

# Compliance & Ethics Professional

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by MaryEllen O'Neill, JD, CCEP, CSSGB

# New compliance officer tips: communicating with the board of directors

- » Keeping your company's board of directors apprised of the company's compliance activities is one of a compliance officer's most important responsibilities.
- » Your presentation to the board should address updates on compliance requirements the board is charged with overseeing, employee education, laws or regulations that affect the company, and review any investigations.
- » Given the time constraints you will be presenting under, you will not be able to provide every detail about the various aspects of your program, but anticipate questions from the board and have answers ready.
- » Make sure you know how much time your presentation is allotted and make sure you can give your presentation in the allotted time.
- » Practice, practice, practice.

**I**t may be intimidating for a new compliance officer, but keeping the board of directors educated on your compliance activities is one of a compliance officer's most important responsibilities. According to the United States Sentencing Commission Guidelines (the Guidelines), "the organization's governing authority must be knowledgeable about the content and operation of the compliance and ethics program and shall exercise reasonable oversight with respect to the implementation and effectiveness of the compliance and ethics program."<sup>1</sup> As such, "individual(s) with operational responsibility shall report periodically to high-level personnel and, as appropriate, to the governing authority, or an appropriate subgroup of the governing authority, on

the effectiveness of the compliance and ethics program."<sup>2</sup>

Depending on your company, you may only meet with the board once a year, and your time may be limited to a 10-15 minute presentation.

Depending on your company, you may only meet with the board once a year, and your time may be limited to a 10-15 minute presentation. Regardless how often you meet with the board, the amount of time with them will most likely be short, because you will most likely be one of many items on the board's agenda. Therefore, you must be

able to efficiently, effectively, and succinctly compress all of the compliance activities you have undertaken and the results you have achieved since your previous meeting into your presentation, while simultaneously preparing yourself for a wider range of potential questions.

Your presentation must include updates on those aspects of the compliance program the board of directors is charged with overseeing, either by law or by regulation, and include updates on all other compliance activities the board, as governing body, should be kept apprised of.

If your company does not have a board of directors, you should make a presentation (similar to the one discussed in this article) to your executives.

### **Reporting on compliance education and training**

Pursuant to the Guidelines, effective compliance education is a key component of every compliance program. The Guidelines provide that an

“organization shall take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program, to the individuals referred to in subparagraph (B) by conducting effective training programs and otherwise disseminating information appropriate to such individuals’ respective roles and responsibilities.”<sup>3</sup>

Because education is an essential component of a successful compliance program, reporting

on the actions you have taken to educate all employees on their compliance responsibilities and the results achieved from subsequent testing should be a part of your presentation. The nature of your company’s business will determine the breadth and depth of your compliance program’s education requirements. Most companies’ compliance education requirements go beyond the basic code of conduct/ethics education. For example, many government agencies such as the Federal Energy Regulation Commission (FERC), the Securities and Exchange Commission (SEC),

and the Commodity Futures Trading Commission (CFTC) require specific efforts to educate those employees who perform or oversee activities regulated by the agency.

Include in your presentation an overview of all the

education and testing programs undertaken or that will be undertaken in the year, the groups that received/will receive the education, and an analysis of the results of the testing (e.g., the successful completion rate). This information is often more illuminating if it is presented in context of prior years’ efforts. Explain the changes (positive or negative), why the change occurred, and if the change is negative, what you are going to do to remediate the results.

If you don’t have time to include it in your presentation, be prepared to answer any questions the board may ask regarding selection of employees for any specialized compliance education programs you provided because of their role/job function in the company. The board may inquire how you selected the subgroup of employees who were given the education and how you

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verified the selected group was the accurate/complete group.

### Reporting on board oversight matters

Many federal agencies have implemented rules, (such as the FTC's Red Flags Identity Theft Rule<sup>4</sup>), the implementation of which require oversight by an affected company's board of directors (if the company has a board). If your company is subject to any of these regulatory requirements, make sure to include a status update in your presentation. Review the year's activities and, if you add a perspective based on previous years' activities, it will help the board quickly put the data into context. Remember the board members may not have had any information on this aspect of your compliance programs since your previous report, and they will appreciate any additional succinct information that provides them with a tool to quickly analyze the current year's efforts. Discuss any issues or concerns that arose and how they were addressed. Include any significant changes to the program, especially those the board is responsible for approving.

Be prepared to discuss the effectiveness of the program. The board may inquire whether there are steps the company can take to make the program more effective and, if so, what steps could be taken and at what cost. If you think the program is effective as it is, be prepared to discuss why.

### New laws or regulations or changes thereto

In any given year, there may be a number of new laws or regulations, or changes to

laws or regulations, that may impact your company. Your presentation should include a brief education of how these new or changed laws impact the company, the steps the company is taking to be compliant with the new/modified requirements, and when the company will be compliant.

Given the potential significance of any new or modified law and the breadth of the tasks your company may have to undertake to become compliant, this part of the presentation may be the most significant. However, you cannot discuss the minute detail of the company's efforts to become

compliant. You have to select the most important aspects to present to the board and, at the same time, be prepared to address any other questions from the board regarding the law's impact and the company's compliance efforts. You should be prepared to discuss

your contingency plan if something prevents you from implementing the new compliance requirements in a timely manner. Be prepared to discuss the cost of the new compliance implementation and where the cost will fall in the company budget. Finally, really know the new requirements and be prepared to answer any questions about the new law or regulation.

### Code of conduct/Ethics violations/Investigations

Code of conduct violation allegations may be reported by any number of individuals in a company, such as the general counsel, the internal auditor, etc. If it is your responsibility to report these matters to

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the board, be sure to include a review of the allegations addressed since your last presentation. Regardless of whether you are the one to actually report on these matters to your board, be prepared to address any questions the board may raise regarding recent allegations, investigations, and status. Be prepared to discuss any known reason for the increase or decrease in the number of reported violations and, if there has been an increase in the number of reported violations, be prepared to discuss actions the company is taking to address the increase.

### Yearly compliance plan

The board of directors is one of your biggest supporters, so make sure they are well informed. Most of the items already mentioned above will be a part of your yearly compliance plan. To the extent timing allows it, review any other items on your yearly compliance plan with them, especially any significant undertakings such as significant staff changes or new system implementations, such as a new compliance education software application.

### Final thoughts/Tips for preparing for your presentation

The board is not your enemy, but they are very busy, so make your presentation the best it can be. Make sure you know how much time your presentation is allotted and make sure you can give your presentation in the allotted time. And while it goes without saying, I am going to say it anyway: Practice your presentation as much as possible. Practice. Practice. Practice. If you can, practice at least once in the room you will be presenting in, so you will feel comfortable when you make the actual presentation. In addition, ask your friends and colleagues to act as board members during one of the practice presentations (but don't share any

confidential information during the practice sessions). Encourage them to interrupt you and ask questions just as real board members will. Listen and act on all of their critiques and suggestions on both your presentation and presenting style. My biggest suggestion is you can't over prepare and, if you make every effort to be well prepared, you will be prepared for whatever comes your way. Your actual board presentation will seem a breeze.

Here are some other questions the board may ask:

1. What is the company's biggest compliance risk, and how are we addressing it?
2. Have there been any changes to your staff or the systems you use? (If there has been, be prepared to explain why the changes occurred and possible subsequent questions as to budget impacts, etc.)
3. What steps would you recommend to improve the compliance program?
4. What keeps you up at night?
5. If you were me, what would you ask/want to know?
6. How does this year's report compare to previous years?
7. Is our company in line with other companies' compliance best practices?
8. Is your budget sufficient?
9. Final thoughts? \*

*The views expressed herein are the author's own and are not meant to represent those of any other individual, organization, or company.*

1. The United States Sentencing Commission: *Guidelines Manual*. November 2015. §8B2.1. (b) (2) (A). Available at <http://bit.ly/manual-sentencing>
2. *Id.*, §8B2.1. (b) (2)(C)
3. *Id.*
4. The Red Flags Rule was issued in 2007 under Section 114 of the Fair and Accurate Credit Transaction Act of 2003 (FACT Act), Pub. L. 108-159, amending the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681m (e). It is published at 16 C.F.R. § 681.1. See also 72 Fed. Reg. at 63,771 (Nov. 9, 2007).

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