

## Where States Jumped In When SEC Stepped Back In 2025

By Jason Pinney, Dana Bach and Joseph Brav (January 13, 2026, 3:39 PM EST)

Since the beginning of President Donald Trump's second term, there have been two key questions on the minds of securities enforcement lawyers.

First, will the U.S. Securities and Exchange Commission take a step back from pursuing enforcement activity?

And second, will the states step up to fill in the regulatory gaps, real or imagined?

Based on what we observed in 2025, the answer to both questions is "yes."

For example, while the SEC has walked away from efforts to regulate environmental, social and governance issues, many states have stepped up. It's the same story with cryptocurrency and digital assets. And there are early signs that states will ramp up efforts to regulate in several developing areas, such as artificial intelligence and retail access to private markets.

As Oregon Attorney General Dan Rayfield put it last year, "The states must fill the enforcement vacuum being left by federal regulators who are giving up under the new administration and abandoning ... important cases." [1]

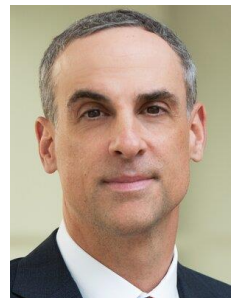
The message is clear: Do not take the states lightly. All signs point to states continuing to aggressively regulate in areas where the SEC is perceived to be taking its foot off the gas.

### The SEC Stepping Back

SEC enforcement activity has decreased under the second Trump administration. Between Inauguration Day and September 2025, the SEC reportedly initiated 91 enforcement suits, compared to 126 actions during the same timeframe in 2024. [2] This is close to a 30% reduction.

And the SEC did not bring its typical whirlwind of cases prior to the close of the agency's fiscal year. In September 2025, the SEC brought fewer than 50 administrative proceedings and civil actions, a significant reduction from the more than 200 in September 2024. [3]

Of course, these figures do not tell the whole story — there are a variety of factors that likely



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contributed to the decrease in enforcement activity, including SEC staff reductions.

### **States Stepping Up: Cryptocurrency and ESG**

At the same time that the SEC is stepping back, numerous states have stepped up to police activity that the SEC appears to have little interest in pursuing, particularly in the areas of cryptocurrency and ESG.

#### ***Crypto***

SEC Chairman Paul Atkins has expressed public support for exempting crypto offerings from qualifying as securities.[4] He has indicated that most digital assets do not qualify as securities under current law — whereas tokenized securities do.

The SEC's view is that it has limited jurisdiction over crypto assets. This is reflected in the SEC's 2026 examination priorities, which drop crypto as a priority item.[5]

States, however, have signaled their intent to continue aggressively regulating crypto assets.

For example, in response to Congress' consideration of a discussion draft of the Digital Asset Market Clarity Act, which omitted any reference to states overseeing crypto, the North American Securities Administrators Association, which represents state-level regulators in all 50 states, wrote to congressional committees urging them to maintain the states' ability to police fraud involving crypto assets.[6] NASAA's letters noted that its members have initiated more than 330 crypto-related fraud enforcement actions since 2017, and expressed doubt that federal regulators could adequately address such fraud alone.[7]

Furthermore, states have filed lawsuits against cryptocurrency exchanges alleging that the exchanges sold unregistered securities. States have also passed legislation regulating crypto, including Illinois, Pennsylvania, Connecticut and Arizona.[8] We expect this trend to continue.

#### ***ESG***

Likewise, many states are actively pursuing ESG initiatives at the same time the SEC is deprioritizing this area.[9]

In March 2025, the SEC stopped defending Biden-era rules requiring the disclosure of climate-related risks and greenhouse gas emissions.[10] Similarly, the SEC withdrew in June its Biden-era notices of proposed rulemaking that concern enhanced ESG-related disclosures for investment advisers and investment companies.[11]

Several states, however, increased efforts to regulate ESG. For example, Oregon passed the Climate Resilience Investing Act, which requires the state's public pension fund to manage climate-related risks and report on greenhouse gas emissions, while California is working to implement laws — S.B. 253 and S.B. 261 — passed in 2023 that impose ESG-related reporting requirements on large companies operating in the state.[12] States including New Jersey, New York, Colorado, Illinois and Washington have introduced bills that would impose climate-related disclosure obligations on companies similar to California's framework.

Still, the states are far from monolithic in their approach to ESG. Numerous states have sought to

prevent financial institutions from considering ESG factors when making investment decisions.

In July 2025, Florida initiated an investigation of two climate-focused organizations — the Carbon Disclosure Project and the Science Based Targets initiative — for potential legal violations in connection with allegedly coercing companies into disclosing information about their environmental impacts. The same month, Missouri announced it is investigating two proxy adviser firms — Glass Lewis & Co. LLC and Institutional Shareholder Services Inc. — for allegedly prioritizing ESG in violation of their fiduciary duties.[13]

In total, at least 19 states have passed laws that limit ESG investing, while only seven have passed laws favorable to ESG or requiring ESG disclosure.[14] We expect this state split on ESG to continue in the coming year.

### **Key Areas to Watch: AI and Retail Access to Private Markets**

Two additional areas where we expect to see a different regulatory approach between the SEC and the states include AI and retail investor access to private markets.

#### ***AI***

The SEC, particularly through Commissioner Mark Uyeda, has championed what Uyeda calls a "technology-neutral approach to regulation" that will "avoid an overly proscriptive approach" and "provide guidance in ways that encourage innovation while protecting investors." [15]

While the SEC's Cyber and Emerging Technologies Unit included "fraud committed using emerging technologies, such as artificial intelligence and machine learning" among priorities it stated early in 2025,[16] Uyeda in December cautioned against the "potential for regulatory overreach" in this area.[17]

In his Dec. 4 remarks at an SEC Investor Advisory Committee meeting, Uyeda commented that

our goal should not be to use the federal securities laws as a backdoor attempt to regulate AI. Rather, we must ensure that investors are not left in the dark about material risks and ... do so in a manner without being encumbered by prescriptive or duplicative requirements.

While it seems reasonable to expect the SEC will continue to pursue fraud cases involving AI, the agency has signaled a clear preference for regulatory restraint.

In contrast, several states — including California, Colorado, Utah and Texas — have been moving quickly to implement AI regulations, and other states seem likely to follow.[18] We expect many states to ramp up efforts to regulate the use of AI in the securities markets in the coming year.[19]

These states will likely face opposition from the federal government, however, as Trump signed an executive order on Dec. 11 designed to curtail the ability of states to regulate AI.[20] Trump's stated rationale for the executive order, posted on Truth Social on Dec. 8, is that "we are beating ALL COUNTRIES at this point in the race, but that won't last long if we are going to have 50 States, many of them bad actors, involved in RULES and the APPROVAL PROCESS." [21]

#### ***Retail Investors and Private Assets***

Another area where the states appear to be stepping up while the SEC is stepping back involves retail investor access to private assets.

Atkins has publicly lamented the SEC's longstanding rule prohibiting nonaccredited investors from investing in closed-end funds with 15% or more of their holdings in private funds.[22] In September, two SEC subcommittees also jointly recommended providing retail investors with greater access to private market assets.[23]

In response, NASAA issued a statement arguing that the SEC's proposed safeguards were inadequate. NASAA opposed the SEC's suggestion to dilute the accredited investor definition and its relaxation of the 15% liquidity cap in registered funds, arguing that the SEC must enhance its oversight of private placements before it can responsibly expand access to retail investors.

We anticipate many states to actively police this area, even as the SEC relaxes its regulatory approach.

## **Conclusion**

So, what's the takeaway?

Do not underestimate the states. They have been steadily increasing their regulatory efforts for years, and we expect the trend to continue in 2026, especially in areas where the SEC is perceived to be backing off. This can spell headaches for regulated entities, as the states may be more inclined to pursue the types of creative cases that the SEC has been pulling back from.[24]

And look for like-minded states to continue banding together — through NASAA or otherwise — to advance their regulatory agendas and expand their influence across an increasingly fragmented political landscape.

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[1] News & Media Releases, Or. Dep't of Just. (Apr. 18, 2025), <https://www.doj.state.or.us/media-home/news-media-releases/category/news/page/5>.

[2] Ben Miller, SEC Zeroes in on Insider Trading and Offering Fraud Under Atkins, Bloomberg Law (Oct. 20, 2025), [https://www.bloomberglaw.com/bloomberglawnews/securities-law/X61VUVO4000000?bna\\_news\\_filter=securities-law](https://www.bloomberglaw.com/bloomberglawnews/securities-law/X61VUVO4000000?bna_news_filter=securities-law).

[3] Frederick L. Block et al., Securities Enforcement Roundup – September 2024, Morgan Lewis (Oct. 7,

2025), <https://www.morganlewis.com/pubs/2025/10/securities-enforcement-roundup-september-2025>.

[4] Chairman Paul Atkins, The SEC's Approach to Digital Assets: Inside "Project Crypto", U.S. Sec. & Exch. Comm'n (Nov. 12, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-111225-secs-approach-digital-assets-inside-project-crypto>.

[5] Key Themes Shaping the 2026 SEC Examination Agenda, ACA Group (Nov. 19, 2025), <https://www.acaglobal.com/industry-insights/key-themes-shaping-the-2026-sec-examination-agenda/>.

[6] See, e.g., Leslie M. Van Buskirk, NASAA Calls on the Federal Government to Leverage the State-Federal Partnership that Fosters Innovation and Mitigates Fraud in Our Capital Markets, N. Am. Sec. Adm'rs Ass'n (May 29, 2025), <https://www.nasaa.org/wp-content/uploads/2025/05/NASAA-Calls-on-the-Federal-Government-to-Leverage-the-State-Federal-Partnership-that-Fosters-Innovation-and-Mitigates-Fraud-5.29.25-F.pdf>; Leslie M. Van Buskirk, NASAA Urges Congress to Champion the States as Fraud Fighters, N. Am. Sec. Adm'rs Ass'n (Jul. 7, 2025), <https://www.nasaa.org/wp-content/uploads/2025/07/NASAA-Letter-to-Congress-Regarding-the-States-as-Fraud-Fighters-7.7.25.pdf>.

[7] Van Buskirk, NASAA Calls on the Federal Government to Leverage the State-Federal Partnership that Fosters Innovation and Mitigates Fraud in Our Capital Markets, *supra* note 8; Van Buskirk, NASAA Urges Congress to Champion the States as Fraud Fighters, *supra* note 8.

[8] Gov. Pritzker Signs Historic Legislation to Protect Consumers from Cryptocurrency Scams, Ill. Dept. of Fin. and Pro. Regul. (Aug. 18, 2025), <https://idfpr.illinois.gov/news/2025/gov-pritzker-signs-historic-legislation-to-protect-consumers-from-cryptocurrency-scams.html>; Pennsylvania Department of Banking and Securities to Begin Regulating Virtual Currency Transmitters Thanks to New Bipartisan Law Signed by Governor Shapiro, Pa. Dept. of Banking and Sec. (Jun. 28, 2025), <https://www.pa.gov/agencies/dobs/newsroom/dobs-regulating-virtual-currency-transmitters-thanks-to-new-bipa>; Connecticut House Bill 7082, Fast Democracy (Jun. 30, 2025), <https://fastdemocracy.com/bill-search/ct/2025/bills/CTB00032691/>; Bill History for HB2387: cryptocurrency kiosk; license; fraud prevention, Az. Legislature (May 12, 2025), <https://apps.azleg.gov/BillStatus/BillOverview/82176>.

[9] A recent Executive Order instructed the SEC Chairman to "consider revising or rescinding" any rules or guidance that implicate ESG policies, "consider requiring proxy advisors to provide increased transparency regarding" their consideration of ESG factors, and to "examine whether" registered investment advisers' practice of engaging proxy advisors to advise on ESG factors is inconsistent with their fiduciary duties. Donald J. Trump, Protecting American Investors from Foreign-Owned and Politically-Motivated Proxy Advisors, The White House (Dec. 11, 2025), <https://www.whitehouse.gov/presidential-actions/2025/12/protecting-american-investors-from-foreign-owned-and-politically-motivated-proxy-advisors/>.

[10] SEC Votes to End Defense of Climate Disclosure Rules, U.S. Sec. & Exch. Comm'n (Mar. 27, 2025), <https://www.sec.gov/newsroom/press-releases/2025-58>.

[11] Enhanced Disclosures by Certain Investment Advisers and Investment Companies About Environmental, Social, and Governance Investment Practices, U.S. Sec. & Exch. Comm'n (June 12,

2025), <https://www.sec.gov/rules-regulations/2025/06/s7-17-22>.

[12] Elizabeth S. Goldberg, ESG Investing Update: Trends in Legislation, Litigation, and Market Response, Morgan Lewis (May 7, 2025), <https://www.morganlewis.com/pubs/2025/05/esg-investing-update-trends-in-legislation-litigation-and-market-response>; Elizabeth S. Goldberg & Rachel Mann, Fall 2025 ESG Investing Quarterly Update, MORGAN LEWIS (Oct. 16, 2025), <https://www.morganlewis.com/pubs/2025/10/fall-2025-esg-investing-quarterly-update>. The Ninth Circuit recently issued an injunction blocking the enactment of S.B. 261 pending the appeal of the district court's denial of the plaintiffs' motion for a preliminary injunction. Oral argument was held on Jan. 9, 2026. See *U.S. of Am. Chamber of Commerce v. Randolph*, Case No. 25-5327, Dkt. Nos. 44 and 52.

[13] Goldberg & Mann, Fall 2025 ESG Investing Quarterly Update, *supra* note 12.

[14] Goldberg, ESG Investing Update: Trends in Legislation, Litigation, and Market Response, *supra* note 12.

[15] Commissioner Mark T. Uyeda, Remarks at the SEC Roundtable on Artificial Intelligence in the Financial Industry, U.S. Sec. & Exch. Comm'n (Mar. 27, 2025), <https://www.sec.gov/newsroom/speeches-statements/uyeda-ai-roundtable-032725>.

[16] Press Release 2025-42, SEC Announces Cyber and Emerging Technologies Unit to Protect Retail Investors, U.S. Sec. & Exch. Comm'n (Feb. 20, 2025), <https://www.sec.gov/newsroom/press-releases/2025-42>.

[17] Commissioner Mark T. Uyeda, Remarks for Investor Advisory Committee Meeting, U.S. Sec. & Exch. Comm'n (Dec. 4, 2025), <https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-iac-120425>.

[18] See, e.g., California Senate Bill 53 (eff. Jan. 1, 2026), [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202520260SB53](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202520260SB53); Colorado AI Act (eff. Feb. 1, 2026), <https://leg.colorado.gov/bills/sb24-205>; Texas Responsible Artificial Intelligence Governance Act (eff. Jan. 1, 2026), <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=89R&Bill=HB149>; Utah Senate Bill 226 (eff. May 7, 2025), <https://le.utah.gov/~2025/bills/static/SB0226.html>.

[19] Buskirk, NASAA Urges Congress to Champion the States as Fraud Fighters, *supra* note 8 at 1, 3 ("On behalf of [NASAA], I write to urge Congress ... to preserve the critical role that state securities regulators play in our capital markets as fighters of fraud ...") ("We conclude that the states' work in fraud prevention and mitigation will increase in the coming years in part due to scams related to both [AI] and [Distributed Ledger Technologies]."); NASAA Highlights Top Investor Threats for 2025, N. Am. Sec. Adm'rs Ass'n (Mar. 6, 2025), <https://www.nasaa.org/75001/nasaa-highlights-top-investor-threats-for-2025/> ("The potential to use artificial intelligence to harm investors has regulators worried. State securities regulators expect an uptick in 2025 of bad actors using AI ... . Regulators say criminals are already exploiting AI across multiple fronts.").

[20] Donald J. Trump, Ensuring a National Policy Framework for Artificial Intelligence, The White House (Dec. 11, 2025), <https://www.whitehouse.gov/presidential-actions/2025/12/eliminating-state-law->

obstruction-of-national-artificial-intelligence-policy/.

[21] Zehra Munir & Joe Miller, Donald Trump to Issue Executive Order for Single Federal Rule on AI Regulation, Financial Times (Dec. 8, 2025), <https://www.ft.com/content/47d54ca4-2ea3-4519-b860-e466ee7802b6> (capitalization in original).

[22] Chairman Paul Atkins, Prepared Remarks Before SEC Speaks, U.S. Sec. & Exch. Comm'n (May 19, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-prepared-remarks-sec-speaks-051925>.

[23] Investor as Owner and Market Structure Subcommittees of the SEC Investor Advisory Committee, Retail Investor Access to Private Market Assets, U.S. Sec. & Exch. Comm'n (Sept. 18, 2025), <https://www.sec.gov/files/iac-private-markets-091125.pdf>.

[24] See Chris Prentice, SEC to Focus on Traditional Cases Under New Leadership, Acting Director Says, REUTERS (Mar. 24, 2025), <https://www.reuters.com/world/us/sec-focus-traditional-cases-under-new-leadership-acting-director-says-2025-03-24/>.