

# TOWARD AN ETHICAL CULTURE

## The State of the Key Elements of an Ethics and Compliance Program

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# Purpose of this Presentation

- We have identified key elements of ethics and compliance programs in the past (last review over 2 years ago)
- Tracked key developments, successes and emerging best practices
- Goal is to develop or identify new practices that may be breakthroughs
- Tap the collective learning of our group

# Process

- Agree on key elements; priorities
- Discuss recent innovations and developments
- Identify possible breakthrough practices
- Identify new practices/tools **NEEDED**
- Output: revised PowerPoint for senior management and board members

# Why Ethical Culture\* is Important

- Organizations encourage and discourage certain behaviors – by their goals and priorities, by their incentives and structures
- Culture adds or detracts from employee morale, accountability, loyalty
- Culture influences employee behavior when they don't know about or have time to consult company policies and guidelines

\*Ethical culture—the way we do things around here.

# Importance of Identifying Key Elements of a Program

- Enables us to create the strongest possible culture of integrity\*
- Respond to expectations of prosecution and sentencing guidelines
- Identify best practices for each element
- Anticipate where an element can go wrong

\*Michael C. Jensen, Integrity: Without it Nothing Works

# Sources of Ethics Best Practices

- Learning from the “great” or the “best”
- Examples where (why) things did go wrong
- Industry ethics efforts (DII, etc.)
- Sarbanes Oxley Act (2002)—what was useful, what wasn’t, and why?
- Stock Exchange Standards (rev.2003)
- Sentencing Guidelines (rev. 2010)
- DOJ Principles of Prosecution (rev. 2006)
- Court cases and precedents; legal process

# Key Elements of an Ethics and Compliance System

1. Selection and behaviors of executives
2. Statement of values
3. Code of conduct for all stakeholders
4. Training and repeated communication of values and standards
5. Systems and process which embody the values

## Key Elements, cont.

6. Ethics risk assessment
7. Effective hotline/feedback systems
8. Mechanism for resolving hard cases
9. Compliance enforcement system
10. Periodic renewal process for values and standards
11. Governance system that reflects the values and standards

# Questions about the elements

- Do we have the right elements?
- Priority and/or critical mass?
- Do new ethics and compliance programs add elements in some order? Does compliance come before values?

# Selection and Behaviors of Executives

- Emerging Best Practices
  - CEO a walking embodiment of values – in both public and private life – selected for this
  - CEO talks and asks about the values...constantly
  - CEO tells stories about putting values to work
- Where It Can Go Wrong
  - Top execs behave at odds with values
  - CEO private behavior inconsistent
  - Top execs misuse power or influence
  - CEO never mentions values (double standard)
  - Top execs demonstrates disdain for employees, customers, other stakeholders

# Values Statements

- Emerging Best Practices
  - Integrate with “business” values
  - Specific reference to there not being a conflict between values and the “bottom line”
- Where It Can Go Wrong
  - Buried in other documents; not emphasized
  - Words, not values “in action”
  - Unrelated to company decisions, actions
  - Deliberate misreading of meaning
  - Ignores reality of corporate operations
  - Ignores reality of global operations

# Codes of Conduct

- Emerging Best Practices
  - Clearly organized and comprehensive
  - New topics?
  - Real life examples, Q and A
  - Easy access to help/answers
- Where It Can Go Wrong
  - Impenetrable, looks like a disclosure statement
  - On the shelf and never consulted
  - Exemptions, exceptions (routinely) granted
  - Deliberate misreading meaning, gaming it
  - Unclear application outside US
  - Failure to think through how applied in ops and foreign countries

# Training and Communication

- Emerging Best Practices
  - Training that focuses on recent issues
  - Training that helps employees identify issues in own ops
  - Expanded use of sophisticated on-line training
  - Training that emphasizes responsibility of individuals
  - Training that allows for employee interaction
  - Frequent CEO columns/appearances on values
- Where It Can Go Wrong
  - Lack of follow-up to assure it is done
  - Obvious lip service regarding values; talking head approach
  - Snickering references by managers
  - Reductionist approach to training - do the least
  - Failing to respond to employee survey concerns

# Ethics Risk Assessment

- Emerging Best Practices
  - Identification of problem areas via survey
  - Identification of problem areas via hotline reports
  - Discussion of ethics risk areas by functional management
  - Discussion of ethics risk areas with board
- Where It Can Go Wrong
  - Lack of trust in survey, confidentiality
  - Poorly drawn survey
  - Lack of candidness about problem areas
  - Failure to engage executives in assessment

# Systems that Embody Values

- Emerging Best Practices
  - Performance evaluation system and surveys have explicit reference to values and compliance
  - Integration of values “categories” into planning and other systems
  - Key decisions systematically examined in light of values
- Where It Can Go Wrong
  - “Fuzzy stuff” in performance ignored
  - Systems exist but ignored
  - Some systems deliberately left out (sales plans)
  - Key decisions made by purely financial criteria
  - Short-term performance pressures drive out values

# Systems that Embody Values

- Ernst & Young's list of systems/operations to be addressed:
  - People processes
    - Recruiting
    - Orientation
    - Performance objectives and measures
    - Global people survey
    - Learning and development
  - Client-related processes
    - Proposals
    - Engagement planning
    - Client acceptance
    - Assurance checks and balances
  - Balanced Scorecard
  - Quality and risk management function
  - Corporate social responsibility function

# Effective Hotline/Feedback Systems

- Emerging Best Practices
  - Use of outside reporting service
  - Strong internal reporting alternative(s)
  - Anonymity possible; avoid retribution (how?)
  - New developments in investigation?
- Where It Can Go Wrong
  - Lack of employee understanding of function
  - Lack of empathy in those answering phone
  - Violation of anonymity; retribution
  - Lack of adequate follow-up
  - Cultural barriers

# Way to Resolve Difficult Ethics Cases

- Emerging Best Practices
  - Employees confident that they will not be penalized for raising issues, implementing values ?
  - Employees confident they can take tough case to boss and actually get help (how prepare bosses?)
  - Executives or managers authorized to make tough calls; backed by top management
- Where It Can Go Wrong
  - “Don’t ask” culture; plausible deniability
  - Fear of negative management reaction
  - Unwillingness of executives/managers to share responsibility
  - Failure to apply ethics commitments to global operations under the guise of “cultural differences”

# Compliance Enforcement

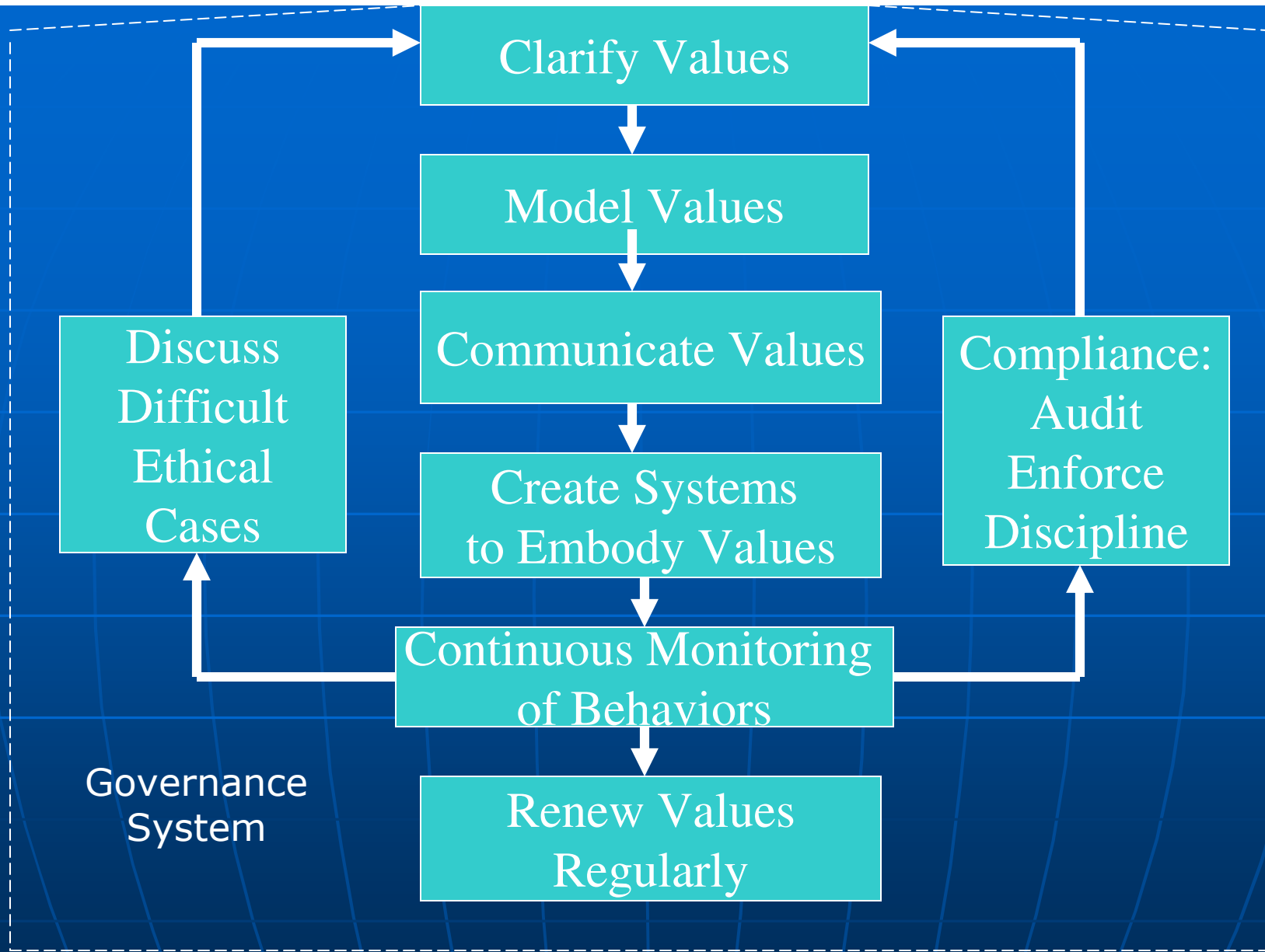
- Emerging Best Practices
  - Identify/audit key areas of ethics risk
  - Adjust discipline rendered to evolving ethics risk (?)
  - New techniques for auditing overseas (?)
- Where It Can Go Wrong
  - Compliance is not complemented with values
  - Auditing does not address areas of real ethics risk
  - Compliance and discipline easier on executives
  - Compliance system protects only the company
  - External resources/expertise

# Periodic Renewal

- Emerging Best Practices
  - Periodic “roll out” of updated values and standards – usually a 3 year cycle
  - Freshness of message for each renewal
  - Engagement of all stakeholders in fresh message
- Where It Can Go Wrong
  - Letting the messages go stale; unchanged
  - Failure to seek input from organization for revisions
  - Failure to address recent incidents; new issues
  - Overemphasis on recent incidents

# Governance of Ethics and Values

- Emerging Best Practices
  - Top executive overseeing ethics effort
  - Qualified and motivated Ethics/Compliance officer (trends?)
  - Active audit or ethics committee of board (trends?)
  - Periodic reporting to board; ethics officer access
  - Focus and reports on areas of ethics risk
- Where It Can Go Wrong
  - Assignment to lower level/ineffectual executive
  - Ethics officer not respected
  - Audit committee not really interested
  - Reporting is perfunctory
  - Failure to apply to global operations
  - No real expectation that reports will lead to improving system



# *Best Practices for a Culture of Integrity*