

## **Managing Ethics and Compliance In Times of Economic Turbulence**

**By Gabe Shawn Vargas**

Few companies remain untouched by the current market downturn. Your company may simply be in a slowdown posture, putting off investments and not hiring until prospects improve. Or it may be in a more crisis mode, laying off employees or looking to sell off assets. Or, if the lines of credit are drying up, it may be working to raise capital or attract a white knight.

Alternatively, it may be contemplating more drastic survival options or already be under creditor protection. To ethics and compliance professionals there is a constant in each instance: No matter how cloudy or distressed its financial situation, the company is not relieved from its ethical obligations or from those legal and regulatory obligations that continue to apply to it.

In fact it is not difficult to argue that during tough economic times a company needs to give ethics and compliance *even more* attention. After all, if your corporation has taken a financial blow, the last thing it needs is an ethics or compliance hit.

Such an occurrence could bring it to the tipping point, possibly eliminating any chance for a recovery. Customers and investors may offer some sympathy to companies that have fallen on hard economic times; they often offer no sympathy to those that compound their troubles with ethics or compliance shortcomings.

Yet to continue in the current environment to manage an ethics or compliance program as if business were “as usual” could itself be irresponsible. If your company is adjusting to unkind economic times, so must you. But the test here is not just one of flexibility or solidarity. It is a test of leadership and sound management. Tough times call for higher levels of leadership and managerial smarts. It is easier to be an ethics and compliance leader when the company agrees on the importance of your task and makes time and resources readily available to you. It is a greater test of leadership to be effective when your company is occupied with survival, when there is fierce competition for scarce internal resources, and management and the board can offer you little attention.

During economic crises six key areas require particular focus and recalibration. These are shown on the table on the next page. A few additional thoughts may help provide context.

### **Devise new ways to influence**

As shown on the table, a first challenge for the ethics and compliance leader of a company facing financial challenges is to continue to be heard. Even in companies where regular ethics or compliance reporting is a standing agenda item for management or board meetings, pressing financial and strategic discussions could easily lead to such reporting being (a) reduced to a simple written submission (which is almost always less effective), (b) postponed, or (c) given less time.

Those experienced in working with boards know that even when a company is not

*An ethics and compliance function has an intergenerational duty: its obligations are to the company and its stakeholders, present and future, not just to current management.*

The author is senior advisor to a regulatory body in Europe. He has held senior corporate legal positions with major multinationals in the U.S. and Europe, including as global head of compliance and corporate responsibility.

under financial stress, “time squeezes” during board meetings are not uncommon. The ninety minutes one thought one had to provide an update and lead a discussion on an important regulatory matter requiring board action could come to be cut to a mere fifteen minutes.

When an enterprise’s focus is on economic survival, time pressures are even more acute. It is important thus to devise other ways to inform and influence. For example, if your formal compliance reporting has been slowed up or reduced, work to get on task forces with senior managers and use the face time there to accomplish what you would have accomplished through other means.

If there is an all-employee meeting where management is updating on business developments, negotiate to get a slot there in exchange for having to postpone the compliance training that no longer fits the new budget constraints. If you get bumped off the agenda of a board meeting, arrange a phone call with the chair of the board or of the audit committee to keep the dialog fresh, even if, from a governance standpoint, you still need to wait for the next board meeting for the formal briefing or board action.

The point is to be creative not just to get your “reporting in,” but to continue to have influence and impact, and to ensure that corporate values and compliance considerations are not overlooked as the company scrambles to cope with the harsh new environment.

**Understand the pressure and pain**

Sales and other employees who are under intense pressure to deliver commercially don’t need compliance preaching. But they may need reminders and support. While it has become standard fare to say that management, not compliance officers, owns compliance, this will hardly be an uplifting message when a sales manager is under the gun to produce. Show your empathy for his or her predicament and ask how the compliance team could help. The dialog may be helpful not just to reinforce that compromising on ethical or compliance obligations is never the wise course, but to help the ethics and compliance team review its own priorities and practices. Are there any compliance policies or processes that are unduly bureaucratic? Can any be trimmed to save time and money, but without decreasing effectiveness?

| Area                          | Challenge   | Considerations  | Possible Responses   |
|-------------------------------|---|---|--|
| <b>1. Corporate Attention</b> | Board and management are in a survival mode; their focus is on the financial. | Particularly important time to show compliance leadership and to step-up. | Demonstrate why enterprise-critical compliance activities need to continue and why a compliance or ethical lapse could undo the company’s financial recovery efforts.<br>Volunteer for the crisis management and turn-around teams. By being part of initiatives now most valued by the company, you may be able exert ethics and compliance influence on critical corporate decisions, even if you are no longer getting as much formal “air time” as before.   |
| <b>2. Commercial Pressure</b> | Sales, finance, and other functions are under the gun to produce.             | Calibrate your compliance activities to this environment.                 | Seek out those in positions under special pressure to offer your understanding and your ethics and compliance support.<br>Identify the values and legal obligations that may come under particular stress in this environment. Develop training scenarios that capture the real dilemmas people will face.<br>Review compliance procedures for streamlining potential. This may help make them more cost effective and reduce their claim on management and employee time.   |
| <b>3. Budget</b>              | Company-wide budget cuts.   | Show your understanding. Do your part.                                    | Be transparent with your team members. Ensure they understand the company’s pain and the imperative to be fiscally prudent. Inspire your team to do more with less.<br>Prioritize and give up or postpone the nice-to-haves. Brainstorm for alternative ideas that cost nothing or little to implement.<br>But remain steadfast if you genuinely feel a budget or personnel cut you are asked to make will put the company under unacceptable compliance or ethical risk. Thriftiness does not trump integrity. Use your Board access if management fails to appreciate this risk.<br>Monitor your expenses against budget diligently. Renegotiate terms with vendors and outside counsel. Make full use of the standard grace periods for paying bills (but do pay on time; your external providers are also likely facing arduous times).<br>Reduce your overhead. Most companies charge internally for office space, number of phone lines, printers etc. Can you consolidate and live with less? |

Similarly, if your company is laying off employees, reflect on what extra or different efforts may be called for. The compliance officer's *risk and control compass* is, of course, needed to ensure that disappointed employees do not cause the company harm as they are forced to exit. But the *ethics compass* is as critical in such times.

No greater homage can be paid to your company's values statement and to the compliance function than to be able to note that departing employees were treated to the very end with respect and dignity. Work with your human resources department on this. If you do compliance exit interviews, check if their approach or wording could use revamping and ensure that those doing such interviews are experienced professionals who can conduct them with the right kind of understanding and sensitivity.

**Support fiscal responsibility as a value**

An economic crisis can place strain on a company's values but it can also serve as an opportunity to strengthen their application. However your company's values may be formally expressed, it is likely that they offer some support

for the goal of managing nimbly and spending responsibly. After all, isn't this also part of the fiduciary duty to protect the interests of the company and its stakeholders? Even if your company's formal values don't reach this far, take up the challenge to support this principle. Work to find ways to make your compliance program more efficient, fiscally prudent and business wise. This is important not just to help the company's bottom line but to lead by example.

Following the events of September 11, 2001, and in the aftermath of the collapse of the New Economy, I had to think long and hard in early 2002 whether to go ahead with a meeting that I had planned for my senior global leadership team. As the company's head of compliance, I had judged a face-to-face meeting indispensable to keep the momentum going on some critical group-wide governance and compliance initiatives.

Yet I was aware as well of the costs of such a gathering. The solution our team agreed on was to go ahead with the meeting but to do it on a truly shoe-string budget. Soon within the company it got around that the compliance team

|  |   |  |   |
|--|---|--|---|
| <b>4. Head-count</b>                               | Company reduces or freezes hiring or begins layoffs.                      | Seek creatively sensible options.  | <p>Piggy-back off other functions. Can someone from the Finance department help with your anti-money laundering efforts? Can Communications allocate someone to help with your compliance Intranet?</p> <p>If you can still add resources, focus on quality rather than quantity. One talented hire at a high salary but with greater horsepower may be worth more than two average hires at lower rates. This may be a particularly good strategy when there are limits on full-time employees.</p> <p>If there is a hiring freeze, consider trainees, interns, students, and temporary staff. Make astute use of external vendors or counsel to fill gaps.</p> <p>If employees are being laid off, work with management to ensure it is done in a manner consistent with your company's values. Show special sensitivity toward affected employees and during compliance exit interviews.</p> |
| <b>5. Communications and Training</b>              | Mainly discomfiting financial news is dominating the company's "airwaves" | Fine tune compliance messages and activities for this environment.                 | <p>Recognize that employees likely feel apprehensive and concerned for their future. Normally effective happy, upbeat compliance messaging may come off as insensitive or ill timed when the company mood is less than buoyant. Readjust to be more straightforward, capturing gravitas as necessary while avoiding adding to the gloominess.</p> <p>Avoid initiatives that smack of extravagance for the times. A multicolored ethics brochure on expensive paper with pull-out features may be an effective communications tool during prosperous times. During bad times it may come off as an improvident luxury.</p> <p>If employees are under time pressure, study how you can make your ethics and compliance training more time effective or how you can combine it with other scheduled training.</p>  |
| <b>6. Risk Assessment, Monitoring and Controls</b> | Changing Risk Landscape, Potential Temptations to Get Around Controls     | Prioritize external and internal monitoring. Discuss your concerns. Seek partners. | <p>Monitor legal and regulatory developments. New economic times may bring some added regulation but also some regulatory relief (e.g. the recent SEC change easing up the requirements on company repurchasing of its own shares).</p> <p>Intense financial pressures may increase the temptation to cut legal corners or get around compliance controls. Openly discuss this concern with managers and employees. Such a discussion may help deter temptations but also assist you in pinpointing the critical areas for redeploying or strengthening controls.</p> <p>Do more scenario planning and stress testing to increase the preparedness of your company to cope even with the less plausible of circumstances. □</p>   |

*No matter how distressed its financial situation, a company is not relieved from its ethical obligations.*

had done more than its share of belt-tightening, even voluntarily giving up its right under company policy to a business class fare in order to make it possible to gather and work intensely on some critical enterprise-wide action items. This was no minor gesture for those coming from different continents who had to fly up to 12 hours on economy and start the meeting on the day of arrival.

While a personal inconvenience to us, our small action earned good will, saved the company money, and allowed us to advance our corporate culture and compliance priorities during a tumultuous economic period.

#### **Think and act as a financial manager**

It is not just one time expenses or big ticket items that require financial discipline. To most compliance officers, the word “monitor” conjures up the need to have oversight mechanisms for tracking if risks are being properly identified and managed, and if policies and procedures are being observed. During trying economic times, it is particularly important to apply this concept also to the compliance program’s own budget, ‘cash flow,’ and expenses. These too need regular monitoring. Just as the company does not wish to surprise the market with unexpected losses, you will want to ensure the compliance program causes no internal fiscal surprises either.

The challenge is not just to avoid going over budget, it is to demonstrate to management and the board that you too are taking steps to manage your shop more efficiently and to optimize it financially, even on smaller or more routine cost items.

Show that you have renegotiated commercial terms with vendors. Explain that you are using up the full permit-

ted payment cycle to settle your external bills while still paying on time.

Volunteer to reduce office space, overhead, and energy consumption. If you have delegated the financial management of the compliance program to a junior person or a secretary as being something “administrative” and of lower priority to you, this is the time to reclaim it. Financial stewardship is also a key part of being a responsible and effective ethics and compliance leader.

#### **Don’t lose the long-term perspective**

One last thought. A company may be in a crisis mode but it does not mean that the only thing it has to manage is the crisis. To facilitate a recovery, a company has to continue delivering its products, servicing its clients, and innovating for the future. Managing the business itself cannot stop.

So too for an ethics and compliance program. It has to adjust, adapt, calibrate, and operate more leanly as suggested above. But it also has to continue functioning. It too has to continue providing its essential ‘products’ and services to protect the company from the current risks. And it also has to look toward the horizon. Recall that as a defender and driver of the company’s values, an ethics and compliance function has an intergenerational duty: its obligations are to the company and its stakeholders, present and future, not just to current management. Hence a salient duty during an economic downturn is to prevent the reversal of previous ethics and compliance accomplishments. Don’t lose sight of your long-term strategy. Work hard to retain your best talent. Keep your enthusiasm up and your creative juices going.

Companies that draw the right lessons from past mistakes and labor diligently to address their financial challenges with the right level of equanimity and optimism will likely emerge stronger from the current crisis. So too will those ethics and compliance programs that make the right adjustments now, while remaining steadfast on their larger mission and principles. □