

PUBLICATION

Common Trends in FINRA and SEC Regulatory Priorities

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Each year, both the Financial Industry Regulatory Authority (FINRA) and the United States Securities and Exchange Commission (SEC) issue guidance concerning their regulatory priorities for the coming year. This year, FINRA issued its [2016 Annual Regulatory and Examination Priorities Letter](#) on January 5, and the SEC Office of Compliance Inspections and Examination's National Exam Program (NEP) issued its [Examination Priorities for 2016](#) on January 11, 2016. Summaries of each priority letter are available [HERE](#) and [HERE](#), respectively.

In order to provide additional insight into the evolution of FINRA and the SEC's regulatory and examination priorities, we have also prepared detailed comparisons of FINRA's priorities between 2007 and 2016 and the SEC's priorities between 2013 and 2016. The comparison of FINRA's priorities is available [HERE](#). The comparison of the SEC's priorities is available [HERE](#).

This Alert will identify and examine some of the topics where FINRA and the SEC's concerns overlap. Because both agencies have indicated that they intend to focus on the topics identified below, it may be prudent for firms to place additional emphasis on these areas throughout 2016. These issues include:

- **Conflicts of Interest:** Both agencies will focus on conflicts of interest in 2016. FINRA's focus relates to its assessment of firm culture and on its interest in seeing firms identify and manage conflicts of interest to ensure ethical treatment of customers. The SEC's focus appears to be somewhat more limited, emphasizing conflicts of interest relating to retirement accounts and private fund advisors' side-by-side management of performance-based and purely asset-based fee accounts.
- **Cybersecurity:** Given the evolving nature of cybersecurity threats, both agencies emphasize cybersecurity and firms' implementation of risk management procedures and controls.
- **Technology Management:** FINRA has expressed broad concerns regarding firms' technology management and the potential for erroneous system and application changes to have adverse effects on customers and the market, among other things. While its emphasis on technology management is less explicit than that of FINRA, the SEC plans to evaluate firms' policies and procedures related to their Regulation Systems Compliance and Integrity (SCI) systems and whether firms' security operations are tailored to the risks each entity faces.
- **AML:** Both agencies emphasized their continued assessment of the adequacy of firms' monitoring for suspicious activity.
- **Microcap Securities:** Both agencies have expressed concern about firms' potential involvement in pump-and-dump schemes or market manipulation and firms' compliance with federal securities laws with respect to microcap securities markets.
- **Liquidity/Liquidity Controls:** While both agencies have expressed interest in liquidity, FINRA's focus is on firms' contingency funding plans whereas the SEC's focus pertains to advisors to mutual funds, ETFs and private funds that have exposure to potentially illiquid fixed income securities and on firms that are new or expanding providers of liquidity in the marketplace.
- **Sales Practices:** A longstanding concern in numerous respects. In 2016, both agencies will continue to focus on suitability issues and inappropriate trading, particularly with respect to new, complex, speculative, and high risk products and excessive trading.

- **Senior Investors:** Both agencies have increased their oversight with respect to senior investors and will continue to do so throughout 2016, emphasizing suitability and concentration in light of concerns regarding seniors' vulnerability to fraud, sales practice abuse and financial exploitation.
- **Private Placements:** Both agencies have committed to analyzing private placements in 2016 with respect to suitability, disclosure and due diligence with FINRA specifically focusing on recent regulatory developments, including the ability to conduct general solicitations under SEC Rule 506(c) of Regulation D and the crowdfunding rules which will become effective in 2016. The SEC's focus is more generally on whether firms are meeting the legal requirements, including those provided by Regulation D and the Immigrant Investor Program.
- **Exchange Traded Funds (ETFs):** FINRA's focus with respect to ETFs will be on firms' roles as authorized participants in the ETF creation and redemption process, which the SEC will address to some extent as well. The SEC's primary focus will be on compliance with applicable exemptive relief granted under the Securities Exchange Act of 1934 and the Investment Company Act of 1940 and with other regulatory requirements.

In light of these shared interests, firms should assess their compliance and supervisory programs in the context of these key risk areas. Firms must also evaluate their sales practices, as well as their policies and procedures with respect to these areas, in order to ensure they are in compliance with all applicable rules and securities laws.

If you have any questions regarding these issues or any other securities-related issues, or need assistance in evaluating your company's policies and procedures, please contact any of the attorneys in Baker Donelson's Broker-Dealer/Registered Investment Adviser Group.