

SEC Exam Playbook

Top 10 List Preparing for an SEC Examination

10. **Implement Effective Compliance Program** – Design and implement a risk-based compliance program that addresses your specific business, risks and potential conflicts of interest; review it at least annually for effectiveness; train staff and ensure they have completed all required compliance reporting; promptly address and document any potential issues or violations.
9. **Retain Books & Records** – Ensure required records are maintained for at least six years (or requisite period) and can be quickly located and produced upon request – Keep personal records separate from business records.
8. **Develop a Plan** – Designate a point person (generally the CCO) and exam team that will be responsible for regulatory interaction and prepare an exam playbook for when the day arrives.
7. **Conduct a Mock Exam** – Conduct a mock audit to know what to expect, test your preparedness and get a preview of the records requested, questions asked and potential findings.
6. **Create Firm Presentation** – Create an overview presentation to provide to examiners to efficiently explain the firm, its business, investment process and team.
5. **Manage Document Requests** – Once notified by SEC staff of impending exam, gather, organize and present information effectively – Prepare a tracking spreadsheet to assign responsible persons, track status and organize response.
4. **Groom the Team** – Identify the people who will meet with the SEC and ensure they know how to interact with the staff.
3. **Prepare the Office** – Prepare a workspace for the exam team, ensure your staff look/act professional, ensure confidential/proprietary information is not left in common spaces and be mindful of private conversations.
2. **Keep a Record** – Maintain a comprehensive record of the exam process, all documents provided, notes from interviews and a list of any follow-up questions or requests to ensure a prompt response and follow-up as needed.
1. **Wrap It Up** – Expect a findings/deficiency letter and be prepared to respond within 30 days – Ensure prompt remedial action and a thorough and respectful response.

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Preparation Stage

- Design and implement a program to produce, maintain and destroy (as necessary and permitted) required books and records. If you do not want to produce records during an exam that are not required, or want to claim attorney/client privilege over certain records, you will need to:
 - Establish a process to clearly distinguish records that are required from those that are not, as well as any privileged records at the time of creation/receipt;
 - Develop controls to ensure that required records are not destroyed;
 - Monitor/test such controls; and
 - Execute destruction schedule for old materials.
- Keep all personal records separate from business records
 - Do not use business email to send personal emails.
 - Do not intermingle personal and business expenses or financial records.
 - SEC examiners have access to all records maintained by a registered firm, including personal records intermingled with business records or on business servers.
- Develop a plan for regulatory interaction
 - Designate someone to coordinate response, usually the Chief Compliance Officer (CCO), and support staff to run point during an examination.
 - Review typical request lists, anticipate likely requests and potentially problematic requests.
 - Do a test production, particularly of more in-depth requests.
 - Discuss with service providers and other firms their experiences with respect to recent exams.
- Consider having an independent third party conduct an annual review, mock audit or simulated examination
 - For cybersecurity, consider an assessment by a third party.
 - Ensure that any issues raised and recommendations made in such reviews are effectively addressed.
 - Ensure that prior SEC or other regulator exam comments, if any, have been addressed.
- Prepare an introductory presentation for the SEC staff
 - Include firm overview with history and description of business; recent business developments; organization chart with key employees listed; fund structure chart (simplify, if necessary, for presentation); summary of compliance program; summary of risk management process, major risks and conflicts at the firm and how they are mitigated and/or disclosed.

- Inquire about the reason for the exam and exam team participants
 - Ask whether the exam is a routine exam, focus/sweep exam or cause exam.
 - Ask whether the exam will be led by the regional office or private fund unit.
 - Ask names of Lead Examiner, Exam Manager and Assistant Director who will oversee the exam.
 - Ask who will participate in the exam team and their role at the SEC; be aware that Enforcement staff or other Division staff may participate in some exams.

- Consult with outside counsel and/or compliance consultant regarding exam focus and requests to help understand whether it is a routine matter or something more significant
 - Determine whether part of local or national initiative.
 - Consider whether focus and requests are typical of recent exams of other firms.
 - Determine whether focus, requests or exam participants suggest a routine exam or more serious issue.

- Prepare staff who will likely be interviewed on how to interact with SEC staff
 - Consider drafting prepared responses to typical or likely questions.
 - Conduct sample interviews and practices responses.
 - Be truthful, cooperative and agreeable, but do not unnecessarily volunteer information or answer questions that are not asked.

- Effectively organize and present requested documents and data promptly
 - Consider reviewing sample request lists in advance to ensure that you are familiar with the type of request and can provide the information promptly in an actual exam.
 - Goal is to provide accurate, complete and well organized documents and data promptly as requested to give examiners assurance that your compliance program is effective.
 - Keep in mind, you must produce records promptly and if you wish to withhold responsive documents pursuant to attorney-client privilege, you will need to provide a privilege log.

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Initial Stage

- Exam Initiation and Initial Document Requests
 - Lead examiner or examination team generally will call Chief Compliance Officer (CCO) to inform firm of examination.
 - “Routine” exams are now rarely conducted on a surprise basis.
 - All exams will have a document request list, which will indicate time frame or date within which documents are to be provided. Often documents are requested in two stages: initial documents fairly quickly and remaining documents several weeks later.
 - Most exams will involve an onsite visit, which may range from one day of very intensive interviews to several days (2-5 or longer) of interviews and document reviews in your office.
 - Examiners will inform the CCO whether and when an onsite visit will take place. The exam staff will consider, but rarely grant, a delay or rescheduling of the onsite visit. However, at times the examination staff may reschedule the onsite portion, for example to accommodate other examinations that are of higher priority.
 - Exam team may arrange for telephonic interviews in lieu of an onsite exam, or in relatively rare instances, may not conduct any interviews or on-site reviews but simply review documents remotely.
 - The firm will be requested to upload documents electronically to a secure file transfer system for examiners to review in their office and prior to the onsite visit, if applicable. Examiners may accept documents, or certain documents, through the firm’s secure file transfer system.
 - The examiners may indicate that the exam will focus on particular area(s) or that the exam is part of a national or regional SEC initiative.
 - However, they are under no obligation to reveal focus of examination or whether it’s “routine” or “for cause”. That notwithstanding, tone and nature of requests will likely make nature and focus of examination evident, particularly to an exam expert.
 - The single most critical goal in the initial stage of an examination, and continuing throughout the exam, is to establish and build a good rapport and level of trust with the exam team. Firms should strive to treat each member of the exam team with respect and seek to understand and respond to their requests as quickly and effectively as possible.
 - Examiners each have unique personalities and styles and serve different roles within the exam team. Beginning with initial conversation, one can begin to gauge roles and personalities of examiners.

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Document Production

- Document Request Lists
 - Document request lists can be relatively brief and focused or longer and more comprehensive, depending on the scope of the exam.
 - Firms should review requested items carefully, and put together a team as needed, in order to provide a complete and well organized response promptly.
 - Examiners have selected the documents and data they believe is necessary to complete their exam and request lists are generally not negotiable. However, firms should feel free to ask for clarification on items requested, if needed, and can provide additional information, if you believe it would be helpful to clarify the request and responsive records.
 - If you do not have a requested record but a similar record providing the same information, ask if this is acceptable before creating new documents.
 - If the document request will result in voluminous records, let the SEC staff know; they may modify the request accordingly but are not obliged to do so.
- Compiling & Organizing Documents
 - Firms should create a document request inventory to track all document requests and note the specific firm records or information that is responsive, the person(s) responsible for gathering such records or data, and the status of the request. An abbreviated version of the inventory should be provided to the SEC with documents to organize the firm's response.
 - When providing data pursuant to exam requests, it is critical to conduct integrity checks of the data for completeness and accuracy before providing it to the SEC. You do not want to provide incomplete or inaccurate data that will require examiners to come back to you for missing data or to correct errors.
 - If the data requested is voluminous or requires extensive time or effort to compile, it may be helpful to provide sample data to examiners first to ensure it is in the format and includes the details that they want, before spending the time and effort in compiling the full request.
 - Compliance staff should be familiar with the standard reports that are available from systems, fund administrators and service providers, so that you are able to promptly provide requested information. Keep in mind that examiners will likely have conducted exams of other firms who use the same systems or service providers and will know if a report is available. Responding that the information is not available or producing delayed response could be a red flag.

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Onsite Stage

- Onsite Portion
 - Most exams now tend to be limited focus examinations with 1-2 days onsite.
 - Examiners will need a conference room to work and conduct interviews.
 - An opening interview will typically be conducted with the CCO and senior management.
 - May have additional questions for individuals related to exam document requests and review areas. Firm staff should be on-call and ready to participate, as needed.
 - Typical staff interviewed: CCO/compliance, Investment, Financial/accounting, Marketing/IR, and IT teams
 - CCO should generally be present in all interviews.
 - CORE staff are available to sit in on all interviews, primarily to take notes and to provide firm guidance regarding conduct of exam process.
 - Offer examiners coffee/water; examiners are not able to accept lunch or food. May want lunch recommendations.
 - Staff from the SEC's Division of Enforcement (typically attorneys) or other SEC offices or divisions may be present during examinations. This is often for training purposes to learn more about industry practices and/or exam process.
- Examiner Preparation and Document Requests
 - Examiners will have reviewed the documents provided in advance of interviews and will likely have follow-up questions or requests on materials provided.
 - May have additional document requests supplemental to what was initially provided. Firm should keep a record of all document requests and coordinate and keep copies of all documents provided to examiners during the exam process.
 - SEC likely will have reviewed in advance other independent information they have researched on the firm, including social media and other internet searches.
 - Examiners have statutory authority to review any books and records. If you maintain it, generally they can request to review it.
- Cooperation/Building Rapport
 - Firm staff should continue to develop rapport and set a good tone with exam staff throughout the on-site examination and through conclusion of the exam.
 - Goal is to establish a level of trust and mutual respect.
 - The firm's staff should be prepared and organized.

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Interviews

- Interview Selection
 - Most examinations will involve interviews with the CCO and other key staff.
 - Examiners will determine and communicate the areas they would like to address in interviews.
 - Examiners may request to speak with specific people, including senior managers or partners.
 - However, firms generally can determine who is the best person(s) to have answer questions for a specific area.
 - It may be helpful to do some preliminary practice interviews with key staff who may be called into an examination, to understand who is best able to answer questions and interact with exam staff most effectively for each functional area.
- Interview Guidance
 - Answer questions openly and honestly.
 - Give the examiners the information they need.
 - Listen to the question and give accurate, concise answers.
 - Avoid getting off on tangents or speculating what they want to know and answering questions not asked or providing information not requested.
 - Do not guess or speculate on the correct response.
 - If you do not know the answer with certainty, it is okay not to answer. Note that you will get back to the examiners with the information requested.
 - Ensure that the CCO or another appropriate person follows up with a response to any information when the initial person interviewed does not know the answer and to promptly correct any misinformation provided.
- Documenting Interviews
 - It is prudent to have at least two people participate in each interview, one (or more) to answer questions and one to take notes.
 - Try to maintain a record of each question asked and the firm's response, so you can go back and follow-up or confirm information, as needed.

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Further Developments and Conclusion

- Exam Conclusion
 - The exam team generally will note concerns they have during the exam process. It is helpful to have an independent objective person listening to interviews who can help assess the nature and extent of any concerns.
 - Generally, examiners will conclude the on-site visit with a summary of their comments/concerns, in what is known as a “preliminary exit interview.” However, with a 1-day exam, the team may not have sufficient time to formulate a typical exit interview or conclusions regarding possible deficiencies.
 - Examiners generally take 30-60 days (but may be significantly more or at times less) to write an exam report.
 - Examination staff discuss issues internally with other SEC team members and managers before finalizing conclusions.
 - The large majority of exams result in a “deficiency letter” or “exam findings letter” identifying issues where examiners have noted a deficiency or weakness they believe you should correct. Some exams result in a “no findings” letter, but such exams are relatively rare.
 - If there are issues that examiners address during the exam that can be corrected immediately, you may fix those issues before you get a letter. It can be productive to initiate follow-up communications with the lead examiner after the on-site exam or interviews to note any items that you have corrected and provide supporting documentation.
 - Lead examiner will typically schedule an exit call to go through what will be in the letter; this is not really the point to debate the issue or respond, as the deficiency letter/findings letter has typically already been drafted.
 - After the exit call, the SEC will send the CCO or the head of the firm the deficiency letter/exam findings letter and request a written response within 30 days. Firms can request an extension, if needed, but it is best to respond promptly if possible.
 - It is wise to seek assistance from your compliance consultant or outside counsel in responding to the exam findings letter. Your response should be respectful and responsive, but firms may disagree with a comment and explain and support their position.
 - If your response to the findings letter is adequate, you generally will not have any further correspondence from the SEC. They do not notify you when exam is closed.
 - Exam comment letters are not public. SEC does not require that you provide letters to investors. Clients or investors may request copies. Firms must decide whether to provide your exam letter to a client or investor. If you provide to one, you generally should be prepared to provide to all clients or investors.