

KD Alert: Financial Industry Regulatory Authority (“FINRA”) Released its 2016 Regulatory and Examination Priorities Letter

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On January 5, 2016, the Financial Industry Regulatory Authority (“FINRA”) released its 2016 Regulatory and Examination Priorities Letter (the “Letter”), in which FINRA outlined its areas of focus for the coming year. For 2016, FINRA has outlined three “broad issues” on which it will focus:

- (1) Culture, Conflict of Interest and Ethics;
- (2) Supervision, Risk Management and Controls; and
- (3) Liquidity.

FINRA’s most important area of focus for 2016 will be firm culture, especially as it relates to compliance and ethics. In the Letter, FINRA announced that it will focus on the frameworks that firms use to develop, communicate and evaluate conformance with their culture. In doing so, FINRA will assess five indicators of a firm’s culture:

- (1) Whether control functions are valued within the organization;
- (2) Whether policy or control breaches are tolerated;
- (3) Whether the organization proactively seeks to identify risk and compliance events;
- (4) Whether supervisors are effective role models of firm culture; and,
- (5) Whether sub-cultures (e.g., at a branch office, trading desk, or an investment banking department) that may not conform to overall corporate culture are identified and addressed.

In making this issue its primary focus, FINRA appears to be telling member firms that compliance should be a key function of firms’ operations, and that firms are expected to encourage active compliance departments, rather than merely tolerate them.

Within the broad issues, FINRA referenced several more narrowly focused topics, including:

- Management of Conflicts of Interest;
- Technology, including Cybersecurity;
- Anti-Money Laundering (“AML”) Controls; and
- Firm Funding.

A couple of the more narrowly focused topics are not new for 2016 but remain on FINRA’s hot-button issues list: AML and Cybersecurity. FINRA focused on AML compliance in 2015 and will continue to do so in 2016. FINRA will be assessing the adequacy of firms’ monitoring for suspicious activity, including surveillance of both money movements and trading activity, and expects firms to continually test their systems to ensure all types of accounts and activity are properly identified and reviewed, and to document any reasons for not doing so pursuant to any risk-based decision.

With respect to Cybersecurity, FINRA intends to review a firm’s approach to Cybersecurity risk management, examining one or more of the following topics: governance, risk assessment, technical controls, incident response, vendor management, data loss prevention, and

staff training. In addition, FINRA will continue to examine firms' ability to protect confidential client information, including compliance with SEC Regulation S-P and Securities Exchange Act Rule 17a-4(f).

As to be expected, FINRA also pointed out other areas of focus for 2016, including:

- Sales Practices, specifically referencing suitability and concentration, as well as seniors and vulnerable investors; and
- Private Placements, the JOBS Act and Public Offerings.

FINRA's priorities for 2016 are extensive and are sure to present a challenging regulatory environment for member firms.

The attorneys of Kaufman Dolowich & Voluck are poised to assist with these and other issues facing your member firm.

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