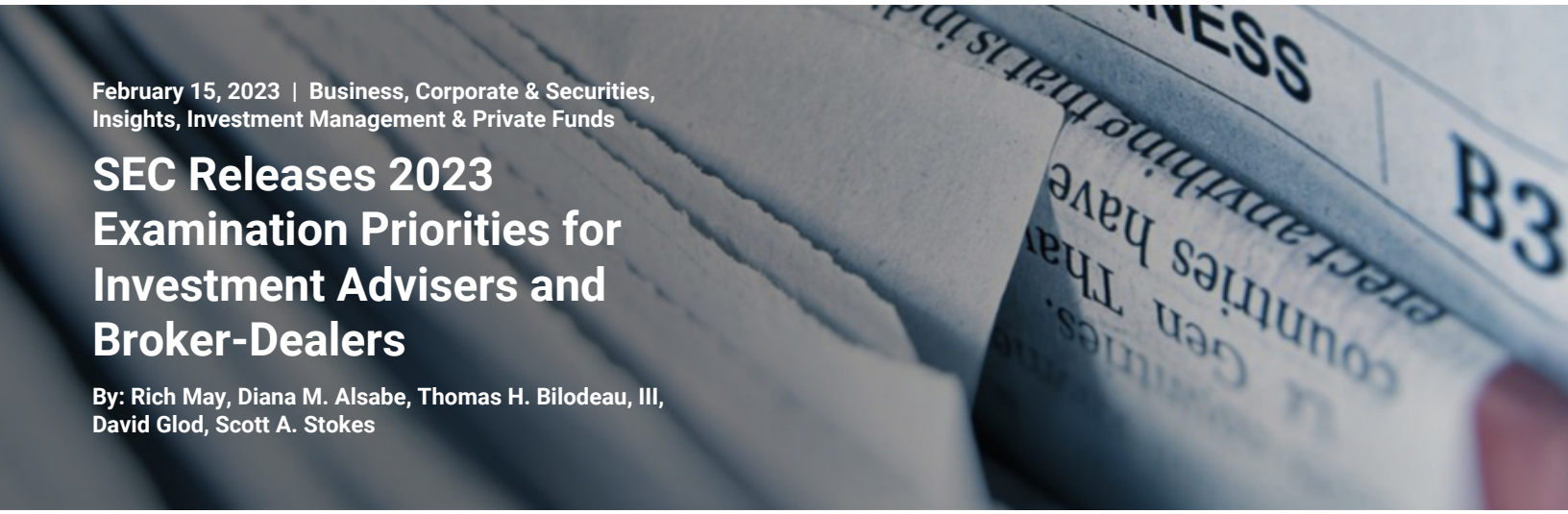

February 15, 2023 | Business, Corporate & Securities, Insights, Investment Management & Private Funds

SEC Releases 2023 Examination Priorities for Investment Advisers and Broker-Dealers

By: Rich May, Diana M. Alsabe, Thomas H. Bilodeau, III, David Glod, Scott A. Stokes

Overview

On February 7, 2023 the SEC's Division of Examinations (the "Division") released its 023 Examination Priorities, announcing key areas of focus for the upcoming year, organized into six themes:

1. New Investment Adviser and Investment Company Rules
2. RIAs to Private Funds;
3. Retail Investors and Working Families;
4. Environmental, Social, and Governance (ESG);
5. Information Security and Operational Resiliency; and
6. Emerging Technologies and Crypto-Assets.

The Division makes clear that this list is not exhaustive of the focus areas the Division considers in its examinations, risk alerts, and outreach. Below are highlights from the key areas of focus that the Division expanded upon in its announcement.

In this blog, we will highlight the SEC's guidance on those of the above topics that are most germane to our clients.

Investment Advisers Rules

New Marketing Rule

The Division will focus on the New Marketing Rule, as set forth in Advisers Act Rule 206(4)-1, in light of its effective compliance date on November 4, 2022. Specifically, the Division is concerned with whether registered investment advisers ("RIAs") have sufficient policies and procedures executed in writing, that are designed to reasonably prevent violations by RIAs and their supervised persons, as set forth in the New Marketing Rule. The Division will also consider the degree to which RIAs have complied with the

Related Services

Business, Corporate & Securities

Investment Management & Private Funds

Related Attorneys

Diana M. Alsabe

Thomas H. Bilodeau, III

David Glod

Scott A. Stokes

©2026 Rich May, P.C. All Rights Reserved

substantive obligations of the New Marketing Rule, as a whole.

- Compliance with Standards:
  - *RIAs*: Demonstrate a reasonable basis for believing you can substantiate material statements of fact and requirements for performance advertising, testimonials, endorsements, and third-party ratings.

RIAs and Private Funds

The Division has indicated it maintain focus on various aspects of RIA's operations and compliance practices, and whether they adequately consider current market factors that may sway valuation and accuracy of RIA regulatory filings. Typically, SEC examinations assess conflicts, compliance issues, and the oversight and approval process pertaining to RIA fees and expenses including:

- The calculation of fees
- Alternative ways that RIAs may try to maximize revenue, including revenue earned on clients' bank deposit sweep programs and
- Excessive fees.

The Division will additionally prioritize assessing the following with regards to RIAs':

- Policies and procedures for retaining and monitoring electronic communications
- Policies for selecting and using third-party service providers
- Examining RIAs who have never been examined, including recently registered RIAs.

Environmental, Social and Governance

Due to the increasing investor demand for Environmental, Social and Governance ("ESG") investment opportunities, the Division intends to continue its focus on ESG-related advisory services and fund offerings. Specifically, the Division seeks to examine:

- Whether such ESG funds are operating consistent with the description set forth in their disclosures
- Whether ESG products are appropriately labeled
- Whether ESG recommendations for retail investors are made in the investors' best interest.

Emerging Technologies

The Division continues to prioritize broker-dealers and RIAs who utilize financial

©2026 Rich May, P.C. All Rights Reserved

technologies or utilize emerging new practices that are technological or internet-based, to satisfy the needs of compliance and marketing, as well as adequately servicing client accounts. These include brokerage services online, internet advisers, automated investments and trading platforms, including RIAs' referred to as "robo-advisers."

Broker-Dealer and RIA examinations will prioritize firms that employ digital engagement practices and the related tools and methods to determine:

- Recommendations were made or advice was provided (e.g., through the use of social media marketing and social trading platforms);
- representations are fair and accurate;
- operations and controls in place are consistent with disclosures made to investors;
- any advice or recommendations are in the best interest of the investor taking into account the investor's financial situation and investment objectives; and

risks associated with such practices are considered, including the impact these practices may have on certain investors, such as seniors.

Provided the disruptions caused by recent financial distress in the crypto asset space, the Division will also maintain monitoring and examining when necessary, potentially impacted or affected registrants.

Recommended Actions

We recommend that all our investment adviser clients review these enforcement priorities with an eye towards their own activities, policies and procedures, as well as applicable regulatory obligations. If there is any confusion or concern surrounding the Division's targets and priorities for examination in 2023, or regulatory compliance, clients should consult with a Rich May attorney.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorneys Thomas Bilodeau III, Scott Stokes, David Glod, or Diana Alsabe.

© 2023 by Rich May, P.C., Thomas Bilodeau III, Esq., Scott Stokes, Esq., David Glod, Esq. and Diana Alsabe, Esq. All rights reserved.