THE ART OF COMMUNICATING WITH REGULATORS

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By: Dawn M. Meyers

As a lawyer, I am often accused of speaking “legalese.” As such, I can empathize with those in the business community who often confide in me that they have difficulty communicating with government regulators. From misunderstandings to unrealistic expectations, it is all too common for conversations with regulators to go off the rails. Given the importance of regulatory approvals to a myriad of business transactions, here are a few pointers on how to improve the quality and effectiveness of your future regulatory interactions.

Understand their role

First and foremost, it is critical that you understand a particular regulator’s role prior to engaging in any communication with them. For example, does the regulator even have jurisdiction over your matter? If so, do they have the authority to make the decision you are asking them to make. I recommend to my clients that they understand the organizational chart prior to any meeting with regulators, and have a working knowledge of the code they are responsible for interpreting or enforcing.

Respect their time

One thing I can virtually guarantee you is that whichever regulator you are meeting is understaffed and overworked. As a result, their time is their most valuable commodity. Don’t waste it. Request a meeting or a call well in advance of when you need it. Request only the amount of time you really need. Ask when scheduling whether other regulators might be needed to address your particular concern and, if so, invite them. Show up on time, and don’t exceed your allotted time. And by all means, be fully prepared when the meeting occurs with all necessary documents in tow. Of course, emergencies sometime arise which limit your ability to honor all of these rules, but if you have a pattern and practice of following them, you are much more likely to have earned an occasional exception.

Be realistic

Regulators can, in some ways, be analogous to the military. For example, I’ve yet to meet a regulator that doesn’t have a regulator boss who, in turn, has a regulator boss, and so on and so on. This hierarchy, in addition to the code governing the matter, limit what a regulator can do for you and by when. Make sure you know beforehand whether your “ask” is within the limits of their authority, and don’t ask them to go out on a limb for you. Such risks might end of being profitable for you, but can create serious issues for the regulator.

Respect their intelligence

While not always the case, more times than not the regulators with whom I have dealt are highly intelligent, very experienced, and experts in their subject matter. This does not mean they are flawless, and communicating information in a respectful manner can prove very helpful. Imagine, however, the affect on a regulator of being talked down to by someone who fancies themselves smarter, more sophisticated or more important. I have seen this happen more times than I care to remember – sometimes overtly and sometimes more subtly, but the effect is always the same. Start by listening, and be sure to show the respect they have earned and deserve. It doesn’t insure the desired outcome, but it certainly improves your chances.

Be honest

Finally, and most importantly, always be honest with regulators. Chances are they already know or will ultimately find out the truth anyway. The damage caused by dishonesty will extend far beyond your specific request or even the specific project, but to your and potentially your colleagues' and business' reputation. Over and over again I have counseled clients to disclose facts or circumstances that they wished the regulators didn't have to know. By being honest and proactive, we have, in virtually every one of those situations, garnered the empathy, respect and cooperation of the regulator in addressing the issue.

While much of this may seem like common sense, failure to abide by these simple rules lands people in my office all too often. Following these rules will not only increase your chances of having quality and effective communication with regulators, it's just the right thing to do. Remember, regulators are people, too.

Should you have any questions or concerns about this topic, please contact Dawn Meyers in our Government and Regulatory Team.

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Dawn M. Meyers

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