

SEC EXAMS Issues Risk Alert for Newly-Registered Advisers: Important Considerations and Observations

APRIL 6, 2023

On March 27, 2023, the U.S. Securities and Exchange Commission (SEC) Division of Examinations (EXAMS) issued a risk alert summarizing the SEC staff's observations from examinations of newly-registered investment advisers (the Alert). The Alert discusses the focus areas reviewed during examinations of newly-registered advisers and shares staff observations regarding compliance policies and procedures, disclosures, and marketing practices.

According to the Alert, EXAMS has prioritized examining newly-registered advisers within a reasonable period of time after their registration has become effective. The Alert also highlights certain information that the SEC staff typically requests and reviews in connection with such examinations. Such information includes:

- General information to provide the staff with an understanding of the adviser's business and operations;
- Demographic and other specific data regarding each advisory client account;
- Information regarding the adviser's compliance program, risk management practices and framework, and internal controls;
- Information to facilitate the staff testing for regulatory compliance in certain areas, including portfolio management and trading activities; and
- Communication used by the adviser to inform or solicit new and existing clients.

Additionally, interviews of advisory personnel are often held to understand the adviser's business, operations, investment activities, and compliance program.

Notably, the SEC staff's review of newly-registered adviser examinations identified issues in three particular areas, including:

- **Compliance Policies and Procedures:** Specifically, compliance policies and procedures (1) did not adequately address certain risk areas applicable to the firm; (2) omitted procedures to enforce stated policies; and/or (3) were not followed by advisory personnel because personnel were not aware of policies or policies were not consistent with businesses or operations. Additionally, annual compliance reviews did not address the adequacy of the advisers' policies and procedures and the effectiveness of their implementation.

- **Disclosure Documents and Filings:** Required disclosure documents contained omissions or inaccurate information and untimely filings. Such omissions and inaccuracies were related to (1) fees and compensation, (2) business or operations, (3) services offered to clients, (4) disciplinary information, (5) websites and social media accounts, and (6) conflicts of interest.
- **Marketing:** Certain marketing materials appeared to contain false or misleading information, particularly with respect to advisory personnel experience, credentials, and past performance. Additionally, underlying documentation to substantiate factual claims made in marketing materials was found to be insufficient.

EXAMS will continue to focus on examinations of newly-registered advisers to provide an opportunity for early engagement with advisers and assist with compliance. Newly-registered advisers should carefully review the Alert and review their current compliance policies, procedures, practices, and disclosure and consider any appropriate changes in the areas discussed in the Alert.

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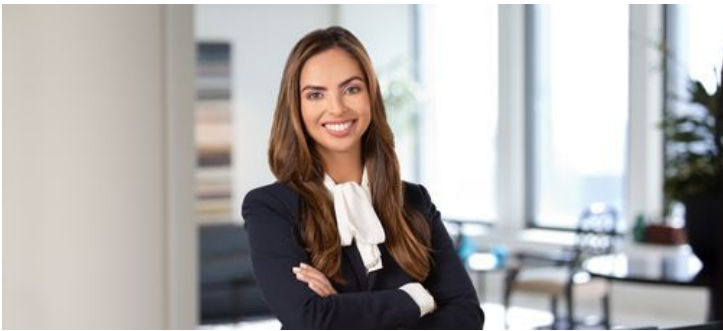
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