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What SEC Examiners Are Looking For: Lessons from the SEC's New York Regional CCO Outreach Program

Julie Majka

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For many advisers, an SEC examination can feel like a high-stakes event. However, recent comments from SEC examination and enforcement staff suggest that many of the issues leading to deficiency letters and enforcement referrals are both predictable and preventable.

During the SEC New York Regional Office's (NYRO) Chief Compliance Officer Outreach Program held on June 16, 2026, SEC staff provided valuable insight into how examiners evaluate compliance programs, common deficiencies they continue to observe, and practical steps firms can take to strengthen their compliance infrastructure.

The Biggest Misconception: "We're Compliant Because We Have Policies"

One of the most common mistakes firms make is assuming that a written compliance manual alone demonstrates compliance. SEC staff repeatedly emphasized that compliance programs must be reasonably designed for a firm's specific business, risks, investment strategies, and operations. "Off-the-shelf" compliance manuals that are not tailored to the firm's actual activities continue to be a source of deficiencies.

Similarly, firms often underestimate the importance of ensuring consistency across their compliance program. Examiners routinely compare Form ADV disclosures, websites, marketing materials, fund documents, side letters, client agreements, and actual business practices. When those items do not align, regulators may view the inconsistency as evidence of broader compliance weaknesses.

The message from examination staff was clear: firms should do what they say they do, and accurately describe what they actually do.

Common Areas Where Firms Continue to Struggle

The Outreach highlighted several recurring areas where examination staff continue to identify deficiencies.

Fee Billing and Expense Allocation

Fee calculations remain one of the most common sources of regulatory findings. Deficiencies cited by SEC staff included:

- Applying incorrect fee rates.

- Improperly applying tiered fee schedules.
- Failing to refund unearned fees.
- Failing to credit terminated accounts appropriately.
- Charging expenses inconsistent with governing documents.
- Incorrectly applying management fee offsets or expense allocations.

These issues frequently develop not because firms intend to overcharge clients, but because billing processes have not been adequately reviewed, tested, or reconciled to client agreements and fund documents.

Marketing Rule Compliance

The SEC continues to devote significant attention to Marketing Rule compliance. Common deficiencies identified during examinations included:

- Policies and procedures that were not reasonably designed to address testimonials and endorsements.
- Failure to monitor social media activity.
- Inconsistencies between ADV disclosures and marketing practices.
- Unsupported or inaccurate statements in advertisements.
- Failure to maintain required books and records supporting advertisements and third-party ratings.

For many firms, the challenge is not the advertisement itself but the absence of documented review, approval, and recordkeeping processes surrounding marketing content.

Conflicts of Interest

Conflicts continue to be a central focus of SEC examinations. Examiners noted particular attention on compensation arrangements, revenue-sharing relationships, affiliated service providers, mergers and acquisitions, side-letter arrangements, and preferential investor treatment.

Notably, SEC staff emphasized that claiming to have no conflicts of interest can itself be viewed as a red flag. Strong compliance programs identify conflicts, disclose them appropriately, and implement controls to address them.

Recent Trends Worth Monitoring

The Outreach also highlighted several examination themes firms should continue monitoring.

Increased Scrutiny of Regulatory Filings

SEC staff specifically referenced late or inaccurate filings, including Forms 13D, 13G, 13F and N-PX. The SEC views filing deficiencies as potential indicators of broader weaknesses within a firm’s compliance program. Examiners noted that basic regulatory obligations should be understood and monitored by compliance personnel.

Cybersecurity, Reg S-P and AI

Cybersecurity remains a significant focus area. Examiners are assessing governance practices, access controls, incident response procedures, data protection safeguards, and identity theft prevention programs. The SEC also discussed the impact of recent Reg S-P amendments and continues to evaluate how firms oversee service providers with access to sensitive information.

The SEC further noted that while no AI-specific regulatory framework currently exists, firms remain subject to existing compliance obligations when using AI tools. Examiners may evaluate AI-related practices under established rules governing compliance programs, books and records, marketing, and the protection of client information.

Private Fund Examinations

Private fund advisers should expect continued focus on fee offsets, expense allocations, side-letter obligations, liquidity terms, borrowing arrangements, and adherence to governing documents. SEC staff emphasized the importance of ensuring that disclosures, calculations, and operational practices remain consistent across all fund documents and investor communications.

Practical Considerations Firms Often Overlook

One of the strongest themes throughout the Outreach was the importance of documentation.

Examiners repeatedly stressed that identifying an issue is only the first step. Firms should document:

- How an issue was identified.
- The root cause of the issue.
- Any client impact.
- Corrective actions taken.
- Steps implemented to prevent recurrence.

Similarly, firms often underestimate the importance of annual reviews. Effective annual reviews should evaluate recurring issues, new business activities, evolving regulatory requirements, staffing needs, and the overall effectiveness of the compliance program. Annual reviews should serve as a meaningful assessment of risk rather than a routine compliance exercise.

Another practical consideration is ensuring the Chief Compliance Officer understands the firm's business in sufficient detail to discuss investment strategies, conflicts, operational risks, and compliance controls. Examiners indicated that a disengaged or uninformed CCO may raise concerns regarding the effectiveness of the firm's compliance program.

SEC enforcement staff noted that a firm's response to examination findings can be as important as the underlying issue. When evaluating potential enforcement referrals, regulators may consider whether the firm identified the issue, implemented corrective action, cooperated with exam staff, and adequately remediated the concern. Thoughtful responses to deficiency letters and documented remediation efforts can demonstrate a firm's commitment to compliance and risk management.

How Firms Can Prepare Before the SEC Calls

According to SEC staff, examination readiness begins long before the initial call from examiners. Firms should periodically assess whether disclosures, policies, procedures, filings, websites, marketing materials, and client documentation remain consistent and accurate. Examiners specifically noted that firms should conduct their own reviews before regulators perform them.

Organization also matters. SEC staff noted that firms that provide organized, complete, and responsive examination submissions generally facilitate a more efficient examination process. Conversely, incomplete responses, disorganized document productions, and inconsistent information can create unnecessary scrutiny.

How Waystone Can Help: Mock SEC Examinations

One of the practical suggestions discussed during the Outreach was testing examination readiness before an actual examination occurs. A mock SEC examination can help firms identify weaknesses before regulators arrive.

Waystone’s Mock SEC Examination program is designed to simulate the SEC examination process and evaluate the areas regulators frequently review, including:

- Form ADV disclosures.
- Compliance policies and procedures.
- Annual review documentation.
- Marketing Rule compliance.
- Fee billing and expense allocation practices.
- Best execution and trading oversight.
- Custody Rule compliance.
- Books and records requirements.
- Conflicts of interest management.
- Private fund operations and disclosures.

In addition to reviewing documentation, Waystone can assess whether compliance programs align with actual business practices, identify potential examination concerns, and help firms develop remediation plans before deficiencies become findings.

A mock examination can also help prepare personnel for regulatory interviews, provide insight into likely examination questions, and evaluate whether the firm can effectively demonstrate its compliance framework to regulators.

Key Takeaway

The SEC’s message was consistent throughout the Outreach: strong compliance programs are tailored, documented, tested, and supported by active engagement from management and compliance personnel. Firms that proactively identify issues, address deficiencies, document remediation efforts, and ensure consistency across disclosures, policies, and practices are generally better positioned when regulatory examinations occur.

Rather than waiting for an examination request letter, firms should view examination preparedness as an ongoing process. Regular reviews, thoughtful compliance testing, and independent mock examinations can help identify and remediate issues before they attract regulatory attention.

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