

SEC Adviser Exams: What to Expect When an Examiner Comes Knocking

by Bettina Eckerle

Given recent statements by the SEC Chairman Mary Jo White, the SEC is committed to increasing adviser oversight through compliance exams. It is no longer a question of “if” they will come knocking, but “when.”

An SEC examination can be stressful and unnerving; at minimum it is somewhat disruptive. To help ease the uncertainty and make sure you are in the best position to come through the exam unscathed, it helps to know what to expect.

To start, the [SEC's stated goal](#) when conducting examinations is to determine whether the firm is:

- Conducting its activities in accordance with the federal securities laws and rules;
- Adhering to the disclosures it has made to investors; and
- Implementing supervisory systems and/or compliance policies and procedures that are designed to ensure that the firm's operations are in compliance with the law. What that means in Plain English is that firms need to have something in place that is actually reflective of their business practices. I am always caught by surprise how often this is NOT the case.

In many cases, firms will receive a letter announcing the examination and requesting information or documents pre-visit.

Once on-site, the examiners may conduct an initial interview where they ask a series of questions about the firm and the activities to be examined. This interview is important to help the examiners to understand the firm and its business. The jury is still out whether a full-blown power-point is useful (in many cases the SEC seemed receptive, but then in others, they were not really interested), but it always helps to have one ready. The examiners may also ask for a walk-through of the firm's offices to gain an overall understanding of the firm's organization, flow of work, and control environment.

As the examiners complete the exam, they may request additional information and documents. They may also request meetings with firm employees to discuss the firm's operations and the information and documents provided. Prior to concluding the on-site exam, the SEC staff will generally conduct an “exit interview,” which allows both sides to discuss any potential issues the examiners found.

The examiners will complete any additional analysis when they return to the SEC offices. Once the exam is complete, the firm will receive written notification (no later than 120 days after the field exam). If no issues were detected, the firm will receive a “no further action letter.” If the examiners did identify issues that need correction, the SEC will send a “deficiency letter,” which asks the firm to undertake corrective action.

In the case of serious violations, the matter may also be referred to the SEC's Division of Enforcement. However, most deficiencies are resolved by identifying the steps that the firm has taken or will take to address the problems and to ensure that they do not reoccur. I am attempting to post a deep-dive with the 10 cardinal rules for any SEC visit for later this summer, so watch out for it!

As always, if you have questions or comments, please call, [e-mail](#) or tweet me [@NYBusinessLaws](#).

Eckerle Law offers legal advice in a variety of transactional and regulatory matters and serves companies' plenary business law needs. Its founder, Bettina Eckerle, is a veteran of Debevoise & Plimpton and Wachtell, Lipton, Rosen & Katz. She also served as the General Counsel of two companies en route to IPO. Please visit the [Eckerle Law website](#) for more details.