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How Combining the Roles of Corporate Secretary and Chief Legal Officer Impacts Legal Risk

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Key Takeaways for In-house Counsel

- Using empirical evidence, the study finds that companies where the chief legal officer (CLO) also serves as the corporate secretary have a lower likelihood of legal risks.
- Based on a sample size covering nearly 1,500 companies over a 17-year period (2003-2019), the authors find that when the CLO and corporate secretary positions are held by the same executive, companies are less likely to face regulatory violations, pay fewer penalties when those violations occur, and are less likely to experience shareholder litigation.
- Opportunities for future research on this topic include a more granular analysis of management reporting structures and further exploration of the nature of how CLOs who are also corporate secretaries deliver information to the board.

Professors Jagadison K. Aier of the Costello College of Business at George Mason University, Justin Hopkins of the Darden Graduate School of Business at the University of Virginia, and I had the privilege and honor of being awarded ACC's Carl Liggio Memorial Paper Competition award this year. Our study focuses on whether having a CLO who also serves as the corporate secretary impacts the legal outcomes of an organization.

As we describe in more detail below, our research demonstrates that companies that combine the CLO and corporate secretary roles are less likely to experience shareholder class action lawsuits and regulatory violations, as well as having lower penalties assessed with violations.

In this article, I provide a brief overview of the study and its results, and the ways we think this study can inform and influence your in-house role in your organization.

Background

The passage of the Sarbanes-Oxley Act in 2002 brought sweeping changes to the US corporate governance landscape and increased the magnitude and complexity of corporate reporting and compliance requirements. The heightened regulatory impetus to enhance overall accountability and expand corporate transparency has significantly transformed the roles and responsibilities of a firm's corporate secretary and CLO.

Our study examines organizational structures involving these two roles and is motivated by growing sentiment within the corporate governance community that the two roles should be separated due to potential conflicts of interest.

An enduring challenge in corporate governance is ensuring that the board is properly informed to oversee and evaluate the management team when the same managers are responsible for sharing relevant, timely, and unbiased information with the board. This challenge is particularly acute in modern corporations because the corporate secretary, who is typically responsible for gathering and sharing information with the board, usually also serves as the CLO.

As the CLO, she is responsible for identifying potential legal risks and developing strategies to mitigate such risks. However, as the corporate secretary, she informs the board about the effectiveness of these activities.

Thus, companies with a combined duty for the CLO have a corporate secretary uniquely positioned to work with the board to mitigate legal risks facing the firm, but also one that is incentivized to color management's legal activities in a positive light, which may prevent the company from developing effective legal strategies. Our study empirically examines whether firms with this combined role are more or less likely to experience future legal troubles.

[Click here to read the full paper.]

About the study

To conduct our empirical tests, we analyzed a sample from nearly 1,500 US public companies covering a 17-year period (2003-2019) using data in BoardEx, a global data company, and identified both the CLO and corporate secretary. Consistent with prior surveys, we find that 80 percent of firm-year observations in our sample have a CLO that also serves as the corporate secretary. This combination is most common in the public administration and wholesale trade industries.

We observe a commensurate decline in the number of companies that combine the CLO and corporate secretary roles related to the age of the company, from 84 percent in our youngest group (0-9 years) to only 67 percent for firm-year observations in our oldest group (60-69 years).

Additionally, we explore characteristics of companies that combine the corporate and CLO roles. These companies are more likely to operate in a high litigation risk industry, are smaller in terms of total assets, and have higher board independence.

In our empirical tests, we examine the relation between having the CLO and corporate secretary roles combined and legal risks using the likelihood of shareholder litigation and regulatory violations and penalties levied for regulatory violations as measures of legal risk. We find that companies that combine these roles are less likely to face regulatory violations, pay fewer penalties when those violations occur, and are less likely to experience shareholder litigation.

We also conduct empirical tests focused on companies that subsequently separate the CLO and corporate secretary functions, and companies that subsequently combine the functions. In our sample, 105 companies combine the CLO and corporate secretary roles, while only 57 separate the roles. We find that our results are generally concentrated among firms that combine the corporate secretary and CLO roles.

Lastly, we consider the impact of board independence on our findings. Our results appear to be driven by companies with high board independence. This suggests that companies that combine the roles are less likely to experience future legal issues, only if the board includes a high proportion of outside directors.

Study results

Broadly, our results are consistent with the corporate secretary serving an important information role to the board, despite the potential for impaired independence from management when the duties are fulfilled by the CLO.

Using various empirical tests and designs, our findings show that companies in which a single individual is tasked with both CLO and corporate secretary roles have a lower likelihood of legal issues than those that do not combine the roles. However, this finding only holds among companies with a high proportion of independent directors, indicating that board independence complements the combined CLO-corporate secretary role.

Given the archival nature of our data, our ability to draw causal conclusions is limited. Nonetheless, our findings highlight that having an informed corporate secretary can help to reduce firm risk.

Opportunities for further research

Research on executive management reporting structure, especially when it comes to the CLO, is scant. Our paper provides important insights into the role, but there is much that can and should be studied on the CLO role and its impact on company legal and ethical outcomes.

For example, if data that provides more specific information about reporting structures within organizations can be identified, we can evaluate how these relationships impact different corporate outcomes.

Additionally, it would be meaningful to explore further the nature of the combined CLO and corporate secretary role to identify exactly how and through what mechanisms the board gets information about legal risks.

[The 2025 Carl Liggio Memorial Call for Papers is now open! Learn more and apply *before January 5, 2025.]*

Syrena Shirley

Assistant Professor

Columbia University

Syrena Shirley is an assistant professor in the accounting division at Columbia Business School, where she teaches Financial Accounting to first-year MBA students. Prior to joining Columbia University in 2023, she was an assistant professor at George Mason University. Dr. Shirley holds a doctorate in accounting from The Pennsylvania State University. Prior to academia, she was a vice president at JP Morgan and a senior auditor at KPMG LLP. Dr. Shirley's research interests are in corporate governance, corporate litigation, securities regulation, and corporate misconduct. She is a

CFA charter-holder and a licensed CPA in NY State.