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Investment Management Update

June 2021

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In this Update

Covering legal developments and regulatory news for funds, their advisers, and industry participants through March 2021.

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Rulemaking and Guidance

From the Chief Accountant, Letter to CFOs

03.30.21

The Office of the Chief Accountant of the SEC's Division of Investment Management periodically issues "Dear Chief Financial Officer" letters to help registered investment companies, business development companies (BDCs), and their independent public accountants address certain accounting, auditing, financial reporting, or other related disclosure matters. The letters provide SEC staff interpretive guidance intended for certain industries, and the Chief Accountant's office maintains an Accounting Matters Bibliography (AMB) to contain them.

On March 30, the Chief Accountant's office withdrew or modified several old letters from its AMB in light of changes in markets and regulations, and added a new letter related to insurance products.

The Division of Investment Management issued eight Dear CFO letters from November 1994 through February 2001. Since then, the staff also expressed its views through other documents, including IM Guidance Updates, IM Information Updates, Accounting and Disclosure Information, and IM Staff Issues of Interest, as well as staff views in correspondence with external industry groups, such as the American Institute of Certified Public Accountants (AICPA), no-action letters, or other relief granted.

The following offers a recap of the March 30 changes — one new letter, three withdrawn, and five modified:

- IM-DCFO 1994-02 Valuation of Certain Portfolio Investments (Nov. 1, 1994) – Withdrawn as of September 8, 2022.
- IM-DCFO 1995-11 Pro Forma Fee Tables and Capitalization Tables (Nov. 2, 1995) – Modified to reflect the impact of Rule 6-11 of the 1940 Act and to provide staff views regarding pro forma fee tables and capitalization tables to be included in a registration statement where multiple potential outcomes may exist.
- IM-DCFO 1997-01 Foreign Pricing Considerations (Nov. 7, 1997) – Modified as of September 8, 2022, the compliance date for Rule 2a-5 of the 1940 Act regarding valuation matters.
- IM-DCFO 1997-03 Designation of Segregated Assets (Nov. 7, 1997) – Withdrawn as of August 19, 2022, the compliance date for Rule 18f-4 of the 1940 Act.
- IM-DCFO 1997-06 Closed-End Fund Expense Ratios – Dividend Payments (Nov. 7, 1997) – Modified to further clarify staff views on closed-end funds' expense ratios specific to dividend payments to preferred stockholders.
- IM-DCFO 1998-07 Financial Data Schedules (Dec. 30, 1998) – Withdrawn.
- IM-DCFO 2001-06 Filings Pursuant to Rule 488 of the Securities Act of 1933 – Modified due to May 2020 changes to Forms and rules made by the Commission. Rule 488 of the 1933 Act states, among other things, that a registration statement filed on Form N-14 by a registered open-end management investment company shall become automatically effective when certain criteria are met.
- IM-DCFO 2020-03 Combined Financial Statements for Compliance with Advisers Act Rule 206(4)-2 – Modified to revise the types of factors the staff believes generally should be considered in an investment adviser's assessment of whether the investment adviser may satisfy the requirements of the exception for limited partnerships (or limited liability companies or other types of pooled investment vehicles) that are subject to an annual audit in accordance with Rule 206(4)-2(b)(4) under the Investment Advisers Act of 1940 by distributing combined audited financial statements.

- IM-DCFO 2021-01 Insurance Products Transitioning to SAP from GAAP per Provision or Request – New. The letter reminds insurers of their obligations regarding periods presented and historical presentation.

A copy of the Chief Accountant's Letter to CFOs can be found at https://www.sec.gov/files/dear-cfo-letter-from-im-chief-accountant-033021.pdf.

Staff Statement on Investment Company Cross Trading

03.11.21

On March 11, the staff of the SEC's Division of Investment Management issued a statement on the status of certain aspects of Rule 17a-7 of the 1940 Act, particularly on the recent adoption of Rule 2a-5 under the 1940 Act (Valuation Rule), which created an updated regulatory framework for fund valuation practices (featuring an upcoming compliance date).[1] In the statement, the staff requested feedback on Rule 17a-7 within 30 days of the publication. Several notable entities, including the Investment Company Institute, Securities Industry Financial Markets Association (SIFMA) Asset Management Group, and various other market participants provided comment letters in response to the statement.

In its current form, Rule 17a-7 permits registered investment companies that might be considered affiliated persons as a result of common investment advisers, directors, and/or officers, to purchase securities from or sell securities to one another (or engage in "cross trades") at an independently determined price, provided that they meet certain conditions. Among other conditions, Rule 17a-7 generally requires that cross trades: (1) involve a security for which market quotations are readily available; and (2) be effected at the independent current market price of the security. Under longstanding SEC guidance, the phrase "for which market quotations are readily available" has had the same meaning under Rule 17a-7 and under the valuation provisions of the 1940 Act and its rules. The Valuation Rule, as adopted, effectively equated securities for which market quotations are readily available with securities whose values are determined solely by GAAP Level 1 inputs. In response, a number of market participants noted that funds and their affiliates regularly engage in cross trades of certain fixed-income securities that may not qualify as having readily available market quotations under the definition set forth in the Valuation Rule, thus making them ineligible to continue to engage in cross trades under Rule 17a-7. They further noted that such a prohibition could result in increased costs and negative market impacts for the affected funds and shareholders.

In light of these comments, changes to market structure, the evolution of trading and valuation practices since Rule 17a-7's adoption in 1966, and the SEC's experience in enforcing Rule 17a-7, the SEC indicated it is seeking comments on several aspects of Rule 17a-7, including the following:

1. Current fund cross trading practices;
2. Securities eligible to cross trade and considerations of pricing and liquidity;
3. Controls used by advisers in conducting cross trading; and
4. Cross trading impacts to market transparency.

The statement also features an appendix, which includes and expands on the topics noted above in requesting comments.

A copy of the staff's statement is available at https://www.sec.gov/news/public-statement/investment-management-statement-investment-company-cross-trading-031121.

[1] Rule 2a-5 was adopted on December 3, 2020, as described in our Investment Management Update article titled, "SEC Adopts Modernized Framework for Fund Valuation Practices."

SEC Requests Comment on Potential Money Market Fund Reform Options Highlighted in President's Working Group Report

02.04.21

On February 4, the SEC published a request for comment on potential reform measures to improve the resilience of money market funds, previously highlighted in a report of the President's Working Group on Financial Markets (Report). Attached as an appendix to the SEC's request released on December 22, 2020, the Report provided an overview of events and reform efforts with respect to money market funds over the last two decades, and included potential measures to increase the resilience of certain prime and tax-exempt money market funds going forward. The request noted that the public comment period would remain open until April 12, 2021.

The Working Group, consisting of the Treasury Secretary, the Chairman of the Board of Governors of the Federal Reserve System, the Chair of the SEC, and the Chair of the Commodity Futures Trading Commission, released the Report following specific challenges encountered by money market funds and short-term funding markets in March 2020 in connection with general market volatility occasioned by the onset of the COVID-19 pandemic. In particular, the Report highlighted challenges encountered by certain prime and tax-exempt money market funds beginning with outflows during the 2008 financial crisis. The Report noted that, in spite of (and, possibly, in some ways, as a result of) reform efforts implemented following the 2008 financial crisis, prime and tax-exempt money market funds continued to contribute to the stressed conditions in short-term funding markets before the Federal Reserve's establishment of facilities to support short-term funding markets. The Report observed that these events occurred despite prior reform efforts to make money market funds more resilient to credit and liquidity stresses and, as a result, less susceptible to redemption-driven runs.

Some of the policy measures proposed in the Report include:

- A removal of the current tie between money market fund liquidity and fee and gate thresholds;
- Reform of the conditions currently in existence for imposing redemption gates;
- Implementation of a "minimum balance at risk";
- Certain money market fund liquidity management changes;
- Use of countercyclical weekly liquid asset requirements;
- Use of floating NAVs for all prime and tax-exempt money market funds;
- Implementation of a swing-pricing requirement;
- Implementation of capital buffer requirements;
- Requirement of liquidity exchange bank membership; and
- New requirements governing sponsor support.

The SEC's Request is available at https://www.sec.gov/news/press-release/2021-25.

Litigation And Enforcement

SEC's Division of Enforcement Creates ESG Task Force; Issues ESG Risk Alert

03.04.21

On March 4, the SEC announced the creation of a 22-member Climate and ESG Task Force (Task Force) in the Division of Enforcement (DOE). Initially, the Task Force will identify any material gaps or misstatements in issuers' disclosure of climate risks under existing rules, and will analyze disclosure and compliance issues relating to investment advisers' and funds' environmental, social, and governance (ESG) strategies. The Task Force also will develop initiatives to proactively identify ESG-related misconduct and coordinate the use of data analysis (and other resources) to identify potential violations.

The Task Force announcement included a submission link to report ESG-related tips, referrals, and whistleblower complaints. Less than two weeks later, the SEC launched a new page on its website to provide investors the latest information about climate and ESG investing and agency actions. Then, on April 9, the DOE issued a Risk Alert to highlight observations from recent examinations of investment advisers, registered investment companies, and private funds offering ESG products and services.

While ESG investing is not a novel concept, over the past few years the SEC has been increasingly interested in this space as its grown in popularity. In particular, the Office of Compliance Inspections and Examinations (OCIE, now known as the DOE), included ESG-related requests in certain fund manager examinations. Then, OCIE's 2020 Examination Priorities identified ESG as a priority, noting a particular interest in the accuracy and adequacy of disclosures provided by registered investment advisers offering clients strategies that incorporate ESG criteria.

[1] The DOE's 2021 Examination Priorities put ESG front and center, characterizing ESG a perennial risk area that needs the DOE — and registrants — to "continue to be vigilant." When the SEC leverages exams to learn emerging trends and related industry practices, Risk Alerts and enforcement often follow. Despite the SEC's clear interest in ESG, there are still no U.S. securities regulations expressly addressing ESG strategies nor universally agreed upon legal definitions of ESG concepts.[2] While some foreign lawmakers and regulators have develop specific ESG regulations,[3] the SEC has yet to tip its hat as to whether it intends to engage in the rulemaking process to develop a specific ESG regulatory framework, or otherwise just continue pursuing regulation through enforcement of its existing regulations.

While no ESG-specific regulatory framework yet exists under U.S. law, market participants, including funds and investment advisers, are still subject to existing anti-fraud provisions under the federal securities laws. Under these provisions, advisers and funds offering clients ESG investment strategies have the same duty to provide adequate and accurate disclosures as advisers and funds offering any other type of investment strategy. Advisers deploying ESG strategies also have a duty to make full and fair disclosure of all material facts to, and obtain informed consent from, investors regarding their strategies and related risks.

The DOE will certainly continue to examine firms to evaluate whether they are accurately disclosing their ESG investing approaches and have adopted and implemented policies, procedures, and practices that

[1] It is our understanding that the Department of Labor has also conducted ESG-focused exams of ERISA plan fiduciaries.

[2] Acknowledging the lack of ESG definitions or specific provisions in the Investment Advisers Act of 1940 (Advisers Act), the Investment Company Act of 1940 (Investment Company Act), or their respective rules, the Risk Alert uses the term "ESG" in the broadest sense to encompass terms, such as "socially responsible investing," "sustainable," "green," "ethical," "impact," or "good governance."

[3] *See* Regulation (EU) 2019/2088 of the European Parliament and of the Council of November 27, 2019 on sustainability-related disclosures in the financial services sector.

accord with their ESG-related disclosures. To assist firms in developing effective ESG practices, the Risk Alert summarizes the DOE's observations of deficiencies and internal control weaknesses from its 2020 and 2021 exams. The Risk Alert notes that the lack of standard ESG industry definitions present certain risks, including confusion among investors on how advisers implement their ESG strategy in their portfolio management. In particular, the DOE staff has observed:

- Unsubstantiated or otherwise potentially misleading statements regarding ESG investing processes and representations regarding the adherence to global ESG frameworks;
- Claims of formal ESG investing processes already in place, but a lack of policies and procedures related to ESG investing;
- Policies and procedures were inadequate to maintain, monitor, and update clients' ESG-related investing guidelines, mandates, and restrictions, or did not appear to be reasonably designed to prevent violations of law, or otherwise were not implemented;
- Proxy voting may have been inconsistent with advisers' stated approaches;
- Weak or unclear documentation of ESG-related investment decisions; and
- Compliance programs that did not appear to be reasonably designed to guard against inaccurate ESG-related disclosures and marketing materials.

The purpose of Risk Alerts generally is to assist advisers and funds in developing adequate policies and procedures to avoid violations — to help learn from those who have gone before them. This Risk Alert may leave more questions than answers for compliance professionals. In particular, a number of the DOE staff's observations relate to policies and procedures addressing ESG investing analyses. Without further guidance or standardization of ESG-related principles and metrics, compliance professionals may struggle to obtain the knowledge and information required to fully develop ESG compliance programs. Indeed, the Risk Alert highlights several effective practices observed by the DOE, including having compliance personal who are integrated and knowledgeable about the firm's ESG approaches and practices, as well as maintaining detailed investment policies and procedures. Compliance professionals bolstering their policies and procedures in response to the Risk Alert may struggle to strike the right balance of responsibility for their firm's ESG practices between their investment teams and compliance.

In addition to the DOE staff's noted effective practices, advisers can learn from items addressed in prior ESG-focused exam document requests. Advisers implementing ESG strategies should consider reviewing their disclosures to ensure that they accurately and fully address their investment process of pursuing ESG investments (*e.g.,* negative screening, factor scoring, etc.) and adequately address related risks, including those involving the use of metrics, benchmarks as well as scouring systems. All claims made about the strategy — evaluating ESG criteria, monitoring, and performance — should be substantiated with backup documentation. Policies and procedures should clearly define strategy-related terms, such as "ESG," "socially responsible," "sustainable," "green," "ethical," and "impact," as well as address methodologies and controls for evaluating and monitoring ESG performance. Advisers relying on third-party products and services should confirm they are appropriate for their strategy in light of investor disclosures, and they should adequately address the associated risks, including the use of third-party data.

Given the increasing investor demands for ESG products and the SEC's continued focus, we expect to see additional regulatory action — whether through guidance, rulemaking, or enforcement — in the coming months.

SEC Division of Examinations Announces 2021 Examination Priorities

03.03.21

On March 3, the U.S. Securities and Exchange Commission's (SEC) Division of Examinations (Division), formerly known as the Office of Compliance Inspections and Examinations, announced its examination priorities for fiscal year 2021. The Division publishes the report annually to identify areas where it believes potential risks to investors and U.S. capital markets may exist. This year's report focused particularly on climate-related risks, conflicts of interests for brokers and investment advisers, and attendant risks related to fintech.

Below find a summary of the Division's 2021 examination priorities.

Retail Investors, Including Seniors and Those Saving for Retirement

The Division will continue to prioritize investments and services marketed to retail investors, including seniors and those saving for retirement. Specifically, the Division will focus on compliance concerns related to mutual funds and exchange-traded products, municipal securities and other fixed income instruments, and microcap securities. The Division will also review the use of primary tools for investor protection, such as Regulation Best Interest, Form CRS, and the Interpretation Regarding Standard Conduct for Investment Advisers, to ensure firms and investment advisors appropriately mitigate conflicts of interests and fulfill their fiduciary duties.

Information Security and Operational Resiliency

The 2021 report also emphasized the heightened risk of cyberattacks and the need for firms to proactively identify and address these risks. The Division will review whether firms have taken adequate measures to: (i) safeguard customer accounts; (ii) verify investors' identities; (iii) oversee vendors; (iv) address malicious email activities; (v) respond to incidents; and (vi) manage operational risk related to employees working from home.

The Division will also continue to review firms' business continuity and disaster recovery plans, but it will incorporate a greater focus on climate-related risks for fiscal year 2021. Specifically, the Division will evaluate whether such plans adequately account for the growing physical and other relevant risks associated with climate change.

Fintech and Innovation, Including Digital Assets

With innovations in fintech and capital formation continuing at a rapid pace, the Division will focus its examinations on whether registrants operate consistently with their representations and handle customer orders in accordance with their instructions. The Division will also focus on reviewing registrants' compliance around trade recommendations made on mobile applications. With respect to digital assets, the Division 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.

For more information on the Division's stance on digital assets, see our client advisory, "Division of Examinations Issues Risk Alert on Digital Asset Securities."

Additional Areas of Focus

The Division reaffirmed its prioritization of ensuring compliance with the AML requirements of the Bank Secrecy Act. Additionally, the Division will examine registrants to evaluate their understanding of exposure to the London Inter-Bank Offered Rate (LIBOR), preparations for the anticipated discontinuation of LIBOR, the transition to an alternative reference rate, and any adverse effects on investors.

Other areas of prioritization identified in the report include areas involving registered investment advisers (RIAs) and certain investment companies. With respect to RIAs, examinations will continue to evaluate core compliance programs ensuring proper execution of typical items. The Division specified that examinations would focus on RIAs that either have never been examined or have not been examined for several years, as well as RIAs that are dually registered as broker-dealers. Regarding registered funds, including mutual funds and ETFs, the Division will generally focus on fund compliance programs and financial conditions, particularly where funds have instituted advisory fee waivers. Further, the Division will continue to focus on advisers to private funds, particularly those with a higher concentration of structured products to assess whether such funds are at a higher risk for holding nonperforming loans and having loans with higher default risk than that disclosed to investors.

With respect to broker-dealers and municipal advisors, the Division will continue to prioritize, among other things, compliance with the Consumer Protection Rule, Net Capital Rule, best execution obligations, Rule 606 regarding order routing, and market-maker compliance with Regulation SHO. The Division also expressed concern regarding the effects of the COVID-19 pandemic and how municipal advisors have adjusted their practices.

Regarding market infrastructure, the Division will focus its examinations on clearing agencies, national securities exchanges, regulation systems compliance and integrity, transfer agents, and the Financial Industry Regulatory Authority (FINRA) and the Municipal Securities Rulemaking Board (MSRB), among other things.

For a full copy of the Division's 2021 Examination Priorities Report, click https://www.sec.gov/files/2021-exam-priorities.pdf.

Risk Alert: The Division of Examinations' Continued Focus on Digital Asset Securities

02.26.21

On February 26, the SEC Division of Examinations (Division) (formerly the Office of Compliance Inspections and Examinations) issued a Risk Alert (Alert) relating to the offer, sale, and trading of digital assets that are securities (Digital Asset Securities). The Alert describes observations of Division staff made during examinations of investment advisers, broker-dealers, national securities exchanges, and transfer agents regarding Digital Asset Securities. Since Digital Asset Securities continue to grow in popularity, the Alert also provides transparency about future focus areas of Division examinations.

Indeed, the Division included financial technology (fintech) and innovation, including digital assets, in its 2021 examination priorities, as announced on March 4.[1] FINRA, too, is focused on digital assets. In the "2021 Report on FINRA's Examination and Risk Monitoring Program," FINRA outlines findings from examinations and provides considerations for member firms relating to outside business activities, communications, risk disclosure, and internal controls as they pertain to digital assets.[2] Given the SEC's attention to digital assets, FINRA, other regulators, and industry participants engaged in the digital asset space should be aware of, and prepared to respond to, inquiries that they may receive relating to digital assets.

With respect to **investment advisers**, the Alert states that examinations will focus on the following areas:

- ***Portfolio management.*** A review of an investment adviser's policies, procedures, and practices, relating to:
  - Classification of digital assets, including whether digital assets are classified as securities;
  - Due diligence on digital assets (*e.g.*, ensuring that the investment adviser understands the digital assets in which it transacts, wallets, devices or software used to interact with the relevant digital asset networks or applications, and the relevant liquidity and volatility of digital assets);
  - Evaluation and mitigation of risks related to trading venues and trade execution and settlement facilities;
  - Management of risks and complexities associated with "forked" (*i.e.*, a change in protocol in the underlying blockchain) and "airdropped" (*i.e.*, digital assets provided for free or in exchange for nominal tasks to generate wider interest) digital assets; and
  - Fulfillment of an investment advisers fiduciary duty regarding investment advice across all client types.
- ***Books and records.*** An examination of an investment adviser's books and records, including whether accurate books and records are kept for, among other things, trading activity in digital assets. The Alert notes that digital asset trading platforms vary in reliability and consistency for order execution, settlement methods, and post-trade recordation and notification, which an adviser should consider when designing its recordkeeping practices.
- ***Custody.*** An examination of an investment adviser's custody practices, including whether the investment adviser is subject to and if so, whether the investment adviser complies with the Custody Rule (Rule 206(4)-2 promulgated under the Advisers Act). Regardless of whether digital assets are stored, the staff will review:
  - Occurrences of unauthorized transactions;

- Controls around safekeeping of digital assets (*e.g.*, employee access to private keys and trading platform accounts);
- Business continuity plans, including private keys; and
- Reliability and security of software and platform providers used to interact with digital asset networks.

Custody of digital assets remains an area of scrutiny for the staff. At the same time, clear guidance on what custodial practices are sufficient to comply with the Custody Rule is lacking. Registrants should expect questions of the sort outlined in prior staff statements.[3] For example, what role do internal control reports, such as System and Organization Controls (SOC) 1 and SOC 2 reports (Type 1 and 2), play in an adviser's evaluation of potential digital asset custodians, and what role should they play? And do state-chartered trust companies that offer services as custodians of digital assets possess characteristics similar to those financial institutions the SEC identified as qualified custodians? If yes, to what extent?

- ***Disclosures.*** Examinations will include a review of disclosures to investors regarding the risks associated with digital assets. The review will consider all types of disclosures and statements made by investment advisers and their agents, including solicitations, marketing materials, regulatory brochures and supplements, and fund documents. In particular, the staff will assess disclosures on specific risks, including the complexities of the products and technology underlying such assets; technical, legal, market, and operational risks; price volatility; illiquidity; valuation; related-party transactions; and conflicts of interest.
- ***Pricing client portfolios.*** Examinations will include a review of the valuation methodologies utilized, including those used to determine principal markets, fair value, valuation after significant events, and recognition of forked and airdropped digital assets.
- ***Registration issues.*** Examinations will include a review of compliance matters related to investment adviser registration, including calculation of regulatory assets under management and classification of digital assets as securities. For private funds managed by investment advisers, the staff will examine whether a private fund must register as an investment company under the Investment Company Act of 1940, as amended, and if it is not registered, whether a private fund qualifies for certain exemptions from registration.

With respect to **broker-dealers**, the Alert states that examinations will focus on:

- ***Safekeeping of funds and operations.*** The staff will examine broker-dealers to understand operational activities, including operations unique to the safety and custody of Digital Asset Securities.
- ***Registration requirements.*** Examinations will include broker-dealers' and any affiliated entities' compliance with broker-dealer registration requirements.
- ***Anti-money laundering.*** The Alert notes that certain aspects of distributed ledger technology present unique challenges to the robust implementation of an anti-money laundering (AML) program. For example, the Alert notes that broker-dealers transacting in digital securities may not consistently conduct routine searches against the Specially Designated Nationals list maintained by the Office of Foreign Assets Control (OFAC) of the U.S. Department of Treasury. The Alert also notes that many broker-dealers transacting in digital assets have inadequate AML procedures, controls, and documentation regarding Digital Asset Securities.
- ***Offerings.*** Examinations will include a review of the due diligence performed by broker-dealers, as well as the disclosures made by broker-dealers to customers related to the offering of Digital Asset Securities, where broker-dealers participate in underwriting and private placement activity for Digital Asset Securities.
- ***Disclosure of conflicts of interest.*** Examinations will include a review of the existence and disclosures of conflicts of interest, and the compliance policies and procedures to address them. For example,

conflicts of interest may exist where broker-dealers operate in multiple capacities, including as trading platforms or proprietary traders of Digital Asset Securities on their own and other platforms.

- ***Outside business activities.*** The Alert notes that the staff observed instances of registered representatives of broker-dealers offering services related to digital assets apart from their broker-dealer employer. The Alert notes that FINRA-member broker-dealers must evaluate the activities of their registered persons to determine whether such activity is an outside business activity or outside securities activity and therefore should be subjected to the approval, supervision, and recordation of the broker-dealer.

With respect to **national securities exchanges**, the Alert states that examinations will focus on registration of exchanges and compliance with Regulation ATS.

With respect to **transfer agents**, the Alert states that examinations will focus on compliance with transfer agent rules promulgated by the SEC to facilitate prompt and accurate clearance and settlement of securities transactions.

Together, the Alert and the inclusion of digital assets in the 2021 Exam Priorities represents another step forward in the maturation of the digital asset economy. Digital assets present unique compliance and operational risks that financial industry participants need to address to uphold their contractual and legal obligations, and to safeguard client assets. As digital assets continue to gain mainstream adoption, it is critical, from a legal and business standpoint, that industry participants have robust compliance programs tailored to their businesses in digital assets.

Troutman Pepper brings extensive experience counseling investment advisers, broker-dealers, and other financial industry participants on all aspects of investment management, including digital assets. For questions, contact any of the authors of this quarterly update.

For a full copy of the Division's Report on Digital Asset Securities, click https://www.sec.gov/files/digital-assets-risk-alert.pdf.

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[1] According to the Division's press release announcing its examination priorities, examinations of market participants engaged with digital assets will continue to assess the following: 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. *See* https://www.sec.gov/news/press-release/2021-39.

[2] *See* https://www.finra.org/rules-guidance/guidance/reports/2021-finras-examination-and-risk-monitoring-program/communications-with-public.

[3] *See also* Staff Letter: Engaging on Non-DVP Custodial Practices and Digital Assets (Mar.12, 2019), available at https://www.sec.gov/investment/engaging-non-dvp-custodial-practices-and-digital-assets; and Staff Statement on WY Division of Banking's "NAL on Custody of Digital Assets and Qualified Custodian Status" (Nov. 9, 2020), available at https://www.sec.gov/news/public-statement/statement-im-finhub-wyoming-nal-custody-digital-assets.

SEC and SRO News

Changes at the SEC: Gary Gensler New Chairman of the SEC

02.03.21

On April 17, Gary Gensler was sworn into office as a member of the SEC by U.S. Senator Ben Cardin. President Joseph R. Biden nominated Mr. Gensler to chair the SEC on February 3, and the U.S. Senate confirmed him on April 14.

Previously, Mr. Gensler served as chair of the U.S. Commodity Futures Trading Commission, as senior advisor to U.S. Senator Paul Sarbanes in writing the Sarbanes-Oxley Act (2002), and acted as undersecretary of the Treasury for Domestic Finance and assistant secretary of the Treasury from 1997-2001.

Immediately before joining the SEC, Mr. Gensler worked as a professor at the MIT Sloan School of Management and served other roles with that institution. From 2017-2019, he acted as chair of the Maryland Financial Consumer Protection Commission, and prior to his public service, Mr. Gensler worked at Goldman Sachs.

Mr. Gensler earned his undergraduate degree in economics in 1978 and his MBA from The Wharton School, University of Pennsylvania in 1979.

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