THOMPSON HINE

# Investment Management Update

**January 2020**

## OCIE Announces 2020 Examination Priorities

**Key Notes:**

- OCIE's focus on cybersecurity and fintech firms suggests that it will continue to make technology-related issues a priority.
- Newly registered investment advisers and firms that have never been examined by OCIE face greater odds of being inspected in 2020.
- Investment advisers to funds should focus on disclosures related to ESG investment strategies.

The SEC's Office of Compliance Inspections and Examinations (OCIE) recently announced its 2020 examination priorities, which aim to improve compliance with rules and regulations, prevent fraud, identify and monitor risk, and inform policy. Although OCIE's examination schedule remains flexible to address any emerging or imminent risks to investors, its priorities center around:

- matters of importance to retail investors,
- the Financial Industry Regulatory Authority's (FINRA) and Municipal Securities Rulemaking Board's (MSRB) operations and regulatory programs,
- financial technology (fintech) and innovation,
- cybersecurity,
- anti-money laundering (AML) programs, and
- other focus areas relating to investment advisers and investment companies.

### Retail Investors

OCIE will maintain its focus on protecting retail investors, including senior investors, and will prioritize examinations of registered investment advisers (RIAs) who offer investments marketed to retail investors (e.g., mutual funds, exchange-traded funds (ETFs), fixed income investments and microcap securities).

OCIE has incorporated Regulation Best Interest into its examination program for RIAs and plans to assess implementation of the new standard of care following the compliance date in June 2020. Additionally, OCIE plans to include in its review the newly adopted requirement that RIAs prepare and deliver to retail investors a client relationship summary on Form CRS.

To assess, among other things, whether advisers' investment and trading strategies are suitable for and in the best interests of investors, OCIE will continue to evaluate firms' practices for fairly executing clients' investment transactions and to examine investment advisers' portfolio recommendations. Examiners will review whether fees and expenses are calculated and charged in accordance with disclosures provided to investors. Moreover, OCIE will consider policies and procedures that address potential conflicts of interest and interactions with senior investors.

### FINRA and MSRB

OCIE will continue to evaluate FINRA's operations, regulatory programs, and review of broker-dealers and municipal advisors. It will also continue to examine MSRB's operational and internal policies, procedures and controls.

### Fintech and Innovation

OCIE recognizes that innovations and advancements in financial technologies, methods of capital formation, market structures and investor interfaces continue to warrant ongoing inspection to assess the effectiveness of related compliance and control functions. It remains focused on registered firms engaged in the digital asset space, as well as RIAs who provide services to their clients through automated investment tools and platforms, often referred to as "robo-advisers."

## Cybersecurity

OCIE will prioritize evaluating cybersecurity risks in its examination programs, with a focus on proper configuration of network storage devices, overall information security governance and retail information security. It will also continue to review registrants' compliance with Regulations S-P and S-ID, concentrating on online access controls and safeguards around proper disposal of retired hardware.

## AML Programs

As part of its continued emphasis on AML programs, OCIE will assess whether regulated entities are complying with applicable requirements, including adapting their AML programs to address their regulatory obligations.

## Other Focus Areas

OCIE will continue its risk-based examinations of RIAs and registered investment companies. Inspections of RIAs will focus on those that have not previously been examined, including new RIAs and those registered for several years that have yet to be examined. Its investment company examinations will concentrate on mutual funds and ETFs, RIA activities and board compliance practices.

Because environmental, social and governance (ESG) investments continue to be popular in the marketplace, OCIE plans to pay more attention to RIAs' disclosures to clients about their investment strategies that encompass ESG considerations. Additionally, OCIE intends to pay particular attention to RIAs of private funds who also manage registered investment companies (e.g, mutual funds) that have strategies similar to the private funds.

## Outlook

Although OCIE's exam priorities list is non-exhaustive, it provides RIAs with this year's key focus areas, and they should be diligent in reviewing and improving their relevant policies and procedures.

## FOR MORE INFORMATION

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