

SEC Regulatory Update 2025 Examination Priorities

On October 21, 2024, the Securities and Exchange Commission (**SEC**) Division of Examinations (“Examination Division” or “Division”) published its 2025 Examination Priorities, highlighting the 30-year anniversary of the creation of the Division (originally called the Office of Compliance Examinations & Inspections, or **OCIE**). The priorities memo summarized changes in the industry since that date, and ways that the Division has adapted its program, improved communication and transparency, and directed its resources to critical risk areas. The Division outlined its priorities across all of its registrant (SEC term for registered investment advisers and ERAs) base, including 1) investment advisers; 2) investment companies; 3) broker-dealers; 4) self-regulatory organizations; 5) clearing agencies; and 6) other market participants. The Division further summarized its examination efforts related to key risk areas and regulatory developments and stated that it will prioritize examinations of investment advisers that have never been examined and those that have not recently been examined. Our team will work with clients to prepare for and manage examinations incorporating these priorities.

Following are highlights of priorities that will mostly directly impact Standish Compliance clients.

Fiduciary Standards of Conduct

Investment advisers’ fiduciary duty includes a duty of care and a duty of loyalty to their clients. In addition, advisers must eliminate or make full and fair disclosure of all conflicts of interest. The Examination Division will focus on advisers’ adherence to such duties, through the following reviews:

- **Investment Advice** - Reviewing whether advice provided to clients is consistent with the advisers’ fiduciary obligations, particularly when it involves: 1) high-cost products; 2) unconventional instruments; 3) illiquid and difficult-to-value assets; and 4) assets sensitive to higher interest rates or changes market conditions (e.g., commercial real estate).
- **Dual Registered IA/BDs** - Reviewing whether dual registrant practices including 1) product suitability; 2) disclosures regarding capacity in which recommendations are made; 3) selection of appropriate account types (e.g., brokerage vs. advisory); and 4) mitigation and disclosure of conflicts of interest.
- **Financial Conflicts** - Reviewing the impact of an adviser’s financial conflicts on providing impartial advice and seeking best execution, with specific focus on non-standard fee arrangements.

Compliance Programs

The Compliance Rule 206(4)-7 under the Investment Advisers Act of 1940 requires registered investment advisers (**RIAs**) to 1) adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act; 2) designate a Chief Compliance Officer to administer and enforce such policies and procedures; and 3) review the adequacy and effectiveness of implementation of the compliance program annually. The Examination Division highlighted its reviews of compliance programs to include the following:

- **Program Coverage** - Assessment of the effectiveness of applicable core areas, including: 1) marketing; 2) valuation; 3) trading; 4) portfolio management; 5) disclosure and filings; and 6) custody.
- **Annual Reviews** - Analysis of the annual review process and whether it adequately addresses conflicts from the adviser's business and compensation arrangements, arbitration clauses, affiliated parties and transactions.
- **Self-Dealing & Conflicts of Interest** - Review of whether policies and procedures are reasonably designed to prevent advisers from placing their interests ahead of clients, with a particular focus on: 1) outsourced investment selection and management; 2) alternative sources of revenues or compensation from the sale of other products or services; and 3) fee calculations and disclosure of fee-related conflicts (e.g., negotiating lower fees for select clients when similar services are provided to other clients at a higher fee).
- **Risk-Based Practices & Products** - Additional risk-based reviews depending on firm practices, such as 1) valuation reviews when investing in illiquid or difficult to value assets (e.g., commercial real estate); 2) use of artificial intelligence (**AI**) in advisory operations, portfolio management, trading, marketing, and compliance; 3) supervision of independent contractors; and 4) updates to compliance practices for changing business models, new assets, clients or services.

Private Fund Advisers

Examiners expect to continue to focus on advisers to private funds with specific prioritization of the following topics:

- **Disclosures** - Whether disclosures are consistent with actual practices and sufficiently address 1) sensitivity to market volatility; 2) sensitivity to interest rate changes; 3) poor performance; 4) significant withdrawals; 5) leverage; and 6) difficult to value assets.
- **Fees & Expenses** - The accuracy of calculations and allocations of fund level and investment level fees and expenses, with a specific focus on 1) value of illiquid assets; 2) post commitment period fees; 3) fee offsets; and 4) disclosures.

Cybersecurity

Noting the proliferation of cybersecurity attacks, disperse operations, weather-related events, and geopolitical concerns, the Examination Division announced plans to review registrant practices to prevent interruptions to mission critical services and to protect investor information, records, and assets, including focus on the following:

- **Policies & Procedures** - Whether policies and procedures are reasonable to manage information securities and operational risks with particular attention to: 1) governance practices; 2) data loss prevention; 3) access controls; 4) account management; 5) responses to cyber-related incidents including ransomware; and 6) use of alternative trading systems and safeguards to protect confidential trading information.
- **Third-Party Products & Services** - Cybersecurity risks and resiliency impact related to the use of third-party products, sub-contractors, services, and information technology (IT) resources without the IT department's approval, knowledge or oversight.

Privacy & Regulation S-P

Regulation S-P was amended in May of 2024 with an effective date in August 2024 and compliance dates in 2026. The Examination Division announced that in the next year, it will assess firm compliance with Regulation S-ID and S-P, to the extent applicable. In particular, examiners will focus on:

- **Identity Theft** - Adequacy of policies, procedures and training to protect against identity theft, customer account takeovers, and fraudulent transfers.
- **Safeguarding Records & Information** - Firm practices and efforts to mitigate operational and technology risks to prevent account intrusions and safeguard personally identifiable information (**PII**), especially in firms with multiple branch offices.
- **Preparation for Regulation S-P Amendments** - Firm progress in preparing to establish incident response programs reasonably designed to detect, respond to, and recover from unauthorized access to or use of customer information.

T+1 Settlements

The SEC adopted amendments to Securities Exchange Act Rules 15c6-1 and 15c6-2 in February of 2023 to shorten the standard settlement cycle for most broker-dealer transactions from two business days after trade date (**T+2**) to one business day after trade date (**T+1**). The new rules were effective in May 2023 with a compliance date of May 28, 2024. The implementation of such rule changes was primarily an obligation of broker-dealers. However, investment advisers may be subject to agreements obligating them to ensure completion of trade allocations, confirmations, and affirmations on behalf of customers no later than end-of-trade-date. Moreover, as part of such rulemaking, the SEC also amended Rule 204-2 under the Advisers Act to require that all RIAs maintain records of each confirmation received, and any allocation and affirmation sent or received for transactions. The Examination Division announced that it will evaluate in 2025 examinations the following investment adviser activities related to such rule amendments:

- **Books & Records** - Compliance with the amended books and records requirements and maintenance of required records.
- **Operational Practices** - Operational changes and impacts related to adviser facilitation of institutional transactions involved in the order allocation, confirmation, or affirmation process.
- **Technology & Deficiencies** - Technology changes associated with the shortened settlement cycle and the need for further attention or resources for deficient products or counterparties.

Emerging Financial Technologies

The Examination Division noted its continued focus on the use of automated investment tools, AI, and trading algorithms or platforms, and the risks associated with the use of emerging technologies and alternative sources of data. Accordingly, Examination staff will conduct reviews focused on the following:

- **Digital Products & Services** - Assessments of 1) adequacy and accuracy of representations; 2) consistency between operations, controls, and disclosures; 3) whether algorithms produce advice or recommendations consistent with investor profiles and strategies; and 4) whether advice and recommendations from digital engagements are consistent with regulatory obligations, particularly with respect to older investors.
- **Artificial Intelligence** - Review of 1) accuracy of representations regarding AI capabilities and use; 2) policies and procedures to monitor or supervise the use of AI, including fraud prevention

and detection, back-office operations, anti-money laundering, and trading; 3) integration of regulatory technology to automate internal processes and optimize efficiency; and 4) protection against loss or misuse of client records or information from the use of AI.

Crypto Assets

The Examination Division observed the proliferation of investments involving crypto assets and associated products and services and related volatility of such investments. Accordingly, Examination staff will examine registrants offering crypto-asset related services, with a focus on the offer, sale, recommendation, advice, trading, and other activities involving crypto assets such as bitcoin and other exchange-traded products. Reviews will focus on:

- **Standards of Conduct** - Whether registrants meet and follow fiduciary duty standards with respect to initial and ongoing due diligence and suitability for retail investors (particularly older investors) and retirement assets.
- **Policies & Procedures** - Whether registrants have appropriately reviewed, updated, and enhanced relevant policies and procedures related to 1) custody practices; 2) Bank Secrecy Act (**BSA**) compliance; 3) valuation procedures; 4) risk disclosures; and 5) operational resiliency.
- **Technology Risks** - Adequacy of registrant practices to address the technological risks and security associated with the use of blockchain and distributed ledger technology.

Anti-Money Laundering (AML)

In August 2024, the Financial Crimes Enforcement Network (**FinCEN**), a bureau of the U.S. Department of the Treasury, issued a final rule to include both RIAs and exempt reporting advisers (**ERAs**) in the definition of "financial institution" under the BSA. Accordingly, RIAs and ERAs will be required to 1) implement a risk-based AML/CFT program; 2) conduct ongoing monitoring to identify suspicious transactions and, on a risk-basis, to update and maintain customer information; 3) file suspicious activity reports (**SARs**) and currency transaction reports (**CTRs**) with FinCEN; 4) keep certain records related to the transmittal of funds; and 5) fulfill information sharing and other provisions of the USA PATRIOT Act. RIAs and ERAs will be required to designate an AML Compliance Officer, conduct AML training and audits to ensure compliance. The amendment is effective in January 2024. These and other requirements have long been in place with respect to broker-dealers and registered investment companies (**RICs**) but have simply been best practice for investment advisers. The Examination Division announced that it would focus on AML programs of broker-dealers and certain RICs. Accordingly, it is unclear whether examiners plan to immediately examine for compliance with the new AML requirements for RIAs and ERA. Nevertheless, the Examination Division noted that it will focus on:

- **AML Program Requirements** - Whether firms are: 1) appropriately tailoring AML programs to their business model and associated AML risks; 2) conducting independent testing; 3) establishing adequate customer identification programs including beneficial owners; and 4) meeting SAR filing obligations.
- **Sanctions Monitoring** - Whether firms are monitoring the Department of Treasury's Office of Foreign Assets Control (**OFAC**) sanctions and ensuring compliance with such sanctions.

See FY2025 Examination Priorities Memo - <https://www.sec.gov/files/2025-exam-priorities.pdf>