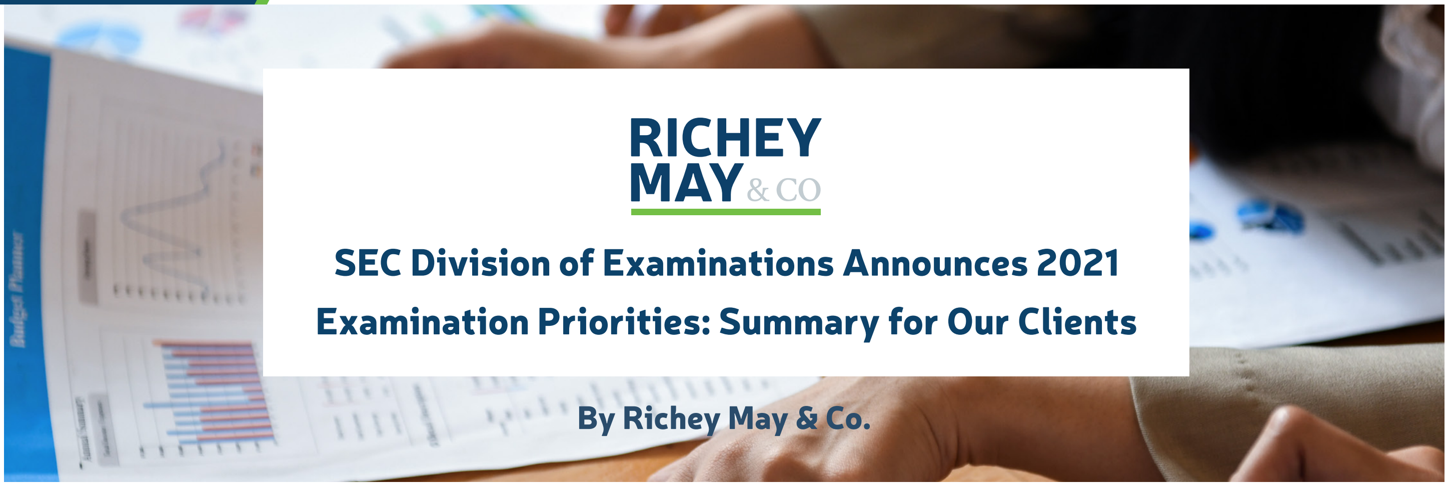

RICHEY MAY & CO

SEC Division of Examinations Announces 2021 Examination Priorities: Summary for Our Clients

By Richey May & Co.

Overview

In March, The Securities and Exchange Commission's Division of Examinations announced its 2021 examination priorities. The Division will also focus on conflicts of interest for brokers (Regulation Best Interest) and investment advisers (fiduciary duty), and attendant risks relating to FinTech in its initiatives and examinations. The examination priorities are published annually to provide insights into its risk-based approach, including the areas it believes present potential risks to investors and the integrity of the U.S. capital markets. The stated priorities are:

- **Information Security and Operation Resiliency**
- **Financial Technology FINTECH and Innovation**
- **Specific focus areas relating to Investment Advisers and Investment Companies**
- **Additional attention to areas involving broker-dealers and municipal advisers**
- **Market infrastructure**
- **Anti-Money laundering programs**
- **Focus on FINRA AND MSRB**

Of these priorities, the experts at Richey May suggest paying particular attention to the following:

Information Security and Operational Resiliency

The Division will shift focus to whether firms are considering effective practices to help improve responses to large scale events as climate related risks become more frequent and more intense. The Division will continue to review business continuity and disaster recovery plans and are accounting for the growing physical and relevant risks associated with climate change. The Division will also review whether registrants have taken appropriate measures to: safeguard customer accounts and prevent account intrusions, including verifying an investor's identity to prevent unauthorized account access; oversee vendors and service providers; address malicious email activities, such as phishing or account intrusions; respond to incidents, including those related to ransomware attacks; and manage operational risk as a result of dispersed employees in a work-from-home environment.

Financial Technology (Fintech) And Innovation, Including Digital Assets And Electronic Investment Advice

Technology is paving the way for a very different way of doing business, from new and innovative data sources and management to digital assets and even electronic investment advice. Examinations will focus on evaluating whether registrants are operating consistently with their representations, whether firms are handling customer orders in accordance with their instructions, and review compliance around trade recommendations made in mobile applications.

The digital asset market continues to evolve, and so too does the adoption of distributed ledger technology in financial services and market infrastructure. Examinations of market participants engaged with digital assets 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.

Focus Areas Relating to Investment Advisers and Investment Companies

Compliance Programs – The Division will continue to review the compliance programs of registered investment advisers (RIAs). The Division will continue to focus on products in these areas that are widely available to investors including open-end funds and ETFs, as well as those offered to accredited investors such as qualified opportunity funds.

RIA Fiduciary Duty – The Interpretation Regarding Standard of Conduct for RIAs reaffirms, and in some cases clarifies, aspects of an RIA's fiduciary duty that comprises duties of care and loyalty to its clients. The Division will continue to examine RIAs to assess whether, as fiduciaries, they have fulfilled their duty of care and duty of loyalty. This will include assessing, among other things, whether RIAs provide advice, including whether account or program types continue to be, in the best interests of their clients, based on their clients' objectives. They will also continue to focus on risks associated with fees and expenses, complex products, best execution, and undisclosed or inadequately disclosed, compensation arrangements.

Registered Funds, Including Mutual Funds and ETFs – The Division will prioritize examinations of mutual funds or ETFs that have not previously been examined or have not been examined in a number of years, and will generally focus on fund compliance programs and financial condition, particularly where funds have instituted advisory fee waivers. In addition, the Division will focus on compliance with exemptive relief, including for the newly created non-transparent, actively managed ETFs.

RIAs to Private Funds – Over 36 percent of RIAs manage private funds, which frequently have significant investments from pensions, charities, endowments, and families. EXAMS will continue to focus on advisers to private funds, and will assess compliance risks, including a focus on liquidity and disclosures of investment risks and conflicts of interest.

Specifically, the Division will review for, among other things: preferential treatment of certain investors by advisers to private funds that have experienced issues with liquidity, including imposing gates or suspensions on fund withdrawals; 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 adviser led fund restructurings, including stapled secondary transactions where new investors purchase the interests of existing investors while also agreeing to invest in a new fund. The Division will also focus on advisers to private funds that have a higher concentration of structured products, such as collateralized loan obligations and mortgage backed securities, to assess whether the funds are at a higher risk for holding non-performing loans and having loans with higher default risk than that disclosed to investors. In addition, the Division will examine advisers to private funds where there may have been material impacts on portfolio companies owned by the private fund (e.g., real estate related investments) due to recent economic conditions.

Focus Areas Involving Broker-Dealers and Municipal Advisors

The Division will examine, in light of the COVID-19 pandemic and its potential impact on municipal advisors and their clients, how municipal advisors may have adjusted their practices. The Division will also examine whether municipal advisors have met their fiduciary duty obligations to municipal entity clients, including the disclosing of and managing conflicts of interest and documentation of the scope of their client engagements.

Market Infrastructure

Regulation Systems Compliance and Integrity – The Division will continue to evaluate whether SCI entities have established, maintained, and enforced written SCI policies and procedures as required. Areas of focus will include IT governance, IT asset management, cyber threat management/incident response, and third party vendor management, including utilization of cloud services.

FINRA and MSRB – The Division will continue its oversight of FINRA by focusing examinations on FINRA's operations and regulatory programs and the quality of FINRA's examinations of broker-dealers and municipal advisors. It will also examine MSRB to evaluate the effectiveness of its policies, procedures, and controls.

As always, prevention is the best medicine; RIAs should prepare for examinations by maintaining effective compliance programs and addressing risks. Firms should also check the compliance of third-party asset managers' policies and procedures. In addition, any new or emerging investment strategies should have accurate, adequate disclosures.

Anti-Money Laundering Programs

Money laundering remains a serious concern. The Division will continue to review for compliance with applicable anti-money laundering (AML) requirements, including evaluating whether broker-dealers and registered investment companies have adequate policies and procedures in place that are reasonably designed to identify suspicious activity and illegal money-laundering activities.

Examiners will check that firms are not only enforcing policies surrounding identification but are also self-monitoring with thorough tests of their AML programs. SAR filings, due diligence, and beneficial ownership compliance will also be checked.

Richey May's team of industry experts closely monitors changes and updates to SEC examination priorities, as well as key risks and trends for financial service providers. Contact Steve Vlasak, Business Development Partner for our Alternative Investments Team or visit www.richeymay.com for more information about the information in this summary or the services Richey May provides to the industry.

For the complete 2021 priorities, visit https://www.sec.gov/files/2021-exam-priorities.pdf?utm_medium=email&utm_source=govdelivery

ABOUT RICHEY MAY & CO.

The dedicated expertise of a national firm with the hands-on service of a boutique provider.

At Richey May we recognize that every industry is different, often presenting unique challenges that require special knowledge and skills. The alternative investments team at Richey May with the core group having worked at Rothstein Kass for many years, focuses exclusively on alternative investment engagements, providing us with a depth of specialized knowledge that very few firms can claim. The members of the alternative investments team have specialized in providing assurance and tax services to the alternative investment industry since beginning their professional careers in public accounting. Our knowledgeable staff is dedicated to identifying new and innovative ways to exceed our clients' expectations and helping them achieve their personal and professional goals. We tirelessly look for ways to add value to our clients – it's what drives us.

We work with clients that range in size from $1M to $4.2B located in over 40 states representing a variety of strategies, including: arbitrage, ABS, catastrophic bonds, convertible arbitrage, cryptocurrency, currency, day trading, derivative funds of funds, distressed debt, emerging markets, energy trading, event driven, fixed income, foreign currency, global macro, funds of funds, high yield, long/short, merger arbitrage, mortgage-backed securities, reinsurance, risk arbitrage, situational and structured finance.