

Press Coverage | October 19, 2023

SEC Enforcement Action Targets Real Estate and Highlights the Agency's Jurisdiction Over Unregistered Sponsors Offering Securities

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[Genna Garver](#)

Genna Garver, a partner with Troutman Pepper, was quoted in the October 19, 2023 *Private Equity Law Report* article, [“SEC Enforcement Action Targets Real Estate and Highlights the Agency's Jurisdiction Over Unregistered Sponsors Offering Securities.”](#)

The SEC's interest in real estate funds has increased over the decades, particularly as products become more complex and in light of market events, Troutman Pepper partner Genna Garver observed. For example, real estate was the underlying asset in many highly complex financial products that failed and contributed to the Global Financial Crisis. The recent pandemic and remote work have significantly impacted the commercial real estate market. The Division of Examinations specifically called out its focus on private funds with commercial real estate investments in its 2023 priorities, she added.

Prime Group is not registered with the SEC in any capacity. Still, the Commission has the authority to regulate for anti-fraud purposes under all applicable securities laws, including the Securities Act, Garver noted. It is important to remember that the SEC has jurisdiction far beyond enforcement of the Advisers Act. “No one engaged in the business of securities escapes that regulation. Our securities statutes are designed to protect investors by leveling the playing field in the wake of the stock market crash,” she explained.

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The purpose of the disclosure standards under the Securities Act is similar to those under the Advisers Act, Garver said. The Securities Act requires disclosure of all material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading. Under the Advisers Act, advisers as fiduciaries must make full and fair disclosure of all conflicts of interest which might incline an investment adviser, consciously or unconsciously, to render advice which is not disinterested such that a client can provide informed consent to the conflict. Advisers must also disclose all material information that could affect the advisory relationship. Fraudulent, deceptive, or misleading statements are prohibited under both statutes. “Managers who allocate expenses to their funds need to be sure they are authorized under the fund documents to do so and that all of their offering materials include accurate and consistent disclosure regarding the same, particularly with respect to expenses incurred by affiliated service providers,” she explained.

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Over the years, the SEC has sustained its focus on the allocation of fees and expenses between managers and their private funds, Garver said. The private funds industry is familiar with disclosing potential conflicts of interest and authorization issues with respect to fee and expense allocations. Still, those issues may only scratch the surface of what the SEC's concerns may be with commercial real estate generally. "I think the bottom line for private fund managers is that the SEC is interested in real estate," she added.

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