

COMPLIANCE WEEK

Case Study: Whistleblowing System At Overstock.com

By Matt Kelly — February 22, 2005

This "case study" is the latest in a series of articles aimed at helping public companies understand how other organizations are using technology to comply with new regulations and standards. These are **not** advertisements or marketing vehicles for the companies mentioned; Compliance Week's editorial staff speaks with the public company that has deployed the technology, and the article is written without the input—and in many cases the knowledge—of the vendor.

An Unexpected Buy

Jonathan Johnson, vice president of corporate affairs at \$494.6 million retailer Overstock.com, is quick to stress that his company provided adequate whistleblower channels well before the Sarbanes-Oxley Act required them. Still, Johnson considered the system *only* adequate.

For example, employees could write a letter to the chairman of the audit committee to report alleged fraud, but that imposed unnecessary burdens in today's digitally driven world. Employees could also communicate with members of the board via email, but the employee had to create email addresses at Web sites like Yahoo or Hotmail to remain truly anonymous.

The system worked, but, as Johnson readily admits, "it was not user-friendly for the user or the company."

Enter SilentWhistle Corp. Overstock.com had not been actively shopping for a new whistleblower system at the time, says Johnson. But several executives at Overstock.com knew of a local company called SilentWhistle and agreed to a meeting.

"When SilentWhistle came and made a pitch to us, we saw that what they were offering was much better than what we had and would make things easier," Johnson says. "It wasn't that we were actively looking, but rather someone found us and proposed something that made a lot of sense to us."

Entirely Painless Integration

Initially, Overstock.com's human resources department examined SilentWhistle as an alternative to a "suggestion box" or complaint system for personnel matters. HR executives then reported their findings to Johnson, who said, "I thought it would be great for whistleblowing and SOX."

Johnson and Overstock.com's chief financial officer tested SilentWhistle's offering several times, and shortly thereafter agreed to purchase the system.

Johnson described the implementation as "entirely painless." That's partially because—rather than integrate its software into customers' IT departments—SilentWhistle hosts its service on its own equipment.

DETAILS	
THE COMPANY	
Company	Overstock.com
HQ	Salt Lake City, Utah
Employees	326
Industry	E-commerce retailer
'04 Rev.	\$494.6 million
'04 Net	(\$5 million)
THE CHALLENGE	
Improve whistleblower system to give employees greater ease in submitting complaints anonymously.	
SOLUTION CHOSEN	
Anonymous employee feedback system from SilentWhistle in Salt Lake City, Utah.	

That way, employees at Overstock.com simply log onto a dedicated Web site hosted by SilentWhistle, which is rebranded to look exactly like Overstock.com's intranet. There, employees can submit a complaint via anonymous email. "There's no plugging into our systems other than getting our email addresses," Johnson says.

To introduce the system, Overstock's president issued an email to all employees that essentially said, "We're introducing this; we hope you use it, and we hope you let us know what's going on. We don't want it to be abused or to be a method for people to get back to their boss. We do want it to be used appropriately." Otherwise, Johnson said, SilentWhistle was so self-explanatory it required no substantial training for workers to use it.

Johnson also mentioned how reasonable it cost them to implement SilentWhistle and that the annual subscription model is ideal.

Current Usage

Since implementing the basic version of SilentWhistle's offering, Overstock.com has since created 12 unique complaint categories for employees. Submissions are routed to various Overstock.com officers and directors depending on the nature of the gripe.

For example, an allegation of financial fraud might go to the audit committee chairman or chief fiscal officer, while requests for more coat hangers in the closet go to the office manager. Johnson and a few other executives see all complaints—even if they don't answer the emails themselves—so they can monitor the volume of submissions and assure that every complaint is investigated.

"When it first went live, we had some people sending submissions that had no content," Johnson says. "We think they were probably testing the system to see if it were truly anonymous. But we have not seen an increase in submissions at all—which has been nice. I think we've provided a better method for people to submit to us, and it hasn't been abused."

Of the several dozen complaints received through SilentWhistle since it went live five months ago, Johnson says, roughly one-third were blank and another third were routine suggestions to improve company operations. Only a handful were allegations of wrongdoing that warranted investigation, and none resulted in any serious consequences.

Lessons Learned

One early mistake Overstock made, Johnson says, was to designate multiple executives as recipients for certain categories of complaints, without specifying who must take action. "We found that wasn't the best idea because no single person owned the complaint," he says.

Overstock subsequently pared back responsibility for most categories to a single executive, or clearly specified who among a group of recipients must track the complaint until its resolution.

Johnson also advises other companies considering whistleblower software to spend extra time focusing on the tracking and resolution of complaints. Most vendors focus on ensuring the confidentiality of the sender; Section 301 of Sarbanes-Oxley requires that the audit committee establish procedures for handling the "confidential, anonymous submission by employees" of concerns regarding questionable financial matters.

However, Johnson notes that assuring anonymity is the easy part. The hard part, he says, is responding, tracking, and monitoring ongoing complaints. For example, says Johnson, some complaints can be resolved immediately and answered with a quick note saying, "Thanks, we've taken care of this today." Other complaints might need a week to investigate, and risk sliding off an executive's radar screen. The SilentWhistle system is capable of reminding management that they need to resolve an issue within a designated period of time rather than following up some other way or sliding through the cracks.