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This complimentary newsletter addresses current regulatory concerns around the world and provides broker-dealers, investment advisers, and insurance companies with tips and suggestions for meeting regulatory obligations.



United States

Managing Changes in the Bank Secrecy Act Compliance Environment

The Year 2010

The year 2010 may rival 2001 for the number of significant changes to the compliance environment of the Bank Secrecy Act (BSA). From its inception in 1970, the BSA was designed to protect the legitimate financial services network from being used and exploited by criminals and their money-laundering accomplices. Since 1970 the BSA has been amended 11 times. Each amendment was in response to shocking events that signified compliance failures or evolving trends and techniques used by criminals to maintain their access to the legitimate financial services network. The terrorist attack of September 11, 2001 triggered the USA PATRIOT Act, which by itself was a seminal change in BSA compliance. With the passing of the USA PATRIOT Act on October 16, 2001 the BSA added additional requirements, several industries, and terrorism to its agenda.

Now the global credit crisis attributed to Wall Street is triggering another round of significant changes to the BSA compliance environment.

Some of these changes have already materialized while others are pending legislation or are expected to occur later this year. These changes, individually and collectively will require all financial institutions to thoroughly evaluate the impact on their AML programs and redesign them as necessary.

2010 Significant Regulatory Changes to Date

The Financial Industry Regulatory Authority (FINRA) was the first regulator to implement changes in 2010. FINRA Rule 3310 became effective January 1, 2010. The Rule requires FINRA members to implement a written AML Compliance Program containing required minimum elements. A member of senior management must approve the AML Compliance Program. For the most part, Rule 3310 adopts NASD Rule 3011 and deletes NYSE Rule 445, but with one significant change. Rule 3310 does not retain the exception in NASD IM-3011-1 that permitted independent testing of the AML Program to be conducted by persons

POLL

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who report to either the AML compliance person or persons performing the functions being tested. This will have the greatest effect on smaller broker-dealers who will have to contract with outside vendors for this service. Outside vendors must meet regulatory expectations as to independence and sufficiency of their BSA/AML expertise to perform the required independent testing.

January 1, 2010 is also the date of FINRA's "Updated Small Firm Template, Anti-Money Laundering (AML) Program: Compliance and Supervisory Procedures." This update is a thoughtful improvement from the previous template. While it provides significant guidance for meeting AML Program requirements, it is not a checklist. The Template itself warns: "...following this template does not guarantee compliance with AML Program requirements or provide a safe harbor from regulatory responsibility." Accordingly, the Template is no substitute for AML expertise in evaluating and redesigning your AML Program.

On March 1 FINRA issued its 2010 Examination Priorities Letter. In its letter FINRA lists both fraud detection and AML as examination priorities. FINRA reinforces the evolving convergence between fraud detection and AML when it provides the example: "...robust anti-money laundering monitoring systems can assist in detecting possible illegal customer conduct..." FinCEN Form 101, "Suspicious Activity Report by the Securities and Futures Industries" itself lists check fraud, credit/debit card fraud, embezzlement/theft, commodity futures/options fraud, mail fraud, securities fraud, and wire fraud as types of suspicious activity to be reported.

On April 29, the Federal Financial Institutions Examination Council (FFIEC) released the 2010 version of the *Bank Secrecy Act/Anti-Money Laundering (BSA/AML) Examination Manual*, which was last updated in August 2007.

Significant updates include:

- BSA/AML Compliance Program Structures
- Core Examination Procedures for Assessing BSA/AML Compliance Programs
- Currency Transaction Reporting Exemptions
- Funds Transfer reflecting the SWIFT MT 202 COV message format
- SAR Reporting
- Automated Clearing House Transactions
- Electronic
- Trade Finance Activities
- Electronic Banking and,
- Third-Party Payment Processors.

The FFIEC *BSA/AML Examination Manual* provides guidance not only for depository financial institutions but also as a guidepost for all financial institutions that have AML Program requirements.

Accordingly, insurance companies and securities dealers are well advised to consider the relevant guidance contained in the *FFIEC Examination Manual*.⁵

2010 Significant Law Enforcement Changes to Date

The BSA is all about criminal and terrorist use of financial institutions to facilitate illegal activities. The recordkeeping and reporting requirements of the BSA provide law enforcement with records and tips that are highly useful in prosecuting criminals and terrorists.

Accordingly, law enforcement is the end user of the BSA. The criminal subpoenas that law enforcement serves on financial institutions test the effectiveness of AML Programs. Criminal subpoenas alert financial institutions to real possibility that they have been used to launder money or finance terrorism. In reviewing records received in response to criminal subpoenas, law enforcement may identify a financial institution's failure to comply with recordkeeping and reporting obligations required by BSA.

If law enforcement officials identify BSA failures, they notify the regulators. This can result in fines, civil money penalties, Cease & Desist orders, and even criminal charges. The critical point is this: When regulators conclude their cyclical BSA examinations and leave, the risks associated with BSA compliance do not end. Every criminal subpoena served on a financial institution tests its AML Program effectiveness. Therefore, when law enforcement activity increases, the number of criminal subpoenas served on financial institutions will likely increase. There is a direct correlation between law enforcement activity and the testing of AML Program effectiveness.

Law enforcement activity is increasing. On November 17, 2009 the President signed an Executive Order to establish the interagency *Financial Fraud Enforcement Task Force* (FFETF) "...to strengthen the efforts of the Department of Justice, in conjunction with Federal, State, tribal, territorial, and local agencies, to investigate and prosecute significant financial crimes and other violations relating to the current financial crisis and economic recovery efforts, recover the proceeds of such crimes and violations, and ensure just and effective punishment of those who perpetrate financial crimes and violations..."

The FFETF encompasses virtually all of the relevant agencies of the Executive Branch, as well as State, tribal, territorial, and local law enforcement entities in the United States. Implementation of the FFETF initiative is just getting under way, and yet on June 17 the FFETF announced results of the broadest mortgage fraud sweep in history involving 1,215 criminal defendants nationwide who are allegedly responsible for more than \$2.3 billion in losses.

Financial institutions should anticipate that the FFETF will be a significant driver in the number of financial fraud investigations in 2010 and beyond. Accordingly, all financial institutions with AML Program requirements should prepare for the prospect of criminal subpoenas emanating from the FFETF initiative. Particularly at risk are those financial institutions that have not been the subject of rigorous BSA compliance testing from their regulators. For example, the regulatory regimen for the insurance industry is still evolving.

What's Yet to Come in 2010

There are many more events likely to occur in 2010 that will impact BSA compliance. Congress is crafting its final changes to new legislation designed to prevent future global financial crises. Once passed, that law will undoubtedly generate new rule-making and subsequent regulations that will impact the BSA compliance landscape.

The European Union and United Kingdom are also engaged in changes in law, regulatory structure, market oversight, and products. Already the UK has embarked on breaking up its financial sector regulator, the Financial Services Administration, into three separate regulators. Switzerland has agreed to a treaty with the United States that diminishes Swiss bank secrecy laws that are relevant to international tax evasion. International cooperation

(continued on page 4)

Maintain BSA/AML Compliance

LIMRA offers a full range of BSA/AML services to help firms sustain compliance with BSA/AML requirements. These include advisory services, independent testing of AML programs, and targeted training.

For example, LIMRA's AML/BSA/OFAC Advisory Service helps firms address concerns before they are elevated to "material weaknesses." Members of our experienced team provide brief and effective onsite reviews to address your high-priority concerns. We can tailor your review to help you:

- Design or review firm-level risk assessments
- Test the effectiveness of management responses to previously identified weaknesses
- Draft, review, and confirm implementation of appropriate policies, procedures, and internal controls
- Evaluate or enhance transaction monitoring, including electronic monitoring systems

For more information:

Contact us at 877-843-2641 or compliance-regs@limra.com.

between national regulators and law enforcement agencies will be enhanced. In the United States, the Financial Crisis Inquiry Commission, established to examine the causes of the financial crisis, has a Congressional deadline to report its findings by December 14, 2010.

LIMRA Leadership

In response to 2010's evolving BSA compliance environment, LIMRA's BSA/AML Compliance Team will continuously track and analyze changes as they materialize. Updates will be published in the *LIMRA Regulatory Review*. LIMRA will also host a series of BSA/AML workshops to identify consequences of change and develop sound practices for sustaining BSA/AML compliance. Changes to BSA compliance will undoubtedly present new challenges, but by working together we can manage these changes effectively and efficiently throughout 2010 and in the future.

By Robert Goecks, CPA, CAMS, CFE, CPP, LIMRA Senior Regulatory Consultant. Mr. Goecks has 37 years of BSA/AML experience. Call 877-843-2641 to learn more about LIMRA's AML Independent Testing and Dynamic Risk assessments.

What We Can Expect in the Future

A Look at the Federal Regulatory Overhaul Discussion Since 2008

We are in unprecedented times. No doubt, the federal regulatory overhaul will have a profound effect on the financial services industry. What does all of this mean for compliance? This article will review concepts and themes that have been a part of the federal financial regulatory overhaul proposals over past two plus years, in order to see what the future holds for us in the new regulatory landscape. Political compromises, differing regulatory philosophies, and the change in political parties of those leading the discussion, have all contributed to alterations in the ideas, but commonalities remain that might tell us how our future will look.

This article will discuss just a few of the many proposals introduced, identify some of the main concepts, and then focus on their common themes to predict some future changes. Because of the sweeping nature of the financial regulatory reform, this article is necessarily limited in scope to only *some* of the themes and concepts in *some* of the proposals, and will not address concepts such as "too big to fail" or restrictions on mandatory arbitration, that have a less direct impact upon compliance.

The Proposals

Before March 2008, little serious discussion was taking place on reforming the regulatory structure. But the meltdown in the financial and housing markets raised questions of what caused the crises, and how the current regulatory framework and its agencies contributed to it. In response, Henry Paulson, then the Secretary of the Treasury, introduced in March 2008 his "Blueprint for a Modernized Financial Regulatory Structure."¹ Paulson's plan contained long-term ideas such as a market stability regulator, a prudential financial regulator, a business conduct regulator, and a corporate finance regulator — as well as short-term reforms including merging the SEC and CFTC, streamlining and updating the SRO rule-making process, registering "global" investment companies, and harmonizing the regulation of broker-dealers and investment advisers.

After Paulson came Obama. In early 2009, the Department of Treasury under President Obama, issued its "Financial Regulatory Reform: A New Foundation."² This Plan included the idea of a business conduct regulator in the form of an entirely new and independent agency with rulemaking authority called the Consumer Financial Protection Agency (CFPA).

Soon thereafter came U.S. Representative Barney Frank's proposal. In July 2009, Congressman Frank, the Chair of the House Committee on Financial Services, introduced H.R. 3126, codifying in statute Obama's CFPA. In October 2009, Frank introduced H.R. 4173, the "Wall Street Reform and Consumer Protection Act of 2009." Rep. Frank's bill continued the concepts of a market stability regulator, prudential financial regulator, business conduct regulator, and the harmonizing of regulation, first introduced 16 months prior by Paulson. House press releases in the fall of 2009 clearly show the CFPA as intended to be a business conduct regulator, and a way to consolidate consumer protection regulatory authority into one agency.

Paul Kanjorski, Chairman of the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, introduced three separate bills — the Investor Protection Act (H.R. 3817), Private Advisor Registration Act (H.R. 3818), and the Federal Insurance Act (H.R. 2609), — that are now a part of H.R. 4173. The Investor Protection Act of 2009 proposed the idea of a fiduciary duty for brokers-dealers, and also a 180-day time limit for the SEC staff to complete examinations, investigations, or enforcement actions. H.R. 2609 creates within the Department of Treasury an Office of Insurance Information to collect and analyze information regarding

lines of insurance and to establish policy on international insurance matters. H.R. 3818 amends the '40 Act by requiring advisers of private funds to register and come under the SEC books and recordkeeping requirements.

In April 2010, Senator Christopher Dodd, Chairman of the Senate Banking Committee, introduced S. 3217, "Restoring American Financial Stability Act of 2010." Senator Dodd's bill also contains the concept of a business conduct regulator in the form of a new agency called the Bureau of Consumer Financial Protection, but housed within the Federal Reserve. Dodd's bill also establishes a National Office of Insurance within the Dept. of Treasury. The theme of harmonizing regulation exists throughout in the Senate bill's directive of cooperation and sharing of resources between regulators. The bill also adds authority to the SEC's Divisions of Trading and Markets and Investment Management to perform compliance inspections and examinations, and increases funding to the SEC. Despite being seen as the stronger of the bills, the Senate bill does not impose a fiduciary standard for broker-dealers, but rather only commissions a study on the issue. The Senate bill does contain a number of investor protection provisions such as grants to the States for adopting rules on the use of professional designations, clarifies the SEC authority to issue rules on point-of-sale disclosures, establishes an Office of Investor Advocate to act as an ombudsman for "Main Street" investors with the SEC, and changes the Accredited Investor standard by (among other things) excluding one's primary residence in the standard.

Reading the Tea Leaves: Predicting Future Changes **The Business Conduct Regulator**

It is unclear what specific effect the CFPA will have on the securities and insurance industries. Although there is an exemption for those regulated by a securities or insurance authority in the CFPA's authority, Congress wants to close regulatory gaps and consolidate consumer protection into one agency. The CFPA could level the playing field, or it could create a further patchwork of regulators and add another layer of regulation. We won't fully know the impact of the CFPA until its rules are finally enacted.

Consolidating, Streamlining, and Harmonizing Regulation

Is the Office of Insurance the first step to a federal insurance regulator? Some seem to think so, and the States are not comforted by Congressional assurance that this legislation will not intrude upon their domain and preempt their authority.³ Although the Office's authority is currently limited to matters of policy and international trade considerations, the door has certainly been propped open to preempting state insurance laws and regulations.

The regulators often duplicative oversight is thought to have contributed to the crises, or at least failed to thwart it. In response, these proposals all have provisions requiring regulators to collaborate and share resources. We can hope this new statutory edict of cooperation will lead to less duplicative oversight, but more likely this cooperation will result in bigger and more coordinated sweeps. Regulators have a natural aversion to sharing resources and information because doing so erodes their agency's domain and authority. It is doubtful that merely by mandating cooperation in statute this engrained dynamic will change, at least in the short term.

Whether there will be a fiduciary duty standard applied to broker-dealers for providing investment advice about securities to a retail customer is unknown. The conference committee report (Dodd-Frank Wall Street Reform and Consumer Protection Act), adopted the Senate bill's idea of the SEC first conducting a study on the issue, rather than the House bill's immediate implementation of the standard. The SEC has six months to study and report to Congress on the effectiveness of the existing legal and regulatory standards of care, and whether there are gaps, shortcomings, or overlaps. In the study, the SEC is mandated to take into account, among other things, whether retail customers understand the different standards and/or are confused by them, the difference in regulating BDs and IAs, the potential impact upon retail investors if the standard is adopted, and the added cost. The SEC must also seek and consider public and industry input in the study. The States aggressively lobbied for the fiduciary standard to apply to all, and will continue their efforts.⁴ If the standard is adopted, a broker-dealer will need to review its compliance program for gaps in their procedures as to meeting this standard, including the disclosure of conflicts of interest, and the consent thereto by the customer, from the receipt of commissions.

Registration and primary jurisdiction over investment advisers with \$100M or less under assets will now fall to the States. This change has been enthusiastically supported by the States. It is expected to affect thousands of investment adviser firms and will require these firms to implement new registration procedures and review their compliance programs under the States' rules.

Registration of advisors to hedge funds and private equity funds will mean the advisors to these funds will now have to register and abide by new books and records and custody requirements for these private funds. The adviser will need to put into place policies and procedures for the retention and safe keeping of the private fund's records, and take such steps to safeguard client assets over which the adviser has custody, including the verification of such assets by an independent public accountant.

Conclusion

As we reach the end game of financial reform, the differences between the House and Senate bills have been resolved in conference committee. But, these reforms will unfold for years to come. The shape of the new regulatory landscape will come about slowly and evolve as the details are worked out in the regulatory rule-making process. As of now, how the compliance field will be affected by these changes remains to be seen. As compliance professionals we will need to be vigilant in keeping up with the changes being proposed, and understand their potential impact upon our firms, so we can be ready for the compliance challenges headed our way.

By Lori Neidel of the Law Office of Lori J. Neidel, LLC. Ms. Neidel is the former Chief Enforcement Counsel for the Missouri Securities Division and now is in private practice providing legal and compliance services to broker-dealers, investment advisers, and others in the financial industry worldwide.

Fingerprinting of Securities Industry Personnel

For securities firms with questions about fingerprint requirements for non-registered filing (NRF) employees, it's best to err on the side of caution.

For securities firms seeking licensure, the laws governing the fingerprinting of securities brokers and dealers are pretty straightforward. Properly identifying *all* firm personnel who must be fingerprinted, however, continues to be an issue for securities firms that already face a host of complex industry regulations and compliance challenges.

The Securities Exchange Act (SEA) of 1934 clearly spells out several requirements that FINRA-registered firms must meet in order to legally sell securities and certain annuity products in the United States.

Per Rule 17f-2 (Fingerprinting of Securities Industry Personnel) under SEA, all of a firm's registered representatives — partners, directors, officers, and employees selling securities products and services or supervising those who do — are obligated, as part of the licensing process, to submit fingerprints to FINRA, the largest independent regulator for all securities firms doing business in the United States. A representative who will be working with a new securities firm must also be fingerprinted, as does a representative re-registering with FINRA after losing his or her license.

It seems simple enough.

The rule, however, also extends beyond securities brokers-dealers to back-office employees with “regular access

to the keeping, handling or processing of securities or monies, or the original books and records relating to the securities or the monies.” Employees with such access are considered non-registered filing (NRF) individuals, and must also be fingerprinted during the initial employment process with a new firm.

This is where things can become a bit challenging. Theoretically, the rule provides criteria for identifying NRFs. In reality, many firms may struggle to distinguish all of the individuals who actually meet that criteria — and are therefore subject by law to fingerprinting.

Some argue that the rule leaves a lot of room for interpretation, and finding a standard, iron-clad definition for an NRF is a tough task. In fact, a quick Internet search of the term “non-registered fingerprint individual” returns approximately 60,000 results that offer information on everything from biometric fingerprint authentication to single-latch fingerprint locks, but provides little additional insight into what constitutes a non-registered employee. A separate search of “non-registered filing individual” brings back about 350,000 matches, but again, nothing in the way of an actual definition.

So, how does a firm decide who is considered an NRF and who isn't? The answer to that question varies from one firm to the next. But, simply put, an employee's designation as an NRF should be based on the duties the employee actually performs, rather than on his or her job title.

Administrative assistants, for example, frequently speak with clients or prospective customers by phone or in person, schedule meetings between sales representatives and clients, and handle other sales-related tasks. At first glance, an administrative assistant is clearly not at the same level of responsibility as someone with sales-related duties. But a closer examination of the position's day-to-day tasks reveals how frequently an administrative assistant comes into contact with the type of information that qualifies him or her as an NRF.

Accounting personnel have access to the company's monies and financial information and are more obvious NRFs. Human resource professionals are closely involved in the organization's general administrative functions, and are likely to be at least somewhat familiar with virtually every aspect of the firm's operations, including sales. Even interns could theoretically be considered NRFs. In most cases, interns do not hold supervisory positions, sell securities, or have access to records. But if they do, even peripherally, as in the case of an administrative assistant, then they would be subject to the same requirements as full-time employees.

Those are generalized job descriptions, of course, and don't come close to summing up the full range of tasks those employees perform. But that's the point: The average securities firm employs many individuals outside of sales who at least brush up against the sales process at some point in their daily duties. And while not ultimately responsible for the selling of securities, they would certainly fit the definition of employees with regular access to the keeping, handling or processing of securities, monies, or books and records. As such, they could reasonably be considered NRFs, and would likely be required to submit fingerprints.

Discretion May Be Key

Discretion may be the key for securities firms with employees that could be classified as NRFs. Some obtain fingerprints from every employee, regardless of an individual's official role. Others fingerprint the firm's registered representatives and leave it at that.

A firm can impose its own requirements outside of those dictated by law, of course. But in terms of achieving compliance with industry regulations, firms with non-registered representatives are probably wise to err on the side of caution.

The definition of a NRF may be broad, and may present issues for securities firms with questions about what's expected of them by the industry's regulatory bodies. But help is available. For example, FINRA offers guidelines on its website, www.finra.org, for fingerprinting securities industry personnel, and includes the exemptions for fingerprinting requirements as stated in Rule 17f-2. Still, the onus remains upon the firm itself to make that distinction. And it's safe to say that few firms can afford to pay the consequences of failing to fingerprint the appropriate NRFs.

No company wants to undergo a costly audit — as some have — as a result of opting not to fingerprint certain NRFs. And firms certainly don't want to pay stiff penalties for SEC or FINRA violations, or worse, lose their license. So, while some firms may balk at the notion of fingerprinting employees beyond those directly involved in selling securities, the time, effort, and expense associated with fingerprinting those individuals could ultimately pale in comparison to the price of choosing not to do so.

By Stefan Keller, President of Business Information Group, Inc., an applicant screening firm that serves the insurance and financial services industry exclusively, offering fingerprinting, background investigations, drug testing and more. He can be reached at skeller@bigreport.com.

Complaint Handling Essentials

What are your complaints telling you?

Some firms are reporting that complaints are “up” in this period of market uncertainty and following the general market downturn which began in 2007. It may serve firms well to review their procedures around the initial intake, effective handling, reporting, and resolution of complaints. Firms should also listen to what those complaints are telling them about their registered representatives, product offerings, product due diligence process, sales materials disclosures, supervision, and the process for handling and resolving complaints.

Recordkeeping and Reporting

A good first step in the process is to be sure the firm has effective procedures for how complaints are received, logged, documented, and timely registered and reported in accordance with FINRA rules. All areas of the firm — especially the registered representative, branch, and call center levels — should have clear procedures for handling customer grievances or complaints and how to distinguish between routine inquiries and complaints which may be reportable on the Uniform Application for Securities Industry Registration or Transfer (Form U4) or pursuant to NASD Rule 3070. Written complaints should always be routed promptly to a centralized person, unit, or recordkeeping system to assure that both the registered representative and the firm are in compliance with their reporting obligations under the reporting rules. FINRA periodically updates the requirements within the rule, most recently by updating the reporting codes

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LIMRA's Independent Producer Clearinghouse

Background checks are a fact of life, but related high costs and overhead don't have to be. LIMRA's Independent Producer Clearinghouse provides savings by sharing producer information among participating companies.

The system performs background checks on producers, and provides and documents initial compliance training. The background check and training results — and costs — for each producer are then shared across their participating carriers. Equally important, producers are freed from duplicative training requirements, leaving them more time to sell.

For more information:

Please visit us [online](#) or contact us at 877-843-2641 or compliance-regsvs@limra.com.

associated with Rule 3070 for complaints received after July 1, 2010, adding new separate reporting codes for annuity complaints. FINRA introduced under current Product Code 20 (Annuities), a redefined code and added two additional codes. Revised Product Code 20 will refer only to variable annuities, whereas new Product Codes 43 and 44 will relate to fixed and equity indexed annuities, respectively, and newly added Product Code 45 captures customer complaints relating to life settlement products (see FINRA Notice 10-27).

Complaints should be considered a major source of information used to inform a number of supervisory controls. Some basic questions that your complaint reporting process and reports to management should be able to answer are:

Supervision

- Are there similar complaints about the product, representative, or multiple representatives at a particular branch?
- For complaints alleging they were not advised properly, or perhaps even misled about risks, features, charges, or fees, it may be advisable to identify and review similar sales by the same representative.
- If poor performance is alleged, was the product information and disclosure clear on the investment risk?
- If poor advice is alleged, was the client a suitable candidate for the product and what suitability information was reviewed prior to principal approval of the sale?

Product Due Diligence

- For multiple complaints about the same product, what training was provided, and were the disclosures clear?
- For multiple complaints about the same product alleging poor performance, were the offering materials clear on the investment objectives, market risks, and investment risks?
- Were guidelines provided in the firm's (or offering firm's) material stating for what type of clients the product was generally deemed to be suitable (e.g., accredited investors only)?

Settling Complaints

Resolving complaints is an art. The same way that regular, frequent customer contact about the product — good and the bad — can avoid complaints; so prompt and clear communication by the staff handling the complaint — including listening closely to the customer — often resolves customer complaints arising from misunderstanding or client “misremembering” the original objective of the purchase. When it becomes clear there was a

material discrepancy between what the customer thought they purchased and what they did purchase, or some other failure on the part of the registered representative or firm, resolution or settlement may be in order. In the case of significant and reportable claims, preparation should be made for what may become an arbitration or litigation matter. In these cases, prudent steps should include measures to preserve the firm's interests. These include;

- Obtaining any documents from the customer that support their claim
- Have counsel (preferably outside counsel for significant cases) obtain a statement from the representative or other key staff at the firm either named in the complaint or who are most knowledgeable about the sale or transaction.
- Retrieve and preserve all firm records related to the sale and the customer.
- Retrieve and preserve all client communications, reports, periodic customer account record mailings, customer satisfaction surveys, and client correspondence (including emails).

Once all the documents needed to reach a decision are assembled they should be reviewed with counsel or firm senior management to determine the best course of action. Once a course of action is determined, it should be promptly communicated to the person responsible for 3070 filings for updating or reporting as required and, as applicable, to the registered representative, should they need to amend any answers on their form U4.

Training Is Key

Training for all staff who come in contact with customers and/or handle complaints, is key to avoiding violations of FINRA rules surrounding complaint reporting. In this environment FINRA pays close attention to firm reporting of customer complaints to enhance investor protection, and states that they will use that information to protect the investing public from problem representatives, firms, or conduct. If recent disciplinary actions are any indication, FINRA will have a very low tolerance for violations in the area of prompt and accurate reporting and recordkeeping of customer complaints.

By Larry Niland, LIMRA Senior Regulatory Consultant and former CCO of the John Hancock Financial Network.

LIMRA offers a one-day, hands-on seminar on *Effective Complaint Handling* for key principals and managers in the complaint-handling chain. For more information, call 877-843-2641.

The Role of the Local CCO in Multinational Firms

The local Chief Compliance Officer (CCO) in a multinational insurance company's operations is an important, sensitive, and difficult position. Current CCOs and those who plan to join the profession in the future must know how to survive and succeed. Headquarters (HQ) compliance management needs to know how to select the right individuals with the experience, professional qualifications, and personal qualities that are necessary for success. HQ management also needs to understand the environment in which local CCOs work and the challenges they face, so that they can provide appropriate support to ensure the CCOs are able to operate independently and effectively.

CCO Supply and Demand

Compliance is a relatively new profession in many markets, even in a developed market like the United States. Because compliance is relatively young, local markets simply have not had time to develop enough mature compliance professionals. The demand for local CCOs has increased over the past few years due to greater regulatory pressure (e.g., fines and sanctions) on insurers. These regulations have come about for the following reasons:

- Variable insurance products have become too sophisticated and difficult for consumers to understand. Regulators thus have been requiring greater disclosure in the solicitation process, on sales, in marketing materials, and on insurers' websites. Regulators require companies to ask applicants to confirm their needs, risk tolerance, suitability, and understanding of the material information disclosed by insurers.
- Distribution has become increasingly diverse. Consumers are exposed to insurance products on TV, through telemarketing, and by direct mail. Consumers can easily buy insurance products via the Internet, through local banks, and through other third-party distribution channels. Regulators are concerned about the appropriateness of suitability, sales and marketing materials, and sales supervision, and therefore mandate insurers to enhance compliance controls over the third-party distribution partners.

- Customers have become aggressive and do not hesitate to file complaints with regulators whenever they are unhappy or have concerns about their insurance agents or companies. Regulators are setting higher market conduct standards. Some regulators are even publishing standardized disciplinary rules and are offering guidance for bringing criminal proceeding against agents for wrongdoing. In order to educate, monitor, and protect agents — while also protecting the customers and the company — insurers have placed more expectations on, and assigned more work to, compliance. Consumerism, therefore, has increased both the workload and the expectations for compliance departments that must educate and monitor agents while protecting both consumers and the company.
- Countries are expected and urged to strengthen controls of their international organizations through anti-money laundering, privacy (personal data protection), intellectual property protection — and are coming under increased scrutiny. Both regulators and insurers expect compliance to conduct or coordinate all these activities to address these concerns.

In some U.S. insurers' international operations, the CCOs also need to implement additional programs to meet specific U.S. regulatory requirements. For example, under U.S. anti-money laundering rules, suspicious activity reports must be filed and annual independent tests must be performed according to the standards of the governing regulatory authority.

Companies with strong compliance will require local CCOs to manage activities like:

- Replacement monitoring and commission recapture
- Financed insurance
- Agent e-mail and website monitoring
- Agency inspections, and more

These activities require sufficient and effective human and monetary resources.

Local CCO Roles and Qualifications

Each company has its own job description for the local CCO. The qualifications and qualities described in the next section are the essence of the CCO's roles and responsibilities from my perspective — a local CCO who has had eight years experience in a multinational insurance company.

A CCO must have sufficient knowledge, seniority, and authority to develop and enforce compliance procedures. They must know the applicable laws and regulations. The following qualifications and qualities are guidelines for compliance professionals who aim to become CCOs, and for HQ compliance of international insurers to develop requirements for local CCOs to ensure that they appoint the right individual to the CCO position.

- **Courage:** This is probably the most important and critical quality that a local CCO must have. The CCO's job requires asking people, including CEOs and executive management, to do, or stop doing, something. They also need to refer compliance issues to HQ if they cannot resolve them at the local level. Some countries' regulations even require the CCO to report to the regulator if the CEO refuses to implement compliance program recommendations. In some companies, the CCO even approves Chairman and CEO gifts and entertainment. The CCO needs to report all compliance violations, for employees at all levels, in order to keep HQ informed of local business initiatives.
- **Corporate Sense:** As a CCO's scope covers all functions, an individual will be more likely to succeed if s/he has diverse experience and strong insurance knowledge about sales, marketing, operations, etc.
- **Curiosity:** A CCO must have a genuine interest in understanding the various laws and regulations, as well as the company business model, management philosophy, principles, policies, and procedures. He should be willing to validate procedures and test data — especially if control results appear too good to be true. A CCO should not just see the surface, but should discover what is underneath, and develop meaningful action plans based on those observations.
- **Cooperation:** It might be safe, in theory, for a CCO to recommend excellent control measures to eliminate a regulatory risk, but CCOs must understand “control = cost,” and not all risks can be eliminated. CCOs should work closely with HQ compliance, local CEOs, and executive management to create the best solution. Sometimes it is appropriate to take intelligent risks.

- **Consistency:** CCOs must lead by example — being consistent and delivering the same compliance messages at all times and all occasions. They should never treat businesses and departments/functions differently.
- **Communication:** A CCO needs strong verbal and written communication skills to establish policies and procedures, deliver training and communication, as well as promote a culture of compliance. Strong communication skills are necessary for CCOs to get CEO and executive management buy-in on new initiatives, or to deliver difficult decisions that may not be welcome or popular.
- **Confidentiality:** CCOs have access to important, personal, confidential, or private information and must protect that business data. In many companies, the CCO also manages or is involved in the disciplinary committee and should be mindful about protecting all investigative and disciplinary information.
- **Creativity:** It is easy for CCO to say “no,” which adds no value to business. However, businesses need their CCOs to recommend alternative solutions or options. The CCO also needs to be creative in identifying, communicating, and resolving issues.
- **Confidence:** A CCO must believe in the value of compliance, ethics, and doing the right thing. With these beliefs, CCOs can confidently ask people to follow the necessary course of action for compliance.
- **Compassion:** A CCO must be compassionate in situations where employees are under compliance review, agency inspections, or disciplinary investigation. They must be professional, demonstrate business courtesy, and try to understand employee concerns. After all, the results of their activities may significantly impact an employee's career and life.

Recommendations to HQ Compliance

An individual with all the above qualifications and qualities may not necessarily succeed as a local CCO if he or she does not have the following structural support and guidance from HQ:

- Compliance must be independent. A CCO needs to ask other functions to develop action plans to comply with new and amended laws and regulations, then to review and approve/reject the action plans, and finally to validate and close the action plans. In some companies, the CCO handles investigation of violations of laws and regulations, and even manages disciplinary functions. If compliance is not an independent unit that monitors all aspects of the country operation, there might be potential conflicts of interest, and the CCO may be influenced by local management.

- The CCO position must be at the executive level. It is not realistic to expect a low-ranking individual to have influence and position power to make things happen. HQ must actively participate in the CCO's performance appraisal and compensation decision. Typically, a local CCO is independent and reports to the regional CCO, the international division, or HQ, but also receives administrative guidance from the local CEO. The local CCO's performance appraisal is usually conducted jointly by the HQ Compliance and the local CEO. If the local CEO alone decides on the CCO's compensation, that could create a conflict of interest, thereby tainting the review process. It is important for HQ compliance to actively participate in the decision-making process regarding the CCO's performance appraisal and compensation.
- Hire CCOs from outside whenever possible. Internal candidates may expect, plan, or want to return to business a few years later and will not want to upset her/his future supervisors, colleagues, or staff — another possible conflict of interest. Recruiting a CCO from outside and having the position report to HQ will maintain functional independence.
- Select CCOs with diverse experience. Whether the CCO is transferred from other functions within the company or hired from outside, choose the individual with sufficient experience in various functions and an understanding of marketing, sales, and operations. Law and compliance backgrounds are preferred, but should not be a necessary requirement.
- Provide CCOs with adequate support and guidance. HQ's support should include, but not be limited to, training, information sharing, timely response to CCO's inquiries and requests for information or assistance, etc.

- See things from the CCO's perspective. The local CCO, CEO, and executive management need to support and respect each other. HQ should help the CCO to achieve this goal, and sometimes may need to compromise on non-critical items and address those same non-critical items in the future.
- Trust and empower the local CCO with autonomy. Delegation of authority should be considered based on a CCO's performance, experience, and results. Proper delegation of authority will help CCOs establish credibility in local operations.
- A CCO's career development or lack thereof is often the reason for CCO turnover. Regional or HQ assignment are logical advancements for a local CCO, but not many companies have the need for such positions.

When one considers the complexities of the position, recruiting and retaining local CCOs is a great challenge. Compensation is an important factor for CCO candidates, but the factors listed above are as important as money in that they are vital in determining how long a local CCO can survive in a new firm.

By Simon Lin, Chief Compliance Officer, Prudential Life Insurance Company of Taiwan Inc.

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¹The Department of the Treasury Blueprint for a Modernized Financial Regulatory Structure ("Treasury Blueprint"), available at <http://www.treas.gov/press/releases/reports/Blueprint.pdf>, March 2008.

²http://www.financialstability.gov/docs/regs/FinalReport_web.pdf

³Letter from the National Conference of State Legislatures to House Committee Chairs, Frank and Bachus, October 23, 2009.

⁴Letter from NASAA President, Denise Voigt Crawford, to chairmen and ranking members of the House and Senate committees, May 26, 2010.

⁵www.ffiec.gov/bsa_aml_infobase/documents/BSA_AML_Man_2010.pdf



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