

CLIENT ALERT

SEC Division of Examinations Releases Its 2025 Examination Priorities

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On October 21, 2024, the Division of Examinations (the “Division”) of the U.S. Securities and Exchange Commission (the “SEC” or the “Commission”) released its 2025 examination priorities (the “Priorities”).¹ The Priorities include specific examination areas relating to investment advisers, investment companies, broker-dealers and other market participants. While a number of the issues discussed in the Priorities are consistent with prior years, the Priorities reflect an enhanced focus on the investment adviser fiduciary standards of conduct, the use of artificial intelligence and digital engagement practices by investment advisers and broker-dealers, and how investment advisers, investment companies, and broker-dealers respond to periods of increased market volatility and changes in interest rates.

Consistent with the Division’s 2024 examination priorities, the Priorities include specific examination areas relating to a number of other topics such as compliance with Rule 206(4)-1 (the “Marketing Rule”) under the Investment Advisers Act of 1940, examination of investment advisers to private funds, information security and operational resiliency, crypto assets and emerging financial technology.

A. Investment Advisers

The Priorities characterize a number of the areas of focus under the general framework of an investment adviser’s fiduciary standards of conduct. The Division intends to focus on: (1) investment advice regarding certain products, investment

¹ 2025 Examination Priorities, Division of Examinations (Oct. 21, 2024), available [here](#). For additional information on the examination process, see *Investment Advisers: Assessing Risks, Scoping Examinations, and Requesting Documents*, Risk Alert of the Division (Sept. 6, 2023), available [here](#).

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strategies, and account types; (2) dual registrants and advisers with affiliated broker-dealers; and (3) the impact of advisers' financial conflicts of interest on providing impartial advice and best execution.

In addition, the Division continues to focus on advisers' compliance programs, including policies and procedures for marketing, valuation, trading, portfolio management, disclosure and filings, and custody. In particular, the Division will focus on:

- (1) fiduciary obligations of advisers that outsource investment selection and management;
- (2) alternative sources of revenue or benefits advisers receive, such as selling non-securities-based products to clients; and
- (3) appropriateness and accuracy of fee calculations and the disclosure of fee-related conflicts, such as those associated with select clients negotiating lower fees when similar services are provided to other clients at a higher fee rate.

The Division also will focus on advisers' policies and procedures for: (1) valuing illiquid assets, such as commercial real estate; (2) compliance and investor disclosures surrounding the use of artificial intelligence ("AI") in advisory operations; (3) overseeing advisers that use independent contractors working from geographically dispersed offices; and (4) compliance practices when advisers adopt new or changed business models.

As with previous years, the Division will prioritize examinations of advisers that have never been examined and those that have not been recently examined, with a continued focus on newly registered advisers.

B. Particular Considerations Regarding Investment Advisers to Private Funds

Private funds remain a high priority of the Division, and the Division intends to focus on reviews of:

- (1) Whether disclosures are consistent with actual practices, if an adviser met its fiduciary obligations in times of market volatility, and whether a private fund is exposed to interest rate fluctuations through strategies like commercial real estate, illiquid assets, and private credit. The Division may particularly focus on examinations of advisers to private funds that are experiencing poor performance and significant withdrawals and/or hold more leverage or difficult-to-value assets.
- (2) The accuracy of calculations and allocations of private fund fees and expenses (both fund-level and investment-level), for example, valuation of illiquid assets, calculation of post-commitment period management fees, offsetting of such fees and expenses, and the adequacy of disclosures.

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- (3) Disclosure of conflicts of interests and risks, and adequacy of policies and procedures, such as: (a) use of debt, fund-level lines of credit, investment allocations, adviser-led secondary transactions, transactions between fund(s) and/or others; (b) investments held by multiple funds; and (c) use of affiliated service providers.
- (4) Compliance with recently adopted SEC rules, including amendments to Form PF, and the updated rules that govern investment adviser marketing, to assess whether advisers have established adequate policies and procedures and whether their actual practices conform to those policies and procedures.

C. Investment Companies

The Division continues to prioritize examinations of registered investment companies due to their importance to retail investors, particularly those saving for retirement.

The Division indicates that there will be a continued focus on assessing registered investment companies' compliance programs, disclosures, and governance practices. In a change from last year, the Priorities do not specifically include as an area of focus boards' processes for assessing and approving advisory and other fund fees, particularly for funds with weaker performance relative to their peers.

The Priorities include the following examination topics for investment companies:

- (1) fund fees and expenses, and any associated waivers and reimbursements;
- (2) oversight of service providers (both affiliated and third-party);
- (3) portfolio management practices and disclosures, for consistency with claims about investment strategies or approaches and with fund filings and marketing materials; and
- (4) issues associated with market volatility.

The Division also will continue to monitor certain developing areas of interest, such as registered investment companies with exposure to commercial real estate and compliance with new and amended rules.

As with adviser examinations, the Division will continue to examine funds that have not been examined and those that have not been examined recently with a particular focus on newly registered funds.

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D. Broker-Dealers

1. Regulation Best Interest (“Regulation BI”)

Consistent with prior years, the Division will continue to address issues related to standards of conduct for broker-dealers. Reviews will focus on how broker-dealers are satisfying their obligations under Regulation BI.

In reviewing whether broker-dealer recommendations are in customers’ best interest, areas of particular interest will include:

- (1) recommendations with regard to products, investment strategies, and account types;
- (2) disclosures made to investors regarding conflicts of interest;
- (3) conflict identification and mitigation and elimination practices;
- (4) processes for reviewing reasonably available alternatives; and
- (5) factors considered in light of the investor’s investment profile such as investment goals and account characteristics.

Examinations will focus on those recommended products that are complex, illiquid, or present higher risk to investors, such as highly leveraged or inverse products, crypto assets, structured products, alternative investments, products that are not registered with the Commission (and are therefore less transparent), products with complex fee structures or return calculations, products based on exotic benchmarks, or products that represent a growth area for retail investment.

Examinations also may focus on recommendations: (1) using automated tools or other digital engagement practices; (2) related to opening different account types, such as option, margin and self-directed IRA accounts; and (3) made to certain types of investors, such as older investors and those saving for retirement or college.

The Division also will continue to focus on issues affecting dual registrants, including conflicts of interest, account allocation practices (e.g., allocation of investments where an investor has more than one type of account) and account selection practices (e.g., brokerage versus advisory, including when rolling over to an IRA or transferring an existing brokerage account to an advisory account, as well as advice to open wrap fee accounts). Examinations also may assess broker-dealer supervision of sales practices at branch office locations.

2. Form CRS

Consistent with prior years, the Division will prioritize compliance with Form CRS, including reviews of the content of a broker-dealer’s relationship summary, such as how the broker-dealer describes: (1) the relationships and services that it

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offers to retail customers; (2) its fees and costs; and (3) its conflicts of interest, and whether the broker-dealer discloses any disciplinary history. The Division also will evaluate whether broker-dealers have met their obligations to file their relationship summary with the SEC and deliver it to retail customers.

3. Broker-Dealer Financial Responsibility Rules

As with the 2024 examination priorities, the Division plans to focus on broker-dealer compliance with the Net Capital Rule and the Customer Protection Rule and related internal processes, procedures and controls. The 2025 areas of focus will include broker-dealer accounting practices impacted by recent regulatory changes; the timeliness of financial notifications and other required filings made by broker-dealers; and broker-dealers' operational resiliency programs, including supervision of third-party or vendor-provided services that contribute to the records firms use to prepare their financial reporting information. In addition, examinations will assess broker-dealer credit, market, and liquidity risk management controls to ensure that firms have sufficient liquidity to manage stress events.

4. Broker-Dealer Trading Practices

The Division will continue to assess broker-dealer equity and fixed income trading practices. Areas of focus in 2025 will include the structure, marketing, fees, and potential conflicts associated with offerings by broker-dealers to retail customers, including bank sweep programs, fully-paid lending programs, and mobile apps/online trading platforms. Division examinations also will review broker-dealer trading practices associated with trading in pre-IPO companies and the sale of private company shares in secondary markets. In addition, the Division will review broker-dealers' execution of retail orders. These reviews will include: (1) whether retail orders are marked as "held" or "not held," and the consistency of the marking with retail instructions; and (2) the pricing and valuation of illiquid or retail-focused instruments such as variable-rate demand obligations, other municipal securities, and non-traded REITs.

With respect to Regulation SHO, the Division will review whether broker-dealers are appropriately relying on the bona fide market making exception, including whether quoting activity is away from the inside bid/offer.

D. Self-Regulatory Organizations

1. National Securities Exchanges

As in prior years, the Division will examine national securities exchanges² to assess whether they are meeting their obligations to enforce compliance with their rules, as well as with the federal securities laws. Examinations may focus on exchange governance, regulatory programs, and participation in National Market System Plans.

² National securities exchanges provide marketplaces for securities transactions and, under the federal securities laws, serve as self-regulatory organizations responsible for enforcing compliance by their members with applicable rules and laws.

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2. Financial Industry Regulatory Authority (“FINRA”)

The Division will conduct risk-based oversight examinations of FINRA. This will involve selecting areas within FINRA to examine through a risk-assessment process designed to identify those aspects of FINRA’s operations important to the protection of investors and market integrity, including FINRA’s implementation of investor protection initiatives such as Regulation BI and Form CRS, and the fair administration of its dispute resolution forum.

3. Municipal Securities Rulemaking Board (“MSRB”)

The Division, along with FINRA and the federal banking regulators, conducts examinations of registrants to assess compliance with MSRB rules, as well as applicable federal securities laws and rules. The Division also applies a risk-assessment process, similar to the one it uses to oversee FINRA, to identify areas to examine at the MSRB.

E. Clearing Agencies

As required by Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the Division will conduct at least one risk-based examination of each clearing agency designated as systemically important and for which the SEC serves as the supervisory agency. These examinations will focus on clearing agencies’ core risks, processes, and controls and will cover the specific areas required by statute, including the nature of clearing agencies’ operations and assessment of financial and operational risk. Additionally, the Division will conduct risk-based examinations of other registered clearing agencies that have not been designated as systemically important.

The Division will conduct risk-based examinations of SEC-registered clearing agencies to determine: (1) whether the clearing agencies’ respective risk management frameworks comply with the Exchange Act, and serve the needs of their members and the markets they serve; (2) the adequacy and timeliness of their remediation of prior deficiencies, including, for example, the role of senior leadership in the remediation process; and (3) other risk areas identified in collaboration with the Commission’s Division of Trading and Markets and other regulators. In addition, the Division examines security-based swap data repositories, as well as entities operating pursuant to a Commission order exempting them from the clearing agency registration requirement under Section 17A(b)(1) of the Exchange Act.

Areas of examination focus may include risk management of liquidity, margin systems, default management, links, third-party relationships, and operations, among other things.

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F. Other Market Participants

1. Municipal Advisors

As with examinations in prior years, the Division will continue to review whether municipal advisors have met their fiduciary duty obligation to clients, particularly when providing advice regarding the pricing and method of municipal securities. The Division will continue to assess whether municipal advisors have made required filings with the Commission and met their professional qualification, recordkeeping, and supervision requirements.

The Division also will continue to examine whether municipal advisors have complied with MSRB Rule G-42, which establishes the core standards of conduct and duties applicable to non-solicitor municipal advisors, including requirements to disclose conflicts of interest and to document municipal advisory relationships. In a change from the 2024 examination priorities, the Priorities do not include compliance with MSRB Rule G-46, which became effective on March 1, 2024.

2. Transfer Agents

The Division will continue to examine transfer agents' processing of items and transfers, recordkeeping and record retention, safeguarding of funds and securities, and filings with the Commission. Examinations will continue to focus on transfer agents that use emerging technology to perform their transfer agent functions.

3. Security-Based Swap Dealers ("SBSDs")

For SBSDs that have yet to be examined, the Division expects to continue to focus its examinations on whether SBSDs have implemented policies and procedures related to compliance with security-based swap rules generally, including whether they are meeting their obligations under Regulation SBSR to accurately report security-based swap transactions to security-based swap data repositories and, where applicable, whether they are complying with relevant conditions in Commission orders governing substituted compliance. For other SBSDs, the Division may focus on SBSDs' practices with respect to applicable capital, margin, and segregation requirements and risk management. The Division also expects to assess whether SBSDs have taken corrective action to address issues identified in prior examinations.

4. Security-Based Swap Execution Facilities ("SBSEFs")

On November 2, 2023, the Commission adopted new Regulation SE under the Exchange Act, which implements a set of rules and forms for the registration and regulation of SBSEFs. The adoption of Regulation SE eliminated the prior temporary registration exemptions for SBSEFs as of August 12, 2024, at which time SBSEFs needed to apply for registration with the Commission. Subject to the timing of these events and the Commission's decisions with respect to any submitted applications, the Division may begin conducting examinations of registered SBSEFs in late fiscal year 2025 as a new examination priority.

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5. Funding Portals

In another new area of focus, the Division will examine whether funding portals are making and preserving: (1) required records, such as records related to investors who purchase, or attempt to purchase, securities through the funding portal; and (2) records related to issuers who offer and sell, or attempt to offer and sell, securities through the funding portal and the control persons of such issuers, among others. In addition, the Division will review funding portals' written policies and procedures to assess if they are reasonably designed to achieve compliance with applicable federal securities laws and rules, such as the restrictions that prohibit funding portals from engaging in the following activities: (1) offering investment advice or recommendations; (2) soliciting transactions in the securities displayed on the funding portal's platform; (3) compensating persons for such solicitation or based on the sale of securities displayed on the funding portal's platform; and (4) holding, managing, possessing, or handling investor funds or securities.

G. Risk Areas Impacting Various Market Participants

1. Information Security and Operational Resiliency

a. Cybersecurity

The Division will continue to review registrant practices to prevent interruptions to mission-critical services and to protect investor information, records, and assets. Operational disruption risks remain elevated due to the proliferation of cybersecurity attacks, firms' dispersed operations, weather-related events, and geopolitical concerns. As part of its examinations in this area, the Division will examine registrants' procedures and practices to assess whether they are reasonably managing information security and operational risks.

A perennial examination priority, particular attention will be on firms' policies and procedures, governance practices, data loss prevention, access controls, account management, and responses to cyber-related incidents, including those related to ransomware attacks. The Division also will review alternative trading systems' safeguards to protect confidential trading information.

With respect to third-party products and services in particular, the Division will continue to consider cybersecurity risks and resiliency goals associated with third-party products, sub-contractors, services, and any information technology ("IT") resources used by the business without the IT department's approval, knowledge or oversight, or non-supported infrastructure. The focus will include assessments of how registrants identify and address these risks to essential business operations.

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b. Regulation S-ID and Regulation S-P

The Division will assess registrant compliance with Regulations S-ID and S-P, as applicable. Examinations will focus on firms' policies and procedures, internal controls, oversight of third-party vendors, and governance practices. In addition, the Division will focus on firms' policies and procedures as they pertain to safeguarding customer records and information at firms providing electronic investment services, including:

- (1) identification and detection to prevent and protect against identity theft during customer account takeovers and fraudulent transfers;
- (2) firms' practices to prevent account intrusions and safeguard customer records and information, including personally identifiable information, especially as it pertains to firms with multiple branch offices; and
- (3) firms' training on identity theft prevention programs and whether their policies and procedures are reasonably designed to protect customer records and information. Examinations also will assess firms' efforts to address operational risk, including technology risks, as operational failures may impact a firm's ability to safeguard customer records and information.

In preparation for the compliance dates of the Commission's amendments to Regulation S-P, the Division will engage with firms during examinations about their progress in preparing to establish incident response programs reasonably designed to detect, respond to, and recover from unauthorized access to or use of customer information.

c. Shortening of the Settlement Cycle

The Division will evaluate broker-dealer compliance with Rule 15c6-1 under the Exchange Act, which reduced the standard settlement cycle for most securities to the day after trade date (T+1), and with Rule 15c6-2 under the Exchange Act, which requires broker-dealers engaging in the allocation, confirmation, or affirmation process to have written agreements or written procedures reasonably designed to ensure completion of the process as soon as practicable and no later than the end of day on trade date (T+0).

The Division will evaluate advisers' compliance with amended books and records requirements associated with T+1. The Division also will consider advisers' operational changes, or impacts related to adviser facilitation of institutional transactions that are involved in the allocation, confirmation, or affirmation processes subject to Rule 15c6-2(a).

In addition, examinations will assess registrant technology changes associated with shortening of the settlement cycle and evaluate any areas that need further attention and resources, such as specific products or counterparties that are routinely not settling within the required time frames

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2. Emerging Financial Technologies

The Division remains focused on registrants' use of certain services, such as automated investment tools, AI, and trading algorithms or platforms, and the risks associated with the use of emerging technologies and alternative sources of data. Notably, the topic of emerging financial technologies is included in its own section in the Priorities, compared to prior years when it was included in the same section as crypto assets. In particular, the division will examine firms that employ certain digital engagement practices, such as digital investment advisory services, recommendations, and related tools and methods. When conducting these reviews, assessments generally will include whether: (1) representations are fair and accurate; (2) operations and controls in place are consistent with disclosures made to investors; (3) algorithms produce advice or recommendations consistent with investors' investment profiles or stated strategies; and (4) controls to confirm that advice or recommendations resulting from digital engagement practices are consistent with regulatory obligations to investors, including older investors.

With respect to AI, the Division will review registrant representations regarding their AI capabilities or AI use for accuracy. In addition, the Division will assess whether firms have implemented adequate policies and procedures to monitor and/or supervise their use of AI, including for tasks related to fraud prevention and detection, back-office operations, anti-money laundering ("AML"), and trading functions, as applicable. Reviews also will consider firm integration of regulatory technology to automate internal processes and optimize efficiencies. In addition, the Division will examine how registrants protect against loss or misuse of client records and information that may occur from the use of third-party AI models and tools.

3. Crypto Assets

Examinations of registrants offering crypto-asset-related services will focus on the offer, sale, recommendation, advice, trading, and other activities involving crypto assets that are offered and sold as securities or related products, such as spot bitcoin or ether exchange-traded products. In particular, these examinations will review whether the registrants: (1) meet and follow their respective standards of conduct when recommending or advising customers and clients regarding crypto assets with a focus on an initial and ongoing understanding of the products that have a particular focus on scenarios where investors are retail-based (including older investors) and investments involving retirement assets; and (2) routinely review, update, and enhance their compliance practices (including crypto asset wallet reviews, custody practices, Bank Secrecy Act ("BSA") compliance reviews, and valuation procedures), risk disclosures, and operational resiliency practices (*i.e.*, data integrity and business continuity plans), if required.

The Division will assess registrant practices to address the technological risks associated with the use of blockchain and distributed ledger technology, including risks pertaining to the security of crypto assets.

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4. Regulation Systems Compliance and Integrity (“SCI”)

The Division will continue to evaluate whether SCI entities³ have established, maintained, and enforced written policies and procedures. As part of the Division’s examination of SCI entities, the Priorities specify that reviews will focus on:

- (1) The policies and procedures regarding the operational, business continuity planning and testing practices of SCI entities.
- (2) The effectiveness of incident response plans. In particular, the Division will evaluate policies and procedures regarding the decision to disconnect or reconnect from another registrant or third-party that is experiencing a cyber event, and the decision-making process to disconnect or reconnect to registrants or third parties when the SCI entity is experiencing a cyber event. This would include all forms of inbound and outbound connectivity, such as trade processing, data feeds, remote processing, post trade reporting, market surveillance, and remote access.
- (3) The policies and procedures pertaining to the security operations management tools employed by SCI entities to ensure that their SCI systems and indirect SCI systems have adequate levels of security and their effectiveness to meet the security goals of the organization.

5. Anti-Money Laundering

The BSA requires certain financial institutions, including broker-dealers and certain registered investment companies, to establish AML programs that are tailored to address the risks associated with the firm’s location, size, and activities, including the customers they serve, the types of products and services offered, and how those products and services are offered. These programs must, among other things, include policies, procedures and internal controls reasonably designed to achieve compliance with the BSA and its implementing rules; independent testing; and risk-based procedures to perform certain customer due diligence, which includes identifying and verifying the identity of customers and conducting ongoing monitoring to identify and, where appropriate, file Suspicious Activity Reports (“SARs”) with the Financial Crimes Enforcement Network.

Given the importance of these requirements, the Division will continue to prioritize examinations of broker-dealers and registered investment companies to ensure that they are: (1) appropriately tailoring their AML program to their business model and associated AML risks; (2) conducting independent testing; (3) establishing an adequate customer identification

³ Regulation SCI applies to “SCI entities,” which include self-regulatory organizations (including stock and options exchanges, registered clearing agencies, FINRA and the MSRB), alternative trading systems that trade National Market System (“NMS”) stocks and non-NMS stocks exceeding specified volume thresholds, disseminators of consolidated market data and certain exempt clearing agencies.

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program, including for beneficial owners of legal entity customers; and (4) meeting their SAR filing obligations. Examinations of certain RICs also will review policies and procedures for oversight of applicable financial intermediaries.

The Division also will review whether broker-dealers and advisers are monitoring and complying with Office of Foreign Assets Control sanctions.

H. Conclusion

The Priorities reflect an enhanced focus on the investment adviser fiduciary standards of conduct, the use of artificial intelligence and digital engagement practices by investment advisers and broker-dealers, and how investment advisers, investment companies, and broker-dealers respond to periods of increased market volatility and changes in interest rates. The Priorities also reflect a continued focus on registered investment companies and their importance to retail investors, broker-dealers and their obligations under Regulation Best Interest, and issues of particular relevance to investment advisers to private funds. Notably, the Priorities discuss areas of focus with respect to investment advisers specifically in reference to advisers' fiduciary standards of conduct. Consistent with prior years, newly registered funds and investment advisers, as well as advisers offering new services and asset classes, will be more likely to face regulatory scrutiny. While the change in administration may lead to some changes in SEC priorities under a new Chairman, market participants nonetheless should evaluate their business activities and enhance their compliance policies and procedures if necessary to address the identified areas of focus.

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