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Chief Compliance Officers Beware

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In recent years, financial regulators have increasingly taken enforcement action against chief compliance officers (CCOs) and others in compliance oversight roles, rather than just against their employers.

In the Matter of Windsor Street Capital, L.P., initiated in January of this year, is a case in point. There, the SEC alleged that a broker-dealer firm violated the Securities Act of 1933 by engaging in dozens of non-exempt unregistered penny-stock sale transactions. The SEC further alleged that the firm violated requirements under the Securities Exchange Act of 1934 by failing to file anti-money laundering (AML) suspicious activity reports (SARs) in connection with such transactions and that the firm's CCO aided, abetted, and caused those AML violations.

That the SEC charged the CCO with complicity in the AML violations (but not the Securities Act violations) may have been partly because the CCO also served as the AML officer under the firm's AML program and, in that capacity, was directly responsible for monitoring clients' suspicious trading activity and ensuring compliance with SAR reporting requirements. Moreover, the SEC alleged that the firm had strong indicia that its clients' penny-stock sales entailed suspicious trading activity under the firm's AML program, as well as under FINRA and SEC guidance, and that the firm and the CCO ignored these "red flags."

This case is consistent with other recent actions where the SEC charged CCOs for gross failure to perform specific responsibilities assigned to them under firm policies. In *In the Matter of Susan M. Diamond*, the CCO was sanctioned for misrepresentations in the firm's Form ADV, which falsely claimed three funds advised by the firm underwent annual audits, where the CCO was responsible for preparing and filing the form. The SEC, however, remains less likely to charge CCOs based on compliance failures in which the CCO is less directly and seriously implicated.