

OCIE Examination of Crypto Advisers

MARCH 19, 2019

In February 2018, the SEC's Office of Compliance Investigations and Examinations (OCIE) listed, for the first time, the examination of broker-dealers and investment advisers engaged in the crypto space as one of its examination priorities.

It has been reported that in early 2018, OCIE commenced a "crypto sweep" of an unknown number of investment management firms.

Then, in late 2018, in announcing its examination priorities for 2019, OCIE once again listed the examination of crypto advisers and broker-dealers as one of its examination priorities.

Advisers who manage crypto assets on behalf of their clients would be well advised to consider the issues raised by OCIE in its examination priority letters, as well as in its crypto sweep letter, and address those issues satisfactorily before OCIE shows up for an examination of the adviser's crypto activities.

OCIE appears to be focusing on seven principal issues in the crypto space:

- **Fees.** What advisory fees do advisers charge in connection with managing crypto assets?
- **Valuation.** How do advisers value crypto assets for the purposes of assessing advisory fees and issuing client reports? (See our blog posts dated January 24, January 30, and February 4 for a description of certain issues relating to the valuation of crypto assets.)
- **Asset Safe-Keeping.** What measures have advisers taken to ensure the security and safe-keeping of clients' crypto assets, so that such assets are not subject to theft or misappropriation? (See our blog posts dated March 7 and March 12 for a description of issues relating to an adviser's custody of clients' crypto assets.)
- **Trading/Portfolio Management Practices.** How do advisers execute trades in crypto assets and price those trades? What crypto exchanges and brokers do they use? How do advisers ensure that crypto investing is within their clients' investment mandates?
- **Risk Disclosure/Marketing.** What disclosures and advertising/marketing materials do advisers provide prospective clients regarding crypto assets? Do these materials adequately disclose the complexity of crypto assets and the risks associated with investing in them, such as dramatic price volatility, potential lack of liquidity,

and the possibility of loss and fraud? (See our blog post dated [February 7](#) for a discussion of risk disclosures relating to crypto assets.)

- **Personal Trading.** If the adviser’s employees and/or principals are permitted to invest in crypto assets, how does the adviser monitor and review employee/principal investments in crypto assets in conjunction with its compliance program? (See our blog posts dated [February 19](#) and [March 7](#) for a description of issues relating to the application of an adviser’s Code of Ethics to crypto assets.)
- **Compliance Considerations.** What measures have advisers taken to review and, to the extent necessary, update their compliance policies and procedures to address all material compliance issues relating to managing crypto portfolios or recommending crypto investments?

When OCIE raises issues such as these, it is sometimes a signal that enforcement actions relating to such issues are either already in the works or will soon be if advisers do not begin to conform their actions to OCIE’s expectations. Accordingly, advisers who manage crypto assets on behalf of, or recommend crypto assets to, their clients should undertake a thorough review and update of

- Their compliance policies and procedures, to ensure that those policies and procedures address the unique compliance considerations raised by crypto investing (including valuation, asset safekeeping/custody, trading/portfolio management practices, and personal trading.)
- The disclosures and advertising/marketing materials they provide to prospective clients regarding crypto assets to ensure that those materials fully and adequately disclose the complexity of crypto assets and the risks related to crypto investing.

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