

Head of the Class: A Thoughtful Approach to Compliance Training

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Introduction

A truly effective compliance program is a living and breathing organism. It adapts to address changes to applicable regulatory requirements, business operations, and other facts and circumstances. The most thoughtful set of policies and procedures cannot truly mitigate the numerous risks facing an adviser if its staff does not understand their ongoing obligations and have the tools at hand to protect the firm on a day-to-day basis. In this article, we discuss various considerations for advisers seeking to design and implement powerful compliance training programs.

Types of Trainings. An adviser's training program should include several different elements. In addition to its regular training program, which may take place at various times during the course of a year, advisers should consider whether additional training is merited if there are significant regulatory developments or enforcement actions. It is advisable to design one or more short training sessions when a new employee joins the firm. Advisers also may want to run one or more tabletop exercises addressing various scenarios, such as a cybersecurity incident or significant business disruption, to ensure that their employees are equipped to handle these situations.

Common Topics. A training program should reflect its principal risks and provide a refresher on the adviser's primary



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fiduciary duties. In considering training topics, many advisers will review the examination priorities of the Securities and Exchange Commission's (SEC) Office of Compliance Inspections and Examinations, any risk alerts or other guidance issued by the Staff of the SEC and key enforcement actions in the prior year. A good training program also will include various reminders of the adviser's key policies and procedures from its compliance manual. Common training topics include:

- **Regulatory Developments.** This may include a summary of any key regulatory developments and the SEC's top examination and enforcement priorities, as well as tips on preparing for an SEC exam.
- **Fees and Expenses.** Training on fees and expenses should note the SEC Staff's recent guidance on fees and expenses, including fee disclosure, valuation and allocation issues.
- **Advertising.** Training on advertising could include a summary of the SEC Staff's guidance on advertising practices and a summary of the adviser's process for the review and approval of advertisements. It also could include information on the use of track record and performance, marketing in jurisdictions outside of the United States, if applicable, and permissible pre-marketing activities.
- **Conflicts.** Conflicts still are a critical issue for advisers. Key topics would include a summary of the adviser's policies on addressing and mitigating conflicts, the importance of avoiding conflicts, where possible, and a summary of recent enforcement actions relating to conflicts issues.
- **Political Contributions.** It is beneficial to remind personnel of the firm's policies regarding political contributions, most notably prior to the next election cycle.
- **Gifts and Entertainment.** This may include a summary of the firm's policies on gifts and entertainment, any

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pre-approval or notice requirements and any limits imposed by the firm on the giving or receipt of gifts or entertainment, including any jurisdictional nuances.

- **Insider Trading.** Insider trading, particularly tipping, is an important issue as many advisers may come into possession of material non-public information about a public company. In light of this, it is important to remind personnel of the adviser's policies to monitor insider trading and also to protect any material non-public information it may obtain. A discussion of any information barriers used by the firm and expert networks also may be relevant.
- **Information Security and Electronic Communications.** Potential training topics include the proper use of email and social media by firm employees, the review, archiving and monitoring of email and other electronic communications and best practices to mitigate against a cybersecurity breach.
- **Privacy.** Protecting client and other personally identifiable information maintained by an adviser is paramount. Training should review the adviser's practices in this regard and steps to take if this information is compromised. Training also should be conducted in response to new privacy and data protection developments, such as GDPR.

Audience. A key aspect of designing an effective compliance training program is identifying the appropriate audience. Certain trainings are beneficial, if not critical, for the entire staff – from the most senior leaders to the administrative employees. Such trainings include orientation trainings for new hires and annual compliance refreshers regarding the adviser's code of ethics. However, many advisers' compliance departments are resource constrained – making it difficult and impractical to apply the full suite of compliance training opportunities across

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the entire firm. As such, thinking carefully about the compliance risks facing the adviser can help the compliance department prioritize the individuals who can most immediately benefit from a particular training. A risk-based approach to training often focuses on the following types of personnel:

- individuals who solicit new business;
- senior leaders for whom a compliance failure would lead to material reputational damage;
- individuals who operate in high-risk jurisdictions or industries; and
- individuals with regular access to confidential or other highly sensitive data.

A potentially overlooked population for training is the compliance staff itself. Law firms and other third-party service compliance providers are often willing to provide regulatory updates, roundtables and other educational opportunities for compliance staff as a way to solidify the relationship with an adviser. Another way to ensure that the compliance team is up to date on the latest compliance risks and trends is to attend industry conferences. Finally, cross-training across the department can provide the compliance staff with a more global perspective on the challenges and obligations facing the adviser, as well as protect against extended absences and unexpected departures.

Frequency and Length of Trainings. A reasonable working assumption is that even the most diligent employee likely will view training as a chore. Consequently, in terms of frequency and length of sessions, many times, less is more. For general compliance trainings, a yearly cadence may be appropriate. A bit of forethought in developing a multi-year plan can help further enhance the annual training experience by ensuring that an adviser addresses certain key topic areas on a regular basis, while also varying particular topics within an area over time. Here, it may make sense to develop a library of modules within a general topic area, which modules the investment adviser can stagger on a rotating basis. For other types of trainings, it may be wise to leverage other periodic events occurring at the firm – such as new analysts' sessions or brown bag lunches – to help fill out a yearly calendar of training events.

Likely, there is no one-size-fits all approach to determining the optimal length of timing for a particular training session. Often, it can be difficult to sustain an audience's attention for electronic trainings exceeding 30 or so minutes. More interactive live sessions may skew longer – specifically to permit ample time for questions. Still, trainings exceeding an hour regarding a single topic likely should be the exception rather than the rule.

Format. In many ways, the culture of an organization can assist in determining the training format that will be best received by employees. Do communications to employees occur via formal channels or does the adviser tend to take a more informal approach? Do employees receive regular updates regarding other firm-related matters? If so, is there a centralized location, such as an Intranet site, for these updates? Whatever the case may be, trainings that align with other messaging may be more impactful to the audience. From a format/materials perspective, some advisers develop

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glossy brochures and desktop materials to “sell” compliance. These types of materials can serve a marketing function for the compliance department – the goal being less about having employees memorize a set of requirements versus knowing whom to contact if something “smells off.” Similarly, an adviser can provide a periodic training “newsletter” with short blurbs on areas of importance to the firm. One challenge with this idea is developing a set of topics that will be useful and interesting to a broad range of roles without becoming generic and dull. Another potential concern is over-saturation. Providing too many updates, emails, or other communications run the risk of desensitizing staff to truly important compliance obligations. Again, the adviser’s culture likely is the best guide as to the right approach.

Another question of format for many advisers is whether to use electronic or web-based training technology or to conduct live, in-person trainings. Understanding that an adviser need not necessarily restrict itself to one or the other of these formats, there are benefits to both approaches. In recent years, there has been a proliferation of web-based training service offerings for investment advisers. In many cases, this software provides a streamlined, simple means to push out training and track participation. Some newer interactive offerings also utilize video gaming techniques (e.g., sounds, moving images, competitive scoring, etc.), which can enhance the training experience for the user. Further, such offerings also may provide the compliance staff with powerful analytic tools and reporting capabilities that can help identify confusing questions or gaps in topics. In response to these findings, an adviser can follow up with more targeted live trainings, reword questions, or otherwise make changes to improve the trainings for subsequent uses. However, despite the creep towards relying on online tools for all aspects of our lives, there are compelling reasons why

in-person trainings remain a beneficial option. Conducting live trainings often personalizes the experience and allows the trainer to provide a more directly interactive session by responding to audience questions and concerns in real time. It also can further the “marketing” purpose noted above – putting a human face to the compliance department. Again, it is possible to use each of these methods to achieve different training objectives, e.g., utilizing online training for more general educational experiences and in-person for follow-up or more tailored trainings.

Other Considerations. Below are a few additional practical considerations and tips for implementing a potent training program.

- Partner with senior executives to ensure that their support for training initiatives is evident. Consider accompanying training with a message from one of the firm’s senior leaders regarding the importance of the particular session.
- Consider partnering with other departments for a coordinated approach, if not a unified front, regarding the firm’s educational efforts. If nothing else, such an approach can allow various departments to synchronize timing so as not to overload employees with too many, overlapping or contradictory training sessions.
- If available, take advantage of centralized space for trainings (or otherwise consider ways to centralize training offerings). Compliance trainings can feel disconnected from other aspects of the firm if they are decentralized from the firm’s other educational offerings. Again, a practical goal is to seamlessly align the compliance training program with the larger firm culture.
- Brainstorm ways to make training more enjoyable for employees. Intro-

ducing competition among employees or departments via prizes or other benefits can be a way to increase engagement.

- For firms with limited compliance resources, off-the-shelf trainings may seem like an attractive alternative. However, there can be challenges associated with the use of stock compliance training tools. Complex firms may find that such trainings cannot adequately address the range of situations in which employees may find themselves. As such, a firm relying on such trainings actually may find itself devoting more time to follow up and supplemental trainings to ensure that nothing falls between the cracks.
- Request certifications or find another method of documenting the various training sessions throughout the year. As is the case with other compliance topics, the old regulator’s adage applies: it did not occur unless documentation exists. A firm should make sure to “get credit” for the hard work it puts into training.

Conclusion

It almost goes without saying that advisers should incorporate employee education into their compliance plans for the firm. While training may be viewed as a mandatory “task,” it can be a powerful tool to mitigate risk if conducted in a thoughtful manner. A compliance department often should view its training program as an opportunity to interface with staff and open up the lines of communication for the future. Even if the particular lessons of the day do not stick, creating this ongoing dialogue can further enhance a firm’s culture of compliance to help it more skillfully address tomorrow’s issues.

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