

SEC Judge Lenient Toward Compliance Employee

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Previously, we described how some recent SEC officials' enforcement actions and statements could suggest a movement toward holding chief compliance officers (CCOs) strictly responsible for legal violations their compliance procedures fail to prevent. See [“SEC Commissioners Making a Noisy Exit”](#) in the Summer 2015 *Expect Focus*. Most SEC commissioners, however, maintain that the SEC only brings enforcement actions against CCOs who have engaged in egregious misconduct. Recently, SEC administrative law judge Cameron Elliott entered the fray, dismissing the SEC Enforcement Division's case against an experienced, but relatively junior, Wells Fargo Advisers compliance employee. The Division alleged that the employee retroactively altered a document to make her review of an instance of insider trading appear more thorough, and then lied about it to the SEC. Although determining that the employee had thus aided, abetted, and caused securities law violations by Wells Fargo, the ALJ refused to impose any sanction on her. He noted that the testimony indicated that at least two levels of the employee's compliance department supervisors also “could have been charged with the same misconduct” and that imposing the sanction the Division requested could send a message to the industry that the Wells Fargo breach was one employee's fault, and not attributable to systemic problems. Further, the **ALJ concluded that excessive sanctioning of compliance personnel could discourage competent individuals from entering the field, especially since firms tend to compensate compliance personnel “relatively poorly.”** It would be a mistake, however, for CCOs to take much comfort from this opinion, as the ALJ clearly signaled a greater willingness to sanction more senior compliance personnel, particularly well-compensated ones.

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