

September 2023

Follow [@Paul_Hastings](#)



Investment Funds & Private Capital Market Insights

Selection and Scope of SEC-Registered Investment Adviser Examinations

By [John L. Budetti](#), [Esther Chiang](#), [Scott Gluck](#), [Ryan Swan](#), and David Wilson

3-MINUTE READ

On September 6, 2023 the SEC released a risk alert (available [here](#)) detailing how the Division of Examinations (the “Division”) utilizes a risk-based approach for both selecting which SEC-registered investment advisers (“RIAs”) to examine and determining the scope of risk areas to examine. The risk alert is consistent with the Division’s past guidance for RIAs, and these issues should look familiar to many clients and sponsors who have undergone an examination. Still, emerging managers and advisers that have not yet been examined in particular may find the information helpful.

Driving the release. Although there has been a raft of proposed, pending and finalized rulemakings, the SEC also is looking to proactively engage with regulated entities by providing additional clarity on the process undertaken by the Division in selecting which (1) RIAs to examine and (2) areas of focus for any given examination (the risk alert provides an example document request list for a standard exam).

Between the lines. The SEC recognizes that most, but not all, RIAs are versed on selection and scope criteria and with this release they seek to further level the playing field on such understanding. Although the risk alert may not provide an in-depth look behind the SEC curtain, we think registrants will welcome the clarity and appreciate the outreach as a departure from some of the more ominous pronouncements in other recent risk alerts.

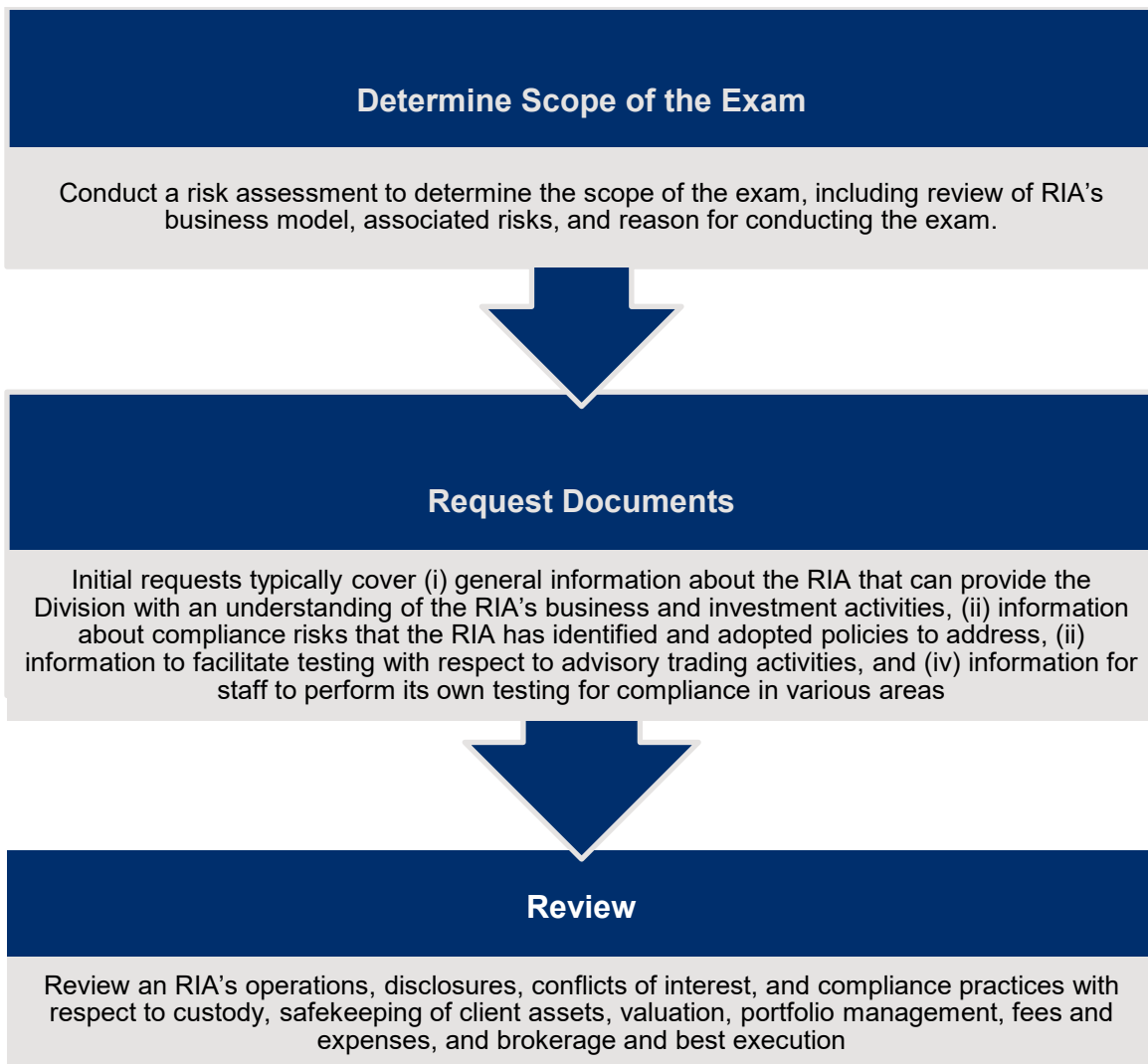
Bottom line.

- **Selection of RIAs for an Examination.** While SEC does not provide a concrete set of factors that the Division will utilize for selection, it does identify certain firm-specific risk factors it considers, including:

a.	<i>Prior Exams</i>	Prior exam observations and conduct, focusing on when the SEC staff have observed repetitive, deficient practices, significant fee- and expense-related issues and significant compliance program concerns
b.	<i>Supervisory Concerns</i>	Past disciplinary history of individuals or affiliates associated with an RIA
c.	<i>Tips</i>	Tips, complaints or referrals related to an RIA

d.	<i>Conflicts</i>	Business activities of the RIA and associated individuals that may create conflicts of interest and conflicts associated with advisers dually registered as brokers
e.	<i>Time</i>	Length of time since an RIA's last examination, or whether an RIA is newly registered
f.	<i>Leadership</i>	Changes to an RIA's leadership or other key personnel
g.	<i>Vulnerability</i>	Indications that an RIA may be vulnerable to market stress
h.	<i>Public Reports</i>	Reporting in the media that involves an RIA
i.	<i>Third-Party Data</i>	Data provided by outside vendors
j.	<i>Past Disclosure</i>	Historical disclosure practices of an RIA
k.	<i>Access to Assets</i>	Whether the RIA has access to client/investor assets and/or presents other service provided risks

- **Examination Focus Areas and Requested Documents.** Once the Division selects an RIA for exam, it typically takes the following actions:



Why it matters. It is important for an RIA to keep in mind these considerations and ensure that its compliance professionals and other employees are attuned to the factors that can increase such RIA's chances of being examined, the potential scope of an exam and document request, and the importance of maintaining documentation in the Division's key focus areas.

Go Deeper:

[Paul Hastings' Investment Funds & Private Capital](#) practice has a truly global footprint, with more than 70 lawyers across the U.S., Europe, and Asia. We represent a diverse set of asset managers, private fund sponsors, and institutional investors.

Our [Investment Funds & Private Capital – Regulatory](#) practice includes attorneys with deep experience handling sensitive and complex regulatory and compliance issues. In the U.S., we regularly advise on Investment Company Act status and structuring issues, private fund investment manager registration, Investment Advisers Act, Securities Act, Securities Exchange Act, and other compliance, SEC examinations and enforcement.



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

John L. Budetti
1(212) 318-6736
johnbudetti@paulhastings.com

Esther Chiang
1(212) 318-6412
estherchiang@paulhastings.com

Scott Gluck
1(212) 318-6610
scottgluck@paulhastings.com

Ryan Swan
1(312) 499-6080
ryanswan@paulhastings.com

David Wilson
1(713) 860-7311
davidwilson@paulhastings.com