



Financial Services

Regulatory Change Management – Leveling the Playing Field

WHITE PAPER

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Regulatory Change Management (“RCM”) is a relatively new compliance concept. Born out of the tremendous increase in regulatory activity post the 2008 global financial crisis, RCM as a discipline is fairly self-explanatory. It is the process by which financial institutions manage change. Simple, right? In fact, Compliance Officers who have been in practice for a significant length of time may balk at the idea of labeling a function that is so axiomatic to the compliance role. However as simple the RCM concept is, the challenge lies in the application. The sheer volume of changes that compliance officers must obtain, assess, and operationalize within their institutions has become daunting. The process is further complicated by the size of the institution, its product line, and geographical footprint. There are now 1,200 regulators across the globe producing an estimated 2,000 changes daily. Compliance Departments are already being asked to do more work with fewer resources and many are struggling to keep their core compliance running smoothly. A strong RCM process can help to alleviate some of the pressure on compliance. In this article, we will explore a potential framework for approaching RCM.

“Okay you guys, pair up in threes!” – Yogi Berra

Taking some advice from Mr. Berra, you might consider your RCM program in light of three simple questions: (1) Are you confident that you know the full scope of the laws and regulations that your institution must adhere to?; (2) Are you confident that you’re adhering to all of those laws and regulations?; and (3) Can you prove it?

The first question, ‘are you confident that you know the laws and regulations that your institution must adhere to’ refers to getting your arms around all of the global regulators and rule books that impact your business. One way to help ensure that your answer to this question is “yes” is to develop a regulatory inventory or Regulatory Library.

Recall the well-known quote from the classic 1980’s movie *Field of Dreams*: “If you build it they will come.” Sounds easy, right? If only financial services compliance was like a baseball field, or if you want to get technical, a haunted baseball diamond in the middle of a cornfield in Iowa. It would truly be a dream if you built your compliance program and wrote robust policies and procedures, and your firm just followed them, or at least read them.

Sadly, this is not the case. In fact, your Compliance Program is probably more akin to the cornfield than the baseball diamond. The care and feeding of your compliance program is an active proposition. It’s not something that you build and then expect to magically work. It is not enough to write policies and procedures; you must be sure that they reflect your business. Additionally, the firms’ policies and

procedures must be continually tended to and updated to reflect external impacts such as regulatory change, and internal impacts such as changes to your business, products, and people. Ensuring confidence in your program means not leaving it to hopes, wishes, and dreams but to actively monitor, manage, and evaluate on a continuing basis your policies and procedures.

“There are three types of baseball players: those who make things happen, those who watch it happen, and those who wonder what happens.” - Tommy Lasorda

Once you have identified your regulator and the accompanying rulebook and have in fact inventoried your Regulatory Library, you must work to ensure that that Library remains up to date. After all, complying with a rule or regulation won’t do you much good if it isn’t the current version; a Regulatory Library filled with expired rules and regulations isn’t worth the platform (e.g., the database, software, or paper) that it’s stored on. In the past year, Wolters Kluwer has identified over 20,000 regulatory changes across all the jurisdictions that we monitor. The only constant within the financial services regulatory environment is that there will be change. In order to keep your compliance program current, you need to devise a way to ensure that you are monitoring and keeping track of those regulatory changes that impact your Regulatory Library.

How do you access the change? There are a number of ways firms keep up with regulatory changes. Compliance Officers and Legal Departments may subscribe to email alerts

from a variety of resources, such as from the regulators directly, industry groups, third party content providers, and law firms or a mixture of these resources. Additionally, Compliance Officers may actively search favored websites for information. Much in the same way that you want to ensure that you know of all of the rules that impact you, you also want to be sure that you have a consistent and trusted process for ensuring that you capture all of the changes that will impact your business. Many compliance policies and procedures hinge on consistent and repeatable methodologies, and I would argue that the best way to ensure that you are getting all the information that you need is by approaching change-monitoring as a consistent and repeatable process. Pick a process, vendor, methodology that works for your firm, that is consistent, repeatable, and defensible, and that gives you the confidence that you need in order to ensure that you have the most up to date information possible within your Regulatory Library.

Once your firm has a Regulatory Library and a consistent methodology for ensuring that it is monitoring changes and updates, then you need to do an impact analysis of any incoming changes or updates. You need to answer questions like:

- What happens when there is a change?
- Is there a specific workflow launched?
- If there has been a change to policy, what does your firm do with the update?
- If there is no change to policy, what does your firm do with the update?

A regulatory change must be reviewed and assessed for its impact on the firm, and a decision must be made whether or not to amend the firm's policies and procedures. While the Compliance Department may own the process of monitoring for change and managing updates (and may even own the workflow for assessing that change), it is likely that there are other stakeholders within the firm who should be involved in the assessment. For example, business owners, risk and other compliance professionals and specialists, and the legal department might be involved in the assessment. A consistent, repeatable, and defensible methodology for assessment is again the best course of action.

“We know we're better than this, but we can't prove it.” — Tony Gwynn

The Compliance Department should evaluate the regulatory change in light of the policies, procedures and current practices of the firm. Identified stakeholders should weigh in to help with this assessment if it is determined that the policies and procedures must be amended. This is more than just a paper based-exercise of amending the policies and procedures. If the policies and procedures require updating, then the underlying practice the document describes must change as well. Following that, the appropriate parties need to be made aware of and trained on the change. Best practice also suggests that this internal vetting and assessment be recorded for future reference. Recordkeeping is a lot like elementary school math. Teachers would caution, that in order to get credit on a problem you must “show your work,” e.g., show us the work that it took for you to get to the answer. Compliance record keeping is the same: if you don't have the documentation surrounding any action, it's as if that action didn't happen. There is an old philosophical question that you might be familiar with: “If a tree falls in a forest and no one is there to hear it, does it make a sound?” To a compliance officer, the answer is no, not if no one is there to record the sound, or at the very least willing to sign a certification to be record kept in the compliance files.

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