Supply Chain Risk Assessment and Compliance: Identifying Vulnerabilities
Mitigating Risk With Effective Due Diligence and Governance

THURSDAY, SEPTEMBER 17, 2015
1pm Eastern   |   12pm Central   |   11am Mountain   |   10am Pacific

Today’s faculty features:

Neal J. White, Partner, McDermott Will & Emery, Chicago
Debra A. Harrison, Partner, McDermott Will & Emery, Washington, D.C.

The audio portion of the conference may be accessed via the telephone or by using your computer’s speakers. Please refer to the instructions emailed to registrants for additional information. If you have any questions, please contact Customer Service at 1-800-926-7926 ext. 10.
**Tips for Optimal Quality**

*Sound Quality*
If you are listening via your computer speakers, please note that the quality of your sound will vary depending on the speed and quality of your internet connection.

If the sound quality is not satisfactory, you may listen via the phone: dial **1-866-961-8499** and enter your PIN when prompted. Otherwise, please send us a chat or e-mail **sound@straffordpub.com** immediately so we can address the problem.

If you dialed in and have any difficulties during the call, press *0 for assistance.

*Viewing Quality*
To maximize your screen, press the F11 key on your keyboard. To exit full screen, press the F11 key again.
In order for us to process your continuing education credit, you must confirm your participation in this webinar by completing and submitting the Attendance Affirmation/Evaluation after the webinar.

A link to the Attendance Affirmation/Evaluation will be in the thank you email that you will receive immediately following the program.

For additional information about CLE credit processing call us at 1-800-926-7926 ext. 35.
Program Materials

If you have not printed the conference materials for this program, please complete the following steps:

• Click on the ^ symbol next to “Conference Materials” in the middle of the left-hand column on your screen.
• Click on the tab labeled “Handouts” that appears, and there you will see a PDF of the slides for today’s program.
• Double click on the PDF and a separate page will open.
• Print the slides by clicking on the printer icon.
Supply Chain Risk Assessment and Compliance: Identifying Vulnerabilities
Mitigating Risk With Effective Due Diligence and Governance

Debra A. Harrison, Partner
202.756.8616
daharrison@mwe.com

Neal J. White, Partner
312.984.7570
nwhite@mwe.com

September 17, 2015
Supply Chain Risk Assessment and Compliance

- Introduction
  - Increased Use of Global Supply Chains
    - Pros: Greater Efficiencies; Lower Costs
    - Cons: Greater Exposure to Legal, Operational and Reputational Risk
      - Complex regulatory compliance obligations
      - Market driven requirements
      - Corporate social responsibility pressures
  - Mitigating the Risk
    - Assessing the Risk
      - Education – know your compliance obligations
      - Due Diligence
    - Compliance (initial and ongoing)
Supply Chain Risk Assessment and Compliance

Why Should We Care?

- Case Study: Lumber Liquidators
  
  - 60 Minutes Report: Hardwood flooring materials the company receives from China alleged to contain more than the legally allowed amount of the carcinogenic chemical formaldehyde
  
  - Fallout: Multiple lawsuits, abrupt resignation of its CEO, 79% drop in stock price (YTD as of mid-August)
  
  - The “Fix”?:
    - Free indoor air quality testing kits for consumers
    - Suspension of sales of all flooring sourced from China
    - Hiring of new Chief Compliance/Legal Officer reporting directly to new CEO
Supply Chain Risk Assessment and Compliance

- **Why Should We Care?**
  - **Other Examples**
    - Lawsuit against Costco for selling shrimp from Thailand, where human rights violations allegedly occurred (California)
    - Recalls of children’s toys due to lead-based paint use
    - Revelation of inhumane working conditions at computer parts suppliers
    - Extended business disruptions in the automotive industry resulting from Japanese earthquake and tsunami
    - Placement of costly tariffs on Chinese solar panels
    - Enormous settlements paid for supplier violations of the Foreign Corrupt Practices Act (just look at the recent cases listed on the SEC’s website: [http://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml](http://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml))
    - Millions of displaced air travelers and shipments following the volcano eruption in Iceland
What Is It?

Supply chain risk management is “the implementation of strategies to manage both everyday and exceptional risks along the supply chain based on continuous risk assessment with the objective of reducing vulnerability and ensuring continuity.” (Wieland, A., Wallenburg, C.M., 2012. Dealing with supply chain risks: Linking risk management practices and strategies to performance. International Journal of Physical Distribution & Logistics Management, 42(10), courtesy of Wikipedia.)
Supply Chain Risk Assessment and Compliance

- What Risks?
  - Legal
  - Reputational
  - Cultural
  - Financial
Supply Chain Risk Assessment and Compliance

- What Risks?
  - Everyday Risks
    - Intentional acts
      - Hidden identity (shell companies)
      - Bribery
      - Human rights violations
      - Quality “shortcuts”
      - Strikes
      - Terrorism
      - Data/Privacy breaches
      - Other violations of laws/regulations
What Risks?

- **Everyday Risks**
  - Accidents/Negligence
    - Mistakes
    - Equipment breakdowns and operator errors
    - Transportation accidents
    - Power outages
    - Technology failures
    - Fire
    - Environmental

- **Exceptional Risks**
  - Natural Disasters
Supply Chain Risk Assessment and Compliance

- How to Assess the Risks?
  - Know your supply chain and where you fit into it

Managing the Links to Protect the Chain
Supply Chain Risk Assessment and Compliance

- How to Assess the Risks? Due Diligence
  - Topics:
    - Identity
    - Financial
    - Their supply chain
    - IP and Data Security
    - Claims history
    - Reputation
    - Geography
    - Disaster preparedness
Supply Chain Risk Assessment and Compliance

- How to Assess the Risks? Due Diligence
  - Gathering the Information:
    - Questionnaires
      - What goes in this?
    - Policies/Systems analysis
      - Theirs not yours
    - Background checks
    - Financial statements
    - Credit references
    - Business references
    - Reputational checks (at least do an internet search!)
    - Site visits and interviews
Supply Chain Risk Assessment and Compliance

When?

- As part of the procurement process
  - RFP requirements
- At renewal of relationship
- Periodic scheduled re-assessments/reporting requirements
- Upon roll-out of new supply chain or CSR policies
- Legal/regulatory changes
- Material changes in supplier
Supply Chain Risk Assessment and Compliance

- **Who?**
  - Compartmentalizing and Prioritizing
    - Geography
    - Revenue
    - Primary source
    - Key components
    - Available alternatives
    - Length up or down the chain
    - Resources
      - Internal and External
    - Internal corporate responsibility mandates
Supply Chain Risk Assessment and Compliance

- **Now What?**
  - Identify internal and external resources
  - Develop/update policies
    - What’s a “passing grade”?  
    - Consequences of failed assessment
  - Communicate and train internal resources to ensure uniformity
  - Communicate policies and expectations with suppliers and customers
    - Develop incentives for compliance
  - Conduct assessments by tiers
  - Assess and update standard contracts for compliance representations, warranties and indemnifications
And Then What?

- Ongoing compliance
  - Self-assessments
  - Onsite audits
- Modifying supply chain strategies
  - Training or changing?
- Industry standards
  - Chemicals
  - Apparel
Supply Chain Risk Assessment and Compliance

**Compliance Areas**

- **Anti-corruption**
  Establishing a functioning anti-corruption mechanism, which takes into account all legal regulations and obtains illegal advantages

- **Labor**
  Ensuring compliance with the applicable labor legislation in each type of transaction

- **Corporate Governance**
  The totality of the principles and guidelines, rights and obligations to which the company is managed

- **Privacy**
  Systematical protection of data from employees, business partners and the company itself

- **Data Management**
  Systematical identification, classification, protection, archiving and destruction of data

- **eCommerce/Cybersecurity**
  Identifying and minimizing the risks of digital communication

- **Intellectual property**
  Methodological protection of its own and at the same time acceptance of foreign intellectual creations

- **Investor protection**
  Protection of persons in their special role as investors

- **Antitrust**
  Promotion of the free market and fair competition, combined with prevention against massive fines

- **Public procurement**
  Successful business transaction with the public sector by adhering to specific regulations

- **Environmental Law**
  Compliance with all provisions by the realization of its own environmental protection concept

- **White Collar Crime**
  Internal prevention and prosecution of criminal wheeling and dealing

- **Foreign trade**
  Compliance with all import and export regulation
Neal J. White
Partner
Chicago, IL
T: +1 312 984 7579
F: +1 312 984 7700

Debra A. Harrison
Partner
Washington, DC
T: +1 202 756 8616
F: +1 202 756 8087

Neal J. White, PC is a partner in the law firm of McDermott Will & Emery, LLP, based in Chicago. Neal focuses his practice on business counseling, commercial law and finance, with particular emphasis on acquisitions and divestitures, joint ventures, strategic alliances, financing arrangements, management/board relationships, other governance matters and executive compensation. He represents companies on a regular basis in both the manufacturing and services sectors, both publicly and privately held. Neal's transactional practice covers Asia, Latin America and Europe, as well as the United States, representing both U.S. and foreign clients. He leads the corporate department's compliance practice. Neal's work with privately held companies encompasses venture capital and private equity owned portfolio companies and their governance issues. His work with public companies covers finance, mergers and acquisitions, and other transactional and governance matters. He advises boards and management on fiduciary duties in connection with potential change in control transactions. He also advises investment banking firms regarding their advisory roles.

Debra Harrison is a partner in the law firm of McDermott Will & Emery, LLP, based in Washington, DC. Debra focuses her practice on general corporate matters, supply, franchising, licensing and distribution matters, as well as other business growth strategies covering corporate transactions. Debra counsels clients on franchise and dealer relations, terminations, transfers and regulatory compliance. Her experience includes development of domestic and international franchise and distribution strategies, preparation of franchise, distribution and license agreements and related disclosure materials, advising on compliance programs and distributor consolidation matters, as well as distributor, supplier, franchisee and dealer terminations. She has worked with hundreds of suppliers and franchisors in a wide variety of industries, including food service, oil & gas, retail, beverage (alcoholic and non-alcoholic), hospitality, automobile rental, convenience store, sports and entertainment, cosmetology, healthcare, real estate, industrial goods, clothiers, cosmetics, and residential and light commercial services. In addition, Debra advises licensors and licensees of trademarks and other intangible assets, and counsels clients regarding the design and implementation of distribution channels and techniques.