

Fortifying Compliance with a Strong CMS

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Saltmarsh, Cleaveland & Gund

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Definition of Fortifying

- Cambridge English:
 - To make *something stronger*, especially in order to protect it
- Merriam-Webster:
 - To make strong; *to strengthen* and secure
- Dictionary.com:
 - To protect or *strengthen* against attack
 - To increase the effectiveness of
- Goal today -- provide some type of takeaway that could help fortify and strengthen your CMS.

What is Compliance and what is CMS?

- Compliance is the act of following the rules.
- Rules include not only the regulations, but also our own internal policies, procedures, guidelines, all acting within ethical parameters.
- Compliance is *not* just the responsibility of the Compliance Officer
 - Responsibility of all team members-
 - Most effective when it is embedded into your daily responsibilities
- Compliance Management System (CMS) is how an institution-
 - Learns about its compliance responsibilities;
 - Ensures that employees understand their responsibilities;
 - Ensures how requirements are incorporated into business processes;
 - Reviews operations to ensure responsibilities are carried out and requirements are met; and
 - Takes corrective action and updates materials as necessary.
- Definition of culture and its interworking with compliance
- Every regulatory agency requires that a change management process is part of an institution's CMS.

Components of CMS

An effective CMS commonly has two interdependent control components:

1. Board and Management Oversight; and
 2. Compliance Program, which includes:
 - Policies and Procedures;
 - Training;
 - Monitoring and/or audit; and
 - Consumer complaint response.
- ✓ When these two interdependent controls are strong and well-coordinated, an institution **should** be successful at managing its compliance responsibilities and risks – CFPB Exam Procedures
- ✓ Weaknesses in a CMS can result in violations of Federal consumer financial law and associated **harm** to consumers – CFPB Exam Procedures
- ✓ Regardless of its size and business model, a financial institution with a poor *culture of compliance* is likely to have shortcomings in its BSA/AML program – FIN 2014-A007

Definition of 'Culture'

- Merriam-Webster Dictionary defines 'culture' as:
 - A set of *shared attitudes, values, goals, and practices* that characterizes an institution or organization.
 - A set of *values, conventions, or social practices* associated with a particular field, activity, or societal characteristics.
- Assistant Attorney General with the Department of Justice pointed out "A company's senior executives and Board of Directors must fully support and engage with the company's compliance efforts. If senior management does not *actively support and cultivate a culture of compliance*, a company will have a paper compliance program, *not an effective one.*"
- What kind of culture has been established within your institution?
 - Proactive and supportive
 - Reactive and lacking support

Is Culture driving your CMS?



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Drill down – Board and Management Oversight

1. Board and Management Oversight

- The Board of Directors is ultimately responsible for developing and administering a CMS that ensures compliance with federal consumer protection laws and regulations.

Board can demonstrate commitment to maintaining an effective CMS by:

- Appointing a compliance officer with *authority and accountability*-
 - *A Compliance Officer should have sufficient authority and independence to:*
 - Cross departmental lines
 - Have access to all areas of the institution’s operations
 - Effect corrective action
 - Some institutions choose to form a compliance committee to assist the CO in coordinating the program. This can be a very effective method to include all business lines in the compliance conversation

Drill down – Board and Management Oversight

- Board can demonstrate commitment to maintaining an effective CMS by:
 - Providing *clear expectations* about compliance within the institution, including third-party providers;
 - Set up an effective compliance program that includes the four required components
 - Each person needs to have a clear understanding about their compliance responsibilities by role
 - Compliance responsibilities should be embedded in every position within an institution
 - FRB states that third-party vendor relationships should be managed as any other business line, division or function of the institution
 - Remember that even though, you might outsource the operational aspects of a product or service, you cannot outsource the responsibility of complying with the laws and regulations or managing the risks associated with third-party relationships

Drill down – Board and Management Oversight

- Board can demonstrate commitment to maintaining an effective CMS by:
 - *Adopting clear policy statements;*
 - *Policies are driven by the regulatory requirements;*
 - *Procedures should reflect what your institution does operationally to meet those requirements;*
 - *Policies/Procedures should be reviewed and updated as the institution's business and regulatory environment changes*
 - *Allocating resources to compliance functions commensurate with the level and complexity of the institution's operations;*
 - Institution's leadership, including the Board should provide adequate human and technological resources that match the level and complexity of the institution
 - Institutions with higher risk profiles and substantially higher volumes of activity within compliance may need to utilize automated systems to sufficiently manage the monitoring aspects of the compliance program
 - Failure to devote sufficient staff and/or resources to the compliance functions within the institution can lead to other failures and breakdown of the compliance program, including fines, regulatory criticism and enforcement actions

Drill down – Board and Management Oversight

- Board can demonstrate commitment to maintaining an effective CMS by:
 - Conducting *periodic* compliance audits:
 - Mechanism needs to be in place to conduct periodic compliance audits to assess compliance within the institution – can be done by internal personnel not part of the daily compliance responsibilities or by outsourced parties
 - Providing *regular reporting* by the compliance officer to the Board or committee of the Board:
 - CO to report compliance activities and audit/review findings to either the BOD or a committee of the Board
 - Opportunity to update the Board on emerging issues that will affect the institution

Drill Down – Compliance Program

2. FI needs to establish a formal, written compliance program, which incorporates the following components:

- Policies and procedures
- Training
- Monitoring
- Consumer complaint response

A well planned, implemented and maintained compliance program will –

- Prevent or reduce regulatory violations,
- Provide cost savings; and
- Just good business from a strategic perspective

Drill Down – Policies and Procedures

- Policies should match the size, complexity and risk appetite of the institution
- Procedures should reflect what you're (truly) doing
- Risk assessment should identify and measure the risk associated with the institution's products, services, customer base and geographic locations
- Policies/procedures/risk assessments should be reviewed and updated as the institution's business and regulatory environment changes

Drill Down – Training

- Training for the BOD, Sr. Management and staff is critical to the maintenance of an effective compliance program
- Computer-based training is good, but face to face is better – can't ask questions of a computer – Zoom/Teams/Go to Meeting – get creative in COVID environment
- Not only include regulatory requirements, but also institution-specific procedures in your training sessions
- Any emerging issues coming to the forefront
- Don't forget training for the Compliance Officer and Compliance Team

Drill Down - Monitoring

- Monitoring is a proactive way to identify procedural or training gaps that (hopefully) head off regulatory violations
- Including the Compliance Officer from the **start** of product development/changes to your CRA AA/opening a new branch/implementation of new line of business will increase the **success** of your compliance monitoring function

Drill Down - Monitoring

- FDIC recommends a monitoring system that includes regularly scheduled reviews of:
 - Disclosures and calculations for various product offerings
 - Document filing and retention procedures
 - Posted notices, marketing literature, and advertising
 - Various state consumer protection laws and regulations
 - Third-party service provider operations
 - Internal compliance communication systems that provide updates and revisions of the applicable laws and regulations to management and staff.

Drill Down – Consumer Complaint Response

- An institution should promptly handle consumer complaints
- Procedures need to be established for addressing complaints and all FI personnel need to know who/what department is responsible for handling them, including timing requirements
- Compliance Officer should be aware of complaints received and resolution if not handled in Compliance Department. CO should be alerted if fair lending or CRA complaints are received
- Review for trends in complaints to identify any systemic compliance problems within the institution

Drill Down – Compliance Audit

- Compliance audit is an independent review of an institution's compliance with laws and regulations, including adherence to the FI's policies and procedures;
- Ensures ongoing compliance and identifies compliance risk conditions;
- Works in conjunction with the institution's internal monitoring system.
- Board should determine scope and frequency of compliance audits.

Compliance Audit Report

- A written Compliance Audit Report should include:
 - Scope of the audit;
 - Deficiencies identified (recommend including root cause, if known – IA CC Rating System);
 - Number of transactions sampled by product type and category reviewed;
 - Description of and recommendation of corrective action, including time frame for correction.
 - Suggestion – include next steps, if appropriate

Change Management Process

- Every regulatory agency requires that a change management process is part of an institution's CMS.
- It is also part of the assessment factors for the Interagency CC Rating System.
- Examiners will assess the Board and Management Oversight as it relates to the institution's effectiveness of the change management processes, including responding timely and in a satisfactory manner to a variety of change, internal or external, to the institution.

FRB Recommended Elements/ Change Management Process

- In the 3rd Quarter 2014 edition of *Consumer Compliance Outlook* newsletter, FRB recommends the following elements for a regulatory change management process:
 - *A standing agenda item* for regulatory change on a consumer compliance committee meeting that incorporates members enterprise-wide, including risk, operations, lending, vendor management, training, internal audit and legal;
 - *Dedicated staff to research, develop, and publish a regulatory change management newsletter* for distribution to management and staff with daily consumer compliance responsibilities for information and training purposes;
 - *A robust training system* that includes industry training, conferences, webinars and seminars whereby participating individuals return to their institutions to *share knowledge gained, updates and tips with management and staff with consumer compliance responsibilities*;
 - *A subscription to the regulatory monitoring services* to learn about current and future regulatory activities.

Questions??

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