

MEMO# 29480

November 9, 2015

The SEC's Director of Enforcement Shares His Views Regarding Enforcement Proceedings Involving CCOs

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TO: CHIEF COMPLIANCE OFFICER COMMITTEE No. 20-15 RE: THE SEC'S DIRECTOR OF ENFORCEMENT SHARES HIS VIEWS REGARDING ENFORCEMENT PROCEEDINGS INVOLVING CCOS

Last week, the SEC's Director of Enforcement, Andrew Ceresney, gave a keynote address that discussed how the Commission approaches enforcement proceedings involving chief compliance officers. [\[1\]](#) After lauding the work done by compliance professionals and expressing the view that the Commission and its staff hold such persons "in high regard and consider [them] key partners in our efforts to serve and protect investors," he discussed the efforts of the Division of Enforcement to protect the compliance function and to sanction CCOs when appropriate.

Predicting Compliance Proceedings

With respect to protecting the compliance function, he noted that one "can predict a lot about the likelihood of an enforcement action by asking a few simple questions about the role of the company's compliance department in the firm." These questions are:

- Are compliance personnel included in critical meetings?
- Are their views typically sought and followed?
- Do compliance officers report to the CEO and have significant visibility with the board?
- Is the compliance department viewed as an important partner in the business and not simply as a support function or a cost center?
- Is compliance given the personnel and resources necessary to fully cover the entity's needs?

He noted that the SEC has brought enforcement proceedings against advisers or advisory personnel – other than the CCO – when, for example, senior management has ignored the

CCO's "pleas for more resources and support" or when advisory personnel have misled the CCO by altering documents.

Compliance Actions Involving CCOs

With respect to enforcement proceedings in which CCOs have been named as respondents, he noted how infrequently the SEC brings actions against CCOs. According to Ceresney, since the SEC adopted the compliance rules in 2003, the SEC has brought approximately 8,000 enforcement proceedings. Of these, approximately 1300 were brought against investment advisers or investment companies. Only 5 of the 1300 cases named individuals with CCO-only titles. According to Ceresney, these five cases involved CCOs who either: (1) were affirmatively involved in misconduct unrelated to their compliance function; (2) engaged in efforts to obstruct or mislead the Commission; or (3) exhibited a wholesale failure to carry out the CCO's responsibilities. These cases were as follows: [\[2\]](#)

CCOs Affirmatively Involved in Misconduct Unrelated to their Compliance Function:

Ceresney cited the case involving the CCO of AlphaBridge Capital Management where the SEC charged a CCO who was a co-portfolio manager with affirmatively misleading the fund administrator and auditor about asset values.

CCOs Who Engage in Efforts to Obstruct or Mislead the Commission Staff: Ceresney cited the August 2015 case of *In Re Parallax Investments, LLC*, John P. Bolt, and F. Robert Falkenburg in which the CCO, in the course of an SEC exam, altered documents to deceive the staff about whether the firm had conducted its annual compliance review. He also cited the case of Judy K. Wolf, which involved a CCO altering documents to make it appear that she had conducted a more thorough trading review than she had after a broker was charged with insider trading.

CCOs Who Have Exhibited A Wholesale Failure to Carry Out the CCO's Responsibilities:

Ceresney cited two examples of this type of case. The first involved the CCO of BlackRock. According to Ceresney, BlackRock's CCO "did not have any written policies and procedures regarding the outside business activities of its employee even though the BlackRock CCO knew of and approved numerous outside activities engaged in by BlackRock employees." Ceresney continues,

It is important to recognize that we did not charge the CCO with failing to disclose the conflict of the senior portfolio manager to the funds' boards; we only charged the firm with that conduct. Rather, we charged the CCO with a wholesale compliance failure – causing BlackRock's failure to adopt written policies regarding outside business activities such as those engaged in by the senior portfolio manager. The absence of an outside business policy, in the face of red flags, was a clear compliance failure given the CCO's awareness of, and focus on, the issue.

The other case he mentioned under this category of action was the case of SFX, the facts of which he described as "similarly compelling." According to Ceresney, SFX involved an investment adviser employee with full signatory power over client bank accounts misappropriating client assets for more than five years by withdrawing money directly from those accounts. While the CCO had no involvement in the misappropriation, he was charged with a violation of the compliance rule because "the firm's policies and procedures specifically assigned the CCO with responsibility to implement the firm's policy requiring review of 'cash flows in client accounts'" and, for more than five years, he failed to ensure

that this review occurred.

Takeaways for CCOs

Ceresney closed his remarks by reiterating Chair White's public statements that "compliance officers should not fear enforcement action if they perform their responsibilities diligently, in good faith, and in compliance with the law." He also noted that there were "three important takeaways" from his remarks:

1. CCOs have the Commission's full support.
2. The SEC will bring enforcement actions against business line personnel in appropriate circumstances where they have deceived or misled the CCO or where their failure to provide the CCO with adequate resources and information causes compliance rule violations.
3. There has been no change in the Commission's longstanding careful and measured approach to determining whether they should charge a CCO in an enforcement proceeding.

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endnotes

[1] See 2015 National Society of Compliance Professionals, National Conference: Keynote Address, Andrew Ceresney, Director, Division of Enforcement (November 4, 2015), which is available at:

<http://www.sec.gov/news/speech/keynote-address-2015-national-society-compliance-prof-ceresney.html>.

[2] The footnotes to his remarks provide cites for each of the cases he references.