

# Alerts & Publications

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## SEC's 2013 Examination Priorities for Investment Advisers

November 16, 2012

On November 15, Drew Bowden, Deputy Director of the SEC's Office of Compliance Inspections and Examinations, outlined some of the 2013 examination priorities for investment advisers<sup>[1]</sup> and investment companies in remarks at the ABA's Seventh Annual National Institute on Securities Fraud conference. He described these examination priorities in categories that align with the National Exam Program's general mission of protecting investors by (i) improving compliance, (ii) preventing fraud, (iii) monitoring risk, and (iv) informing policy.

### Perennial Risks

- Protection of customer/client assets
- Performance marketing and advertising
- Conflicts in portfolio management
- Governance

### Emerging Risks

- Alternative investment companies
- Entities dually registered as investment advisers and broker-dealers
- Payment for fund distributions

### Policy Issues

- Money market fund stress tests
- Compliance with SEC Exemptive Orders
- Compliance with the Pay-To-Play Rule

Investment advisers should proactively assess their records related to these issues and take steps to assure their preparedness for an SEC examination. Both investment advisers and investment companies should keep in mind the new examination authority granted to the SEC by the Dodd-Frank Act to examine the records of persons, including persons not registered with the SEC, who have custody or use of the funds or securities of investment advisers' clients and registered investment companies. As a result, SEC staff can make requests for records directly from third-party custodians when reviewing the levels of safeguards in place to protect client assets.

In an effort to be more transparent with the industry, the National Exam Program has issued Risk Alerts, and its senior officers have spoken about trends they are seeing in examinations. To continue this practice, the National Exam Program hopes to publish

additional information about its 2013 examination goals and priorities. In addition to the priorities outlined above, we would anticipate the publication to also provide an overview of its examination priorities for the broker-dealer, clearing organization, and SRO examination groups.

O'Melveny and Myers can assist you with anticipating, preparing for, undergoing, and responding to investigative and examination inquiries by the SEC. We advise clients, after reviewing their records, of potential issues that may be raised by the SEC during the investigation or examination, develop a strategy to address such issues, and represent client personnel during interviews by SEC staff. We also respond on client's behalf to requests for records, and prepare responses to examination deficiency letters and investigation notices. If you have any questions regarding the content in this Client Alert, please contact Heather Traeger, Kris Easter, or your counsel at O'Melveny and Myers.

[1] The National Exam Program has authority to examine registered investment advisers and exempt reporting advisers.

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