



Taking REMIT and MAR Compliance to the next level

It's only just begun!



Many energy companies have taken action to have some kind of program in place to make sure that they will be REMIT and MAR compliant. However, in contrast to what many companies believe that is not the end but only the beginning of the process. Now the real daunting task starts of how to please the regulators and how to internally monitor, execute and enforce your own compliance programs.

As part of their REMIT and MAR monitoring job regulators are going to review the status of the compliance programs within the companies they supervise. The more comfortable they will be with the effectiveness of your compliance program and the role of the compliance professionals, the less likely they will be willing to take enforcement actions against you. To have your compliance program up to the standards that will satisfy the regulators you have two choices: create a (Chief) Compliance Officer job or outsource all or part of the job to a third party.



The latter option would be particularly interesting to smaller trading companies with limited resources. At many small firms, compliance is a role someone takes on in addition to another job. So outsourcing would still enable these companies to have the expertise of a full-time, independent compliance professional.

As the monitoring by the regulators of energy trading companies is just starting there is only limited evidence about their requirements. Therefore it is interesting to take a look at the lessons that could be learned from the financial industry, that already has a long track record in this issue.

One of the valuable takeaways is how to lower the likelihood that the regulator will take enforcement actions against you because they doubt the role of your compliance department. Answering the following questions will help you to determine whether you will have anything to fear or not.

- Are compliance personnel included in critical meetings?
- Are their views typically sought and followed?
- Do compliance officers report to the CEO and have significant visibility with the Board?
- Is the compliance department viewed as an important partner in the business and not simply as a support function or a cost center?
- Is compliance given the personnel and resources necessary to fully cover the entity's needs?



Besides in their reviews the regulators will certainly assess the following issues:

- **Culture.** Does your company have a culture of compliance and are you monitoring everything from day-to-day operations such as trading to periodic operations such as how training is conducted and whistleblower reporting mechanisms are offered and tested? An important feature of a culture of compliance is the “tone at the top.” Regulators expect senior management to be engaged in compliance — to demonstrably support compliance program elements and offer the compliance officer a seat at upper management and board meetings. This means the compliance function is not considered a back-office function but is, instead, visible and able to communicate and personify the firm’s compliance ethos.
- **Program.** The compliance program is not a checklist of processes, but one that is tailored to the firm’s business and risks and tested regularly to see if they actually work as designed. It should be modified as the firm’s risk profile changes, with processes spelled out as to the issues that must be escalated to senior management.
- **Documentation.** Good record-keeping reflects a compliance program that is constantly reevaluating itself — performing the check-ups and fine-tuning the regulators require.



These are only some of the main issues, there is much more to consider. However, no matter what always remember: you as a company will be ultimately responsible for your own compliance program and compliance-related results. So you better make sure that you will proceed in the right direction and realize that this will be a continuous process.

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