

NEWS ALERT

SECURITIES GROUP



FinTech Should Expect Some SEC Scrutiny in 2020

By Mark J. Tarallo | January 14, 2020

On January 7, the SEC's Office of Compliance, Inspection and Examination (OCIE) issued its annual list of examination priorities for 2020. Among the items identified was a focus on "FinTech", a broad category of activities that includes things like digital currencies, program-driven investment advice, and data analytics. Businesses engaged in FinTech operations should expect some regulatory activity throughout the course of the year, and would be well served to both ensure compliance with the current regulatory framework and stay abreast of any regulatory guidance issued by the SEC. Particular areas of focus are likely to include:

Use of "Alternative Data"

"Alternative Data" is information that goes beyond typical financial information and analytics that may not be readily verifiable. As an example, an investment firm may use third-party vehicle traffic data to evaluate an investment in a retail business. There may be questions as to whether or not the information is material, non-public, and properly obtained. The SEC has expressed concern that these new sources of data may be driving investment decisions, and has stated that "OCIE examinations will focus on firms' use of these data sets and technologies to interact with and provide services to investors, firms, and other service providers and assess the effectiveness of related compliance and control functions."

Digital Assets

"Digital Assets" incorporates a broad category sometime referred to as "cryptocurrencies", and in the SEC's view includes any asset that is issued and transferred using distributed ledger or blockchain technology, including, but not limited to, virtual currencies, coins, and tokens. Due to the rapid growth and constant technological advances in this space, the SEC has long been concerned about retail investors who may not completely understand the risks of their investment. OCIE has indicated that examinations are likely to focus on (1) investment suitability, (2) portfolio management and trading practices, (3) safety of client funds and assets, (4) pricing and valuation, (5) effectiveness of compliance programs and controls, and (6) supervision of employee outside business activities.

Robo-Advisers

The SEC continues to express its concerns that RIAs who provide automated investment advice, sometimes referred to "robo-advisers," present risks to retail clients that those clients don't fully understand. The SEC has continued to express the need for such RIAs to provide more fulsome disclosures to clients and to ensure the suitability of investment advice. To those ends, OCIE examinations will focus on (1) SEC registration eligibility, (2) cybersecurity policies and procedures, (3) marketing practices, (4) adherence to fiduciary duty, including adequacy of disclosures, and (5) effectiveness of compliance programs.

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