

## SEC Releases 2023 Examination Priorities

On February 7, 2023, the SEC's Division of Examinations (Division) issued its [2023 Examination Priorities](#) that support its stated mission—promote compliance, prevent fraud, monitor risk, and inform policy. The group will continue its focus on compliance, governance practices, and cybersecurity. Here's what investment advisers, investment companies, and broker-dealers need to know about the new 2023 focus areas.

### Background

In 2022, the Division examined roughly 15% of the registered investment adviser (RIA) population. This population has grown to 15,000 investment advisers overseeing \$125 trillion in assets under management. For broker-dealers, the Division completed 360 exams and—together with FINRA—roughly half of the 3,500 registered broker-dealers were examined in 2022. The Division prepares its areas of focus based on information gathered from exams, communications with other regulators, comments and tips received from investors, and regulated entities and industry publications. This year, the Division also reached out to state securities regulators and investor groups in developing its exam priorities.

### Newly Effective Rules

Examiners will focus on several recently adopted rules:

**Advisers Act Rule 206(4)-1 (Marketing Rule)** – Examiners will assess whether RIAs have adopted and implemented written policies and procedures that are reasonably designed to prevent violations by the advisers and their supervised persons and review whether RIAs have complied with the rule's substantive requirements, including having a reasonable basis for believing they will be able to substantiate material statements of fact and requirements for performance advertising, testimonials, endorsements, and third-party ratings.

**Resource from FORVIS:** [New Fund Shareholder Report & Advertising Rules](#)

**Investment Company Act Rule 18f-4 (Derivatives Rule)** – If a fund relies on this rule, examiners will assess whether registered investment companies, including mutual funds (other than money market funds), exchange-traded funds and closed-end funds, and business development companies (BDCs), have adopted and implemented policies and procedures reasonably designed to manage the funds' derivatives risks and to prevent rule violations and review for compliance with Rule 18f-4, including the adoption and implementation of a derivatives risk management program, board oversight, and whether disclosures concerning the funds' use of derivatives are incomplete, inaccurate, or potentially misleading.

**Resource from FORVIS:** [SEC Updates Derivatives Rules for Investment Funds](#)

**Investment Company Act Fair Valuation Rule 2a-5** – Examiners will assess funds' and fund boards' compliance with the new requirements for determining fair value, implementing board oversight duties, setting record-keeping and reporting requirements, and permitting the funds' board to designate valuation designees to perform fair value determinations subject to board oversight and review whether adjustments have been made to valuation methodologies, compliance policies and procedures, governance practices, service provider oversight, and/or reporting and record-keeping. See [Appendix](#) for a summary chart of key requirements.

Resource from FORVIS: [Investment Funds Get New Valuation Rules](#)

## RIAs to Private Funds

RIAs to private funds represent 35% of the 5,550 RIA population and manage 50,000 private funds with gross assets exceeding \$21 trillion. The 2023 examinations will focus on:

- Conflicts of interest
- Calculation and allocation of fees and expenses, including the calculation of post-commitment period management fees and the impact of valuation practices at private equity funds
- Compliance with the new Marketing Rule, including performance advertising and compensated testimonials and endorsements, such as solicitations
- Policies and practices regarding the use of alternative data and compliance with Advisers Act Section 204A
- Compliance with the Advisers Act Rule 206(4)-2 (Custody Rule), where applicable, including timely delivery of audited financials and selection of permissible auditors

Examiners will focus on RIAs to private funds with specific risk characteristics, such as:

- Highly leveraged private funds
- Private funds managed side by side with BDCs
- Private equity funds that use affiliated companies and advisory personnel to provide services to their fund clients and underlying portfolio companies
- Private funds that hold certain hard-to-value investments, such as crypto assets and real estate-connected investments, with an emphasis on commercial real estate
- Private funds that invest in or sponsor special purpose acquisition companies
- Private funds involved in adviser-led restructurings, including stapled secondary transactions and continuation funds

## Ongoing Focus

### Environmental, Social, & Governance (ESG) Investing

The Division will continue its focus on ESG-related advisory services and fund offerings, including whether the funds are operating in the manner set forth in their disclosures. Examinations also will assess whether ESG products are appropriately labeled and whether recommendations of such products for retail investors are made in investors' best interest.

Resource: [SEC Cracks Down on ESG Funds' 'Greenwashing'](#)

### Crypto Assets

Examinations will focus on the offer, sale, recommendation of, or advice regarding trading in crypto or crypto-related assets and include whether the firm met and followed its respective standards of care when making recommendations, referrals, or providing investment advice; and routinely reviewed, updated, and enhanced its compliance, disclosure, and risk management practices.

## Conclusion

The asset management team at **FORVIS** has more than 50 years of experience providing accounting, tax, and consulting services to various types of investment holdings, including conventional debt and equity investments, loans, businesses, alternative investments, and other unique assets. As of August 2022, Convergence Optimal Performance ranked FORVIS as a top 25 accounting and audit firm to RIAs. FORVIS also was ranked in the top 20 by assets under management. We have experience providing services to fund complexes with net assets ranging from a couple million to several billion dollars. Our experience allows us to provide tailored services to help meet your unique needs. For more information, visit [forvis.com](https://forvis.com).

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### Appendix

SEC Rule Topic		Description
2a-5	<b>Risk Identification and Management</b>	Rules require that funds periodically assess any material risks associated with the determination of the fair value of the fund's investments, including material conflicts of interest, and managing those identified valuation risks.
	<b>Establish &amp; Apply Fair Value Methodologies, Policies &amp; Procedures</b>	Rules require that the Board or the 'valuation designee' establish and apply fair value methodologies by: <ol style="list-style-type: none"> <li>I. selecting and applying appropriate and consistent fair value methodologies,</li> <li>II. periodically reviewing the appropriateness and accuracy of the methodologies selected and making any necessary changes or adjustments, and</li> <li>III. monitor for circumstances that may necessitate the use of fair value.</li> </ol>
	<b>Test Fair Value Methodologies for Appropriateness and Accuracy</b>	Rules require testing the appropriateness and accuracy of methodologies used to calculate fair value to ensure that selected fair value methodologies are appropriate and adjustments to methodologies are made where necessary. Rule 2a-5 provides for Boards (or valuation designee) to: <ol style="list-style-type: none"> <li>I. identify the testing methods to be used,</li> <li>II. determine the minimum frequency of testing depending on the circumstances of each fund, and</li> <li>III. use new, appropriate testing methods when applicable.</li> </ol>
	<b>Evaluation of Pricing Services</b>	Rules provide that determining fair value in good faith requires the oversight and evaluation of pricing services by establishing a process for approving, monitoring, and evaluating each pricing service provider. It also requires a process to consider factors such as valuation methods used, price challenge processes, and inputs used for pricing.
	<b>Board Oversight and Reporting</b>	Rule 2a-5(b) requires the Board to oversee the valuation designee with a skeptical and objective view that takes account the fund's particular valuation risks, including with respect to conflicts, the appropriateness of the fair value determination process, and the skill and resources devoted to it. It includes certain periodic reports / prompt notification and reporting on matters that materially affect fair value.
31a-4	<b>Recordkeeping</b>	Maintain appropriate documentation to support fair value determinations for six years, the first two in an easily accessible place. Reports generated by valuation designees must include a specified list of the investments or investment types for which the valuation designee has been designated.