

2021 Focus Areas of the SEC Division of Examinations

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The U.S. Securities and Exchange Commission's (SEC) Division of Examinations (the Division) – formerly, the Office of Compliance Inspections and Examinations – recently published its [2021 Examination Priorities](#). These priorities will focus on climate and environmental, social and governance (ESG) risks, conflicts of interest for brokers and investment advisors (fiduciary duty), and risks relating to financial technology. The Division issues its examination priorities annually to provide insights into its risk-based approach, which includes areas that present potential risk to investors and to the integrity of the U.S. capital markets.

In fiscal year 2020, the Division completed over 2,952 examinations, representing a 4.4 percent decrease from the prior year. In many respects, the 2021 priorities are similar to the 2020 priorities and places an emphasis on the protection of retail investors (particularly seniors and those saving for retirement), cybersecurity, financial technology, the discontinuation of LIBOR, market infrastructure, risk disclosures and conflicts of interest.

Protecting Retail Investors

The Division will continue its focus on investments offered to retail investors, which include mutual funds, exchange-traded products (ETFs), municipal securities, fixed income instruments, and microcap securities. Given the focus on retail investors, firms should review their procedures related to marketing and advertising to ensure they meet the requirements outlined by regulators.

The Division will also focus on registered investment advisors' (RIAs) compliance with Regulation Best Interest, Form CRS. The Form CRS was a particular focus of the Division in the prior year, but it was noted that hundreds of RIA firms did not have this form completed or filed on time. As such, Form CRS remains a focus of the Division, and it is likely that this form will be requested during the Division's 2021 examinations.

Cybersecurity and Operational Resiliency

This past year has been unprecedented in the markets, in our professional careers and even in our daily lives. The ongoing pandemic has changed the landscape of how RIAs communicate with investors, and with an increasing number of professionals working remotely, the related cybersecurity concerns have become a major focus for the Division. As such, the Division will continue to review business continuity and disaster recovery plans and will also assess how these programs have been altered for the recent climate change in the industry. RIAs need to be aware that the Division will examine the safeguards implemented to customer accounts, data loss prevention, remote access controls, vendor management, and how RIAs respond to cyber-attacks, such as phishing and ransomware incidents.

Financial Technology (FinTech), Innovation and Alternative Data

RIAs have continued to integrate the use of technology to facilitate compliance with regulatory requirements and to conduct business with its customers and investors. As a result, the Division indicated that this would be another area of focus and will review if firms have controls in place to properly monitor information and safeguard assets. Examinations of market participants engaged with digital assets will continue to assess if the investments are in the best interest of investors and will also review portfolio management and trading practices. The Division will also review and make inquiries regarding the safety of client funds and assets, pricing and valuation of investments, and about the effectiveness of compliance program and controls.

Anti-Money Laundering (AML) Programs

Financial institutions, registered investment advisors and 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.

The London Inter-Bank Offer Rate (LIBOR) Transition

The Division will make inquiries during their examinations with RIAs to assess their understanding of any exposure to LIBOR, a RIA's preparation for the expected discontinuation of LIBOR, and the transition to an alternative reference rate.

Focus Areas Relating to Investment Advisor and Investment Companies

- **RIA Compliance Programs:** The Division will continue to review compliance programs of RIAs and will prioritize examinations of RIAs that have not been examined in several years. The review will include whether programs, policies and procedures are reasonably designed, implemented and maintained and will also see how these compliance programs have been updated for the current environment.
- **Registered Funds, Including Mutual Funds and ETFs:** The Division will prioritize the examination of mutual funds or ETFs that have not previously been examined or have not been examined in a number of years, particularly mutual funds and ETFS that charge advisory fees. These examinations will focus on disclosures to investors, valuation, filings with the SEC, personal trading activities, and fund governance practices.
- **RIAs to Private Funds:** Advisors to private funds will also be subject to review examinations from the Division. These examinations will focus on disclosures to investors regarding risk and liquidity, valuation, compliance, filings with the SEC, and conflicts of interest.

Focus Areas Involving Broker-Dealers and Municipal Advisors

Examinations of broker-dealers will continue to focus on compliance with the Customer Protection Rule and the Net Capital Rule. The Division will review the adequacy of internal processes, procedures, controls and compliance for borrowing securities from customers. Furthermore, examinations will also focus on compliance with best execution obligations in a zero commission environment and compliance with the recently-amended Rule 606 order routing disclosure rules. The Division will also examine the impact of the COVID-19 pandemic and its impact on clients and municipal advisors. The review will focus on whether municipal advisors have met their fiduciary duty obligations to municipal entities, the disclosure of any conflicts of interest, and how these conflicts are managed.

Market Infrastructure

- **Clearing Agencies:** The Division will examine governance, legal, compliance, and risk management framework of registered clearing agencies. This will be done by reviewing efforts to escalate deficiencies identified by the Division and internal auditors and whether timely and appropriate action to correct and mitigate the risks associated with those deficiencies have been taken.
- **National Securities Exchange:** Examinations will focus on exchange operations in order to monitor, investigate, and enforce members and listed company compliance with the applicable exchange rules and federal securities laws.
- **Regulation Systems Compliance and Integrity:** System Compliance and Integrity (SCI) entities will be examined by the Division to evaluate if SCI policies and procedures have been established, maintained, and enforced. SCI policies and procedures that are reviewed include IT governance, cyber threat management and response, business continuity planning, vendor management, and utilization of cloud services.

- **Transfer Agents:** The Division will continue to examine transfer agents core functions, which include the timely turnaround of transfers, recordkeeping and retention and the safeguarding of funds and securities.
- **FINRA and MSRB:** The Division will also continue its oversight of certain regulators, which includes FINRA and MSRB. The Division will review the quality of FINRA's examinations of broker-dealers, and will review MSRB to evaluate the effectiveness of its policies, procedures and controls.

Contact Us

We are here to help advise you on questions you may have regarding your business' best practices and compliance with the SEC's 2021 [Examination Priorities](#).

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