

SETTING POLICIES and GUIDELINES for CONDUCTING INTERNAL INVESTIGATIONS

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**SOCIETY OF CORPORATE
COMPLIANCE AND ETHICS**



SESSION AGENDA

- **Developing an Investigations Policy**
- **Risk Identification and Mitigation**
- **Centralized versus Decentralized Management over the Investigation Process**
- **Responsibility and Authority**
- **Identification of Investigative Resources**
- **Establishing Communication Channels**
- **Status Reporting**
- **Voluntary vs. Mandatory Disclosures**
- **Corrective & Disciplinary Actions**

- **Q & A**



Is there a need for an Investigation Policy?

Consider the following:

- **All organizations experience fraud and misconduct.**
- **Increased responsibility on Management to prevent, detect and correct unacceptable behaviors.**
- **Legal requirements to disclose fraud and certain misconduct.**
- **Risk mitigation.**
- **Key element of a sound E&C Culture.**
- **Makes good sense.**

WHAT ARE YOUR LEGAL & COMPLIANCE RISKS?

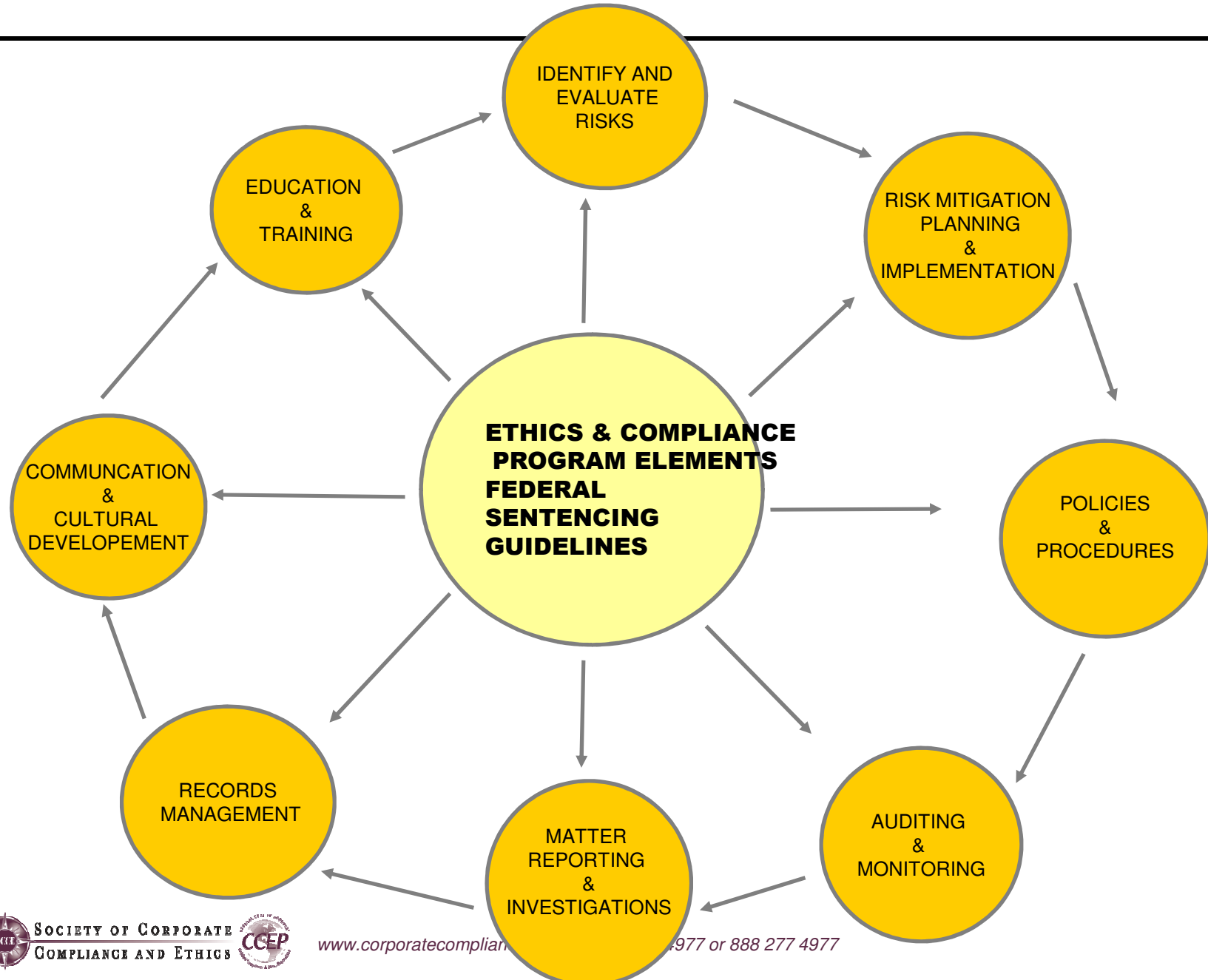
- Accuracy of Business Records
- Anti-Bribery & Corruption
- Antitrust & Unfair Competition
- Conflicts of Interest
- Customer and Supplier Relationships
- Diversity
- Drug-Free Workplace
- Environmental Health & Safety
- Equal Opportunity
- Gifts & Entertainment
- Harassment-Free Workplace
- Insider trading
- Intermediaries (Consultants, Distributors, Representatives)

WHAT ARE YOUR LEGAL & COMPLIANCE RISKS?

- International Trade: Anti-Boycott, Export & Import Compliance
 - Money Laundering
 - Personal Data Protection (HIPPA)
 - Political Contributions & Activities
 - Protection of Physical Property & Proper Use of Company Assets
 - Protection of Intellectual Property
 - Public Disclosures
 - Transactions with Governments
- Identify process owners or subject matter experts for each compliance risk area.
 - Anticipate and develop internal strategies for investigating potential violations in the high risk areas.

It's not a matter of "If" it will happen, but "When" it will happen!"

HOW DO INVESTIGATIONS FACTOR INTO THE RISK ASSESSMENT PROCESS?



CONDUCT A CAPABILITY ASSESSMENT

- Identify the subject matter experts for each major risk
 - Consider experience level of possible investigator
 - Consider history and frequency of violations
 - Identify area of expertise required

The Complete Compliance & Ethics Manual, 2nd Edition, Copyright 2010 has a very comprehensive “Checklist for Assessing Investigative Capabilities”.

SAMPLE INVESTIGATION POLICY STATEMENT

All allegations of suspected or known violations of law and company policy and misconduct will be reviewed in a timely manner and, if necessary, investigated at the direction of the Chief Ethics & Compliance Officer to determine the relevant facts and circumstances of the alleged violation or misconduct. Investigation reports will be submitted to Management who is responsible for determining the appropriate corrective and disciplinary actions.

PROVISIONS IDENTIFYING EMPLOYEE RESPONSIBILITY

Every employee has a duty to report known or alleged violations of company policy, even when personally involved in the violation.

Employees are expected to cooperate with internal auditors and investigations by providing truthful accounts and relevant documentation in response to questions and information requests.

Employees who fail to cooperate, or otherwise impede an internal audit or investigation, will be subject to disciplinary action in accordance with the company's disciplinary action policy.

PROVISIONS FOR INTAKE

Reports of known or alleged misconduct should be reported to an immediate supervisor or others in Management.

Help lines will be established to provide for and, if requested, anonymous reporting of know or suspected violations of the law or company policy and procedures. (List Help Line number and Web address of any On-Line reporting tools)

Management personnel are responsible for notifying Ethics & Compliance, Legal, or Human Resources upon receipt of a report of alleged misconduct.

PROVISIONS FOR INTAKE

- There will be no reprisals or retaliation against any employee for reporting in good faith a suspected or known violation.
- We will strive to maintain the confidentiality of the source. Additionally, reports can be made on an anonymous basis, where local law permits.
- Concerns about accounting, internal accounting controls, auditing matters or other concerns can also be reported by mailing the concern to the Board of Directors or the Audit Committee at the address listed below.

CENTRALIZATION VS. DECENTRALIZATION OF THE INVESTIGATION PROGRAM

Consider the options in light of your current organization.

- Centralized – all investigations conducted under the direction of the E&C Organization.
- Semi- Centralized – investigations are conducted by risk area owners with reports to E&C.
- Decentralized – “Silos” perform investigations and report independently of the E&C Function.
- What is Legal’s role given the options?

CENTRALIZATION VS. DECENTRALIZATION OF THE INVESTIGATION PROCESS

Single source for intake and case management.

Eliminates or greatly reduces duplication.

Minimizes the “Silo” effect.

Central oversight over all investigations in process.

Streamlines reporting process.

Efficiencies in records management.

PROVISION TO DETERMINE WHO SHOULD INVESTIGATE

E&C, with the cooperation and support of internal resources (Legal, HR, Finance, Security, Internal Audit, Quality, etc.) will determine the need to conduct an internal investigation.

Consider a sub-provision identifying the specific organization, in general, that will handle certain investigations.

PROVISION TO DETERMINE WHO SHOULD INVESTIGATE

External resources may also be utilized, at the discretion of the CECO, in situations where subject matter expertise is required or potential conflicts of interest (real or apparent) exist between internal investigators and the accused party.

PROVISION TO DETERMINE WHO SHOULD INVESTIGATE



Take care when investigating “up the food chain”.

CORRECTIVE ACTION PROVISION

- Where an investigation reveals the need to take corrective action, changes to systems, practices and procedures will be implemented.
- Breaches of the Code of Conduct may also be subject to disciplinary action up to and including termination of employment.
- In some instances, a breach of the Code of Conduct may also have legal implications, subjecting the employee and company to civil or criminal penalties, fines or other sanctions.

REPORTING & DISCLOSURE PROVISION

The CECO is responsible for providing periodic (monthly, quarterly, etc.) status reports of investigation activity to Senior Management and the Board of Directors.

Additionally, the CECO will immediately notify the Chief General Counsel of any matter where credible evidence or a reasonable basis exists to believe that a government law or regulation has been violated.

The Chief General Counsel will make a determination to disclose the facts of the matter in a timely manner to the appropriate local, state, or federal authorities.

PROVISIONS FOR CLOSING the LOOP

The CECO will, to the extent practical, follow-up with reporters of known or suspected violations of company policy. Reporters will be advised that the allegation(s) were reviewed, investigated, and if substantiated, followed-up with appropriate corrective actions.

Note: Details of the investigation or corrective and disciplinary actions should not be discussed with a reporter. A polite “thank you” and “case closed” is sufficient.

RECORD KEEPING PROVISION

Copies of internal investigation reports will be maintained by Ethics & Compliance for (X) years, or in accordance with the company's record retention guidelines.

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