



WMHW ALERT: SEC PUBLISHES FISCAL 2024 ENFORCEMENT RESULTS: OUR TAKE LOOKING BACK AND AHEAD

The SEC’s fiscal 2024 Enforcement results are out, and show a considerable drop in the number of filed Enforcement Actions. In the final year of Chair Gary Gensler’s and Enforcement Director Gurbir Grewal’s leadership, the SEC brought 583 actions, a 26% decrease from FY 2023, according to the SEC’s November 22, 2024 press release (<https://www.sec.gov/newsroom/press-releases/2024-186>). We attribute some of that decline to certain programmatic litigation setbacks, the flat budget over the last two years, and fewer securities offering and issuer reporting/audit and accounting cases (a ~43% drop from FY 2023). In addition, the number of FCPA cases declined from 11 to 2, an 82% drop. The SEC’s 2024 enforcement priorities included crypto, off-channel communications, and the investment adviser Marketing Rule.

In this WMHW alert, presented in chart format, we highlight important takeaways from SEC Enforcement in 2024, and how Enforcement might change in a Trump Administration SEC in 2025, especially now that President-elect Trump has named former SEC Commissioner Paul Atkins as his choice for the SEC’s next Chair. We expect a more traditional enforcement focus on matters involving fraud, including offering frauds, investment adviser issues, retail investors, and tangible investor or market harm. The following chart summarizes our 2024 SEC Enforcement observations and our corresponding predictions for 2025. Stay tuned for our upcoming video discussion elaborating on these takeaways and predictions.

Topic	2024 SEC Enforcement Activity	2025 Projection
Fewer Enforcement Actions	The SEC suffered an enforcement process speed bump from the June 2024 <i>Jarkesy</i> decision where the Supreme Court found that, when the SEC seeks civil penalties for securities fraud, the Seventh Amendment entitles the parties to a jury trial.	Regardless of the number of cases the SEC brings in 2025, expect a focus on fraud and other more traditional enforcement. <i>Jarkesy</i> ’s impact on settled cases will wane, but might continue to complicate litigated cases.
Cooperation Credit and civil money penalties	In several recent settlements, the SEC found that a party provided meaningful cooperation leading to reduced civil money penalties, lighter charges, other reduced sanctions, or even a decision not to charge or impose a civil penalty. In 2024, the number of non-monetary settlements with cooperating companies rose to 15%, compared with 9% in FY 2023.	The concept of cooperation credit originated from a Republican-led SEC in the 2001 Seaboard 21(a) report. Expect the SEC to reflect cooperation in future settlements where appropriate, including through non-monetary or reduced civil penalty settlements. Relatedly, look for whether the SEC dusts off the 2006 penalties statement regarding entities. https://www.sec.gov/news/press/2006-4.htm
Crypto & Other Digital Assets	The SEC’s several 2024 digital assets cases focused on the unregistered offer and sale of digital assets, broker and other registration, and fraudulent crypto schemes. Though the SEC reported a record-breaking \$8.2 billion in total disgorgement and penalties for FY 2024, 56% of that amount stems from one crypto case against Terraform, currently in bankruptcy.	Expect less SEC hostility toward the crypto/digital asset industry generally and a potential push for pro-digital asset reforms, especially if Paul Atkins is confirmed.



**WMHW ALERT: SEC PUBLISHES
FISCAL 2024 ENFORCEMENT
RESULTS: OUR TAKE LOOKING
BACK AND AHEAD**

Topic	2024 SEC Enforcement Activity	2025 Projection
Cybersecurity	Cybersecurity remains a priority for the SEC given the increased frequency and sophistication of cyber threats. In 2024, the SEC brought cases for failure to adequately and timely disclose cyber intrusions and failure to develop and maintain a system of cybersecurity-related internal accounting controls sufficient to prevent cybersecurity incidents.	Focus on straightforward cyber disclosure violations; minimal use of internal control theories given dissents by Commissioners Peirce and Uyeda, plus 2024 decision sharply cutting back the SEC's SolarWinds case.
Artificial Intelligence	The SEC scrutinized the accuracy of company statements regarding their use of AI, and charged entities and individuals that engage in "AI washing" by overselling the use of AI or machine learning models or misrepresenting their performance features.	Likely to continue.
Insider Trading	For years, insider trading has remained an important enforcement focus, and 2024 was no different. In the <i>Panuwat</i> litigation, the district court agreed with the SEC that the misappropriation theory applied to "shadow trading," <i>i.e.</i> , trading on information about one company that materially affects a company in the same industry.	Expect continued enforcement.
Litigation	<p>The SEC had mixed litigation results for 2024. As noted, it prevailed in the <i>Panuwat</i> "shadow" insider trading case, but lost challenges, including in the Fifth Circuit, which struck down the private funds rule. The SDNY tossed several counts in the SEC SolarWinds cybersecurity case, in a decision rejecting the SEC's reliance on public company internal accounting control provisions for charging cyber-related conduct.</p> <p>The SEC suffered a programmatic setback in <i>Jarkesy</i>, where the Supreme Court held that litigated SEC administrative proceedings violate the seventh amendment right to jury trial in cases involving civil penalties and fraud. The SEC suffered indirect setbacks from the Supreme Court's (i) <i>Loper Bright</i> ruling shifting power away from agencies and toward the judicial system by overruling the <i>Chevron</i> doctrine and (ii) <i>Corner Post</i> ruling removing impediments to challenging regulations under the APA by holding that such causes of action arise when a specific party becomes subject to the regulation—and not when the regulation takes effect.</p>	The SEC may be more mindful of litigation risk. Expect the SEC to base enforcement actions on more conservative interpretations of statutes and rules generally.
Individual Accountability	The SEC issued 124 orders barring individuals from serving as directors and officers of public companies – the second-highest total in a decade – including in crypto matters against (i) Terraform co-founder Do Kwon and (ii) Silvergate's CEO and CRO related to the company's BSA/AML compliance and its monitoring of crypto customers, including FTX. The SEC also brought individual actions against healthcare executives for misleading statements about an Alzheimer's clinical trial and in a capital raise for a healthcare startup.	For decades, the SEC has emphasized enforcement against individuals responsible for entity misconduct. Expect this to continue.
Gatekeepers	The SEC continued its enforcement against gatekeepers, charging audit firm BF Borgers for a "massive fraud affecting more than 1,500 SEC filings," declaring it "one of the largest ever	SEC focus on gatekeepers – including executives, committee members, accountants, attorneys, and



**WMHW ALERT: SEC PUBLISHES
FISCAL 2024 ENFORCEMENT
RESULTS: OUR TAKE LOOKING
BACK AND AHEAD**

Topic	2024 SEC Enforcement Activity	2025 Projection
	wholesale failures by a gatekeeper.” The SEC expanded its definition of gatekeepers when it charged (in addition to the CEO) the CFO and audit committee chair of an advertising software company for failing to investigate the CEO’s misrepresentations and instead perpetuating the scheme by making false statements about the revenue at issue.	underwriters – is a long term trend and not likely to shift much with a new Commission.
Offering Frauds	The SEC brought several cases involving fraudulent misrepresentations to investors in securities offerings and investment opportunities, including in crypto and AI cases; FY 2024 saw a decrease in the total number of securities offering cases.	Expect continued enforcement focus on offering and other straight-forward fraudulent schemes.
Technical Violations	In 2024, the SEC continued charging non-fraud, no-harm violations such as off-channel communications and whistleblower protection (Rule 21F-17(a)). The SEC collected over \$600 million in off-channel communication penalties against more than 70 firms and charged 21F-17(a) violations in new contexts. The SEC specifically noted that it brought its first recordkeeping violations cases against municipal advisors. The 12 charged firms paid more than \$1.3 million in penalties combined.	Limit technical violations cases to more egregious, systemic or clear-cut violations.
Aggressive Interpretations	The SEC based some enforcement actions on aggressive legal interpretations, prompting dissents from two Republican commissioners in off-channel communications, cybersecurity, crypto, and NFT actions.	Expect fewer cases based on aggressive statutory or rule construction, but beware of some aggressive cases that the Clayton Commission brought.
Collateral Consequences and Waivers	A cumbersome, bifurcated process, plus hostility toward granting waivers, obstructed the ability of settling parties to obtain collateral consequence waivers in SEC enforcement actions.	The SEC might streamline the waiver process as it did during the Clayton Commission.