



Regulatory Compliance for Energy Companies

Don't mix up Legal with Compliance



When I talk to energy companies about the new regulations like REMIT, MAR, EMIR and MiFIDII and the way they handle the compliance thereof, I often get the answer that their legal people are right on top of the latest developments and that they therefor don't need support in implementing a compliance framework. But unfortunately this way of thinking could prove to be a very costly mistake.

Why is that? To cut a long story short: compliance issues should not be handled similar like legal matters. The legal function is an intellectual exercise in understanding the technical nuances of a particular rule (or perhaps interpreting what one can “get away with”). Compliance isn’t simply an intellectual exercise; compliance is about embedding the applicable rules and market practices into your organization and your daily business environment.

Besides many significant regulatory requirements are concepts rather than specific rules. They contain some vague definitions or terms that leave room for interpretation. As a result most regulators prefer that management make a determination on what is “reasonable in the circumstances”.



So compliance or enforcement risks don't arise because of a failure to understand the technical nuances of a rule, but from a poor application of the rules and requirements within your organization

How could you avoid such application failures? First of all compliance is not an isolated function and certainly not the sole responsibility of the compliance officer. The compliance officer should be seen as a source of guidance, rather than a policing function. The development of compliance policies should be a shared responsibility that includes input from management and other staff on how the rule can best fit into your business. In this way you can be sure that the compliance policies and procedures do reflect your business realities and that these will be widely accepted across your organization.

Let's have a look at it from a negative perspective; if your internal compliance policies would not reflect the realities of your business, over time your staff might simply stop following them. This could cost you dearly if your company will become subject to an enforcement or legal action.

In our advisory practice we regularly come across a dangerous practice among small and mid-size firms. This practice has everything to do with costs. The bigger companies spend anywhere between 5% and upwards of 10% of their operating costs on compliance technology, headcount and strategy. For SME's compliance requirements consume more than 10% of their total operating costs. As the cost of compliance is creating a heavier burden on these smaller firms, they understandably want to save money and time by copying or "borrow" compliance manuals and documents that were adopted by other firms such as other energy companies or financial institutions.



However, a “borrowed” policies and procedures manual may not reflect recent regulatory changes and more importantly it may not reflect the firm’s circumstances.

This can be a huge risk, because in the event of an enforcement action by the regulator, the firm may find that it is questioned on why it is using a manual that effectively is irrelevant or outdated.

So the bottom line is that you as an energy trading company should invest time and effort necessary to develop compliance policies and procedures that fit your needs and circumstances. Although it is a significant initial investment it will save you a lot of money over time.

Based on an article on AIMA.org

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