

2023 Examination Priorities

SEC Division of Examinations

On February 7, the SEC's Division of Examinations (the "Division") announced its updated **examination priorities** (the "Exam Priorities") for the 2023 fiscal year. The Exam Priorities are largely consistent with the Staff's 2022 approach, but include some important differences that may impact the compliance programs of certain private fund and separate account managers.

The Exam Priorities relevant to registered investment advisers include:

- **New Marketing Rule Compliance** – The Division intends to focus on advisers' compliance with the new Marketing Rule (Rule 206(4)-1) and their adoption and implementation of related policies and procedures.
- **Private Fund Managers** – As in previous years, the Division will continue to inspect a laundry list of issues applicable to private fund managers, including their observance of fiduciary duties, adoption of effective compliance policies and procedures, calculation and allocation of fees and expenses (in particular, post-commitment period management fees and the impact of valuations at private equity funds), use of alternative data, custody practices, investment advice and risk management, and conflicts of interest and investor disclosures relating to the foregoing. The Division plans to focus on highly leveraged private funds, private equity managers that use affiliated companies and advisory personnel to provide services to funds and portfolio companies, funds that hold hard-to-value investments such as digital assets and commercial real estate, funds that sponsor SPACs, and those involved in stapled secondaries, continuation funds, and other adviser-led restructurings.
- **Retail Investors** – Advisers whose clients or private funds include retail investors should be aware that the Division will continue to examine the adviser's observance of fiduciary duties, including their review of investment alternatives, disclosure and management of conflicts, and pursuit of such clients' and investors' investment goals.
- **Environmental, Social, and Governance (ESG)** – The Division plans to focus on ESG-related offerings, including whether advisers are managing client accounts in accordance with their ESG disclosures and whether such offerings are consistent with the advisers' fiduciary duties.
- **Information Security and Operational Resiliency** – The Division will continue to review advisers' information security postures and other measures to prevent business

interruptions and protect client information and capital. Specific areas of interest include cybersecurity, responses to cyber-related incidents, remote-work safeguards, compliance with Regulations S-P and S-ID, and the management of third-party vendors.

- **Emerging Technologies and Digital Assets** – The Division will examine advisers that employ emerging technologies, such as software products designed to provide automated investment advice or support compliance, marketing, or investor relations functions, as well as advisers that recommend or invest in digital assets. The Division plans to scrutinize the observance of the adviser’s fiduciary duty when recommending investments in digital assets and related compliance and risk-management practices and disclosures.

The Exam Priorities reflect a continued focus on key risk areas of concern to regulators, and registrants should be prepared to demonstrate their compliance with related regulatory requirements and best practices. By staying up to date with the SEC’s examination priorities, firms can help ensure they are efficiently and effectively deploying compliance resources and help to promote the safety of investors’ assets and the stability of financial markets.

About HighCamp Compliance

HighCamp is a boutique compliance consulting and outsourcing firm helmed by former SEC examiners, CCOs and proven consulting professionals. HighCamp specializes in regulatory compliance and operational support for SEC-registered private equity, real estate, venture capital, hedge fund, and institutional alternative managers. HighCamp is 100-percent employee owned, with a gender-balanced leadership team. The company has locations in New York City (Metro), Los Angeles, Denver, Milwaukee, and Bozeman.