

Top 5 takeaways

SEC OCIE Compliance Outreach Program for Investment Adviser and Investment Company Senior Officers



On November 19, 2020, the U.S. Securities and Exchange Commission (SEC) Office of Compliance Inspections and Examinations (OCIE) held their annual **Compliance Outreach Program for Investment Adviser and Investment Company Senior Officers**. The virtual event covered a range of compliance-related matters, and included discussions with representatives from OCIE, the SEC's Division of Enforcement (Enforcement), SEC's Division of Investment Management (Investment Management), and the asset management industry.

Top 5 takeaways:

Resources



1. Ongoing impact of COVID-19

The SEC was quick to act in response to the pandemic, providing various forms of relief early on, and has since continued its outreach with the industry. Throughout, the SEC has remained fully operational, albeit remote, with OCIE conducting exams, Enforcement completing investigations, and Investment Management continuing policy making. Continued coordination among these three groups has been paramount to their ability to move quickly in pursuit of their mission of protecting investors while promoting capital formation.

SEC COVID-19 Response

OCIE Risk Alert: COVID-19 Compliance Risks



2. Formula for a CCO's success: empowerment, seniority, and authority

The role of the chief compliance officer (CCO) perhaps has never been more challenging than it is today, and yet, remains a crucial aspect to the success of an adviser's compliance program. The impact of COVID-19 on the industry, both from an operational and performance standpoint, the rise of opportunities in environmental, social, and governance (ESG) investing and digital assets, and the increasing importance placed on cybersecurity by a remote workforce are sources of continued pressure on adviser compliance programs. Providing the CCO with the resources needed to advance a firm's compliance program, ensuring clear and effective lines of communication between the chief operating officer and firm executives, and promoting a culture of compliance are important to ensuring that an adviser is able to stay ahead of the curve. Firms that don't appropriately elevate their compliance program or sufficiently support the professionals charged with maintaining the program put both their reputation and their clients' assets at risk, while inviting scrutiny and potential action from the SEC.

OCIE Risk Alert: Investment Adviser Compliance Programs

OCIE Risk Alert: Cybersecurity: Safeguarding Client Accounts

OCIE Risk Alert: Cybersecurity: Ransomware

SEC Spotlight on Cybersecurity



3. Conflicts of interest present an opportunity for improvement

The process of managing, mitigating, and disclosing conflicts of interest is not new. However, it is an area that continues to face scrutiny from the SEC, providing opportunities for improvement. The duty of care and the duty of loyalty are core principles that govern an adviser's fiduciary duty to its clients.¹ This means managing conflicts of interest by either eliminating or mitigating them, and providing required disclosures to investors. Providing legal and compliance departments with a seat at the table regarding business matters, meticulously maintaining a conflicts registry, and appropriately tailoring the required disclosures are a few leading practices in ensuring the success of a compliance program. The constant in business is change. A culture of compliance means ensuring that the compliance department is not only informed of changes in the business, but also intricately involved in the decisions that drive such changes. Firm compensation, cash management strategy, share class issues, and private fund-related conflicts are a few of the areas where OCIE continues to focus their attention; in some cases, action has been taken by Enforcement.

SEC Observations from exams of private fund investment advisors



4. Registered funds—regulatory developments, emerging risks, and common staff observations

From a rule-making standpoint, 2020 has proven to be a busy time. from a rule-making standpoint. Recent rule releases and rule proposals, such as the final derivatives rule and the proposed valuation rule, underline Investment Management's continued focus on modernizing the regulatory landscape.

What's new in the SEC Derivatives Rule?

OCIE has adapted to virtual examinations, responded with meaningful flexibility when needed, and provided ongoing observations through their risk alerts, all with the goal of balancing the pursuit of their examination agenda with not overly burdening fund personnel.

SEC proposes modernized fund valuation framework

Recent enforcement actions—including those related to disclosure, cross-trading, trading, valuation, and false or misleading statements—serve as a reminder that Enforcement remains focused on protecting investors and holding firms accountable for noncompliance.

Observations from OCIE's Examinations of Investment Advisers



5. Fintech, ESG, and retail investors—opportunities for growth, but proceed with caution

While teacher retirement programs may provide a valuable source of capital, advisers in the space should be mindful of the fragmented regulatory regime as regulations often differ between states. In addition, recent Enforcement action in this space reiterates the requirement to manage, mitigate, and disclose conflicts of interest.

SEC Engaging on Fund Innovation

The fintech space provides a wealth of opportunities—ranging from investing directly in digital assets to enhancing operational efficiency. However, advisers should be mindful of both the typical risks involved with new technologies, as well as the more specific risks surrounding digital assets (e.g., custody, valuation). Hiring personnel with the relevant expertise to manage these novel risks is essential to the success of adviser compliance programs.

SEC Engaging on non-DVP Custodial Practices and Digital Assets

The rise of ESG investing has brought with it various opportunities and challenges. While there is a clear appetite for ESG among investors and advisers, much remains unclear as the area continues to evolve. Advisers looking to get in on the action should ensure their compliance program is fully integrated with the business as it ventures into ESG-themed investing.

Understanding ESG

¹ In June 2019, the SEC adopted several rules and interpretations to enhance investor protections. See the [press release](#) for the package of related rule making, and the [SEC's Interpretation Standard Regarding of Conduct for Investment Advisers](#).

Questions?

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