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Risk #9: What the New SEC's First Year Signals for the Future of Private Fund Oversight

The Capital Commitment on **April 21, 2026**

The SEC's first year under Chair Paul Atkins, who was sworn in on April 21, 2025, has offered significant insight into the evolution of enforcement priorities, particularly for private fund managers. Following the more aggressive posture under former Chair Gary Gensler, the Commission has recalibrated its approach, yielding a more selective, resource-conscious enforcement program that places renewed emphasis on traditional fraud, clearer statutory grounding, and demonstrable investor harm.

For private fund advisers, this shift reflects a change in enforcement emphasis rather than a meaningful relaxation of compliance expectations: fewer cases driven by technical violations alone, but continued scrutiny of conduct that directly implicates fiduciary duties, conflicts of interest, and misuse of investor assets.

New Leadership -- A Strategic Reset: Back to Core Fraud

Recent remarks at the SEC Speaks conference underscore the Commission's shift away from "regulation by enforcement" toward an approach grounded in core statutory mandates and meaningful investor protection.

Enforcement staff emphasized a "right circumstances" approach to non-fraud compliance violations: such cases remain in scope, particularly where rules are designed to prevent harm or where violations are persistent, unremediated, or result in meaningful investor harm. Chair Atkins also signaled a more pragmatic, coordinated posture, including greater willingness to defer to other regulators, enhanced coordination with criminal authorities and the CFTC, and a focus on avoiding duplicative enforcement.

Taken together, these remarks confirm a strategic reset: a more disciplined program centered on fraud and fiduciary misconduct, prioritizing substance over technical violations.

Reduced Staff Impacts Enforcement Capacity and Selectivity

The SEC is currently operating with approximately 19% fewer staff than under the prior administration, with the greatest impact on the Enforcement Division, a practical constraint that limits its investigative capacity. As a result, the SEC has become more selective at the intake stage, prioritizing matters that present clear evidence of fraud, conflicts, or investor harm. This selectivity is reinforced by the requirement that the Commission authorize formal orders of investigation before investigations may proceed.

At the same time, senior Enforcement Staff consists mainly of career professionals, reflecting significant institutional continuity. While priorities and tone have shifted, the underlying expertise and infrastructure remain largely intact, suggesting evolution rather than wholesale transformation.

A Lower Public Profile for Enforcement

One notable development has been the Division's markedly lower public profile. Historically, senior Enforcement officials regularly spoke at industry conferences and compliance forums; over the past year, those appearances have all but disappeared. Public remarks from Enforcement leadership have likewise been sparse, with only a single substantive speech delivered during Director Ryan's brief, eight-month tenure.

The SEC's approach to enforcement press releases has also shifted. Press releases announcing enforcement actions, once frequent and accompanied by explanatory messaging from senior staff—highlighting the significance of cases, cooperation credit, and broader programmatic themes—have largely been replaced by bare litigation releases. The SEC's recent publication of its FY 2025 enforcement statistics has revealed that overall case activity has significantly declined as expected. The release emphasized that traditional metrics such as case volume and total penalties are no longer the primary measure of success, instead framing enforcement effectiveness in terms of investor protection and alignment with Congressional intent.

Greater Transparency and Consistency in Enforcement Policies

Recent revisions to the Enforcement Manual further reflect the Division's recalibrated approach. The updates emphasize adherence to statutory authority, structured supervisory review, and clearer documentation of investigative steps. The revisions also reinforce internal controls around compulsory process, Wells procedures, and settlement recommendations, underscoring a renewed focus on procedural discipline.

While the changes are not dramatic in isolation, the real test will be whether they lead to meaningful changes in practice rather than remain words on a page. Taken together, the changes reflect a Division seeking greater consistency, tighter oversight, and more clearly articulated enforcement rationales, particularly in cases that may test legal boundaries.

What's Out: Dismissed Litigation and Closed Investigations

The dismissal of active litigation authorized by the prior administration—along with the closure of more than 1,000 investigations that did not result in charges—is another significant development, reflecting Chair Atkins' willingness to reassess the factual and legal bases of claims even where the Commission had previously authorized action unanimously. Since January 2025, the SEC has dismissed nearly 30 litigated enforcement actions involving 74 defendants. The reasons for these dismissals—all made "in the exercise of discretion" with the caveat that it "does not necessarily reflect the Commission's position on other cases"—have ranged from clear policy reversals to fact-specific reassessments.

The largest category (about a third of the cases) relates to crypto and digital asset matters, nearly all of which had been previously authorized on divided 3-2 partisan votes. In a clear expression of a deliberate policy reversal, Chair Atkins described the pivot away from the "misguided regulation by enforcement campaign" under the prior Commission.

A second category includes rules-based, non-fraud enforcement actions premised on novel or contested theories of liability, such as cases involving MNPI policies and procedures and dealer registration requirements. These cases were often authorized on divided votes and may also reflect a change in policy or reduced appetite for enforcement actions lacking allegations of investor harm.

A third category consists of dismissals driven by presidential pardons and other executive actions, rather than any reassessment of the underlying enforcement theories. While not legally required to do so, the SEC appears to have adopted a practice of dismissing its parallel litigations as an "exercise of its discretion."

A final set of cases appears to reflect evidentiary reassessments following discovery, rather than broader policy shifts. At SEC Speaks, the head of the Trial Unit acknowledged that the Division will continually reassess litigation risk, narrowing or dismissing cases where the evidence or litigation posture changes. Such decisions, he emphasized, may be driven by both policy considerations and case-specific facts.

Taken together, these dismissals suggest that prior partisan Commission splits were, as we predicted in an earlier post, a strong indicator of which cases would be reconsidered, with exceptions primarily where external factors or evidentiary weaknesses drove the outcome. The SEC's FY 2025 enforcement results underscore this reset, marking a clear shift away from novel legal theories and claims not sufficiently grounded in the federal securities laws.

What's In: Notable Recent Enforcement Cases

Despite a narrower enforcement focus, several private fund enforcement areas remain firmly on the Commission's agenda. Two recent settled actions underscore that private fund advisers remain squarely within Enforcement's focus where fiduciary duties, conflicts, and investor harm are implicated.

In one case, the SEC brought a non-fraud action against an adviser that sold loans to affiliated funds at allegedly stale prices during the COVID-era market disruption without reassessing fair value, contrary to its disclosures. Although the adviser voluntarily reimbursed investors during the examination, the SEC settlement nonetheless imposed a civil penalty, underscoring that valuation, conflicts, and disclosure failures that result in investor harm remain a core enforcement focus, even where the alleged conduct is merely negligent.

In another case, the SEC alleged that an adviser miscalculated management fee offsets, resulting in excess fees charged to fund investors. Brought as a non-scienter action, the case underscores that "bread-and-butter" issues such as fee calculations remain a core enforcement priority.

Even under a streamlined enforcement philosophy, routine compliance failures continue to draw scrutiny. In one action, the SEC penalized an adviser for failing to conduct required surprise examinations for six years, a clear violation of the Custody Rule and an example of persistent, unremedied compliance breakdowns. In another, the SEC charged an adviser with Marketing Rule violations for claiming it would "refuse all conflicts" despite disclosing multiple inherent conflicts in its Form ADV, leaving it without a reasonable basis to substantiate that statement. In a separate action, the SEC charged two registered advisers for using hedge clauses in retail client advisory agreements that misstated the scope of their unwaivable fiduciary duties and suggested clients had waived non-waivable rights. The SEC also imposed a significant penalty on a private fund adviser for short-sale violations under Regulation M / Rule 105. Together, these cases signal continued attention to market integrity rules and compliance failures that pose risks to investors, even when these amount only to "technical" violations where no harm has been immediately realized.

Finally, Enforcement has remained active in areas involving conflicts and retail exposure. Two cases announced on the same day, one involving undisclosed incentives and the other involving dual-capacity misstatements under Regulation Best Interest, reinforce conflict-of-interest disclosure as a core enforcement theme. Although both actions involved allegations of negligence, the penalties were significant ($19 million and $5 million), reflecting the SEC's heightened sensitivity to retail investor harm.

Looking Ahead

The SEC's enforcement posture in 2026 reflects a more disciplined and targeted approach, but not a retreat from enforcement. For private fund managers, the message is clear: while technical compliance remains important, the greatest enforcement risk lies where compliance failures intersect with conflicts, misrepresentations, misuse of assets, or other conduct causing investor harm. In a more selective enforcement environment, substance, not form, has become the defining theme.

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