

Navigating CCO Liability Risks: ***Tips for staying out of the SEC's Crosshairs***

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Navigating CCO Liability Risks



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Overview

- Panelist Introductions
- Understanding and Defining CCO Liability
- Key Cases and Regulatory Updates
- Tips for Protecting Yourself Against CCO Liability
- Closing Remarks and Audience Q&A

Speakers



Fizza Khan
Chief Executive Officer
Silver Regulatory Associates



Jessica Thayer
Senior Vice President
Starkweather & Shepley

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Panelist Introductions

Fizza Khan, CEO, Silver Regulatory Associates

Fizza Khan is an expert on regulations governing investment advisers, broker-dealers and registered and private funds. As a hands-on leader across the firm's flagship service lines – Regulatory Compliance, ESG and Due Diligence Preparation – Fizza ensures Silver's clients are fully prepared to withstand regulator and investor scrutiny.

Prior to founding Silver, Fizza was the Chief Operating Officer for U.S. Compliance Consulting and a Managing Director at Duff & Phelps. She joined Duff & Phelps in January 2016 as a result of their acquisition of CounselWorks LLC where she was a Partner. At both Duff & Phelps and CounselWorks, Fizza managed the day-to-day provision of compliance services to firm clients and built the foundations upon which advice was given.

Fizza received a Bachelor of Science in Business from Drexel University, where she concentrated on Finance and Economics and published a thesis on the effects of derivative trading regulation. She earned a Juris Doctor from the University of Maryland School of Law.



Fizza Khan
Chief Executive Officer
Silver Regulatory Associates

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Panelist Introductions

Jessica Thayer, Senior VP, Starkweather & Shepley

Jessica is the Senior Vice President and Practice Leader of Starkweather Financial Institutions Risk Solutions. Her team is focused solely on assisting and guiding Banks, Investment Advisors, Mutual Funds, Private Funds, Broker Dealers and Private Equity Firms towards successful and efficient risk transfer solutions. Jessica and the Starkweather Financial Institutions Risk Solutions team are specialists in Directors & Officers Liability, Errors & Omissions, Fidelity, Cyber Security, Employment Practices Liability, and Fiduciary Liability.

Jessica has over 20 years experience in the Financial Institution Professional Lines space. Prior to joining Starkweather, she was a Senior Vice President at Liftman Insurance and Marsh, Inc. where she was responsible for the professional and management liability insurance for all financial institutions in the New England region. At Marsh, she earned client service awards in 2004 and 2005. Jessica was also recently awarded the 2022 Financial Institutions Power Broker Award by Risk & Insurance.

Jessica negotiates and develops terms, conditions and pricing for D&O, E&O, Fiduciary Liability, Employment Practices Liability, Fidelity Bonds, Cyber Security Insurance. Placing both Domestic and International programs; primary and excess. Jessica has worked closely with attorneys to create manuscript policies for clients. In addition, she has provided consultation and policy insight involving complex claims for very large financial institutions.

Jessica received her Bachelor's degree as a Magna Cum Laude graduate from Syracuse University.



Jessica Thayer
Senior Vice President
Starkweather & Shepley

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Understanding and Defining CCO Liability



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Polling Question # 1

Q: How concerned are you about CCO personal liability?

- a) Very concerned.**
- b) Somewhat concerned.**
- c) A little concerned.**
- d) Not concerned at all.**

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Understanding and Defining CCO Liability

- CCOs can be held liable for compliance failures in several ways, including:
 - **Criminal liability**: CCOs can be charged with criminal offenses if they are found to have participated in or facilitated unlawful activities within their organization.
 - **Civil liability**: CCOs can be sued by employees, investors, or other stakeholders if they suffer damages as a result of the firm's noncompliance. CCOs can also face regulatory enforcement actions by government agencies, which can result in fines, penalties, and other sanctions.
 - **Reputation risk**: Compliance failures can damage a firm's reputation, which can also affect the CCO's personal and professional reputation.

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Understanding and Defining CCO Liability

- **Federal Level Oversight:**
 - The U.S. Securities and Exchange Commission (SEC) issued guidance on CCO liability under Rule 206(4)-7 of the Investment Advisers Act of 1940, as amended (the Advisers Act), which requires investment advisers to adopt and implement “written policies and procedures that [are] reasonably designed to prevent violations of the Advisers Act.”
 - However, Rule 206(4)-7 does not specify which elements that investment advisers must include in their policies and procedures in order to meet this requirement.
- **State Level Oversight:**
 - At the state level, CCOs must navigate a patchwork of laws and regulations that vary from jurisdiction to jurisdiction. For example, in California, CCOs can be held liable under the state’s Unfair Competition Law for participating in or approving unfair or fraudulent business practices.

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Understanding and Defining CCO Liability

Who is at Risk?

- Three categories that bring enforcement action against CCOs:
 - 1) CCO has affirmatively participated in misconduct;
 - 2) CCO has helped mislead regulators; and
 - 3) CCO had clear responsibility to implement compliance program and wholly failed to carry out that responsibility.

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Poling Question # 2

Q: How confident are you in managing the personal liability associated with your compliance role?

- a) Very confident.
- b) Somewhat confident.
- c) Not confident.
- d) Do not have personal liability in my current role.
- e) Do not know if I have personal liability in my current role.

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Key Cases and Regulatory Updates that Illustrate the Potential Impact of CCO Liability



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Key Cases and Regulatory Updates that Illustrate the Potential Impact of CCO Liability

Cases:

The two most well-known matters that CCOs should be aware of include **the Kirkpatrick case** and the **Gilder Gagnon Howe & Co. (GGHC) matter**.

- In June 2022, the SEC filed charges against Jeffrey Kirkpatrick, Chief Compliance Officer and Principal of Hamilton Investment Counsel LLC, alleging he aided and abetted in violating the firm's compliance rule violations, pursuant to Section 206(4) and Rule 206(4)-7 of the Advisers Act.
- In the GGHC case, the SEC levied a \$1.7 million fine against GGHC, a dual registered investment adviser and broker dealer (also registered with FINRA), for violations of Section 206(4) and Rule 206(4)-7 of the Advisers Act and found that the CCO "willfully aided and abetted GGHC's violations."

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Polling Question # 3

Q: How closely are you following the regulatory updates coming out of the SEC this year?

- a) Very closely.**
- b) Somewhat closely, but I rely on a third-party partner to update me on new regulations that impact my firm and my role.**
- c) Not closely at all.**

Navigating CCO Liability Risks

Key Cases and Regulatory Updates that Illustrate the Potential Dangers of CCO Liability

Regulatory Updates - Having protections in place are now more important than ever

- New Investment Adviser Rules – What this means and its impact on CCOs right now in today's heightened regulatory environment

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Tips for Protecting Yourself Against CCO Liability



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Polling Question # 4

Q: Do you have any protections currently in place to safeguard yourself against CCO liability?

- a) Yes.**
- b) No.**
- c) I'm not sure where to start or what I need.**

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Tips for Protecting Yourself Against CCO Liability

1) Understanding your Insurance:

- When was the last time you reviewed your D&O/E&O policy?
- Limit Adequacy
- Proper Coverage – E&O is not what will protect your CCO risks
- Indemnification from the firm?
- Are you aware of potential coverage gaps?
- Have you explored dedicated coverage?

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Tips for Protecting Yourself Against CCO Liability Continued

- 2) Avoid too many cooks in the kitchen
- 3) Establish a fail-safe corporate compliance program
- 4) Build a team for scale
- 5) Conduct periodic firm risk assessments
- 6) Ensure employees are well-trained
- 7) Foster a culture of compliance
- 8) Monitor/audit compliance efforts
- 9) Establish an amicable relationship with regulators
- 10) Stay informed on regulatory updates and rule changes

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Closing Remarks and Audience Q&A



Questions & Answers

Thank You

 Fizza Khan

 +1 (646) 838-1718

 fkhan@silverreg.com

 Jessica Thayer

 [+1 (207) 831-8776

 jthayer@starshep.com

Please feel free to contact us if you have any questions.

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