

CORPORATE COUNSEL

What's Your Compliance Officer's Line of Sight?

Donna Boehme, Corporate Counsel

July 22, 2014



Have you ever seen the media coverage of a corporate scandal say, “Penalties for the [safety/environmental/bribery] violations were waived because they occurred outside the chief compliance officer’s line of sight and accountability”? Me neither.

It’s a fairly simple concept. The CCO is expected to have, and should have, the compliance oversight for all high-risk areas of the company. When evaluating the effectiveness and strength of a compliance function, “line of sight” is one of the first things prosecutors and regulators should look for. It is [one of the key criteria](#) that make all the difference between a compliance program that looks good on paper and one that doesn’t work at all in practice.

To illustrate the point, settlement agreements have begun to drill down past reporting lines and independence (which are other critical features of an effective CCO position) and require companies to fix the CCO’s line of sight. For example, the 2012 U.S. Department of Justice [deferred prosecution agreement with U.K. banking giant HSBC](#) required separation of compliance from legal and a new line of sight for the CCO to all anti-money laundering compliance activities in the field, among other reforms.

Why is line of sight so important?

Line of sight in a compliance context means that the CCO has unfettered access to relevant information needed to oversee, and form independent opinions about, the program. If a CCO delivers a report to the board or its committee assuring them that the compliance program is effective, but at the same time certain key risks are “carved out” of their oversight, that means two things: 1) The report is flawed; and 2) The CCO role and compliance program are not correctly structured to “detect and prevent” misconduct across the organization. Lack of line of sight into one or more risk areas impairs the CCO’s oversight of the whole program.

An additional benefit to the company of a correctly structured CCO line of sight is the CCO’s ability to coordinate and leverage compliance activities, and to decrease “compliance fatigue” in the organization. The simple math: three or four separate risk groups conducting overlapping management interviews, risk assessments, training, monitoring and audits wreak significantly more wear and

tear on the organization than a single coordinated effort designed to achieve the consistent goals and standards.

But wait a minute! Does that mean that these risk-area groups must report administratively to the CCO? And that the CCO is creating redundant subject-matter experts?

No, and heck no.

Having line of sight into an area of risk does not mean that the accountable subject-matter experts in that department, such as safety or government contracting, must report administratively to the CCO. Neither does it substitute the CCO as owner of that risk. However, the CCO needs to be able to integrate information from those areas into the overall program, and ensure that their risk-area activities meet the standards for effective compliance programs, regardless of administrative reporting lines.

One of the tasks the CCO performs is to ensure that every important risk area has an owner and relevant subject matter experts to assist in its compliance program. Many of these individual will be in place and, at a minimum, need to understand their role in the company compliance program. To the extent that a risk area lacks subject-matter experts, those will need to be created or recruited by the risk owner. Identifying these gaps is part of the CCO's job as the subject-matter expert on what constitutes an effective and well-implemented compliance program anywhere in the company.

For example, a Foreign Corrupt Practices Act anticorruption compliance program is overseen by the CCO, but “owned” and implemented by the legal department, where the subject-matter experts for this risk are found. Legal never stops owning this risk, but it should not stand outside the CCO's line of sight. Legal works closely with compliance as a partner to ensure that this risk-area program meets the standards set by the CCO for compliance across the organization.

Similarly, HR “owns” and manages sexual harassment and discrimination risk (with support from its subject-matter experts in legal), and these programs need to be integrated into the overall program overseen by the CCO.

Certain other areas of compliance risk, such as safety and environmental, are often of sufficient significance in some organizations to merit a separate department. But that does not mean that they should operate outside the standards of effective compliance programs or be isolated from the best practices or information sharing critical to the company's overall compliance approach.

Each of these groups should keep the CCO regularly informed of the status of their risk-area programs and any gaps or challenges that may arise. One of the hallmarks of a robust compliance program is the establishment of formal information reporting mechanisms by individual risk owners, such as a periodic update on the status of risk-area activities. The CCO consolidates all relevant information from the compliance program across the organization and keeps management and the board informed of its overall status and progress.

Compliance-savvy boards will [ask some basic questions](#) about their CCO's line of sight:

1. Does the CCO have direct access to all key risk-area information in the company, or are some areas “carved out” of the compliance program?

2. Do risk-area groups that are not in the CCO's reporting line regularly provide the CCO with requested information on their risk-area compliance programs?
3. Does the CCO have the independence and broad authority to require improvements in all risk-area activities, if they are not meeting the standards expected for effective, well-implemented compliance programs?
4. Does the CCO have unfiltered access to the board, not only via periodic in-person reporting but also other significant visibility, such as audit committee seat at the table, mandatory escalation of certain key categories of matters and ad hoc access, as necessary?

Some companies structure a compliance function with important features such as independence, empowerment and resources, but forget to think about line of sight. That is a big mistake. Any company that cannot answer "yes" to each of the above queries has a corporate scandal waiting to happen. It's not *whether* a risk area operating in a silo, away from the CCO's line of sight, will explode—it's *when* and *how much*.

So let's review: "Line of sight" means that the CCO sets the standard for an effective compliance program in individual risk areas, even if those programs are developed and implemented by another company function. This is such an important feature that it should be expressly stated in the company's compliance charter as approved by a board resolution. (Don't have a compliance charter? That's a topic for another day!)

Finally boards should consider that strengthening the CCO's line of sight and positioning is a direct boost to their own oversight ability. This all points to a good rule of thumb for boards, prosecutors, regulators and evaluators: if an area of risk is "carved out" of the CCO's line of sight, that is the first place to look for problems.

Donna Boehme is an internationally recognized authority in the field of compliance and ethics, designing and managing compliance and ethics solutions for a wide spectrum of organizations. Principal of [Compliance Strategists](http://compliancestrategists.com), a N.J.-based consulting firm, Boehme is the former chief compliance and ethics officer for two leading multinationals. She has been named to The Top 100 Thought Leaders in Trustworthy Business 2014 by Trust Across America, and can be reached at dboehme@compliancestrategists.com.