Volume 40, Number 1 • January 1, 2026

# Ethikos®

DEMONSTRATING THE VALUE OF BUSINESS ETHICS

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**Story Editor:**
Bill Anholzer
bill.anholzer@corporatecompliance.org

**Copy Editor:**
Jack Hittinger

**Proofreader:**
Julia Ramirez Burke

**Design & Layout:**
Pete Swanson

**Publisher:**
Craig Larson


## On ethics: Patrick Wellens

**by Patrick Wellens and Adam Turteltaub**


***Patrick Wellens*** *(patrickwellens@hotmail.com) is currently working as a Global Compliance business partner for a division of a multinational pharma company based in Zurich, Switzerland. He is the Chair of Ethics and Compliance Switzerland, co-chair of the working groups "life science" and "anti-corruption," and Chief Compliance Officer of the Association of Corporate Investigators.*

***Adam Turteltaub*** *is the former Chief Engagement & Strategy Officer at SCCE & HCCA, based in Eden Prairie, Minnesota, USA.*




Patrick Wellens

**AT: By my calculation, you have been a part of the ethics and compliance community for over 20 years now, after having worked many years in finance and audit. What brought you into it?**

**PW:** While working as country chief financial officer, regional finance manager, and within the internal audit department of large corporations, my primary focus was on evaluating the effectiveness of internal controls over financial reporting, protecting company assets against fraud, and ensuring that operational risks are well managed. As I speak numerous languages and have the necessary certifications, I was often asked by boards to investigate sensitive compliance incidents around the world. Understanding the root causes and behaviors of fraudsters opened the world of compliance to me.

**AT: Thinking back to that time, how would you describe ethics and compliance programs in the early 2000s?**

**PW:** Compared to now, in the early 2000s, ethics and compliance programs were primitive. The primary focus of compliance programs in the 2000s was to avoid fines, prosecutions, and reputational damage. The focus of the compliance program was on financial reporting, anti-corruption, antitrust, and insider trading, and compliance was executed by small departments led by legal teams. Compliance was viewed as a defensive, legal, and procedural function.

**AT: What are some of the positive changes you have seen?**

**PW:** Since the early 2000s, many guidance documents by regulators and independent organizations like the International Organization for Standardization (ISO) have been created so companies know what is expected from them regarding an effective compliance management system. The number of laws that companies need to comply with (e.g., supply-chain transparency laws, human rights, AI, data privacy, cybersecurity) has expanded exponentially. Combined with increased expectations from investors and stakeholders looking for companies that demonstrate strong ethical governance, responsible social practices, and environmental stewardship, integrity is now a fundamental driver of long-term value and resilience. Furthermore, academic research has shown the direct correlation

between a strong ethical culture and reduced misconduct, improved financial performance, and enhanced reputation.

In many organizations, the chief ethics and compliance officer or chief integrity officer positions have been created and report to the board. The size of compliance departments versus the early 2000s has expanded substantially—also driven by the increased scope of compliance. Data privacy, cybersecurity, ethical use of AI, human rights, environmental, social, and governance (ESG) reporting, etc., have been added to the traditional anti-corruption and antitrust focus. Today's compliance departments have more technological solutions and data points at their disposal to measure ethical culture than in the early days (e.g., speak-up channels, data analytics, culture surveys, AI for monitoring, integrated governance, risk and compliance platforms).

**AT: One of the more notable changes I have noticed since I joining this community back in 2000 is a movement away from a strictly legalistic approach toward one that is more human-centric. Do you have the same sense? Do you think we are moving in the right direction, or should we be thinking differently?**

**PW:** Yes, compliance has evolved from being primarily rule-based and punitive—focused on adhering to laws and avoiding penalties in the 2000s—toward being values-based and behavioral now. We see companies experimenting with bringing behavioral scientists into compliance teams, compliance departments focusing on intrinsic motivation ("doing the right thing") rather than extrinsic fear ("avoiding punishment"), and controls being replaced by trust. This is indeed a step in the right direction; however, values and trust only will not work. They need to be embedded in broader ethics and compliance frameworks. In the future, I expect compliance departments to use much more behavioral data and data analytics to provide compliance guidance.

**AT: One other notable change in compliance is that it has—overall but not everywhere—moved up in the organization. It used to be that virtually every compliance or ethics officer reported to general counsel. Now, that's less and less the case. But there is still some resistance. Why do you think that is?**

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**PW:** First, despite guidance from ISO 37301 (Compliance Management Systems), the U.S. Department of Justice (*Evaluation of Corporate Compliance Programs*), Office of Inspector General, and the Organisation for Economic Co-operation and Development guidelines for multinationals that the compliance function should have sufficient authority and autonomy from management and direct access to the board, in many organizations, compliance was historically part of the legal function, and general counsel/legal are protecting "their turf." Second, unless there is a major scandal or request from a regulator to have compliance reporting directly to the board, boards often don't prioritize structural change and leave compliance within legal. Third, boards and management often assume that there are certain efficiencies in keeping compliance under legal rather than building an independent function. Finally, a chief compliance officer reporting to the board might challenge management decisions; therefore, some boards and management might believe it is easier to "control" compliance communication and actions if it is within legal, rather than an independent voice to the board.

**AT: How do you think the ethics landscape has changed?**

**PW:** I believe the ethics landscape has changed in numerous ways. There has been a shift from focusing on profit and shareholders to broader stakeholders. Corporate social responsibility has moved from optional to mandatory. Public expectations have risen sharply. Institutional investors, banks, and pension funds are deciding where to invest money, and they are focusing on companies with strong ESG. Greenwashing is no longer tolerated. Diversity and inclusion, #MeToo, Black Lives Matter, and climate change have become global movements that impact corporate ethics. Multinational companies with global operations are impacted by different trade sanction regimes, must decide whether to withdraw from operations in Russia/Israel, and are expected to comply with numerous supply chain laws.

Technological innovations such as face recognition, AI, autonomous driving, genetically modified food, and social media have created new ethical dilemmas. Fake news, misinformation, hate, hallucination, bias in decision-making, and lack of transparency in algorithms are some of the ethical challenges. Digital ethics around data privacy; increased responsibility for social media providers under legislation like the EU's Digital Services Act; and ethical use of AI in regard to fairness, accountability, and human oversight require strong focus and governance from companies.

Employees, consumers, and non-governmental organizations (NGOs) are more active than they were many years ago, so the likelihood that they will speak up as whistleblowers or take legal action against companies for unethical practices is likely to increase.

**AT: Let me break my following question into two parts. First, how do we get management to recognize the value of compliance programs?**

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**PW:** As with every function, compliance must "sell" itself and show the value it creates. Compliance must measure the impact/effectiveness of its compliance resources.

Compliance can show its value by quantifying costs avoided (fines and legal fees, investigation expenses prevented); using key performance indicators (KPIs) that support strategic business objectives (e.g., improved employee morale, reduced sexual harassment by X%, increased ESG rating, reduced third-party risk by X%, increased assurance through data analytics); and turning compliance data into business intelligence with dashboards on incident trends, culture survey data, speak-up numbers, etc.

**AT: This is a bit of a sad question, but how do we get management to turn that recognition into support? As we all know, there is often a gap between the value management sees and their willingness to invest.**

**PW:** To get management support for compliance, we need to provide evidence (for value created), we need to tie compliance activities to business outcomes, we need to sell compliance as an essential part of enterprise risk management, and the compliance department must highlight the regulatory expectations on compliance to management.

Compliance departments should create dashboards and reports that make compliance results visible and understandable for management and the board. This can be done by celebrating internal success stories where compliance department supported the business (e.g., launching a new product, commercializing a new AI application, winning a major contract, or significantly reducing compliance risks when working with third parties). This can also be done by promoting case studies or showcasing how the compliance department avoided hefty fines that competitors had to pay.

Rather than saying there is an obligation to comply with laws and being perceived as a cost center and innovation-blocker, compliance departments must speak the language of the business/management and use more operational KPIs to showcase their success. For instance, the compliance department should highlight how they helped increase revenues, avoid costs, finalize a successful merger and acquisition deal, get a better ESG rating, improve brand reputation, etc.

> *As with every function, compliance must "sell" itself and show the value it creates. Compliance must measure the impact/effectiveness of its compliance resources.*

The compliance department must furthermore identify champions in the leadership team who can advocate for and promote compliance in executive leadership meetings; it should also partner with allies (risk, human resources, finance, etc.) who can support them as a necessary function. Compliance is also well-advised to focus on providing business insights and intelligence (forward-looking) rather than conducting retrospective monitoring.

Finally, the compliance department must communicate expectations from regulators, stakeholders, and investors (e.g., ESG frameworks) regarding compliance and governance.

**AT: What about the board? You have served as a company director and have great insights into how they think. First, what would you say is their thinking when it comes to compliance programs?**

**PW:** Boards understand that a major compliance incident or failure can have serious reputational and financial implications; therefore, they are worried whether the company has the right culture, organizational processes, and controls that would prevent such a scenario from happening. Of course, there is also a personal interest here: with increased shareholder claims and personal liability of boards, boards want to avoid personal risks and want to make sure that they ask the right questions, exercise oversight, and that the compliance program can withstand external review. Boards often see compliance as part of the bigger enterprise risk landscape.

Unfortunately, many board members do not have operational compliance experience and, hence, are often not familiar with what is needed to implement an effective compliance program. When it comes to compliance, they want assurance that it is effective; they want confidence that the program is credible, measurable, and aligned with organizational strategy—and that management is genuinely committed to it.

**AT: How attuned are boards to ethical considerations, not just legal and business issues?**

**PW:** Because of increased expectations from investors on a company's ESG performance, there is increased focus on ethics, sustainability, and social impact. ESG, AI use, corporate culture, and risks are often on board agendas. Increased transparency reporting requirements and stakeholder activism (NGO, government, patient groups, consumers) further increase board awareness about ethical topics and make them think about a company's mission, purpose, and relationship to various stakeholders.

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However, not all boards have dedicated ethics/sustainability committees to discuss ethical business considerations. The more diverse the board is in terms of age, gender, nationality, and professional experience (certainly having board members with ethics and compliance experience would help), the more likely ethical discussions will happen. Boards with limited diversity and a focus on short-term results, on the other hand, will probably focus on financial results rather than discussing ethical dilemmas.

*Rather than a police/control function, the compliance department should act more as a trusted adviser, someone who helps leadership make sound and ethical decisions.*

**AT: What do you think we need to do to help them think more positively about the profession and the role?**

**PW:** Many boards and management understand and recognize the magnitude of compliance, but at the same time do not see it as a strategic capability. The compliance department must therefore reframe compliance as a strategic enabler and not as a control function. The compliance department should consider linking compliance to company values, mission, and ESG, and focus on how good compliance creates opportunities (e.g., new product launches, access to new markets, reduced risks).

The compliance department must also show its value add (i.e., the return on compliance). Only when compliance can show a measurable impact will it avoid being seen as just a cost center. This can be done through compliance KPIs that are tied to business objectives.

Rather than a police/control function, the compliance department should act more as a trusted adviser, someone who helps leadership make sound and ethical decisions. Compliance officers should have a deep business understanding, strategic thinking, cooperative cross-functionality, and be change agents.

**AT: I often think that part of our problem is the lack of compliance officers on boards. Do you think there is any possibility of changing that?**

**PW:** Historically, boards have been populated with people who have finance, law, or operations backgrounds. As ESG and corporate integrity are becoming more important—both are rooted in strong compliance frameworks—there is an increased chance for compliance officers to be part of the board. Additionally, the risks for which finance, law, or operations were voted into board roles have been expanded to AI, cybersecurity, ESG, and human rights. Chief compliance officers are excellent candidates for board positions as they are masters of these disciplines.

After the Enron scandal, guidance came out that boards must have at least one person with financial expertise. Considering that many high-profile cases with ethical misconduct, fraud, or irregularities often relate to a weak compliance culture, one would hope that professional compliance associations lobby at all levels to have at least one person on the board with in-depth compliance expertise. Similarly, the compliance community and compliance associations such as SCCE should further promote compliance as a strategic discipline.

**AT: What advice would you give to a compliance officer looking to become an outside director? What skills should they develop? What should they do to better position themselves?**

**PW:** For a compliance officer to become an outside director, they need good business understanding. They need to understand strategy, industry trends, external factors impacting the company/industry, digital risks, cybercrime, market expansion strategies, and financial literacy. Compliance officers already bring integrity, ethics, and risk management to the table, but they might want to consider further developing skills in cross-functional leadership and influence, anticipating and managing crises, stakeholder management, and/or governance. Executive programs for board members or aspiring board members exist that focus exactly on these aspects. Aspiring candidates for outside director positions should consider joining a not-for-profit board, consider finding a "mentor," and establish themselves as a strategic governance leader rather than a compliance expert.

**AT: We have seen a lot of regulatory changes driven by Europe lately. Privacy, human trafficking and modern**

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**slavery, and climate rules are all examples. What is your sense of what comes next?**

**PW:** Giving the growing importance of digital platforms and data, I would see an increased value and focus on data privacy, cybersecurity, and AI, but also increased requirements on transparency reporting, sustainability (PFAS, digital product passports, waste management), transparency in supply chain networks, increased complexity in navigating geopolitical risks, and trade sanctions and workplace-related investigations. Traditional compliance activities, such as antitrust, anti-corruption, and conflicts of interest, can, of course, not be neglected.

Due to this ever-increasing list of regulatory requirements, companies must have sound and agile risk assessment methodologies, standardized data-capture nomenclatures, common software platforms where—across the world—some of the above risks can be captured and reported. As some of the risks affect numerous departments, cross-functional teams to address them must be set up. Governance methodologies around AI and third-party risk management remain vital.

**AT: All these new and potential regulations and the emergence of AI all mean we are moving into a different world. How should ethics and compliance programs evolve to be more effective in it?**

**PW:** Ethics and compliance teams should be involved from the initial start of an AI project, including the initial design and development stages. To ensure AI is used ethically, and to follow principles of the EU AI Act, ethics impact assessments should be conducted prior to launch; companies should define an AI policy; ethical principles such as transparency, human oversight, fairness, and competition should be created; and an AI governance or AI ethics review board with members from IT, data science, legal, and compliance should exist.

Ethics and compliance programs—regarding AI—should have clear roles and responsibilities across design, development, and rollout; documentation standards; and workflows (who approves what, when, where, and why based on what data).

Compliance professionals should explore how AI can further facilitate and simplify their work. Therefore, it is recommended to run test cases to see how AI can help with policy development, monitoring, third-party due diligence, investigations, etc.

**AT: One of the concerning elements of AI is that it has no sense of right and wrong. How can we ensure that ethical considerations are counted into the algorithm, or at least the oversight?**

**PW:** The EU AI Act has already defined critical ethical principles. To ensure AI is used ethically, the following elements should be considered:

1. Companies must develop ethical values to ensure AI makes the right decisions.
2. These ethical values must be built into the AI model (ethical design), and regular testing is needed to ensure that the AI system is not acting unethically (e.g., bias).
3. Users must be able to understand which data was used, how the AI model was trained, and its intended use. The logic of the AI model/system should be explained so that unfair or unethical decisions are found.
4. AI algorithms should be continuously monitored for harmful effects as real-world data changes.
5. Human oversight should be required on high-risk AI applications (e.g., in medicine).
6. Clear roles and responsibilities must be defined in the company.

**AT: Thanks for sharing with our readers, Patrick!** //

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