

RIA Compliance Consultants

RIA Compliance Connection Conference

August 24 & 25, 2022

Omaha, NE

COMMON IA EXAM ISSUES THROUGH THE EYES OF
A FORMER REGULATOR

2022 RIA Compliance Connection

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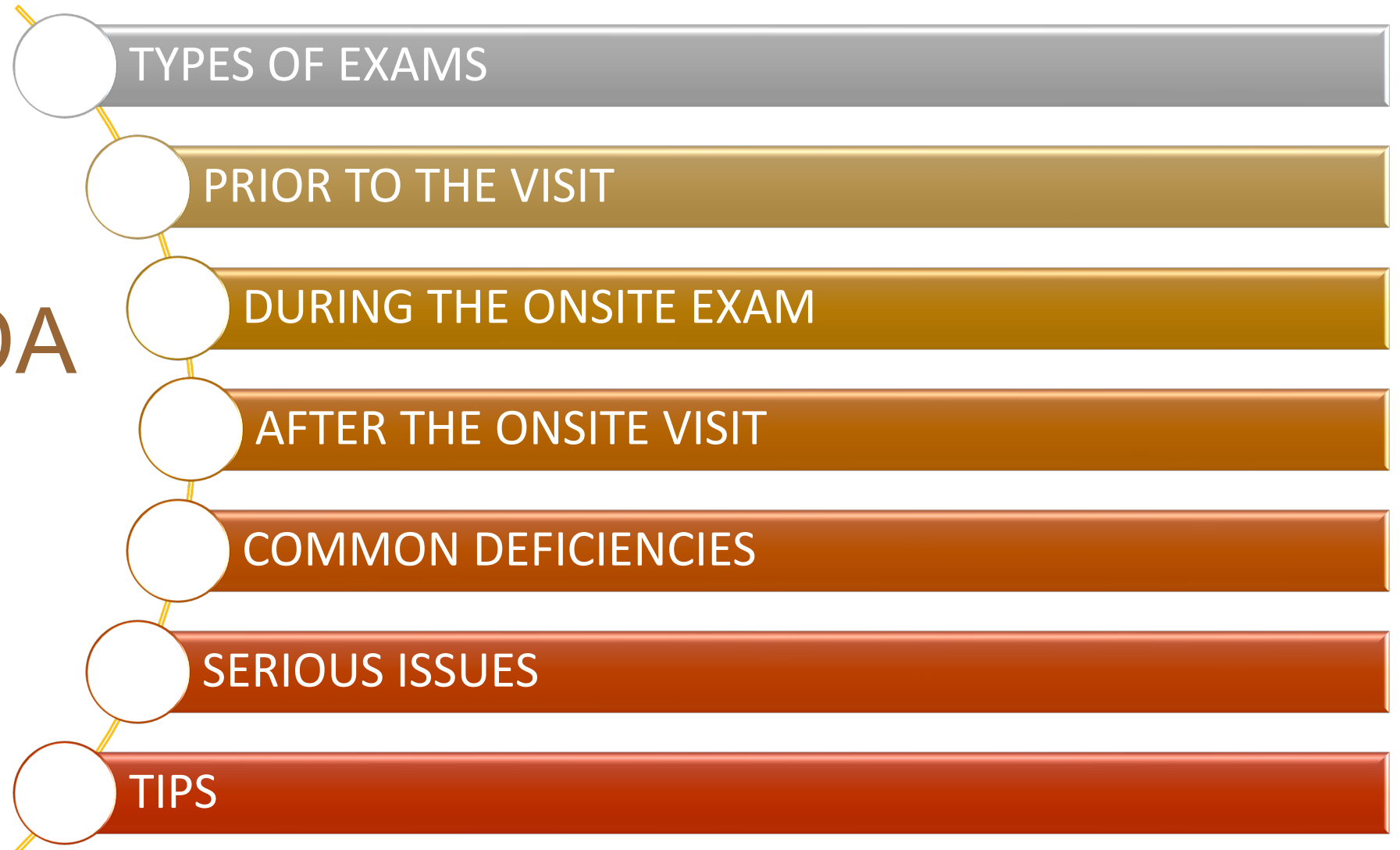
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AGENDA



TYPES OF EXAMS

NEW ADVISER

ROUTINE

SWEEP

FOR CAUSE

PRIOR TO THE VISIT

Assign CCO to lead and notify consultant and legal counsel

Alert IA staff of date exam will start

Familiarize yourself with Form ADV Part 2A, Written Supervisory Procedures and Code of Ethics

Review last exam and verify all corrective actions implemented

Prepare documents and reports requested

Create a method for organizing documents and tracking

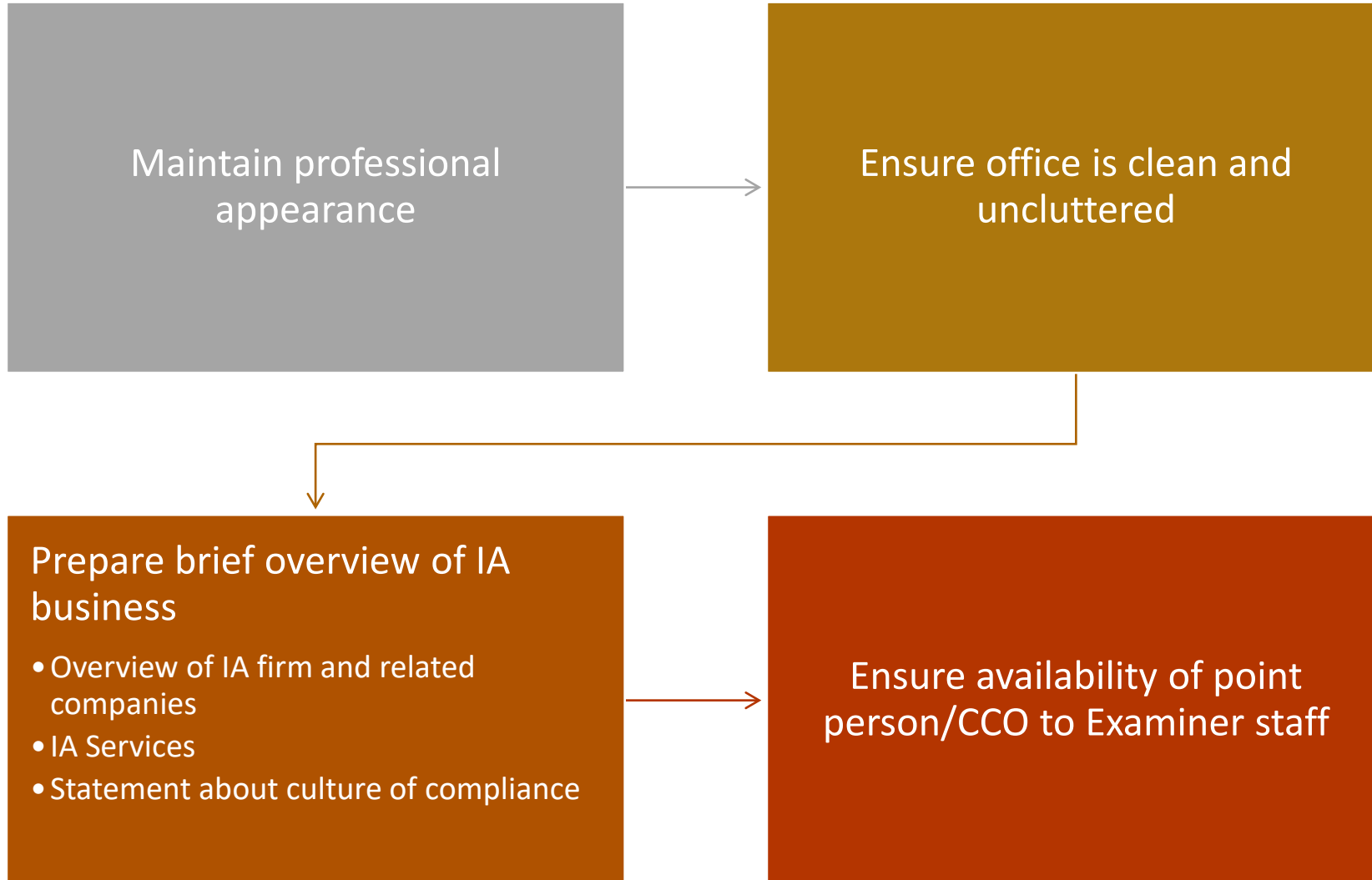
Identify any concerns or weaknesses

Prepare adequate space for Examiners

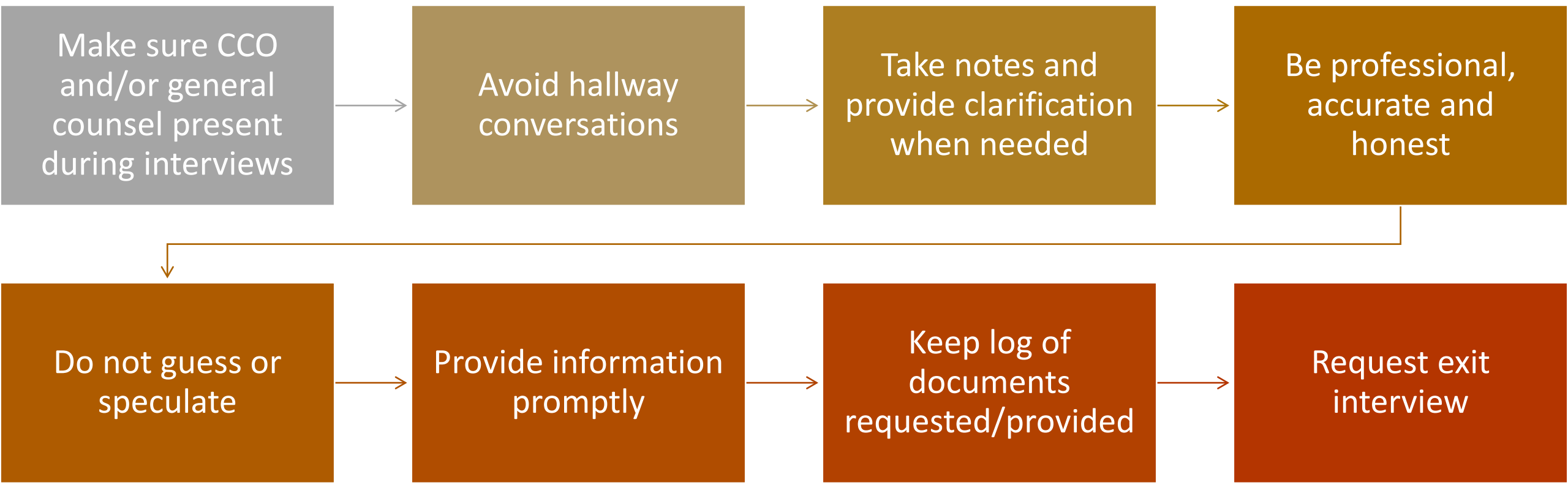
Plan a tour of office

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DURING THE ONSITE EXAM



DURING THE ONSITE EXAM – CONT.



AFTER THE ONSITE VISIT

Check with
Examiners to
confirm no
outstanding
requests/questions

Respond promptly
to deficiency letter

Address all
deficiencies

Correct
deficiencies
identified

Be prepared for
follow-up exam

COMMON EXAM DEFICIENCIES

Failure to maintain updated Written Supervisory Procedures

Failure to follow Written Supervisory Procedures

Failure to perform and document performance of an annual compliance review

Inconsistencies in Form ADV

Failure to update U-4 and ADV Part 2B information

Incorrect fee deductions – fee calculation not matching client agreement/ADV

Failure to prepare and maintain financial statements as required

Misrepresentations on advertising or marketing material

Outdated website

COMMON EXAM DEFICIENCIES

Failure to conduct
remote/branch office
audits

Failure to maintain
suitability information
and investment
objectives for clients

Management of client
accounts inconsistent
with stated
investment objectives

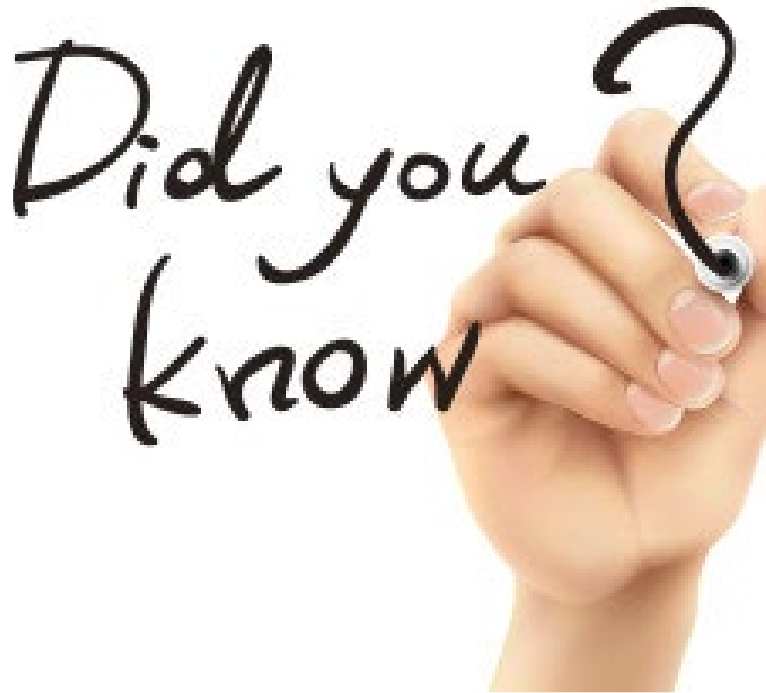
Failure to document
annual best execution
review

Failure to document
lowest cost share
class for mutual funds
in managed accounts

Unregistered IARs

Inability to provide
requested records –
missing books and
records

SEC Exam Fact



“During a typical examination, the Division reviews the compliance programs of RIAs in one or more of the following core areas: marketing practices, custody and safety of client assets, valuation, portfolio management, brokerage and execution, conflicts of interest, and related disclosures.”

SERIOUS ISSUES

Unauthorized
Trading

Unregistered
Activity

Failure to
protect
confidential
customer
information
(PII)

Overcharging
client fees

Having
custody
without
following
safekeeping
requirements

Failure to
disclose
conflicts of
interest and
how
mitigated

TIPS

- Ensure consistency among all IA documents – Form ADV, Client Agreements, WSPs
- States do not necessarily follow SEC No-Action Letters or NASAA Model Rules
- Regulators have policies that change with new staff – the focus changes with administrations
- Don't refuse an audit (or try to postpone indefinitely)
- If possible, fix any deficiencies identified during an audit while the Examiners are onsite
- If you disagree with a finding, make your case in writing using relevant law
- Regulators may obtain data from custodians (verify assets)
- Do not try to hide disclosure
- Keep evidence of yearly offerings
- Fairness is not guaranteed – all regulators do not agree on rules, appropriate disclosures or actions
- Err on the side of more disclosure

Resources

- ✓ RCC Sample Form “SEC Exam – Best Practices Checklist”
- ✓ RCC FAQs – “Preparing for an On-Site SEC Audit”
- ✓ SEC 2022 Examination Priorities
- ✓ Standard document request

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