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INTO THE BREACH: STATE REGULATORS, PRIVATE LITIGANTS, AND SECURITIES ENFORCEMENT

As federal enforcement priorities shift, actions brought by state authorities and private litigants continue to serve as significant enforcement mechanisms within the financial markets. History demonstrates that these alternative actors can impose substantial costs and risks on market participants. This article examines how these other enforcement actors have historically responded to perceived federal gaps, and highlights key risks and strategic considerations for companies and counsel operating in today's evolving regulatory environment.

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With the Trump administration having committed to substantially cutting federal regulations and concentrating on enforcement priorities other than white-collar crime, state securities regulators and private litigants are likely to step into the breach, as they have in the past. Experience suggests that these alternative enforcement mechanisms can bring similar, and sometimes greater, costs for the securities industry. Accordingly, the industry must remain alert to risks from state and private enforcement actions.

I. STATE SECURITIES REGULATORS AND THEIR AUTHORITY

Although securities regulation is typically viewed as the province of the federal government, state securities regulation predates the core federal securities laws enacted in 1933 and thereafter. Consistent with their longstanding regulatory mandate, states have historically stepped in to fill real or perceived federal enforcement gaps. Aggressive state securities enforcement under New York Attorney General ("NYAG") Eliot Spitzer and the example his approach set for subsequent Attorneys General illustrates how state securities regulators across the country may deploy their long-standing enforcement authorities in the coming years.

A. Who Are State Securities Regulators

State securities laws are generally enforced through state Attorneys General, though some states have administrative departments dedicated to regulating securities.[1] The majority of states, including New York, Massachusetts, California, Texas, and Oregon, have popularly elected and directly politically accountable

[1] Andrew K. Jennings, *State Securities Enforcement*, 47 B.Y.U. L. REV. 67, 85 (2021).

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INSIDE THIS ISSUE

● ***HISTORICAL SHAREHOLDER ENGAGEMENT PRACTICES UNDER MICROSCOPE DUE TO MID-PROXY SEASON GUIDANCE FROM SEC, Page 157***

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state Attorneys General.[2] State securities regulators often cooperate with one another to share information, coordinate filings with sister states planning to bring cases against the same defendants, or form multi-state coalitions.[3]

State securities regulators not only receive referrals from sister state agencies, but also from federal counterparts, particularly the SEC. State enforcers report receiving federal referrals related to intrastate conduct that falls under monetary thresholds that would motivate the SEC or a U.S. Attorney's office to keep the case.[4] State enforcers are generally seen as more willing than their federal counterparts to respond to violations of their respective state laws that may be viewed as comparatively small in scale or scope.[5] The inverse is not true: State securities regulators have repeatedly demonstrated that they are willing to target major players when alleged misconduct treads into their jurisdiction,[6] and elected Attorneys General often have discrete political incentives to take on high-profile market participants.

B. Sources of State Authority to Pursue Securities Enforcement

State securities regulators have enforcement authority under their respective securities laws — often referred to as "**Blue Sky" laws.** Blue Sky laws are state-level regulations that govern the offer and sale of securities to protect investors from fraud. All 50 states, along with the District of Columbia and some U.S. territories, have enacted Blue Sky laws, most of which codify the Uniform Securities Act in whole or in part.[7] Despite differences between and among states' Blue Sky laws, all generally serve the same core purpose: to prevent unscrupulous practices and ensure transparency in the market.[8]

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[2] *Attorney General Office Characteristics*, NAT'L ASS'N OF ATT'YS GEN., https://www.naag.org/news-resources/research-data/attorney-general-office-characteristics/ (last visited Apr. 22, 2025).

[3] UNIF. SECURITIES ACT 2002 § 608 (instructing state regulators to "cooperate, coordinate, consult, and subject to [data-protection constraints], share records and information with the securities regulator[s]" of other states).

[4] Jennings, at 104.

[5] *Id*. at 127.

[6] *See, e.g.,* Jonathan Stempel, *Vanguard to pay millions to mutual fund investors hit with big tax bills*, REUTERS (July 6, 2022), https://www.reuters.com/legal/transactional/vanguard-pay-millions-mutual-fund-investors-hit-with-big-tax-bills-2022-07-06/; Press Release, Ala. Sec. Comm'n, Alabama Securities Commission Reaches Settlement with LPL Financial Firm Agrees to Return Alabama Investors' Money for Inappropriate Real Estate Investment Sales (May 17, 2016), https://asc.alabama.gov/wp-content/uploads/2023/11/5-17-2016-Firm-Agrees-to-Return-Money.pdf.

[7] 14 U.S. Sec. Law for Financial Trans. *State blue sky laws* § 2:4 (2d ed.).

[8] In addition to Blue Sky laws, state regulators and Attorneys General have brought securities enforcement actions under a variety of state laws, including state consumer protection statutes, common law fraud and fiduciary duties, or other state business tort statutes. *See, e.g.,* Press Release, Pa. Off. of Att'y Gen., Attorney General Shapiro Announces $575 Million 50-State Settlement with Wells Fargo Bank for Opening Unauthorized Accounts and Charging Consumers for Unnecessary Auto Insurance, Mortgage Fees (Dec. 28, 2018), https://www.attorneygeneral.gov/taking-action/attorney-general-shapiro-announces-575-million-50-state-settlement-with-wells-fargo-bank-for-opening-unauthorized-accounts-and-charging-consumers-for-unnecessary-auto-insurance-mortgage-fees/ (announcing settlement with Wells Fargo over alleged violations of state consumer protection laws); Caitlin McCabe, *Massachusetts Regulators File Complaint Against Robinhood*, WALL ST. J. (Dec. 16, 2020), https://www.wsj.com/finance/regulation/massachusetts-regulators-to-file-complaint-against-robinhood-11608120003 (announcing case against Robinhood over alleged violations of state fiduciary duty rule); Letter from Leslie Brock, Assistant Att'y Gen. Chief, Pub. Fin. Div., Tex. Att'y Gen., to All Bond Counsel (Oct. 17, 2023), https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/public-finance/ABC%20Letter%20Draft%20Net%20Zero%20Alliance%2010.17.23.pdf (announcing Texas Attorney General investigation of large financial institutions' compliance with Texas' anti-ESG law). As a consequence of

Most state Blue Sky laws are broadly written, and civil liability can apply to nearly everyone involved in an offending securities transaction within the state.[9] This generally encompasses not only the buyer and securities owner, but also secondary actors who do not directly commit violations, but may provide substantial assistance to offending conduct.[10] In other words, an entity does not need to be incorporated or have its principal place of business within a state in order to fall within the ambit of that state's Blue Sky law.

New York's Blue Sky law, the Martin Act,[11] enacted in 1921, is one of the most formidable tools available to any state regulator in the United States. The Martin Act grants the NYAG extensive powers to investigate and combat not only fraudulent practices related to securities and commodities, but also various types of financial and business misconduct.[12] The Martin Act offers variations on many of the investigative and remedial tools on which the SEC relies. It provides the NYAG investigative power, criminal enforcement authority, and standing to seek civil injunctive remedies. For example, the Martin Act:

- does not require scienter to prosecute either a civil or criminal misdemeanor charge;[13]
- empowers the NYAG to assert a claim for restitution on behalf of defrauded investors;[14]
- allows the NYAG to obtain search warrants under its criminal prosecution authority;[15]
- enables the NYAG to undertake confidential investigations in which the NYAG can subpoena witnesses and documents, compel attendance, and examine witnesses under oath, either in private or before a magistrate;[16] and
- grants the NYAG unilateral authority to commence a special proceeding in the Supreme Court.[17]

Investigations under the Martin Act are highly confidential. Inquiry participants are prohibited from disclosing information obtained during the investigation, except as directed by the NYAG.[18] However, the NYAG may disclose information about the investigation to the public as appropriate, threatening what some have called "trial by press release."[19]

C. A Retrospective from NYAG Eliot Spitzer's Tenure as the "Sheriff of Wall Street"

In the early 2000s, critics assailed the SEC for what they claimed was its sluggish and passive response to major corporate abuses. During that time, high-profile corporate frauds — like the Enron and WorldCom scandals — exposed massive accounting irregularities and misleading financial disclosures. Although Congress subsequently appropriated additional resources to the SEC[20] and passed major reforms, like the Sarbanes-Oxley Act of 2002, the enforcement gap provided an opening for the then-NYAG Eliot Spitzer to wield an unprecedented degree of state regulatory authority over the securities industry.

Embracing his role as the "Sheriff of Wall Street,"[21] Spitzer criticized what he (and many others) perceived

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the varying laws and political incentives, firms may also have to deal with inconsistent laws across multiple states.

[9] 12A Blue Sky Law *Generally* § 9:55.

[10] 12A Blue Sky Law *Secondary Liability Under States' Securities Laws* § 9:65; *see, e.g.,* Mass. Gen. Laws Ann. ch. 110A, § 410; Cal. Corp. Code § 25504; N.J. Stat. Ann. § 49:3-71.

[11] N.Y. Gen. Bus. Law §§ 352, 352-c, 353.

[12] Richard A. Epstein, *Regulatory Enforcement Under New York's Martin Act: From Financial Fraud to Global Warming*, 14 N.Y.U. J. L. & BUS. 805, 806 (2018).

[13] Gen. Bus. Law § 352-c(1). Felony charges under the Martin Act, Gen. Bus. Law § 352-c(5) and (6) require intent to defraud. *See also People v. Federated Radio Corp.*, 244 N.Y. 33, 41 (1926) (ruling that "lack of scienter will not relieve [a defendant] from liability in actions brought under the Martin Act").

[14] N.Y. Gen. Bus. Law § 353(3).

[15] N.Y. Gen. Bus. Law § 358.

[16] N.Y. Gen. Bus. Law § 352.

[17] N.Y. Gen. Bus. Law § 354.

[18] N.Y. Gen. Bus. Law § 352(5).

[19] Alan Reynolds, *Trial by Press Release*, CATO INST. (Mar. 6, 2025), https://www.cato.org/commentary/trial-press-release.

[20] Jonathan R. Macey, *State-Federal Relations Post-Eliot Spitzer*, 70 BROOK. L. REV. 117, 119-23 (2004) (cataloging the increases in the SEC's operating budget after 2002).

[21] Rebecca Leung, *The Sheriff of Wall Street*, CBS NEWS (May 23, 2003), https://www.cbsnews.com/news/the-sheriff-of-wall-street/.

as the SEC's failure to detect and act upon abuses in the financial industry and used his enforcement authority under the Martin Act to fill the perceived gap.[22] The enormous power afforded to the NYAG under the Martin Act, in conjunction with the office's jurisdictional access to Wall Street, made him a commanding force against some of the country's largest investment firms and brokerage houses.

For example, in 2001, NYAG Spitzer launched an investigation into Merrill Lynch focusing on allegations that the firm had engaged in conflict-of-interest practices by issuing overly positive stock ratings and biased research reports to promote investment banking business, rather than providing independent advice to investors.[23] In April 2002, Spitzer publicly announced the findings of the NYAG investigation, and one month later Merrill Lynch agreed to settle for $100 million.[24] The settlement was among the largest financial penalties paid by a securities firm to that point.[25] Similar investigations into whether nearly a dozen of the nation's largest brokerage firms issued misleading stock recommendations and improperly allocated IPO shares yielded a $1 billion settlement.[26]

Since Spitzer's tenure, NYAGs have routinely used their post to investigate securities abuses and levy heavy financial penalties on major financial players. For example, in 2008, then-NYAG Andrew Cuomo recovered billions from major banks through its auction rate securities probe.[27] More recently, NYAG Letitia James, in coordination with sister state regulators, has targeted new financial products and actors like cryptocurrency and crypto exchanges.[28]

The NYAG is a trailblazer, but not an anomaly — other states have also pushed ahead of the SEC when they perceived enforcement gaps. For example, in recent years, Massachusetts initiated an investigation into the target-date retirements funds of five major asset-management companies,[29] which resulted in a major settlement from Vanguard years ahead of the SEC's related probe (which was later followed by settlements with U.S. states and territories).[30] Earlier this year, after the SEC voluntarily dismissed with prejudice numerous enforcement actions relating to the sale and trading of

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[22] Riva D. Atlas, *Spitzer Vows Legal Action Against Head of Fund Family*, *N.Y. TIMES* (Oct. 30, 2003), https://www.nytimes.com/2003/10/30/business/spitzer-vows-legal-action-against-head-of-fund-family.html.

[23] Patrick McGeehan, *Merrill Lynch Under Attack As Giving Out Tainted Advice*, N.Y. TIMES (April 9, 2002), https://www.nytimes.com/2002/04/09/business/merrill-lynch-under-attack-as-giving-out-tainted-advice.html.

[24] Patrick McGeehan, *$100 Million Fine for Merrill Lynch*, N.Y. TIMES (May 22, 2002), https://www.nytimes.com/2002/05/22/business/100-million-fine-for-merrill-lynch.html.

[25] *Id*.

[26] Gretchen Morgenson and Patrick McGeehan, *Corporate Conduct: The Overview; Wall Street Firms Are Ready To Pay $1 Billion In Fines*, N.Y. TIMES (Dec. 20, 2002), https://www.nytimes.com/2002/12/20/business/corporate-conduct-overview-wall-street-firms-are-ready-pay-1-billion-fines.html.

[27] Carl Gutierrez, *Cuomo's ARS Probe Goes Full Blast*, FORBES (Aug. 15, 2008), https://www.forbes.com/2008/08/15/

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wachovia-cuomo-update-marekts-equity-cx_cg_0815markets26.html.

[28] *See, e.g.,* Press Release, Off. of the N.Y. State Att'y Gen., Attorney General James Secures More Than $22 Million from Cryptocurrency Platform for Operating Illegally (Dec. 12, 2023), https://ag.ny.gov/press-release/2023/attorney-general-james-secures-more-22-million-cryptocurrency-platform-operating; Press Release, Off. of the N.Y. State Att'y Gen., Attorney General James Secures $4.3 Million from Cryptocurrency Company for Defrauding Investors (May 18, 2023), https://ag.ny.gov/press-release/2023/attorney-general-james-secures-43-million-cryptocurrency-company-defrauding; Kate Rooney, *State regulators launch 'Operation Crypto-Sweep' to police cryptocurrency investment schemes*, CNBC (May 21, 2018), https://www.cnbc.com/2018/05/21/state-regulators-crack-down-on-cryptocurrency-investment-schemes.html.

[29] Talal Ansari, *Massachusetts Investigates Potential Target-Date Funds Tax Issue*, WALL ST. J. (Jan. 25, 2022), https://www.wsj.com/finance/investing/massachusetts-investigates-potential-target-date-funds-tax-issue-11643145644?mod=article_inline.

[30] Jonathan Stempel, *Vanguard to pay millions to mutual fund investors hit with big tax bills*, REUTERS (July 6, 2022), https://www.reuters.com/legal/transactional/vanguard-pay-millions-mutual-fund-investors-hit-with-big-tax-bills-2022-07-06/; Press Release, U.S. Sec. and Exch. Comm'n, Vanguard to Pay More Than $100 Million to Resolve Violations Related to Target Date Retirement Funds (Jan. 17, 2025), https://www.sec.gov/newsroom/press-releases/2025-21; Press Release, N. Amer. Sec. Adm'r Ass'n, NASAA Announces $106 Million Multi-State Settlement with Vanguard (Jan. 17, 2025), https://www.nasaa.org/74734/nasaa-announces-106-million-multi-state-settlement-with-vanguard/?qoid=newsroom.

digital assets,[31] the Oregon State Attorney General filed suit against Coinbase and called for sister state securities regulators to also step into the "enforcement vacuum being left by federal regulators who are abandoning these cases"; notably, federal regulators dropped their lawsuit against Coinbase weeks earlier.[32]

II. PRIVATE FEDERAL SECURITIES LITIGATION AS AN ENFORCEMENT MECHANISM

Historically, private litigants can and have filled gaps in federal enforcement regimes by exercising private rights under the federal securities laws. A look back at private federal securities litigation stemming from the 2008 financial crisis illustrates how such litigation may help advance a private enforcement regime absent robust federal securities enforcement.

A. Sources of Private Civil Liability for Defendants Under Federal Securities Law

The two primary sources of civil liability under the federal securities laws are the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act").[33] The Securities Act generally ensures transparency in financial statements and works to prevent fraud in the sale and offering of securities, and the Exchange Act regulates the trading of securities post-issuance and attempts to ensure market fairness by, for example, mandating ongoing reporting obligations for public companies. The two acts comprise the core of federal securities law and, among other things, enable private litigants to bring securities claims when they feel that a company has misled or defrauded them.

Private plaintiffs are generally limited to pursuing a substantially narrower set of claims than the SEC.[34] Litigants bringing an action under the Securities Act typically bring claims under: (1) Section 11, focusing on misstatements or omissions in a registration statement; (2) Section 12(a)(1), covering improper offerings; (3) Section 12(a)(2), prohibiting false or misleading prospectus or oral statements; and (4) Section 15, governing control person liability. Comparatively, litigants bringing claims under the Exchange Act — typically in the form of class actions — bring claims under: (1) Section 20(a), which allows investors to sue control persons; and (2) Section 10(b) — through the SEC's implementing regulation, Rule10b-5 — covering intentionally false or misleading statements, and manipulative practices that affect the price of a security. Because of its broad applicability, Section 10(b) functions as a catch-all antifraud provision and is most often invoked by litigants seeking to sue under the Exchange Act.[35]

The foregoing is a general primer on the foundational laws under which private litigants typically sue.[36] These two complementary laws form the basis for litigants to attempt to hold companies and insiders accountable for

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[31] Press Release, U.S. Sec. and Exch. Comm'n, SEC Announces Dismissal of Civil Enforcement Action Against Coinbase (Feb. 27, 2025), https://www.sec.gov/newsroom/press-releases/2025-47; Aislinn Keely, *SEC Dismisses Kraken, Consensys, Cumberland Crypto Suits*, LAW360 (Mar. 28, 2025), https://www.law360.com/articles/2317295/sec-dismisses-kraken-consensys-cumberland-crypto-suits.

[32] Press Release, Or. Dep't of Just., Oregon Attorney General Rayfield Sues Coinbase for Promoting and Selling High-Risk Investments (Apr. 18, 2025), https://www.doj.state.or.us/media-home/news-media-releases/oregon-attorney-general-rayfield-sues-coinbase-for-promoting-and-selling-high-risk-investments/.

[33] There is also a narrow private right of action for rescission under the Investment Advisers Act of 1940 ("IAA"). The IAA does not have a broad private right of action — like the Securities or Exchange Acts — but § 215(b) provides that a client can seek the limited remedy of rescission if an advisory contract violates the IAA. *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 24 (1979). The scope of that right has not yet been fully adjudicated. *See, e.g.*, *Nexpoint Diversified Real Estate Trust v. Acis Capital Management, L.P.*, 620 F.Supp.3d 36, 45 (S.D.N.Y. Aug. 9, 2022) (analyzing permissible Section 215 claims and whether a Section 215 claim may be premised upon a violation of any provision of the IAA).

[34] Private actions are also subject to the Private Securities Litigation Reform Act ("PSLRA"), which includes heightened pleading standards (e.g., particularity in alleging scienter and misstatements). *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308 (2007).

[35] Joseph A. Grundfest, *Damages and Reliance Under Section 10(b) of the Exchange Act*, Rock Ctr. for Corporate Governance Working Paper Series No. 150, 3–4 (Aug. 28, 2013), https://securities.stanford.edu/academic-articles/20131202-damages-and-reliance-under-section-10b-of-the-exchange-act.pdf.

[36] Such actions necessarily require more to impose liability. The basic elements of a private securities fraud action are (1) a material misrepresentation or omission; (2) scienter; (3) a connection with the purchase or sale of a security; (4) reliance; (5) causation; and (6) loss causation. *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336, 341 (2005).

fraud, misrepresentation, or other wrongdoing. In practice, many such suits were filed after the 2008 financial crisis with investors suing banks, mortgage lenders, rating agencies, and public companies that were alleged to have played a role in the crisis.

B. A Retrospective from the 2008 Financial Crisis

Following the 2008 financial crisis, there was a widespread perception that the federal government had failed to adequately pursue prosecutions of financial institutions and the individuals who contributed to the crisis.[37] Even civil actions by the government were perceived to be limited, as demonstrated by public response to an SEC guideline in 2009 to exhibit caution when "pushing for hefty penalties from banks that had received bailout money."[38]

Despite — or perhaps because of — the perceived gap in federal enforcement in investigating and prosecuting Wall Street's role in the crisis, shareholders (and the plaintiffs' bar) played an outsized role in litigating the crisis's fallout.[39] Many of these disputes emerged as securities class action lawsuits targeting the financial institutions that originated the mortgages later bundled into toxic assets.[40] Other cases focused on insurers and similar entities that played a role in facilitating the packaging and sale of these risky products.[41] Shareholders also took legal action, with some notable success, against large financial institutions.[42] Additionally, several pension plan beneficiaries sued their financial employers, alleging reckless investments in company stock.[43]

The volume of lawsuits underscores that even absent federal enforcement, entrepreneurial plaintiffs will seek out ways to pursue accountability for perceived wrongdoing. For example, asset-backed securities and mortgage-backed securities inspired more lawsuits than any other financial product implicated in the crisis.[44] In one such action against Countrywide Financial, investors sued under Sections 11 and 12(a)(2) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b(5) promulgated thereunder, generally alleging that the securities they bought — such as mortgage-backed securities — were misrepresented as safe when in actuality they contained toxic subprime mortgages. Investors further argued that the offering documents understated the risk associated with such securities or falsely claimed high underwriting standards.[45] Ultimately, the action settled for $624 million.[46]

A starker example could be seen in litigation with Bank of America in the aftermath of the financial crisis. Following its acquisition of Merrill Lynch, Bank of America faced multiple lawsuits and settlements related to the Merrill Lynch deal and its pre-existing issues.[47] A group of state and foreign pension funds sued, alleging that Bank of America misrepresented the financial health of both institutions during the merger process, leading to substantial losses when the true extent of Merrill's financial trouble became apparent.[48] These allegations

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[37] Matthew Goldstein & Ben Protess, *A Clue to the Scarcity of Financial Crisis Prosecutions*, *N.Y. Times* (July 22, 2016), https://www.nytimes.com/2016/07/22/business/dealbook/a-clue-to-the-scarcity-of-financial-crisis-prosecutions.html.

[38] This guideline purportedly arose out of agency concerns about shareholder money effectively being used to pay for settlements. Peter Lattman, *U.S. Widens Probe of Mortgage Fraud*, N.Y. Times (Apr. 14, 2011), https://www.nytimes.com/2011/04/14/business/14prosecute.html.

[39] Noam Stoked, *Credit Crisis Litigation Update: It Is Settlement Time*, Harvard Law School Forum on Corporate Governance (Nov. 30, 2013), https://corpgov.law.harvard.edu/2013/11/30/credit-crisis-litigation-update-it-is-settlement-time/ [hereinafter Credit Crisis Settlement Report].

[40] Andrew Tuch, *Subprime-Related Securities Litigation: Early Trends*, Harvard Law School Forum on Corporate Governance (Apr. 5, 2009), https://corpgov.law.harvard.edu/2009/04/05/subprime-related-securities-litigation-early-trends/.

[41] *Id.*

[42] *Id.*

[43] *Fifth Third Bancorp v. Dudenhoeffer,* 573 U.S. 409 (2014).

[44] Credit Crisis Settlement Report.

[45] *Countrywide Financial Corporation Securities Litigation*, Securities Class Action Clearinghouse (last visited Apr. 22, 2025), https://securities.stanford.edu/filings-case.html?id=103804; *see also* Second Consolidated Amended Class Action Complaint, *In re Countrywide Financial Corporation Securities Litigation* (C.D. Cal. Jan. 6, 2009) (CV 07-05295 MRP (Manx)).

[46] *Countrywide Financial Corporation Securities Litigation*, Securities Class Action Clearinghouse (last visited Apr. 22, 2025), https://securities.stanford.edu/filings-case.html?id=103804.

[47] *Id.*

[48] Consolidated Second Amended Class Action Complaint, *In re Bank of America Corp. Securities, Derivative, And Employee Retirement Income Security Act (ERISA) Litigation* (S.D.N.Y. Oct. 22, 2010) (No. 09 MDL 2058 (PKC)).

were brought under, among other statutes, Sections 11, 12(a)(2), and 15 of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b(5) promulgated thereunder.[49] In fall 2012, Bank of America agreed to pay $2.43 billion to settle the alleged federal securities law violations, the largest settlement of its kind up to that date stemming from the crisis.[50]

The wide array of private civil actions during this period imposed substantial costs on financial institutions. The total amount of settlements in the shareholder class action arena alone amounted to over twenty percent of the total settlement value in credit crisis litigation from January 2007 to October 2013.[51] In other words, vigorous private litigation has proven a costly point of exposure for firms that successfully avoided federal enforcement.

III. CONCLUSION

If the current administration follows through on its commitment to scale back federal securities enforcement activity in certain areas, state regulators and private litigants are poised to step into the breach, as they have done before. Market participants should remain vigilant in their compliance efforts, recognizing that exposure to state-level investigations and private securities litigation remains a significant risk. The winds of federal enforcement can also shift swiftly — whether in response to market events or a change in administration — and given the SEC's five-year statute of limitations for most claims, conduct today may still face federal scrutiny in the years ahead. ■

[49] *Id.*

[50] Jessica Silver-Greenberg & Susanne Craig, *Bank of America Settles Suit Over Merrill for $2.43 Billion*, N.Y. TIMES (Sep. 28, 2012), http://archive.nytimes.com/dealbook.nytimes.com/2012/09/28/bank-of-america-to-pay-2-43-billion-to-settle-class-action-over-merrill-deal/.

[51] Credit Crisis Settlement Report.