Client Alert

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OCIE 2017 Exam Priorities: Focus on Retail, Elderly and Retirement Investors; Market Risks

The SEC's National Examination Program (NEA) of the Office of Compliance Inspections and Examinations (OCIE) announced that its examination priorities in 2017 will focus on three general areas: retail investors, risks specific to elderly investors and retirement investing, and assessing market-wide risks.

PROTECTING RETAIL INVESTORS

Robo-advisers. For the first time, OCIE will focus on so-called "robo-advisers" that provide automated online investment advice. In particular, OCIE will examine compliance practices for overseeing the advisers' algorithms that generate investment recommendations.

Wrap fee programs. OCIE will expand its focus on wrap fee programs, which charge investors a bundled fee for advisory and brokerage services. Examinations will focus on investor suitability, disclosures, and conflicts of interest. Some wrap fee programs in the past have been scrutinized for "reverse churning," a practice that minimizes trades in a client's account to reduce out-of-pocket expenses to an adviser charging a fixed fee.

Exchange-traded funds. OCIE will focus on how ETFs comply with their exemptive orders. In addition, OCIE will review sales practices and suitability of broker-dealer ETF recommendations.

Never-before examined investment advisers. OCIE will continue its program of focusing on newly formed advisers and those that have never been examined.

Recidivism. OCIE will step up its attempts to identify repeat offenders at investment advisers and broker-dealers.

Multi-branch advisers. OCIE will continue to focus on advisers that provide advisory services from multiple locations. OCIE published compliance guidelines for multi-branch advisers in December 2016, which provide a clue to what multi-branch advisers can expect from examiners.

SENIOR INVESTORS AND RETIREMENT INVESTMENTS

OCIE will continue to emphasize examinations of advisers and broker-dealers that recommend sales of variable insurance products and target date funds for retirement accounts. OCIE also will look at how pension plans of government entities manage conflicts of interest in managing those investments and focus on "interactions" with senior investors with a view to identify "financial exploitation."

MARKET-WIDE RISKS

Money market funds. OCIE will focus on how money market funds comply with recent changes to the rules that govern them.

Payment for order flow. A perennial favorite of examiners is back: OCIE will focus on ensuring that broker-dealers comply with their duty to seek best execution when routing customer orders for execution.

Clearing agencies. Using a risk-based approach, OCIE will continue to focus on “systemically important” clearing agencies, pursuant to authority provided by the Dodd-Frank Act.

FINRA. OCIE will enhance its oversight of FINRA, including inspections of FINRA’s operations and regulatory programs.

Regulatory systems compliance and integrity (SCI). OCIE will step up examinations of SCI entities to ensure the integrity and efficiency of their systems, including enterprise risk management.

Cybersecurity. Cybersecurity continues to be a top priority of OCIE examiners.

National securities exchanges. OCIE will continue risk-based examinations of national securities exchanges, focusing on operational and procedural controls.

Anti-money laundering (AML). OCIE will look at broker-dealer AML programs to ensure they are tailored to address specific risks and how they monitor for suspicious activity.

OTHER INITIATIVES

OCIE will also allocate resources to examinations of municipal advisors, transfer agents and private fund advisers, with particular focus on conflicts of interest.

OUR TAKE

OCIE will continue to focus on previously stated priorities. It has added some new ones, however, and there are subtle shifts of how OCIE presents its priorities. Notwithstanding pending changes in the SEC and its staff, we expect OCIE examinations to continue at the same pace and with the same degree of focus, at least in the foreseeable future.

Contacts:

Kelley Howes
(303) 592-2237
khowes@mofo.com

Matthew Kutner
(212) 336-4061
mkutner@mofo.com

Ken W. Muller
(415) 268-6029
kmuller@mofo.com

Stephanie Thomas
(650) 813-6328
sthomas@mofo.com

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