

Recent Dismissals Offer Insights into SEC's Current Enforcement Strategy

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Since the start of the new administration, the SEC has moved to dismiss an unprecedented number of active litigations from across its enforcement docket. Although certain of the crypto-related dismissals have drawn the most attention, the SEC's efforts to pare back its litigated cases have spanned beyond crypto. The agency has targeted cases involving alleged violations of broker-dealer registration requirements and the "liquidity rule," as well as those relating to the dissemination of material non-public information. Though they involve very different factual and legal issues, these matters share two important characteristics: (1) they largely involve technical, non-fraud, violations; and (2) they are generally based on relatively novel legal theories.

Even before Chairman Paul Atkins took the reins of the SEC in April, the agency **made clear** that its enforcement efforts would be focused on cases involving allegations of fraud resulting in harm to investors, and that creative legal theories would be not be embraced. Chairman Atkins has followed these principles, as is evident in the types of enforcement cases that have been filed thus far in his tenure. And the agency's new enforcement director, Judge Margaret Ryan,



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who took the position in early September, is not expected to change direction.

But while a shift in programmatic goals is not an unexpected result of a change in administrations, the SEC's steps to backtrack on its prior charging decisions by seeking dismissal of numerous cases it is actively litigating in federal court is, indeed, without recent precedent. The SEC does not, as a matter of course, seek to dismiss charged matters absent some significant change in the facts or the law specific to individual cases. Here, by contrast, the dismissals appear to be based on policy changes directed by the leadership of the agency. In this way, these dismissals solidify the message coming from the agency since the Inauguration—that it is a **"new day"** at the SEC.

Crypto

Starting in February, the SEC sought to dismiss a number of high-profile crypto cases, including those filed against: crypto exchanges **Coinbase**, **Kraken**, and **Binance** for operating as unregistered securities exchanges; trading firm **Cumberland** for operating as an unregistered dealer; and **Consensus Software** for operating as an unregistered broker through its MetaMask platform. The stated **rationale** provided by the agency was that the dismissals would “facilitate the Commission’s ongoing efforts to reform and renew its regulatory approach to the crypto industry.”

These dismissals were part of a larger overhaul by the SEC of its crypto regulatory and enforcement program. This new direction includes the creation of a new crypto **task force** in January and the subsequent reconfiguration of a much smaller **enforcement unit** focusing on fraud and market manipulation intended to protect retail investors. The SEC has been clear that it will not be pursuing the types of “registration-only” investigations—lacking any underlying fraud allegations—undertaken during the prior administration and has largely closed any such investigations.

Beyond enforcement, the SEC has launched **“Project Crypto”**—“a Commission-wide initiative to modernize the securities rules and regulations to enable America’s financial markets to move on-chain.” Chairman Atkins has been clear that Project Crypto will be “the SEC’s north star in aiding President Trump in his historic efforts to make America the ‘crypto capital of the world.’”

Dealers

In May and June, the SEC sought to dismiss its pending “unregistered dealer” cases, which were brought based on an expansive—and controversial—concept of “dealer” adopted during the last administration. Under this definition, certain market participants that traded in their own accounts

and not on behalf of customers would be operating as securities dealers and need to register with the SEC. Specifically, defendants in the charged cases allegedly acquired convertible notes from penny stock issuers, converted the notes into shares of stock at large discounts from market prices, and then sold those newly issued shares into the public market at a significant profit; the SEC charged the defendants with acting as unregistered securities dealers.

In dismissing the pending dealer litigation—against **Tri-Bridge Ventures, LLC**, **LG Capital Funding, LLC**, **Adam Long** (of L2 Capital, LLC and Oasis Capital, LLC), **River North Equity LLC**, **John Fife** (of Chicago Venture Partners, L.P., Iliad Research and Trading, L.P., St. George Investments LLC, Tonaquint, Inc., and Typenex Co-Investment, LLC), **Auctus Fund Management, LLC**, and **Curt Kramer** (of Power Up Lending Ltd., Geneva Roth Remark Holdings, Inc., and 1800 Diagonal Lending, LLC)—the SEC **noted** only that its decisions were grounded in its “judgment that the dismissals [were] appropriate as a policy matter.”

These dismissals should be understood in the context of broader efforts during the previous administration to expand the statutory definition of “dealer.” In early 2024, the Commission—divided 3-2 along party lines—voted to **adopt** an expanded definition of dealer to include market participants that provide liquidity while trading in their own accounts, which could include the internal, proprietary trading of a large category of investors, from quantitative trading firms to standard hedge funds and crypto-focused investment firms. After industry groups successfully challenged the expanded definition, the SEC appealed the ruling to the Court of Appeals for the Fifth Circuit in the last days of the previous administration. In February, the SEC changed course and moved to drop that appeal, effectively marking the end of the expanded dealer definition.

Liquidity Rule

In July, the SEC **dropped** its first-ever case enforcing the “liquidity rule.” Adopted in 2016, the liquidity rule prohibits a mutual fund from investing more than 15% of its net assets in illiquid investments, requires the fund to take prompt remedial measures if the fund’s illiquid investments exceed that limit, and requires the fund to adopt a liquidity risk management program.

The enforcement case, filed in 2023, charged investment adviser Pinnacle Advisors, LLC and two of its officers with aiding and abetting liquidity rule violations by a mutual fund they advised. The SEC alleged, among other things, that for a 12-month period, the fund’s investments exceeded 15% of its net assets, and that the fund did not enact a plan to reduce its illiquid investments.

Defendants moved to dismiss on the grounds that the SEC had lacked the authority to promulgate the liquidity rule in light of the Supreme Court’s landmark 2024 decision in **Loper Bright v. Raimondo**, which overruled “*Chevron* deference,” a long-standing doctrine that required that courts defer to an agency’s reasonable interpretation of the statutes it administers.

The SEC subsequently moved to dismiss the case against Pinnacle Advisors and its officers before a ruling on this question, noting the dismissal was made “[i]n the exercise of its discretion and as a policy matter.”

In light of this dismissal, the fate of the liquidity rule remains unclear. But it is unlikely that this SEC administration will prioritize enforcement of the rule, and any litigated case involving the liquidity rule presents a risk that a court would vacate the rule on grounds that the SEC lacked the statutory authority to adopt it. While cases based solely on liquidity rule violations are unlikely, it will be interesting to see whether the SEC chooses to include charges based on violations of the liquidity rule in enforcement cases that allege other violative

conduct, or whether it chooses to forego such charges altogether.

Material Non-Public Information

In April, the SEC sought to **dismiss** a case brought under Section 204A of the Investment Advisers Act, which requires investment advisers to adopt policies and procedures to prevent the misuse of material nonpublic information, or MNPI. The case against Silver Point Capital, L.P., a registered investment adviser, was brought in the last days of the previous administration. The SEC alleged that a long-time Silver Point consultant, a now-deceased lawyer, participated, on Silver Point’s behalf, on creditors’ committees of distressed companies in which Silver Point sought to invest.

According to the SEC, this individual received MNPI about certain transactions through participation in these committees and, at the same time, had extensive communications with Silver Point’s public trading desk. The SEC did not allege that the consultant, or anyone else at Silver Point, actually misused MNPI—i.e., that there was an insider trading violation—but only that Silver Point did not exercise the requisite oversight to ensure that individuals like the consultant would not be in a position to misuse MNPI.

The case against Silver Point followed two settled actions brought by the SEC under Rule 204A last year—against **Sound Point Capital Management** and **Marathon Asset Management**—that likewise did not involve any underlying allegation of insider trading. In seeking to dismiss the action against Silver Point, the SEC noted that its decision was “based on the specific facts and circumstances of the case.”

More broadly, this dismissal may signal that the SEC is less willing to base Section 204A violations on internal company policy and procedure deficiencies where there is no evidence of insider trading. On the other hand, the Sound

Point and Marathon cases were **supported** by at least one of the two Republican Commissioners who remain at the SEC. This suggests the current Commissioners may not have a general objection to bringing charges under Section 204A where there is no insider trading violation. Rather, it may be the case that the decision to dismiss the Silver Point case was more a result of the significant litigation risk involved or some other factor specific to that case.

FCPA

In July, the SEC dismissed charges against two former executives of Cognizant Technology Solutions for their roles in purportedly facilitating bribery payments to a foreign official in purported violation of the Foreign Corrupt Practices Act. The SEC stated only that the dismissal was “appropriate as a policy matter.” The SEC’s action followed the DOJ’s dismissal of its indictment against the executives based on the same alleged conduct.

The DOJ took this step following President Trump’s February 2025 **Executive Order**, which temporarily paused FCPA enforcement by the DOJ and directed the Attorney General to reevaluate existing cases and develop new guidance for current and future FCPA enforcement.

The **guidance** subsequently published by the DOJ prioritizes FCPA enforcement in connection with cartels and transnational criminal organizations, national security, or other conduct that harms similar U.S. interests. Though this guidance does not directly relate to the SEC, we can expect that FCPA enforcement by the Commission will not be an area of priority during this administration.

Lessons Learned

One thread that runs through many of the SEC’s recent dismissals is that they reflect the significant policy changes at the agency and in the federal government more broadly. While all administrations shift policies and priorities to some extent, it is unusual for agencies like the SEC to apply these changes retroactively.

But the SEC under the current administration has been aggressive in identifying those pending cases that do not fit within its chosen enforcement priorities, and taking steps to dismiss them. These dismissals reflect a clear repudiation of the prior administration’s goals and a strong indication that the SEC, under Chairman Atkins, is significantly changed.

Going forward, we expect the SEC to focus on “bread and butter” enforcement cases, such as insider trading, offering frauds, and accounting fraud, based on tried-and-true legal theories, especially those involving harm to retail investors.

A good example of this enforcement strategy is the SEC’s recent **formation** of a cross-border task force to combat fraud, focusing on securities law violations by foreign companies accessing the U.S. securities markets. One **impetus** for this new task force appears to be the uptick of suspected market manipulation schemes by foreign issuers listing microcap securities on U.S. exchanges, which may have resulted in large losses to U.S. retail investors.

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