

SEC Enforcement: 2025 in Review

In 2025, the U.S. Securities and Exchange Commission (“SEC”) significantly shifted its approach to enforcement. With the start of the second term of the Trump Administration and the appointment of Paul Atkins as the SEC’s Chairman, the SEC refocused its priorities through the adoption of a “back-to-basics” approach to enforcement. Under this approach, the SEC has reoriented its investigations and enforcement efforts to focus on traditional cases of securities fraud while also aiming to ensure securities markets are fair, orderly, and efficient. In addition, the SEC has made significant changes to its approach to regulating crypto assets, adopting a deregulatory approach to the sector in an effort to help facilitate the development of the crypto assets market.

“Back-to-Basics” Approach

In public statements, Chairman Atkins has repeated the theme that “it *is* a new day at the Securities and Exchange Commission.”¹ Chairman Atkins explained the SEC’s so-called “back-to-basics” approach is an effort to focus on actions to mitigate and address investor harm, including through the prioritization of traditional fraud cases over technical books-and-records and/or registration cases, noting that “[i]n the past, [there have been] examples of enforcement actions in areas, such as retention of books and records, that consumed excessive Commission resources not commensurate with any measure of investor harm.”² Consistent with that approach, the SEC announced that it will move away from regulation by enforcement³ and shift toward prioritizing the reduction of “compliance burdens and facilitat[ion of] capital formation, including by simplifying pathways for raising capital and investor access to private businesses.”⁴ Similarly, with respect to the burgeoning crypto market, the SEC is working to establish “clear rules of the road for the issuance, custody, and trading of crypto assets while continuing to discourage bad actors from violating the law.”⁵

¹ *Statement on the Spring 2025 Regulatory Agenda*, U.S. SEC & EXCH. COMM’N (Sept. 4, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-2025-regulatory-agenda-090425>; *Opening Remarks at the SEC Town Hall*, U.S. SEC & EXCH. COMM’N (May 6, 2025) (emphasis in original), <https://www.sec.gov/newsroom/speeches-statements/atkins-townhall-05062025>.

² *Testimony Before the United States House Appropriations Subcommittee on Financial Services and General Government*, U.S. SEC & EXCH. COMM’N (May 20, 2025) [hereinafter *Testimony of Paul S. Atkins*], <https://www.sec.gov/newsroom/speeches-statements/atkins-testimony-fsgg-052025>; *Keynote Address at the 25th Annual A.A. Sommer, Jr. Lecture on Corporate, Securities, and Financial Law*, U.S. SEC & EXCH. COMM’N (Oct. 7, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-100925-keynote-address-25th-annual-aa-sommer-jr-lecture-corporate-securities-financial-law>; see also *Introductory Remarks at the 2nd Annual Judge Stanley Sporkin SEC Division of Enforcement Directors Panel*, U.S. SEC & EXCH. COMM’N (Feb. 20, 2025), <https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-enforcement-directors-panel-022025> (noting that the SEC “remain[s] dedicated to [its] more traditional investor protection efforts,” notwithstanding the SEC’s other efforts to “keep pace with innovation,” particularly in relation to crypto asset regulation).

³ *Remarks at the “SEC Speaks” Conference 2025*, U.S. SEC & EXCH. COMM’N (May 19, 2025), <https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-sec-speaks-051925>.

⁴ *Statement on the Spring 2025 Regulatory Agenda*, *supra* note 1.

⁵ *Id.*

Judge Margaret Ryan, the recently appointed Director of the Division of Enforcement, confirmed her alignment with this approach in a statement issued in connection with her appointment, stating that she looked forward to joining the SEC in its work to ensure that the Enforcement Division is “true to the SEC’s mission in taking action on behalf of investors harmed by those who break the securities laws and providing an effective deterrent against fraudulent and manipulative activities in our financial markets.”⁶ In September, Judge Ryan reiterated the Enforcement Division’s focus on fraud in a statement announcing the formation of a Cross-Border Task Force to Combat Fraud. The new task force—which, according to Judge Ryan, was part of the “critical effort to enforce the federal securities laws and protect U.S. investors”—would “leverage the Division of Enforcement’s resources and expertise to combat international market manipulation and fraud.”⁷

The “back-to-basics” approach adopted by the SEC in fiscal year 2025 also appears to have informed dismissals of enforcement actions and closures of investigations and—overall—ushered in a measurable decrease in enforcement activity. In fiscal year 2025, the SEC dismissed several enforcement actions, including many involving controls and registration issues⁸ or involving investment advisors.⁹ With respect to the overall decrease in enforcement activity, Cornerstone Research observed that, based on SEC data available as of November 14, 2025, SEC enforcement actions against public companies and subsidiaries dropped by 30%.¹⁰ Only four enforcement actions were initiated against public companies and subsidiaries during the first year of the new administration, as nearly all enforcement actions initiated against public companies and subsidiaries in fiscal year 2025 (52 of 56 enforcement actions) were initiated prior to Gary Gensler’s departure from the SEC.¹¹ Further, fiscal year 2025 saw a 27% decrease in enforcement actions more broadly (i.e., not limited to public companies and/or subsidiaries) as compared to fiscal year 2024.¹² Finally, during calendar year 2025, the SEC brought no new Foreign Corrupt Practices Act (“FCPA”)

⁶ SEC Names Judge Margaret Ryan as Director of the Division of Enforcement, U.S. SEC & EXCH. COMM’N (Aug. 21, 2025), <https://www.sec.gov/newsroom/press-releases/2025-108-sec-names-judge-margaret-ryan-director-division-enforcement>.

⁷ SEC Announces Formation of Cross-Border Task Force to Combat Fraud, U.S. SEC & EXCH. COMM’N (Sept. 5, 2025), <https://www.sec.gov/newsroom/press-releases/2025-113-sec-announces-formation-cross-border-task-force-combat-fraud>.

⁸ See, e.g., Complaint, SEC v. Fife, No. 1:20-cv-05227 (N.D. Ill. Sept. 3, 2020) (alleging defendant and companies he controls violated mandatory registration provisions of federal securities laws in connection with acquisition, conversion, and sale of more than 21 billion shares of penny stock; no fraud alleged otherwise), dismissed (June 18, 2025); Complaint, SEC v. Coinbase, No. 1:23-cv-04738 (S.D.N.Y. June 6, 2023) (alleging defendant operated as an unregistered broker, exchange, and clearing agency by soliciting investors, handling customer funds, and charging transaction fees in violation of federal securities laws; no fraud alleged otherwise), dismissed (Feb. 28, 2025); Complaint, SEC v. Cumberland DRW LLC, No. 1:24-cv-09842 (N.D. Ill. Oct. 10, 2024) (alleging defendant operated as an unregistered dealer in over \$2 billion of crypto assets in violation of federal securities laws; no fraud alleged otherwise), dismissed (Mar. 27, 2025).

⁹ See, e.g., Complaint, SEC v. Silver Point Capital, L.P., No. 3:24-cv-02018 (D. Mass. Dec. 20, 2024) (alleging defendant failed to establish, implement, and enforce policies and procedures reasonably designed to prevent misuse of material nonpublic information in violation of the Investment Advisers Act of 1940; no fraud alleged otherwise), dismissed (Mar. 31, 2025).

¹⁰ CORNERSTONE RSCH., SEC ENFORCEMENT ACTIVITY: PUBLIC COMPANIES AND SUBSIDIARIES—FISCAL YEAR 2025 UPDATE 1 (Nov. 19, 2025), accessible at <https://www.cornerstone.com/insights/press-releases/sec-enforcement-actions-fy-2025/>.

¹¹ *Id.*

¹² Gerald Hodgkins, Lilia Abecassis & John Minor, SEC Focused on Fraud as Actions Markedly Declined in 2025, Law360 (Nov. 12, 2025), <https://www.law360.com/articles/2409430/sec-focused-on-fraud-as-actions-markedly-declined-in-2025>.

enforcement actions.¹³ While the Trump Administration's executive order "Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security" did not expressly apply to the SEC, the SEC's movement away from FCPA enforcement actions is consistent with that executive order.¹⁴

To facilitate the "back-to-basics" approach that has guided the SEC over the past year, Chairman Atkins announced a realignment of reporting lines in the Divisions of Enforcement and Examinations to "better reflect each Division's national programs to improve efficiency, management, and oversight of the Divisions."¹⁵ Several personnel changes also illustrated the significant shifts happening at the SEC in fiscal year 2025. New directors were installed in key divisions (including the Division of Corporation Finance, the Division of Investment Management, and the Division of Trading and Markets), a new Inspector General was named, and Judge Ryan was appointed as the new Director of Enforcement.¹⁶

The SEC's decreased enforcement activity is consistent with the Trump administration's efforts to downsize the federal workforce.¹⁷ According to the Office of Personnel Management, the SEC reported having 4,037 employees in fiscal year 2026, which represents a 4.6% decrease from the 4,232 employees reported in fiscal year 2025 and a 17.7% decrease from the 4,905 employees reported in fiscal year 2024.¹⁸ Headcount at the SEC is expected to remain at a historical low in the upcoming year: Chairman Atkins appeared before the U.S. Senate Appropriations Subcommittee in June 2025 to discuss the SEC's proposed budget, for which he requested 4,101 full-time positions in fiscal year 2026, compared to the 4,548 staffers requested in fiscal year 2025 and the approximately 4,900 who were employed in fiscal year 2024.¹⁹

¹³ SEC Enforcement Actions: FCPA Cases, U.S. SEC & EXCH. COMM'N, <https://www.sec.gov/about/divisions-offices/division-enforcement/enforcement-topics-initiatives/sec-enforcement-actions-fcpa-cases> (last visited Jan. 10, 2026).

¹⁴ Gaspard Le Dem, SEC's FCPA Chief, Top Deputy to Retire, GLOB. INVESTIGATIONS REV. (Apr. 1, 2025), <https://globalinvestigationsreview.com/just-anti-corruption/article/secs-fcpa-chief-top-deputy-retire>. But see SEC Enforcement Actions: FCPA Cases, *supra* note 13 (stating that "Enforcement of the Foreign Corrupt Practices Act (FCPA) continues to be a high priority area for the SEC").

¹⁵ Testimony of Paul S. Atkins, *supra* note 2.

¹⁶ James Moloney Named Director of Division of Corporation Finance, U.S. SEC & EXCH. COMM'N (Sept. 10, 2025), <https://www.sec.gov/newsroom/press-releases/2025-115-james-moloney-named-director-division-corporation-finance>; Brian Daly Named Director of Division of Investment Management, U.S. SEC & EXCH. COMM'N (June 13, 2025), <https://www.sec.gov/newsroom/press-releases/2025-88-brian-daly-named-director-division-investment-management>; SEC Names Jamie Selway as Director of Trading and Markets, U.S. SEC & EXCH. COMM'N (June 13, 2025), <https://www.sec.gov/newsroom/press-releases/2025-87-sec-names-jamie-selway-director-trading-markets>; Kevin Muhlendorf Named SEC Inspector General, U.S. SEC & EXCH. COMM'N (June 23, 2025), <https://www.sec.gov/newsroom/press-releases/2025-92-kevin-muhlendorf-named-sec-inspector-general>; SEC Names Judge Margaret Ryan as Director of the Division of Enforcement, *supra* note 6.

¹⁷ See Chris Prentice & Douglas Gillison, US SEC to See Exodus as Hundreds Take Trump's Buyout Offer, Sources Say, REUTERS (Mar. 21, 2025), <https://www.reuters.com/world/us/us-sec-see-exodus-hundreds-take-trumps-buyout-offers-sources-say-2025-03-21/>.

¹⁸ U.S. OFFICE OF PERSONNEL MANAGEMENT, Workforce Size & Composition, Federal Workforce Data, <https://data.opm.gov/explore-data/analytics/workforce-size-and-composition>; see also Trump Workforce Cuts Table, N.Y. TIMES (Jan. 9, 2026), <https://www.nytimes.com/interactive/2026/01/09/upshot/trump-workforce-cuts-table.html> (denoting a 4,877 employee headcount in November 2024 and 4,037 employees at the same time in 2025).

¹⁹ SEC, FISCAL YEAR 2026: CONGRESSIONAL BUDGET JUSTIFICATION ANNUAL PERFORMANCE PLAN 2 (2025); Jessica Corso, SEC Seeks to Cut Enforcement Staff to 2010 Levels, LAW360 (June 5, 2025), <https://www.law360.com/articles/2349239/sec-seeks-to-cut-enforcement-staff-to-2010-levels>.

Crypto Developments

Another notable aspect of the SEC's work in fiscal year 2025 has been the SEC's revised approach to crypto asset regulation. Chairman Atkins explained in remarks at SEC Speaks on May 19, 2025, that the SEC should embrace and champion innovation, rather than fear it.²⁰ Consistent with these comments on the SEC's approach to crypto markets, there have been several developments in the area of crypto asset regulation at the SEC during the first year of President Trump's second term, which has been broadly marked by a pro-innovation and deregulatory approach across federal agencies.²¹ Through a series of executive orders, the Trump Administration has—among other things—codified a national strategy to foster blockchain growth and limit federal regulatory overreach (EO 14178), create a Strategic Bitcoin Reserve and a Flexible Digital Asset Stockpile (EO 14233), and expand 401(k) investment options by allowing access to alternative assets (EO 14330).²² These executive orders directed agencies, including the SEC, to identify affected regulations, guidance documents, and orders and make regulatory proposals that advance the policies outlined in the relevant executive orders (EO 14178), and otherwise carry out the policy objectives of the orders (EO 14233, EO 14330). President Trump's orders have not only signaled the federal government's willingness to embrace crypto assets as strategic economic tools, but also ushered in policy changes at agencies, including at the SEC, to align with President Trump's orders and to establish clear, technology-neutral rules. These executive orders and subsequent agency changes, reflect President Trump's pledge to "make America the crypto capital of the world."²³

Meanwhile, as the SEC pivoted toward regulatory clarity and reduced enforcement across the board, the shift in the SEC's focus was particularly evident in the area of crypto asset regulation. For instance, in pursuit of increased clarity in its regulations, the SEC established a Crypto Task Force, which is now led by Commissioner Hester Peirce. The Crypto Task Force is dedicated to developing a comprehensive regulatory framework for crypto assets. A press release regarding the launch of the Task Force notes that, going forward, the SEC will endeavor to draw clear regulatory lines,²⁴ creating policy that facilitates the registration and disclosure of market participants and ensures that enforcement resources are "deploy[ed] . . . judiciously."²⁵ The SEC also replaced its Crypto Assets and Cyber Unit with a newly announced Cyber and Emerging Technologies Unit, which Chairman Atkins stated would complement the work of the Crypto Task Force and support the SEC in, again, ensuring that enforcement resources are "deploy[ed] . . . judiciously."²⁶

²⁰ *Prepared Remarks Before SEC Speaks*, U.S. SEC & EXCH. COMM'N (May 19, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-prepared-remarks-sec-speaks-051925>.

²¹ Cf. *Statement on the Spring 2025 Regulatory Agenda*, *supra* note 1.

²² *Trump's First 100 Days of Crypto Asset Regulation*, CAHILL GORDON & REINDEL LLP (May 2, 2025), accessible at <https://www.cahill.com/publications/client-alerts/2025-05-02-trump-first-100-days-of-crypto-asset-regulation>; Exec. Order No. 14330, 90 FR 38921 (Aug. 7, 2025).

²³ *Fact Sheet: President Donald J. Trump Establishes the Strategic Bitcoin Reserve and U.S. Digital Asset Stockpile*, WHITE HOUSE (Mar. 6, 2025), <https://www.whitehouse.gov/fact-sheets/2025/03/fact-sheet-president-donald-j-trump-establishes-the-strategic-bitcoin-reserve-and-u-s-digital-asset-stockpile/>.

²⁴ *The SEC's Approach to Digital Assets: Inside "Project Crypto"*, U.S. SEC & EXCH. COMM'N (Nov. 12, 2025) [hereinafter *Inside "Project Crypto"*], <https://www.sec.gov/newsroom/speeches-statements/atkins-111225-secs-approach-digital-assets-inside-project-crypto> ("[W]e are going to do what regulatory agencies are supposed to do. We are going to draw clear lines and explain them in clear terms.").

²⁵ *SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force*, U.S. SEC & EXCH. COMM'N (Jan. 21, 2025), <https://www.sec.gov/newsroom/press-releases/2025-30>.

²⁶ *SEC Announces Cyber and Emerging Technologies Unit to Protect Retail Investors*, U.S. SEC & EXCH. COMM'N (Feb. 20, 2025), <https://www.sec.gov/newsroom/press-releases/2025-42>.

In remarks made at SEC Speaks, Commissioner Peirce stated that while crypto is not the most critical issue for the SEC, crypto remains important.²⁷ Commissioner Peirce acknowledged that the SEC's historical approach to crypto has "evaded sound regulatory practice" and that crypto's separation from the traditional finance markets would soon change as traditional financial intermediaries develop and engage with crypto assets and market participants experiment with the tokenization of traditional securities.²⁸ Commissioner Atkins has noted that the SEC's approach to crypto will not exist in a vacuum, as the SEC will work "closely with [its] counterparts at the CFTC, with the banking regulators, and with Congress to ensure that non-security crypto assets have an appropriate regulatory regime."²⁹

Moreover, in remarks made at the Federal Reserve Bank of Philadelphia on November 12, 2025, Chairman Atkins outlined his view of the next steps in the "journey" toward establishing a regulatory framework that matches the energy of American innovators and that builds on the Crypto Task Force's "pioneering work," which Chairman Atkins described as laying out a framework for the "coherent, transparent treatment of crypto assets under the federal securities laws [that is] grounded in economic reality rather than in slogans or fear."³⁰ Chairman Atkins described these next steps as being "about basic fairness and common sense as it relates to the application of the federal securities laws to crypto assets and related transactions," explicitly stating that he anticipates that the SEC will consider establishing a "token taxonomy" rooted in *Howey's* investment contract securities analysis.³¹ As to the practical impact of the token taxonomy, Chairman Atkins, who specified that his remarks did not necessarily represent the views of his fellow Commissioners or the Commission as a whole, stated that a revised framework of crypto regulation that recognizes that the securities laws were "not designed as a universal charter to regulate every novel form of value, digital or otherwise" would not constitute "a promise of lax enforcement at the SEC," emphasizing that "[f]raud is fraud."³² Rather, according to Chairman Atkins, the framework would be designed to set forth clear rules that are both firm and fair.³³

In line with the new administration's approach to cryptocurrency, the SEC dismissed a civil action against Coinbase and later closed or paused several other investigations and enforcement actions involving other major crypto-related entities.³⁴

²⁷ *New Paradigm: Remarks at SEC Speaks*, U.S. SEC & EXCH. COMM'N (May 19, 2025), <https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-sec-speaks-051925-new-paradigm-remarks-sec-speaks>; see also *Opening Remarks at the SEC Town Hall*, *supra* note 1 (Chairman Atkins stating that "[i]t should be no surprise that high on th[e] list [of priorities] is a sensible approach toward crypto").

²⁸ *Id.*

²⁹ *Inside "Project Crypto,"* *supra* note 24.

³⁰ *Id.*

³¹ *Id.*

³² *Inside "Project Crypto,"* *supra* note 24.

³³ *Id.*

³⁴ *SEC Announces Dismissal of Civil Enforcement Action Against Coinbase*, U.S. SEC & EXCH. COMM'N (Feb. 27, 2025), <https://www.sec.gov/newsroom/press-releases/2025-47>; *SEC Announces Dismissal of Civil Enforcement Action Against Consensys Software, Inc.*, U.S. SEC & EXCH. COMM'N (Mar. 27, 2025), <https://www.sec.gov/enforcement-litigation/litigation-releases/IR-26277>; Press Release, Crypto.com, SEC Closes Crypto.com Investigation with No Action (Mar. 27, 2025), <https://crypto.com/us/company-news/sec-closes-crypto-com-investigation-with-no-action>; *Case Closed: Clearing the Way for Tokenization*, Ondo Finance (Dec. 9, 2025), <https://ondo.finance/blog/tokenized-securities-step-forward>; Press Release, Robinhood, SEC Closes Investigation Into Robinhood Crypto with No Action (Feb. 24, 2025), <https://robinhood.com/us/en/newsroom/sec-closes-investigation-into-robinhood-crypto-with-no-action/>.

In connection with these broader developments, the SEC's Division of Corporation Finance and the SEC's Division of Trading and Markets (collectively, the "SEC Staff") issued statements articulating its current interpretation of the law concerning matters relating to crypto regulation:

- **Proof-of-Work Mining Activities.** On March 20, 2025, the SEC Staff issued a statement addressing the mining of crypto assets on proof-of-work networks.³⁵ The SEC Staff explained its view that the mining of such crypto assets, when undertaken in connection with certain types of mining (i.e., self (or solo) mining or mining pools), are not premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others. Accordingly, in the SEC Staff's view, these mining activities do not involve the offer and sale of securities within the meaning of the Securities Act or the Exchange Act and thus are not subject to SEC oversight requiring registration with the SEC.³⁶
- **Protocol Staking.** On May 29, 2025, the SEC Staff issued a statement regarding "Certain Protocol Staking Activities," in which the SEC Staff set forth its position that routine, protocol-level staking of native tokens on public proof-of-stake blockchain networks similarly does not constitute an offer or sale of securities subject to SEC oversight.³⁷ Specifically, this guidance addressed three types of staking: self (or solo) staking; self-custodial staking directly with a third party; and "custodial staking," in which a third party takes custody of the owners' crypto assets and facilitates the staking of such assets on behalf of the owners. Pursuant to this statement on the SEC Staff's interpretation of the law, because protocol staking does not constitute securities offerings when properly structured, staking service providers can support proof-of-stake security without needing to register their services as a security offering. As noted in Cahill's prior memorandum on the SEC's revised staking guidance, the common-sense clarification of the SEC Staff's statement represents a departure from the prior administration's enforcement approach and should provide comfort to businesses seeking to provide a range of staking services.³⁸
- **Liquid Staking.** On August 5, 2025, the SEC Staff issued a statement regarding "Certain Liquid Staking Activities," in which the SEC Staff set forth its position on another type of staking: liquid staking. The SEC Staff explained that liquid staking, a type of protocol staking whereby owners of certain crypto assets deposit their assets with a third-party protocol staking service provider and in return receive newly minted crypto assets, also does not involve the offer and sale of securities subject to SEC oversight.³⁹ The SEC Staff's conclusion that this type of staking was not subject to SEC oversight was based on its observation that such staking was not premised on the entrepreneurial or managerial efforts of staking providers.

³⁵ *Statement on Certain Proof-of-Work Mining Activities*, U.S. SEC & EXCH. COMM'N (Mar. 20, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-certain-proof-work-mining-activities-032025>. The SEC Staff's Statement specifically pertained to the mining of crypto assets that are intrinsically linked to the programmatic functioning of a public, permissionless network, and that are used to participate in (and/or are earned for participating in) such network's consensus mechanism or are otherwise used to maintain (and/or are earned for maintaining) the technological operation and security of such network. *Id.*

³⁶ *Id.*

³⁷ *Statement on Certain Protocol Staking Activities*, U.S. SEC & EXCH. COMM'N (May 29, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities-052925>.

³⁸ See also *Practical Implications of the SEC Staff's New Staking Guidance*, CAHILL GORDON & REINDEL LLP (June 3, 2025), accessible at <https://www.cahill.com/publications/client-alerts/2025-06-03-practical-implications-of-the-sec-staff-new-staking-guidance>.

³⁹ *Statement on Certain Liquid Staking Activities*, U.S. SEC & EXCH. COMM'N (Aug. 5, 2025), <https://www.sec.gov/newsroom/speeches-statements/corfin-certain-liquid-staking-activities-080525>.

- **Custody of Crypto Asset Securities.** On December 17, 2025, the SEC Staff issued a statement regarding the application of paragraph (b)(1) of Rule 15c3-3, which requires a broker-dealer to promptly obtain and thereafter maintain physical possession or control of all fully paid and excess margin securities it carries for the account of customers.⁴⁰ In its statement, the SEC Staff determined that it would not object to a broker-dealer deeming itself to have “physical possession” of a crypto asset carried for the account of customers when certain measures are followed. Those measures include (i) the maintenance of full access to the crypto security and the capability to transfer it on the associated distributed ledger technology, (ii) the establishment and maintenance of policies and procedures applicable to the assessment of the distributed ledger technology, and (iii) the protection of private keys. The SEC Staff’s interpretation of Rule 15c3-3 was notable insofar as it contemplated the extent to which a broker-dealer could maintain possession of a crypto asset for purposes of Rule 15c3-3(b), whereas prior guidance focused on control.

In all, the SEC Staff’s statements interpreting the law on matters regarding crypto asset regulation fall in line with the themes made evident by the statements of senior SEC leaders on the SEC’s priorities and enforcement approach. Moreover, the SEC Staff’s guidance further reveals interpretations of relevant law that may pave the way for the development of a more robust crypto securities market going forward.

Disgorgement

Beyond the overall decrease in enforcement and prioritization of cases involving fraud, the amount of disgorgement and prejudgment interest collected during fiscal year 2025 was unprecedentedly low. According to research by Cornerstone, the total amount of disgorgement and prejudgment interest in fiscal year 2025 was the lowest in any fiscal year and more than \$300 million less than the next-lowest total, which was recorded in fiscal year 2012.⁴¹

The significant decrease in disgorgement collected may, to some degree, be informed by a deepening split among federal courts of appeals on the question of whether the SEC must make a showing of pecuniary harm to seek disgorgement. Such uncertainty, which was outlined in our prior article regarding the deepening split,⁴² may soon be resolved, however, as the Supreme Court recently granted a petition for certiorari to resolve that very question.

In *SEC v. Sripetch*, a case decided by the Ninth Circuit in September 2025, a panel from the appeals court held that an award of disgorgement in a civil enforcement action under 15 U.S.C. § 78u(d)(5) and (d)(7) does not require a showing that investors experienced pecuniary harm. The Ninth Circuit’s decision, which aligned with the position the First Circuit took in 2024 in *SEC v. Navellier & Associates, Inc.*, deepened a pre-existing circuit split with the Second Circuit following its decision in *SEC v. Govil* that a showing of pecuniary harm was required to seek disgorgement. Notably, the Ninth Circuit’s decision in *Sripetch* created opposing rules in the two circuits where the SEC brings most of its litigated enforcement actions (the Second and Ninth Circuits).

⁴⁰ *Statement on the Custody of Crypto Asset Securities by Broker-Dealers*, U.S. SEC & EXCH. COMM’N (Dec. 17, 2025), <https://www.sec.gov/newsroom/speeches-statements/trading-markets-121725-statement-custody-crypto-asset-securities-broker-dealers>; see also 17 CFR 240.15c3-3(b)(1).

⁴¹ CORNERSTONE RSCH., *supra* note 10, at 7.

⁴² Kiersten Fletcher, Adam Mintz & Mary Hornak, *How 9th Circ. Ruling Deepens SEC Disgorgement Circuit Split*, Law360 (Nov. 4, 2025), <https://www.law360.com/articles/2405819/how-9th-circ-ruling-deepens-sec-disgorgement-circuit-split>.

Disgorgement is a profit-based remedy that arises under the law of restitution and unjust enrichment and reflects the principle that “[a] person is not permitted to profit by his own wrong.”⁴³ Generally, it is a form of restitution that is measured by a defendant’s gain and that requires a defendant to give up those gains. Until the Second Circuit decided otherwise in *Govil* in 2023, the SEC and courts proceeded on the assumption that disgorgement was the SEC’s analogue to forfeiture in the criminal context. And, because disgorgement was designed to prevent unjust enrichment, the SEC and courts took the position that a wrongdoer could be forced to disgorge all ill-gotten gains, regardless of any victim harm.⁴⁴ A year later, a panel from the First Circuit disagreed with the Second Circuit and affirmed an award of disgorgement absent a showing of pecuniary harm, reasoning that “[d]isgorgement is a ‘profit-based measure of unjust enrichment,’ which reflects the foundational principle that ‘it would be inequitable that [a wrongdoer] should make a profit out of [their] own wrong,’” and emphasizing that disgorgement is “tethered to a wrongdoer’s net unlawful profits,” rather than to any harm suffered by victims.⁴⁵ The Ninth Circuit’s decision in *Sripetch*, which aligned with the First Circuit in holding that a showing of pecuniary harm was not necessary, thus deepened the circuit split that had been developing.

Beyond this deepening split on the necessity of a showing of pecuniary harm, the Eleventh Circuit recently weighed in on the issue of disgorgement in *SEC v. Spartan Securities Group, Ltd.* Therein, a panel from the appeals court held that ordering disgorgement to the U.S. Treasury under 15 U.S.C. § 78u(d)(3)(A)(ii) and § 78u(d)(7) is “for the benefit of investors” under 15 U.S.C. § 78u(d)(5) if “the wrongdoer’s profits cannot practically be disbursed to the victims.”⁴⁶ The court reasoned that the statutory text of 15 U.S.C. § 78u(d)(3)(A)(ii) and § 78u(d)(7) allots the SEC “unconditional” power to seek disgorgement, without mention of the investor-benefit limitation otherwise present in 15 U.S.C. § 78u(d)(5), signaling “deliberate” legislative intent.⁴⁷

Given the significance that the pecuniary harm requirement has on the remedies the SEC can recover in civil enforcement cases (and the importance of the circuits involved in the split), the Supreme Court’s future ruling on the necessity of showing such harm—an issue about which certiorari has been granted—will almost certainly inform the remedies the SEC seeks, as well as its willingness to resolve the financial components of its claims.

Looking Ahead

The “back-to-basics” approach Chairman Atkins introduced to the SEC in fiscal year 2025 is likely to persist, with the SEC continuing to allocate its enforcement resources to core areas relevant to retail investor protection and to pursue further efforts to create a regulatory regime that promotes the development of cryptocurrency while providing traditional protections against securities fraud.

The SEC has already obtained a consent order and filed several complaints in January 2026 that reflect traditional civil enforcement priorities, consistent with the agency’s recently articulated “back-to-basics” approach. On January

⁴³ *SEC v. Sripetch*, 154 F.4th 980, 982 (9th Cir. 2025), *cert. granted*, 2026 WL 73091 (U.S. Jan. 9, 2026).

⁴⁴ Though *Govil* did not tackle head-on the distinction between unjust enrichment and restitution, the Second Circuit reasoned that any award of disgorgement must comport with traditional equitable principles, including that it be “awarded for victims.” *SEC v. Govil*, 86 F.4th 89, 98 (2d Cir. 2023). *But cf. id.* at 107-08 (“Because disgorgement aims to divest profits, not to ‘compensate victims,’ it does not matter whether the property lacks value in the victim’s hands.” (internal citation omitted)).

⁴⁵ *SEC v. Navellier & Assocs.*, 108 F.4th 19, 41 (1st Cir. 2024), *cert. denied*, 145 S. Ct. 2777 (2025), *reh’g denied*, 146 S. Ct. 61 (2025).

⁴⁶ See *SEC v. Spartan Securities Group, Ltd.*, 2026 WL 125790, at *24–26 & n.14 (11th Cir. 2026) (citing *Liu v. SEC*, 591 U.S. 71, 88-89 (2020)).

⁴⁷ See *id.* at *24.

13, 2026, the SEC obtained a final consent judgment in the agency's enforcement action against defendant Matthew Motil, enjoining him from future securities violations, and ordering disgorgement of nearly \$3 million. Motil was accused of defrauding investors by selling promissory notes that were not properly secured, and subsequently using investor money to make Ponzi payments to prior investors and to pay personal expenses.⁴⁸ The same week, the SEC also filed multiple complaints focusing on traditional fraud and insider trading cases, including *SEC v. Rai* (in which the SEC alleged that an executive misappropriated over \$10 million from investors and solicited the investments through several false and misleading statements about how the funds would be used) and *SEC v. Wang* (in which the SEC alleged that Wang and his company Precision Clinical Consulting, LLC engaged in insider trading by trading when Wang had advance knowledge of clinical trial data).⁴⁹ These actions typify the SEC's objective of allocating enforcement resources to core areas concerning investor protection.

Finally, the Supreme Court's upcoming decision on whether a showing of pecuniary harm is required to seek disgorgement may inform the scope of disgorgement and prejudgment interest collected in enforcement actions in years to come.

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If you have any questions about the issues addressed in this alert, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Kiersten A. Fletcher (partner) at 212.701.3365 or kfletcher@cahill.com; Adam S. Mintz (counsel) at 212.701.3981 or amintz@cahill.com; Mary Hornak (associate) at 212.701.3486 or mhornak@cahill.com; Arianna Chen (law clerk) at 212.701.3413 or achen@cahill.com; Sophie Lovering (law clerk) at 212.701.3423 or slovering@cahill.com; Grace Whitehouse (law clerk) at 212.701.3459 or gwhitehouse@cahill.com; or email publications@cahill.com.

⁴⁸ Complaint, *SEC v. Motil*, No. 23-cv-1853 (N.D. Ohio Sept. 25, 2023).

⁴⁹ See, e.g., Complaint, *SEC v. Rai*, No. 1:26-cv-10159 (D. Mass. Jan. 15, 2026); Complaint, *SEC v. Wang*, No. 26-cv-10140 (D. Mass. Jan. 14, 2026).