

Investment Management & Funds Regulatory Update - October 2024

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In this issue we discuss the 2025 examination priorities for the SEC's Division of Examinations.

Industry update

SEC Division of Examinations releases examination priorities for 2025

On October 21, 2024, the SEC's Division of Examinations (Division) published its [examination priorities for 2025](#) (Exam Priorities). The Exam Priorities fall into the following seven categories: (1) Investment Advisers, (2) Investment Companies, (3) Broker Dealers, (4) Self-Regulatory Organizations, (5) Clearing Agencies, (6) Other Market Participants and (7) Risk Areas Impacting Various Market Participants. Highlighted below are some of the key priorities noted in the Exam Priorities for investment advisers and investment companies. For a discussion of the 2024 Exam Priorities, please see our October 31, 2023 [Investment Management Regulatory Update](#).

Investment advisers

According to the Exam Priorities, the Division will continue to prioritize investment advisers' adherence to their fiduciary duty of care and loyalty to their clients, along with advisers' compliance programs.

With respect to investment advisers' fiduciary duty of care and loyalty, examinations will focus on, among other things, investment advice provided to clients regarding 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 will also focus on dual registrants and advisers with affiliated broker-dealers, including "(1) assessing investment advice and recommendations regarding certain products to determine whether they are suitable for clients' advisory accounts; (2) reviewing disclosures to clients regarding the capacity in which recommendations are made; (3) reviewing the appropriateness of account selection practices (e.g., brokerage versus advisory), including rollovers from an existing brokerage account to an advisory account; and (4) assessing whether and how advisers adequately mitigate and fairly disclose conflicts of interest."

According to the Exam Priorities, examinations will also review the impact of advisers' financial conflicts of interest on providing impartial advice and best execution, with consideration given to non-standard fee arrangements.

With respect to advisers' compliance programs, examinations will continue to focus on (1) fiduciary obligations of advisers that outsource investment selection and management; (2) alternative sources of revenue or benefits advisers receive, such as selling non-securities based products to clients; and (3) appropriateness and accuracy of fee calculations and the disclosure of fee-related conflicts, such as those associated with select clients negotiating lower fees when similar services are provided to other clients at a higher fee rate.

The Exam Priorities noted that the Division's review of an adviser's compliance program may focus on valuation assessments when such adviser's clients invest in illiquid or otherwise difficult to value assets (e.g., commercial real estate), and when an adviser integrates artificial intelligence into advisory operations (e.g., portfolio management, trading, marketing, and compliance), the Division may look more in-depth at the adviser's compliance policies and procedures, and disclosures regarding such areas. In addition, the Exam Priorities noted that if an adviser utilizes a larger number of independent contractors working from geographically dispersed locations, the Division's examination may focus on such adviser's oversight and supervision practices. As noted in the Exam Priorities, the Division may also focus on compliance practices when advisers change their business models or are new to advising particular types of assets, clients, or services.

The Exam Priorities noted that the Division will also continue to focus on advisers that manage private funds. According to the Exam Priorities, examinations will focus on whether advisers' practices are consistent with disclosures, and whether advisers met their fiduciary obligations in times of market volatility and interest rate fluctuations, with particular focus on advisers to private funds that experience poor performance, significant withdrawals, leverage or difficult-to-value assets. As noted in the Exam Priorities, other areas of focus include: accurate calculation and allocation of private fund fees and expenses (with a particular focus on valuation of illiquid assets, calculation of post commitment period management fees, adequacy of disclosures and potential offsetting of such fees and expenses); disclosure of conflicts of interests and risks, and adequacy of policies and procedures, including: (1) use of debt, fund-level lines of credit, investment allocations, adviser-led secondary transactions, transactions between fund(s) and/or others; (2) investments held by multiple funds; and (3) use of affiliated service providers. The Exam Priorities further note a focus on compliance with recently adopted SEC rules, including amendments to Form PF and Advisers Act marketing rule, to determine whether advisers have established adequate policies and procedures and whether their practices conform to them.

Investment companies

The Exam Priorities noted that the Division will continue to prioritize examinations of registered investment companies, including mutual funds and exchange-traded funds (ETFs). According to the Exam Priorities, examinations will specifically review (1) fund fees and expenses, and any associated waivers and reimbursements; (2) oversight of service providers (both affiliated and third-party); (3) portfolio management practices and disclosures, for consistency with claims about investment strategies or approaches and with fund filings and marketing materials; and (4) issues associated with market volatility. The Exam Priorities also noted that the Division will continue to monitor certain developing areas of interest, such as registered investment companies with exposure to commercial real estate and compliance with new and amended rules.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Leor Landa

+1 212 450 6160
leor.landa@davispolk.com

Andrew M. Ahern

+1 212 450 3057
andrew.ahern@davispolk.com

Sijia Cai

+1 212 450 3071
sijia.cai@davispolk.com

Luke P. Eldridge

+1 202 962 7144
+1 212 450 3081
luke.eldridge@davispolk.com

Christopher P. Healey

+1 202 962 7036
christopher.healey@davispolk.com

Michael S. Hong

+1 212 450 4048
michael.hong@davispolk.com

Gregory S. Rowland

+1 212 450 4930
gregory.rowland@davispolk.com

Alisa A. Waxman

+1 212 450 3078
alisa.waxman@davispolk.com

Lee Hochbaum

+1 212 450 4736
lee.hochbaum@davispolk.com

James H.R. Windels

+1 212 450 4978
james.windels@davispolk.com

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