Industry Trends – May 2017

Industry Statistics – Mutual Funds

Fund Category	Net Assets (in billions) Mar-17	Net Assets (in billions) Dec-16	Percentage Change in Net Assets	Dollar Change in Net Assets (in billions) Total Change	Change Due to Net Cash Flows	Change Due to Market
Stock	$9,117.8	$8,577.1	6.3%	$540.7	($21.2)	$561.9
Hybrid	$1,433.0	$1,388.7	3.2%	$44.3	($6.2)	$50.5
Taxable Bond	$3,147.8	$3,035.6	3.7%	$112.2	$67.2	$45.0
Municipal Bond	$628.6	$613.7	2.4%	$14.9	$7.1	$7.8
Money Market	$2,664.2	$2,728.7	(2.4%)	($64.5)	($66.5)	$2.0
Total	$16,991.4	$16,343.8	4.0%	$647.6	($19.6)	$667.2

- **Stock** funds assets had a big increase during the quarter of $540.7 billion. For the quarter ended March 31, 2017, market appreciation was $561.9 billion compared to an appreciation of $135.7 billion for the quarter ending December 31, 2016. The net assets for stock funds increased from $8,577.1 billion as of the end of 2016 to $9,117.8 billion at the end of the first quarter of 2017.

- **Hybrid** fund assets increased from $1,388.7 billion as of December 31, 2016, to $1,433.0 billion as of March 31, 2017. This compares to a decrease of $11.5 billion in the fourth quarter of 2016. The increase was the result of market appreciation of $50.5 billion and net outflows of $6.2 billion.

- **Bond** funds had net inflows of $74.3 billion for the quarter ended March 31, 2017, compared to the previous-quarter outflows of $16.8 billion. Assets for all bond funds increased $127.1 billion for the quarter ended March 31, 2017, which included market appreciation of $52.8 billion.

- **Money market** funds had net outflows of $66.5 billion for the three months ended March 31, 2017, compared to the previous-quarter inflows of $52.4 billion. Money market fund net assets, over the three-month period decreased from $2,728.7 billion as of December 31, 2016, to $2,664.2 billion as of March 31, 2017.

Source: Investment Company Institute website

REGULATORY UPDATE

SEC Publishes Alert on Top Five Adviser Compliance Issues

On February 7, 2017, the SEC's Office of Compliance Inspections and Examinations ("OCIE") issued a risk alert detailing the five compliance topics most frequently identified in deficiency letters to SEC-registered investment advisers (the "Risk Alert"). The Risk Alert reflects issues addressed in over 1,000 investment adviser deficiency letters issued in connection with exams completed over the last two years. The five most frequently identified compliance deficiencies identified in the Risk Alert are as follows:

1) **Rule 206(4)-8 (the "Compliance Rule") under the Investment Advisers Act of 1940 (the "Advisers Act")**
    - Compliance manuals not reasonably tailored to the adviser's business practices.
    - Annual review are not performed or did not address the adequacy of the Adviser's policies and procedures.
    - Adviser does not follow compliance policies and procedures.
    - Compliance manuals are not current.
2) **Required Regulatory Filings**
    - Inaccurate disclosures.
    - Untimely amendments to Form ADVs.
    - Incorrect or untimely Form PF filings.
    - Incorrect or untimely Form D filings.
3) **Rule 204(4)-2 under the Advisers Act (the "Custody Rule")**
    - Advisers did not recognize that they may have custody due to online access to client accounts.
    - Advisers with custody obtained surprise examinations that do not meet the requirements of the Custody Rule.
    - Advisers did not recognize that they may have custody as a result of certain authority over client accounts.
4) **Rule 204A-1 under the Advisers Act (the "Code of Ethics Rule")**
    - Access persons not identified.
    - Code of ethics missing required information.
    - Untimely submission of transactions and holdings.
    - No description of code of ethics in Form ADVs.
5) **Rule 204-2 under the Advisers Act (the "Books and Records Rule")**
    - Did not maintain all required records.

- Books and records are inaccurate or not updated.
- Inconsistent recordkeeping.

OCIE's goal in publishing the list of common compliance deficiencies is "to encourage advisers to reflect upon their own practices, policies and procedures in these areas and to promote improvements in investment adviser compliance programs."

The Risk Alert is available at the following link:

https://www.sec.gov/ocie/Article/risk-alert-5-most-frequent-ia-compliance-topics.pdf

SEC Approves New ETF Listing Standards

In 2016, the SEC requested that NYSE Arca, Inc., Bats BZX Exchange, Inc. and NASDAQ Stock Market LLC (collectively, the "Exchanges") each submit proposals to amend their generic listing standards for exchange-traded funds ("ETFs") to add specific continued listing standards. Subsequently, from September 2016 through January 2017, each of the Exchanges filed separate proposals for continued listing standards with the SEC which were approved in substantially the forms proposed. The new listing standards generally create a requirement for both passively-managed and actively-managed ETFs to conform to an Exchange's listing standards on an ongoing basis. The requirement for continued listing standards was already in place for active ETFs and is now being extended to index ETFs. Examples of continued listing standards include:

- Minimum market value for ETF holdings
- Minimum trading volume for ETF holdings
- Minimum number of record or beneficial owners of ETF shares
- Require notification of an Exchange is the ETF becomes aware of non-compliance with an applicable listing standard

The SEC's request for continued listing standards are, in part, aimed at addressing the potential for trading abuses that may affect ETFs, particularly ETFs tracking indexes that are comprised of thinly traded investments. Several industry participants have criticized the application of the new listing standards, noting that, among other issues, the continuous monitoring required would result in greater compliance costs and obligations.

OCIE Releases 2017 Exam Priorities

In January, the SEC's Office of Compliance Inspections and Examinations ("OCIE") released its 2017 examination priorities. OCIE's examination priorities are organized around the thematic areas of (i) examining matters of importance to retail investors, (ii) focusing on risks specific to elderly and retiring investors, and (iii) assessing market-wide risks.

Protecting Retail Investors

OCIE noted that investors continue to face an evolving and increasingly complex set of investment choices and it is pursuing the following initiatives to assess potential risks to retail investors that may arise, including risks related to:

- Electronic Investment Advice
- Wrap Fee Programs
- Exchange-Traded Funds ("ETFs")
- Never-Before Examined Investment Advisers
- Recidivist Representatives and their Employers
- Multi-Branch Advisers
- Share Class Selection

Focusing on Senior Investors and Retirement Investments

OCIE noted the need for increased attention to issues affecting senior investors as the U.S. population ages, including:

- ReTIRE Initiative
- Public Pension Advisers
- Senior Investors

Assessing Market-Wide Risks

OCIE will also examine structural risks that have the potential to affect fair, orderly, and efficient operation of securities markets, including:

- Money Market Funds
- Payment for Order Flow
- Clearing Agencies
- FINRA
- Regulation Systems Compliance and Integrity ("SCI")
- Cybersecurity
- National Securities Exchanges
- Anti-Money Laundering ("AML")

Other Initiatives

Other priorities to which OCIE will allocate examination resources will include:

- Municipal Advisors
- Transfer Agents
- Private Fund Advisers

DOL Fiduciary Rule Delayed

On April 7, 2017, the Department of Labor ("DOL") issued a rule that delays the applicability of the expanded fiduciary definition and the "Impartial Conduct Standards" in the best interest contract ("BIC") exemption provisions of the DOL's fiduciary rule until June 9, 2017. The implementation date for the remaining provisions of the fiduciary rule is January 1, 2018. In a Memorandum dated February 3, 2017, President Trump directed the DOL to conduct an examination of the fiduciary rule "to determine whether [the fiduciary rule] may adversely affect the ability of Americans to gain access to retirement information and financial advice." The DOL's examination will be completed by January 1, 2018 which means that the June 9th provisions will become effective (unless further delayed) prior to completion of the DOL's examination and may also be later revised or rescinded as a result of the examination shortly after their implementation.

In preparation for the implementation of the fiduciary rule, other matters related to fund shares have garnered attention. Following a move by some fund complexes to create "T shares," the SEC also issued interpretative guidance on January 11, 2017 related to "clean shares." Clean shares are shares which satisfy the following five conditions:

- The broker represents in its selling agreement with the fund's underwriter that it is acting solely on an agency basis for the sale of the clean shares;
- The clean shares sold by the broker will not include any form of distribution-related payment to the broker;
- The fund's prospectus will disclose that an investor transaction in clean shares may be required to pay a commission to a broker, and, if applicable, that that shares of the fund are available in other share classes that have different fees and expenses;
- The nature and amount of the commissions and the times at which they would be collected would be determined by the broker consistent with the broker's obligations under applicable law, including but limited to applicable FINRA and DOL rules; and
- Purchases and redemptions of clean shares will be made at net asset value established by the fund (before imposition of a commission).

Because of the limitations of Section 22(d) and Rule 22d-1 of the Investment Company Act of 1940, as amended, some broker-dealers have experienced difficulty dealing with sales charges, breakpoints and waivers that vary by fund. The conditions above related to clean shares appear to be designed to provide a safe harbor for funds, underwriters and broker/dealers in that such parties would be acting as brokers and, therefore, not subject to the provisions of Section 22(d) when in compliance with such conditions. The offering of clean shares may help avoid conflict of interest principles underlying the fiduciary rule implications, although that has not been definitively addressed.

With respect to the BIC exemption from the fiduciary rule, an intermediary relying on the exemption must disclose all fees, compensation, and material conflicts of interest to retirement investors. Recently the ICI issued a white paper to explore the disclosure of noncash compensation and third-party payments to assist with the compliance requirements for the exemptions. The whitepaper is available through the ICI's website.

SEC Proves Improved Ability to Analyze Data

The SEC has recently been calling on investment advisers to discuss situations where data reviewed and analyzed by the SEC indicates that a fund's holdings indicate that the investment strategy has changed – but the Fund's disclosures have not. Utilizing new and enhanced technology, the SEC has been able to make better use of the troves of data it receives through required filings. The SEC's Division of Risk and Examinations has been contacting the Division of Investment Management for further discussion when warranted. SEC Staff has spoken about phone calls to investment advisers to discuss these differences and it is unknown if, or when, any deviations would result in an enforcement action.

Fund directors should be aware of the possibility for style drift as there is a potential for such deviations to lead to a lawsuit for misleading statements in fund offering documents.

SEC Approves Shorter Security Settlement

On March 22, 2017, the SEC adopted an amendment to Rule 15c-6-1(a) that shortened most security settlement cycles from three days to two. The change will be effective on September 5, 2017. The changes are designed to enhance efficiency and reduce counter-party risk.

UMB Fund Services does not anticipate any issues implementing the change nor a need for major system changes.

SEC Staff Issues Guidance on Robo-Advisers

The SEC staff recently released guidance relating to automated investment advisers, referred to as "robo-advisers." In addition to firms that only market themselves as robo-advisers, the guidance also addressed traditional investment advisers' use of automated processes to provide advisory services. The guidance focused heavily on the use of algorithmic-based programming in response to online questionnaires. The staff addressed three main areas for RIAs to consider with their use of automated advisory services: (1) disclosure obligations; (2) investor suitability; and (3) compliance implications.

First, the guidance states that disclosures should outline how an algorithm, or similar tool, is used in the adviser's provision of services. Additional algorithm-related disclosures might include the assumptions and limitation of the algorithm; risks of using the algorithm; a third-party's involvement in the creation and implementation of the algorithm; and the level of RIA or human involvement in using or overriding the algorithm. The guidance also discussed disclosures that should be made surrounding the initial online questionnaire given to clients to determine the advisory plan. Next, the guidance includes considerations for robo-advisers relating to investor suitability. The guidance discussed the limitations of robo-advisers' online questionnaires in providing a robust dialogue between the adviser and client. Finally, the guidance outlines additional items that the adviser should consider adding to its compliance program relating to the use of algorithms or similar tools.

The guidance indicated that in addition to the above considerations, affected advisers should consider how their advisory programs interact with the investment company safe harbor found in Rule 3a-4 of the Investment Company Act of 1940. It is possible that a firm may reach out to the SEC to seek additional guidance or no-action relief on this separate issue.

Brokerage Firm Paying Penalty for Compliance and Trading Surveillance Failures

The SEC announced in February 2017 that a New York brokerage firm, Sidoti & Company LLC ("Sidoti"), agreed to pay a $100,000 penalty to resolve charges of compliance and trading surveillance failures. The SEC's order found that Sidoti had no written policies or procedures in place for the eight month period from November 2014 to July 2015 regarding the misuse of material non-public information in connection with the Adviser and trading in the Fund.

According to the SEC order, there were 126 instances from Nov. 3, 2014 to May 5, 2015 when the Fund traded in a stock that appeared on the firm's daily restricted list. The SEC did not charge Sidoti or any of its affiliates or associated persons with actual misuse of material non-public information. Instead, the focus of the order was on the lack of adequate procedures to prevent the misuse of material non-public information. The order also noted that Sidoti implemented changes to its information barriers in July 2015, but the new policies and procedures failed to prevent the misuse of material non-public information by Sidoti or its associated persons.

According to an SEC statement, "Sidoti did not devote sufficient resources to set up the necessary trade surveillance and compliance systems and failed to meet its obligation to prevent the misuse of material nonpublic information". The SEC found that Sidoti violated Section 15(g) of the Securities Exchange Act of 1934 which requires broker-dealers to establish, maintain and enforce supervisory procedures.

"The order is a reminder to registered broker-dealers – as well as registered investment advisers – to consider their business models and organizational structures when designing and implementing information barriers and other procedures to prevent misuse of material nonpublic information, and to take into account activities and responsibilities with respect to affiliated entities, although, notably, the SEC did not charge affiliates – or individuals – in this administrative proceeding."[1]

[1]Dechert ONPOINT 3/2/2017

https://info.dechert.com/10/8226/february-2017/sec-fines-broker-dealer-for-inadequate-information-barriers.asp

CFTC Issues Exemptive Relief on Liquidation Statement Requirement

In January a division of the Commodity Futures Trading Commission ("CFTC") issued a letter that provided exemptive relief to registered commodity pool operators ("CPOs") on how to satisfy annual filing requirements when a series of a fund is liquidating. Regulation 4.22(c) requires pool operators to provide each participant and the National Futures Association ("NFA") with an annual report containing liquidating statements within 90 days of year-end or permanent liquidation. The letter grants a registered COP of a liquidating series of a fund to prepare and provide unaudited statements of operations and changes to net assets. The CPO remains subject to the timing requirements of the rule and must provide the statements either electronically of physical delivery to all participants of the fund or relevant financial intermediaries and to the NFA within 90 calendar days.

Rule Changes for Centrally Cleared Swaps

The Chicago Mercantile Exchange and LCH Clearnet Limited have amended their rules to legally characterize variation margin payments for OTC derivatives as settlements and not collateral. Prior to the change, variation margin payments have typically been treated as collateral against the derivative position and the receiving party paid interest on the collateral. For accounting purposes, collateral payments are generally treated as a separate unit from the derivative instrument and recorded as a separate account for collateral received/paid. The change does not affect payments between parties but does reduce the regulatory capital required by clearing members. The Rule changes were effective January 3, 2017.

SEC Issues Interpretive Letter on Registered Funds of Funds' investments in Closed-End Funds

Section 12(d)(1)(G) of Investment Company Act of 1940 ("1940 Act") allows open-end funds to invest in other open-end funds over the limits set out in the section if the open-end funds are deemed to be in the same "group of investment companies." In 2006, the SEC adopted

Rule 12d1-2 to expand the types of an investments an open-end fund could make, including those in other investment companies. However, there was ambiguity whether Rule 12d1-2 could also be read to prevent investment in closed-end funds.

In March 2017, in response to a letter request from Dechert LLP, the SEC staff released an interpretative letter confirming that certain open-end funds may also invest in closed-end funds, up to the limits currently provided in Section 12(d)(1)(G) of the 1940 Act. The SEC staff also confirmed this interpretation applies regardless of whether the closed-end funds are in the same "group of investment companies."

AB to Implement Performance Fees on Active Funds

AB (f/k/a/ Alliance Bernstein) is seeking regulatory permission to launch a series of six actively managed mutual funds with a fee structure that resembles performance fees. Funds in AB's new Performance Fee series have annual minimums that ratchet up only as the fund exceeds its stated "index hurdle." The strategies are those typically used in core portfolio holdings, such as large-cap stock and international bond. For strategies that do not clear their index hurdles over established performance periods, investors pay only the minimum management fees. For each basis point a fund delivers above those hurdles, investors pay an additional 0.357 basis points until the stated maximum is reached. This approach puts pricing for actively managed funds in competition with passive products when AB managers miss their benchmarks.

Allegations of Altered Minutes in Section 36(b) Case

Harbor Capital Advisors ("HCA") is in Section 36(b) litigation, and plaintiffs in the case allege HCA altered fund board minutes to omit or change certain director discussions. In addition, attorneys for the plaintiffs allege that regulatory filings included disclosures of "board processes" that did not occur but were later added by counsel for HCA or Harbor Funds.

While the impact of this claim is unclear as it relates to the excessive fee claims, it once again highlights issues fund directors should be aware of related to the production of board minutes and the importance of ensuring disclosures in fund filings match what actually was discussed at board meetings.

The SEC has repeatedly asserted that descriptions of board actions in filings must match what actually happens in the board meetings. In fact, the SEC sanctioned a trust's administrator, trustees and compliance provider for boilerplate disclosures in shareholder reports that contained false or misleading information about the 15(c) process.

TAX UPDATE

Regulatory

IRS Confirms 6-Month Extension for Corporate Tax Returns

The IRS has confirmed on its website that it is allowing calendar-year corporations, including regulated investment companies ("RICs"), a six-month filing extension, instead of the five-month extension specified in the Internal Revenue Code ("Code").

The instructions to Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns, refer, on page 2 of the instructions to an automatic 6-month extension for a calendar year corporation. However, Code Section 6081(b), as amended by the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, P.L. 114-41, provides for a five-month extension for calendar year corporations (until 2026).

The IRS explains on its website that the Form 7004 correctly reflects that calendar year corporations are eligible for an automatic 6-month extension. The IRS cites that under Code Section 6081(a), the Secretary may grant a reasonable extension of time for filing any return, as authority for the longer extension period.

Whereas the Surface Transportation and Veterans Health Care Choice Improvement Act set the due date for the corporate income tax return as the 15th day of the fourth month following the close of the corporation's tax year, for calendar-year corporations the corporate return is generally due April 15 (April 18 in 2017), and the six-month extended due date is October 15 (October 16 in 2017). Non-calendar year corporations already have available a six-month extension available to them under IRC Section 6081(b) except for corporations with a June 30 year end. The due date for the corporate income tax return for a corporation with a June 30 year end is the 15th day of the third month following the close of the corporation's fiscal year, with a seven-month extension (until 2026).

LB&I International Practice Service Concept Unit Hedge Fund Basics

The Large Business & International ("LB&I") Division of the IRS has recently made available an LB&I International Practice Service Concept Unit ("Practice Unit") on Hedge Fund Basics. As part of LB&I's knowledge management efforts, Practice Units are developed through internal collaboration and serve as both job aids and training materials on tax issues. Practice Units provide IRS staff with explanations of general tax concepts as well as information about a specific type of transaction. This Practice Unit will focus on tax issues related to a master fund, addresses key document in hedge fund identification, U.S. trade or business issues, trading safe harbors to U.S. trade/business classification, U.S. source income that is effectively connected income ("ECI") with a U.S. trade or business and U.S. source income that is not ECI with a U.S. trade or business and subject to U.S. Tax. The Practice Unit is available through the IRS website.

International / FATCA

SEC Information Update Regarding Support for US Funds Seeking Reclaims of European Tax

The SEC issued an Information Update to provide U.S registered funds with a framework for requesting letters from the SEC addressed to foreign jurisdictions to assist such funds in obtaining refunds of any foreign taxes that were inappropriately withheld. Since late 2015, the SEC Division of Investment Management ("Division") has provided over 100 funds with letters assisting their tax claims (in some cases including multiple letters for the same fund when a fund has claims in multiple jurisdictions). This effort is expected to result in substantial amounts of refunds for U.S. registered funds making tax claims and, to the extent that inappropriately withheld taxes are refunded, therefore stands to benefit investors of such funds. The Court of Justice of the European Union and certain European Union member state courts have held that EU member states could not impose withholding taxes on certain foreign investors if substantially similar domestic investors were not subject to tax.

For funds that may have similar outstanding tax claims seeking a letter from the Division, the Division is requesting draft letters include the name of the registrant and registration statement file numbers (and series number, if applicable), the first date of the fund's first fiscal year to which the claims relate, a statement that the fund is an open-end registered investment company and the date and state of organization for the relevant fund.

The Division also requests that funds send supporting documentation along with the draft letters that provides a basis for confirmation of the information described above for each request. The supporting documentation is typically a small PDF packet that includes the information described above from the relevant fund's registration statement filings.

State

Ohio's Commercial Activity Tax May Apply to Out-of-State Investment Advisors

The Ohio Supreme Court ("Court") has ruled that the Commercial Activity Tax ("CAT") can be imposed on an entity with substantial receipts from Ohio sources even if there is no physical connection to the State (Crutchfield Corp. v. Testa, Slip Opinion No. 2016-Ohio-7760, et al.). The Court concluded that physical presence is not a necessary condition for imposing CAT because CAT's $500,000 sales-receipts threshold is adequate quantitative standard ensuring that taxpayer's nexus with Ohio is substantial – burdens imposed by CAT on interstate commerce are not clearly excessive in relation to Ohio's legitimate interest in imposing CAT evenhandedly on sales receipts of in-state and out-of-state sellers – Board of Tax Appeals' decision affirming CAT assessments against appellant affirmed.

The CAT is an entity-level tax measured by taxable Ohio-sourced gross receipts from business activities and is imposed on each person with substantial nexus to Ohio. Substantial nexus is created if a person has specified bright-line presence, including Ohio-sourced receipts of $500,000 or more in the State. The current CAT tax rate is 0.26%.

An investment advisor that receives fees directly or indirectly from customers located in Ohio should consider the effects this ruling may have on its Ohio CAT filing obligations. It is likely that fees directly received from Ohio residents (i.e., that exceed the $500,000 filing threshold) could trigger a filing requirement, barring the overturning of the ruling by the U.S. Supreme Court. Persons receiving fees that can be attributed to investors in Ohio should review what, if any, ties there may be to Ohio and determine if any revisions to their existing filings may be warranted.

OTHER

Cybersecurity Regulations for New York Financial Institutions

New York has finalized cybersecurity regulations for banks, insurance accompanies and other financial institutions under the New York Statement Department of Financials Services ("NYDFS") jurisdiction which takes effect on March 1, 2017. The regulation broadly defines "Nonpublic Information" and outlines firms' responsibilities relating to:

- maintaining a cybersecurity program,
- incident reporting, testing and vulnerability assessments,
- cybersecurity personnel, third-party service provider oversight requirements,
- multi-factor authentication and encryption,
- audit trail maintenance and,
- document destruction.

Additionally, enhanced NYDFS reporting requirements include a 72-hour notification protocol for cybersecurity incidents as well as an annual compliance certification filed by February 15th each year.

2017 ICI Mutual Funds and Investment Management Conference

If there was an overarching theme at the 2017 ICI Mutual Funds and Investment Management Conference it was continued uncertainty. At the time, it was unclear as to whether the DOL's Fiduciary Rule would be delayed and it was uncertain as to whether Jay Clayton would be approved as the Chairman of the SEC and what changes he would make.

With respect to some the new(er) regulations, there was a discussion of the responsibility of fund boards relative to the regulations thereby requiring a diversity of experience on boards. Fund boards are tasked with ultimate oversight of (among many other things): valuation, liquidity, distribution, cybersecurity, derivatives and oversight of sub-advisers. There was further discussion as to the evolving role of Chief Compliance Officers and their reporting of information to the board concerning how the adviser responds to and addresses certain issues.

The new liquidity rule was the topic of one break-out session. The role of the board is to approve the liquidity risk management program, review the annual report on effectiveness of the program and to receive reports of any breaches. There was a suggestion to appoint a committee (similar to valuation) to work on the liquidity risk program as diverse perspectives could be valuable. It was also noted that there are some IT challenges associated with this rule as it will likely require different systems to communicate with each other. With respect to investment classification, it was noted that it cannot be entirely outsourced. The illiquid investment limitation of 15% must be continually evaluated and when a cap is breached, it must be reported to the board and the SEC.

In a break-out session devoted to the DOL Fiduciary Rule (which was still slated for implementation on April 9) there was a good amount of discussion regarding share classes, including clean shares.

The SEC’s OCIE and Enforcement panel is generally a popular session. OCIE noted that it is conducting more targeted examinations focusing on key risk areas: retail investors, seniors, and assessing market risk. OCIE reported there are still a lot of findings regarding compliance and codes of ethics. In terms of the basis for referrals to Enforcement, OCIE reported that findings of fraud, harm to investors and recidivist behavior will result in referrals. From the perspective of Enforcement, it will consider the nature of the conduct, was there remediation, is there recidivist behavior and what is critical to investor protection? Enforcement will also conduct a corrective action review to follow up to see if the firm did what it said it would do to address the deficiencies. In the context of a discussion about self-reporting, OCIE noted that the decision to self-report may be rendered moot if there is a whistleblower.