

Importance of Gender Diversity, Equity, and Inclusion in Compliance

By Kelli A. Haugh



About the Author:

Kelli A. Haugh is a Managing Director at **Foreside**. She can be reached at khaugh@foreside.com.

With the United States having inaugurated its first female Vice President, we are reminded of the significance of gender diversity in all aspects of our lives. While the historic inauguration was an achievement towards gender diversity, statistics showing the underrepresentation of women in leadership roles suggest that we still have a long way to go to achieve meaningful gender diversity. For example, only 21% of C-Suite executive positions were held by women in 2019 even though women comprise more than 50% of the U.S. population.¹ In the financial services industry specifically, more women than ever hold compliance roles, but participation in executive leadership remains lagging at 34%.²

The lack of gender diversity within the financial services industry has been identified as an area of concern by regulators that govern financial firms, such as investment advisers and broker-dealers. For example, last year the U.S. Securities and Exchange Commission's ("SEC") then Chairman, Jay Clayton, acknowledged the need for improving diversity and inclusion in the asset management industry in his remarks before an SEC Asset Management Advisory Committee meeting³. The SEC's Office of Women and Minority Inclusion ("OWMI") has also reached out to various entities regulated by the SEC regarding their diversity and inclusion practices as part of its goal to advance diversity and inclusion with entities regulated by the SEC.⁴ The Financial Industry Regulatory Authority ("FINRA") has also launched outreach initiatives that promote diversity and inclusion in the financial services industry generally.⁵ Both the SEC and FINRA initiatives highlight the importance for financial services firms to address gender diversity within their firms.

Even as more women than ever hold compliance roles, many female Chief Compliance Officers ("CCOs") within investment adviser or broker-dealer firms have expressed a lack of feeling fully empowered as executive leaders within their organizations. Their roles may be treated as administrative support as opposed to an executive function; they may have experienced their decision-making overridden by executive management; or they are not included in executive leadership committees. Even when included in leadership meetings, some of these women have reported feeling overlooked and not heard during those meetings compared to their male peers. Unconscious gender bias, which is the unintentional attribution of characteristics or traits to a specific gender, plays a role in the perception of women as lacking executive authority. For example, women with children may be viewed as primary caregivers and therefore lacking the same availability or professional aspirations as their male counterparts. Even studies that promote female leadership traits can effectively undermine women's roles as executive leaders. For example, while some companies would like to see certain competencies in their leaders that are traditionally ascribed to women such as empathy and reasonableness, to some these characteristics do not translate into leadership competence, which can keep women from breaking the proverbial glass ceiling into leadership at an executive level.⁶

A perceived lack of executive authority is particularly problematic for CCOs as they have a vital role in setting a compliance tone at the top and overseeing a firm's compliance policies and procedures. A CCO should be an executive officer of the firm and, as required by Rule 206(4)-7 under the Investment Advisers Act of 1940, should be empowered to enforce the compliance policies and procedures of the firm. Undermining the CCO's decision-making or not adequately considering issues raised by the CCO, even implicitly, diminishes the integrity of the firm's compliance program and puts the firm at risk. Additionally, as we have seen in enforcement

1. Catalyst, Women in Management: Quick Take (August 2020), <https://www.catalyst.org/research/women-in-management/>.

2. Oliver Wyman, Women in Financial Services 2020 (November 2019), <https://www.oliverwyman.com/content/dam/oliver-wyman/v2/publications/2019/November/Women-In-Financial-Services-2020.pdf>.

3. Chairman Jay Clayton, Opening Remarks at the July 16, 2020 Special Meeting of the Asset Management Advisory Committee (July 16, 2020), <https://www.sec.gov/news/public-statement/clayton-amac-2020-07-16>.

4. U.S. Securities and Exchange Commission Office of Minority and Women Inclusion, Diversity and Inclusion in Regulated Entities (October 1, 2020), <https://www.sec.gov/omwi/regulated-entities>.

5. FINRA, Diversity and Inclusion Outreach, <https://www.finra.org/careers/diversity-inclusion/outreach>.

6. Here's What the "Glass Ceiling" Really Means for Women Leaders, Chris Wofford (January 22, 2018), <https://blog.ecornell.com/heres-what-the-glass-ceiling-really-means-for-women-leaders/>.

actions against registered investment advisers and broker-dealers, CCOs can be held personally liable for a firm's compliance violations.⁷ Thus, it is important that firms support and empower their CCOs at an executive level.

As mentioned above, the SEC continues to turn its attention to diversity and inclusion matters within the entities it regulates. Established in 2011 pursuant to the Dodd-Frank Act, the SEC's OMWI provides leadership and guidance for the SEC's diversity and inclusion efforts. In 2015, the SEC, along with other federal regulatory agencies, published the "Joint Standards for Assessing the Diversity Policies and Practices Regulated by the Agencies" ("Joint Standards"). The Joint Standards provides a framework for regulated entities to assess their diversity policies and practices. The SEC encourages regulated entities such as investment advisers to use the Joint Standards to develop or strengthen their programs for promoting diversity and inclusion in their organizations. Additionally, the SEC contacts various regulated entities every two years to request that they complete a Diversity Assessment Report on a voluntary basis, which enables the SEC to monitor trends in diversity-related policies and programs. The SEC most recently issued such requests in the summer of 2020, to firms with more than 100 employees. While completing the Diversity Assessment Report is voluntary, the SEC has noted that responding shows a commitment to improving diversity and inclusion in the financial services industry. Thus, firms that respond have an excellent opportunity to demonstrate their diversity and inclusionary corporate culture to the regulatory organization responsible for overseeing their firms.

Pursuing gender diversity provides many other benefits for firms. In her remarks at the Council of Institutional Investors Fall 2020 Conference, SEC Commissioner Allison Herren Lee cited several studies that found that firms with a higher composition of women on executive teams were significantly more likely to outperform those with fewer or no women executives.⁸ Women bring with them a diversity of background, experience, and skills that demonstrably contribute to the success of organizations. Leveraging this diversity can contribute to the firm's success in its compliance function as well, particularly as it relates to risk management and developing innovative solutions to overcome compliance obstacles. Additionally, achieving gender diversity at an executive level creates a corporate culture of inclusivity among female employees, which leads to the retention of talented employees. Being able to demonstrate a corporate culture of gender diversity may also help firms attract exceptional female candidates for executive roles as they look for firms that will encourage their professional growth.

There are many ways in which firms can promote gender diversity within their organizations. The SEC's OMWI mentioned in its 2018 Diversity Assessment Report that establishing numerical targets for increasing representation of women in senior leadership is one useful tool that firms can use to encourage workforce diversity. Another helpful practice is to require diversity education for all managers, including unconscious bias training with a specific focus on unconscious gender bias. Firms should also consider establishing mentorships for women to create a professional development path to executive leadership within the firm. Additionally, firms can adopt practices designed to retain talented professionals, such as creating opportunities for flex-work arrangements for primary caregivers – who often are women – and facilitating a supportive environment for women returning to the workplace after having children. Importantly, senior executive leaders can cultivate a culture of deference for the compliance function by supporting the role's compliance oversight authority regardless of gender. Periodically assessing one's diversity and inclusion practices can also help to ensure the firm's program adequately addresses current gaps. Firms should also keep in mind that diversity is broadly defined, so they should consider adopting a broadly inclusive approach to gender diversity that addresses all gender identities.

7. See *BlackRock Advisors, LLC and Bartholomew A. Battista*, Release No. 4065 (Apr. 20, 2015); *Southwind Associates of NJ Inc. (d/b/a Villafranco Wealth Management, William Scott Villafranco, and Anthony LaPeruta*, Release No. 4834 (Dec. 22, 2017); *Meredith A. Simmons, Esq.*, Release No. 34-90061 (Sept. 30, 2020).

8. Commissioner Allison Herren Lee, Diversity Matters, Disclosure Works, and the SEC Can Do More: Remarks at the Council of Institutional Investors Fall 2020 Conference (September 22, 2020), https://www.sec.gov/news/speech/lee-cii-2020-conference-20200922#_ftnref1.

In addressing gender diversity within their organizations, firms should also consider the extent to which the COVID-19 pandemic has impacted their female employees. An annual study that tracks the progress of women in corporate America found that the COVID-19 pandemic particularly impacted women negatively, especially women of color.⁹ At the beginning of 2020, women were already significantly underrepresented at the managerial level, comprising only 38% of manager positions while women of color held only 12% of those positions. During the pandemic, women, mothers in particular, reported taking on more personal responsibilities such as housework, childcare, and homeschooling. Women were 1.5 times more likely than fathers to spend at least three hours a day on household and childcare in addition to their regular work hours. As a result of the pandemic's disproportionate impact on women, 1 in 4 women are contemplating downshifting their careers or leaving the workforce. Senior-level women are 1.5 times more likely than senior-level men to think about downshifting or leaving their careers, most having cited burn-out as a main reason. Women of color experienced even greater challenges considering the disproportionate impact of COVID-19 on their communities. The study cites several strategies firms can use in retaining women most impacted by the challenges of the pandemic. These strategies include establishing a sustainable pace at work, providing time off for childcare and other opportunities to "recharge", supporting workplace flexibility at a senior leadership level, strengthening employee communication, and minimizing gender biases that either consciously or unconsciously penalize women for being mothers. Further, firms should consider the distinct challenges particularly faced by women of color and foster a culture that supports, values, and includes them at all levels of the firm.

While there are firms that have implemented robust diversity and inclusion practices which have helped facilitate women's professional growth in compliance leadership, gender diversity should be an ongoing pursuit. When applied to the compliance function, the benefits of that pursuit can be far reaching within an organization. ■

9. McKinsey & Company, "Women in the Workplace 2020" (September 2020), https://wiw-report.s3.amazonaws.com/Women_in_the_Workplace_2020.pdf.