

COMPLIANCE OFFICERS THE SPY WITHIN?

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COMPLIANCE OFFICERS - THE SPY WITHIN?

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Ladies and gentleman

I am delighted to have the opportunity to talk to you for a second time today. The organizers of this very timely conference are to be congratulated on the way in which they have brought us up to speed on the latest developments in the world of compliance. We now have a strong understanding of what is expected of us and what lies on the horizon.

I am particularly pleased to have been asked to address one of my passions and to explain why I believe it is time for financial services firms to begin to embrace their compliance officers not as spies within but as essential players in ensuring the long-term survival of their business.

In my view, to see a compliance officer's role as anything but insurance for the future is to make a major error and I will seek to set out why that is.

Corporate Responsibility

I hope you will not think me too provocative if I say that, these days, for any company to be – and to be seen to be – as anything other than a responsible corporate citizen is to tempt fate. For those in the financial services arena, this is not just risky but positively suicidal.

Over the past decade or two, the complexity of business transactions, technological advances, globalization and the overall pace of change have all combined to increase the volume and complexity of risks facing organizations.

Even before the global financial crisis, the international headlines were increasingly being filled by stories of far-reaching corporate scandals. As a result, policy-makers were increasingly concerned to ensure that financial services jurisdictions and firms did not operate in such a way as to pose an unacceptable risk to their shareholders, the sectors in which they operated and the wider economy.

The inevitable consequence was a stream of intrusive regulatory measures. Following the global crisis, this stream has turned into a flood of new laws, rules, codes and international standards aimed at improving transparency and accountability and redressing the problem of inadequate internal controls and systems.

There is a determination to stamp out any weaknesses in corporate governance. For the governments and regulators of financial services jurisdictions, this means more than ensuring that the new global requirements are translated into local legislation and standards – essential though that still is. It also means ensuring that individual practitioners and firms take the necessary steps to ensure that, once introduced into law, the new rules are being complied with on the ground.

The Importance of Compliance

It was Henry Ford who said, “You can't build a reputation on what you're *going* to do.” In the second decade of the 21st century, companies need to realize that that compliance is not an optional extra but the linchpin of corporate responsibility, corporate reputation and indeed corporate profits.

Ladies and gentlemen, I have been in this business longer than I care to remember. And I tell you that, as the world looks today, any company doing cross-border business that fails to put a proper compliance function in place is jeopardizing its own future.

By a “proper” function, I mean one that is given both sufficient resources and, yes, respect. The role of the compliance officer must be high profile and must pack clout and influence. It must penetrate to the very core of what regulated entities can and cannot do, what records they need to maintain regarding actions taken and not taken, and so on.

Every company director who tries to introduce compliance on the cheap, who looks down on his or her compliance officer or who undermines their work is actually undermining his or her own business.

Getting it wrong can prove very costly. Increasingly, regulators and law enforcement agencies seek redress where breaches of AML CFT rules and or sanctions occur. Fines and forfeitures can be substantial, especially for those who transgress US legislation.

Any failure to be aware of and to observe the rules, therefore – and any association with known fraudsters, conmen, politically exposed people, terrorists, drug traffickers and dealers, tax evaders and other ethically challenged people – represent a clear and present danger for the immediate bottom line as well as for companies' long-term reputation.

All this means that, far from being the spy within, compliance officers should be seen as the essential underpinning of any financial services firm. Just as no professional would forego liability insurance, so they cannot do without their compliance officers, without someone charged with ensuring that the organization is operating in line with all relevant laws, regulations, codes, mandates and standards.

Of course, it is not just individual firms that suffer as a result of inadequate compliance. Every practitioner who is indicted for negligence damages the reputation of their local industry and their jurisdiction as a whole. As Alexander the Great said, "Upon the conduct of each depends the fate of all".

We all need to reflect on how easily company profits – and government revenue – can be put at risk by someone else's inadequate systems, controls and, yes, attitudes. Recognising and knowing how to respond to money laundering are not optional extras. They must lie at the heart of your business and that of your neighbour, too.

In this industry, we are all our brother's keeper. Just as no company can afford to be tagged with the label of a compliance dead beat, nor can it afford for this to be said of other firms operating in its jurisdiction.

The Compliance Officer

The challenge of ensuring proper compliance must be met by individuals, companies and regulators alike.

A useful starting point is to recognize that compliance is still a comparatively new and evolving discipline. It is not exactly a science but rather a nuanced art form of increasing complexity and regulatory rigour.

Effective compliance entails navigating a veritable minefield: a landscape of constantly changing laws, rules, codes and mandates, each of which could cause sudden problems. It means being aware of sanctions lists, of the interplay of global regimes and of how OECD and G20 countries are continuously seeking to apply their rules and laws extra-territorially.

It is now universally agreed that the best way for regulated entities to meet this challenge is to have in place one person, the compliance officer, who is charged with taking ownership of the regulatory and ethical compliance issues and of personifying the corporate conscience of an organization.

This is not a job for the meek, the faint-hearted or the timid. It is a busy, demanding and stress-filled challenge that only few are capable of meeting. It is a job for the proud and the bold, for people of character, candour, charisma and confidence.

The ideal compliance officer should be capable of dealing with multi-faceted, multi-dimensional tasks. Someone who can walk the tightrope with dexterity.

On one hand, officers need to meet the expectations and demands of the regulatory and law enforcement agencies to whom they have a statutory reporting obligation. On the other hand, they need to ensure consistent, buy-in support from their own Board, senior management and staff.

They have to predict and appreciate the relationship between risk and its possibility, and prevent risks turning into problems.

The very nature of the job can lead to tenacious and adversarial relationships within the organization, especially if the role is not properly understood. After all, this is an officer who – with the full backing of the Board and senior management – should be able to butt into any department, ask potentially embarrassing questions and demand honest answers. They have to be allowed to provide unfiltered reports to the Board and to talk to the Board without including the CEO, CFO, COO or whoever when it is appropriate.

In short, there is a myriad of requirements that compliance officers have to balance to keep the company out of trouble. This requires a wide range of skills and competencies in risk management and mitigation – and also in people management. The compliance officer must be part legislative expert, part investigator, part auditor, part counsellor, part trainer, part strategic planner, part operations officer, part supervisor or regulator, part diplomat, part promoter or negotiator and part communications expert.

He or she should have the skills to listen wisely, to digest vast amounts of technical and complex information and then to analyze this, prioritize it and act on it decisively.

This will mean making recommendations which address the problems and then overseeing the implementation of those recommendations, monitoring progress and reporting on implementation – all the while reviewing, revising and updating procedures as necessary to achieve the intended results.

The officer will also need to have a global view of compliance, one which takes into account the relevant laws of multiple countries. This should lead to increased tailoring of compliance programmes to the particular risk profile of the organization, including a review of areas where

compliance programmes may not be mandated by law but where consideration of potential risk scenarios is nonetheless needed.

Incorrect Notions of the Compliance Officer

Ladies and gentleman, you can see that, although essential, a compliance officer's role is not an easy one. Making it harder is the fact that far too often the role is misunderstood, undervalued, underappreciated and under-compensated.

Far too often, compliance officers are taken for granted until an emergency or crisis occurs, when suddenly their worth is recognized and their presence considered essential.

Equally, to be honest, some compliance officers themselves can operate within a silo and take an ivory-tower, disconnected approach from the rest of the company. They can forget that they are employees and that the purpose of their job is to ensure the company continues to be profitable.

These misunderstandings are the result of a fundamental category error. Yes, the officer is the person responsible for driving and overseeing compliance activity. But compliance as a whole is the responsibility of the entire licensee. The officer is the first in the firing line. But it is the whole organization that is exposed if he or she is poor at her job or is not supported to do it properly.

The officer's reporting obligations – statutory or otherwise – often lead to misinterpretation as to whom he or she owes allegiance. Is it the company, the Board, senior management or indirectly the regulator? Is he or she an uncontrolled, autonomous inhibitor of business? Or is the officer merely the organization's get-out-of jail card, the steer for keeping the regulated entity out of trouble?

To be clear, the compliance officer is an employee of the regulated entity, not of the regulator or law enforcer to whom has statutory reporting obligations.

He or she is not an agent or a spy for regulators or law enforcers.

Not just an advisor to the licensee, a drain on the bottom line.

Not a double agent.

Not a devious or manipulative insider who inhibits business in a willy-nilly fashion.

He or she is not a marketing and promotions officer, and therefore not to be located in sales promotion.

Equally, the officer is not someone who should perform major client interfacing roles – if any at all. These should be limited to, at most, education about compliance procedures.

The compliance function will be easier to perform and the company will get better results from it if all of this is properly understood. Fortunately, this is increasingly the case.

Historically, compliance officer were rarely considered to add anything to the bottom line and were seen just as a cost that inhibited business. However, today, more and more directors and Boards see that preventing compliance problems before they become front page news is an indirect way to augment their balance sheet.

As a consequence, the compliance officer's function is increasingly becoming an integral part of an organization's strategic plan and the Chief Compliance Officer's task is becoming, while never easy, then easier.

The Chief Compliance Officer's Role, Mission and Success Factors

It might be useful if I spelt out the role and mission of the compliance officer – or the Chief Compliance Officer (CCO), as he or she is often known – in a little more detail.

This person's core role is one of risk management and risk mitigation. They are thus the architect and steward of the compliance strategy, structure and processes and are primarily responsible for overseeing, managing and implementing compliance within an organization.

This means ensuring that the company and its employees are complying with regulatory requirements, AML/CFT requirements, internal policies, procedures and protocols, and relevant foreign laws, such as the USA's Patriot Act and FATCA.

As the compliance leader and subject matter expert, the Chief Compliance Officer is responsible for establishing standards and implementing procedures to ensure that compliance programmes throughout the organization are effective and efficient in identifying, preventing, detecting and correcting non-compliance with applicable rules and regulations.

The officer must ensure that compliance protocols, manuals, policies and programmes remain relevant and fit for purpose. He or she should train staff at all levels in the proper implementation of protocols and of statutory reporting to both the Board and the regulator of any breaches.

A critical function of the position also entails establishing at Board and senior management level an acceptable risk appetite and then developing strategies that manage and mitigate identified and potential road blocks.

As mentioned, without adequate time and resources the job cannot be done effectively. Procedures, policies and protocols must be written down, regularly updated and widely accessible to staff, management and the Board. They must be tested periodically to ensure they really work and are fit for purpose.

Board engagement and training is a critical but often overlooked area of practice for effective Chief Compliance Officers. The officer's relationship with the Board should always begin with a shared working knowledge of the Board's evolving role in overseeing compliance and ethics in the organization.

I should mention here that a mistake many Chief Compliance Officers make is to provide the Board with information that is excessive, irrelevant, too technical and or lacking sufficient context. Boards have limited time and resources and often have divergent and competing interests. They require relevant information in digestible, measurable, concise and easy-to-understand portions.

Finally, then, compliance officers really need to know and understand the business they are in. They then need to be resourced, not least to undertake significant research to keep the organization forewarned and forearmed about relevant global developments, laws and standards, and the compliance risks and challenges these present.

Successful compliance officers also need to be resourced to access relevant information technology, including compliance resources and systems. In turn, they should use this wisely and not wastefully.

They need to build stakeholder relationships: internally with the Board, senior management team and business lines; and externally with the regulator and law enforcement agencies. This will entail keeping the Board regularly updated and trained as necessary; and in undertaking timely reporting both to the Boards and external bodies.

Compliance officers also need to adopt a principles-based and risk-based approach and not just apply rules blindly.

They need to remain very aware of ethical issues and avoid conflicts of interest. And not least, they need to be encouraged to challenge existing practices and to have the strength of character to do so.

Ultimately, their value will be demonstrated when their firm is not fined or sanctioned while other firms whose compliance function is less properly developed and resourced fall into difficulties.

Conclusion

Ladies and gentlemen, let me conclude by reaffirming that compliance and ethics are now fundamental elements of business strategy. Directors who fail to take active oversight of their firm's compliance and ethic programmes as an integral of their overall business strategy do so at the company's and their individual peril.

The good news is that Boards are now realising that they have a natural ally, a great resource and an agent in the Chief Compliance Officer – someone who is able to separate the wheat from the chaff on compliance issues and to bring key information, critical trends and focused discussions on compliance issues to the boardroom.

Properly positioned, empowered and resourced, a compliance officer is a great asset for a company – one that I believe will increasingly be seen as a key differentiator of competitive advantage.

To adapt Jack Nicholson's powerful words from the film *A Few Good Men*, I look forward to the day when all companies will say of compliance officers, "We want them on the wall, we need them on the wall – and we can handle the truth"!

Thank you.

Appendix

Role of the Chief Compliance Officer

The Chief Compliance Officer (CCO) is the architect and steward of a company's compliance strategy, structure and processes and is primarily responsible for overseeing and managing compliance within an organization, ensuring that the company and its employees are complying with:

1. Regulatory requirements;
2. AML/CFT requirements;
3. Internal policies and procedures; and
4. Relevant foreign laws (eg the US's Patriot Act and FATCA).

The CCO's duties include:

- Maintaining a current knowledge of laws and regulations, and keeping abreast of recent changes;
- Developing an annual compliance work plan that reflects the highest risks to be monitored by the compliance function: these to be determined by conducting a mandatory annual risk assessment using an enterprise-wide approach;
- Providing guidance to the board of directors, senior management, staff, and employees on compliance;
- Overseeing and monitoring the implementation of the compliance programme;
- Developing policies and programmes that encourage managers and employees to report suspected fraud and other improprieties without fear of retaliation;
- Reporting on a regular basis on the progress of implementation, and assisting in establishing methods to improve the efficiency and quality of services and to reduce vulnerability to fraud, abuse, and waste;
- Periodically revising the programme in light of changes to the needs of the organization, and to the law and policies and procedures of government and regulators.
- Developing, coordinating and participating in a multi-faceted educational and training programme that focuses on specific elements of the compliance program and seeks to

ensure that all appropriate employees and management are knowledgeable about, and comply with, pertinent domestic and international standards, laws and rules;

- Developing materials at an institutional level for distribution to all employees to enhance awareness of compliance activities;
- Coordinating internal compliance review and monitoring activities, including periodic reviews of departments;
- Responding to regulatory/law enforcement investigations and queries as the principal point of contact; and
- Independently investigating and acting on matters related to compliance, including having the flexibility to design and coordinate internal investigations.

In summary, as the compliance leader and subject matter expert, the Chief Compliance Officer is responsible for establishing standards and implementing procedures to ensure that the compliance programmes throughout an organization are effective and efficient in identifying, preventing, detecting and correcting non-compliance with applicable rules and regulations.