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Back to Basics, Continued: SEC Asset Management Enforcement Trends So Far in FY2026

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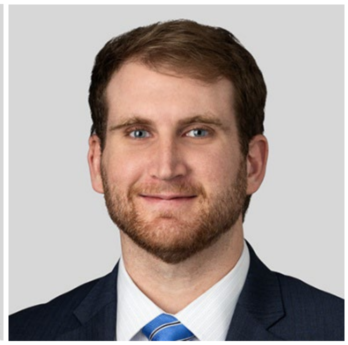

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Led by Chair Paul Atkins, the U.S. Securities and Exchange Commission (SEC) in fiscal year 2025 (FY2025) pivoted sharply from overly aggressive enforcement that at times exceeded the legal boundaries of its authority in favor of a back-to-basics approach focused on "rooting out fraud and remedying investor harm."[1] Thus far in FY2026,[2] this more restrained approach has continued.[3] With respect to asset management enforcement specifically, the Atkins Commission has brought a mix of actions[4] similar to those it filed in FY2025, and at a comparable pace.[5] Read on for a discussion of the top trends in FY2026 SEC asset management enforcement and what might lie ahead for the rest of the fiscal year and beyond.

Litigated, Scienter-Based Civil Actions Remain a Priority

In FY2026, the Atkins SEC has continued to file civil actions in federal court aimed at scienter-based fraud.[6] About half of these actions have covered the typical mix of violations, including misappropriation of funds, offering fraud, and other material misrepresentations made to investors.[7] Of note, the SEC also charged six putative exempt reporting advisers with making material misrepresentations in Forms ADV regarding their assets under management (AUM), office locations and private fund clients, as well as for failing to produce information requested by the SEC for examination.[8] We expect the SEC to continue to prioritize practices that it views to be deliberately fraudulent.

Settled, Non-Scienter-Based Actions Continue at a Similar, Slower Pace

During the same period, the SEC has brought seven non-scienter-based actions as settled administrative proceedings, including six newly filed proceedings and one after dropping a litigated case.[9] This is roughly on par with the 13 settled non-scienter-based actions filed by the Atkins SEC in FY2025. Four of these actions involved investment adviser (adviser, or RIA) breaches of fiduciary duty. The other three involved more technical violations but promote the SEC's investor protection mission.

Breaches of Fiduciary Duty Still a Staple

As Atkins highlighted in remarks before Congress last month,[10] the SEC continues to bring actions for breach of fiduciary duty by advisers. In FY2026, the SEC has filed four such actions, as compared to the seven brought by the Atkins SEC in FY2025. All four involved non-scienter-based disclosure violations charged pursuant to Section 206(2) of the Investment Advisers Act of 1940 (Advisers Act).

Specifically, the SEC allegations in these actions involved:

- An RIA's failure to disclose material conflicts of interest arising from its involvement in a special purpose acquisition company transaction.[11]
- Two affiliated RIAs that used hedge clauses that could mislead retail clients about the scope of the advisers' non-waivable fiduciary duty or cause them to believe they had waived non-waivable legal rights, as well as clauses that improperly allowed the advisers to assign advisory agreements without client consent. The advisers also failed to obtain required independent accountant verification and to implement reasonable compliance policies in violation of the Custody and Compliance Rules, respectively.[12]
- An adviser whose minority owner allocated profitable securities trades to himself while allocating less profitable trades to the adviser's retail advisory clients, a practice that was inconsistent with the adviser's disclosures to those clients that were materially disadvantaged by the trades.[13]
- An RIA's failure to reasonably determine whether principal transactions with the pooled investment vehicles it advised were conducted in accordance with advisory agreement disclosures regarding its valuation methodology.[14]

Consistent with Atkins' comments, the Division of Examinations' most recent exam priorities report,[15] and matters routinely prioritized by the SEC's asset management enforcement program, we expect the SEC to continue to bring similar breach of fiduciary duty actions. Indeed, disclosure-based violations strike at the core principles of the federal securities laws.

Deemphasis on Other Non-Scienter-Based Actions Continues

In FY2026, the SEC has filed three actions that, although based on technical violations,[16] also involved underlying disclosure deficiencies:

- One matter involving a recidivist RIA that violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder resulting from its failure to annually review the adequacy of its compliance policies and procedures — which led to inaccurate disclosures in its Form ADV — and brochure delivery recordkeeping requirements under Section 204 of the Advisers Act and Rule 204-2(a)(14) thereunder.[17]
- Two other actions, involving the same registered fund, in which the SEC separately charged the fund's adviser and the fund's auditor for causing violations of Section 30(g) of the Investment Company Act of 1940, the auditor independence requirement, where the auditor's wife had invested in the fund.[18] Among other things, the SEC found that the independence failures were not reported to the fund's board and subsequent filings erroneously reported the auditor as independent with respect to the fund.[19]

In addition to actions similar to those above, we expect the SEC to continue to bring non-scienter-based actions to enforce the Custody Rule, Marketing Rule and other rules aimed at investor protection.

Penalties Remain Relatively Low

So far in FY2026, the largest civil monetary penalties imposed by the SEC in settled, non-scienter-based actions against RIAs have been $900,000, $200,000 and $150,000, with the rest under $100,000. Even when compared to penalties levied by the Atkins SEC in FY2025, these are relatively low amounts.[20] That said, the smaller amounts may be due at least in part to the lower AUM of the settling advisers, only one of which had AUM of over $1 billion.[21] Accordingly, we expect penalties to conform to the statutory parameters and continue to be lower than they were before the Atkins SEC's tenure and roughly commensurate with the seriousness of the offense and the size of the asset manager.

Litigation Continues to Have Benefits

Litigating defendants continue to benefit from the independent decision-making of the federal courts and juries, which continue to issue decisions and verdicts with narrower findings of liability and lower penalties than those traditionally sought by the SEC. For example, the SEC in January elected not to continue its ongoing, litigated case against an RIA for allegedly failing to adequately disclose material conflicts of interest, instead entering into a tentative settlement agreement after the U.S. Court of Appeals for the First Circuit vacated a large judgment imposed by the district court against the RIA and remanded the matter to the lower court.[22]

In February, the SEC dropped its previously filed case imposing scienter-based charges against an investment adviser and its minority owner where, among other things, the owner disproportionately allocated profitable securities to himself while allocating less profitable trades to the firm's advisory clients, instead agreeing to settle on non-scienter-based charges as discussed above.[23] Later that month, a Massachusetts federal court jury found for the defendant adviser, rejecting the SEC's scienter-based charges under Section 206(1) of the Advisers Act, and finding the adviser liable only on the SEC's non-scienter-based breach of fiduciary duty charge in violation of Advisers Act Section 206(2) for the same conduct.[24]

Although these cases were brought by the previous commission, they illustrate more broadly that litigation has been beneficial and is worth considering whenever the SEC takes an unjustifiably aggressive or legally unsupported enforcement position. We also expect the Atkins SEC to file all contested matters in federal court as has been the case since the U.S. Supreme Court's 2024 decision in *SEC v. Jarkesy*. While settlements continue to be filed administratively, we attribute that to the more reasonable settlement positions of the SEC.

Future commissions may not continue this trend, at which time federal court settlements may become more beneficial to those electing to settle charges.

Continued Emphasis on Fairness, Transparency and Efficiency in the Investigative Process

Last month, for the first time since 2017, the SEC's Division of Enforcement updated its Enforcement Manual.[25] Many of the most notable revisions to the manual, including those aimed at ensuring a uniform Wells process, as well as facilitating simultaneous consideration of settlement recommendations and waiver requests, were foreshadowed by certain of Atkins' public remarks in FY2025.[26] In addition, the Enforcement Manual has been modified extensively to detail the division's framework for evaluating cooperation (defined to also include self-policing, self-reporting and remediation), including its impact on civil penalties.[27] That said, the Enforcement Manual is not binding,[28] and the extent of meaningful change to the investigative process in practice remains to be seen.

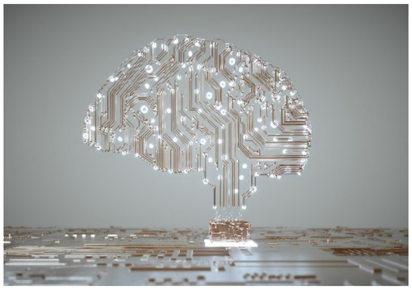
What Else to Expect

In addition to the expectations we've outlined above, there are a few other things that asset managers should be mindful of in FY2026 and going forward:

- **More Room for Resolution Without Commission Action.** It is important that asset managers conduct the legal analysis necessary to convince a more reasonable SEC that not every matter constitutes fraud and design creative solutions to avoid enforcement action by making use of other provisions of the federal securities laws and availing themselves, where appropriate, of the SEC's recent reiteration of its interest in extending credit for cooperation.[29]

- **Potential Further Limits on Disgorgement.** The U.S. Supreme Court recently granted certiorari to resolve a circuit split involving whether disgorgement may be awarded in matters where the SEC cannot prove investor harm. The Ninth Circuit held that the SEC may obtain disgorgement without proving that investors suffered pecuniary harm,[30] while the Second Circuit previously held that the purpose of disgorgement is to return funds to harmed victims.[31] The Supreme Court's decision could significantly curtail the SEC's use of disgorgement and will likely put a greater emphasis on penalties.

- **Artificial Intelligence.** Earlier this month, Atkins confirmed that, with the help of its AI Task Force, the SEC will deploy AI "across the Commission."[32] Among other things,



the SEC will use AI to conduct risk assessments, detect market misconduct, and review disclosures. Not surprisingly, Atkins made it clear that the SEC will crack down on bad actors "that misuse AI technologies to further … fraudulent and manipulative schemes," and make false claims about the use of AI, while noting that materiality is the lens through which the SEC views any such disclosures.[33] Firms should be aware of the SEC's use of AI and check their own use of the technology.

[1] See Chair Paul Atkins, "Testimony Before the U.S. House Financial Services Committee" (February 11, 2026); see also our article, "SEC Asset Management Enforcement in Fiscal Year 2025 and Beyond: The Atkins Commission's 'New Day'" (November 12, 2025).

[2] This article covers developments in asset management enforcement between October 1, 2025, and February 28, 2026 — the first five full months of the SEC's FY2026.

[3] See Enforcement Director Margaret Ryan, "Remarks to the Los Angeles County Bar Association" (February 11, 2026) (reiterating, in her only extensive public remarks, Chair Atkins' focus on "returning to the basics" and the enforcement program's "principal focus … to protect investors"). Just before this article was published, the SEC announced Ryan's resignation. See Press Release No. 2026-27, "SEC Announces Enforcement Division Director Judge Margaret A. Ryan Has Resigned From Agency," (March 16, 2026). The SEC expects to announce a permanent successor to Ryan in the coming weeks. Former Acting Director Sam Waldon will return to that role in the interim. We do not expect a change in the Atkins SEC's enforcement program as a result of this development.

[4] All actions in this report refer to 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.

[5] Commissioner Mark Uyeda was the SEC's acting chair from January 21, 2025, until Atkins officially began his tenure on April 21, 2025. We have included this just over eight-months-long time period when referring to the FY2025 activities of the "Atkins SEC" or "Atkins Commission" throughout this article.

[6] The SEC has filed 13 such matters so far in FY2026. The Atkins SEC brought 22 during its tenure in FY2025. There have been no settled scienter-based actions in this fiscal year thus far.

[7] See *SEC v. Lichtenstein*, Release No. 26426 (S.D.N.Y. filed October 22, 2025); *SEC v. Gauvin; Blackridge; Gray Digital Capital Management USA; Gray Digital Technologies*, Release No. 26439 (E.D.N.Y. filed December 10, 2025); and *SEC v. Sofia*, Release No. 26463 (D.N.J. filed January 20, 2026).

[8] The complaints charged the advisers with scienter-based violations of Section 207 of the Investment Advisers Act of 1940 (Advisers Act) for the material misstatements and non-scienter-based violations of Section 204(a) of the Advisers Act for the failure to provide records. (See "SEC Charges Six Investment Advisers with Making Misrepresentations in Forms Filed with the Agency," Litigation Release No. 26416 (November 17, 2025).) Each of the SEC's complaints seeks injunctive relief and civil monetary penalties. (See *SEC v. Adamant Stone*, Release No. 26416 (D. Colo. filed November 13, 2025); *SEC v. AI Financial Education Foundation*, Release No. 26416 (D. Colo. filed November 13, 2025); *SEC v. AI Investment Education Foundation*, Release No. 26416 (D. Colo. filed November 13, 2025); *SEC v. Bluesky Eagle Capital Management*, Release No. 26416 (S.D.N.Y. filed November

13, 2025); *SEC v. Invesco Alpha*, Release No. 26416 (D. Colo. filed November 13, 2025); and *SEC v. Supreme Power Capital Management*, Release No. 26416 (S.D.N.Y. filed November 13, 2025).)

[9] There have been no litigated actions charging only non-scienter-based violations.

[10] See Atkins, supra n.1.

[11] See *In the Matter of Engaged Capital*, Release No. IA-6940 (January 16, 2026). The SEC censured the adviser and ordered it to both cease and desist and pay a penalty of $200,000.

[12] See *In the Matter of FamilyWealth Advisers and FamilyWealth Asset Management*, Release No. IA-6941 (January 20, 2026). The SEC ordered both firms to cease and desist, imposed censures, and levied penalties of $85,000 for FamilyWealth Advisers and $65,000 for FamilyWealth Asset Management. The SEC credited the advisers for remedial steps taken, including distributing revised advisory agreements to all clients with the request that they sign and return the agreements. The Division of Examinations assisted with the investigation into the underlying conduct.

[13] See *In the Matter of Barrington Asset Management and Gregory David Paris*, Release No. IA-6944 (February 10, 2026). Gregory David Paris, who owned a minority interest in the adviser and was its executive vice president and chief compliance officer, also settled to violations of Section 206(2) of the Advisers Act and was ordered to pay disgorgement of $78,490, interest of $31,048, and civil penalties of $40,000. A Fair Fund was established to facilitate collection of sums owed. The adviser itself was censured but was not ordered to pay a penalty.

[14] See *In the Matter of Madison Capital Funding*, Release No. IA-6948 (February 25, 2026). The SEC also found that the adviser violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder and ordered the firm to pay a penalty of $900,000. The SEC considered the remedial acts undertaken by the firm, which included voluntarily reimbursing its client funds over $5 million, including over $200,000 in interest, and enhancing its disclosures and policies relating to its loan transfer practices.

[15] See "Fiscal Year 2026 Examination Priorities," Division of Examinations, at 4–5.

[16] In FY2025, the Atkins SEC brought six non-scienter-based actions other than those involving breaches of fiduciary duty. These included actions for providing false information to the SEC (See *In the Matter of Advance Capital Management*, Release No. IC-35522 (April 7, 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)) and actions for violations of the Advisers Act Marketing Rule (See *In the Matter of Meridian Financial*, Release No. IA-6916 (September 4, 2025)) and Custody Rule (See *In the Matter of Munakata Associates*, Release No. IA6901 (August 1, 2025)).

[17] The SEC stopped short of charging the adviser for Form ADV inaccuracies, instead focusing on the inadequacy of its policies and procedures. The SEC also charged the adviser's individual owner for causing the policies and procedures violations. (See *In the Matter of Rudney Associates*, Release No. IA-6927 (November 24, 2025).) Recidivist conduct has always been an enforcement focus, and the SEC's FY2026 exam priorities note that the Division of Examinations' "assessment of the effectiveness of advisers' compliance programs is a fundamental part of the examination process." (See Examination Priorities, supra n.15, at 5.)

[18] See *In the Matter of MH Investment Management*, Release No. IC-35810 (November 21, 2025); and *In the Matter of John Michaels, CPA*, Release No. IC-35809 (November 21, 2025). As to the latter, the SEC found the auditor to have engaged in improper professional conduct and charged him with failing to comply with the auditor independence rules of both the SEC and Public Company Accounting Oversight Board (PCAOB) as well as other PCAOB rules unrelated to independence. The SEC also denied the auditor the privilege of appearing or practicing before the SEC as an accountant, with the right to request reinstatement after three years.

[19] The SEC did not bring separate charges for disclosure violations related to the inaccurate filings.

[20] For example, the highest penalties levied against advisers for non-scienter-based actions under the Atkins SEC in FY2025 were $19.5 million, $1.75 million and $1 million. (See *In the Matter of Vanguard Advisers*, Release No. IA-6912 (August 29, 2025); *In the Matter of American Portfolios Advisors*, Release No. IA-6893 (July 11, 2025); and *SEC v. Vukota Capital Management*, No. 25-cv-02821 (D. Colo. filed September 9, 2025).)

[21] For instance, the AUM of the advisers who settled to the highest payments thus far in FY2026 were $3.7 billion, $652 million and $869 million, respectively. By contrast, the same figures for the Atkins SEC in FY2025 were $300 billion, $13 billion and $900 million, respectively.

[22] The case is currently stayed pending settlement negotiations. (See *SEC v. Commonwealth Equity Services*, No. 1:19-cv-11655 (D. Mass. filed August 1, 2019). For more information on the First Circuit's decision, see our article, "First Circuit Rebuffs SEC: $93M Judgment Reversed in Latest Judicial Setback" (April 10, 2025).

[23] See *Barrington Asset Management*, supra n.13; see also Litigation Release No. 26480, "SEC Dismisses Civil Enforcement Action Against Illinois Investment Adviser and Its Minority Owner and Simultaneously Institutes Settled Administrative Proceeding" (February 10, 2026).

[24] See Litigation Release No. 26485, "Court Enters Final Judgment Against Investment Adviser and Advisory Firm for Breaches of Fiduciary Duties in Annuity Sales to Advisory Clients," (February 19, 2026). The Advisers Act Section 206(2) violation was based on the defendants' selling fixed index annuities to advisory clients without adequate disclosure of their financial incentive to recommend such products as opposed to other investment options. The jury also found for the defendants on the SEC's claims that they had violated Advisers Act Section 206(4) and Rule 206(4)-7 thereunder for failing to adopt and implement policies and procedures reasonably designed to prevent Advisers Act violations.

[25] See Press Release No. 2026-20, "SEC's Division of Enforcement Announces Updates to Enforcement Manual" (February 24, 2026).

[26] See Chair Paul Atkins, "Keynote Address at the 25th Annual A.A. Sommer, Jr. Lecture on Corporate, Securities, and Financial Law," (October 7, 2025) (discussing specific ways the current SEC can improve on and refine the Wells process, including longer time windows to submit a Wells response, earlier engagement from the staff during investigations, more disclosure of evidence, and meetings with senior enforcement leadership); and Chair Paul Atkins, "Statement on Simultaneous Commission Consideration of Settlement Offers and Related Waiver Requests" (September 26, 2025) ("restor[ing] the Commission's prior practice of permitting a settling entity to request that the

Commission simultaneously consider an offer of settlement … and any related waiver request … promotes fairness and economy of Commission resources”). See also Ryan, supra n.3 (emphasizing that the new Wells process is both “transparent and fair” because the staff is focused on “facilitating an open, informed, and thoughtful dialogue between staff and parties under investigation … before taking the significant step of recommending an enforcement action”).

[27] See, generally, Division of Enforcement, Enforcement Manual (February 24, 2026) at Section 6 (“Cooperation”). In a new subsection titled “Other Benefits of Cooperation,” the manual states, “The Division may recommend that the Commission forgo seeking civil penalties, or seek reduced civil penalties, against an entity in consideration of any self-policing, self-reporting, remediation, and cooperation by the entity” (Id. at 6-103). As it happens, the SEC in FY2026 has extended credit to a settling adviser only for remediation, and in only two of the seven non-scienter-based actions — *see* *FamilyWealth Advisers*, supra n.12 and *Rudney Associates*, supra n.17 — as compared to the seven instances in which the Atkins Commission gave credit in its 13 such actions in FY2025.

[28] See Enforcement Manual, supra n.27, at 1-1. (“The Manual is not intended to and does not constitute a rule, regulation, or statement of the Commission. It is not binding on the Commission and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal.”)

[29] In addition to what we have outlined above, Ryan noted that violations of non-scienter-based provisions are ”not necessarily” “on par with fraud,” adding that she is “confident that many violations of these provisions should not — and do not — result in enforcement cases by the Commission.” Elaborating, Ryan stated: “[T]here is a middle ground: where fraud is absent, but compliance has failed in a way that poses risks to investors, risks to the integrity of the market, or yields a benefit to the participant. It is a place that may warrant enforcement action but may also present opportunity … for both the Division and those who might be subject to an enforcement action to craft thoughtful resolutions in an appropriate case.” See Ryan, supra n.3.

[30] See *SEC v. Sripetch*, 154 F.4th 980 (9th Cir. 2025).

[31] See *SEC v. Govil*, 86 F.4th 89 (2d Cir. 2023).

[32] See Chair Paul Aktins, “Remarks at Financial Stability Oversight Council Artificial Intelligence Innovation Series Roundtable on Strategy and Governance Principles” (March 4, 2026). Atkins clarified, however, that AI will “not and cannot supplant the considered judgment of our commissioners and staff, nor can it serve as the sole basis of an SEC enforcement action.”

[33] Although the Atkins SEC has yet to bring any “AI washing” actions against asset managers, the Gensler Commission did bring such actions. See *In the Matter of Delphia (USA)*, Release No. IA-6573 (March 18, 2024); *In the Matter of Global Predictions*, Release No. 6574 (March 18, 2024); *SEC v. QZ Asset Management*, No. 4:24-cv-4153 (D.S.D. filed August 26, 2024); and *In the Matter of Rimar Capital*, Release No. IA-6745 (October 10, 2024).