

## KD Alert: The Office of Compliance Inspections and Examinations (“OCIE”) of the U.S. Securities Exchange Commission (“SEC”) released its Examination Priorities for 2016 (“Priorities”)

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On Monday, January 11, 2016, the Office of Compliance Inspections and Examinations (“OCIE”) of the U.S. Securities Exchange Commission (“SEC”) released its Examination Priorities for 2016 (“Priorities”). Generally, OCIE will continue to focus on certain practices and products that it perceives to present potentially heightened risks to investors and/or the integrity of the U.S. capital markets. Much like 2015, OCIE’s 2016 priorities are organized around three thematic areas:

1. Examining matters of importance to retail investors, including investors saving for retirement;
2. Assessing issues related to market-wide risks; and
3. Using OCIE’s evolving ability to analyze data to identify and examine registrants that may be engaged in illegal activity.

With respect to protecting retail investors and investors saving for retirement, OCIE is planning and/or conducting various examination initiatives to assess risks to retail investors that could arise from the enumerated areas, including:

- **ReTIRE:** Continuing an initiative launched in June 2015, 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.
- **Exchange Traded Funds (“ETFs”):** OCIE will be examining 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, and review the ETFs’ unit creation and redemption process. OCIE will also focus on sales strategies, trading practices, and disclosures, particularly in niche or leveraged/inverse ETFs.
- **Variable Annuities:** OCIE will assess the suitability of sales of variable annuities to investors, as well as the adequacy of disclosure and the supervision of such sales.

With respect to using data analytics to identify signals of potential illegal activity, OCIE has highlighted several of its initiatives in which it will leverage its capabilities in the area of data analytics, including:

- **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.
- **Anti-Money Laundering (“AML”):** OCIE will continue to examine clearing and introducing broker-dealers’ AML programs, focusing on firms it feels have not filed an adequate number of suspicious activity reports (“SARs”), or have filed incomplete or late SARs.

OCIE will also continue to assess the degree to which broker-dealers' AML programs are robust and targeted to the firms' business models, and the extent to which the firms are able to adapt their AML programs to current risks.

- Product Promotion: OCIE will continue to focus on detecting the promotion of new, complex and high risk products and related sales tactics with respect to suitability and potential breaches of fiduciary duties.

OCIE also identified other areas of focus, including:

- Private Placements: OCIE will review private placements, including those made under Regulation D of the Securities Exchange Act of 1933 or the Immigrant Investor Program ("EB-5 Program") to evaluate whether legal requirements are being met within such areas as due diligence, disclosure and suitability.
- Private Fund Advisers: OCIE will be examining private fund advisers, maintaining a focus on fees and expenses, and evaluating the controls and disclosure associated with side-by-side management of performance-based and purely asset-based fee accounts.

OCIE's priorities for 2016 are largely a continuation of their initiatives for 2015, which emphasizes the importance of areas of focus such as advice to older investors and retirees, AML compliance, and the increased scrutiny of private funds. OCIE's list of priorities is sure to keep the compliance departments of SEC-registered firms busy throughout 2016. The attorneys of Kaufman Dolowich & Voluck are prepared to help firms navigate this tumultuous regulatory environment.

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