

Division of Examinations: 2022 Examination Priorities

On March 30, 2022 the Division of Examinations of the United States Securities & Exchange Commission published the [2022 Examination Priorities](#).

As in other years, the 2022 Examination Priorities document provides certain data regarding the scope of the examination program and the growth of the investment adviser community. Following are highlights of that data:

- In fiscal year 2021, the Division of Examinations completed 2,200 examinations of investment advisers;
- The Division of Examinations targets an examination coverage of 15% of investment advisers – and in 2021 examined approximately 16% of investment advisers;
- In fiscal year 2021, there was a net addition of approximately 900 SEC-registered investment advisers, bringing the number of investment advisers subject to SEC purview to over 14,800;
- The number of investment advisers with AUM over \$10 billion has increased 30% in the last five years;
- Total AUM is over \$113 trillion, an approximately 70% increase from five years ago; and
- More than 35% of investment advisers manage a private fund.

General Comments Regarding Compliance and Compliance Programs

The Division of Examinations again emphasizes the importance that firms place on compliance, with there being compliance engagement across business lines and with executive management. In addition, the Division of Examinations provides that a well-designed compliance program should be “resilient” and able to adjust to changing conditions and scenarios. Resilient compliance programs have the following common features:

- Inclusivity – participation and input across all business and operational lines;
- Change management – having a process in place to address new compliance risks and challenges;
- Reviews – which should consider compliance matters that arose previously, changes in business activities and regulatory changes; and
- Testing – on a routine and periodic basis, when certain transactions occur, and over extended periods of time to discern patterns or trends.

Examination Priorities for 2022

Private Funds

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More than 5,000 SEC-registered investment advisers manage private fund assets. Due to the growth in this market, the Division of Examinations will continue to focus on RIAs to private funds. Examinations will focus on issues such as:

- An adviser's fiduciary duty;
- Compliance programs;
- The calculation and allocation of fees and expenses;
- Custody;
- Fund audits;
- Valuation, and the impact of valuation on adviser fees;
- Conflicts of interest;
- Disclosure of investment risks;
- Preferential treatment of certain investors by RIAs, especially related to liquidity;
- Compliance with regulatory requirements relating to cross trades, principal transactions and distressed sales; and
- Controls related to material nonpublic information.

The Division of Examinations will also focus on conflicts and disclosures relating to advisers' portfolio strategies, risk management and investment recommendations and allocations.

Environmental, Social And Governance (ESG) Investing

The Division of Examinations will continue its focus on ESG-related advisory services and investment products. Reviews by the Division will generally focus on whether advisers are:

- Accurately disclosing their ESG investing approaches, and if they have adopted policies and procedures ensuring compliance with federal securities laws in connection with ESG-related disclosures;
- Voting client securities in accordance with policies and procedures, and whether votes align with an adviser's ESG-related disclosures and mandates; and
- Overstating or misrepresenting ESG factors incorporated into portfolio selection.

Fiduciary Duty and Form CRS

The Division of Examinations will continue to review how advisers are satisfying the Advisers Act fiduciary obligation to act in the best interest of retail investors and not to place their own interests ahead of retail investors. Reviews will include assessments of practices relating to:

- The consideration of alternative investments – risks, rewards and costs;
- Management of conflicts of interest;
- Trading – best execution obligations;
- Disclosures;
- Account selection – wrap fee accounts; and
- Account conversions and rollovers.

Additional focus areas include such things as:

- Revenue-sharing arrangements;
- Recommending or holding more expensive classes of investment products when lower-cost classes are available;
- Recommending wrap fee accounts without assessing whether such accounts are in the best interest of the clients, including the impact of the move to zero commissions on certain types of securities transactions by various broker-dealers; and
- Recommending proprietary products.

In addition, the Division of Examinations will focus upon dually registered RIAs and broker-dealers, as well affiliated firms with financial professionals who service both brokerage and advisory clients. While the focus areas for these firms will be similar to what is described above, the Division of Examinations will place a particular emphasis on potential conflicts of interest, including with regard to account recommendations and allocation of investments across different accounts. The Division of Examinations will review whether such firms have implemented written policies and procedures to effectively mitigate and address conflicts.

Information Security and Operational Resiliency

The Division of Examinations will continue to review whether advisers have taken appropriate measures to:

- Safeguard customer accounts, including verifying a customer's identity;
- Oversee vendors;
- Address email phishing and/or account intrusions;
- Respond to incidents, such as ransomware attacks;
- Identify and detect red flags related to identity theft; and
- Manage operational risk related to a dispersed/more stay-at-home workforce.

Also, the Division of Examinations will review advisers' business and disaster recovery plans, with a particular focus on the impact of client risk and substantial disruptions to normal business operations.

Emerging Technologies and Crypto Assets

The Division of Examinations will conduct examinations on firms that are, or claim to be, offering new products and services or employing new practices, to assess whether:

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- Operations and controls in place are consistent with disclosures and the regulatory obligations of an adviser;
- Advice and recommendations are consistent with investors' investment strategies and an adviser's fiduciary duty;
- Controls take into account any unique risks associated with such practices.

In regards to crypto assets, the Division of Examinations will review custody arrangements for such assets, and will review the offer, sale, recommendation and trading of crypto assets. Reviews will determine whether advisers involved in crypto assets have met their fiduciary standard of conduct when recommending crypto assets, including evidence of an initial and ongoing understanding of such products. Also, reviews will determine whether advisers routinely review, update and enhance compliance policies and procedures, risk disclosures and operational practices.

The Examination Program for Investment Advisers – Compliance Programs

The Division of Examinations provides additional information regarding typical examinations of investment advisers, especially related to compliance programs. During a typical examination, the Division of Examinations reviews the compliance programs of advisers in one or more of the following key areas:

- Marketing practices;
- Custody;
- Valuation;
- Portfolio management;
- Brokerage and execution; and
- Conflicts of interest and related disclosures.

Furthermore, during the examination process, reviews will be conducted to determine whether advisers' compliance programs address;

- Investment advice being in the best interest of each client;
- Adequate oversight of service providers;
- Whether sufficient resources exist to perform the compliance functions; and
- Compliance controls around the creation, receipt and use of material nonpublic information.

The Division of Examinations will also review whether an adviser has implemented oversight practices to mitigate any heightened risks, such as:

- Employees with prior disciplinary histories;
- Determining that any migration of investor accounts from a broker-dealer business model to an adviser model is in clients' best interests; and
- Operating from multiple branch offices.

Finally, the Division of Examinations will continue to focus on disclosures and other issues related to fees and expenses. Specifically, the Division of Examinations will focus on issues associated with:

- Failure to charge fees in accordance with client agreements;

- Inaccurate calculation of fees, including tiered/breakpoint fees; and
- Failure to refund prepaid fees.

[Here](#) is the link to the 2022 Examination Priorities:

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