

Meeting the culture and compliance oversight challenge

On December 13, 2022, the Ethics, Culture, and Compliance Network (ECCN) convened a select group of directors and senior ethics & compliance executives in New York for candid roundtable dialogue on crucial issues in board oversight of ethics, compliance, and culture. *For a full list of participants, see appendix on page 3.*

Following are some key insights that emerged from these discussions:

- Preparing for inevitable lapses.** No ethics & compliance or risk management program is perfect, and boards must accept that ethical lapses, cultural problems, and compliance failings will happen, while ensuring that systems, processes, and culture are in place to minimize both the frequency and severity of problems. A key question for boards, one director said, is *“What is the role of the board in working with the chief compliance officer in defining risk appetite and accepting or adjusting management’s tolerance for compliance and culture risk.”*
- Fostering a speak-up culture throughout the organization is essential to minimizing the incidence and severity of ethical issues.** Participants noted that fear of repercussions often hinders speaking up, and this can extend to interactions at the most senior levels of the organization; participants shared examples of CEOs who shut down dialogue and stressed that it is incumbent on board members to push back against such behavior. *“The sooner you bring me a problem, the happier I am,”* said one board member. *“If people feel there is a demerit to coming to the board with a problem, you are doing it all wrong.”* In addition, law enforcement and regulatory bodies are increasingly looking to evidence of a speak-up culture as a key indicator of a healthy corporate culture.
- Effective oversight depends on collaborative relationships as much as formal structures.** Participants stressed the importance of giving the chief ethics & compliance function adequate organizational influence, and some advocated elevating the position of the CECO in the organization to report directly to the CEO, rather than to the general counsel, as is often the case. Others suggested that relationships characterized by openness and transparency are more important than the CECO’s place in the reporting structure. A director who had experienced differing reporting structures said, *“my interaction with the chief compliance officer is exactly the same in both cases. I’m more concerned about my relationship with the chief compliance officer and with what frequency they talk to me than where it reports.”*

Relationships can be tested when organizations are under stress, including the relationship between the board and management. One participant warned, *“If the board and management partner on problems, that’s one dynamic; but if boards are in the mode of protecting themselves, and hiring their own counsel, you are in a really bad place.”*

- Promoting a culture of continuous engagement and early and frequent communication.** Several participants noted that it is crucial to surface problems early, even seemingly minor ones. A director encouraged others *“not to hide behind the concept of materiality, because small problems can turn into big ones.”* At the same time, leaders must exercise judgement in how issues are escalated to

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avoid overwhelming the board with information. *“It’s important to frame issues so that directors have a broader picture and know how to think about it, not in the abstract, but in the context of other issues.”*

- **Leading with a data-driven approach.** Taking a data-driven approach to ethics & compliance can surface issues for the board and identify problems, but data must be contextualized and benchmarked to drive insights. As one executive said, *“we don’t just look at speak up hotline numbers, we combine that with HR and ethics data. The board can’t just look at the data, they need to look around the corners.”* All of this takes resources, and CECOs must make the case to boards that investments in data and analytics are worth the cost. Heightened regulatory expectations for evidence of healthy corporate cultures and robust compliance programs are highlighting the need for these investments.
- **Maintaining a healthy board culture.** Board self-assessment is essential to effective oversight, but boards are often reluctant to put themselves under the microscope. *“The first thing is to look at yourself and the board before you move down the line, but self-reflection is hard.”* Another director agreed: *“We need to be as hard on ourselves as we are on management.”* Board refreshment and diversity are crucial to healthy board culture, but achieving those goals can be challenging. Mandatory committee rotation and retirement policies may be necessary to prevent directors from overextending their board service. However, such policies can arbitrarily force effective directors off the board prematurely while leaving less effective members in place. In particular, participants suggested that frequent rotation of committee chair roles can inhibit the development of healthy working relationships between board members and executives, including the audit chair and the chief compliance officer.

This document reflects the network’s use of a modified version of the Chatham House Rule whereby names of network participants and their corporate or institutional affiliations are a matter of public record, but comments are not attributed to individuals, corporations, or institutions. Network participants’ comments appear in italics

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Appendix: meeting participants



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Properties, Oaktree
Specialty Lending,
Ocwen Financial, and
OneMain Financial



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Assistant General
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**Marjorie Rodgers
Cheshire**
Non-executive director,
Exelon and PNC
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Terry Crews
Non-executive director,
ADM, Hormel Foods,
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Chief Ethics &
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