

# MARSH'S CHIEF COMPLIANCE OFFICER PERSONAL LIABILITY PROTECTION



Chief compliance officers (CCOs) face a growing likelihood of being held personally liable for corporate failures and violations. Federal regulators are transforming their approach to CCO liability, going beyond enforcing primarily intentional violations. Now, they are pursuing cases of negligence where the CCO was not involved or aware of the wrongdoing. Recent enforcement actions from the US Securities and Exchange Commission (SEC) and other regulatory agencies reflect this trend. In one case, the US Department of Treasury sought \$1 million in penalties against a CCO who allegedly failed to prevent, detect, or report fraudulent conduct.

In such an environment, as a CCO, have you considered how your personal assets may be at risk? What insurance protections are in place to cover your potential legal fees and settlement and judgment costs? Although directors and officers (D&O) liability insurance may provide some coverage for CCOs, it may not go far enough. To address this need, Marsh developed dedicated personal asset protection specifically for CCOs.

## INCREASING RISKS FOR CCOS

Historically, enforcement actions against CCOs were fairly rare. They usually involved intentional wrongdoing

and/or attempts to cover up violations. Now, individuals are increasingly held accountable over corporate mishaps, falling stock prices, and regulatory compliance issues. For example, regulatory enforcement priorities such as the 2015 "Yates Memo" from the US Department of Justice provide specific guidance about naming and prosecuting individuals in cases of wrongdoing.

Taken together with other enforcement signals and a series of aggressive SEC actions, CCOs are questioning the potential scope of their personal liability.

### Who it's for

CCOs of:

- Publicly traded companies.
- Financial institutions in particular.
- Any company regulated by the SEC.

### What you get

- Exclusive personal asset protection for the CCO.
- Tailored coverage for the duties and responsibilities of the CCO.
- Coverage for fines and penalties and defense costs.
- Highly favorable insurability language.

## EXISTING POLICIES MAY BE INADEQUATE

CCOs are concerned about whether they can rely on corporate indemnification and insurance to pay for defense costs and any settlement or judgment that may result if they are pursued for unintentional wrongful conduct. To address some of these concerns, organizations purchase the below policies, but are they enough?

**D&O liability insurance:** The policy is shared among all officers and directors — and in some cases, the company and certain employees as well — for securities or a broader set of claims. In the event of a multifaceted regulatory and/or litigation situation, insurance proceeds may erode and be insufficient to protect the CCO.

**Side-A difference-in-coverage (DIC) insurance:** The policy is dedicated only to the company's officers and directors and includes broader coverage and narrower exclusions. However, potential issues remain as to the sharing of limits among all the officers and directors and whether fines and penalties are covered.

## MARSH'S CCO PERSONAL LIABILITY PROTECTION COVERAGE DETAILS

Marsh's solution is devoted to personal asset protection for the CCO. Our CCO personal liability protection is excess insurance that sits above a D&O liability policy. It is underwritten by a collection of prominent global D&O insurers, and has the following unique aspects:

- No sharing of limits with other officers, directors, employees, or the entity. The policy is purchased by the company exclusively for the protection of the CCO; the CCO is the named insured.
- Explicit identification of the CCO's job responsibilities and specified coverage for allegations of failure to properly perform same.
- Difference-in-conditions (DIC) drop-down feature in the event that underlying D&O insurance does not respond.

Marsh is one of the Marsh & McLennan Companies, together with Guy Carpenter, Mercer, and Oliver Wyman.

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- Exclusions limited to prior intentional criminal acts and prior knowledge.
- Coverage for fines and penalties (to the extent legally insurable), in addition to defense costs.
- Highly favorable insurability language.

## INNOVATIVE SOLUTIONS FOR EVOLVING RISKS

Marsh's CCO personal liability coverage can assist organizations to attract and retain talented executives by helping to protect them from unique exposures. CCOs should understand well in advance of any regulatory action — perhaps at the time of negotiating employment — what corporate and insurance protections are in place. Marsh's CCO personal liability protection provides the right coverage to serve the evolving needs of the CCO.

For more information on Marsh's CCO personal liability protection, contact your Marsh representative or:

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