

# 2025 SEC Division of Examinations Priorities

October 24, 2024

On October 21, 2024, the U.S. Securities and Exchange Commission's (the "SEC") Division of Examinations (the "Division") released its 2025 Examination Priorities (the "Priorities").<sup>1</sup> The Priorities provide insight into the products, practices, and services the Division views as presenting heightened risk to investors or capital markets and will focus on in its future examinations. Despite the vacatur of the Private Fund Adviser Rules, the 2025 Priorities make clear that the SEC will continue its focus on private fund advisers, shifting its emphasis away from many areas in last year's Priorities and toward new ones such as compliance with the new amendments to Form PF. The 2025 Priorities also reflect a focus on integration of artificial intelligence, security-based swap execution facilities, funding portals, compliance with the amendments to Regulation S-P and Rule 15c6-1, firms that employ digital engagement practices, and Systems Compliance and Integrity entities' incident response plans. Along with its new substantive priorities, the Division notes that it made structural changes to focus more specialized resources on supporting its priorities with regard to broker-dealers and exchanges. Those include building out a group to focus on national securities exchanges, adding a national risk strategist to assess and examine planning considerations, and adding a new associate director to strengthen the program's home office.<sup>2</sup>

In addition to its areas of focus, the Division is engaged in an effort to reevaluate the methodology it uses to calculate annual examination number projections, with the goal of tying its annual targets to its risk-based examination approach and available staff resources.<sup>3</sup>

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<sup>1</sup> 2025 Examination Priorities, Division of Examinations, U.S. Securities and Exchange Commission (Oct. 21, 2024), available [here](#).

<sup>2</sup> 2025 Examination Priorities at 3.

<sup>3</sup> *Id.* at 3.

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## Investment Advisers

The 2025 Priorities remain focused on investment advisers' adherence to fiduciary duties and the effectiveness of their compliance programs, including advisers to private funds.<sup>4</sup>

The Division's focus on fiduciary duties continues to emphasize advice provided regarding high-cost products, unconventional instruments, illiquid and difficult-to-value assets, and assets sensitive to higher interest rates or changing market conditions, such as commercial real estate. With regard to the fiduciary duties of dual registrants and broker-dealers, the Priorities likewise focus on the same areas as the 2024 Priorities: determining whether certain products are suitable for clients' advisory accounts; disclosures to clients regarding the capacity in which recommendations are made; the appropriateness of account selection practices; and mitigation of conflicts of interest.<sup>5</sup>

### Private Funds

Despite the vacatur of the Private Fund Adviser Rules,<sup>6</sup> the 2025 Priorities make clear that the SEC will continue its focus on private fund advisers.<sup>7</sup> The Division added several new topics of focus to this year's Priorities, and it excluded many topics that it had previously included in 2024. The Division remains focused on its 2024 priority of portfolio management risks during times of market volatility and higher interest rates and clarified that in 2025, they are specifically looking at the accuracy of disclosures and advisers' compliance with their fiduciary obligations in this context.

The 2025 Priorities add a focus on the accuracy of calculations and allocations of private fund fees and expenses. The Priorities list examples of areas that may impact the calculations, many of which have become perennial focus areas for the Division. The example areas are: valuation of illiquid assets; calculation of post-commitment period management fees; offsetting of such fees and expenses; and adequacy of disclosures. Another focus area is the disclosure of conflicts of interests and risk and adequacy of policies and procedures. While the prioritization of disclosures, conflicts, and controls is not new, this year's Priorities provide examples of products and practices that will be the focus of these reviews: (1) use of debt, fund-level lines of credit, investment allocations,

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<sup>4</sup> *Id.* at 5–7.

<sup>5</sup> *Id.* at 5–6.

<sup>6</sup> For more information, see our client alert, [Fifth Circuit Banishes SEC Private Fund Adviser Rules to a Galaxy PEAR, PEAR Away...](#)

<sup>7</sup> *2025 Examination Priorities* at 7.

adviser-led secondary transactions, transactions between funds and/or others; (2) investments held by multiple funds; and (3) use of affiliated service providers.<sup>8</sup>

Finally, the 2025 Priorities add a focus on compliance with recently adopted SEC rules, with specific emphasis on the recent amendments to Form PF.<sup>9</sup> The amendments to Form PF enhanced reporting requirements by private fund advisers, in particular, large hedge fund advisers, large liquidity fund advisers, and large private equity fund advisers.

Unlike last year's Priorities, the prioritized topics of review as to private funds no longer include:

- due diligence for consistency with policies, procedures, and disclosures with respect to private equity and venture capital fund assessments of prospective portfolio companies;
- adherence to contractual requirements regarding limited partnership advisory committees or similar structures, including any notification and consent processes; and
- compliance with the Investment Advisers Act of 1940 requirements regarding custody, including accurate Form ADV reporting, timely completion of private fund audits by a qualified auditor and the distribution of private fund audited financial statements.<sup>10</sup>

## Compliance

The 2025 Priorities reiterate that assessment of advisers' compliance programs is a fundamental part of the examination process. The Division will pay particular attention to whether an adviser's policies appropriately address any outsourcing of investment selection or management functions, any alternative sources of revenue or benefits advisers receive, as well as the calculation of fees and the disclosure of related conflicts. In addition, the Priorities note that certain practices and products may require a more in-depth review by the Division, such as where the adviser:

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<sup>8</sup> *Id.*

<sup>9</sup> Form PF, Reporting Requirements for All Filers and Large Hedge Fund Advisers, Advisers Act Rel. No. 6546, U.S. Securities and Exchange Commission (Feb. 8, 2024), available [here](#); Form PF, Reporting Requirements for Large Liquidity Fund Advisers, Advisers Act Rel. No. 6344, U.S. Securities and Exchange Commission (Jul. 12, 2023), available [here](#); Form PF, Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers; Requirements for Large Private Equity Fund Adviser Reporting, Advisers Act Rel. No. 6297, U.S. Securities and Exchange Commission (May 3, 2023), available [here](#).

<sup>10</sup> 2025 Examination Priorities at 7.

- integrates artificial intelligence into advisory operations, including portfolio management, trading, marketing, and compliance;
- utilizes a large number of independent contractors working from geographically dispersed locations; and
- changes its business models or is new to advising particular types of assets, clients, or services.

Advisers integrating artificial intelligence can expect a deeper dive into their related compliance policies, procedures, and disclosures. Advisers utilizing independent contractors may see enhanced focus on their supervision and oversight practices.<sup>11</sup>

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## Investment Companies

The Division continues to prioritize examinations of registered investment companies, mutual funds, and exchange-traded funds. The topics and characteristics it will focus on are: (1) fund fees and expenses, including associated waivers and reimbursements; (2) oversight of affiliated and third-party service providers; (3) portfolio management practices and disclosures, for consistency with claims about investment strategies or approaches and with fund filings and marketing materials; (4) issues associated with market volatility; (5) registered investment companies with exposure to commercial real estate; and (6) compliance with new and amended rules.<sup>12</sup>

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## Broker-Dealers

The Division will continue to examine broker-dealers on their Regulation Best Interest practices, review the content of the Form CRS, and focus on the perennially examined products—those that are complex, illiquid, or high risk. As examples of those products, the 2025 Priorities highlight highly leveraged or inverse products, crypto assets, structured products, alternative investments, products that are not registered with the SEC, products with complex fee structures or return calculations, products based on exotic benchmarks, and products that represent a growth area for retail investment. New topics of focus will be broker-dealers' recommendations using automated tools or

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<sup>11</sup> *Id.* at 6. The Division's new emphasis on outsourcing and artificial intelligence is somewhat expected, given that the SEC is currently contemplating reproposals of rules relating to outsourcing and the use of predictive data analytics by registered investment advisers.

<sup>12</sup> *Id.* at 7.

digital engagement practices and recommendations related to opening different account types, such as option, margin and self-directed IRA accounts.<sup>13</sup>

The 2025 Priorities highlight two new areas of review: timeliness of financial notifications and other required filings made by a broker-dealer, and supervision of third-party or vendor provided services that contribute to the records firms have used to prepare financial reporting information.<sup>14</sup>

The Division continues to prioritize broker-dealer equity and fixed income trading practices, newly emphasizing a detailed list of areas it will review. Review topics 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;
- trading practices associated with trading in pre-IPO companies and the sale of private company shares in secondary markets;
- broker-dealers' execution of retail orders, including (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 real estate investment trusts; and
- whether broker-dealers are appropriately relying on the bona fide market making exception in Regulation SHO, including whether quoting activity is away from the inside bid/offer.<sup>15</sup>

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## Self-Regulatory Organizations and Clearing Agencies

The Division remains focused on national securities exchanges, the Financial Industry Regulatory Authority ("FINRA"), and the Municipal Securities Rulemaking Board ("MSRB"). The Priorities reiterate nearly verbatim those outlined in the 2024 Priorities. They add a focus on exchange governance, regulatory programs, and participation in National Market System Plans in the examinations of national securities exchanges and

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<sup>13</sup> *Id.* at 8.

<sup>14</sup> *Id.* at 8–9.

<sup>15</sup> *Id.*

call out broker-dealers as one stakeholder group the Division will reach out to as part of its risk assessment of FINRA.<sup>16</sup>

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## Other Market Participants

### Municipal Advisors

Exams of municipal advisors will continue to emphasize compliance with the March 2024 MSRB Rule G-42, which established standards of conduct and duties for municipal advisors, including conflict of interest disclosure requirements.<sup>17</sup>

### Transfer Agents

The Division continues to focus on the same areas in examinations of transfer agents as it did in the 2024 Priorities.<sup>18</sup>

### Security-Based Swap Dealers (“SBSDs”)

The Division reiterates the priorities with regards to SBSDs that it announced in the 2024 Priorities. The 2025 Priorities add a focus on whether the SBSDs are complying with relevant conditions in SEC orders governing substituted compliance and whether SBSDs have taken corrective action to address previously identified issues.<sup>19</sup>

### Security-Based Swap Execution Facilities

For the first time, the Division will begin conducting examinations of security-based swap execution facilities (“SBSEFs”) in late fiscal year 2025. This comes after the SEC’s adoption of Regulation SE in November 2023, implementing rules and forms for the registration and regulation of SBSEFs.<sup>20</sup> SBSEFs needed to apply for registration with the SEC as of August 2024, when the temporary registration exemptions were eliminated.<sup>21</sup>

### Funding Portals

The 2025 Priorities newly emphasize examinations of funding portals. Examinations will focus on whether funding portals are making and preserving records of investors who purchase or attempt to purchase through the portal and records related to issuers

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<sup>16</sup> *Id.* at 9–10.

<sup>17</sup> *Id.* at 11.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Security-Based Swap Execution and Registration of Security-Based Swap Execution Facilities, Exchange Act Rel. No. 98845, U.S. Securities and Exchange Commission (Nov. 2, 2023), available [here](#).

<sup>21</sup> 2025 Examination Priorities at 11.

who offer and sell, or attempt to offer and sell, securities through the portal. Another focus will be funding portals' written policies and procedures. Examinations of policies and procedures will seek to assess if they are "reasonably designed to achieve compliance with applicable federal securities laws and rules." Specifically, laws and rules that prohibit funding portals from engaging in the following activities:

- offering investment advice or recommendations;
- soliciting transactions in the securities displayed on the funding portal's platform;
- compensating persons for such solicitation or based on the sale of securities displayed on the funding portal's platform; and
- holding, managing, possessing, or handling investor funds or securities.<sup>22</sup>

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## Risk Areas Impacting Various Market Participants

### Cybersecurity

The 2025 Priorities continue to highlight that operational disruption risks remain elevated due to "proliferation of cybersecurity attacks, firms' dispersed operations, weather-related events, and geopolitical concerns."<sup>23</sup> As such, the Division will prioritize examination of registrants' procedures and practices to assess whether they are reasonably managing information security and operational risks.

### Regulations S-ID and S-P

The Division will assess compliance with Regulations S-ID and S-P, including registrants' progress in preparing to comply with the May 2024 amendments to Regulation S-P.<sup>24</sup> The amendments establish a new minimum standard for data breach notifications, expand the definition of "customer information," require the adoption of policies and procedures for incident response and service provider oversight, and impose new recordkeeping obligations.<sup>25</sup> The compliance date for large entities is December 2025, and the date for smaller entities is June 2026.<sup>26</sup> The Division anticipates making

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<sup>22</sup> *Id.* at 12.

<sup>23</sup> *Id.*

<sup>24</sup> Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Customer Information, Advisers Act Rel. No. 6604, U.S. Securities and Exchange Commission (May 16, 2024), available [here](#).

<sup>25</sup> *The SEC Adopts Significant Cybersecurity Amendments to Reg S-P*, Debevoise In Depth (May 17, 2024), available [here](#).

<sup>26</sup> *Id.*

“targeted outreach” to the securities industry focused on implementation of the new requirements.<sup>27</sup>

### Shortening of the Settlement Cycle

In February 2023, the SEC issued an amendment to Rule 15c6-1, shortening the standard settlement cycle for most broker-dealer transactions to one business day after the trade date.<sup>28</sup> In 2025, the Division will evaluate compliance with the new rule and with Rule 15c6-2, which requires broker-dealers to have written agreements or 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).”<sup>29</sup>

### Artificial Intelligence and Emerging Financial Technologies

The Division remains focused on the risks associated with automated investment tools, artificial intelligence, trading algorithms, and platforms. In particular, the 2025 Priorities emphasize examinations of “firms that employ certain digital engagement practices, such as digital investment advisory services, recommendations, and related tools and methods.” Those examinations will assess 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.<sup>30</sup>

The 2025 Priorities increasingly focus on registrants that utilize artificial intelligence. With respect to these firms, the Division will:

- review registrant representations regarding their artificial intelligence capabilities or artificial intelligence use for accuracy;
- assess whether firms have implemented adequate policies and procedures to monitor their use of artificial intelligence, including for tasks related to fraud prevention and detection, back-office operations, anti-money laundering, and trading functions, as applicable;
- assess firm integration of regulatory technology to automate internal processes and optimize efficiencies; and

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<sup>27</sup> 2025 Examination Priorities at 3.

<sup>28</sup> SEC Finalizes Move to T+1 with a 15-Month Window to Adapt, Debevoise In Depth (Feb. 23, 2024), available [here](#).

<sup>29</sup> 2025 Examination Priorities at 13.

<sup>30</sup> *Id.*



- examine how registrants protect against loss or misuse of client records and information that may occur from the use of third-party artificial intelligence models and tools.<sup>31</sup>

### Crypto Assets

The 2025 Priorities remain focused on monitoring and examining registrants offering crypto asset-related services. The Priorities add bitcoin and ether exchange-traded products as examples of assets that are offered and sold as securities or related products it will focus on.<sup>32</sup>

### Regulation Systems Compliance and Integrity

The Division remains focused on Systems Compliance and Integrity (“SCI”) entities, with the new Priorities emphasizing the effectiveness of incident response plans.<sup>33</sup> With respect to these plans, the Division will specifically evaluate:

- policies and procedures regarding the decision to disconnect or reconnect from another registrant or third-party that is experiencing a cyber event;
- the decision-making process to disconnect or reconnect to registrants or third parties when the SCI entity is experiencing a cyber event;
- all forms of inbound and outbound connectivity, such as trade processing, data feeds, remote processing, post trade reporting, market surveillance, and remote access during such an event; and
- 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.<sup>34</sup>

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## Anti-Money Laundering

The Division remains focused on the same anti-money laundering (“AML”) priorities from the 2024 Priorities. They will assess whether broker-dealer and registered investment companies are: (1) appropriately tailoring their AML programs to their

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 14.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

business models and associated AML risks; (2) conducting independent testing; (3) establishing an adequate customer identification program, including for beneficial owners of legal entity customers; and (4) meeting their Suspicious Activity Reports (“SARs”) filing obligations.<sup>35</sup>

Not specifically mentioned in the 2025 Priorities but also of note is the Financial Crimes Enforcement Network’s new AML rule for investment advisors. The new rule imposes significant new AML and countering the financing of terrorism (“CFT”) compliance responsibilities, even for investment advisers that voluntarily maintain AML/CFT programs, such as obligations related to SARs, information sharing with the government and enhanced due diligence measures.<sup>36</sup>

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<sup>35</sup> *Id.* at 15.

<sup>36</sup> New Anti-Money Laundering Requirements for Investment Advisers: Ten FAQs, Debevoise In Depth (Sept. 9, 2024), available [here](#).



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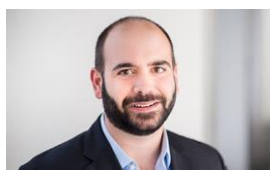
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