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January 10, 2020

## SEC Announces 2020 Examination Priorities

On January 7, 2020, the Securities and Exchange Commission's Office of Compliance Inspections and Examinations ("OCIE") announced its examination priorities for 2020.<sup>1</sup> OCIE emphasized that culture and "tone at the top" are key to effective compliance programs and noted several hallmarks of effective compliance programs: compliance's active engagement in most facets of firm operations; early involvement in important business developments; knowledgeable and empowered chief compliance officer with full responsibility, authority, and resources to develop and enforce policies and procedures of the firm; and a commitment to and tangible support for compliance at all levels of an organization.

Below are certain highlights of the examination priorities particularly relevant to investment advisers to private equity, credit and hedge funds.

**Private Fund Advisers.** OCIE will focus on investment advisers to private funds that have a greater impact on retail investors, such as firms that provide management to separately managed accounts side-by-side with private funds, with particular focus on controls to prevent the misuse of material non-public information and conflicts of interest, such as undisclosed or inadequately disclosed fees and expenses and the use of affiliates to provide services to clients.

**Investment Advisers Offering New Strategies.** OCIE expressed a particular interest in the accuracy and adequacy of disclosures provided by investment advisers offering new types of or emerging investment strategies, such as strategies focused on sustainable and responsible investing.

**Dually Registered Investment Advisers.** OCIE will continue to prioritize examinations of investment advisers that are dually registered as, or are affiliated with, broker-dealers, or have supervised persons who are registered representatives of unaffiliated broker-dealers.

**Never-Before or Not Recently-Examined Investment Advisers.** OCIE will continue to conduct risk-based examinations of selected investment advisers that have never been examined, as well as those that have not been examined for a number of years and may have substantially grown or changed business models.

**Digital Assets.** OCIE's examinations will focus on management of digital assets, including trading, safety of client funds and assets, pricing of client portfolios, compliance, internal controls, and supervision of employee outside business activities relating to digital assets.

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**Cybersecurity.** OCIE's examinations relating to cybersecurity will focus on, among other things, proper configuration of network storage devices and information security governance and protection of clients' personal financial information.

**Standard of Care.** OCIE encourages investment advisers to engage with the newly established inter-Divisional Standards of Conduct Implementation Committee in complying with the recently adopted Interpretation Regarding Standard of Conduct for Investment Advisers (the "Interpretation") which reaffirms, and in some cases clarifies, aspects of an investment adviser's fiduciary duty to its clients.<sup>2</sup> OCIE has already integrated the Interpretation into the investment adviser examination program.

**Key Takeaways.** While these enforcement priorities drive many of OCIE's examinations, the scope of any examination by OCIE uses a risk-based approach that analyzes a myriad of factors, including an investment adviser's operations; the products it offers, including certain products identified as higher risk; compensation and funding arrangements; prior examination observations and conduct; disciplinary history of associated individuals and affiliates; changes in firm leadership or other personnel; and whether an investment adviser has custody of investor assets. Investment advisers should consider reviewing their existing practices, policies, and procedures regarding the above-mentioned enforcement priorities.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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<sup>1</sup> See, [Office of Compliance Inspections and Examinations 2020 Examination Priorities](#).

<sup>2</sup> See, [Commission Interpretation Regarding Standard of Conduct for Investment Advisers](#). Additionally, in advance of the June 30, 2020 compliance date, (i) investment advisers and broker-dealers will need to comply with the [Form CRS Relationship Summary: Amendments to Form ADV](#), and (ii) broker-dealers will need to comply with [Regulation Best Interest: The Broker-Dealer Standard of Conduct](#). Firms may contact the committee as questions arise in planning for implementation.