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SEC Division of Examinations Announces 2021 Examination Priorities

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On March 3, the U.S. Securities and Exchange Commission's (SEC) Division of Examinations (Division), formerly known as the Office of Compliance Inspections and Examinations, announced its examination priorities for fiscal year 2021. The Division publishes the report annually to identify areas where it believes potential risks to investors and U.S. capital markets may exist. This year's report focused particularly on climate-related risks, conflicts of interests for brokers and investment advisers, and attendant risks related to fintech.

Below find a summary of the Division's 2021 examination priorities.

Retail Investors, Including Seniors and Those Saving for Retirement

The Division will continue to prioritize investments and services marketed to retail investors, including seniors and those saving for retirement. Specifically, the Division will focus on compliance concerns related to mutual funds and exchange-traded products, municipal securities and other fixed income instruments, and microcap securities. The Division will also review the use of primary tools for investor protection, such as Regulation Best Interest, Form CRS, and the Interpretation Regarding Standard Conduct for Investment Advisers, to ensure firms and investment advisors appropriately mitigate conflicts of interests and fulfill their fiduciary duties.

Information Security and Operational Resiliency

The 2021 report also emphasized the heightened risk of cyberattacks and the need for firms to proactively identify and address these risks. The Division will review whether firms have taken adequate measures to (i) safeguard customer accounts, (ii) verify investors' identities, (iii) oversee vendors, (iv) address malicious email activities, (v) respond to incidents, and (vi) manage operational risk related to employees working from home.

The Division will also continue to review firms' business continuity and disaster recovery plans, but it will incorporate a greater focus on climate-related risks for fiscal year 2021. Specifically, the Division will evaluate whether such plans adequately account for the growing physical and other relevant risks associated with climate change.

Fintech and Innovation, Including Digital Assets

With innovations in fintech and capital formation continuing at a rapid pace, the Division will focus its examinations on whether registrants operate consistently with their representations and handle customer orders in accordance

with their instructions. The Division will also focus on reviewing registrants compliance around trade recommendations made on mobile applications. With respect to digital assets, the Division will continue to assess the following: (1) whether investments are in the best interests of investors; (2) portfolio management and trading practices; (3) safety of client funds and assets; (4) pricing and valuation; (5) effectiveness of compliance programs and controls; and (6) supervision of representatives' outside business activities.

For more information on the Division's stance on digital assets, see our client advisory, *[Division of Examinations Issues Risk Alert on Digital Asset Securities](#)*.

Additional Areas of Focus

The Division reaffirmed its prioritization of ensuring compliance with the AML requirements of the Bank Secrecy Act. Additionally, the Division will examine registrants to evaluate their understanding of exposure to the London Inter-Bank Offered Rate (LIBOR), preparations for the anticipated discontinuation of LIBOR, the transition to an alternative reference rate, and any adverse effects on investors.

Other areas of prioritization identified in the report include areas involving registered investment advisers (RIAs) and certain investment companies. With respect to RIAs, examinations will continue to evaluate core compliance programs ensuring proper execution of typical items. The Division specified that examinations would focus on RIAs that either have never been examined or have not been examined for several years, as well as RIAs that are dually registered as broker-dealers. Regarding registered funds, including mutual funds and ETFs, the Division will generally focus on fund compliance programs and financial conditions, particularly where funds have instituted advisory fee waivers. Further, the Division will continue to focus on advisers to private funds, particularly those with a higher concentration of structured products to assess whether such funds are at a higher risk for holding nonperforming loans and having loans with higher default risk than that disclosed to investors.

With respect to broker-dealers and municipal advisors, the Division will continue to prioritize, among other things, compliance with the Consumer Protection Rule, Net Capital Rule, best execution obligations, Rule 606 regarding order routing, and market-maker compliance with Regulation SHO. The Division also expressed concern regarding the effects of the COVID-19 pandemic and how municipal advisors have adjusted their practices.

Regarding market infrastructure, the Division will focus its examinations on clearing agencies, national securities exchanges, regulation systems compliance and integrity, transfer agents, and the Financial Industry Regulatory Authority (FINRA) and the Municipal Securities Rulemaking Board (MSRB), among other things.

For a full copy of the Division's 2021 Examination Priorities Report, click [here](#).

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