Lowenstein Sandler

Client Alert

Investment Management

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SEC's 2026 Examination Priorities for Investment Advisers

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On November 17, the U.S. Securities and Exchange Commission (SEC) Division of Examinations (the Division) released its annual examination priorities for fiscal year 2026 (the Report). The Report outlines key risk areas where the Division may allocate resources in the coming year. Notably, this is the first release under Chairman Paul Atkins and reflects the Division's reduced resources, resulting in an increased emphasis on operational effectiveness and efficiency in comparison to previous years. The Report also omits any reference to crypto assets as a focus priority.

Though the Report addresses risks applicable to a number of financial market participants, this Client Alert focuses on the changes to priorities relevant to SEC-registered investment advisers.

Adherence to Fiduciary Standards of Conduct

In comparison to last year's report, in 2026, the Division plans to focus on:

- Adhesion to the adviser's duty of care and duty of loyalty;
- Investment products, including alternative investments (e.g., private credit and private funds with extended lockups), complex products (e.g., exchange-traded fund (ETF) wrappers on less-liquid strategies and option-based ETFs), and higher-cost products;
- Recommendation consistency by aligning product disclosures with relevant client profiles (e.g., objectives, tolerance, and income). The Division particularly called out (1) investors saving for or in retirement; (2) products that are especially volatile; and (3) advisers (a) to private funds that also advise separately managed accounts or newly registered funds (including favoritism in allocations and interfund transfers); (b) to newly launched private funds; and (c) that are new to advising private funds (including with respect to regulatory readiness, liquidity, valuation, fees, disclosures, and differential treatment via side letters); and
- Advisory practices with a higher risk of conflicts of interest, such as dual registrants (e.g., investment advisers also registered as broker-dealers) and dually licensed personnel where the compensation structure creates conflicts; advisers using third-party access to client accounts where compliance controls may be insufficient to protect data and assets; and advisers that have merged, consolidated, or been acquired, resulting in operational and compliance complications.

Effectiveness of Advisers' Compliance Programs

Compared to last year, the Division has shifted focus away from the 2025 priorities related to outsourced investment selection/management and alternative revenue sources (e.g., selling non-securities products). Under the new SEC chair, the emphasis has pivoted to policy enforcement and addressing conflicts. However, there still remains focus on whether policies and procedures are in compliance with the Investment Advisers Act of 1940 and are reasonably designed to fit the investment adviser's operations and clientele.

In particular, the Report stated that examinations in 2026 may now focus on the following:

- Implementation and enforcement of compliance policies and procedures, e.g., annual reviews, marketing, valuation, trading, portfolio management, disclosures, filings, and custody;
- Whether disclosures address fee-related conflicts, particularly those arising from account and product compensation structures;
- Compliance practices when advisers change business models or are new to advising certain assets, clients, or services;
- Timely and accurate filings, including on Schedules 13D and 13G and Forms 3, 4, 5, 13F, and N-PX (for investment advisors with activist engagement practices).

While the Report does not explicitly indicate that fee calculation accuracy is a priority for 2026, recent enforcement actions indicate this will still be a focus into the new year. See our Client Alert on the recent enforcement actions here.

Never-Examined Investment Advisers and Recently Registered Investment Advisers

As with last year's priorities, the Division will continue to prioritize examinations of investment advisers that have never been examined, with particular emphasis on recently registered investment advisers.

Updates to Risk Areas

- Cybersecurity: The 2026 priorities indicate that the Division will focus on training and security controls that investment advisers are using to identify and mitigate risks associated with artificial intelligence (AI) and malware, including understanding how to implement information from third-party intelligence sources. This expands from the 2025 priorities in this area, which only focused on third-party/vendor cyber risks and alternative trading system data protection.
- Regulations S-ID and S-P: This year, the Division will continue to focus on compliance with Regulations S-ID and S-P, with added emphasis on identifying and mitigating identity theft as well as training employees on identifying red flags and preventing identity theft.
- Emerging Financial Technology: This year's Report emphasizes the accuracy of AI-related representations, supervision and monitoring of AI usage, and recent advancements in AI, instead of the 2025 focus on how registrants protect against loss or misuse of client information resulting from the use of third-party AI models and tools.
- Anti-Money Laundering (AML): While AML risks continue to focus on entities in scope for compliance with the Bank Secrecy Act (e.g., broker-dealers), the Division's 2026 priorities particularly call attention to risks associated with omnibus accounts maintained for foreign financial institutions, in line with recent enforcement actions. Additionally, the Division emphasized the monitoring of and compliance with Office of Foreign Assets Control (OFAC) sanctions by all entities, including investment advisers.
- Cryptocurrency: A notable absence from the Report's 2026 priority risk areas is reference to risks associated with cryptocurrency, despite the 2025 priorities explicitly calling out firms offering services relating to advisory regarding, and the offer and sale of, cryptocurrency. This absence is not unexpected given the new administration's deregulatory efforts around cryptocurrency and the SEC's recent guidance indicating that most meme coins are not securities under federal law. However, as the Report is not to be considered an exhaustive list of risks and priorities, advisers and broker-dealers are still encouraged to consider cryptocurrency risks in their policies and procedures.

Our Thoughts

The 2026 priorities reflect a recalibration toward enforcement of existing controls, transparency in AI-related practices, and disclosure risks. In an attempt to distance himself from the uptick in enforcement actions under the prior administration, Atkins has emphasized that examinations are meant to be not a prelude to enforcement but rather a collaborative effort between the Division and firms. The removal of cryptocurrency from specifically identified risk factors is also in line with the SEC's current agenda to advance development in the digital asset sector.

Specifically for investment advisers, the 2026 priorities focus on (1) the products being offered to retirement-age and less-sophisticated investors, (2) firms that have recently undergone major changes, such as new firms or ones that have recently begun offering new types of investment products, (3) the handling and disclosure of conflicts of interest, and (4) cybersecurity and operational resilience. As always, firms should take note that the Report is not a comprehensive indicator of the issues that the Division may address during examinations. The new priorities provide firms with an opportunity to conduct gap analyses of their current policies and procedures, particularly with respect to vendor oversight, cybersecurity, and retail investor communications.

Lowenstein Sandler will monitor future publications from the Division and provide further updates in subsequent Client Alerts so that investment advisers can determine whether changes to their policies and procedures are necessary. Please reach out to one of the listed authors of this Client Alert or your regular Lowenstein Sandler contact if you have any questions regarding the Report.

Contacts

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