

CCO Annual Reports: What You Need to Know

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Today's Speakers



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Today's Agenda

- CCOs: Who? What? Why?
- CCO Best Practices
- CFTC Materials – Regulation, Advisories, Statements
- CFTC Regulation 3.3(e) – Content Requirements
- Questions & Answers



CCO Best Practices

- Identify Your VIPs.
 - Who is the CEO/senior executive? Who is the CCO?
 - Are they identified in the annual report?
 - Do these names match NFA Form 8-R?
- Get your dates right.
 - Does your report include the specific dates of coverage?
 - Do those dates match the most recently completed fiscal year?



Who is the CCO?

17 CFR 3.3

(a) Designation. Each FCM/SD/MSP shall designate an individual to serve as its chief compliance officer, and provide the chief compliance officer with the responsibility and authority to develop, in consultation with the board of directors or the senior officer, appropriate policies and procedures to **fulfill the duties** set forth in the Act and Commission regulations . . . and to **ensure compliance** with the Act and Commission regulations.

(b) Qualifications. The individual designated to serve as chief compliance officer shall have the background and skills appropriate for fulfilling the responsibilities of the position. No individual disqualified, or subject to disqualification, from registration under section 8a(2) or 8a(3) of the Act may serve as a chief compliance officer.



What is the role of the CCO?

“[T]he role of the CCO, under the Dodd-Frank Act, goes beyond the customary and traditional advisory role of a CCO and requires more active engagement. The Commission expects the CCO to be **actively engaged** in administering a firm’s compliance policies and procedures[.]” (83 FR at 43512)

“[A] CCO cannot reasonably be expected to have sole and complete responsibility for ensuring compliance with the Act and the relevant regulations. . . **[the rule] does not require the CCO to guarantee compliance or be granted final supervisory authority.**” (83 FR at 43514)



What is the purpose of the CCO annual report?

The annual requirement to compile in a single document the results of a registrant's compliance policies and procedures should serve as an efficient means to focus

the registrant's board and senior management on areas requiring additional compliance resources or changes to business practices;

the CCO annual report also will provide the Commission with a detailed overview of the state of compliance of the industry as a whole.

(77 FR at 20190)



CCO Best Practices

- Start by looking backwards. (Your regulator will!)
 - Be sure to review last year's identified areas for improvement and material noncompliance disclosures.
 - Does this year's report track from last year? Have you made progress? Do you need to amend timelines?
 - How do your resource allocations this year compare to last year?
 - Do they present a culture of compliance?
 - Do they explain any material changes?



CFTC Materials

- November 2010 NPRM (75 FR 70881)
- April 2012 Adopting Release (77 FR 20127)
- December 2014 Advisory (CFTC Letter No. 14-153)
- May 2017 NPRM (82 FR 21330)
- August 2018 Adopting Release (83 FR 43510)
- 2018 Guidance (83 FR at 43523, Appendix C)
- December 2019 Advisory (CFTC Letter No. 19-24)
- January 3, 2020 DSIO Director's Statement



CFTC Rule 3.3 – CCO Duties

17 CFR 3.3(d):

(d) Chief compliance officer duties. The chief compliance officer's duties shall include, but are not limited to:

(1) **Administering** each of the registrant's **policies and procedures** relating to its business as a futures commission merchant, swap dealer, or major swap participant that are required to be established pursuant to the Act and Commission regulations;

(2) In consultation with the board of directors or the senior officer, **taking reasonable steps to resolve material conflicts of interest** relating to the registrant's business as a futures commission merchant, swap dealer, or major swap participant that may arise;

(3) **Taking reasonable steps to ensure compliance** with the Act and Commission regulations relating to the registrant's business as a futures commission merchant, swap dealer or major swap participant;

(4) **Taking reasonable steps to ensure the registrant establishes, maintains, and reviews written policies and procedures reasonably designed** to remediate noncompliance issues identified by the chief compliance officer through any means, including any compliance office review, look-back, internal or external audit finding, self-reporting to the Commission and other appropriate authorities, or complaint that can be validated;

(5) **Taking reasonable steps to ensure the registrant establishes written procedures reasonably designed** for the handling, management response, remediation, retesting, and resolution of noncompliance issues; and

(6) **Preparing and signing** the annual report required under paragraphs (e) and (f) of this section.



What are “Reasonable Steps”?

“Whether the CCO’s activities constitute ‘reasonable steps’ depends on the facts and circumstances of the Registrant’s related business activities, such as the size of the business, the diversity and complexity of the swaps or FCM activities, and the overlap with other compliance activities in the firm (e.g., where swap dealing activities may be contained within business lines that are subject to additional regulation outside the CEA).”

- includes active engagement in the day-to-day implementation of compliance policies and procedures.
- would likely include a reasonable level of involvement in compliance monitoring, identifying non-compliance or potential noncompliance events, advising on the mitigation and correction of compliance activities, and, where necessary, escalating significant matters that require senior management attention.

(83 FR at 43514)



CFTC Letter 19-24

What Does it Mean?

“The goal of this advisory is to foster better compliance with the Commission’s regulations.”

“Emphasis of these recommendations in this advisory . . . will help to ensure that the Registrant is in compliance with the Commission’s regulations.”

January 3, 2020 Statement:

“The Advisory is merely guidance and does not impose any new requirements . . . DSIO expects that CCOs will take reasonable measures to implement the Advisory’s recommendations when preparing their annual compliance reports for 2019 . . . DSIO does expect, however, that CCOs will be able to consider those recommendations more completely when preparing their 2020 annual reports, which will be due in 2021.”



CCO Best Practices

- Did you certify the right way?
 - Copy and paste the certification statement from 3.3(f)(3).
- You don't need to include **“the chart.”**
 - But continue to use for internal tracking purposes.
- Cite the corresponding CFTC rules.
 - For areas for improvement with regulatory requirements.



3.3(e)

Content Requirement for CCO Annual Reports

1. Written Policies and Procedures (including Code of Ethics & Conflicts of Interest)
2. Assessment of Effectiveness of Policies & Procedures
3. Areas for Improvement, Changes to Program/Resources
4. 4 Categories of Resources
5. Material Noncompliance Issues
6. Material Changes to Policies & Procedures



CCO Annual Report - WPP

17 CFR 3.3(e)(1)

The written policies and procedures of the futures commission merchant, swap dealer, or major swap participant described in paragraph (d) of this section, including the code of ethics and conflicts of interest policies.



CCO Annual Report – Assessment of Effectiveness

17 CFR 3.3(e)(2)

The futures commission merchant's, swap dealer's, or major swap participant's assessment of the effectiveness of its policies and procedures relating to its business as a futures commission merchant, swap dealer or major swap participant.



CCO Annual Report – Areas for Improvement

17 CFR 3.3(e)(3)

Areas for improvement, and recommended potential or prospective changes or improvements to its compliance program and resources devoted to compliance.



CCO Annual Report – Areas for Improvement

CFTC Letter 19-24

Commission regulation 3.3(e)(3) consists of two distinct components.

- (1) identify and discuss the area(s) needing improvement, including the basis for each recommended area(s) for improvement.
- (2) discuss what changes the CCO is recommending to address such area(s), including the proposed improvements and the time frame for their implementation.

The discussion should include cross-references to the regulations that the area(s) for improvement and recommended changes would address.

“Registrants that are reporting compliance issues not rising to the level of material non-compliance should report those issues as areas for improvement.”



CCO Annual Report – Areas for Improvement

CFTC Letter 19-24

Identified Deficiencies:

- Areas for improvement in a standalone section with explanatory information, including areas or initiatives the CCO has identified that are intended to help facilitate compliance
- Why does the identified deficiency need improvement?
- What CFTC regulation is associated with the area for improvement?
- What are the recommended changes to address each area for improvement?
- What resources are needed?
- What is the projected timeline?



CCO Annual Report – Resources

17 CFR 3.3(e)(4)

The financial, managerial, operational, and staffing resources set aside for compliance with respect to the Act and Commission regulations relating to its business as a futures commission merchant, swap dealer or major swap participant, including any **material deficiencies** in such resources.



CCO Annual Report – Resources

CFTC Letter 19-24

- Discussion should address, specifically, four areas: financial, managerial, operational, and staffing resources.
- Discussion should include information specific to the Registrant, not just at the parent or enterprise level.
- Discussion should include a reasonable estimate for the portion of aggregated resources dedicated to the Registrant’s compliance activities for the CEA and CFTC Rules.
- **Operational Resources:** “the most useful discussions would include a description of the software, including the name of the specific software used for compliance purposes, how the software is used by personnel, and how the software fits into the entity’s overall regulatory compliance program.”



CCO Annual Report – Material Noncompliance

17 CFR 3.3(e)(5)

Any material noncompliance issues identified and the corresponding action taken.



CCO Annual Report – Material Noncompliance

CFTC Letter 19-24

- What is the Registrant’s standard of materiality?
- How are material noncompliance matters identified?
 - “Identified” means by internal self-assessment or external entity (e.g., NFA).
 - CCO Annual Reports should also include any material findings from the Registrant’s own self-evaluation, not just the designated SRO.
 - Consecutive annual reports with only externally-identified material non-compliance issues will raise flags at the CFTC.



CCO Annual Report – Material Changes

17 CFR 3.3(e)(6)

Any material changes to compliance policies and procedures during the coverage period for the report.



CCO Annual Report – Material Changes

CFTC Letter 19-24

“An effort should be made to identify those changes to the policies and procedures that are material, as that term is defined and discussed by the Registrant in its CCO Annual Report.”



CCO Best Practices

- Communication is your friend.
 - Maintain a written record of transmittal of the report to the board of directors/senior officer and the audit committee (or equivalent body).
 - If the Registrant does not have an audit committee (or equivalent body), include a statement to that effect in the annual report.
- Ethics? Conduct?
 - If your firm follows a code of ethics or code of conduct (even if at the enterprise level), include it among your policies and procedures, with an assessment of its effectiveness.



Questions?

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