

MEMO# 30519

January 12, 2017

SEC Publishes the Priorities for Its National Examination Program in 2017

[30519] January 12, 2017 TO: ICI Members

Investment Company Directors

ICI Global Members

Chief Risk Officer Committee

ETF (Exchange-Traded Funds) Committee

ETF Advisory Committee SUBJECTS: Audit Committees

Compliance

Investment Advisers

Money Market Funds RE: SEC Publishes the Priorities for Its National Examination Program in 2017

Earlier today the National Examination Program (“NEP”) within the SEC’s Office of Compliance Inspections and Examinations (“OCIE”) published its examination priorities for 2017.[\[1\]](#) According to the Priorities, they were selected in consultation with the Commissioners, senior staff from the SEC’s regional offices, the SEC’s policy-making divisions, the enforcement division, the SEC’s Investor Advocate, and the SEC’s fellow regulators. The Priorities are organized around the following three thematic areas: examining matters of importance to retail investors; focusing on risks specific to elderly and retiring investors; and assessing market-wide risks. While the NEP has long published its priorities annually, for the first time, this year’s publication notes that, with the NEP’s “objective of being data-driven and risk-based,” it has incorporated data analytics into the vast majority of its examination initiatives to identify industry practices and/or registrants that appear to have elevated risk profiles.

The portions of the Priorities that may be of interest to the Institute’s members from the three thematic areas are as follows:[\[2\]](#)

Protecting Retail Investors

The NEP’s work in this area will include reviewing:

- Registrants’ use of **Electronic Investment Advice**, including the use of “robo-advisers.” This review will likely focus on registrants’ compliance programs, marketing, formulation of investment recommendations, data protection, disclosures relating to conflicts of interest, and registrants’ practices for overseeing the use of algorithms.
- **Wrap Fee Programs.** Areas of focus in connection with wrap fee programs may include wrap account suitability, the effectiveness of disclosures, conflicts of interests, and brokerage practices including best execution and trading away.

- **ETFs.*** These reviews will focus on compliance with exemptive relief, the unit creation and redemption process, sales practices, disclosure, and the suitability of broker-dealers' recommendations to purchase ETFs within niche strategies.
- **Never-Before-Examined Advisers.*** This has been a priority of the NEP since 2014.
- **Recidivist Representatives and their Employers.*** The staff expect to continue to use their analytic capabilities to identify individuals with a track record of misconduct and the advisers that employ them.
- **Multi-Branch Advisers.** The focus here will be on the "unique risks" presented by designing and implementing a compliance program applicable to multiple offices and overseeing the advisory services provided at such offices.

Senior Investors and Retirement Investments

The NEP's work in the area will include:

- Their **ReTIRE** initiative,* which focuses on services investment advisers and broker-dealers offer to investors with retirement accounts. These reviews may also involve looking at registrants' sales of variable insurance products, the sale and management of target date funds, and controls around cross transactions, particularly transactions involving fixed income securities.
- **Public Pension Advisers.*** OCIE is particularly interested in reviewing how investment advisers to public pension plans manage their conflicts of interest and fulfill their fiduciary duty to the client. The staff may also look for pay-to-play practices and undisclosed gifts and entertainment practices.
- **Senior Investors.** The staff plans to evaluate how registrants manage their interactions with senior investors, including any supervisory programs or controls relating to products and services directed at senior investors.

Assessing Market-Wide Risks

The issues making the list in this section of the Priorities are:[\[3\]](#)

- **Money Market Funds.** In particular, the staff will be reviewing the funds' compliance with the money market rule reforms adopted in 2014 including the boards' oversight of the funds' compliance with the revised rules as well as registrants' policies and procedures relating to stress testing and the funds' periodic reporting of information to the Commission.
- **Cybersecurity.*** According to the Priorities, the staff will continue its initiative "to examine for cybersecurity compliance procedures and controls, including testing the implementation of those procedures and controls."[\[4\]](#)

In addition to the above, OCIE plans to allocate examination resources to look at municipal advisors' compliance with SEC and MSRB rules; transfer agents;[\[5\]](#) and private fund advisors. Also, the staff plans to conduct examinations focused on risks, issues, and policy matters that arise from market developments, new information learned from examinations and other sources (e.g., tips, complaints, referrals, other regulators), and regulatory developments.

Tamara K. Salmon
Associate General Counsel

endnotes

[1] See *Examination Priorities for 2017*, National Examination Program (Jan. 12, 2017), which is available at: <https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2017.pdf> (the “Priorities”).

[2] This memo omits summarizing those areas of the Priorities that do not appear to impact our mutual fund and investment adviser members. An asterisk (“*”) next to an item indicates that the item was on the NEP’s 2016 priorities.

[3] Other areas of focus under this theme include a review of broker-dealers’ payment for order flow; clearing agencies; FINRA; Regulation SCI; National Securities Exchanges; and broker-dealers’ compliance with AML requirements.

[4] Priorities at p. 4.

[5] Their review of transfer agents is expected to focus on timely turnaround of items and transfers and compliance with recordkeeping and safeguarding requirements,