



Being an SEC Registered Investment Adviser: *Your OCIE Examination*

CompliGlobe
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Are you really ready for your exam?

You must prove that you are doing these things during the year

- Ensure proper “Compliance tone at the top”
- Adopt, implement, administer and enforce your written policies and procedures (“WPPs”) that comprise your Compliance program
- Validate your Compliance Program through monitoring and testing
- Conduct a meaningful annual review
- Conduct a mock examination
- Keep current all of the documents and materials that OCIE will request – books and records
- Use the results of your AR and mock exam and the output of your monitoring and testing to validate your Compliance program
- Always be ready for an exam

Examinations

- Section 204 of the Advisers Act gives the SEC the authority to examine the books and records that advisers are required to keep
- Types of examinations
 - **Risk-based** (based upon Form ADV data and other factors)
 - **Cause** – tips, complaints, whistleblower information, referrals from SEC divisions or other regulators
 - **Thematic** – focus on compliance issues that are in need of SEC or SEC Staff attention
 - **Presence** examinations – never before been examined RIAs
 - **Correspondence** examinations – OCIE examines you by e-mail and phone
 - **Repeat** exams – OCIE returns to see how you responded to a previous exam and/or a deficiency letter

How were you selected for an examination?

- Identified through risk analysis
- “Never before been examined”
- Sources of information used in the decision-making process
 - OCIE Risk Analysis Group
 - Division of Investment Management priorities
 - Division of Enforcement Asset Management Unit
 - Prior exam results and/or a deficiency letter, if applicable
 - Publicly available information
 - Changes in an adviser’s profile – new CCO, more assets, performance aberration, new private funds – *or* no changes over a period of time
 - Tips from other regulators or “TCRs” received by the SEC
 - Other areas of the SEC
- Analysis
 - Systematic (Form ADV disclosures) by industry
 - Tactical (abberational performance, events, etc.)

Focus of examinations

- “Compliance tone at the top” – set by the CEO, Board of Directors and management
- Risk and conflicts of interest identification and control, relative to your business
- Failure to understand “lessons learned” from Risk Alerts, Enforcement actions and SEC and SEC Staff interpretations
- Disclosure
- Advertising
- Strength or weakness of a Compliance program
- CCO and their performance
- Cybersecurity and BCP
- Monitoring and testing: using or ignoring results?
- Affiliations, branches and third party activities and oversight
- Changes implemented when and as required
- Responses to breaches, trade errors and developments
- What was not caught and why?
- Control environment

Focus of examinations (cont'd)

- Safe-keeping of clients' assets (custody)
- Undisclosed compensation arrangements
- Trading issues: best execution, allocation and cross trades
- Brokerage selection, review, arrangements and trading
- Code of Ethics and PAD activities – access persons and their “connected persons”
- Valuations
- Fees and expenses

What's in an exam?

- Document request – 14 days to provide documents and data, weeks one and two
- Pre-visit analysis and review – weeks three and four
- Data entry and analysis into *NEAT*, OCIE's analytical software – weeks three and four
- During the examination (on-site or correspondence) - weeks five and six
 - Discussions with CCO, CEO, key managers and staff
 - Analysis of information
 - Request for more information
 - Documentation of findings
 - Exit interview
- Written communication to complete examination, and only one or more of the following are possible – by 180 days after start of exam
 - No-further action letter
 - Deficiency letter – must reply within 30 calendar days after receipt
 - Enforcement referral

What do we do to prepare for an examination?

- Always be ready!
- Provide materials promptly and keep a duplicate set of documents
- DO NOT IMPEDE AN EXAM – provide all documents and answer questions promptly
- Ensure that everyone will be present during the exam or, if this is really not possible, make sure that requested persons/key staff are available for a phone interview
- Form and prepare the exam team
 - The CEO, the CCO and key staff
 - Conduct refresher compliance training and mock interviews
 - Confirm all systems are operational and all records are available
 - Do not change or hide anything and do not alter any records
 - Know the practical implications of the exam – this is “our opportunity to shine” and not “they’re here to catch us out or find something”
- Do the “30 minute drill”
 - Review all Code of Ethics materials, reports, reviews and breaches
 - Review the breaches log and trade errors log
 - Review output from the last two annual reviews

What do we do during the examination?

- Ensure that everyone is present in person or by phone
- Have the CEO and the CCO welcome the examination team
- Have a secure room prepared for the examination team with secure guest internet access, water and coffee
- Give them a floor tour and introduce them to key players
- Agree “ground rules”
 - Designated point person for all examiner inquires and requests
 - One off questions or requests to other personnel?
 - Full access to point person to ensure examination moves quickly
 - All document requests numbered and in writing
 - Daily end-of-day meeting with examiners
 - Who copies documents?
 - Confirm whether the examiners want to talk to or receive information from or about affiliates, related persons, etc.

What do we do during the examination? (cont'd)

- During each interview
 - Have the CCO and the person(s) being interviewed in the room, relaxed
 - Write down every question and every answer and record them in a master log
 - Answer questions in a concise, clear manner – if you do not know something, say so and give the answer as quickly as possible thereafter
 - Correct any misimpressions or wrong answers on the spot
 - Do not contradict colleagues
- Pre-clear documents or materials you propose to give to the exam team – this is not the time to market the firm as the examiners will already know who you are
- If you need time to deliver additional requested documents or records, tell the examiners and give them a delivery date and time – and provide per what you say
- Follow up, follow up, follow up
- At the end of each day, should ask how things went and if anything else is needed

After the examination

- Comply promptly and fully with additional requests for documents and information
- Review, consider and accept the findings
 - Query them for a better understanding
 - The deficiency letter will set forth the relevant Advisers Act positions and why a comment or deficiency is being raised
- Don't “challenge” or fight findings – if you disagree, state your position clearly with support
- Take on board findings – you can start to address them before the examination team leaves!
- **Respond to every point raised within the stated time frame**
- Remember – the exam team will come back to see how you are doing, so be prepared!

“The Reality of CCO and GC Liability”

NYC RCA Asset Management Leadership Symposium

- “The SEC has cautioned that it intends to bring enforcement actions ... stressing the importance of continuous oversight of a firm’s compliance program.”
- During the panel, “Emerging Landscape of CCO and GC Liability”, Mark Berman, CEO of CompliGlobe, advised CCOs and GCs to take a proactive approach to ferreting out potential deficiencies by conducting mock examinations. He cautioned: *“CCOs and GCs should not be hearing about compliance deficiencies for the first time when the SEC visits a firm’s offices to conduct an examination.”*

[RCA Asset Management Thought Leadership Symposium Highlights Regulators’ Examination and Enforcement Priorities, the New SEC Examination Paradigm and Liability Concerns for CCOs and General Counsels](#)

Some lessons learned from examinations ...

- Tell the truth, do not impede and do not withhold documents
- Poor compliance policies alone will be a basis for an enforcement referral
- Follow your Compliance policies

In the Matter of GW Wade & Co. (October 2013)

- Policies and procedures must evolve as your business grows and changes

In the Matter of Feltl & Company (November 2011)

- Complete a proper annual review and have sound internal controls

In the Matter of Equitas Capital Advisers (October 2013)

- Resolve examination issues with the SEC

In the Matter of Further Lane Asset Management (October 2013)

- Importance of e-mails

In the Matter of Comprehensive Capital Management (July 2013)

Remember

- OCIE know who you are and have formed ideas and views about you
- The examination will help confirm their views or uncover new items
- Do not open new lines of enquiry or launch into discussions
- Ask the examiners questions – they can learn from you just as you will learn from them



For more information, please contact:

Mark Berman

berman@compliglobe.com

Helen Broome

broome@compliglobe.com

Robert Manfredro

manfredro@compliglobe.com

Hong Kong + 852 8124 5181

London + 44 208 458 0152

USA +1 917 724 5758

www.compliglobe.com

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