

# Regulatory Alert

Regulatory Insights for Financial Services

September 2023

## Risk Alert: – SEC Investment Adviser Supervision

### KPMG Insights:

- *Supervision insight: Expands view into SEC regulatory examination and supervision process.*
- *Risk-based: Sets examination selection of investment advisors and risk areas.*
- *Firm-specific risks: Based on risk characteristic (e.g., activities, regulatory history), as well as tips, complaints, referrals.*
- *“Typical” requests: Provides ‘typical’ examination documents and information requests.*

The SEC Division of Examinations issues a [Risk Alert](#) on the risk-based approach the Division staff uses for selecting SEC-registered investment advisers (advisers) for examination and determining the scope of risk areas to examine, as well as to provide a list of typically requested documents and information.

### Assessing Risks and Scoping Examinations

**Selecting Firms to Examine.** The Risk Alert provides a non-exhaustive list of firm-specific risk factors related to an adviser’s business activities, conflicts of interest, and/or regulatory history that Division staff may consider when selecting advisers for examination, including:

- Prior examination observations and conduct, (e.g., “repetitive deficient practices during more than one review of a firm”, fee- and expense-related issues, or compliance program concerns).
- Supervisory concerns (e.g., disciplinary history of associated individuals or affiliates).
- Tips, complaints, or referrals.
- Business activities of an adviser or its personnel that may create conflicts of interest, (e.g., advisers dually registered as, or affiliated with, brokers).
- Length of time since an adviser’s registration or last examination.

- Material changes in an adviser’s leadership or other personnel.
- Indications that an adviser might be vulnerable to financial or market stresses.
- Reporting by news and media that may involve or impact an adviser.
- Data provided by certain third-party data services.
- Disclosure history of an adviser.
- Whether an adviser has access to client and investor assets and/or presents certain gatekeeper or service provider compliance risks.

The Division staff may also consider whether an adviser provides services, recommends products, or otherwise meets criteria relevant to the focus areas described in the Division’s annual examination priorities (see KPMG’s Regulatory Alert, [here](#)).

**Selecting Examination Focus Areas.** Once selected for examination, Division staff will perform additional risk assessments to determine the scope of the examination. The scope can vary based on an adviser’s business model, associated risks, and the Division’s reason(s) for conducting

the examination, however, examinations typically include staff review of:

- Operations, disclosures, conflicts of interest, and compliance practices with respect to “core areas” (e.g., custody and safekeeping of client assets, valuation, portfolio management, fees and expenses, brokerage, and best execution).
- Requested documents and information related to the “core areas” to understand potential conflicts of interest and risks and controls, and to test the effectiveness of compliance policies and procedures for monitoring, mitigating, and managing those risks and conflicts of interest.

### Requesting Documents

**Selecting Documents to Request.** As part of the examination process, Division staff will send an adviser a letter containing an initial request list identifying information, including documents, for review, including:

- General information, such as organizational information, business and operations, disclosures and filings, and legal and disciplinary issues.
- Information about the compliance program, risk management, and internal controls, such as compliance program structure and oversight processes, valuation, and information processing, reporting, and protection.
- Information to facilitate testing with respect to advisory trading activities, including information about clients and accounts, portfolio management, brokerage and trading, and conflicts of interest and insider trading.
- Information for the Division staff to perform testing for compliance in various areas, such as those related to marketing and advertising, financial records, and custody.

*Note: The Risk Alert provides an attachment containing a more detailed list of information that is initially requested in examinations.*

### Risk Alert: Observations from Examinations of Newly-Registered Advisers

The currently released Risk Alert follows a [March 2023 Risk Alert](#), which similarly outlines the setting of examination scope and listing of typically requested information and documents while also providing Division staff observations from examinations of newly-registered advisers. Division staff encourages all advisers to review their compliance policies and procedures, disclosure documents and filings, and marketing in light of the issues identified in these examinations. The findings included:

- **Compliance policies and procedures** that: (1) did not adequately address certain risk areas applicable to the firm; (2) omitted procedures to enforce stated policies; and/or (3) were not followed by advisory personnel, typically because the personnel were not aware of the policies or procedures, or the policies or procedures were not consistent with their businesses or operations.
- **Disclosure documents** that contained omissions or inaccurate information related to advisers’: (1) fees and compensation; (2) business or operations (including affiliates, other relationships, number of clients, and assets under management); (3) services offered to clients, such as disclosure regarding advisers’ investment strategy (including the use of models), aggregate trading, and account reviews; (4) disciplinary information; (5) websites and social media accounts; and (6) conflicts of interest.
- **Marketing materials** that appeared to contain false or misleading information, including inaccurate information about advisory personnel professional experience or credentials, third-party rankings, and performance as well as information and/or claims that advisers were unable to substantiate.

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