

## **THE PERSON OF THE YEAR – CHIEF COMPLIANCE OFFICER**

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Since we are closing in on the end of 2011, it is time to join the crowd and select the person of the year award -- even in our narrow field of reference: compliance. For me there is no question -- it is the chief compliance officer. There is no other position in a company which has taken on more significance.

All you need to do is consider the environment in which they operate. Across all disciplines -- health care, environmental compliance, labor, health and safety, money laundering, OFAC, sanctions, antitrust, export controls, and, of course, anti-corruption -- the chief compliance officer has taken on more responsibilities and been asked to do more with less.

The state of the chief compliance officer in every organization is improving. But there is much more room for improvement, not in the caliber of the chief compliance officers, but in the support they need, the role they play and the sphere of influence they need to carry out their mission.

I have consistently predicted that the chief compliance officer's importance in a company is dramatically changing for the better. There are institutional forces which hold them back from achieving their mission.

First, and most significantly, is the Board of Directors and the Audit Committee. The Board and even the Audit Committee usually see compliance as a minor precautionary task which is supposed to protect them from future violations. Once a potential problem occurs, the Board and the Audit Committee start to sing a different tune -- then it is premised on proactive compliance. In this context, it is difficult for a chief compliance officer to get the support and resources they need to protect the company from future violations. It is only after the Board experiences its first problem that compliance becomes a higher priority.

If a Board is forward thinking and created a Compliance Committee, the task of a chief compliance officer may be easier -- the Compliance Committee reflects a proactive commitment to compliance and the importance of compliance to the overall corporate mission. Those companies which have Compliance Committees usually have carved out an important role for the chief compliance officer and given the office the resources needed to carry out the company's compliance mission, or at least are willing to work with the chief compliance officer to address the compliance needs of the organization.

The chief compliance officer also meets resistance from the general counsel and the internal auditor. Too often, the general counsel and internal auditor are threatened by the chief compliance officer's role. In some cases, the Board meddles in this area and asks why isn't compliance within the purview of the general counsel's office? That is a strange question -- the general counsel usually is reacting to a potential legal problem or risk, while the chief compliance officer is trying to implement procedures and controls to avoid even asking the legal

question -- in other words, compliance is aimed at implementing controls and reporting obligations which are premised on legal determinations.

Similar issues arise between the internal auditor and the chief compliance officer -- the internal auditor sees its role as controlling and monitoring every expenditure of funds to ensure that all payments are authorized and accurately recorded. The chief compliance officer needs to play an integral role in this area because many of the potential violations can involve money or unauthorized expenditures.

In the face of these challenges, chief compliance officers have been dedicated to their mission and have developed new compliance programs and tools. As I always say, chief compliance officers are the unsung corporate heroes who are immediately blamed when a problem occurs but rarely praised as companies improve compliance performance.

The Obama Administration has aggressively increased enforcement of laws and regulations against the business community. Whether you agree with its policies or not, the reality is that compliance is a critical commodity in the corporate world. From my vantage point, chief compliance officers have done a remarkable job this year, and for that they deserve the Person of the Year award.