

# Compliance Trends, Hot Buttons and Developments

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# Agenda

1. Introductions
2. Noteworthy Numbers
3. Convicted or Acquitted Exercise
4. Review Compliance Fundamentals
5. Discuss Compliance Trends, Developments and Hot Buttons
6. Questions

# Noteworthy Numbers

**1.172**

According to economist Mark Crain, in his publication entitled 2009 10,000 Commandments, an annual snapshot of the Federal Regulatory State, U.S. regulatory compliance costs hit an est. \$1.172 Trillion in 2008.

**2.4**

Recent \$2.4B record setting fine levied by the DOJ on a large pharma co. for inappropriate sales and marketing practices This fine follows a \$1.6B fine rendered against a global manufacturing company for bribery violations and \$1.4B fine levied against another pharma company earlier this year.

**1**

According to the 2006-2008 ACC survey, the #1 concern of GCs is mitigating company risk, which supplants cost containment as the GCs top of mind concern.

# Historical Milestones\*

1960

2009

- 1960s and 70s EPA, OSHA and EEOC born
- 1977 FCPA Born
- 1980s Defense Contracting scandals
- 1991: U.S. Sentencing Guidelines
- 1996: In re Caremark
- 2001: Enron debacle
- 2002 SOX
- 2003 Thompson Memo
- 2004 FSG Amendments
- 2006 McNulty Memo
- 2007 FAR Enhancements
- 2008 Financial meltdown and scandals
- 2009 Recovery Act



# Compliance and Ethics Transformation

## What is Tone at the Top?

- Examples set by the senior executives, i.e., The CEO's words and actions.

## Why is it Important?

- May be the single most element in protecting company.
- Sr. Execs who embrace a culture of integrity, ethics and compliance help to create a well-run organization, examples include:
  - CEO walking the walk, i.e., issuing frequent compliance messages, authoring an introductory Code of Conduct letter, participating in compliance training;
  - Elevating compliance organizationally, i.e., reporting to the CEO with access to the board and inclusion of compliance issues on the board's agenda
  - Encouraging employees to surface issues, and
  - Appropriately investing in the company's compliance programs.
- A growing number of CEOs and boards are embracing compliance as an important resource in maximizing shareholder value.



# Convicted or Acquitted

## Sanjay Kumar, CEO Computer Associates

- Massive accounting fraud perpetrated by the company's CEO, CFO and GC from the late 1980s to 2001 and then attempted a cover-up through 2004.
- Lacked Tone at the Top – Dominating Leadership...ruled by fear. Dissenting opinion was met with immediate termination. The Board was in the dark and accepted management's explanations.
- Shareholders lost over \$10B. Employees were shocked and demoralized.

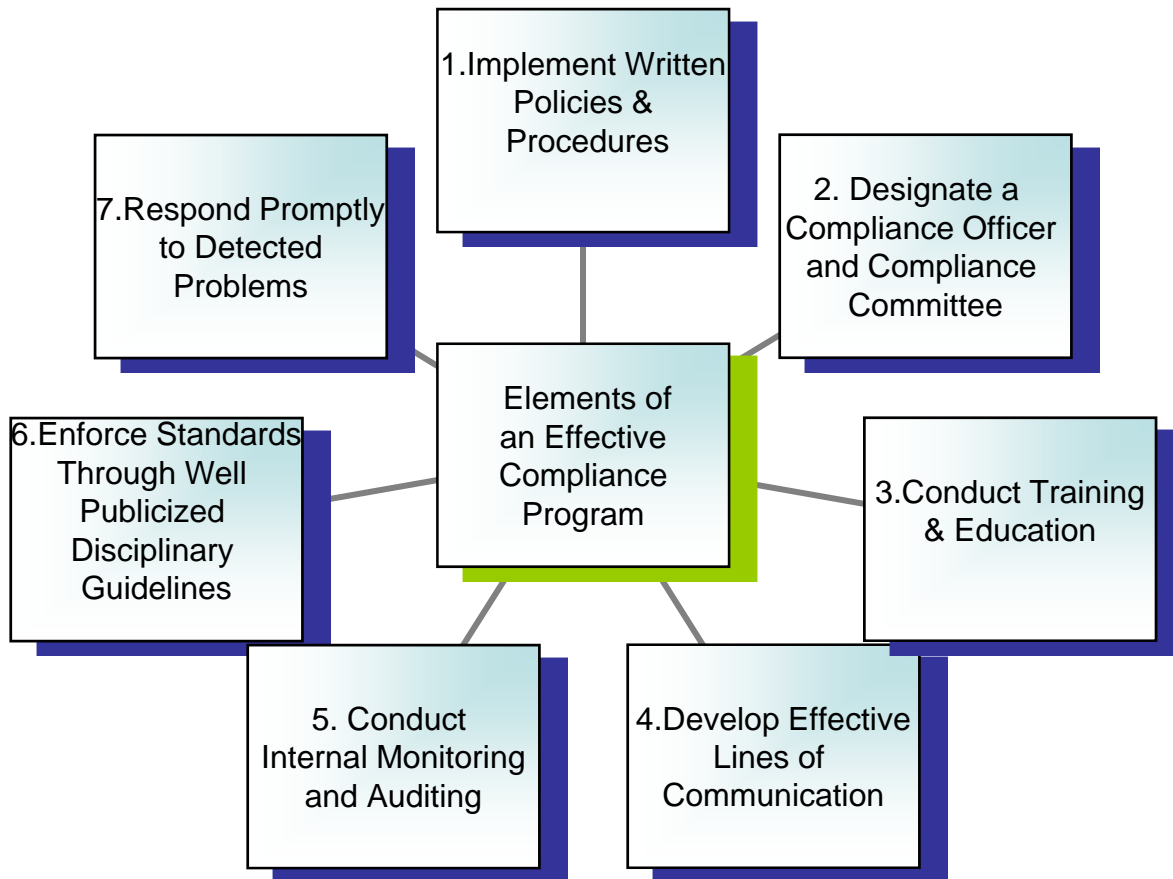
## Penalties

On April 13, 2007, Kumar sentenced to 12 year prison term and fined \$798.6M. The govt. may also take 20% of his future gross annual pay for restitution.



*Five years ago, I joined \_\_\_ with the goal of helping \_\_\_ become a trusted, valued and strategic partner, not only to our customers, shareholders and employees, but in the communities where we live and work around the world.*

# What are the 7 Elements of an Effective Compliance Program?



## What is a Compliance?

Compliance means conforming to a law or regulation or policy

### The 7 elements:

- Addressed in the FSG.
- Backbone for building a compliance program. Provide guidance on how to build a compliance program.
- When evaluating a case prosecutors will be looking for the seven steps.

# Compliance Review

CCO Tasks	Challenges	Costs	Benefits	What can we expect in 2010?
<ul style="list-style-type: none"> <li>•Regulatory Assurance</li> <li>•Code of Conduct</li> <li>•Policy management</li> <li>•CE training</li> <li>•Compliance training</li> <li>•Reporting</li> <li>•Incident management</li> <li>•Risk assessment</li> <li>•Supplier screening</li> </ul>	<ul style="list-style-type: none"> <li>•Constant flow of new and revised laws and regs</li> <li>•Injunctive relief and consent decrees</li> <li>•Limited global reg. visibility</li> <li>•Monitoring risk and developing audits</li> <li>•Policy management</li> <li>•Reporting</li> <li>•Third party risk</li> </ul>	<ul style="list-style-type: none"> <li>•Bankruptcies</li> <li>•Legal costs</li> <li>•Damaged reputation</li> <li>•Job loss</li> <li>•Settlement agreements</li> <li>•Fines</li> <li>•Imprisonment</li> <li>•Decrease in shareholder value</li> </ul>	<ul style="list-style-type: none"> <li>•Mitigate risk</li> <li>•Reduce penalties</li> <li>•Enhanced shareholder value</li> <li>•Recruit top talent</li> </ul>	<ul style="list-style-type: none"> <li>•Increasingly complex regulatory environment</li> <li>•Aggressive enforcement</li> <li>•Convergence of Risk and Compliance</li> <li>•Increase use of technology and more centralization</li> </ul>

# Trends & Development

# The Great Debate: Where Should Compliance Report?

## Why Report into the CRO

- Strengthens CCO's ability to identify and quickly respond to emerging risks. Facilitates better prevention and detection of compliance risks.

## Why Report into the GC

- Compliance, with its focus on legal and reg. matters, is a natural subset of the org's legal unit. GC is familiar with compliance areas and has established relationships with relevant agencies, and has CEO and the board access.
- Advantage of attorney client privilege.
- ABA and ACC endorsed.
- According to 07 ACC survey, 43% of GCs polled also carry CCO title.

## Why Report into the CEO

- Prevalent in heavily regulated industries and companies recovering from a compliance crisis.

## Regulators View

- Regulators in certain verticals have expressed support for a direct reporting relationship between the CCO, CEO and the Board.

# Convicted or Acquitted?

## Dennis Kozlowski

Tyco's CEO, was accused of misusing Tyco's money.

- \$2 M birthday party for his wife on the Italian island of Sardinia;
- \$6K shower curtain allegedly purchased with company funds.

### **Penalties**

- Found guilty on 22 of 23 counts of grand larceny and conspiracy, falsifying business records and violating business law.
- Ordered to pay \$134M back to Tyco and fined \$70M
- Sentenced to 25 years in prison



## **Mark Belnick**

Tyco's GC and former Iran Contra prosecutor and high profile litigator, was indicted for grand larceny, accused of receiving \$17M as a reward for corp. wrongdoing.

- Offered and refused plea bargain.
- Jury found him not guilty.
- Resigned from Tyco and has a solo NYC practice.

# Increased Regulatory and Enforcement Activity

- The legal and regulatory landscape is becoming ever more complex. Enforcement is on the rise, and Government is at your door step more often.
- Economist Mark Crain estimated that regulatory compliance costs hit \$1.172 *trillion* in 2008.\*
- In 2008, agencies issued 3,830 final rules, a 6.5-percent increase from 3,595 rules in 2007.\*
- The 2008 *Federal Register almost broke* the 80,000-page barrier. It contained 79,435 pages, up 10% from 72,090 pages in 2007—an all-time record high.\*

## Governance, Boards & CEOs

- Former CEO of BDO Seidman charged with 22 counts
- Former KPMG execs sentenced to 10 yrs in prison for selling tax shelters

## Marketing & Sales

- Pfizer ordered to pay record fine
- Eli Lilly ordered to pay \$2.2B fine
- Sanofi pays \$95.5M fine

## Insider Trading

- SEC brings first ever case against insider trading with credit default swaps
- UK delivers first criminal conviction related to insider trading

## International/FCPA

- Siemens fined for FCPA
- Halliburton agrees to pay for FCPA
- DOJ goes after foreign controlled \$

## EH&S

- \$2M fine for dumping waste off Fla
- Dell to cut 40% greenhouse gas emissions by 2015

## Whistleblowers

- Private Co found liable for SOX
- Former employees sue AIG over retaliation for reporting alleged FCPA violation

# Stringent Enforcement: The Mighty DOJ\*

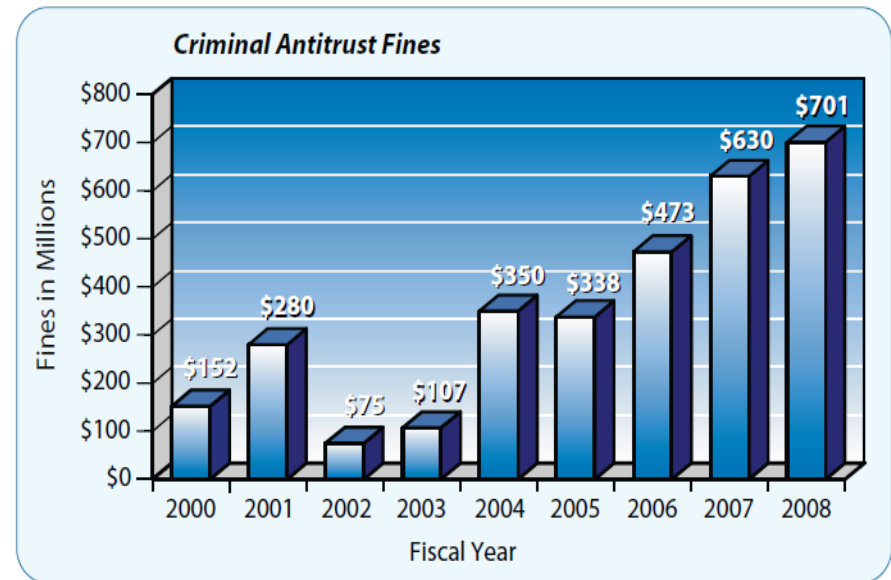
- **Jail Sentences Reach An All-Time High:**

Defendants prosecuted by the Division were sentenced to more than 31,000 jail days in FY 2007, more than twice the number imposed in any previous year.

- **\$3.5M in Criminal Antitrust fines:** Since January 2001, the Division has obtained more than \$3.5 billion in criminal fines against more than 120 corporations and 160 individuals as a result of criminal antitrust prosecutions.

- **Pharma Fraud:** DOJ's investigation of Big Pharma yielded significant returns in 2008-09, including settlements with Merck \$361.5M, Cephalon \$258M, Lilly \$1.4B and Pfizer.

- **FCPA:** Since 2001, the Department has substantially increased its focus on FCPA violations. DOJ brought more FCPA prosecutions in the last five years than in all of the previous 26 years dating back to passage of the FCPA statute in 1977.



# Compliance Under the Obama Administration

We are seeing increased regulatory activity in certain industries.

## Financial Services

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- Widespread changes proposed, i.e. new FS Oversight Council and Consumer Protection Org.
- FERA enhances Govt.'s capacity to pursue FC fraud.
- More aggressive SEC,
- Executive Comp Reforms.

## Federal Contractors

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### Increased Transparency, including:

- TARP Federal Govt's Central Contractor Registration.
- Submitting reports to the funding agencies.
- E-Verify requirements.

## Healthcare & Life Sciences

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- Increasingly stringent enforcement of fraudulent Pharma Sales & Marketing. Record setting \$2.4B fine recently levied.
- Development of a national electronic medical records system.
- Significant HIPPA reforms
- Medicare and Medicaid reg. changes.

# Global Compliance Critical Concern

## FCPA Penalties Get Tougher

- FCPA up tick due to globalization. It's a global compliance hot-button.
- Aggressive FCPA enforcement.
  - Top DOJ priority
  - SEC civil enforcement power
  - Govt. has zero tolerance policy
- According to a 2009 Deloitte Financial Advisory services, only 31% of respondents indicated that their company had a comprehensive FCPA compliance program in place.
- Rise of foreign anti-bribery laws.

## Record Setting Fines

- Defense Contractor fined **\$579M**, by DOJ and SEC;
- Large Global Mfr fined **\$1.6B**, combined DOJ, SEC and German authorities enforcement.

Total Criminal and Civil Fines Imposed on Corporations:  
2002-present

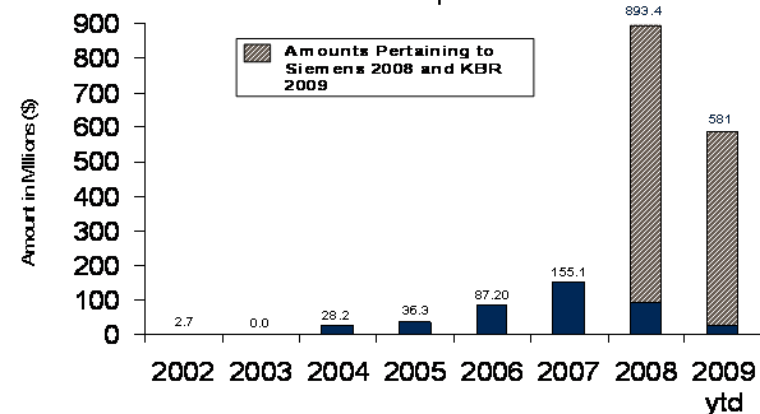


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# The Third Party Risk Nightmare\*

•**What is Third Party Risk?** Risks associated with engaging suppliers, vendors. Companies are accountable for their supplier's actions.

According to a recent CE officers third party controls survey conducted by SCCE:

- Only 47% reported that they distributed their employee code of conduct to suppliers;
  - Only 26 % require those third parties to certify that they've read it;
  - Only 17 % have a separate code of ethics tailored to their third parties
- CCO's covet a global standard for vetting third-party suppliers, i.e., an independent authority, that could screen and certify suppliers.



*"It is impossible to know whether all of our third parties are always doing what they're supposed to be doing."*

*-Fortune 500 Healthcare CCO-*

# Convicted or Acquitted

## John Rigas

- Once 6<sup>th</sup> largest cable co.
- Filed for bankruptcy protection in 2002 listing \$18.6B in debt.
- Allegation that 80 year old founder & sons looted company of more than \$1B.
- Secret cash payments, personal loans not disclosed to the Board; personal use of assets.
- Used the co as a personal piggy bank.

## Penalties

- Forfeits \$1.5 B in assets;
- Sentenced to 15 years;
- Son faces 25-30 years;
- Adelphia was fined \$715M



*I did nothing but try to improve the conditions of my employees.*

# GRC Technology



## Elements

1. **Regulatory Intelligence** – Monitor and interpret laws and regs and import into compliance workflow.
2. **Policy Management** – Ensure full life-cycle management of policies including creating, storing, versioning, distributing, tracking policies and linking to relevant statutes and regulations.
3. **Compliance Training** – Reduce risk by deploying online compliance training solutions to your employees and suppliers.
4. **Incident Management** – Use hotline and case management services to identify, record, investigate and manage to remediation key issues and exposures.
5. **Reporting** - Provide a corporate view of compliance through powerful reporting tools, including executive dashboards .
6. **Risk Management** – Mitigate risk using due diligence, risk monitoring and assessment tools.