Presented by

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Agenda

• The ‘Why’ of Benchmarking
• Noteworthy Models to Aid Benchmarking
• Approach and Tools
• Benchmarks for 8 Essential Program Areas
• Key Takeaways
• Q&A
Why Should I Benchmark My E&C Program?

THE BIG QUESTION
Definition of Benchmarking

Is It the Same as Conducting a Program Assessment?

- **Benchmarking** is the process of comparing one’s business processes and performance metrics to industry bests or best practices from other companies - *Wikipedia*

- **Assessment** is the act of making a judgment about something – *Merriam-Webster*
The Benefits of Benchmarking

- Provides data to **justify your budget**
- Creates a prioritized list of **opportunities for improvement**
- Informs **long-range plan** to incorporate opportunities for improvement
- Pinpoints needs from **other functions** such as HR, Audit, etc.
- Assists board and executives to understand if **program is within norms** and where it lands on continuum from acceptable to best
- Helps organization determine where it wants to be on **continuum of practices**
DOJ’s Viewpoint

• U.S. Federal Sentencing Guidelines
  - The **critical factors** in evaluating any [compliance] program are whether the program is adequately designed for **maximum effectiveness in preventing and detecting wrongdoing** by employees and whether corporate **management is enforcing the program** or is tacitly encouraging or pressuring employees to engage in misconduct to achieve business objectives.

  - An organization’s failure to incorporate and follow **applicable industry practice** or the standards called for by any applicable **governmental regulation** weighs against a finding of an effective compliance and ethics program.
And What if This Happens?

The Department of Justice just issued a document request to evaluate your program before making a charging decision...

Would you be prepared to respond?
Noteworthy Models to Aid Benchmarking

GUIDELINES AND STANDARDS
Ethics and Compliance Effectiveness Models*


- FSG
- Medicare 7-Elements
- FSG Revision
- UK Bribery Act
- COSO Revision
- DII**
- COSO
- SOX
- Dodd-Frank and FSG Revision
- FCPA Guidance
- ISO 19600
- ISO 37001

* Based on effective dates
** DII – Defense Industry Initiative
## 8 Elements of an Effective Compliance Program

**FSG 8 Elements - Based on Risk and Addresses Organizational Culture**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
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<tbody>
<tr>
<td>1.</td>
<td>Standards &amp; procedures to prevent and detect criminal conduct</td>
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<td>2.</td>
<td>Leadership and oversight of the program with appropriate resources and authorities</td>
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<td>3.</td>
<td>Deny leadership positions to people who have engaged in misconduct</td>
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<td>4.</td>
<td>Communicate standards and procedures of compliance program</td>
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<td>5.</td>
<td>Conduct effective and relevant training</td>
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<td>6.</td>
<td>Monitor and audit; maintain reporting mechanism</td>
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<td>7.</td>
<td>HR alignment: incentives/discipline</td>
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<td>8.</td>
<td>Respond quickly to allegations and modify program</td>
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COSO 2013 Framework – 17 Principles

[Diagram showing the COSO 2013 framework with layers: Control Environment, Risk Assessment, Control Activities, Information & Communication, and Monitoring Activities.]
Hui Chen’s Four Important Factors
For Evaluating the Effectiveness of a Compliance Program

• Does the compliance program demonstrate thoughtful design?

• How operational is the program (not a paper program)?

• How well do stakeholders communicate with each other?

• How well is the program resourced?
  - https://www.youtube.com/watch?v=pRTGZmmbc5o&feature=youtu.be
    • (Nov. 13, 2015, NYU School of Law)

− https://www.youtube.com/watch?v=pRTGZmmbc5o&feature=youtu.be

• (Nov. 13, 2015, NYU School of Law)
The Benchmarking Process
Applies to organizations of all sizes and industries

- Determine the **standards/guidelines** on which your program is built
- Identify **program operating goal**: ≤ best practice?
- Select a **program element** or process to benchmark
- Identify the key structure/performance/effectiveness **metrics**
- Choose **target** companies of desired size/industry to benchmark
- Collect and analyze **data** from targets and published reports/surveys
- Identify **opportunities** for improvement, based on your operating goal

Adapted from: http://www.bain.com/publications/articles/management-tools-benchmarking.aspx
Approach and Tools

CONSIDERATIONS AND RESOURCES
Getting Started

• Does someone need to pre-authorize?
  – Board
  – Executive management
  – General counsel

• Who conducts?
  – Ethics/compliance
  – External consultants

• What are your framework standards and program operating goal?

• Will you share your own data with target companies?
The Impact of Organization Size

FSG 2011 8b2.1. The Size of the Organization

- A small organization may meet the requirements of [the FSG] with less formality and fewer resources than would be expected of large organizations.

- Examples:
  - Use of existing resources and simple systems
  - The governing authority may conduct oversight by directly managing the E&C program
  - Training employees through informal staff meetings
  - Monitoring through regular ‘walk-arounds’ or continuous observation while managing the organization
  - Using available personnel, rather than employing separate staff, to carry out the E&C program
  - Modeling its own E&C program on existing, well-regarded E&C programs and best practices of other similar organizations
Resources Used to Benchmark

- Industry peers
- Industry and cross-industry organizations
- Published surveys, reports, papers
- Vendors and consultants
- Benchmark and survey solicitors
- Internal surveys, focus groups (longitudinal benchmarking)
Benchmark What You Need
But don’t try to boil the ocean...
Potential Elements to Benchmark (and Document)

- **Structure**
  - Staffing, salaries, resources, budget, roles, reporting

- **Board**
  - Interactions, reporting, training, oversight

- **Code of conduct**
  - Approach, content, format, deployment, attestations, rollout, build or buy

- **Policies**
  - Topics, management, attestations, ownership

- **Training and communications**
  - Seat time, audiences, topics, methods, frequency, build or buy

- **Alignment With HR Practice**
  - Exit interviews, incentives, performance measures, promotion criteria

- **Monitoring and assessment**
  - Education effectiveness, program effectiveness, third party practices, risk-based monitors, documentation systems

- **Helpline**
  - Setup, statistics, case management, investigation management

- **Response and prevention**
  - Discipline types and consistency, controls improvement process

- **Culture**
  - Fear of retaliation, belief nothing will be done, consistent accountability, ethical leadership, pressure to bend rules

- **Risk Assessment**
  - Stand-alone vs. ERM integration, frequency, post-assessment work plan
Benchmarks for 8 Essential Program Areas
Risk Assessment

Common/Effective Practice

- Risk of criminal conduct and other high risk compliance areas periodically assessed
- Risk assessment outcome and activity reports to senior management and board
- Program resources deployed in risk-sensitive manner
- Compliance risk assessment linked with ERM

Best Practice

- Risk assessments include reputational/ethics risks every 2 years with updates in off years
- Staff in business units assigned to address unique risks faced by those units
- Board awareness/involvement in outcome review or mitigation oversight
- Recognition of emerging issues/trends
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Risk Assessment

Compliance Risk Management

• Compliance Risk Assessment, using a uniform methodology for ranking risks, is conducted every two years with a high-level update on ‘off’ years

• Compliance and Enterprise Risk Assessments are linked and drive Internal Audit planning

• Compliance Mitigation Action Plans used to track progress on risk mitigation for identified compliance risks
Oversight, Structure and Leadership

Common/Effective Practice

- **Board:**
  - Aware of program oversight responsibilities
  - Accessible to program managers and holds executive sessions
  - Receives timely reports of significant issues/investigations
  - Assigns adequate program resources

- **Management and Leadership:**
  - E&C program responsibilities understood by all management levels and employees
  - High-level program manager has sufficient clout

- **Structure:**
  - Both high-level and day-to-day program managers with defined relationship to Board
  - Management committee gets information from program managers and gives program input

Best Practice

- **Board:**
  - Program oversight responsibilities codified in governance committee charter
  - Knowledgeable about program content and operation and gives visible support to program
  - Conducts oversight of program effectiveness and culture

- **Management and Leadership:**
  - Management ethics committee charters/procedures with codified responsibilities to give input on program
  - Senior leadership exercises responsibility to sustain culture of compliance and integrity

- **Structure:**
  - Program applies to third-party partners
  - Individuals/committees deploy program initiatives regionally or locally, as needed
  - Program integrated with business operations
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Oversight, Structure and Leadership

Program Structure and Oversight

• Board and leadership support for compliance and ethics activities

• Board oversight at audit committee level including annual training program

• Compliance council oversees E&C program

• Senior management monitors and supports compliance activities

• Conflict of Interest advisory team reviews potential conflict situations
Standards and Procedures

Common/Effective Practice

- Good accessibility to Code, policies and procedures
- Policy development and dissemination process
- Current policies to address high-medium risks
- Code update at least every 3-4 years
- Code certification annually

Best Practice

- Code in readable language includes links/references to policies; reporting processes; responsibilities of employees/managers; standards for high-risk areas
- Document retention program including E&C documents
- Standards for third parties
- Scheduled periodic review of Code and policies
- Automated policy management
- COI disclosure program
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Standards and Procedures

- Code of Conduct
- All employees complete Code certification annually, including conflict-of-interest disclosure
- Policy management program
Alignment with HR Practices

Common/Effective Practice

- Performance appraisals include ethics and compliance criteria
- No incentives built into goals that could motivate misconduct
- Exit interviews include an E&C component

Best Practice

- Ethical conduct considered in promotion criteria
- Appropriate screening of new hires, promotion candidates and third-party partners
- Performance appraisals for management include their E&C program responsibilities
- Review of discipline for consistency
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Alignment With HR Practices

Discipline and Incentives

• Promote compliance through consistent use of disciplinary activities and aligning incentives with compliance goals

• Corporate and individual performance goals consistently include compliance measures
Training and Communications

Common/Effective Practice

• E&C education tied to risk assessment
• Manager awareness of responsibilities and how to respond to issues
• Leadership messaging
• New employee Code training in first 30 days
• Code training every 2 years
• Tracking of all training completion

Best Practice

• Multi-year quarterly education plan including various methods and formats
• Role-relevant education based on risk
• Board and leadership training (not just briefing)
• Assess effectiveness of education efforts
• Sanitized cases and lessons learned
• Code training annually for all employees
• Automated certifications and tracking of training
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Training and Communications

Training

• All managers receive Code of Business Conduct training every year
• All employees receive training every other year
• Training required within 30 days for new hires
• Extensive regulatory compliance training requirements on safety, environmental, and other key risk areas

Communications

• Compliance messaging is a critical part of our overall communications strategy, both internally and externally
• Updates to all employees quarterly on compliance performance
• Internal meetings include values shares
• Town Hall meetings used to communicate compliance & ethics-related issues
### Reporting and Response

#### Common/Effective Practice

- Confidential and anonymous system for reporting E&C questions and concerns
- Employees understand reporting process and are encouraged to speak up
- Report escalation policy or process
- Non-retaliation policy is enforced
- Incident management system that allows tracking and reporting of statistics

#### Best Practice

- Case closure times average 30 days or less
- All investigators undergo common training
- Policies/procedures for assigning, conducting and overseeing investigations
- Tracking corrective actions for consistency
- Focus on root cause analysis and related program improvements
- Data tracking, trending and reporting with analysis to leadership and board
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Reporting and Response

Reporting and Investigations

• Hotline accessible to all employees and contractors

• Reporting trends tracked and reviewed with board audit committee on annual basis

• Transparent communications with managers and employees regarding intake and management of reports, as well as non-retaliation expectations
Monitoring and Assessment

Common/Effective Practice

• Audit plans and protocols for conducting E&C audits
• Use of employee surveys and exit interviews as E&C program monitor tools
• Audits for adherence to program procedures

Best Practice

• Partners with audit and other SMEs who visit sites
• Conducts external program and culture assessments every 3-4 years with internal review in off years
• Evidence of continuous program improvement based on monitor results
• Implementation of automated monitoring
• Assess compliance with KPIs
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Monitoring and Assessment

Measurement and Monitoring

• External program assessments conducted on a routine basis

• Development of action plans and program changes based on assessment results

• Regular involvement of internal audit department to test and confirm compliance with regulatory requirements and internal standards
Culture

Common/Effective Practice

• Employees have heard and believe compliance messages
• Trust in compliance processes and systems
• Low fear of retaliation

Best Practice

• Alignment of varying cultures within an organization
• Addresses global cultural differences
• Management of pressure to reach goals
• All staff held equally accountable
• Extend to pre- and post-M&A targets
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Culture

Corporate Culture

• Program priorities developed based on Ethics and Compliance Framework Review

• Implementation of action plan to intentionally shape corporate culture

• Alignment of corporate initiatives connected to culture
After the Benchmarking Exercise

- Develop a **summary of findings and opportunities** based on the data and aligned with program operating goals
- **Socialize summary** with key stakeholders – CEO, board, others – to course-correct next steps
- Develop a 2-3 year ethics and compliance **work plan** to address the opportunities
- **Document** clearly where benchmarks have shaped your program so they can be assessed for effectiveness
- Periodically **repeat benchmarking** exercise, potentially addressing new areas of your program
Key Takeaways forBenchmarking

SHAPE YOUR PROGRAM FOR MAXIMUM VALUE
Key Takeaways

- There are **many benefits** to benchmarking, including defending your budget and your approach to your E&C program

- Follow a **well-developed process** to plan, conduct and report out your benchmarking

- Choose your benchmarking **targets** carefully

- Use the results to create a **long-range work plan**; then work the plan

- **Document** your process, benchmarks used, and how they shape your program

- Note benchmarks used during **program assessments**
What’s Next on the Schedule?

Enjoy a 30-minute break!
• See NAVEX Global solutions in action and live-chat with booth staff in the Solutions Hall
• Participate in topical forums in the Networking Lounge
• Download assets in the Resource Library
• Explore more about our Industry Partners

Don’t miss the next 3 sessions at 11:00am PT / 2:00pm ET
• Data You Can Use in Your Program Today: Insights from Across Our Benchmarking Reports
• Harnessing the Power of Your Code of Conduct: Zap Life Back Into Your Program
• Keeping Pace With the Regulations That Affect Your Workforce