

CLOs and CCOs

A new era of collaboration

Dedicated and independent regulatory compliance functions are becoming increasingly common and well established in corporate America. In the last dozen or so years, many companies across industries have created and enhanced compliance functions, assigned responsibilities and accountabilities, and established effective compliance internal control frameworks. The chief compliance officer (CCO) role has been elevated and continues to evolve and intensify amid heavy regulation and demand for new and specialized skill-sets.

Companies structure compliance in different ways. Traditionally, the function may have been housed within legal (more common), finance, internal audit, or even in limited instances, human resources. However, in

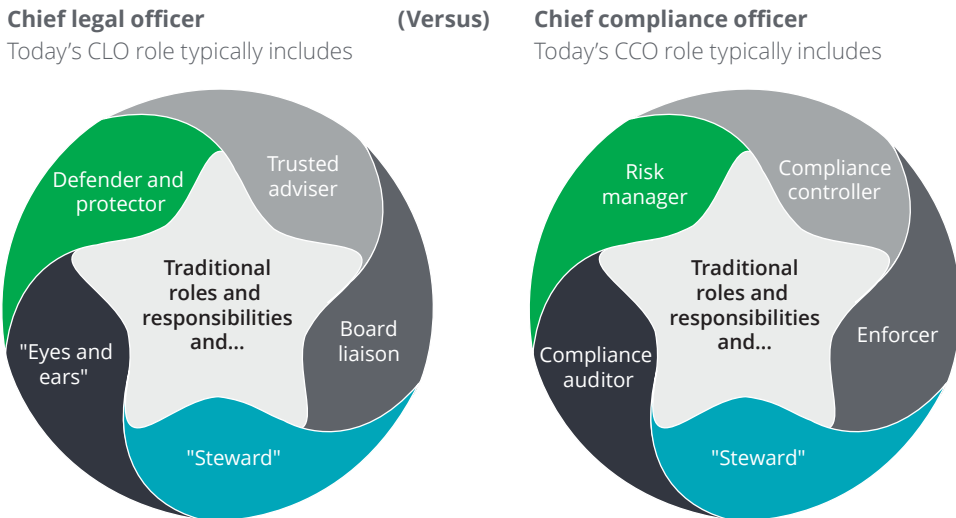
recent years, the compliance function has evolved quickly to become an independent, standalone organization with a CCO at the helm, in many instances reporting directly to the chief executive officer (CEO) with a dotted reporting line to the audit committee, the chief legal officer (CLO), or even the chief financial officer (CFO). Wherever compliance resides structurally, maintaining its independence is a growing imperative and, for some industries, a regulatory mandate.

Predictable tensions can arise between CCOs and CLOs over authority and responsibilities in any compliance structure. At the same time, the roles of both officers are evolving in notably different directions, requiring skills and attributes beyond their traditional repertoires.

In short, it's no time for turf battles. Instead, the CCO and CLO can advance the company's ability to fulfill statutory and regulatory requirements by communicating and collaborating around key aspects of compliance risk management.

This paper explores the evolution and divergence of the CCO and CLO roles, along with several factors that are shifting compliance from legal and other functions into an independent function in many companies. It highlights several potential tension triggers between the CCO and CLO and suggests areas in which communication and collaboration can have particular impact.

Figure 1: The changing roles of the CLO and CCO



New responsibilities and alignments

The expectations placed on both the CLO and CCO have expanded markedly in the contemporary compliance era (Figure 1). Along with the traditional role of providing legal interpretations, advice, and advocacy, CLOs today often sit at the executive table, serving as an active board liaison and a trusted business adviser to other members of management. In addition to defending and protecting the company, the CLO can constructively serve as the eyes and ears of forward-looking legal liability and risk management in transactions and other activities. The CLO also plays an important role as a management steward of organizational ethics and values.

Sarbanes-Oxley and subsequent regulatory mandates have served to accelerate the elevation of the CCO role from relative obscurity in some companies, if it existed at all, to a vital, complex senior management position. CCO responsibilities have evolved in areas including compliance-related internal and financial controls, regulatory risk management, compliance related assessments and monitoring, proactive assessments of compliance risks and issues, training and communications, and enforcement of company policies, procedures, and business processes. Hinting at the tensions suggested earlier, the

CCO typically may also have a regulation-mandated stewardship role as an ethical conscience of the organization as well.

Moving toward independence and the executive circle

As noted, compliance activities today can be found to reside wholly or partially in several corporate functions, or they can be independent. Surveys conducted by Deloitte and *Compliance Week* in recent years indicate a trend toward standalone compliance operations, with 59 percent of 2015 respondents indicating their top compliance job is a stand-alone position, up from 50 percent in 2014 and 37 percent in 2013.¹ Further, there seems to be an inexorable trend toward compliance functions reporting directly to the CEO or board of directors—57 percent in 2015 vs. 44 percent in 2014 and 51 percent in 2013.

One major factor driving the shift toward independence is the evolving and diverse

skill-sets required to effectively implement and maintain modern compliance programs. While legal backgrounds and training are useful to certain compliance activities, such as policy and procedure development and training, other applicable areas of specialization essential to an effective compliance program are often now outside the traditional scope of responsibility and experience of a legal professional, including:

- Enterprise risk assessments and methodologies
- Internal controls, including both business process and financial controls
- Proactive monitoring and advanced data analytics
- Assessment and remediation of control gaps

The evolving skill-set requirements are being further accelerated by regulatory suggestions that it is not enough to write a policy, launch it and, if an infraction occurs, point to its existence. Evidence of proactive risk assessments, a trust-but-verify approach to compliance, and implementation of preventive and detective controls and assurance mechanisms are necessary to move organizations beyond addressing compliance problems as they occur to actual prevention—a growing regulatory expectation.

¹ "In Focus: 2015, 2014, and 2013 Compliance Trends Surveys," Matt Kelly, Thomas Rollauer, and Nicole Sandford, *Compliance Week* and Deloitte, <http://www2.deloitte.com/us/en/pages/regulatory/compliance-trends-report.html>; http://deloitte.wsj.com/riskandcompliance/files/2014/06/Compliance_Week_Compliance_Survey_20141.pdf; and http://deloitte.wsj.com/riskandcompliance/files/2013/09/us_aers_grr_final_deloitte_compliance_week_pdf_080813.pdf.

Growing regulatory enforcement and emphasis on the structural aspects of effective compliance programs are also contributing to the shift. Regulator pronouncements, comments, and settlements continue to strongly signal that maintaining compliance independence from the legal and finance functions can be an important element of program effectiveness. Similarly, shareholder and governance advocates increasingly insist on corporate transparency on matters involving ethics and compliance.

These developments do not diminish the CLO's critical role and skills in interpreting requirements and participating in investigations. At the same time, it is increasingly the case that staffing the compliance function exclusively with legal professionals is likely to provide an incomplete composition of the essential skills noted above.

Potential tension triggers

On one level there are distinct advantages to both models of compliance; that is, maintaining compliance within the legal function on the one hand, and transforming compliance into an entity independent of legal on the other hand, as seen in Figures 3 and 4, respectively.

Whether compliance remains within legal, resides in another enterprise function, or becomes an independent function, its continuing evolution may create inherent tension triggers between CCOs and CLOs, who may have viewpoints that are opposing or prioritized differently based on modestly overlapping roles, notably in five potential areas:

Ethical stewardship. Typically the CCO is charged with instilling an ethical corporate culture and tone at the top, along with implementing effective programs to prevent, detect, deter, and remediate internal control deficiencies giving rise to violations of law and company policy. The CLO and other senior management in areas such as human resources may

Figure 2

When legal and compliance are combined

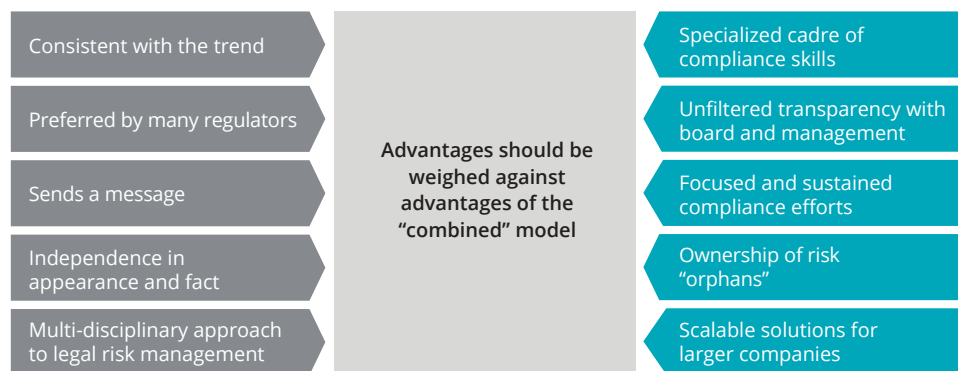
Several potential advantages are apparent...



Figure 3

When the CCO is independent from the CLO

Several potential advantages are apparent...



perceive their role as having some of the same characteristics and responsibilities.

Legal risk management. By definition, the CCO is responsible for identifying, prioritizing, and mitigating sources of legal and regulatory risk through effective internal controls and business processes. The CCO may also be vested with “ownership” of certain legal risk areas such as privacy, anticorruption, conflicts of interest, and records and information management. Here again, CLOs may consider these functions and risk areas to be part of their scope of responsibilities.

Independence. The CCO can appropriately view organizational independence and autonomy as critical enablers of an

effective compliance program and pivotal in meeting the letter and spirit of the US Federal Sentencing Guidelines and other authoritative frameworks. Conversely, the CLO may view CCO independence and autonomy as creating the potential for confusion over roles and responsibilities related to legal risk management and misalignment of communications with the board and management.

People. The CCO needs a dedicated, centralized staff with an increasingly varied set of specialist skills including legal, internal control, audit, human resources, law enforcement, and business operations. The CLO and other senior company management may view the compliance staff as duplicative, inefficient, and potentially

creating channel conflict and confusion due to perceived overlapping responsibilities. The compliance function can also be challenged to create career paths that draw talented people to the function and foster their career development, and it could face organizational resistance to bringing other skill-sets into the fold. Creating a logical and compelling career path through the compliance function for people at various organizational levels requires alignment with legal, internal control, audit, and human resources.

Attorney-client privilege. The CCO sees the need for substantial transparency in carrying out the activities of the compliance function consistent with regulatory and other stakeholder expectations. Meanwhile, the CLO has understandable concerns about protecting the corporate attorney-client privilege in appropriate circumstances. The complex and potential legal liabilities associated with some compliance issues can instill in some companies a desire to blanket the activities of the compliance function with the attorney-client privilege. Establishing an independent compliance function requires understanding of circumstances that can call for privilege and the judgment to involve legal when needed.

Areas of collaboration and cooperation

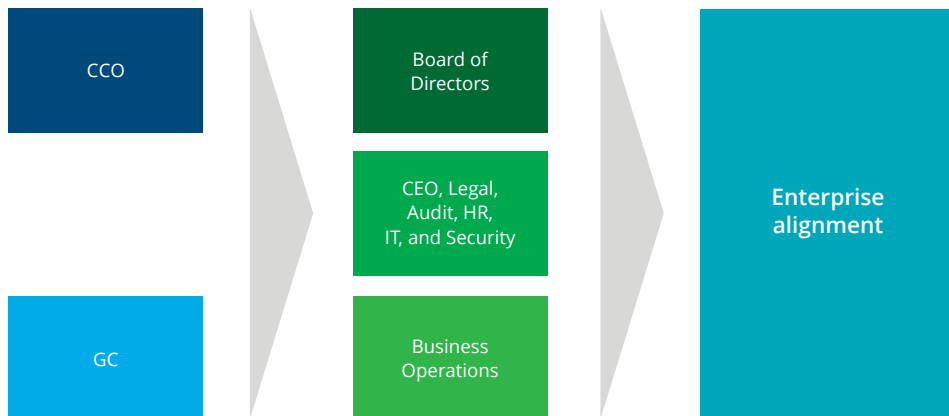
With CCOs and CLOs both facing expanding roles and responsibilities, multilevel collaboration between the board, management, and operations is vital across the enterprise (Figure 4).

Important areas in which cooperation can strengthen compliance include:

Culture. No single function owns culture. Corporate leaders, compliance, legal, finance, operations, and human resources have a role in shaping and nurturing an ethical culture, which in turn has an impact on employee morale and retention. Alignment and consensus are essential to avoiding jealousies, turf fights, organizational chaos, and employee confusion.

Figure 4

Collaborating for success



Objective program assessments.

Organizational recognition of the importance of an objective assessment of corporate compliance program effectiveness is essential. Regulators increasingly expect companies to obtain an objective view of their compliance design, operations, and plans for continuous improvement. Companies also want to know how well their compliance operations compare with industry and cross-industry peers.

Precise roles, authority, accountability.

Establishing the authority and independence of the compliance function requires distinguishing its role, authority, and accountability from legal, human resources, internal audit, corporate security, and other functions, a factor many companies often overlook. Careful evaluation and planning can help avoid the ungoverned approach of diving into discreet issues without a broader perspective and plan.

Risk ownership. Certain risk areas in a company can be owned by everyone but managed by no one. These “risk vacuums” typically cut across company segments and can include areas such as records retention and management, data privacy compliance, and fraud and anticorruption management, which typically do not fall under sole ownership of any single company activity. Providing logical organizational homes for these risk areas (e.g., within compliance) can

help avoid the hidden dangers of diffuse risk ownership and accountability.

Dynamic risk assessment process.

Compliance risk is not static. It can increase in some areas as it decreases in others. Because of this, companies can ill afford to take a one-and-done approach of identifying risk, mitigating it, testing controls, and moving on to the next priority. Periodic review and reprioritization of risk areas is essential and helps drive continuous controls enhancement, integrated assessment plans, and gap closure governance.

Continuous control enhancements.

Elevating the quality of compliance programs in the face of continually increasing regulatory expectations is an ongoing, but necessary, challenge. Effectively integrating control enhancement plans with the after-the-fact confirmation provided through proactive assessments can both remediate control gaps in a timely manner and help evolve the overall maturity of the enterprise compliance program.

Risk-based third-party compliance.

Knowing whether suppliers, distributors, sales agents, representatives, and other third parties doing business on the company’s behalf are meeting compliance expectations requires cooperation and communication between the compliance, legal, finance, procurement, and internal audit functions. Initiatives to proactively prevent compliance

breakdowns also can require the involvement of information technology and other stakeholders. Enforcement actions in recent years have highlighted an ongoing government focus on managing risks arising from third party activity.

Data quality systems and procedures.

Dashboards and other technology tools can equip companies to monitor their compliance performance in real time using applicable and appropriate metrics and KPIs. Effectively employing these tools involves defining key indicators and establishing common language and nomenclature on a global basis.

Investigation playbooks. Ownership of the investigation process can be a potential tension trigger between compliance and other company functions. Having a defined taxonomy and protocols for which function takes the lead in compliance investigations

can help companies respond promptly and appropriately when issues arise, as well as guide decisions regarding the appropriate invocation of the attorney-client privilege.

Documented escalation criteria.

Properly informing senior management and the board regarding compliance issues involves having a common understanding of what is important for them to know and clearly defining issues that should be escalated for awareness and action. These steps are critical to presenting issues in a manner that allows the company to appropriately manage the potential financial, reputational, and legal impact of significant issues potentially impacting business operations.

Compliance archives. In regulatory investigations, government authorities increasingly may seek to evaluate a company's compliance program, manuals,

investigation activity logs, risk assessments, compliance audit plans, and control remediation and enhancement plans. A disciplined records management process and standalone archive to memorialize the compliance program can help meet these demands.

Different approaches, common goals

The CLO and the CCO both play central roles in compliance, each possessing the knowledge, influence, and practical ability to help guide the organization toward positive actions and outcomes. Whatever a company's compliance structure, these two leaders can work to overcome potential tensions inherent in addressing these issues and foster engagement throughout the enterprise to enhance the overall approach to compliance risk management.

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