

## 4 Strategies to Consider for Navigating Regulatory Overload

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More than three years after the collapse of Bear Stearns and Lehman Brothers sparked the 2008-2009 financial crisis, the financial services industry is now dealing with the regulatory response. The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") alone requires regulators to issue more than 300 separate rulemakings. Additionally, FINRA, the SEC, and the Department of Labor, among other agencies, have all proposed or adopted substantial changes to other existing rules and regulations, as well.

Although Dodd-Frank was passed over 16 months ago in July 2010, many of the new regulations contemplated have yet to be approved or implemented and, in some cases, are not yet proposed. This delay may be due to a host of reasons, including the complexity of the issues involved, feedback from industry advocates and participants on certain proposed changes, the time required to conduct a detailed cost-benefit analysis, and the regulators' own budget and resource constraints.

In this "stop-and-go" environment, simply keeping track of proposed regulatory changes can be a full-time job for chief compliance officers. And when you factor in the time and energy it takes to actually implement new policies and procedures, it's no wonder many broker-dealers are struggling to keep pace.

With these challenges in mind, we spoke with internal and external specialists to gain insight into how firms and their staff, including but not limited to compliance officers, can navigate this regulatory environment more efficiently. Here are four strategies to consider as you balance your workload:

### **1. Distinguish Between What's News and What's Noise**

Industry trade journals, law firms, and compliance consultants all work to keep readers, as well as clients and prospects, informed about what's going on in Washington, D.C. However, the resulting volume of regulatory news and speculation can be overwhelming.

"We are dealing with a whole host of new rules from a multitude of different agencies," says David Carter, vice president, associate general counsel, Fidelity Investments. "It's on a much greater scale than anything we have seen in the past."

A first step to consider when you become aware of a proposed regulatory change is to take a deep breath and begin to assess the initial potential impact. In many cases, feedback from broker-dealers and trade organizations can result in significant changes to the originally proposed rule. Therefore, while it does make sense to review an initial rule proposal and determine how it might impact your business, it may often be best to not implement permanent changes to policies, procedures, or systems until a proposed rule has been finalized.

A first step in managing the flow of information may be to create a system to track the status of the various rule changes that are being proposed. This can be handled in-house or with assistance from an outside consultant, or a combination of the two. You may also want to determine which regulations may impact your business and which may not have any effect on you. For example, given that the Dodd-Frank Act covers an extremely broad range of financial services industries and regulators, depending on the scope of your particular firm there may be certain provisions within the Dodd-Frank Act that you do not necessarily need to monitor.

While it's best to avoid overreacting to newly proposed rules, you also have to be careful about waiting too long to get started. "Due to the start and stop nature of many of the Dodd-Frank provisions, broker-dealers sometimes get frustrated and say, "well I'm just not going to worry about this at all," says Mimi LeGaye, president of MGL Consulting, Inc. "The challenge is to find the right balance between being proactive and being reactive. You don't want to put things off to the point where you're having to scramble to comply."

## **2. Don't Feel That You Have to Go It Alone**

If you're feeling overwhelmed by the volume of potential regulatory changes swirling about, take solace in the fact that broker-dealers and compliance departments everywhere may be facing the same challenges. Rather than hunkering down and trying to interpret proposals and implement changes on your own, consider reaching out to your peers, professional advisors, consultants, or law firms to learn how others are managing.

"We often see compliance officers who are stretched because they're either afraid to ask for help or they don't know who to turn to for help," says LeGaye. "I believe compliance officers need to get comfortable with the fact that they don't have to have all the answers themselves. They need to be comfortable asking others for help and outsourcing where they can, because you can't be all things to all people."

You can also connect with your peers at industry events, take advantage of educational resources that many consultants and law firms publish free of charge, or simply pick up the phone and call a fellow compliance officer. Further, there may be additional trade organizations or compliance groups that you may find helpful to join.

Similarly, when it comes to dealing with the enormous workload that may result from Dodd-Frank and other proposals, you may want to consider outsourcing certain

functions to a consultant. Bringing in someone from the outside may provide a broader perspective than you might get in-house, and it could be more cost effective than hiring full-time staff. For those concerned about potentially outsourcing their own job, LeGaye says that MGL simply supplements, rather than replaces, the work of internal compliance personnel.

### **3. Let Your Voice Be Heard**

Despite the best of intentions, politicians and regulators sometimes propose regulations that create unintended consequences that are detrimental to industry participants and/or end investors. To help ensure you have a say in how your industry is regulated, consider responding to regulatory proposals either directly or through a trade organization, such as the Financial Services Institute (FSI), the Bank Insurance & Securities Association (BISA), or the Securities Industry and Financial Markets Association (SIFMA).

“This is an unprecedented time for us in this industry,” says Keith Kelly, chief operating officer of FSI, a Washington, D.C. trade organization that advocates on behalf of independent broker-dealers and independent advisors. “We realize there is always a need for change and revision, and while we are not opposed to change, we need to make sure that proposed regulations have been fully vetted and that everyone understands the consequences, before those changes are implemented.”

Kelly believes that broker-dealers and advisors need to speak up on behalf of themselves, their clients, and the industry. “It behooves everyone in the industry to be involved in the advocacy process to ensure their needs and their perspectives are represented,” says Kelly. “If they do not represent themselves, they are deferring to someone else to represent for them.”

As an example of how advocacy can pay off, Kelly points to the Department of Labor’s efforts to expand the definition of “fiduciary.” If this proposal had gone forward in its original form, it would have made it very difficult for commission-based brokers to offer investment advice to clients regarding their retirement accounts.

In response, FSI mobilized a letter writing campaign which Kelly says resulted in more than four thousand letters to the White House. FSI leaders also met with senior officials at the DOL, along with President Obama’s top economic adviser. In September, the DOL withdrew the proposed rule, although they have publically indicated they are still pursuing an amended version.

“Without the support of our members and without the CEOs of member firms flying to Washington to testify on a financial services subcommittee, we would not have had the success that we had,” says Kelly.

The DOL’s proposal was just one example of how advocacy can help improve or reshape proposed regulations. Other recent examples include the repeal of expanded IRS Form 1099 requirements that were originally included in the federal health care

legislation and the changes to a proposal to that would have prevented advisors from being able to be classified as independent contractors.

Fidelity's David Carter believes that trade organization membership can help organizations both large and small learn from their peers and influence regulations. "We work closely with Fidelity's own government relations team, but we also rely heavily on our trade organizations," says Carter. "While we have filed numerous comment letters ourselves over the past year, we have also worked with our principle trade organizations on their letters too. In my view, trade organizations offer a good way for smaller shops to leverage outside resources to advocate on their behalf, while also serving as an educational resource."

#### **4. Implement and Monitor With Care**

Once a new rule is finalized, your next challenge is to implement the necessary changes by the requisite compliance date and to ensure you will remain in compliance thereafter. Depending on the scope of the regulation, implementation may be a matter of modifying some procedures, updating your policy manuals, and training your staff, or it could involve expensive and complex system developments.

In the latter case, consider managing the implementation process just as you would any other major technology upgrade. This includes getting an early start, involving the right people, assigning a project manager, ensuring your budget is sufficient, and developing detailed reporting. If the project involves outside vendors, determine roles and responsibilities so that all parties are in agreement.

Along the way, you should consider documenting your thought process and why you made the decisions you made, as examiners often check that you are in compliance with the latest rules and you'll want to be able to explain why you built your systems in a certain way. "The first time FINRA looks at you for a new rule, they're probably going to find some issues or tweaks," says Young. In many cases, Young says that FINRA examiners are also looking to identify, document, and share best practices learned from those early post-implementation examinations.

Once employees have been trained on new procedures, consider periodic spot checks to confirm compliance. And don't forget to document all such training and compliance checks. Young says that any new rules the firm believes are material to their business should be included in the firm's annual training program and continuing education programs. Advisor firms should include changes in their annual review of their records, and broker-dealers should include them in their annual 3012 report. "Regulators are not only looking to confirm that you have processes in place, but whether you are double-checking to make sure they're working," cautions Young.

As more provisions of Dodd-Frank and other regulatory changes are proposed and take effect in the coming months, compliance officers are unlikely to see their workload reduced any time soon. However, understanding which regulations will impact your business, taking advantage of trade organization resources, reaching out to fellow

compliance officers, and seeking outside guidance, may help you manage the process more efficiently.

## **Learn More**

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