Blogs
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Asset Management ADVocate

SEC Staff and Chair Talk Examination Priorities (For the Time Being At Least)

Speaking at a compliance workshop sponsored by the Investment Adviser Association held in Atlanta on November 10, 2016, Bill Royer, Associate Director of the SEC examination program in the Atlanta Regional Office of the SEC laid out the priorities that he expected the SEC's Office of Compliance Inspections and Examination (OCIE) to focus on in the coming year. Novel topics for OCIE in 2017, according to Royer, will include virtual investment services and robo advisers and how they and similar new models for the provision of investment advice address established concerns such as compliance with internal controls, stress testing, cybersecurity, and fiduciary responsibilities. OCIE, Royer said, will focus in 2017 on abuses it perceives with wrap fee programs and trade away transactions, and will devote continued energy to the ongoing sweep exam targeted at the conflicts related to the incentive for investment advisers to recommend fund share classes with relatively high loads or distribution fees over those with lower fees and expenses, particularly within wrap fee programs. OCIE also plans to address money market funds' adherence to the new regulatory standards applicable to them, Royer told the workshop. Royer also explained that OCIE plans to carry forward to 2017 a number of priorities from prior years, including efforts to: identify inappropriately loose compliance affiliations between multi-branch investment advisers: ensure the appropriate level of cohesion in compliance programs resulting from asset management industry business combinations; and seek the proper supervision of, controls surrounding, and disclosure regarding investment adviser representatives with disciplinary history. Royer noted that OCIE's findings in its examinations of private fund advisers were expected in to inform the Division of Investment Management's efforts in 2017 to address provisions of the Investment Advisers Act that don't squarely contemplate the current state of the private equity markets. He said that each year OCIE examined approximately 12% of the roughly 12,200 SEC-registered investment advisers. Royer's comments were echoed by those of SEC Chair Mary Jo White who, shortly after announcing her intention to step down over two years early as Chair of the SEC in the wake of the 2016 presidential election, spoke on November 15, 2016 before the U.S. Congressional Committee on Financial Services. Reviewing the wide range of regulatory initiatives taken on and completed by the SEC during her tenure as Chair that began in 2013, White emphasized that:

> another key area of enforcement is investment management, where the SEC has continued to bring actions addressing a widening range of issues, including performance advertising, undisclosed conflicts of interest, compliance issues, and private equity fees and expenses…The Enforcement Division's focus on private equity has expanded significantly over the past few years and, to date, the SEC has brought eleven enforcement actions related to private equity advisers breaching their fiduciary duties by charging undisclosed fees and expenses, shifting and misallocating expenses, and failing to adequately disclose conflicts of interest."

OCIE, White said, "continues to bolster its risk-based approach by using data analytics to identify activities that may warrant examination as well as deploying technology to make examinations more efficient and targeted." And, effective October 1, 2016, White told the Congressional Committee,

> [OCIE] transitioned resources from its broker-dealer examination program to its program for investment advisers and investment companies. Together with the new hires permitted by our Congressional appropriations, we have increased the investor advisor and investment company OCIE staff by approximately 20% from FY 2015 levels. Significantly more resources are needed to

> fulfill our responsibility to investors."

As the presidential administration shifts, vacancies at the SEC and other federal agencies are filled, and the new Congress settles in, whether these resources will be forthcoming and whether OCIE will be able to make good on its plans for the year remains to be seen.

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