

# SEC Examination Priorities Signal Capital Markets Enforcement

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- *Paul Hastings attorneys review new SEC oversight plan*
- *Areas of focus include AI, crypto-focused investments*

The Securities and Exchange Commission's Division of Examinations recently released its 2025 priorities. These identify several new or emerging areas of focus that could be precursors to enforcement actions, such as the use of artificial intelligence, crypto-focused investment strategies and assets, business continuity and preparedness, and anti-money laundering requirements.

Although not comprehensive, the Oct. 21 list generally reflects the business practices, products, and services that the division believes may present heightened risks to investors or the integrity of capital markets.

Investment advisers and broker-dealers should familiarize themselves with key Division of Examination priorities, confirm that their written policies and procedures adequately address them, and, where appropriate, consult with outside counsel to adopt or enhance policies to demonstrate compliance during an SEC examination.

## Investment Advisers

The division, as always, will focus on whether investment advisers have adhered to their fiduciary duties with respect to investment advice provided to clients regarding products, investment strategies, and account types, particularly with high-cost products, unconventional instruments, illiquid and difficult-to-value assets, and assets sensitive to higher interest rates or changing market conditions, including commercial real estate.

The division also will assess whether an investment adviser's compliance program meet the standards under the Investment Advisers Act of 1940 and other applicable laws, and whether the adviser's policies and procedures are designed adequately to prevent the adviser from placing its own interests ahead of its clients' interests.

New for 2025, the division's priorities state that, if an adviser incorporates artificial intelligence into its advisory operations, then the division may look "in-depth" at the adviser's compliance policies and procedures and disclosures related to the use of artificial intelligence.

As in previous years, the division will continue to prioritize examinations of newly registered investment advisers, advisers that have never been examined previously, and advisers that have not been examined recently.

### **Advisers to Private Funds**

The division's 2025 examination priorities confirm the division will continue to focus on advisers to private funds, especially with respect to disclosure practices, fee calculation and allocation, and compliance with new regulations such as the amendments to Form PF and the investment adviser marketing rule.

The division also 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.

The division's priorities specifically identified investment strategies subject to market volatility 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 in prior years.

### **Broker-Dealers**

The division has focused consistently on protecting retail investors, and an important part of that focus is ensuring that broker-dealers comply with their obligations under Regulation Best Interest.

In this regard, the division's 2025 priorities signal an emphasis, among other things, on broker-dealer recommendations involving complex, illiquid, and higher-risk products, such as highly leveraged or inverse products, crypto assets, structured products, products that are not registered with the SEC, and products based on exotic benchmarks. Relatedly, the division will review the content of broker-dealers' relationship summary on Form CRS and whether broker-dealers have met their Form CRS delivery obligations.

Importantly, the 2025 priorities specifically identify broker-dealers' bank sweep programs as an area of potential review during examinations. In recent years, the SEC has brought enforcement actions regarding investment advisers' bank sweep programs, and the division's 2025 priorities suggest the SEC may be preparing enforcement actions in this area.

The 2025 priorities underscore that dual-registered broker-dealers and investment advisers should pay particular attention to the risks posed by conflicts of interest. Dual registration may create an incentive for investment professionals to favor products that have higher loads or distribution fees or to recommend proprietary products, services, or account types that could result in additional fees being charged to investors.

In dual registration situations, firms and investment personnel must be careful to act transparently, apply the appropriate standard of care, and make accurate representations to customers.

## Looking Ahead

The division's 2025 examination priorities contain many of the same priorities as previous years but also identified new areas of focus that could be precursors to SEC enforcement actions.

To be prepared for an SEC examination, firms should take appropriate action in response to the division's examination priorities. The division's overall focus on investment advisers to private funds and protecting retail investors suggests the division will continue to be aggressive in identifying deficiencies among broker-dealers and investment advisers and referring cases to the Division of Enforcement.

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