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Top Ten Regulatory and Litigation Risks for Private Funds in 2022

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Last year, we wrote, "The regulatory and litigation risks for private funds are greater than at any time since the financial crisis in 2008." That statement is even more true today. The Wall Street Journal recently published separate front-page stories on an SEC initiative to oversee large private companies and the explosive growth of the private credit industry (suggesting a more active phase of regulatory oversight). Growth itself is not necessarily a risk, but disputes – and regulators – tend to follow capital.

Private funds are now an integral part of the global economy and, as a consequence, are affected by it. Currently, there are massive structural changes occurring simultaneously across industries and the economy as a whole. For example: cryptocurrencies could threaten legacy payment systems and currencies; the electrification of the auto industry may lead to obsolescence of the internal combustion engine; and climate change will increase the ESG groundswell. These changes are not merely disruptive; they are transformative.

Meanwhile, the macro economy is undergoing a sea change. Inflation is higher than at any time since 1982. Inflation will lead to higher interest rates – sparking changes in investment assumptions and behaviors conditioned over decades to a low inflation environment. In response, the federal government is ending early its policy of quantitative easing which it continued as part of the response to the pandemic. These changes are happening as we enter the third year of the pandemic which has disrupted every part of society, not just supply chains.

Direct government action may spur even greater changes. Antitrust, privacy, and cybersecurity enforcement – and the threat of enforcement – is palpable and likely to cut across sectors in the coming months, especially tech. China has undertaken its own crackdown on tech that reflects policy choices at the highest level of government – which may persist for decades. Finally, geopolitical tensions are likely to rise, especially if Russia invades Ukraine, which may cause markets to shudder.

These are merely some of the known risks.

None of this is to say that we are concerned for the private funds industry. It will continue to flourish. Consumer confidence and spending remain robust, capital (for now) remains historically cheap, and private equity investment is strong. But the benign market and relatively benign regulatory environment of the last decade is unlikely to persist. Accelerated change and volatility are coming, and together they are likely to result in more disputes and regulatory inquiries.

With that backdrop, we have developed this list of Top 10 Regulatory and Litigation Risks for Private Funds in 2022 to assist sponsors and managers to assess their own risks and take steps to mitigate their risk profile. We will be publishing a series of posts on each of these topics in the weeks ahead.

1. Decentralized Finance: The Next Frontier of SEC Enforcement
2. Treating "Like for Like": SPAC Disclosure, Marketing and Gatekeeping in 2022
3. ESG: Practical Points For Where Market Practice and Legal Trends Collide
4. Regulatory Shake-Out on Digital Assets: An Industry Waits for Additional Guidance
5. Economic Sanctions and Asset Seizures: An Important Focus for the Biden Administration
6. Increased Focus on Privacy and Cybersecurity for Private Funds in 2022
7. Insider Trading, MNPI and Related Internal Controls: A Renewed Focus by the SEC
8. The Trend of Increasing Disclosure Obligations for Private Funds Continues in 2022
9. Conflicts of Interest: How High Will the Bar Be Raised
10. Portfolio Company Risk: Plaintiffs Set Sights on Sponsors and Boards of Directors

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