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Summary Narrative Of Chief Compliance Officer Liability

Luke Trompeter
American University Washington College of Law

SUMMARY NARRATIVE OF CHIEF COMPLIANCE OFFICER LIABILITY

LUKE TROMPETER*

INTRODUCTION

The modern business environment is considered more complex and challenging than ever before.[1] Businesses now rely heavily on their Chief Compliance Officers ("CCO") to ensure their business practices adhere to the increasingly numerous laws and regulations that apply to their

* Senior Note & Comment Editor, Volume 7, *American University Business Law Review*; JD/MBA Candidate, American University, Washington College of Law, 2019; B.A. Political Science, B.S. Business Administration, *University at Buffalo (SUNY)*, 2015. I would like to thank my editors, Catriona Coppler and Alexandra McLeod, as well as the entire *American University Business Law Review* staff for their assistance.

1. *How to Navigate Risk Management and Compliance Complexity*, PWC (2009), http://www.pwc.com/us/en/increasing-it-effective ness/assets/sap_grc_process_controls_solution_brief.pdf.

operations.[2] The number of CCOs in major financial institutions has correspondingly doubled since 2005.[3] This Article will summarize the principal laws, regulations, and jurisprudence that can confer personal liability for a CCO in the banking and finance industries.[4] While the author has attempted to include a variety of industries to which such laws apply, this piece does not purport to be a complete examination of every possible law, regulation, rule, guideline, or edict imposed through enforcement applicable to all industries.

II. FEDERAL LAWS

A. *Banks and Banking*

In addition to applicable State laws, the United States banking industry is governed by Title 12 of the United States Code.[5] Banks and other depository institutions are further overseen by numerous federal government agencies, including the Federal Deposit Insurance Corporation ("FDIC"), the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve, the U.S. Treasury Department, the Consumer Financial Protection Bureau ("CFPB"), and the National Credit Union Administration ("NCUA"). These agencies supervise, examine, and enforce safety and soundness requirements, consumer protection laws, and regulations for the institutions under their jurisdiction. The Department of Justice ("DOJ") is also responsible for enforcing certain laws (e.g., the Americans with Disabilities Act) and has authority to conduct civil and criminal investigations of banks' and financial institutions' activities.

i. *Unsafe or Unsound Practices*

If a federal banking regulator finds that a CCO previously engaged in or is about to engage in an unsafe or unsound practice in violation of a federal

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2. Cynthia Dow, *How the Chief Compliance Officer role is transforming across Financial Services*, RUSSELL REYNOLDS ASSOCIATES (Apr. 28, 2016), http://www.russellreynolds.com/insights /thought-leadership/how-the-chiefcompliance-officer-role-is-transforming-across-financial-services.

3. Sam Batkins, *The Paperworks: Examining Trends in Regulatory Specialist Employment*, AM. ACTION F. (Sept. 25, 2013), https://www.americanactionforum.
org/research/the-paperworkers-examining-trends-in-.regulatory-specialist-employment/.

4. While there is a large emphasis on compliance in other industries such as healthcare, this piece focuses primarily on the banking and financial industries.

5. *See generally* 12 U.S.C. (2012).

banking law, the regulator may issue a cease and desist order.[6] The order requires an immediate stop to the behavior and it may apply to both the institution and individually to the compliance officer.[7] Federal regulators also have the authority to require affirmative action to correct violations and in some cases, may require a compliance officer to pay monetary restitution to the financial institution.[8]

A CCO may be suspended from his role for the duration of any FDIC, OCC, Federal Reserve, or NCUA investigation involving a felony of dishonesty, breach of trust, or a criminal violation of the Bank Secrecy Act.[9] The suspension remains in effect until the information, indictment, or complaint is finally disposed of or until terminated by the agency.[10] In 1976, a federal court held that when an instituted affiliated party ("IAP") including a CCO, is suspended, due process requires that the individual be given an immediate post suspension hearing.[11] Since then, a number of other courts have adopted this reasoning.[12]

A federal banking agency may remove a CCO from office if it determines that the compliance officer violated any law, regulation, or condition imposed by a regulator, or any written agreement between the financial institution and a regulator involving unsafe or unsound practices or breach of fiduciary duty.[13] For a CCO to be removed from office, the regulator must establish three criteria.[14] First, that the CCO violated a law or regulation, a final cease–and–desist order, a condition imposed by a federal banking agency, or a written agreement between the bank and regulator involving unsafe or unsound practices or a breach of fiduciary duty.[15] Second, either the CCO's violation or practice caused the financial institution a financial loss or other damage, the interest of the institution's depositors were or could have been prejudiced, or the CCO personally benefited from the violation.[16] Lastly, the CCO's violation must involve

6. *Id.* § 1818(b).

7. *Id.*

8. *Id.* § 1818(b)(6)–(7).

9. *Id.* § 1818(g)(3).

10. *See id.* § 1818(g).

11. Feinberg v. Fed. Deposit Ins. Corp., 420 F. Supp. 109 (D.D.C. 1976).

12. *See generally* Fed. Deposit Ins. Corp. v. Mallen, 486 U.S. 230, 234 (1988); Majors v. Green Meadows Apartments, 546 F. Supp. 895, 899 (S.D. Ga. 1980); Am. Liberty Bail Bonds v. Garamendi, 46 Cal. Rptr. 3d 541, 555 (Ct. App. 2006).

13. *See* 12 U.S.C. § 1818(e) (recognizing the CCO is entitled to an additional Administrative Procedures Act hearing if no prior settlement is reached).

14. *Id.*

15. *Id.* § 1818(e)(a).

16. *Id.* § 1818(e)(b).

personal dishonesty, or otherwise demonstrate willful or continuing disregard for the safety and soundness of the depository institution.[17] Should a CCO knowingly violate a removal order, the banking regulator may impose criminal penalties on the individual up to five years in prison, fines up to $1,000,000, or both.[18]

ii. Criminal Offense Involving Dishonesty, Breach of Trust, or Money Laundering

Once a compliance officer has been convicted of a criminal offense involving dishonesty, breach of trust, or money laundering, he or she will be terminated from the company and prohibited from working for an insured depository institution in any capacity.[19] In practical terms, this is very likely to prevent an individual from obtaining future employment in the financial field.

A CCO may be subject to civil penalties for violation of banking law.[20] The amount of the penalty is dependent upon the compliance officer's mental state with violations imposing strict liability at $7,500 per day the violation continues; violations involving recklessness imposing fines of $37,500 per day; and penalties for CCOs who knowingly commit violations of banking law or knowingly breach their fiduciary duties at $1,425,000 per day.[21] An Administrative Procedures Act hearing before an Administrative Law Judge is required if no settlement is reached between the parties, regardless of which tier of violation is implicated.[22] In determining whether to assess a civil monetary penalty and the amount, federal regulators consider the following 13 criteria:

1. Evidence that the violation or practice or breach of fiduciary duty was intentional or was committed with a disregard of the law or with a disregard of the consequences to the institution;
2. The duration and frequency of the violations, practices, or breaches of fiduciary duty;
3. The continuation of the violations, practices, or breach of fiduciary duty after the respondent was notified or, alternatively, its immediate cessation and correction;
4. The failure to cooperate with the agency in effecting early resolution

17. *Id.* § 1818(e)(c).
18. *Id.* § 1818(j).
19. *Id.* § 1829(a)(1)(A)–(B).
20. *See id.* § 1818(i)(2) (reflecting the civil monetary penalties adjusted for inflation under 12 C.F.R. § 263.65(b)(2) (2016)).
21. *Id.* § 1818(i)(2)(A)–(B).
22. *Id.* § 1818(i)(2)(H).

of the problem;

5. Evidence of concealment of the violation, practice, or breach of fiduciary duty or, alternatively, voluntary disclosure of the violation, practice or breach of fiduciary duty;
6. Any threat of loss, actual loss, or other harm to the institution, including harm to the public confidence in the institution, and the degree of such harm;
7. Evidence that a participant or his or her associates received financial gain or other benefit as a result of the violation, practice, or breach of fiduciary duty;
8. Evidence of any restitution paid by a participant of losses resulting from the violation, practice, or breach of fiduciary duty;
9. History of prior violation, practice, or breach of fiduciary duty, particularly where they are similar to the actions under consideration;
10. Previous criticism of the institution or individual for similar actions;
11. Presence or absence of a compliance program and its effectiveness;
12. Tendency to engage in violations of law, unsafe or unsound banking practices, or breaches of fiduciary duty; and
13. The existence of agreements, commitments, orders, or conditions imposed in writing intended to prevent the violation, practice, or breach of fiduciary duty.[23]

In February 2016, the OCC released matrices with new factors and weight.[24] These new matrices differ from previous criteria as they separate actions against institutions and individuals, increase the weight for several factors including intent, continuation of conduct after notification, and concealment, and add a new factor for "[e]ffectiveness of internal controls and compliance program."[25] This signals the OCC's increased focus on self-reporting, internal risk management, personal liability of bankers, and an effort to shift away from rewarding efforts that attempted compliance but failed, focusing instead on results.[26]

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23. Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies, 63 Fed. Reg. 30227 (June 3, 1998).

24. *See* OFFICE OF THE COMPTROLLER OF THE CURRENCY, PPM 5000–7 (REV), POLICIES AND PROCEDURES MANUAL: CIVIL MONEY PENALTIES (2016) *available at*: https://www.occ.treas.gov/news-issuances/bulletins/2016/bulletin-2016-5a.pdf.

25. Travis P. Nelson, *Prepare For OCC's New Approach To Civil Money Penalties*, LAW360 (Mar. 15, 2016 10:56 AM), https://www.law360.com/articles/771266/prepare-for-occ-s-new-approach-to-civil-money-penalties.

26. *Id.*

iii. Undercapitalized Institution

If a federal banking agency determines a financial institution is undercapitalized, it may require the institution to dismiss from office any senior executive officer, including a CCO.[27] Any CCO who held office for more than 180 days before the institution became undercapitalized may be subject to dismissal.[28]

iv. Fourteen Predicate Offenses

If a CCO is convicted of one of fourteen predicate offenses,[29] he may be subject to additional civil penalties by the Attorney General's office up to $5,000,000.[30] Courts have since followed five factors for determining civil penalties under this statute: (1) the good or bad faith of the defendant and the degree of his scienter; (2) the injury to the public, and whether the defendant's conduct created substantial loss or the risk of substantial loss to other persons; (3) the egregiousness of the violation; (4) the isolated or repeated nature of the violation; and (5) the defendant's financial condition and ability to pay.[31] Since these are civil actions to recover civil penalties under criminal offenses, the Attorney General only has to prove the right to recovery by a preponderance of the evidence, rather than the criminal standard of beyond a reasonable doubt.[32]

Federal banking regulators may prohibit or limit, by regulation or order, any golden parachute payment[33] or indemnification payment to a CCO

27. *See* 12 U.S.C. § 1831o(f)(2)(F)(ii) (defining executive officer as any person who "participates or has authority to participate (other than as a director) in major policymaking functions of the company or bank" under 12 U.S.C. § 375b).

28. *Id.*

29. *See id.* § 1833a(c)(1)-(3) (including receipt of gifts for procuring loans; theft by a bank officer; willfully misapplying property of lending institutions; falsifying bank entries; falsifying credit transactions; falsifying FDIC transactions; falsifying loan and credit applications; committing bank fraud; making false claims; making false statements; concealment of assets from a receiver; mail fraud; wire fraud; and fraud in connection with Small Business Administration transactions).

30. *Id.* § 1833a(b)(2).

31. United States v. Menendez, No. 11 Civ. 06313, 2013 WL 828926, at *16–17 (C.D. Cal. Mar. 6, 2013).

32. 12 U.S.C. § 1833a(f).

33. *See id.* § 1828(k)(4)(A) (defining golden parachutes as any payment by a covered institution that is "contingent on the termination of such party's affiliation with the institution or covered company; and is received on or after the date on which the insured depository institution or covered company, or any insured depository institution subsidiary of such covered company, is insolvent . . . the institution's appropriate Federal banking agency determines that the insured depository institution is in a troubled condition . . . the insured depository institution is subject to a proceeding

resulting from an administrative or civil action.[34] The FDIC has stated that while a CCO may be indemnified for expenses incurred prior to the commencement of the formal action (the filing of a notice of charges), an institution cannot reimburse (or purchase insurance to reimburse) a director or officer for a civil monetary penalty assessed against them or obtain an endorsement to its policy which is paid for by the director or officer.[35] However, a financial institution may indemnify a CCO for legal expenses attributable to charges for which the compliance officer is found not guilty.[36]

v. Bank Secrecy Act and Recordkeeping

Financial institutions are required to comply with the Bank Secrecy Act and anti–money laundering regulations issued by the Financial Crimes Enforcement Network ("FinCEN"), a bureau of the United States Department of Treasury under Title 31 of the United States Code.[37] The Bank Secrecy Act requires financial institutions in the U.S. to assist the U.S. government in preventing money laundering through record keeping of the cash purchases of negotiable instruments and reporting suspicious activity.[38]

If a domestic financial institution and a director, including a CCO, willfully violates recordkeeping requirements, he or she may be subject to civil penalties up to $100,000.[39] For example, in 2014, FinCEN used this provision to impose a $1 million penalty against the CCO of MoneyGram for willfully violating the requirement to implement and maintain an anti–money laundering program.[40] Unlike other government agencies, FinCEN does not publicly disclose how it assesses a civil monetary penalty and accused parties are not entitled to an administrative hearing on their cases.[41]

initiated by the Corporation to terminate or suspend deposit insurance for such institution.").

34. *Id.* § 1828(k)(1).

35. 12 C.F.R. §§ 308.18, 359(1)–(2) (2016).

36. *Id.* § 359.1(l)(2)(ii).

37. *See generally* 31 U.S.C. (2012).

38. *See generally id*. §§ 5311–5330.

39. *Id.* § 5321(a)(1).

40. *See* Haider, FinCEN Assessment, No. 2014–08 (Dec. 18, 2014).

41. *See* Robert B. Serino, *It's Anyone's Guess How Fincen Determines Fines*, AM. BANKER (Mar. 9, 2016, 12:00 PM), https://www.americanbanker.com/opinion/its-anyones-guess-how-fincen-determines-fines.

An individual, including a CCO, who is found to be willfully in violation of the Bank Secrecy Act may be fined up to $250,000 and/or imprisoned for up to five years.[42] If the Bank Secrecy Act violation is part of a pattern of illegal activity or occurs in connection with another violation involving more than $100,000 in a twelve–month period, the penalties against a CCO rise to $500,000 in fines and a maximum prison term of ten years.[43]

The CCO of a US financial institution may be subject to monetary penalties for any willful or grossly negligent violation of recordkeeping requirements.[44] Violating compliance officers may be subject to fines up to $10,000 per violation.[45] CCOs may also be subject to criminal penalties by the DOJ for willful violation of any regulation under the general recordkeeping requirements for U.S. financial institutions.[46] CCOs face fines up to $1,000, a year in prison, or both if convicted.[47] Additional criminal penalties including fine increases up to $10,000 and up to five years in prison, may be assessed if the CCO's violation is committed in furtherance of another felony.[48]

CCOs who willfully violate the prohibition on structuring transactions to avoid currency reporting requirements are subject to FinCEN civil penalties up to the amount involved in the transaction.[49] A compliance officer who willfully participates in the violation of any reporting requirements for foreign accounts or transactions may be assessed a civil penalty larger than $25,000 or the amount involved in the transaction up to $100,000.[50]

The Secretary of the Treasury will provide protection from liability for all employees or officers including CCOs, who report suspicious transactions that may lead to violations.[51] FinCEN also provides protection from discrimination to CCOs who alert FinCEN of wrongdoing at financial institutions.[52]

42. 31 U.S.C. § 5322(a).
43. *Id.* § 5323(b).
44. 12 U.S.C. § 1955(a) (2012).
45. *Id.*
46. *Id.* § 1956.
47. *Id.*
48. *Id.* § 1956.
49. *See id.* § 1010.820(e).
50. *See id.* § 1010.820(f).
51. 31 U.S.C. § 5318(g) (2012).
52. *See id.* § 5328 (exempting protection from those who deliberately participate in the violation or knowingly provide false information to the authorities).

B. Commodities and Securities Exchange

Financial institutions engaged in selling and purchasing of securities are primarily governed by the DOJ and the Securities and Exchange Commission ("SEC") under Title 15 of the United States Code.[53] A CCO found in violation of the Investment Advisors Act will be given a cease and desist order by the SEC.[54]

i. SEC's Civil Monetary Penalties

The SEC may subject a CCO to civil monetary penalties for willfully violating any provision of the 1933, 1934, and Investment Company Acts, directing or helping another to violate those laws, willfully making a false statement in an application for registration, or failing to reasonably supervise another person who violates those laws.[55] The fines range between $7,500–$80,000 for first tier violations; $80,000–$400,000 for violations involving fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and $160,000–$775,000 for violations that directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.[56]

The SEC does not have a mechanical formula for assessing civil monetary penalties separate from the statute. In fact, in 2012, the D.C. Circuit criticized the SEC for "not provid[ing] a consistent interpretation of the Rule and not justifying the apparent inconsistency of its application."[57]

For example, in 2015, the SEC charged the CCO of BlackRock Advisors LLC, an investment adviser, with causing the firm's compliance–related violations by failing to implement compliance policies and procedures that were reasonably designed to prevent violations of the Advisers Act.[58] The SEC alleged the BlackRock CCO failed to include how compliance violations should be assessed and monitored for conflict purposes, and when conflicts of interest should be disclosed to BlackRock fund's boards and advisory clients.[59] The CCO agreed to pay a $60,000 penalty.[60] Also in 2015, the SEC charged the CCO of SFX Financial Advisory

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53. *See generally* 15 U.S.C. (2012).

54. *Id.* § 80b–3(k).

55. *Id.* § 80b–3(i)

56. *See id.* § 80b–3(i)(A)–(C).

57. Rapoport v. SEC, 682 F.3d 98, 106 (D.C. Cir. 2012).

58. *See* BlackRock Advisors LLC, Investment Advisers Act Release No. 4065, Investment Company Act Release 31,558, 111 SEC Docket 1721 (Apr. 20, 2015).

59. *Id.*

60. *Id.*

Management Enterprises Inc., with failing to implement compliance policies and procedures that should have detected an alleged misappropriation of client assets by an executive at the firm.[61] The SEC further alleged that the CCO was responsible for material misstatements in firm filings and the CCO agreed to pay a $25,000 fine.[62]

Under the Securities Exchange Act of 1934, SEC registered clearing agencies are required by the Commission to appoint a CCO who reports directly to the Board of Directors, administers compliance procedures, resolves conflicts of interest, and supervises company practices.[63] Any individual, including a CCO, who engages in manipulative behavior on which investors rely, is liable for securities fraud as the primary violator.[64] If the SEC finds a CCO in violation of anti–fraud provisions, it may impose a fine on the CCO and temporarily or permanently ban the CCO from acting as a director or officer of any public company.[65] The amount of the civil penalty will be based on whether the CCO recklessly disregarded overseeing a violating individual, or the CCO knowingly or recklessly failed to establish or maintain prevention procedures as mandated by the SEC.[66] If the SEC determines during an investigation that a CCO is in violation, or is going to violate securities law, the Commission may order the CCO to cease and desist from all business conduct.[67] If a CCO "blows the whistle" on corporate misconduct, the SEC will protect the CCO from termination, demotion, or suspension by the violating business.[68]

The SEC may choose to bring an action against a CCO if, within five years of the start of the action, the CCO breached his fiduciary duty with personal misconduct while representing a registered investment company.[69] A CCO who knowingly or recklessly provides assistance to individuals in violation of securities law may also be liable under Title 15.[70] The SEC may hold a CCO liable if he willfully makes untrue statements on required SEC reports and applications.[71] If the CCO is found guilty of making

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61. *See* SFX Fin. Advisory Mgmt. Enters., Inc., Investment Advisers Act Release No. 4116 (June 15, 2015).

62. *Id.*

63. 15 U.S.C. § 78c–3(j) (2012).

64. *Id.* § 78j; *see also In re* Charter Commc'ns, Inc., 443 F.3d 987, 991 (8th Cir. 2006).

65. 15 U.S.C. § 78u(d)(2)–(3).

66. *Id.* § 78u–1(a)(3)–(b).

67. *Id.* § 78u–3(a).

68. *Id.* § 78u–6(h)(1)(A).

69. *Id.* § 80a–35(a).

70. *Id.* § 80a–47(b).

71. *Id.* § 80a–48.

untrue statements, or helping others make untrue statements, he may be barred or suspended from employment in the investment industry.[72]

ii. Private Civil Actions

Under the SEC's governance, purchasers of securities may also bring actions against an issuer including the director, executives, or principal officers (such as a CCO).[73] A CCO may also be liable if he is determined to be a "controlling person" with "actual power and influence" over policy decisions.[74] In 2010, an Administrative Law Judge found as part of an SEC enforcement action that a General Counsel for a brokerage and investment bank was a supervisor.[75] The case against the General Counsel was eventually dismissed, but arguably opened the door to compliance officers and general counsel being labeled as supervisors.[76]

C. Criminal Statutes

The DOJ prosecutes all criminal compliance violations under Title 18 of the United States Code.[77] The DOJ has the ability to prosecute both those who commit an offense and those who aid and abet an offender as a principal.[78] Thus, if a CCO aids or abets the commission of a violation, he or she could be held directly liable.[79] A CCO may also be charged as an accessory after the fact if he knows an offense has been committed and assists the offender to avoid prosecution.[80] Willful concealment or destruction of evidence by a CCO may be prosecuted as obstruction of justice by the DOJ.[81] Officers of lending, credit, or insurance companies who willfully misapply money from the company can be held liable under Title 18 for embezzlement.[82] CCOs who attempt or conspir to commit

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72. *Id.* § 80b–3(f).

73. *See* 15 U.S.C. § 77d–1(c) (2012); *see also id.* § 77k(a).

74. *See id.* § 77o(a); *see also* Wiley v. Hughes Capital Corp., 746 F. Supp. 1264, 1281–82 (D.N.J. 1990).

75. *See* Urban, SEC Rel. No. 402, 2010 WL 3500928, at *44 (ALJ Sept. 8, 2010).

76. Suzanne Barlyn, *SEC drops "supervisor" case against ex-general counsel*, REUTERS (Jan. 27, 2012), http://www.reuters.com/article/us-sec-urban-idUSTRE80Q16N20120127 (explaining the industry in this broad view of "supervisor" makes compliance officers easy targets for the SEC).

77. *See generally* 18 U.S.C. (2012).

78. *Id.* § 2.

79. Nye & Nissen v. United States, 336 U.S. 613, 618 (1949).

80. 18 U.S.C. § 3.

81. *Id.* § 551.

82. *Id.* § 657.

fraud, including knowingly making false material statements, may be held criminally liable by the DOJ.[83] CCOs who knowingly engage in money laundering may also be liable for fines up to $500,000 or twice the value of the laundered property (whichever is greater), and/or up to twenty years imprisonment.[84]

III. COMPLIANCE REGULATIONS

A. Banks and Banking

Banking compliance regulations are issued by the OCC, the FDIC, the Board of Governors of the Federal Reserve, the Treasury Department, and the CFPB, under Title 12 of the Code of Federal Regulations.[85] The OCC requires CCOs to establish a compliance program with a system of internal controls, provide for independent compliance testing, and designate and train individuals responsible for day–to–day compliance.[86] The OCC may bring civil monetary penalties for failure to comply with these consumer protection provisions against a CCO, up to $7,500 for each day the violations continue.[87]

The FDIC may bring civil penalties, for violations of the Change in Bank Control Act in three tiers.[88] Strict liability will be imposed for any violators up to $5,000 per day; persons who recklessly violate the regulations face fines up to $47,340 per day; and persons who knowingly violate the regulation face fines up to $1,000,000 per day.[89] A CCO may also incur civil penalties from the FDIC for false or misleading statements during an investigation.[90]

Financial institutions are also regulated under Title 31 of the United States Code of Federal Regulations by the DOJ and FinCEN.[91] CCOs must take reasonable steps to ensure that their institutions have adequate procedures governing Federal tax matters, and may be liable if he or she willfully, recklessly, or through gross incompetence, fail to do so, or do not take reasonable steps to ensure the procedures are properly followed.[92] Additional liability may be imposed on a CCO if he knows, or should

83. *Id.* §§ 1349, 1623.
84. *Id.* § 1956(a)(1)(ii).
85. *See generally* 12 C.F.R. (2016).
86. *Id.* § 21.21(c)–(d).
87. *Id.* § 30.6(b).
88. *Id.* §§ 308.116, 308.502.
89. *Id.* § 308.116.
90. *Id.* § 308.502(a)(i)–(iii).
91. *See generally* 31 C.F.R. (2016).
92. *Id.* § 10.36(a).

know, that an employee is not complying, and the CCO willfully, recklessly, or through gross incompetence, fails to correct the noncompliance.[93]

CCOs who willfully violate the prohibition on structuring transactions to avoid currency reporting requirements are subject to FinCEN civil penalties up to the amount involved in the transaction.[94] A compliance officer who willfully participates in the violation of any reporting requirements for foreign accounts or transactions may be assessed a civil penalty larger than $25,000 or the amount involved in the transaction up to $100,000.[95]

The SEC may bring its own charges against a swap dealer CCO for failure to complete the duties of a CCO or failure to implement and monitor a compliance program.[96] CCOs who voluntarily submit correct information to the SEC regarding misconduct may be shielded from liability.[97] However, if a CCO knowingly or willingly makes false or fraudulent statements to the SEC, he could be liable for both criminal and civil penalties.[98]

IV. CONCLUSION

While the modern compliance environment is complex to navigate, businesses can look to their CCOs to ensure that their compliance programs align with current legal and regulatory requirements. Although the regulations and laws vary depending on the industry, CCOs should familiarize themselves with these rules to minimize their personal company's liability and the risk to their employers (and its reputation). Positions in compliance are demanding and require a company's top talent to be carried out effectively. However, as analyzed above, the current state of regulatory oversight is ever changing and the potential for significant personal liability upon compliance officers is high. Care must be taken by both industry and regulators to ensure that qualified personnel remain willing to accept the important responsibilities taken on by CCOs.

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93. *Id.* § 10.36(b).
94. *Id.* § 1010.820(e).
95. *Id.* § 1010.820(f).
96. *Id.* §§ 240.13n–11, 255.20.
97. *Id.* § 240.21F–2.
98. *Id.* § 200.311.

both industry and regulators to ensure that qualified personnel remain willing to accept the important responsibilities taken on by CCOs.