

by Jamal Ahmad, JD, CPA, CFE, CFF and Jonny Frank, JD, LLM

# Data: A hidden gem in the effectiveness of ethics and compliance programs

- » Just as they use data to measure operational efficiencies, so too can organizations use data to measure and assess the effectiveness of their ethics and compliance programs.
- » Data-driven assessments provide a factual basis upon which to draw qualitative conclusions about the effectiveness of ethics and compliance programs and defend compliance activities in the wake of an incident.
- » Compliance officers should work with data experts to identify, collect, and present relevant data in a manner that is meaningful and easy to understand.
- » Companies should establish appropriate metrics to assess the state of ethics and compliance programs and develop benchmarks by which to measure their progress.
- » The use of analytics tools, such as a dashboard and its easy-to-access and useful information, can be of great benefit to the Compliance function.

**W**hen it comes to ethics and compliance programs, organizations often take great pains to design specific activities to meet their regulatory and internal compliance requirements. Regardless of size, the government and standard setters instruct companies to periodically assess the effectiveness of the programs, and keep up with changing internal and external circumstances.<sup>1,2</sup> If the organization does not self-assess the program, others will. Customers will vet suppliers; acquirers will conduct due diligence; and, in the wake of misconduct, the government will investigate when determining whether to pursue criminal and/or regulatory action against the company and individual

employees, including compliance professionals.<sup>3</sup>

Organizations currently use data to, among other things, measure operational efficiency and, for public companies subject to the Sarbanes-Oxley Act, to assert to the effectiveness of controls over financial reporting.<sup>4</sup> It stands to reason that they can and should unlock this same data to measure effectiveness and efficiency of ethics and compliance activities. Data-supported assessments carry more weight than mere qualitative assessments and provide a basis for actions taken with respect to implementation of compliance efforts, as well as remediation efforts in the event of a compliance issue.

Boards, third parties, and government officials prefer data-driven compliance program assessments, because they are fact-based, use objective criteria, and contain



Ahmad



Frank

tangible criteria that are measurable over time. Data also provides a basis to draw qualitative conclusions (e.g., the programs are effective) and to defend the activities in the wake of an incident.<sup>5</sup> Additionally, compliance officers can use data to focus their compliance resources, get the most out of those resources and, if resource starved, make the case to enlist additional support.

### Defining data

Data is simply another word for information.

Typically, data is presented in number or amount (e.g., the time of entry into a building, the amount of dollars spent on compliance-related functions, the number of calls to the whistleblower hotline) or in words (e.g., the names of the individuals who participated in a risk assessment). Data analytics is the science of examining such raw data with the purpose of drawing conclusions about that information.

Experts in data analytics often differentiate between “structured” and “unstructured” data. Structured data refers to information that resides in fixed fields (e.g., information from an enterprise resource planning [ERP] system, such as Oracle or SAP; other financial and operating systems, tables, and spreadsheets). Unstructured data, as the name implies, includes raw information that does not reside in fixed fields (e.g., e-mails, Word documents, pictures, video, audio, webpages, text contained in spreadsheets). Semi-structured data refers to data that can be converted from an unstructured format into defined fields.

Organizations can use both structured and unstructured data to assess the effectiveness of compliance and ethics

programs. Structured data is much easier to analyze, particularly if the organization collects information in pre-defined fields that correlate to the analysis (e.g., whistleblower data organized by type of complaint, business function, and resolution). It is possible to analyze unstructured data, but less convenient. The organization needs

either to convert the unstructured data into defined fields or use full-text, keyword searches.

### Identifying and collecting data

Part of the challenge in using data for the compliance

assessment lies in identifying and gathering the data required for the analysis. Relevant data for assessment purposes often resides in disparate locations, both internal and external to the organization. Once relevant data is identified, it must be “normalized” for meaningful analysis. It is common for data to reside in different systems and exist in different formats. Accordingly, compliance officers need to work with data analytics experts to create a data plan and corresponding roadmap to locate, secure, and assimilate relevant data into a common platform.

### Measuring progress

Although there are no “one size fits all” solutions to ethics and compliance programs, organizations must still select criteria against which to measure their company. Rather, the organization should tailor the criteria to its unique circumstances (e.g., number of employees, industries, and geographies in which the organization does business).

Experts in data analytics often differentiate between “structured” and “unstructured” data.

Professional literature abounds with criteria for an effective compliance and ethics program. Many organizations follow the U.S. Sentencing Commission's Federal Sentencing Guidelines,<sup>6</sup> but that guidance technically applies only to sentencing following a guilty plea or verdict.

The Committee of Sponsoring Organizations of the Treadway Commission (COSO) is the leading framework for managing compliance, operational, and reporting risk. The COSO Integrated Internal Controls Framework<sup>7</sup> is another useful resource, which public companies can apply to also meet Sarbanes-Oxley requirements. Federal departments and agencies issue their own guidance, including, for example, the Department of Defense, Health and Human Services, the Department of Justice (DOJ), the Securities & Exchange Commission (SEC), and the Office of the Comptroller of the Currency. State agencies provide additional guidance.

Many organizations employ a risk-based approach, though, it presents somewhat of a "chicken-and-egg" dilemma. This approach begins with a risk assessment to define the scope of the E&C programs. Others include a risk assessment as a component of a compliance program. Either approach is acceptable, provided that the organization conducts a comprehensive risk assessment—and the same data can be used in either scenario.<sup>8</sup>

The Committee of Sponsoring Organizations of the Treadway Commission (COSO) is the leading framework for managing compliance, operational, and reporting risk.

**Benchmarking for success**

One of the significant challenges with regard to E&C programs is that most published criteria are general and qualitative.

The Federal Sentencing Guidelines, for example, require organizations to "promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law,"<sup>9</sup> and the DOJ expects "high-level commitment by directors and senior management."<sup>10</sup>

The literature, however, provides scant direction on how organizations can measure compliance with these broad principles.

Given the absence of specific guidance, organizations must identify appropriate data sources and develop objective quantitative and qualitative metrics to meet government expectations.<sup>11</sup> For example, to demonstrate a commitment to a culture of compliance, organizations can consider and score the results of focus groups and culture surveys, as well as the frequency of messages from senior management that reinforce ethics. Or, to demonstrate effective training, track completion rates and signed certifications for receipt and acknowledgement of relevant governance documents such as the organization's Code of Conduct. Finally, the organization can assess the effectiveness of remediation efforts by reviewing incident reports compiled by the Internal Audit department (or its equivalent) and scoring the nature and sufficiency of the follow-up.

It is important to know your audience when developing benchmarks. Senior management and the board might be interested in one set of benchmarks, but prosecutors and regulators might have an interest in others. Proactively anticipating these areas of focus will prove more successful than trying to recreate them after the fact.

Developing benchmarks takes considerable time. Forensic auditors, data analytics experts, and compliance risks and controls experts can help compliance officers to identify potential data sources, develop analytics procedures, and employ statistical packages to categorize and design rational scoring methodologies to grade results.

Set benchmarks against peer entities, if possible. An organization can look at statistics on mechanisms used to report misconduct and compare them with the use

of its hotline, for example, against similarly-sized organizations.

Create internal benchmarks, if external ones are not available. When developing a culture survey, for example, create the expected number of “strongly agree,” “agree,” “disagree,” and “strongly disagree” responses to particular questions. The benchmarks, after all, must be defensible.

### Developing a dashboard

The organization needs to track benchmarks, just as it would any other program or plan. Take advantage of technology to automate the collection and tracking of benchmarks. The Compliance function, ultimately, would benefit from a dashboard, which (in addition to easy access to critical and useful information) would by its mere existence demonstrate the organization’s commitment to compliance (see Table 1).

**Table 1: Compliance Metric and Associated Dashboard Visual**

Federal Sentencing Guidelines Metric(s)	Sample Dashboard Metric(s)
Culture that encourages ethics and compliance	Culture survey results; messages from senior management emphasizing importance of ethics
Roles of board, management, and Compliance	Board committee charters and meeting minutes; frequency of meetings between senior management and compliance personnel; Compliance department structure and resources
Diligence by positions of authority	Diligence files
Training	Completion rates for trainings and signed certifications regarding receipt of training
Mechanism to report misconduct	Number of ethics hotline calls; nature of allegations; type of reporting mechanism
Risk assessment	Frequency and nature of compliance-related risk assessments
Audits to detect misconduct	Number of internal audits including detection of misconduct within scope; types of misconduct; risk indicators considered
Response and remediation of misconduct	Number, type, and results of allegations and remediation

## Conclusion

As scrutiny of corporate ethics and compliance programs intensifies, it has become more imperative than ever for compliance executives to identify and use the appropriate data to measure the effectiveness of these activities. Data can be leveraged not only to maintain a watchful eye on the programs, but also to defend them in the event of regulatory action. \*

1. United States Sentencing Commission: *2014 Guidelines Manual*, §8B2.1. Available at <http://bit.ly/guidelines-manual>
2. See Leslie R. Caldwell, United States Department of Justice, Remarks at 22nd Annual Ethics and Compliance Conference, October 1, 2014. Available at <http://bit.ly/remarks-assist-ag>

3. Leslie R. Caldwell, United States Department of Justice, Speech at SIFMA Compliance and Legal Society New York Regional Seminar. November 2, 2015. Available at <http://bit.ly/leslie-caldwell>
4. See Sarbanes-Oxley Act of 2002, §§302, 404 (2002).
5. United States Department of Justice: *Principles of Federal Prosecution of Business Organizations*, §9-28.300 (2015) (directing prosecutors to consider the effectiveness of the corporations pre-existing compliance program in determining whether to file criminal charges).
6. *Ibid.*, Ref #1
7. Information about COSO is available at <http://www.coso.org>.
8. Jonny Frank: "5 Ways to Meet DOJ's Heightened Compliance Expectations" *Law 360*; May 29, 2015. Available at <http://bit.ly/5-ways-to-meet>
9. Federal Sentencing Guidelines, §8B2.1(a)(2)
10. *Ibid.*, Ref #3
11. Timothy Hedley and Ori Ben-Chorin: "Collecting and Evaluating Effective Compliance Program Metrics" *Compliance & Ethics Professional*; December 2015, pp 57-60.

**Jamal Ahmad** ([jahmad@stoneturn.com](mailto:jahmad@stoneturn.com)) is Managing Director at StoneTurn Group in New York City.

**Jonny Frank** ([jfrank@stoneturn.com](mailto:jfrank@stoneturn.com)) is a Partner at StoneTurn Group in New York City.

## Upcoming 2016 SCCE Web Conferences

3.2.2016 | **Education tech: Are you managing privacy and security risks or outsourcing them?**

▪ **ROSLYN F MARTORANO**, Systemwide Privacy Manager, University of California

▪ **ISAAC STRALEY**, Campus Information Security Officer, University of California, Irvine

▪ **DIANNE YODER**, Associate Director IT and Professional Services, Strategic Sourcing Centers of Excellence, University of California

3.9.2016 | **Our First Ethical Climate Survey: What we did and what we learned**

▪ **ANN D. E. FRASER, PHD**, Executive Director, Values, Integrity and Conflict Resolution Directorate, Integrity and Redress Secretariat, Canadian Food Inspection Agency

3.16.2016 | **Concerns that Keep Youth Program Directors Awake at Night**

▪ **CANDACE COLLINS**, Director of Higher Education, Praesidium Inc.

3.30.2016 | **Update on Global Data Privacy Laws and Frameworks**

▪ **ROBERT BOND**, Partner, Charles Russell Speechlys LLP

4.13.2016 | **Right to be forgotten, right of erasure, so nothing left to chance?**

▪ **ROBERT BOND**, Head of DataProtection and Cyber Security Law, Charles Russell Speechlys LLP

4.28.2016 | **Navigating the Challenges of U.S. Export Controls**

▪ **JULIO FERNANDEZ**, Principal Consultant, Fernandez Export Advisory LLC

Learn more and register at [corporatecompliance.org/webconferences](http://corporatecompliance.org/webconferences)