

Financial Services Newsletter

SEC OCIE 2019 Examination Priorities

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The U.S. Securities and Exchange Commission (SEC), through the Office of Compliance Inspections and Examinations (OCIE), has issued its [2019 Examination Priorities](#). The OCIE publishes its examination priorities annually. The report is designed to promote compliance, prevent fraud, identify and monitor risk, and inform policy.

In fiscal year 2018, the OCIE completed over 3,150 examinations, representing a 10 percent increase over fiscal 2017. The 2019 examination priorities focuses on six topics which are outlined in this e-newsletter.

Matters of Importance to Retail Investors

Priorities include:

- **Fees and Expenses—Disclosure of the Costs of Investing:** OCIE will continue to review fees charged to advisory accounts, ensuring that the fees are assessed in accordance with the client agreements and firm disclosures. Of particular interest are “wrap fees,” where advisors charge investors a single bundled fee for both advisory and brokerage services. Continued areas of interest include adequacy of disclosures and brokerage practices.
- **Conflicts of Interest:** Examples include the use of affiliated service providers and products focusing on the impact to clients and related disclosures. Product areas under scrutiny include “securities-backed, non-purpose loans,” as are lines of credit and borrowing client funds.
- **Senior Investors and Retirement Accounts and Products:** These examinations will focus on compliance programs of investment advisors, the appropriateness of certain investment recommendations to seniors, and the supervision by firms of their employees and independent representatives.
- **Portfolio Management and Trading:** OCIE will review firms’ practices for executing investment transactions on behalf of clients, fairly allocating investment opportunities among clients, ensuring consistency of investments with the objectives obtained from clients, disclosing critical information to clients, and complying with other legal restrictions.
- **Never-Before or Not-Recently-Examined Advisors:** Examinations will be prioritized for certain investment advisors that have not been examined for a number of years and may have substantially grown or changed business models.
- **Mutual Funds and Exchange Traded Funds:** Examinations will focus on risks associated with:
 - index funds that track custom-built or bespoke indexes;
 - Exchange Traded Funds (ETFs) with little secondary market trading volume and smaller assets under management (AUM);
 - funds with higher allocations to certain securitized assets;
 - funds with aberrational underperformance relative to their peer groups;
 - funds managed by advisors that are relatively new to managing Registered Investment Companies (RICs); and

- advisors that provide advice to both RICs and private funds that pursue similar investment strategies.
- **Municipal Advisors (MAs):** OCIE will also prioritize whether MAs provided the appropriate disclosures regarding their conflicts of interests or otherwise violated their fiduciary duty to a municipal entity.
- **Broker-Dealers Entrusted with Customer Assets:** Examinations of select broker-dealers to verify the Customer Protection Rule — which restricts the use of customer assets and prevents the broker-dealer from using customer assets as working capital — is in compliance.
- **Microcap Securities:** OCIE will continue examinations of broker-dealers involved in selling stocks of companies with a market capitalization of under \$250 million. Areas of focus include reviewing for manipulative schemes (i.e., pump and dump schemes), compliance with Regulation SHO, which governs short sales, and Exchange Act Rule 15c2-11, which governs the submission and publication of quotations by broker-dealers for certain over-the-counter (OTC) equity securities.

Compliance and Risk in Registrants Responsible for Critical Market Infrastructure

The OCIE will focus attention to the following entities:

- **Clearing Agencies:** OCIE will continue to conduct annual examinations of clearing agencies that the Financial Stability Oversight Council has designated as systemically important.
- **Entities Subject to Regulation Systems Compliance and Integrity (SCI):** Regulation SCI is designed to strengthen the technology infrastructure of the U.S. securities markets. OCIE wants to evaluate whether they have effectively implemented written policies and procedures required by Regulation SCI. Areas of focus for the OCIE include controls relating to software development life cycles and related governance procedures, effectiveness of internal audit programs, inventory management, and threat management capabilities.
- **Transfer Agents:** Examination candidates will include transfer agents that serve as paying agents for issuers, transfer agents developing blockchain technology, or transfer agents that provide services to issuers of microcap securities, private offerings, crowd funded securities, and digital assets.
- **National Securities Exchanges:** OCIE will examine internal audit and surveillance programs and funding for regulatory programs.

Select Areas and Programs of FINRA and MSRB

The Financial Industry Regulatory Authority (FINRA) will continue to focus on its operations and regulatory programs as well as on the quality of its examinations of broker-dealers and municipal advisors that are also registered as broker-dealers. OCIE will continue to conduct inspections of the Municipal Securities Rulemaking Board (MSRB) to evaluate the effectiveness of the MSRB's policies, procedures, and controls.

Digital Assets

The OCIE will examine portfolio management of digital assets, trading, safety of client funds and assets, pricing of client portfolios, compliance, and internal controls.

Cybersecurity

OCIE examinations will focus on the proper configuration of storage devices, information security governance, practices of advisors with multiple offices, access rights and controls, data loss prevention, vendor management, training and incident response.

Anti-Money Laundering (AML)

Broker-dealers are required to establish AML programs which should include policies and procedures reasonably designed to identify customer due diligence, monitor suspicious activity, and file suspicious activity reports (SARs) when appropriate.

Contact Us

For more information about the OCIE's 2019 examination priorities, regulatory compliance and best practices, please contact your engagement partner or any of the following:

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