

HALLMARK V OF THE
**Ten Hallmarks of an
Effective Compliance Program**

COMMUNICATION AND TRAINING

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A. 360 degrees of Compliance Communications

A 360-degree view of compliance is an effort to incorporate your compliance identity into a holistic approach so that compliance is in touch with and visible to your employees at all times. It is about creating a distinctive brand philosophy of compliance which is centered on your consumers. In other words, it helps a compliance practitioner to anticipate all the aspects of your employees needs around compliance your employees, who are the customers of your compliance program. This is especially true when compliance is either perceived as something that comes out of the home office or is perceived as the “Land of No.” A 360-degree view of compliance gives you the opportunity to build a new brand image for your compliance program.

Communications is often thought of as a two-way street—upward and downward, inbound and outbound, or side-to-side. However, it is better to think of it as a 360-degree effort. You simply can no longer as effectively communicate in just two ways. You now communicate in a more holistic manner, and in multiple ways. If you are just thinking about communications in the classic form, you are missing something that is happening around you.

360 degrees of compliance communication is not just a classic form of communication but rather it is a communication in the concept of every interaction, whether they be planned interactions or whether they be into or accidental interactions. It is all a form of communication. This is particularly true if you are a compliance professional, a chief compliance officer or a compliant practitioner. The things you do, the way you act, and the way people see you are always communicating. It is not simply communicating to one another as often you may well be communicating to a group across siloed boundaries, to the constituencies you had not even planned to initially communicate with.

There are several concepts which should be included in your 360-degree view of compliance communications. Begin with an objective so you identify the purpose of your communication and the target of whom you are going to communicate to. Identify as clearly as you can the purpose and reason to ensure your message is aligned with your objectives. For instance, are you implementing a 360-degree view of communication to educate, inform, change perceptions or build trust and commitment?

Next, who is your audience? To communicate effectively, you need to understand your audience. In any corporation, there are multiple audiences who are the key stakeholders in the 360-degree process. How much do they know? Some of the stakeholders include the Board of Directors, senior management, middle management, employee teams, committees, coaches, facilitators, customers, business partners, vendors, sales agents and representative, strategic alliances and business ventures. What are your distribution channels and how do you track your messaging? You should create a comprehensive spreadsheet to track the messages the intended audience and the delivery mechanism. Another key ingredient of the 360-degree approach is feedback. This is a key component of the 360-degree experience and educate each stakeholder on the benefits of feedback from the 360-degree approach.

Finally, you need to evaluate what you have done. You can monitor your communication activities by tracking attendance at the events, website statistics, open rate of emails, downloads of materials, video hits; in other words, the same techniques that your marketing folks would use to determine their messaging's effectiveness. The objective is to build trust for the 360-degree process by determining if the goal achieved. You can utilize surveys or focus groups to assess the impact on your target audience. By focusing on your customer customers of compliance (i.e., your employees), it allows you to identify gaps and improve the communication process for your compliance program.

Using such a 360-degree approach to communication, allows a chief compliance officer to "see around corners" and can be one of the greatest strengths of a best practices compliance program. The reason is listening. Listening is a key leadership component and there are certainly many ways to listen. You can sit in your office and wait for a call or report on the hotline or you can go out into the field and find out what challenges employees are facing. From this you can work with them to craft a solution that works for the company and holds to the company's ethical and compliance values.

The best example I can provide to you is a story told to me by Louis Sapirman, the CCO at Dunn & Bradstreet. It happened to him in Argentina. Argentina has an interesting form of illegal conduct, which is an open black market for the changing of currency. Sapirman was with a colleague who was one of the leaders from the company's South American operations and they went into a convenience store. The person who was going to sell him the product suggested that he go just around the corner and change money on the black market where he could get a much better exchange rate, almost a 100 percent difference in the exchange rate; he declined to do so. Sapirman paid and received the established bank right in the small transaction.

He had not considered role modeling that compliance. About six months later one of his team members was in Mexico speaking to the leader of the Dunn and Bradstreet operation there. The non-compliance function employee said that he was the person who had been with Sapirman. He recounted the story of doing the right thing, when literally no one was watching. That is the power of 360-degrees in communication.

B. The Use of Social Media in Compliance

What is the message of compliance inside of a corporation and how it is distributed? In a compliance program, the largest portion of your consumers/customers are your employees. Social media presents some excellent mechanisms to communicate the message of compliance going forward. Many of the applications that we use in our personal communication are free or available at very low cost. Why not take advantage of them and use those same communication tools in your internal compliance marketing efforts going forward?

In an interview with the author, Louis Sapirman, Chief Compliance Officer at Dun & Bradstreet (D&B) has talked about the company's integration of social media into compliance. Sapirman emphasized the tech-savvy nature of the company's workforce. It is not simply about having a younger workforce. If your company is in the services business, it probably means an employee

base using technological tools to deliver solutions. He also pointed to the data-driven nature of the D&B business so using technological tools to deliver products and solutions is something the company has been doing for quite a while. This use of technological tools led the company to consider how such techniques could be used internally in disciplines which may not have incorporated them into their repertoires previously.

Not surprisingly, with most any successful corporate initiative, Sapirman said it began at the top of the organization, with the company's Chief Executive Officer, Robert Carrigan. Sapirman noted that the CEO saw the advantage of using social media internally and challenged his senior management team to take a new look at the manner in which their corporate functions were using social media. From there, Sapirman and his compliance team saw the advantages of using social media for facilitating a 360-degree approach to communications in compliance. Sapirman comprehended the possibility for use of social media for compliance with those external to the company as well.

Internally, Sapirman identified a tool called Chatter, which he uses similarly to Twitter users who engage in a Tweet-up. He has created an internal company brand in the compliance space, using the moniker *#dotherightthing*, which trends in the company's Chatter environment. He also uses this hashtag when he facilitates a Chatter Jam, which is a real-time social media discussion. He puts his compliance team into the event and they hold it at various times during the day, so it can be accessed by D&B employees anywhere in the world.

He said that he seeds Chatter Jam so that employees are aware of the expectations and to engage in the discussion respectfully of others. When D&B began these sessions he also reminded employees that if they had specific or individual concerns they should bring them to Sapirman directly or through the hotline. However, he does not have to make this admonition any more, as everyone seems to understand the ground rules. Now this seeding only relates to the topics that each Chatter Jam begins with going forward.

One of the concerns lawyers tend to have about the use of social media is with general and specific topics coming up on social media and the ill it may cause the organization. Sapirman believes that while such untoward situations can arise, if you make clear the ground rules about such discussions, these types of issues do not usually arise. That has certainly been the D&B experience.

Each employee uses their own names during these Chatter Jams so there is employee accountability and transparency as well. Sapirman said they further define each communication through a hashtag so that it cannot only immediately be defined but also searched in the archives going forward. He provided the examples of specific regulatory issues and privacy. This branding also enhances the process going forward.

Sapirman points to specific compliance initiatives that arose during or from these Chatter Jams to emphasize their utility. Sapirman emphasized that these events allow employees the opportunity to express their opinions about the compliance function and what compliance

means to them in their organization. One of these discussions was around the company's Code of Conduct. He said that employees wanted to see the words "Do the Right Thing" as the name of the Code of Conduct.

I inquired about D&B's use of social media in connection with their third parties. Sapirman said that the company allows some of them access to its internal Chatter tools to facilitate direct communications. Further, these external contractors can connect with both Sapirman and the company through Twitter. He said that he is consistently communicating to the greater body of customers about the compliance initiatives or compliance reminders on what the D&B compliance function is doing and how it is going about doing them. He believes it is an important communications tool to make sure that he and his team are getting their compliance messages out there.

Sapirman also described using Chatter in a manner that sounded almost like Facebook and its new live video function. He said they can deliver short video vignettes about compliance to employees. The compliance function or the employee base can develop these.

Another approach was suggested by the company Hootsuite and its social media tool *Periscope*. Hootsuite did a campaign called "Follow the Sun" using Periscope. They asked their employees showcase what they called #HootsuiteLife. They gave access to different people in every company office around the globe. Throughout the day, it would "Follow the Sun," and people in different offices would log into the Hootsuite account and walk around and show off their culture, interviewing their friends, etc. They talk about the importance of culture and now they are proving it. The number of inbound applications drastically increased after people got that sneak peek into their company. Think how powerful such a presentation could be for your organization if the focus was on compliance.

Both of these initiatives drive home three key insights. The first is how compliance, like society, is evolving, in many ways ever faster. As more millennials move into the workforce, the more your employee base will have used social media all their lives. Once upon a time, email was a revelatory innovation. Now if you are not communicating, you are falling behind the 8-ball. Employees expect their employers to act like and treat them as if this is the present day, not 1994 or even 2004.

The second is that these tools can go a long way towards enhancing your compliance program going forward. Recall the declination to prosecute that Morgan Stanley received from the Department of Justice, back in 2012, when one of its Managing Directors had engaged in FCPA violations. One of the reasons cited by the DOJ was 35 email compliance reminders sent over 7 years, which served to bolster the annual FCPA training to the recalcitrant Managing Director. You can use your archived social media communications as evidence that you have continually communicated your company's expectations around compliance. It is equally important that these expectations are documented (Read – Document, Document, and Document).

Finally, never forget the *social* part of social media. Social media is a more holistic, multiple-sided communication. Not only are you setting out expectations but also these tools allow you to receive back communications from your employees. The D&B experience around the name change for its Code of Conduct is but one example. You can also see that if you have several concerns expressed it could alert you earlier to begin some detection and move towards prevention in your compliance program.

C. What is effective compliance training?

The communication of your anti-corruption compliance program, both through training and message, is something that must be done on a regular basis to ensure its effectiveness. As the FCPA Guidance explains:

Compliance policies cannot work unless effectively communicated throughout a company. Accordingly, DOJ and SEC will evaluate whether a company has taken steps to ensure that relevant policies and procedures have been communicated throughout the organization, including through periodic training and certification for all directors, officers, relevant employees, and, where appropriate, agents and business partners.

One of the key goals of any Foreign Corrupt Practices Act (FCPA) compliance program is to train employees in awareness and understanding of the FCPA; your specific company compliance program; and to create and foster a culture of compliance. Beginning in the fall of 2016 through the announcement of the FCPA enforcement Pilot Program, the DOJ began to talk about whether you have determined the effectiveness of your training. This continued with the 2017 Evaluation of Corporate Compliance Programs where they asked, “How has the company measured the effectiveness of the training?” This point has bedeviled many compliance professionals yet is now a key metric for the government in evaluating compliance training.

Also raised in the Evaluation was the focus of your training programs, where the DOJ inquired into whether your training was “tailored” for the audience. The Evaluation, In Prong 6, Training and Communication, asks:

What training have employees in relevant control functions received? Has the company provided tailored training for high-risk and control employees that addressed the risks in the area where the misconduct occurred? What analysis has the company undertaken to determine who should be trained and on what subjects?

This adds two requirements. The first is that you must assess your employees for risk to determine the type of training you might need to deliver. This means that you should risk rank your employees. Obviously, the sales force would be the highest risk but there may be others which are deserving of high risk training as well. From your risk ranking, you need to then develop training tailored for the risks those employees will face.

The key going forward is that you have thoughtfully created your compliance training program. Not only in the design but who receives it, all coupled with backend determination of

effectiveness. Finally, all of this must be documented. In Prong 6, Training and Communication, of the Evaluation it read, in part:

Has the training been offered in the form and language appropriate for the intended audience? How has the company measured the effectiveness of the training?

Most companies have not considered this issue, the effectiveness of their compliance program. I would suggest that you start at the beginning of an evaluation and move outward. This means starting with attendance, which many companies tend to overlook. You should determine that all senior management and company Board members have attended FCPA compliance training. You should review the documentation of attendance and confirm this attendance. Make your department or group leaders accountable for the attendance of their direct reports and so on down the chain. Evidence of training is important to create an audit trail for any internal or external assessment or audit of your training program.

One of the key goals of any FCPA compliance program is to train company employees in awareness and understanding of the law; your specific company compliance program; and to create and foster a culture of compliance. In their book *Foreign Corrupt Practices Act Compliance Guidebook: Protecting Your Organization from Bribery and Corruption*, Martin T. Biegelman and Daniel R. Biegelman provide some techniques which can be used to begin to evaluate ethics and compliance training.

The authors encourage post-training measurement of employees who participated. A general assessment of those trained on the FCPA and your company's compliance program is a starting point. They list five possible questions as a starting point for the assessment of the effectiveness of your FCPA compliance training:

1. What does the FCPA stand for?
2. What is a facilitation payment and does the company allow such payments?
3. How do you report compliance violations?
4. What types of improper compliance conduct would require reporting?
5. What is the name of your company's Chief Compliance Officer?

The authors set out other metrics, which can be used in the post-training evaluation phase. They point to any increase in hotline use; are there more calls into the compliance department requesting assistance or even asking questions about compliance? Is there any decrease in compliance violations or other acts of non-compliance?

What if you want to take your post-training analysis to a higher level and begin a more robust consideration of the effectiveness of compliance training. Joel Smith, the founder of Inhouse Owl, a training services provider, considered an analysis of return on investment (ROI) for compliance training. He advocated performing an assessment to determine ethics and compliance training ROI to demonstrate that by putting money and resources into training, a compliance professional can not only show the benefits of ethics and compliance training but

also understand more about what employees are getting out of training (i.e., effectiveness). The goal is to create a measurable system that will identify the benefits of training, such as avoiding a non-compliance event such as a violation of the FCPA.

Smith's model uses four factors to help determine ROI for your ethics and compliance training, which are: 1) Engagement, 2) Learning, 3) Application and Implementation, and 4) Business Impact. These same four factors can be used to determine compliance training effectiveness.

Figure out what you want to measure. Before you ever train an employee, you should have a goal in mind. What actions do you want employees to take? What risks do you want them to avoid? In compliance training, you want them to avoid non-ethical and non-compliant actions that would lead to potential violations. Your goal is to train employees to follow your Code of Conduct and your compliance program policies and procedures, so you avoid liability related to actions.

Were employees satisfied with the training? What is their engagement? The next step is to get a sense of whether employees feel that the training you provided is relevant and targeted to their job. If it's not targeted, employees will likely not be committed to changing risky behavior. One way to obtain such data is through a post-training survey. This should give you insight into determining if employees thought the training was beneficial and effective in answering their questions and concerns.

Did employees actually learn anything? A critical part of any employee training is the assessment. You must know whether they actually learned anything during training. You can collect this data in a number of ways, but for compliance training, the best way is to measure pre- and post-training understanding over time. Basically, each time you train an employee, measure comprehension both before and after training.

Are employees applying your training? A survey should be used to determine employee application and their implementation of the training topics. To do so, you must conduct surveys to understand whether they ceased engaging in certain risky behaviors or better yet understand how to conduct themselves in certain risky situations. These surveys can provide a good sense of whether the training has been effective.

The beauty of using surveys is that it provides feedback on not simply the compliance training to determine effectiveness but a much wider variety of areas for your compliance program. These surveys can provide critical information on the state of your compliance program and provide substantive feedback for further inclusion back into your compliance program. Testing your program and using that information in a feedback loop is another key component of a best practices compliance program.

The importance of determining effectiveness of your compliance program is now enshrined by the DOJ in its Evaluation. The Evaluation demonstrates the DOJ wants to see evidence of the effectiveness of your compliance program. This is something that many chief compliance

officers and compliance professionals struggle to determine. Both the simple guidelines suggested, and the more robust assessment and calculation provide you with a start to fulfill the Evaluation, but you will eventually need to demonstrate the effectiveness of your compliance training going forward.