How recent DOJ activities signal importance of data analytics

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Companies need to develop a compliance analytics strategy and roadmap in response to increased guidance by the Department of Justice (DOJ) on the use of data, their companies' increased investment in data analytics and increased pressure on their budgets to do more with less.

While compliance analytics can help a company establish that it meets the DOJ's expectations and avoid costly and reputation-damaging investigations and litigation, their use can also help identify, predict and monitor for noncompliance more broadly and maintain an effective allocation of compliance resources and compliance program effectiveness. Compliance analytics can help a company go from data to insight to action.

DOJ signals the increasing importance of data analytics:

The Evaluation of Corporate Compliance Programs (ECCP) (revised June 2020), provides guidance to DOJ attorneys when conducting an investigation of a corporation, determining whether to bring charges, or negotiating plea or other agreements (Justice Manual 9-28.300). The June 2020 revisions added specific guidance on the DOJ's expectations for data collection and use. These revisions and updates reflect, in part, DOJ's own evolution and their experience applying data analytics tools to identify and investigate fraud schemes. The revised guidance outlines the DOJ's specific expectations for data collection and use. The ECCP directs DOJ attorneys to ask:

- Do compliance and control personnel have sufficient direct or indirect access to relevant sources of data to allow for timely and effective monitoring and or testing of policies, controls and transactions? Do any impediments exist that limit access to relevant sources of data and, if so, what is the company doing to address the impediments?

The revised guidance emphasizes using compliance metrics and data to maintain the effectiveness of a compliance program. Examples used in the guidance include understanding which policies and procedures are being accessed by relevant employees, evaluating how training impacts employees' behavior or operations, measuring helpline awareness and effectiveness, and monitoring investigations and resulting discipline for consistency.

Going forward, some anticipate that the use of compliance analytics may play a role when companies attempt to benefit from the DOJ's Foreign Corrupt Practices Act (FCPA) Corporate Enforcement Policy. The policy requires a company to demonstrate that it had an effective compliance program, including a system of internal and accounting controls that enabled the identification of the misconduct and led to the company's voluntary self-disclosure. As part of this analysis, data analytics can demonstrate how the compliance program effectively measures, reports and operates. It can also be used to identify trends, create insights and assist with monitoring.

Importantly, the DOJ has also recently hired several former chief compliance officers including (1) Glenn Leon as the chief of the Fraud Section, who was previously the CECO of Hewlett Packard Enterprise; and (2) Matt Galvin, former CECO of AB InBev, to a new role within the Fraud Section as "Counsel, Compliance and Data Analytics." They bring deep in-house experience and perspective to the DOJ. Their recent statements indicate a pragmatic expectation for companies to use the data and technology that they have access to — it isn't about using the "shiniest tool in the toolbox."

Leaders need to use compliance analytics as evidence of effectiveness in preventing and detecting noncompliance for their companies' prioritized risks.

Companies need to get their arms around their data and their existing business intelligence tools, and they need to start paying attention to what that data is telling them," says Amy Schuh, a partner at Morgan, Lewis & Bockius LLP. Amy suggests that one way is to "start and build on what you have, and importantly act on what you find as you're looking at your data and trends. An effective compliance program will use data to make objective decisions to focus on specific high-risk areas of their business (e.g., specific business units or types of transactions, or third parties).

Corporate compliance departments should:

- Use data and technology available to other internal audit, HR and operations
- Use data as part of ongoing compliance processes
- Use "compliance data" (e.g., investigations, training, conflicts and compliance helpline data) and "business data" (e.g., financial, customer relationship management and human resources data), and consider multidimensional risk analysis combining these types of data sets
- Analyze trends, patterns and relationships in the data – look for anomalies
- Allocate resources and act based on insights created by compliance analytics

"If the data points you're pulling together aren't leading to actions and helping you make decisions, you're not living up to the use case expectation of analytics," says Spyro Karetsos, Chief Compliance Officer at Google. As a result, compliance analytics will help companies prioritize where resources should be allocated from a mitigation perspective. As Scott Schools, Chief Compliance & Ethics Officer at Uber says, "the value of compliance analytics is in their ability to help company management address real risks and real problems." Compliance analytics can help prevent risks from becoming issues.

> "When we think of our work with EY Virtual, we certainly have some great pre-built solutions available on our platform for our clients to use to stay compliant in these areas by not only using our technology to identify, predict and monitor for noncompliance, but also our services to help them go from data to insight to action — to allow them to effectively manage their compliance risks.
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