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*Whitepaper*

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## **Beyond Compliance: Implementing Effective Whistleblower Hotline Reporting Systems**



## Introduction

“Hotline” reporting systems have been in use for more than two decades, and have proven an effective method for detecting workplace fraud and abuse. In response to the corporate disasters that were brought to light by whistleblowers, Congress included in the Sarbanes-Oxley of 2002 the requirement for a “hotline” reporting system to accept employee allegations of financial and accounting fraud. But the use of these reporting systems has spread rapidly into non-profits, colleges, universities, and K-12 school districts. The categories of reports taken through these hotlines includes not only accounting issues, but human resources, IT, bribery and acceptance of gifts, misuse of assets, environmental concerns and other compliance areas. Once viewed as a simple “tip line”, the modern hotline reporting system has been elevated to a comprehensive tool for managing an organization and reinforcing cultural ideals and the code of conduct.

## Best Practices for Whistleblower Hotline Reporting Systems

With the increased use of hotline reporting systems has come demand for more robust systems that support both use by reporters and the organizations that receive and resolve the reports. A portion of this demand is driven by legislation (reporters’ confidentiality and anonymity as defined in Sarbanes-Oxley), but much of it has emerged in the form of best practices that help organizations mitigate risk and enjoy the fullest protections of the Organizational Sentencing Guidelines. Regardless of whether an organization has (or is considering) an internal system or a third-party provider for handling whistle blower reporting, these practices provide a useful guide for functionality and performance.

Effective Communication of Ethics Policies and Programs	<ul style="list-style-type: none"> <li>- The reporting system reflects an organization’s commitment to ethical behavior through Web pages and printed materials made available to employees, customers, and vendors.</li> <li>- The reporting system reflects closely an organization’s potential risks and violations associated with its operation to help guide reporters and enable analysis of reporting activity.</li> <li>- In large organizations, the reporting system should reflect the potential risks and violations associated with individual business units.</li> </ul>
Confidential, Anonymous Stakeholder Report Intake	<ul style="list-style-type: none"> <li>- The reporting system ensures reporters’ confidentiality and anonymity, and is available to employees, customers, and vendors.</li> <li>- The reporting system is universally accessible 24x7x365 and offers secure reporting via the Web, telephone, fax, or mail.</li> <li>- The reporting system makes available highly trained interviewers to help reporters feel comfortable with the reporting process and provide complete information.</li> <li>- The reporting system is accessible in any language and reflects sensitivity to linguistic and cultural differences.</li> <li>- The reporting system facilitates follow-up by the reporter, enabling ongoing two-way communication while maintaining confidentiality and anonymity.</li> </ul>
Targeted Report Distribution and Oversight	<ul style="list-style-type: none"> <li>- The reporting system facilitates targeted distribution of reports to pre-defined individuals based on violation type, materiality level, business unit and geography.</li> <li>- The reporting system precludes from the distribution list anyone named in the report as well as their subordinates.</li> <li>- The reporting system immediately alerts appropriate individuals to new reports and follow-up feedback from reporters.</li> <li>- The system generates summary and trend reports for the audit committee and Board of Directors or Trustees for effective oversight.</li> </ul>
Assessment and Classification of Reports	<ul style="list-style-type: none"> <li>- The system facilitates review of reports to determine next steps, such as following up with the reporter for more details, closing a non-actionable report, or starting an investigation.</li> <li>- The system minimizes the impact of frivolous reports and delivers actionable data.</li> </ul>
Review, Management and Resolution of Reported Issues	<ul style="list-style-type: none"> <li>- The system facilitates the collection, management and retention of information concerning reported matters.</li> <li>- The system helps organize follow-up investigative activity and associated details through case management tools.</li> </ul>

Secure Retention of All Information	<ul style="list-style-type: none"><li>- The system maintains data security at all times and provides a repository for all report information that is retained in accordance with an organization's policies.</li><li>- The managing organization has strong policies for storing and handling sensitive data and the IT expertise to fully secure servers from internal and external attacks.</li><li>- The system generates an audit trail for all activities associated with each report.</li></ul>
Ethics Program Review and Refinement	<ul style="list-style-type: none"><li>- The system enables sensitive analysis of reporting activity and violations across the organization, with data broken down by business unit, divisions, and locations for targeted remedial activities.</li><li>- The system enables reporting of resolution status and action taken for each report, as well as for subsets of reports, based on violation type, materiality level, location, etc.</li></ul>

## Implementing an Effective Hotline Reporting System

As the functional requirements of hotline reporting systems have increased dramatically, so too has the investment in expertise, labor, and technology required to develop and run them. To address the guidelines outlined above, the reporting system must include elements such as a permanently manned call center with trained interviewers, a telephony system that facilitates toll-free international calling, an advanced web-based system for accepting reports from any location and enabling management around the world, and advanced networking structure to secure all data.

There are four key areas that an organization should explore when determining the design and scope of the hotline reporting system, and whether (or which aspects) to build or buy. These include:

- assessing operational expenses and management requirements of a hotline
- building trust in the system among employees
- managing risk and compliance over time
- affecting organizational change and improvement through the system

### Assessing Operational Expenses and Management Requirements of a Hotline

Building and maintaining a hotline reporting system that meets the demands of today's regulatory and business climate is obviously much more complex and resource-intensive than what was needed when the state-of-the-art was a toll-free phone number connected to a voice message box. Here are some specific questions to consider:

- How many employees and other stakeholders is the system serving, and how many reports should be expected? How many call center interviewers are needed to handle reports?
- To deploy a system that is universally available around the clock for employees and other stakeholders, do you need to consider one time zone or all twenty-four? How does that impact staffing of a call center and network monitoring? How does this impact the need for translating reports?
- How do you develop the technology infrastructure that facilitates confidentiality, anonymity, and data security without taking IT resources from mission-critical projects? Can you leverage the investment made in other areas of the business?
- How do you facilitate local management and investigation of reported issues to bring about resolution, while at the same time providing for oversight at the audit committee level? Will this be a manageable addition to workload? Are there choke points in the system preventing the rapid dissemination of reports and oversight data?
- How secure is the information contained in the reports? Are there weak links in the technology that introduce the risk of a system breach?

As with any non-core function, organizations should consider carefully what to build and what to outsource. As reporting systems become increasingly powerful and expensive to build, analysis of all available options becomes more important.

### Building Trust of the System among Employees

The perception of anonymity and trust in the hotline system is imperative when soliciting reports on ethical and illegal activity. According to former SEC Chairman Harvey Pitt, "It is important for employees to know and believe that the reporting process is truly anonymous." The culture that management works to establish and nurture plays an important role in employee trust, and the outreach the company pursues is highly indicative of the seriousness of the approach toward an "open door" culture. Many organizations operate help-line systems, which are designed to answer employees' questions about ethics, policies and compliance matters. However, extending those systems to handle whistleblower complaints brings challenges that may suppress reporting activity or increase the risk for the organization. These challenges include:

- Reporting to an internally controlled system may seem inherently non-anonymous and may diminish the system's use or prevent reporters from providing complete information.
- If reporters are required to record their voice on an automated system or speak to a coworker assigned to take reports, the "confidential and anonymous" nature of the report may be questioned.
- Systems that don't facilitate confidential and anonymous follow-up by the reporter may yield incomplete and unactionable information.

Any circumstance that reduces the use of the hotline reporting system diminishes its value as a tool to prevent fraud and abuse.

### Managing Risk and Compliance Over Time

The focus on preventing whistleblower retaliation in Sarbanes-Oxley, the Organizational Sentencing Guidelines, and other legislation on the books and in process has brought intense focus to the "confidential and anonymous" characteristics of whistleblower reporting. This in turn may increase risk for organizations that are managing the receipt of whistleblower reports internally. Pitt has noted that "any attempt to create a system internally exposes the company unnecessarily to liability for failing to meet the anonymous and confidentiality requirement [of Sarbanes-Oxley section 301]."

In the event that an internal conflict becomes a legal issue whether it has been reported or not, demonstrable availability of an anonymous system is an important factor in the reduction of liability. Employment and labor law attorneys Dudley Rochelle and David Goldman find that "the more emphasis the employer places on encouraging complaints to be brought to its attention, the better the employer's chances of showing that the employee's failure to complain was unreasonable." Businesses are expected not just to provide this service but to ensure that their employees are cognizant of and confident in its ability to protect their anonymity.

To be effective a hotline reporting system should not be static. As compliance requirements evolve over time and an organization grows and changes, it is essential that the reporting system evolve to meet new needs. This takes the form of adding risk categories to the system as new areas of the business emerge, adding locations, business units and report recipients as the

organization grows, and providing reports or capturing new data points from reporters as compliance requirements dictate.

### **Affecting Organizational Change and Improvement through the Hotline System**

Ensuring that reports delivered promptly to appropriate personnel is vital to resolving issues and minimizing potential damage. Having access to robust case management tools can reduce the time and labor required to resolve matters and should be considered an important element of the overall system.

In addition, the reporting system should provide access to highly customizable and flexible statistical reports and trend alerts related to hotline usage that allow organizations to follow the broader picture. These analytics offer opportunities for organizations to identify breakdowns of internal controls, isolate geographic or managerial issues, or identify larger systemic concerns. The resolution of each report is ultimately not enough to satisfy best business practice demands. For an organization to embrace these goals, they must have the tools to learn from mishaps and successfully prevent and deter future violations.

## **Building an Optimal System through Co-Sourcing**

Many organizations operate employee phone-based help lines for compliance and ethics questions and either extend that system or open a different phone-based system for whistleblower reporting. While they may be interested in moving toward a more comprehensive approach for whistleblower reporting due to the more demanding requirements, abandoning systems that are in place, working, well-known, and trusted throughout the workforce is not an option.

Co-sourcing with a reporting system vendor that can support a blended internal/third-party solution may be the most practical solution. In these situations, firms continue to accept calls and reports to internal help lines and hotlines, but offer the option of using the third-party system as an alternative. In addition, critical issues reported to internal systems that need to be assessed, investigated, and resolved may be migrated to the third-party system to make use of case management tools. Example situations where co-sourcing the reporting system may be beneficial include:

### **Many Reporting Systems and Hotlines**

Some organizations have several different phone lines and databases for taking various types of reports, leaving them with no common system that yields a view of reporting activity across the entire organization. This creates silos, yields ineffective oversight and increased work to manage the many systems. Organizations may deploy a third-party system to act as the unified database for all internal systems, taking advantage of the system's case management tools and analytical reporting for better management.

### **Mergers and Acquisitions**

Emotions often run high in these situations and integration of cultures and employees can take time and finesse. Employees in the acquired concern may not feel comfortable reporting to the new organization's internal system. The organization may choose to deploy a third-party system that offers the appearance of more objectivity and enables analysis of overall reporting activity and activity for each group separately.

## International Growth

Managing international operations is an intense challenge, and covering those business units with an internal reporting system may present tremendous hurdles, such as increased staffing due to time zones, sourcing translation work, understanding cultural nuances and facilitating international calling. The organization may choose to outsource the whistleblower reporting activities from international locations to a provider with worldwide experience while maintaining the internal system for domestic workers.

## Conclusion

Implementing a confidential and anonymous reporting system is a critical endeavor for organizations of all types and sizes that are committed to enacting stronger and more effective governance practices. The Association of Certified Fraud Examiners (ACFE) has described hotlines as the most effective method of detecting fraud in the workplace, and has found that organizations without an anonymous hotline suffer median losses from fraud more than twice of that found in organizations with an anonymous reporting mechanism in place. A successful hotline reporting system can yield other important benefits, including improved insight into organizational behavior, enhanced satisfaction among employees and other stakeholders and reduced financial, legal and reputation risk.

Every organization should analyze their inherent risk factors and operational requirements based on their size, scope and geographic reach. Keeping the best practices and considerations for achieving an effective hotline reporting system in mind, the organization can then define and deploy a solution that not only meets compliance requirements but supports the organization's ongoing health and growth.

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