

SEC Announces 2019 Examination Priorities

The Securities and Exchange Commission's Office of Compliance Inspection and Examinations ("OCIE") announced its examination priorities for 2019 (available [here](#)). OCIE's examination program is grounded on its "four pillars:" promoting compliance, preventing fraud, identifying and monitoring risk, and informing policy. OCIE's examination priorities for 2019 focus on the following six themes:

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

It is worth noting that five of the six priorities for 2019 are carried over from 2018 examination priorities. Only the Digital Assets priority has been added.

These priorities are not exhaustive and will not be the only issues OCIE addresses in its examinations, risk alerts, and investor and industry outreach. While the priorities drive many of OCIE's examinations, the scope of any examination is determined through a risk-based approach that includes analysis of a registrant's operations, products offered and other factors.

OCIE's 2019 Examination Priorities:

1) Retail Investors Including Seniors and their Savings for Retirement

OCIE prioritizes the protection of retail investors, particularly seniors and those saving for retirement. In furtherance of that end, OCIE will focus on the following:

- Fees and Expenses:

OCIE will continue to review fees charged to advisory clients, ensuring that the fees are assessed in accordance with client agreements and firm disclosures. OCIE will examine firms with

practices that may create increased risk of inadequately disclosed fees and other costs. OCIE also will focus on investment advisers that participate in wrap fee programs (programs that charge investors a single bundled fee for both advisory and brokerage services).

- Conflicts of Interest:

OCIE will review policies and procedures that address (i) utilization of services or products provided by affiliated service providers; (ii) whether advisers or broker-dealers are receiving financial incentives to recommend to clients non-purpose loans or lines of credit that allow borrowers (their clients) to use securities in their brokerage or advisory accounts as collateral to obtain loans, and whether the advisers and broker-dealers are adequately disclosing to their clients the risks and the conflicts of interest presented; and (iii) borrowing funds from clients, including whether adequate disclosure has been made.

- Senior Investors and Retirement Accounts and Products:

OCIE will examine how broker-dealers oversee their interactions with senior investors and will review the services and products offered to them. Examinations of investment advisers will focus on their compliance programs, appropriateness of investment recommendations to seniors, and supervision of their employees and independent representatives.

- Portfolio Management and Trading:

OCIE will review firms' practices for executing trades, allocating investment opportunities among clients fairly, ensuring consistency of investments with client objectives, disclosing critical information to clients, and complying with other legal restrictions.

- Never-Before or Not Recently-Examined Investment Advisers:

OCIE will continue to conduct risk-based examinations of certain investment advisers that have never been examined, newly-registered investment advisers, advisers that have not recently been examined, and advisers that may have grown substantially or changed their business models.

- Mutual Funds and Exchange Traded Funds:

OCIE will continue to prioritize examinations of mutual funds and exchange traded funds, as they are the primary investment vehicles for many retail investors.

- Municipal Advisors:

OCIE will continue to examine municipal advisors that have never been examined, focusing on compliance with registration requirements, professional qualifications, continuing education requirements, disclosure of conflicts of interest, fiduciary duties to the municipal

entities they advise, and compliance with recently effective MSRB rules, including rules that relate to advertisements by municipal advisors.

- **Broker-Dealers Entrusted with Customer Accounts:**

OCIE will examine broker-dealers that hold customer cash and securities to make sure that those assets are safeguarded and accurately reported. OCIE will focus on compliance with the Customer Protection Rule, which restricts the use of customer assets and prevents broker-dealers from using customer accounts as working capital.

- **Microcap Securities:**

OCIE will continue to examine broker-dealers involved in selling microcap securities (stocks of companies with a market capitalization of under \$250 million). OCIE will focus on avoidance of manipulative schemes, compliance with Regulation SHO (which governs short sales) and laws that govern the submission and publication of quotations by broker-dealers for certain over-the-counter securities.

2) Compliance and Risk in Registrants Responsible for Critical Market Infrastructure

OCIE will continue to examine registrants responsible for critical market infrastructure, including clearing agencies, entities subject to Regulation SCI (designed to strengthen the technology information of the U.S. securities markets), transfer agents and national securities exchanges.

3) FINRA and MSRB

OCIE's examination of FINRA will continue to focus on FINRA's operations and regulatory programs and the quality of FINRA's examinations of broker-dealers and municipal advisors that also are registered as broker-dealers. OCIE will conduct examinations of MSRB members to ensure compliance with MSRB rules and will continue to conduct inspections to evaluate the effectiveness of MSRB's policies, procedures and controls.

4) Digital Assets

Digital Assets represents the additional theme to OCIE's 2019 Examination Priorities. The digital market has grown rapidly as has the number of digital asset market participants. OCIE will examine firms engaged in the digital asset market and will monitor the offer and sale and management of digital assets, safety of client funds and assets, pricing of client portfolios, compliance, and internal controls.

5) Cybersecurity

Cybersecurity protection is critical to the operation of the financial markets. OCIE will continue to prioritize cybersecurity in its examination programs, and will focus on proper configuration of network storage devices, information security governance, and policies and procedures related to retail trading information security. OCIE will emphasize cybersecurity practices at investment advisers with multiple branch offices, and will continue to focus on governance and risk assessment, access rights and controls, data loss prevention, vendor management, training, and incident response.

6) Anti-Money Laundering Programs

OCIE will continue to prioritize broker-dealer compliance with AML obligations required by the Bank Secrecy Act, including filing suspicious activity reports (SARs) with the Financial Crimes Enforcement Network (FinCen), and conducting timely independent tests of their AML programs. The goal is to ensure that broker-dealers have policies and procedures in place that are reasonably designed to identify suspicious activity and illegal money laundering.

Conclusion

These priorities reflect OCIE's assessment of certain risks, issues and policy matters arising from market and regulatory developments, information gathered from examinations and other sources, including tips, complaints, referrals and coordination with other regulators. The list of priorities is not exclusive and does not encompass all the areas that will be addressed in examinations. OCIE's risk-based approach, both in selecting the entities to examine and in determining the scope of risk areas to examine, remains flexible and subject to change in order to cover emerging and exigent risks to investors and the marketplace as they arise.

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If you receive notice of an OCIE examination or if you would like assistance in preparing for one, please contact Meryl Wiener, any of the undersigned or your regular Warshaw Burstein attorney.

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