Compliance and Ethics Committee

LONG-RANGE PLAN

February 14, 2017

Co-Chairs: F. Joseph Gormley and Douglas M. Tween

Vice-Chairs: Thomas Lang, Michele Lee, Dorothy Raymond, Deborah Salzberger, Joseph Tipograph

Young Lawyer Representatives: Keith A. Starr

Council Liaison: Subrata Bhattacharjee

I. COMMITTEE BACKGROUND

A. Scope of Current Charter

The current charter for the Compliance and Ethics Committee is two-fold: (1) professional responsibility and ethics as pertain broadly to all aspects of the practice of antitrust and consumer protection law, and (2) global competition and consumer protection law compliance. The Compliance and Ethics Committee was conceived as a vehicle for unified consideration of the full range of compliance and ethics issues within the scope of the Section's activities. Central to that mission is providing resources and a network for discussing, evaluating and analyzing antitrust compliance and ethics issues.

Our work encompasses the full range of global compliance and ethics issues in the field of antitrust. We pursue that work through publications and programs designed to keep antitrust practitioners aware of cutting edge compliance and ethics issues. We emphasize collaboration with other committees and embrace a global perspective, prioritizing diversity issues in recognition of the fact that compliance and ethics issues are not limited to the United States.

B. Interaction With Other Committees

The Compliance and Ethics Committee concentrates on interaction with all other committees, as compliance and ethics subject matter constitutes at least a subtext or underlying analytical layer in all legal areas. In the most recent year the Compliance and Ethics Committee submitted joint Spring Meeting proposals with seven other committees. In addition, international outreach has been a priority over recent years as the Committee has generated spotlight compliance programs focusing around the globe. We recently presented a program addressing
compliance issues in Latin America, and intend to continue our series with China and the UK, and eventually to extend this into a more regular series. We expect that this new series will bring in new volunteers and members from various jurisdictions.

C. Plan to Expand Committee Membership

The Committee membership has been stable recently in the high 300s. Makeup is typical of the Section. We have recently undertaken an initiative to increase membership, focusing on law firms and government agencies. This initiative includes:

- Assignment of a Vice Chair responsible for expanding membership;
- Reaching out to contacts at law firms and the U.S. agencies and encouraging them and their colleagues to join the Committee;
- Targeting recruitment to international lawyers who are members of the ABA but not members of the Committee, as well as developing closer cooperation with the relevant Section committees, while also expanding ABA membership by increasing programs and publications that: (i) appeal to non-U.S. lawyers; (ii) focus on consumer protection and data privacy issues; (iii) are relevant to in-house counsel responsible for antitrust matters outside of the U.S.; and (iv) are aimed at female counsel;
- Supporting outreach to the competition, consumer protection, and privacy agencies and bars in jurisdictions outside of the United States, including by increasing programs and publications conducted with these bar associations, as appropriate;
- Encouraging involvement and coordination among those of our members who are also members of other bars and bar associations, including the International Bar Association, with whom the Section has a long history of collaboration;
- Reviewing of the membership lists of the Section to identify lawyers who are not yet members of the Committee with a view to inviting them to become members;
- Inviting members of the Committee’s LinkedIn page who are not yet Section and Committee members to become members;
- Promoting membership in the Section and Committee with antitrust practices of major law firms outside of the United States; and
- Contacting each major antitrust bar association outside of the United States to explore opportunities to host joint events and networking sessions.
D. Recent Accomplishments

1. *Antitrust Compliance Handbook: A Practitioner’s Guide* was approved by the Council in July 2016. Chapter drafts have begun arriving this month (December 2016). As with many other Committee endeavors, at least one co-sponsor is present, in this case the Corporate Counseling Committee. Target publication date is April 2018. The project is led by Dorothy Raymond, Ted Banks, and Joe Murphy of Compliance and Ethics, and Elai Katz of Corporate Counseling. This will be a more comprehensive and detailed guide on developing and implementing compliance programs than any the Section has produced before, and will take account of significant recent developments. The intent is to serve the membership and broader communities by providing an effective guide to practices on how to reduce or eliminate risks and harms of anticompetitive conduct both to clients and to society in general. The target audience includes in-house counsel and compliance officers with antitrust responsibilities, outside counsel who advise on compliance, and regulators seeking to impose or evaluate corporate compliance programs. Recognizing that many of those involved in planning, implementing, and evaluating antitrust compliance programs are not principally antitrust practitioners, the book will be written in a way that will be accessible to those with limited knowledge of antitrust law without compromising the rigorous in-depth analysis the section is known for and which experienced practitioners demand.

2. The Committee has begun a series of spotlight compliance programs focusing in turn on various emerging and important jurisdictions around the world. The series started with Latin America, and will also cover China, the UK, and other jurisdictions as market conditions warrant.

3. The Committee submitted seven co-sponsored Spring Meeting proposals with other Committees, and each one had a panel that affirmatively contributed to Section diversity goals.

4. We are preparing two Spring Meeting programs, continuing the Committee’s active role in the Spring Meeting. One of those programs is seeking for the first time in Section history to present a panelist who is actively involved in state bar ethics enforcement.

5. We have drafted and are pursuing publication of an antitrust compliance flip book aimed at small and medium business enterprises, an underserved compliance market.

6. We have created a 10-member Advisory Board made up of practitioners from law firms, in-house, and U.S. and non-U.S. enforcement agencies. The
II. ANTICIPATED POLICY ISSUES

A. Ethics Credit

1. The Issue. While not strictly a policy issue as such, the Committee likely best serves the Section and its members by focusing first on its mission to provide ethics credit availability through a number of channels, including Spring Meeting and distance learning options made available at maximally efficient calendar slots.

2. Committee Response. The Committee will aim to increase its share of ethics credit spending in the bar generally and provide members with a greater range of options for securing necessary ethics credit. The Committee will do this by seeking to ensure that it produces or co-sponsors programming that qualifies for ethics credit. The Committee has appointed a Vice Chair directly responsible for this task.

3. Action Items and Target Dates. The Committee will present one stand-alone CLE event by July 2017, and two events in the next Section year.

B. Yates Memo Issues

1. The Issue. Recent documents from U.S. enforcers suggest that a more stringent focus will be placed on individual accountability for corporate crime. The perspective of the incoming administration on this issue is however yet unknown.

2. Committee Response. The Committee has produced and has scheduled various programs dealing with the evolving environment on this issue, and intends to stay on the cutting edge of same.

3. Action Items and Target Dates. The Committee will produce a Yates Memo update program in Fall 2017, about nine months into the Trump Administration.

C. International Markets

1. The Issue. Companies face a plethora of often divergent requirements when managing cross-border litigation, transactions and ventures. Increasing
globalization and internationalization, along with the continued growth of often geographically agnostic information and high tech economic sectors, will drive further complexity in the near future and going forward.

2. Committee Response. The Committee will aggressively seek to widen its international focus, work that has recently begun through the design of a series of spotlight compliance programs focusing in turn on various emerging and important jurisdictions around the world. The Committee will continue to seek to attract international members and contributors and become a thought leader in reconciling the often divergent compliance and ethics requirements in managing cross border litigation, transactions and ventures.

3. Action Items and Target Dates. The Committee has developed an audio program series entitled Antitrust Compliance: Everywhere and Everything. The Committee has presented Latin America and India programs, while Canada and the UK are scheduled for March and May 2017. We will continue to present the series bi-monthly.

III. LONG TERM PLANS TO STRENGTHEN THE COMMITTEE

A. Scope of Charter

We believe the Charter is adequate and not in need of revision.

B. Membership

As noted above, the Committee likely best serves the Section and its members by focusing first on its mission to provide ethics credit availability through a number of channels. The best way to insure the Committee can succeed in this is to ensure that the Committee is a recognized thought leader in both traditional and emerging ethical and compliance realms. Accordingly, the Committee will seek to attract ethics enforcers and international members and contributors to its membership.

C. Principal Weaknesses or Impediments

The principal limitation for the Committee is the possibility that it will be perceived as pertaining to compliance and ethics only in a narrow area related to competition law and limited to the United States. We believe because competition issues touch many aspects of the largest international transactions that the Committee may be well positioned to comment on emerging complex international issues.
D. On-Going Activities

1. CLE and committee programs. The Committee has presented programming this Section year that contributed significantly to diversity goals, and at the date of this writing has begun both an ongoing compliance series focused on international issues as noted above, a program aimed at compliance in technology sector employment issues, and two Spring Meeting programs, as well as seeking to provide broad availability of ethics credit over a variety of channels. The Committee will aim to increase its share of ethics credit spending in the bar generally and provide members with a greater range of options for securing necessary ethics credit.

2. Technology. Our website contains a variety of resources and links to a number of state antitrust and consumer protection resources. Our Committee is in the process of updating its contributions to the Connect platform and its use of other technology platforms and its website. One of the principal goals of this Long Range Plan will be to develop and implement the appropriate procedures for ensuring all technology platforms are kept in a manner consistent with the Committee’s ambition to be a thought leader in compliance and ethics issues.

3. Joint activities with other committees. As noted above, the Committee has shown a commitment to working with other committees through Spring Meeting co-sponsorships, publication co-sponsorships, and program co-sponsorships. The Committee believes its highest value is in making ethics credit widely available through a number of channels, and will focus its efforts on working with other committees to make ethics credit available through Section programming in the most efficient channels.