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R&C risk & compliance

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REPRINTED FROM:
RISK & COMPLIANCE MAGAZINE
JAN-MAR 2019 ISSUE



www.riskandcompliancemagazine.com

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NAVIGANT

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MINI-ROUNDTABLE

DATA ANALYTICS AND AI FOR ANTI-CORRUPTION COMPLIANCE



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John Loesch is a director in the Global Investigations and Compliance Practice at Navigant. He has extensive experience conducting large-scale investigations and with FCPA/anti-bribery compliance matters in both the government and private sector. Mr Loesch has worked on high profile investigations for congressional oversight committees, the US Securities and Exchange Commission, and the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), and has in-house compliance experience with a Fortune 200 public company.

R&C: How would you describe the current legal and regulatory environment governing anti-corruption efforts? To what extent have related risks and compliance demands increased for businesses?

Loesch: In the United States, prosecutors and regulators continue to aggressively enforce the Foreign Corrupt Practices Act (FCPA) and impose significant sanctions on corporations and individuals. With the Department of Justice (DOJ) Corporate Enforcement Policy, there are now significant incentives for companies that self-report misconduct, fully cooperate with the DOJ's investigation, and timely and adequately remediate their compliance programmes. To receive full cooperation credit, among other things, companies are required to identify all individuals substantially involved in the underlying conduct and turn over all relevant facts. This is consistent with the DOJ's increased focus on individual liability. Recent statements by DOJ officials substantiate that these cases are a priority and that they, with the FBI, will continue to dedicate resources to investigating and prosecuting these matters. Outside the United States, many countries are passing new anti-bribery laws or stepping up enforcement of existing laws. France recently conducted the first independent prosecution under its new anti-corruption law, Sapin II. In addition, Brazil and Argentina have

both been more aggressive in independently pursuing investigations and prosecutions against corrupt government officials. US prosecutors and regulators are now working more closely with their foreign counterparts to share information and, in many instances, are arriving at global resolutions whereby financial sanctions are allocated between the participating jurisdictions. Thus, in the current environment, it is likely that a company with a bribery or corruption problem will be facing investigations in multiple jurisdictions. Compliance programmes must be appropriately scoped to meet these multinational risks.

R&C: What steps can organisations take to ensure their anti-corruption programmes align with regulatory compliance requirements?

Campbell: Fortunately, there is a good bit of guidance published regarding anti-corruption compliance programmes. The DOJ and US Securities and Exchange Commission (SEC) have published FCPA guidance, which includes 'Hallmarks of Effective Compliance Programs'. The UK Ministry of Justice has published Bribery Act guidance, which addresses 'adequate procedures'. In addition, the Organization for Economic Cooperation and Development and several other organisations have released compliance programme guidance. All of the guidance is similar and requires that

compliance programmes include continuous and comprehensive risk assessments, coupled with a process to strengthen existing controls and develop new controls as necessary, consistent with the risk assessment. A code of conduct, and ethics policies endorsed by top management and that require accountability throughout the organisation, should also be included. An effective whistleblower programme is also recommended. Companies also should develop a strong internal audit team and plan. Audits should be structured to test the execution of existing controls, incorporate steps that recognise fraud indicators and anomalies associated with historical weaknesses, and those that are indicative of emerging risks. A training programme should provide all employees with an understanding of the company's policies, procedures, processes and controls, and how they are designed to ensure compliance with the law and regulations.

R&C: What role can data analytics and artificial intelligence (AI) play in detecting and preventing corrupt activities?

Loesch: In today's 'Big Data' world, data analytics and artificial intelligence (AI) can help an organisation analyse data quickly from multiple sources to identify anomalous activity associated

with third parties, employees and customers. Patterns can be revealed that are too complex for humans to see without mechanical assistance – or

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*Joseph S. Campbell,
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without significant time and effort. For example, AI can analyse accounting ledgers, travel and expense reports, receipts and invoices, emails, phone calls and text messages to detect payments and expense payouts that are questionable in terms of timing, nature, regularity and amounts. A surveillance tool using machine learning can be 'fed' historical information and learn to recognise acceptable and appropriate transactional patterns, and then have the ability to identify transactions that do not 'fit' that pattern and may be anomalous and should be reviewed for improper behaviour. Such deviations – for example a salesperson in Asia whose expenses are double the average of the rest of the regional

sales team – can be investigated, allowing mitigation of corruption at early stages.

R&C: What advice would you give companies on designing and implementing an effective anti-corruption programme that utilises data analytics and AI? What are the key considerations and techniques that need to be considered?

Campbell: I would advise organisations to start small when it comes to implementing data analytics into their anti-corruption compliance programmes. Many organisations use a proof of concept to test the effectiveness and to gain senior-level approval. Implementing small solutions in the first wave not only tests usefulness but, if successful, helps secure buy-in for larger-scale implementations. Companies can then scale up from that initial proof of concept and incorporate analytics and AI into their internal processes. The goal should be to improve results by building more intelligence into the already existing process — combining machines to augment human intelligence, not replace it.

R&C: What are the typical cost implications involved in deploying data

analytics and AI as part of anti-corruption compliance strategies?

Loesch: Corruption is expensive, with more than \$1 trillion lost each year to bribes globally. AI programmes can function as inexpensive analysts and work in real time to help detect and prevent corruption. Although machines can be quite costly to power and maintain, the cost is significantly less than what it would cost full-time employees to do

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the same work. Plus, machines do not need to take coffee breaks and do not get fatigued. They will return the same results for extended periods of time, thus improving accuracy at a lower cost. As technology gets cheaper and more widely available, it will become part of risk management for most major organisations.

R&C: In your opinion, where in the corporate hierarchy should responsibility for introducing data analytics and AI into anti-corruption processes reside? Which individuals or teams should be involved in driving the process forward and rolling it out?

Loesch: In my opinion, it starts at the top. Senior management needs to adequately budget for data analytics and AI programmes and provide the ‘tone at the top’ support. Compliance needs to have overall responsibility, but it is going to be a collaborative effort involving the information technology department, finance and internal audit.

R&C: If not handled properly, what are the potential downsides of introducing new technology into anti-corruption frameworks?

Campbell: AI algorithms are only a tool to help analyse and understand complex data sets. Humans are still required to select which information is most crucial in order to make important risk management decisions. If algorithms are faulty, wrong decisions could be made or important data might be missed. Thus, while robots will likely take over some jobs, humans will still be needed to provide the necessary subject matter expertise and judgment.

Companies should also be cognisant of having strong information security programmes to ensure data trafficking through a data analytics system is protected from compromise. They should also have measures in place to detect attempted and successful intrusions, so mitigation can immediately take place and proper notifications made.

R&C: Do you expect to see greater adoption of data analytics and AI across the anti-corruption landscape in the months and years ahead? What are the likely consequences for organisations that resist such technology?

Campbell: Use of data analytics and AI to monitor anti-corruption risks is an evolving field. Currently there are the early adopters, along with others poised to make the jump to real-time data analytics. Most other companies are watching how the others are doing while they review and analyse historical data on their Excel spreadsheets. Over time, data analytics and AI will become a ‘best practice’. In fact, the DOJ, in its ‘Evaluation of Corporate Compliance Programs’ document, notes that prosecutors, when evaluating the effectiveness of a compliance programme, will ask about metrics the company has collected and how those metrics have informed the company’s compliance programme. Although the DOJ document does not specifically mention AI, the DOJ is certainly looking at how companies collect

and analyse data in the compliance programme context. In my opinion, as data analytics and AI continue to evolve, companies will need to make a risk-based decision on whether to incorporate them into their programmes. As data analytics and

AI become more of a best practice, a decision not to incorporate these tools will most certainly be second-guessed by prosecutors and regulators; thus, there better be a good documented reason for not incorporating them. **RC**