The Complete Compliance and Ethics Manual 2024
3M's Transparency Journey: Using Ethics and Compliance Cases as Teaching Tools

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Editor's note: An earlier version of this article was written for the 2010 edition of the Manual. For the 2020 edition, SCCE asked the Ethics & Compliance Department at 3M to provide an update on their compliance training program.

Introduction

When a company faces an ethics and compliance failure, what's the best strategy—a communications blackout or getting the issue out in the open? With the support of their ethics and compliance officers, most companies traditionally have resisted publicizing business failures. Many companies, however, have shifted strategy and started openly communicating about difficult issues. Even though openness in this area challenges the prevailing wisdom of past decades, most companies who have made the change report positive results from such transparency.

What caused the change? In the past, few companies were willing to talk—even internally— about employee misconduct. A number of factors converged to change the status quo. When the U.S. Sentencing Guidelines for Organizations amended Chapter 8, "Sentencing for Organizations," in 2004, it established that companies must create and deliver to all employees effective compliance and ethics training.[2] Public interest groups and shareholder activists focusing on corporate social responsibility have used their influence to demand greater transparency in ethics and compliance issues.

In the United States, perhaps the greatest push for transparency has come from prosecutors and government regulators. Hundreds of companies have negotiated deferred prosecution agreements, signed corporate integrity agreements, and entered into guilty pleas. Prosecutors have insisted that many of these deals include commitments from wayward companies to embrace public transparency in their new-and-improved compliance programs.

In many recent corporate scandals, it has made little sense for the offending company to resist public transparency. Thanks to 24-hour news coverage, the public quickly hears the bad facts, along with a large dose of editorial scorn directed at the company. Indeed, once a company's name finds its way into a front-page headline containing the word "scandal" and has been subjected to wall-to-wall television news coverage, transparency about how the company plans to address its failings can't possibly hurt. In fact, the showing of a little public humility is often a necessary start toward restoring the shine to a tarnished corporate reputation.

The decision for a company to be transparent about a scandal that has already been in the news is not particularly difficult. Moreover, it hardly qualifies as a courageous decision when a company embarks on a transparency initiative that has been demanded by a corporate compliance monitor put in place by the U.S. Department of Justice.

Out of such obligatory transparency, however, many companies have come to realize great benefits. Companies find they can use the publicity to gain traction in repositioning their corporate culture. By openly talking about

what will be done differently in the future, the company can earn trust from employees and external stakeholders. Justice Louis Brandeis said, "Sunlight is the best disinfectant." So, too, transparency has proved over and over to be the best and quickest way to repair a broken reputation.

Of course, no ethics and compliance officer would wish for a company scandal simply to have a platform from which to launch a transparency initiative. So what about the thousands of companies that have not had their last, worst act prominently displayed in the headlines? These companies are not pushed by events (or compliance monitors) into the transparency pool and forced to learn to swim. Instead, they have to make a difficult decision whether to jump voluntarily into the water.

Potential Benefits

Why would a company make the leap? Because with risk comes great potential reward. When handled correctly, transparency about compliance failures leads to a number of positive results in the organization. Here are a few:

- **Reality Check No. 1.** Pollyanna employees realize the company is not immune to problems. They learn they can no longer keep their heads in the sand and assume misconduct does not happen at their company.

- **Reality Check No. 2.** Cynical employees learn the company is committed to enforcing its business conduct policies and holding employees accountable for misconduct. They discover the company really wants to root out misconduct and take disciplinary action against rogue employees who do not uphold company values.

- **Trust.** All employees come to appreciate that the company is committed to organizational justice and takes appropriate action when violations are substantiated. Employees feel more confident reporting concerns once they are convinced that the company will take the report seriously.

- **Training.** All employees learn their role in being vigilant and helping the company find and fix problems. And no lesson holds the attention of employees like a frank discussion about real problems within their own company.

- **Leadership Development.** Management learns how it can do a better job bringing employees into the conversation and engaging them to become part of the solution to address misconduct.

Despite these benefits, many companies have been unwilling to take the plunge and start communicating about ethics and compliance failures, even within the company. This is hardly surprising, as transparency in this area counters several "maxims" learned in business and life:

- Bad news should be kept in the family.

- All disciplinary action should be confidential.

- You will get sued if you talk about an employee's failings and the disciplinary response.

- Commenting on bad news will only extend the story into another news cycle.

- If you can't say something nice, don't say anything at all.

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