

Observations on the SEC's 2026 Examination Priorities

by David Tang and Michael Schmieder

The SEC's Division of Examinations (the "Division") recently announced its examination priorities ("Exam Priorities") for fiscal year 2026.¹ In this eUpdate, we share some key observations on the Exam Priorities that impact SEC-registered investment advisers ("advisers").²

Dorsey Observations

- The Exam Priorities reflect a significant departure from prior exam priorities. The Exam Priorities omit key topics previously highlighted, such as economic incentives that advisers face when recommending products, preventing Marketing Rule violations, Form ADV disclosures, assessments of compensation arrangements, and valuations of illiquid or difficult-to-value assets.
- The Exam Priorities reflect a de-emphasis on private funds. There are no sections devoted exclusively to private funds and the Division did not reference "the calculation of post-commitment period management fees," where many of the SEC's private fund enforcement actions have arisen in recent years.
- Another item not included in this year's Exam Priorities is cryptocurrencies, which has been an area of intense scrutiny.
- Instead, the Exam Priorities highlight a focus on the use of emerging technologies, most significantly artificial intelligence.
- The Division continued its focus on adequate client disclosures, mitigating and eliminating conflicts of interest, anti-money laundering programs, and information security.
- The Division will also continue to prioritize examinations of advisers that have never been examined, including recently registered advisers. Despite the changes in approach, advisers should continue take steps to prepare for examinations and regularly review the adequacy and effectiveness of their compliance programs. Dorsey's compliance services are available to advise firms through the SEC examination process and assist with exam preparation and mock audits.

Related People

- David Tang
- Michael Schmieder

Related Capabilities

- Corporate Governance & Compliance
- Financial Services Regulatory
- Investment Funds
- Investment Management

Summary of Investment Adviser Exam Priorities

Fiduciary Standards of Conduct. The Division stated they continue to prioritize whether investment advisers are acting in the best interest of their clients, focusing on

recommendations involving complex, illiquid, or high-cost products (e.g., private credit and alternative investments). Examinations will focus specifically on:

- *Investment advice.* Exams will review investment advice and disclosures for consistency with their fiduciary obligations, including (1) the impact of advisers' financial conflicts of interest; (2) advisers' consideration of various factors, including cost, the investment objectives, characteristics, liquidity and risk, and potential benefits, volatility, likely performance, time horizon and cost of exit; and (3) the best execution of the goal of maximizing value for their clients.
- *Investment products.* Exams will focus on alternative investments (e.g., private credit and private funds with investment lock-up for extended periods), complex investments (e.g., EFT wrappers on less liquid underlying strategies, option-based EFTs, and leveraged and/or inverse EFTs), and products that have higher investment costs, including high commissions.
- *Investment recommendations.* Exams will focus on consistency with product disclosures and clients' investment objectives, risk tolerance, and financial personal background. It will emphasize (1) recommendations to older investors and those saving for retirement; (2) advisers to private funds that are also advising separately managed accounts and/or newly registered funds; (3) advisers to newly launched private funds; (4) recommendations of certain products sensitive to market volatility; and (5) advisers that have not previously advised funds.

Conflicts of Interest. Exams will focus on practices that may create additional risks and potential conflicts of interest: e.g., (a) conflicts of interest associated with advisers that are dually registered as broker-dealers; (b) advisers utilizing third parties to access client accounts; and (c) advisers that have merged or consolidated with or have been acquired by existing advisory practices.

Compliance Programs. The Division views its assessment of advisers' compliance programs as a fundamental part of the examination process and will evaluate the robustness of advisers' compliance programs, looking for evidence that policies are not only written but effectively enforced and tested in practice. Examinations would typically include marketing, valuation, trading, portfolio management, disclosure and filings, and custody.

The Division will also focus on whether advisers' policies and procedures address fee-related conflicts that arise from account and product compensation structures. Examinations may also include a review of compliance programs for advisers with activist engagement practices, for example, focusing on timely and accurate filings on Schedules 13D, 13G, and Form 13F.

Never Examined and Recently Registered Advisers. The Division will prioritize the examination of advisers that have never been examined, with an emphasis on recently registered advisers.

The 2026 Exam Priorities identify certain risk areas that impact a broad range of market participants, including investment advisers:

Information Security and Operation Resiliency.

Cybersecurity remains a perennial priority. Examiners will review governance practices, data loss prevention, incident response plans, and the oversight of third-party vendors. Examinations could focus on (1) governance practices, data-loss prevention, access controls, account management, and responses to cyber-related incidents; and (2) training and security controls employed to identify and mitigate risks associated with artificial intelligence and malware attacks.

Regulation S-P. Compliance with the 2024 amendments to Regulation S-P will be a focus of examinations. The Division will assess whether an adviser's incident-response program is reasonably designed to detect, respond to, and recover from the unauthorized access of customer information.

Emerging Financial Technology.

The use of automated investment tools, AI, and trading algorithms will be scrutinized to ensure representations made to investors are accurate, controls align with disclosures, and that advice is consistent with regulatory obligations. The Division will specifically assess advisers' policies for monitoring the use AI technologies, including those used for fraud prevention and detection, back-office operations, anti-money laundering, and trading functions.

¹ SEC Division of Examinations 2026 Examination Priorities available at <https://www.sec.gov/files/2026-exam-priorities.pdf>.

² In addition to advisers, the Exam Priorities include focus areas for registered investment companies, broker-dealers, self-regulatory organizations, clearing agencies, other market participants.