

GENERAL COUNSEL FORUM HIGHLIGHTS

In early November, NYSE Governance Services held a day and a half Compliance Workshop and General Counsel Forum to address the most pressing issues facing legal and compliance officers at publicly traded companies. Major topics at the event included discussions such as compliance data analytics and reporting, leadership and corporate culture, legal and regulatory updates, global compliance risk, and managing the legal function both within and outside the company.

COMPLIANCE WORKSHOP

On November 2 at the New York Stock Exchange, the half-day Compliance Workshop kicked off with a discussion on how to transform data analytics into meaningful information that can help companies harness the power of technology to provide more effective and measureable compliance programs.

NYSE Governance Services counsel Lori Littlejohn moderated “Next-Gen Compliance Training,” featuring insights from DA Graham, vice president and global integrity leader for Nielson Holdings.

- Graham evangelized on the need for compliance analytics that truly demonstrate results, rather than simply check-the-box exercises that equate to an “E” for effort. Said Graham: “What the data tells us, we use to inform the future.”

Implementing a compliance program that really works was the focus of the second panel, which offered boots-on-the-ground experience from Michael Bramnick, senior vice president and chief of staff/compliance officer for NRG Energy and Paul Fabara, president, Global Risk and Compliance and chief risk officer for American Express Co.

- Bramnick emphasized that both tone at the top and tone at the middle were key to unifying management’s expectations from everyone in the organization.
- Fabara discussed self-reporting at the employee level; an understanding of escalation and reporting at the middle management level; and the importance of follow through with actions at the highest level of the organization.

Eric Morehead, principal, Morehead Compliance Consulting, and Doug Siegel, managing director and chief compliance officer, Oppenheimer Holdings, both offered practical tips and advice for effectively briefing the board.

- Predictive data, noted Morehead, is becoming a real trend and when properly deployed, he said, allows the board to act on information in a forward-looking, strategic manner that creates more effective oversight of compliance risk.

The last panel of the Compliance Workshop delved into global compliance risk, and featured commentary from Michael Berry, chief compliance officer, Petro China Americas, and Jose Roberto Rodrigues, vice president for legal and corporate affairs with BRF Brasil.

- Rodrigues focused on how compliance programs have changed since the implementation of the Clean Company Act and in the wake of the investigation and ensuing scandal related to state-owned oil company Petrobras, involving a chain of corruption that eventually led to calls for impeachment of Brazil’s President Rouseff.
- According to Berry, the cultural obstacles to building a unified compliance and ethics culture are often significant, especially within an environment where a prevalence of state-owned enterprises have historically embraced corrupt business practices as the norm.



GENERAL COUNSEL FORUM

On November 3, the NYSE Governance Services General Counsel Forum began with a powerful keynote address from Rick Palmore, former general counsel with Sara Lee Foods and General Mills, and currently a partner with Dentons in Chicago.

- Having an understanding of the business strategy, Palmore insists, is the most important talent a good GC brings to the table. In fact, he insists, there is always room for more strategic thinking. “In times of crisis,” Palmore stated, “there is no such thing as too much good strategy.”

Next, attendees heard an update on cyber liability from Boris Segalis, partner, Norton Rose Fulbright, who was joined by Richard Nohe, chief legal officer of BT Group, Americas and Adam Rosman, EVP and general counsel, First Data Corp.

- Panelists discussed best practices for incident response and reporting, the new threat of “shadow IT,” the protections afforded by cyber liability insurance, and the most recent rulings related to legal standing as it relates to cyber liability and litigation.

Following a fruitful peer collaboration and luncheon, attendees convened for the afternoon sessions, beginning with a fulsome discussion on shareholder activism moderated by Kai Haakon Liekefett, partner with Vinson & Elkins LLP. Liekfett was joined by Avinash Mehrota, managing director and co-head in the M&A Shareholder Advisory group, Investment Banking Division of Goldman Sachs; Matthew Sherman, president of Joele Frank, Wilkinson Bremmer Katcher; and Stephen Weinstein, SVP and chief compliance officer and group general counsel and secretary, RenaissanceRe Holdings, Ltd.

- Panelists discussed how the general counsel needs to be a strategic advisor to the board with regard to shareholder engagement strategies — to add value through his/her ability to negotiate, lobby, and evaluate deal options and to better apprise the board if and when an activist comes into the picture.



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One topic that hit a nerve with GCs in attendance was the efficient running of the legal department—specifically the issue of insourcing versus outsourcing and how best to deploy existing resources. The topic was addressed by Andrew Bonzani, SVP, general counsel, and secretary, Interpublic Group and Lauren Ezrol Klein, EVP, general counsel and corporate secretary for Time Inc.

- Both panelists commented on the rising cost of the legal function and the pressures from within to manage toward a bottom line and a budget when considering outsourcing to external counsel and other legal service providers. They also addressed how to balance those needs with the efficiency and talent needed to maintain an effective internal legal team.
- This discussion opened up quite a few comments from the audience on how to effectively cross-pollinate various legal specialties (i.e., M&A, HR, real estate, compliance) within the legal department to bolster a wider swath of experience and thus reduce the cost of outsourcing.

The penultimate panel involved a refresher on the duties and responsibilities of boards with respect to mergers and acquisitions led by two partners at Schulte Roth & Zabel, Michael Gilligan and Bill Gussman.

- Gilligan reminded the audience that while it may seem elementary, having a solid plan in place that involves the right team makes all the difference. “The key mistakes happen when people are surprised or when there is a lack of advanced planning,” noted Gilligan.

The Forum concluded with a session on “Embracing Disruption” — including how legal departments are adopting new technologies and deploying data analytics to manage risk and how to stay agile and competitive. Panelists included Jack Campo, chief legal officer, Smith & Nephew, LLC; Nancy Saltzman, general counsel and corporate secretary, EXL Services Holdings; and Brandon Daniels, president, Clutch Group.

- The bottom line, the group agreed, was to learn to embrace change and be ready to invest in the future—but to do so wisely. “Every dollar spent on IT is an investment,” said Campo, “and you have to be ready to show what the payback will be.”

