

Fairview Observations from SEC Examinations 2025:



4 Key Categories

Despite the transition to a more “hands off” administration when it comes to regulations, over the past few months our team has actually experienced one of the highest volumes of exams in recent years. Ranging from areas of common deficiencies to the kinds of advisers predominantly undergoing exams, these observations can help ensure you are prepared for a potential exam.

For the Division of Examinations (the “Division”), this year has been a year of change. Historically, the U.S. Securities and Exchange Commission (“SEC”) has been steadily growing, but the congressional budget justification sent this year asked for 2% less funding. Personnel losses have been the story in the U.S. Capitol with federal employees seeing lay-offs, job cuts, voluntary early retirement options, and deferred resignation programs. Consider these statistics: The SEC’s staffing request is down 17% from fiscal year 2024. The percentage of advisers examined, which has held steady at 15% in recent years, is now estimated to be 11% for fiscal year 2026. Adapting to this reduction in numbers could explain the changes we are seeing in SEC examinations of investment advisers.



Increasing Number of Shorter Request Lists with a Narrowed Focus

The most noticeable change observed by Fairview is the trend towards more examinations with a limited timeframe or a limited scope.

- **New Registrant Exams are Occurring Earlier**

- Starting in the first two quarters after registration, instead of after the first year or two.
- This limited review period can mean less data to produce, and is often at a time when the annual review has not yet been completed.
- New compliance programs have less time to implement policies or correct early mistakes.
- The focus is on implementation, especially around (1) policies and procedures, (2) advisory agreements, (3) marketing, and (4) disclosures of advisory activities and affiliates.

These early occurring exams may be a way for the Division to meet its goal of reviewing new registrants despite having a shrinking staff. There is less material to review, and typical deficiencies for lack of implementation or inadequate policies and procedures will still be discovered.

- **Exams for Established Advisers are Speeding Up**

- Production deadlines as fast as one week for the initial request list.
- Request lists range from 7 to 40 questions, followed by a quick succession of additional requests, sometimes with overlapping deadlines.
- Interview questions focus on one or two issues, such as fee billing and marketing.
- Review periods range between 12-18 months instead of two years.

Broad exams with 60-90 questions and a two-year review period are still common. However, Fairview is observing an increase in exams that are narrowly focused and built for speed. Although staff generally extend production deadlines upon an adviser’s request, the three-week long or open-ended deadlines seen during the pandemic and the years following are behind us. More request lists ask for production within a week, and requests for electronic documents ask for production within 24 hours.

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Areas of Common Deficiencies from Recent Examinations

- **Implementation** – Inadequate policies and procedures continue to be a common deficiency, but more common is the failure to implement all of an adviser’s written policies and procedures.
 - **Remote Office Supervision and Vendor Due Diligence** – Conducting and documenting adequate reviews.
 - **Committee Meetings** – Holding meetings according to the stated frequency and documenting each occurrence.
 - **Annual Reviews** – Completed on time and with all supporting documentation.
 - **Recordkeeping** – Must be able to produce records under the time pressure of an SEC examiner’s request.
- **Legal Agreements** – Both investment advisory agreements and other legal agreements in use by an adviser present compliance risks. If a firm’s agreements are not written with compliance requirements in mind, hedge clauses or non-disclosure provisions may violate the Advisers Act and cause a deficiency.
 - **Investment Advisory Agreements:**
 - Lacking records of signed advisory agreements for accounts under management. Be sure to save down copies of any agreement stored with a third-party to satisfy your requirements under the Books and Recordkeeping Rule and to be able to produce these upon demand by the SEC.
 - Hedge clauses that attempt to waive fiduciary duties owed to clients or other unwaivable legal rights.
 - Failure to refund unearned fees in accordance with the advisory agreement and ADV 2A disclosures.
 - Failure to follow the governance provisions of an agreement, such as obtaining necessary approvals or notice provisions.
 - **Employment Agreements** – Confidentiality clauses or non-disclosure agreements that are at odds with the SEC’s Whistleblower Rule.
- **Private Fund Audited Financial Statements** – Maintaining written policies and procedures to complete audits, undergoing the audit each year, delivering the audit to investors within the required timeframe, and amending Form ADV Part 1 are all necessary to comply with the Audit Exemption to the Custody Rule.
 - Maintain Assets at a Qualified Custodian in the Private Fund’s name.
 - Undergo the Annual Audit with an independent public accountant in good standing with the Public Company Accounting Oversight Board (“PCAOB”).
 - Deliver the Annual Audit within 120 days (180 days for Funds of Funds or 260 days for “top-tier” Funds that invest in Funds of Funds).
 - Update Form ADV Part 1, Item 7.B “Report Not Yet Received” responses to Question 23(h).
- **Form ADV Deficiencies** – As the primary registration and disclosure form for investment advisers, the Form ADV is highly scrutinized during an exam. Fairview has observed deficiencies for inaccuracies, marketing disclosures, and Form CRS procedures.
 - **Inaccuracies in Office Locations** – Must be current and Form ADV Part 1, Part 2, and Form CRS references must match. Even home offices used by permanently remote, full-time employees formulating and providing investment advice must be disclosed as a place where “investment advisory business” is occurring, even if only virtual meetings take place from that location.
 - **Business Lines and Affiliates** – Must be comprehensively disclosed in Form ADV 2A and Form CRS. Check Form ADV Part 1, Items 5.E, 6, and 7 for necessary responses.
 - **Location of Records** – Include office locations, vendors, and service providers as applicable.
 - **Marketing Item 5.L** – Disclose your current use of performance and third-party promotion, including compensated endorsements or solicitors. Do not answer “yes” if the practice is “no” or “maybe in the future” because a hyper-focused examination may be aimed at a practice that is not applicable to your firm.

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- **Form CRS** – Multiple deficiencies were observed for Form CRS:
 - Amending material changes and properly highlighting those changes, such as by adding a third page exhibit describing the change.
 - Timely delivery to retail clients and posting the most current Form CRS prominently on the firm website.
 - Following the prescribed language and formatting exactly.
 - Maintaining written policies and procedures to achieve all of the above.
- **Marketing** – Deficiencies under the new Marketing Rule tended to include lack of clear and prominent disclosures where required, violations of the general prohibition for substantiating material claims, or issues with the calculation or presentation of performance.
 - **Third Party Ratings, Testimonials, and Endorsements** – Compensated or not, these all require disclosures that must be prominently placed beneath each type of third-party promotion.
 - **Substantiation** – No firm can substantiate claims of “100% conflict-free advice” or “eliminated all conflicts of interest.” Statements like these will receive a deficiency. After all, every firm discloses various conflicts of interest and efforts to mitigate them in ADV 2A and Form CRS. Similarly, claims of “world class” or “best in class” investments or personnel will be met with requests to substantiate the claim with proof.
 - **Performance** – Lots of attention paid to the methodology of calculating net performance, disclosures accompanying performance presentations, and the ability to substantiate performance figures.

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Areas Routinely Scrutinized by SEC Examiners

- **Advisory Fees and Billing** – How firms make money and the costs and expenses charged to investors remain one of the most common focus areas. Compliance programs should be prepared in these areas to be ready for this scrutiny.
 - **Billing Procedures** – Create detailed policies and procedures and follow them by monitoring, reviewing, and testing them. If new business lines or fee processes come into play, update your written policies and procedures.
 - **Prorated Fees and Rebates** – Follow your legal agreements when it comes to calculating rebates. Examiners are very exacting on this issue. Fairview observed a deficiency where the billing software used a 90-day denominator, instead of 92-days for the fourth quarter as described in the agreement. The two-day difference overcharged a client \$30 in fees, and the Examiners issued a deficiency for this oversight.
 - **Billing on Margin Accounts** – This practice must be clearly disclosed to investors both in the agreement itself and in Form ADV.
- **Private Fund Expenses and Compensation** – Follow your governing documents carefully.
 - **Allocation** – Fairview observed many deficiencies for improperly charging things like the cost of office space, annual meetings, and travel expenses to a fund, when the fund documents did not disclose or allow for the allocation of the particular expense.
 - **Portfolio Company Arrangements** – If you have a consulting agreement with a portfolio company, look at possible disclosure required by Form ADV Part 1, Item 5.E and Part 2A.
 - **Fee Offsets** – The percentage of any management fee offsets must be clearly disclosed to investors and followed in your billing procedures. Examiners will look to match the methodology disclosed to the methodology used to calculate the fee for any differences.

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- **Valuation** – Valuation has a direct impact on fees and performance reporting, making your valuation policies and procedures ripe for scrutiny.
 - **Liquid Assets** – Hard to value and illiquid assets are consistently cited in the Division’s Examination Priorities published each fiscal year. If these assets are part of a portfolio you manage, prepare for extra Examiner attention to your valuation process.
 - **Stale Valuations** – Fairview has observed deficiencies for stale valuations or the failure to revalue investments according to the frequency stated in the governing agreement or written compliance procedures. Stale valuations, especially when you know or should know that the value has become inaccurate, means any asset-based fee calculations will be inaccurate too.
 - **Policies and Procedures** – For private fund managers, follow the valuation guidelines in the fund documents and review these with each new deal. New activity is still bound by the governing documents, and new valuation practices may require amendments to those documents.
- **Other Benefits to the Adviser** – In addition to fees, other economic benefits must be evaluated for conflicts of interest. Fairview has observed requests for production and examination interview questions that drill down on affiliations, soft dollar arrangements, and other arrangements that benefit the firm.
 - **Affiliates** – If you have an affiliation with a service provider and use that service provider to support your advisory business, that is a conflict that must be competitively priced and mitigated.
 - **Soft Dollars** – Expect to be asked about the services you receive from broker-dealers other than executing transactions. Item 12 of ADV 2A must accurately disclose soft dollar benefits or similar benefits provided without a formal soft dollar arrangement.
 - **Other Arrangements** – Any source of compensation or other economic benefit could create a conflict of interest with your clients and impinge on your fiduciary duty.

With investor harm as a chief priority of the SEC, it is no surprise that Examiners follow the money during an examination. When it comes to any form of economic benefit for your firm, be sure that you have assessed conflicts of interest and can confidently walk through the arrangement with an Examiner.

4 New Areas Appearing in Examination Request Lists

Every examination includes a request for information and documentation. These request lists tend to cover the expected topics tied to current regulations and requirements. However, the SEC can also include requests to learn about how firms are approaching new areas where there may not be a clear requirement or regulation on point. These requests can act like a census, giving the SEC an idea of the industry trends around these areas, or can act as a new angle to review existing requirements such as fiduciary duties, data protection, and recordkeeping.

- **Insurance Products** – In the last year, new questions on insurance products began to appear in examination request lists. Questions on the insurance products offered, commission rates, and economic benefits to the adviser could reveal issues around ADV disclosures and conflicts of interest. Questions on policies and procedures and any limitations around insurance products, could uncover weaknesses in the compliance program if procedures are narrowly focused on other asset types, or weaknesses in satisfying fiduciary duties if clients’ risks from these products are not addressed.

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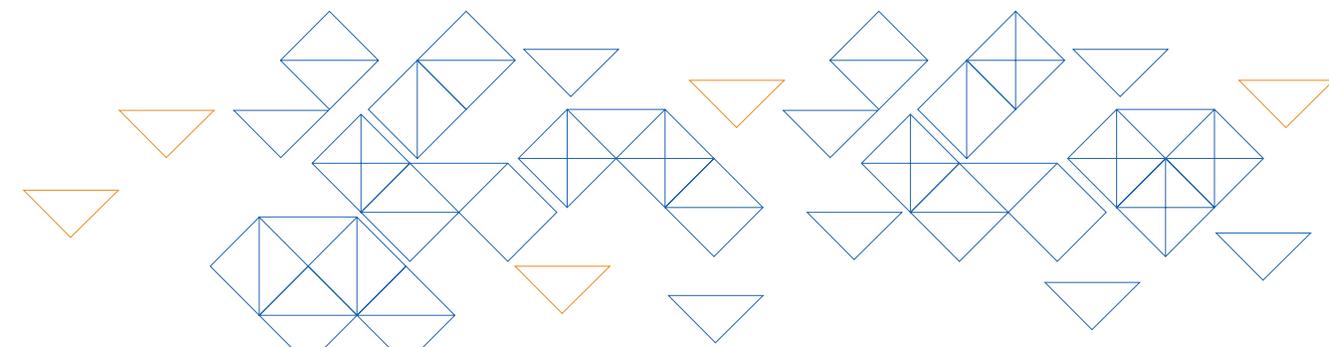
- **Artificial Intelligence** – Artificial intelligence (“AI”) has been among the published examination priorities for the last five years, and “AI Washing” enforcement actions hit several firms for false and misleading statements around their use of AI. Fairview has observed examination requests regarding the use of artificial intelligence, both while there was a proposed AI Rule and after the proposed rule was withdrawn (the Conflicts of Interest Associated with the Use of Data Analytics Rule was proposed on July 26, 2023, and the proposal was withdrawn on June 12, 2025). Requests touch on: AI usage related to marketing and marketing disclosures; modeling; investment selection and trading performed by AI; and compliance policies and procedures that address the use of AI. Questions on service providers, employees with AI-related responsibilities, training, written policies and procedures around AI usage, and identified conflicts of interest have also appeared.
- **Digital Assets** – Digital or crypto assets include holdings related to crypto tokens, cryptocurrency, initial coin offerings, distributed ledger technology, blockchain and/or related products, and pooled investment vehicles. The SEC created a Crypto Task Force and has been pushing for a regulatory framework to modernize the use of digital assets. In examination requests, Fairview has observed detailed questions around digital assets held in client portfolios, the custody system used for such holdings, and policies and procedures to secure the private keys for such holdings.

Although the SEC does not have specific guidance in these areas, the broad requirements of the Advisers Act still apply. Depending on your firm’s exposure to these areas, your compliance program may need to adapt to ensure new activities are being adequately addressed by compliance policies and procedures and trainings.

What does this mean for me?

Advisers would be wise to compare current practices with this observations list and ensure your policies and procedures, as well as current business practices, are up to date. Fairview provides comprehensive and ongoing compliance administration services for registered investment advisers, including complete SEC examination support.

[Contact us](#) today if you have questions concerning these observations, or if you’re interested in support for your firm.



About Fairview

Founded in 2005, Fairview®, LLC provides a full range of back-office support services for investment advisers and other financial institutions.

For more information, visit [FairviewInvest.com](https://www.fairviewinvest.com).

