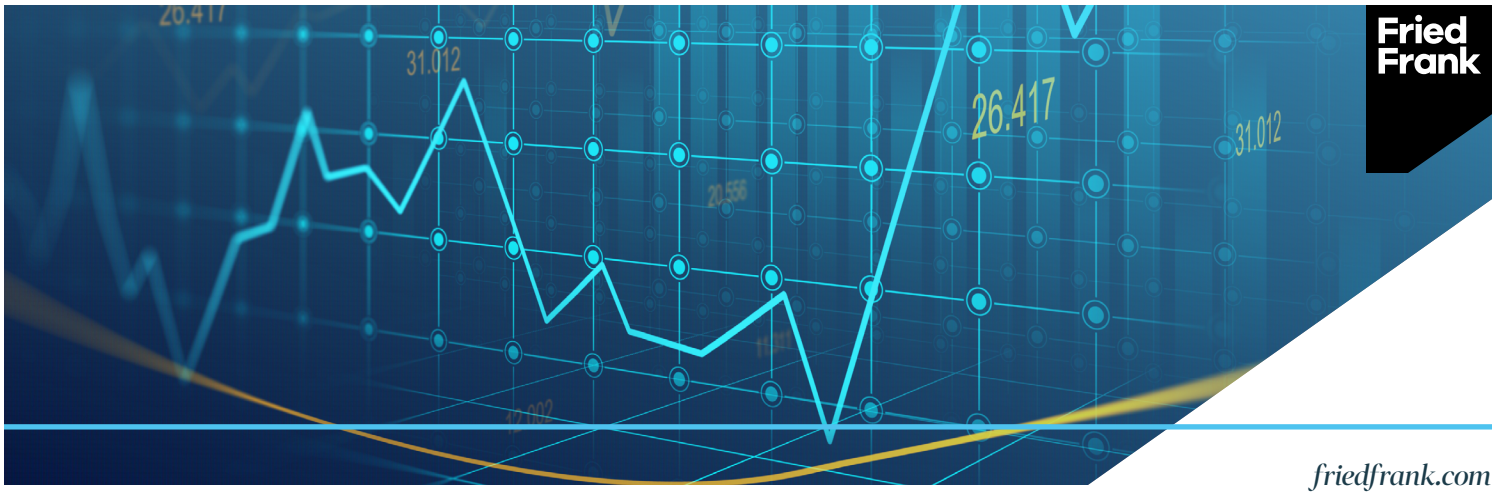

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Key Takeaways for Asset Managers: SEC Speaks 2025

In late May 2025, the SEC Commissioners and senior staff across the agency spent two days at "SEC Speaks" discussing the SEC's priorities under newly installed Chairman Paul Atkins, providing the first significant window into the new SEC. It is clear that this SEC plans to make substantial shifts, including granting retail investors greater access to private funds that could be a robust benefit to both investors and private fund advisers. Equally clear, however, is that while there has been some movement in SEC priorities away from compliance-only charges, the Divisions of Examinations and Enforcement will remain active, including continuing to pursue historical fee and expenses cases.

1) Look for Opportunities to Innovate in the Securities Markets

Chairman Atkins began SEC Speaks with a speech focusing on innovation, promising a "new day at the SEC."[1] While much of the remarks' particulars focused on crypto markets, Chairman Atkins highlighted various instances in the SEC's history when, in his view, the SEC fostered innovation with respect to all manner of market issues. Chairman Atkins' emphasis on the SEC's embrace of entrepreneurial approaches and technologies strongly suggests that he will be open to innovation beyond the crypto markets.

2) Engage in Constructive Dialogue with the SEC Staff

Throughout SEC Speaks, the Commissioners and the SEC staff emphasized their openness to dialogue and collaboration with the industry. The SEC staff highlighted recent and forthcoming guidance and rulemaking with reminders that the staff are open to questions and feedback from affected parties. For example, the Division of Corporation Finance suggested firms develop targeted questions for the SEC staff after discussing the issues with their outside counsel and auditors, and encouraged seeking no-action relief. The Division of Examinations also encouraged open dialogue and communications between the SEC staff and registrants throughout the exam stages.

KEY CONTACTS

Dabney O'Riordan
Partner, Washington, DC
Litigation, Asset Management
Dabney.ORiordan@friedfrank.com
T: +1.202.639.7299



Michael Sherman
Partner, Washington, DC
Asset Management
Michael.Sherman@friedfrank.com
T: +1.202.639.7451



Ilan Graff
Partner, New York
Litigation
Ilan.Graff@friedfrank.com
T: +1.212.859.8931



Although the prior SEC also invited conversations with the industry, the SEC's actions since January 20, 2025 suggest that such efforts to engage with the regulator will lead to more productive results. Recent helpful guidance that was based on reach outs includes (i) the March 12, 2025 no-action letter establishing a new method of verifying accredited investor status for funds relying on 506(c) of Regulation D[2] and (ii) updated and enhanced FAQs regarding performance reporting under the Marketing Rule.[3]

Now is the time to identify issues for which engagement with the SEC staff would be beneficial to your business or the industry. This could include an idea for a new product, or identifying a challenge an existing SEC rule or guidance poses to the industry.

3) Increase Retail Investor Access to Private Funds by Revisiting Limits on Who Can Invest in Closed-End Funds with Significant Private Funds Investments

Both Chairman Atkins and Division of Investment Management leadership specifically stated an intent to review prior limits the SEC staff had placed on who could invest in closed-end funds that were significantly invested in private funds. Since 2002, the SEC staff had taken the position that an unlisted closed-end fund investing in underlying private funds (meaning funds that would be investment companies but for the exceptions outlined in sections 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940, as amended) must either: 1) limit the private fund investments to 15% of its assets or 2) restrict sales of its own shares to investors that meet accredited investors requirements and impose a minimum initial investment requirement of $25,000 (the "2002 Limits"). The SEC will revisit the 2002 Limits in order to "increase investment opportunities for retail investors seeking to diversify their investment allocation in line with their investment time horizon and risk tolerance."[4]

Notably, Chairman Atkins stated that such increased access could be justified given "the increased oversight and enhanced reporting by both private fund advisers and registered funds."[5] Consistent with that framing, staff of the Division of Investment Management noted they would be attuned to disclosures regarding conflicts of interest, fees, and liquidity, and the Division of Enforcement multiple times noted they would continue to enforce the fiduciary duty under both the duty of loyalty and duty of care standards, as well as material failures to file required reports.

As the SEC revisits these issues, private fund advisers should consider how (if at all) they want to expand the pool of investors for their funds.

4) Continue Compliance Programs to Prevent Harm and Misuse of MNPI

As the SEC is seeking to expand retail investor access to alternative investments, private fund managers should keep in mind that harm, especially as it relates to retail investors or vulnerable populations, was a recurring theme at SEC Speaks. Additionally, as noted above, at least three speakers from the Division of Enforcement referenced continuing focus from the Division on an investment adviser's fiduciary duty, which will continue to be pursued under a negligence

standard. Relevant to asset managers, the following enforcement issues were emphasized by the staff:

- The Chief of the Asset Management Unit emphasized enforcing the fiduciary duty and harm, but also made a point of continuing to enforce certain rules even absent harm, including the Custody Rule and Section 204A's requirement to have reasonable policies and procedures to prevent the misuse of material non-public information.
- The Chief of the Market Abuse Unit revisited the long list of cases the SEC has previously brought alleging insider trading and cherry-picking, indicating such misconduct will continue to be a priority.[6]
- The Chief of the new Cyber and Emerging Technologies Unit will prioritize (i) the misuse of technology to commit fraud, (ii) false statements surrounding the use of emerging technologies (*e.g.*, artificial intelligence), and (iii) the use of malware and other devices for hacking to enable securities fraud.

Notably, there was no mention of the e-communications sweep or shadow trading that helped to characterize the Division under the prior SEC, and the focus on harm strongly indicates we are unlikely to see such cases or stand-alone compliance cases absent extreme instances of non-compliance or some other conduct resulting in harm. That said, the SEC staff was very clear that enforcement actions against investment advisers will continue.

5) Expect a More Robust Wells Process in Enforcement Investigations

The Commission staff emphasized its willingness to meet with registrants' representatives to usher in more productive conversations and a more robust Wells process. Staff was nevertheless clear that this attention to process will not open the door to multiple meetings with senior leadership.

FOOTNOTES

[1] Paul S. Atkins, Chairman, *Prepared Remarks Before SEC Speaks* (May 19, 2025).

[2] *See* Latham & Watkins LLP (March 12, 2025) no-action letter (allowing more efficient verification for investors whose commitments exceed certain dollar thresholds). On March 17, 2025, Fried Frank issued a Client Memorandum with our insights regarding the guidance and no-action letter: https://www.friedfrank.com/news-and-insights/sec-issues-helpful-guidance-regarding-verification-of-accredited-investor-status-for-private-offerings-relying-on-rule-506-c-12318.

[3] On March 21, 2025, Fried Frank issued a Client Memorandum with our insights regarding the updated FAQs: https://www.friedfrank.com/news-and-insights/updated-sec-marketing-rule-faqs-ease-adviser-presentation-of-extracted-performance-and-certain-characteristics-12331.

[4] Paul S. Atkins, Chairman, *Prepared Remarks Before SEC Speaks* (May 19, 2025).

[5] *Id*.

[6] The SEC frequently uses data analytics to identify potential insider trading, and the Consolidated Audit Trail ("CAT") was anticipated to be a huge repository for the SEC to conduct such analysis. During his opening speech, however, Chairman Atkins said that he has "instructed the staff to undertake a comprehensive review of the CAT" to examine not only cost, but also the scope of the data that is reported and collected, thus indicating that changes to the CAT are likely.

Attorney advertising. Prior results do not guarantee a similar outcome.