
SEC Releases 2023 Examination Priorities for Registered Investment Advisers and Broker-Dealers.

On February 7, 2023, the U.S. Securities and Exchange Commission ("SEC") Division of Examinations (the "Division") released its annual Priorities Report1 for upcoming examinations of registered investment advisers ("Advisers") and broker-dealers ("BDs" and, together with Advisers, "Firms"). To help ensure compliance with federal securities laws, the Division uses a risk-based approach that accounts for market growth, technological advancements, and new forms of risk to investors. By identifying these priorities, the Division strives to achieve its four goals of promoting compliance, preventing fraud, monitoring risk, and informing policy. The Division identified the following specific areas of focus for Advisers and BDs.

Mutual Areas of Focus for Advisers and BDs

Standards of Conduct

The Division is continuing to prioritize the examination of Firms for compliance with applicable standards of conduct, including fiduciary duties for Advisers and Regulation Best Interest2 for BDs. Both standards of conduct obligate Firms to put the interests of investors ahead of their own personal, financial, and professional interests. In relation, the Division will be focusing on investment advice and recommendations in connection with specific products, investment strategies, and account types. The Division is concerned with products that are complex, high cost, illiquid, proprietary, or unconventional. Such products may include derivatives, leveraged exchange-traded funds, exchange-traded notes, variable annuities, non-traded real estate investment trusts, and microcap securities. The Division may also focus on recommendations and advice provided to certain investors, such as senior investors and those saving for retirement. Moreover, the Division noted it may prioritize review of specific account recommendations, including retirement account rollovers and 529 college savings plans.

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