



U.S. Securities and
Exchange Commission

2024

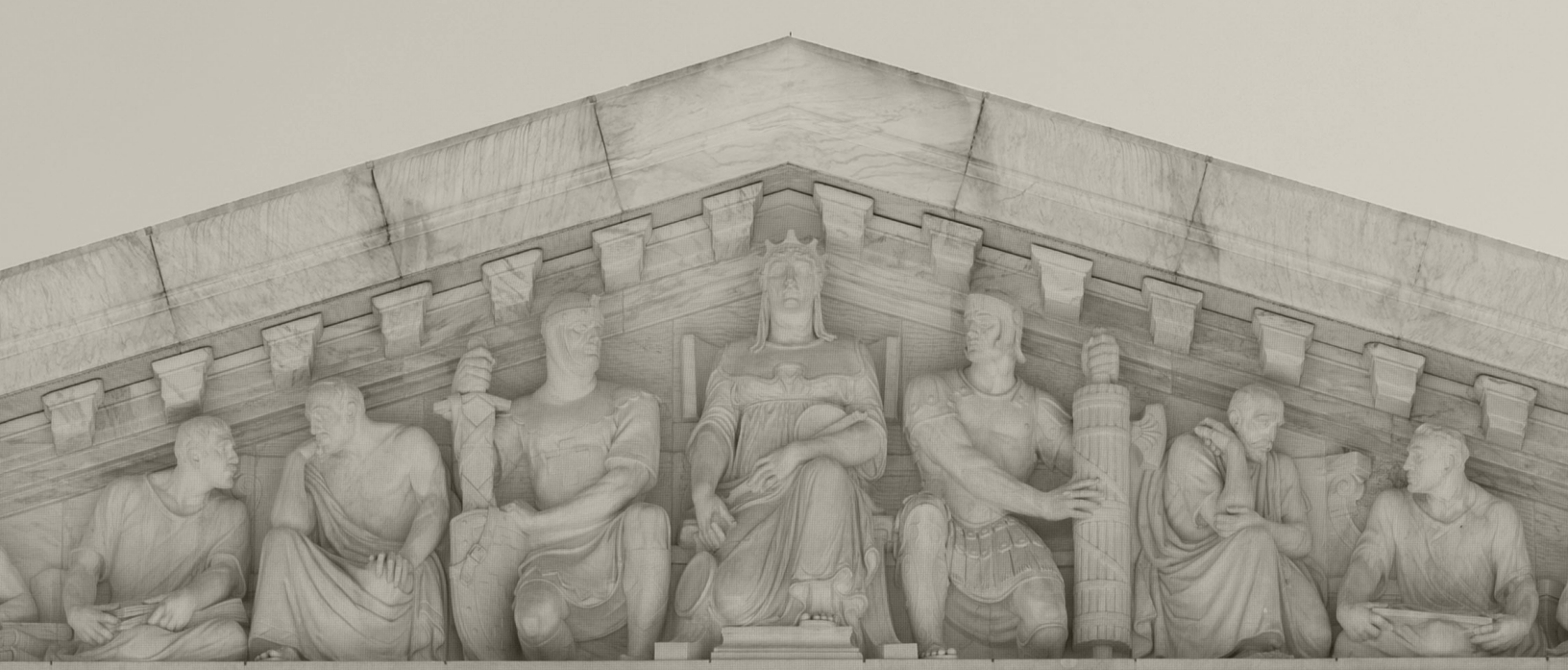
EXAMINATION PRIORITIES

Division of Examinations

CONTENTS

| | |
|---|----|
| MESSAGE FROM THE LEADERSHIP TEAM | 1 |
| DIVISION OF EXAMINATIONS – FISCAL YEAR 2024 EXAMINATION PRIORITIES | 5 |
| I. Investment Advisers | 7 |
| A. Examinations of Investment Advisers | 7 |
| B. Examinations of Investment Advisers to Private Funds | 10 |
| II. Investment Companies | 11 |
| III. Broker-Dealers | 13 |
| A. Regulation Best Interest..... | 13 |
| B. Form CRS..... | 14 |
| C. Broker-Dealer Financial Responsibility Rules | 14 |
| D. Broker-Dealer Trading Practices..... | 14 |
| IV. Self-Regulatory Organizations..... | 15 |
| A. National Securities Exchanges | 15 |
| B. Financial Industry Regulatory Authority | 15 |
| C. Municipal Securities Rulemaking Board | 16 |
| V. Clearing Agencies..... | 16 |
| VI. Other Market Participants | 17 |
| A. Municipal Advisors | 17 |
| B. Security-Based Swap Dealers..... | 18 |
| C. Transfer Agents | 18 |
| VII. Risk Areas Impacting Various Market Participants..... | 18 |
| A. Information Security and Operational Resiliency | 18 |
| B. Crypto Assets and Emerging Financial Technology | 19 |
| C. Regulation Systems Compliance and Integrity | 20 |
| D. Anti-Money Laundering..... | 21 |
| VIII. Conclusion | 22 |

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EQUAL JUSTICE UNDER LAW



MESSAGE FROM THE LEADERSHIP TEAM

In the more than ten years since the publication of the Division of Examinations' (Division) first annual examination priorities, there has been a dramatic growth in, and increased complexity of, the U.S. capital markets and its participants. At the same time, we have seen financial products and technological tools offered to investors continue to evolve at greater speed. Despite these exponential changes, the Division has remained resilient and endeavored to keep pace with risks in the marketplace. As the speed of this transformation in the markets continues to accelerate, the Division continues to evolve how we conduct examinations and engage with market participants.

With over 1,100 staff members spread across eleven regional offices and in Washington, DC, Division staff are engaged with market participants through examinations and proactive outreach continuously throughout the year. These interactions form a critical connection between the U.S. Securities and Exchange Commission (SEC or Commission) and the capital markets, giving Division staff and staff across the agency a ground level view of developments in the financial industry. Guided by the Division's "four pillar" mission – to promote compliance, prevent fraud, monitor risk and inform policy – our experienced and talented staff gain a unique perspective of the industry and risks in the markets which informs both what we do as a Division and the Commission more broadly.

We are pleased to provide you with the examination priorities for fiscal year 2024. This year, for the first time, we are aligning the publication of our priorities with the start of the fiscal year with the hope that it will better inform investors and registrants of the key risks, trends, and examination topics that we plan to focus on in the upcoming year. This step, along with focused engagement with the industry and investors through our national and regional outreach events and a greater presence of our examiners in the field, are just a few examples of our intention to provide more transparency and to continue to move forward together with investors and the industry to promote compliance.

A LOOKBACK AT FISCAL YEAR 2023

As part of our commitment to fulfilling our "four pillars," Division staff carried out critical work over the last twelve months through focused and targeted examinations and outreach, fostered compliance through proactive engagements with the industry, and uncovered fraudulent conduct through our risk-based examination process. Completion of these examinations has been no simple task, and the high quality and efficiency in which they were conducted is a testament to the hard work of a committed and focused staff with a mission to serve investors.

In the three years since the beginning of the pandemic, we have continued to transform how we carry out examinations and communicate observations and other important information to market participants. With the nationwide return to the office earlier this year, we have been proactive in utilizing what we have learned over the past three years to enhance how we work and communicate with market participants, while incorporating many of the efficiencies into our processes. Division staff have also continued to conduct more in-person fieldwork, and in many instances, provided virtual options to both examiners and registrants to participate in different stages of an examination to broaden access. We have also sought to actively manage the process of identifying the need for and publication of risk alerts that summarize examination observations as well as preview to registrants potential examination scope areas focusing on compliance with new rules.

Last fiscal year, the Division published nine risk alerts providing observations that touch on a diverse cross-section of examination topics, including observations related to: (i) compliance with Regulation S-ID and firms' development and implementation of an identity theft prevention program; (ii) broker-dealer compliance related to Regulation Best Interest; (iii) issues identified in recent newly-registered investment adviser examinations; (iv) issues concerning LIBOR-transition preparedness by investment advisers and investment companies; and (v) compliance with anti-money laundering regulation. We also used our risk alerts to highlight areas that certain examinations might cover, such as highlighting staff's focus on different aspects of the Marketing Rule under the Advisers Act.

In fiscal year 2023, we also continued our robust engagement with investors, investor groups, industry, and regulatory partners, by participating both virtually and in-person, in various speaking engagements and national and regional compliance events. Notably, the Division held its semi-annual National Compliance Outreach seminar virtually in November 2022, further extending the impact and reach of the event. Over 10,000 compliance and industry professionals attended the event, which included discussions of a variety of key topics for senior officers of registered investment advisers and investment companies. We also continued to coordinate and share experiences and information with other federal and state regulators, as well as with self-regulatory organizations. The Division also launched a series of joint regulatory trainings with FINRA staff to enhance communication and collaboration between both regulators related to our respective examination programs. By collaborating with one another through these trainings, our aim was not only to enhance communication between Division and FINRA staff, but also to learn about one another's examination methodology,

and how both organizations protect investors, ensure compliance, and preserve market integrity. Our regional offices also took the lead in developing and organizing several compliance focused events by collaborating with other regulators, as well as industry and professional associations within their respective regions.

Although fiscal year 2023 continued to place greater demands on the Division's resources, we strived for more efficiency and effectiveness in carrying out our examinations while being responsible and nimble. Last year, the Division implemented a number of internal changes to align our resources to developments in the markets and the evolving regulatory landscape. For instance, we centralized the monitoring and data function for security-based swaps into the Office of Security Based Swaps within the Broker-Dealer Exchange Program. We also established specialized teams within our different examination programs, allowing us to better address emerging issues and risks associated with crypto assets, financial technology, such as artificial intelligence, and cybersecurity, among others. Finally, we continued to strengthen our leadership team by bringing onboard a number of key senior and advisory positions and building additional capacity in various examination programs to keep pace with the rapidly developing market ecosystem consistent with Congress' fiscal year 2023 appropriation.

CONTINUING TO MOVE FORWARD TOGETHER

The theme of evolving with the markets and remaining flexible in the ever-changing markets also carries over to our engagement with registered firms, investors, and the industry. More specifically, we acknowledge that changes in the regulatory landscape will impact many registrants and other market participants. As the industry prepares to meet new regulatory requirements, similarly, the Division will need to consider the impact of these rules, which will influence potential examinations, compliance risks and new focus areas. To support the industry, we expect to increase our engagement through increased in-person fieldwork, compliance outreach events, speaking engagements, among other touchpoints.

Since the publication of our fiscal year 2023 priorities approximately eight months ago, we have advanced our mission as reflected in this year's priorities, which provide both continuity and change to reflect a fluid and evolving economic and regulatory landscape. Given the shorter interval in between the publication of our priorities, several initiatives and focus areas from last year remain as fiscal year 2024 priorities.

FINAL NOTES

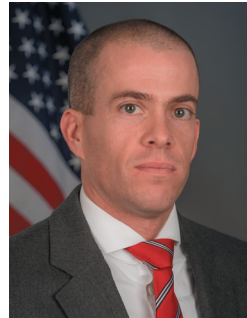
As we look ahead this fiscal year, the Division will build upon our past accomplishments and efforts, strive to do more, and continue to adapt to the ever-changing markets. Continuing to use our “four pillars” as our foundation, we will remain both resilient and willing to adjust our priorities as the U.S. capital markets and market participants, as well as products they offer, continue to rapidly evolve. In doing so, we hope to increase the level of transparency across the range of activities in which we are engaged. We remain energized and determined to take on more challenges and make this year even more successful.



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Division of Examinations

2024

**EXAMINATION
PRIORITIES**



FISCAL YEAR 2024 EXAMINATION PRIORITIES

The Division of Examinations (Division) prioritizes examinations of certain practices, products, and services that it believes present potentially heightened risks to investors or the integrity of the U.S. capital markets. This year's examinations will prioritize areas that pose emerging risks to investors or the markets, as well as examinations of core and perennial risk areas.

I. INVESTMENT ADVISERS

A. Examinations of Investment Advisers

As a fiduciary, an investment adviser owes a duty of care and a duty of loyalty to its clients. An adviser must, at all times, serve the best interest of its clients and not subordinate its clients' interest to its own. In other words, an investment adviser cannot place its own interests ahead of the interests of its clients. In addition, an adviser is required to eliminate or make full and fair disclosure of all conflicts of interest which might incline the adviser—consciously or unconsciously—to render advice which is not disinterested such that a client can provide informed consent to the conflict. Examining for advisers' adherence to their duty of care and duty of loyalty obligations remains a priority for the Division. In reviewing advisers' adherence to this fiduciary standard, the Division continues to focus on:

- Investment advice provided to clients with regard to products, investment strategies, and account types, particularly those regarding: (1) complex products, such as derivatives and leveraged exchange-traded funds (ETFs); (2) high cost and illiquid products, such as variable annuities and non-traded real estate investment trusts (REITs); and (3) unconventional strategies, including those that purport to address rising interest rates. Examination focus may be emphasized for investment advice provided to certain types of clients, such as older investors and those saving for retirement.
- Processes for determining that investment advice is provided in clients' best interest, including those processes for (1) making initial and ongoing suitability determinations, (2) seeking best execution, (3) evaluating costs and risks, and (4) identifying and addressing conflicts of interest. Such assessments will also review the factors advisers consider in light of the clients' investment profiles, including investment goals and account characteristics. Examinations will review

how advisers address conflicts of interest, including (1) mitigating or eliminating the conflicts of interest, when appropriate, and (2) allocating investments to accounts where investors have more than one account (*e.g.*, allocating between accounts that are adviser fee-based, brokerage commission-based, and wrap fee, as well as between taxable and non-taxable accounts).

- Economic incentives that an adviser and its financial professionals may have to recommend products, services, or account types, such as the source and structure of compensation, revenue, or other benefits. Such economic incentives may exist when there is revenue sharing, markups, or other incentivizing revenue arrangements. Examinations will focus on the economic incentives and conflicts of interest associated with advisers that are dually registered as broker-dealers, use affiliated firms to perform client services, and have financial professionals servicing both brokerage customers and advisory clients to identify, among other things: (1) investment advice to purchase or hold onto certain types of investments (*e.g.*, mutual fund share classes) or invest through certain types of accounts when lower cost options are available; and (2) investment advice regarding proprietary products and affiliated service providers that result in additional or higher fees to investors.
- Disclosures made to investors and whether they include all material facts relating to conflicts of interest associated with the investment advice sufficient to allow a client to provide informed consent to the conflict.

The Division remains focused on advisers' compliance programs, including whether their policies and procedures reflect the various aspects of the advisers' business, compensation structure, services, client base, and operations, and address applicable current market risks. The Division's review of advisers' annual reviews of the effectiveness of their compliance

programs is an important part of assessing whether the advisers' conflicts of interests are addressed in the advisers' compliance programs, including those conflicts created by the advisers' business arrangements or affiliations and related to adviser and registered investment company fees and expenses.

The examination focus on compliance policies and procedures may include one or more of the following areas, as discussed in the adopting release for the compliance rule (Compliance Rule) under the Investment

The Division remains focused on advisers' compliance programs, including whether their policies and procedures reflect the various aspects of the advisers' business, compensation structure, services, client base, and operations, and address applicable current market risks.

Advisers Act of 1940 (Advisers Act):¹ (1) portfolio management processes; (2) disclosures made to investors and regulators; (3) proprietary trading by the adviser and the personal trading activities of supervised advisory personnel; (4) safeguarding of client assets from conversion or inappropriate use by advisory personnel; (5) the accurate creation of required records and their maintenance in a manner that secures them from unauthorized alteration or use and protects them from untimely destruction; (6) safeguards for the privacy protection of client records and information; (7) trading practices; (8) marketing advisory services; (9) processes to value client holdings and assess fees based on those valuations; and (10) business continuity plans. Compliance program reviews will also assess whether the policies and procedures are sufficient to support compliance with advisers' fiduciary obligations.

Particular examination focus will include:

- Marketing practice assessments for whether advisers, including advisers to private funds, have: (1) adopted and implemented reasonably designed written policies and procedures to prevent violations of the Advisers Act and the rules thereunder including reforms to the Marketing Rule; (2) appropriately disclosed their marketing-related information on Form ADV; and (3) maintained substantiation of their processes and other required books and records. Marketing practice reviews will also assess whether disseminated advertisements include any untrue statements of a material fact, are materially misleading, or are otherwise deceptive and, as applicable, comply with the requirements for performance (including hypothetical and predecessor performance), third-party ratings, and testimonials and endorsements.
- Compensation arrangement assessments focusing on: (1) fiduciary obligations of advisers to their clients, including registered investment companies, particularly with respect to the advisers' receipt of compensation for services or other material payments made by clients and others; (2) alternative ways that advisers try to maximize revenue, such as revenue earned on clients' bank deposit sweep programs; and (3) fee breakpoint calculation processes, particularly when fee billing systems are not automated.
- Valuation assessments regarding advisers' recommendations to clients to invest in illiquid or difficult to value assets, such as commercial real-estate or private placements.

¹ Advisers Act [Rule 206\(4\)-7](#). See also SEC, [Final Rule: Compliance Programs of Investment Companies and Investment Advisers](#), IA-2204 (Dec. 17, 2003).

- Safeguarding assessments for advisers' controls to protect clients' material non-public information, particularly when multiple advisers share office locations, have significant turnover of investment adviser representatives, or use expert networks.
- Disclosure assessments to review the accuracy and completeness of regulatory filings, including Form CRS, with a particular focus on inadequate or misleading disclosures and registration eligibility.

The Division is also focused on advisers' policies and procedures for: (1) selecting and using third-party and affiliated service providers; (2) overseeing branch offices when advisers operate from numerous or geographically dispersed offices; and (3) obtaining informed consent from clients when advisers implement material changes to their advisory agreements. Such reviews will assess, among other things, whether the advisers' policies and procedures are reasonably designed and implemented and whether the procedures prevent the advisers from placing their interests ahead of clients' interests.

As with previous years, the Division continues to prioritize examinations of advisers that have never been examined, including recently registered advisers, and those that have not been examined for a number of years.

B. Examinations of Investment Advisers to Private Funds

Advisers to private funds remain a significant portion of the SEC-registered investment adviser population. The Division will continue to focus on advisers to private funds and prioritize specific topics, such as:

- The portfolio management risks present when there is exposure to recent market volatility and higher interest rates. This may include private funds experiencing poor performance, significant withdrawals and valuation issues and private funds with more leverage and illiquid assets.
- Adherence to contractual requirements regarding limited partnership advisory committees or similar structures (*e.g.*, advisory boards), including adhering to any contractual notification and consent processes.
- Accurate calculation and allocation of private fund fees and expenses (both fund-level and investment-level), including valuation of illiquid assets, calculation of post commitment period management fees, adequacy of disclosures, and potential offsetting of such fees and expenses.

- Due diligence practices for consistency with policies, procedures, and disclosures, particularly with respect to private equity and venture capital fund assessments of prospective portfolio companies.
- Conflicts, controls, and disclosures regarding private funds managed side-by-side with registered investment companies and use of affiliated service providers.
- Compliance with Advisers Act requirements regarding custody, including accurate Form ADV reporting, timely completion of private fund audits by a qualified auditor and the distribution of private fund audited financial statements.
- Policies and procedures for reporting on Form PF, including upon the occurrence of certain reporting events.

II. INVESTMENT COMPANIES

The Division continues to prioritize examinations of registered investment companies, including mutual funds and ETFs, due to their importance to retail investors, particularly those saving for retirement.

Examinations of registered investment companies often include assessing, among other things, their compliance programs and fund governance practices, disclosures to investors, and accuracy of reporting to the SEC. In assessing registered investment companies' compliance programs and governance practices, the Division will review boards' processes for assessing and approving advisory and other fund fees, particularly for funds with weaker performance relative to their peers. In addition, the Division will review registered investment company valuation practices, particularly for those addressing fair valuation practices (*e.g.*, implementing board oversight duties, setting recordkeeping and reporting requirements, and overseeing valuation designees), and, as applicable, will assess the effectiveness of registered investment companies' derivatives risk management and liquidity risk management programs.

The Division continues to prioritize examinations of registered investment companies, including mutual funds and ETFs, due to their importance to retail investors, particularly those saving for retirement.

Examination focus areas may include:

- Fees and expenses and reviewing whether registered investment companies have adopted effective written compliance policies and procedures concerning the oversight of advisory fees and implemented any associated fee waivers and reimbursements. A particular focus will be on: (1) charging different advisory fees to different share classes of the same fund; (2) identical strategies offered by the same sponsor through different distribution channels but that charge differing fee structures; (3) high advisory fees relative to peers; and (4) high registered investment company fees and expenses, particularly those of registered investment companies with weaker performance relative to their peers. Examinations will also review the boards' approval of the advisory contract and registered investment company fees.
- Derivatives risk management assessments to review whether registered investment companies as well as business development companies have adopted and implemented written policies and procedures reasonably designed to prevent violations of the Commission's fund derivatives rule (Investment Company Act Rule 18f-4). Review of compliance with the derivatives rule may include review of the adoption and implementation of a derivatives risk management program, board oversight, and whether disclosures concerning the registered investment companies' or business development companies' use of derivatives are incomplete, inaccurate or potentially misleading. Examinations may also cover the associated registered investment companies' or business development companies' procedures for, and oversight of, derivative valuations.

In addition, the Division will review for compliance with the terms of exemptive order conditions and the issues associated with recent market dislocations and volatility, such as whether registered investment companies in liquidation are following liquidation procedures.

As with adviser examinations, the Division continues to prioritize examinations of registered investment companies that have never been examined, including recently registered investment companies, and those that have not been examined in a number of years.

III. BROKER-DEALERS

A. Regulation Best Interest

Regulation Best Interest establishes the standard of conduct for broker-dealers at the time they recommend to a retail customer a securities transaction or investment strategy. When making such a recommendation, a broker-dealer must act in the retail customer's best interest and cannot place the financial or other interest of the broker-dealer ahead of the customer's interest. This obligation is satisfied only if the broker-dealer complies with the following specified component obligations: (1) providing certain required disclosure, before or at the time of the recommendation, about the recommendation and the relationship between the retail customer and the broker-dealer (Disclosure Obligation); (2) exercising reasonable diligence, care, and skill in making the recommendation (Care Obligation); (3) establishing, maintaining, and enforcing policies and procedures reasonably designed to address conflicts of interest (Conflict of Interest Obligation); and (4) establishing, maintaining, and enforcing policies and procedures reasonably designed to achieve compliance with Regulation Best Interest (Compliance Obligation).

Regulation Best Interest establishes the standard of conduct for broker-dealers at the time they recommend to a retail customer a securities transaction or investment strategy.

In reviewing whether broker-dealer recommendations are in customers' best interest, areas of particular interest will include: (1) recommendations with regard to products, investment strategies, and account types; (2) disclosures made to investors regarding conflicts of interest; (3) conflict mitigation practices; (4) processes for reviewing reasonably available alternatives; and (5) factors considered in light of the investor's investment profile, including investment goals and account characteristics.

Examinations will focus on those recommended products that are: (1) complex, such as derivatives and leveraged ETFs; (2) high cost, such as variable annuities; (3) illiquid, such as nontraded REITs and private placements; (4) proprietary; and (5) microcap securities. Examinations may also focus on recommendations to certain types of investors, such as older investors and those saving for retirement or college.

As part of the examinations, the Division will evaluate whether the broker-dealer has established, maintained, and enforced written policies and procedures reasonably designed to achieve compliance with the areas described above as well as with Regulation Best Interest as a whole. This analysis will include considering whether the written policies and procedures are reasonably designed based on the costs, risks, and rewards of the securities and investment strategies that the broker-dealer recommends to customers.

The Division will also continue to focus on dual registrants and examinations will encompass firms' conflicts of interest, account allocation practices (*e.g.*, allocation of investments where an investor has more than one type of account) and account selection practices (*e.g.*, brokerage versus advisory and wrap fee accounts). Examinations will also assess broker-dealers supervision of branch office locations.

B. Form CRS

The Division's examinations will review the content of a broker-dealer's relationship summary, such as how the broker-dealer describes: (1) the relationships and services that it offers to retail customers; (2) its fees and costs; and (3) its conflicts of interest, and whether the broker-dealer discloses any disciplinary history. These examinations will also evaluate whether broker-dealers have met their obligations to file their relationship summary with the Commission and deliver their relationship summary to retail customers.

C. Broker-Dealer Financial Responsibility Rules

Examinations will focus on broker-dealer compliance with the Net Capital Rule and the Customer Protection Rule and related internal processes, procedures and controls. Areas of review will include fully paid lending programs and broker-dealer accounting for certain types of liabilities, such as reward programs, point programs, gift cards and non-brokerage services, and will also assess broker-dealer credit, interest rate, market, and liquidity risk management controls to assess whether broker-dealers have sufficient liquidity to manage stress events.

D. Broker-Dealer Trading Practices

Examinations will cover broker-dealer equity and fixed income trading practices. In particular, examinations will review compliance with: (1) Regulation SHO, including the rules regarding aggregation units and locate requirements; (2) Regulation ATS, and whether the operations of alternative trading systems are consistent with the disclosures provided in Forms ATS and ATS-N; and (3) Exchange Act Rule 15c2-11.

During examinations of wholesale market makers, examinations may include quote generation, order routing and execution practices, market data ingestion, regulatory controls, and risk management.

IV. SELF-REGULATORY ORGANIZATIONS

A. National Securities Exchanges

Examinations will focus on whether national securities exchanges are meeting their obligations to enforce compliance with self-regulatory organization rules and the federal securities laws. Specifically, examinations will focus on exchange order handling and exchange surveillance, investigation, and enforcement programs to detect and discipline member firm violations. In addition, examinations will focus on exchange oversight of regulatory service agreements.

B. Financial Industry Regulatory Authority

The Financial Industry Regulatory Authority (FINRA) oversees approximately 3,400 brokerage firms, 150,000 branch offices, and more than 620,000 registered representatives through examinations, enforcement, and surveillance. In addition, FINRA, among other things, promulgates rules that govern its members, provides a forum for securities arbitration and mediation, conducts market regulation, including by contract for a majority of national securities exchanges, reviews broker-dealer advertisements, administers the testing and licensing of registered persons, and operates industry utilities, such as Trade Reporting Facilities.

The Division conducts risk-based oversight examinations of FINRA. It selects areas within FINRA to examine through a risk assessment process designed to identify those aspects of FINRA's operations important to the protection of investors and market integrity, including FINRA's implementation of investor protection initiatives such as Regulation Best Interest and Form CRS. The analysis is informed by collecting and analyzing extensive information and data, regular meetings with key functional areas within FINRA, and outreach to various stakeholders, including industry and investor groups. Based on the outcome of this risk assessment process, the Division conducts inspections of FINRA's major regulatory programs. The Division also conducts oversight examinations of FINRA's examinations of certain broker-dealers and municipal advisors that are FINRA members. From its observations during all of these inspections and examinations, the Division makes detailed recommendations to improve FINRA's programs, its risk assessment processes, and its future examinations.

C. Municipal Securities Rulemaking Board

The Municipal Securities Rulemaking Board (MSRB) regulates the activities of broker-dealers that buy, sell, and underwrite municipal securities, and municipal advisors. The MSRB establishes rules for municipal broker-dealers (including registered municipal securities dealers) and municipal advisors, supports market transparency by making municipal securities trade data and disclosure documents available, and conducts education

and outreach regarding the municipal securities markets.

The Division, along with FINRA and the federal banking regulators, conducts examinations of registered firms to assess compliance with MSRB rules, and applicable federal securities laws. The Division also applies a risk assessment process, similar to the one it uses to oversee FINRA, including outreach to various stakeholders, to identify areas to examine at the MSRB.

The Municipal Securities Rulemaking Board regulates the activities of broker-dealers that buy, sell, and underwrite municipal securities, and municipal advisors.

V. CLEARING AGENCIES

Title VIII of the Dodd-Frank Act requires the Commission to examine, at least once annually, each clearing agency designated as systemically important and for which the Commission serves as the supervisory agency. Pursuant to Section 807 of the Dodd-Frank Act, these examinations will focus on clearing agencies' core risks, processes, and controls and will cover the specific areas required by statute, including the nature of clearing agencies' operations and assessment of financial and operational risk. Additionally,

the Division will conduct risk-based examinations of other registered clearing agencies that have not been designated as systemically important. The Division will examine the registered clearing agencies for compliance with the Commission's Standards for Covered Clearing Agencies, which are rules that require covered clearing agencies to have policies and procedures that address, among other things, maintaining sufficient financial resources, protecting against credit risks, managing member defaults, and managing operational and other risks.

Title VIII of the Dodd-Frank Act requires the Commission to examine, at least once annually, each clearing agency designated as systemically important and for which the Commission serves as the supervisory agency.

Examinations of registered clearing agencies include both risk-based examinations and Corrective Action Reviews, and are undertaken to assess: (1) whether the clearing agencies' respective risk management frameworks comply with the Exchange Act, and serve the

needs of their members and the markets they serve; (2) the adequacy and timeliness of their remediation of prior deficiencies, including, for example, the role of senior leadership in the remediation process; and (3) other risk areas identified in collaboration with the Commission's Division of Trading and Markets and other regulators. In addition, the Division also examines security-based swap data repositories, as well as entities operating pursuant to a Commission order exempting them from the clearing agency registration requirement under Section 17A(b)(1) of the Exchange Act.

Areas of examination focus in fiscal year 2024 may include risk management of liquidity, models and model validation, margin systems, third-party service providers, and operations, and the internal audit function, among other things. Finally, the Division consults with the Federal Reserve Board each year on the scope and methodology of the Commission's Dodd-Frank examinations, as required by that Act, and routinely consults with the Commission's Division of Trading and Markets concerning risks it observes in its supervisory role over the above clearing agencies. These risks are incorporated into the risk-based planning of the examinations.

VI. OTHER MARKET PARTICIPANTS

A. Municipal Advisors

Examinations will continue to review whether municipal advisors have met their fiduciary duty obligation to clients, particularly when providing advice regarding the pricing, method of sale, and structure of municipal securities. Examiners will review whether municipal advisors are complying with their obligations to document municipal advisory relationships and disclose conflicts of interest and requirements related to registration, professional qualification, continuing education, recordkeeping, and supervision.

New MSRB Rule G-46, which becomes effective on March 1, 2024, is designed to establish the core standards of conduct for solicitor municipal advisors, which include disclosure of conflicts of interest and documentation of client relationships, among other things. Examinations of solicitor municipal advisors during the second half of fiscal year 2024 will focus on compliance with new MSRB Rule G-46.

New MSRB Rule G-46, which becomes effective on March 1, 2024, is designed to establish the core standards of conduct for solicitor municipal advisors, which include disclosure of conflicts of interest and documentation of client relationships, among other things.

B. Security-Based Swap Dealers

Examinations will continue to focus on whether security-based swap dealers have implemented policies and procedures related to compliance with security-based swap rules generally and are meeting their obligations under Regulation SBSR to accurately report security-based swap transactions to security-based swap data repositories. Moreover, examinations will focus on whether security-based swap dealers are complying with applicable capital, margin, and segregation requirements and relevant conditions in Commission orders governing substituted compliance.

C. Transfer Agents

Examinations will focus on transfer agent processing of items and transfers, recordkeeping and record retention, safeguarding of funds and securities, and filings with the Commission.

Examinations will also focus on transfer agents that service certain types of issuers, including those issuing microcap and crypto asset securities, and transfer agents that use emerging technologies to perform their transfer agent functions.

VII. RISK AREAS IMPACTING VARIOUS MARKET PARTICIPANTS

A. Information Security and Operational Resiliency

The Division will continue to review broker-dealers' and advisers' practices to prevent interruptions to mission-critical services and to protect investor information, records, and assets. Operational disruption risks remain elevated due to the proliferation of cybersecurity attacks, firms' dispersed operations, intense weather-related events, and geopolitical concerns. Given these risks and concerns, cybersecurity remains a perennial focus area for all registrants.

The Division will focus on registrants' policies and procedures, internal controls, oversight of third-party vendors (where applicable), governance practices, and responses to cyber-related incidents, including those related to ransomware attacks. Part of this review will consider whether registrants adequately train staff regarding their identity theft prevention program and their policies and procedures designed to protect customer records and information.

With respect to third-party products and services in particular, the Division will continue to assess how registrants identify and address risks to essential business operations. In connection with its mission to inform policy, the Division will also look at the concentration risk associated with the use of third-party providers, including how registrants are managing this risk and the potential impact to the U.S. securities markets.

In addition, many broker-dealers and advisers consist of a main office and multiple other branch offices. Examinations of broker-dealers and advisers will continue to look at firms' practices to prevent account intrusions and safeguard customer records and information, including personally identifiable information, especially as it pertains to their multiple other offices.

Lastly, the Commission adopted rule changes to shorten the standard settlement cycle for most broker-dealer transactions from two business days after the trade date to one business day after the trade date. In connection with this change, the Division will assess registrant preparations associated with this shortening of the settlement cycle, which has a compliance date of May 28, 2024.

The compliance date for recently adopted rules shortening the standard settlement cycle for most broker-dealer transactions to one business day after the trade date is May 28, 2024.

Examinations of broker-dealers and advisers will continue to look at firms' practices to promote cyber resiliency. Reviews will include firm practices, policies, and procedures to prevent account intrusions and safeguard customer records and information, including personally identifiable information. Additional focus will be on the cybersecurity issues associated with the use of third-party vendors, including registrant visibility into the security and integrity of third-party products and services. The Division will also review whether there has been an unauthorized use of third-party providers.

B. Crypto Assets and Emerging Financial Technology

The Division continues to observe the proliferation of certain types of investments, including crypto assets and their associated products and services, and emerging financial technology, such as broker-dealer mobile applications and advisers choosing to provide automated investment advice to their clients. The Division will focus on broker-dealers and advisers offering new products and services or employing new practices, particularly technological and online solutions that service online accounts aimed at meeting the demands of compliance and marketing. The Division remains focused on certain services, including automated investment tools, artificial intelligence, and trading algorithms or platforms, and the risks associated with the use of emerging technologies and alternative sources of data.

The Division continues to observe the proliferation of certain types of investments, including crypto assets and their associated products and services, and emerging financial technology, such as broker-dealer mobile applications and advisers choosing to provide automated investment advice to their clients.

Given the continued volatility of, and activity around, the crypto asset markets, the Division will continue to monitor and, when appropriate, conduct examinations of registrants. Examinations of registrants will focus on the offer, sale, recommendation of, advice regarding, trading in, and other activities in crypto assets or related products. Specifically, reviewing whether such registrants involved with crypto assets: (1) meet and follow their respective standards of conduct when recommending or advising customers and clients regarding crypto assets, with a focus on an initial and ongoing understanding of the products, to the extent required by the applicable standard of conduct, particularly when the investors are retail-based (including older investors) and investments involve retirement assets; and (2) routinely review, update, and enhance their compliance practices (including crypto asset wallet reviews, custody practices, Bank Secrecy Act (BSA) compliance reviews, and valuation procedures), risk disclosures, and operational resiliency practices (*i.e.*, data integrity and business continuity plans), if required. With respect to crypto assets that are funds or securities, the Division will consider whether advisers are complying with the custody requirements under the Advisers Act (Rule 206(4)-2). In addition, the Division will assess whether any technological risks associated with the use of blockchain and distributed ledger technology have been addressed, including whether compliance policies and procedures are reasonably designed, accurate disclosures are made and the risks pertaining to the security of crypto asset securities are addressed, if required by applicable law.

C. Regulation Systems Compliance and Integrity

The Commission adopted Regulation Systems Compliance and Integrity (SCI) in 2014 to strengthen the technology infrastructure of the U.S. securities markets. Regulation SCI entities include national securities exchanges, registered and certain exempt clearing agencies, FINRA, MSRB, plan processors, and alternative trading systems that meet certain volume thresholds. Among other things, these critical market infrastructure entities must establish, maintain, and enforce written policies and procedures reasonably designed to ensure that their systems' capacity, integrity, resiliency, availability, and security is adequate to maintain their operational capability and promote the maintenance of fair and orderly markets. The Division will continue to evaluate whether SCI entities have established, maintained, and enforced written policies and procedures, as required. One area of focus will include whether the policies and procedures of SCI entities are reasonably designed to ensure the security of the SCI systems, including the physical security of the systems housed in data centers, as required.

D. Anti-Money Laundering

The BSA requires certain financial institutions, including broker-dealers and certain registered investment companies, to establish anti-money laundering (AML) programs that are tailored to address the risks associated with the firm's location, size, and activities, including the customers they serve, the types of products and services offered, and how those products and services are offered. These programs must, among other things, include policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and its implementing rules; independent testing; and risk-based procedures to perform customer due diligence (as required by the Customer Due Diligence rule), which includes identifying and verifying the identity of customers and conducting ongoing monitoring to identify and report suspicious transactions. Where appropriate, certain financial institutions must also file Suspicious Activity Reports (SARs) with the Financial Crimes Enforcement Network. SARs can be used to detect and combat market manipulation, insider trading, Ponzi schemes, corruption, money laundering, terrorist financing, and a variety of other illicit activities potentially violative of securities and other laws and regulations.

The Division will continue to focus on AML programs to review whether broker-dealers and certain registered investment companies are: (1) appropriately tailoring their AML program to their business model and associated AML risks; (2) conducting independent testing; (3) establishing an adequate customer identification program, including for beneficial owners of legal entity customers; and (4) meeting their SAR filing obligations. Examinations of certain registered investment companies will also review policies and procedures for oversight of applicable financial intermediaries.

Also, the Division will review whether broker-dealers and advisers are monitoring Office of Foreign Assets Control sanctions and ensuring compliance with such sanctions.

VIII. CONCLUSION

These priorities reflect the Division's assessment of certain risks, issues, and policy matters arising from market and regulatory developments, information gathered from examinations, and other sources, including tips, complaints, and referrals, and coordination with other Divisions and Offices at the Commission as well as other regulators. While the Division will allocate significant resources to the examination issues described herein, it will also conduct examinations focused on and devote resources to new or emerging risks, products and services, market events, and investor concerns.

The Division welcomes comments and suggestions regarding how it can better fulfill its mission to promote compliance, prevent fraud, identify and monitor risk, and inform Commission policy. Our contact information is available at <https://www.sec.gov/exams>. If you suspect or observe activity that may violate the federal securities laws or otherwise operates to harm investors, please notify Commission staff at <https://www.sec.gov/tcr>.

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