Message from the Chair

Dear Corporate Compliance Committee Members:

I hope you enjoyed the winter holidays and are looking forward to the Section's Spring Meeting in Montréal on 7-9 April, even though the weather will likely not be particularly spring-like. The Committee is sponsoring and co-sponsoring several programs on Thursday, Friday, and Saturday; holding our periodic business meeting on Friday; and having a committee dinner with the Corporate Counsel, Cyberspace Law, Intellectual Property, White-Collar Crime, and Young Lawyer committees at Industria, a casual brasserie-style restaurant, on Thursday night. Of course, the Section staff is planning many other fun and educational programs of interest. You may view the current schedule, and register/purchase tickets, on the Section website.

The Section officers often talk about what the Section's value proposition is to its members. Overwhelmingly the value of a Section membership focuses on the high-quality content that the Section delivers - through in-person and webinar CLEs, other distance learning, and publications (in the form of books, magazines, newsletters, etc.). I ask that you reflect on what content you find most valuable and how you might contribute to it. Because the Section has its own programs and publications staffs, decisions regarding what content to produce are not made by an out-of-touch editor; on the contrary, we make those decisions ourselves as a Section. There are many opportunities for contribution, and if you approach the Committee's lead team with a viable proposal, we will endeavor to find the right content vehicle for it.

Finally, I am also pleased to announce that Margaret Cassidy has been appointed Vice Chair of the Committee. Margaret will be working with the Committee's lead team to improve our engagement and contributions, and I hope you will give her your full support.

I look forward to seeing you in April.

Regards,
Brian T. Sumner
Chair

5 Things to Think About Before You Give that Compliance Presentation

By Ted Banks

Personally reaching out to clients and colleagues with a compliance message can be a superior way to educate them about compliance risks, particularly as compared to a mediocre online computer-based training program. You not only have a chance to present a message that is customized for your client or company, but you have a chance to build a personal relationship with the people in your audience. Very often people are reluctant to reach out to someone they haven't met in person, but once they've had that personal encounter, communications improve. Many lawyers have had the experience of someone coming up to them after a compliance presentation, and saying "Can I talk to you about . . . ?"

But you also can damage your credibility and set-back the compliance program
by giving a bad presentation. It could be too long, or have poor slides, or be unrelated to the business, or you might be nervous and unintentionally convey to the audience that you really don’t know what you are talking about. Although unintentional, you may help solidify negative stereotypes of lawyers (they are clueless, they are arrogant, they only care about themselves, etc.).

Read more...

Corporate Compliance With Corporate Jet Registration

By Michelle Wade

Has your company restructured or brought in a new investor in the last few years? Many entities are considering mergers, acquisitions or inversions to become more competitive. From a compliance perspective an audit can be invaluable to confirm that the aircraft registration is valid. Failing to have a properly registered aircraft can result in FAA civil penalties, invalidation of insurance coverage and violation of loan covenants.

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Read more...

Editor’s Corner

By Alan S. Gutterman*

Welcome to our first Committee Newsletter of 2016. I am the Newsletter Editor and I’m writing to seek your contributions for future issues, which we plan to publish on a quarterly basis. We invite you to submit relatively short pieces, perhaps 300 to 500 words, on topics of interest to our members. In addition, we are open to longer articles if you are so inclined. If you have something you’d like to share, please contact me at my e-mail address below.

The Committee will also be supporting a themed issue of Business Law Today that will include a collection of articles on compliance-related topics. We have several commitments already; however, if you are willing and able to participate and provide us with an article running from 1,000 to 1,500 words I’d love to hear from you. We anticipate that articles will be due by the beginning of May.

We are also seeking one or two deputy editors for the Newsletter, with the real possibility of advancement to the Editor position later this year. The Section makes it easy to publish the Newsletter and it’s a great way to get involved.

Many thanks in advance and we hope you enjoy the information we’ve provided in this issue.

*Alan S. Guterman is the Publications Chair of the Corporate Compliance Committee and can be reached at aguterman@alanguterman.com. He is the Director of the International Center for Growth-Oriented Entrepreneurship (www.growthentrepreneurship.org) and the Business Counselor Institute (www.businesscounselorinstitute.org). Readers interested in compliance-related materials developed and distributed by Mr. Guterman should contact him at the address above and navigate to the “Compliance” page at the website of the Center.
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5 Things to Think About Before You Give that Compliance Presentation

Ted Banks*

Personally reaching out to clients and colleagues with a compliance message can be a superior way to educate them about compliance risks, particularly as compared to a mediocre online computer-based training program. You not only have a chance to present a message that is customized for your client or company, but you have a chance to build a personal relationship with the people in your audience. Very often people are reluctant to reach out to someone they haven’t met in person, but once they’ve had that personal encounter, communications improve. Many lawyers have had the experience of someone coming up to them after a compliance presentation, and saying “Can I talk to you about . . . . ?”

But you also can damage your credibility and set-back the compliance program by giving a bad presentation. It could be too long, or have poor slides, or be unrelated to the business, or you might be nervous and unintentionally convey to the audience that you really don’t know what you are talking about. Although unintentional, you may help solidify negative stereotypes of lawyers (they are clueless, they are arrogant, they only care about themselves, etc.).

Getting in front of a live audience is an important and sometimes rare opportunity to advance the cause of compliance. Here are a few things to think about so you don’t blow your chance:

1. What do you know the audience you will be facing? Can you have a conversation with the audience?
   If you have not otherwise interacted with the group you will be addressing, spend some time learning about who they are, and the products they sell. If you don’t know the kind of problems they have faced in the past or might currently be facing, do some research. When you start out, approach the audience as a friend and colleague, and stress that the information you are providing will help them succeed, but that you are very interested in hearing about their concerns and needs. Make some part of your presentation a bonding exercise – such as pictures of their office or plant, or perhaps even a local sport team. Make sure they know that this presentation is about them – not about you.

2. Do you know how not to talk like a lawyer?
   Your goal here is not only to share some compliance information, but to convince the audience that you are “good guy” (or “good gal’). Many lawyers think they need to talk or write “like a lawyer” with big words and long sentences. All that will do is send the folks scurrying to their cell phones as they tune you out. Keep your presentation simple – which means easy to understand, not childish or condescending. Your skills as a lawyer should include the ability to explain complex legal concepts in simple terms. Always remember that while you take your subject seriously, and stress its importance, you don’t take yourself seriously. But

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don’t go overboard on the jokes, and probably it is best to skip the jokes altogether if you are an American lawyer speaking to a group in another country or where the audience has a significant number of non-Americans.

3. YouTube and the media are your friends.
   Short (~2 minute) videos are great additions to any presentation. If you don’t have a library of videos from a commercial compliance vendor, search online. You would be surprised at what you might find. Apart from short videos that other people have made (and are available for use without violating anyone’s copyright), look for news reports that might illustrate the compliance issue you are discussing.
   If you have an audience wedded to their smartphones, figure out a way to use the devices as part of your presentation. Developing a custom app may be a bit pricey, but if you can get everyone’s email address in advance, you can send them materials to look at during the presentation. For example, a hypothetical story about which they need to determine a solution. Anything that gets the audience’s input and participation is a plus. They enjoy it, and because of this they think better of you. Dividing the audience into groups to do something is also a good technique to engage them actively. Although you might think that it is an inefficient use of time, it is a much more potent learning technique than listening to a lecture.

4. Shorter is always better – and you can do it.
   Edit your presentation until you have boiled down to the essence. Whatever time you are given to speak, plan to use a fraction of it. Set aside time so that (unless it is a huge crowd) everyone can introduce themselves (helps build rapport with the audience), and allow time for questions at the end. If possible, address everyone by name. If you don’t get questions and you find yourself with extra time, have questions for them ready to go. You can throw up a few extra slides, and see how they respond (“Now that you know all about _____, what would you do if this happened?”)
   If you do ask questions, make sure you listen carefully and respond respectfully. If the question becomes too lengthy, or may expose legal liability issues, politely say that you will talk to the person offline. You don’t want to have the program hijacked by something that is of interest to only one person, or expose matters that would otherwise be privileged.
   Although lawyers want to pack in as much material as they can, our attention spans fade. Stuff that you present toward the end of a long presentation simply is not retained, and the audience is annoyed for causing them to suffer through a long presentation. Think about TED talks – 18 minutes maximum. If you go much longer without audience involvement in an activity, you may not accomplish anything.

5. Leave them with no more than 4 things to remember – one of which should be whom to call with questions.
   Your presentations should be designed so that everyone can play back the essence of what you were talking about. I submit that for any compliance subject, this can be done. For example, if you are giving an antitrust presentation, your main points should be:
   - Never talk about competitive matters with a competitor
   - Don’t unfairly try to dominate a market, or talk as if you are
- Treat customers fairly
- If you ever have a question, call or email __________.

Did I leave stuff out? Of course. If I’m talking to sales or marketing people, I might add in something about unfair or deceptive conduct. If I’m talking to strategy people, I might talk about mergers. But whomever I talk to, I want them to remember the main points. They do not need to be an expert on the minutiae — that is our job. We basically want to educate them enough so that their radar is turned on; when a potential compliance issue surfaces, they will know what to do or whom to call.

Think about how your presentation will be received outside of a legal context. Put yourself in the shoes of the audience members. You want to show them you care. You want to sell the concept that compliance is a good thing, and that it is OK to do business with integrity. You want to establish trust and build a relationship so that people will view you as a colleague who wants to help them achieve their business goals, not as a policeman who is only playing “gotcha” if they make a mis-step.
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An aircraft may be registered in the US only when the aircraft is owned by a “citizen of the United States”. The FAA has its own definition of a citizen.

Per USC 49 U.S. Code § 40102 (15) “citizen of the United States” means
(a) an individual who is a citizen of the United States;
(b) a partnership each of whose partners is an individual who is a citizen of the United States;
(c) a corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.

This definition poses more problems than you might imagine. Invalidation of the aircraft’s registration will occur immediately if the owner of the aircraft fails to satisfy the FAA’s definition of citizen of the United States. This could occur with a change in the president of the company if the new president is not a US citizen, if a foreign investor owns more than 25% of the company or if the company merges with a foreign entity.

The definition does not tell you everything you need to know to be in compliance with the statute and FAA registration regulations. The FAA looks up the chain of ownership until it reaches individuals. Each owner in the chain must satisfy the definition. Leaving it to the flight department to handle everything involving the aircraft or trying to apply the statute without digging through FAA legal interpretations can produce less than satisfying results.

Changes in entities are common. Problems can arise if there is an aircraft involved and no one reviews the impact of the change on the aircraft’s registration. Unfortunately an invalid registration may void the insurance coverage. An invalid registration will also violate loan covenants if there is any financing on the aircraft.

Your insurer denying coverage for any aircraft claim is a very expensive way to learn about the FAA’s definition of citizen of the United States. There are relatively easy solutions for registration of the aircraft if an entity does not meet the FAA’s definition of citizen of the United States.
A periodic check-up with experienced business aviation counsel can help reduce company risk and overall costs by identifying aviation compliance issues and how to address them before they become problems. You can ensure FAA and IRS compliance, minimize enterprise risk and add value by creating a tailored corporate aircraft structure based on your current facts and needs.

*Michelle M. Wade is a partner with the law firm of Jackson & Wade, L.L.C. and counsels clients on the acquisition, registration, financing and operation of corporate jets operated under Part 91 and Part 135 of the Federal Aviation Regulations. She can be reached at mwade@jetlaw.com and www.jetlaw.com