The Physics and Chemistry of "Good-faith" Compliance

By Jim Lawrence

The Building Blocks of Dealership Compliance

> "Particles attract one another by some force, which in immediate contact is exceedingly strong, at small distances performs the chymical operations, and reaches not far from the particles with any sensible effect." - Sir Isaac Newton

I am not sure what this means exactly either…he wrote this in the 1600s…what I think it means is there are things that naturally attract each other and when they get into proximity to one another they create a particularly strong bond.

There are plenty of examples of this phenomena in nature, e.g. water, oxygen, carbon dioxide, swamp gas, cow farms, etc. What is interesting (and the entire point of this article) is that this natural process of chemical and *physical* bonding provides a strong analogy to dealership compliance and the emerging way out of the unmanageable quagmire of ever increasing regulations and requirements.

Forces

> Wikipedia states: "In physics, force is anything that can cause a massive body [e.g. dealership compliance effort?] to accelerate. It may be experienced as a lift, a push, or a pull. In an extended body [multi-location dealerships?], force may also cause rotation, deformation, or an increase in pressure … while deformation and pressure are determined by the stresses that the forces create."

Compliance within a dealership is driven by "forces" from many quarters. These "forces" include regulatory driven personnel-based compliance, with harassment laws and other employment practices. There are also regulatory driven transaction/deal-based compliance with FCRA, GLBA, OFAC and others. Other "forces" include OEM compliance, which comes in two fantastic flavors, Franchise Agreement requirements, e.g. dealer allocation and quotas, and the CSI/Quality/Residuals Support programs to which 1000s of dealerships must adhere (e.g. Toyota Signature, Chrysler's 5 Star, CPO/CUV, etc). Additionally compliance exists with homegrown procedures, proprietary to dealerships, all of which we will probably never know, e.g. T-shirt orders, special order parts processes, time-off requests, BHPH collections processes, etc.

For dealers, this growing variety of mandatory "forces" are lifting, pushing and pulling up the cost of doing business, from higher legal claims to increased overhead, just to manage relatively small portions of compliance requirements and doing so inconsistently. [Author's note: Inconsistency of compliance is the butter on a plaintiff's lawyer's bread.]

These "forces" are deforming dealerships from their traditional system of "bring in inventory, offer inventory, sell inventory and service inventory" any way you can and creating new and previously unknown stresses to the average dealer, or any dealer of any size for that matter.

Weak and Strong Bonds

Dealerships are bound to existing business processes and workflows involving today's manual and compliance point solutions involved in the transaction process. This suggests that even a small set of so called solutions require several disruptive "one-off" implementations, spanning many months of time across departments. The history of growing payouts and claims in the press suggest the outcome of inconsistent compliance has been the creation of huge gaps of serious liability that require a level of comprehensive protection that no manual or point "solution" can address alone.

There are two general types of "solutions" to dealership compliance. The many and varied and proprietary and inconsistent manual solutions and a small number of relatively new single-point transaction-based technology solutions. These separate compliance activities address <u>some</u> of the literally 100s of compliance challenges dealerships face. These "silos" of compliance activity tend to represent a somewhat effective means to address particular issues. But, and this is a BIG "but," since these disparate processes do not bond the necessary information together in a comprehensive, readily understood manner, there is simply no way to get a handle on all of the activity (AKA costs) associated with compliance in a dealership. Yikes!

Further these approaches require various sundry and proprietary maintenance efforts (aka personnel battling entropy) that over time at any busy dealership with high turnover will become inconsistent and eventually breakdown. Technology is only good if you use it. As the champions of particular technologies leave, so to does the pressure to use it. Lastly, those proprietary manual processes dealers are bound to, may not (e.g. probably don't) add value but they ARE costly and VERY time consuming. How's that for a universal constant?

On the other pole, the automated point solutions are fully committed to specific actions that tend to support transaction-related compliance, e.g. OFAC, ID Checks, Credit checks, etc. They provide "in-line" deal compliance checks and do their job well. They speed the transaction along and help maintain consistency across multiple deals to avoid the trials and tribulations of federal, State and local regulatory intervention. Many of the DSPs have figured out how to add real value to a deal by simplifying and automating compliance checks as part of the workflow. Good news, right? Maybe… Maybe not, let's find out.

To garner these fantastic benefits all you have to do is actually have your personnel use them…and there is the rub. How many times a year have you replaced someone in your Sales and F&I crew you wish you did not have to? As they leave, so goes the costly knowledge of how and why your team needs the "in-line" compliance systems. Without your sales and F&I personnel well trained and ready to use those systems, your dealership is open to the usual suspects of regulatory enforcement. Bam!

Logic

The NADA & ATD Federal Regulatory Compliance Chart in 2003 had about 117 regulations. In early 2007 the NADA Regulatory Compliance Chart had nearly 140. In short, it ain't easy being a dealer. Compliance of all shades is a growing issue, from new regulations to over-stressed domestic OEMs to strained manual dealership operations and ever thinning margins. History suggests that the spread of point solutions will continue along the same trajectory and will continue to represent an interesting cost/benefit conundrum for dealership in the foreseeable future. Enjoy!

Now for the point I am slowly making…

Covalence

Sir Isaac's quote - "Particles attract one another… which in immediate contact is exceedingly strong" rings sweetly in my ears. In looking at the plethora of available solutions that address another plethora of compliance related issues, the obvious first response is to stop using the word "plethora" and then to combine the pieces parts of these single point "solutions" into something more comprehensive.

To create that which best address the multi-variant compliance issues every dealer faces, combine the "best of breed" elements that effectively manage compliance at a dealership. Not a bad thought I think…combining transaction and personnel related compliance solutions…but what if you combined the weakest solutions or the weakest with the strongest? These suggest outcomes less than optimal.

Existing one-off compliance systems are building the momentum that eventually throws off their riders, with serious consequences, generally ending up in the press. How does a dealer get off this merry-go-round spinning ever faster? I believe the answer lies in looking at the two things that work to keep the dealership in compliance with all the laws, regulations and OEM requirements … personnel and transaction based compliance systems.

By combining transaction and personnel based compliance systems, principals and executive management can better protect their dealerships from the vast majority of risks while reducing the costs associated with manual business processes.

From this point of view, ultimately dealers need to combine the systems that cover 100% of your personnel-based and 100% of your transaction-based compliance issues. This means systems that touch (e.g. inform, send content to, track completion and report exceptions) every person in your dealership throughout their entire employment lifecycle, from hiring, orientation and training, compliance training and compliance training, performance evaluation, compliance training, then more compliance training then to separation/termination. Because these are the same people who manage the transaction-based compliance systems many dealers have in place, e.g. from lead management and CRM systems to desking and F&I Menu selling systems to service follow-up systems. Getting them to use the F&I Menu for example is a matter of training (and incentive). Turnover equals compliance training. And did I mention you need compliance training?

Anyway, by combining transaction and personnel based compliance in an automated fashion, dealerships will improve transaction consistency, which facilitates and protects deals from getting unwound and reduces the chances of costly and time consuming litigation (e. g. those things that can unwind you). If ALL of your people know and understand (and you can prove that they understand), the activities related to "good-faith" compliance and transaction-based, "in-line" compliance, you pull human error out of the deal preparation and closure process.

You can't lose! Or at least you won't get eaten up by hungry lawyers and you will get consistent, e.g. better quality, less costly business process improvements that studies suggest lead to higher customer satisfaction (maybe…if JDPA says so.). But frankly, who cares as long as your dealership is protected from formerly uncontrollable liabilities and risks which were simply budgeted for as a "cost of doing business." Now THAT response to compliance leads to nothing but a black hole.

Avoiding Weak Bonds

Comprehensive protection from liability requires that dealers manage the regulatory compliance for both vehicle sales transactions and the personnel tasked with implementing the compliance processes of the dealership. Fundamentally, addressing one half of this "covalent bond" without the other half, opens the dealership to claims, fines and penalties. This is true even when they are diligent on either the transaction side or the personnel side. I think that the strength of this "covalent bond" of two compliance approaches can effectively battle the "forces" pushing proactive dealerships to the outer limits of existing manual and stand-alone point solutions.

Building Strong Bonds

According to Wikipedia, covalent bonds are "a form of chemical bonding that is characterized by the sharing of pairs of electrons..." These bindings vary in strength and intensity. They can be very weak and incredibly strong.

At a high level, combined elements in terms of personnel and transaction-based compliance give a dealer the following:

Personnel Based Compliance	**Transaction-Based Compliance**
Reduce turnover cost of new hire orientation & on-boarding	Automated Deal Audits and Secure Client Info Archival
Automated Distribution of Required Trainings, including the mandatory use of transaction compliance tools.	"In-line" Identity Checks
Automated Compliance Action Alerts	Pre-populate docs in the Deal Jacket for Accuracy
Automated Compliance Tracking & Measurement	"Inline" OFAC Checks
Comprehensive Compliance Content	Automatic Deal Jacket Documentation
Clear Exception Reporting	Automatic Adverse Action Notices
Clear Compliance Effort Decision-making and Guidance	Automatic Credit Application "back-stops"
Electronic Personnel Record s	Streamlined Credit App Submittal
Electronic Document Management	Electronic Authorizations & Deal Signatures
Electronic Sign-off	Automated IRS Cash Reporting Documentation

Singularity

It used to be that you had to choose a manual process for one and a maintenance issue for the other. There are transaction-based and personnel-based compliance management systems out there that can address both issues, in a complimentary fashion. Like the earth and moon, endlessly orbiting, these two technologies are beginning to emerge from the plasma of regulatory space, creating something new and interesting and effective yet simple.

Dealerships are pin-balling through the industry forces pushing, pulling and deforming their operations well beyond anything their predecessors ever experienced into a singularity never witnessed in the dealership space. Add consolidation and miniscule profitability and you get the Big Bang of forces that can either create living matter (e.g. dealerships alive and well and growing) or forces that destroy matter (e.g. dealerships spiraling toward the black hole of insolvency). The universal beauty of this stellar event is you can see it coming and have the means at your disposal to ride the wave.

Jim Lawrence has extensive experience in building cutting edge dealership software in the fixed operations and front end of dealerships and is involved in managing the compliance software development at Compli. For more information or any other compliance management software needs, visit www.compli.com or e-mail Jim at jim@compli.com.