

Key Takeaways from the SEC's 2025 Exam Priorities

Alert

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On October 21, 2024, the Division of Examinations (Division) of the Securities and Exchange Commission (SEC) published its 2025 examination priorities (2025 priorities). The release of the 2025 priorities is intended to inform registered investment advisers, investment companies and broker-dealers of potential areas the Division will review during examinations in 2025.

The changing presidential administration portends potentially significant shifts in SEC focus for 2025. Historically, however, the SEC pursues enforcement actions in the areas referenced in the Division priorities through such change. Many of the 2025 priorities should be expected to survive. As such, it is important to review the 2025 priorities carefully and consult counsel with any questions.

A review of the 2025 priorities reveals the Division's emphasis on a broad array of issues relating to investment advisers and broker-dealers, including private fund advisers, conflicts of interest disclosures, Regulation Best Interest (Reg BI), cybersecurity and crypto assets. Additionally, although the 2025 priorities reinforce many of the Division's priorities over the last several years, they also signal the Division's increased attention to the use of artificial intelligence (AI) and compliance with recent regulatory amendments. Below is a brief summary of the 2025 priorities that are particularly relevant to investment advisers and broker-dealers.

INVESTMENT ADVISERS

The Division will continue its tradition of prioritizing examinations of investment advisers who have never been examined, newly-registered advisers, and advisers that have not been examined recently. Of those selected for an examination in 2025, the Division is expected to focus its review on fiduciary standards, compliance programs and private fund advisers.

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Fiduciary Duties

The Division remains focused on investment advisers' adherence to fiduciary standards of conduct in 2025. As fiduciaries, advisers owe duties of care and loyalty to their clients. This means advisers must act in the best interests of their clients at all times, and they must eliminate or make full and fair disclosure of all conflicts of interest that have the potential to impact an advisers' ability to render disinterested advice. In its review of fiduciary obligations, the Division will pay close attention to investment advice and recommendations relating to: (1) high-cost products; (2) unconventional instruments; (3) illiquid and difficult-to-value assets; and (4) assets sensitive to higher interest rates or changing market conditions (e.g., commercial real estate).

The Division will also prioritize dual-registrants and advisers with affiliated broker-dealers by: (1) assessing investment advice and recommendations to determine if suitable for advisory accounts; (2) reviewing disclosures regarding the capacity in which recommendations are made to clients by dual-registrants and advisers with affiliated broker-dealers; (3) reviewing whether account selection practices (e.g., brokerage versus advisory) are appropriate, including rollovers from existing brokerage accounts to advisory accounts; and (4) assessing whether advisers sufficiently mitigate and/or disclose conflicts of interest.

Compliance Programs

The Division continues to prioritize compliance with Rule 206(4)-7 under the Investment Advisers Act of 1940, which requires investment advisers to: (1) adopt and implement compliance policies and procedures to prevent violations of the act; (2) designate a chief compliance officer to administer compliance policies and procedures; and (3) review compliance policies and procedures annually. Examinations of compliance programs will evaluate core compliance areas, including marketing, valuation, trading, portfolio management, disclosure, filings and custody. Investment advisers' annual reviews regarding the effectiveness of their programs will also be examined, as the Division views these self-reviews as a critical component of monitoring conflicts of interest stemming from business and compensation agreements, arbitration clauses and affiliations with certain parties and transactions. The Division may focus on or go into a greater depth review of compliance programs for advisers that integrate AI into their advisory operations, have clients that invest in illiquid or difficult-to-value assets, have recently changed their business models, or are new to advising particular types of assets, clients or services.

Private Fund Advisers

The 2025 priorities signal the Division's continuing focus on investment advisers to private funds. This priority was largely expected, including due to the Fifth Circuit's recent decision invalidating the SEC's 2023 Private Fund Rules. However, the Division's review of private fund advisers in 2025 will prioritize investment strategies that may be sensitive to market volatility and interest rate changes, including

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commercial real estate, illiquid assets and private credit. The Division will also prioritize examinations of private fund advisers showing poor performance, significant withdrawals, higher leverage or difficult-to-value assets.

Additionally, the Division plans to review conflicts of interest disclosures and determine whether advisers are adequately complying with policies and procedures of recently-adopted amendments and beginning to implement the enhanced reporting requirements under Form PF.

BROKER-DEALERS

The SEC has brought numerous actions against broker-dealers alleging violations of Reg BI and failures to meet Form CRS obligations. This is why it is no surprise that both are top priorities again in 2025. Additionally, examinations will prioritize reviews of financial responsibility and trading-related practices and services.

Regulation Best Interest

With respect to broker-dealers, the Division will continue to examine broker-dealer practices related to Reg BI, which establishes the standard of conduct broker-dealers must follow when recommending securities transactions or strategies to clients. Specifically, broker-dealers must make investment recommendations in the best interests of their clients. To ensure broker-dealers comply with Reg BI, the Division will assess: (1) whether the broker has a reasonable basis to believe a recommendation regarding products, investment strategies or account types is in the best interests of the customer and does not place the broker's interests ahead of the customer's; (2) conflict of interest disclosures made to investors; (3) practices relating to conflict identification, mitigation and elimination; (4) processes for reviewing reasonably-available alternatives; and (5) factors considered in light of the investor's investment profile, including investment goals and account characteristics.

These reviews will focus specifically on broker-dealers who recommend products that are complex, illiquid or present a higher risk to investors, including highly-leveraged products, crypto assets, structured products and alternative investments. Examinations may also review recommendations that are generated using automated tools, related to opening different account types and/or made to specific investors, such as older investors or investors saving for retirement or college.

Form CRS

The SEC requires broker-dealers (and investment advisers) to provide its Form CRS to all retail investors. Form CRS is a disclosure document that provides information about a broker to assist investors in deciding if a broker-dealer is right for them. The 2025 priorities state the Division will review the content of broker-dealers' "relationship summary" within its Form CRS, including the descriptions regarding the

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relationships and services offered to retail customers, its fees and costs, its conflicts of interest, and any disciplinary history disclosed by the broker-dealer.

Broker-Dealer Financial Responsibility Rules

The Division continues to focus its examinations on broker-dealers' compliance with the net capital rule and the customer protection rule. The Division will also review any related internal processes, procedures controls, operational resiliency programs and an assessment of broker-dealer credit, market and liquidity risk management controls.

Broker-Dealer Trading-Related Practices and Services

Examinations will prioritize broker-dealer equity and fixed income trading practices. Areas of focus include the structure, marketing, fees, and potential conflicts associated with offerings by broker-dealers to retail customers, trading practices associated with trading in pre-Initial Public Offering companies and the sale of private company shares in secondary markets, and the execution of retail orders, such as whether orders are marked as "held" or "not held," the consistency of the marking with retail instructions, and the pricing and valuation of illiquid or retail-focused instruments. Additionally, the 2025 priorities include a focus on bank sweep programs, which have been the subject of recent litigation, and compliance with Regulation SHO, including the bona fide market-making exception.

RISK AREAS

The 2025 priorities also highlight several key areas the Division believes "present the highest risk areas to investors and markets." These areas include cybersecurity, compliance with recent regulatory amendments, the use of financial technology, and crypto assets.

Cybersecurity

The Division will continue to ensure registrant practices prevent mission-critical service interruptions and protect investor information by focusing its examinations on policies and procedures, governance, data loss prevention, access controls, account management and incident response. Examinations will also review risks associated with registrant use of third-party products and services.

Compliance with Recent Amendments

The Division will assess whether registrants are complying with Regulations S-ID and S-P. Entities have until either 2025 or 2026, depending on entity size, to comply with the May 2024 amendment to Regulation S-P, which requires a new minimum standard for data breach notifications, expands the definition of "customer information," mandates the adoption of policies and procedures for incident response and service provider oversight, and imposes new recordkeeping obligations. The Division will assess progress

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towards compliance starting next year. Additionally, examinations will evaluate compliance with recent amendments to Rules 15c6-1 and 15c6-2.

Financial Technologies

With AI on the rise, the 2025 priorities emphasize registrants' use of automated investment tools, including AI, digital engagement practices (DEPs), and other trading algorithms. This priority is unsurprising given the Division's recent focus on AI technology in investor interactions following the [SEC's July 2023 rule proposal](#) relating to broker-dealers' and investment advisers' use of predictive data analytics.

The 2025 priorities focus heavily on investment advisers' implementation of AI, including how AI is used and whether firms monitor and supervise AI. Specifically, reviews will assess whether: (1) representations regarding AI capacity and use are accurate; (2) adequate policies and procedures to monitor and supervise AI use for tasks related to fraud prevention, back-office operations, anti-money laundering and trading functions are implemented; (3) internal processes are automated; and (4) registrants protect against loss or misuse of client records and information that may occur due to the use of third-party AI models and tools.

For firms utilizing DEPs, including digital investment advisory services and recommendations, examinations will review whether: (1) representations are fair and accurate; (2) operations and controls are consistent with disclosures; (3) the advice or recommendations produced by DEPs is consistent with investors' investment profiles and stated strategies; and (4) firms have employed controls confirming the advice or recommendations produced by DEPs that are consistent with registrants' regulatory obligations.

Crypto Assets

Crypto assets remain a top priority for the Division in 2025. Examinations will review a broad range of activities involving crypto assets offered and sold as securities, including bitcoin and other exchange-traded products. The examinations will review whether registrants: (1) meet and follow standards of conduct when advising clients; and (2) routinely review, update and enhance their compliance practices, risk disclosures and operational resiliency practices.

As a reminder, the 2025 priorities are not an exhaustive list of areas the Division may review during examinations. However, they act as a reference of potential risks to consider when reviewing and strengthening compliance programs.

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