

2019 COMPLIANCE BRANCH EXAMINATION PRIORITIES

The Division of Market Oversight's Compliance Branch is pleased to share its inaugural Examination Priorities for all designated contract markets ("DCMs") and swap execution facilities ("SEFs") (collectively referred to as "regulated entities").¹ Calendar year 2019 marks the first time that the Compliance Branch is publishing its Examination Priorities, and we anticipate publishing Examination Priorities annually on the Commission's website to better communicate with DCMs, SEFs, market participants, and the public. A goal of the annual publication of Examination Priorities is to increase awareness and attention by regulated entities and market participants on areas that the Compliance Branch has identified as being of particular importance to effective self-regulation in U.S. derivatives markets in the coming year. In this regard, the Compliance Branch's Examination Priorities for 2019 are based on four pillars:

- (1) Effective communication, so that regulated entities and market participants are aware, through frequent communication, of the Compliance Branch's priorities or areas of concern in the near-term. In addition, the Compliance Branch's findings and recommendations as conveyed to individual DCMs in examination reports will provide DCMs with clear and concise information on areas of potential improvement in their self-regulatory programs.
- (2) A risk-based determination of priorities, so that key entities and subject areas will receive the most attention. The Compliance Branch will consider factors such as a DCM's market share; the time elapsed since the entity's last review; findings during the last review, including any need for follow-up in the short- to medium-term; concerns expressed by market participants and other Commission offices and divisions; new products, rules, or technology implemented by a DCM; significant organizational changes at the DCM, including changes in staffing, management, or ownership. SEFs will not be included in examinations in 2019 given pending changes to the Commission's part 37 rules. However, the Compliance Branch will initiate a regulatory outreach to SEFs as described below.
- (3) Continuous improvement, so that the Compliance Branch's examination program is responsive to regulatory and market developments and can provide timely and effective oversight of DCMs. The Compliance Branch's

¹ Although not included in this document, the Compliance Branch regularly conducts System Safeguards Exams to monitor DCMs', SEFs', and swap data repositories' (SDRs) programs for system safeguards risk analysis and oversight and cybersecurity testing.

examination program also seeks to be a resource for the entire Commission and its staff.

- (4) Efficiency, so that the Compliance Branch can leverage the Commission's staff, technology, and experience to achieve best-in-class results with current resources. The Compliance Branch's focus in 2019 will be on more frequent and prompt examinations; emerging trends, products, and technologies; and targeted aspects of traditional compliance functions, including regulatory staffing, investigations, trade practice surveillance, market surveillance, and disciplinary programs. The Compliance Branch is taking important steps to expedite its examinations process, including streamlined internal procedures, concentrating each examination on a subset of DCM practice areas and related Commission regulations, and prompt feedback to DCMs upon the conclusion of an examination.

The Compliance Branch has historically conducted examinations through Rule Enforcement Reviews of DCMs to monitor their compliance with the Commodity Exchange Act ("Act") and Commission regulations. These efforts will continue in 2019 through examinations that will target specific elements of a DCM's self-regulatory program and more focused time periods. The Compliance Branch will also conduct examinations in emerging areas of self-regulation, where regulatory requirements and best practices may still be developing. In many instances, the Compliance Branch will conduct examinations in a comparative fashion so that it can identify model regulatory practices more easily across DCMs. The Compliance Branch will share such model practices with other DCMs whenever possible while respecting each DCM's confidentiality.

In 2018, the Compliance Branch completed an important, high-level review of 11 DCMs' products and volume, investigations, disciplinary cases, staffing, conflict of interest policies, technology, market maker and incentive programs, and other aspects of their businesses. This review helped the Compliance Branch establish a baseline for each DCM's self-regulatory operations. At the conclusion of its review, the Compliance Branch discussed its findings with DCM staff and provided feedback to help DCMs establish their own baselines regarding the Compliance Branch's interests and expectations. Based on the 2018 review, the Compliance Branch identified the following topics for potential in-depth examination at DCMs:

- (1) cryptocurrency surveillance practices;
- (2) surveillance for disruptive trading (including DCMs' rules, surveillance practices, investigations, and disciplinary cases);
- (3) trade surveillance practices (selected elements);

- (4) block trade surveillance practices;
- (5) market surveillance practices (selected elements);
- (6) real-time market monitoring practices;
- (7) practices around market maker and trading incentive programs; and
- (8) DCMs' relationships with and services received from regulatory service providers.

Each of these areas is likely to be the focus of an examination addressing one or more DCMs. The target period for such examinations will typically be a six-month period. The Compliance Branch anticipates that most DCMs will undergo at least one examination in 2019.

In addition to conducting the examinations outlined above, the Compliance Branch's DCM priorities for 2019 include quarterly calls with large and medium volume DCMs, and biannual calls with lower volume DCMs, to foster effective two-way communication between regulators and regulated entities. These calls will provide the Compliance Branch with an opportunity to stay up-to-date on the DCMs' regulatory investigations and disciplinary cases of note; to discuss new products and rules; to better understand volume trends and market participants' behavior on the exchanges; and to obtain up-to-date information regarding staffing, technology, and other changes at the DCMs. DCMs will also have an opportunity to ask questions of Compliance Branch staff and discuss issues of mutual concern. Such periodic calls will be particularly important for DCMs that do not undergo an examination in 2019.

In 2019, the Compliance Branch will also begin regulatory consultations with a number of SEFs and will begin designing an examination program for SEFs. The regulatory consultations will serve as a preliminary step to help provide effective oversight while the Commission finalizes its new part 37 rules for SEFs and the Compliance Branch develops its SEF examination program. These regulatory consultations will resemble the Compliance Branch's high-level review of DCMs in 2018 and will seek, in part, to establish a baseline of information regarding each SEF's regulatory and business operations. In addition, the regulatory consultations will also help the Compliance Branch educate SEFs regarding the examination program and its other interactions with regulated entities to evaluate their compliance with the Act and Commission regulations.

The Compliance Branch is responsible for conducting examinations and other oversight of the 14 DCMs and 23 SEFs currently registered with the Commission. Twelve professional staff members across the Commission's Washington, DC, New York, Chicago, and Kansas City offices are responsible for examinations of DCMs' and SEFs' programs for effective self-regulation. The Compliance Branch considers DCMs' regulatory staffing, automated surveillance systems, audit trail requirements, real-time market monitoring, investigations, disciplinary actions, sanctions,

market-maker and trading incentive programs, matching engine rules, and any other DCM or SEF program area relevant to fair and effective self-regulation of markets and market participants. It endeavors to work collaboratively with all DCMs and SEFs to achieve intelligent outcomes for exchanges, market participants, and the broader public that relies on Commission-regulated markets for price discovery, risk mitigation, and other important economic activity. Additional Compliance Branch staff focus on Systems Safeguards Exams of DCMs, SEFs, and SDRs to monitor their programs for system safeguards risk analysis and oversight and cybersecurity testing.