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Private Funds in the Hot Seat under Gensler's SEC

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Since Chair Gary Gensler's nomination in February, the securities industry has speculated on the rulemaking and enforcement priorities of the Securities and Exchange Commission ("SEC") under his oversight. While Gensler has already confirmed his focus on SPACs, ESG and cryptocurrency, he has been coy regarding private funds. That ended this week when he testified before a subcommittee to the U.S. House Appropriations Committee.

Specifically, Gensler told the subcommittee that he has sought staff recommendations for increased private fund reporting and disclosure through Form ADV, Form PF, and other enhancements. He also indicated that the Divisions of Investment Management, Examinations, and Enforcement would "continue to focus" on investment advisers to private funds in the areas of "investment risks and conflicts of interest, fees and expenses, liquidity, valuation of assets, and controls around material non-public information."

In making such statements, Gensler emphasized the SEC's role as the only sheriff in town, as it relates to investments advisers. He also emphasized the growing and evolving nature of the "multi-trillion-dollar" private fund market, citing statistics over the last five years showing that private equity funds grew in number by 58 percent, assets by 116 percent, and venture capital funds by 110 percent and 200 percent, respectively. Finally, he described many of these funds as implementing "new strategies, structures and business practices," which presented new risks to investors.

While Gensler did not necessarily present this concentration on private funds as a change in course, the reality is that this represents a significant shift from former SEC Chair Jay Clayton's SEC, which concentrated on investment advisers to retail or "Main Street" investors through initiatives like the Share Class Selection Disclosure Initiative. Accordingly, funds should be prepared for increased regulatory and enforcement scrutiny for the next four years.

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