

SEC's OCIE Announces Examination Priorities for 2017

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The Securities and Exchange Commission (SEC) recently announced the 2017 examination priorities of its Office of Compliance Inspections and Examinations (OCIE). OCIE's 2017 examination areas are informed in part by OCIE's priorities from 2016 and will focus centrally on (1) examining matters of importance to retail investors; (2) focusing on risks specific to elderly and retiring investors; and (3) assessing market-wide risks. In particular, the SEC has highlighted electronic investment advice, wrap fee programs, and share class selection as important priorities with respect to protecting retail investors in 2017.

Protecting Retail Investors

OCIE noted that it is pursuing a "variety of examination initiatives to assess potential risks to retail investors" in 2017. In this regard, OCIE's new area of focus in 2017 is the examination of "robo-advisers" – advisers that provide electronic investment advice to retail investors – in addition to other investment advisers and broker-dealers that "primarily interact with clients online" and use "automation" as part of their services. Specifically, OCIE examinations of such advisers will focus on compliance programs

(including compliance for algorithms), marketing, formulation of investment recommendations, data protection, and disclosures relating to conflicts of interest.

Separately, OCIE looks to expand its focus on protecting retail investors by conducting examinations of registered investment advisers and broker-dealers associated with "wrap fee" programs. Specifically, OCIE looks to determine whether such advisers are "acting in a manner consistent with their fiduciary duty" and "whether they are meeting their contractual obligations to clients."

OCIE also looks to broaden the Never-Before Examined Advisers initiative to include "focused, risk-based examinations of newly registered advisers as well as of selected advisers that have been registered for a longer period but have never been examined by OCIE."

Finally, OCIE will continue several programs and initiatives from prior years, including: (1) examinations of exchange-traded funds and multi-branch advisers, (2) targeting individuals and investment advisers that are repeat offenders of the securities laws, and (3) examining conflicts of interests arising from

mutual funds that issue multiple share classes. In particular, OCIE has stated that RIAs with multi-branch locations pose unique risks with respect to design and implementation of a compliance program.

Focusing on Senior Investors and Retirement Investments

In 2017, OCIE aims to give "increased attention to issues affecting senior investors and those investing for retirement." In this area, OCIE will continue its ReTIRE program launched in June 2015; this year, examinations will likely focus on "registrants' recommendations and sales of variable insurance products as well as the sales and management of target date funds," in addition to controls related to cross-transactions. OCIE will also continue its focus on public pension advisers, and, this year, OCIE will emphasize evaluation of how firms "are managing conflicts of interest and fulfilling their fiduciary duty" in addition to "pay-to-play and undisclosed gifts and entertainment practices."

With regard to senior investors, OCIE will specifically evaluate "how firms manage their interactions with senior investors," and

examinations will likely focus on supervisory programs and controls related to investment products targeted to senior investors.

Assessing Market-Wide Risks

OCIE's efforts in maintaining fair, orderly, and efficient markets will include examinations of or be related to (1) oversight of compliance policies and procedures related to money market funds, (2) select broker-dealers, with an eye to compliance with their duty of best execution, and (3) clearing agencies designated as systemically important, pursuant to the requirements of the Dodd-Frank Act.

OCIE intends to continue its focus on cybersecurity, testing, and assessing firms' implementation of cybersecurity procedures and controls. OCIE also plans to (1) continue examining Regulation Systems Compliance and Integrity ("Regulation SCI") entities, (2)

continue inspecting national securities exchanges, and (3) enhance its oversight of FINRA. In addition, OCIE will continue to examine broker-dealers to assess whether anti-money laundering policies are tailored to the "specific risks that a firm faces."

Additional Priorities

Finally, OCIE expects to allocate examination resources to municipal advisors, transfer agents, and private fund advisers. The examination of municipal advisers will focus on compliance with SEC and Municipal Securities Rulemaking Board rules, while the examination of transfer agents will, among other things, focus on "detecting issuers that may be engaged in unregistered, non-exempt" securities offerings. Examination of private fund advisers will generally focus on "conflicts of interest and disclosure of conflicts," with a specific emphasis on actions that "benefit the

adviser at the expense of investors."

Conclusion

New highlights for 2017 include electronic investment advice, wrap fee programs, and FINRA oversight. Cybersecurity, AML, and protecting senior investors continue to be important priorities for 2017. OCIE continues to include broker-dealers, RIAs, and private funds on its list of priorities, with issues ranging from retail sales to market risk.

Financial firms should be advised that OCIE'S 2017 examination priorities are not exhaustive and may be adjusted in light of market conditions, industry developments, and OCIE's ongoing risk assessment activities.

Please contact the authors for information regarding the OCIE examination process and strategies to prepare for such examinations.



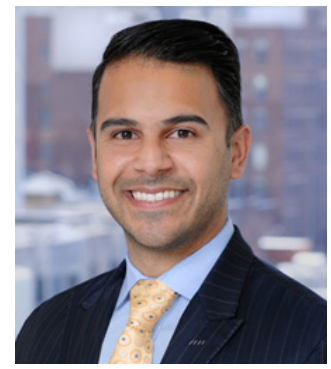
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