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SEC Division of Examinations Releases its List of What's Hot & What's Not for 2026

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Consistent with recent years, early this fiscal year the SEC's Division of Examinations (the "Examinations") has released its 2026 examination priorities ("Priorities"). The Priorities signal a more engagement?oriented program consistent with one of Chairman Atkins' mantras, framing regulatory oversight and compliance as a two?way conversation—not a "gotcha" exercise. In the prologue, Examinations leadership: (1) promises to share observations and deepen outreach with registrants and SROs, and to harmonize its work with that of the Commission's various policy divisions and (2) underscores its plan for deploying limited resources to the highest risk areas for investors and market integrity. The second issue is a perennial one for the SEC but is particularly acute following the significant reduction in headcount the SEC has experienced in the past nine months. Notwithstanding agency changes, in our experience, the work of Exams has generally continued to proceed apace.

Exams in 2026 will remain guided by its "Four Pillars" to promote compliance, prevent fraud, inform policy, and monitor risk, with a focus on implementation of the amended Reg S?P,[1] cybersecurity, AI?enabled risks and vendor oversight, other emerging focus areas (private credit and alternative investments), and protections for retail investors. At the same time, Exams will continue to focus on longstanding core concerns: accurate, consistent disclosures; effective compliance programs; AML; and resilient operations.

A takeaway: Examination's priorities for this year seem to include almost everything. That means its risk-based approach will be put to the test. If Examinations follows the same approach as Enforcement, then we may see less of a focus on the numbers—i.e., how many exams are conducted—and more focus on substantive exams of risk-identified priorities. For registrants, this may mean "deeper dive" exams rather than many "desk exams."

Now for some specifics . . .

What's Hot for Examination in 2026?

- Retail, retail, retail. Especially seniors, and those saving for retirement.
- Complex, illiquid and hard-to-value products
    - *Think*: private credit, variable rate demand obligations, variable and registered index-linked annuities; ETFs that invest in illiquid assets; structured products; products based on exotic benchmarks, and products that "represent a growth area for retail investors."
- Cyber threats, AI-drive, polymorphic malware
    - Information security and operational resiliency.
    - *Think*: Data loss prevention, access controls, account management, and responses and recovery to cyber-related incidents, including ransomware attacks.
- Reg S-ID identity theft prevention
- Amended Reg S?P compliance
    - *Expect:* Pre? and post?compliance date dialogue with and testing by Exam staff.
- Rule 605 of Reg NMS
    - Heightened focus on public disclosure of order routing and execution information by broker-dealers

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- Late or inaccurate Schedules 13D/13G, Form 13F, Forms 3/4/5, and Form N?PX by investment advisers that are required to file
- Investment Companies' Names Rule compliance
- Emerging technology
    - Automated investment tools, AI technologies, and trading algorithms or platforms, and the risks associated with the use of emerging technologies and alternative sources of data
    - Backoffice AI. Policies and procedures to monitor and/or supervise the use of AI technologies, including for tasks related to fraud prevention and detection, back-office operations, AML, and trading functions
- Vendor supervision
    - Services used by broker-dealers to prepare financial reporting, in change management
    - Advisers using third parties to access clients' accounts and the impact on protection of client assets and data
    - Vendor systems that qualify as SCI systems or indirect SCI systems under Reg SCI
- Examinations of registered SBSEFs
    - Entirely new this year! Focus on rules and internal policies for trade monitoring, processing, participation, and operational risk programs
- Certain 'business?model' risks
    - Dual registrants with incentive compensation conflicts (*See* Reg BI discussion below)
    - Advisers to both private funds and SMAs or newly registered funds (e.g., reviewing for favoritism in investment allocations and interfund transfers)
    - Advisers that have not previously advised private funds
    - Post?M&A adviser business integration that outpaces compliance

What's Classic.

Newly registered advisers and investment companies, and never-before examined advisers remain a top priority; such entities should prepare for examination.

As noted at the outset, the Priorities also discussed all the usual focus areas for an SEC exam:

- **For Advisers**
    - Fiduciary duty, including conflicts disclosure and mitigation
        - In 2026, Exams will focus on alternatives (e.g., private credit, and private funds with extended lock ups), valuation, fees/expenses, investment allocations, and differential investor treatment (e.g., side letters)
    - Alignment between investment recommendations and client objectives
    - Policies tailored, implemented, and enforced across marketing, valuation, trading, portfolio management, disclosures/filings, and custody.
    - Best Execution
    - Accurate fee and conflict disclosures
    - *Interestingly:* Private fund fees and expenses were not specifically highlighted for 2026 and there was no separate Private Funds section in the Priorities
- **For Investment Companies**
    - Fees/expenses, disclosure accuracy, governance
    - Funds with complex or illiquid exposures (including closed?end funds) and novel or leverage?sensitive strategies
- **For Broker-Dealers**
    - Compliance with net capital and customer protection rules

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- Risk management controls – liquidity, market, credit risk
- Trading practices associated with extended hours trading, and municipal securities, including the rates reset process on variable rate demand obligations, priority of orders, and mark-ups disclosure
- Reg BI
  - The usual priorities (care, costs, conflicts, alternatives), plus, for 2026:
    - Supervision of sales practices at specific branch locations
      - *Inside baseball:* In the past, census data was used to identify branches located in areas with outsized senior populations
    - For dual registrants, account selection practices (e.g., brokerage versus advisory, including when rolling over employer plans to an IRA or transferring an existing brokerage account to an advisory account, as well as recommendations to open wrap fee accounts)
- Form CRS accuracy, including disciplinary history disclosures
- Reg SHO, especially whether reliance on the bona fide market making exception is appropriate, including whether quoting activity is away from the inside bid/offer
- Reg ATS, specifically, safeguards to protect subscriber confidential information under Rule 301(b)(1), and alignment of description in the Form ATS-N, disclosures and risk controls

- **AML**
  - Business-specific, risk?tailored programs, independent testing, customer identification/beneficial ownership, SARs, OFAC monitoring and sanctions compliance, RICs' oversight of applicable financial intermediaries
- **For SROs**
  - Risk?based oversight of national exchanges, FINRA, and the MSRB, with data?driven reviews of regulatory programs including Reg BI/Form CRS at FINRA and dialogue, followed by recommendations
- **For Clearing Agencies**
  - Compliance with core risk-management functions
- **Other Market Participants:**
  - **Municipal Advisors.** Fiduciary duties to municipal entity clients; MSRB Rule G?42, including conflicts disclosures; compliance with professional qualification, registration, recordkeeping, and supervision requirements
  - **Transfer Agents. C**ompliance with Reg S-P, use of emerging technology to perform transfer agent functions (*Think*: AI, DLT, blockchain)
  - **Reg CF Funding Portals.** Arrangements with qualified third parties regarding the maintenance and transmission of investor funds; making and preserving required records/recordkeeping; and, post?compliance, Reg S?P incident response
- **Security-Based Swap Dealers.** Accuracy and completeness of **Reg SBSR** reporting of security-based swap transactions to security-based swap data repositories and capital/margin/segregation requirements

A modern twist. The Priorities repeatedly identify consistency across disclosure documents as an exam focus. Staff may use new technology to detect discrepancies in how the same topic is described across different disclosures or other public statements.

That's so last year …

Dropped from last year's priorities are: Crypto, operational readiness for shortening of the settlement cycle, and (for broker-dealers), order marking (held/not held); bank sweep and fully-paid lending programs (although cash sweeps are still part of financial responsibility exam focus); pre-IPO/secondary private company trading; and references to certain investment strategies such as those involving commercial real estate.

Conclusion. While not an exhaustive list of all areas of focus in the coming year, the Priorities provide helpful guidance for registrants and counsel to analyze and improve, where appropriate, compliance programs.

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With assistance from Of Counsel Lauren Cook Jackson.

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[1] A related aside: Consistent with the promise of deepening outreach, the Commission is holding three virtual compliance outreach events regarding implementation of amended Regulation S-P. Each event focuses on different registrant types, with the events scheduled according to the registrants' respective compliance deadline. The second event will focus on transfer agents and is scheduled for December 17, 2025.

Related Capabilities

Securities Enforcement

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