



Who Will Want to be a Compliance Officer?

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You will all be well aware that the regulatory requirements are increasing in the financial services sector globally. Regulators appear to be implementing a ‘loser pays’ philosophy with ever increasing penalties being levied both on firms and individuals. Nothing in this article is looking at whether there has been a misdemeanour that requires such precipitous action, but instead we are focussing on the message that is being delivered and the consequences of these actions.

Recent cases in both the UK and USA in particular are seeking to name and shame individuals. This has been a technique which has long been applied to the regulatory market, but the approach seems to be changing.

We have heard much about senior management responsibility and the role of the governance committees. Globally there are a series of actions taking place seeking to ensure that those tasked with managing the business take compliance seriously and receive evidence to show that they are conducting their work to the standards that are required. Clearly the first line of defence is responsible for managing compliance and senior management need to know that this is being undertaken effectively.

But we ask the question **“who will want to be a compliance officer?”** To this I could also add “who would want to be a risk officer?” or “who would want to be an internal auditor?”

In all of these cases a department is tasked with trying to get someone else to do something. Let us think about each of these three roles. The compliance officer cannot actually ensure that compliance is achieved. They do not hold every conversation at the firm nor deal with every message that is sent out. This is an unrealistic proposition. They interpret changing rules and regulations in terms of seeking to ensure that the firm is capable of complying and also should verify that the necessary controls have been implemented in the business.

Of course the monitoring of these controls on a day-to-day basis does not fall under the

perjure of the compliance department. This is the responsibility typically of the operations area reporting to some form of Chief Operating Officer and ultimately to the governing committee of the firm. The compliance officer has no protection and you might distinguish this by contrasting the position of the Money Laundering Reporting Officer who does have a prescribed role with protection. The compliance officer if they disclose has no protection other than the whistleblowing legislation. This brings me to recent cases in the UK and the USA which have a common thread. Again I do not want to go into any depth regarding either case but in two cases the compliance officer has been penalised and in one of these the internal auditor was also penalised. What these cases have in common is that no other members of staff or senior management were criticised at any time.

Can this be right? The compliance officer reports to the senior management who also are responsible



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for their pay and rations. Some senior management interpose themselves between the compliance officer and the firm and we have heard of a number of compliance officers who are put into a difficult position. What should they do if they are under pressure from the senior management team to not disclose something to the regulator? Regulators will tell you that immediate reporting is clearly the order of the day – but is that realistic and fair?

If the governing body of a firm tells a compliance officer to delay or avoid reporting something then the compliance officer has two choices. Either they can report and be dismissed by the firm or they can resign and report. Both are problematical for the individual. If they are dismissed they will have a problem getting a reference for their next role. Likewise if they resign they will also find it almost impossible to get a reference from the previous employer. If you are seeking to employ a compliance officer would you make your first choice someone that has either been dismissed by their firm or resigned and reported to the regulator? Would you believe them?

The consequence of this is that compliance officers are actually put into an invidious position. They are almost damned if they do and damned if they do not. Surely in all such cases senior management should be seen as having the primary responsibility unless it can be seen that the compliance officer wilfully disregarded their instructions and caused a breach on their own behalf.

My concern is that the balance of reward and risk have now become unbalanced and individuals will become increasingly concerned at becoming compliance officers. Many of the better people are likely to wish to leave the profession perhaps becoming consultants or trainers. We are seeing such people approaching our firm due to these concerns.

So if you are a compliance officer, what should you do? I am not sure how many of the following actions are feasible or even possible, but they need to be borne in mind.

1. Annually you should get the governing committee of the firm to commit that they are responsible for ensuring that the firm complies with all of its rules and regulations and that this is not the responsibility of the compliance officer.
2. The employment contract of the compliance officer should expressly include the statement that the compliance officer is under a duty to deal openly with their regulators and that this could include reporting matters to the regulator which have not been fully discussed or been approved by management. Such disclosure unless manifestly negligent should not form the basis for any form of retribution against the compliance officer.
3. The compliance officer should meet regularly with both risk and internal audit probably in tripartite meetings which are duly minuted to ensure that the full picture of concerns are communicated to all of the parties concerned.
4. Clearly compliance officer insurance is required. In the recent cases it does appear that the compliance officer has been held out to dry. Without such

insurance the costs of defending the case become exorbitant.

5. The compliance officer should consider making greater use of outsourced services. If you have hired a external firm to provide you with reporting it will be harder for the regulator to come after you so long as the selected firm is adequately staffed with quality personnel.
6. Finally you should keep records of all of your meetings with senior management and the regulator. Draft notes and send them to the party concerned to document what was discussed, disclosed and the actions to be taken by which party. In that way your good work is being recognised.

But on balance would I recommend you becoming a compliance officer? In my opinion the salaries do not compensate adequately for the level of personal risk that is being taken so accordingly I would view this as a balanced decision.



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