

Litigation

Jan. 20, 2025, 9:48 AM PST

Block Faces Investor Suit Over Illicit Use of Square, Cash App

By [Ufonobong Umanah](#)

- **COURT:** N.D. Cal.
- **TRACK DOCKET:** [No. 3:25-cv-00642](#) (Bloomberg Law subscription)

Block Inc. allegedly created “a haven for criminal and illicit activities” by failing to institute basic due diligence on its Square and Cash App payment platforms, an investor said in a proposed class action.

The lawsuit, filed in the US District Court for the Northern District of California, ties the company's failure to properly oversee the payment platforms to a 77% drop in Block's stock price. The lawsuit accuses the Jack Dorsey-founded company of making “materially false and misleading” statements claiming it had robust anti-money laundering measures in place.

In reality, investor Corinne Gonsalves claims, Block's growth between 2020 and 2024 was fueled by a “systemic disregard” towards regulatory obligations. The oversight failures—which include a failure to report thousands of suspicious transactions to regulators—allowed the payment platforms to facilitate money laundering, drug trafficking, terrorism financing, and other criminal activity, according to the suit.

“As former employees would later reveal, defendants failed to course-correct, even after senior Block leadership was alerted to these deficiencies and despite numerous red flags, ultimately leading to multiple whistleblower complaints and probes and fines by regulators,” Gonsalves said.

The Jan. 17 lawsuit comes on the heels of announced settlements with the Consumer Financial Protection Bureau and state financial regulators, which together will require the company to pay out over \$250 million.

The federal and state investigations, among other things, “support a compelling inference” that Block knew its statements were false, according to Gonsalves.

The investor suit seeks to represent Block investors who purchased Class A common stock during the 2020-2024 class period. The complaint asserts two claims under Sections 10b and 20a of the Exchange Act, and seeks compensatory damages and attorneys' fees.

Block in November defeated a similar investor suit that a federal California judge dismissed for failing to meet the requirements of the Private Securities Litigation Reform Act of 1995.

Block didn't immediately respond to a request for comment.

Robbins Geller Rudman & Dowd LLP and Johnson Fistel LLP represent the investor.

The case is *Gonsalves v. Block Inc.*, N.D. Cal., No. 3:25-cv-00642, complaint 1/17/25 .

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News from Bloomberg Terminal

Jan. 21, 2025, 10:29 AM PST

Oracle's NetSuite Purchase Win Secured by Top Delaware Court (1)

- Pension fund appealed over interview memos, NetSuite plans
- High court found that Ellison 'did not actually control Oracle'

By Jennifer Kay

(Bloomberg Law) --

Oracle Corp.'s 2016 acquisition of NetSuite Inc. was safeguarded Tuesday, with the Delaware Supreme Court upholding a trial judge's decision finding the deal had been negotiated at arm's length by a "fully empowered special committee."

The pension fund that challenged the deal failed to prove that Oracle founder Larry Ellison withheld material information from the committee, according to the high court's 42-page opinion.

"Furthermore, Ellison did not actually control Oracle," Chief Justice Collins J. Seitz wrote in the opinion for the court's full five-member panel. "He had no ability unilaterally to bring about drastic changes without management and board approval, which, as the Court of Chancery found, 'did not appear cowed or overawed' by Ellison."

The Delaware Chancery Court upheld the NetSuite acquisition in May 2023, following a 10-day trial held the previous year. The pension fund that had challenged the deal appealed to the high court to review its lack of access to the special committee's interview memos, whether Ellison is a controller of Oracle, and the Chancery Court's analysis of Ellison's post-merger plan for operating NetSuite.

"We note with skepticism the argument that Ellison should have made his post-closing views known," Seitz said. If Ellison had done so, the pension fund "likely would have quickly pivoted and claimed that he breached his fiduciary duty by improperly exerting his influence," he said.

The decision, which caps eight years of litigation, vindicates Ellison and Oracle CEO Safra Catz, their attorney, Peter Wald of Latham & Watkins LLP, said in an emailed statement. It "underscores for clients and practitioners that adherence" to Delaware's standards for reviewing and completing conflicted fiduciary transactions achieves the best results for stockholders and "will pay significant dividends in any subsequent litigation challenging the deal," he said.

"NetSuite was one of the best acquisitions Oracle ever made," Wald said.

The Firemen's Retirement System of St. Louis is represented by Friedlander & Gorris, Robbins LLP, and Robbins Geller. The board committee is represented by Potter Anderson & Corroon and Kramer Levin Naftalis & Frankel. Ellison and Catz are also represented by Young Conaway Stargatt & Taylor.

The case is *In re Oracle Corp. Derivative Litig.*, Del., No. 139,2024, opinion 1/21/25.

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(Updates with comment from Ellison's attorney in sixth and seventh paragraphs.)

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Class Action

Jan. 21, 2025, 7:51AM PST; Updated: Jan. 21, 2025, 8:55AM PST

Sacklers Join Latest Deal to Settle Purdue Opioid Litigation (1)

By James Nani

- Work continues on Purdue Pharma reorganization plan
- Prior deal collapsed after Supreme Court ruling last June

Purdue Pharma LP's Sackler family owners have joined a proposed settlement that would allow the OxyContin maker to exit bankruptcy and put more than \$6 billion toward resolving opioid-related litigation, court-appointed mediators said.

With a faction of the Sackler family that had previously been holding out on a deal now on board, work continues on a reorganization plan, individual settlement agreements, and determining what the drugmaker will look like when it exits bankruptcy, the mediators said in a report filed Monday in the US Bankruptcy Court for the Southern District of New York.

The Sacklers' prior deal that aimed to resolve widespread opioid litigation was struck down by the US Supreme Court last June.

The proposed terms of the new settlement are expected to be circulated to all of the mediation parties and then made public, the co-mediators' report said.

A preliminary injunction protecting Sackler family members from civil suits was approved after Purdue filed for Chapter 11 in 2019 under the weight of litigation accusing the Sacklers of fueling the national opioid epidemic—accusations they deny. That injunction, which has been extended multiple times by the bankruptcy court, is "vital" to continue negotiations, the mediators said.

The report comes ahead of a hearing on Jan. 24 in front of US Bankruptcy Judge Sean Lane in which he'll consider whether to again grant Purdue's request to extend the injunction.

"The Mediation Parties' full engagement and perseverance and patience have made this progress possible," the report said.

The mediators have said a plan to exit bankruptcy with more than the previously promised \$6 billion from Sackler family members will be filed this month.

The mediators, retired bankruptcy judge Shelley Chapman and Eric Green of Resolutions LLC, said "in-depth discussions" on the settlement with the Department of Justice and its bankruptcy monitoring unit are expected to happen over the next several weeks.

Purdue attorney Marshall Huebner of Davis Polk & Wardwell declined to comment.

The case is Purdue Pharma L.P., Bankr. S.D.N.Y., No. 19-23649, report 1/20/25.

(Updated with additional information from the mediators' report.)

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This Week in Chancery Court: Anaplan, B. Riley, Novo, Zendesk

By Jennifer Kay and Mike Leonard

Delaware's top court will consider reviving shareholder litigation over Anaplan Inc.'s \$10 billion sale to Thoma Bravo LLC, a case with the potential to overhaul the way judges view shareholder approval in merger cases involving fiduciary breach claims. The Chancery Court, meanwhile, will weigh several major deal challenges, including a lawsuit taking aim at Zendesk Inc.'s \$10.2 billion buyout.

Here's more of what's on the Chancery and Delaware Supreme Court calendars this week. All courts in the state are closed Monday for Martin Luther King Jr. Day.

Wednesday: In re Anaplan Inc. S'holders Litig., Del., No. 284,2024, oral arguments 1/22/25.

At issue: The Delaware Supreme Court will hear oral arguments in an appeal of a June 2024, Chancery Court ruling that allowed Anaplan's ex-leaders to exit claims they cost investors \$400 million by giving themselves equity grants that jeopardized the Thoma Bravo deal. Investors say in a brief the Chancery Court's reliance on a 2015 decision on "cleansing" of fiduciary breaches, where Delaware's top court said investor approval of a merger defeats virtually all post-closing legal challenges unless they involve board conflicts of interest, leaves them no avenue to redress the reduced transaction price. Anaplan's ex-leader say in an answering brief that the investors want the justices to rewrite or narrow the 2015 opinion in *Corwin v. KKR Financial Holdings LLC*.

Court action: The high court hears oral arguments in Dover, Del.

Anaplan Ex-Leaders Beat Case Over \$10 Billion Thoma Bravo Sale

Wednesday: Frank v. Mullen, Del. Ch., No. 2023-0381, oral arguments 1/22/25.

At issue: B. Riley Financial Inc. has asked the court to dismiss a 2023 lawsuit challenging its take-private acquisition of National Holdings Corp. The class action alleges the transaction was underpriced and forced through by B. Riley and National's ex-CEO, who's now a B. Riley executive. The shareholder leading the litigation says in a brief that "secret communications" between B. Riley and National's management thwarted efforts to negotiate a deal that was in all National shareholders' best interests.

Court action: Oral arguments on the motion to dismiss will be held in Wilmington, Del.

B. Riley Hit With Investor Lawsuit Over National Holdings Buyout

Wednesday: Amethyst Arbitrage Int'l Master Fund v. Svane, Del. Ch., No. 2023-1139, oral arguments 1/22/25.

At issue: Investors sued Zendesk's former senior leaders in 2023, alleging they arranged its take-private sale to avoid losing a campaign to oust them by Jana Partners LLC. The software company now seeks to dismiss the second amended complaint, saying in a brief that the investors continue to "ignore Zendesk's degrading economic reality leading up to the transaction." In their answering brief, the investors say the transaction process "bears all the hallmarks of an unfair deal" for \$77.50 per share, a price that was "significantly below acquisition offers Zendesk had repeatedly rejected."

Court action: Oral arguments on the motion to dismiss will be held in Wilmington, Del.

Zendesk \$10 Billion Sale Amid Pressure From Jana Draws Suit (1)

Wednesday: DrugCrafters LP v. Loh, Del. Ch., No. 2024-0111, oral arguments 1/22/25.

At issue: Former Paratek Pharmaceuticals Inc. investors filed a lawsuit in February 2024 challenging its \$462 million sale to Novo Holdings A/S and Gurnet Point Capital LLC, saying its leaders accepted a lower price in order to increase incentive payments for themselves. The former board members targeted by the litigation say in a brief that the merger "resulted from a nearly two-year strategic process" that included independent advisers, an independent transaction committee to manage the process, and negotiations with multiple bidders. In an answering brief, the investors said the transaction committee was "feckless" and failed to manage the directors' conflicts in the deal.

Court action: Oral arguments on the motion to dismiss will be held in Wilmington, Del.

Paratek's \$462 Million Novo-Gurnet Deal Hit With Legal Challenge

Wednesday: Wagner v. BRP Grp. Inc., Del. Ch., No. 2023-0150, oral arguments 1/22/25.

At issue: The investor lawsuit against a founder of insurance company BRP Group Inc. was part of a wave of cases last year that led to a landmark Chancery court ruling invalidating a popular kind of stockholder pact. The suits challenged agreements that hand the corporate reins to founders or preferred investors, usually by granting them extensive veto rights and a pledge from the company to support their board nominees. After Vice Chancellor J. Travis Laster upended the governance strategy in a February 2024 ruling involving investment bank Moelis & Co., lawmakers worked to overturn the decision, a push culminating in changes that took effect last August. Laster has defended his *Moelis* opinion and several related rulings—including the *BRP* decision in May—even after the legislature limited their scope. He awarded \$6 million in legal fees to the pension fund that led the *Moelis* case and \$2.3 million to the investor behind a parallel lawsuit against software company N-able Inc. The shareholder who brought the BRP case is seeking \$5 million in fees.

Court action: Oral arguments on the motion for fees will be held in Wilmington.

Stockholder Pacts Get New Guidance 3 Months After Moelis Ruling

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Revance Wins Again Over Investors' Claims of Wrinkle Drug Fraud

By Jennifer Kay

- Judge previously dismissed investors' claims in March 2024
- FDA approved frown wrinkle drug Daxi, competitor to Botox

Revance Therapeutics Inc. has prevailed again over investors' claims that the biotech company misled them about the timeline for regulatory approval of the anti-wrinkle injection Daxi.

The investors failed to show that Revance's executives had an intent to deceive, manipulate, or defraud, Judge Araceli Martínez-Olguín in the US District Court for the Northern District of California said in a Jan. 17 order dismissing a second amended complaint without leave to amend. She had dismissed the previous complaint in a March 30 decision.

Even if the investors "could show that Revance executives had knowledge of issues with the approval process, the Court already held such a showing was insufficient to meet the high standard of showing deliberate recklessness," she said in the new 12-page order.

The 2021 lawsuit followed the Food and Drug Administration's rejection of Revance's application for the drug candidate, DaxibotulinumtoxinA, for the treatment of frown lines. FDA inspectors had found record-keeping and quality control problems during an inspection. Revance addressed those issues and the FDA has since approved the drug, which is viewed as a competitor to Botox.

The investors argued Revance failed to disclose the problems that made FDA approval unlikely in 2021, and various company statements expressing confidence in FDA approval were misleading.

In the amended complaint, the investors added new allegations based on the account of a former Revance employee, "who purportedly served as Deputy Chief of Staff from July to December 2021," according to Martínez-Olguín's order. But that account fails to show a "strong inference" of intent to deceive, she said.

The complaint's allegations that Revance executives were in "crisis" following the FDA's initial rejection "does not, without more, naturally lead to the conclusion that Defendants intentionally concealed the information from the public or that there was an extreme departure from ordinary care," she said. It's just as plausible that Revance's leaders believed any problems would be addressed and the injection would eventually be approved, she said.

"Indeed, the fact that DAXI was approved the following year makes this alternative all the more compelling," she said.

Faruqi & Faruqi LLP represents the investors. Cooley LLP represents Revance.

The case is Aramic LLC v. Revance Therapeutics Inc. , N.D. Cal., No. 21-cv-09585, order 1/17/25 .

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Class Action

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AI Training Company Leaders Sued Over Hindenburg Report Claims

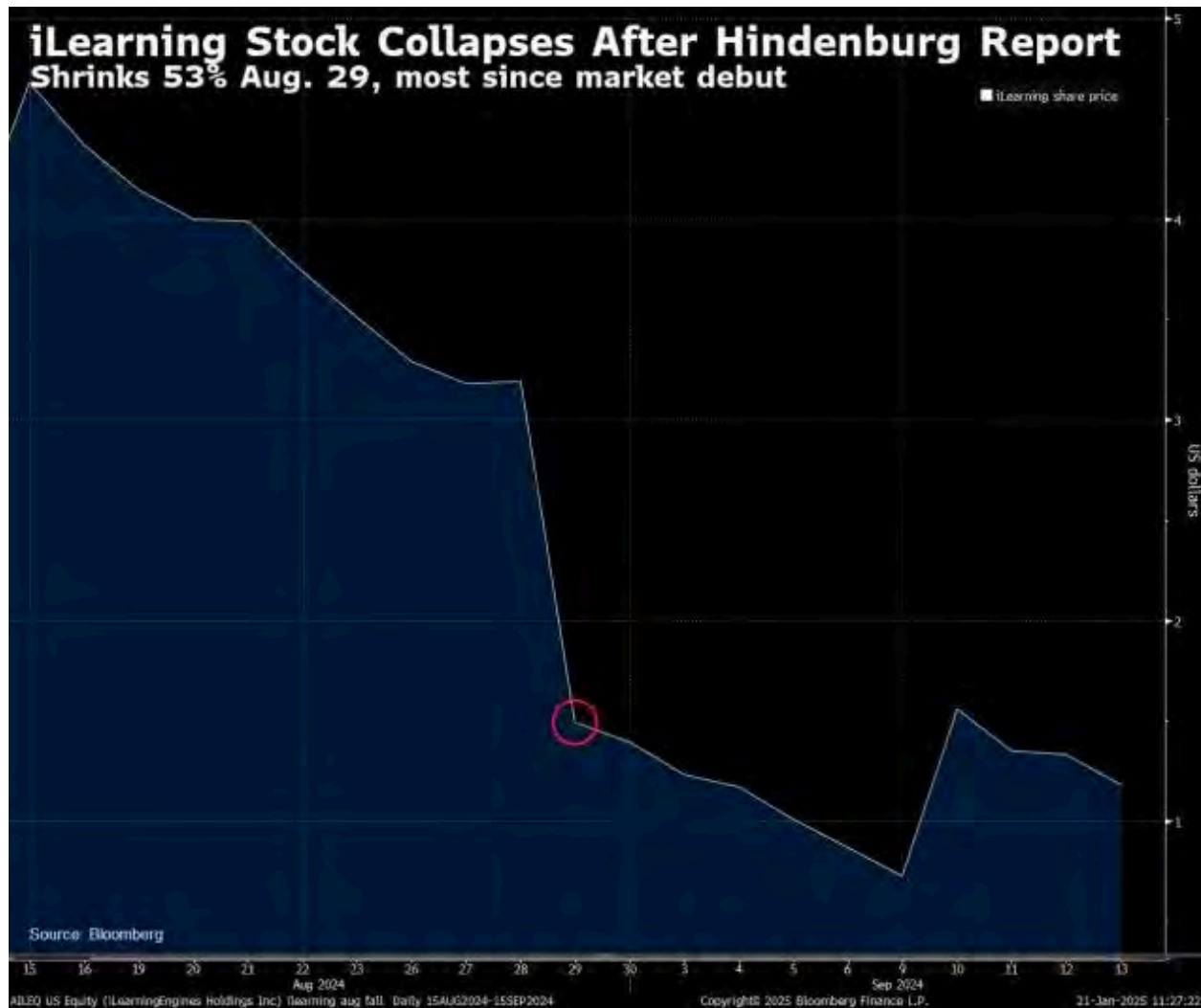
By Gillian R. Brassil

- **COURT:** D. Md.
- **TRACK DOCKET:** No. [8:25-cv-00192](#) (Bloomberg Law subscription)

iLearningEngines Inc. executives faked the education software company's revenue by relying on an undisclosed related party, causing a record stock drop on a short-seller report about the relationship and exposing it to a proposed class action, a shareholder derivative suit said.

The artificial intelligence platform reported \$138 million in revenue from its key Indian market in 2022—but really it was just over \$853,000, 99% less than iLearning reported, said the complaint filed in the US District Court for the District of Maryland on Monday.

Short seller Hindenburg Research said on Aug. 29 iLearning used its relationship with the undisclosed "technology partner" to report "largely fake" revenue and expenses, among other issues, investor Matthew Whitfield said. Share prices plummeted more than 53% that day—the stock's largest single-day tumble since its market debut, according to data compiled by Bloomberg. iLearning went public via a special purpose acquisition company merger in April.



Its CEO said he believed the report contained “misleading statements, speculations and innuendos” after it published.

iLearning filed for Chapter 11 bankruptcy in December. Proceedings are ongoing in the Bankruptcy Court for the District of Delaware.

iLearning said in December it placed top executives, including CEO Harish Chidambaran and senior vice president and former CFO S. Farhan Naqvi, who are named in the proposed securities class action, on leave pending a company investigation into the Hindenburg report’s claims.

An investor filed the proposed class action regarding the same allegations against the company and those two in October. The judge administratively closed the case against iLearning after it filed for bankruptcy.

Goldman & Minton PC and Rigrodsky Law PA represent Whitfield.

iLearning didn’t immediately respond to an email seeking comment. Neither did the firm representing it through the bankruptcy.

The case is Whitfield v. iLearningEngines, Inc. , D. Md., No. 8:25-cv-00192, complaint filed 1/20/25 .

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Securities Law and Practice Need Reorienting Around Materiality

- *Cleary Gottlieb partner explains most pressing securities issues*
- *SEC could concentrate on periodic filings, private placement*

With Republicans taking control of Congress and a new leader to chair the Securities and Exchange Commission, the incoming administration has an opportunity to modernize the securities law framework.

Record stock prices belie the troubling fact that our public markets are suffering substantial secular decline. The number of public companies has shrunk dramatically in recent decades, while the SEC has layered increasing obligations on issuers and market participants. It's time for a reboot.

Public status provides a sense of permanency, equity to compensate employees and fund acquisitions, and a commitment to quality and compliance that investors appreciate. The US public market also provides deep liquidity to retail and institutional investors and unparalleled price discovery. Yet, these benefits increasingly are outweighed by regulatory burdens, some of which focus on social issues that are ill-suited to securities regulatory oversight.

So, what can be done?

We should reorient legislation and regulation around the historical touchstone of materiality for information—a substantial likelihood that a reasonable person would consider it important from a financial point of view. Disclosure requirements that fail to meet this mark should be abandoned.

This guiding principle should be paired with an emphasis on simplification. The regulatory framework has become unnecessarily complex, heightening the cost of going and being public, and constraining economic growth and job expansion.

Significant steps could be taken. A few illustrative ones follow.

Since 1933, federal law has mandated that public offers and sales of securities be registered with the SEC. As a result, possible SEC review of each offering is a hurdle to accessing the market, except only for the largest companies, which benefit from an exception.

The SEC should rehabilitate the idea of company registration. Under this approach, only the company would register with the SEC, and offerings would be de-regulated. A public offering could be done as and when desired, without the speed bump of SEC approval. The SEC could concentrate on reviewing periodic filings, and companies, underwriters, auditors, and other gatekeepers would remain liable for any fraud committed when offering and selling securities.

Private placements, used by entrepreneurs and small businesses to raise capital, also should be made simpler. In particular, state securities, or “blue sky” laws, can be expensive and time-consuming to comply with, while providing little investor protection. Exclusive regulation of securities offerings should sit with the SEC.

Allowing investors who pass a financial knowledge exam to invest in private placements would further democratize private market access, so it’s not merely the province of the wealthy.

Direct listings should be de-regulated to allow greater continuity between private markets and public markets. This would spur more private market trading and promote tighter spreads, while providing issuers with an alternative to M&A or a traditional IPO.

Disclosure for directors, officers, and large equity holders should be rationalized to eliminate overlapping rules. Although clear, simple disclosure is sensible, insiders should be freed from short-swing trading. This framework allows a specialized plaintiffs’ bar to trap unwary insiders with draconian disgorgement rules for deemed insider trades that don’t involve any wrongdoing, information advantage or profit.

The antiquated publicity rules for both public and private offerings likewise should be abandoned. They are unsuited to the information age and unduly restrict speech relating to offerings. Investors can be directed to defined offering materials such as the prospectus, so that investors know exactly which documents they should rely on. Fraud laws still would apply to misleading statements, regardless of where made.

The liability management rules governing issuer self-tenders and exchange offers should be rethought. Current law mandates up to 20 business days for a holder to consider whether to sell or exchange a security. The same holder, however, may well have decided to purchase that security in mere minutes. The law also currently is subject to a long history of complex regulatory exceptions, making it difficult to follow and inconsistent across deal types. Modernization again is warranted.

The Investment Company Act was adopted in 1940 to prevent rampant abuses involving pooled investment products. The act broadly defines “investment company,” resulting in operating companies sometimes being treated like mutual funds, limiting their ability to go public or requiring drastic steps to retool their balance sheets.

The rules have been moderated in some instances, such as with the business development company structure. However, more could be done to properly limit its scope and further liberalize it—for example, by creating a framework for permanent capital vehicles, such as those holding limited partner stakes in private equity and hedge funds, to be publicly offered and listed, as is the case in Europe.

These ideas are only indicative of much more that could be done with the right political backing and a genuine desire to improve the health of our markets for companies and investors alike.

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Write for Us: Author Guidelines

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Business Law Prof Blog

 [businesslawprofessors.com/2025/01/bump-up](https://www.businesslawprofessors.com/2025/01/bump-up)

January 18, 2025

Bump up

By Ann Lipton on January 18, 2025

This Bloomberg article about insurance disputes over “bump ups” caught my attention, so it’s another moment for me to step outside my (corporate) lane and pretend I know something about contracts (or insurance).

The issue is, lots of corporate managers have D&O coverage, and that coverage includes standard exclusions. Like, D&O insurance won’t cover willful acts of misconduct, that kind of thing, but it will cover settlement of such claims.

And it also includes an exclusion for “bump up” claims. That kind of claim is when the company sells itself to an acquirer, and the former shareholders sue alleging the consideration was inadequate. If there’s a settlement – or I guess an adjudication that doesn’t fall into the willful category – for bumping up the consideration paid to shareholders in an acquisition, the insurer is not obligated to cover it.

That’s led to a lot of litigation over what kinds of settlements/claims are excluded, and what are not, and insurers come out on the short end of the stick. For example, in *Harman Int’l Indus. Inc. v. Ill. Nat’l Ins. Co.*, a Delaware Superior court held that Section 14 claims for a false proxy statement issued in connection with a merger are not excluded by the “bump up” provision – i.e., insurance is responsible for those claims. In 2023, a Delaware Superior Court held that the bump up provision did not apply – and claims were insured – against Viacom’s directors, in connection with CBS’s acquisition of Viacom. The theory was that the insurance contract was ambiguous as to the types of transactions covered and ambiguity was construed in favor of the insured.

In the Bloomberg article, unsurprisingly, “Policyholder attorneys were united in their view that shareholder litigation following M&A transactions should fall within the scope of coverage.” One attorney opined, “here is a problematic gulf between the coverage that they believe they purchased based on the plain language of these policies and the positions that certain insurance companies are taking when the insurance actually is needed.”

Okay but here’s the thing.

Let’s say Acquirer Company strikes a deal to buy Target Company. Let’s say, arguably, the directors and officers of Target sold for too low a price, and shareholders of Target sue.

The defendants, one way or another, are likely to be indemnified by Target – so, especially if there's a settlement, damages aren't actually paid by directors, they're paid by Target, which means ultimately they're paid by the Acquirer.

Think about the incentives here. It's almost *better* if directors arguably breach their fiduciary duties and agree to a lowball price. In the absence of insurance, the worst that happens is, there's a lawsuit, and Acquirer pays what it should have paid originally. In the best case scenario, though, insurance kicks in, pays the excess, and now part of the purchase price *can be offloaded on to the insurer*. The insurer, in other words, can be counted on to finance the purchase.

That, I assume, is why insurers exclude bump ups from coverage: to prevent Acquirers from forcing insurance to help finance their deals.

So if that's right, it should inform how courts evaluate the scope of the exclusion. Rather than fall back on standard canons like, insurance contracts are construed against the insurer, I think courts should think about what's being incentivized here, and why the exclusion exists in the first place. If ultimately the insurer is being asked to pay for the fair value of Target – value that is now accruing to the Acquirer, which is the real party in interest – the insurer should win.

And another thing: In this week's *Shareholder Primacy* podcast, Mike Levin and I talk about the Fifth Circuit decision striking the NASDAQ diversity rules, and about the services proxy advisors provide to corporations. Available here on Spotify, here on Apple, and here on YouTube.

Securities Law Prof Blog

 lawprofessors.typepad.com/securities/2025/01/new-securities-law-articles-in-print.html

Saturday, January 18, 2025

New Securities Law Articles in Print

The following law review articles relating to securities regulation are now available in paper format:

Sophie Abrams, Note, *Full Moon or Full Fraud? A Proposed Method for Interpreting Emojis under Rule 10b-5*, 89 Brook. L. Rev. 1259 (2024).

Waleed Alkoor, Student Article, *Mining for Answers: Decrypting the Securities Puzzle of Cryptomining Hosting Contracts*, 25 N.C. J.L. & Tech. 537 (2024).

Heather Hughes, *Robots, Markets, and the Value of Deal Lawyers*, 49 J. Corp. L. 833 (2024).

Christine Hurt, *Socially Acceptable Securities Fraud*, 49 J. Corp. L. 785 (2024).

Moran Ofir & Tal Elmakiess, *The Eco-Agency Problem and Sustainable Investment*, 49 BYU L. Rev. 1675 (2024).

Tommaso Oliveiro, Min Park & Hong Zou, *Liquidity Effects of Litigation Risk: Evidence from a Legal Shock*, 67 J.L. & Econ. 103 (2024).

Jillian Sarro, Note, *Risky Retirement: A Proposal for FTC Oversight of Self-Directed IRAs*, 52 Hofstra L. Rev. 1039 (2024).

Securities Law Prof Blog

 lawprofessors.typepad.com/securities/2025/01/new-securities-law-articles-in-print-1.html

Monday, January 20, 2025

New Securities Law Articles in Print

The following law review articles relating to securities regulation are now available in paper format:

John P. Anderson, *Is the SEC Proposing a "Loaded-Question" Climate Change Disclosure Rule?*, 84 La. L. Rev. 1263 (2024).

Joan MacLeod Heminway, *The Materiality of ESG Information: Why It May Matter*, 84 La. L. Rev. 1365 (2024).

Becky L. Jacobs, *From CSR and TBL to ESG and the SDGs: Roots from Resistance to Regularization*, 84 La. L. Rev. 1251 (2024).

Jennifer O'Hare, *Continuing Education for Directors of Public Companies*, 51 Fla. St. U. L. Rev. 373 (2024).

Alessandro Piras, Note, *Unraveling the Disgorgement Regime*, 63 Santa Clara L. Rev. 565 (2024).

David Rosenfeld, *Stay in Your Lane! Law, Politics, and the SEC's Climate Disclosure Proposal*, 84 La. L. Rev. 1283 (2024).

Ahmed E. Taha, *George Clooney Is Paid That Much? Regulating Celebrity Advertisements*, 93 UMKC L. Rev. 107 (2024).

Russelectric Employee Stock Plan Lawsuit Moves Forward Again

By Jacklyn Wille

- Terminated plan allowed boosted payments after corporate sale
- Judge has twice declined to dismiss aspects of ERISA lawsuit

Former employees of Massachusetts power control systems manufacturer Russelectric Inc. again advanced their lawsuit saying their employee stock ownership plan was raided of value after the company founder's death.

The stock plan's 2016 termination doesn't cut off the workers' ability to bring claims under the Employee Retirement Income Security Act based on a 2019 transaction that allegedly should have provided them with higher payments, Judge Patti B. Saris said Thursday. The "clawback" provision added to the plan at its termination meant the plan continued to hold assets that could form the basis of an ERISA claim, she said.

"Here, the Plan retained a future interest in clawback payments contingent on a subsequent sale of the Company, as established under the amended Plan in March 2016," Saris said. "This retained interest qualifies as a plan asset under ERISA. Since the terminated Plan retained assets, ERISA governs Defendants' actions related to the clawback payments."

The lawsuit centers on Russelectric's stock plan, which held a 30% stake in the company after it was established by founder Raymond Russell in 2010. Employees claim they were significantly underpaid for their shares when the plan was terminated after Russell's death, and they say they lost out on about \$7 million after the company's 2019 sale to Siemens AG under a clawback provision that allowed them to receive additional amounts if the company was sold for a higher price than they were paid for their shares at termination.

Saris's opinion, issued in the US District Court for the District of Massachusetts, greenlights certain ERISA claims related to the amounts allegedly owed under the clawback provision. It follows her 2024 ruling declining to dismiss claims over the payments workers received in connection with the plan's termination.

The employees are represented by Engstrom Lee LLC, Block & Leviton LLP, and Morgan & Morgan PA.

The defendants are variously represented by ArentFox Schiff LLP, McDermott Will & Emery LLP, Morrison Mahoney LLP, Groom Law Group, and Womble Bond Dickinson (US) LLP.

The case is Bowers v. Russell , 2025 BL 14951, D. Mass., 22-cv-10457-PBS, 1/16/25 .

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Boston Nonprofit Sued Over Low-Yield Retirement Plan Investment

By Jacklyn Wille

- **COURT:** D. Mass.
- **TRACK DOCKET:** [No. 1:25-cv-10120](#) (Bloomberg Law subscription)

A nonprofit serving low-income Boston residents was hit with a proposed class action saying it parks more than half of its retirement plan assets in an overly conservative fund earning paltry returns.

The investment earnings of the retirement plan covering employees of Action for Boston Community Development Inc. are “among the lowest in the country” because more than 55% of the plan’s assets are held in an inappropriate capital preservation fund, two former employees said in the complaint. This fund, which Action for Boston required longtime workers to hold at least a portion of their retirement savings in, caused the plan to see average annual returns of less than 5% between 2019 and 2023, compared to nearly an average of nearly 9% for similar retirement plans.

This strategy, which drove more than \$10 million in lost earnings, was both inappropriate for retirement savers and out-of-step with industry standards, the workers said in a complaint filed Thursday in the US District Court for the District of Massachusetts.

A handful of recent lawsuits have targeted employers that direct significant retirement plan assets toward overly conservative investments. International Bancshares Corp. was hit with similar allegations last year, and several cases have targeted companies that use low-yield funds in their employee stock ownership plans.

Action for Boston didn’t immediately respond to a request for comment.

Block & Leviton LLP and Engstrom Lee LLC represent the workers.

The case is *Hildonen v. Action for Bos. Cmty. Develop., Inc.*, D. Mass., No. 1:25-cv-10120, complaint 1/16/25.

To contact the reporter on this story: Jacklyn Wille in Washington at jwille@bloombergindustry.com

Class Action

Jan. 21, 2025, 8:17 AM PST

BDO USA Sued Over \$1.3 Billion Employee Stock Plan Transaction

By Jacklyn Wille

- **COURT:** D. Mass.
- **TRACK DOCKET:** [No. 1:25-cv-10128](#) (Bloomberg Law subscription)

A participant in BDO USA's employee stock ownership plan filed a proposed class action saying workers were wrongly overcharged to become partial owners in the accounting and advisory firm.

The lawsuit centers on an August 2023 transaction in which a newly-established ESOP purchased 42% of BDO's common stock from executives and other principals for about \$1.3 billion. This transaction, which was financed by a private credit deal with Apollo Global Management affiliates, was done at an inflated purchase price that reflected a flawed valuation of the company based on inflated earnings and unreasonable projections, according to the complaint.

Plaintiff Tristin Taylor says BDO employees were "pressured" to inflate revenues in the run-up to the transaction by manipulating how certain client payments were attributed. He further alleges that the purchase price didn't account for the "deteriorating" quality of BDO's audit work in the years leading up to the deal.

Taylor's lawsuit, filed Jan. 17 in the US District Court for the District of Massachusetts, brings claims under the Employee Retirement Income Security Act on behalf of a proposed class of about 10,000 people covered by the ESOP.

BDO defended the ESOP in an emailed statement.

"While our policy is not to comment on litigation, BDO USA's ESOP was executed with the guidance of an independent trustee, an independent valuation firm, and guided by external legal counsel, all prominent experts in their fields," Lydia Humenycky, senior director of brand reputation and communications, said. "We are confident in the creation and ongoing management of our ESOP and are pleased that it has already seen an increase in value since its inception."

Taylor and the proposed class are represented by Cohen Milstein Sellers & Toll PLLC.

The case is Taylor v. BDO USA, PC, D. Mass., No. 1:25-cv-10128, complaint 1/17/25.

To contact the reporter on this story: Jacklyn Wille in Washington at jwille@bloombergindustry.com

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Class Action

Jan. 21, 2025, 9:24AM PST

Nemours Foundation Retirement Fee Challenge Poised to Advance

By Jacklyn Wille

A lawsuit saying Nemours Foundation mismanages its \$1 billion retirement plan through excessive administrative fees inched forward when a federal magistrate judge said the pediatric health system's motion to dismiss should be denied.

The dispute turns on factual questions that would be better resolved after the parties engage in discovery, Magistrate Judge Laura Lothman Lambert of the US District Court for the Middle District of Florida said in a Jan. 17 recommendation. Lambert cited recent decisions in which judges in her district allowed similar lawsuits to advance against Embry-Riddle Aeronautical University Inc. and TriNet HR III Inc.

- The proposed class action says the Nemours plan significantly overpays for administrative services while allowing its recordkeeper to earn money off plan assets while they're temporarily held in a clearing account in connection with withdrawals and deposits
- The case is assigned to Judge Brian J. Davis, who can accept, reject, or modify Lambert's conclusions

Jackson Lewis PC represents Nemours. Wenzel Fenton Cabassa PA and Morgan & Morgan PA represent the plan participants.

The case is Cannarozzo v. Nemours Found. , 2025 BL 16354, M.D. Fla., No. 3:23-cv-00136, magistrate report 1/17/25 .

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'Extremely Disturbing': AI Firms Face Class Action by 'Taskers' Exposed to Traumatic Content

[law.com/therecorder/2025/01/17/extremely-disturbing-ai-firms-face-class-action-by-taskers-exposed-to-traumatic-content](https://www.law.com/therecorder/2025/01/17/extremely-disturbing-ai-firms-face-class-action-by-taskers-exposed-to-traumatic-content)

Michelle Morgante



What You Need to Know

- Defendants include Scale AI, Smart Ecosystem and Outlier AI.
- Plaintiffs say the three companies performed AI training work for Google and Meta.
- A nationwide class would include current and former independent workers.

Contract workers who say they suffered severe psychological harm by being exposed to “deeply unsettling” and traumatic scenarios used to train generative artificial intelligence models filed a class action complaint on Friday against three Bay Area firms for alleged negligence and unsafe working conditions.

The suit, filed in the U.S. District Court for the Northern District California by Clarkson Law Firm, alleges Scale AI, Smart Ecosystem and Outlier AI failed to accurately disclose the disturbing nature of the content involved in the work, ignored the workers’ requests for support and retaliated against those who complained.

The plaintiffs, who were known as “taskers,” said they repeatedly were assigned to view and react to violent, graphic and sexually explicit content as part of projects for the defendants’ corporate clients, including Google parent company Alphabet and Meta, which operates the social media platforms Facebook, Instagram, Threads and WhatsApp.

The taskers performed critical AI training such as creating prompts, or user-generated questions, fed to AI models, and moderating content, the suit said. The nature of the work was “far from ordinary,” often involving “life-or-death scenarios” that “placed an extraordinary emotional and psychological burden on plaintiffs, leaving them to grapple with severe emotional harm in the absence of adequate safeguards.”

The workers, the suit said, “are treated as expendable cogs in the machine. Through defendants’ automated platform, known as Outlier, taskers are assigned tasks with cold efficiency—devoid of any human oversight or concern for the well-being of those performing

these tasks.”

In a statement emailed to The Recorder, Scale AI representative Joe Osborne said, “We do not comment on litigation but are committed to ensuring we are in full compliance with all applicable laws and regulations.” Counsel for the defense has yet to appear.

Glenn Danas, lead counsel for the plaintiffs, said the suit is needed to protect workers amid the rapid expansion of AI and the harm it is causing to those hired to train its large language models. “Given how slow regulation has been, and how many thousands of workers throughout the U.S. Scale AI is cycling through, this suit is critical to protect Scale AI’s ever-growing legion of workers,” Danas said in a statement emailed to The Recorder.

“Each of the plaintiffs has suffered mental and emotional trauma from being exposed to depraved content in service of Scale AI’s various projects,” he said.

According to the complaint, taskers regularly were assigned to address user prompts that concerned topics such as suicidal ideation, sexual predation, child sexual assault, violence and other highly violent topics. For one plaintiff, it said, “each prompt required many conversational turns, requiring a person’s complete mental and emotional engagement for the completion, often resulting in traumatic and harrowing conversations.”

Plaintiffs said they were misled during the hiring process and told they would be training AI to create poems or scientific articles. They were told they’d be provided psychological support, such as access to a therapist, the complaint said, but instead found “such support was nonexistent.”

“Taskers who voiced concerns about the psychological toll of their work faced swift retaliation,” it said. “Taskers who reported feeling uncomfortable with certain tasks were frequently terminated without explanation or removed from all projects. Defendants’ policy was unambiguous: conform to the demands of the tasks, regardless of their psychological toll, or face immediate termination.”

The plaintiff group is led by Angela Schuster of Colorado County, Texas, who has been an independent contractor of the defendants since July 2023. Other current and former workers in the group are Anna Pendleton of Los Angeles; Howard Quattlebaum of Fairfax County, Virginia; Xavier Retana of Cook County, Illinois; Latoya Howard of Muscogee County, Georgia; and Steve McKinney of Ventura County, California.

Taskers, the complaint said, were assigned to use the Outlier platform to search for images that could be offensive, traumatic or harmful. They then would draft prompts designed to train the AI to differentiate between responses that were acceptable or in violation of the model’s ethical rules. The work, it said, caused them to suffer trauma-related symptoms, including nightmares, insomnia, depression and anxiety.

The complaint said a nationwide class would include independent contractors who worked for the defendants as taskers or in similar positions and were engaged in reviewing traumatic video and image content and responding to AI data-generating work concerning highly sensitive and traumatic topics.

In seeking a jury trial, the complaint seeks injunctive relief to require the defendants to implement safety guidelines for taskers and establish a court-supervised program funded by the defendants for the treatment of the workers' psychological trauma. It also seeks punitive damages.

Danas said the medical monitoring is necessary because it's not known how long the workers' trauma will last and ongoing care is needed "to ensure that plaintiffs are able to proactively care for themselves going forward."

While the suit would not include foreign contract workers performing such work, Danas said the hope is that safeguards implemented by Scale AI would benefit the global workforce.

Editor's note: This article was updated to include statements from Clarkson partner Glenn Danas.

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Careless Generative AI Use Puts Attorney-Client Privilege at Risk

- *Wiley attorneys examine AI impact on privileged communication*
- *Prepare by refining AI use policies, review vendor data terms*

Generative artificial intelligence is easy to use to draft documents, answer questions, conduct research, or complete other tasks, but it can pose unique problems to attorneys.

Privileged communications are legally protected from disclosure, but they lose that protection if shared with someone else later. The advent of generative AI tools raises several unique questions about the concept of privilege for companies, which can take action now to mitigate risks.

When lawyers talk about privilege, they usually refer to two distinct types of protection: attorney-client privilege and work product immunity.

Attorney-client privilege protects communications made between privileged persons (attorney, client, or agent) in confidence for the purpose of obtaining or providing legal assistance for the client. Provided their confidence is maintained, these are privileged communications, and their disclosure can't be compelled.

By contrast, work product immunity is narrower. It only protects records prepared by or for a party in anticipation of litigation or for trial.

Both types of protection are forfeited where there is no expectation of privacy and their content isn't protected work product. Even if a communication or file is protected, that protection can be waived if an attorney or client relays it to a non-party, thereby forfeiting any expectation of privacy.

These principles become critical when evaluating AI tools, as they could directly or indirectly reveal confidential, proprietary, or even privileged information.

Generative AI Tools

By their nature, public AI tools—built for and servicing up to millions of different users—pose a significant risk to the privilege of any information or records shared with the application.

An attorney may need to input privileged information for a public AI tool to conduct effective legal research or draft responsive briefs. Doing so risks waiving privilege, because many of these tools reserve the right to store and later use all input data.

Even if an attorney is aware of the risks, a paralegal or other individual working at the direction of an attorney may come to rely on public AI tools and unwittingly expose privileged information.

An enterprise AI tool, built for and servicing only internal users, mitigates such risks by ensuring any information shared for training or in the form of user inputs stays within the organization. But enterprise tools aren't without their own risks.

Allowing an enterprise tool to use legal documents as training data could render that content available to the company at large. A company could then unintentionally waive privilege by allowing employees without a "need to know" to have access to any privileged information and work product.

In-House Challenges

In-house lawyers who wear dual hats are particularly at risk of waiving privilege if they use these tools. Materials developed by a business person aren't privileged, but what if that person is also a lawyer? If they use AI to create what's believed to be privileged content, is it entitled to protection?

Given how easy these tools can be to use, it's possible that lawyers will have less to do on the legal side of the house and shift more firmly toward business functions, further eroding possible privilege protections their presence may allow. Conversely, AI tools may tempt non-lawyers to delve into more legal areas without entitlement to any sort of protection, opening a company to additional disclosures.

AI tools can be further used to assist with core legal functions, such as using a company's prior contracts to generate new agreements. If a lawyer uses the program, are the inputs and outputs privileged? What about a non-lawyer? And does it matter if the agreement is totally new, or if the AI tool is merely suggesting specific provisions based on pre-drafted content and information?

Many tools exist for just that purpose, but the effect on any privilege protection when using such a tool is still unknown. There are, however, some ways to prepare.

Refine AI use policies now . If your company permits AI usage, it may be prudent to wall off legal work product from any enterprise AI tools so that their content can't be shared with employees outside of those who "need to know."

Consider making a tool just for attorneys if you're looking to leverage AI in legal work such as contract drafting. Consider relying on outside counsel and their tools to ensure privilege isn't inadvertently waived.

Review vendor policies on retaining input data carefully. Privilege protection relies on a reasonable expectation of privacy. If a vendor's terms reveal it is sending all inputs back to the vendor, even just for quality control, privilege may be waived.

Companies should take another look at their vendor agreements as well as their vendors' AI policies. To the extent there are concerns with vendor terms or policies, it's better to address these issues now rather than after a potential waiver of privileged information.

Keep abreast of how employees are using AI tools. This shouldn't be a set-it-and-forget-it policy. Technology changes rapidly, and new legal developments on these issues could happen any day. Keeping track of which employees use AI products—and how—will ensure you don't inadvertently waive privilege.

Don't wait for a subpoena or discovery request to start thinking about these privilege issues. As AI tools become more ingrained in your company's day-to-day operations, you can avoid a lot of problems down the road by addressing potential privilege issues now.

This article does not necessarily reflect the opinion of Bloomberg Industry Group, Inc., the publisher of Bloomberg Law and Bloomberg Tax, or its owners.

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Class Action

Jan. 20, 2025, 11:26 AM PST

LinkedIn Beats State-Law Claim in Suit Over Collecting DMV Data

By Christopher Brown

LinkedIn Corp. defeated the sole remaining claim of a lawsuit alleging it intercepted the personal information of its users who visited the website of the California Department of Motor Vehicles in violation of federal and state privacy laws.

Judge P. Casey Pitts of the US District Court for the Northern District of California granted LinkedIn's motion to to dismiss the plaintiffs' claim under the California Invasion of Privacy Act for lack of federal jurisdiction on Jan. 17.

- Pitts dismissed the plaintiffs' claim under the federal Driver's Privacy Protection Act in a Jan. 3 order after finding the information collected by LinkedIn wasn't information from a motor-vehicle record, as required under the act
- The judge then asked the parties to show cause why federal jurisdiction over the CIPA claim was appropriate given the novel state-law issues involved in resolving it
- Plaintiff Jacqueline Jackson said in her supplemental brief she agreed the court should decline to exercise jurisdiction over the claim, and will refile the case in state court

Baron & Budd PC represents Jackson and the proposed class. Cooley LLP represents LinkedIn.

The case is Jackson v. LinkedIn Corp. , N.D. Cal., No. 5:24-cv-00812, 1/17/25 .

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Toyota's Hino avoided a monitor in DOJ emissions case. Will it trend?

[reuters.com/legal/government/column-toyotas-hino-avoided-monitor-doj-emissions-case-will-it-trend-2025-01-21](https://www.reuters.com/legal/government/column-toyotas-hino-avoided-monitor-doj-emissions-case-will-it-trend-2025-01-21)

Jenna Greene

Hino Motors' logo is pictured at the 45th Tokyo Motor Show in Tokyo, Japan October 27, 2017. REUTERS/Kim Kyung-Hoon Purchase Licensing Rights [↗](#), opens new tab

Jan 21 (Reuters) - Sometimes what's missing from a settlement can be as notable as what it contains.

Consider the deal struck by Toyota Motor Corp subsidiary Hino Motors last week with the U.S. Justice Department to settle criminal and civil charges for falsifying emissions data for diesel truck engines.

There was a hefty penalty, to be sure: \$1.6 billion. And a press release [↗](#), opens new tab in which a veritable parade of federal and state officials piled on censure, calling the company's decade-long misconduct brazen, fraudulent and egregious.

But for all the castigation, I'm struck by what the plea agreement [↗](#), opens new tab didn't do: Subject Hino, which did not respond to a request for comment, to oversight by an independent corporate compliance monitor (though it's still required to implement internal reforms).

It's a bigger win for Hino than it might sound, and one that may hold lessons for other corporate defendants.

Such outcomes could become more common over the next four years. During President Donald Trump's first administration, DOJ leaders scaled back [↗](#), opens new tab the use of corporate monitors (sometimes derided as "company babysitters") in criminal resolutions. Defense lawyers tell me they anticipate a similar fall-off now – a move that their clients are likely to welcome.

For one thing, the third-party outsiders (often prominent former prosecutors) tapped in the wake of misconduct to oversee corporate remediation efforts tend to be expensive. The tab for three years of oversight can run \$30 million to \$50 million or more, according to an article by law firm Crowell & Moring [↗](#), opens new tab.

Beyond the cost, monitors "are intrusive," Cary Coglianese, a professor at the University of Pennsylvania Carey Law School and director of the Penn Program on Regulation, told me. "Sometimes it's already perceived as invasive to have a government regulator looking at what a company is doing," he said. "Having a corporate monitor there is only amplifying that."

On paper, Hino in some ways would seem to be a prime candidate for a monitorship. According to the DOJ, the company falsified emissions data from 2010 to 2022 for 105,000 heavy-duty diesel truck engines to make it appear that they met Clean Air Act standards,

resulting in “vast amounts of excess air pollution.”

Such wrongdoing ticks multiple boxes on DOJ’s current criteria for appointing a monitor [↗](#), opens new tab. The misconduct was long-lasting and involved multiple employees and supervisors, while top executives allegedly failed to heed warnings or take corrective actions. Charges against the company included conspiring to deceive U.S. regulators, customs officials and customers about the engines, as well as wire fraud and smuggling.

A DOJ spokesperson declined comment.

On the other hand, prosecutors credited Hino for “exemplary cooperation,” noting that the company’s helpfulness “significantly improved after engaging new U.S. counsel.”

Hino was represented by a team from Covington & Burling that included Lanny Breuer, Noam Kutler, Mark Finucane, Jennifer Saperstein and Leah Saris, according to the plea agreement. Firm lawyers declined to comment for this column.

Court records do not indicate the firm that Covington replaced.

Prosecutors also noted Hino’s voluntary “implementation of remedial measures, including organizational, structural, and leadership changes,” and that the company fired, disciplined or reassigned multiple employees involved in the scheme.

Hino in a press release [↗](#), opens new tab said that it appointed an outside director who is an expert in cross-border legal and compliance matters, as well as creating chief compliance officer and deputy chief compliance officer positions, among other reforms.

“That’s a strategy – to try to pre-empt a monitor,” said Sullivan & Cromwell co-chair Robert Giuffra, or at least to limit the scope of the oversight. Giuffra, who was not involved in the Hino matter, added, “The bigger the case, the greater the pressure for a monitor.”

Giuffra was lead counsel to Volkswagen, which faced similar allegations of cheating on diesel emissions test, though on a larger scale. When VW settled criminal and civil charges with DOJ in 2017, the deal included a minimum of three years of supervision by a compliance monitor. (Former Deputy Attorney General Larry Thompson, who did not respond to a request for comment, got the job.)

Fiat Chrysler was also required to hire a compliance auditor as part of its civil settlement over diesel emissions involving about 100,000 Ram 1500 and Jeep Grand Cherokees in 2019.

When the DOJ requires a monitor, it’s not supposed to be “punitive,” Julie Myers Wood, CEO of investigations, compliance and monitoring firm Guidepost Solutions, told me. Rather, it’s based “first and foremost on the government’s view of the state of the company’s current compliance program and conduct,” she said. “Have they remediated what went wrong?”

In the past year, prosecutors required monitors in settlements with companies including TD Bank and Magellan Diagnostics.

Boeing was also set to get a monitor as part of its plea deal related to 737 Max crashes. In December, a federal judge in Texas rejected the 111-page settlement, objecting to a single line about selecting a monitor in keeping with DOJ's "commitment to diversity and inclusion." According to the court docket, the parties are currently meeting and conferring about revising the settlement and are due to update the court no later than Feb. 16.

Considering that Trump in his first day in office curtailed diversity, equity and inclusion initiatives within the federal government, perhaps it won't be hard to mollify the judge on that count.

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Settlements near \$320 mln in college aid lawsuit after Caltech, Johns Hopkins deals

 [reuters.com/legal/litigation/settlements-near-320-mln-college-aid-lawsuit-after-caltech-johns-hopkins-deals-2025-01-20](https://www.reuters.com/legal/litigation/settlements-near-320-mln-college-aid-lawsuit-after-caltech-johns-hopkins-deals-2025-01-20)

Mike Scarcella

By Mike Scarcella

January 20, 2025 7:58 AM PST Updated a day ago

A file photo of students attending their graduation ceremony. REUTERS/Fabian Bimmer
Purchase Licensing Rights , opens new tab

Jan 20 (Reuters) - Johns Hopkins University and the California Institute of Technology have agreed to pay a combined \$35.2 million to resolve claims that they favored wealthy student applicants, pushing total settlements in a lawsuit over financial aid practices to nearly \$320 million.

Lawyers for a proposed class of 224,000 current and former U.S. students disclosed , opens new tab the latest settlements in a filing on Friday in federal court in Chicago. The settlements must be approved by a judge.

The 2022 lawsuit said 17 prominent colleges and universities violated U.S. antitrust law by breaching a pledge not to consider students' finances in making admissions decisions.

Caltech agreed to pay \$16.7 million, and Johns Hopkins said it will pay \$18.5 million. Among earlier settlements, Brown, Yale and Columbia universities agreed to pay a combined \$62 million.

"The fact and amount of these settlements bear out our allegations," said Ted Normand, one of the lead attorneys for the students. "Our goal now is to show that the remaining defendants are liable for the rest."

The schools, including those that have reached settlements, have all denied wrongdoing.

"We are unwavering in our commitment to ensure that a student's socioeconomic status is not a barrier to a Caltech education," Caltech said.

Johns Hopkins did not immediately respond to a request for comment.

Cornell, Georgetown, Massachusetts Institute of Technology, University of Pennsylvania and Notre Dame are the remaining defendants.

Cornell in a statement said it "will vigorously defend our record to show that we admit students based on their qualifications — regardless of their ability to pay — and that we meet their financial needs after individualized analysis with competitive aid packages."

Notre Dame said "we continue to believe that there is no merit to the plaintiffs' claims, and we will let our defense of the lawsuit speak for itself."

Georgetown, MIT and Penn did not immediately respond to requests for comment.

The schools in a court filing [opens new tab](#) last month said the plaintiffs' damages estimate was "fundamentally unreliable" and should be excluded.

The plaintiffs have said they have evidence [opens new tab](#) that some schools put students on priority or special interest lists based on familial wealth and donation history.

The case is Henry v. Brown University, U.S. District Court for the Northern District of Illinois, No. 1:22-cv-00125.

Read more:

College students seek \$685 million in damages in US financial aid lawsuit

US judge approves \$284 mln in settlements in financial aid litigation

Brown, Yale, Columbia among latest to settle financial-aid lawsuit

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Class Action

Jan. 20, 2025, 10:15 AM PST

Lytx to Pay \$4.25 Million to Settle Truckers' Biometric Lawsuit

By [Christopher Brown](#)

- Class members entitled to pro-rata share of settlement funds
- Suit alleged Lytx collected face scans without driver consent

Driver-recording services provider Lytx Inc. would pay \$4.25 million to settle allegations in two federal lawsuits it collected the biometric identifiers of truck drivers without their consent in violation of the Illinois Biometric Information Privacy Act under a deal given initial approval by a federal court.

The deal would allocate 50% of the settlement fund to a sub-class of Illinois residents, and 50% to a larger sub-class of non-Illinois residents whose claims were subject to challenge on extraterritoriality grounds.

Class members with valid claims would be entitled to a pro rata share of the fund for the settlement class to which they belonged, after deduction of attorneys' fees and costs, service awards to the class representatives, and the costs of settlement, according to the plaintiffs' motion for preliminary approval of the deal.

Judge Nancy J. Rosenstengel of the US District Court for the Southern District of Illinois granted the motion Jan. 17.

The plaintiffs alleged in two proposed class actions that Lytx, the maker of dashboard cameras and software used to monitor truck drivers, collected their face scans without obtaining their written consent as required under the BIPA. The Lytx technology is used in more than 4,000 truck fleets across the country, the complaints said.

Plaintiff Joshua Lewis filed a lawsuit against Lytx and his employer Maverick Transportation LLC in November 2021 in the Southern District of Illinois. James Cavanaugh filed a proposed class action against Lytx in October 2021 in the Northern District of Illinois. Nathaniel Timmons filed a proposed class action against Lytx and his employer Gemini Motor Transport LP in December 2021 in Illinois state court, which the company removed to the Central District of Illinois.

The Cavanaugh and Timmons actions were subsequently consolidated in the Northern District of Illinois. Settlement was reached after joint mediation involving the parties in both lawsuits.

The recovery would provide an allocation of \$85 for each Illinois resident and \$35 for each non-Illinois resident, based on an estimated class size of 20,000 Illinois residents and 60,000 non-Illinois residents, the plaintiffs' motion said.

Class counsel intend to seek fees of up to one-third of the settlement amount, or \$1,417,000, up to \$125,000 in reimbursement for the costs of litigation, and service awards of \$10,000 for each of the three class representatives.

Lewis previously entered into a \$56,800 settlement with Maverick Transportation. The claims of Cavanaugh and Timmons against Gemini Motor remain pending.

Carney Bates & Pulliam PLLC, Lieff Cabraser Heimann & Bernstein LLP, Werman Salas PC, Workplace Law Partners PC, Milberg Coleman Bryson Phillips Grossman PLLC, and J. Dominick Larry of Chicago represent the plaintiffs and the classes.

The cases are Lewis v. Maverick Transp. LLC , S.D. Ill., No. 3:22-cv-00046, 1/17/25 and Cavanaugh v. Lytx Inc. , N.D. Ill., No. 1:21-cv-05427, 1/17/25

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Class Action

Jan. 20, 2025, 10:04AM PST

SeatGeek Kicks New York Fees Claims to Arbitration, Beats Class

By Alex Ebert

- Court validates SeatGeek site's 'sign-in-wrap,' 'browserwrap'
- Purchaser who opted out terms can bring case in open court

SeatGeek Inc. can fight a group of customers in arbitration and can't be subject to a class action lawsuit, a federal judge ruled in a partial win for the company facing deceptive fees litigation.

The group of concert and other event-goers sought to bring a class action complaint against SeatGeek alleging that fees added to the cost of tickets midway through the seat-selection and payment process violate New York's ticket transparency law.

That question will have to be left to an arbitrator because most of the plaintiffs clicked agreement to SeatGeek's online "Terms of Use" agreement, the court said. Those terms included an agreement to arbitrate through legally valid "sign-in-wrap"—terms applicable when a purchaser signs in from their account—or "browserwrap," which signals a user agrees to a company's terms by continued use of a website, US District Court for the Eastern District of New York Judge Natasha C. Merle said.

The "record supports a finding that the parties entered into an agreement to arbitrate by manifesting mutual assent in accordance with New York contract law," Merle said in her opinion issued Friday. "The uncluttered layout and clearly visible text on SeatGeek's checkout page provided 'reasonably conspicuous' notice that, by clicking the 'Place order' button, the user also agreed to the" terms.

The ruling was mixed for SeatGeek, however. The court denied the company's request to outright dismiss the claims of another patron who signed an opt-out to the company terms and wasn't subject to arbitration for claims over the more than \$100 in fees he paid to buy two tickets for the musical Cabaret.

Looking just at the complaint, Merle said there were enough allegations against the company's practices to send his lawsuit over violations of New York's fee transparency into the discovery phase of litigation.

"Plaintiff's allegations of paying an unlawful fee to transact with defendant meet the low threshold required to sufficiently plead concrete economic injury," she said.

Levi & Korsinsky LLP represented the ticket purchasers. Cooley LLP represented SeatGeek.

The case is Vasell v. SeatGeek, Inc., E.D.N.Y., No. 24-cv-00932, 1/17/25 .

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NFL families demand justice without exhumations for CTE diagnoses

 [courthousenews.com/nfl-families-demand-justice-without-exhumations-for-cte-diagnoses](https://www.courthousenews.com/nfl-families-demand-justice-without-exhumations-for-cte-diagnoses)

Alexandra Jones

Families of deceased NFL players pushed an appeals court to reverse a federal court's decision that they must dig up and diagnose the players with CTE to qualify for the NFL's concussion settlement.

San Francisco 49ers quarterback Brock Purdy (13) is pressured by Cleveland Browns defensive end Ogbo Okoronkwo (54) during the second half of an NFL football game Sunday, Oct. 15, 2023, in Cleveland. (AP Photo/Ron Schwane)

PHILADELPHIA (CN) — The Third Circuit heard arguments Friday from the families of deceased NFL players who argued they should not be forced to exhume their loved ones' remains to receive compensation from the national concussion settlement.

“Remember that in this case, we're talking about family members who lost a loved one — who was dead at the time that this settlement agreement was approved,” attorney David Campbell told the appeals court.

The Morrison & Foerster lawyer spoke on behalf of Yvonne Sagapolutele — widow of Pio Sagapolutele, a former NFL defensive tackle who died in 2009 from a brain aneurysm after retiring from the league — and other NFL family members Friday.

He argued his clients are entitled to their share of the NFL's concussion settlement agreement, which has sparked more than \$1.3 billion in claims so far, because the biggest determining factor of whether someone had chronic traumatic encephalopathy, or CTE, is whether they played in the NFL.

NFL attorney Paul Weiss argued the players' representatives must put the bodies of their deceased loved ones through required neuropathological examinations — tests that would necessitate exhuming players' bodies — to determine eligibility for concussion settlement awards.

“There was no ambiguity in the relevant provisions of the NFL concussion settlement agreement. In order to recover for death with CTE a claimant was required to come forward with a postmortem diagnosis by a certified pathologist — that is, a diagnosis through a postmortem pathological examination of the decedent's brain tissue,” the Rifkind, Wharton & Garrison lawyer said.

Campbell argued a neuropathologist would be able to offer a proper postmortem diagnosis of his clients' loved ones based on their careers alone — and that digging up their remains should not be necessary for them to file a claim. He conceded that while it's undisputed that the only way to 100% conclusively, definitively diagnose CTE is to cut open a brain and look for the top proteins, a confident diagnosis could also be offered on other merits.

"We now know that over 99% of the brains that have been examined of NFL football players have demonstrated that they have CTE," Campbell said. "And so I can't see how that would be insignificant to a board certified neuropathologist even if their preference might be to get to 100%."

More than 20,000 retired players have brought successful claims in the larger case with the NFL over which Philadelphia federal court Judge Anita Brody has been presiding for more than a decade.

She recently ruled that a postmortem exhumation and examination was needed for members of the class whose NFL player loved ones' died before receiving a CTE diagnosis — the ruling at issue in Friday's Third Circuit hearing.

U.S. Circuit Judge Peter Phipps, a Donald Trump appointee, seemed to agree, noting the NFL settlement language did use the phrase "postmortem diagnosis of CTE made by a board-certified neuropathologist."

U.S. Circuit Judge Arianna Freeman, a Joe Biden appointee, meanwhile questioned the NFL's attorney about whether he was aware of any NFL class members who opted out of the class because they had perceived they were unable to satisfy the diagnostic criteria by getting a postmortem diagnosis.

"I'm not aware of any plaintiffs who opted out specifically on that ground," Weiss said.

In 2011, 75 football players sued the NFL for failing to protect them against head injuries from concussions. The players said the NFL "attacked" legitimate science for years and set up its own Brain Injury Committee to dismiss the devastating effects of repeated concussions, though the league knew of the medical risks as early as the 1920s.

The players said that for decades, the NFL had been aware that repeated head trauma can result in lasting brain injuries, such as memory loss, dementia, depression, and CTE.

From 2002 to 2005, independent researchers and doctors conducted a series of studies that revealed NFL-related concussions could lead to cognitive issues like depression, early-onset dementia, and CTE, along with its associated symptoms.

U.S. Circuit Judge Cindy Chung, another Biden appointee, rounded out the panel. They did not indicate when or how they would rule.

22-Count Indictment Is Just the Start of SCOTUSBlog Atty's Legal Problems, Experts Say

 [law.com/nationallawjournal/2025/01/17/22-count-indictment-is-just-the-start-of-scotusblog-attys-legal-problems-experts-say](https://www.law.com/nationallawjournal/2025/01/17/22-count-indictment-is-just-the-start-of-scotusblog-attys-legal-problems-experts-say)

Alyssa Aquino

Thomas Goldstein. Photo: Diego M. Radzinski/ALM

Tom Goldstein, the appellate attorney and SCOTUSBlog publisher, faces a tax evasion complaint related to his alleged gambling activities and personal relationships. But legal experts say the sprawling indictment against him could spawn ethics complaints and civil litigation.

January 17, 2025 at 07:14 PM

By Alyssa Aquino

Tom Goldstein, the SCOTUSBlog publisher and appellate attorney who argued dozens of cases before the high court, faces several tax fraud charges related to his gambling activities and personal relationships. But legal experts say the sprawling indictment against him may be just the beginning of his troubles.

The 50-page indictment filed in the Maryland federal court on Thursday broadly tells the tale of a man abusing his authority over the now-defunct Supreme Court litigation boutique, Goldstein & Russell, to repay nearly \$15 million worth of debt that piled up as he engaged in high-stakes poker games, where the buy-in could run up to tens of millions of dollars.

Trial counsel for Goldstein—John Lauro of Lauro & Singer and Christopher Kise of Continental—said Thursday that their "client intends to vigorously contest these charges and we expect he will be exonerated at trial."

The charges are extensive and severe and, if proved, could expose Goldstein to decades in prison, said criminal defense attorney Mark Eiglarsh. If convicted as charged, Goldstein can expect a heavy penalty, based on the nature of the alleged crimes and the "substantial amount" of purportedly unpaid taxes, according to Eiglarsh.

Moreover, "the penalty could be more severe in this case because, as an attorney, he is presumed to have a greater understanding of the law than the average person," Eiglarsh said in a statement.

The indictment alleged a slew of misconduct running from "at least" 2016 to March 2023, when Goldstein announced his retirement from appellate practice.

Prosecutors with the U.S. Attorney's Office for the District of Maryland alleged that Goldstein diverted legal fees owed to Goldstein & Russell to his debtors, which allegedly included a billionaire client who staked \$10 million in Goldstein's poker games, and misrecorded payments as legal expenses. Prosecutors further alleged that Goldstein covered up his poker earnings and losses on federal taxes, as well as on a \$2 million loan application to purchase a home in Washington, D.C. To purchase the residence, Goldstein turned to litigation funding, and pledged Goldstein & Russell's receivables from a number of legal matters, according to prosecutors.

Prosecutors went further and alleged a slew of misconduct allegedly involving four women who allegedly had "intimate" relationships or were pursued by Goldstein. Goldstein, prosecutors claimed, offered sham jobs to the women at the firm, allowing them to receive \$39,000 in salaries and health insurance benefits for little or no work. Goldstein is married to his longtime legal partner, Amy Howe, with whom he ran Goldstein & Russell's predecessor firm, Goldstein and Howe, and founded SCOTUSBlog, whose high court coverage is popular with the legal community.

Shanlon Wu, a former federal prosecutor who served as counsel to former Attorney General Janet Reno, said the indictment could lead to civil litigation from old partners at Goldstein & Russell.

Kevin Russell and Daniel Woofert, former partners at Goldstein & Russell, didn't immediately respond to requests for comment. After Goldstein's retirement, the pair went on to found the appellate boutique Russell & Woofert.

But the fact that prosecutors brought a criminal complaint over tax evasion raised questions from Wu as to whether any of the allegedly misused funds were client money or funds earmarked for clients.

"If there's any client money involved, that's a huge problem for lawyers," he said.

Regardless of the merits of the criminal charges, professional liability attorney George Mahaffey said Goldstein will "undoubtedly" face an ethics investigation, either from the Maryland State Bar Association or the Bar Association of the District of Columbia, which both include Goldstein as a member.

"There's a lot of stuff there that's potentially very troubling to bar counsel," said Mahaffey, whose practice at Goodell DeVries Leech & Dann includes representing lawyers in ethics-related matters.

A bar complaint could potentially be brought against Goldstein under the American Bar Association's Rule 8.4, which prohibits misconduct involving fraud or negatively impacts the perception of the legal profession. Such a complaint would kick off a long ethics

investigation, which Goldstein would have to report to any other bar associations to which he belongs, which could lead to more investigations in other jurisdictions, Mahaffey said.

Herman Russomanno III, a Florida-based attorney who also defends lawyers in discipline cases, added that potential disciplinary action could occur for any misconduct committed by Goldstein outside of his practice, so long as the misconduct is "unlawful or contrary to honesty and justice." While most of the alleged misconduct is related to his firm, some of the charges concerning Goldstein's personal tax returns could involve money that is unrelated to his practice, Russomanno said.

In total, Mahaffey said that disbarment could be in the cards for Goldstein, if the alleged misconduct was true. And although Goldstein retired in 2023, a disbarment could still sting, Mahaffey said.

"I think for someone who has standing in the field and was practicing among a very small group of people who practice and litigated before the Supreme Court, [a disbarment] would matter," he said.

Lauro and Kise noted in their Thursday statement that Goldstein is a prominent attorney with an "impeccable reputation" and they were "deeply disappointed that the government brought these charges in a rush to judgment without understanding all of the important facts."

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Who Got The Work

Rebekah S. Guyon of Greenberg Traurig has entered an appearance for Vision Service Plan in a pending digital privacy lawsuit. The case was filed Dec. 4 in Illinois Northern District Court by Wexler Boley & Elgersma, Gustafson Gluek PLLC and Taus Cebulash & Landau. The suit accuses the defendant of using third-party tracking

Nasdaq Moves to Erase Board Diversity Rules After Court Loss

By Andrew Ramonas

Nasdaq is seeking to formally withdraw rules meant to boost the number of women and minorities on company boards, after a federal appeals court struck them down last year.

The stock exchange operator intends to scrub the regulations from its rulebook for listed companies by Feb. 4, according to a Thursday filing with the Securities and Exchange Commission. A US Court of Appeals for the Fifth Circuit mandate voiding the rules will take effect that day, Nasdaq Inc. said.

The rules required thousands of listed companies to have diverse boards or explain why they don't. The SEC must back Nasdaq's plans in order for the exchange operator to officially remove the regulations. The Fifth Circuit in December ruled that the SEC lacked the authority for its 2021 approval of the board diversity rules.

"The proposed rule change merely updates Nasdaq's rulebook to reflect the court's decision, which takes effect without regard to this rule filing," the exchange operator said in its paperwork.

- An SEC spokesperson declined to comment.
- A Nasdaq representative said in December the company didn't plan to challenge the Fifth Circuit decision.
- The Fifth Circuit voted 9-8 to scrap the rules, siding with conservative groups that argued the SEC overstepped its authority by approving the regulations.

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Companies Should Follow Own Rules, Scrap Inauguration Donations

By Rob Chesnut

Column

Columnist Rob Chesnut says corporations' ever-growing donations to presidential inaugurations corrodes public trust, and morale of companies' own employees, who are often held to a higher ethical standard.

Now that the election is over, the tradition of paying tribute to the new leader is in full swing with gestures of fealty and currying favor. In ancient times, noblemen might have traveled great distances to bestow a king with gold or dazzling jewels. In our democracy, it involves corporations and their leaders sending a seven-figure check to the president's inauguration committee, attending lavish inauguration fetes, and, perhaps, announcing policy reversals to align with the new president's agenda.

It's not the proudest moment for corporate conduct.

Since Election Day, President Donald Trump's inaugural committee has raised north of \$170 million for his inauguration activities, presidential library, and political operations—that's a sizable jump from the amount raised for his 2017 inauguration—\$106 million.

Corporate donations are welcome, and there are no maximums. Trump isn't the first to use the inauguration as a fundraising opportunity—it's become an integral part of 21st-century Washington politics. After banning corporate donations and limiting donations to \$50,000 per person for his first inauguration that raised over \$50 million, President Barack Obama sparked controversy by lifting the corporate ban and soliciting up to \$1 million for VIP inauguration packages in 2013, raising over \$40 million.

President Joe Biden's 2021 inauguration drew tens of millions of dollars from corporate donors, generating about \$62 million. And in 2025, the scale of donations is clearly ramping up. The line of donors for the 2025 inauguration is so long that inaugural events are completely sold out—even \$1 million donors are being told they won't be provided with tickets, though of course their donations are still welcome.

I've drafted a number of corporate codes of conduct, so I find inauguration fundraising particularly hard to watch. Corporate codes are full of rules admonishing employees that there is zero tolerance for activity that might even create the appearance of impropriety when dealing with government officials.

Meta Platforms Inc.'s code of conduct, for example, states that employees should "never offer bribes or kickbacks, or anything of value, to an individual or government official to improperly influence—or if it could appear to improperly influence—a business or government decision." Alphabet Inc., the parent company of Google LLC, warns that "offering gifts, entertainment, or other business courtesies that could be perceived as bribes becomes especially problematic if you're dealing with a government official." Both Meta and Alphabet pledged \$1 million donations after Trump's election.

Microsoft Corp., which also pledged \$1 million for the inauguration fund, prohibits "improperly giving, promising, offering, or authorizing payment of anything of value in order to obtain or keep business or to secure some other advantage for Microsoft." We want to "hold ourself to the highest possible standards of ethical business conduct," Alphabet proclaims in its code. Right after the inauguration.

I can hear the lawyers in the audience: Well, Rob, the money is technically going to a nonprofit inaugural committee, not directly to any government official, so these companies might be adhering to the letter of their own policy. But if you recognize—as most companies do—that providing entertainment to government officials is improper because it creates the impression that you're currying favor and attempting to get a business benefit, the distinction between who collects the money and who gets the benefit is meaningless, particularly when there is so little transparency around how the funds are spent and where the leftover funds go.

The damage done by inauguration money grabs is more than just supporting public cynicism in government. It creates cynicism about ethics throughout the employee base of the companies that participate. As employees watch this inauguration, it has to be challenging for them to enthusiastically follow the mandates of their company's code that preaches against even the appearance of impropriety in dealings with government, knowing that leadership takes advantage of any opportunity to use money to influence.

I'll be glad when Trump puts his hand on the bible (perhaps the Trump-endorsed special Inauguration Day edition available for \$69.95, embossed with his name on the cover) and is sworn into office, ending another chapter in what is an increasingly unseemly procession of inauguration seasons.

Let's talk about meaningful reform that limits donation size, increases transparency around how the funds are spent, and regulates use of leftover donations. And corporations should end donations that run contrary to their own publicly promoted ethical standards.

Rob Chesnut consults on legal and ethical issues and was formerly general counsel and chief ethics officer at Airbnb. He spent more than a decade as a Justice Department prosecutor and he writes on in-house, corporate, and ethics issues.

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Jan. 17, 2025, 5:15 PM PST

American Electric Power Settles SEC Probe for \$19 Million

By Maia Spoto

American Electric Power Co. Inc. has reached a \$19 million settlement with the SEC over allegations it misled investors about its involvement with a nonprofit tied to Former Ohio House Speaker Larry Householder.

The utility didn't admit or deny the findings of the investigation. Householder, who organized the scheme, is in federal prison and faces state charges, and another utility, FirstEnergy Corp., settled with the SEC for \$100 million over claims it misled investors about bribes paid to Householder.

- AEP misled investors in a July 2020 press release that said it wasn't funding an organization to combat the passage of a bailout of a handful of power plants, the SEC found.
- The company used nonprofit Empowering Ohio's Economy Inc. to support the organization tied to Householder that pushed for the bailout, according to the investigation.
- AEP failed to disclose to investors transactions with the group and keep appropriate accounting, the findings said.

The case is In the matter of American Electric Power Co. Inc. , S.E.C., No. 3-22425, 1/17/25 .

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Indicted FirstEnergy CEO told executive to lie to investigators about consulting contract, feds say

[cleveland.com/open/2025/01/indicted-firstenergy-ceo-told-executive-to-lie-to-investigators-about-consulting-contract-feds-say.html](https://www.cleveland.com/open/2025/01/indicted-firstenergy-ceo-told-executive-to-lie-to-investigators-about-consulting-contract-feds-say.html)

January 17, 2025



Former FirstEnergy CEO Chuck Jones and top lobbyist Mike Dowling, as well as the state's former ranking utilities regulator Sam Randazzo all appeared in court on Tuesday, February 13, 2024, for their arraignment in Summit County Common Pleas Court. Jones walks into the courtroom. David Petkiewicz, [cleveland.com](https://www.cleveland.com)David Petkiewicz, [cleveland.com](https://www.cleveland.com)

By

Jake Zuckerman, jzuckerman@cleveland.com

COLUMBUS, Ohio – After the arrest of the Ohio House speaker for taking bribes from FirstEnergy and despite a blitz of subpoenas from the FBI, thousands of text messages “were missing” from the iPhone of the company’s chief executive, who directed another executive to “alter” a consulting contract and lie about it, investigators say in a new indictment.

Racketeering charges were unsealed Friday against former CEO Chuck Jones, 69, and senior vice president of external affairs Mike Dowling, 60. They’re accused of waging two separate bribery schemes between 2017 and 2019: one with GOP House Speaker Larry

Householder to pass bailout legislation of its nuclear plants, and one with Public Utilities Commission of Ohio Chairman Sam Randazzo for preferential regulatory treatment. They pleaded not guilty to the charges Friday.

While the broad strokes about the cases have been known for years, revealed at an extended criminal trial and through a spread of criminal, regulatory, and civil investigations, Friday's indictment reveals new details about how prosecutors say Jones especially tried to cover his tracks.

Federal prosecutors charged Householder and his political allies, but not Jones and Dowling, in July 2020.

In September that same year, Jones directed someone the indictment identifies as FirstEnergy Service Executive 1 to "alter" a document related to a \$400,000 payment to "Individual B."

The indictment doesn't identify FirstEnergy Service Executive 1 and Individual B, but they appear to be Dennis Chack, a senior vice president with the company, and Tony George, a Cleveland area businessman who brokered Jones' relationship with Householder.

Individual B is identified in the indictment as the recipient of an email Cleveland.com and The Plain Dealer previously obtained via public records request, revealing George as its sender.

FirstEnergy Service Executive 1, the indictment says, discussed the Householder investigation and a \$400,000 consulting payment made to George with both George and Jones in September 2020. Chack, who was an executive with the FirstEnergy Service Company, was interviewed by FirstEnergy's internal investigators on both Sept. 11, 2020, and Sept. 21, 2020, to discuss EcoEarth, George's company that was party to the backdated contract, according to PowerPoint presentation made to FirstEnergy's board.

George didn't return a text or phone call. An attorney for Chack declined to comment.

After telling him to change the document, the indictment says, Jones told FirstEnergy Service Executive 1 to "provide false information" about the payment to "individuals" gathering information in response to the federal indictment and subpoenas.

Jones, it continues, told the executive that he "provided purposefully false information" to unspecified individuals about the transactions with Individual B, that he had previously told the executive to keep his name off of.

FirstEnergy fired Jones, Dowling and Chack in October 2020.

Not long after Householder's arrest in July 2020, the company created a digital copy of Jones' iPhone, the new indictment states. But in October, when the company asked Jones for his phone again, "thousands of messages were missing from the phone, including messages relevant to the federal investigation." And on Dowling's phone, prosecutors say communications to relevant individuals "were missing from the phone."

Cleveland.com and The Plain Dealer reached out to attorneys for Jones and Dowling.

The allegations involving Chuck and George mirror the contents of a PowerPoint presentation to the company's board of directors, previously obtained by Cleveland.com, explaining the decision to fire Chuck, who was not accused in the bribery scheme.

The PowerPoint presentation states that in September 2020, Chuck told FirstEnergy's internal investigators he was not aware of any consulting services that EcoEarth, George's company, provided to FirstEnergy. But a few days later, he produced a contract dated November 2016 detailing a \$400,000 arrangement. A skeptical FirstEnergy hired a forensic handwriting analyst who concluded that it's "highly probable" the signatures on the contract were written in the last six months, suggesting fraud. Chuck admitted to creating the document and lying about it, in full knowledge of the raging federal criminal investigation, the FirstEnergy document states.

The document states that George, having received a billboard advertising contract from FirstEnergy, subcontracted \$500,000 off the work to Chuck's daughter, Denise Angerstein.

In Householder's trial, prosecutors seized on repeated instances of what they cast as evidence of concealment. Testimony and evidence showed how Householder deleted records of his phone contacts with Attorney General Dave Yost; two Householder allies ordered a staffer to delete all her digital records; Householder pressured a state lawmaker to delete records of their conversations; and Matt Borges, a lobbyist convicted alongside Householder, deleted his text messages with a campaign operative he paid off with \$15,000.

Mike Benza, a law professor and former public defender, said at the time that these kinds of concealment efforts can act as evidence of intent. They suggest a person knew what they were doing was wrong – a misdeed to be covered.



Stories by Jake Zuckerman

- Ohio will have two freshmen in the U.S. Senate. Can they deliver for Ohio?: Capitol Letter

- Feds charge former FirstEnergy CEO Chuck Jones, ex-senior vice president in bribery scheme
- The Ohio AG says he ran a 'scam' East Palestine charity. A congressman just hired him

Jake Zuckerman covers state politics and policy for Cleveland.com and The Plain Dealer.

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Former FirstEnergy CEO, senior VP indicted in Ohio bribery scheme

 1.next.westlaw.com/Document/I66328f60d5d311efa280fb7d6c9cbc2e/View/FullText.html

NewsRoom

1/18/25 Dayton Daily News (No Page)

2025 WLNR 1403191

Dayton Daily News (Ohio)

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January 18, 2025

Kristen Spicker; Dayton Daily News, Ohio

Jan. 18—Two former FirstEnergy executives are accused of participating in a \$60 million bribery scheme.

Former CEO and President Charles E. Jones, 69, of Akron, and former Senior Vice President Michael Dowling, 60, of Massillon, were indicted on one count of participating in a racketeering conspiracy by a federal grand jury.

Jones and Dowling reportedly were part of a conspiracy to increase FirstEnergy's stock price while enriching themselves.

"Jones and Dowling used their positions within FirstEnergy to engage in schemes involving the offer, acceptance and payment of bribes, money laundering and witness and information tampering," the indictment read.

As part of the scheme, the pair allegedly participated in bribes to former Ohio House Representative Larry Householder and former PUCO Chairman Samuel Randazzo.

Between 2017 and March, FirstEnergy paid more than \$59 million to Generation Now, which Jones and Dowling knew was controlled by Householder, according to court records.

The funds were funneled through a 501(c)(4) entity, Energy Pass-Through, to Generation Now and other entities that were reportedly associated with other public officials.

The money allegedly helped Householder become speaker of the House and pass House Bill 6, a nuclear bailout that benefited FirstEnergy.

Jones and Dowling are also accused of directing more than \$4 million to Randazzo's companies to influence him to take actions that would benefit them and FirstEnergy, according to the indictment.

In June 2023, Householder was sentenced to 20 years in prison for his role in the scheme.

---- Index References ----

Company: FIRSTENERGY CORP.

News Subject: (Crime (1CR87); Financial Fraud (1FI18); Fraud (1FR30); Social Issues (1SO05))

Industry: (Electric Utilities (1EL82); Energy & Fuel (1EN13); Utilities (1UT12))

Region: (Americas (1AM92); North America (1NO39); Ohio (1OH35); U.S. Midwest Region (1MI19); USA (1US73))

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Former FirstEnergy Executives Face Federal RICO Charges (1)

By Eric Heisig

- Pair accused of working to pay bribes, commit money laundering
- Indictment comes after charges were filed in Ohio court

Two former FirstEnergy Corp. executives, including its former CEO, face a new federal indictment in a sprawling corruption case that involved more than \$60 million in bribes to the former Ohio House speaker and a top utilities regulator.

Former CEO Charles E. Jones and former Senior Vice President of External Affairs Michael Dowling are charged with participating in a racketeering conspiracy and face up to 20 years in federal prison. Their indictment was handed up Wednesday and unsealed Friday after they were in federal custody ahead of their arraignments, according to court records. Both men pleaded not guilty Friday and were released by a federal magistrate judge.

Both men—who face a separate criminal case in state court, with Jones also facing a Securities and Exchange Commission lawsuit—allegedly committed a series of crimes geared toward increasing the Akron, Ohio-based FirstEnergy's stock price and to enrich themselves. They included bribery, money laundering, and obstruction, the US Attorney's Office for the Southern District of Ohio said in a news release.

This included steering bribe money to former House Speaker Larry Householder (R) and Samuel C. Randazzo, a former attorney at McNees Wallace & Nurick LLC who became chairman of the Public Utilities Commission of Ohio, prosecutors said. Jones and Dowling worked so FirstEnergy could steer more than \$60 million to entities operated to benefit Householder during his ultimately successful bid for House speaker and his push to pass a \$1.3 billion legislative package that bailed out two nuclear power plants owned by the utility at the time, according to authorities.

Jones and Dowling also pushed for Gov. Mike DeWine (R) to name Randazzo as the state's top utilities regulator; FirstEnergy then paid Randazzo's companies more than \$4.3 million in exchange for favorable actions in proceedings in front of the public utilities commission, according to federal officials.

Eight people have been charged because of the myriad investigations, which became public after the FBI arrested Householder, former Ohio Republican Party Chairman Matthew Borges and others in 2020. Householder, who was convicted in 2023 of the same charge that Jones and Dowling face, is serving a 20-year federal prison stint.

Randazzo died by suicide last April while facing state and federal charges, some of which stemmed from the alleged \$4.3 million bribe. His company pleaded guilty last month to state charges.

FirstEnergy has paid hundreds of millions of dollars in settlements with state and federal prosecutors and the SEC.

Jones is represented by BakerHostetler. Dowling is represented by Tucker Ellis LLP.

The case is United States v. Jones , S.D. Ohio, No. 1:25-cr-00006, indictment unsealed 1/17/25 .

(Updates second paragraph with info from the defendants' arraignments.)

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Former executives charged in Ohio bribery scheme

 [usatoday.com/story/news/nation/2025/01/17/former-firstenergy-executives-charged-in-ohio-bribery-scheme-householder/77783516007](https://www.usatoday.com/story/news/nation/2025/01/17/former-firstenergy-executives-charged-in-ohio-bribery-scheme-householder/77783516007)

NATION

Ohio

Former energy executives face federal charges in massive Ohio bribery scheme

Two former executives are charged in a racketeering scheme and turned themselves into federal authorities on Friday. The pair are charged in connection with the biggest bribery scandal in Ohio.



Two former energy company executives turned themselves into authorities Friday for their suspected role in facilitating the biggest corruption scandal in Ohio state history.

The scheme involved over \$60 million in bribes to secure a \$1 billion bailout of FirstEnergy's faltering nuclear plants and eliminate regulatory hurdles. The scandal has already landed one of Ohio's most powerful politicians in federal prison.

Prosecutors indicted former FirstEnergy CEO Chuck Jones, 69, and ex-Senior Vice President of External Affairs Michael Dowling, 60, under the Racketeer Influenced and Corrupt Organizations Act, a charge created to prevent organized crime and fight against drug kingpins.

"This alleged \$60 million racketeering conspiracy defrauded Ohioans to enrich the defendants," FBI Cincinnati Special Agent in Charge Elena Iatarola said. "The FBI will continue to pursue political corruption and corporate fraud to protect taxpayers and hold white-collar criminals responsible for their actions."

The charging of the pair of executives is the latest in a case that's racked the state since the U.S. Attorney's Office for the Southern District of Ohio first indicted former Ohio House Speaker Larry Householder and four others linked to the scheme in 2020. Householder was dealt a 20-year sentence in 2023 for orchestrating the scheme. Others tied to scheme are in prison, awaiting sentencing or have committed suicide.

Ohio Gov. Mike DeWine would not comment on the indictments during a press conference on Friday.



Prosecutors allege that Jones and Dowling participated in bribery, money laundering and obstruction to increase the company stock price and enrich themselves. FirstEnergy fired the two men in October 2020.

The Akron-based company previously pleaded guilty to bribing Householder and former Public Utilities Commission of Ohio Chairman Sam Randazzo – two public officials in powerful positions to help the company. The company paid a \$230 million fine and agreed to cooperate with federal investigators.

FirstEnergy spokesperson Jennifer Young said the company can't comment on the new indictment but noted that in the intervening years "FirstEnergy is a different, stronger company that has taken significant steps to move forward."

Householder's role in the scheme involved recruiting Republicans to win control of the House and passing the controversial House Bill 6, which included a \$1 billion bailout for two nuclear plants then-owned by a FirstEnergy subsidiary. Former Ohio Republican Party chairman Matt Borges received a five-year prison sentence for his role.

Randazzo was accused of accepting a \$4.3 million bribe to help pass that law and ease regulatory hurdles for the company. He had pleaded not guilty. The case was dismissed after he died by suicide last April.

A statehouse scandal fueled by dark money

Even before Friday's announcement, the case has had a huge impact: Householder and Borges are convicted and imprisoned, two co-conspirators Jeff Longstreth and Juan Cespedes pleaded guilty and are awaiting sentencing, lobbyist Neil Clark and Randazzo both died by suicide, and FirstEnergy changed its leadership and board.

The latest development marks the first time federal authorities have charged the bribers instead of the bribe recipients.

The indictment paints a picture of how FirstEnergy executives used money and influence to their own advantage at the Ohio Statehouse. After House Bill 6 passed, Jones sent a photoshopped version of Mount Rushmore, featuring Randazzo's and others' faces on it. The caption read: "HB 6 F*** ANYBODY WHO AINT US."

In October 2016, the executives pledged to the FirstEnergy board that the company value would be increased by 27%. But at the same time, the utility faced a weak energy market and hundreds of millions of dollars in losses, especially from FirstEnergy Solutions, its nuclear power subsidiary. To turn the company around, Jones and his team pursued bailouts from federal and state officials.

In 2018, FirstEnergy Solutions filed for bankruptcy and said it would close its nuclear power plants absent a government bailout.

FirstEnergy used dark money groups to help Householder amass political power and become Ohio House speaker. In April 2019, Householder unveiled House Bill 6, which would require 4.5 million Ohio consumers to pay fees on their monthly electric bills to help keep the nuclear plants open.

'An expensive friend': Gleeful texts show fruits of bribery

Text messages Jones and Dowling included in the indictment show the glee the pair shared as their scheme to save the company on the backs of Ohio taxpayers took shape.

"Huge bet and we played it all right on the (state) budget and HB6, so we can go back for more!" Dowling said in a text to Jones the day that Ohio's governor signed the bailout into law.

The pair followed the success of the bailout bill with a new goal: "Win the National Championship" – a reference to getting favorable action in the state budget that would guarantee the company millions of dollars per year as well as other favorable treatment.

"Tell LH to put on his big boy pants. Ha," Dowling told Jones as they continued the scheme.

As FirstEnergy's stock climbed Jones texted Randazzo - the state utilities commissioner accused of accepting bribes who committed suicide: "Those guys are good but it wouldn't happen without you," he wrote. "My Mom taught me to say Thank you."

The indictment also includes the pair's remarks on Householder.

"[t]alked to Speaker today," Jones wrote to someone unidentified in the indictment about Householder. "He's an expensive friend."

Laura A. Bischoff and Jessie Balmert are reporters for the USA TODAY Network Ohio Bureau; Michael Loria is a national news reporter for USA TODAY.

Read the federal indictment here:

This is a developing story that will be updated.

Two former utility executives will face racketeering charges

 1.next.westlaw.com/Document/l1d98a8f0d56211ef941ba006662c756f/View/FullText.html

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Section: News

Two former utility executives will face racketeering charges

Ex-CEO, VP accused of bribing Ohio officials to bail out FirstEnergy

Laura A. Bischoff and Jessie Balmert

January 18, 2025

U.S. Attorney for the Southern District of Ohio Ken Parker and his team are prosecuting the case against Chuck Jones and Michael Dowling nearly two years after they won convictions against Larry Householder and Matt Borges.

Two former FirstEnergy executives were indicted in connection with a massive statewide bribery scandal that put one of Ohio's most powerful politicians in federal prison.

Former FirstEnergy CEO Chuck Jones and ex-Senior Vice President of External Affairs Michael Dowling are accused of bribing state officials to pass a \$1 billion bailout for the company's nuclear plants and to eliminate regulatory hurdles.

"This alleged \$60 million racketeering conspiracy defrauded Ohioans to enrich the defendants," FBI Cincinnati Special Agent in Charge Elena Iatarola said. "The FBI will continue to pursue political corruption and corporate fraud to protect taxpayers and hold white-collar criminals responsible for their actions."

Both were indicted under the Racketeer Influenced and Corrupt Organizations Act, a charge created to prevent organized crime and fight against drug kingpins. Jones, 69, of Akron, and Dowling, 60, of Massillon, were turning themselves in to federal authorities Friday morning.

Prosecutors allege that Jones and Dowling participated in bribery, money laundering and obstruction to increase the company stock price and enrich themselves. FirstEnergy fired the two men in October 2020.

The Akron-based company previously pleaded guilty to bribing former Ohio House Speaker Larry Householder and former Public Utilities Commission of Ohio Chairman Sam Randazzo – two public officials in powerful positions to help the company.

The company paid a \$230 million fine and agreed to cooperate with federal investigators.

FirstEnergy spokesperson Jennifer Young said the company can't comment on the new indictment but noted that in the intervening years "FirstEnergy is a different, stronger company that has taken significant steps to move forward."

Householder was sentenced to 20 years in federal prison for his role in the scheme, which involved recruiting Republicans to win control of the House and passing the controversial House Bill 6, which included a \$1 billion bailout for two nuclear plants then-owned by a FirstEnergy subsidiary. Former Ohio Republican Party chairman Matt Borges received a five-year prison sentence for his role.

Randazzo was accused of accepting a \$4.3 million bribe to help pass that law and ease regulatory hurdles for the company. He had pleaded not guilty. The case was dismissed after he died by suicide last April.

A statehouse scandal

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In October 2016, the executives pledged to the FirstEnergy board that the company value would be increased by 27%. But at the same time, the utility faced a weak energy market and hundreds of millions of dollars in losses, especially from FirstEnergy Solutions, its nuclear power subsidiary. To turn the company around, Jones and his team pursued bailouts from federal and state officials.

In 2018, FirstEnergy Solutions filed for bankruptcy and said it would close its nuclear power plants absent a government bailout.

FirstEnergy used dark money groups to help Householder amass political power and become Ohio House speaker. In April 2019, Householder unveiled House Bill 6, which would require 4.5 million Ohio consumers to pay fees on their monthly electric bills to help keep the nuclear plants open.

It paid millions of dollars to Randazzo and his companies, including a \$4.3 million payment shortly before he applied to chair the Public Utilities Commission of Ohio.

Even after the scandal became public and lawmakers repealed the subsidies, FirstEnergy Solutions, which emerged from bankruptcy under the name Energy Harbor, kept the plants open and operating.

The federal indictment says that Jones and Dowling purposely used dark money groups because the source of funds didn't have to be disclosed.

"Huge bet and we played it all right on the (state) budget and HB6, so we can go back for more!" Dowling said in a text to Jones the day that Gov. Mike DeWine signed the bailout into law.

The indictment details FirstEnergy's plans to "Win the National Championship" – a reference to getting favorable action in the state budget, House Bill 6 and in front of the PUCO.

When the charges against Householder became public in July 2020, FirstEnergy copied everything on Jones' company cell phone. Months later, FirstEnergy took the phone from Jones again to re-copy its contents but found that thousands of messages relevant to the investigation had been deleted, according to the indictment. Messages between Dowling and Jones were also missing from Dowling's company phone.

U.S. Attorney for the Southern District of Ohio Ken Parker and his team are prosecuting the case against Jones and Dowling nearly two years after they won convictions against Householder and Borges.

Parker is an appointee of the Biden administration and may step down in the near future. Parker inherited the Householder and Borges case from federal prosecutor David DeVillers, a Trump appointee who stepped down in February 2021.

The Jones and Dowling cases are assigned to U.S. District Court Judge Timothy S. Black, who heard the case against Householder and Borges.

Last February, Ohio Attorney General Dave Yost, a Republican, charged Jones and Dowling in state court with engaging in a pattern of corrupt activity. Both have pleaded not guilty to those offenses.

U.S. Attorney for the Southern District of Ohio Ken Parker and his team are prosecuting the case against Chuck Jones and Michael Dowling nearly two years after they won convictions against Larry Householder and Matt Borges.

---- Index References ----

Company: Public Utilities Commission; FIRSTENERGY SOLUTIONS CORP.; Ohio House Motel; ENERGY HARBOR HOLDINGS LLC

News Subject: (Crime (1CR87); Criminal Law (1CR79); Financial Fraud (1FI18); Fraud (1FR30); Government Litigation (1GO18); Legal (1LE33); Social Issues (1SO05))

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NewsRoom

Ohio's New U.S. Senator Jon Husted Has a History of Connections to Energy and Charter Scandals

 [clevescene.com/news/ohios-new-us-senator-jon-husted-has-a-history-of-connections-to-energy-and-charter-scandals-45909004](https://www.clevescene.com/news/ohios-new-us-senator-jon-husted-has-a-history-of-connections-to-energy-and-charter-scandals-45909004)

Marilou Johaneck, Ohio Capital Journal

[click to enlarge](#)



Photo by Graham Stokes for the Ohio Capital Journal.

Ohio's next U.S. Senator, Jon Husted.

"No comment." That's all Ohio Gov. Mike DeWine said and walked away. Only at the tail end of DeWine's press conference last Friday, to announce Lt. Gov. Jon Husted as his pick to replace J.D. Vance in the U.S. Senate, was the elephant in the room even acknowledged. What was the governor's response to the federal indictments handed down (the same day) against two former FirstEnergy executives tied to the biggest public corruption scandal in state history?

DeWine's response was no response. His briefing was about Husted's promotion not the stain of malfeasance on their watch that the federal indictments underscored. Both men revert to a predictable default setting when it comes to questions about their knowledge of or involvement in the FirstEnergy scheme to bribe lawmakers into giving it a massive state subsidy. Deny. Deflect. Dismiss. No comment.

The pair insists, despite mounting evidence to the contrary, that they knew nothing about anything corrupt in the legislation written by and for FirstEnergy that they were instrumental in passing and signing into law. DeWine and his LG maintain they conducted themselves properly and did right by Ohio with energy policy that just happened to include an extravagant gift from the state to a utility that donated richly to their campaigns.

They either outright refute the logged meetings, phone calls, emails and text messages shared with FirstEnergy brass before, during, and after the company's *billion-dollar* nuclear plant bailout was enacted — or feign amnesia about their chumminess with generous GOP donors even as FirstEnergy's devious pay-to-play arrangement was underway to enrich investors and hose ratepayers.

But as court documents indicate — in the state and federal trials of defendants who got caught up in the nuclear bailout scam — DeWine, and especially Husted, had their fingerprints all over the dodgy FirstEnergy legislation while it was being created and passed through the legislature to benefit the utility and Republican sugar daddy. Like many Ohio Republicans, DeWine and Husted had lengthy relationships and intricate business dealings over the years with the head honchos at FirstEnergy.

Their coziness with ex-FirstEnergy CEO Chuck Jones and Senior VP Mike Dowling appeared to reach its peak in 2019 with passage of House Bill 6 to prop up the utility's two aging and uncompetitive nuclear power plants in Ohio. So when federal prosecutors announced that Jones and Dowling — at the center of a \$60 million bribery plot to buy off state officials for a *\$1.2 billion* bailout — had been slapped with federal racketeering charges, the top state officials who made that bailout happen must have squirmed.

Their political patrons, already facing related charges on the state level, could well implicate the gov and his Senate-appointee in the developing federal cases. No wonder Husted is hightailing it out of Ohio before the boom lowers. But the senator-to-be, who has managed to skate around his deep entanglements in some of the state's biggest scandals, (e.g., the notorious ECOT online charter school he championed without accountability that ripped-off a ton of taxpayer money for phantom students) may not be able to slide so deftly around his role as a pivotal player in the FirstEnergy scandal.

Publicly released court records suggest Husted, in close contact with FirstEnergy execs, was *leading* the behind-the-scenes efforts to push the tainted HB6 through the legislature and onto the governor desk ASAP. Detailed evidence contains a slew of FirstEnergy texts referencing "State Official 2," confirmed as Husted, that show how involved the LG was in not only lobbying for arguably the most corrupt piece of state energy legislation ever, but for making the nuclear bailout bill even beefier by extending the FirstEnergy payouts in the legislation a few extra years.

Although Husted had to trim his sails on that front, FirstEnergy leaders chortled in text messages that the LG was in their corner "fighting to the end" to give the company everything it wanted and more. Who cared if Ohio ratepayers were on the hook for hundreds of millions in new monthly surcharges on their electricity bills? Husted wasn't working for them. He was helping FirstEnergy boost its profit margin in an unprecedented bribery and money laundering fraud perpetrated on everyday Ohioans.

Of course, Husted defaults to denial about any knowledge of the corruptness that permeated FirstEnergy's bid for bloated state subsidies from the very beginning. It's a dance he and DeWine do whenever pervasive state scandal threatens to puncture the governor's folksy persona or the LG's image as the telegenic GOP Golden Boy who checks off every box that matters to deep-pocketed powerbrokers lining up to make a killing on custom-made government policy.

As Husted heads to Washington he takes a political skills set honed in shameless service to: an unscrupulous utility that tried to buy a gravy train ticket from the state with secretly-funded legislation, to a crooked for-profit charter that bilked taxpayers out of hundreds of millions of dollars, to a billion-dollar voucher boondoggle funding private religious schools in a scandal waiting to explode, to the fossil fuel industry's anti-wind and anti-solar propaganda machine after publicly supporting renewable energy.

Husted will fit right in with the Republican Senate majority carrying water for the highest bidder waving a campaign check, capitulating to the tyrant trashing the Constitution with impunity, and brushing aside telling stains of gathering malfeasance with "no comment."

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Ohio News

News from Bloomberg Terminal
Jan. 21, 2025, 10:25 AM PST
The SEC Was Busy Last Week

By Matt Levine

(Bloomberg Opinion) --

SEC: General

What if the US Securities and Exchange Commission never brings another enforcement case? What if it's like "ahh, go ahead, do all the fraud you want"? What if the only enforcement cases are against BlackRock for doing ESG investing, or against short sellers of Trump Media & Technology Group Corp.? Crime might be legal now, if you are a vocal enough supporter of Donald Trump, and the financial and crypto industries are rushing to support him. It's hard to imagine anyone getting in trouble for texting about work from their personal phones, now.

Just in case, the SEC filed a ton of enforcement actions on Friday, the last practical day it could do so before the administration changed.¹ We will talk about a few of the highlights in the following sections.

The main reason that the SEC brings cases like these, and one of the main reasons I write about them, is that they form the contours of legal financial conduct; they tell you what you are and are not allowed to do. If there is an SEC case against a firm for doing X, then that is a way of informing the financial industry that you are not allowed to do X; each big published enforcement action expands the law a bit, telling the world not just "this firm did a bad thing" but also "this thing that a lot of people were doing? It's bad." Compliance officers and law firms will send out memos to their clients, saying "hey after the SEC case last week, you are not allowed to do X." "Regulation by enforcement" is the mean way of putting it.

Last week's cases, like every case, make rules. Or rather, made rules. They made rules that were meaningful in the world of Gary Gensler's SEC.² Can you just ignore these rules now? Are they a waste of time? Are you allowed to do all of the things that last week's cases say you are not allowed to do? Probably not, no, probably I wouldn't go that far. Still it feels weird to talk today about what the rules are, based on last week's cases. I'm going to do it anyway, but the rules have probably changed.

SEC: Two Sigma

Quantitative hedge funds and proprietary trading firms employ researchers whose job is to find trading signals. A trading signal is some rule of the form "when you see X, that means that Stock Y will probably go up." X is something observable – some other security's price or volume or some other market event, or some accounting item, or something happening on social media, or some satellite photos of parking lots, or whatever – and the researcher has found that, when X happens, then there is statistically significant increase in the probability that Stock Y will go up. So the researcher will go to her boss and say "good news, I discovered that X predicts that Stock Y will go up, so whenever X happens we should buy some Stock Y."

"Not so fast," her boss will say. "You have found that, when X happens, Stock Y will outperform the market by 0.1% the next day, 54% of the time. That's good work, and I am impressed. But we can't run a hedge fund off that fact. For one thing, we have transaction costs to trade Stock Y, which will eat up much of the expected profit. For another thing, we have like 500 other signals that your colleagues have found. Sometimes, when your signal predicts Stock Y will go up, our other signals predict it will go down, and we should actually sell it, not buy it, if those other signals are better. Other times, when your signal predicts Stock Y will go up, our other signals *also* predict it will go up, so your signal is not that useful. No, we cannot run a strategy that is just 'when X happens, buy Stock Y.' Instead, what we will do is add your signal into our big trading model. The big trading model looks at all the signals and combines them in some appropriate way to get our firm's combined best guess about what stocks will go up and down. Your signal will be added to the big trading model, which will make the model a bit smarter about Stock Y, some of the time. But the big trading model will never be reducible to a rule as simple as 'when X happens, buy Stock Y.' The big trading model knows many other things."

And so the researcher's signal will get added to the model. Generally speaking, the signal will be worth more – will have more influence on the model – if:

1. It is strong: "When X happens, Stock Y goes up by 5%, 90% of the time" is better than "When X happens, Stock Y goes up by 0.1%, 54% of the time." The higher the Sharpe ratio of a strategy, the better it is.
2. It is *uncorrelated* to the model's other signals. If you find a signal like "companies underperform when their chief executive officers have nice suntans," but the model already incorporates a signal like "companies underperform when their CEOs have low golf handicaps," and golf skill and suntans are highly correlated, then your signal is not adding very much to the model, even if it is pretty good on its own.

In fact, if your signal is too correlated to other signals, the model might ignore it or even trade *against* it. Michael Isichenko writes:

What is less intuitive, if the correlation of two performing books gets high enough, ... the optimal weight ... for the lower-Sharpe book gets negative, even though the book is profitable by itself. This observation emphasizes an important role of correlations in combining, and also poses an interesting question of pnl attribution ... for the purposes of compensation of quants working for a combined portfolio. ...

Positively correlated forecasts compete for weight in the mix. Many weights can end up zero or even negative. ... Forecasts contribute to the optimal bottom line in a complicated, nonlinear way, and the sum of the contributions, however computed, does not normally add up to the total.

Isichenko is discussing the most important question in quantitative finance: "How much is my bonus?" Generally speaking, the more value a researcher adds to the overall trading model, the more she gets paid. The way you add value to the overall trading model, crudely speaking, is (1) the model trades on your signals and (2) the stocks that it buys on your signals go up.

If you are a quantitative researcher, you could imagine gaming this. One form of gaming is:

1. You find a signal. It's pretty good, not amazing, but pretty good.
2. You hand it off to your boss and it goes into the big trading model.
3. The big trading model doesn't make much use of it, because it is too correlated with other signals.
4. Therefore, you do not get paid very much for the signal you found.
5. You find those other signals and break their kneecaps.
6. Now the big trading model stops using the other signals and uses yours instead.
7. Yours is pretty good, so it makes money, so you get paid.

The problem with this is that you can't really break the kneecaps of statistical models of stock price returns. What you *could* do, maybe, is trick the big trading model into thinking that your signal is uncorrelated with the other signals. Then the big trading model will use your signal a lot – it will trade a lot of stock based on your signal – because uncorrelated signals are very useful. And you will get paid a lot.

Is this bad? Well, sure, I mean, the big trading model was optimized to achieve high risk-adjusted returns, and by tricking it into using more of your signal, you break that optimization. The model will achieve lower risk-adjusted returns. But maybe higher absolute returns; who knows? By breaking the model in this way, you cause it to double down on your signal, to put more money into your signal than it deserves. If your signal works pretty well, then for a while this could actually be *good* for the model's performance; it is taking more risk but possibly earning higher returns.

Anyway this is not any sort of advice about anything, and in general if you are a researcher at a quant firm, tricking your firm's trading models in this way is (1) a bad idea and (2) probably not all that feasible. They will try not to let you do that. But ... maybe? Here's an SEC case from last Thursday against Two Sigma Investments LP:

According to the SEC's order, in or before March 2019, Two Sigma employees identified and recognized vulnerabilities in certain Two Sigma investment models that could negatively impact clients' investment returns, but Two Sigma waited until August 2023 to address the issues. Despite recognizing these vulnerabilities, Two Sigma failed to adopt and implement written policies and procedures to address them and failed to supervise one of its employees who made unauthorized changes to more than a dozen models, which resulted in Two Sigma making investment decisions that it otherwise would not have made on behalf of its clients.

We talked about this situation in 2023, when it was first reported that "a researcher at Two Sigma Investments adjusted the hedge fund's investing models without authorization." Apparently he "was trying to improve the firm's performance, which would have benefited his career and potential pay." And, in an obvious sense, it worked: The SEC says that his "changes resulted in certain funds and [separately managed accounts] overperforming by more than \$400 million and other funds and SMAs underperforming by approximately \$165 million." So he added more money than he subtracted, but in a bad way.

The SEC order lays out the bad way. Two Sigma's trading code was off limits to researchers: "Two Sigma's live trading system uses Model code that is stored in a secure file called the 'Jar,'" and researchers couldn't mess with it. But there was a separate database, called celFS, "to store certain Model parameters that were too large to be stored in the Jar," and the researchers had more ability to change that.³

To get a signal or strategy – called a "Model" in the SEC order – approved, researchers had to submit a white paper and other documentation explaining the model, and Two Sigma decided if it was strong and uncorrelated enough. "Two Sigma management then reviewed these documents and forms, and Models could be approved where, among other things, the modeler's documentation reported that the proposed Model's correlation to existing Models was below a specified threshold."

But once it was approved:

Between November 2021 and August 2023, Modeler A, a TSI employee who had used celFS to store certain Model parameters for years, made dozens of unauthorized changes to Model decorrelation parameters stored in celFS for fourteen different Models that Two Sigma used in live trading. These Models included both Models that Modeler A developed himself as well as Models developed by Modeler A's direct reports and with which Modeler A assisted. ...

By adjusting these Model parameters, in many cases to zero (i.e., nullifying the parameter), Modeler A increased these Models' expected correlation to Two Sigma's other Models without detection. ...

These changes caused the Models to perform differently than expected such that Two Sigma made investment decisions that it otherwise would not have made. Specifically, Modeler A's unauthorized changes resulted in Two Sigma buying or selling more or less of specific securities than it otherwise would have, which caused certain funds and SMAs to overperform by more than \$400 million and other funds and SMAs to underperform by approximately \$165 million. Modeler A received millions of dollars of additional compensation from Two Sigma as a result of the net overperformance attributable to these changes.

I think that means, roughly, that this researcher cranked up how much Two Sigma's overall trading engine relied on his models. You have some signal, it spits out trade recommendations, and then the trading engine ignores or scales back those recommendations to the extent they correlate with the firm's other signals. The decorrelation parameter tells the engine how much to scale them back. If you set that parameter to zero, then the engine takes more of your signal's recommendations – even if they are highly correlated with other signals – and, if your signal is good, you get more performance attributed to you.

The business of a big quantitative hedge fund is to get a high risk-adjusted return, but in any particular year, if you are an employee of that hedge fund, you might care more about a high absolute return. Probably that gets you a bigger bonus. Quant funds aim for a low volatility of returns, but quant fund *employees* benefit from a high volatility: If the returns are high you get a big bonus, if they're mediocre you need to find a new job, and if they're catastrophic you need to find a new job, so a 50/50 chance of high or catastrophic is better, for you, than a 100% chance of mediocre.⁴ If you can secretly turn the dial to take more risk, you might.

SEC: Two Sigma (2)

Separately, I point out occasionally that one of the great evergreen topics of recent SEC enforcement – up there with texting about work on personal cell phones – is having employees sign nondisclosure agreements. There is an SEC whistleblower protection rule saying that you are not allowed to impede anyone from talking to the SEC about possible securities law violations, “including [by] enforcing, or threatening to enforce, a confidentiality agreement,” and the SEC takes the position that even *having* a confidentiality agreement is a “threat” to enforce it, unless the agreement says very clearly “but of course you are allowed to talk to the SEC about whatever you want.” Many financial employers have messed this up.

And last week’s SEC case against Two Sigma also includes one of those. When employees left, they signed separation agreements, which said “but of course you are allowed to talk to the SEC,” but not in the right words:

Specifically, Section 6(d) of the Separation Agreements (the “Employee Representation”) required departing employees to make the following representation: “You represent that you have not filed against any Two Sigma Party any charges, complaints or lawsuits regarding any acts or omissions occurring prior to your execution of this Agreement with any international, federal, state, city or local court, governmental agency or arbitration tribunal.”

The Separation Agreements also contained a prospective carve-out in Section 14(c) (the “Carve Out”), which stated: “Nothing in this Agreement (including without limitations Sections 5(g), 6, 7 and 8), the Company’s policies or any other agreement between you and the Company prohibits you from making a good faith reporting of possible violations of law or regulation to any governmental agency or entity or making other disclosures that are protected under whistleblower laws or regulations.”

You might think – Two Sigma apparently did think – that this would be enough to satisfy the SEC, but it was not. I won’t tell you why not; it’s more fun to guess, or read the SEC order I guess. This stuff isn’t easy!

SEC: Startup accounting

Roughly speaking the way it works is:

1. If you are a young startup raising a seed investment round, you can have a 6-year-old write your financial statements on a napkin and hand the napkin to potential investors and it's fine. Like, for one thing, your financials are probably pretty simple, but also investors are not really *expecting* professionalism from you at this point. It's you and two buddies in a garage, you are all working flat-out to build the product, no one expects you to do a good job keeping track of the money. The investors are investing in *you*, in your team and your vision and your pitch, not in the financial results you have achieved so far. If the financial statements that you gave them, on that napkin, turn out to be *wrong*, eh, whatever, it's not that big a deal.
2. If you are a mature startup looking to do an initial public offering, you will have to have competent accountants prepare your financial statements, and you will have to hire a real outside auditing firm to audit them to make sure they're right, and if you raise money in an IPO and the financial statements turn out to be wrong, you will get in trouble.
3. At some point in between those two stages, there is a transition. Before the transition, your financial statements don't really have to be right. After the transition, they do.

This is, it should go without saying, not legal or financial advice. If you call up a lawyer or an accountant and say "hey I'm running a small startup and looking to raise money from investors, is it okay if my financial statements are slapdash and probably wrong," they will probably say "what, no, your financial statements should be right." Or here's this guy:

"In our markets, when potential investors ask for and receive financial information from startups, they reasonably expect those financials to be accurate, reliable, and free from material misrepresentations and omissions," said Mark Cave, Associate Director of the SEC's Division of Enforcement.

But ... really? From startups? Always? Investors expect those financials to be accurate and reliable? I feel like that's not true. I feel like the realistic expectation is more like this:

Employee A prepared the working financial information for investors on an ad-hoc basis, updating it whenever an investor requested GrubMarket's financial information. To prepare the working financial information provided to investors, Employee A reviewed bank statements and accounting records for the wholesalers on whatever accounting systems they used and spoke with managers for the wholesalers. Employee A's other responsibilities included overseeing operations and logistics, sourcing and packing produce, and managing payroll, human resources, insurance, and food safety. Despite GrubMarket's rapid growth, it continued to devote limited resources to the preparation of financial information that was shared with investors.

GrubMarket Inc. was a startup founded “with the goal of digitizing the food supply chain” by “acquiring produce and meat wholesalers” and putting them on its software platform, though they continued to be managed by their former owners. It quickly succeeded in acquiring a bunch of wholesalers, each of which had different accounting systems that “ranged from QuickBooks or other accounting software to paper records.” And GrubMarket’s consolidated accounting system consisted of having one person, who was not an accountant but whose day job involved *packing produce*, call up the various acquired wholesalers and say “hey how much money did you make this quarter” or whatever, and then putting that in a spreadsheet or on a napkin. And then the produce packer’s spreadsheet or napkin was sent around to potential investors. Who were like “ah yes, fine, startups.”

Both of those block quotes are from an SEC enforcement action against GrubMarket Inc. from last Friday. At some level the problem is that GrubMarket sent out inaccurate financial information to investors: The SEC says that GrubMarket settled (and will pay an \$8 million penalty) “for providing investors with financial information that the company should have known was unreliable and that overstated its historical revenues by approximately \$550 million.” Bad!

But if you read between the lines a little bit, it seems that GrubMarket’s real problem was that it eventually hired a real chief financial officer:

In June 2019, before kicking off marketing for the Series D round, and to improve its finance function, GrubMarket hired as its Corporate Controller a certified public accountant who had an audit background. The Corporate Controller was promoted to the role of Chief Financial Officer in April 2020. ...

Shortly after joining GrubMarket, the CFO determined that she could not independently verify the working financial information. Over the next eighteen months, the CFO worked with multiple third-party accounting consultants to develop a supportable and traceable set of GrubMarket financials (the “revised financial information”).

But it kept taking investor money based on the bad financials:

While GrubMarket was using the working financial information to solicit Series D investors, GrubMarket used preliminary versions of the revised financial information for other corporate purposes. ...

In early February 2021, GrubMarket shared the substantially completed, revised financial information with prospective investors in the upcoming Series E round. The revised financial information showed materially lower revenue figures than were included in the working financial information that GrubMarket provided to investors in the Series D round, including to Investor A.

GrubMarket did not immediately inform Investor A of the revised financial information. As a result, when Investor A wired the \$19 million Series D investment to GrubMarket in late February 2021, Investor A was unaware of the revised financial information.

I feel like the lesson here – again, not legal advice! – is that, if you are a small startup, and your operations/human resources/food safety/fruit packing manager also produces some amateur financial statements, you *can* send those amateur financial statements to investors, and you *can* take money from those investors, and if the amateur financial statements turn out to be wrong you can be like “yes but our fruit packing manager wrote them, what did you expect?” And everyone – even the SEC – will probably be like “yeah fine that’s fair.”⁵ But once you hire an actual accountant to be your CFO, and she starts preparing professional financial statements, you can’t keep raising money based on the amateur ones. If you only have fake financial statements and you use them to raise money, ehh, well, you know. But once you have real financial statements you have to stop using the fake ones.

SEC: Vanguard

In late 2020, Vanguard Group decided to lower the fees that it charged some medium-sized 401(k) retirement plans for target-date mutual funds. That’s nice! The reasoning for this change was basically that Vanguard was making too much money on these plans, and it wanted to give some of it back to its customers, so it lowered the fees. Just goodness-of-its-heart type stuff.⁶

You would not think that this would lead to any sort of tax problems for Vanguard’s customers, for at least two reasons:

1. Lowering the fees on a mutual fund is not generally a taxable event? You pay taxes when you buy or sell securities, not when your investment manager lowers its fees.
2. 401(k) plans are tax-advantaged, and in particular, even if lowering the fees was generally a taxable event for investors in these funds (it isn’t), people who invested through 401(k) plans would not have any tax liabilities.

And yet somehow Vanguard messed it up, and its basically nice decision – to lower fees for medium-sized 401(k) customers – got it in trouble with the SEC. On Friday it agreed to pay more than \$100 million to settle with the SEC.⁷

Honestly it takes some work to mess this up, but Vanguard managed. Here’s how, from the SEC order. Vanguard offered target-date funds⁸ in two different classes, called “Investor” and “Institutional.” The Investor funds were “for investors with assets of less than \$100 million, including small- and medium-sized retirement plans and individual investors”; the Institutional funds were “for institutional investors (primarily larger retirement plans) with assets greater than \$100 million.” The investments were similar in each class, but the fees were different: “The Investor [funds] had an average expense ratio of 0.14%, and the Institutional [funds] had an expense ratio of 0.09% across all vintages.” You got a volume discount if you invested more than \$100 million with Vanguard.

At some point Vanguard decided that it was making too much money:

As part of the services provided to the TRFs [Target Retirement Funds], Vanguard monitors the TRFs’ expense ratios. ...

By mid-2019, investor demand for TRFs had increased, and the Investor TRFs' assets had grown substantially, to approximately \$276 billion in assets under management. This growth was mainly driven by increased investments by small- and medium-sized retirement plans, which combined held approximately \$100 billion in Investor TRF assets. The growth in assets resulted in economies of scale that lowered Vanguard's expenses in servicing the Investor TRFs, creating a gap between the expense ratios and Vanguard's expenses described above.

To reduce the gap between the expense ratios and Vanguard's allocated expenses for the Investor TRFs, and to return value to shareholders, in early 2020 Vanguard formed a Pricing Working Group ("Working Group") to analyze and recommend options to Vanguard's Global Investment Committee, comprised of Vanguard's senior management, and ultimately to the Trust's Board of Trustees.

I do want to pause here. Probably every other SEC action against an asset manager that I have ever written about has essentially the form "... and then the manager sat down and figured out how to get more money out of the clients." This one has the form "... and then the manager formed a committee to figure out how to get *less* money out of the clients." And yet.

The problem is that the Investor and Institutional classes were not, in fact, two different share classes of the same fund; they were two separate funds.⁹ Just sort of sloppy structuring. And Vanguard's solution here was to lower the minimum for the Institutional funds, from \$100 million to \$5 million. So lots of small and medium-sized 401(k) plans that were previously in Investor funds were eligible for the cheaper Institutional funds. And Vanguard told them, and they naturally switched. Which was a taxable event:

The movement of investors switching from the Investor TRFs to Institutional TRFs could result in potential capital gains impacts, not just for investors who switched but also for investors who purchased or continued to purchase Investor TRFs. Investors would realize capital gains because the Investor TRFs and Institutional TRFs were separate funds and not separate share classes of the same fund. To switch from an Investor TRF to an Institutional TRF required the redemption of the Investor TRF shares and the subsequent purchase of Institutional TRF shares. If those redemption requests outpaced new investments in the Investor TRFs, the Investor TRFs would have to satisfy redemption requests from their available cash or the sales of underlying fund assets. The Working Group understood that the redemptions likely would generate capital gains distributions for Investor TRF shareholders remaining in the funds because of the likelihood of selling underlying fund assets that had increased in value.

If a lot of plans switched to the lower-fee funds, they would have to redeem out of the Investor funds and buy new shares in the Institutional funds. Nothing actually happens – the same plans keep the same assets at Vanguard – but for tax purposes the Investor funds have to sell their assets and the Institutional ones have to buy them.¹⁰ So the Investor ones have big capital gains (if their stocks are mostly up, which is mostly true for long-term retirement funds¹¹). And because they are mutual funds, those gains are shared by the redeeming holders but also by people – like the small (sub-\$5 million) 401(k) plans – that keep their money in the Investor funds.

Except that actually the smaller 401(k) plans don't care about taxable gains, because 401(k) investors don't pay taxes on capital gains. But the Vanguard target-date funds also had some taxable investors, who ate the taxes:

The Working Group estimated that approximately 5.79% or \$17 billion of Investor TRFs' assets were held by investors in taxable accounts at Vanguard, and those investors—who were all retail investors—would have capital gains and tax consequences. Approximately 40%, or \$110 billion, of all Investor TRF assets were held in non-Vanguard accounts. The Working Group failed to fully consider whether any of those non-Vanguard accounts were taxable and might also realize capital gains and tax consequences. ...

From December 2020, when Vanguard and the Trust announced the lowering of the minimum investment for the Institutional TRFs, to October 2021, redemptions in the Investor TRFs totaled approximately \$130 billion, compared with approximately \$41 billion in redemptions in the prior period from November 2019 to October 2020. Capital gains distributions for the Investor TRFs as a percentage of net asset value from November 2020 to October 2021 averaged 9.69%, nearly seven times larger than the 1.39% average from November 2019 to October 2020.

As a result, Investor TRF investors who held the funds in taxable accounts at Vanguard and at other firms realized unexpected, historically high capital gains distributions and tax consequences for 2021. These capital gains distributions accelerated the investors' incurrence of tax liability and deprived them of the potential compounding growth of their investments in the Investor TRFs through retirement.

That's rough on those investors. (Eventually Vanguard decided to merge the Investor and Institutional funds into one fund, solving the problem going forward, though leaving those taxable retail investors with their big tax bills.)

Why is it a *securities law* violation? The SEC is mostly a disclosure regulator, and it decided that Vanguard's disclosures weren't good enough:

The Investor TRFs' prospectuses that were effective and distributed by Vanguard in 2020 and 2021 for the continuous offers and sales of fund shares in this period stated that the funds' distributions "may be taxable as ordinary income or capital gain[]" and "[c]apital gains distributions may vary considerably from year to year as a result of the Funds' normal investment activities and cash flows." ...

These disclosures were materially misleading because they described certain normal investment activities and cash flows that could affect capital gains, but failed to disclose, when discussing capital gains distributions, what Vanguard and the Trust knew or should have known was likely to be unusually large capital gains distributions for Investor TRF investors holding the funds in taxable accounts, resulting from the lowering of the minimum investment for the Institutional TRFs and the redemptions from the Investor TRFs.

I guess if you are going to cut fees for your clients, the best thing to do is to cut those fees in a way that doesn't end up hurting your other clients. The second-best option is to disclose it more clearly.

SEC: Miscellaneous

Really there were so many enforcement actions filed last week. I have written above about some of the more interesting ones, but there are so many more. A few quick hits:

- The SEC got \$38.5 million in penalties from Digital Currency Group and Genesis Global Capital for “misleadingly characterizing Genesis’s balance sheet as strong” after the collapse of Three Arrows Capital (3AC) in June 2022. This is actually a fascinating little bit of machinery – Genesis plugged the \$1.1 billion 3AC-shaped hole in its balance sheet by having DCG, its parent company, write “IOU \$1.1 billion” on a piece of paper, which the SEC finds misleading in various ways – but we have talked about it before, in 2023, when New York Attorney General Letitia James sued Genesis and DCG for this. The SEC also doesn’t like it.
- The SEC fined LPL Financial LLC \$18 million for failings in its anti-money-laundering programs. For instance: “LPL failed to close or restrict thousands of high-risk accounts, such as cannabis-related and foreign accounts, that were prohibited under LPL’s AML policies.” What an odd sentence. Often, when regulators bring AML cases, they say things like “Firm X had failings in its AML programs, which led to terrorists using Firm X to move money, which is bad.” Here, the SEC says that LPL’s sloppiness “permitted numerous cannabis-related accounts to be opened and remain open for years,” but never quite says that cannabis is bad. Cannabis is, you know, kind of legal in many places, and it is not clearly illegal under US federal law to provide financial services to cannabis companies. On the other hand, if you *voluntarily* have AML policies like “we don’t provide accounts to cannabis companies,” and then you go and provide accounts to cannabis companies, you will get in trouble. Why would you just voluntarily have a policy like that? Oh, reasons. Here is an important Patrick McKenzie post about “debanking.”
- The SEC fined Wells Fargo Advisors and Merrill Lynch a total of \$60 million for putting brokerage and advisory clients’ cash in low-yielding accounts at their affiliated banks, maximizing their own profits rather than the yield on the clients’ cash. We talked about this before, and I pointed out that of course *banks* are in the business of paying as little interest as possible on their customers’ deposits. If you are a financial adviser (a fiduciary) or a retail broker (required to act in your customers’ “best interest”), though, you are really supposed to do what’s right for the client, including telling them “hey you can get a better rate in a money market fund.” Also of course we talked last week about the US Consumer Financial Protection Bureau’s lawsuit against Capital One Financial Corp., saying that even a bank can go too far in paying depositors as little interest as possible.
- Here’s a guy charged with “illegally brokering transactions involving the stock of private companies that were expected to undertake an initial public offering.”
- Here are some guys who allegedly insider traded ahead of follow-on offerings.
- Here are some broker-advisers who allegedly sold shares of “a sham oil-and-gas company” to their customers, and also “tried to hide the sales by communicating through means not subject to surveillance by [their firm], such as through personal phones and email.” One last cell-phones case!
- Here’s one last bite at the “crypto tokens are securities” apple, a lawsuit alleging that “from April 2019 to the present, Nova Labs made unregistered offers and sales of securities when it offered and sold electronic devices called ‘Hotspots’ that mined Nova Labs’ crypto assets and ‘Discovery Mapping,’ a program that allows users to exchange their private data for Nova Labs’ crypto assets.”
- Here’s an investment adviser who allegedly stole \$20 million from customers and “used the money for his own purposes, including to pay country club dues, transfer it to other clients, and purchase a portion

of a miniature golf course in New Jersey," classic.

Trump memecoin

Imagine you are elected mayor of a medium-sized city. Just before you take office, you announce a new program. This program is: You have set up a website where people can give you money. If they give you money, their name goes on a list, on your computer. "What do we get for the money," they ask. "Oh nothing," you say. "Your name just goes on the list, and I get the money, to spend. That's it. Nothing happens with the list."

You can, I think, see two fairly obvious problems here:

1. If you are telling the truth, people are giving you money for nothing, so why would they do it?
2. Are you telling the truth? Will people believe you? Will people who want contracts with the city find it useful to be on the list? Isn't this, you know?

It seems like this would be a scam, or a bribe, or probably both.

Crypto solves these problems. Instead of a website with a list, you launch a memecoin with a ledger. People can give you money and get on the list, but in exchange they get something. The thing they get is: A *tradeable* entry on the list, an electronic claim saying "I gave you money" that they can sell, at some fluctuating market price, to somebody else. They can *make money* by giving you money: They give you \$10 to get on the list, and then sell their spot on the list to someone else for \$12.

I'm kidding when I say that crypto solves the problems. The problems remain, unchanged, and there are some additional problems. But crypto somehow ... obfuscates the problems? A little? Not very much? Anyway now you can give Donald Trump money for no reason, or possibly for some reason:

[On Friday] came the launch of a Trump memecoin – a virtual token that appears to offer direct financial benefit to the president-elect's family. The token's market value surged to about \$5.6 billion by Saturday afternoon – which could mean a windfall of billions of dollars, at least on paper, for Trump-linked entities that own most of it.

"\$Trump is currently the hottest digital meme on earth," Eric Trump wrote on X. "We are just getting started!"

The token drew immediate rebuke from government watchdogs, who called it the president-elect's latest breach of ethical norms and a way to profit from his place on the world stage.

Okay. And:

"It is literally cashing in on the presidency – creating a financial instrument so people can transfer money to the president's family in connection with his office" said Adav Noti, executive director of Campaign Legal Center, a nonprofit ethics group. "It is beyond unprecedented."

The market capitalization of the thing, at various points this weekend, hit any arbitrary large number you might want; here's an Axios report with "\$25 billion" in the URL, "\$58 billion" in the headline and "\$72 billion" in the text. On the one hand, people point out that that's not real, that Trump could not monetize all of that by dumping his tokens into the market. On the other hand, would someone pay Trump, say, \$100 million for a \$100 million block of these tokens? At their market price? Maybe! Nothing wrong with that trade, after all, that's just a willing buyer and willing seller transacting at market prices, what problem could anyone have with that? Crypto!

Also. Back in the early days of Bitcoin, there was a critique of it that went like this: "Sure only 21 million Bitcoins will ever be mined, so the supply is limited. But if there is a lot of demand for this sort of digital money, someone will copy the Bitcoin code and mechanism and introduce a new competing coin with the exact same properties. Call it Blitcoin. And then there will be 21 million Blitcoins, which are essentially the same as Bitcoins, and you can repeat this process as often as necessary, which will put a cap on the value of Bitcoin."

This critique has some logic to it – I once found it persuasive – but it turned out to be mostly wrong. People *did* make clones of Bitcoin, but Bitcoin's price still went up. Bitcoin had a history and social legitimacy – and, thus, a robust infrastructure of miners and nodes – that made it valuable, and that could not be replicated by copying the code.

But consider the similar critique for Trump memecoins:

1. Donald Trump can always launch a *new* memecoin and say "*no, this one is the official Trump memecoin.*"
2. Has he not already done that three times? Trump Media & Technology Group Corp. is not a memecoin – it is the publicly traded stock of an operating corporation – but, you know, come on. And just last month I was writing about World Liberty Financial, another Trump-affiliated cryptocurrency, saying that it "just manifestly doesn't do anything, but ... sells tokens to raise money to give to Trump." And now there's this one, "billed as the 'only official Trump meme,'" this week anyway.
3. If you buy a bunch of this one this week, he can always go sell a new one next week. His supply is unlimited, or limited only by people's desire to give him money, and his desire to take it.

Actually that already happened:

The \$TRUMP token lost almost half its value after first lady Melania Trump's coin was unveiled. Traders say demand for the tokens overlapped—\$TRUMP token holders had to unload some of their holdings to buy her meme coin. Prices have since regained some ground, but the market value of the \$TRUMP coin peaked Sunday at almost \$15 billion.

There can always be more!

Things happen

SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force. Hedge Funds Kept \$1.8 Trillion as Fees, or Half Their Gains. Goldman Picks Leaders to Run Wall Street Engines in Major Revamp. BlackRock, Weinstein Reach Truce in Feud Over Closed-End Funds. Perella Weinberg feud goes to trial a decade after schism. Private Equity Has a Plan If IPOs, Sales Don't Work: More Debt. JPMorgan 'War Room' Examining First Days of Trump Presidency. Commerce Nominee Lutnick Is Backer of Outlaws' Favorite Cryptocurrency. "The reckoning between Musk and gamers has been a long time coming." Twelve Dudes and a Hype Tunnel: Scenes from the 'Super Bowl for Excel Nerds.' SoftBank-Backed Fish Startup Allegedly Faked Most of Its Sales.

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1. It also put out a separate press release announcing that "it filed 200 total enforcement actions in the first quarter of fiscal year 2025" (through December), which is a record, and that it "filed more than 40 enforcement actions from Jan. 1, 2025, though Jan. 17, 2025, indicating that the Division's high level of productivity continues into the second quarter of fiscal year 2025." Presumably the next two weeks will be continue at that pace, hahahahaha, no.
2. This is called "legal realism."
3. At first they could just change it themselves, but in 2022 an "employee inadvertently overwrote an entire volume in celfS containing several Models' parameters before certain markets opened for trading that day." After that, researchers had to put in a ticket to change a parameter, and a small team of engineers would make the change. But the changes were made "without review or analysis by the engineers who received the tickets," so researchers could still make whatever changes they wanted: The ticketing system was to avoid inadvertent errors due to researcher clumsiness.
4. This is overstated and the funds try to guard against it, but there is some margin where it is probably true.
5. Or maybe not. "GrubMarket was negligent in not disclosing that the financial statements and other financial information the Company provided to investors were unreliable," it says, even before getting to the bit about the CFO, suggesting that if GrubMarket had more forcefully said "hey these financial statements are pretty fake" then maybe it would have been fine.
6. More specifically, Vanguard is not a normal for-profit investment management company: "Our company is owned by its funds," it says, "which in turn are owned by Vanguard's fund shareholders." So it has less incentive to charge high fees, since the profits go back to the funds anyway. Also, disclosure? I own some Vanguard funds, and thus some of Vanguard.
7. That's approximate; Vanguard also had some state settlements and there is some double-counting. The SEC says: "Vanguard agreed to be censured, cease and desist from future violations, and pay \$18.2 million in disgorgement and prejudgment interest that will be deemed satisfied by the payment of \$92.91 million in relief ordered by the states' settlements and a \$13.5 million civil penalty, for a total amount of \$106.41 million to be distributed to affected investors through a Fair Fund. The \$106.41 million in ordered relief is in addition to \$40 million that Vanguard agreed to pay to settle an investor class action."
8. A target date fund is a retirement fund with a particular target date: If you plan to retire around 2045, you buy a 2045 target fund, and that fund has some asset allocation that generally starts aggressive and becomes more conservative as you approach (and then pass) the target date. Generally these funds do their allocation by investing in some mix of other Vanguard funds. Vanguard's funds covered in this order run from 2015 to 2065, in five-year increments.

9. Actually many separate funds, one for each retirement vintage, but for each vintage – say, “retire in 2030” – there was an Investor fund and a separate Institutional fund.

10. There are mutual fund rules about how they are allowed to do this, but that’s not the point.

11. It’s actually quite important that this happened in late 2020. Basically what happened is that Vanguard’s working group started thinking about this in early 2020, when stock prices had collapsed due to Covid, so they figured “ehh no one has any capital gains anyway.” The SEC says: “The Working Group observed that, through early 2020, accumulated realized capital gains in the Investor TRFs averaged 0.5%, consistent with historical numbers. However, this observation was based on evaluations of capital gains during a one-month period between late February and March 2020. Because the financial markets had declined substantially at the time due to consequences from the COVID-19 pandemic, the Working Group assumed that capital gains would continue to be modest for Investor TRFs in the foreseeable future.” But by the time the plans were finalized later in the year, stocks had recovered and there were a lot more taxable gains.

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Crypto Executives Warn Trump's Memecoins Harm the Industry (1)

By Ryan Weeks

- Tokens from Trump and his wife rattle the crypto market
- They risk stoking criticism of digital assets as frivolous

Donald Trump and his wife **Melania's** new memecoins ignited criticism from crypto executives who were expecting the digital-asset sector to be treated seriously by the Republican's incoming US administration.

The president-elect unveiled the "Trump" token on Friday and his wife Melania launched her "Melania" effort on Sunday. The Trump memecoin's market value hit \$15 billion at one point but then briefly slid below \$8 billion as Melania's token took some of the spotlight, figures from aggregator CoinMarketCap show.

The memecoin sector, stuffed with joke tokens like Dogecoin offering little intrinsic value and lots of volatility, is divisive as it feeds criticism of the nascent industry as too frivolous and risky for mainstream investors. Memecoins rely on social media tailwinds that can disappear as quickly as they arise.

While Trump's latest crypto foray turbocharged speculation — Bitcoin jumped to a fresh record on Monday just hours before his inauguration — some executives said it will do more harm than good to an industry trying to rebuild its reputation. It quickly added a windfall of billions of dollars, at least on paper, for Trump-linked entities just as the incoming president is said to weigh an executive order designating the asset class a "national priority."

Read more: [Trump's Memecoin Creates Billions From Thin Air Before DC Return](#)

The Trump launches are "now clearly a blight that we will have to work to put behind us as builders," said Rob Hadick, general partner at crypto-focused venture-capital company Dragonfly Capital.

The Trump token's market capitalization stood at just below \$11 billion as of 11 a.m. in London, CoinMarketCap data show.

Inauguration Countdown

Rather than two new memecoins, the industry was keen to focus on Trump's expected steps to foster wider industry growth following his inauguration. Crypto executives spent the past two years fending off a crackdown by the US Securities And Exchange Commission in the wake of the chaotic implosion of Sam Bankman-Fried's trading platform FTX.

In a post on X, **Balaji Srinivasan**, an angel investor and former chief technology officer at US crypto exchange Coinbase Global Inc., said memecoins are a zero-sum "lottery" where the "price eventually crashes and the last buyers lose everything."

In a separate post, SkyBridge Capital LLC founder **Anthony Scaramucci** pointed out the launch of Melania coin caused Trump coin to sink.

Scaramucci was briefly Trump's director of communications in 2017 during the latter's first presidency before being fired and becoming a vocal critic.

More 'Consequences'

Meanwhile **Gabor Gurbacs**, director of digital-asset strategy at investment provider VanEck until last year and founder of PointsVille, said the memecoins "cost the US, the presidency and his family a lot of credibility."

Gurbacs said in an X post that the consequences of the launches "haven't even started" and called on Trump to fire his crypto advisers.

Representatives for Trump didn't return requests for comment about the criticism of the memecoins from some digital-asset executives.

Trump used to be a crypto industry skeptic but pivoted as the sector poured huge sums into campaign coffers during the build-up to the US election. He now plans to turn the US into the linchpin of the global digital-asset industry and has backed the idea of establishing a national Bitcoin stockpile.

The president-elect's previous forays into crypto include profitable collections of nonfungible tokens, digital collectibles that show him in a variety of poses and costumes. Along with his sons, he's also endorsed World Liberty Financial, a project that has been much-hyped but for which details remain scarce.

The weekend memecoin drama was a "wild" turn of events that "even the crypto industry hadn't quite imagined," said Caroline Mauron, co-founder of Orbit Markets, a provider of liquidity for crypto derivatives. "I suppose a more conventional policy approach was expected — which may still be coming."

(Updates with Bitcoin record in fourth paragraph.)

--With assistance from **Suvashree Ghosh** and **Sidhartha Shukla**.

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<https://www.wsj.com/finance/currencies/trump-meme-coin-cryptocurrency-eda5d5d9>

MARKETS & FINANCE | CURRENCIES

Crypto Thought Trump Would Bring It Legitimacy. Then He Launched a Meme Coin.

Industry players worry the success of the president's meme coin will undermine the credibility they have worked hard to cultivate

By [Vicky Ge Huang](#) [Follow](#) and [Caitlin Ostroff](#) [Follow](#)

Updated Jan. 21, 2025 11:20 am ET



Trump was used in a promotion at a bitcoin conference last year in Nashville, Tenn. PHOTO: LIAM KENNEDY/BLOOMBERG NEWS

The crypto industry eagerly awaited Donald Trump's return to the White House. Now, it's reeling after the president and first lady launched a pair of meme coins.

Dubbed \$TRUMP and \$MELANIA, the tokens have no economic purpose—their value is largely based on the popularity of internet memes. The market cap of the president's coin has soared to \$7.8 billion since Friday night's launch, while the first lady's token is worth about \$800 million, according to CoinMarketCap.

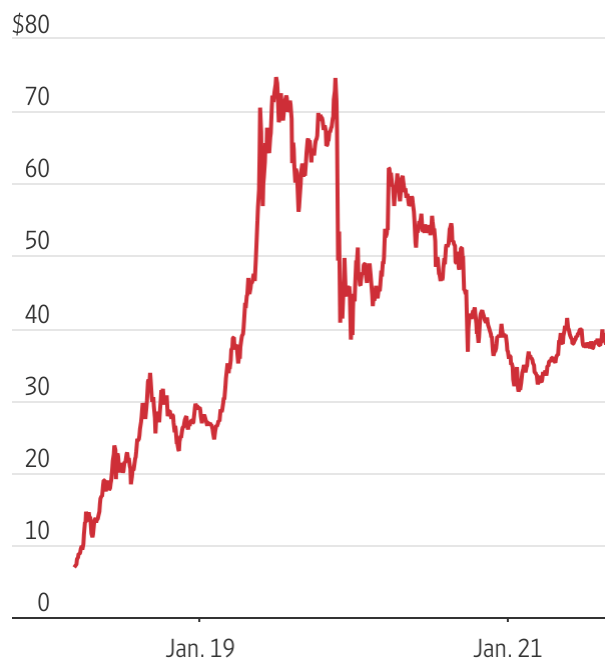
By selling coins known for their speculative nature and extreme volatility, the president has undermined the credibility that the industry has worked hard to build in recent years, some crypto executives and investors say.

They also point to the brazen conflict of interest: Trump benefits directly from the sale of the tokens while setting the policy that affects how markets are valued and regulated.

Even the most ardent Trump supporters reached a breaking point when the \$MELANIA token launched less than 48 hours after the rollout of her husband's coin.

Ryan Selkis, the former chief executive of crypto research firm Messari and a vocal supporter of Trump, urged the president to fire the adviser who recommended going forward with the launch of the second coin.

Dollar value of Donald Trump's meme coin



Note: Times are Coordinated Universal Time.
Source: CoinMarketCap

“1. They don’t know what they’re doing. 2. They cost you a lot of \$ and goodwill. 3. They don’t have your interests in mind,” said Selkis in a social-media post shortly after the \$MELANIA token launch.

The \$TRUMP token lost almost half its value after first lady Melania Trump’s coin was unveiled. Traders say demand for the tokens overlapped—\$TRUMP token holders had to unload some of their holdings to buy her meme coin. Prices have since regained some ground, but the market value of the \$TRUMP coin

peaked Sunday at almost \$15 billion.

Some crypto enthusiasts questioned if the coins were a scam and if Trump’s accounts had been hacked. The mechanisms on the token reminded some of a rug pull, crypto parlance for a project that is launched and quickly abandoned, leaving investors with steep losses.

One point of criticism: 80% of the \$TRUMP token's supply is owned by Fight Fight and CIC Digital, an affiliate of the Trump Organization, according to the website associated with the token. The terms and conditions of both \$TRUMP and \$MELANIA bar buyers from joining class-action lawsuits against the project and indemnify the project against any claims.

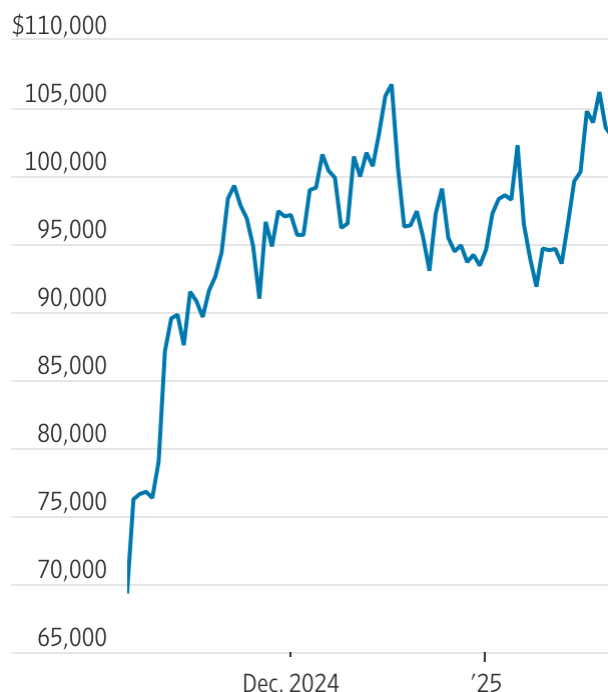
Trump or any other coin issuer benefits twice when meme coins are sold to the public. They get the proceeds of coin sales and they have an ownership stake whose value rises when the price of the coin increases. They can then sell more coins to gain further profits.

Trump and first lady Melania Trump on Monday at an inaugural ball. PHOTO: JULIA DEMAREE NIKHINSON/ASSOCIATED PRESS

Spokespeople for the Trump Organization and the websites associated with the tokens didn't respond to requests for comment.

After the stunning collapse of the FTX exchange in 2022, the crypto industry made big inroads in rebuilding its brand and reputation. It emerged as one of the biggest spenders of the election cycle by donating \$170 million to a trio of super PACs to elect friendly lawmakers.

Bitcoin went mainstream and soared past \$100,000 thanks to the roaring launch of the first U.S. spot bitcoin exchange-traded funds offered by big Wall Street asset managers such as BlackRock and Fidelity Investments. Trump became the industry's biggest cheerleader and promised to deliver legislation that would treat digital assets differently than stocks and bonds.

Bitcoin price since Election Day

Source: CoinDesk

The tokens aren't the Trump family's first foray into crypto. Last year the president helped launch a decentralized finance project with his sons Donald Trump Jr. and Eric Trump known as World Liberty Financial.

Yet the decision to launch the cryptocurrencies caught the crypto community off guard. A crowd of crypto executives and Silicon Valley tycoons who gathered Friday night at an event dubbed the Crypto Ball didn't learn of the launch until they checked their phones late in the evening. Trump unveiled the coin on

social media at 9 p.m. ET.

In launching the tokens, Trump has waded into a longstanding divide in the world of crypto: staid technology enthusiasts who see crypto as a means of financial inclusion and innovation versus speculative investors who see it as a means to monetize brands, memes and ideas.

"I think people will think meme coins are the foundation of the crypto industry," said billionaire entrepreneur and crypto investor Mark Cuban. "It's not. There are real applications that add value."

Cuban, who was vocal in his support of Kamala Harris during the presidential election, said Trump's token launch looks like "a highly manipulated offering."

The backlash over the Trump meme coins reached beyond the crypto industry. Michael Gayed, a portfolio manager and market analyst who publishes the Lead-Lag Report, posted criticism of the coin on X that drew support within the crypto community.

"There's a general level of disgust," said Gayed. "I do believe this puts into question some of Trump's credibility when we have a president-elect enrich

himself just before inauguration and make a mockery of an entire ecosystem.”

Some crypto investors said the fervor around the Trump family meme coins is a sign of frothy market conditions and an indication that crypto prices may have peaked. Bitcoin prices set a new high above \$109,000 early Monday, just hours before Trump’s inauguration, and have soared about 50% since his election.

“To me, it’s a glaringly obvious top signal,” said Quinn Thompson, founder of crypto hedge fund Lekker Capital. “Everyone’s extremely exuberant with high animal spirits.”

Thompson, who has been a vocal supporter of Trump, said he doesn’t think launching meme coins is where Trump and his family should be focusing their time when the industry still requires friendlier laws.

Others online celebrated the meme coins as a quick way to make money.

“After four years of Bidenomics, young people have concluded they’re not going to buy Apple stock. If they want their shot, it’s going to be through crypto,” said Trevor Traina, former U.S. ambassador to Austria in Trump’s first administration and a crypto entrepreneur.

Write to Vicky Ge Huang at vicky.huang@wsj.com and Caitlin Ostroff at caitlin.ostroff@wsj.com

Videos

Trump's Memecoin Creates Billions From Thin Air Before DC Return

By Annie Massa

- Speculators push new Trump token to \$5.6 billion market value
- Watchdogs see it as the president-elect's latest ethics breach

In tuxedos and floor-length gowns, crypto executives and adherents spilled through the Andrew W. Mellon Auditorium in Washington on Friday, ready to toast the inauguration of Donald J. Trump — a leader who promises to become the most crypto-friendly US president.

"The reign of terror against crypto is over," roared David Sacks, the venture capital executive appointed as Trump's crypto czar.



David Sacks

Photographer: Alex Flynn/Bloomberg

Just how pro-crypto can a president be? That same evening came the launch of a Trump memecoin — a virtual token that appears to offer direct financial benefit to the president-elect's family. The token's market value surged to about \$5.6 billion by Saturday afternoon — which could mean a windfall of billions of dollars, at least on paper, for Trump-linked entities that own most of it.

Read more: [Crypto Fans Bid Up Trump-Branded Token Days Before Inauguration](#)

"\$Trump is currently the hottest digital meme on earth," **Eric Trump** wrote on X. "We are just getting started!"

Watchdogs' Rebuke

The token drew immediate rebuke from government watchdogs, who called it the president-elect's latest breach of ethical norms and a way to profit from his place on the world stage.

Critiques of Trump's family real estate business — including spending by foreign companies and special interest groups at its properties — trailed him through his first term. More recently he's pushed Trump-branded nonfungible tokens.

But a memecoin, which is usually unlinked to any underlying business and thus highly speculative for investors and potentially wildly lucrative for founders, pushes the boundaries further, said Danielle Brian, executive director of the nonpartisan Project on Government Oversight.

"Any effort the Trump Organization was making to demonstrate they were concerned about potential conflicts, specifically where it comes to foreign governments — this seems to entirely undermine," Brian said.

Other groups that raised concerns include the nonprofit Campaign Legal Center and Citizens for Responsible Ethics in Washington, which unsuccessfully sued Trump in his first term for violating Constitutional prohibitions on foreign gifts and compensation.

"The clear difference with crypto is how quickly you can have a windfall," said Kedric Payne, general counsel at the Campaign Legal Center.

Industry Euphoria

The memecoin further enmeshes the Trump family in an industry his administration will be in charge of regulating.

Billed as the "only official Trump meme," the token's website encourages buyers to "get your piece of history," and features images of Trump raising his fist in defiance, as he did after narrowly dodging an assassination attempt at a rally in July.

An 80% share of the virtual asset is owned by a Trump Organization affiliate called CIC Digital LLC, and a related entity called Fight Fight Fight LLC — whose name echoes the words Trump mouthed after a bullet grazed his ear. Their holdings will be unlocked over a three-year period. According to the site, 200 million of the token immediately became available, a supply that will grow to 1 billion over three years.

Trump and his sons **Donald Trump Jr.** and **Eric Trump** have also been promoting a crypto platform called World Liberty Financial, in which they also have financial ties.

The crypto industry viewed itself as unfairly persecuted under the Biden administration, and spent heavily to elect Trump. Under chairman Gary Gensler, the Securities and Exchange Commission sued big crypto exchanges Binance, Coinbase Global Inc. and Kraken, arguing that they sold assets that should be classified as securities.

In the days leading up to Trump's inauguration, that gloom was replaced with a feeling of euphoria.

Crypto companies spent \$10 million on Trump's inauguration, according to Politico. Gensler is stepping down, with crypto-friendly lawyer **Paul Atkins** nominated to replace him.

And far from being a pariah, Kraken's name and logo emblazoned the halls of the crypto ball in Washington.

"The beginning of innovation in America for crypto has just begun," Sacks said at the event.

--With assistance from **stacy-marie ishmael**.

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Trump Shreds Emoluments Clause with New Memecoin while Norms Fairy Weeps (and Melania Joins the Fun)

[nakedcapitalism.com/2025/01/trump-shreds-emoluments-clause-with-new-memecoin-while-norms-fairy-weep-and-melania-joins-the-fun.html](https://www.nakedcapitalism.com/2025/01/trump-shreds-emoluments-clause-with-new-memecoin-while-norms-fairy-weep-and-melania-joins-the-fun.html)

By Lambert Strether

January 20, 2025

By Lambert Strether of Corrente.

On the Friday before inauguration day at 9:00pm, President-elect Donald Trump released a memecoin, \$TRUMP, that by Sunday was valued at \$58 billion, making him one of the world's 25 richest people. Felix Salmon summarizes:

The \$TRUMP memecoin — a financial asset that didn't exist on Friday afternoon — now accounts for about 89% of Donald Trump's net worth.

The coin (technically a token that's issued on the Solana blockchain) has massively enriched Trump personally, enabled a mechanism for the crypto industry to funnel cash to him, and created a volatile financial asset that allows anyone in the world to financially speculate on Trump's political fortunes....

Some 200 million of the 1 billion total coins have already been released and are being actively traded. The rest, which are owned by Trump-controlled entities, will be able to be sold at various points over the next three years, starting in April.

Not to be outdone, Melania Trump launched her own coin MELANIA Sunday night, almost immediately achieving a market capitalization north of \$5 billion.

Here is a handy chart:



These sudden, lightning strike-like events strike me as remarkable, extraordinary, potentially signaling a change to the Constitutional order. And yet they aren't front page news at the New York Times or the Washington Post[1] (being eclipsed by the inaugural itself, TikTok, the coming winter storm, etc.). What can they mean? In this post I'll try a sketch a preliminary answer to that question.

Let me concede immediately that I loathe Bitcoin and its “community” (and loathe them despite any raised hands saying “I personally profit from it!”). See Bloomberg, “Joseph Stiglitz: Bitcoin ought to be outlawed“:

Nobel Prize-winning economist Joseph Stiglitz said “bitcoin is successful only because of its potential for circumvention, lack of oversight.” “So it seems to me it ought to be outlawed,” Stiglitz said Wednesday in a Bloomberg Television interview with Francine Lacqua and Tom Keene. “It doesn’t serve any socially useful function.”

However, this is not the post to give my loathing analytical form (here is a partial list of NC posts on bitcoin; the headlines will give you an idea of the general tenor of our coverage[2]). What I will do first is define some terms for those who came in late: Blockchain, for example. After that I will consider the Constitutional, even existential, questions raised by Trump’s memecoin.

Definitions: Blockchain, Bitcoin, Shitcoin, Memecoin

The world of so-called[3] “decentralized finance” has an extensive vocabulary all its own, seeminly spawned in imitation of — and I can’t believe I’m saying this — *genuine* finance. Our purpose, however, is to understand Trump’s memecoin, and for that we need four terms: Blockchain, Bitcoin, Shitcoin, and Memecoin.

Bitcoin (and Crypto (and Blockchain)). From the Monthly Review (2022):

Bitcoin was launched a few months after the collapse of Lehman Brothers as a prototype for a secure, permissionless digital currency that would be created, without the guarantee of a financial intermediary as the basis for its credibility, by ‘mining’—the energy-intensive process of deploying a large amount of computing power to solve a cryptographic puzzle (also called proof of work) validating a transaction[4]. While currencies are conventionally underpinned by trust in a powerful central authority, Bitcoin relies on this cryptographic proof, drawing on open-source software and a network of servers sharing data to verify and record transactions so that a multitude of users can anonymously validate the cryptocurrency. Time-stamped, cryptographically proven transactions, immutably recorded in ledgers, are shared and replicated across servers, forming the blockchain—the technological bedrock of the decentralized logic of the cryptoverse. A limit on the maximum number of bitcoins that can be mined (21 million) is built into the trustless mechanisms on the grounds that this technologically imposed scarcity acts as a bulwark against inflation and the profligate impulses of the state. But perversely, this artificial scarcity ensured the allure of Bitcoin as a speculative asset.

Bitcoin has now been joined by a vast number of other cryptocurrencies. Crypto coins are subject to stomach-churning price swings, a painfully slow settlement process, and a huge environmental footprint, undermining their utility as a stable, liquid, and efficient means of settlement.

Shitcoin. From Investopedia: “The term shitcoin refers to a cryptocurrency with little to no value or no immediate, discernible purpose. The word is a pejorative term often used to describe altcoins or cryptocurrencies developed after Bitcoin became popular.” (Of course, Stiglitz would argue, and I would assert, that all bitcoins are shitcoins.) And a subtype of the shitcoin is—

Memecoin. From The Motley Fool:

Meme coins are cryptocurrencies that originate from internet memes or have a humorous or viral aspect. Unlike Bitcoin (BTC -0.4%) or Ethereum (ETH 1.29%), which are backed by robust blockchain technologies and have clear utility in [fraud] digital transactions and decentralized applications (dApps), meme coins often lack a specific purpose beyond the community and cultural value they hold.

Dogecoin (from which Musk’s DOGE derives, Musk being a DOGE holder, naturally) is a meme coin derives from the DOGE meme (see Know Your Meme). Another example from the Daily Mail:

Meme coins are generally considered to be incredibly risky investments, since they are prone to insider-trading and extreme volatility.

There are thousands of them available for purchase through many different platforms, but the most recent meme coin that has gotten negative media attention was Haliey Welch's.

Welch, better known as the 'Hawk Tuah Girl,' launched \$HAWK with the help of a shady foundation on December 4.

The token cratered by over 90 percent just hours after it reached a \$490 million market cap, prompting accusations of fraud from the crypto community and a lawsuit against the creators of the coin.

Trump signals that his coin is a memecoin in his URL ("gettrumpmemes.com") and in the verbiage on the page:

Trump Memes are intended to function as an expression of support for, and engagement with, the ideals and beliefs embodied by the symbol "\$TRUMP" and the associated artwork, and are not intended to be, or to be the subject of, an investment opportunity, investment contract, or security of any type. GetTrumpMemes.com is not political and has nothing to do with any political campaign or any political office or governmental agency.

We'll see about that "not political" in the next section.

Issues Raised by Trump's Memecoin

There are at least four.

First, **executive unity**. I struggled to think of a *good* reason for Trump's spectacular *autogolpe* as a top-tier, world-class oligarch immediately before he took the oath of office, a reason not involving lust for power or open corruption, and this is what I came up with. In Federalist #70, famous for the discussion of "energy in the executive," Madison writes (I have marked the two key portions [A] and [B]):

Those politicians and statesmen who have been the most celebrated for the soundness of their principles and for the justice of their views, have declared in favor of a single Executive and a numerous legislature. They have with great propriety, considered energy as the most necessary qualification of the former, and have regarded this as most applicable to power in a single hand, while they have, with equal propriety, considered the latter as best adapted to deliberation and wisdom, and best calculated to conciliate the confidence of the people and to secure their privileges and interests.

That unity is conducive to energy will not be disputed. Decision, activity, secrecy, and despatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished.

This unity may be destroyed in two ways: either by vesting the power in [A]two or more magistrates of equal dignity and authority; or by vesting it ostensibly in one man, subject, in whole or in part, to the control and co-operation of others... The experience of other nations... [a]s far, however, as it teaches any thing, it teaches us not to be enamoured of [B]plurality in the Executive.

[A] “two or more magistrates.” I think I was one of the first to joke about “President Musk,” but the jokes had a basis in reality, as Musk really did seem to be an independent actor. By increasing his personal wealth overnight to \$35 billion dollars, Trump shows fellow billionaire Musk, in the crudest way possible, who the big dog on the block really is.

[B] “plurality in the Executive.” Trump’s experience in his first administration must surely have given him the sense of “plurality in the executive,” given for example that he ordered withdrawal from Syria, and it didn’t happen, which can only mean there are people in his administration just as powerful as he is. Now, I don’t think Trump becomes “the big dog” in our enormous Federal government as easily as he does in a one-on-one with Musk, but the sense of Trump’s dominance can only increased (importantly, within Trump himself).

Second, **the emoluments clauses**. Article I, Section 9, Clause 8 (foreign emoluments):

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Article II, Section 1, Clause 7 (domestic):

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

And the Legal Information Institute's commentary:

For most of its history, courts have rarely substantively analyzed or interpreted the Foreign Emoluments Clause. During the administration of President Donald Trump, however, a number of private parties, state attorneys general, and Members of Congress sued the President based on alleged violations of both the Foreign Emoluments Clause and the Domestic Emoluments Clause (collectively, the Emoluments Clauses). Three major federal lawsuits concerning the Emoluments Clauses were filed against President Trump. Over nearly four years, these cases progressed through the lower federal courts, resulting in the first significant judicial decisions on the Emoluments Clauses.

In late 2020, the Supreme Court denied review in one of these cases, and—after the end of President Trump's term in January 2021—instructed two federal appellate courts to vacate their judgments and dismiss the other two cases as moot.

So Trump's memecoin puts us in uncharted territory. More:

The final litigated issue was the meaning and scope of the term "emolument" as used in the Emoluments Clauses—particularly, whether it includes private, arm's-length market transactions. In the litigation, President Trump argued that 'emoluments' included only benefits received by an officeholder in return for official action or through his office or employment. Plaintiffs urged that 'emoluments' be defined more broadly to apply to any 'profit, gain, or advantage' received by the President from a foreign or domestic government. The two district courts that reached the issue adopted the plaintiffs' broader definition of 'emolument,' although the appellate courts subsequently vacated those decisions.

Trump's memecoin, then, would seem to be barred by the district courts broader definition, but not barred by the appellate courts. To put the matter in very simple terms:

Most dangerous thing for country about Trump coin is what comes next. Now anyone in world can essentially deposit money into bank account of President of USA with a couple clicks. Every favor – geopolitical, corporate or personal – is now on sale, right out in the open.

— Anthony Scaramucci (@Scaramucci) January 19, 2025

Most dangerous thing for country about Trump coin is what comes next. Now anyone in world can essentially deposit money into bank account of President of USA with a couple clicks. Every favor – geopolitical, corporate or personal – is now on sale, right out in the open.

— Anthony Scaramucci (@Scaramucci) January 19, 2025

(This article argues that Trump’s memecoin is carefully crafted to win a Supreme Court case legalizing the practice, but the technical basis on which it does so is beyond me. Perhaps some kind reader can explicate.)

Third, **a cult of personality**. Once again, from Trump’s site:

“Celebrate Our Win & Have Fun!”

Note the word “our” (and how the heck is owning a memecoin *fun*? I genuinely don’t get it. More:

Join the Trump Community. This is History in the Making!

I genuinely don’t get the “community” aspect either, though it’s often used by coin touts. And once more:

Trump Memes are intended to function as an expression of support for, and engagement with, the ideals and beliefs embodied by the symbol “\$TRUMP” and the associated artwork, and are not intended to be, or to be the subject of, an investment opportunity, investment contract, or security of any type. GetTrumpMemes.com is not political and has nothing to do with any political campaign or any political office or governmental agency. See Terms & Conditions Here, See Card Allocation Here.

On one level, “is not political” is just silly. “Celebrating the win” is obviously political, given that an election was won; “community” is political as well, by definition (even more so when forming the community is “history in the making”). Presumably that’s all boilerplate that Bud From Legal insisted be in there. However, the part that concerns me is this:

... an expression of support for, and engagement with, the ideals and beliefs embodied by the symbol “\$TRUMP” and the associated artwork...

I hate to invoke Godwin’s law, and heaven knows I don’t think MAGA are Nazis. But the idea that one *pays* to express “support” seems like a phase shift to me; it reminds me uncomfortably of the fact that Nazi brownshirts had to buy their own uniforms; a level of commitment, especially in bad times, far greater than going to rallies or voting. “If this goes on,” if the level of commitment is escalated, drawing more and more relentlessly in, then I am

even more uncomfortably reminded of what I have always regarded as the dividing line between fascist adjacency and outright fascism, the line we have never crossed: “a mass-based party of committed nationalist militants.”

Fourth, **financialization of the body politic**. Felix Salmon writes:

Trump’s fans believed it made sense to stand by him through the scandals and the victories, because they thought his leadership would provide them with opportunities down the road.

But now holders of TRUMP have a direct financial incentive to amplify his message and defend his presidency, because the token is sure to rise in value whenever sentiment moves in his favor.

I suppose if money is speech....

Conclusion

I’ve never been one to worship, with Democrats, at the altar of the Norms Fairy. But it does seem to me that a President using the imminence of his inauguration to transform himself into an instant multi-billionaire is a norms violation on a colossal, a gargantuan scale, a mountain so huge that we cannot see its peak from where we stand. Felix Salmon writes:

Trump has just delivered a masterclass in the ability of a president to turn power into wealth.

(Or social capital into economic capital). Can anybody really believe that a *sitting* President should have the power to teach that lesson? Can anyone believe that the Constitution’s framers intended it? Does this mean every future President can do the same thing? Why not every politician? Will Bitcoin prices replace polling? Why not? Heck, why not voting? Meanwhile, even the tech bros are aghast. From Web3 Is Going Great:

[S]ome in the crypto world are reacting with horror at Trump’s decisionmaking. While they hoped that Trump’s administration would be crypto-friendly, they did not seem to anticipate that the Trump family would openly embrace some of the ecosystem’s worst parts to enrich themselves at everyone else’s expense.

(Again, I think the “worst parts” of crypto “ecosystem” are the “ecosystem” itself, but it’s telling that even true believers have problems with the grossness of Trump’s act.) And what on earth can Susie Wiles think? Or did she find out about it from Trump’s post?

NOTES

[1] RealClearPolitics, which I had *thought* was a reliable, albeit conservative aggregator, hasn't mentioned the story at all:

<https://www.nakedcapitalism.com/2025/01/trump-shreds-emoluments-clause-with-new-memecoin-while-norms-fairy-weeps-and-melania-joins-the-fu...> 10/13



[2] Naked Capitalism on Bitcoin:

What Happens If Bitcoin Succeeds? (2021)

Crypto Crackdown: Only the Beginning? (2021)

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The Only Crypto Story You Need? A Response to Matt Levine's The Crypto Story (2022)

Jim Chanos: "The Crypto Ecosystem Is Well-Suited for the Dark Side of Finance." (2023)

Feds Bust \$3.4 Billion Crypto Theft, Demonstrating Ability to Penetrate Supposed Secrecy (2023)

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[3] As it turns out, decentralized finance has turned out to be extremely concentrated. The creation of bitcoins ("mining") is very concentrated, because it's capital intensive; it takes a lot of electrical and processing power. So is bitcoin ownership (see list of whales here). Interestingly, the mythical Bitcoin founder, Satoshi Nakamoto "could be a single person or a group of people. Either way, the identity remains a successfully guarded secret." Nakamoto is said to own 1.1 million Bitcoins, making him one of the 30 richest people in the world. (Speaking of "groups of people," it's interesting to consider whether there are any institutions that would find the anonymity enabled by bitcoin of practical use.)

[4] Some blockchain vendors have replaced "proof of work" with "proof of stake." See here.

NOTES

[1] RealClearPolitics, which I had *thought* was a reliable, albeit conservative aggregator, hasn't mentioned the story at all:

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Disapprove +18

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Biden's Farewell Interview



[2] Naked Capitalism on Bitcoin:

What Happens If Bitcoin Succeeds? (2021)

Crypto Crackdown: Only the Beginning? (2021)

Nassim Nicholas Taleb Shellacks Bitcoin and Cryptocurrencies (2021)

The Only Crypto Story You Need? A Response to Matt Levine's The Crypto Story (2022)

Jim Chanos: "The Crypto Ecosystem Is Well-Suited for the Dark Side of Finance." (2023)

Feds Bust \$3.4 Billion Crypto Theft, Demonstrating Ability to Penetrate Supposed Secrecy (2023)

What Does Mustard Gas Have in Common with Crypto and Blockchain? (2023)

[3] As it turns out, decentralized finance has turned out to be extremely concentrated. The creation of bitcoins ("mining") is very concentrated, because it's capital intensive; it takes a lot of electrical and processing power. So is bitcoin ownership (see list of whales here). Interestingly, the mythical Bitcoin founder, Satoshi Nakamoto "could be a single person or a group of people. Either way, the identity remains a successfully guarded secret." Nakamoto is said to own 1.1 million Bitcoins, making him one of the 30 richest people in the world. (Speaking of "groups of people," it's interesting to consider whether there are any institutions that would find the anonymity enabled by bitcoin of practical use.)

[4] Some blockchain vendors have replaced "proof of work" with "proof of stake." See here.

What Are Memecoins and Why Did Trump Launch One?: QuickTake

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Memecoins are cryptocurrencies that begin with an internet meme or a joke. Speculative and volatile, they are held up by skeptics as proof that crypto will never compete with traditional finance.

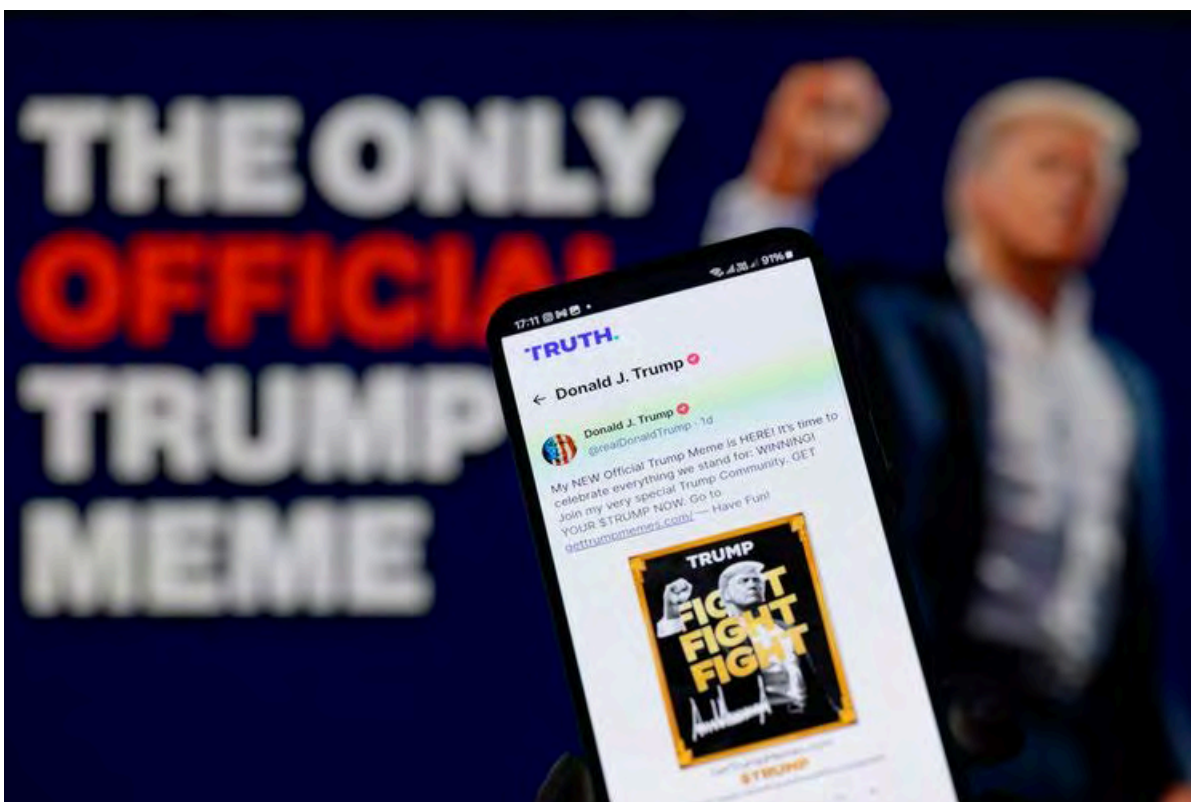
So when Donald Trump and his family launched two memecoins to mark his return to the White House, some crypto executives suggested it would do their industry more harm than good.

Trump has promised to be a “pro-Bitcoin president,” in a reference to the most successful cryptocurrency. The crypto industry poured money into his re-election campaign in the hope that he’ll end a regulatory crackdown that’s held back investment in the asset class.

From Trump’s point of view, minting a memecoin may just be good business: The market value of his \$Trump coin surged to about \$15 billion soon after its debut on Jan. 18, pointing to a windfall — at least on paper — for entities linked to the new president that own most of the token. Two days later came the launch of \$Melania, named after the US first lady, which also soared in the space of a few hours.

What are memecoins?

Other well-known cryptocurrencies such as Bitcoin and Ether were created in an attempt to emulate and improve on traditional currencies or to pay for online services. Memecoins usually start out as jokes or social experiments. The original and most valuable memecoin, Dogecoin, began with a picture of a Shiba Inu dog that had gone viral on the internet. Newer memecoins like dogwifhat and Pepe are, quite literally, references to memes of a dog wearing a hat and a green anthropomorphic frog.



A post from Donald Trump's Truth account announcing the \$Trump meme coin.

Photographer: Jonathan Raa/NurPhoto/Getty Images

With no underlying assets to back up their value and no obvious practical purpose, memecoins are worth simply what people are willing to pay for them. Yet the total market value of all memecoins is now more than \$100 billion, making the jokes expensive ones.

The technology behind each memecoin varies. Dogecoin, for example, is built on top of its own "blockchain," which is a public ledger of ownership and transaction activity. Other memecoins are built on popular blockchains such as Ethereum or Solana. Though it's not clear why, dogs have been the most popular theme for memecoin creators, who are usually anonymous crypto developers.

Who profits from memecoins?

Their developers and early investors stand to gain the most if they rally. Crypto exchanges and brokerages are another often overlooked winner. Their trading volumes grow when there's a burst of interest in a memecoin, inflating their fee revenue.

What do we know about the Trump memecoins?

Trump's memecoin art is an illustration of the US president with his fist in the air — a reference to a photo of Trump that went viral following an attempt on his life during a campaign rally.

The \$Trump token was launched on the Solana blockchain and was listed on crypto trading venues including Binance, OKX, Bybit and Robinhood. \$Melania was available for trading on platforms such as Kraken, KuCoin and Bitget.

\$Trump jumped more than tenfold to as high as \$73.4 in its first days of trading, according to crypto data aggregators CoinGecko and CoinMarketCap. It lost some steam after the \$Melania coin rolled into the market.

An affiliate of the Trump Organization called CIC Digital LLC and a related entity called Fight Fight Fight LLC (the words Trump mouthed after a bullet grazed his ear during the campaign rally attack) own 80% of the \$Trump memecoin.

What was the response to the Trump memecoins?

Some crypto fans rejoiced, seeing the launch as further proof of Trump's commitment to the industry. During the election campaign, he also made a foray into digital collectibles known as nonfungible tokens (NFTs). They showed him in a variety of poses and outfits, sometimes dressed as a superhero.

Crypto executives who were expecting Trump's new administration to champion crypto as a serious contender to mainstream finance were less impressed. Some major US banks have begun to offer crypto-related investments, but the industry still needs to convince regulators that digital tokens are safe to win the confidence of more finance professionals.

The \$Trump token drew immediate rebuke from government watchdogs, who called it the president-elect's latest breach of ethical norms and a way to profit from his place on the world stage.

What are the biggest memecoins?

Dogecoin is the leading memecoin, with a market value of more than \$50 billion. Others with high market valuations include Shiba Inu, Pepe and Bonk. Trump's memecoin quickly rose to third place in the list.



Dogecoin remains the king of memecoins, with a market value of more than \$50 billion

Photographer: Paul Yeung/Bloomberg

If memecoins are so risky, why do people invest in them?

Retail investors regard the microscopic starting prices of memecoins as an opportunity to make large returns if they pile in early. Memecoins can be a cheaper investment option than Bitcoin and Ether, and their prices often surge when those more established tokens rally.

But with no tangible assets to shore up their value, buying memecoins can be a perilous undertaking. Prices can surge or collapse in minutes, partly because there's often only a small pool of the coins available, with most held by their creators and their associates.

Memecoin investors can sometimes fall victim to a scam known as a rug pull, in which a coin's developers abandon the project or suddenly liquidate their own holdings, rendering the tokens worthless. Few memecoins have third-party auditors for their code, making it easier for hackers to attack vulnerabilities in the software and steal investors' money.

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Crypto Lists Regulatory Framework at Top of Trump Wish List

By Emily Mason

As inauguration day approaches, members of the crypto industry are eagerly anticipating a slew of digital asset friendly executive actions at the dawn of a second Trump Administration.

Potentially at the top of the wish list would be an executive order prompting the regulatory agencies, including the Commodity Futures Trading Commission and the Securities and Exchange Commission to collaborate on building a framework for digital asset policy. While decisions about how cryptoassets are classified will ultimately be up to Congress, an executive order could spur the agencies to produce research pushing the issue forward. The largest US firms in the sector, from Coinbase Global Inc. to Ripple Labs, have long advocated for clear regulatory guidelines just for digital assets.

President-elect Donald Trump is staffing his ranks of regulatory leaders with pro-industry picks including former SEC Commissioner **Paul Atkins** for chair of the main securities industry regulator and Scott Bessent as Treasury Secretary. He's also introduced a new role: artificial intelligence and crypto Czar, a seat to be helmed by David Sachs, general partner of venture firm Craft Venture and a co-founder of PayPal Holdings Inc.

"Those people are ultimately going to make the policy," said **Ari Redbord**, global head of policy and government at blockchain intelligence company TRM Labs. "They understand that you need to thread the needle as a regulator between enabling lawful users privacy within an open financial system, but at the same time stopping bad actors and ensuring consumer protection."

Increased clarity would dovetail with a push by the crypto industry to gain wider access to banking services. Under the Biden Administration, regulators put out statements warning of the risks that come with banking digital asset companies. The shutdowns of crypto friendly banks Signature and Silvergate in 2023 reinvigorated concern about banks being pressured to not deal with crypto companies.

"A level regulatory playing field between the banking and crypto sectors as well as clear rules for permissible crypto-related products and services will support a more secure environment for consumers and the financial system," **Rebeca Romero Rainey**, president of the Independent Community Bankers of America, said in a statement Friday.

The departure of FDIC Chair Martin Gruenberg, scheduled for the day before Trump's inauguration on Jan. 20, has been a cause for celebration among critics who say his agency targeted the crypto industry. Federal Deposit Insurance Vice Chair Travis Hill, one of two Republicans on the FDIC's board, is expected to take over Gruenberg's seat.

"I also expect the FDIC to take a more open-minded approach to innovation and technology adoption, while still promoting core safety and soundness principles," Hill said during a recent speech.

Another key focus for the industry is the easing of Staff Accounting Bulletin No. 121 (SAB 121) that basically require banks to account for customers' cryptoassets as their own. With those assets effectively being listed on their balance sheets, banks need to maintain higher levels of capital.

Trump Plans to Designate Cryptocurrency as a National Priority

Trump is planning to release an executive order elevating crypto as a policy priority and giving industry insiders a voice within his administration, Bloomberg reported on Thursday, citing people familiar with the plans. The order is expected to name crypto as a national imperative or priority — strategic wording intended to guide government agencies to work with the industry, according to people familiar with the matter. It is also slated to create a crypto advisory council to advocate for the industry's policy priorities, said the people who requested anonymity to discuss an executive order that is not yet public.

"We are hopeful and optimistic for strong leadership from the incoming administration, making clear that crypto is something we should encourage and embrace in the United States, not drive away," **Kristin Smith**, CEO of the Blockchain Association, said in a statement.

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Securities Law

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Wall Street Looks Beyond Trump Memecoin to Focus on Crypto Plans

By Cagan Koc and Francine Lacqua

- CEOs gathered in Davos anticipate clearer rules under Trump
- Trump's memecoin could complicate efforts, TD Cowen says

There's Donald Trump the crypto champion, promising to unshackle an industry hit by a years-long regulatory crackdown. Then there's Trump the memecoin, which created billions of dollars of instant paper wealth but earned [sharp rebukes](#) even from the industry that stands to gain perhaps the most from his presidency.

Financial executives gathered in Davos this week are choosing to focus more on the former than the latter. Their hope is that Trump will push through legislation making it less onerous for their companies to push into cryptoassets, an effort industry giants from JPMorgan Chase & Co. to BlackRock Inc. have already begun.

"I think that the thing with the Trump administration is we're going to start to see them converge more the Tradfi and the crypto, which is something that we need," said Franklin Templeton Investments Chief Executive Officer **Jenny Johnson** in an interview with Bloomberg Television at the World Economic Forum, using slang for "traditional finance."

Problem is, Trump the memecoin now risks complicating the agenda of Trump the crypto savior.

The token, which quickly surged to a \$15 billion market value after it was launched on Friday and has since plunged almost 50%, could galvanize Democratic opposition and bog down efforts to get digital-asset legislation through Congress, TD Cowen analyst **Jaret Seiberg** said in a note.

Read more: [What Are Memecoins and Why Did Trump Launch One?: QuickTake](#)

"Our view is that anything which complicates the ability of Congress to agree on a bipartisan crypto market structure bill is negative for the crypto sector," Seiberg wrote.

The price of Bitcoin, the original cryptocurrency, shows just how much is riding on Trump's second term. It retreated from a record high on Tuesday after support for crypto wasn't among a slew of executive orders he issued immediately upon taking office, as many had expected.

Go-Slow Approach

For years, the biggest financial companies were reluctant to dive into crypto, opting instead to experiment with using the underlying blockchain technology for a [range of applications](#) – often with little to show for it. Executives tended to view the industry as rife with scams and fraud, and regulations made it impractical or impossible for large banks to hold digital assets on their balance sheets.

But the calculus began to change a year ago when the first US exchange-traded funds investing directly in Bitcoin launched and became an instant hit. Since then, they have ballooned to oversee a combined \$121 billion, lead by BlackRock's iShares Bitcoin Trust ETF.

Two parallel developments also helped pave the way. The first was that comprehensive regulations like the European Union's Markets in Cryptoassets took effect in several jurisdictions, giving financial firms a clearer view on how to engage with crypto.

The second was Trump's explicit embrace of and promise to deregulate the industry, which poured at least \$135 million into pro-crypto politicians' campaigns.

Pro-Crypto Cabinet Picks

After winning the election, Trump made his intentions clear by picking crypto advocates for key positions, including Cantor Fitzgerald LP CEO Howard Lutnick as commerce secretary. For executives gathered in the Swiss mountain town of Davos this week, the eagerly awaited next step is a well-defined regulatory framework for things like custody of digital assets.

"With crypto, the key issue for banks has been are they able to custody it?," said **Ron O'Hanley**, CEO of State Street Corp. "Up until now, they haven't been able to given the way the accounting rules have been applied. But the extent to which that changes, I mean that's then something we'd be interested in custodying."

Trump's memecoin – a type of digital token that often starts out as an online joke, has little or no intrinsic value, becomes the object of fevered speculation and then crashes – risks becoming a policy distraction.

It was immediately **condemned** by government watchdogs as a breach of ethical norms and a money grab riddled with potential conflicts of interest, including with foreign governments. And according to TD Cowen's Seiberg, it sets the stage for political gridlock in Washington.

"Democrats are going to demand details on who bought the coins and what is responsible for the increase in price," Seiberg wrote. "They will be searching for indications that foreign governments, foreign businesses and domestic companies are using the coin to influence Trump's decision-making. They also will demand details on how the Trump family is monetizing this investment."

Republicans are expected to push back, "which could only worsen partisan tensions and complicate getting to a bipartisan crypto market structure deal," he added.

Some executives in Davos sought to steer clear of the controversy around the Trump coin, instead outlining their own cautious steps into crypto.

ABN Amro Bank NV's outgoing CEO **Robert Swaak** said cryptocurrencies are something the Dutch lender should keep a close eye on. Asked in an interview about Trump's memecoin, he said: When "you expose large groups of clients to alternative forms of currencies, you need to be confident that it is indeed a measure or a currency that can be used in a safe way. And to me, that means there's a bit there's maturity that has to take place."

Pressed on when he thought the Trump token launch was mature, he equivocated: "I think that's another variation on the theme that needs to evolve."

Then he burst out laughing.

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Lutnick's Cantor Is Backer of Outlaws' Favorite Cryptocurrency

By Zeke Faux and Todd Gillespie

Deep Dive

To the crypto company Tether, the account was identified only by a 31-character string: TTAHMDqoom4f2VTWniroPWQHcTRZ4ca.

It's a cryptocurrency wallet address, one of more than 300 million around the world that have held Tether tokens and make up a global unregulated payments network. Unlike a bank or fintech company, Tether collects no personal information about most of its users. Anyone can open a crypto wallet and move money with Tether quickly, cheaply and anonymously.

As Howard Lutnick, the Commerce secretary nominee who's Tether's most prominent booster in the US, has said, "It's the digital dollar all over the world."

It turns out that particular crypto wallet was controlled by Sa'id al-Jamal, a financier of the Houthi fighters attacking merchant ships in the Red Sea, according to the US Treasury Department. The US made the allegations about the wallet and four others in a statement last month. Al-Jamal was sanctioned by the US in 2021 for his ties to terrorist groups, a punishment intended to lock him out of the dollar-based financial system. Still, he was able to use those crypto wallets to send and receive more than \$300 million of Tether, according to crypto research firm ChainArgos, which analyzed the public blockchain data at Bloomberg's request.

It's not just Al-Jamal. Tether has become the go-to digital currency of the criminal world. North Korea's regime, Mexican drug traffickers and Southeast Asia-based human traffickers and scammers have all been caught using it to move millions of dollars. Deputy Treasury Secretary Wally Adeyemo warned Congress last year that Russia was using the cryptocurrency to circumvent sanctions and finance its war in Ukraine.

Lutnick, the 63-year-old billionaire chief executive officer of Cantor Fitzgerald LP, has made his bank the linchpin of the Tether system. There are now more than \$130 billion worth of Tether tokens outstanding, and Cantor holds most of the US Treasury bonds that back them — the reason they're trusted to be worth \$1 each. Lutnick stepped in about three years ago at a time of crisis for Tether and vouched for the company when few others would. In return, Tether has paid Lutnick's firm tens of millions of dollars, and Cantor purchased a minority stake in Tether, according to people with knowledge of their relationship who asked not to be named because the companies view the details as sensitive.



Howard Lutnick and Donald Trump at Mar-a-Lago in Palm Beach, Florida, in December.
Photographer: Andrew Harnik/Getty Images

As Commerce secretary, Lutnick wouldn't have responsibility for crypto, though the department has issued reports about how the industry should be regulated. Still, he'd have the president's ear as Cantor's client wrestles with scrutiny from US regulators and investigators. Lutnick's relationship to Tether likely will be questioned when the Senate Commerce Committee holds confirmation hearings for President-elect Donald Trump's nominee. Those hearings haven't been scheduled but could be as soon as next week, according to a committee staffer.

"I am deeply concerned by Lutnick's past work with a company under investigation for its ties to sanctioned entities like Russian arms dealers, Chinese fentanyl traffickers and North Korean nuclear weapons programs," said Senator Elizabeth Warren, a Democrat from Massachusetts who isn't on the committee. "A Commerce Secretary is supposed to fight for America's interests — not his own personal interests or those of former clients whose actions undermine our national security."

To comply with federal ethics rules, which prohibit working on matters that affect one's financial interests, Lutnick has said he'll divest from Cantor and his other companies, though he has also said his stakes won't be sold on the open market. A spokesperson for the company and for Lutnick declined to give more details or to respond to any questions about Tether. A spokesman for the Trump transition team declined to comment.

"The Commerce Department has virtually nothing to do with cryptocurrency regulation," Melissa Braid, a spokesperson for the Republicans on the committee, said in a statement. "Mr. Lutnick plans to divest from the company with a stake in the world's most popular stablecoin anyway."

A spokesperson for Tether didn't respond to a list of detailed questions. Tether has said that the company cooperates with law enforcement and does everything it can to root out illicit activity. "With Tether, every action is online, every action is traceable, every asset can be seized and every criminal can be caught," Tether's CEO, Paolo Ardoino, has said. When informed by law enforcement that criminals are using particular anonymous accounts, the company will generally freeze them and seize their money, though that doesn't stop the criminals from opening new wallets. US prosecutors thanked the company last year for freezing accounts holding \$5 million of fraud proceeds in one case.

Regulators on the Treasury's Financial Stability Oversight Council have been warning about Tether's risks for years. And federal prosecutors in New York have been investigating the company, according to people with knowledge of the matter. (Tether has denied this.) Even Senator Cynthia Lummis, a Wyoming Republican and crypto advocate on the Commerce committee, has criticized the company for facilitating illicit activity.

"Its product is being used to facilitate terrorism and other illicit activities," Lummis said at a hearing in 2023. "It's time they're brought to justice." Lummis, who also sent a letter to the Justice Department urging it to prosecute Tether, didn't respond to a request for comment for this story.



The Financial Stability Oversight Council at the Treasury Department in Washington, DC, in December 2023.

Photographer: Al Drago/Bloomberg

Tether is what's known as a stablecoin — a cryptocurrency that, unlike others, is supposed to be backed one-to-one by a real asset, such as the US dollar. Dreamed up by a group that included a former child actor from *The Mighty Ducks*, it's now controlled by Giancarlo Devasini, a reclusive former plastic surgeon from Italy, who splits his time between the Swiss Alps, the French Riviera and the Bahamas. (On paper, he's the chief financial officer, but those who've dealt with the company say he's the boss.)

Tether announced Jan. 13 that it would relocate to crypto-friendly El Salvador, ending years of not being headquartered in any country. The company is also considering a US presence, depending on "what the laws are looking like coming from the US," Tether's CEO Ardoino said Jan. 16 in a Bloomberg Television interview.

First popularized by crypto traders, Tether also has become attractive to those who want access to US dollars but can't open a US bank account. Tether has said that most of its users are ordinary people in countries such as Argentina or Turkey, where the local currency has lost value as a result of inflation. But Tether's fans also include a slew of underworld figures.

Read more: Stablecoin Tether Grows Into Crypto World's \$69 Billion Mystery

In Southeast Asia, where thousands of people are trapped in compounds and forced to perpetrate online scams, Tether is the "preferred choice" for crime syndicates, according to a 2024 United Nations report. The crypto research firm Elliptic said on Jan. 14 that Tether powers the biggest ever dark-net marketplace, used by the compounds' bosses to launder billions of dollars. The terrorist group Hezbollah has used it too, says crypto research firm Chainalysis, and US prosecutors alleged in a 2023 indictment that North Korea's undercover IT workers have moved millions of dollars to the regime using Tether.

As one alleged Russian money launderer wrote to a Venezuelan oil trader in 2021 about using Tether to conduct a sanctions-busting crude oil deal: "Everyone does it now. It's convenient, it's quick." (US authorities obtained that message and cited it in a 2022 federal indictment.)

Just last month, the UK's National Crime Agency said it had broken up a money-laundering ring run by Russians that swapped cash for Tether and moved billions of dollars around the world. The launderers would take crypto from ransomware hackers and trade it to drug traffickers who had large amounts of cash, according to the NCA. In one instance, Irish gangsters allegedly used the Tether they received to order a multi-ton shipment of cocaine from South America.

"Stablecoins present a hugely attractive option to these launderers," Robert Jones, the NCA's director general of operations, said in an interview. "The risk of it being frozen is much less than it would be with a traditional bank where you'd have anti-money-laundering procedures."

Tether has said that only a select group of customers can exchange dollars for Tethers directly with the company, and that it vets them carefully. Its ability to police how others use its network is limited. The Moscow-based crypto exchange Garantex, sanctioned by the US since 2022, continues to open new wallets and offer Tether trading to its customers, according to ChainArgos.

"Banks need to know who's sending money to whom, and broadly for what purpose," Michael Hsu, the acting Comptroller of the Currency since 2021, said in an interview. "In the crypto space, there are more opportunities to get in and move that money around undetected."



Acting Comptroller of the Currency Michael Hsu

Photographer: Al Drago/Bloomberg

Lutnick has defended Tether from criticism over facilitating illicit activity and denied that the cryptocurrency has any ties to terrorism. More than 650 Cantor Fitzgerald employees were killed in the Sept. 11, 2001, attacks on the World Trade Center, including Lutnick's brother, Gary.

"You know, my brother was killed by jihad," Lutnick said in a speech at a Bitcoin conference in July 2024. "Let me make it crystal, crystal clear. We would never ever be associated with a company that has anything to do with jihad."

The relationship between Lutnick's bank and Tether has been profitable for both sides. Tether, which once struggled to turn a profit, now earns billions of dollars a year of interest from the government debt it holds at Cantor. Tether earned quite a bit more than \$10 billion from those interest payments and other investments last year, Ardoino said in the Bloomberg TV interview. Tether boss Devasini is now worth \$8 billion, making him one of the world's richest Italians, according to the Bloomberg Billionaires Index.

For Cantor, a mid-sized investment bank based in midtown Manhattan, Tether has proved a lucrative client. Just last month, Cantor brokered a \$775 million investment by Tether in the right-wing video site Rumble Inc. Rumble's stock jumped 81% when the deal was announced, and Cantor's stake in Rumble gained \$54 million in value, Bloomberg data show. The bank will earn an unspecified fee for putting the deal together.

Cantor is also starting a business lending US dollars to clients who hold Bitcoin, which Tether may help finance, Bloomberg has reported. Lutnick owns more than half of Cantor, which he has run for 33 years.

Lutnick's Tether ties raise concerns about whether he'll give the president advice about crypto that's in the public interest, or for his own benefit, said Mark Hays, associate director for cryptocurrency and financial technology at Americans for Financial Reform, which advocates for stricter Wall Street regulation. "Far from just being a steward of Tether's reserve assets, he's gone out of his way to be a booster and a champion for Tether, despite real questions about Tether's practices," Hays said in an interview.

Lutnick has said he learned about Tether while on the hunt for a way to get into the crypto business after a 2020 decision by federal regulators that made it easier for banks to hold digital assets. Most of the people he met, including Sam Bankman-Fried of FTX and Alex Mashinsky of Celsius — both later convicted of fraud — didn't inspire confidence.

"I met every criminal who's now in jail," Lutnick recounted in the speech at the Bitcoin conference, "and then I met the people who ran Tether."

Tether was facing a crisis around that time. By 2021, it had issued more than 50 billion tokens but was dogged by questions about whether it really had \$50 billion in reserves to back them. The company's owners agreed to pay a \$18.5 million fine that February to New York's attorney general over allegations it misrepresented its reserves. Some US banks refused to handle the company's transactions. Top US regulators were concerned that Tether could collapse in a bank run.

Tether had been keeping much of its money with banks in the Bahamas and, to earn a return, had invested some of its reserves in risky assets such as Chinese commercial paper. This arrangement left it dependent on the Bahamian banks' ability to connect with US banks on its behalf. That ability was threatened when, in October 2021, Tether agreed to pay a \$41 million fine to the Commodity Futures Trading Commission also for lying about its reserves. (Tether didn't admit or deny the allegations.)



Lutnick on Capitol Hill in December.

Photographer: Al Drago/Bloomberg

Lutnick said that after receiving adequate proof that Tether did in fact have all of its reserves, he offered a solution. Cantor, as what's known as a primary dealer in US government debt, had easy access to vast amounts of safe US assets. He offered to take on Tether as a client, provided it rolled its holdings into Treasury bills.

Tether's Devasini went for it. Tether's Treasury holdings give it the ability to sell assets to redeem billions of tokens for dollars when needed, Lutnick said, boosting confidence in the cryptocurrency. And in January 2024, Lutnick vouched for Tether in a Bloomberg Television interview. "There has always been a lot of talk 'Do they have it or not?' and I'm here with you guys and I'm telling you we've seen it and they have it," Lutnick said.

The next month, Lutnick flew on his private jet to El Salvador, where he met with Devasini and President Nayib Bukele, an outspoken crypto advocate who made Bitcoin legal tender in the small Central American country, according to flight records and photos posted on social media. Lutnick's son Brandon, whom many at Cantor expect will receive a significant promotion if his father is confirmed as Commerce secretary, later moved to Switzerland to work at Tether for a stint.

Lutnick was a major Trump fundraiser, bringing in \$15 million at one August event at his Hamptons home. He co-led the transition team and vied to be Treasury secretary, where he would have overseen sanctions enforcement.

The banker has been putting forward the argument that stablecoins are good for the US because they create new demand for US debt, helping finance the country's deficits and drive "dollar hegemony." Lutnick may have won Trump over. In July, when Trump spoke at the Bitcoin conference, the candidate praised Lutnick — "one of the truly brilliant men of Wall Street" — and echoed some of his comments about stablecoins. Trump has also been promoting his own crypto company, World Liberty Financial, which plans to issue a stablecoin.

"We will create a framework to enable the safe and responsible expansion of stablecoins," Trump said at the conference, "allowing us to extend the dominance of the US dollar to new frontiers around the world."

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Long-Standing Crypto Cases Are Winding Down Before Trump Ascent

By Olga Kharif

- Digital Currency Group, Gemini latest to agree to settlements
- Cases involving at least six firms announced in the last week

Digital Currency Group and its subsidiary Genesis Global Capital settled Securities and Exchange Commission charges on Friday — the latest in a slew of crypto firms to do so as US regulators appear to clear their slates in the waning days of the Biden administration.

Agencies including the Commodity Futures Trading Commission, Justice Department and the SEC have announced various settlements, charges or resolutions in at least six cases involving digital assets in the last week, according to a tally compiled by Bloomberg.

More than 100 enforcement actions were filed against crypto companies during Joe Biden's term. Industry observers expect a different approach under President-elect Donald Trump, a one-time crypto critic turned booster. Trump has nominated crypto-friendly appointees for many key agency posts, vowed to change laws to make them more crypto friendly, and is expected to make crypto a national priority.

"If regulators are settling more crypto-related enforcement actions, it may very well be due to the incoming administration and the changes that the agencies are going to experience," said Jonathan Groth, partner at DGIM Law. "Under the new administration, support may wane for dedicating large expenditures of time and resources to major enforcement actions focused on crypto."

For the crypto companies that are agreeing to settlements, that may be a way to turn a new leaf as well.

"Settlement is always a good thing," said Sahel Assar, practice group leader for blockchain and digital asset group at Buchanan, Ingersoll & Rooney. "Litigation is costly, you want to be able to just settle, move on and start on a fresh note. Rather than linger, better to close out and repurpose under an administration that's going to be much, much more friendly to this technology. It's a way of dusting the past and getting ready for the future."

The SEC didn't immediately return a request for comment.

Some of the cases announced in the last week:

- The CFTC said the U.S. District Court for the Southern District of New York entered a consent order against Gemini crypto exchange that includes a permanent injunction, and requires Gemini to pay a \$5 million fine.
- US Attorney Matthew Podolsky announced that exchange BitMEX was sentenced to a \$100 million fine for violating the Bank Secrecy Act “by willfully failing to establish, implement, and maintain an adequate anti-money laundering (“AML”) and know-your-customer (“KYC”) program.”
- The CFTC announced the U.S. District Court for the Southern District of Florida entered orders of final default judgment against Mosaic Exchange Ltd., a Pennsylvania limited liability company, and its owner “for running a fraudulent digital asset commodity scheme.”
- A federal grand jury in the Northern District of Georgia returned an indictment on Jan. 7 charging three Russian nationals for their involvement in operating the cryptocurrency mixing services Blender.io and Sinbad.io, per Jan. 10 announcement from the Justice Department.
- A cryptocurrency businessman who dubbed himself “The Godfather” and a Los Angeles County Sheriff’s Department deputy have agreed to plead guilty to federal criminal charges, including for their roles in a conspiracy that targeted multiple victims in Los Angeles.

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FDIC sues 17 former SVB leaders over bank's collapse

DJ [dailyjournal.com/articles/382939-fdic-sues-17-former-svb-leaders-over-bank-s-collapse](https://www.dailyjournal.com/articles/382939-fdic-sues-17-former-svb-leaders-over-bank-s-collapse)

Banking

Jan. 21, 2025

The Federal Deposit Insurance Corporation has filed a high-stakes lawsuit against 17 former Silicon Valley Bank executives and directors, claiming their reckless actions and neglect of fiduciary duties caused the bank's catastrophic 2023 collapse.



Shutterstock

The Federal Deposit Insurance Corporation sued 17 former Silicon Valley Bank officers and directors for billions in damages, accusing the defendants of causing the bank's March 2023 failure by "egregiously mismanaging" its assets.

The complaint filed on Jan. 16 in the Northern District of California comes almost two years after the FDIC was named as receiver for SVB and took control of the bank and its liabilities after the bank went under on March 10, 2023. The day before, the bank collapsed after a \$42 billion single-day run by customers imploded the institution. *Federal Deposit Insurance Corporation v. Becker et al.*, 5:25-cv-00569 (N.D. Cal. Filed Jan. 16, 2025).

Outside counsel for FDIC argued in the complaint that the defendants "ignored clear warnings of risk to the Bank's financial condition" to boost the bank's short-term stock price.

"They focused on short-term profits and support of SVBFG's stock price rather than on prudently managing interest-rate risk and liquidity risk at the Bank," FDIC's attorneys wrote. "This conduct was negligent, grossly negligent, and a breach of the fiduciary duties of care and loyalty owed by each defendant to SVB. As a result of these breaches, SVB suffered billions of dollars in losses that would have been avoided had defendants properly overseen and managed SVB's risk."

In a Dec. 19 news release the FDIC Board of Directors announced that it had unanimously approved taking civil action against the SVB officers and claimed that the FDIC had taken similar action in the past against executives from other failed banks.

Among the defendants are Gregory Becker, SVB's former CEO, and Daniel Beck, SVB's former CFO who previously denied fault in a separate putative class action brought by shareholders.

The attorneys representing FDIC are: Lynn R. Fiorentino in Los Angeles, Lawrence H. Heftman and David C. Giles in Chicago of ArentFox Schiff LLP; Stephen Sorensen and Elliot McGraw of Bailey Glasser in Washington, D.C.

The three other officer defendants are: Marc Cadieux, former chief credit officer; Michael Descheneaux, former president; Michael Kruse, former treasurer; and Laura Izurieta, former chief risk officer. The 11 defendants that served on SVB's board of directors until the bank's demise include Joel Friedman, the chair of SVB's finance committee from 2013.

Becker, Beck, Friedman, and a majority of the director defendants named in the new lawsuit are co-defendants in a consolidated, putative class action brought by shareholders over claims of securities fraud in the wake of SVB's collapse. *In re: SVB Financial Group Securities Litigation*, 3:23-cv-01097 (N.D.Cal. filed March 13, 2023).

Attorneys for Becker and Beck in the shareholder dispute denied wrongdoing in a motion to dismiss jointly filed on April 3. Their counsel argued that the plaintiffs attempted "to convert hindsight accusations of corporate mismanagement into securities fraud."

"Plaintiffs' allegations, premised on cherry-picked excerpts of documents released by SVB's regulators, are without merit and contradicted by those same documents, which show that SVB's management was highly responsive to regulator feedback and that the defendants at all times acted in good faith in the best interests of SVB, its shareholders, and its customers," the attorneys wrote. "Crucially, the losses allegedly suffered by plaintiffs after the unprecedented March 2023 SVB bank run were not caused by any fraud on the part of defendants."

U.S. District Judge James Donato has yet to rule on Becker and Beck's motion after taking the matter under submission on Aug. 30.

Becker's attorneys in the pending shareholder lawsuit are: James N. Kramer, Alexander K. Talarides, M. Todd Scott, Molly McCafferty, and Tristan K. Allen of Orrick, Herrington & Sutcliffe LLP. Beck's attorneys in that matter are: Kristopher Benjamin Kastens, Barry H. Berke, Daniel Michael Ketani and Jennifer S. Windom of Kramer Levin Naftalis Frankel LLP.

Neither defendant's attorneys could be reached for comment Friday and the rest of the defendants have yet to hire attorneys in the matter.

FDIC and SVB have been embroiled in a legal battle of their own in the wake of the bank's collapse.

Silicon Valley Bank sued the FDIC in December 2023, accusing the federal agency of defying the U.S. Department of the Treasury's invocation of the systemic risk exception, which allows the agency to override cost restrictions if the risk of an institution's failure poses a threat to the financial system's stability. *SVB Financial Group v. Federal Deposit Insurance Corp.*, 5:23-cv-06543-BLF (N.D. Cal., filed Dec. 19, 2023).

That case is pending after U.S. District Judge Beth Labson Freeman, who partially granted the FDIC's motion to dismiss on Aug. 8.

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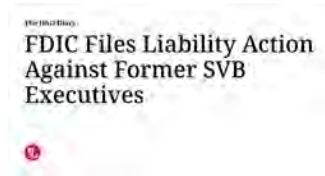
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FDIC Files Liability Action Against Former SVB Executives

[dandodiary.com/2025/01/articles/banks/fdic-files-liability-action-against-former-svb-executives](https://www.dandodiary.com/2025/01/articles/banks/fdic-files-liability-action-against-former-svb-executives)

January 20, 2025



By Kevin LaCroix on January 20, 2025

Posted in Banks

FDIC

The FDIC as receiver of the failed Silicon Valley Bank has filed a negligence and breach of fiduciary duty action against the bank's former directors and officers. The complaint alleges that the FDIC's lawsuit is "a case of egregious mismanagement of interest-rate and liquidity risks by the Bank's former officers and directors." The complaint seeks to recover the "billions of dollars in damages caused by the negligence, gross negligence, and breaches of fiduciary duty." A copy of the FDIC's complaint can be found [here](#).

Background on SVB's Collapse

Readers will recall that on March 10, 2023, the FDIC announced SVB's closure and the agency's appointment as the bank's receiver, as discussed in detail [here](#). SVB was at the time of its closure the 16th largest U.S. bank. The bank had grown rapidly, with its total assets growing from \$60 billion at the end of 2019 to \$209 billion at the end of 2022, meaning that the bank's asset size more than tripled in three years. The increase in assets corresponded to an increase in deposits, which were largely invested in long-duration securities. Unusually, SVB had a high level of uninsured deposits, with about 94 percent of its deposits uninsured as of year-end 2022. (The deposits were uninsured because they exceeded the insured deposit limit under the FDIC deposit insurance program). The bank also had an unusually concentrated customer base.

The closure followed what was in effect a run on the bank. The sequence of events running up to the bank's closure began in March 2022, when the Federal Reserve began rapidly raising interest rates. The rising interest rates caused the value of SVB's bond holdings to decline. The decline in the value of the bank's bond portfolio was merely a paper loss and wouldn't have mattered if the bank didn't have to sell the bonds and instead held them to maturity.

Unfortunately, over the course of 24 hours preceding the bank's closure, depositors withdrew or sought to withdraw nearly all of SVB's deposits, causing the bank to have to sell portions of its bond portfolio at a loss. When news circulated that the bank was seeking to raise additional capital, the company's share price declined. The share price drop triggered deposit withdrawals. When news of the withdrawals began to circulate in the Silicon Valley business community, the bank run escalated, and regulators had to step in. The bank's collapse threatened a contagion effect within the U.S. banking system, and over the following weekend banking regulators had to step in forcefully to prevent the SVB failure from triggering a systemic collapse.

The Complaint

On January 16, 2025, the FDIC as receiver filed a liability action in the Northern District of California against certain of the bank's former directors and officers. The complaint alleges that "in the two years before the Bank failed, the Officer Defendants and Director Defendants ignored fundamental standards of prudent banking and SVB's own risk policies in pursuit of short-term profit." The defendants, the complaint alleges, "ignored clear warnings of risk to the Bank's financial condition, including repeated breaches of the Bank's own interest-rate-risk models, during a period of actual or likely increases in interest rates." The defendants ignored the warnings "to try to boost SVBFG's short term income and its stock price, even though doing so exposed the Bank to unreasonable risk."

The complaint names as defendants six former SVB officers (including former CEO Gregory Becker) and eleven former SVB directors. Several of the officers (including Becker) also served as directors. Several of the director defendants served on Board committees, such as the Risk Committee and the Finance Committee.

The complaint alleges that the defendants breached their duties "in at least three ways.

First, the complaint alleges that "the Officer Defendants and seven of the eleven Director Defendants overexposed SVB to investments in long-term securities, held primarily in the Bank's unhedged held-to-maturity ("HTM") securities portfolio, to try to increase yield in 2021."

Second, the complaint alleges that "from 2021 through July 2022, the Officer Defendants and the same seven Director Defendants caused SVB to terminate interest-rate hedges on its available-for-sale ("AFS") securities portfolio."

Third, the complaint alleges that "five of the Officer Defendants and ten of the Director Defendants were responsible for SVB's paying a grossly imprudent \$294 million bank-to-parent dividend ... in December 2022—less than three months before SVB's failure."

The complaint has three substantive counts. The first count alleges negligence against the officer defendants. The second count alleges gross negligence against all defendants. And the third count alleges breach of fiduciary duty against all defendants. The complaint seeks to recover “actual damages in an amount to be proven” (plus pre- and post-judgment interest). As noted above, in its introductory paragraphs, the complaint expressly states that the FDIC-R seeks to recover the “billions of dollars in damages” the defendants allegedly caused.

Discussion

The FDIC’s filing of this lawsuit had been long-expected. But anticipating a potential complaint is one thing, but seeing it in print is another.

In reading this complaint, I was reminded of the questions I frequently get about the potential liabilities of bank directors. Anyone interested in learning more about the ways that bank directors can potentially be held liable will want to read this complaint. The specific counts of the complaint that name directors as defendants are the counts alleging that the bank negligently terminated its interest rate hedges, and that the bank’s board improperly approved a large intra-corporate dividend just months before the bank collapsed.

While the complaint boldly states that the FDIC-R seeks to recover the “billions” of losses the defendants alleged misconduct allegedly caused, whether the FDIC will in fact be able to recover even a portion of this amount remains to be seen.

As I noted in a prior post, the bank’s D&O insurance program consisted of a \$210 tower of D&O insurance. This tower has already been subject to erosion (perhaps substantial erosion) as a result of various prior lawsuits that have been filed against the former SVB directors and officers. It will be further eroded as the individuals named as defendants in this lawsuit seek to defend themselves. The FDIC’s bid to try to capture whatever remains of the limits will face competition from the claimants in the other lawsuits already pending against the SVB executives.

Of course, there is always the possibility that the FDIC will also seek to recover amounts from the individuals’ personal assets. Even if some of the individuals may have substantial personal assets, it seems unlikely that the FDIC’s aggregate recoveries will amount to the “billion” it said it seeks to recover.

In any event, this lawsuit has only just been filed and it will be interesting to see how it progresses, and how it eventually turns out.

Tech industry appeals California social media restrictions for minors

DJ [dailyjournal.com/articles/382936-tech-industry-appeals-california-social-media-restrictions-for-minors](https://www.dailyjournal.com/articles/382936-tech-industry-appeals-california-social-media-restrictions-for-minors)

Jan. 21, 2025

A technology trade group has urged the 9th U.S. Circuit Court of Appeals to halt parts of a California law restricting social media notifications and personalized feeds for minors. The law, set to take effect next month, has sparked a legal battle over First Amendment rights and child protection.



Until their appeal is considered, a technology trade group is asking the 9th U.S. Circuit Court of Appeals to enjoin the state from enforcing part of a new law that would bar social media companies from sending unsolicited notifications to minors without the consent of a parent or guardian.

But the state attorney general's office argued last week that an injunction would not serve the public interest.

Senior U.S. District Judge Edward J. Davila of San Jose allowed some provisions of the law, entitled the Protecting Our Kids From Social Media Addiction Act, to go into effect but postponed his order until Feb. 1 so the social media companies could ask the 9th Circuit for a stay.

NetChoice LLC - which represents Silicon Valley companies such as Alphabet Inc., which owns YouTube, and Meta Platforms Inc., which operates Facebook and Instagram - filed a motion asking the appellate court to enjoin the state from enforcing two of the law's key provisions earlier this month.

"The district court flouted Supreme Court and [9th] Circuit precedent by holding that 'personalized' feeds displayed by social media websites may not be expression protected by the First Amendment," Lehotsky Keller Kohn LLP partner Scott A. Keller wrote for NetChoice.

"SB 976's parental-consent requirements for minors to view personalized feeds at all, or for more than one hour per day, violate the First Amendment," he added.

While Davila blocked portions of the law last month, he rejected a preliminary injunction on provisions concerning what the state deems "addictive" feeds: a limit on internet companies' ability to provide feeds where a platform recommends, selects or prioritizes material to minors based on information about them.

The other provision creates default settings, which can be overridden with parental consent, on platforms that feature such feeds.

Davila "declined to preliminarily enjoin those provisions, concluding that Plaintiff - on a thin record, at a very early stage in the case - failed to meet the stringent burden of showing that the provisions are likely facially unconstitutional," Deputy Attorney General Christopher J. Kissel wrote in a brief filed last week.

"Even if Plaintiff had met its burden of showing that the challenged provisions of SB 976 implicate the First Amendment, those provisions are at most subject to intermediate scrutiny and are constitutional," he continued.

"They pursue a compelling interest - the physical and mental health of children and teens - while focusing narrowly on features that cause children and teens harm," Kissel added. "The First Amendment does not forbid using content-neutral means to regulate harmful conduct that has, at most, an incidental relationship to expression."

The state asked the 9th Circuit to deny the technology trade group's motion for an injunction pending appeal, which would allow the disputed provisions of the law to go into effect next month. *NetChoice LLC v. Bonta*, 25-146 (9th Circ., filed Jan. 2, 2025).

SB 976, written by state Sen. Nancy Skinner, D-Berkeley and signed into law by Gov. Gavin Newsom in September, is one of several statutes to impose new requirements on social media companies due to concerns that children are being harmed by staying online late at night and during school hours.

After NetChoice sued in November and sought an injunction, Davila ruled that the social media companies are likely to succeed on their First Amendment claim against SB 976's notification provisions and the requirement that companies disclose the number of minor users of their platforms.

But the judge also wrote that because the trade group has not made a record on how the sites' regulated feeds function, "it has not met its burden to show facial unconstitutionality."

Another NetChoice lawyer, Steven P. Lehotsky, a partner with Lehotsky Keller Cohn, wrote in an earlier brief that the law could give state officials "sweeping power [to] ... ban all personalized feeds on the world's major social media websites - including those for adults."

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<https://www.wsj.com/business/media/cbs-owner-discusses-settling-trump-suit-with-merger-review-on-tap-a5916925>

EXCLUSIVE MEDIA

CBS Owner Discusses Settling Trump Suit, With Merger Review on Tap

Trump seeking \$10 billion in suit over '60 Minutes' Harris interview; FCC signals tough review of Paramount merger with Skydance

By *Jessica Toonkel* and *Drew FitzGerald*

Jan. 17, 2025 2:14 pm ET



CBS's news operations have had a season of turbulence. PHOTO: AL DRAGO/BLOOMBERG NEWS

Paramount Global **PARA 1.77%** ▲ executives have held internal discussions about settling a lawsuit filed by Donald Trump over a CBS **PARA 1.77%** ▲ News interview with Vice President Kamala Harris, according to people familiar with the situation, a sign of larger efforts to dial down tensions with the incoming president.

Paramount, owner of CBS, its namesake studio and several cable channels, has a major piece of business in front of the new administration: its planned merger with Skydance Media. It's become clear to executives at both companies that Trump's dissatisfaction with CBS News will make the review tougher than they anticipated, and that they'll likely need to offer concessions to win approval, people familiar with the situation said.

Incoming Federal Communications Commission Chairman Brendan Carr gave Paramount executives a warning to that effect at a reception late last year following the taping of the Kennedy Center honors in Washington, according to people familiar with the exchange, and he has echoed the message in public remarks.

The FCC has the authority over the transaction because it would involve the transfer of broadcast-TV licenses held by local CBS-owned stations.

Trump's lawsuit against CBS, which seeks \$10 billion in damages, alleges that the network committed election interference by editing portions of an interview with Harris, favoring her campaign for president. Trump claimed CBS aired one version of the interview on "60 Minutes" and another version on its show "Face the Nation," each containing different answers about Israel. CBS has said it aired a more succinct version of Harris's interview on "60 Minutes."

There was no indication that Paramount had approached Trump's team about a settlement, but executives at the company were gaming out options to reduce friction with the incoming administration.

"What's going on here is a lot of bluster to discipline the future operations of CBS," said Andrew Jay Schwartzman, a longtime public-interest attorney and senior counselor at the Benton Institute for Broadband & Society. "My guess is that this is just to kind of soften them up and a warning to others."



Incoming Federal Communications Commission Chairman Brendan Carr PHOTO: GRAEME SLOAN/SIPA USA/REUTERS

CBS News is not alone in drawing Trump's ire. Last year, he filed a defamation lawsuit against Disney's ABC News and star anchor George Stephanopoulos over comments he made on air stating that Trump had been found civilly liable for raping writer E. Jean Carroll. A federal jury determined Trump was liable for sexual abuse. Last

month, Disney settled the suit, agreeing to contribute \$15 million to Trump's presidential foundation or museum and to pay \$1 million in legal fees to Trump's lawyer.

Paramount and Skydance executives have considered a number of possible changes the company could make to shore up CBS News editorial operations while reassuring Trump's camp, including adding new processes around programming and possibly releasing the transcript of its "60 Minutes" interview with Harris, according to the people familiar with the situation.

Skydance is run by David Ellison, the son of billionaire Oracle co-founder Larry Ellison, who has a good relationship with Trump. Under the terms of the deal, Skydance and its investors agreed to spend more than \$8 billion to acquire control of Paramount from media heiress Shari Redstone and merge it with Skydance. A person close to Skydance said David Ellison would support measures to promote unbiased journalism.

Paramount finds itself in a similar predicament to the one CNN owner Time Warner faced in 2016 when it proposed merging with telecom giant AT&T. Trump regularly took aim at CNN for alleged bias, and his Justice Department sued to block the deal on antitrust grounds.

Then, however, CNN's editorial practices weren't officially part of the government review, which on its face was about whether a unit that included CNN should be sold off as a condition of the deal. AT&T and Time Warner resisted and prevailed, closing their deal.

This time around, an FCC leader is making a news organization's fairness an explicit issue. For Paramount, as with Time Warner, any concessions to Trump come with the risk of upsetting Hollywood talent. "Paramount has the same problem, which is if you bend the knee on the editorial side, there's a talent problem on the streaming side," said Blair Levin, a former FCC official and analyst at New Street Research.

The Paramount-Skydance deal could face other serious challenges. John Moolenaar, the Republican chairman of the House select committee on China, said Wednesday that the merger warranted review by the Committee on Foreign Investment in the U.S. China's Tencent Holdings, which was recently added to a U.S. blacklist of Chinese military-linked companies, is an investor in Skydance. A Skydance spokeswoman said the Tencent investment in the new Paramount would be less than 5%.

CBS's news operations have had a season of turbulence, with certain programming drawing criticism from inside and outside the company. Most recently, the Jan. 12

episode of “60 Minutes” on the Biden administration’s handling of the war in Gaza triggered concerns over bias at the news division.

Jewish organizations and the Anti-Defamation League blasted the episode for being slanted against Israel. Internally, executives raised questions about why more context wasn’t added to the piece to make it more balanced, said people familiar with the situation.

Within hours of the episode airing, Paramount had reached out to Susan Zirinsky, its former president, to oversee standards and help vet stories on an interim basis, according to people familiar with the situation. In recent days, CBS News has reached out to several senior cable news executives to replace Zirinsky on a permanent basis, according to other people familiar with the discussions.

Last fall, CBS News anchor Tony Dokoupil opened an interview about Israel with author Ta-Nehisi Coates by stating that the content in Coates’s new book “The Message,” which is critical of Israel, “would not be out of place in the backpack of an extremist.” Dokoupil’s interview caused CBS’ race and culture unit to express concern that his tone and phrasing gave a perception that he was biased.

The incident set off a backlash at the company. Some employees said Dokoupil went too far, while others felt the news division came down too hard on him. Redstone, the controlling shareholder of Paramount, even gave a public statement in support of Dokoupil.

Since then Redstone and David Ellison have spoken about the need for changes at CBS News to make sure it is objective, according to people familiar with the situation.

Carr has said that bias accusations are fair game for the media regulator. In a November Fox News interview, he cited a news-distortion complaint from the Center for American Rights as an element he would consider during the merger review.

Outgoing FCC Chairwoman Jessica Rosenworcel, a Democrat, dismissed the complaint on Thursday, saying in a statement that “the FCC should not be the President’s speech police” or “journalism’s censor-in-chief.”

—Isabella Simonetti contributed to this article.

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Videos

Hedge Funds Kept \$1.8 Trillion as Fees, or Half Their Gains (1)

By Nishant Kumar

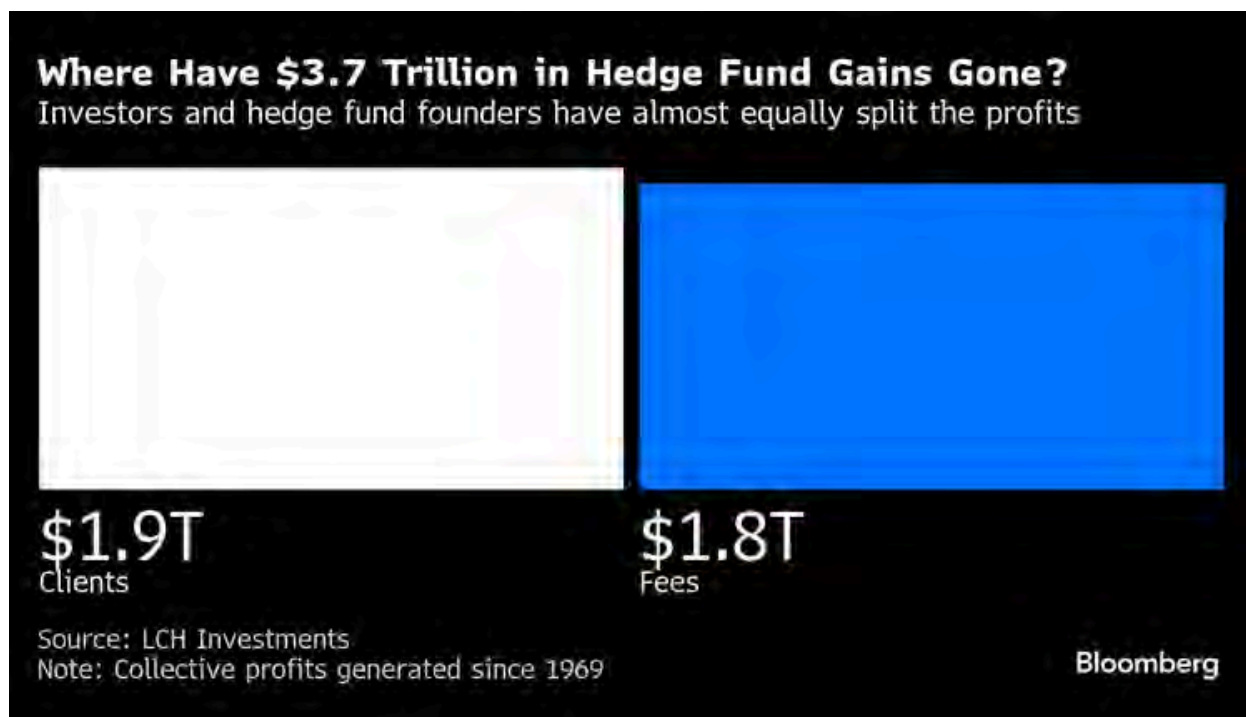
- Fees have soared this century to 50.4% of gains: LCH research
- D.E. Shaw, Millennium, Citadel made the most money last year

Hedge funds have long been regarded as notoriously expensive. New research reveals just how costly they truly are for their clients.

Of the \$3.7 trillion in profits they have earned as an industry since 1969, nearly half or a staggering \$1.8 trillion was gobbled up as fees, according to estimates by LCH Investments, a fund of hedge funds. With soaring assets, hedge funds have raised their charges to 50.4% of gains, up from the roughly 30% they earned until the early 2000s.

This is the first time LCH has ever quantified the high expenses that have become the bedrock of hedge fund firms and have helped mint multiple billionaires over the years. **Warren Buffett** once described those fees as “a compensation scheme that is unbelievable,” while **Bill Gross**, the co-founder of Pacific Investment Management Co., called them a “giant ripoff.” Such criticisms have largely been brushed off by an industry that researcher HFR says has grown sevenfold this century to manage a record \$4.5 trillion.

“The Great Financial Crisis of 2008 presented an opportunity for a reset in the way hedge funds charge fees to investors,” **Rick Sopher**, chairman of LCH, told Bloomberg News. “This opportunity was largely missed.”



The charges were, in part, the result of investors not recovering fees already paid when they redeem or funds close after losses, Sopher said. "This factor becomes particularly meaningful during periods when hedge funds suffer significant losses such as the global financial crisis of 2008 and in some subsequent years," he added.

Read More: Some Multistrategy Hedge Funds Keep Over Half of Their Profits

Hedge funds charge a fixed management fee, with the largest of them increasingly introducing a so-called pass-through expenses that allow them to charge clients for anything from bonuses, hiring cost, research, entertainment to other expenses. When hedge funds make money, they also keep typically 20% of the profits as performance fees. When they lose, clients take the entire hit in addition to paying the fixed or pass-through costs.

LCH studied fees as part of its annual ranking of the most profitable hedge funds in the world.

D.E. Shaw & Co. topped the table as the most profitable hedge fund for 2024, followed by **Izzy Englander's** Millennium Management. Ken Griffin's Citadel, which leads peers for the most money made by a hedge fund since their launch, was placed third last year.

The annual survey focuses on money managers with the most overall profits in absolute dollar terms since inception, and as a result the largest and oldest hedge funds typically tend to do best. The top 20 firms, which oversee about a fifth of the industry's assets, generated \$93.7 billion or roughly a third of the industrywide gains last year.

As measured by a more traditional way of assessing returns, the top-20 grouping gained 13.1% on an asset-weighted basis, outperforming returns of 8.3% across all funds.

Hedge fund managers overall made \$289 billion for their investors in 2024 and the top 20 have made about \$855 billion net of fees since inception.

Top 20 Managers Ranked by Profits in 2024

Source: LCH Investments; Gains are in billions of dollars

*Note: * Denotes gains frozen when all outside capital returned*

(Updates with earnings of top 20 managers in last paragraph.)

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Vanguard to Pay \$106 Million Over Retirement Fund Violations (1)

By Nicola M White

Vanguard Group will pay more than \$106 million to settle US Securities and Exchange Commission allegations that it made misleading statements about capital gains distributions and tax consequences to retail investors who held popular target-date retirement funds in taxable accounts.

The company announced in December 2020 it would lower the minimum initial investment for its Vanguard Institutional Target Retirement Funds. The SEC claims that to meet demand, a different Vanguard retirement fund had to sell underlying assets with gains because financial markets had rebounded from their pandemic lows.

As a result, retail investors of the Vanguard Investor Target Retirement Funds who continued to hold their shares in taxable accounts faced historically larger capital gains distributions and tax liabilities, according to the agency.

"Materially accurate information about capital gains and tax implications is critical to investors saving for their retirements," Corey Schuster, chief of the SEC's Division of Enforcement's asset management unit, said in a statement. "Firms must ensure that they are accurately describing to investors the potential risks and consequences associated with their investments."

The settlement will be distributed to affected investors through a Fair Fund, the SEC said.

"Vanguard is committed to supporting the more than 50 million everyday investors and retirement savers who entrust us with their savings. We're pleased to have reached this settlement and look forward to continuing to serve our investors with world-class investment options," the firm said in a statement.

(Updates with details throughout.)

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SEC Files AI-Washing Enforcement Action Against Restaurant Technology Company

dandodiary.com/2025/01/articles/artificial-intelligence/sec-files-ai-washing-enforcement-action-against-restaurant-technology-company

January 21, 2025



By Kevin LaCroix on January 21, 2025

Posted in Artificial Intelligence



In what may be the SEC's first AI-washing enforcement action against a reporting company, on January 14, 2025, the agency brought a settled enforcement action against Presto Automation, a restaurant services technology company, based on the company's alleged misrepresentations "regarding critical aspects of its flagship artificial intelligence ("AI") product, Presto Voice." A copy of the SEC's January 14, 2025 press release about the action may be found [here](#). The agency's January 14, 2025 Order in the proceeding can be found [here](#).

Presto Automation provides technological products and services to the restaurant industry. Presto became a publicly traded company through a September 2022 merger with a SPAC. The company was listed on Nasdaq until September 2024. The company's flagship artificial intelligence (AI) product, Presto Voice, employs AI-assisted speech recognition technology to automate aspects of drive-thru order taking at quick-service restaurants.

The SEC alleges that between November 2021 and May 2023, the company made misrepresentations about its use and the capabilities of its AI-based product in Commission filings and public statements.

Specifically, the agency alleges that the company "failed to disclose that, for a period of time, the AI speech recognition technology in all units of Presto Voice that the company had then deployed was owned and operated by a third party."

The SEC alleges further that subsequently, after the company Presto did deploy Presto Voice units powered by its own AI speech recognition technology for some customers, the company "falsely claimed that its own AI product eliminated the need for human order-taking. In fact, the vast majority of drive-thru orders placed through this version of Presto Voice required human intervention."

As part of the resolution of the enforcement proceeding the company agreed to a cease-and-desist order. There was no civil penalty imposed.

Discussion

In her post on *TheCorporateCounsel.net* blog discussion the SEC's action against Presto Automation (here), Liz Dunshee noted that she is "pretty sure" that this action represents the first AI-washing related enforcement action against a reporting company. As far as I know, she is correct about that.

It will also be interesting to readers of this blog that Presto Automation was a de-SPAC company. So this enforcement action is not only AI-related but it is SPAC-related as well. Like so many post-SPAC merger companies, this company seems to have stepped into its role as a publicly traded company without being fully prepared.

Among other things, the SEC's order alleges that Presto "had no established process for drafting, reviewing, or approving periodic or current reports required to be filed with the Commission." The order also alleges that the company "never implemented disclosure controls and policies and procedures for reviewing periodic or current reports required to be filed by the company." As a result, the Order alleges, the company "did not have an established process to ensure that the information required to be disclosed in its filings was recorded, processed, summarized, and reported accurately, or that information required to be disclosed by the company was accumulated and communicated to Presto's management for timely assessment and disclosure pursuant to applicable rules and regulations."

The bottom line is that the company, like so many other companies that are hit with AI-washing allegations, overstated the capabilities of its AI-based products and services.

It is worth noting that this settled enforcement actions was filed in the waning days of the Biden Administration SEC. It remains to be seen to what extent alleged AI-related misrepresentations will be a priority for the SEC under the new Trump administration.

Silbert's DCG to Pay \$38 Million in a Settlement With SEC (1)

By Ava Benny-Morrison and Nicola M White

- Ex-Genesis CEO fined \$500,000 for downplaying financial stress
- DCG says SEC findings are 'limited' to 2022 Genesis tweets

Barry Silbert's Digital Currency Group and the former chief executive officer of a now-defunct subsidiary, Genesis Global Capital LLC, will pay \$38.5 million to resolve US Securities and Exchange Commission allegations that they misled investors about the subsidiary's financial condition, the regulator said.

"It is vital that companies and their officers speak truthfully to the investing public, especially in times of financial instability or turmoil," Sanjay Wadhwa, acting director of the SEC's Division of Enforcement, said in a statement Friday.

DCG and Genesis's former CEO, Soichiro "Michael" Moro, downplayed the impact of a roughly \$1 billion loss suffered following the collapse of crypto hedge fund and Genesis borrower Three Arrows Capital in 2022, the SEC said in a cease-and-desist order. DCG and Moro then exaggerated what DCG did to help Genesis in the aftermath, according to the SEC.

Moro made misleading statements on social-media platform Twitter, now known as X, characterizing Genesis's balance sheet as strong, and DCG executives retweeted some of those statements, the SEC said. DCG reviewed the original tweets "but failed to exercise reasonable care in connection with their publication," according to the agency.

"Michael tried very hard working with other people at Genesis and DCG to provide truthful information to the market, but the SEC feels that the tweets ended up nonetheless misleading some people," Moro's attorney, Marcus Asner, said in a statement, adding that Moro didn't deny the SEC's findings.

For two years, the SEC and federal prosecutors in Brooklyn have been scrutinizing DCG's internal financial dealings and its Genesis subsidiary. The parallel probes came out of a turbulent period for the crypto market that led to the collapse of once-booming firms, including Genesis, and uncovered allegations of fraud across the industry.

DCG and Moro settled with the SEC without admitting to or denying the agency's allegations. Moro will pay civil penalties of \$500,000, while DCG will pay \$38 million.

"We are pleased to have concluded an extensive investigation process that was limited in its findings and focused on the social media posts and communications made by our former operating subsidiary, Genesis Global Capital," a DCG spokesperson said. "This settlement allows us to focus on our growth initiatives and continue to embrace the positive momentum in the industry."

Winklevoss Twins

Genesis Global Capital had collaborated with crypto-trading platform Gemini Trust Co., co-founded by the billionaire Winklevoss twins, on a program marketed as Gemini Earn. It let Gemini clients collect as much as 8% interest on their digital-asset holdings.

It was deemed a success until the collapse of Three Arrows Capital in 2022 reverberated across the industry and left a hole in Genesis's balance sheet. Facing heavy losses, Genesis paused customer withdrawals before filing for bankruptcy in January 2023.

Read More: Crypto Lender Genesis Files for Bankruptcy as Crisis Spreads

US authorities had zeroed in on a \$1.1 billion promissory note that DCG issued to Genesis in the wake of the Three Arrows failure and how the note terms were conveyed publicly.

Cameron Winklevoss accused DCG of misleading creditors, Gemini Earn customers and Gemini by implying it had absorbed Genesis losses when it had in reality entered into a "bogus long-dated promissory note." Winklevoss, who was later interviewed by investigators, made the allegations in an open letter posted on X.

DCG, which operates a slew of businesses and also invests in startups, has undergone some painful changes since the last crypto bust sent its lending subsidiary into bankruptcy. Amid glaring publicity, and accusations from Winklevoss, DCG ended up selling news site CoinDesk and shuttering institutional-trading platform TradeBlock. About a year ago, Silbert resigned as chairman of subsidiary Grayscale Investments, which runs a Bitcoin exchange-traded fund and offers other products.

Genesis has already faced multiple liabilities in connection with the Gemini Earn program. Genesis reached a \$2 billion settlement in May with New York State Attorney General Letitia James, who accused Genesis and DCG of defrauding investors.

Genesis also settled a separate action with the SEC in February, agreeing to pay \$21 million to end a lawsuit that accused the crypto lender of breaking securities rules through the Gemini Earn program.

(Updates with additional details of settlement starting in third paragraph.)

--With assistance from **Olga Kharif**.

Game Coin Crypto Coder Settles SEC Rug Pull Claims for \$823,000

By Gillian R. Brassil

- Eric Zhu to disgorge almost \$553,000, pay \$150,000 penalty
- SEC alleged blockchain engineer's sales caused 12% price slip

Eric Zhu settled claims he pulled the rug out from under Game Coin cryptocurrency investors, the US Securities and Exchange Commission said in a federal court filing Friday.

The blockchain engineer will fork over nearly \$823,000 to the SEC if the US District Court for the Middle District of Louisiana approves the agency's unopposed motion for final judgment. Without admitting or denying the allegations, Zhu will pay back almost \$553,000 he purportedly misappropriated plus more than \$120,000 in prejudgment interest and a \$150,000 civil penalty.

Zhu perpetrated a fraudulent scheme from about June 2021 through at least September 2021, the SEC said in its complaint filed Thursday, after he was hired by two unnamed individuals to do coding work for their Game Coin LLC marketplace and crypto assets. The marketplace, which went live in November 2024, allows amateur athletes to build and sell digital trading cards of themselves, the SEC said.

The crypto asset for trading card purchases would be a token called "GME" which the founders promoted on social media, the complaint said. They purportedly offered GME from June through at least November 2021 on platform PancakeSwap.

The SEC said that the founders suspected a rug pull, eventually stopped promoting GME and moved on with a new token.

Trading on PancakeSwap relied on liquidity pools, which involves crypto token pairs that can be traded for one another—GME and Binance coins were in this pool, the complaint said. As investors bought GME using BNB, the amount of GME decreased and its value increased.

The person depositing in the pool gets "liquidity provider" tokens, the SEC said. The risk is that the holder of a lot of LP tokens can take out a significant portion of the crypto asset pair and sell large amounts of one back in, diminishing its value—a rug pull.

Game Coin founders assured investors that LP tokens were locked, meaning they couldn't be used by issuers or insiders to perform a rug pull, the complaint said. Zhu knew or was reckless in not knowing that the founders assured, and that investors expected, GME creators to safeguard the LP tokens, the SEC alleged.

But certain LP tokens were accrued to an address Zhu alone controlled and, without anyone's knowledge, he kept them unlocked, the SEC said. In September, Zhu used them to pull the crypto asset pair from the pool, then sold the withdrawn GME into it, causing an about 12% GME price decline in a likely rug pull, the complaint said.

Zhu then transferred some of the BNB he withdrew and the profits of his GME sales, worth approximately \$553,000 combined, to an address he held that was hosted by an offshore crypto platform, the SEC said.

The case is before Judge John W. deGravelles.

Morvillo Abramowitz Grand Iason & Anello PC represents Zhu. The firm didn't immediately respond to a request for comment.

The case is SEC v. Zhu , M.D. La., No. 3:25-cv-00054, motion for entry of final judgment 1/17/25 .

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Jan. 17, 2025, 7:10 AM PST

SEC Charges GrubMarket With Overstating Revenue By About \$550M

By Robert Lavelle

The Securities and Exchange Commission settled charges against GrubMarket, a private, California-based e-commerce food distributor, for providing investors with financial information that the company should have known was unreliable and that overstated its historical revenues by approximately \$550 million.

- GrubMarket agreed to a cease-and-desist order and to pay an \$8 million civil penalty

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Wells Fargo and Bank of America Agree to Pay Combined \$60 Million to Settle SEC Probe

 [law.com/nationallawjournal/2025/01/17/wells-fargo-and-bank-of-america-agree-to-pay-combined-60-million-to-settle-sec-probe-](https://www.law.com/nationallawjournal/2025/01/17/wells-fargo-and-bank-of-america-agree-to-pay-combined-60-million-to-settle-sec-probe/)

James Palmer

The U.S. Securities and Exchange Commission smacked Wells Fargo and Bank of America with a combined \$60 million in penalties for allegedly mismanaging the cash sweeps of their clients.

Cash sweeps are a method used by investment firms that automatically collects and deposits leftover cash from the accounts of its customers and channels them into an affiliated bank account, where the brokerage earns interest on it.

According to the SEC, two investment advisory units of Wells and a BOA subsidiary offered deposit sweep programs as the only cash sweep option for most advisory clients resulting in a significant financial benefit for the banks but not their customers

"Cash sweep programs impact nearly all advisory clients, who often pay advisory fees on assets held in these accounts," said , Acting Director of the SEC's Division of Enforcement Sanjay Wadhwa said in a press release. "These actions reinforce that advisory firms must have reasonably designed policies and procedures to consider their clients' best interest when evaluating potential sweep options for cash held in advisory accounts and to ensure that cash held in an advisory account is properly managed by financial advisers consistent with a client's investment profile."

In the enforcement actions announced Friday, the regulator said the two firms agreed to settle the charges without admitting or denying any wrongdoing.

Wells Fargo Clearing Services and Wells Fargo Advisors Financial Network will pay a total of \$35 million in penalties, according to the SEC.

In a statement emailed to Law.com, Wells said, "Our agreement with the SEC puts this broader industry matter behind us and, as the settlement states, we have already successfully addressed the issues covered by the resolution."

Meanwhile, BOA's subsidiary Merrill Lynch, Pierce, Fenner & Smith will pay \$25 million to settle the charges.

"As the SEC noted, Merrill took several significant steps before becoming aware of the Commission's investigation, including increasing the rates paid to advisory clients in Merrill's Bank Deposit Program, lowering the minimum thresholds for investing cash in certain money market funds, and adopting and implementing enhanced supervisory procedures," a BOA

representative said in an emailed statement to Law.com. "In fact, Merrill was one of the first large firms to offer a significantly higher cash sweep rate for advisory clients' uninvested cash."

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Wells, Merrill Sweep Accounts Shortchanged Clients, SEC Says (1)

By Nicola M White and Katherine Doherty

Investment adviser units of Wells Fargo & Co. and Bank of America Corp.'s Merrill shortchanged customers by funneling uninvested cash into sweep accounts that benefited the banks but not their clients, the US Securities and Exchange Commission alleged Friday.

The firms paid \$60 million to settle the claims without admitting to or denying the regulator's allegations.

Wells Fargo Clearing Services agreed to pay a civil penalty of \$28 million; Wells Fargo Advisors Financial Network, \$7 million; and Merrill, \$25 million, according to the SEC's cease-and-desist orders.

Wealth advisers direct clients into so-called cash sweep accounts before customers make investment decisions. These accounts are supposed to let customers earn more interest than if they sat on piles of uninvested cash.

Both Wells Fargo and Merrill for several years offered only one cash sweep option for most of their clients and these accounts delivered paltry returns, the SEC said.

"Merrill took several significant steps before becoming aware of the commission's investigation, including increasing the rates paid to advisory clients in Merrill's Bank Deposit Program, lowering the minimum thresholds for investing cash in certain money market funds, and adopting and implementing enhanced supervisory procedures," a representative for Merrill said in an emailed statement.

A Wells Fargo spokesperson said the agreement with the SEC "puts this broader industry matter behind us, and as the settlement states, we have already successfully addressed the issues covered by the resolution."

Regulators have been zeroing in on cash sweep account practices, probing them about their duties to act in the best interest of clients.

Customers also have filed proposed class actions against several big banks, including Charles Schwab Corp. and JPMorgan Chase & Co., and Wells Fargo.

Securities Law

Jan. 21, 2025, 6:12AM PST

SoftBank-Backed Fish Startup Allegedly Faked Most of Its Sales

By David Ramli, Olivia Poh and Yoolim Lee

- eFishery board investigating startup's sales, profit numbers
- Indonesian firm has raised hundreds of millions of dollars

eFishery Pte, one of Indonesia's most prominent startups, may have inflated its revenue and profit over several years, according to an internal investigation triggered by a whistleblower's claim about the company's accounting.

A preliminary, ongoing probe into the agritech startup, backed by investors including SoftBank Group Corp. and Temasek Holdings Pte, estimates that management inflated revenue by almost \$600 million in the nine months through September last year, according to a 52-page draft report circulated among investors and reviewed by Bloomberg News. That would mean more than 75% of the reported figures were fake, the report said.

eFishery, which deploys feeders to fish and shrimp farmers in Indonesia, was a darling of the nation's startup scene and scored a valuation of \$1.4 billion when G42, an AI firm controlled by United Arab Emirates royal **Sheikh Tahnoon bin Zayed Al Nahyan**, backed its latest funding round. It has raised hundreds of millions of dollars in an attempt to modernize the country's fish industry, providing farmers with smart feeding devices as well as feed, and then buying their produce to sell into the broader market.

Read more: [SoftBank's Latest Unicorn Set to Be Fish Startup From Indonesia](#)

Investors were initially enticed by its profitability at a time when layoffs, CEO resignations and plummeting valuations in the tech sector dominated headlines. It presented a \$16 million profit for the first nine months of 2024 to investors, but the investigation commissioned by the board alleges the firm actually generated a \$35.4 million loss.

Revenue for the period was estimated at \$157 million, rather than the \$752 million investors were told, according to the report. Management also inflated revenue and profit numbers for several previous years, the report said.

The report was initiated after a whistleblower approached a board member with allegations that the accounts weren't accurate, according to people familiar with the matter. The board then commissioned a formal investigation in December, and dismissed co-founder and Chief Executive Officer Gibran Huzaifah after the accounting inconsistencies were discovered, the people said.

"We are fully aware of the gravity of the market speculation and we take this matter with the utmost seriousness," eFishery said in an emailed statement. "We remain dedicated to upholding the highest standards of corporate governance and ethics in all of eFishery's operations."

Read more: [CEO Who Grew Up in Poverty Builds Rare \\$1.4 Billion Fish Startup](#)

The report, authored by FTI Consulting, is marked as a draft and subject to further changes as the investigation continues. It's based on more than 20 interviews with company staff and reviews of accounts and messages on WhatsApp, Slack and other channels, according to the report. The draft report notes that investigators haven't yet spoken with the auditors or reviewed any audit workpapers or other documentation. The numbers are likely to change further, with bank statements, interviews and other accounts still yet to be found or completed.

Huzaifah didn't respond to messages seeking comment. Temasek and SoftBank declined to comment, while representatives of FTI and G42 didn't immediately respond to queries.

Shareholders and directors have been surprised at the scale of the alleged fraud given the protective measures that were put in place, including channel checks and exit interviews of staff, said one of the people, who asked not to be named as the matter is private. EFishery had previously hired PricewaterhouseCoopers and Grant Thornton to audit financial results. The two accounting firms didn't respond to requests for comment.

Investor calls have been taking place since the investigation began and the key question will be what to do with the company's assets and remaining cash, one of the people said.

While eFishery said it had over 400,000 fish feeders in operation at customers, initial investigations estimate it only had about 24,000. In total, internal books show retained losses at roughly \$152 million from its inception until November 2024. While the total assets of the firm stand at \$220 million, this includes \$63 million in accounts receivable and \$98 million in investments, according to the report.

The allegations of fraud may be damaging for Indonesia's startup scene, and come at a critical time as young companies and investors in the country struggle to raise new funding. EFishery was the nation's latest so-called unicorn, or a startup valued at more than \$1 billion.

--With assistance from **Min Jeong Lee**.

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Law360 Names Practice Groups Of The Year

Law360 (January 20, 2025, 8:00 PM EST) -- Law360 would like to congratulate the winners of its Practice Groups of the Year awards for 2024, which honor the attorney teams behind litigation wins and significant transaction work that resonated throughout the legal industry this past year.



With an eye toward standout matters and groundbreaking legal work, Law360 selected more than 170 winning groups across more than 30 practice areas. In the awards' 15th year, the Practice Groups of the Year hail from 77 law firms that rose to the top of nearly 800 submissions.

Gibson Dunn & Crutcher LLP took the top spot for **Firms of the Year**, with 10 practice groups in the ranking, followed by Sullivan & Cromwell LLP and Covington & Burling LLP with eight practice groups each. Skadden Arps Slate Meagher & Flom LLP, Latham & Watkins LLP and Cravath Swaine & Moore LLP each earned six wins.

Congratulations to this year's Practice Group of the Year winners:

Appellate

Clement & Murphy

Gibson Dunn

Gupta Wessler

Hogan Lovells

Jones Day

Williams & Connolly

Banking

Cahill Gordon

Mayer Brown

Paul Weiss

Sullivan & Cromwell

Williams & Connolly

Bankruptcy

Akin

Brown Rudnick

Jones Day

Paul Hastings

Sullivan & Cromwell

Weil

Cannabis

Dentons

Dykema

Vicente

Capital Markets

Davis Polk

Debevoise

Goodwin

Latham

Skadden

Class Action

Bernstein Litowitz

Boies Schiller

Lieff Cabraser

Quinn Emanuel

WilmerHale

Competition

Cohen Milstein

Covington

Cravath

Gibson Dunn

WilmerHale

Winston & Strawn

Complex Financial Instruments

Cahill Gordon

Dentons

Mayer Brown

Compliance

Covington

Morrison Foerster

Sidley

Construction

Kaplan Kirsch

Nossaman

Orrick

Seyfarth

Troutman Pepper

Cybersecurity & Privacy

Gibson Dunn

Keker Van Nest

Keller Rohrback

Latham

Lieff Cabraser

Employment

Cohen Milstein

Epstein Becker

Gibson Dunn

Paul Hastings

Shegerian & Associates

Energy

Cravath

Jenner & Block

Kirkland

Norton Rose

Skadden

Vinson & Elkins

Environmental

Baron & Budd

Bracewell

Gibson Dunn

Hunton

Keller Rohrback

Sidley

Fintech

Davis Polk

Latham

Quinn Emanuel

Skadden

Sullivan & Cromwell

Fund Formation

Fried Frank

Kirkland

Proskauer

Simpson Thacher

Weil

Government Contracts

Arnold & Porter

Bradley Arant

Hogan Lovells

Seyfarth

Wiley

Healthcare

Debevoise

Foley & Lardner

Ropes & Gray

Sheppard Mullin

Williams & Connolly

Insurance

Cohen Ziffer

Covington

O'Melveny

Sullivan & Cromwell

Wiley

Intellectual Property

Duane Morris

Irell

Kirkland

Morgan Lewis

Reichman Jorgensen

WilmerHale

International Arbitration

Freshfields

Gibson Dunn

King & Spalding

International Trade

Covington

Grunfeld Desiderio

Kelley Drye

Wiley

Life Sciences

Cooley

Fenwick

Freshfields

Hogan Lovells

Latham

Media & Entertainment

Covington

Cravath

Davis Wright

Williams & Connolly

Mergers & Acquisitions

Latham

Paul Weiss

Simpson Thacher

Skadden

Weil

Private Equity

Cravath

Debevoise

Latham

Ropes & Gray

Simpson Thacher

Skadden

Product Liability

DLA Piper

Kline & Specter

Lieff Cabraser

Sullivan & Cromwell

Real Estate

DLA Piper

Gibson Dunn

Kirkland

Simpson Thacher

Wachtell

Weil

Securities

Bernstein Litowitz

Cravath

Gibson Dunn

Labaton Keller

Robbins Geller

Winston & Strawn

Sports & Betting

Covington

Debevoise

Keker Van Nest

Paul Weiss

Winston & Strawn

Tax

Cravath

Mayer Brown

Skadden

Sullivan & Cromwell

Technology

Cooley

Fenwick

Orrick

Paul Weiss

Weil

Transportation

Dykema

Mayer Brown

O'Melveny

Sullivan & Cromwell

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Lyft Shareholder Suit Over Earnings Report Error Tossed

By **Craig Clough**

Law360 (January 17, 2025, 5:59 PM EST) -- A California federal judge tossed a proposed class action Thursday against Lyft that alleged the ride-sharing giant defrauded investors when it issued an earnings release with an error that caused its stock to shoot up and then fall in under an hour when the error was corrected.

The order from U.S. District Judge Trina L. Thompson dismissed both claims against Lyft Inc., CEO David Risher and CFO Erin Brewer, but said the plaintiffs can amend their complaint for violations of Section 10(b) and Section 20(a) of the Securities Exchange Act and Rule 10b-5.

Judge Thompson said the plaintiffs failed to allege that the defendants acted with scienter, or that 42 minutes was not a reasonable amount of time in which to issue a correction.

"Here, the [first amended complaint] fails to adequately allege that Defendants acted with scienter prior to the publication of the misstatement," the judge said. "Plaintiff's reliance on the fact that the misstatement would have been surprising and called to Risher and Brewer's attention is conclusory and does not address defendants' mental state when the misstatement was made."

The lawsuit, filed in March 2024 by Yuan Chen, sought to represent a class of Lyft investors who purchased stock between 4:05 p.m. on Feb. 13, 2024, when an earnings release with an error was issued and caused the company's stock to spike, and 4:47 p.m. that day, when a correction was made, and the stock gains were reversed.

The error in the press release stated that Lyft anticipated an "Adjusted EBITDA margin expansion ... of approximately 500 basis points year-over year" for fiscal 2024, but the actual number was 50, according to the complaint. EBITDA stands for Earnings Before Interest, Taxes, Depreciation and Amortization.

After the press release, Lyft's stock shot up by 67% to \$17.95 before Brewer corrected the number on an earnings call 42 minutes later, and the company also issued a corrected release at 6:02 p.m., which caused shares to fall to \$12.92 per share, according to the complaint.

Brewer did not make the correction until 24 minutes into the call, according to the complaint, which argued that because the defendants "did not move promptly to correct the misstatement is corroborating evidence that the initial misstatement was either knowing or severely reckless."

In finding that the plaintiffs failed to allege scienter, the judge said the court would not consider an expert opinion that "scienter is supported by the fact that analysts and investors would have been surprised by the misstatement, making a strong inference that at least one analyst would contact defendants immediately after the issuance of the misstatement to obtain clarification."

The judge cited the Northern District of California's ruling in [Sgarlata v. PayPal Holdings Inc.](#) while finding that "[a]lthough '[t]here is authority for the proposition that a plaintiff can support a securities fraud claim with opinions provided by an expert,' district courts may only consider allegations from experts if such factual allegations satisfy the same standard applied to confidential informant."

"Plaintiff offered no argument, either in his opposition or during oral argument, to show that [the

expert] meets this standard," the judge added.

In finding that 42 minutes was a reasonable amount of time in which to correct the error, the judge cited the Ninth Circuit's 2015 ruling [In re Yahoo! Inc. Securities Litigation](#) , which found that six weeks was a reasonable amount of time to correct a pre-class statement.

Counsel for the parties did not immediately respond to requests for comment.

Chen is represented by Alexander Shahin Vahdat of Berman Tabacco and Robert C. Finkel of Wolf Popper LLP.

The defendants are represented by Josh A. Cohen and Elliot Greenfield of Debevoise & Plimpton LLP.

The case is Yuan Chen v. Lyft Inc. et al., case number 3:24-cv-01330, in the U.S. District Court for the Northern District of California.

--Editing by Kristen Becker.

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FirstEnergy Execs Hit With RICO Charges Over Bribe Scandal

By **Elliot Weld**

Law360 (January 17, 2025, 7:30 PM EST) -- Two former executives of FirstEnergy Corp. have been hit with federal racketeering charges over their alleged scheme to bribe Ohio House of Representatives members for a billion-dollar bailout that has drawn scrutiny from government agencies and led to long prison sentences for others involved in the scandal.

Former FirstEnergy CEO Charles Jones and former senior vice President of external affairs Michael Dowling were each charged with conspiracy under the Racketeer Influenced and Corrupt Organizations Act in an **indictment** unsealed Friday.

Jones and Dowling were charged in February 2024 by Ohio state prosecutors along with former Ohio Public Utilities Commission chair Sam Randazzo over an alleged scheme to **bribe the state legislature** in an effort to pass H.B. 6, which related to the bailout. Jones was accused by the SEC in September of concealing the company's payments to politicians, and FirstEnergy reached a **\$100 million settlement** with the agency the same month in a separate suit over the scandal.

Former Ohio House Speaker Larry Householder and Republican lobbyist Matt Borges were **convicted** of taking cash from FirstEnergy in exchange for pushing the bailout. Householder was sentenced to 20 years in prison, while Borges was sentenced to five.

"I stated following the jury conviction of Householder and Borges that this office would continue to work tirelessly to hold more people accountable for their actions to harm Ohioans, and we have," Southern Ohio U.S. Attorney Kenneth L. Parker said in a statement Friday.

Counsel for Jones and Dowling did not immediately respond to requests for comment Friday.

Prosecutors said that between 2017 and March 2020, FirstEnergy sent more than \$59 million to a tax-exempt organization called Generation Now, which was controlled by Householder.

According to the indictment, Jones told a FirstEnergy consultant in November 2016, "When we were talking on Weds I told him there was gonna be a sense of urgency but couldn't tell him all the details. If we don't move on some type of supplant in the first half of 2017 it will be too late. These plants will be shut, sold or bankrupt."

After meeting with Householder in Washington, D.C., in January 2017, another tax-exempt entity called Energy Pass-Through was created to get bribe money to Householder, according to prosecutors. The day after the meeting, a FirstEnergy unit wired \$5 million to an Energy Pass-Through bank account, the indictment said.

Dowling said in an internal company presentation that the preferred method of giving money was "through Section 501(c) groups, as these are considered 'dark money' because they are not required to disclose where the donations came from," according to the indictment. He and Jones allegedly sent payments to Generation Now with the understanding that Householder would help pass certain nuclear legislation. The money that went to that entity assisted Householder in becoming speaker of the House and passing H.B. 6, prosecutors said.

Jones and Dowling used bribery to push their preferred appointees to the Public Utilities Commission, including Randazzo and others, according to the charges, and FirstEnergy paid Randazzo's companies

\$4.3 million in exchange for him taking actions favorable to the company. This included him helping to draft pro-nuclear plant legislation and pressuring public officials to support certain legislation and regulations, the indictment said.

Prosecutors said Jones referred to Householder as his "expensive friend" and thanked Randazzo after taking action that Jones believed raised FirstEnergy's stock price in 2019.

Jones made about \$60 million from performance-based compensation based in part on First Energy's stock prices during his tenure as CEO from 2015 to 2020, prosecutors said. Some of Dowling's pay was also tied to the company's financial performance and growth, the government said.

After H.B. 6 passed in 2019, Dowling and Jones allegedly celebrated, with Dowling remarking, "Huge bet and we played it all right on the budget and HB 6, so we can go back for more!"

The bill provided more than a billion dollars in subsidies for two nuclear plants. A Chapter 11 bankruptcy plan was approved for FirstEnergy's nuclear power unit FirstEnergy Solutions after it was passed, and the entity emerged from bankruptcy in February 2020 after changing its name to Energy Harbor, the indictment said. The nuclear subsidies in the bill were repealed in March 2021, and Energy Harbor and the two nuclear plants continued to operate, according to prosecutors.

The government is represented by Emily Glatfelter and Matthew Singer of the U.S. Attorney's Office for the Southern District of Ohio.

Jones is represented by Carole Rendon of BakerHostetler.

Dowling is represented by John McCaffrey of Tucker Ellis LLP.

The case is U.S. v. Jones et al., case number 1:25-cr-00006, in the U.S. District Court for the Southern District of Ohio.

--Additional reporting by Ryan Harroff. Editing by Adam LoBelia.



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Energy Co. To Pay \$19M SEC Fine Over Ohio Bribery Scandal

By **Katryna Perera**

Law360 (January 17, 2025, 5:21 PM EST) -- American Electric Power Inc. on Friday agreed to pay \$19 million to resolve claims from the U.S. Securities and Exchange Commission that the utility company violated federal securities laws in connection with a bribery scandal embroiling the Ohio Legislature.

The SEC **issued an order** stating American Electric had agreed to pay the civil monetary penalty without admitting to or denying any of the allegations. The SEC's action centers on the utility's relationship with Empowering Ohio's Economy Inc. — a nonprofit formed, fully funded and controlled by American Electric — and its involvement in a \$60 million bribery scheme connected to the former Ohio House of Representatives Speaker Larry Householder.

According to the order, American Electric controlled Empowering Ohio's spending and used it to further its own interests, causing the entity to contribute a total of \$1.2 million to nonprofit organizations associated with Householder.

This included two contributions to Generation Now Inc. — a 501(c)(4) social welfare organization Householder controlled — in the amounts of \$250,000 and \$100,000 in 2019 to support the passage of Ohio House Bill 6, a **controversial bailout** that provided FirstEnergy Corp. with subsidies for its struggling nuclear and coal-fired plants while slashing renewable energy programs.

Prosecutors later alleged FirstEnergy essentially bought the bill's passage by paying millions to Generation Now.

The SEC also claimed Householder used Empowering Ohio's contributions to defeat a referendum effort on HB 6.

Additionally, the Friday order states that in March 2020, American Electric and its then-CEO met Householder for lunch, during which Householder presented his initiative focused on revising political term limits in Ohio.

"The new law would allow Householder to remain speaker for up to an additional sixteen years," the SEC said. "Householder asked for financial support for his new initiative ... a few weeks later ... Empowering Ohio contributed \$500,000 to a newly-created 501(c)(4) organization associated with Householder to support the term-limit initiative."

The truth about American Electric's involvement with Householder began to come to light in July 2020, when a **criminal complaint** against the former speaker was unsealed, alleging that he, Generation Now and several others participated in a federal racketeering conspiracy.

According to the SEC's Friday order, The Columbus Dispatch published an article linking American Electric and Empowering Ohio, and noted Empowering Ohio had contributed to Generation Now.

On this news, American Electric's stock dropped by 10%, or \$8.82 per share, and American Electric began receiving inquiries from institutional investors and market analysts about the company's involvement with Householder, the bribery scheme and Empowering Ohio, the SEC said.

In response to the Columbus Dispatch article, American Electric issued a press release that allegedly

omitted key facts and made several misrepresentations, including that the utility company did not contribute to Generation Now, according to the SEC.

"These statements were misleading ... because it created the impression that American Electric Power had not made any contributions to Generation Now, but failed to disclose that it had fully funded Empowering Ohio and that an American Electric Power Employee directed Empowering Ohio's contributions to Generation Now," the SEC said.

The agency said the press release also misleadingly stated that American Electric's contributions to Empowering Ohio were only to "support its mission of promoting economic and business development and educational programs in Ohio."

"The second statement was misleading because it created the impression that American Electric Power's contributions to Empowering Ohio were exclusively to support Empowering Ohio's contributions to charitable and apolitical causes, when, in reality, Empowering Ohio's contributions were primarily made to 501(c)(4) organizations associated with politicians that American Electric Power wanted to support," the agency said.

The SEC further alleged American Electric failed to disclose material related party transactions, failed to devise and maintain a sufficient system of internal accounting controls, and failed to properly make and keep books and records that accurately account for related party payments.

In an announcement about the settlement on Friday, American Electric said it fully cooperated with the SEC throughout the process.

"Resolving this issue is an important step for AEP. We look forward to putting this matter behind us and fully focusing on making needed investments to enhance the service we provide to our customers," the utility said.

Last June, Householder was sentenced to the maximum **20 years in prison** for his role in the bribery scheme. FirstEnergy entered a deferred prosecution agreement in July 2021, agreeing to pay a **\$230 million penalty** and cooperate.

The SEC declined to comment on Friday.

American Electric is represented by Reid J. Schar from Jenner & Block LLP and Nicholas S. Goldin from Simpson Thacher & Bartlett LLP.

Counsel information for the SEC was not available Friday.

The case is In the Matter Of American Electric Power Inc., case number 3-22425, before the Securities and Exchange Commission.

--Editing by Lakshna Mehta.



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Drink Maker Celsius Settles SEC's Accounting Claims For \$3M

By **Sydney Price**

Law360 (January 17, 2025, 5:21 PM EST) -- The U.S. Securities and Exchange Commission on Friday fined beverage company Celsius Holdings Inc. \$3 million to settle claims that it issued financial statements that were materially inaccurate and misleading due to misreported stock award information.

According to the cease-and-desist order, Celsius understated its stock-based compensation expenses when the company modified the terms of stock awards for six departing employees in 2021. The following year, Celsius corrected certain previously reported financial information to reflect the stock-based compensation expenses, causing Celsius' previously reported net income to become a net loss for certain periods, the order states.

Generally, Celsius employees and board members would forfeit unvested stock awards after leaving the company, but in the second and third quarters of 2021, Celsius made an exception to the provisions for six outgoing employees and board members, according to the SEC.

"Re-valuing the stock awards for the six departing employees and board members would have resulted in an increased value for these stock awards and material increases in the company's stock-based compensation expenses," the order states. "Celsius, however, failed to recognize and record the incremental compensation costs as required."

The SEC alleges that no one at the company took steps to ensure the accounting for the modified stock awards for the employees and board members was in accordance with generally accepted accounting principles.

Without admitting or denying wrongdoing, Celsius agreed to pay a \$3 million civil penalty. The SEC said that its investigation into the company remains ongoing.

In 2023, an investor filed a class action against Celsius over the alleged misconduct. The company agreed that year in August to **settle the claims** for \$7.3 million, and the deal received final approval by a Florida federal judge last year.

The plaintiffs in that case alleged Celsius compensated its workers liberally with stock awards in an attempt to minimize its compensation costs. When the stock spiked in value and nine workers departed in the second and third quarters of 2021, Celsius was faced with the prospect of having to pay out these workers' shares when the stock was trading at an all-time high, so it instead delayed the acceleration of the workers' share-based compensation and falsely reported an inflated net income in the second and third quarters of 2021, the plaintiffs said.

Representatives of the parties did not immediately respond to requests for comment on Friday.

The SEC is represented by its own Ashley Sprague and Avron Elbaum.

Counsel information for Celsius was not immediately available on Friday.

The case is In the Matter of Celsius Holdings Inc., file number 3-22429, before the U.S. Securities and Exchange Commission.

Wells Fargo, BofA Units Pay SEC \$60M Over Cash Sweeps

By **Sarah Jarvis**

Law360 (January 17, 2025, 5:34 PM EST) -- The U.S. Securities and Exchange Commission on Friday announced that Merrill Lynch and two units of Wells Fargo will pay a combined \$60 million to settle claims they failed to implement preventative procedures concerning their cash sweep programs.

Without admitting or denying the agency's findings, Wells Fargo Clearing Services LLC **agreed** to pay a fine of \$28 million, Wells Fargo Advisors Financial Network LLC agreed to pay a fine of \$7 million, and Bank of America's Merrill Lynch Pierce Fenner & Smith Inc. **agreed** to pay a fine of \$25 million, the SEC said.



The SEC alleged that Wells Fargo Advisors and Merrill Lynch failed to adopt and implement policies and procedures concerning their cash sweep programs that considered their clients' best interest. (AP Photo/Andrew Harnik, File)

The agency alleged Wells Fargo Advisors and Merrill Lynch set the interest rates offered in their bank deposit sweep programs, whose yield differential compared to other cash sweep alternatives grew to nearly 4% during periods of rising interest rates. The two firms offered the programs as the only cash sweep option for most advisory clients, the SEC said.

The two firms failed to adopt and implement policies and procedures designed to consider their clients' best interest in selecting what cash sweep program options would be available to clients, as well as procedures covering financial advisers' duties regarding managing client cash in advisory accounts, the SEC alleged.

The acting director of the SEC's Division of Enforcement, Sanjay Wadhwa, said in a statement that cash sweep programs "impact nearly all advisory clients, who often pay advisory fees on assets held in these accounts."

"These actions reinforce that advisory firms must have reasonably designed policies and procedures to consider their clients' best interest when evaluating potential sweep options for cash held in advisory accounts and to ensure that cash held in an advisory account is properly managed by financial advisers consistent with a client's investment profile," Wadhwa said.

Wells Fargo said in a Friday statement that its agreement with the SEC "puts this broader industry matter behind us, and as the settlement states, we have already successfully addressed the issues covered by the resolution."

Bank of America said in its own Friday statement that Merrill Lynch was one of the first large firms to offer a "significantly higher" cash sweep rate for its clients' uninvested cash.

"As the SEC noted, Merrill took several significant steps before becoming aware of the commission's investigation, including increasing the rates paid to advisory clients in Merrill's Bank Deposit Program, lowering the minimum thresholds for investing cash in certain money market funds, and adopting and implementing enhanced supervisory procedures," Merrill Lynch said.

The firms consented to censures and the entry of orders finding that they violated the Advisers Act.

Under the cash sweep programs at issue in the orders, Wells Fargo Advisors and Merrill Lynch automatically sweep their advisory clients' uninvested cash holdings into interest-bearing accounts at one or more banking affiliates. For Wells Fargo Advisors, that included Wells Fargo Bank NA, which would then send payments to Wells Fargo Clearing Services.

The SEC said it considered the firms' remedial acts and cooperation with agency staff, noting Wells Fargo Advisors improved its policies and procedures regarding the selection of cash sweep options and the allocation of client cash in advisory accounts "consistent with their stated goals." The firm also reevaluated its limits on sweep program holdings.

Merrill Lynch also cooperated with agency staff and undertook remedial measures, including increasing the rates paid to advisory clients under its cash sweep program and improving its supervisory procedures targeting certain investment advisory program accounts with significant cash holdings. The firm also lowered the minimum thresholds for investing cash in certain money market funds, the SEC said.

The orders also note that Wells Fargo Advisors and Merrill Lynch both "provided detailed narrative responses on numerous topics," which helped expedite the SEC's investigations.

Wells Fargo is facing a **proposed class action** filed in a California federal court by a customer claiming the bank's cash sweep program only allows users to sweep their cash into Wells Fargo-selected accounts, a practice the suit said has drawn regulatory scrutiny because it disproportionately benefits the bank.

Other financial institutions, including Morgan Stanley, Bank of America and LPL Financial, have **also** been **hit** with lawsuits over their cash sweep programs.

The firms are represented by Amy Doberman of WilmerHale.

The SEC is represented in-house by John Mulhern, Min Choi, Jonathan Shapiro, David Mendel, James Carlson, Kimberly Frederick, Corey Schuster and Reid Muoio.

The cases are In the Matter of Merrill Lynch Pierce Fenner & Smith Inc., case number 3-22433, and In the Matter of Wells Fargo Clearing Services LLC and Wells Fargo Advisors Financial Network LLC, case number 3-22430, before the Securities and Exchange Commission.

--Additional reporting by Sydney Price. Editing by Daniel King.