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Where SEC Examinations Will Focus in 2020.

The Securities and Exchange Commission's Office of Compliance Inspections and Examinations plans to home in on municipal advisor requirements and broker-dealers' obligations while keeping an eye on self-regulatory organizations in 2020.

OCIE laid out its 2020 examination priorities on Tuesday with an on-trend emphasis of protecting retail investors. The report touched on a few muni market issues of focus for the new year amid a larger focus on other fixed-income markets.

SEC Chair Jay Clayton's focus has been on retail investor protection and he has taken considerable interest in municipal securities.

"OCIE's 2020 examination priorities identify key areas of risk, both existing and emerging, that we expect self-regulatory organizations (SROs), clearing firms, investment advisers and other market participants to identify and mitigate," Clayton said.

OCIE's examinations will focus on the conduct of MAs when faced with conflicts of interest and also compliance with Municipal Securities Rulemaking Board Rule G-40 on advertisements, which went into effect in August 2019. Rule G-40 is a milestone because it formally regulates MA advertising for the first time.

Examinations will also focus on whether MAs have registered, as required by law.

The National Association of Municipal Advisors has requested that OCIE to focus on non-registered MAs previously.

"In the past, we have also asked OCIE to focus on non-registered MAs, as we believe this is still a problem in the marketplace," said Susan Gaffney, NAMA executive director. "We hope that OCIE will continue to address this important issue as part of their work plan."

As for broker-dealers, OCIE plans to examine issues relating to the preparation and implementation of recent rulemaking, such as Regulation Best Interest and other rules. RegBI will strengthen the broker-dealer standard of conduct beyond existing suitability obligations and make it clear that a broker-dealer may not put its financial interests ahead of the interests of a retail investor. The rule becomes effective in June 2020.

"OCIE recognizes that these new rules will require various market participants to make changes to their operations, including to required disclosures, marketing materials and compliance programs," OCIE wrote in its report.

OCIE will also examine broker-dealer activity in municipal and corporate bonds for compliance with best execution obligations, including fair pricing, markups and markdowns and commissions. Examiners will look at retail disclosures relating to markups and markdowns as well.

MSRB rules require dealers to disclose their markups and markdowns on certain transactions in the

confirmations they send to retail customers.

Some muni market groups hope OCIE will aim for fairness in examinations between broker-dealers and MAs.

The Securities Industry and Financial Markets Association asked OCIE to examine both groups equally.

“We have been actively engaged in many of the areas OCIE highlights as priorities, and we continue to advocate for a level playing field for municipal securities broker-dealers and the non-dealer municipal advisor community,” said Leslie Norwood, managing director, associate general counsel and head of municipals at SIFMA. “We would encourage OCIE to examine both groups equally.”

OCIE also said it will focus on high-risk products such as private placements, an area of controversy between dealers and non-dealer muni advisors. The SEC proposed an MA exemptive order in late 2019, which would allow for MAs to be involved in some private placement activities without registering as a broker-dealer, a move strongly opposed by dealer firms.

The Bond Dealers of America’s highest priority at the SEC is the MA exemptive order.

“The proposal is misguided and goes against decades of established regulatory treatment of private placements,” said Mike Nicholas, BDA CEO. “Soliciting investors is a broker-dealer activity, clearly and specifically.”

OCIE will continue to examine self-regulatory organizations like the MSRB and evaluate the effectiveness of its operations and internal policies, procedures and controls.

The MSRB declined to comment.

By Sarah Wynn

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