A DIFFERENT WAY OF LOOKING AT COMPLIANCE

Costly, yes. But there's costs and then there's costs

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By Steve Cocheo, executive editor and digital content mgr.

In the 33 years I've been covering the banking industry, I've long been a witness to a split in the business.

When I cover compliance conferences, I've often seen compliance bankers and regulators working with almost a sense of collegiality. The bankers there want to get it right, nail compliance cold. It's their job, and, for some, I would almost swear it is a religion.

When I cover CEO conferences, compliance is, to speak with understatement, not a favorite topic. I've never met a CEO who wanted to be out of compliance, certainly. But they know what the many facets and functions of compliance wind up costing. The advent of the Dodd-Frank Act and other post-crisis legislation and regulation has only increased their aggravation. And it most certainly will increase their banks' costs.

Over the years I've watched the industry's players try to build bridges between the compliance folks who sweat to make it all work within budget, and the CEOs who have to figure out how to make a profit for shareholders at the end of the day. Nowadays, the star of the compliance cadre has risen because banks stand in need of good compliance officers as never before.

Indeed, the costs of compliance have caused much talk in community banking circles about finding merger partners, or selling out, because of the compliance burden. Just the other day, I spoke with a community banker who is in the boomtown area in the upper west. In spite of that prosperity, he says he and his directors have to seriously consider selling out because of growing compliance costs.

That kind of thing was one spur for me to do the Compliance Clinic column that debuts in our August issue, about community banks outsourcing major portions of compliance as an alternative to growing their compliance staffs beyond what they can afford. The challenge is not just in the staffing, but the costs of keeping that staff up to date. Even as a bystander to compliance, I often tell bankers, I have trouble keeping up and current, and I don't have to also run a compliance program or a community bank. Compliance information, and being current, is one of the most perishable commodities in business.

And this brings me to Chuck Lewis, one of the deans of the compliance fraternity and a source I quote in the August article. In talking to Chuck for the article, I heard a case made for the importance of compliance that I couldn't fit into the article, but that I thought should get an airing.

Good humor about a serious subject

I've known Chuck Lewis through ABA's Regulatory Compliance Conference for decades. I've known many good compliance people, some of whom blog for us and some of whom get quoted frequently. Chuck is one of the few who can bring a sense of humor to the subject.

Just about every year that I can recall, Chuck has given a presentation at the ABA meeting that puts a humorous spin on the burdensome challenge. Sometimes he's done it as a "Ten Things" kind of listing. I've seen one or two people attempt to imitate Chuck, but not everyone can carry it off.

As I wrote, Chuck is one of the deans of the discipline--he received ABA's Distinguished Serve Aware in 2004. He's been a compliance officer in banking, and went on to consult in compliance and risk management with an accounting firm and with a bank holding company consulting subsidiary. Today, he is at the forefront of a trend among state bankers associations, some of which have been assisting members by offering elements of compliance outsourcing and consulting. Since late 2009, Chuck has served as vice-president, MBA Compliance Services, at the Missouri Bankers Association.

A way to think about compliance

So, in reporting my outsourcing article, I tracked down Chuck somewhere between compliance visits. As I broached the issue, he suggested we take a step back and think about the role of compliance, and the importance of the compliance function to banks.

CEOs, understandably, think of it as a cost. A cost of doing business, and a high one.

But Chuck suggested that the industry look beyond the immediate cost, and think about costs avoided.

I've heard the argument made before, face to face, and from the podium. But Chuck boiled it down to a clear analogy.

"You've got to look at it as a seat belt," he said.

A seat belt doesn't add anything to a car, in terms of looks, speed, or improve gasoline mileage. In fact, I'm getting so old now that I recall an ancient safety commercial where people talked about how inconvenient seat belts are. I remember a spot where a woman driver complained that seat belts wrinkled her dress.

Chuck said that many CEOs don't see the value of compliance. Compliance officers don't bring in revenue. Many see the function as a necessary evil.

But again, think about compliance as a seat belt, said Chuck. You may not like wearing one, but if and when you have a collision, it may save your head going through the windshield.

Compliance, whether through an outsider's view such as Chuck's, when he visits a bank, or through the view of a staff officer, presents the line bankers with a perspective they don't have, being in the daily fray.

"You can't see the trees, if you've down in the forest," Chuck said.

Even if a bank outsources chunks of the compliance job, it can't avoid compliance responsibility, he added.

"You still have to be the one who makes sure that the seat belt works," said Chuck.

The other side of the seat belt

But there's another side to the seat belt analogy, Chuck allowed.

Now, through the years, I've heard compliance officers beef about marketing officers. They say Marketing is always one step away from getting the bank in trouble. And today, you might say, with social media's instantaneous nature, the bank can be one tweet away from an issue.

On the other hand, I've heard Compliance described as "The Department of No." No, you can't do that. No, you can't say that. No, you can't show that. No, no, no.

I remember when seat belts were very restrictive things, firmly bolted up and down. Actually, my station car still has such antiques in place.

Newer cars feature seat belts with "give." You can adjust height, and there's some freedom of movement, with some kind of mechanical override that holds you tight when you need to be held tight to your seat.

And this brings up Chuck's strong suggestion to the compliance fraternity: You can't just say "no" anymore.

Today, said Chuck, "we have to be seen as an asset, as someone who can give solutions."

Elaborating on the point, Chuck said Compliance can't just turn thumbs down. Instead, he said, Compliance must be able to say, "No, you can't do that. But here's what you can do."

A time for flexibility

At ABA's Regulatory Compliance Conference in June, one thing I was gleaning from many sessions was how the compliance function itself is changing. The pressure of basic UDAP--Unfair and Deceptive Acts and Practices--has been growing steadily, and that has been a factor.

And now the existence of the expanded concept under the Dodd-Frank Act and the Consumer Financial Protection Bureau, UDAAP---Unfair, Deceptive, Or Abusive Acts and Practices-has morphed compliance. (Our recent coverage of a conference session where bankers described how fair-lending compliance knowledge helps with UDAAP relates here.)

It's becoming a cliché, but it's true. Compliance has moved beyond check the boxes to a focus on process, procedures, and attitude.

Banks face risks here beyond raised eyebrows or "matters requiring attention" after an exam. There's the risk of legal penalties. The risk of private and governmental lawsuits. And reputation risk, which arises at social media speed nowadays.

Perhaps there is a middle ground here, is what I took away from my conversation with Chuck Lewis. CEOs and Marketing can begin to see Compliance in a consultative role. And Compliance can step into those shoes.

After buckling up, of course.