

REGULATORY INTELLIGENCE

COVID-19: How to mitigate compliance risk amid a crisis

Published 07-Apr-2020 by
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The world is fighting a battle against a silent enemy for which there is no modern precedent. At a time when eyes were fixed on the escalating tensions between the United States and Iran, the Syrian crisis and trade wars between superpowers, the COVID-19 pandemic launched its assault. COVID-19 and the defensive measures implemented to slow its advance have disrupted the economy. Many businesses deemed non-essential have been ordered to close, schools are shuttered, those employees who are fortunate enough to be able to do so are working from home, markets are volatile and healthcare resources are stretched thin.

There is, understandably, considerable anxiety about job security at present. Many industries have already seen mass redundancies. Despite government interventions and the huge sums of money pumped into various economies, millions of people are losing their livelihoods. The financial services sector is not immune to the effects of the COVID-19 pandemic, and it also faces unique compliance risks that continue to warrant attention, even during a crisis of this nature. This article describes a few measures firms can employ to address their compliance obligations while remaining cognisant of the strains faced by their staff and stakeholders.

Employee wellbeing

As a starting point, now is not the time to focus on foot faults and minor, unintentional errors. Firms should do what they can to reassure employees that their health, safety, and families' needs come first, and do their best to communicate plans for dealing with the problems that they and their employees are facing. Providing transparent information to employees about their futures, to the extent possible, can reduce the distraction and anxiety that results from uncertainty. Setting out plans for accomplishing long-term objectives can reduce the focus on achieving short-term results and thus reduce temptations to cut corners or take improper risks.

Firms both inside and outside of the financial services world should remind employees that they are still expected to follow all laws and company policies. At the same time, however, they should avoid taking a heavy handed approach to addressing the minutiae and should reinforce internal relationships by focusing primarily on employee wellbeing. Companies that appear callous may invite significant backlash in the future, which will no doubt hit their bottom lines.

Tone from the top

Firms should work with their counsel to stay abreast of any legislation and/or regulations promulgated by governments to address the crisis. Senior management need to be aware that their response will set the tone for the rest of the organisation's staff. They must take the lead in communicating to employees how the organisation intends to follow any new directives, to demonstrate a continued commitment to compliance. Creating an atmosphere that promotes ethical behaviour is central to an effective compliance programme and starts with the tone management sets through its own actions, especially in times of crisis. Firms should therefore avoid any temptation to circumvent the spirit of any evolving obligations, because doing so may undermine messages about commitment to compliance more generally.

Firms should be particularly careful if they need to lay off compliance professionals as to do so could signal that such roles are not as important as revenue-generating positions. This is a message that regulators have long been at pains to discourage; instead they have made it clear that the compliance function should be comparable in stature with other significant strategic functions. If a compliance position must be let go, the firm should document a cogent explanation for why the reduction was necessary. Firms should also document how the tasks that the dismissed compliance professional was performing will be covered in future, or why coverage is no longer required (for example, because the position only serviced a particular business line that was entirely eliminated).

Misconduct

If employees feel under extra pressure to achieve unrealistic financial results in this difficult environment, the temptation to engage in misconduct may increase (for example, traders may be tempted to use non-public information improperly). Employees who receive variable compensation that is tied to short-term financial results may be particularly worried about their long-term remuneration. Social distancing makes interaction with both new and existing clients difficult, but firms must still try to generate revenue to continue operations. Ultimately, too much focus on near-term financial goals in this kind of environment may drive misconduct by anxious personnel who feel pushed to "secure that deal" and "hit that target".

Firms should provide their compliance professionals with all the support and resources they need to continue their work (at minimum, whatever other staff are receiving). Senior management should reiterate the organisation's commitment to following new legislation and regulations, as noted above. To the extent possible, they should try to reduce colleagues' anxiety about how market forces beyond



their control might affect their jobs and remuneration and discourage short-term thinking and goal-setting. Firms should also continue to monitor existing controls and enquire about unusual transactions (and document their efforts to do so).

Reputational considerations

Governments are making extraordinary efforts to reduce regulatory burdens and to accommodate businesses and individuals by, for example, moving tax-filing deadlines, extending time limits to renew lapsing licences and providing similar relief to excuse failure to meet certain deadlines. Once the dust has settled, prosecutors and enforcement agencies are unlikely to accept the COVID-19 pandemic as an excuse for any criminal acts or intentional misconduct. Moreover, any perception that a firm inappropriately took advantage of the pandemic may result in significant long-term reputational damage. Well-managed firms can use this unprecedented experience as an opportunity to make a statement about their core values, as demonstrated by how they react and what they prioritise.

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Produced by Thomson Reuters Accelus Regulatory Intelligence

07-Apr-2020



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