

## OCIE Announces 2020 Examination Priorities

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On January 7, 2020, the SEC's Office of Compliance Inspections and Examinations (OCIE) announced its 2020 examination priorities for regulated entities, including investment advisers and registered funds. The examination priorities are organized into the following eight categories:

1. retail investors, including seniors and individuals saving for retirement;
2. information security;
3. financial technology and innovation, including digital assets and electronic investment advice;
4. additional focus areas involving registered investment advisers (RIAs) and registered funds;
5. additional focus areas involving broker-dealers and municipal advisors;
6. anti-money laundering (AML) programs;
7. market infrastructure; and
8. matters concerning Financial Industry Regulatory Authority (FINRA) and the Municipal Securities Rulemaking Board (MSRB).

Within the foregoing categories, OCIE will focus on several issues of potential interest to funds and their investment advisers, including the following:

- **Standards of Care/Regulation Best Interest.** Before the June 30, 2020 compliance date for Regulation Best Interest and Form CRS, OCIE will engage with broker-dealers during examinations on their progress on implementing the new rules. After the compliance date,

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OCIE will assess implementation of the requirements of Regulation Best Interest, including policies and procedures regarding conflict disclosures, and for both broker-dealers and RIAs, the content and delivery of Form CRS.

- **Mutual Funds and ETFs.** OCIE will prioritize examinations of mutual funds and ETFs, the activities of their RIAs and oversight practices of their boards. Examinations will assess industry practices and regulatory compliance in various areas, including a focus on: (1) RIAs that use third-party administrators to sponsor mutual funds they advise or are affiliated with; (2) mutual funds or ETFs that have not been previously examined; and (3) RIAs to private funds that also manage a registered investment company with a similar investment strategy.
- **FinTech Innovation.** For “robo-advisers,” focus areas include: (1) SEC registration eligibility; (2) cybersecurity policies and procedures; (3) marketing practices; (4) adherence to fiduciary duty, including adequacy of disclosures; and (5) effectiveness of compliance programs.
- **RIAs Subject to Prioritized Examinations by OCIE.** OCIE will prioritize examinations of the following types of RIAs: (1) dually registered firms, or those affiliated with broker-dealers or that have supervised persons who are registered representatives of unaffiliated broker-dealers; (2) firms that use the services of third-party asset managers to manage clients’ investments and the extent of these firms’ due diligence practices, policies and procedures; (3) previously examined RIAs that have not been examined for several years, with a focus on whether the RIAs’ compliance programs have been appropriately adapted in light of any substantial growth or change in their business models; and (4) RIAs to private funds that have a greater impact on retail investors, such as firms that provide management to separately managed accounts side by side with private funds.
- **Information Security.** OCIE will assess RIAs’ protection of clients’ personal financial information with particular focus on: (1) governance and risk management; (2) access controls; (3) data loss prevention; (4) vendor management; (5) training; and (6) incident response and resiliency. OCIE will also focus on: oversight practices related to service providers and network solutions, including cloud-based storage; controls surrounding online access and mobile application access to customer brokerage account information; and safeguards around the proper disposal of retired hardware that may contain client information and potential network information that could create an intrusion vulnerability.
- **Retail Investors.** OCIE will focus on recommendations and advice given to retail investors, higher risk products, including private placements and securities of issuers in new and emerging risk areas, such as those that: (1) are complex or non-transparent; (2) have high fees and expenses; or (3) where an issuer is affiliated with or related to the registered firm making the recommendation.
- **Conflicts of Interest and Fiduciary Duties.** OCIE will focus on: (1) disclosures and supervision of outside business activities of employees and associated persons and any related conflicts; (2) fulfillment of RIAs’ duties of care and loyalty, including whether RIAs provide advice in the best interests of their clients and eliminate or disclose all conflicts of interest; (3) fee and compensation-based conflicts of interest, including, among other things, revenue sharing arrangements and direct or indirect compensation to advisory personnel for executing client transactions; and (4) aggregation of accounts for purposes of calculating fee discounts. OCIE will also focus on financial incentives provided to financial services firms and professionals that may influence the selection of particular mutual fund share classes.

- **New or Emerging Investment Strategies, including ESG.** OCIE has a “particular interest” in the accuracy and adequacy of disclosures provided by RIAs offering clients new types or emerging investment strategies, such as strategies focused on sustainable and responsible investing, which incorporate environmental, social and governance (ESG) criteria.
- **AML Programs.** OCIE will continue to prioritize examining broker-dealers’ and investment companies’ compliance with their AML obligations, including whether firms have established appropriate customer identification programs and whether they are satisfying their SAR filing obligations, conducting due diligence on customers, complying with beneficial ownership requirements, and conducting robust and timely independent tests of their AML programs.

OCIE notes that this list of priorities is not exhaustive, and will not be the only issues addressed during examinations.

The examination priorities are available [here](#).

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