FS Regulatory Briefs*

New SEC Investment Advisor Examination Request List

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In the past few weeks, the SEC's New York regional office ("NYRO") has begun using the attached revised request letter in its inspections of investment advisers. This new request letter, issued by Office of Compliance Inspections and Examinations ("OCIE"), with a goal to standardize request letters across its regional offices, is significantly shorter than the 27 page request letter previously used by NYRO. Advisers may heave a sigh of relief in seeing this new 11 page request letter, which omits much of the detailed information requested in the past. However, based on our understanding, although advisers may be required to produce less information upfront, they should expect to see an increase in supplemental requests made by the examination staff as risks are identified during the course of the inspection. As such, it is hard to say whether the new request letter would reduce the overall hardship of document production for advisers during the inspection process.

Some specific observations we made in reviewing the new request letter are:

- In the previous request letter, while specific documents were requested for topics such as soft dollars, best execution, brokerage arrangements and solicitation arrangements, the new request letter broadly asks for any pertinent documentation relating to such topics. This increases the burden for advisers to determine relevant information that should be produced for the SEC staff. In past, if a document or report was not specifically listed in the request letter, advisers did not necessarily volunteer the information to the SEC.
- For private fund managers, in addition to the adviser's policies and procedures to safeguard non-public information when supervised persons make investment decisions for clients, proprietary or personal accounts, the SEC is requesting policies and procedures intended to prevent the inappropriate communication by investors in the private funds managed by the adviser. Advisers, particularly those who have investor committees or who allow investors to interact with fund managers, should carefully review whether they have policies and procedures in place to address this issue. The SEC has previously expressed concerns about hedge fund investors who are also officers of public companies and as a result may be privy to material non-public information which potentially could be communicated to the adviser.
- While the new request letter has mostly reduced the amount of information asked upfront, it adds a section on Financial Records (including balance sheet, income statement, trial balance, general ledger, cash receipts and disbursement journal) that the adviser would need to produce for the entire examination period. Typically, examiners request such financial records only on a sample basis once the examination commences to review for issues, among others, such as trade errors, appropriate advisory fees and payment to solicitors or other parties which may reveal potential conflicts of interest. Given the amount of information that would need to be generated, particularly for larger investment advisers, it may be prudent for advisers to check with the assigned examiners whether they would like the requested information for the entire examination period or for a sample period picked by them.
- One may notice how certain topics included in the previous request letter are entirely removed from the new letter. Issues such as gifts and entertainment, cross trades, email and instant messages, list of seminars and conferences attended, are some of the topics omitted, however, as previously mentioned,

advisers should be prepared to produce this information for the examiners since it may be part of a supplemental request made during the course of the inspection.

Additional Information

If you would like additional information about the topic discussed in this FS Regulatory Brief or a copy of the SEC's request letter, please call:

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