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August, 2007

Dear Colleague,

We are pleased to present *Leading Corporate Integrity: Defining the Role of the Chief Ethics and Compliance Officer*.

This paper responds to a problem expressed by many professionals tasked with leading the ethics and compliance efforts in their organizations: most CECOs do not believe they have been given sufficient authority and resources to accomplish their missions. Even further, they struggle to raise the discussion with executives and directors.

It is our hope that this paper will be a catalyst for discussion. Led by the Fellows of the Ethics Resource Center (ERC), our working group included the executive directors of ERC, Business Roundtable Institute for Corporate Ethics, the Ethics and Compliance Officer Association (ECO A), the Open Compliance and Ethics Group (OCEG), and the Society of Corporate Compliance & Ethics (SCCE).

The challenge before all executives is to achieve a balance between tailoring the CECO job to an organization's unique characteristics while also providing the CECO with the necessary authority and tools universal to all those holding such positions. We hope that this paper will be helpful in providing a framework to find that balance in your organization.

We invite you to add your comments and suggestions in an ongoing web-based dialogue. Additionally, an executive summary, profiles of CECOs, and position descriptions can be found at www.ethics.org/CECO.

Sincerely,

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Leading Corporate Integrity:

Defining the Role of the Chief Ethics & Compliance Officer (CECO)

Chief Ethics & Compliance Officer (CECO) Definition Working Group



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Leading Corporate Integrity:

Defining the Role of the Chief Ethics & Compliance Officer (CECO)

Chief Ethics & Compliance Officer (CECO) Definition Working Group

**For additional resources,
please visit the Ethics Resource Center
website: www.ethics.org/CECO**

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FOREWORD


The need for this paper was perhaps best evidenced by a headline appearing on Forbes.com on October 23, 2006, questioning “Chief Ethics Officers: Who Needs Them?”¹ The article was a response to statistics that had been reported just a few days earlier by Business Week that during the first three quarters of 2006, a CEO was fired every thirteen days as the result of scandal.² “Chief ethics and compliance officers have become trendy in recent years,” the Forbes article went on to say, “but some experts fear they act mainly as window dressing.”

Yet research suggests that when appropriately designed and situated in an organization, ethics programs—and the officers who lead them—can and do make a difference.³ The key is to have a program that is adequately structured, with sufficient authority and responsibility given to its designated leader to carry out his or her responsibilities. When this happens, a proper tone is set from the top, an ethical culture grows, and misconduct is reduced. By contrast, a Chief Ethics and Compliance Officer (CECO) who serves as window dressing likely does more harm than good, especially in times of difficulty.

A close look at ethics and compliance programs across companies suggests that there is wide disagreement about the best way to situate a CECO. Conversations with CECOs also quickly reveal their frustration: these professionals cannot fully do their jobs. Their issue is not the desire to perform; rather, despite good intentions on the part of their employers, many CECOs are set up for failure due to deficient resources, inadequate preparation, or insufficient authority.

The purpose of this paper therefore is to suggest the role that is most appropriate to the corporate CECO such that an organizational ethics and compliance capability can achieve its intended purpose. The document that follows is a product of the Ethics Resource Center’s Fellows Program, and is also the result of several discussions among leaders of some of the most prominent nonprofit organizations in the ethics and compliance industry, convened to speak with one voice on this issue.

Our intention with this document is to offer suggestions, but not to prescribe detailed solutions. Every organization is unique; therefore the way a CECO functions must also be tailored to the corporate environment in which that person operates. What is universal is the fact that ethics is essential to longstanding success in business and the recovery of public trust in market economies. If ethics is to be a priority, it must be championed and fully supported. To that end, we offer this report as a starting place for a continuing discussion of the most effective ways to enable CECOs and their organizations to achieve success.



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¹ Clark, Hannah. (2006, October 23). *Chief Ethics Officers: Who Needs Them?*
www.forbes.com/home/corporategovernance/2006/10/23/leadership-ethics-hp-lead-govern-cx_hc_1023ethics.html.

² LaVelle, Louis. (2006, October 12). *CEOs Feel the Heat.*
www.businessweek.com/bwdaily/dnflash/content/oct2006/db20061012_398172.htm?campaign_id=rss_daily.

³ Ethics Resource Center (2005). *National Business Ethics Survey*, Washington, DC: ERC.

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EXECUTIVE SUMMARY

Senior corporate executives are under great pressure to build and maintain strong organizational ethics programs. The stakes are high for any organization that fails to make ethics a priority and then finds itself embroiled in scandal. Public perceptions—often driven by the media—spoil a company’s reputation and weaken its brand value. Lowered trust among investors can devastate a company’s ability to attract support for growth. Regulators and lawmakers may move swiftly to punish and/or further regulate those who step outside accepted ethical boundaries.

Today, many organizations are choosing to consolidate the critical responsibility for ethics and compliance programs under a chief ethics and compliance officer (CECO). But the specific roles and reporting lines for this relative newcomer among corporate management positions are not always clearly defined; many CECOs report feeling set up for failure due to insufficient authority or inadequate resources.

This paper is intended to serve as the starting point for a dialogue within corporate management circles—particularly among CEOs, boards of directors and the CECOs themselves—about the proper placement, qualifications, and responsibilities for a leader of the corporate ethics and compliance function. This paper also provides resources and identifies additional steps for further examination of this critical management function.

The Bottom Line: CECOs Add Value

CECOs whose roles are clearly and properly defined and who are empowered to create and maintain strong ethics programs:

- Help provide shelter from severe sanctions in the event of legal/regulatory difficulty;
- Contribute to the establishment of an enduring ethical culture;
- Help other corporate leaders prevent misconduct or effectively address it when it occurs; and
- Provide a public demonstration of the organization’s commitment to integrity.

The Cornerstone: A Clearly Defined Role

To truly be a value-added function, the CECO must have a well-defined role and be endowed with adequate resources. This demands a balance between tailoring the job to an organization’s unique characteristics and providing the CECO with the basic authority and tools that should be universal for all who hold such positions.

At minimum, a CECO should be:

- Held accountable to the governing authority while carrying out its delegated fiduciary responsibilities;
- Independent to raise matters of concern without fear of reprisal or a conflict of interest;

- Connected to company operations in order to build an ethical culture that advances the overall objectives of the business; and
- Given the authority to have decisions and recommendations taken seriously at all levels of the organization.

The CECO also must have the financial and human resources necessary to comprehensively promote standards, educate the workforce, and respond to potential violations in a timely manner.

Assuring Access and Independence: Reporting Relationships & Accountability

A CECO's line of reporting is perhaps the single biggest influence on his or her credibility and authority within the organization. Ideally, the CECO will have:

- Employment decided and terminated only at the direction of the board of directors;
- A direct reporting relationship to either the board or the CEO;
- Direct, unfiltered access to the board; and
- Performance goals defined by the board and CEO.

The CECO position should be augmented by the board's appointment of one independent director or member of the audit committee, knowledgeable about business ethics and compliance, with accountability for ethics and compliance.

Responsibilities: Being a Full Member of the Executive Team

A CECO should be a full member of executive leadership, expected to:

- Oversee assessment of organizational risk for misconduct and noncompliance;
- Establish organizational objectives for ethics and compliance;
- Manage the organization's entire ethics and compliance program;
- Implement initiatives to foster an ethical culture throughout the organization;
- Supervise ethics and compliance staff embedded throughout the organization;
- Frequently inform the board of directors and senior management team of risks, incidents, initiatives driven by the ethics and compliance program, and progress toward program goals;
- Implement a program of measurement to monitor program performance; and
- Oversee periodic measurements of program effectiveness.

Sample position descriptions and case studies of CECOs are available on the Ethics Resource Center website.⁴

⁴ For additional resources related to this paper, please visit www.ethics.org/CECO.

Personal Qualifications: Knowledge, Skills & Integrity

Like any other member of the senior executive team, a CECO should enter the position with certain knowledge and skills, including:

- Management experience;
- Ability to work at the executive level;
- Knowledge of business;
- Knowledge of and passion for ethical conduct and compliance; and
- Strong personal character and a commitment to integrity.

The CECO's Special Role: Professional Development & Responsibility to the Field

Beyond their daily duties, CECOs have a responsibility to themselves and to the broader ethics and compliance field. As executives, CECOs should consider themselves accountable to a standard of conduct equal to that imposed upon other executives, the board, the broader public, and to CECO peers. As a result, CECOs must:

- Demand a high standard of conduct from vendors, non-governmental organizations (NGOs), and others providing ethics and compliance related services;
- Take responsibility for the preparation of rising CECOs and other ethics and compliance professionals; and
- Advance knowledge and shape public dialogue about ethics and compliance.

Conclusion: The CECO Role Continues to Evolve

Infusing and maintaining the highest ethical standards across the extended enterprise are among the most important job responsibilities in corporations today. The role of the CECO has emerged in response to the demand for a more accountable, transparent, and ethical business culture, and the creation of CECO positions across industries is testimony to corporate leaders' recognition of the importance of ethics and compliance in assuring their companies' success and longevity.

Still, many executives and boards have not yet realized the potential of their CECOs, in some cases by not providing adequate resources or authority to those holding the position. This report further defines the CECO role and demonstrates its critical value to an organization.

Properly constituted, the CECO investment is always worthwhile—because, in the end, ethical conduct is a key ingredient in building and sustaining investor and stakeholder trust and in protecting society from organizational misconduct.

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INTRODUCTION

“Our financial markets have been widely regarded as the fairest, most transparent, and most efficient in the world. But now it’s becoming increasingly clear that something has gone wrong—seriously wrong. We are facing a crisis of confidence that is eroding the public’s trust in our markets, and poses a real threat to our economic health.”

—Senator Paul S. Sarbanes (D-MD)⁵

On July 30, 2002, just 11 days after Senator Sarbanes addressed the House-Senate Conference on what was then called the *Public Company Accounting and Investor Protection Act of 2002*⁶, the most comprehensive effort to regulate American corporations since the Securities and Exchange Act of 1934⁷ was signed into law. Corporate life was substantially changed. There was very little question at the time that efforts were needed to increase the attention given by business leaders to the ethics and compliance of their organizations. Despite a time of intense political polarization, both chambers of Congress were united as they passed the Sarbanes-Oxley Act (SOX) with overwhelming support: no dissenting votes in the Senate and only three dissenting votes in the House. Congress clearly agreed with President Bush’s statement that “the business pages of American newspapers should not read like a scandal sheet.”⁸ The SOX Act was intended to establish “significantly higher standards for corporate responsibility and governance.”⁹ And so it did.

A Changed Corporate World

In a “post-SOX era,” such matters as prevention and detection of criminal conduct, effectiveness of internal controls, independence of auditors and directors, and disclosures in financial reporting have all become daily challenges to corporations. Compliance now involves not only obedience to the laws that are directly related to conducting an organization’s actual business, but also adherence to many other standards designed to regulate the internal operations of the business itself. In some cases, compliance is becoming an organizational department as well as a line item in company budgets.

Yet SOX was just one influence in a series of legislative and regulatory efforts to systematically initiate these sweeping reforms. A myriad of external authorities have now added expectations to which corporations must also respond. Revisions to the *Federal Sentencing Guidelines for Organizations (FSGO)*, new listing requirements by exchanges, Internal Controls and Enterprise Risk Assessment Guidelines, governance standards, and new accounting rules subsequent to SOX have also contributed to the new environment in which businesses presently operate. While these laws, standards and guidelines are designed to enhance protection of corporate stakeholders, they also create new challenges for corporations and potentially detract from the overall goal of corporate integrity. With attempts to mandate appropriate behavior, greater focus has been spent in

⁵ www.banking.senate.gov/prel02/0719oscf.htm.

⁶ Eventually renamed The Sarbanes-Oxley Act (SOX).

⁷ Coates, Breena E. (2002). Rogue Corporations, Corporate Rogues & Ethics Compliance: The Sarbanes Oxley Act, 2002. www.pamij.com/8-3/pam8-3-6-coates.pdf.

⁸ Ibid.

⁹ United States. Congress. (2002). Senator Sarbanes, 148 Cong. Rec. S7350-04.

the last two years on compliance than ethics.¹⁰ Meanwhile research increasingly reveals that, in terms of actual impact, these programmatic efforts pale in comparison to the creation and perpetuation of a culture that emphasizes integrity and leadership from the top down and that holds the organization and its stakeholders accountable to high ethical standards.¹¹

With every new rule and every new insight, the tasks involved with leading corporate efforts in compliance and fostering a corporate culture of integrity are only becoming more complex and demanding. Where do these increasing responsibilities fall within an organization?

Growing Expectations of the Ethics and Compliance Officer

In 1991, the original FSGO suggested that organizations designate a “high-level position” to help oversee the compliance function of an organization, in order to address what were already heightened concerns that organizations needed to prevent and respond to misconduct. Because the specifics of this FSGO policy were left open to interpretation, ensuing practices varied widely. In some cases, the CEO was the self-proclaimed “ethics officer.” In many other cases, however, another individual was appointed to take on the responsibility; this person, however, was often degrees removed from the CEO and/or the board of directors. Until recently, the role of the ethics or compliance officer was simply encom-passed within the responsibility of human resources, legal, finance, or audit. Increasingly, the position is now gaining the title of “chief” ethics officer and/or “chief” compliance officer and is sometimes coupled with vice presidential, executive vice presidential, or an even higher executive level position.¹²

Today, best practice suggests that the role of a “designated high-level official” has come even farther from its original conception, in many ways due to SOX and other regulatory policies which have assigned culpability for missteps in ethics and compliance to the board of directors and senior leaders. The job is now far more than a CEO, CFO, or CLO can reasonably fulfill without assistance. The responsibilities of the chief ethics and compliance officer (CECO)—as a key player in protecting the organization’s governing authorities—are now immense, ranging from training the board of directors to oversight of an internal audit of the compliance function itself.

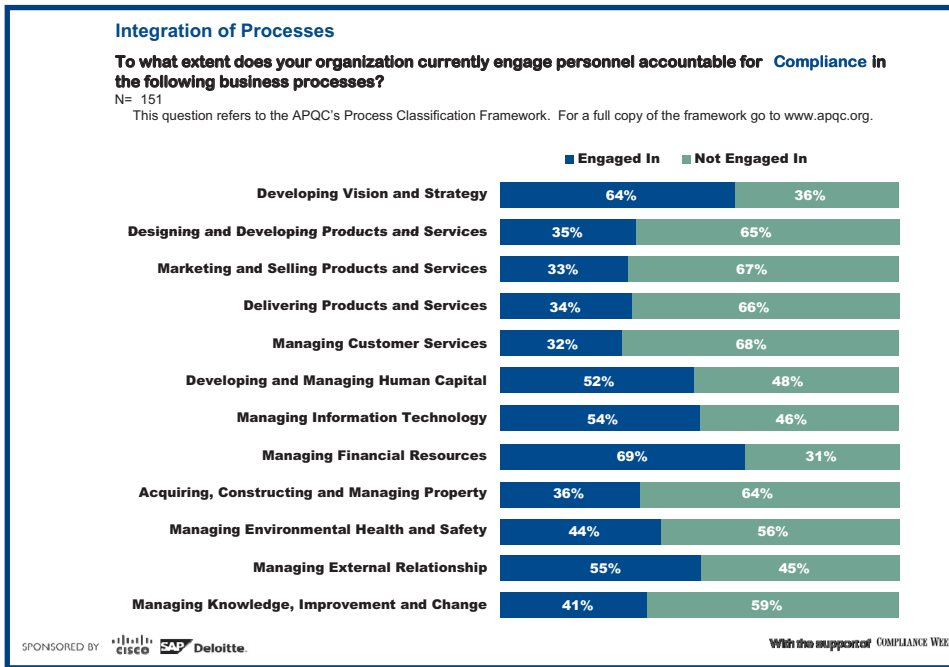
The knowledge, skills, and experience needed to fulfill the duties of the CECO far surpass previous expectations.¹³ Where ethics and compliance was once a silo within an organization, today the responsibility extends from the board down and across to functions of ethics, compliance, legal, finance, internal audit, human resources, and risk management. External auditors are as much a part of the picture as internal employees, taking a new interest in compliance largely under the rubric of their assessment of entity level controls (see the following chart). The scope of the function extends beyond employees in the U.S. to workers globally.

¹⁰ Open Compliance and Ethics Group (2007). *OCEG Governance, Risk & Compliance Strategy Study*, Phoenix, AZ: OCEG.

¹¹ Ethics Resource Center (2005). *National Business Ethics Survey*, Washington, DC: ERC.

¹² www.zoominfo.com now reflects 39 listings with the title “Ethics Officer” or “Chief Ethics Officer” (with over 50% of those identified as a vice president or higher level position) and over 1,200 listings with the title “Chief Compliance Officer” but with a much smaller percentage including a vice president or higher level position designation. More than 800 job titles exist in the ethics and compliance function (Murphy, J. & Leet, J. (2006). *Working for Integrity*, 63-88). Therefore, many organizations do not have an individual with the specific title of CECO. In this paper, we use the title CECO intending to address the individual with overall responsibility for the ethics and/or compliance function.

¹³ (2005, August 16). *Salary.com and Ethics Officer Association Survey Validates Value of Ethics and Compliance Officers’ Roles in Today’s Corporate World*. www.salary.com/aboutcompany/la_youtscripts/abcl_display.asp?tab=abc&cat=Cat27&ser=Ser341&part=Par562.



Source: Open Compliance and Ethics Group (2007). *OCEG Governance, Risk & Compliance Strategy Study*

And so today, the job description for a CECO has a breadth more like that of a CEO than a direct (and sometimes indirect) report:

WANTED: "Corporate officer with responsibility to provide global leadership on compliance and ethics; oversee all compliance and ethics programs and initiatives of the company; ensure that appropriate programs, procedures, and policies are implemented to reduce the chances of illegal or unethical conduct by the company."¹⁴

Responsibility for the conduct of employees worldwide and oversight of global programs as they relate to all initiatives of the company are no small tasks.

The Issue

The stakes are high for every organization. Despite strides made through regulation and other programmatic efforts, research indicates that one in two employees still observe what they believe to be at least one act of misconduct each year,¹⁵ and the penalties are more severe for organizations that have not taken adequate steps to prevent and detect such behavior. Expectations of voluntary disclosure of transgressions to authorities and cooperation in government investigations are also heightened.

¹⁴ Identity of the organization listing the position has been withheld.

¹⁵ Ethics Resource Center (2005). *National Business Ethics Survey*, Washington, DC: ERC.

As the responsibilities of ethics and compliance grow, more questions arise as to the specific authority needed and the best possible role for effective oversight. For example:

- What is the role of a designated CECO, and what kind of authority should he or she be given?
- Who is the best possible CECO in an organization—the CEO, general counsel, or some other designee?
- If not the CEO, to whom should a CECO report?
- What is the appropriate involvement of the board in the ethics and compliance program and what should be the relationship between the board and the CECO?
- What does it mean to put adequate resources into the ethics and compliance function?¹⁶
- What skills and qualifications are needed to competently perform the job of a CECO?
- What are the responsibilities of this individual (or individuals) to the organization and to the ethics and compliance profession?

The purpose of this paper is to closely examine these and other issues surrounding the designation of leadership responsibility for the corporate ethics and compliance function. Specifically, it is the intention of the authors of this document to examine the role of the CECO, the placement of such an individual, and the authority that will enable his or her oversight most effectively.

Creation and Review of This Paper

This research was undertaken in response to a need that has been repeatedly articulated by CECOs in forums hosted by some of the leading associations in the ethics and compliance field. The need for clarification of the role also arose in a meeting of the Ethics Resource Center Fellows Program,¹⁷ which led to the creation of a CECO Definition Working Group to address the concerns. Recognizing that the impact of the issues extended far beyond the ERC Fellows and that there was a need for broad collaboration, the working group was soon expanded to include executive directors and presidents of five of the leading nonprofit organizations serving ethics and compliance officers throughout the country. As such, the CECO Definition Working Group also includes the Business Roundtable Institute for Corporate Ethics, the Ethics and Compliance Officer Association (ECO), the Open Compliance and Ethics Group (OCEG), and The Society of Corporate Compliance and Ethics (SCCE).

Together the working group created an outline for this document, which was then presented at two ECOA conferences for feedback from ethics and compliance practitioners. This paper was subsequently authored by the executive directors and selected designees of all five organizations comprising the working group and has

¹⁶ (2005). Federal Sentencing Guidelines. www.ussc.gov/2005guid/8b2_1.htm. USSC, §8B2.1(b)(2)(C).

¹⁷ The Ethics Resource Center (ERC) Fellows Program is a forum for senior level practitioners, scholars and nonprofit leaders to identify emerging issues and conduct research in corporate compliance and ethics.

been reviewed by members and stakeholders of each organization. Our goal has been not only to consider and address the issues surrounding the role of the CECO, but also to represent the collective experience and recommendations of our constituents, with their wealth of knowledge concerning ethics and compliance in action and experience applying the concepts in their own organizations.

Overview

The document that follows this introduction is organized into five sections. To begin, the value proposition of the ethics and compliance function and its CECO are addressed in **Section I**.

Next, in **Section II**, the ideal role of the CECO is discussed. Specific focus is given to the integration of this role in the senior level decision-making and strategy-setting processes. This section also expounds the meaning of the FSGO requirements regarding high level personnel and the assignment of day-to-day operational responsibility for a program.

Section III addresses the skills and qualifications necessary for effective practice of the CECO job function. Advancements in certification, professional educational programs and business school curricula are also discussed here.

The responsibilities of the CECO to governing authorities and the profession at large are introduced in **Section IV**.

In the **Conclusion and Next Steps**, summary remarks offer suggestions of next steps for *a)* boards of directors; *b)* CEOs; *c)* CECOs; and *d)* professional organizations, consultants, and vendors in the ethics and compliance field. Additional questions to be considered in future research are also posed.

Charge to the Reader

This working group hopes that, in suggesting steps to be taken by organizations to adequately staff their ethics and compliance needs, we will spur our readers to initiate dialogue in their organizations.

Every organization is unique, and therefore the means by which it articulates and addresses its expectations for corporate integrity will vary. CECOs, in many ways, are a reflection of the corporate culture in which they operate. Nevertheless, the need for guidance throughout the corporate world is clear: “If corporate leaders are serious about ethics, they will have to empower their ethics officials to develop tough programs that challenge and monitor senior executives at a level of intensity commensurate with the power that they wield.”¹⁸

It is our further intention that this document and the ensuing dialogue will make strides in challenging senior leaders to consider the ways in which they can best empower their CECOs. Finally, we endeavor to speak to current ethics and compliance officers themselves, in order to encourage improvement of practice, offer courage in challenging their organizations, and promote overall advancement of the profession as a whole.

¹⁸ Terris, Daniel. (2005, March 20). *How To Teach Ethics to CEOs*. www.brandeis.edu/ethics/news/2005/2005.March.20.html.

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SECTION I:

Chief Ethics and Compliance Officers— The Value Proposition

Why do companies have ethics and compliance officers, and more specifically why should they have a CECO? In most parts of the world it is not technically a legal requirement, nor has it reached the level of prevailing practice such that the majority of organizations have a CECO (or the equivalent).¹⁹ In the U.S., however, it is becoming increasingly rare for any large company not to have a CECO, and smaller companies are also gradually creating the position. Yet common practice does not necessarily mean that companies are adopting the best possible practice. Are corporations better off because they have a CECO?

The answer is yes. One can make a legal, business, and philosophical case that CECOs add value to a corporation.

The Legal and Regulatory Case

One of the most significant benefits for organizations with CECOs (and the programs they create) is the shelter that such high-level ethics officers can provide in the event of trouble.

Most of the credit for this contribution rests with the FSGO, promulgated by the U.S. Sentencing Commission in 1991. The Guidelines provide that companies sentenced for most federal crimes must receive a reduction in fines if they meet certain standards, including having an effective ethics and compliance program with a high-level person or persons given responsibility for the function.²⁰

Similarly, federal government enforcement officials have adopted the approach and the standards of the Guidelines in making enforcement decisions. Instead of a company being indicted, tried, convicted and sentenced, enforcement authorities may consider the effectiveness of the existence or nonexistence of a compliance program as a factor in determining whether to indict a lawbreaking corporation, as illustrated in both the 2003 Thompson and 2006 McNulty memoranda issued by the U.S. Department of Justice.²¹ Other federal regulations and enforcement authorities have taken a similar approach.²²

Continuing case law is enhancing the value proposition of the CECO in running an effective program that protects the organization and its board from liability. A landmark corporate law case in the Chancery Court in Delaware, the Caremark case, indicated that board members could face potential personal liability if they failed to ensure that appropriate information and reporting systems were instituted by management.²³ The U.S. Supreme Court, in cases dealing with harassment and discrimination, has held that compliance efforts should be taken into account in determining liability and punitive damages.²⁴ Nor is this message limited to the United States. For example, companies in Italy may defend against charges of corrupt practices based on the existence of a compliance program.²⁵

Note, however, that none of these governmental policies technically mandate that companies have comprehensive programs or CECOs—companies can opt not to create creditworthy programs and cross their fingers that they will never have to

¹⁹ There are exceptions where a Compliance & Ethics officer may be required, as discussed later in this section.

²⁰ www.uscc.gov/2005guid/8b2_1.htm. USSC, §8B2.1(b)(2)(C) and 8C2.5(f).

²¹ U.S. Department of Justice (2003). Principles of Federal Prosecution of Business Organizations. See also www.usdoj.gov/dag/speech/2006/mcnulty_memo.pdf.

²² For a review of some of these practices, see Report of the Ad Hoc Advisory Group on the Organizational Sentencing Guidelines (2003, October 7), p. 32-35. www.uscc.gov/corp/advgrprpt/ag_final.pdf.

²³ Caremark International, Inc. Derivative Litigation, 698 A.2d 959 (Del.Ch. 1996), followed in Stone v. Ritter, 911 A.2d 362 (Del. 2006). See “The Implications of Stone V Ritter” Rebecca Walker, *Compliance and Ethics Magazine* (2007, April), Volume 4, No. 2.

²⁴ Burlington Industries, Inc. V Ellerth, 524 U.S. 742 (1998); Farragher V City of Boca Raton, 524 U.S. 775 (1998).

²⁵ Bevilacqua, Chiara. (2006 Nov/Dec). Corporate Compliance Programs Under Italian Law, *Ethikos* 20 (3).

²⁶ Examples include corporate integrity agreements, consent decrees, deferred prosecution agreements, and enforceable undertakings.

²⁷ www.ussc.gov/2005guid/8d1_1.htm. USSC, §8D1.1(a)(4).

²⁸ Cannon, W.S., Anderson, T., & Burchstead, M. (2006). *Pragmatic Practices for Protecting Privilege*. *Association of Corporate Counsel*. www.acc.com/public/attyclientpriv/pragpract.pdf.

²⁹ Securities and Exchange Commission Final Rule: Audit Committee Disclosure 17 CFR Parts 210, 228, 229, and 240 [Release No. 34-42266; File No. S7-22-99] RIN 3235-AH83 www.sec.gov/rules/final/34-42266.htm and by the Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (75 pages). www.nyse.com/pdfs/blueribb.pdf.

³⁰ Portions of this discussion are an abbreviated version of points covered in: Murphy, J. & Leet, J. (2006). *Working for Integrity*, 14.

³¹ A recent tracking of stock returns on portfolio was conducted by Corpedia, Inc. An index was created comprising companies considered to be “ethical,” due to high rankings in corporate citizenship, governance, social responsibility, ability to attract and retain employees and sustainability practices. The study revealed that investments 5 years ago, held to the present day for “ethics index” companies would have yielded a 105% return, compared to 26% for the S&P500. For more information about methodology, see www.corpedia.com.

³² Ethics Resource Center (2005). *National Business Ethics Survey*, Washington, DC: ERC.

³³ According to a watchdog group, Citizen Works, companies experienced dips in stock price as a result of corporate scandal, for example: AES, \$45M; AOL TimeWarner, -59%; Computer Associates, -73.58%; Halliburton, -56.51%; Im Clone Systems, -52.34%; for more information, see www.citizenworks.org/enron/corp-scandal.php.

face the government in an actual investigation or enforcement proceeding. This situation changes dramatically if a company does run afoul of the law. Companies may hope to avoid indictment or negotiate settlement agreements, which can bear a number of different names;²⁶ however, these agreements generally require that companies institute compliance programs under government oversight as a condition of probation.²⁷ Depending on the level of detail, agencies instituting these agreements will typically require high-level oversight in the form of a CECO. These agreements range across a variety of industries and address numerous offenses,²⁸ although in some industries, such as healthcare, the agreements are more detailed.

Perhaps the ultimate legal case for the value of a CECO is being made by incremental governmental steps to go beyond incentives and negotiations and fully mandate that companies have programs, including ethics and compliance officers. The first initiatives on the path of mandating ethics and compliance programs have been to require specific steps like harassment training (a few states now require this), helplines, codes of conduct and internal controls for publicly traded companies in the U.S. There are also examples where compliance programs are required in specific risk areas: HIPAA requires privacy compliance programs in U.S. healthcare; Germany requires companies to have privacy compliance officers; and Canada requires companies to have entire privacy programs. The stock exchanges in the U.S., India and South Africa require at least some formal compliance program elements.²⁹ In California, the pharmaceutical industry is required to meet the detailed standards set out in guidance documents issued by the U.S. Department of Health and Human Services. There is a real possibility that governments elsewhere will see this compulsory approach as an attractive model.

The Business Case

Yet all these laws and regulations establish only the minimum standard. In complying with regulatory suggestion, a CECO adds value only to the extent that he or she helps an organization stay out of trouble. Beyond this, however, CECOs also have genuine value³⁰ in advancing business objectives.

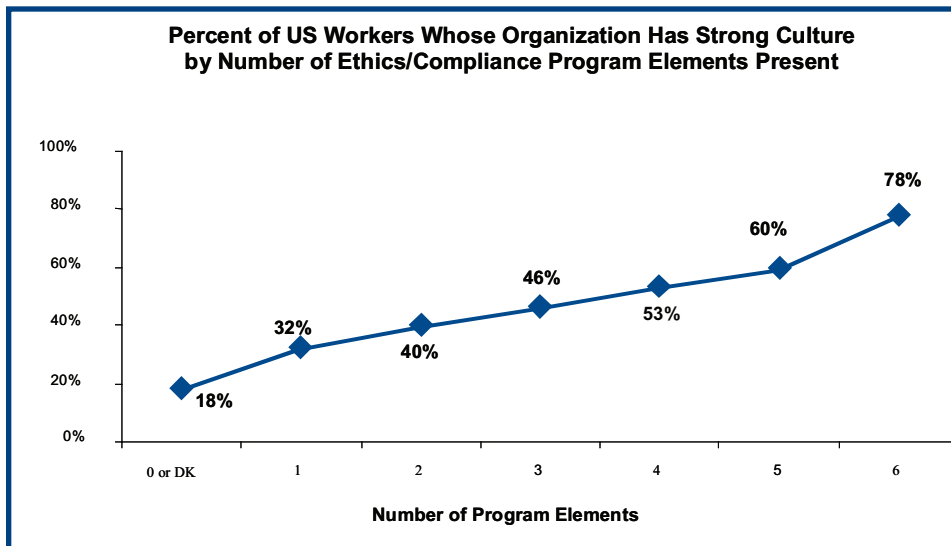
Public trust in capital markets is essential to business success and, to that end, companies are dependent on their reputations and brands if they are to attract loyal customers, investors, partners, and even employees.

Evidence has begun to suggest that companies which are perceived to *a)* have a sound foundation of ethical conduct and to *b)* act in a responsible manner outperform those lacking such a brand perception.³¹

Additionally, these companies are also found to have a more loyal employee base.³² By contrast, companies that are perceived to be irresponsible suffer severe consequences including loss of reputation, higher turnover rates, and lower productivity. A hard-won reputation can be lost in minutes through one scandal.³³ Similarly, employees who do not feel valued or who perceive that their

management fails to sincerely uphold the standards of the organization are more likely to observe misconduct, express dissatisfaction with the organization overall, and even leave altogether.³⁴

Beyond the brand and investment value they provide, the work product of a CECO can help establish an ethical culture in an organization. For companies that are rapidly expanding and attempting to establish themselves on a global basis, it can be difficult to maintain a consistent and strong culture in all corners of the business. Even U.S.-based organizations must tend to the culture of their organizations, in part because the FSGO encourages it,³⁵ but also because research increasingly reveals that through a strong ethical culture, the prevalence of misconduct is reduced by as much as 40%.³⁶ Even in organizations that have many diverse populations and geographic locations, the more an organization invests in a CECO and the more elements of an ethics and compliance program it has in place, the more likely the culture of the organization is perceived by employees as prioritizing ethical conduct (see following graph).



Source: Ethics Resource Center's 2005 National Business Ethics Survey®

In a related manner, it has been estimated that companies lose up to six percent of their revenue to waste, fraud and abuse.³⁷ But a program that includes helplines, monitoring, and auditing can significantly reduce this bottom line harm.

The Philosophical Case

Finally, executives will find value in the presence of a CECO for a very fundamental reason: *it is the right thing to do*. Organizations should have a strong leader tasked with helping to ensure that organizational standards are a priority. An organization which implements an ethics and compliance program without designating an individual to oversee it risks the possibility that the function will fail for lack of leadership. Similarly, talking about the importance of ethics without creating a

³⁴ Ethics Resource Center (2005). *National Business Ethics Survey*, Washington, DC: ERC.

³⁵ www.uscc.gov/2005guid/8b2_1.htm. USSC, §8B2.1(b).

³⁶ Ethics Resource Center (2005). *National Business Ethics Survey*, Washington, DC: ERC.

³⁷ Murphy, J. & Leet, J. (2007). *Building a Career in Compliance and Ethics*. Minneapolis, MN: Society for Corporate Compliance and Ethics, p.151.

formal function to uphold and promote organizational standards may be perceived as hypocritical. Philosophically, if an organization desires that its employees and agents operate with the highest ethical standards when undertaking its business, it must demonstrate its commitment by creating an ethics and compliance capability and designating high-level oversight. It is the right thing to do.

Overall Value

Together, the legal, business, and philosophical case for a CECO make a compelling argument for appointing a CECO to the executive ranks of a corporation. In summary, a CECO who can assure continued improvements in governance, risk management, compliance, and ethics offers value in several ways:

- Establishment of an ethical culture;
- Prevention and management of misconduct;
- Upholding organizational commitment to integrity; and
- Shelter in the event of legal/regulatory difficulty.

There are likely many other benefits of a CECO, such as improved performance of employees, increased confidence of senior management as leaders, and exemplars for which time and new research will likely reveal supporting data. Nonetheless, the full value of a CECO will only be realized if he or she is adequately prepared, properly situated and empowered, provided sufficient resources, and able to achieve success in the job he or she is given. This is the subject for the next section.

SECTION II:

Chief Ethics and Compliance Officers— Definition of the Role

An organization sends an important message about the priority of ethics and compliance to leadership by the way the functions appear on an organizational chart. A CECO as a formal part of an executive level team gives a strong indication that ethics not only begins at the top, but also that the ethics and compliance-related interests of the organization are intentionally represented in high-level business decisions. By contrast, a CEO may actively talk about the fact that ethical conduct is important, but if the next highest official working with the ethics and compliance area is found several levels down on the organizational chart, a less persuasive argument can be made that ethics and compliance really matter.

There are many aspects of the CECO role that are presently under debate by practitioners and scholars. Of particular focus are the person(s) to whom the CECO reports; the extent to which a CECO should fit in with or oversee governance, risk, and compliance (GRC) functions;³⁸ and the definition of the job in order to give maximum credibility to the CECO. Given the variance in common practice across organizations and the relative recency of more rigorous revisions to the FSGO, these discussions are likely to continue for quite some time. Nonetheless, a starting point to help guide internal leadership discussions is sorely needed and is the purpose of this section.

While several characteristics of the job description are common among CECOs who are effective in their organizations, in practice every organization must define the role of the CECO according to its particular needs and culture. Recognizing the need to strike a balance, we suggest four principles to guide leadership decisions about the role of the CECO.

In any organization, regardless of the sector or circumstances, the CECO should be:

- **Held accountable to the governing authority while carrying out its delegated fiduciary responsibilities.** Even the minimum legal standard for compliance³⁹ recognizes that “ultimately the governing authority is responsible for the activities of the organization.”⁴⁰ A board can only carry out this responsibility if it is actively involved in monitoring management’s operating performance and its compliance and ethical activities. That being said, a governing authority cannot assume the day-to-day tasks; it is acceptable and even suggested by the FSGO that the operational responsibility be delegated to “specific individual(s) within the organization.”⁴¹ In so doing, the board entrusts some of its fiduciary responsibility to the designated individual(s) charged with the ethics and compliance responsibility. If a CECO is to fulfill the delegated responsibilities of the board, he or she should in some way be directly accountable to and able to seek regular guidance from the board.
- **Independent to raise matters of concern without fear of reprisal or a conflict of interest.** Among their many responsibilities, CECOs are asked to objectively monitor the decisions and conduct of management, based upon the standards of the organization and the law. When so much as the possibility of wrongdoing surfaces, it is the duty of the CECO to respond.

³⁸ For more information about GRC in corporations, see www.oceg.org.

³⁹ As suggested in Federal Sentencing Guidelines for Organizations: www.ussc.gov/2005guid/8b2_1.htm.

⁴⁰ Report of the Ad Hoc Advisory Group on the Organizational Sentencing Guidelines (2003): www.ussc.gov/corp/advgrprpt/AG_FINAL.pdf.

⁴¹ USSC, §8B2.1(b)(2)(C) and accompanying Application Note 3.

The CECO's ability to perform this function is severely undermined if a CECO's actions could result in personal gain or harm given his or her position in the organization.⁴² Especially in monitoring the activities and tone of executive-level management, the CECO should be afforded as much independence as possible to act in the best interest of the organization.

- ***Connected to company operations in order to build an ethical culture that advances the overall objectives of the business.*** At the same time that strategic level of independence is warranted, operational integration into the business is also essential. CECOs are tasked with establishing and maintaining an ethical culture in their organizations, which is often the result of the fusion of organizational standards with business practice. If operational level ethics and compliance personnel are distanced from company operations, the ethics and compliance function inevitably becomes “the ethics police,” isolated from daily activity and actively avoided. When connected to business operations, ethics and compliance can be the lifeblood of daily activity. Even further, a CECO who speaks the language of the business can create meaningful dialogue to advance the standards of the organization.
- ***Provided with authority to have decisions and recommendations taken seriously at all levels of the organization.*** To the extent that it is a part of the operational culture of an organization, ethics and compliance cuts across functions and transcends levels. Because he or she serves alongside the CEO in representing the standards of the organization, a CECO must have the credibility to make decisions and enforce standards with all levels of management. Anything less communicates that right conduct is not important.

The CECO should be:

- Accountable to the governing authority
- Independent
- Connected to company operations
- Taken seriously

Tailoring the CECO Role

The challenge for every organization is determining how to employ these principles while taking into account its context, the aspects of an organization that make its circumstances and culture unique. Only when a CECO has accountability, independence, and authority in a way that is meaningful to the organization can he or she begin to influence behavior. Connection to business will also look different in every environment. Therefore, the design of the ethics and compliance function should be, first and foremost, an application of the above principles while taking into account the characteristics and goals of the organization. Several characteristics will likely be strong determinants of the shape the ethics and compliance function takes:

- Business objectives;
- Organizational values or standards;
- Priority of ethics among company leadership;
- Industry and regulatory environment;

⁴² See Hoffman, M. & Rowe, M. (2006). *The Ethics Officer as Agent of the Board: Leveraging Ethical Governance Capability in a Post-Enron Corporation*. Paper presented at the TransAtlantic Business Ethics Conference at the Wharton School, University of Pennsylvania, October 6-7, 2006.

- Organizational size;
- History of ethics and compliance violations;
- Capability of management throughout the organization to respond to ethics issues;
- Organizational structure;
- Management style of the senior team; and
- Informal practices and shared understandings (“the way things really work around here”) at lower levels of the organization.

Who Decides?

Decisions about the reporting relationship and resources provided for ethics and compliance should not be taken lightly. Not only are they a reflection of an organization’s priorities, but as discussed in the previous section, they can provide protection in the event of external scrutiny. For that reason, the individuals tasked with the design of the CECO job can be as important a consideration as the resulting position description itself.

If attention is drawn to an organization because misconduct is alleged or has taken place, the board of directors and the CEO will be compelled to defend the adequacy of the ethics and compliance efforts in their organization. Given this ultimate responsibility, it is only appropriate that the decisions regarding the job description of the CECO should be made by those who ultimately have to accept responsibility for his or her performance. In organizations where the function already exists, these same individuals should take on the task of periodically reviewing the resources and authority of the CECO. Often, boards are not aware of the complexity of the ethics and compliance area and may need sound advice. Members of the board and the CEO should revisit the positioning of their CECO with direct input from the current ethics and compliance staff. Boards should also consider retaining outside expertise in the ethics and compliance area or adding an expert ethics and compliance officer from another company to the discussion.

Definition of the Role

What should be the scope of the job of a CECO? To advance the dialogue, we suggest here a basic definition. The designated high-level official within a corporation should be expected to assume a broad and substantial position, which includes:

- ***The one individual who serves as the primary officer.*** From acknowledgement by the CEO to recognition on organizational charts and in other communications, the CECO must be established as the high-level designee who is responsible for promoting and upholding the standards of the organization. Where an ethics and/or compliance committee exists to champion and potentially oversee the ethics and compliance function, the CECO should serve as chairperson.

Only when a CECO has accountability, independence, and authority in a way that is meaningful to the organization can he or she begin to influence behavior

- **Responsibility for the overall ethics AND compliance program.** The logic of obeying the law is more meaningful to employees when couched in a set of principles that helps company stakeholders to understand the kind of organization that leadership is trying to create. In many ways, ethics and compliance are compatible functions and belong together. Ethics is focused on what the right thing is to do, or how employees should act, while compliance is focused on staying within the boundaries, or the ways employees must act. Messages of training make more sense when employees learn not only what they should not do, but also how the organization would like them to act (what they should do). Reporting procedures are less confusing when all legal or values-based issues can be raised to the same department. The CECO should tend to both ethics and compliance concerns together and should integrate the work of both based on the standards of the organization.
- **Formal and informal recognition as having authority for a critical function in the organization.** Formally, the CECO should be: considered the primary person to whom managers, executives, and the board should turn for advice on ethics or compliance-related questions; viewed as an essential part of decision making processes to provide guidance on advancing the business consistent with the standards of the organization; and otherwise looked to for help in creating proper tone from the top. Informally, however, the presence of an “ethics person” is sometimes circumvented in an organization, especially when difficult decisions are being made and reminders of organizational standards or regulation will not be easy to hear. If an organization is to fully set a proper tone from the top, and if the CECO is to be able to inculcate company standards into the organization, the CECO must be fully empowered. Ultimately, the decision-makers should want the CECO to participate, a hallmark of having a culture committed to advancing ethical standards.
- **Supporting the CEO and board in championing corporate values and standards.** Sometimes CEOs will indicate that they consider themselves to be the Chief Ethics and Compliance Officer in the organization. This is good practice; while the CECO may bear the formal title, tone at the top is best set by the CEO. Yet for many executives, highlighting ethics in daily communications and activities is not second nature. Even when they believe that they are actively espousing the standards of the organization, many executives are perceived as ethically neutral (at best) by their employees; it takes intentional action and communication to highlight ethics in everyday activity. Most CEOs are unaware of how well they are doing in that regard.⁴³ Therefore, it is also a responsibility of the CECO to be a resource and a “coach” to the CEO and the entire executive team as they work to set the proper tone. The CECO must be present to observe leadership in action and to consistently point out ways for executives to demonstrate the importance of ethics.⁴⁴ Executives should look to their CECOs to serve as a resource on a daily basis.

⁴³ Linda Klebe Treviño, et al. (1999). “Managing Ethics and Legal Compliance: What Works and What Hurts” *California Management Review*, 41, 131-151.

⁴⁴ For one list of steps the CEO can take to go beyond mere words, see: Murphy, J. (2007, May/June). How the CEO Can Make the Difference in Compliance and Ethics, *Ethikos*, 20 (6). www.ethikosjournal.com/html/pastarticlesbyissue.html.

- **Participation in major company decisions.** Ethics involves decisions about “the right thing to do,” where the outcome of a decision impacts other people. As a result, an ethical dimension can be found in the vast majority of strategic decisions made within a company. More often than not, however, the foremost authority on ethics is absent from the table when key decisions impacting customers, workforce, shareholders, or others are being made. By being at the table, leaders in ethics and compliance “can help corporate leaders to set a personal example and insist that when a decision is made, no matter how large or small, everyone is obligated to check his or her internal compass and ask whether the course of action is the right thing to do.”⁴⁵ If standards of business conduct are to be a guiding element in the activities of an organization, the CECO should be a senior member of the management team, present when difficult and complex conversations are being held.
- **Serving as a member of the executive management team.** As stated previously, ethical considerations are present in many business-related decisions ranging from performance standards for merit increases to reduction of head count or integration of new organizational cultures through mergers and acquisitions. On a daily basis, senior executives make decisions that affect many people and therefore have an ethical component. For this reason, the CECO should be considered a member of the senior executive team. In some companies, the CECO is one level down from these discussions, reporting to a member of the executive team, and is expected to be “represented” by his or her supervisor in executive discussions (by such individuals as the general counsel, VP of human resources, etc.). While it is certainly understandable that the executive-level team should be kept to a manageable number, it is noticeable to employees, shareholders, and other stakeholders which functions are given executive authority in the company. It is also surprising how much is known to employees throughout an organization with regard to the individuals who “really have authority to help make the decisions around here;” the inclusion or exclusion of the CECO helps to cement that perception.
- **Maintaining a singular focus on ethics/compliance.** Every additional responsibility jeopardizes a CECO’s ability to remain focused and to perform effectively. In light of regulatory encouragement for an organization to demonstrate a strong commitment to ethics and compliance, additional risk is posed if the highest official dedicated to ethics is not even dedicated full-time. At least in larger organizations, the CECO role should be a full-time position, with one individual dedicated 100% to the job.⁴⁶ When the CECO has only this one role, it is essential that the officer be fully empowered and connected to avoid being marginalized.⁴⁷

The CECO should be a senior member of the management team, present when difficult and complex conversations are being held

⁴⁵ Speech by SEC Chairman William H. Donaldson (March 4, 2005) to the SEC Speaks Conference, Washington, DC. www.sec.gov/news/speech/spch030405whd.htm.

⁴⁶ Additionally, some organizations advocate making the CECO role a rotational position to ensure a periodic change in perspective and objectivity. However, other organizations believe that rotation undercuts the consistent application of standards and the professional status of the CECO.

⁴⁷ Small organizations may be limited in their ability to dedicate a full-time individual to the CECO position. While it is always best to do so, where it is not possible, the CECO should be grouped with related functions.

Reporting Relationships

Three schools of thought exist regarding the best reporting relationship of the CECO. Some suggest that only a reporting relationship to the board will suffice. Others counter that if the CECO is to be an accepted member of the senior management team, reporting to the board precludes that from happening. Therefore directly reporting to the CEO is considered best from this viewpoint. Still others suggest that it is not necessary for the CECO to serve as a member of the senior executive team at all. In those cases, the CECO can often be found reporting to a member of the senior management team (or lower), such as the general counsel, HR, or security.

The decision as to where the CECO will report is perhaps the single biggest influence on the credibility and authority that the CECO will have in the organization. It is, therefore, a key ingredient to the CECO's success.

There is no one answer to the question as to where a CECO should report, although the CECO always needs a direct, unfiltered line to the highest governing authority. First and foremost, it must be a reflection of the organization itself, taking into account the factors mentioned in the first part of this section. But the reporting relationship of the CECO must also be an outgrowth of the guiding principles that come with the job: Accountability for the fiduciary responsibilities with which it is entrusted; independence to raise matters of concern; authority to be taken seriously; and connection to company operations. As a reflection of those principles, we suggest here the best possible arrangement.

Accountability

- ***Direct reporting to the top of the organization, i.e. either the board of directors (or its subcommittee) OR to the CEO (depending on organizational culture and structure).*** If a CECO is expected to support senior management in upholding standards for the organization and to participate at the highest level in ethics-related decisions, it is imperative that the CECO report to the highest level in the organization. Doing so ensures that the CECO has the access and authority needed to implement initiatives with other management. It also sends a strong message to the organization that ethics is a function with which the CEO and the board want personal involvement.
- ***Employment decided and determined by the authority of the board of directors.*** The CECO occupies a delicate position, especially if it becomes evident that some wrongdoing may be taking place among executive management. Regardless of the reporting relationship, a CECO should be hired only upon review and approval by the board of directors (or the audit committee if that is the established reporting relationship).

If a CECO is expected to support senior management in upholding standards for the organization, it is imperative that the CECO report to the highest level in the organization

Similarly, the CECO should not be terminated unless review and approval by the board has taken place. Doing so ensures his or her independence and helps to protect the CECO from retaliation by peers if he or she has to raise concerns about the conduct of senior management.

- *Performance goals approved and evaluated by the board of directors.* Goals for performance may in practice be created and evaluated by the CEO; however, they should also be a reflection of the governing authority's goals and have the full endorsement of the board. This approach gives credibility to the dual reporting relationship.

Authority

- *Ability to enforce standards above and below his or her level.* One essential element of the CECO's role is to uphold the law, regulations, and the standards of the organization. Importantly, it is the role of the CECO to be sure that systems are in place to prevent and detect violations at all levels, from members of the board of directors to employees at the lowest levels of the organization and into the extended enterprise of vendors and business partners. It is appropriate and necessary for the CECO to be called upon to seek resolution of issues above his or her level, if such matters jeopardize the integrity of the organization.
- *Direct, unfiltered access to governing authority for the provision of information and solicitation of advice.* If an authentic spirit of accountability to governing authorities is to be achieved, CECOs must be given permission to independently approach and consult with directors without fear of reprisal from management, and it is anticipated that such authority will be exercised judiciously.

Specific Responsibilities

- *Oversees the assessment of organizations' risk for misconduct and noncompliance.* The FSGO encourage organizational assessment of risk for noncompliance (by examining the extent to which the program is designed to FSGO specifications and with regard to identification of vulnerabilities to noncompliant behavior).⁴⁸ While a compliance-related risk assessment may fit into a larger organizational enterprise risk assessment, responsibility for the identification and response to risk with regard to ethics and compliance should still fall under the purview of the CECO.
- *Establishes organizational objectives for ethics and compliance.* Based upon vulnerabilities for noncompliance identified through a risk assessment process, CECOs should be responsible for overseeing the identification of priorities for the ethics and compliance effort and for establishing objectives by which program progress can be monitored.

⁴⁸ www.usssc.gov/2005guid/8b2_1.htm. USSC, §8B2.1(c).

- *Manages entire ethics and compliance program throughout the company, including:*
 - Creation, revision, distribution, and enforcement of the code;
 - Training of the board, employees, and vendors on organizational standards, risks, compliance, and resources;
 - Operation of the reporting helpline (or oversight of vendors responsible for the function);
 - Auditing and monitoring;
 - Investigation of reports of misconduct; and
 - Provision of guidance and support for enforcement of organizational standards at all levels.

Consistent with the implementation of measures encouraged by the FSGO, the CECO should assume responsibility for the essential program elements identified by government and other authorities. This should be done with the business objectives in mind.

- *Encourages the prioritization of corporate values throughout the organization.* Assigning oversight of ethics and compliance to one individual does not mean that the ethical and compliant conduct of every employee falls under the purview of the CECO. While the purpose of the ethics and compliance function is to encourage appropriate conduct by all members of an organization, no single person can be responsible for the decisions and actions of every employee and agent. The intermediary role of managers and supervisors is critical in this respect.

Research indicates that the individual with the largest impact on an employee's ethical conduct is his or her immediate supervisor.⁴⁹ Therefore, the formal purpose of the ethics and compliance function or department should be to raise awareness among managers as to the impact that they can have and further educating and equipping these leaders with the skills, authority, and accountability necessary to ensure that their employees are upholding the standards of the organization.

- *Implements initiatives to foster an ethical culture throughout the organization.* The FSGO encourage organizations to “otherwise promote an organizational culture that encourages ethical conduct” through the ethics and compliance program.⁵⁰ Doing so expands the focus of the program to achieve a much larger purpose: positively affecting the culture of the organization such that ethical and legal conduct is expected and rewarded. Attending to ethical culture is an activity which research indicates is a worthy expectation for a CECO,⁵¹ because an effective ethics

⁴⁹ Ethics Resource Center (2005). *National Business Ethics Survey*, Washington, DC: ERC.

⁵⁰ www.ussc.gov/2005guid/8b2_1.htm. USSC, §8B2.1(b).

⁵¹ Ethics Resource Center (2005). *National Business Ethics Survey*, Washington, DC: ERC.

and compliance program has been demonstrated to positively impact the ethical component of the organizational culture. A strong ethical culture, in turn, yields ethical conduct on the part of employees.

- *Supervises ethics and compliance staff embedded throughout the organization.* Staff performing the ethics and the compliance function should ultimately be accountable to the CECO.
- *Frequently informs the board of directors and senior management team of risks, incidents, and activities related to the ethics and compliance program.* Directors should be regularly updated on reported incidents of potential misconduct, investigations underway, and actions being taken. Additionally, the CECO should be expected to apprise the board of training and other proactive efforts. Where a direct reporting relationship to the board is not present, this activity should take place at least quarterly. Similar reports should be made to senior management; however, with increased frequency.
- *Ensures the periodic measurement of program effectiveness.* The FSGO urge organizations not only to put programs in place, but also to demonstrate that they work.⁵² In order to do so, the FSGO call for periodic assessment of the compliance program. Common practice suggests data collection and review of the program structure and impact at least every two years.

Adequate Resources

In order to accomplish all these tasks, CECOs must be provided with adequate resources. The FSGO tell us that the person responsible for the ethics and compliance program “shall be given adequate resources, appropriate authority, and direct access to the governing authority or an appropriate subgroup of the governing authority.”⁵³ The difficult question is determining what resources are “adequate.”

There is no one formula as to the amount of resources that should be afforded a CECO in order to create and maintain an effective program. The need will vary by such important factors as the size of a company, its structure, the breadth of its operation, and the nature of its industry. Some highly regulated industries are required to dedicate substantial resources to ethics and compliance or at least those risk elements dictated by law. Others will be more accustomed to a light touch by government and commit fewer resources. For example, total costs to comply with SOX are estimated between \$500K—\$1 million per \$1 billion in revenue. Compliance with all other regulations can cost as much as five—six times that number. In October 2001, before passage of Sarbanes-Oxley, total regulatory compliance costs were estimated to be \$450 billion—\$843 billion annually (about \$4,500 per employee in a large company and almost \$7,000 per employee in a small company).⁵⁴ These costs are almost certainly higher given the new environment.⁵⁵

⁵² www.ussc.gov/2005guid/8b2_1.htm. USSC, §8B2.1(b)(5).

⁵³ Ibid.

⁵⁴ W. Mark Crain and Thomas D. Hopkins, “The Impact of Regulatory Costs on Small Firms,” a report for The Office of Advocacy, U. S. Small Business Administration, October 2001. This study is being updated and will be available in the fourth quarter of 2005.

⁵⁵ Open Compliance and Ethics Group (2005). *OCEG 2005 Benchmarking Study: Key Findings*, Phoenix, AZ: OCEG.

Nevertheless, some guiding principles can be employed in allocating funds, systems, and staff to the CECO. *Resources can be considered adequate when organizations have funding to comprehensively promote standards, educate the workforce, audit and monitor compliance, and to receive/respond to incidents that are potential violations of those standards in a timely manner.* This includes the following:

- ✓ Sufficient funds and content expertise to review, refresh, and distribute the corporate code of conduct to every employee and the board once a year;
- ✓ Sufficient funds to comprehensively train every employee and the board on organizational standards and core compliance risks;
- ✓ Sufficient staffing to work with management to promote the values of the organization;
- ✓ Sufficient staffing and funds to conduct thorough compliance audits, monitoring, and deep dives;
- ✓ Sufficient resources to ensure the effectiveness of ethics and compliance controls;
- ✓ Sufficient staffing to maintain an anonymous helpline (or to outsource this function), and to investigate incidents that are reported;
- ✓ Sufficient staffing to separate the proactive communication and training functions from the receipt of calls and follow-up investigations; and
- ✓ Sufficient staffing to serve as a resource to the board and senior management.

For many organizations, decisions about the responsibilities and resources given to the CECO are secondary ones—after all, at face value, ethics and compliance are not traditionally defined business areas. But it is this kind of thinking that can lead an organization down a slippery slope. If business operations are to be undertaken with integrity, ethics and compliance must be central. Recent research also indicates that the single biggest factor in the loss of shareholder value is damage to corporate reputation.⁵⁶ Similarly, when an organization is undergoing transition, risk for misconduct rises by 11%.⁵⁷ An effective ethics and compliance program can mitigate that risk.

It is one thing to establish criteria and to devote ample resources to the CECO in order to position him or her to succeed. Yet it is quite another to adequately fill the job with a person who will ensure that positive outcomes result. The next section discusses the skills and qualities necessary to fill the position of the CECO with the best possible candidate.

⁵⁶ Eccles, R.G., Newquist, S.C. & Schatz, R. (2007). Reputation and Its Risks. *Harvard Business Review*, February, p. 1-12.

⁵⁷ Ethics Resource Center (2005). *National Business Ethics Survey*, Washington, DC: ERC.

SECTION III

Chief Ethics and Compliance Officers — Skills and Qualifications

As established in the previous section, an ethics and compliance program is most successful when a CECO is given adequate authority as a member of the senior executive team. Not just anyone can adequately fulfill this role, especially given the visibility and responsibility involved. This section provides a review of the skills and qualifications necessary for the CECO.

Education and Experience

A look at current CECOs across organizations reveals that many have a legal background because of the importance of understanding the intricate and law-based aspects of compliance. Still other CECOs come from functions with a control or personnel orientation, such as internal audit, security and HR. Individuals with prior careers in education, theology, or philosophy have also effectively assumed the role of CECO in an organization.

While formal preparation programs are in development in several leading universities, it is not likely that a specific degree program will emerge in the near future to provide a certain career track for a CECO. Nevertheless, some common characteristics of an individual who is sufficiently equipped to be a CECO have emerged:

- **Knowledge of business.** Credibility as a member of the executive team comes, in part, with experience and success in business. Whether by formal training, hands-on experience, or time served in business, a successful CECO will be able to demonstrate knowledge of business operations enough to be able to speak the language of management, relate the standards of the organization in terms that will be meaningful to workers at all levels, and understand the stressors that create ethical and compliance risk for the various positions within business.
- **Ability to work at the executive level.** Executives conduct themselves in specific ways, from their means of communication to the focus of their energies. Successful CECOs have learned how to talk to peer executives, lay out high level strategy for the ethics and compliance function, and otherwise relate their area of responsibility to business objectives. They are able to work as a member of the executive team.
- **Ability to work with other departments.** Successful CECOs must have the ability to network, coach, and champion by establishing positive, effective relationships with other key functions within their organization. It is important that CECOs work with HR, finance, communications, risk management, governance, and other closely aligned departments. Leveraging these partnerships is critical to the successful implementation of ethics and compliance programs throughout the organization.

- ***Knowledge of and passion for ethical conduct and compliance.***

A CECO who does not really care about ethics and compliance will never be more than a figurehead. Familiarity with classical moral theory (ethics as a discipline) is desired and may prove beneficial to the person in this role, but is not an absolute requirement for the job. Equally important is a sincere desire, energy, and willingness to learn about ethical conduct, ethical culture and organizational dynamics, and legal/regulatory guidelines.

- ***Management experience.*** As outlined in the previous section, the role of a CECO involves not just managing direct reports, but also working with managers throughout an organization to equip them to model and champion ethical conduct and to recognize and respond to potential inquiries, concerns, and issues. Establishment and maintenance of an ethical culture essentially requires the ability to relate to leaders and followers at all levels. Time served as a manager gives credibility to the CECO.


These principles can be further delineated in a few specific qualifications that can be expected of the CECO:

- ✓ Substantial business experience (15 years+);
- ✓ Ability to communicate (public speaking, professional writing, with executives, etc.);
- ✓ Ability to develop and deliver training;
- ✓ Familiarity with SOX, FSGO and other relevant compliance standards;
- ✓ Familiarity with leading thinking and research in business ethics and compliance;
- ✓ Understanding of the auditing process;
- ✓ Understanding of the risk management/risk assessment process;
- ✓ Comfort with eLearning, learning management systems and other IT;
- ✓ Project management skills;
- ✓ Substantial management experience (10 years+); and
- ✓ Ability to motivate and inspire people.

Personal Skills and Characteristics

Every job in a corporation demands a set of personal traits as much as it does professional experience and skills and the CECO job is no exception. While there are certainly many talents and characteristics that are valuable to ethics and compliance people, five stand out in particular. In order to meet or exceed expectations, the CECO must be:

- *A person of integrity.* Integrity means consistently living by one's personal convictions and principles and doing what is right. An earned reputation of acting with integrity personally gives the CECO an added ability to talk with employees and stakeholders about ethical standards without coming across as hypocritical. The CECO must be the leader among leaders when it comes to the display of a personal commitment to integrity.
- *A person of strong character.* Research has shown that an ethical culture is the result of certain leadership behaviors at all levels; in essence, role modeling is an essential element of creating an environment where the standards of the organization are taken seriously.⁵⁸
- *Equipped with strong people skills.* By its very nature, ethics and compliance addresses interrelationships among people—an ethical decision is one where the outcome affects someone else. Not only does a CECO need to have a strong understanding of people to be able to give guidance in ethical decisions, he or she must be able to work with people as a manager of staff, intercede in difficult situations, communicate corporate standards, and affect change. A CECO must be able to work with people in one-on-one circumstances and in group contexts (such as training sessions) in order to achieve conflict resolution, to problem solve, and to build consensus and understanding. The CECO must be able to relate to people at all levels; thus, he or she must have the political savvy to deal effectively with senior executives and board members in a company, as well as union representatives, anonymous whistleblowers, and individuals with wide-ranging agendas.
- *Persistent.* Research indicates that substantive culture change in an organization takes up to ten years. Even if the goals for an ethics and compliance program are less comprehensive, mere communication of standards and training of an entire workforce can pose challenges and take substantial time and energy. A CECO needs the patience and persistence to work through the delays and barriers to see the program through successfully.



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⁵⁸ Research conducted by the Ethics Resource Center reveals that when leadership engages in certain ethics-related actions (among them modeling ethical conduct), misconduct is reduced by as much as 40%. Source: Ethics Resource Center (2005). *National Business Ethics Survey*, Washington, DC: ERC.

- *Willing to walk away from the job.* A CECO must be able to take risks to uphold organizational standards and personal convictions, especially among superiors. Judge Ruben Castillo, Vice Chair of the Sentencing Commission, has emphasized the need for independence of the chief ethics and compliance officer, observing that, at times, resigning from the post may be the necessary and right thing to do in the face of company policies that appear unethical or illegal.⁵⁹ If leadership is unwilling to heed his or her guidance, a CECO may need to walk away from the job. When a CECO's need (financially or otherwise) to keep his or her job outweighs his or her willingness to uphold the standards of the organization, he or she is far less likely to take risks and display the candor necessary to effectively fulfill his or her job responsibilities.
- *Courageous.* A champion of ethics and integrity must have the strength and willingness to take risks in order to confront wrongdoing, even at the highest levels. This is an enormously difficult and intimidating task. While most days for an ethics and compliance person are spent implementing and maintaining the program—training, drafting materials, reviewing company activities, investigating helpline calls, etc.—the decisive moments in the life of any ethics and compliance program come in tests of strength. These are the moments when a powerful interest or manager in the business wants something done a certain way and the CECO stands alone in challenging improper conduct. It can be a very lonely experience, when otherwise respected leaders in the company are challenging the ethics and compliance person's judgment and even loyalty to the company. Without a deep well of strength, the will of the majority or of the most powerful managers can result in catastrophic results for the company and its constituents. The CECO must have the fortitude to stand his or her ground.
- *Results-oriented implementer.* A CECO must be simultaneously a visionary and an execution-oriented implementer. An organization does not benefit if it never achieves its visions. The CECO must be unwaveringly focused on achieving results but creative and accepting of alternative and dynamic approaches to implementation.

⁵⁹ Remarks of Judge Ruben Castillo, Practising Law Institute, Advanced Corporate Compliance Program (New York: September 18, 2006).

⁶⁰ In sentencing a corporate compliance officer for crimes that reflected a complete abdication of responsibility, Judge Ruben Castillo, Vice-Chair, U.S. Sentencing Commission, cited the compliance officer's total lack of training in compliance. *United States v Caputo*, 456 F. Supp. 2d 970, 98 (N.D. Ill. 2006).

⁶¹ For a list of resources, please visit www.ethics.org/CECO.

Professional Development & Certification

Even with the best possible preparation, CECOs—like any other group of professionals—benefit from continuing education and exposure to new thinking. Current and future CECOs should be encouraged to pursue regular professional development.⁶⁰ Several sources exist for professional development of current and future CECOs, many through leading nonprofit organizations in the field.⁶¹

The extent to which a specific body of knowledge should be acquired is another area that is currently being defined in the field. More specifically, this translates into the question of the value of obtaining certification before taking on the role of CECO. Certification programs for various elements of the ethics and

compliance field have already been developed in and beyond the United States. Certification may involve four elements:

- Accumulation of a minimum amount of experience in the field;
- Commitment to professional ethics standards;
- Successful completion of an exam in core process areas and relevant frameworks; and
- Completion of continuing professional education courses and programs.

The certification process is intended to set a professional standard and assure a level of quality in the practice.⁶² Proponents argue that certification has become associated with being a member of a profession, and, in the interest of advancing ethics and compliance to that end, credentialing courses and even specific certification tests should be offered.⁶³ Skeptics counter that it is difficult to pinpoint what can actually be certified to attest to the adequate preparation of an ethics and compliance professional. In their view, knowledge of ethics, personal character, familiarity with process, and legislation are all broad areas, some of which are difficult to quantify.

It remains to be seen the extent to which these certifications will become universally accepted as a standard; but, to the extent that these accrediting bodies foster continuing education, they provide a benefit to the field. Meanwhile, a few guiding principles should be employed as expectations of CECOs, given their leadership role in their organizations and in the ethics and compliance industry. With regard to the professional development, CECOs should maintain:

- *Connections to peers in other organizations.* Through membership in professional organizations, attendance at conferences, or involvement in particular projects, CECOs should make efforts to be regularly connected to other CECOs. Doing so allows peers to share information, problem solve, challenge, and encourage one another. Attending a single conference once a year is insufficient to develop meaningful networks in this regard.
- *Up-to-date knowledge of emerging standards, legal, and regulatory issues.* Laws and regulations change regularly. Additionally, standards for ethics and compliance programs (and related internal controls) are also evolving. CECOs have an obligation to remain current on the guidelines and expectations that pertain to their organizations. For more information about organizations that can help, please visit www.ethics.org/CECO.
- *Exposure to new insights from research.* New insights emerge daily regarding the outcomes of an effective program, the ways to create ethical culture, effective methods for program implementation, and new standards for ethics and compliance. These insights enhance the work of the CECO and advance the field as a whole. CECOs should be regular

⁶² For a fuller discussion of the value of certification for the compliance and ethics profession, see: Snell, R. (2006, August). "Professional Certification for Compliance and Ethics Professionals: The Time has Come" *Compliance & Ethics* 3 (3), 2. www.corporatecompliance.org/CC/EP/docs/ProfessionalCertification_snell.pdf.

⁶³ In the United States, professional certification in compliance and ethics is available through several organizations. The Society of Corporate Compliance and Ethics (SCCE) provides a pathway to certification for compliance professionals in all fields via a training and examination program. Closely related are efforts by the Ethics and Compliance Officer Association (ECO) to partner with a university to offer a certificate. SCCE's certification-via-examination program is similar to the industry-specific credential offered by its affiliate, the Health Care Compliance Association. The Health Ethics Trust, which since 1995 has certified health care compliance professionals and more recently compliance executives, offers a structured approach based on training, required experience, and a portfolio demonstrating professional accomplishments. The Australasian Compliance Institute has also developed requirements for professional accreditation. The International Association of Privacy Professionals offers certification in the privacy compliance area.

readers of journals, newsletters, and executive summaries of research. Professional development should include remaining abreast of the latest thinking and educating the board and company executives on emerging issues and insights in ethics and compliance.

- *Access to resources to learn about best practices.* Many sources exist to help CECOs and their staff learn about the activities of other organizations. These resources range from newsletters and websites to in-person meetings and seminars dedicated to the discussion of best practices. CECOs should be encouraged to allocate a portion of their resources (in time and money) to keeping current through involvement with these groups.

Assuming the role of the CECO is no easy task. It requires an individual who is sufficiently experienced and equipped to connect people and functions by drawing them to a set of shared standards and expectations of right conduct. Being a CECO also involves a willingness to take a hard line—to correct behavior when necessary—to protect the interests of the organization. As one CEO observed, “Our collective efforts within the corporate world when it comes to ethics and compliance have lacked focus; have been too scattered, too piecemeal, too marginal.” Even further, “[the] industry wants—needs—more help in creating and sustaining effective ethics and compliance programs, and putting them together, because simply having a program—even a comprehensive one—may not be enough.”⁶⁴

Indeed it is not enough. The job must be adequately defined, and the right person must fill it. But even further, CECOs must look to their governing authorities and their profession as a whole with a much larger view. They must also call on themselves to take a leading role on a much bigger stage. The responsibility of the CECO to the governing authority and the profession is the subject of the next section.

⁶⁴ Remarks made by Boeing CEO James McNerney at the 2006 Ethics and Compliance Conference. Speech text is available at: www.boeing.com/news/speeches/2006/mcnerney_060427.htm.

SECTION IV:

Relationship with Governing Authority and Professional Responsibility

Chief ethics and compliance officers (CECOs) are called upon to be champions of professional responsibilities and attributes, within and beyond their organizations. The opportunity and the challenge for ethics and compliance officers in accepting this call is that the landscape they influence is shifting from more limited, less empowered notions of ethics and compliance to notions of enterprise values and large impact on the organization and the community.⁶⁵ Effectively addressing the challenge requires an appropriate perspective on the responsibility and relationship of a CECO toward their organization, the industry, and the public.

A Call to Action Within the Organization

Research examining the shared roles of the ethics office and senior leadership concluded that: “It is necessary for the focus to be on the culture of the organization, not just the ethics program, for there to be effective ethics program integration . . . leaders make a critical contribution in the creation of organizational culture; they set the tone at the top and establish expectations about the use of values in guiding behavior and business outcomes.”⁶⁶

Such a corporate culture-driven framework and call to action can point the CECO, senior executives, and the board of directors in the same direction in multiple ways. First, the shift of focus from outdated, ineffective compliance to culture, values, and leading management practices suggests there is not a one-size-fits-all approach to ethics and compliance. Instead, while there are consistent processes for ethics and compliance objectives, an organization’s unique mission, core values, history, and culture are important considerations in shaping how these are achieved in practice. Second, ethics is about “guiding behavior and business outcomes.”

Leading-practice organizations do not separate ethics and compliance from business and decision-making.

Relationship with Senior Management

The relationship between the CECO and management is driven by the corporate governance principle that the “responsibility of management [is] to operate the corporation in an effective and ethical manner to produce value for shareholders.”⁶⁷ While all managers and executives must participate in this responsibility, the CECO must be viewed as the designated leader among the management team in promoting ethics and compliance as an integral part of those operations.

Actions for CECOs with Senior Management

As outlined in the previous section, CECOs have a responsibility to train not only the workforce in lower levels, but also the executives and directors at or above their level. In working with senior management, CECOs should use their experience, knowledge, and leadership to ensure that the overall organization and executive team are knowledgeable about both current compliance regulations and ethics and compliance leading practices. Hotlines, training, controls, codes of conduct, and

⁶⁵ In a global survey of ethics professionals, over 70% describe their organization’s approach to business ethics as “primarily values-driven” or “primarily compliance-driven, but becoming more values-driven.” See: “2005 Global Ethics & Compliance Benchmarking Survey.” Language and Culture Worldwide. www.languageandculture.com.

⁶⁶ Daigneault, M., Guthrie, J., & Navran, F. (2000). “Managing Ethics Upward” citing ERC Fellows Program, Exploratory Research Findings.

⁶⁷ Business Roundtable. (2005). “Principles of Corporate Governance.”

the like are important, as are conversations at all levels of the organization. Organizations should routinely discuss, embrace, and especially, challenge the corporate mission and principles and whether the company is living that mission.

Actions for Senior Management with CECOs

Senior management must adopt the mindset of “business” and “ethics” together, i.e. ethics and compliance is a core discipline of business strategy and execution, not a “bolt-on.”

Senior leaders of all corporate functions must also build ethical thinking into every business process.

This may be as simple as redefining the framework of questions employees ask when making business decisions or facing dilemmas. By the time a crisis reaches the executive level, it is often scrubbed and sanitized, as well as often being too late to make a proactive decision.

Relationship with the Board of Directors

A discussion of the relationship between the CECO and the board of directors begins with the 2004 Amendments to the FSGO. In amending the original Sentencing Guidelines, the United States Sentencing Commission (the “Commission”) specifically clarified leadership responsibilities relating to ethics and compliance as follows:

- **FIRST**, the board of directors must be knowledgeable about the organization’s ethics and compliance program, including information on the compliance risks facing the firm and the programs installed to combat those risks.⁶⁸
- **SECOND**, the Guidelines require that senior management must ensure that the organization has an effective compliance program.⁶⁹
- **THIRD**, as was highlighted earlier in this paper, those individuals with day-to-day operational responsibility for ethics and compliance must “be given adequate resources, appropriate authority, and direct access” to the board of directors or an appropriate subgroup of the board.⁷⁰

In light of these federal policy guidelines, and based on experience working with both ethics officers and boards of directors, there are several actions that should be taken.

Actions for CECOs with the Board

In working with the board of directors, CECOs should use their experience, knowledge, and leadership to challenge the board to engage in conversations about ethics and compliance. This should be more than providing a report-out on compliance efforts and the number of calls received by the ethics hotline. The CECO’s report to the board should include a candid assessment of ethics and compliance risks facing the organization.

⁶⁸ USSC, §8B2.1(b)(2)(A).

⁶⁹ USSC, §8B2.1(b)(2)(B) and Amendment No. 673.

⁷⁰ USSC, §8B2.1(b)(2)(B) and C and Application Note 3.

Actions for Boards of Directors with CECOs

Boards must also make efforts to engage the ethics and compliance officers by:

- *Putting ethics and compliance on the board agenda.* Ethics and compliance is not just hotline analysis and employee fulfillment of required compliance training courses. Directors should utilize conversations with CECOs to better understand the culture and values of the organizations they govern and, ultimately, the principles and values that employees use to make their daily business decisions;
- *Setting the governance bar higher than just satisfying the legal “duties” of the board.* Directors have legal duties of loyalty and care. Directors should recognize that the company’s stakeholders have higher expectations of them as well; and
- *Ensuring that CECOs are appropriately empowered* and positioned to challenge management, if necessary. Thus, the board must understand the ethics and compliance field and be able to evaluate the performance and effectiveness of the organization’s ethics and compliance program.

Of course, leading boards evaluate and govern the company’s ability to create value broadly across stakeholder groups. In a 2005 *Corporate Board Member* survey, almost 90% of directors reported receiving financial and business information in preparation for board meetings. However, less than 50% receive employee values/satisfaction information or customer satisfaction information as part of their preparation.⁷¹ Boards can better govern for long-term shareholder return when they also analyze the performance and satisfaction of their most important assets: their people and their customers. Being knowledgeable about the ethics and compliance program is an essential part of this orientation.

Responsibility to the Ethics and Compliance Field

While there are a number of management fields with longer histories and more established responsibilities, CECOs are demonstrating significant progress in establishing standards, professional responsibilities, training, and overall career development tracks. Given that, certain current challenges for the field include: how to appropriately elevate leaders; how to provide the necessary resources and authority; and how to advance the credibility of professionals who are doing the job.

CECOs are senior leaders in the ethics and compliance field. As senior executives in their organizations, they also have a responsibility to exemplify and shape their profession. As members of an emerging profession, CECOs should consider themselves to be accountable to:

- *A high standard of ethical conduct.* A number of codes of conduct for ethics and compliance and related professionals (such as lawyers, ombudsmen, auditors, and fraud examiners)—across organizational lines and sectors—have been emerging. (See resources included on www.ethics.org/CECO for examples of organizations with codes of conduct.) CECOs should also

Certain current challenges for the field include:

- How to appropriately elevate leaders
- How to provide the necessary resources and authority
- How to advance the credibility of professionals who are doing the job.

⁷¹ 2005 *Corporate Board Member* / PricewaterhouseCoopers Survey: “What Directors Think?”

uphold the standards of their organization and work to ensure that those standards promote ethical and legal conduct. In other words, the values and standards that apply to a CECO in his or her job should guide behavior wherever he or she represents the organization.

- *The public.* It is widely accepted that “a distinguishing mark of a profession is acceptance of its responsibilities to the public.”⁷² The Ethic and Compliance Officer Association Standards of Conduct are among many in the field that recognize a commitment to the “public understanding of business ethics and compliance and their importance to sound business management.”⁷³ Other codes of conduct, such as the Professional Ethics Code adopted by the Health Care Compliance Association (HCCA), more specifically encourage exemplifying high ethical standards “in order to contribute to the public good.”⁷⁴ The commitment to protect interests and educate beyond the narrow interests of one particular organization distinguishes CECOs from many other managers in an organization.
- *CECO peers.* Being a CECO can be a lonely calling in an organization. It is commonplace for a CECO to be expected to exemplify the behaviors he or she is trying to cultivate. Yet just like any other leader, CECOs are fallible people. The pressures of senior leadership, expectations of management, and the temptations of power can all have a detrimental effect on a CECO’s conduct. Peers are essential to encourage and hold one another accountable. Working collectively contributes to strengthening the field and promoting strong ethical standards and practices.

On behalf of the profession they lead, CECOs must also:

- *Expect a high standard of conduct from vendors, providers, NGOs, and others serving the organization in the name of ethics and compliance.* The “ethics of the ethics profession” extends to eLearning companies, helpline providers, trainers and consultants, as well as myriad nonprofit organizations providing resources and assistance to CECOs in-house. High standards that apply to CECOs should be expected of any individual or organization connected to the ethics and compliance profession. A CECO should commit to working only with those organizations that exemplify the conduct that he or she is trying to model to employees.
- *Take responsibility for the preparation of rising CECOs and all ethics and compliance employees.* The strength of the ethics and compliance field is dependent on the next generation of leaders who will succeed CECOs of today. CECOs should develop a career path for capable staff in the organization to gain more experience. Serving as a mentor for emerging leaders throughout the field is also a way to prepare ethics and compliance employees.
- *Advance knowledge and shape the dialogue.* There is a great deal that is yet to be known about the influence of ethics and compliance programs. A number of organizations are undertaking research and still more are

⁷² American Institute of Certified Public Accountants (AICPA), Code of Professional Conduct, as amended January 14, 1992. (New York: AICPA), 1109.

⁷³ Ethics and Compliance Officer Association (ECO), “The Standards of Conduct: Business Ethics and Compliance Professionals.” www.theeco.org.

⁷⁴ Health Care Compliance Association (HCCA): www.hcca-info.org/Content/NavigationMenu/AboutHCCA/ProfessionalEthics/codeofethicsFINAL11-14-03.pdf.

developing tools to be able to guide public dialogue on matters that relate to standards and expectations for corporations. However, research and resources are only as good as their relevance to everyday practice. CECOs are best suited to identify emerging issues, challenges, and questions that are in need of answers, and they are best equipped to assist with the application of these tools to daily practice. Additionally, most organizations are “field research” in action. Insights that CECOs gain from their own work are valuable, and professionals in ethics and compliance should consider it a professional responsibility to share what they are learning with their peers and with the public at large.

In conclusion, ethics and compliance begins at the top and mandates strong leadership from the CECO. CECOs and other ethics and compliance employees must consistently display the conduct that the organization endeavors to promote, in order for others to follow suit.

CECOs must begin to see themselves as key players in an arena that is essential for the well-being of the companies they serve, as well as for society as a whole.

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SECTION V:

Conclusions and Next Steps

We trust that most organizational leaders want to experience the full value of their CECO through the ethical culture, prioritization of right conduct, and increased brand value they help to create. Yet CECOs do not provide any of this value by happenstance; to the extent that organizations do not have CECOs that are provided sufficient resources, adequately placed in the organizational hierarchy, prepared, and fully accepting of their responsibilities, then there is work to be done by a number of stakeholders in the field. In concluding this paper, next steps are suggested for several key leaders who have the power to influence both the ethics of their organizations and the corporate world overall. These leaders include boards of directors, CEOs, CECOs, and leaders of organizations serving the ethics and compliance industry.

Boards of Directors

A great deal of public and investor attention has been placed on organizational governance, and rightly so. Directors can have a great deal of influence on the decisions and activities of management, and, to that end, ethics and compliance should be a high priority at the board level. If there is to be a proper tone from the top, it should be set beginning with the board of directors.

Members of corporate boards have a responsibility to:

- *Regularly put ethics and compliance on the board agenda*, sending the message to management that ethics and compliance is of utmost importance. A high level review of the ethics and compliance program once a year is not enough. Members of corporate boards should spend time reviewing relevant data and talking about the ethical culture that is desired by the board. Providing guidance to management as to the board's priorities and standards for company conduct is imperative.
- *Assume authority for hiring and (if necessary) firing the CECO*. Corporate boards should create provisions that the employment of the CECO occurs at the request of the board. If senior management asks the board to terminate the CECO, the board or its committee should conduct an investigation to be sure that the request is not an act of retaliation against the CECO.
- *Become knowledgeable about the organization's ethics and compliance program*. A board has the responsibility to clearly establish the organization's values and make sure they are embedded in the ethics and compliance program. A board should not only read and use the code of conduct, but should also meet periodically with the CECO. Becoming familiar with the ethics and compliance mechanisms in place within the organization is an important responsibility of a corporate board.
- *Become knowledgeable about compliance risks to the organization and strategies in place to prevent them*. Compliance risks can take different forms: inadequate program design to meet regulatory expectation (e.g. insufficient response to FSGO); failure to operate the program as designed; and vulnerability to certain types of misconduct that might

Next Steps: BOARDS OF DIRECTORS

- Regularly put ethics and compliance on the agenda
- Assume hiring/firing authority of the CECO
- Become knowledgeable about the ethics program
- Learn about the organization's compliance risks
- Be proactive in evaluating the program
- Evaluate executive team's commitment to ethics/compliance
- Educate the board on ethics and compliance issues
- Appoint an experienced independent director
- Encourage and support the CECO

occur, given the work of the organization. CECOs should identify compliance risks regularly and report the findings of the assessment to the board of directors.

- *Be proactive in evaluating, monitoring, and overseeing the program.* A board member should not assume that just because there is a CECO or a code of conduct, there is a strong program within the organization; he or she should look for evidence.
- *Request an evaluation of the CEO and executive team based upon their commitment to ethics and compliance.* A few leading organizations are already asking the CECO to review and assess the tone that is sent from the top with regard to ethics and compliance. In some cases, CEO performance is tied, in part, to the evaluation offered by the CECO. Tone at the top can be quantified.
- *Ensure the board is educated on the ethics and compliance issues faced by directors themselves.* Board members make many ethics-related decisions as they fulfill their roles. Knowledge of the situations that constitute conflicts of interest and other common board-related ethics and compliance violations is important. Board educational sessions on ethics and compliance should be conducted at least once per year.
- *Appoint an independent director or audit committee member who either has experience in ethics and compliance or is willing to gain sufficient knowledge through education.* Boards would be wise to invite an experienced ethics and compliance professional to serve as an independent member of the board, or on the audit committee.⁷⁵ Doing so would ensure that at least one director would be intimately familiar with the questions to ask of management, the measures by which the CECO should be held accountable, and the situations that constitute red flags and should receive scrutiny by the governing authority.
- *Encourage and support the CECO.* The CECO position is a difficult one, and, if trouble arises, the likelihood that the CECO will directly approach the board will be increased if a relationship has already been established. Even further, the task of upholding standards can be a lonely one. The board should contact the CECO periodically to offer encouragement and advice.

⁷⁵ Murphy, J. & Roach, D. (2006 Nov/Dec). Compliance Officer on Board: What Your Audit Committee is Missing. *Ethikos*, 20, (3).

Chief Executive Officers

CEOs have an important role in the success of an ethics and compliance program, in that their decision about the seniority given to a CECO, the extent to which resources will be provided, and the messages that will be sent from the top of the organization largely take place at his or her direction. All of these things reflect and further the tone set from the top.

CEOs have a responsibility to:

- *Adopt a mindset that business and ethics go together*, and even further, to look for opportunities to point out to employees how ethics is a factor in the CEO's decision making process. A CEO's ability to talk about ethics in this way, to model ethical conduct, and to earn the trust of employees is what will set the proper tone from the top and convince their organization that ethics really matters.
- *Ensure that an effective ethics and compliance program is in place*. A CEO should request regular updates from the CECO regarding the growth of the ethical culture in the organization. It is important for the CEO to review findings of risk assessments and briefings on efforts to measure the progress of the program. Taking a leading role in the ethics and compliance program is critical; the CEO should be the first to take the training, participate in a safety walk, be the one who uses the code for guidance, and actively consult the ethics office with questions.
- *Give sufficient authority and designation to the CECO*. The CEO should appoint a CECO, and ask him or her to, at the very least, report directly to the CEO with an unrestricted line to the audit committee. The CEO should require the CECO to participate in executive level discussions and strategic decisions.
- *Provide adequate resources for the ethics and compliance program*. Even in the face of adversity for the organization, a CEO should resist cutting the ethics and compliance program budget. Research shows that during times of transition and difficulty, misconduct increases by as much as 11%.⁷⁶ The ethics and compliance program, if adequately resourced, can help to weather even the most difficult of circumstances.

Next Steps: CHIEF EXECUTIVE OFFICERS

- Adopt a mindset that ethics and business go together
- Give sufficient authority to the CECO
- Ensure an effective ethics and compliance program
- Provide adequate resources for the program

⁷⁶ Ethics Resource Center (2005). *National Business Ethics Survey*, Washington, DC: ERC.

Next Steps: CHIEF ETHICS & COMPLIANCE OFFICERS

- Revisit responsibilities of the CECO
- Ask for authority and responsibility when necessary
- Point out ethics and compliance dimensions of board decisions
- Support efforts to advance the profession

Chief Ethics and Compliance Officers

CECOs are stewards of the ethics and compliance program within their organizations. As such, the need persists to find ways to establish and maintain the best program possible, even if this requires challenging authorities to provide more resources or a different organizational structure.

Ethics and compliance officers have a responsibility to:

- *Initiate conversations to revisit the stated responsibilities of the CECO.* CECOs should examine the culture of the organization and talk candidly with leaders at the highest level about the authority and resources that are really needed to run the ethics and compliance program effectively.
- *Be courageous to ask for authority and responsibility needed to do the job.* It may require demonstrated leadership before the CECO can be awarded a leadership role. Many ethics and compliance officers complain about not being given adequate authority, but few actually seek out the responsibility. Raising the question will, at the least, serve as an opportunity to make senior leaders aware of the ethics needs of the organization.
- *Use experience, knowledge, and leadership to point out the ethics and compliance dimensions of board decisions and executive leadership conversations.* A CECO must take every opportunity to highlight the situations where ethics and compliance is a part of daily business activity, and serve as a support to senior leaders as they strive to set the proper tone from the top by making ethics important in everyday activities.
- *Support efforts to advance the profession.*

A CECO can do so by:

- 1) joining a professional association in the industry and taking on a leadership role;
- 2) supporting education programs for ethics and compliance professionals as both a participant and a leader;
- 3) engaging in discussions with colleagues to advance best practices;
- 4) endorsing efforts to heighten public awareness of emerging issues in organizational ethics and compliance; and
- 5) serving as a mentor to new ethics and compliance professionals.

Professional Organizations, Consultants and Vendors

There are many organizations that comprise the ethics and compliance industry, each dedicated to providing resources and services to help CECOs and their staff members as they work to create effective programs. Whether for-profit or non-profit, these organizations often have a unique knowledge of the field from having worked with many different ethics and compliance programs and professionals. The knowledge and reach of these organizations can be of great assistance to CECOs throughout the industry.

Leaders of professional organizations in the ethics and compliance industry have a responsibility to:

- *Work together to uphold and promote professional standards of practice in the profession.* Professional organizations with multiple stakeholders and members can help to advance a new standard of high-level oversight and executive-level positioning for CECOs. Leaders should distribute and promote this document to members, and challenge senior executives to consider the structure of their internal programs and adopt the suggestions discussed herein.
- *Provide educational resources, continuing education, and other support for professionals.* Leaders of professional organizations can further the ethics and compliance field by offering courses and training programs for CECOs to equip them as corporate executives and leaders. A leader should also conduct research to determine the practices that make the most impact and to identify the ROI (return on investment) of a CECSO. It is also important to engage CECOs in discussion with one another to provide support for their efforts to advance their internal programs.
- *Create ways to nurture the next generation of CECOs.* Leaders should encourage the addition of ethics and compliance courses in educational institutions, and endorse efforts by corporations to hire new professionals with training in ethics and compliance. Through implementing conferences, training sessions, and mentoring programs for entry-level and lower-level employees in ethics and compliance, leaders of professional organizations can help to cultivate the next generation of CECOs.

Next Steps: PROFESSIONAL ORGANIZATIONS IN ETHICS & COMPLIANCE INDUSTRY

- Work to uphold professional standards
- Provide educational resources and support
- Create ways to nurture the next generation of CECOs

Conclusion

Leading integrity is perhaps one of the most important job responsibilities in the corporate world today. In a time of heightened media attention to corporate activities, lowered trust by investors and the broader public, greater potential harm that can be caused by large companies and other organizations, and growing efforts to regulate business, CECOs have a great deal to offer to their organizations through the programs they can help create and maintain. Yet many have not yet fully realized their potential, due to constraints imposed by their position in the organization, the expectations laid before them, or the resources they are given. When it comes to ethics and compliance, the investment is always worthwhile. After all, ethical conduct is not only necessary for preventing problems, it is also the key ingredient to investor and stakeholder trust. We encourage readers to review the investment they are making in ethics and compliance, and we anticipate improved results.

CONTRIBUTING ORGANIZATIONS

Ethics Resource Center (ERC) is devoted to independent research and the advancement of high ethical standards and practices in public and private institutions. For 85 years, the ERC has been a resource for institutions committed to strong ethical cultures. ERC uses its expertise to inform the public dialogue on ethics and ethical behavior. ERC analyzes current and emerging ethics issues, produces new ideas and benchmarks, offers insight to encourage behavior of the highest integrity, and works to enhance the public trust in the capital markets. Professionals are also able to access ERC research findings through *Ethics Today*, an online publication, or through an online benchmarking portal.

The Ethics Resource Center is also home to the U.S. benchmark on workplace ethics, fielded through its National Workplace Ethics Studies. Since 1994, the Ethics Resource Center (ERC) has issued its flagship report from this research—the National Business Ethics Survey (NBES)—measuring levels of misconduct, the prevalence of ethics cultures and the impact of ethics programs on employees in business. In addition to its core question set, each version of the survey has evolved along with the nation’s business, expanding to include relevant questions pertaining to contemporary issues.

ERC Fellows Program consists of a select group of corporate, government, non-profit and educational leaders who share an expertise and strong practical interest in the fields of organizational ethics. It gives ethics leaders an opportunity to engage in collaboration and research to identify, examine and further understand critical organizational ethics questions. An emphasis is placed on work products or research outputs with practical applications for corporate member organizations.

For more information visit: www.ethics.org

The Business Roundtable Institute for Corporate Ethics (the Institute) is an independent center established in partnership with Business Roundtable—an association of 160 CEOs from leading companies—to renew and enhance the link between ethical behavior and business practice. The Institute brings together leaders from business and academia to fulfill this mission through executive education programs, practitioner-focused research and outreach.

The Institute’s educational programs include ethics seminars for Chief Executives, Boards of Directors and Senior Executives. These programs—which provide an intimate environment that fosters leading practice exchange—are led by the Institute’s Academic Advisors, a group of leading experts from many of America’s top business schools who combine thought leadership with decades of hands-on experience in guiding leaders from a variety of industries.

For more information visit: www.corporate-ethics.org

The Ethics and Compliance Officer Association (ECO) is the only organization exclusively for ethics and compliance executives. ECOA is the mission-driven leader and global voice for the ethics and compliance community. ECOA is committed to tapping the network of knowledge and thought leadership from our collective experiences to align trust and corporate integrity to business performance and—together—to shape the future of the ethics and compliance profession. ECOA members benefit from numerous conferences; seminars; workshops; research, surveys and benchmark studies; our alliance with the Ethics Resource Center; ECOA's DIALOGUE (blog); a continuum of information through newsletters, webcasts and daily reports posted on our web site; and our online resource library.

For more information visit: www.theecoa.org

Open Compliance and Ethics Group (OCEG®) is a 501(c) 3 nonprofit organization helping companies align their governance, risk and compliance activities with their organizational objectives to Drive Principled Performance™. OCEG® created a one-of-a-kind resource the OCEG Foundation Framework (“The Red Book”) which is an integrated view of the mandatory and voluntary boundaries and the core and additional business practices that effect successful GRC programs as recommended by seasoned practitioners and vetted through an open and public review process. Through the OCEG Knowledge Portal, members are able to access and download, in a variety of formats, custom reports from the Foundation Framework as well as domain supplements, tools, guides, handbooks and thousands of sources.

In addition to these core materials, OCEG makes the following items available to the public:

- GRC Illustrated Series (providing visual representations of key governance, risk and compliance initiatives)
- OCEG Benchmark Series (providing data to substantiate business cases and prove value)
- OCEG Webinar Series (providing educational and insightful discussions and training on critical issues facing today's GRC professionals)

OCEG makes it easy to find the materials most pertinent to your needs through our role-based entry-points and our topic-based reading rooms. Weekly newsletters keep you apprised of the latest in OCEG events and publications. Our quarterly publication GRC360° keeps you abreast of key trends and issues. Lastly, OCEG fosters networking and knowledge sharing through-out the OCEG GRC community of practice in our Member-to-Member area, the OCEG IT Forum, and in our roundtable events.

For more information visit: www.oceg.org

The Society of Corporate Compliance and Ethics (SCCE) holds an annual Compliance & Ethics Institute which is a primary education and global networking event for corporate compliance and ethics professionals. Outstanding leaders in the compliance industry share their knowledge, resources, and methods for developing and improving programs in today's challenging compliance environment. A new SCCE certification program allows participants in all industries to become Certified Compliance and Ethics Professionals (CCEP). The purpose of CCEP is to heighten the credibility of compliance practitioners and enhance the credibility of compliance programs staffed by these certified professionals. SCCE offers many communication resources, a bi-monthly Compliance and Ethics Magazine, and a Web site featuring the latest compliance and ethics news, policies and procedures, and answers on current compliance issues. The SCCE Code of Ethics for Compliance Professionals sets specific standards of conduct that are expected of compliance professionals and recognizes the responsibilities of the profession to the general public, employers, and clients.

For more information visit: www.corporatecompliance.org

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For additional resources,
please visit the Ethics Resource Center
website: www.ethics.org/CECO