

## Investment Management

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# SEC's OCIE Releases 2019 Examination Priorities for Investment Advisers, Broker-Dealers, and Other Financial Industry Professionals

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### What You Need To Know:

- SEC's OCIE released its 2019 Examination Priorities December 20, 2018.
- Six themes are identified.
- Several new subtopic headings have been added.

On Dec. 20, 2018, the SEC's Office of Compliance Inspections and Examinations ("OCIE") released its 2019 Examination Priorities (the "2019 Exam Priorities") for its National Exam Program. As compared to recent years, OCIE's priorities have largely stayed consistent. The six themes for OCIE's 2019 Exam Priorities, which OCIE considers "perennial risk areas and developing products and services," are:

- Retail investors
- Compliance and risks regarding critical market infrastructure
- FINRA and MSRB
- Digital assets
- Cybersecurity
- Anti-money laundering

OCIE emphasized that while these six themes will drive many of its examinations, "the scope of any examination is determined through a risk-based approach that includes analysis of the registrant's operations, products offered, and other factors."

Perhaps the most notable change in examination priorities is that, as digital assets continue to grow in both volume and importance, OCIE has now established "Digital Assets" as a stand-alone

category, as opposed to a subtopic heading as it was in 2018. With both institutional and retail investors continuing to show interest in these assets, OCIE will closely monitor and determine when certain digital assets can be considered securities. We have also been advised of instances in which OCIE has taken the rare step of examining Exempt Reporting Advisers to digital asset funds to determine, among other things, whether the assets are securities and how the assets are being custodied. In light of this new paradigm, financial industry professionals—including investment advisers, broker-dealers, and traders—should ensure that they are complying with all existing and applicable regulations.

OCIE highlighted that the examination program has continued to grow in recent years, with examinations in 2018 increasing by 10 percent as compared to 2017. Notably, examinations regarding investment advisers "increased to approximately 17 percent of SEC-registered investment advisers, up from approximately 15 percent in 2017."

Investment advisers and broker-dealers should be aware that a number of new subtopic headings have been featured in OCIE's 2019 Exam Priorities for the first time:

- **Broker-Dealers Entrusted With Customer Assets.** OCIE will monitor to make sure broker-dealers that hold customer cash and securities are abiding by applicable rules and regulations including the Customer Protection Rule, which places restrictions on how broker-dealers can use customer assets.
- **Conflicts of Interest.** As fiduciaries to their clients, investment advisers must act and advise with the best interests of their clients in mind. Among other things, OCIE will review firm policies and procedures regarding the use of affiliated service providers and products, securities-backed non-purpose loans and lines of credit, and borrowing funds from clients.
- **Microcap Securities.** For firms selling stocks of companies below a \$250 million market capitalization, among other things, OCIE will monitor for manipulative schemes, such as “pump and dump” schemes.
- **Portfolio Management and Trading.** OCIE will examine portfolio management processes with an emphasis on fair allocation of investment opportunities among clients, consistency between investments and client objectives, disclosure of material information to clients and

regulatory compliance. OCIE will also monitor to make sure that portfolio recommendations are in the best interests of clients.

## Observations and Recommendations

Investment advisers and other financial industry professionals should expect that OCIE, with its effective use of technology and highly sophisticated personnel, will continue to push for more regulatory examinations. While we may not see another 10 percent increase in examinations, we do not expect to see a significant decrease in either the number or the scope of examinations in 2019. In particular, investment advisers should keep in mind that, while the six themes highlighted by OCIE demonstrate its broader goals for the coming year, a robust compliance program requires attention to the full spectrum of regulatory concerns in light of each investment adviser’s operations.

Please contact Ethan L. Silver, Scott H. Moss, Joseph S. Hendricks or your regular Lowenstein Sandler contact if you have any questions regarding OCIE’s 2019 examination priorities or how your firm can adapt in consideration of OCIE’s new emphases.

The 2019 examination priorities can be found [here](#).

## Contacts

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