

The image features a teal square in the top left corner containing the text "K&L GATES" in white. The background of the slide is a dark blue gradient with a stylized financial chart. The chart includes a series of teal candlesticks, a blue line graph with glowing points, and a series of purple rectangular blocks that resemble a bar chart.

K&L GATES

Asset Management and Investment Funds Fall Conference

WELCOME REMARKS



Regulatory Roundup for Funds and Investment Advisers

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ICI Recommendations for Investment Company Act Modernization

- The Investment Company Act of 1940 (1940 Act) regulatory framework has not been comprehensively reviewed in more than 30 years
- Investment Company Institute (ICI) recommendations reflect two principles:
 - The core 1940 Act framework remains fundamentally sound
 - Any proposed changes must advance the interests of individual investors
- Themes
 - Fostering exchange traded fund (ETF) innovation
 - Expanding retail investor access to private markets
 - Strengthening closed-end funds
 - Eliminating unnecessary regulatory costs and burdens
 - Better leveraging the expertise and independence of fund directors

Status of Recommendations

- Certain recommendations have already been acted upon
 - The US Securities and Exchange Commission (SEC) issued a notice with respect to an application permitting a new or existing fund to offer both mutual fund and ETF share classes
 - SEC staff dropped a position limiting retail closed-end funds to investing 15% of their net assets in private funds
- Other recommendations may be acted upon soon
 - Exchanges proposed rules to eliminate the annual shareholder meeting requirement for new listed closed-end funds
 - Amendments to the rule permitting cross-trading are included on Spring 2025 Reg Flex agenda

The SEC's Spring 2025 “Reg Flex” Agenda

- Pursuant to the Regulatory Flexibility Act of 1980, published semiannually by the Office of Information and Regulatory Affairs, a division within the Office of Management and Budget, under the Executive Office of the President
- Includes items in three stages: Prerule Stage, Proposed Rule Stage, Final Rule Stage
- Items on the agenda represent the SEC's “renewed focus on supporting innovation, capital formation, market efficiency, and investor protection”
 - Themes of deregulation; facilitation of crypto investing
- Each item expected to be promulgated by 1 April 2026, but it is possible, if not likely, that rulemaking would occur after this date

Rulemakings Affecting Investment Companies and Advisers

- Amendments to Form N-PORT (Proposed Rule)
 - To address identified disclosure burdens
 - SEC commissioners have previously noted commenter concerns; 2024 amendments subject to litigation; effective/compliance dates delayed
- Amendments to Rule 17a-7 Under the Investment Company Act (Proposed Rule)
 - To modernize the conditions for, and expand the availability of, Section 17(a) exemption allowing certain purchase or sale transactions between an investment company and certain affiliated persons
- Customer Identification Programs for Registered Investment Advisers and Exempt Reporting Advisers (Final Rule)
 - Requiring certain investment advisers to implement “reasonable procedures” to verify the identifies of their customers

Rulemakings Affecting Investment Companies and Advisers (cont'd)

- Amendments to the Custody Rules (Proposed Rule)
 - Amendments and/or new rules under the 1940 Act and the Investment Advisers Act of 1940
 - To improve and modernize the regulations around the custody of advisory client and fund assets
 - Including to address, in each case, crypto assets
- Transfer Agents (Proposed Rule)
 - To modernize the existing regulatory regime for transfer agents
 - Including rules relating to crypto assets and the use of distributed ledger technology by transfer agents
- Crypto Assets (Proposed Rule)
 - To help clarify the regulatory framework for crypto assets and provide greater certainty to the market
 - Potentially to include certain exemptions and safe harbors
- Crypto Market Structure Amendments (Proposed Rule)
 - To account for the trading of crypto assets on alternative trading systems and national securities exchanges

Rulemakings Affecting Investment Companies and Advisers (cont'd)

- Other actions potentially facilitating capital formation and reducing compliance burdens
 - Asset-backed securities registration and disclosure enhancements
 - Increasing availability of Rule 144 safe harbor
 - Expanding accommodations for emerging growth companies
 - Modernizing the shelf registration process
 - Expanding exempt offerings for private companies
 - Rationalizing disclosure practices for public companies
 - Revising the “small entity” definition
 - Dealer definition clarifications
 - Modernizing shareholder proposal rules
- Items removed from the Fall 2024 Reg Flex Agenda
 - Safeguarding Advisory Client Assets
 - Fund Fee Disclosure and Reform
 - Use of Predictive Data Analytics
 - Exchange-Traded Products
 - Enhanced ESG Disclosures
 - Cybersecurity Risk Management
 - Outsourcing

Names Rule



Names Rule Amendments

- Initial cause for optimism:
 - Regulatory freeze—10:1 rule rescissions
 - 31 March letter from House Financial Services Committee Republicans
 - ICI and other trades pushed hard against, citing extensive costs
- But... It's likely to be a thing. 😞
- At least it's been extended—there's hope!
 - Fund groups with assets > US\$1 billion: 11 June 2026
 - Fund groups with assets < US\$1 billion: 11 December 2026
 - BUT only first on-cycle update! (e.g., a fund with 31 December FYE and 1 May updates will have until the 1 May **2027** update)

Current Issues

- Amendment issues not (yet) coming up in SEC disclosure review
- Feb FAQs
- Funds still wrestling with:
 - International / global
 - Value / growth
 - Antithetical investments
 - Multiple elements
- Watch out for:
 - Cure requirement (90 days from the date of “departure”)
 - Compliance measurement

Cross Trading

- 2a-5 broke 17a-7
 - The definition of “readily available” in 2a-5 tied the concept to Level I securities
 - Adopting release extended that to 17a-7
- But fixing 17a-7 is on the SEC agenda!
 - Trade associations advocating for fixing this
 - Two main proposals:
 - Allow Level I and II and vendor prices
 - Same as the above, but allow EVERYTHING
 - Other requests: extend application to private funds!
 - Movement on this possible in the near term

Regulation S-P

Overview

- On 16 May 2024, the SEC adopted amendments to Regulation S-P which impose significant obligations on “covered institutions” to safeguard customer information.
- The amendments are intended to address the expanded use of technology and corresponding risks that have emerged since 2000, the year of the original adoption of Regulation S-P.
- Compliance dates for the amendments:
 - Large entities: **3 December 2025**
 - All other covered institutions: **3 June 2026**

New Protections and Obligations

- **Broader Definition of Customer Information**
 - Customer information includes nonpublic personal information about the covered institution's own customers AND nonpublic personal information received:
 - From a financial institution about its customers; or
 - On behalf of a financial institution.
- **Adoption of Incident Response Program**
 - Brokers, dealers, investment companies, registered investment advisers, funding portals, and transfer agents registered with the SEC or another appropriate regulatory agency (covered institution) must develop, implement, and maintain written policies and procedures to detect, respond to, and recover from unauthorized access to customer information.
- **Notification Requirements**
 - Covered institutions must notify each individual whose "sensitive customer information" was, or was reasonably likely to have been, accessed or used without authorization, unless the covered institution has determined, after a reasonable investigation, that sensitive customer information has not been, and is not reasonably likely to be, used in a manner that would result in substantial harm or inconvenience.
 - "Sensitive customer information" refers to any component of customer information alone or in conjunction with any other information, the compromise of which could create a reasonably likely risk of substantial harm or inconvenience to an individual identified with the information.

New Protections and Obligations (Cont'd)

- **Service Provider Oversight**

- Covered institutions must establish, maintain, and enforce written policies and procedures reasonably designed to require oversight of “service providers”
 - “Any person or entity that receives, maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to a covered institution”
 - Intentionally broad definition; requirements might affect arrangements with a broad range of entities, including potentially email providers, customer relationship management systems, cloud applications, and other technology vendors
- Policies and procedures must ensure service providers take appropriate measures to:
 - Protect against unauthorized access to or use of customer information, and
 - Provide notification to the covered institution no later than 72 hours after becoming aware that a breach in security has occurred
- Covered institutions are **not** required to enter into written contracts with their service providers to take certain appropriate measures but are ultimately responsible for the customer information in their possession

- **Recordkeeping and Annual Privacy Notice Requirements**

Obligations When a Breach Has Occurred

- **Service Provider**
 - Provide notification to the covered institution **not later than 72 hours** after becoming aware that a breach in security has occurred resulting in unauthorized access to a customer information system maintained by the service provider
 - 72-hour notification deadline aligns with other federal, state, and international regulatory deadlines governing notification in the event of a cyber incident
- **Covered institution**
 - Provide notification to individuals whose “sensitive customer information” was, or is reasonably likely to have been, accessed or used without authorization as soon as practicable, but **not later than 30 days** after the covered institution becomes aware that unauthorized access to or use of customer information has, or is reasonably likely to have, occurred
 - Rebut presumption of notification after conducting a reasonable investigation of the facts and circumstances of the incident and determining no substantial harm or inconvenience would result

Covered Institution Considerations

- Review existing policies and procedures to identify gaps that will need to be addressed prior to the compliance date of the amendments.
- Identify and evaluate each service provider that receives, maintains, processes, or is otherwise permitted access to customer information through its services to the covered institution.
- Review contracts and consider how to capture covered institutions' expectations and understanding.
- Understand how customer information moves through the organization so that a proper assessment can be done to understand what controls are in place to protect that customer information (known as data mapping).
- Confirm that the risk assessment process is iterative.

Forms N-PORT and N-CEN

The background features a dark blue grid pattern. Overlaid on this are several glowing, curved lines in shades of white, yellow, and blue. There are also faint, stylized representations of what might be data points or small structures, possibly related to the N-PORT and N-CEN forms mentioned in the title.

Form N-PORT Amendments

- Required to be filed monthly, 30 days after month-end (rather than filing 60 days after quarter-end) and data will be publicly available with a 60-day delay
- SEC asserts that more frequent and timely reporting of fund portfolio holdings data will allow the SEC to:
 - “[C]onduct more targeted and timely monitoring efforts;
 - [A]nalyze risks and trends more accurately; and
 - [B]etter assess the breadth and magnitude of potential impacts of market events and stress affecting particular issuers, asset classes, counterparties, or market participants.”
- Imposes additional operational and cost burdens on funds, as funds will need to compile, prepare, and file Form N-PORT data on an accelerated schedule
- Compliance dates extended two years
 - **17 November 2027**, for fund groups with net assets of at least US\$1 billion or more as of the end of their most recent fiscal year
 - **18 May 2028**, for fund groups with less than US\$1 billion in net assets as of the end of their most recent fiscal year

Form N-CEN Amendments

- Open-end funds with liquidity risk management programs are required to identify and provide information about third-party service providers that such funds use to comply with Rule 22e-4 (Liquidity Service Provider)
 - Name each Liquidity Service Provider;
 - Provide identifying information, including the legal entity identifier, if available, and address for each Liquidity Service Provider;
 - Identify if the Liquidity Service Provider is affiliated with the fund or its investment adviser;
 - Identify the asset classes for which that Liquidity Service Provider provided classifications; and
 - Indicate whether the Liquidity Service Provider was hired or terminated during the reporting period.
- Enables the SEC to track and analyze funds' liquidity classification practices by requiring information about whether and which Liquidity Service Providers are used, for what purpose, and for what period
- The effective and compliance date for the amendments to Form N-CEN, contained in the same release as Form N-PORT adopted on 28 August 2024, will remain until **17 November 2025**

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Form PF

Form PF Amendments

- On 8 February 2024, the SEC and Commodity Futures Trading Commission (CFTC) jointly adopted significant amendments to Form PF.
- Key changes:
 - Additional reporting for master-feeder, parallel fund, and fund-of-funds structures
 - New requirements for reporting trading vehicles, unfunded commitments, and contributions
 - Expanded disclosure of withdrawal/redemption rights and investor liquidity
 - Increased granularity for counterparty exposure and risk metrics
 - Large hedge fund advisers face additional monthly exposure reporting, more detailed counterparty/creditor tables, and removal of aggregate reporting (now fund-level transparency)
 - Digital assets included as a reportable investment strategy

Form PF Compliance Date Extensions

- The original compliance date for the Form PF amendments was **12 March 2025**
- On 29 January 2025, the SEC and the CFTC extended the compliance date for the amendments to **12 June 2025**
 - The SEC and CFTC cited that they had become aware of various challenges associated with the timing of the initial compliance dates, noting additional burdens and technological challenges
- On 11 June 2025, the SEC and CFTC postponed the compliance date again, this time to **1 October 2025**
 - This time, the SEC and CFTC cited ongoing industry concerns about readiness and data quality
- On 17 September 2025, the SEC and CFTC issued a third extension, this one until **1 October 2026**
 - Further compliance date extension allows the SEC and CFTC to complete their review in accordance with the Presidential Memorandum
- Commissioner Crenshaw suggested that the SEC was “delaying the Form PF amendments *indefinitely*—and as long as it takes—to undo them.”

The background features a dark blue gradient with faint, stylized financial charts. A white horizontal band is centered across the image. Below this band, there are glowing orange and blue lines that sweep across the frame, suggesting market trends or data flows. The overall aesthetic is high-tech and financial.

Liquidity Rule Post Pinnacle

Pinnacle Case Dismissal

- On 11 July 2025, the SEC dismissed its enforcement action against Pinnacle Advisors, LLC, the first-ever case brought under the open-end fund “liquidity rule.”
 - The SEC's case against Pinnacle was initially filed in 2023 under a Commission led by former Chair Gary Gensler.
- The litigation release announcing the dismissal did not indicate why the SEC agreed to dismiss the case, stating that the SEC did so in “the exercise of its discretion and as a policy matter.”
- Defendants first moved to dismiss the lawsuit in 2023 and argued that the SEC lacked authority to promulgate the liquidity rule.
- As the litigation progressed, the Supreme Court overturned “*Chevron* deference” in *Loper Bright Enterprises v. Raimondo*, and generally eliminated judicial deference to federal agencies’ interpretations of their rule-making powers.

Pinnacle Case Dismissal

- The SEC had alleged that Pinnacle and two of its officers aided and abetted liquidity rule violations by a mutual fund they advised and aided and abetted the fund's violations of Rule 30b1-10 under the 1940 Act (relating to the filing of current reports).
- The SEC alleged that for a 12-month period from 2019 to 2020, the Pinnacle fund held approximately 21% to 26% of its net assets in illiquid investments.
- The SEC also alleged that Pinnacle classified the fund's largest illiquid investment as a "less liquid investment," without a reasonable basis to support such classification and against the advice of fund counsel and the view of the fund's external auditors.
- The SEC also alleged the fund's independent trustees "aided and abetted the fund's violation by recklessly failing to exercise reasonable oversight of the fund's program" because the trustees knew that shares in question were restricted and illiquid.

Pinnacle Case Dismissal

- The SEC relied on Section 48(b) of the 1940 Act as the basis for bringing action against the independent directors. Section 48(b) states that any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of the 1940 Act or its rules, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided. The case was a rare use of this provision.
- The dismissal raises the question of whether the SEC will avoid seeking enforcement of other alleged violations of the liquidity rule, to avoid the risk that a court could vacate the liquidity rule based on lack of statutory authority for the rule.
- As interest grows in expanding retail investors' access to private market assets, liquidity risks and attendant disclosures remain an area of focus.

Product Trends and Developments

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ETF Share Classes



Administrative History

- 2000: Exemptive order **and patent** for share class structure
- 2000 to present: No similar exemptive orders granted
- 2019: ETF Rule
- 2023: Vanguard patent expired; 80+ fund sponsors have since filed exemptive applications for share class relief
 - Most originally sought to add an ETF class to a mutual fund
 - A few sought to add a mutual fund class to an ETF
 - All applicants now seek relief for both
- Exemptive applications required because SEC said ETF Rule release said that the rule does not permit an ETF as a share class;
 - “[C]onsiderations that are different”



[S]hare class ETFs raise policy considerations that are different from those we seek to address in the rule



Administrative History

- On 29 September 2025, the SEC issued a notice to grant exemptive relief to Dimensional Fund Advisors LP, et al. (DFA) to its exemptive application filed on the prior business day that would permit (1) mutual funds to offer ETF share classes and (2) ETFs to offer mutual fund share classes (collectively, ETF share class funds).
- The notice was published in the Federal Register on 1 October 2025 and provides the public until 16 October 2025 to request a hearing. If no hearing is requested, the SEC would issue the exemptive order to DFA permitting ETF share class funds after the end of the notice period
 - Government shutdown will impose a delay
 - Hearing request may be filed

SEC Exemptive Relief

“Considerations that are different” than for a stand-alone ETF

- Cross-subsidization
 - Brokerage expenses
 - Tax efficiency
 - Cash drag
 - Custodial fees

SEC Exemptive Relief

Rule 18f-3 Plan

The Board must find that the plan is in the best interests of each share class individually and the fund as a whole

- An ETF share class fund will operate pursuant to a written plan as required by Rule 18f-3 (18f-3 Plan), which requires approval by the Board, including a majority of the independent trustees.
- Before the issuance of shares by an ETF share class fund, the Board will approve the 18f-3 Plan.
- Before any approval of the 18f-3 Plan, the Board should request and evaluate such information as may be reasonably necessary to evaluate the 18f-3 Plan.

SEC Exemptive Relief

Three Board Reports

- Initial Advisor Report
 - To assist in Board's upfront evaluation of the operation of a fund in the structure, the adviser must provide a cost-benefit type analysis of the structure for the fund
- Ongoing Monitoring Procedures
 - At the time of the initial approval of the 18f-3 Plan, the Board must approve procedures explaining how the success of the class and fund in the structure will be evaluated.
- Ongoing Advisor Report
 - The Board is also required to find at least annually that the 18f-3 Plan continues to be in the best interests of each share class individually and the fund as a whole based on an annual report from the adviser.

Initial Advisor Report

- Reasonably expected benefits and costs for each share class individually and the fund as a whole, including:
- Any potential cost savings and other benefits
- An evaluation for each share class of how it will be affected by reasonably expected:
 - Cash flows and costs associated with portfolio transactions;
 - Cash levels;
 - Distributable capital gains, including for existing funds based on the extent of any unrealized capital gains/losses or loss carryforwards;
- Reasonably expected transition costs;
- Why the investment strategy is appropriate for the structure, including given daily portfolio transparency, capacity constraints, etc.; and
- Any potential material conflicts of interest, including any sources of potential cross-subsidization, identified by the adviser.

Ongoing Monitoring Process

- This is a framework for utilizing numerical thresholds to evaluate whether the fund is operating as expected per the Initial Advisor Report
 - Monitoring Thresholds
 - The Board will approve (a) certain numeric thresholds, (b) the method for calculating such thresholds, and (c) the time periods over which to measure the thresholds.
 - The numerical thresholds will evaluate the ETF share class fund's:
 - Costs associated with portfolio transactions;
 - Cash levels; and
 - Capital gains distributions.
 - The numerical thresholds should be reasonably designed to assist in the identification of material conflicts of interest between the share classes.
 - Board Notification
 - If the ETF share class fund exceeds a numerical threshold, the Board will be notified no later than 30 days following the end of the applicable time period in which such threshold was exceeded.
 - The adviser will provide the Board a written explanation of the causes of the exceedance and proposed recommendations for any remedial action

Ongoing Advisor Report

- A discussion of any observed benefits or cost savings to the ETF share class fund resulting from the structure;
- A discussion of any observed material conflicts of interest between the share classes, or observed material negative consequences to the share classes resulting from the structure, including the following:
- A discussion of how creation/redemption or purchase/redemption activity in the share classes has the ETF share class or the mutual fund share classes during the prior year, with respect to:
 - Cash levels;
 - Short- and long-term capital gains distributions; and
 - Costs associated with portfolio transactions.
- Any performance difference between the share classes due to the difference in dividend payment dates between the ETF share class and the mutual fund share classes

Disclosure and Other Requirements

Different Names – all references to the ETF share class must use “ETF” or similar (not only fund name)

Separate Prospectuses – for the ETF and mutual fund share classes

Dual Class Disclosure – that the fund offers both ETF and mutual fund share classes

Risk Disclosure – about the exemptive relief and the risks of the structure

Not Marketed as a Mutual Fund – cannot be marketed as a mutual fund

Dividend Prospectus Disclosure – ETF shares will generally receive dividend payments later than mutual fund shares; reinvestment will depend on broker

Exchange Privilege – appropriate disclosure, if exchange from mutual fund to ETF share class is available

Digital Assets

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What Are Digital Assets?

- IRS Definition:

“any digital representation of value recorded on a cryptographically secured, distributed ledger (blockchain) or similar technology”

- A “digital asset” includes:

- Cryptocurrencies (BTC, ETH, XRP, etc.)
- Tokenized real-world assets
- Payment stablecoins
- NFTs

- Digital assets are just **one** of the many uses of blockchain technology

Digital Assets in Asset Management

- According to State Street's 2025 global research on digital assets and emerging technologies:
 - Almost 60% of institutional investors are planning to increase their digital assets allocation in the next 12 months, and average exposure is expected to **double** within three years
 - 40% of institutional investors surveyed have a dedicated digital assets team or business unit
- JPMorgan Asset Management December 2024 report:
 - "Crypto's appeal has largely been its alpha generation potential, but even here challenges persist. While Bitcoin's returns have been impressive, they've come with extraordinary volatility, four times that of the S&P 500."
 - "...the role of crypto in portfolio construction is mostly a function of risk tolerance. Cryptocurrencies are inherently unpredictable: there is little visibility into future price movements..."
 - "... tokens can become obsolete (and therefore worthless) as new ones enter the market with improved functionality. As a result, for most investors, any allocation to crypto in a portfolio should be kept both small enough to ensure that even in the event of a significant sell-off it does not derail overall portfolio objectives and well diversified."

Regulatory Landscape

- President Trump aims to make the United States the “crypto capital of the world”
- Regulators are following suit:
 - **SEC Chairman Paul Atkins:** “Despite what the SEC has said in the past, most crypto assets are not securities.”
 - **CFTC Acting Chairman Caroline Pham:** “Under the prior administration, our agencies sent mixed signals about regulation and compliance in digital asset markets, but the message was clear: innovation was not welcome. That chapter is over.”
- The SEC and CFTC both have crypto initiatives seeking to draw clear regulatory lines, distinguish securities from nonsecurities, provide realistic paths to registration for market intermediaries, and end “regulation by enforcement”
- Emphasis on facilitating innovation and engagement with stakeholders through roundtable discussions and requests for information

Digital Assets: Waiting for Clarity

- No sure path to market structure legislation
- President's Working Group on Digital Assets Report
 - Directed the SEC and CFTC to use all existing authority to enable the trading of digital assets
 - List of recommendations for immediate action by the SEC:
 - Time-limited safe harbor for decentralized digital assets that would otherwise be an investment contract
 - Safe harbor for certain airdrops from characterization as “sales”
 - “Innovation exemption” for registrants to engage in new business models
 - Modernize transfer agent rules to permit use of blockchain technology
 - Provide clarity on when self-hosted wallet providers are broker-dealers
 - List of recommendations for immediate action by the CFTC:
 - Guidance on when digital assets are “commodities”
 - Clarity on CFTC registration requirements to DeFi activities
 - Clarity on haircuts for digital assets held by registered intermediaries
 - Guidance on adoption of tokenized noncash collateral as regulatory margin
 - Consider allowing use of blockchain technology for recordkeeping purposes

Digital Assets: Recent Developments

- SEC Division of Investment Management no-action letter re: custody of crypto assets with state trust companies (30 September 2025)
- SEC / CFTC roundtable on regulatory harmonization (29 September 2025)
- CFTC launches tokenized collateral and stablecoins initiative (23 September 2025)
- SEC / CFTC joint statement on trading certain crypto asset products (2 September 2025)
- CFTC announces “Crypto Sprint Initiative” (21 August 2025)
- President’s Working Group on Digital Assets Report (30 July 2025)
- GENIUS Act enacted into law (18 July 2025)
- CLARITY Act passed by the House of Representatives (17 July 2025)

The GENIUS Act

- The first major piece of digital assets legislation passed by Congress
- Defines “payment stablecoins” and establishes reserve and redemption requirements
 - A payment stablecoin is a digital asset that is designed to be used as a means of payment or settlement that is not a national currency, deposit, or otherwise a security; and the issuer of which:
 - Is obligated to convert, redeem, or repurchase for a fixed amount of monetary value, not including a digital asset denominated in a fixed amount of monetary value, and
 - Represents that such issuer will maintain, or create the reasonable expectation that it will maintain, a stable value relative to the value of a fixed amount of monetary value.
- Creates regime for chartering and supervision of payment stablecoin issuers
- Subjects payment stablecoin issuers to bank-like regulations, including safety and soundness requirements and Bank Secrecy Act compliance
- Requires payment stablecoin issuers to comply with marketing rules to protect consumers from deceptive practices (including prohibiting issuers from claiming stablecoins are backed by the US government, federally insured, or legal tender)

SEC NAL: Custody of Crypto Assets

- On 30 September 2025, the SEC Division of Investment Management published a no-action letter (NAL) effectively allowing RIAs, RICs, and BDCs to maintain crypto assets and related cash and cash equivalents with certain state-chartered trust companies.
- Under the NAL, the state-chartered trusts must be:
 - Supervised and examined by a state authority with supervision over banks; and
 - Permitted to exercise fiduciary powers under applicable state law.
- The RIA, RIC, or BDC can rely on the NAL if:
 - It has a reasonable basis, following due inquiry, to believe that, among other things, the trust company is authorized to provide custody services for crypto assets and maintains policies and procedures designed to safeguard such assets;
 - It enters into (or causes a client to enter into) a written custodial services agreement with the trust company requiring such company to segregate the assets and prohibiting the company from lending, pledging, or hypothecating such assets;
 - Adequate disclosure is provided; and
 - A determination is made that the provision of the trust company's custody services is in the best interest of the client, fund, or BDC, as applicable.

Tokenization and Blockchain Technology



Tokenization Defined

- FIA Tokenization Working Group: asset tokenization involves digital tokens that represent tangible or intangible assets, such as stocks, bonds, cash, or securities, and creating a record of ownership for such assets on blockchains.
- ISDA: “tokenization” broadly refers to a technological and legal process of attaching enforceable rights to entries in a DLT-based system.
 - Tokenization is **not** a single, uniform mechanism
- GMAC definition of “Tokenized Derivative:” a “digital twin” token that represents an underlying derivative instrument issued and recorded on a different platform, where such representation itself satisfies the definition of a derivative under relevant law.
- Native digital assets like BTC and ETH are **not** considered to be tokenized assets

Benefits of Tokenization

- Speed of settlement
- Facilitates 24/7 trading and margining
 - Alternative to traditional assets that only trade during business or other limited hours
- Compatible with digital asset ecosystems
- Transparency
- Added liquidity in otherwise illiquid markets
- Fractionalization / investor access to new and less accessible asset classes
- “Golden” record of underlying asset ownership and transfers of ownership
- Potentially obviates need for, or changes, role of transfer agent

Blockchain Technology in Asset Management

- Blockchain technology has the potential to upend traditional asset management infrastructure in a number of ways:
 - *Tokenization.* Private funds, mutual funds, traditional securities, and other real-world assets may be tokenized, effectively moving transfer agency onto a blockchain.
 - *Operational efficiencies.* Blockchain technology provides enhanced recordkeeping capabilities, and a reduction in settlement times
 - *Direct access.* Peer-to-peer transactions and bypassing traditional intermediaries leads to lower costs and fewer hurdles.
 - *Risk reduction.* Blockchain technology enables simpler regulatory reporting and provides an immutable audit trail.
 - *Proxy voting:* Blockchain technology allows companies to know in real time who has voted; prevents a person from voting twice.
 - *Securities lending:* Escrow of digital assets held on a ledger could reduce risk in collateral management.

Blockchain Technology in Asset Management

- According to State Street's 2025 global research on digital assets and emerging technologies:
 - Private equity and private fixed income are expected to be first asset classes to undergo tokenization—focusing on unlocking liquidity and efficiency in traditional illiquid markets.
 - 10–24% of institutional investments are expected to be executed through tokenized instruments by 2030.
 - Over half of institutional investors surveyed said AI and quantum computing will be more impactful on investment operations than tokenization, but most see these technologies as complementary to digital asset programs.
- Transfer Agent (TA) on the blockchain: Plume Network officially registered as a TA on 7 October 2025, will control digital securities and shareholder records on a blockchain
 - Plume's system is linked to DTCC, and will manage the shareholder registry ownership transfers and corporate actions in real time

Tokenized Securities – Recent Developments

- Tokenized securities: shares of a company are converted into digital assets (known as tokens), which are held by investors and represent ownership or fractional ownership in the underlying security.
- “Crypto Mom” aka SEC Commissioner Hester Peirce:
 - “As powerful as blockchain technology is, it does not have magical abilities to transform the nature of the underlying asset. Tokenized securities are still securities.”
- On 8 September 2025, Nasdaq submitted Form 19b-4 to the SEC to facilitate the trading of tokenized securities and ETPs on its markets
 - When trading a security on Nasdaq, investors can choose between the traditional digital representation of the security, or the tokenized version
 - Tokenized securities and ETPs represent the same store of value as traditional securities
 - Tokenization is “just a different method of digitally representing an asset”
 - Tokenized shares will have the same order entry and execution, the same CUSIP, and the same rights and benefits as a traditional share.
 - The product filing has not yet been approved or rejected by the SEC

Tokenized Funds – Recent Developments

- BNY Mellon and Goldman Sachs collaborated in July 2025 to launch “mirrored record tokenization” of money market funds
 - Select asset managers were able to subscribe and redeem MMF shares through BNY’s LiquidityDirect platform, which offers connectivity to the GS DAP platform (where mirror tokens of the MMF shares are created)
 - BNY will continue to maintain official books, records, and settlements for the MMF shares within “currently approved guidelines” while also enabling mirror tokens on GS DAP
- BlackRock’s first tokenized MMF issued on a public blockchain, BUIDL, will be accepted as collateral on two major crypto exchanges (Crypto.com and Deribit) for institutional investors **in select jurisdictions**
 - BUIDL became the first tokenized fund to exceed US\$1 billion (March 2025) and now has over US\$2 billion AUM

Tokenization: Ownership and Control

- Who retains control of the tokenized asset, including the ability to update the underlying blockchain record?
- How is transfer of the tokenized asset effectuated?
- Is the token itself an asset, or merely evidence of ownership (i.e., does the token have value, or is it a form of recordkeeping?)
- Does the token represent ownership of the underlying asset, or ownership in an SPE that owns the asset?

- Uniform Commercial Code considerations:
 - Article 7 – documents of title
 - Article 8 – investment securities and intermediaries
 - Article 9 – creating, perfecting, and enforcing security interests
 - Article 12 – “controllable electronic records”
 - 2022 Amendments not yet adopted in all 50 states

Retail Access to Private Markets

The background of the slide features a stylized financial chart. It includes a grid of horizontal and vertical lines. Overlaid on this grid are several candlestick-like bars in shades of purple and blue. A prominent blue line, likely representing a moving average or trend line, curves across the chart from the lower right towards the center. The overall color palette is dark, with deep blues and purples, creating a professional and tech-oriented aesthetic.

Growing Interest in Alternative Investments

- Increased demand in recent years from private wealth channels seeking diversification through alternative investments has resulted in financial advisors looking for products to address this growing need.
- Certain segments of the market have historically not been as accessible to retail investors, as they have largely been institutional markets (e.g., private credit and private equity).
- At the same time, the number of public companies has decreased. At its highest in 1996, there were approximately 7,300 publicly traded companies in the United States, compared to about 4,300 today.
- Interval funds and tender offer funds have become popular fund structures to provide access to alternative strategies and less liquid investments, by combining attractive features of closed-end funds and open-end funds.

Recent Actions on Alternative Investments

- Executive Order “Democratizing Access to Alternative Assets for 401(k) Investors” (7 August 2025)
 - Directing the DOL to, among other things, “clarify [its] position on alternative assets and the appropriate fiduciary process associated with offering asset allocation funds containing investments in alternative assets under ERISA” and the SEC to “consider ways to facilitate access to investments in alternative assets by participants in participant-directed defined-contribution retirement savings plans.”
- Select SEC Actions To Date
 - Permitting Launch of ETF with Significant Private Asset Exposure
 - Lifting of 15% Limit on Private Fund Investments for Closed-End Funds
 - Streamlined Co-Investment Relief under Rule 17d-1
 - SEC Investor Advisory Committee – Draft Recommendations Regarding Retail Investor Access to Private Market Assets

Open-End and Closed-End Fund Basics and the Rise of Continuously Offered Closed-End Funds

Open-End Funds

- Redeemable by investor daily
- Must hold 85% liquid investments

Closed-End Funds

- Not redeemable by investor
- May invest up to 100% in illiquid assets
- Historically conducted single offering (IPO) and shares traded thereafter on an exchange to allow investor liquidity

Interval Funds

- Continuously offered registered closed-end funds that provide liquidity to investors through regular periodic share repurchases
- Rely on Rule 23c-3 under the Investment Company Act of 1940
- Interval funds conduct repurchase offers for their shares under Rule 23c-3 repurchase procedures
- Repurchase process is similar to a tender offer but simpler and less expensive

Tender Offer Funds

- Continuously offered registered closed-end funds that provide liquidity to investors through periodic tender offers conducted on a discretionary basis, rather than regular periodic share repurchases
- Do not rely on Rule 23c-3, but rather on the tender offer provisions of the Securities Exchange Act of 1934 and the rules thereunder

Interval Funds

Advantages

- Combines attractive features of closed-end funds and open-end funds.
 - Like other closed-end funds, ability to invest in less liquid financial instruments because fund is not subject to fluctuations in asset size from the need to meet daily redemption activity like mutual funds
 - Unlike some alternative products, open to all investors if fund is publicly offered
 - Appeal to investors looking for the regulatory safeguards of a registered fund coupled with greater exposure to illiquid investment classes (as compared to a mutual fund)
- Continuously offered, so fund size can grow over time
- Redemption/repurchase activity is controlled by board action and adviser recommendation
- Treated like an open-end fund for purposes of share registration and annual updates, with registration fees based on net sales
- No required FINRA filing fees, and subject only to FINRA Rule 2341, which imposes varying caps on sales compensation/distribution fee level like open-end funds

Interval Funds

Challenges

- Must establish “fundamental” policy of making periodic repurchase offers, changeable only by a majority vote of the fund’s outstanding voting securities
- Subject to portfolio liquidity requirement during repurchase offer period:
 - During repurchase offer period, fund must hold liquid assets equal to the full amount offered for repurchase
 - If the board chooses a low repurchase offer amount that is oversubscribed, the fund may need to accept tendered shares on a *pro rata* basis, thus limiting investor requests
- Repurchase offer timing and amount restricted by rule
- Suitability considerations

Comparison With Mutual Funds

	Interval Fund	Mutual Fund
Structure	Closed-end	Open-end
Shares Offered	Continuously	Same
Exchange Listed?	No	No
Share Classes	Single class only, unless exemptive relief obtained.	Yes, Rule 18f-3
Share Pricing	No less frequently than weekly, but at least daily on the five business days preceding a repurchase request deadline	Each business day
Share Registration and Annual Updates	Registration fees based on net sales; Rule 486 process	Same; Rule 485 process
Share Liquidity	Solely from periodic repurchase offers	Must redeem shares on any business day when requested by shareholder
Repurchase/ Redemption Amount, Procedures, and Fees	Share repurchases made at net asset value (NAV). Periodic repurchases must comply with Rule 23c-3(b) under the Investment Company Act of 1940. May charge shareholders a stated repurchase fee, not exceeding 2% of repurchase proceeds.	Share redemptions made at NAV. Generally, must meet redemption requests within seven days. May charge shareholders a stated redemption fee, not exceeding 2% of redemption proceeds, or a contingent deferred sales charge for shares redeemed before a stated minimum timeframe.

Comparison With Mutual Funds (Cont'd)

	Interval Fund	Mutual Fund
Borrowing	Any borrowing, including any borrowings to cover repurchases or any issuance by the fund of senior securities, must meet the asset coverage limitations of 300%, including the amounts borrowed. Practical limits on borrowing exist to a greater degree than other closed-end funds based on Rule 23c-3 requirements	A mutual fund using a leverage strategy may borrow only from a bank, provided the fund meets the asset coverage limitations of 300%, including the amounts borrowed. A mutual fund not using a leverage strategy can still borrow, but only from a bank and only for temporary purposes.
Portfolio Liquidity Requirements	During the repurchase offer period, an interval fund must hold liquid assets equal to the amount of the shares offered for repurchase. Liquidity determined in same manner as open-end funds—seven days.	At all times a mutual fund may not invest more than 15% of its net assets in illiquid investments.

Comparison With Mutual Funds (Cont'd)

	Interval Fund	Mutual Fund
Distribution Fees and Sales Charge	Subject to FINRA Rule 2341, which imposes varying caps on sales compensation/distribution fee levels.	Same.
Directors	A majority of the directors of both an interval fund and a tender offer fund must be directors who are not “interested persons” of the fund, and those directors must select and nominate any other disinterested directors.	Same.

Prediction Markets / Event Contracts

- A “prediction market” is a derivatives exchange on which traders can take a position on real world event outcomes
 - E.g., Polymarket, Kalshi, ForecastEx, Crypto.com
- “Event contracts” aka “binary options” are the financial instruments traded on a prediction market
 - Payout based on “Will X event happen – yes or no?”
- Examples of event outcomes include:
 - Contest winners (elections, sports, award shows, etc.)
 - Length of government shutdown
 - Closing price of a stock index or cryptocurrency
- Largely retail markets and growing in popularity in the United States, not without controversy

Enforcement, Examinations, and Litigation Developments Impacting Funds and Investment Advisers

Meghan Flinn, Partner, K&L Gates

Theodore Kornobis, Partner, K&L Gates

Stephen Topetzes, Partner, K&L Gates

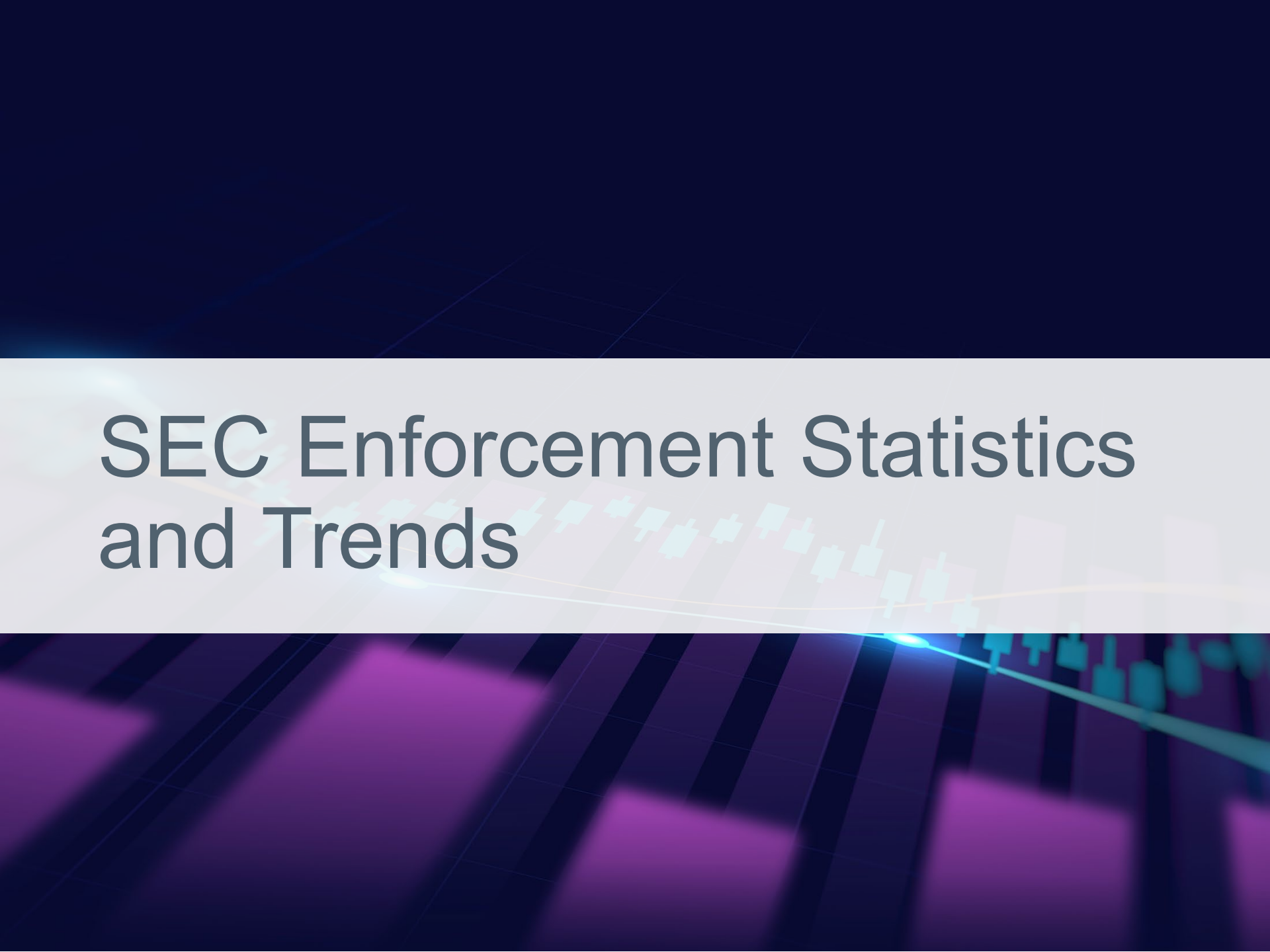
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01 SEC Enforcement Statistics and Trends

02 SEC Examination Priorities

03 SEC Enforcement Updates

04 Litigation Update

The background of the slide features a stylized financial chart. It includes a grid of horizontal and vertical lines. Overlaid on this grid are several candlestick-like bars in shades of pink and purple. A bright blue line, possibly representing a moving average or a trend line, curves across the chart from the lower right towards the center. The overall color palette is dark, with deep blues and purples, accented by the pink of the bars and the bright blue of the trend line.

SEC Enforcement Statistics and Trends

SEC Enforcement Statistics (FY 2024)

- 583 total actions filed, including (26% decline from FY 2023):
 - 159 Civil actions
 - 272 Standalone APs
 - 93 Follow-on APs
 - 59 Delinquent filings
- SEC classified 431 / 583 as “stand-alone” actions (14% decline from FY 2023)
- 17% of actions were taken against broker dealers
- 23% of actions were taken against investment advisers / investment companies
- 124 individuals barred from serving as officers and directors
- \$8.2 billion in financial remedies, highest amount in SEC history:
 - \$6.1 billion disgorgement and prejudgment interest
 - \$2.1 billion in civil penalties (Terraform Labs and Do Kwon)
- \$345 million distributed to harmed investors

SEC Enforcement Statistics (FY 2024)

Enforcement Summary Chart for FY 2024 by Primary Classification

Primary Classification	Civil Actions	Standalone APs	Follow-On APs	Delinquent Filings	Total	% of Total Actions	% of Civil and Standalone APs
Broker Dealer	7 (13)	54 (79)	37 (37)	0 (0)	98 (129)	17%	14%
Delinquent Filings	0 (0)	0 (0)	0 (0)	59 (59)	59 (59)	10%	0%
Foreign Corrupt Practices Act	0 (0)	2 (2)	0 (0)	0 (0)	2 (2)	0%	0%
Insider Trading	16 (30)	18 (18)	1 (1)	0 (0)	35 (49)	6%	8%
Investment Advisers / Investment Companies	17 (39)	80 (91)	38 (39)	0 (0)	135 (169)	23%	23%
Issuer Reporting / Audit & Accounting	22 (49)	27 (33)	11 (12)	0 (0)	60 (94)	10%	11%
Market Manipulation	11 (45)	6 (6)	2 (2)	0 (0)	19 (53)	3%	4%
Miscellaneous	5 (8)	50 (64)	1 (1)	0 (0)	56 (73)	10%	13%
NRSRO	0 (0)	6 (6)	0 (0)	0 (0)	6 (6)	1%	1%
Public Finance Abuse	0 (0)	14 (16)	0 (0)	0 (0)	14 (16)	2%	3%
Securities Offering	80 (288)	14 (18)	3 (3)	0 (0)	97 (309)	17%	22%
SRO / Exchange	1 (2)	0 (0)	0 (0)	0 (0)	1 (2)	0%	0%
Transfer Agent	0 (0)	1 (1)	0 (0)	0 (0)	1 (1)	0%	0%
Total	159 (474)	272 (334)	93 (95)	59 (59)	583 (962)	100%	100%

Each action initiated has been included in only one category listed above, even though many actions may fall under more than one category. Partly counts are noted in parentheses.

SEC Enforcement Statistics (FY 2024)

- Categories of enforcement actions highlighted by the SEC in its year-end summary:
 - Off-channel communications
 - Marketing Rule
 - Whistleblower protection cases
 - Disclosures of holdings and transactions by insiders / investment managers
 - “Major Fraud” (i.e., Ponzi schemes, fraudulent crypto asset schemes, and IPO fraud)
 - Emerging technology and cybersecurity
 - Cryptocurrencies
 - Gatekeepers
 - Public company misstatements

SEC Enforcement Statistics

- FY 2025 enforcement statistics have not been published, but the SEC's actions this year highlight some themes:
 - Fewer actions overall
 - Increased focus on “classic” fraud and retail investor harm:
 - Ponzi or Ponzi-like schemes
 - Insider trading
 - “Affinity fraud” (i.e., fraud involving elderly, veterans, and religious groups)
 - Conflicts of interest
 - Keeping up enforcement against registered actors
 - Conflicts of interest
 - Fee calculations
 - Custody rule violations
 - Cherry-picking
 - Continued emphasis on cooperation, self-reporting, and remediation

The background features a dark blue grid pattern. Overlaid on this is a stylized line graph with a series of small, light blue squares connected by a thin line, showing an upward trend. A bright blue light flare is visible on the right side of the graph. The overall aesthetic is modern and technological.

2025–2026 Expected Exam Priorities

SEC Exam Priorities FY 2025

- For FY 2025 (announced 21 October 2024), examination priorities included:
 - Investment Advisers – fiduciary duty, compliance program effectiveness, private funds.
 - Investment Companies – Compliance program effectiveness, disclosures, governance, fees and expenses.
 - Broker-Dealers – Reg BI compliance, Form CRS compliance, trading practices.
 - Information Security and Operational Resiliency – Cybersecurity policies and procedures, vendor oversight, incident response.
 - Crypto and Fin Tech – Automated tools and use of AI, recommendations of crypto products
 - AML – AML procedures and compliance with Bank Secrecy Act, SAR filing, OFAC compliance
- FY 2026 examination priorities are expected to be announced this month.



SEC Enforcement Updates

Enforcement Priorities – 2025

- The SEC's enforcement actions under the leadership of Chairman Atkins so far suggest prioritization of:
 - “Classic” fraud and retail investor harm:
 - Ponzi or Ponzi-like schemes
 - Insider trading
 - “Affinity fraud” (i.e., fraud involving elderly, veterans, and religious groups)
 - Registered actors (i.e., investment advisers, investment companies, and their associated persons)
 - Failure to disclose conflicts of interest
 - Not properly crediting investors' accounts
 - Certain Custody Rule violations
 - Cherry-picking favourable investments for preferred accounts

Enforcement Priorities – 2025

- The SEC’s adjusted **enforcement approach** under Chairman Atkins is also notable:
 - Continued focus on cooperation, self-reporting, and remediation
 - Rejection of “regulation through enforcement” and, instead, addressing rulemaking after engaging with relevant industry participants
 - Required Commission approval of formal orders of investigation to ensure they align with Commission priorities
 - Notification regarding technical violations before investigations and enforcement actions
 - A stated commitment to a transparent and cooperative investigation and Wells Process
 - Increased SEC and CFTC “regulatory harmonization”
 - *Particularly as they wait for Congress to pass the full cryptocurrency market structure legislation (passed House, under consideration in Senate)*

Enforcement Priorities – 2025

- Comparing what the current Atkins SEC is **not prioritizing, with limited exceptions**, to the Gensler SEC is also notable:
 - Environmental, social, and governance
 - Recordkeeping and compliance faults
 - Registration related issues
 - Crypto products or exchanges
 - Off-channel communications
 - Whistleblower protection rule violations
 - FCPA violations
 - Failure to warn of cybersecurity breaches

Enforcement Priorities – Looking Ahead

- Expected to continue:
 - Emphasis on outright fraud and investor harm
 - Narrowly tailored registration and compliance matters
 - Emphasis on cooperation, self-reporting, and remediation
- Likely developments:
 - Focus on cross-border fraud involving Chinese companies and gatekeepers
 - Cybersecurity unit focus on “AI Washing”—meaning false claims about a company’s expertise in, and use of, AI
 - Continued proactive engagement with industry before enforcement actions
 - Continued nonaction for cryptocurrency actions, but increased focus on regulatory “rules of the road”

Selected Enforcement Actions: Failure to Disclose Conflicts of Interest

- *Transamerica Retirement Advisors, LLC (17 January 2025)*
 - SEC settled charges for failing to disclose conflicts of interest created by Transamerica's incentive compensation payments to investment adviser representatives related to referral and rollover of retirement assets to thousands of accounts.
 - SEC focused on Transamerica disclosing incentives it "may" provide its advisers, when it was actually paying these incentives for the "concerning referrals and rollovers" of assets.
 - Resulted in cease-and-desist order, censure, and a \$2.9 million penalty.

Selected Enforcement Actions: Misrepresentation of Compliance Policies

- *Navy Capital Green Management, LLC (January 14, 2025)*
 - According to the SEC, Navy Capital represented to private fund investors that it voluntarily conducted AML due diligence, despite not being legally required to do so.
 - In practice, the firm allegedly failed to consistently conduct the due diligence promised, including with respect to an investor later tied to suspected money laundering.
 - The firm also allegedly failed to maintain adequate policies and procedures ensuring the accuracy of offering materials.
 - Resulted in cease-and-desist order, censure, and \$150,000 civil penalty.
- Misrepresentations to investors relating to AML and compliance procedures was a focus under the Gensler SEC. The Atkins SEC is unlikely to have a significant change in direction on this topic.

Selected Enforcement Actions: Fiduciary Duty and Misleading Filing Information

- *Cambridge Investment Research Advisors, Inc. (CIRA) (20 March 2025)*
 - CIRA breached its fiduciary duty to advisory clients by investing client assets in mutual funds and money market sweep funds that generated millions in revenue sharing to an affiliated broker-dealer, instead of lower-cost share classes and investment options with less or no revenue sharing.
 - CIRA also converted hundreds of accounts to its more expensive wrap account program without analyzing whether doing so was in its clients' best interests or adequately disclosing this decision.
 - Finally, CIRA also avoided paying millions of U.S. dollars of transaction fees using its mutual fund recommendations and failed to disclose conflicts resulting from its investment advisers' receipt of forgivable loans in exchange for maintaining certain asset levels and tenure with the affiliated broker-dealer.
 - Resulted in \$15 million in monetary relief (disgorgement, prejudgment interest, and a civil penalty).
- *Advance Capital Management, Inc. (7 April 2025)*
 - Advance Capital caused its former client, a previously registered investment company, to include materially false and misleading information—failing to include pending class action claims—on its application to deregister.
 - Resulted in a cease-and-desist order, \$300,000 disgorgement, \$99,953 prejudgment interest, and \$200,000 civil penalty.

Selected Enforcement Actions: Custody and Marketing Rules

- *Munakata Associates LLC (1 August 2025)*
 - SEC settled charges against Munakata alleging failure to arrange surprise examinations because it had custody of client funds and securities.
 - SEC determined Munakata had custody because the 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.
 - Resulted in a cease-and-desist order and \$50,000 penalty.
- *Meridian Financial, LLC (4 September 2025)*
 - SEC settled charges against Meridian for alleged violations of the marketing rule, recordkeeping, and compliance obligations.
 - The alleged marketing rule violation occurred when the firm disseminated an advertisement claiming it “refused all conflicts of interest” without a “reasonable basis to substantiate” because the firm had acknowledged various conflicts of interest inherent in its role as an investment advisor.
 - Resulted in a cease-and-desist order, censure, and a \$75,000 civil penalty.

Other Actions of Note: Settlement Modification Requests

- *16 Firms Seek Settlement Modification (14 April 2025)*
 - 16 firms sought modification and stay of prior settled orders related to those firms' employees conducting off-channel communications.
 - The firms argued it was “inequitable” to require compliance with these orders because the SEC’s subsequent (post January 2025) settlements for similar conduct with similarly situated firms had better terms.
 - The SEC denied these motions citing the “strong interest” in finality of settlements and arguing that the mere existence of later settlements with different terms does not constitute a significant change in circumstances.
- *Five Firms Seek Settlement Modification (26 June 2025)*
 - Five firms sought modification and stay of prior settled orders related to those firms' employees conducting off-channel communications.
 - The firms made similar arguments to above but also argued that their self-reporting warranted relief.
 - The SEC denied these motions explaining that self-reporting is one of many factors considered, and there was no significant changed circumstances.

Other Actions of Note: Deregulation and Dropped Actions

- *Silver Point Capital, L.P. (4 April 2025)*
 - In December 2024, the SEC charged Silver Point with failure to establish, implement, and enforce written policies reasonably designed to prevent the misuse of material nonpublic information.
 - In April 2025, the SEC filed a joint stipulation to dismiss with prejudice the ongoing civil action citing its “discretion to dismiss this action ... based on the specific facts and circumstances.”
- *Adam R. Long, et al. (23 May 2025)*
 - Previously, the SEC brought actions against these dealers for acquiring and offering microcap stocks, convertible note financing, and penny stocks without registering.
 - In May 2025, the SEC dismissed these actions and stated that this was “appropriate as a policy matter.”
- *Pinnacle Advisors, LLC (11 July 2025)*
 - SEC previously charged Pinnacle Advisors and two independent trustees with violations of the Liquidity Rule by holding 21% to 26% of its net assets in illiquid investments, failing to heed advice to move to more liquid options, and misleading the SEC about their liquidity classifications.
 - In July 2025, the SEC filed a joint stipulation with the defendants to dismiss the action with prejudice asserting it was “appropriate as a policy matter.”

Deregulatory and Procedural Developments

- The Trump administration has embarked on a broad deregulatory agenda, including at the SEC.
 - This agenda includes the initiative announced by the president on 31 January 2025 in an executive order launching the “10-to-1” deregulatory mandate to federal agencies.
 - Chairman Atkins has embraced this agenda, particularly regarding capital information, noting at a recent speech his goal to “Make IPOs Great Again” and an interest in adopting the president’s stated goal of reducing the frequency by which public companies must report data to the investing public.
- Some of the notable deregulatory moves under the Atkins SEC affecting the asset management industry include:
 - The formal withdrawal of 14 rules proposed by the Gensler SEC, including rules relating to custody, cybersecurity, and ESG practices; and
 - The extension of compliance dates for multiple adopted rules, including the recent amendments to the Names Rule, Form N-PORT, and Form N-PF.

Deregulatory and Procedural Developments

- The Atkins Commission has also enacted several changes to the way in which the Commission conducts business and transacts with the securities and investing industries:
 - A reversion to the prior practice of considering an offer of settlement in an enforcement action and any related waiver requests simultaneously;
 - As evidenced in ongoing analysis of statistics, a shift away from “regulation by enforcement”;
 - A more business-friendly enforcement behavior, such as requiring formal investigations to be approved by Commissioners (as opposed to being left to the discretion of the Director of the Division of Enforcement), emphasizing the Wells process, notification of technical violations prior to enforcement, and not using press releases to announce each and every enforcement action; and
 - Potentially a more amenable to applications for relief from industry and director bars placed on individuals as a result of previous enforcement actions.



Litigation Update

Selected Asset Management Litigation – Fund Accounting Cases

- Series of putative class actions filed by same firm (Miller Shah)
- Defendants include mutual fund complexes, their advisers, and fund directors/trustees
- Claims under the Securities Act of 1933 for alleged material, false and misleading statements and omissions in registration statements.
 - Non-fraud claims
- Allegations concern the accounting of distributions the fund receives.
 - Related to accounting practices by investment companies that treat dividend income and capital gains as assets until the funds distribute their net investment income and net capital gains to their shareholders.
 - Core of allegations: dividend income and capital gains received by a fund are effectively fund *liabilities* (not assets) and should be accounted for as such.
 - Incorrect accounting leads to artificial inflation of NAV, overpaying for shares, paying taxes on distributions where part is effectively a return of principal.
 - Failure to disclose these risks and resulting impact on shareholders.
- Still in preliminary stages of litigation.

Selected Fund-Related Litigation – *James Alpha Funds Trust*

- Putative class actions asserting non-fraud disclosure violations under the Securities Act of 1933.
- Alleges false or misleading disclosures for undisclosed risks regarding fund's illiquid investments.
- Core of allegations:
 - (a) the funds failed to disclose that a substantial percentage of their NAV was concentrated in illiquid assets;
 - (b) the funds failed to disclose that the safeguards that purportedly limited the fund's investment in illiquid assets were ineffective and that, as a result, the fund's investment in illiquid assets exceeded its purported limits; and
 - (c) the funds materially overvalued the carrying value of certain of the fund's assets and overstated the fund's NAV
- The litigation is currently awaiting the appointment of a lead plaintiff followed likely by motions to dismiss.

Selected Fund-Related Litigation – **WAMCO**

- Securities Exchange Act of 1934 Act fraud-based claims for alleged false and misleading statements and material omissions in regulatory documents
- Core of allegations:
 - (a) WAMCO management favored certain of its strategies over others (those with higher fees);
 - (b) management disfavored certain of its strategies (those with lower fees);
 - (c) this favoritism by management led certain portfolio managers to allocate profitable trades disproportionately to the higher-fee strategies (“cherry-picking”); and
 - (d) WAMCO’s compliance and oversight mechanisms were either insufficient to monitor this activity or were expressly disregarded.
- The litigation is currently awaiting the appointment of a lead plaintiff followed likely by motions to dismiss.

FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.

- The U.S. Supreme Court will consider a case concerning Section 47(b) of the Investment Company Act of 1940.
 - Issue: Does Section 47(b) create a private right of action for shareholders of registered investment companies to bring lawsuits seeking to rescind contracts that allegedly violate the ICA?
 - A circuit split exists -
 - 2nd Circuit's answer: Yes
 - All other circuits to have considered the question: No
 - Petitioners argue the statute lacks “rights creating language” of the type used elsewhere in the ICA (Section 36(b)) and generally required by the Court
 - Respondents say “at the instance of any party” language and a prior decision involving the IAA (*Transamerica Mortgage Advisors, Inc.*, 444 U.S. 11 (1979)) support a private right of action
 - While the context of this case involves closed-end fund activism, the Supreme Court's decision could have broad implications for all registered funds and their service providers.
 - There is potential for a flood of litigation involving investment companies.
 - Because fund management and operations are nearly always fully externalized, a wide range of tasks associated with managing a fund and distributing its shares are performed by the fund's adviser or other service providers pursuant to written contracts with the fund in exchange for a fee.

Trade Association Panel Discussion

Daniel Austin, Head of U.S. Markets Policy & Regulation, AIMA

Paul Cellupica, General Counsel, ICI

Lindsey Keljo, Head of Asset Management Group, SIFMA

Kirsten Wegner, CEO, IIA

Dan Crowley, Partner, K&L Gates (*Moderator*)

Washington Update

Dan Crowley, Partner, K&L Gates

Karishma Page, Partner, K&L Gates

What's Happening in Washington?

The background features a dark blue grid pattern. A glowing blue line, resembling a stylized 'W' or a path, starts from the bottom left and moves towards the top right. The line is composed of several segments, with the top segment being a solid blue line and the bottom segment being a dashed blue line. The overall aesthetic is modern and technological.

Trump Administration & 119th Congress

- Trump Administration
 - Executive orders: Over 200 (approx. 300 lawsuits), likely more to come
 - (Fastest) Cabinet confirmation
 - DOGE: Prior to Musk's departure from DOGE in May, attempts at federal government reduction in force, termination of funding/contracts, data access
 - Geopolitical focus on trade/tariffs, border security, engagement in Israel-Gaza and Ukraine-Russia, focus on Iran
- Legislative
 - Tax reform bill passed in July
 - Congressional Review Act activity
 - Uptick in oversight efforts
 - **GOVERNMENT SHUTDOWN** (after 2 shutdowns averted)

Flood the Zone

- President Trump and Congressional Republicans have a perceived **mandate, though limited time**
- **All of Government Approach**
 - Executive/regulatory/compliance action
 - DOGE
 - Oversight, investigations
 - Powerful social/traditional media leveraging
 - Fast legislative push
- **“America First” focus**
 - Taxes (reconciliation)
 - Trade/tariffs
 - Border security, immigration, sanctuary cities
 - Energy
 - Transportation, logistics
 - Workforce, benefits
 - Social or issues cast as such (ESG, DEI)

Limiting Agent: Time

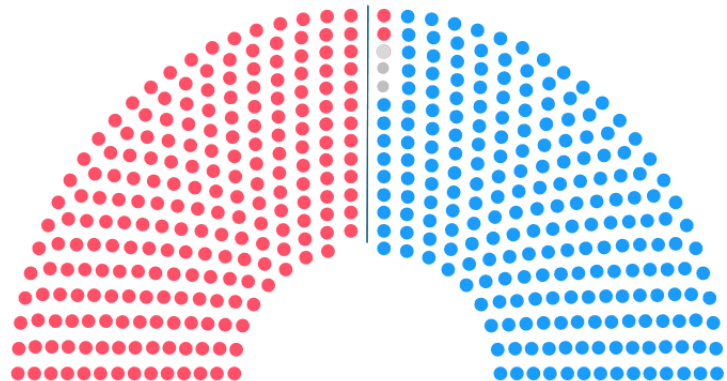
Political pendulum swing continues to accelerate; political physics likely to result in flip as some point in near future

Change Elections

1960-1999	2000-2024
7 change elections Every 5.57 years	11 change elections Every 2.18 years

Marginal, Yet Effective Majorities

Balance of Power in the House

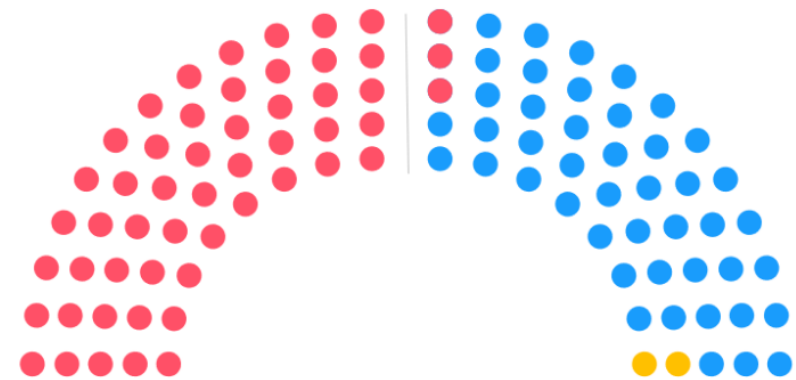


219 REPUBLICANS

213 DEMOCRATS

3 VACANCIES

Balance of Power in the Senate



53 REPUBLICANS

45 DEMOCRATS

2 INDEPENDENTS

who caucus with Democrats

An Outdated Visual, but...

Unitary Executive Theory



Shifting Balance of Powers

- Post-*Loper Bright*, diminished Executive Branch departments/agencies vis-à-vis centralization of power in White House
- Judicial review resulting in uneven injunctive relief, lengthy process, and unclear compliance
- Cooperative Congressional majority (and challenged Congressional minority)
- (added element of increasing state action)

(Short) Congressional Agenda

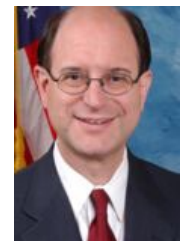
- **FY 26 Appropriations**
- NDAA
- Digital Assets Market Structure
- Farm Bill?
- Possible additional reconciliation/tax extenders bill?
- Other policy priorities?

The background of the slide features a stylized financial chart. It includes a grid of horizontal and vertical lines. Overlaid on this grid are several rectangular blocks in shades of purple and magenta, some of which are tilted. A series of small, light-colored squares are arranged in a diagonal line across the middle of the chart. A bright blue light streak or lens flare effect originates from the right side and points towards the center of the chart.

Financial Services Policy Update

House Financial Services Committee

- Rep. French Hill (R-AR), Chairman
 - Key priorities:
 - Community banking
 - Digital assets
 - Capital formation
- Rep. Maxine Waters (D-CA), Ranking Member
 - Key priorities:
 - Racial equity and D&I-related efforts
 - Consumer protection
 - Housing affordability and access
- Subcommittee on Capital Markets
 - Rep. Ann Wagner (R-MO), Chairwoman
 - Rep. Brad Sherman (D-CA), Ranking Member



Senate Banking, Housing & Urban Affairs Committee

- Sen. Tim Scott (R-SC), Chairman
 - Key priorities:
 - Capital formation
 - Deregulation
 - Housing
 - Digital assets
- Sen. Elizabeth Warren (D-MA), Ranking Member
 - Key priorities:
 - Consumer protection
 - Oversight of Wall Street
 - Housing access/affordability
- Subcommittee on Securities, Insurance, and Investments
 - Sen. Mike Rounds (R-SD), Chairman
 - Sen. Mark Warner (D-VA), Ranking Member



Digital Assets

- A marked turn toward regulation of digital assets
- GENIUS Act
 - Establishes legal and regulatory framework for stablecoins
 - Signed into law July 2025
 - Significant bipartisan support in both chambers
- Market Structure
 - CLARITY Act passed in the House July 2025
 - Negotiations currently underway in the Senate
 - Multi-committee approach (SBC/Ag)
- Taxation of digital assets?
 - House and Senate are working on finalizing proposals

SEC Agenda

- SEC Chairman Paul Atkins – sworn in April 2025
- Priorities:
 - Deregulation and rolling back Biden-era rules
 - Digital assets
 - Fraud
 - Facilitating capital formation
 - Retail access to private markets
- On 6/12 the SEC issued final notices to rescind 14 unfinished rulemakings initiated under the Biden



Evolving Focus

- Key aspect of Republican political platform is to undo certain “woke” financial policies implemented by the Biden administration and Democrats
- Top oversight priorities:
 - ESG-related regulations, including countering the “Green New Scam,” corporate governance, etc.
 - D&I-related regulations and agency initiatives, including human capital disclosures
 - Outbound investments
 - International regulatory frameworks affecting U.S. companies (e.g., EU Corporate Sustainability Due Diligence Directive)
 - Proxy advisors

LONGER-TERM/MACRO DYNAMICS

- Continued policymaker/staff turnover
- Uncertain, volatile policy and political environment
 - Reversals of partisan policy (reconciliation measures) will continue
 - Resilience of bipartisan policy
- Federal/State complexity
- Capital market impacts
- Significant macro-economic, fiscal issues imminent
- Geopolitical, technological (AI) disruptions possible

SUCCESS IN THE LONG ARC OF POLICY

- Advance policy objectives while minimizing political risk
- Protect mission with strong foundational basis
 - To extent possible, approach that appeals broadly, targeted for key audiences if necessary
 - Deployment of information, education, messaging materials
 - Reinforcing echo chamber
- Strong, ongoing relationship building
- Constructive, respectful approach, with dialable response
 - Responsive with proactive mitigation of risk, with stronger affirmative defense if and when needed
 - Middle of the pack, with thought leadership or coalitions where needed
 - Long-term allies, building bridges early and often
- Prepare for volatility, with reversals, both in short and long term
- Predictive, defensible implementation/compliance

K&L GATES