Next Generation Anti-Corruption Compliance Programs
Transforming a Policy-Based Program to a Controls-Based Program

Speaker Bios

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The DOJ’s 2019 Evaluation of Corporate Compliance Programs guidance requires the following considerations:

1. "Is the corporation’s compliance program well designed?"

2. "Is the program being applied earnestly and in good faith? In other words, is the program being implemented effectively?"

3. "Does the corporation’s compliance program work in practice?"
The DOJ's 2018 *Selection of Monitors in Criminal Division Matters* guidance requires the following considerations in determining whether a monitor is needed:

- “whether the corporation has made **significant investments in, and improvements to**, its corporate compliance program and **internal control systems**”

- “whether remedial improvements to the compliance program and internal controls have been **tested** to demonstrate that they would **prevent or detect similar misconduct** in the future.”

**ELEMENTS OF NEXT GENERATION ANTI-CORRUPTION COMPLIANCE**

- Real-Time Data-Driven Risk Assessment
- Dynamic Employee Engagement
- Unified and Integrated Systems
- Data Analytics & Continuous Monitoring
DOJ 2019 Guidance: Risk Assessments

Prosecutors may give credit for programs that give “appropriate attention and resources” to transactions designated as higher-risk, even if the program fails to prevent a violation in a low-risk area.

Considerations for the Risk Management Process:

• “What methodology has the company used to identify, analyze, and address the particular risks it faces?”
• “What information or metrics has the company collected and used to help detect the type of misconduct in question?”
• “How have the information or metrics informed the company’s compliance program?”

Considerations for Risk-Tailored Resource Allocation:

• “Does the company give greater scrutiny, as warranted, to high-risk transactions (for instance, a large-dollar contract with a government agency in a high-risk country) than more modest and routine hospitality and entertainment?”
RISK ASSESSMENT

FIRST GENERATION

• Subjective & Soft Inputs
• Infrequent (Annual)
• Missing Key Data
• Paper Based

NEXT GENERATION

• Subjective and Objective Data Inputs
• Real-Time/Continuous
• Integration of multiple data sources
• Automated using technology
• Risk across multiple dimensions (e.g., country, vendor, employee, etc.)

REAL-TIME DATA-DRIVEN RISK ASSESSMENT

Automated platform

Ingesting real-time data from ERP, T&E and Investigations

Multi-dimensional risk ranking

Machine learning to adjust risks over time

Visualization of data for ease of understanding

Access controls to provide limited cuts of data to management
SPEND OUTLIER ANALYSES

ELEMENTS OF NEXT GENERATION ANTI-CORRUPTION COMPLIANCE

- Real-Time Data-Driven Risk Assessment
- Dynamic Employee Engagement
- Unified and Integrated Systems
- Data Analytics & Continuous Monitoring
DOJ 2019 Guidance: Training & Engagement

"Prosecutors, in short, should examine whether the compliance program is being disseminated to, and understood by, employees in practice in order to decide whether the compliance program is ‘truly effective.'"

Considerations include:

- "What, if any, guidance and training has been provided to key gatekeepers in the control processes (e.g., those with approval authority or certification responsibilities)?"

- "[W]hether the company has relayed information in a manner tailored to the audience’s size, sophistication, or subject matter expertise. Some companies, for instance, give employees practical advice or case studies to address real-life scenarios."

- "Have supervisory employees received different or supplementary training?"
EMPLOYEE ENGAGEMENT

FIRST GENERATION

• Generic E-Learning Modules
• Infrequent (Annual)
• Multiple/Siloed Processes/Forms
• Paper Based

NEXT GENERATION

• Dynamic Functional Training
• Point-in-Time and Embedded in Company Processes
• Automated and Accessible on Desktop and Mobile
• Multilingual
• Real-time data and reporting

ELEMENTS OF NEXT GENERATION ANTI-CORRUPTION COMPLIANCE

Real-Time Data-Driven Risk Assessment
Dynamic Employee Engagement
Unified and Integrated Systems
Data Analytics & Continuous Monitoring
DOJ 2019 Guidance: Unified and Integrated Systems

Prosecutors should examine whether "policies and procedures... ensure the compliance program is well-integrated into the company’s operations and workforce."

Considerations include:

- Has "the company’s third-party management process... been integrated into the relevant procurement and vendor management processes?"

- "In what specific ways are compliance policies and procedures reinforced through the company’s internal control systems?"

- "What mechanisms exist to ensure that the contract terms specifically describe the services to be performed, that the payment terms are appropriate, that the described contractual work is performed, and that compensation is commensurate with the services rendered?"

Enforcement Case Studies: Anheuser-Busch InBev (2016); Walmart (2019)
UNIFIED & INTEGRATED SYSTEMS

FIRST GENERATION

• Siloed Diligence and Pre-Approval Disconnected from Vendor Master & Payment Systems

• Work-around payment processes

NEXT GENERATION

• Unified Cross-Risk Approvals, from Vendors to T&E and COI

• Integration of approval with vendor master, P2P and T&E systems

• Hard controls to validate approvals

• Identifying and closing work-around payment processes

ELEMENTS OF NEXT GENERATION ANTI-CORRUPTION COMPLIANCE

Real-Time Data-Driven Risk Assessment

Dynamic Employee Engagement

Unified and Integrated Systems

Data Analytics & Continuous Monitoring
DOJ 2019 Guidance: Data Analytics & Continuous Monitoring

“Prosecutors should likewise look to whether a company has taken ‘reasonable steps’ to ‘ensure that the organization’s compliance and ethics program is followed, including monitoring and auditing’.”

Considerations include:

- “Whether the company engaged in ongoing monitoring of their third-party relationships.”
- “How often does internal audit conduct assessments in high-risk areas?” “What testing of controls, collection and analysis of compliance data, and interviews of employees and third-parties does the company undertake.”
- “Has there been sufficient staffing for compliance personnel to effectively audit, document, analyze, and act on the results of the compliance efforts?”
- “What types of audits would have identified issues relevant to the misconduct? Did those audits occur and what were the findings?”

Enforcement Case Study: Microsoft (2019); Compliance Program Case Study: Credit Suisse (2017)
DATA ANALYTICS & CONTINUOUS MONITORING

**FIRST GENERATION**

- Manual and Infrequent audits
- Judgmental samples
- Weak feedback loop for findings

**NEXT GENERATION**

- Automated Monitoring with Technology
- Real-Time/Continuous on ALL spend
- Clear documentation of resolution
- Machine Learning to continuously improve monitoring engine

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**Next Generation Continuous Monitoring**

![Diagram of Next Generation Continuous Monitoring process](image)

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RISK-RANKING EVERY SPEND ITEM

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<tr>
<th>NAME</th>
<th>COUNTRY</th>
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RISK ENGINE SUMMARY

- **RATING**
  - Strong
  - Moderate
  - Weak
- **ANALYSIS FOCUS**
  - Strong Conflict of Interest
  - Vendor & Employee
- **ANALYSIS NAME**
  - Moderate Anomaly
  - Round Dollar

WITH A WORKFLOW & AUDIT TRAIL

Transaction #1234567
Cycle 14 – as of 3/01/2019

Remediation Steps

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Next Generation End-to-End Risk Management

Dynamic Training and UX
Intuitive and Embedded

Data-Driven Risk Assessment
Continuous and Integrated

Pre-Approval/Due Diligence
Unified Cross-Risk with Best-In-Class Technology

P2P, ERP and T&E Integration
Integration via API

Spend Monitoring
Automated and Continuous on All Spend

Dynamic and Functional Training
Embedded in Processes

Risk Insights Informed by Pre-Approvals, Monitoring and Investigations

Third-Party Due Diligence
Gifts & Hospitality
Conflicts of Interest
Sponsorships/Donations

P2P (Purchase Req.)
ERP (Vendor Master)
T&E (Expenses)

Continuous Monitoring Using Sophisticated Algorithms and ML
Validation of Pre-Approval Data with Spend Data

Continuous Risk Feedback Loop

Questions?