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Anatomy of a data-driven decision: Making informed compliance decisions

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Whether consciously or unconsciously, you make decisions every day that are likely based on data. From selecting which book to read and car to buy, to what to eat for breakfast and where to go on vacation, chances are you are relying on at least some data points. Those data points can be quantitative or qualitative, such as written user reviews or a recommendation from a friend. Now, how reliable those data points are, or whether they are statistically significant, is another story and certainly can affect the outcome of the decision you ultimately make, including whether the risk that you were trying to mitigate (e.g., going over your vacation budget) is realized.

Given this reality, the U.S. Department of Justice Criminal Division in its June 2020 updated guidance on the *Evaluation of Corporate Compliance Programs* specifically emphasized the use of data and analytics. Notably, the Justice Department includes a section on Data Resources and Access in the list of factors to be evaluated when assessing a company’s compliance program, emphasizing that “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.”^[1]

Although the guidance explicitly focuses on the use of data analytics in determining the effectiveness of a company’s compliance program overall, since at least 2017, the Justice Department has also focused on the role of gatekeepers (i.e., individuals most recently defined as “those with approval authority”) as well as operational integrity (i.e., essentially how compliance is “reinforced through the company’s internal control systems”).^[2] It is perhaps not an insignificant leap to interpret the guidance as implicitly supporting the use of data analytics as part of a company’s operational integrity and for compliance professionals to assist the gatekeepers in making informed, data-driven approval decisions.

So how can a company facilitate the gatekeeper’s ability to make such decisions?

Step 1: Identify the objective

As with any decision-making process, the first step should be to identify the objective, and if there are several, prioritize accordingly. If we take the example of purchasing a car, one’s objectives may include spending the least amount of money and purchasing the safest, most reliable car for traveling long distances. In this case, the objectives can be prioritized such that buying the safest car within a certain budget becomes the ultimate objective.

Similarly, if your company has already identified fraud and corruption as one of its biggest risk areas, then one objective of an approval decision may be to ensure the legitimacy of the money that will be spent as part of the activity.

Step 2: Identify the data needed

Once you have identified your objectives, you must then determine which data or information will provide relevant insights related to your objective. At first, this may seem easy or obvious. Taking our car example, if your objective is to buy the safest car within your budget, then you might think that all you need is the safety ratings for cars that are at or below your budget; however, additional factors (i.e., data points) may affect the ultimate cost of a car. For example, a car's average gas mileage and average service fees are additional data points that can affect how much money is spent on a car over time.

For our compliance example, companies should identify what data can assist a gatekeeper in making a decision that mitigates the risk of fraud and corruption. Obvious data sources would be the actual payment amounts being made to individuals or third parties, but similar to our car-purchasing scenario, companies should consider additional data points that may also be relevant, such as the country in which the payment is being made, the type of services being provided, the fact that a third party is engaging subcontractors, and even more compound metrics like the amount of money being paid over a time period. All of these additional data points may inform the potential risk of an activity.

Step 3: Consider context

In the car example, the ability to review and consider context is relatively straightforward and relatively easy. Lists of “safest cars” and consumer reports abound; however, in the case of our compliance example, companies should consider ways to provide additional context. For example, can your preapproval system for approving a gift or donation also provide analytics as part of the approval process? If so, the approver can see not only the requested amount but how it compares to other similar requests. Providing context, such as a record of requests of the same nature or with the same recipient, can reveal if the requested payment is an outlier and, therefore, potentially noncompliant.

Step 4: Analyze the data

Analyzing the data in our car example may be relatively straightforward. Leveraging lists such as those mentioned above, in which the data has been helpfully packaged by consumer agencies, can make the analysis of relevant data points easy for you, the ultimate decision maker.

Likewise, your company should mimic those consumer agencies and package insights in a way that is most helpful to your gatekeepers—*your* decision makers. It is simply not enough to identify the relevant data or analytics; companies must make them accessible, understandable, and useful to the gatekeepers. Consider embedding certain insights directly into your preapproval and due diligence processes and tools as a powerful way to achieve this. By doing so, at the very time that they are making an approval decision, gatekeepers can gain valuable information, such as aggregate spend, frequency thresholds, and contextual analytics.

Step 5: Make the decision

In following each of the previous steps, in the car analogy, the risk that the car expenses exceed a monthly budget has been mitigated. And with respect to compliance decisions, you have enabled your company's gatekeepers to have all of the requisite insights to, hopefully, approve only legitimate transactions.

Step 6: Iterate, iterate, iterate

To enable your gatekeepers to make data-driven decisions, you will want to iterate the steps above to refresh

your data sources, identify any new data sources, and address any feedback you've received. In evaluating the effectiveness of the data-driven decision-making process in our compliance example, you may identify quantitative data that reflect a decrease in the number of compliance incidents since approvers have had access to certain data. You may also receive quantitative input that certain data are more helpful to gatekeepers than others. Continued refinement will keep your risk mitigation program—and your company—steps ahead of any wrongdoing.

Start small

A final consideration in creating the groundwork for making data-driven decisions is to start small. With so many data sources available, it is easy to become overwhelmed or to overwhelm the gatekeepers with too much data. Consider identifying and prioritizing your data sources based on those that provide the most pertinent information, are easily accessible, or those that could provide insights across a number of different types of transactions or decisions to be made.

With the amount of data being created every day, reaching almost incalculable numbers, compliance professionals need to harness this valuable information to both evaluate their program's effectiveness as well as to operationalize their programs to enable the most informed decisions.

About the author

Kara Bonitatibus has previously held multiple compliance counsel roles at Pfizer and spent several years in private practice at Stroock and DLA Piper.

Takeaways

- Leveraging data and providing it to your business approvers can lead to more informed compliance decisions and ultimately better outcomes.
- Don't just make any or all data available; understand the specific objectives by a decision and determine the data that will provide relevant insights.
- Provide data in a useful way, whether in a dashboard, a list of metrics, or in context with other data or information.
- Obtain feedback from business approvers, measure the outcomes of their decisions, and continue to iterate on what and how data are made available to them.
- Data can be overwhelming. Start small and identify data sources that are easily accessible and easily understood.

¹ U.S. Dep't of Justice, Criminal Div., *Evaluation of Corporate Compliance Programs* (Updated June 2020), 12, <http://bit.ly/2Z2Dp8R>.

² U.S. Dep't of Justice, Criminal Div., *Evaluation of Corporate Compliance Programs*, 4.