There is no understating the importance of the establishment of a solid compliance program within today’s business environment. A multitude of resources and tools exist and are available to assist companies with establishing processes to meet the massive onslaught of regulatory requirements. As important as the establishment of a program is, we must not lose sight of the criticality of sustainability efforts and monitoring around the effectiveness of those programs that we work so hard to establish.

Regardless of compliance requirements, chances are your company has scrambled to adequately address the various requirements. As we’ve noted before, compliance is no longer the sole responsibility of a select few. The resources and time required to ensure your program continues to maintain a solid foundation and to monitor its effectiveness can become overwhelming and costly. In addition, if your compliance processes are not centralized, adequate coordination and management can become difficult. Compliance requirements can vary from state to state and industry to
to industry. In today’s business, failure to comply can result in both civil and criminal penalties for companies and their executives. One of the difficulties company’s face in developing their programs is that any laws and regulations related to compliance requirements may dictate implementation of administrative, physical and technical components, but the legislation does not necessarily recommend the specific actions companies should take.

There was a time where focus on compliance programs was primarily on the program establishment and policy aspects. Compliance and risk professionals would find that often the majority of their time was embedded in writing policies, communicating and training and administration. When the Federal Sentencing Guidelines were released, compliance professionals were quick to recognize that the rules “gave credit” to organizations that had programs in place in the event the company experienced a compliance violation. Of course, this is an extremely important component however just as important is the monitoring and maintenance of that program.

In one of our webinars, I provided a scenario of watching a small child carefully build a tall tower of blocks and then proudly step back to admire his work while expressing his glee to his parents. How many times would we then see that child, within a short period of time, kick that tower of blocks town and destroy his wonderful accomplishment? Was the child’s purpose for kicking the tower down related to the thrill of demolishing his creation or just to watch the reaction of his parents who just provided him significant praise and admiration over his hard work? We will leave that one to the psychologists to figure out. But let’s consider that same scenario when it comes to work to build our compliance programs.

It is doubtful that any professional who spends a significant amount of his time working on a dedicated program for his company would then purposely do something to destroy or significantly damage that program. But … what about those who are not as connected to the ownership and construction of the program? Think about the above example of a child and his blocks. Let’s assume that instead of the child kicking his own tower down, a sibling or friend comes along and decides to take a swat at the tower. What is the child’s reaction? What would be the parent’s reactions and what would be any observer’s reactions? This one additional fact can change the whole scenario. We start to think about control mechanisms, punishments and responses. Should the parent have found a way to protect the child’s creation, should they have more closely monitored other children who may have approached the tower or maybe the aspects of respecting someone else’s property had not been properly instilled. Of course, there are many more assumptions that can affect this scenario, but think of these in relation to the corporate environment and any significant initiative or program that has been initiated. It is not good enough to just “build the tower”, we must find ways to manage, monitor and maintain that tower so that it is preserved for the future.

A top take away in a recent “Hot Topics in Compliance and Ethics” conference was that key decisions coming out of the Delaware courts found that corporate officers have the same legal duty of care and loyalty as corporate Directors. In fact, a compliance officer can be found personally liable for the illegal misconduct of employees if the compliance officer failed to implement and adequately monitor a company’s compliance program. That dynamic places a whole new meaning on the need to “manage and monitor” what is put in place. Somehow, when personal liability comes into play, individuals worry a bit more about their own accountability. Regardless of liability or accountability, the concept that we want to take away is the need to establish monitoring and evaluate processes within our programs to ensure their effective sustainability.

With that in mind, let’s talk about a few important concepts that are critical to ensuring sustainability and effective execution of your compliance program. As a side note, you may glance at the below captions and feel like “I know that!” I’m certain many who are reviewing this article do. I encourage you to not just read the caption. Review the information and questions presented here, break down any perceptual barriers that you may have and evaluate which concepts may be a challenge for your organization.

Full program buy-in
Here is where you want to ensure that buy-in from executives, the board, or other professionals, is complete, well-understood and fully intended. “Rubberstamping” a program because of regulation requirements is never a good answer.

Think about the issues faced by many companies upon the passing of Sarbanes-Oxley. Public companies were not given a choice. They had to comply. But one of the biggest challenges in the early days of compliance was truly getting organizations to understand the full ramifications of what compliance meant. Compliance was not to be just an exercise of documenting controls and executing tests. Compliance was expected to mean transparent evaluation and full disclosure of gaps. Yet, for individuals faced with executing the compliance requirement within their company, many found that the “transparent and full disclosure of gaps” could become a very difficult task within their company. In addition, many non-publicly traded or smaller companies stated that although they were not required to comply, they intended to adopt practices outlined by SOX as a leading standard. Yet, how often was this statement an attempt to present a positive front to their customers and investors without really adopting the stringent practices of identifying, evaluating, reporting and remediating gaps?

The lesson learned should be that in order for a compliance program to be effective and sustainable, it is important that those who will be required to support the program and provide oversight, need to understand the full ramifications of program aspects. Internally identified compliance issues must be aggressively addressed and remediated rather than quietly pushed aside. Also, it is important to NOT “shoot the messenger.” Often, those tasked with monitoring compliance issues become concerned when they identify a gap within the processes. In theory, they have done their job in properly evaluating the issue and identifying the gap. But if the reaction by management or the Board is one of “it is not a big deal”, or “prove the gap resulted in a problem” or worse yet, “we’ve always done it like that and the auditors have never said it was a problem,” the compliance professional may be reluctant to bring the issue forward. This, in essence, is an example of lack of full buy-in of a program. Buy in should mean that you not only support the building of the program, but you also support actions that come from monitoring and testing of the effectiveness of the program.

Well-defined organizational roles

This is one of those topics that can often be easier said than done. With organizations comes politics and with politics comes territorial boundaries. The world of compliance has existed for many years. It has tapped into the resources of legal departments, risk departments, insurance and credit areas, accounting and auditing and even operations or environmental and health and safety. Knowing that so many groups can be impacted, you can begin to see the difficulty with adequate definition of roles and responsibilities.

Some organizations have assigned a “Corporate Compliance Officer.” This can be considered a leading practice when the compliance officer serves as the coordinator and administrator of the various procedures required to ensure compliance. However, it does not mean that the Compliance Officer owns all of compliance. Compliance, just like risk and internal controls, is owned by each individual in the company who executes a role that may be bound by rules or standards.

Even for company’s who establish specific compliance departments, the concept of roles and ownership can still be difficult. As previously stated, there are so many areas and groups who “have a piece of the pie.” It is natural for individuals to feel as if their space or territory is being invaded. This is why it is critical that roles, responsibilities, authorities and assignments be well outlined and understood. Political barriers must come down if a compliance program is to work effectively. All parties including legal, finance, audit, compliance, risk management etc., must be able to work cohesively and cooperatively on the various aspects of program establishment and monitoring regardless of organizational positioning. Defining roles and responsibilities and ensuring they are well known and accepted within the organization will go a long way in managing the various personalities that can come into play.

Identification of existing or emerging compliance regulations

This step can definitely be a challenge. How do you ef-
effectively monitor all the types of regulations that your company is required to comply with? Many companies have legislative groups that are in tune with new or emerging legislation that may impact your specific company, but how do you ensure that critical information is timely delivered to the compliance professional required to establish procedures for the company?

Multiple types of software exist that are designed as regulatory implementation and compliance tracking tools. The software combines regulatory content and tracking capabilities to help compliance staff manage and implement the latest regulatory changes. Important aspects of this software include the ability to access versions of proposed bills and regulations as well as bulletins within the scope of various regulations. In addition, the software provides abilities to archive activities and create a record that can be accessed for internal audit or formal market-conduct examination. The software that may be best suited for your company can vary significantly and requires dedicated analysis of needs and capabilities as well as cost benefit analysis. The important point to note is that the capability exist, it is up to the compliance professional to determine the best method to utilize for their company. If you are not aware of software alternatives ... “Google It.”

Adequately define and plan regular assessment processes

Many professionals believe, what goes unmonitored, may go unmanaged. The best compliance programs are those that adequately balance implementation of procedures and ongoing assessment of effectiveness. You may have heard the saying “Don’t implement a policy you can’t enforce.” This isn’t to say you should ignore policies that need to be implemented, but you need to ensure that the policies you do implement can be adequately supported, resourced and monitored. I’ve often heard the comment that “Enron had a best practice code of conduct.” What good did that document do for Enron? Unless procedures are in place to assess compliance with standards and to support that assessment, having a leading practice written document on compliance may not serve to be of value to your company. A few key things companies should ensure when determining their assessment processes includes:

- Procedures or programs established can be effectively managed and supported.
- Programs are routinely evaluated to ensure they meet any regulatory requirements.
- Assessment processes are in place and adequately supported by the organization. Adequately supported must mean that the organization seriously considers recommendations or observations that may come to light during the assessment.
- There is adequate support and assistance from executive management and the Board on compliance issues.

Strong communication and training

This component could be viewed as one of the later stages in establishing a compliance program. Although it may be a step that is performed further along in the processes, it is very important to consider the needs for education and training related to your compliance initiative early in the process. Education and training could be the key to obtaining adequate buy-in from not just the Board and senior management but also from employees. In addition, adequate training and communication are essential to ensure professionals understand requirements and expectations.

A good example of this concept can be related to what companies do or don’t do when addressing the topic of fraud in their environments. Researchers have found that a key to preventing fraud is fraud awareness. Some executives, however, unfortunately think that training professionals on “fraud” or even “compliance” issues could result in teaching the professional how to commit a wrongful act. This way of thinking could significantly hamper your organizations ability to establish a sustainable program. Effective communication and training are keys to ensuring your compliance initiatives are well supported and understood. If professionals don’t know the rules, how do they know they aren’t following them? Don’t let the communication barrier impact your program. Address training and communication needs early and often.

Consistent procedures for addressing non-compliance
Consistent is the key word here. The last thing a company wants in relation to its compliance initiatives is to have professionals feel like there is a “double standard” when it comes to who has to comply.

Compliance requirements should be consistent throughout the company and for all employees. Correspondingly, there should be a well-established protocol for addressing acts of non-compliance. That protocol should be followed regardless of who is deemed to have created the violation.

As with whistleblower hotlines, individuals often ask how you can convince employees that non-compliance issues are being properly addressed. You certainly don’t want to “name names,” or “hang the perpetrator out to dry.” Yet it is important that personnel understand there is a complete and fair evaluation process when looking at non-compliance issues and that the process is followed in all circumstances. This will assist in providing strength to your compliance program credibility.

Continual improvement processes

Just as mentioned above with monitoring processes, it is important that companies take a view of “ongoing and continual improvement” when it comes to compliance programs. The business environment continues to change and will keep changing. We must not view our compliance initiatives as a one and done event. With the never ending onslaught of new and continually changing legislation, it is critical to look at our compliance initiatives as evolving processes. Consider looking at your program on a process maturity scale. The top of the scale would mean that you are continually re-evaluating, monitoring and testing your processes to ensure they are meeting the needs of your company.

Overview

Yes Virginia, compliance issues are here to stay and only getting larger. Make sure you right-size your program to your company’s needs. This will help ensure sustainability. Don’t underestimate the need for adequate buy-in from the Board and senior management. This will be critical to the success of your program. Ensure you have the proper champion within the organization to support your needs and insist on periodic reporting to the Board. They don’t know what they don’t know. Don’t let the “oops” syndrome catch you. Once you’ve had a compliance issue, it is much tougher to catch up with your compliance needs.