

Compliance & Ethics Professional

November/December
2012



A PUBLICATION OF THE SOCIETY OF CORPORATE COMPLIANCE AND ETHICS

www.corporatecompliance.org

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by Jeffrey M. Kaplan

A “law map” for compliance and ethics programs

C&E officers are often given broad mandates to help their companies reduce the risk of a violation of law. But does this mean that their responsibility extends to all areas of law? And, should an audit committee look only to a C&E officer



Kaplan

to discharge the committee’s duty—found in many charters—to oversee compliance “with applicable laws and regulations”?

The scope of any particular C&E department’s remit, of course, depends on the company in question. But to help C&E officers and board members who may be struggling with this issue, here is a written (not drawn, as I’ve never been good at art) “law map” for the C&E world.

On one part of that map are areas of law requiring a substantial amount of C&E program expertise, but relatively little legal expertise. Among these are conflicts of interest, confidential information and, to some extent, corruption. For areas of this sort, the C&E department would typically be in charge of both designing and implementing mitigation.

A second part of the map consists of risk areas requiring both a lot of legal expertise and specialized compliance mitigation knowledge. Examples include financial reporting and environmental, health, and safety (EH&S). At least in some companies—with well-developed compliance efforts in such areas—the best thing a C&E officer can do is to stay out

of the way of the experts. But there may also be companies where providing help (e.g., in developing EH&S training) is an appropriate role for the C&E officer. Of course, general program processes—such as concerns lines—are helpful for mitigating all risks, including ones in this category.

Third, there are areas requiring substantial legal expertise but for which compliance program expectations are not as well established, such as insider trading and aspects of competition law. For these, the best approach may be

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for the C&E office actively to collaborate with the internal legal experts on specific compliance efforts.

Finally, there are many areas of legal exposure where mitigation requires something different than C&E program measures, such as patent protection, employee benefits, or contractual disputes. The territory covered by this part of the map is, by any measure, larger than all the other parts combined. And, given all the work they have to do, it is fortunate that C&E officers’ roles rarely extend to these sorts of risks. *

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