

MEMO# 29629

January 12, 2016

SEC's National Examination Program Publishes Its Examination Priorities for 2016

[29629]

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TO: BROKER/DEALER ADVISORY COMMITTEE No. 3-16
CHIEF RISK OFFICER COMMITTEE No. 2-16
COMPLIANCE MEMBERS No. 2-16
INTERNAL AUDIT COMMITTEE No. 1-16
INVESTMENT COMPANY DIRECTORS No. 3-16
OPERATIONS MEMBERS No. 2-16
PENSION MEMBERS No. 1-16
SEC RULES MEMBERS No. 3-16
TRANSFER AGENT ADVISORY COMMITTEE No. 4-16
VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 1-16 RE: SEC'S NATIONAL EXAMINATION PROGRAM PUBLISHES ITS EXAMINATION PRIORITIES FOR 2016

On January 11th, the SEC's Office of Compliance Inspections and Examinations ("OCIE") published its examination priorities for the coming year. [\[1\]](#) As in the past, these priorities will focus on three thematic areas involving investment advisers, broker-dealers, and transfer agents:

1. Examining matters of importance to retail investors, including investors saving for retirement;
2. Assessing issues relating to market-wide risks; and
3. Using the Commission's evolving ability to analyze data to identify and examine registrants that may be engaged in illegal activity.

Two of OCIE's priorities include mutual funds. The first, which falls under the second theme listed above, relates to "liquidity controls" and involves OCIE examining "advisers to mutual funds, ETFs, and private funds that have exposure to potentially illiquid fixed income securities" to review "various controls in these firms' expanded business areas, such as controls over market risk management, valuation, liquidity management, trading activity, and regulatory capital." [\[2\]](#) The second, which falls under "Other Initiatives," involves OCIE's review of "Never-Before-Examined Investment Advisers and Investment Companies," which will involve OCIE continuing to conduct "focused, risk-based

examinations of selected registered investment advisers and investment company complexes” that have not previously been examined. OCIE’s remaining areas of focus that may be of interest to our members are summarized below.

I. Protecting Retail Investors and Investors Saving for Retirement

OCIE’s focus under this theme will include:

- ReTire – Examining investment advisers and broker-dealers in connection with the services they offer to investors with retirement accounts with a focus on the reasonable basis for their recommendations, conflicts of interest, supervision and compliance controls, and marketing and disclosure practices.
- ETFs – Examining ETFs for compliance with applicable exemptive relief and other regulatory requirements. OCIE will focus on sales strategies, trading practices, disclosure, excessive portfolio concentration, primary and secondary market trading risks, adequacy of risk disclosure, and suitability, particularly in connection with niche or leveraged/inverse ETFs.
- Variable Annuities – OCIE will assess the suitability of sales of variable annuities to investors (including exchange recommendations and product classes), as well as the adequacy of disclosure and the supervision of such sales.
- Public Pension Advisers – OCIE will examine advisers to municipalities and other government entities focusing on pay-to-play and other key risk areas such as identification of undisclosed gifts and entertainment.

II. Assessing Market-Wide Risks

In addition to reviewing liquidity controls as discussed above, under this theme, OCIE also plans to focus on cybersecurity. The Priorities note that, in September 2015, OCIE launched its second initiative to examine broker-dealers’ and investment advisers’ cybersecurity compliance and controls, which involves testing and assessing registrants’ implementation of procedures and controls. In 2016, it hopes to “advance these efforts.” OCIE will also be reviewing compliance with Regulation Systems Compliance and Integrity (“SCI”) and those clearing agencies that are designated as systemically important.

III. Using Data Analytics to Identify Signals of Potentially Illegal Activity

OCIE intends to use data analytics and intelligence from its examinations and regulatory filings to identify registrants that appear to have elevated risk profiles involving: recidivism; AML; microcap fraud; excessive trading; and product promotion, particularly new products that are complex and high risk and that may involve either unsuitable recommendations or “potential breaches of fiduciary obligations.” [\[3\]](#)

IV. Other Initiatives

Aside from the never-before-examined investment advisers and investment companies, the

miscellaneous issues that OCIE will focus on this year include municipal advisors, private placements, private fund advisers, and transfer agents. With respect to transfer agents, OCIE plans to focus on “timely turnaround of items and transfers, recordkeeping and record retention, and safeguarding of funds and securities.” [4] For those transfer agents that also act as paying agents, OCIE will focus on their safeguarding of “security-holder” funds.

OCIE reminds registrants that this list of priorities is not exhaustive and they will conduct other examinations focused on risk, issues, and policy matters that arise from market developments, or new information learned from examinations or other sources.

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endnotes

[1] See *Examination Priorities for 2016*, National Examination Program, Office of Compliance Inspections and Examinations, SEC (January 2016) (the “Priorities”), which are available at:

<http://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2016.pdf>.

The Commission’s press release announcing their publication is available at:

<http://www.sec.gov/news/pressrelease/2016-4.html>.

[2] Priorities at p. 3.

[3] Priorities at p. 4.

[4] Priorities at p. 5.