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Investment Funds & Private Capital

SEC Division of Examinations: 2025 Examination Priorities

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Last week, the Securities and Exchange Commission's Division of Examinations (the "Division") released its [2025 examination priorities](#), an annual publication by the Division designed to make the public aware of issues, areas, and topics that the Division intends to focus on in examinations of regulated financial services firms in the upcoming fiscal year. This year's priorities include perennial areas of focus, such as advisers to private funds, disclosure of conflicts of interest, standard of conduct and fees and expenses, and emerging issues such as cybersecurity practices, safeguarding of customer records and information, artificial intelligence, and crypto assets.

Advisers to Private Funds

The examination of advisers to private funds remains a top priority for the Division, with topics of emphasis including:

1. Whether the adviser's disclosures are consistent with its actual practices, and whether the adviser has met its fiduciary obligations in times of market volatility—particularly where a private fund is exposed to volatility due to interest rate fluctuations, such as funds with commercial real estate, illiquid asset, and/or private credit strategies.
2. Accuracy of calculations and allocations of private fund fees and expenses (both fund-level and investment-level), including calculation of post commitment period management fees and related offsets.
3. Disclosure of conflicts of interests and risks, including continuing focus on certain areas specifically identified by the Division, such as:
 - a) Transactions between fund(s);
 - b) Use of debt, including fund-level lines of credit;
 - c) Investment allocations;
 - d) Adviser-led secondary transactions;
 - e) Investments held by multiple funds; and
 - f) Use of affiliated service providers.
4. Compliance with recently adopted rules, including Form PF amendments and Advisers Act Rule 206(4)-1 (the "Marketing Rule").

Effectiveness of Investment Advisers' Compliance Programs

The Division, as always, will assess how effectively an adviser's compliance programs meet the standards under the Investment Advisers Act of 1940 ("Advisers Act") and other applicable laws, and whether its policies and procedures are designed adequately to prevent the adviser from placing its own interests ahead of its clients' interests. Areas of emphasis will include:

1. Advisers that outsource investment selection and management;
2. Alternative sources of revenue, such as selling non-securities based products to clients; and
3. Appropriateness and accuracy of fee calculations and the disclosure of fee-related conflicts.

Adherence to Fiduciary Standards of Conduct

The Division is focused on examining whether advisers have adhered to their fiduciary duties of care and loyalty with respect to investment advice provided to clients regarding products, investment strategies, and account types, particularly with respect to items such as:

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, including commercial real estate.

The Division also will be focused on dual registrants and advisers with affiliated broker-dealers.

Priorities for Investment Companies

The Division will continue to prioritize examinations of registered investment companies ("RICs"), including mutual funds and exchange-traded funds, focusing on their compliance programs, disclosures, and governance practices. Particular areas of focus include:

1. Fund fees and expenses, and any associated waivers and reimbursements;
2. Oversight of service providers;
3. Portfolio management practices and disclosures; and
4. Issues associated with market volatility.

Priorities for Broker-Dealers

The Division's priorities with respect to registered broker-dealers include:

1. Broker-dealer practices related to Regulation Best Interest;
2. Disclosures made on Form CRS, particularly those disclosures relating to (i) retail customers; (ii) the broker-dealers' fees and costs; and (iii) the broker-dealers' conflicts of interest;
3. Broker-dealer compliance with financial responsibility rules; and
4. Trading-related practices and services.

Key Takeaways:

1. Although the Division's examination priorities are not a comprehensive list of topics, compliance personnel should consider examination preparedness with respect to areas applicable to their regulated businesses.

2. Because it's an election year, SEC policymaking priorities—including the Division's areas of focus upon examination—are subject to change as a result of a new administration, potential personnel turnover, and other similar political factors.
3. The Division remains focused on fee calculation issues, including post-commitment fee calculations for private fund sponsors, which has been a recurring theme in private fund adviser examinations for the last few years.
4. The Division highlighted that it intends to focus particular attention on:
 - a) Assets that are sensitive to higher interest rates and/or changing market conditions;
 - b) Assets that are illiquid or difficult to value; and
 - c) Investment strategies that may be sensitive to market volatility and/or interest rate changes.

The Division's priorities also specifically identified investment strategies subject to market volatility and/or interest rate changes, including private credit and commercial real estate, as areas that will be subject to greater regulatory scrutiny by the Division than has been the case in prior years. Sponsors of private funds in these two areas should be particularly vigilant going forward given this increased level of scrutiny.

5. The Division also identified several new areas of focus, including:
 - a) Advisers receiving alternative sources of revenue or benefits, such as selling non-securities based products to clients (presumably such as insurance products);
 - b) Disclosure of conflicts where select clients have negotiated lower fees than other clients for similar services; and
 - c) The use of debt by advisers and funds, including fund-level lines of credit.
6. A host of emerging issues remain on the horizon, most if not all of which are unlikely to go away any time soon. These include use of artificial intelligence and other new financial technologies by advisers, the need to protect customers' confidential information, and increasingly complex anti-money laundering requirements designed to identify and protect against insider trading, corruption, terrorist financing, and a variety of other illicit activities.
7. Advisers and broker-dealers should carefully review their policies and practices in light of the release, which identifies several areas and investment strategies the Division is likely to focus on in the months and years ahead.

Please reach out to discuss exam preparedness or any other aspect of the SEC's 2025 Examination Priorities.

Go Deeper:

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If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

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