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THE WATCHDOGS ARE BEING WATCHED

An increasing number of enforcement actions against CCOs for their organizations' misconduct has focused attention on their duties and responsibilities. The authors address this subject, giving an overview of the role of CCOs, recent enforcement actions against them, and theories of liability in the cases. They close with specific actions CCOs are advised to take to mitigate such risks.

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Today's fast-growing and complex business reality has raised great concerns about corporate integrity and ethics. Regulators have promulgated numerous regulations and rules to ensure that businesses are operating within the legal boundaries, and enforcement actions have been taken against wrongdoers who have crossed the line. A particular role, the chief compliance officer ("CCO"), has been created to serve as a watchdog to meet corporate compliance needs. While traditionally compliance officers are seen as "partners" of enforcement authorities, an increasing number of enforcement actions against CCOs has indicated that the watchdogs are being watched too, generating CCOs' fear of personal liability for their organizations' misconduct.

This article gives an overview of the role of CCOs, reviews the recent trend in enforcement actions against CCOs, examines the circumstances under which CCOs are held liable for corporate misdeeds, and provides advice to CCOs to protect against exposure to personal liability.

I. BACKGROUND

A. What Does It Mean to be a CCO?

The CCO of a company is the officer primarily responsible for overseeing and managing regulatory compliance issues within an organization. The CCO, as a "watchdog," plays an important role in ensuring corporate integrity and ethics in conducting business. CCOs have been tasked with a number of responsibilities, such as developing and implementing policies and procedures for the organization to meet regulatory requirements, investigating disclosures of noncompliance and suspected misdeeds, assessing noncompliance risks, and reporting misconduct to senior management and the government (when necessary).

Historically a company's general counsel performed many of the duties of the compliance officer. Today it is increasing practice that their functions are distinct and roles are independent of each other. The general counsel

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