

Investment Management & Funds Regulatory Update - November 2025

November 26, 2025 | Client Update | 7-minute read

In this issue, we discuss, among other things, the SEC Division of Examinations' exam priorities for 2026, and a recent FINRA enforcement action against a wholesale distributor of investment company securities for alleged violations of FINRA rules regarding gifts and entertainment.

Table of Contents

Industry update

- SEC Division of Examinations releases examination priorities for 2026

Litigation

- FINRA fines wholesale distributor of investment company securities for alleged violations in connection with gifts and entertainment
- SEC charges six purported private fund advisers for alleged material misrepresentations and unsubstantiated statements in Form ADV filings

Industry update

SEC Division of Examinations releases examination priorities for 2026

On November 17, 2025, the SEC's Division of Examinations (Division) published its [examination priorities for 2026](#) (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 2025 Exam Priorities, please see our October 31, 2024 [Investment Management Regulatory Update](#).

Investment advisers

According to the Exam Priorities, the Division will continue to prioritize investment advisers' adherence to their fiduciary duties of care and loyalty to their clients, particularly regarding the aspects of their business that serve retail investors, along with advisers' compliance programs.

The Division will review investment advice provided to clients for consistency with fiduciary obligations. The Exam Priorities noted (i) the impact of advisers' financial conflicts of interest on providing impartial advice; (ii) advisers' consideration of the various factors associated with their investment advice, such as costs, objectives, liquidity, volatility, performance in various market conditions, time horizons and exit strategies; and (iii) advisers seeking best execution with the goal of maximizing value for their clients.

In terms of the Division's focus, a particular emphasis will be placed on recommendations involving: (i) alternative investments, such as private credit or private funds with extended lock-up periods; (ii) complex investments, like exchange-traded funds (ETFs) overlaying illiquid strategies or option-based, leveraged or inverse ETFs; and (iii) high-cost products with elevated commissions or expenses. Examiners will check for alignment between recommendations and client profiles, with an emphasis on older or retirement savers. For private fund advisers, focus areas include advisers that also advise separately managed accounts, newly launched private funds, recommendations of potentially volatile products, and first-time private fund advisers. For advisers that have not previously advised private funds, the Exam Priorities highlight reviewing for regulatory awareness, liquidity, valuation, fees, disclosures, and differential treatment of investors, including use of side letters.

In particular, the Exam Priorities identified types of advisers and advisory services or business practices that may create additional risks and conflicts of interest, such as: (i) advisers that are dual-registered as broker dealers, where incentive structures may create conflicts in recommendations or allocations; (ii) third-party access to client accounts, including controls over asset and data security; and (iii) mergers and acquisitions, which may introduce operational disruptions, additional conflicts and compliance gaps.

With respect to advisers' compliance programs, examinations will continue to focus on marketing, valuation, trading, portfolio management, disclosure and filings, and custody. Examiners will also analyze advisers' annual reviews of the effectiveness of their compliance programs. The Exam Priorities noted that the Division's review of an adviser's compliance program may focus on whether policies and procedures address compliance with the Advisers Act and the rules thereunder and are reasonably designed to address conflicts of interest, in light of a firm's particular operations, and to prevent advisers from placing their interests ahead of clients' interests. Examinations areas of focus may include: (i) whether policies and procedures are implemented and enforced; (ii) whether disclosures address fee-related conflicts, with a focus on conflicts that arise from account and product compensation structures; (iii) whether timely and accurate regulatory filings have been made for advisers, particularly those with activist engagement practices (e.g., Schedules 13D and 13G; Form 13F; Forms 3, 4, and 5; and Form N-PX); and (iv) compliance practices when advisers change their business models or are new to advising particular types of assets, clients, or services.

As with previous years, the Division will prioritize examinations of advisers that have never been examined, with particular emphasis on recently registered advisers. In a change from previous years, the Exam Priorities do not include a section devoted exclusively to private funds and do not include a section on crypto or digital assets.

Investment companies

The Division will continue to prioritize examinations of registered investment companies, including mutual funds and ETFs, due to their importance to retail investors, particularly those saving for retirement. As with investment adviser examinations, the Division will prioritize funds that have never been examined and those that have recently registered.

According to the Exam Priorities, examiners will specifically review fund fees and expenses, and any associated waivers and reimbursements, and portfolio management practices and disclosures for consistency with investment strategies, fund filings, marketing materials, and the amended fund "Names Rule." In terms of the Division's areas of interest, the Division will monitor: (i) funds that participate in mergers or similar transactions, including any associated operational and compliance challenges; (ii) funds that use complex strategies or have significant holdings of less liquid investments, including any associated issues regarding valuation and conflicts of interest; and (iii) funds with novel strategies or investments, including funds with leverage vulnerabilities.

Litigation

FINRA fines wholesale distributor of investment company securities for alleged violations in connection with gifts and entertainment

On October 31, 2025, FINRA accepted a letter of Acceptance, Waiver, and Consent ([AWC](#)) submitted by First Trust Portfolios L.P., a wholesale distributor of securities issued by its affiliated investment companies (the Wholesaler), proposing to settle alleged violations of FINRA and Exchange Act rules relating to gifts and entertainment.

According to the AWC, between 2018 and 2024, the Wholesaler frequently provided non-cash compensation to representatives of retail broker-dealers in the form of gifts, meals and entertainment that far exceeded the \$100 per-person annual limit set by FINRA. The AWC noted that on several occasions, the non-cash compensation offered was preconditioned upon the representatives of retail broker-dealers achieving sales targets in connection with the sale of the securities of the investment companies affiliated with the Wholesaler.

Additionally, during the same period, the Wholesaler's employees allegedly submitted inaccurate expense reports for reimbursement of such gifts and entertainment, resulting in the Wholesaler having inaccurate records of gifts and entertainment expenses. Such inaccuracies included, for example, understated values for the gifts or entertainment, or inaccurate disclosure of the retail broker-dealer representatives attending certain entertainment events. The Wholesaler used such inaccurate expense reports to generally quarterly reports sent to retail broker-dealers and as a result, the Wholesaler provided inaccurate records and misleading information to retail broker-dealers regarding gifts and entertainment received by their representatives.

According to the AWC, the Wholesaler failed to establish a compliance system to adequately supervise its provision of non-cash compensation and reporting of gifts and entertainment expenses. For example, the AWC noted that the policies and procedures maintained by the Wholesaler did not provide clear guidance on what constitutes "frequent and excessive" non-cash compensation, there were no steps taken to verify the accuracy of expense reports, and employees of the Wholesaler were able to modify expense reports after they were submitted and approved.

On account of this alleged misconduct, the Wholesaler consented to a censure, a \$10 million fine, and a commitment to providing certifications to FINRA with respect to its compliance with FINRA and Exchange Act rules referenced in the AWC.

SEC charges six purported private fund advisers for alleged material misrepresentations and unsubstantiated statements in Form ADV filings

On November 13, 2025, the SEC filed complaints in the United States District Courts for the Southern District of New York and District of Colorado against six companies (the Defendants) claiming to be private fund advisers exempt from registration under Section 203(m) of the Advisers Act and Rule 203(m)-1 thereunder. According to the SEC's complaints, each of the Defendants represented in its Form ADV that it advised private funds (the Funds) and that a third-party registered investment adviser (each, an RIA) reported information on such Funds in the RIA's separate Form ADV filing. The complaints allege, however, that the RIAs' Form ADVs did not report any information on the Funds, and the SEC did not find reporting on the Funds in any other filings. According to the complaints, each Defendant also provided certain information in its Form ADVs, such as the address of its principal office and place of business, and the Defendant's CIK number. However, the complaints allege that in the case of each Defendant, the real estate manager or business resident of the address provided in the Defendant's Form ADV had no knowledge of such Defendant, and a search of the Defendant's purported CIK number on the SEC's public reporting company database yielded no information. The SEC's complaints claim that the Defendants made material misrepresentations in their Form ADV reports filed with the SEC and thus violated Section 207 of the Advisers Act.

The SEC's complaints also claim that the Defendants failed to respond to SEC staff requests for books and records subject to examination, including records to substantiate information provided in the Defendants' Form ADVs. The SEC claims that by failing to provide such books and records, the Defendants violated Section 204(a) of the Advisers Act.

The SEC's complaints seek civil penalties and injunctive relief. For more information, please see the [litigation release](#) issued by the SEC on November 17, 2025.

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

Oran Ebel

+1 212 450 4114
oran.ebel@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

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.