GreenbergTraurig

Alert | Financial Regulatory & Compliance

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SEC Division of Examinations 2025 Priorities

The Securities and Exchange Commission's Division of Examinations (Division) announced its 2025 examination priorities (Exam Priorities) Oct. 21, 2024. These priorities address areas of concern based on recent examinations, and often forecast referrals to the Division if material rule violations or deficiencies are uncovered. The Exam Priorities focus on six different types of market participants subject to SEC regulation or oversight, as well as four risk areas impacting many market participants.

Market Participants:

1. Investment advisers

2. Investment companies

3. Broker-dealers

4. Self-regulatory organizations (SROs)

5. Clearing agencies

6. Other market participants including municipal advisors, security-based swap dealers, transfer agents, security-based swap execution facilities, and funding portals.

Risk Areas:

1. Information security and operational resiliency;
2. Crypto assets and emerging financial technology;
3. Regulation systems compliance and integrity (SCI);
4. Anti-money laundering.

This GT Alert discusses the Exam Priorities related to each of these market participants and the four common risk areas impacting many market participants.

Market Participants

1. *Investment Advisers*

The Division will continue to prioritize advisers' adherence to their duty of care and duty of loyalty obligations to clients. In examining advisers' adherence to these fiduciary duties, the Division will focus on:

- Investment advice provided to clients about products, investment strategies, and account types, and whether that advice satisfies the fiduciary obligations owed to clients. The Division will pay particular attention to recommendations related to high-cost products, unconventional instruments, illiquid and difficult to value assets, and assets sensitive to higher interest rates or changing market conditions (e.g., commercial real estate);
- Dual registrants and advisers with affiliated broker-dealers. Among other areas, the Division will review the appropriateness of account selection practices, disclosures to clients regarding the capacity in which recommendations are made, and whether and how advisers adequately mitigate and fairly disclose conflicts of interest; and
- The impact of conflicts of interest on providing impartial advice and best execution, with consideration given for non-standard fee arrangements.

In addition, the Division will continue evaluating the effectiveness of advisers' compliance programs pursuant to Rule 206(4)-7 under the Investment Advisers Act of 1940. Examinations will focus on:

- Fiduciary obligations of advisers that outsource investment selection and management;
- Alternative sources of revenue, such as selling non-securities-based products to clients; and
- Fee calculations and disclosures of fee-related conflicts, particularly in cases where some clients negotiate lower fees when similar services are provided to other clients at higher fees.

The Division will continue its recent focus on investment advisers to private funds and will closely review the following topics:

- Disclosures and fiduciary duty considerations for strategies that may be sensitive to market volatility and/or interest rate changes (e.g., commercial real estate, illiquid assets, and private credit), with particular focus on advisers to private funds that are experiencing poor performance and/or hold more leverage or difficult-to-value assets;

- Accuracy of calculations and allocations of private fund fees and expenses;
- Conflicts, controls, and disclosures regarding use of debt, fund-level lines of credit, investment allocations, adviser-led secondary transactions, investments held by multiple funds, and use of affiliated service providers; and
- Compliance with recently adopted SEC rules, including amendments to Form PF and the updated rules that govern investment adviser marketing.

2. *Investment Companies*

The Division will focus on evaluation of registered investment company compliance programs, fund governance practices, disclosures to investors, and accuracy of reporting to the SEC. Specific examination focus areas may include:

- Assessment of fees and expenses, and any associated waivers and reimbursements;
- Oversight of affiliated and third-party service providers;
- Portfolio management practices and disclosures, for consistency with claims about investment strategies, fund filings, and marketing materials; and
- Issues associated with market volatility.

3. *Broker-Dealers*

The Division will evaluate whether broker-dealers have established, maintained, and enforced written policies and procedures reasonably designed to achieve compliance with Regulation Best Interest (BI), Form CRS, financial responsibility rules, and trading practices. Focus areas will include:

- Recommendations to retail customers and compliance with Regulation BI, including:
  - Recommendations regarding products, investment strategies, and account types and whether the broker has a reasonable basis to believe the recommendation is in the best interest of the customer and does not place the broker's interests ahead of the customer's interests;
  - Conflicts of interest disclosures and conflict identification, mitigation and elimination practices;
  - Processes for reviewing reasonably available alternatives;
  - Factors relating to clients' investment profiles (e.g., investment goals and account characteristics);
  - Broker-dealer practices that recommend products that are complex, illiquid, or present higher risks to investors (e.g., highly leveraged or inversed products, crypto assets, structured products, alternative investments, not registered with the SEC, complex fee structures or return calculations, based on exotic benchmarks, or growth areas for retail investments); and
  - Recommendations that use automated tools or other digital engagement practices, are related to opening different account types (e.g., option, margin, self-directed IRA accounts), and made to older investors and those saving for retirement or college.
- The content of relationship summaries and delivery obligations under Form CRS;
- Compliance with the Net Capital Rule, Customer Protection Rule, and related internal processes, procedures, and controls;
- Assessment of broker-dealer credit, market, and liquidity risk management controls; and

- Review of equity and fixed income trading practices, including:
  - The structure, marketing, fees, and potential conflicts associated with bank sweep programs, fully paid lending programs, and mobile apps/online trading platforms;
  - Trading in pre-IPO companies and the sale of private company shares in secondary markets;
  - Execution of retail orders; and
  - Compliance with Regulation SHO and whether broker-dealers are appropriately relying on the bona fide market making exception.

4. *Self-Regulatory Organizations (SROs)*

The Division will scrutinize SRO compliance with rules governing operations, enforcement activities, and fulfillment of regulatory duties.

5. *Clearing Agencies*

The Division will examine, at least once annually, each clearing agency designated as systemically important.

6. *Other Market Participants*

The Division's focus areas for other market participants include:

- Compliance with fiduciary duty obligations, recordkeeping, and registration requirements;
- Security-based swap dealers' compliance with obligations under Regulation SBSR, capital, margin, and segregation requirements;
- Transfer agent processing, safeguarding of funds and securities, and regulatory filings; and
- Funding portals' compliance with recordkeeping requirements and written policies and procedures that are reasonably designed to achieve compliance with federal securities laws.

Risk Areas

1. *Information Security and Operational Resiliency*

The Division will continue its focus on registrants' information security practices and their operational resiliency, including data loss prevention, access controls, account management, responses to cyber-related incidents, and alternative trading systems' safeguards to protect confidential trading information.

The Division will also assess cybersecurity risks and resiliency goals associated with the use of third-party services, particularly where such services are used without the IT department's approval, knowledge, or oversight.

For broker-dealers and investment advisers, the Division will assess firms' practices to prevent account intrusions and safeguard customer records and information. The Division will also evaluate broker-dealer compliance with the shortening of the settlement cycle for most broker-dealer transactions pursuant to Rules 15c6-1 and 15c6-2 under the Securities Exchange Act of 1934. Exams will assess registrant technology changes associated with the shortening of the settlement cycle and evaluate areas that require further attention and resources, such as specific products that routinely do not settle within the required time frames.

2. *Emerging Financial Technologies*

The Division will focus on companies' use of emerging technologies and alternative sources of data (e.g., automated investment tools, artificial intelligence, and trading platforms) and examine firms that use digital investment advisory services and related methods. Specifically, the Division will assess:

- Fairness and accuracy of representations, including those regarding AI capabilities;
- Consistency of operations and controls with disclosures made to investors;
- Whether advice or recommendations produced by algorithms are consistent with investors' stated strategies;
- Whether controls to confirm that advice resulting from digital engagement practices are consistent with regulatory obligations to investors;
- Adequacy of policies and procedures to monitor companies' use of AI;
- Firm integration of regulatory technology to automate internal processes and optimize efficiencies; and
- How registrants protect against the loss/misuse of client information that may occur from the use of third-party AI models.

3. *Crypto Assets*

The Division will focus on the offer, sale, recommendation, advice, trading, and other activities involving crypto assets that are offered and sold as securities (e.g., spot bitcoin or ether exchange-traded products). Among other measures, exams will review whether registrants:

- Adhere to applicable standards of conduct when advising clients regarding crypto assets;
- Have sufficient initial and ongoing understanding of these products, particularly where investors are retail-based and investments involving retirement assets; and
- Routinely review, update, and enhance their compliance practices with respect to crypto asset wallet reviews, custody practices, Bank Secrecy Act compliance, valuation procedures, risk disclosures, and operational resiliency.

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

4. *Regulation SCI*

As in 2024, the Division will evaluate whether SCI entities (e.g., exchanges and clearinghouses) have implemented policies and procedures to ensure the security and resiliency of their systems and meet Regulation SCI requirements. Exams will evaluate SCI entities' operational risk management, business continuity planning, and incident response capabilities to uphold market stability.

5. *Anti-Money Laundering (AML)*

The Division will examine whether broker-dealers and certain registered investment companies:

- Have AML programs tailored to address the risks associated with the firm's location, size, and activities;
- Conduct independent testing;
- Establish adequate customer identification programs;
- Meet suspicious activity report filing obligations; and
- Monitor Office of Foreign Assets Control sanctions.

Conclusion

The 2025 Exam Priorities do not significantly differ from 2024 but do highlight issues relating to emerging financial technologies, including AI. SEC-registered firms should be aware that the Exam Priorities list is not exhaustive, and examinations may cover issues not stated in this list. The current Exam Priorities align with recent SEC announcements and activity, such as recent, recently amended, or pending rules and regulations. Accordingly, registered firms should take note of these priorities when reviewing compliance programs to ensure such programs address the Division's focus. As always, firms should pay close attention to the 2025 Exam Priorities, as they may suggest sweep examination programs, as well as future priorities of the Enforcement Division and other actions.

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