



**Written Submission of Benjamin Schiffrin, Director of Securities Policy, Better Markets
Before The Capital Markets Subcommittee of the U.S. House Financial Services Committee
“A New Day at the SEC: Restoring Accountability, Due Process, and Public Confidence”
Wednesday, February 4, 2026, 2:00PM ET**

Good afternoon, Chairman Wagner, Ranking Member Sherman, and Members of the Subcommittee. Thank you for the invitation to testify today. My name is Benjamin Schiffrin, and I am the Director of Securities Policy at Better Markets, Inc., a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support financial reforms of Wall Street, and make the financial system work for all Americans.

I. Introduction

For 90 years, since its creation in 1934, the mission of the Securities and Exchange Commission (SEC) was to protect investors. But in 2025, under current SEC Chair Paul Atkins, the SEC’s mission changed. The SEC now exists to protect the financial industry. Chair Atkins may be ushering in a new day at the SEC, but he is not returning the SEC to its roots. Chair Atkins is turning his back on the SEC’s historic mission of investor protection.

The SEC has spent the last year curtailing the rights of investors in public companies, endorsing the sale of risky and expensive private market assets to retail investors, promoting the crypto industry relentlessly, reducing enforcement to its lowest levels in a decade, dismantling the database it uses to catch crooks, and revisiting, delaying, or abandoning rules to protect investors. These actions have profound consequences for investors, markets, and our economy.

The SEC’s determination to prioritize the interests of corporate management, private funds, and crypto companies comes at the cost of investor protection. With respect to public companies, the SEC has fundamentally altered the relationship between public companies and shareholders. The SEC has curtailed the ability of investors to have a say in how companies are run. It has also made it harder for those investors to seek redress for corporate misconduct. And the SEC is poised to significantly reduce the information investors receive about the companies they own. As a result, the SEC should now stand for the Shareholder Exploitation Commission.

This transformation of the SEC’s priorities will hurt all investors. The SEC is not simply retreating from certain policy preferences such as climate or DEI disclosures; instead, it has launched a broad-based attack on investor disclosures, rights, and remedies. This attack will prevent investors—especially institutional investors that are focused on fundamental financial matters—from having a say in how the companies they own are run, from holding the companies

they own accountable when they harm investors, and from receiving all material information about these companies so they can make informed investment decisions. State and local pension funds, private retirement funds, and even individual retirement accounts are all going to suffer as they get less disclosure, less protection, and fewer remedies and chances to recover losses.

At the same time as the SEC is making it harder to be an investor in public companies, it is making it easier for private market firms and crypto companies to peddle their products to retail investors. Private market assets have long been considered risky for retail investors because they lack the disclosures that accompany publicly offered securities. As a result, private market firms traditionally have been limited to selling their securities only to so-called “accredited investors” who are able to “fend for themselves” by conducting their own due diligence and who can bear the risk of loss from these riskier, more opaque, and more expensive securities. Even these investors, who are usually institutions or high-net worth individuals, complain about the lack of transparency in the private markets. Under the guise of “democratizing” access to these securities, the SEC is trying to steer retail investors into the private markets at the same time as institutional investors are pulling back from assets that offer greater risk and lesser returns.

The SEC’s relentless promotion of the crypto industry poses even greater danger for retail investors. Crypto remains a highly volatile asset that has no proven utility. Despite being called cryptocurrency, it is not used as money. Instead, to the extent it is used lawfully, it is used for speculation. This leads to massive losses when investors flee for safer assets. The fact that the crypto industry is rife with fraud, scams, and abuses also leads to massive losses. Yet the SEC has abandoned enforcement efforts to protect investors from the risks that crypto poses. Unfortunately, the SEC’s decision to reduce its enforcement efforts has extended beyond crypto, as in 2025 the SEC brought its fewest enforcement cases in a decade.

These actions will not only hurt investors but will also harm our markets and our economy. Our capital markets are the envy of the world, but that is because they are well regulated and well policed. Investors have faith and confidence in them. This has been our competitive advantage for almost a century and has drawn trillions of dollars worldwide into U.S. markets. That will change as the SEC retreats from protecting investors and enforcing the law to exploiting investors and protecting the industry. As investors’ rights and protections are stripped away, investors will look elsewhere to invest their money. That will hurt the economy because there will be less money invested in the U.S., leading to fewer businesses and jobs. So under this SEC, Wall Street and management win, but investors, markets and our economy lose.

II. The SEC now exists to protect corporate management and not everyday investors.

A. The SEC has made it harder for investors to have a say in how public companies are run, even though they are the owners of these companies.

The SEC’s shift from protecting investors to protecting the financial industry and corporate management is most evident in the actions it has taken with respect to public company

investors. The SEC spent the last year making it harder for shareholders—the ultimate owners of a public company—to have a say in how the companies they own should be run.¹ The SEC has:

- Made it easier for companies to obtain a letter from the SEC saying the agency will not object if a company chooses to exclude a shareholder proposal from its proxy materials.²
- Rescinded guidance that made it harder for companies to exclude shareholder proposals.³
- Issued guidance that prevents investors from engaging with companies on critical issues such as executive compensation without triggering restrictive disclosure requirements.⁴

Unfortunately but unsurprisingly, the assault on investors that the SEC began in 2025 has continued in 2026. Two weeks ago, the SEC said it would now oppose the publication of investor communications designed to influence corporate management unless they are filed by shareholders with at least \$5 million of the company’s stock.⁵ Shareholder groups from across the political spectrum blasted the move.⁶ Yet the SEC said it made the change at the behest of corporations, putting it squarely on the side of corporate management and not small investors.⁷

These changes are particularly pernicious because the SEC adopted them without input from the public. Although Republican SEC Commissioners and industry groups complained about 30- or 45-day comment periods for proposed rules under former Chair Gary Gensler,⁸ the SEC under Chair Atkins has proceeded without any public input at all, much less the notice-and-comment rulemaking that the Administrative Procedure Act requires. Courts have held 30-day comment periods to comply with the APA.⁹ The SEC under Chair Atkins has provided no legal justification for its failure to seek public input entirely. Yet this failure to seek public input enables the SEC to take the actions so obviously detrimental to investors in public companies.

¹ See Benjamin Schiffrin, *The SEC is Now the Shareholder Exploitation Commission*, Better Markets (Dec. 18, 2025), <https://bettermarkets.org/wp-content/uploads/2025/12/SEC-2025-Review-Fact-Sheet-12.18.25.pdf>.

² See Commissioner Caroline A. Crenshaw, *Statement on Division of Corporate Finance’s Announcement on the 14a-8 Process* (Nov. 17, 2025), <https://www.sec.gov/newsroom/speeches-statements/crenshaw-statement-division-corp-fins-announcement-14a-8-process-111725>.

³ See Division of Corporation Finance, SEC, *Shareholder Proposals: Staff Legal Bulletin No. 14M* (Feb. 12, 2025), <https://www.sec.gov/about/shareholder-proposals-staff-legal-bulletin-no-14m-cf>.

⁴ See *Exchange Act Sections 13(d) and 13(g) and Regulation 13D-G Beneficial Ownership Reporting* (July 11, 2025), <https://www.sec.gov/rules-regulations/staff-guidance/compliance-disclosure-interpretations/exchange-act-sections-13d-13g-regulation-13d-g-beneficial-ownership-reporting>.

⁵ Corbin Hiar, *SEC muzzles messaging tool used by small-dollar investors*, Politico (Jan. 29, 2026), <https://subscriber.politicopro.com/article/eenews/2026/01/29/sec-muzzles-messaging-tool-used-by-small-dollar-investors-00753282>.

⁶ *Id.*

⁷ *Id.*

⁸ Soyoung Ho, *Gensler Defends 30, 45-Day Comment Period for SEC Rulemaking Proposals*, Thomson Reuters (Jan. 24, 2022), <https://tax.thomsonreuters.com/news/gensler-defends-30-45-day-comment-period-for-sec-rulemaking-proposals/>.

⁹ Rachel Layne, *How Long is Long Enough? Judicial Review of Agency Comment Periods*, 93 Geo. Wash. L. Rev. 1238, 1256 (2025).

Chair Atkins's SEC may not care about investors, such as the small group of nuns in Kansas who only want to advocate for change at the companies in which they invest.¹⁰ But it is everyday investors, both institutional and retail, and not managers that drive the capital markets:

Corporate democracy ensures that directors and officers are held accountable for their actions. Accountability lowers agency costs, since the threat of replacement pressures directors and officers to align their interests with those of the shareholders. This alignment of interests ultimately leads to greater efficiency and increases financial returns. Furthermore, active involvement of retail shareholders in a firm's decision-making process improves the quality of the protection of the investment community as a whole, which increases investors' willingness to invest in corporations. This, in turn, supports the development of capital markets and increases the financial resources available for production and growth.¹¹

The SEC's decision to turn its back on investors therefore not only hurts the investors themselves but also endangers our capital markets and potentially threatens their preeminence in the world.

B. The SEC has made it harder for investors to address corporate misconduct.

The SEC has not been content with making it harder for investors to hold management accountable by making their voices heard; the SEC is also making it harder for investors to seek redress for corporate misconduct. The longstanding position of the SEC has been to refuse to allow initial public offerings to go forward if the filing contained mandatory arbitration provisions that could deprive shareholders of the power to bring claims in court against the company in case of wrongdoing.¹² Yet Chair Atkins recently announced that the SEC would no longer prevent public companies from forcing shareholders into mandatory arbitration.¹³

There are many problems with this stance. Mandatory arbitration almost always favors corporations and rarely results in a win for investors.¹⁴ This is because, among other reasons, arbitrators are typically individuals who are either involved with the financial industry or have a history of working for the industry.¹⁵ But perhaps most problematic is that mandatory arbitration

¹⁰ Rose Colon, *Why these nuns have filed more than 350 shareholder resolutions*, NPR (Oct. 23, 2024), <https://www.npr.org/2024/10/18/nx-s1-5150123/why-these-nuns-have-filed-more-than-350-shareholder-resolutions>.

¹¹ Dov Solomon, *The Voice: The Minority Shareholder's Perspective*, 17 Nev. L.J. 739, 744 (2017).

¹² Kevin Roose, *Carlyle Drops Arbitration Clause From I.P.O.*, N.Y. Times (Feb. 3, 2012), <https://archive.nytimes.com/dealbook.nytimes.com/2012/02/03/carlyle-drops-arbitration-clause-from-i-p-o-plans/>.

¹³ Press Release, *SEC Issues Policy Statement Clarifying that Mandatory Arbitration Provisions Will Not Affect Effectiveness of Registration Statements*, SEC (Sept. 17, 2025), <https://www.sec.gov/newsroom/press-releases/2025-120-sec-issues-policy-statement-clarifying-mandatory-arbitration-provisions-will-not-affect>.

¹⁴ Better Markets, *Forced Arbitration: Taking Away Your Rights and Your Money* (June 1, 2019), <https://bettermarkets.org/newsroom/forced-arbitration-taking-away-your-rights-and-your-money/>.

¹⁵ Better Markets, *The Dirty Dozen—Why Mandatory Arbitration is Unfair* (Oct. 11, 2017), <https://bettermarkets.org/newsroom/dirty-dozen-why-mandatory-arbitration-unfair-0/>.

prevents shareholders from filing class action lawsuits in court.¹⁶ So the widespread adoption of mandatory arbitration provisions by corporate issuers “would substantially curtail, if not eliminate, the securities fraud class action.”¹⁷ Chair Atkins’s position is all the more troubling because the SEC has long viewed class actions as an essential part of securities regulation.

For example, Richard Breeden, former chair of the SEC and current Chair Atkins’s former boss, testified before Congress in 1991 that “private actions perform a critical role in preserving the integrity of our securities markets” and that private securities litigation is “a ‘necessary supplement’ to actions brought by the Commission” and “an ‘essential tool’ in the enforcement of the federal securities laws.”¹⁸ Arthur Levitt, another former SEC Chair, characterized private securities litigation as serving “a valuable purpose in our system, encouraging corporations to observe their disclosure obligations carefully.”¹⁹ Even Jay Clayton, SEC Chair during President Trump’s first term, declined to endorse mandatory arbitration provisions and refused to reverse the SEC’s longstanding view that a mandatory arbitration provision would be inconsistent with the public interest and the protection of investors.²⁰

Chair Atkins’s decision to reverse the SEC’s longstanding opposition to mandatory arbitration provisions thus represents a stark departure from almost all of his predecessors. Bloomberg described this shift as a “new level of hostility toward investors and lawyers typically viewed as the Wall Street cop’s allies,” noting that prior to the shift former SEC leaders “across the political spectrum” routinely praised the partnership between SEC enforcement and the private securities litigation bar.²¹ As Lauren Ormsbee, a lawyer who prosecutes securities fraud on behalf of institutional investors, said: “Historically, the SEC and private enforcement bar are aligned in curbing corporate wrongdoing and keeping companies honest.”²²

Chair Atkins’s SEC seems uninterested in curbing corporate wrongdoing, keeping companies honest, and protecting investors. Instead, it seems more interested in protecting corporations from meritorious investor claims. The consequences could be profound.

The consequences of a shift to shareholder arbitration could be substantial. Private litigation, especially private aggregate litigation, is one of the main tools for

¹⁶ Press Release, *SEC Allowing Corporations to Force Harmed Investors Into Biased Arbitration Star Chambers is Wrong*, Better Markets (Sept. 17, 2025), <https://bettermarkets.org/wp-content/uploads/2025/11/PSLRA-Mandatory-Arbitration-Fact-Sheet-11.5.25.pdf>.

¹⁷ Barbara Black, *Eliminating Securities Fraud Class Actions Under the Radar*, 2009 Colum. Bus. L. Rev. 802, 804 (2009).

¹⁸ Edward Labaton, *Consequences, Intended and Unintended, of Securities Law Reform*, 29 Stetson L. Rev. 395, 401 n.43 (1999) (quoting *Securities Investor Protection Act of 1991: Hearing Before the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs*, 102d Cong. 15-16 (1991)).

¹⁹ Arthur Levitt, “*Final Thoughts on Litigation Reform*,” 33 San Diego L. Rev. 835, 838 (1996).

²⁰ Letter from SEC Chair Jay Clayton to Representative Carolyn B. Maloney (Apr. 24, 2018), https://www.skadden.com/-/media/files/publications/2018/05/maloney_et_al_forced_arbitration_es156546_response

²¹ Ben Miller, *SEC War on ‘Frivolous’ Litigation Upends Wall Street Cop’s Role*, Bloomberg (Jan. 8, 2026), <https://news.bloomberg.com/securities-law/sec-war-on-frivolous-litigation-upends-wall-street-cops-role>.

²² *Id.*

enforcing securities and corporate law in the United States. A shift to arbitration likely would dramatically reduce the number of claims filed, in part because representative actions such as class actions or derivative suits probably would be unavailable. The future of shareholder rights may be at stake.²³

Mandatory arbitration thus “would undercut federal securities law by precluding most shareholders from seeking its enforcement through a class action.”²⁴ And because “shareholder class actions can serve vital deterrence and remedial functions in both corporate governance and capital markets[,] [c]hanneling this litigation into private arbitration that shareholders could only pursue on an individualized basis would largely neuter those functions and, thus, reshape the manner in which public corporations and securities markets operate.”²⁵ This transformation in securities regulation would be “to the detriment of large and small shareholders alike.”²⁶

The SEC’s deviation from its longstanding and warranted opposition to mandatory arbitration clauses will only harm the very investors that the SEC exists to protect.²⁷

C. The SEC wants to make it harder for investors to receive the material information that enables them to make informed investment decisions.

In addition to preventing investors from participating in how the companies they own are run, and to preventing investors from suing those companies in court when they commit misconduct, the SEC wants to make it harder for investors to receive material information about public companies. Chair Atkins foreshadowed this approach when he held a roundtable last May that focused on reducing disclosures regarding executive compensation.²⁸ He said subsequently that the SEC needed a “re-set” of the rules that require executive compensation disclosures.²⁹

More recently, Chair Atkins proclaimed that the executive compensation roundtable was only the “first step” in a “comprehensive review” of the SEC’s rules that require the disclosure of information outside of a company’s financial statements.³⁰ Chair Atkins believes that these rules

²³ Zachary D. Clopton and Verity Winship, *A Cooperative Federalism Approach to Shareholder Arbitration*, 128 Yale L.J. Forum 169, 170-71 (2018).

²⁴ Mohsen Manesh and Joseph A. Grundfest, *The Corporate Contract and Shareholder Arbitration*, 98 N.Y.U. L. Rev. 1106, 1142 (2023) (emphasis in original).

²⁵ *Id.* at 1110-1111.

²⁶ *Id.* at 1142.

²⁷ Benjamin Schiffrin, *The SEC’s Attempt to Kill Securities Class Actions Through Mandatory Arbitration Violates Congressional Action*, Better Markets (Nov. 5, 2025), <https://bettermarkets.org/wp-content/uploads/2025/11/PSLRA-Mandatory-Arbitration-Fact-Sheet-11.5.25.pdf>, at 3.

²⁸ Press Release, *SEC Announces Roundtable on Executive Compensation Disclosure Requirements*, SEC (May 16, 2025), <https://www.sec.gov/newsroom/press-releases/2025-73>.

²⁹ Paul S. Atkins, Chairman, *Revitalizing America’s Markets at 250* (Dec. 2, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-120225-revitalizing-americas-markets-250>.

³⁰ Paul S. Atkins, Chairman, *Statement on Reforming Regulation S-K* (Jan. 13, 2026), <https://www.sec.gov/newsroom/speeches-statements/atkins-statement-reforming-regulation-s-k-011326>.

provide investors with too much information. Because disclosure “has long been at the bedrock of the modern securities regulation framework,”³¹ this is an unusual position for an SEC Chair.

Last week, Commissioner Uyeda gave a speech in which he hinted at the types of disclosures this SEC no longer believes investors deserve.³² He said that, among other items, the SEC should consider deleting disclosures regarding companies’ insider trading policies, regarding companies’ transactions with related persons, and regarding companies’ cybersecurity policies and governance oversight. Despite the predicate for Chair Atkins’s “comprehensive review” being that some SEC rules require the disclosure of immaterial information, Commissioner Uyeda said only that revising these rules would “simplify” and “streamline” the SEC’s rulebook; he did not explain how these disclosures were immaterial to investors.

The SEC’s attack on disclosure does not appear limited to non-financial information. At the behest of President Trump, Chair Atkins has said that the SEC is “fast-tracking” a proposal to shift from quarterly to semiannual reporting of a company’s financial results.³³

The peril of such a move for investors should be obvious. Less frequent reporting “could give companies more opportunity to hide or postpone bad news.”³⁴ And U.S. stocks trade at a premium, compared to elsewhere, due to their stricter financial reporting requirements.³⁵

The ostensible reason for the shift would be to enable companies to focus more on long-term planning than short-term results. But there is no evidence that this would be the case.

[N]umerous studies have found no discernible improvements in corporate planning or performance in countries where it has been tried. And in the United States, what’s especially worrisome is that it is being proposed along with a paring of financial regulations and enforcement and the shuttering of official data sources. Ordinary people would know less about hundreds of companies that make up the stock market and hold sway over our day-to-day lives. ‘Quarterly earnings of publicly traded companies provide a benchmark for the entire economy,’ John Coates, a Harvard law professor and former S.E.C. official, said in an interview. Without high-quality, frequently published information, we would be further in the dark.³⁶

³¹ Tom C.W. Lin, *Reasonable Investor(s)*, 95 B.U. L. Rev. 461, 508 (2015) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 186 (1963) (stating that a core principle of modern securities regulation is to “substitute a philosophy of full disclosure for the philosophy of *caveat emptor*”); JOEL SELIGMAN, THE TRANSFORMATION OF WALL STREET: A HISTORY OF THE SECURITIES AND EXCHANGE COMMISSION AND MODERN CORPORATE FINANCE 39-40 (3d. ed. 2003)).

³² Commissioner Mark T. Uyeda, *Remarks at the 53rd Annual Securities Regulation Institute* (Jan. 26, 2026), <https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-securities-regulation-institute-012626>.

³³ Douglas Gillison and Manya Saini, *US SEC chair fast-tracks Trump push to end quarterly earnings reports*, Reuters (Sept. 29, 2025), <https://finance.yahoo.com/news/us-sec-chairman-atkins-vows-042106107.html>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Jeff Sommer, *It’s a Bad Time for Trump’s Plan to Cut Back on Corporate Reporting*, N.Y. Times (Oct. 2, 2025), <https://www.nytimes.com/2025/10/02/business/trump-earnings-reports-investing-stocks.html>.

Commissioner Uyeda recently revealed the likely real reason for the proposed shift: companies find quarterly reporting burdensome.³⁷ He said a shift to semiannual reporting would provide companies with greater “flexibility.”³⁸ But the SEC is supposed to side with investors, not the companies which the SEC is supposed to regulate and which would obviously prefer to be subject to less stringent reporting requirements. Investors (and our markets as a whole) benefit from these reports. As Ernst & Young said the last time the SEC contemplated shifting away from quarterly reporting, “the transparency it provides benefits investors, and it has contributed to making the US public capital markets so successful.”³⁹

Whether it be financial or non-financial information, Chair Atkins believes that reducing public company disclosure obligations will “Make IPOs Great Again.”⁴⁰ He attributes the recent decline in public company listings to onerous regulation.⁴¹ Yet Chair Atkins ignores the fact that companies need not go public anymore as a result of the SEC making it easier and easier over the years to raise money privately.⁴² So the way to increase the number of IPOs isn’t to reduce public company disclosure, it is to revitalize the public markets by reducing the ability to raise capital in the less transparent private markets. Unfortunately, the SEC is poised to do the opposite.

III. The SEC is pushing retail investors into the risky and opaque private markets.

At the same time the SEC is making it harder to be an investor in a public company, it is trying to steer ordinary retail investors into private market assets. Private market assets are more opaque, more illiquid, and more expensive than publicly traded stocks and bonds.⁴³ Their value is also determined not by what investors think they are worth but by what fund managers say.⁴⁴ These characteristics make the private markets risky for all investors.⁴⁵ That is why the SEC has historically limited the sale of private market assets to so-called “accredited investors”—

³⁷ Commissioner Mark T. Uyeda, *Remarks at the 2025 Institute for Corporate Counsel* (Dec. 3, 2025), <https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-institute-corporate-counsel-120325>.

³⁸ *Id.*

³⁹ Ernst & Young, Comment Letter re: Request for Comment on Earnings Release and Quarterly Reports (Mar. 21, 2019), <https://www.sec.gov/comments/s7-26-18/s72618-5169795-183489.pdf>.

⁴⁰ Atkins, *supra* note 29.

⁴¹ Niko Gallogly, *Can Paul Atkins ‘Make IPOs Great Again’?*, N.Y. Times (Nov. 1, 2025), <https://www.nytimes.com/2025/11/01/business/dealbook/paul-atkins-ipos.html>.

⁴² Benjamin Schiffrin, *The SEC is Killing IPOs*, Better Markets (Feb. 25, 2025), <https://bettermarkets.org/wp-content/uploads/2025/02/SEC-is-Killing-IPOs-Fact-Sheet-02.25.25-Final.pdf>.

⁴³ Benjamin Schiffrin, *Private Securities Offerings Should Be the Exception, Not the Rule*, Better Markets (May 19, 2025), https://bettermarkets.org/wp-content/uploads/2025/05/BetterMarkets_Private_Markets_Report_05-19-2025.pdf.

⁴⁴ Jason Zweig, *Wall Street’s Big, Bad Idea for Your 401(k)*, The Wall Street Journal (July 25, 2025), <https://www.msn.com/en-us/money/savingandinvesting/wall-street-s-big-bad-idea-for-your-401-k/ar-AA1Ji7uX> (arguing that the solution for problems plaguing interval funds and other private funds is to move to public markets).

⁴⁵ Steven Church and Sabrina Willmer, *Private Market Blowups Highlight Perils for Retail Investors*, Bloomberg (Sept. 30, 2025), <https://www.bloomberg.com/news/articles/2025-09-30/private-market-blowups-highlight-dangers-for-retail-investors> (discussing losses of both institutional and retail investors in private assets).

institutional investors and high-net-worth individuals who can “fend for themselves” and who can bear the risk of a loss.⁴⁶ Nonetheless, Chair Atkins now insists retail investors “cannot have a balanced, diverse portfolio if you don’t have exposure these days to the private markets.”⁴⁷

This position is not borne out by the evidence. Instead, “[o]wning a bit of everything in a publicly traded market is usually said to give you plenty of diversification. The vast literature on finance has suggested this for more than 50 years.”⁴⁸ Even with the increasing concentration of the U.S. stock market, investors can protect themselves by also holding cash and bonds, and by ensuring that their “stock and bond investments include broad international allocations” too.⁴⁹

So Chair Atkins’s position may not be consistent with the needs of investors, but it does favor the private market firms that are looking for an expanded investor base in the form of retail investors.⁵⁰ They need these new investors since money from the institutional investors who typically invest in the private markets is drying up.⁵¹ The private capital industry “has struggled to raise new money in recent years from institutional investors such as pensions and endowments.”⁵² So despite the good reasons why retail investors have historically been off-limits to private market firms, these firms now eye retail investors and the vast wealth in their 401(k)s.⁵³ They want a slice of the \$12 trillion in these retirement accounts regardless of whether that is in the best interest of these retail investors.⁵⁴ In order to help these firms, the SEC has taken the following actions to induce retail investors to enter the private markets:

- Touting the supposed benefits of private market assets for retail investors.⁵⁵

⁴⁶ Lydia Beyoud, *SEC to Look at Rules for Investing in Private Funds*, Bloomberg (May 19, 2025), bloomberg.com/news/articles/2025-05-19/sec-to-look-at-rules-for-investing-in-private-funds-review-cat.

⁴⁷ Patrick Donachie, *Atkins and B/D Advocates Align on Alts in 401(k)s*, Wealth Management (Oct. 21, 2025), <https://www.wealthmanagement.com/regulation-compliance/atkins-and-b-d-advocates-align-on-alts-in-401-k-s>.

⁴⁸ Jeff Sommer, *Your ‘Safe’ Stock Funds May Be Riskier Than You Think*, N.Y. Times (Jan. 30, 2026), <https://www.nytimes.com/2026/01/30/business/stock-market-concentration-risk.html>.

⁴⁹ *Id.*

⁵⁰ Preeti Singh, *Stone Point to Join Push for Retail Wealth with \$1 Billion Fund*, Bloomberg (Dec. 15, 2025), <https://www.bloomberg.com/news/articles/2025-12-15/stone-point-to-join-push-for-retail-wealth-with-1-billion-fund>

⁵¹ Allison McNeely and Dawn Lim, *Private Equity is Coming for America’s \$12 Trillion in Retirement Savings*, Bloomberg (Mar. 25, 2025), <https://www.bloomberg.com/news/articles/2025-03-25/retirement-saving-private-equity-comes-for-america-s-401-k?sref=mQvUqJZj>.

⁵² Antoine Gara, *Donald Trump considers order to open US retirement plans to private equity*, Financial Times (May 21, 2025), <https://www.ft.com/content/aeda9848-67c1-482c-8ea3-f1063fa572ef>.

⁵³ *The risky world of private assets opens up to retail investors*, The Economist (May 1, 2025), <https://www.economist.com/finance-and-economics/2025/05/01/the-risky-world-of-private-assets-opens-up-to-retail-investors>.

⁵⁴ Ian Salisbury, *Private Equity Wants a Piece of Your 401(k)*, Barrons (Mar. 7, 2025), <https://www.barrons.com/articles/retirement-401k-private-equity-62be9228>.

⁵⁵ Commissioner Mark T. Uyeda, *The Diversification Deficit: Opening 401(k)s to Private Markets* (Nov. 20, 2025), <https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-diversification-deficit-opening-401ks-private-markets-112025>.

- Permitting an exchange-traded fund that intends to invest in private credit to start trading despite concerns raised by the staff about the liquidity and valuation of such assets.⁵⁶
- Allowing individuals to self-certify that they qualify as the “accredited investors” to whom private market assets may be sold, even though these individuals may not have the resources to conduct proper due diligence or to absorb the losses that may occur.⁵⁷

The reason accredited investors need to conduct their own due diligence is that the private markets lack the disclosure requirements that are the hallmark of the public markets. The basic bargain of the securities laws is that to sell securities to the public one must provide investors with disclosures of all material information. Issuers that do not want to provide these disclosures are limited to the private markets. So when Commissioner Peirce asks, “Why shouldn’t mom and pop retail investors be allowed to invest in the private markets,”⁵⁸ the answer isn’t that they shouldn’t. The answer is that if issuers want to sell to retail investors they must do so with the disclosures that the law requires to accompany any offering of securities to the general public.⁵⁹

Indeed, given that even large institutional investors lose billions of dollars in the private markets,⁶⁰ the SEC’s push to eliminate the longstanding restrictions on sales of private market assets to ordinary retail investors without the disclosure requirements that normally accompany a public offering is incredibly risky. One recent high-profile example shows why. David Gentile, the former private equity executive who recently had his seven-year prison sentence for fraud commuted,⁶¹ preyed on ordinary people who technically qualified as accredited investors. Gentile’s \$1.8 billion securities fraud scheme ensnared 17,000 investors across the United States, all of whom met the definition of an accredited investor eligible to buy private market assets.⁶² Gentile’s victims show the perils of an overly broad definition of an accredited investor, and of allowing ordinary retail investors to invest in the private markets. His victims included:

⁵⁶ Anna Gleason, ‘*Fell through the cracks: Controversial private credit ETF faces new regulatory hurdles*, CNBC (Mar. 6, 2025), <https://www.cnbc.com/2025/03/06/sec-in-hot-seat-over-private-credit-etf-approval.html>.

⁵⁷ No Action Letter: Latham & Watkins (Mar. 12, 2025), <https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-corporation-finance-no-action/latham-watkins-503c-031225>.

⁵⁸ Commissioner Hester M. Peirce, *Statement on Amending the “Accredited Investor” Definition* (Aug. 26, 2020), <https://www.sec.gov/newsroom/speeches-statements/peirce-accredited-investor-2020-08-26>.

⁵⁹ Benjamin Schiffrin, *There’s No Such Thing as Private Market Assets in the Hands of the General Public*, Better Markets (Sept. 10, 2025), https://bettermarkets.org/wp-content/uploads/2025/09/BetterMarkets_NoSuchThingAsPrivateMarkets_Report_09-10-2025.pdf, at 6.

⁶⁰ Davide Scigliuzzo, *Wall Street Firms Fortress, Ares Face Total Loss on Portable-Toilet Deal*, Bloomberg (Nov. 25, 2025), <https://www.bloomberg.com/news/articles/2025-11-25/fortress-ares-face-total-loss-on-platinum-equity-toilet-deal?sref=mQvUqJZj>.

⁶¹ Gregory Svirnovskiy, *David Gentile no longer required to pay \$15.5M in restitution after Trump’s commutation*, Politico (Dec. 3, 2025), <https://www.politico.com/news/2025/12/03/david-gentile-fraud-restitution-trump-00674963>.

⁶² *NASAA Announces State Enforcement Actions Against GPB Capital Holdings for Allegedly Defrauding Investors in \$1.8 Billion Private Offering Scheme* (Feb. 4, 2021), <https://www.nasaa.org/56683/state-enforcement-actions-announced-against-gpb-capital-holdings-for-allegedly-defrauding-investors-in-1-8-billion-private-offering-scheme/>.

- Catherine Kominos, 66, a retired engineer in Virginia who invested \$50,000. “I’m a senior citizen,” Kominos said. “I need that money. It’s not like I’m a jet setter or a wealthy person.”
- Lou DeLuca, 76, a retired schoolteacher from Brooklyn who invested \$100,000.
- Jeff Lipman, 72, a retired dentist living in Boca Raton, Florida, who lost \$300,000.⁶³

Gentile’s fraud involved everyday Americans who lost money because they qualified as accredited investors. Linqto’s recent bankruptcy is an example of retail investors who lost money in the private markets despite not qualifying as accredited investors.⁶⁴ If mom-and-pop investors are losing money in the private markets even before the SEC changes the rules to make it easier for private market firms to sell their risky products to them, what will happen afterwards?

Proponents of the private markets used to say that the risks were offset by the potential for greater returns, and that retail investors were missing out on these supposedly more lucrative opportunities.⁶⁵ However, research now shows that private market assets do not perform better than publicly-traded securities.⁶⁶ Perhaps that is why Chair Atkins and others now instead tout “diversification” as the reason they say retail investors need the private markets.

Instead of pushing private market firms’ agenda, Chair Atkins should listen to retail investors. As Alicia H. Munnell, a senior advisor at the Center for Retirement Research at Boston College, recently said, “the only party pushing for private equity in 401(k) plans is the private-equity industry.”⁶⁷ Surveys consistently show that ordinary investors do not want more options to invest in the private markets. The Wall Street Journal found that only 10% of investors are dissatisfied with their current 401(k) plan offerings and want more nontraditional options like private equity and private credit.⁶⁸ Research conducted by AARP similarly found that:

- Most adults do not think it is important to have the ability to invest in private market investments (61%) in their workplace retirement savings accounts.
- Interest declines sharply when people learn about their fees, liquidity, transparency, and risk—60% are not at all interested, and another 25% are only slightly interested.

⁶³ Santul Nerkar and Kenneth P. Vogel, *Fraudster’s Victims Are Seething After Trump Commuted His Sentence*, N.Y. Times (Dec. 12, 2025), <https://www.nytimes.com/2025/12/12/nyregion/david-gentile-trump-commutation.html>.

⁶⁴ Church and Willmer, *supra* note 45.

⁶⁵ Benjamin Schiffrin, *Private Market Assets Do Not Belong in 401(k)*, Better Markets (June 4, 2025), <https://bettermarkets.org/wp-content/uploads/2025/06/Better-Markets-Fact-Sheet-Private-Markets-in-401ks-6.4.2025.pdf>.

⁶⁶ *Id.*

⁶⁷ Alicia H. Munnell, *Workers Do Not Need Private Equity in their 401(k) Plans*, Center for Retirement Research (Aug. 11, 2025), <https://crr.bc.edu/workers-do-not-need-private-equity-in-their-401k-plans/>.

⁶⁸ Miriam Gottfried and Anne Tergesen, *Wall Street is Pushing Private Assets into 401(k)s. We Asked Whether Anyone Wants Them*, The Wall Street Journal (Oct. 12, 2025), <https://www.wsj.com/finance/investing/401k-retirement-savings-private-assets-e445311e>.

- Most Americans are uncomfortable with being automatically enrolled in funds in their workplace retirement savings accounts that include private market investments (68%). This resistance is particularly strong among older adults.⁶⁹

So the SEC's push to allow private market sales to ordinary retail investors willfully ignores the needs and preferences of working Americans and instead allows the Wall Street firms who stand to profit from such investments to achieve what they have long viewed as their holy grail.⁷⁰

IV. The SEC is promoting the crypto industry relentlessly.

As troubling as the alignment between the SEC and the private funds industry is at the potential expense of retail investors, the risks pale in comparison to the risks to retail investors from the SEC's alliance with the crypto industry. Crypto remains a haven for criminals, who take advantage of the hype to target retail investors.⁷¹ It also remains unbelievably volatile. A recent selloff wiped out over \$1 trillion across the crypto world.⁷² Smaller retail investors bore the brunt of this downturn.⁷³ Yet the SEC spent the last year promoting crypto at every turn. The SEC has:

- Launched “Project Crypto,” Chair Atkins’s plan to help make the United States the “crypto capital of the world” and move America’s financial markets on-chain.⁷⁴
- Established a “Crypto Task Force.”⁷⁵
- Repealed guidance that protected customers by requiring that banks have capital to protect against the risk of loss inherent in volatile crypto assets.⁷⁶

⁶⁹ Bryan Miller, *Americans Have Little Interest in Adding Private Market Investments and Cryptocurrency to Workplace Retirement Accounts*, AARP (Nov. 20, 2025), <https://www.aarp.org/pri/topics/work-finances-retirement/financial-security-retirement/private-market-and-cryptocurrency-investments/>.

⁷⁰ *Trump's financial watchdogs promise a revolution*, The Economist (May 29, 2025), <https://www.economist.com/finance-and-economics/2025/05/29/trumps-financial-watchdogs-promise-a-revolution>.

⁷¹ Olga Kharif, *When Crypto, Hackers, And AI Combine? It's Crime Season*, Bloomberg (Nov. 6, 2025), <https://www.bloomberg.com/news/newsletters/2025-11-06/what-is-crypto-crime-season-digital-asset-scams-frauds-and-hacks-are-rising?sref=mQvUqJZj>.

⁷² Judy Lagrou and Olga Kharif, *Crypto World Wipes Out \$1 Trillion After Latest Bitcoin Drop*, Bloomberg (Nov. 19, 2025), [bloomberg.com/news/articles/2025-11-19/crypto-world-wipes-out-1-trillion-as-bitcoin-plunges-anew](https://www.bloomberg.com/news/articles/2025-11-19/crypto-world-wipes-out-1-trillion-as-bitcoin-plunges-anew).

⁷³ Muyao Shen, *Crypto Reels From a \$200 Billion Crash as Retail Investors Move On*, Bloomberg (Dec. 4, 2025), <https://www.bloomberg.com/news/articles/2025-12-04/crypto-reels-from-a-200-billion-crash-as-casino-crowd-moves-on?sref=mQvUqJZj>.

⁷⁴ Paul S. Atkins, Chairman, *American Leadership in the Digital Financial Revolution* (July 31, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-digital-finance-revolution-073125>.

⁷⁵ Press Release, *SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force*, SEC (Jan. 21, 2025), <https://www.sec.gov/newsroom/press-releases/2025-30>.

⁷⁶ Better Markets, *SEC's Decision to Rescind SAB 121 Endangers Investors and the Financial System* (Jan. 24, 2025), <https://bettermarkets.org/newsroom/secs-decision-to-rescind-sab-121-endangers-investors-and-the-financial-system/>.

- Approved the listing and trading of crypto-exchange traded products (ETPs) marketed to retail investors that have suffered losses during recent market volatility.⁷⁷
- Approved generic listing standards for crypto ETPs so that new and untested crypto products are able to enter the market without prior SEC review or approval.⁷⁸
- Voted to permit the in-kind creation and redemption of crypto ETPs so that firms may create and redeem shares of crypto ETPs using crypto rather than cash.⁷⁹
- Issued guidance saying that SEC-registered exchanges are not prohibited from facilitating the trading of certain spot crypto asset products.⁸⁰
- Issued guidance permitting state trust companies to act as custodians for crypto assets.⁸¹
- Issued guidance stating that crypto mining, staking, and liquid staking do not involve the offer or sale of securities; that stablecoins do not involve the offer or sale of securities; and that meme coins are not securities but rather “collectibles.”⁸²

The SEC’s guidance on meme coins is a particularly stark example of the SEC failing to protect ordinary people. Meme coins are the crypto equivalent of penny stocks in traditional securities.⁸³ Both leave retail investors susceptible to pump-and-dump scams that may cause large losses.⁸⁴ The SEC has long regulated penny stocks. Yet because meme coins involve crypto, the SEC

⁷⁷ Isabelle Lee, *Retail Traders Schooled on Market Timing as New Crypto Bets Sink*, Bloomberg (Nov. 18, 2025), <https://www.bloomberg.com/news/articles/2025-11-18/retail-traders-schooled-on-market-timing-as-new-crypto-bets-sink?sref=mQvUqJZj>.

⁷⁸ Commissioner Caroline A. Crenshaw, *Passing the Buck on Reviewing Proposals to List and Trade Digital Asset ETPs* (Sept. 17, 2025), <https://www.sec.gov/newsroom/speeches-statements/crenshaw-statement-commodity-based-etps-091725>.

⁷⁹ *US securities regulator allows for in-kind crypto redemptions*, Reuters (July 29, 2025), <https://www.reuters.com/technology/us-securities-regulator-allows-in-kind-crypto-etf-redemptions-2025-07-29/>.

⁸⁰ *SEC-CFTC Joint Staff Statement (Project Crypto-Crypto Sprint)*, Staff of SEC and CFTC (Sept. 2, 2025), <https://www.sec.gov/newsroom/speeches-statements/sec-cftc-project-crypto-090225>.

⁸¹ No Action Letter: Simpson Thacher and Bartlett LLP (Sept. 30, 2025), <https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-investment-management-staff-no-action-interpretive-letters/simpsonthacherbartlett093025>.

⁸² *Statement on Certain Proof-of-Work Mining Activities* (Mar. 20, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-certain-proof-work-mining-activities-032025>; *Statement on Certain Protocol Staking Activities* (May 29, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities-052925>; *Statement on Certain Liquid Staking Activities* (Aug. 5, 2025), <https://www.sec.gov/newsroom/speeches-statements/corfin-certain-liquid-staking-activities-080525>; *Statement on Stablecoins* (Apr. 4, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425>; *Staff Statement on Meme Coins* (Feb. 27, 2025), <https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins>.

⁸³ Benjamin Schiffirin, *Meme Coins are Like Penny Stocks. We Must Regulate Them That Way* (Dec. 10, 2025), <https://bettermarkets.org/wp-content/uploads/2025/12/Penny-Stock-Reform-Act-and-Meme-Coin-Fact-Sheet-12.10.25.pdf>.

⁸⁴ Oliver Knight, *Crypto Investors Lost Over \$500M in Memecoin Rug Pulls and Scams in 2025*, CoinDesk (Feb. 11, 2025), <https://www.coindesk.com/business/2025/02/11/crypto-investors-lost-over-usd500m-in-memecoin-rug-pulls-and-scams-in-2024>.

takes the position that they are not securities and that the securities laws do not protect investors in meme coins. This means the SEC leaves meme coin investors who lose their life savings buying meme coins as speculative financial assets—not as collectibles—to fend for themselves.⁸⁵

The SEC's preoccupation with crypto is especially troubling given that so few Americans care about crypto. The Federal Reserve recently published statistics showing interest in crypto is actually declining. The percentage of adults who used crypto either as an investment or as part of a financial transaction was down to 8% in 2024 from 12% in 2021.⁸⁶ The Fed also showed that:

- Using crypto as an investment remained more common than for financial transactions.
- Seven percent of adults bought or held crypto as an investment in the prior 12 months.
- Two percent of adults used crypto to make a financial transaction in the prior 12 months.

So the SEC has spent the last year heavily promoting an industry that most Americans reject.

The SEC's catering to the crypto industry at the expense of investors also extends beyond its regulatory actions. In 2025, the SEC retreated from its enforcement efforts against crypto firms despite having previously won almost 100% of its crypto cases.⁸⁷ The New York Times reported that, as of December 14, this SEC had not brought a single new crypto case in 2025.⁸⁸

V. The SEC has curtailed its enforcement program substantially.

Unfortunately for investors, the SEC's enforcement pullback was not limited to crypto cases. Enforcement activity overall plunged under Chair Atkins.⁸⁹ Cornerstone Research recently published a report documenting the extent of the decline in SEC enforcement actions:

- The SEC brought 30% fewer enforcement actions against public companies and subsidiaries in fiscal year 2025 compared to fiscal year 2024.
- The SEC brought only *four* such cases under the new administration.

⁸⁵ Benjamin Schiffrin, *The SEC Leaves Meme Coin Investors to Fend for Themselves*, The Public Interest by Better Markets, Substack (Mar. 28, 2025), <https://bettermarkets.substack.com/p/the-sec-leaves-meme-coin-investors>.

⁸⁶ *Report on the Economic Well-Being of U.S. Households in 2024-May 2025*, Board of Governors of the Federal Reserve System, <https://www.federalreserve.gov/publications/2025-economic-well-being-of-us-households-in-2024-banking-and-credit.htm>.

⁸⁷ Ben Schiffrin, *Having Won Almost 100% of Its Cases Against the Crypto Industry, the SEC Baselessly Surrenders*, Better Markets (Mar. 12, 2025), https://bettermarkets.org/wp-content/uploads/2025/03/Better_Markets_Fact_Sheet_Crypto_Enforcement-3.12.25.pdf.

⁸⁸ Ben Protess et al., *The S.E.C. Was Tough on Crypto. It Pulled Back After Trump Returned to Office*, N.Y. Times (Dec. 14, 2025), <https://www.nytimes.com/2025/12/14/us/politics/sec-crypto-firms-trump-investigation.html>.

⁸⁹ Sarah Jarvis, *SEC Enforcement Actions Plunged After Gensler, Report Says*, Law360 (Nov. 19, 2025), <https://www.law360.com/articles/2413297/sec-enforcement-actions-plunged-after-gensler-report-says>.

- The total amount of monetary settlements was \$808 million—the lowest for any year in which there was a change in the administration and the second lowest since 2010.⁹⁰

Bloomberg similarly found that in 2025 the SEC brought “28% fewer litigated enforcement actions through September compared to the same period last year.”⁹¹

These statistics are perhaps unsurprising given that a senior enforcement official said that the industry could expect a “more sympathetic ear” under Chair Atkins in the realm of enforcement.⁹² They are also unsurprising given that the SEC’s workforce is down 15% from the previous administration and that in 2025 the SEC restructured and reorganized the Enforcement Division; these factors “likely contributed to the recent decline in enforcement, with possible lasting effects on the Division’s capacity to investigate and bring new actions.”⁹³

VI. The SEC is dismantling the Consolidated Audit Trail.

The SEC is not only reducing the number of cases that it brings but also is dismantling the most important tool it has to catch crooks. The Consolidated Audit Trail (CAT) is a tool that tracks trades in real time and allows the SEC to see the entire market.⁹⁴ Previously, the SEC had

to cobble together disparate data from a variety of existing information systems lacking in completeness, accuracy, accessibility, and/or timeliness—a model that neither supports the efficient aggregation of data from multiple trading venues nor yields the type of complete and accurate market activity data needed for robust market oversight.⁹⁵

Currently, the CAT requires securities firms to “submit their detailed, extensive records into a pooled, centralized system.”⁹⁶ So it provides the SEC with a “real-time data feed of detailed market activity.”⁹⁷ This allows the SEC “to track all activity efficiently and accurately

⁹⁰ Press Release, *SEC Enforcement Actions Against Public Companies and Subsidiaries Drop by 30% in FY 2025*, Cornerstone Research (Nov. 19, 2025), <https://www.cornerstone.com/insights/press-releases/sec-enforcement-actions-fy-2025/>.

⁹¹ Ben Miller, *SEC Zeroes in on Insider Trading and Offering Fraud under Atkins*, Bloomberg (Oct. 20, 2025), <https://news.bloomberglaw.com/securities-law/sec-zeroes-in-on-insider-trading-and-offering-fraud-under-atkins>.

⁹² Jessica Corso, *SEC To Have ‘Sympathetic Ear’ On Penalty Talks, Official Says*, Law360 (May 14, 2025), <https://www.law360.com/articles/2339688/sec-to-have-sympathetic-ear-on-penalty-talks-official-says>.

⁹³ Harris Fischman, et al., *SEC Enforcement: 2025 Year in Review*, Harvard Law School Forum on Corporate Governance (Jan. 21, 2026), <https://corpgov.law.harvard.edu/2026/01/21/sec-enforcement-2025-year-in-review/>.

⁹⁴ Benjamin Schiffrin, *The SEC Must Not Kill The CAT*, Better Markets (Oct. 1, 2025), <https://bettermarkets.org/wp-content/uploads/2025/10/Better-Markets-CAT-Fact-Sheet-10.1.25.pdf>.

⁹⁵ *Consolidated Audit Trail*, Exchange Act Release No. 67457, 2012 WL 2927797, at *2 (July 18, 2012).

⁹⁶ John C. Coffee, Jr., and Joshua Mitts, *Can Section 11 Be Saved?: “Tracing” a Path to its Survival*, 15 Harv. Bus. L. Rev. 1, 18-19 (2025).

⁹⁷ Roberta S. Karmel, *IOSCO’s Response to the Financial Crisis*, 37 J. Corp. L. 849, 900 (2012).

throughout U.S. markets.”⁹⁸ Thus, the CAT helps the SEC “detect and respond to problematic conduct.”⁹⁹

The problem of market manipulation—whether through front-running, spoofing, insider trading, or otherwise—threatens to undermine the integrity of the securities markets. As one might expect, the market manipulators who engage in these tactics usually aim to cloak their actions in secrecy. One goal of the SEC’s CAT effort . . . is to bring emerging forms of market manipulation out of the shadows.¹⁰⁰

James Angel, a finance professor at Georgetown University, says that without the CAT there would be “a big hole in our financial regulation.”¹⁰¹ Angel says that you need the CAT if “you’re trying to catch people doing things like spoofing or manipulation or other sleazy stuff.”¹⁰² The CAT puts the SEC “in a position to engage in more proactive oversight.”¹⁰³ It allows the SEC to capture a complete record of all information about an order, including the identity of customers, and thus facilitates surveillance for market disruptions, insider trading, and other abuses.¹⁰⁴ So the CAT protects investors from stock manipulations and other predatory trading activities.

Despite its effectiveness, Chair Atkins seems intent on dismantling the CAT. The SEC has taken several actions in the past year that call the future of the CAT into question. These include:

- Directing the staff to undertake a comprehensive review of the CAT.¹⁰⁵
- Issuing an order relieving market participants from the need to create certain records and maintain some data in the CAT, which reduces the SEC’s insight into the market.¹⁰⁶
- Eliminating from the CAT the requirement to report names, addresses, and years of birth, which makes it harder for the SEC to identify the perpetrators of misconduct.¹⁰⁷

⁹⁸ John W. Bagby and Nizan G. Packin, *Regtech and Predictive Lawmaking: Closing the Reglag Between Prospective Regulated Activity and Regulation*, 10 Mich. Bus. & Entrepreneurial L. Rev. 127, 162 (2021).

⁹⁹ David A. Wishnick, *Reengineering Financial Market Infrastructure*, 105 Minn. L. Rev. 2379, 2392 (2021).

¹⁰⁰ *Id.*

¹⁰¹ Jennifer Hughes, *Killing the CAT: why a key regulatory tool is under attack from Wall Street*, Financial Times (Nov. 15, 2024), <https://www.ft.com/content/9f330134-1317-4edf-ad2b-749a207ce761>.

¹⁰² *Id.*

¹⁰³ Rachel E. Barkow, *The New Policing of Business Crime*, 37 Seattle U. L. Rev. 435, 454 (2014).

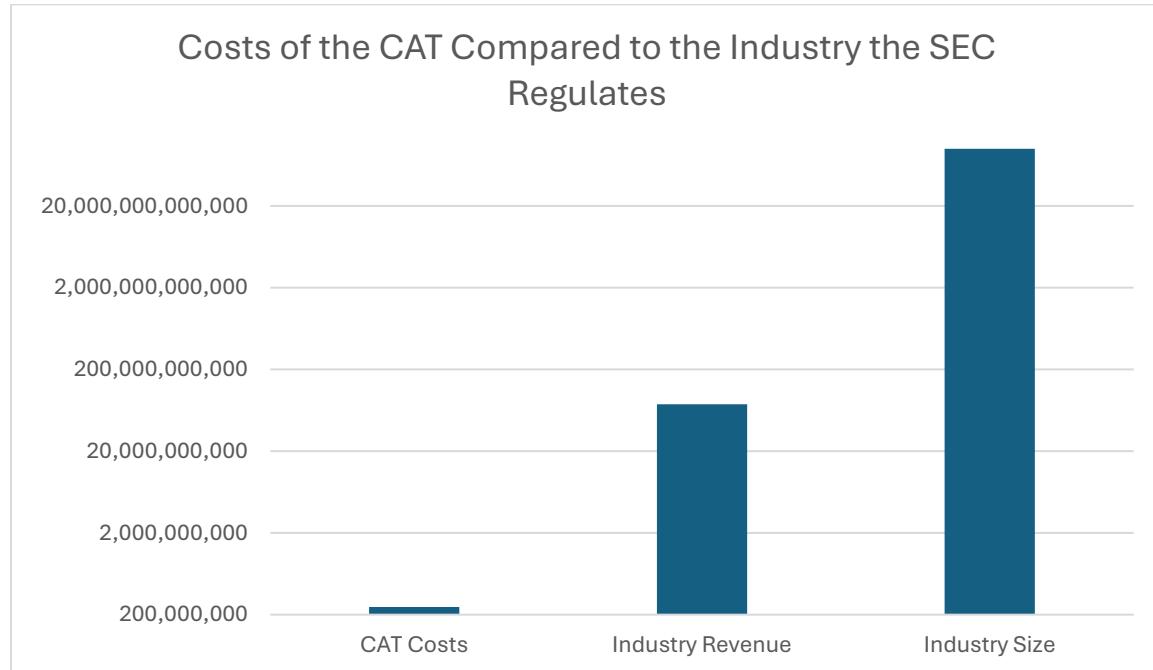
¹⁰⁴ *Id.*

¹⁰⁵ Paul S. Atkins, Chairman, *Prepared Remarks Before SEC Speaks* (May 9, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-prepared-remarks-sec-speaks-051925>.

¹⁰⁶ Press Release, *SEC Issues Order to Reduce Operating Costs of Consolidated Audit Trail*, SEC (Sept. 30, 2025), <https://www.sec.gov/newsroom/press-releases/2025-127-sec-issues-order-reduce-operating-costs-consolidated-audit-trail>.

¹⁰⁷ Better Markets, *SEC Anti-Investor Crusade Continues: Weakening CAT Handcuffs the SEC and Lets More Financial Lawbreakers Get Away* (Jan. 14, 2026), <https://bettermarkets.org/newsroom/sec-anti-investor-crusade-continues-weakening-cat-handcuffs-the-sec-and-lets-more-financial-lawbreakers-get-away/>; Press Release,

Chair Atkins justified these orders as an attempt to reduce the CAT's costs. He has decried the costs of operating the CAT, which he said were projected to exceed \$248 million annually as of November 2024.¹⁰⁸ This sounds expensive, and some concerns about the CAT's costs are legitimate, but the securities industry earned pre-tax net income of over \$75 billion in 2024.¹⁰⁹ And the SEC is responsible for overseeing capital markets that exceed \$100 trillion in size.¹¹⁰



The costs of the CAT pale in comparison to the revenue of the industry the SEC must regulate, as well as the size of the markets the SEC must monitor. Understood this way, the costs of the CAT are a small price to pay for effective policing. It is understandable that the industry would like less effective policing. As David Slovick, a former SEC lawyer now at Barnes & Thornburg, said, the CAT “makes the SEC’s lift a lot lighter. . . . Their cases against Wall Street are going to be more effective and, of course, Wall Street doesn’t like that.”¹¹¹ The chair of the SEC, on the other hand, should want the SEC’s cases to be more—not less—effective. The SEC, which regulates the securities industry, should want to bolster rather than dismantle the CAT, which has

Exemption from the Requirement to Report Certain Personally Identifiable Information to the Consolidated Audit Trail, SEC (Feb. 10, 2025), <https://www.sec.gov/newsroom/press-releases/2025-38>.

¹⁰⁸ Paul S. Atkins, Chairman, *Consolidated Audit Trail: A New Day for the CAT* (Sept. 30, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-093025-consolidated-audit-trail-new-day-cat>.

¹⁰⁹ SIFMA, *Capital Markets Fact Book* (July 28, 2025), <https://www.sifma.org/research/statistics/fact-book>.

¹¹⁰ Eva Su, *Capital Markets and Securities Regulation: Overview and Policy Issues*, Congressional Research Service (May 2, 2025), <https://www.congress.gov/crs-product/R48521>.

¹¹¹ Chris Dolmetsch, *Wall Street Seizes Opportunity to Gut SEC Trading Surveillance*, Bloomberg (May 2, 2024), <https://news.bloomberg.com/banking-law/wall-street-seizes-opportunity-to-gut-sec-trading-surveillance>.

been called “a regulator’s dream.”¹¹² The industry has long opposed the CAT, however, and under Chair Atkins the SEC’s agenda is now the financial industry’s agenda.¹¹³

VII. The SEC has revisited, delayed, or abandoned rules designed to protect investors.

The industry has been no less successful in getting the SEC to follow its lead with respect to rulemakings. On March 11, 2025, about a month before Chair Atkins’s confirmation, the Managed Funds Association sent a letter to the SEC proposing that it revisit the rules it had adopted under the prior administration and withdraw all proposed rules that remained pending.¹¹⁴ Upon his confirmation, Chair Atkins wasted little time in embracing these priorities as his own.

For example, in February 2024, the SEC adopted rule amendments to require private funds to provide more information about their investment strategies to the SEC.¹¹⁵ The amendments were designed to enhance the SEC’s oversight of the private funds industry, allow the SEC to guard against the systemic risks posed by the industry, and further the SEC’s investor protection efforts.¹¹⁶ At the time, MFA called the rule amendments “misguided.”¹¹⁷ After becoming chair, Chair Atkins has prevented the rule from going into effect by extending the date by which firms would have to comply with the rule.¹¹⁸ In doing so, he has also directed the staff to “undertake a comprehensive review” of the rule—a potential precursor to its abandonment.¹¹⁹

As another example, in January 2024, the SEC adopted a rule to enhance disclosures and provide additional investor protections in initial public offerings by special purpose acquisition companies (SPACs).¹²⁰ The SEC’s action followed a wave of SPAC bankruptcies that resulted in

¹¹² Hughes, *supra* note 101.

¹¹³ Benjamin Schiffrin, *Chair Atkins’ Agenda is the Industry’s Agenda*, Better Markets (Aug. 11, 2025), <https://bettermarkets.org/wp-content/uploads/2025/08/Better-Markets-Atkins-Agenda-Fact-Sheet-8.11.25.pdf>.

¹¹⁴ Letter from Jennifer W. Han to Acting Chair Uyeda re: Recommendations to Promote Capital Formation, Improve Regulatory Efficiency, and Reduce Waste, Managed Funds Association (Mar. 11, 2025), <https://www.mfaalts.org/wp-content/uploads/2025/03/MFA-letter-to-Acting-Chair-Uyeda-re.-Policy-Recommendations-Final.pdf>.

¹¹⁵ Fact Sheet, *SEC/CFTC Amendments to Form PF*, <https://www.sec.gov/files/ia-6546-fact-sheet.pdf>.

¹¹⁶ Press Release, *SEC Adopts Amendments to Enhance Private Fund Reporting* (Feb. 8, 2024), <https://www.sec.gov/newsroom/press-releases/2024-17>.

¹¹⁷ Benjamin Bain, *Hedge Funds to Share More on Their Strategies Under SEC Rule*, Bloomberg (Feb. 8, 2024), <https://www.bloomberg.com/news/articles/2024-02-08/hedge-funds-must-share-more-on-their-strategies-under-sec-rule?sref=mQvUqJZj>.

¹¹⁸ Press Release, *SEC and CFTC Extend Form PF Compliance Date to Oct. 1, 2026*, SEC (Sept. 17, 2025), <https://www.sec.gov/newsroom/press-releases/2025-119-sec-cftc-extend-form-pf-compliance-date-oct-1-2026>.

¹¹⁹ Paul S. Atkins, Chairman, *Statement at Open Meeting on Further Extension of the Form PF Compliance Date* (June 11, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-statement-open-meeting-061125>; Commissioner Caroline A. Crenshaw, *Extensions on Extensions: Statement on Further Extension of the Form PF Compliance Date* (June 11, 2025), <https://www.sec.gov/newsroom/speeches-statements/crenshaw-statement-form-pf-061125>.

¹²⁰ Press Release, *SEC Adopts Rules to Enhance Investor Protections Relating to SPACs, Shell Companies, and Projections*, SEC (Jan. 24, 2024), <https://www.sec.gov/newsroom/press-releases/2024-8>.

billions of dollars of lost investor capital.¹²¹ Bloomberg’s editorial board said that the rules “should allow investors to continue to access [SPACs] while providing added clarity about their legal protections and prodding the business toward a steadier and less bubble-prone model,” noting that protecting investors in capital markets “is the SEC’s core mission.”¹²² Nonetheless, the American Securities Association said the rules would “chill participation in the SPAC market and reduce the ability of private companies to access public capital markets.”¹²³ Chair Atkins has now said the SPAC rules had been “rather controversial” and that the SEC would review them.¹²⁴

Along with revisiting final rules, the SEC has continually delayed the implementation of rules that should have already gone into effect. The SEC has extended the compliance date for rules designed to bolster the market for Treasury securities, for rules designed to prevent funds from using misleading names, for rules requiring funds to more frequently report portfolio-related information, for rules governing the reserve requirements for broker-dealers to protect customer assets, and for rules designed to improve the prices investors receive on their trades and lower their trading costs.¹²⁵ These delays leave investors without the benefit of these rules.

In addition to delaying rules the SEC already adopted, on June 12, 2025, Chair Atkins withdrew all rule proposals that remained pending at the end of the prior administration¹²⁶—just as MFA suggested in its letter. These rules ranged from regulations that would have ensured investors receive the best prices when trading securities, to measures that would have protected investors from the potential dangers of artificial intelligence, to guidelines that would have

¹²¹ Benjamin Schiffrin, *SPACs + Crypto = Buyer Beware*, Better Markets (July 24, 2025), <https://bettermarkets.org/wp-content/uploads/2025/07/Better-Markets-SPACs-Fact-Sheet-7.24.25.pdf>.

¹²² *New Rules Will Force SPACs to Sober Up*, Bloomberg (Feb. 9, 2024), <https://www.bloomberg.com/opinion/articles/2024-02-09/sec-rules-will-force-spacs-to-sober-up-and-act-like-ipos>.

¹²³ Paul Kiernan, *SPAC Mania is Dead. The SEC Wants to Keep It That Way*, The Wall Street Journal (Jan. 24, 2024), https://www.wsj.com/finance/regulation/sec-wants-to-make-sure-spac-investors-know-what-theyre-getting-into-510aca30?gaa_at=eafs&gaa_n=AWEtsqeIBZB7zjnzW2ALY5hqCrLbnnvREm2efb78Flnpb54WqeLXnx1MyQdJ&gaa_ts=698132d9&gaa_sig=IQmpXBQkRvTBmH9f4uSuvQ9fXslEHZViNPeFRCfdF7EDsu6bH5RqsXUxLY8asdjn2vHfUMhUiEK_IiWiBRBWw%3D%3D.

¹²⁴ Lydia Beyoud, *SEC’s Atkins Says Rules on Blank-Check Companies to be Reviewed*, Bloomberg (July 2, 2025), <https://news.bloomberglaw.com/private-equity/secs-atkins-says-agency-will-look-at-rules-on-blank-check-firms>.

¹²⁵ Press Release, *SEC Extends Compliance Dates and Provides Temporary Exemption for Rule Related to Clearing of U.S. Treasury Securities*, SEC (Feb. 25, 2025), <https://www.sec.gov/newsroom/press-releases/2025-43>; Press Release, *SEC Extends Compliance Dates for Amendments to Investment Company Names Rule*, SEC (Mar. 14, 2025), <https://www.sec.gov/newsroom/press-releases/2025-54>; Press Release, *SEC Extends Effective and Compliance Dates for Amendments to Investment Company Reporting Requirements*, SEC (Apr. 16, 2025), <https://www.sec.gov/newsroom/press-releases/2025-64>; Press Release, *SEC Extends Compliance Date to Help Broker-Dealers Fully Test and Implement Daily Reserve Computation Requirement*, SEC (June 25, 2025), <https://www.sec.gov/newsroom/press-releases/2025-95-sec-extends-compliance-date-help-broker-dealers-fully-test-implement-daily-reserve-computation>; Press Release, *SEC Issues Exemptive Order Regarding Compliance with Certain Rules Under Regulation NMS*, SEC (Oct. 31, 2025), <https://www.sec.gov/newsroom/press-releases/2025-130-sec-issues-exemptive-order-regarding-compliance-certain-rules-under-regulation-nms>;

¹²⁶ <https://www.sec.gov/files/rules/final/2025/33-11377.pdf>.

required broker-dealers and investment advisers to strengthen their cybersecurity. The rules also would have updated the definition of an exchange to better reflect modern trading and updated the requirements that govern how investment advisers must safeguard client assets. As a result, the rules would have increased investor protection. But, in addition to MFA, industry groups like the Investment Company Institute had urged the SEC not to adopt these proposals.¹²⁷ Unsurprisingly, the rules' withdrawal was "lauded by the investment industry as good news."¹²⁸

The SEC explained the withdrawals as allowing the agency to get "back to our roots of promoting, rather than stifling, innovation."¹²⁹ The SEC did not explain why the rules would have stifled innovation. Nor did it explain why it viewed its mission as promoting innovation rather than protecting investors. The word "innovation" appears only once across the four foundational securities laws.¹³⁰ Yet the Securities Exchange Act of 1934, which created the SEC, repeatedly refers to the need for the SEC to consider in its rules the "protection of investors." Chair Atkins may well be ushering in a new day at the SEC, but he is not returning the SEC to its roots; he is turning his back on the SEC's historic mission of investor protection.

VIII. Conclusion

The last year shows that the SEC should now be known as the Shareholder Exploitation Commission. The SEC is eliminating the fundamental safeguards that protect investors in public companies. At the same time, it is inducing investors to enter the private markets, where those safeguards do not exist at all. It is also endlessly promoting the crypto industry despite that industry's track record of scamming retail investors and causing huge losses. The enforcement activity that is supposed to deter bad actors from preying on ordinary investors is nonexistent. And the SEC is dismantling a key tool for monitoring the markets, while revisiting, delaying, or abandoning rules meant to enhance investor protection. Chair Atkins's new day at the SEC may well be a great day for the financial industry, but it promises to be a terrible day for investors.

¹²⁷ Stephanie Palma, et al., *Trump SEC chair scraps proposed market rules as he charts new path*, Financial Times (Jun. 20, 2025), <https://www.ft.com/content/08537ac6-c47b-4bd3-bae6-782ea8446afb>.

¹²⁸ Harriet Agnew, *Industry Bids 'Good Riddance' to SEC rules*, Financial Times (Jun. 23, 2025), <https://www.ft.com/content/8e0e3d0c-2c57-4485-8608-d0fc12e84c0d>.

¹²⁹ Palma, *supra* note 127.

¹³⁰ See <https://www.govinfo.gov/content/pkg/COMPS-1884/pdf/COMPS-1884.pdf>; <https://www.govinfo.gov/content/pkg/COMPS-1885/pdf/COMPS-1885.pdf>; <https://www.govinfo.gov/content/pkg/COMPS-1879/pdf/COMPS-1879.pdf>; <https://www.govinfo.gov/content/pkg/COMPS-1878/pdf/COMPS-1878.pdf>.