Simpson Thacher

Registered Funds Regulatory Update

January 8, 2026

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SEC Staff Guidance

SEC Approves Dual Share Class Structure

On November 17, 2025, the SEC issued an order granting exemptive relief for a registered fund seeking to offer both mutual fund and ETF share classes in a single vehicle. The approval follows the SEC's public notice of its intent to approve the application on September 29, 2025.

This concludes a 28-month application process for the registered fund, whose initial filing was in July 2023 and was amended three times. The formal release accompanying the decision stated that the matter was considered and the application accepted because "granting the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the ['40] act."

DFA is the first firm to receive approval since Vanguard was granted access to the structure in 2000. The SEC's decision follows the expiration of a patent, held by Vanguard for over two decades, that permitted Vanguard to offer dual share classes on its index-tracking funds; the patent, effectively barring its competitors from offering this revolutionary dual structure until its expiration in May 2023.

The exemptive relief is subject to a number of conditions, including a three-part governance framework that requires the fund's board to actively evaluate the ongoing fairness and benefits of the structure by reviewing reports from the investment adviser and finding that the dual share plan remains in the best interest of the fund and its individual share classes.

On December 17, 2025, the SEC issued a combined notice to an additional thirty firms of its intent to approve their applications, pending any public request for a hearing into the applications.

In the Matter of DFA Investment Dimensions Group Inc., et al. (File No. 812-15484), Release No. IC-35786 (Nov. 17, 2025).

Notice of Application under Section 6(c) of the 1940 Act, *Multi-Class ETF Fund Exemptive Relief under the Investment Company Act of 1940,* Investment Co. Act Release No. 35834 (Dec. 17, 2025), available at: https://www.sec.gov/files/rules/ic/2025/ic-35834.pdf.

SEC Division of Corporation Finance Announces Limited Engagement on Exclusion of Shareholder Proposals for the Upcoming Proxy Season

On November 17, 2025, the SEC's Division of Corporation Finance announced that during the 2025–2026 proxy season, due to resource constraints following the government shutdown and the breadth of existing guidance issued by the SEC Staff, the Staff will not respond to no-action requests or express views on companies' intending to rely on Rule 14a-8 under the Exchange Act for exclusion of shareholder proposals in their proxy materials, except for requests related to state-law based exclusions under Rule 14a-8(i)(1). Pursuant to the statement:

- **Notification of exclusion is still required**. Companies seeking to exclude proposals submitted pursuant to Rule 14a-8 will still be required to notify the Staff and proponents under Rule 14a-8(j) no later than 80 days before filing their definitive proxy statement. That said, the Staff will not be providing substantive feedback on those notifications.
- **Companies can voluntarily seek a formal response from SEC Staff**. To the extent a registrant desires to receive a formal response from the Staff for any proposal that it intends to exclude, the statement indicates that such companies or their counsel should include as part of their Rule 14a-8(j) notification an unqualified representation that the company has a reasonable basis to exclude the proposal under the rule, prior guidance or judicial decisions. In such cases, the Staff will respond with a letter stating it will not object to the exclusion without assessing the validity of the basis itself.
    - Importantly, the statement asserts that prior Staff responses to no-action requests are not binding and any prior negative response to a request for no-action relief would not preclude a company from forming a reasonable basis to exclude a proposal based on similar grounds.
- **Approach applies for the duration of the 2025–2026 proxy season**. According to the statement, this updated approach applies to the current proxy season (October 1, 2025 – September 30, 2026) and any pending no-action requests submitted before the government shutdown on October 1, 2025. Companies that have already submitted such requests and wish to receive a formal response must now include the required representation to trigger a reply from the Staff.

The Staff of the Division of Investment Management is responsible for responding to Rule 14a-8 requests for investment companies and will follow a substantially similar process.

SEC Statement, *Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season* (Nov. 17, 2025), available at: https://www.sec.gov/newsroom/speeches-statements/statement-regarding-division-corporation-finances-role-exchange-act-rule-14a-8-process-current-proxy-season.

SEC Remarks

Uyeda Outlines Case for Increasing Closed-End Fund Access to Private Investments

At an ICI Conference held on November 20, 2025, SEC Commissioner Mark Uyeda delivered remarks on the SEC's plan to expand retail access to private investments. Uyeda outlined what he characterized as a "diversification deficit" within the current 401(k) system and asserted that most retirement savers lack access to private market investments that might improve their long-term investment outcomes. He proposed that the existing regulatory framework needs a significant overhaul as the U.S. retirement system has moved away from traditional defined-benefit pensions toward defined-contribution plans in which individuals bear responsibility for their investment choices. He explained that expanding 401(k) plan access to private equity, private credit, real estate, and other private-market strategies could strengthen portfolio diversification. He also emphasized the importance of regulatory coordination, calling on the SEC and the DOL to align their approaches to facilitate responsible private-market access in 401(k) plans.

In his remarks, Uyeda also stated that the SEC plans to expand retail access to private investments by reducing the litigation risks to plan fiduciaries under ERISA by, among other things, heightening the pleading requirements for plaintiffs bringing private securities class actions. Uyeda noted that this approach would emphasize ERISA's standards of prudence and loyalty in an effort to "ensur[e] that fiduciaries who act responsibly are not punished," stressing that it "is *not* about shielding bad actors" (emphasis added). Further, Uyeda argued that, although private investments have more illiquidity risk, they provide diversification and long-term value to a portfolio, and plan fiduciaries under ERISA should be able to make prudent decisions related to risk optimization and investment selection.

Former SEC Commissioner Caroline Crenshaw, in a speech made before her term expired on January 3, 2026, however, criticized the SEC's policy choice to create greater access to private market investment strategies, calling it an "irresponsible departure from [the] foundational pillars of the securities laws." Crenshaw further stated that private markets lack the "same guardrails that make our public markets a level playing field for retail investors" thereby exposing retail investors to more risky investments.

Mark T. Uyeda, SEC Commissioner, Speech, *The Diversification Deficit: Opening 401(k)s to Private Markets* (Nov. 20, 2025), available at: https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-diversification-deficit-opening-401ks-private-markets-112025.

Caroline A. Crenshaw, Former SEC Commissioner, Speech, *The Rubble and the Rebuild: The Future of Financial Regulation Series at The Brookings Institution* (Dec. 11, 2025), available at: https://www.sec.gov/newsroom/speeches-statements/crenshaw-remarks-future-financial-regulation-series-brookings-institute-121125.

Daly Discusses Focus on Innovation for the SEC's Upcoming Term

In a recent speech, SEC Director of the Division of Investment Management Brian Daly discussed the Division's upcoming priorities, identifying four substantive themes and/or categories of focus: (i) deregulation; (ii) modernization initiatives; (iii) democratization of alternative asset investments; and (iv) promotion of artificial intelligence. Daly emphasized that the Division intends to listen to and engage with both the industry and the general public in moving forward with these priorities.

Deregulation

Daly first raised the importance of innovation in the market, specifically crediting America's dominance in finance to allowing more innovation than its competitors. As a natural complement to innovation, Daly highlighted deregulation as a way to unlock value and emphasized the Division's receptiveness to concrete arguments about how thoughtful changes can facilitate innovation and/or eliminate unnecessary compliance costs. "[The Division is] asking 'Why is this still on the books?' in a number of contexts," Daly noted, "and you should too." He added that the Division is eager to learn about why certain rules or reporting forms are not working as intended, raising, for example, Form PF and related pain points (*e.g.*, Form PF calls for certain information that asset managers believe is not relevant to the form's purpose or calls for information to be presented in a way that is inconsistent with industry practice).

Modernization

Daly discussed the Division's focus on modernizing outdated rules, noting in particular the problems stemming from the tension between past rulemakings and ongoing technological development—the former lagging behind the rapid acceleration of the latter—and the Division's goal to modernize rules "in a way that is platform-independent, technology-neutral, and future-ready." As examples, he highlighted the custody and recordkeeping rules as primed for modernization—the former to accommodate digital assets, and the latter to transition to the digital age, in each case in a platform- and technology-neutral and future-ready capacity. Daly noted that the Division's hope is to create rules that are flexible to adapt to future modernizations, without the need for drastic changes on an ongoing basis.

Democratization

Daly stated that the trend to democratize private markets has become more pronounced with President Trump's Executive Order directing the DOL to expand access to alternative investments within retirement accounts. He added that the Division is working closely with the DOL to support this effort, but not to expect changes overnight or all at once. Rather than taking a "big bang" approach to democratization, with a "'Retailization Rule' that suddenly transforms everything about how private funds are structured, marketed and operated," Daly lauded "a thoughtful and incremental reconsideration" of the existing regulatory framework as the best path forward. Reinforcing one of the other themes raised, he noted the intention to allow the industry to innovate, with the Division's role being to listen, learn, and react thereto.

Artificial Intelligence

Daly reemphasized the Division's goals in the context of AI—to enable, support, and regulate thoughtfully in the space in a manner that accommodates AI development. He briefly described the SEC's three-pillar AI Action Plan in support thereof, seeking to: (i) accelerate AI innovation; (ii) build AI infrastructure; and (iii) lead in international AI diplomacy and security. Daly added that the Division is and intends to continue engaging directly with asset managers where they see an innovative use of AI in an effort to gather more information—emphasizing his view of AI use as a beneficial tool, while recognizing the important regulatory concerns raised by its use. Overall, Daly's tone suggests the Division is looking to help and seeking to engage with managers on the topic of AI usage.

Brian Daly, SEC Division of Investment Management Director, *Remarks to the American Bar Association's Federal Regulation of Securities Committee's Private Funds Subcommittee and Investment Advisers and Investment Companies Subcommittee* (Dec. 2, 2025), available at: https://www.sec.gov/newsroom/speeches-statements/daly-remarks-aba-fed-reg-ia-ic-subcommittees-120225.

Atkins Announces Procedural Reforms for SEC's Enforcement Program

In a speech at Fordham School of Law on October 7, 2025, SEC Chair Paul Atkins announced procedural reforms to enhance fairness and transparency in the SEC's enforcement program, stating that the Division of Enforcement will (i) no longer seek maximum penalties in enforcement cases; (ii) undergo an investigation process liberalization; and (iii) change its performance-based incentives for the Staff. Atkins stated that penalties should be "appropriately tailored to the misconduct at issue, within statutory limitations and without adding further to shareholder injury."

Atkins also criticized recent agency enforcement actions targeting books and records violations, which consumed excessive resources "not commensurate with any measure of investor harm." Atkins stated that the Enforcement Division will modify its investigation process to allow potential respondents and defendants at least four weeks to make written submissions in response to a Wells notice, which is an initial informational request by the agency given in certain enforcement circumstances. He highlighted the benefits of early engagement with the Staff through pre-Wells discussions to address perceived factual misunderstandings prior to the issuance of a Wells notice. Atkins noted that, in some cases, the Staff will allow unsolicited submissions by investigated firms (*i.e.*, white papers), prior to receipt of a Wells notice; this may assist the Staff in identifying issues and analyses that would have otherwise been missed. Additionally, Atkins explained that the SEC will now consider an enforcement settlement at the same time as other Division waivers in an effort to increase efficiency and holistic analysis.

Atkins also stated that the SEC will change its performance-based incentives for the Staff, expressing his concern that incentivizing the Staff only for bringing enforcement actions may discourage it from following the evidence and law and closing investigations. He suggested that the SEC look beyond the numbers and instead reward the Staff for high quality work and good judgment for bringing cases.

Paul S. Atkins, SEC Chair, Speech, *Keynote Address at the 25th Annual A.A. Sommer, Jr. Lecture on Corporate, Securities, and Financial Law* (Oct. 7, 2025), available at: https://www.sec.gov/newsroom/speeches-statements/atkins-100925-keynote-address-25th-annual-aa-sommer-jr-lecture-corporate-securities-financial-law.

SEC Enforcement

SEC Charges Six Firms Impersonating as Investment Advisers

On November 17, 2025, the SEC announced civil actions against six purported investment advisers for allegedly making material misrepresentations and unsubstantiated statements in Form ADV filings made between 2023 and 2024. The civil actions follow the Department of Justice's indictment of Hong Kong resident, Guanhua Su, for his alleged role in a complex securities fraud scheme. The SEC Complaints relate to a purported "ramp-and-dump" scheme that allegedly used false and deceptive adviser forms to scam investors out of hundreds of millions of dollars. The DOJ indictment alleges that the six purported advisers were among at least ten "shell entities" created by Su and his co-conspirators.

The Complaints were filed separately in November 2025, in the United States District Courts for the Southern District of New York and the District of Colorado alleging that the firms made misrepresentations concerning their organizational structures, office locations, assets under management, and client relationships. Specifically, the Complaints claimed that each firm managed significant assets ranging from $1 to $10 million but failed to substantiate them when requested by the SEC. The Complaints also allege that the firms misrepresented themselves as operating from offices in New York City and Denver, but the purported office spaces in both cities had no knowledge of these firms or their personnel. For instance, a search of one firm's address reportedly revealed that the space was actually occupied by a jewelry store located in a strip mall. Additionally, the firms claimed various corporate statuses, with two firms asserting that they were public companies, despite the absence of any such information in the SEC's public company database.

The Complaints charge each firm with certain recordkeeping and material misstatement provisions of the Advisers Act and seek injunctive relief and civil penalties.

SEC Litigation Releases, *SEC Charges Six Investment Advisers with Making Misrepresentations in Forms Filed with the Agency* (Nov. 17, 2025), available at: https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26416.

DOJ Press Release, *Hong Kong Businessman Indicted for Role in Filing False SEC Investment Adviser Forms on behalf of Sham Entities Used in Ramp-and-Dump Scheme* (Nov. 14, 2025), available at: https://www.justice.gov/opa/pr/hong-kong-businessman-indicted-role-filing-false-sec-investment-adviser-forms-behalf-sham.

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Memorandum

SEC Division of Examinations Announces 2026 Examination Priorities

December 4, 2025

The SEC Division of Examinations released its 2026 Examination Priorities, providing a first look into the Division's stated focus areas for the new fiscal year.[1] The 2026 priorities are the first annual examination priorities published since SEC Chairman Paul Atkins began his tenure in April. The priorities include many long-standing, core SEC examination topics. However, consistent with the Division's stated goal that the publication of its annual priorities "encourage[s] firms to direct their compliance efforts on areas of potentially heightened risk," the 2026 priorities also highlight many of-the-moment risk areas such as private credit, Regulation S-P, and merger activity.

Below we highlight certain key takeaways from the published priorities before providing an overview of other areas discussed in the Division's report.

Key Takeaways

1. **The Division identified private credit and other alternative investments as emerging focus areas.** The 2026 priorities identify key products the Division will focus on next year. These include alternative investments, including private credit and private funds with extended lock-up periods, in addition to complex investments with less-liquid holdings. The priorities also include registered investment companies (Registered Funds) that use complex strategies and/or have significant holdings of less liquid or illiquid assets and Registered Funds with novel strategies or investments as developing areas of interest. Given the continued growth and popularity of private credit across both institutional private credit and retail-focused alternative products, it is not surprising that the SEC has taken notice. This heightened focus by the SEC corresponds with its ongoing efforts to increase access to alternative investments for 401(k) plan participants, and it follows that the SEC would also have an increased examination focus in these areas. We already have observed a heightened focus on private credit and retail alternatives in recent examinations, as well as an increase in the volume of examinations targeting interval funds and their sponsors.[2] Advisers to both private funds and retail-alternative products should remain focused on their compliance programs and pay particular attention to conflicts of interest, investment allocation, accuracy of disclosures, valuation, fund fees and expenses, and governance practices.

[1] With the publication of the 2026 Examination Priorities in November (following the government shutdown in October), the Division continued its earlier publication schedule that began with the 2024 Examination Priorities to better align publication with the start of the new fiscal year instead of the new calendar year.

[2] Public reports explain that interval funds are subject to an examination sweep. *See SEC Reopens with Backlog of Fund Filings, Exams and Enforcement Cases*, Fund Fire (November 14, 2025), available here.

2. **Core and emerging areas for private fund and Registered Fund advisers.** The priorities include a number of topics that are particularly relevant to private fund advisers (discussed further below), including:

   - adherence to an adviser's fiduciary duties;
   - conflicts disclosures related to investment advice and the implementation of policies and procedures reasonably designed to address conflicts of interest; and
   - the overall effectiveness of an adviser's compliance program.

   Private fund fees and expenses were not specifically highlighted and notably, there was no separate "private funds" section in this year's priorities. Nonetheless, the foregoing core topics apply to private fund advisers and often serve as the basis of private fund enforcement actions. Under Atkins' leadership, the SEC already settled one private fund fee and expense case earlier this year,[3] and private fund examinations remain active. As noted, the priorities also called out a few emerging areas applicable to private funds and their sponsors, including private credit and alternative investments. These topics can apply to private fund sponsors that also advise separately managed accounts and/or newly registered funds (with an emphasis on investment allocations and interfund transfers), advisers to newly launched private funds, and Registered Funds that invest in illiquid assets (like private equity). All these fund advisers should remain prepared for examination scrutiny on the topic of fees and expenses, in addition to other core examination topics, including marketing, valuation, trading, portfolio management, disclosure and filings, and custody.

3. **Examinations for compliance with the Regulation S-P amendments will likely be initiated soon.** Larger covered institutions (including registered investment advisers with over $1.5 billion in AUM and investment companies with over $1 billion in AUM) were required to be in compliance with the amendments by December 3, 2025. (Smaller covered institutions have until June 3, 2026 to be in compliance with the amendments.) The 2026 priorities specifically name Regulation S-P as a 2026 risk area, noting that examinations will focus on firms' policies and procedures, internal controls, oversight of third-party vendors and governance practices.[4] The priorities state that the Division will engage firms during examinations regarding whether their incident response programs are reasonably designed to detect, respond to, and recover from unauthorized access to or use of customer information. The Division will also examine whether firms have developed, implemented, and maintained policies and procedures in accordance with the rule's new provisions, which includes the establishment of an incident response program and vendor oversight procedures. Given the Regulation S-P compliance dates, as well as a recently settled Regulation S-P enforcement action, advisers should confirm they have taken appropriate steps to comply with the amendments.[5]

[3] *See* Advisers Act Rel. No. 6908 (Aug. 15, 2025).

[4] It is common for the annual exam priorities to highlight new rules as focus areas. The 2023 priorities included compliance with the new Marketing Rule as an exam priority following the November 4, 2022 compliance date.

[5] On November 25, 2025, the SEC announced a settled order regarding a firm's failure to adopt written policies and procedures designed to protect customer records and information, in violation of Regulation S-P. *See* Advisers Act Rel. No. 6928 (Nov. 25, 2025). For Simpson

4. **Elimination of crypto assets as a priority.** In a significant reversal from the last several years, the Division did not identify crypto assets as a 2026 examination priority and did not mention crypto or other digital assets in the report. This is consistent with the SEC's efforts to establish a regulatory framework for digital assets under Chairman Atkins, bring crypto into the mainstream financial services industry, and facilitate innovation in the space. While the absence of crypto as a standalone examination priority may signal a shift in tone from the SEC, advisers engaged in crypto and crypto-related activities should still remain prepared for examination questions on these topics, including, among other things, custody and disclosure.

5. **Merger activity highlighted as a 2026 priority.** The 2026 priorities specifically highlight certain types of merger activity as key areas of focus for the new fiscal year. With respect to advisers, the Division stated it will focus on advisers that have merged or consolidated with, or been acquired by, existing advisory practices. The priorities note that these activities may result in accompanying operational or compliance complexities, in addition to new conflicts of interest. With respect to Registered Funds, the Division stated that Registered Funds that participate in mergers or similar transactions are a developing area of interest, again highlighting the operational risks and compliance challenges resulting from such activities. In light of these stated priorities, any M&A activity with respect to either advisers or funds should be accompanied by an appropriate compliance review, including updating policies and procedures for any new compliance risks, conflicts or other topics that may result from the merger.

Overview of 2026 Priorities

The 2026 priorities focus on expected themes that are core to the Commission's investor protection mission.

INVESTMENT ADVISERS

Similar to last year, the Division has highlighted (i) adherence to fiduciary standards of conduct and (ii) effectiveness of advisers' compliance programs as key priorities of the Division.

Adherence to Fiduciary Standards of Conduct

The 2026 priorities highlight advisers' adherence to their duty of care and duty of loyalty obligations as a key priority, particularly with respect to retail customers. The Division will review investment advice and related disclosures provided to clients for consistency with an adviser's fiduciary obligations, including:

- The impact of an adviser's financial conflicts of interest on providing impartial advice;
- An adviser's consideration of the various factors associated with investment advice, including cost, the investment product or strategy's investment objectives, characteristics (including any special or unusual features), liquidity, risks and potential benefits, volatility, likely performance in a variety of market and economic conditions, time horizon, and cost of exit; and

Thacher's most recent discussion of the Regulation S-P amendments and upcoming compliance dates, please see our article: *Regulation S-P Amendments: Practical Points for Private Fund Advisers* (Aug. 25, 2025), available here.

- An adviser's obligation to seek best execution with the goal of maximizing value for clients under the particular circumstances occurring at the time of the transaction.

As noted above, the Division also stated that it would focus on investment products such as:

- Alternative investments (*e.g.*, private credit and private funds with investment lock-up for extended periods);
- Complex investments (*e.g.*, ETF wrappers on less liquid underlying strategies, option-based ETFs, and leveraged and/or inverse ETFs); and
- Products that have higher costs associated with investing (*e.g.*, high commissions and higher investment expenses than similar products or investments).

Examinations will also focus on investment recommendations for consistency with product disclosures and the clients' investment objectives, risk tolerance and financial or personal backgrounds, with particular emphasis on: (1) recommendations to older investors and those saving for retirement; (2) advisers to private funds that are also advising separately managed accounts and/or newly registered funds (*e.g.*, reviewing for favoritism in investment allocations and interfund transfers); (3) advisers to newly launched private funds; (4) recommendations of certain products that may be particularly sensitive to market volatility; and (5) advisers that have not previously advised private funds (*e.g.*, reviewing for regulatory awareness, liquidity, valuation, fees, disclosures, and differential treatment of investors, including use of side letters).

Finally, the Division noted that it will focus on particular types of advisers and advisory services or business practices that may create additional risks and potential conflicts of interests, including (i) advisers that are dually registered as broker-dealers; (2) advisers utilizing third parties to access clients' accounts; and (iii) advisers that have merged, consolidated with, or been acquired by existing advisory practices. The Division will also prioritize examinations of advisers that have never been examined, including an emphasis on recently registered advisers.

Effectiveness of Advisers' Compliance Programs

Similar to last year, the Division acknowledged that assessments regarding the effectiveness of advisers' compliance programs are a fundamental part of the examinations process. Examinations on this topic typically include core areas of adviser's compliance program, which, may include marketing, valuation, trading, portfolio management, disclosure and filings and custody, as well as an analysis of an adviser's annual reviews of the effectiveness of its compliance program. The focus on core compliance areas, including custody, is consistent with a recently settled custody-related enforcement action.[6] The Division also noted that it continues to focus broadly on whether advisers' policies and procedures address compliance with the Advisers Act and the rules thereunder, and whether policies and procedures are reasonably designed to address conflicts of interest in light of a firm's particular operations and to prevent advisers from place their own interests ahead of client interests. Accordingly, examinations may focus on: (i) whether an adviser's policies and procedures are implemented and enforced; and

[6] *See* Advisers Act Rel. No. 6901 (Aug. 1, 2025).

(ii) whether disclosures address fee-related conflicts, with a focus on conflicts that arise from account and product compensation structures.

The Division also noted that its focus may shift depending on an adviser's practice or products, such as for advisers with activist engagement practices (*e.g.*, whether they these advisers are making late or inaccurate filings on Schedule 13D and 13G, among other forms) or for advisers who change their business models or are new to advising particular types of assets, clients, or services.

REGISTERED FUNDS / INVESTMENT COMPANIES

The Division will continue to prioritize examinations of Registered Funds, including ETFs and mutual funds due to their importance to retail investors, and as mentioned above, it has highlighted certain new developing areas of interests, including:

- Registered Funds that participate in mergers or similar transactions, including any associated operational and compliance challenges;
- Registered Funds that use complex strategies and/or have significant holdings of less liquid or illiquid investments (*e.g.*, closed-end funds), including valuation and conflicts of interest; and
- Registered Funds with novel strategies or investments, including funds with leverage vulnerabilities.

With respect to the examinations of Registered Funds, the Division noted that examinations will generally focus on compliance programs, disclosures, filings (*e.g.*, summary prospectus) and governance practices. Operational areas of focus include (i) fund fees and expenses, and any associated waivers and reimbursements; and (ii) portfolio management practices and disclosures, for consistency with statements about investment strategies or approaches with fund filings, and marketing materials, and the amended "Names Rule" (after the compliance date).[7]

The priorities also discuss anti-money laundering (AML) programs for certain Registered Funds that are required to establish AML programs under the Bank Secrecy Act (BSA), noting that the Division will focus on whether Registered Funds are (1) appropriately tailoring and updating their AML program to their business model and associated AML risks, including accounting for risks associated with omnibus accounts maintained for foreign financial institutions; (2) adequately conducting independent testing; (3) establishing an adequate customer identification program, including for beneficial owners of legal entity customers; and (4) meeting their Suspicious Activity Report filing obligations. The priorities note that the examinations of certain Registered Funds will also review policies and procedures for oversight of applicable financial intermediaries.

As with adviser examinations, the Division will prioritize never-before-examined Registered Funds, with an emphasis on Registered Funds that have recently registered to help empower and encourage building robust compliance programs.

[7] For Simpson Thacher's discussions of the Names Rule amendments, please see our articles: *SEC Adopts Amendments to Fund "Names" Rule* (Oct. 26, 2023), available here and *SEC Issues Names rules FAQs and Extends Compliance Dates* (Apr. 8, 2025), available here.

INFORMATION SECURITY AND OPERATIONAL RESILIENCY

The Division noted that it will continue to review registrant practices to prevent interruptions to mission-critical services and to protect investor information, records and assets. This includes compliance with Regulation S-P and the recent amendments, discussed above in the Key Takeaways section. The priorities also state that particular attention will be on firms' policies and procedures pertaining to governance practices, data loss prevention, access controls, account management and responses and recovery to cyber-related incidents. Additionally, examinations will focus on training and security controls that firms are employing to identify and mitigate new risks associated with artificial intelligence (AI) and polymorphic malware attacks, including how firms are operationalizing information from threat intelligence sources.

EMERGING FINANCIAL TECHNOLOGY

The Division noted that it remains focused on advisers' use of certain financial technology products and services, including automated investment tools, AI technologies, and trading algorithms or platforms, and signaled that it will examine firms that engage in activities such as automated investment advisory services (*i.e.*, "robo-advisory" platforms), recommendations and related tools and methods. It noted that assessments will generally include whether:

- Representations are fair and accurate;
- Operations and controls in place are consistent with disclosures made to investors;
- Algorithms lead to advice or recommendations consistent with investors' investment profiles or stated strategies; and
- Controls to confirm that advice or recommendations resulting from automated tools are consistent with regulatory obligations to investors, including retail and older investors.

The Division also specifically noted that it will focus on recent advancements in AI and will review registrant representations regarding their AI capabilities for accuracy. Representations regarding an adviser's use of AI has been an increasing priority of the SEC in recent years, with the first "AI-Washing" enforcement actions settled in 2024.[8] The Division noted that examinations will also assess whether firms have implemented adequate policies and procedures to monitor and/or supervise their use of AI technologies, including for tasks related to fraud prevention and detection, back-office operations, anti-money laundering, and trading functions, as applicable. Examinations will also consider firm integration of regulatory technology to automate internal processes and optimize efficiencies.

BROKER-DEALERS

The Division stated that it will continue to examine broker-dealer sales practices, including those related to Regulation Best Interest, noting a particular focus on:

[8] *See* Advisers Act Rel. No. 6573 (Mar. 18, 2024) and Advisers Act Rel. No. 6574 (Mar. 18, 2024).

- Recommendations of products and investment strategies (including, among others, ETFs that invest in illiquid assets such as private equity or private credit; alternative investments; and other products that have complex fee structures or return calculations, are based on exotic benchmarks, are illiquid, or represent a growth area for retail investment);
- Conflict identification and mitigation practices, in particular with respect to recommendations of accounts, rollovers, and recommendations involving limited product menus;
- Processes for reviewing reasonably available alternatives; and
- Processes for satisfying the Care Obligation, including consideration of particular factors in a customer's investment profile and the product and account type characteristics considered.

The Division also stated that examinations will focus on dual registrants, including reviews of processes for identifying, mitigating and eliminating conflicts of interest where dual registrants receive compensation or other financial incentives that may create conflicts of interest that must be addressed; account allocation practices (*e.g.*, allocation of investments where an investor has more than one type of account); and account selection practices (*e.g.*, brokerage versus advisory, including when rolling over employer plan assets to an IRA or transferring an existing brokerage account to an advisory account, and recommendations to open wrap fee accounts).

Finally, as with certain Registered Funds, the Division highlighted that it would focus on broker-dealers' AML programs and review whether broker-dealers are: (1) appropriately tailoring and updating their AML program to their business model and associated AML risks, including accounting for risks associated with omnibus accounts maintained for foreign financial institutions; (2) adequately conducting independent testing; (3) establishing an adequate customer identification program, including for beneficial owners of legal entity customers; and (4) meeting their Suspicious Activity Report filing obligations. The priorities note that AML programs should be tailored to address the risks associated with a firm's location, size, and activities, including the customers served, the types of products and services offered, and how those products and services are offered.

Conclusion

Overall, the Division's priorities are consistent with the "back-to-basics" messaging the SEC has emphasized under Chairman Atkins and highlight several perennial examination topics and focus areas you would typically expect to see from the SEC. At the same time, the 2026 priorities also call out certain headline topics like private credit and alternative investments that the market is currently focused on. As examinations remain active, registrants are advised to review the 2026 priorities against their own compliance programs to confirm they remain prepared for a possible exam.

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SEC Watch

January 7, 2026

The Division of Examinations Publishes a Risk Alert on Marketing Rule Compliance

Summary: The Division of Examinations published the latest in its series of Risk Alerts related to advisers' compliance with the Marketing Rule. The Risk Alert focused on Rule 206(4)-1(b) (covering testimonials and endorsements) and Rule 206(4)-1(c) (addressing third-party ratings). The Risk Alert highlighted deficiencies in advisers' adherence to disclosure requirements and oversight and compliance practices with respect to testimonials and endorsements, and due diligence and disclosure requirements regarding third-party ratings.

Takeaway: The Risk Alert notes that "The Division continues to focus on advisers' compliance with the Marketing Rule," and we continue to see that focus in exams.

Best Practice Tip: Advisers should continue to ensure that their compliance programs and practices comply with all of the Marketing Rule's requirements, with special attention given to the testimonials and endorsements and third-party ratings provisions that are highlighted in the Risk Alert.

Caroline Crenshaw Departs SEC

Summary: The Commission announced the departure of former Commissioner Caroline Crenshaw, a Democrat who had served since 2020.

Takeaway: Crenshaw's exit leaves the five-member Commission with only three Commissioners, all Republicans. While Commissioner Crenshaw had little practical power in the minority, she issued a string of recent dissents illuminating her contrary perspective on recent Commission actions. Until additional Commissioners are named, the absence of a bi-partisan panel suggests that initiatives and policy moves prioritized by Chairman Atkins, such as those focused on market access, including for crypto assets, will go forward without Commission dissention.

Best Practice Tip: No action needed, but we will keep a close eye on how single-party control drives the Commission's next moves.

Division of Trading and Markets Issues Statement on Custody of Crypto Asset Securities for Broker-Dealers

Summary: The Division of Trading and Markets issued a statement providing its views on the application of Rule 15c3-3(b)(1) to crypto asset securities. Also known as the "Customer Protection Rule," this rule requires broker-dealers to promptly obtain and thereafter maintain physical possession or control of all fully paid and excess

margin securities it carries for the account of customers. In broad strokes, the Division stated that it would "not object to a broker-dealer deeming itself to have 'physical possession'" of a crypto asset security carried for a customer account if the broker-dealer: (1) has access to the crypto asset security and transfer capability; (2) implements policies and procedures to conduct and document an assessment of the crypto asset security's distributed ledger technology; (3) does not deem itself to possess a crypto asset security if it is aware of any material security or operational problems or weaknesses with the distributed ledger technology or is aware of any other material risk posed to the broker-dealer by custodying the crypto asset security; (4) implements policies and procedures to protect private keys from theft, loss, or unauthorized or accidental use; and (5) implements policies and procedures for ensuring continued safekeeping and accessibility of the crypto asset security in the event of disruption.

Takeaway: The Division noted that the statement "is part of an effort to provide greater clarity on the application of the federal securities laws to crypto asset securities" and aligns with the Atkins Commission's emphasis on clarifying the Commission's role with respect to crypto. Importantly, the Division explained that it was "providing its views in response to requests from market participants" and that it would "continue to consider issues relating to broker-dealer's custody of crypto asset securities and the feedback it has received."

Best Practice Tip: While the Division's statement is explicitly cabined to Rule 15c3-3(b)(1)—and thus separate from the Advisers Act Custody Rule—it underscores the Commission's willingness to respond to requests and consider feedback from market participants. Advisers should identify areas where the Staff may be receptive to feedback and consider engagement with the Staff where appropriate.

Enforcement Update

Although it was generally all quiet on the Enforcement front in December, we continue to see a gradual uptick in investigative activity across the board, including in the private fund sector. As those investigations mature, stay tuned for important updates.

December 8, 2025

The Division of Examinations Releases Its 2026 Priorities

Summary: The SEC Division of Examinations released 2026 Priorities. In the release announcement, Chairman Atkins's tone marked a significant departure from prior years; describing the report as a way to "enable firms to prepare to have a constructive dialogue with SEC examiners and provide transparency," and emphasizing that examinations "should not be a 'gotcha exercise.'" A comprehensive analysis of the Priorities is here.

Takeaway: Much of the report came as no surprise—*e.g.*, a focus on advisers' compliance programs, an emphasis on conduct that affects retail investors, and the exclusion of crypto-assets as a priority. More interesting, however, is the Commission's tone, which conveys a desire for examinations to be a more collaborative process designed to improve compliance in a practical way. That said, the Examinations Division is large, and geographically diverse, and it can take time for changes in approach to manifest on the ground.

Best Practice Tip: While the Priorities reflect the message the Commission wants the industry to hear, the experience of going through an exam is unlikely to change materially. Registrants should work to ensure the house is in order in case Exams comes knocking and stay true to the usual script of proactive engagement with Exams Staff and swift remediation of issues identified in the course of an exam.

Enforcement Returns to Business-as-Usual

Summary: With the shutdown behind us, Enforcement has rumbled back to life. In addition to proactive outreach on ongoing investigations, the Commission has filed a number of enforcement matters, including against asset managers. In particular, on November 17, 2025 the SEC announced the filing of six independent complaints against six investment advisers alleging material misrepresentations and unsubstantiated statements in their Forms ADV filed with the Commission. Notably, each of the advisers failed to respond to the SEC's outreach regarding the misstatements.

- The SEC also recently announced settled charges against an adviser for violations of Regulation S-P, specifically, the failure to adopt reasonably designed policies, procedures, and controls regarding information security. This case aligns with the SEC's apparent focus on Regulation S-P: December 3 was the compliance date for large advisers to comply with amendments to Regulation S-P that were adopted in May 2024; the 2026 Exam Priorities specifically name Regulation S-P as a "risk area"; and the SEC is holding a series of "compliance outreach events" about the amendments, the first having been held back in September.

Takeaway: This recent enforcement activity suggests that the Commission—while re-focused on a more traditional approach to enforcement—will also continue bringing straightforward, non-fraud and non-scienter-based securities law violations.

Best Practice Tip: This Commission's emphasis on the protection of retail investors and a "back-to-basics" approach to enforcement nonetheless includes the pursuit of non-fraud and non-scienter-based offenses. Advisers should continue to maintain their compliance programs to ensure technical compliance with the rules.

A Final Death for the SolarWinds Litigation

Summary: After suffering a setback last summer when the District Court dismissed two of three main claims in the SEC's litigation against SolarWinds and its Chief Information Security Officer, the matter was finally put to bed on November 20 when the SEC filed a joint stipulation with the SolarWinds defendants to dismiss, with prejudice, the surviving claims. The SEC noted in its announcement that it sought the dismissal "in the exercise of its discretion" and the dismissal "does not necessarily reflect the Commission's position on any other case."

Takeaway: The dismissal of the SolarWinds litigation marks another example of the SEC unilaterally walking away from high-profile litigation authorized by the previous Commission.

Best Practice Tip: While outside of the asset management space, the Commission's dismissal of the litigation underscores the importance of constructively engaging with Staff—whether in the rulemaking, no-action, exam or enforcement context—in a manner that best aligns with the Commission's priorities.

November 5, 2025

The Shutdown Continues

Summary: The Government Shutdown has stretched into its fifth week, the longest on record. The SEC is operating with a skeleton staff with more than 90% of its current staff furloughed. That said, the SEC is still watching. During the Shutdown, the Commission has suspended trading in securities of at least eight foreign companies on Nasdaq for "ramp and dump" schemes and filed at least five enforcement actions. Chairman Atkins continues to make public appearances and to push forward the Administration's agenda, including soliciting opinions on ending the quarterly reporting process.

Takeaway: Things are much quieter on the SEC front, but this is the most active Government Shutdown yet with some middle-of-the-road enforcement actions and even some public appearances by SEC commissioners.

Best Practice Tip: Continue your business as usual consistent with the belief that regulators are on active duty. To the extent investigations have been suspended for the Shutdown, push things forward in appropriate cases to continue to foster goodwill and take advantage of the lull to sharpen your strategy.

Less of a Black Box: Changes to the Wells Process on the Horizon

Summary: On October 7, Chairman Atkins previewed plans to refresh the SEC's Wells process for engaging with potential respondents or defendants at the end of an investigation. Atkins expressed his view that the Wells process is "an extension of due process and fundamental constitutional rights," not a mere courtesy.

- Atkins made clear his expectation that Enforcement Staff provide respondents with "sufficient information," including testimony transcripts and key documents. In addition, Enforcement Staff must "be realistic about time periods for submissions," but in any event, respondents should be afforded at least four weeks to submit a response. Overall, Atkins expects the Wells process to be an avenue toward ensuring accuracy in enforcement cases; to do that, advocates must be given insight into the claims, evidence, and legal theories against which they will be expected to defend.

Takeaway: Respondents already often (but not always) receive many of the procedural protections Atkins identified. Going forward, *all* respondents should expect transparency at the Wells phase and a meaningful opportunity to respond.

Best Practice Tip: Targets of SEC investigations should take advantage of opportunities to ask questions regarding the Staff's areas of inquiry and tentative legal theories early in the case to best position advocacy. During the Wells process, do not hesitate to request clarity or access to particular documents—particularly testimony transcripts that would not otherwise be accessible—so submissions address the Staff's specific areas of concern.

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