WHITE PAPER

COMPLIANCE MANAGEMENT

The Role of Contact Centers in Compliance Management Systems (CMS)

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INTRODUCTION

The passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) became a watershed event for the enactment of stricter regulatory measures focused on enhancing consumer protection in the U.S. Dodd-Frank has been responsible for many changes in the regulatory landscape but no single change has been as important as the creation of the Consumer Financial Protection Bureau (CFPB), a regulatory agency that has been tasked with the primary responsibility for the creation and enforcement of consumer protection laws for financial products and services sold in the U.S. The CFPB has created a new vision of regulation for the larger organizations, over which the agency enjoys statutory primacy, in the enforcement of customer protection laws. The new focus is on customer protection in contrast to the safety and soundness issues that were previously the most important for banking regulation in the U.S. Mis-selling and consumer protection were consigned primarily for the entities that were regulated by the SEC or the CFTC, namely in the realm of securities and commodities regulations. From 1930 to 1940, we see a rapid expansion and creation of consumer protection laws in the securities field; especially with the passage of landmark regulations, such as the 33 Act, the 34 Act and the 40 Act. Similarly, the creation of the CFPB, in accordance with the Dodd-Frank Act, has brought about mis-selling and other consumer protection-related issues – bringing organizational awareness of consumer protection to the largest banks and other non-financial entities. New regulation in consumer protection matters have focused the regulatory dialogue that CFPB examiners are having with their regulated entities on the importance of having a Compliance Management Systems (CMS). The role of regulators (both prudential and CFPB) is steadily ramping up added compliance pressure on the regulated entities with an added focus on consumer protection laws. The importance of the CMS was highlighted in the CFPB's "Supervision and Examination Manual" and reiterated in two successive editions of the CFPB's Supervisory Highlights –the first issued in the Fall 2012 and in the latest Summer Supervisory Highlights published on August 21, 2013.

"A critical component of a well-run financial institution is a robust and effective CMS designed to ensure that the financial institution's policies and practices are in full compliance with the requirements of Federal consumer financial law."

CFPB Supervisory Highlights, Fall 2012

WHAT IS A CMS?

The CMS is the framework that includes all of the infrastructure and oversight of the compliance program within an organization. According to the second Supervisory Highlights issued by the CFPB in August 21, 2013, the interdependency of the following four control components within the CMS of an organization is crucial to managing its consumer compliance risks and responsibilities:

1) Board of directors and management oversight

2) A compliance program

3) A consumer complaint management program

4) An independent compliance audit

The CFPB examination manual instructs its examination staff to consider whether these four control components are strong and well-coordinated in reviewing whether the supervised entity is successfully managing its compliance responsibilities and risk. These four control components should ideally provide a 360 degree feedback loop that will allow for the periodic and necessary adjustment of the firm's consumer compliance stance, minimize potential violations of consumer protection law, and mitigate future deficiencies in the CMS.

The board of directors and/or the senior management of the organization are ultimately responsible for making sure that the other three control components are working seamlessly and interdependently to provide a periodic snapshot of the balance of the risk and control environment within the organization.

An effective compliance program should incorporate the following: 1) policies and procedures that are designed to optimally mitigate consumer compliance risks posed by the firm's business activities, 2) adequate training to the organization, 3) periodic monitoring of the control and risk environment, and 4) timely corrective action to correct any noted deficiencies. Specifically, the compliance program should be designed to hedge the consumer compliance risk that is generated by the entity as a result of selling products and services in the particular product line in specific geographies. At a minimum, some of the compliance controls would include oversight of third-party service providers, adequate training and guidance on compliance processes, prevention of deceptive marketing practices (UDAAP liability), requisite recordkeeping and record retention policies, and easy access to business records in response to document production requests pursuant to a documentary request. The Chief Compliance Officer (CCO), who is ideally independent of the business line and is empowered to make compliance-related decisions and recommendations directly to the Board, is primarily responsible for creating and administering the compliance program.

The ideal consumer complaint management program will encompass the entire lifecycle of the complaint. In most organizations, customer complaints typically begin their lifecycle as a contact center interaction. The customer complaint interaction, the initial triage and investigation, possible escalation, and final resolution of the customer complaint should be tracked, monitored, indexed and reviewed periodically. If utilized correctly, data from consumer complaints can point to weaknesses in the risk and control environment and highlight areas with hidden business risks. Data from contact centers can also reveal inadequacies in the mitigating controls that are lurking within the organization. The voice of the customer through customer complaints and other interactions should be highlighted in exception reports and are the canaries in the coalmine – warning senior managers of potential consumer compliance dangers that may lurk deep within the operational bowels of the organization. Most frequently, firms are not able to adequately measure and respond to the customer complaints in a timely fashion because the canary's voice is not understood or simply not heard. Customized exception reports can be used to analyze the structured and unstructured data that is captured in the contact centers to create appropriate corrective action plans and provide the necessary managerial oversight. These metrics can also be used to spot trends and patterns of compliance weaknesses or increasing business risks. These insights should be utilized to provide strategic actions in order to improve the current CMS.

"It [CFPB] also found consumer complaints being handled by the business line that received the complaint without any centralized tracking of issues across the entity."

CFPB Summer 2013 Supervisory Highlights

An independent compliance function should periodically audit the compliance and control environment and provide a report on whether it properly counters or minimizes the business risks facing the firm. These results should be provided to the board and adjustments need to be made to the control environment or the business will have to derisk in order to adopt a more consumer compliant posture.

Senior management or the board should use the analysis derived from the periodic compliance monitoring, consumer complaints data, and results of the independent audit report to drive organizational changes to the business strategy and/or the compliance program. These changes will then have to be disseminated in a timely fashion to the entire organization. When these four control components are able to analyze the data from the various compliance and complaint programs, the firm's strategic managers can take the relevant and decisive action to instill a more consumer compliant posture and reduce the possibility of CFPB enforcement actions.

RECENT ENFORCEMENT ACTIONS

The CFPB announced its first major enforcement actions against three major U.S. banks from July 18, 2012 to October 1, 2012. The banks were cited for deceptive and unfair marketing to consumers in the credit card businesses and had to pay approximately half a billion dollars in disgorgements and penalties. This is the first enforcement action that UDAAP liability was the primary cause of liability on very broad and overarching enforcement actions against the larger U.S. banks. The CFPB enforcement action against one bank stated that there was clear violation of consumer protection laws "at every stage of the consumer experience, from marketing to enrollment to payment to debt collection". The contact center experience was ground zero in the breakdown of the CMS within the individual banks. C.H Wiggins, the deputy enforcement director at the CFPB, reiterated in his address to the DC Bar on August 22 2013, that the following areas are what he considers "the cop on the beat," "core" focus areas for investigations and actions to enforce consumer protection. The areas included: auto finance, consumer loans, credit cards, credit reporting, debt collection, debt relief, deposit accounts, fair lending, money services / prepaid cards, mortgage origination, mortgage servicing, payday loans and student lending. Since the three large enforcement actions in late summer of 2012, the CFPB brought enforcement actions against companies providing a wide range of products and services to consumers, such as debt-relief service providers, four of the largest mortgage insurers, banks providing installment vehicle loans to service members and their third-party marketing affiliates, debt collection companies, and companies providing mortgage loan modifications. The CFPB has just started executing on its mandate. Organizations providing products or services listed in the "core" focus areas are on notice with the CFPB.

The common thread in all of the enforcement actions is that consumers were being disadvantaged by unfair or deceptive marketing or did not adequately understand the terms and conditions of the benefit to be able to make informed decisions. This is the thrust of the UDAAP liability. In the major enforcement actions brought about by the CFPB, the deceptive practices revolved around how products or services were marketed by the company or a third-party vendor. The CFPB has officially pronounced that the actions of a third-party vendor do not shield the bank from direct liability. It may be argued that any non-compliant conduct by third-party vendors and outsourcers expose their client organizations to direct liability. A third-party vendor management process with board oversight is an emerging best practice that most U.S. banks are transitioning or creating within their own organizations. It is also important to note that the standard indemnification clauses with most third-party vendors were specifically vitiated by the terms of the enforcement clauses crafted by the CFPB.

CMS AND CONTACT CENTERS

High profile CFPB enforcement actions against major financial institutions have demonstrated the need for improving compliance management in client contact centers. The CFPB and prudential regulators have renewed calls for organizational oversight and accountability - even over client contact centers that have been outsourced to third-party vendors and service providers. Contact center agents have daily contact with large numbers of customers, increasing the potential to create inconsistencies and disharmony within the CMS of the organization. The primary reasons for the failures in contact centers are well known and include issues such as chaotic workflow; high agent turnover; inadequate training; inability for the organization to get new organization policies, disclosures and regulatory mandates to the desktop and workflows of agents; inability to recall the information in a meaningful fashion in order to conduct reviews for compliance assurance; and the inability to analyze the structured and unstructured data in order to develop patterns and reports that can be used to institute corrective action and make organizational changes to the CMS. An effective CMS will turn these known contact center failures into organizational successes leading to self-sustainable changes and embedding customer satisfaction and compliance awareness into every client interaction.

According to the second Supervisory Highlights issued by the CFPB in August 2013, a CMS is how a supervised entity conducts the following six objectives: 1) establishes its compliance responsibilities; 2) communicates those responsibilities to employees; 3) ensures that responsibilities for meeting legal requirements and internal policies are incorporated into business processes; 4) reviews operations to ensure responsibilities are carried out and legal requirements are met; 5) takes corrective action, and 6) updates tools, systems and materials, as necessary.

1. ESTABLISH COMPLIANCE RESPONSIBILITIES

Compliance responsibilities should be calibrated to mitigate the inherent risks posed due to the organization's business offerings to the consumers and in dealing with the regulations and laws in the various jurisdictions. The laws, policies and regulations may come from varied sources, such as state regulatory agencies, federal regulatory agencies, DOJ, case law, standard business practices and other self-regulatory organizations.

"…employees have not been trained in the legal requirements applicable to their jobs, resulting in situations where similar consumer contacts are inconsistently handled within the same entity."

CFPB Supervisory Highlights, Summer 2013

2. COMMUNICATE THOSE RESPONSIBILITIES TO EMPLOYEES

Most organizations are pretty adept at understanding their regulatory environment but the true challenge that most firms face is how to push new regulations and compliance processes into the frontlines and the operational framework of the business. After all, in-house legal and compliance officers are not staffing the contact centers. The typical contact center staffer is overworked and undertrained in the firm's current policies but is expected to deliver the organization's compliance responsibilities in the form of verbal disclosures and disclaimers to the consumers. It's no wonder that this is the most common and exposed fault line in most organizations.

Recent high profile CFPB enforcement actions against major banks have shown us that the contact centers may become an organization's greatest liability.

Reason 1: The inability to seamlessly incorporate the latest compliance processes to the front lines of the organization.

Reason 2: The inability to provide the most direct and real-time compliance training.

Reason 3: The inability to assure front-line compliance consistency with consumer regulations.

This liability has been publicly exposed and is at the center of the largest enforcement actions and settlements against banks by the CFPB. But with the right contact center solution, this organizational liability can become the greatest asset. Contact center solutions need to provide the ability to export agent coaching tips directly to the agent's desktop in real time. Complex organizations attempting to build a more consumer-centric posture must change to a corporate-wide compliance posture with the right tone from the top, make proper utilization of contact center interactions, and use the analytical data collected in the contact centers to optimize the CMS.

3. ENSURE THAT RESPONSIBILITIES FOR MEETING LEGAL REQUIREMENTS AND LEGAL POLICIES ARE INCORPORATED INTO BUSINESS PROCESSES

A robust CMS is one where the managers, the Board, the compliance and independent audit functions are regularly reviewing exceptions and deficiencies in the control environment. The right contact center solution will allow the various stakeholders to evaluate the state of compliance in the contact centers on a real-time basis. Data from contact centers can be used effectively to periodically test and monitor for weaknesses in operational processes. Contact centers in most organizations carry out the bulk of the business processes from handling routine NACHA disclosures to complex mortgage-related questions with specific regulatory significance depending on the location of the caller or the state in which the realty or client/business is domiciled. Senior managers of the organization are mandated to provide contact center staff with comprehensive training on internal policies and new regulations. Contact center agents need to consistently deliver proper disclosures and information to the consumer and alleviate confusion and misunderstanding which will lead to increased liability during a CFPB exam. Senior managers need the right tools to push the right disclaimers and disclosures into the business processes in the contact centers in a timely fashion. Contact center solutions need to provide agents the ability to have information readily available by push/pull desktop technologies in order to provide the right level of support during a customer interaction. Contact center agents must be given tools to navigate to policy streams based on the nature of the customer interaction and the ability to readily access the right scripts and instructions to provide a compliant interaction with the consumer. The agent must be able to access previous customer interactions in order to provide consistent and optimal customer service. Contact center agents should have policy and procedures baked into their workflow in order to quickly access legal requirements and internal policies designed to conduct an interaction that is compliant with the legal and regulatory requirements of the organization. .

4. REVIEW OPERATIONS TO ENSURE RESPONSIBILITIES ARE CARRIED OUT AND LEGAL REQUIREMENTS ARE MET

The first step is to conduct a contact center risk assessment to evaluate how this crucial operational and service center is executing its mandate of ensuring organizational compliance and client satisfaction. Are the right technologies in place? Are the various sources of customer information integrated into the agent's desktop workflow environment? Does the contact center agent have access to all of the relevant information resources in the organization in the workflow? –Did the agent receive the proper training in compliance responsibilities? Are all of the regulations and other obligations of the organization identified and provided within the contact center? What is the "time lag to agent" for rolling out new compliance and regulatory policies, disclaimers and disclosures? Do managers have a good oversight process built into the contact center solution to review the interaction, spot exceptions and adverse trends, and remediate? Contact center risk assessment is truly a horizontal risk assessment that can fit logically into the overall CMS risk assessment since the interaction will touch on various high risk policies, businesses and client complaints.

It is imperative that managers have the right solutions in the contact centers to be able to analyze collected structured and unstructured data in aggregate. Senior managers must adjust business processes or change organizational policies to respond to perceived or actual weaknesses in the control environment. This will help to create a more robust CMS by giving managers the ability to self-audit the contact center operations, drive compliance, and increase consumer protection. Contact center managers need the capability to provide compliance assurance by having the right tools to extract call recordings and interactions in a consolidated report to review all interactions where they may have been potential exceptions to policy or procedures. These reports allow contact center managers to review and provide continuous feedback into the CMS. They also highlight the compliance policies that are working well and reveal the areas of potential weaknesses where optimization efforts may be required. Managers in contact centers benefit from new technologies that allow them to have easy access to the audit trail of all calls/interactions with a particular customer. Compliance managers should also have the ability to investigate consumer complaints by reviewing call recordings with visual timeline presentation of how the interactions unfolded. The ability to cull customer complaints that may infringe on specific consumer protection laws, such as Fair Lending, are useful to understand potential weaknesses in the CMS. These capabilities are crucial for a robust CMS using currently available contact center technologies to ensure that compliance responsibilities are being adequately met.

5. TAKE CORRECTIVE ACTION

When weaknesses in the control environment of the contact centers are spotted, it is the contact center manger's responsibility to escalate or remediate in accordance with the compliance processes of the organization. Again, the ability to conduct a self-audit is only possible when the contact center solutions are able to provide readily accessible and actionable information. Organizational managers need the ability to schedule and track exceptions using integrated reports generated from customer interactions at the contact centers. These capabilities can allow operational and compliance managers to take corrective action, mitigate the escalation of consumer complaints, and reduce the risk of reputational harm.

6. UPDATE TOOLS, SYSTEMS, AND MATERIALS, AS NECESSARY

The information gathered by the contact center should be analyzed to understand the weaknesses of the control structure. The entire management team should be committed to reduce the business risk and/or amend the control processes to manage the residual consumer compliance risk. High risk policies and other pervasive exceptions that are highlighted in the reports generated by the contact centers should be used to update specific compliance-related business processes within the CMS. The 360 degree feedback loop between the various levels of compliance controls, such as in-business compliance, corporate compliance and independent compliance audit results, should be used to amend the control environment or to recommend specific courses that can reduce business risk in a report to the Board. Risk and compliance awareness should be embedded into the entire organization but there should be special focus and oversight for customer-facing operations and those employees who represent the firm in client interactions.

The lessons learned by organizations who have already been subjected to adverse actions by the regulators or have completed an exam cycle with the CFPB is that contact centers are the blind spot in their CMS. This should not come as a surprise since a majority of consumers will routinely have their initial exposure to the CMS of an organization through the contact center. It is imperative that consistency of service and compliance standards be maintained and reviewed within these gateways. It can be argued that a CMS cannot function properly without an effectively managed contact center.

Please contact a NICE representative to discuss how our comprehensive contact center compliance solutions can serve as a cornerstone to improving your organization's CMS.

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