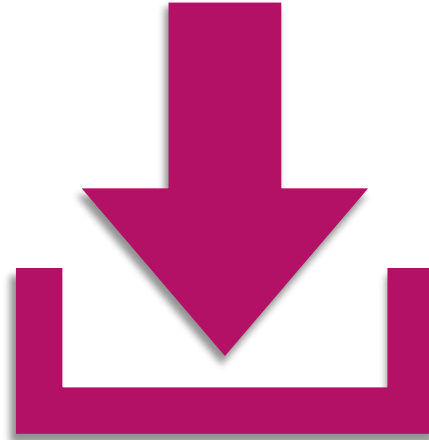




Basic CCO Training

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<https://www.ria-compliance-consultants.com/CCO-Basic-Training>



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ContEd@ria-compliance-consultants.com

Your Instructor



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Course Overview

- ▶ CCO Qualifications & Authority
- ▶ CCO's Role & Responsibilities
- ▶ CCO During A Regulatory Exam
- ▶ CCO's Personal Liability
- ▶ Questions

Curriculum & Regulatory Resources

SEC Rule 206(4)-7:

[https://www.law.cornell.edu/cfr/text/17/275.206\(4\)-7](https://www.law.cornell.edu/cfr/text/17/275.206(4)-7) .

NYC Bar: Framework for Chief Compliance Officer Liability in the Financial Sector (6/2/21):

<https://www.nybar.org/member-and-career-services/committees/reports-listing/reports/detail/framework-for-chief-compliance-officer-liability> .

SEC OCIE Observations: Investment Adviser Compliance Programs (11/19/20):

https://www.sec.gov/files/Risk%20Alert%20IA%20Compliance%20Programs_0.pdf .

SEC Commissioner Speech: When the Nail Fails – Remarks before the National Society of Compliance Professionals (10/19/20):

<https://www.sec.gov/news/speech/peirce-nscp-2020-10-19> .

Speech by SEC Official: Remarks at NRS 30th Annual Fall Investment Adviser and Broker-Dealer Compliance Conference (10/14/15):

<https://www.sec.gov/news/speech/donohue-nrs-30th-annual> .

Speech by SEC Official: 2015 National Society of Compliance Professionals, National Conference: Keynote Address (11/4/15):

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

Public Statement by SEC Commissioner: The Role of Chief Compliance Officers Must be Supported (6/29/15):

<https://www.sec.gov/news/statement/supporting-role-chief-compliance-officers> .

SEC's Frequently Asked Questions about Liability of Compliance and Legal Personnel at Broker-Dealers under Sections 15(b)(4) and 15(b)(6) of the Exchange Act (9/30/13):

<https://www.sec.gov/tm/divisionsmarketregfaq-cco-supervision-093013htm> .

SEC Final Release for Rule 206(4)-7: Compliance Programs of Investment Companies and Investment Advisers:

<https://www.sec.gov/rules/final/ia-2204.htm> .

SEC's Compliance Program Requirements Under Rule 206(4)-7

Must adopt and implement **written policies and procedures** reasonably designed to prevent violation, by you and your supervised persons, of the Act and the rules that the Commission has adopted under the Act;

Review, no less frequently than annually, the **adequacy of the policies and procedures** established pursuant to this section and the effectiveness of their implementation; and

Designate an individual (who is a supervised person) responsible for administering the policies and procedures that you adopt (Chief Compliance Officer).

Basis for CCO Role

- ▶ SEC Rule 206(4)-7 creates the requirement for the Chief Compliance Officer (“CCO”) role and should be used as the basis for determining and developing the CCO’s responsibilities when acting in this capacity.
- ▶ CCO must administer policies and procedures
- ▶ Does not need to be responsible for day-to-day completion of all policies and procedures

CCO Qualifications

- ▶ No SEC specified qualifications (e.g., exams, years of experience)
- ▶ Rule 206(4)-7 simply states, “Designate an individual (**who is a supervised person**) responsible for administering the policies and procedures that you adopt under paragraph (a) of this section.”
- ▶ CCOs should be:
 - ▶ **Competent** and knowledgeable regarding the Investment Advisers Act of 1940 (“Advisers Act”);
 - ▶ **Empowered** with full responsibility and authority to develop and enforce appropriate policies and procedures for the firm; and
 - ▶ In a position of sufficient **seniority** and **authority** within the organization to compel others to adhere to the compliance policies and procedures.

CCO Qualifications Experience & Knowledge

- ▶ CCO Should Have Significant Securities Industry Experience
- ▶ Familiarity with Compliance Requirements for an Investment Adviser
- ▶ If CCO Does Not Have Strong Understanding of Compliance But Experience, Then CCO Should
 - Pass Series 65
 - Attend Compliance Trainings and Conferences
 - Utilize an Outside Compliance Consultant
 - Subscribe to Regulatory Newsletters & Alerts


CCO Qualifications Wearing Multiple Hats

- ▶ CCO Can't Be in Name/Title Only
- ▶ The Individual Serving as CCO Can Wear Multiple Hats But Must Have Time to
 - Develop Knowledge of Investment Advisers Act and/or State Securities Act
 - Fulfill Duties of CCO



CCO – Authority to Create & Enforce Procedures

CCO should have the full responsibility and authority to create and enforce policies and procedures for the firm and its supervised persons.



CCO may delegate compliance tasks to other supervised persons of the investment adviser firm but must maintain ultimate responsibility for ensuring the delegated tasks are completed in a timely and accurate manner.

CCO's Seniority

- ▶ CCO Should Have Sufficient Seniority & Authority To Compel Supervised Persons To Adhere To Firm's Policies & Procedures
 - Typically, CCO Is An Officer Of Firm
- ▶ CCO Report Directly To One Of The Most Senior Leaders Of The Firm (e.g., CEO, President, Managing Director, General Counsel)
- ▶ CCO Should Regularly Meet with the Most Senior Management of Firm
 - CCO Should Be Included Be Included In Senior Level Discussions Regarding Leadership, Strategy, New Programs, Acquisitions, Sales, Investment Management, Firm's Finances And Business Operations

Access, Knowledge & Resources for a CCO

- ▶ CCO Should Have Unrestricted Access To Critical Compliance Information Such As
 - Trading Exception Reports
 - Investment Advisory Agreements With Key Clients And
 - President, CEO Or Founder's Personal Securities Transaction Quarterly Reports & Annual Personal Securities Holding Reports
- ▶ CCO Should Have A Solid Understanding Of The Firm's Compliance Manual And Its Compliance Practices
- ▶ CCO Should Be Provided By The Firm With Sufficient Resources To Implement An Effective Compliance Program

CCO's Role – 9 Categories

Former SEC official explained that if he were a CCO, he would consider his role in terms of 9 different categories:

- ▶ **Laws, Regulations, and other Requirements** - Having first-hand knowledge of the applicable laws and regulations related to his firm and its activities
- ▶ **Understanding of Organization and Operations** – Having a deep understanding of the firm, its structure and internal operations; a working knowledge or roadmap of how different areas interact with or are dependent on other areas of the firm; and a detailed knowledge of the supervisory structure of the firm.

CCO's Role – 9 Categories

- ▶ **Conflicts of Interest** – Having a clear understanding regarding the firm's conflicts of interest and how they are identified, how frequently they are reviewed, when they are identified, how conflicts are resolved and by whom, and who drafts the disclosures and how and when they are communicated to clients.
- ▶ **Clients of the Firm** – Having a detailed understanding of the firm's clients/customers and the products and services provided to them.
- ▶ **Compliance and Other Systems** - Understanding of the firm's compliance and technology platforms and whether they can accommodate implementation of a robust compliance program for your firm.

CCO's Role – 9 Categories

- ▶ **Policies and Procedures** – Having a detailed knowledge of the firm's policies and procedures and how they are applied and monitored as well as the intended goal for each.
- ▶ **Markets and Business Practices** – Having an understanding of the various markets in which the firm operates, including any specific practices in those markets that may raise concerns, and a detailed understanding of the types of investment products and strategies involved in providing advice to clients.
- ▶ **Culture of the Firm** – Having a strong grasp on the culture of the firm and, if necessary, changing it to promote robust compliance.
- ▶ **What Don't I Know?** – Having an appreciation and understanding for what you, as a CCO, don't know or when you need to rely on the knowledge or expertise of others and where the firm has competency gaps.

CCO's High-Level Responsibilities



Risk Assessment - Conduct a risk analysis and determining all real and potential risks and conflicts of interest.



Code of Ethics - Oversee development, implementation, maintenance, and enforcement of the firm's CoE and compliance policies and procedures.



Counsel – Advise management and supervisors regarding appropriate supervisory actions and appropriate corrective actions.



Annual Review - Conduct an annual compliance review to ensure compliance program is effectively addressing areas of risk and policies and procedures are being implemented effectively.

CCO's Responsibilities

Assignment of Supervisory Tasks

- ▶ SEC Rule Release for Rule 206(4)-7, Investment Adviser Compliance Program, Specifically States:
 - “Having the title of chief compliance officer does not, in and of itself, carry supervisory responsibilities.”*
- ▶ Under A Compliance Program, Supervisory Tasks Can Be Assigned to Individuals Other than the CCO
 - CCO Should Test System and Verify Supervisors Are Meeting Obligations Under Compliance Program
- ▶ Compliance Tasks Assigned to CCO Can Be Delegated, But CCO Must Track and Ensure Completion By Staff

As-Needed Compliance Tasks

- Update Form ADV
- Maintain List of Clients Requesting Form ADV Part 2A and Part 2B
- Keep Terminated Client List
- Verify Receipt of All Documents Necessary for New Client
- Review New Client's Investment Objectives/Risk Tolerance Compared to Investment Portfolio
- Solicitor/Promoter Disclosures Received
- Maintain List of Client Requests for Copy of Code of Ethics
- Review Advertising & Maintain Evidence Supporting Advertising & Approval
- Keep List of Supervised Persons

As-Needed Compliance Tasks

- Onboard New Supervised Persons
 - ✓ Compliance Manual (Code of Ethics)
 - ✓ Personal Securities Holdings
 - ✓ Form U4
 - ✓ Form ADV Part 2B
 - ✓ Professional Designation Check
 - ✓ Advertising/Letterhead/Business Card
 - ✓ Outside Business Activity Disclosures

As-Need Compliance Tasks

- Identify and Fully Disclose Conflicts of Interest
- Identify and Fully Disclose All Material Facts Related to Firm and Advisory Services
- Investigate & Manage Client Complaints
- Keep Record of Compliance Violations
- Provide Initial and Ongoing Compliance Training for Supervised Persons
- Conduct Due Diligence on Supervised Persons, Investment Adviser Representatives, Promoters and Sub-Advisers/Third-Party Money Managers

Quarterly Compliance Tasks

- Review Emails
- Audit Fee Calculations/Deductions
- Verify Number of Clients Per State – Registration/Notice Filing
- Spot Check Advertising
- Re-Review Business Continuity/Disaster Recover Plan for Updates
- Review Exception Reports Related to Investment Performance and Confirming Client Objective/Risk Tolerance Matches Investment Strategy
- Review PST
- Check That Required Books & Records Are Being Maintained

Annual Compliance Tasks

- Renew Annually via IARD Registrations/Notice Filings
- File Annual Form ADV Amendment
- Deliver Form ADV Part 2A and Privacy Policy to Existing Clients
- Complete Best Execution & Due Diligence of Broker-Dealers & Qualified Custodians
- Conduct Ongoing Due Diligence of Promoter & Re-Verify Endorsements
- Conduct Ongoing Due Diligence of Sub-Advisers & Third-Party Money Managers
- Obtain Code of Ethics Acknowledgement, Annual Personal Securities Holdings, OBA Disclosure, and Annual Survey from All Supervised Persons

Annual Compliance Tasks

- Review All Heightened Supervision Plans of Supervised Person
- Run Credit & Background Check on All Supervised Persons
- Review and Update Form ADV Part 1, Part 2A, Part 2B and Part 3 (for SEC registered firms)
- Review and Update Compliance Manual and Code of Ethics
- Conduct Annual Review of Compliance Program and Prepare Written Report
- Conduct Audit of Each Branch Audit
- Provide Compliance Training to All Supervised Persons

CCO Responsibilities

Compliance Deficiencies

- ▶ If a deficiency is found, make sure the necessary steps are taken to correct the policies and procedures and any problems that have arisen from those deficiencies.
- ▶ Investigate any areas of concern or red flags and follow through on the investigation.
- ▶ Keeping current on regulatory requirements and changes and revise and update the policies and procedures as necessary.
- ▶ Train staff on updated policies and procedures and re-test to verify updates are effective.

CCO During an Exam

- ▶ CCO typically is **main point of contact** with the regulator during an investment adviser exam.
 - CCO should be someone with good communication skills who will respond to the regulator in a timely manner
- ▶ At the beginning of an exam, an examiner will begin to assess if there is a strong culture of compliance throughout the firm and whether the CCO is “**competent, knowledgeable, and empowered.**”
- ▶ Examiners will want to know that the CCO has the following:
 - experience and qualifications,
 - familiarity with the regulations,
 - knowledge of the firm’s operations, adequate resources, and
 - independence and authority to implement and enforce an effective compliance program.

CCO Defense Against Failure to Supervise

- ▶ *“Having the title of chief compliance officer does not, in and of itself, carry supervisory responsibilities. Thus, a chief compliance officer appointed in accordance with rule 206(4)-7 ... would not necessarily be subject to a sanction by us for failure to supervise other advisory personnel. A compliance officer who does have supervisory responsibilities can continue to rely on the defense provided for in section 203(e)(6) of the Advisers Act [15 USC 80b-3(e)(6)]. Section 203(e)(6) provides that a person shall not be deemed to have failed to reasonably supervise another person if: (i) the adviser had adopted procedures reasonably designed to prevent and detect violations of the federal securities laws; (ii) the adviser had a system in place for applying the procedures; and (iii) the supervising person had reasonably discharged his supervisory responsibilities in accordance with the procedures and had no reason to believe the supervised person was not complying with the procedures.”*

See footnote 73 of Final Rule Release: Compliance Programs of Investment Companies and Investment Advisers, Release Nos. IA-2204; IC-26299; File No. S7-03-03 (emphasis added).

Former SEC Commissioner's Take on Liability

In a June 2015 Public Statement, "The Role of Chief Compliance Officers Must be Supported," issued by former SEC Commissioner Luis Aguilar, he addressed some of his views as it relates to the importance of the role of the CCO as well as his views on enforcement actions against CCOs and **"why CCOs who put investors first and do their jobs competently, diligently, and in good faith should not worry about being targeted by and SEC enforcement case."**

He indicated that the CCOs "play an important and crucial role in fostering integrity in the securities industry...Simply stated, the [SEC] needs capable and honest CCOs to help protect investors and the integrity of the capital markets."

Broker-Dealer CCO Liability

- ▶ In 2013, SEC's Division of Trading and Markets released FAQs about Liability of CCOs at Broker-Dealers under the Exchange Act.
 - Although this is specific to broker-dealers, there are some things that investment advisers can take away from reviewing these FAQs.
- ▶ Liability can result when a CCO fails to establish, maintain, and enforce policies and procedures reasonably designed to prevent violations of securities laws.
- ▶ If the CCO does not have supervisory responsibilities but instead is solely responsible for establishing and monitoring the firm's policies and procedures, the CCO must ensure that those policies and procedures are being followed. If the CCO has been assigned supervisory responsibilities, the CCO has direct responsibility for discharging those supervisory responsibilities.

Enforcement Action Against CCO

A securities regulator may bring an enforcement action against a CCO of an investment adviser when

- (1) the CCO participated in the underlying misconduct unrelated to his or her compliance duties*
- (2) the CCO obstructed or misled the securities regulator, or*
- (3) the CCO has exhibited a wholesale failure to carry out his or her responsibility.*

See <https://www.sec.gov/news/speech/keynote-address-2015-national-society-compliance-prof-cereseney.html>
<https://www.sec.gov/news/speech/peirce-nscp-2020-10-19> and
<https://www.nybar.org/member-and-career-services/committees/reports-listing/reports/detail/framework-for-chief-compliance-officer-liability-in-the-financial-sector-1>

Summary of CCO's Responsibilities

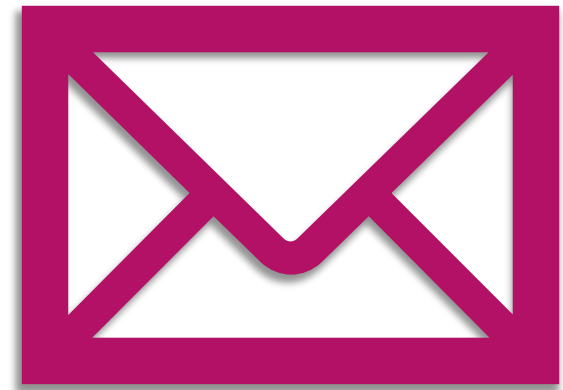
CCO Is Responsible for Following

- ▶ **Establishing** a written compliance program
- ▶ **Training and Enforcing** the compliance policies and procedures
- ▶ **Monitoring and Reviewing** Looking for areas of weakness
- ▶ **Revising** again, and again....

Questions

Please submit any question online or email with any questions about the content of this course.

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Thank You

