The role of advanced data and analytics in enhancing oversight of ethics and compliance

January 2024

Integrating more advanced data analytics into a company's compliance program can significantly enhance the ability to identify, predict, and monitor for noncompliance at scale. Technological developments can enable companies to generate better insights into ethical culture, monitor day-to-day business activities for noncompliance or potential fraud, and assess risk more precisely. But sophisticated use of data analytics remains relatively rare in this space, and organizations face a range of challenges in developing more mature approaches.

On December 7, 2023, members of the Ethics, Culture, and Compliance Network met virtually to discuss how organizations are using data and analytics to inform compliance risk assessment and enhance oversight of ethics and compliance, including DOJ expectations, data trends and potential use cases, challenges in data access, and good practices in board reporting.[1]

Members were joined by Darryl Lew and Courtney Andrews, partners at White & Case's white-collar practice, and Ty Francis, chief advisory officer at LRN.

For a list of meeting participants, see appendix (page 6).

This *Summary of Themes* highlights the importance of data analytics in enhancing risk assessment and oversight of ethics and compliance programs:

Evolving enforcement expectations

Enforcement authorities, including the US Department of Justice (DOJ), are increasingly taking companies' use of data and analytics into consideration when evaluating compliance programs to decide whether to charge a company and, if so, the appropriate form of resolution and corresponding penalty. Mr. Lew said that the DOJ has emphasized three key elements of using data and analytics as part of an effective compliance program: *"Do company compliance personnel have access to relevant data, are they using it to test program effectiveness, and is data being used to assess risk and identify trends and patterns to inform the use of limited compliance resources?"* Mr. Lew cited recent examples of the DOJ agreeing to non-prosecution agreements or reducing otherwise applicable fines and noting companies' use of data analytics to monitor program effectiveness or identify compliance risks as a relevant consideration. He continued, *"This is one way the Department is trying to incentivize companies to invest in in data and the use of data analytics as part of their compliance programs."*

Mr. Lew noted that the DOJ's own use of data analytics to identify misconduct and inform their prosecutorial efforts has matured, describing the Justice Department as *"increasingly sophisticated about compliance programs and their use of data."* In recent years, the DOJ has bolstered its strength by hiring former compliance leaders with deep experience in advanced analytics. *"So, if you find yourself in the unlucky position of having to present your compliance program to the Justice Department, there are very sophisticated interlocutors now on the other side of the table,"* said Mr. Lew.

Trends, uses, and challenges in data analytics

"Although use of data analytics is becoming more common, most companies are still developing and have sort of a nascent approach to data analytics for compliance," reported Ms. Andrews. She said that only about 9% of organizations that participated in a 2023 Global Compliance Benchmarking Survey run by White & Case LLP and KPMG viewed themselves as being advanced in their use of data analytics for compliance, and larger companies tended to be more advanced in their use of data analytics than smaller ones.[ii] According to LRN's annual program effectiveness report, which surveyed 1,800 compliance professionals, high-performing compliance programs are much more likely "to collect and analyze data that provide real-time insight into program impact." However, while 59% of respondents said that collecting and analyzing the data were within their remit, only 20% of them said they had actually improved their ability to capture that data.[iii]

Use cases

There is growing convergence among the companies that use data analytics in how they integrate data into their compliance programs. Ms. Andrews noted that companies use data analytics most commonly in such areas as risk assessments, report development, visualizations and/or dashboards, and to manage training and certification requirements. Additionally, course performance metrics are often used to better understand how ethics and compliance programs are working. Participants discussed additional more advanced use cases:

- **Risk-based transaction testing.** By creating bespoke algorithms based on considerations like geographic or third-party risks, companies can flag the riskiest transactions for more in-depth testing.

"By employing this data-driven approach, companies can allocate their compliance resources effectively and really home in on the transactions that they perceive to pose the greatest compliance risk to the company," said Ms. Andrews.

- **Third-party monitoring.** Data analytics makes it possible to use different factors to identify the third parties that pose the greatest compliance risk to the company. On monitoring the correlation between the timing of onboarding and the risk level of a third-party vendor, one executive said, *"Take into account if something is taking too long: that means people are going to circumvent, and you're going to lose the effectiveness of your compliance program."*
- **Culture risk escalations.** As companies are increasingly focused on culture risk, the volume of escalations can be examined as a simple data point to identify geographies or business lines that may warrant greater attention from a compliance perspective. *"What do your escalations look like broadly across the company, but also by geography, by region, or by business unit? Are there any geographies or business units where there's a big spike or where there are no escalations at all, and if so, why?"* said Ms. Andrews.
- **Leading indicators.** Ethics and compliance data like hotline reports or investigations are lagging indicators, but participants emphasized the value of predictive measures that anticipate potential problems. One executive said, *"If we could get to leading indicators and not spend millions of dollars doing so, that's almost compliance nirvana."* On developing a hotspot identifier tool, one executive said, *"If you can find early on where deviation begins, you can course correct to salvage and rehabilitate the people, and the cost to the organization is significantly less."*
- **Root cause analysis.** One executive shared, *"I've implemented the use of root cause analysis uniformly across the investigations program … Whenever we have substantiated misconduct, we assign up to two causes per allegation*. *By analyzing root causes, we found that you have the same statistical patterns with certain categories of misconduct that indicate when lower-risk misconduct, depending on the root cause, more than likely will lead to higher type of misconduct. Then you track the data sets over time and more efficiently apply your training resources to monitoring and auditing."*

Challenges

Participants noted several challenges when it comes to incorporating data analytics into ethics and compliance monitoring:

- **Data management.** Organizations struggle with what one executive described as *"the data tsunami."* One participant noted, *"A lot of boards and compliance teams are getting overwhelmed with managing the data."* It's not just the sheer volume of data; timeliness is also a major challenge for compliance teams. *"It's great having the data, but it's also about the time you're taking to collect that data, because if you're taking two or three months to collect it, you end up having very outdated information,*" an executive pointed out.
- **Data silos.** Compliance leaders sometimes struggle to access needed data due to lack of information sharing between various parts of the organization. One executive recalled that at a previous company, *"there were certain investigations at a global level that compliance and ethics did not have access to.*

We had to insist, with the help of the CEO, on changing that so that the compliance officer has all that information. That wall has to come down." Participants suggested that data sharing between compliance and human resources is a particular challenge: *"HR will often err on the side of privileging and hiding things because they want to protect the company,"* one executive remarked. Boards may need to push management to share data more broadly. One executive said, *"The board will always suffer if the information is maintained in silos within the organization."* Another executive encouraged directors to *"ask to see data together instead of in a fractured way. Expectations have to be set at the top for how compliance and human resources work together."* Participants agreed on the importance of centralizing investigative functions under compliance. Doing so, one executive said, *"removed a lot of these silo issues. And the board and particularly audit committee is the most important governance tool to accomplish this outcome."*

- **Resource allocation.** Developing the analytical tools and data processes to derive key insights requires significant investments in technology and personnel, and compliance leaders are struggling to determine the most efficient way to use limited organizational resources. One executive said, *"We're trying to figure out how to focus the precious resources we have. We were trying to develop a hotspot identifier tool, so we really started focusing on people data, so if we could identify the problem child, the person, the team, the region, that has issues, we could focus our resources, and pay attention to the things that matter most."*

Effectively reporting to the board

Boards risk becoming overwhelmed with information and have limited time and resources to dig deep into compliance trends and risks. One executive said, *"My view is that directors have to be pretty carefully fed a limited amount of information. And it isn't that people should withhold information from the board, but there's only going to be so much time to deal with it."* The board's visibility into compliance can also be limited by the fact that *"there is a natural bias to try to protect the board from litigation."*

Participants shared good practices for board reporting:

- **Developing robust reporting materials.** One executive said, *"What is presented to the board has to be meaningful. It's the duty of the compliance officer to interpret the data for the board and identify what is the most meaningful by trend or risk."* Another executive said, *"We have a template that we use to collect data from all the affiliates and then aggregate it up and synthesize it into a simple report to the board. That gives them information at a whole group level that generally goes to the audit committee."* One director recommended having *"really good dashboards when meeting with the board [in order to] call out things that need attention."* Sharing annexes and prereads ahead of board meetings allows directors to dive deeper into issues on the agenda. *"We have standing appendices for the corporate compliance and regulatory compliance section of our audit committee report. I think that directors appreciate consistency and being able to see trends over time, so we do not change those appendices,"* said an executive.
- **Finding the right cadence for board reporting.** Participants agreed on the need for regular reports to the board and deeper dives for the relevant committee. One executive said, *"My compliance team*

provides monthly reports of key data, including new risks and trends, to the audit committee. And we meet with audit quarterly. And then for the full board, it's a much higher level of key points, trends, general information about the program, and improvements we're making."

- **Increasing interaction between the chief ethics and compliance officer (CECO) and the board.** One executive encouraged peers *"to think about the reporting line and an important practice of the CECO getting time with the audit committee."* Participants agreed that granting the CECO a direct line to the board helps the board to fulfill its fiduciary duties. One director said, *"We just established premeetings, one-on-one with the head of the audit committee. I think that is a step in the right direction."*

Participants

The following participated in all or part of the meeting:

Noni Abdur-Razzaq
Associate
Tapestry Networks

Virginia Addicott
Non-executive director
CDW and Element Fleet Management

Courtney Hague Andrews
Partner
White & Case

Eric Baldwin
Principal
Tapestry Networks

Michael Bramnick
Senior Vice President-Administration, Chief Compliance Officer, & Chief of Staff
NRG Energy

Jim Byrne
Vice President, Corporate Ethics and Business Conduct
Lockheed Martin

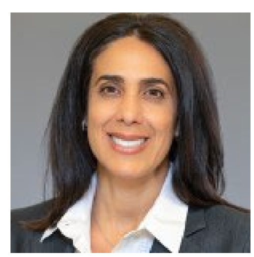
Jonathan Day
Chief Executive
Tapestry Networks

Forrest Deegan
Chief Ethics & Compliance Officer
Victoria's Secret

Nicole Diaz
Global Head of Integrity & Compliance
Snap

Susan Frank Divers
Director of Thought Leadership and Best Practices
LRN

Andy Dunbar
Senior Vice President and Chief Compliance Officer
Herbalife



Marsha Ershaghi Hames
Partner
Tapestry Networks

Participants

Antonio Fernández
Chief Ethics and Compliance Officer
FirstEnergy

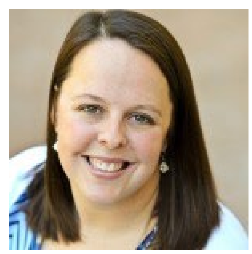
Ty Francis
Chief Advisory Officer
LRN

Kathleen Franklin
Global Ethics & Compliance Strategy Leader
Sony Corporation of America
Non-executive director
Bank OZK

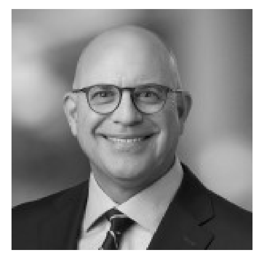
Sandy Helton
Non-executive director
OptiNose

Clayton M. Jones
Non-executive director
Deere and Motorola Solutions

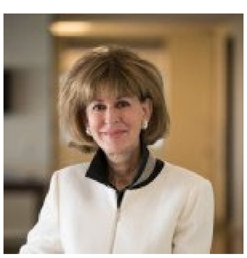
Julie Kane
Non-executive director
Heliogen



Laura Koski
Project and Event Manager
Tapestry Networks



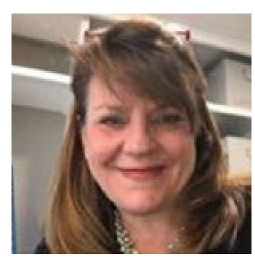
Darryl Lew
Partner
White & Case



Mary Pat McCarthy
Non-executive director
Micron Technology and Palo Alto Networks

Gina Nese
Nice President, Global Compliance and Ethics Officer and Counsel
Align Technology

Justin Ross
Vice President and Global Chief Compliance Officer
FedEx



Kim Rupert
SVP and Chief Risk Officer
SAIC

Participants

Diana Sands
Non-executive director
Anglogold Ashanti and SP Plus

Erik Sandstedt
SVP & Global Chief Compliance Officer
Las Vegas Sands

Scott Sullivan
Chief Integrity & Compliance Officer
Newmont Corporation

Kim Urbanchuk
Chief Compliance Officer
Covington & Burling LLP

Amber Williams
Senior Vice President & Deputy General Counsel
Bath and Body Works

Kim Williams
Non-executive director
The EW Scripps Company, Xcel Energy, and Weyerhaeuser

Endnotes

[1] *Summary of Themes* reflects Tapestry Networks' use of a modified version of the Chatham House Rule whereby names of members and their company affiliations are a matter of public record, but comments are not attributed to individuals or corporations. Quotations in italics are drawn from conversations with network members and guests in connection with the meeting.

[ii] For more information, see Darryl Lew and Matthew McFillin, *2023 Global Compliance Risk Benchmarking Survey* (New York: White & Case, 2023).

[iii] For more information, see LRN, *The Ethics & Compliance Program Effectiveness Report: 2023 Global Standards Edition* (New York: LRN, 2023).