THE SUPER ESG ISSUE

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WINTER // 2019

PLUS!
SPECIAL FEATURE
DISABILITY INCLUSION AT WORK

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who see opportunity in ethical leadership

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CII
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DEPARTMENTS ›

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Portions of this issue, along with web-exclusive features, can be found at our website: **www.ethisphere.com**

Our Mission Statement

The Ethisphere® Institute is the global leader in defining and advancing the standards of ethical business practices that fuel corporate character, marketplace trust and business success. We have a deep expertise in measuring and defining core ethics standards using data-driven insights that help companies enhance corporate character. Ethisphere believes integrity and transparency impact the public trust and the bottom line of any organization. Ethisphere honors superior achievements in these areas with its annual recognition of The World's Most Ethical Companies®, and facilitates the Business Ethics Leadership Alliance (BELA), an international community of industry professionals committed to influencing business leaders and advancing business ethics as an essential element of company performance. Ethisphere publishes *Ethisphere Magazine* and hosts ethics summits worldwide.

The opinions expressed in this magazine are those of the authors, not the printer, sponsoring organizations or the Ethisphere Institute.

This magazine is printed on recycled paper.

SPEAKING UP

THIS ISSUE'S LETTER FROM THE EDITOR

Dear Readers,

Every company has an aphorism that colleagues use, or even overuse, to the point that it becomes a mental reflex for the entire organization. For us at Ethisphere (and perhaps many other ethics and compliance folks), that would certainly be the venerable, "What gets measured, gets done."

Of course, there's good reason for that. Measurement communicates seriousness. Any time a company is willing to put a flag in the ground by developing metrics, defining goals, and transparently advertising progress (or a lack thereof) towards them, they declare that what they're measuring matters to them.

For years now, the movement for companies to more seriously weigh environmental, social, and governance (ESG) factors in their assessments of their own performance has been gaining steam. At first, ESG assessments were a core component of companies' CSR reports, heavy on anecdote, light on data, and with actual benchmarks nowhere to be found.

As ESG data collection became more refined, investors and academics have been able to study the links between ESG performance and a company's overall financial returns. The trends are clear: companies that successfully reduce waste and emissions, fight trafficking, control their supply chains, and follow transparent governance practices perform better in the market. In other words, ESG issues are of material concern to a company's bottom line.

In this issue's feature, we have contributors discussing the evolution of ESG topics from a wide variety of angles. The investment professionals at **Northern Trust** give us insight into their view of ESG, both as investors and as a company trying to perform well in its own right. To give us the evolving view from within, **HPE**'s Chief Sustainability Officer discusses that company's long-term commitment to sustainability. Investor advisors and advocates from **Institutional Shareholder Services** explain their thinking on the challenges of ESG metrics, Ethisphere's own Emily Rickaby gives a rundown of the trends in the best corporate CSR reports, and two experts from **Baker McKenzie** discuss the way that ESG monitoring builds on the capabilities that ethics and compliance departments have already developed.

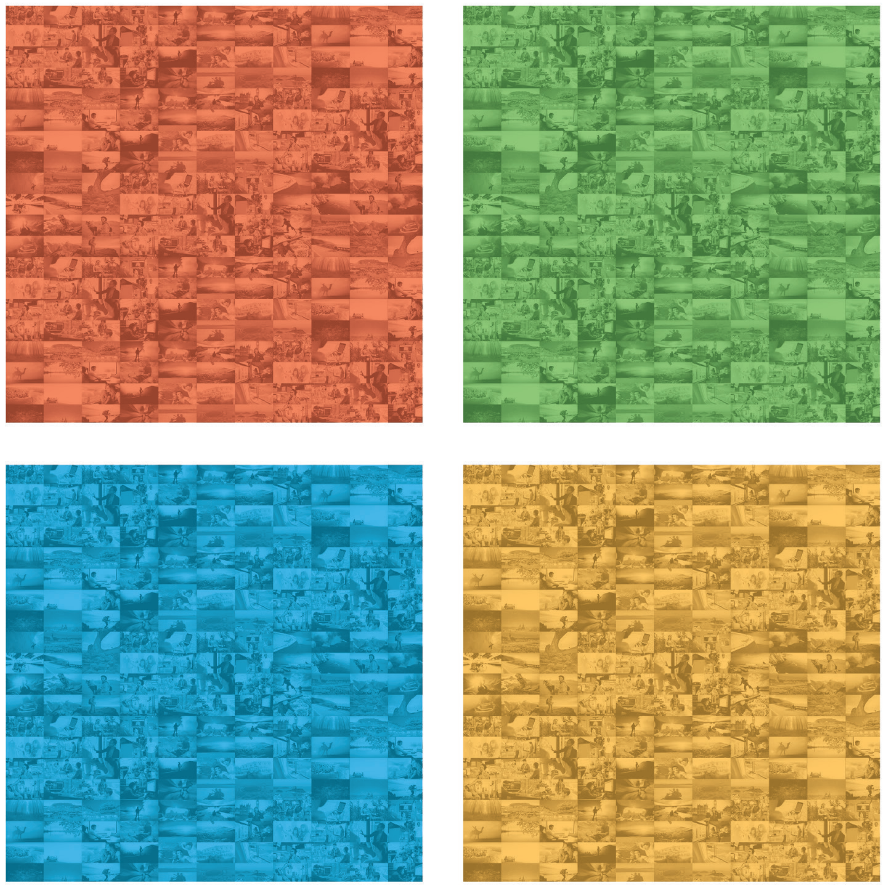
Finally, this issue's special feature zeroes in on one ESG issue of particular importance to Ethisphere: the push for greater inclusion of people with disabilities in the workplace. We have recently announced a partnership with the **Disability Equality Index**, the **American Association of People with Disabilities**, and **Disability:IN** to incorporate their own expertise and resources into our own benchmarking through the World's Most Ethical Companies® and Business Ethics Leadership Alliance. The story of disability inclusion, a moral imperative that is now becoming an economic one, is a useful case study for the evolution of many ESG issues, and we hope our readers can learn from the journeys of the companies profiled there.

Tyler Lawrence

Tyler Lawrence
Executive Editor
Ethisphere Magazine

Our mission is to empower every person and every organization on the planet to achieve more.

Microsoft is proud to be recognized by Ethisphere Magazine as one of the World's Most Ethical Companies.



MOUTHING OFF

» THIS QUARTER'S LETTERS TO THE EDITOR «

Have something to say? Write the editor at tyler.lawrence@ethisphere.com or at Ethisphere Magazine, 1412 Broadway, 21st Floor, New York, NY 10018.

RESPONSES TO *ETHISPHERE MAGAZINE'S* EMPLOYEE ISSUE

"Culture Champions: Emotional Wellness at Booz Allen Hamilton"

This article contained so many interesting insights about the links between emotional wellness concerns and the kinds of problems that ultimately end up on a Chief Compliance Officer's desk. Many thanks for highlighting that connection. – **Sofia P.**

"Keep It Simple: Allianz Reaches Its Audience"

While the bigger-picture articles about major topical areas or debates facing the ethics and compliance community are nice, I appreciate articles like this one breaking down one company's approach to a very specific problem they're facing. I'll be keeping this in mind thinking about our own ethics communications plan for 2020. – **Caleb H.**

Ethisphere Response: *Ethisphere is always pleased to provide a combination of high-level discussion and very concrete best practices. In addition to our media such as Ethisphere Magazine, this sort of discussion is the mainstay of our Business Ethics Leadership Alliance (BELA) roundtables, and events such as the Global Ethics Summit.*

"A South Asia Primer"

Ethisphere's continued focus on South Asia as a growing market is immensely appreciated. Too much content is written purely from an American or European perspective. Will Ethisphere be extending this regional focus to other places? – **Michael S.**

Ethisphere Response: *Ethisphere strives to provide resources and best practices to professionals around the globe. BELA offers programming specific to our partners in South Asia, Latin America, the Asia-Pacific region, Europe, and Canada. To learn more about BELA's international chapters, please contact Jonathan Whitacre at jonathan.whitacre@ethisphere.com.*

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BY THE NUMBERS

DISABILITY INCLUSION GOOD FOR COMPANIES AND EMPLOYEES

LIKE MANY ESG TOPICS, INCLUSION TIED TO PERFORMANCE

In *Getting to Equal 2018: The Disability Inclusion Advantage*, Accenture alongside partners from Disability:IN and the American Association of People with Disabilities laid out data showing how top performing companies on the Disability Equality Index ("Champions") also outperform the market.

28

Champion companies on the DEI achieved an average of 28% higher revenue compared to their peer companies.

50

Compared to peer companies, Champions had shareholder returns over 50% higher.

30

Champions also experienced profit margins 30% higher than peers over the analyzed period.

4x

Even those companies who did not start as Champions but improved their DEI scores over time saw 4x higher returns.

Source: Getting to Equal 2018: The Disability Inclusion Advantage, Accenture.

THE GOOD AND THE BAD

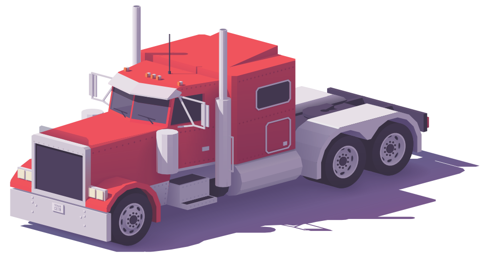
PAPER BAGS AND PROFIT PROPELLERS

HOW IT WORKS

Paper Bags are given to companies and organizations that are involved in, or have attempted to cover up, scandals, violations or other embarrassing events.

Profit Propellers are awarded to companies and organizations that have recently done something interesting, innovative or brave in the area of ethical leadership.

Engine and power-generation manufacturer **Cummins** receives a **profit propeller** for publicly committing to a set of emissions standards for its products and operations in line with the science behind the United Nations SDGs.



Global real estate firm **WeWork** gets a **paper bag** after pre-IPO filings and reporting revealed strategic, management, and leadership practices so capricious that founder Adam Neumann was forced to resign as CEO, the IPO was indefinitely delayed, and layoffs rocked the company.

Retailer **Dick's Sporting Goods** gets a **profit propeller** after removing guns from its stores and destroying $5 million worth of assault rifles to keep them off the streets. Despite vocal criticism, the company's stock is up 60% over 2019.

Swedish telecom **Ericsson** earns a whopper of a **paper bag** after agreeing to a settlement over $1 billion with the U.S. Department of Justice for a FCPA violations spanning a decade and five countries. The company compounded its problems by being uncooperative after investigations began.

Californian utility **PG&E** receives a **paper bag** after the company's decades-long failure to perform necessary upkeep on its power distribution network caused wildfires last year and forced blackouts for millions of customers during a brutal heat wave.

Airline **JetBlue** announced a plan to go carbon-neutral for all of its flights within the United States in July 2020, earning a **profit propeller**. Airplane emissions account for approximately one-tenth of the entire global carbon footprint.

Do you know of a recent news story you feel should be awarded a Paper Bag or Profit Propeller? Send your ideas to ***tyler.lawrence@ethisphere.com***

AROUND THE CIRCUIT

SOUTH ASIA ETHICS SUMMIT: ADVANCING COMPLIANCE IN THE SUBCONTINENT

Ethics and compliance leaders from across India came together for the 2nd Annual South Asia Ethics Summit. The program provided an opportunity for participants to share thoughts and insights around the latest trends in ethics and compliance program development and strategy, as well as put a spotlight on the best practices being implemented by E&C leaders.

Hosted at the global headquarters of **Infosys** in Bengaluru, India, the Summit featured a variety of panels geared towards ethics, compliance, privacy, and governance in South Asia. The Summit opened with a keynote address from Inderpreet Sawhney, Group General Counsel & Chief Compliance Officer for Infosys. Ethisphere's Erica Salmon Byrne also presented the results of the Prevention of Sexual Harassment (PoSH) Survey and Report conducted in partnership with the Business Ethics Leadership Alliance (BELA) South Asia community. Other topics covered by panels include:

- What Is the Banking Sector Doing to Improve Integrity?
- Social Media and the Emerging Intrusions of Company Compliance Across India
- Data Governance – How Can You Best Balance Privacy, Compliance & Corruption With So Much On the Line?
- Conflicts of Interest – Mitigating this Root Cause through Better Internal Reporting
- Public Relations Spotlight – How can the E&C Function Best Explain the Company Story and Manage Reputation?
- The Generation Game – Engaging 'Zillennials' to Understand their Drive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Feature

LEADING THROUGH TRANSITION

During times of upheaval for a company or entire industry, it's very easy for ethics and compliance concerns to become secondary or fall by the wayside entirely. Everyone in the company, from leadership to the front lines, is under different sorts of pressure to hit business targets despite an often-difficult environment.

However, the best companies will see these moments of transition as an opportunity to reinforce the company's ethical commitments, and may even be able to leverage the ethics and compliance program to help smooth the process of transition for employees. Employees at companies with a strong sense of purpose, and operations built to advance and reinforce that purpose, will have much more clarity when making pivotal decisions.

This section features interviews with two leaders with experience prioritizing ethics during transitions. First, CareFirst BlueCross BlueShield's CEO Brian Pieninck has a wide-ranging conversation with Ethisphere's Erica Salmon Byrne about the importance of prioritizing ethics during times of stress and transition, and strategies for communicating a company's priorities. Then, VF Corp's General Counsel Laura Meagher talks about how the legal and compliance functions have played into the company's recent streamlining of its brand portfolio, a change made in part to create a more purpose-aligned company.

TOPICS COVERED
// *Messaging & Decision-Making*

ENGAGED AT THE TOP

CareFirst's CEO on Communicating Throughout an Organization

Interview by Erica Salmon Byrne

CareFirst BlueCross BlueShield, the largest health insurance provider in the Mid-Atlantic region of the United States, is a member of the Business Ethics Leadership Alliance and a seven-time World's Most Ethical Companies® honoree. CareFirst's President and CEO, Brian D. Pieninck, is particularly engaged with matters of ethics and compliance—a trait not common among chief executives. While Brian was on his way to speak to a group of employees in West Virginia, Erica Salmon Byrne caught up with him for a long chat about his views on ethics and compliance, leading the company through a time of transition in the industry, and more.

Erica Salmon Byrne: Brian, why is it so important that you as the CEO are involved in ethics and compliance?

Brian Pieninck: From my perspective, this is as much about culture as anything else. People believe in where you spend your time and your energy, and from an organizational perspective, what you fund.

I think people seeing me engaged—not just superficially, not just when I'm pulled in by compliance or HR, but proactively as something that's part of every conversation that we have—is important. And I think it puts a whole level of personalization on it, and people begin to think about it differently, in terms of the importance to culture and the importance to our environment and their personal accountability.

ESB: I know from the conversations that you and I have had that there are a lot of examples of how you very actively partner with Todd [Cioni, CareFirst's Vice President and Chief Compliance, Ethics, and Privacy Officer] and the ethics and compliance team, giving not just company resources but your time, specifically. What's your favorite thing that you two have done? What do you think has had the greatest impact, from a cultural perspective?

BP: From my perspective, hands down, it's the opportunity to stand in front of associates and have conversations with them. It's humanizing.

I think one of the things that a lot of organizations understand to some degree is that any time you're dealing with risk, you're striking a nerve with people. You're plucking at strings that people are inherently uncomfortable with. And breaking down those barriers and humanizing topics like compliance and making them approachable to people, I think, is critical to getting honest conversations, honest observations, and progress. Any time we get a chance to just get in front of people and just have a real conversation, tell a real story, share a real anecdote, and create a safe space for this sort of discussion to happen organically, I think is the best investment that you can make.

ESB: How do you keep that message consistent while going through change? I

know that your industry is going through a transformation now as a business, and that you've gone through transition when you moved into your role as CEO. Can you talk a little bit about how you think about values and using a values-based approach during that time of transition? Any examples you can give us of things that you feel have worked particularly well?

BP: These are the moments in your life, personally but also I think in organizations, when it can become a ripe environment for people to not do the right thing, for the wrong reasons. Even saying that out loud helps to draw focus and defuse tension. I think the most important thing is to share with people what you are not willing to compromise on, to help people understand what the guardrails are, and that even in the midst of change, even in the midst of urgency, even in the midst of growing complexity, even in the midst of growing volume, there are just certain things we are not willing to accept from ourselves individually or as the company collectively in order to forward other objectives.

And you've got to treat these things in principle as co-equal. These are equally important and they have to be done together. It's not a choice of one or the other. I think acknowledging that up front gives people permission to think about it differently because otherwise, they might get caught up in mixed messages. For example, I'm feeling urgency around this business topic, and therefore I may feel implicitly that there's a choice to be made here and that I'm being asked to make that choice, even if no one's said it that way. I think you've got to talk about things like this—not that that's a perfect antidote.

Facts & Figures

7 | 2019 WORLD'S MOST ETHICAL COMPANIES® | WWW.ETHISPHERE.COM

7 years in a row that CareFirst has been named to the World's Most Ethical Companies®, starting in 2013.

It's important to help people understand that this is not an event. Transformation in business, based on business circumstances or societal circumstances, is no longer something that you do and then replant your feet for a prolonged period of time. Part of what we are trying to acculturate, and part of what we're trying to control for, is this idea that we're really not able to set our feet the way that we used to. The demands of our business require us to stay constantly in motion, so we need to get smarter about how we acculturate that motion, prioritize, and exercise sound judgment in real time.

I think that also helps people to recognize that if I'm waiting for it to get easier, quieter, simpler in order to make those difficult judgment calls, I should stop waiting and start prioritizing. I try to model behavior, and I encourage others to model behavior. When we see or hear something in conversations that begs a question, whether it be a cultural question, an ethical question, a compliance question, or a business operations question, we should use that as a teachable moment and say, "Let's pause here for a moment on this particular topic, and let's talk about the implications of what's being said and what's not being said."

We try to do that pretty consistently, because I find that it provides real life context for people to learn from, that it takes discussion from conceptual to practical and helps people then apply it to their own work. Those are the sorts of things that we try to employ to make it manageable.

ESB: I call that sort of analysis "making decisions out loud." Do you have a sense or have you talked to the members of your team about how they push that down inside their own organization? One of the things that we often find companies struggling with is, okay, the leadership team does this well, but how do I model that?

BP: I think this is the challenge, right? And I would not consider us to be unique, other than that I think we are building a culture where we're persistently willing to say out loud to each other, "Hey, we haven't quite gotten this right yet." I would say what I've recognized is that you need multiple listening devices and you need multiple feedback devices. If you are relying solely on the waterfall effect, you will fail. If you're relying solely on grassroots efforts, you will fail. What we try to do, what I personally try to do as the CEO, is to develop as many listening devices within the organization as I possibly can, including firsthand perspective, indirect perspective, and hierarchical perspective that's filtered through layers.

It's a constant triangulation to see if what we're saying and doing and the way that we're saying and doing it in small groups of people is resonating with large groups of people. And then as you identify those gaps, you say them out loud to each other, and you try to close them. I think that is the job. There's no perfect way to do this. And as soon as you think you've got it right, the only thing that you've done is identified the things you see and touch. You haven't identified the many things you likely have not seen or touched, and you've left some area of the organization, some people in the organization, feeling as if it's an "us and them" type of conversation.

So we just try to persistently throw ourselves at that. We've got the same challenge every other company does, which is getting the message to a certain part in the organization, and I think expediency has a tendency to take hold, or a lack of understanding filters through the telephone game. That's why you need to have the mechanism that goes direct to the people and explain it to them the way that you explained it within their hierarchy, within their organization structure, and get their real-time feedback. And then have a loop to the folks to say, "This is where it's connecting and this is where it's not connecting." But I don't think it gets easier than that—at least in my experience, it hasn't.

ESB: And that's really what you and Todd are doing right now, right? Where you are going and talking directly to associates?

BP: Yes. This is an interesting thing, though, that I find a lot of cultures are not comfortable with this approach. When I first got to CareFirst, it used to freak out my direct report team that I would go to their teams just to have conversations with them. You've got to trust your leadership team. But you also have to verify. And sometimes it's not an issue of trust. Look, there's honest things that just break down in chains of communication even where trust exists.

We've got to be persistent in trying to reconnect those chains. How do we help each other get that right? And I think people start to realize that when you gather that information, you're going to bring it back to them and work together on how to make things better. It's not going to be punitive; you're going to tell me what you're hearing and then you're going to help me figure that out and we'll do it together. And through that, we'll make progress.

ESB: That makes a lot of sense. Brian, you know, one of the things that we've done a lot with CareFirst, perhaps a little bit more than some other BELA members, is data and benchmarking. How are you using the data?

BP: I'm a big believer that you fight conjecture and hyperbole and misconception with facts. This isn't about my opinion; it's not even about your opinion or Ethisphere's institutional opinion. This is about using the reality of us and of others like us, and different than us, as a lens to say, "Are we the best that we're capable of being?"

Oftentimes when you deal in things like risk and controls that strike chords, where there's an emotional connotation, there's fear and anxiety, in some cases. Just defusing that with facts and information makes it more accessible to people and helps them to see the merits, but it also helps them to see what's possible. It may be hard, but let's look at others like us. How are they doing? What are they doing? And I think that constant reinforcement that we're not the only people on this journey is something that has merit beyond us. Having an example beyond us that they can reflect on, I think, goes a long, long way to really crystallizing people's sense of what's actionable and what's possible.

ESB: That makes a lot of sense. Brian, any advice for CEOs that are reading this or thinking about their own involvement with their ethics and compliance program? Any thoughts on how to dive in?

BP: You've got to be willing to hear the things that you don't want to hear. You've got to treat every challenge, every objection, as an opportunity. And if you go into it with the mindset that better is possible and that the goal here is to constantly improve, then it makes you far more willing and receptive to listen to the things that organizations just don't want to hear of themselves and individuals don't want to hear of themselves.
People are sometimes worried about questions—"Well, why do you want to ask that question?"—because we're afraid of what people will say. Well, you've already been defeated, in my opinion. If you can't build the facility and the willingness and the desire to improve by acknowledging that there's room for improvement, or at least be open to the possibility that people may have something that's on their mind different than what you would like to believe to be true, how do you possibly get to the right trajectory of these things?

ESB: CareFirst has been a World's Most Ethical Companies honoree for the last seven years, which is a very substantial accomplishment because it's a very rigorous process that you all go through. Why is it important to CareFirst as an organization to be on that list?

BP: I mean, from my perspective, and this may not be exactly what you're expecting, I think the designation is fabulous, but I don't think that designation is the most important thing in this conversation.

ESB: It's the process.

BP: The process is the way for us to determine whether or not we're making the kind of progress we want to be making, as compared to other people. We had this conversation recently, and someone made the statement, "If we ever failed to make the World's Most Ethical Companies list, it would be crushing to this organization." And I said, "I'm not sure I agree with that. I'm not as sure I agree it's the right way for us to be looking at this." The idea here is that we need to be able to hold up a lens—not just of ourselves and what we could imagine—we need a lens that incorporates many different other perspectives on this topic, that allows us to really get to a much better trajectory of improvement, constant improvement. And this is what the process has given us. I would not feel good about not being a World's Most Ethical Companies honoree, that is 100 percent for certain. And we've codified this into our business goals for each division, as well as the company, for a reason. We want people to feel this is co-equal to everything else we're saying we're trying to accomplish. But if you were to ask me what the benefit is, it's what we learn every year. And every year we learn something about what others like us and those who are different than us are doing that we could be, should be, and need to be considering that we may not have fully considered.

To me, that's the real benefit of the process—being on that journey with an organization that helps us look at it that way, but also other organizations who are, I think, trying to accomplish the same thing.

ESB: If I could have wished for an answer, that's exactly what I would have wanted to hear. To us, it isn't about the 130 or so companies that make the list every year. It's about why you apply in the first place, and what it says about who you are as an organization and what matters to you.

BP: I think the risk with things like this is always that people begin to study for the exam. If you're just studying for the exam and you're not trying to be a great practitioner, I feel like there's something that gets lost in translation. We wouldn't want to just work towards the designation and not really work towards progress.

ESB: Anything that you would add that we haven't already talked about?

BP: I'm interested to see where the journey takes us. I think the sensibility around things like ethics continues to change and evolve. And I feel like we're in the midst of a fairly rapid change cycle. I think getting a perspective from within our associate base of what a high ethical standard means to them, and balancing that with the same perspective of outside organizations who aren't us, is something that is worth revisiting.
Organizations are oftentimes finding too late that they failed to meet the expectations of their constituents after they've done something that looked to them like the standard course of business in any other year, or any other decade, but reached its expiration date in this year, in this decade. I see a lot of companies struggling with that dynamic sensibility. As a company and as an industry, I feel like that's something that probably warrants some additional time and energy to say, "So how do we move with that? How do we incorporate that into our planning, our thinking, but also our questioning?"

ESB: I think my favorite part of this conversation has been a perspective that transformation is not a single moment in time. It has to become a mindset, and that's a different way of thinking about the role that values play in the course of having that kind of attitude.

BP: Yes. As you talk about that on your side, I wonder if other CEOs are having that conversation. I find it feels we're on a little bit of a horizon with that. Everybody's beginning to give deference to that reality. But I'm not sure our constructs have really matured to address it. You're still trying to convince people that this is a constant, this is the new norm. If you're waiting for it to go back to being what it used to be, or what you remember it being, you're probably not going to be successful.

Expert Biography

Brian D. Pieninck *has been President and Chief Executive Officer of CareFirst BlueCross BlueShield since July 2018. Prior to serving as President and Chief Executive Officer, Mr. Pieninck was CareFirst's Chief Operating Officer. In that role, he was responsible for overseeing the company's four strategic business units (Consumer Direct, Small and Medium Group, Large Group/CareFirst Administrators, and Federal Employee Health Benefit Plan), as well as the company's Technical and Operational Support division. Mr. Pieninck joined the company in 2015 and previously served as Executive Vice President for the company's Large Group Strategic Business Unit and CareFirst Administrators. Prior to joining CareFirst, Mr. Pieninck was a member of Aetna's executive leadership team, where he held a variety of positions of increasing responsibility during a 19-year tenure, including President of Southeast National Accounts, and most recently, President of the Americas for Aetna International. Mr. Pieninck is a member of the boards of the Federal Employee Program Board of Managers, Special Olympics Maryland, and the Economic Alliance of Greater Baltimore and is a member of the United Way's Tocqueville Society.*

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A LEANER, COLLABORATIVE ORGANIZATION

VF Corp's General Counsel on a Purpose-Driven Change

Interview by Erica Salmon Byrne

Following a year that saw VF Corporation streamline its portfolio of brands and move its headquarters, Ethisphere Magazine took the chance to ask a few questions to the company's General Counsel Laura Meagher about leading the legal function through these shifts. In this conversation, she discusses preserving culture, new regulations and cross-company collaboration at the new VF.

TOPICS COVERED
// Partnerships & Privacy

Ethisphere Magazine: VF has undergone a number of significant changes in the past year or so, can you offer some background on the newly evolved VF?

Laura Meagher: 2019 marked one of the most significant periods of transformation in VF's 120-year history. The successful spin-off of our jeans business in May was a huge accomplishment, which allowed us to concentrate our efforts on building and growing our iconic portfolio of brands across the active, outdoor and workwear segments – led by brands like Vans, The North Face, Timberland, and Dickies. Another major change for us this year has been our headquarters move to Denver, Colorado in June, which is a place with an unrivalled heritage and culture of outdoor and activity-based lifestyles, as well as a thriving business environment. Finally, we have been highly focused on building a purpose-led, performance-driven culture that celebrates our shared journey while respecting and enabling the individual culture of each of our brands. It's a new day at VF as we step into the next chapter of our journey as a more dynamic and agile corporation.

EM: What has the change meant for the VF legal function? How has the legal team helped shape that transformation?

LM: All of the transformational change over the past 18 months has put a premium on the support the VF legal team has provided. The complicated securities, commercial, operational and regulatory aspects involved with the spin off our jeans business required a significant step up in the need for legal support and guidance. As we emerge as a more consumer-minded, retail-centric and hyper-digital business, we are even more focused on areas of privacy and data protection. At the same time, our increased focus on China and other emerging markets has increased the demands on our ethics and compliance team to ensure we are managing our business with the right controls in place globally. In addition, with our move to Denver, we have had the opportunity to attract new local talent from the Denver legal community, which has allowed us to expand and diversify our team. The legal function will continue to play a key role in ensuring that as a company we do so in the right way, consistent with our purpose.

As we emerge as a more consumer-minded, retail-centric and hyper-digital business, we are even more focused on the areas of privacy and data protection.

EM: You have ultimate accountability for VF's ethics and compliance function. What role does ethics and compliance play in a purpose-driven organization and how integral is it to business success?

LM: Our purpose is to power movements of sustainable and active lifestyles for the betterment of people and our planet. At VF, we seek to be more than just one of the world's largest apparel companies, but a company that uses its scale and resources to improve people's lives and make the world a better place. This is what the marketplace and society expect of us, and it's what we expect of ourselves. Our ethics and compliance team is critical to cultivating our culture and living our purpose. Throughout our 120-year history we've reinvented ourselves multiple times, always thinking about our next move. And it's been our steadfast commitment to ethics, integrity, and running our business consistent with our purpose that has directly contributed to our business success over that time.

EM: As a company consisting of diverse brands, business units and regions, how does VF maintain a collaborative and inclusive approach to ethics and compliance, while preserving the unique culture that exists throughout the business?

LM: We work to ensure that every business decision we make is done with our Guiding Principles in mind. Those principles of integrity, courage, curiosity, empathy, and perseverance help create a culture where associates understand what is expected of them, have the resources to make the right choices, and feel empowered to speak up and raise concerns. We challenge ourselves to ensure there are unifying themes in our messaging across the enterprise, while providing opportunities for tailored engagements that meet the direct needs of our business partners. We also strive to ensure that transparency exists throughout the organization. Whether it's by posting our Ethics Helpline statistics publicly, openly sharing survey data, or publishing real-life ethics investigations results, we are looking to not only preserve our culture of integrity but enhance it by building trust and living our Guiding Principles.

EM: As the role of ethics and compliance has become more integrated with other functions in the organization, what challenges have you encountered?

LM: We view the evolution of our ethics and compliance work as having presented more opportunities than challenges. As we begin to amass data and help increase awareness, we can work with our brands to tailor our interactions through our training, communications, and other engagement activities. That leads to real results and measurable impact, which creates stronger partnerships with our colleagues and business partners. We also recognize the need for consistency. For example, we have over 200 ambassadors across the company who support our internal investigations process. Each of those associates is provided with in-person training to help ensure a common approach. More than anything, we view this as an opportunity to provide a significant return on investment and have a positive impact on our culture worldwide.

EM: As consumer privacy has become an increasingly hot-button issue, what steps have you taken to ensure compliance with new regulations? Do you consider going beyond regulations in cases where consumer expectations may be driving potential new regulations?

LM: Respect for consumer data is fundamental to our commitment to being consumer centric. Ensuring consumer privacy and the protection of our consumers' and our employees' data is critical to ensuring trust while creating the best experiences possible. We commit to following the law everywhere we do business, but we also know it's important to ensure our policies reflect our purpose and our Guiding Principles. Our work in the area goes beyond compliance. We've developed a robust program that includes the appointment of a data protection officer in Europe. All of this has allowed us to ensure more collaboration across the company and create stronger awareness about our partners and how we can enhance synergies in our approach to data privacy.

EM: How do you resolve what could be potential points of tension between compliance and marketing for new regulations like GDPR?

LM: While we strive to take a practical, business-friendly approach, the bottom line is that compliance always comes first. Our efforts to provide practical solutions cannot be overstated, but our focus is on providing legally compliant approaches that provide solutions to the needs of the business.

EM: How does VF factor in the rapid shifts in geopolitical risk in what appears to be a volatile operating climate?

LM: As a global company with operations in more 150 countries around the world, we are generally accustomed to the ebb and flow of global events, but we keep a close eye on them. And, of course, our teams are constantly evaluating how events may influence our business – positively or negatively – and taking actions to reduce risk or take advantage of opportunities. For instance, the recent tariffs have caused us to look at ways to further diversify our supply chain so we are not overly dependent on any one country. And in some instances, we make more significant changes as we did this summer related to the Amazon fires in Brazil, where we made the decision to suspend our leather sourcing until we can be assured our Responsible Sourcing Guidelines are strictly followed.

EM: What do the legal and compliance teams do to proactively identify new risks? What are some examples of trends that you've identified that have the potential to become issues for companies like VF?

LM: We've really taken a holistic approach to risk management. We've put into place a more systematic risk assessment process that includes greater collaboration. In addition, we work closely with our analytics team to gather data and insights that allow us to engage associates and focus our activities and resources in the right direction. This allows us to address emerging risks and evaluate the impact of our work on existing issues in a meaningful way.

EM: As you look back over your career at VF, what do you hope to leave as your legacy?

LM: My vision is to ensure that the legal and compliance teams are viewed as trusted business partners that enable the success of our business by helping ensure we stay true to our purpose and always remain on the right path.

Expert Biography

Laura Meagher *is Executive Vice President, General Counsel & Secretary of VF Corporation. She holds overall responsibility for VF's legal function, including compliance with securities laws, mergers and acquisitions, general corporate law and corporate governance, and intellectual property law and litigation. Ms. Meagher joined VF in 2004 as Assistant General Counsel.*


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Feature

ESG HERE TO SUPERCHARGE YOUR BOTTOM LINE

Illustration by RJ Matson

Although the concept that companies ought to operate according to environmental, social and governance principles (ESG) was only introduced by Kofi Annan in 2004, the idea has quickly reached maturity. Now, ESG principles have come into their own as a potent guidance system for companies seeking to both operate ethically and win in the market. The cumulative picture painted by research and the last few years of market returns makes it very clear: companies that excel on ESG issues excel overall.

In this month's feature, the investment experts at Northern Trust give us their view of the shifting ESG landscape, and the way that they personally approach it as a company. Ethisphere's own Emily Rickaby describes the major trends in ESG reports that she has observed in her research, and how to ensure your company's hits the mark. From HPE, Chief Sustainability Officer Chris Wellise goes into trends in the circular economy, and how being a sustainability leader has helped his company's bottom line and attracted even more business. The investment advisory experts at ISS tackle the tricky issue of metrics in ESG reporting, and put forward an argument for transparency. Finally, a pair of Baker McKenzie's anti-corruption and governance experts give us the bird's eye view from the board level about ESG governance.

TRANSPARENCY, METRICS, AND RESPONSIBILITY

Investment Leaders at Northern Trust on ESG Imperatives

Interview by Tyler Lawrence

Chicago-based financial services firm Northern Trust has three values at the core of its operations: service, expertise, and integrity. These values serve the firm well in its role as both a publicly traded company trying to walk the walk on ESG issues and as an investor trying to hold other companies to those same standards. Ethisphere got the chance to talk about trends in ESG with Connie L. Lindsey, the firm's head of corporate social responsibility, and Mamadou-Abou Sarr, director of sustainable investing.

Tyler Lawrence: To start us off, can you tell me just a little bit about your roles at Northern Trust and how you each fit into the organization?

Connie Lindsey: I run our global corporate responsibility practice along with community development and diversity, equity, and inclusion. I report directly to our CEO, and from an oversight and governance perspective my function is under the purview of the governance committee of our board of directors. I work closely with Mamadou's team. I sit on the ESG committee of senior leaders from around the firm as it relates to proxy voting and other governance matters.

Mamadou-Abou Sarr: I am the Director of product development and sustainable investing. I have also previously been the global head of sustainable investing, where I was responsible for ESG innovation.

TL: Connie, how have your interactions with companies around ESG issues changed over the course of the last few years? What are companies providing now that they weren't before?

CL: Companies certainly are looking very closely at issues that have to do with diversity. They are also looking at issues related to sustainability, environmental matters, and their economic implications. So those are two of the top issues that we've seen. I think there's also a migration towards higher levels of transparency.

TL: Many companies feel a tension that greater transparency also exposes them to greater risk and scrutiny. How can you convince companies that transparency is beneficial to them?

CL: At Northern Trust, we see corporate responsibility and ESG issues as a form of risk mitigation. We want to share with our key stakeholders and shareholders specific information about the firm, and delivering meaningful information to them can help mitigate some risk. But that's for each individual institution to determine what that means for them.

TL: We know ESG investing is increasing, but which way does the causality flow—is increased demand for ESG products leading to investor innovation, or do you think that your own innovation is creating better products that are now more attractive to consumers?

MAS: Sustainable investing continues to be one of the fastest-growing market segments in the asset management industry. According to the Global Sustainable Investment Alliance report, global assets following some form of ESG factors reached $30.7 trillion at the end of 2018, which represents nearly one-third of the money managed professionally. The changing landscape of ESG "regulation" is among the main drivers of the ESG growth. Other factors include investors' demand for fully integrated ESG strategies and a dramatic change of investors' preferences in segments such as UHNWI and pension assets.

TL: Northern Trust is both an investor and a company in its own right, trying to do business according to ESG principles. How does your work as investors concerned about these issues inform your own internal operations and decision making?

MAS: We believe appropriate management of ESG factors can create long-term shareholder value for Northern Trust as an investment management firm as well as a publicly traded company. We align our business with the fundamental principle of sustainability: meeting the needs of the present generation without compromising the ability of future generations to meet their own needs. Our definition of sustainable investing acknowledges that the long-term financial success of our clients and shareholders is dependent on a healthy global environment, a stable society, and well-functioning, well-governed companies. As such, we believe that material environmental, social, and governance issues are business issues. When managed well, these factors can position a company for success. When managed poorly, they can lead to negative externalities that can result in reputational and financial risk. ESG analytics can complement quantitative or fundamental investment techniques to mitigate risks or capture new opportunities. As such, we view the integration of ESG factors in investment analysis as a key part of our responsibility as an asset manager.

TL: Looking forward a few years, where do you think that we're going in terms of transparency around ESG issues and sustainability?

CL: I think it differs by regions in the world. I think in North America we are seeing some movement, but I see a different pace outside of North America and AMEA. For example, in the UK there are different ways that they are approaching ESG issues. The difference is not regulation or law, but the questions that various entities are asking about transparency. While companies are not required legally to participate, in order to deliver the story or the message around their brand, it is important to have good information and data.

TL: Within ESG, social areas are where the data is fuzziest. Companies don't necessarily have the numbers yet to back up any of their initiatives. Do you have any thoughts on where you see ESG metrics going?

CL: I'm a proponent of higher levels of verifiable transparency. If a company makes a statement, it should be verified by relevant external sources. I think that is one of the most important things, going forward. Whatever organizations state about, for example, their human capital policies, needs to be verifiable and substantiated by external sources.

TL: So there needs to be some sort of relationship with a trusted auditor to verify that sort of data.

CL: That would be my position, yes. I serve on the board of the Global Reporting Initiative, and one of the things that we discuss as we're developing the standards for preparing a corporate responsibility report is exactly that—how data is acquired, accumulated, ultimately reported, and then verified.

TL: Northern Trust's own attitude towards community investment development falls under your purview, Connie. Can you give me a little bit of background about your initiatives?

CL: Our community development strategy allows us to concentrate efforts and resources on direct investments that have a sustainable community impact and aligns with our Community Reinvestment Act (CRA) designation. Northern Trust has maintained an outstanding CRA rating for 24 consecutive years. We have four specific focus areas in our strategy; affordable housing, job creation, wealth accumulation, and education. Social Impact Bonds or pay for performance is one aspect of our community development work. One of our early social impact investments in Chicago was a program designed to provide high quality pre-kindergarten services to children in high-need communities, as well as supportive resources to their parents to support their overall readiness for school and reduce the need for individual education programs.

TL: Mamadou, where do you see ESG investing going in the next few years? What shifts do you expect to see in demand or in the metrics available to assess ESG concerns?

MAS: Increasing interest in sustainable and ESG investing means more opportunity for investors to find the best fit for their portfolios. Sustainability is central to all investment areas, as investors increasingly demand solutions that fulfill a complete ESG portfolio. However, there are still holes to fill before the ESG portfolio is complete, and that's where thoughtful innovation comes in. For asset managers, that means sustainable investing should be integral to product development that aligns with investors' objectives. We are expecting ESG assets to grow substantially over the next few years as regulatory requirements and demand for ESG reporting increase. We are moving from an era of ESG information to ESG integration and forward-looking ESG data. Artificial intelligence and machine learning are becoming a critical part of the new metrics available to assess ESG concerns.

Expert Biographies

Connie L. Lindsey *is Executive Vice President and Head of Corporate Social Responsibility at Northern Trust, Chicago. She is responsible for the design and implementation of the global Corporate Social Responsibility, Community Development and Investments, and Global Diversity, Equity, and Inclusion strategy for Northern Trust and the development of goals, policies, and programs appropriate to the brand and business unit strategies. In addition, Ms. Lindsey provides oversight and leadership to the firm's response to environmental matters as well as social issues within the marketplace, workplace, and community.*

Mamadou-Abou Sarr *is the Director of Product Development and Sustainable Investing at Northern Trust Asset Management, where he is responsible for driving innovation and product development across the company's array of asset class capabilities. Mamadou oversees the strategic product group and provides strong leadership in the area of sustainable investing that fosters the implementation of sustainable investing across asset classes and channels.*

SEARCHING FOR A COMPASS

Navigating the Water of ESG Reporting

Written by Emily Rickaby

On the topic of ESG, there is no shortage of ideas. A few months ago, I set out to see if there was consensus as to just what we mean when we say "ESG", especially as regards to the "S," and to any reporting methodologies. As an individual (in the same shoes as an end customer, consumer, or individual stakeholder) trying to develop an understanding of the practicable approaches to sustainability at a corporate or organizational level, I was met with a tidal wave of articles, blog posts, investment indices, honors lists, reporting frameworks, climate counsels, roadmaps, and standards that were anything but standard.

Go ahead and see for yourself. For example, type "ABCs of ESG" into your search engine of choice. Other than agreement that "ESG" stands for "Environmental, Social, and Governance," the content diverged quickly. Of course, there are common themes, ideas, and concepts, but with so many frameworks, matrices, and roadmaps competing to be the standard bearer, there was no quick and easy way to arrive at what one would consider a firm footing on the topic.

So, instead of approaching ESG from the front end, I turned to the more tangible back end-- the corporate sustainability report. I selected reports to review at random, with the only organizing principle being a focus on large corporations and trying to sample a few reports in each of a handful of industries --manufacturing, finance, technology, consumer products, and business services. While random sampling comes with its own list of potential drawbacks, some trends and key questions emerged around the definition of materiality, the setting and framing of goals, and the data supporting the progress against those goals

These reports cover a lot of ground. There is no shortage of the report real estate devoted to organizations' goals related to environmental aspects. There is a lot of narrative about efforts managing waste, water, emissions, and energy-- and a lot of data-- much more on average than the "S" and "G" combined. In some ways, this is to be expected. The gallons of water used year-over-year in a manufacturing capacity or the amount of electricity consumed at a server farm can be easily measured. Setting the "environmental" category aside, we focused on the social and governance aspects, particularly those related to diversity and inclusion, supplier oversight, and governance transparency.

Even with this small sampling, it is clear that the better of the reports contain the following attributes:

- **Materiality definition:** What items are considered material by the business and with what level of priority? What resource or standard was used to determine materiality (MSCI, UN SDGs, or SASB, etc.)? What about internal influences such as corporate culture, values, and the nature of the business? Not every suggested material item or international goal is appropriate for every corporation. Materiality report sections should demonstrate focus and intentionality. Make the connection clear between what the corporation does and who the corporation is and the priorities of materiality.

- **Stakeholder engagement:** Who are considered stakeholders, and how do they align with the definitions of materiality? What type and what frequency are engagements with stakeholders? Are these engagement activities internally developed or developed with an outside organization or consultant (i.e. AccountAbility AA1000)? How are the insights and information gleaned from these engagements used to influence the corporation's actions and goals related to ESG?

- **Goals aligned with materiality:** Narrative should clearly explain how goals were developed given the scope and priority of materiality. Goals should have targets that are measurable, not merely aspirational.

- **Goal progress illustrated with data:** Show the progress against goals using distinct data points. For each belief or value statement, there is an expectation of a goal, an explanation of efforts to pursue the goal, and a demonstration of progress. Select data points that are meaningful, not merely numerical.

- **The "S" beyond philanthropy:** Every report includes information on charitable contributions, corporate foundations, employee volunteering and donations, and partnerships with or in support of third party non-profits, etc. This way of contributing to society is necessary, and these days expected, but perhaps not sufficient in this space. The better of the reports were able to show clear alignment of the social goals selected by the corporation and how those efforts were tied to the core purpose of the business. What are the direct community interactions being taken by, and in the name of, the corporation?

Select data points that are meaningful, not merely numerical.

- **Diversity and Inclusion:** Go beyond reporting the gender make-up of the board of directors. What is the diversity (gender, ethnicity, age, disability, etc.) of the workforce? What about that of internal promotions, recruitment and retention? What efforts are made in terms of training and development? Pay equity? What about diversity and inclusion considerations for stakeholders beyond employees?

- **Supply chain responsibility:** What is the flow-down of ESG-related expectations to suppliers? What is the oversight? Does evaluation take place only at the vetting or contracting stage? What type and how many supplier audits are performed, and what is the outcome?

- **Employee development, engagement, and wellbeing:** Be specific about efforts to make the workplace more equitable and the employee lifestyle more sustainable. Share engagement survey key data points. Transparency on health, safety, and injury issues. Time, funding, and range of development opportunities. Share measurable strides in improving employee benefits

- **Governance:** In addition to describing, or linking to, codes of conduct or ethics reporting hotlines, consider greater transparency in code of conduct or ethics violation case reporting - including rate of substantiation, type of violations reported, days to close reports, etc. And, regarding ESG, demonstrate clear lines of oversight and accountability.

- **Reporting frameworks:** If using, or aligning to, a reporting framework (i.e. GRI), write the report first, then use a matrix to show alignment. Be wary of letting a reporting framework drive the voice, style, and organization of the report, as this can read as inauthentic and "check the box".

- **Supplemental materials:** To the extent the core ESG report refers to or links out to supplemental materials-- codes, policies, websites, data summaries, etc.-- make it easy to follow the trail of the story and make sure the reader can get at least a summary understanding of a concept in the report itself without having to constantly jump to other resources.

- **External assurance or verification:** This is a must for the credibility of the report.

To be sure, the above merely scratches the surface of the world of ESG reporting. Done well, ESG reporting (assuming the veracity of the information) can be a competitive advantage. Done poorly, the door opens to damage to the brand and reputation, invites hostile shareholder proposals, or even activist lawsuits. Moving to a world more focused on corporations as being purpose driven is a world where we see the corporation as "person" in ways that are not just about protecting the rights of the corporate person, but expanding the responsibilities beyond regulatory impositions. It is personal. It is the corporate person as mirror of the individual person. ESG reporting should be a reflection of the overall brand and business values of each organization. These reports should feel organic, honest, and reflect the color of the organizations. The topic of ESG will be a priority for Ethisphere and the Business Ethics Leadership Alliance in 2020 and we look forward to continuing the discussion.

Author Biography

Emily Rickaby *is the Global Resources Manager for the Business Ethics Leadership Alliance (BELA) at Ethisphere. In her role, she works with Ethisphere's data and analytics team, members of the BELA community and other compliance and ethics professionals to curate and publish relevant content resources and enhance the BELA member hub experience in support of the BELA member community.*

Emily has expertise in content development and instructional design in both the legal and corporate fields. Prior to joining Ethisphere, Emily worked for 8 years at Thomson Reuters in a Senior Content Development role for the West LegalEdcenter product. She also worked as a learning and development consultant for Wells Fargo and GE.

TECH FOR SMART SUSTAINABILITY

A Conversation on Sustainability & ESG Metrics

Interview by Tyler Lawrence

While attending this year's Bloomberg Sustainable Business Summit, Ethisphere Executive Editor Tyler Lawrence had a chance to talk with Hewlett Packard Enterprise's Chief Sustainability Officer Chris Wellise. The conversation touched on HPE's innovations towards a circular economy, the challenges of reducing environmental impact in the supply chain, and the future of ESG metrics for investors.

Tyler Lawrence: Can you give me a brief overview of your role at HPE and where you sit within the organization?

Chris Wellise: I'm the Chief Sustainability Officer, and within the Office of Legal and Administrative Affairs. There are multiple organizations linked within sustainability— the Office of Ethics and Compliance, the operational team, the corporate affairs organization that I sit in, as well as procurement.

TL: We're speaking at the Bloomberg Sustainable Business Summit, where we've heard several conversations around the notion of the circular economy, which I know is something that you're also thinking about at HPE. Can you tell me a bit about the principles of the circular economy and how you're putting them into practice at HPE?

CW: The circular economy is really about reducing inputs associated with manufacturing products, extending the lives of products, and also thinking how one might be able to up-cycle those to a higher or better use at end of life. But, in technology, there are even broader implications. How do you remove what I would call "resource leakages" from systems in other verticals—For instance, the use of industrial technology for collecting data, and then using that data to dematerialize the manufacturing process.

TL: Tell me a little bit more about that.

CW: So when I think about what we do in the IT space, I often think about things in two buckets. I think about sustainable IT: how do we design our products for the environment? How do we design them for circularity? How do we design them for disassembly or recyclability or extended use? And then in the second bucket, I think about IT for sustainability: how do you then apply technology to other industries to improve the sustainability or resource efficiency within those other industries? Closed loop manufacturing is a concept that's been around for decades and decades, where you essentially look at data collected throughout a manufacturing process, and then you're able to improve efficiencies throughout that process.

But now with the advent of machine learning, advanced analytics, and high-performance computing, you can do this within seconds. And one of the benefits associated with doing that, is you can look at production processes and reduce or dematerialize the amount of material that goes into a product based upon those data inputs. So, that's kind of connected to that circular economy concept.
Within HPE, the concept of the circular economy has been around for about 40 years. Since 1992, we've had a design for environment program at HP, prior to the division into two companies. And really that's about how do you design out waste, how do you design out toxic materials while maintaining the performance of products, and how do you design them for recyclability and disassembly at end of use. Those concepts have really been in practice since the early nineties at our company.

TL: And would you say that since HPE has had this focus going back to the nineties on your own processes, does that now help you, in terms of your ability to attract customers for the business of applying your machine learning to their processes?

CW: I would say it works in a couple of different ways. One, we've got cutting edge technology, which appeals to customers looking to take advantage of technology in a new way to transform their industry. But also, one of the things we've done with my team is developed sustainability sales enablement practice. Because we've been doing it for so long, a lot of our partners and customers came to us and said, "Look, you guys have been involved in leading carbon targets for decades. You've had leading supply chain related requirements for your suppliers in terms of things like forced labor, conflict minerals programs, et cetera. Why don't we collaborate so you can help us to understand and share those best practices?"

And what that does is strengthens our relationships through our sustainability-related leadership. Companies want to partner with companies that have shared values. Our CEO Antonio Neri talks about how HPE is really become a purpose-driven company. I think that's true for a lot of our customers too. And they're looking to partner with the right suppliers that share their values.

TL: Pivoting a little bit to the question of ESG: over the last few years we've seen ESG investing go from being a niche in the marketplace to a cornerstone of many investment portfolios. With that shift, what new questions do you get from investors? What data are they asking for that you've had to learn to generate as a company?

CW: The benefit to having been in the sustainability space for a long time is we had a bit of a head start. One of the things we did in our sustainability report, which we call the Living Progress Report, is developed a data summary, which really helps investors digest the data that they need. What really started as corporate citizenship, and then sustainability, has emerged into now this ESG space. How do investors evaluate potential in their investment-making decision protocol using real KPIs? We've had a very robust set of assured data within our sustainability report for years. But within the last 12 to 24 months, there's been an increase in questions around things like TCFD [Task Force on Climate-related Financial Disclosures], which is appropriate to talk about here since Mike Bloomberg has been one of the key proponents.

A question that's come up is, "How are you quantifying climate risks?" But I think while that's important, what's perhaps more important from my perspective is, "What is the opportunity?" Not just to focus on risk. What is the opportunity? And in our case, some of the things I mentioned around the application of technology, I think have the opportunity to transform other industries in a way that's climate smart, and helps transition the globe to a low carbon economy.

TL: If you're only now seeing an influx of questions around TCFD and other climate risks, you didn't necessarily have the capacity to answer all of those questions at first. So how have you gone about building capability, both in your internal offices and throughout your supply chain, to collect the data to answer those question?

CW: I don't mean for this to sound like boasting, but honestly we've been a leader in this space for so long and doing it so long, that I think our performance sort of preceded the questions. And it also could be reflective of the fact that IT is a bit of a leading industry vertical. Some of the questions maybe began to hit IT first, but we had also begun to think about these things several years ago.

This last year was the first year that we did report on TCFD, but it's also the first year we got questions on TCFD. Some of the other KPIs around carbon, greenhouse gas footprint, assurance of our data, labor practice indicators within supply chain—these are the areas that we've been working on for a long time and where we had very strong programs, both upstream and within our four walls, for decades.

But what will be interesting is the rise in ESG of investors trying to wrap their heads around what KPIs can help inform their investment decisions. I don't think that nut has been fully cracked yet. I think investors are trying to figure out what that looks like. And I think corporates are trying to figure out what that looks like too, how to anticipate what those key KPIs might look like. In some cases, they're things that we've been measuring for years, but we're also looking for signals from investors too, in terms of what is of primary interest to them. it's a conversation happening right now between investors and corporates. What will emerge is hopefully the best of how we should perform, and what they're trying to measure.

TL: Could you speculate a little bit on what the direction that some of those KPIs may be heading is? What do you think you'll be measuring, and what you'll be asked to measure, three years from now, five years from now?

CW: I think it really is going to be based on a holistic value chain approach for all companies. One of the things that we've worked on as corporate sustainability practitioners for a long time is how we are performing internally from an operational perspective.
But what's becoming apparent is that very little of our environmental impact is associated within the operational domain of companies, particularly within manufacturing. In our case, it's about 6% of the impact, which is pretty common if you're in manufacturing. The majority of our impact is downstream within our products, and the rest is upstream within the supply chain related to extraction, assembly, manufacturing components, etc. So, I think increasingly what investors and everyone's going to be grappling with is, what does your value chain look like? Where are your material impacts? What are you doing to establish aggressive targets within those areas that have the most significant impact? And then, how are you deriving performance?

That's the big shift that we're starting to see. For years it was all about having an operational greenhouse gas target. Now most of our initiatives are in the supply chain of products. What are you doing there?

HPE has really been focused on developing a first-of-its-kind supply chain target for greenhouse gases. We're working with our suppliers, 80% by spend, to establish science-based targets, and then also looking at increasing the efficiency of our products downstream, which was where our biggest impacts are, by 30 times by 2025.

TL: Well, thank you so much.

Author Biography

Chris Wellise *is passionate about drawing upon his experience in business and science/engineering to analyze how organizations innovate, develop, and market products; consume energy and natural resources; and produce waste streams, to find ways to bring businesses closer to economic, social, and environmental sustainability. As HPE's chief sustainability officer, Christopher directs the global Living Progress team, focused on solving social and environmental challenges in collaboration with nonprofit organizations, governments, customers, and partners.*

MEETING INVESTOR EXPECTATIONS ON ESG REPORTING

How Climate Risk Transparency Helps Companies

Written by Emmanuelle Palikuca and Nicole Bouquet

With the growing interest in environmental, social, and governance (ESG) topics among investors, legal and investor relations professionals are frequently asked to wear a new hat—that of an acting sustainability leader. While it is clear to these "sustainability officers" that investors care about ESG issues in a broad sense, it is usually less clear exactly what their investors want to see and where the company should start in addressing ESG topics.

The Materiality of Climate-Related Disclosures

Given the overwhelming range of issues under the ESG umbrella, it is common for companies to face the challenge of prioritization, especially when resources are limited. Many companies tackle this issue by focusing first on low-hanging fruit, an approach that can lead to some quick wins and mobilize resources within the company to do more.

Investors like BlackRock and State Street prefer that companies focus on the issues that are most material to their business model and operations. While materiality often varies across industries and sometimes even companies within the same industry, climate change has emerged as an increasingly salient issue universally. Climate-related risks can manifest in multiple ways, posing significant threats

Facts & Figures

18%

Percentage of publicly listed companies currently on track to meet emissions targets set by the Paris Climate Agreement. Source: Arabesque.

to companies across their business operations. For example, more frequent extreme weather events lead to physical or asset-level risks, new regulations targeting greenhouse gas (GHG) emissions may present compliance risks, and the increased cost of raw materials may create market risks.

The Two Degrees of Climate Disclosures

There are many elements to comprehensive climate reporting, but the two key areas that investors focus on are climate-related risk management processes and quantitative climate metric disclosures.

The first step in building an effective climate-related risk management process is to identify two categories of risk: the threats that climate change poses to the company and the impact of the company's operations and assets on climate change. The foundation of any effective climate disclosure begins with the company's ability to demonstrate that it understands the specific ways in which it may affect and be affected by climate change. A global lodging real estate investment trust might discuss the financial risks stemming from the impact of rising sea levels on its oceanfront properties. A regional bank might discuss the extent to which its loan portfolio supports extractive activities. Every company's climate risk profile will be unique, but the identification and disclosure of these risks is becoming a standard shareholder expectation.

The second step is to establish a strategic plan to manage and mitigate the climate-related risks identified by the company. The best climate-risk management processes include qualitative and quantitative components, such as a set of climate-related goals, a description of the company's strategies and programs for alleviating climate risks and quantitative targets that establish a pathway for achieving the company's goals. By disclosing a comprehensive plan that include these elements, a company can assure investors that it is proactively addressing climate risks and building resilience within its business operations.

Companies struggle to report on climate change risks in line with investor expectations, and as a result, the quality and detail of current corporate climate disclosures varies. Among U.S. companies in the large-cap S&P 500 index, 46 percent publicly disclose climate change policies that specifically address climate-related risks, but only 28 percent clearly describe the impact of these risks on the company's business, strategy and financial planning. Among smaller U.S. companies outside the S&P 500 but in the broad-market Russell 3000 index, these figures are even lower. Only 3 percent of these companies disclose policies that address specific climate-related risks, and 2 percent explicitly link these risks to business operations.

Investor reliance on quantitative climate metrics tends to vary by investor and by industry. Some investors view the presence of quantitative targets as a signal that the company acknowledges the existence of climate risks and understands their potential impact on the business. Other investors scrutinize these targets closely and look for the use of science-based GHG emission reduction targets. Incorporating quantitative climate-related metrics is especially important for companies in carbon-intensive industries like energy, utilities and transportation.

Concluding Thoughts on Corporate Climate Disclosures

Two concerns often arise when stepping into a sustainability leadership role and contemplating increased environmental or social disclosures of any kind, not just those related specifically to climate. The first issue is risk. Leadership teams might worry that disclosing climate risks or data could leave the company exposed to reputational or legal risk. Of course, companies need to ensure that its disclosures are accurate and comprehensive; however, for many investors increased transparency is the priority, and public disclosure of climate information would warrant credit, not criticism.

Companies may not always have access to the climate data, especially the quantitative emissions metrics, that many investors seek. This sparks the second concern that companies often cite: the cost of outsourcing the collection of climate-related data to third-party vendors. While it would be ideal to measure the extent of the company's climate risks before developing a strategic plan to alleviate them, the cost of data collection is a legitimate obstacle, especially for companies with limited resources dedicated to tackling ESG issues. Companies in this situation should consider taking a multi-phase approach to climate reporting that will allow for disclosing the climate risk management process without incurring the potentially high labor and monetary costs of gathering emissions data.

Under a multi-phase approach, companies can begin to tell their climate story by identifying the specific climate risks that are material to their business model. Even if the company isn't ready to go further with its climate disclosures, simply disclosing these risks will signal an evolving focus on climate issues. Once these risks are acknowledged and disclosed, companies can begin developing policies and strategies for managing these risks. These policies and strategies can then be publicly disclosed. Part of the strategic plan could include measuring GHG emissions and developing reduction targets. Incorporating measurement into the company's strategy could provide more time to spread the costs of data collection.

Author Biography

***Emmanuelle Palikuca** is a Sustainability Advisor on the ISS Corporate Solutions team, where she is responsible for engaging with companies across industries to drive sustainable business practices through the improvement of their ESG disclosures and performance. Previously, Emmanuelle was on the climate team at the Interfaith Center on Corporate Responsibility (ICCR), where she specialized in methane research to advance key investor-driven engagements with companies in the energy industry. Prior to joining ICCR, Emmanuelle worked on the carbon asset risk team at Ceres in Boston, MA.*

***Nicole Bouquet** is Head of Sustainability Advisory for ISS Corporate Solutions. This team of advisors works with corporate issuers to improve disclosures related to sustainability and social risks and consults on the formation of internal programs to manage these risks. Prior to joining the team earlier this year, she held a role in the ISS Institutional business as a product specialist team lead supporting the investor use case for ESG data and research. Nicole has held many positions across client service and sales for other ESG research providers prior to joining ISS and has helped many of the largest, U.S.-based investment management firms design and implement programs for integrating ESG into the investment process.*

ESG: A NEW RISK FRONTIER

Baker McKenzie Experts on How Boards are Responding

Interview by: Tyler Lawrence

Baker McKenzie partners Peter Tomczak and William "Widge" Devaney both have extensive experience in corporate anti-corruption matters, and often interface with boards on compliance related topics. As such, they've seen how ESG concerns have trickled up to the board, and how overlaps with anti-corruption mean ethics and compliance professionals in particular are well-suited to support new ESG requirements. Ethisphere editor Tyler Lawrence got the chance to chat with them both about these developments.

TL: ESG topics have quickly become of material concern for investors. How should in-house legal and compliance departments respond to that shift?

PT: Corporate compliance and legal departments play a very active role in helping the board in its risk oversight function, advising boards in terms of understanding ESG issues at a substantive level, and also liaising between the board and various constituencies such as institutional investors, labor, activists, and consumers about how the company is managing specific ESG risks.

So how is it changing? As ESG issues are more frequently elevated directly to the board, legal and compliance's roles have grown. Now, ESG matters have become an ongoing discussion with consumers, institutional investors, and regulators. That discourse has also become more sophisticated. Increasingly, I think boards are looking at two very important questions. First, how do ESG concerns fit in our time horizon, as a long term and short term perspective? Second, how are we incentivizing managers to actually behave in a way that promotes principles we espouse as a company? Legal and compliance departments give advice not only on underlying substantive issues but also evolving trends, as well as interface directly with constituents on those two issues.

WD: Companies now should look very carefully at the representations they're making around ESG. Historically, companies could be cavalier and state something as an absolute goal when it was more aspirational. Now, legal and compliance play a big role in helping companies to identify, at the board and managerial level, what goals can be measured, what goals are aspirational, what can and cannot be said, and how companies should say it.

The good news is that legal and compliance already have the playbook on a lot of this because ESG is very much an extension of current compliance best practices. A lot of the blueprint is already in place, and it is the legal and compliance blueprint that we've seen evolving over the last 10 or 15 years.

TL: Increasingly companies are making ESG commitments, not just about their own operations, but their third parties and suppliers. How should legal and compliance approach third party ESG commitments?

WD: The playbook is largely in place there, too. Diligence third parties so you know how reliable their statements might be; and look for any red flags. How do they operate? What is verifiable? Continuing with the traditional playbook, a company wants firm contractual reps and warranties, including termination clauses that can be triggered as a result of failure to meet specific ESG claims. It comes back again to the ability to audit and monitor the third party. So, once more, the mechanisms are in place.

PT: As Widge noted, the playbook is in place. You can review the contract that is in place between a third party and the company. However, companies should also be looking at what behavior third parties are being incentivized to undertake on a company's behalf. That's really the more challenging aspect.

TL: How many companies do you think are already handling that integration well, monitoring ESG practices alongside the anti-corruption practices that they've been monitoring for a long time?

PT: It's a difficult question to answer because of the breadth of what ESG includes. I think there are certain topics, especially in certain regulated industries, on which companies do a very good job monitoring third parties. Other topics are newer. I think we would see a range of responses there, depending on the category, the company, the business model, industry, and level of regulation.

WD: I think one place where you do see a dovetail, at least anecdotally, is supply chain. Companies are paying a lot more attention to supply chain issues like human trafficking and child labor than in the past. Similarly, we hear companies talking more often about potential reputational damage as a result of third parties' actions with respect to business operations in various places.

PT: You really can't underestimate the importance of reputational issues. With supply chain, companies recognize that it's their consumer-facing brand name that is at risk if there are issues in the supply chain that don't accord with the company's stated principles.

TL: For some ESG issues, the metrics are more easily defined and more easily measured than others. What are you seeing in this area? What kind of metrics are investors looking for from companies, particularly around social concerns, where metrics aren't as well developed?

WD: As you point out in the question, some things are more measurable than others. ESG is so broad that companies are focused on what is measurable so they can demonstrate that they're making progress. Some of it is more aspirational, and companies try to show that they're moving in the right direction by putting out anecdotal evidence. So much of it is how you are viewed by the public. Are you viewed as a good company, a bad company, or a company in transition? Not an easy question to answer, but large parts of this are measurable. Other goals, I think, corporations have to leave for the moment as aspirational goals, the success of which is measured by anecdotal evidence.

PT: You have to consider the purposes of the metrics. One purpose for quantifiable metrics is to allow investors to compare companies' performance. There's been a real struggle with that: there's not a mandated set of disclosures, though certain pending legislation may eventually help promote more uniform disclosure practices. Investors want disclosures on non-financial metrics. They want to understand, what are the core values of the company? What is going on in the company? How is that linked to its long term value? And again, how is the company fulfilling its stated ESG principles?

TL: In terms of board oversight and board engagement around ESG issues, what kind of trends have you both seen? Are boards actually prepared to provide adequate oversight in this area?

PT: The clear trend has been that ESG is becoming a larger part of the board's risk oversight function. The boards realize the potential risks of ESG issues impacting company value. But then the next question is, what do you do about it? How does that link to, for example, compensation and incentives? How does that link to our third parties and what we're incentivizing them to do? How do we cause management to incorporate ESG issues into the ERM process?

There may be a knee-jerk reaction to set up a committee for ESG. Directors should ask if there is really a need for such a committee, or is this something that the whole board can take on? ESG issues also may present board composition issues, for example, is there someone on the board with the experience to understand deeply specific ESG concerns?

TL: The social component of ESG is often related to a company's license to operate. How can that be measured, if at all? And are directors paying enough attention to it?

WD: When we look at the social license to operate, my definition of that is how companies are viewed by the marketplace, and how their standard practices are viewed by their various stakeholders. I think about the Business Roundtable and the recognition that there are a number of stakeholders, and perhaps a corporate entity's rationale is broader than just to maximize value for shareholders—that it reaches out into its community, its employees, its third parties and certainly into its customers, and it has a much broader societal role. That all plays into ESG, and how the board handles ESG.

That's what boards are struggling with—how do they get their arms around this change? Seeing what the customers and the community are demanding, boards are trying to put the right metrics in place, to get the right people in place. It's still a work in progress. Nothing is going to change overnight. Certainly, however, it seems that the corporate community is starting to pivot in the right direction.

PT: I don't believe at this point there's a consensus to fully abandon shareholder primacy, which would beg the question of what would replace it and how those stakeholders would monitor other constituencies effectively. There's been much discussion about short-term versus long-term behaviors. Short-term behaviors may diminish the enterprise's long-term value. And how does that align with shareholder interests that are longer-term in nature? You don't have to completely get rid of the existing paradigm to address ESG issues, particularly with a more robust and balanced understanding of "shareholder interest" being used.

TL: Any final thoughts?

PT: Though certainly there are incidents that are exceptions, on the whole, companies and their boards view themselves as valuable members of the community, and that sentiment – beyond simple economic calculations – informs their decision making.

WD: Shareholder maximization is not going to be abandoned. Milton Friedman had it as the sole factor. And now we're coming around to this idea that there are multiple stakeholders that the corporation owes a duty to, in addition to just maximizing value for the shareholder.

Expert Biographies

William (Widge) Devaney *is Co-Chair of the Global Compliance and Investigations Group, a partner in the Firm's North America Litigation group, and Co-Chair of the North America Government Enforcement Subgroup. A former federal prosecutor, Mr. Devaney is co-chair of the ABA's Transnational Crime Subcommittee, and an officer of the IBA's Business Crime Committee. He previously served on the Criminal Justice Act Panel for the Southern District of New York, representing indigent clients in federal criminal matters.*

Peter Tomczak *serves as the Chair of Baker McKenzie's North America Litigation and Government Enforcement Practice Group. Mr. Tomczak serves on the North America Pricing Committee, and oversees the practice group's development and review of non-hourly fee based arrangements. In addition, he serves as a member of the Global Steering Committee of the Firm's Industrials, Manufacturing and Transportation industry group. He joined Baker McKenzie in 2003, after having served as a law clerk for the Delaware Court of Chancery.*


Braille

Feature

THE DISABILITY ADVANTAGE

Inclusion as a Financial Imperative

Written by Tyler Lawrence // Art by Chip Cole

The year 2020 marks the 30th anniversary of the landmark passage of the Americans With Disabilities Act (ADA), which became law in 1990. The ADA prohibits discrimination against people with disabilities, building on the language and framework of the Civil Rights Act of 1964 to make disability status a protected class in the United States alongside race, religion, sex, and nationality.

People with disabilities and their allies around the United States will spend the year celebrating the milestone, and the myriad ways that the act has opened doors for and improved the lives of millions. Ethisphere, recognizing that one of the major frontiers for disability inclusion is the workplace, is proud to announce that we are working to incorporate disability inclusion as a metric for future iterations of the World's Most Ethical Companies®, in partnership with the advocates and experts at Disability:IN.

To understand the importance of inclusive workplaces in the lives of people with disabilities, and to see what inclusion looks like in practice, Ethisphere spoke with a variety of experts and advocates at Disability:IN alongside executives at several companies they have recognized as leaders on the Disability Equality Index.


Among the resources offered by Disability:IN on its website is a collection of inclusive stock photography, such as this image.

Disability:IN began its life as the US Business Leadership Network in 1994, as part of the President's Committee on the Employment of People with Disabilities. Several iterations later, it is now the leading advocate for business and the community of people with disabilities in the US workforce today.

The problems that Disability:IN seeks to address are pervasive. Despite the prohibitions on discrimination embedded in the ADA and decades of advocacy trying to dispel myths about the capabilities of people with disabilities, the labor force participation rate for people with disabilities remains 32.8% in the United States, compared with 77.8% for those without disabilities.

Most of that gap represents people with disabilities who would like to work, but have been kept out of the labor force by a system that sees disability as a far larger obstacle to employment than it actually is. There are many, many people with disabilities who would gladly work if given the chance. The trouble is, they often aren't.

Disability:IN exists, above all, to empower corporate America to facilitate disability inclusion and equality by hiring, developing, and promoting more of the incredible untapped talent within the population of people with disabilities, helping their own bottom lines while they empower a community that has been fighting for decades for equal access. Most importantly, the organization also exists to change attitudes about the capabilities of people with disabilities.

Disability Inclusion as a Civil Right

The life of Ted Kennedy, Jr., disabilities rights attorney and Board Chair of the American Association of People with Disabilities (AAPD), has in many ways given him a front row view to the transformation in the movement for disability rights in the United States. The Kennedy family's advocacy for people with disabilities goes back decades, which Ted credits to his family's response to his aunt Rosemary Kennedy's intellectual disability, and included Eunice Kennedy Shriver's founding and lifelong patronage of the Special Olympics.

However, Ted's connection to disability is more personal still: he survived a rare childhood bone cancer that resulted in the amputation of his right leg. While, as Kennedy puts it, "my situation doesn't remotely compare to the types of challenges that other people with disabilities face," he still faced serious hurdles in his young life that informed his worldview.

One crystalizing experience was a lecture that he attended while in college by Judy Heumann (who now serves alongside him on the board of the American Association of People with Disabilities). In this lecture, Heumann framed disability inclusion—in the workforce and elsewhere—as a societal civil rights issue, rather than a personal challenge to be individually overcome. This framing revolutionized Kennedy's thinking and prompted his deeper involvement as an activist with various governmental and business-aligned group, including serving on President Ronald Reagan's Committee on the Employment of People with Disabilities.

Now, Kennedy pins part of the blame for the persistent jobs gap on old attitudes. "When I grew up in the 1960s and 70s, we thought of people with disabilities as objects of charity," he explains, "deserving of attention and money and nonprofit support. But the way that society tended to depict people with disabilities reinforced the idea that they could not perform on an equal level as their non-disabled peers." As such, people with disabilities were not integrated into society as a whole, kept from the educational system and ultimately, access to gainful employment and the independence that comes with it.

Kennedy attributes the shift in attitudes and organizing strategies over the last several decades to the examples of other notable civil rights struggles in the United States, particularly the movements for Black, women's, and LGBTQ civil rights. Their example prompted more and more people with disabilities to see discrimination against them as Judy Heumann did—as a societal, not personal, problem. The parallel in philosophy to the African American Civil Rights Movement is so strong that the preamble to the Americans with Disabilities Act is, as Kennedy notes, "is lifted nearly word for word from the Civil Rights Act of 1964."

And just as with the Civil Rights Act, the passage of major leg-

Kennedy on a panel at the Disability:IN Conference, alongside representatives from Merck, Bank of America, and Accenture.

islation was both its own tremendous achievement, and also the beginning of the next phase of work. Activists and organizers had changed the law. Other organizations would have to be built to do the tough work of changing society. As the ADA's lead sponsor, Rep. Tony Coelho, said in a 1997 speech to business leaders, "I invite you to be part of this great enterprise. A lot of people, each doing their part, can create a powerful force for change." Disability:IN and AAPD have spent the subsequent decades helping the business community to bring about that change.

Many Programs, One Vision

Disability:IN's work has expanded over the years, and they have allied with many other organizations. From the beginning, Disability:IN's advocacy has been strongly intersectional, drawing strategy from and building relationships with organizations advocating for civil rights for racial minorities, LGBTQ people, and other protected classes. Discrimination against people with disabilities in the workforce dovetails with difficult perceptions facing many other working populations, and the challenge of ensuring that companies are inclusive and not merely diverse is one that touches a whole range of groups.

Now, the nonprofit's team of experts and advocates, many of them people with disabilities themselves, sprawls between providing resources, defining best practices, maintaining a network of suppliers run by people with disabilities, and fostering the next generation of talented future leaders with disabilities.

Many of these various strands come together in Disability:IN's Inclusion Works program, which Director of Marketing and Communications Elaine Kubik describes as "our exemplary program, taking all of our programs and available tools and packaging them up for a community of corporations."

All of the participating companies, of which there are now 41 public members, convene twice a year to share best practices and learn from their peers. Although the programming covers a wide range of subjects—supplier diversity, leadership development, and more—the focus comes back to Disability:IN's most central goal: hiring more people with disabilities. According to Kubik, the organization has now facilitated the employment of over 40,000 people with disabilities, which she calls "a testament to the fact that our resources that these companies are using work."

The Disability Equality Index

Perhaps the group's most publicly visible initiative is the Disability Equality Index (DEI), a joint initiative with the AAPD. Explicitly modeled on the Human Rights Campaign's Corporate Equality Index for LGBTQ inclusion, the DEI was conceived as a tool for companies to benchmark their own progress towards disability inclusion, and a way to recognize those companies leading the way.

Now in its sixth year, the Index is constantly evolving, with questions added or adjusted to reflect the latest developments and to continue raising the bar. An advisory committee, composed of half advocates and half business leaders, helps to guide the Index's evolution. As the DEI's Director Becky Kekula puts it, "The advocate side wants us to make sure there were questions that businesses understood, and the business side can tell us what's reasonable for the time-being."

For Kekula, the idea that the Disability Equality Index should be a "carrot, not a stick" pervades its work. "We do not publish scores below 80," she explains. "We want to help guide business to get better, but not scare them away when it comes to disability inclusion." Top performers get recognized, and everybody gets a blueprint for how to do better. As Elaine Kubik puts it, "Everybody, every organization, every person, is on a journey in this space. There's still more to learn, and that's the beauty of it. At least these companies are starting."

That approach mirrors the way that Ethisphere runs the World's Most Ethical Companies recognition, with a public list of high-scorers and a benchmark available to all participants, which is one reason that the partnership is so exciting to both organizations.

Look at the sidebars on the next page to see interviews with leaders at Mastercard and The Hartford, both of whom received perfect scores on the 2019 Disability Equality Index, about their companies' disability inclusion journeys.

Data Is Clear: Inclusion Correlates to Performance

Disability:IN's thinking parallels Ethisphere's in another key way—the conviction that doing business the right way is also profitable. And, as with Ethisphere's data that the World's Most Ethical Companies outperform the market in the long run, Disability:IN has data to demonstrate that inclusive companies do better in the marketplace, too.

Of course, it's important to state that even if hiring and promoting more people with disabilities didn't correlate with performance, it would be the right thing to do. However, the data is clear on this fact, and that fact helps Disability:IN to more forcefully argue that inclusion, along with being a moral imperative, is simply something every competitive company ought to be working towards.

Until recently, the picture wasn't quite so sharp. Smaller studies of various sorts had been done, but a comprehensive overview of the relationship between disability inclusion and financial performance was lacking. To fill that knowledge gap, Disability:IN and the AAPD approached Accenture, the respected global strategy and technology consultancy, which also happened to be an Inclusion Works participant.

That partnership resulted in the publication of "Getting to Equal 2018: The Disability Inclusion Advantage." This persuasive, succinct report lays out the problems of unemployment and labor force participation facing people with disabilities, before pivoting to a comparison of the profitability and value creation by the top performers on the DEI (which the report aptly calls "Champions") versus a peer group of companies.

The results are stark. As the report notes, "Champions were twice as likely as others to have higher total shareholder returns than those of their peer group." [Emphasis in original] Even among companies that did not necessarily begin as Champions, improving scores over time on the DEI also correlated to stronger performance, with "Improvers" being four times more likely to outperform peers than non-Improvers.

The report goes on to examine the exact mechanisms for this improved performance, dissect the barriers that companies iden-

The Hartford

Susan Johnson | Chief Diversity & Inclusion Officer

Can you tell me more about The Hartford's relationship with Disability:IN?

We like to think about organizations that we can partner with strategically, and who align with stakeholders that we care about. Certain people with disabilities are an important community for us. We've been participating in the Disability Equality Index for a number of years. It gives us some good insights into the areas we should focus on, on what good looks like, and what's coming down the pike in terms of policies and programs. A survey like that requires participation from across The Hartford. Internal partners across the organization help us complete the survey. It helps keep us all cognizant about how we can ensure that we provide an inclusive work environment across the spectrum.

Can you talk to me a little bit more about the business perspective?

It is important to The Hartford that we're viewed as an exceptional company for character. We do a lot of work with people who are out on short- or long-term disability, and part of our line of business is helping them to get back to work in an effective way. We want to really help them focus on what they can do while they're with a disability. So, this work helps us to better understand our customers and how to work effectively with them.

We do a lot of business with and through AARP, and 40% of adults who are age 65 and over have a disability. The more sensitive we are to people with disabilities, the more effectively we deal with a portion of our customers.

From a talent perspective, because the conversation around visible and invisible disabilities is growing, more and more candidates are open and transparent talking about their disability, and they rightfully expect to be accommodated throughout the whole candidate experience. Companies that can offer an inclusive work environment are going to be able to retain top talent.

What changes in policy or practice have you made over the last few years to benefit employees with disabilities?

We did a pretty comprehensive look across the board a couple of years ago, bringing together all of these different internal constituencies—people in the talent space, the facilities space, communications, supplier diversity—just to make sure we all worked together, so that we weren't working in silos.

We took a wide look at what's good in the market, taking the best pieces from places like external surveys or the DEI. We also engaged an external consultant who guided us through the process. Honestly, there was no ready-made framework. We built one ourselves.

We have an employee resource group targeted towards people with disabilities called F.A.N., the Flex-Abilities Network, and they're highly engaged. F.A.N. has been able to advocate for several things—that the company add behavioral therapy to our benefit offerings, which is especially helpful to children with autism. F.A.N. also created a training webinar for hiring managers on how to interact effectively with candidates who might have a disability.

They've done a lot with a program we call "Hart Mobs" where we identify one of our small business customers and kind of "mob" them with Hartford employees going to support their company. F.A.N. has identified small business owners who may be people with disabilities or support the disability community, who are also Hartford customers, and we have "mobbed" them.

We also have an initiative called "Courageous Conversation Circles" where we get small groups of employees to talk about tough, complex topics around diversity. F.A.N. has produced many of them on topics such as ableism and ageism.

tify to better inclusion, and outline strategies for more positive engagement. As Disability:IN CEO Jill Houghton says, "Disability inclusion provides businesses with a great opportunity to improve their bottom lines, while fostering innovative workplaces that benefit from different perspectives."

Investors Commit to Inclusion

The latest strategy that Disability:IN and AAPD have pursued to help convince the private sector of the importance, and feasibility, of widespread disability inclusion may ultimately be the organization's most consequential.

The data from the Accenture report correlating disability inclusion with financial performance opened the door to a provocative argument: that institutional investors acting as responsible fiduciaries must take disability inclusion into account, since it so clearly correlates with better financial returns, making it of material concern to investors. To that end, in May 2019, a group of investors spearheaded by New York State Comptroller Thomas DiNapoli and Oregon State Treasurer Tobias Read released the Joint Investor Statement on Corporate Disability Inclusion.

The rationale for pushing companies on this issue was clear, according to Comptroller DiNapoli: "Disability inclusion provides businesses with a great opportunity to improve their bottom lines, while boosting diversity and innovation. We want to know that our investment dollars are being used to maximize a company's potential and long-term profitability." Tobias Read agreed. "Companies that embrace disability inclusion in the workplace benefit from increased innovation as well as profitability," he said.

As of January 2020, additional investors have joined the initial group, and the signatories now represent over $2.1 trillion worth of assets under management. Although public comptrollers and pension systems predominate among the signatories, several major private companies stand out on the list, including Voya Financial and Bank of America. Voya's Chairman and CEO, Rod Martin, said, "Disability inclusion—everywhere, including the workplace—is good for our customers, our employees and society."

Signatories of the Statement endorse a range of best practices in disability inclusion, and state a belief that their portfolio companies ought to follow those practices. Highlights include that companies should "Establish a public, company-wide hiring goal for people with disabilities and measure progress on achieving that goal;" and that they should, "Develop a supplier diversity program to include Disability-Owned Business Enterprises."

Going forward, Disability:IN hopes that continued efforts will convince even more investors to sign on to the Statement. At this point, they see that many investors remain hesitant for the simple reason that they worry that their own internal practices aren't yet up to par. To that concern, Kubik simply responds, "At least you'd be starting."

Anniversary, Opportunity

Looking forward into 2020 and the commemoration of the 30th anniversary of the ADA, the Disability:IN team sees a few trends for inclusion continuing this year. Elaine Kubik predicts, "There's going to be a big push for digital accessibility, including software applications and other technologies, be accessible to and usable by all, including people with disabilities. CEO Jill Houghton agrees, saying, "The front door is now digital and accessibility is not achieved by passing a single test; if technology and content is not usable, it is not accessible."

Above all, Disability:IN remains laser-focused on empowering business to build an inclusive global economy where people with disabilities participate fully and meaningfully. Given the ongoing economic expansion that continues to pull in people from the sidelines of the workforce, there has never been a more opportune moment for their advocacy. "In encouraging people to come off the sidelines," Kubik says, "what we're trying to do is also raise the profile of our corporate partners as inclusive brands, a signal that this company is more likely to offer accommodations, or ensure their internal tools are accessible."

In no small part thanks to the work of the tireless advocates at Disability:IN, there has likely never been a better time to be a person with a disability in the workforce, although of course much work remains to be done. The moral and economic arguments have aligned. Now, companies must step up to meet the challenge.

Author Biography

Tyler Lawrence *is the Executive Editor of Ethisphere Magazine. He oversees the content of the print magazine, Ethisphere' special reports, and other publications, as well as magazine.ethisphere.com. He is deeply engaged in conversations about the purpose of the corporation in the 21st century, and how an ethical company should interact with its many stakeholders. He may be reached at tyler.lawrence@ethisphere.com.*

Mastercard

Tim Murphy | General Counsel

MasterCard is a corporate partner of Disability:IN and is part of the Inclusion Works program. Can you tell me a bit more about your journey?

We talk at the company about wanting to have a real culture of decency. Ajay Banga, our CEO, believes strongly in the idea of an individual's DQ, or decency quotient. For us, decency is a culture where everybody can bring their best selves to work and, critically, where inclusion is a leadership skill.

We believe deeply that we make better decisions when more voices are represented. We were blessed to have a few folks who were extraordinary leaders for us in the disability area. Susan Warner, who runs a lot of our corporate volunteerism, was very passionate about this issue and raised her voice internally. Another was my colleague Renee Pirone, who suffered a catastrophic injury a few years ago while snowmobiling. Her personal journey—becoming a person of disability, continuing to work, then being this unbelievable role model—taught us we've got some work to do.

The Disability:IN relationship came through our talent management team and we jumped on it, because we felt we need some help working on internal practices. It's been quite productive. The important thing is making sure it's okay to have this conversation, because as soon as you do, you realize that almost everybody knows somebody who has some form of a disability.

What have you worked on at Mastercard over the last few years to attain and maintain your perfect score on the DEI?

We've been doing a lot of work for the last several years on self-identification, and really encouraging employees to feel comfortable self-identifying a disability for us. That's where people like Renee, who have been able to tell their stories to peers and colleagues, really help.
We've just done a really compelling global disability training program for relevant employees. Then, we put together an accessibility council so stakeholders from around the company could come together at least four times a year and talk about improvements that we may need, whether digital or physical. We had not had that sort of structured feedback before.

Where have you gotten your guidance for improvement in this area?

Disability:IN is really important. We also look at our peer group, so we'll routinely do a benchmarking against peers as part of our inclusion efforts. This is a space where we felt we needed to learn more quickly.
Otherwise, we're listening to our team. Our business resource groups are so important because I now have people all over the world coming together and telling us what they need, or what they're seeing happen, and helping us set the agenda. It was feedback from those groups that, for example, led us to caption our internal webcasts for sign language.

Inclusion is a wonderful way to create a global culture unique to Mastercard and raise standards in places that don't necessarily have the ADA. Our colleagues in India are getting accommodations as well, we are going to be setting a very high standard. Big companies are transmitters of culture around the world.

What advice would you give to companies just starting to look at their own practices around disability inclusion?

One, definitely benchmark, and use outside resources. There are very powerful outside organizations who can help you begin, and Disability:IN is certainly one of them. Two, listen to your internal champions. There will be someone in your organization who's passionate about this topic. Let them run with it. Three, I think having the BRG as an input mechanism, and creating places like an accessibility council where you can have a dialogue, is really important.

TOPICS COVERED
// Third Parties & Support

PARTNERING FOR INTEGRITY

Dell Technologies and Ethisphere's Digital Partner Program

Written by Tyler Lawrence

Henrique Barcelos works in the family business, a technology solution provider called LTA-RH based out of the southern Brazilian city of Porto Alegre. Many members of Henrique's family play a role in its operations, and the company sells almost exclusively to the public sector in a country recently notorious for corruption investigations. While it has always operated with integrity, since LTA-RH does business in a country with well-publicized scandals such as Operation Car Wash and a relatively high perception of corruption, LTA-RH must prove it has a sophisticated compliance operation—especially to remain a major partner of Dell Technologies.

Dell Technologies, alongside experts from Ethisphere, recently rolled out an initiative to help bring compliance best practices to companies in its partner network such as LTA-RH. In 2020, that initiative will spread worldwide within its reseller ecosphere.

Dell Technologies recently launched their Progress Made Real 2030 plan which lays out key social impact commitments for the coming decade. The first several sections focus on topics that have become the bread-and-butter of company CSR—sustainability, strategic giving, social innovation, and diversity and inclusion. However, the final chapter, titled "Upholding Ethics & Privacy," ventures into new territory. In it, the company outlines a variety of concrete commitments toward becoming an even more transparent steward of its customers' data, as well as a commitment to digitally support its extensive partner network in the fight against corruption.

For any company, this would be a significant undertaking, but given the large partner community Dell Technologies' works with on a daily basis, it's especially daunting. In addition to selling directly to its customers, Dell Technologies' solutions are also sold via what it terms channel partners. Some of these partners are other large, sophisticated multinationals, with extensive anti-bribery and corruption controls to match Dell Technologies' own. However, in certain markets, some of those channel partners look a lot like Henrique and LTA-RH. Over the next decade, Dell Technologies plans to help them step up to meet international best practices.

A New Plan for Success

For Dell Technologies' Chief Responsibility Officer Chris Fraser, including ethics and privacy in the new ten-year social impact plan felt natural. "We did a company-wide survey asking team members what they felt were important initiatives for Dell Technologies to commit to for 2030. We also solicited input from many of our leaders and conducted an external materiality assessment," she explained. "One thing that surfaced consistently across all stakeholder groups was the importance of ethics and privacy to our team members and customers."

The company's Chief Ethics and Compliance Officer, Mike McLaughlin, is fellow signatory of the Progress Made Real 2030 plan and owner of the new goals. "Integrity is in many ways table stakes," he said, "but it can never be assumed or taken for granted. It has to be emphasized in what we tell the world is important to us."

On top of that, Dell Technologies' other social impact goals—for example, to recycle or reuse an equivalent product for every one purchased by 2030—require a level of customer trust that only an ironclad commitment to ethics and privacy could produce. "We need our customers and partners to commit to returning out of service IT products, but customers have concerns over the data that sits on those old devices," Fraser said. "Since 2007 we have recovered 2B pounds of used electronics, maintaining our customers' trust by following strict data disposal standards. This track record, combined with the inclusion of ethics and privacy as a fundamental part of our plan and goals, lets partners and customers know they can trust us to deliver without compromising data privacy."

As for the decision to put a stake in the ground and make concrete commitments to ethics and privacy in the social impact report, Mike McLaughlin succinctly explained, "If something matters to you, you talk about it, and you measure it. Ethics and privacy matter to Dell Technologies."

How? The Digital Partner Program

Of course, it's one thing to say that ethics matter within your own company, and to say you will certify your own compliance processes with that standard. But Dell Technologies is going a step further. In Progress Made Real, Dell Technologies has stated that by 2030, 100% of the over 10,000 partners that Dell Technologies has a direct relationship with will demonstrate their commitment to the company's values.

As the Progress Made Real plan states, "We drive a high standard of responsibility in our partner ecosystem…[Dell Technologies] will provide our partners digital tools to assess and improve their own programs in order to meet Dell Technologies' expectations and evolving industry requirements."

How exactly does the company plan to do that? One strategy involves the Digital Partner Program.

Working with experts from Ethisphere, Dell Technologies ran a pilot of the Digital Partner Program with a few of its channel partners in the Latin American market in mid-2019. As Mike McLaughlin explains it, "The Digital Partner Program, which we are conducting in partnership with Ethisphere, allows our partners to upload the key elements of their ethics and compliance programs and have those elements digitally evaluated and a gaps analysis and improvement path identified when warranted. This allows us to reach many more partners in a timely, consistent, and cost-effective manner."

Eventually, Dell Technologies will encourage its partners operating in the highest risk environments around the world to participate in the Digital Partner Program. Obviously, any initiative on this level requires getting buy-in from the business leaders. For Dell Technologies, they were easy to convince. The company's SVP of Latin America Channel Sales, Alvaro Camarena, places a premium on his ability to attract and maintain ethical partners. As he said, "At the end of the day, the biggest competitive advantage we can all have is peace of mind." Setting a high bar allows Dell Technologies to attract partners who can and will want to meet it, kicking off what he calls a "virtuous cycle."

Streamlined and Feedback-Oriented

Rolling out the program in the Latin American market, given the spotlight on anti-bribery and corruption work there for the last several years, was a natural choice. At LTA-RH, Henrique Barcelos was eager to have his company, one of Dell Technologies' largest solution providers in Latin America, participate. "Compliance has been a business differentiator for us," he explains. "With the new anti-corruption laws, if you don't have a compliance program, you cannot sell to many states in Brazil. We have to be very ready and structured to sell in the public sector."

It also helped that LTA-RH found the Digital Partner Program extremely straightforward. Barcelos called it "very easy, very practical," and said the company had managed to compile the necessary documentation over a month ahead of schedule because of how streamlined it was.

Importantly for the partners, the Digital Partner Program is not a traditional audit, which Camarena says has a distinctly "negative meaning" in the region. Rather, he likes being able to approach companies saying, "We're interested in keeping the partnership with you, and we're going to work together on how to solidify and get 100% compliance on matters that are critical for us."

Best of all, the feedback from the Program is also immediately useable. "We implemented recommendations as soon as we received feedback," Barcelos said. "We updated our documentation internally, and had rounds of internal training." While LTA-RH had been strong on Brazilian compliance, Barcelos said that the recommendations were quite helpful in bringing the company's programs in alignment with some international regulations with which they were less familiar.

Now, Barcelos has mentioned the Digital Partner Program to other companies with whom he works as well. "Their jaws drop when I talk about it," he says. Most importantly for LTA-RH, other companies are now more eager to partner with him knowing that his compliance program has benefitted from this support.

Ethics as Value Proposition

Although Dell Technologies' commitment to championing ethics throughout its partner network will require significant investment, everyone involved is confident the commitment will pay dividends. Prior to her role as CRO, Chris Fraser held a variety of roles at both Dell Technologies and, prior to the merger, EMC. That background has given her a perspective that informs her conviction that the company's social impact goals move the bottom line. "Many of our customers and partners care about this, now more than ever. We have always understood that real progress requires deep alignment with our business priorities."

Mike McLaughlin agrees. "We win because of who we are and how we conduct ourselves, in addition to our world-class products and solutions." Elevating not only Dell Technologies' ethical commitments, but also those of their entire partner network, furthers that ethos. As he says, "Customers want to associate with companies that share their values, especially today where a company's brand and reputation are tied to all companies in their ecosystem."

For Alvaro Camarena in charge of Dell Technologies' Latin America channel business, the program's success will ultimately mean the partners take the reins. "Right now, we're bringing everyone up to speed. When we are successful, everyone will be 100% compliant, and they are looking for ways to innovate further." Eventually, that will put the regional corruption scandals of recent years firmly in the past. At that point, in Latin American economies, he hopes, "Just like in the movies, in the end the good guys win."

Author Biography

Tyler Lawrence *is the Executive Editor of Ethisphere Magazine. He oversees the content of the print magazine, Ethisphere' special reports, and other publications, as well as magazine.ethisphere.com. He is deeply engaged in conversations about the purpose of the corporation in the 21st century, and how an ethical company should interact with its many stakeholders. He may be reached at tyler.lawrence@ethisphere.com.*

TOPICS COVERED
// *Regulation & Records*

CHALLENGES OF EPHEMERAL MESSAGING

Maintaining Business Records in the Era of Snapchat

Written By: Jina Choi and Stacey Sprenkel

On March 8, 2019, the Department of Justice (DOJ) announced welcome revisions to its November 2017 Foreign Corruption Practices Act (FCPA) Corporate Enforcement Policy, now incorporated as Justice Manual (JM) 9-47.120. The 2017 Policy had introduced a rebuttable presumption that the DOJ would decline to prosecute companies that voluntarily self-disclose, fully cooperate, and timely and appropriately remediate in FCPA matters. To obtain full remediation credit, however, the 2017 Policy required companies to "prohibit employees from using software that generates but does not appropriately retain business records or communications."

It was understood as a blanket prohibition against employee use of "ephemeral messaging" platforms allowing automatic destruction of messages or other communication channels resistant to record retention or third-party access. The business and legal communities expressed concerns that the 2017 Policy was out of touch with the reality of a fast-evolving global business environment, where employees ubiquitously rely on ephemeral messaging apps for business and personal communications, not least for the reasons of information security and data privacy protection.

Perhaps in self-corrective response to such concerns, the DOJ's March 8, 2019 revisions to the Policy, in relevant part, moved away from a categorical prohibition of ephemeral communications to a more flexible approach. Under the 2019 Policy, companies seeking remediation credit must "implement appropriate guidance and controls on the use of personal communication and ephemeral messaging platforms that undermine the company's ability to appropriately retain business records or communications or otherwise comply with the company's document retention policies or legal obligations."

This was welcome news to the business community. However, now the onus is on the company to ensure that business records and communications are appropriately retained if employees are using ephemeral messaging platforms. This raises a whole new set of questions. What constitutes appropriate guidance and controls? What communications and messaging platforms may undermine a company's ability to appropriately retain business records? How do we ensure that employees are not using ephemeral messaging platforms to generate communications that are business records? One way may be to simply ban ephemeral messaging platforms—but to what end? Will this just drive the use of such messaging underground? How should companies address this issue in a way that is consistent with the realities of how employees communicate, but also mitigates risk? There are no one-size-fits-all answers to these questions. However, there are some key questions and considerations that will help legal teams wrap their arms around this seemingly daunting task.

The overall concern is whether employees are generating business records on text messaging platforms and, if so, what the company is doing to ensure those business records are being maintained and preserved. Unlike email communications that will be retained on a company's servers, text messages that exist on an individual employee's device may not be preserved centrally. On top of that, text messages that disappear upon receipt or after a short time period present added challenges to maintaining comprehensive and appropriate business records. Here are some basic questions that can assist companies as they formulate appropriate guidance and controls on employee use of ephemeral messaging platforms.

1. Which Messaging & Communications Platforms Are Employees Using?

People speak of "ephemeral messaging apps" as if they are all created equal. In reality, many messaging platforms that are thought of as ephemeral are not actually ephemeral, or do not have to be (preserving communications is an option). Some are encrypted and others are not. Some are even screen-shot proof. Are they used in jurisdictions where their use is perceived as necessary or essential? Is the ephemeral nature of the messaging platform crucial to its functionality or to why employees use it? Has your organization adopted instant business messaging software or applications? If so, have you adjusted the default retention settings? Should you, considering your organization and how these are used? Understanding which messaging platforms employees are using and where, and knowing the characteristics of those platforms will help you decide what to do.

2. Who is Using Messaging Platforms, and What Are They Using Them For?

In order to craft appropriate guidelines for the use of ephemeral messaging platforms, it is important to understand who is using them, where, and for what purposes. The ultimate question is whether business records are being generated on these platforms and if so, what the company is doing to make sure that they are retained. In order to determine whether these texts make up business records, it is important to understand who is using them and what they are using them for. Are senior executives using them to communicate? Or is this primarily a tool used by R&D teams in India? Are they used for substantive communications? Or primarily for logistical discussions and meeting scheduling? In order to develop an approach that will work, and guidelines that will be followed, it is important to have answers to these practical questions.

3. What Legal Restrictions are Relevant to Your Ability to Access and Retain Communications and do you Already Have Policies Addressing Them?

The issue of access to and retention of employee communications on messaging platforms raises questions about individuals' rights to privacy in their communications. Employers' ability to access communications on messaging platforms can implicate issues related to personal communications on company devices, as well as business communications on personal devices. Understanding the applicable legal frameworks that impact decision making over use and retention of employees' communications through messaging apps is essential to avoid creating a whole new set of problems in an attempt to solve one.

Many companies have already addressed these issues in other company policies, including technology use policies, BYOD policies, and document retention policies. If this is the case, these policies can often be adjusted to take into account new text messaging platforms.

Ultimately, the trickiest questions relate to the fundamental question of whether or not to permit communications on messaging platforms that are truly ephemeral (and subsequent access and retention are not options). While the 2019 Policy allows companies a higher degree of choice in designing procedures and controls tailored to their business needs, technological preferences, and compliance priorities, these choices do not necessarily lend themselves to easy solutions.

While many companies have not yet figured out their own solution, companies that have are taking varying approaches. Some companies, for example, may choose to prohibit use of ephemeral messaging apps in certain types of business communications (e.g., permitting them for scheduling and logistics but not substantive communications). Other companies may permit their use only by certain personnel (e.g., R&D may use them, but not sales, and not senior executives). Another option is to permit only messaging apps that have a retention option. There is no one right answer.

At the end of the day, companies need to figure out what works for their organization (and will not drive behavior underground). There is a need to strike a thoughtful balance between current business practices and business realities, and compliance with the DOJ's 2019 Policy's aims of deterring misconduct and preserving evidence

Author Biography

__Jina Choi__ is a 16-year veteran of the Securities and Exchange Commission (SEC), where she ultimately served as the Director of the San Francisco Regional Office of the SEC. There she helped to enforce many of the laws that govern the public and pre-IPO companies she now represents. While many of Jina's achievements as an SEC enforcement lawyer and federal prosecutor are public record, her current work in private practice is equally as impressive. She brings a formidable dedication to the rule of law and client advocacy. She represents and counsels companies on government and internal investigations, enforcement-related litigation, whistleblower complaints, and compliance programs.

__Stacey Sprenkel__ is the head of the Litigation Department in Morrison & Foerster's San Francisco office and is a member of the firm's global anti-corruption and compliance team. She has extensive experience conducting corporate internal investigations on a broad range of issues both domestically and internationally, and she regularly assists clients with conducting global risk assessments, and with developing compliance programs, including reviewing and implementing anti-corruption and other compliance policies, controls, and training programs. She conducts anti-corruption due diligence in connection with M&A and private equity transactions, and provides counseling on a broad range of compliance issues.

TOPICS COVERED
// *Regulation & Risk*

ESG SUCCESS WILL RELY ON CLO'S SKILLSET

As stakeholders and communities demand action, the CLO is poised for the job

Written by Veta T. Richardson

Leaders today are navigating a business environment that is evolving at a record pace. And while financial measures of success proliferate, savvy business executives realize that the full measure of a corporation's value transcends the balance sheet. Faced with this reality and the rapid pace of change, chief executive officers and boards of directors are finding themselves in unfamiliar territory. In this new world, the CLO is uniquely positioned to advise the CEO and board to chart a course forward.

Climate change impacts the corporate environment

A warming planet is making a profound mark on business at multiple levels. Water shortages around the world are ravaging populations, shrinking agricultural yields, and threatening farmers. In Europe, seawater is too warm to effectively cool nuclear reactors, shutting them down. Fishing stock has dwindled across the oceans and fuel prices are spiking internationally.

New regulations, mandated at the national and international levels, are cropping up rapidly to attempt to stem climate change. Unfortunately, no one can see whether it will be too little, too late. What we do know is that a hotter planet brings increased and volatile business risk, whether operational, value chain, disruption, litigation, or regulatory.

A survey published in 2018 by Standard & Poor's found that 73 of the S&P 500 companies publicly disclosed that extreme weather affects or will affect their bottom line, overwhelmingly for the worse. The writing on the wall is clear: The weather will trend increasingly extreme; revenue will be less predictable and more prone to swings. New risks demand new strategies. Doing business in the same old way is now a recipe for failure. Boards at com-

ACC data show that CLO attention to sustainability issues is largely motivated by the reputational impacts associated with environmental and social issues.

panies like those 73 in the S&P survey are increasingly demanding proactive measures. But boards are far from the only stakeholders demanding change.

Stakeholders demand action

As climate change adds volatility to more industries such as fossil fuels, agriculture, and logistics, investors are focusing their attention on risk. As a result, more and more capital is flowing into sustainable investments. In fact, the consulting firm Opimas projects that the market in ethical, sustainable investment will reach US$35 trillion in assets in 2020. It's no coincidence that issuance of green bonds is soaring, and environmental, social, and governance (ESG) indices are proliferating.

A growing number of investors, along with consumers, governments, and stakeholders up and down the supply chain, are making demands from a moral standpoint, rather than a strictly commercial one. In the end, the planet's wellbeing is our responsibility; to ignore that imperative looks more and more like a gross dereliction of duty. Today's workforce and tomorrow's talent want to work for employers who match their values, and those values are increasingly connected to action on climate change.

Businesses need to update their organizational models

The hardest part of adjusting for climate change is not necessarily strategic, but tactical. Every department of a business has a part to play. Supply chains are focused on decreasing their carbon footprint. Financial institutions develop green plans to persuade investors to give a little more to benefit the earth. Human resources look to incentivize employee actions like taking public transit, recycling, and working remotely. Boards are paying attention and asking more questions, and chief executive officers are tasking members of the C-suite to lead company-wide initiatives on sustainability.

Increasingly, the duty of coordinating these tasks falls on the CLO or general counsel. According to a 2019 study by the Association of Corporate Counsel (ACC), a global association of 46,000 in-house lawyers, 93 percent of CLOs in companies with a sustainability plan either lead or significantly influence those plans.

(Proactive) legal is the linchpin

At companies worldwide, the general counsel is emerging as a C-suite player with unprecedented levels of responsibility. CEOs and boards of directors are wise to take full advantage of the critical thinking and political savvy that the CLO brings to the table. With all of the environmental, geopolitical, regulatory, compliance, data privacy, reputational, and cybersecurity risk that companies are facing, the input of a seasoned, credible general counsel is essential.

Just as the 2007-2008 financial crisis led to an "Age of the Chief Financial Officer," when the CFO was the central executive increasingly tapped for corporate boards and promotion to CEO, the teens and twenties of the 21st century have become the "Age of the Chief Legal Officer." CLOs are no longer counselors for the C-suite, but key business strategists and partners. Increasingly the authority on tech policy and other rapidly changing fronts, the legal function is uniquely equipped to help companies navigate a business environment where most business decisions are also potentially legal ones. Regulations mandated by the Paris Climate Accord, or by national or regional authorities, intersect at complicated angles, which only the CLO can navigate. The old-fashioned, reactive CLO could never keep pace with these tangled webs of risk and regulation. The modern CLO, however, is the only officer with the training and knowledge to help companies stay ahead of the curve.

Moreover, reputational risk, a major factor for consumers and investors alike, is squarely in the bailiwick of legal. ACC data show that CLO attention to sustainability issues is largely motivated by the reputational impacts associated with environmental and social issues.

Reputation is ultimately linked to ethics: is this company acting in the interest of me and my community? This goes beyond the prevention of obvious malfeasance, like money laundering or an internal culture of sexual harassment: It means ensuring that the company's actions, values, and tone from the top are aligned. Again, the CLO is best equipped to serve as an ally to the board and CEO to strengthen and enforce the company's ethical culture.

Facts & Figures

93%

Share of CLOs who influence or lead their company's sustainability plan in companies who have them.

The CLO must have a seat at the table

The greatest problem facing CLOs has nothing to do with expertise or capacity, and everything to do with lack of access to the executive team. According to ACC research, only 78 percent of CLOs report to their CEO. And while it's encouraging that 93 percent of CLOs lead or significantly influence ESG matters, in companies where a special officer handles ESG matters, only 11 percent of those officers report to the CLO. Worse, almost 45 percent of companies surveyed don't have a sustainability plan at all.

If boards want to get serious about sustainability, they cannot afford to let the natural leaders in this new space languish without a seat at the leadership table. All CLOs should report to their CEO. In developing ESG policy and dealing with stakeholders large and small, national and international, boards and executives alike should look to their best-suited ally.

Author Biography

***Veta T. Richards**, is president and CEO of the Association of Corporate Counsel (ACC), a global legal association that promotes the common professional and business interests of in-house counsel who work for corporations, associations and other organisations through information, education, networking, and advocacy. With more than 46,000 members in 85 countries employed by over 10,000 organisations, ACC connects its members to the people and resources necessary for both personal and professional growth. By in-house counsel, for in-house counsel.® For more information, visit www.acc.com and follow ACC on Twitter: @ACCinhouse.*

TOPICS COVERED
// Root Causes & Incentives

CLOSING THE LOOP ON COMPLIANCE ASSURANCE

Demonstrating program effectiveness and value creation

Written By: Michele Wiener and Oliver Martin-Robinson

There is no shortage of best practice advice on the tenets of an effective compliance program, but finding guidance on demonstrating, testing and documenting program effectiveness can be a challenge. Regulatory bodies have largely made clear their requirements for compliance program assurance: they expect compliance officers to test, monitor and continuously refine policy, procedures and programs to reduce margins of error and adapt to shifting operational, geopolitical, regulatory and data landscapes.

The latest Department of Justice Guidance Document on Evaluation of Compliance Programs instructs prosecutors to consider "whether a compliance program is a 'paper program' or one implemented, reviewed and revised, as appropriate, in an effective manner."

The US Sentencing Commission states that an organization should "take reasonable steps...to ensure that the organization's compliance and ethics program is followed, including monitoring and auditing to detect criminal conduct [and]...to evaluate periodically the effectiveness of the organization's compliance and ethics program."

The UK Bribery Act's guidance on "Adequate Procedures" is more specific, requiring organizations to "consider how to monitor and evaluate the effectiveness of their procedures and adapt them where necessary.... Organizations could...consider formal periodic reviews and reports for top-level management... [and] might wish to consider seeking some form of external verification or assurance of the effectiveness of procedures."

What does this mean in practice?

We've seen the compliance function evolve from a traditional tick-box cost center into a key business stakeholder, often tasked with protecting a company's most precious commodity: its reputation. This responsibility, along with the influx of data sources and technology under a compliance professional's watchful eye, has shifted compliance assurance from an exercise of outlining program design and intent to a multi-faceted stress test aimed at adding value to overall business operations.

As members of senior management become more engaged with and aware of risk, they look to the compliance function to educate them on their companies' evolving risk profiles and advise them on the optimal path forward. The litmus test of an effective internal compliance program is whether senior management trusts that risk is being approached responsibly. Demonstrating that your organization can quickly identify and respond to a host of issues—from bribery and corruption risk to fraudulent activity, cyber security, privacy issues and sanctions exposure—establishes that trust and solidifies the compliance function as a strategic pillar of any organization's strategy.

So much to do

It is common to see compliance programs limited by their ability to only be reactive and by organizations that simply don't know where to begin to truly transform their compliance functions. To build a demonstrably effective compliance program, companies should consider the following five key areas:

1. **Take a risk-based approach to your entire compliance program**

   While many companies may claim to take a risk-based approach to compliance, we advise our clients to expand this prioritizing mechanism, so often used in the application of due diligence, across their entire program. Leverage your company's enterprise risk management process or develop a model to assess and address your highest-risk operations and begin to invest there. Where is your exposure coming from? Is it country-based? Do you have complex sales and marketing functions prone to improper activity? How exposed is your business to political influence? How secure is your data? Risk profiling will look different for every organization—but developing this programmatic model allows for a level of transparency and C-suite dialogue around compliance investment and effectiveness.

   Much like enhancing levels of due diligence, program risk rankings may simply demand new policies and procedures at the lowest category, while your highest risk operations might require more involved investments such as predictive analytics or site visits. Consider the GlaxoSmithKline (GSK) FCPA enforcement: pharmaceuticals and healthcare organizations have long been susceptible to pay-to-prescribe schemes and, China's largely state-run healthcare system has a high level of risk for corruption and bribery. Taking a risk-based approach, it is likely that GSK would have been advised to invest in analytical transaction monitoring. Anomalies in a high-risk jurisdiction such as China would have triggered an early investigation and site visits around practices within its robust direct and indirect sales pipeline.

2. **Gain control over your organization's data**

   Data can make or break a strong compliance program. This can be a pain point for smaller and midsize organizations that feel like this is an unattainable goal without the same compliance budgets that large multinational organizations have. Control of data is, however, not just a "nice to have;" regulators have sent a clear signal that it is becoming a requirement. We've seen a rise in the "mega-investigation" in recent years and, as Director of the UK's Serious Fraud Office Lisa Osofsky has remarked, "The sheer amount of data available has increased exponentially over recent years. Our intelligence unit is already using more powerful analytic tools to make connections across disparate and diverse datasets to enhance our development of strategic intelligence." Those same analytical tools can and should be used in proactive measures as what is no longer the ideal, but rather the expectation.

   If you are unsure where to start, use the risk-based program approach to prioritize. One indicator for investment can come from regulatory enforcements in your industry or countries of operation. Look at the root cause of regulatory sanctions and determine whether you ares vulnerable to a similar issue.

   As an example: the Och-Ziff Capital Management Group agreed to a settlement with the FCPA following an investigation which found that deficient internal controls aided in covering up payments made to intermediaries, agents and business partners in order to pay bribes to high-level government officials of countries in Africa. If Och-Ziff had leveraged internal audit findings to craft ongoing analyses of payment data, it potentially would have spotted the red flags prior to regulatory intervention. Although hindsight bias is disputable, this example nevertheless shows the potential power of data being collectively analyzed and reviewed through a compliance framework.

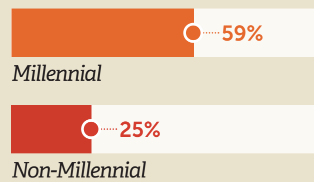
Facts & Figures

REPUTATIONALLY RISKY...

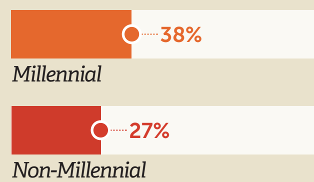
At this point its well-known that Millennials have significantly higher expectations of the brands they patronize. But exactly how do those expectations translate into Millennial investor behavior? Nuveen asked a diverse set of investors:

Have you done any of the following in the past year?

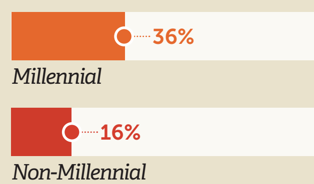
Asked my advisor about a company after revelations of bad acts:



Boycotted a retail brand based on management behavior:



Sold an investment due to a company scandal:



Conclusion: *As Millennials become a larger and larger share of the investor pool, the market may respond even more negatively to revelations of corporate misbehavior. Companies who foster ethical cultures and sustainable business practices now may protect themselves against future damage.*

Source: *Fourth Annual Responsible Investing Survey, Nuveen.*

3. **Identify root causes and openly address your flaws**

In some cases, the root cause of an issue and its required countermeasure may be obvious. For example, an isolated incident of an employee not following policy would require additional education to ensure compliance. In other cases, such as conflicts of interest, the root cause is not so obvious or raises broader concerns about culture, which are more challenging to effectively remediate. When monitoring and auditing your organization's program, scrutinize issues in the aggregate to ensure that patterns of systemic risk are being addressed and wider issues are not being ignored in favor of a quick fix. Policy may be misunderstood in some regions—or perhaps there is a widespread issue of corruption within your supply chain. Either way, you must analyze the root cause in order to properly remediate the issue. Root cause analysis also facilitates the ability to be transparent with the business and employees about ongoing compliance challenges.

Nothing brings better awareness to an issue like real-life examples. The compliance programs we see working the best are the ones that are open and honest. Communicating instances of misconduct—or, more generally, compliance issues that have been identified and how they have been remediated—sends a clear signal that your program is being actively monitored, gives employees insight into what is being monitored and creates a dialogue around compliant and ethical behavior.

4. **Get local**

It cannot be stressed enough that effective programs need to be rolled out locally with training, procedures and monitoring all tailored to the local operating environment. Cultural nuances, accepted business practices, geopolitical circumstances and human rights issues from country to country should be factored into program design and implementation. The local appetite for compliance and ethics, as they relate to the risk tolerance of the corporate headquarters, will influence resource allocation—some programs will only require light-touch monitoring and training and others will require site visits and a more hands-on approach to ensuring the business has the understanding, resources and tools necessary to ensure ongoing compliance.

For example, labor welfare risk for major construction projects in the countries of the Gulf Cooperation Council (GCC), where local labor laws and regulations are not always fully understood or adhered to, presents a significant challenge for compliance programs in the region that doesn't necessarily exist for operations in other parts of the world. The region is no stranger to controversy surrounding the treatment of construction workers and laborers, and international companies expose themselves to significant reputational risks by not paying close enough attention to the treatment of both their own workers and those in their supply chain—and not monitoring, through a local compliance program, what is actually happening on the ground. Companies should embed specific policies and processes to address labor welfare risks, which are then regularly monitored, to ensure compliance with local requirements.

5. **Incentivize compliance**

Effective compliance programs must be completely integrated into an organization's operations and ethos. One way to ensure this is by thinking creatively about ways to incentivize compliance and the backing of compliance programs. Although zero tolerance of unethical conduct should continue, balancing discipline with encouragement of compliant behavior is a useful approach. Building incentives means doing more than rewarding the avoidance of compliance mishaps. There has been increasing movement to recognize contribution to compliance and ethics as part of senior managers' performance reviews and bonus targets—including for example, tracking the training completion of subordinates, driving thought leadership and messaging efforts to promote compliance, and achieving success in compliance audits. Incentivizing compliance in this way encourages compliance ethics to be part of a continuous dialogue both locally and at headquarters. As senior leaders develop their own compliance scorecards for their areas of oversight, you will begin to see a shift from tick-box approaches to real value creation that can be demonstrated and carried forward.

Closing the loop

Closing the loop on your organization's compliance program by demonstrating effectiveness is achievable. As risk and its impact on an organization's bottom line continue to intensify, senior leaders often look to the compliance program as a first line of defense. Those senior leaders—as well as regulators—are expecting you to be able to defend and demonstrate your program's intent and strategic direction. Can you identify and respond to risks in a timely manner and keep a detailed view of the entirety of business operations? Where resources are limited, take a risk-based approach to investment, ensure business partners are incentivized to be program champions and properly tailor corporate policy to meet regional needs. In demonstrating effectiveness, data will be your biggest challenge and your greatest strength. As regulators continue to demonstrate the power of data in investigations, organizations should take note and mirror those techniques in proactive, rather than reactive, measures.

Author Biography

Michele Wiener *is a Senior Partner within Control Risks' Compliance, Investigations and Technology practice in the Americas region. She has significant experience in fraud and corporate compliance matters in the US and abroad. Working on behalf of legal counsel, boards of directors and senior management of public and private corporations, Michele specializes in conducting complex corporate investigations and forensic accounting engagements involving allegations of corruption, financial reporting fraud, internal controls and books and record-keeping violations under both the Foreign Corrupt Practices Act (FCPA) and UK Bribery Act. She has led engagements in more than 30 countries, including the US, Latin America, Europe, the Middle East, Africa and Asia. Michele has also helped companies design, evaluate and improve anti-corruption and anti-fraud compliance programs. In 2019, Michele and her team were named Compliance Consulting Team of the Year at the C5 Women in Compliance Awards.*

Oliver Martin-Robinson *is a Client Services Manager within Control Risks' VANTAGE practice focusing on the Americas. He has responsibility for managing clients in the region's VANTAGE engagements, and ensuring that we exceed the client's expectations with the overall quality of service from Control Risks. Having been at the company for over six years, he has gained extensive experience across multiple services in both the Middle East and Americas. Before moving to New York in 2018, Oliver spent five years in Dubai, where he managed compliance and sanctions due diligence, business intelligence and investigatory engagements. He has also focused on regulatory risk and investigations more recently in the Americas, including in complex post-settlement monitorships.*

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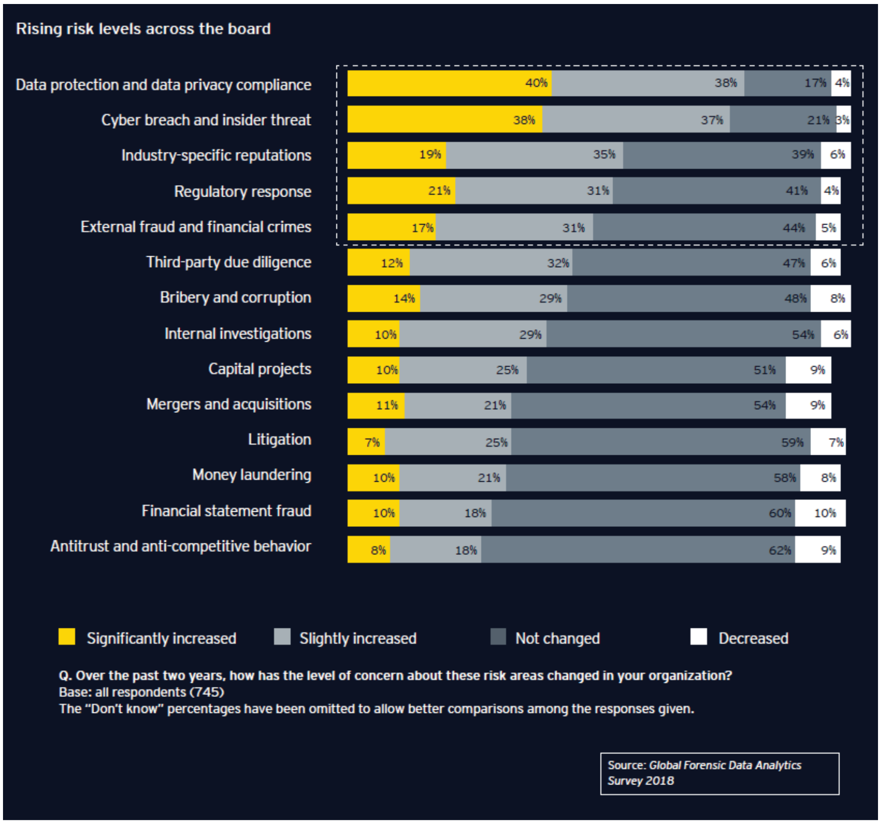

DEMANDS ARE CHANGING

The future of investigations and compliance

Written by Daniel Torpey & Sarah Nguyen

When it comes to compliance issues and trends, organizations are expected to keep abreast of the latest regulations and monitor their own activities to stay compliant. However, changes and uncertainties in the market are adding further pressure on the compliance efforts of organizations, making it more and more challenging to simply maintain the status quo. The following market dynamics are creating an increased level of focus on an organization's compliance and investigative functions.

TOPICS COVERED
// Regulation & Risk

Regulatory pressures

The regulatory environment continues to be unpredictable, with swings in compliance and regulatory demands across different areas of the organization that force organizations to keep up. The focus on compliance has grown dramatically over the past several years, and ethical behavior has received more attention than ever before. In April 2019, the Criminal Division of the Department of Justice released a new guidance document for white-collar prosecutors on the evaluation of an effective corporate compliance program for corporations. The document describes specific factors to consider when determining if a corporation's compliance program was effective during the time of the offense. In the 2017 report, The True Cost of Compliance with Data Protection Regulations, conducted by Globalscape and Ponemon Institute LLC, the average cost of compliance for multinational organizations in the US was $5.47m, an increase of 43% from $3.53m in 2011. For more highly regulated industries, such as financial services and industrial, the cost of compliance was much higher at $30.9m and $29.4m, respectively. Specifically, the penalties incurred by multinational companies for comparable investigations that EY Forensic & Integrity Services conducted ranged from $675m to $1b, exemplifying the high cost of noncompliance.

Additionally, organizations are conducting more investigations and expanding their compliance functions. Compared to the 2015 benchmarking report conducted by the Association of Certified Fraud Examiners (ACFE), Benchmarking Your In-House Fraud Investigation Teams, the 2017 report saw that 16% of fraud investigators within organizations investigate 20 to 99 cases at a given time, an increase from 11.9% in 2015, and 37% of fraud investigators spend 76% to 100% of their time on fraud investigations compared to 33.1% in 2015. Furthermore, organizations with more than 10,000 employees had on average 59 fraud investigators internally in 2017, a growth from 41.9 in 2015.

While housing a large compliance function can help an organization be responsive to its regulatory and compliance matters, it may not be the most cost-effective method. The model is not flexible to the

The evolving market and business environment present continued stress on organizations to house effective compliance and investigative teams

The table below highlights the various issues and challenges faced by organizations in undertaking compliance matters and investigations.

Business issues/challenges in investigations and compliance	
Resource optimization	It is often a challenge to get the right number of people with the right skills in the right locations. High variability in resource needs and specialized skills make an in-house model inefficient and difficult to simultaneously achieve high productivity and high quality.
Resource prioritization	Organizations may have other important matters or other priorities that they need their in-house teams to focus on.
Geographical sensitivity	Investigations and compliance issues may occur abroad or in areas where the organization does not have a strong team present to undertake and resolve the matters. Additionally, local expertise is needed to understand the regulatory requirements abroad, the local language and any cultural norms.
Cost overruns	Legal advice may be needed to understand the ramifications of a compliance issue. The costs involved in hiring a law firm and a consultant and associated technology fees can become burdensome.
Technology constraints	Organizations may not have the right tools or people with the knowledge to use the optimal investigative tools. Additionally, an organization's in-house team may not have access to the most innovative tools to perform the work efficiently.
Business restructuring	A change of management or business reorganization often calls for a review of key processes and controls in place regarding compliance matters.
Lack of knowledge of event or issue	An organization's in-house team can lack the broader experience to undertake every investigative or compliance matter, but an external consultant hired on a one-off basis has a limited understanding of the company's business and history of compliance issues.

peaks and valleys that often are associated with the regulatory environment. When regulatory demands slow down, organizations are left with high expenses associated with underutilized staff in nonrevenue-generating areas of the organization. Salaries and benefits are the most obvious costs incurred to maintain an in-house compliance function, but additional costs, such as technology and training and development, also figure prominently.

Macroeconomic and geopolitical environment

Political power shifts, both domestic and international, and economic growth challenges continue to create uncertainty as organizations struggle to figure out how these external factors will impact their business. In the EY Global Fraud Survey 2018, 42% of survey respondents stated that the macroeconomic environment poses the greatest risk to their business.

Additionally, in the 2018 annual survey of global business executives conducted by A.T. Kearney, a weak macroeconomic performance and an unstable geopolitical environment were identified as top concerns of many organizations. For example, the international sanctions environment, trade confrontations and Brexit are top matters of importance that will have a domino impact globally. Despite the instability and increasing levels of complexity in the macroeconomic and geopolitical environment, organizations are still expected to comply with new regulatory decisions and minimize the risk exposure these decisions will have on their business.

Market demands

Regulators and consumers today are demanding a greater level of transparency and accountability from companies. At the same time, shareholders expect organizations to continue to find ways to generate profit, often by exploring emerging markets and making acquisitions to both accelerate growth and profit from less-developed markets. This leads to a greater exposure to third-party risk that increases the strain on the compliance function. These pressures and demands place organizations in a precarious situation as they seek to grow their business without sacrificing their compliance duties while managing their risks. The EY Global Fraud Survey 2018, with a perspective on emerging markets, indicates that fraud and corruption risks remain one of the biggest risks in the emerging markets, with 52% of respondents stating that bribery and corruption practices occur widely in business in their country vs. 20% in developed markets. To limit the risks involved with acquiring or forming new relationships with businesses abroad, proper third-party due diligence is critical, as is an understanding of the regulatory environment abroad and the risk trends that exist there.

Digitization and technology

Digitization and the continually advancing frontier of technology bring their own challenges. While organizations embrace and implement technologically advanced features into their business for added benefits and efficiency, these changes also create vulnerability. Ninety-one percent of the survey respondents from the EY Global Fraud Survey 2018 stated that they will incorporate advanced technology, such as digital payments, the Internet of Things (IoT), robotics and artificial intelligence, into their business within the next two years. However, the survey respondents also recognized the increased risks of cyber attacks and data breaches as a result of the digital era. In fact, the EY Global Forensic Data Analytics Survey 2018 showed the most prevalent increase in the levels of concern around data protection and data privacy compliance, cyber breach and inside threat compared to previous years. Without transforming their compliance functions to properly manage the risks associated with the digital era, organizations will expose themselves to financial risk, as well as reputational damage from consumers and regulators.

This article has been edited for Ethisphere Magazine from the publication "The Future of Investigations and Compliance." A link to the full report can be found at http://magazine.ethisphere.com/ey-w2019/

Author Biography

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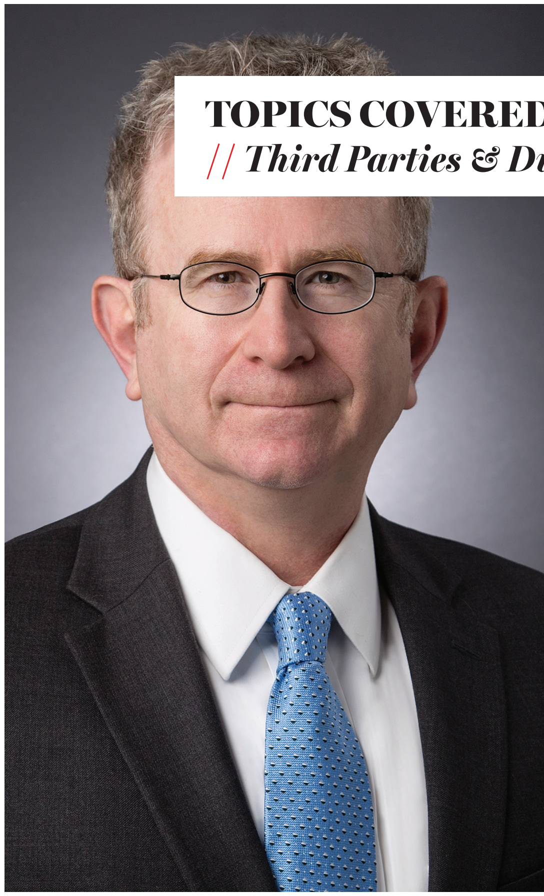
Sarah Nguyen *is a senior manager in EY's Forensic & Integrity Services. She assists clients with investigations, regulatory response, and compliance-related matters. She has led different types of projects managing teams of varying sizes, and has considerable experience working with clients across industries. In her sparetime, Sarah is a prolific ceramicist.*



TOPICS COVERED
// *Third Parties & Due Diligence*

WHAT WORKS BEST?

Maximizing the Impact of Your Ethics & Compliance Program

Written by: Susan Divers and Jonathan Drimmer

Against the background of continuous scandals in the corporate world and other institutions, ethics and compliance professionals play an increasingly critical role in their organizations today—nothing less than preventing misconduct and remediating it effectively when it occurs. Add to that the increasing focus by regulators on results, not just program design and implementation, seen vividly in the U.S. Department of Justice's Evaluation of Corporate Compliance Programs (ECCP), updated in May 2019.

As the role of the E & C professional has grown and regulators have become more demanding, budgets, staffing and investment haven't necessarily kept pace. Thus, the question of what are the "must haves" that drive program effectiveness and without which programs fail has become even more important to E & C professionals facing limited resources.

Combining our expertise as two former Chief Ethics and Compliance Officers and practitioners, our joint research and experience points to five areas that can act as catalysts, driving ethical culture and principled behavior and transforming a less impactful program into a more effective one. See our white paper on this topic for an in-depth discussion. With that in mind, here are our top five priority action areas that underpin ethics and compliance program effectiveness and advice on how to implement them:

1. Managers Must Practice What They Preach

If employees see their managers modeling behaviors and following the rules, there is a good chance the employees will do the same. The converse is also true: if a manager engages in unethical behavior himself or herself, it legitimizes misconduct in their teams. The bottom line is that ethics and compliance messages are only effective when they are incorporated into the actions of the company and its management at all levels.

Since many managers are not familiar or necessarily comfortable with ethics and compliance topics, practical training to provide them with the resources they need and incentives to do so as part of performance management are good initiatives to pursue. LRN's 2019 Program Effectiveness Report showed a significant increase in the use of ethical behavior criteria: 28% more respondents said it mattered in performance reviews in 2019 versus 2018, and almost three times more said it figured prominently in bonus allocations year over year.

2. Organizational Justice

Employee perceptions that the company is "fair" in allocating both rewards and sanctions is both a foundation and driver of ethical culture. Failure by an organization to hold everyone to the same standards undermines program effectiveness. A good first step is developing and embracing transparent and clear standards for determining workplace rewards and sanctions, and including formal audits or assessments in these areas – with transparent results – to verify that organizational justice is taken seriously and working as intended (or warrants refinement). A second is an open approach to investigations and disciplinary actions. Simple measures such as a disciplinary matrix to identify how compliance breaches will be evaluated, an outline of investigative process to identify the steps taken when a concern is lodged and sanitized summaries of significant investigation results can build trust in the organization's processes.

3. Speaking Up and Listening Up

One behavioral ethics study distilled 45 potential predictors of misconduct to five factors that strongly predict the frequency of misconduct in an organization. At the top of the final five was lack of a speak up/listen up culture. Investing in this area should be a priority, including offering and advertising multiple channels of reporting, such as email, messaging, internet drop-boxes, external compliance committees or ombudsmen. Training managers how to listen to employee concerns and providing a means of intake and resolution for such employee feedback can capture critical data and identify problems before they metastasize. Utilizing surveys creatively to capture feedback on investigations, at the end of training modules or more generally can go a long way to promoting speaking up in the normal course of business and facilitates more robust data collection.

4. Simplify and Operationalize

Many company policies can be described as a kitchen sink filled with every conceivable legal requirement and caveat (sometimes taken verbatim from statutes and regulations) in dense, formal language. Procedures to comply with policies can resemble mazes that the employee must navigate to obtain advice and/or approval. Policies and procedures that are simple, straightforward, and easy to understand are more likely to be understood and followed. By the same token, policies and procedures should be highly accessible and convenient, something DOJ recognizes in its revised guidance. A one sentence invitation that pops up on the mobile phone of an employee landing in China and invites them to click on the relevant gift and entertainment rules is more likely to be heeded than a five-page policy on the legal website.

5. Localize Your Program (But Not Your Values)

Staying focused and uncompromising when it comes to fundamental values such as integrity, respect and transparency is essential no matter where an organization operates. But soliciting input, creativity and participation from employees and their community can better identify local risks and design strategies to mitigate them. Input from local employees that describes the fraud schemes that arise in that geography, and which government agencies or officials can pose the greatest complications or risks better prepares employees to deal with challenges. Inviting local speakers to help deliver training or compliance messages can build relationships as well as enhance impact. Global subscription databases in complex jurisdictions may not capture key risks with respect to suppliers or other third parties, but online domestic resources – such as national tax identification numbers, or litigation databases – can be more useful.

Conclusion

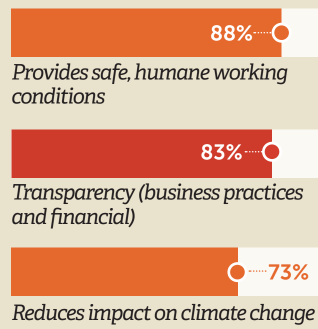
Too many E & C programs still spend most of their resources and efforts on rules and checklists, the "skeleton" that outlines the program's structure and components. By focusing on elevating manager behavior, implementing organizational justice and speaking up/listening up, an organization can establish and enhance an ethical culture, the "heart" of any effective E & C program. Going further by simplifying, operationalizing and localizing the program puts it in "the bloodstream," making it part of how the organization makes decisions and operates.

Facts & Figures

ESG DRIVING DECISIONS

Consumers are increasingly keyed-in to discussions about ESG issues in the news, and many of those factors have a direct impact on which companies that consumers choose to give their business to. Allianz Life's annual ESG Investor Sentiment Study polled a group of consumers to find out how.

Your decision to do business with a company is impacted by whether it:



Conclusion: While a wide range of factors impact American consumers' choices, ESG factors increasingly play a role that companies cannot ignore.

Source: *ESG Investor Sentiment Study, Allianz Life, 2019.*

Author Biography

Susan Divers *is a senior advisor with LRN Corporation. In that capacity, Ms. Divers brings her 30+ years' accomplishments and experience in the ethics and compliance area to LRN partners and colleagues. Prior to joining LRN, Mrs. Divers served as AECOM's Assistant General for Global Ethics & Compliance and Chief Ethics & Compliance Officer. Under her leadership, AECOM's ethics and compliance program garnered six external awards in recognition of its effectiveness and Mrs. Divers' thought leadership in the ethics field.*

Jonathan Drimmer *is a partner at Paul Hastings LLP and is the former Chief Compliance Officer and Deputy General Counsel at Barrick Gold Corp.*

TOPICS COVERED
// Third Parties & Supply Chain

HIGHLIGHTING INTEGRITY

Promoting Values and Transparency for Growth

Written By: Danielle Cannata

The Kingdom of Saudi Arabia's national development strategy, "Vision 2030," is an ambitious proposal that aims to build upon the country's geographic location, resources, and unique strengths and capabilities. It challenges all Saudis to create an environment that unlocks business opportunities at home and abroad, strengthens the economy, and creates jobs.

As a company based in Saudi Arabia with a global footprint, SABIC recognizes that for these ambitions to be realized, the Kingdom's businesses need to fully integrate the Vision's themes of transparency and integrity into the corporate culture. In support of the 2030 goals, on 9 October 2019 SABIC hosted over 400 participants at a major conference in Riyadh under the theme "Promoting Integrity and Transparency for Growth." The event offered the Saudi and global business community a unique opportunity to connect in the interest of elevating corporate integrity and compliance practices.

SABIC's goal in hosting the conference was to use its compliance experience to benefit its supply chain as well as the markets where it operates. The SABIC experience has been that embracing a culture of integrity makes employees more proud to work for us, customers more confident in buying our products, banks more assured in lending, and investors more secure in trusting us in their portfolios. As part of the SABIC contribution to Vision, the message that SABIC wanted to bring to the Saudi community via the conference is that there is an increasing understanding among stakeholders that a culture of transparency and integrity encourages growth and investment.

During his opening remarks, SABIC CEO and Vice Chairman, Yousef Al Benyan, said the time was right for focused discussions on ethics and integrity. "Saudi Arabia is moving to a bright future," he said, "It is growing, changing and preparing for more local entrepreneurship, more investment, and has a young population eager to make this all happen. Saudi Vision 2030 challenges businesses to rise to the occasion by observing their social and ethical responsibilities and contributing to the creation of a sustainable economy.

"By strengthening integrity and compliance capacity across the Saudi supply chain, companies and investors can grow in new ways and with confidence. The opening of the Saudi stock market to foreign investors is increasing attention on the compliance practices of our companies. Those who meet international standards and expectations will be in the driving seat to secure new investment."

Capacity Building for Regional and Global Supply Chains

The SABIC experience in building out a

world-class, global compliance program from the Middle East may be somewhat unique, but program leaders believe that its structure and principles can and should apply to other companies in the SABIC supply chain. This opportunity to help build capacity was one of the reasons for hosting this event and bringing together leaders from international and local corporations, financial institutions, governments, academia and NGOs.

Panelists discussed topics such as the building blocks of a culture of integrity and ethics, and quantifying the value of a culture of integrity in responding to stakeholder inquiries. Participants agreed that companies embracing cultures of integrity have a greater chance of success, as this generates investor and stakeholder confidence, employee loyalty, and ultimately long-term value.

One of the panelists was Nancy Higgins, Vice President & Chief Ethics and Compliance Officer for the Bechtel Group. She explained the benefit to Bechtel's supply chain as follows:

"Bechtel has partnered with customers in Saudi Arabia for more than 75 years. We believe our success in the Kingdom and around the world is directly attributable to our culture of high ethical conduct and our commitment to performing all business transactions fairly and with integrity. We share many of our Ethics and Compliance Program elements online to promote transparency and to help other companies build a culture of integrity and compliance. Working together, through collective action, we can raise the standard for ethical business behavior around the world, and we all will benefit."

A Strong Value Proposition

Companies and societies that really embrace a culture of integrity are the ones that will succeed in the long-term. They generate more investor confidence and ultimately, greater enduring value. This value is precisely what SABIC is seeking to produce—to not only make products that the world needs, but to do so in a manner that gives stakeholders reason to feel confident.

For SABIC, a large part of building an integrity culture involves listening to customers, suppliers, banking partners and other external stakeholders; benchmarking with peer companies; and active involvement with organizations like TRACE International, the World Economic Forum, and the OECD. Throughout all of these engagements, we listened to what matters to people and we learned that having a culture of integrity does make a difference.

Keynote speaker TRACE President Alexandra Wrage expressed strong support for SABIC's initiative and appreciation for the chance to make the case for the role the private sector plays in enhancing transparency. "Too often companies and government are portrayed as having competing interests," she said, "when in fact, both groups benefit from more transparency, greater predictability and heightened confidence in the market."

The Right Discussion at the Right Time

The timing of the conference was tied to several key developments in Saudi Arabia. The event followed the opening of the Saudi Stock Exchange (Tadawul) to foreign investors and its recent listing on the MSCI Emerging Markets Index, an internationally respected market benchmark that provides supplementary assurance to potential investors.

Next year, Saudi Arabia will hold the presidency of the G20 and SABIC's CEO will serve as president of its business grouping, the B20. During the G20 Summit in Riyadh in November 2020 the eyes of the world's business community will be on Saudi Arabia and its companies. Saudi companies can use this platform to promote not only the G20 goals, but also the Saudi Vision 2030 objectives.

In order to fully achieve these objectives and attract greater foreign investment, the all of the Kingdom's companies will need to play a part. The range of conference attendees demonstrated that companies in Saudi Arabia are keen to build out their own compliance programs to create value for their own stakeholders. Each company can play a role in developing its compliance capability to make its own supply chain more ethical and secure.

For SABIC, the benefits of the conference were numerous. We highlighted the value of our own program, shared our experience, and contributed to capacity development in our commercial partners. SABIC took the opportunity to use its leading role in compliance in the region to emphasize that Saudi companies will need to demonstrate to the world that Saudi Arabia is a safe and reliable place to invest. To maximize the potential for Saudi Arabia's future, the conference helped the Kingdom's business community to connect ethics and integrity to Vision 2030 and its principles.

Author Biography

Danielle Cannata *is a Senior Counsel within SABIC Legal Affairs, based in Houston, Texas. Since joining SABIC in 2008, Danielle has advised the business on trade compliance and strategy. She manages the international trade compliance team within SABIC Legal Affairs. She also supports the Corporate Sustainability Department on compliance, ethics and social sustainability issues and works extensively on the company's 3rd party due diligence program. Her portfolio also includes anti-bribery compliance. In this capacity, she serves as SABIC's representative to the B20 Task Force on Improving Transparency and Anti-Corruption and the World Economic Forum's Partnering Against Corruption Initiative. She is a member of the member of the Trust in Business Network, the advisory board of the OECD's Trust in Business initiative. During the Saudi presidency of the G20 in 2020, Danielle is co-chairing the B20 Integrity and Compliance Task Force.*

BELA RESEARCH

INSIGHTS FROM ETHISPHERE'S CULTURE QUOTIENT DATA SET


INSIGHTS FROM OUR CULTURE QUOTIENT DATA SET: VOLUME TWO

Focusing on the Role of the Manager in Influencing Ethical Culture

January 2020

ETHISPHERE

GOOD. SMART. BUSINESS. PROFIT.

Ethisphere has a wealth of data about how leading companies address culture – and the perceptions of more than four million employees. To advance best practices and shared learnings, Ethisphere has launched two volumes of Insights from Our Culture Quotient Data Set. The first report covers trends in how and why employees report, and the second focuses on the importance of managers in fostering an ethical culture.

The Business Ethics Leadership Alliance (BELA) convened a working group to gain a deeper understanding of the current development and use of data analytics and available technological enhancements. The tools and concepts presented were leveraging the best of current data analytics and technology systems and breaking new ground on future methods of risk assessment, monitoring, and intervention controls.

In addition to the complete analysis of the working group presentations, the full reports also includes:

- Specific technology, toolsets, and key examples
- Results of a broader BELA community survey highlighting innovation being implemented by member companies
- Insights on criteria for successful technology and data analytics projects
- Additional considerations and challenges
- How employees observe and report misconduct
- Perceptions of senior leaders
- Pillars of an ethical culture

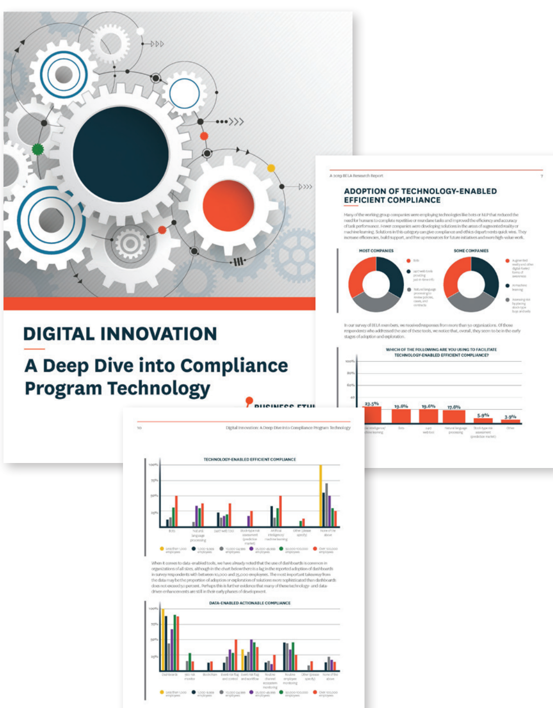
Here's a sneak peek of what you'll find inside:

- 92.8% of respondents stated that if they observed unethical behavior, they would report it. Yet when employees actually observed unethical misconduct, only 54% reported it.
- 60% of those who observed unethical behavior reported it to their direct supervisor. Only 22% used the corporate helpline.

For more information, find the reports on the BELA Member Hub, or contact **jonathan.whitacre@ethisphere.com** to inquire about membership.

BELA RESEARCH

DIGITAL INNOVATION: A DEEP DIVE INTO COMPLIANCE PROGRAM TECHNOLOGY



The digital era continues to push the pace and volume of business transactions and activities. This often leads to changes in a company's risk profile and requires new risk management solutions. To help manage these risks, compliance programs are turning to technology solutions to prevent and detect improper activities. But just what are companies doing, how are they doing it, and what are the challenges and successes?

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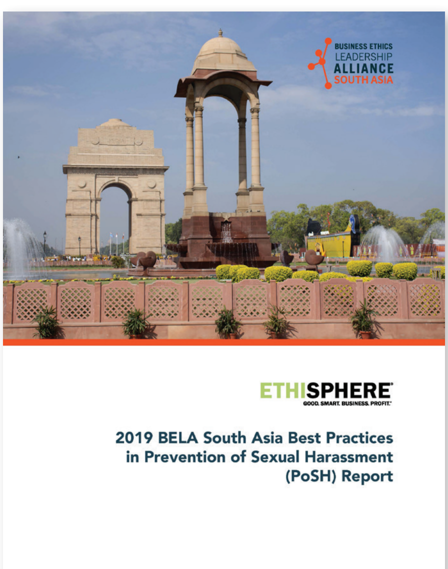
For more information on the Digital Innovation working group, or any of Ethisphere's programming around data privacy, AI, and compliance technology, please contact Stefan Linssen at **stefan.linssen@ethisphere.com.**

BELA SOUTH ASIA

PRESENTING NEW RESEARCH FOR THE COMMUNITY



The Business Ethics Leadership Alliance's (BELA) Prevention of Sexual Harassment (PoSH) Survey and Report was launched under the direction of our BELA South Asia working committee comprised of leaders from **Infosys, Accenture, Diageo India, Cummins, Hindustan Coca-Cola Beverages Pvt Ltd** and **Johnson Controls**. Since PoSH was legislated, companies across India have been working to meet its terms and provide a safe environment for their employees.

The PoSH Survey and Report touches a variety of industries, capturing leading practices while measuring how companies—both India-based and multinationals operating in the region—are responding to PoSH compliance, fair employment practices, and other forms of harassment. As Erica Salmon Byrne, Chair of BELA points out in her opening letter in this report, these issues are not going away. While #MeToo may no longer be the topic of daily headlines, the movement has left a powerful and permanent impact on the way that these issues are viewed, reported, and handled.

The PoSH Survey and Report was pulled together in response to interest from the members of the South Asia Chapter of the BELA community. For more information about BELA South Asia, please contact Managing Director Aarti Maharaj at **aarti.maharaj@ethisphere.com.**

BELA GLOBAL

BELA EXPANSION CONTINUES AROUND THE WORLD

The BELA Community connected in 2019 through new international chapters.
For more: ***events.ethisphere.com***

Latin America

Inaugural Mexico City Ethics Summit, in partnership with Parsons

Roundtables:

- Mexico City, hosted by Dell
- São Paulo, hosted by JLL

- Mexico City, hosted by Peñoles

Asia Pacific

Roundtables:

- Singapore, hosted by 3M

- Tokyo, hosted by Aflac and Nokia

Europe

London Ethics & Compliance Forum

Roundtable:

- London, hosted by Unilever

Canada

Roundtable:

- Toronto, hosted by Baker McKenzie

GLOBAL ETHICS SUMMIT 2020

REGISTRATION NOW OPEN FOR 12TH ANNUAL EVENT

Ethisphere is excited to once again welcome the community to New York City on April 1st and 2nd, 2020 for the 12th Annual Global Ethics Summit. The two-day event will feature professionals from over 230 BELA member companies coming together to share knowledge.

The event will feature a faculty of over 75 speakers from some of the most transformational companies around the world, with plans to address organization character and ethical values across global stakeholders. Amongst the growing list of standout leadership, we are thrilled to confirm faculty including:

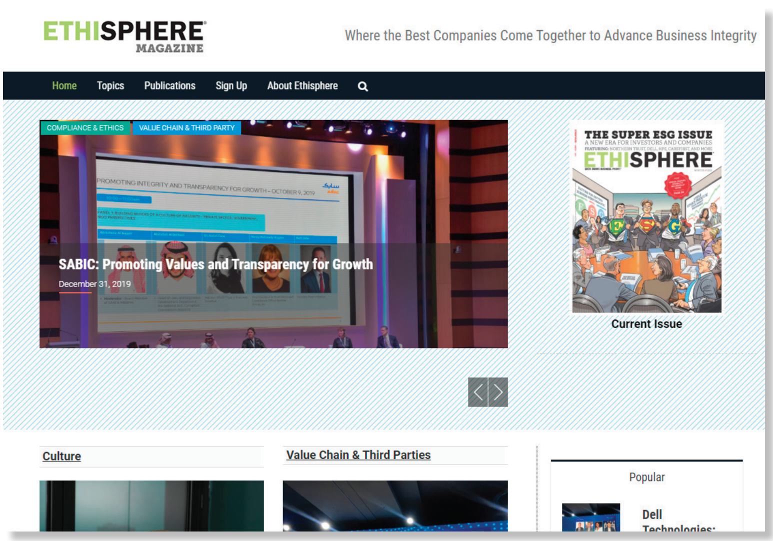
- Catherine Razzano, Vice President and Chief Compliance Officer, **Panasonic Avionics**
- Michael Duran, Vice President and Chief Ethics & Compliance Officer, **3M**
- David S. Huntley, Senior Executive Vice President & Chief Compliance Officer, **AT&T Inc.**
- Kim Urbanchuk, Chief Ethics and Compliance Counsel, **Parsons**
- David Trujillo, Executive Vice President, Global Chief Ethics and Compliance Officer, **Walmart Inc.**

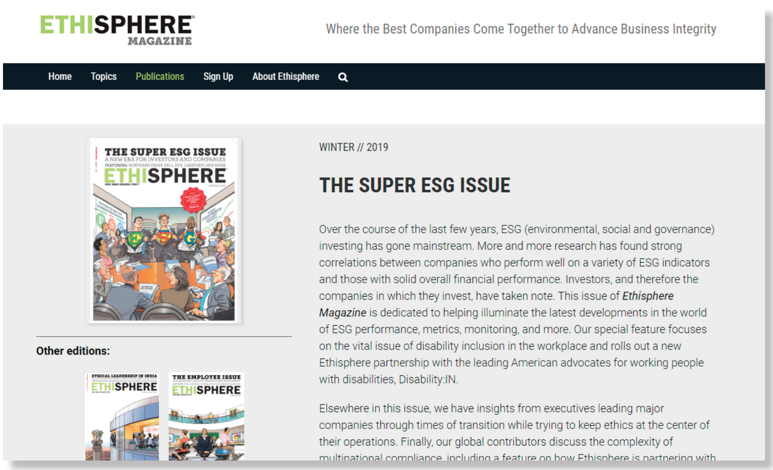
To register, please go to **https://globalethicssummit.ethisphere.com.**

BELA Members receive one complimentary pass and unlimited discounted passes at 50% off. Those with questions about registration should contact Ethisphere's Director, Global Events Chelsie Dumenigo at chelsie.dumenigo@ethisphere.com.

ONLINE

BEYOND THE PRINTED PAGE





New Website for All Ethisphere Magazine Content

Ethisphere Magazine now has a new home on the web at **magazine.ethisphere.com**, where all of our print content will appear alongside digital-only publications and standalone articles on topics of interest to our readers. The website contains a backlog of older Ethisphere Magazine articles, posts from the Ethisphere Insights blog, and more.

Go to the website to explore even more of our original content, and to add yourself to the subscriber list so you'll stay up-to-date whenever new content is uploaded. Don't miss out on the vital challenges, best practices and debates happening today.

In Case You Missed...

Last year's **World's Most Ethical Companies® mini-issue** of the magazine is now available at magazine.ethisphere.com. In addition to the full World's Most Ethical Companies list of honorees, the special edition features interviews with five CEOs from honoree companies, including **Texas Instruments, Wipro Limited, BMO Financial Group, Iberdrola, S.A.** and **Western Digital**. The issue also featured independent research from Ethisphere and **EthicOne** on how companies leverage their ethics commitments in marketing and communications, as well as a look from **Edelman** at the role of employers' as trusted institutions in employees' lives.

THE FINAL WORD

CULTURE AND PURPOSE AT PLAY IN ESG

The turning of the decade has offered me a chance for reflection on the remarkable changes we have seen in the global business community. If you had claimed in 2010 that we would be seeing an entire edition of Ethisphere dedicated to ESG reporting I would have scoffed (or maybe asked what ESG even meant).

The pace of the news cycle and the challenges of managing a multi-generational consumer and employee base has placed companies in the unenviable position of having to make decisions at a speed simply unimaginable to our 2010 selves. Fortunately, that does not have to be a bad thing; it simply requires some preparation.

The much-discussed Business Roundtable statement took a significant step in the direction of environmental, social and governance principles, commonly referred to as ESG. In 2004, U.N. Secretary General Kofi Annan kicked off the ESG movement when he urged the world's leading financial institutions to take these factors into consideration in their allocation of capital, which he believed would ultimately benefit both businesses and society. Now that investors have placed more than $30 trillion in assets under management according to ESG principles, we are seeing his vision bear fruit. The focus on purpose—from the Roundtable statement, guidance from institutional investors like Blackrock, and from pension funds like CalPERS—provides companies with an opportunity to develop a framework of decision making. Decisions should be driven by a real awareness of the "why" of a company: why does it do what it does, and how does that purpose inform its decision-making processes in a way that allows individual employees to make the necessary rapid-fire responses aligned with that framework?

The focus we have seen in the compliance profession on the relationship between culture and controls reflects our concern with human behaviors, not just systems. If you think about the crises of the last decade, individual (mis)behavior and the culture that influenced it was often a significant factor, and often the controlling factor. The ease with which problems escalate into scandals in our interconnected digital media environment means that a smart compliance officer is challenging her organization to think about culture as part of the dialogue around purpose. This intersection of culture, purpose, and decision-making frameworks will be a key focus of Ethisphere's over the course of 2020, and likely well beyond into the next decade. I look forward to what our community produces to help inform that conversation; it has the potential to fulfill Mr. Annan's vision in a remarkable way.

Erica Salmon Byrne
Executive Vice President, Ethisphere

THE INDEX

THIS QUARTER'S COMPANIES AND PEOPLE

ETHISPHERE

would like to thank all of the outstanding contributors who helped make this issue possible. See you next quarter!