

Senior management training, accountability and oversight for anti-money laundering compliance

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Lauren Kohr, CAMS-FCI, CFIRS, has a background that includes more than 11 years of experience in the financial sector with significant experience in BSA/AML and OFAC compliance. Currently Lauren serves as the Senior Manager over governance, risk and quality control within the Financial Intelligence Unit at Pentagon Federal Credit Union, the third largest credit union in the USA. Lauren is responsible for several aspects of the BSA/AML compliance programme including risk assessments, policy/procedures, governance, quality assurance and merger and acquisition due diligence. Prior to her current role she was the Director of AML/BSA/OFAC Compliance at Metro Bank in Harrisburg, PA. During this time, she was responsible for developing, implementing and overseeing all aspects of the Bank Secrecy Act Compliance Program, including USA PATRIOT Act, Anti-Money Laundering and OFAC regulations. Lauren is continuously recognised as a central contributor within the financial industry for her strengths in BSA/AML compliance, governance, process improvement/implementation and quality assurance/audit reviews. Lauren was named the 2016 ACAMS Professional of the Year and authored the 2016 ACAMS paper of the year. She also currently sits on the Board of Directors for the US Capital ACAMS Chapter.



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ABSTRACT

The aim of the paper is to communicate to AML compliance professionals about the importance of educating their boards of directors and/or institutional management teams so that they can create a culture of compliance that will permeate the organisation from the top down. The paper discusses how to accomplish this through appropriate approaches to training, what metrics to focus, how to establish accountability and things to consider in a compliance/risk assessment. There are few references in the paper due to much of it being based on the collective experience of the authors and how such items were handled in the organisation where both previously worked: both authors carry similar principles into their current organisations. The general format of the paper is that of a white paper, in that the authors are trying to persuade the audience to take a similar approach to what they have outlined.

Keywords: *accountability, oversight, training, risk, metrics*

INTRODUCTION

Arguably no element is more important to the compliance programmes of the financial institution than the commitment of its highest-level leadership to promoting an unwavering culture of compliance. This is not a novel concept to most risk management professionals, however it presents a unique dilemma as they attempt to navigate through their often difficult, frequently confusing and sometimes thankless jobs. Even if compliance officers and staff are highly experienced and qualified, utilising state-of-the-art systems and performing with exceptional efficiency, their programmes can quickly deteriorate into problematic areas if leadership within the organisation does not consistently maintain a watchful, interested and concerned eye. Furthermore, they must be willing and able to take action to mitigate continuous risks, including provision of appropriate resources, communicating

compliance initiatives throughout the institution, enforcing such initiatives and taking an interest in learning about the present and future obligations of their roles.

Although most risk management professionals and compliance officers already have an incredible workload, a large portion of the responsibility for establishing effective oversight, accountability and training for organisational leadership falls upon their shoulders. How this is executed will vary between institutions due to differences in jurisdictional regulation, corporate structure and other factors. Nevertheless, a number of strategies exist that may be applied to fit the needs of various compliance programmes throughout the entire financial services industry.

Background

Although compliance and risk management functions encapsulate a variety of areas which all require a similar commitment from institutional leadership, this paper will focus specifically on anti-money laundering (AML) for the purposes of this paper. When discussing management or leadership the authors will be addressing all individuals at the board of directors and executive management levels.

Perhaps one of the best and most recent examples of why AML compliance is such an important issue is the guidance of the United States' Financial Crimes Enforcement Network (FinCEN) on establishing a culture of compliance.¹ This guidance was issued in August 2014 and identified six primary areas of concern. In summary, those areas are:

1. Leadership actively supports and understands compliance efforts.
2. Efforts to manage and mitigate Bank Secrecy Act (BSA)/AML deficiencies and risks are not compromised by revenue interests.

3. Relevant information from the various departments within the organisation is shared with compliance staff to further BSA/AML efforts.
4. The institution devotes adequate resources to its compliance function.
5. The compliance programme is effective by, among other things, ensuring it is tested by an independent and competent party.
6. Leadership and staff understand the purpose of its BSA/AML efforts and how its reporting is used.

While this guidance was issued with the United States' Bank Secrecy Act as well as other AML laws in mind and focused on financial institutions within the United States there are principles here that can be applied to organisations worldwide. The guidance tells us US institutions are expected to establish a strong 'tone at the top' when it comes to AML compliance in order to avoid failures and deficiencies in this area. In order to accomplish this management must decide on how much compliance risk they are willing to accept enterprise-wide.

That is where the responsibility of the compliance function comes into play. If leadership is expected to outline strategic objectives, including the identification of compliance risks and how such risks will be mitigated, they first need education from the subject matter experts. This begins with finding an approach to training and communicating appropriate information that fits for the particular management in that specific institution. Simply put, a one-size-fits-all approach is most likely to fall short of accomplishing the goal, especially when considering the differences from jurisdiction to jurisdiction. The AML compliance officer must take careful consideration into how to best interact and deliver information to management and it is the job of the compliance officer to adapt to whatever culture is in place to find a customisable approach that can be formalised and documented.

Crucially, it must be remembered that it may be necessary to try more than one method or channel before deciding which is most effective as compliance officers should always be attempting to make a connection that will enable them to demonstrate their knowledge in a way that builds trust.

Training approach

When formulating a training plan for management, as well as the institution as a whole, the current culture must be examined and considered when deciding how best to adapt to its nuances. Depending on the structure, frequency of meetings, and time allotted for training, the AML compliance officer will need to maximise time and focus on the highest priority items. The training plan should clearly define the following:

- Who is to be trained based on title or position – in many organisations those that need to be trained will include any individual on the board of directors as well as those who can be defined as executive or senior management.
- How frequently training is to be conducted – some organisations may be able to provide training on an annual basis while others will want the opportunity to get information in front of their leadership team as often as possible.
- What delivery methods will be utilised – this may include written reports, verbal communication, formal presentations etc.
- Who is to conduct the training – in some instances the AML compliance officer may feel more comfortable utilising a third party to complete the training for their leadership team.

Regardless of whether the AML compliance officer or a third party delivers the training it is important to establish the presenter as the subject matter expert and that management should pay careful attention to the message

being delivered. These training sessions cannot be seen merely as necessary exercises that are not taken seriously: there must be focus on high-level information that will be most pertinent to those in charge, including notable regulatory changes, enforcement actions and how management can be involved in the compliance initiatives of the institution in the most effective manner. Remember that the audience will not be well-versed in the day-to-day operations or lingo used by risk and compliance professionals so it is best to communicate in simple terms to avoid miscommunication.

Metrics reporting

One of the best ways to communicate compliance initiatives, work completed and use of currently available resources is through key risk and key performance metrics, which is applicable regardless of the institution or jurisdiction. For most, any or all of the following should be communicated to the top decision makers of the organisation on a periodic basis, dependent on the overall risk profile of the organisation:

- number of Suspicious Transaction Reports/ Suspicious Activity Reports (STRs/SARs) submitted to the functional regulator or financial intelligence unit (FIU) for that jurisdiction or institution;
- enhanced due diligence work completed on higher risk clients;
- large currency reporting (Currency Transaction Reports);
- sanctions or high-risk country review results;
- issues tracked or remediated from audits or examinations;
- accounts closed due to issues related to AML;
- trends of suspicious activities or changes in risk profile for the institution;
- current risks within the high risk customers, products, services and geographies;
- status of AML related training initiatives;
- resource needs, especially related to human and technological capital;

- competitor fines or public notifications of agreements to address issues with non-compliance.

Metrics may be provided in a number of ways. Charts, graphs and other types of visual aids can make it easier to conceptualise the true efforts of the AML officer and team. Being able to quickly access this information as well as other accomplishments of the AML team requires a strong governance function and active tracking of all of the completed tasks.

Equipping the metrics to the appropriate personnel, which in addition to top management may include departmental staff or others with a need to know, may not be enough. The data must also be communicated in a way that makes it easily understood. The data, without understanding of what it means, is not likely to provide meaningful assistance.

Accountability

Ultimately, the goal of the AML compliance officer, in training or communicating compliance initiatives to institutional leadership, is to impress upon management that they are ultimately accountable for the compliance or non-compliance of the organisation with AML laws and regulations.

Regulatory and oversight agencies are raising the bar for the Board of Directors and central decision makers respective to their fiduciary duty to ensure a strong culture of compliance exists related to AML. The increased responsibility requires greater accountability which could result in personal liability. Specific to the United States, the notion of increased accountability on the Board of Directors can be supported by the New York Department of Financial Services Superintendent's Regulations, Part 504 – Banking Division Transaction Monitoring and Filtering Program Requirements and Certifications.² The primary requirements of the new anti-terrorism and anti-money laundering regulation requires each New

York regulated institution to maintain a reasonably designed transaction monitoring programme and filtering programme for the purpose of monitoring transactions after their execution for potential BSA/AML violations and suspicious activity reporting and interdicting Office of Foreign Assets Control (OFAC)-prohibited transactions before they are consumed. The regulation also calls for a requirement that an annual board resolution or compliance finding be filed by a senior officer with relevant responsibility. This resolution or certification would indicate the programme of the financial institution meets the transaction monitoring and filtering requirements: this type of requirement strongly shows the evidence of the emphasis being placed by the United States regulatory agencies on the importance of ‘tone at the top’ related to the AML and Bank Secrecy Act (BSA) culture. Personal liability may be imposed if the transaction monitoring or filtering programmes of the institution are found to be deficient.

This does not mean, however, that all accountability can be put solely on the board. AML practitioners, specifically those designated as the compliance officer, are responsible for coordinating and monitoring the overall AML compliance programme initiatives and are hence also accountable for a sound compliance programme. In order for compliance officers to uphold their fiduciary duty it is incumbent upon the responsible individual(s) to examine themselves as well as their compliance programme critically, honestly and consider the following:

- Is the compliance officer competent enough to maintain an appropriate programme?
- Is the current programme efficient enough to handle the large volume of work that flows through a typical AML department?
- When issues are identified will the compliance officer report and work to fix them?
- How does management respond to programme weaknesses or identified risks?
- Are the current resources adequate?

Often times, for the right people to understand their obligations and be accountable for their part in AML compliance, it comes down to compensation. Tying compensation directly to performance in regards to management AML risks can quickly turn members of the team into fully supportive players.

Compliance assessment

Brent Snyder, Deputy Assistant Attorney General from the Antitrust Division of the United States’ Department of Justice (DOJ) indicated that, ‘If senior management does not actively support and cultivate a culture of compliance, a company will have a paper compliance program, not an effective one’.³

Identifying where the institution resides on the spectrum of a strong culture of compliance can be a misleading effort and provide a false sense of security unless the AML compliance officer really digs deep into the core foundations, processes and controls embedded within the institution. Management may speak to the importance of compliance however one must query if it is demonstrated throughout all levels of the organisation? As a leader within the organisation, revenue goals and financial initiatives, rewards and incentives, board and industry expectations as well as business initiatives must be set aside so that analysis of a strong culture of compliance can take place.

Conducting a risk assessment geared towards an initiative to better evaluate the overall culture of compliance within the financial institution will not only be educational for the leadership team but also provide a better understanding of the culture embedded within the core foundation and principles of the institution. The risk assessment will provide insight into the business units’ processes of the business units and inter-twining relationships with other processes and operational, technological and staffing efficiencies, inefficiencies or

vulnerabilities. The results of the risk assessment should be shared with the board of directors and management team, while the status of any action items should be periodically reported as part of the key risk indicators.

Table 1 gives an example of a potential framework of risk considerations for assessing the overall culture of compliance of a financial institution. Table 1 again utilises the six primary areas of concern of FinCEN:

Based on the results of the risk considerations, the following items should be factored into the risk assessment:

- potential root causes;
- potential consequences;
- inherent/initial rating;
- existing controls;
- residual/current rating;
- risk mitigation plan (additional controls needed).

One of the biggest mistakes an organisation can make is allocating efforts to perform an assessment without allocating resources for remediation. The culture of compliance risk assessment will provide useful information that will identify where improvements can be made however the assessment itself will not solve any exposed problems. Action plans which take into account the risk assessment priority and implementation responsibility should be developed to respond to the risks and identify the individual or position responsible for carrying out each risk mitigation method.

At the Association of Certified Anti-Money Laundering Specialists (ACAMS) 20th Annual AML and Financial Crimes Conference, Adam Szubin, Acting Under Secretary for Terrorism and Financial Intelligence for the US Department of the Treasury, affirmed the importance of a compliance culture: 'I've learned in this job that the most expensive, the most sophisticated compliance program can fail in the

absence of that culture and I've come to believe that is one of the most important aspects for a financial institution. It really does mean a difference between success and failure.'⁴

As a leader within a financial organisation it must be remembered that a culture of compliance requires a comprehensive effort to evaluate the different organisational dynamics that contour the foundation such as leadership, ethics and values, effective communication, information sharing, technology and resource allocation, incentives, training and effectiveness of the AML function.

Understanding the bigger picture

AML compliance is not just about meeting regulatory expectations and following the laws of the jurisdiction but also the greater good. Compliance professionals are often the first line of defence in detecting and reporting potentially suspicious activities leading to financial crimes. This is much needed assistance to law enforcement personnel who are actively investigating and prosecuting illicit actors involved in these activities, considering the large scale of money laundering and terrorist financing in the world today. This is expressed repeatedly in the United States in communication from regulators and among industry experts who have called compliance functions in financial institution the 'tip of the spear' in fighting financial crimes.

Management should be reminded that all work being done to assure regulatory compliance goes beyond what they see on the surface. Through their efforts in ensuring a strong culture of compliance within the organisation they are also supporting the continuous work of the AML community to provide material support to law enforcement investigations: the principal aim of any good AML law or regulation should be to fight nefarious actors and ease the burden on

Table 1: Risk assessment

Risk Description	Risk Considerations
1. Leadership is engaged	<ul style="list-style-type: none"> • Institution leaders understand the responsibilities of the institution regarding compliance with AML laws and regulations as well as creating a culture of compliance • Institution leaders demonstrate their support for AML laws and regulations from the top down • Institution leaders receive periodic AML training tailored to their roles and responsibilities • Institution leaders understand their AML obligations and compliance responsibilities and make informed decisions with regard to the allocation of resources to the AML function • Institution leaders remain informed of the state of AML compliance within the organisation
2. Compliance should not be compromised by revenue interests	<ul style="list-style-type: none"> • Compliance staff is empowered with sufficient authority and autonomy to implement the AML programme of an institution • The interest of the institution in revenue does not compromise efforts to effectively manage and mitigate AML deficiencies as well as risks • The institution has implemented an effective governance structure that allows for the AML compliance function to work independently and take appropriate actions to address and mitigate any risks that may arise
3. Information should be shared throughout the organisation	<ul style="list-style-type: none"> • Information in applicable departments that may be useful to AML Compliance should be shared with compliance staff • Information should be shared with compliance staff across multiple affiliated institutions when necessary
4. Leadership should provide adequate human and technological resources	<ul style="list-style-type: none"> • The designated individual responsible for coordinating and monitoring day-to-day compliance with AML laws and regulations is knowledgeable and has sufficient authority to administer the programme • The institution leaders have devoted sufficient staff to the AML function and the AML officer agrees with the staffing levels • Appropriate technological resources have been allocated to AML compliance and the AML officer agrees
5. The AML programme should be effective and tested by an independent and competent party	<ul style="list-style-type: none"> • The AML programme should include continuous risk assessment, sound risk-based customer due diligence and enhanced due diligence, appropriate detection and reporting of suspicious activity/transactions as well as independent AML programme testing • The AML programme should receive independent testing by a qualified, unbiased and independent individual or company that does not have a conflicting businesses interest that may influence the outcome of the compliance programme
6. Leaderships and staff should understand how their AML reports are used	<ul style="list-style-type: none"> • Leadership and staff at all levels should understand they are not simply generating AML related reports for the sake of compliance but rather recognise the purpose of the reports and how the information is used

the global financial system promulgated by money laundering and terrorist financing.

CONCLUSION

In order to have effective training, accountability and oversight the management and compliance professionals within an institution have to work together as a team and understand their respective roles and responsibilities. It is the responsibility of the AML compliance officer to develop the training that their leadership will need to effectively understand what is needed of them and why, drawing on their expertise and knowledge of the day to day functions. This will result in deepening the understanding of accountability in each area by creating a culture that makes compliance a top priority at all times. By developing this culture and offering appropriate oversight the institution can ensure it not only meets regulatory and legal expectations but also becomes part of

a meaningful effort to work with governments and law enforcement agencies who have the difficult task of detecting, prosecuting and eliminating financial crimes.

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