

2024 YEAR IN REVIEW

SEC Enforcement

January 14, 2025

SEC Enforcement: 2024 Year in Review

During Chair Gary Gensler's last fiscal year heading the Securities and Exchange Commission, the total number of enforcement actions dropped, but financial remedies hit a record high. In this Year in Review, we highlight important takeaways for business leaders and in-house counsel from the Enforcement Division's activities in 2024, and look ahead to the SEC's priorities in 2025 under a second Trump administration.

Highlights

- **Reduced Enforcement, Increased Cooperation:** This fiscal year saw a slowdown in the total number of SEC enforcement actions to 583—down 26% from FY 2023. While it brought fewer cases, the Division still recovered \$8.2 billion in financial remedies, the highest annual recovery in SEC history—although over half of that came from the judgment in one major cryptocurrency case. That figure is especially notable given the SEC's continued efforts to encourage self-reporting and cooperation, including a record 34 admissions of guilt and 75% of public-company and subsidiary defendants having their cooperation noted, the highest level since FY 2019.
- **Emerging Focus on AI, Consistent Focus on Crypto and Cyber:** Artificial intelligence was a top priority for the Division in 2024 and will likely remain important in 2025 under incoming Chair Paul Atkins. The Division adapted its enforcement approach to new alleged fraudulent schemes in the AI, cryptocurrency, and cyber spaces, including scams leveraging social media. It remains to be seen what the enforcement agenda in these areas will be under the new administration, particularly with respect to cryptocurrency.
- **Less Judicial Deference to SEC Adjudication and Rulemaking:** The Supreme Court issued several major decisions in 2024 that may have a significant impact on the SEC's enforcement and rulemaking authority. In *SEC v. Jarkesy*, the Court held that the Division cannot use in-house administrative law judges (ALJs) to seek civil penalties for securities fraud—undoubtedly a loss for the SEC, but one with uncertain impact on the Division's approach to enforcement. The Court also issued two important decisions on the power of administrative agencies—giving regulated parties greater latitude, and more time, to challenge rules promulgated by the SEC that exceed its statutory authority.

New Leadership in 2025

Following former President Donald Trump's election to a second term, change at the helm of the SEC is imminent. On November 21, 2024, Chair Gensler announced that he would leave the agency effective January 20, 2025,¹ paving the way for a replacement to be named before Inauguration Day.

¹ SEC Press Release, SEC Chair Gensler to Depart Agency on January 20 (Nov. 21, 2024), <https://www.sec.gov/newsroom/press-releases/2024-182>.

After weeks of speculation, on December 4, 2024, Trump announced that he would nominate former SEC Commissioner Paul Atkins to chair the SEC. Atkins, who previously founded the Patomak Global Partners financial consulting firm, served as a Commissioner from 2002 to 2008 during the George W. Bush administration.

If the nomination is confirmed by the Senate, which is widely expected, Atkins would likely pursue a less aggressive regulatory agenda and return the agency to a ‘bread-and-butter’ enforcement program focused on harm to retail investors. As a Commissioner, Atkins was an outspoken skeptic of the benefit of significant SEC penalties against corporations, opining that “fines against shareholders are often not appropriate” unless the corporation “is a criminal enterprise” or “the shareholders themselves have somehow benefited from the fraud to the detriment of other corporations or the marketplace as a whole.”² Since leaving the agency, Atkins has also criticized the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 as “aggravating uncertainty and undermining the climate necessary for economic growth.”³ Similarly, Atkins is expected to be hostile to the concept of ‘regulation by enforcement.’

Also garnering much attention are Atkins’s views on the cryptocurrency industry—a frequent target of the Gensler SEC, as discussed later in this Review. Atkins has been active in crypto advocacy through his work as co-chairman of the Digital Chamber’s Token Alliance, which describes itself as “the leading policy voice for tokenized networks, apps, and issuers.”⁴ On a February 2023 podcast, Atkins opined that crypto firms would be more willing to conduct business in the United States if the SEC were “more accommodating” and would “deal straightforwardly” with those firms.⁵ We anticipate that, as Chair, Atkins will prioritize clearer and friendlier rules for the crypto industry, along with a lighter touch on enforcement.

Until Atkins’s nomination is confirmed, the SEC will operate under acting leadership, which could slow the pace of the agency’s enforcement activity early in FY 2025. Moreover, in light of President-elect Trump’s proposal for a “Department of Government Efficiency,” led by Elon Musk and Vivek Ramaswamy, it remains to be seen whether the SEC will see substantial cuts to its budget or staff, which could impede its ability to carry out as robust of a regulatory agenda as it has in recent years.

The Year in Review

Chair Gensler and Director of Enforcement Gurbir Grewal⁶ had a slower year of enforcement compared to 2023. In FY 2024, the SEC brought a total of 583 enforcement actions, down 26% from FY 2023.⁷ This includes 80 enforcement actions against public companies and subsidiaries (down 12% from FY 2023) and 431 “stand-alone” actions (down 14% from FY 2023).⁸ However, despite bringing fewer cases, the SEC “obtain[ed] orders for \$8.2 billion in financial remedies,” the highest annual recovery in the

² SEC Speech, Remarks Before the Atlanta Chapter of the National Association of Corporate Directors (Feb. 23, 2005), <https://www.sec.gov/news/speech/spch022305psa.htm>.

³ *On Enhancing Investor Protection After the Financial Crisis: Statement Before the S. Comm. on Banking, Housing, & Urban Affairs*, 112th Cong. (July 12, 2011) (statement of Paul S. Atkins) at 3, <https://www.banking.senate.gov/download/071211atkins-testimony>.

⁴ Digital Chamber, *Priorities*, <https://digitalchamber.org/priorities/digital-tokens/>.

⁵ Kibbe on Liberty, *Ep. 215: Keep Your Government Hands Off My Crypto, Guest: Paul Atkins* at 21:30-21:50 (Feb. 22, 2023), <https://freethepeople.org/kol-keep-your-government-hands-off-my-crypto-guest-paul-atkins-ep-215/>.

⁶ Grewal resigned as Director of Enforcement effective October 11, 2024; Sanjay Wadhwa currently serves as Acting Director. See SEC Press Release, SEC Announces Departure of Enforcement Director Gurbir S. Grewal (Oct. 2, 2024), <https://www.sec.gov/newsroom/press-releases/2024-162>.

⁷ SEC Press Release, SEC Announces Enforcement Results for Fiscal Year 2024 (Nov. 22, 2024), <https://www.sec.gov/newsroom/press-releases/2024-186>.

⁸ SEC Press Release, SEC Announces Enforcement Results for Fiscal Year 2024 (Nov. 22, 2024), <https://www.sec.gov/newsroom/press-releases/2024-186>; Cornerstone Research, Press Release: SEC Enforcement Actions Against Public Companies and Subsidiaries Drop by 12% in FY 2024; Actions Still Up Nearly 5% Compared to Historical Average (Nov. 21, 2024), <https://www.cornerstone.com/press-release/sec-enforcement-actions-drop-12-percent-fy-2024>.

agency’s history—including \$2.1 billion in civil penalties, the second-highest amount ever imposed in one fiscal year.⁹ That said, over half of the \$8.2 billion in financial remedies came from the judgment in the *Terraform* cryptocurrency case, discussed later in this Review.¹⁰ Finally, the SEC obtained 34 admissions of guilt, the most ever recorded for one fiscal year.¹¹

Emphasis on Rewarding Cooperation

Throughout 2024, senior SEC enforcement officials repeatedly underscored the importance of self-reporting and cooperating with the Division. For example, in a May 2024 speech, then-Director Grewal discussed “Five Principles of Effective Cooperation in SEC Investigations,” including: (1) self-policing; (2) self-reporting; (3) remediation; (4) cooperation above and beyond what is legally required; and (5) collaboration¹² (a new principle not previously articulated in the SEC’s 2001 Seaboard Report on this topic). In other public comments in 2024, Grewal emphasized that cooperation is the best way to avoid civil penalties.¹³

In FY 2024, 75% of public companies and subsidiaries that were the subject of enforcement actions had their cooperation expressly referenced in settled orders or press releases issued by the SEC—the highest level of cooperation since FY 2019 (77%) and far greater than the average from FY 2015 through FY 2023 (64%).¹⁴ In FY 2024, 15% of defendants settled with no monetary penalty—the most since FY 2013 and far greater than the 2015–2023 average of 6%.¹⁵

Greater Reliance on Sweeps, with Focus on Off-Channel Communications

Increased reliance on investigative sweeps—i.e., market-wide investigations into numerous market participants for similar misconduct—was a notable trend during Gensler’s tenure as Chair that continued this past year. In FY 2024, the Division conducted five sweeps that led to 38 enforcement actions against public companies and subsidiaries—about 48% of the SEC’s total enforcement activity against public companies and subsidiaries during the year.¹⁶

The most prominent sweep conducted by the SEC in 2024 targeted recordkeeping failures due to “off-channel” electronic communications by investment advisors, broker dealers, and others, accounting for 22 of the 38 sweep-related enforcement actions in FY 2024.¹⁷ This effort—colloquially known as the “WhatsApp initiative”—resulted in over \$600 million in civil penalties against more than 70 firms in 2024, including the SEC’s first cases charging recordkeeping violations against municipal advisors.¹⁸

The SEC also used its off-channel communications sweep as an opportunity to further incentivize companies to cooperate proactively with SEC investigations. In an August 2024 press release announcing the charges, the SEC noted that three of the

⁹ SEC Press Release, SEC Announces Enforcement Results for Fiscal Year 2024 (Nov. 22, 2024), <https://www.sec.gov/newsroom/press-releases/2024-186>.

¹⁰ *Id.*

¹¹ Cornerstone Research, Press Release: SEC Enforcement Actions Against Public Companies and Subsidiaries Drop by 12% in FY 2024; Actions Still Up Nearly 5% Compared to Historical Average (Nov. 21, 2024), https://www.cornerstone.com/press_release/sec-enforcement-actions-drop-12-percent-fy-2024.

¹² SEC Speech, “The Five Principles of Effective Cooperation in SEC Investigations,” Remarks at Securities Enforcement Forum West 2024 (May 23, 2024), <https://www.sec.gov/newsroom/speeches-statements/grewal-remarks-securities-enforcement-forum-west-052324>.

¹³ Sarah Jarvis, *SEC’s Grewal Says Self-Reporting Best Bet For No Penalties* (May 6, 2024), LAW360, <https://www.law360.com/articles/1831026/sec-s-grewal-says-self-reporting-best-bet-for-no-penalties>.

¹⁴ Cornerstone Research, *SEC Enforcement Activity: Public Companies and Subsidiaries* (2024) at 7, <https://www.cornerstone.com/wp-content/uploads/2024/11/SEC-Enforcement-Public-Companies-Subsidiaries-FY2024.pdf>.

¹⁵ *Id.*

¹⁶ *Id.* at 5.

¹⁷ *Id.*

¹⁸ SEC Speech, Remarks at Securities Enforcement Forum D.C. 2024 (Nov. 6, 2024), <https://www.sec.gov/newsroom/speeches-statements/wadhwa-remarks-securities-enforcement-forum-110624>.

defendant firms self-reported their violations and received significantly lower civil penalties as a result—which then-Director Grewal described as “demonstrating once again the real benefits of proactive cooperation.”¹⁹

Other notable actions brought as a result of sweeps include: two actions for violating the Marketing Rule; six actions for failing to timely file beneficial ownership and insider transaction reports; and one action for failing to file a Form 13F.²⁰

Continued Focus on Public-Company Disclosure and Accounting Fraud

In 2024, the SEC maintained a steady enforcement plate of traditional disclosure and accounting fraud cases against public companies.

For example, on February 6, the SEC announced settled accounting fraud charges against Cloopen Group, a China-based provider of cloud communications products and services whose shares traded on the New York Stock Exchange during the relevant period.²¹ Two senior managers at Cloopen allegedly orchestrated a plan to prematurely recognize revenue from service contracts to meet quarterly sales goals—which inflated total revenues by 4% in Q2 2021 and by 6% in Q3 2021.²² The SEC elected not to impose civil penalties against Cloopen because the company self-reported its accounting issues, cooperated extensively with the staff’s investigation, and undertook prompt remedial measures—further underscoring the SEC’s commitment to rewarding cooperation.²³

More recently, on August 9, the SEC announced settled accounting and disclosure charges against electric vehicle technology firm Ideanomics and three senior executives for misleading the public about the company’s financial performance between 2017 and 2019.²⁴ The SEC alleged, for example, that Ideanomics and its former CEO, Zheng (Bruno) Wu, reported \$300 million in revenue guidance in November 2017 despite several indications that the company would miss the target by a wide margin; it later reported only \$144 million in revenue for the year.²⁵ These are the type of ‘bread-and-butter’ enforcement actions that we expect the SEC will continue to bring under Atkins’s leadership.

Additionally, in 2024 the SEC brought several internal-controls actions in which the Division either did not pursue claims against the company or sought no penalties against the company due to self-reporting and cooperation. For example, on September 4, the SEC announced settled charges against Portland General Electric Company for maintaining insufficient internal accounting controls that did not “sufficiently document and convey information about the company’s derivatives trading to its management and accounting personnel” or “ensure compliance with disclosure requirements.”²⁶ The Division did not seek a civil penalty because of the company’s cooperation and implementation of remedial measures (including withholding FY 2020 incentive

¹⁹ SEC Press Release, Twenty-Six Firms to Pay More Than \$390 Million Combined to Settle SEC’s Charges for Widespread Recordkeeping Failures (Aug. 14, 2024), <https://www.sec.gov/newsroom/press-releases/2024-98>.

²⁰ Cornerstone Research, *SEC Enforcement Activity: Public Companies and Subsidiaries* (2024) at 5, <https://www.cornerstone.com/wp-content/uploads/2024/11/SEC-Enforcement-Public-Companies-Subsidiaries-FY2024.pdf>.

²¹ SEC Press Release, SEC Charges China-Based Tech Company Cloopen Group with Accounting Fraud (Feb. 6, 2024), <https://www.sec.gov/newsroom/press-releases/2024-15>.

²² *Id.*

²³ *Id.*

²⁴ SEC Press Release, SEC Charges Ideanomics and Three Senior Executives with Accounting and Disclosure Fraud (Aug. 9, 2024), <https://www.sec.gov/newsroom/press-releases/2024-94>.

²⁵ *Id.*

²⁶ SEC Press Release, SEC Charges Oregon-Based Utility Company with Internal Accounting and Disclosure Controls Violations That Existed Before \$127 Million Trading Losses (Sept. 4, 2024), <https://www.sec.gov/enforcement-litigation/administrative-proceedings/34-100917-s>.

compensation from three executives).²⁷ The next day, the SEC announced fraud charges against Nicholas Bowerman (the former finance director of CIRCOR International, a formerly publicly traded technology manufacturer) for “manipulat[ing] CIRCOR’s internal accounting records by falsifying Pipeline Engineering’s financial results before they were included in CIRCOR’s consolidated financial statements.”²⁸ The Division also settled related charges against CIRCOR for failing to maintain sufficient internal controls to prevent Bowerman’s fraud, but it did not seek a civil penalty because CIRCOR self-reported following an internal investigation and implemented remedial measures.²⁹

SEC Chair Gensler’s Areas of Focus

2024 saw an increased focus by Chair Gensler and the Enforcement Division on “keeping pace with emerging threats,” such as the risks of artificial intelligence, new fraudulent social media schemes leveraging crypto, and failures to disclose cyber breaches.³⁰

Artificial Intelligence

Artificial intelligence was an emerging priority for the Division in 2024 and will likely remain at the forefront under the new administration. Throughout the year, the Division focused on “AI-washing”—i.e., false or misleading statements by companies about the use or capabilities of their AI tools. Many of Chair Gensler’s office hours and speeches concentrated on the emerging risks in the artificial intelligence space. For example, in February 2024, Chair Gensler spoke about the “great efficiencies” AI can bring across the economy and financial world, but warned of the “host of issues” AI can exacerbate—including “opportunities for deception or manipulation,” both in designing the AI models themselves and in representing their capabilities to investors.³¹

In public remarks, then-Director Grewal drew parallels between the Division’s experience with the issues in ESG investing and similar problems created by the growth of AI—specifically highlighting the SEC’s settled charges with two investment advisers for AI-washing their investment processes, pursuant to which the firms agreed to pay \$400,000 in civil penalties.³² The messaging from SEC leadership was clear: companies must “ensure that [their] representations regarding [] use of AI are not materially false or misleading.”³³ Companies should seek to understand the AI-related risks of their businesses, evaluate public statements about AI in their business operations, and update and implement relevant internal policies.³⁴

Cryptocurrency

As in 2022 and 2023, the SEC continued its ‘regulation-by-enforcement’ approach to the cryptocurrency industry in 2024, focusing on actions alleging fraud and non-compliance with registration requirements. Over half of the SEC’s record-setting \$8.2 billion in financial remedies in FY 2024 came from the judgment obtained in *SEC v. Terraform Labs PTE LTD.*—“one of the largest

²⁷ *In the Matter of Portland General Electric Company*, File No. 3-22065, at 5 (Sept. 4, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-100917.pdf>.

²⁸ SEC Press Release, SEC Charges Former Finance Director at CIRCOR International with Accounting Fraud (Sept. 5, 2024), <https://www.sec.gov/newsroom/press-releases/2024-116>.

²⁹ *Id.*

³⁰ SEC Press Release, SEC Announces Enforcement Results for Fiscal Year 2024 (Nov. 22, 2024), <https://www.sec.gov/newsroom/press-releases/2024-186>.

³¹ SEC Speech, AI, Finance, Movies, and the Law - Prepared Remarks Before the Yale Law School (Feb. 13, 2024), <https://www.sec.gov/newsroom/speeches-statements/gensler-ai-021324>.

³² SEC Speech, Remarks at Program on Corporate Compliance and Enforcement Spring Conference 2024 (Apr. 15, 2024), <https://www.sec.gov/newsroom/speeches-statements/gurbir-remarks-pcce-041524>; see SEC Press Release, SEC Charges Two Investment Advisers with Making False and Misleading Statements About Their Use of Artificial Intelligence (March 18, 2024), <https://www.sec.gov/newsroom/press-releases/2024-36>.

³³ *Id.*

³⁴ *Id.*

securities frauds in U.S. history” and the Division’s “first-ever crypto-related trial.”³⁵ On April 5, a jury in the Southern District of New York found Terraform Labs and Do Kwon (the company’s co-founder) liable for “orchestrating a years-long fraud involving crypto assets securities that led to massive investor losses when the scheme unraveled.”³⁶ After the unanimous jury verdict, the parties “agreed to pay more than \$4.5 billion” in total remedies, “the highest remedies ever obtained by the SEC following a trial.”³⁷ Notably, Kwon himself agreed to pay over \$200 million in individual penalties, further highlighting the Division’s emphasis on individual accountability.³⁸

Additionally, the SEC settled other crypto-related securities fraud charges—such as with Silvergate Capital, its former CEO, and its former Chief Risk Officer for misleading investors about its Bank Secrecy Act/Anti-Money Laundering compliance program and the monitoring of crypto customers.³⁹ Like *Terraform*, this action demonstrates the SEC’s recent focus on individual accountability, with both individual defendants agreeing to pay \$1 million and \$250,000 in civil penalties, respectively, and to receive five-year officer-and-director bars.⁴⁰ The SEC also settled charges with companies that failed to comply with registration requirements, such as with Barnbridge DAO for failing to register its offer and sale of structured crypto assets offered and sold as securities.⁴¹

A new area of focus for the SEC in 2024 was on “relationship investment scams”—i.e., fraudulent schemes in which a perpetrator builds a personal connection with a victim, gaining the victim’s trust over time, and then convinces the victim to invest in fake or non-existent investment opportunities. The SEC brought its first actions of this kind in the crypto space, charging five companies and three individuals in connection with two alleged relationship investment scams involving fake crypto asset trading platforms.⁴² The SEC alleges that the defendants “solicited investors via social media apps, lied to them to gain their trust and confidence, and then stole their money.”⁴³ Those cases remain pending in the Central District of California.

Cybersecurity

Cybersecurity persisted as a top concern for Chair Gensler in 2024. In 2023, the SEC adopted rules “requir[ing] public companies to disclose material cybersecurity incidents under Items 1.05 of Form 8-K.” These rules went into effect for most companies in December 2023.⁴⁴ In May 2024, the Director of the SEC’s Division of Corporate Finance published a statement clarifying that the

³⁵ *SEC v. Terraform Labs PTE LTD.*, Case No. 1:23-cv-01346 (S.D.N.Y. Feb. 16, 2023), ECF No. 1; SEC Press Release, Terraform and Kwon to Pay \$4.5 Billion Following Fraud Verdict (June 13, 2024), <https://www.sec.gov/newsroom/press-releases/2024-73>; SEC Press Release, SEC Announces Enforcement Results for Fiscal Year 2024 (Nov. 22, 2024), <https://www.sec.gov/newsroom/press-releases/2024-186>.

³⁶ SEC Press Release, Terraform and Kwon to Pay \$4.5 Billion Following Fraud Verdict (June 13, 2024), <https://www.sec.gov/newsroom/press-releases/2024-73>.

³⁷ SEC Press Release, Terraform and Kwon to Pay \$4.5 Billion Following Fraud Verdict (June 13, 2024), <https://www.sec.gov/newsroom/press-releases/2024-73>; SEC Press Release, SEC Announces Enforcement Results for Fiscal Year 2024 (Nov. 22, 2024), <https://www.sec.gov/newsroom/press-releases/2024-186>.

³⁸ *Id.*

³⁹ SEC Press Release, SEC Charges Silvergate Capital, Former CEO for Misleading Investors about Compliance Program (July 1, 2024), <https://www.sec.gov/newsroom/press-releases/2024-82>.

⁴⁰ *Id.*

⁴¹ SEC Press Release, BarnBridge DAO Agrees to Stop Unregistered Offer and Sale of Structured Finance Crypto Product (Dec. 22, 2023), <https://www.sec.gov/newsroom/press-releases/2023-258>.

⁴² SEC Press Release, SEC Charges Multiple Individuals and Entities in Relationship Investment Scams (Sept. 17, 2024), <https://www.sec.gov/newsroom/press-releases/2024-134>.

⁴³ *Id.*

⁴⁴ SEC Statement, Disclosure of Cybersecurity Incidents Determined To Be Material and Other Cybersecurity Incidents (May 21, 2024), <https://www.sec.gov/newsroom/speeches-statements/gerding-cybersecurity-incidents-05212024>.

rules require companies to disclose incidents after they have determined the breach was material.⁴⁵ In June, the SEC issued updated guidance on these rules.⁴⁶ Companies should monitor this and other guidance in this area, especially in light of the Division's recent focus on cybersecurity-related enforcement.

Further, in 2024, the Division settled charges with companies for failures to disclose cyber intrusions—such as against The Intercontinental Exchange and its affiliates, including the NYSE.⁴⁷ The SEC also settled charges against Equiniti Trust Company LLC for failing to protect client funds from cyber intrusions, “which led to losses of millions of dollars in client funds.”⁴⁸

In a blow to the SEC's cybersecurity enforcement efforts, the U.S. District Court for the Southern District of New York dismissed a large part of the Division's case against SolarWinds, in which it alleged that SolarWinds made misleading statements about its cybersecurity practices and failed to fully disclose a cyber intrusion.⁴⁹ The motion to dismiss was supported by four groups that submitted amicus briefs, including a brief submitted by Paul, Weiss on behalf of former government officials.⁵⁰ This case was the first time the SEC brought intentional fraud charges in a cybersecurity case, brought an accounting control claim based on an issuer's alleged cybersecurity failings, and brought a cybersecurity enforcement claim against an individual.⁵¹ However, in a partial win for the SEC, Judge Paul A. Engelmayer held that the SEC sufficiently pled misrepresentation and scheme liability claims as to a 2017 security statement SolarWinds had posted on its website and representations as to two of the company's five cybersecurity practices.⁵² It remains to be seen whether Judge Engelmayer's decision, along with the change in administration, will cause the Division to hesitate in pursuing aggressive enforcement for cybersecurity incidents.

Whistleblower Protection

The SEC continued to pay substantial whistleblower awards in 2024, albeit not quite at the record levels we saw in 2023. In FY 2024, the SEC received “more than 24,000 whistleblower tips, more than 14,000 of which were submitted by two individuals[,]” and awarded \$255 million to whistleblowers, compared to the record-breaking \$600 million in rewards in FY 2023 (although \$279 million went to a single whistleblower that year).⁵³

Enforcement of whistleblower protection rules was likewise a priority for Chair Gensler in 2024. For example, the SEC settled charges against a multi-national financial services firm for violating the whistleblower provisions of the Dodd-Frank Act, which prohibit market participants from taking any action to impede would-be whistleblowers from contacting the SEC.⁵⁴ According to

⁴⁵ *Id.*

⁴⁶ SEC Compliance and Disclosure Interpretations: Exchange Act Form 8-K (June 24, 2024), <https://www.sec.gov/rules-regulations/staff-guidance/compliance-disclosure-interpretations/exchange-act-form-8-k>.

⁴⁷ SEC Press Release, SEC Charges Intercontinental Exchange and Nine Affiliates Including the New York Stock Exchange With Failing to Inform the Commission of a Cyber Intrusion (May 22, 2024), <https://www.sec.gov/newsroom/press-releases/2024-63>.

⁴⁸ SEC Press Release, SEC Charges Transfer Agent Equiniti Trust Co. with Failing to Protect Client Funds Against Cyber Intrusions (Aug, 20, 2024), <https://www.sec.gov/newsroom/press-releases/2024-101>.

⁴⁹ Paul, Weiss Publications, SDNY Court Deals Blow to SEC Cyber Enforcement, Dismisses Most Charges Against SolarWinds and Its CISO (July 23, 2024), <https://www.paulweiss.com/practices/litigation/cybersecurity-data-protection/publications/sdny-court-deals-blow-to-sec-cyber-enforcement-dismisses-most-charges-against-solarwinds-and-its-ciso?id=52318>.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*; see *Sec. & Exch. Comm'n v. SolarWinds Corp.*, No. 23-cv-9518 (PAE), 2024 WL 3461952, at *2 (S.D.N.Y. July 18, 2024).

⁵³ SEC Press Release, SEC Announces Enforcement Results for Fiscal Year 2024 (Nov. 22, 2024), <https://www.sec.gov/newsroom/press-releases/2024-186>; SEC Press Release, SEC Announces Enforcement Results for Fiscal Year 2023 (Nov. 14, 2023), <https://www.sec.gov/newsroom/press-releases/2023-234>.

⁵⁴ SEC Press Release, SEC Announces Enforcement Results for Fiscal Year 2024 (Nov. 22, 2024), <https://www.sec.gov/newsroom/press-releases/2024-186>.

the settlement order, the firm “regularly asked” clients and customers with whom the company had issued settlements to sign a release agreement that “impeded” them from voluntarily reporting potential securities law violations to the SEC.⁵⁵ The Division alleged that this scheme forced clients to either choose to take settlements and credits from the company or report potential violations to the SEC.⁵⁶ Although the firm did not admit or deny the Division’s allegations, it agreed to pay an \$18 million civil penalty—“the largest penalty on record for a standalone violation” of this rule—and it agreed to be censured.⁵⁷ Additionally, the SEC settled charges with seven public companies for violating the whistleblower protection rule by “requir[ing] employees to waive their right to possible whistleblower monetary awards.”⁵⁸ In addition to the combined \$3 million in civil penalties, the companies have taken remedial steps to ensure compliance, including revising the relevant agreements.⁵⁹

Under the new administration and leadership, the Division might opt to de-emphasize the whistleblower program. Although former Chairman Jay Clayton (who served during the first Trump Administration) publicly supported the program,⁶⁰ Atkins has criticized the provisions of the Dodd-Frank Act that created the whistleblower program as “creat[ing] perverse incentives . . . and set[ting] up a system that has many inherent problems.”⁶¹

Climate Disclosures

In March 2024, the SEC adopted the long-awaited climate-related disclosure rules, over two years after they were first introduced.⁶² These rules require companies to present annual reports and disclose financial statements that provide information about “material climate-related risks . . . and any mitigation or adaptation activities,” “material climate-related targets,” “costs . . . and losses associated with severe weather events,” “company board and management oversight and governance of climate-related risks,” and other climate-related information.⁶³ The final rules “eliminate the controversial requirement to disclose Scope 3 greenhouse gas (“GHG”) emissions” and “limit[] the requirement to disclose Scope 1 and Scope 2 GHG emissions.”⁶⁴

⁵⁵ Order, In the Matter of J.P. Morgan Securities LLC, United States of America Before the SEC (Jan. 16, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-99344.pdf>.

⁵⁶ SEC Press Release, J.P. Morgan to Pay \$18 Million for Violating Whistleblower Protection Rule (Jan. 16, 2024), <https://www.sec.gov/newsroom/press-releases/2024-7>.

⁵⁷ SEC Press Release, SEC Announces Enforcement Results for Fiscal Year 2024 (Nov. 22, 2024), <https://www.sec.gov/newsroom/press-releases/2024-186>; SEC Press Release, J.P. Morgan to Pay \$18 Million for Violating Whistleblower Protection Rule (Jan. 16, 2024), <https://www.sec.gov/newsroom/press-releases/2024-7>.

⁵⁸ SEC Press Release, SEC Charges Seven Public Companies with Violations of Whistleblower Protection Rule (Sept. 9, 2024), <https://www.sec.gov/newsroom/press-releases/2024-118>.

⁵⁹ SEC Press Release, SEC Charges Seven Public Companies with Violations of Whistleblower Protection Rule (Sept. 9, 2024), <https://www.sec.gov/newsroom/press-releases/2024-118>.

⁶⁰ SEC Statement, Strengthening our Whistleblower Program (Sept. 23, 2020), <https://www.sec.gov/newsroom/speeches-statements/clayton-whistleblower-2020-09-23>.

⁶¹ *On Enhancing Investor Protection After the Financial Crisis: Hearing Before the S. Comm. on Banking, Housing, & Urban Affairs*, 112th Cong. (July 12, 2011) (statement of Paul S. Atkins) at 10-11, <https://www.banking.senate.gov/download/071211atkins-testimony>.

⁶² SEC Press Release, SEC Adopts Rules to Enhance and Standardize Climate-Related Disclosures for Investors (Mar. 6, 2021), <https://www.sec.gov/newsroom/press-releases/2024-31>.

⁶³ Paul, Weiss Publications, SEC Adopts New Climate Disclosure Requirements (Mar. 8, 2024), <https://www.paulweiss.com/practices/transactional/capital-markets/publications/sec-adopts-new-climate-disclosure-requirements?id=50582>.

⁶⁴ *Id.*

Although these rules are finalized, they face an uncertain future. A challenge to the climate-related disclosure rules is pending in the Eighth Circuit;⁶⁵ the SEC announced in April that it would voluntarily stay the final rules until that challenge is resolved.⁶⁶

Other Important Developments in 2024

Insider Trading Enforcement

FY 2024 saw significant developments in the insider trading space, including major trial victories for both the SEC and Department of Justice.

On April 4, a jury in the Northern District of California found that Matthew Panuwat, a former senior director of business development at biopharmaceutical firm Medivation, violated Section 10(b) of the Exchange Act and SEC Rule 10b-5 by “shadow trading”—i.e., trading in securities of a similarly situated competitor’s shares while in possession of inside information about his own company.⁶⁷ On September 9, Judge William Orrick upheld the jury’s verdict and ordered Panuwat to pay \$321,197.40—the maximum civil penalty, and three times his profit on the trades.⁶⁸ Although the SEC described the case as “pure and simple” insider trading,⁶⁹ *Panuwat* is the Division’s first enforcement action alleging that information about one firm could be considered material to investors of another firm because of the two firms’ similarities or connections. Both the jury’s verdict and Judge Orrick’s decision could embolden the SEC to continue pursuing aggressive charging theories into trading conduct that historically has not been prohibited.

Additionally, on June 21, a jury in the Central District of California convicted Terren Peizer, the former CEO of Ontrak, Inc., of insider trading, marking the first insider trading conviction based solely on trades executed via a Rule 10b5-1 plan.⁷⁰ A Rule 10b5-1 plan allows a public-company insider who may come into possession of material non-public information (“MNPI”) to buy or sell shares at a predetermined time pursuant to a written plan, provided that the plan satisfies certain conditions and is adopted at a time when the insider has no MNPI.⁷¹ In March 2023, the SEC and DOJ filed parallel criminal and civil actions against Peizer, alleging that he avoided over \$12.5 million of losses by trading pursuant to two Rule 10b5-1 plans established while he possessed MNPI.⁷² The SEC indicated that the civil charges arose from the agency’s “data-driven initiative into executive trading pursuant to Rule 10b5-1 plans.”⁷³ Given the DOJ’s victory at trial, such initiatives may continue, even in cases where trades

⁶⁵ *Iowa et al. v. Sec. & Exch. Comm’n*, Nos. 24-1522 and consolidated cases (8th Cir.).

⁶⁶ Letter to Clerk of Court, *Iowa et al. v. Sec. & Exch. Comm’n*, No. 24-1522 (8th Cir. filed Apr. 4, 2024).

⁶⁷ *Sec. & Exch. Comm’n v. Panuwat*, No. 21-cv-06322 (WHO) (N.D. Cal. Apr. 5, 2024), ECF No. 169.

⁶⁸ *Panuwat*, 2024 WL 4602708 at *28-*29 (N.D. Cal. Sept. 9, 2024).

⁶⁹ SEC Statement, Statement on Jury’s Verdict in Trial of Matthew Panuwat (Apr. 15, 2024), <https://www.sec.gov/newsroom/speeches-statements/grewal-statement-040524>.

⁷⁰ *United States v. Peizer*, No. 2:23-cr-00089 (C.D. Cal. June 21, 2024), ECF No. 324.

⁷¹ Paul, Weiss Publications, DOJ and SEC Allege Insider Trading Based Exclusively on Rule 10b5-1 Trading Plans (Mar. 3, 2023), <https://www.paulweiss.com/practices/litigation/litigation/publications/doj-and-sec-allege-insider-trading-based-exclusively-on-use-of-rule-10b5-1-trading-plans?id=46186>.

⁷² DOJ Press Release, CEO of Publicly Traded Health Care Company Charged for Insider Trading Scheme, DOJ (Mar. 1, 2023), <https://www.justice.gov/opa/pr/ceo-publicly-traded-health-care-company-charged-insider-trading-scheme>; SEC Press Release, SEC Charges Ontrak Chairman Terren Peizer With Insider Trading (Mar. 1, 2023), <https://www.sec.gov/newsroom/press-releases/2023-42>. The SEC’s civil action was stayed in April 2023 pending conclusion of the criminal proceedings.

⁷³ SEC Press Release, SEC Charges Ontrak Chairman Terren Peizer With Insider Trading (Mar. 1, 2023), <https://www.sec.gov/newsroom/press-releases/2023-42>.

resulted only in avoided loss. Indeed, following the *Peizer* verdict, the acting head of the DOJ's Criminal Division confirmed that, although this was the Department's first prosecution based solely on Rule 10b5-1 plans, "it will not be our last."⁷⁴

The Administrative State at the Supreme Court

Consistent with recent trends, in 2024, the Supreme Court issued several decisions reining in the enforcement and rulemaking authority of federal agencies, including the SEC.

On the enforcement front, in *SEC v. Jarkesy*, the Supreme Court held that the Division cannot use in-house administrative law judges (ALJs), as opposed to federal district courts, to seek civil penalties for securities fraud, because the defendant has a right to a jury trial on such claims under the Seventh Amendment.⁷⁵ *Jarkesy* is certainly a loss for the SEC—although it was already bringing the vast majority of its fraud cases in federal court, the Division has historically prevailed far more often in enforcement actions before its own ALJs.⁷⁶ This decision may cause the Division to forego certain cases in federal court that it would have otherwise brought in-house—where it imposed \$784 million in civil penalties in FY 2024 (54% of all monetary settlements).⁷⁷

Although the *Jarkesy* decision is narrow in scope, it introduces some uncertainty into current and future SEC enforcement actions. While *Jarkesy* only concerned securities fraud claims seeking monetary penalties, defendants will likely challenge in-house adjudication of other claims on similar Seventh Amendment grounds. Until those constitutional issues are decided, bringing other contested claims in-house would be a high-risk strategy for the SEC. Early indications are that the Division is proceeding with caution; just months after *Jarkesy*, it dismissed two contested Rule 102(e) proceedings against accountants who allegedly failed to conduct audits in accordance with professional standards⁷⁸ (it had previously moved to stay those cases pending a decision in *Jarkesy*). Moreover, the SEC has not yet issued any guidance on how *Jarkesy* will affect the terms of pending settlements; going forward, the agency might revise the language of its settlement agreements to require defendants to explicitly acknowledge and waive their right to a jury trial.

As for rulemaking, two cases stand out. In *Loper Bright Enterprises v. Raimondo*, the Supreme Court overruled the so-called "Chevron deference" doctrine, which had "required courts to defer to 'permissible' agency interpretations of the statutes those agencies administer—even when a reviewing court reads the statute differently."⁷⁹ The Court explained that the Administrative Procedure Act ("APA") requires courts to "exercise independent judgment in determining the meaning of statutory provisions" instead of deferring to agencies' interpretation of their own authority.⁸⁰ Then, in *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, the Court clarified the time period within which a party may sue an agency under the APA for harm caused by the agency's actions.⁸¹ The Court held that, under the six-year statute of limitations, an APA claim "accrues when the party is injured by final agency action," not when the agency originally acted.⁸² As a result, the injured party can sue the agency

⁷⁴ DOJ Press Release, Chairman of Publicly Traded Health Care Company Convicted of Insider Trading (June 21, 2024), <https://www.justice.gov/opa/pr/chairman-publicly-traded-health-care-company-convicted-insider-trading>.

⁷⁵ *Sec. & Exch. Comm'n v. Jarkesy*, 144 S. Ct. 2117, 2139 (2024).

⁷⁶ *Id.* at 2141 (Gorsuch, J., concurring).

⁷⁷ Cornerstone Research, SEC Enforcement Activity: Public Companies and Subsidiaries (2024) at 9, <https://www.cornerstone.com/wp-content/uploads/2024/11/SEC-Enforcement-Public-Companies-Subsidiaries-FY2024.pdf>.

⁷⁸ *See, e.g.*, Administrative Proceeding, File No. 3-20394 (Aug. 9, 2024), <https://www.sec.gov/files/litigation/apdocuments/3-20394-2024-08-09-motion.pdf>.

⁷⁹ *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2254 (2024).

⁸⁰ *Id.* at 2262.

⁸¹ *Corner Post, Inc. v. Bd. of Governors of Fed. Res. Sys.*, 144 S. Ct. 2440, 2448 (2024).

⁸² *Id.* (emphasis added).

“within six years of its injury,” even if the action that caused the injury (e.g., the enactment of an agency rule) was taken many years earlier.⁸³

Following the *Loper Bright* and *Corner Post* decisions, regulated parties have greater latitude, and more time, to challenge final rules proposed and adopted by the SEC. This may lead to an increase in both the frequency and success of challenges to the agency’s rulemaking. Though it is too soon to discern any direct impact, the SEC has not fared well in defending its proposed rules since *Loper Bright* and *Corner Post*. For example, on November 21, a federal district court in Texas struck down the agency’s proposed rule that expanded the definition of “dealer” to include proprietary traders and some hedge funds (the “Dealer Rule”), finding that the SEC had exceeded its statutory authority under the ‘34 Act.⁸⁴ In doing so, the Court afforded no deference to the SEC’s interpretation of the statute, instead concluding that the SEC’s definition of “dealer” was “untethered from the text, history, and structure of the Act.”⁸⁵ More recently, on December 11, the Fifth Circuit struck down Nasdaq’s board diversity disclosure requirements, holding *en banc* that the SEC had exceeded its authority in approving them.⁸⁶

Together, *Loper Bright*, *Corner Post*, and *Jarkesy* continue a line of recent Supreme Court decisions curtailing the power of administrative agencies based on concerns of statutory and constitutional overreach. These decisions will complicate matters for the SEC as it assembles its enforcement and rulemaking programs under new leadership in 2025.

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⁸³ *Id.* at 2460.

⁸⁴ *Nat’l Ass’n of Private Fund Managers v. Sec. & Exch. Comm’n*, No. 4:24-cv-00250-O, 2024 WL 4858589 (N.D. Tex. Nov. 21, 2024); *Crypto Freedom Alliance of Tex. v. Sec. & Exch. Comm’n*, No. 4:24-cv-00361-O, 2024 WL 4858590 (N.D. Tex. Nov. 21, 2024).

⁸⁵ *Nat’l Ass’n of Private Fund Managers*, 2024 WL 4858589, at *3.

⁸⁶ Paul, Weiss Publications, Fifth Circuit Strikes Down Nasdaq Board Diversity Disclosure Requirements (Dec. 16, 2024), <https://www.paulweiss.com/practices/transactional/capital-markets/publications/fifth-circuit-strikes-down-nasdaq-board-diversity-disclosure-requirements?id=55839>.

We look forward to providing you with further updates on these and other developments throughout the year ahead.

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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