

Practice Update

SEC Releases 2026 Examination Priorities: Key Implications for Private Fund Advisers

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Summary

- Exam focus remains anchored in longstanding concerns: fiduciary duties, conflicts of interest, valuation, fees and expenses, operational resiliency, and disclosures and filing obligations, despite greater transparency and more consistent engagement with registrants.
- The SEC will continue to thoroughly assess whether compliance programs reflect the adviser's actual business and operational activities, particularly where strategies and business models have expanded, and ensure that they are applied consistently and effectively.
- The SEC reiterated that exams will be tailored to advisers' practices, with added focus on certain alternative investment strategies such as private credit, advisers that have never been examined, newly launched firms, and new and emerging products or services.
- Despite a recalibrated approach under new leadership, advisers should anticipate continued exam and enforcement activity in the private fund sector and ensure they have appropriate compliance resources, a strong tone at the top, and preparedness for exams, with particular

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attention to common deficiency areas that continue to drive exams and enforcement.

SEC Releases 2026 Examination Priorities

The Securities and Exchange Commission's Division of Examinations recently released its Examination Priorities for 2026. These are the first priorities under Chairman Paul Atkins and reflect a supervisory program adjusting to new leadership and rebalancing its approach to exams.

Atkins noted that "examinations are an important component to accomplishing the agency's mission, but they should not be a 'gotcha' exercise," and that publishing the priorities is meant to help firms "prepare to have a constructive dialogue with SEC examiners." Keith Cassidy, the Acting Director of the Division, added that the Division aims to improve compliance "in a way that is both transparent and practical" as it enters a new exam cycle.

While the tone differs from recent years, advisers should expect continued focus on fiduciary and disclosure obligations and how compliance programs adapt to changes in business lines and market conditions. Private fund advisers should view the 2026 release as an extension of longstanding exam themes, rather than a departure from them.

Fiduciary Duties and Compliance Programs

The Division's core focus remains adherence to the duty of care and duty of loyalty. Examiners will review whether investment advice and related disclosures align with fiduciary obligations, including how advisers identify and manage financial conflicts and whether they appropriately consider material factors such as cost, investment objectives and characteristics, liquidity, volatility, risks and potential benefits, performance in different market environments, time horizon, and exit considerations. Examiners will also assess whether advisers seek best execution in a manner designed

to maximize client value under the circumstances of each transaction.

Examiners will pay particular attention to products and strategies that introduce heightened risks or complexity, including private credit, private funds with extended lock-up periods, and closed-end and semi-liquid funds. They will evaluate whether the structure, liquidity features, and fee arrangements are fully disclosed, appropriately governed, and consistent with an adviser's fiduciary duties.

As private fund advisers expand into retail-facing channels through interval funds, tender-offer funds, and other hybrid or semi-liquid registered funds or complex strategies or those with significant holdings of less liquid or illiquid investments (e.g., closed-end funds), examiners will assess whether liquidity, valuation practices, fee structures, and related disclosures are appropriate for these products and consistent across the adviser's platform. This scrutiny applies equally to institutional advisers managing parallel private funds, SMAs, fund-of-one structures, co-investment programs, or registered fund products alongside private funds.

Examiners will review how advisers allocate investment opportunities across vehicles and execute cross trades. They may evaluate how advisers manage situations where multiple vehicles hold the same assets, as well as ensuring different fee arrangements, economic incentives, or performance structures do not influence portfolio or trading decisions, and whether these decisions align with written policies and are supported by contemporaneous documentation.

Advisers should expect focused reviews of pricing and valuation practices, liquidity management, side letter administration, and compliance with the Marketing Rule, particularly when presenting early performance, launching new strategies, or entering distribution networks that reach a broader investor base.

Compliance Program Effectiveness and Tailored Examinations

Examiners will continue to place significant emphasis on the strength and effectiveness of an adviser's compliance program. For private fund advisers, this means demonstrating that policies and procedures are tailored to the firm's actual business and are operating as intended across core areas such as marketing and performance advertising, valuation, trading, portfolio management oversight, custody, and regulatory filings.

Examiners will also look at how advisers conduct and document their annual compliance reviews, including whether those reviews meaningfully assess the program's effectiveness and reflect changes in the adviser's strategies, products, or operational footprint.

The SEC noted that exams may be tailored to an adviser's specific practices and products. While the release uses activist advisers as an example — pointing to filing obligations under Schedules 13D and 13G, Form 13F, Forms 3, 4, and 5, and Form N-PX — the same principle applies broadly across private fund strategies.

For hedge fund advisers, examiners may focus on how funds have adjusted terms in response to market conditions, including the use of extended lock-ups, revised liquidity provisions, and changes to fee or performance allocation structures. Reviews may also assess advisers' handling of MNPI in connection with public-side and private-side activities, best-execution and trading-execution practices, and oversight of counterparties.

For private credit advisers, tailored exams may focus on valuation methodologies for less liquid or bespoke instruments, the handling of MNPI when trading loans and securities, participation in lender groups and ad hoc committees, and the use and oversight of financial advisers, consultants, and

other third parties in diligence and workout processes.

For private equity advisers, examiners may review fee and expense practices, disclosures to investors, and adherence to fund governing documents, including PPMs, LPAs, and LPAC approval processes, to ensure they align with fiduciary obligations and actual operating practices.

Newly registered advisers and those never before examined also remain a priority. This includes first-time fund managers who may be less familiar with SEC and Advisers Act requirements, as well as established private fund advisers whose growth in assets, personnel, or product complexity has outpaced the development of their compliance infrastructure. Examiners will focus on whether these firms have built programs that appropriately scale with the risks and operational realities of their businesses.

Information Security, Regulation S-P, and Emerging Technologies

Cybersecurity and operational resiliency remain core examination priorities. Examiners will assess whether advisers have policies and procedures reasonably designed to safeguard investor information and ensure continuity of mission-critical services in the face of cyberattacks, ransomware, dispersed operations, weather-related disruptions, and geopolitical risks.

Exams will focus on governance practices, access controls, data-loss prevention measures, account management oversight, and the adviser's ability to detect, escalate, and respond to incidents. Examiners will also evaluate training programs and the controls advisers use to address emerging risks associated with AI-driven threats and other advanced malware, including how firms leverage threat intelligence information in their programs.

Compliance with Regulation S-P and the 2024 amendments will remain a significant examination focus in 2026, particularly given the December 3, 2025 compliance deadline for advisers with more than \$1.5 billion in regulatory assets under management. Examiners will review incident response programs, administrative and technical safeguards, and vendor oversight practices, with attention to how advisers allocate data protection responsibilities across internal functions and among service providers.

The Division also highlights its continued interest in emerging technologies. Advisers using artificial intelligence tools (proprietary and third party) should expect questions about how those technologies are governed, how their use is disclosed, and whether outputs align with fiduciary and compliance obligations. Examiners will evaluate whether representations about capabilities are accurate, whether compliance oversight is meaningful, and whether models or tools are monitored for accuracy and consistency with stated strategies and uses.

Private Fund Issues Across Strategies

The 2026 release does not include a dedicated private funds section, a notable shift from recent years. Even so, the issues most relevant to private fund advisers appear throughout the release and remain central to exams. Examiners are expected to focus on valuation of illiquid assets, the management of conflicts across related vehicles, MNPI handling, fee and expense allocation practices, compliance with the Marketing Rule, required regulatory filings, and the accuracy and completeness of investor communications and disclosures.

Limited distributions and elongated exit timelines in many closed-end and semi-liquid structures have contributed to increased use of continuation funds, GP-led restructurings, extensions, and other portfolio- or fund-level recapitalizations. These

transactions raise meaningful fiduciary, valuation, and conflict considerations. Examiners may review how advisers determine valuations, the extent to which fairness opinions or third-party pricing are used, how the interests of rolling and selling investors are evaluated and balanced, and how advisers document LPAC consultations, approvals, and other governance steps. They may consider whether investor materials and process narratives are consistent with governing documents and stated conflict management frameworks.

Conclusion

The 2026 Examination Priorities reflect an examination program evolving under new leadership but continuing to emphasize many of the same themes the Division has focused on for years. For private fund advisers, robust compliance programs, strong documentation, and the consistent application of policies remain essential.

For questions about the SEC's 2026 Examination Priorities or any of the topics discussed in this alert, please contact Akerman LLP's Investment Management Practice.

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