of performance in manufacturing and 10 percent in non-manufacturing functions.

Our commitment to safety is communicated in a number of ways, and usually engages the audience to reinforce the message. The Ingredion Safety Pledge was introduced in 2011 when every employee around the world, from plant worker to office administrator, was asked to sign the Pledge to demonstrate their personal commitment to safety. These signed Pledges are updated periodically and displayed throughout our facilities as a constant reminder that safety is the foundation of our work.

Every June we celebrate safety month at our facilities around the world to engage, educate, and train employees and contractors on safety. A contest encourages employees to design posters to promote our emphasis on working safely, and the winning submission is reproduced and distributed to all facilities for display.

As CEO, I want employees to go home in the same condition that they came to work in – a single injury is one too many.

Quarterly employee webcasts begin with an update on our safety performance. At live, off-site meetings everyone learns what to do in case of an emergency. And, one of our annual CEO awards is dedicated to safety excellence, recognizing substantial contributions to the continuous improvement of our safety performance. Last year, our team in Brazil took the award for their exemplary work, surpassing more than 12 million man-hours without a lost-time accident at all seven facilities.

In 2015, we introduced the “20.20 All Eyes on Safety” campaign to reinforce the goal of reducing the company-wide total recordable incident rates (TRIR) to 0.20 by the year 2020. Since we began tracking safety metrics in 2010, TRIR has improved significantly from 1.02 to 0.29 in 2015 and Lost Time Incident Rates (LTIR) decreased from 0.30 to 0.08. Our focus on contractors, as well as employees, has been equally effective. We have achieved a 72 percent reduction in the incident and lost time rates among employees and among contractors a 70 percent reduction in TRIR and 82 percent reduction in LTIR.

We have accomplished a great deal, but at Ingredion, we strive for continuous improvement. To further enhance the safety practices within plant operations worldwide, we have developed a Hazard Study program, a six-level process to assess potential hazards in new projects. Over 100 employees have been trained as Hazard Study Leaders and are implementing Hazard Studies in all operating regions.

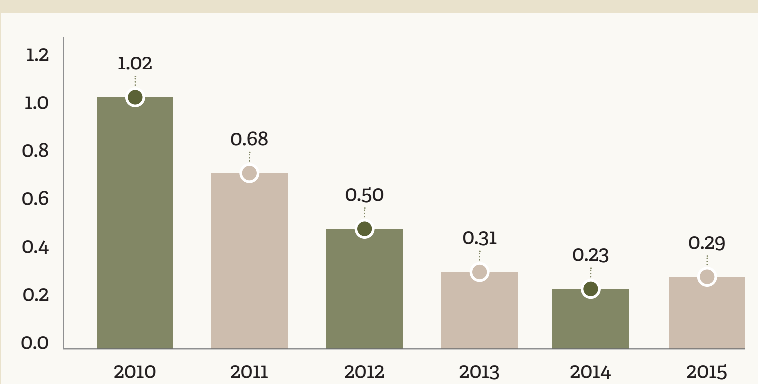
I am known for my motto: “A safe plant is a well-run plant.” A safe operating environment allows employees to focus on their jobs, driving shareholder value through enhanced productivity. Ingredion’s share price and total shareholder return continue to outpace the S&P 500. Since 2009, the share price has enjoyed a compound annual growth rate (CAGR) of 24 percent and total shareholder return of 26 percent CAGR.

Ingredion’s dedication to safety is unwavering. We will continue to provide a secure and healthy work environment for our employees, contractors, and visitors. We are committed to maintaining the highest standards of safety at our facilities and continually strive to send our workers and visitors home unharmed and injury free.

Facts & Figures

TRIR SAFETY RESULTS

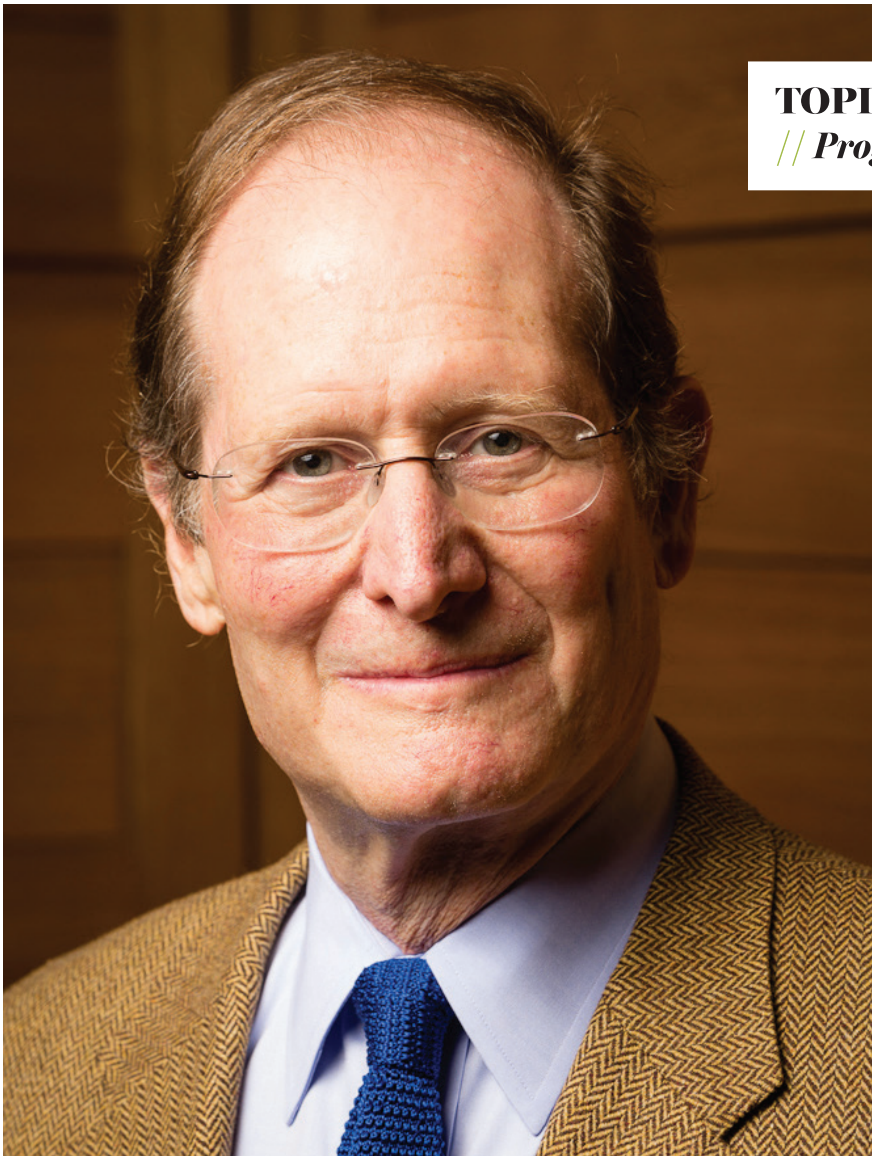
Total Recordable Incidence Rate (TRIR) stated per 200,000 hours.



Author Biography

Ilene Gordon *joined Ingredion Incorporated in 2009 as Chairman, President and Chief Executive Officer. Previously she held executive positions at Alcan Packaging, Packaging Corporation of America and Signode. Gordon began her career at the Boston Consulting Group as a strategy consultant based in Boston, London and Chicago.*

She is a director of International Paper, a Trustee of The Conference Board, and the first female chairman of the Economic Club of Chicago.



TOPICS COVERED
// *Program Advice & Strategy*

PERFORMANCE WITH INTEGRITY

In Conversation with Ben W. Heineman, Jr.

Interview by Les Prendergast

A true subject matter expert, Ben W. Heineman, Jr. shares his perspective regarding the evolving role of the General Counsel. In this interview, Mr. Heineman, Jr. shares details about his exciting new book, and takes us on a journey of overcoming obstacles and creating a framework for success.

Can you share what projects you are currently involved in?

BH My priority for 2016 is to reach the broadest possible audience for my new book, *The Inside Counsel Revolution: Resolving the Partner-Guardian Tension*, which is being published in April by Ankerwycke, the trade imprint of the American Bar Association. I am also thinking about future projects in such areas as improving access to justice or new writing and teaching in areas like the global auto industry which poses every conceivable issue of business, law, ethics and policy.

What insight can you offer regarding your upcoming book, *The Inside Counsel Revolution: Resolving Partner-Guardian Tension*?

BH In essence, the book seeks to advance a sustained argument about what it means to be a great corporation and what it means to be a great lawyer. I hope it will be of benefit to inside and outside lawyers, not just in private companies but also in public and non-profit organizations; not just in the US but around the world; not just today but also tomorrow. I also hope that it will reach a broader audience of directors, executives, students and experts on corporate governance and the role of business in society.

What inspired you to develop the book?

BH For more than 30 years, I have been deeply involved in enhancing the role of the General Counsel (GC) as a key member of corporate management who assists the corporation to carry out the mission of high performance with high integrity and sound risk management and thereby to be a responsible corporate citizen—first as GE GC from 1987-2005 and then as senior fellow at Harvard's schools of law and government and lecturer at Yale Law. I wrote a short book for CEOs in 2008 on these themes: "High Performance with High Integrity" (Harvard Business Press). But, with increasing attention being paid to the role of GC, I wanted to write a much more detailed and extensive account of the transformation which would serve as a benchmark for people to consider moving forward.

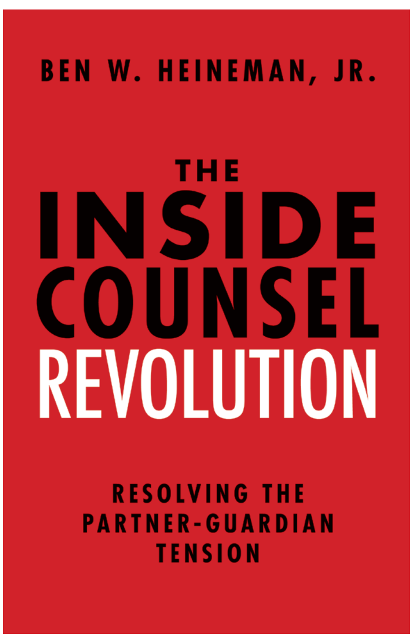
What are some of the key changes you have seen in the role of the GC?

The CEO and top business leaders, including the GC, must, ultimately, be fiercely dedicated to creating, leading and maintaining a uniform performance with integrity culture across the globe.

BH One thesis of my book is that over the past 30 plus years, there has been an inside counsel revolution of increasing scope and power. General counsel and corporate law departments in top global companies have become far more sophisticated, capable and influential, transforming both business and law in two important ways.

First, the role of the GC inside the corporation has significantly grown in importance. The GC has often replaced the senior partner in a law firm as the primary counselor for the CEO and board of directors. The GC role has broad scope—beyond law—that includes ethics, risk, governance and citizenship. The GC is a core member of top management, participating in decisions and actions not just about risks but also about opportunities, not just about law but also about business, not just about public policy but also about geopolitics. The GC is now often seen as having importance and stature comparable to the Chief Financial Officer by directors, CEOs and business leaders because the corporation requires that it navigate complex and fast-changing law, regulation, litigation, public policy, politics, media and interest group pressures across the globe. As a result, the expertise, quality, breadth and power of the GC and inside counsel have increased dramatically.

Second, the role of GC outside the corporation has also significantly grown in importance with a related dramatic shift in power from outside law firms to inside law departments over both matters and money. Because corporate law departments are increasingly staffed by outstanding specialists and generalists, inside lawyers have taken on day-to-day management and strategic direction of major issues and major expenditures affecting the corporation. General counsel and inside lawyers are also increasingly advocates, points of contact or negotiators with important public and private parties in both developed and developing economies. On the critical risks and opportunities of "business and society" issues, boards and business leaders now delegate key outside relationships to the GC.



Author, Ben W. Heineman, Jr., offers an analytic and prescriptive look at the modern role of inside counsel—as partner to the board of directors, the CEO, and business leaders, but ultimately as guardian of the corporation.

With respect to the book, what are some of the primary messages you would like to share?

BH There are four framing "practical ideals" which are fundamental.

First, corporations, especially global companies, should adopt the fusion of high performance with high integrity and sound risk management as their mission. High performance means strong sustained economic growth through provision of superior goods and services, which in turn provide durable benefits for shareholders and other stakeholders. High integrity means robust adherence to the spirit and letter of formal rules, both legal and financial; voluntary adoption of binding global ethical standards that go beyond the mandatory rules; and employee commitment to core values. The core values of the company, as expressed importantly through the core values of its employees, are essential to strong, trusting relationships inside and outside the company. These values, in turn, can only exist when the company commits to law and ethics and to making those norms operational throughout the company. Law, ethics and values!!

Second, the GC must be a lawyer-statesperson who is an outstanding technical expert, a wise counselor and an accountable leader, tasked with assisting the corporation to achieve that fundamental goal of high performance with high integrity. For the lawyer-statesperson, the first question is: "Is it legal?" But the ultimate question is: "Is it right?" As lawyer-statesperson, the GC must engage in robust debate on major corporate initiatives about "the ends" of an action, not just "the means" for carrying it out; about what is the "right" role of business in society, not just about what is "legal." The GC is well positioned as counselor to introduce a dose of constructive challenge to such discussions.

Third, to function effectively as a lawyer-statesperson, the GC must assume a second aspirational role: partner to the board and business leaders and guardian of the corporation. Under appropriate conditions, being an effective partner on business and law establishes the trust and credibility that allows the GC to be an effective guardian. The fusion of the partner and guardian roles turns on deep GC integration in the corporation: being at major corporate decision-meetings (strategy, budget, deals, new products, new geographies, etc.) and being deeply involved in implementation of those decisions. Such involvement means the GC can help the business leaders achieve legitimate commercial goals and give independent views on whether corporate action comports with appropriate standards relating to integrity, risk and citizenship. It requires character, stature, independence and courage so that the GC does not just passively salute and obey when business leaders suggest questionable actions.

Fourth, the CEO and top business leaders, including the GC, must, ultimately, be fiercely dedicated to creating, leading and maintaining a uniform performance with integrity culture across the globe. Culture is the shared principles (the values, the policies and the attitudes) and the shared practices (the norms, systems and processes) that influence how people feel, think and behave from the top of the corporation to the bottom. The GC has a special, critical role in the multiple, interrelated steps—the articulation of the aspirations and the implementation of the actions—essential to a performance with integrity culture. This involves general actions such as clear articulation of policy; robust education and training; embedding systems, processes and resources in business operations; giving employees a voice; proper discipline for failures and proper incentives for good behavior.

The GC must live these four practical ideals across the fundamental issues s/he faces in the corporation: performance, compliance, ethics, risk, governance, citizenship and organizational leadership.

What are some of the problems and dilemmas currently faced by GC who are trying to set the standard of meeting business objectives with high integrity?

BH The GC faces obstacles which critics often cite when expressing doubts about whether s/he possesses the independence to be a true lawyer-statesperson and guardian. These include: negative business attitudes about lawyers; business leaders' lack of understanding about law and policy; a leader's overbearing personality; group pressures to conform; inside lawyer fear of CEO retribution; problems of having only one client and lawyer concern about their compensation. In many recent scandals—from accounting fraud to improper options back-dating to global bribery to the credit crisis—GC and inside lawyers, in their eagerness to be partners, have failed as guardians. They did not act with independence and courage; they failed to ask broad, probing questions about dubious actions; they failed to say "slow down" or "stop."

Can you provide some suggestions for overcoming the obstacles you just mentioned?

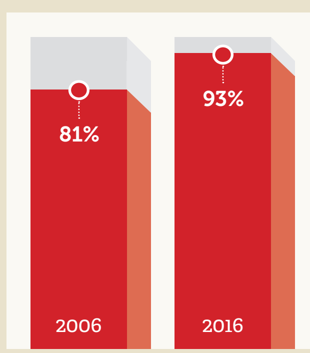
BH I do not believe that the choice for GC (and inside lawyers generally) is to go native as a "yes person" for business leaders and be legally and ethically compromised or to be a conservative, inveterate "nay-sayer" ultimately excluded from core corporate decisions and activity. The obstacles to the partner-guardian fusion can be overcome by many factors: the character, reputation and independence of the GC; an alliance with other top staff officers (Finance, HR, Compliance and Risk) and a close relationship with the board of directors which should ask for private meetings with the GC and should oversee the GC's compensation and job status. Ultimately, however, the capacity to serve as partner to business leaders and guardian of the corporation turns on the attitudes of the CEO and the board.

I believe these board and CEO attitudes can—and will—exist. This is so not because of theory, but because of reality. The inside counsel revolution occurred in part as a reaction to the excesses and acquisitiveness of outside law firms. But the key driver was the dramatic increase in global commercial complexity and in related "business in society" issues, including core ethical issues, which sophisticated inside lawyers can handle with speed, skill and judgment.

How can readers discover more about you and you work?

BH Search my name at the following websites for numerous articles: Harvard Law School Forum on Corporate Governance and Financial Regulation; Harvard Business Review; and The Atlantic.

Facts & Figures



*According to the 2016 NYSE Governance Services/ BarkerGilmore Survey Report, The Rise of the GC: From Legal Adviser to Strategic Adviser, **93%** of respondents consider the GC to be part of the executive management team, up **12%** from ten years prior.*

Expert Biography

***Ben W. Heineman Jr.** was GE's Chief Legal Officer from 1987 to 2005, and is the author of the new book The Inside Counsel Revolution: Resolving the Partner-Guardian Tension (Ankerwycke; May 2016). Prior to GE, Heineman was Editor-in-Chief of the Yale Law Journal, Supreme Court Law Clerk, Assistant Secretary for policy at the Department of Health, Education and Welfare, and practiced public interest and constitutional law. Since his retirement, he has been a Senior Fellow at Harvard's schools of law and government.*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TOPICS COVERED
// *Advice & Strategy*

THE THREE PILLARS

David Golden on the Framework for Driving Sustainability

Written by David A. Golden

A sustainable company creates significantly more value in the world than the resources it consumes. With this basic "equation", one framework to use when driving sustainability within a company is to focus on three pillars: (1) reducing resource consumption/ increasing resource efficiency; (2) maximizing the value of the company's product or service offering; and (3) creating social value with the company's profits, employees, and influence. Doing this in a clear and concrete way that aligns with the company's overarching strategy engages and motivates employees and drives success at the triple bottom line.

Managing Resources to Create Value: Culture and Leadership Matter

Eastman is approaching its 100th year of doing business. During that time, we have developed a culture of responsible resource stewardship. Our environmental commitments are consistent with the company's dedication to maintaining an excellent environmental compliance record and operating as a responsible corporate neighbor. Whether managing our energy-intensive operations, protecting the quality of our air and water, or working to reduce waste, the Eastman team is focused on developing, identifying and investing in new technologies and work practices. We work hard to instill and maintain a culture of continually looking to minimize our environmental footprint by conserving natural resources, inventing more efficient production methods, and developing chemistries that use renewable raw materials. Being a responsible steward of resources also means ensuring our workplaces and operations are safe, our hiring and promotion practices are diverse and inclusive, and that we act ethically and responsibly in all of our business dealings.

This culture did not develop overnight. Rather, it's a consequence of a very deliberate, relentless articulation of who our company is and what we stand for. Such a responsible culture can only be driven by proper "tone at the top." We proactively share this vision among our Eastman Team members as well as committing to hold ourselves accountable. We look for the right cultural commitment in our hiring, training, and promotion.

One example of driving this culture is our sponsorship of the largest environmental conference in the state of Tennessee. The conference is held in the city where our headquarters and one of the largest, integrated chemical facilities in the country is located. Public officials and regulators from the United States Environmental Protection Agency, as well as State and local agencies, attend and speak at this annual conference along with industry and community representatives. This event has proven to be an immensely valuable forum to generate and share ideas and best practices as well as develop a network of resources and colleagues. Furthermore, it's a public statement of what we stand for.

Our culture has resulted in a myriad of recognitions for Eastman including being named an ENERGY STAR® Partner five years in a row by the United States Environmental Protection Agency and ENERGY STAR® Partner--Sustained Excellence three years in a row. Both of these accomplishments are a record in our industry. We have also been named one of the *World's Most Ethical Companies*® three years in a row and were recently honored by AIChE for Advancing Excellence in Process Safety. Additionally, Eastman has been recognized as one of the Glassdoor Best Places to Work for the last three years.

Creating Value Through Collaboration-Driven Innovation

Truly innovative companies understand the needs, drivers and behaviors across the value chain, including the needs of the *end consumer*. We're monitoring for changing trends and associated demand effects while also using our insights to drive change with our customers, suppliers, downstream retailers, and consumers. Making deliberate choices to invest in the right things, at the right time, with the right partners, yields focus and dramatic results.

The Eastman Innovation Lab (EIL) is a good example of this paradigm. Fifteen years ago, we launched the EIL to better connect with industrial designers. Fostering relationships and encouraging collaboration between designers and a material supplier was unheard of in our industry. Making these connections across the value chain led to better-informed material selection and ultimately empowered Eastman's business partners to find ways to incorporate sustainable materials very early on in the design process. Consistent collaboration helps Eastman and our partners design products that are not only functional but are often recyclable, durable and waste reducing. It also helps our partners understand how our materials can be used to enhance the quality of life of downstream customers by improving safety and decreasing their environmental footprint. This process helps enable alignment with consumers' increasing desire for responsible, sustainable products.

Making Connections to Increase Social Value

The profits, employees, and influence of a sustainable company can be powerful forces for good. Eastman focuses our corporate responsibility efforts on empowerment, education, environment, and economic development. The more of these "Four Es" connected to a project, the higher priority for support. We bias our corporate responsibility initiatives toward projects that have the potential to be transformative. With those projects, we often play a catalytic role. We look to maximize collective impact by collaborating and engaging with partners, both public and private, whose strategic focus empowers positive change for our world.

A good example of this concept is our ongoing partnership with the Woods Hole Oceanographic Institution (WHOI). Because the ocean is so fundamental to the health of the planet, and the blue economy a critical part of the world's future, Eastman is supporting WHOI on a variety of projects. One project involves a transformative way to gather data in the Gulf Stream, which historically is surprisingly void of continuous monitors.

Parting Thoughts

Embedding sustainability in corporate strategy requires an engaged leadership team that is committed to setting and achieving goals that drive change and create value. Eastman has an active Sustainability Council, which I chair, consisting of senior executives representing a cross-section of the organization. The Council provides direction on the company's sustainability strategy, leveraging sustainability as a key driver of innovation and growth. The Council not only ensures collaboration, communication, and motivation, both internally and externally with key partners and stakeholders, but also provides governance and prioritization of issues and goals. A clear and crisp sustainability vision can be a valuable reference point for a company as well as a way to illuminate the value of sustainability. Do not fear setting a vision because you feel you might never achieve it. As you set it and awake to the possibilities, you will reach beyond your previous grasp. As Thoreau said, "Only that day dawns to which we are awake. There is more day to dawn."

Expert Biography

***David A. Golden** is Senior Vice President, Chief Legal & Sustainability Officer, and Corporate Secretary for Eastman Chemical Company. Golden has overall responsibility for Eastman's Legal, Corporate HSES, Product Safety & Regulatory Affairs, Sustainability, Government Relations, Community Affairs, and Public Policy functions, which has personnel in the United States, Europe, Asia and Latin America. He also has overall responsibility for Eastman's Global Business Conduct and International Trade Compliance programs. Immediately prior to this position, he was Vice President, Associate General Counsel, and Corporate Secretary with overall responsibility for Eastman's Legal Department.*

SCHEDULE OF EVENTS

SOMEWHERE ELSE YOU HAVE TO BE?

The following list highlights a few of the many events that Ethisphere and its partners host around the globe each year. Some are in-person forums, while others are virtual, but all provide unparalleled insight into the leading ethics, compliance and governance issues of today.

The following icons represent different characteristics of each event:
Live events take place in a physical location, while online events are broadcast virtually. BELA events are complimentary for BELA members and CLE Events are eligible for CLE (or local CLE equivalent) credit to attendees.

Live Event | Online Event | BELA Event | CLE Event

JUNE

Live Event, BELA Event

JUNE 8TH - 9TH
4th Annual Latin America Ethics Summit

Join your peers for this unique event to be held at the Grand Hyatt in Sao Paulo, where the C-Suite leaders across industries and geographies assemble to advance corporate integrity and performance. Topics include anti-corruption and bribery, creating an open reporting culture, mergers and acquisitions, risk assessment, governance, and much more. Watch for updates at: ***latinamericaethicssummit.com***

Hosted by *Ethisphere*

Online Event, CLE Event

JUNE 14TH
There's an Election Coming: What Corporate Compliance Officers Need to Know About Political Activity

This web conference will review regulations surrounding communications with employees and members of the public about political issues, the rules related to use of corporate facilities and resources for political purposes, and strategies for developing and implementing corporate policies related to corporate and employee political activity.

Hosted by *SCCE*

SEPTEMBER

BELA Event, CLE Event

SEPTEMBER 20TH - 21ST
Inaugural Middle East Ethics and Compliance Summit

The Middle East Ethics & Compliance Summit is the first of its kind! This new event offers leading executives from the regional business community a unique opportunity to connect in the interest of inspiring corporate integrity and honored compliance practices. Join us and your peers at this game changing event! Watch for updates and register now at: ***middleeastethicssummit.com***.

Hosted by *Ethisphere and Parsons*

Live Event, CLE Event

SEPTEMBER 25TH - 28TH
15th Annual Compliance and Ethics Institute

SCCE's annual Compliance & Ethics Institute is the primary education and networking event for professionals working in the Compliance and Ethics profession across all industries around the world. Sessions at the 2016 conference will offer the latest compliance information on hot topics and current events. The event will be held at the Sheraton Grand Chicago. Watch for updates at: ***complianceethicsinstitute.org***

Hosted by *SCCE*

OCTOBER

Live Event, BELA Event

OCTOBER 11TH
London Conference Forum

The London Ethics & Compliance Forum is a one-day event focusing on the many issues executives are addressing with corporate integrity today. Join some of the most reputable multinational and leading regional company business executives, GCs, Chief Compliance Officers and other top experts as they assemble to take action, share cutting edge practices and offer new insights on ethics and compliance across Europe and around the world. Enjoy in-depth conversations and enriched networking opportunities to connect with some of the best industry leaders. Watch for updates at: ***londoncomplianceforum.com***

Hosted by *Ethisphere*

Live Event, BELA Event

OCTOBER 13TH
Paris Conference Forum

Join your peers for this unique one day event to be held in Paris, where the C-Suite leaders across industries and geographies assemble to advance corporate integrity and performance. Learn about the latest hot topics and current trends. Watch for future updates and additional details.

Hosted by *Ethisphere*

ONLINE INSIGHTS

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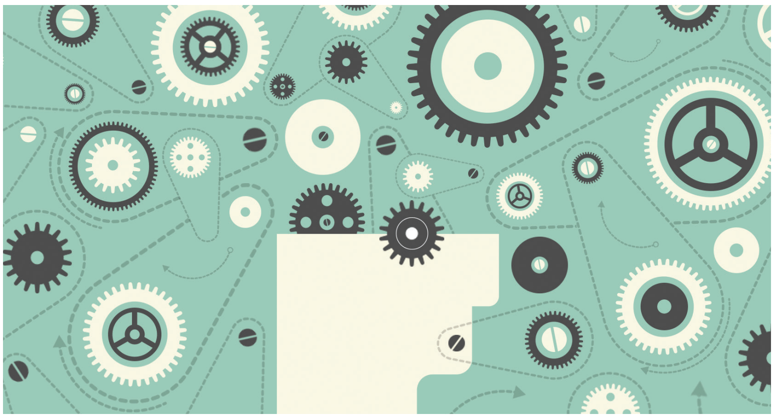

Ethisphere Launches Online Insights

In January, Ethisphere launched an online portal for ethics, governance and compliance insights. The site, found at **insights.ethisphere.com**, highlights best practices, trends, and other ideas from company leaders, industry practitioners as well as Ethisphere's original research and reporting. It contains podcasts, video interviews, whitepapers, and other documents geared towards keeping corporate leaders informed of both the latest news as well as the current program best practices their peers are employing to build a strong culture of ethics. The following are some of the highlights from the last quarter.

Panama Papers Leak Exposes Lapse in Company Culture

More than 11.5 million documents were leaked from a Panamanian law firm, Mossack Fonseca. Dubbed as one of the biggest data leaks in history, Panama Papers exposes how some companies and politicians engage in unethical business practices.

The New Ethical Mandate for Value-Conscious Companies

Corporate leaders have always seen transparency as a best policy, but more interesting is the approach some companies have taken to move this concept further. Some experts have found that focusing intensely on issues such as corporate citizenship, diversity, and sustainability, can contribute to long-term value creation.

Culture Measurement – A Series on our Pillars

It is critically important to assess what your employees believe happens when people violate ethical standards. Is there one standard for the average employee and a different one for the "golden child"? You can readily measure your ethical culture by asking people questions such as what they believe it takes to get ahead in your company.

France Anti-Corruption Bill and Compliance Officers

Having received heavy criticism over the years, France is looking to implement new changes to its current anti-corruption system. Much of the enforcement has been left to American regulators who have found French companies wrapped up in FCPA violations.

Featured Expert this Month on Insights

Ethisphere's Insights features a regular series of expert interviews with corporate leaders. Pictured above is ***Michael Gioffre***, Chief Compliance and Ethics Officer, Voya Financial, who talks about mentorship, "the next big thing" in compliance, and the characteristics that make a successful leader. "Compliance officers need to be able to adapt their approach to keep employees engaged," Gioffre says, "so employees will remember the information in their company's policies when they need to." Read the full interview online.

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THE FINAL WORD

BETTER QUESTIONS MAKE FOR BETTER BOARDS

Too many questions in the corporate boardroom might sometimes be a problem, but too few or poorly informed questions are almost always a bigger mistake. Tough decisions about succession, risk, compliance and other complex issues require the right information and the correct level of discussion - the heart of which is the well posed question. For independent directors, "cooperative skepticism" is one way of describing this balance between asking questions that challenge and enlighten while avoiding interactions that might bog down an otherwise effective management team.

Many questions from independent directors simply clarify materials received from management. This is a mistake. Those "housekeeping" questions can be useful but tend not to unearth new viewpoints, reveal erroneous fundamental assumptions, or help management cast a fresh critical eye on their plans and strategy.

To develop the right questions, directors and senior executives need to cultivate and encourage a varied, substantial, and recurring inbound flow of relevant unvarnished information about their company. Directors rely on official curated sources such as management presentations, stock analyst reports, securities filings, and formal news coverage. The risk, however, is that even well intentioned management will over-curate this information and directors will consume an incomplete and sometimes biased set of materials.

The best directors, with a goal of fostering a cooperatively skeptical discussion, will find information from a wider variety of non-curated sources. These include the investment theses of any relevant short sellers or shareholder activists, blogs and online commentary about the company or the company's critical vendors, and "amateur" commentary about company culture, management, or products found on job-sites or in consumer review forums. These directors take the time to digest that information and create space (and time) to bring their intellect and experience to the formation of questions posed to management - all with the goal of advancing the conversation beyond the simple clarification of materials already on hand.

In her groundbreaking book, "Willful Blindness: Why We Ignore the Obvious at Our Peril," Margaret Heffernan highlights one of the practical advantages of spending time to create and foster better questions. Her research into corporate missteps, whether perpetrated by bad actors or simply the result of well-intentioned but mistaken managers, demonstrates that the information needed to avoid catastrophe was seldom hidden or secret. Instead, this critical insight was often just one good question away from being brought to the attention of the board and management. Better questions, as it turns out, are the low hanging fruit of improved boardroom decision-making.

F. Daniel Siciliano

Daniel Siciliano
Professor and Associate Dean
Rock Center for Corporate Governance at Stanford

THE INDEX

THIS QUARTER'S COMPANIES AND PEOPLE

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