Reporting to the Board
Everything your board needs to know about the compliance program—but shouldn’t have to ask
CONTENTS

4  Remind your board about why they care
5  Coach your board on what to look for
6  Deliver a regular and thorough report to the board
9  Be prepared, be consistent and be efficient
Introduction

Corporate boards practice oversight, and oversight—particularly when it’s removed from the day-to-day operational trenches—means asking a lot of questions. Boards find themselves bombarded not only with information of varying relevance about the companies they oversee, but also with suggestions about the questions they should ask to improve that relevance. Type “questions board members should ask” into your favorite search engine and see for yourself.

Not a few of these proposed questions involve ethics and compliance, and they can be helpful. What are our highest-risk areas and how are we addressing them? What is the state of the compliance program and how is it evolving? What do our compliance reporting processes look like? And so on.

Such questions deserve answers. But so do many others that board members don’t have to ask aloud: Is the company profitable? What are the drivers of those profits or losses? How much debt are we carrying and who are the major lenders? What’s the company’s market position? Companies provide boards this sort of information as a matter of course. Reporting on the organization’s compliance program needs to become just as second nature.

To be fair, compliance systems and process are decades behind those of the financial realm. The compliance world generally lacks standardizations like income sheets and balance statements.

Still, more than a decade after Sarbanes-Oxley, the legal, enforcement-related and regulatory edifices relating to compliance are largely in place. Rarely does the balance between corporate misdeed and penalty elicit surprise when new enforcement actions and settlements are disclosed. The governance, risk and controls needed to maintain effective compliance programs are now well-understood.

The days of simply suggesting to corporate boards questions they should ask about compliance are over. It’s time to give boards what they need to play an effective, active role in this realm. Which begs the question: How do you do it?

The answer has four parts:

1. Remind the board why compliance is important to the company—and to them.
2. Coach the board to deepen their perspective on key compliance issues—both broadly speaking and as it applies to your company.
3. Report to the board regularly and thoroughly, including red flags, on the status of compliance programs and external benchmarking.
4. Prepare yourself to deliver a thorough report and supply the answers your board will surely look for.
REPORTING TO THE BOARD

Remind your board why they should care about compliance

Rare is the director still oblivious to the importance of a solid compliance program. But sometimes it’s helpful to remind your board why companies and those governing them need to pay special attention.

You might start with a quick overview of relevant laws, regulations and judicial guidance: the expanding scope of the Responsible Corporate Officer Doctrine; the 2010 revisions to the Federal Sentencing Guidelines; the relevant sections of Sarbanes-Oxley. You could point out the seminal case law—in particular Caremark and Stone v. Ritter. You could explain how a litany of regulation—from the Foreign Corrupt Practices Act to HIPAA to Gramm-Leach-Bliley to European anti-money laundering rules—influences your compliance program. Some of it will depend on your line of business; some of it applies universally. The bottom line is that board members have a well-established legal obligation to ensure that companies have solid compliance programs in place and should encourage regular reporting on the topic.

You might also allude to a shining example of how an excellent compliance program can be worth the trouble. In 2012, a Morgan Stanley employee was sentenced to nine months in prison for FCPA violations in China. Yet the U.S. Department of Justice declined to prosecute Morgan Stanley itself. Why? Morgan Stanley was able to show that they had trained the employee on FCPA seven times and reminded him to comply at least 35 times.

You could mention the costs, financial and reputational, to companies that failed to adhere to a higher standard: from Wal-Mart ($400 million in fines) to HSBC ($1.9 billion) to Pfizer ($2.3 billion) to the infamous cases of WorldCom and Enron. Remind the board that fines and penalties usually make up a small fraction of the actual tab once legal fees, brand equity and reputational damage are taken into account.

Also tell them that there’s a bright side. That the superior reputations of ethical organizations attract and retain better employees and make them more favorable to potential partners and investors, who are paying increasing attention to compliance and ethics-related risks.

And tell them that the best companies are already on top of this. A 2012 Ethisphere Institute study of the “World’s Most Ethical Companies” found that 92 percent of boards surveyed had ethics and compliance subcommittees, and 97 percent had formal processes in place to bring red flags to the board’s attention. They found that 83 percent of these companies’ boards were briefed on compliance at least quarterly. Ethisphere also noted that the World’s Most Ethical Companies’ share prices consistently outpaced S&P 500 returns. Ethics and compliance, in short, is vital to a company’s legal health as well as the bottom line.

You might start with a quick overview of relevant regulations. You could mention the costs to companies that failed to adhere to a higher standard. But also tell them that there’s a bright side.
Coach your board on what to look for

All the above information is best conveyed as a part of a board’s formal compliance report, which will have two general thrusts.

• First, sketch out the big picture: the motivations (see the ‘why’ above) as well as the best practices around robust compliance programs in general.

• Second, explain the specifics behind your company’s ethics and compliance philosophy, strategy and systems—and their role in that ecosystem.

Help them understand the big picture

The board must understand that taking ownership of your company’s compliance is very much its job, that they set the “tone at the top” and that it’s vital to the organization’s success. Beyond that, ignorance is no protection from legal action—the board is responsible for overseeing the company’s compliance health and as such is legally obligated to receive regular updates. They will do this job through some combination of full-board engagement and more fine-grained work by a committee (generally the audit committee).

Explain why a compliance program is important, what a good program looks like and about the sorts of information companies should provide boards, such as:

• Hotline statistics

• Compliance training statistics

• Policy attestation rates

Also let them know that top companies with a deep commitment to effective compliance programs make continuous improvements a priority by routinely monitoring, measuring and benchmarking program effectiveness. As such, they keep their boards abreast of culture assessment reports, compliance-related statistics from employee surveys, compliance program measurement statistics, peer-to-peer benchmarking exercises and more.

Give them a view from the trenches

Once you’ve explained the generals of compliance programs, go into how your compliance program works. What’s the structure of your compliance organization, who are the key players, what are the reporting relationships and how does the overall program tie together and interact? Are you using one solution or many—and why did you choose those options? Make sure your board understands the mechanics of your compliance program so they can better understand the results and data. Finally, outline what you hope to accomplish with the compliance program and if any roadblocks are standing in your way.

Once board members are versed in your program, you’re ready to move into company-specific compliance issues with a deep dive into your compliance program. Then it’s time for the deep dive into your compliance program. Doing it properly will take more than an hour, but it will be time well spent.
With the coaching completed, your board should have a solid grasp of what’s expected of them. Among the many things the board has a better understanding of is its legal obligation to receive a compliance-related report from you at least once a year, in addition to briefings when violations occur. But then, you also told them you would brief them on compliance quarterly—or more often. Among the World’s Most Ethical Companies, 42 percent updated their boards on compliance quarterly; another 41 percent did so more often still.

Before discussing what sort of information should be part of these periodic board updates, let’s spend a moment talking about the “who” in compliance reporting. Often, chief compliance officers serve a dual role as general counsel. They don’t run the day-to-day compliance program. If this is the case with your company, be sure the person leading the actual work is in the room for board updates even if she isn’t presenting. This not only allows the board to directly question the person most steeped in the issues, but it also lets them build a personal relationship with her.

What to report

Compliance initiatives are at once universal and situational, covering everything from broad anti-theft to nuanced intricacies of healthcare patient privacy practices. Board reports must be clear on the key risk areas and issues facing your company and what you’re doing to mitigate them.

Here you’ll touch on the most pressing risks facing the company and the industry at large. You’ll also look ahead and explain how your company’s risk profile may change with new regulations and enforcement priorities, expansion into new markets or changes in the company’s structure that might follow an initial public offering or a merger, among other factors.

At the top of the list of things to report, you should share the most recent:

- Hotline statistics
- Compliance training statistics
- Policy attestation rates
- Investigation reports
- Risk assessments and changes
- Quarter-over-quarter statistical comparisons

This short list should look familiar: these are the standard compliance program performance metrics you told the board about during training. For good measure, and to align your program report with best practices and regulatory expectations, you should also share:

- Culture assessment reports
COMPLIANCE AS A MATTER OF COURSE

• Compliance-related statistics from employee surveys
• Important changes or rulings in compliance law
• Any other relevant data

If your risk profile is changing, tell the board how your compliance policies, procedures and systems are adapting. Tell them about how you’re addressing compliance weak spots, about new training initiatives and communication approaches, about improvements in compliance-related data gathering and about how the knowledge you’ve gleaned from that data has yielded important insights and improvements. Update them on policy changes and the reasoning behind those changes. Tell them about the program’s future plans—not just for this coming quarter, but over the next three years.

THE DEEP DIVE: WHAT TO COVER

Key players: The key compliance actors within the company as well as the reporting chain. If the compliance lead has direct access to the CEO and board, say so (if not, you should arrange for such access and then say so).

Incentives: How compliance plays into executive and management compensation and incentives.

Risk: How the program covers the company’s high-risk areas at home and abroad. Make clear how these initiatives apply not only to employees, but also to business partners, vendors, subcontractors and third parties.

Culture: How the company is fostering an ethical culture and how leadership supports those efforts.

Resources: What you spend on the compliance program, whether that number is rising or falling, and why.

Leadership: What top management is doing to foster a culture of compliance and how the company is leveraging middle management—who, being near the front lines, are an invaluable resource.

Training: What training programs are available for different types of employees and what internal communication strategies and vehicles are being used to keep ethics and compliance top of mind across the organization.

Assessment: The ongoing monitoring and auditing processes that assess the program’s effectiveness, including how periodic program reviews are done and how the program has been validated by an independent third party.

Response: The processes and communication lines the company has established to review compliance violations, how responses are calibrated and what measures have been put into place to stop it from happening again.

Open door: How you encourage employees to come forward with reports of misconduct and how you disseminate your non-retaliation policy. Tell the board how your managers are trained to field employee reports, document alleged misconduct and move reports up the reporting chain in a timely manner—as well as the steps in place to investigate them.

Planning: To wrap up, describe your plans for the compliance program during the next year and beyond.
REPORTING TO THE BOARD

Report the warts

Don’t hide compliance missteps or issues—report on them. More importantly, report how you plan to address and mitigate them going forward. No program is perfect and it’s vital that you share any weaknesses and gaps with the board in charge of overseeing the program. Presenting soft spots gives board members an opportunity to suggest ways to harden your systems and approaches based on their experiences and track records of success. In some cases, it also may lend credibility to any arguments you have to increase investment in the compliance program.

Give them the 411 on the hotline

Update the board on the results from the company’s hotline the outcomes of those investigations. But also make clear that the hotline is one of many arrows in the compliance-program quiver, and that low hotline numbers may or may not be a reliable indicator of a company’s compliance health. For example, employee survey data may indicate discomfort with hotline reporting—perhaps due to concerns about confidentiality or retaliation—despite policies designed to encourage hotline use.

Give them your benchmarking results

Say you’re a baseball player with a .300 average. What does that really say about your swing? The number’s meaning depends on the competitive environment. If you’re in the big league, you’re an all-star. If you’re in high school, you’ll never make it to the majors. In the same vein, a company—and by extension, its board—will have a hard time evaluating the true effectiveness of its compliance program without understanding what league it’s in and how the best of its competitors are batting, so to speak. You and your board need comparative data to show how you’re doing—and what you might be missing. Beyond direct competitors, benchmark against industry and compliance best practices. If you only look at the competition, you’ll never notice if you’re all playing in the minors.

Benchmarking is not optional. If your company does come under scrutiny, regulators and law enforcement officials will look hard at how well you do compared to the industry at large.

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Tell board members how they can get involved

Finally, give board members the opportunity to engage in the program. For example, some companies are posting director interviews about ethics and compliance on their company intranet. Some of the most effective examples involve sharing ethical challenges the board member faced in their own career. A director might also volunteer to take an employee ethics award winner to lunch, or lend their voice to employee compliance communications. They may have better ideas (you should ask them), but the bottom line is that involving your board in will increase their awareness and support of the program—and sends a powerful to employees, regulators and other stakeholders that the board has made compliance a priority.
COMPLIANCE AS A MATTER OF COURSE

Be prepared, be consistent and be efficient

Just like you need to prepare your board to digest the information they’ll receive in your regular reports, you need to prepare beforehand as well. Know what you want to tell them and try to keep the type of information they receive consistent from report to report. Once the board is familiar with the kind of information you’re delivering, they’ll be able to move past the novelty and focus on the data, changes and meaning behind what you’re telling them.

Prepare yourself

Time is precious, so keep reports short, impactful and digestible. Don’t limit your focus to printed, bound reports—particularly if there’s a good chance they’ll never get read. Instead, focus on talking points and answering questions. If your board is doing a good job, you will get peppered with questions. Do what you can to anticipate their questions so you can formulate answers beforehand. If there is a data discrepancy, a new program failed to get off the ground or your company’s risk profile changed, your board will want to hear more about it and dig into the reasons behind it. Still, no matter how much you prepare, you may not have an answer for everything—that’s OK. Don’t be afraid to tell the board that you don’t know something, but you’ll look into it and report back.

Make reporting easy

As with financial controls, manufacturing process control and so many other systems underlying modern business, compliance depends on information systems to consolidate and manage the many streams of data informing the process. Even large companies with mature programs still find themselves relying on a bric-a-brac of spreadsheets, emails, SharePoint databases and other multi-purpose tools. Even if combinations of such software can capture all the data, assimilating it and reporting on it can take days if not weeks, during which time problems can fester and new violations can slip through the cracks. Leave yourself enough time to gather the information needed for your report. When reviewing your compliance processes and systems, understand that there are now solutions available to help speed and automate compliance reporting, which will ultimately help decrease the risk of human error and cut costs.

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Conclusion

Effective boards ask questions. But rather than telling them what questions they should ask, your company should focus on putting together a solid edifice of information—including both hard data and narrative perspective—about the nature and effectiveness of your compliance programs.

Coaching provides the big-picture and company-specific baselines; quarterly (or more frequent) updates refine and keep current board members abreast of what you’re doing to maintain high compliance standards and minimize risk. The higher quality your board coaching and briefings, the better the remaining questions from your board members will be. Sharp inquires about areas you hadn’t considered have the best chance of yielding answers that strengthen your company’s governance and controls.
Convercent's solution operationalizes and integrates compliance functions across key compliance risk areas, enabling a cohesive approach to managing, mitigating and monitoring compliance risks. Pairing a refreshingly intuitive user interface with natively integrated reporting and analytics, Convercent’s compliance program management solution ultimately facilitates the efficient, good-faith application of an effective and defensible corporate compliance program that safeguards the financial and reputational health of your company.

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