

CORPORATE COUNSEL

The GC and the CECO: Partners at the Table

The Compliance Strategist

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The Compliance Strategist is travelling, so she's asked guest columnist [Patrick Gnazzo](#) to take over for the column's June installment.

The general counsel and the chief ethics and compliance officer (CECO) are partners. And so is the CECO with all the other functions in an organization.

Every day the various functions in an organization work out ways in which they need to work together so that each can discharge its unique mandate. The CECO/GC relationship is no different, but some of the difficulty arises because of a lack of common understanding in the difference between “legal compliance” and the broader compliance framework and mandate that the CECO is expected to manage. Only when the general counsel community understands and accepts that difference can we have a meaningful conversation about how the two functions can work collaboratively and effectively together.

The problem with all the arguments that the CECO community hears from the GC and in-house legal community regarding compliance “ownership” centers specifically on “legal compliance.” CECOs have never said that the compliance organization should own legal compliance or take over any traditional legal role of the GC. In any organizational structure, there are multiple risk areas, in addition to those owned by the legal function that require subject-matter ownership. These include information technology, human resources, finance, treasury, safety, environmental, quality, security, engineering and more.

We never hear the in-house community argue that the GC should own *all* of the other specific risk-area compliance programs within an organization—and they shouldn't. The GC owns areas of legal compliance, such as antitrust, Foreign Corrupt Practices Act, antibribery, anti-money laundering, and contract terms and conditions. In most organizations the GC also

owns trade and export, and records management and retention. The CECO usually only owns these particular risk areas when the CECO is part of the in-house legal department and acts as (legal) subject-matter owner in addition to its other overall compliance duties.

CECOs tend to be in total agreement that the GC has always owned, and continues to own, legal compliance. But subject-matter ownership—like all other areas of subject-matter ownership in the organization—operates within the broader framework of an effective compliance and ethics program overseen by the CECO.

There is a larger responsibility for the compliance function that goes well beyond what many GCs still perceive as legal compliance, and that is where many of the disconnects arise. That responsibility is to prevent, find and fix the problems in the organization by managing and overseeing an effective compliance and ethics program. The CECO is the subject-matter expert and leader of this overall compliance responsibility, including support for an ethical culture of transparency and accountability, which are inextricably linked to the compliance program.

Two decades of evolving best practices, tools and critical thinking about the CECO mission have expanded the accountability and arena of compliance well beyond legal compliance. From time to time, in some large but also some smaller ways, the methodologies and priorities of compliance will conflict with those of legal. When that happens, a transparent discussion and resolution creates [a healthy check and balance for the organization](#). Alternatively, when compliance is operated purely as a branch of legal, by managers who aspire to be the general counsel (who in turn controls their pay and bonus), the organization is in significant danger of losing the benefit of a meaningful and independent compliance program.

The role of the CECO is to ensure that the subject-matter owners have policies in place that inform employees and management about the requirements, ensure implementation of those policies through procedures and ensure that proper training occurs with respect to those requirements. All subject-matter owners like IT, HR, legal and business operations that are responsible for implementing all aspects of their own compliance programs are an organization's first line of defense against violations of law and policy.

The CECO, then, is the organization's second line of defense. It is the CECO's responsibility, through an oversight role, to ensure that functions are doing what they are charged to do, and that the business units are implementing the requirements and training employees and management to understand those requirements. In addition, the CECO should be alert to gaps in an organization's policies and implement ways to manage those gaps. Typical risk areas that are not always covered within organizations, and for which the CECO often needs to develop and designate a subject-matter owner, include conflicts of interest, corporate contributions, records retention, social investing, and gifts and entertainment policies. We don't usually hear GCs talk about owning responsibility in those areas.

So the CECO is responsible for ensuring that all specific risk-area compliance programs are in place and being implemented, and that individuals are being trained, monitored and receiving the proper incentives (both positive and negative). Therefore they are the organization's "overall" chief compliance officer, ensuring that compliance is being adhered to everywhere.

Just to round out organizational responsibilities, the audit function is the organization's third line of defense. That is why it is vital for the CECO to work closely with the functional heads, the business units and audit.

If properly implemented, an effective compliance program eliminates gaps and silos, and ensures that each of the functions and the business units understands their responsibilities clearly and discharges them. To make this work, the CECO employs many management systems tools that the organization uses to accomplish important objectives, such as motivating employees, coaching line management, building trust, monitoring progress, holding people accountable, producing reports to management and the board, and protecting shareholder value and that of other stakeholders.

The CECO's role is to give the board of directors and management assurances that compliance is working throughout the organization—right down to ensuring that the company investigates issues, resolves them, uses discipline when necessary and makes changes to compliance programs as needed.

Finally, the CECO would be the last person to argue that compliance is the only group responsible for ethics. Management, including all functional heads and individual employees themselves, are all individually responsible for ethical culture, and the GC often counsels leadership on its management decisions. That said, the CECO serves an important oversight role in reminding everyone in the organization that business ethics should always be part of the organization's decision-making process, and in managing the compliance program to achieve this important goal. Management, functional heads and employees sometimes, in the moment of serious problem solving, forget to consider ethics in their decision-making. That is why the CECO needs to be in the room when top leadership decisions are made.

The rise of the CECO as an independent voice in the C-suite and the structuring of the compliance function to successfully discharge its accountabilities should not be seen by the GC as “encroaching” on the role of legal. This is not a zero-sum game.

Those who view the rise of the CECO in prominence as a threat or a “turf battle” are not helping the organization when they ignore or deny the critical issues of [mandate conflict \[PDF\]](#) and organizational sustainability. The issue during a crisis is not, “Who do the managers consult first?” but, “Are all critical voices heard by the C-suite and the board?” Good collaboration, clear lines of accountability and having the right partners at the table make this happen. One need only look at some current headlines to find case after case in which the old model of compliance subordinated to legal led to disastrous results for the companies involved.

The GC is an important voice in the C-suite and will continue to be a critical legal advisor to management and the board. But experience and [high-profile developments in corporate misconduct](#) have shown that the CECO's mandate and role is distinct from that of the GC. The voices calling for an independent and empowered CECO are getting louder—and with good reason. They also include constituencies beyond the CECO community, including boards, investors, regulators, prosecutors and NGOs.

These voices continue to provide anecdotal and statistical evidence to support their position, including LRN's recently released “[2014 Ethics and Compliance Program Effectiveness Report](#),” which confirms:

“Programs led by an individual reporting to either the CEO or the board (or one of its committees) *substantially outperform* those reporting to the general counsel.”
[emphasis added]

This is consistent with [recent public comments](#) by U.S. Securities and Exchange Commission official Andrew Ceresney, confirming that a company with both its GC and CECO reporting to the CEO, each with “significant visibility with the board,” is ahead of the game.

It's a perilous world out there for companies. The old model of compliance subordinated to legal needs to evolve to meet the heightened challenges and risks of the modern corporate landscape. The evidence is overwhelming that companies benefit when legal and compliance collaborate as equal and independent partners at the table, whether at the organization's management review or in the boardroom.

Let's get started.

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