Compliance: What’s In It for the CEO?

By Roy Snell and Adam Turteltaub

Econic CEO Lee Iacocca was known for his vision and dedication. But he was also famously wrong, by his own admission, on one big issue. For decades he was a staunch opponent of a proposed change to automobile regulations, and even had a secret meeting with then President Nixon arguing that it must be stopped.

What did he want to stop? Airbags.

He wasn’t alone. The auto industry fought air bags for years, before giving in. To his credit, Iacocca himself admitted he was in error: “You can teach an old dog new tricks... You won’t hear any more beefs about air bags from me.”

Today few would buy a new car without airbags, and the quantity and types of airbags included in new car models have become selling points for new vehicles. The industry has clearly recognized the importance of air bags, and safety, to the bottom line.

In many ways compliance in the financial services industry, and, in fact, in business in general, isn’t that different from airbags. It’s a safety device that many leaders would rather live without. The criticism is that it’s expensive, gets in the way of doing business and is unnecessary.

Yet, any reading of the business section shows that compliance programs are absolutely essential. As long as business employs people, there will be mistakes, bad decisions and outright wrongdoing. Without preparing adequately for it, without protective airbags, a bad situation can get a lot worse.

How, though, do you convince your CEO? By showing her or him that it’s good for the bottom line, and good for achieving his or her vision.

Here are eight arguments to use to get CEO support for making a strong commitment to compliance programs.

1. Not having a compliance program is expensive.

Each year the Society of Corporate Compliance and Ethics publishes a calendar which includes key incidents and settlements of corporate wrongdoing. It’s a useful tool for compliance and ethics officers looking for a hook for employee communications. The 2014 calendar included more than $30 billion dollars in new settlements and penalties. $30 billion that didn’t go to the corporate bottom line but went to the government instead.

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The financial services sector was particularly hard hit. The mortgage mess continues to be expensive and has been joined by the LIBOR scandal. JPMorgan just agreed to pay $920 million to various governments in its "London Whale" settlement. More payments are expected to follow.

Yet, the financial services industry is far from alone. Expensive settlements abound, and even the discovery of a potential problem can do serious financial harm. Walmart is reported to be spending $600,000 a day investigating allegations of bribery abroad.

Given the potential costs of a settlement, in addition to the costs of an investigation and mounting a legal defense, no company can afford to dismiss the risk of non-compliance.

It should be noted that all of these are hard costs. The softer costs can be equally great in terms of lost reputation and customers.

2. Good compliance can save you money when things go wrong.

In financial services, there’s a tendency to focus on the SEC’s compliance requirements. But, that is only part of the picture. While the SEC levels civil penalties, when things go off the rails the Department of Justice can become involved and, if they do, you may well be looking at criminal enforcement actions as well.

Fortunately, an effective compliance program can help you here as well. The US Sentencing Guidelines provide that if a company has an effective compliance program in place it can see its penalties decrease by as much as 95%.

The Guidelines, themselves, are not overly prescriptive. They call for:

- Assessing legal and regulatory risk
- Oversight of the compliance program by high-level personnel
- Due Care in delegating substantial discretionary authority (put another way: not hiring people with a history of fraud as brokers)
- Effective communication to all levels of employees, aka training
- Reasonable steps to achieve compliance, which include systems for monitoring, auditing, and reporting suspected wrongdoing without fear of reprisal
- Consistent enforcement of compliance standards including disciplinary mechanisms
- Reasonable steps to respond to and prevent further similar offenses upon detection of a violation

In sum, they call for management to do what it should: be serious about managing legal and regulatory risk.

If a company can demonstrate that it has met the elements of what is known as an Effective Compliance Program, it can reap substantial benefits if convicted.

Firms can also reap significant benefits even in negotiating a settlement.

Such was the case with Morgan Stanley, which was caught up in an investigation of a potential violation of the Foreign Corrupt Practices Act. In arguing that these were the actions of a rogue employee, Morgan Stanley showed prosecutors the breadth and extent of its compliance program, including 35 separate reminders sent about the Foreign Corrupt Practices Act.

In the end, the government declined to prosecute the company, saving it untold millions in legal fees, and a possible ruinous penalty.

3. It’s hard to say you were the victim of a rogue employee when you can’t prove that you did something to prevent him or her from going rogue.

Even the best of companies find themselves with a few bad actors eventually.

When wrongdoing occurs, companies typically claim, not always disingenuously, that this was the act of a rogue employee and did not reflect the company’s culture or commitment to lawful, compliant behavior.

But how do you prove that?

How do you prove that the company is committed to doing the right thing?

As the Morgan Stanley case demonstrates, compliance programs are excellent tools for demonstrating that the actions were those of a bad apple, not a bad barrel.

They demonstrate that your organization was serious about understanding its legal risks and doing something about them. And, a well constructed program can show all the ways in which you communicated to the employee your systems for preventing and identifying wrongdoing and the remediation steps you took.

Without that data it’s just your word versus the rogue employee’s actions.

4. The compliance program extends your vision for the company throughout the workforce.

As the CEO, your job isn’t just about making sure the company delivers the numbers. You’re in a position to actually
lead, to set a vision, and to see that the workforce follows your vision. A compliance program is an excellent way for you to share your vision, and, in so doing, make sure that employees understand both what your goals are as well as the fact that you want them to achieve those goals the right way.

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That’s critical for two reasons. First, you don’t want your workers cutting corners. You want them to win and win the right way. Second, without the right compliance communications, employees (and those watching the company) will only see the call to achieve a goal and not necessarily the commitment to achieving them the right way. That can, of course, be dangerous.

When prosecutors and other enforcement authorities look at an incident, they are very concerned with seeing what the tone at the top of the organization was. It’s a way to assess whether they have that rogue employee on their hands, or if the wrongdoer reflects the culture of the company.

The right compliance program can answer that question very definitively. It can demonstrate your commitment to the organization’s hitting its goals the right way. That it is a commitment not expressed only in words but in a fully realized program.

5. The compliance program gives insight into how your workforce is thinking and acting

Auditing and monitoring, and having mechanisms for employees to report wrongdoing, are all central to an effective compliance program. They’re how you know if a program is working, and if employees feel as if they can raise concerns without fear of retaliation.

They’re also a good way to see what is going on in the organization. Are employees reporting managers pushing them to break rules? Are they seeing dangerous conditions on the factory floor that could lead to injuries? Is someone cheating on his expense reports? Issues like these are regularly raised on helplines.

In addition, even the training in compliance issues can be very revealing about which managers are committed to compliance and which aren’t. Here’s what could be an indication: roll out your compliance training company wide and ask for reports on completion rates by operating division. Then look to see which divisions are finishing them first and last.

If you see one division is consistently last, the leadership there may not be demonstrating a sufficient commitment to the compliance program.

One way to remedy that situation is to let managers know that they are being scored on whose division completes the training first. Letting them know that their bonuses could be affected sends a powerful message that compliance is taken seriously, and you expect them to take it seriously.

6. The compliance program safeguards your reputation and the firm’s.

It doesn’t matter how much money was made by Worldcom, Enron, Countrywide and others. All that they are known for these days is what was done wrong. And, none of their leaders are likely finding it easy to get work these days.

Even companies that survive scandal have to live with long-term negative repercussions and great short-term pain that can go on for months or years. Imagine what it must be like to be a JPMorgan employee today, and imagine how hard it must be to recruit good people.

With a strong compliance program in place, reputation-destroying incidents can be prevented, found and resolved early and put behind the company more quickly.

This protects the company’s reputation and enables both management and employees to focus on the business rather than scandal.

7. If you don’t find and fix your own problems, the regulators eventually will.

Finding a violation of a rule or of law, especially a serious one, is a problem. But if you find it first, you are in a much stronger position than if the government does. For one, you have time to mitigate the damage before it goes public.

But, even more importantly, finding the problem on your own and bringing the issue to the government can pay off significantly in terms of reduced fines and penalties. While there are no guarantees in these situations, there are substantial incentives for companies that self-disclose violations of
law. In case after case, prosecutors have cited the company’s willingness to disclose the violation as a factor in leading to reduced penalties, or no penalties at all.

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8. It’s time to treat compliance like airbags

You can make the mistake that the auto industry first did with airbags and think of them as solely expensive and unnecessary devices that the regulators have driven down your throat. Or, you can do what the auto industry ultimately did and recognize that compliance programs, like airbags, provide real benefits. Not only do they provide added safety, they provide you with an asset that you can use to protect and win over investors.

The growth isn’t just being driven by US regulators anymore. The UK Bribery Act provides guidance for compliance programs. In addition, the Organization for Economic Cooperation and Development (OECD), the “club” of the world’s most-developed economies, has been a strong advocate for compliance programs as a part of anti-corruption efforts. The OECD has called upon member states to encourage compliance programs, and publicly chastised those that do not.

In addition, it has become an expectation of larger companies that their vendors will have compliance programs in place. Not having a compliance program can thus limit who will buy your product or service. Sort of like selling cars without airbags.

**ENDNOTES**

* Roy Snell has developed numerous partnerships with government, industry, and other professional associations, and he has facilitated collaboration between the compliance/ethics profession and the enforcement community. Roy has a Master’s degree in Health and Human Services Administration.

  He is a Certified Compliance and Ethics Professional (CCEP),® and through his work with the two associations, he has overseen the development of compliance and ethics books, manuals, videos, conferences and audio conferences. He has been a regular speaker in the compliance profession for more than ten years and has spoken internationally for the United Nations on compliance and ethics.

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  Prior to joining the SCCE staff, Adam was a regular speaker at the Society of Corporate Compliance and Ethics’ events, as well as conferences for a number of other associations, including the Institute of Internal Auditors and the National Contract Management Association. Additionally, Adam served for two years on the Washington staff of Senator Daniel Patrick Moynihan.

  Adam also has an extensive writing background. He was a part of the founding editorial team for Excite. In addition, he has contributed articles to several magazines and wrote a chapter of *We’ll Never Be Young Again*, a look back at the assassination of John F. Kennedy.

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