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SEC Asset Management Enforcement in Fiscal Year 2025 and Beyond: The Atkins Commission's 'New Day'

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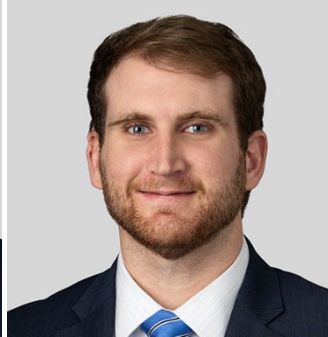
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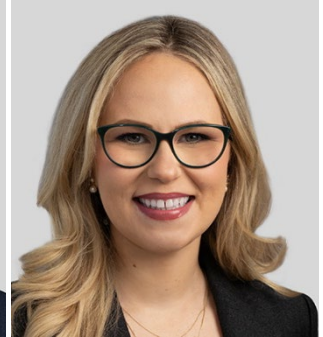
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“If you lie, cheat or steal [from] your investors and steal their money like Bernie Madoff, we’ll leave you naked, homeless and without wheels. ... [But] you can’t just suddenly come and bash down their door and say ‘uh-uh we caught you, you’re doing something and it’s a technical violation.’ ... What I am trying to address is a market perception that ... there was a lack of due process, a lack of notice, a lack of rule of law.” – Chair Paul Atkins, September 2025¹

The 2025 fiscal year (FY2025) for the U.S. Securities and Exchange Commission (SEC) ended on September 30. Rather than waiting for a reopened SEC to issue its annual enforcement results report,² we have analyzed those results, which are publicly available,³ as well as the public remarks of current Chair Paul Atkins and other SEC officials of relevance to asset managers. The evidence underscores the stark differences between the current SEC’s enforcement program and that of previous SEC Chair Gary Gensler. Read on for a comparison of the results of — and rhetoric around — the Gensler- and Atkins-led⁴ FY2025 enforcement programs and an assessment of what to expect from SEC enforcement in the future.

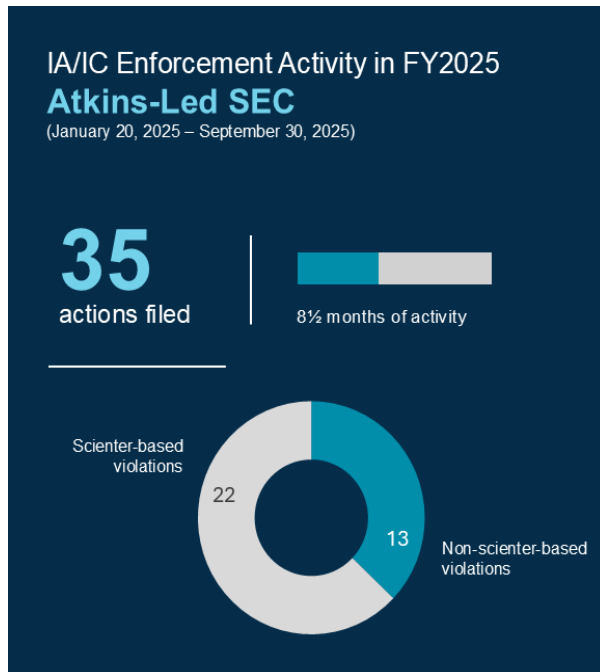
The Gensler Commission’s Last Hurrah

The Gensler Commission’s enforcement program⁵ was marked by a “regulation-by-enforcement” approach that was, not unexpectedly, roundly criticized by the asset management industry.⁶ The SEC issued a press release announcing that it had brought a “record” 200 enforcement actions⁷ in the first quarter of FY2025, as well as an additional 40 as of January 17 — Gensler’s last full day in office.⁸ With respect to asset management enforcement, by our estimate, the Gensler Commission filed a total of 48 stand-alone actions pursuant to the Investment Advisers Act of 1940 (Advisers Act) and/or the Investment Company Act of 1940 (1940 Act) (together, IA/IC actions) during this three-and-a-half-month period. Although 13 of these stand-alone actions involved scienter-based⁹ fraud,¹⁰ another 35 actions — 34 of which were filed as settled and one filed as litigated — or more than 70% of the total number of stand-alone actions, did not.¹¹

The breadth of the settled¹² stand-alone actions alleging IA/IC violations brought during this time period that did not include a finding of scienter is also notable. In addition to more garden-variety actions,¹³ they centered around environmental, social and governance (ESG)-related disclosures,¹⁴ anti-money laundering (AML) due diligence practices disclosures,¹⁵ the last wave of settlements focused on off-channel communications,¹⁶ seven actions filed on a single day for failure to file Form PF,¹⁷ three stand-alone policies and procedures violations,¹⁸ principal trades involving money market funds,¹⁹ a stand-alone violation of the 1940 Act for prohibited joint transactions,²⁰ a Whistleblower Rule violation,²¹ and an adviser’s failures to withdraw its registration and to respond to SEC examinations staff document requests.²² Of the 35 actions, 15 included civil penalties of at least \$1 million²³ and, of those 15, eight

included penalties of at least \$10 million.²⁴ The 35 actions — at least a dozen of which involved well-known asset managers — served as a fitting swan song for the Gensler Commission’s aggressive and wide-ranging enforcement program.

A ‘New Day’ for Enforcement



The second inauguration of President Donald Trump quickly led to a full-throated and publicly declared rollback of the Gensler Commission’s enforcement program.²⁵ Shortly after being confirmed, Atkins said, “Predictability, due process, rule of law, [and] integrity are all part of what create respect and project a sense that one can get a fair shake without vindictiveness or ulterior motives. Unfortunately, in the last four years until January, the SEC’s long-held reputation has suffered in that vein.”²⁶ Testifying before Congress a month later, Atkins assured lawmakers that it was “a new day at the SEC,” stating, “Policymaking will be done through notice and comment rulemaking, not through regulation-by-enforcement.”²⁷ Earlier this fall, Atkins admonished the prior SEC for “weaponiz[ing] its investigatory, subpoena, and enforcement authorities” — an “ineffective” and “injurious”

approach that “drove jobs, innovation, and capital overseas.”²⁸ Most recently, Atkins noted that the SEC “must view cases of benign or innocent actions differently” than “cases of genuine harm and bad acts.”²⁹ As an example, Atkins criticized the previous SEC’s books-and-records enforcement actions because they “consumed excessive Commission resources not commensurate with any measure of investor harm.”³⁰

With respect to affirmative enforcement, Atkins set the tone in his first weeks as chair: “Investor protection is the cornerstone of our mission — to hold accountable those who lie, cheat, and steal.”³¹ Since then, Atkins has repeatedly stressed that his enforcement program will focus on fighting fraud and manipulation.³² Most notably, testifying before Congress, Atkins underscored that his SEC “will return to Congress’ original intent, which is to police violations of ... established obligations, particularly as they relate to fraud and manipulation.”³³ Although Atkins has not been specific about other affirmative enforcement priorities of particular relevance to investment advisers and investment companies, both then-Acting Chair Uyeda and then-Acting Division of Enforcement Director Samuel Waldon suggested that, among other things, breaches of fiduciary duty by investment advisers would remain on the SEC’s radar.³⁴ Atkins has also made clear his preference for the quality of investigations and actions over their quantity.³⁵

The number and nature of the enforcement actions brought by the Atkins-led SEC in FY2025 are consistent with these remarks. By our count, the new SEC filed a total of 35 stand-alone enforcement actions in FY2025 for IA/IC violations during its eight-and-a-half-month stretch of FY2025. Of those 35 actions, 15 were brought as litigated³⁶ and 20 as settled.³⁷ Just 13 of the 35 actions, or 37%, did not include a scienter-based charge.³⁸

The Atkins Commission's Non-Scienter-Based IA/IC Enforcement Actions

In line with the new SEC's deemphasis on enforcement around technical violations, none of the 13 Atkins-led SEC's non-scienter-based FY2025 IA/IC enforcement actions involved alleged ESG or AML disclosure issues, off-channel communications, Form PF violations, stand-alone policies and procedures violations, principal trades, joint transactions or the Whistleblower Rule. Moreover, by dropping numerous litigated cases filed by the Gensler Commission, including not only the raft of crypto-related registration actions³⁹ but also the SEC's first attempt to enforce the Liquidity Rule⁴⁰ and the stand-alone policies and procedures action related to the misuse of material nonpublic information mentioned above,⁴¹ the Atkins-led SEC has gone farther than previous commissions in departing from its predecessor's priorities with respect to matters without an allegation of scienter.

That said, and although most, if not all, of the Atkins Commission's FY2025 enforcement actions⁴² resulted from investigations opened, if not nearing resolution, before January 20, 2025, the 13 non-scienter-based actions brought under the Advisers Act or 1940 Act that settled publicly since Gensler left the SEC merit a review. Broadly speaking, these actions can be categorized as involving: (1) breaches of fiduciary duty; (2) the provision of false information to the SEC; and (3) violations of relatively uncontroversial rules that this SEC views as important to its investor protection mission.

Breach of Fiduciary Duty

Consistent with then-Acting Chair Uyeda's and then-Acting Enforcement Director Waldon's aforementioned public remarks, seven of the 13 actions centered around breaches of fiduciary duty.⁴³

On February 14, the SEC filed settled charges against a registered investment adviser (RIA) and one of its representatives for violating their fiduciary duties of loyalty and care in connection with improperly converting more than 180 brokerage accounts — mostly belonging to elderly clients — into higher-fee advisory accounts between 2020 and 2023.⁴⁴ According to the SEC's order, clients paid up to 10 times more in fees based on a percentage of assets under management (AUM), instead of brokerage commissions, while receiving little or no additional service. The SEC found that the respondents breached their duties of loyalty⁴⁵ by failing to disclose that these conversions would increase both client costs and the representative's compensation. In addition, by failing to conduct a meaningful review of the clients' investment profiles to assess the suitability of the account conversions, the SEC found that both respondents breached their duties of care, and as a result, willfully violated Section 206(2) of the Advisers Act.⁴⁶ The firm agreed to pay a \$150,000 civil money penalty

and to retain an independent compliance consultant (ICC) to strengthen its disclosure and compliance program. The firm's representative agreed to pay a \$75,000 penalty and, despite having settled only to non-scienter-based violations, accepted a nine-month suspension from the securities industry. The SEC's order noted that the firm refunded to clients most of the advisory fees charged during the relevant period. It added that the commission gave both respondents credit for unspecified remedial efforts.

In March, the SEC charged an RIA and an individual who was its former chief compliance officer (CCO) and managing partner with multiple violations of the Advisers Act.⁴⁷ Between 2021 and 2024, the firm's chief operating officer (COO) misappropriated about \$223,000 from portfolio companies of a private fund managed by the RIA, using company debit cards for personal expenses and paying herself unauthorized compensation.⁴⁸ Despite warning signs, the former CCO and managing partner failed to reasonably supervise the COO in violation of Section 203(e)(6) of the Advisers Act. He also violated Section 206(2) of the Advisers Act by causing the fund to pay a \$346,904 debt owed by an entity that he and the COO controlled, conferring an improper benefit to that entity. In addition, the RIA settled to charges of the Custody Rule because it lacked adequate internal controls and failed to obtain required audits, as well as the Advisers Act's Compliance Rule for its failure to implement policies and procedures reasonably designed to prevent the misuse of fund assets. The respondents received credit for remediation and cooperation for, among other things, voluntarily reporting the both the fund's overpayment in connection with the loan and the COO's misappropriation to the staff during the investigation and making fund investors whole for the related misconduct. The former CCO and managing partner accepted an \$80,000 penalty and a 12-month supervisory suspension. The RIA was censured and fined \$235,000.

The SEC settled in July with a formerly registered investment adviser for breaching its fiduciary duty⁴⁹ by failing to adequately disclose conflicts of interest, overbilling its clients, and, through its personnel, creating backdated compliance documents and giving them to SEC staff during the course of an examination.⁵⁰ The adviser failed to fully and fairly disclose the nature and extent of conflicts associated with certain fee markups charged by an unaffiliated clearing broker that were paid over to its affiliated broker-dealer, which resulted in additional costs to its clients. In contravention of its client agreements, the adviser also billed and collected fees on alternative investment positions when no fees were supposed to be assessed on those positions and failed to refund a pro rata portion of prepaid quarterly advisory fees when clients terminated their accounts. The SEC found that the adviser's conduct violated Sections 204(a) and 206(2) of the Advisers Act and Rule 204-2(a)(17)(ii) thereunder. The adviser consented to a cease-and-desist order, a censure, and a penalty of \$1.75 million. In determining to accept the settlement, the SEC considered remedial efforts taken by the adviser including reimbursement of costs plus interest to clients.

In August, the SEC settled with an RIA for failing to adequately disclose conflicts of interest to its private fund clients related to its calculation of management fees.⁵¹ The adviser failed to include the interest collected in credits provided to certain of its private funds, resulting in the funds receiving lower fee offsets than they were otherwise entitled to receive. The adviser

also improperly double-counted certain transaction fees when calculating the appropriate fee owed when multiple funds invested in the same portfolio company. In each instance, the adviser failed to disclose these practices. The SEC found that this conduct violated Section 206(2) of the Advisers Act. The adviser agreed to a cease-and-desist order, a censure, \$508,877 in disgorgement and prejudgment interest, and a penalty of \$175,000, to be contributed to a Fair Fund to reimburse affected investors.⁵²

On the same day near the end of August, the SEC filed two settled actions against RIAs related to their conflicts-of-interest disclosures when making recommendations to prospective and existing clients to enroll in managed account programs — but did so without expressly alleging a “breach of fiduciary duty.”⁵³ In one action, the adviser’s regulatory filings and website contained inconsistent and, at times, contradictory disclosures regarding the incentive compensation paid to advisers who enrolled clients in this program.⁵⁴ The SEC’s order found that, for example, while the RIA’s Form ADV Part 2 brochure disclosed that certain advisers were eligible for a discretionary bonus, the firm’s Form CRS and supplement contained contradictory disclosures that those advisers received no additional compensation. The SEC found that this conduct violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. The adviser, given credit for cooperation and remediation,⁵⁵ agreed to a cease-and-desist order, a censure, and to pay a penalty of \$19.5 million, which would be used to fund a Fair Fund to reimburse affected investors.

In the other action, the SEC settled with the RIA and its affiliated broker-dealer for making misleading statements when advising retail investors and inadequately disclosing conflicts of interest created by their use of a compensation system that financially incentivized certain retirement plan advisers to enroll plan participants in a managed account service.⁵⁶ Although the adviser’s disclosures referenced the possibility of a conflict of interest, they did not disclose the full nature of the conflict, minimized the connection between the compensation and enrollment, and used “may” rather than disclosing that advisers did receive such compensation.⁵⁷ The SEC found that the adviser’s conduct violated Section 206(2) of the Advisers Act. While receiving credit for cooperation and remediation,⁵⁸ both respondents agreed to a cease-and-desist order, a censure, and to each pay a penalty of \$750,000. In addition, the adviser agreed to disgorgement and prejudgment interest of approximately \$4.5 million.

The following month, the SEC filed settled charges in federal court against an individual and two investment adviser entities he controlled for breaches of their fiduciary duties and making material misrepresentations to private funds and investors who purchased limited partnership interests in those funds.⁵⁹ The complaint alleged that to cover a cash shortfall at other private funds, the defendants advised various private funds to make short-term loans to one of the adviser entities at below-market rates. The complaint also alleged that the defendants sent misleading letters to investors in four private funds to attract investor interest. Further, the defendants are alleged to have made material misstatements in marketing and offering materials concerning the existence of an auditor, the amount of AUM, a fund’s investment strategy, and the adviser’s filing status. All of the defendants were charged with violating

Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933. The individual defendant and the first entity defendant were charged with violating Section 206(2) of the Advisers Act, while the individual defendant and the second entity defendant were charged with violating Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. The defendants agreed to settle the charges, consenting to injunctions⁶⁰ and monetary relief of about \$6.9 million in disgorgement, prejudgment interest of about \$1.8 million, and total penalties of \$1 million (with the individual paying \$600,000 and the RIAs together paying \$400,000).

In light of the public remarks about breaches of fiduciary duty and the steady pace of the above actions from February through the last month of FY2025, we expect the SEC to continue to bring these sorts of actions, especially where it believes that investors are harmed.⁶¹ Further, this trend is consistent with the published examination priorities for the fiscal year.⁶² We note, however, that only the first of these actions alleged a breach of the duty of care, a charge that we believe is less likely to be levied by this SEC.

Providing False Information to the SEC



Four of the Atkins Commission's FY2025 IA/IC actions involved the provision of false records or forms to SEC staff. In July, the SEC brought three actions reflecting its support for the work of its Division of Examinations. On July 11,⁶³ the SEC settled two separate actions, one with a firm's former CCO and the other with its former president, resulting from their creation and backdating of three annual compliance calendars that were provided to the staff during an exam.⁶⁴ During the exam, the CCO voluntarily admitted his conduct to the

staff; the president did not. On July 15, the SEC brought another settled action against the former CCO of an RIA for altering records and creating fictitious forms in response to an SEC examination of her employer. When examiners requested documents and information related to the adviser's pre-clearance trading policy, the CCO modified and/or created over 170 forms covering multiple years, creating the appearance that the forms had been completed and in a timely fashion, including in some instances where no forms had been filled out in the first instance. The CCO did not inform the staff that she modified the forms in response to their request or that she had created forms in instances where no form existed.⁶⁵

Earlier in the year, the SEC charged an RIA for causing its former client fund to file a false and misleading Form N-8F⁶⁶ by failing to disclose pending class-action claims during the fund's liquidation and deregistration. Thus, the RIA interfered with the Division of Investment Management staff's assessment of the deregistration application and caused the SEC to grant the application based on incorrect information. Moreover, because the pending claims

were not distributed to shareholders, this action involved customer harm.⁶⁷ This is the Atkins Commission's only action involving a stand-alone violation of the 1940 Act.

Given Atkins's express focus on those who "lie, cheat or steal," we expect the SEC to continue to focus on conduct that misleads SEC staff. We would therefore expect that fact patterns similar to those discussed above may result in an enforcement action.

Other SEC Rules Implicating Investor Protection

The Atkins SEC brought two actions involving its Custody Rule and one action involving its Marketing Rule in FY2025. In the matter filed in March discussed above,⁶⁸ the adviser violated the Custody Rule when it failed to obtain required audits and, thus, failed to deliver audited financial statements to investors.⁶⁹ The adviser purported to rely on the Custody Rule's audited financials alternative to certain of the rule's requirements, which allows for advisers to certain types of pooled investment vehicles to fulfill those requirements by obtaining an annual audit and distributing audited financial statements to investors within 120 days of the end of the fiscal year.⁷⁰ While the adviser retained an independent public accountant, the audits were never completed.

In addition, the SEC brought a settled action in August with an RIA for standalone violations of the Custody Rule.⁷¹ The adviser had custody of client funds and securities because its president served as a co-trustee of two trusts that were the firm's advisory clients; had signatory authority on four of the firm's clients' accounts; and acted as an authorized agent with power of attorney on five of the firm's clients' accounts. Although this obligated the adviser to obtain surprise examinations, it failed to do so for the period from 2018 to 2024. The adviser agreed to a cease-and-desist order and to pay a civil money penalty of \$50,000, but the order contained no further remediation or undertakings.

In September, the SEC settled with an RIA for failing to comply with the Marketing Rule's provisions regarding marketing, recordkeeping, the implementation of compliance policies and procedures, and the conducting of an annual compliance review.⁷² The adviser disseminated an advertisement in which it claimed it "refuse[d] all conflicts of interest" without providing context for this claim, while the adviser separately recognized various conflicts of interest inherent in its role as an investment adviser and disclosed conflicts of interest in its Form ADV Part 2A brochure. As a result, the adviser lacked a reasonable basis to believe that it would be able to substantiate the claim in its advertisement that it refused all conflicts of interest.

The adviser also failed to maintain copies of advertisements that appeared on its website, to implement its policies and procedures concerning the reliance on third parties for recordkeeping and the conducting of annual compliance reviews, and to conduct its required annual review pursuant to Rule 206(4)-7 of the Advisers Act. The SEC found that the adviser's conduct violated Sections 204(a) and 206(4) of the Advisers Act and Rules 204-2(a)(11), 206(4)-1(a) and 206(4)-7 thereunder. The adviser agreed to a cease-and-desist

order, a censure, and to pay a civil money penalty of \$75,000. The firm was given credit for cooperation and remedial efforts.⁷³

We expect the SEC to continue to bring enforcement actions that will serve to emphasize the importance of compliance with these two rules, both of which continue to be staples of routine SEC examinations, particularly in the face of notably protracted or widespread violative conduct.

Procedural and Operational Changes

There have been a variety of procedural and operational changes to the SEC's enforcement program or otherwise that may affect that program.

Staff Cuts

The SEC's workforce was reduced by approximately 15% between the start of FY2025 and May 20 — decreasing from a peak of roughly 5,000 employees and 2,000 contractors to around 4,200 employees and 1,700 contractors.⁷⁴ The FY2026 budget — prepared as the first budget of the Atkins era — requested funding for 1,178 full-time equivalent (FTE) positions for the Division of Enforcement,⁷⁵ compared to 1,447 positions requested in the FY2025 budget,⁷⁶ representing a more than 18% cut. While the Enforcement Division is being asked to do more with less, and acknowledging that, at a minimum, SEC enforcement under Atkins is off to a slow start, we do not expect this to translate into a significant reduction in its capabilities or willingness to devote resources to pursuing its mission of investor protection.

Formal Orders

On March 10, the SEC issued a rule amendment to rescind the 2009 delegation of authority to the Division of Enforcement for the issuance of formal orders of investigation.⁷⁷ Since the delegation more than 15 years ago, the director of the Enforcement Division had full discretion to open formal investigations and wield the agency's subpoena authority for enforcement purposes. This rule amendment effectively transfers that power to the SEC commissioners, who will make decisions regarding formal orders and subpoenas by a majority vote. This change centralizes enforcement decision-making, gives the commissioners more direct oversight of enforcement, and "more closely align[s] the Commission's use of its investigative resources with Commission priorities."⁷⁸

We believe that these changes to the delegation of authority will result in the Enforcement Division launching more investigations through voluntary requests for documents (and potentially even voluntary interviews) rather than subpoenas, and that the division may be dissuaded from undertaking investigations based on novel theories that amount to "regulation by enforcement." If so, asset managers may have more flexibility to negotiate over the scope of requests and increased opportunities to potentially drive a matter to an early negotiated resolution. On the other hand, the investigative process will remain one where the staff is the

first party to present its view of the facts to the SEC and the new formal order protocol might actually accelerate the point at which that happens in any given investigation.

New Director of Enforcement

On August 21, the SEC announced Margaret “Meg” Ryan as the new director of its Division of Enforcement.⁷⁹ Ryan brings a diverse legal and military background⁸⁰ but appears to have little or no experience with the federal securities laws or the securities industry. In announcing her appointment, Atkins emphasized his well-known enforcement priorities: “Judge Ryan will lead the Division guided by Congress’ original intent: enforcing the securities laws, particularly as they relate to fraud and manipulation.”⁸¹ Ryan echoed these priorities and emphasized that she will serve the SEC in “providing an effective deterrent against fraudulent and manipulative activities in our financial markets.”⁸² Consistent with these remarks, we anticipate that Ryan will bring the objectivity and even-handedness of a jurist to enforcement as opposed to the aggressive and sometimes creative approach of the prior division.⁸³

Wells Process

Atkins announced significant reforms in October to the agency’s Wells submission process,⁸⁴ which is the mechanism by which individuals or companies receive a “Wells notice” of an impending enforcement action and respond to proposed enforcement recommendations.

These changes include the following:

- Requiring Enforcement Division staff to provide more detailed information from the investigative file — including key documents and testimony transcripts — so that recipients “understand the potential charges and the evidentiary basis for those charges,” rather than facing a short and opaque notice. Atkins put it plainly: the “Wells process ... should be viewed as an extension of due process and fundamental constitutional rights.”⁸⁵
- Extending the minimum time for a Wells submission from about two weeks to at least four weeks — with longer extensions where warranted by complexity — and instructing staff to avoid what he called a “gotcha game.”
- Ensuring that all Wells submissions, including those in matters where staff later change or drop proposed charges, will be presented to the full commission, and encouraging “early engagement” by respondents (such as submitting white papers) before formal notice when possible. As Atkins emphasized, the goal is not just efficient enforcement, but to “get it right” by promoting fairness, transparency and accuracy in enforcement decisions.

Atkins’s reforms of the Wells process represent a move toward transparency and accuracy in the broader enforcement process. As Atkins stated, the reformed Wells process will offer a “balanced approach [that] services the interest of justice and strengthens the integrity of [the

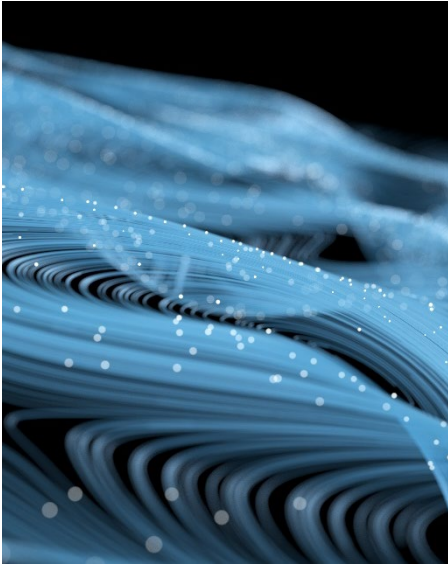
SEC's] enforcement program.”⁸⁶ The shift gives asset managers who have received a Wells notice (and in appropriate instances, those who have reached an appropriate juncture in an investigation even though no Wells notice has been issued), a more meaningful opportunity to understand and rebut proposed charges before the SEC acts.⁸⁷ Together, these changes are likely to strengthen due process protections and reduce the likelihood of premature or unsupported enforcement actions.

Simultaneous Consideration of Settlement Offers and Related Waiver Requests

In the same remarks, Atkins discussed an additional change he called a “close cousin” to the Wells process reforms — that the agency is reinstating its prior practice of allowing an enforcement settlement offer and a related waiver request for collateral consequences (such as statutory disqualifications) to be presented to the SEC simultaneously.⁸⁸ As Atkins put it, the change is intended to “avoid the pitfalls of fragmented review at different times,” because previously “enforcement staff negotiated settlements in one silo, [and] the policy division considered waiver requests in another.” Under the new procedure, when a party submits both a settlement offer and a concurrent waiver request, the staff will present both items to the commission “together ... within the context of the relevant facts, conduct, and consequences.” Atkins emphasized that this joint review will improve efficiency and certainty in the settlement process and better serve the SEC's three-part mission of protecting investors, maintaining fair and orderly markets, and facilitating capital formation. For asset managers, including those that are publicly traded and those with publicly traded parent companies, this is welcome news.

What to Expect from the Atkins Commission Going Forward

We expect the Atkins Commission to pick up the pace, and to file more actions like those it brought in FY2025, as we move forward in FY2026. In addition, although the Atkins Commission has yet to bring a non-scienter-based action involving principal trades, joint transactions or the Whistleblower Rule, given the right fact patterns, such clear statutory prohibitions are likely to serve as the basis for future enforcement actions under current leadership, as they have in the past under commissions led by Republican-appointed chairs.⁸⁹ We also expect other perennial issues of focus for IA/IC enforcement that were not among the Atkins SEC's non-scienter-based enforcement actions in FY2025, such as valuation and cross-trading, to return to the fore.



Artificial Intelligence

Although it is somewhat surprising that the Atkins Commission has yet to bring a case under the Advisers Act centered around “AI washing”⁹⁰ or otherwise involving artificial intelligence, we expect that to change. Since the end of the Gensler era, at least one commissioner has applauded actions previously filed to address AI-related violations,⁹¹ and the Atkins SEC has brought such actions outside of the IA/IC context in FY2025.⁹²

Consistent with this SEC’s vocal commitment to rooting out fraud, even before Atkins arrived, the commission formed a separate body to target such misconduct perpetrated through the use of new technologies such as AI. In February, the SEC announced the creation of the Cyber

and Emerging Technologies Unit (CETU) with the goal of “combatting cyber-related misconduct” and “protect[ing] retail investors from bad actors in the emerging technologies space.”⁹³ Although the CETU’s mandate is principally focused on fraud, it also includes overseeing “[r]egulated entities’ compliance with cybersecurity rules and regulations.” In light of these efforts and the ubiquity of AI-related technology, it is likely that the industry will see cases involving AI in the future.⁹⁴

Exam Referrals

We believe that the Division of Examinations will continue to drive enforcement referrals. For eight of the 13 Atkins SEC’s non-scienter-based FY2025 IA/IC enforcement actions discussed above, the conduct at issue either occurred or was identified during an exam.⁹⁵ Although we have not yet been involved with an examination referral to enforcement during Atkins’s tenure, we are aware of several exams that are notable for both their duration and for their thoroughness with respect to assessing potential client harm. Further, while it is not yet clear whether SEC staff will conduct with the same frequency the sort of relatively widespread IA/IC exam sweeps that resulted in enforcement referrals under previous commissions,⁹⁶ there have been press reports of sweeps relevant to asset managers.⁹⁷

Individual Accountability

In a co-authored article, Atkins noted in the past that “the effectiveness of a corporate penalty as a means for deterrence is questionable,” reasoning that “[c]orporations do not act; individuals do.”⁹⁸ Not surprisingly, then, every one of the Atkins Commission’s 22 scienter-based IA/IC actions involved individuals. On the other hand, of the 13 Atkins Commission’s non-scienter-based IA/IC actions, five, or 38%, involved individuals.⁹⁹ While those actions present a small sample size, the Atkins SEC’s overall rate of just over 77% for such actions is higher than other commissions’ overall rates for stand-alone actions involving individuals generally in recent years.¹⁰⁰

Civil Penalties

Atkins has made it clear throughout his career that outsized penalties will be disfavored while he is SEC chair.¹⁰¹ Recently, he reiterated that enforcement processes “should ensure that we seek to impose penalties and other relief that are appropriately tailored to the misconduct at issue, within statutory limitations.”¹⁰² As expected, and as is evident from the discussion above, civil monetary penalties levied by the Atkins Commission have been considerably lower than those brought by the previous SEC. Such penalties resulting from settled, non-scienter-based IA/IC enforcement actions totaled just over \$24 million between January 20 and the end of the fiscal year.¹⁰³ This figure represents just 38% of the civil monetary penalties levied on a single day — January 13 — of FY2025 enforcement under Gensler on which a set of investment advisers and broker-dealers agreed to pay over \$63 million for recordkeeping violations.¹⁰⁴ This comparison illuminates yet another contrast between the two commissions and their divergent approaches to enforcement.

Credit

As for the SEC’s giving firms credit for self-reporting, cooperation and remediation, we expect this to continue to be a factor considered by this commission, particularly with respect to assessing the appropriateness and amount of civil penalties. Atkins has vocalized the importance of cooperation credit in making such determinations in the past.¹⁰⁵ Of the 13 non-scienter-based IA/IC actions brought during the Atkins era, seven, or 53%, included an express acknowledgement of credit, with three entities receiving credit solely for remediation and four entities for both remediation and cooperation.¹⁰⁶

Independent Compliance Consultants

During the tenures of both Gensler and Atkins in FY2025, fewer ICCs were ordered by or included in the undertakings of settled enforcement actions. Only one of the Atkins Commission’s 13 FY2025 non-scienter-based IA/IC actions required the retention of an ICC,¹⁰⁷ and only one such action required an ICC under Gensler¹⁰⁸ during FY2025. That said, and although we believe that firms are getting ahead of the imposition of ICCs by engaging compliance consultants before being forced to do so, we expect the use of ICCs to continue, even if less frequently than in the past.

New Priorities

Looking farther down the road, the Atkins Commission’s embrace of innovation and relaxation of other restrictions is already spawning a flurry of new products and investments that is likely to lead to new enforcement priorities in the not-so-distant future. For example, the [expanded ability of retail investors to hold private credit](#) will place additional valuation challenges on asset managers that are bound to be scrutinized. And as retail investors expand their holdings of crypto assets, there will be more attention given to the custody arrangements for those assets. Finally, the asset management industry will not be immune to

the pressures and opportunities created by generative AI and will need to find ways to use these technologies that will not create their own regulatory issues.

Takeaways

Although based on only a partial fiscal year's worth of information, it is clear that the SEC under Atkins will be less focused on relatively technical issues, as well as harsher penalties, than its predecessor under Gensler, both generally and with respect to the asset management industry.

That said, the Atkins Commission has not shied away from bringing actions alleging breaches of fiduciary duty related to conflicts of interest and disclosures to investors, especially when it has concluded that investor harm has occurred, as well as actions where the SEC finds that its staff was misled and those aimed at enforcing its key rules.

While the number and scope of asset management-related enforcement actions has diminished during Atkins's tenure compared to those brought earlier in FY2025 by the Gensler Commission, asset managers and their personnel should remain vigilant in ensuring that their compliance programs are appropriately designed and implemented, as well as when responding to whistleblower or other internal complaints, SEC exam requests, and SEC enforcement inquiries.

At the same time, asset managers and their personnel should be prepared to leverage the new SEC's commitment to respecting the limits of the federal securities laws and its return to providing a more transparent and fairer process to those under investigation.

¹ [“Donald Trump's New SEC Appointee Scraps Aggressive Enforcement Agenda,”](#) *Financial Times* (September 15, 2025).

² The SEC did not publish its FY2024 results until late in November 2024. See Press Release 2024-186, [“SEC Announces Enforcement Results for Fiscal Year 2024”](#) (November 22, 2024).

³ See the SEC’s [press releases archive](#), [administrative proceedings archive](#) and [litigation releases archive](#) (which includes civil actions brought in federal court).

⁴ Commissioner Mark Uyeda was the SEC’s acting chair from January 20, 2025, until Atkins officially began his tenure on April 21, 2025. We have included this time period when referring to the Atkins Commission throughout the article.

⁵ See, e.g., the following Stradley Ronon publications: [“SEC Brings First Settled Enforcement Action Finding Client and Customer Release Agreement Contravened the Whistleblower Rule”](#) (February 5, 2024); [“SEC Enforcement and Investment Advisers: 2023 Is in the Books. How Will 2024 Look?”](#) (March 15, 2024); [“SEC Settles First Off-Channel Communications Enforcement Action with Standalone Investment Adviser”](#) (April 10, 2024); [“Supreme Court Limits SEC's Home Field Advantage”](#) (July 3, 2024); [“As Regulation Best Interest Enforcement Cases Accelerate, It's Time to Shift Strategy”](#) (September 9, 2024); [“SEC Settles Enforcement Actions with JPMorganChase Affiliates for \\$151M”](#) (November 25, 2024); and [“Asset Management Enforcement: Latest Trends and a Look Ahead at the New Commission”](#) (March 11, 2025). See also [“Asset Management Enforcement: Latest Trends and a Look at the New Commission,”](#) *The Investment Lawyer* (July 2025).

⁶ See, e.g., Bryan Corbett (president and CEO of the Managed Funds Association), [“It's Time to Turn the Page on an Overreaching SEC,”](#) *Barron's* (December 5, 2024) (“When challenged, the SEC began using enforcement actions as a backdoor to official rulemaking. These practices have collectively, and unnecessarily, exacerbated the tension between the SEC and market participants.”); [Letter from the Investment Company Institute, Managed Funds Association and Other Trade Associations to Gary Gensler](#) (January 31, 2023) (“[W]e are strongly concerned that the SEC is attempting to exceed its authority under the Advisers Act and engaging in rulemaking by enforcement through its current sweep regarding off-channel communications.”); [“SEC Accused of 'Regulation by Enforcement' as Critics on Both Sides Circle,”](#) *InsuranceNewsNet* (January 31, 2024) (Dale Brown, president and CEO of the Financial Services Institute, said, “We’re going to continue to make the case that [the SEC] ultimately undermine[s] their own important mission and role when they use those enforcement powers and if it’s not transparent and not fair, it makes it harder for financial advisors and the firms to comply. It ultimately has a negative impact on mainstream clients.”).

⁷ Of these 200 enforcement actions, 118 were “stand-alone” actions. “Stand-alone” actions include all enforcement actions other than those seeking bars based on the outcome of SEC actions or actions by criminal authorities or other regulators, or those seeking to deregister public companies that were delinquent in their SEC filings.

⁸ See Press Release 2025-26, [“SEC Announces Record Enforcement Actions Brought in First Quarter of Fiscal Year 2025”](#) (January 17, 2025).

⁹ Scienter is an intent to deceive, manipulate or defraud. See *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 216 (1976). Certain circuit courts have held that the standard for scienter is also supported by a showing of a “reckless disregard of the truth.” See, e.g., *SEC v. Bauer*, 723 F.3d 758, 775 (7th Cir. 2013).

¹⁰ See [*SEC v. The Pre IPO Marketplace*](#), No. 26149 (E.D.N.Y. filed September 30, 2024); [*In the Matter of Rimar Capital*](#), Release No. IA-6745 (October 10, 2024); [*SEC v. Arsenault*](#), No. 26160 (D. Conn. filed October 11, 2024); [*SEC v. Pannon Investment Advisors*](#), No. 26167 (S.D. Fla. filed October 30, 2024); [*SEC v. Kushner*](#), No. 26176 (S.D.N.Y. filed November 21, 2024); [*SEC v. Burleson*](#), No. 26178 (N.D. Cal. filed November 21, 2024); [*SEC v. Leech*](#), No. 26183 (S.D.N.Y. filed November 25, 2024); [*SEC v. Banister*](#), No. 26187 (S.D.N.Y. filed December 6, 2024); [*SEC v. Onyeachonam*](#), No. 26194 (D.N.J. filed December 11, 2024); [*SEC v. Cobb*](#), No. 26201 (S.D.N.Y. filed December 12, 2024); [*SEC v. Dolphin Associates III*](#), No. 26203 (D. Conn. filed December 20, 2024); [*SEC v. Mason*](#), No. 26224 (E.D. Pa. filed January 17, 2025); [*SEC v. Arete Wealth Management*](#), No. 26228 (N.D. Ill. filed January 17, 2025). These actions involve schemes such as insider trading, offering fraud, and misappropriation of funds.

¹¹ Most of the 35 actions were grounded in mere negligence. See, e.g., the actions in which firms were charged with violations of Advisers Act Rule 206(4)-1 (the Marketing Rule): [*In the Matter of Wahed Invest*](#), Release No. IA-6763 (November 1, 2024); and [*In the Matter of Atlas Financial Advisors*](#), Release No. IA-6803 (December 20, 2024). Others effectively imposed strict liability. See, e.g., the actions in which firms were charged with violations of Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder for failure to preserve and maintain “off-channel” electronic communications: [*In the Matter of TPG Capital Advisors*](#), Release No. IA-6813 (January 13, 2025); [*In the Matter of Kohlberg Kravis Roberts & Co.*](#), Release No. IA-6814 (January 13, 2025); [*In the Matter of Apollo Capital Management*](#), Release No. IA-6815 (January 13, 2025); [*In the Matter of Carlyle Investment Management*](#), Release No. IA-6816 (January 13, 2025); and [*In the Matter of Blackstone Alternative Credit Advisors*](#), Release No. IA-6812 (January 13, 2025).

¹² In all of the settled administrative proceedings discussed in this article, the respondent(s) neither admitted nor denied the SEC’s findings.

¹³ See [*Wahed Invest*](#), supra n.11 and [*Atlas Financial Advisors*](#), supra n.11 (alleging violations of the Marketing Rule); [*In the Matter of Driftwood Advisors*](#), Release No. IA-6804 (December 20, 2024) and [*In the Matter of Jeffrey Q. Johnson*](#), Release No. IA-6828 (January 17, 2025) (alleging violations of the Custody Rule, which is codified under Advisers Act Rule 206(4)-2); [*In the Matter of LDP Partners*](#), Release No. IA-6743 (October 7, 2024) (breach of fiduciary duty and improper fees); [*In the Matter of Fair Invest*](#), Release No. IA-6776 (November 25, 2024) (numerous violations centered around misleading statements to investors); [*In the Matter of Morgan Stanley Smith Barney*](#), Release No. IA-6782 (December 9, 2024) (misappropriation of client funds, policies and procedures violation, and failure to supervise personnel); [*In the Matter of Seacrest Wealth Management*](#), Release No. 6788 (December 12, 2024) (cherry-picking and policies and procedures violation); [*In the Matter of Rose Park Advisors*](#), Release No. IA-6802 (December 20, 2024) (conflict-of-interest disclosures); [*In the Matter of One Thousand & One Voices Management*](#), Release No. IA-6811 (January 10, 2025) (breach of fiduciary duty and improper expenses); [*In the Matter of VCP Financial*](#), Release No. IA-6819 (January 14, 2025) (improper management of conflict of interest); [*In the Matter of Transamerica Retirement Advisors*](#), Release No. IA-6826 (January 17, 2025) (breach of fiduciary duty and conflict-of-interest disclosures); and [*In the Matter of The Vanguard Group*](#), Release No. IA-6830 (January 17, 2025) (misleading statements regarding potential tax consequences from investments in target-date retirement funds).

¹⁴ [*In the Matter of WisdomTree Asset Management*](#), Release No. IA-6753 (October 21, 2024); and [*In the Matter of Invesco Advisers*](#), Release No. IA-6770 (November 8, 2024).

¹⁵ [*In the Matter of Navy Capital Green Management*](#), Release No. IA-6823 (January 14, 2025).

¹⁶ See the off-channel communications actions, supra n. 11.

¹⁷ [*In the Matter of Greenhaven Road Investment Management*](#), Release No. IA-6789 (December 13, 2024); [*In the Matter of GSSG Solar*](#), Release No. IA-6790 (December 13, 2024); [*In the Matter of Kudu Investment Holdings*](#), Release No. IA-6791 (December 13, 2024); [*In the Matter of The Catalyst Capital Group*](#), Release No.

IA-6792 (December 13, 2024); [In the Matter of Longpoint Partners](#), Release No. IA-6793 (December 13, 2024); [In the Matter of NFC Investments](#), Release No. IA-6794 (December 13, 2024); [In the Matter of WPAM Advisers](#), Release No. IA-6795 (December 13, 2024). Section 204 of the Advisers Act and Rule 204(b)-1 thereunder require registered investment advisers that manage at least \$150 million in private fund assets to file Form PF.

¹⁸ Two concerned cash sweep programs: [In the Matter of Wells Fargo Clearing Services](#), Release No. IA-6827 (January 17, 2025); and [In the Matter of Merrill Lynch, Pierce, Fenner & Smith](#), Release No. IA-6829 (January 17, 2025). One concerned preventing the misuse of material nonpublic information: [SEC v. Silver Point Capital](#), No. 26202 (D. Conn. filed December 20, 2024). Section 206 of the Advisers Act and Rule 206(4)-7 thereunder (the Compliance Rule) require registered investment advisers to adopt and implement written policies and procedures that are reasonably designed to prevent violations of the act.

¹⁹ [In the Matter of J.P. Morgan Investment Management](#), Release No. IA-6761 (October 31, 2024) (where exemptive relief was inapplicable). Advisers Act Rule 206(3) requires that an investment adviser provide written disclosure and obtain client consent before completing a principal trade.

²⁰ [In the Matter of J.P. Morgan Investment Management](#), Release No. IC-35373 (October 31, 2024). Section 17(d) of the 1940 Act and Rule 17d-1 thereunder prohibit any affiliated person of a registered investment company from effecting transactions in which the company is a joint participant with an affiliated person.

²¹ [In the Matter of Two Sigma Investments](#), Release No. IA-6824 (January 16, 2025) (also involving a breach of the duty of care related to an algorithmic investment model). Section 21F of the Securities Exchange Act of 1934 and Rule 21F-17(a) thereunder (the Whistleblower Rule) prohibit any action taken to impede an individual from reporting a violation of the federal securities laws.

²² [In the Matter of Touradji Capital Management](#), Release No. IA-6810 (January 10, 2025). Section 203A of the Advisers Act and Rule 203A-1(a) thereunder prohibit investment advisers from remaining registered with the SEC unless the adviser meets certain eligibility requirements, including maintaining at least \$90 million in assets under management. Section 204(a) of the Advisers Act provides that all records of investment advisers are subject to periodic examination by the SEC.

²³ The following actions included civil penalties between \$1 million and \$10 million: [WisdomTree Asset Management](#), supra n.14; [J.P. Morgan Investment Management](#), supra n.19; [J.P. Morgan Investment Management](#), supra n.20; [TPG Capital Advisors](#), supra n.11; [Apollo Capital Management](#), supra n.11; [Carlyle Investment Management](#), supra n.11; and [Transamerica Retirement Advisors](#), supra n.13.

²⁴ The following actions included civil penalties of at least \$10 million: [Invesco Advisers](#), supra n.14; [Morgan Stanley Smith Barney](#), supra n.13; [Blackstone Alternative Credit Advisors](#), supra n.11; [Kohlberg Kravis Roberts & Co.](#), supra n.11; [Two Sigma Investments](#), supra n.21; [Wells Fargo Clearing Services](#), supra n. 18; [Merrill Lynch, Pierce, Fenner & Smith](#), supra n.18; and [The Vanguard Group](#), supra n.13.

²⁵ In one of his earliest speeches as acting chair, Commissioner Mark Uyeda criticized the previous commission's regulatory approach, stating, "What occurred under the Biden Administration was a stark aberration from longstanding norms as to what the Commission has historically viewed its legal authority, policy priorities, and use of enforcement." See [Remarks at the Florida Bar's 41st Annual Federal Securities Institute and M&A Conference](#) (February 24, 2025).

²⁶ Chair Paul Atkins, [Opening Remarks at the SEC Town Hall](#) (May 6, 2025).

²⁷ Chair Paul Atkins, [Testimony Before the United States Senate Appropriations Subcommittee on Financial Services and General Government](#) (June 3, 2025).

²⁸ Chair Paul Atkins, “[Keynote Address at the Inaugural OECD Roundtable on Global Financial Markets](#)” (September 10, 2025) (discussing enforcement in the context of a broader statement on the regulation of digital assets).

²⁹ Chair Paul Atkins, “[Keynote Address at the 25th Annual A.A. Sommer, Jr. Lecture on Corporate, Securities, and Financial Law](#)” (October 7, 2025).

³⁰ Id.

³¹ Chair Paul Atkins, “[Opening Remarks at the SEC Town Hall](#)” (May 6, 2025).

³² See, e.g., Chair Paul Atkins, “[Keynote Address at the 25th Annual A.A. Sommer, Jr. Lecture on Corporate, Securities, and Financial Law](#)” (October 7, 2025) (The Enforcement Division “is indispensable to our mission of rooting out fraud and manipulation because the scams that we combat can wreak devastating consequences on real people around the country, wiping out savings for retirements, down payments, educations, and so on.”).

³³ See Chair Paul Atkins, “[Testimony Before the United States Senate Appropriations Subcommittee on Financial Services and General Government](#)” (June 3, 2025).

³⁴ See Commissioner Mark Uyeda, “[Remarks at the Florida Bar's 41st Annual Federal Securities Institute and M&A Conference](#)” (February 24, 2025) (“The agency continues to bring charges for insider trading, inflating financial performance, and breaches of fiduciary duty by investment advisers, among other topics.”); see also Acting Division of Enforcement Director Samuel Waldon, “[Remarks During Division of Enforcement Panel at SEC Speaks Conference](#),” Practising Law Institute (May 19, 2025) (“[I]nsider trading, accounting and financial disclosure fraud, offering fraud, market manipulation, breaches of fiduciary duty by investment advisers. Those are all going to remain key areas of focus for us, as they always have been.”). Although Atkins has not mentioned focusing on breaches of fiduciary duty in the context of SEC enforcement, he has highlighted the importance of that duty in public remarks related to proxy voting. See Chair Paul Atkins, “[Remarks at the Meeting of the Investor Advisory Committee](#)” (June 5, 2025) (“The topic of proxy voting, proxy advisors, and shareholder activism is extremely important to me, because not only does it have profound implications for corporate governance, but, in the context of funds, it also implicates the fundamental fiduciary duty that advisers owe clients to act in their best interest. I must underscore that investment advisers or pension-fund managers violate their fiduciary duties if they put their own priorities ahead of their clients’ interests when voting proxies.”).

³⁵ See Chair Paul Atkins, “[Keynote Address at the 25th Annual A.A. Sommer, Jr. Lecture on Corporate, Securities, and Financial Law](#)” (October 7, 2025) (“If we reward the staff only for bringing enforcement actions, then we have discouraged the staff from determining not to recommend an enforcement action. ... Our goal is to reward the staff for their quality work and judgment on cases to bring, violations to charge, and relief to seek.”).

³⁶ [SEC v. Max Infinity Management](#), No. 26233 (E.D.N.Y. filed January 31, 2025); [SEC v. Burak](#), No. 26256 (S.D.N.Y. filed February 26, 2025); [SEC v. Upright Financial](#), No. 26270 (D.N.J. filed April 11, 2025); [SEC v. Taller](#), No. 26300 (S.D.N.Y. filed April 29, 2025); [SEC v. Evergreen Property Developments](#), No. 26298 (W.D. Wash. filed April 30, 2025); [SEC v. Kronus Financial](#), No. 26317 (S.D. Fla. filed May 28, 2025); [SEC v. New Line Capital](#), No. 26319 (D.N.M. filed June 2, 2025); [SEC v. Evolution Lending](#), No. 26333 (S.D. Cal. filed June 23, 2025); [SEC v. PE Capital Investment Management Partners](#), No. 26339 (N.D. Ill. filed July 3, 2025); [SEC v. K&G Investment Solutions](#), No. 26349 (W.D. Tex. filed July 14, 2025); [SEC v. D'Ambrosio](#), No. 26354 (S.D.N.Y. filed July 17, 2025) (filed with a partial consent judgment); [SEC v. Chirico](#), No. 26375 (S.D.N.Y. filed August 14, 2025); [SEC v. Stock Purse Trading](#), No. 26379 (S.D. Fla. filed August 20, 2025) (filed with a partial consent judgment); [SEC v. Embarcadero Capital Advisors](#), No. 26395 (C.D. Cal. filed September 10, 2025); and [SEC v. Prophecy Asset Management](#), No. 26414 (D.N.J. filed September 29, 2025).

³⁷ [*In the Matter of One Oak Capital Management*](#), Release No. IA-6855 (February 14, 2025); [*In the Matter of Momentum Advisors*](#), Release No. IA-6860 (March 7, 2025); [*In the Matter of Tiffany L. Hawkins*](#), Release No. IA-6861 (March 7, 2025); [*SEC v. Pallek*](#), No. 26264 (E.D. Wis. filed March 10, 2025); [*In the Matter of Advance Capital Management*](#), Release No. IC-35522 (April 7, 2025); [*In the Matter of North East Asset Management Group*](#), Release No. IA-6881 (June 3, 2025); [*SEC v. El Capitan Advisors*](#), No. 26327 (C.D. Cal. filed June 4, 2025); [*In the Matter of American Portfolios Advisors*](#), Release No. IA-6893 (July 11, 2025); [*In the Matter of Colin Michael Moors*](#), Release No. IA-6894 (July 11, 2025); [*In the Matter of Gary Bruce Gordon*](#), Release No. IA-6895 (July 11, 2025); [*In the Matter of Suzanne Ballek*](#), Release No. IA-6896 (July 15, 2025); [*In the Matter of Gary Steven Costello*](#), Release No. IA-6897 (July 16, 2025); [*In the Matter of Munakata Associates*](#), Release No. IA-6901 (August 1, 2025); [*In the Matter of TZP Management Associates*](#), Release No. IA-6908 (August 15, 2025); [*In the Matter of Vanguard Advisers*](#), Release No. IA-6912 (August 29, 2025); [*In the Matter of Empower Advisory Group*](#), Release No. IA-6911 (August 29, 2025); [*In the Matter of Meridian Financial*](#), Release No. IA-6916 (September 4, 2025); [*In the Matter of James D. Warring*](#), Release No. IA-6917 (September 8, 2025); [*SEC v. Vukota Capital Management*](#), No. 26393 (D. Colo. filed September 9, 2025); and [*SEC v. Patel*](#), No. 26406 (N.D. Ala. filed September 19, 2025).

³⁸ Each of the litigated actions was grounded in scienter-based fraud, as were seven of the 20 settled actions. To be fair, the number of actions brought by the SEC in the first year of a new presidential administration is typically lower than in the last year of the previous administration, both because of the resulting turnover at all levels of the commission as well as the previous SEC's efforts to finalize its matters before Inauguration Day. In addition, given its final push and accompanying announcement of results as discussed above, the Gensler Commission may have left the cupboard particularly bare. Only one or two of the Atkins SEC's IA/IC actions arguably involved well-known asset managers.

³⁹ See, e.g., Press Release 2025-47, "[SEC Announces Dismissal of Civil Enforcement Action Against Coinbase](#)" (February 27, 2025) (Acting Chair Mark Uyeda: "For the last several years, the Commission's views on crypto have been largely expressed through enforcement actions without engaging the public. ... It's time for the Commission to rectify its approach and develop crypto policy in a more transparent manner."); see also Litigation Release No. 26316, "[SEC Announces Dismissal of Civil Enforcement Action Against Binance Entities and Founder Changpeng Zhao](#)" (May 29, 2025).

⁴⁰ See Litigation Release No. 26347, "[SEC Announces Dismissal of Civil Enforcement Action Against Pinnacle Advisors](#)" (July 11, 2025). The Liquidity Rule is codified under Rule 22e-4 of the 1940 Act. Stradley Ronon partner Jan Folena served as lead trial counsel for the mutual fund independent trustees in this action. See "[Stradley Ronon Secures SEC Dismissal in First-Ever Liquidity Rule Enforcement Action](#)," (July 11, 2025).

⁴¹ See Litigation Release No. 26281, "[SEC Announces Dismissal of Civil Enforcement Action Against Silver Point Capital](#)" (April 4, 2025).

⁴² Of these 13 actions, the first three were filed in the three-month period during which Commissioner Mark Uyeda served as acting chair.

⁴³ See [*One Oak Capital Management*](#), supra n.37; [*Momentum Advisors*](#), supra n.37; [*American Portfolios Advisors*](#), supra n.37; [*Vukota Capital Management*](#), supra n.37; and [*TZP Management Associates*](#), supra n.37.

⁴⁴ See [*One Oak Capital Management*](#), supra n.37.

⁴⁵ The duty of loyalty is not expressly mentioned in the order.

⁴⁶ The SEC also found that the firm violated Advisers Act Section 204 and Rule 204-3 thereunder by failing to deliver its required Form ADV brochure, which should have disclosed fees, services and conflicts of interest;

and Section 206(4) and Rule 206(4)-7 thereunder by maintaining deficient compliance policies and procedures that did not ensure suitability reviews or oversight of account conversions.

⁴⁷ See [Momentum Advisors](#), supra n.37.

⁴⁸ The SEC filed a separate settled action against the COO for scienter-based charges related to her willful misappropriation of company funds in violation of Section 206(1) of the Advisers Act. The COO agreed to pay a \$200,000 penalty and was barred from the securities industry. See [Tiffany L. Hawkins](#), supra n.37.

⁴⁹ See [American Portfolios Advisors](#), supra n.37.

⁵⁰ On the same day, two personnel of the RIAs separately settled with the commission for aiding and abetting the adviser's violations related to their production of backdated compliance documents. For a discussion of these two actions, see infra p. 12, n. 64.

⁵¹ See [TZP Management Associates](#), supra n.37.

⁵² Not surprisingly, as indicated by the ordered remediation, the firm did not receive credit for remedial actions taken.

⁵³ These two actions are similar to the action brought in the last days of the Gensler Commission in which an RIA settled charges for failing to disclose conflicts of interest created by incentive compensation payments to RIA representatives for referring and rolling over retirement assets to thousands of managed accounts. See [Transamerica Retirement Advisors](#), supra n. 13.

⁵⁴ See [Vanguard Advisers](#), supra n.37.

⁵⁵ In addition to general cooperation with the staff's investigation, the adviser undertook several remedial acts. The respondent removed language from its website that stated advisers received no financial incentives. Further, the adviser corrected contradictory disclosures in its supplement and Form CRS. The respondent also hired a consultant to review its disclosure and conflict-of-interest identification approach. The order does not mention any reimbursements made by the firm.

⁵⁶ See [Empower Advisory Group](#), supra n.37.

⁵⁷ The broker-dealer also did not establish, maintain and enforce written policies and procedures reasonably designed to identify and address the conflict of interest related to the incentive compensation system. Thus, the broker-dealer's conduct failed to comply with the disclosure and conflict-of-interest obligations of Regulation Best Interest in violation of Securities Exchange Act Rule 15l-1(a)(1).

⁵⁸ Credited cooperation included providing key documents to the SEC staff, voluntary presentations to the staff on topics of interest, and performing data collection and analysis of the managed account service. Credited remedial acts included hiring new compliance professionals, engaging a third-party consulting firm to assess the design of plan participant-facing activities, and the implementation of an algorithmic tool to assist plan participants in assessing the value of managed account service offerings. However, no reimbursement of funds is mentioned in the order.

⁵⁹ See [Vukota Capital Management](#), supra n.37.

⁶⁰ This action had to be filed in federal court in order to include an injunction among the remedies sought. See 15 U.S.C. § 78u(d)(1) (memorializing the SEC's authority to seek injunctions to prevent ongoing and future violations of the federal securities laws by seeking such a remedy in federal court).

⁶¹ In three of these actions, the firms received credit for reimbursing their clients. In three others, the firms were ordered to pay disgorgement. The other action required the firm to pay its civil penalty into a Fair Fund for distribution to affected clients.

⁶² See “[Fiscal Year 2025 Examination Priorities](#)” at p. 5–6, SEC (addressing “Adherence to Fiduciary Standards of Conduct” as a priority). The examination priorities for FY2026 have not yet been published.

⁶³ See [American Portfolios Advisors](#), supra n.37.

⁶⁴ See [Colin Michael Moors](#), supra n.37; and [Gary Bruce Gordon](#), supra n.37. These actions relate to the action discussed above involving breach of fiduciary duty for failure to adequately disclose conflicts of interest. See [American Portfolios Advisors](#), supra n.37. Specifically, the CCO created backdated compliance documents that purported to memorialize contemporaneous annual compliance reviews, and the president signed and backdated his signature on all of them. The SEC found that the CCO’s and president’s conduct aided and abetted and caused the adviser’s violation of Section 204(a) and Rule 204-2(a)(17)(ii). They each consented to a cease-and-desist order, a censure, and civil penalties of \$10,000 and \$20,000, respectively.

⁶⁵ See [Suzanne Ballek](#), supra n.37. The SEC found that this conduct aided and abetted the CCO’s employer’s violations of Sections 204(a) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. The CCO consented to a cease-and-desist order, a \$40,000 civil money penalty, and a three-year industry bar.

⁶⁶ See 17 CFR § 270.8f-1 (laying out conditions for deregistration of a registered investment company by filing an application with the SEC on Form N-8F).

⁶⁷ See [Advance Capital Management](#), supra n.37. The RIA failed to provide information in response to a question about active litigation on the firm’s application to deregister as an investment company. The correct information would have identified the firm as a member of certain shareholder classes on whose behalf class actions had been brought. The firm caused its client to violate Section 34(b) of the 1940 Act and was ordered to pay a \$200,000 civil money penalty, \$300,000 in disgorgement and \$99,953 in prejudgment interest. The SEC gave credit to the firm for remedial efforts, including modifying compliance processes, policies and procedures. A Fair Fund was set up for payment of disgorgement and prejudgment interest to be distributed to affected investors not compensated during the liquidation process.

⁶⁸ See [Momentum Advisors](#), supra n.37.

⁶⁹ Id.

⁷⁰ See Advisers Act Rule 206(4)-2(b)(4).

⁷¹ See [Munakata Associates](#), supra n.37.

⁷² See [Meridian Financial](#), supra n.37.

⁷³ The firm’s efforts included removal of the violative marketing material, retention of a third-party firm to support with preservation of books and records, engaging a compliance consultant, and hiring a CCO. It also undertook to conduct an annual compliance review and to certify that it had done so.

⁷⁴ See Chair Paul Atkins, “[Testimony Before the United States House Appropriations Subcommittee on Financial Services and General Government](#)” (May 20, 2025).

⁷⁵ See “[Fiscal Year 2026: Congressional Budget Justification Annual Performance Plan](#)” at p. 7, SEC.

⁷⁶ See [“Fiscal Year 2025: Congressional Budget Justification Annual Performance Plan”](#) at p. 12, SEC.

⁷⁷ See 17 CFR Part 200; [Release Nos. 33-11366; 34-102552; IA-6862; IC-35492](#) (March 10, 2025).

⁷⁸ Id.

⁷⁹ See Press Release 2025-108, [“SEC Names Judge Margaret Ryan as Director of the Division of Enforcement”](#) (August 21, 2025).

⁸⁰ Ryan served as a senior judge on the U.S. Court of Appeals for the Armed Forces from 2006 to 2020 after being nominated by President George W. Bush. Ryan previously clerked for U.S. Supreme Court Justice Clarence Thomas and Judge J. Michael Luttig of the U.S. Court of Appeals for the Fourth Circuit.

⁸¹ Id.

⁸² Id.

⁸³ Industry spokespersons appear to agree. See, e.g., Chris Iacovella (president and CEO of the American Securities Association), [“ASA Applauds SEC’s Selection of Judge Margaret Ryan as Director of Enforcement”](#) (August 22, 2025) (“[W]e look forward to working with an honest, transparent, and highly respected practitioner of the law who will return the SEC’s Enforcement Division to objectively calling balls and strikes.”).

⁸⁴ See Chair Paul Atkins, [“Keynote Address at the 25th Annual A.A. Sommer, Jr. Lecture on Corporate, Securities, and Financial Law”](#) (October 7, 2025).

⁸⁵ Id.

⁸⁶ Id.

⁸⁷ Atkins has also expressed a commitment to an increased sharing of information through this process, laying out that “senior enforcement leadership will meet with defense counsel before making a recommendation to the Commission.” Id.

⁸⁸ Id.

⁸⁹ See, e.g., the following SEC actions brought under former Chair Jay Clayton: [In the Matter of Palmer Square Capital Management](#), Release No. IA-5586 (September 21, 2020) (principal trades action); [In the Matter of Garrison Investment Group](#), Release No. IA-5345 (September 13, 2019) (joint transactions violation); and [SEC v. Collector’s Coffee](#), No. 24469 (S.D.N.Y. filed November 4, 2019) (Whistleblower Rule action). Despite recent reports that describe a reduction in whistleblower awards, we expect the commission’s enforcement program to continue to rely on whistleblower complaints and cooperation with enforcement staff. See, e.g., “SEC Whistleblower Awards Tumble to 6-Year Low, Signaling ‘Closer Scrutiny and Stricter Standards,’” *Law.com* (October 14, 2025).

⁹⁰ See Press Release 2024-36, [“SEC Charges Two Investment Advisers with Making False and Misleading Statements About Their Use of Artificial Intelligence”](#) (March 18, 2024).

⁹¹ Commissioner Mark Uyeda, [“Introductory Remarks at the 2nd Annual Judge Stanley Sporkin SEC Division of Enforcement Directors Panel”](#) (February 20, 2025) (“Take innovation involving artificial intelligence (AI). ... [A]s with other technological innovations — we’ve seen how bad actors can capitalize on that increased use and interest by offering investment opportunities with false statements or exaggerations about AI capabilities.

Thanks to the hard work of the Division, the Commission has brought several enforcement actions to protect investors from such bad actors.”).

⁹² For example, in April, the SEC commenced litigation against the former CEO of a privately held technology startup for making false and misleading statements regarding the company’s use of AI. See Litigation Release No. 26282, [“SEC Charges Founder and Former CEO of Artificial Intelligence Startup with Misleading Investors”](#) (April 11, 2025).

⁹³ SEC Press Release 2025-42, [“SEC Announces Cyber and Emerging Technologies Unit to Protect Retail Investors”](#) (February 20, 2025).

⁹⁴ The FY2025 enforcement priorities discuss disclosures and compliance related to the use of AI in advisory operations as an area of interest. See [“Fiscal Year 2025 Examination Priorities”](#) at p. 6, SEC.

⁹⁵ See [One Oak Capital Management](#), supra n.37; [Momentum Advisors](#), supra n.37; [American Portfolios Advisors](#), supra n.37; [Colin Michael Moors](#), supra n.37; [Gary Bruce Gordon](#), supra n.37; [Suzanne Ballek](#), supra n.37; [Munakata Associates](#), supra n.37; and [Meridian Financial](#), supra n.37.

⁹⁶ See, e.g., Press Release 2023-173, [“SEC Sweep into Marketing Rule Violations Results in Charges Against Nine Investment Advisers”](#) (September 11, 2023).

⁹⁷ See, e.g., [“SEC Probes Interval Fund Valuation, Liquidity,” Ignites](#) (September 29, 2025)

⁹⁸ Paul Atkins and Bradley Bondi, [“Evaluating the Mission: A Critical Review of the History and Evolution of the SEC Enforcement Program,”](#) 13 Fordham J. Corp. & Fin. L. 367 (2008).

⁹⁹ Although the non-scienter-based actions included three against CCOs, each of those actions fell within the three categories identified by former Enforcement Director Gurbir Grewal and are consistent with Grewal’s commitment to not charge CCOs who are making good-faith efforts to perform their job. See Gurbir Grewal, [“Remarks at New York City Bar Association Compliance Institute”](#) (October 24, 2023) (identifying three types of enforcement actions against CCOs: (1) where compliance personnel participated in misconduct unrelated to compliance; (2) where they misled regulators; and (3) where there was a wholesale failure to execute compliance functions). See [Momentum Advisors](#), supra n.37 (wholesale neglect of compliance function by CCO); [Colin Michael Moors](#), supra n.37 (CCO misled regulators); and [Suzanne Ballek](#), supra n.37 (CCO misled regulators). We do not expect this to change under Atkins.

¹⁰⁰ For example, in FY2022, the SEC filed charges against individuals in 68% of stand-alone cases. In FY2023, the rate dropped to 63%. In FY2024, the SEC charged individuals in only 50% of stand-alone cases. See [“SEC Prioritized Enforcement Sweeps as Cases Slowed in ‘24,” Law360](#) (December 4, 2024).

¹⁰¹ See, e.g., Commissioner Paul Atkins, [“Remarks of Commissioner Paul S. Atkins Before the SEC Speaks Conference”](#) (March 3, 2006) (“Is there a propensity for our enforcement attorneys to use the amount of penalties as a yardstick for their own performance? ... Are penalties — for their own sake — a proxy to show how effective we are in doing our job? What effect has that on the rest of our program, and on cases that are important but lack zeros?”)

¹⁰² See Chair Paul Atkins, [“Keynote Address at the 25th Annual A.A. Sommer, Jr. Lecture on Corporate, Securities, and Financial Law”](#) (October 7, 2025).

¹⁰³ This sum includes a single \$19.5 million penalty levied against an RIA for failure to disclose conflicts of interest. See [Vanguard Advisers](#), supra n.37.

¹⁰⁴ See Press Release 2025-6, “[Twelve Firms to Pay More Than \\$63 Million Combined to Settle SEC's Charges for Recordkeeping Failures](#)” (January 13, 2025).

¹⁰⁵ See Commissioner Paul Atkins, “[Speech by SEC Commissioner: Remarks to the ‘SEC Speaks in 2008’ Program of the Practising Law Institute](#)” (February 8, 2008) (“Companies should have a clear understanding of what it takes to receive cooperation credit. ... [T]he extent of cooperation in an investigation is an element in determining how high civil monetary penalties ... could be set.”).

¹⁰⁶ In one action, the adviser voluntarily reported the COO’s misappropriation of fund assets to the SEC staff. See [Momentum Advisors](#), supra n.37. Of course, to the extent that a firm self-reported and received a full declination from an enforcement action, there would likely be nothing public about that result.

¹⁰⁷ See [One Oak Capital Management](#), supra n.37.

¹⁰⁸ See [Morgan Stanley Smith Barney](#), supra n.13.