

SEC Outlines Division of Examinations Priorities at Annual “SEC Speaks” Forum

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Leaders from the Securities and Exchange Commission’s (SEC) Division of Examinations (Division) discussed the agency’s priorities earlier this month at the Practising Law Institute’s (PLI) annual “SEC Speaks” event.^[1] The Division is planning a near-term focus on the SEC’s “new marketing rule, robo-advisors, compliance with Regulation Best Interest, business continuity plans, climate risk, and [the forthcoming discontinuation of] [the London Interbank Offered Rate (LIBOR)].”^[2]

The Division conducts on-site examinations of registered entities, which the SEC uses “to inform rule-making initiatives, identify and monitor risks, improve industry practices and pursue misconduct.”^[3] Acting Director Daniel Kahl told the PLI audience that while the Division was “distracted from routine exams by recent market events, including the Solar Winds cyberattack, the collapse of Archegos Capital Management, and the ‘meme stocks’ market volatility in January 2021,” it “remains vigilant in its exams program.”^[4]

The Division of Examinations has issued six Risk Alerts thus far in 2021, emphasizing risks related to climate and LIBOR, among others.^[5] An April alert highlighted concerns stemming from investors’ desire for “products and financial services that incorporate environmental, social, and governance (ESG) factors.”^[6] According to the Division, the “rapid growth in demand” for these assets “present[s] certain risks,” because “the variability and imprecision of industry ESG definitions and terms” can confuse retail investors if the terms are “not clearly and consistently” defined.^[7]

Kahl and Co-Deputy Director Kristin Snyder said the Division also continues to monitor risks associated with the transition away from LIBOR, expected after 2021. LIBOR “is used extensively in the United States and globally as a ‘benchmark’ or ‘reference rate’ for various commercial and financial contracts.”^[8] The Division is reviewing entities’ preparation for the transition by analyzing “whether and how the registrant has evaluated the potential impact of the LIBOR transition on the organization’s: (i) business activities; (ii) operations; (iii) services; and (iv) customers, clients, and/or investors.”^[9]

Division of Examinations staff also said that exams of “registered investment advisers to private funds” will focus on “compliance risks, including a focus on liquidity and disclosures of investment risks and conflicts of interest.”^[10] In particular, the Division will review advisors’ compliance with the SEC’s new marketing rule, scheduled to take effect in May 2022. The rule defines what counts as an “advertisement,” outlines general marketing prohibitions, and provides guidance about what content can be included in testimonials and endorsements of services.^[11] Advisors should make sure that they have policies and procedures in place to comply with this new rule.

Cybersecurity also continues to be a Division priority. The Division is “acutely focused on working with firms to identify and address information security risks.”^[12] The increase in remote work since the start of the COVID-19 pandemic has increased concerns about “endpoint security, data loss, remote access, use of third-party communication systems, and vendor management.”^[13]

If you have any questions regarding the SEC’s Division of Examinations priorities, recently issued Risk Alerts, your firm’s policies or procedures, or anything otherwise relating to the above alert, please do not hesitate to reach out to Troutman Pepper’s Securities Investigations and Enforcement team for guidance.

[1] See <https://www.pli.edu/programs/sec-speaks>. [link no longer active]

[2] See INVESTMENT ADVISERS — Examinations staff reviews Division’s priorities at SEC Speaks. [link no longer active]

[3] See <https://www.sec.gov/exams/about>.

[4] See INVESTMENT ADVISERS — Examinations staff reviews Division’s priorities at SEC Speaks. [link no longer active]

[5] See *id.*

[6] See <https://www.sec.gov/files/esg-risk-alert.pdf> at 1.

[7] See *id.* at 2.

[8] See https://www.sec.gov/files/Risk Alert – OCIE LIBOR Initiative_1.pdf at 1.

[9] See *id.* at 2.

[10] See INVESTMENT ADVISERS — Examinations staff reviews Division’s priorities at SEC Speaks. [link no longer active]

[11] See *id.*

[12] See <https://www.sec.gov/files/2021-exam-priorities.pdf> at 24.

[13] See *id.*

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