Vinson&Elkins

September 2025

Government Enforcement Semi-annual Roundup

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Executive Summary

Federal government enforcement continues to pose commercial and reputational risks to companies and individuals that operate in highly regulated environments. Vinson & Elkins is pleased to offer this round-up of recent developments in federal enforcement, with a particular emphasis on changes during the first few months of the second Trump administration. These summaries have been prepared by our highly experienced lawyers in the fields of antitrust, energy regulatory, environmental, securities, and white collar enforcement. They cover changes in agency leadership, agency restricting efforts, significant new policy developments, predictions about future enforcement trends, and summaries of major enforcement cases.

We believe that the following developments warrant close attention.

- Ongoing impacts of the U.S. Supreme Court's decision in *SEC v. Jarkesy.* The Court's June 2024 decision in *SEC v. Jarkesy* fundamentally altered the procedural landscape for agency enforcement actions. The *Jarkesy* ruling affirmed that respondents facing agency-imposed civil penalties, particularly for fraud allegations, are entitled to a jury trial in federal court, rather than being compelled to defend themselves in administrative proceedings before agency-appointed judges. This decision has already shifted some administrative enforcement to judicial enforcement at the Securities and Exchange Commission, the Federal Energy Regulatory Commission, and the Pipeline and Hazardous Materials Safety Administration. We expect the implications of *Jarkesy* to continue to be worked out in agency enforcement practice for some years to come.
- Rule of law-based enforcement. New Trump administration political appointees at the Department of Justice and the Environmental Protection Agency are much more likely to enforce laws as passed by Congress instead of using enforcement power to drive preferred policy outcomes. Settlement agreements that create bespoke regulatory programs that go beyond what statutes or regulations prescribe will likely be disfavored in this administration. This administration also disfavors the over-use of criminal enforcement authority for regulatory violations, which may well correct a multi-year drift toward criminalizing regulatory noncompliance.
- Progressive enforcement priorities will be deemphasized. The Trump administration has clearly signaled that progressive priorities like diversity, equity, and inclusion; environmental, social, and governance; environmental justice; and climate change will not drive enforcement policies. This is a clear break from the Biden administration, in which these priorities were used to prioritize investigations and enforcement actions.
- Ongoing enforcement in the energy sector. Despite deemphasizing climate change-based priorities, the Trump administration appears willing to continue enforcement actions in the energy sector, including: (1) Clean Air Act enforcement at upstream, midstream, and refinery facilities; (2) energy regulatory enforcement of tariffs; and (3) enforcement of pipeline safety laws.
- Ongoing securities enforcement. The Trump administration has signaled its ongoing commitment for the Securities and Exchange Commission to correcting wayward actions through the use of its enforcement authority. At the same time, the new administration is taking a different approach to cryptocurrency enforcement and has overturned an Obama-era delegation that allowed senior career staff to commence enforcement actions instead of the full Commission.
- Shifts in white collar criminal enforcement. While white collar enforcement continues its multi-year decline, the Department of Justice ("DOJ") has announced a new enforcement plan that aims to balance aggressive white collar enforcement related to crimes that harm Americans and the federal fisc with a commitment to avoid overbroad enforcement that may unduly burden businesses or U.S. interests. DOJ's Criminal Division will focus enforcement on white collar offenses identified as having the "greatest impact in protecting American citizens and companies and promoting U.S. interests." DOJ will also adopt a fairness-based approach to corporate charging that rewards self-disclosure and remediation, while aiming to resolve investigations efficiently to limit the collateral consequences of prolonged inquiries.

We invite you to reach out to any of our contributing attorneys by using the contact information included at the end of this report.

Antitrust Enforcement

In light of the administration change, antitrust enforcement initiatives have been in a state of flux over the past several months. After the election, the outgoing Biden administration sought to shore up some of its overall antitrust policy goals, several of which ran counter to the incoming Trump administration's antitrust agenda. As a result, the public has had to grapple with dramatic policy shifts in some areas, and surprising continuity in others.

For example, many believed that large tech companies' efforts to ingratiate themselves to the Trump administration would result in less aggressive antitrust enforcement against them, which was characteristic of the Biden administration. However, enforcement against such companies has been surprisingly consistent despite the change in administrations. In other areas though, the Trump administration has directly signaled its intent to undo Biden era initiatives. For example, the Biden administration previously withdrew longstanding guidelines for collaborations among competitors, which the Trump administration said was improper. On some issues, the extent to which the new administration will continue or depart from prior initiatives is still unclear. For example, although the new Chairman of the Federal Trade Commission ("FTC") previously had criticized the Biden FTC's rule banning non-competes nationwide, the Trump administration has signaled that it will continue to focus on antitrust issues which may impact the labor market.

Still, some antitrust enforcement staples, such as the prosecution of traditional price-fixing cartels and bid-rigging schemes, are likely here to stay. And companies should still be aware of Biden-era changes to important antitrust policies like the Corporate Compliance Policy and the Corporate Leniency Policy, which could have significant enforcement implications.

In the following sections, we summarize new antitrust leadership in the Trump administration, offer comments on areas of antitrust enforcement to watch, identify key updated antitrust policies, and offer case updates in the areas of labor market, bid-rigging, and price-fixing enforcement.

New Antitrust Leadership

On January 20, 2024, President Donald Trump nominated Abigail Slater to serve as Assistant Attorney General ("AAG") for the Department of Justice's ("DOJ") Antitrust Division, and also selected Andrew Ferguson to serve as the new FTC Chairman, replacing Lina Khan.

Department of Justice

AAG Slater previously had served as an economic advisor to Vice President JD Vance and served on the National Economic Council and was an FTC attorney for over ten years. In her first speech at the University of Notre Dame Law School, Slater previewed an "America First" antitrust agenda, which emphasized protecting "small businesses and innovators, from Little Tech, to manufacturing, to family farms." Her remarks also warned against "ill-gotten monopolies," suggesting that the Antitrust Division will continue to focus on monopolization enforcement, particularly against Big Tech. Finally, Slater called for antitrust agencies to "enforce the laws passed by Congress, not the laws they wish Congress had passed," as well as a "preference for litigation over regulation"—perhaps suggesting a return to traditional tools and theories.

Federal Trade Commission

Chairman Ferguson was previously nominated by President Joe Biden in 2023 to serve as a Republican FTC Commissioner and previously had served as Solicitor General of Virginia and Chief Counsel to Senator Mitch McConnell in the U.S. Senate Judiciary Committee. In his May 15, 2025 testimony before the House Appropriations Committee, Ferguson emphasized that Congress established the FTC to be "a cop on the beat for our markets, not to make the rules," suggesting that the FTC may be more focused on enforcing antitrust laws as written rather than pursuing novel policy objectives. However, Ferguson also emphasized that the FTC would be focused on "holding Big Tech accountable for unlawful conduct that results in censorship and undermines free speech online"—which some may consider a novel use of antitrust laws. His remarks also signaled that the FTC will continue the prior administration's efforts to prosecute monopolization cases, including against some of the largest tech companies in the world.

In addition to appointing Ferguson as FTC Chairman, President Trump nominated Mark Meador as the third Republican Commissioner. Meador was confirmed and sworn in on April 16, 2025. On March 18, 2025, while Meador's confirmation was pending, Trump fired the two remaining Democratic Commissioners, Alvaro Bedoya and Rebecca Kelly Slaughter. Traditionally, FTC Commissioners serve staggered seven-year terms, can only be fired for cause, and there can only be three Commissioners from the same political party as the President. Bedoya and Slaughter claim that President Trump did not have the power to fire them and are seeking reinstatement in court. The issue is likely headed to the Supreme Court, which will need to grapple with its seminal *Humphrey's Executor v. United States* decision, which held that Presidents cannot remove members of quasi-legislative and quasi-judicial agencies without cause. Recent cases have called into question whether *Humphrey's Executor* remains good law.

Areas to Watch

The transition has created uncertainty in the regulatory landscape as the new administration's enforcement priorities come into focus. Through its first several months, the Trump administration has demonstrated a willingness to pursue novel enforcement actions in areas of heightened political scrutiny, which has only increased the questions facing many businesses. In the realm of antitrust law, both state and federal regulators have signaled an intention to test new enforcement theories on issues of political priority to President Trump; most notably, against companies that have diversity, equity, and inclusion ("DEI") and environmental, social, and governance ("ESG") programs, and which maintain social media and other online "speech" platforms. As a result, we expect that businesses operating in these and other political hotspots may now face a heightened risk of antitrust investigation.

Diversity, Equity, and Inclusion as Antitrust Enforcement

Corporate DEI policies have emerged as potential targets for state and federal antitrust enforcement. On February 26, 2025, FTC Chairman Ferguson issued a Directive Regarding Labor Markets Task Force, stating the administration's view that DEI benchmarking "may have the effect of diminishing labor competition by excluding certain workers from markets." The memorandum makes specific reference to FTC's jurisdiction to prosecute anticompetitive labor practices relating to "collusion or unlawful coordination on DEI metrics," and announces two legal theories under which it may seek to prosecute corporate DEI policies: (1) as agreements in restraint of trade in violation of Section 1 of the Sherman Act, *see* 15 U.S.C. § 1, and (2) as unfair or deceptive acts affecting commerce under Section 5 of the FTC Act, *see* 15 U.S.C. § 45(a)(1).

To establish a violation of Section 1 of the Sherman Act, prosecutors will need to establish three elements: (1) a contract, combination, or conspiracy (*i.e.*, an agreement) between the defendants, (2) that restrains trade unreasonably in a relevant market, and (3) injury to competition. The requirement to show that corporate DEI programs constitute an anticompetitive agreement will take more than mere allegations of parallel conduct, *i.e.*, that separate companies implemented similar DEI policies in a condensed time frame. However, such parallel conduct may form one basis for a jury to *infer* the existence of a conspiracy, when considered in combination with other circumstantial evidence of an agreement to restrain competition.

One likely consideration is whether competitors have agreed to share competitively sensitive information, either directly or through a benchmarking service. Courts routinely consider whether such "information exchanges" unreasonably restrain trade under a rule of reason analysis. In the context of corporate DEI policies, a company's use of a benchmarking organization, standing alone, is not enough to establish an anticompetitive information exchange. Government enforcers pursuing this theory would also need to show the existence of a relevant labor market in which defendant companies compete, collective market power in that market, and the anticompetitive effect of DEI benchmarking on labor markets. Because DEI policies are not typically understood to affect the wages paid to workers or the overall supply of jobs, an antitrust enforcer would also need to show that challenged DEI policies somehow restrained competition by reducing the overall efficiency of labor markets. Economists typically agree that this could present a substantial challenge.

As a result, FTC may be more likely to investigate DEI benchmarking as a violation of Section 5 of the Federal Trade Commission Act, which prohibits "unfair or deceptive acts or practices affecting commerce." 15 U.S.C. § 45(a)(1). It is generally understood that the definition of "unfair" practices under Section 5(a) is exceedingly broad, and FTC may seek to take advantage of that breadth to investigate and litigate the legality of DEI benchmarking activities. However, the FTC's ability to prosecute Section 5 claims is meaningfully limited by 15 U.S.C. § 45(n), which requires that the alleged unfair conduct causes or is likely to cause harm to "consumers"—*i.e.*, persons or businesses. Ultimately, should the FTC decide to pursue Section 5 claims, it may have difficulty establishing that the mere existence of DEI benchmarking caused injury to consumers, which would require a showing that a company's DEI programs resulted in reduced availability or increased prices for its products or services.

Environmental, Social, and Governance Enforcement

State and federal antitrust enforcers' scrutiny of coordinated ESG policies predates the Trump administration. Under President Biden, the FTC was clear that there is no exemption to the antitrust laws for environmental initiatives. And over the last couple of years, Republican officials have pursued multiple avenues to investigate corporations' participation in common environmental initiatives as potential violations of U.S. antitrust law. For instance, in 2023 and 2024, Republican members of the House Judiciary Committee sent requests for information to dozens of private companies, retirement systems, and government pension programs regarding their participation in Climate Action 100+, a group which works with large investors to improve their climate-related governance. That effort culminated in a contentious June 2024 hearing before an antitrust subcommittee of the House Judiciary Committee, in which representatives of private investment and state retirement system members of Climate Action 100+ were called to testify. Conservative state attorneys general have led similar efforts to combat ESG initiatives. In September 2023, Republican state attorneys general sent a letter to the Net Zero Financial Service Providers Alliance warning that its program to assist companies in reducing greenhouse gas emissions may violate antitrust law. In that letter, the state attorneys general express their view that the Net Zero Financial Service Providers Alliance promotes coordination amongst competitors which may "artificially restrict the supply of goods and services in the real economy" to the detriment of U.S. consumers.

Indeed, in *State of Texas v. Blackrock, Inc.*, Case No. 6:24-cv-00437 (E.D. Tex. Nov. 27, 2024), conservative state attorneys general brought suit under Section 1 of the Sherman Act, alleging that several institutional investors were colluding on output restrictions of coal production through common ESG commitments. The state plaintiffs allege that defendants agreed to use their equity in competing coal companies and to share competitively sensitive production target data in order to pressure coal companies to reduce production below competitive levels. The states also assert a Clayton Act Section 7 claim, which prohibits stock or asset acquisitions that may substantially lessen competition. Here, plaintiffs' Section 7 claim is premised on an untested "horizontal shareholding" theory, under which the institutional investor defendants' collective ownership and influence over coal companies is alleged to have created an anticompetitive drag on competition. This is a novel theory which has never been litigated, in part because economists and antitrust litigators largely agree that it is exceedingly difficult to connect passive stock ownership with competitive harm.

Nevertheless, on May 22, 2025, FTC and DOJ filed a statement of interest in support of the states' claim. The regulators take the position that whether or not defendants' conduct furthered climate objectives is irrelevant to any valid defense under the antitrust laws. They argue that the states properly pled a claim under Section 7 of the Clayton Act, because (1) the Clayton Act's passive investor exception does not prohibit courts from examining the anticompetitive conduct of ostensibly passive, minority investors; and (2) a plaintiff may plead a Section 7 claim by showing that horizontal shareholdings purchased solely for investment were in fact affirmatively used to cause a substantial lessening of competition in a relevant market. FTC and DOJ also argue that the states have pled concerted action establishing an agreement under Section 1 of the Sherman Act. In particular, they highlight plaintiffs' allegations that the institutional investors agreed to a common strategy for influencing corporate behavior in the energy industry, and that defendants' agreement was memorialized in public commitments to join various climate-change initiatives.

This matter is currently awaiting a decision on motion to dismiss, the outcome of which may influence future enforcement decisions by state and federal antitrust regulators.

Online Censorship as a Basis for Antitrust Enforcement

Despite the change in administration, Big Tech is still squarely in the crosshairs of antitrust regulators. However, the specific focus of enforcement actions against tech companies is likely to reflect important policy initiatives of the new administration. One such example is the Trump administration's concern with potential censorship by Big Tech companies, particularly censorship of conservative viewpoints. After Trump appointed Andrew Ferguson as

Chair of the FTC, Ferguson tweeted that the FTC would "end Big Tech's vendetta against competition and free speech." And prior to his appointment as FTC Chair, Ferguson called on the FTC to "investigate online platforms for unfair acts or practices relating to their opaque, unpredictable processes for banning users and censoring content." Indeed, the FTC has already launched a public inquiry to "better understand how technology platforms deny or degrade users' access to services based on the content of their speech or affiliations, and how this conduct may have violated the law."

Whether current antitrust law is well suited to combat such censorship is up for debate. However, the current administration seems willing to employ the available antitrust tools in new and creative ways to address these concerns.

Updated Policies

The past year has also seen the updating of several important antitrust policies, for example, DOJ's Corporate Compliance Policy and Leniency Policy.

Corporate Compliance Policy

In November 2024, DOJ's Antitrust Division updated its 2019 guidance for the Evaluation of Corporate Compliance Programs in Criminal Antitrust Investigations. This nonbinding guidance is intended to assist Antitrust Division prosecutors in evaluating corporate compliance programs for the purpose of making charging decisions and sentencing recommendations for criminal violations of the Sherman Act. The guidance provides an overview of the key elements of effective compliance programs, including the design and comprehensiveness of the program, the company's broader culture of compliance, dedication of adequate personnel and resources to the program, mechanisms for assessing antitrust risk, compliance training and communication to employees, continuous auditing of the program, processes for confidential reporting and investigation of suspected violations, compliance incentives and discipline, and a company's remediation efforts to improve its compliance program. The guidance also advises prosecutors on how to weigh the effectiveness of a company's antitrust compliance program in considering sentencing reductions.

The 2024 updates focus largely on the role of company culture in promoting antitrust compliance. The guidance discusses the importance of having senior leadership and mid-level managers "set the tone" on antitrust compliance. It also highlights the need for companies to support compliance programs with appropriate resources, training, and continuous improvements that account for prior compliance incidents. The guidance further emphasizes that companies should encourage compliance reporting by offering confidential mechanisms for employees to report potential antitrust violations "without fear of retaliation."

The 2024 guidance also addresses for the first time antitrust risks arising from several recent technological advancements. For instance, the guidance advises prosecutors to consider whether a company has "clear guidelines regarding the use of ephemeral messaging or non-company methods of communication" and policies regarding the preservation of such communications. It also calls for prosecutors to consider a company's risk assessment relating to the use of artificial intelligence and algorithmic revenue management technologies. In particular, DOJ advises that companies should have the ability to "detect and correct decisions made by AI or other new technologies that are not consistent with the company's values."

The updated guidance provides useful insight on the Antitrust Division's priorities for evaluating corporate compliance programs. Companies should use the guidance as a resource for developing effective compliance programs that may not only prevent antitrust violations, but position companies to receive more lenient treatment in the event of a violation.

Leniency Policy

Frequently described by the Antitrust Division as one of its most important tools in detecting criminal antitrust conspiracies, the Leniency Policy provides immunity from prosecution to the first organization or individual to self-report participation in a criminal antitrust conspiracy and cooperate fully with the Antitrust Division's investigation. In early 2024, the Antitrust Division updated its Leniency Policy to incorporate DOJ's M&A Safe Harbor Policy, which is designed to incentivize companies "to timely disclose misconduct uncovered during the M&A process." Traditionally, under the Safe Harbor Policy, companies that disclose criminal conduct to DOJ within six months of closing on an acquisition may be eligible for a declination, provided other conditions are met (for example fully remediating the misconduct within one year from the closing date, fully cooperating with any DOJ investigation, and disgorgement of profits). However, when the Antitrust Division incorporated the M&A Safe Harbor Policy, it arguably made it more difficult to receive protection for criminal antitrust violations discovered in the M&A process.

This is due to the fact that, unlike with other criminal conduct, disclosure of Sherman Act violations only qualifies for the safe harbor if the acquirer discloses the violations *before* the merger or acquisition closes and also agrees to keep the transaction open for an indefinite period of time until permitted by the Antitrust Division (and the FTC, when relevant).

This could have significant impacts on companies that discover potential criminal violations of the Sherman Act during the transaction process. Navigating the Leniency Policy in such circumstances could impact not only the protections such companies are eligible for but also the overall timing of the deal itself.

Competitor Collaborations Guidance

In December 2024, the FTC and DOJ jointly issued a statement withdrawing their Antitrust Guidelines for Collaborations Among Competitors. The guidelines were a valuable resource for companies navigating collaborations with their competitors and specifically stated that the agencies would not challenge a competitor collaboration that accounted for less than 20 percent of the relevant market. FTC Chair Ferguson disagreed with the withdrawal of the guidance at the time, and it is possible that the new administration will revisit the guidelines.

Labor Market Focus

In a surprising show of continuity, the Trump administration appears similarly focused on addressing antitrust concerns in the labor market. However, the extent to which the new administration's approach will differ from the old is still playing out. For example, in April 2024, the Biden FTC issued a final rule banning non-compete agreements nationwide. However, current FTC Chair Ferguson has described the rule as "wildly exceed[ing]" the FTC's authority, and it is possible the rule will be revisited.

On January 16, 2025, the outgoing Biden DOJ and the FTC jointly issued the Antitrust Guidelines for Business Activities Affecting Workers, which replaced the Antitrust Guidance for Human Resource Professionals released in 2016. The guidelines outline specific types of conduct or practices that may violate antitrust laws, such as sharing competitively sensitive information, imposing non-compete provisions upon employees through employment agreements, and making misleading claims about employee earning potential. Similarly, in February 2025, the FTC announced the formation of a Joint Labor Task Force to protect workers from unfair or deceptive practices and unfair methods of competition in the labor market.

In April 2025, Trump's DOJ announced that a federal jury convicted the former Director of Operations of a home health agency for participating in a three-year conspiracy to artificially cap the wages of home healthcare nurses in Las Vegas, Nevada. According to the indictment, the defendant's conduct furthered a conspiracy between his company and two others to keep the wage rates paid to nurses within an agreed-upon range. DOJ reported the conspiracy affected the wages of hundreds of home healthcare nurses. As a result, the defendant was convicted of participating in a wage-fixing conspiracy and faces up to 10 years in prison and a $1 million criminal fine. This case offers a clear example of the type of harm DOJ aims to correct through its enforcement efforts.

Continued Focus on Bid-Rigging Enforcement

In recent years DOJ's Antitrust Division has prioritized investigating and prosecuting criminal violations in the public procurement process. In 2019, the Antitrust Division announced the creation of a new "Procurement Collusion Strike Force," which has partnered Antitrust Division resources with other law enforcement branches, such as U.S. Attorney Offices, the FBI, and other federal agencies. The goal of the strike force is to root out bid-rigging, price-fixing, and market allocation in the procurement process, and the misuse of taxpayer funds dedicated to public programs.

In 2024, the Antitrust Division secured multiple guilty pleas from companies and individuals in connection with various bid-rigging schemes in several different industries across the country. For example, one scheme involved rigging the sale of sports equipment to public schools throughout Mississippi and Louisiana. Another involved a conspiracy to rig bids for asphalt paving services contracts in Michigan. And other defendants were charged for their scheme to rig bids, defraud the government and pay bribes and kickbacks in connection with the sale of IT products and services to federal government purchasers, which resulted in overcharges of millions of dollars to the U.S. government.

These companies and individuals all face severe penalties under Section 1 of the Sherman Act, which allows up to 10 years imprisonment and millions in criminal fines. It is likely that this type of enforcement will continue as usual despite the change in administration.

Traditional Price-fixing Enforcement

Finally, combatting traditional price-fixing remains a top priority for DOJ. In recent remarks, AAG Slater described antitrust law as a "scalpel … necessary to make targeted, incisive cuts to remove the cancer of collusion …." AAG Slater also emphasized the importance of "the binding nature of Supreme Court and other relevant precedent." Accordingly, DOJ is likely to continue actively prosecuting the types of horizontal price-fixing cases that have long been recognized as *per se* Section 1 violations. Indeed, DOJ has recently racked up several convictions in these types of cases which demonstrate that DOJ is willing to prosecute multiple participants involved in the same conspiracies, and not merely the most central figures.

For instance, on March 11, 2025, DOJ announced that eight defendants had pled guilty to charges related to their participation in "a long-running and violent conspiracy" to fix prices and allocate the market for transmigrante forwarding agency services. These agencies provide services to individuals who transport used vehicles and other goods from the United States through Mexico for resale in Central America. The defendants allegedly created a centralized entity known as a "Pool" to "collect and divide revenues among the conspirators, limit competition from other agencies, and increase prices for their services." The defendants also allegedly used violence to intimidate individuals not participating in the Pool. In addition to the price-fixing charges, five defendants pled guilty to conspiring to monopolize the market in violation of Section 2. These charges are notable because DOJ had not criminally prosecuted Section 2 violations for decades, before resuming enforcement in 2022.

In another successful DOJ prosecution, two executives of competing steel distribution businesses in Puerto Rico pled guilty in August 2024 to conspiring to fix prices of reinforcing bar, or rebar. From 2015 and 2022—which includes the rebuilding periods following Hurricanes Irma and Maria—the defendants allegedly conspired to fix prices for rebar distributed to hardware stores, building contractors, and other businesses. One defendant admitted that over $50 million in sales was affected by the conspiracy. The defendants allegedly exchanged communications, including WhatsApp chat messages, where they agreed on specific rebar prices and price increases. This case highlights the importance of direct evidence in price-fixing prosecutions and DOJ's interest in preventing companies from unlawfully amplifying the financial cost of disasters.

One significant development that could complicate DOJ's efforts to prosecute price-fixing and bid-rigging offenses is the Fourth Circuit's opinion in *United States v. Brewbaker*, 87 F.4th 563 (4th Cir. 2023). In this case, the Fourth Circuit held that the *per se* standard does not apply when alleged conspirators have both horizontal and vertical relationships. On November 12, 2024, the Supreme Court denied DOJ's petition for certiorari, letting the Fourth Circuit's decision stand.

The denial of certiorari leaves *Brewbaker* as controlling precedent in the Fourth Circuit and calls into question whether DOJ will be able to prosecute criminal antitrust violations in situations where competing defendants also have vertical supplier and customer relationships. Defendants in future prosecutions may attempt to raise *Brewbaker* to require the court to examine the full extent of their business dealings. For the moment, DOJ has not indicated that it intends to depart from its policy of only prosecuting *per se* unlawful conduct. However, this does not preclude companies and individuals from facing civil liability in actions analyzed under the rule of reason.

Energy Regulatory Enforcement

The Federal Energy Regulatory Commission's ("FERC") 2024 enforcement activity included investigations, audits, and settlements impacting a broad spectrum of activity across the energy sector. FERC enforcement's 2024 activity demonstrates the agency's continuing focus on curbing alleged market manipulation, energy tariff violations, and inaccurate reporting. Case-by-case updates addressing discrete enforcement actions at FERC are provided below.

First, the most significant development impacting FERC enforcement came from the Supreme Court rather than from the agency itself. The Court's June 2024 decision in *SEC v. Jarkesy* fundamentally altered the procedural landscape for agency enforcement actions. The *Jarkesy* ruling affirmed that respondents facing agency-imposed civil penalties, particularly for fraud allegations, are entitled under the Seventh Amendment to a jury trial in federal court, rather than being compelled to defend themselves in administrative proceedings before agency-appointed judges—this decision was pivotal in the resolution of FERC's more-than-a-decade-long case against TotalEnergies Gas & Power North America, Inc. ("*TGPNA*"), discussed below. The *Jarkesy* decision and its immediate impact on *TGPNA* mark a significant shift in the balance of procedural rights for respondents in FERC enforcement matters. FERC has acknowledged that, going forward, it cannot seek civil penalties for alleged violations of the Natural Gas Act ("NGA") through in-house administrative proceedings, and must instead pursue such remedies in federal court. This development not only enhances due process protections for market participants but also signals a period of transition and potential reform in FERC's enforcement process as the agency adapts to new constitutional requirements and heightened judicial scrutiny.

Second, FERC enforcement proceedings in 2024 demonstrated the importance of rigorously ensuring compliance with ever-evolving Independent System Operator ("ISO") and Regional Transmission Organization ("RTO") tariff provisions. FERC's vigor in pursuing tariff-violation cases suggests that market participants should conservatively interpret ambiguous tariff provisions, and the Commission's 2024 proceedings demonstrate the necessity of staying up to date on changes to relevant documents. For example, battery assets are gaining greater market share year over year, and the industry's understanding of how battery assets are operated and dispatched under ISO and RTO tariffs is still evolving; in this context, a market participant could be forgiven for perhaps not understanding how certain tariff provisions ought to apply in the context of battery-related reporting. And yet FERC has found that ignorance (or even ambiguity) of the law is not a defense, and the fact that these provisions are perhaps less than clear did not prevent FERC's imposition of penalties in three separate instances (all summarized below) related to battery assets subject to California Independent System Operator ("CAISO") tariffs. The case summaries below also identify multiple instances where recently implemented tariff requirements (*e.g.*, implemented the same year as the alleged violation) resulted in enforcement activity. The primary lesson here is that the onus is on the market participant to understand and comply with currently effective tariff requirements.

The following are summaries of relevant 2024 FERC proceedings.

Enforcement Case Summaries

TotalEnergies Gas & Power North America, Inc. (Docket No. IN12-17) (settlement approved Jan. 10, 2025)

In 2012, FERC Enforcement began an investigation into TotalEnergies Gas & Power North America, Inc. ("Total") to determine whether the company had engaged in manipulation that violated NGA Section 4A and FERC's Anti-Manipulation Rule. After an extensive investigatory and in-house enforcement process that spanned over a decade, FERC set the matter for hearing before an administrative law judge. Total filed suit in federal district court, alleging that the Commission's enforcement process violated, among other things, Total's Seventh Amendment right to a jury trial. In light of the September 2024 *Jarkesy* decision, which held that respondents in administrative civil penalty proceedings have a Seventh Amendment right to a jury trial, the Commission issued an order terminating Total's in-house hearing before an administrative law judge. Importantly, that order explicitly referenced the going-forward impact *Jarkesy* would have to FERC's Enforcement process, particularly on NGA enforcement cases, noting:

> The Commission is examining *Jarkesy*'s impact on the Commission's existing enforcement procedures and expects to further address its approach to enforcement cases in light of *Jarkesy*. The Commission expects that it will issue a further order regarding the status of [the enforcement action against Total].While we do not in this Order terminate the [enforcement action against Total] in its entirety, any further administrative proceedings involving Respondents will not involve a trial-type evidentiary hearing conducted by a Commission ALJ, or any initial decision, findings, or determinations by a Commission ALJ under the Commission's Rules of Practice and Procedure.

Enforcement and Total ultimately agreed to a settlement that included a stipulation and consent agreement on December 17, 2024. The agreement contained no findings, but Total agreed to make a $5,000,000 donation in the form of "restitution" to "certain agreed-upon non-governmental actors." In a first-of-its-kind provision, Total retained the ability to publicly deny the allegations. Total and the Commission jointly moved to dismiss related federal court litigation. Vinson & Elkins attorneys represented respondents in this FERC enforcement proceeding and the related federal court litigation.

Rover Pipeline, LLC and Energy Transfer LP (Docket No. IN19-4-000)

This case involves facts dating back nearly a decade, providing another example of the impact *Jarkesy* has had on enforcement proceedings in recent years. As in *Jarkesy*, this case involves questions as to whether an administrative agency's in-house adjudication of the case violates a party's right to a jury trial.

This proceeding began in late 2016, when FERC Enforcement staff began a non-public investigation related to Rover Pipeline, LLC's ("Rover") purchase and removal of a potentially historic home (known as the Stoneman House) while Rover's application for permission to construct the new 711-mile interstate natural gas pipeline and related facilities was pending. On March 18, 2021, FERC issued an Order to Show Cause and Notice of Proposed Penalty (Docket No. IN19-4-000), ordering Rover to explain why it should not pay a $20,160,000 civil penalty for alleged violations of Section 157.5 of FERC's regulations (requiring certificate holders to be forthright in their submissions of information to the FERC). Rover filed its answer and denial to the order on June 21, 2021, and a surreply on September 15, 2021, wherein it asserted that it had in fact been forthright with the Commission. FERC issued an order on January 20, 2022, setting the matter for hearing before an administrative law judge. The hearing was set to commence on March 6, 2023.

Rover filed suit in Federal District Court, alleging among other things that the FERC proceeding violated Rover's Seventh Amendment right to a jury trial. The federal district court ultimately ordered that the Federal District Court case and the FERC administrative proceeding would both be stayed pending the resolution of the *Jarkesy* case. Since 2023, the FERC and the Federal District Court proceedings have both remained paused, even following the Supreme Court's resolution of *Jarkesy*. The FERC administrative proceeding is currently stayed, and the Federal District Court proceeding is administratively closed. Vinson & Elkins attorneys represent respondents in this FERC enforcement proceeding and the related Federal Court litigation.

American Efficient, LLC; Modern Energy Group LLC; MIH LLC; Midcontinent Energy LLC; Wylan Energy, L.L.C.; Affirmed Energy LLC (Docket No. IN24-2-000; EL24-124-000)

In its December 16, 2024 Order to Show Cause and Notice of Proposed Penalty (Docket No. IN24-2), the Commission described the Enforcement staff report underlying this enforcement case. The report indicated that American

Efficient, LLC ("American Efficient") had received hundreds of millions of dollars in capacity payments from PJM Interconnection ("PJM") and Midcontinent Independent System Operator ("MISO") from 2014 through the present for a purported energy efficiency capacity program that did not reduce the demand for energy and violated the PJM and MISO tariffs, and that American Efficient intentionally misled the ISO/RTOs to capture these capacity payments. This case remains ongoing; Enforcement staff initially proposed penalties ranging from $516 million to $1.032 billion if American Efficient "settles and accepts responsibility," $619.2 million to $1.238 billion if American Efficient settles but does not accept responsibility, and $722.4 million to $1.445 billion if American Efficient does not settle. Staff also recommended that American Efficient disgorge (1) $253,053,879, plus interest, back to MISO and PJM and (2) disgorge additional unjust profits received between April 2024 and the date of any future Commission order directing disgorgement.

These same facts are also at the center of complaint proceedings in other proceedings, including EL24-124-000 (a complaint Affirmed Energy ("Affirmed"), one of American Efficient's affiliates, filed against PJM), where Affirmed is seeking to "stop PJM from violating its Tariff and the Federal Power Act ("FPA") by withholding the collateral it owes to Affirmed. The unlawful withholding threatens an imminent end to the company."

This case demonstrates the impact that *Jarkesy* is having in ongoing proceedings. Affirmed's complaint indicated that "the Supreme Court's recent decision in *SEC v. Jarkesy* … raises doubts as to the legitimacy of FERC's efforts to adjudicate claims that can result in assessment of a civil penalty. [Affirmed] reserves the right to raise challenges to such efforts in the future."

On June 2, 2025, American Efficient responded to the Show Cause Order. American Efficient cited a Fifth Circuit case (*AT&T, Inc. v. FCC*, 135 F. 4th 230 (5th Cir. 2025)) and *Jarkesy* as examples of recent authority casting doubt on FERC's civil penalty authority under the FPA.

American Efficient argued that "in the coming months, the highest levels of DOJ, including the Solicitor General, are poised to address *Jarkesy's* application to agency enforcement proceedings for the first time in this Administration," and that the opinions taken by DOJ and the Solicitor General could render FERC's FPA penalty system unconstitutional. Accordingly, American Efficient urged that "it would be unwise and inappropriate for FERC to rush out a penalty order against American Efficient now. FERC does not know whether DOJ, at the highest levels, is prepared to contest the aspects of the Fifth Circuit's decision that would condemn FERC's penalty process," nor whether the Fifth Circuit or Supreme Court will grant further review in the FCC proceeding.

EWP Renewable Corporation (Docket No. IN24-12-000) (settlement approved Dec. 23, 2024)

The 17.5 MW Hemp Hill biomass generator in Springfield, New Hampshire produces electricity by burning wood chips, pellets and sawdust. During the relevant period, Hemp Hill had a capacity obligation of approximately 17 MWs. Hemp Hill experienced an outage in fall 2019 but failed to change its availability status after the outage from November 6 to December 17, 2019, thus it erroneously appeared available to generate power.

Additionally, between July 10 and August 4, 2020 (26 days), Hemp Hill did not have the state license required to operate its boiler, thus could not legally produce power. Nonetheless, Hemp Hill failed to submit outage tickets on 23 of the 26 unlicensed days. During this same period, on July 27, 2020, Hemp Hill received a day-ahead award, to which it was unable to perform. Hemp Hill informed ISO-NE that its inability was due to boiler door gasket maintenance.

Enforcement alleged that Hemp Hill violated several ISO-NE Tariff rules: Market Rule 1 (requiring accurate operating parameters), and Tariff Section III.13.6.1.1 (licensing and outage communication). Additionally, it alleged that Hemp Hill violated 18 C.F.R. §35.41(a) (the "Unit Operation" Rule). Enforcement recommended a civil penalty in the amount of $722,000, as well as a $259,669 disgorgement to ISO-NE.

Sonoran West Solar Holdings, LLC (Docket No. IN24-13-000) (settlement approved Dec. 5, 2024)

The Crimson battery project consists of two batteries that inform CAISO of their "state of charge"—the then-available stored battery energy. Sonoran West Solar Holdings, LLC ("Sonoran") used these states of charges to bid on CAISO day-ahead awards and, during the relevant period, submitted bids that allegedly did not reflect the actual forecasted state of charge. On a number of dates in late 2022 and through early 2023, Sonoran submitted outage cards with Maximum Stored Energy values of 0 MWh, indicating the batteries needed to be fully discharged before the outage. As a result, Sonoran received day-ahead awards that totaled $2,473,265.

Enforcement alleged that Sonoran's battery bidding violated CAISO Tariff §30.5.6.1 (requiring bids reflecting accurate physical positions), and §37.3.1.1 (resources must reasonably be available). It also alleged that Sonoran's initial state-of-charge information was false and misleading, violating 18 C.F.R. §35.41(b) (sellers must provide accurate and factual information within the markets of Commission approved ISOs). Enforcement recommended a civil penalty of $1,000,000, along with a $2,473,265 disgorgement to CAISO.

Vista Energy Storage, LLC (Docket No. IN24-11-000) (settlement approved Aug. 6, 2024)

Vista Energy Storage, LLC ("Vista") owns and operates the Vista Battery, which has a maximum storage capacity of 40 MWh. The Vista Battery offers both energy and ancillary services into CAISO. Enforcement alleged that Vista submitted inaccurate initial state of charge values as part of its regulation down bids from a resource that was not "reasonably expected to be available and capable of performing at levels specified in the bid," violating CAISO Tariff §37.4.1.1. More specifically, Vista allegedly knew, or should have known, that it would not have received certain awards if it had submitted initial state of charge values reflecting that the actual state of charge would have been around 20 MWh (rather than "at or below 4 MWh," as Vista had reported) during 33 days in the relevant period. The state of charge reported by Vista allegedly resulted in more frequent discharges of Vista's batteries, with CAISO being required to pay Vista for these discharges at Vista's bid prices, which were often above CAISO's marginal price.

Enforcement recommended that Vista pay a civil penalty of $1,000,000 and that Vista disgorge an additional $1,670,000.

Voltus, Inc., and Gregg Dixon (Docket No. IN21-10-000) (settlement approved Jan. 6, 2025)

Enforcement alleged that Gregg Dixon, the former CEO of Voltus, Inc. ("Voltus"), violated the Commission's Anti-Manipulation Rule by engaging in a fraudulent scheme: Voltus allegedly collected customer data in jurisdictional transactions, then without authority or contractual rights, registered load-modifying resources and emergency demand resources using this customer data to reduce demand and offer zonal resource credits, from which Voltus (and not the customers) benefitted. Enforcement further alleged that Dixon made false and misleading statements to MISO, customers, potential customers, and other individuals to further this fraudulent scheme and knew (or was reckless in not knowing) that this scheme violated MISO's Tariff. As a result, it recommended civil penalties in the amount of $10,919,457 from Voltus and $1,000,000 from Dixon, as well as a $7,080,543 disgorgement to MISO.

Montpelier Generating Station, LLC and Rockland Capital, LP (Docket No. IN24-15-000) (settlement approved Dec. 6, 2024)

Montpelier Unit 2 is one of four "twin-pack" simple cycle units, each designed to operate in tandem but which can run separately. Each twin-pack unit has an individual capacity of 29 MW and a combined capacity of 58 MW. On October 25, 2022, Montpelier Unit 2 tripped offline due to high vibrations and allegedly submitted a ticket on PJM's eDART system, identifying a reduction of 58 MW. Later that day, Montpelier allegedly informed PJM that the outage occurred only on one turbine, and the unit could edit the reduction to 29 MW. Due to several delays of repairing the turbine, Montpelier Unit 2 was allegedly unavailable during PJM's Maximum Generation Emergency Action on December 23, 2022, during Winter Storm Elliot.

Enforcement alleged that Montpelier's outage violated PJM Tariff Attachment K, Section 1.9.4 (addressing Generator Forced Outages requirements in accordance with the PJM Manuals, which require certain records of events to be maintained during a Forced Outage). It also alleged that Montpelier's submission of an eDART ticket to PJM incorrectly classified Montpelier's outage, violating 18 C.F.R. §35.41(b) (sellers must provide accurate and factual information within the markets of Commission approved ISOs). As a result, Enforcement recommended a civil penalty in the amount of $105,000 and a disgorgement of $674,064 (plus $84,690 in interest) to PJM.

Big Rivers Electric Corporation (Docket No. IN24-9-000) (settlement approved Sept. 5, 2024)

Big River Electric Corporation ("BREC") offered its unit at the Robert D. Green Generating Station, known as Green 2, into the MISO capacity auction for the summer 2023 season. Starting in 2023, MISO implemented a new rule that imposed Capacity Replacement Non-Compliance Charge ("CRNCC") penalties in certain circumstances on units that are unavailable during a capacity season. Under the new rule, BREC could put Green 2 on a planned outage for no more than 31 days during the summer capacity season without incurring CRNCC penalties.

BREC exceeded the 31-day limit in the summer of 2023. The Green 2 station planned an outage from May 30 to June 29, 2023, but extended the outage until July 6 by reporting a forced outage on the 29th. Enforcement alleged that BREC violated the Anti-Manipulation Rule by falsely telling MISO that it had a forced outage from June 29 to July 6, 2023. Enforcement also alleged that BREC submitted offers to MISO for Green 2 at full availability from July 6 to July 25, 2023, when BREC "knew or was reckless in not knowing" that the plant could not run at full availability due to a malfunctioning 2A ID fan motor. As a result of its investigation, Enforcement recommended a civil penalty of $336,870 and a disgorgement of $308,341.

Public Service Electric & Gas Company (Docket No. IN21-5-000) (settlement approved Dec. 5, 2024)

Public Service Electric & Gas Company ("PSE&G") is a directly owned subsidiary of Public Service Enterprise Group Incorporated. PSE&G provides electric transmission and electric and natural gas distribution services to about 2.4 million customers in the New Jersey area. PSE&G plans, constructs and invests in transmission projects that are reviewed and must be approved by PJM as a part of PJM's regional transmission expansion process ("RTEP"). In 2017, PSE&G recommended that PJM approve a $546 million project to replace a transmission line in the Roseland-to-Pleasant Valley corridor ("RPV Line"), which spanned about 50 miles across New Jersey. A requirement of this project was to file a Transmission Planning and Evaluation Report (FERC Form No. 715).

Enforcement alleged that PSE&G became aware that it had submitted false information on FERC Form No. 715, and that PSE&G was obligated, but failed, to inform PJM of the incorrect information, and thus violated 18 C.F.R. §35.41(b) (sellers must provide accurate and factual information within the markets of Commission approved ISOs). As a result of its investigation, Enforcement recommended a civil penalty of $6,600,000.

Arlington Energy Center III, LLC; Blythe Solar 110, LLC; Blythe Solar III, LLC; Blythe Solar IV, LLC; Desert Sunlight 250, LLC; Sunlight Storage, LLC; and McCoy Solar, LLC (Docket No. IN24-10-000) (settlement approved Aug. 8, 2024)

Each company listed as a party to this proceeding is an indirect subsidiary of NextEra Energy Resources, LLC and/or NextEra Energy Partners, LP. All companies operate a co-located battery energy storage system and solar generation facility (collectively, the "Plant") that share a point of interconnection ("POI"). Enforcement alleged that each battery energy storage system and solar generation facility function as separate resources, but because they share a single POI, they may not collectively exceed the POI limit under the CAISO large generator interconnection agreement for the facilities. Enforcement further alleged that the POI limit is well below the combined maximum potential output for the plant. For example, the McCoy battery facility has a capacity of 230 MW and the McCoy solar facility has a capacity of 250 MW. The POI for the plant is 250 MW.

In December 2021, CAISO modified §34.13.3 of its tariff to prohibit co-located battery facilities from deviating from dispatch instructions when providing ancillary services. Enforcement alleged that NextEra did not update its software to comply with the change.

Enforcement alleged that the relevant dispatch instructions for the companies curtailed battery facilities but allowed the solar facilities to continue to deliver to the CAISO grid, as was permitted prior to the 2021 tariff change. Enforcement further alleged that during the period of January 1, 2022, through September 1, 2023, the companies deviated from dispatch instructions for a total of 3,835 five-minute intervals, allowing the solar facilities to continue delivering output while curtailing the battery facilities. Enforcement alleged that these deviations violated § 34.13.3 of CAISO's tariff and resulted in $381,724 in incremental revenues that occurred when the solar facilities should have been disgorged. Enforcement recommended a civil penalty of $105,000 and a disgorgement of $381,724 to CAISO.

Galt Power Inc. (Docket No. IN20-5-000) (settlement approved June 28, 2024)

Galt is a wholesale power marketer with FERC-approved market-based rate authority. During the relevant time period, Galt produced and exported energy generated by two wind farms (37 MW) from NY-ISO into ISO-NE in order to receive Class I Renewable Energy Credits ("RECs"). Galt's in-house counsel reviewed GIS rules and the tariffs for both ISO-NE and NYISO in order to confirm that Galt's trading strategy was not prohibited and found nothing that would specifically prevent Galt from implementing the strategy. The GIS rules and the tariffs did not address the trading issue, but the Massachusetts Department of Energy Resources ("MA DOER") regulations specifically prohibited "importing the output from qualified renewable energy resources into the ISO-NE control area for the creation of Class I RECs, then exporting that energy or a similar quantity of other energy out of the ISO-NE control area during the same hour."

Enforcement found that Galt's trading strategy consisted of wash trades (trades that are prearranged to cancel each other out and involve no economic risk) and were a *per se* violation of FERC's Market Behavior Rule 2, FPA Section 222, and the Anti-Manipulation Rule. Specifically, Enforcement alleged that Galt repeatedly executed "prearranged offsetting trades of the same product among the same parties" that involved no economic risk and were thus in violation of FERC's Anti-Manipulation Rule. As a result of its investigation, Enforcement recommended a civil penalty of $1,500,000 and a disgorgement of $372,297.

Linde, Inc. and Northern Indiana Public Service Company (Docket No. IN24-3) (settlement approved Jan. 4, 2024)

Linde, Inc. ("Linde") operates the Calumet Area Pipeline Operations Center ("CAPOC") in northern Indiana; the center distills gases such as oxygen, nitrogen and argon from the atmosphere, and can require as much as 330 MW to operate. For the relevant period (August 2017 to July 2022), Linde's CAPOC facility participated in MISO as a DRR-1 asset. DRR-1 assets are expected to supply quantities of energy through behind-the-meter generation or controllable load. Northern Indiana Public Service Company ("NIPSCO") is a load-serving entity that provides distribution service to roughly 470,000 retail electric customers in the state of Indiana. As arranged through various contracts and agreements, NIPSCO served as a MISO market participant on behalf of Linde.

MISO Tariff §38.2.5.d.ii.e requires market participants to "respond to the transmission provider's directives to start, shut down, or change output levels of resources in accordance with the terms specified in the [demand response] offer …." Enforcement alleged that Linde did not reduce energy consumption levels when MISO accepted demand response offers. Instead, Enforcement asserted that Linde and NIPSCO, as the acting market participant, violated MISO's tariff by operating certain equipment solely for the purpose of increasing electricity use and raising its baseline to receive DRR-1 payments. As a result of its investigation, Enforcement recommended a civil penalty of $10,500,000 from Linde, as well as disgorgements of $48,500,000 from Linde and $7,700,000 million from NIP-SCO.

Ketchup Caddy, LLC and Philip Mango (Docket No. IN23-14-000)—Order to Show Cause and Notice of Proposed Penalty (Feb. 21, 2024); Order Assessing Civil Penalties (Dec. 5, 2024)

In 2018, Mango, the owner of Ketchup Caddy, LLC ("Ketchup Caddy") shifted Ketchup Caddy's focus to registering response resources and offering into MISO's Planning Resource Auctions ("PRAs"). Ketchup Caddy began participating in MISO's annual PRA and MISO's capacity market in June 2019. Entry into MISO's PRA and capacity market meant that Ketchup Caddy could also register as a Load Modifying Resource ("LMR") and receive capacity payments from MISO for availability during an emergency dispatch. To register as an LMR, Ketchup Caddy illicitly pulled customer information from Ameren's website and submitted this information to MISO's annual PRA.

Enforcement alleged that Ketchup Caddy and Mango violated FPA Section 222 and Section 1c.2 by engaging in a manipulative scheme to register demand response resources with MISO without their knowledge or consent. Enforcement also alleged that Ketchup Caddy violated MISO's Tariff by offering uncontracted resources into annual PRAs. The Commission issued an Order to Show Cause on February 21, 2024.

The Commission, in its Order Issuing Civil Penalties, found that Ketchup Caddy and Mango violated FPA Section 222, the Anti-Manipulation Rule and MISO Tariff Sections §69.A.3.5 and §69A.7.1(a). As a result of its investigation, Enforcement recommended civil penalties of $25,000,000 against Ketchup Caddy and $1,500,000 against Mango. It also recommended an additional $506,502 disgorgement against Mango.

SunSea Energy, LLC (Docket No. IN24-8-000), Smart One Energy LLC (Docket No. IN23-13-000), Josco Energy Corp. (Docket No. IN24-7-000) (settlements approved March 12, 2024, and June 28, 2024)

All three entities were subject to investigative proceedings before the New York Public Service Commission ("NYPSC") for customer complaints related to marketing and enrollment practices. In their annual credit questionnaires required by NYISO, the entities failed to disclose that they were the subject of ongoing investigations. Enforcement alleged that the failures to disclose the NYPSC proceedings violated 18 C.F.R. §35.41(b) and Section 26.1.3 of the credit reporting provisions in NYISO's Tariff. All three proceedings were resolved through separate Stipulations and Consent Agreements and resulted in civil penalties of $5,000 per docket.

Environmental Enforcement

The Environmental Protection Agency ("EPA") will continue to enforce environmental laws in the second Trump administration. While there will be important policy shifts—for example, away from prioritizing climate-related enforcement and away from enforcing Biden administration regulations that are under reconsideration—environmental enforcement has always been and will remain a core function of the EPA's mission. The loss of experienced EPA career staff under early retirements and voluntary resignations will undoubtedly affect the agency's enforcement function, particularly as performed by enforcement lawyers in the agency's regional offices. But as an indication of the ongoing importance of the enforcement program, career staff in the Office of Enforcement and Compliance Assurance were not eligible to participate in the agency's latest voluntary resignation program.

In the following sections, we offer an overview of environmental enforcement developments within the federal agencies primarily responsible for enforcement, we discuss the potential impact of the Supreme Court's decision in *Jarkesy* on ongoing administrative enforcement, and we summarize some of the most significant enforcement cases across a wide array of environmental statutes.

Federal Agency Developments

Department of Justice

Early in 2025, the Attorney General pulled the plug on all of the Biden-era environmental justice enforcement policies. In its February 5, 2025, memorandum titled "Rescinding 'Environmental Justice' Memorandum," DOJ clawed back the May 5, 2022, Environment and Natural Resources Division's environmental justice ("EJ") enforcement memoranda, guidance or similar directives that implement the prior administration's "environmental justice agenda" and told every U.S. Attorney's office to do the same. The message was clear: enforcement would be "even-handed," with no special weight given to race or community impact when deciding which environmental laws to pursue.

Then, on February 5, 2025, DOJ brought back its ban on funneling settlement money to non-governmental groups. A few months later—on May 12, 2025—DOJ issued guidance making it explicit that criminal cases should be reserved for willful violations that cause significant public harm, which in practice means prosecutors are focusing on only the worst offenders—large-scale fraud, blatant violations that rack up hefty penalties, and anything that shows a clear disregard for environmental rules.

Despite these policy shifts, DOJ's Environment and Natural Resources Division kept up its monthly *Environmental Crimes Bulletins* through the first quarter of 2025, detailing everything from Clean Air Act cases to illegal dumping and wildlife trafficking. In other words, the day-to-day grind of fines, indictments, and consent decrees is still happening—even if the criteria for taking those actions have changed.

Environmental Protection Agency

On March 12, 2025, EPA's Office of Enforcement and Compliance Assurance ("OECA") issued an interim memo overhauling its National Enforcement and Compliance Initiatives ("NECIs") to support the Trump administration's "Powering the Great American Comeback" agenda. Key policy changes include:

Restriction on "Undue Disruption" to Energy Projects: One of the most significant changes is a strict ban on any enforcement action—civil or criminal—that would "unduly burden or significantly disrupt" energy production, refining, or distribution, unless EPA can demonstrate an "imminent and substantial threat" to human health or the environment. Practically speaking, before moving forward with an air-permitting, wastewater, or hazardous-waste case at an oil or gas facility, Regional Administrators (or higher) must certify that the action will not compromise energy supply or critical infrastructure without a compelling health or safety justification.

Removal of Environmental Justice Criteria and Emphasis: Equally transformative is the complete removal of environmental justice criteria from OECA's toolkit. References to "environmental justice," "vulnerable populations," "overburdened communities," and similar terms have been stripped from all NECI documents. In effect, any EJ screening tools and guidance—whether from EPA or DOJ—that prioritized cases based on community demographics or cumulative burdens must be scrapped. Under this new guidance, every enforcement decision must rest solely on statutory or regulatory requirements, with no allowance for demographic or equity-based considerations unless explicitly mandated by law. On March 7, 2025, the EPA and DOJ dismissed the high-profile enforcement action against Denka Performance Elastomer LLC, closing a case that had drawn national attention. This dismissal followed President Trump's January 2025 executive order directing that federal enforcement actions be based strictly on statutory authority and discontinuing consideration of DEI factors. The EPA noted that the original lawsuit—filed by the Biden-era EPA—did not allege violations of specific regulatory air-quality standards and reaffirmed its commitment to statutory enforcement.

Reprioritization and Reinterpretation of NECI Focus Areas: EPA will refocus its enforcement resources on core statutory mandates in a few ways:

- Mitigating Climate Change: The original NECI targeted methane emissions from oil and gas facilities, hydrofluorocarbons ("HFCs"), and landfill gas. Under the revised memo, methane enforcement at oil and gas sites is suspended unless the Assistant Administrator for OECA concurs. HFC enforcement remains focused on illegal imports and sales, while landfill inspections revert to core EPA enforcement without EJ overlays.
- Protecting Communities from Coal Ash Contamination: Previously driven by EJ concerns over coal ash disposal, this NECI is now limited to "imminent threats to human health" at active power plants. EJ factors cannot inform enforcement—unless statutorily required—and any action that might "unduly burden or significantly disrupt" power generation requires advance OECA approval.
- Reducing Air Toxins in Overburdened Communities: Enforcement shifts from targeting "highly burdened" communities to focusing on the highest hazardous air pollutant ("HAP") concentrations and human-health impacts, regardless of demographics. Regions may still inspect areas with elevated HAPs but must avoid broader EJ or cumulative-burden metrics.
- Chemical Accident Risk Reduction: While the Clean Air Act's Risk Management Program ("RMP") compliance remains a priority, the emphasis on anhydrous ammonia and hydrogen fluoride is removed. OECA will prioritize inspections of highest-risk facilities based on overall chemical hazards. Any enforcement at chemical sites that could hamper energy production requires written OECA concurrence.
- Other Rules and Reconsiderations: Any enforcement linked to rules under reconsideration (*e.g.*, recent air or water regulations) requires Assistant Administrator for OECA approval, ensuring the EPA avoids enforcing standards slated for revision or repeal.

Pipeline and Hazardous Materials Safety Administration

On May 20, 2025, the Pipeline and Hazardous Materials Safety Administration's ("PHMSA") Chief Counsel issued a Civil Penalty Policy Memo clarifying that, for all pending and future cases, proposed civil penalties must be calculated using the edition of the Civil Penalty Worksheet ("Worksheet") in effect on the date the violation occurred. PHMSA directs each Regional Office and the Office of Pipeline Safety ("OPS") to apply the "Worksheet Version" current at the time of the infraction—rather than retroactively imposing increases from rules adopted later—thereby ensuring that operators are not penalized under standards that did not exist when the violation took place.

To enhance transparency, the memo requires PHMSA to share the draft penalty worksheet—and its detailed calculations of base amounts and each statutory adjustment—with the operator before issuing a Notice of Proposed Civil Penalty. The policy also reiterates that, when adjusting the gravity-based assessment, PHMSA will take into account any "good faith efforts" by the operator to prevent or promptly correct the violation, as well as the "history of prior offenses," consistent with statutory requirements. Finally, the memo clarifies that if a violation spans multiple years, PHMSA should use the Worksheet in effect on the date of discovery of the continuing violation, unless doing so would result in a penalty lower than the amount calculated under the Worksheet in force when the violation first began.

Potential Impact of *Jarkesy* on the EPA's Administrative Enforcement

The Supreme Court's decision in *SEC v. Jarkesy* might very well apply to many of the EPA's administrative enforcement cases. The Court affirmed that respondents facing agency-imposed civil penalties for violations that are similar to those found in common law are entitled to a jury trial in federal court, rather than being compelled to defend themselves in administrative proceedings before agency-appointed judges. For decades, the EPA has relied on its administrative law judges to enforce the Clean Air Act ("CAA"), Clean Water Act ("CWA"), Resource Conservation and Recovery Act ("RCRA"), and Safe Drinking Water Act ("SDWA")—issuing orders, assessing penalties, and securing injunctive relief without resort to federal courts.

If *Jarkesy* applies to a particular EPA allegation of noncompliance—for example, a claim for violations of air quality permit limits that are found to be similar to common law nuisance claims—the EPA could be forced to bring that and subsequent similar actions in Article III federal courts. That shift would create benefits and disbenefits. Benefits would include: (1) having a neutral tribunal oversee enforcement claims instead of in-house agency lawyers serving as administrative judges; and (2) a more careful consideration by the EPA as to whether picayune noncompliance warrants federal enforcement. It may be that the EPA brings fewer enforcement cases and would focus its efforts and resources on the kind of significant noncompliance that would warrant judicial enforcement. Disbenefits would include: (1) having significant cases that could have been resolved more easily using the statutory limitations for administrative enforcement referred to DOJ, where settlements are typically more expensive and more elaborate; (2) the possibility of much higher litigation costs for cases that historically were resolved administratively. Neither DOJ nor the EPA have comprehensively evaluated which of the myriads of statutory and regulatory requirements are similar enough to common law claims to warrant a cessation of administrative enforcement under *Jarkesy*. This means that individual administrative enforcement respondents will need to determine whether the stakes of administrative enforcement are high enough to warrant a claim (and the resulting litigation expenses) if *Jarkesy* applies.

Statute-specific Case Summaries

Clean Air Act Enforcement

While the EPA under the Trump administration is expected to scale back broad, policy-driven enforcement—particularly in cases that might disrupt energy production or rely on environmental justice rationales—it will maintain a robust stance against clear statutory violations, especially those involving fraud or tampering with emissions controls. In practice, this means that although EPA's overall enforcement volume and scope may narrow, regulated entities should not anticipate a wholesale retreat. Instead, enforcement will become more targeted, focusing on egregious or unambiguous violations. Companies, therefore, must continue to uphold strong compliance programs to avoid significant penalties and operational disruptions.

Enforcement in the oil and gas sector

The EPA targeted the oil and gas sector aggressively during the Biden administration, winning the largest settlement in the sector against Marathon Petroleum, which included a civil penalty of $64.5 million and estimated injunctive remedies of $178 million. Over the past ten years, judicial settlements in this sector carried an average civil penalty of $7.6 million and injunctive remedy costs of $23.2 million. While the pace of judicial settlements has slowed during the first part of the Trump administration as political management at DOJ reviews all enforcement case dockets, the EPA continues to process investigations in this sector and bring new administrative enforcement cases.

Hino Motors, Ltd.

On January 15, 2025, Hino Motors, Ltd. ("Hino") and its U.S. manufacturing and sales affiliates entered into a landmark settlement with the EPA, DOJ, and the California Air Resources Board ("CARB") to resolve extensive CAA violations. The enforcement action focused on Hino's submission of fraudulent engine-emissions test data over more than a decade, affecting approximately 105,000 model-year 2010–2019 heavy-duty highway engines and 5,700 model-year 2011–2019 non-road compression-ignition engines imported and sold in the United States.

Key alleged violations:

- Submission of false or fabricated emissions test data in applications for EPA certificates of conformity, which are required for the import and sale of engines in the United States.
- Failure to disclose software functions that could affect emissions control systems.
- Regular alteration or improper conduct of emissions testing from 2010 to 2019, resulting in the importation of non-compliant engines.

Hino will pay over $1.6 billion in combined civil and criminal penalties, which includes a $525 million civil penalty, a $522 million criminal fine, and nearly $300 million allocated for vehicle recall programs and mitigation projects. In addition to these financial penalties, Hino is required to implement a comprehensive compliance and ethics program, undergo a five-year probation period, and is prohibited from importing any diesel engines it manufactures into the United States during this time. If Hino seeks to resume U.S. sales while the consent decree is in effect, it must retain an independent compliance auditor. The EPA also voided certificates of conformity for the affected engines, marking the largest such action in the agency's history. Furthermore, Hino must develop and implement a recall program for certain model year 2017–2019 engines, which will require both software and hardware modifications to bring those engines into compliance.

United States v. Fayat S.A.S.

On January 16, 2025, the EPA and DOJ announced a settlement with Fayat S.A.S. ("Fayat") and nine of its subsidiaries, resolving allegations of CAA violations stemming from the import and sale of non-compliant diesel engines in non-road construction equipment. According to the government's complaint, between 2014 and 2018, Fayat and its subsidiaries imported and sold hundreds of pavers, rollers, and other non-road equipment containing diesel engines that were not certified to meet EPA emission standards. The company was also cited for failing to comply with required labeling and reporting obligations under the CAA. These violations allegedly resulted in the release of excess nitrogen oxides and particulate matter into the environment.

Under the terms of the consent decree, Fayat is required to pay an $11 million civil penalty and undertake a mitigation project to address the environmental harm caused by the excess emissions. Specifically, Fayat must retrofit a tugboat based in Mobile, Alabama by permanently destroying and replacing two uncontrolled propulsion engines and two auxiliary generators with new equipment that meets current emissions standards. The settlement also imposes ongoing reporting requirements to ensure compliance.

Turn 14 Distribution, Inc.

On January 17, 2025, the EPA and DOJ announced a settlement with Turn 14 Distribution, Inc. ("Turn 14"), one of the nation's largest automotive parts distributors, resolving alleged violations of the CAA. The government alleged that Turn 14 sold more than 140,000 aftermarket "defeat devices"—products designed to bypass or disable vehicle emissions controls.

Under the consent decree, Turn 14 must pay a $3.6 million civil penalty and implement a comprehensive compliance program. The company is required to immediately stop the manufacture, sale, distribution, and installation of all aftermarket defeat devices, destroy any such devices in its possession, and cease providing technical support for these products. Turn 14 must also ensure that all emissions controls on its fleet vehicles are present and fully operational, deny warranty claims related to defeat devices, and notify known customers about the CAA's prohibitions on such products. The settlement further mandates robust internal compliance measures and employee training.

As evidenced by the *Turn 14 Distribution* matter, DOJ and the EPA have continued to pursue cases involving the installation and sale of aftermarket defeat devices, emission control "deletions," and "tuning" products designed to override or disable required emissions equipment. Enforcement actions in 2025 have demonstrated a willingness to pursue even low-volume offenders, with DOJ accepting pleas or securing convictions in nearly a dozen cases involving as few as eight illegally modified vehicles. The primary targets of these actions have been body shop owners performing the modifications and commercial truck operators purchasing these services, with cases brought in jurisdictions across the country.

Clean Water Act Civil Enforcement

David Rapp

On January 14, 2025, the EPA issued a Final Administrative Compliance Order against David Rapp for unpermitted discharges of fill material into waters of the United States, in violation of Sections 402 and 404 of the CWA. Rapp, a private landowner in West Virginia (EPA Region 3), deposited fill into jurisdictional wetlands without a Section 404 permit. Under the Order, Rapp must immediately cease all unpermitted discharges, submit a detailed restoration plan within 60 days to return the impacted wetlands and stream channels to pre-disturbance conditions, and complete approximately $3.6 million in restoration work. He is also required to monitor the restored areas biannually for five years and report the results to EPA. This action—one of the few major 2025 enforcement measures under CWA § 404—underscores EPA's heightened focus on wetland protections amid upcoming Waters of the United States ("WOTUS") regulatory revisions and introduces multi-year compliance obligations with enhanced monitoring. Notably, this was the only 2025 enforcement action to reference environmental justice considerations in its Enforcement and Compliance History Online ("ECHO") description.

Municipality of Ponce

On January 23, 2025, the U.S. District Court for the District of Puerto Rico entered a consent decree against the Municipality of Ponce ("Ponce") for violations of its MS4 National Pollutant Discharge Elimination System ("NPDES") permit under the CWA. Ponce's storm sewer system exceeded bacterial limits for total coliform and enterococcus, and Ponce failed to complete required operational tasks—such as compiling an outfall inventory, developing procedures, and training personnel. Under the consent decree, Ponce must fully comply with its MS4 permit, update mapping and maintain an outfall inventory, implement an Illicit Discharge Detection and Elimination ("IDDE") program, conduct biannual sampling and outfall monitoring, inspect flood-control pump stations and develop an action plan, establish a dedicated line item budget and personnel training program, and submit a green infrastructure project plan to reduce stormwater flows. The municipality was assessed a $25,000 penalty and must invest approximately $65 million in mandated stormwater improvements.

City of Rio Rancho

On April 29, 2025, the EPA issued a Final Administrative Compliance Order against the City of Rio Rancho, New Mexico ("Rio Rancho") for violations of its NPDES permit under the CWA. The Rio Rancho wastewater treatment facility exceeded its permitted effluent limits for chemical oxygen demand, biological oxygen demand, sanitary waste, total suspended solids, and nitrogen (as ammonia). Under the Order, Rio Rancho must follow a construction schedule to correct these violations, reduce ongoing discharges to permitted levels, and submit written certification to EPA once the facility is back in compliance. The estimated cost of the required upgrades is approximately $2.6 million. This action underscores the EPA's continued focus on NPDES enforcement—particularly against municipal water systems—and imposes multi-year compliance obligations to ensure sustained adherence to permit limits.

South Pacific Petroleum Corporation

On May 13, 2025, the EPA issued a Final Administrative Compliance Order against South Pacific Petroleum Corporation ("SPPC") for violations of its NPDES permit under the CWA. SPPC, operating in Piti, Guam (EPA Region 9), exceeded its permitted effluent limits for oil and grease. Under the Order, SPPC must implement measures to reduce ongoing discharges of oil and grease and submit written certification to the EPA once the facility achieves compliance. The estimated cost for the required compliance actions is approximately $1.32 million. This action—closing the enforcement in 2025—underscores the EPA's continued focus on NPDES enforcement, particularly against repeat violators: SPPC previously violated its permit in 2020 and incurred a $6,000 penalty. The Order may include multi-year compliance obligations to ensure sustained adherence to permit limits.

Clean Water Act Criminal Enforcement

United States v. National Water Main Cleaning Co.

On March 4, 2025, the U.S. District Court for the District of Connecticut sentenced National Water Main Cleaning Co. ("NWMCC") for a felony violation of the CWA. In July 2019, while rehabilitating a large culvert pipe in Cheshire, Connecticut, NWMCC disregarded its required stream diversion plan and discharged uncured geopolymer mortar—a cement-like substance—into Cuff Brook. The unauthorized release killed more than 150 fish and severely contaminated the brook. NWMCC was ordered to pay a $500,000 fine and an additional $500,000 to the Connecticut Department of Energy and Environmental Protection ("CT DEEP") SEP Fund, serve a three-year term of probation, and implement a multi-year environmental compliance program. The compliance program mandates the hiring of outside consultants for annual auditing and the appointment of a dedicated compliance manager for its Connecticut facilities. This case underscores continued federal emphasis on enforcing the NPDES program—especially against municipal water-system contractors—and highlights multi-year compliance obligations, third-party auditing, and state-federal collaboration, as EPA's Criminal Investigation Division worked alongside CT DEEP. Notably, NWMCC already faced prior enforcement under a 2014 Massachusetts settlement for separate pollution allegations at the time of this incident.

Pedro Luis Bones-Torres

On March 11, 2025, the U.S. District Court for the District of Puerto Rico sentenced Pedro Luis Bones-Torres for felony violations of the CWA and the Rivers and Harbors Act of 1899. Between January 2020 and October 2022, Bones-Torres carried out unauthorized land-clearing and construction within the Jobos Bay National Estuarine Research Reserve in Salinas, Puerto Rico—removing protected mangroves and depositing fill material to build a concrete pad, gazebo, and dock on the Mar Negro without any permit. The unpermitted discharge of fill into wetlands and waters of the United States disrupted critical habitat and violated federal law. Bones-Torres received a 12-month term of incarceration. This prosecution, involving extensive coordination among EPA's Criminal Investigation Division, the FBI, U.S. Army CID, Commerce OIG, NOAA Office of Law Enforcement, and U.S. Fish and Wildlife Service Office of Law Enforcement, underscores the federal government's aggressive enforcement of unpermitted discharges and unauthorized structures—even where no commercial profit was involved—and highlights how prior convictions can influence sentencing severity.

United States v. Tribar Technologies, Inc.

On April 29, 2025, in the U.S. District Court for the Eastern District of Michigan, Tribar Technologies, Inc. ("Tribar") was sentenced for a misdemeanor violation of the CWA. Tribar, which manufactures decorative trim assemblies for the automotive market, operated a chrome-plating facility in Wixom, Michigan, which accumulated approximately 15,000 gallons of hexavalent chromium-laden wastewater. On July 29, 2022, a facility employee discharged roughly 10,000 gallons of inadequately pretreated effluent from a holding tank into the onsite wastewater treatment system. Because all 460 alarms in the treatment system had been disabled, the contaminated wastewater bypassed treatment entirely and entered the Wixom sanitary sewer. Tribar did not report the discharge until August 1, 2022. The court imposed a $200,000 criminal fine, $20,000 in restitution, and a five-year term of probation. Under the probation conditions, Tribar must implement a comprehensive environmental management system and compliance plan—including regular third-party audits—to ensure future adherence to permit requirements. This case underscores continued federal focus on NPDES enforcement and highlights the importance of maintaining proper treatment alarms and reporting unpermitted discharges. The investigation involved close collaboration among EPA's Criminal Investigation Division, DOJ's Environmental Crimes Section, the Michigan Department of Natural Resources, the FBI, and the Coast Guard Investigative Service.

Clean Water Act Citizen Suits

Communities for a Healthy Bay v. Husky Terminal and Stevedoring, LLC

On January 10, 2025, the U.S. District Court for the Western District of Washington approved a consent decree in *Communities for a Healthy Bay v. Husky Terminal and Stevedoring, LLC,* resolving allegations that Husky Terminal and Stevedoring, LLC's ("Husky") marine terminal in Washington repeatedly violated its NPDES permit by discharging inadequately controlled stormwater into Puget Sound. The Consent Decree requires Husky to pay a total of $300,000 toward Supplemental Environmental Projects ("SEPs"): $150,000 to the Puyallup Tribe of Indians and $50,000 to the Rose Foundation for Communities and the Environment, both earmarked for projects that improve water quality or aquatic habitat in Puget Sound. In addition, Husky must pay $100,845 in attorneys' fees and litigation costs and $5,000 to Communities for a Healthy Bay for reviewing Husky's Stormwater Pollution Prevention Plan ("SWPPP").

The consent decree also imposes injunctive relief mandating strict compliance with Husky's NPDES permit and enhanced stormwater controls, including regular terminal sweeping, installation of catch-basin inserts, and improved trash management. Husky must engage qualified environmental consultants to oversee those controls, institute comprehensive stormwater discharge monitoring, and submit a revised SWPPP for stakeholder review and comment.

Los Angeles Waterkeeper v. Fenico, LLC

On January 3, 2025, the U.S. District Court for the Central District of California approved a consent decree resolving allegations that Fenico, LLC's ("Fenico") metal foundry in California repeatedly violated the CWA and California's industrial stormwater general permit. Specifically, Los Angeles Waterkeeper alleged that Fenico discharged stormwater without authorization and failed to implement required best management practices ("BMPs") under its California NPDES permit.

Under the consent decree, Fenico must fund SEPs and related remedies totaling $100,000: $35,000 to the Rose Foundation for environmental projects aimed at reducing or mitigating stormwater pollution in San Pedro Bay; $50,000 to cover Los Angeles Waterkeeper's attorneys' fees and litigation costs; and $15,000 to support compliance monitoring by Los Angeles Waterkeeper. Fenico is also required to implement enhanced injunctive measures, including adoption of site-specific BMPs, more frequent sampling and monitoring of stormwater discharges, and revisions to its SWPPP. Employees must receive targeted training, conduct regular visual observations, and promptly report any exceedances. For any numeric effluent limits that are exceeded, Fenico must develop and execute an action plan to return discharges to compliance. Finally, Los Angeles Waterkeeper will conduct multi-year compliance monitoring to verify Fenico's adherence to all decree requirements.

Los Angeles Waterkeeper v. Northrop Grumman Corporation

On January 9, 2025, the U.S. District Court for the Central District of California approved a consent decree resolving allegations that Northrop Grumman Corporation's ("Northrop Grumman") facility in California violated the CWA and California's industrial and construction stormwater general permits. Los Angeles Waterkeeper alleged unauthorized stormwater discharges and failure to implement required BMPs under both permits.

Under the consent decree, Northrop Grumman must fund SEPs and related relief totaling $407,147: $200,000 to the Rose Foundation for projects mitigating stormwater pollution in the Los Angeles/Long Beach Harbor waters; $177,147 to cover Los Angeles Waterkeeper's attorneys' fees and litigation costs; and $30,000 for compliance monitoring by Los Angeles Waterkeeper. Northrop Grumman must implement enhanced BMPs—such as stormwater filtration systems and regular sweeping—conduct more frequent sampling and visual monitoring, revise its SWPPP, and provide targeted employee training. The consent decree also establishes numeric effluent limits; if exceedances occur, Northrop Grumman must develop and execute an action plan to return discharges to compliance. Ongoing reporting is required, and Los Angeles Waterkeeper will carry out multi-year compliance monitoring to verify adherence to all obligations.

Northwest Environmental Defense Center v. Jopp Energy Company

On March 25, 2025, the U.S. District Court for the District of Oregon approved a consent decree settling allegations that Jopp Energy Company's ("Jopp Energy") industrial recycling facility in Oregon repeatedly violated the CWA and Oregon's industrial stormwater general permit (Permit No. 1200-Z). The Northwest Environmental Defense Center alleged that Jopp Energy discharged stormwater without authorization and failed to implement required stormwater controls, imperiling water quality in the Willamette River basin.

Under the consent decree, Jopp Energy must fund SEPs and related relief totaling $20,000—paid to the Columbia Slough Watershed Council for projects that reduce stormwater pollution or enhance local water quality in the Willamette River basin—and $170,000 to cover plaintiff's attorneys' fees and litigation costs.

To address ongoing permit violations, Jopp Energy must engage a registered professional engineer to conduct a comprehensive engineering assessment of its stormwater controls and develop a written compliance plan. The company is required to revise its SWPPP accordingly and implement any new controls identified in the assessment. Monthly stormwater sampling and quarterly compliance reports must be submitted to Northwest Environmental Defense Center, and the company must share stormwater data and corrective-action updates on an ongoing basis.

Puget Soundkeeper Alliance v. Accurate SM LLC

On April 17, 2025, the U.S. District Court for the Western District of Washington approved a consent decree resolving allegations that Accurate SM LLC's ("Accurate SM") sheet metal manufacturing facility discharged stormwater containing zinc, copper, and elevated turbidity in violation of the CWA and its Industrial Stormwater General Permit. Puget Soundkeeper Alliance alleged that Accurate SM failed to control runoff from its roof and paved areas, leading to unauthorized discharges into Puget Sound tributaries.

Under the consent decree, Accurate SM will fund SEPs and related relief totaling $100,000: $50,000 to the Rose Foundation for Communities and the Environment for water-quality projects in Puget Sound; $34,500 to Sound Salmon Solutions for salmon-habitat restoration; and $15,500 to Friends of the Salish Sea for stormwater monitoring. Accurate SM will also pay $34,000 toward Puget Soundkeeper Alliance's attorneys' fees and litigation costs.

To address ongoing violations, Accurate SM must apply a high-performance roof coating and repair pavement surfaces to reduce zinc and other pollutant runoff. The company is required to perform monthly vacuum sweeping of all paved areas, implement enhanced stormwater sampling and reporting, update its SWPPP and provide mandatory employee training on best management practices. Accurate SM must maintain compliance with its Industrial Stormwater General Permit and share quarterly documentation with Puget Soundkeeper Alliance regarding all correspondence with regulatory agencies.

Resource Conservation and Recovery Act Citizen Suits

Center for Biological Diversity v. Talen Energy Corp.

On April 2, 2025, the Center for Biological Diversity sued Talen Energy Corp. ("Talen Energy") and Brunner Island, LLC for violations of EPA's 2015 coal combustion residuals ("CCR") rule and RCRA. According to the complaint, Talen Energy owns and operates the Brunner Island Station in Pennsylvania, which is a coal- and natural-gas fired electric generation facility that produces significant amounts of CCR. The plaintiff alleges that an unlined CCR disposal impoundment at the facility is contaminating groundwater and the nearby Susquehanna River with arsenic and other toxic chemicals, and that the operator's failure to monitor these conditions amounts to a violation of the CCR rule and RCRA. The plaintiff seeks an order compelling compliance at the Brunner Island facility as soon as possible. This citizen suit comes at a time when EPA and the Trump administration have signaled that they will scale down enforcement efforts in this area.

Ben Franklin Investment Company v. Choi

An investment company sued two individuals who formerly operated a cleaning business at a property in Torrance, California. The complaint, filed on March 20, 2025, alleges that the defendants released hazardous substances at the property and that these wastes are present in the soil, gas, and groundwater at and emanating from the property. The plaintiff has sued under RCRA, seeking an order requiring the defendants to investigate and remediate the contamination and to abate any imminent and substantial endangerment. In addition to RCRA, the plaintiff brings claims under CERCLA and California state law.

Pipeline Safety Enforcement

Freeport LNG Development, LP

On April 9, 2025, PHMSA issued a Final Order concluding an enforcement case against Freeport LNG Development, LP ("Freeport LNG"), based on the December 20, 2024, Amended Proposed Compliance Order ("PCP"). PHMSA had alleged the following operations and maintenance violations at Freeport LNG's Quintana Island, Texas liquefaction facility:

- Failure to Perform Atmospheric Corrosion Inspections: Freeport did not conduct internal or external corrosion assessments on its onsite LNG transfer piping—specifically, it omitted mandatory ultrasonic thickness measurements and visual inspections on aboveground piping exposed to the marine environment.
- Inadequate Emergency Shutdown Valve ("ESDV") Testing: The company failed to test its ESDVs at the required frequency, neglecting both manual functional tests and automatic-closure drills for valves serving critical piping systems.
- Omitted Leak Detection and Repair Surveys: Freeport LNG missed multiple quarterly leak surveys on its pressurized piping systems; where leaks were identified, it did not initiate, or document timely repairs as required.
- Incomplete Operations & Maintenance ("O&M") Manual Updates: The facility's O&M manuals lacked current procedures for corrosion monitoring, ESDV testing protocols, and leak-repair criteria, and Freeport LNG had not maintained a revision history that reflected the facility's evolving operational practices.

Freeport LNG did not contest these findings. Under the Final Order, the company paid the full $1,540,800 civil penalty—PHMSA's largest collected since early 2024—and agreed to complete the Amended PCP's corrective measures by specified deadlines.

Under the consent decree, Freeport LNG must implement an annual ultrasonic thickness corrosion inspection program for all aboveground LNG transfer piping, repairing, or replacing any sections that fall below minimum wall thickness criteria. The company must also establish a quarterly functional testing schedule for every ESDV, recording all test results in a centralized log reviewed by a qualified pipeline safety engineer. Additionally, Freeport LNG must conduct quarterly leak detection surveys on pressurized systems using combustible gas detectors, tag and repair any identified leaks within 30 days, and submit written verification of these repairs to PHMSA. Finally, the facility's Operations & Maintenance manuals must be overhauled to incorporate current, documented procedures for corrosion monitoring, ESDV testing, and leak repair, and a maintenance of records protocol must ensure that all future revisions are tracked and dated.

Panhandle Eastern Pipe Line Company, LP

In June 2023, PHSMA initiated an administrative enforcement proceeding against Panhandle Eastern Pipe Line Company, LP ("PEPL") relating to a fatal gas pipeline incident that occurred at PEPL's Borchers Station in Meade, Kansas in March 2020. The company contested the three claims in PHMSA's Notice of Proposed Violations ("NOPV") and PHMSA convened an administrative hearing on the matter in April 2024. Before PHMSA's Associate Administrator issued a final order, PEPL filed a lawsuit against PHMSA in the Northern District of Texas, alleging, among other things, that the administrative enforcement proceeding violated PEPL's Seventh Amendment right to a jury trial. The lawsuit also raised several due process concerns with PHMSA's administrative enforcement procedures. Vinson & Elkins attorneys represent respondents in the federal court litigation related to this PHMSA enforcement matter.

On April 22, 2025, PHMSA withdrew its administrative enforcement action against PEPL and moved to dismiss PEPL's lawsuit as moot. In so doing, the agency acknowledged that the Department of Transportation recently published new guidance on its administrative enforcement procedures "that addresse[d] many of the due process concerns" PEPL raised in its federal lawsuit. The Department of Justice, on behalf of PHMSA ("DOJ/PHMSA"), also effectively conceded PEPL's Seventh Amendment claim by electing to pursue the enforcement action in federal district court. Notably, the DOJ/PHMSA, dropped two of the three claims in PHMSA's NOPV claims, which the agency was willing to pursue in-house but not in federal court. This shift from PHMSA's administrative process to a DOJ-led judicial action high-lights operators' right to civil-court due process and emphasizes PHMSA's insistence on strict adherence to written safety protocols to prevent catastrophic pipe-line incidents.

PEPL and the United States' Complaint

On July 8, PEPL denied that PHMSA is entitled to any form of relief due to improprieties in the investigative portion of the enforcement proceeding, among other reasons.

PEPL has also asserted a counterclaim against the United States, arguing that binding precedent renders the enforcement action null and void because it arises from an unconstitutional delegation of legislative power.

Oil Pollution Act and Safe Drinking Water Act Enforcement

Duluth, Minnesota

On January 15, 2025, the EPA issued an Administrative Order on Consent to the City of Duluth, Minnesota, under the SDWA. The order responded to significant deficiencies in Duluth's public water system—deficiencies that, according to EPA notices in September and November 2023, had "the potential for causing the introduction of contamination into the water delivered to consumers." Under the Order, Duluth must undertake extensive capital infrastructure projects—estimated to cost $41 million—to remedy the identified deficiencies and bring its system into full compliance. To finance these upgrades, the city has proposed a Water Infrastructure Surcharge over the next 20 years. This action highlights EPA's ongoing oversight of municipal water systems and its willingness to mandate large-scale improvements when public health risks are identified.

Oasis Mobile Home Park

On January 16, 2025, the EPA and DOJ resolved SDWA violations at Oasis Mobile Home Park (the "Park"), located on the Torres Martinez Desert Cahuilla Indians Reservation in California (EPA Region 9). The Park—serving roughly 1,000 predominantly agricultural workers—had long struggled with arsenic levels in its groundwater. In 2021, EPA issued an Emergency Administrative Order (EAO) addressing imminent and substantial endangerments from arsenic contamination and potential wastewater intrusion, but Oasis repeatedly failed to comply. The key violations alleged included:

- Failure to Provide Septic System Inventory (Class V Wells): Oasis did not submit required information about its septic systems to EPA, hindering federal oversight.
- Noncompliance with EPA's 2021 Emergency Administrative Order: Oasis failed to retain a certified back-up operator; did not submit an alternative water source plan or operations assessment; neglected to provide timely notices of order violations; skipped weekly reporting and meetings; deviated from the EPA-approved distribution system sampling plan; and missed the deadline to install additional water-storage capacity.
- Arsenic Contamination Threat: Naturally occurring arsenic in the groundwater was present at levels exceeding health standards and posed an imminent and substantial endangerment to Park residents.
- Risk of Wastewater Intrusion: Deficient wastewater treatment operations risked allowing contaminants from the Park's septic system to enter the public water supply, further endangering public health.

The Park was assessed a $50,000 civil penalty, payable to EPA's Securing Safe Water Fund. Over the next two years, the Park must undertake extensive infrastructure upgrades—including the installation of arsenic treatment units and expanded storage—and implement operational enhancements. These enhancements require retaining a certified operator, adopting an EPA-approved sampling plan, conducting weekly reporting and meetings, and satisfying all directives outlined in the Emergency Administrative Order.

Virgin Islands Water and Power Authority – St. Croix

On March 27, 2025, the EPA issued a Unilateral Administrative Order Without Adjudication against the Virgin Islands Water and Power Authority – St. Croix Division for multiple SDWA violations, including exceedances of Maximum Contaminant Levels, failures in monitoring and reporting, deficient sampling and analysis procedures, noncompliance with the Surface Water Treatment Rule, and other reporting lapses within the public water system. Under the Order, the Authority must undertake approximately $1.5 million in mitigation measures to upgrade its water treatment and monitoring infrastructure, bring sampling protocols into compliance, and ensure adherence to the Lead and Copper Rule. This action follows EPA sampling conducted in September and October 2023, which identified elevated lead and copper levels at 36 locations across St. Croix, and reflects ongoing federal scrutiny driven by heightened political pressure after a November 2023 federal emergency declaration and class-action lawsuit over chronically contaminated drinking water on the island.

Emergency Planning and Community Right-to-Know Act Enforcement

Multistar Industries

On December 10, 2024, the Ninth Circuit affirmed a civil penalty of $850,000 against Multistar Industries ("Multistar") for violations of Section 312 of the EPCRA and analogous provisions of the CAA RMP. Multistar stored trimethylamine ("TMA") in railroad tank cars on its private tracks in Washington state, then failed to implement required safety and notification measures for accidental releases. Although EPCRA Section 312 exempts substances "in transportation," the court adopted EPA's "motive-power" interpretation of the RMP transportation exemption, holding that TMA-loaded railcars disconnected from their locomotives were not "in transportation" and thus subject to RMP requirements. Because those containers fell outside the transportation exemption, Multistar's failure to comply with both EPCRA's inventory/reporting duties and the RMP's risk-management obligations warranted the $850,000 penalty.

Multi-Statute Civil Environmental Enforcement

Dyno Nobel, Inc.

On April 23, 2025, the U.S. District Court for the Western District of Missouri granted a joint motion by DOJ and the EPA to terminate the 2020 consent decree with Dyno Nobel, Inc. ("Dyno Nobel"), concluding a multi-statute enforcement action against the company. The government filed the underlying lawsuit in 2019.

Key alleged violations:

- CWA violations: Discharging wastewater and pollutants—including such as ammonia, nitrate, pH, Total Suspended Solids, Biochemical Oxygen Demand, E. coli, and Nitroglycerin—without a valid NPDES permit and failing to comply with the conditions of its NPDES permits.
- RCRA violations: Operating a hazardous waste facility without the required RCRA permit, disposing of hazardous waste (including explosives) at its facilities, and offering hazardous waste for shipment without a proper RCRA manifest.

Under the 2020 consent decree, Dyno Nobel did not admit liability but agreed to pay a $2.9 million civil penalty. Dyno Nobel also agreed to implement injunctive relief measures at both Missouri sites to achieve and maintain compliance, including: eliminating unauthorized wastewater discharges at one facility; surveying and modifying each facility's sewer systems to prevent future unauthorized releases; conducting hazardous waste determinations for any solid wastes generated after entry of the consent decree; and proposing and implementing a dust missions mitigation plan at one location. By April 23, 2025, Dyno Nobel had satisfied the stipulated injunctive requirements and submitted all necessary reports demonstrating compliance. In response, DOJ and EPA agreed to terminate the consent decree less than one month after Dyno Nobel's request, effectively closing the case without further penalty or oversight.

Frazier T. Boyd III, et al.

On April 15, 2025, the U.S. District Court for the Western District of Virginia lodged a proposed consent decree in *United States v. Frazier T. Boyd III, et al.*, resolving allegations that the defendants had discharged dredged and fill materials into both federally protected waters and state waters of Virginia without the required permits. The action was brought by DOJ and the EPA on behalf of the United States, joined by the Commonwealth of Virginia acting through its Department of Environmental Quality.

Key alleged violations:

- CWA: Discharging dredged or fill materials into waters of the United States without obtaining § 404 permits. According to the complaint, from at least 2022 onward, the defendants filled wetlands and streams at multiple properties without § 404 permits under the CWA.
- Virginia State Water Control Law: Failure to comply with Virginia's State Water Control Law by discharging pollutants into state waters without valid permits.

Under the proposed consent decree, the defendants agree to cease all unpermitted discharges of pollutants into waters of the United States and waters of the Commonwealth unless conducted in strict compliance with both federal and state law. They must restore approximately 5.6 acres of impacted wetlands and streams to predisturbance conditions by implementing a corrective action plan approved by the EPA and Virginia Department of Environmental Quality, and they will purchase compensatory mitigation credits to offset any remaining ecological impacts. In addition, the defendants will pay a $450,000 civil penalty—split evenly between the federal government and Virginia—reflecting both the scope of the unauthorized discharges and their commitment to swift remediation. By voluntarily submitting a detailed restoration plan and demonstrating good-faith remediation efforts, the defendants secured a negotiated penalty that takes into account their prompt corrective measures.

J.H. Baxter & Co., Inc. et al

On April 22, 2025, the U.S. District Court for the District of Oregon sentenced J.H. Baxter & Co., Inc., J.H. Baxter & Co. of Washington, Inc. (together, "J.H. Baxter") and the president of those companies after a criminal trial brought by DOJ and the EPA.

Key alleged violations:

- CAA: The two J.H. Baxter entities pleaded guilty to illegal treatment of hazardous waste and violations of the CAA NESHAP Subpart QQQQQQ—applicable to wood-preserving area sources—stemming from their operation of a wood-treatment facility in Oregon.
- RCRA: Separately, the companies' president admitted to making false statements in violation of RCRA when he falsified records related to hazardous-waste disposal.

At sentencing, the court imposed $1 million in criminal fines jointly and severally on the two corporate defendants, and $500,000 on Georgia Baxter-Krause personally. The companies received five years of probation, during which they must comply with stringent environmental monitoring and reporting requirements. Ms. Baxter-Krause was sentenced to 90 days' imprisonment followed by one year of supervised release. No restitution was ordered.

Aghorn Operating, Inc., et al.

On April 15, 2025, the U.S. District Court for the Western District of Texas sentenced Aghorn Operating, Inc. ("Aghorn"), one of its vice presidents, and a separate support-services company following guilty pleas in *United States v. Aghorn Operating, Inc., et al*.

Key alleged violations:

- CAA Negligent Endangerment: Aghorn and its vice president, Trent Day, admitted that they boiled off hazardous process wastewater from wood-treatment retorts at their Odessa facility, releasing toxic hydrogen sulfide (H-S) gas into the surrounding community.
- Occupational Safety and Health Act Willful Violation Causing Death: The same conduct at the Odessa facility exposed employee Jacob Dean and his spouse, Natalee Dean, to fatal H-S exposure, constituting a willful Occupational Safety and Health Act ("OSHA") violation.
- False Statements under the Safe Drinking Water Act: Kodiak Roustabout Inc. pleaded guilty to falsifying well integrity test results required to prevent aquifer contamination, making materially false statements to regulators.
- False Statements: During the EPA/OSHA investigation, Mr. Day knowingly provided false information regarding the timing and location of the hazardous H-S emissions, resulting in additional personal liability.

Under the agreed terms, Aghorn received two years of probation—with specific operations-related conditions—paid a $1 million fine plus a $175 assessment and must maintain operational improvements instituted following the fatal incident and ensure third-party monitoring of well tests during its probationary period. The company's vice president was sentenced to five months' imprisonment, one year of supervised release, and a $25 assessment. The support-services company received one year of probation—also with operations-related conditions—paid a $400,000 fine and a $400 assessment.

Securities Enforcement

While the SEC landscape has rapidly changed since the end of fiscal year 2024, looking back on the year still provides valuable insights into what fiscal year 2025 will bring. As reported by the SEC in November 2024, the Commission filed a total of 583 enforcement actions. This represents a 26 percent drop from 2023. Almost 15 percent of these enforcement actions were brought against U.S. public companies or subsidiaries, and over 40 percent of all actions were related to disclosure or reporting violations.

The Commission obtained orders for $8.2 billion in financial remedies, the highest amount in SEC history. While this $8.2 billion figure is impressive, approximately 56 percent is attributable to a monetary judgment obtained during the SEC's jury trial win against Terraform Labs PTE, Ltd. and its co-founder Do Kwon, discussed in detail below.

Among its metrics for FY 2024, the SEC obtained orders barring 124 individuals from serving as officers and directors of public companies—the second highest number of such bars obtained in a decade. Additionally, the SEC distributed $345 million to harmed investors and awarded $255 million to whistleblowers. Finally, the Commission received 45,130 tips, complaints, and referrals, the most ever received in one year.

As noted, the Securities and Exchange Commission ("SEC" or the "Commission") under Chairman Paul Atkins is anticipated to pull back from crypto and off-channel communication cases, stand-alone technical violations, and the overuse of internal controls and certain other provisions of the securities law. But as reinforced by SEC staff, there are several other areas that will continue to receive attention under Chair Atkins. These include major fraud, individual accountability, gatekeeper accountability, and certain public company cases.

In the sections below, we summarize changes in leadership at the SEC, discuss restructuring of the SEC, summarize the SEC's cryptocurrency initiative, identify policy changes related to formal investigative authority, and summarize key enforcement cases.

New Leadership

Like every other regulatory agency, the SEC has seen significant change throughout its ranks. Starting at the top, Atkins is the new Chairman, replacing Gary Gensler as the head of the agency. After being nominated by President

Trump on January 20, 2025, Atkins was confirmed by the U.S. Senate on April 9, 2025, and officially started his tenure on April 21, 2025. In his testimony to the Senate, Atkins vowed to implement "efficient, effective, and well-designed regulation . . . [and to] analyze their effectiveness, and use [the SEC's] enforcement power to cure and rectify wayward actions."

Chairman Atkins started his career as a lawyer in New York focusing on corporate transactions. After serving on the staffs of two chairmen of the SEC, Atkins was appointed by President George W. Bush to serve as a commissioner from 2002 to 2008. Most recently, Atkins served as chief executive of Patomak Global Partners, a consulting firm he founded in 2009.

In many respects, Atkins arrived to an SEC already transforming to align with his goals and priorities. During his time as Acting Chairman, Mark Uyeda—along with fellow Republican Commissioner Hester Peirce—implemented a series of structural and procedural changes meant to unwind what they viewed as overreach in the enforcement space by former Chair Gary Gensler, particularly in the cryptocurrency space. In pursuit of this goal, Acting Chairman Uyeda launched a crypto task force (the "Crypto Task Force"), headed by Commissioner Peirce, dedicated to "developing a comprehensive and clear regulatory framework for crypto assets." In connection with this task force, the SEC has sought dismissal of numerous crypto actions on the basis that these dismissals "will facilitate the SEC's ongoing efforts to reform and renew its regulatory approach to the crypto industry."

More recently, on August 21, 2025, the Commission announced that Judge Margaret "Meg" Ryan had been named Director of the Division of Enforcement ("Enforcement"), effective September 2, 2025. In announcing her appointment, Chairman Atkins stated: "Judge Ryan will lead the Division guided by Congress' original intent: enforcing the securities laws, particularly as they relate to fraud and manipulation." Judge Ryan was a senior judge of the United States Court of Appeals for the Armed Forces. Before her tenure as judge, she was a partner at two law firms, Wiley Rein LLP and Bartlit Beck LLP. She previously served as a law clerk to Supreme Court of the United States Associate Justice Clarence Thomas and to Judge J. Michael Luttig of the United States Court of Appeals for the Fourth Circuit. Sam Waldon, the Acting Director of Enforcement, will return to his previous role as Chief Counsel for the Division. Judge Ryan is new to the job and has yet to speak in detail as to her enforcement priorities. Waldon has indicated a focus on traditional cases going forward, including insider trading, accounting and disclosure fraud, and retail investor fraud. Waldon has also noted a concentration on individual accountability noting that "[i]t's always a priority, but I do think that those are cases that are going to be received better by this Commission." At this year's Practising Law Institute's "SEC Speaks" conference, Deputy Directors Nekia Hackworth Jones and Jason Burt reiterated Enforcement's plans to increase focus on harm to retail investors, including senior citizens. And on September 5, 2025, the Commission announced the formation of a task force that will strengthen and enhance the Enforcement's efforts to identify and combat cross-border fraud harming U.S. investors. The announcement noted that the Cross-Border Task Force will focus initially on investigating potential U.S. federal securities law violations related to foreign-based companies, including potential market manipulation, such as "pump-and-dump" and "ramp-and-dump" schemes. The announcement further noted that the task force also will focus enforcement efforts on gatekeepers, particularly auditors and underwriters, that help these companies access the U.S. capital markets. In addition, the Commission stated that the task force will examine potential securities law violations related to companies from foreign jurisdictions, such as China, where governmental control and other factors pose unique investor risks.

Restructuring

The SEC, similar to all other federal agencies, has experienced a top-down shake-up following the start of the new Trump administration and the creation of the Department of Government Efficiency. The SEC immediately scaled back its size and reach through a large reduction in headcount and the unprecedented dismissal of numerous pending enforcement actions. Under Chair Atkins, a further reduction in headcount seems likely. Appearing before the U.S. Senate Appropriations Committee in June, Chair Atkins proposed a budget which would reduce staff to 2010 levels, prior to the passage of Dodd-Frank.

Perhaps most notably, the position of regional director has been eliminated from all 10 of the SEC's regional offices. As of April 9, 2025, the SEC reassigned the agency's 10 regional directors and reallocated their duties to various officials across the country.

Prior to this move, SEC regional directors played a pivotal role in the day-to-day management of the SEC's regional offices. Regional directors were responsible for overseeing the offices' enforcement group, examination program, general office administration, and served as the public face for their assigned office. Specific tasks included deciding whether to pursue an enforcement action, establishing settlement terms, supervising the staff responsible for inspecting registered broker-dealers, investment advisors, and fund managers in the region, hiring personnel management, and interacting with state and federal regulators, law enforcement, and members of the investing public.

The elimination of the regional director position does not mean that all of these responsibilities have disappeared. Instead, these functions have been reallocated to staff in a variety of locations. A new title of deputy director has been created to oversee certain categories of enforcement and examination activity. Specifically, the deputy director positions now include:

- Deputy Director Southwest (Home Office in D.C. and the Miami and Atlanta regional offices)
- Deputy Director Northeast (Philadelphia, Boston, New York, and Chicago regional offices)
- Deputy Director West (Los Angeles, San Francisco, Fort Worth, and Denver regional offices)
- Deputy Director over the Specialty Units
- Deputy Director in charge of coordination with federal, state, and local agencies.

Cryptocurrency Initiatives

On February 20, 2025, the SEC formally announced the creation of the Cyber and Emerging Technologies Unit ("CETU" or the "Unit"), replacing the former Crypto Assets and Cyber Unit. This change was not merely nominal but represents a shift in the SEC's focus on crypto enforcement. The creation of the CETU will complement the SEC's Crypto Task Force that was announced at the beginning of the year.

The CETU is comprised of roughly 30 attorneys and fraud specialists from a variety of SEC offices. It will be led by Laura D'Allaird, the former co-chief of the Crypto Assets and Cyber Unit, and will prioritize rooting out fraud and combating misconduct, with a focus on fraudulent disclosures related to cybersecurity, fraud involving blockchain technology and crypto assets, and hacking to obtain material nonpublic information. The Unit also plans to address "AI washing"—a deceptive marketing tactic that misleads customers and investors about the companies' use of artificial intelligence—and cases involving fraud committed using AI.

Simultaneously, the Crypto Task Force will work to forge a clear and sensible regulatory framework for crypto assets. This goal is in line with Chair Atkins's desire for the SEC to act through regulation rather than enforcement. In order to achieve this goal, the SEC issued a statement inviting public comment on a variety of issues related to blockchain technology and crypto assets. This statement further signals the SEC's shifting approach to digital asset regulation.

Formal Investigative Authority

On March 11, 2025, the SEC—under Acting Chairman Uyeda—voted to amend existing regulations and eliminate the agency's standing delegation of formal order authority to the Director of Enforcement. This decision rescinds a procedural process that had been in place since the first Obama administration. In delegating formal order authority to the Director of Enforcement, SEC staff could obtain a formal order of investigation—and thereby obtain subpoena power—without seeking full and formal approval from the Commissioners.

This newly adopted rule rescinds that authority, returning the SEC to its pre-2009 processes. Consequently, all formal orders must, once again, be approved by the Commissioners, a move which the SEC says "is intended to increase effectiveness by more closely aligning the SEC's use of its investigative resources with Commission priorities." If the Commissioners perceive that a proposed investigation does not align with their goals, they can deny a request for a formal order.

It remains to be seen how this might affect the quantity, speed, and type of investigations pursued in Enforcement. Generally, when seeking Commission approval for an action, SEC staff must prepare a detailed memorandum justifying their request, followed by Commission review, and finally a vote on whether to approve a formal order. With greater procedural hurdles to obtain formal subpoena power, SEC staff may make greater use of voluntary requests for information, which rely upon the cooperation of third parties. An increase in voluntary requests may allow for greater opportunities to demonstrate cooperation with SEC staff, which could result in quicker investigations and more closures without action, though this remains to be seen.

2024 SEC Enforcement Action Highlights

Terraform Labs and Kwon to Pay $4.5 Billion Following Fraud Verdict / Tai Mo Shan to Pay $123 Million for Negligently Misleading Investors about Stability of Terra USD

In June 2024, Terraform Labs PTE, Ltd. ("Terraform Labs") and its co-founder, Do Kwon, were held liable by a unanimous jury verdict for one of the largest fraud schemes in U.S. history involving their crypto security, Terra USD ("UST"). Kwon and Terraform Labs were found liable for making false claims about the illicit use of UST and claiming that they had created an "algorithmic stablecoin," which resulted in wiping out tens of billions of dollars in market value. The SEC charged Kwon and Terraform Labs with securities fraud and for offering and selling securities in unregistered transactions. Both Terraform Labs and Kwon were found liable in the Southern District of New York for offering and selling crypto asset securities in unregistered transactions, and a unanimous jury found both liable for securities fraud. As part of the settlement, Terraform Labs and Kwon agreed to pay more than $4.5 billion collectively.

In December of 2024, Tai Mo Shan Limited ("Tai Mo Shan"), a statutory underwriter for Terraform Labs's crypto asset LUNA, was also charged with misleading investors about the stability of UST and for offering and selling securities in unregistered transactions. The SEC found that Tai Mo Shan misled investors by entering into an agreement with Terraform Labs that encouraged Tai Mo Shan to trade UST in a manner that deceived the market into believing that the company's algorithmic method was stabilizing UST, when it was actually being stabilized by Tai Mo Shan's own substantial purchase of UST. As a result, Tai Mo Shan agreed to pay $123 million in penalties, and to cease and desist from future violations.

Global Aerospace Company AAR and Former Executive Agree to $30 million Settlement for Bribing Nepalese and South African Officials

In December 2024, the SEC resolved charges against AAR CORP. ("AAR") and a former executive for violations of the Foreign Corrupt Practices Act ("FCPA") resulting from two bribery schemes involving hundreds of millions of dollars. AAR is a global provider of aviation services based out of Illinois and Deepak Sharma was an executive of an AAR subsidiary alleged to have orchestrated the bribery schemes. These schemes were carried out to win a contract for the sale of two planes valued at $210 million to Nepal Airlines, a government-owned airline and, separately, to win a contract to provide aviation services to a government-owned subsidiary of South African Airways.

The SEC found that AAR violated the anti-bribery, recordkeeping, and internal accounting controls of the FCPA and ordered the company to pay $29,236,624 in disgorgement and prejudgment interest. In an action by DOJ, AAR entered into a non-prosecution agreement and agreed to pay a $26,363,029 criminal penalty. Individually, the SEC order found that Sharma violated the anti-bribery, recordkeeping, and internal accounting control provisions of the FCPA, and he was ordered to pay $184,597 in disgorgement and prejudgment interest.

Twenty-six Firms to Pay More than $390 Million Combined to Settle SEC'sCharges for Widespread Recordkeeping Failures

In August 2024, the SEC announced charges against 26 broker-dealers and investment advisors for pervasive and long-term failures to maintain electronic communications. In particular, the SEC investigation uncovered the use of unapproved "off-channel" communications among personnel at multiple levels of authority for records that were required to be maintained under securities laws. This practice deprived the SEC of access to such communications in their investigations. As a result, the firms were charged with violating recordkeeping provisions of the Securities Exchange Act of 1934 (the "Exchange Act") and the Investment Advisers Act of 1940, along with charges for failing to reasonably supervise personnel.

The firms admitted to the violation of federal securities laws and agreed to pay combined civil penalties of $392.75 million and to address their compliance policies. The penalties varied by firm, from $400,000 to be paid by Haitong International Securities, to $50 million to be paid by several firms. Of the 26 firms, three self-reported their violations and therefore faced lower civil penalties.

SEC Settles Charges with Zymergen Inc. for $30 Million for Misleading IPO Investors About Company's Market Potential and Sales Prospects

The SEC brought charges against Zymergen Inc. ("Zymergen") for misleading IPO investors about the market potential, revenue prospects, and customer pipeline for their electronics film product, Hyaline. Zymergen is a California-based biotechnology company that raised $530 million through its April 2021 IPO and later filed for bankruptcy in 2023. The SEC's order found that Zymergen violated anti-fraud provisions of the federal securities laws. The SEC's findings include that Zymergen's claims about the market opportunity for Hyaline relied on improper product markets and unsupported premium pricing. The SEC also found that Zymergen provided misleading revenue forecasts and misrepresented the status of Hyaline's customer pipeline to investors by omitting significant problems that Hyaline was facing. In September 2024, the SEC settled with Zymergen, with the company agreeing to pay a $30 million penalty subject to approval by the bankruptcy court.

SEC Settles Charges for More than $249 Million with Morgan Stanley for Fraud

In January 2024, the SEC charged Morgan Stanley & Co. LLC ("Morgan Stanley") and the former head of its equity syndicate desk, Pawan Passi, with a fraud scheme involving their disclosure of confidential information about "block trades." A block trade generally involves the sale of a large quantity of shares of an issuer's stock, privately arranged and executed outside of the public markets. Passi and his subordinate violated federal law and Morgan Stanley policy by disclosing non-public material information concerning impending block trades to buy-side investors who would use the information to "preposition"—taking a short position in the stock that was subject to the upcoming block trade. If Morgan Stanley then purchased the block trade, the buy-side investors would request and receive allocations from Morgan Stanley to cover their short positions. This prepositioning reduced Morgan Stanley's risk in purchasing block trades, earning them millions of dollars from these low risk trades, and developed their block trade business.

The SEC's order found that Morgan Stanley violated certain broker-dealer and anti-fraud provisions of the Exchange Act and required Morgan Stanley to pay $138 million in disgorgement, $28 million in prejudgment interest and $83 million in civil penalties, which has been partially satisfied by the firm's $136,531,223 forfeiture. Individually, the SEC found that Passi likewise violated the anti-fraud provisions of the Exchange Act and ordered him to pay a $250,000 civil penalty and placed several bars on him. The U.S. Attorney's Office for the Southern District of New York conducted a concurrent action and announced a criminal resolution with Morgan Stanley and Passi

J.P. Morgan to Pay $18 Million for Violating Whistleblower Protection Rule

In January of 2024, the SEC settled charges with J.P. Morgan Securities LLC ("J.P. Morgan") for violating whistleblower protection laws by impeding advisory clients and brokerage customers from reporting potential securities violations. From 2020 to 2023, J.P. Morgan asked retail clients who were issued a settlement or credit of over $1,000 from the firm to sign confidentiality agreements including a prohibition against contacting the SEC. As a result, many clients were forced to choose between receiving settlements and reporting potential securities violations to the SEC. The SEC emphasized that it is illegal to include provisions in any agreements that impede potential whistleblowers and that investors have a right to contact the SEC without interference. The SEC's order finds that J.P. Morgan violated Rule 21F-17(a) under the Exchange Act which prohibits any action to impede an individual from communicating with the SEC about a possible securities law violation. In its settlement, J.P. Morgan agreed to cease and desist and pay an $18 million penalty.

White Collar Enforcement

Traditional white collar criminal enforcement continues to decline. Although white collar enforcement usually declines around election years, the second Trump administration has redirected enforcement resources to immigration, transnational criminal organizations/cartels, fentanyl, and violent crime, so it is not surprising to see that white collar enforcement levels are low relative to prior years.

White collar criminal prosecutions have been steadily trending down for years, with monthly enforcement levels as of January 2025 at their lowest point in recent memory, excluding the few months around the initial outbreak of COVID-19. Turnover among white collar prosecutors and DOJ leadership is common around election years, so to some extent this trend is expected.

On May 12, 2025, however, DOJ announced a new white collar enforcement plan which aims to balance aggressive white collar enforcement related to crimes that harm Americans and the federal fisc with a commitment to avoid overbroad enforcement that may unduly burden businesses or U.S. interests. As explained further below, DOJ's Criminal Division will focus enforcement on white collar offenses identified as having the "greatest impact in protecting American citizens and companies and promoting U.S. interests." DOJ will also adopt a fairness-based approach to corporate charging that rewards self-disclosure and remediation, while aiming to resolve investigations efficiently to limit the collateral consequences of prolonged inquiries.

The Trump administration's enforcement agenda and administrative reorganization of DOJ are likely to result in a reprioritization of white collar enforcement to non-traditional focus areas consistent with the administration's goals. For example, after a four-month pause in enforcing the FCPA ordered by President Trump in February 2025, DOJ recently announced that its anti-corruption enforcement actions will now focus generally on cases implicating threats to U.S. national security and economic interests. Similarly, the administration has signaled its willingness to combat procurement fraud, customs/tariffs evasion, and Diversity, Equity, and Inclusion ("DEI") programs via the civil False Claims Act (the "FCA").

To assist companies in navigating the rapidly evolving DOJ enforcement landscape, we summarize the general trends in two key areas of white collar enforcement: the FCPA and the FCA. We then provide a more detailed summary of key cases and decisions from the past several months in each area.

The Trump Administration's Approach to White Collar Enforcement

On May 12, 2025, DOJ's Criminal Division issued a memorandum outlining its new enforcement approach to corporate and white collar crime (the "Enforcement Plan"). As noted above, the Trump administration's white collar enforcement approach seeks to balance protecting American interests, upholding the rule of law, and ensuring justice for victims of white collar crime, while minimizing unnecessary burdens on legitimate business activity.

Under the Enforcement Plan, the Criminal Division will concentrate its resources on high-impact areas of white collar crime that pose the greatest threat to U.S. citizens, markets, and national security. DOJ will prioritize criminal investigations and prosecutions involving the following "high impact" areas:

- Healthcare fraud and fraud targeting federal programs, including procurement and defense spending;
- Trade and customs fraud, particularly schemes involving tariff evasion;
- Fraud involving variable interest entities ("VIEs"), with a focus on risks associated with certain foreign-affiliated companies listed on U.S. exchanges;
- Market manipulation and investor fraud, including Ponzi schemes, elder fraud, and schemes targeting servicemembers and consumers;
- Threats to the U.S. financial system, including sanctions violations and facilitation of transactions by cartels, transnational criminal organizations ("TCOs"), hostile nation-states, and foreign terrorist organizations;
- Material support by corporations to foreign terrorist organizations, including newly designated cartels and TCOs;
- Complex money laundering operations, with particular attention to Chinese Money Laundering Organizations and those involved in the drug trade;
- Violations of the Controlled Substances Act and the Federal Food, Drug, and Cosmetic Act, including unlawful distribution of opioids and fentanyl-laced counterfeit pills;
- Bribery and associated money laundering that impact U.S. national interests, undermine national security, harm the competitiveness of U.S. companies, and enrich corrupt foreign officials; and
- Crimes involving digital assets that victimize investors or facilitate other criminal conduct.

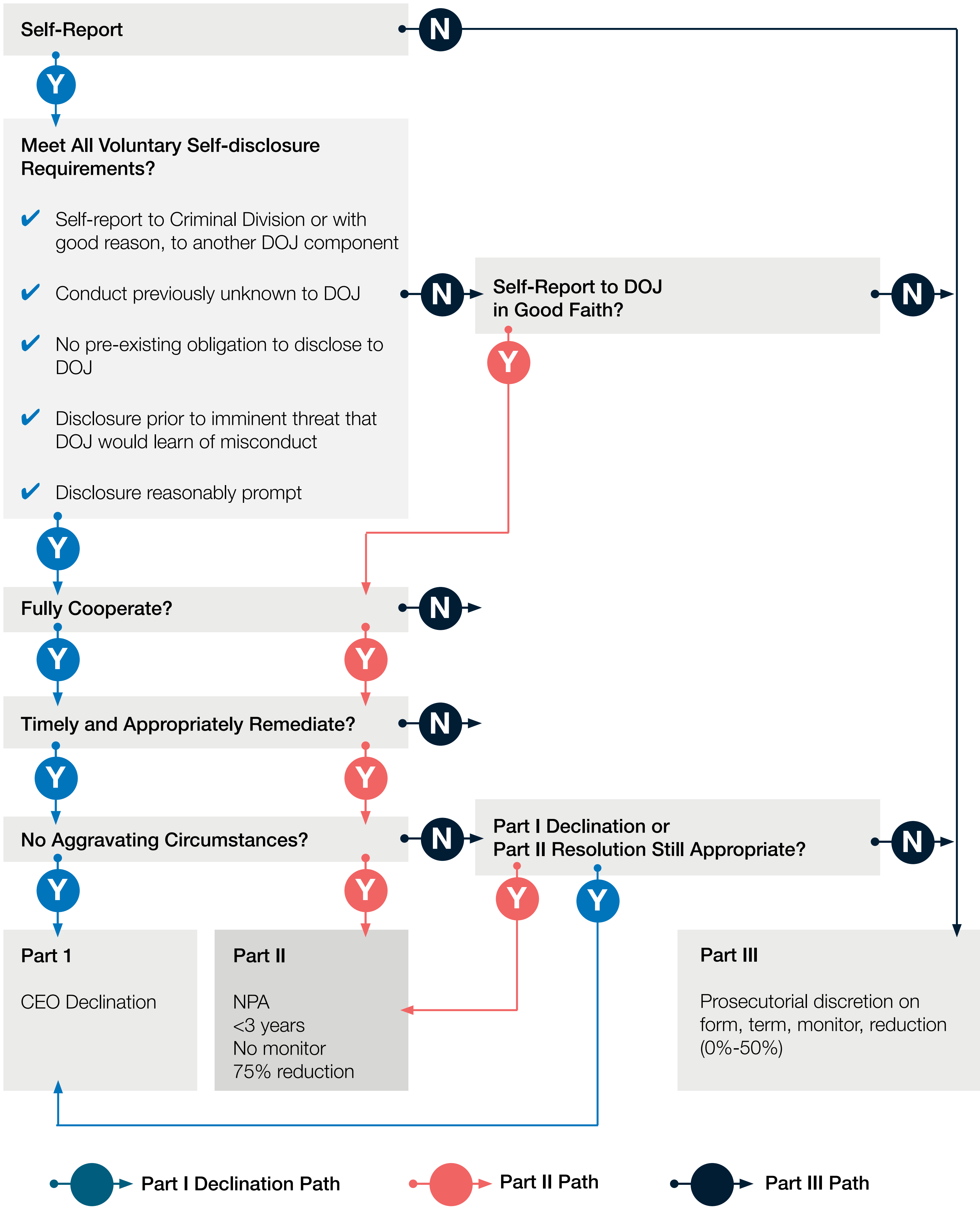
DOJ will also prioritize asset seizure in connection with these offenses and will use forfeited proceeds to compensate victims where permitted by law. DOJ has expanded its whistleblower pilot program to include tips leading to forfeiture in cases involving international cartels, TCOs, corporate immigration violations, material support of terrorism, corporate sanctions offenses, and trade or procurement fraud.

The Enforcement Plan recognizes that not all corporate misconduct warrants federal criminal prosecution, as the government can prosecute individuals and seek civil or administrative remedies in response to lower-level offenses committed by a corporation. As DOJ's "first priority is to prosecute individual criminals," the Enforcement Plan contemplates prosecuting individual employees or executives and promotes an approach that allows companies to remediate misconduct and, if needed, receive a fair resolution through tools such as non-prosecution agreements, deferred prosecution agreements, or guilty pleas tailored to the case-specific facts.

In connection with the Enforcement Plan, DOJ revised its Corporate Enforcement and Voluntary Self-Disclosure Policy (the "CEP") to clarify and enhance the benefits for companies that self-disclose, cooperate, and remediate misconduct. Under the revised policy, DOJ will grant a declination—rather than merely presume one—to companies that voluntarily self-disclose misconduct, provided the following conditions are met:

- DOJ first learned of the misconduct from the company (*i.e.*, the disclosure is valid and voluntary);
- The company fully cooperates with DOJ;
- The company appropriately and timely remediates the misconduct; and
- There are no aggravating circumstances present.

Further, if a company self-reports in good faith, but the report does not qualify as a voluntary self-disclosure (such as where a whistleblower has already alerted DOJ to the allegations), then, absent aggravating circumstances, DOJ will grant the company a non-prosecution agreement with a term less than three years, allow a 75 percent reduction off the low end of the applicable Sentencing Guidelines fine range, and not require an independent compliance monitor. To help illustrate its analysis, the revised CEP includes a flowchart summarizing the analysis:


Self-Report
N
Y
Meet All Voluntary Self-disclosure Requirements?
Self-report to Criminal Division or with good reason, to another DOJ component
Conduct previously unknown to DOJ
No pre-existing obligation to disclose to DOJ
Disclosure prior to imminent threat that DOJ would learn of misconduct
Disclosure reasonably prompt
N
Self-Report to DOJ in Good Faith?
N
Y
Y
Fully Cooperate?
N
Y
Y
Timely and Appropriately Remediate?
N
Y
Y
No Aggravating Circumstances?
N
Part I Declination or Part II Resolution Still Appropriate?
N
Y
Y
Y
Y
Part 1
CEO Declination
Part II
NPA
<3 years
No monitor
75% reduction
Part III
Prosecutorial discretion on form, term, monitor, reduction (0%-50%)
Part I Declination Path
Part II Path
Part III Path

The Enforcement Plan constitutes the most company-friendly enforcement posture DOJ has adopted in recent memory. Recognizing that companies are often partners in preventing and detecting misconduct, the CEP emphasizes incentives over penalties—offering more "carrots" than "sticks" to encourage self-disclosure, cooperation, and remediation.

In addition, the Enforcement Plan directs prosecutors to expedite investigations and charging decisions to reduce their duration and minimize collateral consequences. The Enforcement Plan also signals that DOJ will limit its use of independent compliance monitors and, in cases where monitorships are required, tailor their scope narrowly to address specific risks while reducing costs and business disruption.

DOJ's Changing Foreign Corrupt Practices Act Enforcement Priorities

DOJ's approach to FCPA enforcement has experienced perhaps the most significant shift among the many policy changes in DOJ and elsewhere in government. On June 9, 2025, Deputy Attorney General Todd Blanche announced that DOJ will resume investigating and prosecuting violations of the FCPA (the "Blanche Memo"), ending the moratorium ordered four months earlier by President Trump. The Blanche Memo signals that going forward, FCPA enforcement actions will focus on cases implicating significant threats to U.S. national security interests, including the operations of cartels and TCOs, corruption that harms U.S. economic competitiveness, bribery involving key infrastructure or assets, and egregious corrupt misconduct evidencing substantial criminality. DOJ's enforcement priorities may be more targeted than before, but the FCPA appears poised to remain in DOJ's white-collar toolkit.

Background

Prior to the Blanche Memo, the direction of FCPA enforcement had been uncertain for the first few months of the second Trump administration. On February 5, 2025, United States Attorney General Pamela Bondi issued a set of 14 new policy memoranda implementing the administration's criminal and civil enforcement policy objectives. Of particular relevance to white collar enforcement was the memorandum titled "Total Elimination of Cartels and Transnational Criminal Organizations" (the "Bondi Memo"), which directed DOJ's FCPA Unit to prioritize cases involving bribery that facilitates the criminal operations of cartels and TCOs, including those related to human smuggling and the trafficking of narcotics and firearms. The Bondi Memo further directed that FCPA enforcement shift away from cases that do not involve such connections.

The Bondi Memo also relaxed procedural requirements for DOJ to bring FCPA cases by suspending the usual requirement that prosecutors seek authorization from DOJ's Criminal Division before investigating or prosecuting FCPA cases. The Bondi Memo also lifted the requirement that such cases include prosecutors from within DOJ's FCPA Unit, if such cases involve bribery linked to cartels and TCOs. Now, United States Attorney's Offices across the country only are required to provide the FCPA Unit 24 hours' notice before seeking charges in such cases.

Five days after the Bondi Memo, on February 10, 2025, President Trump signed an Executive Order (the "Order") pausing all FCPA investigations and enforcement actions for 180 days. The Order stated that the application of the FCPA has been "stretched beyond proper bounds and abused," harming U.S. interests by impeding foreign policy objectives, hindering economic competitiveness, and affecting national security. The Order emphasized the importance of preserving the president's authority over foreign affairs and advancing U.S. economic interests abroad.

In response to these concerns, the Order directed the U.S. Attorney General to reassess the FCPA enforcement guidelines and policies during the pause. During this period, no new FCPA investigations would be initiated and existing cases would be examined to ensure they aligned with U.S. foreign policy priorities and promote economic competitiveness.

The Blanche Memo

On June 9, 2025, the Order's review period concluded after Deputy Attorney General Todd Blanche issued DOJ's new FCPA enforcement policy. Consistent with the Bondi Memo, the Order, and the Enforcement Memo, the Blanche Memo details DOJ's FCPA-specific enforcement guidelines. The guidelines articulate a non-exhaustive list of factors for prosecutors to consider when deciding whether to pursue an FCPA investigation or prosecution. The factors articulated in the Blanche Memo are:

Total Elimination of Cartels and Transnational Criminal Organizations

The Blanche Memo emphasizes that a key factor in determining whether to initiate an FCPA investigation or enforcement action is whether the alleged misconduct: (1) is connected to the criminal activities of a cartel or TCO; (2)

involves money laundering or the use of shell companies that launder money for cartels or TCOs; or (3) is related to employees of state-owned enterprises or other foreign officials who have accepted bribes from cartels or TCOs.

Safeguarding Fair Opportunities for U.S. Companies

The Blanche Memo notes that the competitiveness of U.S. companies is critical to safeguarding U.S. national security and economic prosperity. Therefore, prosecutors are directed to consider whether bribery "deprived specific and identifiable U.S. entities" of fair competition or caused "economic injury to specific and identifiable American companies or individuals." The Blanche Memo also seeks to target the "demand side" of foreign bribery by directing prosecutors to consider whether U.S. companies have been harmed by foreign officials who demand bribes, signaling a potential uptick in DOJ's use of the FCPA's new sister statute, the Foreign Extortion Prevention Act ("FEPA").

Advancing U.S. National Security Interests

The Blanche Memo directs prosecutors to focus on cases threatening U.S. national security due to "bribery of corrupt foreign officials involving key infrastructure or assets," given the risk of strategic competitors exploiting corrupt officials to the strategic detriment of the United States.

Prioritizing Cases with Egregious Misconduct

The Order instructed that FCPA enforcement should not penalize U.S. companies and individuals for routine business practices in other nations. As a result, the Blanche Memo directs that FCPA investigations and enforcement actions "shall not focus on alleged misconduct involving routine business practices or the type of corporate conduct that involves de minimis or low-dollar, generally accepted business courtesies." The memo also reiterates the FCPA exception for facilitating and expediting payments, and the affirmative defenses for reasonable and bona fide expenditures and payments that are lawful under the written laws of the foreign country.

To some extent, this approach inverts the traditional thinking behind FCPA. Previously, the FCPA combated international corruption by forcing U.S. companies and companies listed on U.S. stock exchanges to export anti-corruption compliance expectations around the world. Under the new policy taking shape at DOJ, the focus will instead be on prosecuting corrupt companies who disadvantage compliant U.S. companies and the foreign officials who demand bribes.

Taking an America First approach to FCPA enforcement, as contemplated in the Blanche Memo, may require renegotiation of, or withdrawal from, the Organization for Economic Cooperation and Development ("OECD") Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The new Trump administration has demonstrated a willingness to reimagine how U.S. agencies operate and forge new international norms in many areas, so it is conceivable that it will do the same here to avoid treaty provisions in arguable conflict with its enforcement priorities.

The Enforcement Plan, Bondi Memo, and Blanche Memo signal an FCPA enforcement landscape that prioritizes cases impacting U.S. national security and economic competitiveness considerations. Although companies should remain nimble as DOJ continues to refine and deploy its re-focused enforcement policies, compliance functions should plan for the impacts and opportunities of an America First enforcement approach.

Combating Waste, Fraud, and Abuse—Steady FCA Enforcement Protected

Robust enforcement of the FCA—the primary remedy to combat fraud against the government—is in perfect alignment with the Trump administration's focus on combating waste, fraud, and abuse. Recent activity in the FCA space signals that robust enforcement will continue under Trump 2.0, and administration officials have previewed aggressive enforcement in the near future.

FCA enforcement has been steady and heavy in recent years, with the government recovering at least $2 billion every year since 2009. DOJ reported recovering $2.9 billion in FCA settlements and judgments in fiscal year 2024, which does not include two resolutions in October 2024 (just after the end of the fiscal year) totaling over $850 million. Fiscal year 2024 also saw the highest number of *qui tam* whistleblower lawsuits filed in any single year, signaling the important role that private whistleblowers, known as "relators," play in the statute's enforcement. Enforcement in 2024 focused heavily on healthcare fraud, defense contractor fraud, and pandemic relief fraud, the first two of which are traditionally active sectors for FCA enforcement and the latter of which has been a focus post-2020.

There have been hundreds of millions of dollars in judgments and settlements under the FCA already under the Trump administration, although it remains too early to predict how the total amount of recoveries will measure against previous years. In addition to active enforcement in the healthcare, defense, and pandemic relief spaces, in light of the Trump administration's aggressive use of tariffs, there is likely to be more enforcement involving improper international trade practices, including so-called "reverse false claims" cases premised on alleged false statements or documents that fraudulently reduce an entity's import duties. At the same time, recent settlements and litigation suggests that DOJ will continue to prioritize FCA cases based on cybersecurity non-compliance involving government contracts for the foreseeable future, with new *qui tam* cases related to cybersecurity likely to emerge.

On May 19, 2025, Deputy Attorney General Blanche announced DOJ's Civil Rights Fraud Initiative (the "Initiative"), which directs DOJ to prioritize civil FCA cases against contractors and other recipients of federal funds that engage in unlawful racial discrimination, including through DEI programs, but falsely certify compliance with civil rights laws, such as the Civil Rights Act of 1964. Under the Initiative, DOJ's Civil Division and Civil Rights Division are directed to assemble a team of attorneys who will "aggressively pursue" such FCA cases. Further, each U.S. Attorney's Office in the country is directed to identify an Assistant United States Attorney to support the Initiative's efforts. Citing to the FCA's *qui tam* provision, the Initiative encourages private parties to pursue FCA suits, and to share in any monetary recovery, in support of DOJ's approach to civil rights fraud.

Given the potential surge in criminal and civil FCA enforcement over the next four years, companies should adapt their compliance programs to the heightened FCA risk environment. Given the wide range of conduct which could lead to a potential violation, companies should ensure that their compliance programs are well-implemented and thoroughly integrated within the business.

Key White Collar Cases to Know

Developments in FCPA Enforcement

While DOJ's FCPA enforcement policy review is underway, DOJ has dismissed some pending charges while electing to continue with other prosecutions. It is difficult to discern a guiding principle from DOJ's decisions to date. Below, we summarize developments in key FCPA cases from the initial months of the second Trump administration.

DOJ Dismissed an FCPA Prosecution Days Before Trial

In a surprising end to a closely watched FCPA prosecution, DOJ dismissed all charges against two former Cognizant Technology Solutions Corporation ("Cognizant") executives days before trial, despite having previously signaled to the court that DOJ intended to try the case after reviewing the matter under President Trump's Order.

The defendants in *United States v. Coburn et al.*, No. 2:19-cr-00120 (D.N.J), Gordon Coburn and Steven Schwartz, were first charged in February 2019. According to the indictment, Coburn and Schwartz, who were Cognizant's President and Chief Legal and Corporate Affairs Officer respectively, conspired to pay Indian government officials approximately $2 million in exchange for a planning permit to build an office campus for Cognizant's Indian subsidiary. The indictment alleges that after lengthy delays in obtaining local government approval for a required permit, Coburn and Schwartz directed a third-party construction company to pay the $2 million bribe, signaling to the third party that Cognizant would not pay an outstanding $17 million owed in construction fees until the permit was secured. Once local officials approved the permit, Cognizant released the $17 million to the construction company and allegedly processed an additional claim for $3.7 million relating to "approvals/ campus regularization"—including approximately $2.5 million purportedly charged for "statutory approvals – planning permit." The indictment alleges that the defendants and other Cognizant employees created fake claims to justify the additional payment to the third-party construction company, and Coburn, despite knowing the claims were falsified to cover bribe repayments, approved them.

The case was pending for over six years, during which time Cognizant reached a $25 million resolution with the SEC, before coming to an unusual end. On February 11, 2025, the day after President Trump issued the Order, the court ordered the government to state whether the trial should move forward on March 3, 2025, as scheduled in light of the Order. On February 18, 2025, the government filed a letter informing the court that the matter was under prioritized review, but that the government was preparing to proceed with the trial as scheduled. Three days later, on February 21, 2025, the government reported to the court that it intended to proceed to trial as scheduled after completing review under the Order. The court moved jury selection to March 4, then again to March 5, due to a separate medical issue.

But before jury selection could begin, on March 4, 2025, the newly installed acting U.S. Attorney for the District of New Jersey, John Giordano, filed a letter seeking a 180-day adjournment of the trial to consider the application of the Order to this matter. This came as a surprise to those following the case in light of DOJ's prior representation that it had already completed this review. After some back and forth with the parties regarding the application of the Speedy

Trial Act and other matters, the court set trial for April 7, 2025, to give the new U.S. Attorney time to complete his review. During this review, President Trump announced that Alina Habba would take over as acting U.S. Attorney and that Giordano would be nominated to serve as the U.S. Ambassador to Namibia. Days before this deadline, on April 3, 2025, the government moved to dismiss after reassessing the case under the Order.

DOJ Is Moving Forward with Several Other FCPA Prosecutions

Despite electing not to move forward with the *Coburn* case, DOJ is pressing forward with four other criminal FCPA prosecutions.

In *United States v. Zaglin et al.*, No. 1:23-cr-20454 (S.D. Fla.), DOJ advised the court on April 11, 2025, that it intends to proceed to trial after completing a "detailed review" of the case pursuant to President Trump's Order. In that case, two U.S. businesspeople and a former Honduran government official are charged in connection with an alleged bribery conspiracy connected to over $10 million in contracts to provide uniforms and accessories to the Honduran National Police. According to the indictment, the defendants used a sham brokerage agreement to conceal payments to Honduran officials through a web of shell companies and U.S. and foreign bank accounts. DOJ's decision to move forward with the case was announced without any of the public twists and turns of the *Coburn* case. On June 5, 2025, one of the defendants entered into a plea agreement with the government. Trial of the remaining defendants is scheduled to begin on September 2, 2025.

DOJ similarly informed the court of its intention to proceed to trial in *United States v. Hobson*, No. 2:22-cr-00086 (W.D. Pa.). In that case, the government charged the former Vice President for Corsa Coal Corp. ("Corsa"), Charles Hobson, with orchestrating a scheme to bribe officials at Egypt's state-owned coke company to obtain lucrative contracts for Corsa. Specifically, the indictment alleges that Hobson funneled payments through intermediaries and offshore accounts, all the while receiving a portion of the commissions as kickbacks, to secure approximately $143 million in coal supply contracts for Corsa. Following the issuance of President Trump's Order, Hobson moved on February 20, 2025, for a six-month postponement of his trial, which was at that time scheduled for April 21, 2025. Hobson's motion cited the possibility that DOJ's review could materially affect his case and argued that, given the broader enforcement pause, it was reasonable to anticipate a reconsideration of the charges against Hobson. On March 4, 2025, the government responded by requesting time to complete its review pursuant to the Order. The Court granted Hobson's motion for a continuance on March 6 and scheduled a status conference for May 6, 2025. On April 11, 2025, however, the government notified the court that it had completed review under the Order and intended to proceed to trial. The court scheduled jury selection to begin on February 3, 2026.

Likewise, on April 9, 2025, DOJ informed the court in *United States v. Bautista et al*., No. 1:24-cr-20343 (S.D. Fla.) that it intends to proceed to trial. In that case, DOJ charged three executives with the voting machine company Smartmatic and the former Chairman of the Philippine Commission on Elections ("COMELEC") in connection with an alleged bribery and money laundering scheme. The indictment alleges that the executives caused at least $1 million in bribes to be paid to Juan Andres Donato Bautista, the former COMELEC Chairman, to obtain and retain voting machine and election services contracts during the 2016 Philippine elections. The indictment alleges Smartmatic overcharged COMELEC by $10–$50 per voting machine, then used the surplus funds to make payments to Bautista through a web of U.S. and non-U.S. bank accounts. Two of the defendants (including one U.S. citizen and one U.S. resident) are facing FCPA charges, and all defendants are facing money laundering charges. The case is currently slated for trial to begin on October 6, 2025.

In *United States v. Diallo*, No. 8:23-CR-00054 (C.D. Cal.), the Order has not played an overt role in the case's procedure, and trial is currently scheduled to begin on October 28, 2025. In that case, the defendant, Amadou Kane Diallo, is a Senegalese national and lawful permanent resident of the United States who is alleged to have defrauded investors of nearly $2 million intended for business opportunities in technology, health care, real estate, and services to the African diaspora. Instead of investing the money as the investors intended, Diallo allegedly used the money to fund his lavish lifestyle, which included purchasing a Rolls-Royce and a Ferrari. Diallo is further alleged to have used the funds to provide extravagant entertainment to Senegalese officials in an effort to obtain a land grant in Senegal. Diallo's alleged plan was to use the land as the basis for collateral to take out a loan. The alleged bribes include a helicopter ride to a Los Angeles Lakers game for one official and providing five vehicles to assist with another official's political campaign.

It is not clear what distinction exists between these cases and *Coburn* to account for DOJ's differing approach. Although the Order cited concerns with overly expansive FCPA enforcement harming U.S. competitiveness, three of the cases DOJ cleared to move forward involve U.S.

businesses and defendants, as did *Coburn*. Further, the alleged bribes in *Coburn, Zaglin, Hobson*, and *Bautista* were all monetary, whereas *Diallo* involves alleged non-monetary bribes of luxury travel and an official's personal use of vehicles. Given the lack of a clear defining principle underlying DOJ's decision to move forward with these cases, it may not be until the Attorney General issues new FCPA enforcement guidance that DOJ's policy towards prosecuting FCPA violations by individuals becomes clear.

Recent Developments in FCA Enforcement

Apart from changes under the new administration, the FCA continues to produce legal disputes and Circuit splits. So far this year, there has been a major U.S. Supreme Court decision that appears to extend the statute's reach, a brewing challenge to the constitutionality of the FCA's *qui tam* provisions, and signals of future enforcement in the context of a rapidly changing cybersecurity and international trade landscapes.

SCOTUS Extends FCA Liability to False Claims for Privately Managed Funds Provided by the Government

In *Wisconsin Bell, Inc. v. United States ex rel. Heath*, 145 S. Ct. 498 (2025), the Supreme Court determined that a reimbursement request for funds under the "E-Rate" program, a federal initiative to subsidize internet and telecommunications services for schools and libraries, qualifies as a "claim" under the FCA. This decision is notable because the funds covered by the E-Rate program are collected through mandatory contributions from telecommunications carriers and are administered by the Universal Service Administrative Company ("USAC"), a private entity overseen by the Federal Communications Commission ("FCC").

A relator sued Wisconsin Bell, Inc. ("Wisconsin Bell") on behalf of the United States claiming that Wisconsin Bell defrauded the E-Rate program by overcharging schools in violation of the FCC's "lowest corresponding price" rule. This rule requires carriers to charge schools no more than what they would charge similarly situated non-residential customers. The relator claimed that the over-charges led to inflated reimbursement requests submitted to the E-Rate fund, resulting in the program paying out more than it should have.

Wisconsin Bell moved to dismiss the suit, arguing that E-Rate reimbursement requests could not qualify as "claims" under the FCA because the E-Rate funds were not government funds. Instead, Wisconsin Bell argued, the funds were originally contributed by private telecommunications carriers and managed by a private corporation.

The Supreme Court disagreed, holding that the reimbursement requests qualified as "claims" under the FCA because the government provided at least a portion of the funds at issue from the U.S. Treasury to USAC. As defined in the FCA, the term "claim" includes any request for money that is to be used to advance a government program or interest and where the government "has provided any portion of the money" at issue. 31 U.S.C. § 3729(b)(2)(A)(ii)(I). Here, the government provided at least a portion of the money because federal agencies collected the funds from private companies and deposited them into the U.S. Treasury, then the government transferred the funds to USAC. The Court reasoned that this qualifies as "providing" a portion of the E-Rate funds, and therefore that the relator's case could survive a motion to dismiss. Rejecting Wisconsin Bell's counter argument that the government was a mere intermediary, the Court determined that the question of whether the government ever took ownership of the funds was not relevant—merely transmitting funds as an intermediary is enough.

This decision has the potential to expand the FCA's application to similarly structured programs.

District Court Finds the FCA's *Qui tam* Provision Unconstitutional, Queuing Up Appellate Fight

In September 2024, the U.S. District Court for the Middle District of Florida became the first court to hold that the *qui tam* provision of the FCA violates the Appointments Clause of Article II of the Constitution. The case, *United States ex rel. Zafirov v. Florida Medical Associates., LLC,* 751 F. Supp. 3d 1293 (M.D. Fla. 2024), is a *qui tam* suit alleging that a healthcare provider misrepresented patients' medical conditions to Medicare. After the government declined to intervene and prosecute the case, the defendant moved for judgment on the pleadings, arguing that the FCA's *qui tam* provision violates the Constitution's Appointments Clause, Take Care Clause, and Vesting Clause. The government then intervened to litigate the constitutional arguments. The district court found that by pursuing litigation to enforce the FCA, the relator was exercising a "core executive power," but was not properly appointed under the Appointments Clause of Article II in the Constitution. The court therefore dismissed the case.

The district court made three findings regarding the Appointments Clause argument: (1) a relator is an Officer of the United States; (2) historical examples of *qui tam* provisions do not exempt a relator from the Appointments

Clause; and (3) because the relator is not constitutionally appointed, dismissal was the only permissible remedy.

In determining that a relator is an Officer of the United States, the court explained that under the Appointments Clause, principal officers of the government must be nominated by the president and confirmed by the Senate. Inferior officers, who can be appointed by the president, the courts, or the heads of departments, are excepted from this general rule. On the other hand, government employees are not subject to the Appointments Clause. The court therefore considered whether a relator is an officer of the United States, and therefore subject to the Appointments Clause, or merely an employee.

The court looked to the Supreme Court's definition of an "officer" of the *United States in Buckley v. Valeo,* 424 U.S. 1 (1976), which encompasses those with "significant authority pursuant to the laws of the United States." The court found that FCA relators qualify as officers under that test due to the significant civil enforcement authority they exercise on behalf of the United States when pursuing *qui tam* litigation. Further, the court found that nothing in Article II distinguishes a relator, who is effectively self-appointed, from an inferior officer of the government, who is appointed by either the president, some other executive official, or the courts.

Although every appellate court which has considered the issue to date has upheld the constitutionality of the FCA's *qui tam* provision, Justices Thomas, Kavanaugh, and Barrett have suggested that the Court should review the constitutionality of the *qui tam* provision in a future case. In *Zafirov*, which is pending before the Eleventh Circuit as of this writing, the government has filed briefing in 2025 supporting the *qui tam* provision's constitutionality. Given that Trump administration officials, including the Attorney General, have committed to defending the FCA's *qui tam* provision, it is likely that DOJ will continue to defend the *qui tam* statute against constitutional challenges.

Regardless of how the Eleventh Circuit rules, it is likely that the litigants in *Zafirov* will ultimately seek the Supreme Court's review. This case is one to watch, given its potentially significant impact on FCA enforcement nationwide.

Cybersecurity Remains a Key FCA Risk Area

On March 26, 2025, DOJ announced a $4.6 million settlement in *United States ex rel. Berich v. MORSECORP Inc. et al.* over allegations that MORSECORP Inc. ("MORSE") failed to comply with cybersecurity requirements in various contracts with the Departments of the Army and Air Force in violation of the FCA. In the complaint, DOJ alleged that

MORSE knowingly submitted false or fraudulent payment claims that it was in compliance with Department of Defense ("DoD") cybersecurity measures set forth in the Defense Federal Acquisition Regulation Supplement ("DFARS") clauses 252.204-7008 and 252.204-7012. These clauses require DoD contractors and subcontractors to abide by certain cybersecurity requirements to safeguard sensitive government information. As *Berich* was originally filed as a *qui tam* action, the relator will receive an $851,000 share of the settlement amount.

Similarly, DOJ announced an $8.4 million settlement in *United States ex rel. Doe v. Raytheon Co. et al*. on May 1, 2025, to resolve similar alleged violations of the FCA related to cybersecurity noncompliance in Raytheon Company's ("Raytheon") contracts with DoD. Because this was also a *qui tam* lawsuit initially filed by a former employee of Raytheon, the whistleblower will receive approximately $1.5 million of the settlement.

FCA Enforcement is Likely to Increasingly Target Improper International Trade Practices

Given the Trump administration's expansive use of tariffs, the international trade landscape has changed dramatically in the past several months. Among the many other consequences of these developments is the increased FCA risk posed by tariff and customs obligations. Already in 2025, DOJ has resolved one and initiated another FCA case involving alleged duty evasion. These cases signal an emerging area for future FCA enforcement.

On March 25, 2025, DOJ announced a $8.1 million FCA settlement resolving *United States ex rel. Urban Global LLC v. Struxtur, Inc., et al.* The case centered on allegations that a flooring company had evaded customs duties by submitting false information to U.S. Customs and Border Protection ("CBP"). According to the government, the defendant submitted falsified documentation regarding the country of origin and identity of wood flooring manufacturers, allowing the company to improperly evade applicable antidumping, countervailing, and Section 301 duties.

The complaint premised FCA liability on 31 U.S.C. § 3729(a)(1)(G), which prohibits knowingly making or using a false statement or document material to a payment obligation to the government, as well as knowingly concealing or improperly avoiding a payment obligation to the government. While the FCA is typically thought of as prohibiting a person from *obtaining* money from the government by means of a false claim, this lesser-known provision proscribes what is known as "reverse false claims" liability by prohibiting the knowing use of false statements or documents to *avoid paying* money rightfully owed to the government.

Notably, the case originated from a *qui tam* lawsuit filed by a competitor under the FCA's whistleblower provision. Given that the FCA provides a bounty payment for relators, the defendant's competitor will receive approximately $1.2 million of the settlement proceeds.

In *United States ex rel. Lee v. Barco Uniforms Inc., et al.,* which was announced on April 18, 2025, the United States accused defendants of violating the FCA by underpaying customs duties on imported apparel, including uniforms sold to healthcare and food service workers.

According to the government's allegations, the defendants conspired to misrepresent the value of items purchased from their international suppliers, allowing the defendants to avoid or decrease the payment of customs duties owed to the United States. The complaint specifies that the defendants executed a double-invoicing scheme which involved submitting false entry summaries that under valued the products to CBP. This, in turn, effectively reduced the amount of duties that the defendants appeared to owe. The case also originated from a *qui tam* whistleblower complaint, this one filed by a former Barco employee.

Taken together, these cases show that DOJ is willing to leverage the FCA to further the President's trade agenda while also combating waste, fraud, and abuse. In the current international trade environment, this emerging enforcement area is likely to become a more prominent mainstay in FCA practice in the coming years.

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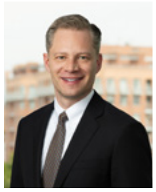

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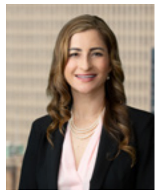

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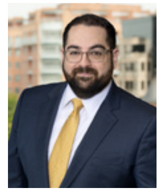

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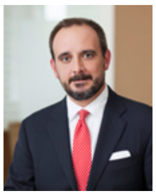

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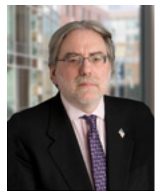

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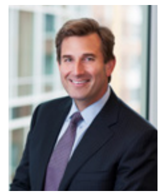

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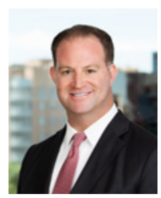

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