

Ask and Ye Shall Receive: OCIE's 2018 Examination Priorities - Part 1 of 2

Industry professionals have noted that the SEC's Office of Compliance Inspections and Examination ("OCIE") was tardy in releasing their priorities list, although recent speeches from SEC officials have provided a preview of the issues in OCIE's crosshairs. The [full priority list](#) was released on February 7. The SEC's examination priorities identify practices, products and services that reflect potentially heightened risks to investors and capital markets. As in prior years, the SEC's priorities are thematic, covering: retail investors, including seniors and retirement savers; compliance and critical market infrastructure; FINRA and MSRB activities; cybersecurity; and anti-money laundering. The first of these priority areas is summarized below. Details on the deep dive OCIE will take in examining firms' practices around compliance and critical market infrastructure, FINRA and MSRB activities, cybersecurity and anti-money laundering will be discussed in Part 2 of this blog. Part 2 of this blog will also discuss the guiding principles that OCIE has reiterated for 2018. **Priorities—Retail investors, including seniors and retirement savers** The SEC will continue to prioritize retail investors, particularly seniors, and will examine firms that serve them, focusing on higher risk products and new technologies for service delivery. Particular focus areas will be:

- Disclosure about costs of investing, fees charged by and compensation payable to financial professionals, including compensation from transactions involving affiliates and incentive payments, as well as calculation of fees and expenses and valuation matters.
- For firms or practices with higher risk business models, the SEC will look at:
 - Whether personnel receive incentive, especially for mutual fund share classes with different sales or distribution fees;
 - Accounts that are orphaned when a representative leaves a firm and no new representative has been assigned;
 - Advisers that change fee structures from commissions to asset-based fees; and
 - Private fund advisers with a high concentration of investors representing retail clients, including nonprofit organizations and pension plans.
- Advisers that provide electronic or digital platforms, including "robo-advisers," and their compliance programs, including the oversight of algorithms, marketing materials, data protection and conflict of interest disclosures.
- Wrap fee programs, to assure that adviser are complying with fiduciary duties and contractual terms, and that recommendations are reasonable, conflicts are disclosed, best execution is obtained and trading costs are disclosed.
- Advisers with elevated risk profiles that have never been examined.
- Broker-dealers interacting with senior investors, including to identify financial exploitation and to confirm internal controls and supervision.
- Firms servicing retirement investors and state and local and nonprofit plans, including 403(b) and 457 plans, and their investment recommendations, sales of variable annuities and management of target date funds.
- Mutual funds that have poor relative performance or flows; are managed by advisers with little registered fund experience; or that hold securities that are hard to value in times of stress, such as securitized auto, student or consumer loans, or collateralized mortgage-backed securities.
- ETFs with little secondary market trading volume and that face de-listing.

- Mutual funds and ETFs that track custom-built indexes, to review for conflicts related to the adviser's relationship with index sponsors and the adviser's role in selecting or weighting index components.
- Municipal advisers and underwriters, for compliance with registration, recordkeeping and supervision requirements, and other standards of conduct.
- Fixed income secondary market order execution, for both corporate and municipal bond transactions, specifically to assess whether broker-dealers have supplemented best execution policies and procedures.
- For cryptocurrency and initial coin offerings, the SEC will "monitor" the sale of these products and examine for compliance with the securities laws, looking specifically at whether "financial professionals" maintain controls to safeguard against theft or misappropriation, and whether the risk disclosures provided to investors sufficiently address the risk of total investment loss, liquidity, price volatility and potential fraud.

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