

# 2024 SEC Division of Examinations Priorities

October 23, 2023

On October 16, 2023, the U.S. Securities and Exchange Commission’s (“SEC”) Division of Examinations (“Division”) released its 2024 Examination Priorities (the “Priorities”).<sup>1</sup> Because the Division changed the timing of its release to coincide with the beginning of the agency’s fiscal year, many of these Priorities are reiterations of those announced earlier this year.<sup>2</sup> However, there are some notable additions and deletions from past Priorities. Key takeaways include the following:

- The Division will continue to focus on assessing compliance with the Advisers Act Marketing Rule, including substantiation of marketing materials, performance advertising, and compensated testimonials and endorsements.
- The Division will continue to focus on registered investment advisers to private funds, including conflicts of interest, calculation and allocation of fees and expenses, and the impact of valuation practices.
- The Priorities include venture capital fund advisers—for the first time in the more than ten years since the Division began publishing its Priorities—with a focus on due diligence practices and assessments of prospective portfolio companies.
- With respect to broker-dealers, the Division will continue to focus on compliance with Regulation Best Interest, including documentation of investment recommendations, consideration of reasonably available alternatives, and conflicts disclosures and mitigation.
- The Division did not identify ESG as a priority area in its adviser reviews for the first time in several years.

---

<sup>1</sup> 2024 Examination Priorities, DIVISION OF EXAMINATIONS, U.S. SEC. & EXCH. COMM’N (Oct. 16, 2023), available [here](#).

<sup>2</sup> *Id.* at 3; see also 2023 SEC Division of Examinations Priorities, DEBEVOISE IN DEPTH, available [here](#).

---

## INVESTMENT ADVISERS

According to the Priorities, investment adviser examinations will center on compliance with fiduciary duties. One focus will be on advice regarding certain products, investment strategies, and account types, including “complex” products (like derivatives and leveraged ETFs); “high cost” and illiquid products (such as variable annuities and non-traded REITs); and “unconventional strategies” (like those purporting to address rising interest rates).<sup>3</sup> Another focus will be on how advisers determine that their advice is in their clients’ best interest, including processes for suitability determinations, seeking best execution, evaluating costs and risks, and identifying and addressing conflicts of interest.<sup>4</sup> The Division will address economic incentives that advisers may have to recommend certain products or services, as well as conflicts of interest inherent in certain business models, such as advisers dually registered as broker-dealers or referral arrangements with affiliated firms and whether disclosures relating to such conflicts are sufficient.<sup>5</sup> The Division will also continue its focus on adviser compliance programs concerning the Advisers Act’s Compliance Rule, including whether policies and procedures reflect the various aspects of the advisers’ business, compensation structure, services, client base, and operations, and address applicable current market risk.<sup>6</sup>

With respect to investment advisers to private funds in particular, the Division will prioritize specific issues, including the following:

- the portfolio management risks present when there is exposure to recent market volatility and higher interest rates, including private funds with more leverage and illiquid assets, as well as those experiencing poor performance, significant withdrawals, and valuation issues;<sup>7</sup>
- adherence to contractual commitments regarding limited partnership advisory committees or similar structures;<sup>8</sup>
- accurate calculation and allocation of private fund fees and expenses, such as the valuation of illiquid assets;<sup>9</sup>
- due diligence practices for consistency with policies, procedures, and disclosures, particularly with respect to private equity and venture capital fund assessments of

---

<sup>3</sup> 2024 Examination Priorities at 7.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 8.

<sup>6</sup> *Id.* at 9-10.

<sup>7</sup> *Id.* at 10.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

---

prospective portfolio companies. Notably, this is the first-ever mention of venture capital funds in the Priorities;<sup>10</sup>

- conflicts, controls, and disclosures regarding funds managed side by side with registered investment companies and use of affiliated service providers;<sup>11</sup>
- compliance with Advisers Act requirements regarding custody;<sup>12</sup> and
- policies and procedures for reporting on Form PF.<sup>13</sup>

**Investment Companies.** Due to their importance to retail investors, the Division will continue to prioritize review of investment companies, such as mutual funds and ETFs. Examinations will focus on perennial risk areas, including board oversight, accuracy of fund reporting, compliance programs, and disclosures to investors. In terms of specific review areas, the Division intends to focus on (i) charging different advisory fees to different share classes of the same fund; (ii) sponsors charging differing fee structures for identical strategies offered through different distribution channels; (iii) high advisory fees relative to peers; and (iv) high registered investment company fees and expenses, particularly those of registered investment companies with weaker performance relative to their peers.<sup>14</sup> What might constitute a “high” fee is not defined by the Priorities. In addition, the Division plans to focus on policies and procedures designed to prevent violations of the SEC’s fund derivatives rule, as well as compliance with the terms of exemptive order conditions and issues associated with recent market dislocations and volatility.<sup>15</sup>

**Broker-Dealers.** The Division continues its focus on broker-dealer compliance with longstanding regulations, including the Net Capital Rule, the Customer Protection Rule, Regulation SHO, Regulation ATS, and Exchange Act Rule 15c2-11.<sup>16</sup> In addition, Examinations Staff will continue to review broker-dealers’ compliance with all aspects of Regulation Best Interest, including, but not limited to, the mitigation and management of conflicts and broker-dealers’ efforts to establish, maintain, and enforce reasonably designed written policies and procedures.<sup>17</sup> The Division will also review whether broker-dealers’ recommendations are in customers’ best interest, especially for products that are complex, expensive, illiquid, proprietary, or involve microcap

---

<sup>10</sup> *Id.* at 11.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 12.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 14.

<sup>17</sup> *Id.*

---

securities.<sup>18</sup> The Division will also continue to focus on the content of broker-dealers' relationship summaries reflected in Form CRS, including whether all required disclosures are made and whether the firm has complied with the obligation to file the Form CRS with the SEC and distribute it to customers.

**Clearing Agencies.** Beyond the review mandated by Title VIII of the Dodd-Frank Act, the Division will conduct risk-based examinations of other registered clearing agencies for compliance with the risk management provisions of the SEC's Standards for Covered Clearing Agencies.<sup>19</sup>

**Other Market Participants.** The Division reiterated its intent to review municipal advisors, security-based swap dealers, and transfer agents. Because new MSRB Rule G-46—which establishes core standards of conduct for solicitor municipal advisors—will become effective on March 1, 2024, examinations of municipal advisors in the latter half of the year will focus on this new rule.<sup>20</sup>

**Risk Areas Impacting Various Market Participants.** The Priorities reiterate the SEC's perennial focus on cybersecurity. The Division will review practices designed to promote cyber resiliency, including the prevention of interruptions to mission-critical services and the protection of investor information and assets.<sup>21</sup> Beyond reviewing policies, procedures, and internal controls, the Division will examine the oversight of third-party vendors, governance practices, and responses to cyber-related incidents.<sup>22</sup> With respect to third-party providers in particular, the Division will assess how registrants identify and address risks to essential business operations. For registrants with multiple offices, examinations will focus on practices across locations.<sup>23</sup> And, with the shortening of the standard transaction settlement cycle for most broker-dealer transactions from two business days to one, the Division will assess registrant preparations in advance of the May 28, 2014 compliance date.<sup>24</sup>

Crypto-related assets and emerging financial technology remain SEC Priorities. The Division will focus particular attention on broker-dealers and advisers offering new products and services or employing new practices, including, for example, trading algorithms and AI tools.<sup>25</sup> For registrants involved with crypto assets, the Division will evaluate compliance with the relevant laws, as well as whether the registrant routinely

---

<sup>18</sup> *Id.* at 13.

<sup>19</sup> *Id.* at 16.

<sup>20</sup> *Id.* at 17.

<sup>21</sup> *Id.* at 18.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 19.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

---

reviews and improves its compliance practices.<sup>26</sup> With respect to crypto assets that are funds or securities, the Division will consider whether advisers are complying with the custody requirements under Advisers Act Rule 206(4)-2, as well as whether any technological risks associated with blockchain and distributed ledger technology have been addressed.

For Reg SCI entities, the Division will focus on whether policies and procedures are reasonably designed to ensure the security of the SCI systems.

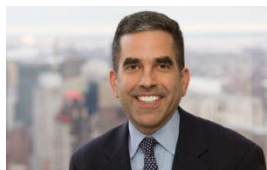
And finally, for registrants subject to the Bank Secrecy Act, the Division will continue to examine for properly tailored AML programs, independent testing, adequate customer identification programs, and meeting their SAR filing obligations.<sup>27</sup>

\* \* \*

Please do not hesitate to contact us with any questions.



**Kara Brockmeyer**  
Partner, Washington, D.C.  
+1 202 383 8120  
kbrockmeyer@debevoise.com



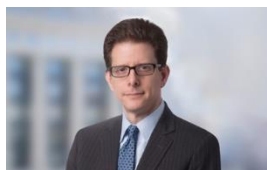
**Andrew J. Ceresney**  
Partner, New York  
+1 212 909 6947  
aceresney@debevoise.com



**Charu A. Chandrasekhar**  
Partner, New York  
+1 212 909 6774  
cchandrasekhar@debevoise.com



**Arian M. June**  
Partner, Washington, D.C.  
+1 202 383 8053  
ajune@debevoise.com



**Robert B. Kaplan**  
Partner, Washington, D.C.  
+1 202 383 8060  
rbkaplan@debevoise.com



**Julie M. Riewe**  
Partner, Washington, D.C.  
San Francisco  
+1 202 383 8070  
jriewe@debevoise.com

---

<sup>26</sup> *Id.* at 20.

<sup>27</sup> *Id.* at 21.



**Kristin A. Snyder**  
Partner, San Francisco  
+1 415 738 5718  
kasnyder@debevoise.com



**Jonathan R. Tuttle**  
Partner, Washington, D.C.  
+1 202 383 8124  
jrtuttle@debevoise.com



**James B. Amler**  
Counsel, New York  
+1 212 909 6756  
jbamler@debevoise.com



**Philip A. Fortino**  
Counsel, New York  
+1 212 909 7451  
pafortino@debevoise.com



**Anna Moody**  
Counsel, Washington, D.C.  
+1 202 383 8017  
amoody@debevoise.com



**Stephan J. Schlegelmilch**  
Counsel, Washington, D.C.  
+1 202 383 8154  
sjschlegelmilch@debevoise.com



**Scott Woods**  
Associate, New York  
+1 212 909 6859  
sjwoods@debevoise.com