

How to cover your compliance bases

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The compliance officer is responsible for catching, throwing, reacting to activity in the field, and covering home plate. It's not easy being the compliance officer. You help set company policy, enforce the rules, survey the field, and attempt to remedy any missteps. While retrieving missed throws, you're pitching your own, trying to prevent fouls, anticipating the next error, and generally trying to play the game cleanly. Some firms require that one person does all of this him or herself. In fact, some firms expect that this job be done on a part-time basis by a person wearing multiple hats. In very small firms, the president is the rainmaker, money manager, and also – in his or her spare time – the compliance officer. There are other firms in which a compliance department exists with more than one staff person.

Here are the attributes of a well-rounded compliance officer:

1. **Be a student and a teacher.** Understand the rules and regulations that govern our industry. Remain current on the changes that are taking place. Be able to train others in their compliance responsibilities and give them a healthy appreciation for the law.

This training can take several forms. Importantly, hold periodic compliance meetings with your staff. If the term "compliance" is a turn-off with certain persons or groups, call them management or brainstorming sessions. Depending on the size of the firm, staff size, and the issues involved, a monthly or quarterly meeting can work well. Quarterly is the ideal time to pass out the Quarterly Securities Reporting forms and request timely collection.

We are coming up on year-end renewals and document reviews. Include the whole staff in deciding if the Form ADV disclosure is up-to-date and represents everyone's understanding of how business is being done. You might learn something from a person you least expected, such as your administrative assistant, or another person who processes these forms.

In addition to in-person meetings (or to bring to the live ones), copy articles from third-party publishers (e.g., Complinet or The Consortium's ComplianceE-News) to circulate and discuss. As a certified financial planner, Curt Weil at Lasecke Weil Wealth Advisory says: "One way that I use The Consortium's ComplianceE-News is to copy segments/snippets and email them to my staff as appropriate for a one-minute 'Compliance Consciousness' moment."

2. **Act as an adviser to top management on compliance matters.** Rather than citing rules and putting the nix on all marketing ideas, determine how best to implement their desires in a manner consistent with the regulations.

Here are six things to look for in advertising:

- *"Puffery."* Unsubstantiated claims of "the best," "the largest," or "the oldest."
- *Implied guarantees.* Do not use promissory language, such as "our clients achieve financial success when working with us."
- *Testimonials are prohibited.* Do not use endorsements or inferences to satisfied customers.
- *There is no "safe" investment.* Make appropriate risk disclosures.
- *Discussing past performance.* Even a simple reference, such as "overall, our clients made XX percent while the market was up by X percent only" requires extensive disclosure language.
- You cannot use any statement that is *untrue* or otherwise *false* or *misleading*.

3. Analyze and resolve compliance issues. Determine where there are gaps and how to fill them. Develop processes to supervise for compliance.

Read your own written supervisory procedures. Make a list or calendar of the things for which each supervisor is responsible, such as the monthly reviews of trade tickets or quarterly reviews of trade errors. Then complete these reviews throughout the year. Are others performing their reviews?

4. Be empowered with full responsibility and authority to develop and enforce appropriate policies and procedures for the firm. The compliance officer should have a position of sufficient authority within the organization to compel others to adhere to the compliance policies and procedures.

Admittedly, this can be difficult. In some organizations, the president hires a chief compliance officer, but he or she does not relinquish control and wants to do some edgy marketing campaign. The CCO might have to look for a job elsewhere in this scenario, or prove his or her worth in the firm, without being too demanding. What is optimal: A good tone from the top that other staff members can adopt, the compliance department being allowed to review and implement new marketing and new procedures themselves, and a president that does not dismiss the compliance function.

5. Be assertive when requesting the proper resources. Be gentle in your assertiveness; this will help you get your message across more effectively. Auditors will look at the resources provided to the CCO, such as attendance at conferences, publications reviewed, and access to outside, competent compliance professionals.



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