ILLINOIS STATE BAR ASSOCIATION

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The Corporate Lawyer

The newsletter of the Illinois State Bar Association's Section on Corporate Law

Tribute to Bernard G. Peter, Jr.

BY MARGO LYNN HABLUTZEL

THE OFFICERS AND SECTION COUNCIL of the Corporate Law Departments Section were shocked and saddened to learn of the death of Bernard "Bernie" G. Peter Jr. in August. Although Bernie had been ill for some years, he always seemed to bounce back from any relapse, more than once attending a Section Council meeting from a hospital bed. Once when we suggested that he needed to focus on his medical care, Bernie brushed away the concern by stating that he was bored waiting for somebody to come to the room, and he would rather be participating in the meeting than staring at the ceiling.

Bernie had just been recognized for his service as Editor of the Corporate Law Departments Newsletter, a post he cherished and diligently fulfilled. Under his stewardship, the newsletter went from nearly moribund to publishing almost every month, offering substantive articles on a wide range of topics. Bernie set the example for others on the Section Council by finding articles written by law firms and appearing in other newsletters,

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Legal and Regulatory Issues That Corporate Law Departments Should Monitor During the Remainder of 2026

BY BROOKE CONNER & ERIC HYLA

THE FIRST HALF OF 2026 HAS brought increasing clarity on regulatory positions and priorities under the current administration. Corporate law departments should remain vigilant about monitoring regulatory developments in order to be best prepared for future risk. Recent guidance from key government agencies, including the Securities and Exchange Commission (SEC or "Commission"), the Public Company Accounting Oversight Board (PCAOB), and the Department of Justice (DOJ), has provided valuable insight into what corporate law departments can expect for the rest of the year.

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Tribute

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culling the best for the Corporate Law Departments newsletter.

At the same time, Bernie edited the newsletter for the Employee Benefits Section, sometimes utilizing an article in both newsletters. However, the breadth of the articles published in the Corporate Law Departments newsletter, whether written by members of the Section Council or contributed by others, was vastly broader. Even when he was not familiar with the topic, Bernie recognized strong writing and interesting content. The ninety newsletters he produced for the Corporate Law Departments Section, totaling over 570 pages, brought timely information and provided true value to the members.

Although he was not able to attend in person, Bernie had just ascended to the Chair of the Employee Benefits Section Council, having progressed through the leadership of that Section while editing both newsletters and fighting his personal battle. Both sections will miss him greatly, not just for his contributions, but for his depth of knowledge, his sly humor, and his willingness to give advice when asked.

In addition to his roles on the Corporate Law Departments Section Council and the Employee Benefits Section Council, Bernie was a staunch (and very vocal) supporter of the Illinois Bar Foundation, even when he was not a member of their Board. The IBF posted the following tribute:

It is with profound sadness the Illinois Bar Foundation shares the passing of longtime Board member and dedicated supporter Bernard "Bernie" Peter.

Bernie was a true champion of the Illinois Bar Foundation. A passionate advocate for pro bono service and the Foundation's Champions Program, he believed in expanding access to justice and inspiring members of the legal community to give back. He will be deeply missed by his fellow Board members, colleagues, and friends.

We are grateful for Bernie's years of service and the lasting impact he made on the Foundation and legal community. Our heartfelt condolences go out to his family, friends, and all who had the privilege of knowing him.

In recognition of Bernie's longstanding support of the Illinois Bar Foundation, the Section Council recommends that anybody wishing to honor his legacy do so by contributing to the Illinois Bar Foundation, in any amount. The Corporate Law Departments Section Council is naming an upcoming CLE on pro bono activity of in-house counsel in his honor. ■

Tribute authored by Margo Lynn Hablutzel, Chair, Corporate Law Departments Section Council.

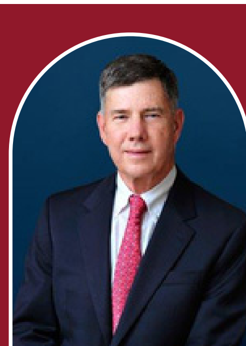
ILLINOIS STATE BAR ASSOCIATION

In memory of

Bernard ("Bernie") Peter

1944 – 2026

Newsletter Editor



The Corporate Lawyer

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Updates from the SEC Fiscal Year 2025 Enforcement Results Announcement and appointment of new Director of the Division of Enforcement

On April 7, 2026, the SEC announced its enforcement results for the fiscal year ("FY") 2025.[1] The SEC's enforcement results discussed several areas of focus, including a reprioritization of its enforcement efforts, a greater emphasis on individual accountability, a focus on protecting vulnerable retail investors, the redeployment of personnel to focus on cyber, artificial intelligence ("AI") and international matters, and the SEC's litigation victories. Additionally, the SEC obtained monetary relief totaling $17.9 billion. Of the $17.9 billion, $14.9 billion resulted from a single action commenced in 2009 regarding an alleged $8 billion Ponzi scheme for which final judgment was entered in January 2025. The remaining $3 billion resulted from disgorgement ($1.4 billion), civil penalties ($1.3 billion), and certain other disgorgement amounts ($0.3 billion) the Commission deemed were satisfied by penalties in non-SEC actions.

On April 8, 2026, the Commission announced attorney David Woodcock's appointment as the next Director of the Division of Enforcement, effective May 4, 2026.[2] Mr. Woodcock succeeds former Enforcement Division Director Judge Margaret A. Ryan, who resigned from her position effective March 16, 2026. Mr. Woodcock previously served as the Director of the Commission's Fort Worth Regional Office from 2011 to 2015. Mr. Woodcock stated that he was committed to "lead[ing] the division with the highest level of professionalism and rigor as we execute [SEC Chairman Paul S. Atkins'] vision and ensure the integrity of our financial markets."[3]

Composition of Actions

During FY 2025, the SEC filed 456 enforcement actions, including 303 standalone actions and 69 "follow-on" actions. In each category, the SEC's actions declined by approximately 20-30% compared to FY 2024, in which the SEC pursued 583 actions total, including 431 standalone actions and 93 "follow-on" actions.

Reprioritization

In announcing its enforcement results, the SEC stated that, in FY 2025, it resolved prior cases the current Commission does not consider to be sufficiently grounded in federal securities laws. The Commission further stated that its previous actions seeking penalties for books-and-records violations (in particular its off-channel communications sweep), crypto firm registration-related cases, and "definition of a dealer cases" identified "no direct investor harm," "produced no investor benefit or protection" and demonstrated a "misinterpretation of the federal securities laws, a misallocation of Commission resources, and a bias for volume of cases brought versus matters of investor protection."[4]

Going forward, the current Commission stated that it is "deliberately refocused" on matters concerning fraud, noting that such cases inherently require additional time and Commission resources to pursue.[5] Accordingly, the SEC expects that future enforcement priorities and results will be linked to the Commission's and Enforcement Division's "core mandate" of standing up to fraud in many forms, ensuring appropriate remediation, and repaying investor losses when harmed.[6]

SEC Chairman Paul S. Atkins claimed the Commission "put a stop to regulation by enforcement" and would instead "prioritiz[e] cases that provide meaningful investor protection and strengthen market integrity" including "fraud, market manipulation, and abuses of trust[.]"[7] Fellow SEC Commissioner Mark T. Uyeda echoed this sentiment, noting that he "fully support[s] the move away from using enforcement as a tool for policymaking" and welcomed what he described as "the return to the Commission's historical norms."[8]

Key insights from the DOJ's first-ever department-wide Corporate Enforcement Policy

In March 2026, the United States Department of Justice released a Corporate Enforcement and Voluntary Self-Disclosure Policy (CEP) which, for the first time in the DOJ's history, applies across the entire DOJ, with the exception of antitrust cases. Under the new CEP, the DOJ will decline to prosecute companies for criminal conduct if four factors are met:

1. The company voluntarily self-disclosed the misconduct to the appropriate DOJ criminal component;
2. The company "fully cooperated" with the DOJ's investigation;
3. The company "timely and appropriately remediated" the misconduct; and
4. No aggravating circumstances are present, which relate to "the nature and seriousness of the offense, egregiousness or pervasiveness of the misconduct within the company, severity of harm caused by the misconduct, or corporate recidivism."

In the event of a declination, the company will still be required to pay disgorgement and restitution compensation resulting from the misconduct at issue.

Additionally, in instances where a company fails to meet the requirements for a declination because of its failure to meet the "voluntary self-disclosure requirements"[9] or the presence of aggravating factors, the company can still take advantage of the "Near Miss" policy under the new CEP, under which the DOJ will:

1. Provide a Non-Prosecution Agreement (NPA);
2. Allow a term of fewer than three years;
3. Not require an independent compliance monitor; and
4. Allow a reduction of at least 50% but not more than 75% off the low end of the U.S. Sentencing Guidelines fine range.

One significant exception to the CEP is a carve out for any antitrust cases, which will continue to be governed by the Antitrust Division's Leniency Policy.

Takeaways

Companies should be cautiously optimistic that if they identify potential misconduct at their organization, there is a significant likelihood of obtaining a declination of prosecution as long as the requirements set forth in the DOJ's CEP are met. It remains critical for companies to have effective compliance programs to enable the prompt discovery and remediation of any potential misconduct, which will allow for companies to act deftly to obtain the benefits under the CEP if voluntary self-disclosure is appropriate. However, companies must carefully analyze their particular facts and circumstances to determine whether any "aggravating circumstances" are present which would negate their ability to obtain the benefits under the CEP even if they choose to voluntarily self-disclose. More clarity will come as the DOJ publicizes its enforcement activities under this new CEP.

Updates on developments in Commission's approach to examinations, regulation, enforcement, and litigation from the March 19-20, 2026 SEC Speaks Conference

Remarks of the SEC's Chair and Commissioners

The conference opened with remarks from Chair Paul S. Atkins and Commissioners Hester M. Peirce and Mark T. Uyeda, each of whom provided insight into the Commission's evolving regulatory philosophy and priorities. Collectively, their remarks reflected a continued emphasis on the SEC's core mission, a reassessment of the appropriate scope of the Commission's authority, and a shift toward clearer rulemaking—particularly in areas such as disclosure, capital formation, and emerging technologies. At the same time, the speakers highlighted ongoing efforts to update the regulatory framework while balancing investor protection, market efficiency, and innovation.

Chair Atkins's remarks focused on outlining what he calls the Commission's "ACT" strategy.[10] Under this framework, Chair Atkins stated that the Commission's initiatives will largely fall within three categories: (1) advancing the SEC's rules to align with how markets operate today; (2) clarifying the SEC's regulatory regime to streamline oversight and facilitate innovation; and (3) transforming current requirements by eliminating obligations that the Commission considers burdensome and impractical. Chair Atkins emphasized that the SEC will modernize its regulatory framework while remaining grounded in the SEC's core mission of protecting investors. In particular, Chair Atkins highlighted a shift towards developing clear rules and guidance for cryptocurrency markets, rather than relying on a "regulation by enforcement" strategy.

Chair Atkins also announced that the Commission, in his view, is undertaking efforts to transform its rulebook by removing immaterial requirements that burden the market without a corresponding benefit to investors. He stated that the Division of Corporate Finance is engaged in a review of the SEC's disclosure requirements, with an emphasis on ensuring that such requirements are appropriately tailored to information that is material to investors. Additionally, the Division of Enforcement will reportedly focus its resources on matters that meaningfully advance investor protection and market integrity, rather than pursuing technical violations that, in the Commission's view, do not result in investor harm.

Commissioner Hester M. Peirce focused her remarks on the concept of materiality and the limits of the Commission's disclosure rulemaking authority.[11] Commissioner Peirce emphasized that Congress identified investors as the intended audience of securities disclosures and that "any disclosure under the securities laws should serve a fundamentally economic purpose." In her view, anchoring disclosure requirements in the reasonable investor's economic interests provides a clear limiting principle on the Commission's authority. "That limited mandate focuses [the Commission's] discretionary disclosure efforts solely on material information," Commissioner Peirce explained.

Finally, Commissioner Mark T. Uyeda noted that the Commission is "working on meaningful steps intended to revitalize the public markets."[12] For example, he highlighted efforts to modernize shelf registration, and noted that Commission staff are engaged in a comprehensive review of Regulation S-K to assess the effectiveness of current disclosure requirements. He also referenced consideration of potential changes to periodic reporting obligations, including whether companies might be permitted to move from quarterly to semi-annual reporting.

Division of Enforcement

Senior staff from the Division of Enforcement provided an overview of the Division of Enforcement's current priorities, enforcement philosophy, and recent litigation developments. Staff indicated that the Commission is prioritizing the quality, not the quantity, of enforcement actions, with a focus on cases involving clear misconduct by actors who "lie, cheat, and steal." Consistent with this approach, the Division of Enforcement intends to continue its focus on core enforcement areas, including insider trading, accounting and disclosure fraud, market manipulation, and breaches of fiduciary duty by investment advisers. Division of Enforcement staff also confirmed that the staff will continue to pursue cross-border enforcement initiatives, including efforts to address pump-and-dump schemes involving foreign issuers.

While fraud-based cases remain the highest priority, Division of Enforcement staff emphasized that non-fraud violations will continue to be pursued in appropriate circumstances. However, the Division of Enforcement indicated that staff will take a more measured approach in such cases, distinguishing between isolated, good-faith errors that are promptly remediated and repeated or unaddressed compliance failures. In the former instance, staff indicated that an enforcement action may be unlikely; in the latter, the staff signaled a greater willingness to proceed. Chief Counsel Mark Cave discussed the Division of Enforcement's renewed emphasis on transparency and fairness in the investigative process, particularly in connection with the Wells process. He noted that recent updates to the Division of Enforcement's Enforcement Manual (the "Manual")[13] reflect a policy of providing Wells recipients with access to "salient" and "probative" evidence, including key documents, testimony, and, where appropriate, exculpatory materials reviewed by the staff. He stated that, although the Division of Enforcement will not undertake a comprehensive search for all potentially exculpatory information, recipients should expect to receive access to materials central to the staff's preliminary determination to recommend an enforcement action to the Commission. At the same time, Mr. Cave emphasized that these disclosures will be balanced against competing considerations, including protecting the integrity of the investigative record, safeguarding witnesses from potential retaliation, preserving confidential information, and maintaining the efficiency of investigations. With respect to penalties, the Division of Enforcement staff noted that the Commission continues to evaluate corporate penalties under the framework set forth in its 2006 policy statement,[14] including considerations such as scienter, deterrence, and the potential impact on current shareholders. The Division of Enforcement staff emphasized that, where appropriate, it will prioritize individual accountability and seek remedies against responsible individuals, rather than relying solely on corporate penalties that may ultimately be borne by shareholders. Division of Enforcement Chief Accountant Ryan Wolfe noted that accounting-related enforcement actions remain focused not only on technical compliance, but also on the messages that they convey to investors.

Finally, the panel addressed emerging risks, including the use of AI, noting that the Division of Enforcement is actively monitoring both internal applications and the potential for bad actors to exploit such technologies in furtherance of fraud.

Paul Tzur, Deputy Director, Enforcement Central and South, highlighted that the SEC's newly issued Enforcement Manual provides guidance on what effective corporate remediation looks like, and that the Division of Enforcement staff's assessment of remediation is an important factor in determining cooperation credit. Mr. Tzur noted that key examples indicating sufficient remediation include holding individual wrongdoers accountable, improving internal controls and procedures, compensating those harmed by the conduct, clawing back compensation from wrongdoers, and improving training for relevant personnel. Michael Brennan, Associate Director, noted that while many investigations originate from referrals by the Division of Examination, where there has been cooperation during the examination alongside sufficient remedial action, the Division of Enforcement may forego taking action.

Division of Examination

Senior staff from the Division of Examination provided an update on the Division of Examination's priorities for the upcoming year, emphasizing increased cooperation internally amongst SEC offices, within the Commission more broadly, and with other regulatory agencies in its pursuit of protecting investors and ensuring fair and orderly markets. The program's priorities for the coming year include matters involving retail investors, particularly older investors and retirement accounts. In addition, there is an emphasis on recommendations involving alternative and complex investments, as well as products with higher costs or fees. The SEC is additionally focused on firms that are advising mutual funds and separately managed accounts, as well as advisors that utilize third-party access platforms or models.

Going forward, examinations will include cybersecurity through the lens of Regulation S-P, specifically focusing on compliance with written policies and procedures relating to the timely detection, response to, and notification of cybersecurity incidents. Staff noted that when using AI, firms should maintain appropriate human oversight, as the use of AI does not eliminate a duty of care and loyalty to clients, and ensure that there are adequate controls, personnel, and disclosures in place. The panel further emphasized that the Division of Examinations does not seek to discourage the use of emerging technologies and continues to work closely with partners across the Division of Examination and the Commission.

Accounting Developments

From an enforcement perspective, the SEC continues to focus on coordination across SEC divisions with respect to accounting and disclosure rulemaking, as well as ongoing initiatives relating to international standard-setting reform. The Office of the Chief Accountant continues to focus on consultations with registrants with complex accounting issues and registrants are encouraged to engage with the office on such matters, suggesting that the PCAOB may also play a role in providing consultation or guidance on emerging issues.

Staff noted that AI remains an area of focus for potential rulemaking and regulatory attention. The panel cautioned that auditors need to be aware of independence concerns associated with AI. In addition, the panel highlighted scrutiny around how registrants are utilizing AI in the preparation of financial disclosures and how such usage is communicated to investors, recommending that companies evaluate AI use in the context of whether it relates to material aspects of their business or disclosures.

Key Takeaways and Practical Implications

Several themes emerged throughout the SEC's remarks. First, it appears that the Commission is continuing to emphasize what current leadership views as the SEC's core functions—investor protection, market integrity, and capital formation—while reassessing whether existing rules, disclosures, and enforcement priorities are properly calibrated to those objectives. In that respect, the remarks from Chair Atkins and Commissioners Peirce and Uyeda suggest a shared interest in narrowing regulatory ambiguity, reducing what they view as unnecessary burdens, and favoring clearer rulemaking over more aggressive reliance on enforcement to shape policy.

Second, it seems likely that market participants will continue to see increased attention to the boundaries of the SEC's authority. That theme surfaced repeatedly in the remarks on materiality, disclosure obligations, harmonization with the CFTC, and the pending litigation discussed by the Office of the General Counsel. Particularly in the areas of crypto assets, private market access, and implied private rights of action, the Commission appears to be operating against a backdrop of continued judicial scrutiny. As a result, it is likely that future SEC initiatives will be shaped not only by policy preferences, but also by litigation risk and the need to build more durable legal foundations for agency action.

Third, the various division sessions suggest that, although the Commission's leadership is signaling a targeted approach, registrants should not interpret that as a retreat from active oversight. The Division of Examination's priorities indicate continued focus on retail investor protection, cybersecurity, complex products, and the use of emerging technologies. Likewise, the Division of Enforcement made clear that fraud, investor harm, market manipulation, accounting issues, and fiduciary breaches remain central priorities. It appears that the practical shift is less about whether the SEC will act, and more about how it will allocate resources and distinguish between serious misconduct, technical violations, and matters that may be resolved through remediation or other supervisory means.

Fourth, it appears that process and transparency are becoming more prominent themes in the Division of Enforcement. The discussion of the Wells process, cooperation credit, remediation, and the Enforcement Manual suggests that the Commission is attempting to provide greater predictability around investigative procedures and charging decisions. For companies and individuals facing SEC scrutiny, this likely means that early engagement, credible remediation, and well-supported advocacy may carry increased strategic importance, particularly where the matter does not involve intentional fraud or significant investor harm.

Fifth, developments in accounting, examinations, trading, and markets suggest that the Commission remains attentive to innovation, but cautious about how innovation is integrated into existing regulatory frameworks. The discussions regarding AI, tokenization, cybersecurity, and evolving market structures indicate that the SEC is not ignoring technological developments; rather, it appears to be trying to avoid rules that could prematurely constrain innovation while still preserving investor protection and disclosure integrity. For registrants, this likely means that experimentation with new technologies will continue to draw regulatory attention, especially where those technologies affect disclosures, internal controls, customer information, or market infrastructure.

Finally, cases pending before the Supreme Court and other federal courts of appeals suggest that judicial developments may continue to play a meaningful role in defining the Commission's enforcement tools and the private litigation landscape. It is likely that forthcoming decisions on disgorgement, implied private rights of action, and other challenges to Commission approvals or settlement practices will affect not only how the SEC litigates cases, but also how market participants assess litigation risk, settlement strategy, and compliance obligations going forward.

Highlights from American Law Institute's Accountants' Liability Conference 2026

The American Law Institute's annual Accountants' Liability Conference was held on May 14 and 15, 2026, in Washington, D.C. The conference, now in its 36th year, was co-hosted by Junaid A. Zubairi, Chair of Vedder's Government Investigations and White Collar Defense group, and Veronica Callahan of Arnold & Porter LLP.

Highlights from this year's conference included extensive discussion of the policy priorities of the SEC and PCAOB, including a continued focus on (1) combatting investor harm; (2) auditor independence; (3) the use and rise of new tools and technology in the accounting industry; and (4) ways to identify, manage, and mitigate accounting-based risks.

Keynote Panel with the SEC's Office of Chief Accountant Staff

Acting Chief Counsel Shehzad (Shaz) Niazi and Deputy Chief Accountant Michal Dusza from the SEC's Office of the Chief Accountant (OCA) echoed the SEC's recent messaging regarding a "return to core principles," with a focus on protecting investors through accurate and independent financial audits and an increased emphasis on individual liability for misconduct. Mr. Niazi and Mr. Dusza discussed the importance of auditor independence, with Mr. Dusza recommending that auditors keep in mind the "dynamic environment" affecting financial disclosures. Mr. Dusza explained that new technology, geopolitical issues, and economic trends should not be disregarded when reaching audit opinions. He also noted that quality control and individual accountability, specifically for gatekeepers like auditing firms, are "two core pillars" of current SEC enforcement. Mr. Niazi shared that individual accountability is a focus aimed at general deterrence, with the ultimate goal of protecting investors.

Keynote with PCAOB Board Member George Botic

PCAOB Board Member Botic noted that the PCAOB's current strategic plan is designed to run through 2026, and he stated that the PCAOB is working on developing a new plan to cover the next five years. Throughout his discussion, Board Member Botic expressed an interest in receiving public comment on the plan, proposed rules related to standard setting (including Critical Audit Matters and the use of service organizations), and the general state of the profession. Regarding the PCAOB's largest budget reduction in history, Board Member Botic commented that people are both the PCAOB's biggest expense and also its most important asset.

Board Member Botic identified two primary benefits of the PCAOB's inspections of audit files—first, they provide insights into firm systems' quality control (QC), which Board Member Botic views as foundational to high quality audits, and second, they confirm the engagement team's ability to execute at the standard that firm systems' QC is designed to maintain (*i.e.*, audit quality improves as a result of an engagement team's awareness that their audit might actually be inspected). According to Board Member Botic, firms with better QC systems were better positioned to withstand "shocks to the system," such as the Covid pandemic.

Board Member Botic addressed PCAOB initiative QC 1000 ("A Firm's System of Quality Control"), scheduled to take effect later this year, and he stated that PCAOB inspections are shifting toward reviewing firms' systems of QC. Board Member Botic observed that certain firms have noted complexities in QC 1000's implementation, and he noted that the PCAOB will be issuing a supplemental request for comment this year. Board Member Botic said that he expects QC 1000 will give inspectors greater insight into how a firm assesses risks and culture, but cautioned that the inspection process is complex, and that there is a risk of moving too quickly. Board Member Botic also announced that the PCAOB's goal is to form a task force on QC 1000, stating that information is expected to be provided in the coming weeks.

Board Member Botic identified inspections for broker-dealer auditors as another area of PCAOB focus. Although the PCAOB previously deferred its decision on whether to exempt broker-dealer auditors from inspection, Board Member Botic noted that the PCAOB expects to adopt a permanent inspection program, following rulemaking and coordination with the SEC. According to Board Member Botic, the biggest question is whether there should be an exemption for non-carrying broker dealers, which would impact both inspection and registration.

Recent Enforcement Takeaways

Panelists highlighted a number of recent cases against issuers and auditors, providing the following themes and takeaways: (1) a disconnect between how management views results and how they communicate those results to investors; (2) misstatements that do not just affect one part of a company's disclosures; (3) issuer leadership and "tone at the top" and their role and effect on compliance; and (4) the importance of robust systems of internal accounting controls to prevent investor harm.

PCAOB Inspection Program

The PCAOB staff noted that, consistent with the prior year, the PCAOB continues to focus on risks to audit quality, and in turn, investors. The PCAOB targets issuers in industries or sectors negatively affected by, or sensitive to, the current macroeconomic landscape, as well as issuers facing heightened or emerging risks, including SPAC and de-SPAC transactions, cybersecurity, cryptocurrency, initial audits, M&A, and IPOs. Emerging issues include the approaching effective date of PCAOB initiative QC 1000, the continuing evolution of alternative practice structures, and AI. Additionally, given the current geopolitical environment, the PCAOB staff noted the importance of recognizing the impact of certain factors on audits, including market volatility, legal and regulatory exposure (*e.g.*, sanctions, compliance), and heightened fraud risk.

The PCAOB staff also discussed their work on modernizing the inspection program, including by: (1) providing more timely and effective reporting (whether work product, comment forms, inspection reports, or remediation determination), including focusing on material findings in inspection reports; (2) streamlining the inspection process; (3) increasing transparency where possible; and (4) increasing outreach to stakeholders, including audit committees. With respect to streamlining the inspection process, the PCAOB staff stressed, however, that this does not mean that the PCAOB will stop reviewing audit engagement files. Additionally, the PCAOB staff believes there is still a need to observe operation of controls in the performance of the audit to assess how the QC system is working.

Supreme Court Clarifies SEC's disgorgement powers

On June 4, 2026, a unanimous Supreme Court ruled in *Sripetch v. SEC*, 608 U.S. _ (2026),[15] that the SEC can seek disgorgement from a respondent who violates the federal securities laws even if the SEC has not established that such violation caused any pecuniary losses to victims. The SEC's ability to seek disgorgement—the return of any profits gained from alleged violations of the federal securities laws—thus remains a powerful remedy available to the SEC in enforcement matters.

Sripetch is the third Supreme Court decision in the past decade clarifying the SEC's disgorgement authority. In *Kokesh v. SEC*, 581 U. S. 455 (2017), the Court held that disgorgement operated as a "penalty" and therefore the SEC must seek disgorgement within five years of the date the SEC's claim accrued.[16] Three years later, the Court established further limitations on the SEC's disgorgement remedy in *Liu v. SEC*, 591 U.S. 71 (2020), ruling that the SEC may seek to disgorge only the respondent's net profits (as opposed to total revenues) gained from the respondent's violation of the securities laws and that the SEC must return those gains to the wronged investors (as opposed to depositing them in the United States Treasury).

Relying on "traditional equitable principles," the *Sripetch* opinion held that the SEC need not have evidence of pecuniary loss by victims in order to seek disgorgement. It found that, historically, courts in equity have sought to deprive a wrongdoer of the wrongdoer's net profits obtained from their unlawful conduct. In other words, the relevant question is not what financial losses were caused by the wrongdoer, but what gains the wrongdoer unlawfully received.

At bottom, the SEC's disgorgement authority remains a powerful tool in the SEC's enforcement toolbox. However, Justice Thomas's concurrence in *Sripetch* suggests that the discussion on the SEC's disgorgement authority may remain unfinished. While he agreed with the majority that the SEC may properly seek disgorgement as a remedy without proving pecuniary harm to investors, Justice Thomas urged the Court to soon take up another case on the disgorgement issue and "recognize that disgorgement is now a legal remedy for which the Seventh Amendment requires a jury trial." *Sripetch*, 608 U.S. __ at 1 (Thomas, J., concurring). Whether it is ultimately considered a legal or equitable remedy, the Court's unanimous decision in *Sripetch* confirms that alleged misconduct need not result in clearly identifiable victims in order for the SEC to pursue disgorgement in situations involving receipt of ill-gotten gains. ■

This article was originally published in Business and Securities Law Forum (July 2026, Vol. 72, No. 1), the newsletter of ISBA's Section on Business and Securities Law.

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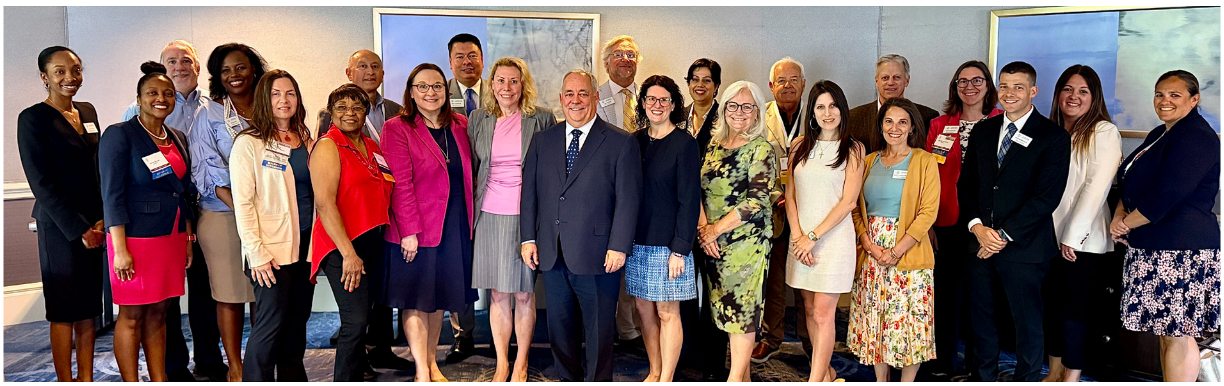
1. *SEC Announces Enforcement Results for Fiscal Year 2025*, Securities & Exchange Commission (Apr. 7, 2026), https://www.sec.gov/newsroom/press-releases/2026-34.
2. *SEC Appoints David Woodcock as Director of the Division of Enforcement*, Securities & Exchange Commission (Apr. 8, 2026), https://www.sec.gov/newsroom/press-releases/2026-35-sec-appoints-david-woodcock-director-division-enforcement.
3. *Id.*
4. *SEC Announces Enforcement Results for Fiscal Year 2025*, Securities & Exchange Commission (Apr. 7, 2026), https://www.sec.gov/newsroom/press-releases/2026-34.
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. Under the CEP, voluntary self-disclosure exists where (1) a company makes a good faith disclosure of the misconduct to the DOJ; (2) the misconduct was not previously known to the DOJ; (3) "the company had no preexisting obligation to disclose the misconduct" to the DOJ; (4) the voluntary self-disclosure occurred before an "imminent threat of disclosure or government investigation"; and (5) the company disclosed the conduct within a "reasonably prompt time." (CEP, Appendix B.)
10. See Paul S. Atkins, *Prepared Remarks Before SEC Speaks*, U.S. Securities & Exchange Commission (Mar. 19, 2026), http://www.sec.gov/newsroom/speeches-statements/atkins-remarks-sec-speaks-031926-prepared-remarks-sec-speaks.
11. See Hester M. Peirce, *The Art and Science of Materiality*, U.S. Securities & Exchange Commission (Mar. 19, 2026), https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-sec-speaks-031926.
12. See Mark T. Uyeda, *Capital, Choice, and the Pursuit of Happiness: Remarks at The SEC Speaks in 2026*, U.S. Securities & Exchange Commission (Mar. 19, 2026), https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-sec-speaks-031926.
13. See *SEC's Division of Enforcement Announces Updates to Enforcement Manual*, U.S. Securities & Exchange Commission (Feb. 24, 2026), http://www.sec.gov/newsroom/press-releases/2026-20-secs-division-enforcement-announces-updates-enforcement-manual.
14. *Statement of the Securities and Exchange Commission Concerning Financial Penalties*, U.S. Securities & Exchange Commission (Jan. 4, 2006), https://www.sec.gov/news/press/2006-4.htm.
15. https://www.supremecourt.gov/opinions/25pdf/25-466_5i26.pdf.
16. Congress has since established new statutory provisions governing the statute of limitations periods for disgorgement. See 15 U.S.C. § 78u(d)(8).

2026
Annual Meeting
Illinois State Bar Association

June 11-12, 2026 | The Ritz-Carlton | St. Louis, Missouri

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EXIT


SPEAKER
MODERATOR


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