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The SEC Under the Second Trump Administration

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On January 20, 2025, President Trump began his second Administration with an unprecedented wave of twenty-six (26) Executive Orders,¹ including several that directly affect the U.S. Securities and Exchange Commission ("SEC"). These Executive Orders included the immediate appointment of Commissioner Mark Uyeda as acting SEC Chair while President Trump's nominee for SEC Chair, Paul Atkins, awaits Senate confirmation. The change in leadership at the SEC will have significant consequences, but this leadership changeover is only part of the story.

The President's Day One Executive Orders, and his statements about them, signal a fundamentally different approach to federal regulation and bureaucracy. A January 20, 2025 Executive Order titled "Establishing and Implementing the President's 'Department of Government Efficiency'"² renamed the U.S. Digital Service "as the U.S. DOGE Service (USDS)" and required each federal Agency (including the SEC, *see* 5 U.S.C. § 551) to establish "a DOGE Team of at least four employees ... within thirty days of the date of [the] Order." Order § 3(c). Although the Order focuses on "modernizing Federal technology and software," other Presidential statements and Orders make it clear that DOGE has a broader mandate. After his November 2024 victory, President Trump announced his DOGE initiative as a "way for [his] Administration to dismantle Government Bureaucracy, slash excess regulations, cut wasteful expenditures, and restructure Federal Agencies," towards a "smaller Government, with more efficiency and less bureaucracy."³ The President's Day One "Hiring Freeze" Order reflects this by implementing a civilian federal employee hiring freeze, and asking DOGE to use the freeze period to provide a report on reducing the federal workforce "through efficiency improvements and attrition."⁴

¹ By comparison, President Trump issued only 1 Executive Order upon taking office in 2017. President Biden issued 9 Day One Executive Orders; President Obama issued 2 in 2009; President George W. Bush issued none; and President Clinton issued 1 in 1993. *See* <https://www.washingtonpost.com/politics/2025/01/20/trump-executive-orders-list/>.

² *See* <https://www.whitehouse.gov/presidential-actions/2025/01/establishing-and-implementing-the-presidents-department-of-government-efficiency/>.

³ *See* <https://www.presidency.ucsb.edu/documents/statement-president-elect-donald-j-trump-announcing-that-elon-musk-and-vivek-ramaswamy>.

⁴ *See* "Hiring Freeze," Executive Order (January 20, 2025) (implementing a "freeze on the hiring of Federal civilian employees" and requiring the Director of the Office of Management and Budget to consult with the Administrator of the U.S. Department of Government Efficiency Service to create "a plan to reduce the size of the Federal



While it was always clear that a Republican-led SEC would take a different approach on enforcement and rule-making, even more dramatic changes may come from this “tone at the top.” Indeed, commentators including the President’s nominee for SEC Chair, Paul Atkins, have expressed interest in merging SEC and CFTC (the Commodity Futures Trading Commission) into one agency.⁵ Big changes are underway, which will result in small changes throughout the SEC. Day-to-day interactions with the SEC, even on routine matters such as Comment Letters on registrations and filings, should also change; and if they do not, there will likely be a process for complaints.⁶

Enforcement and Rule-Making Changes

The dissents and other statements of Republican Commissioners Uyeda and Peirce, and nominee Atkins, provide a clear signal of their position on enforcement and rule-making.

The Republican Commissioners will have the votes to implement this position. The resignations of Chair Gensler and Democratic Commissioner Jaime Lizárraga (effective January 17, 2025) leave a 2-1 majority in favor of Republican Commissioners at the SEC, which will become a 3-1 majority if Paul Atkins is confirmed as Chair.⁷ (Until then, under SEC quorum rules, Democratic Commissioner Crenshaw could slow changes that require a Commission vote.⁸) We expect the new SEC leadership to reflect the following values in their approach to enforcement and rule-making.

Government’s workforce through efficiency improvements and attrition”), available at <https://www.whitehouse.gov/presidential-actions/2025/01/hiring-freeze/>.

⁵ See https://www.wsj.com/opinion/how-doge-can-streamline-financial-rules-policy-regulation-markets-057c7643?mod=opinion_lead_pos11&utm_source=securitiesdocket.beehiiv.com&utm_medium=referral&utm_campaign=should-the-sec-and-cftc-merge (noting that “most other major economies have a single regulator for both [securities and commodity derivatives] markets”; that merging SEC and CFTC “has long had bipartisan support”; that former Rep. Barney Frank (D. Mass.) opined that “[t]he existence of a separate SEC and CFTC is the single largest structural defect in our regulatory system”; and that Paul Atkins testified in 2015 that Congress “blew” a “once-in-a-lifetime opportunity to streamline our crazy quilt of financial services regulators,” including by not merging “the SEC and CFTC to create one markets regulator.”)

⁶ Nominee Atkins’ writings have expressed an interest in greater responsiveness to public input about how the SEC could do better. See, e.g., Paul S. Atkins and Bradley J. Bondi, *Evaluating the Mission: A Critical Review of the History and Evolution of the SEC Enforcement Program*, 13 *Fordham J. Corp. & Fin. L.* 367, 415 (2008) (calling for an ombudsman position to receive anonymous complaints about SEC Enforcement staff), available at <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1013&context=jcfl>.

⁷ The one Democratic Commissioner, Caroline Crenshaw, is serving beyond the expiration of her term in June 2024, as permitted for up to 18 months beyond the expiration of the formal term. Her nomination by President Biden to another 5-year term did not go forward during the Biden Administration, in part due to opposition from the crypto industry. See <https://www.law.com/nationallawjournal/2024/12/12/senate-panel-postpones-vote-on-reconfirmation-of-democrat-crenshaw-to-sec/?sreturn=20250121120407>; <https://www.sec.gov/about/sec-commissioners>.

⁸ The SEC ordinarily consists of five Commissioners, only three of which may be members of the same political party. 15 U.S.C. § 78d. Under 17 C.F.R. 204.1, a quorum of the Commission consists “of three members, provided, however,



- *“Bread and butter” enforcement will continue.* Commissioners Uyeda and Peirce often dissented but even more often voted in favor of enforcement, where the SEC was engaged in traditional policing of the securities market. Enforcement against Ponzi schemes and other traditional securities frauds will continue at a robust pace.
- *Environmental, Social and Governance (ESG) is out.* In a dissent titled “We are Not the Securities and Environment Commission – At Least Not Yet,” Commissioner Peirce dissented to the SEC’s 2024 ESG-related Climate Change Disclosure rules, stating that the SEC “cannot make such fundamental changes to our disclosure regime without harming investors, the economy, and this agency.”⁹ Commissioner Uyeda echoed this view, saying the SEC had “gone astray” in adopting its “Climate Rule” (the amendments to Rule 605 of the Exchange Act adopted in March 2024), venturing too far from traditional measures such as materiality.¹⁰ The SEC has already disbanded its ESG Task Force, but we expect the new Administration to go further, including both unwinding ESG rules already formalized and/or possibly providing guidance to the industry that those rules will not be enforced even while still on the books.
- *Regulation by enforcement is out; partnering with industry is in.* Commissioners Peirce and Uyeda have repeatedly objected to enforcement actions that they view as “Monday morning quarterbacking” on reasonable judgment calls in grey areas,¹¹ or otherwise reflective of a failure “to craft sensible, timely, and achievable regulatory paths.”¹² The Republican Commissioners are not alone in this criticism: the Third Circuit recently told the SEC to explain its failure to issue rules that the crypto industry could follow, with one Judge stating that the Gensler SEC’s enforcement-heavy approach raised due process concerns: “The SEC repeatedly sues crypto companies for not complying with the law, yet it will not tell them how to comply. That caginess creates a serious constitutional problem; due process guarantees fair notice.”¹³ The radically different approach of the new SEC is

that if the number of Commissioners in office is less than three, a quorum shall consist of the number in office.” In *FTC v. Flotill Products, Inc.*, 389 U.S. 401 (1967), the Supreme Court confirmed that the FTC (also a five-member commission) could validly take action based on a 2-1 vote by the three commissioners then in office. *Id.* at 183 (holding that “in the absence of a contrary statutory provision, a majority of a quorum consisted of a simple majority of a collective body is empowered to act for the body.”) If Commissioner Crenshaw were to recuse, even though “a simple majority” would not exist, section 204.1 has been upheld as allowing the remaining two Commissioners to approve an action by their majority vote. *SEC v. Feminella*, 947 F. Sup. 722, 725-26 (S.D.N.Y. 1996).

⁹ See <https://www.sec.gov/newsroom/speeches-statements/peirce-climate-disclosure-20220321>.

¹⁰ See <https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-sec-speaks-040224>.

¹¹ See <https://www.sec.gov/newsroom/speeches-statements/peirce-uyeda-statement-solarwinds-102224>.

¹² See <https://www.sec.gov/newsroom/speeches-statements/peirce-blockfi-20220214>.

¹³ *Coinbase, Inc. v. SEC*, Case No. 23-3202, at 49 (ordering the SEC to provide “a sufficiently reasoned disposition of Coinbase’s petition” for crypto rules); *id.* (Bibas, J., concurring opinion) at 18 (3rd Cir. January 13, 2025), available at <https://www2.ca3.uscourts.gov/opinarch/233202p.pdf>.



immediately apparent: on January 21, 2025 acting Chair Uyeda announced a “SEC Crypto 2.0” task force led by Commissioner Peirce that will “collaborate with ... the public to set the SEC on a sensible regulatory path that respects the bounds of the law.”¹⁴ This different approach will be reflected across many industries and initiatives, including:

- *Crypto.* Given the Republican Commissioners’ opposition to the Gensler-era approach to crypto, and President Trump’s crypto-friendly stance (reflected in his January 17, 2025 launch of a \$TRUMP meme coin), it has been long expected that the SEC will roll back its enforcement push against crypto industry players. Although fraud-based cases will continue to be brought, pure registration violation cases will cease until new rules provide greater clarity.¹⁵ Despite acting Chair Uyeda’s swift actions thus far (including the January 21, 2025 announcement of a new SEC crypto task force, and the January 23, 2025 rescinding of Staff Accounting Bulletin 122 (“Accounting for Obligations to Safeguard Crypto-Assets an Entity Holds for its Platform Users”),¹⁶ we expect even more significant crypto regulatory changes from the Trump White House and/or Congress, which includes a bipartisan “Blockchain Caucus.”
- *Cybersecurity.* Commissioners Peirce and Uyeda have criticized SEC enforcement actions based on alleged defects in cybersecurity disclosures as improperly treating cybersecurity incident victims companies as “perpetrators” rather than the crime victims they are. While companies must disclose material incidents, the SEC will no longer don “a Monday morning quarterback’s jersey to insist that immaterial information be disclosed” as well.¹⁷ Companies’ reasonable judgments in the face of such attacks deserve deference.
- *Off-channel communications.* In September 2024, Commissioners Peirce and Uyeda issued a joint statement against enforcement as a response to off-channel communication: “The use of off-channel communications—text messages, smartphone chat applications like WhatsApp, and personal email outside firm-approved systems—is prevalent across the securities industry. We have an industry-wide problem that we will not solve through enforcement.”¹⁸ This enforcement sweep was already losing steam; it is now dead.

¹⁴ See <https://www.sec.gov/newsroom/press-releases/2025-30>.

¹⁵ The SEC Crypto 2.0 announcement states: “To date, the SEC has relied primarily on enforcement actions to regulate crypto retroactively and reactively, often adopting novel and untested legal interpretations along the way. Clarity regarding who must register, and practical solutions for those seeking to register, have been elusive.”

¹⁶ See <https://www.sec.gov/rules-regulations/staff-guidance/staff-accounting-bulletins/staff-accounting-bulletin-122>.

¹⁷ See <https://www.sec.gov/newsroom/speeches-statements/peirce-uyeda-statement-solarwinds-102224>.

¹⁸ See https://www.sec.gov/newsroom/speeches-statements/statement-peirce-uyeda-qatalyst-09242024#_ftn1.



- *Penalties against companies will be lower.* Commissioners Peirce and Uyeda often criticized their colleagues for imposing unduly high penalties. In a May 2024 joint statement, they explained: “Imposing outsized penalties for minor violations risks creating a counter-productive dynamic between the Commission and regulated entities. When regulatory foot faults result in ever-steeper penalties that bear little to no relation to real-world harm, the perception that the Commission’s penalty regime is more a tool to generate numbers for year-end statistics and less a means to achieve outcomes that enhance market integrity and investor protection begins to appear not unreasonable.”¹⁹ As nominee Atkins has noted, the SEC has long pledged to take into account, and should take into account, “that civil penalties assessed against corporate issuers will ultimately be paid by shareholders who were themselves victimized by the violations” and so should be limited to “the rare situation where the issuer received a ‘direct economic benefit’ from the fraud,” not already accounted for through civil litigation “for the same transgressions.”²⁰

Rule-Making Changes Related to Periodic Disclosure Requirements

With respect to periodic disclosure requirements, we expect few, if any, new disclosure requirements as part of the transition in administration.

The most likely subject of any initiatives with respect to periodic disclosures would be rolling back disclosure initiatives of the previous administration. Under the Biden administration, the SEC adopted the following major initiatives from a periodic reporting perspective:

- New Cybersecurity Disclosures
- New Climate-Related Disclosures
- New Issuer Share Repurchase Disclosures (*vacated*)
- Shortening of Deadline for Schedule 13D and 13G Filings
- New 10b5-1 Plan and Insider Trading Disclosures
- National Exchange Listing Standards Requiring Compensation Clawback Policies
- Pay versus Performance Disclosures
- Universal Proxy Rules
- Nasdaq Board Diversity Listing Standards (*vacated*)
- Updated Disclosure Requirements with respect to Regulation S-K Items 101 (Description of Business), 103 (Legal Proceedings) and 105 (Risk Factors)
- Amendments to Financial Disclosures About Acquired and Disposed Businesses
- Modifications to Definitions of Accelerated Filer and Large Accelerated Filer

¹⁹ See <https://www.sec.gov/newsroom/speeches-statements/peirce-uyeda-statement-intcntl-exchange-052224>.

²⁰ See Atkins and Bondi, *supra* n. 6, at 390, 400-401 (citations omitted).



As noted above, rules concerning Environmental, Social and Governance (ESG) and Climate matters, long maligned by Republican lawmakers and Commissioners as resting on a shaky foundation (both in terms of statutory authority and benefit to investors), will likely be rolled back or significantly curtailed. Some rules, such as Issuer Share Repurchases and the Nasdaq Diversity Listing Rules, have already been vacated pursuant to court challenges.

However, before issuers start shedding their ESG initiatives, they should consider that SEC, NYSE and NASDAQ rules are not the only source of pressure to make disclosures. For example, proxy advisors and institutional investors may still have an interest in disclosure of certain matters. "Private ordering" (where the private sector pushed for changes they considered important) was a powerful force during President Trump's first term, and will likely continue in his second term. Consider the "Proxy Access" movement championed by the New York City Comptroller, which resulted in significant changes to the director nomination process at many issuers, without any formal government rulemaking. State initiatives, like CA SB 253 and SB 261, or even international requirements, like GDPR, also can have an outsized impact on practices. Counterparties, like insurance companies, can also influence how an issuer chooses to operate. These forces will likely continue to shape the landscape of issuer considerations. Furthermore, issuers in some instances require many years of lead time to establish systems in reaction to certain ESG initiatives, like Climate Change Disclosures. Many companies have already spent significant time and energy preparing for the rules already in place and/or the concerns of various stakeholders. As the pendulum often swings both ways, the threat of these initiatives staying, through private ordering, or coming back in future administrative changes, may continue many companies on these paths, at least in some capacity.

Offering Exemptions

The Biden administration expanded exemptions from offering registration requirements by adopting new offering integration rules, increasing offering limits of certain exemptions, and expanding the definition of "Accredited Investors." The new Administration may take further steps to expand exemptive relief. However, given the significant amount of expansion that has already taken place in recent years, this will probably not be a top priority or an urgent need to address.

That being said, under the Dodd-Frank Act, the SEC must evaluate the definition of an "accredited investor" (at the core of most exemptions from registration) every four years, for the protection of investors, in the public interest, and in light of the economy. The last report, which came out in December 2023, indicated the SEC's interest in soliciting views of the public and other stakeholders. It is possible that further revisions to this definition will be proposed even before the next report is due in 2027.



Conclusion

The impact of the Trump Administration on the SEC will likely be significant and swift. Despite these changes, issuers should proceed with caution. Private forces, external to the Trump Administration or SEC, may continue to shape issuer practices consistently with the initiatives from previous administrations, even if the SEC and other government actors no longer require them.



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