

# Actualités

## FOCUS

### 149 Challenges, Risks, and Potential Liabilities for CCOs

On September 12, 2019, the U.S. Commodity Futures Trading Commission (CFTC) settled charges against Raphael Marconato of Limeira, Sao Paulo, Brazil. As Chief Compliance Officer (CCO) of a registered commodity pool operator and commodity trading advisor ("Trading Firm"), Marconato, along with the Trading Firm's CEO, fraudulently solicited participants to invest in commodity pools, and misappropriated their accounts. When the National Futures Association (NFA), the self-regulatory organization for the U.S. derivatives industry investigated the Trading Firm, Marconato lied to the NFA to assist the CEO in concealing this fraud. As a result of this settlement, Marconato was ordered to pay \$125,000 in restitution, and a \$25,000 civil money penalty for fraud and making false statements. In addition, he is barred from engaging in commodity trading and from the commodity industry. The settlement recognizes Marconato's cooperation with the CFTC, and requires his ongoing cooperation in ongoing litigation against other parties. Lastly, it is important to note the collaboration between prosecutors and regulators, including DoJ, the

FBI, NFA, CFTC, as well as Comissao de Valores Mobiliarios of Brazil. In today's environment, cross border cooperation by enforcement authorities is on the rise. James McDonald, Director of Enforcement at CFTC, said: "The reach of our enforcement efforts does not stop at our borders - we will root out fraud and misconduct in our market no matter where it originates".

Without question risks in today's world are rising, as are the expectations of enforcement authorities. In a perfectly transparent world, there are no secrets, and there is no place to hide. CCOs are on the front line of managing organizational risk and preserving reputation capital. In this environment, the challenges, risks and potential liabilities for CCOs are growing. Foremost among the many obligations and responsibilities of CCOs (see *Fraud Section in the Criminal Division of the United States Department of Justice, Evaluation of Corporate Compliance Programs, April 2019 : H. Chen, Towards Outcome-Focused Evaluation in Rev. int. Compliance 2018, act. 76*) is "independence". I have long said independence is a state of mind. For many years in my career, I carried a letter of resignation in my pocket. It was liberating.

The psychoanalyst Erich Fromm once wrote: "We are what we are devoted to, and what we are devoted to motivates our conduct." Marconato clearly was motivated by money, at least, at the expense of the defrauded investors, as well as his own worth and dignity. His mistaken loyalty to the Trading Firm in general, and specifically to the CEO, was corrupting. Joseph Campbell writes: "This is the threat to our lives. We all face it. We all operate in our society in relation to a system. Now is the system going to eat you up and relieve you of your humanity, or are you going to be able to use the system for human purpose?".

I came across a blog positing a few years ago entitled: "If you ever cross over the line, you can never come back". Indeed, in business and in life, our first instinct must be our best instinct. The author in this short blurb goes on to say that if you are confronted with a challenging and potentially dangerous ethical dilemma and make the right choice, it is likely your values will be hardened and affirmed, and you will never be challenged again.

**Keith T. DARCY,**  
President of Darcy Partners Inc.  
[linkedin.com/in/keith-darcy-b8b6a93](https://www.linkedin.com/in/keith-darcy-b8b6a93)