

**ALERTS**

## SEC Enforcement Director Highlights Focus on Private Funds

**May 25, 2023**

In a series of recent industry events, U.S. Securities and Exchange Commission (“SEC”) Enforcement Director Gurbir Grewal continued to emphasize that the private funds industry is “a substantive priority area” for the SEC’s enforcement agenda. Director Grewal’s statements are consistent with the significant uptick we have observed in the examination and investigation of private funds and associated individuals.

In his public comments, Director Grewal identified several areas of particular enforcement focus:

- Fees and Expenses
- Conflicts of Interest
- Insider Trading
- Digital Assets

While none of these issues is particularly surprising or novel, the current enforcement focus on them is noteworthy, as is the Director’s willingness to publicly acknowledge this attention. The Commission has been charging firms for improper fee and expense charges for many years, but the issue has again come to the fore with the impending Private Funds Rule<sup>[1]</sup>, which is expected to impose prescriptive mandates on disclosures of fees and expenses. With respect to conflicts of interest, as many private fund businesses have grown in scale and complexity, the potential for conflicts of interest has increased exponentially. Insider trading is a perennial area of focus for the Commission, and an enhanced capacity to

surveil trading data has generated increasingly sophisticated techniques for the review and investigation of suspicious or anomalous trading. Finally, as to digital assets, the SEC's enforcement efforts increasingly focus on gatekeepers or intermediaries – such as unregistered exchanges – that promote or facilitate trading in digital assets that the Commission generally views as unregistered securities.

Director Grewal also made two noteworthy comments about the agency's focus on "off channel" communications: (1) that the problem is "pervasive"; and (2) that two brokerage firms that recently self-reported significant off-channel communications paid less in penalties than firms that did not self-report.

With increased examination and enforcement activity, and an unprecedented amount of new rulemaking, the private funds industry is very much in focus at the SEC. Well-informed and sophisticated efforts to address these and other issues are particularly important in this context.

*Authored by Charles J. Clark, Marc E. Elovitz, Kelly Koscuizska and Craig S. Warkol.*

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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[1] <https://www.srz.com/resources/sec-proposes-new-rules-for-private-fund-managers.html>

<https://www.srz.com/resources/srz-comments-on-proposed-rules-for-private-fund-advisers-and.html>

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