

“Reasonable Inquiry” Checklist for Compliance and Ethics efforts

Whether just coming onto a Board or have served many years, this checklist is designed to assist members of the governing body of an organization with their duty to determine whether:

“information and reporting systems exist in the organization that are reasonably designed to provide ... the board itself timely, accurate information sufficient to allow ... the board ... to reach informed judgments concerning both the corporation's compliance with law and its business performance.” In re Caremark Int'l Inc. Deriv. Litig. (Del. Ch. 1996).

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### **Is responsibility for Compliance and Ethics assigned to an individual?**

- Who?
- Position description?
- Training / background?
  
- Authority:
  - o position in the corporate structure (Senior manager? Executive Team? Director? Manager?)
  - o How was that structure decided upon?
  
- Independence:
  - o Reports to?
  - o Performance goals determined by?
  - o Performance evaluation process?
  - o Who hires / fires?
  
- Access:
  - o Duty to report to the Board?
  - o How often?
  - o Scope of those reports?
  - o Private conversations?

### **Is there a management level oversight committee with responsibility for Compliance and Ethics?**

- Membership?
  - o Are these “high level” individuals?
- Attendance?
- Charter / committee description of responsibilities?
- Activities?
- Metrics?
- Self-evaluation?

### **What resources are dedicated to Compliance and Ethics?**

- Budget?
- basis for budget?
- How does this budget compare to other functions, e.g. marketing, public relations, human resources?

**What are the organization's most substantial Compliance risks?**

- How were these identified?
- What is done to monitor each?

**What measure(s) of "effectiveness" are being used to evaluate the Compliance and Ethics effort?**

- How were these chosen?
- How often are they reviewed?

**Does the Organization have a "Code of Conduct"?**

- How was it written?
- When was the last review / revision?
- What steps are taken to communicate and enforce it?
- How are employees evaluated for the behaviors described?

**What is the policy / procedure process?**

- Are any approved by the Board?
- Which ones?
- How often?
- How are these communicated within the organization?
- Are contractors / vendors contractually required to follow these policies / procedures?

**Is there learning from missteps?**

- What government sanctions / citations has the organization received in the past three years?
- What, if anything, was changed in the Compliance and Ethics program after each of these sanctions / citations?
- What is done to encourage and follow-up on internal "whistleblowing"?

**Benchmarking?:**

- Has the Compliance and Ethics effort been reviewed by an independent consultant?
- When or why not?
- Was the consultant's report presented to the Board?
- What actions have been taken as a result of this review?

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Resources:

- Leading Corporate Integrity: Defining the Role of the Chief Ethics and Compliance Officer (Ethics Resource Center, 2007) available at www.ethics.org
- Specific Points for a Director to Examine In Determining The Effectiveness Of An Ethics Program (Ethics Resource Center, 2003) available at www.ethics.org
- Federal Sentencing Guidelines Manual, Chapter 8 (2010) available at http://www.ussc.gov/Guidelines/2010_guidelines/Manual_HTML/8b2_1.htm