

DOJ Tells HSBC and Corporate America: Reform Your Compliance Departments

By Donna Boehme [All Articles](#)

Corporate Counsel

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Last week's U.S. Department of Justice **deferred prosecution agreement with U.K. banking giant HSBC** made headlines for its eye-popping \$1.9B penalty and five-year monitorship, both punishments for its "blatant failure" to maintain an effective anti-money-laundering (AML) program. According to prosecutors, years of lax oversight and a "pervasively polluted" culture led to serial U.S. trade sanctions violations that likely funneled billions into the coffers of terrorists and drug dealers. But what is most notable about the HSBC DPA, perhaps obscured by the record-breaking fine: a mandate for unprecedented and sweeping reforms to the firm's compliance function.

Under the DPA, HSBC's remedial actions include separating its compliance and legal functions, a structural change already common to settlements in the health care industry. The DPA also cites enhancements to the seniority and positioning of the firm's chief compliance officer, who has now been "elevated" into the ranks of the top 50 most senior managers globally. HSBC has also increased its AML budget nine fold to \$244M, and reformed reporting relationships to give the CCO a line of sight to all compliance personnel.

The HSBC case is further indication that U.S. regulators and prosecutors are closely scrutinizing the independence, empowerment, and resources of corporate compliance functions—and even further, they are re-thinking the relative seniority and positioning of the chief compliance officer vis-a-vis other senior managers.

Another important feature of the HSBC DPA is the linkage of senior executives' bonuses to the firm's compliance standards and values, a step many leading companies have yet to implement.

This is just the latest story to put the corporate compliance function firmly in the spotlight. A proactive management team in today's increasingly complex legal environment will take necessary steps to ensure the chief compliance officer has the requisite powers, positioning, and resources to do the job. Boards and CEOs need to take note and make changes before prosecutors do so for them.

*Donna Boehme is an internationally recognized authority and practitioner in the field of organizational compliance and ethics, designing and managing compliance and ethics solutions within the U.S. and worldwide. As principal of **Compliance Strategists LLC**, Boehme is the former group compliance and ethics officer for two leading multinationals and currently advises a wide spectrum of private, public, governmental, academic, and nonprofit entities through her NJ-based consulting firm.*

*See also: **"The HSBC Settlement's 5-Page Road Map to Corporate Compliance,"** CorpCounsel, December 2012.*