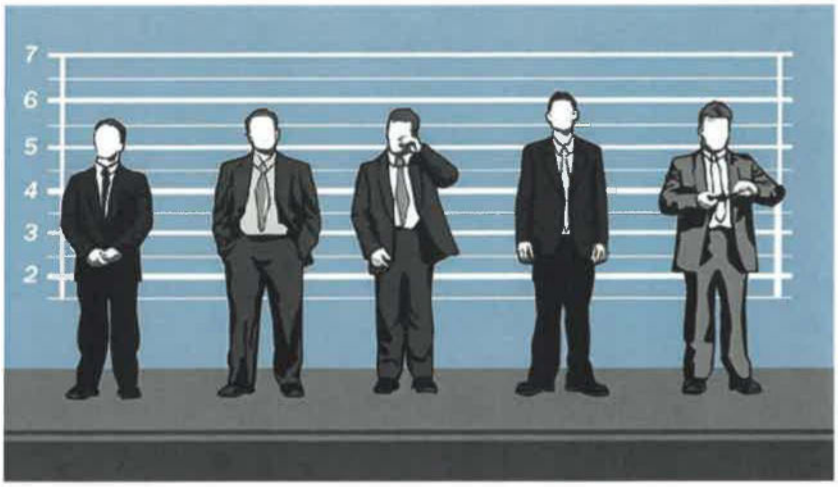
European CEO, January 2013

By Gabe Shawn Varges

Management



CEOs have substantial experience working with company counsel. But to work effectively with the latest C-Suite executive – the Chief Compliance Officer – different skills are required

At some point in their career CEOs have told their General Counsel that an important part of their job is to keep them out of legal trouble. Usually well intentioned, the statement reflects a common CEO expectation that the company's lawyer is at least in some ways also his or her counsel.

Experienced General Counsels will remind the CEO that their client is actually "the company". But in practice this line is often blurred. After all, legal advice is most effective when the executive feels comfortable confiding in the legal advisor. In exchange for candidness, CEOs expect their General Counsel to also be mindful of their legal interests.

And as the General Counsel's manager, a CEO can usually find ways to exert influence for this purpose if needed.

With the emergence of the latest addition to the C-Suite – the Chief Compliance Officer – CEOs in Europe, the US and other jurisdictions are having to learn to work with a new type of legal professional, one for which expectations and traditional management models do not fit. While the Chief Compliance Officer also deals with legal and regulatory matters, his or her role is markedly different from that of the General Counsel.

Not recognising this could cause the CEO to undermine the CCO's effectiveness... and could come to damage the CEO's own interests.

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Here are eight tips for a successful CEO-CCO relationship.

1. Recognise that the CCO's job is to help ensure compliance, not just to advise about it. Unlike the General Counsel whose role is primarily to render advice, the CCO's role is increasingly being understood – by regulators and the marketplace alike – as having an assurance character. It is about helping achieve compliance, not just about counselling or reporting on it. Thus it is not surprising that following major money laundering failures that ultimately led to $1.9bn in fines, HSBC CEO Stuart Gulliver publicly announced in July 2012 that compliance officers at their bank are now specifically empowered to "enforce the [compliance] standards".

2. Understand the different dynamic that this creates. Accepting the CCO's duty to help bring about compliance also means accepting that it is about compliance by all employees, including the CEO. This changes the dynamic of the relationship. While not an auditor or regulator, the CCO is not just another employee under the normal control and command of the CEO. The CCO has independent duties to the Board of Directors and is not simply a management resource. Even where the CCO reports to the CEO, the prudent CEO keeps these higher CCO duties in mind.

3. Don't play the CCO and General Counsel against each other. Having a strong CCO is part of today's governance checks-and-balances. This may lead to situations where the CCO has a different view than the General Counsel on a compliance risk or what is needed to address it. Rather than playing the General Counsel against the CCO to seek to get to a different result, the CEO can benefit from hearing both perspectives. When the CCO's view on an important matter still differs from that of the General Counsel or the CEO, it is wise for the CEO to get the opinion of the Board of Directors or its Audit Committee. The reasons for the ultimate decision should be well documented. Increasingly regulators are interested in learning of when and why the CCO (or the Chief Risk Officer) is overruled by Management or the Board.

4. Ensure the CCO is of the right seniority and is given the right authority and resources. The recent financial crisis revealed that many Chief Risk Officers did not have the standing or authority to be effective. A similar observation may be made of Chief Compliance Officers. At some companies the CCO is still insufficiently high on the hierarchy and lacks clearly defined authority and accountabilities. It is a powerful signal to the Board of Directors when the CEO takes the lead in ensuring that the CCO is positioned to succeed.

This includes having someone of sufficient experience and seniority, armed with enough resources, who is given a robust mandate and the authority to carry it out. A weak CCO reflects poorly on the CEO's governance sensitivity and may ultimately expose the company—and the CEO—to avoidable compliance risks.

5. Keep the CCO in the senior information loop. A CCO who feels excluded from important information may wrongly come to suspect an effort to hide non-compliance. Even worse, he or she will lack the means to make the right assessments on compliance risks. The insightful CEO is transparent. He will invite the CCO to important senior leadership meetings and events and put the CCO on the recipient list for material company information. He or she will also ensure that the compliance charter provides the CCO the authority to access the persons and records the CCO needs to carry out his or her duties.

6. Provide helicopter cover but don't interfere with the CCO's independence. Even where well authorised on paper, a CCO may still experience push-back from some managers and employees. A powerful divisional manager, for example, may refuse to have his team carry out the compliance training the CCO has ordered. In such cases, the CEO's help may be appropriate. But the skilled CEO will provide it in a way that reinforces, not undermines, the CCO's independent authority. Thus, the CEO should convey that the divisional manager has to do the training not because the CEO is demanding it but because the CCO has determined such training to be necessary.

7. Regularly nurture the CEO-CCO relationship. There is split opinion on whether the CCO should report to the CEO or directly to the Chairman of the Board or of the Audit Committee. At some companies the CCO still reports to the General Counsel but this practice is increasingly giving way to arrangements that give the CCO more independent stature. Whatever reporting arrangements are in place, it is important for the CEO to foster a productive relationship with the CCO. With high demands on their time, some CEOs may be tempted to delegate this relationship to their Chief of Staff or similar. But doing so deprives the CEO from gaining a direct understanding of the CCO as a person and leader. It also prevents the development of mutual trust which is essential for both sides to deal effectively with difficult issues of compliance strategy and performance. The thoughtful CEO will thus hold regular meetings with the CCO, not just on specific compliance issues but on the larger challenges which both the CEO and the CCO face.

8. If you don't have one, get one. Having a senior compliance executive is no longer a luxury limited to publicly listed or highly regulated companies. Corporations of all ilks face increasing legal and ethical challenges for which such a resource—if properly equipped—can be instrumental for effective compliance execution. A CCO is no cure for the absence of Board or CEO commitment to responsible conduct. But it can help in operationalizing and sustaining such commitment, including during periods of Board and senior management turnover. In recruiting a CCO, the skilled CEO ensures that he alone does not drive the process. He involves the Board of Directors in the interviewing and selection of the CCO. For rather than strengthening the CCO, it can weaken such person if employees or regulators see him or her as a handpick of the CEO. When the company's Board and stakeholders perceive the CEO as a progressive compliance champion, not a compliance laggard, this ultimately brings benefit to him or her as well, not just to the company.