

KIRKLAND & ELLIS

Kirkland AIM

SEC's Examination Division Issues Priorities for 2021

19 April 2021

On March 3, 2021, the SEC's Division of Examinations ("Exams") published its [Examination Priorities for 2021](#). Certain of the 2021 priorities are consistent with priorities noted in past years, such as a focus on investment risks and conflicts of interest disclosure, a continued interest in whether an investment adviser has fulfilled its duty of care and duty of loyalty as a fiduciary, and heightened attention to cybersecurity and information security risks. Exams will also continue to prioritize examinations of investment advisers that have not been examined for a number of years or who have never been examined.

Of specific interest to private fund sponsors will be a focus by Exams on:

- portfolio valuations and impacts on advisory fees;
- any material impact caused by recent economic conditions to portfolio companies held by private funds (e.g., real estate related investments);
- conflicts around adviser led fund restructurings, including stapled secondary transactions;
- adequacy of disclosure on and compliance with regulatory requirements for cross trades, principal investments or distressed sales;
- disclosure to investors in private funds with a concentration on structured products (e.g., collateralized loan obligations and mortgage backed securities) focusing in particular on whether the disclosure adequately describes the risk associated with a fund holding non-performing loans or loans with higher default risk;
- funds with a focus on, or referred to as, sustainable, socially responsible, impact investing or environmental, social and governance ("ESG");
- preferential treatment of certain investors in funds that have experienced liquidity issues, e.g., the imposition of gates or suspensions on fund withdrawals;

- controls around the use of alternative data (e.g., use of data analytics tools) as part of an adviser's business and investment decision-making process, including whether appropriate controls are in place around the receipt, use and creation of such information; and
- exposure to and engagement with digital assets.

Related Professionals

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Related Services

Practices

- Transactional
- Investment Funds

Suggested Reading

- 19 April 2021 Kirkland AIM Risk Alert: SEC's Examination Division Issues ESG Risk Alert for Investment Advisers
- 29 January 2021 Kirkland AIM 2021 Private Fund Manager U.S. SEC/CFTC Filing Deadlines
- 30 December 2020 Kirkland AIM OCIE Issues Observations on Investment Adviser Compliance Programs; Changes to Private Offering Rules under Regulation D

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