Whitepaper

Responding to Regulatory Activity:
6 Vital Areas to Gauge the Effectiveness of your Regulatory Change Management Process

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As a Chief Compliance Officer at some time or maybe many times, you have been confronted by compliance failures that resulted from a broken regulatory change management process. Investigation into the root cause showed underlying problems that are prevalent throughout the industry, including too many legislative changes at one time, new legislation that was missed altogether, implementation of new products or services, and a lack of follow through on the effectiveness of the implemented changes.

Executive Summary

Chief Compliance Officers and other executives know that one of the central components of effective compliance risk management is the successful management of regulatory changes. When tasks are properly completed, the level of compliance risk for the institution is significantly mitigated. There are six key functions that compliance executives can use to assess organizational capabilities and performance in this critical area.

Performance Scorecard

The regulatory compliance management workflow includes at a minimum the following six vital areas of performance effectiveness:

1. Acquiring Content
2. Analyzing the Impact
3. Distribution to the Business
4. Monitoring and Supporting Progress
5. Verification
6. Reporting

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Responding to Regulatory Activity:

Working with clients, we have found that institutions of all sizes and across all lines of business have reasonably effective capabilities for locating and acquiring information about regulatory and legislative activity. Many institutions employ a variety of alert services and attend industry events to stay abreast of the ever changing landscape. Further, most institutions have made some kind of attempt to assess the impact of regulatory change and disseminate it throughout their companies. At a minimum if the regulatory activity applies, the alert or information is disseminated to department heads to incorporate into their process and procedures, and the changes may be discussed at compliance committee meetings.

However, beyond the initial phases of the change management process, we have seen that process effectiveness rapidly deteriorates. This is particularly troubling with the continued strain on compliance resources, and limited or no management reporting on the timeliness or effectiveness of the implemented changes.

A close examination of each area of effectiveness can give compliance officers some compelling insights—and some compelling reasons why they should take the time to evaluate their organization's regulatory compliance management process.

1. Acquiring Content

Are we locating all legislative and regulatory developments that pertain to our business? Are we doing it in the most efficient manner?

- On the positive side, there is plenty of readily available information. The main reason institutions find it relatively easy to acquire content is that there is an abundant supply of information providers. Compliance professionals typically use a combination of sources including trade association feeds, commercial regulatory providers and free, Internet-based resources.
- There are, however, two drawbacks: reliability and risk of redundant efforts. First, quality and accuracy of reporting varies a great deal by source. Fee-based services are usually most reliable. Trade association bulletins, commercial legal notifications, and legislative and regulatory resources often provide the same information in differing formats, levels of completeness and expert analysis.

The second consideration is that institutions typically receive this information through more than one entry point. A solid process can obviate duplication of efforts. The process is more laborious when individuals from compliance, legal and the business each do their own information sourcing out of fear that their internal providers (their peers) may not reliably supply what they need. Or the situation where everyone contributes to the aggregation of regulatory change information, without an established protocol, leading to multiple e-mails, phone calls and meetings for each new regulatory item.

- Additionally in a fragmented system, we have seen that the chances of missing something important are high. Consider, for example, the volume of legislative and regulatory activity coming out of Dodd-Frank. Dodd-Frank mandates over 400 new rules and requirements. Since the law was signed by President Obama in July 2010:
  - regulators have written 224 of the 400 rules;
  - these 224 rules consume 7,365 pages;
  - it will take private sector job-creators 24,180,856 hours every year to comply with these first 224 Dodd-Frank rules; and
  - the Consumer Financial Protection Bureau ("CFPB") added several mortgage rules to this tally in January 2013 creating a page count now over 10,000.
- With the increase demand on compliance resources, you may find that the number of people dedicated to monitoring regulatory activity is higher than your time allocation allows, particularly when considering other priorities. However, a weak link this early in the process will likely cause a process failure. Institutions can either throw more bodies at the problem, "human-ware" or employ automation.

2. Analyzing the Impact

Are we consistent, accurate and timely when we analyze new regulatory activity for impact to the organization?

- Business people crave your expertise. One of the most highly valued services that compliance professionals provide their company is specific instruction on the meaning of a legislative or regulatory change and detailed instructions on how the change affects the business. This should come as no surprise when you consider the magnitude of the task.
- Enacted legislative documents are often very lengthy, cover a multitude of issues, require the reader to employ considerable attention to detail, and apply industry knowledge in order to digest and properly interpret the information. Business unit executives seek "bottom line" information; "what does it mean to my business". Compliance, as the experts, must be a part of the analysis to determine where and how the change affects business.
- To make matters more complex, the regulatory clock is ticking. Each day the compliance staff takes to prepare a written summary is a day that the business units are not implementing operational changes. This coupled with changes that may take months to complete (i.e., system changes) often leads to the all too common problem of late implementation.

3. Distribution to the Business

Are we notifying the right people about regulatory changes that affect their business responsibilities? Do we keep our distribution lists updated?

- Details, details, details. Today, getting information out into the organization is faster than ever. E-mail distribution lists, internal web sites and applications such as SharePoint all effectively facilitate information-sharing—including communicating about regulatory changes. So what is the problem with distribution?

First, managers throughout the organization often do not recognize the importance of the incoming communications, or the responsibility for designated staff members to receive and react to the regulatory change notifications.

Secondly, the process is a continual give and take between the business units and compliance. Compliance staff should periodically follow-up and verify that their distribution process is keeping up with changes in business staff (resulting from promotions, terminations, new hires, etc.), and that those receiving the information understand what they have received and know what to do next. This may seem like a small detail, but a broken communication channel all but guarantees that no one is implementing regulatory changes in a department that needs to do so. If no one knows about a change or understands their role in the process, then no one will act upon the communication.

4. Monitoring and Supporting Process

Do we monitor our process? Do we support our business areas to correctly implement regulatory changes?

- If this story sounds familiar, you are not alone: Your staff locates legislative and regulatory changes. Perhaps they write up a summary or internal bulletin, then post it on an internal site or send it out by e-mail to an internal distribution list. But what happens afterward is anyone's guess.

If your goal is effective and timely management of regulatory changes, this scenario is very unsettling. Equally alarming is the frequent lack of follow through, or even resistance to it.

In some institutions, accountability for regulatory change management appears to stop at the door of the compliance department. A scenario that might play out can be described as, "I found the change, told the business about it; now it's their job to do something about it." While this usually is the outlook of over-worked staff juggling multiple priorities, it accounts for a significant drop-off in process effectiveness. If process improvement is to occur, then compliance must be integrated into the operational change process employed by the business.

- Sometimes people are simply swamped. To make matters worse, they often have ineffective tools. Now more than ever the volume of legislative and regulatory activity is simply overwhelming. Many dedicated and hard-working compliance people are doing their best to process, communicate, monitor and offer advisory assistance regarding the implementation of regulatory changes to the business – all timely, accurately, and before the next examiner walks in the door.

But they are doing all this with tools that were not built for that purpose. The typical institution has a pieced-together set of documents and manual processes, usually involving spreadsheets, and perhaps an internally built database to house information. The most widely used tool is Excel but the most widely known mistakes are made using Excel. Without any kind of centralized uniform system, the effort to document implementation is enormous, and adherence to documentation standards is extremely hard to achieve.

5. Verification

Do we verify that regulatory changes are implemented correctly, on time, and sustainable?

- One way to assess your change management process is to examine your workflow and determine points of ownership throughout the process. At which points, do the business unit managers have responsibility? Do they have responsibility for reviewing incoming regulatory changes, monitoring progress within their departments, and signing off on work done by their staff members? Do they have established reporting systems for monitoring their own performance? Do they know if regulatory implementation is completed on time? Positive responses to these questions are a good indicator that adequate review steps are in place and supported by the proper resources.
- A frustrating reality is de-implementation. Another vital aspect of successful regulatory implementation management is ensuring that once a change is put into effect, it stays in effect. But many things can cause de-implementation.

One very common scenario involves something very basic: system upgrades. Core banking system upgrades often include enhancements to meet regulatory guidelines. However, those enhancements were made by the core provider from a technical system perspective; "how does our system function and need to handle this change". However, if the changes are not discussed with compliance prior to being deployed the core provider's enhancement may actually render a compliance objective impossible (i.e., the field compliance relies on is no longer available or it feeds to a different location). Here, the value of internal compliance auditing becomes evident. It is vital that compliance stay informed of not only regulatory changes, but how the business implements the change and how those key interconnectivity points are maintained over time. This also requires internal audit plans to stay current with regulatory change requirements and the resulting business process changes.

6. Reporting

Are we reporting on key business metrics to measure the effectiveness of our regulatory change management program?

- Have you ever felt confident you knew the answer to something but had to prove it and could not find the answers you know exist? Sometimes documenting something that you just do every day is harder than just doing it. The environment we work in today requires solid documentation as evidence of your compliance with compliance. Can you produce documentation that demonstrates in detail how and when your company achieved compliance with a recently created or modified regulatory requirement? You probably would consider yourself lucky if someone gave you a spreadsheet detailing this information.

Responding to Regulatory Activity:

The institution's performance on your next regulatory exam will hinge on your ability to reconstruct how a regulatory requirement went from its birth in the regulation to its maturity as a standard integrated into policy, procedures, systems, training and documents.

Most institutions have no choice but to have employees sift through archived e-mails to reconstruct the actions taken. This takes significant time and resources, and often delivers only partial or piecemeal information. Institutions that have a log of activity on a spreadsheet are slightly ahead of the game, at least in terms of having some dates and distribution information. But they still need to track down additional documentation to prove the work was completed and is still being maintained

- You should aspire to something much greater. In top-performing institutions, management regularly receives metrics on activity volume, performance to goals, and trends. Timely and meaningful management reporting provides management with the tools necessary to understand the institution's level of compliance and to challenge the business leaders on their performance. At a minimum, the analysis should outline jurisdiction, line of business, and regulatory filters to show the impact across the entire organization or for one requirement. Institutions with this level of information can readily provide a single, detailed snapshot of every regulatory change, its impact to the institution, actions required, and status to goal – all without days of research to recreate the change management process after the fact.

The Benefits of an Effective Change Management Process

As we've outlined in these pages, there are six vital areas to gauge the effectiveness of any institution's regulatory change management process— a work process that is central to the compliance function. These six areas are a blueprint for performing an assessment of your institution's change management program and to identify productivity improvements across the process.

A solid process will help your institution:

- Perform better on internal compliance audits and regulatory examinations
- From over-burdening compliance staff with inadequate tools and rework
- Avoid financial risk and reputational harm from non-compliance, and
- Reduce the financial burden of implementing changes late in the regulatory cycle

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