

# The SEC's Latest CCO Case and the Ongoing Need for a Framework

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On June 30, 2022, the SEC filed a [settled action](#) against Hamilton Investment Counsel, LLC (the "Firm") and its chief compliance officer ("HIC CCO"). Notably, the SEC charged the HIC CCO with willfully aiding and abetting the Firm's violations of Section 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-7 thereunder – or more simply stated, the SEC charged the HIC CCO with aiding and abetting the Firm's compliance rule violations. The primary underlying conduct involved compliance failures related to an investment advisory representative ("IAR") not disclosing outside business activities to the Firm.

Other key aspects of the order instituting proceedings include:

- The HIC CCO served as the principal of the Firm, and a registered representative associated with the broker-dealer used by the Firm;
- The SEC charged the HIC CCO with aiding and abetting, not causing or failure to supervise;
- The HIC CCO allegedly became aware of the IAR's outside business activities and failed to formally report such activities on multiple occasions;
- The charges against the Firm were limited to compliance rule violations; and
- No allegations of client harm were alleged.

While cases against chief compliance officers are historically rare, past cases have involved individuals who serve in various roles at firms or "wear multiple hats." That is consistent with the facts here. What is novel about this case, however, are the charges only focus on aiding and

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abetting, and the violations only involve the compliance rule itself, as opposed to more egregious conduct involving client harm.

Commissioner Hester M. Peirce issued a [statement](#) with the release of this settled action. While Commissioner Peirce opened her statement by supporting the settlement, she then repeated concerns that she had previously raised publicly regarding the “importance of thinking carefully about when to impose liability against a [chief compliance officer].” In her statement, Commissioner Peirce referenced the [framework proposal of the Compliance Committee of the New York Bar Association](#) (“NY Bar Framework”), which, in summary, focuses on the following factors:

- *Did the CCO not make a good faith effort to fulfill his or her responsibilities?*
- *Did the Wholesale Failure relate to a fundamental or central aspect of a well-run compliance program at the registrant?*
- *Did the Wholesale Failure persist over time and/or did the CCO have multiple opportunities to cure the lapse?*
- *Did the Wholesale Failure relate to a discrete specified obligation under the securities law or the compliance program at the registrant?*
- *Did the SEC issue rules or guidance on point to the substantive area of compliance to which the Wholesale Failure relates?*
- *Did an aggravating factor add to the seriousness of the CCO’s conduct?*

Applying the NY Bar Framework to her view of the facts, Commissioner Peirce concluded that this settled action “lays out a sound basis for concluding that the [HIC CCO’s] conduct here fell materially short.” She closed by encouraging engagement “on designing a properly calibrated CCO liability framework....”

Commissioner Peirce’s call to action is the latest in a line of efforts to clarify this controversial area that dates back for years:

- On September 30, 2013, the SEC’s Division of Trading and Markets issued guidance with “FAQs” entitled “[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.](#)”
- On November 4, 2015, the then Director of the Division of Enforcement gave the [keynote address at the 2015 National Society of Compliance Professionals, National Conference](#), in which he described a limited number of categories regarding the infrequent circumstances in which the SEC would consider charging a CCO.
- In addition to the NY Bar Framework, within this past year, the National Society of Compliance Professionals (“NSCP”) offered its “Firm and CCO Liability Framework” (information available on NSCP’s website [here](#)).
- More recently, on March 17, 2022, FINRA released its [Regulatory Notice 22-10](#) with the subtitle, “FINRA Reminds Member Firms of the Scope of FINRA Rule 3110 as it pertains to

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the Potential Liability of Chief Compliance Officers for Failure to Discharge Designated Supervisory Responsibilities.”

With the HIC CCO only being charged with aiding and abetting a compliance rule violation based on facts and circumstances that did not involve fraud or customer harm, the need for a better framework and more certainty continues to increase in importance for the compliance industry.

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