



Chief Compliance Officer (CCO) Liability

In the wake of two high profile CCO personal liability cases (SFX and BlackRock Advisers), CCOs are left wondering what more they can do to protect their personal assets.

CCOs are tasked with an increasing number of responsibilities while managing compliance and organizational risk. Since the Dodd Frank Act was passed five years ago, lifting the "private adviser" exemption under the 40 Act, thousands of investment firms were forced to register with the SEC and establish a compliance infrastructure to adopt, implement, and monitor compliance with ongoing reporting requirements. Over this period, increased regulatory scrutiny and enforcement activities continue to add to the complexity of compliance officers' roles.

While some firms choose to appoint a designated CCO, in some cases, compliance functions are assumed or shared with individuals already responsible for maintaining other significant duties within the organization. However, because there are currently no guidelines distinguishing the role of CCOs versus management carrying out compliance functions, CCOs continue to be held to a high standard and may be held personally accountable for compliance failures that they may not necessarily control.

While regulatory bodies will continue to issue fines and penalties, below are some precautionary steps that we believe CCOs and their firms can take to mitigate their exposures.

1. **We point our clients to their indemnity bylaws/agreement, as this is their first line of defense.**
If the CCO is held personally liable or pursued directly by a regulatory body, will they be indemnified by the firm? Is a personal indemnity agreement with the firm possible?
2. **We look to the available insurance contracts in place at the firm.**
What coverages are included? What are the total limits available? Does the CCO fall within the scope of an "Insured Person?" Your insurance broker should be able to provide clear answers to all of these questions to determine if any upgrades are prudent.
3. **We suggest a review of prior professional experience as well as the responsibilities of any individuals assuming compliance roles.**
The following are some factors that the SEC considers during an examination. Do these individuals have the experience and proper compliance training to handle their responsibilities? Are they being provided with resources to carry out their responsibilities (training, support, etc.)? Does the firm have policies and procedures, or documentation outlining the degree of responsibility/authority of the CCO?

Payment by liability insurance of the actual fine and penalty amounts imposed by regulators against an individual is still being questioned and debated amongst legal and insurance professionals, and specifically whether or not these fine and/or penalty amounts imposed on an individual are "insurable under the law" in the U.S. As a leader in providing insurance brokerage services and risk transfer solutions to the Asset Management industry, Crystal & Company is proactively tracking this issue with insurers offering insurance products both domestically in the U.S. and internationally (i.e. London and Bermuda), and we will continue to provide updates on this subject where appropriate and applicable.