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Compliance Today - May 2022
Making it illegal to mislead the CCO?

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Would a law that makes it illegal to mislead the chief compliance officer (CCO) help or hinder the mission of the compliance function? We may find out, albeit on a very limited scale, if one recent proposal comes to fruition.

In December,[1] the U.S. Securities and Exchange Commission re-proposed a series of anti-fraud rules applicable to security-based swap (SBS) entities—later published in a February *Federal Register*.[2] Included with those rules is a new proposal aimed at protecting the independence and objectivity of the CCOs of SBS entities. The proposed Rule 15Fh-4(c) would "make it unlawful for any officer, director, supervised person, or employee of an SBS Entity, or any person acting under such person's direction, to directly or indirectly take any action to coerce, manipulate, mislead, or fraudulently influence the SBS Entity's CCO in the performance of their duties under the Federal securities laws or the rules and regulations thereunder."

The rule, of course, would only apply to a small fraction of US companies—only SBS entities. But it raises the question of whether such a rule would benefit or harm the compliance profession if enacted on a broader level.

We've all heard numerous reports of CCOs being threatened and manipulated, as well as being misled and having critical information withheld from them. Making it illegal to do so would certainly provide a tremendous boost to the support of the CCO position. It would elevate the CCO's independence and authority to a new level.

But this would not come without some potential problems. How the Securities and Exchange Commission or any other government agency would determine which actions fall within the boundaries of "coerce, manipulate, mislead, or fraudulently influence" is probably the most notable. But, having such a rule in place could also lead to a reduction in business units' and executives' willingness to communicate with CCOs, out of fear that their actions could be interpreted as violating this rule. And we all know that this communication is critical to the success of a compliance and ethics program.

If it is implemented, I'll be watching this area very closely. I am skeptical that its benefits would outweigh the costs. Is it just what the compliance profession needs to give it better support, or is it a step too far and one that results in isolation of the compliance function?

1 U.S. Securities and Exchange Commission, "SEC Proposes Rules to Prevent Fraud in Connection With Security-Based Swaps Transactions, to Prevent Undue Influence over CCOs and to Require Reporting of Large Security-Based Swap Positions," news release, December 15, 2021, https://www.sec.gov/news/press-release/2021-259.

2 Prohibition Against Fraud, Manipulation, or Deception in Connection With Security-Based Swaps; Prohibition Against Undue Influence Over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions, 87 Fed. Reg. 6,652, 6,656 (February 4, 2022) .