The CCO – the SEC's Target or Ally in Enforcement and Examinations?

By Sarah A. Good and Ildiko Duckor[1]

The last half of 2015 has been characterized by a lot of debate and press attention on the role of the Chief Compliance Officer ("CCO") at investment advisers. It has attracted attention within the highest levels at the SEC as reflected in a series of public statements and speeches, including the public disagreement of two Commissioners on whether or not there is a new trend targeting CCOs. While this debate has been unusual, it has led to a healthy and productive discussion about the CCO's role. Below, we will discuss in turn: (a) recent statements over the past six months by SEC leaders about CCOs and whether or not there is a new trend targeting them, (b) what qualities are essential to an effective CCO and whether or not the job should be outsourced, and (c) how an effective compliance leader can prevent and detect any problems and be truly effective in preparing the firm for SEC examinations.

SEC LEADERS' STATEMENTS IN THE LAST HALF OF 2015

June 18, 2015: Commissioner Gallagher

It all began with the extraordinary issuance of a public statement by Commissioner Daniel M. Gallagher of the U.S. Securities & Exchange Commission ("SEC or the "Commission) on June 18, 2015[2] registering his disagreement with two recent settled actions[3] involving two CCOs. He stated that "[b]oth settlements illustrate a Commission

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[2] *See* Commissioner Daniel M. Gallagher, *Statement on Recent SEC Settlements Charging Chief Compliance Officers With Violations of Investment Advisers Act Rule 206(4)-7* (June 18, 2015), available at http://sec.gov/news/statements/sec-cco-settlements-iaa-rule-206-4-7.html.
[3] *See In the Matter of Blackrock Advisors LLC*, Rel. No. 2014-71 (Apr. 20, 2015) ("*Blackrock*") (charging CCO concerning his alleged failure to ensure that the firm had compliance policies and procedures to assess and monitor employees' outside activities and disclose conflicts of interest); *In the Matter of SFX Financial Advisory Management Enterprises, Inc.*, Rel. No. 2015-120 (June 15, 2015) ("*SFX*") (charging CCO for purported failure to implement compliance policies and procedures that would have detected a multi-year theft of client assets by the president).

trend toward strict liability for CCOs" and could result in CCOs "opt[ing] for less comprehensive policies and procedures with fewer specified compliance duties and responsibilities to avoid liability when the government plays Monday morning quarterback."[4] The Commissioner also remarked that CCOs are the "only line of defense" to ensure compliance with the securities laws and that the recent settlements targeting CCOs perversely "will disincentivize a vigorous compliance function at investment advisers."[5] As a result, Commissioner Gallagher criticized the lack of clarity of Rule 206(4)-7 that appears to speak to the responsibility of the adviser rather than the CCO. He also called for "restraint and discretion even at the investigation stage" in charging CCOs as "[t]he psychological impact, and in many cases reputational damage, that can come with many months or years of testimony, the Wells process, and settlement negotiations can be just as chilling as the scarlet letter of an enforcement violation."[6] He finally forcefully stated that "the Commission seems to be cutting off the noses of CCOs to spite its face."[7]

Commissioner Gallagher's strong statement led to a hue and cry that there was a new trend at the SEC to hold CCOs strictly liable for their firms' compliance shortcomings. In the wake of that brouhaha, the SEC has been backpedalling furiously in multiple statements and speeches to dispute Commissioner Gallagher's view.

June 29, 2015: Commissioner Aguilar

On June 29, 2015, Commissioner Luis A. Aguilar issued his own public statement disagreeing with Commissioner Gallagher.[8] He stated that there was no new trend targeting CCOs and pointed out that the number of SEC enforcement actions involving CCOs over the past years has been small even though the number of registered investment advisers has increased almost 35% over the past 10 years.[9] Specifically, he noted that the SEC has filed

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[4] *See supra* at n.2.
[5] *See supra* at n.1.
[6] *See supra* at n.1.
[7] *See supra* at n.1.
[8] *See* Commissioner Luis A. Aguilar, *The Role of Chief Compliance Officers Must Be Supported* (June 29, 2015), available at http://sec.gov/news/statements/supporting-role-of-chief-compliance-officers.html.
[9] *Id.* ("In general, the Commission's enforcement actions against CCOs ebb and flow with the number of cases brought against investment advisers and investment companies"; estimates the percentage of enforcement cases against CCOs out of the total number of cases brought against investment advisers and investment companies to range from 6% to

only 8 cases against CCOs with CCO-only titles and job functions over the past 11 years and only 5 of those cases involved violations of Rule 206(4)-7.[10] Commissioner Aguilar thus disagreed with Commissioner Gallagher that Rule 206(4)-7 was a problem and he expressed the belief that the SEC approaches CCO cases "very carefully, making sure that it strikes the right balance between encouraging CCOs to do their jobs competently, diligently, and in good faith, and bringing actions to punish and deter those that engage in egregious misconduct" and considers "fairness and equity" in determining whether or not to exercise its prosecutorial discretion.[11] Finally, he noted that an effective compliance program is a "shared corporate responsibility" and that CCOs must have senior leadership to support them.[12] Where the support has not been evident in two recent matters, the SEC has punished other senior management for failing to support the CCO and has not charged the CCO.[13]

July 15, 2015: Chair White

On July 15, 2015, Chair White in a speech noted that there was no new enforcement directive singling out CCOs for particularly harsh treatment.[14] Specifically, she commented that "it is not our intention to use our enforcement program to target compliance professionals" and continued that "[b]eing a CCO does not provide immunity from liability, but neither should our enforcement actions be seen by conscientious and diligent compliance professionals as a threat."[15] Chair White finally stated that the SEC "does not bring cases based on second guessing compliance officers' good faith judgments, but rather when their actions or inactions cross a clear line that deserve sanction."[16]

October 14, 2015: Andrew J. Donohue

19% from 2009-2014 and most of those cases involved CCOs who "'wore more than one hat'").

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] Id. (citing *In the Matter of Pekin Singer Strauss Asset Management Inc., Ronald L. Strauss, William A. Pekin, and Joshua D. Strauss*, Adv. Act Rel. No. 4126 (June 23, 2015) and *In the Matter of Carl D. Johns*, Adv. Act Rel. No. 3655 (Aug. 27, 2013).

[14] See Chair Mary Jo White, Opening Remarks at the Compliance Outreach Program for Broker-Dealers (July 15, 2015), available at http://www.sec.gov/news/speech/opening-remarks-compliance-outreach-program-for-broker-dealers.html.

[15] *Id.*

[16] *Id.*

Andrew J. Donohue, SEC's Chief of Staff, supported Chair White's remarks in his speech given at NRS 30th Annual Fall Investment Adviser and Broker-Dealer Compliance Conference on October 14, 2015.[17] He noted first that in his speech he had "challenged" his audience "to be pro-active in your role as compliance professionals" and he acknowledged that "some of you may be wondering whether this elevated role could expose you to increased personal liability."[18] He responded to that question with a resounding "no" and and later commented that "[f]rom my point of view, the Commission is not targeting – and has not targeted – compliance personnel."[19]

November 4, 2015: Andrew Ceresney

A few weeks later, Andrew Ceresney, Director of the SEC's Division of Enforcement, supported Andrew Donohue's statements in his speech concerning Enforcement's approach to compliance professionals to the National Conference for the National Society of Compliance Professionals.[20] In his opening, he remarked:

> I have heard, both from the leaders of your organization and others, that certain recent enforcement actions by the Commission against compliance personnel in the investment adviser space have caused concern in the compliance community. I am hopeful that, after you hear my remarks, you will understand that these actions punish misconduct that falls outside the bounds of the work that nearly all of you do on a daily basis; do not involve the exercise of good faith judgments; and are consistent with the partnership we have developed to foster compliance with the laws.[21]

At several points in his speech, Mr. Ceresney referred to compliance professionals as the SEC's "essential partners in ensuring compliance with the federal securities laws" and that the SEC "will do all [it] can to help you perform your work."[22]

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[17] *See* Andrew J. Donohue, *Remarks at NRS 30th Annual Fall Investment Adviser and Broker-Dealer Compliance Conference* (Oct. 14, 2015), available at http://www.sec.gov/news/speech/donohue-nrs-30th-annual.html.
[18] *Id.*
[19] *Id.*
[20] *See* Andrew Ceresney, *2015 National Society of Compliance Professionals, National Conference: Keynote Address* (Nov. 4, 2015), available at http://www.sec.gov/news/speech/keynote-address-2015-national-society-compliance-prof-cereseney.html.
[21] *Id.*
[22] *Id.*

He also made four important points. First, he noted the two enforcement cases that were brought against individuals at firms who either failed to provide sufficient resources to the compliance function for it to run effectively or were involved in obfuscating facts from compliance personnel. The lesson of those cases was that the SEC "will aggressively pursue business line personnel and firms who mislead or deceive you, or obstruct the compliance function, or who fail to support you in a manner that causes compliance violations."[23] Second, he noted that Rule 206(4)-7 did not lack clarity and has not been used to second-guess a compliance professional's judgment. Third, he noted that enforcement actions against compliance personnel were rare and when brought fell within one of three categories: (a) affirmative involvement in misconduct that is unrelated to the compliance function, (b) involvement in attempts to mislead or obstruct the SEC's staff in their examinations or investigations, and (c) a failure entirely to carry out his or her responsibilities and caused their firm to experience compliance failures under Rule 206(4)-7. Fourth, of over 8,000 enforcement actions since 2003, 1,300 involved investment adviser/investment company cases and of those, only 5 of them were against individuals with CCO-only titles affiliated with investment advisers under Rule 206(4)-7 where there were no efforts to obstruct or mislead the SEC's staff. Of those 5 cases, 2 were brought in 2015, 2 in 2013 and 1 in 2010.

In closing, Mr. Ceresney emphasized that enforcement actions against CCOs under Rule 206(4)-7 were extremely rare and that "there is no change in our longstanding careful and measured approach to determining whether we should charge a CCO" and that the SEC decided "to recommend charging a CCO only when warranted after a thorough examination of the facts and circumstances and consideration of fairness and equity."[24] He also stated that the compliance professional audience "should not hesitate to provide advice and help remediate when problems arise" and that they should "not be concerned that by engaging in good faith judgments, [they] will somehow be exposed to liability."[25]

November 9, 2015: National Exam Program Risk Alert

And then, just a few weeks ago, the SEC's Office of Compliance Inspections and Examinations ("OCIE") issued a seven-page Risk Alert on their findings concerning the

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[23] *Id.*
[24] *Id.*
[25] *Id.*

compliance program at firms with outsourced CCOs.[26] The Risk Alert was based upon examinations of 20 firms in which the CCO function itself (as opposed to other compliance related activities) was outsourced by a firm to a third party. The findings were troubling but not particularly surprising; OCIE found that outsourced CCOs with frequent in-person contact at firms were in the best position to perform their duties and responsibilities as they had better knowledge about their firms' business, operations and risks and developed personal relationships with firm personnel that empowered them to perform such duties, including implementing necessary compliance changes, when appropriate.

On the other hand, firms with outsourced CCOs that relied on impersonal communications with the firm, such as through email, did not appear to have a good understanding of the firm's business, operations and risks or be empowered to implement compliance changes within the firm. Such outsourced CCOs often utilized standardized checklists not tailored to the specific business, practices, strategies and risks applicable to the firm's operations. Obviously, if the correct checklists are not employed, then the right information is not being provided to those CCOs to complete their annual review and oversee compliance. In addition, such outsourced CCOs often lacked sufficient knowledge about the firm's business to catch or follow up on any inconsistencies in responses from the firm to checklist items. Such lack of knowledge also would lead naturally to firms not having the right policies, procedures or disclosures in place to address all conflicts of interest or other compliance issues.

According to the Risk Alert, CCOs whether they relied on in-person or impersonal communication methods all functioned more effectively where they could independently obtain the records required for their annual review as opposed to relying on the firm itself to gather those records. In firms in which the latter occurred, OCIE noticed that the accuracy of those firms' annual reviews may have been affected. Outsourced CCOs who served in that function for numerous unaffiliated firms sometimes also did not have sufficient resources to perform compliance duties for all of the firms that the CCO serviced.

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[26] See SEC's Office of Compliance Inspections and Examinations, National Exam Program, Risk Alert, *Examination of Advisers and Funds That Outsource Their Chief Compliance Officers*, Vol. V, Issue 1 (Nov. 9, 2015), available at https://www.sec.gov/ocie/announcement/ocie-2015-risk-alert-cco-outsourcing.pdf.

Finally, OCIE noticed in its examinations of these 20 firms that on occasion compliance policies and procedures were not followed or the firms' actual practices deviated from compliance manuals. OCIE also noticed that some of the policies and procedures were not tailored to the specific business of the firm and thus they contained policies and procedures that were not appropriate or just inapplicable to that particular firm.

ARE CCOS BEING TARGETED IN A NEW TREND BY THE SEC?

Filing Metrics

A critical review of the metrics concerning SEC actions against CCOs, particularly those who did not also assume an operational role with their firms, unequivocally demonstrates that there is no new trend targeting CCOs.[27] Instead, the SEC has continued to bring cases against CCOs on a very limited basis where the facts are particularly egregious, such as a failure to maintain a compliance program at all or participation by the CCO in underlying fraudulent activity. Such enforcement activity is consistent with the SEC's stated overall objectives of holding individuals – and not just companies or entities – liable for wrongful misconduct on the theory that only such individual liability operates as a deterrent to other actors within the security industry to engage in the same improper conduct.[28]

Rule 206(4)-7 and Prosecutorial Discretion

While there has been much attention on Rule 206(4)-7 and whether or not it lacks clarity, a focus on the legal niceties of the Rule misses the mark. Promulgated in 2003, Rule 206(4)-7 requires advisers to "adopt and implement written policies and procedures

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[27] *See* Andrew Ceresney, *2015 National Society of Compliance Professionals, National Conference: Keynote Address* (Nov. 4, 2015), available at http://www.sec.gov/news/speech/keynote-address-2015-national-society-compliance-prof-cereseney.html (of over 8,000 enforcement actions since 2003, 1300 involved investment advisers or investment companies and of those, only 5 filed against individuals serving in CCO-only titles affiliated with investment advisers under Rule 206(4)-7).

[28] *See e.g.,* Chair Mary Jo White, Speech at Council of Institutional Investors, *Deploying the Full Enforcement Arsenal* (Sept. 26, 2013) ("Another core principle of any strong enforcement program is to pursue responsible individuals wherever possible. That is something our enforcement division has always done and will continue to do. Companies, after all, act through their people. And when we can identify those people, settling only with the company may not be sufficient. Redress for wrongdoing must never be seen as 'a cost of doing business' made good by cutting a corporate check. Individuals tempted to commit wrongdoing must understand that they risk it all if they do not play by the rules. When people fear for their own reputations, careers or pocketbooks, they tend to stay in line."), available at http://www.sec.gov/News/Speech/Detail/Speech/1370539841202.

reasonably designed to prevent violation" of the Investment Advisers Act of 1940 and periodically "[r]eview . . . the adequacy of the policies and procedures . . . and the effectiveness of their implementation."[29] The policies and procedures should be reasonably designed to prevent violations from occurring, detect violations that have occurred, and correct promptly any violations that have occurred.

The SEC oversees over 11,000 investment advisers – an amount that has increased over the past few years with no concurrent increase in its personnel assigned to regulate investment advisers. As in other areas, the SEC has limited resources that it must employ judiciously to punish, deter and prevent wrongful conduct primarily through exercising prosecutorial discretion. Ultimately, it is the SEC's exercise of prosecutorial discretion in upholding the laws that is more important than the clarity or lack of clarity of the Rule. Given the convincing data that the number of enforcement actions against CCOs has not increased or surged in any meaningful way and remains a small percentage of cases that are brought, it appears that the SEC is consistently exercising its prosecutorial discretion only on a very limited basis in initiating actions against CCOs.

QUALITIES OF AN EFFECTIVE CCO

While no new trend against CCOs exists – notwithstanding the publicity that such a trend may exist fueled by Commissioner Gallagher's statement[30] – a lot of guidance has emerged about what constitutes an effective CCO. An effective CCO must be knowledgeable about the securities laws and the regulatory framework applicable to investment advisers. She also should be knowledgeable about the adviser's business, investment strategy, kinds of clients, operations and attendant risks. In addition, an effective CCO is one who is trusted and respected by the management team, included in high-level meetings about the firm and its direction, empowered to implement any changes that the CCO deems necessary to support compliance and supported by sufficient resources to hire employees or outside consultants as well as purchase any necessary compliance tools to support the compliance function. Finally, an effective CCO needs to be an individual who is able to be independent and make decisions or recommend action to management that might be deemed to be unpopular or expensive in order to support compliance.

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[29] Rule 206(4)-7, Investment Advisers Act of 1940.
[30] *See supra* at n. 2.

SHOULD THE CCO FUNCTION BE OUTSOURCED?

In light of OCIE's recent Risk Alert,[31] firms should proceed with caution in utilizing outsourced CCOs. OCIE will presume that such firms reviewed the Risk Alert. Thus, if an examination in 2016 by OCIE reveals any of the same compliance shortcomings identified in the Risk Alert due to the use of an outsourced CCO, firms can expect to be dealt with more harshly.

The most optimal practice is for firms to have a CCO who is an employee and on site at all times. In this fashion, the CCO can build relationships with employees and management and develop a strong understanding of the firm's business, operations and specific risk profile.

If hiring a full-time CCO as an employee is cost prohibitive for a firm, it can still outsource the CCO function to a third party consultant. However, if this occurs, the firm needs to make sure that (a) the CCO is physically present in the firm's offices on a regular basis and does not primarily rely on email, (b) that the third-party has sufficient resources to devote to the firm and is not spread too thin by serving to too many other advisers, (c) the CCO has the independent ability to request and review firm documents, (d) that the CCO has a solid understanding of the firm's business and strategies and does not employ generic checklists, and (e) that the firm has empowered the CCO to have sufficient authority to implement changes, as necessary, to ensure that the firm is operating in compliance with the applicable laws.

HOW CAN A CCO BEST PREPARE THE FIRM FOR EXAMINATIONS?

Proactive Planning and Compliance Culture

The foundation for a positive examination outcome starts with a firm's compliance culture. The CCO lays the most effective groundwork for any regulatory test by fostering a compliance culture that permeates every level of the organization and is based on each employee's deep appreciation for an adviser's fiduciary duties to its clients. Unless a CCO is both part of top management and echoed by the rest of a firm's executives in their actions and communication with their subordinates, it will be hard to implement a top down compliance culture that touches every employee across the firm's entire operations. A firm

[31] *See supra* at n. 26.

will only convey an image that compliance is its top priority if in fact each executive adopts that view and actively supports the CCO's role and efforts.

A thorough understanding of a firm's individual risk and conflicts profile based on its structure, components and aggregate business operations should be reflected in the firm's compliance policies and procedures. The firm's (including its business units' and affiliates') products, services and investment strategies, as well as the various types of clients served (including proprietary accounts), will be the dominant factors in uncovering all conflicts of interest and other risks whose management, mitigation and disclosure must be addressed by a well-tailored compliance policies and procedures manual. To ensure relevance and practicality, the written procedures manual must be a product of a concerted effort between the CCO and investment professionals. The CCO must be intimately familiar with the firm's products, services and investment strategies, as well as back office operations (including third party administration and other services) as much as the investment and operations professionals must have a good comprehension of the application of the relevant laws, regulations and their interpretations to their activities.

Business and compliance functions should join forces not just in preparing the compliance manual, but also in its implementation and continuous improvement. In order to keep pace with the firm's evolving business practices, compliance policies and procedures should be continuously re-assessed and adjusted to reflect actual practices. Engaging training sessions for employees about identifying problems and how to escalate them, persistent supervision to detect unreported matters, and an open culture encouraging communication and transparency should round out an effective compliance culture. These principles will also work to address the OCIE's three main areas of concern: (i) protecting retail investors, (ii) issues related to market-wide risks, and (iii) identifying registrants engaging in illegal activity.

Timely Remediation

In addition to proactive preparation, it is equally important to quickly and decisively remedy any negative findings upon the conclusion of an examination. The SEC's Compliance Program Initiative is designed to address repeated compliance failures, so issues raised in a deficiency letter are ripe for follow-up as the starting point of a subsequent examination. In the current regulatory environment—where violations of compliance policies and procedures can serve as the basis of enforcement actions—investment advisers

and their compliance professionals are strongly advised to carefully analyze and heed the SEC's recommendations listed in any deficiency letter. Firms should implement any immediately necessary changes in a timely manner, and follow through with responsive updating of their compliance program as necessary. Upon any such internal changes, a CCO should take a comprehensive, firm-wide approach to assessing collateral impact on external reporting, client and investor agreements, SEC and private disclosure documents and various marketing documentation. This will serve to ensure uniformity and accuracy, and compliance with the adviser's fiduciary duties of full and fair disclosure of all material facts and not to mislead clients.

Compliance Program Tools

It is essential that a firm, with the input of the CCO, select and utilize sensible tools that improve the efficiency of the organization, management and testing of a complex compliance program, and any related recordkeeping. The SEC employs cutting edge technology and data tools to detect suspicious activity and misconduct, and investment firms should respond in kind by investing in the technology that's right for them. Firms should regularly review their technology infrastructure—especially in the areas of trading, recordkeeping, reporting and communications—to ensure they have the most effective tools available. The CCO need not be a technology expert but should have sufficient savvy in technology matters to effectively perform basic compliance checks and have high-level command of a technology/software-driven compliance system. Partnering with information technology (internal or outsourced) in the administration and improvement of the compliance system is as vital as it is to cooperate with investment personnel. Incorporating new rules, reporting requirements, contractual obligations or new service provider feeds into the electronic compliance software will require close collaboration between the CCO and IT. Perhaps the ultimate illustration for such indispensable teamwork between them is an adviser's cybersecurity policy and procedures.

Another component of preparedness for an SEC visit is conducting a mock-SEC audit. A mock exam should be a test-run that includes the review of and response to sample SEC document request lists to anticipate likely areas of examination. It also should identify any gaps in policies and procedures as well as the right contacts within the firm for each area examined. To extract the most value out of a mock exam, its process should be near-identical to an actual SEC examination. Employing a third-party provider could

convincingly replicate the "real" thing, and test process, attitudes and exam conduct as much as the advisory firm's policies and procedures. Senior management always should participate actively in any mock exam, both to match reality and set the tone of the exercise for employees. Of course, the CCO should use the results to improve actual preparedness for a real exam by implementing remedial actions based on the mock exam's findings.

Practical Guide for Managing an SEC Examination

While a well-managed compliance program is the necessary foundation for an examination to go well, how a firm manages the exam process itself will significantly contribute to the overall outcome. At the start of an examination, there should be a designated point person (usually, but not always, the CCO) to coordinate with the OCIE throughout the entire examination process and serve as the facilitator to ensure a smooth and consistent examination process. Simultaneously, firm management and the adviser's entire staff should be notified of the exam, and the necessity of involving outside counsel should be considered at this time.

Many examinations are not conducted in person by the Staff, but will be handled via (electronic) mail and over the phone. If, however, the Staff visit in person, there are some basic "good behavior" considerations that, if followed, will contribute toward a desirable outcome and a positive work environment for the weeks to come. Notably, in recent years, the SEC has expanded not just the number but also the preparedness and expertise of its personnel. Many of the hires are from the private sector, including large law firms, broker-dealers, private equity and hedge fund firms, who are very familiar with private funds and their operations, and the industry in general. Underestimating an examiner's sophistication would be a mistake potentially resulting in a disconnect between examiner and the examined, which could be difficult to bridge later in the process. It goes without saying, but the personnel of an investment adviser should always treat the OCIE in a professional and courteous manner, and the CCO should set the tone for this during the announcement of the start of the examination. Moreover, at the beginning of an exam, firms should seek to establish a cooperative and non-combative tone with the examiners. As a general matter, taking a cooperative approach will create a smooth process for both parties. On the other hand, a hostile or combative approach not only lays the foundation for a cantankerous examination and gives the impression that the firm may have something to hide, it also paints the firm in a less-than-positive light.

Once an examination is underway, the CCO or the designated point person should be focused on providing the OCIE with the documentation required for any information requests. Thus, the other executives and employees can focus on the business of the firm. The CCO also should carefully judge the scope of the firm's response to the SEC's request. The documentation provided in response should be reasonable and pertinent to the request. Hiding, evading or inundating the examiners with information is counter-productive in the long run because it serves to both frustrate the examiners and extend the examination process. Extending the examination process often means examiners will be onsite for a longer period of time than would have been needed had the production of information been handled in a more thoughtful manner from the start, ultimately resulting in longer business disruption at the least. The best approach is to respond honestly and directly to requests for documents and information without unreasonable delay. While existing compliance procedures, if adequate, should accomplish organized and timely document production, the CCO should ensure during the examination process that the firm keeps appropriate records of all SEC requests and all firm responses, including documents, electronic material and interviews.

The role of compliance remains critically important, and investment advisers should remain vigilant in adhering to their current policies and procedures. Importantly, there must be on-going monitoring and updating of the relevant policies, programs and procedures to ensure they keep pace with evolving business practices, and record keeping and reporting obligations are being met. Even if an examination has yet to occur, proactive steps should be taken to ensure the firm is institutionally prepared for an examination. Institutional preparedness can be attained by conducting a mock audit, and ensuring disclosure documentation and actual compliance and business practices are all consistent.

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In closing, over the past six months, the SEC has provided a lot of guidance and commentary on the important role that the CCO of investment advisers plays in establishing and maintaining appropriate compliance. It is important that firms learn from that advice and adjust their own internal processes where necessary to create and maintain a real and strong culture of compliance within their own firms. When that has occurred and firms follow some of the recommendations in this article, they will experience successful examinations that do not result in any material weaknesses.