

FOLEY EXECUTIVE BRIEFING SERIES



FUNDING DUE DILIGENCE

WHAT YOUR INVESTORS NEED YOU TO KNOW ABOUT COMPLIANCE

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Today's Agenda

- Introductions
- Regulations governing employee and customer information
- Requirements for protecting company financial data
- Guidance for protecting intellectual property that has not been patented
- Expectations of regulators and investors, and the necessary due diligence
- Legal and technology strategies for implementing compliance with limited resources
- Suggestions for communicating and evangelizing these practices throughout the company
- Q & A



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Today's Focus

- Compliance as an asset
- The flipside: Non-compliance as a liability
- Strategies to put your company in the best position to maximize value and minimize issues during due diligence by investors (and/or potential acquirors)



Today's Speakers

- **Edouard C. LeFevre**, Foley Private Equity & Venture Capital Partner
- **Peter F. McLaughlin**, Foley Privacy, Security & Information Management Senior Counsel
- **Danielle Sheer**, Carbonite Inc. General Counsel.



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- Information Technology & Outsourcing
- Privacy, Security & Information Management
- Private Equity & Venture Capital
- Transactional & Securities



Carbonite

- The Carbonite industry-first offer of unlimited online backup service for a flat, low price revolutionized the market for consumer and small business backup services.
- Since 2006, the company has backed up more than 39 billion files and has restored more than 3.2 billion lost files for its customers.
- Carbonite backs up more than 100 million files every day to high-redundancy storage servers in its Boston and Somerville, Mass. data centers.
- The Carbonite mission is to provide a simple, affordable, and secure backup solution for the mainstream computer user.

www.carbonite.com



Regulations governing employee and customer information

- US employs a sector-based regulatory system
 - HIPAA, GLB, COPPA...
- FTC enforcement
 - Unfair and deceptive practices
 - Equally applicable to employee data
- Increasing visibility of incidents



Requirements for protecting company financial data

- SOX 404 certifications @ internal controls
- Data security not highlighted in the regs
- Industry practice and reference points
 - ISO 27002
 - NIST Guidelines



Protecting IP that has not been patented

- Role-based access controls; trust but verify
 - Internal vs external threats
- Confidentiality and Non-disclosure agreements
 - Internal, including assignment of Inventions
 - External
- The best protection: control timing and amount of disclosure
- Documentation is key to enforcement
- “Trade Secrets”



Expectations of regulators and investors

- Regulators expect compliance, regardless of size or sophistication
- Investors presume regulatory compliance
- Transaction documents will allocate risk to the Company
- “Acquiror-size” compliance is an asset
- Compliance issues can adversely affect valuation, both in terms of investor confidence and practical consequences
- What does compliance look like in due diligence?



Implementing compliance with limited resources

- Legal and technology strategies
- Anticipate time and expense requirements.
- Challenges of prioritization
 - Can some regulatory efforts be skipped?
 - Can some regulatory efforts be delayed?
- What guidelines should apply?
- Risk assessment
 - Understand what you have and where it is



Communicating and evangelizing best practices

- Written policies and procedures are key
- Monitor and enforce compliance
- Communicate the importance and potential rewards of best practices
- Training & awareness (frequency)



Questions?



For More Information

■ **Edouard C. LeFevre, Esq.**

elefevre@foley.com

(617) 342-4071

■ **Peter F. McLaughlin, Esq.**

pmclaughlin@foley.com

(617) 502.3265

Foley & Lardner LLP
111 Huntington Avenue, 26th Floor
Boston, MA 02199
(617) 342-4000