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For more information,
contact:

M. Alexander Koch (Alec)

+1 202 626 8982

akoch@kslaw.com

Carmen Lawrence

+1 212 556 2193

clawrence@kslaw.com

Conrad C. Axelrod

+1 212 556 2314

caxelrod@kslaw.com

Richard H. Walker

+1 202 626 2620

rwalker@kslaw.com

Rafaela Cálcena

+1 212 556 2353

rcalcena@kslaw.com

Christina Kung

+1 202 626 9125

ckung@kslaw.com

King & Spalding

Washington, D.C.

1700 Pennsylvania Avenue,
NW

Washington, D.C. 20006-4707

Tel: +1 202 737 0500

New York

1185 Avenue of the Americas
New York, New York 10036-
4003

Tel: +1 212 556 2100

SEC Division of Examinations – 2021 Priorities

On March 3, 2021, the SEC’s Division of Examinations (“Division” or “EXAMS”) published its annual Examination Priorities Report, which identified eight primary areas of focus for Fiscal Year 2021.¹ While many of these priorities overlap with those identified in the past,² there also were some notable additions, including a focus on the effects of the COVID-19 pandemic, broker-dealers’ compliance with Regulation Best Interest (“Reg. BI”), and whether funds purporting to implement ESG (Environmental, Social, and Governance) investment strategies have been operating in a manner consistent with their disclosures to investors.

The pandemic has created a number of new challenges both to the firms and the SEC Staff related to the remote work environment, including potential vulnerabilities involved in cybersecurity and investor data protection, supervisory frameworks, and reviewing and adjusting policies and procedures. Despite the disruptions from COVID-19, the Division was very active in examining investment advisers and broker-dealers during 2020. EXAMS’ staff conducted 2,952 exams in total, including 15 percent of all SEC-registered investment advisers.³ Although the total number of exams completed in 2020 is slightly lower than the prior year (3,089 exams), it is still a significant number given obstacles caused by the pandemic. The broker-dealer and exchange examination program conducted over 330 exams of broker-dealers in 2020, which is only slightly lower than the number in 2019 (over 350 exams).⁴ The Division highlighted, though, that the number of Registered Investment Advisers (“RIA”) continued to increase, as well as the complexity of the industry, which may create a risk that the Division lacks sufficient resources to cover the RIA space adequately.

EXAMS also established an Event and Emerging Risks Examination Team (“EERT”) in 2020 to provide faster responses to emerging and exigent risk areas by proactively engaging with financial firms regarding emerging threats and current market events and mobilizing to provide expertise and resources on critical matters to the regional offices as necessary, as part of the overall modernization of the Division. This new



resource likely will assist EXAMS in its role as the “eyes and ears” of the Commission.

This Alert provides an overview of EXAMS’ stated priorities, which include the following:

1. Protection of retail investors;
2. Information security and operational resiliency;
3. Financial technology and digital assets;
4. Anti-Money Laundering (“AML”);
5. LIBOR transition;
6. Additional areas of focus for investment advisers and investment companies;
7. Additional areas of focus for broker-dealers and municipal advisors; and
8. Market infrastructure.

PROTECTION OF RETAIL INVESTORS

Standards of Conduct

EXAMS has expressed a continued commitment to the protection of retail investors, particularly with regard to standards of conduct as guided by Reg. BI, the Interpretation Regarding Standard of Conduct for Investment Advisers, and Form CRS.⁵ Reg. BI, implemented in 2020, established a new standard of conduct for broker-dealers and associated persons of broker-dealers which requires the satisfaction of four obligations: Disclosure Obligation, Care Obligation, Conflict of Interest Obligation, and Compliance Obligation.⁶ EXAMS will prioritize examinations of Reg. BI in 2021, with a focus on (1) determining whether broker-dealers are making recommendations that are reasonably believed to be in the customers’ best interests; (2) evaluating compliance processes and modifications to product offerings, including enhanced transaction testing; and (3) evaluating firm policies and procedures such as those designed to comply with other elements of Reg. BI or regarding the identification of conflicts of interest.⁷ This focus on Reg BI comes in the wake of the fact that the Commission was divided when the rule was enacted, there have been delays and operational costs to fully implement the rule, opponents to the rule who believe it does not provide adequate protection have remained vocal, and the Chair of the House Financial Services Committee, Maxine Waters, sent a lengthy letter to President Biden calling for, among other things, Reg BI to be rescinded — all of which is likely to create pressure on the SEC to make sure that the rule has been fully implemented and the industry is compliant.⁸

The Interpretation Regarding Standard of Conduct for Investment Advisers confirmed and clarified the fiduciary duties of care and loyalty that RIAs owe to their clients. Assessing whether RIAs have fulfilled this obligation will remain a priority for EXAMS in 2021. This will involve assessing whether RIAs have provided advice to clients that (1) is in the best interest of their clients, including whether account or program types continue to be in their clients’ interest; (2) based on their clients’ objectives; and (3) involve elimination or full and fair disclosure of all conflicts of interest.⁹

EXAMS also plans to prioritize examinations of broker-dealer and RIA compliance with Form CRS obligations. Form CRS requires broker-dealers and RIAs to provide a client relationship summary with information about the firm to retail investors.¹⁰

Frauds, Sales Practices, and Conflicts

Given recent market volatility and industry pressures that may have affected firms’ revenues, EXAMS noted a potential for increased financial stress on firms that could then lead to increased instances of fraudulent conduct.¹¹ With this in mind, EXAMS will focus this year on assessing: (1) whether broker-dealers are making appropriate recommendations to



seniors and retirement communities, teachers, military personnel, and individuals saving for retirement; (2) specific types of recommendations such as those regarding account type, conversions, rollovers, sales practices, and complex products, including the fulfillment of compliance obligations involved in providing investors access to complex strategies; (3) compliance with changes to the definition of “accredited investor” when recommending and selling private offerings; (4) disclosures regarding conflicts of interest, with an emphasis on fees and expenses, along with RIAs that operate and utilize turnkey asset management platforms;¹² and (5) the calculation of fees and expenses in accordance with disclosures.¹³

Retail-Targeted Investments

Recognizing the importance of certain securities products to retail investors, EXAMS will also continue to prioritize securities with elevated risks, such as mutual fund and exchange-traded funds (“ETFs”), municipal securities, and microcap securities.¹⁴ For mutual funds and ETFs, EXAMS intends to focus on (1) the recommendations of financial intermediaries; (2) the adequacy and suitability of disclosures involving ETFs; and (3) any incentives provided to financial services firms or professionals that may influence the selection of higher cost mutual fund share classes over available lower cost classes.¹⁵

EXAMS has also indicated that timely and accurate disclosures related to municipal securities and other fixed income securities is of even greater importance due to the pandemic and related market volatility.¹⁶ EXAMS will also review broker-dealer trading activity in municipal and corporate bonds for compliance with aspects such as best execution obligations, pricing fairness, and the reasonableness of mark-ups or mark-downs.¹⁷

Additionally, deterring microcap fraud will be a priority for EXAMS in 2021. Broker-dealers and transfer agents that offer, sell, or distribute microcap securities should remain cognizant of EXAMS’ focus areas for examinations, which include the handling of microcap distributions and share transfers by transfer agents, along with associated sales practices and compliance with regulatory requirements by broker-dealers.¹⁸

INFORMATION SECURITY AND OPERATIONAL RESILIENCY

EXAMS highlighted the increased risks related to cybersecurity. To be clear, none of these threats are new, but they have taken on even greater importance as a result of the pandemic. In the coming year, EXAMS will focus on assessing whether firms have adequately managed (1) data security and access controls, including with customer accounts, online and mobile application access to investor information, and third-party service providers; (2) vendor management; (3) cyber incidents, such as ransomware attacks or malicious email activity; and (4) the operational risks related to increased remote operations.¹⁹ As previously alerted, EXAMS also intends to review registrants’ business continuity and disaster recovery plans taking into account the lessons learned with the COVID-19 pandemic, and also will examine whether such plans account for the growing physical and other risks associated with climate change.²⁰ Updates and changes in this area will be expected and firms should consider themselves on notice of a need for increased vigilance and attention to this area.

FINTECH AND DIGITAL ASSETS

EXAMS also highlighted the rapid and continual innovation in financial technology and capital formation, indicating its intention to focus on assessing whether firms are operating consistent with their representations and customer instructions.²¹ EXAMS will also review (1) compliance around trade recommendations made in mobile applications; (2) the implementation and integration of technology used to facilitate compliance with regulatory requirements (“RegTech”) in a firm’s compliance program; and (3) controls and compliance around the creation, receipt, and use of data from non-traditional sources.²² As foreshadowed by a Risk Alert issued in February 2021, EXAMS also plans to continue



assessing participants involved with digital assets, with a focus on issues such as whether investments in these instruments are in the best interest of the investors and the effectiveness of related compliance programs and controls.²³

AML PROGRAMS

EXAMS will continue to prioritize examinations of broker-dealers and registered investment companies for compliance with their AML obligations.²⁴ Firms must have risk-based AML programs tailored to address the risks associated with the firm's location, size, and activities, including the type of products and services offered to customers or investors, and the means by which those products and services are offered.²⁵

EXAMS will assess whether firms have adequate policies and procedures reasonably designed to identify suspicious activity and illegal money-laundering activities. Policies and procedures should be reasonably designed to identify and verify the identity of customers and beneficial owners of legal entity customers, perform customer due diligence, monitor for suspicious activity, and, where appropriate, file Suspicious Activity Reports (SARs) with the Financial Crimes Enforcement Network (FinCEN).²⁶

THE LIBOR TRANSITION

The discontinuation of LIBOR could have a significant impact on the financial markets and may present a material risk for certain market participants. Transition plans should already be well underway. As previously announced in a June 2020 Risk Alert, EXAMS reiterated that it will review the plans that firms have developed and steps they have taken to prepare for the LIBOR discontinuation, including:

- The firm's and investors' exposure to LIBOR-linked contracts;
- The firm's operational readiness, including any enhancements or modifications to systems, controls, processes, and risk or valuation models associated with the transition to a new reference rate or benchmark;
- The firm's disclosures, representations, and/or reporting to investors regarding its efforts to address LIBOR discontinuation and the adoption of alternative reference rates;
- Identifying and addressing any potential conflicts of interest associated with the LIBOR discontinuation and the adoption of alternative reference rates; and
- Clients' efforts to replace LIBOR with an appropriate alternative reference rate.²⁷

ADDITIONAL AREAS OF FOCUS FOR INVESTMENT ADVISERS & INVESTMENT COMPANIES

RIA Compliance Programs

EXAMS remains focused on assessing the effectiveness of RIA compliance programs, including whether those programs and their policies and procedures are reasonably designed, implemented, and maintained.²⁸ Compliance programs must be dynamic and responsive to changes both in the organization and the environment in which the firm operates. As part of this review, EXAMS will also evaluate whether the firm has devoted sufficient compliance resources.²⁹

Given the increasing number of RIAs, the Division has adopted a risk-based examination approach in the selection of the RIAs that will be subject to an examination. For 2021, the Division will continue to conduct examinations of RIAs that have never been examined, including new RIAs and RIAs registered for several years that have yet to be examined.³⁰

In addition to reviewing core areas that typically receive scrutiny,³¹ EXAMS intends to focus on products and services offered as sustainable, socially responsible, impact, and ESG conscious.³² In particular, EXAMS will focus on ESG products that are widely available to investors such as open-end funds and ETFs, as well as those offered to accredited investors such as qualified opportunity funds.³³ This initiative dovetails with the recent creation of a Climate and ESG



Task Force in the Division of Enforcement, demonstrating the organization-wide resources being dedicated by the Staff.³⁴ EXAMS will review the consistency and adequacy of the disclosures provided to clients regarding ESG strategies, determine whether the firms' processes and practices match their disclosures, review fund advertising for false or misleading statements, and review proxy voting policies and procedures and votes to assess whether they align with the strategies.³⁵ Therefore, RIAs must be prepared to establish the legitimacy of their claims with empirical evidence and backup materials. The SEC is investing in specialized resources to enhance its focus and expertise in the ESG space, including the recent appointment of a new Senior Policy Advisor for Climate and ESG, and likely will expect registrants touting their ESG expertise to have done the same. We have observed many RIAs enlisting specialized outside consultants to help develop their own ESG-related investment criteria and client platforms.

Moreover, EXAMS will continue to prioritize examinations of investment advisers that are dually registered as, or are affiliated with, broker-dealers, or have supervised persons who are registered representatives of unaffiliated broker-dealers. Areas of focus include: (1) conflicts of interest that arise from certain compensation arrangements and outside business activities; (2) best execution; and (3) prohibited transactions.

Registered Funds – Mutual Funds and ETFs

EXAMS typically reviews registered funds' compliance programs and governance practices, with a focus on disclosures to investors, valuation, and filings with the Commission. In light of the pandemic crisis, EXAMS will focus on reviewing valuation and the resulting impact on fund performance, liquidity and risk-related disclosures for investments in markets that have been affected by the pandemic such as energy and real estate, and products such as bank loans and high yield corporate and municipal bonds. EXAMS will also review funds' and advisers' disclosures and practices related to securities lending.³⁶

Moreover, examinations will be focused on liquidity risks. Specifically, EXAMS will focus on liquidity risk management programs (LRMPs), evaluating whether these programs are reasonably designed to assess and manage the funds' liquidity risk. EXAMS will also review the implementation of required liquidity classifications, particularly in light of the recent stresses in the market due to the pandemic.

Other areas of focus will include assessing compliance with exemptive relief, including for the newly created non-transparent actively managed ETFs, funds' financial condition, especially where funds adopted advisory fee waivers, and money market funds' compliance with stress-testing requirements, website disclosures, and board oversight.³⁷

RIAs to Private Funds

As we predicted, EXAMS made clear that it will focus on RIAs that manage private funds,³⁸ with an emphasis on liquidity and disclosures concerning investment risks and conflicts of interest.³⁹

In particular, EXAMS will prioritize:

1. Preferential treatment of certain investors by advisers to private funds that have experienced issues with liquidity, including imposing gates or suspensions on fund withdrawals;⁴⁰
2. Portfolio valuations and the resulting impact on management fees;
3. Adequacy of disclosure and compliance with any regulatory requirements concerning cross trades, principal investments, or distressed sales; and
4. Conflicts around liquidity, such as adviser led fund restructurings, including stapled secondary transactions where new investors purchase the interests of existing investors while also agreeing to invest in a new fund. The Division's focus on these specific areas demonstrates the increased sophistication and understanding of the Staff and an ability to probe complex transactions effectively.



EXAMS also emphasized that it will focus on private funds that hold a higher concentration of structured products, showing a lingering concern about the kinds of liquidity issues that were highlighted during the 2007–2009 financial crisis. EXAMS will assess whether such funds are at a higher risk for holding non-performing loans or loans with higher default risk than what has been disclosed to investors. In addition, EXAMS will examine advisers to private funds where there may have been material impacts on portfolio companies owned by the private fund (e.g., real estate related investments) due to the pandemic and recent economic conditions.

ADDITIONAL AREAS OF FOCUS FOR BROKER-DEALERS & MUNICIPAL ADVISERS

In addition to Reg. BI, the Division will also focus during exams of broker-dealers on the safety of customer cash and securities, best execution in light of the effects of evolving commissions and other cost structures, and certain types of trading activity.

Specifically, EXAMS will review:

- Compliance with the Customer Protection Rule and the Net Capital Rule, including the adequacy of internal processes, procedures, and controls, and compliance with requirements for borrowing securities from customers;
- Broker-dealer funding and liquidity risk management practices to assess whether firms have sufficient liquidity to manage stress events;
- Compliance with best execution obligations in a zero commission environment and compliance with the recently amended Rule 606 order routing disclosure rules. EXAMS will continue its prior initiative relating to payment for order flow and its possible effect on order routing and best execution obligations;
- Market maker compliance with Regulation SHO, including the rules regarding aggregation units and locate requirements; and
- Whether alternative trading systems are operating consistently with their Form ATS-N disclosures.⁴¹

For municipal advisors, EXAMS has emphasized the importance of timely and accurate disclosure, especially due to the impact of the COVID-19 pandemic on the finances and operations of municipal issuers. EXAMS will review whether municipal advisors have (1) adjusted their practices in light of the pandemic; (2) met their fiduciary duty obligations to municipal entity clients, including but not limited to disclosing and managing conflicts of interest and documentation of the scope of their client engagements; (3) satisfied their registration, professional qualification, continuing education, and supervision requirements; and (4) relied on relief from the Form MA annual update filing requirements, or the temporary broker exemptive order permitting certain activities in connection with direct placements of municipal securities.⁴²

MARKET INFRASTRUCTURE: CLEARING AGENCIES, NATIONAL SECURITIES EXCHANGES, AND REGULATION SYSTEMS COMPLIANCE AND INTEGRITY (SCI)

EXAMS will also conduct evaluations of clearing agencies, national securities exchanges, and SCI entities. Assessments of clearing agencies designated as systemically important, and for which the SEC serves as the supervisory agency, will be focused on core risks, processes, and controls and will cover the specific areas required by statute, including assessment of financial and operational risk. Examinations of exchanges will focus on the investigation and enforcement of member and listed company compliance with, as applicable, exchange rules and the federal securities laws. For SCI entities, EXAMS will evaluate whether written SCI policies and procedures have been established, maintained, and enforced.⁴³



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¹ DIV. OF EXAMINATIONS, U.S. SEC. & EXCH. COMM'N, 2021 EXAMINATION PRIORITIES (2021), available at <https://www.sec.gov/files/2021-exam-priorities.pdf>. The SEC renamed its Office of Compliance Inspections and Examinations ("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>. The formerly known-OCIE was created 25 years ago and is now the second largest division at the SEC, behind the Division of Enforcement. See *id.*

² See OFFICE OF COMPLIANCE INSPECTIONS & EXAMINATIONS, U.S. SEC. & EXCH. COMM'N, 2020 EXAMINATION PRIORITIES (2020), available at <https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2020.pdf>.

³ *Id.* at 2. See DIV. OF EXAMINATIONS, U.S. SEC. & EXCH. COMM'N, 2021 EXAMINATION PRIORITIES 6–7 (2021), available at <https://www.sec.gov/files/2021-exam-priorities.pdf>. The percentage of registered investment advisers covered by the examinations program in 2020 was the same of 2019.

⁴ *Id.*

⁵ DIV. OF EXAMINATIONS, U.S. SEC. & EXCH. COMM'N, 2021 EXAMINATION PRIORITIES 19–21 (2021), available at <https://www.sec.gov/files/2021-exam-priorities.pdf>.

⁶ *Id.* at 19. As described by the Private Investments Subcommittee during the March 19, 2021 meeting of the SEC's Asset Management Advisory Committee, this focus is increasingly seen as a function of supply and demand. Even as the proportion of private investments as a share of overall capital raising continues to increase, public market growth has been captured by fewer, larger companies, driven in part by significant inflows from self-managed household retirement and savings accounts. Despite recent policy and regulatory efforts to improve access to private offerings, including through amendments to the "accredited investor" definition, the vast majority of private offerings remain limited to the ~1% of households that satisfy the higher "qualified purchaser" standard. See Amending the "Accredited Investor" Definition, Release Nos. 33-10824; 34-89669; File No. S7-25-19 (Aug. 26, 2020), available at <https://www.sec.gov/rules/final/2020/33-10824.pdf>.

⁷ DIV. OF EXAMINATIONS, U.S. SEC. & EXCH. COMM'N, 2021 EXAMINATION PRIORITIES 20 (2021), available at <https://www.sec.gov/files/2021-exam-priorities.pdf>. In December 2020, EXAMS also issued a "Statement on Recent and Upcoming Regulation Best Interest Examinations." The statement identified components of Regulation Best Interest that may be the subject of focus in the next phase of examinations, including how firms have considered costs in making a recommendation and the processes firm personnel have used to recommend complex products. See U.S. SEC. & EXCH. COMM'N, *Statement on Recent and Upcoming Regulation Best Interest Examinations from the SEC Division of Examinations* (Dec. 21, 2020), available at <https://www.sec.gov/news/public-statement/examinations-regulation-best-interest-2020-12-21>; see also OCIE Risk Alert, *Examinations that Focus on Compliance with Regulation Best Interest* (Apr. 7, 2020), available at <https://www.sec.gov/files/Risk%20Alert-%20Regulation%20Best%20Interest%20Exams.pdf>.

⁸ U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON FINANCIAL SERVICES, Letter to President Biden (Dec. 4, 2020), available at https://financialservices.house.gov/uploadedfiles/120420_cmw_ltr_to_biden.pdf.

⁹ DIV. OF EXAMINATIONS, U.S. SEC. & EXCH. COMM'N, 2021 EXAMINATION PRIORITIES 20 (2021), available at <https://www.sec.gov/files/2021-exam-priorities.pdf>.

¹⁰ *Id.* at 21.



¹¹ *Id.*

¹² “White label” services reduce barriers to entry for asset managers, but the temptation of undue reliance on such services without adequate supervision can have the potential for widespread impact on investors.

¹³ DIV. OF EXAMINATIONS, U.S. SEC. & EXCH. COMM’N, 2021 EXAMINATION PRIORITIES 21–22 (2021), available at <https://www.sec.gov/files/2021-exam-priorities.pdf>

¹⁴ *Id.* at 22–23.

¹⁵ *Id.* at 22.

¹⁶ *Id.* at 23.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 24.

²⁰ *Id.* at 25; see also OCIE Risk Alert, *Cybersecurity: Ransomware Alert* (July 10, 2020), available at <https://www.sec.gov/files/Risk%20Alert%20-%20Ransomware.pdf>.

²¹ DIV. OF EXAMINATIONS, U.S. SEC. & EXCH. COMM’N, 2021 EXAMINATION PRIORITIES 25 (2021).

²² *Id.* at 25–26.

²³ *Id.* at 26; see also Div. of Examinations Risk Alert, *The Division of Examinations’ Continued Focus on Digital Asset Securities’* (Feb. 26, 2021), available at <https://www.sec.gov/files/digital-assets-risk-alert.pdf>.

²⁴ See also Div. of Examinations, Risk Alert, *Compliance Issues Related to Suspicious Activity Monitoring and Reporting at Broker-Dealers* (March 29, 2021), available at <https://www.sec.gov/files/aml-risk-alert.pdf>. This Risk Alert shares observations from examinations of broker-dealers regarding AML compliance, aiming to reiterate the obligations under AML rules and regulations, and to assist broker-dealers and mutual funds in reviewing and enhancing their AML programs, in particular their monitoring for and reporting of suspicious activity to law enforcement and financial regulators.

²⁵ DIV. OF EXAMINATIONS, U.S. SEC. & EXCH. COMM’N, 2021 EXAMINATION PRIORITIES 27 (2021).

²⁶ *Id.*

²⁷ *Id.*; see OCIE Risk Alert, *Examination Initiative: LIBOR Transition Preparedness* (June 18, 2020), available at https://www.sec.gov/files/Risk%20Alert%20-%20OCIE%20LIBOR%20Initiative_1.pdf.

²⁸ DIV. OF EXAMINATIONS, U.S. SEC. & EXCH. COMM’N, 2021 EXAMINATION PRIORITIES 28 (2021).

²⁹ *Id.* The Division has previously stated the importance of devoting adequate resources to compliance. See 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>.

³⁰ DIV. OF EXAMINATIONS, U.S. SEC. & EXCH. COMM’N, 2021 EXAMINATION PRIORITIES 28 (2021).

³¹ Such as appropriateness of account selection, portfolio management practices, custody and safekeeping of client assets, best execution, fees and expenses, business continuity plans, and valuation of client assets for consistency and appropriateness of methodology.

³² DIV. OF EXAMINATIONS, U.S. SEC. & EXCH. COMM’N, 2021 EXAMINATION PRIORITIES 28 (2021).

³³ *Id.*; see also King & Spalding Client Alert, *Seizing the Opportunity? SEC Zeroes in on Qualified Opportunity Zone (QOZ) Fund Sponsors* (July 19, 2019), available at <https://www.kslaw.com/news-and-insights/seizing-the-opportunity-sec-zeroes-in-on-qualified-opportunity-zone-qoz-fund-sponsors>.

³⁴ On March 4, 2021, the SEC announced an “Enforcement Task Force Focused on Climate and ESG Issues.” The initial focus will be to identify any material gaps or misstatements in issuers’ disclosure of climate risks under existing rules. The task force will also analyze disclosure and compliance issues relating to investment advisers’ and funds’ ESG strategies. U.S. Sec. & Exch. Comm’n, *Press Release 2021-42, SEC Announces Enforcement Task Force Focused on Climate and ESG Issues* (Mar. 4, 2021), available at <https://www.sec.gov/news/press-release/2021-42>; see also King & Spalding Client Alert, *SEC Kicks Off 2021 Agenda With Intense Focus on ESG Disclosures* (Mar. 19, 2021), available at <https://www.kslaw.com/news-and-insights/sec-kicks-off-2021-agenda-with-intense-focus-on-esg-disclosures>.

³⁵ DIV. OF EXAMINATIONS, U.S. SEC. & EXCH. COMM’N, 2021 EXAMINATION PRIORITIES 28 (2021).

³⁶ *Id.* at 29.

³⁷ *Id.*

³⁸ See The CLS Blue Sky Blog, *King & Spalding Discusses SEC’s Potential Focus During Biden Administration* (Feb. 12, 2021), available at <https://clsbluesky.law.columbia.edu/2021/02/12/king-spalding-discusses-secs-potential-focus-during-biden-administration/>.

³⁹ DIV. OF EXAMINATIONS, U.S. SEC. & EXCH. COMM’N, 2021 EXAMINATION PRIORITIES 30 (2021); see also 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.



⁴⁰ This issue has become increasingly prioritized because the Commission views the affected pension funds as representing the interests of underlying retail beneficiaries. See Peter Grant & Esther Fung, *Real Estate Slump Forcing Big Funds to Delay Investor Redemption Requests*, WALL ST. J. (Nov. 3, 2020, 8:00 AM), available at <https://www.wsj.com/articles/real-estate-slump-forcing-big-funds-to-delay-investor-redemption-requests-11604408401>.

⁴¹ DIV. OF EXAMINATIONS, U.S. SEC. & EXCH. COMM'N, 2021 EXAMINATION PRIORITIES 30–31 (2021).

⁴² *Id.* at 31.

⁴³ *Id.* at 32–33.