

## “24” Intercepts Compliance

The following takes place between 8.00 a.m. and 9.00 a.m.

**W**ith a temporarily disassembled high powered rifle, several clips of armour piercing bullets and myriad explosive devices all tucked deftly away in a haversack slung over his shoulder, CTU<sup>1</sup> Special Agent Jack Bauer, with pistol drawn, bellows, “Federal Agent, out of the way!” as he propels his battle-scarred frame along New York’s underground in the perpetual hunt for a single-minded vicious terrorist, seeking instant “martyrdom” by detonating his bomb-strapped body.<sup>2</sup>

Moments before, the villain’s photo is uploaded to Agent Bauer’s state of the art, multivariate, encrypted smart-phone and remotely confirmed via a high tech imperceptible ear-piece, whose unknown technology is supported by a ghost satellite shadowing the formidable Jack’s every move...several miles above the earth. Whew!

What is the similarity between this nail-biting scene from the renowned “24” TV series and the, arguably, renowned compliance function?

### Dealing with Change

In Jack’s world, situations can change in a heartbeat and thus require immediate adaptation to the circumstances. Failure to do so could result in serious consequences, including loss of life. Likewise, a company’s failure to adapt to changes in its competitive environment – for example, the entrance of a new powerful competitor, the development of an innovative product/service or even the requirements inherent in new laws/regulations – can jeopardize the company’s longevity through sanctions or loss of its operating licence!

The financial services domain is fraught with high speed change, particularly regulatory change. For example, in the late 1990s–early 2000s, financial institutions as you know had to deal with new standards relating to anti-money laundering (AML) and

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<sup>1</sup> Counter Terrorism Unit

<sup>2</sup> Ordinary people believe martyrdom occurs when one is killed for one’s religious beliefs rather than by committing suicide and deliberately killing others in the process!

## **“24” Intercepts Compliance**

were mandated to have systems in place to deter and detect its occurrence. The passing of AML laws also saw the development of new regulatory guidelines to help shape their implementation.

### **Tragedy, Scandal and Change**

Following the tragic collapse of New York’s Twin Towers on September 11, 2001, additional mandates around terrorist financing emerged, alongside disclosure requirements of the USA Patriot Act.

Still, the now infamous Enron scandal of 2002 triggered a new approach in the world of accounting and finance in the form of ‘new SOX<sup>3</sup>’ which was aimed at limiting the extent to which the big accounting firms could both audit and simultaneously provide advisory services to the same clientele.

In recent years, the downturn in the global economy (unbelievably, spurred by what could only be described as a ‘wild band of risk-taking-financial vagabonds’ or better put: ‘infants dressed in business suits’ (whichever you like) saw the passing of sweeping legislation by the US Congress in 2010 in the form of the Dodd Frank Act. Allied to this is the Bank of International Settlement’s a.k.a. “Basel III” obligation that seeks to hold certain financial institutions to higher levels of accountability through adjusted capital adequacy as well as operational risk requirements.

### **Tax Disclosures and Change**

And now there is FATCA. Sounds like a ‘bad word’ I know. Nevertheless, the impact of the Foreign Account Tax Compliance Act and the related disclosure stipulations for financial institutions with a US client base has moved sovereign nations to enter into an intergovernmental agreement with the USA, to give effect to its implementation.

You might have observed that the regulatory change I speak of is for the most part, externally-driven. This means that our local laws, regulatory guidelines and by

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<sup>3</sup> Sarbanes Oxley

## “24” Intercepts Compliance

extension our company’s policies and procedures, will ultimately require revision to reflect these changes whenever they occur. Thus, like Jack Bauer, compliance finds itself in a state of constant action and forward momentum, not only having to respond to change but often to anticipate the change that might be coming next!

### Horizon Scanning

Anticipating change involves scanning the horizon for the faintest of indicators. It is not simply looking to see what regulators are doing or may do next. Rather it involves analyzing the innovations and new products and services of companies at the top of their game. This is how leading companies shape their environment, by innovating. This in turn triggers state involvement (through regulators) to limit risk taking within acceptable contours – for the public good. Ultimately, as competitive pressures mount, this breeds more innovation and the cycle begins all over again.

There is also another kind of innovation of which we must be aware, which occurs alongside the traditional kind, so to speak: Criminal innovation is the norm for business on the dark side. There is no difference in risk taking, idea generation or rewards, except that it occurs off the grid as it were. That said criminal innovation, of necessity, also provokes legal and regulatory intervention. In the context of financial services there is no better example than AML requirements now enshrined in the legal framework of a majority of countries around the world and for which regulators have established guidelines to support institutional conformance.

### Important Work

As change agents, Compliance Officers bridge the gap between ‘what is’ and ‘what needs to be’. Operating in this gap means operating in a place of complexity, ambiguity and, depending on your perspective, a place of creativity.

Like the character Jack Bauer, Compliance Officers do all in their power to neutralize or minimize the impact of ‘terrorist’ incursions (bad guys such as fraudsters, money launderers etc.) on the organization. We shore up weaknesses in our organization’s

## “24” Intercepts Compliance

(risk management) armour, solve implementation problems often under intense regulatory pressure and deploy capable resources to identify and pre-empt potential failures. This is why consistent monitoring and reporting as well as on-going engagement (training) is so critical to our work. We also have to understand the company's values, vision and mission to ensure there is no deviation through personal or corporate acts of indiscretion.

### **The “Judas” Factor**

Sometimes though, the terrorists manage to penetrate the veil and do damage. As well, some ‘terrorists’ operating from within, stand to do the worst damage of all, violating protocols, abusing their power over people and systems and exploiting control gaps towards their own self-serving ends. It is understood – by criminals for sure – that support from the inside is critical to achieving their objectives. Companies must therefore ensure that those who are hired for key roles in particular are closely scrutinized both before and after hiring. Even the best of people can after all change for the worst!

### **Moving Right Along!**

The good thing is that like Jack, despite the battle scars (in our case, sanctions, unsatisfactory audits et al.) we learn from our mistakes and remain focussed on our mission. In the end, the results are worth it. The blossoming compliance culture we see emerging in our companies makes it worth it. Working alongside and developing fellow Agents makes it worth it!

Let's continue to change our organizations for the better!

Signed: *Special Change Agent, Kirk Taitt*