SEC’s 2021 Examination Priorities Focus on Fintechs and Sustainability

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In March, the Securities and Exchange Commission (SEC)’s Division of Examinations announced its 2021 examination priorities. The SEC has committed to focusing its investigations on, among other issues, “attendant risks related to FinTech,” conflicts of interest for securities brokers, and investment advisor breach of fiduciary duty. In short, the SEC’s focus on financial services companies will continue in 2021, with promised intensity. Additionally, a newer trend appears to be the SEC’s focus on disclosure concerning investment risks associated with climate change (sometimes referred to as “ESG” or “Environmental, Social, and Corporate” governance, three central factors in measuring the sustainability and social impact of an investment in a company or business).

As it concerns FinTech (referring to financial technology and innovation, including digital assets) and financial services generally, the SEC claims that its audits will focus on whether companies operate “consistent with their representations” to customers and investors, through whatever medium such representations occur. The SEC will also examine the handling of customer orders and the use of remote mobile applications (i.e., apps) to process financial transactions. The SEC further plans to scrutinize companies that utilize digital assets (think cryptocurrency) as part of their investment strategies, as well as management and portfolio trading practices, the safety of client funds, the effectiveness of internal controls, and other related matters. As a corollary, the SEC suggests that it may tighten its focus on anti-money laundering (AML) as well as alleged “suspicious and illegal” monetary activities inherent in any securities/financial institutions, including those which occur in the burgeoning cryptocurrency marketplace.

Concerning other priorities, the SEC has recommitted to rooting out conflicts of interest, confirming adherence to compliance programs, ensuring the protection of retirement savings, and enforcing investor/customer informational security and privacy. This means that the SEC will continue to focus on:

(a) how financial services companies interact with their customers (including the quality of disclosures and transparency regarding important (material) information),
(b) whether companies take conflicts of interest seriously and enforce their policies,
(c) the degree to which compliance/AML policies are followed and enforced, and
(d) efforts taken to protect customer private and confidential information.

None of these priorities is new; however, the SEC has suggested the need for more rigorous examination for 2021.

Finally, the SEC, for the first time, has expressed a significant interest in integrating climate and ESG considerations into the agency’s broader regulatory framework. As with its newly-emphasized priorities, it remains to be seen just how the SEC’s focus on ESG will translate into action. The SEC has also made clear that its list of priorities is non-exclusive, and subject to change.

Thus far in 2021, the SEC has brought over fifty enforcement actions, mostly against broker-dealers accused of fraud, individuals operating Ponzi schemes, illegal securities offerings, and undisclosed payments. In other words, there do not appear to be any new enforcement-specific trends, but Q1 2021 only recently ended, and the SEC could shift focus over the next nine months.

McGlinchey’s Government and Internal Investigations Group will continue to monitor SEC developments. Please contact any of its members if you have any questions.

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