

SEC Staff Issues 2024 Examination Priorities

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On October 16, 2023, the staff of the SEC's Division of Examinations issued its examination priorities for 2024. The examination priorities include areas of particular interest to regulated entities such as registered investment advisers, registered funds and broker-dealers, including those described below. As in previous years, the staff continues to prioritize examinations of advisers and funds that have never undergone an examination and those that have not been examined for several years.

Investment Advisers

- **Adviser Fiduciary Duties.** The staff stated that it will continue to prioritize examinations of advisers for adherence to their obligation under the duties of care and loyalty. In this regard, examiners will focus on (1) investment advice about products, investment strategies and account types, particularly with respect to complex products, high cost and illiquid products and unconventional investment strategies; (2) processes used to determine that investment advice is in the clients' best interest, including suitability determinations, seeking best execution, evaluating costs and risks, and identifying and addressing conflicts of interest; (3) economic incentives and conflicts of interest associated with advisers that are dually registered as brokerdealers, use affiliated firms to perform client services and have financial professionals servicing both brokerage customers and advisory clients; and (4) disclosures made to investors relating to conflicts of interest.
- **Adviser Compliance Programs.** The staff stated that it remains focused on advisers' compliance programs, with particular focus on (1) marketing practices, including compliance policies and procedures relating to the Marketing Rule (Rule 206(4)-1), Form ADV disclosure of marketing-related information and maintaining substantiating evidence of marketing processes and other required books and records; (2) compensation arrangements, including adherence to fiduciary obligations particularly with respect to the receipt of compensation for services or other material payments, alternative ways that advisers attempt to maximize revenue such as bank deposit sweep programs, and fee breakpoint calculation processes; (3) valuations of client investments that are illiquid or difficult to value,

such as commercial real estate or private placements; (4) safeguarding controls to protect clients' material non-public information; and (5) regulatory filings, including Form CRS. The staff stated that it is also focused on advisers' policies and procedures to select and use third-party and affiliated service providers, oversee branch offices and obtain informed consent from clients for material changes to advisory agreements.

- **Advisers to Private Funds.** The staff stated that it will continue to focus on advisers to private funds and will prioritize specific topics, such as (1) portfolio management risks relating to recent market volatility and higher interest rates, which may include funds with poor performance, significant withdrawals, valuation issues and those that use leverage or invest in illiquid assets; (2) adhering to contractual requirements for limited partnership advisory committees or similar structures; (3) calculating and allocating private fund fees and expenses; (4) due diligence practices, particularly for assessments of prospective portfolio companies by private equity and venture capital funds; (5) conflicts of interest, controls and disclosures regarding side-by-side management and the use of affiliated service providers; (6) compliance with custody requirements; and (7) policies and procedures for Form PF reporting.

Investment Companies

- **Fund Compliance Programs and Governance Practices.** The staff stated that examinations of registered investment companies will often include an assessment of fund compliance programs and governance practices, including reviews of (1) boards' processes for evaluating and approving advisory and other fund fees, particularly for funds with weaker performance relative to peers; (2) valuation practices; (3) derivatives risk management programs; and (4) liquidity risk management programs.
- **Fees and Expenses.** The staff stated that it may focus on fund fees and expenses, including whether funds have adopted compliance policies and procedures relating to the oversight of advisory fees and properly implemented any fee waivers and reimbursements. The staff stated that a particular focus will be on (1) funds charging different advisory fees to different share classes of the same fund; (2) fund sponsors offering identical strategies through different distribution channels but with differing fee structures; (3) funds with high advisory fees relative to peers; and (4) funds with high fees and expenses, particularly for funds with weaker performance relative to peers. Examinations will also review the boards' approval of the advisory contract and fund fees.
- **Derivatives Risk Management.** The staff stated that it may also focus on derivatives risk management and whether funds have effectively adopted and implemented compliance policies and procedures relating to the Derivatives Rule (Rule 18f-4), including (1) the adoption and implementation of a derivatives risk management program, board oversight and disclosure of funds' use of derivatives; and (2) funds' procedures for, and oversight of, the valuation of derivative instruments.

Broker-Dealers

- **Regulation Best Interest.** The staff stated that it will continue to prioritize examinations of broker-dealers for adherence to their standard of conduct obligations under Regulation Best Interest, including related compliance policies and procedures. In this regard, the staff stated that it will focus on, among other things (1) recommendations regarding products, investment strategies and account types, particularly with respect to products that are complex, high cost, illiquid, proprietary or invest in microcap securities; (2) disclosures to investors about conflicts

of interest; and (3) conflict mitigation practices.

- **Form CRS.** The staff stated that it will review the content of a broker-dealer's relationship summary, including descriptions of (1) the relationships and services that it offers retail customers; (2) fees and costs; and (3) conflicts of interest, as well as whether the broker-dealer discloses any disciplinary history. Examinations will also evaluate whether broker-dealers have met their filing and delivery obligations with respect to Form CRS.
- **Financial Responsibility Rules and Trading Practices.** The staff stated that it will focus on compliance with the Net Capital Rule and the Customer Protection Rule, and review trading practices for compliance with Regulation SHO, Regulation ATS and Rule 15c2-11.
- **Self-Regulatory Organizations, Clearing Agencies and Other Market Participants.** The examination priorities also outline focus areas for examinations of (1) self-regulatory organizations, including national securities exchanges, FINRA and the Municipal Securities Rulemaking Board (MSRB); (2) clearing agencies; and (3) other market participants, including municipal advisors, security-based swap dealers and transfer agents.
- **Risk Areas Impacting Various Market Participants.** Lastly, the staff highlighted examination priorities with respect to significant areas of risk for multiple types of registrants, including (1) information security and operational resiliency; (2) crypto assets and emerging financial technology; (3) regulation systems compliance and integrity; and (4) anti-money laundering.

In closing, the staff stated that although it will allocate significant resources to its stated examination priorities, it will also conduct examinations and devote resources to address new or emerging risks, products and services, market events and investor concerns.

The Division of Examinations' 2024 examination priorities are available [here](#).

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