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Date: February 9, 2018

**INFORMATIONAL ONLY FOR BOARD OF DIRECTORS**

**TO: MEMBERS, GOVERNANCE COMMITTEE**

<b>I. AGENDA ITEM # AND TITLE:</b>	Open Agenda Item 21ai – Governance, Compliance and Privacy Update
<b>II. NAME AND PROGRAM:</b>	Governance, Compliance & Privacy
<b>III. ACTIVITY:</b>	<input checked="" type="checkbox"/> Informational <input type="checkbox"/> Request for Direction <input type="checkbox"/> Action Proposed <input type="checkbox"/> Exploratory
<b>IV. JUSTIFICATION:</b>	<input checked="" type="checkbox"/> Standard/Required Item <input type="checkbox"/> Board Request – New Item <input type="checkbox"/> New Topic from Staff

**V. EXECUTIVE SUMMARY:**

Compliance reporting includes:

- SB 396 Transgender Work Opportunity Act
- 2017 ORSA Compliance
- Digital Millennium Copyright Act Agent Re-registration
- 2017 Compliance Training Results
- Questions the Board Should Ask about Compliance & Ethics
- Hotline reporting

**VI. ANALYSIS:** The following summarizes compliance related activity for the period and is in alignment with State Fund’s Compliance Framework<sup>1</sup>:

**Clear Written Standards of Conduct, Policies, and Procedures**

**A. New Legislation**

**a. SB 396 (Lara) – Transgender Work Opportunity Act**

Bill amends the Government and Unemployment Insurance Codes<sup>2</sup> to:

- Prohibit employment discrimination based on gender orientation;
- Require biennial sexual harassment supervisor training to include training related to gender identity and expression, and sexual orientation; and
- Require display of the Department of Fair Employment and Housing’s (DFEH) poster about transgender rights in employee locations.

<sup>1</sup> All Governance reports are grounded in State Fund’s Compliance Framework – resource USSG Ch. 8 Part B2.1(b)

<sup>2</sup>CA Gov’t Code §§ 12950 & 12950.1 and CA Unemployment Insurance Code §§ 14005 & 14012

### **b. Operational Impact**

- Post the new DFEH poster in all locations where employee notices are maintained
- Review the Code of Conduct and Corporate Policies for compliance with SB 396
- Assure 2019 supervisor anti-harassment training contains the required gender orientation components.

### **B. 2017 Own Risk and Solvency Assessment (ORSA) Report**

State Fund submitted its ORSA report, as attested by the Chief Risk Officer, to the California Department of Insurance on November 28, 2017<sup>3</sup>.

As allowed under the Insurance Code<sup>4</sup>, the ORSA report will be referenced in State Fund's Corporate Governance Annual Disclosure due June 30, 2018.

### **C. Digital Millennium Copyright Act (DMCA) Agent Registration<sup>5</sup>**

The DMCA provides safe harbor protections against copyright infringement liability for online service providers. The U.S. Copyright Office (Office) requires entities that allow, or plan to allow, website users to generate or post information on their websites to re-register their DMCA agents with the Office by December 31, 2017.

State Fund's external website<sup>6</sup> has the functionality for its blog to allow outside users to post material. The Governance Office registered as the designated agent on December 28. The designation mitigates the risk State Fund could be held liable for infringing content posted by third parties.

#### **Operational Impact**

- Update the website to include the DMCA and agent contact information
- Review the Intellectual Property Policy and incorporate the new requirement.

### **Oversight, Accountability, and Resources**

State Fund's *Compliance Framework (Framework)* reflects State Fund's commitment to be an honest, legally compliant, and responsible organization. The *Framework* aligns with the United States Sentencing Guidelines' (USSG) seven essential elements of an effective compliance and ethics program<sup>7</sup>:

- Oversight, Accountability & Resources
- Standards of Conduct, Policies & Procedures
- Effective Training, Communications & Awareness
- Consistent Monitoring, Evaluation & Reporting
- Due Care in Delegating Authority

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<sup>3</sup> ORSA report pursuant to Cal. Insurance Code § 935.1

<sup>4</sup> Corporate Governance Annual Disclosure pursuant to Cal. Insurance Code §§ 936.1 et seq.

<sup>5</sup> 17 U.S.C. § 512

<sup>6</sup> [www.statefundca.com](http://www.statefundca.com)

<sup>7</sup> USSG Ch. 8 Part B2.1(b)

- Consistent Promotion & Enforcement
- Risk Assessment, Response, Continuous Improvement & Auditing

To assist the Board in overseeing the execution of the *Framework*, a series of questions to ask, arranged by the Guidelines' seven elements, has been compiled in Appendix II for reference and use.

## **Effective Training, Communication, and Awareness**

### **2017 Compliance Training**

**Goal:** *Achieve 98% Workforce compliance rate (100 percent consultants and 98 percent employee) for the organization's mandatory training.*

**Goal met.** Ninety-nine percent active employee and one hundred percent contingent worker compliance was achieved for 2017 mandatory compliance training.

## **Consistent Monitoring, Evaluation, and Reporting**

### **Ethics and Privacy Reported Issues**

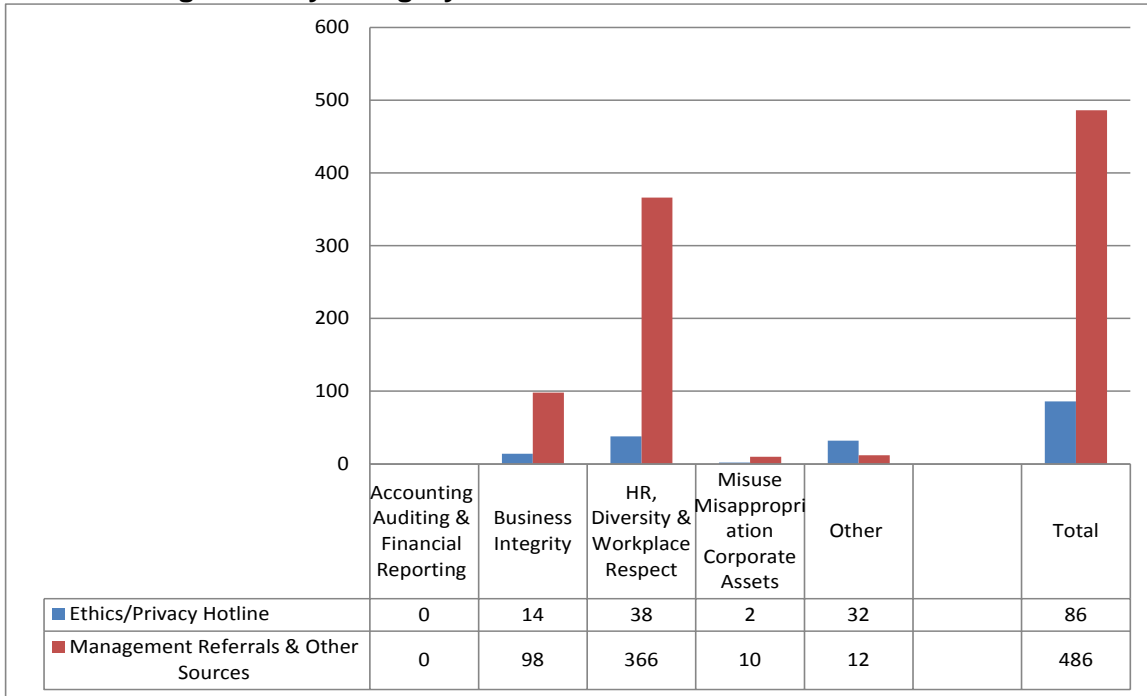
#### **Analysis 2017 vs 2016**

A change in reporting data elements occurred in 2017. Performance issues were excluded from total number of reports. To perform a year-to-year comparison, 2016's total number of reports was adjusted to exclude performance related issues (801-236=565). Total adjusted number of reports in 2016 is 565.

### **Key Findings**

- Hotline reports increased by 21% in 2nd half (47) compared to 1st half of 2017 (39).
  - Increase is attributed to the April 2017 message published to the organization about State Fund's hotline as a safe zone.
- Human Resources (HR) related issues continue to be the most reported category (71%; 404/572).
  - This trend continues to align with other industries which collectively reported that 72% of all referrals were HR related (2017 Navex Global Ethics & Compliance Benchmark Report).

**Chart 1: Allegations by Category**



## Appendix:

- I: Report Allegation Category Definitions
- II: 2018 Edition – Questions about Compliance & Ethics

### I: Report Allegation Categories and Definitions

**Accounting, Auditing, and Financial Reporting:** Forgery, Accounting and Financial Control

**Business Integrity:** Falsifying Records, Privacy and Data Security Incidents, Theft, Compliance and Regulatory Matters, Information Security, Vendor Relations, Claims, Policy, Legal, and Other Business Practices

**HR, Diversity and Work Place Respect:** Attendance, Code of Conduct Violation, Conflict of Interest, Equal Employment Opportunity-Discrimination, Retaliation and Sexual Harassment, Favoritism, Inappropriate/ Offensive Behavior, Hiring Practices, Performance

**Misuse, Misappropriation of Corporate Assets:** Fraud, Misuse/ Abuse of Time or Resources

**Other:** Types of misconduct that fails to fall into the above categories such as Safety, Assault or Environmental Protection Compliance.



**APPENDIX II - Board Oversight Questionnaire – Minimum Standards & Elements - Compliance and Ethics**

ELEMENT	QUESTIONS
<p><b>OVERSIGHT, ACCOUNTABILITY &amp; RESOURCES</b>            Board and senior management must be engaged in the design, implementation and maintenance of compliance &amp; ethics programs.</p>	<p>What actions have senior leaders taken to demonstrate their commitment to ethics, integrity, and compliance?            Is a high-level person responsible for reasonable assurance of the effectiveness of compliance and ethics programs?                Are specific person(s) responsible for day-today compliance and ethics operations? <i>and</i>                Are there adequate resources to run their programs? <i>and</i>                Do these person(s) have direct access to the Board?            How is a culture of ethics and integrity measured in organization?            How is information about wrongdoing communicated to the Board?            How is the effectiveness of the compliance program measured?</p>
<p><b>STANDARDS OF CONDUCT, POLICIES, &amp; PROCEDURES</b>            Establish standards and procedures to prevent and detect criminal conduct.</p>	<p>What standards form the foundation of the compliance program? <i>and</i>            Is the compliance and ethics infrastructure embedded in the culture?            How are the compliance and ethics programs periodically reviewed?            Does the Code of Conduct (CoC) set the standard of what is expected and include examples?            Does the CoC speak to diverse employee groups?            Is there an acknowledgement of receipt and understanding?</p>
<p><b>EFFECTIVE TRAINING, COMMUNICATION, &amp; AWARENESS</b>            Take reasonable steps to communicate periodically the standards, procedures and other aspects of its compliance and ethic programs by conducting effective training programs and disseminating role-based appropriate information.</p>	<p>Are communications and training aligned with compliance risks?            Is training aligned with the Code of Conduct (CoC)?            Is training interactive?            Is training tailored to specific roles and responsibilities?            How is comprehension gauged?            How do we assure workforce members meet their compliance training requirements?            How and how often is information about compliance and ethics communicated to the organization?</p>

Basis: USSG Chapter 8 Part B § 8B2.1

Sources: Society of Corporate Compliance and Ethics Handbook 2017; USDOJ Evaluation of Corporate Compliance Programs 2017; Navex Global – Ethics & Compliance Matters, June 2015; CEB Gartner, Board Oversight Questionnaire, 2010; Gruner, R. Corporate Experience with Deferred Prosecution Agreements 2008.



**APPENDIX II - Board Oversight Questionnaire – Minimum Standards & Elements - Compliance and Ethics**

ELEMENT	QUESTIONS
<p><b>CONSISTENT MONITORING, EVALUATION &amp; REPORTING</b>            Take reasonable steps to assure compliance and ethics programs: Are followed through monitoring and auditing; and Publicized systems are in place which allow anonymous and confidential reporting of potential or actual criminal conduct.</p>	<p>What systems are in place to prevent/detect employee wrongdoing?            Are transactional controls in place?            Are there periodic compliance risk assessments, analyses and mitigations?            How are compliance risks identified?            Are there benchmarks which trigger audits?            Is there an independent and confidential reporting system in place for reporting suspected wrongdoing and legal violations? <i>and</i>            Does it offer anonymity, and provide reporting without fear of retaliation?            Has a third-party vendor been engaged for reporting suspected wrongdoing? <i>and</i>            Is it adequate and properly resourced?</p>
<p><b>DUE CARE IN DELEGATING AUTHORITY</b>            Use reasonable efforts to exclude from substantial authority in the organization any individual whom the organization knew or should have known through the exercise of due diligence, engaged in past illegal or unethical conduct.</p>	<p>Are there effective background checks in place?            Are there effective processes in place to identify and act upon potential conflicts of interest in fact or appearance?            Are there appropriate safeguards in place when agents and third parties are retained?</p>
<p><b>CONSISTENT PROMOTION &amp; ENFORCEMENT</b>            Use appropriate incentives to perform in accordance with the compliance and ethics program and assure appropriate disciplinary measures are taken.</p>	<p>Are disciplinary actions and incents been fairly and consistently applied?            Are supervisors and managers held accountable for misconduct occurring under their supervision?            Who participates in making disciplinary decisions for misconduct?            How does State Fund incentivize ethical behavior?            How does State Fund consider potential negative implications of incentives/rewards?</p>
<p><b>RISK ASSESSMENT, RESPONSE, CONTINUOUS IMPROVEMENT, &amp; AUDITING</b>            When criminal conduct has been detected, an organization must: a) respond appropriately; b) take reasonable steps to prevent and detect similar conduct; and c) make necessary modifications to its compliance and ethics programs.</p>	<p>Does a review and root cause analysis of what went wrong take place?            Are there appropriate policies and procedures in place to assure preservation of information when there are allegations of misconduct?            When wrongdoing is detected, is an analysis done to determine how it was detected?            Did policies/procedures change after conduct detected?            Are there audits of the effectiveness of remediation?            How do we assure audit findings are appropriately responded to and followed up?</p>

Basis: USSG Chapter 8 Part B § 8B2.1

Sources: Society of Corporate Compliance and Ethics Handbook 2017; USDOJ Evaluation of Corporate Compliance Programs 2017; Navex Global – Ethics & Compliance Matters, June 2015; CEB Gartner, Board Oversight Questionnaire, 2010; Gruner, R. Corporate Experience with Deferred Prosecution Agreements 2008.