

SEC Division of Examinations: 2022 Examination Priorities

APRIL 12, 2022

On March 30, 2022, the U.S. Securities and Exchange Commission Division of Examinations (the “Division”) released its [annual list of examination priorities for 2022](#). Investment Managers should take these priorities into consideration when designing or updating their compliance programs as useful indicators of areas of special focus that may present a higher enforcement risk. The Division’s focus is on protecting clients and ensuring compliance. Client protection features include appropriately informing clients, protecting their interests, and implementation of appropriate security measures. Specifically, the Division emphasized environmental, social and governance (“ESG”) and rapid technological changes in investing throughout the examination priorities in 2022.

These priorities are not exhaustive and the Division’s examinations are likely to focus on many areas beyond this list. Moreover, the Division continues to characterize its examination selection process and scope determinations as a risk-based approach that provides it with sufficient flexibility to allow for coverage of emerging and exigent risks as they arise.

Significant Focus Areas

Areas of particular focus related to investors include:

1. **Private Funds.** The Division’s examinations will focus on SEC-registered investment advisers (RIAs) to private funds due to the rapid growth in assets managed by RIAs to private funds over the past five years. The areas of greatest focus are the calculation of fees and expenses; potential preferential treatment of certain investors, including in the context of imposing fund gates or suspensions on withdrawals; compliance with the Advisers Act Custody Rule, specifically the “audit exception”; disclosure and compliance practices related to cross trades, principal transactions, or distressed sales; and liquidity conflicts such as RIA-led fund restructurings. Portfolio strategies, risk management, and investment recommendations will also be a focus in reviews. One specific area of focus will be private funds’ investments in Special Purpose Acquisition Companies (SPACs), particularly where the private fund adviser is also the SPAC sponsor.
2. **Environmental, Social, and Governance (ESG) Investing.** ESG has become increasingly important to investors but is still vague in both terminology and approach. The Division will continue to focus on ESG-related advisory services and investment products to minimize materially false and misleading statements. ESG areas of concern

include inaccurate disclosures of ESG investment approaches, voting of client securities that are not in alignment with ESG disclosures and proxy voting policies, and “greenwashing” by overstating the ESG factors considered in portfolio selection.

3. **Standards of Conduct: Regulation Best Interest, Fiduciary Duty, and Form CRS.** The Division continues to focus on standard-of-conduct issues. Examinations will focus on whether RIAs and Broker Dealers are placing their interests ahead of the interests of their retail customers. Broker Dealer examinations will focus on sales practices related to, among other things, SPACs, structured products, leveraged and inverse exchange traded products (ETPs), , private placements, annuities, municipal and other fixed income securities, and microcap securities. RIA examinations will focus on the duties of care and loyalty with a focus on, among other things, revenue-sharing arrangements, recommending more-expensive classes of investment products when lower-cost classes are available, and wrap-fee account recommendations (particularly in light of the move to zero commissions on certain transactions by broker-dealers). In addition to the focuses for individual examinations, examinations for dually registered RIAs and broker-dealers will also focus on sales and recommendations that are either high-fees or affiliated with the firm or create improper incentive or compensation to the adviser.
4. **Information Security and Operational Resiliency.** Examinations will continue to review the measures that firms have taken to safeguard customer accounts, oversee vendors, address phishing and account intrusions, respond to incidents such as ransomware, identify and detect identity-theft red flags, and manage work-from-home-related risks.
5. **Emerging Technology and Crypto-Assets.** Examinations will focus on firms that offer new services or use new practices such as fractional shares, “finfluencers,” or digital engagement practices, assessing whether standards of conduct are met, advice and recommendations are consistent with investment strategies, and the unique risk associated with these new practices is taken into account. With respect to crypto-assets, the Division will also focus on the duty of care and understanding of products, and regular review and updating of compliance practices.

Investment Adviser and Investment Company Examination Program

RIA examinations typically focus on marketing practices, custody and safety of client assets, valuation, portfolio management, brokerage and execution, conflicts of interest, and related disclosures. Specific focus is on ensuring (1) investment advice is in each client’s best interest, (2) adequate oversight of service providers and controls around material nonpublic information, and (3) compliance duties are resourced sufficiently and minimize heightened risks. Heightened risks that will be assessed include whether RIAs: (1) employing individuals who have prior disciplinary histories have implemented heightened oversight practices and (2) operating multiple branch offices have appropriate oversight relating to compliance. Finally, the Division will focus on advisory-fee calculations, inaccurate calculations, and failure to issue refunds of prepaid fees for terminated accounts or pro-rated fees for onboarding clients.

Registered investment companies, including mutual funds and ETFs are still prioritized. Specifically, money market funds and business development companies remain highest priority. Examinations will focus on disclosure to investors, accurate reporting, and compliance.

Broker-Dealer and Exchange Examination Program

Preventing microcap fraud remains a priority for the Division. Examination focus areas will include transfer agent handling of microcap distributions and share transfers and compliance with Regulation BI and other regulatory requirements in broker-dealer sales. In relation to municipal issuer disclosures, examinations will focus on ensuring timely and accurate disclosures.

Additionally, broker-dealer operations remain a focus. Emphasis is on protecting customers, ensuring appropriate trading practices, ensuring compliance with regulations, and minimizing illegal distribution of unregistered securities.

Examinations of broker-dealers will focus on compliance with the Customer Protection Rule and Net Capital Rule by ensuring there are adequate internal protections and assessing funding and liquidity risk-management practices.

Finally, national security exchanges will be assessed generally for compliance with federal securities laws, detecting and disciplining violations and ESG initiatives will be compared against offered services. Municipal advisors will also be examined to ensure they have met their registration, professional, continuing education, and supervisory requirements.

Other Areas of Focus

1. **Clearance and Settlement Examination Program.** Risk-based examinations will be conducted at least once on every systematically important clearing agency in addition to some examinations of other agencies. The examinations will focus on compliance of risk-management frameworks with the Exchange Act, the remediation timeline, and other risk areas identified in collaboration with the SEC's Division of Trading and Markets.
2. **Regulation Systems Compliance and Integrity.** The Division will continue to evaluate Regulation SCI entities' policies and procedures to ensure compliance with Regulation SCI, with the purpose of strengthening the U.S. securities markets technology infrastructure. Areas of focus include: (1) reviewing incident-response policies, specifically ransomware; (2) any third-party infrastructure that supports critical functions; (3) policies for returning to the workplace or hybridization; and (4) policies created to identify and mitigate risks in supply-chain software, specifically with a focus on secure coding practices.
3. **FINRA.** Oversight examinations of FINRA will continue, specifically in the areas of ensuring operations protect investor and market integrity and certain broker-dealers and municipal advisors.
4. **MSRB.** Examinations will focus on the risk-assessment process to identify areas to examine at MSRB. MSRB policies, procedures, and controls will be the most important.
5. **The London Inter-Bank Offered Rate (LIBOR) Transition.** Division examinations will focus on ensuring appropriate preparations have been made to address the cessation of LIBOR rates and the transition to an alternative reference rate.
6. **Anti-Money Laundering.** The Division will continue to prioritize examining compliance with anti-money laundering requirements. Focus will be on whether firms have customer identification programs, Suspicious Activity Report filing obligations are being met, customer due diligence is being conducted, beneficial ownership requirements are in compliance, and regular testing of the anti-money laundering programs is being conducted.

5 Min Read

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