

SEC Releases 2013 Examination Priorities

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On February 21, 2013, the US Securities and Exchange Commission (the “SEC”) released its examination priorities for 2013. The priorities were published by National Examination Program (“NEP”), a program administered through the SEC’s Office of Compliance Inspections and Examinations, including market-wide areas of focus as well as issues specific to investment advisers and investment companies, broker-dealers, clearing and transfer agents, and market oversight. Areas identified by NEP as priorities are summarized below.

Ongoing Risks

NEP identified the following as areas of heightened risk:

- safety of client assets,
- conflicts of interest related to compensation arrangements,
- marketing and performance,
- conflicts of interest related to allocation of investment opportunities, and
- fund governance.

Of particular note is the focus on safety of client assets and compliance with the requirements of Rule 206(4)-2 of the Investment Advisers Act of 1940 (the “Advisers Act”), commonly referred to as the “Custody Rule.” Investment advisers should note that examinations this year will likely look to whether advisers are:

- recognizing situations in which they have custody (which is broadly defined in the Custody Rule),
- complying with the “surprise exam” requirement,
- satisfying the requirements that assets be held by a “qualified custodian,” and
- for pooled investment vehicles, following the terms of the audit exception to the independent verification requirement.

New and Emerging Issues

NEP identified the following as areas that carry increased risk as a result of recent developments in the industry:

- new registrants,
- dually registered investment advisers and broker-dealers,
- “alternative” investment companies, and
- payments for distribution in guise.

With respect to new registrants, NEP noted that since the Dodd-Frank Wall Street Reform and Consumer Protection Act became effective in 2012, approximately 2,000 investment advisers have newly registered with the SEC. In response, the NEP is planning a two-year initiative to establish a presence with these advisers. The initiative will focus on engaging the new registrants, examining a substantial percentage of such registrants, analyzing the findings, and reporting the results to the industry.

Policy Topics

Finally, NEP identified additional topics over which it intends to gain a better understanding. These policy topics are:

- money market funds,
- compliance with exemption orders, and
- compliance with Advisers Act Rule 206(4)-5, the “Pay to Play” rule that restricts advisers from soliciting government entities for business in exchange for political contributions.

NEP’s complete examination priorities for 2013 are available [here](#).

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