



Personal liability – a phrase that strikes fear in the heart of every CCO. The best approach to minimizing a CCO’s personal liability is to avoid being deemed a supervisor. The industry’s collective attention refocused on the potential for CCO supervisory liability following the case *In the Matter of Theodore W. Urban*, Initial Decision Release No. 402 (Sept. 8, 2010).

Interestingly, Section 203(e)(6) of the Investment Advisers Act provides an opportunity for CCOs to avoid liability for failure to supervise a bad actor, provided CCOs properly discharge their duties and obligations. As Section 203(e)(6) does not explicitly state what it means to discharge duties and obligations, we have compiled our Top Ten best practices to assist in reducing personal liability.

1. While the CCO maintains policies and procedures, they should be owned by the applicable business lines. Whenever possible, ensure business function responsibilities are assigned to someone residing in the business function, rather than the CCO.
2. The CCO should not serve as a voting member of most oversight committees; rather serve in an advisory role where possible.
3. Ensure policies and procedures are current.
4. Document, document, document – every violation, concern and material discussion.
5. Be open with management regarding your documentation; don’t keep violations to yourself. Also, communicate violations discovered and resolutions discussed in written form to the violator, with a copy to the individual’s supervisor.
6. Form and actively use a compliance committee to spread your compliance risk among applicable members of the firm (and for developing and maintaining a more robust compliance program).
7. Conduct annual review and testing, and update the compliance program promptly.
8. Actively work with external parties (including counsel and consultants) to ensure your compliance program is consistent with industry best practices.
9. Attend conferences and join compliance organizations to ensure you remain current.
10. Implement an education program. Rather than ad hoc education, consider implementing risk-based education specifically targeting business lines within the firm, focusing on matters of importance to those groups.

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