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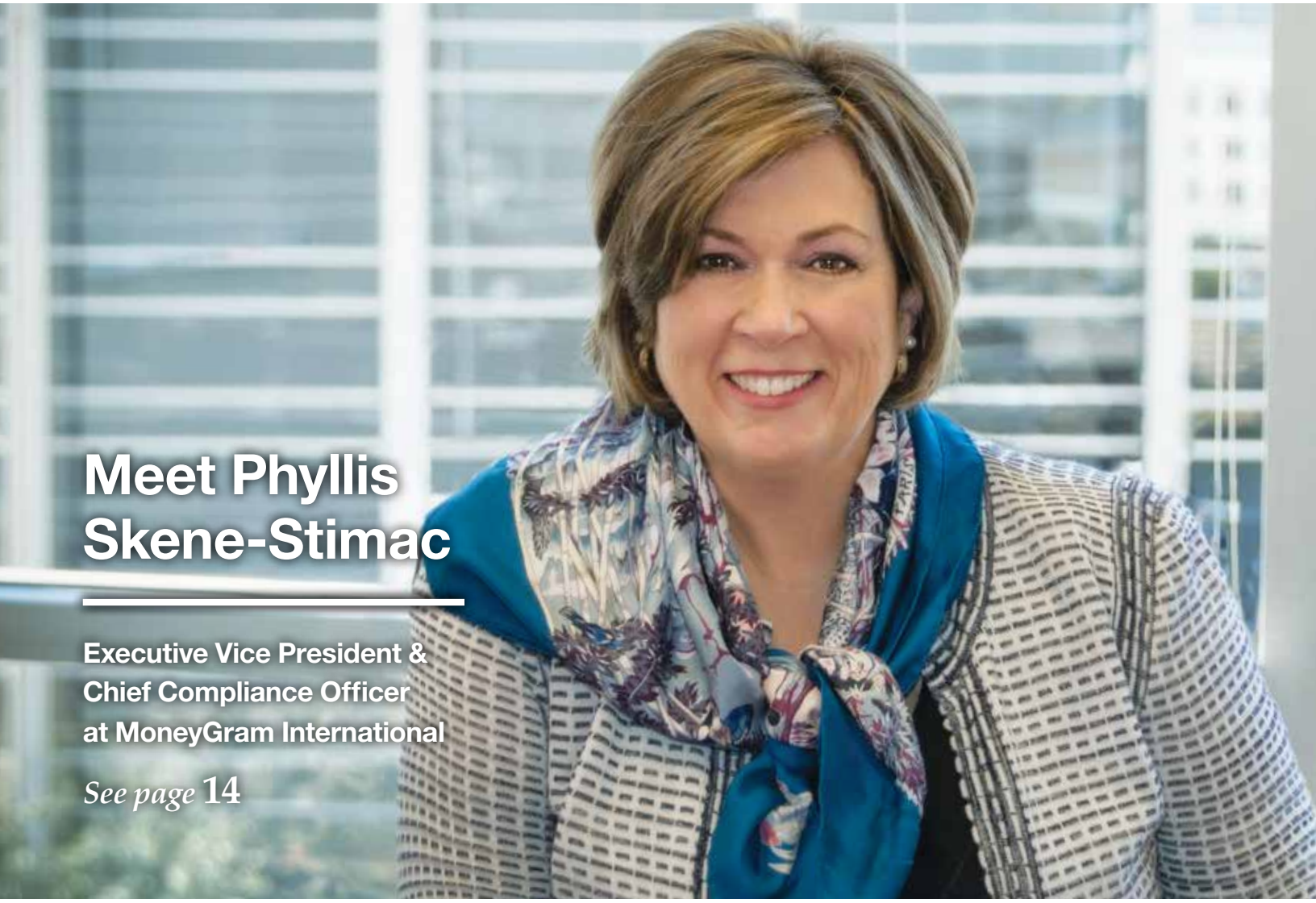

Meet Phyllis Skene-Stimac

Executive Vice President & Chief Compliance Officer at MoneyGram International

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by Jeffrey M. Kaplan

Compliance program assessments – a "Teacher's Guide"

Justly celebrated beer commercial centers around the many triumphs of "the most interesting man in the world." As someone who has spent much of the past 15 years conducting compliance & ethics (C&E) program and risk assessments, I have as good a claim as anyone to the title of the world's most boring man.

Kaplan

But while not worthy of a beer commercial, some of what I have learned from this work may be of use to readers of *Compliance & Ethics Professional* who are developing or enhancing their respective companies' programs. In particular, this column is about one legal risk area and one legal expectation on which companies frequently fall short, perhaps more than any others.

Antitrust/competition law is the most consistently underappreciated legal risk area in my experience. On one level this is peculiar, because concern for antitrust risk – spawned by high-profile prosecutions in the 1960's – was the genesis for the development of the first compliance programs, at least in the U.S. But on another level, this shortfall is not surprising, in that antitrust officials in the U.S. (and their competition law counterparts in the EU) have done a poor job in promoting compliance programs over the years. Whatever the cause, this is – based on my assessment experience – often a deeply under-mitigated risk area, with the principal antidote being a fairly rigorous focus on antitrust in one's risk assessment (i.e., a process that includes a market-by-market dimension, among other things).

Turning from risk areas to legally mandated program elements, the most frequent measure where companies under-perform is, in my assessment experience, the requirement that discipline be imposed not only for active wrongdoing, but also for "failing to take reasonable steps to prevent or detect criminal conduct…" (e.g., for the supervisor who was "asleep at the switch"). Some of the resistance here is based on the feeling that such discipline is unfair, but much of it is due to simple ignorance of the fact that this form of remedial measure is actually required by the Federal Sentencing Guidelines (and indeed has been since 1991).

Whatever the cause, this is an area where many companies need to "up their game." Among the steps that should be considered here are making clear in the code of conduct and in other communications that the company imposes such discipline, and revising investigative protocols to require investigators to look for this issue in all cases. ✳

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