



Re-thinking Corporate Ethics Processes

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What makes good judgment?
Experience.
What makes experience?
Bad judgment.

Guglielmo Ferraro

Advice from Those with Experience

- *Consider compliance to be a basic necessity for corporate social responsibility.*
- *Reward what you preach.*

Key Allegations Reported

- Suspension of code of ethics
- Conflicts of interest
- Opaque disclosures
- Inappropriate response to whistleblower's charge
- Sale of shares by executives
- Market manipulation
- Inadequate response to prior failures
- Document destruction
- Lack of evident remorse

A Sample of Opinions

- “While environmentalism, philanthropy, and volunteerism are important, they are not to be confused with business ethics” (Hoffman/Driscoll, *Christian Science Monitor*, 1/24/2002)
- “The most interesting lessons from this debacle are to do with culture and the remit of professional firms, not how to best cover your back when things go wrong” (*Financial Times* editorial, 4/12/2002)
- “Competitors and analysts said the ultimate cause of Enron’s brutal collapse was a culture of greed and arrogance that bred excessive secrecy” (*NY Times*, 1/13/2002)
- “We reserve our harshest treatment for...companies [that obstruct or don’t cooperate with investigations]” (Remark by Harvey Pitt, reported by Dow Jones, 4/19/2002)

Financial Lessons

* Courtesy of John Copley

- There's no such thing as good or bad financial performance.
 - *But there's the financial reflection of good or bad operating judgments.*
- If it's too good to be true...
 - *Then it's too good to be true.*
- There may be a good reason it doesn't seem to make sense.
 - *Maybe it doesn't make sense.*
- If you cheat this year...
 - *Next year will tempt you even more.*

Ethics / Compliance Lessons

- You don't have to be an accountant...
 - *To be held responsible for understanding basic accounting treatments and asking questions about not-so-basic ones.*
- Consider the extremes of conflicts of interest.
 - *If your rules work fine in the ordinary course of business, how will they work if business gets to be extraordinary?*
- A cross-functional committee is a key component of effective, ongoing risk assessment...
 - *But since committees rarely get things done, you also need a project manager.*

Ethics / Compliance Lessons (continued)

- Only a few hotline calls each year is probably a bad thing.
 - *The more advice-related calls that you receive each year, the greater the likelihood that you are preventing something bad.*
- The Board is management’s “supervisor.”
 - *In the spirit of, “Talk with your supervisor’s supervisor if you are not comfortable talking with your supervisor,” the Board must be accessible.*
- Service providers are contractors.
 - *Do you monitor whether your contractors have ethics / compliance processes that manage your risk?*

Ethics / Compliance Lessons (continued)

- Re-visit your Federal Sentencing Guidelines checklist...
 - *But don't treat it as a checklist. Assess existence, coverage, and effectiveness.*
 - *Evaluate risk based on probability, impact, and quality of controls.*
- Some people think that compliance ends where ethics begins, and some people think they are one and the same...
 - *Decide and communicate clearly about what you mean these to mean, but commit in practice to the broad application of the idea that they necessary and inseparable.*
 - *Evaluate rewards.*

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