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Question of the Week:

What is the most significant regulatory change you expect to see this year and why?

March 8, 2023

In the registered fund world, we spent much of the past year focused on complying with – and implementing – new, operationally complex rules covering derivatives, valuation and fund-of-fund investments, among others. This year, I expect the SEC to examine fund and adviser compliance with the technical aspects of those newly implemented rules, including a review of applicable policies and procedures. Despite notable industry resistance, I believe the SEC will pursue, substantially as proposed, rules in the areas of liquidity and swing pricing, service provider oversight and proxy voting.

William T. MacGregor, Registered Funds, New York

In an increasingly aggressive enforcement climate where the SEC is scrutinizing transactions in hindsight with greater skepticism, it is especially important to be mindful of required disclosure and filing requirements. Attention to potential conflicts, consent, transparent disclosures and timely filings during the course of the transaction is key. Even the smallest of foot faults can become the subject of an enforcement inquiry, at which point it will be too late to fix any mistakes.

Robert Pommer, Securities Litigation, Washington, D.C.

Over the course of 2023, the looming tidal wave of proposed SEC regulations will come crashing down as these proposed rules are finalized and adopted, affecting private fund advisers in particular. The cumulative effect on investment advisers, operationally and financially, seems likely to be the most impactful development in the regulatory space this year. Even now, many investment advisers are finding their bandwidth and budgets under strain from existing regulatory and investor-driven mandates. This will only increase as those burdens become even larger and more complex, potentially accelerating consolidation across the industry.

Robert H. Sutton, Private Funds, New York

The flurry of SEC rule proposals portend major changes for public operating companies, such as extensive ESG disclosure and restrictions on corporate stock buy-backs. However, the biggest impact currently is not the rule proposals, rather it is the tightened enforcement environment. There is an ESG enforcement task force primed to scrutinize the new disclosures, and stock trading by insiders is under more scrutiny as companies start to comply with new rules on insider trading plans.

Frank Zarb, Capital Markets, Washington, D.C.

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