

An Interview About Mentorships & Compliance Decisions

By Beth Haddock and Michelle Ellis



About the Authors:

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In this article, Beth Haddock (mentor) interviews Michelle Ellis (mentee). They discuss how compliance officers can be effective in the midst of challenges and how a mentor relationship can help compliance officers do more with less as budgets are expected to contract.

Mentors & 2020

Beth Haddock: Why did you decide to apply for a NSCP mentor?

Michelle Ellis: I reached a point where I wanted to talk with other professionals in the field, but it was difficult to get out and meet people on my own. A mentor has proven to be a good option to help with some of questions and the insight I needed. With the NSCP program, I had access to mentors across the country. I am in Texas and you are in New York. Participating in the mentor program has been valuable, even though we have not met in person yet. NSCP's mentor program provided me a chance to meet a few other individuals as well, some local and others not. It has been a great resource to get varying opinions.

Beth Haddock: What is your biggest challenge this year -- COVID-19, remote work, new privacy regulations, Regulation Best Interest, to keep-up with the business or something else?

Michelle Ellis: There have been several challenges in 2020; the biggest has been Regulation Best Interest ("Reg BI"). As a small firm, which does very little retail business, I am the primary person responsible for the implementation of Reg BI, including training, while maintaining my current workload. I have been reviewing compliance software systems to determine if this could alleviate some of my work, but the costs are well over our small firm's budget. My plan is to continue to review and evaluate compliance software systems to keep on top of current solutions in the event my firm's budgetary restrictions change for the better. I may also get some ideas for workflow improvements through research and demonstrations.

Beth Haddock: What are some examples of guidance and advice you received from your mentor?

Michelle Ellis: Sometimes I forget that not everybody likes or knows about compliance rules. The best piece of advice I received from you was "to know your audience." I work with an older group of individuals and they tend to be somewhat set in their ways of doing business. I often get emails back that make it clear to me they do not understand why I am asking them to do something or report information to compliance. In the past, these emails would frustrate me. I could not understand how they were not familiar with the

particular compliance rule. Typically, I would have several email exchanges before I could get what I needed from the individual. You helped me understand that while I like compliance and following the rules, not everyone is as eager as I am! You helped me learn to frame my emails differently, so I can get the person on board at the start. You helped me accept that it is fine to help the person asking the question by giving them enough information so they understand they are accountable going forward.

Another important piece of advice I received from you was to stop asking for more resources without giving support for the need. I had a habit of asking for resources without providing research, sources or clarity on the regulatory need. For example, I tried to get my team on board for purchasing new software and the response was always no. On my last attempt, I did not ask without supporting the request more thoroughly. I said exactly what was needed and why. The response was much quicker and everyone agreed that software was needed.

Beth Haddock: What has been the greatest benefit you have received from NSCP Mentoring Program?

Michelle Ellis: Peace of mind. It makes a huge difference. You know you have someone in your corner that has had similar experiences and can help guide you. I know if a problem arises and am stuck, I can always call or email you. Even being able to bounce ideas off of someone in the same role is a great benefit. There is no downside to having a mentor help you grow into a better compliance professional.

Beth Haddock: What did you learn about NSCP that you did not know before engaging in the program?

Michelle Ellis: I have been a member of NSCP for a few years, so I am pretty familiar with the website, educational opportunities and the overall helpfulness of the group. Before engaging in the mentorship program, I would have been more likely to ask current and previous coworkers for help with issues. Engaging in the mentorship program has helped me see the true benefit of the NSCP community. It has allowed me to confide and ask questions without worrying about whether the person I am asking has the time to work through issues with me. I have found NSCP members are eager to help. I have talked with several members and have personally seen how much they want to help other professionals. NSCP has a great membership base with a wealth of knowledge, I do not think I would know the true scope of the knowledge available had I not joined the mentor program.

Beth Haddock: Having experienced the benefits of a mentor, would you ever consider being one in the future?

Michelle Ellis: Yes, I would definitely consider being a mentor in the future.

Documenting Decisions & Regulatory Experience

Beth Haddock: Do you think about documenting high risk, routine or all decisions in your procedures? Could you please provide an example of when documentation was beneficial in preparing a response to a regulatory inquiry?

Michelle Ellis: I think about documenting everything, but it is not feasible for me at the moment. I tend to document anything that I consider high risk or outside of routine processes and procedures. That is in line with regulatory expectations and my procedures, but of course I think there is always more I can do.

As an example, in the past, I handled a situation with a trader. The trader was not showing-up to work and was slow to respond to requests. We were concerned with his quality of work, but the firm had not encountered this situation before and the individual was not necessarily doing anything wrong. Regardless, in an abundance of caution, we decided to document our interactions with the trader and increase the frequency of our reviews. Through that work, we discovered that the individual was engaged in an unapproved outside business activity, and his failure to disclose that activity to the firm resulted in his termination. Later, we received an inquiry from FINRA about his termination. We were then able to provide the documentation FINRA requested. The firm demonstrated that customers suffered no harm and that we appropriately monitored the registered representative and terminated his affiliation upon discovery of his unapproved outside business activity.

Beth Haddock: Has your work been examined by a regulator? If not – is that something you think about?

Michelle Ellis: Our compliance programs have been reviewed by regulators. The reviews have been routine with nothing out of the ordinary so they have not been too concerning for me. That said, I think about the compliance program being examined all the time. It's always a work in progress. I try to find ways to improve our program by building on the basics.

My greatest concern is the compliance responsibilities I delegate to others in the firm. Being the only compliance professional at my firm, if I need help I have to delegate. I try to only delegate the less technical compliance tasks. I have to trust that the person I give the task to will properly complete it or ask questions if needed. As you know, we have discussed smart delegation and you have encouraged me to document and delegate particular operational tasks to those I believe have the requisite skills and experience. I rarely delegated work before the pandemic. Working from home is not always as fast and easy as I would like, so I have had to delegate more often. Sometimes delegation saves me time but not always. To supervise the delegated work, I need to make sure I understand the thought process of the person helping me and often I revise documents to clarify points or add information.

Contemporaneous Records & Supplements Thereto

Beth Haddock: In 2019, the SEC settled a case against Deer Park <https://www.sec.gov/litigation/admin/2019/ia-5245.pdf> for among other things violations of the compliance rule 206(4) -7 because its valuation and pricing procedures were not adequate. Part of the settlement was an agreement to hire a new CCO. When you think about investment management compliance, how do you make sure compliance and management/supervision is clearly separated and documented? How do you know you have written enough? Do you use Committees or independent audits?

Michelle Ellis: I try to keep everything as separate as possible between compliance and management/supervision. Compliance saves its documents to different drives, and compliance is in a different location, so there is a clear separation of duties. Additionally, the firm uses committees and we have independent audits. Our asset management firm is small having only 3 people, so I clearly define each person's role in our policies and procedures. However, as we have discussed, particularly with Reg BI and delegating tasks, there is a fine line between accurately delineating a process and writing procedures that are overly burdensome and potentially unrealistic. It is a matter of accurately identifying a risk and knowing when more documentation is needed.

Beth Haddock: This spring, the SEC announced a settlement with Ares Management. <https://www.sec.gov/news/press-release/2020-123> “Ares did not require its compliance staff, prior to approving the trades, to sufficiently inquire and document whether the board representative and members of his Ares team possessed material nonpublic information relating to the portfolio company.” Can you explain what you think are best practices for documenting approvals for directorships or personal trades? How do you make sure conflicts are described and mitigated? Do you ever say “no” to a request?

Michelle Ellis: My number one best practice is pre-approval. I know a lot of people find it annoying to seek pre-approval for outside business activities or personal trades, but this is the first and best chance I have to prevent someone from breaking rules or taking on unmitigated conflicts. It also allows me an opportunity to create boundaries and rules before anything takes place. Conflicts can be tricky for me, so I tend to try to find all the conflicts myself first, discuss any conflicts the individual may feel are present, and get with a select group of managers to discuss any conflicts they may have found. Then as a team we work to mitigate the conflict uncovered.

Yes -- I have said “no” to requests. In these cases, I documented the reason for rejecting the request and I also let the individual know if it would ever be open for discussion again. As part of a routine exam, regulators will ask this question, so it is good to document when something is not approved.

Beth Haddock: In the SEC matter against Judy K. Wolf (2015), <https://www.sec.gov/alj/aljdec/2015/id851ce.pdf>, the SEC took action because Ms. Wolf supplemented her insider trading surveillance

records in an inappropriate way. How do you make sure supplements to your records are dated so if the regulators inspect them there is a clear record of material revisions?

Michelle Ellis: After changing a record, I save it under a new file name and date. Changes are a natural part of a functioning compliance program, and it's my job to identify gaps and augment where needed. Sometimes when reviewing, I don't receive all the facts at once so updates need to be made to a review. Sometimes someone else is doing the review work. When I review their work, I have changes which may be due to current regulatory developments or something I learned through NSCP. This would also require an update to the review. I also prefer that individuals email me documents instead of submitting hard copies. I keep a date stamped copy of the entire email in the file.

The Year Ahead

Beth Haddock: As you think about the year ahead, what advice do you have for compliance officers to manage compliance programs in this environment?

Michelle Ellis: In the current environment, many of us are working from home, partially working at the office or working in an almost empty office. This can leave compliance officers feeling isolated. I encourage compliance officers to reach out to each other, join a NSCP committee or join a local compliance group. I also highly recommend seeking a mentor or becoming mentor. Many of us will encounter things in compliance that we have not experienced in the past. Having people to call upon for guidance and advice will be tremendously helpful in the coming year. ■