Newsletter 01/2021

Dear Client,

The SEC Division of Examinations (formerly OCIE) announced the 2021 Examination priorities on March 3, 2021, including a greater focus on climate related risks, such as business continuity plans in light of intensifying physical risks associated with the climate change. This also means ESG focused investing will come under greater scrutiny. They will also focus on the fiduciary duty and risks relating to FinTech. The Division publishes its examination priorities annually to provide insights into its risk-based approach, including areas it believes present potential risks to investors.

> The Division completed 2,952 examinations in 2020, a 4.4% decrease from 2019. Resulting in just over 2,000 deficiency letters. Obviously, the pandemic had something to do with the decrease. The surprise is only that the decrease is so small. To the metrics: the number of RIAs has increased to just over 13,900 in 2020 with total assets under management of $97 trillion. Yes, trillion. In addition, the Division has ramped up its conduct of the process of "asset verification" at custodian banks, i.e., ensuring that assets actually exist and are properly valued. In 2020 the Division verified over 4.8 million investor accounts, with over $3.4 trillion in assets, over twice the value verified in 2019.

Closer to us, the Division has, to no-ones surprise, had challenges examining non-U.S. based RIAs that are increasingly subject to their own jurisdictions' laws on data protection and privacy that may impact such RIAs ability to provide certain information to the SEC. This issue resulted in the new advisor registration moratorium for the EU, now lifted for the U.K., and we expect in the coming few months, to be lifted for Switzerland. The Division has become very sensitive now to the large and growing population of non-U.S. based RIAs. These now numbering over 900 RIAs, managing around $12 trillion in U.S. client assets. According to the SECs 2020 report, Switzerland is home to 63 of these. This

makes Switzerland the second largest concentration of offshore RIAs, after the United Kingdom with 283 RIAs. The UKs data protection authority has stated that SEC-registered firms in the UK can rely on the public interest derogation under the local data protection laws to transfer records containing personal data to SEC staff during examinations. To our knowledge, the Swiss Federal Data Protection and Information Commissioner is in the process of providing the same assurances. If we take the same percentage of RIAs examined in the U.S. to be applied to Switzerland, we may reasonably expect in a first round of examinations some 20 RIAs examined. Given the technological advances in remote examination directly resulting from the pandemic, we suspect that long awaited day that the SEC actually conducts exams here to be moving closer.

To work. The following is an overview of the priorities:

Retail Investors, including seniors and those saving for retirement, through Reg. BI and Fiduciary Duty Compliance

> The focus will remain on compliance with Regulation Best Interest, Form CRS and whether registered Investment Advisers have fulfilled their fiduciary duty of care and loyalty. Furthermore, it will be examined whether firms are appropriately mitigating conflicts of interest and, where necessary, providing disclosure of conflicts.
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> Especially investments heavily used by retail investors (mutual funds, ETF's, municipal securities, variable annuities, private placements, microcap securities) will be looked at.

Information Security and Operation Resiliency

The Division will continue to review business continuity and disaster recovery plans of firms with the focus to whether such plans are considering the growing physical and other relevant risks with climate change. Furthermore, it will be

reviewed whether registrants have taken appropriate measures to safeguard customer accounts and prevent account intrusions, oversee vendors and service providers, address malicious email activities, respond to incidents and manage operational risk as a result of dispersed employees in a work-from-home environment.

Financial Technology (Fintech) and Innovation, Including Digital Assets Examinations will focus on evaluating whether registrants are operating consistently with their representations, whether firms are handling customer orders in accordance with their instructions, and review compliance around trade recommendations made in mobile applications. 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.

Anti-Money Laundering Programs

The Division will continue to review for compliance with applicable anti-money laundering (AML) requirements, including evaluating whether broker-dealers and registered investment companies have adequate policies and procedures in place that are reasonably designed to identify suspicious activity and illegal money-laundering activities.

The London Inter-Bank Offered Rate (LIBOR) Transition

The Division will continue to engage with registrants through examinations to assess their understanding of any exposure to LIBOR, their preparations for the expected discontinuation of LIBOR and the transition to an alternative reference rate, in connection with registrants' own financial matters and those of their clients and customers.

Focus Areas Relating to Investment Advisers and Investment Companies Compliance Programs

The Division will continue to review the compliance programs of registered investment advisers (RIAs), including whether those programs and their policies and procedures are reasonably designed, implemented, and maintained. RIAs are also increasingly offering investment strategies that focus on ESG factors. The Division will continue to focus on products in these areas that are widely available to investors including open-end funds and ETFs, as well as those offered to accredited investors such as qualified opportunity funds. The Division will review the consistency and adequacy of the disclosures RIAs and fund complexes provide to clients regarding these 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. Registered Funds, Including Mutual Funds and ETFs – Examinations of registered funds will focus on disclosures to investors, valuation, filings with the Commission, personal trading activities, contracts and agreements, and will include a review of fund governance practices and compliance programs. The Division will prioritize examinations of mutual funds or ETFs that have not previously been examined or have not been examined in a number of years, and will generally focus on fund compliance programs and financial condition, particularly where funds have instituted advisory fee waivers. In addition, the Division will focus on compliance with exemptive relief, including for the newly created non-transparent, actively managed ETFs. The Division will also review funds' and advisers' disclosures and practices related to securities lending.

RIAs to Private Funds

The Division will continue to focus on advisers to private funds, and will assess compliance risks, including a focus on liquidity and disclosures of investment

risks and conflicts of interest. The Division will also focus on advisers to private funds that have a higher concentration of structured products, such as collateralized loan obligations and mortgage backed securities, to assess whether the private funds are at a higher risk for holding non-performing loans and having loans with higher default risk than that disclosed to investors.

Therefore, we would advise to:

1) Conduct a check of your current policies and procedures if they cover the above-mentioned points;
2) Implement or modify policies and procedures accordingly.

If you are interested in exploring this more closely, please let us know.

best regards,
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Impressum

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