

## Compliance, After The Storms

The Storms – fraud and financial crimes, money laundering scandals and data thefts – have left global financial services firms reeling! On the heels of these events, standard setters to legislators issue new requirements – at times, with blinding speed. Regulators levied fines on wayward financial institutions, some of which surpassed USD \$1 billion. Significant disruptions to business as usual have impacted the compliance professionals particularly hard. Adding to the disruptions is an awareness that criminals are becoming increasingly innovative.

For the compliance professional, these recent events add up to a swirling maelstrom of inputs to be reviewed and considered for the next compliance ‘upgrade’. Questions compliance professionals may ask themselves in the face of all of these events include: How do I ensure my organisation is doing all it needs to do to avoid operational or regulatory risks? Am I looking at the right areas? What are the emerging risks in our line of business? How best to redevelop and integrate changing requirements into the compliance framework?

Paraphrasing Winston Churchill, the compliance professional should *‘never waste a good crisis!’*. It is from these storms, these crises, that the compliance professional can gain greater power in driving change. After crises, senior management and Boards of Directors tend to be more attentive; both in the fallout that may occur in the loss of clients, revenue and reputation, as well as the subsequent regulatory action that invariably happens when a firm is at the center of a crisis.

Now, more than in any time in our history, financial institutions must be resilient to weather the future storms. Clearly, some firms have missed the opportunity to make substantial investments geared towards compliance driven businesses. Forecasts have long trended in this direction. The Chief Executive Officer of the then FSA echoed just this sentiment in his Overview in the 2012/2013 Business Plan. Paraphrasing, it was set out that, *regulated entities need to show a greater willingness to proactively comply*<sup>1</sup>.

Regulators are not seeking to push firms' risk appetite on a downward slant. What regulators are seeking to do is to get firms to take an honest assessment of their risks, as well as the strength of their compliance frameworks. Pro forma risk frameworks will not work! The use of ‘boiler plate’ compliance practices cannot work! Tick-the-box forms and questionnaires cannot be the only tool in the compliance tool kit; these forms and questionnaires also cannot dictate instances when a more intrusive review may be warranted. Standardized documents have dwindling purpose in compliance. To move forward, a ‘kaizen’ of compliance must occur – a continual improvement in the efficiency and effectiveness of compliance. And compliance professionals need to demonstrate that they are up to the challenge!

Compliance professionals must be dynamic! They must quickly absorb changes to regulatory requirements, decipher typologies and communicate effectively to top management and the Board. Compliance professionals, together with senior management, must be the drivers behind necessary change. What this means for the compliance professional and the firm is more engagement in all areas of the firm. It means the compliance professional must be involved in and contribute to management's dialogue with regulators, new business development streams, and agreements (with employees, contractors and other third party service providers). Ideally, a firm should engage the compliance professional in the proactive formulation of a crisis response, should a crisis strike.

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<sup>1</sup> FSA Business Plan: 2012/2013. Page 9. [www.fsa.gov.uk/static/pubs/plan/bp2012-13.pdf](http://www.fsa.gov.uk/static/pubs/plan/bp2012-13.pdf)

Recognition of what impacts compliance is also essential. The compliance professional must develop systems and controls for external threats, as well as potential rogue agents within a firm. Rigorous internal testing must also form an integral part in compliance. This allows for gaps to be discovered from within, and not by clever criminals. Documentation of compliance measures, primarily through manuals and reports, can also inoculate a firm in the event of a crisis. Whilst it may not lessen possible public scrutiny, it can make for more productive engagement when, not if, regulators come to investigate.

As a caution, Boards must also embrace compliance. The best compliance framework is essentially powerless without a robust Corporate Governance structure in place. Political pressure is now also a material factor management must contend with during a crisis. Boards must keep in sharp focus that the compliance function remains their responsibility, and if poorly implemented, their liability.

Given the increasingly expensive nature of non-compliance, the compliance professional is poised to assist in securing the bottom line. Doing so requires clear positioning as an advocate to management, not as an adversary. It also requires clear messaging on compliance as an asset to the firm and not a cost center; in several cases, the large fines levied on financial firms outstripped what may have been previously deemed burdensome costs associated with compliance training, compliance tools and staffing of a Compliance Department. If a firm jealously guards its reputation within the financial services industry as trustworthy, effective and committed to excellent services, then they must evolve to a compliance driven firm to maintain that reputation. If firms cannot change, they will find the current environment too hostile to their continued existence.

If compliance professionals do not commit to doing their part to building resilient compliance frameworks and effectively implementing them, firms have a much greater risk of loss of business in the event of a crisis. In some instances, firms cannot withstand a direct hit of a 'storm'. In the end, building a resilient compliance framework is a surmountable challenge, provided that the compliance professional understands of what resilient compliance is truly worth.