



GIVE & TAKE

THE CASE FOR A BETTER G&E COMPLIANCE PROGRAM

PART ONE: SETTING THE FOUNDATION

WHY DOES G&E MATTER?

Tony Robbins once said, “Every problem is a gift—without problems we would not grow.” In the compliance arena, the reverse also applies, as many gifts can pose problems. And while we can argue that some of the most staggering compliance growth and maturation has happened as a result of problems (looking at you, Pfizer and Weatherford), there’s a pretty strong case to be made for avoiding problems—and thereby scrutiny—in the first place.

Which brings us to compliance with gifts and entertainment (G&E) standards set forth by domestic and international anti-corruption laws and guidance.

GIFTS THAT KEEP ON GIVING

Companies commonly use gifts as a way to obtain or retain business, and regulators have made it clear that “reasonable and bona fide” gifts made without corrupt intent are unlikely to trigger an investigation. However, lavish or excessive gifts and entertainment can easily be viewed as quid pro quo for getting or keeping business (whether unwittingly given or maliciously used as vehicles to disguise bribery and graft schemes). This can be crippling to an organization in a number of ways.

“To induce the official to use his influence to effect and influence an act.”



In describing the intent of lavish travel given to an Egyptian government official in their [civil complaint against Metcalf & Eddy](#)—the first FCPA enforcement action focused solely on excessive gifts and entertainment (G&E)—the U.S. Department of Justice (DOJ) summarized the very heart of the issue at hand with gifts and entertainment: next to cash bribes, they’re the single most tangible form of a conflict of interest.

1

THE LONG ARM OF THE LAW

The global anticorruption legal landscape is increasingly complex—and its enforcement increasingly rigorous and costly. This can be particularly challenging for companies operating in numerous jurisdictions, including countries where local officials expect, or even demand, gifts. While the United States has been leading the international community in prosecuting corporate bribery, the United Kingdom, Brazil, Germany and others are progressively demonstrating their willingness and aptitude for doing the same. Enforcement is ramping up, and so are the amounts associated with enforcement actions.

THE BOTTOM LINE:

The average value of an FCPA enforcement action has come in under the \$20 million mark just two out of ten years since 2004. Since then, 14 resolutions have been for more than \$100 million.

Historically, FCPA charges have focused on large cash bribes, with improper gifts, travel or entertainment appended as a secondary offense—“icing on the cake” for monetary payments, it would seem, in most cases. The exceptions to this have generally been in cases of extreme misconduct.

That is, until recently. Prosecutors have as of late demonstrated that they can and will levy charges for improper gifts alone, even in cases where cash has not actually exchanged hands. As Andrew J. Ceresney, Director of the SEC’s Enforcement Division, stated in a recent [release](#), “[W]e will pursue employees of public companies who think it is acceptable to buy foreign officials’ loyalty with lavish gifts and travel.”

(ENFORCEMENT) ACTIONS SPEAK LOUDER THAN WORDS

Starting in late 2014, there have been a growing number of examples where companies and individuals have been prosecuted solely for giving improper gifts and entertainment—debunking the commonly-held perception that excessive G&E alone wouldn’t be enough to land a company in hot water unless accompanied by a “smoking gun” of large-scale cash bribery.

Actions Speak Louder than Words

EXHIBIT A: FLIR SYSTEMS

The Violation: \$40,000 in excessive, “non-essential” travel and \$7,000 worth of lavish watches provided to the Saudi Arabia Ministry of Interior officials

The Damage:

\$9.5 million settlement

.9% drop in stock price

Worth Noting: Though the company profited to the tune of \$7 million as a result of the travel and gifts in question, the SEC levied a relatively low civil penalty in the case—\$1 million

The Takeaway: Credit is given to companies who are able to proactively identify possible FCPA violations and voluntarily disclose to officials as a result.

EXHIBIT B: BRUKER

The Violation: \$230,000 in improper payments to Chinese government officials for non-business related travel, sightseeing, tours and shopping in New York, Los Angeles, the Czech Republic, Norway, Sweden, Switzerland, Italy, Frankfurt and Paris

The Damage:

\$2.4 million SEC settlement

\$22 million in pre-enforcement action professional fees and expenses

1.8% drop in stock price

Worth Noting: Most of the expenses in question occurred after legitimate events and activities.

The Takeaway: Even if an expense appears related to a legitimate purpose, the government still expects a level of scrutiny to root out less explicit misconduct.

EXHIBIT C: BHP BILLITON

The Violation: \$720,000-\$960,000 to host 60 government officials and their guests at the 2008 Summer Olympics with hospitality packages that included event tickets, luxury hotel accommodations and sightseeing excursions

The Damage:

\$25 million SEC settlement

Worth Noting: The SEC settlement doesn’t accuse BHP of a corrupt or improper payment, or even acknowledge that BHP profited from the gift. They were charged because of deficiencies in their program that increased their risk of violating anticorruption laws.

The Takeaway: Gaps or weaknesses in a compliance program may be enough to warrant an SEC investigation or enforcement action, even when there is no actual (or even alleged) bribery.

2 STOCK PERFORMANCE

Companies that announce FCPA investigations or settlements may see their stocks slide as investors react unfavorably to the news.

CASE IN POINT: After disclosing that the DOJ and the SEC were investigating possible corruption related to a contract award in South Africa, Net 1's stock price dropped nearly 59%. When South African courts invalidated the contract because of the concerns, shares dropped another 28%.

4 STANDING ON STOCK LISTINGS

Addressing corruption allegations is highly disruptive to a business, which may jeopardize public companies' standing with the exchanges they're listed on.

CASE IN POINT: When Veraz Networks disclosed its \$300,000 settlement with the SEC in 2010 for improper gifts and payment offers, it had to delay filing its quarterly reports. As a result, NASDAQ warned Veraz "that its common stock may be subject to delisting."

3 SHAREHOLDER LAWSUITS

Compliance fallout may also extend to a company's shareholders, either in the form of class action lawsuits or derivative suits brought against the company's directors.

CASE IN POINT: Alcoa agreed to pay \$3.75 million in attorneys' fees and make significant compliance program and governance improvements to settle an FCPA-based shareholder derivative lawsuit—this in addition to their \$384 settlement with the DOJ and SEC.

5 LEGAL, ACCOUNTING AND CONSULTING FEES

Bringing in outside experts to swiftly and deftly investigate and remediate corruption can add up quickly.

CASE IN POINT: In 2008, Siemens paid a combined \$1.6 billion to U.S. and German authorities to settle bribery allegations. Equally as striking was the \$1 billion the company spent on attorneys, accountants and internal controls to investigate and address the misconduct and make the necessary improvements to their program.

6

REPUTATIONAL

Concerns about G&E are well founded: they have the potential to create unfair advantages by introducing and influencing subjectivity in business decisions—creating a conflict of interest.

Whether a quid pro quo arrangement is in place or not, the mere perception of corruption can cast doubt on the fair dealings of the company, eroding the perception of—and confidence in—its transparency and organizational justice. Vendor awards, partnerships, investments and more that appear to be awarded following the receipt of a gift can breed skepticism and mistrust among internal and external parties. As a result, a company's reputational value and competitive disposition suffer.

The scale of gifts may seem to pale in comparison to outright cash bribes, but [studies have shown](#) that the dollar amount of bribery does not matter—both small and large bribes have the same negative effect on a firm's competitiveness factors.

7

COMPANY CULTURE

“As it turns out, the biggest problem with corporate corruption isn't its effect on a firm's reputation or the regulatory headaches it causes,” reveals a [2013 study by Harvard Business School](#). “Rather, bribery's most significant impact is its negative effect on employee morale.”

Not only does this lead to losses in productivity and employee retention, but as morale's been shown to tie directly to company performance and stock market returns, you're sure to see this take a toll on your bottom line as well.

Improper gifts need not be prosecuted or even be public knowledge for them to cripple a company. The message that excessive gift-giving sends to employees is unmistakable: We do business at all costs. At a minimum, your employees won't believe you do business or make decisions fairly. Even worse, they may perceive that their job depends on offering or paying a bribe in any form, regardless of what your policies and training tell them.

THE STATUS QUO FALLS SHORT

“A ‘check the box’ compliance approach of forms over substance is not enough to comply with the FCPA.”

–Antonia Chion

*Associate Director, Division of Enforcement
Securities and Exchange Commission*

Today, organizations that are making an effort to monitor gifts and entertainment are primarily relying on two methods:

- **FORMS:**

Whether paper-based or electronic, these G&E disclosures are largely text field-based, standalone documents, leaving the compliance team with mounds of unstructured and disconnected information.

- **ACCOUNTS PAYABLE REPORTS:**

Reports generated from accounts payable software forwarded to compliance and reviewed for questionable transactions.

While a start, these methods present a number of challenges that both reduce a company’s ability to effectively collect and manage G&E disclosures—thereby exposing them to greater corruption risk.

CORRUPTION RISKS:

NO SUMMARY

One gift might not appear to break the law or violate company G&E policies, but what about a series of gifts made over the course of a few weeks, months or years? A single system of record should reconcile, connect and add these disclosures so you fully understand the total value of gifts being given and received on behalf of the company.

NOT A TWO-WAY STREET

These tools don't account for G&E employees receive. Tracking outgoing gifts will only partially address anticorruption risk; the UK Bribery Act, specifically, prohibits giving and receiving a bribe. Therefore, it's also important to provide a place where employees can disclose incoming gifts that may actually (or appear to) influence business decisions.

NO CONTEXT

These systems lack critical data context that could distinguish a harmless, bona fide gift from an illegal bribe. Knowing the purpose of a gift or whether the recipient is a government official are types of important information that may hinder your ability to effectively monitor and address G&E compliance.

NOT COMPLIANCE TEAM-FRIENDLY

Because of the lack of centralization or structure to the data you're receiving, the compliance team spends more time on administrative tasks related to taking in and updating data than analyzing and acting on it—where they're most needed.

TOO LITTLE, TOO LATE

These methods are only used for capturing disclosures once an employee is asking for reimbursement—and more than likely, the gift has already been given.

DATA DUMP

Though you may be able to wade through each disclosure to review and approve them, you'll be hard-pressed to really understand and address larger organizational trends if you're unable to collate the data and drill down into it, which can be incredibly useful for establishing benchmarks and spotting areas of elevated risk.

NOT EMPLOYEE-FRIENDLY

You can't expect employees to participate (let alone comply) if your G&E policies, disclosure tool and compliance aren't provided in their native language or in an easily accessible location and format.

ONE SIZE FITS ALL

The same form is used for all G&E disclosures, regardless of the type, amount, purpose or third party involved. The ability to clearly articulate what qualifies as each type of event, then set acceptable thresholds and approval processes for each will create a clear and transparent process.

As the expectations, scrutiny and stakes rise exponentially for G&E compliance, organizations can and should look for a more reliable, effective and efficient way to monitor and address the risks posed by these expenses. Particularly as the SEC has demonstrated a willingness to prosecute solely based on an ineffective G&E program, companies no longer have the luxury (if you can call it that) of waiting for a bribery event to occur for the regulators to come knocking.

Which begs the question...

NOW WHAT? - - - - -

PART TWO: ← - - - - -

AN EFFECTIVE G&E PROGRAM

THE VALUE OF INTEGRATION

MITIGATING RISK WITH REPORTING AND ANALYTICS

AN EFFECTIVE G&E PROGRAM

"Firms that invest in control systems are going to realize benefits. You're not just incurring costs by investing in these systems. Besides protecting reputation and morale, it also means that the firm is able to contain and control actions that its business allies or employees take."

-The Real Cost of Bribery, Harvard Business School

BUILDING THE FRAMEWORK

Before you even begin looking at tools or systems to help you take in and monitor disclosures of gifts, travel and entertainment, it's important to understand the critical components of effective G&E management. This will help you more clearly set expectations and define success for your team, executives and employees. It'll also help you build a minimum and optimal set of requirements for any systems or tools you look to implement.

CHANGE YOUR PERSPECTIVE

Think of these requests as disclosures, not incident reports. They're mostly proactively made exceptions to your established G&E policies, and you can choose to clear them outright, clear them with conditions or decline them. By viewing and positioning G&E completion as a disclosure, you remove some of the intimidating and negative connotations employees have with your reporting hotline, while setting the expectation that this requires frequent and ongoing participation from employees and compliance alike.

STANDARDIZE AND STREAMLINE

A system with structured, picklist data will enable you to run reports and analytics and address larger behavioral, organizational and environmental trends so that you can better understand (and ultimately address) the events that influence and enable problematic gifts.

MAKE THE RULES

It's not just defining the information you'll capture in your disclosures. What happens once employees hit "Submit" is equally (if not more) important. You'll want to define routing rules, approval workflow and escalation procedures—which may all vary by jurisdiction, business unit, type of gift, recipient, dollar amount or a number of other variables. This might also include automatic clearances or rejections based on any of those factors (if you have a zero tolerance policy for giving gifts to government officials, for example). Though it may seem daunting, this exercise will help you understand the configurability and flexibility required for your G&E program.

KNOW YOUR AUDIENCE

You want to provide a very welcoming, easy to use and non-threatening environment that encourages employees to record their G&E disclosures in a very forthcoming way that will in turn help the compliance department understand the challenges and risks—both existing and potential—that they face within their organization. Some basic requirements? Have it available in local languages, make it fast and easy to complete a disclosure and clearly define what qualifies as an improper gift.

OUTBOUND DISCLOSURES

Next, define the information you want and need to track for gifts, travel and entertainment your employees are giving to someone else. Your policies and procedures should help employees understand that this is a proactive responsibility aimed at ensuring that any gifts, travel and entertainment they're conferring to an outside party receives the appropriate and necessary scrutiny and approval. Local and international bribery standards and recent enforcement trends can help guide this exercise—any information regulators may ask for is data you should have readily available and easily accessible in your G&E system.

... YOU'LL NEED TO TRACK

- **TYPE OF DISCLOSURE:** Distinguish gifts, travel and entertainment from one another to accommodate different rules, legal standards and approval requirements. You can even add additional categories based on your specific requirements, including political contributions; charitable donations and sponsorships; and facilitation payments.
- **RECIPIENT:** This will help you distinguish government officials and employees of state-owned entities from other business partners less likely to trigger anticorruption violations. It'll also help you avoid improper gifts to individuals with whom you have pending business.
- **VALUE:** Quickly discern nominal gifts from big-ticket items and route or approve/reject them accordingly. Though the guidance on appropriate and reasonable G&E dollar value is murky, tracking both one-time and sum value of gifts given over time can help you prevent misconduct in the short and long term.
- **PURPOSE:** This bit of information is often the missing, but critical, piece of G&E transaction logs. It adds important context that could distinguish bona fide and legitimate expenses from excessive or undue gifts.
- **CLEARANCE:** Record whether the gift was cleared, cleared with conditions or rejected with details provided where needed. This not only allows the compliance team to provide stipulations to employees under which they're allowed to move forward with the gift, but provides a defensible record of your feedback to employees on acceptable or unacceptable gifts.

***Remember: The mere offer or promise of a gift can trigger enforcement action under the FCPA. It's important that this disclosure process is reinforced as a necessary step before employees even mention it to the intended recipient.*

INBOUND DISCLOSURES

Beyond ensuring that employees understand what types of gifts—if any—they're legally allowed to accept, it's also important they know how and what type of information you need to decide if they can accept the gift (or what to do with it if they cannot). This will more often than not be a reactive exercise, but an important one nonetheless.

•• YOU'LL NEED TO TRACK •••••

- **TYPE OF DISCLOSURE:** Employees can tell you if they received or were offered gifts, travel or entertainment so that the disclosure can be routed appropriately according to your routing and approval rules.
- **PURPOSE:** This bit of information is often the missing, but critical, piece of G&E transaction logs. It adds important context that could distinguish bona fide and legitimate expenses from excessive or undue gifts.
- **RECIPIENT:** Track where gifts are coming from and ensure that employees making purchase decisions or awarding contracts aren't accepting anything that may be perceived to compromise their objectivity.
- **CLEARANCE:** Although these decisions will mostly be made after a gift has been received, it'll allow you to more swiftly address questionable gifts so that your organization can eliminate any perception of conflicts of interest or bribery and remain above reproach.
- **VALUE:** Even though this may be subject to the employee's best guess, it'll again allow you to review and address the disclosure appropriately

A TOOL WITH A VIEW

Beyond individual G&E disclosures, you should also expect to have a more comprehensive understanding of your organizational “ecosystem” with regard to gifts being given and received in the form of G&E dashboards. These dashboards can come in the following forms, depending on the granularity of insight needed:



INDIVIDUAL VIEW

See all of the gifts an employee has offered, given, been offered or received in one place. This will not only allow you to review the sum total of all of these disclosures, but you can more easily understand and spot important trends that may pose a risk—like an uptick in gifts being given to potential clients and the end of a quarter, or a concentration of gifts to a particular customer or official.

GROUP VIEW

Particularly useful for business units or regional offices that pose a higher risk of bribery and corruption, viewing an aggregate collection of outbound and inbound gifts helps you make important connections, establish internal benchmarks and spot trends that may elevate your risk. View G&E trends by employee types to ensure agents or other high-risk third parties are receiving any additional scrutiny necessary. This data is also incredibly useful in helping you target your compliance training and communication efforts to employee groups that are more likely to give and/or receive gifts.

COMPANY VIEW

Useful for understanding macro trends with what, how, why and to whom gifts are coming in and going out of your organization, the company view can help you establish G&E program benchmarks and deliver a compliance program report to your board, regulators or other third parties with richer detail and greater transparency.

Beyond these functional requirements, it’s also important to consider how to more increase the utility of your G&E system by tapping into data from other compliance program initiatives and other organizational data sources.



THE VALUE OF INTEGRATION

Having a single, configurable and powerful system of record for inbound and outbound disclosures of gifts can help safeguard an organization from unwanted regulatory scrutiny and enforcement action. However, to maximize the efficacy of your G&E program, however, consider integrating it with other systems—both inside and outside of the compliance department—to add a richness and context to your G&E data that will yield more granular and actionable insights.

INTEGRATING WITH... COMPLIANCE DATA

Improve how you understand, document and address employee gift disclosures by relating them to your other critical compliance data, including:

POLICIES, TRAINING & COMMUNICATIONS

PROACTIVE	REACTIVE
<ul style="list-style-type: none"> • Reduce corruption risk by providing a unified, cohesive message that reminds employees of the significant risk bribery poses and the important responsibility they have to disclose G&E. • Proactive: You'll also be able to detect violations and track exceptions to company policies and procedures (e.g., skipping approval requirements). 	<ul style="list-style-type: none"> • Target G&E policies and procedures where they're most needed based on disclosure rates or significant risk events. • Understand where policies and procedures are working—or falling flat—based on G&E disclosure rates and trends. • Quickly and easily verify what G&E policies, procedures and training an employee has received in the event of misconduct.

HOTLINE REPORTS & CASES

PROACTIVE	REACTIVE
<ul style="list-style-type: none"> • Prevent and root out misconduct by addressing G&E before they're given or accepted. 	<ul style="list-style-type: none"> • Understand where allegations of bribery and corruption are occurring, focus G&E efforts in those areas and monitor and track improvements. • View all incidents an employee has been involved in (as a reporter, subject or witness) alongside their G&E disclosure history to improve and standardize responses and easily spot red flags.

CONFLICT OF INTEREST DISCLOSURES

PROACTIVE	REACTIVE
<ul style="list-style-type: none"> • Collect and address relationship disclosures that may present additional conflicts of interest beyond gifts given or received. • Gain insight into employee relationships, affiliations and activities that may influence gift-giving activities and decisions. 	<ul style="list-style-type: none"> • Better understand exposure to bribery and COI risk by seeing an employee's relationship disclosures alongside their G&E history.

RISK ASSESSMENT

PROACTIVE	REACTIVE
<ul style="list-style-type: none"> • Target G&E initiatives to employee populations, business units or geographic regions more at risk for bribery and corruption. 	<ul style="list-style-type: none"> • Track and measure G&E activities to gain a real sense of where your risks are being effectively addressed.

Correlating data from your compliance program initiatives doesn't just facilitate easier program reporting and benchmarking; you'll be far better armed to perform gap analysis and have early and consistent insight into compliance risk. You'll also be able to zero in on exactly what controls were in place at any given point in time, down to the employee's individual attestation and certification history. More G&E disclosures, with richer and more structured data contained in them, arms the corporate compliance team with richer insight into employee behaviors, risk disposition and drivers and where compliance initiatives may be working—or falling perilously short.

INTEGRATING WITH... HR DATA

Stepping outside your program, there's incredible value in connecting your G&E data to your human resource information system (HRIS) to pull through employees, locations and other relevant data in real time. By doing so, you'll be able to:

- Simplify and automate configuration of approvals, workflow and routing rules based on the most up-to-date employee roster and hierarchy in your HR system.
- Instantly and easily analyze G&E disclosure trends by employee type, seniority, tenure or salary grade or by geographic region, business unit or subsidiary.

INTEGRATING WITH... FINANCE DATA

Taking things a step further, integrating your expense management software can provide the ultimate system of checks and balances for your G&E program. Not only does this integration allow you to effortlessly validate that a gift disclosure matches the actual expenditure, but you can immediately surface any data from the expense system that signals an exception to or deviation from company policy by seeing it displayed on their comprehensive employee compliance record, right alongside their disclosure, policy, training and case history.

As you find ways to leverage more relevant data in tandem with your G&E system, you'll find it easier to truly understand G&E disclosure trends—allowing you to confidently make better decisions, more rapidly. Ultimately, you'll have the information you need to more effectively mitigate one of the most severe risks facing your organization today.

MITIGATING RISK WITH REPORTING AND ANALYTICS

Though challenging, properly collecting and managing G&E disclosures presents a key opportunity for organizations to reduce compliance risk by having more and better disclosure data to analyze—and act on—around the gifts employees are giving and receiving that may pose a problem.

HINDSIGHT:

ENHANCED REPORTING CAPABILITIES

More disclosures, with richer and more structured data contained in them, equips the corporate compliance team with richer insight into employee behaviors, bribery risk disposition and drivers and where G&E initiatives may be working or falling short. However, the true value of a single system of record lies beyond short-term G&E clearance and triage: The data you collect over time will provide you with insight you need to continuously enhance and defend your G&E compliance efforts.

Consider some sample G&E reports to understand the full impact of what this could mean for your program:

- Total value of gifts given and received in the 10 most high-risk markets you operate in (based on Transparency International's Corruption Perceptions Index)
- Number, type and total value of gifts given to government officials in a given time period
- Most common purposes for outbound and inbound gifts

PREDICTIVE:

ENHANCED ANALYTICAL CAPABILITIES

What's more, you'll be able to leverage the wealth of data at your disposal to build predictive models—allowing you to move from a proactive to reactive strategy by anticipating upticks in risk exposure based on historical trends and events.

Imagine being able to:

- Design and modify regional sales incentive compensation plans based on compliance and misconduct trends associated with previous incentives
- Create short-term compliance protocol to curb heightened risk associated with an event that presents heightened risk (sporting event sponsorships, contract awards, etc.)
- Deploy targeted, shorter policies and training based on the type and nature of inbound and outbound gifts in a business unit or region

As the stakes continue to increase worldwide for anticorruption compliance, organizations should prioritize building a world-class approach to taking in, monitoring and analyzing disclosures of gifts, travel and entertainment given and received on their organization's behalf. Doing so helps employees understand and fulfill their responsibilities, allows your compliance team to more effectively monitor and audit G&E transactions and provides senior management and government officials with the records they need to be assured of your good-faith effort to avoid corruption.



Convercent's risk-based global compliance solution enables the design, implementation and measurement of an effective compliance program. Delivering an intuitive user experience with actionable executive reporting, Convercent integrates the management of corporate compliance risks, cases, disclosures, training and policies. With hundreds of customers in more than 130 countries—including Philip Morris International, CH2M Hill and Under Armour—Convercent's award-winning GRC solution safeguards the financial and reputational health of your company. Backed by Azure Capital, Sapphire Ventures (formerly SAP Ventures), Mantucket Capital and Rho Capital Partners, and based in Denver, Colorado, Convercent will revolutionize your company's compliance program.

Visit us at www.convercent.com