

SEC Rules Evolve: Risk Mitigation for Investment Advisors



January 16, 2025

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Questions

- Please submit using the question tool on user dashboard

Meet Your Presenters

- Kevin Koehler, Head of Financial Institutions, Westfield Specialty
- Chris Luca, SVP-Asset Management Product leader, Westfield Specialty
- Mike Colford, SVP-Cyber Product Leader, Westfield Specialty
- Kate Miniter, VP-Financial Institutions, Lockton Companies
- Jason Cronin, Partner, Wiley Rein LLP

Agenda

- 2025 SEC Focus Areas in the Asset Management/Broker Dealer Arena
- Discussion of recent SEC Investigation and enforcement trends
- Target Areas: AI (AI washing), Digital Engagement Practices, Cybersecurity, Cryptocurrency, AML
- Underwriting Philosophy & Strategy
 - D&O & E&O
 - Cyber
 - Westfield Specialty New Asset Management Form
- Broker Perspective-Trends, Preferences and Market Availability
- Takeaways and Summary
- Q & A

Governmental Investigations (SEC) – Overview



SEC ENFORCEMENT
ACTIONS DECREASED IN
FY 2024



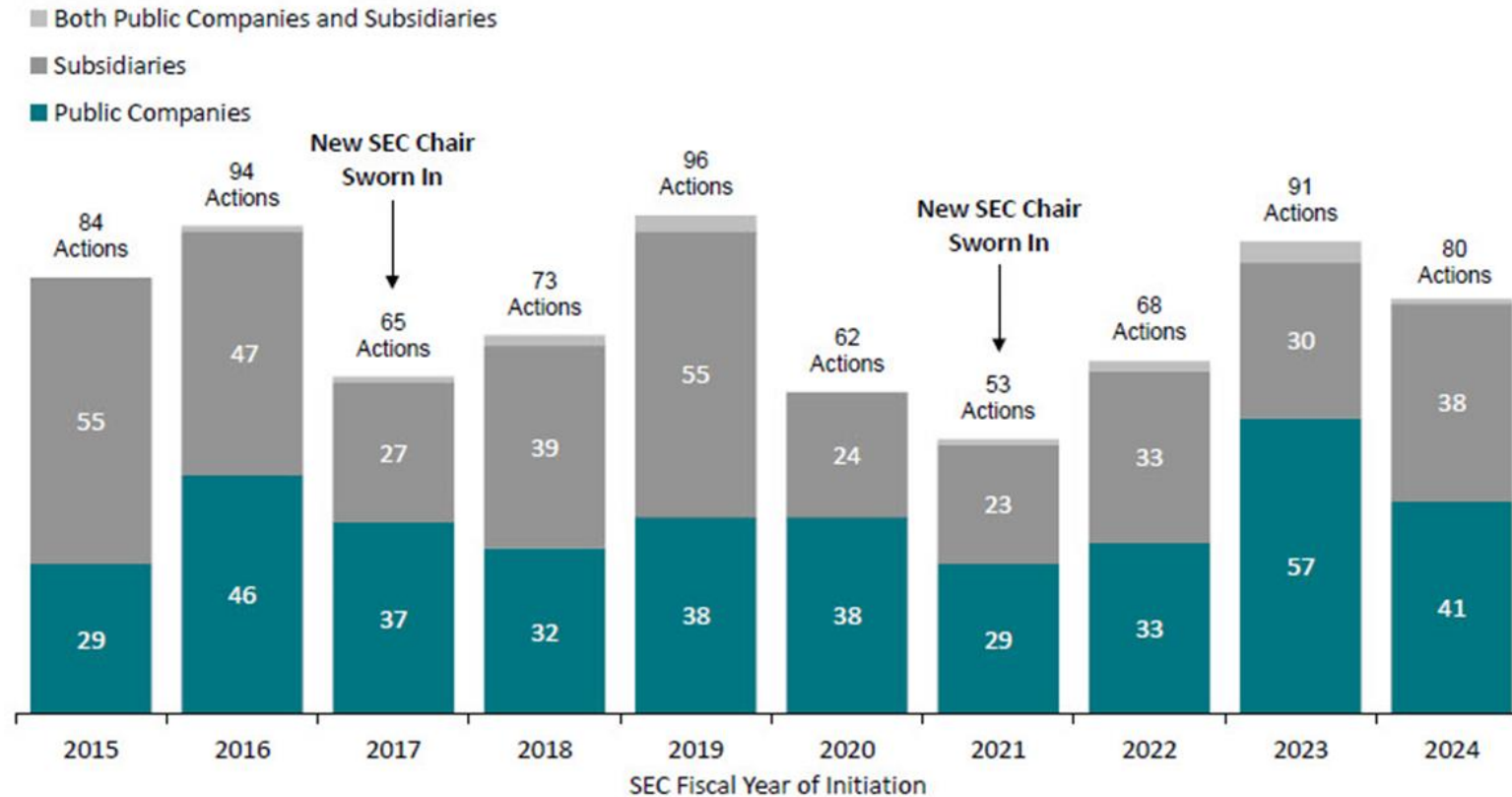
CONTINUED HIGH RATES
OF COOPERATION



SLIGHT INCREASE IN
TOTAL MONETARY
SETTLEMENTS - \$1.5
BILLION

Governmental Investigations (SEC) – Enforcement Actions

Figure 1: Public Company and Subsidiary Actions
FY 2015–FY 2024



Source: [Cornerstone Report FY 2024](#)

Source: Securities Enforcement Empirical Database (SEED)

Note: Relief defendants are not considered.

Governmental Investigations (SEC) – Allegations

Figure 3: Heat Map of Allegations Against
Public Companies and Subsidiaries
FY 2015–FY 2024

Allegation Type	SEC Fiscal Year of Initiation										
	Average 2015–2023	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Issuer Reporting and Disclosure	37%	23%	27%	40%	33%	29%	50%	49%	38%	45%	41%
Broker Dealer	15%	13%	12%	12%	26%	16%	10%	6%	24%	19%	29%
Investment Adviser/ Investment Company	19%	8%	20%	18%	18%	38%	23%	25%	15%	7%	13%
Foreign Corrupt Practices Act	13%	12%	19%	15%	14%	16%	11%	8%	9%	12%	3%
Public Finance Abuse	8%	38%	12%	0%	1%	1%	2%	4%	7%	3%	1%
Securities Offering	2%	0%	6%	0%	3%	1%	2%	2%	6%	2%	0%
Insider Trading	0%	0%	0%	0%	0%	0%	0%	2%	0%	0%	0%
Market Manipulation	1%	1%	0%	6%	1%	0%	2%	0%	0%	0%	0%
Other	5%	5%	4%	8%	4%	0%	2%	6%	1%	12%	14%
Number of Actions	76	84	94	65	73	96	62	53	68	91	80

0%
1–10%
11–20%
21–50%
51–100%

Source: Securities Enforcement Empirical Database (SEED)

Note: Relief defendants are not considered. Percentages may not add to 100% due to rounding. "Public Finance Abuse" includes actions that were categorized by the SEC as "Municipal Securities and Public Pensions" prior to FY 2016. "Other" includes actions categorized by the SEC as "Other" or "Transfer Agent."

Governmental Investigations (SEC) – Cooperation (cont'd)

- ▶ SEC noted cooperation in 75% of matters involving public company and subsidiary defendants.
- ▶ Cooperation was at its highest level since FY 2019 (77%).
- ▶ Cooperation was well above average for FY 2015-2023 (64%).
- ▶ Shift in settlement outcomes:
 - ▶ 15% of defendants settled without a monetary penalty in FY 2024 – an increase from the FY 2015-2023 average (6%)

2024: The SEC & Investment Advisers

- ▶ SEC brought 130 actions against IA's and their representatives.
- ▶ Active use of “sweeps” – Off-Channel Communications, Marketing Rule, Beneficial Ownership Reporting
- ▶ Ongoing sweeps focusing on Whistleblowers, Custody Issues, and “Pay-to-Play.”
- ▶ Other exposures: Conflict-of-Interest, Misrepresentations and Disclosure failures.
- ▶ New frontiers: Artificial Intelligence (“AI washing”); MNPI.

Governmental Investigations – Looking Ahead

- Changes in presidential administration come with changes in enforcement priorities.
- Election of President Trump likely signals reduced focus on enforcement; that should lead to less regulatory exposure.
- However, a laxer regulatory environment could lead to increased civil litigation exposure.
- Former SEC Commissioner Paul Atkins is President Trump's nominee for SEC Chair – viewed as pro-business, pro-crypto, and anti-regulation.

Investment Management & Fund E&O/ D&O

- Underwriting Focus:
 - Applications/ DDQ's/ Offering Docs/ Regulatory Docs (ADV)
- Regulatory Issues / Concerns:
 - AI/ Tech usage: Internal Risk Management
 - Poor Performance, Significant Withdraws, High Leverage, Valuation
 - Focus on CRE, Private Credit
 - Suitability/ Volatility
- Volatility/ Sustainability:
 - Digital Assets as part of overall asset allocation
 - Obligation to investors best interest over their own

Cyber and Privacy

- SEC has shown renewed focus and emphasis on cyber controls
 - Privacy of investor and client information
 - Operational resilience of technology and critical operations
- Wrongful Collection and Misuse of Data
- Advancement of Artificial Intelligence
- Underwriting
 - Malicious vs. non-malicious exposures
 - 3rd party vendor management
 - Prevent, Detect and Respond

The Broker's Perspective

- Investment Advisor E&O- Regulatory Coverage
- Other Key Terms to Consider
 - Exclusions- Specific Matter Exclusions
 - Definitions- Definition of Professional Services
- Overlap and Alignment between Financial Lines products:
 - Advisor E&O, Cyber and Crime

Remember This

Q&A



Thank You!