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# Change on the horizon
## SEC under a new administration

### Changes ahead

Significant changes are anticipated at the US Securities and Exchange Commission (SEC) in 2025, which may have a considerable impact on investment companies. For the past four years, the investment management industry has been feeling the impact from the pace and breadth of adopted and proposed rules under Chairman Gary Gensler. Gensler resigned from the SEC on January 20, 2025, Inauguration Day, and Jaime Lizárraga, another Democratic commissioner, also stepped down in January. The departures leave one Democratic commissioner, Caroline Crenshaw, serving alongside Republicans Hester Peirce and Mark Uyeda. Uyeda was recently named the acting chairman of the SEC. To complete the flurry of changes, President Donald Trump named Paul Atkins, a former commissioner and cryptocurrency advocate known for having a free-market approach, as his choice to lead the SEC.

Once a full commission is back in action, we anticipate the new regulatory climate to be more favorable to merger and acquisition activity across all industries, cryptocurrency, private credit, and hedge funds leading to capital formation and enhanced investor choices and opportunities; as well toward new and novel products, such as exchange-traded fund (ETF) share class structures, exchange-traded products (ETPs), and retail alternatives. Atkins, while the SEC commissioner in 2005, said in a speech to the AICPA that "overly prescriptive standards can rob you of the ability to apply your professional judgment."[1] Industry participants may have more flexibility to innovate and can expect rulemaking activity under the Trump administration to focus on streamlining firms' compliance requirements or otherwise lightening their regulatory burden overall.

Below we will explore the impacts of the change in administration on the SEC agenda and priorities, novel products, SEC enforcement, digital assets, and regulatory agencies.

### Overview of current proposals

Significant SEC proposals from the previous administration remain unfinished. As a result, certain areas of the Gensler SEC agenda will no longer move forward. This includes swing pricing. Unfinished rule proposals of the previous commission, such as those for safeguarding, predictive analytics, and environmental, social, and governance (ESG), will likely languish as currently proposed, offering some breathing room to firms inundated by new regulatory and compliance requirements for the past several years. While still receiving some negative feedback from the industry, the less controversial items on the agenda, such as investment adviser outsourcing[2] and cybersecurity[3] rules, may also not move forward or be reproposed with potential for significant changes.

Further, the next spring SEC agenda may include industry issues like making e-delivery the default option for sending most regulatory communications from funds and their asset managers. This would be a win for the industry. The next SEC administration could also open up alternative investments for retail investors and overall be more friendly to increasing retail access to the private market. In fact, the SEC just recently approved a groundbreaking private credit ETF, making private credit more accessible to individual investors.[4] Similar type funds and ETFs are sure to follow.

On President Trump's first day in office, he signed an executive order freezing all federal agency rules that had been finalized but not published in the Federal Register—also giving agencies permission to "consider postponing for 60 days" any rule already published but not yet fully implemented.

Over the course of 2025, it may become more apparent which initiatives the new SEC administration seeks to unwind, what will be added to the SEC agenda, and which rules will be reproposed. Already in 2025, the SEC has issued exemptive orders as a way to provide relief of rules adopted under Chairman Gensler by extending deadlines or eliminating certain disclosure requirements. This trend may continue to provide relief without another rulemaking process and comment period.[5]

Changes at the SEC are not the only developments affecting future rulemaking. Rulings by US courts in 2024, specifically the Loper Bright opinion on the Chevron doctrine,[6] will give the courts more power and potentially weaken agencies' ability to pursue future rulemaking. The decision is not expected to lead to overturning any existing rules as the opinion limited retrospective application. Another impactful ruling to the SEC is the Jarkesy ruling that affirmed the right to a federal jury trial in SEC actions alleging securities fraud where civil penalties are sought.[7]

## ETF share class option for mutual funds

ETFs had another record-breaking year in 2024, with US ETF assets reaching over $10 trillion, a 30% gain for the year.[8] Confidence in ETFs was high going into 2025, and ETFs are growing three times faster than mutual funds.

Since the broad limitation for other investment managers to create ETF share classes was removed with The Vanguard Group, Inc.'s patent expiration in May 2023, dozens of investment managers have filed applications with the SEC to establish ETF share class structures for their existing mutual funds. To date, the SEC has not approved these ETF share classes for actively managed ETFs, and the previous commission did not indicate a willingness to approve such applications for ETF share classes on actively managed mutual funds.

Given interest in this novel product among the industry's largest players and with a new chairman at the SEC, we believe we will see these lingering applications approved to benefit the capital markets and investors by providing diversity of investment options with multi-share classes and level the ETF share class playing field. The benefits of ETFs as a share class of a mutual fund include tax efficiency for both ETF and mutual fund share classes using custom baskets for in-kind redemptions thereby reducing the distributions of capital gains tax to investors, as well as the ability for investors to convert their mutual fund shares into ETF shares of the same fund without realizing capital gains. The ETF share class will likely allow investors to access mature funds with track records and investment strategies already under the mutual fund product mix. Although the ETF share class may create a beneficial tax environment, it is possible for tax liabilities to be passed to ETF investors if the mutual fund realizes significant capital gains, and conditions could affect the ability of the ETF share class to remove the capital gains.

## Less regulation through enforcement

Under Chairman Gensler, total enforcement penalties reached record levels. In fiscal year 2024, the SEC filed 583 enforcement actions while obtaining orders for $8.2 billion in financial remedies.[9] The number of actions was down 26% from 2023, but financial remedies were up from nearly $5 billion in 2023. Financial remedies records were set in 2022, 2023, and 2024 under Gensler's SEC. The chairman was known and often criticized for regulating through enforcement, particularly around cryptocurrency, which is expected to ease under Atkins based on his track record at the SEC and viewpoints on cryptocurrency regulation. Commissioners Peirce and Uyeda, under Gensler, dissented in many of the enforcement actions related to off-channel communications and cryptocurrency signaling that under Atkins there might be a different focus for enforcement. Specifically for off-channel communications and records retention, we expect that continued enforcement and related significant fines likely will cease.

Enforcement cases on cryptocurrency and ESG are expected to slow with the change in administration and changes in priorities. The SEC under the new administration is expected to focus more on investor protection and compliance with fiduciary standards such as excessive fees, and pulling back on crypto cases and private fund enforcement. In the past, Atkins has opposed large fines for corporations, suggesting that they unduly punish shareholders.[10] The new chairman likely won't abandon all initiatives of the SEC under Gensler, but the approach will differ. A more principles-based approach is expected, and the size of penalties are expected to fall.

## Digital assets

An area of increased focus in the industry is cryptocurrency and the lack of clear regulation. There is an expectation that more cryptocurrency ETFs and ETPs will be approved under the new commission. In 2024, the SEC approved both Bitcoin and Ether ETPs after previously only approving cryptocurrency futures ETPs.

Less enforcement action to force companies into an SEC regulatory framework that is arguably not suited for digital assets is expected in 2025. The current Safeguarding Rule proposal, which included crypto assets, will likely face significant revision under the new administration. There is uncertainty on the path forward for crypto regulation, but even in the first few days of the new administration a more cryptocurrency-friendly approach has taken hold as seen by the actions of Acting Chairman Mark Uyeda and President Trump.

Uyeda created a cryptocurrency task force ("Task Force") on January 21, 2025,[11] which will be led by fellow commissioner Peirce, known as "crypto mom,"[12] with the goal to collaborate with the SEC staff and the public to set the SEC on a sensible regulatory framework for digital assets and catch up the United States with other more crypto-innovative countries. According to the SEC press release, "the Task Force's focus will be to help the Commission draw clear regulatory lines, provide realistic paths to registration, craft sensible disclosure frameworks, and deploy enforcement resources judiciously."

In addition, on January 23, 2025, President Trump signed an executive order, Strengthening American Leadership in Digital Financial Technology.[13] The executive order, which is largely aligned with the principles of the Task Force, is intended "to establish regulatory clarity for digital financial technology and secure America's position as the world's leader in the digital asset economy, driving innovation and economic opportunity for all Americans." As part of the executive order, a Presidential Working Group on Digital Asset Markets was established.

In another win for the cryptocurrency industry, Staff Accounting Bulletin (SAB) No. 121 was rescinded when the SEC issued SAB No. 122 on January 23, 2025.[14] SAB No. 121 required institutions holding crypto assets for customers to record those holdings as assets and liabilities on their balance sheets. The SAB was controversial as these were not the entities' assets (only held on investors' behalf) and hindered banks and broker-dealers from offering crypto custody services and significantly increased the operational costs and complexities for financial institutions. The repeal is expected to increase institutional participation in the crypto service provider space (custody services, brokerage services, and trading) and signals the start of a new regulatory era.

## New administration takes aim at long-standing regulatory organizations

The lack of clear regulatory guidelines from either the SEC or Commodity Futures Trading Commission (CFTC) on cryptocurrency has created a volatile environment that can stifle innovation. A potential merger of the SEC and CFTC is gaining attention again as financial markets are increasingly complex and as a way to reduce inefficiencies in securities and commodities law. Talk of combining the agencies is nothing new,[15] but there is a renewed focus as the lines between securities and commodities continue to blur. Of particular interest is regulation of cryptocurrency assets. A combined SEC and CFTC could reduce regulatory uncertainty over cryptocurrency by creating a unified regulatory body. Clear and comprehensive guidance to the market and cryptocurrency firms would create more innovation and certainty in the industry.

Changes at the SEC discussed above may also result in changes at the Public Company Accounting Oversight Board (PCAOB), including potentially new board members and resulting changes in policies and priorities. The timing and scope of the potential changes are not known, but if there are changes in PCAOB leadership, those would most likely follow the changes at the SEC, which appoints the PCAOB Board. The change in administrations in 2017 and 2021 both saw shake-ups at the PCAOB, including the appointment of new PCAOB chairs. Under a new chair and board members, the direction of the PCAOB could shift to a pared-down regulatory approach that is more open to the feedback of the industry. The Noncompliance with Laws and Regulations proposal (NOCLAR)[16] has been top of mind in the industry since the controversial proposal was released in June 2023. A PCAOB under new leadership could release a proposal on the topic that is more workable for audit firms, the legal profession, and public companies.

## Conclusion

As a new administration takes the reins, regulatory headwinds are likely to shift in the months ahead. With several of the SEC agenda items for the investment management industry left unfinished, firms can potentially breathe a sigh of relief that the most onerous of proposals (e.g., swing pricing), under consideration may have been avoided. The industry also has an important opportunity to have its voice heard by the new administration that is more receptive to industry feedback and points of view as it focuses on capital formation and pragmatic regulation.

## Authors

**Paul Kraft**
Audit & Assurance Partner
US Investment Management
Marketplace Excellence Leader
Deloitte & Touche LLP
+1 617 437 2175
pkraft@deloitte.com

**Lauren Jackson**
Audit & Assurance
Managing Director
Deloitte & Touche LLP
+1 617 437 2991
laurenajackson@deloitte.com

**Ryan Moore**
Audit & Assurance Partner
Deloitte & Touche LLP
+1 617 437 2814
ryanmoore@deloitte.com

**Maria Gattuso**
Advisory Principal
Deloitte & Touche LLP
+1 203 321 7098
mgattuso@deloitte.com

**Jessica Hamilton**
Audit & Assurance
Senior Manager
Deloitte & Touche LLP
+1 714 913 1526
jesshamilton@deloitte.com

## Endnotes

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