

MEMO# 35430

September 8, 2023

SEC EXAMS Division Publishes Risk Alert Shedding Light on Investment Adviser Exams

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TO: Chief Compliance Officer Committee

Internal Audit Committee

Operations Committee

SEC Rules Committee RE: SEC EXAMS Division Publishes Risk Alert Shedding Light on Investment Adviser Exams

On September 6, 2023, the SEC's Division of EXAMS published a Risk Alert that provides some transparency into the Division's examination of registered investment advisers.[\[1\]](#) The Risk Alert discusses how the Division selects firms to examine, how it determines the focus areas for exams, and the documents typically requested in connection with exams. The Alert's discussion is briefly summarized below.

Selecting Firms to Examine

The Alert notes that, in deciding which adviser to examine, the Division may consider any of the following factors:

- Prior examination observations and conduct, particularly conduct relating to significant fee- and expense-related issues and significant compliance concerns that were previously identified;
- Supervisory concerns such as disciplinary history of individuals or affiliates of the adviser;
- Tips, complaints, and referrals involving the firm;
- Business activities of the firm or associated individuals that may create conflicts of interest;
- The length of time since the last inspection of the firm;
- Material changes in the firm's leadership or personnel;
- Indications that the firm may be vulnerable to financial or market stresses;
- News and media reports that may involve or impact the firm;
- Data "provided by certain third-party data services";
- The disclosure history of the firm; and

- Whether the firm has access to client and investor assets and/or whether it presents certain gatekeeper or service provider compliance risks.

Selecting Examination Focus Areas

According to the Risk Alert, once an adviser is selected for examination, an additional risk assessment occurs to determine the scope of the examination. As such, the scope of an examination and the documents requested will vary from examination to examination depending on the firm's business model, associated risks, and the reason for conducting the examination. Typically, however, the examination will include a review of the advisers': operations; disclosures; conflicts of interest; and compliance practices in certain core areas of the adviser's business. These core areas include but are not limited to: custody and safekeeping of client assets; valuation; portfolio management; fees and expenses; brokerage; and best execution. During an examination, advisers should expect examiners to request documents relating to these core areas so the examiners can understand the adviser's conflicts of interest, its risks and controls, and the effectiveness of the adviser's compliance policies and procedures for monitoring, mitigating, and managing its risks and conflicts.

Selecting Documents to Request

The Risk Alert discusses the Division's practice of sending the adviser a letter notifying it of the upcoming examination and listing the documents that the staff plans to review as part of the examination. These documents typically relate to the following areas of the adviser's operations:

- General information about the adviser and its organization and business;
- Information about the adviser's compliance program, risk management, and internal controls;
- Information to facilitate testing with respect to the adviser's trading activities; and
- Information for the staff to perform its own testing for compliance in various areas (e.g., marketing and advertising, financial records, and custody).

To better understand the type of documents/information the examiners may review in each of these areas, the Risk Alert includes a four-page Attachment that lists the "Typical Initial Information Examiners Request of Investment Advisers."

The Risk Alert additionally notes that, while the document requests and the adviser's responses are typically provided electronically, "if certain records are not maintained electronically or cannot be produced electronically, the staff may request that the adviser make such records available for in-person examination."

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Notes

[\[1\]](#) See Investment Advisers: Assessing Risks, Scoping Examinations, and Requesting

Documents, SEC Division of Examinations Risk Alert (September 6, 2023), which is available at: <https://www.sec.gov/files/risk-alert-ia-risk-and-requesting-documents-090623.pdf>.

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