

# Reading Between the Lines



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The SEC's enforcement priorities are no secret, but for a full understanding of them, firms need to know where to look.

For firms that want to know where SEC enforcement actions will be targeted in the coming year, they don't even have to ask.

The regulator is pretty transparent. In January each year it publishes its new examination priorities, and throughout the year publicly states its areas of concern. And – as night follows day – each year the cases it brings largely bear these out.

The regulator's focus on material non-public information and insider trading, for example, is long-standing.<sup>1</sup> At the 'SEC Speaks' conference in February 2017, the regulator's chair Mary Jo White confirmed that it continued to be a priority,<sup>2</sup> as did the Deputy Director of Enforcement.<sup>3</sup> It should be no surprise, then, that insider trading cases were

among some of the most significant enforcements of the last year.<sup>4</sup>

In the coming year, we can expect the SEC to continue to stress the importance of a broad range of issues: conflicts of interest, expense allocations and cyber security. The last is also among the new examination priorities highlighted for 2017, along with retirement investment advice and a particular focus on robo advice in the retail space.<sup>5</sup> Generally, though, it seems likely we can expect more of the same from the regulator.

These expectations can all largely be met through a rigorous commitment to continued assessment. Firms cannot simply disclose conflicts of interest or outside business on a form, for example, and then forget about it. It comes down to establishing a culture of compliance – another very long-standing preoccupation of the regulator.<sup>6</sup>

1 <https://www.sec.gov/fast-answers/answersinsiderhtm.html>

2 <https://www.sec.gov/news/speech/white-speech-beyond-disclosure-at-the-sec-in-2016-021916.html>

3 <http://blogs.orrick.com/securities-litigation/2016/02/23/sec-speaks-what-to-expect-in-2016/>

4 <https://www.sec.gov/news/pressrelease/2016-212.html>

5 <https://www.sec.gov/news/pressrelease/2017-7.html>

6 <https://www.sec.gov/news/speech/spch042303lar.htm>

### Theory and Practice

Nevertheless, there remain limits on the guidance firms can draw from the SEC's public pronouncements.

Within the broad priorities the SEC sets out, there is still room for novel cases, for example. There also remain uncertainties as to exact expectations of the SEC.

Two other sources therefore should provide additional guidance. The first is its enforcement actions, which again are well publicised.<sup>7</sup> These show not only whether the regulator's rhetoric matches the reality, but the ways in which firms can fall short of its requirements.

Firms can also, through their advisers, learn from other firms currently undergoing routine SEC examinations. These examinations reveal the areas and questions preoccupying the regulator: valuable intelligence that can guide us on not only where the enforcement is focussed today, but where that focus might be moving to in the future.

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<sup>7</sup> <https://www.sec.gov/enforce>

