



What Ticks Off a Regulator?

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July 12, 2019*

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Gallen Executive School, Switzerland

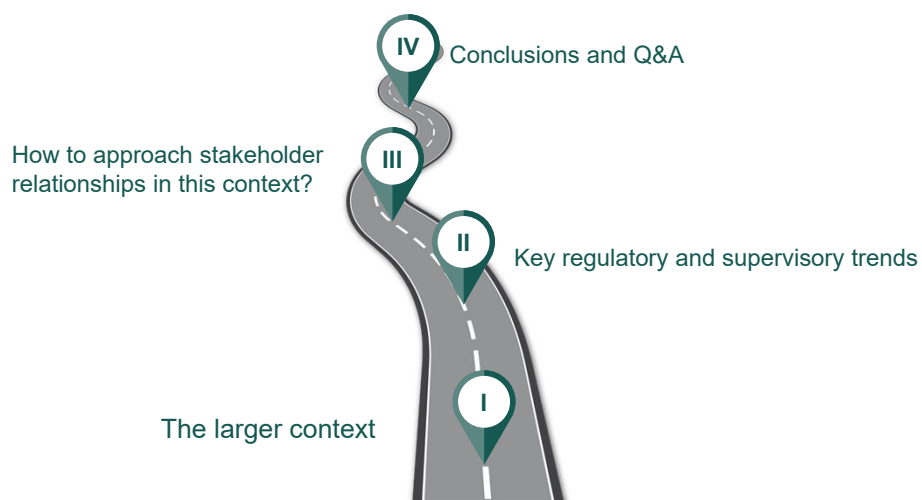
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***"From insight
to impact"*** 

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Our Roadmap Today

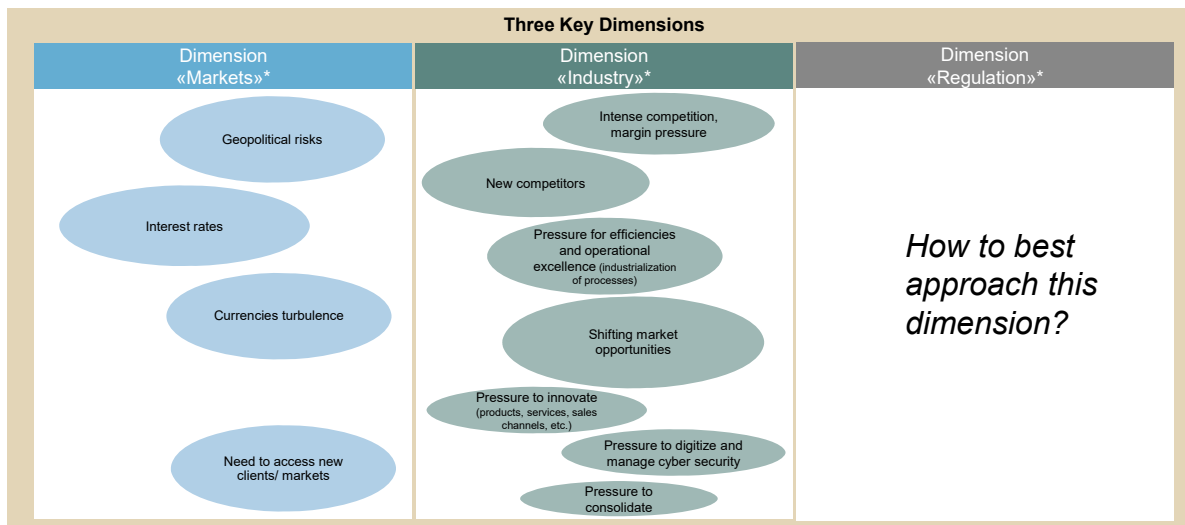


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I. The Larger Context: Three key dimensions of the operating environment for any company

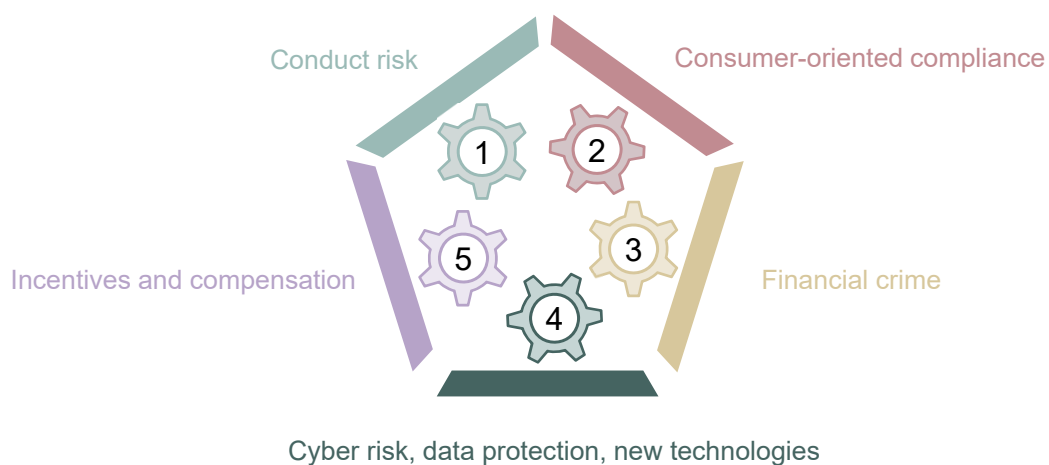


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II. Key Regulatory and Supervisory Trends: Five areas growing in intensity across jurisdictions



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1. Conduct risk



Sample emerging regulator concerns include



Is compliance giving sufficient focus to senior management risk?



Does compliance help or influence management in “grey zones”, or when ethical dilemmas arise?



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2. Consumer-oriented compliance



Sample emerging regulator concerns include



How much of the compliance time / resources are being applied in this area?



Is there clarity on whose interest prevails in a conflict situation?



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3. Financial crime



Sample emerging regulator concerns include

-  Does the business model incorporate the costs of financial crime compliance?
-  What is the company doing to attract and retain high-performing compliance talent in this area?



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4. Cyber risk, data protection, new technologies



Sample emerging regulator concerns include

-  Are Compliance, Risk and IT talking?
-  Enough being done against “soft data leakages”?
-  Is AIBD being used to increase compliance effectiveness?



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5. Incentives and compensation



Sample emerging regulator concerns include

-  Sufficient “pay at risk”?
-  Malus? Clawbacks?
-  Is compliance excellence rewarded?



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III. How To Approach Stakeholder Relationships in this Context Is this the right approach?



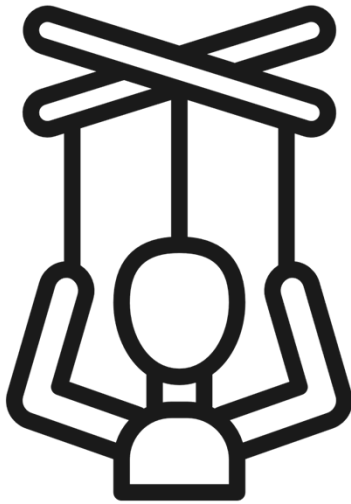
“Compliance would like to manage its
relationship with the regulator”

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“Managing” could give rise to these impressions



The Chief Compliance Officer (CCO) of a company should avoid appearing as a lobbyist to regulators.

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The goal is *optimizing* engagement



- If done properly, it is for both sides' benefit

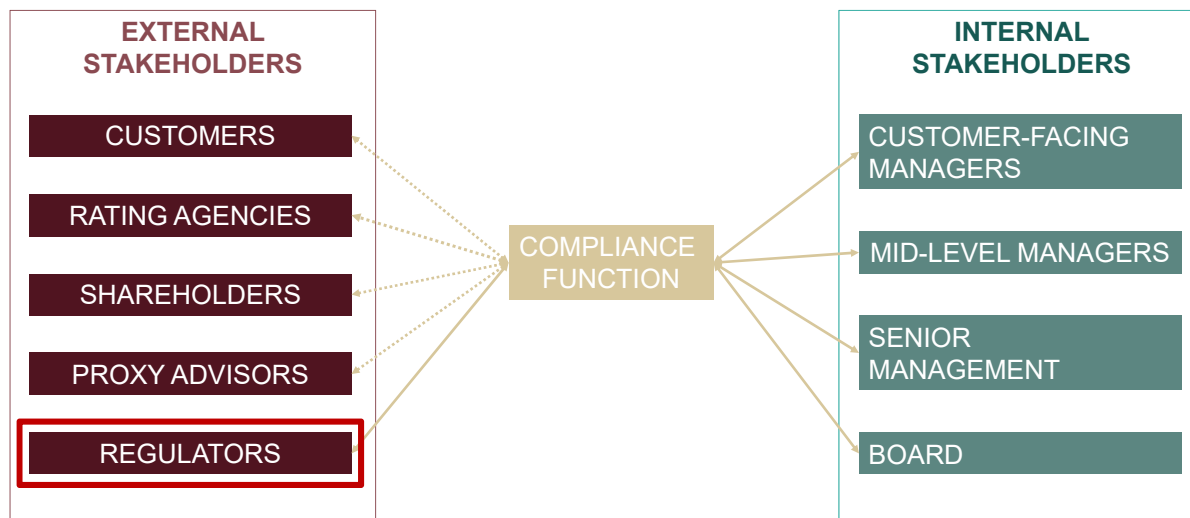


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But optimizing engagement requires knowing how to optimize relationships with *all* stakeholders.



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The landscape of regulators is vast...but regulators often share some common characteristics



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So how to deal with regulators? How not to «tick them off»?
Hint?



S.M.P.

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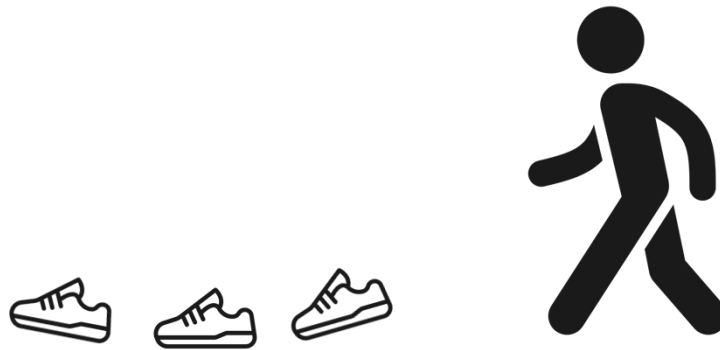
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- 1. Shoes**
 2. Marriage
 3. Pet Peeves

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Tip #1: An effective relationship with the regulator starts by walking in their shoes



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Regulators are often...



...Understaffed, each has multiple companies to regulate



...Likely paid less than you



...And also under pressure

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Regulators too are blamed for compliance failures; it's not a new phenomenon...and it is intensifying

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"Sen. Warren Says New York Fed Pick Should Testify Before Senate Ahead of Appointment"

- *The Wall Street Journal*, March 26th 2018

"Danish and Estonian regulators under EBA investigation over Danske incident"

- *Banking Tech*, 19th February 2019

"Is the SEC to Blame for Lehman's Failure?"

- *The Atlantic*, April 20th 2010

"British Regulator Takes Partial Blame for R.B.S. Failure?"

- *DealB%k*, December 12th 2011

"Why Didn't Bank Regulators Prevent the Financial Crisis?"

- *Federal Reserve Bank of St. Louis*, 23rd 2017

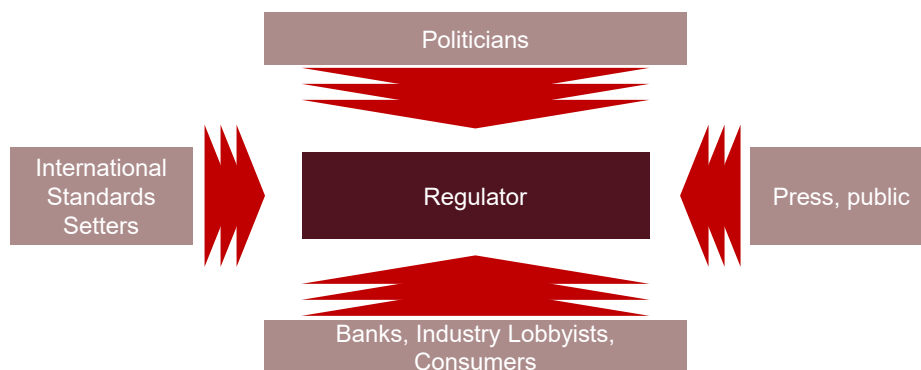
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The pressure on regulators is multiple

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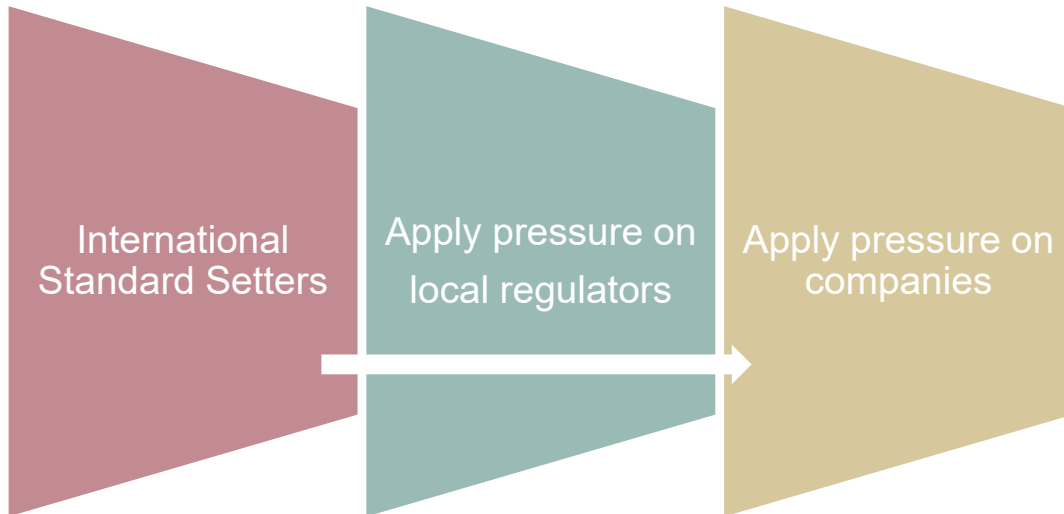


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And a dynamic has set in as more regulation is connected with international standards



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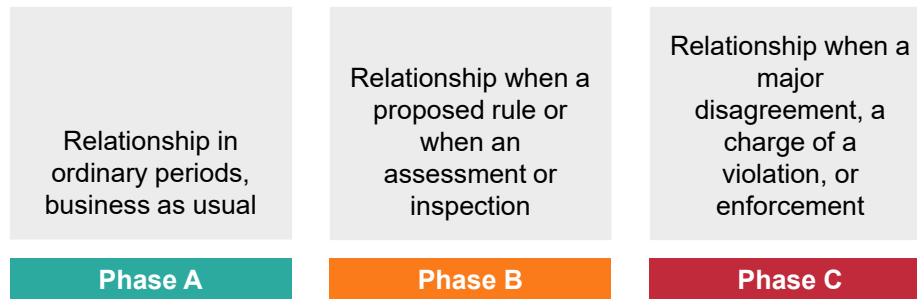
1. Shoes
- 2. Marriage**
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Tip #2: Consider the relationship with the regulator as involving three phases, comparable to a marriage.



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Phase A



Phase A Time to **build** the relationship and earn trust

- Invest time learning about the people at the regulator, their organization, their news
- Introduce yourself
- Keep the regulator informed of changes on your team
- Regulator does not know everything...inform on industry and other developments

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You may need to fall back later on the “trust capital” you’ve built up during this phase...



You need to invest in your relationship to build trust



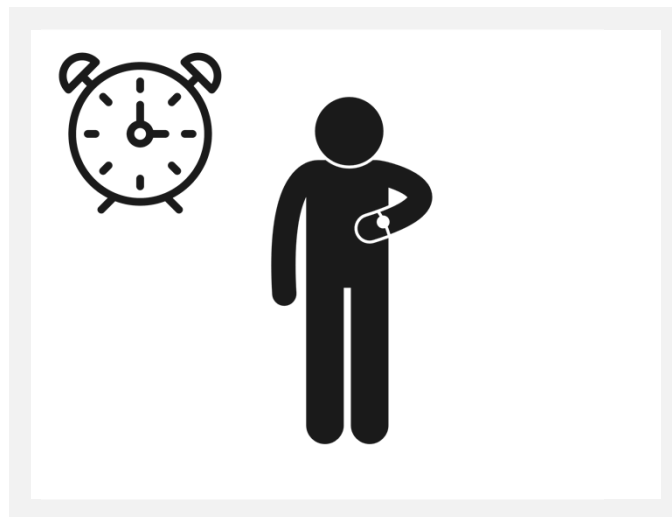
Regulators will more likely give you the benefit of the doubt, if you have build up enough “trust capital”

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Part of Phase A is reporting to the regulator in a timely fashion



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...and in a transparent, complete, yet crisp manner



Professionally written



Highlight key points



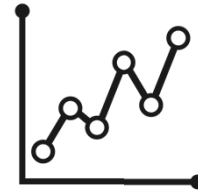
Use graphics where possible



Use side-boxes for additional comments



Double-check accuracy of a) statements and b) numbers



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Another tip:



Don't create panic or overstate



But don't underplay the seriousness of the situation

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Report also on prevention, not only on problems

- Area of difficulty for many compliance functions
- But “prevention” not equal to “reporting on being busy”
 - Not “how many we trained”, but “how we measure effectiveness”
 - Forward looking not only backward looking KPIs



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You are not just “reporting”

- You are also further building up the relationship
- By bringing “reasonable assurance”
 - You are showing that you are doing your best and acting in good faith
 - But avoid overpromising!



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Phase B



Phase B

Time to think of joint gains, while protecting your interests

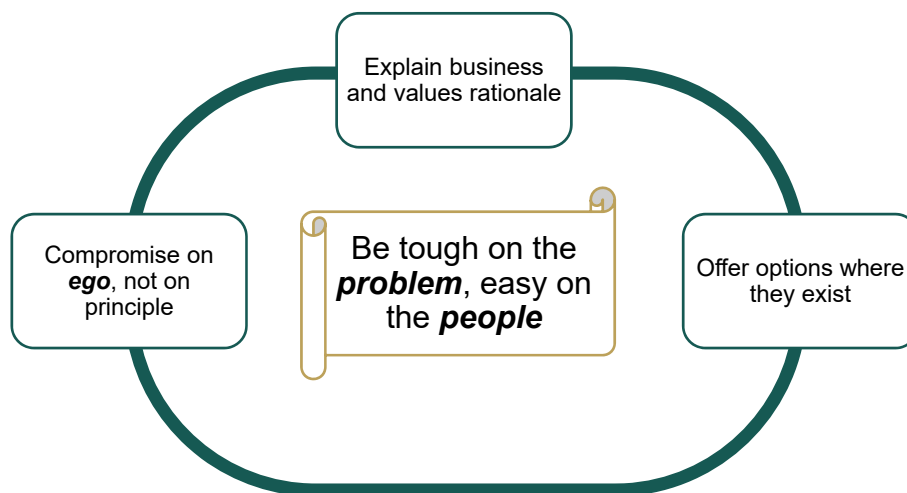
- 👍 Use rulemaking as opportunity to provide constructive input
- 👍 If an examination, err on “over-preparing”
- 👍 Defend your position, but it is a phase to further build your reputation as helpful, collaborative, and fair, not to be adversarial
- 👍 Recall it is a «transaction»: relationship is of higher value

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In this connection recall this tip...



Inspired by the work of Roger Fisher, Professor at Harvard University and author of Getting To Yes

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Phase C



Phase C

A critical time when the relationship is tested

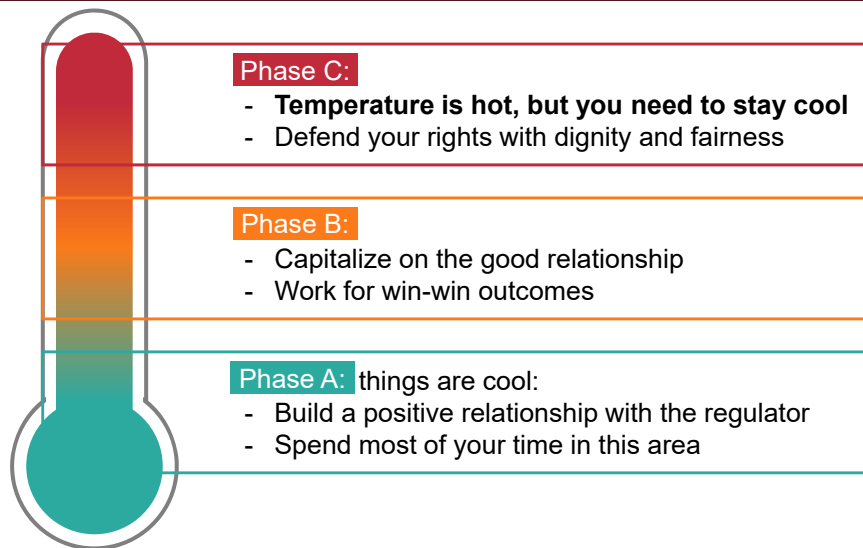
- ⚠ Don't bring friction-creating attitude or people
- ⚠ Avoid threats
- ⚠ First weapon: reason and principles, not legal bombs!
- ⚠ Worst time to hide things from the regulator
- ⚠ No bridge-burning, the regulator will remain your regulator

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Summarized



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1. Shoes

2. Marriage

3. Pet Peeves

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Tip #3: Know your regulators' «pet peeves» or «hot buttons»



Typos”, grammatical errors, incomplete data

- Interpreted as lack of attention to quality...even disrespect to the regulator

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«pet peeves» and «hot buttons» (cont.)



Bringing only legal or government affairs people to meetings

- Some regulators want to hear directly from business, compliance, and other control people

Arriving late for calls or meetings, or leaving early

- Can be interpreted as company culture...could wind up in the minutes

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«pet peeves» and «hot buttons» (cont.)



Surprises

Questioning the authority of your interlocutor

Drips and drabs

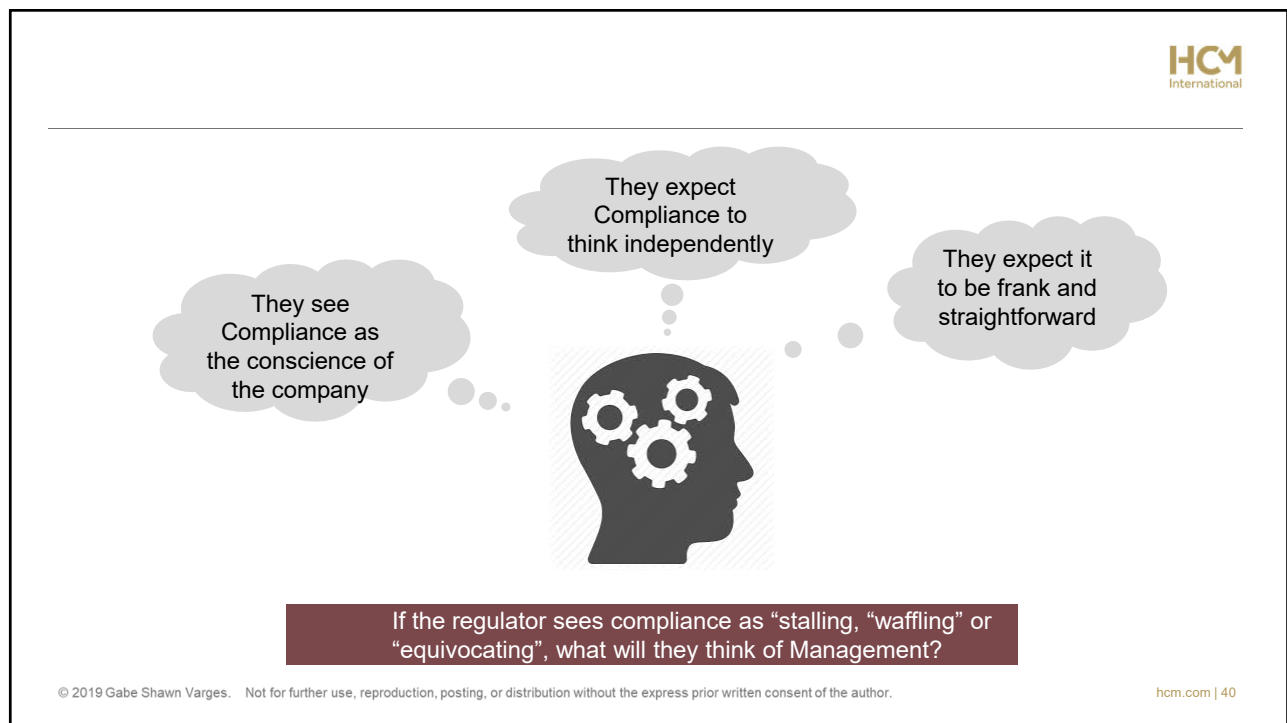
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But limits to commonality of interests

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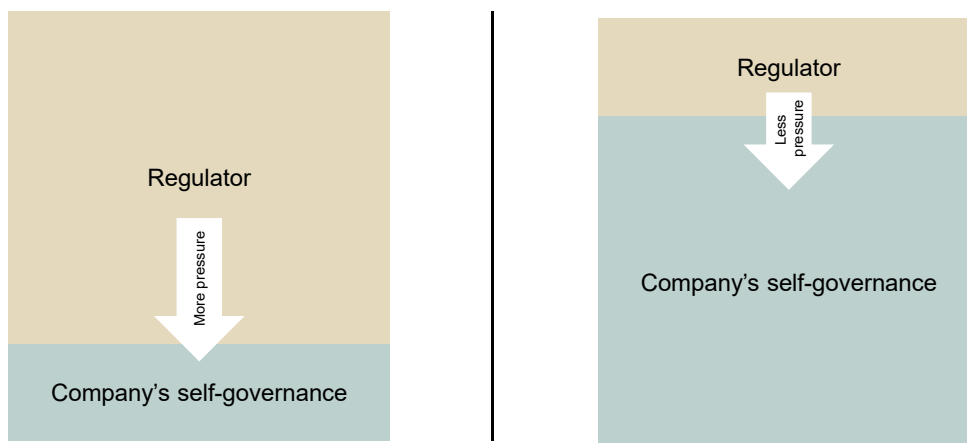
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Nonetheless, recall this dynamic

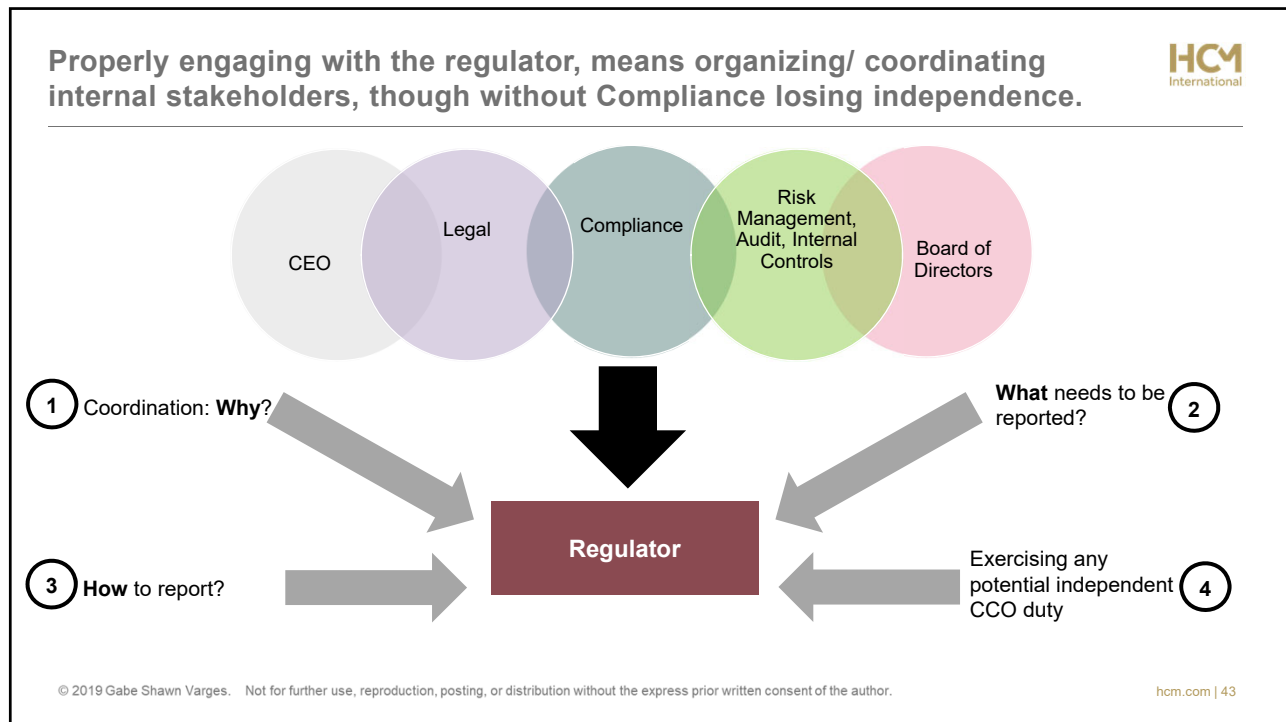
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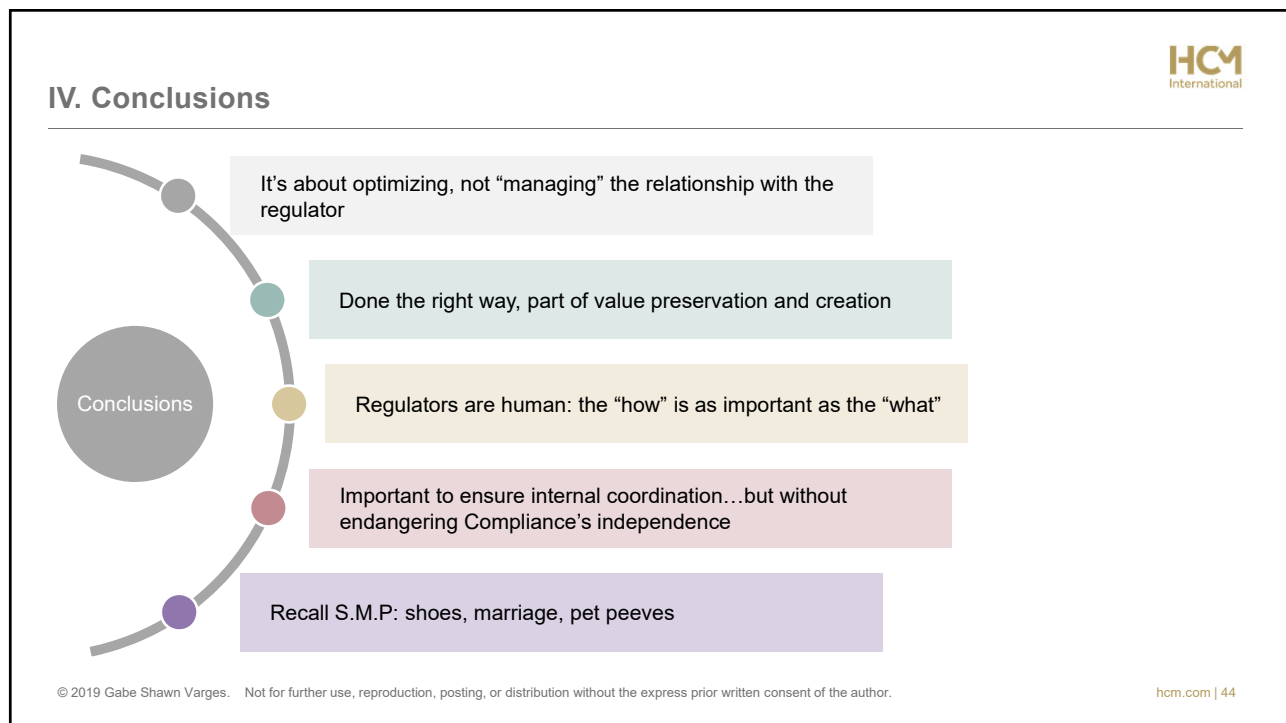
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