

Internally Funding Your Compliance Program

Big banks are not doing too well these days in the compliance arena. From Barclay's and the burgeoning LIBOR manipulation scandal; to HSBC and its money-laundering operations for drug cartels over the past several years; to the ongoing reckoning of JP Morgan and its \$5 bn+ trading loss that it is still trying to extricate itself from several months after publicly announcing the loss, big banks seem to be more in the news these days for compliance failures rather than successes.

I saw an article in The Rector Factor section of the July 27 **Houston Business Journal**, entitled "*Prepared company perspective for lenders, investors*", by columnist Bruce Rector that discussed some ideas that companies might draw upon when looking for financing. I thought it would be helpful for the compliance practitioner to use as a guide when putting together a budget, or other, request for funding a compliance initiative.

Rector wrote about the materials a company should put together and have ready when they are seeking financing from banks, investors or other financial institutions. He set out a list of information that a company should have prepared and be ready to present to such institutions because any entity or person who may provide funding is going to want to know some specific details about your company. He believes that management needs to anticipate such requirements and prepare in advance for it. He cautions not to wait until the last minute to put the information together or when you seek funding as "waiting until you need money is never the best time to go out and get it." While you can be so mundane as to call this a "loan application" Rector believes that if you lay out the information in a coherent manner, it would allow an outsider to get some "perspective on the company". Further, he believes that such information is actually "multipurpose and can be used to inspire and sell stakeholders – you, your bankers and investors, and your employees – on the business and its prospects" for your company. I have modified Rector's recommendations for a 'good application' to steer them towards a Compliance Department.

- **Executive Summary.** This should be no more than three (3) pages and it should convey excitement and impact. It must spell out your compliance mission and clearly state the opportunities that are presented for your compliance group to not only further the goals of compliance with the Foreign Corrupt Practices Act (FCPA) or UK Bribery Act but how these opportunities will result in increased earnings and profits.
- **The Industry.** Here is an opportunity for bench-marking within your industry. You should use credible research from recognized authorities or collect the information from your colleagues in other companies directly, if such information is available to you. You should focus on the size, growth and significance of compliance within your industry and the opportunities for growth within your company.
- **The Company.** Here you should walk the reader through how your compliance program has grown; this could include organic growth, detailing areas that you may have engaged

in as best practices have evolved, and growth of your compliance regime through acquisitions. You should also share major victories and tie all of these into your company values as set out in your published Code of Conduct.

- **Management and Ownership.** Here is an opportunity for you to recognize the persons in your compliance organization. You should have an organizational chart, biographies of key personnel and anticipated hiring needs.
- **Financial Information/Projections.** Here you should create a three-year forecast using best, probable and worst-case scenarios for each year on a cash basis. In this section you should include historical return on investment (ROI) figures from prior initiatives, to the extent that you have any and end with a current balance sheet that will indicate and extend top and bottom-line growth for your compliance department.
- **Purpose of the Investment.** Here you need to be short, compelling and to the point. You should spell out precisely what you are asking for and reiterate what you will do with the funding.

My **This Week in FCPA** partner, Howard Sklar, often talks about the “internal marketing” of compliance. I believe that Rector’s suggestions in putting together information for financial investment would be a good way for a compliance practitioner to think about internally marketing compliance and internally seeking funding for compliance initiatives.

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