

# SEC Enforcement Is Returning to the Regular Order

The regulator's enforcement approach is changing under new leadership.

By **Peter Shea** | June 10, 2025

Recent actions and statements indicate the Securities and Exchange Commission is returning to a more regular enforcement program – one that's more consistent with historical standards.

Paul Atkins, sworn in as SEC chair on April 21, promoted transparency, consistency and the use of cost/benefit analysis in the SEC's operations when he was a commissioner from 2002 to 2008.

These principles will apparently guide the new SEC enforcement program, and Atkins has committed allies in commissioners Mark Uyeda and Hester Peirce, who both have long and cooperative working histories with him and have laid the groundwork for what comes next.

The SEC's new enforcement approach will focus on:

- Greater clarity of SEC positions on securities laws and rules before engaging in enforcement activity.
- Consistent application of the securities laws and regulations as viewed across the history of the SEC.
- Analysis of the costs and benefits of any investigation, given the Enforcement Division's staff has been reduced by about 15% since January 2025.

There is already some evidence of this change in approach in recent SEC actions.



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Since the switch of administrations, the SEC has dismissed pending enforcement actions in crypto asset cases and so-called "off-channel communications" recordkeeping violation cases. To the extent some of these cases or investigations persist, the SEC is reviewing them.

Those retreats illustrate a reversion to the SEC practice of issuing transparent guidance to industry participants before it can engage in enforcement actions.

In the crypto cases, under the prior administration, many industry participants sought SEC guidance to develop a regulatory framework for novel crypto assets under the federal securities laws, only for the SEC to begin enforcement actions against them.

In the off-channel communications cases, the SEC offered no guidance on how the SEC recordkeeping rules should be applied to new forms of electronic communications before investigating and charging broker-dealers and investment advisors with books and record violations where there were no allegations of fraud.

While the SEC's whistle-blower program and the Division of Examinations will continue to source enforcement case referrals, the use of examinations as a feeder for enforcement investigations may now be limited.

### **Enforcement Isn't 'Creative'**

Commissioner Peirce has historically decried instances where exams have become enforcement referrals, where the securities industry would have been better served by SEC guidance.

Looking ahead, this posture seems likely to limit enforcement referrals to those cases involving fraud or breaches of fiduciary duties that are harmful to investors.

Thus, there is an expectation that certain issues raised in SEC exams will more often remain in the exam process rather than morph into enforcement actions.

Division of Enforcement acting director Samuel Waldon has stated that "creativity" is not where enforcement "wants to be."

That sentiment coincides with a recent move toward greater SEC centralization of enforcement decision-making.

New deputy director positions have been created to oversee the SEC's local regional offices. Thus, regional office actions are now subject to closer home office oversight.

Further, enforcement staff no longer can issue formal orders of investigation granting federal subpoena authority. Now, all formal orders must be approved by the full commission.

These moves hopefully will result in more consistent and considered application of the federal securities laws in enforcement actions.

### **A Focus on Investor Harm**

Looking forward, the SEC's enforcement program should focus on consistent and well-considered concepts of securities fraud. An emphasis on cases involving retail investor harm should also be a core focus.

For instance, broad enforcement sweeps of the securities industry will be those that will provide the greatest benefit to retail investors for minimal costs of reducing fraudulent industry practices.

Under Chair Jay Clayton, enforcement conducted a sweep of mutual fund share class abuses where brokers were investing investors' assets in higher fee and load share classes when they were eligible for cheaper share classes.

Under Chair Atkins, enforcement may similarly engage in an industry sweep for undisclosed fees and expenses imposed on fund shareholders.

Fees and expenses fall squarely within the statutes the SEC enforces and do not rely on new rules nor on novel theories of liability for an unprepared industry.

Finally, industry gatekeepers – including fund directors – will remain very important to the enforcement program.

Gatekeeper cases should focus on fraud or negligence. Board directors fall into the gatekeeper category.

The SEC has had difficulty bringing aiding-and-abetting liability claims against gatekeepers in the courts.

Under a cost/benefit analysis, enforcement would bring those clear cases where the gatekeeper is definitively engaged in an act, or a disregard of duty, that ends up causing a violation or investor harm.

For example, fund director aiding-and-abetting liability ought not to apply where the director is deceived by the primary violator, but it would apply if the director were actually aware of the deception and took no further action.

Registered funds and independent directors have had to adapt in recent years to an enforcement approach that relied on "regulation by enforcement" preferences of a commission unwilling to issue industry guidance or rules based on clear principles.

That is not the fault of the SEC's professional staff but a failing of prior commissioners.

The SEC's enforcement program under the new chair should see a return to the program's historical operating principles, based on transparency, consistent application of federal securities laws and regulations, and an eye to allocating scarce enforcement resources to cases that will have the greatest impact for enhancing good industry conduct and reinforcing fiduciary duties.

Thus, the current enforcement program is turning away from regulation by enforcement and returning to regular order.

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