

Compliance & Ethics

PROFESSIONAL



Vol. 6 / No. 6
12 / 2009

A PUBLICATION OF THE SOCIETY OF CORPORATE COMPLIANCE AND ETHICS



Congratulations to the 2009 Compliance & Ethics Award Winners

TOP STORIES INSIDE

- 4 Governance, risk and compliance for today's linguistically diverse companies
- 6 Anti-corruption compliance: This is no time to relax
- 16 Return on Ethics: Six industry leaders share their views
- 20 Creating a network of Ethics and Compliance leaders
- 30 Doing more with less: Compliance policies and programs



26 In the Spotlight: Eric Havian, Partner
Phillips & Cohen, LLP

Compliance and ethics officer positioning: A benchmarking survey

By Rebecca Walker

In the recent Corporate Integrity Agreement (CIA) between Pfizer and the Office of the Inspector General of the Department of Health and Human Services, Pfizer agreed that its chief compliance officer will now report directly to the CEO; will neither be nor be subordinate to the general counsel or CFO; and will make periodic reports to the Audit Committee of the board. Most compliance professionals agree that the appropriate positioning of the compliance and ethics (C&E) officer within an organization is critical to the success of a program. But, does it really harm a compliance and ethics program when the general counsel is also the head of Compliance and Ethics? Or is Legal the appropriate department for a function that has the primary purpose of preventing legal violations? And how important is it that the compliance and ethics officer report directly to the CEO?

Where the C&E officer should report is not an easy question for many organizations to answer, and most companies would likely argue that the most effective positioning varies between organizations. In order to gather valuable benchmarking data for its members, the SCCE recently disseminated a nine-question survey regarding C&E officer positioning. The survey was answered by a total of 560 respondents. The majority of respondents were from

public or privately-held organizations (26% from publicly-held, and 24% from privately-held). The survey also drew a large number of respondents from non-profit institutions (36%), educational institutions (8%) and government entities (6%).

Background

The Pfizer CIA, which was signed in August of 2009, contains a number of “Corporate Integrity Obligations,” including extensive provisions relating to the structure of Pfizer’s compliance program. Specifically, Pfizer agreed that it will “continue to employ an individual to serve as its Compliance Officer” during the term of the CIA. The compliance officer and the deputy compliance officer must be members of senior management and must both make at least semi-annual reports regarding compliance matters directly to the board of directors or a designated subcommittee. In addition, both the compliance officer and deputy compliance officer must be officially “authorized” to report on matters to the board of directors at any time.

OIG’s requirements of Pfizer certainly go above and beyond prevailing legal guidance. The Federal Sentencing Guidelines’ definition of an effective compliance and ethics program provides merely that the head of the compliance and ethics program be a member of high-level



REBECCA WALKER

personnel. The term “high-level personnel” is defined as “individuals who have substantial control over the organization or who have a substantial role in the making of policy within the organization.”¹ The term is specifically intended to include directors, executive officers, individuals in charge of a major business or functional unit of the organization (such as sales, administration, or finance), and individuals with a substantial ownership interest. The Guidelines also provide that those individuals who have been delegated day-to-day operational responsibility for the compliance and ethics program should report periodically to high-level personnel and, as appropriate, to the board or a board committee on the effectiveness of the program and have adequate resources, appropriate

authority, and direct access to the board or a board committee.²

The Pfizer CIA is not the first time that OIG has made clear that it does not believe that ethics and compliance should reside in the Legal department or be subordinate to the general counsel. OIG has long held that it is important to house the Compliance and Ethics department outside the Legal department in order to create an effective program.³ The approach of healthcare regulators has not necessarily been adopted outside that industry; however, it is nonetheless a well-accepted tenet of compliance law that the positioning of the C&E officer is a critically important factor to the success of any program. As the Ethics Resource Center stated in its 2007 white paper entitled *Leading Corporate Integrity*, “A [compliance and ethics officer’s] line of reporting is perhaps the single biggest influence on his or her credibility and authority within the organization.”

Survey Results

So where do C&E officers report, and to what extent have organizations attempted to create the appropriate level of authority and independence for this position? The SCCE’s survey seeks to answer that question from

a few different perspectives, and it contains some surprising and hopeful results for the Compliance and Ethics profession.

The survey began by asking respondents whether their organization has designated a compliance/ethics officer (whatever the title). Perhaps more indicative of the self-selective nature of those responding to the survey than anything else, a full 97% of respondents indicated that they have designated a C&E officer, and an additional 1% indicated that they are planning to create that position soon. Only 2% of respondents do not have someone in the position of C&E officer.

What other position does the Compliance and Ethics Officer hold?

The survey next asked respondents what other position the C&E officer holds in the organization. More than one third of respondents (36%) indicated that the C&E officer holds no other position at their organization. Even more surprisingly, the number of C&E officers who report to the head of Internal Audit is the same as the number who report to the general counsel, both at 12%. However, more C&E officers are members of the Law department than the Internal Audit department,

as an additional 8% of respondents’ C&E officers, other than the general counsel, are also members of the Law department, bringing the total number of Law department C&E officers to 20%.

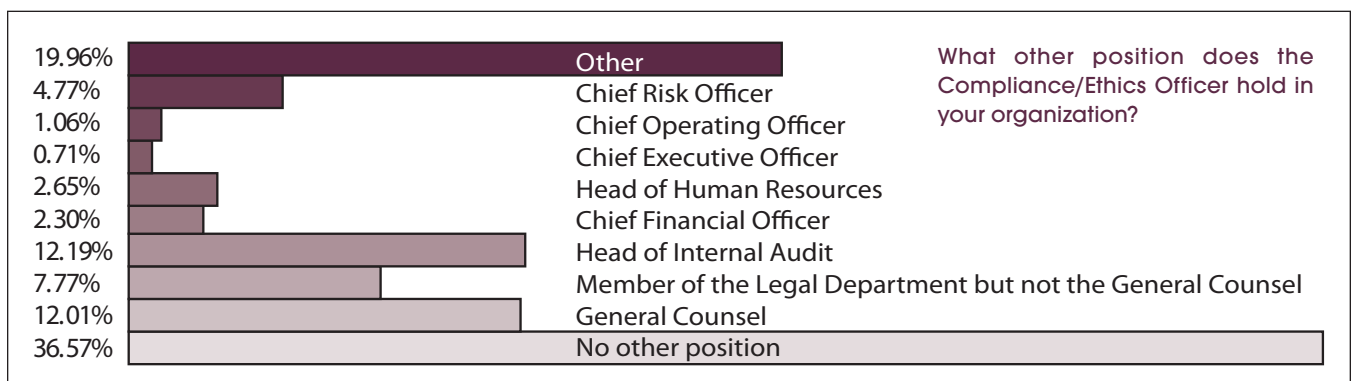
Other positions also held by the C&E officer include:

- Chief Risk Officer – 4.7%
- Head of Human Resources – 2.6%
- Chief Financial Officer – 2.4%
- Chief Operating Officer – 1.1%
- Chief Executive Officer – 0.6%
- Other – 20%

To whom does the Compliance and Ethics Officer report?

One of the most important factors in determining the authority and independence of the compliance function is to whom the C&E officer reports. The survey results to that question are quite surprising. A full 45% of respondents indicated that the C&E officer at their organization reports administratively to the CEO. Only 17% of C&E officers report to the general counsel. Only about one in ten (11%) of respondents indicated that their C&E officer reports administratively to the board or a committee of the board. Other reporting relationships include:

- Chief Financial Officer – 6%
- Chief Operating Officer – 5%



- Member of the Legal Department but not the General Counsel – 1%
- Head of Internal Audit – 2%
- Head of Human Resources – 1%
- Chief Risk Officer – 1%
- Other – 12%

Regardless of where in one's organization the C&E officer actually reports, the vast majority of

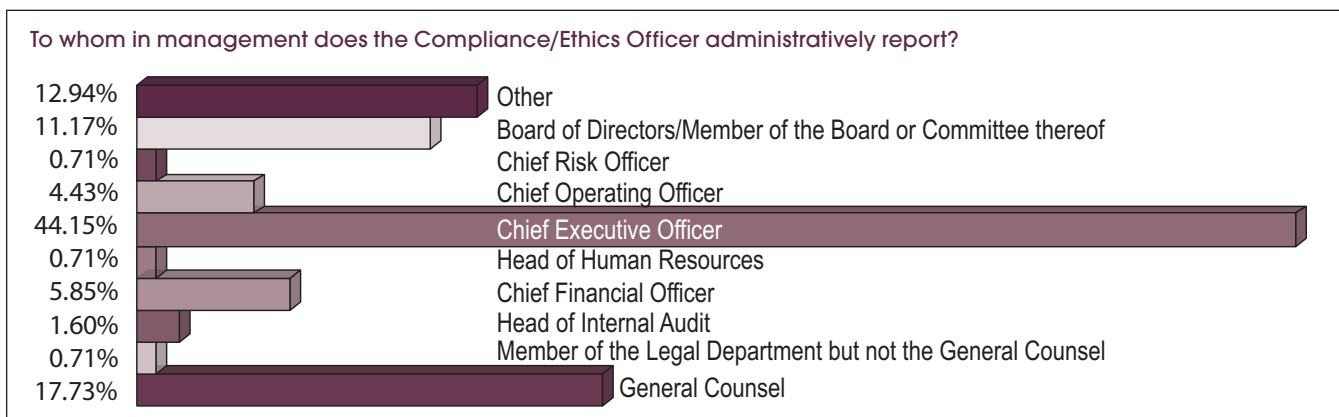
survey respondents (77%) agreed that it is important for the C&E officer to report directly to the CEO.

Distance between Compliance and Ethics Officer and CEO

Another means of ascertaining the positioning of the C&E officer within an organization is to look at the number of administrative levels

between the C&E officer and the CEO. The majority of respondents (55%) indicated that there are no levels of management between the C&E officer and the CEO, meaning that the C&E officer reports directly to the CEO. (The discrepancy between this 55% and the 44% of respondents who indicated that

CONTINUED ON PAGE 50



Web 2.0 is about the new, faster, everyone connected Internet.

SCCE is embracing this approach and offers you a number of ways to build out your network, connect with compliance professionals, and leverage this new technology.

Take advantage of these online resources, keep abreast of the latest in compliance news, and stay ahead of the curve.

Each resource is 100% dedicated to compliance and ethics management. So sign up for whichever one works best for you, or for all four if you're already living the Web 2.0 life.

The Social Network:

Dozens of discussion groups and more than 2,000 participants
<http://community.corporatecompliance.org>

SCCE'S COMPLIANCE & ETHICS PROFESSIONAL Social Network

Linked In:

Profiles of over 600 compliance and ethics professionals eager to connect
www.linkedin.com/groups?gid=61769



Twitter:

Over 4,000 people already follow us on Twitter to get breaking compliance news
http://twitter.com/SCCE_News



Facebook:

Connect with compliance and ethics professionals on Facebook
www.corporatecompliance.org/FaceBook & www.corporatecompliance.org/Fan_Page



Tired of
24/7/365
compliance
issues?

Try 4,500/30/12
instead.

4,500
compliance
& ethics
professionals
joined in one
community.

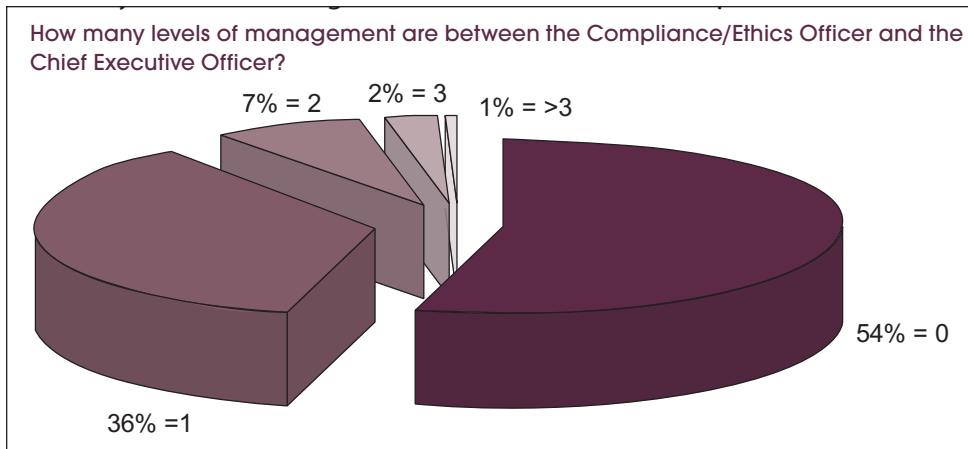
30 conferences
a year to choose
from, all with special
members-only rates.

12 issues of
*Compliance & Ethics
Professional*, the
exclusive SCCE
member magazine.

Join the Society of Corporate Compliance and Ethics.

Visit corporatecompliance.org to learn how you can enjoy the educational opportunities, networking, and support of the Society of Corporate Compliance and Ethics.





their C&E officers report directly to the CEO, above, is likely explained by the fact that some of the respondents indicated that the C&E officer reports to the board or a board committee; at least some of those C&E officers likely report directly to the CEO also.) More than one third (36%) of respondents indicated that there is only one level of management between the C&E officer and the CEO. Only 7% have two levels of management between the C&E officer and the CEO; 2% have three levels of management between those positions, and 1% have 4 levels of management separating the C&E officer from the CEO.

Does your Compliance and Ethics Officer have an employment contract?

Protection of the C&E officer from summary termination is another means of creating independence and authority for that

position. In response to the question of whether C&E officers have an employment contract, only 30% of respondents said yes, and another 2% indicated that they are planning to implement that soon. Two thirds (67%) of respondents indicated that their C&E officer does not have an employment contract.

Does your Compliance and Ethics Officer report to the Board?

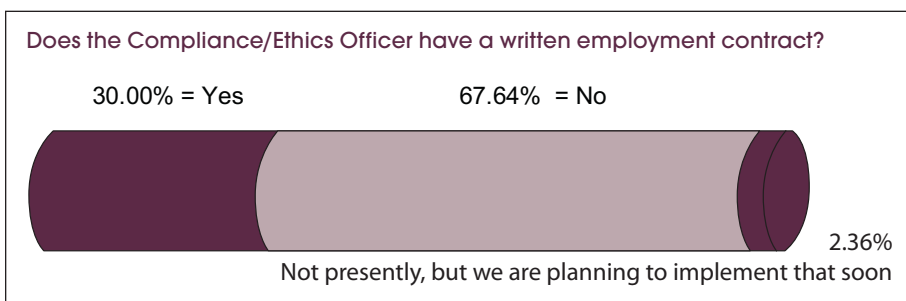
Another indicator of C&E officer independence and authority is whether he or she provides reports to the board of directors or a committee of the board regarding the program. The vast majority of respondents (79%) indicated that the C&E officer of their organization provides reports to the board or a board committee both in writing and in person, and another 3% indicated that, while their C&E officer does not presently provide reports to the board, they will be implementing that practice

soon. Only 8% of respondents' C&E officers provide reports to the board in writing but not in person, and 10% of respondents indicated that their C&E officer does not provide reports to the board.

The survey also asked respondents whether the C&E officer of their organization meets in executive session with the board or a committee of the board on the compliance and ethics program. Almost four in ten (39% of respondents) stated that their company has a written requirement of periodic meetings in executive session between the C&E officer and the board or a committee of the board, and an additional 4% indicated that, although meetings in executive session do not currently occur, their organization plans to implement that practice soon. About one quarter (23%) of respondents stated that meetings in executive session occur "as requested by the Compliance/Ethics Officer." For 34% of respondents, the C&E officer does not meet in executive session with the board or a committee of the board.

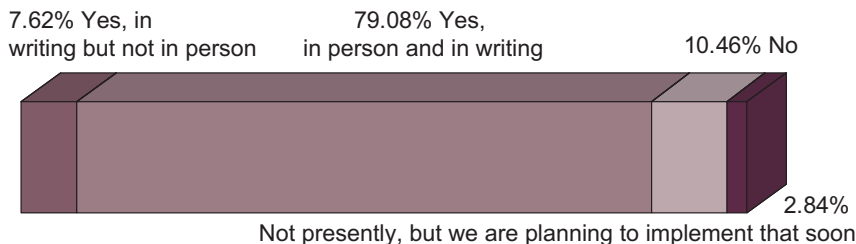
Board oversight question

A requirement that the board be notified of or approve significant employment actions relating to the C&E officer is another means of fostering that position's independence and authority. However, almost half (47%) of respondents indicated that their boards are not informed of significant employment actions relating to the C&E officer, such as terminations, significant salary reductions, or changes in the identity of the C&E officer. At more than a third (36%) of responding organizations,



there is a practice or expectation (as opposed to a requirement) of notifying the board or a board committee of significant employment actions relating to the C&E officer. About one in ten (11% of respondents) indicated that their organization has a written requirement that the board or a board committee pre-approve

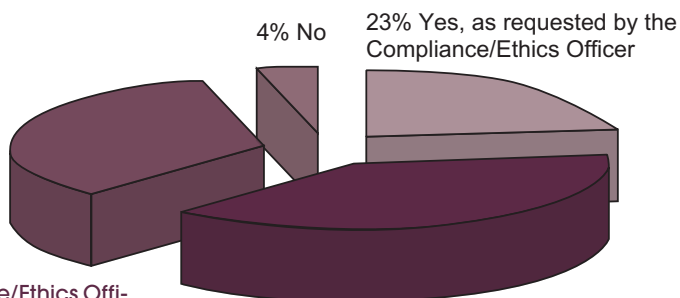
Does the Compliance/Ethics Officer of your organization provide periodic reports to the Board or a committee of the Board on the compliance and ethics program?



significant employment actions relating to that position, and 7% stated

that their organization has a written requirement that the board or a board committee be notified of significant employment actions.

34% Not presently, but we are planning to implement that soon



Does the Compliance/Ethics Officer of your organization meet in executive session with the Board or a committee of the Board on the compliance and ethics program?

39% Yes, the company has a written requirement of periodic meetings in executive session between the Compliance/Ethics Officer and the Board or a committee of the Board

Conclusion

According to the survey data, C&E officers currently enjoy a fairly high level of authority and independence. Many C&E officers have no other position at their organizations, report directly to the CEO, provide periodic reports to the board, and

CONTINUED ON PAGE 52

Build Your Compliance Library

with SCCE's Practical Reference Guides for Compliance Professionals



Building a Career in Compliance & Ethics

A step-by-step guide to establishing a career in this hot new field. Gain tips and insights from experts who have first-hand experience making powerful organizations safer and more ethical.



Compliance 101

This 106-page guide provides the basic information you need to develop an effective compliance and ethics program in any organization. Whether you're building a program from scratch or seeking to revitalize an inadequate program, you'll find help on every aspect of your program.



501 Ideas For Your Compliance and Ethics Program

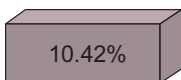
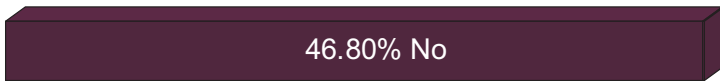
Jump-start your program with SCCE's new idea guide! Author Joe Murphy has spent his career collecting great ideas for building an effective compliance and ethics program. These practical tips can have an immediate, lasting impact on your organization's program.

To order, visit the SCCE Web site at www.corporatecompliance.org/ books or call +1 952 933 4977 or 888 277 4977.

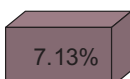


SOCIETY OF CORPORATE COMPLIANCE AND ETHICS

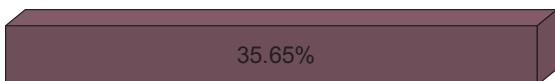
In your organization, is the Board of Directors or a committee of the Board notified of or does it approve significant employment actions relating to the Compliance/Ethics Officer (e.g., termination, significant salary reduction, or changes in identity of Officer)?



The company has a written requirement that the Board or a committee thereof pre-approve significant employment actions relating to the Compliance/Ethics Officer



The company has a written requirement that the Board or a committee thereof be notified of significant employment actions relating to the Compliance/Ethics Officer prior to the company's taking such action



The company has a practice/expectation of notifying the Board or a committee thereof of significant employment actions relating to the Compliance/Ethics Officer

meet in executive session with the board or a board committee. However, there is still some room for improvement. Only 30% of respondents indicated that their C&E officer has an employment contract, and at 47% of organizations, the boards are not informed of significant employment actions impacting the C&E officer. †

Editor's note: Rebecca Walker is a partner at the law firm of Kaplan & Walker LLP, located in Santa Monica, California and Princeton, New Jersey. She is a member of the Advisory Board of the SCCE and is the author of **Conflicts of Interest in Business and the Professions: Law and Compliance**, published by Thomson West.

Get great exposure for your employment ads!

200 words • 90 days • only \$400!

Compliance and ethics professionals

belong to a highly specialized field. SCCE can match qualified individuals with your staffing needs. Take advantage of SCCE's Web site to advertise your unique career opportunities. It's easy and cost effective. List up to 200 words for 90 days for only \$400. Get worldwide exposure for your classified ad to a targeted audience!



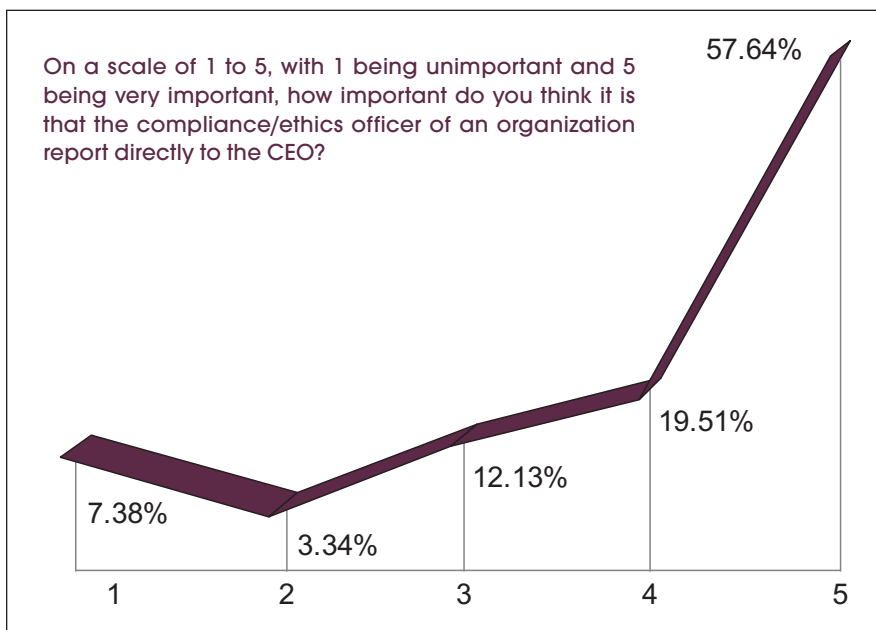
TO POST A JOB:

Visit www.corporatecompliance.org/jobads and complete and submit the form
www.corporatecompliance.org | +1 952 933 4977 or 888 277 4977

Notes:

- 1 United States Sentencing Guidelines Manual § 8A1.2, Application Note 3(b) (2009).
- 2 United States Sentencing Guidelines Manual § 8B2.1(b)(2)(C) (2009).

- 3 For a summary of the OIG's views, see United States Department of Health and Human Services Office of the Inspector General and American Health Lawyers Association, An Integrated Approach to Corporate Compliance: A Resource for Healthcare Organizations Boards of Directors (July 2004).



CORPORATE COMPLIANCE & ETHICS: GUIDANCE FOR ENGAGING YOUR BOARD



THIS VIDEO TRAINING KIT serves as a call to action for board members, detailing why they must get involved and stay current on compliance and ethics issues. Resources included in the kit:

- 12½-minute video in DVD format
- Sarbanes-Oxley Act
- Federal Sentencing Guidelines
- Powers Report on Enron Investigation
- Additional white papers



ORDER ONLINE AT
www.corporatecompliance.org

NON-MEMBERS \$395 | SCCE/HCCA MEMBERS \$345