

FINRA Issues 2019 Risk Monitoring and Examination Priorities Letter

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On January 22, the Financial Industry Regulatory Authority, Inc. (FINRA) released its annual, but renamed, [Risk Monitoring and Examination Priorities Letter](#) (“Priorities Letter”) for 2019. The Priorities Letter contains some important messages for FINRA member firms that participate, or have plans to participate, in the crypto space.

First, firms that participate in, or plan to participate in, activities relating to digital assets are once again “encouraged” to notify FINRA about such activities, even if such activities do not require a membership application. See FINRA [Notice to Members 18-20](#) (July 6, 2018). FINRA states that it will “review firms’ activities through its membership and examination processes related to digital assets and assess firms’ compliance with applicable securities laws and regulations and related supervisory, compliance, and operational controls to mitigate the risks associated with such activities.” Specific concerns referenced by FINRA include how firms determine whether a digital asset is a security and whether firms have adequate controls and supervision over compliance with rules related to marketing, sale, execution, control, clearance, recordkeeping and valuation of digital assets as well as AML/Bank Secrecy Act rules and regulations.

Second, the Priorities Letter raises concerns with respect to what FINRA views as increasing involvement by members in the distribution of securities through online platforms in reliance on Rule 506(c) of Regulation D and Regulation A under the Securities Act of 1933. FINRA is concerned that some members that are involved with online distribution platforms nevertheless assert that they are not selling or recommending securities to customers. FINRA views the handling of customer accounts and funds or receiving transaction-based compensation as indicative of sales activities that can trigger suitability, AML, and other regulatory requirements. The Priorities Letter also states that FINRA will evaluate how firms are evaluating offering documents and communications with the public including whether they omit material information, contain false or misleading statements, or promise unreasonable returns. In the case of offerings subject to Regulation D, FINRA also intends to review the risk of sales to non-accredited investors and non-compliant escrow arrangement. With respect to Regulation A offerings, FINRA will also assess whether compensation arrangement disclosure and whether such arrangements are excessive.

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