

# Publications

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## SEC's 2025 Exam Priorities: What Investment Advisers Need to Know

The SEC's Division of Examinations recently released its *Fiscal Year 2025 Examination Priorities* (the "2025 Priorities") highlighting its priorities for the SEC's 2025 fiscal year (which commenced on October 1, 2024). This legal alert focuses on the impact of the 2025 Priorities on investment advisers, including private investment fund managers, and investment advisers should review and update their policies and procedures in accordance with the 2025 Priorities.

### Investment Advisers:

The 2025 Priorities emphasize a continued focus on adherence to fiduciary standards, compliance program effectiveness, private funds and their advisers, and, as has been the case for many years, assessment of recently registered or never-examined advisers:

1. **Fiduciary Standards of Conduct.** Investment advisers are expected to fulfill their duties of care and loyalty, prioritizing client interests above their own. Examinations will focus on whether advisers provide sound advice on products, strategies, and account types. The SEC will scrutinize high-cost products, complex, illiquid, or difficult to value assets, and assets sensitive to interest rate and market shifts (notably, commercial real estate-related investments), and ensuring advisers disclose conflicts of interest fully, particularly in dual registration scenarios (i.e., where an entity or affiliated entities are investment advisers and broker-dealers). In an examination, advisers should expect to be able to support investment recommendations and the fees charged and the adequacy of disclosures with respect thereto, especially for investments with high fees or expenses, that are illiquid, or that are unconventional or difficult to understand. This is likely to result in closer review of investments into nascent asset classes such as digital assets.

2. **Effectiveness of Compliance Programs.** As always, an examiner is likely to assess an investment adviser's compliance program. Investment advisers employing any of the following should expect additional scrutiny: outsourcing investment advisory functions; receiving alternative revenue from advisory clients (other than providing investment advice); charging different fees to clients for similar services; investing in illiquid or difficult-to-value investments (notably, commercial real estate-related investments); utilizing artificial intelligence in advisory processes; and overseeing geographically dispersed

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### Related Capabilities

- Investment Management & Funds

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3. Private Fund Advisers. Advisers of private funds remain an examination focus. Notably, the SEC will focus on:

- Disclosures and fiduciary duties in times of market volatility - advisers advising with respect to commercial real estate, illiquid assets, and private credit should expect additional scrutiny, as well as advisers who have experienced poor performance or employ high leverage;
- Fee calculations and allocations (with respect to investments and with respect to funds) - advisers should be prepared to substantiate investment- and fund-level fees and expenses, including calculation of fee offsets;
- Disclosure of conflicts of interest and adherence to disclosed or approved solutions - advisers should review disclosures and existing policies to ensure that all conflicts are disclosed and policies followed, particularly in respect of debt, fund-level lines of credit, investment allocations, adviser-led secondaries, cross trades and principal transactions, investments involving multiple clients, and the use of affiliated service providers; and
- Adequacy of policies and procedures with respect to new rules and regulations – notably, in respect of Form PF and the marketing rule.

4. Never or Recently Examined Advisers. Consistent with all exam priorities in recent memory, priority is given to reviewing advisers who have not undergone recent SEC examinations, especially those newly registered.

### **Risk Areas Generally:**

Across financial market participant types, the 2025 Priorities emphasize that all exams will focus on information security, operational resiliency, emerging financial technologies, and crypto assets. Those which apply to investment advisers are the following:

1. Cybersecurity. The SEC continues to emphasize the importance of cybersecurity, particularly as the risk of operational disruptions from cyberattacks, dispersed operations, and external factors (e.g., weather or geopolitical issues) increases. The SEC will assess firms' security protocols, especially related to data protection, access controls, incident responses, and third-party vendor management.
2. Regulation S-ID and Regulation S-P. These regulations primarily focus on identify theft prevention and safeguarding customer information. Examinations will review policies and practices for protecting investor data, with a specific focus on electronic services, identify theft prevention, and responses to unauthorized account access. An adviser's policies and procedures should address Regulation S-ID and Regulation S-P, related to protection of personal information and accounts.
3. Shortening of the Settlement Cycle. Examinations will evaluate whether broker-dealers and advisers are meeting new operational and recordkeeping requirements, ensuring the timely settlement of transactions (in respect of the move to a T+1 settlement cycle for securities).
4. Emerging Financial Technologies. The SEC will examine the use of digital tools such as automated investment systems, artificial intelligence (AI), and trading algorithms. Reviews will assess the accuracy of representations about these tools, how well they align with investor profiles, and the adequacy of firms' controls over these systems.
5. Crypto Assets. The SEC will focus on registrants offering crypto-related services.

Examinations will assess how these firms meet their standards of conduct, monitor risks, and safeguard investor assets, including the security of blockchain technology and digital wallets.

The 2025 Priorities do not include any major surprises, but they emphasize that the SEC will continue its scrutiny of investment advisers and fund managers – with a special focus on investments related to commercial real estate investments, illiquid investments, and unconventional investments. Each investment adviser should promptly review its compliance manual, Form ADV and investor disclosures with the 2025 Priorities in mind. Please contact any of the authors or your contact in the Polsinelli team for assistance with that review.