SEC Office of Compliance Inspections and Examinations Announces 2019 Exam Priorities

By Daren R. Domina | February 1, 2019

RELATED PRACTICES Investment Banking and Broker Dealer, Investment Management

Recently, the Office of Compliance Inspections and Examinations ("OCIE") of the U.S. Securities and Exchange Commission ("SEC") released its annual examination priorities for 2019. The six general themes for 2019 investment adviser and broker-dealer priorities are:

1. Compliance and risk in registrants responsible for critical market infrastructure
2. Digital Assets (including cryptocurrencies, coins and tokens)*
3. Cybersecurity
4. Anti-Money Laundering
5. Matters of importance to retail investors (including seniors and those saving for retirement)
6. Select areas and programs of FINRA and MSRB

   ** Indicates new examination priority for 2019*

The themes are non-exhaustive and the scope of 2019 examinations will continue to be risk-based and focus on key areas of SEC oversight such as disclosure of services, fees, expenses, conflicts of interest and trading and execution quality issues.

Never-Before-Examined and Not-Recently Examined Advisers – OCIE will continue to prioritize examining investment advisers that have never been examined or that have not recently been examined and may have grown substantially or changed business models.

Portfolio Management and Trading – OCIE will focus on advisers' practices for executing transactions, fairly allocating investment opportunities, ensuring consistency of investments with client objectives and disclosing critical information to clients. OCIE will also assess investment and trading strategies for (i) suitability for the client, (ii) dated or accurate disclosures, (iii) the adequacy of risk disclosures for risky investments or products and (iv) appropriate risk monitoring.

Fees, Expenses and Conflicts of Interest – OCIE will focus on advisers' fees and expenses, including disclosure of the costs of investing, selection of mutual fund share classes, wrap fee programs and the adequacy of related disclosures and brokerage practices. In addition, OCIE will continue to examine conflicts of interest, including policies and procedures around disclosing the use of affiliated service providers and products, securities-backed non-purpose loans and lines of credit, and borrowing funds from clients.

Mutual Funds and ETFs – OCIE will focus on mutual funds and ETFs, particularly on risks associated with (i) index funds that track custom-built or bespoke indexes, (ii) ETFs with little secondary market trading volume and smaller assets under management, (iii) funds with aberrational underperformance relative to peers, (iv) funds managed by advisers that are relatively new to managing mutual funds, and (v) advisers that provide advice to both mutual funds and private funds with similar investment strategies.

Cybersecurity – OCIE will focus on (i) proper configuration of network storage devices, (ii) information security governance generally, and (iii) policies and procedures related to retail trading information security. With respect to advisers, OCIE will also focus on (i) governance and risk assessment, (ii) access rights and controls, (iii) data loss prevention, (iv) vendor management, (v) training and incident response, and (vi) advisers with multiple branch offices or that have recently undergone a merger.

Digital Assets – OCIE will monitor broker-dealers, trading platforms and investment advisers involved in the offer and sale, trading, and/or management of digital assets, especially involving retail investors. Where the products are securities, OCIE will examine for regulatory compliance. OCIE aims to identify these market participants and then assess the extent of their activities. For firms actively engaged in the digital asset market, OCIE will conduct examinations focused on, among other things and as applicable (i) portfolio management of digital assets, (ii) trading, (iii) safety of client funds and assets, (iv) pricing of client portfolios, and (v) compliance and internal controls.

Senior Investors and Retirement Accounts – OCIE will examine how advisers and broker-dealers interact with, and offer products and services to, senior investors and those saving for retirement. OCIE will also focus on investment recommendations and supervision (including the ability to identify financial exploitation of seniors).

Anti-Money Laundering Programs – OCIE will continue to prioritize examining broker-dealers for compliance with their AML obligations, including whether they are meeting their SAR filing obligations, implementing all elements of their AML program and robustly and timely conducting independent tests of their AML program.

Additional Considerations

OCIE will also focus on a number of other areas such as never-examined Municipal Advisors, oversight of FINRA and MSRB, and broker-dealer areas including safeguarding of customer assets, the sale of microcap securities, Regulation SHO compliance and OTC equity quotations.

Read OCIE’s full list of 2019 Examination Priorities.

For more information, please contact any one of the lawyers below.