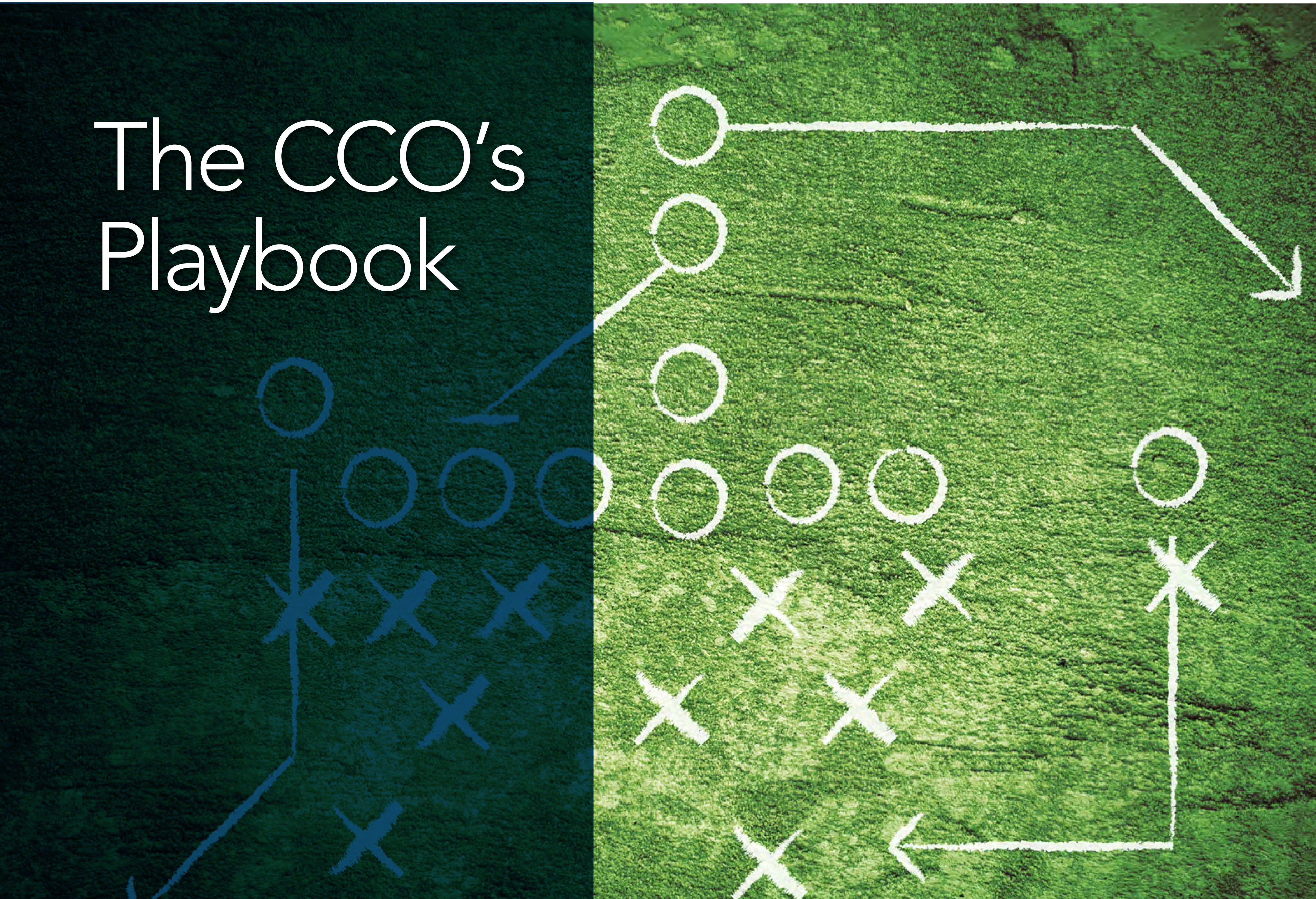
CSS
Compliance Solutions Strategies

The CCO's Playbook



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Introduction

The global regulatory space is complex and fragmented, and the scope of compliance has increased. With COVID-19, tightening of compliance budgets and, coupled with the fact that regulation never sleeps, CCOs are facing more challenges than ever. Financial firms can address these problems through tactical and reactive responses to regulatory deadlines or think more strategically to optimize their compliance data, operations and technology and ease the burden compliance officers are facing.

CSS's in-house team of CCOs know how to anticipate change and take a proactive approach to compliance, helping bridge the gap between the regulations and practice. With the unique insights, knowledge and experience that the CSS team of former CCOs can offer – from attaining a seat at the executive table, doing more with less resources, to mitigating risk, creating a culture of compliance and ensuring teams are aware of any BCP blindspots – compliance officers can remain vigilant and empowered.

For CCOs, by CCOs, this playbook was developed to help compliance teams combat these day-to-day challenges and provide best practices and insights so CCOs sleep more soundly – even during times of uncertainty, regulatory change and market volatility.

CHAPTER ONE

ASSESSING YOUR COMPLIANCE PROGRAM IN TIMES OF BUSINESS DISRUPTIONS

Assessing Your Compliance Program in Times of Business Disruptions

-Allison Fraser

Whether your firm is continuing to work from remote locations or is beginning to get back to the office, the disruptions of the past few months require an "other-than-annual" or interim evaluation of your firm's compliance program, particularly with respect to high-risk areas. What worked as intended? What exceptions were made to policies or procedures? Has the required documentation been maintained? These are just some of the questions that compliance officers need to ask and, more importantly, answer.

There are many reasons for conducting an interim review of aspects of a firm's compliance program. First and foremost, the enacting release of Rule 206(4)-7 of the Investment Advisers Act states that "although the rule requires only annual reviews, advisers should consider the need for interim reviews in response to *significant compliance events, changes in business arrangements, and regulatory developments*."[1] Another reason is our short-term memory. While we all think that we will remember why an exception was made or how a situation was resolved, we generally won't without benefit of good documentation. Additionally, as our experiences post-2008 demonstrated, regulators will question what challenges the firm faced during these turbulent times and how they were addressed. They will also expect that policies and controls were followed and exceptions were documented.

Compliance officers are central to documenting how a firm responded to these business disruptions and recommending what enhancements or changes should be made to a firm's compliance program. To accomplish this, having a plan to conduct interim assessments is a crucial first step.

Where to Start

Your firm's risk inventory is a good place to begin identifying the subject matter areas and controls that should be reviewed. Those areas that have been rated as high risk based on impact or likelihood of occurrence should be prioritized for the assessment. Consider whether it is more

1 2020 Investment Management Outlook – Deloitte Center for Financial Services

appropriate to evaluate sub-categories of specific topics rather than the entire category. Using trading as an example, select a few sub-categories, such as allocation of investment opportunity, trade errors and cross trading, instead of all facets of a trading program.

Another means of further prioritizing areas for review is by identifying policies and procedures for which exceptions have been made during these turbulent times. For example, were any exceptions made for employees who submitted personal trading reports late or neglected to pre-clear political contributions? Were meetings of oversight committees postponed or standing agenda items not reviewed?

One aspect of the compliance program that all firms will need to review is their information security and incident response programs, as well as their business continuity plans. Firms will need to examine what parts of the programs worked and those that did not. In this regard, it would be appropriate to discuss whether having an assessment conducted by a firm's internal information technology team or by an independent third-party would be best. Whatever the answer, this review should be a high priority as no one is certain how long employees will be working remotely or if business resiliency programs will be tested again.

Other areas will depend on your firm's business, types of clients and investment products. For investment advisers to retail clients, areas of focus may be custody, protection of personal identifying information and client communications. Institutional managers may need to review compliance with client investment guidelines and restrictions, cross trading and broker execution. For private and registered funds, the focus may be conflicts of interest, liquidity, pricing and valuation and material non-public information.

Once a list of focus areas for the interim review has been made, prioritize the list and establish deadlines for completing the review of each area. Note, however, that deadlines should be realistic, and an interim review will not be completed overnight. There is most likely a lot happening within your organization. Consider regulatory filing deadlines that need to be met, such as Form CRS, and other factors impacting compliance and firm resources.

What to Do

As with an annual review, approach assessing a focus area of the interim review by using a team approach. Identify the individual or business unit best suited to collaborate with a compliance officer to conduct the review of a subject matter area. Be sure that the timeline established by the compliance team for completing the review works with the individual or business unit. If it does not, negotiate a timeframe that works for everyone and gets the job done.

If your firm resources are stretched to capacity, an alternative may be for your firm to engage a third-party compliance consultant to assist with the interim review. The engagement could supplement the work being done internally and limited to certain topics based on risk or areas where the firm would benefit from an independent assessment. It could also be to conduct the entire interim review. Factors such as budget and timing will influence the scope of hiring a third-party consultant.

Interim Review of Compliance Controls					
(as of __/__/____)					
Subject Matter Area	**Responsible Evaluator**	**Expected Completion Date**	**Date Completed**	**Summary of Findings**	**Location of Supporting Review Materials**

Next, create a log of interim review areas and annotate it with who is responsible for the review, the proposed deadline and actual completion date. It is also helpful to include a summary of the findings and the location of the documentation that supports the review. Utilizing this approach can be done manually or using a work management application.

There are a variety of techniques that can be used to validate controls and testing. What is important is selecting the type of testing that is appropriate to assess the topic or subject matter area. Types of testing to consider include:

- Transactional Testing – review of samples of transactions (ex: trade tickets, personal trading);
- Forensic Testing – review certain types of transactions over a time period (ex: trade allocation, broker execution costs);
- Periodic Testing – reviews at regular intervals that are conducted looking back over time (ex: email reviews); and
- Monitoring – ongoing oversight of a function that identifies exceptions to the process on a real-time basis (ex: investment guideline exceptions, trading a restricted security).

How to Document an Interim Review and Report to Management

The least complicated way to document the focused reviews is to follow the same template or process that has been used to document the annual review of a firm's compliance program. The process should establish a consistent means for memorializing the testing and results. Keep in mind that the results should identify not only opportunities for improvement but also the controls that worked as intended. As with all reviews, retaining the documentation that supports each assessment is a necessary element of the review. Again, the least complicated way to do this is to follow the procedures that are used for the annual review.

Reporting the results of the interim review should also follow the same process that is used for reporting the findings of the annual review. Some firms have the results reported to senior management while others report them to an oversight committee, and some do both. The end goal of reporting the results is to advise people outside of the compliance function of the controls that worked and those that require enhancements. The goal is also to get support or buy-in to implement a remediation plan.

After reporting the results, develop a plan to implement program enhancements and establish implementation timelines. Then (what may be the hardest part of all), implement the plan!

Additionally, interim reviews can and should be incorporated into your annual review. Rule 206(4)-7 requires that policies and procedures be reviewed no less frequently than annually to assess their adequacy and the effectiveness of their implementation. You don't have to wait to review all policies at the end of a year or reporting period. The assessments conducted during the interim review should become part of the annual review as should any actions taken to enhance a policy or process.

Elements of Successful Interim Reviews

- Leverage firm resources, including people, technology and third-party resources, to assist with evaluating the effectiveness of the firm's policies and procedures. If resources are stretched, consider engaging a third-party consultant for assistance with all or part of the review
- Develop a review plan that is both manageable and actionable
- Set realistic deadlines to complete subject matter area reviews
- Establish standardized review procedures and record retention protocols
- Provide a report, either verbally or written, summarizing effective controls and those that need enhancement
- Develop a plan to implement improvements that were identified
- Implement the remediation plan
- Incorporate the interim reviews and remediation actions into your annual review

CHAPTER TWO

BUSINESS CONTINUITY AND PREPARING FOR REGULATORY EXAMS POST-PANDEMIC

Business Continuity and Preparing for Regulatory Exams Post-Pandemic

-Korrine Kohm

As a Compliance professional, the past five months have probably been the most challenging of your career. Not only have you had to help coordinate staff to work remotely from home, but you had to find new ways to ensure your compliance program remained effective and reasonably designed in light of the insane current events. Those events, whether COVID-19, significant market fluctuations, halted stock exchange trading, or liquidity concerns, provided new and unique challenges for even a seasoned compliance professional. And while the focus on these new risks should take center stage for compliance officers, there are other factors that first should be addressed.

Let's first consider how your Business Continuity Plan (BCP) fared. The reality is that we are really not post COVID-19 at this time. Some governments expect it could be months before a full reopening of regions. What does that mean to compliance professionals? That a work from home (WFH) protocol may be around for quite some time.

Starting in March 2020, investment managers experienced a true test of their BCP. Prior to March 2020, there were not many financial services firms that considered pandemic planning in their BCPs. Within a few short weeks, investment managers were forced to fully implement their continuity plans and figure out new ways to manage certain aspects of their business remotely. So, what worked? And more importantly, what didn't work?

Let's look at staff considerations as an example. Some investment managers were faced with key members of their organization succumbing to COVID-19. If it was a mild case of the coronavirus, the employee may have only been taken out of commission for a few short weeks. But in more serious cases, some employees were in the hospital and not capable of performing their jobs for well over a month. Did your BCP address temporary or long-term succession planning for key members of your organization? Many financial firms did not plan for the potential long-term absence of key members of staff due to illness. For example, many smaller size investment advisers did not have designated backups for key members of your organization. The key employees were not just investment professionals, but encompassed operations, compliance, accounting, and client relations.

When I was in-house Chief Compliance Officer for a very large investment adviser, I was a department of one. When I took planned maternity leave, the compliance program came suddenly to a halt. It became clear to senior management that resources to compliance were needed, even if it was only for an interim period while I was on maternity leave. Imagine what firms faced with an unexpected pandemic that suddenly forced everyone to quarantine? Of course you can imagine it, because you faced this crisis yourself! Therefore, now is the best time, while things are fresh on your mind, to memorialize how your firm did in transitioning to WFH protocols and dealing directly with the impact of the pandemic.

Performing a BCP self-assessment will help memorialize where your company saw success and which areas needed improvement. Specific areas to evaluate within the self-assessment should include communications, technology, cybersecurity, how mission critical vendors performed, personnel considerations and any impact to your clients. The self-assessment should be critical, and also address what areas were unsuccessful. Documentation of remediation measures will help reinforce the strength of your BCP moving forward.

On first blush, your BCP may have seemed successful. However, were there any elements of your business that were impeded due to quarantine? Where you unable to mail quarterly statements or the Form ADV material changes notification? What happened to your firm's mail? Did the inability to access your offices impact the receipt of important materials delivered via postal service? If your firm performed bill-paying services, did the fact that your office was closed impede your ability to provide those services to clients? It is important to address these considerations within the self-assessment.

Two other important considerations are books and records and cybersecurity. As a result of COVID-19, full or partial staff of financial firms across the world were forced to work remotely. Though VPN and other telecommuting measures may have been in place, the reality is, employees may have been storing certain required books and records locally, or worse, in paper format at their homes. Naturally, the movement to a virtual work environment increased cybersecurity concerns for all organizations.

Some questions you should ask yourself include: Did you need to implement new policies to govern employees maintaining books and records at their personal residences due to WFH protocols? Prior to the pandemic, were all employees set up on secure remote access? Did you suddenly have to allow employees to utilize their own electronic devices to perform work functions and maintain client records? These are just a sampling of the questions compliance professionals should discuss with other members of their organization to gauge how successfully prepared their BCP was prior to COVID-19.

Remember that as a fiduciary to your clients, you have a responsibility to ensure your advisory firm can provide financial advice and monitor assets over the course of the relationship. This includes during a pandemic! Performing this self-assessment will show the regulators the proactive attention to the topic of BCP and the measures you have taken to remediate any deficiencies. The Securities and Exchange Commission (SEC) is already interested in how firms were able to respond to COVID-19. The following two questions were included on a SEC document request list in April 2020 to a firm in a routine examination:

- A copy of the Firm's BCP and other compliance policies and procedures addressing the continuity of business operations.
- Copies of firm-issued policies, procedures, guidance or other information tailored to address continuity of business operations specific to pandemics.

I expect that the SEC will continue to include more of these types of questions in regulatory exams. Plus, it would not be surprising to see the SEC perform a sweep exam of investment managers specific to the topic of COVID-19. Less we forget, it was only a few short months after Hurricane Sandy hit the North-East region of the United States when the SEC issued a risk alert titled, "SEC Examinations of Business Continuity Plans of Certain Advisers Following Operational Disruptions Caused by Weather-Related Events Last Year."[1] Alas, it's just a matter of time that the SEC comes asking about those blindspots that were not uncovered until COVID-19.

As for regulatory examinations, it was business as usual for the SEC with respect to providing regulatory guidance and completing examinations. Not only did the SEC announce that there would not be a delay in adopting the new Form CRS Relationship Summary disclosure document, but in April 2020, they released an Office of Compliance Inspection

1 https://www.sec.gov/about/offices/ocie/business-continuity-plans-risk-alert.pdf

and Examination (OCIE) Risk Alert titled "Examinations that Focus on Compliance with Regulation Best Interest[2]" advising SEC-registered broker-dealers and investment advisers about the scope and content of initial examinations after the compliance date for Form CRS of June 30, 2020. In fact, it was noted in a footnote of the risk alert that, "OCIE staff remains fully operational nationwide and continues to execute its investor protection mission."

The SEC transitioned to remote, virtual examinations quickly after the United States shut down due to COVID-19. Firms that were in the process of having an examination may have had a brief reprieve, however in a few short weeks, examination teams were back on track with document requests and setting up interviews via remote measures. In fact, new examinations started as the pandemic continued.

Had I still been in house CCO at my previous firm, I could only imagine the stress and anxiety upon getting that initial call from the regulators advising that they were starting a regulatory examination - during a worldwide pandemic! Most compliance professionals spent the end of the first quarter dealing with transitioning to remote work environments, monitoring investment portfolios due to the market volatility, supervising staff, all while quarantining and caring for family. Throw on top of that an unexpected call from the SEC politely saying, "We get there is a pandemic going on, but we are (virtually) here to perform your (routine, new registrant) examination."

To be fair, the SEC did acknowledge that the coronavirus had created challenges for investment advisers and broker-dealers. For example, though the examination document requests and methods for production did not change, the SEC would consider an extension for delivering materials if a registrant needed it. For investment advisers that had completed their examinations, the SEC also provided an additional 30 days on top of the normal time frame to respond to any deficiency letters. This pandemic evidenced the importance of maintaining electronic books and records so that access to and delivery of requested materials to the regulators was flawless.

Sometimes you need a little crisis to get your adrenaline flowing and help you realize your potential[10]! If you were effectively managing your compliance program leading up to the pandemic, then undergoing the regulatory examination during the pandemic should have been seamless. Compliance professionals that were able to promptly respond to the SEC's request and not avail themselves of the permitted time extensions reflected their preparedness and the effectiveness of their compliance program.

I was recently reminded of one of Winston Churchill's most famous quotes, "Never let a good crisis go to waste." When you look back at this unique period of history as a compliance professional, will you celebrate your firm's successful management of its compliance program and business continuity plan or will the memories haunt you?

2 https://www.sec.gov/files/Risk%20Alert-%20Regulation%20Best%20Interest%20Exams.pdf

3 The Glass Castle, Jeannette Walls

CHAPTER THREE

THE LASTING IMPACT OF COVID-19 ON INVESTMENT MANAGEMENT

The Lasting Impact of COVID-19 on Investment Management

-Matt Calabro

The COVID-19 pandemic and related shutdown of global economies will be remembered as one of the most significant shocks to the investment management industry. The sudden and impactful events of March 2020 borrowed elements of the previous shakeups of the 21st century. For investment managers, the pandemic surprised markets like the September 11, 2001 attacks, sent world financial systems to the brink of collapse reminiscent of the Global Financial Crisis of 2008 and displaced businesses in the way Superstorm Sandy impacted New York City in 2012.

In early 2020, global economies were generally strong. In the United States, there was strong GDP growth, near full employment and equity markets were at all-time highs. As the pandemic spread throughout the world, the economies shut down virtually overnight during the second week in March, unsettling markets everywhere. By mid-March, the U.S. was in a full-blown credit crisis, with credit markets seizing, buyers were avoiding even "safe" investments like U.S. Treasuries and investors were fleeing money market funds. On March 16, the Dow Jones Industrial Average suffered its second worst day in its history. Governments around the world stepped in to provide massive amounts of liquidity to stabilize markets.

What are the Implications?

As with any major disruptive market event, there are meaningful impacts to investment managers resulting in lasting changes. Looking ahead, we see changes to how work is done, the rise of market volatility and an expected regulatory response. Each of these implications will increase complexity and challenge a firm's compliance staff.

How Work is Done

The deployment of people and resources to "work from home" was largely successful throughout the global investment management industry. The rise of improved connectivity, Web-based telephone and video services and collaboration tools shattered long-held views on what

types of work could be performed remotely. Employees in a wide-range of functions were able to access their work and stay productive. 2020 will be the year that "Zoom" became a verb and household pets joined in meetings. The flexibility unlocked by all these tools makes it clear that remote work is here to stay and available to a wider variety of jobs than previously imagined.

With a future workforce that may be increasingly dispersed, there are likely changes to processes and information flows within the firm. Compliance professionals will need to be at the forefront of modifying policies and procedures, ensuring that key controls are in place and documented. Firms must ensure that employees are adequately cross-trained on critical functions, as a positive COVID-19 test can unexpectedly sideline an employee for two weeks. Investment managers with a strong compliance culture ensure that the CCO and key compliance leaders have a "seat at the table" as critical decisions about the business practices are made.

Market Volatility

Investment managers have been increasingly challenged with downward fee pressure over the past few years. The rise of ETFs and other passive investments and the democratization of information have led to steady decreases in fee rates. The increase in market volatility and the "instant" global recession create additional revenue pressures for investment managers. Throughout the spring and summer of 2020, 4-5% moves in the S&P 500 index were all too common. While the liquidity crunch of mid-March was eased with massive amounts of government intervention, the increased uncertainty weighs heavy on budget decisions.

As a result, investment managers are focusing more heavily on their expense line. While well-run firms understand the importance of effective compliance programs, spending constraints will challenge compliance teams to do more with less.

Regulatory Response

When the market goes to the brink of collapse and needs a massive amount of government support to bring stability, the regulatory framework is sure to be reviewed. In the immediate aftermath of the crisis, regulators have taken an active exam posture, reviewing for compliance while also gathering information as to how investment managers reacted to the crisis. If past crises are an indication, this is often followed by new rules designed to shore up the financial system from future shocks. In the coming months, we will need to pay attention to regulators around the globe for signals of future reforms.

Action Steps

Moving forward, there are a few critical steps for a CCO to take to ensure the strength of the compliance program. First, review the current risk assessment and adjust risk ratings, controls and activities accordingly. Key areas to consider include:

- Portfolio Management. While the CCO may not be responsible for investment risk, it is important to evaluate how the investment risk management model performed during the crisis and what changes may be necessary. Consider the impact on liquidity assessments, especially where there are specific liquidity requirements (e.g. mutual funds or client guideline restrictions). If the risk profile of the portfolio or a particular security has changed, that change should be reflected in the risk assessment. Evaluate the effectiveness of the portfolio monitoring process, including the use of alerts to warn in advance of a guideline breach.
- Internal controls. Consider how the crisis has impacted any existing internal controls or supervisory procedures and what changes may be necessary. For example, if a particular transaction requires two signatures, how is that authorization accomplished in a remote environment? If this approval is completed electronically, ensure that proper evidence is retained and that the procedures and risk controls reflect the actual practice. If a compliance officer traditionally sits near the trading desk and the firm views that as a valuable control, how is that control replaced in a virtual environment?
- Key person risk. Consider critical functions within the organization that are only performed by one person. As noted earlier, the pandemic has taught us that firms need to prepare for long and unexpected employee absences and should have effective cross-training programs to ensure ongoing resilience.
- New risks? Consider whether any new risks have been created and make sure that they are properly addressed.

Next, given the challenging operating environment and strain on resources, a CCO should diligently challenge processes to ensure that every compliance activity contributes to the compliance or risk management process. Activities that do not should be reviewed and potentially reassigned or discontinued. It is helpful to have good metrics about how the compliance function is performing and contributing to the firm's goals.

Finally, CCOs should look at whether automation can help improve processes, drive efficiency and lower the total cost of ownership. While such activities may seem like luxuries in this environment, challenging times present opportunities for a critical review and targeted efforts to strengthen the process before the next growth spurt.

As we have seen time after time, investment managers will be challenged with unexpected crises that call for quick and decisive action. The resilience of the industry rests with its ability to effectively manage risk and quickly adapt to changes.

CHAPTER FOUR

NAVIGATING REGULATORY CHANGE: HOW TO WIN THE REGULATORY GAME

Navigating Regulatory Change: How to Win the Regulatory Game

-Ariana Monchick

Being a Chief Compliance Officer navigating regulatory change is a lot like quarterbacking an offense in an action-packed (American) football game: you're responsible for calling the plays, reading the opposition, seeing opportunity, and leading the team to victory. This can really be applied to any sport or business. With the expanding scope of regulations demanding constant improvement and agility, how do compliance teams anticipate change and win the regulatory game?

Stay Apprised of Rulemaking

In order to read the opposition, you've got to watch film on the opponent.

- Make it a point to devote time every day to stay on top of industry news and new regulations. Sounds easy, but CCOs get pulled in so many different directions and finding the extra time can be challenging. Staying apprised of what's on the regulators' agenda can put you and the firm in a position of being proactive rather than reactive when a new rule comes down the pipeline.
- Spend the first 30 minutes of your day having your "coffee and regs." Subscribe to bulletins from law firms and compliance consulting firms, read Investment News, and listen to podcasts.
- Consider joining industry associations, such as NSCP, the Investment Advisers Association and the Financial Services Institute. These groups engage with legislators and regulators to help shape regulation and affect change, and are a great resource for regulatory updates.
- Attend industry conferences and network with other compliance professionals. Conferences provide the opportunity to learn about best practices and hear from your peers on how they are navigating new requirements.

Educate Members of Your Firm on the Impact of Changes

Team captains don't win games alone; they've got a team behind them helping them to victory.

Once the regulators propose a new rule or regulation, educating others within your organization on the impact of the rule is a key part of the process. Engage other people in your organization and give them ownership of compliance. Not only can this lead to more effective implementation of new rules, but it can also help the firm with risk prevention. Call a meeting with other department heads, tell them the latest challenge, and ask them how the firm is going to tackle it. By taking a team approach, you may get some really creative solutions from other people in the organization as to how the firm can implement the rule changes.

I think the latest round of regulatory changes in the U.S. – Form CRS and Regulation Best Interest – are a perfect example of the importance of engaging other people in the organization as you tackle new regulations. The conflict identification and mitigation aspect of the rules has been a large burden for firms as there is now an explicit requirement for both broker-dealers and investment advisers to identify and disclose all relevant conflicts, and then mitigate or eliminate the conflicts. Firms have had to spend a considerable amount of time looking at revenue sources, compensation arrangements, and other conflicts, and determining whether those conflicts can be dealt with purely through disclosure or whether they will need to be further mitigated or eliminated.

Consider establishing a Conflicts Committee that meets periodically to review new products and servicing offerings. If you are with a small firm, the committee might be comprised of just you as the CCO and your firm's Managing Partner. If you're with a large organization, you'll want to have other member of senior management and department leaders on the committee to help identify any new conflicts. Questions the committee should discuss include:

- Have new vendor agreements been signed?
- Have there been any changes to the firm's custodial agreements or pricing?
- Does the firm have any new revenue streams?
- Have any changes been made to sales incentives?
- Will any new business initiatives present any conflicts?

You might think you know all of the conflicts that exist at the firm, but if a new agreement is signed and you are not aware of it, you could end up having gaps in your disclosures. You may also want to consider engaging the other committee members to create an inventory of the firm's conflicts to help with the conflict identification and mitigation process.

Incorporate Regulatory Changes into Your Compliance Program

See the opportunity and create a strategic offense.

The process of implementing regulatory changes is a great opportunity for CCOs to show their value to the business. Support business growth by taking a business-friendly approach when responding to regulatory changes. Get creative and bring ideas to the table! For example:

PROBLEM: The new Form CRS includes conversation starters that financial professionals are going to have to be prepared to answer, and firms may not feel comfortable with letting their financial professionals answer questions from clients regarding the firm's conflicts of interest.

SOLUTION: In addition to training your financial professionals as to how to respond to questions from clients, provide them with tools to help them respond appropriately, such as a separate document with answers to each of the conversation starters that can be used as a guide when having conversations with clients.

PROBLEM: Many retail investors do not understand the differences between an advisory account and brokerage account. How can the firm ensure clients and prospective clients understand the differences so clients can determine which type of account would be in their best interest?

SOLUTION: Partner with Marketing to create a brochure that breaks down the differences between an advisory account and brokerage account that can be used to supplement Form CRS.

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Utilizing technology is another effective way to tackle the challenges of operationalizing changes. As a result of firms working remotely during the COVID-19 pandemic, a lot of organizations have adopted more automated tools to help facilitate delivery of account documents. Technology can help firms stay on top of providing required disclosure documents with account paperwork to clients and provide an audit trail to evidence delivery.

Studies have shown that people are the greatest challenge to implementing change. Effectively incorporating regulatory changes into your compliance program requires the business to embrace a culture of proactive compliance and risk management. Getting buy-in from the business leaders in your organization can partly be accomplished through education and engagement, but it is also important for other business leaders to understand:

1. Compliance is not just the CCO's problem to solve, it's the firm's problem to solve; and
2. There is reputational risk with not complying.

Regulatory reform in the financial services industry is constantly evolving. Lead your firm to victory by taking a strategic approach to compliance.

CHAPTER FIVE

GAINING A SEAT AT THE TABLE – INFLUENCING FROM WITHIN

Gaining a Seat at the Table – Influencing from Within

-Dan Haynes

Throughout my career, I've never heard a business leader say compliance isn't important. Time and again, through countless conversations and interviews, compliance is touted as paramount to the firm. And while those presidents and CEOs may think they believe that, often compliance is left out of those key meetings and decisions, only being filled in later to "make it happen." If you have "compliance" in your title, likely this has happened to you. So how can you keep this from happening?

Earning Confidence

If you expect to get an invite to the meeting simply because of your title or status at the firm, I suspect you're in for a rude awakening. When conversations come up about a new offering, the goal is to have people think, "Let's get Compliance involved early so we go down the right path." No one likes to have an idea gain momentum only to have it change course (or worse, squashed) later on. That's uncomfortable on both sides of the table.

In order to be a part of those discussions, you have to prove you'll add value. So how does compliance show its value when it's typically viewed as the "No" department?

First, be a student of the firm. This is easy when you're new and trying to gain a fundamental understanding of what exactly the company does. But beyond those initial meetings with departments, dig deeper. Ask questions that aren't directly tied to regulatory considerations. Ask things like:

- What's our main product line? How is the firm's overall revenue tied to the various offerings?
- How do we define our target market? How has that evolved and are there any plans to change this?
- What systems do we use? How do they tie in with each other? Can I see what kinds of reports and data we can get out of them?

Showing that you're interested in things beyond your day-to-day responsibilities shows a genuine concern for the overall success of the company. It also helps you piece things together for your own understanding and will ultimately make it easier to get things accomplished.

If you've been at the firm for a while now, don't rely on the answers you got years ago. As they say, the only constant is change, so commit to re-engaging with various departments. Show an interest in them and what they do for the firm. Then start piecing it all together.

Secondly, recognize that knowledge isn't the only thing you need. There's a lot of information out there about literally everything (thanks, Internet!), but the key is putting it together. Knowing how data flows from start to finish and who is involved in what can show not just that you're curious about the business, but that you can be valuable to helping solve and think through issues. Compliance is in a unique position where your reach can and should be to literally every other department in some way. Yes, you can come at it with the approach that they "have" to have those conversations with you, but make it so that they want to. Once you're able to speak to how the pieces of the machine work together, you'll find yourself being sought out for your opinion.

A great example of this happened during the COVID-19 pandemic. Firms were immediately thrown into a business continuity / disaster recovery scenario with little to no warning. Countless hours were spent scrambling in an effort to not just keep businesses running, but also how to keep employees safe. Who better to take the lead on something like this other than compliance? Business continuity planning is often a marriage between compliance and operations.

Demonstrating Value

Once you've earned the seat at the table, how do you keep it? It's no surprise that most measures of success are quantifiable. Firms often set out high-level goals – so how can you tie your efforts into the firm's successes?

First, you have to understand what the goals are. I know this seems obvious, but as you're reading this now, can you recite your firm's goals for this year? What about the 3- and 5-year goals?

Then, start tying your actions directly to those goals. Examples include:

- New, more efficient processes (like the implementation of software) that increase time spent on building the business;
- Reviewing marketing materials to help reach different segments of the market; and
- The new registrations of people, funds, products to further diversify the firm's product offering.

And don't forget to quantify where you can. Be specific in terms of how many marketing materials, how many registrations, how many trades were reviewed. There's power behind numbers and a reason why all departments should quantify where you can. This shows real, tangible value.

Communicating Consistently

Compliance professionals have a bad habit of popping up when things go wrong. It's a necessary aspect of our jobs – thinking through what went wrong, how to fix it and how to keep it from happening again. This is of course important, but don't let that be the only time people hear from you.

At one of my previous firms, I gained a reputation that every time I came by her office with a piece of paper in my hand, that meant something was wrong. She would sit up straight in her chair and immediately react as if I was bringing her bad news. The ironic part is, she was one of the most compliant advisors we had. It opened my eyes to appearances matter. I'd clearly given her a reason to react that way, so it taught me to make my dialogue with her (and others) more frequent and consistent – not just when things went wrong, or I needed something.

Countless industries often will say they're a "people business." I don't think compliance is any different. Understanding people, their motivations, their goals, even just fundamentally who they are – that can go a long way. And this isn't a one-way road. Compliance professionals often must separate their emotions from the facts. It's easy to do when you're looking at a situation and trying to figure out what went wrong. After all, it likely wasn't your mistake. But be careful when you do this because it can lead to people viewing you as a position/title/department instead of a human being.

Don't let yourself become just an email address. Just as it's important to get to know people on a more personal level, let them also get to know you. Communications (and compliance) goes both ways.

Move the Business Forward

I was at a conference once where the speaker put forth a question to the audience. He asked, "Why do you think brakes exist on cars?" Universally, the reaction was to slow the cars down, or to stop them.

And while that's fundamentally true, the speaker asked us to think more critically about the role brakes play. He told us to think about the very first iterations of cars. Those first designs didn't have brakes, and when they were invented, not very good ones. As a result, cars had to go slow.

But as technology improved, and cars got faster, the brakes had to evolve along with the engines. Faster and faster cars demanded better and stronger brakes. So, in looking at it this way, brakes actually help cars go faster. We wouldn't travel as quickly or as safely as we do without them.

Think of your role as compliance in this same way. The easy, simple answer is that compliance slows the firm down. In reality, when positioned the correct way, compliance is what actually allows the firm to continue to progress.

CHAPTER SIX

TOWARDS AN OPTIMAL MODEL FOR COMPLIANCE

Compliance Culture in a Bottle

-Victoria Olson

If you're like me, you've sat through, and maybe even presented, countless lectures about the culture of compliance. It's a bit of a nebulous topic with no single definition. To me, a culture of compliance is decision-making and behavior driven by doing the right thing, even when no one is watching. And that is even more important than ever when working in a remote environment.

As compliance professionals, culture is probably the single most significant factor in determining whether we look forward to our work or want to run the other way and never stop. I've sat in some meetings where the suggestions were so outrageous that I could swear I was getting "punked." I've attempted to review marketing materials that were so over the top that there were more redlines and comments when I was done than there were words in the initial text. I've had to sit people down and explain why you just can't backdate a report to make it look like it was completed timely. I've uncovered and investigated a Ponzi scheme (Spoiler alert: he's in jail now). I've conducted internal investigations and served on FINRA enforcement panels. Along the way I've heard every last justification for lying, cheating, stealing and general rule breaking. But more often, thankfully, I've had the absolute pleasure of working with people who truly appreciate my advice, who look at compliance as a valuable resource, who are open, honest and inclusive.

What makes one firm – and the various professionals who represent it – live and breathe by the book, while others are a bunch of scofflaws? I can tell you this for sure: there is no magic potion that you can buy to embed a culture of compliance in an organization.

As cliché as it may sound, I honestly believe this starts at the top. Try as you might, if the leadership of the firm truly believes it's OK to get a "C" in compliance (or worse!), you're going to have a hard time moving the needle. This is where, as compliance officers, we need to dig deep into ourselves and find a salesman. Seriously. And if you can't find one, take a class or read a book. I highly recommend Getting to Yes: Negotiating Agreement Without Giving In, by Roger Fisher and William L. Ury.

Tone at the top is critical because everything you need to do depends on their buy-in in some form or another. Need more resources to effectively implement your compliance program? Need time on the calendar for all associates to participate in training? Assistance in responding to a regulatory inquiry or examination? Recommending the firm terminate the employment of your number one salesperson because of repeated compliance breaches? For each of these, and many other challenges, you are going to need management's buy-in.

Whether you are a large firm staffed with hundreds of compliance professionals or a dual-hatted CCO in a small shop, compliance is infinitely more effective when the head(s) of the firm are setting a good example. If the bosses take compliance seriously, day in and day out, the other employees are far more likely to take it seriously. If the bosses think it's OK to complete attestations past the due date, don't care if new account paperwork is incomplete, regularly suggest aggressive or inappropriate marketing tactics, it's much more likely that others will pick up these habits. And if management does not hold employees accountable for their actions, or support you in addressing compliance breaches, recidivism will run rampant. New hires will learn bad habits, and if weeding out a bad actor isn't important, each person hired might bring more issues that pollute the firm's environment further.

With all that being said, it's probably obvious that if management is not setting the right tone, you will need to address that as a matter of priority. Figure out how high up the issue goes, and, as uncomfortable as it might be, sit down and have a frank conversation on the subject. This is where you need your sales skills to come out. Talk about aspects of their work and leadership that you genuinely value. Maybe even share a story about something they've said or done that helped you to improve "XYZ." Let them know that efforts to grow the business are important to you. Then honestly and calmly describe the challenges you're having. Use specific examples of lapses in sound decision-making or other concerning observations. Do not lecture. Your goal is to get them on board, not to alienate.

Explain WHY this is important. Not just to you. Explain why it is important to management to imbue a culture of compliance throughout the organization.

In my experience, money talks. And while compliance is not typically viewed as the epicenter of profitability, I truly believe that our work is the foundation of a firm's success. First and foremost, no one wants to pay a fine. You don't have to be a math genius to know that writing a check to the SEC is going to impact the firm's bottom line, not to mention the cost for lawyers and other professionals a firm would need to hire to address an enforcement action. Then you have all the time and aggravation of being embroiled in such a situation. Few executives dream of testifying in front of the SEC. And time = money. If the management team is busy dealing with enforcement, they're not focusing on making (and managing) money. The disruption to business can be more costly than the actual dollar amount of the fine. If that's not enough, reputational damage resulting from malfeasance can cripple asset gathering efforts and make the process of retaining clients a full-time effort.

Enough doom and gloom! Remember to make this a positive conversation. There are many advantages to having a clean regulatory record. Not only can you potentially reduce the likelihood of getting on the short list to host the regulators in the near term, the firm avoids awkward discussions with clients about what went wrong and how it's being addressed. The firm doesn't have to overcome prospect concerns that [insert applicable violation] might happen again and negatively impact their accounts. The firm can discuss fiduciary duty and not have to say, "except this one time…" In short, the firm can confidently represent to clients its commitment to doing the right thing.

Once you have management on board and understanding the importance of compliance, let them know how they can help you through simple actions. Offer to draft a quarterly email or newsletter to all employees that can be sent from management highlighting some aspect of a compliant culture. Express interest in attending meetings that you don't normally attend for the purpose of learning more about the business. Ask for five to 10 minutes on the agenda at various meetings. Consider a "fireside chat" format and co-present with management. There are innumerable opportunities to move talks about culture to the forefront – use your creativity!

Pre-COVID-19, I would say, "get people used to just seeing you around." Walk the trading floor. Have lunch with a relationship manager. Invite the head of marketing to participate in an industry call focused on advertising regulation. Create opportunities for positive interactions so that when there's an issue to work through, employees know and trust that you are there to help. This also gives you an opportunity to hear what's going on at the grassroots level.

Since the beginning of 2020, we've all had to make changes to how we

work. Given the success and effectiveness many have demonstrated in a remote environment, I'd venture to guess that we will see more alternate work arrangements on a permanent basis.

While the long-term effects of this pandemic remain to be seen, we are, here and now, forced to rely more heavily on employees acting with a strong moral compass. As such, it's more important than ever that we are vigilant in our duty to effectively implement compliance policies and procedures that are reasonably designed to prevent regulatory violations. Firms should evaluate the need for an interim review of their compliance policies and procedures to assess what, if any, adjustments are appropriate in light of having a remote workforce and other potential changes in business arrangements.

Since we can no longer walk the office and take advantage of informal conversations to supplement knowledge of business activities, consider increasing the volume and frequency of emails you are reviewing. Assess the effectiveness of key word lexicons for flagging risks that may be unique to this new environment – certainly privacy of client information can be tricky when sharing a home office/kitchen table. You may also want to obtain IT reports to verify that personnel are appropriately accessing the firm's network and that records are being stored consistently in a secure method. As we're now coming to the end of the Code of Ethics transaction reporting window for the second quarter in COVID times, check to see if there is any slowdown in employees completing this requirement. In other words, take the pulse of the firm's culture and "treat" any ailments you find.

Then go back to basics. How is the tone at the top? Have any of your regular interactions with firm leadership been impacted, e.g. cancelled meetings, training, etc.? When you pick up the phone and call someone, do they answer, or regularly send you to voicemail? Has there been an increase in trade errors? Style drift? Delays in reporting? Are the compliance team members keeping up with their responsibilities, both in volume and quality of work? Other issues? Issues with compliance culture may not present as actual violations of policy, but instead could manifest as sloppiness in carrying out regular procedures and one-off assignments. If you determine that the culture needs treatment, don't delay!

Keep meetings on the calendar even if the work agenda is short. It's important to maintain the regular presence of compliance throughout the organization. I stick by my pre-COVID advice and continue to recommend getting people used to seeing you around. Continue "face-to-face" meetings whenever possible, especially for more difficult conversations. This is still possible thanks to the many video conferencing tools.

Don't let the good work you've done in building relationships dissolve because you can't walk down the hall to meet with someone. And don't wait to have a conversation until something has gone wrong. A firm's culture is the culmination of ethical decision making every day. It can't be turned on at will.

As the steward of compliance in your organization, keep your eyes and ears open, motivate management to lead through their actions and words, and no matter what, be approachable and adaptable. Truly partner with them to help the firm achieve its goals efficiently and compliantly. That just might be the magic potion we're all looking for.

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