A Program Evaluation on the Viability of a Foreign Corrupt Practices Act (FCPA) Program Implemented in a Multinational Organization in Corporate America

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Dedication

I dedicate this thesis, along with the fortitude and wisdom that it took to reach this milestone, this accomplishment, to the exemplary life of my grandmother, the late Justine C. White.

Ubuntu—I am because you are!

May you rest in peace. Your legacy WILL live on!
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Abstract

The Foreign Corrupt Practices Act of 1977 (FCPA) is legislation enacted by the government of the United States of America (US), criminalizing the bribery of foreign officials by any individual or company with a US business concern. FCPA violations have resulted in many large corporations facing criminal and civil penalties and fines in excess of $2 billion, collectively.

In response, companies are seeking to implement global FCPA compliance programs aimed at training and educating employees and third party business partners on the requirements of remaining in compliance with the provisions of the FCPA. The intent is to enact a change of behavior toward more ethical business transactions, void of bribery. An FCPA program also seeks to identify and terminate relationships with third parties that pose heightened FCPA risk/exposure to the organization. To date, there is little empirical evidence supporting the effectiveness of existing/implemented FCPA programs within corporate America.

Using a qualitative approach, this program evaluation study assessed the viability of an FCPA program in corporate America. The theoretical framework was based on John Kotter’s eight-step approach to organizational change as the platform for effective program implementation. The FCPA program was also evaluated against a framework for designing effective ethics/FCPA programs devised by the Association of Certified Fraud Examiners and The Network. This study employed an outcome-summative approach to program evaluation, to accumulate and report the results of the viability of the program under evaluation.

The findings show that the FCPA program subject to this research can be used as a viable model for organizations implementing similar programs, after some additions to the program to align with the effective organizational change model by Kotter and also by adding resistance
management and evaluation to the program implementation strategy in addition to the steps outlined by the Kotter model.

*Keywords:* viable FCPA program, program viability, anti-bribery, program evaluation, Kotter
Chapter One

Problem Statement

Bribery and corruption are global phenomena that persistently plague the United States of America (US) and the international marketplace (Olsen, 2010). Gray and Kaufmann (1988) report that corruption is one of the single largest impediments to economic growth and development across the world. Cleveland, Favo, Frecka, and Owens (2009) further emphasize that corruption, of which bribery is a key component, is “a particularly insidious and unethical global problem” (p. 199), describing it as an age-old, long-standing issue, massive in its scale and reach, and adversely affecting economic development.

Stemming from the discovery of corporate corruption during the Watergate investigations in the US in the 1970s, followed by an in-depth review of the widespread practice of bribery of foreign officials (Kaikati, Sullivan, Virgo, Carr & Virgo, 2000; Marceau, 2007), the US Foreign Corrupt Practices Act of 1977 (FCPA) was enacted with the intent of combating corruption including bribery. The FCPA consists of two primary tenets: accounting and recordkeeping, and illicit payments (Thomas, 2010). First, the FCPA states that it is an illegal, criminal offense to bribe a foreign official (Cleveland et al., 2009). Specifically, all companies with a US business concern are prohibited from making payments deemed to be of a corrupt nature, for the purpose of obtaining or retaining business (Cohen, Holland, & Wolf, 2008). Under the FCPA legislation, bribes are not only limited to currency, but encompass anything considered to be of value (US Department of Justice, 2011). Under another component of the Act, the FCPA mandates adequate, specific recordkeeping and internal controls by US companies (Cleveland et al., 2009). The provisions require the accurate maintenance of accounting records under the theory that companies engaging in the payment of bribes do not record these illicit payments as bribes in
their accounting systems (Brodsky, Greenburg, & Kelly-Najah, 2008). The lack of accurate accounting records makes it difficult to identify bribery payments occurring within an organization. Thus, the maintenance of appropriate accounting records, theoretically, should render the detection of bribe payments easier, if they exist. The US Department of Justice (DOJ), along with the Securities and Exchange Commission (SEC), investigates and prosecutes FCPA violations (US Department of Justice, 2011).

An integral aspect of the FCPA is the definition of a foreign official. As McLaughlin (1978) connotes in his article “The Criminalization of Questionable Foreign Payments by Corporations: A Comparative Legal Systems Analysis,” “the statute defines ‘foreign official’ as any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of such government or department, agency, or instrumentality” (p. 1073). The term foreign official does not include employees serving in ministerial or clerical capacities (McLaughlin, 1978).

The FCPA placed significant burden and competitive disadvantage on US businesses in the international marketplace (Baker, 2010; Dworsky, 2009; Olsen, 2010). Bribes engulfed the social, cultural, and business fabric of many foreign countries, and as a result of bribe payments, many organizations earned high revenue contracts for large economic development projects in many of the developing nations throughout the world (Rose-Ackerman, 1999). The FCPA rendered these bribe payments by US corporations illegal, making it difficult for US companies to earn business simply based on competitive prices and quality when other companies were offering incentives through money (i.e. bribes) (Baker, 2010).

Despite the vigor with which the DOJ and SEC have pursued large settlements from companies violating the provisions of the FCPA (Brodsky et al., 2008), US and global
economies continue to be marred by the unscrupulous act of bribery and the resulting criminal, civil, monetary, and other adverse ramifications. Bribery directly and severely threatens the financial health of companies, the vast number of stakeholders within the company, and societies at large (Olsen, 2010). Powpaka (2002) notes that bribery negatively affects quality and price, and disrupts the normal course of business.

One of several US corporations convicted of bribery, the company that is the subject of this research faced both criminal and civil infractions for violations of the FCPA. This multi-billion dollar corporation was a multinational conglomerate headquartered in Princeton, NJ. The company operated in three main industries (White, 2012a):

- Personal and asset security: this branch of the company offered security and alarm services to commercial businesses and private homeowners;
- Flow control: provided valves for the control of oil and water resources, and also supplied thermal heating products and equipment for the construction sector; and
- Fire protection: included the provision of fire extinguishers, sprinklers, firefighter equipment and other fire protection products.

To prevent further violations of the FCPA and the related consequences, the company instituted a global FCPA risk assessment and training program in 2009 to educate employees on the tenets of the Act, with the intention of reducing instances of corruption and costly violations. To date, the program has not been formally evaluated to ascertain the effectiveness of its design in meeting the program’s objectives and industry standards.

Significance of the Problem

A popular and factual tenet of the business world is that companies exist to maximize shareholder wealth (Gitman & Zutter, 2012; Martin, Petty, & Wallace, 2009). Martin et al.
(2009) expound on the responsibility of an organization, stating that management’s role is to act in the best interest of stakeholders, beyond solely the shareholders. This concept is referred to as Corporate Social Responsibility (CSR) and encourages firms to “go beyond their statutory obligation to comply with the law and voluntarily take steps to improve the quality of life of their employees and their families, the local community, and society at large” (Martin et al., 2009, p. 110). Martin et al. (2009) integrate the concept of shareholder wealth maximization with corporate social responsibility, terming it Value(s)-Based Management.

Considering the implications of Value(s)-Based Management, anything then that causes a company to be the subject of investigations and prosecution and results in significant monetary losses can be constituted as actions contrary to the best interest of a company’s stakeholders (Martin & Petty, 2000). An unethical practice such as bribery is one such act that causes companies to be subjected to circumstances that directly impact profitability and cash flow.

Until 2007, the US DOJ’s prosecutions of bribery had been relatively few with fines that were relatively low (Cleveland et al., 2009; Darrough, 2010). Marceau (2007) described the government’s FCPA enforcement action as flaccid up until the 1990s, with increased activity in the late 2000s when the DOJ and SEC commenced more frequent prosecutions and the levying of enormous fines. In 1995, Lockheed paid what was then the largest fine administered under the FCPA: $21.8 million in criminal penalties and an additional $3 million in civil fines (Kaikati et al., 2000). Lockheed did not have an FCPA compliance program in place at the time.

Then came the heavy fines and aggressive enforcement of the FCPA provisions by the DOJ and the SEC in what many consider to be a landmark case: Siemens (Darrough, 2010). In

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1 Stakeholders not only encompass shareholders of an organization, but also include employees, vendors, the community and any other parties that have a stake in the company.
2009, the media reported the $1.34 billion fine to be paid by Siemens for bribery (Darrough, 2010). Siemens also did not have an FCPA compliance program in place at the time.

Continuing its aggressive FCPA investigations and enforcement action, in 2006, the SEC alleged that subsidiaries of the organization subject to this research were involved in a number of FCPA violations internationally (Fishman & Young, 2006). The allegations claimed that the company’s subsidiaries in a South American and an Asian country made illegal payments in the form of bribes (Goldstein, 2007). The company paid $50 million to the SEC in civil penalties (Goldstein, 2007) and in 2012 settled with the DOJ for approximately $26 million (White, 2012b). The history of fines paid to the DOJ and the SEC by other companies and the millions paid by the company in this research underscore the importance of eliminating bribery in business transactions. Goldstein (2007) further notes that in the complaints against the company by the SEC and DOJ, the organization was criticized for possessing knowledge of the FCPA violations but taking no steps to implement a program to enforce FCPA compliance. Implementing a program that effectively educates and trains employees on how to remain compliant with FCPA requirements can minimize costly FCPA violations (Huisiian, 2009).

To this end, the company that is the subject of this research implemented an FCPA risk assessment and training program:² a global, organization-wide risk assessment, training, and education initiative addressing FCPA compliance (White, 2009a). The FCPA program not only served as a training tool on FCPA compliance rooted in regulatory requirements, but it was also leveraged by company management as an organizational change instrument intended to effect more ethical business transactions and decision-making void of bribery (White, 2009a). This

² This document uses the terms “FCPA risk assessment and training program” and “FCPA program” interchangeably.
study addressed the viability of the FCPA risk assessment and training program’s design and implementation.

**Organization of this Thesis**

As shown, Chapter One of this thesis describes the problem of practice and the significance of the problem to society and companies in corporate America. Further, it provides justification for the need for this study. This section is followed by a list of key terms used throughout this study and the definition of those key terms in the context of this thesis. Chapter One then continues with a detailed description of the theoretical framework used to guide this investigation in answering the research question.

Chapter Two presents the literature review, which provides an exploration and synthesis of the relevant body of knowledge in the existing literature, on the topic being explored. The research question to be answered by this study is also presented in Chapter Two.

In the third chapter, the research design is described, detailing the methodology used in conducting this study. Discussions on the validity and credibility follow the methodology.

Chapter Four presents the findings arising from this research under the eight themes/steps from the Kotter (1995) model. Chapter Five follows, discussing the results of this study in relation to the theoretical framework and relevant literature, and it also includes recommendations, future research, limitations of this study, and a conclusion. The reference section and appendices follow Chapter Five and conclude this thesis.

**Definition of Key Terms**

*Business sponsor:* a unique term used by the company under investigation to describe employees that are in charge of managing business partners that engage in business transactions with the company.
Corruption Perception Index (CPI): a score assigned to countries based on the perceived corruption that exists within the particular country/economy. This is an assessment made by Transparency International (Transparency International, 2011) and is updated annually.

Facilitating Payments: “Facilitating Payments are small payments of cash or the provision of a small gift to a Non-U.S. Government Official for the sole purpose of expediting or securing the performance of a routine governmental action by that Non-U.S. Government Official, where the Non-U.S. Government Official does not have the discretion to deny the performance of such action” (White, 2010b, p. 60).

Theoretical Framework

Introduction. The theoretical framework for this thesis was grounded in the concept of companies successfully effecting organizational change when implementing FCPA programs. Consequentially, the study employed Kotter’s (1995) eight-step process of effective change leadership and management. The relevance and plausibility of Kotter’s (1995) theory was examined in parallel with Lewin’s (1947) theory of organizational change through his three-step model. Lewin’s (1947) model served as the seminal and grounding research on organizational change theory.

Kotter’s (1995) model, an expansion of Lewin’s (1947) three-step model, provided the theoretical and practical objectives that can be employed by organizations and are necessary in implementing effective change. Within this study, Kotter’s (1995) model provided the practical, detailed application needed to occur within Lewin’s (1947) general framework, in order for change to be successful. The result was a theoretical framework based on a more recent theory of change (Kotter, 1995), grounded in original, seminal research (Lewin, 1947) on effective change implementation.
Kurt Lewin, a social science theorist lauded as one of the founding fathers of organizational change and development theory, proposed the popular three-step, ‘unfreeze-change-refreeze’ change theory as an approach to organizational change implementation (Lewin, 1947). Though Lewin’s (1947) change theory has garnered significant criticism, Edgar Schein (1988) wrote:

There is little question that the intellectual father of contemporary theories of applied behavioural science, action research and planned change is Kurt Lewin. His seminal work on leadership style and the experiments on planned change which took place in World War II in an effort to change consumer behaviour launched a whole generation of research in group dynamics and the implementation of change programs. (p. 239)

Under the three-step model, Lewin (1947) noted that any change within an organization must begin by creating disequilibrium of the status quo; next, enacting the desired change; and then reinforcing, sustaining, and institutionalizing the implemented change. Several theorists have expanded Lewin’s (1947) model, but its basic tenets have remained steadfast.

In his approach, John Kotter, a modern exemplar of effective change research, proposes eight steps to implementing effective, top-down change within organizations of varying sizes. Kotter’s (1995) approach offers strategic steps that can be employed under the basic three-phase foundation set by Lewin (1947).

Figure 1 was devised by this author as a depiction of Lewin’s (1947) and Kotter’s (1995) theories.
Unfreezing. Lewin’s (1947) research noted the fact that many companies are deeply rooted in organizational culture. That is, companies and their employees have established a set of...
standards and ways of doing things, and these norms become learned and widely practiced throughout the organization. Individuals, and companies as a whole, have therefore become accustomed to these set ways of doing things and these norms become engrained in the social and business fabric of the company (Lewin, 1947). Lewin (1947) observed that it is therefore difficult to change what he terms as the quasi-stationary equilibrium of a firm. But in order to create change, this equilibrium must be overhauled (Lewin, 1947). This upheaval of the status quo constitutes the unfreezing phase of Lewin’s (1947) change theory.

To bring about change within an organization, disequilibrium must occur, uprooting the current habits and status quo of the company and implementing positive drivers that empower people to gravitate toward the required change (Lewin, 1947). The recipients of change must experience survival anxiety—being able to connect the change to something cared about, and therefore believing that if the change is not implemented, that unfavorable consequences will occur (Schein, 2004). As Burnes (2004) explicates, “those concerned have to feel safe from loss and humiliation before they can accept the new information and reject old behaviours” (p. 985).

Integral to Lewin’s (1947) work is the changing of group level dynamics as opposed to individual behaviors. Individuals usually succumb to group pressures; hence changing individual behavior would not institute the desired organizational change (Burnes, 2004; Schein, 1988).

Integrating Kotter’s (1995) eight-step process, once disequilibrium has been created through the unfreezing phase of change implementation, the organization will need to (1) create a sense of urgency to the situation; (2) form a guiding coalition; and (3) create a vision for the desired change.

**Creating a sense of urgency.** Kotter (1995) suggests that an early task is to create a sense and a need to bring about the necessary change urgently, efficiently, and effectively. Kotter
(1995) writes that management typically looks at a necessary change in the face of crises or opportunities. He further explains that numerous individuals affected by change do not simply buy-in to change but require motivation to do so or else the change will not progress. He notes that it is often difficult to drive individuals out of their norms and comfort zone (Kotter, 1995) toward the critical change that is required, which reiterates the need for managers to focus on this phase of the change progress and create the sense of urgency required to enact the change.

Kotter’s (1995) observations showed that over 50% of companies have failed in the first phase. This phase of the change process is effective/functioning “when 75% of a company’s management is honestly convinced that business-as-usual is totally unacceptable” (Kotter, 1995, p. 62).

**Form a guiding coalition.** Under this step, Kotter (1995) emphasizes the need for a dedicated, strong, and influential team of leaders to institute the change within the organization. Not only should the head of the organization adopt and support the change, but he or she should be involved in the process along with several other organizational leaders, both from senior management and other ranks (Kotter, 1995).

**Create a vision.** This involves determining the state of the organization after the change and developing the strategy to be employed in instituting the change. It involves envisioning the future state of the organization: what it will represent and how things will be different after the change implementation (Kotter, 1995).

**Moving.** This phase of Lewin’s (1947) change theory pertains to the actual implementation of the desired change. The moving phase constitutes a shift from the former, undesirable behaviors to the adoption of the new behaviors, company-wide, that the change agents aspire to institutionalize and make permanent (this leads to the refreezing stage described
later) (Lewin, 1947). Adopting and relating Kotter’s (1995) model, this phase of the change implementation involves (1) communicating the vision; (2) enabling action and removing obstacles; and (3) generating short-term wins.

**Communicating the vision.** Various modes of communication are utilized within an organization to disseminate information about the desired change and the future state of the company once the change has been implemented (Kotter, 1995). Effective, organization-wide communication, at all levels, is essential during this phase of the change implementation process (Kotter, 1995). This phase goes beyond simple e-mail communication to employees and other stakeholders affected by the change process, and delves into company executives and change agents displaying model behavior of the change. A support network should also be available within the organization to ensure the effective implementation of the intended change (Kotter, 1995).

**Enabling action/removing obstacles.** This step moves beyond the communication phase and involves actually implementing the desired change into the everyday decisions and actions of stakeholders (Kotter, 1995). It also ensures the availability of mechanisms to support the change recipients in performing effectively and appropriately within the context of the change (Kotter, 1995).

**Generating short-term wins.** Lewin’s (1947) theory of change suggests that often times change recipients slip back into the old, undesired habits. Under this step, Kotter (1995) emphasizes the promotion of any immediate benefits of the desired change within the organization to demonstrate to stakeholders the practical benefits of the change (Kotter, 1995). This further relates to Lewin’s (1947) survival anxiety under step one of the three-step change model. Using short-term wins, you essentially eliminate that survival anxiety complex,
demonstrating to the change recipients that the desired change eliminates the negative consequences of old behaviors.

**Refreezing.** The final phase of Lewin’s (1947) theory involves creating an environment of permanency for the new behaviors instituted by the change efforts. Under this phase, the theory is that change recipients, the organization’s stakeholders affected by the change, will adopt the new habits taught and will dispense of the old, undesired habits/behavior permanently. Beer (1980) explicates that this is “where social system components become congruent with, and thus support, intended change in one or more components” (p. 64). This aligns with steps seven and eight of Kotter’s (1995) model, which promotes (1) holding the gains and building on change, and (2) anchoring changes in the culture of the organization.

**Holding the gains/building on change.** This is a continuous process of ensuring that the change fits the dynamics of the organization (Kotter, 1995). Kotter (1995) argues that change agents often prematurely declare the organizational change to be victorious. He further explains that the change needs to be constantly adapted based on internal and external pressures in order to be sustainable in the long-term (Kotter, 1995).

**Anchor changes in the culture.** Reverting to the unfreezing phase, the change process proposed by Lewin (1947) sought to unfreeze the organizational culture in order for stakeholders to unlearn the negative behaviors that were prominent. Subsequently, with the new behaviors instituted, this phase of Kotter’s (1995) model reiterates engraining the new behaviors into the organizational culture so that the new behaviors become the norms of the change recipients.

**Conclusion.** The tenets of Kotter’s (1995) eight-step change model shaped the framework of this study in evaluating the viability of an FCPA program in corporate America, from the view of industry experts who deal with the prevention of bribery in business.
transactions. Kotter’s work, regarded by researchers as an effective model of change implementation and management (Guzman, Gely, Crespo, Matos, Sanchez & Guerrero, 2011; Nitta, Wrobel, Howard & Jimmerson-Eddings, 2009; Quinn, Amer, Lonie, Blackmore, Thompson & Pettigrove, 2012; Tanguay, Waltman & Defebaugh, 2011), informed this researcher of the relevance and effectiveness of this theory to the implementation of a modern anti-corruption program that could have far-reaching implications for the implementation and change efforts of similar programs within other corporate American business entities.
Chapter Two

Literature Review

The literature review commences with an exploration of corruption by providing specific examples of the pervasiveness of corporate corruption throughout major regions of the world (Brown, 2012; Darrough, 2010; Fanjul, 2008; Goldstein, 2007; Kroll, 2011; Williams, 2004). This sets the context for the purpose of the research conducted and further expounds upon the problem of practice: corruption within the international business environment. This leads to a description of the need for and the lifecycle of the Foreign Corrupt Practices Act of 1977 (FCPA). A brief description of the legislation and its advancements over time are presented.

Change management is discussed next as most corporate cultures are engrained with a culture of unethical practices (Bishara, 2011; Carr & Outhwaite, 2011; Fanjul, 2008; Glaeser & Saks, 2006; Rockness & Rockness, 2005). Therefore, implementing an ethics/FCPA program that seeks to change the organization toward more ethical practices warrants an effective change management strategy. Under the theme of effective change management, this study examines employee motivation and perception toward organizational change, the role of change agents, resistance to change, and corporate culture. These constitute important considerations and areas of change that management should focus on to infuse effective organizational change within a company.

The researcher then explores the need for effective ethics programs and training, with emphasis on effective FCPA programs, a sub-set of ethics and the focus of this research. To conclude, the literature review section provides a brief description of the FCPA program that is being investigated.
**Pervasiveness of global corporate corruption.** Corruption, a phenomenon not easily defined, can be broadly characterized as anything bad that may occur within society (Zarb, 2011). Within a business context, corruption includes bribery, fraud, embezzlement, and other illegal practices (Zarb, 2011). Despite Benjamin Franklin’s proclamation that there has not been a nation damaged by business (Fanjul, 2008), the media and literature abound with examples of the global business environment being marred by the notoriety of corrupt business practices (Bishara, 2011; Carr & Outhwaite, 2011; Fanjul, 2008; Glaeser & Saks, 2006; Rockness & Rockness, 2005).

Transparency International, which publishes an annual index on the perceived corruption in major global economies, is a self-described organization leading the charge of a corruption free world (Transparency International: Our Organisation, 2012). The organization publishes its annual index called the Corruption Perceptions Index (CPI), which ranks countries on a scale of zero to 100, based on the perceived level of corruption that exists in the public sector of respective countries (Transparency International: Our Organisation, 2012). A rating of 100 represents the highest level of ethical behavior, void of significant corruption, while a rating of zero represents the most corrupt and unethical countries in the world (Transparency International: Our Organisation, 2012). Transparency International does not propose a definitive score that divides ethical versus unethical countries. For example, the index does not tell users that any country scoring above 50 is deemed non-corrupt while countries scoring below 50 are corrupt. The company that instituted the FCPA program that is the subject of this study, views countries with a CPI of 70 and above to be safe to conduct business with\(^3\), while countries with

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\(^3\) The CPI index is a key indicator but not the only measure that the subject company uses to determine countries in which it will conduct business. See the “FCPA risk assessment
scores below 70 are deemed to be the most corrupt (White, 2009a). Given this precept, approximately 15% of the 183 countries ranked by the index (Transparency International, 2011) are perceived as the most ethical countries (White, 2009a).

It would be an enormous undertaking to list every instance of global corporation corruption given the pervasiveness of the issue. To provide an overview, major public cases in the global marketplace are described below.

**Corruption in Central/North America.** In a 2012 discovery, it was reported that the Mexican subsidiary of Wal-Mart, Walmex, paid significant amounts of money through third party intermediaries to obtain building permits to expand the chain’s retail presence in Mexico (Brown, 2012). Reports in the popular press disclosed that the company’s management knew of the corruption but failed to take appropriate action, to include disclosure to US authorities (Brown, 2012). Wal-Mart is currently still under investigation and no charges/prosecution have been filed (Brown, 2012).

**Corruption in Europe.** German engineering company Siemens AG incurred the largest corruption related penalties in history. In 2008, Siemens, charged with violating the FCPA, agreed to pay in excess of $1.5 billion in fines for violation of US anti-bribery laws (Darrough, 2010). The fines included criminal charges of $450 million to the US DOJ for bribery; civil penalties in the amount of $350 million to the US SEC for improper accounting records and weak internal controls; and a cumulative amount of approximately $830 million to German prosecutors for the company’s corrupt activities (Darrough, 2010).

**Corruption in Latin America.** In 2000, International Business Machines Corporation Argentina (IBM-Argentina) was charged and fined by the SEC for violation of the FCPA
The company paid bribes to bank directors to secure a contract to modernize the computer environment in an Argentine bank, owned by the country’s government (Fanjul, 2008). Fines imposed amounted to approximately $300,000, with a cease and desist injunction issued against IBM (Fanjul, 2008).

**Corruption in the Middle East.** In 1996, amidst numerous sanctions imposed against Iraq arising from the first Gulf War, the country was permitted to sell oil in exchange for money in order to supply the Iraqi population with food and other basic needs (Williams, 2004). This quickly turned into a large corruption scandal. Through oil smuggling and kickbacks, the country’s former President, Saddam Hussein, pocketed an excess of $11 billion by inappropriately circumventing the rules and regulations of the United Nations and selling oil outside of the Oil-for-Food Programme (Williams, 2004). More than half of the 4,500 companies participating in the program were found to have paid excess money to Saddam Hussein for contracts to obtain and sell the country’s oil (Williams, 2004), even though the sale of the oil and collection of profits were to be handled exclusively through the United Nations (Williams, 2004).

**Corruption in North America.** In the early 2000s, Tyco International was charged for falsifying its financial statements and for the payment of bribes in South Korea and Brazil (Goldstein, 2007). Several of the company’s former management personnel were jailed as a result of the accounting fraud, and the company paid $26 million in fines to the DOJ (Kroll, 2011).

Corruption in the international marketplace is wide in scope and is not limited to a specific region, country or point in time (Charoensukmongkol & Sexton, 2011; Jatto, Jr., 2010; Lee & Oh, 2007; Rodriguez, Uhlenbruck & Eden, 2005). What varies is the acceptance of
bribery in specific countries and the degree to which corruption is prosecuted or ignored. The pervasiveness of corruption in the American economy gave rise to the enactment of the Foreign Corrupt Practices Act of 1977 (FCPA), which aims to combat corruption of US corporations in international business environments. Several other countries have subscribed to the provisions of the FCPA in an effort to limit and/or prevent corruption in their economies. Some countries have even adopted their own conventions and penalties. Examples include China, which has sentenced businesspeople to the death penalty for corrupt business practices (Shoesmith, 2012), and the United Kingdom, which penned, implemented, and enforces the UK Bribery Act against bribery and corruption (Yeoh, 2012).

**Historical Overview of the FCPA**

**The Watergate scandal and passage of the FCPA.** The Foreign Corrupt Practices Act, an amendment to the Securities and Exchange Act of 1934, was the first US Federal law that forbade the bribing of foreign officials (Darrough, 2010). Researchers contend that the FCPA was born of the corruption related to the Watergate scandal of the 1970s (Darrough, 2010; Thomas, 2010).

The scandal\(^4\) prompted investigations into widespread corruption occurring within large corporations in the US (Schudson, 2004). Investigators discovered that several large US firms engaged in illegal payment practices to foreign officials and their election campaigns (Mattera, 2007; Schudson, 2004). The Council on Economic Priorities estimated that US corporations

\(^4\) The corruption involved in the Watergate scandal and illegal payments to the Nixon re-election campaign in the 1970s ignited investigations into political corruption in America. Through the investigations, it was discovered that American corporations were making financial contributions in the form of bribes/illegal payments to politicians and their campaigns, both in America and abroad. This financial support to politicians favors the contributing organizations in winning lucrative government contracts (Darrough, 2010). These types of corrupt practices triggered the need for the FCPA.
made corrupt payments in excess of $300 million (Mattera, 2007). This mass corruption signaled the need for laws governing corrupt practices in the US. The US Congress responded with the enactment of the FCPA (Seitzinger, 1999).

**The 1988 and 1998 FCPA amendments.** The 1988 amendments to the FCPA brought about key changes to the original 1977 legislation. One change to the act included the imposition of a maximum fine of $2 million to companies for violating the FCPA (Brown, 2001). Individuals could be fined up to $100,000 and/or up to five years imprisonment (Thomas, 2010). Furthermore, the amendments permitted companies to have two defenses for what may appear as illegal payments (Brown, 2001):

- Payments which are lawful under the laws/conventions of the respective country are permissible; and
- Good faith, bona-fide payments could be made to foreign officials when related to product demonstrations or promotions, or payments necessary for the execution of a contract.

For purposes of the FCPA legislation, clerical and administrative functions were not included under the definition of a foreign official (Thomas, 2010). The 1998 amendment also expanded the scope of the FCPA. It now included foreign individuals not affiliated with an American company but conducting business on US soil, and also focused on the intended outcome of the bribery and not how the bribery was conducted (Thomas, 2010).

**The influence of the FCPA on the OECD convention.** The 29 member nations of the Convention on the Organisation for Economic Co-operation and Development (OECD) signed the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 1997 (Darrough, 2010). As of 2009, 38 countries had subscribed to the OECD’s
anti-bribery convention, rendering bribery illegal per respective country laws (Darrough, 2010). Before the enactment of the OECD Convention on anti-bribery, American organizations encountered significant competitive disadvantages in foreign countries, many of which permitted bribery payments and rendered such payments tax deductible (Darrough, 2012). The Convention, similar to the provisions of the FCPA, rendered the payment of bribes illegal for the purpose of obtaining business, retaining business or securing an improper advantage over other competitors (Darrough, 2010). The passage of the OECD Convention created a more equal playing field for the once competitively disadvantaged American corporations (Darrough, 2010).

**Organizational change and change management.** Corruption appears to be rampant in business and a part of the corporate culture within many organizations given the number of corruption-related incidents that occurred within the past decade and prior (Brown, 2012; Darrough, 2010; Fanjul, 2008; Goldstein, 2007; Kroll, 2011; Williams, 2004). A shift in organizational culture is therefore warranted and must be implemented through appropriate management strategies to ensure that the change is effective. Organizational change, according to Dessler (2004), occurs largely across four categorical themes within a company. These are:

- **Strategic change:** realigning the current stance of the company with a new focus as a result of phenomenon such as legal pressures, increased competition and so on. Strategic change can occur suddenly and be unavoidable for the company’s survival, and it also tends to be risky;
- **Technological change:** a change in the technology driving the operations of a company;
- **Structural change:** realigning the hierarchy/reporting structure within the company; and
- **People/behavioral/cultural change:** changing the overall fabric and everyday life of the company through changing of people and/or what they do and how they do it.
In deciding on instituting change, Dessler (2004) challenges management to consider what the forces are leading to change (the “why”), what needs to be changed (the “what”), and strategies around how the company should initiate and sustain the changes (the “how”).

Change is ushered into business environments virtually daily through new regulations, technological advances, new competition/business challenges, and other business phenomena (Dessler, 2004; Gans, 2011). Change management affects anyone in an organization whose current state will differ in the future when the change is implemented (Gans, 2011). It is largely addressed in the literature from an “action-oriented program-solving approach” (Van de Ven & Sun, 2011, p. 58). Through this approach, change agents typically identify and focus on breakdowns within the change process and undertake the corrective action necessary to resolve the issue leading to resistance toward the change (Van de Ven & Sun, 2008). Aiken and Keller (2009) note that change management, in the conventional sense, underpins the necessity to institute sustainable change in the organizational culture of a company: its practices, systems, behaviors, appraisals, rewards, and so on.

There are three major, classical change management strategies discussed in the existing literature: empirical-rational, normative-re-educative, and power-coercive (Chin & Benne, 1961).

Under an empirical-rational change strategy, change recipients are described as acting out of their own self-interest and are said to be rational beings (Chin & Benne, 1961). Once individuals know the reasons and benefits driving change they are more adept to change (Chin & Benne, 1961). According to Szabla (2006), this change strategy is typically effective among a population already open to the change. Not without its criticisms, empirical-rational change appears to ignore emotions as a contributor to change acceptance and also does not account for the fact that this change approach requires an expert to lead the change; someone that may not be
able to effectively tap into the social and psychological fabric of the organization and the people, to empower them toward change (Chin & Benne, 1961).

Normative-re-educative change exposes change recipients to new values, norms, and attitudes requiring the internalization of these new ways (Chin & Benne, 1961). This approach heavily focuses on intelligence and feelings as opposed to cognition (Szabla, 2006).

The power-coercive strategy employs the exertion of power from those in authoritative positions within organizational hierarchies to implement change (Chin & Benne, 1961). Under this strategy the change is identified and communicated, along with the relevant steps that need to be taken by change recipients. Then, based on dependence of the authoritative figure, change recipients respond to and adopt the change (Chin & Benne, 1961).

The literature describes a major threat to organizational change as organizational change cynicism (OCC) (Brown & Cregan, 2008). Abraham (2000) explains OCC as “a negative attitude toward one’s employing organization … The core belief is that principles of honesty, fairness and sincerity are sacrificed to further the self-interests of the leadership” (p. 269). Organizational change cynicism is important because it centers on employee perceptions of its management and the organizational culture and can adversely affect change efforts (Brown & Cregan, 2008). Brown and Cregan (2008), through their research, confirmed that a top-down, information-sharing model, along with employee involvement in the decision-making processes, decreased cynicism. This implies that not only do employees expect frequent communication from management but that they also wish to be included in management decisions to fully understand and shape the changes to be implemented within the company (Brown & Cregan, 2008). This significantly decreases cynicism and as a result, provides a more effective change management model and change process.
Organizational development (OD) is another strategy proposed for effective change management. This cultural change approach is based on action research and behavioral sciences (Dessler, 2004). OD places the responsibility of analyzing information and instituting the necessary changes in the hands of the employees (Dessler, 2004). This promotes greater buy-in company-wide since employees were the ones to diagnose the problem and propose the change solution that they will abide by (Dessler, 2004).

**Motivation and perception.** Kotter’s (1995) eight-step model commences with creating urgency within the organization toward the critical need for change. In Kotter’s (1995) research, he found that one of the most effective ways to accomplish the sense of urgency is to motivate employees, specifically leadership, to buy-in to the change (Kotter, 1995).

Motivation is described as persistence and intent toward achieving a particular goal or objective (Sadri & Bowen, 2011). Sadri and Bowen (2011) write that motivated employees are more likely to engage in “organizational citizenship behaviors” (p. 45). Fitsimmons (2009) suggests tying the motivating factor to organizational goals and linking the organizational goal to the employee’s stake in the organization. As an example, the motivating factor could be demonstrating to employees that FCPA compliance and ethical decision-making are critical organizational goals, and lack of compliance could result in debarment of the company from business transactions in the USA (Stevenson & Wagoner, 2011). In turn, this would likely result in the employee losing his/her job and earnings, which represents the employee’s stake in the organization and an undesirable outcome. Sadri and Bowen (2011) root this type of motivation in Maslow’s (1943) Theory of Hierarchical Needs, noting that employees are usually motivated toward actions that fulfill human needs identified in Maslow’s (1943) research.
Further research has shown that employees demonstrate their commitment to organizational goals based on their leader’s actions. Badaracco and Webb (1995) found that employees were motivated to model the behavior of their leadership. Tyler, Dienhart, and Thomas (2008) also concluded that when there is a shared commitment to organizational values and goals between employees and superiors, both in words and behavior, employees are more inclined and motivated to follow the organization’s rules. The studies of Badaracco and Webb (1995) and Tyler et al. (2008) indicate the value of shared commitment and motivation in implementing organizational changes that lead to a more ethical and compliant organization, and with that sense of urgency that Kotter (1995) recommends.

Employee perceptions are important as there is increased employee learning and buy-in to organizational goals, strategies, and policies when employees understand what is required of them to perform their jobs and are provided with adequate tools, in their eyes, to educate them about company and job requirements (Kirkpatrick & Kirkpatrick, 2006). Trevino, Weaver, Gibson, and Toffler’s (1999) research revealed that:

A key finding … is the importance of designing an ethics program that is perceived by employees to be first and foremost about shared organizational values and about guiding employees to act on their ethical aspirations. Such programs motivate employees to be aware of ethical or legal issues, report bad news to management, report ethical or legal violations, and refrain from engaging in unethical or illegal conduct. In addition, unethical/illegal behavior is reduced, employee commitment is higher, and employees believe that decision making in the organization is better because of the ethics program. (p. 139)
Expectancy theory is another paradigm in the theory of motivation. This construct includes effort-performance expectancy, performance-outcome expectancy, and valence (Fudge & Schlacter, 1999). These views of expectancy theory state that:

- If an employee believes that he or she can perform better, then the employee is more motivated toward a higher level of performance than the employee that believes he or she cannot elevate his or her level of performance. Relating to Kotter’s (1995) urgency creation, if an employee believes that he or she can achieve what is required of him/her under the organizational changes, the employee will be more motivated to adapt to the changes or acting with that sense of urgency that Kotter (1995) describes as essential to a change process. This is effort-performance expectancy.

- Under performance-outcome expectancy, if an employee perceives the rewards associated with acting in accordance with organizational changes as worthwhile, that employee would be more motivated to act with the sense of urgency that is necessary for change (Fudge & Schlacter, 1999).

- The employee would also have to place a high enough value on the reward to be gained in order to act with urgency toward the organizational change (Fudge & Schlacter, 1999). This is described under the expectancy theory as valence (Fudge & Schlacter, 1999). The preceding theories form a framework for effectively accomplishing step one and several other steps of Kotter’s (1995) eight-step model to organizational change.

**Change agents.** Change agents are described as those leaders, outside of the traditional corporate hierarchy, who champion change efforts within an organization (Arrata, Despierre & Kumra, 1995). These are individuals who empower and motivate employees company-wide toward change efforts. Kotter (1995) suggests that successful change is initiated with a guiding
coalition of organizational leaders: change agents who will institute the necessary program changes while overcoming obstacles such as resistance. Change agents are influential within a company and assist with minimizing and eliminating resistance (Westover, 2010).

Kotter (1995) notes that these change agents, or the guiding coalition, should be powerful within the organization: in their job titles, relationships across the company, expertise, and reputation. Several other researchers (Burke, 2002; Fernandez & Rainey, 2006; Johnson & Leavitt, 2001; Nadler & Nadler, 1998) also promulgate the necessity for commitment and support of the most powerful and highest ranking individuals within an organization, for efforts to be successful. These are the individuals who would form part of the guiding coalition and be the change agents within the organization. Essentially the coalition should include members who are powerful and tactical enough to induce that employee buy-in necessary under Kotter’s (1995) first step of creating urgency.


Change is described as the upheaval of the status quo, which results in modifications to deeply rooted behaviors and attitudes and naturally leads to resistance (Agboola & Salawu, 2011; Carr et al., 1996). According to Dessler (2004), changes typically occur to an organization’s strategy, technology, structure, and employees. There are two main types of resistance to change described in the literature: active resistance, which includes finding faults and manipulative behavior, and passive resistance, which includes saying that one will do something and then does not do it (Fiedler, 2010). Agboola and Salawu (2011) depict the main resisters to change as those
long-standing employees that are vested in the norms and culture of the organization, citing that newer employees are less invested in the existing organizational culture.

In their case studies on selected organizations, Agboola and Salawu (2011) found that key factors to successful change and reduced resistance included well-documented and established policies for employees to follow along with adequate training on the polices, the benefits of the changes, and a sense of job security. Van Dick and Van Dick (2009) write that people do not resist change but rather resist perceived consequences such as job loss, loss of pay and other negative connotations of change. As mentioned throughout this literature review, Agboola and Salawu (2011) reiterate that change implementation and dealing with resistance is the undertaking of a visionary leadership team (Agboola & Salawu, 2011).

Ford et al. (2008) argue that resistance is often viewed as obstacles being constructed by change recipients. By this, change agents are deemed to be effectively implementing change processes with the recipients of the change presenting barriers to the change. This is termed a “change agent-centric view” (Ford et al., 2008, p. 362). Ford et al. (2008) challenge this change agent-centric view, noting that often times change agents break “psychological and implied” (p. 365) agreements with the recipients of the change, resulting in the negative behaviors (Folger & Skarlicki, 1999; Shapiro & Kirkman, 1999). Change agents lose the trust of change recipients and encounter what they believe to be resistance when there is actually a breakdown of communication, and change agents do not clearly explicate organizational and personal benefits of the change, or a strong justification for the change (Ford et al., 2008). Change agents need to be honest and communicate frequently about the change, being upfront about what they do not know (Ford et al., 2008). Change agents sometimes misrepresent the true nature and effects of change for several reasons (for example to make themselves look good or to reduce resistance by
offering change that appears attractive to employees) (Ford et al., 2008). This leads to distrust and perceived resistance.

Then, the talks about change should be followed by a call to action (Beer et al., 1990; Ford et al., 2008; Ford & Ford, 1995). In their study of the Work-Out Program in GE, Ashkenas and Jick (1992) found that change agents assumed that their talks about change would automatically lead change recipients to take action. Ford et al. (2008) contend that change agents should explicitly recommend performance and action items for change recipients to undertake.

**Corporate culture.** Many corporate meltdowns are the result of failed cultural systems as opposed to the lack of individual ethical decisions (Chen, Sawyers & Williams, 1997). An effective and positive corporate culture acts to boost employee morale, make the workplace more enjoyable, and facilitate openness to new ideas, innovation, and changes for the betterment of the organization (Sadri & Lees, 2001).

Schein’s (2004) organizational culture mechanisms reiterate Dessler’s (2004) strategies; they include management’s (1) reaction to critical events/crises, (2) allocation of resources, (3) attention paid to specific areas within the organization and the metrics that management is most concerned with, (4) role modeling, teaching and coaching, (5) allocation of rewards and status, and (6) recruitment and promotion (Schein, 2004). These are the mechanisms that upper management utilizes to influence the corporate culture, known as culture creation (Schein, 2004).

Mahrokian, Chan, Mangkomkkanok, & Hee Lee (2010) extend the mechanisms of a strong corporate culture to include a strong organizational leadership team. Chen et al. (1997) note that the critical issue lies in creating and managing a positive and effective corporate culture. To accomplish this they offer a total quality approach to ethics, a “cooperative approach aimed at facilitating continuous quality improvement through better communication among
workers and employers” (Chen et al., 1997, p. 860). Drawing influence from Blanchard and Peale’s (1988) principles on ethics—Purpose, Pride, Persistence, Perspective, and Patience—a total quality ethical system encompasses: customer focus, top-down support, participation and communication through teamwork, employee empowerment, and balanced incentive programs (Chen et al., 1997).

Dowling and Moran (2012) compare and contrast a “bolted on” (p. 26) versus a “built in” (p. 26) corporate culture. Their research suggests that corporations with ethics engrained into the culture of the organization (built in) tend to be more appealing to stakeholders and more successful generally, as opposed to companies that use ethics as a window dressing or simply as a mechanism in response to competitive, legal, and other pressures (Dowling & Moran, 2012). In the latter scenario, ethics are not aligned with or considered as part of the strategy of the organization and are simply bolted on.

**Ethics programs and training.** In light of numerous scandals in business environments within the US and globally, there is a pressing need for companies to address and promote ethical behavior and decision-making (Frisque & Kolb, 2008). In evaluating the viability of the FCPA program concerned in this study, the importance of an ethical foundation through an instituted ethics program and regular ethics training, of which FCPA compliance is a sub-set, needs to first be discussed. De Colle and Werhane (2008) examine ethics from three theoretical perspectives:

- Aristotle’s ethics of virtue: human beings are born neither bad nor good but can become bad or good based on virtues or vices that they indulge in;
- Kant’s categorical imperative: morality springs from reason; and
Mill’s greatest happiness principle: whatever makes an individual happy is what he or she should do.

De Colle and Werhane (2008) challenge that ethics should be approached from the perspective of why the correct action or decision should be taken as opposed to simply asking what is the right thing to do and doing it without purpose or a commitment to doing the right thing.

Ethics programs and training serve as the platform for increasing employee awareness around issues pertaining to ethical decision-making within an organization (West & Berman, 2004). Paine (1994) describes ethics training from the perspective of a high and a low road. The low road serves merely to prevent organizations from the ramifications and embarrassment associated with improper ethical conduct; whereas, the high road encourages employees to act ethically in situations of ethical dilemma, not simply as a reactive measure, but as a way of corporate life (West & Berman, 2004).

Ponemon and Felo (1996) offer twelve strategies integral to the success of training programs: live instruction, sessions conducted by a professional trainer, a powerful message from the manager, small class sizes, a minimum of four hours of training, decision-based focus, significant group interaction, real case studies, extensive employee involvement, a separate course for compliance related issues, follow-up communications with participants, and programs specifically designed for new employees (West & Berman, 2004).

*Effective ethics programs.* The United States Sentencing Commission (the Commission), with direct responsibility for the Federal Sentencing Guidelines, provides a framework for

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5 Federal Sentencing Guidelines are a set of policies and standards against which US Corporations are held accountable and prosecuted in the event of corporate, criminal misconduct.
effective ethics programs (United States Sentencing Commission, 2011). Among the guidelines, and in support of several tenets of Kotter’s (1995) eight-step model, the Commission suggests that effective ethics programs should be well-documented and widely circulated among company employees, with adequate oversight by the company’s leadership (New Requirements for an Effective Compliance and Ethics Program, 2010). It further notes that employees should be trained on the requirements of the program, and adherence to program policies should be rewarded (New Requirements for an Effective Compliance and Ethics Program, 2010). The Commission further calls for program evaluation in order to ascertain program effectiveness (Carberry & Leiken, 2010).

Pelletier and Bligh’s (2006) study of a public sector organization, however, found that having a formal, documented policy did not influence employee perceptions about the effectiveness of an ethics program. Weaver (1995), Krawiec (2003), and Newberg (2005) also posit the lack of sufficient research evidence to substantiate a significant impact of documented ethics policies on employee behavior. This was substantiated in Trevino et al.’s (1999) research findings titled “Managing Ethics and Legal Compliance: What Works and What Hurts.” A survey distributed to over 10,000 employees across six companies found that the existence of documented policies yielded little impact on ethical conduct (Trevino et al., 1999). Trevino et al. (1999) describe seven determinants of an effective ethics program:

1. Minimization of unethical conduct: an effective ethics program reports reduced unethical behavior among employees;

2. Recognizing ethical dilemmas through increased employee awareness and education;

3. Availability of adequate/appropriate resources to respond to employee concerns and queries about ethical conduct;

4. Absence of repercussions in conjunction with an environment that supports the delivery of bad news to leadership;

5. Decision-making in everyday business transactions that reflects ethical and better decisions;

6. Avenues for the reporting of ethical concerns and/or violations by employees, and an environment that encourages internal reporting; and

7. Employee congruence and the value that the organization places on employees as being a part of and belonging to the corporate family.

These components of an effective ethics program remain relevant in 21st century corporations (Lafferty, 2010; Pelletier & Bligh, 2006; Wulf, 2012).

In a self-described Kantian approach to ethics, Reynolds and Bowie (2004) challenge the aforementioned precepts of an effective ethics program (i.e., well-documented, availability of adequate resources, etc.) as being purely “social scientific” (p. 275). They suggest that research focusing on the social scientific aspect of ethics tends to focus on surface behavior or what employees and organizations do for the sake of remaining in compliance with laws and company policies, while ignoring the true, underlying values system of the individual or the organization (Reynolds & Bowie, 2004). Reynolds and Bowie (2004) question the efficacy of the Federal Sentencing Guidelines explaining that organizations implement ethics programs as a matter of force by the law (as required by the Federal Sentencing Guidelines) and not simply because of the unequivocal desire to act ethically as it is the right thing to do; the latter construct representing a Kantian view.
Effective FCPA programs. An effective FCPA training program should explain to employees exactly what is permissible under the law and requirements to remain in compliance with company policy (Goelzer, 2005; Huisisian, 2009). Employees should be able to differentiate and identify what activities or behaviors are acceptable in conducting their regular duties (Goelzer, 2008). If the employee is unclear about specific conduct or business activity, adequate resources should be readily available to assist in the decision-making process (Hunt & Vitell, 2006; McDonald & Nijhof, 1999; Pelletier & Bligh, 2006; Trevino et al., 1999).

Effectively, companies should focus the majority of resources on those areas of the organization that are prone to the highest risk of policy violations: whether by country, industry or some other factor that determines where violations may occur most frequently or cause the greatest impact to the organization (Copeland, 2000; Goelzer, 2008; Marks, 2011).

Although the existing body of literature offers extensive information relating to the necessary components of an effective ethics program, under which FCPA programs may be categorized, there exists a need for significantly more empirical research on what specifically constitutes an effective FCPA program.

Huisisian (2009) suggests that a good program serves to educate employees about the general provisions of the FCPA along with company-specific policies relating to anti-bribery and facilitating payments. Of greater significance is the implementation of a program that stipulates adherence to one consistent policy globally (Huisisian, 2009). Employees of a specific organization in every part of the world should be subjected to the same standards and accountability in conducting business on behalf of that organization (Huisisian, 2009).

Goelzer (1998) posits that an effective FCPA program commences with an organization identifying its riskiest third party business partners (for example, by the type of relationship
between the third party and the organization, the countries where business is conducted and the perceived corruption in those countries, transaction volume and other considerations). An effective program should also include the implementation of due diligence procedures on the highest risk third parties, a formal company statement/policy on bribery, adequate resources (both in time and management oversight) to be allocated to the implementation and enforcement of the program, and monitoring procedures to ensure the effectiveness of the program (Goelzer, 1998). Copeland (2000), whose writings encompass Goelzer’s (1998) aforementioned FCPA program components, emphasizes the importance of effective communication and training around company policies through a multi-media approach.

Several authors, including Marks (2011), Huisian (2009), Isaak (2008), Copeland (2000) and Goelzer (1998), propose practical and theoretical frameworks for implementing and maintaining an effective FCPA program, compliant with regulatory requirements; however, they lack empirical research against which to credit the effectiveness of their proposals.

**Reasons why training fails.** Researchers contend the myriad reasons why training programs fail. One of the predominant reasons is customer satisfaction (Kirkpatrick & Kirkpatrick, 2006). If training participants are not satisfied with any aspect of the training program, then they lack the buy-in and action required by the training session, and even more immediate, they lack motivation to absorb and retain the information presented during the training (Kirkpatrick & Kirkpatrick, 2006). This underscores the importance of program evaluations, first and foremost, by understanding the perceptions of the training participants and garnering an understanding for what areas of the training program can be improved. This is the first level or “evaluating reactions” tenet of Kirkpatrick’s four level evaluation model (Kirkpatrick & Kirkpatrick, 2006).
Labb (2008) suggests that another reason training programs fail is that employees do not immediately see the benefit of the training and its alignment to their job functions or the overall corporate strategy. The ability to immediately link the training content to an actionable area of an employee’s job functions increases the retention of the training content and the overall effectiveness of the training (Labb, 2008). If employees are asked to enroll in a training initiative on ethics in the workplace but they do not garner an understanding for the importance of the training to the organization and tools or strategies that they may employ, the information from the training program, as argued by Spitzer (1984), contributes to the long-term developmental goals and strategy of the organization but has little immediate impact on the organization.

Training information and content should also be developed with specific consideration for the audience. It should be in language that the target participants can understand (Husisian, 2009; Labb, 2008). Developing a training program in language that cannot be understood by the participants decreases the overall utility and effectiveness of the training (Labb, 2008).

Plotczyk (2011) calls for an action-training model to prevent the failure of a program. Plotczyk (2011) suggests that most training fails because it addresses the outcome to be attained by the training rather than fixing the underlying issues causing the problem. Moreover, he asserts that most training programs entail trainers talking to participants, as opposed to utilizing real situations that employees can apply the training skills and techniques to.

There appear to be countless reasons why training programs fail within organizations, with each researcher offering solutions to ensure a successful training initiative (Husisian, 2009; Kirkpatrick & Kirkpatrick, 2006; Labb, 2008; Plotczyk, 2011). The important tenets of a successful and effective program encompass formative-summative program evaluation, where training is delivered and information obtained to revise or redesign the training module(s) and
deliver a more effective program in the future (Weiss, 1998). This is accomplished through obtaining participant feedback and other evaluative methods (Kirkpatrick & Kirkpatrick, 2006).

**FCPA risk assessment and training program.**

**FCPA risk assessment program.** The FCPA program to be evaluated in this thesis is overseen by the Vice President of Legal Operations and the Chief Compliance Counsel, both reporting to the Senior Vice President/Chief General Counsel of the company’s Legal Department, and ultimately to the CEO and the Board of Directors. From a day-to-day management perspective, there is a Program Director and a staff of full-time employees and consultants.

In the program, each third party that the company engages in business with is assigned to an employee that has primary responsibility for managing the business relationship (White, 2009a). The program emphasizes employee accountability, with corrective action taken against an employee whose third party violates company policies (White, 2009a).

The company manages its third parties under several relationship categories, each of which has specific risk assessment and processing procedures before the company engages in transactions with the third party (White, 2009a).

In assessing the risk of a third party to the company, management considers the relationship of the third party to the organization (for example, distributors, agents, and so on), the country where the third party is located and performing business on the company’s behalf, and the transaction volume anticipated (White, 2009a). Depending on these variables, a third party may then be automatically approved for business or subjected to an investigative/due diligence background check (White, 2009a).
Table 1 summarizes the major business relationships that the company has with third parties and the due diligence requirements under the FCPA program.

Table 1

**Third Party Qualification of the FCPA Program**

<table>
<thead>
<tr>
<th>Relationship</th>
<th>Transaction Volume Consideration</th>
<th>CPI Consideration</th>
<th>Further Due Diligence Required?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounting Firm</td>
<td>No</td>
<td>7.0</td>
<td>Yes, if country CPI &lt; 7.0</td>
</tr>
<tr>
<td>Environmental Consultant</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Law Firm</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Consultant</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Real Estate Agent</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trade Association</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authorized Dealer</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Mobile Sales Rep.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pure Reseller</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wholesaler</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agent</td>
<td>No</td>
<td>No</td>
<td>All Cases</td>
</tr>
<tr>
<td>Commercial Consultant</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Customs Agent</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Freight Forwarder</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lobbyist</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax Agent</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Charitable Organization</td>
<td>USD $10,000</td>
<td>7.0</td>
<td>Yes — If transaction volume is USD $10,000 or above and country CPI &lt; 7.0</td>
</tr>
<tr>
<td>Distributor</td>
<td>USD $100,000</td>
<td>No</td>
<td>Yes, if transaction volume is USD $100,000 or above</td>
</tr>
<tr>
<td>EPC General Contractor</td>
<td>USD $250,000</td>
<td>7.0</td>
<td>Yes — If transaction volume is USD $250,000 or above and country CPI &lt; 7.0</td>
</tr>
<tr>
<td>Subcontractor</td>
<td>USD $100,000</td>
<td>7.0</td>
<td>Yes — If transaction volume is USD $100,000 or above and country CPI &lt; 7.0</td>
</tr>
</tbody>
</table>
Note. An illustration of the third party qualification matrix of the FCPA Program under review, showing the third party relationships required to undergo investigative due diligence.

There are dedicated committees that grant approval for the company to engage in business with a third party, subject to the completion of training around the company’s FCPA program by the third party and a written agreement/contract between the company and the third party.

**FCPA training.** The company conducts training of employees about the requirements of the FCPA program. Training sessions are conducted by one of the members of the company’s FCPA Program Management team. Currently, employees complete one training session of approximately one hour to ninety minutes. Each session is generally conducted in-person in countries that are considered to be the highest risk (of corruption) business markets, and online for other countries. The training sensitizes employees to the need for the FCPA program, citing the instances of bribery and the large fines by companies such as Siemens, Lockheed Martin, Tyco, and other major corporations. The program then defines the process that third parties must undergo in order to become qualified business partners. Finally the training introduces employees to the resources available to assist them through the third party qualification process and tests their knowledge of the training materials presented through a brief, interactive quiz.

**Conclusion.** This literature review has demonstrated the pervasiveness of corruption within corporate America and the international business environment, and the legislative referendums enacted to promote business with integrity. The FCPA is America’s mechanism to inject ethical transacting into the business world by US Corporations. The implementation of an effective ethics program and, by extension, an effective FCPA compliance program is, therefore, necessary to enact change within corporations that customarily engage in corrupt business practices with their third party business partners. An effective program acts to ensure that
stakeholders understand the provisions of the FCPA and what it means to conduct business ethically and with integrity, and the consequences associated with violations. Programs must be designed and evaluated to determine their effectiveness at meeting the aforementioned objectives. This can be accomplished by designing a viable FCPA program based on the effective ethics/FCPA program tenets synthesized in this literature review, and implementing the program, with the goal of successful organizational change, in accordance with Kotter’s (1995) eight-step model.

**Research Question**

The research question addressed by this thesis is: To what extent is the chosen company’s FCPA program viable in its design and implementation when compared to industry standards and Kotter’s eight-step change model?

The problem of practice demonstrates that FCPA non-compliance and unethical business practices are pervasive issues (Bishara, 2011; Carr & Outhwaite, 2011; Fanjul, 2008; Glaeser & Saks, 2006; Rockness & Rockness, 2005). The solution is to develop a viable program that forges compliance with the FCPA legislation within an organization to prevent violations and fines (Goelzer, 2005; Huisisian, 2009, United States Sentencing Commission, 2011). A viable FCPA program leads to the desired organizational change of non-bribery and more ethical business conduct by employees (About the ACFE, 2012; Huisisian, 2009).

For purposes of this study, an FCPA program is considered viable when it is designed in accordance with the ACFE and The Network’s effective ethics program framework (described in the Methodology section of this thesis) and implemented through Kotter’s (1995) eight-step change model. The author considers the totality and culmination of the literature review on effective FCPA programs and ethics programs in general to be adequately reflected in these two
models (ACFE/The Network’s effective ethics program framework and Kotter’s eight-step model), and thereby posited that these two essential components are necessary in creating a viable FCPA program, with the intent of combating bribery.
Chapter Three

Methodology

**Program evaluation.** Simply stated, evaluation measures the effectiveness of a program in meeting its intended objectives (Weiss, 1998). Researchers on the topic of evaluation have identified traces of this phenomenon dating back to the 1800s (Weiss, 1998), with Caro (1977) identifying evidence of surveying, one aspect of evaluation, to biblical times. Weiss (1998) reports that social policy-makers in the earlier part of the 1800s and 1900s conducted surveys primarily as a mode to gather data on the extent of societal problems, neglecting to employ methodologies to analyze the effects of any social reforms instituted.

A flurry of evaluative research surfaced in the early 1900s with medical and educational professionals leading the charge (Weiss, 1998). There was the “Eight-Year Study/Third-School Study” on educational progressivism, which saw high schools redesigning their curriculum and performing assessments of the changes (Alkin, 2004). Another notable advancement in evaluation included the 1970s “inauguration of a series of social experiments to test novel policy and program ideas prior to their enactment” (Weiss, 1998, p. 13). These events contributed to and commenced the current pervasive use of evaluation and the numerous evaluative models employed in virtually all industries, sectors and countries in the world. Barnett and Mattox (2010) write that “today’s approach to measuring success in corporate training is a complex mix of theory and practice and trial and error, with key contributions derived from evaluation theory, instructional design, technology, statistics and basic business processes” (p. 28). Mann and Robertson (1996) note the importance of evaluating program effectiveness as critical since it determines the efficient use of company funds.
Utility and limitations of program evaluation.

Program enhancement. Program evaluations are advantageous as they serve the primary purpose of providing information to enhance a program’s effectiveness (Kirkpatrick & Kirkpatrick, 2006). There are arguments in the existing literature that acknowledge that program evaluations may actually be detrimental to a program, as they are sometimes used to determine the “continue or terminate” disposition of a program (Weiss, 1998). The feedback obtained from program participants through program evaluations is used to rethink and redesign specific programmatic aspects to ensure a curriculum, delivery method, and other program areas that satisfy the needs of the customers: the participants (Kirkpatrick & Kirkpatrick, 2006).

Program justification. As mentioned under the program enhancement section, program evaluations are sometimes used to justify the existence of a program. Often times, if participants perceive programs as effective, the expenditures on the program are deemed justified (Weiss, 1998). If programs are not meeting their stated objectives, as determined by evaluations, management may make the critical decision of reducing funding to the program or terminating it entirely (Weiss, 1998).

Restrictions on report publication. One disadvantage of program evaluation is the extent to which the results can and will be published for use by a larger audience (Weiss, 1998). Generally, program evaluations contain sensitive information specific to an organization: information that the organization may not wish to be released publicly (Caro, 1977). As a result, a program’s effectiveness may not be known to other organizations wishing to adopt a certain program because results of the program’s effectiveness are not publicly available (Weiss, 1998).

Generalization. Program evaluations are often specific to a particular organization and a program specific to that organization, thereby limiting the usage of the results of the evaluation
externally and on a larger scale. Program evaluation results can prove useful, however, to an organization intending to adopt a program similar to the one being evaluated and that is already in use or has been utilized by another organization (Weiss, 1998).

In exploring the problem of practice, an outcome-summative program evaluation methodology was employed by this researcher, as the program has already been designed and implemented. An outcome approach to evaluation measures the effectiveness of the program against its stated and intended objectives (Weiss, 1998). Outcome evaluation examines what is occurring subsequent to the program’s implementation and the degree to which the changed behaviors of participants are attributable to the program itself (Weiss, 1998). The summative tenet stems from the measure of effectiveness of an already developed and instituted program (Weiss, 1998).

**Approach.** This study utilized a two-step approach to assessing the extent of the viability of the FCPA program in question. The first step involved utilizing an evaluative framework designed by industry experts to test the actual design of the program, specifically to identify whether the program embodies all of the necessary components of a viable FCPA ethics program. Since programs are designed to effect change, the second step employed in evaluating the viability of the program was an evaluation of the program against Kotter’s (1995) effective organizational change framework, to determine whether the program encompassed the necessary tenets to effect successful organizational change. In examining the program against a viable design and against a viable change model, the researcher answered the research question on the extent of the viability of the FCPA program as a model for preventing bribery and FCPA violations. Figure 2 was constructed by this author as an illustration of the convergence of the FCPA program under evaluation with Kotter’s (1995) eight-step change model and the
ACFE/The Network’s ethics program evaluation framework (Evaluate Your Ethics Program, 2006), to form a viable FCPA program.

Figure 2. A depiction of the intersecting of the program being evaluated with Kotter’s eight-step change model and the ACFE/The Network’s effective ethics program framework, as representative of a viable FCPA program.

Evaluative tools. The researcher surveyed the existing body of knowledge on effective ethics and FCPA programs. The information obtained has been synthesized in the Literature Review section. Based on the knowledge gleaned from the literature on effective programs and effecting successful organizational change, the researcher conducted research to assess the
viability of the FCPA program in question. To accomplish this, the researcher selected the framework called the Ethics Program Evaluation Form (Appendix A) to assess the effective design of the FCPA program under consideration (Evaluate Your Ethics Program, 2006). This framework integrates the various theories on effective ethics/FCPA programs as discussed in the Literature Review and proposes a framework of the relevant components of an effective program. The framework, posited as a self-evaluation survey instrument for organizations, was devised by the Association of Certified Fraud Examiners (ACFE) in conjunction with The Network (Evaluate Your Ethics Program, 2006). Its primary focus is to serve as an evaluative tool in assessing the effective design and development of an ethics program within organizations of various sizes (Evaluate Your Ethics Program, 2006). As stated previously, FCPA compliance programs are a sub-set of ethics programs. According to these two organizations that designed the ethics program effectiveness framework, they possess over 25 years of experience in designing effective ethics programs, and have designed programs for several global, complex organizations (Evaluate Your Ethics Program, 2006).

The Association of Certified Fraud examiners “is the world’s largest anti-fraud organization and premier provider of anti-fraud training and education” (About the ACFE, 2012). The organization, which issues the Certified Fraud Examiner credential to professionals involved in creating and sustaining ethical business environments within global organizations, is dedicated to issuing knowledge and tools that assist industry professionals and corporations in the fight against unethical business conduct (About the ACFE, 2012). As of the time of this study, the researcher was a member in good standing of the ACFE in the capacity of a Certified Fraud Examiner.
The Network is largely known for providing anonymous hotlines for employees of its clients to report misconduct within their companies (About The Network, Inc., 2012). The organization also offers product solutions around codes of conduct for organizations, ethics and compliance training, and ethics and compliance awareness campaigns (About The Network, Inc., 2012). The Network boasts of over 30 years experience in delivering ethics and compliance solutions to several global organizations (About The Network, Inc., 2012). The organization’s purpose statement notes that The Network strives “[t]o help create better workplaces by combining innovative people and industry-leading technology to allow companies to build and promote ethical cultures” (About The Network, Inc., 2012).

**Data collection and analysis.** Company/program documents relating to the subject FCPA program constituted the primary source of evidence for this research. At the time of this study the researcher worked for the company. The company permitted access (with the requisite permission from management) to the details and documents of the FCPA program. Details of the program were also available in a comprehensive article available to the public in a compliance journal (White, 2011a). The researcher gathered the necessary evidence and artifacts to assess the effective design of the FCPA program against the Ethics Program Evaluation Form framework (Evaluate Your Ethics Program, 2006). The evidence gathered included company-developed handbooks that explain all of the details about the program to employees, e-mail communications to stakeholders, ombudsman publications, publications on the company intranet, other documented company policies, and any documents that proved necessary to appropriately evaluate the program (see Appendix I for full list of documents reviewed).

This study employed a descriptive analysis of the data/results, evolving from the evaluative framework being utilized and program documents collected. The researcher evaluated
the tenets of the FCPA program based on the questions listed in the evaluative tool, providing a
detailed description of how the company addressed each component of an effective program. For
example: the framework called for an effective program to have a reliable and secure hotline for
company employees to report violations and other issues (Evaluate Your Ethics Program, 2006).
The researcher described the extent to which the FCPA program under evaluation addressed this
component of an effective ethics program. Similar evaluations were performed for all of the
components suggested by the framework as comprising an effective program.

The researcher then analyzed the FCPA program against Kotter’s (1995) eight-step
effective change model. Under each of the eight steps in successfully implementing change,
Kotter (1995) describes the actions that organizations should undertake. The researcher
evaluated the actions taken within the FCPA program under investigation, against Kotter’s
involved creating a guiding coalition to effectively lead the change effort. This research detailed
how the company addressed this step of the Kotter (1995) model in implementing its FCPA
program. A similar evaluation was undertaken for each of Kotter’s (1995) other seven steps. A
gap analysis was then conducted based on the two evaluation methods used in this study. The
gap analysis identified the components of the FCPA program that were missing or required
further development in accordance with the ACFE/The Network’s framework (Evaluate Your
Ethics Program, 2006) and those areas where the program was not implemented effectively or
not implemented at all according to Kotter’s (1995) effective change model. This gap analysis
constituted the key findings and implications of this research, and formed the primary basis for

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6 Kotter’s (1995) eight steps to organizational change include: (1) creating urgency, (2) forming a
guiding coalition, (3) creating a vision for change, (4) communicating the vision, (5) removing
obstacles, (6) creating short-term wins, (7) building on the change, and (8) anchoring the changes
in corporate culture.
assessing the extent of the viability of the FCPA program under evaluation. Based on the implications of this research, recommendations for strengthening the FCPA program were developed for use as a framework by other companies, along with areas of future research.

**Validity and Credibility**

In addressing the issue of validity and reliability in research, Creswell (2009) writes that threats, both internal and external, challenge the validity of any research. In the research design methodology of a study, the researcher must seek to eliminate or minimize threats to the validity of the study (Creswell, 2009).

This research employed an integrated evaluative instrument, devised by industry experts with over 25 years of experience designing and evaluating ethics programs (Evaluate Your Ethics Program, 2006). The significant expertise of the organizations that devised the evaluative instrument along with the fact that the instrument has been used to evaluate several programs globally lends to the validity of the research instrument and, by extension, this research.

Further, the researcher utilized a peer reviewer to validate the results of this study based on the program documents and information obtained (see Appendix H). Since the researcher worked with the FCPA program on a daily basis, there may appear to be biases toward reporting certain outcomes from the research data obtained. Allowing a peer reviewer not affiliated with the program to review the data collected and validate the information to be reported helped to uphold the credibility of the findings reported in this study. The peer reviewer was a colleague of the researcher that is a member of the Association of Certified Fraud Examiners and works with designing effective ethics programs. This individual was selected since he has knowledge of the FCPA program in question and understands essential components and emergent themes inherent
in an effective ethics/FCPA program. The peer reviewer has no apparent vested interest in the FCPA program in question.
Chapter Four

Results

This research sought to evaluate the extent of the viability of an FCPA program by evaluating the program against the effective ethics program framework proposed by the Association of Certified Fraud Examiners and The Network (Evaluate Your Ethics Program, 2006) on how to design a viable ethics/FCPA program. This effective ethics program framework by the ACFE/The Network was then matched against Kotter’s (1995) eight-step model on successful organizational change to determine themes and convergences between the two frameworks. The use of Kotter’s steps as the central/emergent themes served to determine the program’s overall viability at effecting organizational change toward non-bribery and FCPA compliance. This study was conducted utilizing a document review to evidence the extent of the viability of the FCPA program being researched.

Research question. The research question addressed by this thesis is: To what extent is the chosen company’s FCPA program viable in its design and implementation when compared to industry standards and Kotter’s eight-step change model?

The problem of practice demonstrates that FCPA non-compliance and unethical business practices are pervasive issues (Bishara, 2011; Carr & Outhwaite, 2011; Fanjul, 2008; Glaeser & Saks, 2006; Rockness & Rockness, 2005). The solution is to develop a viable program that forges compliance with the FCPA legislation in an organization to prevent violations and fines (Goelzer, 2005; Huisian, 2009, “United States Sentencing Commission,” 2011). A viable FCPA program leads to the desired organizational change of non-bribery and more ethical business conduct by employees (About the ACFE, 2012; Huisian, 2009).
For purposes of this study, an FCPA program was considered viable when designed in accordance with the ACFE and The Network’s effective ethics program framework (Evaluate Your Ethics Program, 2006) and implemented through Kotter’s (1995) eight-step change model. The research posited that these two essential components were necessary to create a viable FCPA program with the intent of combating bribery.

The research consisted of a review of one company and its FCPA program against these frameworks. The documentation included the company’s two FCPA compliance handbooks that explain the vision and the guidelines of the FCPA program, PowerPoint presentations, e-mails from the company’s Senior Management to employees, the company intranet, the company’s external website, online training materials available on the company’s Learner Management System (LMS), and memoranda. The documents reviewed had origination dates of between January 1, 2009 to August 31, 2012.

The research revealed evidence that the company implemented its FCPA program in accordance with many of Kotter’s (1995) eight steps to effective program implementation and the framework on effective ethics program by the ACFE/The Network (Evaluate Your Ethics Program, 2006). For example, the company created a sense of urgency to implement the program by communicating the potential for reduced fines for past violations through the implementation/enforcement of an effective compliance program. The company also assembled a powerful and influential task force and conducted widespread communication of the new vision through several channels. The company also publicly acknowledged the ethical acts of an employee to demonstrate to the employee community that ethical decision-making is encouraged.

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7 This is an online platform used by the company to deliver training materials to employees.
and rewarded by management and should be engrained in the company’s culture. Further information on the findings appears below.

**Create urgency.** Kotter (1995) suggests that an early task is to create a sense and a need to bring about the necessary organizational change urgently, efficiently and effectively. The ACFE/The Network’s ethics framework also suggests urgency in implementing an ethics/FCPA program. It points out the importance of having a program in place to prevent adversities within an organization. The framework states:

An ethics program provides tremendous benefits, including detecting and deterring unethical behavior that can devastate an organization. The Association of Certified Fraud Examiners (ACFE) and The Network have partnered to help some of the world’s most complex organizations develop hotlines and ethics communications programs that minimize risk of illegal and unethical activities. (Evaluate Your Ethics Program, 2006, p. 1)

Contributing to its sense of urgency to establish an FCPA program that would enact change toward non-bribery, the company observed the prosecution and payment of heavy fines by more than five companies, by the US Department of Justice and the Securities and Exchange Commission, with the common theme being that these companies received mandates to institute anti-bribery programs. A September 2012 article released by the US Department of Justice (Justice News, 2012) demonstrates that at the time when the program was implemented, the US DOJ had not yet rendered a decision on the fines and penalties that the company subject to this investigation would face. Recognizing the mandates that other companies received to institute FCPA programs, the company decided that it needed to quickly implement a program prior to its own prosecution for past instances of bribery in hopes of reducing the fines and punishment it
would receive if convicted of wrongdoing. The company’s FCPA program would also help to prevent future corrupt behavior by employees.

Reiterating the sense of urgency and need for an FCPA program to employees of the company and to external stakeholders, the CEO wrote:

In recent years we have investigated far too many bribery and corruption matters with the hope that each new instance would be our last. We must now be sure we have prevented all such improper conduct by [Company\textsuperscript{8}] employees as well as third parties operating on our behalf. These actions undermine [Company’s] reputation and our efforts to put these matters behind us. We cannot tolerate this behavior, nor can we allow it to continue… we have no alternative than each one of us making this a top priority and getting it done. I expect your full cooperation. (White, 2009a, p. 1)

Therefore, the true urgency to establish an FCPA program lay in management’s goal of minimizing the potential fines that could be incurred by the US DOJ for violating the Act and the other non-monetary consequences that could result. Management also wanted and needed to demonstrate its continued commitment to ethical business given the company’s tarnished image from the accounting scandals that it encountered in the early 2000s. Management therefore set out to implement an FCPA program to reduce and eliminate bribery within one year from the date that the violations were uncovered.

In the meeting minutes of a legal team meeting held on April 1, 2008, it was reported that the company’s attorneys did not know what the potential fines and punishments of the company would be for violating the FCPA, but that other companies received multi-million dollar fines, even up to approximately $2 billion. The legal experts noted that given the trend of the US DOJ

\textsuperscript{8} Where the name of the company appeared in quotes/documents, the term [Company] is used to preserve the anonymity of the organization subject to this research.
mandating the implementation of anti-bribery controls for companies that had been prosecuted for similar FCPA violations, it was in the best interest of the company to implement its own controls and FCPA program before being convicted to demonstrate a proactive commitment to ethical business.

Articles (Brown, 2012; Darrough, 2010; Fanjul, 2008; Goldstein, 2007; Kroll, 2011; Williams, 2004) on other companies prosecuted of similar FCPA violations, reported that in addition to fines, companies faced the penalties of possible jail time of employees involved in the bribery schemes, possible debarment from conducting business in the US, and having an external monitor put in place to ensure that all transactions within the company are free of bribes and other corruption. An outside monitor would come at an enormous cost to the company. The external monitor would also limit company privacy and its control over several functions such as investigating misconduct and reporting only major instances of corruption to the appropriate authorities. In essence, the company would lose some level of autonomy with an external monitor that would be reporting directly to the US DOJ (United States Sentencing Commission, 2011).

Consequentially, the true urgency to create and implement the program, as previously mentioned, lay in the fact that senior management wanted to (White, 2009a):

1. Use the program to demonstrate its dedication and commitment to ethical business transactions, with the intent of influencing the US DOJ to decrease/minimize potential fines and penalties;

2. Ensure that the company could continue transacting in the US; and

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9 An external monitor is an individual or a company, specializing in FCPA and general ethical compliance issues, which is selected by the US DOJ to monitor transactions occurring within a company, to ensure that they are free of corruption.
3. Eliminate the need for an external monitor.

Given these factors and senior management’s desire to minimize the financial impact of a conviction and restore the tarnished image of the company, the first indication of the urgency for an FCPA program was in a PowerPoint presentation dated September 9, 2009 outlining the legal team’s blueprint to create an organization-wide FCPA compliance program with the goal of minimizing and eliminating bribery payments. This document was created by the Senior Compliance Counsel and the Chief Compliance Counsel and presented to the company’s senior management, including the CEO, the CFO, the Chief General Counsel, and the Vice President of Audit. This was preceded by several e-mails dated between January and June 2009, between senior management in the legal department and senior management in finance, emphasizing the need for a program to manage the company’s third parties and financial information that needed to be included in budgets to effectively run the FCPA program.

**Assemble taskforce.** Under this step, Kotter (1995) emphasizes the need for a dedicated, strong, and influential team of leaders to institute the change within the organization. The ACFE/The Network’s ethics framework does not extensively address the role and involvement of management in the implementation of an FCPA program, except that senior management should be involved in the creation of an ethical culture within the organization (Evaluate Your Ethics Program, 2006).

Evidence that influential members of the company’s management team were required for the successful implementation and that these members were actually included in the implementation of this organization-wide FCPA program was found in the first and second editions of the program handbook (White, 2009a; White, 2010a). Presented in the handbooks
were the names and titles of the leadership team that comprised the guiding coalition, which included the highest-ranking employees in the organization.

Prior to the implementation of the FCPA program, sales personnel within the organization were essentially free to engage in business with any third party business partner, subject to minimal background checks (personal observation, March 8, 2010). With the full implementation of the ethics/FCPA program in August 2009, sales personnel saw the program as hindering quick business transacting. One e-mail that this researcher reviewed stated, “I don’t know why we have to do this all of a sudden, this is slowing down business significantly” (White, 2010b). Another e-mail mentions, “I am going to lose business if I have to wait up to 6 weeks for an answer on doing business with this business partner” (White, 2010c).

Against this background, indication of senior management involvement was found in both the first and second handbooks distributed to employees. In the first handbook, the CEO emphasized his support for the FCPA program by writing, “Going forward, I personally will hold each of us fully accountable for management and oversight of our third party relationships” (p. 1). Appendices D and E include the full letters penned by the CEO from the 2009 and 2010 editions of handbook respectively.

The Chief General Counsel and many other business leaders also committed to ensuring the successful implementation of the program throughout the organization; these individuals also formed part of the implementation team. As listed in the first edition handbook (White, 2009a, p. 12), these other business leaders include the following corporate officers: the Chief Financial Officer (CFO), Chief Compliance Counsel, the Vice President (VP) of Audit, and the VP of Operational Excellence. Additionally, at a local level the following officers from within the business units of the company formed part of the guiding coalition: the three Presidents, the three
CFOs and the three General Counsels (GCs). Kotter (1995) explicates that, “in successful transformations, the chairman or president or divisional general manager, plus another 5 or 15 or 50 people, come together and develop a shared commitment … the coalition is always pretty powerful—in terms of titles, information and expertise, reputations, and relationships” (p. 98).

As detailed in a PowerPoint presentation dated September 9, 2009, these senior leaders of the organization met over the course of approximately one year, agreed on the vision, goals, structure, and process of the FCPA program, approved the cost to implement and run the program, and committed to transmitting the program throughout their respective business units to promote and ensure compliance by all employees (White, 2009b).

**Define vision.** This phase, according to Kotter (1995), involves determining/envisioning the state of the organization after the change and developing the strategy to be employed in instituting the change. Kotter (1995) describes the vision as easily communicable and acceptable by the company’s stakeholders. The vision for a viable, organizational ethics/FCPA program, as researched by the ACFE and The Network for over 25 years, involves an organization that (Evaluate Your Ethics Program, 2006):

1. Communicates with stakeholders regarding the overall ethical position of the organization and the ethics hotline available for use;
2. Has an anonymous reporting system and process for the reporting and handling of ethical issues;
3. Ensures data security of any information passing through the ethics program;
4. Is focused on creating an ethical culture and environment throughout the organization through ethical training and extensive communication strategies;
5. Investigates and handles appropriately, any ethical violations. (p. 1)
The guiding coalition established a clear vision for the organization. In many of the publications reviewed, management described an organization free of ethical misconduct, specifically bribery (White, 2009a; White, 2010a). The leaders envisioned an organization where employees were aware that the company does not tolerate ethical misconduct and that when faced with such situations, employees either had the knowledge and values to do what is right or they would consult the appropriate, readily available resources to assist them with ethical decision-making (White, 2009a; White, 2010a).

Management’s vision further involved each external business partner relationship being monitored by an internal employee and having that employee be fully accountable for ethical business transacting with the third party business partner. The CEO of the organization described the tenets of the FCPA program as not simply being guidelines but mandates. The program’s second edition handbook states:

The first point of accountability for the Third-Party Management Program is the Business Sponsor, who is the owner of the third-party relationship. The Business Sponsor is a [Company] employee, often in business management or sales, who owns and sponsors a third-party relationship. The Business Sponsor is the person who is the primary contact with the third party and is responsible for managing and overseeing its work for [Company]. (White, 2010a, p. 3)

The vision was to ensure that potential business partners were investigated sufficiently and to an extent where management would know of any misconduct throughout a business partner’s history. The handbook states, “Third-party retentions require a rigorous qualification process that may include due diligence, depending upon the type of third-party relationship and the country where we do business with the third party” (White, 2010a, p. 3).
By thoroughly assessing the overall risk of each third party and then investigating the higher risk ones, the company could then make informed decisions about which third parties to partner with and which to avoid. The vision was to have a network of business partners that posed little to no threat of implicating the company in unethical behavior in business transactions (White, 2010a).

In a PowerPoint presentation used from 2010 to the time of completion of this research to train employees on how to ensure compliance with the FCPA program, management made the vision clearer to stakeholders by emphasizing the purpose of having an ethical company. This PowerPoint addresses potential fines and penalties that the US DOJ could enforce if the company continued to be marred by bribery. These penalties could reach up to approximately $1.5 billion or more, as in the case of Siemens (Darrough, 2010).

In an online training developed and available in the company’s Learner Management System (LMS), management also demonstrates a strong commitment to the new vision of the organization by getting stakeholders on-board. The training was delivered to any and all employees that were responsible for the management of a third party/business partner relationship. The training was delivered by the dedicated Third-Party Management Program team that the company assembled to manage its FCPA compliance program. Existing employees needed to take the training by June 2010 and new employees could take the training as an optional part of their annual training requirements or immediately upon being assigned duties that involved managing a business partner. In the training, management:

1. Shows the net costs of the program compared to the potential fines and other consequences that could arise if bribery were prevalent;
2. Discusses disciplinary actions (up to termination) of employees that do not follow the mandates of the program or who violate the new culture of anti-bribery (White, 2010a).

The vision of the FCPA program is as follows (White, 2009a):

Third parties retained by [Company] or any of its subsidiaries must:

- Be qualified to represent, sell, or promote [Company] products and services
- Have a reputation for professionalism that will reflect well on [Company]
- Be honest and ethical in their business dealings
- Be transparent in providing information to [Company] in connection with the application of our Third Party Management Program
- Comply with applicable laws, including in the countries where services will be provided
- Receive only reasonable compensation that is consistent and commensurate with the services provided to [Company]. (p. 4)

Communicate the vision. Step four of Kotter’s (1995) eight-step process involves utilizing the various modes of communication within an organization to disseminate information about the desired change and the future state of the company once the change has been implemented. The ACFE/The Network outlines the various communication strategies that the company should employ. This includes newsletters, meetings, the intranet, and other sources frequently used by employees. Refer to Appendix A for the full communication strategy described by the ACFE/The Network.

The company utilized various communication methods to inculcate the FCPA program requirements and the need for a more ethical organization, free of bribery. These included:

- Word of mouth by senior and middle management;
• Intranet, available on demand (for internal users/employees);

• Mass e-mails to employees (once annually); an e-mail dated February 28, 2010 notes, “Everyone, everywhere doing business with [Company] must abide by the requirements of the FCPA compliance program as outlined in the First Edition of the Third Party Management Program handbook;

• Mass e-mails to business partners (once annually);

• FCPA program handbook (two editions dated August 2009 and June 2010) distributed to employees in hardcopy format and also made available on-demand in electronic format on the company intranet;

• Online training sessions available on-demand; the training is dedicated specifically to FCPA compliance and notes, “The requirements in this training must be adhered to by all business sponsors managing a third party relationship”;

• In-person training sessions available upon request;

• Company website available on-demand (primarily for external users but also available to internal users);

• Clauses in contractual agreements with business partners; the clause reads:

  Seller will not be required under any circumstances to take any action or make any payments that Seller believes, in good faith, would cause it or its affiliated companies to be in violation of any Anti-Corruption Laws (Anti-Corruption Laws include, collectively, the United States Foreign Corrupt Practices Act, laws under the OECD Anti-Bribery Convention and local anti-corruption laws). If Seller at any time believes, in good faith, that a breach of any of the representations and warranties in this Section has occurred or may occur, Seller may withhold any
commission, compensation, reimbursement, or other payment until such time as Seller has received confirmation to its reasonable satisfaction that no breach has occurred or will occur. Seller shall not be liable to Buyer for any claim, losses, or damages whatsoever related to Seller’s decision to withhold any commission, compensation, reimbursement, or other payment under this provision.” (White, 2012k, p.1);

- Inclusion of ethical decision-making as an annual appraisal factor for employees.

This researcher also found that information on the FCPA program is included in new hire materials. In the company’s Guide to Ethical Conduct (GEC) handbook (part of the new hire materials/packet), there is a section titled Anti-Bribery that provides general information on the company’s intolerance of bribery and the requirements of the FCPA program. The GEC handbook then refers employees to the second edition FCPA handbook, referenced throughout this findings section, for specific information on managing third party/business partner relationships and preventing bribery.

The second edition handbook used to communicate the vision and the requirements of the FCPA program, available on the company intranet, has been translated and made available in all of the languages that are spoken by employees of the organization. These languages include Spanish, French, Simplified Chinese, German, and approximately 15 other languages. The translations were presented to local legal counsels that speak English and the respective native languages to ensure that translations were appropriate and that no cultural nuances existed in translated materials (personal observation, April 8, 2010).

Further examples of communicating the vision at all levels of the organization are demonstrated through in-person updates on FCPA compliance that are provided to the Board of
Directors on a quarterly basis. For instance, a PowerPoint presentation was delivered at the Board of Directors’ meeting on March 7, 2012 in Switzerland, where FCPA compliance was an agenda item and information on the company’s progress was included. The progress information in the PowerPoint presentation (presented on March 7, 2012 to the Board) included the fact that the company had created approximately 10,000 contracts with third party business partners, all of which included language enforcing compliance with the company’s policies on bribery and ethical business transacting.

Business unit executive teams also meet to discuss FCPA compliance on a weekly basis. Meeting minutes from a September 12, 2012 meeting showed that a Vice President and other senior management personnel met to discuss and approve engaging in business with three new business partners after the due diligence process was completed on these third parties. This communicates to lower level employees the vision of upholding an ethical organization and that matters of who the company partners with, are being taken seriously. The meeting minutes from the September 12, 2012 meeting denote that the meeting commenced with the Vice President thanking everyone for his/her continued efforts to ensuring that the organization remains bribe-free. Further, the e-mail distribution list showed that the decisions taken at the meeting, which included approving two cases and denying one case, were communicated to lower level employees. The one case that was denied was because the third party had a history of corruption (White, 2012c).

E-mails pertaining to third parties other than the aforementioned were also sent to senior business leaders on August 6, 13, 20, 27 and September 3, 10 and 17 in 2012. The business leaders (which included Vice Presidents, CFOs and Legal Counsels) reviewed the high-risk business partners included in the e-mail and approved them to engage in business with the
company. The decisions were then communicated to lower level employees that would be managing the relationship with the business partner with explanations stating that there appeared to be no reputational issues with the third parties and that they appeared to uphold the same commitment to ethical business as the company (White, 2012d). Executive teams met weekly to discuss approving third parties as business partners, from August 2009 to September 2012, when these findings were written (White, 2012e).

Further evidence of the communication strategy of the company is seen through e-mails that contain vignettes on FCPA compliance and FCPA issues and are distributed to the business/employee community on a quarterly basis. These vignettes point out FCPA issues (instances of bribery) encountered by other companies and the policies and procedures that the company in question and other companies continue to implement to maintain an anti-bribery environment. For example, the May 2012 e-mail contained information about the Wal-Mart bribery scandal that occurred in Mexico and language re-emphasizing the fact that bribes should not be paid, even in instances and situations as small as to speed up obtaining work/building permits for job sites. The e-mail noted, “We strive to conduct all business transactions with the highest level of integrity, and we look to each employee to assist us with this and report any and all violations” (White, 2012f). These vignettes are e-mailed to all employees from the Office of the Ombudsman and are available on the intranet quarterly.

Separate e-mail communications (in addition to the aforementioned vignettes) on FCPA compliance are also remitted to legal and compliance personnel in the Legal department by the Chief Compliance Counsel (CCC) on a more frequent basis. From March 2012 until June 2012, legal professionals in the company received five e-mails on FCPA compliance. In all of its communications, management notes that the FCPA program is a mainstay within the
organization. The May 2012 e-mail from the CCC emphasized that legal personnel must continually promote the vision of an ethical organization. The e-mail stated, “Remember to always communicate to every single employee that we are an ethical organization that conducts business in accordance with all laws and regulations and in a fair manner … any wrongdoing will be caught, and the company and individuals involved will prosecuted by the appropriate authorities” (White, 2012g).

**Enable action/remove obstacles.** This phase moves beyond communication of the vision and involves actually implementing the desired change into the everyday decisions and actions of stakeholders (Kotter, 1995). The entire ethics framework proposed by the ACFE and The Network addresses this phase of the program implementation process (refer to Appendix A). Under this theme, this researcher reviewed documents to determine any obstacles faced by the company and/or its employees, post-implementation of the FCPA program.

The primary obstacle noted was the fact that the FCPA program slowed the pace at which the company could engage a business partner, and it also prevented bribery in countries where these payments were once customary/allowed. To prevent these obstacles from being a burden to the company, a quicker investigation process was implemented to grant employees pre-approval to conduct business with third parties. Additionally, limited facilitating payments were allowed after obtaining the appropriate approval from the Chief Compliance Counsel. (White, 2010a).

The FCPA program hindered quick transacting since new business partners could be subjected to due diligence, resulting in an up to six weeks wait before transactions could occur. To the sales personnel in the organization, this stifled sales and drove some business partners into the hands of competitors. An e-mail communication from an employee notes, “[i]f we don’t
hurry this distributor will go to our competitor. This process is taking too long and we will lose money” (White, 2011b).

Aware of this, the legal team created a process, as outlined in a memorandum dated January 20, 2012, whereby the company’s external investigators would conduct a high-level due diligence search/investigation of a prospective third party business partner. The investigation involved extensive searches of the Internet and other public media to identify any adverse information about the business partner. The search typically took the investigators between five to seven business days to complete, and if no adverse information arose about the business partner (such as a history of corruption) the company could proceed with any immediate orders or transactions while full investigational due diligence was on-going. Once the full investigation was completed and there were no adverse findings, the third party was presented to senior management for full approval as a business partner.

Another obstacle faced by some employees was the fact that in certain countries, bribe payments were deemed legal and even tax deductible and were a normal part of business in these countries. To counter this, the company rendered certain payments legal, on an exception basis and requiring explicit approval from the legal team. These payments include payments related to (1) gifts, meals, and entertainment; (2) travel and lodging; and (3) facilitating payments (White, 2010a).

**Generate short-term wins.** Kotter (1995) writes about promoting any immediate benefits of the desired change within the organization to demonstrate to stakeholders the practical benefits of the change (Kotter, 1995).

The ethics program framework by the ACFE/The Network does not address this aspect of building and implementing an ethics/FCPA program.
Review of documents revealed that the short-term wins were communicated to employees in an e-mail dated September 25, 2012. This was about the verdict from the US DOJ, after three years of the program’s existence, indicating that fines/penalties were less than anticipated. The short-term win for the company lay in the fact that the US DOJ held off on rendering any penalties or fines to the company and monitored the FCPA program to ensure its viability and effectiveness at decreasing and even eliminating instances of bribery.

The e-mail read, “The Legal team of [Company] extends sincere gratitude to all employees for their dedication to our FCPA compliance efforts. The outcome of the decision by the US Department of Justice is very favorable to our organization and it’s because we’ve implemented a world-class FCPA program and because you have followed it with integrity and diligence…” (White, 2012g).

There was no other evidence in the documentation reviewed of any short-terms wins within the organization since the institution of the FPCA program.

**Hold the gains/build on change.** This step involves a continuous process of ensuring that the change fits the dynamics of the organization (Kotter, 1995). Kotter (1995) warns against declaring victory too early and allowing the organization to slip back into its previous ways.

To prevent the company from reverting to the previous status quo, the ethics framework calls for certain mechanisms to be instituted within a viable ethics/FCPA program. These mechanisms include a dedicated, anonymous system whereby employees can report unethical conduct observed within the organization without fear of retaliation. The ethics framework also emphasizes the establishment of an appropriate and documented policy to appropriately investigate any misconduct/FCPA violations by employees, while still ensuring the privacy of all parties involved.
The company website, the second edition handbook, e-mails and training materials (PowerPoint presentation and Learner Management System) revealed that the company has (White, 2010a):

1. A dedicated reporting hotline;
2. Procedures for investigating reported instances of corruption; and
3. An IT environment and policies to ensure the confidentiality and data security of information collected.

As detailed on the company website, there is an anonymous reporting system through the Office of the Ombudsman that can be used by all stakeholders. Individuals are not required to provide any identification information about themselves; however, they must provide sufficient information to allow investigators to investigate the matter being reported, including the names of the parties involved in the corruption/corrupt behavior. The company noted to this researcher that information around documented policies on investigational procedures could not be shared. Therefore, there are no formally documented procedures available to the general employee population specifying how FCPA investigations are conducted within the company. Per legal personnel from whom the policies were requested, this information is not shared in order to uphold the integrity of the investigations process.

The hotline, one of the mechanisms used to “build on the change” toward an ethical organization (Kotter, 1995): (1) is available to report instances of bribery and unethical conduct; (2) is free of charge for employees; and (3) is available in both toll free and local numbers for international employees. The hotline is available for calls by employees 24 hours per day, seven days a week, and every day of the year. Employees may also report any violations through a dedicated website that the company maintains. The hotline and website are available to
employees in their native language. Employees are provided with a case number and a pin number so that they can log on to the case management system on the website to track the status of issues reported. The case management system, along with the case number for tracking cases, helps maintain anonymity while providing continuous communication with and case status updates to employees. Information on the hotline is detailed in the program handbooks (White, 2009a; White, 2010a).

Investigations relating to violations of company policy/unethical behavior are managed by a third party provider and also by the company itself. This strategy is employed to promote confidentiality of issues reported and persons involved, and to allow for an impartial party, specifically trained in investigations regarding ethical issues, to investigate the matter reported and provide an unbiased report of findings. Only the ombudsman team (which was in place prior to the implementation of the program) and external case managers have full access to review all information related to investigations. Since data are maintained by a third party provider, only this company and the ombudsman team have access to information on investigations, along with those individuals who have been provided with a specific case number and a pin (the parties involved in the case and usually the individual that reported the incident). The parties involved in the reported incident can view the findings and related/relevant information on the case management website.

**Anchor changes in culture.** With the new organizational behaviors instituted, Kotter (1995) reiterates the need to engrain the new behaviors into the organizational culture in order that the new behaviors become the norms and standards of the change recipients.

The ethics framework proposed by the ACFE/The Network beckons the creation of an ethical culture through (Evaluate Your Ethics Program, 2006):
• Surveying employees to ensure that they have gained an understanding of the ethical environment;

• Discussing ethics and the code of conduct frequently;

• Frequent communications;

• Ethics training. (p. 3)

To demonstrate a commitment to an ethical organizational culture, this researcher found that new hire training materials included information on ethical decision-making in employee’s everyday roles/functions in the organization. The company also required employees to sign a standard agreement certifying that each and every employee understood and agreed to abide by the ethical policies of the company. There is however no specific mention of FCPA compliance in the statement to be signed by employees, though the FCPA policy falls under the umbrella of ethical policies. It is a blanket statement of employees’ general compliance with company policies on ethics (see Appendix G).

Another example of the company engraining changes and ethical decision making into its culture was demonstrated in the public acknowledgment of one employee for promptly reporting a business partner’s request for money to pay a bribe to help the company win a major contract in the employee’s respective country. The employee promptly reported the issue to the Office of the Ombudsman who investigated the situation and was able to terminate any business/agreements with the business partner prior to the rogue business transaction occurring, which would have violated FCPA laws and potentially landed the company in further legal complications. The employee was publicly mentioned and acknowledged by management (personal observation, September 27, 2012).
To further show the company’s commitment to anchoring ethical decision-making and a bribe-free environment throughout the organization, the Legal department annually remits a general survey to employees to ascertain the issues that employees believe are important to the organization. This survey was sent to all company employees in June 2012. The survey permitted employees to relay information on the ethical issues they believed to be important to the organization and issues that employees believed may require closer monitoring. There was also one general question that asked employees to indicate whether they believed the resources available to them were adequate and whether the employee believed that additional resources and/or training were required. The question specifically asked, “Please describe your level of satisfaction with the resources and support provided to you by the Legal Compliance Organization of [Company]. Also indicate any additional resources and/or support that would benefit your business segment, that you do not currently receive” (White, 2012i). There is no specific question or space provided that asks employees specifically about FCPA issues; however, this can be provided in the general comments space at the end of the survey (described above).

High-risk business partners were required to undergo an FCPA training module. These high-risk third parties (subsequent to 2009, the start of the FCPA program) also signed a statement that commits to not paying bribes on the company’s behalf. Anti-bribery language was also included in all contracts. A record was maintained of each business partner that undergoes the FCPA training and those that signed the FCPA anti-bribery agreement of the company. The above information demonstrates that the company implemented measures to ensure that compliance and ethics were engrained throughout the business processes within the company.
Corporate governance and integrity statements were included on the company’s intranet under Employee Resources and on the general website for external visitors to the company site. The company’s commitment to anti-bribery and remaining in compliance with the FCPA legislation was echoed on the company intranet by the Chief Executive Officer, and listed on the general website for external visitors under The [Company] Guide to Supplier Social Responsibility.

The importance of the FCPA program and ethical business practices continued to be reiterated throughout the organization through quarterly newsletters, postings on the intranet and road shows,\textsuperscript{10} where compliance with the FCPA program was incorporated with other ethical reflections\textsuperscript{11} training. Management at all levels continued to enforce the necessity for following the tenets of the program to promote a business environment free of bribery.

Chapter 5 discusses the implications of the findings presented above for scholars and practitioners and proposes future research.

\textsuperscript{10} A road show is described as a group of legal professionals visiting various sites to conduct training sessions. Since the sessions are typically designed to be entertaining and engaging and given the fact that the team "takes to the road" traveling from site to site, it is referred to as a road show.

\textsuperscript{11} Ethical reflections are engaging case scenarios that allow participants to reflect on the ethical dilemmas involved in the scenarios and how they might resolve the issue(s) if faced with similar decisions/circumstances.
Chapter Five

Discussion of Research Findings

The purpose of this research was to determine the viability of an FCPA program, in accordance with the Kotter (1995) eight-step model on effective program implementation. The intent of the FCPA program was to combat the issue of bribery, a pervasive phenomenon in today’s international marketplace (Bishara, 2011; Carr & Outhwaite, 2011; Fanjul, 2008; Glaeser & Saks, 2006; Rockness & Rockness, 2005).

Kotter’s (1995) eight-step model for effective organizational change was used as the theoretical lens through which the FCPA program under investigation was analyzed, as the purpose of implementing an FCPA program was to institute successful organizational change toward non-bribery. The Kotter (1995) model was chosen because it defines the process for effective program implementation that effects organization-wide change, and it has been used in several successful change initiatives in large organizations (Guzman, Gely, Crespo, Matos, Sanchez, & Guerrero, 2011; Nitta, Wrobel, Howard, & Jimmerson-Eddings, 2009; Quinn, Amer, Lonie, Blackmore, Thompson, & Pettigrove, 2012; Tanguay, Waltman, & Defebaugh, 2011). The Kotter (1995) model was used in conjunction with a framework on effective ethics programs proposed by the Association of Certified Fraud Examiners and The Network (Evaluate Your Ethics Program, 2006). The framework combines over 25 years of knowledge on effective ethics programs and was used in this research as a tool to collect data about the design of the FCPA program.

As of the completion of this thesis, the company subject to this investigation has been dissolved as a result of a Board of Directors decision, supported by the votes of shareholders. The decision to close the company was undertaken to dismantle the conglomerate, multi-industry
nature of the organization and create three distinct entities that align more strategically with core production competencies (White, 2011c). The closure of the business was not a result of the fines imposed by the US DOJ in September 2012 for the company’s prior FCPA violations.

Even though the company has closed, the findings and implications of this research remain valid and have ongoing use in any corporate environment since they relate to a general compliance program. If implemented according to a successful implementation model such as the Kotter (1995) model, which has been used in several organizational change initiatives (Guzman, Gely, Crespo, Matos, Sanchez, & Guerrero, 2011; Nitta, Wrobel, Howard, & Jimmerson-Eddings, 2009; Quinn, Amer, Lonie, Blackmore, Thompson, & Pettigrove, 2012; Tanguay, Waltman, & Defebaugh, 2011) and also implemented in accordance with the effective ethics program model by the ACFE/The Network, the FCPA program should enact FCPA compliance and behavior that supports non-bribery. Both of these frameworks (Kotter and the effective ethics program framework) are general models that have been previously used in several other organizations in corporate America and that strengthen the applicability and relevance of the FCPA program under consideration, in other companies.

By analyzing the convergence of the effective ethics program framework (Evaluate Your Ethics Program, 2006) with the Kotter (1995) model, and then comparing the requirements of these two frameworks with the FCPA program under investigation, this researcher examined the question: To what extent is the chosen company’s FCPA program viable in its design and implementation when compared to industry standards and Kotter’s eight-step change model?

Figure 3 is a scorecard created by this author to summarize and depict the findings from Chapter 4 against Kotter’s (1995) model. In the scorecard:
• A circle shaded in black signifies that the program under evaluation meets Kotter’s (1995) criteria for effective programs with no recommendations for improvement from the literature; and

• A circle in white signifies that some of Kotter’s (1995) criteria have been met (but not all) and there remain some recommendations from this thesis and the literature for improvement of the program.

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<thead>
<tr>
<th>THEMES FROM FINDINGS</th>
<th>Kotter (1995) Evaluation Criteria</th>
<th>Results</th>
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<tbody>
<tr>
<td></td>
<td>Create urgency</td>
<td>●</td>
</tr>
<tr>
<td></td>
<td>Assemble taskforce</td>
<td>●</td>
</tr>
<tr>
<td></td>
<td>Define vision</td>
<td>○</td>
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<td></td>
<td>Communicate the vision</td>
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<td>Enable action/remove obstacles</td>
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<td>Generate short-term wins</td>
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<td>Hold the gains and build on change</td>
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<td></td>
<td>Anchor changes in culture</td>
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Figure 3. A score-card of the extent to which the FCPA program meets the requirements of Kotter’s (1995) eight-step model to successful organizational change, under the themes described in the Findings section of this thesis (i.e. the Kotter model).

**Overarching discussion on findings.** The primary reason that the company implemented this FCPA program was to create a more ethical organization, demonstrate to the US Department of Justice that it was serious about conducting ethical business transactions in accordance with the law, and avoid further fines/prosecution in the future (United States Sentencing Commission, 2011). An ethical organization would not be subject to fines from the US DOJ for FCPA violations; that, in turn, impacts the bottom line (financial position) of the organization. Lack of fines preserves shareholder wealth (many of the employees are shareholders) and maintains the employee incentive plan (such as bonuses and profit-sharing). Management also recognized that a company marred by unethical conduct is a company that can be barred from operating in the US, and with approximately 50% of revenues and the majority of jobs residing in the US, it was in the best interest of the organization to change its culture to become more ethical. Further, by implementing the FCPA program, the organization hoped to obtain leniency in the fines and other punishments it would receive for past FCPA violations.

In September 2012, after it had monitored the implementation and progress of the company’s FCPA program, the verdict from the US DOJ resulted in the company paying $26 million in fines with no prosecution, a lesser penalty than some other companies with similar violations that did not have FCPA programs implemented prior to their convictions (Darrough, 2010). For example, Siemens’ fine was approximately $1.5 billion in 2008; Haliburton paid approximately $579 million in 2009; and BAE Systems paid approximately $400 million in 2010.
(Viswanatha, 2012). After approximately three years of monitoring the program and its impact on the organization (i.e. the decrease of reported bribery instances), the US DOJ decided to enter a non-prosecution agreement\(^{12}\) against the organization and reduced fines for reducing bribery instances. Management or the DOJ did not disclose the initial amount of potential fines to the public; however, the company’s legal team reported that the fines assessed owing to the good behavior of the organization were less than expected had the FCPA program not been in place.

The findings from this research show that the FCPA program aligned with five of Kotter’s (1995) steps to effective organizational change. This demonstrates that the company implemented a strong program with respect to these five areas. However, in three of the areas described by Kotter (1995) as requirements of an effective program that will successfully effect organizational change, the company failed to implement the strategies necessary to produce a completely viable FCPA program.

**Areas in conformance with Kotter model.** Below is a synthesis of the key findings in this thesis that substantiate both the Kotter (1995) model and the existing literature. These are the areas represented by black circles in Figure 3. As previously stated, black circles signify that the program under evaluation meets Kotter’s (1995) criteria for effective programs with no recommendations for improvement based on the findings, the Kotter model, and the literature. In the five areas discussed below, which conform to five of the steps to effective organizational change, the organization met the standards established by Kotter (1995). The five areas are sense of urgency, establishing the taskforce, communicating the vision, enabling action and removing obstacles, and holding gains while building on change.

\(^{12}\) In a non-prosecution agreement, no formal criminal charges are filed against a company.
Urgency. The literature review demonstrated the pervasiveness of bribery throughout practically all regions of the world, in companies of all sizes and spanning several different industries (Bishara, 2011; Brown, 2012; Carr & Outhwaite, 2011; Charoensukmongkol & Sexton, 2011; Darrough, 2010; Fanjul, 2008; Glaeser & Saks, 2006; Goldstein, 2007; Jatto, Jr., 2010; Kroll, 2011; Lee & Oh, 2007; Rockness & Rockness, 2005; Rodriguez, Uhlenbruck, & Eden, 2005; Williams, 2008). Moreover, the US DOJ is no longer taking a passive approach to FCPA enforcement; the late 2000s saw aggressive action taken against violators with significant fines and other penalties being levied such as the nearly $2 billion Siemens fine (Darrough, 2010; Marceau, 2007). This, coupled with the fact that the company under investigation experienced instances of bribery in the early 2000s, for which it was fined, with further/repeat instances discovered in the late part of the first decade of the 2000s, created the urgent need for the organization to design and implement an anti-bribery program to change its corrupt organizational culture.

As the findings demonstrated, shortly after the discovery of repeated instances of bribery and after scanning the enforcement environment to assess punishments by the US DOJ for similar violations, the company embarked upon the approval and creation of a remedy to combat bribery with the implementation of its organization-wide FCPA compliance program (within a year) in August 2009. The US DOJ rewarded this quick action in 2012 when the organization was spared any formal criminal charges and given reduced fines, as compared to other violators, for its FCPA compliance efforts.

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13 The organizational culture is deemed corrupt because of significant, widely publicized accounting/fraud issues that the company experienced in the early 2000s, along with FCPA violations also occurring in the early 2000s and repeat FCPA violations in the late 2000s.
This research revealed that the company responded promptly to the urgency in implementing an FCPA program. Management began the process of forming a team to design an FCPA program, approving the implementation of the program and instituting it all within approximately one year. The existing literature or the Kotter (1995) model does not address any specific timeline in which programs should be implemented. However, the one-year timeline was reasonable and reflective of the urgent need for the program’s implementation.

**Taskforce.** The FCPA program researched met the criteria established by Kotter (1995) and described in the literature for assembling the appropriate team required to implement organizational change. Researchers (Burke, 2002; Fernandez & Rainey, 2006; Johnson & Leavitt, 2001; Kotter, 1995; Nadler & Nadler, 1998) share the view that the most powerful and highest ranking individuals within a company need to be involved in the change process in order for the change efforts to be successful.

Consistent with the requirements of the existing literature and Kotter (1995), the findings demonstrate that top-level management, the highest-ranking individuals in the organization, was involved in the change process of the company investigated and constituted the guiding team that created and promoted the FCPA program. This management team included the CEO (the company’s highest officer) and several other high-ranking individuals including the third in command (the Chief General Counsel), divisional and corporate Presidents, VPs, and General Counsels.

Although the research findings indicate that the guiding coalition for the FCPA program implementation met the criteria of having the most powerful and high-ranking individuals of the organization involved in the change efforts, the level of influence that these individuals have throughout the organization could not be assessed since this research focused on a document
review rather than interviews. Kotter’s (1995) model presupposes that because of their positions that these individuals would have influence over employees in the company; however, to state their level of influence definitively, additional research would need to be completed by interviewing employees. This was not the focus of this research.

**Employee cynicism**: One of the biggest obstacles to effective organizational change is employee cynicism (Brown & Cregan, 2008) and resistance (Agboola & Salawu, 2011; Beer, Eisenstat, & Spector, 1990; Carr, Hard, & Trahant, 1996; Fernandez & Rainey, 2006; Folger & Skarlicki, 1999; Ford, Ford, & D’Amelio, 2008; Kotter, 1995; Lewin, 1947; Shapiro & Kirkman, 1999). Although the highest ranking executives of the company were involved in the FCPA program implementation as suggested by some scholars (Arrata, Despierre & Kumra, 1995; Burke, 2002; Fernandez & Rainey, 2006; Johnson & Leavitt, 2001; Kotter, 1995; Nadler & Nadler, 1998), others contend that to avoid employee cynicism and resistance, two of the biggest factors barring successful organizational change, that lower level employees should be involved in the change efforts and the decision-making process (Brown & Cregan, 2008; Dessler, 2004; Trevino et al., 1999). From the documentation review conducted there was no evidence that indicated lower level employees were involved in the change efforts such as designing and implementing the program. Although this step was labeled with a black circle as it did meet Kotter’s (1995) requirements for having a strong, influential guiding coalition, the fact that lower level employees should be involved in the change efforts, as purported by the literature and substantiated by the findings in this research, will be discussed further in the implications and recommendations section.

**Communicating the vision.** Brown and Cregan’s (2008) research implies that employees expect frequent communication from management regarding change, with Goelzer (1998) noting
the importance of effective communication in effective FCPA programs. Moreover, the Federal Sentencing Guidelines (United States Sentencing Commission, 2011) state that part of an effective ethics (FCPA) program includes requirements, or a vision, that are well documented and widely circulated among company employees. Kotter (1995) emphasizes utilizing various modes of communication within the organization to disseminate information about the desired change and the future state of the organization. The effective ethics framework proposed by the ACFE and The Network also suggests that the vision should be communicated through several varied channels within the organization (Evaluate Your Ethics Program, 2006).

The company employed all of the communication strategies suggested by the effective ethics framework and described in the relevant literature except for the suggested postings about FCPA compliance in break rooms and other common areas (Evaluate Your Ethics Program, 2006). According to Kotter (1995), an extensive/comprehensive communication strategy helps engrain the vision of the FCPA program within the organizational culture. Within the organization under investigation, awareness about and details of FCPA compliance and the FCPA program were available through many company resources that are available and distributed to various stakeholders throughout the organization.

All of the materials reviewed included language that stated that the organization does not tolerate bribery and has implemented this FCPA program to monitor and prevent bribery from occurring; however, as purported in the literature, there is no consistent vision statement that employees can refer to (Kantabutra & Avery, 2010).

**Enable action/remove obstacles.** As mentioned previously, one of the biggest obstacles to successful organizational change is employee resistance to the change and employee cynicism
Under this step of the change implementation strategy, Kotter (1995) writes that the organization should address resistance and cynicism by removing obstacles that impede effective change.

There was resistance toward the FCPA program since it posed the obstacle of lengthening the time necessary to complete business transactions within the organization. This proved to be a financial disincentive of the program to the company. Kotter (1995) notes that there needs to be adequate resources and solutions available to remove obstacles and allow stakeholders to comply with the realities of the change. Van de Ven & Sun (2011) describes an “action-oriented program-solving approach” (p. 58) whereby the change agents identify and focus on breakdowns within the change process and undertake the necessary corrective action to resolve the impeding issue(s). To this end, management devised a new approach to accelerate business for employees by granting preliminary approval for third parties while due diligence was ongoing. This removed the obstacle.

Another obstacle (Kotter, 1995) that employees faced was the fact that bribes were customary and legal in some countries. To counter this management allowed certain limited payments (which are not perceived as bribes) to be made with prior approval from the company’s legal team, thereby removing the obstacle. These limited payments are permissible by law and allow businesspeople to give gifts, facilitating payments, entertainment, and other permissible payments to foreign officials.

Although the FCPA program met Kotter’s (1995) requirements in this step, this thesis discusses the implications of employee resistance in the Implications section later in this chapter,
as this was an emerging phenomenon observed in this research but not addressed extensively by the Kotter (1995) model.

**Hold the gains/build on change.** This phase of Kotter’s (1995) program implementation model involves ensuring that the program infrastructure and resources are able to sustain the expected changes/results. Several authors support this theory, noting that if employees are unclear about specific conduct or business activity, adequate resources should be readily available to assist in the decision-making process (Hunt & Vitell, 2006; McDonald & Nijhof, 1999; Pelletier & Bligh, 2006; Trevino et al, 1999).

The FCPA program researched included several tools to effectively build on and support the change efforts within the company, including a reporting hotline as required by the ACFE/The Network’s model and the existing literature (Evaluate Your Ethics Program, 2006; Trevino et al., 1999).

To demonstrate its commitment to building on the change of becoming an organization free of bribery, the company and FPCA program also incorporated an investigations process to examine all reported instances of unethical conduct, specifically bribery. This is an integral aspect of an effective FCPA program as purported by Huisisian (2009) and Goelzer (1998).

In building on the change to be brought about by the FCPA program (Kotter 1995), effective training should be offered to stakeholders (Agboola & Salawu, 2011; Paine, 1994; Ponemon & Felo, 1996; West & Berman, 2004). This research found that the training sessions offered by the organization incorporated the components described by Kotter (1995) and in the literature review.
An effective program should also include the implementation of due diligence procedures on the highest risk third parties (Goelzer, 1998). The FCPA program researched included extensive due diligence procedures on the highest risk third parties within the company.

**Key implications and recommendations.** The key findings of this thesis and areas that, if corrected and incorporated into the FCPA program under review and similar programs offered by other corporations, would strengthen the program’s viability are in the three Kotter (1995) steps of: defining the vision, generating short-term wins, and anchoring changes in the culture of the organization. These three areas are the steps represented by white circles in Figure 3. As previously stated, white circles signify that the program under evaluation met some of Kotter’s (1995) criteria for effective program implementation, but there is room for improvement in order to sustain a viable FCPA program that will transcend change throughout the organization. These three areas where the program was not in complete conformance with Kotter (1995) are key to both the implications outlined in this thesis and important for future research. They are also integral to corporations intending to replicate the FCPA program described herein, in standing up to the scrutiny of the Department of Justice and complying with FCPA legislation. These three areas lead to key implications and recommendations for scholars and practitioners.

**Defining the vision.** Labb (2008) writes that programs fail because employees do not immediately see benefits, the program’s alignment to their job functions and/or the overall corporate strategy. Linking the objective(s) and vision of the program to an employee’s job function increases the retention, buy-in, and overall effectiveness of the program (Labb, 2008). If employees are asked to adopt an initiative on ethics within the workplace, but they do not understand the importance of the program to the organization and the tools or strategies that they
may employ to help them meet requirements, then the program will have little immediate impact on the organization (Spitzer, 1984).

In accordance with the literature on effective ethics programs (Labb, 2008; Spitzer, 1984) and Kotter (1995), the company appears to have appropriately defined the vision of the organization. As explicated in the findings, the company established and communicated a clear vision for the company, described as an organization free of ethical misconduct, specifically bribery (White, 2009a; White, 2010a). Leadership clearly communicated that the organization would no longer tolerate ethical misconduct. By thoroughly assessing the overall risk of each third party and then investigating the higher risk ones, the company could then make informed decisions about which third parties to partner with and which to avoid. The vision was to have a network of business partners that posed little to no threats of implicating the company in unethical behavior in business transactions (White, 2010a).

This area, however, was not in complete conformance with the Kotter (1995) model since there was no single vision statement that employees could refer to that described the program. The overall vision of non-bribery was communicated through the processes and publications, but there was no one, defined vision statement or no clear call that resonated throughout the entire FCPA program.

**Generate short-term wins.** Kotter (1995) suggests that in order to continue motivating employees toward the change, management needs to promote the short-term successes that the change has brought about within the organization. Fitsimmons (2009) suggests tying the motivating factor (or the short-term win) to organizational goals and linking the organizational goal to the employee’s stake in the organization. The Federal Sentencing Guidelines issued by
the United States Sentencing Commission (United States Sentencing Commission, 2011) promote rewarding employees for adherence to program policies.

In accordance with the Kotter (1995) model, the company under investigation promoted that reduced fines and penalties resulted from the implementation of the FCPA program. The existing body of literature addresses this by stating that when employees understand how their stake in the organization is affected, they are more likely to embrace the change. The company noted to employees that high fines from the US DOJ would adversely affect the company’s finances, which would adversely affect compensation and fringe benefits to employees. In other words, if the company pays out money in fines, then jobs, bonuses, and other incentives would be in jeopardy at an organizational level.

The company is not conformed with Kotter (1995) and the literature in that there was no evidence demonstrating specific rewards or “wins” available to employees for following the requirements of the FCPA program, specifically on an individual level.

**Anchor changes in culture.** The company subject implemented several mechanisms to engrain the change and the FCPA program into the fabric of the organization. Kotter (1995) addresses this as the last phase of the change implementation process where the change becomes institutionalized and is seen as the norm. Lewin (1947) calls this the refreezing phase of the change process and cites its importance in ensuring that the organization does not revert to the previous status quo.

This area is not, however, in complete congruence with the Kotter (1995) model as there did not appear to be a complete shift in the culture of the organization as cases of bribery continued to arise within the company, as reported internally by management (White, 2012j), up until the company stopped doing business as the entity researched for this thesis. The fact that
bribery cases still existed demonstrates that ethical business transacting was not yet a standard within all parts of the business and among all employees of the organization; however, it is important to note that this fact is inconclusive because the company ceased doing business.

**Recommendations.** This research is valuable to the many corporations that seek to implement FCPA programs in the face of increasing instances of bribery in the international marketplace. By replicating the program described in this research, along with the recommended changes below and the suggested additions to the Kotter (1995) model, companies can institute viable programs that will help them remain in compliance with FCPA legislation, thereby avoiding hefty fines.

Two primary implications arose from the research conducted:

1. Improvements/additions are needed to the FCPA program, in accordance with the Kotter (1995) model and the existing literature; and

2. Additional steps need to be added to the Kotter (1995) model in order for it to be more relevant for organizational change given specific issues described in the literature review and confirmed by this research. These steps are not addressed extensively or at all in the current/existing Kotter (1995) model.

**Program improvements/additions.** The program improvements below stem from the steps described in the preceding section that were not in complete conformance with Kotter (1995) and the literature review. These are the areas that an organization can add to the FCPA program described in this research to enact a viable anti-bribery program.

First, middle management and lower level employees should be involved in change efforts to promote greater employee buy-in and more successful organizational change. As described in the Taskforce section above, researchers contend that when middle management and
lower level employees are involved in diagnosing problems and proposing the change solution, there is a greater likelihood that the employees will accept the change, and it is likely to be more successful than a top-down approach.

The second program improvement involves the communication strategy. A company should create a simple, clear vision statement echoing the need for FCPA compliance and should place the statement in break rooms and other common areas where employees frequently congregate. This allows employees to easily remember the vision and keep it at the forefront of their minds.

Lastly, as a short-term win and in accordance with the performance-outcome expectancy and valence theories, employees should be provided with measurable rewards that they place a high value on to promote increased cooperation and participation in the FCPA program. As an example: If employees have a target bonus that they work toward in the organization, the employee’s manager should have the authority to adjust that bonus up or down based on reduced fines (or the absence of fines in subsequent years).

**Additions to Kotter model.** The most significant result of this research is the implication that the existing Kotter model lacks emphasis on two key components for effective change. The existing body of literature emphasizes that resistance is prevalent in any organizational change (Agboola & Salawu, 2011; Beer, Eisenstat & Spector, 1990; Carr, Hard, & Trahant, 1996; Fernandez & Rainey, 2006; Folger & Skarlicki, 1999; Ford, Ford, & D’Amelio, 2008; Kotter, 1995; Lewin, 1947; Shapiro & Kirkman, 1999). The results of this research point to several steps in the Kotter model where resistance could be addressed and minimized. For example, the Kotter model does not address resistance in relation to the guiding coalition. However, involving lower-level employees who are influential among their peers in the guiding coalition could reduce
resistance toward the change agents. Even employees who may not be particularly high in the hierarchy could effect greater buy-in among their co-workers and thereby effect successful organizational change. As resistance is such a prevalent phenomenon in change implementation as substantiated by this research, identifying resistance to change and addressing it should be a key focus and a stand-alone step in the change implementation model.

Next, as described extensively in the literature and discovered in this research, a major factor of any process implementation and successful change initiative is evaluation of the change and making any required adjustments (Kirkpatrick & Kirkpatrick, 2006). The Kotter (1995) model does not include evaluating the impact and effectiveness of the organizational changes and making any necessary adjustments as a stand-alone step in the change implementation model.

**Future Research**

There are several areas of future research stemming from this study. First, this research focused on the conceptual aspect of the FCPA program under investigation. It examined the design of the program: its components (compared to industry standards) and its implementation (against the Kotter eight-step model). Now that the structure and implementation of the program have been examined and the viability of the program assessed, the next phase would be to determine the perceptions of program participants, to obtain their views on the effectiveness of the program in meeting its objectives of preventing bribery in business transactions.

Additionally, the standards of comparison in this study: the ACFE/The Network framework and Kotter’s (1995) eight-step model are largely theoretical bases (supported by the literature on effective ethics programs) for examining the design and implementation effectiveness of a program. Obtaining participants’ views of the program would illuminate
whether these models are still relevant given particular dimensions (such as time, the size of the organization, industry, and so on).

Following an examination of participants’ perceptions of the program would be an objective study to determine whether the program is actually meeting its stated objectives. This can be accomplished by testing employees’ knowledge of the program, conducting interviews or business school case studies\(^\text{14}\) with employees to see how employees would respond to ethical dilemmas, or anonymously confronting employees with ethical situations (without them knowing that the situation is a test scenario), and determining whether their responses are in accordance with expected behaviors of the FCPA program.

Next, reviewing violations data to determine the program’s effectiveness would be a vital area of future research. The researcher, if relevant information becomes available, could look at the number and magnitude of violations before the implementation of the program and compare it to the same information after implementation of the program. This could be examined with respect to the cost of the program and fines, if any, incurred both prior and subsequent to implementation of the program.

Lastly, additional areas of scholarly exploration around the topic of effective/viable FCPA programs could include:

- A comparison of several FCPA programs in the industry to identify best practices for organizations looking to implement an FCPA program; and
- Implementing this program in other organizations to determine its effectiveness across companies in various industries and of various sizes.

\(^{14}\) This author uses the term business school case studies to differentiate from case studies conducted in formal, scholarly research. Business school case studies in this context refer to real-life situations that are documented and used to analyze the issues involved and strategies for solving those issues.
Further research would also be required to determine the relevance and viability of the proposed revisions to the Kotter (1995).

**Research Limitations**

As stated at the beginning of Chapter 5, the company subject to this investigation was still undergoing negotiations with the US Department of Justice about its FCPA violations in the early 2000s. As a result, some of the information that may have been required to further assess the viability of the company’s FCPA program could not be obtained because of the ongoing legal proceedings. For example, Kotter’s (1995) eight-step organizational change model calls for inculcating/anchoring the changes into the corporate culture of the organization. One way to measure this in the company would be to determine the number and magnitude of bribery cases that occurred prior to implementation of the program as compared to the number and magnitude at post-implementation of the FCPA program. This information however was not public knowledge due to legal implications of releasing such information while the company was still under investigation by the US DOJ.

Another limitation was the availability of documented information. The findings in this thesis are reported predominantly based on the documented policies and procedures of the program under investigation. There may have been components of the program that were implemented and are functioning effectively but were not formally documented by the company. Since this research was a document review and did not involve interviews of personnel, the research did not capture any aspects of the program that have been implemented but not documented.

Lastly, this study focused on the viability of an FCPA program in a company that operates in a specific industry, is of a specific size with regard to revenues and number of
employees, and that faced specific ethical issues in certain countries. The organization subject to this research was an approximately $20 billion company as of September 2012 (annual revenues) operating globally, including operations in high-risk\(^{15}\) countries. The company’s operations focused on fire, flow control, and personal/asset security markets. While the literature does not differentiate between programs for companies in specific industries and sizes, the conservative approach of this specific program under investigation, coupled with the associated costs to implement a program of this magnitude, may not be appropriate for all organizations that are considering implementation of an FCPA program. As Weiss (1998) notes however, program evaluation results can prove useful to an organization intending to adopt a program similar to the one being evaluated and that is already in use or has been utilized by another organization.

**Conclusion**

With the persistence of unethical business practices worldwide and as FCPA enforcement action by US authorities persists, along with enormous fines and penalties, organizations must continually monitor their business partners and educate and train employees through a viable FCPA program to ensure that employees and business partners comply with US and global laws against bribery.

Corporations will not only be required to implement viable programs that deter/prevent unethical conduct, they will also be responsible for ensuring that employees understand and abide by the tenets of the program.

This thesis outlined the significance of the problem of practice of unethical business conduct, predominantly bribery, and the enormous financial consequences that bribery poses to firms and communities, extending to economies and countries. The author then assessed the

\(^{15}\) High-risk countries refer to those countries where there are high levels of corruption in the business environment.
extent to which an FCPA program, already implemented in corporate America, was viable in its
design and potential to effect organizational change resulting in the prevention of FCPA
violations.

Therefore, this FCPA program, with the changes described earlier and the revised Kotter
(1995) model, can jointly serve as a viable and potential platform in effecting organizational
change toward non-bribery for other companies facing the same laws and regulations as the
company subject to this research.
References


*International Journal of Business, Accounting, & Finance, 5*(2), 105-117.
Appendix A: Ethics Program Evaluation Form

Evaluate Your Ethics Program

An ethics program provides tremendous benefits, including detecting and deterring unethical behavior that can devastate an organization. The Association of Certified Fraud Examiners (ACFE) and The Network have partnered to help some of the world’s most complex organizations develop hotlines and ethics communications programs that minimize risk of illegal and unethical activities. Based on nearly 25 years of experience, the Ethics Program Evaluation Form will help you identify areas where your organization can implement improvements to your current reporting process.

COMMUNICATION REGARDING ETHICS AND THE HOTLINE

Is ethics a focus in new hire training?

Do employees certify they have received and understand:
- Code of conduct
- Ethics training materials

Does the communication define roles and expected behavior for employees, and are employee responsibilities outlined to set proper expectations?

Do all employees receive training regarding:
- Hotline usage
- Ethical issues
- Conflicts of interest
- Kickbacks
- Accounting irregularities
- Protection from retaliation
- Internal theft

Do supervisors receive specialized training regarding ethics and the hotline?

Does your organization provide hotline awareness materials to:
- Managers/Supervisors
- Employees
- Shareholders/Stakeholders
- Vendors

Has your organization designed a hotline communications campaign that reaches all employees on an ongoing basis (at least once each quarter)?

Will the content change to keep the topic new and interesting?
What tools are used to promote the hotline? Does your organization leverage existing tools and utilize various media such as:
- Employee newsletters
- Employee meetings
- Intranet
- Postings in break rooms
- Training classes
- Employee mailings

Are communication materials printed in primary languages spoken at all offices, including international locations (if applicable)?

Does the content clearly explain the purpose and process of reporting concerns, including the hotlines?

Is content reviewed for cultural nuances for use with international employees (if applicable)?

**ANONYMOUS REPORT PROCESS**

Has your organization established an anonymous reporting mechanism?

Does your organization ensure confidentiality for those who wish to remain anonymous?

Ensuring accuracy and detail: Do interviewers ask probing questions to ensure pertinent information is uncovered?

Do interview questions change according to the type of unethical behavior being reported?

Is the hotline available free of charge to all employees?

Is there a well-defined process for immediate notice of time-sensitive issues, such as impending illegal activity?

Is the hotline available 24/7/365?

Does the hotline enable reporting in the native language of all employees?

Is there a process for maintaining ongoing communication with anonymous parties?

**DATA SECURITY**

Are processes in place to protect confidentiality of ethics case information, including secure storage of backup data?

Is the data center physically secure from non-IT personnel?
Does the system have firewalls and intrusion detection to protect against hackers?

Does anyone other than the IT department, whose job function involves managing data files, have access to information?

Is report information encrypted to ensure the security of email transmissions?

Are temporary and contract employees prevented from accessing information?

Do you have a data retention policy that is well defined and followed?

**CREATING AN ETHICAL CULTURE**

Has your organization conducted an employee survey to gain an understanding of the ethical environment?

Does your organization discuss ethics and the code of conduct frequently (on at least a quarterly basis)?

Do employees receive ethics messages:
- In written communication from senior management
- On your Intranet
- In meetings with supervisors
- In meetings with top management

Does the organization conduct ethics training:
- For all employees
- For all supervisor employees

Has ethics training been conducted with senior management?

Has an ethics statement been issued to all suppliers?

Is Corporate Governance and Integrity discussed on the organizational website?

Does ethics communication for employees include messages from senior management:
- In writing
- In a live or pre-recorded address to all employees

**INVESTIGATIONS**

Are investigation procedures:
- Established
- Documented in writing
- Followed consistently
- Reviewed by legal counsel to ensure they are appropriate
- Designed to protect confidentiality and prevent retaliation

If your organization is publicly traded, has the Audit Committee developed a mechanism for ‘receipt, retention and treatment; of complaints to comply with Sarbanes- Oxley regarding allegations of financial irregularities?

Has your organization developed relationship with an external party such as forensic accountants or independent Certified Fraud Examiners?

Do investigations procedures address the need to protect whistleblowers?

**HANDLING ETHICS ISSUES AND COMPLAINTS**

Is there a centralized database of all ethics issues or complaints, including “open door” reports?

Does the case management system contain the following elements of an incident:
- Initial report
- Involved parties
- Investigator
- Case Manager
- Details regarding actions taken to investigate
- Caller identify (or anonymous)
- Classification of the type of allegation
- Investigation assignment
- Ongoing communications
- Status (i.e. open, ongoing, closed)
- Resolution
- Action taken

Does the case management system provide audit trails that describe the history of changes made to a case?

Are users of the case management system trained regarding the type of information that should be included in the case documentation?

Does the system enable multiple users to document actions taken to investigate and resolve each case?

Is data in the case management system protected in the same way that data is protected through the hotline?

Does the system offer tiers of users with differing access rights, so users can only view and change records that fall within the scope of their responsibilities?
Dear Leader:

In recent years we have investigated far too many bribery and corruption matters with the hope that each new instance would be our last. We must now be sure we have prevented all such improper conduct by [Company] employees as well as third parties operating on our behalf. These actions undermine [Company’s] reputation and our efforts to put these matters behind us. We cannot tolerate this behavior, nor can we allow it to continue.

For this reason, [Company] has initiated a company-wide effort described in this handbook to impose strict controls and procedures on all third party entities acting outside the U.S. on behalf of our businesses. These include sales agents, distributors, customs brokers, freight forwarders, and others who can create liability for [Company]. Completing this project is a top priority for us, to ensure greater compliance with [Company’s] Guide to Ethical Conduct.

Going forward, I personally will hold each of us fully accountable for management and oversight of our third party relationships. To further secure our position as a global industry leader, we have no alternative than each one of us making this a top priority and getting it done. I expect your full cooperation.

As leaders, we all have the responsibility to model the behaviors that support our company values and to educate our employees about [Company's] position against bribery. It is good business to say “no” to bad business. In fact, some companies that have gone through this process of severing certain relationships with high-risk third parties have increased their overall profitability. That’s because bribery often results in revenues with little or no profits and is often accompanied by embezzlement.

I ask you to read through this document and the accompanying materials carefully and determine what next steps apply to you. Then take those steps and stay aware of the need to apply these third party management requirements on a going-forward basis. Note that these are not guidelines but mandates.

The effectiveness of our company policies and programs relies on the solid support and commitment of our leaders and employees to conducting business with integrity. Together, we will continue to make [Company] a company that’s respected around the world for ethical business practices, integrity and fair dealing.

Thank you for doing your part.

[CEO]
Appendix C: 2010 Handbook Letter to Company Leaders and Employees by CEO

Dear Leader:

In August 2009, Tyco launched an industry-leading effort to eliminate risks of bribery and corruption in our businesses. With your help, we have properly documented and qualified our third-party partners around the globe, and we continue to advance compliance with Tyco’s Guide to Ethical Conduct.

We are now pleased to release the second edition of the Third-Party Management Program Handbook. The second edition builds on the previously established strict controls for all third parties acting on behalf of our businesses. The second edition includes refinements to our processes and procedures to more efficiently implement the program globally. We heard from many of you through the qualification process about ways to improve the program. We appreciate your feedback and have incorporated many of your ideas into the second edition.

Of course, the overall message remains the same: We each must continue to be fully accountable for the management and oversight of our third-party relationships. As a global industry leader, we must make this effort a top priority. I expect nothing less than excellent execution and full cooperation.

I ask you to read through this second edition handbook and the accompanying materials carefully so you can fully comply with the mandates of the Third-Party Management Program. The second edition includes new relationship types, refined relationship definitions and updated processes. Please note that these are not guidelines but mandates.

I want to thank each of you for the great work you have done to support the Third-Party Program over the past year. I am counting on you to continue your active involvement in the program and to help Tyco strengthen its commitment to ethical business practices, integrity and fair dealing everywhere in the world.

Thank you for doing your part.

[CEO]
Appendix D: Certain Limited Payments Permitted by the Company

2. LIMITED PAYMENTS ARE PERMITTED ONLY BY EXCEPTION

The following activities are permitted under this Policy. However, they require review and approval in accordance with the attached implementing Procedures:

2. A. GIFTS, MEALS AND ENTERTAINMENT

Gifts, Meals and Entertainment that are given in good faith and without corrupt intent in connection with [Company’s] legitimate international business activities are permitted in accordance with the following terms and the attached Procedure A (relating only to Government Officials).

1. All Gifts, Meals and Entertainment extended by [Company] officers, directors, employees or third parties retained by [Company] shall:
2. Be reasonable and customary under the circumstances;
3. Be consistent with local law or custom unless otherwise restricted by this Policy or the attached Procedures (relating only to Government Officials);
4. Not be motivated by a desire to influence the recipient inappropriately;
5. Be provided openly and transparently;
6. Not be given to the same recipient, directly or indirectly, with a frequency that results in an appearance that the Company is trying to “buy” the recipient’s influence;
7. Be given in good faith without corrupt intent, the expectation of reciprocity or a “quid pro quo”;
8. In the case of Gifts, be provided in connection with a recognized gift-giving event or holiday in the recipient’s home jurisdiction;
9. In the case of Meals or Entertainment, be provided in connection with a bona fide and legitimate Company business purpose;
10. Be tasteful so as to not cause the Company embarrassment;
11. Not be salacious or offensive;
12. Satisfy the requirements of the attached Procedure A (relating only to Government Officials); and
13. In the case of gifts, never be in the form of cash or a cash equivalent (such as travelers check, bearer instruments, notes or similar instruments).

2. B. TRAVEL AND LODGING

Travel and Lodging directly related to the promotion, demonstration, or explanation of the Company’s products or services, such as a site review, are permitted in accordance with the following terms and the attached Procedure B (relating only to Government Officials).

Company shall provide Travel and Lodging to customers or potential customers only if the Travel and Lodging are:
• Directly related to either: (i) the promotion, demonstration or explanation of Company products or services; or (ii) the execution or performance of a contract between Company and the customer or potential customer;
• Reasonable and customary under the circumstances;
• Consistent with local law or custom unless otherwise restricted by this Policy or the attached Procedures (relating only to Government Officials);
• Not motivated by a desire to influence the beneficiary inappropriately;
• Provided openly and transparently;
• Not given, directly or indirectly, to the same person with a frequency that results in an appearance that the Company is trying to “buy” that person’s influence;
• Given in good faith without corrupt intent, the expectation of reciprocity or a “quid pro quo”;
• Not inclusive of any sightseeing paid by Company directly or indirectly; and
• Consistent with the requirements of the attached Procedure B (relating only to Government Officials).

2. C. FACILITATING PAYMENTS

Facilitating payments are small payments of Cash or the provision of a small Gift to a Non-U.S. Government Official for the sole purpose of expediting or securing the performance of a Routine Governmental Action by that Non-U.S. Government Official, where the Non-U.S. Government Official does not have the discretion to deny the performance of such Routine Government Action. (see Procedure C).

Example of Facilitating Payments include payments to expedite or secure:

• Customs clearance
• Immigration and work permits, and
• Telephone and utility connection.

Company strongly discourages the making of Facilitating Payments. Requests for Facilitating Payments will only be accepted for review in very limited circumstances where there is a significant or pressing business need to secure a Routine Governmental Action on an expedited basis, and refraining from making the Facilitating Payment will directly result in inordinate delay or the inability of Company to satisfy its business obligations.

Only Facilitating Payments of a nominal value (as defined in the attached Procedures) and infrequent nature may be submitted for review under this Policy.

The attached implementing Procedure C sets forth detailed steps and requirements that must be strictly followed in order to qualify for one of the limited exceptions described above.

Under no circumstances shall any Company officer, director or employee or any third party who conducts business on Company’s behalf make, provide, offer or authorize any payment under one of the limited exceptions set forth above without strictly following the attached Procedure C.
Appendix E: Commitment Statement Signed Annually by All Employees

My Commitment Statement

I confirm that I have read and understand the [Company] Guide to Ethical Conduct (Guide) and I commit to embrace and utilize the Guide principles in my daily work activities. I understand that, consistent with applicable local law, every Company employee is required to comply with the policies in the Guide. I am not aware of any unreported violations of these principles. Should I have a concern about a possible violation of [Company] policy, I will raise the concern through the appropriate channels as outlined in the Guide.

Date: _________________________________________________________________________

Family Name/Last Name: ___________________________________________________________________

Given Name/First Name: ___________________________________________________________________

Middle Name/Other Names: ___________________________________________________________________

Signature: __________________________________________________________________________

Employee Identification Number (if applicable): ____________________________________________
Appendix F: Approval E-mail to Use the Ethics Program Evaluation Form

On Thu, Jul 19, 2012 at 11:25 AM, James wrote:

Lemar,

You have our permission to use the document for your thesis. You might also find value in other materials we have produced since this checklist. Just visit our website at www.tnwinc.com and go to the Resources section.
If you have any additional questions, please feel free to contact me.

James, Senior Manager, Marketing Communications & PR
www.tnwinc.com | The Network, Inc. | 333 Research Court | Norcross, Georgia USA 30092

From: Lemar White
Sent: Thursday, July 19, 2012 11:04 AM
To: Info
Subject: Fwd: Request to Use Evaluation Instrument

To Whom It May Concern:

I found a document called Evaluate Your Ethics Program, which was created by the Association of Certified Fraud Examiners and The Network, copyrighted 2006.

I am writing to request permission to use this document as part of my thesis research at Northeastern University for the Doctor of Education degree in Organizational Leadership and Communication. Per the e-mail below, the ACFE is OK with me using the document.

I will be using the document as a framework in evaluating the effective design of an ethics program in corporate America. I will simply be comparing the design of the program against the survey; the survey will not be distributed to anyone (the research does not involve any human subjects).

I found the survey at:

Is this the latest version of this document or was there one published subsequent to 2006? Also, is there somewhere else where the document is located on your website so that I can appropriately cite it? I look forward to hearing from you. I may be reached at this e-mail address or by telephone: 609-XXX-XXXX.

Regards,

Lemar T. White, MBA, CFE
From: RESEARCH
Date: Wed, Jul 18, 2012 at 4:50 PM
Subject: RE: Request to Use Evaluation Instrument
To: Lemar White, RESEARCH

Hi, Lemar,

You are welcome to use the document under the circumstances you described. However, I would also advice you seek the permission of The Network if you have not already done so, as they were primarily responsible for the development of the resource.

I wish you the best of luck with your research. If you have any additional questions or if I can be of further assistance, please don’t hesitate to contact me.

Kind regards,

Andi, CFE, CPA
Director of Research
Association of Certified Fraud Examiners
World Headquarters • The Gregor Building
716 West Avenue • Austin, TX 78701

The 2012 Report to the Nations—“the most authoritative and widely quoted body of research on occupational fraud”—is now available.

Please consider the environment before printing this e-mail.

From: Lemar White
Sent: Wednesday, July 18, 2012 2:32 PM
To: RESEARCH
Subject: Request to Use Evaluation Instrument

To Whom It May Concern:

I found a document called Evaluate Your Ethics Program, which was created by the Association of Certified Fraud Examiners and The Network, copyrighted 2006.

I am writing to request permission to use this document as part of my thesis research at Northeastern University for the Doctor of Education degree in Organizational Leadership and Communication.

I will be using the document as a framework in evaluating the effective design of an ethics program in corporate America. I will simply be comparing the design of the program against the
survey, the survey will not be distributed to anyone (the research does not involve any human subjects).

I found the survey at:

Also, is this the latest version of this document or was there one published subsequent to 2006? I look forward to hearing from you. I may be reached at this e-mail address or by telephone: 609-XXX-XXXX.

Regards,

Lemar T. White, MBA, CFE
Appendix G: E-mail Approving Use of Company Information Used in Research Findings

From: Matt  
Sent: Tuesday, October 02, 2012 12:09:51 PM (UTC-05:00) Eastern Time (US & Canada)  
To: White, Lemar  
Cc: Dan  
Subject: RE: Follow-up on Research

Lemar

Sorry for the delayed response. I am ok with your research and conclusions.

Matt

From: White, Lemar  
Sent: Tuesday, September 25, 2012 1:12 PM  
To: Matt  
Subject: FW: Follow-up on Research

Matt,

I know that you are on vacation, but when you have a minute please let me know your thoughts.

I really just want to ensure that nothing I’ve written is considered proprietary information. I’ve tried to keep things at a very high level based on benchmarking meetings that Tyco would have done and also the article published in the compliance journal.

Best Regards,

L. White

From: Dan  
Sent: Tuesday, September 25, 2012 1:07 PM  
To: White, Lemar  
Subject: RE: Follow-up on Research

Lemar,

Timing on this is really rough given how busy things are with all of the ongoing work to separate and to resolve our FCPA issues. I think it’s Matt’s call on this.

Thanks,

Dan
Matt and Dan,

A couple of weeks, maybe a month ago, we decided that I should find an alternate approach to my research, as speaking with employees was not in the best interest of the organization, specifically given our position with the DOJ.

Without having to start my research over and find a new topic, I discussed with my school, looking at the design of the program against industry standards for how an ethics/FCPA program should be designed and implemented. I used a framework that was published by the ACFE/The Network (called Evaluate Your Ethics Program) and also stuck with the Kotter model on effective change. So I used these two benchmarks (so to speak) to determine if the program was effective.

I wanted to see if this is more acceptable. The information was based primarily on the article that was published in Compliance Week, and also on information that was shared in benchmarking meetings that I was a part of. There will be no mention in the research of this being [Company’s] FCPA program. [Company] will remain anonymous. And I did not speak to anyone nor will I speak to anyone within the company, other than you and/or Dan on this, as was agreed previously.

My hope was to find that the program could be used as a model FCPA program and that is what I found, as the program met all of the requirements of both models that I evaluated it against.

And of course, none of this was completed during company time.

Can you please take a look at this and let me know if this is acceptable?

Best Regards,

L. White
January 19, 2013

Mr. Lemar T. White, CFE

Re: A Program Evaluation on the Viability of a Foreign Corrupt Practices Act (FCPA) Program Implemented in a Multinational Organization in Corporate America

This letter is submitted for consideration in connection with Lemar T. White’s doctoral thesis captioned above. Mr. White requested that I review his thesis from the perspective of an anti-corruption subject matter expert. Set forth below is a summary of my observations.

As a client service executive and consultant who is frequently engaged to design, evaluate, remediate, implement, administer and monitor ethics and compliance programs, Mr. White’s thesis topic is of particular interest to me. Of further interest is the fact that I am very familiar with both the subject company and their FCPA compliance program.

Mr. White has taken on an important topic as many global organizations struggle with measuring the effectiveness and return on investment of a corporate compliance program and, most often, have little or no formal metrics in place to evaluate them in a meaningful way. Given this ongoing challenge, I found Mr. White’s thesis to be very well researched and relevant to compliance officers and practitioners alike.

I am in the process of transitioning into a new role at a new organization. In connection with this new role, I will be charged with global responsibility for an advisory practice and to act as a change agent. I found the use of Kotter’s eight-step approach to be personally inspiring and I plan on applying it to measure the effectiveness of my efforts at organizational change.

More broadly, this study provides a potential framework that will enable compliance professionals to objectively evaluate their programs utilizing John Kotter’s eight-step approach to organizational change. Mr. White has not only produced an extremely thorough, well-reasoned study in the application of organizational management techniques to ethics and compliance, he has provided something that is both instructive and extremely useful to his colleagues in the field of compliance.

Very truly yours,

Scott Moretz
Appendix I: Documents Collected by Researcher

Below is a listing of all documents reviewed and retained by this researcher in conducting this research. These documents have been referenced throughout this thesis with the citation “White” (various dates) in order to maintain the anonymity of the company.

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009a</td>
<td>Company FCPA Program Handbook (1st edition)</td>
</tr>
<tr>
<td>2009b</td>
<td>PowerPoint Presentation from Legal Team to Company Executive Leadership</td>
</tr>
<tr>
<td>2010a</td>
<td>Company FCPA Program Handbook (2nd edition)</td>
</tr>
<tr>
<td>2010b</td>
<td>E-mail correspondence from company employee (to this researcher in his capacity as an member of the FCPA program team)</td>
</tr>
<tr>
<td>2010c</td>
<td>E-mail correspondence from company employee (to this researcher in his capacity as an member of the FCPA program team)</td>
</tr>
<tr>
<td>2011a</td>
<td>Article in Compliance Week Journal</td>
</tr>
<tr>
<td>2011b</td>
<td>E-mail correspondence from company employee (to this researcher in his capacity as an member of the FCPA program team)</td>
</tr>
<tr>
<td>2011c</td>
<td>E-mail correspondence from company CEO to all employees</td>
</tr>
<tr>
<td>2012a</td>
<td>Company website</td>
</tr>
<tr>
<td>2012b</td>
<td>Article on Department of Justice website</td>
</tr>
<tr>
<td>2012c</td>
<td>E-mail correspondence from Business Unit President (to this researcher in his capacity as an member of the FCPA program team)</td>
</tr>
<tr>
<td>2012d</td>
<td>E-mail correspondence from Business Unit President (to this researcher in his capacity as an member of the FCPA program team)</td>
</tr>
<tr>
<td>2012e</td>
<td>Various meetings with Business Unit Presidents (in which this researcher was personally in attendance as an member of the FCPA program team)</td>
</tr>
<tr>
<td>Year</td>
<td>Description</td>
</tr>
<tr>
<td>-------</td>
<td>------------------------------------------------------------------</td>
</tr>
<tr>
<td>2012f</td>
<td>E-mail correspondence from Ombudsman to all company employees</td>
</tr>
<tr>
<td>2012g</td>
<td>E-mail correspondence from Chief Compliance Officer to all company attorneys</td>
</tr>
<tr>
<td>2012h</td>
<td>E-mail correspondence from Chief Compliance Officer to all company employees</td>
</tr>
<tr>
<td>2012i</td>
<td>Survey from Chief Compliance Officer to all company employees</td>
</tr>
<tr>
<td>2012j</td>
<td>E-mail correspondence from FCPA Program Leader to FCPA program team</td>
</tr>
<tr>
<td>2012k</td>
<td>Sample contract/agreement that is executed between company and third parties</td>
</tr>
</tbody>
</table>