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Published on: 5/13/2013

That exam initiative announced last fall by the newly-named OCIE Director **Drew Bowden** continues to percolate but more time is needed before the agency can assess the lessons from the so-called "presence exams" ([IA Watch](#), Dec. 17, 2012).

"It's too soon to report any conclusive trends," said **Ray Slezak**, an assistant regional director in the SEC's New York Regional Office. He spoke on [IA Watch's](#) May 7th webinar [Mastering An SEC Exam](#).

"We're seeing mixed results though," he continued. Benefits are accruing to those private fund advisers that dedicated resources to compliance before they registered. "They generally have solid compliance programs," Slezak revealed. However, those firms that neglected compliance early on haven't always impressed. They are likely to face "lengthier deficiency letters," he said.

You also should be aware that the national exam program is working with the SEC's Division of Trading and Markets on the issue of whether a private fund adviser should register as a broker-dealer ([IA Watch](#), May 6, 2013). The partnership aims "to evaluate each questionable compensation arrangement," said Slezak, to weigh whether B-D registration should have been undertaken. Concerns arise over transactions-based compensation stemming from the selling of fund shares to receiving fees from portfolio companies for investment banking type services, he added.

The other exam hot topics expressed by Slezak matched closely OCIE's [exam priorities list](#) released earlier this year ([IA Watch](#), March 4, 2013). He added that aberrational performance remains "a red flag," that compliance officers should be aware of key "no-action letters" for advertising and marketing ([IA Watch](#), April 18, 2011) and that pay-to-play issues frequently pop up.

Another problem examiners encounter is former broker-dealers that make an untidy transition to registered advisers. "They have trouble adjusting to being a fiduciary," he said. Their Form ADV brochures leave out key conflicts. They appoint compliance officers who aren't familiar with IA rules. "That generally results in a poor compliance program" and more deficiencies for these advisers, Slezak said.

Rob Kaplan, a partner with **Debevoise** in New York, picked up on the theme of greater attention to expenses of private fund advisers, which we reported last month ([IA Watch](#), April 1, 2013). Expect detailed looks at the general ledger and inquiries about even di minimis spending "to make sure they're authorized expenses," he said.

Exam teams vary by asset size

If your firm manages more than \$500 million in assets, expect three to four examiners to be on site for at least a week, said **Michelle Kennedy**, president of **Compass Compliance Services** in Greenville, S.C. One examiner will focus on marketing and performance, a second on trading, best execution and valuation and the third on personal trading, policies and procedures and code of ethics, she continued.

If you fall under that AUM threshold, you're likely to get two examiners who will stay a week or less, she said.

"If all goes well," expect a deficiency letter six or seven months after they depart, Kennedy added. A resolution could drag on much longer if the exam took a bad turn.

A hot topic she's seeing among her clients' exams is oversight of remote offices (working from home counts). Deficiencies usually cite a failure to supervise because of a lack of relevant policies and procedures or documentation substantiating past compliance visits. Custody issues also frequently come up as advisers battle this perplexing rule. The common mistake is to fail to detect covered accounts. Kennedy recommended annual training of staff to spot custody.

A game-plan ahead of time

Before examiners arrive, e-mail staff to alert them and to remind them to quell open conversations, suggested **Deborah Hammalian**, CCO at **ING-U.S.** in New York. Once onsite, usher examiners to a segregated work area complete with telephones, printers and room.

Be sure to have a second set of eyes check what you produce to examiners before handing it over. Your trade blotter may contain more data than asked for. Or it may not be in the format that examiners requested. Even your organization chart may contain an error that could be corrected with a quick double-check, said Hammalian.

"Interview prep is probably one of the best things you can do for your portfolio managers, your analysts and others," she said. Counsel them that they should be responsive but efficient when answering examiners.

Someone from compliance should attend all meetings and interviews and take notes, Hammalian continued. This makes for a good way to detect themes that examiners are pursuing.

Use your exit interview with examiners as an opportunity to clarify and educate them on issues

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raised, said Slezak. And there's nothing wrong with a compliance officer who hasn't heard about an exam's progress as time drags on to contact the lead examiner to ask for a status report, he added.

Editor's Note: To order your copy of our SEC exam webinar, including the accompanying materials, click [here](#).

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