

KEY SEC UPDATES: NEW EXAMINATION PRIORITIES, NO-ACTION RELIEF FOR BROKERAGE PAYMENTS TO UNREGISTERED ENTITIES AND EXPANDING PERMISSIBLE CRYPTO CUSTODIANS

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EXAM PRIORITIES EMPHASIZE PROTECTING RETAIL INVESTORS

The U.S. Securities and Exchange Commission's (SEC) Division of Examinations (Division) recently released its examination priorities for FY 2026. The priorities support Chair Paul Atkins' focus on protecting retail investors and preventing fraud, core areas of the SEC's triparty mission of investor protection, fair and orderly markets and capital formation. The exam priorities reflect the back-to-basics narrative we have seen from the SEC since the change in administration and, with some notable exceptions (discussed below), largely align with last year's priorities.

The exam priorities are centered on areas where regulated entities interact with retail investors. The list highlights the importance of broker-dealer and investment adviser standard of care obligations, the importance of disclosure and the risks associated with certain complex products. Similarly, the Division states it intends to focus on registered investment companies with wide exposure to retail investors, including mutual funds and exchange-traded funds (ETFs). In that sense the exam priorities align closely with recent years. The timely publication of these priorities signals that the SEC is beginning to return to business as usual after the government shutdown. [For more on the impact of the shutdown, see recent podcast [*When Washington Stops: What the 2025 Shutdown Means for the SEC and Congress Going Forward.*](#)]

While previous years' exam priorities specifically addressed cryptocurrency and private funds as separate exam priorities, in 2026 the Division has changed its

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approach and is now examining these products as part of its assessment of the suitability of certain investment products recommended to retail investors. The Division will now consider these and other products through the lenses of liquidity, risk, and the fees and/or costs to the investor.

OVERVIEW OF PRIORITIES

Investment Advisers:

- The Staff expects to prioritize examining advisers that have merged or consolidated with existing advisory practices to ensure registrants are maintaining an appropriate compliance regime during integration periods. This includes internal controls, surveillance and training programs in addition to compliance policies and procedures.
- Advisers using third parties to access client accounts should likewise expect scrutiny, with a lens toward ensuring that appropriate protections are in place to prevent data breaches or unauthorized access.
- Exams will focus on reviewing the appropriateness of recommendations made to retail investors, with an emphasis on reviewing that the recommendations are suitably tailored for the retail investors' financial goals and risk tolerance, and that account types are appropriate to meet those goals.
- The Staff indicated a heightened focus on alternative, complex and/or less than liquid investment products, particularly private credit, private funds with extended lock-up periods, and other complex or higher-cost products. Examiners will prioritize assessing how advisers address key risk areas, including conflicts of interest, liquidity management, valuation practices, allocation of investment opportunities, fee structures and the adequacy of disclosures provided to investors.

Broker-Dealers:

- Exams will seek to verify the operational strength of broker-dealers through examination of net capital rule and customer protection rule compliance. This includes examination of cash sweep programs, prime brokerage activities and other programs affecting the broker-dealer's financial resiliency.
- The SEC expects exams to assess retail sales practices, including those related to compliance with Reg BI. The emphasis will fall on the suitability of recommendations to retail investors, the policies in place at dual registrants to identify and mitigate potential conflicts of interest, and account selection practices (such as option, margin and self-directed IRA accounts, as well as brokerage vs. advisory).
- Broker-dealers should also expect to see exams that review the

effectiveness of sales practice supervision at branch offices.

Investment Companies:

- Mutual funds, ETFs and other products widely used by retail investors will be prioritized for examination.
- Enhanced scrutiny will be placed on fund fees and expenses, any associated waivers and reimbursements, disclosures of investment strategies and marketing materials, and funds that use complex, illiquid or novel strategies (to include funds with leverage vulnerabilities).
- The Commission will also be examining compliance with the “Names Rule” which seeks to ensure that fund names are not misleading to retail investors.[\[1\]](#)

Risk Areas Impacting Various Market Participants:

- Cybersecurity remains a top priority, given the proliferation of incidents and importance of maintaining operations amid potential disruption. This includes appropriately managing third-party risk, through compliance with Regulation SCI and Regulation S-P.[\[2\]](#)
- Use of artificial intelligence (AI), particularly when it is deployed in connection with advising or making recommendations to retail investors, will be an exam focus. The Division will also examine representations made about AI capabilities and use of AI for back-office compliance and monitoring tasks.
- Staff will be examining compliance with Regulation S-ID and AML requirements designed to detect red flags and prevent fraud.
- Best execution will be a focus for both investment advisers and broker-dealers.

NO-ACTION RELIEF PERMITS BROKERAGE PAYMENTS TO UNREGISTERED ENTITIES

On Nov. 18, 2025, the Division of Trading and Markets issued a no-action letter (NAL) stating that it would not recommend enforcement when broker-dealers disburse transaction-based compensation directly to a registered representative-owned personal services entity (PSE or unregistered entity). The letter responds to a request from the Financial Services Institute first submitted in 2019.

Under the no-action relief outlined by the Commission, broker-dealers are now permitted to provide transaction-based compensation directly to unregistered, personal services entities provided that certain conditions are met. These conditions ensure that broker-dealers maintain responsibility for supervision of the registered representatives, prevent the compensation from going to unregistered persons working at the PSE, and prevent fraud.

This is a significant development for broker-dealers that will streamline and modernize compensation arrangements with registered representatives, particularly in the independent channel. The Securities Exchange Act of 1934 otherwise prohibits payments of transaction-based compensation to unregistered entities, instead requiring payment to be made directly to the registered representative. The Investment Advisers Act of 1940 (the Advisers Act) contains no such restrictions.

Broker-dealers looking to utilize this no-action relief should review the conditions outlined in the letter to ensure that PSEs meet the requirements and update written supervisory procedures and consult counsel with any questions. Investment advisers with similar business models but no broker-dealer registration should consult counsel.

NO-ACTION RELIEF ALLOWING FOR THE USE OF STATE TRUST COMPANIES TO CUSTODY CRYPTO ASSETS

The SEC's Division of Investment Management issued a letter on Sept. 30, 2025, providing no-action relief allowing registered investment advisers, regulated funds, and issuers to treat state trust companies as "banks" under the custody provisions of the Advisers Act and the Investment Company Act of 1940 subject to certain conditions.

This is a significant development for the financial services industry because it expands custodian options for crypto assets and provides regulatory clarity. The Advisers Act requires use of a qualified custodian to client funds or securities, which includes banks. However, there was some uncertainty that state trust companies could be considered banks because they typically have more diversified business activity beyond receiving deposits or exercising fiduciary powers. At the same time, very few banks offer crypto asset custody services because of the existing regulatory regime and previous guidance from the SEC restricts custodying of crypto to special purpose broker-dealers.

Expanding the available custodians for crypto and tokenized securities held by a registered investment adviser or investment company helps meet rising demand for custody services, particularly those that are safe and secure. It also removes the historical uncertainty the industry has faced when seeking custodial options. The Commission is expected to further propose rulemaking related to crypto assets and market structure, rooted in the longstanding *Howey* test to determine when a crypto transaction is an investment contract.

For additional information, please contact your regular Armstrong Teasdale lawyer or one of the listed authors.

[1] See SEC, *Final Rule: Investment Company Names*, Release No. IC-35000



(Sept. 20, 2023). The expanded Names Rule compliance date has been extended to June 11, 2026 for larger fund groups (net assets over \$1 billion), and December 11, 2026 for smaller fund groups. For more information please see SEC, *Investment Company Names*, Release No. IC-35500 (Mar. 14, 2025)

[2] See SEC, *Press Release: SEC Adopts Rule Amendments to Regulation S-P to Enhance Protection of Consumer Information*, Release No. 2024-58 (May 16, 2024). Large covered institutions (fund complexes with net assets of more than \$1 billion; advisers with more than \$1.5 billion in assets under management; broker-dealers that are not “small entities” under the Securities Exchange Act of 1934, as amended) are required to comply with the Regulation S-P amendments; small covered institutions have until June 3, 2026 to comply with the new amendments.