

Lest We Forget, the SEC Cares About Private Equity

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During last week's testimony before the Senate Committee on Banking, Housing, and Urban Affairs, the questioning of SEC Chair Gary Gensler focused on the expected topics of cryptocurrency regulation, ESG disclosures, and gamification. But Gensler's [written testimony](#) circulated beforehand reminded the marketplace that private funds, including private equity, will continue to be a focal point.

In particular, Chair Gensler stated that the SEC is considering potential reforms regarding "the conflicts of interest [private fund] managers may have and the information they are providing investors about the fees they charge," noting that "enhance[d] disclosures" will "better enabl[e] pensions and others . . . to get the information they need to make investment decisions." While no proposed rulemaking has been announced, this suggests something may be in the works. Gensler also suggested continued focus by both the Examination and Enforcement Divisions, with later statements regarding the continuing importance of the SEC's "robust enforcement and examination regimes."

This testimony comes on the heels of May [testimony](#) provided before the U.S. House Appropriations Committee, where Gensler stressed the 58% growth in private equity funds over the last five years and stated he was seeking staff recommendations for increased private fund reporting and disclosure through, among other means, Form ADV and Form PF.

The SEC's recent focus on private funds generally, and private equity specifically, was also reflected in the [exam priorities](#) announced by Examination Division this past March. These priorities included a focus on investment advisers to private funds, with a "focus on liquidity and disclosures of investment risks and conflicts of interest." And while the Enforcement Division's Asset Management Unit appears to be busy wrapping up the backlog of retail advisers' conflicts of interest cases – reflecting the priorities of former Chair Jay Clayton – we fully expect to see a shift to the private fund world under Gensler.

In preparation, we advise private equity investment advisers to perform comprehensive reviews of their compliance programs and the disclosures in their offering documents and Forms ADV on the following topics:

- The nature and number of advisory fees earned;
- Expenses incurred by advisers and borne by the funds and their portfolio companies, including whether such expenses are charged in accordance with disclosures, sufficiently documented, and allocated appropriately;
- Advisory relationships with third party service providers to the funds and their portfolio companies;
- Principal transactions and cross-trades within the private equity group;
- Conflicts relating to liquidity and valuation in connection with adviser-led-fund restructurings; and
- The process by which valuation of portfolio assets are arrived and its impact on management fees

Indeed, we understand that such topics are the focal point of recent examination requests. Accordingly, we recommend that advisers evaluate their practices and procedures surrounding the detection, evaluation, and monitoring of existing and new conflicts of interest. We also recommend that advisers evaluate their existing disclosures regarding conflicts, risks, and fees to ensure they are sufficiently detailed and complete.

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