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## SEC Releases 2021 Examination Priorities

On March 3, 2021, the U.S. Securities and Exchange Commission (the “SEC”) released its annual report outlining the [2021 National Exam Priorities](#) of the Division of Examinations (“the Division”),<sup>(1)</sup> which are:

- Retail Investors;
- Information Security and Operational Resiliency;
- Financial Technology (“Fintech”) and Innovation, including Digital Assets;
- Anti-Money Laundering Programs;
- The London Inter-Bank Offered Rate (“LIBOR”) Transition;
- Focus Areas Relating to Investment Advisers and Investment Companies;
- Focus Areas Involving Broker-Dealers and Municipal Advisors; and
- Market Infrastructure.

In addition to outlining the Division’s priorities for the year, the report also provides insightful observations of the Division’s views regarding several topics including, but not limited to, the impact of the global coronavirus pandemic on the financial services industry; the implementation of Regulation Best Interest; the importance of compliance programs, Chief Compliance Officers, and compliance resources at regulated firms; and risk, technology, and industry trends. Below is a detailed summary of the priorities most applicable to our clients. To view the priorities in their entirety, please click on the link above.

### RIA Compliance Programs

The Division will continue to review the compliance programs of registered investment advisers (“RIAs”) by conducting risk-based examinations of those: (i) that have never been examined; (ii) that were previously examined but have not been examined for a number of years; (iii) dually registered as, or affiliated with, broker-dealers.

### RIAs to Private Funds

The Division will continue to focus on RIAs to private equity, hedge funds, and other private funds, and will assess compliance risks, including a focus on liquidity and disclosures of

investment risks and conflicts of interest. The Division in examinations, among other things, will review for:

- Preferential treatment of certain investors by advisers to private funds that have experienced issues with liquidity;
- Portfolio valuations and the resulting impact on management fees;
- Adequacy of disclosure and compliance with any regulatory requirements of cross trades, principal investments, or distressed sales; and
- Conflicts around liquidity, such as restructurings, including stapled secondary transactions.

## **Retail Investors, including Seniors and Individuals Saving for Retirement**

The Division will prioritize examinations to assess compliance with Regulation Best Interest (“Reg BI”) and Form CRS. These exams will focus on:

- Investment products marketed to, or designed for, retail investors;
- How firms are complying with the recent changes to the definition of accredited investor when recommending and selling certain private offerings; and
- Disclosure and calculation of fees, expenses and other charges to investors.

## **Information Security and Operational Resiliency**

Examinations will focus on, among other items, whether firms have taken precautions to:

- Safeguard customer accounts, oversee service providers, address malicious email activities, respond to incidents, and manage operational risk;
- Implement controls around online and mobile application access to investor account information, around electronic storage of books and records, and around personally identifiable information maintained with third-party cloud service providers; and
- Make improvements to business continuity and disaster recovery plans to respond to climate-related events of increasing frequency and intensity.

## **Financial Technology (“Fintech”) and Innovation, including Digital Assets**

The Division will continue to focus on firms providing advice to clients through automated investment tools and platforms (i.e., “robo-advisers”) or firms offering automated asset allocation, fractional share purchases, customized portfolios, and mobile applications; focusing on whether investments are in the best interests of investors; portfolio management and trading practices; safety of client funds and assets; pricing and valuation; effectiveness of compliance programs and controls; and supervision of representatives’ outside business activities.

## **Anti-Money Laundering**

The Bank Secrecy Act requires financial institutions, including broker-dealers and registered investment companies, to establish anti-money laundering (“AML”) programs designed to reveal and protect against suspicious activity related to tax evasion, fraud, and terrorist financing.

## **The London Inter-Bank Offered Rate (“LIBOR”) Transition**

The Division will continue to engage with registrants through examinations to assess their understanding of any exposure to LIBOR, their preparations for the expected discontinuation

of LIBOR and the transition to an alternative reference rate, in connection with registrants' own financial matters and those of their clients and customers.

## **Take Action**

In reviewing the above summary, Clients should:

- Examine their advisory activities to confirm they have appropriate policies and procedures in place to address the items above, as applicable;
- Verify that their policies and procedures are functioning properly; and
- Consider undergoing a mock examination to test the compliance program and have the opportunity to correct any deficiencies before undergoing an SEC Examination.

For additional insight on examination priorities and other hot-button issues, please contact us.

[11](#) Formerly the Office of Compliance Inspections and Examinations or "OCIE".

**For further information on this announcement, please contact:**

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