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Client Alert

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Widening the Aperture Beyond Retail-Focused Advisers

SEC Enforcement and Exams Likely to Focus More on Private Funds in the New Administration

For the next several weeks and months, intense focus will be trained on determining the priorities of the Biden administration. We believe that at the Securities and Exchange Commission ("SEC"), the new administration will ramp up examinations and investigations of investment advisers, and specifically advisers to private funds.

The industry has certainly been in growth mode. By the SEC's own calculations, the number of private funds increased by nearly one third during the past four years (from 26,840 funds in the first quarter of 2016 to 34,858 in the first quarter of 2020), and the aggregate net asset value increased likewise (from $6.9 trillion in the first quarter of 2016 to $9.5 trillion in the first quarter of 2020).[1]

As is the case across the federal government, the SEC leadership is in flux. President Biden has nominated Gary Gensler, who previously led the Commodity Futures Trading Commission from 2009 to 2014, to become the new SEC chairman.[2] But even with a number of leadership posts to be filled in the weeks and months to come, we expect the new team will identify policing private fund advisers among their priorities. We also believe the trajectory of the Commission's work and guidance over the past several years relating to private fund advisers reveals how many of their early priorities and initiatives will take shape.

This article reviews the SEC's recent work and guidance in this area and identifies the key points that private fund advisers should address before examiners and enforcement attorneys come calling.

FOCUS ON FUNDS

In fiscal year 2020, enforcement actions involving investment advisers and investment companies comprised 21% of the standalone actions brought by the SEC's Division of Enforcement ("Enforcement").[3] In its annual report for the fiscal year 2020 (“2020 Annual Report”), Enforcement described a “Focus on Investment Professionals,” emphasizing advisers’ obligations to disclose material conflicts of interest to clients and to be transparent about fee structures.[4]

The SEC’s Division of Examinations (“Examinations”) — until recently called the Office of Compliance Inspections and Examinations — was also very active in examining investment advisers during 2020, despite the challenges imposed by COVID-19.[5] Examinations’ staff conducted more than 2,950 exams, including approximately 15 percent of all SEC-registered investment advisers.[6] Although slightly lower than the number of exams completed in the prior year (3,089 exams),[7] it is still a very significant number given disruptions from the pandemic and shows the Staff’s ability to continue executing on its exam program even during this time of remote work.

Based on observations from its exams, Examinations published ten risk alerts in 2020, including one focused specifically on observations from exams of private fund advisers.[8] (For more detailed coverage of that June 2020 risk alert, see our prior client alert covering that development.). Examinations’ risk alerts have chronicled a number of frequently observed deficiencies involving: conflicts of interest, fees and expenses, supervision issues, and cybersecurity, among other things.[9]

For 2021, we expect Examinations will increasingly prioritize private fund advisers, as the pendulum swings away from the recent emphasis on retail investors. That will likely lead Examinations staff to refer an increased number of private funds to the SEC’s Enforcement staff for investigations. Additionally, advisers will need to mind the Commission’s 2019 interpretation regarding investment advisers’ fiduciary duty to clients.[10] That guidance reaffirmed that advisers have broad duties of care and loyalty, and we expect examiners and Enforcement attorneys will be searching for instances where advisers have strayed from that renewed guidance. Investment trends and broader priorities of the incoming Democratic administration will also drive exams and enforcement — one example of which will be a new focus on environmental, social, and governance (“ESG”) topics.

Overall, we expect to see the following issues come under particular scrutiny, each of which we address in more detail below:

- Conflicts of interests, fees and expenses, and cybersecurity;
- Practices of advisers managing funds focused on ESG criteria, which have gained increased popularity among U.S. investors;[11]
- Areas particularly affected by the COVID-19 pandemic, such as updating policies and procedures to fit the current work environment and remote supervision of personnel;
- Heightened controls around material nonpublic information;
- Valuation of funds focused on industries impacted by the pandemic; and
- Securities investments that finance Chinese military companies.

CONFLICTS OF INTEREST

Conflicts of interest will continue to be an area of focus for the SEC. The staff perennially assesses whether firms have identified, addressed, and fully and fairly disclosed all material conflicts of interest that could affect the advisory relationship. And if the pendulum swings back toward where the Obama administration left off, that would also point to a likely uptick in enforcement actions against advisers for conflict of interest and fee allocation issues, which were a defining characteristic of SEC enforcement toward the end of that administration.[12]

From an enforcement perspective, the SEC has consistently emphasized the importance of making adequate disclosures. Enforcement has brought conflict-of-interest cases involving side compensation arrangements and undisclosed adviser compensation.[13]

In the exams context, SEC staff reported that failures to disclose conflicts of interest between private fund advisers and their funds remained one of the most common deficiencies observed in 2020.[14] In particular, Examinations highlighted inadequate disclosures concerning: (1) allocation of investment opportunities among clients; (2) different clients investing in the same portfolio company at various levels of the capital structure; (3) financial relationships between the adviser and either investors or clients; (4) preferential liquidity rights; (5) interests in recommended investments; (6) investments made by co-investment vehicles and other co-investors; (7) agreements with service providers; (8) failures to disclose fund restructurings; and (9) failures to adequately disclose conflicts involving buying and selling between fund investors (cross-transactions). In particular, Examinations identified instances where the price used for securities transfers between client accounts disadvantaged either the selling or purchasing client.[15] The SEC has also emphasized the dangers of framing particular conflicts as hypothetical. Disclosing that an adviser *may* have a conflict, for example, is not adequate in circumstances where that conflict actually does exist.[16] Instead, disclosures should describe the actual conflict and how the investment adviser plans to manage it.

Going forward, SEC-registered fund advisers should add these issues to the checklist for consideration when drafting or updating fund documents. Effective controls must then be implemented to ensure that conflicts of interest are disclosed as required and that the fund adviser acts in accordance with those disclosures.

FEES AND EXPENSES

The transparency of fee structures was also identified as an area of enforcement concern in Enforcement’s 2020 Annual Report. The SEC reached settlements with several private fund advisers in 2020 concerning failures to fully disclose or obtain consent regarding costs of certain services, misallocation of expenses related to co-investments, as well as improper charges concerning performance fees.[17]

Examinations also alerted firms about deficiencies and risks relating to fees and expenses.[18] Based on Examinations’ guidance, we expect examiners to continue scrutinizing allocation issues, such as inaccurate allocation of fees and expenses among funds, failing to allocate expenses consistent with disclosure to investors, and charging clients for expenses that were not permitted by operating agreements.

Additionally, Examinations recently highlighted that it will be looking at revenue-sharing arrangements between investment advisers and issuers or service providers to ensure that these agreements are accurately disclosed to investors.[19] Other issues highlighted by the staff involve: (1) failures to disclose adequately the role and compensation of certain non-employees providing services to the funds; (2) overcharging of management fees and carried interest; and (3) other issues concerning fees and fee offsets, such as failures to maintain adequate procedures and properly handle fees received from portfolio companies.[20] For example, examiners might assess whether a fund adviser has calculated fee offsets consistent with disclosures, failed to provide the fee offset at all, improperly allocated fees among clients, or accelerated the portfolio company’s monitoring fees without adequate disclosure.

CYBERSECURITY

Enforcement has brought several cases in recent years highlighting the importance of cybersecurity. Those cases have involved failures to keep adequate controls around customer accounts and private information, to maintain policies and procedures reasonably designed to protect customer data, and to guard against cyber threats that prey on lax internal accounting controls.[21]

Cybersecurity has also been a particular area of focus for SEC examiners over the past several years, and we expect that to continue. In 2020, Examinations highlighted an increase in the number of ransomware attacks on registrants' service providers, along with an increase in the sophistication of attacks on registrants themselves.[22] Although there is no "one size fits all" approach to cybersecurity threats, Examinations provided observations to assist market participants in their consideration of how to enhance cybersecurity preparedness and operational resiliency to address ransomware attacks such as: (1) incident response and resiliency policies, procedures and plans; (2) operational resiliency; (3) awareness and training programs; (4) vulnerability scanning and patch management; (5) access management; and (6) perimeter security.[23]

Additionally, Examinations encouraged registrants to consider reviewing and updating their Regulation S-P and Regulation S-ID policies and programs to address, among other things, the emergent risk of credential stuffing, and to evaluate current practices and limitations.[24] Examinations staff spotlighted numerous practices that firms have implemented to help protect client accounts, including: (1) periodic review of policies and programs; (2) use of Multi-Factor Authentication; (3) use of Completely Automated Public Turing test to tell Computers and Humans Apart ("CAPTCHA"); (4) implementation of controls to detect and prevent credential stuffing attacks; (5) surveillance of the dark web for lists of leaked user IDs and passwords, and (6) performing tests to evaluate whether current user accounts are susceptible to credential stuffing attacks.[25]

ESG FUND INVESTMENTS, DISCLOSURES

We also expect that Examinations will prioritize reviewing funds' actual investment holdings against their ESG-related disclosures, policies, and procedures. As suggested by SEC staff in October 2020, the goal would be to assess whether firms are implementing their strategies consistent with the disclosures provided to investors.[26]

Current SEC Acting Chair Lee spoke in November 2020 about the intersection between climate change risk and financial risks and vulnerabilities.[27] Lee urged the SEC to "focus on climate risk as systemic risk" and proposed numerous suggestions for the SEC to consider, including: (1) the design of a disclosure regime that would ensure financial institutions provide accurate and reliable information regarding their exposure to climate risk, (2) issuing rules regarding the policies and procedures investment advisers would need to maintain and implement for ESG investments, and (3) mapping climate risks to GAAP.[28]

During the past several years, U.S. markets have also seen an increase in popularity of funds focused on ESG criteria like sustainable investing, impact investing, and socially responsible investing. When structuring portfolios, investment advisers must ensure that their positions are consistent with their disclosures.

This is an area where we expect guidance from the SEC under the Biden Administration, given the focus on environmental and social issues the President showed during his campaign and through the senior-level advisor appointments that have been announced to date.[29] While the SEC generally shies away from prescribing what sectors or investment types investors should purchase, the Commission will scrutinize whether investors are getting what they were told.

COVID-19 COMPLIANCE PROGRAM EFFECTIVENESS

As the pandemic continues, Examinations has alerted investment advisers of pandemic-related risks observed during exams in 2020 and recommended that firms review, enhance, and adjust their policies and procedures to the firm's current operation framework and risks.

Specifically, Examinations has encouraged firms to review and make any necessary changes to their policies and procedures around disbursements to investors, including where investors are taking unusual or unscheduled withdrawals from their accounts due to surprises caused by the pandemic.

The staff has also emphasized the challenges presented by the current remote work environment. Examinations highlighted various changes caused by the pandemic that may need to be considered and reevaluated by firms, including: (1) policies and procedures around disbursements to investors; (2) supervisory frameworks generally, as supervisors have lesser visibility into the conduct of supervised persons working remotely; (3) supervised persons operating in markets with greater volatility and therefore increased risks of fraud; (4) limitations on the scope of diligence firms can conduct on third-party managers, particular investments, and portfolio holding companies; and (5) communications and transactions taking place outside the firm's own systems, as employees work remotely and use personal devices. Peter Driscoll, the Director of Examinations, has emphasized that firms need to adapt processes such as remote due diligence on service providers and sub-advisers, which will require considerable attention by advisory firms. [30] He also highlighted that new technology adopted to address needs caused by the pandemic may bring new risks that need to be assessed by compliance departments. [31]

The unprecedented and ongoing COVID-19 pandemic, of course, has also emphasized the additional potential vulnerabilities involved in cybersecurity and investor data protection.[32] As firms continue to operate in a remote-work environment, there must be ongoing efforts to protect sensitive information and guard against the improper access of firm systems. Moreover, firms must devote sufficient resources to their compliance departments and make sure they have access to all necessary information, as recently highlighted by Examinations.[33]

HEIGHTENED CONTROLS AROUND MATERIAL NONPUBLIC INFORMATION DURING THE PANDEMIC

Enforcement has emphasized the importance of maintaining market integrity amid COVID-19 and an associated increase in market volatility. In March 2020, the co-Directors of Enforcement issued a statement encouraging broker-dealers, investment advisers, and other registrants to ensure that disclosure controls and procedures were in place to protect against any misuse of material nonpublic information.[34] Due to the "dynamic circumstances" brought on by the pandemic, such as the increased likelihood that earnings reports or required SEC disclosure filings are delayed, Enforcement holds the view that "corporate insiders are regularly learning new material nonpublic information that may hold an even greater value than under normal circumstances."[35] Firms should be particularly mindful of their obligations to keep such information confidential, especially as they navigate the remote work environment and its affiliated risks around loss of sensitive information and improper access to firm systems and accounts.[36] Examiners will have the Commission's public guidance on this topic in mind when conducting exams this year.

VALUATION OF INVESTMENTS IMPACTED BY THE PANDEMIC

Similarly, based on observations from its National Exam Program, Examinations encouraged firms to validate the accuracy of investment valuations used, in light of this increased potential for misconduct.[37] For private funds, in particular, Examinations cautioned against failures to value client assets in accordance with valuation processes.[38] This should not come as a surprise, as Examinations has consistently raised valuation issues as an area of concern. In 2014, then-Director of Examinations Andrew J. Bowden gave a speech that highlighted several commonly observed valuation issues, including: (1) use of a different valuation methodology than is disclosed to investors, (2) cherry-picking comparables or adding back inappropriate items to EBITDA, and (3) changing the valuation methodology from period to period.[39] Then-Director Bowden also noted that Examinations would be reviewing marketing materials for any inconsistencies or misrepresentations — an issue that was further highlighted in an Examinations Risk Alert a few years later in 2017.[40] Recent market volatility has shined a brighter spotlight on this issue, and firms should be duly prepared during upcoming exams.

FOREIGN FINANCING

Firms should also be aware of an emerging risk area with regard to foreign investments. Examinations recently issued a Risk Alert to notify market participants of former President Trump's Executive Order ("EO 13959") on investments in securities associated with Communist Chinese military companies (“CCMCs”).[41] Pursuant to EO 13959, and beginning January 11, 2020, individuals and entities are prohibited from purchasing any publicly traded securities or derivatives of CCMCs as identified by the Treasury Department’s Office Foreign Asset Control (OFAC) or the Department of Defense.[42]

Examinations has encouraged firms to assess the impact of EO 13959 on their investments and related processes. As a newly identified area of interest, firms should also continue to monitor and remain apprised of any updates to this issue by OFAC.[43] Absent an about-face by the incoming SEC leadership, we expect this topic to be on examiners’ checklist for exams in the coming year.

CONCLUSION

As the new administration settles in, all signs at the SEC point to an increased emphasis on private fund advisers. Following four years of focus on prioritizing the protection of retail investors, we expect the new administration will widen the aperture, with private fund advisers increasingly finding themselves in view of Enforcement as well as Examinations.

The staff’s enforcement and exam activities in 2020 suggest where the new SEC leadership will start. To prepare, firms should focus on maintaining adequate disclosures, policies, and procedures, especially in areas involving conflicts of interest, ESG criteria, cybersecurity, and day-to-day processes most impacted by the pandemic. Now is the time to tighten up practices, before exam deficiencies in this area begin turning with increasing frequency into enforcement investigations.

[1] *See* DIV. OF INVESTMENT MANAGEMENT, U.S. SEC. EXCH. COMM’N, Private Fund statistics, 2020 Q1 (Dec. 10, 2020), available at https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2020-q1.pdf; 2016 Q1 (Oct. 11, 2016), available at https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2016-q1.pdf. These reports aggregate data reported by private funds on Form ADV and Form PF, the numbers comprise data from private equity funds, hedge funds, real estate funds, liquidity funds, securitized asset funds, venture capital funds and other private funds.

[2] *See* Financial Times, *Biden names Gensler as SEC head in push towards more scrutiny* (Jan. 18, 2021), available at https://www.ft.com/content/a1ddd082-a253-4148-975a-1ec85b5e94d0; the Division of Enforcement recently announced its Acting Director of Enforcement, *see* U.S. SEC. EXCH. COMM'N, Press Release 2021-15, *Melissa Hodgman Named Acting Director of Division of Enforcement* (Jan. 22, 2021), available at https://www.sec.gov/news/press-release/2021-15.

[3] DIV. OF ENF'T, U.S. SEC. EXCH. COMM'N, ANNUAL REPORT 16 (2020), available at https://www.sec.gov/files/enforcement-annual-report-2020.pdf. In the fiscal year 2020, the Division of Enforcement reported 405 cases, while in the FY 2019 the number was 526. *See id.* at 33. Overall, the number of cases involving investment advisers and investment companies was down about 23% last year, compared to the 2019, although, the numbers from 2019 were higher as a result of the SEC's Share Class Selection Disclosure initiative. While the number of cases brought was down, the SEC obtained a record amount of disgorgement and penalties , $4.68 billion, based in part on a single settlement involving an unregistered initial coin offering that by itself resulted in returning more than $1.2 billion to investors and an $18.5 million civil penalty. *See* Press Release 2020-146, *Telegram to Return $1.2 Billion to Investors and Pay $18.5 Million Penalty to Settle SEC Charges* (June 26, 2020), available at https://www.sec.gov/news/press-release/2020-146.

[4] *See* DIV. OF ENF'T, U.S. SEC. EXCH. COMM'N, ANNUAL REPORT 15 (2020).

[5] The SEC renamed OCIE the Division of Examinations on December 17, 2020. *See* U.S. SEC. EXCH. COMM'N, *Statement on the Renaming of the Office of Compliance Inspections and Examinations to the Division of Examinations*. (Dec. 17, 2020), available at https://www.sec.gov/news/public-statement/joint-statement-division-examinations. OCIE was created 25 years ago and is now the second largest division at the SEC, behind the Division of Enforcement.

[6] Peter B. Driscoll. *Opening Remarks at National Investment Adviser/Investment Company Compliance Outreach 2020* (Nov. 19, 2020), available at https://www.sec.gov/news/speech/driscoll-role-cco-2020-11-19.

[7] *See* OCIE, U.S. SEC. EXCH. COMM'N, Examination Priorities (Jan. 7, 2020), available at https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2020.pdf.

[8] *See* OCIE Risk Alert, *Observations from Examinations of Investment Advisers Managing Private Funds* (June 23, 2020), available at https://www.sec.gov/files/Private%20Fund%20Risk%20Alert_0.pdf.

[9] In addition to those areas, we noted that deficiencies related to compliance programs have been among the most common observed by Examinations both for investment advisers and investment companies. We expect that the staff will increase scrutiny over the resources allocated and authority granted to compliance departments in 2021. They may also look at compliance annual reviews and at common deficiencies or weaknesses with establishing, implementing, or appropriately tailoring a firm's written policies and procedures. *See* OCIE Risk Alert, *OCIE Observations: Investment Adviser Compliance Programs* (Nov. 19, 2020), available at https://www.sec.gov/files/Risk%20Alert%20IA%20Compliance%20Programs_0.pdf; Peter B. Driscoll. *Opening Remarks at National Investment Adviser/Investment Company Compliance Outreach 2020* (Nov. 19, 2020), available at https://www.sec.gov/news/speech/driscoll-role-cco-2020-11-19.

[10] *See* U.S. SEC. EXCH. COMM'N, Rel. No. IA-5248, *Commission Interpretation Regarding Standard of Conduct for Investment Advisers* (Jun. 5, 2019), available at https://www.sec.gov/rules/interp/2019/ia-5248.pdf.

[11] Morningstar, *Sustainable Funds U.S. Landscape Report* (Feb. 14, 2020), available at https://www.morningstar.com/lp/sustainable-funds-landscape-report; Financial Times, *Record sums deployed into sustainable investment funds* (Jan. 19, 2020), available at https://www.ft.com/content/6ff72af4-5d76-11ea-ac5e-df00963c20e6.

[12] *See* Mary Jo White, Chair, U.S. Sec. Exch. Comm'n, Testimony on "Examining the SEC's Agenda, Operations, and FY 2018 Budget Request" Before the Committee on Financial Services United States House of Representatives (Nov. 15, 2016), available at https://www.sec.gov/news/testimony/white-testimony-sec-agenda-fy2018-budget-request.html (describing an area of increased focus for the SEC with "'first-of-their-kind' actions for failures to report material compliance matters to fund boards and the improper allocation of expenses by private equity advisers," as well as the "eleven enforcement actions related to private equity advisers breaching their fiduciary duties by charging undisclosed fees and expenses, shifting and misallocating expenses, and failing to adequately disclose conflicts of interest"); *see, e.g.*, *In re Cherokee Investment Partners LLC and Cherokee Advisers LLC*, (November 5, 2015, Rel. No. 4258), available at https://www.sec.gov/litigation/admin/2015/ia-4258.pdf.

[13] *See In the Matter of Naya Ventures, LLC,* (March 12, 2020, Rel. No. 5461), available at https://www.sec.gov/litigation/admin/2020/ia-5461.pdf (note that Naya Ventures is a Texas exempt-reporting adviser); *SEC v. Criterion Wealth Mgmt. Ins. Services, Inc. et al.* (C.D. Cal., February 13, 2020, Rel. No. 24738), available at https://www.sec.gov/litigation/complaints/2020/comp24738.pdf; *In the Matter of Sica Wealth Management, LLC, et al.*, (February 27, 2020, Rel. No. 5453), available at https://www.sec.gov/litigation/admin/2020/ia-5453.pdf.

[14] *See* OCIE Risk Alert, *Observations from Examinations of Investment Advisers Managing Private Funds* (June 23, 2020), available at https://www.sec.gov/files/Private%20Fund%20Risk%20Alert_0.pdf; *see also* OCIE Risk Alert, *Observations from Examinations of Investment Advisers: Compliance, Supervision, and Disclosure of Conflicts of Interest* (July 23, 2019), available at https://www.sec.gov/files/OCIE%20Risk%20Alert%20-%20Supervision%20Initiative.pdf.

[15] *See* Client Alert, *OCIE'S Latest Risk Alert: Another Warning Shot for Private Fund Advisers* (July 21, 2020), available at https://www.kslaw.com/news-and-insights/ocies-latest-risk-alert-another-warning-shot-for-private-fund-advisers; *See* OCIE Risk Alert, *Observations*

from Examinations of Investment Advisers Managing Private Funds (June 23, 2020), available at https://www.sec.gov/files/Private%20Fund%20Risk%20Alert_0.pdf.

[16] See *In the Matter of Monomoy Capital Mgmt., L.P.* (April 22, 2020, Rel. No. 5485), available at https://www.sec.gov/litigation/admin/2020/ia-5485.pdf and https://www.sec.gov/enforce/ia-5485-s (stating that Monomoy's disclosures that "'under specific circumstances, certain Monomoy operating professionals may provide services to portfolio companies that typically would otherwise be performed by third parties,' and that 'Monomoy may be reimbursed' for costs related to such services" were not full and fair disclosures).

[17] See *In the Matter of Monomoy Capital Mgmt., L.P.* (April 22, 2020, Rel. No. 5485), available at https://www.sec.gov/litigation/admin/2020/ia-5485.pdf and https://www.sec.gov/enforce/ia-5485-s (noting that an exam contributed to the Monomoy investigation); *In the Matter of Rialto Capital Management, LLC* (August 7, 2020, Rel. No. 5558), available at https://www.sec.gov/litigation/admin/2020/ia-5558.pdf; *In the Matter of Finser Int'l Corp., et al.* (September 24, 2020, Rel. No. 5593), available at https://www.sec.gov/litigation/admin/2020/ia-5593.pdf.

[18] *See* Client Alert, *OCIE'S Latest Risk Alert: Another Warning Shot for Private Fund Advisers* (July 21, 2020), available at https://www.kslaw.com/news-and-insights/ocies-latest-risk-alert-another-warning-shot-for-private-fund-advisers; *See* OCIE Risk Alert, *Observations from Examinations of Investment Advisers Managing Private Funds* (June 23, 2020), available at https://www.sec.gov/files/Private%20Fund%20Risk%20Alert_0.pdf.

[19] *See* Peter B. Driscoll et al., U.S. Sec. Exch. Comm'n, Speech at the PLI Conference: The SEC Speaks in 2020 Program (Oct. 8, 2020).

[20] *See* OCIE Risk Alert, *Observations from Examinations of Investment Advisers Managing Private Funds* (June 23, 2020), available at https://www.sec.gov/files/Private%20Fund%20Risk%20Alert_0.pdf.

[21] *See In the Matter of Voya Financial Advisors, Inc* (Sept. 26, 2018, Rel. No. 5048), available at https://www.sec.gov/litigation/admin/2018/34-84288.pdf; *In the Matter of Morgan Stanley Smith Barney LLC* (Jun. 8, 2016, Rel. No. 4415), available at https://www.sec.gov/litigation/admin/2016/34-78021.pdf; *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding Certain Cyber-Related Frauds Perpetrated Against Public Companies and Related Internal Accounting Controls Requirements*, Exchange Act Release No. 844429 (October 16, 2018), available at https://www.sec.gov/litigation/investreport/34-84429.pdf (reporting findings from an investigation focused on nine public companies and certain cyber-related frauds involving spoofed emails that tricked employees into sending nearly a combined $100 million to outside parties; the SEC assessed whether the victim companies may have violated the federal securities laws by failing to have a sufficient system of internal accounting controls).

[22] *See* OCIE Risk Alert, *Cybersecurity: Ransomware Alert* (July 10, 2020), available at https://www.sec.gov/files/Risk%20Alert%20-%20Ransomware.pdf.

[23] *Id.*

[24] *See* OCIE Risk Alert, *Cybersecurity: Safeguarding Client Accounts against Credential Compromise* (Sept. 15, 2020), available at https://www.sec.gov/files/Risk%20Alert%20-%20Credential%20Compromise.pdf.

[25] *Id.*

[26] Peter B. Driscoll et al., U.S. Sec. Exch. Comm'n, Speech at the PLI Conference: The SEC Speaks in 2020 Program (Oct. 8, 2020).

[27] Allison Herren Lee, Acting Chair, U.S. Sec. Exch. Comm'n, *Keynote Remarks at PLI's 52nd Annual Institute on Securities Regulation* (Nov. 5, 2020), available at https://www.sec.gov/news/speech/lee-playing-long-game-110520.

[28] *Id.*

[29] Financial Times, *Record sums deployed into sustainable investment funds* (Jan. 19, 2020), available at https://www.ft.com/content/6ff72af4-5d76-11ea-ac5e-df00963c20e6; Barrons, *How a Biden Administration Will Boost ESG and Impact Investing* (Nov. 9, 2020), available at https://www.barrons.com/articles/a-10-acre-equestrian-estatewith-plenty-of-room-to-buildto-hit-market-in-california-01608650730; *see also* NYT, *With John Kerry Pick, Biden Selects a 'Climate Envoy' With Stature* (Nov. 23, 2020), available at https://www.nytimes.com/2020/11/23/climate/john-kerry-climate-change.html.

[30] Peter B. Driscoll. *Opening Remarks at National Investment Adviser/Investment Company Compliance Outreach 2020* (Nov. 19, 2020), available at https://www.sec.gov/news/speech/driscoll-role-cco-2020-11-19.

[31] *Id.*

[32] *See* Client Alert, *SEC Examiners Warn of COVID-Related Compliance Risks for Broker-Dealers and Investment Advisers* (Aug. 18, 2020), available at https://www.kslaw.com/news-and-insights/sec-examiners-warn-of-covid-related-compliance-risks-for-broker-dealers-and-investment-advisers.

[33] *See* OCIE Risk Alert, *OCIE Observations: Investment Adviser Compliance Programs* (Nov. 19, 2020), available at https://www.sec.gov/files/Risk%20Alert%20IA%20Compliance%20Programs_0.pdf; Peter B. Driscoll, *Opening Remarks at National Investment Adviser/Investment Company Compliance Outreach 2020* (Nov. 19, 2020), available at https://www.sec.gov/news/speech/driscoll-role-cco-2020-11-19.

[34] Public Statement, Statement from Stephanie Avakian and Steven Peikin, Co-Directors of the SEC's Division of Enforcement, Regarding Market Integrity (Mar. 23, 2020), available at https://www.sec.gov/news/public-statement/statement-enforcement-co-directors-market-integrity.

[35] *Id.*

[36] *See* OCIE Risk Alert, *Select COVID-19 Compliance Risks and Considerations for Broker-Dealers and Investment Advisers* (Aug. 12, 2020), available at https://www.sec.gov/files/Risk%20Alert%20-%20COVID-19%20Compliance.pdf.

[37] *See* OCIE Risk Alert, *Select COVID-19 Compliance Risks and Considerations for Broker-Dealers and Investment Advisers* (Aug. 12, 2020), available at https://www.sec.gov/files/Risk%20Alert%20-%20COVID-19%20Compliance.pdf.

[38] *See* OCIE Risk Alert, *Observations from Examinations of Investment Advisers Managing Private Funds* (June 23, 2020), available at https://www.sec.gov/files/Private%20Fund%20Risk%20Alert_0.pdf.

[39] Andrew J. Bowden, Dir., Office of Compliance Inspections and Examinations, Speech at Private Equity International Private Fund Compliance Forum 2014 (May 6, 2014), available at https://www.sec.gov/news/speech/2014--spch05062014ab.html.

[40] *See id.*; OCIE Risk Alert, *The Most Frequent Advertising Rule Compliance Issues Identified in OCIE Examinations of Investment Advisers* (Sept. 14, 2017), available at https://www.sec.gov/ocie/Article/risk-alert-advertising.pdf.

[41] *See* Division of Examinations Risk Alert, *Executive Order on Securities Investments that Finance Communist Chinese Military Companies* (Jan. 6, 2021), available at https://www.sec.gov/files/risk-alert-securities-investments-finance-communist-chinese-military-companies.pdf.

[42] Exec. Order No. 13959, 85 Fed. Reg. 73185 (Nov. 17, 2020), available at https://home.treasury.gov/system/files/126/13959.pdf.

[43] *See e.g.*, U.S. Dep't of Treasury, *Publication of Communist Chinese Military Companies Frequently Asked Questions* (Jan. 6, 2021), available at https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20210106.