

2020 Exam Priorities of Financial Services Industry

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As they do at this time each year, the SEC Office of Compliance, Inspections and Examinations ("SEC") and the Financial Industry Regulatory Authority ("FINRA") recently announced their examination priorities for 2020.¹ While not a complete description of all types of matters that will be taken up by these entities in the coming year, the announcements provide helpful guidance to firms, broker-dealers, investment advisors and associated persons in determining where to allocate compliance resources. There are several categories of particular interest from these 2020 exam priorities, discussed below.

1. Sales Practices

Both the SEC and FINRA are placing increased attention on the protection of retail investors, especially seniors. In furtherance of these efforts, the exam priorities include:

- Prioritizing examinations for intermediaries that serve retail investors, including Registered Investment Advisors ("RIAs"), broker-dealers and dually-registered firms.
- Focusing on retail-targeted investments, including mutual funds, ETFs, variable annuities, municipal securities, microcap securities and fixed income securities.

There will also be an emphasis on compliance with Regulation BI (effective June 30, 2020), which establishes a "best interest" standard of conduct for broker-dealers and associated persons when they make a recommendation to a retail customer of any securities transaction or investment strategy involving securities, including recommendations of types of accounts.

The OCC has likewise identified risks to retail customers as a priority, including with respect to underwriting practices, credit oversight and control, and interest rate outlooks.

2. RIAs, Investment Advisors, Broker-Dealers and Municipal Advisors

Specific to these groups, the SEC and FINRA will prioritize examination of RIAs that are dually-registered as, or are affiliated with, broker-dealers, especially new RIAs or RIAs registered for several years but have not been examined. There will also be an increased focus on compliance programs addressing conflicts of interest, best execution, prohibited transactions, fiduciary advice, and disclosure of fees and expenses. These groups should expect a focus on:

- internal procedures and controls regarding trading practices;
- disclosure of order routing information;
- management of trading risk; and
- supervision of algorithmic trading.

Finally, municipal advisors will see increased scrutiny regarding:

- registration
- professional qualification and education requirements;
- fiduciary duty obligations to municipal entity clients;
- fair dealing with market participants; and
- disclosures of conflicts of interest.

3. Information Security

The SEC and FINRA will be making efforts to assess protection of clients' personal financial information, including particular focus on access controls, governance and risk management, data loss prevention, vendor management, training, and incident response. Third-party and vendor risk management, including those leveraging cloud-based storage, will also be an area of focus.

The OCC will be prioritizing technology risk management and technological innovation, in addition to emphasizing the use of technology in Bank Secrecy Act and Anti-Money Laundering ("AML") compliance.

4. AML Programs

There will be a continued priority placed on the examination of broker-dealers and investment companies for compliance with Bank Secrecy Act and AML obligations. Regulated entities should ensure that AML policies and procedures are reasonably designed to identify suspicious activity and illegal money-laundering activities. As mentioned above, this is also a priority for the OCC.

5. FINTECH and Digital Assets

SEC-registered market participants that are engaged in digital assets will be another area of focus, with special attention on:

- assessment of suitability;
- management and trading practices;
- safety of assets;
- pricing and valuation;
- oversight by compliance; and
- supervision of outside business activities.

There will also be added scrutiny on entities that provide automated investment tools and platforms ("robo-advisers") and their registration eligibility, marketing practices, cybersecurity policies, adherence to fiduciary duty, adequacy of disclosures and compliance oversight.

6. Market Infrastructure

Finally, the SEC and FINRA anticipate assessing policies and procedures of clearing agencies, national securities exchanges, transfer agents and Regulation System Compliance and Integrity ("SCI") entities to ensure the protection of the integrity of the marketplace. This will include a review compliance with ongoing obligations regarding market manipulation, Trade Reporting and Compliance Engine ("TRACE"), Order Audit Trail System ("OATS") and direct market access controls.

For more detailed information, the 2020 Exam Priorities for FINRA and the SEC can be found in the links below.

SEC - <https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2020.pdf>

FINRA - <https://www.finra.org/sites/default/files/2020-01/2020-risk-monitoring-and-examination-priorities-letter.pdf>

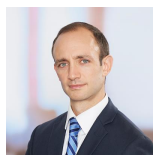
[1] The Office of the Comptroller of the Currency ("OCC") issued its Fiscal Year 2020 Bank Supervision Operating Plan in October 2019. References to the OCC's priorities will be made herein, where appropriate.

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