

## CCO Role in Investigations and Discipline

**Ricardo Pellafone**, Associate General Counsel  
Western Digital Corporation

**Debra Torres**, Chief Compliance & Ethics Officer  
PepsiCo

**Jim Zappa**, Executive Vice President & General Counsel  
CHS Inc.



# CCO Role in Investigations and Discipline

**Ricardo Pellafone**, Associate General Counsel  
Western Digital Corporation





**Ricardo Pellafone**  
**Associate General Counsel**







**Key assumption:  
Input, not authority**



# Tackling Big Cases

Level	Type of Behavior	Example
Written Warning	Intentional policy violations or negligence resulting in loss	Minor per diem fraud Carelessness resulting in regulatory fine
Final Written Warning	Intentional behavior that endangers others/Company	Ignoring clear policy/training resulting in loss

# Establishing Structure

**Involve stakeholders**

**Work with ranges**

**Cite precedent**

**Non-binding guidelines**

**Aggravators/mitigators**



# Potential Guidelines

Level	Type of Behavior	Example
<b>Written Warning</b>	<b>Intentional policy violations or negligence resulting in loss</b>	<b>Minor per diem fraud Carelessness resulting in regulatory fine</b>
<b>Final Written Warning</b>	<b>Intentional behavior that endangers others/ Company</b>	<b>Ignoring clear policy/training resulting in loss</b>

# CCO Role in Investigations and Discipline

**Debra Torres, Chief Compliance & Ethics Officer**  
PepsiCo





**PEPSICO**



Tropicana



# Managing Investigations in a Global Organization

**Debra M. Torres, Esq.**  
**PepsiCo Chief Compliance & Ethics Officer**

May 18, 2015



## The Speak Up Program

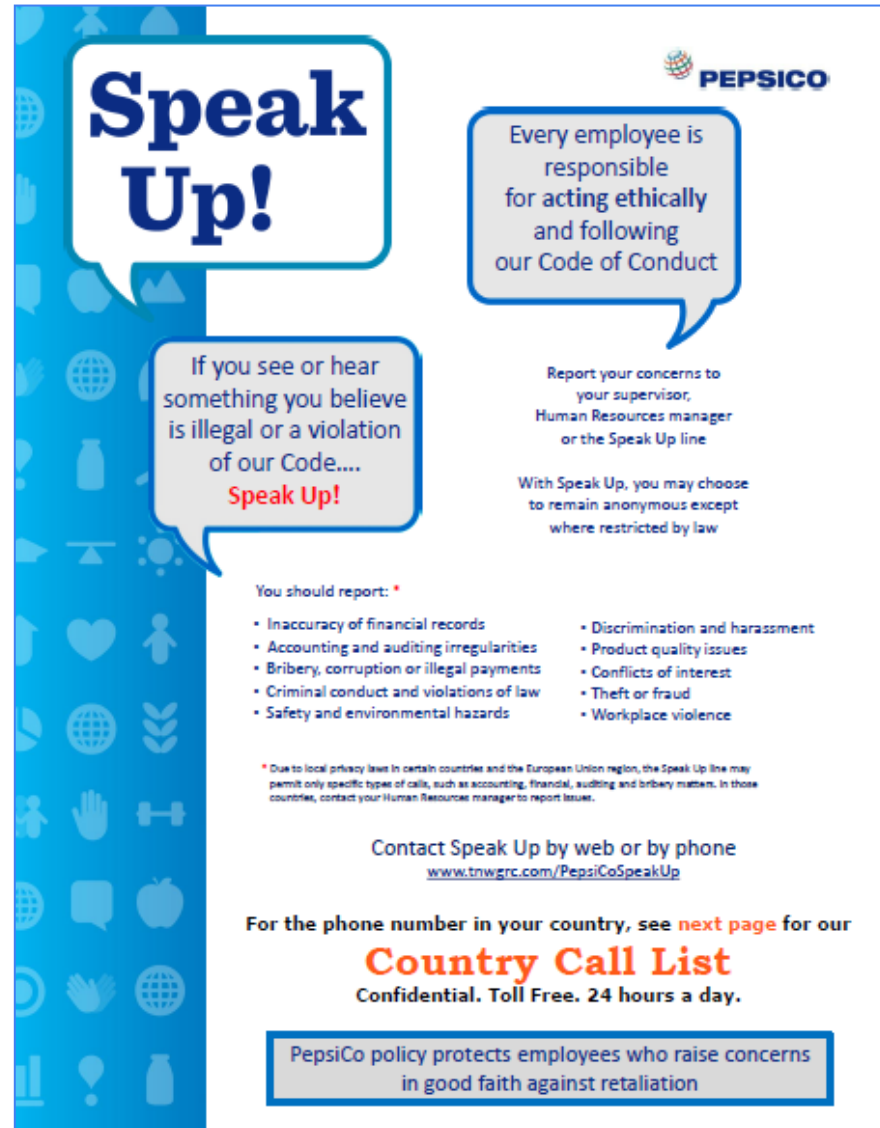
**Speak Up** is a 24/7 ethics hotline operated by a third party vendor

- available in 60+ countries and
- 35+ languages
- Anonymous reporting option
- In 2014, more than 5,000 reports made, about 50% of them anonymous

### Case Management

- All Speak Ups entered into CM at Sector Level
- Other cases that come to Global Compliance & Ethics (“GC&E) are also entered into CM, including:
  - Cases escalated pursuant to internal Escalation Policy from other functions
  - ‘Chairman’s Cases’
  - Direct reports to GC&E personnel

PepsiCo Global  
Compliance & Ethics

**Speak Up!**

Every employee is responsible for acting ethically and following our Code of Conduct

If you see or hear something you believe is illegal or a violation of our Code...  
**Speak Up!**

Report your concerns to your supervisor, Human Resources manager or the Speak Up line

With Speak Up, you may choose to remain anonymous except where restricted by law

You should report: \*

- Inaccuracy of financial records
- Accounting and auditing irregularities
- Bribery, corruption or illegal payments
- Criminal conduct and violations of law
- Safety and environmental hazards
- Discrimination and harassment
- Product quality issues
- Conflicts of interest
- Theft or fraud
- Workplace violence

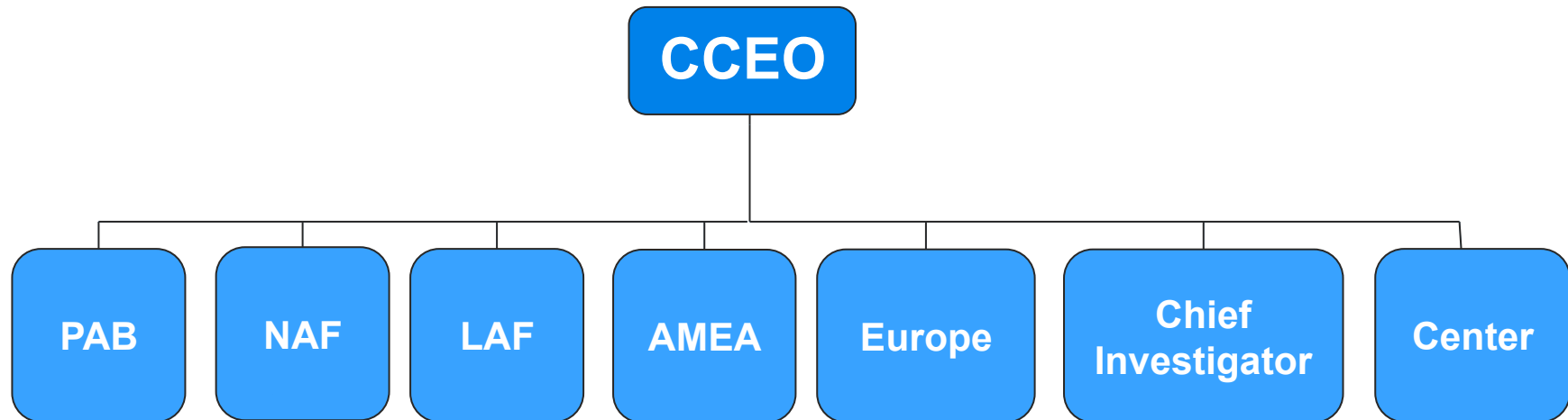
\* Due to local privacy laws in certain countries and the European Union region, the Speak Up line may permit only specific types of calls, such as accounting, financial, auditing and bribery matters. In those countries, contact your Human Resources manager to report issues.

Contact Speak Up by web or by phone  
[www.tnwgrc.com/PepsiCoSpeakUp](http://www.tnwgrc.com/PepsiCoSpeakUp)

For the phone number in your country, see **next page** for our  
**Country Call List**  
Confidential. Toll Free. 24 hours a day.

PepsiCo policy protects employees who raise concerns in good faith against retaliation

## Global Architecture



**Each Sector lead has direct reports stationed in locations around the sector, usually one per region**



## Control Environment Councils (CEC)

- CECs were created to leverage non-GC&E resources to assist in investigations, and to ensure management focus on importance of compliance and ethics to the larger ‘control environment’
- Each CEC includes:
  - CFO
  - CPO
  - Controller
  - General Counsel
  - Compliance & Ethics Officer (chair)
- All Sectors have a CEC; most Regions and some Business Units
- CEC Functions:
  - Assignment of appropriate non-GC&E resources for investigations
  - Ensure consistency of quality of investigations, particularly for more serious allegations
  - Ensure consistency of remediation/discipline for more serious violations across each Sector, and globally



## Escalation of Potentially Significant Matters

- Clearly identified criteria for escalation of certain Speak Ups and other reported allegation as ‘potentially significant violations’
- Escalation based on several factors, including:
  - Nature of allegation
  - Seniority or role of personnel allegedly involved
  - Amount of money potentially involved
- PSV resolutions are reviewed by CECs (on an anonymous basis, unless partly or fully substantiated)
  - PSV 2: reviewed/closed within sector
  - PSV 1: sector CEC develops recommendation for review/closure by Global CCEO.
    - Band 3+ discipline reviewed by Escalation Committee (CCEO, GC, CHRO, Chief Auditor)
- PSV activity generally, and certain matters specifically, reviewed with CEO and Audit Committee

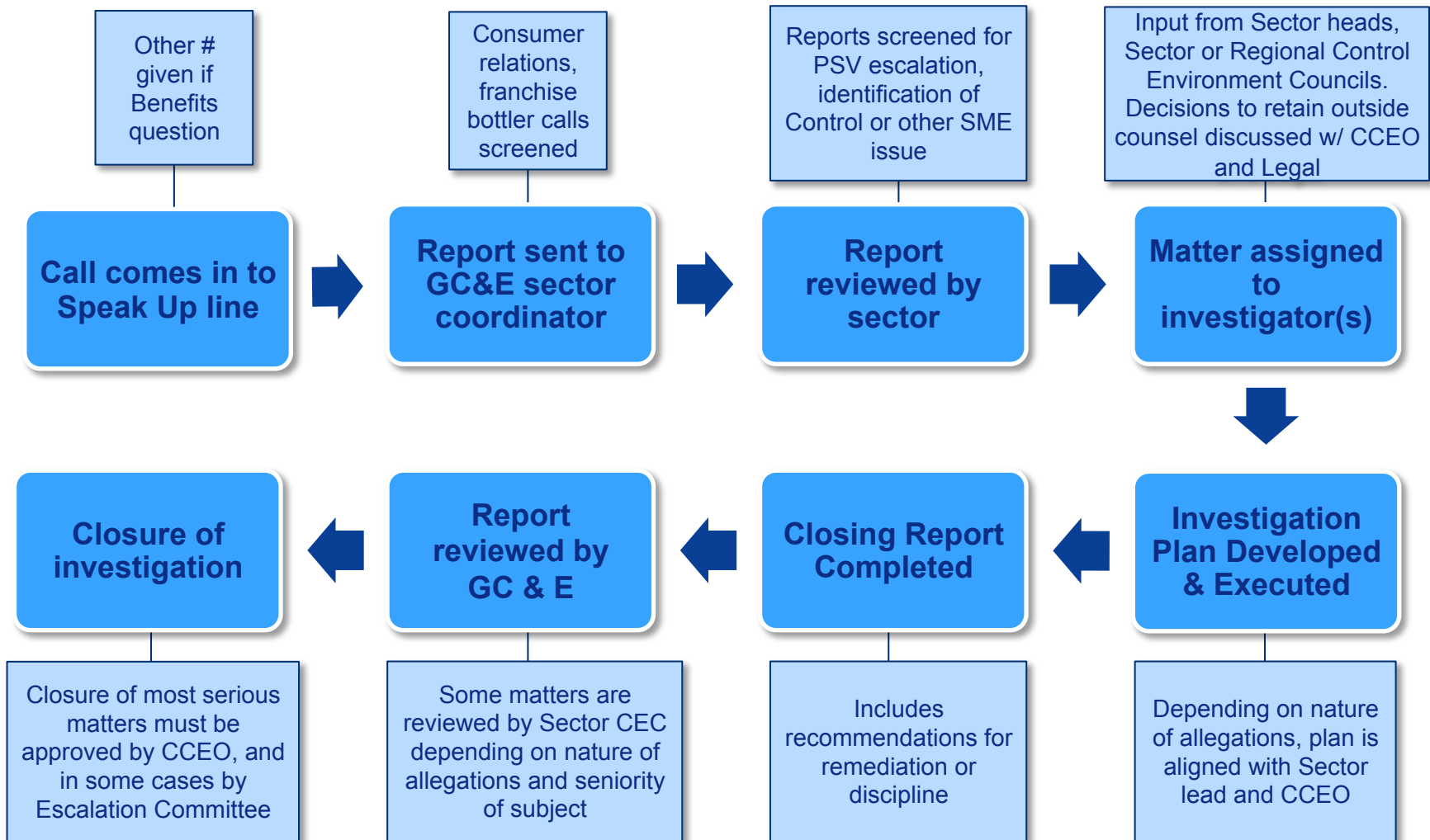


## Investigation Training

- Training is critical to ensure quality investigations
  - All GC&E personnel trained on developing an investigations plan, investigations protocol, requirements for documentation, etc.
  - Investigators trained to look beyond specific allegations of the Speak Up to recognize additional issues that may not have been reported
  - HR and other personnel (e.g., Control, Legal) who are frequently asked to assist in investigations also receive training (in addition to guidance and oversight by GC&E personnel during the course of the investigation)
- Closing report templates ensure consistency of documentation supporting the investigation
  - Even investigations of 'minor' or 'routine' allegations must be documented



# Investigation Life Cycle



# CCO Role in Investigations and Discipline

**Jim Zappa**, Executive Vice President & General Counsel  
CHS Inc.





# My Background

---

- 10+ years as **labor/employment counsel and employee relations leader** conducting and advising on HR issues relating to investigations
- 4 years as **business counsel** involved in managing regulatory and product quality investigations
- 3 years leading **international legal team** oversight of labor, conflict of interest, fraud and cross-border corruption-related investigations
- 2 years as **chief compliance officer** in organization with internal compliance investigation team

# Fundamental Beliefs\*\*

---

- Every compliance/ethics investigation involves/creates a **business** challenge
  - Operational – Employee - Customer
- Compliance investigations can serve 2 objectives:
  - Determine if violations occurred and properly sanction misconduct and
  - Develop/reinforce the compliance culture [not always top of mind]
- The compliance leader advances those 2 objectives when she/he promotes collaboration across functions and with business leaders
  - Particularly important when external investigators are being used
- Communications and role clarity are 2 consistently challenging issues
  - Though it may seem overly mechanical, there are advantages to creating formal structures and protocols to manage both
- Remediation/lessons learned are essential, but can be lost as people just want “life to return to normal”
  - Establishing formal processes for establishing and documenting them can help

\*\* Formed by experience, including my share of mistakes

# Investigations

---

- Compliance officers must help ensure corporation makes the optimal decision on the investigation resource
  - Conducting a **fair and reasonable** investigation does not = “gold plated” or “FBI-trained investigator”
  - The optimal investigation resource depends on the allegation topics and the activities needed (interviews, data)
  - Not every lawyer or HR professional or auditor is a good investigator
- Formal process for assigning investigators helps ensure speed and independence, manage “turf battles” and provide clarity for everyone
  - Also protects against any attempt to “under invest” in investigation

# Investigations

---

- Establishing specific process steps, templates, and routines may seem artificial, but they help ensure consistency over time and help manage political aspects of a particular investigation (e.g., the level and “power” of the person being investigated)
  - Specific notification protocols
- Even when the compliance team is not conducting a compliance investigation, the compliance officer must ensure investigation proceeds in a fair and reasonable manner
  - Has the mandate to protect the overall integrity of the compliance program
  - Most often, the person who can most effectively ask the “hard questions” about investigation process and progress

# Discipline

---

- Compliance officer owns the role to ensure sanctions for compliance failures are consistent and equitable over time
  - From employees' point of view (includes employees' view of whether management is held accountable)
  - From corporation's point of view (includes external and internal stakeholders perceptions)
- Achieving calibrated decisions over time is a challenge – esp. in large, global organizations
  - Does anyone even record outcomes? Your HR or ethics reporting systems can be used to track outcomes for calibrating future, similar situations
- Formalizing a decision-making process helps drive consistency (minimize impact of differences in experience or power)
  - Identified steps and decision-makers (local decisions versus corporate decisions)
  - Factors applied to determine discipline outcomes (primary and secondary factors)



# Discipline

---

- For global companies, local labor laws are a real factor and can test the commitment to discipline – don't wait until the end of the process to determine local law requirements
  - Resignation versus termination; severance requirements
  - Approval by external groups (labor boards, works councils, unions)
- Talking about “what happened to Jane” remains a difficult issue – not just whether to say anything, but what to say
  - If “transparency” is necessary to a strong compliance culture, saying anything is valuable
  - Balance (don't overweight) the “risk” of a privacy or defamation claim and the “benefit” of sending a clear message to the employees who remain
  - PR/media/HR professionals can help provide solutions

# Remediation

---

- Some compliance failures are actually “one-off” failures or are unique to the person ... business leaders may assume every failure is unique
- Compliance officer must promote the idea of looking beyond the person to the business processes and controls that were involved in the failure
  - Better to confirm that controls are working than to miss an opportunity to improve controls (e.g., fraudulent vendor payments showed an overall failure to use procurement resources, which caused general overspending)
  - Business focused processes (e.g., Six Sigma tools) work to address gaps and to make compliance actions feel more operational

# Remediation

---

- Business teams/leaders may want to get back to “business as usual” – investigations are operational challenges – and compliance officer must keep them at the table to identify and implement remediation
  - Review other, similar operations?
  - Establish a new policy, procedure or control?
  - Conduct training?
  - Communicate with employees?
- In diverse operations, compliance officers also must ensure the “lessons learned” are passed across operations/geographies
  - Permit business teams/leaders to assess risk of a similar event and take proactive preventive actions