

Best practices in compliance training

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ABSTRACT

Compliance impacts almost every facet of an organisation. In order for an organisation's compliance programme to be effective, however, it is imperative that the firm have a well-planned, comprehensive compliance-training regimen. Even the most comprehensive compliance programme is ineffective if staff have not been trained on the programme, do not understand the firm's policies and procedures, and have not been educated on their own responsibilities in carrying out the programme. This paper discusses the importance of

placing structure around a firm's compliance training and explore themes that should be considered in evaluating such a training programme. Themes discussed include compliance-training programme content, audience, format, timing, implementation, documentation and programme effectiveness.

Keywords: Compliance, Employee Training, Staff Education, Job Responsibilities, Training Programme

INTRODUCTION

Compliance programmes are a critical element of a financial services firm's foundation. Without a strong compliance programme, cracks begin to form, and that foundation may begin to weaken. Over time, these compliance cracks, which can often go undetected for years, expand and encroach upon the firm's entire structure. If and when discovered, at best, there is a lot of mending to do. At worst, these fissures could result in the demise of the firm.

The importance of a solid compliance programme cannot be overstated, as compliance impacts almost every facet of an organisation. For the compliance programme to be effective, however, it is imperative that the firm have a well-planned, comprehensive compliance-training regimen. Even the most comprehensive compliance programme is ineffective if staff have not been trained on the programme, do not understand the firm's policies and procedures, and have not been educated on their own responsibilities in carrying out the programme.

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When setting out to develop, or improve, a firm's compliance-training programme, a firm should first answer the following questions:

- What are the training program's goals? One primary goal of an effective compliance-training programme should be to educate personnel about applicable laws, as well as firm policies, in order to cultivate good judgment and ethical decision-making.
- What are the objectives of the programme? Are the firm's objectives consistent for all persons in the organisation or will certain staff require specialised training?
- Who will be responsible for formulating, implementing and monitoring participation in the firm's compliance-training program? Firms should consider involving noncompliance personnel in the initial planning stage to consider the perspective of employees who are responsible for complying with firm policies, but are not immersed in day-to-day compliance.
- How will the effectiveness of the training be measured? Are there observable changes expected after the training? How will those be assessed?

SCOPE OF COMPLIANCE TRAINING

Ensure Relevance

In determining content for a compliance-training programme, it is critical to ensure the content tracks the firm's compliance policies and procedures, which should be designed based on the firm's unique business activities and risks specific to the firm. An attentive chief compliance officer will ensure that the firm's compliance programme is reviewed on a continuous basis, not just annually, to consider updates to the programme as changes in regulation occur or as changes in the firm's business warrant. Therefore, the firm should ensure

topics selected for compliance training include changes in the firm's compliance programme that are the result of such regulatory developments or due to business and operational changes at the firm.

Examine a Compliance-Training Blueprint

While this paper covers compliance-training considerations for a variety of financial services firms, it is worth examining the continuing education requirements set forth by the Financial Industry Regulatory Authority (FINRA)¹ for broker-dealers. FINRA Rule 1240(b), Continuing Education Requirement, requires broker-dealers to, at least annually, 'evaluate and prioritize [their] training needs' and develop a written training plan.

In performing this needs analysis, the broker-dealer must take into account: (a) the firm's size and organisational structure; (b) scope of business activities; (c) legal and regulatory developments; (d) the firm's sales and marketing strategies and related risks and (e) input from multiple internal sources including legal, compliance, trading, internal audit, operations, management and sales personnel.²

Once the needs analysis has been completed, the broker-dealer can identify potential training objectives and establish programme goals. This step provides structure to assist the firm in determining the scope of the compliance-training programme.

This planning structure imposed by FINRA in the establishment of a broker-dealer's compliance-training programme offers a model that merits consideration by other types of financial services firms. The practice of identifying specific training needs and documenting a written plan for execution creates a blueprint for delivery of effective compliance training.

Always Consider Regulatory Communications

Most regulators publish annual letters outlining their regulatory and compliance priorities for the coming year. In addition, throughout the year, regulators stay in contact with the firms they regulate through various communications, both direct to firm or industry-wide. Regulators expect firms to take notice of these communications, examine their application to the firm's business and heed any advice or best practices described therein. Therefore, it is essential to review all of these communications and determine to what extent such guidance impacts the firm's compliance policies and procedures and, consequently, its training programme. Some examples include:

- *Examination Priorities Letters.* The US Securities and Exchange Commission (SEC) and FINRA publish letters near the start of each year to communicate their examination priorities for the upcoming calendar year. The SEC's notice communicates the practices, products and services that it believes present potentially heightened risks to investors or to the integrity of the US capital markets.³ FINRA's letter describes areas of focus for FINRA's risk monitoring, surveillance and examination programmes.⁴ Both communications are designed to publicise the areas on which the regulator will focus when conducting examinations over the coming year, and are topics that should be considered in a firm's compliance policies and its training programme to ensure staff are aware of these high-priority areas.
- *Enforcement actions.* To the extent they are relevant, a firm should pay close attention to enforcement actions regulators have taken against firms who violated applicable regulations. These enforcement actions can provide a roadmap of what to do and not to do, and provide an excellent training opportunity for firms that

may be facing similar challenges or regulatory issues.

- *Risk Alerts.* The SEC's Office of Compliance Inspections and Examinations (OCIE) also periodically publishes 'risk alerts' to raise awareness of compliance and industry risks. These risk alerts often result from identified deficiencies and resulting enforcement actions that focus on one particular topic, prompting the regulator to publish a formal communication regarding common deficiencies it has found. To the extent the subject of a risk alert is relevant to a firm's business, the subject of that risk alert should be covered in the firm's next training opportunity.
- *Pending legislation, newly adopted regulations.* Newly adopted regulations that impact a firm's business should always be included in training. Further, regulatory bodies often provide financial firms and organisations representing those firms with the opportunity to comment on a concept release or a rule proposal that has not yet been adopted into law. These releases and proposals provide a sneak peek into pending regulation and can give a firm an opportunity to prepare for any changes and, if appropriate, address such changes in training.
- *Results of prior internal and external audits, inspections and examinations.* Firms should also consider results of audits, inspections and examinations in determining training topics. These may be a firm's best, or in some cases only, objective assessment of how the compliance programme and related training is working. Review comments from inspectors and examiners to ensure that any actual or perceived areas of weakness are being or have been addressed.

Include These Core Topics. While not all financial services firms are alike, there are some core topics that comprise the foundation of a solid compliance-training

programme. To the extent these topics are relevant to a firm's business, these pillars of compliance should be considered:

- *Conflicts of Interest.* This training should focus on both how to identify a conflict as well as how to address a conflict (eliminate it, or mitigate and disclose it). The training should also provide common examples of conflicts of interest, such as those that are often inherent in revenue-sharing arrangements and other compensation arrangements between the firm and a third-party provider.
- *Insider Trading.* The financial services industry's continual M&A activity creates an environment ripe for both deliberate and inadvertent sharing of private company information. While senior executives and members of boards, perhaps the most common types of recipients of insider information, should be well trained to prevent insider trading violations, such violations can occur at all levels of an organisation. Therefore, a firm should ensure it has trained all employees regarding insider trading prohibitions, how to recognise if one has come into possession of inside information, and the importance of reporting the receipt of such information in accordance with applicable policies and procedures.
- *Privacy Practices.* Regulation S-P imparts notice requirements and places restrictions on a financial institution's ability to disclose nonpublic personal information (NPI) or personally identifiable information (PII) about its consumers.⁵ The regulations governing such disclosures are well defined and require clear explanation to the consumer of the firm's privacy practices via a privacy notice delivered to the financial institution's consumers. Employees of firms governed by Regulation S-P should be trained not only in ensuring proper delivery of a privacy notice; they must also understand and be able to explain to the consumer the situations in which the consumer's NPI or PII may be shared. In many cases, the consumer will have the ability to 'opt out' of such disclosure. In these cases, the financial institution's employees must be properly trained on firm procedures when a consumer exercises his or her right to opt out. Further, the SEC cited common privacy practice deficiencies and weaknesses in an April 2019 risk alert,⁶ noting failures of firms to adopt or implement policies and procedures, and failure of employees to comply. These deficiencies crossed over into the realm of cybersecurity and included weaknesses in adopting policies governing the use of personal devices, inadequate training on use of encryption when transmitting NPI or PII, and failure to maintain an inventory of such information.
- *Cybersecurity and Protection of Client Information.* As noted by the SEC in its January 2020 release on Cybersecurity and Resiliency Observations, training is a key component of an effective cybersecurity programme.⁷ Training employees on common phishing scams and other attempts to steal information, how to recognise fraudulent requests for sensitive information, and the firm's cybersecurity practices provides staff with basic information they need to protect the firm and its clients and heightens their awareness of cybersecurity threats.
- *Use of Social Media.* Marketing professionals and business development coaches will tout the benefits of employing social media strategies to expand a firm's client base, reach new audiences and communicate exciting developments at a pace not achieved with traditional advertising. These experts, however, rarely consider that compliance restrictions may limit a firm's messaging. To the extent a financial services firm permits its representatives and staff to use social media for business purposes, the firm should consider the topic of compliant

social media practices as a core element of its compliance-programme training.

- *Whistleblowing*. Firms that are registered with the SEC should not overlook the importance of the SEC's Whistleblower Programme in its compliance-training programme. Established pursuant to Section 922 of the Dodd-Frank Act and implemented by the SEC in rules effective August 2011, the SEC's Whistleblower Programme provides significant monetary awards to eligible individuals who come forward with high-quality original information that leads to an SEC enforcement action in which over US\$1m in sanctions is ordered.⁸ The SEC encourages employees to report suspected misconduct internally, as well as to the SEC. Appropriate training should highlight how the firm will investigate and address matters reported internally and must provide employees with the information and resources to make such reports.
- *Anti-Money Laundering (AML)*. Section 352 of the USA PATRIOT Act amended the Bank Secrecy Act (BSA) to require financial institutions, including broker-dealers, to establish AML programmes.⁹ The Financial Crimes Enforcement Network of the US Treasury is charged with overseeing financial institution's compliance with the PATRIOT Act. These programmes must include policies and procedures to achieve compliance with BSA requirements regarding the recording, and filing of reports on, financial transactions that may be useful in investigating and prosecuting money laundering and other financial crimes. Training on the requirements of a firm's AML programme is mandatory.¹⁰ Broker-dealers should ensure that their training programmes educate employees about their responsibilities under the firm's AML programme and the BSA. While investment advisers are not formally covered under the PATRIOT Act, the BSA or any implementing regulations, many

investment advisory firms have adopted AML policies and procedures, including the provision of training as a best practice.

IDENTIFYING TRAINEES

All financial services firms should consider training employees on core compliance topics, such as those discussed earlier. A comprehensive compliance-training programme may be augmented by assigning specific training to associates based on their role or job function within the organisation. Examples include:

Members of the board and those with senior or management positions. Board members and those in senior management positions should receive training that focuses on protecting sensitive or confidential information, preventing and avoiding insider trading, and compliance with a firm's code of ethics. Such training could also address handling whistleblower reports, antiretaliation training and creating a culture of compliance generally.

Employees with access to client funds. Individuals responsible for customer funds or fund assets, such as those who act as trustees or have power of authority over client accounts, those who perform billing functions, those who use client login credentials to manage client accounts, and general managers of a fund, must be properly trained on custody matters and the safeguarding of client assets.

Traders, portfolio managers and those responsible for arranging or effecting transactions. Employees engaged in trading or effecting securities transactions must be trained on a firm's execution obligations, such as an adviser's duties to seek best execution and comply with soft dollar arrangements.

Solicitors and others with whom the firm has entered into referral arrangements. Both FINRA and the SEC have

adopted rules regarding the activities of solicitors for financial services firms.¹¹ These individuals must be trained on the requirements applicable to their solicitation activity to avoid potential regulatory violations.

Compliance personnel. That is right — who will train the trainers? It should not be assumed that compliance professionals do not need compliance training. In fact, it is critical that a firm's compliance staff stay abreast of the latest compliance developments, which can range from keeping informed on pending regulation to examining risk alerts and enforcement actions. In addition, compliance professionals are responsible for ensuring the firm is prepared for a regulatory exam at all times. Conducting a mock exam is an excellent method of training compliance personnel. Additional sources of training for compliance professionals include reputable industry conferences, professional compliance certification programmes, and national and regional events organised by regulators, such as SEC and FINRA outreach programmes.

New employees. Complying with legal and ethical requirements should be an ongoing condition of employment. These concepts can be introduced in employment agreements or employee handbooks provided to newly hired staff, in addition to inclusion in the firm's compliance manual. New hires should always participate in training specifically designed to introduce them to the firm's policies, including compliance policies and procedures. Such training will frequently include collection of attestations or certifications from the new employee that he or she has complied with the firm's initial reporting requirements and agreement to abide by firm policies and applicable regulations.

Role changes and promotions. Appointments of existing associated persons to new positions within the firm often warrant

a review of training needs to ensure the employee is aware of his or her compliance obligations as they relate to the new role.

THE MANY FORMS OF COMPLIANCE TRAINING

Can Compliance Actually Be Fun? Well, for many, that might take some convincing. Consider, however, that trainees are more likely to pay attention and be genuinely engaged if they either have something to gain, such as company swag or a bonus day off, or if they have a reputation to protect. Games and friendly competition not only go a long way in engaging staff, they also support retention of critical themes and messaging in the firm's compliance training. Creative examples include 'Are You Smarter Than Your CCO' and 'Compliance Jeopardy'. Crafting interactive formats like these takes extra effort, but provide more positive learning environments that help negate the stigma that compliance is boring, and provide the added benefit of team-building and comradery.

When it's not all fun and games. If organising games and handing out prizes do not fit a firm's culture, there are more traditional ways to educate employees. Formats include live presentations, pre-recorded webinars and online courses (Table 1). Each are explored subsequently.

- *Live Trainings.* Live, or in-person, training sessions are generally delivered by the firm's compliance personnel or a third-party compliance professional, and content can be tailored — even during delivery of the training — to emphasise a point or to address attendees' questions. This format works well for smaller audiences, such as small- to mid-sized firms training all employees on core compliance concepts. This format also works well for specialised training delivered to small

Table 1: Forms of compliance training: benefits & constraints

<i>Form of Training</i>	<i>Benefits</i>	<i>Constraints</i>
Make It a Game	Interactive, engaging Enables team building	Takes time and effort to customise
Live Trainings	Content can be customised Facilitates interactive dialogue among attendees	Difficult to schedule with larger audiences
Prerecorded Webinars	Content can be customised Accommodates varying schedules Flexibility in timing of delivery to various attendees	No opportunity for questions, interactive dialogue
Online Vendor Courses	Flexibility in timing of delivery to various attendees Ability to quiz attendees and assess comprehension	Lack of ability to customise content No opportunity for questions, interactive dialogue

groups of people who share a similar function at the firm. Small group trainings facilitate interactive dialogue, enabling attendees to benefit from hearing others' questions and comments. While training could take place in a conference room, in which the trainer(s) and trainees are present, for firms or groups of employees that are geographically dispersed, the concept of 'live' training could still be applied with the assistance of video conferencing technology.

- *Prerecorded webinars.* Like live trainings, prerecorded webinars offer the ability to customise content and are often delivered by the firm's compliance staff. Larger firms with many employees who have conflicting calendars are likely to find more success with prerecorded video trainings, as they can be distributed to staff and viewed by each employee at a time that is most convenient. While prerecorded trainings provide scheduling flexibility, they lack the opportunity for attendees to ask questions or to engage in meaningful dialogue and to learn from each other's questions.
- *Online courses.* Firms that do not require extensive flexibility regarding content,

or those with many employees who need to electronically track completion of trainings, may elect to use a third-party online course platform to distribute their compliance-training programmes. There is flexibility in the timing of delivery as well as in rolling out certain content to select groups of employees; the biggest limitation of third-party content, however, is that it is not tailored to the firm's own compliance programme. Canned courses are useful in providing general education on compliance rules and concepts, but they do not speak to a firm's adopted policies and procedures or the application of core compliance concepts to the firm's operating model. Firms willing to work with this limitation, however, will find the benefit of being able to assess trainee comprehension via quizzes or tests, as well as tracking course completion and participation, to be instrumental in assessing the effectiveness of its training programme. Many of these platforms also offer reporting on commonly missed questions so the firm can consider retraining on those concepts.

Formalise the Firm's Education Programme. Designing a proprietary training

structure, such as 'ABC Adviser University', can help to formalise and organise a firm's training programme. This structure can be applied across numerous areas of the firm's business in addition to compliance, such as human resources (harassment training) or job function training. Each subject of study can have designated core, or required, courses, as well as 'electives'. The firm could even assign credits to its courses. Students who successfully complete a minimum number of courses in various subjects, including compliance, can earn internal diplomas or plaques in recognition of achievement upon obtaining a certain number of credits. Of course, if electing to extend content of the education programme beyond areas of study related to compliance, coordination with management teams from other departments is necessary to ensure a comprehensive programme. Positioned dexterously, this concept not only serves to fulfil the firm's training and educational needs, it brands the firm's training programme and establishes gravitas, while simultaneously fostering pride in the organisation and rewarding trainees with a sense of accomplishment.

Create Accountability. Some of the most effective ways to create accountability is to reward success, as well as to impart consequences for failure. Both approaches are likely to result in observable increases in participation and effort. In corporate group-training situations, it is fairly easy to reward success by providing the group that demonstrates the most knowledge with something of value, such as a free lunch or an early departure day. Imparting consequences for failure is also, however, an effective tool, if employed in a positive manner. One way to accomplish this is to require the 'failing' group, the team that demonstrated the weakest comprehension of the subject matter, to prepare and deliver to the remaining groups a training session covering the content or compliance

themes they missed. This can result in a fun, team-building activity, yet emphasises accountability and encourages trainees to invest efforts upfront. An added benefit is that the team which then becomes responsible for training its peer groups will come out of this exercise well versed in that particular compliance concept and will become a resource for other staff.

Casual Options. To keep salient points fresh, firms that employ an intranet for corporate messaging might consider using this platform to 'drip' compliance concepts, such as publishing a 'compliance question of the week'. Other forms of compliance education, which can be delivered between formal training sessions, are peer-to-peer trainings, such as 'brown bag lunches' or 'coffees with colleagues'. These brief sessions (generally under an hour) provide a casual and relaxed training environment, and attendance can be mandatory or optional. Each of these options also facilitates 'micro-learning', through which concepts are taught via a number of short courses or modules, rather than traditional, longer training sessions. Breaking down comprehensive compliance concepts into shorter, bite-sized pieces makes it easier for students to absorb and retain content.

TIMING OF DELIVERY

Unless the frequency of training is specified by law or regulation, firms must make their own determination as to how often to provide training. As a general rule, firms should distribute training on core topics applicable to all employees annually. In addition, if content is dense or voluminous, it may be advantageous to dissect the training into digestible monthly or quarterly segments. As discussed earlier, microlearning can address concerns about short attention spans and may offer more successful retention of important concepts.

Beyond scheduling standard training, certain situations may trigger off-schedule training targeting specific topics. These may include, but are not limited to:

- Changes in regulation
- Amendments to the firm's compliance policies or procedures
- Deficiencies cited in a regulatory exam
- Compliance programme violations identified via an internal or externally conducted compliance assessment
- Operational weaknesses or failures
- Observations of a general lack of employee understanding of their compliance obligations

Finally, every firm should have a formal process for rolling out training to newly hired staff to ensure all of the firm's employees have received the training required by the programme, regardless of whether or not they were employed by the firm when a particular training was held.

IMPLEMENTATION

Once a firm has selected all topics to be covered, who to train on what topics and when and how to roll out the firm's compliance-training programme, it's time to put the programme to work. Influential messaging is critical, and it starts with the firm's 'tone from the top'.

The management of each firm, such as the CEO, should emphasise an employee's responsibility to understand and adhere to the firm's compliance policies and procedures and actively participate in training. This will establish the training programme as a pillar of the firm's overall compliance programme. Equally as important is encouragement from the managers of each business line, who are familiar with behaviours of each member of their team, in order to provide ongoing encouragement

for participation and completion of training requirements.

As the firm's training commences, incorporating a prerecorded or live message from a selected manager can be impactful. If feasible, enlisting one or more of these managers to participate in delivery of the training is an effective way to convey the significance of compliance themes incorporated into the training programme.

DOCUMENTATION

It goes without saying that documentation of a firm's compliance-training programme is an essential element of that programme. Documentation regarding the firm's training should contain evidence of topics covered, when the programme was distributed and who participated in the training. It should also include a description of the firm's planning process and what drivers impacted decisions that were made regarding content and attendees.

As a firm distributes its compliance-training programme over time, observations regarding commonly missed questions or concepts should be made, and those concepts should be incorporated into subsequent trainings. These lists should be reviewed over time to identify patterns that might justify not only adjustment in the programme's content, but a change in format or method of delivery, as well.

MEASURING THE EFFECTIVENESS OF COMPLIANCE TRAINING

It is critical to understand whether or not a compliance-training programme is effective. While assessing employee understanding after completing training can be helpful, it is not necessarily sufficient. Determining what trainees know both before and after the training can provide more useful information on the

effectiveness of the training. Authors Hui Chen and Eugene Soltes discuss the pitfalls of compliance programmes and training without effective measurement in their article ‘Why Compliance Programs Fail — and How to Fix Them’.¹² They recommend designing a system to demonstrate the link between the training programme and changes in employee behaviour using a regression model that can measure the desired result while controlling for or excluding outside factors. Another method of assessing comprehension and evaluating the results of a training programme is the Kirkpatrick Model,¹³ which determines aptitude based on four levels of criteria. These include: (1) the reaction of the student and their thoughts about the training experience; (2) the student’s resulting learning and increase in knowledge from the training experience; (3) the student’s behavioural change and improvement after applying the skills on the job and (4) the results or effects that the student’s performance has on the business. While not all firms will have the resources or ability to implement one of these models, they should at the very least assess employee knowledge after the training and, if possible, design ways to measure employee behaviour post training.

SUMMARY

A firm’s chief compliance officer manages and administers all aspects of a financial services firm’s compliance programme; the responsibility to maintain compliance with rules and regulations governing the firm’s business, however, rests on all employees. Providing comprehensive compliance training to firm personnel is critical to

fostering a business culture where compliant, legal and ethical practices are the norm.

The most thorough policies and procedures cannot mitigate the numerous risks faced by a firm if the employees do not understand and take seriously their ongoing compliance obligations. Comprehensive compliance training programmes that are thoughtfully designed to fit the firm’s culture and take into account the firm’s goals and the needs of employees are the most effective way to communicate firm policies and ensure that staff are properly educated on the important role they play in protecting the firm.

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