

## Corporate Compliance Fall 2024 Syllabus

Fordham University School of Law  
Tuesday 6:00 pm – 8:50 pm

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### The Big Picture

Corporate Compliance is an introductory course in the rapidly growing field of corporate compliance. The course is intended to provide students with a sound foundational understanding of the legal, regulatory and risk management considerations that have driven business organizations to develop and enhance their internal programs for identifying and managing their "compliance risks". The course will examine compliance program requirements in a variety of industries with a particular focus on financial, but also including banking, social media, advertising, media and others.

### What You Will Learn

#### *The Theory*

- The corporate law roots of compliance programs; and
- The "carrots and sticks" that law enforcement officials and regulatory agencies have employed to encourage and compel business organizations to adopt compliance regimes, including the U.S. Sentencing Guidelines and Justice Department guidelines.

#### *The Practice*

- How to identify general compliance risks affecting entities in a number of industries and how compliance programs vary across industries, including financial services, banking, social media, advertising and media;
- An understanding of the legal and regulatory structures impacting compliance with respect to various products and industries, including but not limited to the Investment Company Act, the Investment Advisors Act, Dodd-Frank and banking regulations, the Foreign Corrupt Practices Act and anti-money laundering regulation;
- **How to effectively identify and communicate the risks to senior management;**
- How to draft integrated policies, procedures and internal controls to resolve and mitigate the risks;
- How to prepare a training module for internal constituents;
- How to develop independent testing and use management reporting mechanisms;

- The legal and regulatory considerations associated with conducting internal investigations;
- How to respond to external investigations by law enforcement and regulatory agencies; and
- The legal and ethical challenges associated with managing a corporate compliance program.

## **How You Will Be Evaluated**

The course will seek to mimic, as much as is possible in the classroom setting, the challenges of operating within a corporate compliance department. The goal is to evaluate the student on their progress in developing the skills necessary to provide senior management and other employees in the firm with actionable, problem solving tools to operate the business in a manner that complies with law and regulation. That is the day-to-day life of compliance professionals. As such:

### **Class Participation – 30%**

In seeking to mimic the life of a compliance professional students should not only show up for class, but be prepared to discuss the assigned material. The semester will be the most interesting and meaningful when everyone participates. Each student, as is true in a compliance department, brings their own unique life and professional experiences that makes them valuable.

### **Course Work Product – 35%**

Several times during the semester you will be asked to generate a memorandum, training module, policy or other written or oral work product that addresses a hypothetical provided to you or based on the reading materials. Sometimes the work product will be completed individually and other times you will be asked to work in small groups. References to those assignments appear on the particular date(s) in the syllabus. The specific instruction or hypothetical associated with the assignments are found on the last page of the syllabus.

A portion of our classroom time will be spent generating these assignments. Even in very small organizations that have only one compliance professional, the work of compliance is always collaborative. Compliance professionals are looking to drive solutions that allow the business to operate in a compliant manner, but with sufficient flexibility to generate revenue. That requires the ability to solicit input from both internal and external constituents before settling on a final result.

Therefore, we will devote class time to the preparation of the assignments with our classroom being a workshop to discuss issues, form working groups and begin to generate the content.

**For each class, please check the assignments to be prepared before class. ON THE DUE DATE OF AN OUT-OF-CLASS ASSIGNMENT, YOU ARE REQUIRED TO EMAIL THE ASSIGNMENT TO ME**

**BEFORE THE START OF THAT DAY'S CLASS. You should also complete the required reading for that class. THIS INCLUDES THE FIRST CLASS.**

Take Home Final Exam – **35%**

Students will be given a complicated hypothetical scenario involving a number of compliance issues. Students will be required to identify the compliance issues and risks, describe how the law and regulation we have covered relate to those issues and devise strategies for responding to and mitigating those issues and risks.

### **Absences**

Life happens. Please email me in advance if you need to be absent from a class for a valid reason. If you cannot complete the work product, if any, for a given week for a valid reason you will be expected to make it up for the next week.

### **Course Schedule and Reading Assignments**

Set forth below is the anticipated course schedule, required readings and summary of the assignments, all of which are subject to revision. I place a premium on current events as they help us learn from the past and influence the future. Therefore, I may send articles on relevant course materials throughout the semester.

Most of the required reading assignments can be found on the internet, Lexis and Westlaw or, if not, will be posted on Lawnet or emailed to the class.

I have tried to limit the required reading to “primary source material” and sometimes summaries or practical articles. This material, along with our work product, will be the primary basis for our in-class discussions.

### **Guest Experts**

Several times throughout the semester I will invite a Guest Expert to speak to the class. These individuals may include corporate executives, Chief Compliance Officers or other subject matter experts. They will join class and share their Compliance expertise with you in an interactive format. This is your opportunity to ask questions, start developing your network, and learn about the different ways in which Compliance affects different organizations and industries. I urge you to take advantage of the various subject matter experts.

Class	Topic	Assignment
<p><b>PLEASE NOTE: THE FIRST CLASS WILL BE HELD ON 9/3/24. WE WILL SCHEDULE A MAKEUP AT A LATER DATE FOR THE MISSED CLASS.</b></p>		
<p>Class 1  9/3/2024</p>	<p><b>Introduction to Compliance, Corporate Governance and Theories of the Firm</b></p> <ul style="list-style-type: none"> <li>a. Class Introductions*</li> <li>b. Syllabus</li> <li>c. What is Compliance?</li> <li>d. Applying the COSO Framework</li> <li>e. Theories of the Firm</li> <li>f. Corporate Governance</li> </ul>	<p>DE General Corp. Law; 8 Del C. §141 ¶ (a)&amp;(b)</p> <p>John Valesco, <u>The Fundamental Rights of the Shareholder</u>, 40 U.C. Davis L. Review 407 (2006);</p> <p>COSO: Compliance Risk Management: Applying the COSO ERM Framework (pgs. 1-5)  <a href="https://www.coso.org/Shared%20Documents/Compliance-Risk-Management-Applying-the-COSO-ERM-Framework.pdf">https://www.coso.org/Shared%20Documents/Compliance-Risk-Management-Applying-the-COSO-ERM-Framework.pdf</a></p> <p><a href="https://opportunity.businessroundtable.org/ourcommitment/">https://opportunity.businessroundtable.org/ourcommitment/</a></p> <p><i>Guth v. Loft</i> 5.2d 503 (Del 1939)</p> <p><i>Smith v. Van Gorkham</i>, 488 A.2d 858 (Del 1985)</p> <p><b>*Locate any current news article involving a corporation beprepared to explain how it relates to Compliance.</b></p>
<p>Class 2  9/10/2024</p>	<p><b>Basis of Corporate Liability and Compliance Mitigation</b></p> <ul style="list-style-type: none"> <li>a. Corporate Governance Theories (con't.)</li> <li>b. Basis of Corporate Liability &amp; Board Oversight - Corporate Liability</li> <li>c. Writing a Good Compliance Memo</li> </ul>	<p>WLKR Article (Prof. will post): Caremark, Inspection Demands, and Board Record-Keeping: Emerging Risks and Solutions for Oversight &amp; Duty-to-Monitor Claims</p> <p>Delaware Code: Title 8 Corporations; Ch. 1 General Corp. Law; Subchapter IV Directors and Officers  <a href="https://delcode.delaware.gov/title8/c001/sc04/index.html">https://delcode.delaware.gov/title8/c001/sc04/index.html</a></p> <p><i>Graham v. Allis-Chalmers Manufacturing Co.</i> 188 A.2d 125 (Del. 1963)</p> <p>Article: Why Applying Delaware Caremark Standard is Big Deal (Prof. will Post)</p> <p><b>Focus on...</b>  <i>In re Caremark Int'l. Inc. Derivative Litigation</i>, 698 A.2d 959 (Del Ch. 1966)  <i>Stone v. Ritter</i>, 911 A.2d 362 (Del. 2006)  <i>In re Citigroup Inc.</i>, 964 A.2d 106</p>

<p>Class 3 9/17/2024</p>	<p><b>Culture of Compliance</b></p> <ol style="list-style-type: none"> <li>a. The Story of James</li> <li>b. Creating a Culture of Compliance</li> <li>c. Key Elements of an Effective Compliance Program</li> <li>d. Memo critiques</li> </ol>	<p><a href="https://legal.thomsonreuters.com/content/dam/ewp-m/images/legal/en/graphics/a-culture-of-compliance-infographic.png">https://legal.thomsonreuters.com/content/dam/ewp-m/images/legal/en/graphics/a-culture-of-compliance-infographic.png</a></p> <p><a href="https://www.diligent.com/insights/grc/culture-of-compliance/">https://www.diligent.com/insights/grc/culture-of-compliance/</a></p> <p>Speech by Lori A. Richards (Director, Office of Compliance Inspections and Examinations U.S. Securities and Exchange Commission), <i>The Culture of Compliance</i> (April 23, 2003)</p> <p>Speech by Brent Snyder (Deputy Assistant Attorney General, Antitrust Division of the U.S. Department of Justice), <i>Compliance is a Culture, Not Just a Policy</i> (September 9, 2014)</p> <p>SEC Commissioner Cynthia Glassman, <i>Sarbanes Oxley and the Idea of "Good" Governance</i>, <u>Speech to American Society of Corporate Secretaries</u> (September 27, 2002)</p>
<p>Class 4 9/24/2024</p>	<p>Foreign Corrupt Practices Act: Front and Center in a Changing World</p>	<p><i>Practical Law: The Foreign Corrupt Practices Act: Overview</i>, by Christopher Cook and Kevin M. Comeau</p> <p>SEC Investor Bulletin: The Foreign Corrupt Practices Act – Prohibition of the Payment of Bribes to Foreign Officials</p>
<p>Class 5 10/1/2024</p>	<p>Insider Trading and Documentation, Training, Testing &amp; Recordkeeping</p> <ol style="list-style-type: none"> <li>1. What is insider trading?</li> <li>2. How have regulators expanded the definition?</li> </ol> <p><b>Assignment 1 DUE</b></p>	<p><a href="https://corpgov.law.harvard.edu/2020/02/13/report-on-insider-trading-by-the-bharara-task-force/">https://corpgov.law.harvard.edu/2020/02/13/report-on-insider-trading-by-the-bharara-task-force/</a></p> <p>Chapter 12A – Insider Trading (Post)</p> <p>Matt Levine – Bloomberg Businessweek Article (Post)</p> <p>Paul Weiss Blaszczak Rehearing Article</p>
<p>Class 6 10/8/2024</p>	<p><b>Criminal Prosecution of a Corporation</b></p>	<p><b>U.S. Department of Justice Criminal Division Evaluation of Corporate Compliance Programs (Updated June 2020)</b></p> <p><a href="https://www.justice.gov/criminal-fraud/page/file/937501/download">https://www.justice.gov/criminal-fraud/page/file/937501/download</a></p> <p><a href="https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-gives-keynote-address-abas-36th-national-institute">https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-gives-keynote-address-abas-36th-national-institute</a></p> <p><b>Deputy Attorney General Rod J. Rosenstein Delivers Remarks at the Amer. Conf. Institute's 35th Conf. on the FCPA (skim)</b></p> <p><a href="https://www.justice.gov/opa/speech/deputy-attorney-general-rod-j-rosenstein-delivers-remarks-american-conference-institute-0">https://www.justice.gov/opa/speech/deputy-attorney-general-rod-j-rosenstein-delivers-remarks-american-conference-institute-0</a></p>

		<b>Memorandum from Sally Quinlan Yates, Deputy Attorney General, to Heads of Department Components and U.S. Attorneys regarding Individual Accountability for Corporate Wrongdoing (September 2015)</b>
Class 7 10/15/2024	Anti-Money Laundering Compliance	<p>31 USC 5318 (h) - Patriot Act Section 352</p> <p>31 USC 5312 (a)(2) - Patriot Act Definition of "Financial Institution"</p> <p>67 Federal Register No. 82 p. 21110 (April 29, 2002) - FINRA Rule 3310 - Anti-Money Laundering Compliance Program</p> <p>82 Federal Register No 187 p. 45182 (September 28, 2017)</p> <p>Broker-Dealer Anti-Money Laundering Program; Overview (Practical Law - Westlaw)</p> <p><i>Anti-Money Laundering: An Often-Overlooked Cornerstone of Effective Compliance</i>, Speech, Kevin W. Goodman, National Associate Director, Broker-Dealer Examination Program, Office of Compliance Inspections and Examinations, Securities Industry and Financial markets Association, June 18, 2015</p>
Class 8 10/22/2024	Liability of Compliance Officers	<p>Good summaries:</p> <p><a href="https://www.natlawreview.com/article/sec-s-cco-guidance-month">https://www.natlawreview.com/article/sec-s-cco-guidance-month</a></p> <p><a href="https://www.lawjournalnewsletters.com/2019/08/01/compliance-officers-recent-regulatory-guidance-and-enforcement-actions-and-mitigating-the-risk-of-personal-liability/?slreturn=20210217093836">https://www.lawjournalnewsletters.com/2019/08/01/compliance-officers-recent-regulatory-guidance-and-enforcement-actions-and-mitigating-the-risk-of-personal-liability/?slreturn=20210217093836</a></p> <p>Including international references:</p> <p><a href="https://www.stepto.com/en/news-publications/fincen-penalizes-compliance-officer-for-anti-money-laundering-failures.html">https://www.stepto.com/en/news-publications/fincen-penalizes-compliance-officer-for-anti-money-laundering-failures.html</a></p> <p><a href="https://www.law.com/corpcounsel/2020/07/14/criminal-liability-risks-for-compliance-officers-a-multi-jurisdictional-perspective-part-i/">https://www.law.com/corpcounsel/2020/07/14/criminal-liability-risks-for-compliance-officers-a-multi-jurisdictional-perspective-part-i/</a></p>
Class 9 10/29/2024	Corporate Compliance Programs: Components and Structure w/ Cybersecurity Focus	U.S. Securities and Exchange Commission, <i>Division of Investment Management</i> , IM Guidance Update, April 2015, No. 2015-02 and the materials linked in the footnotes.

	<p><b>Guest Speaker:</b> <b>Ed Delk</b></p>	<p>FFIEC Cybersecurity Assessment Tool, May 2017</p> <p>Have a look at the services offered by CSI, <a href="http://www.csiweb.com/industries-we-serve/financial-institutions/regulatory-compliance/services/cybersecurity-risk-assessment">http://www.csiweb.com/industries-we-serve/financial-institutions/regulatory-compliance/services/cybersecurity-risk-assessment</a></p> <p>NY State Dept. of Financial Services' Cybersecurity Requirements for Financial Services Companies (23 NYCRR 500)</p> <p>Dept. of Health &amp; Human Services: Top 10 Tips for Cybersecurity in Health Care</p> <p>Out-of-</p>
<p>Class 10 10/12/2024</p>	<p>Internal Investigations, Whistleblowing, Customer Complaints, &amp; Audits</p>	<p><i>Upjohn Co. v United States</i>, 449 U.S. 383, 101 S. Ct. 677 (1981)</p> <p><i>In re Kellogg Brown &amp; Root, Inc.</i>, 756 F. 3d 754 (D.C. Cir, 2014)</p> <p><i>In the Matter of Blackrock Advisors, LLC</i>, SEC Administrative Proceeding, Release No. 4065, File No. 3-16501 (April 20, 2015)</p> <p><i>In the Matter of SFX Financial Advisory Management Enterprises, Inc.</i>, SEC Administrative Proceeding, Release No. 4116, File No. 3-16591 (June 15, 2015)</p> <p>Commissioner Luis A. Aguilar, <i>The Role of Chief Compliance Officers Must Be Supported</i> (June 29, 2015)</p>
<p><b>NO CLASS – NOVEMBER 5 PRESIDENTIAL ELECTIONS</b></p>		
<p>Class 11 11/19/2024</p>	<p>Start Up, and Social Media Compliance</p>	<p><i>Abrams v. U.S.</i> 40 S. Ct. 17 – with an emphasis on Justice Holmes' dissent</p> <p>Kara Swisher, <i>Introducing the Internet Bill of Rights</i>, The New York Times, October 4, 2018 <a href="https://www.nytimes.com/2018/10/04/opinion/ro-khanna-internet-bill-of-rights.html">https://www.nytimes.com/2018/10/04/opinion/ro-khanna-internet-bill-of-rights.html</a></p> <p>Evan Osnos, <i>Can Mark Zuckerberg Fix Facebook Before it Breaks Democracy</i>, The New Yorker, September 17, 2018 – <a href="https://www.newyorker.com/magazine/2018/09/17/can-mark-zuckerberg-fix-facebook-before-it-breaks-democracy">https://www.newyorker.com/magazine/2018/09/17/can-mark-zuckerberg-fix-facebook-before-it-breaks-democracy</a></p> <p><a href="https://www.ftc.gov/news-events/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-restrictions">https://www.ftc.gov/news-events/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-restrictions</a></p>

<p>Class 12 11/26/2024</p>	<p>Focus on Privacy: A. GDPR / CCPA Data Privacy B. Compliance Officer Roundtable</p>	<p>1) Data Privacy Issues 2021: <a href="https://www.cpomagazine.com/data-privacy/data-privacy-top-considerations-for-2021/">https://www.cpomagazine.com/data-privacy/data-privacy-top-considerations-for-2021/</a></p> <p>2) IAPP Summary of Schrems II: <a href="https://iapp.org/news/a/the-schrems-ii-decision-eu-us-data-transfers-in-question/">https://iapp.org/news/a/the-schrems-ii-decision-eu-us-data-transfers-in-question/</a></p> <p>3) Biden and Privacy Shield Talks: <a href="https://iapp.org/news/a/biden-appoints-chris-hoff-to-oversee-privacy-shield-talks/">https://iapp.org/news/a/biden-appoints-chris-hoff-to-oversee-privacy-shield-talks/</a></p> <p>4) Practical Law CCPA-GDPR Comparison Chart: <a href="https://iapp.org/media/pdf/resource_center/CCPA_GDPR_Chart_PracticalLaw_2019.pdf">https://iapp.org/media/pdf/resource_center/CCPA_GDPR_Chart_PracticalLaw_2019.pdf</a></p> <p>5) First CCPA case: <a href="https://www.natlawreview.com/article/first-ccpa-settlement-reached-hanna-andersson-case">https://www.natlawreview.com/article/first-ccpa-settlement-reached-hanna-andersson-case</a></p> <p>6) GDC Prepare for NY Data Privacy Law: <a href="https://www.gibsondunn.com/prepare-for-ny-data-privacy-law-to-catch-up-to-calif/">https://www.gibsondunn.com/prepare-for-ny-data-privacy-law-to-catch-up-to-calif/</a></p>
<p>Class 13 TBD</p>	<p>TBD</p>	

**TAKE HOME FINAL EXAM – EXAM WINDOW DECEMBER 4<sup>th</sup> @ 9 AM TO DECEMBER 18<sup>th</sup> @ 9 AM**

**Assignment #1**

You are the General Counsel of a newly formed investment management firm. Your CEO comes to you and tells you that he has made an investment in a start-up company and given a seat on its Board. He has asks you for a memorandum outlining any issues he should be concerned with if he takes the Board seat. Draft a two-page memorandum.

**Assignment #2**

Group presentation where your group will present on a specific topic. The topic choices will be discussed and assigned in class.