

Frequently Asked Questions (FAQs) Regarding Compliance Committees

In group discussions at the October 2013 annual conference of the Society of Corporate Compliance and Ethics, participants discussed challenges and raised issues pertaining to corporate compliance committees. Of those issues, the high priorities identified by participants can be categorized into two key topics: unclear roles and responsibilities, and lack of buy-in by management and committee members.

Many questions arose under each topic. The following are most of those questions, with suggested solutions. Some of the suggestions come directly from the attendees at the sessions; others are from the facilitators. We value your input so please feel free to respond with your own suggestions or comments to Paula Saddler coi@coireview.com or Maggie Steenrod maggie@steenrod.net. This document was also reviewed by Ann Dunham, who provided comments in April of 2014.

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A. ISSUES REGARDING COMPLIANCE COMMITTEE FUNCTION

(1) How do you gain support and/or authority for defining charter, creating credibility?

Support and authority must come from senior management, in particular those responsible for establishment of the compliance committee.

(2) Should the committee have compliance oversight authority over everything in the company?

The answer depends on the needs that the compliance committee is addressing. It also depends on the structure of the organization. If it is decentralized where business units have a lot of autonomy, then perhaps there needs to be a network of compliance committees to represent the needs of each business unit. If the organization is highly centralized, then one committee may suffice. The important point is to get the buy-in from the representatives on the committee and from management about the best structure.

(3) Should the compliance committee serve in an advisory role or have an operational role within the company?

That depends on the charter of the compliance committee and the needs it is addressing. The compliance committee can mirror the function and structure of other committees throughout the organization, such as the risk committee, or other committees that require inter-disciplinary functions.

The Compliance Committee should serve in the advisory role. The operations are to be done by each department.

The Compliance Committee members can assist with questions, policy or regulation interpretation and give guidance.

The Compliance Officer and the Compliance Committee cannot do the operational work for the departments. Our job is to make sure things get done and people are held accountable.

(4) How do you get buy-in from the business units? And how do you deal with disinterest by the business units, especially if they don't have a member on the compliance committee?

One approach is to invite them into the planning process at the time the charter is being developed. A driving document for planning can be the risk assessment for the organization as a whole and particularly the compliance risk assessment for the organization. The risks for not having a well-coordinated approach to compliance for each business unit should be identified and discussed with each business unit, so that each accepts the risks and remedies of either participating or not in the compliance committee.

Buy-in most effectively comes from having one on one meetings with department directors. Explain the importance of having a compliant culture and the important work of the Compliance Committee. Provide examples of compliance issues, how they might be handled and what consequences could occur if there is non-compliant behavior. Something that was in the news gives a real life example that might make compliance seem more real to them.

Ask the director to share any of their compliance concerns, both in their department and anything they may have witnessed in the organization. Convey to them you are there to help the organization be compliant, not just looking for things that went wrong.

The department director must be informed and occasionally reminded how important it is that they relay compliance related information to their staff. It takes everyone in the organization to create a culture of compliance. The Compliance Officer and the Compliance Team are there to give guidance, not to be the judge.

At the time that members are selected for the compliance committee, at least one representative from the business unit(s) should be selected. A best practice would be to include the business units as much as practical. This is because it is the business units that create and manage the risk through their operations. There certainly can be more than one representative from the business units. If the business units don't have a representative directly reporting to the committee, it is important to keep them informed anyway. Find an appropriate contact person for each business unit and keep them apprised of compliance committee activities. Equally important is to get their feedback as to compliance issues in their organizations of which the committee should be aware.

(5) The committee is newly formed and members don't understand what compliance is.

Educating members on the compliance committee can be addressed by induction sessions and preparing resources for the committee members to understand the need for the compliance committee and the role of its members. The resources would include, at a minimum, the functions of the Chief Compliance Officer and case studies of real compliance issues that have affected your organization. The Compliance Officer obviously will have a key role in preparing these materials and can draw extensively from the SCCE or HCCA websites.

Notes:

It is best to start from the very beginning. The review of the following items would be good:

1. Code of Conduct – make sure they read it
2. The 7 Elements of an Effective Compliance Program

3. Go over the New Employee Compliance mandatory education – they probably don't remember it

Provide the team members with news articles on compliance issues.

Have an item on the agenda to educate on one area of compliance at every meeting for the first year or so.

It is important for the Compliance Officer to remain up to date on everything compliance in order to show confidence and commitment as their leader!

(6) What does the committee do when it does not have clear authority to act or to advise?

Absent clear authority, the committee should draft a charter according to what the members believe the organization's needs are and submit it for review and approval by senior management. If senior management does not support the compliance committee, then it would not be an effective strategy to continue forming such a committee.

(7) How do committee members know if their committee is a "checkbox" by management or whether it has real credibility regarding the company's compliance activities?

This depends on the level of support of management, what the charter of the committee is and what resources are available to it.

(8) Do you have a sample compliance committee charter?

A sample charter can be found at the end of this document.

B. ISSUES REGARDING COMPLIANCE COMMITTEE RESOURCES

(1) What should compliance committee resources be in terms of staff and budget?

The answer to this question is driven by the charter of the committee. If the compliance committee has an oversight function, it may need fewer resources than one that is more operational.

C. ISSUES REGARDING COMPLIANCE COMMITTEE ORGANIZATION

(1) What should the role and composition of the compliance committee be?

The answer depends on the identified risks that your Organization faces in not having a compliance committee. Thus the need combined with any real past problems of the Organization will drive what the role and composition of the compliance committee. You may also want to find examples from organizations in your industry to see how they are organizing their compliance committees.

In general, however, there should be no more than approx. 12 - 14 members or it won't be an effective committee. Some examples of members are Quality, Human Resources, Information Technology, Revenue Cycle, In-House Legal, In-house Auditor, all from Compliance Dept., Foundation and Accounting. If in healthcare – Utilization, Medical Records, Clinic Manager, Patient Accounts.

The role is to provide a platform where information is reported and documented on Auditing and Monitoring, Accreditation and Licensure, Policies and Procedures, Hotline Calls, Complaints of HIPAA

Privacy and Security. Also where areas of concern can be discussed with the result of action plans and/or education given.

(2) Is the committee's role advisory or operational?

This would depend on the charter of the compliance committee. See answer to A(3).

(3) To whom does the compliance committee report?

You may want to find examples from organizations in your industry to see how they are organizing their compliance committees. You may also want to examine any other inter-disciplinary committees within your organization to mirror the reporting structure as appropriate. The sample charter that is attached reflects a compliance committee in strictly an advisory role reporting to the compliance officer, and an executive compliance committee responsible for taking corrective action. This might work for many organizations because:

- (a) It provides for a grass-roots effort to capture compliance issues as they arise
- (b) There is continuity because the compliance officer is a member of both committees
- (c) There is lower risk to the company because the compliance committee members review, analyze, and make recommendations, but don't have decision-making authority
- (d) The executive compliance committee should have the clout to enforce corrective action requirements
- (e) If corrective action is not implemented, the compliance committee would provide feedback to the executive compliance committee, which in turn could take further action.

(4) How do you deal with unclear roles and responsibilities?

Again, this relates to the charter of the committee. As part of the charter, the compliance committee may also develop a document for roles and responsibilities of the committee members as representatives of their functional units.

(5) How do you get members to commit to actively participate in compliance committee meetings?

Among the many responses to this issue were the following:

- (a) Get clear direction and overt support from executive management
- (b) Create committee member job descriptions to ensure members know expectations and can meet them
- (c) Integrate responsibilities of the compliance committee into the members' job descriptions and performance evaluations
- (d) Have the marketing department create materials and a pitch to encourage participation
- (e) Review the charter periodically and ensure it remains effective
- (f) Examine and re-adjust the charter every couple of years
- (g) Take it back to the business units to counter ambivalence
- (h) Address committee member needs

It is a good idea to start each meeting with reminding members why you are coming together for a compliance meeting. In healthcare, for example, at the start of every meeting you might talk about doing what is right for patients and employees so that you provide a legal and ethical place for patients to get healthcare and for employees to come to work.

Having a discussion about how important to the team each and every one is might also help. We all have an area of expertise to bring to the table and often discussions require a wide range of knowledge and opinions. You can also tell the committee members that they were chosen specifically for their commitment to the organization and that is a great honor and responsibility to be on the team.

Another idea is to create an environment so the committee members know it is a “safe place” to discuss issues and concerns, that no idea or question is stupid, and that we all learn from each other. Things that are discussed in the meeting stay confidential.

(6) We don't have a compliance committee at all.

If your organization has not established a compliance committee and you believe one is advisable, contact departments that would be key contributors to request their support for a proposal to senior management to establish one. We suggest including in your proposal a draft charter, list of proposed committee members, a budget of resources needed, and an analysis of the anticipated return on investment for your organization.

It might be a good idea to start with a fairly small core group to get going. This should be done as soon as possible. To start out, meet quarterly so no one feels overwhelmed with “one more meeting”. Going forward, quarterly might continue to be sufficient. Some organizations meet monthly.

As Compliance Officer, make sure each member feels they are an important part of the team and their input and knowledge is very valuable to get this committee going in the right direction.

Talking about the 7 Elements of an Effective Compliance Program might be a good place to start out discussing as you get organized with how the meeting agendas will go. Determine what core agenda items will be important to have on every meeting agenda for your organization.

D. ISSUES REGARDING HOW THE COMPLIANCE COMMITTEE OPERATES

(1) Who determines the agenda and how do you make it appealing?

Besides developing a charter that defines the purpose of the compliance committee, you may also want to draft operating guidelines to decide in advance who determines the agenda. Usually the agenda is prepared by the presiding officer of the committee, with inputs from members.

The Compliance Officer should be in charge of setting every agenda. The Compliance Committee members can recommend other agenda items for that month as things come up.

There should be a standard core agenda for every meeting.

Agenda items should remain relevant. If an item fails to be relevant at any point, it should come off the agenda.

Keep the agenda relevant. Stay informed about the issues affecting key business units. One method to do that is to ask for input from business units. Reach out formally as well as informally to discuss what are the concerns of management and workers in the compliance area.

(2) How frequently should the committee meet?

That depends on the charter of the committee and the needs that it is addressing. There should be a minimum of meeting quarterly. This frequency seems more appealing to most organizations so they don't feel overwhelmed by meetings, yet get accomplished what needs done.

Some organizations meet monthly, as they have determined that to work best for them.

(3) What should the focus be for the committee?

Get support and unity for defining the charter. The committee's focus will be influenced by the risk assessment of the organization as a whole and the specific risks to compliance for the organization as well as for individual business units.

(4) How do committee members deal with inconsistent leadership?

Some possibilities are to have a rotation schedule for the leadership, or to have an election by committee members on a periodic basis.

(5) Should legal staff consistently handle leadership of the committee or should it be rotated among all departments represented?

No – the Compliance Officer should always be in charge of the committee. Consistency in the leadership is key to the success of the committee and its objectives. Active participation by all members is important, but the CO is the captain of the Compliance ship.

(6) How to keep topics fresh and current when you meet only quarterly?

The agenda should reflect the hot issues that are affecting the organization. Focus on issues that may affect key business units and rotate that attention. Any type of regulatory action initiated by government agencies will be a key driver in focusing attention on compliance matters.

(7) What materials should be provided at meetings?

A lot of material is available for consideration by the committee, including reports of risk assessments and investigations (sanitized), hotline reports of complaints and abuses of authority or regulations, reports of regulators, reports of the legal office regarding regulatory matters, reports of external events that may have an impact on the operations or reputation of the organization. There may also be material from social media sites that may be relevant to compliance. For example, an organization that has contracts with factories in Bangladesh may be affected by the collapse of factory buildings in Dacca. Any confidential materials should be marked as such and treated accordingly.

(8) Should risk management be addressed by the committee?

Risks that affect the organization are a vital part of the compliance effort and should be taken into consideration in considering the agenda for the compliance committee.

(9) How do you handle selective disclosure, when members withhold partial or complete information from the committee, or provide insufficient detail for the committee to do its job?

The committee has to decide if it can play a meaningful role if it is not receiving sufficient information to exercise its function based on the charter. If not, then either the party that is withholding information has to provide more details so that the committee can do its work, or the compliance committee should disband if it cannot get the information it needs to do its job. This

situation may also benefit from soft skills, such as having a private conversation with the members who are withholding information to advocate for the release of key data.

It is extremely important to create a “safe zone” in the Compliance Committee meeting room. There should be no secrets. Everything that is discussed in the confidence of the team is to be kept confidential. Trust is the key!

If a member won't discuss information that is necessary for the committee to do its best job, maybe that member is not a good fit for the team. All information is necessary to make good decisions and suggested improvements.

(10) Is it a problem with middle managers setting the agenda when high level managers with more information and understanding sit on the committee?

That depends on a lot of factors. Perhaps the middle managers need to consult with higher level managers when preparing the agenda so that the items will more accurately reflect the real issues affecting the organization. It is also possible that some topics may be generic and that higher level managers can bring the issue into greater focus. The whole answer depends on how the operating guidelines for the committee are set up.

(11) What is the appropriate level of management to participate in a compliance committee?

This depends on the terms of reference and the operating guidelines for the compliance committee. As a general rule, it should be the director level or above that participates in the compliance committee.

(12) Members showing up late or not at all affects committee function and effectiveness.

Ensuring each agenda includes topics of interest to all members will help achieve good attendance at the meetings. Depending on the culture of the organization, the “carrot” approach maybe more effective than the “stick” in motivating members to participate responsibly. Most employees respond positively when the reasons for the compliance committee and the risks of not having a good compliance committee are fully explained and clear to them. Including compliance committee participation on the member's job description performance evaluation, if possible, would provide additional motivation. Also, if there is a stated starting time, then the compliance committee should begin on time and proceed as best it can. This will reinforce to the members the importance of keeping to the schedule.

If a member does not make every effort to get to the meeting on time, or not at all, the Compliance Officer should have a serious discussion with that member. The CO needs to determine how serious the member takes his/her commitment to the Compliance function of the organization.

Another option is to discuss the team member's tardiness or absenteeism with their superior, and let them have a discussion with their employee about whether they should continue to be a member of the Compliance Committee.

It may be necessary to replace that committee member with someone else that will be committed to compliance for their organization. It takes the entire team to make successful and effective decisions.

[COMPANY NAME] **COMPLIANCE COMMITTEE CHARTER**

CORPORATE COMPLIANCE—AN EFFECTIVE COMPLIANCE PROGRAM CONTINUALLY ALLOWS FOR THE PREVENTION AND/OR DETECTION OF VIOLATIONS INVOLVING LAWS, REGULATIONS, POLICIES, PROCEDURES, AND GUIDELINES GOVERNING ALL EMPLOYEES WITHIN THE ORGANIZATION.

PURPOSE

The Committee facilitates compliance by serving as an informational and advisory resource for the Compliance Officer.

The Committee extends the presence of the compliance function beyond the Corporate Compliance Officer and staff to the operational units of the organization.

The Committee serves as a communication link between employees and the compliance function.

The Committee's purpose, accomplished through the fulfillment of duties and responsibilities of each member at the operational level, is an integral part of the Company's commitment to compliance.

VALUES

The Committee is guided by and dedicated to the Company's core values of [*list core values*], and the Company Code of Ethics.

The Committee recognizes the necessity of independence, objectivity, accuracy, and confidentiality.

VISION

The Committee endeavors to foster and maintain a culture of Corporate Compliance throughout the organization.

The Committee endeavors to promote each employee's responsibility to abide by the Code of Ethics.

The Committee endeavors to promote the benefits of Corporate Compliance initiatives throughout the Company.

The Committee endeavors to facilitate the communication process involving Corporate Compliance information and the Code of Ethics.

The Committee endeavors to serve as leaders for Corporate Compliance activities.

STRUCTURE

The Corporate Compliance Officer chairs the Committee with the compliance staff supporting the Committee.

The scope of the Committee encompasses operational functions within the various business units comprising the Company.

The Committee includes representatives from the major business units.

The Committee reports appropriate issues to the Executive Corporate Compliance Committee comprised of the Chief Executive Officer, Chief Operating Officer, [Medical Director], and Corporate Compliance Officer.

The Executive Corporate Compliance Committee evaluates strategic compliance issues and makes decisions regarding proposed corrective action plans.

FUNCTIONS

The Committee assists in detecting and evaluating possible regulatory violations.

The Committee assists in implementing corrective actions as needed to prevent the occurrence of unlawful or unethical behavior and to stop any such behavior as soon as reasonably possible after it is discovered.

The Committee assists in developing and implementing appropriate solutions for compliance issues.

The Committee assists in determining approaches for promoting compliance.

The Committee assists in compliance training and education, including fraud and abuse prevention, for employees.

The Committee assists in assessing policies and procedures designed to address internal and external environment, the regulations with which it must comply, and specific risk areas.

The Committee assists in developing/completing compliance-related projects and provides feedback to the Corporate Compliance Officer and compliance staff.

RESPONSIBILITIES

Compliance Committee members review and analyze compliance-related issues, rulings, or procedures potentially impacting the Company's operations.

Compliance Committee members submit to the Compliance Officer ideas, concerns, questions, or discussion topics in advance of meetings.

Compliance Committee members review the agenda and supporting documents in advance of Committee meetings and are prepared to discuss issues related to their expertise.

Compliance Committee members attend regularly scheduled meetings.

Compliance Committee members attend ad hoc meetings as scheduled by the Compliance Officer, either in person, via telephone, or electronically.

CORPORATE COMPLIANCE COMMITTEE

MEMBERSHIP

Corporate Compliance (Auditor)

Corporate Compliance Officer (SVP)

Finance (VP)

Human Resources (Director)

Information Systems (Director)

Utilization Management (Director)

Privacy Officer

Registration/Access Center (Director)

Risk Management (Director)

Clinical Services (VP)

Lab (Director)

Pharmacy (Director)

PT/OT/ST, Audiology (Director)

Research (Director)

Managers of Key Business Units