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U.S. SEC Division of Exams Announces 2024 Examination Priorities: Sidley Austin

On October 16, 2023, the U.S. Securities and Exchange Commission (SEC) Division of Examinations (EXAMS or Division) issued its annual examination priorities, which, for the first time, was published at the start of the SEC's fiscal year to "better inform investors and registrants of key risks, trends, and examination topics" the Division intends to focus on in the coming year.¹

Our Take

The October 16 publication of the priorities represents the earliest publication to date in the 10-year history of the publication of examination priorities, which will help registrants better prepare for upcoming exams. EXAMS acknowledged that the short time period since publication of the 2023 priorities, only eight months ago², means that "several initiatives and focus areas from last year remain" priorities for 2024. Against that backdrop, the Division focused on the need to demonstrate compliance with all of its new regulations, and we note that many of the areas of examination priorities also align with areas in which additional or amended regulations have been proposed or may be under consideration.

The priorities for the upcoming year underscore that investment advisers are fiduciaries and, therefore, EXAMS will focus on the identification and disclosure of conflicts of interest. Broker-dealers are especially reminded of their obligations under Regulation Best Interest (Reg BI). While EXAMS has focused for several years on duties owed to clients and investors, the fact that next year's priorities lead with a discussion of EXAMS' focus on duties owed to clients and investors suggests that registrants should expect even greater focus on this aspect of an examination. Further, as demonstrated by recent enforcement actions for marketing rule and custody rule violations, the SEC staff is providing little, if any, "grace period" for the implementation of new rules; that is, rather than giving registrants an opportunity to correct deficiencies, the SEC is proceeding (at least in some cases) directly to enforcement.³ For both investment advisers and broker-dealers, the Division is also focused on complex, costly, and illiquid products, such as derivatives, leveraged exchange traded funds (ETFs), variable annuities, and nontraded real estate investment trusts (REITs).

In addition, the Division highlighted its general focus on crypto assets and new technology, the need for security, resilience, and systems integrity for registrants and markets, and anti-money-laundering (AML) for broker-dealers and other financial institutions, specifically including compliance with Office of Foreign Asset Control (OFAC) sanctions (including for advisers). Notably missing from the specifically identified risk areas were environmental, social, and governance (ESG)-related issues.

This Sidley Update provides a summary of upcoming examination priorities and perennial issues registrants can anticipate in this year's examinations. Based on the full scope of EXAMS priorities, registrants should note the following themes for 2024:

i) The Division's core priorities remain the same as in prior years.

ii) Registrants should be ready to show how they have implemented compliance controls for new rules.

iii) ESG remains a challenging area to both regulate and examine, with ESG not only slipping down, but off, the priority list (although registrants should continue to be mindful of the overlap between the Division's priorities and ESG-related products and services).

[Continue reading.](#)

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