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Private Equity Alert

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Investment advisers: Insights on SEC 2025 Examination Priorities

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Investment firms should assess their compliance programs if they are active in the priority areas highlighted by the Division of Examinations.



What's the impact?

- The Division of Examinations has expressed interest in targeting advisers who have not been previously evaluated.
- In particular, 2025 examinations will focus on fiduciary obligations, adherence to the "Compliance Rule," and practices relating to cybersecurity and treatment of digital assets.

The U.S. Securities and Exchange Commission (the SEC), Division of Examinations (the Division) recently published its Fiscal Year 2025 Examination Priorities (the Examination Priorities). These outline several key focus areas affecting investment advisers, specifically private fund advisers. Generally, consistent with past years, the Division will prioritize examinations of advisers who have never been evaluated or who have not been examined in recent years. In response, investment advisers may wish to revisit compliance programs to ensure these adequately address the Division's focus for the coming year.

What is covered during SEC examinations?

Examination Priorities—published every year since 2013—are “to inform investors and the industry about key areas where we intend to focus our resources—those areas the Division believes present the highest risk areas to investors and the markets.”

In 2025, the Division will focus on the following priorities during investment adviser examinations:

FIDUCIARY OBLIGATIONS GENERALLY

Examinations will focus on advisers’ duties of care and loyalty, ensuring that client recommendations align with their best interests. Advisers will be evaluated on how they manage and disclose conflicts of interest, especially in situations involving (i) high-cost or unconventional products; (ii) illiquid, rate-sensitive, and difficult-to-value assets; or (iii) dual registrants or advisers with affiliated broker-dealers. This is the first item under the Division’s list of priorities and may signal a willingness to use the fiduciary obligation rules as a fallback for enforcement efforts weakened by recent court decisions against the SEC.

COMPLIANCE RULE

The Division reminded industry participants, “Rule 206(4)-7 under the Investment Advisers Act of 1940 (Advisers Act), often referred to as the “Compliance Rule,” requires SEC-registered investment advisers to:

- / [A]dopt and implement written policies and procedures that are reasonably designed to prevent violations of the Advisers [Act,] and the rules adopted under the Advisers Act by the adviser and its supervised persons[,] including to prevent the advisers from placing their interests ahead of clients’ interests;
- / [D]esignate an individual as Chief Compliance Officer to be responsible for administering the policies and procedures; and
- / [R]eview compliance policies and procedures at least annually for their adequacy and the effectiveness of their implementation.”

SEC examinations will closely examine the compliance programs of registered advisers, especially around marketing, valuation, trading, disclosures, and custody. Examinations may delve deeper based on an adviser’s practices, such as third-party management outsourcing, alternative revenue sources, and fee calculation transparency. Special attention may be given to (i) the valuation of illiquid assets, like commercial real estate; (ii) supervision and oversight practices if an adviser utilizes a large number of independent contracts working from geographically dispersed locations; or (iii) compliance practices when advisers change their business models or are new to advising particular types of assets, clients or services.

CYBERSECURITY AND OPERATIONAL RESILIENCY

With technology reliance growing in investment management, cybersecurity remains a top priority for examinations. The Division will review measures to prevent interruptions to critical services, safeguard investor information, maintain robust data loss prevention, ensure access control, and oversee third-party vendors.

CRYPTO ASSETS AND EMERGING FINANCIAL TECHNOLOGY

The SEC will monitor developments in crypto assets and emerging financial technologies, with examinations assessing compliance, risk disclosures, operational resilience, adherence to custody rules, and use of AI in investment tools. The Division will also examine policies surrounding the use and oversight of artificial intelligence in investment practices.

INVESTMENT COMPANIES

Of note to investment advisers operating registered investment companies (RICs), the Division will continue to prioritize examinations of RICs' compliance programs, disclosures, and governance, as well as emerging areas, such as those with commercial real estate exposure. Examinations will review fund fees, expenses, service provider oversight, portfolio management consistency, and market volatility.

Other SEC examination priority areas

In addition to the above priorities, during examinations of advisers to private funds, the Division will focus on the following priority areas:

INVESTMENT DISCLOSURES

The Division will assess whether disclosures provided by private fund advisers to their clients accurately reflect their practices and uphold fiduciary duties, especially in times of market volatility or when private funds are affected by interest rate changes (e.g., credit funds). Examinations will emphasize advisers whose funds are underperforming, have significant withdrawals, or are highly leveraged with challenging-to-value assets.

FEES AND EXPENSES

The Division will continue focusing on accurate calculation and allocation of fees and expenses by private fund advisers, both at the fund and investment levels. Particular attention will be given to valuing illiquid assets, managing post-commitment period fees, applying fee offsets, and ensuring clarity in fee and expense disclosures.

CONFLICTS OF INTEREST, CONTROLS, AND RISKS

The Division aims to evaluate the adequacy of private fund advisers' conflict disclosures and risk mitigation policies. Areas of concern include fund-level credit lines, investment allocations, adviser-led secondary transactions, inter-fund transactions, investments across multiple funds, and the use of affiliated service providers.

COMPLIANCE WITH NEW SEC RULES

The Division will review private fund advisers' adherence to recently updated SEC rules, including Form PF amendments and the modernized rules for investment adviser advertising (also known as the Marketing Rule). The Division will conduct targeted outreach to evaluate adherence to SEC updates, particularly under Regulation S-P.

Preparation

While the Examination Priorities are not significantly different from prior years—or diverge from recent SEC announcements and activity—there is an emphasis on the use of technology, particularly AI. It is recommended that investment advisers take the announcement as a prompt to review compliance programs to ensure these adequately address the Division's expectations for the coming year.

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