
Hughes Hubbard & Reed

Compliance Continuity in the Face of COVID-19

Client Advisories

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"Give me Grace to accept with serenity the things that cannot be changed, Courage to change the things which should be changed, and the Wisdom to distinguish the one from the other."

March 18, 2020 – Many of us are already, or soon will be, under various levels of quarantine or restricted movement due to Covid-19. In this time of unparalleled uncertainty, our thoughts and focus appropriately center on the greater issues of life and safety. When our gaze, however, returns to the more mundane but important tasks at hand, we must confront the complexities of ensuring compliance despite only having remote links to the business and processes. We should all anticipate—with optimism but also serious preparation—a post-quarantine return to business, and appreciate that a return to “normal” business will actually mean in practice a period of frenetic efforts to make up for lost time and lost revenue —with accordingly severe demands on compliance professionals. In this vein, we offer some thoughts on effective mechanisms for compliance professionals to stay in front of your internal clients, stay on top of emerging compliance issues and effectively manage anti-corruption compliance in these difficult times of remote monitoring:

- **Stay Visible.** Your internal stakeholders might have a mistaken impression that, with Compliance departments working remotely, compliance is no longer active. Think of ways to let your colleagues know that you are present, available, and fully operational. Proactively contact business colleagues, remind them of how to reach you remotely, check-in regarding their wellbeing and resources, and ask them what potential transactions they anticipate in the coming months. Essentially, ask via email or chat the types of questions that you might ask in the hallways or at the water cooler.
- **Chase for Completeness.** Take the time—the time you rarely have in the normal course of work—to ensure that due diligence files are complete, forms are signed, and all necessary information has been provided to the compliance team. In a post-quarantine boom, there will be much frustration if the absence of a signed third party application or business justification holds up a transaction that the business desperately needs to meet the year’s targets.
- **Keep Reading.** The results of open-source research, third party due diligence reports, and applications or requests for compliance advice can be overwhelming. Take the time while on quarantine or otherwise working

remotely to get caught up on necessary reading—and make use of the time to think critically and ask questions about the materials. This is another important step to anticipating the post-quarantine wave. You might also take the opportunity to ask your internal stakeholders for information on anticipated transactions, much sooner than you otherwise, in order to be prepared for later.

- **Hold the Line.** Accommodating remote working does not mean that requests to water down or reduce the requirements of the compliance program should be granted. Work proactively, and leverage technology to ensure that applicable procedures are honored. If certain requirements legitimately cannot be satisfied, work collaboratively and agree to a modified process in writing and on a temporary basis—and document the reasons why the process does not undermine the substantive requirements of your original procedure.
- **Insist on Interviews—Remote is Better than None.** Do not forego required interviews. Insist on finding a solution, via videoconference or telephone. Interviews remain critically important to address information gaps and assess the credibility of third parties.
- **Ensure Financial Controls are Functioning.** Take time to communicate with your colleagues in finance to ensure that financial controls (payment blocks, four-eyes requirements, etc.) are still maintained despite mandatory telecommuting. To the extent certain financial controls cannot be accessed remotely in the normal course, work collaboratively with finance and management to ensure that solutions are identified and implemented.

There is no Covid-19 defense to corruption, and hindsight affords few excuses. As with many things relating to compliance, the real audience is always a hypothetical, and likely hostile, regulator who—many years in the future—is asking your company about a prior relationship while under an assumption that the relationship allowed illegal conduct to occur. In these circumstances, the current pandemic that is so affecting our lives and our way of working will be either entirely forgotten, or at best, severely under-appreciated. The best way to protect your employer, your shareholders, and yourselves from future compliance risk is to do everything that you can—including by following the above steps—to ensure that compliance remains active, visible, and assertive during the quarantine and is well-positioned to tackle successfully the post-quarantine wave of business activity.

An abbreviated version of this piece originally appeared in the [FCPA Blog](#). You can read it [here](#).

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