FCPA Training Firms Flourish As DOJ Bears Down On Bribery

By Max Stendahl

Law360, New York (September 11, 2013, 8:08 PM ET) -- In 2008, with the economy cratering, Farzad Barkhordari's 2-year-old compliance training firm Click 4 Compliance saw a sudden influx of business.

At the time, the U.S. Department of Justice and U.S. Securities and Exchange Commission had begun to ramp up enforcement of the U.S. Foreign Corrupt Practices Act, a 1977 law that bars payments to foreign officials designed to retain or obtain business. Companies that had previously sent representatives overseas to train employees on the FCPA were slashing their travel budgets amid financial woes. They needed Click 4 Compliance to create interactive, online programs describing the 1977 law and its prohibitions in multiple languages, including Mandarin.

As the requests poured in, Barkhordari recalled recently, "the company took off."

"As you can imagine, the number of people that reach out to us is increasing constantly," he said.

Five years after that eureka moment, Click 4 Compliance is among a small group of compliance firms that have ridden the wave of FCPA enforcement to commercial success. Mike Koehler, author of the popular FCPA Professor blog, said online training programs were among the fastest-growing segments of "FCPA Inc." — a term he coined to describe the booming industry of anti-bribery enforcement, defense and compliance.

"There's certainly nothing wrong with training employees on the FCPA," said Koehler, a Southern Illinois University law professor. "Generally, though, training that is not done properly can actually be bad."

Click 4 Compliance, a respected leader in the field, offers both online and live sessions. But far too often, attorneys and FCPA experts say, cost-conscious firms will utilize only generic online courses. To be effective, employee training must involve face-to-face interaction and be tailored to specific industries or job roles that present a heightened legal risk, Latham & Watkins LLP partner Aaron Murphy said.

"As great as these online tools are, there's no one-stop shopping that can be done in this area," Murphy said.

Employees who click through a 45-minute program may learn that it is illegal to provide suitcases full of cash to prime ministers in connection with a government contract, but may not absorb the finer points of the statute, like who qualifies as a "foreign official" and which kinds of payments not involving specific contracts are barred, attorneys say.
Most public companies believe their training programs are working. In a recent worldwide survey of more than 250 corporate compliance executives, 73 percent rated their training of domestic employees as either "effective" or "very effective."

Still, the June 2013 survey, conducted by Kroll Advisory Solutions and Compliance Week, found that 47 percent of all respondents had conducted no anti-corruption training with third parties, which often play a central role in foreign bribery schemes. Of the companies that did train third parties on anti-corruption, only 30 percent believed their efforts were effective. The report called those statistics "unsettling."

Moreover, employees who do receive training may consider it a nuisance. A staff member at one of the "Big Four" U.S. accounting firms described his and his team's mindset during a required anti-bribery course: "Find out which buttons you need to click to move on to the next slide, do it as fast as possible, then guess on the quiz until you get it right."

With this problem in mind, providers of online training courses are getting creative in hopes of standing out. Click 4 Compliance says in marketing materials that its 30-minute online FCPA program contains interactive graphics and role-playing scenarios and avoids "legalese." In a demo for the program, a narrator says, "Compliance is not complex, but corruption is."

Compliance is not always boring, either. Second City, the Chicago improv sketch comedy troupe, offers an FCPA training video as part of a corporate ethics and compliance program called RealBiz Shorts. In March, Second City launched its fourth volume of RealBiz Shorts videos. At the time, Steve Johnston, president of Second City Communications, said the group was "trying to influence behavior."

"Employees have limited time and short attention spans, and more social forms of training and communication, like RealBiz Shorts, help compliance professionals connect with colleagues by making them laugh, think and retain messages," Johnston said.

So far, no single firm has cornered the marketplace for FCPA training programs, according to Michael Volkov, CEO of The Volkov Law Group LLC, which specializes in compliance, internal investigations and white collar defense. The work is becoming more lucrative amid high demand, driven largely by tougher U.S. enforcement, he said.

"This is an industry that's going to grow," Volkov said.

A series of high-profile FCPA cases in recent years has underscored the extraordinary risk of noncompliance. Wal-Mart Stores Inc., under investigation for alleged bribes to Mexican officials, has spent more than $300 million on FCPA expenses and compliance programs so far this year. And Siemens AG, which lacked an FCPA training program until 2007, has provided training to thousands of employees after striking a record $1.6 billion settlement in 2008 with U.S. and German investigators.

To be sure, U.S. authorities have acknowledged that rogue employees can circumvent even the most sophisticated compliance programs. In April 2012, the DOJ charged a former Morgan Stanley managing director with bribing a Chinese government official, but declined to charge the bank due to its strong internal controls. That case has provided an invaluable lesson, experts say: Prosecutors will often reward companies that take compliance seriously.

John Gill, vice president of education at the Association of Certified Fraud Examiners, which provides FCPA training, said tougher U.S. enforcement had led to an uptick in business, especially among financial institutions. ACFE's clients for on-site training include government agencies like the FBI, CIA and U.S. Department of Energy. Its courses are
updated at least once a year to keep up with legal and policy developments.

Gill acknowledged that the law, despite its ubiquity, can be "very hard to explain."

"Everyone has their own definition of what's a bribe and what's a grease payment," he said. "It can be complicated if you don't develop a strong policy as to where the line is."

--Editing by Elizabeth Bowen and Katherine Rautenberg.