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KD Financial News Alert: SEC Unveils Its Examination Priorities for 2017

By Stefan R. Dandelles, Esq. and Brendan P. McGarry, Esq.

Last week, the Office of Compliance Inspections and Examinations ("OCIE") of the U.S. Securities Exchange Commission ("SEC") released its Examination Priorities for 2017 ("Priorities"). Generally, OCIE's Priorities reflect certain practices, products and services that OCIE perceives to present heightened risk to investors and/or capital markets at large. OCIE's Priorities are organized around three thematic areas:

1. Examining matters of importance to retail investors;
2. Focusing on risks specific to elderly and retiring investors; and
3. Assessing market-wide risks.

With respect to protecting retail investors, OCIE is pursuing a variety of examination initiatives to assess risks to retail investors that could arise from the enumerated areas, including:

- Electronic Investment Advice: OCIE is examining RIAs and BDs that offer "robo-advisers" that primarily interact with clients online and firms that use automation as a component of their services. OCIE will review compliance programs, risk disclosures and marketing, as well as oversight of algorithms that generate recommendations.
- Wrap Fee Programs: OCIE will expand its review of RIAs and BDs associated with wrap fee programs, including whether investment advisers are acting in a manner consistent with their fiduciary duties and meeting their contractual duties to clients.
- Exchange Traded Funds ("ETFs"): OCIE will continue to examine ETFs for compliance with applicable exemptive relief under the Securities Exchange Act of 1934 and the Investment Company Act of 1940, as well as other regulatory requirements. OCIE will also continue its review of sales strategies, trading practices, and disclosures, particularly in niche or leveraged/inverse ETFs.
- Never-Before Examined Investment Advisers: OCIE is expanding its initiative of examining newly registered advisers and those that have been registered for a longer period but never examined.
- Recidivist Representatives and their Employers: OCIE will continue to use its analytic capabilities to identify individuals with track records of misconduct and examine the firms that employ them.

With respect to senior investors and retirement investors, OCIE will continue to devote increased attention to issues affecting these groups, including:

- ReTIRE: Continuing its multi-year initiative, OCIE will examine SEC-registered investment advisers and broker-dealers and the services they offer to investors with retirement accounts, which will include examining the reasonable basis for recommendations made to investors, conflicts of interest, supervision and compliance controls, and marketing and disclosure practices.
- Public Pension Advisers: OCIE will review how investment advisers to public pensions manage conflicts of interest and fulfill their fiduciary duties, as well as pay-to-play and other risks specific to these advisers.
- Senior Investors: OCIE will evaluate how firms manage their interaction with senior investors, and will focus on supervisory programs and controls relating to products and services directed at senior investors.

With respect to assessing market-wide risks, OCIE has highlighted several areas it will evaluate for structural risks and trends that may involve multiple firms or entire industries:

- Money Market Funds: OCIE will examine compliance with amendments to rules adopted in 2014, which became effective in October 2016, addressing redemption risks in money market funds.
- Payment for Order Flow: OCIE will assess how certain BDs, such as market makers and those serving primarily retail customers, are complying with their duty of best execution when routing customer orders.
- Anti-Money Laundering ("AML"): OCIE will continue to examine broker-dealers' AML programs, focusing on whether the firms are able to adapt their AML programs to current risks.
- Clearing Agencies: OCIE will continue to conduct examinations of clearing agencies for which the SEC is the supervisory agency pursuant to Dodd-Frank.

OCIE also identified other areas of focus, including:

- Municipal Advisor's: OCIE will continue to evaluate municipal advisors' compliance with SEC and MSRB rules.
- Transfer Agents: OCIE will continue its review of transfer agents, focusing on those who service microcap issuers in order to detect issuers who may be engaging in unregistered, non-exempt offerings of securities.
- Private Fund Advisers: OCIE will focus on conflicts of interest and disclosure of those conflicts, as well as actions that appear to benefit the adviser at the expense of investors.

OCIE's Priorities continue many of its initiatives from 2016, with particular emphasis on sales practices, especially those directed at senior investors, and issues that may provide market-wide risk. OCIE's examinations are certain to make waters choppy for compliance departments of SEC-registered firms throughout 2017. The attorneys of Kaufman Dolowich & Voluck are prepared to help firms navigate this tumultuous regulatory environment.

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