



corporatecompliance.org

Compliance & Ethics PROFESSIONAL®

A PUBLICATION OF THE SOCIETY OF CORPORATE COMPLIANCE AND ETHICS

OCTOBER 2018



**Meet
Eric Feldman**
CCEP-I, CFE

Senior Vice President
Affiliated Monitors, Inc.
Los Angeles



FEATURES

- 18 **Meet Eric Feldman, CCEP-I, CFE**
an interview by **Gerry Zack**
- 26 **[CEU] Third-party due diligence: Compliance management applied to supply chains**
by **Flávia Melo**
Third-party due diligence falls under the scope of many major global anti-corruption laws, and automation, analysis, and prioritization can help you efficiently leverage your resources.
- 30 **[CEU] Five steps to manage data integrity risks**
by **Michael Yachnik**
Big data is an invaluable resource to organizations, but the surge of information requires compliance professionals to constantly validate, secure, and maintain the data being used.
- 34 **[CEU] Do you know how to audit a third party in the supply chain?**
by **Mónica Ramírez Chimal**
A collection of tips and strategies to effectively audit a third party.
- 38 **Compliance in Brazil: Truth or dare?**
by **Daniel Soares and Fernanda Freitas**
Brazil has fallen in rankings on Transparency International's Corruption Perceptions Index. But the tide is changing, and good news may be on the horizon.

DEPARTMENTS

- 8 **News**
- 11 **SCCE news**
- 16 **People on the move**
- 64 **SCCE congratulates newly certified designees**
- 69 **Takeaways**
- 70 **SCCE upcoming events**

COLUMNS

- 3 **Letter from the Incoming CEO**
by **Gerry Zack**
- 4 **Letter from the CEO**
by **Roy Snell**
- 25 **Empirically speaking**
by **Billy Hughes and Dian Zhang**
- 29 **Ethics vs. or AND compliance**
by **Steven Priest**
- 33 **Compliance, life, and everything else**
by **Thomas R. Fox**
- 37 **View from the front lines**
by **Meric Craig Bloch**
- 43 **Kaplan's Court**
by **Jeffrey M. Kaplan**
- 47 **The view from Nickel City**
by **Jennifer L. Kennedy**
- 51 **How to be a wildly effective compliance officer**
by **Kristy Grant-Hart**
- 68 **The last word**
by **Joe Murphy**



Compliance & Ethics Professional is printed with 100% soy-based, water-soluble inks on recycled paper, which includes 10% post-consumer waste. The remaining fiber comes from responsibly managed forests. The energy used to produce the paper is generated with Green-e® certified renewable energy. Certifications for the paper include Forest Stewardship Council (FSC), Sustainable Forestry Initiative (SFI), and Programme for the Endorsement of Forest Certification (PEFC).



Eric Feldman

CCEP-I, CFE

Senior Vice President
Affiliated Monitors, Inc.
Los Angeles

an interview by Gerry Zack

Meet Eric Feldman

Eric Feldman (efeldman@affiliatedmonitors.com) was interviewed in August 2018 by **Gerry Zack** (gerry.zack@corporatecompliance.org), Incoming CEO of SCCE & HCCA, based in Minneapolis, MN.

GZ: You spent many years in the federal government, in various Office of Inspector General roles, including serving as Inspector General (IG) for the National Reconnaissance Office (NRO). Tell us a bit about these experiences.

EF: I spent the entirety of my 32-year federal government career in the “oversight” of government programs, people, and contracting. Most of this was done from the perspective of enforcement. I started with the Government Accountability Office (GAO) as an auditor/program evaluator chasing down

the use of funds in support of military assistance to El Salvador and Honduras during the Central American conflicts in the 1980s. In fact, *The Washington Post* called our little group the “combat accountants for the GAO,” depicting us in cartoons as nerds with pocket protectors counting the numbers of mortar shells as the bullets were flying over our heads. This is where I learned that Compliance can be dangerous!

I eventually moved on to evaluating the effectiveness of intelligence programs around the world, and I was particularly drawn to the challenge of providing oversight of taxpayer dollars in highly sensitive programs with little transparency. The amount of fraud and abuse in these programs can be staggering. I served the bulk of my career at the

Defense Intelligence Agency (DIA) and the Central Intelligence Agency (CIA), where I served as the Deputy IG for Audit, responsible for a large team of auditors tasked with detecting and preventing fraud, waste, abuse, and mismanagement in our intelligence programs, including some of the government’s most sensitive covert action programs. Although the commitment to the mission and the security of our nation at these agencies was (and still is) admirable, compliance and ethical behavior were not always considered mission imperatives.

For a few years post-9/11, I worked directly for CIA leadership, helping to restructure the organization, then was appointed the IG of the NRO. For those who may not be familiar, the NRO is an Intelligence Community agency responsible for the research and development, launch, and operations of the nation’s spy satellites. The agency had previously been covert; its very existence used to be classified, until it illegally utilized funds appropriated for other purposes to secretly build a multimillion dollar headquarters building in suburban Virginia. This revelation, among other instances of financial and legal non-compliance, led to the establishment of an expanded IG function and my appointment.

GZ: What were some of the most important things you learned about compliance and ethics programs from your federal career?

Its very existence used to be classified, until it illegally utilized funds...to secretly build a multimillion dollar headquarters.

EF: Because the NRO executes a large proportion of its budget using contractors, our focus was on procurement fraud. Billions of dollars used to flow to hundreds of contractors and subcontractors with little independent oversight; my office quickly got busy conducting audits—and investigations. Many of our investigations resulted in referrals to the Department of Justice (DoJ) for prosecution of both individuals and companies. Over time, I became frustrated that we were investigating the same companies for similar types of fraud and other misconduct. Although IGs are very good at meeting their “Prime Directive” —conducting audits and investigations

and measuring success in prosecutions, convictions, and recoveries—the Inspector General Act of 1978 (as amended) also requires IGs to “prevent” fraud and remediate control deficiencies. In the contracting world, I quickly discovered that the only way to do this was to work with our contractors to help strengthen their compliance and ethics

programs and ethical cultures. We conducted best practices conferences for corporate compliance officers, conducted cross-training on procurement fraud red flags, and regularly met with the leadership of defense contractors to communicate the government’s expectations on ethics and compliance.

When my term as IG was over, the CIA asked me to serve as the senior advisor to the director for Procurement Integrity, where my role was to evaluate the seriousness with which our contractors were taking their ethics

and compliance responsibilities. This opened my eyes to the opportunity for companies to replicate the many ethics and compliance best practices that had been developed, and to correct the frequent mistakes that led to weak cultures and ultimately to ethical failures.

GZ: After many years in the federal IG community, you retired and entered the private sector. What is it that drew you to your current role as an advisor and monitor?

EF: After 32 years in federal government IG roles, I wasn't sure whether my skills and experience would cross over to much of anything. During my last year, I was giving

a presentation at the Association of Inspectors General Annual Conference in Newark, New Jersey, where I shared my observations of contractor best practices in ethics and compliance programs. Vin DiCianni, the founder and President of Affiliated Monitors, was in the audience.

We spoke after the presentation about the role of independent monitors across industries at all levels of government. It quickly became clear that my work as an independent IG—conducting assessments of compliance, controls, and employee conduct—was very similar to that of an independent monitor. The remedial approach that Affiliated Monitors takes reflects my own philosophy as an IG, which is that independence and collaboration do not have to be mutually exclusive. A monitor, like an IG, can work with the company to strengthen controls and improve the organization. The more traditional (and

less effective) approach that uses a “gotcha” mentality is unnecessary for success in either profession.

Likewise, I found that the proactive assessments of contractor ethics and compliance programs that I conducted for the NRO and CIA during my last few years were perfectly aligned with the proactive assessment work that Affiliated Monitors conducts to demonstrate due diligence *before* an ethical crisis. I was, frankly, relieved to find that my skills could be applied in this fairly specialized private sector role, and I have been thoroughly enjoying this work over the past seven years.

GZ: As an independent monitor, you often work with organizations after they've experienced a significant compliance matter stemming from a regulatory investigation. What are some of the things you most commonly hear these companies say in the context of “I wish we had just...” to avoid the problems they are in?

EF: That's a great question, and the answer differs depending on when in the process it is asked. Immediately after a significant compliance matter or an ethical failure that involves some kind of sanction from the government, senior leadership often looks at the issue as a “one-off,” a bad actor that violated their rules, and they wish they had found out about the behavior sooner. It isn't until after our assessment is conducted and we have talked to a large number of employees that the more subtle cultural factors emerge: misaligned performance incentives, mixed messages from

Independence
and collaboration
do not have
to be mutually
exclusive.

managers and supervisors, ineffective communication and training, etc. The most common thing that leaders say they wish they had done sooner was to talk more to their employees. Most of them recognize too late that they are out of touch on the true state of the corporate ethical culture, too insulated from the realities of perverse incentives and mixed messages, and way too trusting that mid-level managers and first-line supervisors are properly communicating the ethics message and holding their staffs accountable. Many of these managers also wish they had the insight that a third-party monitor can provide on the effectiveness of their ethics and compliance program *before* the ethical failure, so they could have done proactive troubleshooting.

GZ: Similarly, having a mandatory monitor is not something an organization looks forward to. What are the common characteristics that companies could have had in place to avoid the appointment of a monitor?

EF: The DoJ has clearly articulated its position in its Corporate Enforcement Policy that companies that self-report wrongdoing may be able to avoid having a monitor *if* they also implement an “effective” compliance program. The DoJ has identified the hallmarks of an effective compliance program as including the fostering of a culture of compliance, dedicating sufficient resources to compliance activities, and ensuring that the company has experienced compliance personnel who have appropriate access to the management and the board of directors. The program doesn’t have to be perfect in order to obtain favorable consideration from the DoJ, but the company has to be able to demonstrate that it has done its due diligence to create a strong ethical culture, properly communicate the rules, and hold people accountable.

I was very happy to see Deputy AG Rod Rosenstein talk about accountability at the American Bar Association National Institute on White Collar Crime in San Diego last March. He said that if companies want to be treated as victims, they need to act like victims by identifying, investigating, and disciplining the perpetrators. This message was pretty clear.

GZ: You also perform a lot of proactive services for organizations in connection with risk assessments, compliance and ethics programs, etc. What are the most common issues you find when you perform a compliance and ethics risk assessment?

EF: I really enjoy the proactive piece of our work, because it often allows us to help companies avoid the cost and misery of enforcement actions. We typically perform preventive monitoring and assessment efforts in pretty much the same manner we would approach a monitorship, including a baseline assessment of the ethics and compliance program and all of its elements, as well as an assessment of the corporate ethical culture. Unlike a consulting engagement, our approach is completely independent, although we often conduct the work under the auspices of attorney-client privilege so that counsel can decide whether to release the results. These kinds of reviews contain recommendations that create a road map for a company to strengthen its culture and improve its program.

The most common issues we find in proactive assessments involve a lack of consistent communication from leadership to the staff on ethical expectations. There is often a disconnect between the written core values, which almost always include words like “integrity,” “honesty,” and “commitment to ethical behavior,” and the messages that employees hear on a day-to-day basis about the need to sell products, meet financial

goals, and cut costs. Many senior leaders believe that email is an effective way to let employees know what their managers expect. However, employees take their cue from their immediate supervisors, who may be emphasizing financial results over ethics. We typically find that the “tone at the top” is not enough, and that ethics messaging gets stuck in a thermal layer affecting the “mood in the middle” and creating cynicism in the “buzz at the bottom.”

We also regularly find codes of conduct that are not written in a way that resonates with the staff or motivates them to action. If training on the code of conduct is strictly computer-based, staff tend to lose interest in it, especially if they see the exact same program more than once. Code of conduct training should be regularly updated and supplemented with live training and messaging that reinforces ethical behavior. We often find that companies are missing opportunities to use real-life investigative/disciplinary cases as “teachable” moments”; these resonate more and provide more effective training tools than obscure vignettes. Regardless of how good the ethics training is, perceptions of fairness and consistency in the enforcement of ethics rules can erode credibility, as we see in many of our assessments.

GZ: Affiliated Monitors serves clients in a variety of industries. Do you find many differences from one industry to another in terms of how compliance and ethics functions are structured and operated?

EF: Benchmarking best practices between companies and industries can be a useful practice to strengthen the effectiveness of ethics and compliance programs. Less important than the industry, however, is whether the individual corporate culture, or perhaps the geographic culture of a particular company office in a different region of the world, is appropriate for that best practice. For example, we have found that in some cultures, it is more critical to encourage employees to raise questions or concerns with their immediate managers as a way of protecting the company (and their own livelihood) than

it is to overpromote use of an anonymous reporting hotline.

Some industries that are highly regulated, such as financial services and healthcare, have a more traditional regulatory compliance-oriented culture with the general counsel function “owning” Compliance. Although many

would agree that an independent corporate ethics and compliance officer reporting to the CEO and the board is the “best practice,” industry differences and culture might require a more incremental evolution of the program to foster success.

GZ: One industry you are quite familiar with is government contracting, and your firm performs suspension and debarment monitoring in this sector. In making decisions about suspension or debarment, what have you seen as the key factors that resulted in the government’s decision to suspend or debar versus not?

Employees take their cue from their immediate supervisors, who may be emphasizing financial results over ethics.

EF: The standard for suspension and debarment in the federal government is very different from criminal prosecutions and settlements done by state or municipal governments, or even regulatory boards (such as medical or pharmacy boards). The standard used is whether the company has demonstrated that it is a “responsible party” or contractor as defined by the Federal Acquisition Regulation (FAR). Although there are FAR requirements that require very specific business ethics and compliance programs and practices, the responsible party determination can be quite subjective, offering the company an opportunity to demonstrate its due diligence and convince the suspending and debarring official (SDO) that it is a responsible contractor. Although each SDO has different views on the factors that make a contractor “responsible,” some of the most common factors include whether the company has held the employees involved in the misconduct accountable, whether the company has taken reasonable steps to remedy any inadequate controls, if the company has invested resources in an independent and properly resourced ethics and compliance function, and whether the company can demonstrate whether its ethics and compliance efforts are generally operating effectively.

GZ: One of the most common issues faced by compliance professionals who have been in the profession for many years is a sense that there’s nothing more to learn. But you’re a walking example of someone who continues to evolve and develop fresh ideas. What tips do you have for our most experienced readers for keeping that attitude and for techniques on staying fresh?

EF: This profession is constantly evolving, and I find it very hard to keep up. Fortunately, technology and social media have given us a plethora of resources where we can

read articles and blogs on virtually every compliance and ethics-related subject almost every day. In fact, the challenge is to avoid information overload, and choose those resources that are the most applicable to the compliance subjects or industries in which you are working. Personally, I set aside a certain amount of time in the evenings and on weekends to read articles circulated on LinkedIn, and I regularly watch a few of the widely distributed podcasts (such as those by our colleague, Tom Fox). Adam Turteltaub is one of the most prolific Twitter users I know, and although I can’t find the time to regularly tweet, I read the Compliance and Ethics examples and articles circulated by Adam on a daily basis. I also attend the SCCE Compliance & Ethics Institutes, in both the U.S. and Europe, in order to expand my knowledge.

I think I should add that I would be very skeptical of anyone in the compliance profession who thinks they have seen it all, since we deal with the full range of human behaviors and are constantly surprised by what people do (good and bad). In my experience, most of my colleagues in this profession share this viewpoint and regularly write and comment on innovative approaches and best practices. I think the growth of SCCE conferences around the world, not just in numbers (which has been amazing) but in the breadth and depth of content, demonstrates that our industry is constantly learning and growing.

GZ: What have you observed as the biggest changes to affect compliance and ethics programs in recent years?

EF: There is now more of a recognition that a “paper program” just isn’t going to be enough to satisfy the government. It used to be that a glossy code of conduct, some computer-based training, and an anonymous hotline were enough to convince the government that the company was doing

the right thing. Just like the profession itself, government regulators have become more sophisticated in their understanding of what makes an effective ethics and compliance program. There has also been more of an emphasis on a company's ethical culture, which, in my view, is a foundational internal control critical to whether an employee chooses to comply.

GZ: On that same note, what do you see as the biggest developments that will have an impact on compliance and ethics professionals over the next few years?

EF: I think that the proliferation of alternative resolutions to settlements, such as deferred prosecution and other types of settlement agreements, will offer an increasing number of countries a tremendous vehicle for requiring companies to create or strengthen their programs. We are already seeing this in places like the UK, France, Singapore, Germany, and Australia, all of

which have either passed or are considering legislation calling for deferred prosecution agreements when a company demonstrates its commitment to remediation and a strong ethics and compliance program. This will increase the demand for trained compliance professionals around the world. Affiliated Monitors recently submitted testimony to the UK House of Lords describing how the use of monitors in such agreements can help resource-strapped government agencies ensure that companies improve their compliance posture, thereby reducing recidivism. In the U.S., increased DoJ attention to ethics and compliance programs and corporate culture, and demands for remedial actions at the state and municipal enforcement levels, will likely drive an increased demand for—and reliance on—compliance and ethics professionals throughout the country.

GZ: Eric, thank you so much for sharing your experiences with our readers. *

Don't forget to earn your CCB CEUs for this issue

Complete the *Compliance & Ethics Professional* CEU quiz for the articles below from this issue:

- ▶ **Compliance in Brazil: Truth or dare?**
by Daniel Soares and Fernanda Freitas (page 38)
- ▶ **How to position compliance management for a more strategic role**
by Daniel Solo (page 48)
- ▶ **A survivor's guide to monitorships**
by Katherine A. Lemire (page 56)

To complete the quiz:

Visit corporatecompliance.org/quiz, log in with your username and password, select a quiz, and answer the questions. The online quiz is self-scoring and you will see your results immediately.

You may also fax or mail the completed quiz to CCB:

FAX: +1 952.988.0146

MAIL: Compliance Certification Board
6500 Barrie Road, Suite 250
Minneapolis, MN 55435, United States

Questions? Call CCB at +1 952.933.4977 or 888.277.4977

To receive 1.0 non-live Compliance Certification Board (CCB) CEU for the quiz, at least three questions must be answered correctly. Only the first attempt at each quiz will be accepted. *Compliance & Ethics*

Professional quizzes are valid for 12 months, beginning on the first day of the month of issue. Quizzes received after the expiration date indicated on the quiz will not be accepted.