
Canadian Centre for Ethics & Corporate Policy: Measuring the Effectiveness of Your Ethics Program

Andrea Falcione – Chief Ethics Officer & VP, Advisory Services
SAI Global Compliance

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Agenda

- Introductions
- Ethics Risk Management
- What Does Effective *Mean*?
- Measuring Program Effectiveness
- The Ethics Conundrum
- Possible Solutions
- Questions/Comments
Introductions

SAI Global Compliance

- Multiple fully-staffed offices around the world
  - Compliance Americas: 4 US locations
  - Compliance EMEA: 2 UK locations
  - Compliance Asia Pacific: 3 Australian locations

- 500 substantive clients, including 40% of the Fortune 100 companies and 30% of the Fortune 500

- Oversee programs across 120 countries and in over 60 languages

- In-house expertise in a full complement of advisory services, adult learning, and technology integration
Introductions (cont.)

Team of lawyers, data analysts, technology consultants and professional writers
Certified Compliance & Ethics Professionals
Consult on various aspects of client programs, including:
Compliance- and ethics-related risk assessments
Code benchmarking, commentary and re-writing
Cultural and awareness assessments
Remediation of conflicts of interest
Assessment of program effectiveness
Training and communication benchmarking
Conducting interviews and focus groups
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Ethics Risk Management

CEO/Board/Sr. Management

ACCOUNTABLE TO
- Shareholders/Investors
- Government
- Customers
- Public/Media/NGOs

RESPONSIBLE FOR
- Employees
- Contractors/Agents
- Channel/Distribution Partners
- Suppliers
- Customers
Ethics Risk Management (cont.)

- Demonstrate & Promote Legal & Ethical Business Conduct
- Create a Culture of Ethics
- Demonstrate & Maintain Appropriate Oversight
- Address Existing Risks

- Operating Practices and Procedures
- Policies, Guidelines and Directives
- Communication and Dissemination of Information
- Information Management and Maintenance of Records
Ethics Risk Management (cont.)

Any organization’s risk management activities – their number, their type and their sophistication – will depend upon many criteria:

Critical Factors

Any organization’s Risk Management activities – their number, their type and their sophistication – will depend upon several criteria, including:

- Type of Organization (Public/Private, For-Profit/Not-for-Profit)
- Importance of Brand Recognition (High/Low)
- Nature of Industry (Regulated/Non-regulated)
- Type of Industry
- Size of Organization (# of Employees, Market Cap, Revenue, Etc.)
- Geographic Area(s) of Operation (Canada-only/Global)
- Company Ethics/Compliance History (Prior History of Corporate Integrity Failure, Under a Settlement Agreement with the Government, Etc.)
- Business with the Government (Yes/No)
Ethics Risk Management (cont.)

- A truly effective program identifies the **key risk areas** a company needs to address, based on:
  - Risk assessment in substantive areas, such as corruption, competition, intellectual property, and so on
  - Assessment of risks by business unit
  - Assessment of risks by geographical location
  - Application of effectiveness analysis frameworks, such as metrics, in key risk areas
- Business risk can be defined as follows:
  
  - \( \text{RISK} = \text{Probability of Occurrence} \times \text{Severity} \)

- Goal: ethics efforts should decrease both
  - Develop metrics appropriate to key risk areas to track increases & reductions in frequency and/or severity of ethics failures
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What Does Effective *Mean*?

There are various lenses through which an ethics program can be viewed to determine its effectiveness:

**Legal**—what do laws and regulations have to say about it?  
**Comparables**—how do you compare?  
**Aspirational**—what does your organization wish to accomplish?

These lenses inform both qualitative and quantitative measures of ethics program effectiveness.
What Does Effective *Mean*? (cont.)

**Legal Lens**

Includes:
- Canada Corruption of Foreign Public Officials Act
- U.S. Sentencing Guidelines
- OECD Guidelines
- Other sources

By Risk Area
- Regulatory/Enforcement Agency
- Case Law
- By Jurisdiction
- Canadian Provinces
- Other Countries
- Stock Exchange Requirements
What Does Effective *Mean*? (cont.)

Comparables Lens
What Does Effective *Mean?* (cont.)

*Example*: Morgan Stanley Declination to Prosecute

Garth Peterson guilty plea  
Conspiring to evade internal accounting controls that Morgan Stanley is required to maintain under FCPA  
BUT … Morgan Stanley was not prosecuted!

**Why not?**
What Does Effective *Mean*? (cont.)

Morgan Stanley:

- Constructed and maintained an effective system of internal controls
- Quickly launched internal investigation
- Voluntarily disclosed
- Cooperated throughout investigation
What Does Effective *Mean*? (cont.)

Morgan Stanley
Monitored transactions
Randomly audited employees, transactions and business units
Tested to identify illicit payments
Conducted extensive due diligence on all new business partners
Imposed stringent controls on payments made to business partners
What Does Effective *Mean*? (cont.)

Morgan Stanley regularly updates policies to
Reflect regulatory developments
Address risks associated with
  - Gifts & entertainment
  - Meals, travel & lodging
  - Charitable contributions
  - Outside employment

Morgan Stanley requires written compliance certs
Annual Code certification
Annual disclosure of outside business interests
What Does Effective Mean? (cont.)

Morgan Stanley frequently trains employees on policies and the law. Morgan Stanley also frequently reminds employees about ABAC laws, policies and tenets.

- Circulation of Code and policies
- Guidance on engaging consultants
- Addressing specific high-profile events/examples (e.g., Beijing Olympics)
What Does Effective *Mean*? (cont.)

Now, ask:

How would your program compare?
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- **Measuring Program Effectiveness**
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Measuring Program Effectiveness

“How do you determine program effectiveness?”

% of Clients Who Use Each Measure

Source: 2011 SAI Global Client Benchmarking Survey
Measuring Program Effectiveness (cont.)

What Did the 2009 Survey Tell Us?

It’s important to understand the difference between activity metrics and effectiveness metrics.

**Activity** metrics gauge WHAT you are doing
- Training completion rates actually constitute Activity metrics
- Virtually all hotline data represents Activity metrics

**Effectiveness** metrics gauge the OUTCOME of those Activities
- Litigation info typically comprises Activity metrics
- Internal survey data can amount to Effectiveness metrics, depending on the ?s
- Exit interviews can constitute Effectiveness metrics, depending on the ?s

*SAI GLOBAL*
Consider this again:

% of Clients Who Use Each Measure

Source: 2011 SAI Global Client Benchmarking Survey
Measuring Program Effectiveness (cont.)

**Design:** If you did everything in your ethics program plan, would it meet your business goals and applicable legal standards?

- Review by desk audit
  - Ex. Communications plans and training curricula

**Implementation:** Have you actually done what you said you would do?

- Counting what is there
  - Ex. Training completion records

**Impact:** Is it actually working?

- Ex. In-depth review, in the field, of whether employees are following procedures on which they have been trained

**IMPACT IS THE MOST IMPORTANT ASPECT OF THIS ANALYSIS**

*Adapted from “Auditing Compliance & Measuring Effectiveness,” presentation by Joe Murphy, May 2009.*
Measuring Program Effectiveness (cont.)

**Qualitative**: Aspects of ethics program which concern strategy and program structure, and which are not easily represented numerically

*Example*: Proactive, annual education and communication plan, including topics, audience, methodology, etc.

**Quantitative**: Aspects of ethics program which can be counted and represented numerically

*Example*: Training completion rates

*Both factors are important, but remember that numbers don’t always tell the whole story!*
Measuring Program Effectiveness (cont.)

Standards and Procedures

Internal Controls
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The Ethics Conundrum

REALITY: Ethics is not typically 100% owned centrally. A few examples: distribution network issues (sales); supply chain program (procurement); hotline reports (HR)

CONUNDRUM: How do the CEO/Board know things are being handled holistically and appropriately across your organization?

REQUIREMENT: Although Execution will likely be distributed, Measurement and Reporting should be managed centrally.
The Ethics Conundrum (cont.)

“To whom do you communicate ‘effectiveness?’”

Source: 2011 SAI Global Client Benchmarking Survey
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Possible Solutions

1. How should we approach it?
2. What should we measure?
3. What does it mean?

Effectiveness of Initiatives

DASHBOARD

Reports (Senior Mgmt & Board)
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ANDREA FALCIONE, JD, CCEP
Chief Ethics Officer & VP Advisory Services
SAI Global Compliance
Andrea.Falcione@saiglobal.com
www.saiglobal.com/compliance

51 Sawyer Road
Suite 510
Waltham
MA 02453
+1 781 891 9700 M
+1 781 398 3524 D
+1 781 891 9701 F