# JUSTIFY YOUR WORTH: ADD VALUE TO YOUR CUSTOMER'S BUSINESS OBJECTIVES

By Carrie B. Cote, Esq.

As compliance professionals, we must justify the cost of compliance. It is often not the act of complying that has our clients concerned, but rather the cost of complying. How often have you heard the words "Assume the risk" from one of your clients? In many instances, despite our best efforts to educate, inform and advise our clients, a risky business decision is made in the interest of saving dollars. In this economy, no matter what our business is, we are all looking for ways to conserve our resources. Not only are we looking for ways to save, but we have to contend with the increasing cost of virtually everything. Even the cost of compliance is increasing every year. In a recent survey conducted by Thomson Reuters entitled, "Cost of Compliance Survey for 2011," 71 percent of the 371 companies surveyed said they foresaw an increase in the cost of compliance for the coming year. But as we all know, scrimping on compliance is not in our client's best interest. As such, we must do our best to substantiate our services and add value to our client's business plans.

One of the obvious ways to demonstrate that compliance is worth the pecuniary expenditure is to show your client the laundry list of increasing monetary penalties levied against the corporate world over the past ten years. It takes no more effort than picking up the daily newspaper to see the crippling affects that fines have on businesses across the country and around the globe. A U.S. defibrillator manufacturer was recently fined $296 million for its non-compliance with requirements to report defects in a product. In 2009, Intel was fined $1.45 billion for unlawful rebating strategies. In 2002, Prudential Insurance was fined $4 billion for unlawful sales practices. HSBC has been the recipient of recent cease-and-desist letters from both the Office of the Comptroller of the Currency and the Federal Reserve Board for deficiencies in its Anti-Money Laundering program and related violations. The cost associated with these violations may likely reach $1 billion. The message to convey to our clients is that the cost of compliance failure, whether it is in the thousands, millions or billions of dollars, could be avoided with a strong compliance program.

The idea of trying to quantify the cost of compliance is not a novel one. Many companies have tried to put a price tag on compliance and validate the need for a proactive compliance approach. One example of the quantification of the cost of compliance is a Benchmarking Survey conducted by the Open Compliance & Ethics Group in 2005. This survey estimated for every $1 billion in revenue, the cost of a compliance program is less than $6 million. Similarly, META Group conducted research for PricewaterhouseCoopers that estimated costs for compliance failures for companies with annual revenue of $1 billion reached a staggering $81 million. Based on these statistics, the cost of maintaining a compliance program is far less than the potential penalties for non-compliance.

Now that we have convinced our clients that compliance is the cheaper option, it is also important to assure them we are not just here to protect them from fines, lawsuits and sanctions. Dedicating resources to compliance efforts is also an obvious way to defend against the reputational consequences that await a well-publicized sanction. When a client's name hits the headlines, any misconduct has the potential to immediately impact the bottom line. In fact, I am sure that many of us spend time quantifying reputational risk for our clients and answering the question, "What is the cost of negative press?" The answer is that the cost of negative press includes irreversible damage to a company's reputation and brand, both of which can lead to loss of customers, shareholders and new business. One recent example of reputational damage was quantified by one expert who estimates that the reputational cost alone for BP's oil spill last year in the Gulf of Mexico will cost the company $12.5 billion in decreased market cap. In an article written by Jonathan Hemus of Insignia Communications, Hemus estimates Toyota's brand is worth $25 billion less this year than a year ago due to mishandling its recall crisis in 2009. The best way to combat reputational risk is to prevent it and manage it. From a compliance perspective, prevention comes in the form of building and maintaining an effective compliance framework. The essential elements of such a framework include commitment and accountability, documenting policies and procedures, monitoring and testing compliance with applicable rules and regulations, compliance training and reporting to senior management.

An additional motivating factor, although less obvious and therefore something to opine on when you can, is that having a well-oiled compliance program helps save time, create efficiencies and increases a company's ability to react to market changes more quickly. For example, when a client is working towards getting a product to market or preparing an advertising campaign, all projects that are designed to bring dollars in the door, and aligning a compliance program with business goals and objectives will get these initiatives to market quicker. It is critical to a company's success to ensure that the compliance culture allows for you to have a seat at the table for the creation as well as the review of an initiative.

With that, comes the idea of integrating compliance into the daily practices of business operations. Compliance should not be layered on top of business operations, but should run parallel. The goal is to create efficiencies when a review is needed to avoid wasted resources. I am sure each of us has been asked to sign off on an initiative that does not meet the current risk culture for a particular business and must be abandoned or severely amended, wiping away time and money already spent. Had compliance been at the table with the business line from the start, it could have steered the initiative down a path that both obtained the business's objectives and remained within the compliance requirements. Making compliance a consideration up front provides greater potential for improved business decisions, and increased revenue.

Adding value to a client's business process is more than expeditiously providing a thumbs-up on an initiative. It also means educating the business line on compliance expectations. When business objectives are aligned with a compliance program, compliance professionals have the responsibility to hold up their end of the bargain.

Therefore, it is critical to have a consistent approach when reviewing a business initiative. Consistency creates an expectation on the part of clients so they are aware of the requirements to get a product to market. One best practice adopted by many government entities and compliance professionals is the establishment of a list of common compliance requirements within their client's area of business. When shared with clients, this list can provide consistency and set an expectation of what is necessary to roll out a compliant product. This type of uniformity within a compliance department can add value and decrease the cost of compliance.

Another added benefit resulting from a solid compliance program, and one that should never be ignored, is the value added when a company fosters an environment of integrity and ethics. We can create a program for success but it is the top-down tone of an organization that truly cultivates a successful compliance program. Senior management must embrace the idea that everyone in the organization is responsible for compliance and then communicate the importance of compliance to its employees at every turn. This communication begins at Day One with new employee training and is reinforced through annual training and readily accessible company policies. Educating staff about the "why" is just as important as the "how." Without substance or awareness around a directive, employees may carelessly complete their tasks, or may skip critical regulatory controls all together. Imploring staff to make the right decisions alone does not foster the environment that will reduce regulatory violations, fines, sanctions and audit findings. However, ensuring they understand why they are supposed to do something will often reduce loss events and increase the number of events identified by internal staff rather than outside sources. When everyone has ownership of compliance, every day is presented with the opportunity to get it right.

So, the next time you are faced with the need to justify expenditures for compliance purposes, I ask that you try a few things. First, pull up a recent news website, type in the words "Fine or penalty" into the search engine and see what comes up. Arming yourself with current real-life examples of compliance failure consequences can really be persuasive. Next, look up some recent case law that evidences the potential liability facing businesses today. It will help your client understand that the current risk appetite does not include leaving a compliance matter unaddressed. And, lastly, review your recent work product and make your client aware of the collaborative success stories for aligning business objectives with compliance. Informing your clients that there are real-life consequences stemming from sanctions, reputational damage and loss of an efficient work environment will give them the opportunity to make informed decisions and will evidence your value as a trusted advisor in their process.

Carrie B. Cote, Esq. J.D is admitted to the bar in Maine and Connecticut. She is employed by the Compliance Risk Management department of TD Bank, N.A. Carrie currently supports TD Insurance, Inc. in its compliance efforts and previously supported all lending lines of the bank.