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## Investment Funds & Private Capital Market Insights

# SEC Announces 2024 Examination Priorities

4 MINUTE READ

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The SEC's Division of Examinations ("DOE") recently released its 2024 examination priorities ([available here](#)). The SEC provides examination priorities on an annual basis to convey to registrants specific areas that DOE will focus on in the coming year. This client alert focuses on examination priorities most relevant for private fund sponsors. The 2024 DOE priorities also include focus areas for other registrants, including (i) RIAs of clients that are not private funds, (ii) registered investment companies, (iii) broker-dealers and (iv) other market participants.

### Private Fund Sponsors

For several years in a row, private fund sponsors (*i.e.*, sponsors to private equity funds, real estate funds, credit funds, hedge funds and other similar funds that are not registered investment companies) and issues specific to private fund sponsors have been highlighted as DOE priorities. For 2024, these priorities include:

- Portfolio management risks relating to recent market volatility and high interest rates (*e.g.*, declining performance, withdrawals and valuation issues and effects on funds with significant leverage and illiquid assets);
- Adherence to contractual requirements regarding limited partnership advisory committees, including with respect to notice and consent provisions;
- Calculation and allocation of fund fees and expenses at the fund- and investment-level, including related topics such as valuation of illiquid assets, post-commitment period management fees, adequacy of disclosures and fee offset provisions;
- Prospective portfolio company due diligence, including consistency with respect to related policies, procedures and disclosures;
- Conflicts, controls and disclosures involving private funds managed side-by-side with registered investment companies and the use of affiliated service providers;

- Custody rule compliance, including accurate Form ADV reporting, timely completion of fund audits and distribution of audited financial statements; and
- Form PF reporting, including with respect to the new event reporting requirements that were adopted earlier this year (*a discussion of the Form PF amendments is available [here](#)*).

In addition, DOE noted that it will focus on the following areas relevant to private fund sponsors (and others):

- Marketing practices, including whether sponsors have (i) adopted updated policies and procedures for compliance with the Advisers Act's new Marketing Rule which took effect in November 2022 (*a discussion of the Marketing Rule updates is available [here](#)*), (ii) included appropriate disclosures of marketing-related information on Form ADV, (iii) maintained substantiation of their marketing processes and procedures in their books and records, and (iv) complied with the substantive requirements of the new Marketing Rule in advertisements, including with respect to the general principles, the specific requirements relating to performance presentation (with a particular focus on hypothetical performance and predecessor performance), the use of third-party ratings and conditions for the use of testimonials and endorsements;
- The use of expert networks and assessing an adviser's controls for protecting clients' material non-public information; and
- Information security, cybersecurity and operational resiliency, including a sponsor's internal controls, policies and procedures with respect to business disruptions and continuity, due diligence and oversight of third-party vendors, cybersecurity incidents and response and identity theft concerns.

The DOE priorities report also noted that it will continue to prioritize undertaking examinations of advisers that are newly registered, those that have never been examined and those that have not been examined for a number of years.

#### **Key Takeaways:**

- Private fund sponsors (and other SEC registrants) should keep these priorities front-of-mind when evaluating their compliance programs and operations and consider enhanced testing as part of the annual review process.
- DOE's 2024 examination priorities should be reviewed in parallel with its 2023 priorities (*a discussion of the 2023 SEC examination priorities is available [here](#)*), as many of the 2024 priorities represent repeat and/or related areas of focus.
  - For example, (i) calculation and allocation of fund fees and expenses, including with respect to post-commitment period management fees, (ii) management of private funds side-by-side with registered entities, (iii) custody rule compliance, (iv) information security policies and procedures, (v) a focus on compliance with newly-adopted rules and (vi) prioritization on examining never-been-examined advisers and those that have not been examined for a number of years are repeat or related themes from the DOE's 2023 examination priorities.

- By contrast, certain areas mentioned as 2023 examination priorities relating to ESG disclosures and practices, conflicts around GP-led secondaries, use of alternative data and electronic communications are not included in the 2024 list. However, sponsors should continue to remain diligent regarding these recent risk areas.

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