



# Where Do We Go From Here?

## The Sentencing Guidelines and Emerging Best Practices

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Prepared by Ed Petry, PhD, Executive Director, Ethics Officer Association



# Continuing, Common Themes

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- ... but with new elements:
  - Training
  - Investigations
  - Discipline
  - Helplines
  - Global Program Challenges
  - Failure of Academia
  - Marginal Role of CSR



# New Themes and Ideas

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- Now That We Have Your Attention ...
- Culture Trumps Compliance
- The New Sentencing Guidelines  
Risk and Program Assessment, Culture



# Major Themes and Ideas

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- Now That We Have Your Attention ...
  - Scandals, reforms and the high risk environment have raised awareness and created an opportunity for ethics and compliance officers to elevate and integrate their efforts.
  - Increase in products and services.



# Major Themes and Ideas

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- Now That We Have Your Attention ...
  - What are you doing to make the most of this opportunity for the long-term?
  - Who is listening (that wasn't before)? What has gotten their attention? SOX, NYSE, USSC, Investors, Insurers, Peers? Eliot Spitzer?
  - Are you managing up? Board? Senior management?



# Major Themes and Ideas

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- Now That We Have Your Attention ...
  - Who is delivering/controlling the C&E message?  
You? Others in your company? Third parties?
  - Are you being bypassed? Financial reporting?  
Internal controls? Governance? IT?



# Major Themes and Ideas

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- Now That We Have Your Attention ...
  - Are your resources increasing commensurate with the increase in risk and attention?
  - What do you need to sustain (or gain) momentum?



# Major Themes and Ideas

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- Culture Trumps Compliance
  - Tone and setting an example at the top
  - Ethical culture: integrating values, strategy and operations



# Major Themes and Ideas

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- Culture Trumps Compliance
  - Evolving from “an ethics & compliance program” to “it’s just the way we do business – everyday”
  - ...ethics is not “beyond compliance” it’s effective compliance



# Major Themes and Ideas

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- Culture Trumps Compliance
  - Leadership – by example
  - Communication/Transparency
  - Consistency – discipline and investigations
  - Alignment of performance criteria and values
  - Trust – prevent/respond to retaliation
- “Gradual degradation” must be met by consistent, continual effort – not a one time event



# Major Themes and Ideas

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- Culture Trumps Compliance
  - So far a “Piecemeal approach”
  - What can ethics and compliance officers do to build an ethical corporate culture? Do you have a constructive role?
  - Is a “high risk world” a “compliance world”? - If yes, how do you “sell” the importance of ethical corporate culture?



# Major Themes and Ideas

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- Culture Trumps Compliance

... but

- Executive comp/perks trump culture?



# Major Themes and Ideas

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- The New Sentencing Guidelines
  - Oversight & Management
  - Training
  - Assessment
  - Incentives
  - Risk Assessment
- Culture



# Major Themes and Ideas

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- The New Sentencing Guidelines
  - Risk Assessment
  - Culture



# Summary of Changes

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## Step 2 – Oversight & Management

- Board of Directors/Governance:
  - Must be knowledgeable about content and operation of C&EP
  - Must exercise reasonable oversight of implementation and effectiveness of C&EP
  - Must receive training that is practical, effective and is appropriate to their roles and responsibilities as Board members



# Summary of Changes

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## Step 2 – Oversight & Management

- High-level Personnel:
  - Must “ensure” C&EP is effective
  - Must have “direct, overall responsibility” for the C&EP
  - Must receive training that is practical, effective and is appropriate to their roles and responsibilities



# Summary of Changes

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## Step 2 – Oversight & Management

- Individual(s) with day-to-day operational responsibility:
  - Must reports to High-level Personnel and, as appropriate, to the Board
  - Must be given “adequate resources”
  - Must have “appropriate authority” and have “direct access” to the Board



# Summary of Changes

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## Step 5 – Monitoring, Auditing and Internal Reporting

- Monitoring & Auditing must now include periodic evaluation of the effectiveness of the C&EP



# Summary of Changes

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## Step 6 – Discipline and Incentives

- In addition to “consistent discipline” C&EP must now be promoted and enforced...
- ...through “appropriate incentives to perform in accordance with the C&EP”



# Summary of Changes

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## The “8<sup>th</sup> Step” – Assessing Risk

- Subsection (c), immediately following the “seven steps,” now requires:
  - Periodic assessment of risk
  - The results of the assessment should influence the design, implementation and modification of the C&EP
  - Application Note 6 and Commentary specifies additional considerations when assessing risk



# Summary of Changes

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## The “8<sup>th</sup> Step” – Assessing Risk

- You must counter the arguments:
  - If we know...we have to act
  - It's a distraction that doesn't add value
  - It's discoverable and not worth the risk.
  
- Who owns it? Who is involved? Integrated?
- How broad: marketing, M&As, reputational risk
- Holistic or silos?



# Where Do We Go From Here?

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- Culture
  - Assessment
  - Litigation Dilemma
  - Calculation of loss
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- Rely on each other
    - Take the initiative