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SEC Announces 2018 Examination Priorities

The National Examination Program, which is administered by the SEC's Office of Compliance Inspections and Examinations ("OCIE"), recently published its [Examination Priorities for 2018](#) (the "2018 Exam Priorities"). In the 2018 Exam Priorities, OCIE listed the following priorities affecting the mutual fund/investment management industry.

- Remaining as an item from last year's priorities, OCIE will continue to prioritize cybersecurity in its examinations of broker-dealers' and investment advisers' cybersecurity programs, including focusing on, among other things, risk assessment, access rights and controls, data loss prevention, vendor management, training, and incident response procedures.
- Another item from last year's priorities, OCIE will examine advisers and broker-dealers that offer investment advice through automated or digital platforms, including "robo-advisers." These examinations will focus on compliance programs, marketing, formulation of investment recommendations, data protection and disclosures relating to conflicts of interest.
- In May 2018, the U.S. Treasury Financial Crimes Enforcement Network ("FinCEN") promulgated new rules to strengthen customer due diligence ("CDD") requirements for "financial institutions," which term includes mutual funds (but not registered investment advisers). The new anti-money laundering ("AML") rules are described in this [Ropes & Gray Alert](#). OCIE will examine whether SEC-regulated entities are adapting their AML programs to address their new CDD obligations and, more generally, OCIE will assess these entities' compliance with AML requirements.
- OCIE will focus its examinations on mutual funds and ETFs that (i) have experienced poor performance or liquidity issues relative to their peers, (ii) are managed by advisers that are relatively inexperienced managing registered investment companies, (iii) hold securities that are likely to be difficult to value during a period of market stress (including "securitized auto, student, or consumer loans, or collateralized mortgage-backed securities) and (iv) seek to track custom-built indexes, for the purpose of reviewing conflicts that the adviser may have with the index provider. OCIE also will focus on ETFs that have little secondary market trading volume and that are at risk of exchange delisting and having to liquidate assets. Examinations of these ETFs will include an analysis of whether investment risks were disclosed adequately to investors.
- OCIE will continue to examine registered investment advisers and broker-dealers associated with wrap fee programs. In particular, the examinations will focus on whether (i) the recommendations to invest and continue in the program are reasonable, (ii) regulatory requirements to disclose conflicts of interests are satisfied and (iii) advisers are obtaining best execution and disclosing costs of executing transactions with another broker-dealer.
- OCIE will continue to make risk-based assessments and select for examination investment advisers that have elevated risk profiles, including advisers that have never been examined and those advisers that have not been examined in some time.

For further information about how the issues described in this Alert may impact your interests, please contact your regular Ropes & Gray contact.