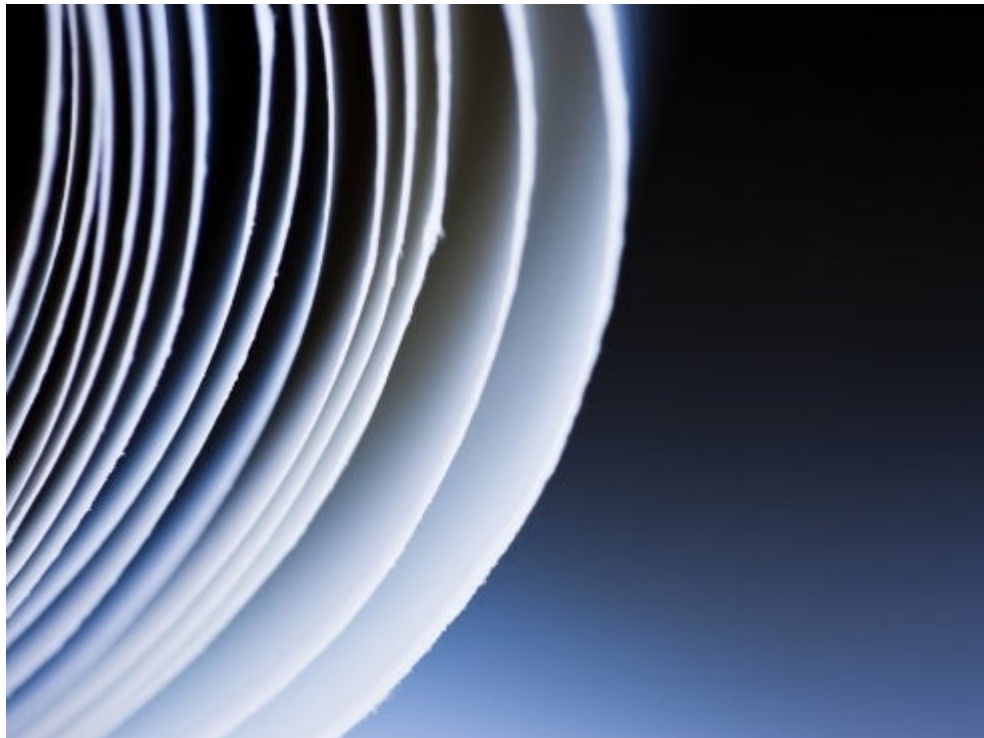


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Securities Enforcement Forum New York 2025: A New Era Looms



Senior Division of Enforcement (Division) officials from the U.S. Securities and Exchange Commission (SEC or Commission) spoke with SEC alumni, private practitioners, and other professionals at the Securities Enforcement Forum New York 2025 (the Forum), held on January 28, 2025, in Manhattan—just days after President Donald Trump was inaugurated.

Panelists discussed and forecasted SEC enforcement priorities and anticipated changes in 2025, especially in light of the new administration and SEC leadership transitions. Although there was some uncertainty as to how enforcement priorities would take shape over the coming months, SEC panelists made clear that the Division’s work would continue. What was certain was that the upcoming changes, whether in Division leadership, the Commission, or enforcement priorities, would reverberate across many areas of enforcement affecting registrants.

Key Developments

Forthcoming Changes to SEC Enforcement

Following a [record](#) number of enforcement actions in the first quarter of fiscal year 2025 and after a [decline](#) in enforcement actions in fiscal year 2024 (during which the SEC obtained a record \$8.2 billion in financial remedies), panelists generally agreed that they expect incoming SEC leadership to take a more tempered approach to enforcement. However, Antonia Apps, acting deputy director of the Division of Enforcement, emphasized that the Division’s work would continue as there were “no blanket rules” on pausing investigations or specific resolutions following leadership transitions. She explained that, while it is too early to provide direction on enforcement priorities, the current commissioners’ public statements (*e.g.*, dissents)—which shed light on their policy decisions and views—could be indicators.

Despite it being early in the new administration, Apps anticipated changes to cryptocurrency (crypto) enforcement, the breadth and severity of enforcement penalties, and the Wells process.

1. **Crypto.** Apps expected that there would be less “regulation by enforcement” in this area. Indeed, the SEC [launched](#) a Crypto Task Force on January 21, 2025, led by Commissioner Hester Peirce, to develop a regulatory framework for crypto assets. A few days later, on January 23, 2025, President Trump [issued](#) an executive order establishing a cross-agency Working Group on Digital Asset Markets composed of various government officials, including the chairman of the SEC. These initiatives reflect a significant shift towards creating a clear framework for crypto regulation.
2. **Penalties.** Apps surmised that before imposing officer and director bars or penny stock bars, the Commission would place a “more thoughtful” focus on whether those bars would serve the public interest. As to corporate penalties, Apps and Sam Waldon, acting director of the Division of Enforcement, have looked to previous [guidance](#) issued in 2006 by the Commission, which included former commissioner and now SEC chairman nominee Paul Atkins. That guidance turned on two key principles: (1) the presence or absence of a direct benefit to the corporation as a result of the violation and (2) the degree to which the penalty will recompense or further harm the injured shareholders. Other SEC panelists agreed, including Thomas Smith, associate regional director of the SEC’s New York regional office. He stressed that the staff has always considered these factors when assessing penalties, including discussing these factors with defense counsel during negotiations. Even so, we expect incoming SEC leadership to attribute greater weight to these factors when determining appropriate penalties.
3. **Wells process.** Apps expected Enforcement Division leadership to be more receptive to engaging in Wells meetings when requested. This would be a significant departure from former Director Gurbir Grewal’s position, where Wells meetings were the exception, not the norm. However, Grewal himself noted at the Forum that his decision to limit Wells meetings may have been “rash” as it was made during the first six months of his tenure as director. During a 2007 [speech](#), former Commissioner Atkins stressed the importance of the Wells process and noted that it gives “someone the ability to tell their side before the SEC takes public action.”

Cryptocurrency

Crypto was top of mind at the Forum given the widespread attention it has received from the new administration and the public at large. Staff discussed the SEC’s new Crypto Task Force and suggested that the SEC is aiming to establish clearer regulatory guidelines for market participants and provide a clear path to registration. In fact, on February 4, 2025, one week following the Forum, Commissioner Peirce released a [statement](#) setting forth a nonexhaustive list of 10 items the Crypto Task Force is “working on with staff across the Commission’s policy divisions,” including determining the security status of crypto assets and carving out areas that are not within the Commission’s jurisdiction.

While these issues are also currently being litigated, staff indicated more broadly at the Forum that the SEC is looking to deploy enforcement resources judiciously in the crypto space. As ongoing crypto litigation will continue to play out in courts, clearer guidelines for market participants may streamline that litigation.

Disclosures

Panelists discussed trends in cybersecurity and environmental, social, and governance (ESG)-related disclosures and anticipated changes in enforcement of those disclosures under new leadership.

Cybersecurity

Panelists noted that from July 2023—when the SEC adopted [rules](#) regarding cybersecurity disclosures—through the end of 2024, approximately 60 companies collectively filed around 90 Form 8-Ks disclosing a cybersecurity incident. Although the July 2023 rules require registrants to disclose any cybersecurity incident that a registrant determines to be material within four business days after such determination, 90% of those 8-Ks filed disclosed that the incident was not material or that the registrant had not yet determined whether the incident was material. Panelists opined that this indicated registrants were making careful judgments about whether to disclose a cybersecurity incident in view of their materiality determinations in order to avoid the SEC second guessing those determinations.

Regardless—whether a registrant discloses that there was no material impact or does not disclose at all because of that determination—panelists noted that registrants would be well advised to ensure that they have processes and procedures in place to demonstrate the reasonableness of their materiality determinations. Moreover, although the so-called second guessing may occur less frequently under new leadership, because of the pervasiveness of cybersecurity incidents, registrants should consider continuing to adopt this approach moving forward.

ESG

While ESG-related disclosures were a priority under former Chairman Gary Gensler, panelists anticipated potential “greenhushing” cases with the change of administration. These types of cases would involve instances where a company fails to disclose the extent to which it has pro-environmental policies or practices, including how ESG factors relate to investment decisions. The rise of greenhushing could be the fallout from increased regulation and enforcement in this space under prior SEC leadership.

Key Takeaways

Key takeaways from the Forum:

- Expect a shift in enforcement priorities, including (but not limited to) crypto, penalties, and increased Wells meetings, over the coming months as SEC leadership transitions with the new administration.
- Crypto market participants may see more clarity around crypto regulation as the SEC seeks to develop a crypto regulatory framework.
- While cybersecurity disclosures may not be an enforcement priority under new leadership, registrants would be well advised to ensure reasonable processes and procedures around documenting materiality determinations.
- Public companies should be mindful to avoid “greenhushing” of ESG factors used for investment decisions in their disclosures.

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