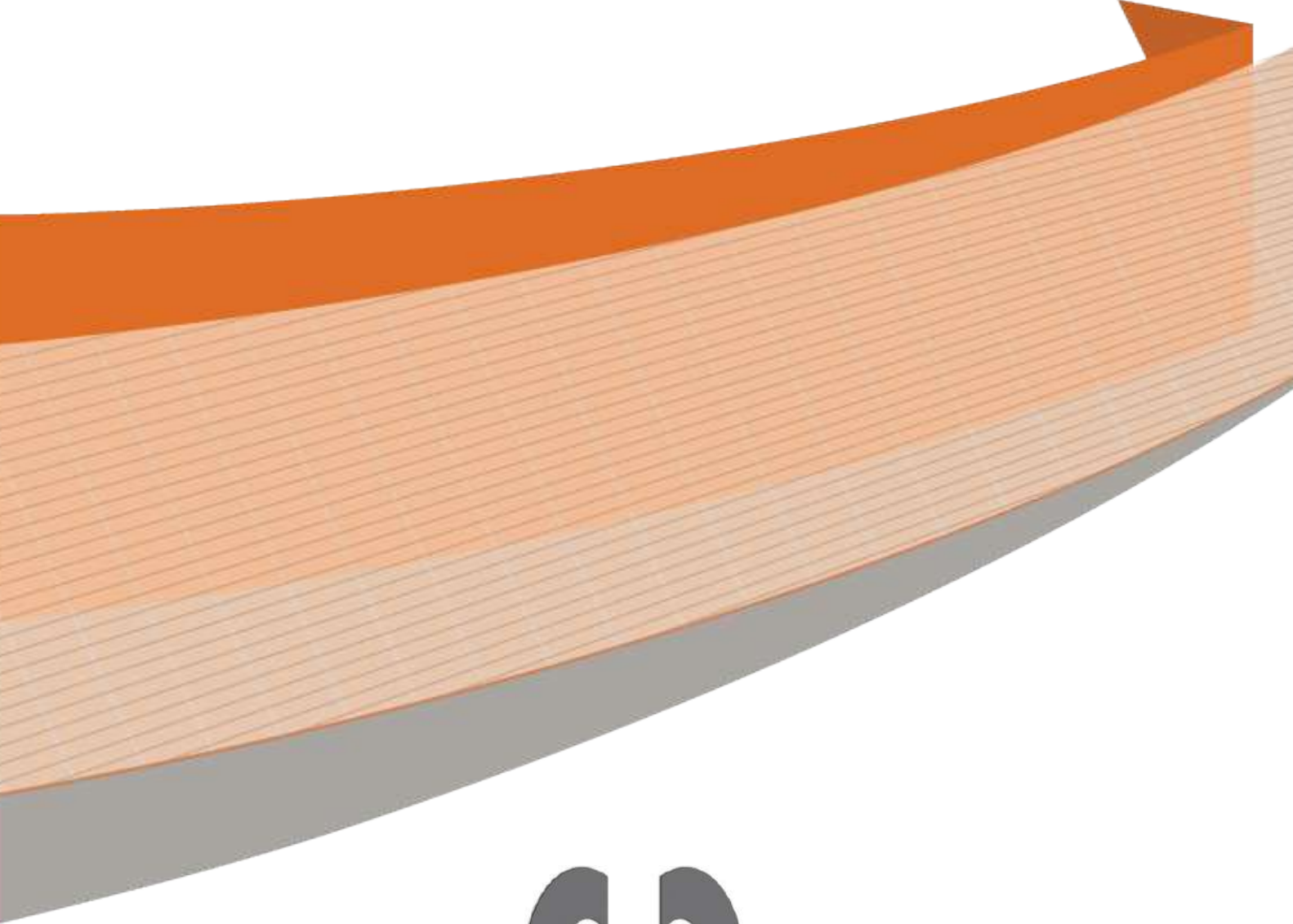


# It's 2017, What Are the SEC's Priorities?

*Spotlight On Talent: Portia Amato*



## It's 2017, What Are the SEC's Priorities?

**By Portia Amato**

By now, every CCO and their team have asked themselves this question, and if you have not already, this is the time to do so, especially if you have not been the lucky host to an SEC Audit in some time.

The Office of Compliance Inspections and Examinations (OCIE) of the Securities and Exchange Commission (SEC) has released their list of priorities for the year and it is covering a lot of ground. They did break it down into three focus areas: 1) Examining matters of importance to retail investors; 2) Focusing on risks specific to elderly and retiring investors; and 3) Assessing market-wide risks<sup>1</sup>.

In the first article in this three-part series, we will take a close look at the first focus area, Examining Matters of Importance to Retail Investors, including the subtopics and how Registered Investment Advisors (RIA's) and Broker Dealers (BD's) alike can tackle these matters should the SEC pay a visit.

The OCIE has determined that, due to the overwhelming growth in Investors ability to obtain on-line investment advice, the SEC will focus their examinations of the compliance program of RIA's and BD's that offer electronic investment advice including "robo-advisors". What RIA's and BD's need to do to prepare for such an exam is to document investment strategies and algorithms that generate investment recommendations as well as evidence the consistency of the investment advice. Additionally, RIA's and BD's must have in place a full Compliance Program in the same way a traditional firm would have, regardless of whether a face to face meeting will ever be held with a client. Customer Suitability checks must remain stringent and an air-tight, regularly tested Cybersecurity and Data Protection Programs must be in place. All breaches of security, even minor breaches, should be documented, along with the action plan for future preventative measures that was put in place.

Wrap Fee Programs have been a focus for Examiners for several years now, and has made the 2017 list as a focus initiative. Evidence and time stamps proving fair and effective rotation of trades among the various sponsor platforms will be a key hurdle for all RIA's.

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<sup>1</sup> SEC's Examination Priorities for 2017 <https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2017.pdf>

The key to passing this part of the exam is to show consistency, which is no easy feat when many sponsors are on an electronic trading platform while many others are still reliant on other less automated means of placing trade orders. Proving that the electronic trade order sponsors are not being favored over those with other trade order directives will be important to demonstrate during an audit. Conflicts of interest will focus on the topic of trade execution as well. This one has proven the greatest challenge across the board. The questions the examiners will ask will relate to large institutional and corporate client trade executions versus wrap trades. They will examine trade blotters and execution prices. Trade rotation cannot start and end with the various sponsors, they must be rotated in with all the clients, big and small, and it must be documented.

Never-before examined and multi-branch advisers, it's time to clean house, your guests will be arriving soon! Many firms have flown quietly under the radar since they flipped their Open sign on their front door, and the SEC is finally taking notice. Small, new RIA's and BD's should have Big Compliance Programs in place. Take the large established firm approach; have Compliance Policies, Procedures and WSP's that include "What If" versions for your small, growing shop. You will have many blank logs, many procedures in place for those blank logs, but all your potential risks and policies for the "what-ifs" and "when-ifs" will be in place for your business as it does grow. The forward thinking pro-active model of compliance will go very far in setting the tone of the exam. Multi-branch offices must have documented policies and procedures for how compliance matters are handled across the branches, including documented, periodic on-sight compliance audits of the physical location as well as the employees at those locations. A completed checklist for each location should be on file and ready to be handed over to the Examiners. The on-sight audit should be done on an annual basis as part of Rule 206(4)-7 of the Advisors Act for RIA's and part of FINRA's 3120/3130 annual testing of supervisory Controls for BD's.

One of the 2016 initiatives of the OCIE, which made the list again this year, is Supervision and oversight of Employees with disciplinary history<sup>2</sup>, whether the event(s) happened at your firm or elsewhere. This initiative is a two-prong focus. One being disclosure. The Examiners will be looking to ensure that all disciplinary actions were fully disclosed on the ADV, U4's and to all clients at every opportunity, to the fullest extent. Additionally, documented supervision of the employee will be vital to a successful exam. To name a few, oversight of the employees' investment advice, trade activity, performance calculations, research reports and one-on-one analyst meetings are some of the areas that will need close and once again, documented monitoring.

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<sup>2</sup> Examinations of Supervision Practices At Registered Investment Advisers  
<https://www.sec.gov/ocie/announcement/ocie-2016-risk-alert-supervision-registered-investment-advisers.pdf>

Exchange Traded Funds (ETF's) will continue to be a priority in 2017, in particular the sales practices, disclosures and suitability of BD's recommendation practices. Having calculated controls, documented checks and balances, compliance oversight of ETF trading practices and forensic trade blotter testing will be a key component of the ETF Compliance Program.

The OCIE will continue their conflicts of interest inspections regarding recommendations to invest, or remain invested, to particular share classes of mutual funds. This is another 2016 initiative that is carrying over to 2017. The focus will remain on compensation disclosure and financial incentives as they relate to the recommended share classes. Such examinations will likely focus on topics including the adviser's share class recommendation practices, fiduciary duty and best execution; disclosure; and compliance policies and procedures<sup>3</sup>.

In conclusion, 2017 will be a year of analyzing risk, assessing shortcomings in processes and controls, and documenting all the processes and controls that are currently in place. Compliance Risk Concepts is here to help. Whether to conduct a full Audit of your compliance program, help document parts of your compliance program, identify key areas that need additional focus, or any other compliance, risk, cyber or AML related help you may need, we are an email or phone call away.

Tune in for the 2nd article in our Three-Part Series on "It's 2017, What are the SEC's Priorities?", where we will examine the SEC's focus on "risks specific to elderly and retiring investors".

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<sup>3</sup> OCIE's 2016 Share Class Initiative <https://www.sec.gov/ocie/announcement/ocie-risk-alert-2016-share-class-initiative.pdf>

## SPOTLIGHT ON TALENT: PORTIA AMATO



**PORTIA AMATO**  
Compliance Consultant, CRC

*Portia is a seasoned Compliance Officer, having over 18 years of investment management experience. Over the course of her career, Portia has specialized in compliance, operations and client services for investment advisors and top tier investment banks. Portia also successfully helped to launch two wrap-fee programs for New York Life Investment Management and US Trust.*

*As a Compliance Officer at Epoch Investment Management, LLC, Portia did extensive work involving Personal Trade Auditing, SEC Exam preparation work, FED Audit, Volcker Rule Conformance, AML, Vendor Due Diligence, various Regulatory filings such as Form PF, Form D, 13H Large Trader, Form ADV, international regulatory filings, Compliance Procedures and Manuals, Employee Compliance Training, as well as many other aspects of Legal and Compliance.*

*At DRA Advisors, LLC, Portia was hired as the firm's first Compliance Officer to implement a firm-wide compliance program and to address the SEC's focus of real estate investment firms. Additionally, Portia instituted a multitude of compliance policies and procedures, completed all required regulatory filings, worked with outside counsel to complete a prior SEC audit, established marketing and website review procedures, liaised with IT to create and launch a cybersecurity policy and conducted compliance training for all employees including targeted training.*

*Portia is enrolled at Western International University, attended Saint Peter's University, has a Diploma from Dover Business College in Computer Information Specialist and is scheduled to take her Series 65. Portia's volunteer work includes Commissioner of American Youth Soccer Organization (AYSO) Region 1089 and coaches' boys and girls ages 4-10. She is also a 4th Grade Catechist at Saint John's Parish in her hometown and cooks for a local soup kitchen.*



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