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What Investment Advisers Should Expect from SEC Enforcement Post-Shutdown

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If the first few months of the new SEC administration has shown anything, it is that investment advisers should expect the SEC to remain active in its enforcement of the Investment Advisers Act. Despite an overall slowdown in enforcement actions this past fiscal year, the Enforcement Division continued to pursue investment advisers for a variety of different violations, such as the custody rule, marketing rule, Rule 105, deficient policies and procedures, and certain negligence-based conduct involving evergreen issues like conflicts of interest and fees.[1]

Following Chairman Paul Atkins's directive, the SEC is likely to focus on bread-and-butter securities law violations involving market participants who "lie, cheat, and steal" and on the most vulnerable investors, such as retail investors and seniors. As a result, investment advisers can expect the SEC to focus its efforts on core violations of the Advisers Act, including Sections 206(1) and (2), Section 207,[2] and Rule 206(4)-8 claims, and less attention on novel legal theories that might be seen as second-guessing management or stifling innovation.

A few themes have emerged as to the type of conduct the SEC's enforcement regime may focus on after the shutdown.

Emerging Technologies (AI)

The Commission likely will focus on questions of "AI washing," that is, whether a market participant may have failed to disclose material information about the use of artificial intelligence or may have overstated the capabilities or implementation of AI technology. In February, the SEC created a new "Cyber & Emerging Technologies Unit" to investigate potential cyber-related misconduct and protect retail investors from misconduct in emerging technologies, such as AI and machine learning. We might also see the SEC issue guidance to firms considering how to use AI, the way the SEC has done for other emerging technologies. Although the Atkins-led SEC has yet to bring an "AI washing" action against investment advisers, its allegations in actions outside of the investment adviser context provide some insight into what advisers might expect from the Commission. In April 2025, the Commission filed an unsettled action against a former CEO of a mobile shopping app, alleging that the defendant marketed the use of AI technology to process transactions but that the technology had not been implemented.[3] These allegations are similar to actions that were brought against investment advisers in the last administration. For instance, in October 2024, the prior administration brought a settled action against an investment adviser for marketing an AI-driven trading platform that it had not implemented.[4] Investment advisers should expect the current Commission to still explore similar enforcement investigations.

Conflicts of Interest

Investment advisers should review their marketing materials and SEC filings to make sure, among other things, there are no conflicting material disclosures. The Commission has brought multiple actions against advisers this year premised on conflicting disclosures to investors about conflicts of interest, finding violations of both anti-fraud provisions and compliance program requirements. In one instance, according to the settled order, the adviser's incentive compensation pay disclosures in the Form ADV Part 2 Brochure ("Form ADV") contradicted disclosures in the Form CRS and Supplement to the Form ADV.[5] In another instance, according to the settled order, the adviser's marketing materials stated that it "refuse[d] all conflicts of interest" without any context for the statement, while its SEC filings, including its Form ADV, recognized and disclosed conflicts of interest.[6] More generally, the SEC has also brought a number of cases focused on fees, including post-commitment management fees, fee disclosures, and fee calculations, areas that will remain of interest to the Commission.

Cherry-Picking

Cherry-picking schemes, the practice of fraudulently allocating profitable trades to favored accounts at the expense of other clients, are a perennial enforcement priority. The Commission has already brought one enforcement action for cherry-picking this year, in which the settled order found an investment adviser and its principal disproportionately allocated profitable trades to their own accounts and the

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principal's family members' accounts.[7] Notably, the settlement included an associational bar on the principal and a censure on the adviser. We expect the Commission to continue looking for similar conduct.

**With assistance from associate Bryan Clegg.*

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[1] E.g., SEC Litigation Release, Tomislav Vukota and His Two Advisory Firms Settle Charges for Breaches of Fiduciary Duty and Misrepresentations (Sept. 9, 2025) (alleging "three distinct types of negligent misconduct" under, inter alia, Section 206(2) and Rule 206(4)-8 of the Investment Advisers Act), *available at* https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26393; SEC Admin. Proc., AP Summary, SEC Charges Vanguard Advisers for Failing to Adequately Disclose Conflicts of Interest to Clients (Aug. 29, 2025) (alleging conflicting incentive compensation disclosures and inadequate policies and procedures in violation of Section 206(2) and Rule 206(4)-7, respectively, of the Investment Advisers Act), *available at* https://www.sec.gov/enforcement-litigation/administrative-proceedings/ia-6912-s.

[2] Indeed, on November 13, 2025, immediately after the government reopened, the SEC filed actions in federal court against six investment advisers for making statements in their Form ADV filings that could not be substantiated, such as their business location, management, and private fund clients. *See SEC v. Bluesky Eagle Capital Management*, S.D.N.Y., No. 1:25-cv-09507; *SEC v. Supreme Power Capital Management Ltd.*, S.D.N.Y., No. 1:25-cv-09505; *SEC v. Invesco Alpha Inc.*, D. Colo., No. 1:25-cv-03651; *SEC v. AI Financial Education Foundation Ltd.*, D. Colo., No. 1:25-cv-03649; *SEC v. AI Investment Education Foundation Ltd.*, D. Colo., No. 1:25-cv-03650; *SEC v. Adamant Stone Ltd.*, D. Colo., No. 1:25-cv-03645.

[3] SEC Litigation Release, SEC Charges Founder and Former CEO of Artificial Intelligence Startup with Misleading Investors (April 11, 2025), *available at* https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26282.

[4] SEC Admin. Proc., File No. 3-22236, *In re Rimar Capital USA*, at 4–5 (Oct. 10, 2024) (finding that the investment adviser and its investment manager and CCO violated Sections 206(1) and 206(2) of the Advisers Act), *available at* https://www.sec.gov/files/litigation/admin/2024/33-11316.pdf.

[5] SEC Admin. Proc., AP Summary, SEC Charges Vanguard Advisers for Failing to Adequately Disclose Conflicts of Interest to Clients (Aug. 29, 2025), *available at* https://www.sec.gov/enforcement-litigation/administrative-proceedings/ia-6912-s.

[6] SEC Admin. Proc., AP Summary, SEC Charges Massachusetts-Based Investment Adviser with Marketing, Books and Records, and Compliance Rule Violations (Sept. 4, 2025), *available at* https://www.sec.gov/enforcement-litigation/administrative-proceedings/ia-6916-s.

[7] SEC Admin. Proc., AP Summary, SEC Charges Minnesota Investment Adviser and Principal in Cherry-Picking Scheme (June 3, 2025), *available at* https://www.sec.gov/enforcement-litigation/administrative-proceedings/34-103173-s.

Related Capabilities

Securities Enforcement

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