

# UnitedHealth Wants NY Judge to Dismiss Stock-Drop Case Filed After Exec's Murder

**LAW** [law.com/newyorklawjournal/2025/05/19/unitedhealth-wants-ny-judge-to-dismiss-stock-drop-case-filed-after-execs-murder](https://www.law.com/newyorklawjournal/2025/05/19/unitedhealth-wants-ny-judge-to-dismiss-stock-drop-case-filed-after-execs-murder)

Alyssa Aquino

May 19, 2025



CalPERS headquarters at Lincoln Plaza in Sacramento. Photo: Coolcaesar/WikiCommons

## News

Backed by plaintiffs law firm, Robbins Geller Rudman & Dowd, CalPERS argues that an investor represented by the Rosen Law Firm filed a "wholly duplicative" suit to CalPERS own, after CalPERS was appointed lead plaintiff.

3 minute read

## Securities Litigation

The nation's largest public pension fund asked the Manhattan federal court to relinquish a securities suit alleging that UnitedHealth misled investors on the fallout from the killing of an insurance executive, arguing the case undermines its year-old suit against the company.

The California Public Employees' Retirement System, or CalPERS, argued that investor Roberto Faller's new case against UnitedHealth was "wholly duplicative" of its complaint, which was filed in May 2024.

Faller's case referenced Luigi Mangione's alleged Dec. 4 killing of UnitedHealth executive, Brian Thompson. But in a motion to intervene to transfer the case to Minnesota, CalPERS argued that its pending lawsuit contained similar allegations concerning UnitedHealth's denial rates.

"Denying intervention would reward the filing of a wholly duplicative copycat case by a nominal shareholder in a remote jurisdiction far away from the First-Filed Securities Action (with a flimsy basis for invoking venue), undermine the Lead Plaintiff Order issued by the U.S. District Court for the District of Minnesota, and usurp CalPERS' statutory right as the court-appointed Lead Plaintiff to control the litigation—the exact type of gamesmanship the PSLRA was enacted to prevent," CalPERS argued.

Represented by Robbins Geller Rudman & Dowd, CalPERS sued UnitedHealth Group Inc. last year in Minnesota, where the company is headquartered, alleging that UnitedHealth covered up potential Medicare fraud and high denial rates for Medicare Advantage patients for necessary care. The case was supplemented several times, with CalPERS moving on May 5 to supplement the complaint again.

CalPERS argued that the Rosen Law Firm, which represented Faller, was aware of its lawsuit, pointing out in a footnote that the firm "issued not just 1 or 2, but over 70 press releases" on a deadline to seek lead plaintiff status in CalPERS' case. But although CalPERS was appointed lead plaintiff, the Rosen Law Firm filed suit on behalf of Faller in New York.

In that case filed on May 7, Faller alleges that in the months following Thompson's death, UnitedHealth had secretly moved away from the coverage policies that had reportedly motivated Thompson's alleged killer, Luigi Mangione. However, the company maintained that a 2025 earnings outlook predating the murder was still feasible, despite disavowing the "aggressive, anti-consumer tactics" needed to reach those projected earnings, Faller claimed. UnitedHealth has denied all wrongdoing.

CalPERS argued that Faller's claims were based on the exact same facts as CalPERS' motion to supplement. CalPERS further stressed its alleged loss from the misconduct, saying it had purchased over 1.8 million shares of UnitedHealth stock and "suffered hundreds of millions of dollars in losses."

"If Faller, who purchased 10 shares of UnitedHealth stock, were allowed to prosecute this duplicative Action separately from the First-Filed Securities Case, there is undoubtedly a risk that this case would proceed on a different timeline with different rulings and therefore impair

CalPERS' ability to prosecute the case on behalf of the putative class," CalPERS said. Representatives for CalPERS and Faller did not respond to Monday requests for comment.

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May 14, 2025

By Michael C. Miller, Michelle S. Kallen, Evelyn M. Hudson and Myles Ashong

🕒 10 minute read

May 08, 2025

## UnitedHealth Shareholder Claims Company Covered Up Impacts of Its CEO's Killing

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🕒 3 minute read

# Strategy Faces Investor Lawsuit for Over \$5 Billion Bitcoin Accounting Losses

 [law.com/nationallawjournal/2025/05/19/strategy-faces-investor-lawsuit-for-over-5-billion-bitcoin-accounting-losses](https://www.law.com/nationallawjournal/2025/05/19/strategy-faces-investor-lawsuit-for-over-5-billion-bitcoin-accounting-losses)

Michael A. Mora

May 20, 2025

MicroStrategy Inc. and three of its executives are facing a securities class action complaint in a federal district court in Virginia over allegations that the bitcoin bull duped investors about the financial risks associated with adopting fair value accounting for its cryptocurrency holdings.

Since 2020, Strategy, headquartered in Virginia, has increasingly focused on purchasing and holding bitcoin as a long-term business strategy. To achieve that aim, Strategy used proceeds from equity and debt financing, as well as cash flows from its operations, to accumulate bitcoin, which serves as its primary treasury reserve asset.

Throughout the class period between April 30, 2024, and April 4, 2025, the defendants, who include chair Michael J. Saylor, chief executive officer Phong Le and chief financial officer Andrew Kang, are accused of consistently touting Strategy's bitcoin-focused investment strategy and treasury operations.

In doing so, Strategy introduced several new key performance indicators—namely, “BTC Yield,” “BTC Gain” and “BTC \$ Gain”—to measure its financial performance and help the market assess its investment approach, court records show. Strategy also accounted for its bitcoin under a cost-less-impairment accounting model in which it classified its large bitcoin holdings as intangible assets.

However, on Jan. 1, Strategy adopted the Financial Accounting Standard Board's accounting standard update No. 2023-08. Under ASU 2023-08, publicly traded companies are required to measure their crypto assets at fair value in their financial statement, with gains and losses from changes in the fair value of those assets recognized in net income or losses in each reporting period.

And while the defendants advised investors throughout the class period that they expected Strategy's adoption of ASU 2023-08 to materially impact its financial statements, the defendants are accused of failing to disclose the “nature or scope of the expected impact while downplaying the attendant risks,” according to the complaint.

“Defendants consistently provided rosy assessments of Strategy's performance as a bitcoin treasury company following its adoption of ASU 2023-08,” the plaintiffs and proposed class alleged. “They did this, in part, by reporting and projecting positive BTC Yield, BTC Gain, and

BTC \$ Gain results, while omitting the immense losses the Company could realize on its bitcoin assets after accounting for these assets under a fair value accounting methodology.” Now, the case is pending before the U.S. District Court for the Eastern District of Virginia.

The plaintiffs and proposed class point to Le’s sales of nearly \$16 million and Kang’s sales of over \$2 million of Strategy common stock prior to the disclosure to the U.S. Securities and Exchange Commission that it recognized a “\$5.91 billion unrealized loss on its digital assets for the first quarter of 2025, which was expected to result in a net loss for the quarter.”

On the news of the filing, the stock dropped over 8.5%.

And the plaintiffs and proposed class added in the complaint that on a subsequent earnings call to discuss the first quarter results, “company management explained that this loss stemmed from applying a fair value accounting methodology to Strategy’s bitcoin assets following bitcoin’s steep depreciation in value in the first quarter of 2025.”

Steven J. Toll, a partner at Cohen Milstein Sellers & Toll in Washington, D.C., who represents the plaintiff and proposed class, did not respond to a request for comment. Neither did the defendants.

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Cohen Milstein Sellers & Toll

Latest

Trending

### Who Got The Work

Andrew J. Levander, Neil A. Steiner and Angela Liu from Dechert have entered appearances for Arbor Realty Trust and certain officers and board members in a pending shareholder derivative lawsuit. The complaint, filed on April 18 in New York Eastern District Court by The Rosen Law Firm on behalf of Marty Kessler, accuses the defendants of overstating net income and failing to disclose the company's

disregard for underwriting standards, leading to a high volume of loans that were at a heightened risk of default. The case, assigned to U.S. District Judge Rachel P. Kovner, is 1:25-cv-02176, Kessler v. Kaufman.

[Read More](#)

### **New Suit - Securities**

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ON Semiconductor d/b/a Onsemi and several of its current and former directors and officers, including its CEO, were hit with a stockholder derivative lawsuit on May 16 in Arizona District Court. The action, brought by McKay Law and Weiss Law on behalf of long-term stockholder Yael Balsam-Respler, centers on the company's long-term supply agreements which were publicly represented as stable and 'ironclad' revenue sources. However, it is alleged that these agreements allowed customers to cancel or modify their commitments, undermining their reliability. Executives are accused of repurchasing company stock at inflated prices and engaging in insider trading, which resulted in financial damage to shareholders. The case is 2:25-cv-01672, Balsam-respler v. El-khoury.

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## Securities Law News

# SIFMA Seeks Appellate Check of Wells Fargo Investor Class Status

May 19, 2025, 1:15 PM PDT

- Trade group asked Ninth Circuit to check classwide scrutiny
- Said district court wrongly accepted promise of damages model

Wells Fargo & Co. investors wrongly garnered class status in their suit alleging the bank misled them over a diverse hiring policy that really featured fake interviews with minority candidates, a securities trade association said.

The US Court of Appeals for the Ninth Circuit should accept Wells Fargo's petition for permission to appeal because the district court wrongly took investors' assurances they would devise a classwide damages model, said the Securities Industry and Financial Markets Association's amicus brief filed May 16.

Investors sued Wells Fargo in 2022, alleging a stock decline after news reports exposed Wells Fargo's practice of sham job interviews with minority candidates it had no intention of hiring.

If the Ninth Circuit grants the review, it should reverse the US District Court for the Northern District of California's class-certification order, SIFMA said. The securities trade association said the closest the shareholders' expert came to identifying a damages methodology was saying he could "back cast" the stock decline from the class period's end as a measure of inflation.

SIFMA said that its members would be "adversely affected by the district court's erosion of" a 2013 Supreme Court ruling requiring courts "to rigorously assess predominance at the class-certification stage" and that this decision could raise costs of securities class actions on the US economy.

The Supreme Court in *Comcast Corp. v. Behrend* said courts must closely look at whether plaintiffs could demonstrate damages measurable classwide based on their theory of liability. The US Court of Appeals for the Fourth and Sixth Circuits recently granted review over this class certification question, SIFMA said.

Courts can't wait to see if damages can be applied on a classwide basis after certification because this is often the last stage of securities litigation, the amicus brief said. After class status is granted, "defendants face significant pressure to settle even meritless claims," SIFMA said.

Judge Trina L. Thompson certified a class of those who invested in Wells Fargo and were purported to be damaged from Feb. 24, 2021, through June 9, 2022. The plaintiffs satisfactorily claimed they'd used an event study to determine classwide damages, saying *Comcast* didn't require investors to produce a case-specific event studies method, Thompson said. Event studies measure any artificial inflation based on abnormal stock drops tied to the disclosure of fraud.

Wells Fargo had argued that the investors failed to satisfy the 2013 standard as their expert's report was vague and didn't designate a clear classwide damages methodology based on investors' theory of the company's liability. But Thompson said the defendants conceded that "that the caselaw is not on their side" and that many courts have certified a class after plaintiffs propose an event study.

Debevoise & Plimpton LLP represents SIFMA. Sullivan & Cromwell LLP represents Wells Fargo. Kessler Topaz Meltzer & Check LLP is lead counsel for the class. None of the law firms immediately responded to emails seeking comment. Wells Fargo declined to comment in an email.

The case is *SEB Inv. Mgmt. AB v. Wells Fargo & Co.*, 9th Cir., No. 25-3021, brief filed 5/16/25 .

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**Securities Law News**

# Aehr Test Systems Investor Drops Claims Over Revenue Miss (1)

May 19, 2025, 8:39 AM PDT; Updated: May 19, 2025, 1:24 PM PDT

- The lead plaintiff voluntarily let lawsuit go—at least for now
- Suit alleged Aehr overstated 2024 revenue growth projections

An Aehr Test Systems Inc. investor dropped claims that the semiconductor test supplier and two top executives misled shareholders about its projected 2024 revenue growth before a 22% stock selloff.

Lead plaintiff Yue Guo notified the US District Court for the Northern District of California May 16 that he is voluntarily dismissing the allegations, but left the ability to refile. The proposed class action alleged that Aehr said in October 2023 that its 2024 fiscal year revenue would surpass \$100 million, but in January 2024 the company and executives misleadingly downplayed reducing that projection and touted its visibility into customer orders.

Aehr slashed its 2024 revenue forecast to \$65 million on March 25, 2024, while sharing a preliminary third fiscal quarter revenue estimate that missed consensus expectations. Its CEO said in a press release that day softness in semiconductors and shifts in electric vehicle introductions and ramps impacted Aehr more than expected.

Share prices plummeted more than 22% to close at \$11.37 on the March day the revenue projection was cut—the stock's steepest single-day fall since July 2021, according to data compiled by Bloomberg.

The investment fund that filed the operative complaint in December also sought to be lead plaintiff.

"We are pleased that the court-appointed lead plaintiff chose to dismiss the case rather than file an amended complaint. We have always believed that the case had no merit, and we always strive to provide our investors and business partners with timely and up-to-date information about our business," an Aehr spokesperson said in an email.

The Rosen Law Firm PA is lead counsel for the proposed class, targeting those that got Aehr stock from Jan. 9, 2024, through March 24, 2024. Latham & Watkins LLP represents Aehr, CEO Gayn Erickson, and CFO Chris P. Siu. Neither firm immediately responded to an email seeking comment.

The case is Lucid Alt. Fund, LP v. Aehr Test Sys., Inc. , N.D. Cal., No. 3:24-cv-08683, 5/16/25 .

(Updates to include comment from Aehr in the sixth paragraph.)

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## Securities Law

### **Barclays Defeats New York High Court Shareholder Lawsuit**

May 20, 2025, 8:41AM PDT

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- **NY plaintiffs lack standing to bring case under English law**
- **Judges disagree over history of internal affairs doctrine**

New York's highest court on Tuesday rejected arguments that current and former officials of London-based Barclays PLC can be sued under New York law—a decision that sparked rebuke from the court's chief judge.

"Doc Brown and Marty McFly would be impressed with the majority's ability to transport the present into the past to arrive at today's holding," Chief Judge Rowan Wilson wrote in his solo dissent, referencing the film *Back to the Future*.

The 6-1 court affirmed the lower court's dismissal of New York-based Ezrasons Inc.'s shareholder lawsuit alleging nearly 50 current and former Barclays directors and officers breached their fiduciary duty owed to Barclays under English law, causing injury to the company.

The majority rebuffed Ezrasons' argument that a 1961 state law overrode the internal affairs doctrine, which says disputes should be adjudicated based on the law of the place where the company is incorporated. Ezrasons argued that the law gave beneficial owners of shares in foreign corporations standing to litigate on behalf of their companies in New York, despite conflicting foreign law.

"The statutory provisions on which plaintiff relies do not clearly manifest legislative intent to displace the long-settled internal affairs doctrine, and thus do not preclude a defense that plaintiff lacks standing under English substantive law to maintain this derivative action," Judge Anthony Cannataro said, noting that no court since 1961 has treated the law as displacing the internal affairs doctrine with regard to shareholder derivative standing.

Wilson rebutted that the post-1961 cases on which the majority relies "are not relevant to the law as it stood" when it was enacted. Pre-1961 case law established that courts could, at their discretion, agree to hear cases involving the affairs of foreign corporations or to dismiss the case in favor of a more convenient forum. The doctrine didn't exist as a choice-of-law rule that dictated which jurisdiction's law would apply, Wilson argued.

"In other words, the time is out of joint, and must be set right," he wrote.

The state legislature clearly intended that the law include choice-of-law provisions that subjected foreign corporations to the same standards as domestic ones, Wilson said.

"Through the jurisprudential time machine it has concocted, transporting today's doctrine back to the first half of the last century, the majority's decision forces the legislature to anticipate the evolution of the common law and preemptively disavow it," Wilson wrote. "That is an impossible task; even we do not know what future decisions may hold."

Wilson's historical analysis is misplaced, Cannataro said. "It is the statutory text that must be carefully parsed, not pre-1961 case law that no party here has challenged, and which is in any event replete with references to a choice-of-law doctrine that courts, legal practitioners, investors, and corporate managers have for generations taken as a given," he wrote.

Attorneys for both sides didn't immediately respond to requests for comment.

Bottini & Bottini Inc., Powers & Santola LLP, and Weiss Law represented Ezrasons. Skadden, Arps, Slate, Meagher & Flom LLP represented Barclays and the individual directors and officers.

The case is Ezrasons Inc. v. Rudd , N.Y., No. APL-2024-00016, opinion 5/20/25 .

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**Class Action****Checkpoint Therapeutics Beats Investor Suit Over FDA Approval**May 20, 2025, 6:43AM PDT

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Checkpoint Therapeutics Inc. defeated investor claims it concealed the likelihood US regulators would deny its skin cancer treatment's application due to its manufacturer's compliance problems, a federal judge ruled.

Most of the purportedly misleading statements were unactionable puffery, opinion, or forward-looking projections, Judge Paul A. Engelmayer of the US District Court for the Southern District of New York said as he tossed the investor's proposed class action allegations with finality Monday.

The case is In re Checkpoint Therapeutics Sec. Litig. , S.D.N.Y., No. 24 Civ. 2613, dismissed 5/19/25 .

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# Guest Post: CEOs and Board Liability

**K** [dandodiary.com/2025/05/articles/director-and-officer-liability/guest-post-ceos-and-board-liability](https://www.dandodiary.com/2025/05/articles/director-and-officer-liability/guest-post-ceos-and-board-liability/)

Kevin LaCroix

May 19, 2025



Sarah Abrams

*The recent news that Warren Buffett is stepping down as Berkshire Hathaway's CEO has drawn the attention of the business pages around the world. But along with Buffett's move, there have been other CEO-related developments that have attracted the attention of the corporate and securities world, including with respect to Tesla CEO Elon Musk. In the following guest post, Sarah Abrams, Head of Claims Baleen Specialty, a division of Bowhead Specialty, examines these CEO moves and considers their implications. I would like to thank Sarah for allowing me to publish her article as a guest post on this site. I welcome guest post submissions from responsible authors on topics of interest to the blog's readers. Please contact me directly if you would like to submit a guest post. Here is Sarah's article.*

Warren Buffett's May 3 announcement that he will step down as CEO by year's end, along with recent speculation about Tesla seeking Elon Musk's successor, presents a timely opportunity to explore board influence at companies where the CEO is deeply synonymous with the brand. Buffett and Musk have long been known for their dominant leadership styles, often making major decisions single-handedly on behalf of their companies.

When CEOs make and publicly announce dramatic unilateral decisions, it can raise concerns about board governance and expose both the board and the company to heightened D&O risk. The following discusses the parallels between Berkshire Hathaway (BH) and Tesla board engagement, as well as potential governance liability stemming from CEO behaviors exhibited by Buffett and Musk.

According to Buffett, no one on BH's board (except his two children) or succeeding CEO Greg Abel knew that he would be resigning effective January 1, 2026. Even though Buffett has stated in writing over the last couple of years that Greg Abel would be his replacement, catching the board and named successor by surprise can cause investor scrutiny of board oversight. Readers of the D&O Diary know that Buffett's annual letter to Shareholders, which is part of BH's annual report, is often a blend of financial insights, personal reflections, and forward-looking statements, emphasizing transparency, humility, and the importance of long-term thinking.

This year was no different, and on Page 2 of the letter published on February 22, 2025, Buffett stated that “[a]t 94, it won’t be long before Greg Abel replaces me as CEO and will be writing the annual letters.” Buffett also recalled his investment and relationship with Pete Liegl, founder of Forest River, and strong BH equity activity, including Buffett-directed holdings in large, profitable businesses like Apple, American Express, Coca-Cola, and Moody’s. The February 22 letter was not a dramatic departure from last year, so no reason for shareholders to anticipate him stepping down.

Buffett’s investment decisions on behalf of BH have resulted in a market cap of \$1.104 Trillion USD. When Buffett took over in 1965, BH’s market value was approximately \$18 million. BH shares have increased 5,502,284% under Buffett. On the first day of trading after Buffett’s announcement, BH shares fell as much as 5%. Buffett emphasized that he will not sell a share of BH stock, which may help protect leadership from shareholder activism while Buffett is alive.

Even so, the board of a publicly traded company is responsible for overseeing executive leadership and succession planning. While succession planning has occurred at BH, being unaware of the timing of Buffett’s departure may be spun as a failure in the board’s duty of care. Succession risk for a public company board can result in operational disruption and internal uncertainty. In short, a CEO stepping down without informing the board may undermine governance fundamentals, even if the CEO is Warren Buffett.

Tesla’s board has faced, very publicly, allegations of governance failures relating to Musk in recent years. The first example discussed below involved the Tesla board’s 2018 approval of Musk’s outside compensation: purportedly the result of the Compensation Committee not being sufficiently independent to negotiate with Musk. The derivative litigation against the board not only voided Musk’s pay package but also resulted in a change to Delaware corporate law.

D&O Diary readers may be aware that the impetus, in part, of Delaware SB 21 (SB 21) passed in March 2024 was the investor lawsuit filed against Elon Musk and Tesla *Tornetta v. Elon Musk*. Tornetta, on behalf of himself and other shareholders, filed a derivative lawsuit in Delaware Chancery Court alleging breach of fiduciary duty against an allegedly influenced board that approved a compensation plan for Musk with \$55.8 billion maximum value based upon certain vesting benchmarks. At the time of the offer, Tesla had a market capitalization of around \$60 billion. Musk’s package was approved at the 2018 annual meeting and ratified at the 2020 annual meeting.

The Delaware Court in *Tornetta* opined that rescission of Musk’s compensation award would be appropriate because, in part, Musk heavily influenced the design of the compensation plan. Unsurprisingly, shortly after the *Tornetta* decision, Tesla and its board filed a proxy statement asking shareholders to approve moving its corporate headquarters from Delaware

to Texas. Shortly thereafter, SB 21 was proposed and fast-tracked with a specific “clarification” of the definition of a controlling shareholder (i.e. Musk), which would have likely changed the outcome of the *Tornetta* case.

Despite the subsequent change in Delaware law, Tesla’s board was still exposed to liability stemming from its pay package dispute. Musk’s involvement and control over his compensation award exposed the board to a shareholder lawsuit. His subsequent involvement in the Trump Administration and DOGE has again exposed the Tesla board to potential derivative litigation.

Musk’s political activities have hurt Tesla earnings and share price. Tesla’s market value hit a record high of \$1.5 trillion in December 2024 and has fallen to about \$900 billion since that time. The board allegedly told Musk he needed to spend more time with Tesla after first-quarter profits had reportedly plunged 71% and the stock value had decreased 27%. The board’s failure to establish interim leadership and strategic clarity while Musk was engaged with the Trump administration may expose the board to a breach of its duty of oversight, resulting in corporate destabilization and decline in Tesla’s profitability.

While BH and Tesla are very different companies with very different leadership, a D&O underwriting risk to consider is how the board interacts with a CEO synonymous with the company. The reason why shareholders of BH have remained shareholders for the same as shareholders of Tesla. Buffett and Musk. In the case of both boards, the CEOs seem to have a significant amount of control. For D&O underwriters there are certainly takeaways from the latest BH and Tesla dramas. In particular, underwrite to the level of board oversight publicly exhibited.

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**Ann M. Lipton**

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i don't know if this is true but it tells us (1) despite his other holdings he still very much cares about tesla's performance, and (2) tesla backlash matters

[www.cnbc.com/2025/05/20/e...](https://www.cnbc.com/2025/05/20/e...)



**Elon Musk says he will spend 'a lot less' on future campaign donations**

Elon Musk said he plans to spend less on political donations in the future, signaling a change in attitude from President Donald Trump's top campaign backer.

[www.cnbc.com](https://www.cnbc.com)

May 20, 2025 at 7:24 AM Everybody can reply

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14



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**Agora01619** @agora01619.bsky.social · 56m

Don't believe anything that comes out of his mouth.



**RI Smith** @rismith.bsky.social · 3h

I think there's also (3) Trump world absolutely hates him right now and blames him for Trump's bad numbers reflecting Elon's even worse numbers.



**Elon Musk**

## Elon Musk says he will spend a 'lot less' on politics

Donald Trump's biggest donor has already pulled back from White House role



Elon Musk, the world's richest man, spent more than a quarter of a billion dollars on Donald Trump's 2024 presidential campaign

**Joe Miller** in New York

Published 3 HOURS AGO | Updated 08:11



Elon Musk, the US's largest political donor, has said he intends to spend a "lot less" on political campaigns in the future, in a blow to Donald Trump loyalists ahead of next year's midterm elections.

The world's richest man, who spent more than a quarter of a billion dollars on Trump's 2024 presidential campaign, said he thought he had "done enough" donating to political causes.

Speaking at the Qatar Economic Forum on Tuesday, Musk said: "I'm going to do a lot less [political spending] in the future," adding that he did not "currently see a reason" to sustain the level of support he has given conservative candidates over the past year.

The remarks come after Musk's most recent foray into electoral politics ended in defeat. The Wisconsin Supreme Court candidate he backed with more than \$25mn lost by 10 percentage points in April, after Democrats turned the race into a referendum on the Trump administration and Musk's so-called Department of Government Efficiency.



Musk says he will spend a 'lot less' on political campaigns in the future © Reuters



Soon after the defeat, Musk — who polls show is more unpopular than Trump — announced he was stepping back from Doge to spend more time running Tesla, which had suffered a sales slump in part due to protests against the government cost-cutting initiative.

The billionaire transformed the 2024 election by bankrolling Trump's campaign, and by offering Republicans in key swing states \$100 to sign a petition affirming their support “for the First and Second Amendments”, in an attempt to increase turnout in marginal districts.

America PAC, the political action committee set up by Musk, also [offered \\$1mn per day](#) to a signatory of the petitions in the final weeks of the race.

Trump's supporters had expected Musk to continue supporting Maga-aligned Republicans through the next election cycle.

Congresswoman Marjorie Taylor Greene, a fierce Trump ally, said in November that America PAC was “going to be critical in mounting primaries against anyone that stands in the way of the MAGA agenda”.

But Musk has since clashed with members of Trump’s cabinet and is implacably opposed to the administration’s trade policies. His businesses have also suffered from his proximity to the White House.

On Tuesday, the Tesla chief executive reiterated that he expected to remain in charge of the electric car company for the foreseeable future.

The company denied recent reports that members of Tesla’s board had explored the option of appointing a successor.

Musk, who is fighting a legal battle over a roughly \$100bn pay package at Tesla, said he believed “there should be compensation . . . [when] something incredible was done”.

He also suggested his commitment to the company was at least somewhat contingent on pay and whether the shares he is awarded give him sufficient control of the company.

Musk said he would be open to eventually floating his satellite internet business Starlink, which is currently a part of SpaceX, but was wary of the administrative burdens of being a public company.

*Additional reporting by Chloe Cornish*

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# Tesla Sets Record With \$139 Million Pay Package for Finance Chief

Vaibhav Taneja’s stock award is worth more than any CFO’s pay—and most CEOs’

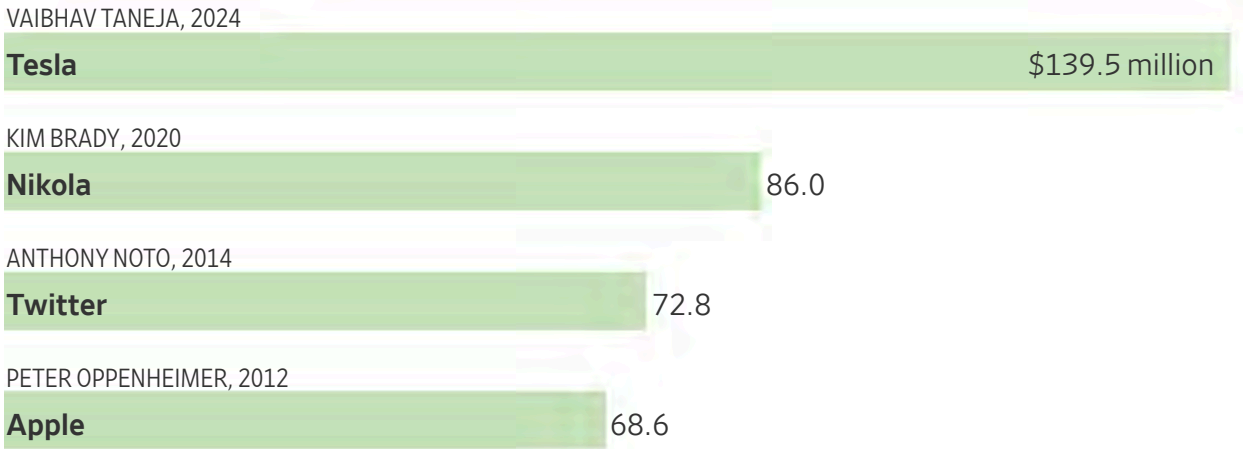
By [Theo Francis](#) [Follow](#)

May 20, 2025 5:30 am ET



Tesla deliveries fell 13% and net profit fell 71% in the first quarter. PHOTO: BENOIT TESSIER/REUTERS

## Top-ten highest CFO pay packages



JAMES FAY, 2021

**Matterport** 68.5

ROBERT ROSIELLO, 2015

**Valeant Pharmaceuticals\*** 60.4

MARIO MARTE, 2020

**Chewy** 60.0

PATRICK PICHETTE, 2015

**Alphabet** 56.6

JASON PARK, 2020

**DraftKings** 56.1

BRITTANY BAGLEY, 2024

**Axon** 53.4

\*Renamed Bausch Health

Note: Dates shown are fiscal years.

Source: Equilar

[Elon Musk](#) isn't the only [Tesla](#) TSLA **2.17%** ▲ executive rewriting the compensation playbook. The electric carmaker's finance chief, Vaibhav Taneja, received a pay package of \$139 million last year.

That is more than most chief executives and the highest amount paid to a chief financial officer since modern reporting began in 2006, according to Equilar. It eclipses the \$86 million package that hydrogen-truck maker [Nikola](#) gave its then-CFO in 2020. Nikola [filed for bankruptcy](#) this year.

Taneja's compensation was tied to stock options and equity awards he received in October 2024 that recognized his promotion to CFO in August 2023. The 47-year-old has held other financial roles at Tesla since 2017.

Taneja's boss, meanwhile, is still working without a paycheck. Tesla's board has formed a special committee to review Musk's compensation. His pay has been tied up in legal fights since a multibillion stock grant was [thrown out](#) by a court. [Tesla has appealed](#) that decision.

Tesla's shares were trading near \$250 at the time of Taneja's equity award, which vests—or becomes fully Taneja's property to sell or exercise—over four years. They closed around \$342 on Monday.

The award came during a period of [mixed results](#) for Tesla. While the stock soared toward the end of the year following the election of President Trump, global vehicle deliveries fell for the [first time](#) in more than a decade. In the first quarter, deliveries fell 13% and net profit fell 71%.

Tesla and Taneja didn't respond to requests for comment. In an April 30 regulatory filing discussing the award, Tesla said it reviewed its compensation to reflect individual performance and retention in light of current equity awards.

Write to Theo Francis at [theo.francis@wsj.com](mailto:theo.francis@wsj.com)

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## Videos

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<https://www.wsj.com/politics/policy/elon-musk-to-slash-political-spending-4dac0fec>

POLITICS | POLICY

# Elon Musk to Cut Back Political Spending

After making huge bets on the 2024 election, the world's richest person and Trump booster said he would spend less. He promised to stay on as Tesla CEO.

By [Eliot Brown](#) [Follow](#)

Updated May 20, 2025 11:41 am ET



Elon Musk speaks via video link at the Qatar Economic Forum on Tuesday. PHOTO: CHRISTOPHER PIKE/BLOOMBERG NEWS

[Elon Musk](#) says he plans to cut back on political spending, after making huge donations in the 2024 election to boost President Trump.

“In terms of political spending, I’m going to do a lot less in the future,” he said in a video interview at the Qatar Economic Forum. “I think I’ve done enough.”

Musk, the world’s richest person, who spent a considerable fortune helping to elect Trump, indicated he still could increase spending again if conditions change.

“If I see a reason to do political spending in the future, I will do it,” he said. “I do not currently see a reason.”

Musk played a [polarizing role in the early weeks](#) of the Trump administration, overseeing the Department of Government Efficiency as it [slashed federal spending and jobs](#).

In April, Musk said he was going to spend less time in Washington and more overseeing [Tesla](#), his electric-vehicle company. Investors had grown worried that he had taken his eye off the ball, with Tesla's sales and share price dropping during his time in the White House.

On Tuesday, asked if he would still be chief executive of Tesla in five years, Musk said, "Yes." He then caveated, adding, "Well, I might die."

The Wall Street Journal recently reported, citing people familiar with the matter, that Tesla board members [reached out to several executive search firms](#) to work on a formal process for finding Tesla's next CEO. The board members, concerned that Musk was spending too much time in Washington, told him he needed to spend more time on Tesla.

Tesla later issued a denial and Musk criticized the article on X, his social-media platform.

Musk shrugged off declining Tesla sales—[deliveries fell 13%](#) in the first three months of the year compared with a year earlier—saying that while the company had lost some liberal customers over his prominent role in the Trump administration, it had gained others among his political supporters.

"Our sales are doing well at this point," he said. "It's already turned around."

After initially planning to stay out of the 2024 election, Musk became one of the largest individual donors in U.S. election history, putting in close to \$300 million to help Trump and other Republicans, filings show.

After Trump's victory, Musk turned his sights to the state level, pouring more than \$23 million into a Wisconsin state Supreme Court race to boost a Republican-backed candidate. But the effort resulted in a loss—the [liberal candidate won](#).

Musk dismissed [potential conflicts of interest](#) in his role as a top adviser to Trump and his extensive business interests, which include SpaceX, a leading commercial space-exploration company and government contractor, and xAI, an artificial-intelligence startup.

“I have not seen any case where there has been an accusation of conflict,” he said, adding that his work is only advisory—leaving it up to others in the administration to choose whether to enact his suggested cuts.

When asked on Tuesday about the Journal’s reporting last year that Musk had been in [regular contact](#) with [Vladimir Putin](#) since late 2022, Musk said he spoke to the Russian president once. “The reported conversations are false.”

Write to Eliot Brown at [Eliot.Brown@wsj.com](mailto:Eliot.Brown@wsj.com)

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## Videos

# Musk Commits to Tesla CEO Role and Plans Political Pullback

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Elon Musk said he's committed to still leading Tesla Inc. five years from now and expects to pare back his political spending, assuaging some investors' concerns about the future of his most valuable company.

The billionaire offered new details about his plans in a wide-ranging interview with Bloomberg News that also touched on his compensation, Tesla's sliding sales and a possible spinoff of SpaceX's Starlink satellite business. Musk repeated his criticisms of a familiar cast of characters, from Bill Gates to the Delaware judge who's twice ruled against his massive Tesla pay package.

Musk, whose \$375.5 billion fortune leads the Bloomberg Billionaires Index, reiterated that he wants to own more shares of Tesla for reasons of authority, rather than wealth.

"It's not a money thing," he said during a remote appearance Tuesday at the Qatar Economic Forum in Doha. "It's a reasonable control thing, over the future of the company."

Musk has been chief executive officer of Tesla since 2008, one of the longest active stints atop the world's largest automakers. His level of engagement with the company has come under greater scrutiny as the carmaker has followed up its first annual sales drop in over a decade with steeper declines early this year.

*The government of the State of Qatar is the underwriter of the Qatar Economic Forum, Powered by Bloomberg.*



WATCH: Elon Musk, chief executive officer of Tesla, says he's committed to still being CEO in five years.  
Source: Bloomberg

Tesla shares jumped after Musk's comments about his commitment to staying CEO, trading up as much as 3.6% before paring gains. The stock has declined 14% this year.

Musk, 53, downplayed the extent of Tesla's challenges, saying that "it's already turned around." When pressed about this — the carmaker's vehicle sales continued to plunge across Europe's biggest electric vehicle markets in April — the CEO said that the region is the company's weakest, but that it's strong elsewhere.

"Our sales are doing well at this point," he said. "We don't anticipate any meaningful sales shortfall."

## Brand Damage

Musk disputed the extent to which he's damaged Tesla's brand, saying that while the company may be losing some sales among consumers on the political left, it's gained others on the right. He criticized protesters he said have committed "massive violence" against his companies.

"They're on the wrong side of history, and that's an evil thing to do," he said, referring to people damaging Tesla cars and showrooms. "Something needs to be done about them, and a number of them are going to prison, and they deserve it."

President Donald Trump has rallied to Musk and Tesla's defense, including by showcasing the company's cars just outside the White House in March. The Federal Bureau of Investigation later formed a task force to coordinate investigations into vandalism and arson incidents at Tesla stores and charging stations, and Attorney General Pam Bondi announced charges against individuals accused of setting the company's property ablaze with Molotov cocktails.

## State of SpaceX

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Musk's SpaceX has been relatively resilient during Trump's second term. Governments around the globe have been opening up to Starlink, the closely held company's satellite internet service, since its founder spent more than a quarter of a billion dollars to help Trump retake the presidency.

Read More: South Africa to Offer Musk Starlink Deal Before Trump Meet

Musk said that while it's possible Starlink may go public at some point in the future, he's in no rush. Although listing the company could be a way to make more money, he said it would be at the expense of additional overhead and "very annoying" lawsuits.

"Something needs to be done about the shareholder derivative lawsuits in the US," Musk said, adding that law firms are seeking out "a puppet plaintiff with a few shares" to initiate litigation against companies.

## On the Attack

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The comments were consistent with Musk's critique of the shareholder lawsuit that led Delaware Chancery Court Judge Kathaleen St. J. McCormick to rule in January of last year that his Tesla pay package should be rescinded. The company has appealed to the state's supreme court, and the board disclosed last month that it's established a special committee to consider compensation matters involving Musk.

Musk referred to McCormick as "the activist who is cosplaying as a judge in a Halloween costume."

Read More: Judge in Musk Pay Case Slams Tesla's 'Supine' Board

Musk also fired back at Gates, who criticized him last week for the role he's played in the Trump administration slashing tens of billions of dollars in assistance the US has provided to developing nations. The Microsoft Corp. co-founder told the Financial Times last week: "The picture of the world's richest man killing the world's poorest children is not a pretty one."

"Who does Bill Gates think he is to make comments about the welfare of children?" Musk responded.

When asked whether he'd checked if Gates is right that cuts to USAID might cost millions of lives, Musk challenged his fellow billionaire to "show us any evidence whatsoever that that is true. It's false."

## Election Spending

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When the conversation turned to elections — including the upcoming US midterms in 2026 — Musk said he thinks he'll spend "a lot less" on politics in the future.

"I think I've done enough," he said.

Asked if this is because of the blowback he's been getting, Musk demurred.

"If I see a reason to do political spending in the future, I will do it," he said. "I do not currently see a reason."

(Updates with comments on Starlink, Delaware judge in Tesla pay case and Bill Gates.)

## **Class Action**

### **Embry-Riddle 401(k) Investor Seeks Class Status Over Plan Fees**

May 20, 2025, 7:56 AM PDT

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- **Earlier case bringing similar claims was denied class status**
- **New motion emphasizes details showing plaintiff's standing**

Embry-Riddle Aeronautical University is facing a new attempt to certify a class of employees challenging the school's retirement plan fees after a prior attempt in a separate case fell flat.

Plan participant Karen Garceau on Monday asked the US District Court for the Middle District of Florida to certify a class of more than 4,600 people covered by the school's retirement plan, saying she "unquestionably has standing" to press the case because she invested in the funds challenged by her lawsuit. Garceau "readily acknowledges" that presiding judge Paul Byron recently declined to certify a class raising similar claims against the school, but she has "carefully addressed and attempted to cure" the problems that prevented the earlier case from being certified, according to the motion.

Garceau's year-old lawsuit says Embry-Riddle mismanaged its \$500 million retirement plan by overpaying for administrative services and choosing investments that carried excessive and unnecessary fees. Her lawsuit was filed two months after Byron denied a class certification request filed by another Embry-Riddle plan participant in a separate case. That participant hadn't shown an injury that would give her standing to sue because records show she was charged reasonable recordkeeping fees and didn't invest in any of the funds challenged by her lawsuit, Byron said.

Garceau invested in three plan funds being challenged by the lawsuit and paid excessive recordkeeping fees of at least \$56 in 2023, according to her motion.

The earlier lawsuit, led by Guillermina Lopez, was dismissed on standing grounds in 2024.

Garceau is represented by Wenzel Fenton Cabassa PA. Embry-Riddle is represented by Carlton Fields PA.

The case is Garceau v. Embry-Riddle Aeronautical Univ., Inc. , M.D. Fla., No. 6:24-cv-00755, motion 5/19/25 .

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# Black neighborhood fights back as Elon Musk factory belches pollutants into air

 [rawstory.com/elon-musk-ai](https://rawstory.com/elon-musk-ai)

Krystina Alarcon Carroll

May 20, 2025

 Black neighborhood fights back as Elon Musk factory belches pollutants into air

FILE PHOTO: Elon Musk leaves after a meeting with Indian Prime Minister Narendra Modi at Blair House, in Washington, D.C., U.S., February 13, 2025. REUTERS/Nathan Howard/File Photo

Elon Musk is accused of sidestepping environmental protections in the city of Memphis, and [Bloomberg opinion columnist Mary Ellen Klas](#) claims it is “everyone's problem.”

A Musk supercomputer plant, dubbed Colossus, is powered by methane gas-burning turbines and which dumps its air waste into Southwest Memphis, home of Boxtown, according to the report.

[Klas](#) reports Boxtown is a “historically Black community with higher rates of cancer and asthma and a lower life expectancy than other parts of the city.”

The turbine manufacturer’s guidelines state that the engines release an undisclosed amount of ozone-depleting [nitrogen oxides](#) and formaldehyde into the air.

According to Bloomberg, “Neither the company nor the Shelby County Health Department released any information about the pollutants emitted by the gas turbines.”

But Boxtown is not having it — and is aggressively pushing back.

The area is already leading Tennessee in emergency room visits for asthma, and this past April was given an [“F”](#) for its air quality by the American Lung Association.

It’s not just an air quality problem, according to [Klas](#). Colossus will also be using more electricity and water than is currently available in the city, according to the local utility provider, Memphis Light, Gas, and Water.

## EXCLUSIVE: Trump accused of new grift that puts Qatari plane in shade

The President of Memphis Community Against Pollution [KeShaun Pearson](#) urged residents to speak up at an April 25th rally. “We are not a sacrifice zone for the profits of a Billionaire with Technocratic fantasies.”

Memphis officials claim the supercomputer plant will be “transformative” for the region. They allege Colossus will bring jobs, infrastructure, and “long-needed revenue.”

“The regulatory approach appears to have come down to this: trust us,” Klas said.

The report claims, the company has obtained “no environmental permits” and local leaders “have provided a comprehensive explanation for how the startup is going to meet the supercomputer plant’s energy needs.”

Bloomberg made clear this stretches far beyond the city limits of Memphis. Attorney Amanda Garcia told the outlet, “Air pollution doesn’t know borders of states.” Later, adding that the entire region already measures levels of ozone pollution that exceed the federal limit.

# Musk's AI 'Colossus' in Memphis Is Everyone's Problem

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Air pollution is the price of this AI arms race.  
Photographer: Jamie Kelter Davis/Bloomberg

Build a massive supercomputer housed in a plant powered by methane gas-burning turbines that emit an undisclosed amount of pollutants into a disadvantaged community. Obtain no environmental permits. Ask permission later.

That's the approach Elon Musk has taken in the city of Memphis as he rushes to build two massive data centers to provide computing power for his artificial intelligence startup xAI. It's a scenario America might have to get used to as the Trump administration sidles up to Big Tech and devalues environmental protection in service to an AI arms race.

Environmental Protection Agency Administrator Lee Zeldin announced in March that he was open to lowering air quality standards which have "served as a major obstacle to permitting" energy operations. He has since opened the door to allowing some manufacturers to bypass Clean Air Act regulations.

These statements coincide with a push by Musk and other tech titans to usher in a new era of supercomputing by running AI programs that tap the properties of quantum physics at unprecedented speeds. The operations consume enormous amounts of water and power, raising widespread environmental concerns.

In Memphis, those fears have been punctuated by a trail of confusion, secrecy and deception as residents — who had been kept in the dark for months — started asking questions.

According to the local utility provider, Memphis Light, Gas and Water, Musk's xAI facility will need an estimated 1 million gallons of water a day and up to 150 megawatts of electricity — more than is currently available in the city.

But no local leaders, from Mayor Paul Young to the Greater Memphis Chamber of Commerce, which has served as xAI's liaison to the region, have provided a comprehensive explanation for how the startup is going to meet the supercomputer plant's energy needs. They also haven't answered why a massive new power plant was allowed to operate without a permit.

Local officials have suggested the supercomputer plant will be "transformative" for the region and bring jobs, infrastructure, and long-needed revenue. But the regulatory approach appears to have come down to this: trust us.

The community is not having it and is aggressively pushing back. Southwest Memphis is home to Boxtown, a historically Black community with higher rates of cancer and asthma and a lower life expectancy than other parts of the city. State health data shows that the county leads Tennessee in emergency room visits for asthma. A long-term study of ambient air toxics in the region found at least 22 local pollution sources and a cumulative cancer risk four times higher than the national average. And in April, the American Lung Association gave the region an “F” for its air quality.

“A decade of continued failure has to end here with this illegal pollution of our community,” wrote KeShaun Pearson, president of Memphis Community Against Pollution. He was urging residents to show up for an April 25 public hearing on the xAI plant. “We are not a sacrifice zone for the profits of a Billionaire with Technocratic fantasies.”

Pearson and his community want the Shelby County Health Department, which has regulatory oversight, to require xAI to get the proper permits and follow the air quality protections that state and federal law require. The community packed the public hearing and an earlier town hall and, on Friday, the health department announced it had received 1,700 public comments and it will take them another 60 days to complete the permit review.

But the company not only keeps barreling ahead, it's expanding. Last June, Musk announced that xAI had bought a shuttered appliance factory near the Boxtown neighborhood to build what he calls “Colossus”— the “world’s largest supercomputer.” Within just 122 days, he had the operation online. By March, the Chamber of Commerce announced that xAI had purchased another property nearby, which would more than double its Memphis operations.

To provide power to the site, the company found what it considers a loophole in the Clean Air Act and used it to install several methane-powered gas turbines. It said they would only be used temporarily as the company waited for Memphis Light, Gas and Water to build the infrastructure needed to meet its power needs. It applied for air quality permits to permanently operate 15 of them.

Without reliable data, the Southern Environmental Law Center took satellite images of the xAI facility. The photos revealed that instead of 15 turbines, xAI had quietly moved in at least 35 portable methane gas turbines, none of which had air quality permits.

In response, Mayor Young said that the company told him that only 15 of the turbines were operating and the remaining were “being stored” at the plant. The center conducted a follow-up flyover to get thermal images of the facility. The images revealed that 33 of the 35 turbines were releasing significant amounts of heat, indicating they were likely running, Amanda Garcia, the group’s senior attorney, told me.

Neither the company nor the Shelby County Health Department released any information about the pollutants emitted by the gas turbines. According to guidelines written by the turbine manufacturer, the engines release ozone-depleting nitrogen oxides and formaldehyde into the air.

The Southern Environmental Law Center also found other troubling signs of likely deception. At a public hearing in April, Brent Mayo, xAI's site leader in Memphis, tried to explain that the operation will be equipped with "selective catalytic reduction technology" to lower emissions.

But Garcia said aerial images showed no evidence that such emissions-reducing equipment had been installed, and an xAI consultant recently told a chamber group that "the turbines would have to be retrofitted" to do that.

The size of the second xAI plant now has residents even more concerned. The Chamber of Commerce has announced that the 40 to 90 methane gas turbines planned for that site would no longer be used there. But last week, the Daily Memphian reported that the company was considering a plan to install gas turbines across the border at a former natural gas plant in Southaven, Mississippi.

"Air pollution doesn't know borders of states," Garcia said, adding that the entire region already measures levels of ozone pollution that exceed the federal limit.

The EPA is unlikely to step up to protect these residents. The agency has shut down the teams created under the Biden White House to address environmental justice issues. It's going to be up to communities like Boxtown to fight back.

### **More From Bloomberg Opinion:**

- Oklahoma High Schoolers Are Getting a Dangerous Lesson Plan: Mary Ellen Klas
- It's Electricity Realism, Not Climate Denialism: Javier Blas
- Pope Leo XIV Might Be the Climate Champion We Need: Mark Gongloff

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# State AGs object to legal shield for Carrier Global in PFAS bankruptcy

 [reuters.com/legal/government/state-ags-object-legal-shield-carrier-global-pfas-bankruptcy-2025-05-19](https://www.reuters.com/legal/government/state-ags-object-legal-shield-carrier-global-pfas-bankruptcy-2025-05-19)

Dietrich Knauth

May 19, 2025

A man arrives at a U.S. District Bankruptcy Court in Manhattan, New York, U.S., January 9, 2020. REUTERS/Brendan McDermid/File Photo Purchase Licensing Rights, opens new tab

May 19 (Reuters) - Seven U.S. states on Monday objected to fire protection company Kidde-Fenwal's bankruptcy plan, saying that the proposed settlement improperly attempts to shield its owner Carrier Global from lawsuits related to toxic PFAS chemicals in its firefighting foam products.

Carrier, which is not bankrupt, is attempting to use Kidde-Fenwal's bankruptcy to avoid its own separate responsibility for lawsuits over the so-called "forever chemicals" in a way that violates that U.S. Supreme Court precedent, the states alleged in court filings in Delaware bankruptcy court.

Carrier previously agreed to pay \$540 million to Kidde-Fenwal and its creditors as part of a Chapter 11 plan that would resolve lawsuits by local governments, companies and individuals who have claimed that Kidde-Fenwal's firefighting foam products contaminated drinking water and soil with PFAS near airports and military bases around the U.S. But that deal cannot be used to cut off states' ability to sue Carrier directly over the alleged PFAS contamination, according to two separate objections filed by the Democratic attorneys general of New York, California, Colorado, Connecticut, Delaware, Maine, Vermont and the District of Columbia.

They cited a Supreme Court ruling last year, in the bankruptcy of Purdue Pharma, that sharply scaled back a court's ability to wipe away legal claims against entities that have not filed for bankruptcy themselves.

Carrier did not immediately respond to a request for comment.

Kidde-Fenwal filed for bankruptcy in May 2023, after being named as a defendant in more than 4,400 PFAS lawsuits over its chemical firefighting foam products. It was the first company to go bankrupt as a result of PFAS litigation, but experts have said that more companies could follow.

Dubbed "forever chemicals" because they do not easily break down in the human body or environment, per- and polyfluoroalkyl substances, or PFAS, are a group of roughly 15,000 known chemicals used in hundreds of consumer and commercial products including firefighting foams, non-stick pans, stain resistant clothing and cosmetics.

Kidde-Fenwal's bankruptcy plan does not explicitly contain the type of "non-debtor releases" that were shot down in the Supreme Court last year. Instead, it characterizes the PFAS liability as an "estate claim," a type of legal claim that Kidde-Fenwal can bring against its parent company and that only Kidde-Fenwal's bankruptcy estate can settle or litigate.

The states argued that Kidde-Fenwal's plan is using "word games" to "obscure the underlying reality" of the settlement, which will take away creditors' ability to sue Carrier over PFAS contamination.

The states said Carrier has "vast liability" for the contamination, which presents significant and persistent risks to human health and the environment.

New York, for example, said that Kidde-Fenwal's chemical have contaminated soil and water at approximately 35 locations. The state has already spent more than \$100 million to address the contamination, with ongoing annual costs of more than \$3 million, according to the objection.

Carrier has a market capitalization of \$64.8 billion, and it sells heating, air conditioning and refrigeration services.

Kidde-Fenwal intends to split Carrier's \$540 million contribution, along with future insurance recoveries and other assets, among PFAS creditors. Under Kidde-Fenwal's proposed bankruptcy plan, states would receive 30% of the settlement funds, local water providers would receive 30%, and individuals with personal injury claims would receive 22%, with smaller amounts reserved for firefighter training and damage to airports, businesses, landfills and personal property.

Kidde-Fenwal, which sold its assets to private equity firm Pacific Avenue Capital Partners earlier in its bankruptcy, intends to solicit creditor votes on its Chapter 11 plan beginning in June.

Water providers in the U.S. have reached large settlements in their PFAS litigation, including a \$10.3 billion settlement with 3M and a \$1.19 billion settlement with DuPont, Chemours and Corteva.

The case is Kidde-Fenwal Inc, U.S. Bankruptcy Court for the District of Delaware, No. 23-10638.

For Kidde-Fenwal: Brian Glueckstein and Justin DeCamp of Sullivan & Cromwell

For the creditors' committee: David Molton of Brown Rudnick

Read more:

Carrier reaches \$730 mln settlement over fire protection unit PFAS claims  
Fire protection company Kidde-Fenwal files for bankruptcy citing PFAS lawsuits

## Litigation

### **Shopify En Banc Loss Opens Courthouse Doors for E-Commerce Cases**

May 20, 2025, 1:30 AM PDT

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*Sheppard Mullin attorneys say a Ninth Circuit decision means that e-commerce platforms could be subject to suit in a jurisdiction just by making online services available to consumers there.*

In a game-changing decision, the US Court of Appeals for the Ninth Circuit broadened the scope of specific personal jurisdiction as applied to e-commerce and other online platforms.

An en banc panel last month delivered a 10-1 decision holding that Shopify can be sued in California due to its use of web tracking technology to collect a California consumer's location, device, and shopping history data.

This stark departure from prior rulings means that e-commerce platforms may be subject to personal jurisdiction (and lawsuits) in states in the Ninth Circuit simply by making their online services available to consumers located in those jurisdictions.

In *Briskin v. Shopify, Inc.*, California resident Brandon Briskin alleged Shopify violated his privacy rights by installing web tracking technologies on his iPhone without his knowledge or consent.

Briskin filed a putative class action in 2021 in California federal court against Shopify Inc., a Canadian corporation headquartered in Canada, and two of its US subsidiaries. That court dismissed the case.

On appeal, a three-judge panel of the Ninth Circuit affirmed the district court's ruling that it lacked specific personal jurisdiction. The Ninth Circuit subsequently voted to rehear the personal jurisdiction determination en banc.

The Ninth Circuit analyzed whether the district court had specific personal jurisdiction using a three-part test:

- Did Shopify expressly aim its conduct at California?
- Did Briskin's claims arise out of that California-targeted conduct?
- Was it fair and just to force Shopify to defend the lawsuit in California?

As to each of these questions, the en banc Ninth Circuit responded with a very clear "yes."

First, the court found that Shopify intentionally directed its wrongful conduct toward California "through its extraction, maintenance, and commercial distribution" of personal data. Importantly, the court found that the requirement of "express aiming" of conduct doesn't require a finding of "differential targeting" (conduct focusing on the forum state).

This holding dramatically expands specific personal jurisdiction in the Ninth Circuit by overruling prior case law that required some sort of differential treatment of the forum state for a finding of “express aiming” of the defendant’s allegedly tortious conduct. It also creates a jurisdictional split as many other federal circuits require a defendant’s conduct to be expressly aimed at the forum state for specific personal jurisdiction.

Instead, “an interactive platform expressly aims its wrongful conduct toward a forum state when its contacts are its own choice and not random, isolated, or fortuitous.” The court held that Shopify expressly aimed at California because it “allegedly knew the location of consumers like Briskin either prior to or shortly after installing its initial tracking software onto their devices” and “deliberately reached out beyond its home state by knowingly installing tracking software onto unsuspecting Californians’ phones so that it could later sell the data it obtained.”

Second, the court held that Briskin’s claims arose from “Shopify’s contact with Briskin’s device, which Shopify allegedly knew was in California” and related to Shopify’s conduct in California because its “installation of software onto unsuspecting Californians’ devices and extracting personal data from them is the kind of contact that would tend to cause privacy injuries.”

Third, the court found that its exercise of jurisdiction was reasonable because Shopify had purposefully directed its business activities toward California and hadn’t raised any grounds demonstrating exercising personal jurisdiction would be unreasonable. In so doing, the court rejected Shopify’s arguments that the exercise of jurisdiction was unfair “because that could lead to specific jurisdiction in all 50 states” and other forums had general jurisdiction over the claims—namely, Delaware, New York, and Canada.

E-commerce platforms and other online businesses should be mindful of this decision and consider the risks associated with their current business operations given that operating a nationwide or globally accessible platform, or collecting consumer data from websites, may now suffice to establish jurisdiction. Companies should take several steps.

**Document your data collection and use practices.** Data governance is particularly important for companies whose practices involve collecting information of consumers in the US.

Companies can’t understand their risk levels, or the jurisdictions that they may be subject to regulatory scrutiny or litigation in, without clear insight into their collection and use of data and supporting technology. To optimize business decision-making, companies must understand and must have documented their assets, the data they consume, the software they use, and the products and services they support.

**Understand web tracking practices.** Companies should review and categorize the web tracking technologies they are using to understand their purpose and evaluate whether the benefits outweigh the risks for use cases that may subject the company to unfavorable forums for litigation.

**Assess whether to collect location data.** The Ninth Circuit’s analysis focused on Shopify’s collection of location data. Refraining from collecting this data would support an argument that the company isn’t expressly aiming at a state because it isn’t aware of consumers’ locations.

**Make sure policies and practices comply with laws in consumer-friendly states.** More lawsuits regarding the type of data collection seen in *Briskin* will likely be filed in states with robust, consumer-friendly data privacy laws, such as California. Companies that interact with consumers in the Ninth Circuit should be prepared to defend their compliance with various privacy laws and regulations that are frequently relied upon by plaintiffs in courts in those states.

By holding that e-commerce companies can be sued in any state where their platforms interact with users, even without differential targeting and without an in-state physical presence, the Ninth Circuit has greatly expanded the reach of personal jurisdiction for e-commerce and other online platforms. This holding lowers the bar for establishing personal jurisdiction at the pleadings stage, which will likely embolden plaintiffs to file privacy and other consumer protection class actions in California and other states that are viewed as plaintiff-friendly.

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**Securities Law News**

# Judge Rejects Vanguard \$40 Million Capital Gains Tax Class Deal

May 19, 2025, 5:33 PM PDT

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In a move that blocks Vanguard Group Inc. from offsetting a US Securities and Exchange Commission settlement by \$40 million, a Pennsylvania federal judge sided with investors and denied Vanguard's proposed settlement with investors in a mutual fund.

The proposed \$40 million settlement provided no value to the class of harmed investors, who allege they had to pay surprise capital gains taxes because of how the firm restructured the funds, because they'd lose \$13 million to attorneys' fees if the court approves it. If the court rejects it, they receive that \$13 million through an SEC settlement, according to an opinion issued Monday in the US District Court for the Eastern District of Pennsylvania.

Judge John F. Murphy rejected the agreement, describing the question before him as such: "if a class is guaranteed to get more money if we reject a proposed settlement than approve it, are we obliged to reject it? Our answer is yes." He ordered the parties to meet and confer regarding next steps.

The "strange situation" of the case arose when Vanguard settled with the SEC for \$135 million following an investigation into the same challenged investment decisions after the parties wrapped up the proposed settlement in the lawsuit, the opinion said.

The SEC deal allows Vanguard to reduce its \$135 million payment by \$40 million if the proposed settlement in this case is approved, so "Vanguard is on the hook for \$135 million regardless" of the lawsuit "but it matters to the class," Murphy wrote. The opinion said "the named plaintiffs, their counsel, and Vanguard cannot deny the math."

Rosen Law Firm PA represents the class. Debevoise & Plimpton LLP and Welsh & Recker PC represent Vanguard.

The case is *In re Vanguard Chester Funds Litig.*, E.D. Pa., No. 22-cv-00955, 5/19/25.

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# US judge rejects Vanguard \$40 million mutual fund settlement, cites SEC accord

 [reuters.com/legal/us-judge-rejects-vanguard-40-million-settlement-with-mutual-fund-investors-2025-05-19](https://www.reuters.com/legal/us-judge-rejects-vanguard-40-million-settlement-with-mutual-fund-investors-2025-05-19)

Jonathan Stempel

May 19, 2025

The logo for Vanguard is displayed on a screen on the floor of the New York Stock Exchange (NYSE) in New York City, U.S., June 1, 2022. REUTERS/Brendan McDermid/File Photo  
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- Judge says rejecting settlement would save legal fees
- Vanguard's \$106.4 million SEC accord included an offset
- Vanguard, investors' lawyers not available to comment

May 19 (Reuters) - A federal judge on Monday rejected Vanguard Group's \$40 million settlement with investors who claimed the mutual fund giant stuck them with inflated tax bills in its popular target-date funds.

U.S. District Judge John Murphy in Philadelphia said the proposed class action settlement announced in November "provides no value" to investors because Vanguard could have offset the \$40 million from its similar, larger settlement in January with the U.S. Securities and Exchange Commission.

The SEC accord provided \$135 million in remediation to investors, minus the \$40 million and minus \$2.1 million for individual claims. Vanguard's total payout to the SEC was \$106.4 million, including a \$13.5 million civil fine.

In a 25-page decision, Murphy agreed with an objecting class member that approving the \$40 million settlement didn't make sense because it would leave investors with less money, with more than \$13 million taken out for their lawyers' legal fees.

Murphy said that meant the settlement was not fair, reasonable and adequate.

"The named plaintiffs, their counsel, and Vanguard cannot deny the math," Murphy wrote.

"The SEC settlement guarantees class members the exact benefit that would have been provided by this proposed settlement - but without deduction for attorneys' fees or requiring claims to be extinguished."

Lawyers for the investors and for Vanguard did not immediately respond to requests for comment. The objecting class member John Hughes, a lawyer, declined to comment.

Vanguard argued that Hughes misunderstood the SEC accord, and rejecting the \$40 million settlement based on his objection would make it harder for companies to settle parallel civil and regulatory actions.

Both settlements stemmed from Vanguard's December 2020 decision to reduce the minimum investment in lower-cost target-date fund classes meant for institutional clients to \$5 million from \$100 million.

Many investors who qualified for those funds shifted from higher-cost retail fund classes. This forced the retail funds to sell assets to meet redemptions, and pass taxable capital gains to the remaining investors.

The target-date funds contain mixes of stocks, bonds and cash designed to become less risky as investors age. They are also designed to be tax-efficient.

Vanguard is based in Valley Forge, Pennsylvania. It had \$10.4 trillion of assets under management as of January 31.

The case is *In re Vanguard Chester Funds Litigation*, U.S. District Court, Eastern District of Pennsylvania, No. 22-00955.

Reporting by Jonathan Stempel in New York; Editing by Lincoln Feast.

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# FirstEnergy continues effort to raise prices as Ohio repeals scandal-ridden bill

 [news5cleveland.com/news/politics/ohio-politics/firstenergy-continues-effort-to-raise-prices-as-ohio-repeals-scandal-ridden-bill](https://www.news5cleveland.com/news/politics/ohio-politics/firstenergy-continues-effort-to-raise-prices-as-ohio-repeals-scandal-ridden-bill)

Morgan Trau

May 19, 2025

While energy prices are set to jump this summer, Ohio Gov. Mike DeWine signed a bill into law that could provide some relief — eliminating a subsidy from the scandal-ridden House Bill 6.

COLUMBUS, Ohio — While energy prices are set to jump this summer, Ohio Gov. Mike DeWine signed a bill into law that could provide some relief — eliminating a subsidy from the scandal-ridden House Bill 6 that requires ratepayers to fund unprofitable coal plants. As this happens, utility companies move to increase consumers' bills.

It's been six years long years for Tyler Fehrman, the whistleblower in the state's largest public corruption scheme.

Back in 2019, Former Ohio House Speaker Larry Householder took a \$61 million bribe in exchange for legislation to give utility company FirstEnergy a \$1 billion bailout, named H.B. 6, all at the taxpayers' expense.

In March 2023, a jury found that Householder and former GOP leader Matt Borges, beyond a reasonable doubt, participated in the racketeering scheme that left four men guilty and two dead.

In late June that year, federal judge Timothy Black sentenced Householder to 20 years in prison. Borges got five years for his role in the scheme, but most importantly, he attempted to bribe Fehrman, the FBI informant, with \$15,000 to help kill a repeal effort he was working on. On video, Borges told Fehrman that if he told anyone about the bribe, he would "blow up" his house.

**RELATED:** Federal appeals court upholds conviction of Householder in public corruption case

While some of H.B. 6 was overturned already, ratepayers have been paying a subsidy that funds two Ohio Valley Electric Corporation coal plants — one in Southern Ohio and one in Indiana. The main beneficiaries for OVEC are American Electric Power Company (AEP), Duke Energy and AES Ohio. Still, FirstEnergy collects payment for it.

But with the swipe of a pen — consumers will likely see their bills go down. DeWine signed a massive energy overhaul bill, H.B. 15, on Friday. It repeals the OVEC charges.

A study commissioned by the Ohio Manufacturers' Association found that in 2024 alone, these subsidies cost ratepayers roughly \$200 million. The company lost more than \$100 million the same year, so consumers are paying for plants that aren't profitable.

You would be saving \$1.30 and \$1.50 per month, depending on your utility provider, according to the Energy News Network.

The subsidies may not seem like a lot every month, but they add up when inflation is high and people struggle.

"It makes a difference, especially in today's day and age with a kind of shaky economy and folks trying to just make ends meet," Fehrman said.

While this will save citizens a bit of money, Householder attorney Scott Pullins argues that this will hurt the rural areas it serves.

"They are major high-paying jobs in the area, and the kind of area where there aren't very many high-paying jobs," Pullins said about the plant jobs. "They generate a whole boatload of taxes for schools in those areas. And if those plants get shut down, it's going to be devastating for those communities."

The Ohio plant employs many Ohioans, he added. But now, this may embolden utility companies to ask for more rate hikes, he said. This is already happening.

"Our electric grid needs to be modernized," Pullins said. "I'm assuming that those are where those costs are going. I think we do need a robust regulatory scheme to make sure these companies aren't wasting these funds."

FirstEnergy is now petitioning the Public Utilities Commission of Ohio (PUCO) to raise its prices — a \$190 million increase in its charges.

#### **Watch more about the increases below:**

**RELATED:** FirstEnergy wants to raise prices following repeal of scandal-tainted legislation

If approved, the Ohio Consumers' Counsel estimated that Cleveland Illuminating Company consumers will see a \$13 price increase per month, Ohio Edison will have a \$3 spike, and Toledo Edison at \$1.50.

On Monday, DeWine told me he doesn't have an opinion on the price increases.

"As far as the raising of bills, ultimately, as you know, this is up to the PUCO," he said.

Fehrman said this shouldn't be allowed.

"There is this massive scandal where these companies tried to put a larger burden on the backs of every single Ohioan," he said. "And now, they're asking for more money in a time when folks are already struggling."

The bill will go into effect in 90 days.

I have covered this bribery scandal extensively, from the legislation going through the Statehouse to the arrests, trial, conviction, and sentencing of Householder and Borges.

**CLICK HERE** to read my previous reporting.

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**Securities Law News**

Opinion

# Matt Levine's Money Stuff: US Debt Rates Itself

May 19, 2025, 11:50 AM PDT

Aa1

Does US government debt even *have* a credit rating? I mean, it does. It has three, or probably more, but three big ones. Since 2011, the US government has had an AA+ rating at Standard & Poor's; since August 2023, it has had an AA+ rating at Fitch. Until last week, it had an Aaa rating at Moody's Ratings, but on Friday that too was cut to Aa1. AAA (or Aaa) is the best rating; AA+ (or Aa1) is the second-best rating.

But what is a credit rating? In some sense, there are companies — “ratings agencies” or “nationally recognized statistical ratings organizations” — that employ people who think about the creditworthiness of companies and governments and asset-backed securities, and who come up with ratings that tell investors how creditworthy their bonds are. If you are an investor, you might trust the ratings agencies to tell you what bonds to buy. If you want to buy risky bonds, you can buy bonds with “junk” ratings (or more politely “high yield,” BB+/Ba1 or lower). If you want to buy safe bonds, you can buy bonds with “investment grade” ratings (BBB-/Baa3 or higher). If you want to buy only the very safest bonds, you can stick to bonds with AAA/Aaa ratings.

But the actual importance of ratings agencies seems to be more formalized than this. It's not that you *want* to buy BBB rated bonds or whatever; it's that you *have* to. Historically, certain types of investors were *legally required* to buy bonds with certain ratings; most notably, money market funds were limited to buying mostly securities with the top short-term ratings. After the 2008 financial crisis, US regulators scrubbed most of those requirements from the rules, worried that the ratings agencies were too conflicted for their judgments to have legal status.

But they still have *quasi*-legal status. Lots of investors have mandates requiring them to buy, for instance, only investment-grade bonds: An investment-grade bond mutual fund or index might be required to contain only bonds with investment-grade ratings, as determined by ratings agencies. Individual investors will buy investment-grade bond funds because they want their money to be safe, and those bond funds will then be required — by their fund documents and disclosures to investors — to go out and buy bonds with investment-grade *ratings*, even if the funds' managers happen to think that one particular BB rated bond is really safe. Or a contract will say "you can only post collateral that is rated AA- or better," so investors will need to buy AA- rated bonds to post as collateral. Not everything is like this — if you're an individual investor, or a bond-fund manager with a universal mandate, you can buy whatever you want — but quite a lot of things are.

And so when a ratings agency downgrades a bond or company, that has consequences, not because investors assume that the agency's decision is *correct* but because it is *binding*. If you run an investment-grade bond mutual fund and a bond that is rated only by Moody's goes from Baa3 to Ba1, you probably won't buy any more of that bond. You won't go read the Moody's downgrade report and evaluate their evidence and come to a different conclusion and say "nope, still investment grade." You are constrained to buy investment-grade bonds, *as determined by the ratings agencies*, so their decisions directly affect yours.

And so when a company is downgraded from investment-grade to junk, its financing costs go up. It can't borrow from specialized investment-grade investors any more, so it will have to borrow from a different group of specialized high-yield investors. As their name implies, they charge more.

Similarly, in asset-backed securities, there seems to be a lot of demand for AAA/Aaa ratings. Banks structure securities to have big AAA-rated tranches, so that they can sell those tranches to investors who want only the safest securities; you have to pay more interest to the people buying the AA+ tranches than the ones buying the AAA tranches.

*Hypothetically* you could imagine US government debt working like this. You could imagine that the US government might want an AAA rating as much as, and for the same reasons as, an asset-backed securities issuer. You could imagine that a lot of financial plumbing would rely on AAA ratings, that a lot of funds would only be allowed to hold AAA-rated bonds, or that a lot of collateral arrangements might only accept AAA-rated bonds as collateral. And all of that plumbing was merrily making use of the world's largest supply of risk-free bonds, US Treasuries, and then Moody's downgraded them on Friday. Perhaps financial plumbing would be thrown into disarray, demand for Treasuries would collapse — because they are no longer risk-free *for plumbing purposes* — and the US's borrowing costs would go way up.

You really could imagine that, because when Fitch downgraded the US in 2023, people did. (Many of these sorts of quasi-regulatory requirements are of the form "the middle rating of the three big agencies is controlling," so the Fitch downgrade, coming second, was in some sense more decisive than S&P's first move or Moody's third.) But, because US Treasuries really are such a *large* supply of risk-free bonds, and because they are obligations of the US government, it would be a little weird if things really worked this way, if a Fitch (or Moody's) downgrade could really prevent a lot of investors from holding Treasuries. We talked about it at the time, and I looked at various rules, and as far as I could tell it didn't matter. I wrote:

The collateral rules for the Federal Reserve's discount window require investment-grade ratings (BBB- or better) for US dollar corporate bonds, and AAA ratings for foreign-currency corporate bonds. But US Treasuries are just US Treasuries; they are always eligible and there are no ratings criteria. The Bank of England also accepts US government bonds categorically as Level A collateral for its liquidity insurance schemes. The US Commodity Futures Trading Commission's rules for derivatives margin also say that US government securities are eligible collateral with no ratings criteria.

Or for bank capital, the rule is that a bank "must assign a zero percent risk weight to an exposure to the U.S. government, its central bank, or a U.S. government agency." For insurance capital, the National Association of Insurance Commissioners sets standards for risk-based capital based in part on ratings; but there is "no [risk-based capital] requirement for bonds guaranteed by the full faith and credit of the United States ... because it is assumed that there is no default risk associated with U.S. Government issued securities." Nothing about ratings.

Later I quoted a Goldman Sachs Group Inc. research note doing a similar but more comprehensive survey and finding that, "because Treasury securities are such an important asset class, most investment mandates and regulatory regimes refer to them specifically, rather than AAA-rated government debt."

That is: The credit rating of US government debt, for most purposes for which people would use a credit rating, is "US government debt." The credit ratings assigned by S&P or Fitch or Moody's are not, as far as I can tell, *binding* on any investors; the thing that is binding is the particular legal status of Treasuries as US sovereign debt. As I wrote in 2023:

If I were a ratings agency my rating on US government debt would not be a semi-arbitrary collection of As. My rating would be "this is US government debt." For good and for ill, people mostly know what that means!

Now, that is too glib, and Moody's job is not only to issue binding rulings about what debt is and isn't safe, but also to justify its quasi-regulatory status by doing correct and reasoned credit analysis. So they have to come up with some rating for the US government, and I suppose there is some pressure to react to fiscal profligacy or other embarrassments by saying "actually it's Aa1 now." The Moody's downgrade is newsworthy because it *reflects* market sentiment — people are worried about the budget deficit, etc. — more than because it *affects* it.

Of course if you are a completely unconstrained investor — an individual, or an unconstrained bond manager, or I guess a foreign sovereign — and you owned a lot of Treasuries because they had the very top rating at Moody's, and now Moody's has come along and said "actually they're a bit riskier," you are free to sell. If your credit analysis is heavily influenced by Moody's, and if you want only the very safest bonds that Moody's rates, you can dump Treasuries and probably buy a lot of AAA tranches of structured credit stuff. I am sure someone will, but that really is an unusual investing niche.

Anyway here are my Bloomberg colleagues John Authers, Joe Weisenthal and Tracy Alloway on the decision. Here is Moody's press release, which "reflects the increase over more than a decade in government debt and interest payment ratios to levels that are significantly higher than similarly rated sovereigns," but notes that "the US retains exceptional credit strengths such as the size, resilience and dynamism of its economy and the role of the US dollar as global reserve currency." You probably didn't need Moody's to tell you that.

### Conditional target redemption forward

If you are a customer of a large reputable investment bank, there are three main ways for you to lose all your money trading foreign exchange derivatives :

1. You make a simple bet and lose for simple reasons. You make a straightforward bet on some market move, and the market moves the other way. You bet a million dollars that the dollar will appreciate against the Swiss franc, say, and instead the dollar depreciates and you lose your million dollars.
- 2. You make a complicated bet and lose for complicated reasons. The bank comes to you to pitch some ferociously complicated derivatives bet, and you make it, and you lose the bet for ferociously complicated reasons. "We will bet you a million dollars that at most 17 of the following 31 events occur," the bank will say, but the title of the presentation will be like "Super Dollar Go Up Bet," and the bank will show you some payoff charts and disclosures, and broadly speaking the charts will show you that you are mostly betting that the dollar will appreciate against the franc, though there are a few weird edge cases where the dollar will appreciate and you will lose the bet anyway. You think the dollar will go up, so you make the bet, and the dollar *does* appreciate against the franc, but you fall into a weird edge case and lose the bet and feel aggrieved. "Why did you sell me that thing," you will ask the bank. "You called it a Super Dollar Go Up Bet, and the dollar went up, but I fell into a weird edge case and lost all my money."
- 3. You make a complicated bet and lose for simple reasons. The bank comes to you to propose some ferociously complicated derivatives bet, and you make it, and you lose the bet for simple intuitive reasons. The bank shows you the "Super Dollar Go Up Bet," and you take it, and the dollar goes down and you lose all your money. The bet had various edge cases, but they didn't matter, because the main thing you were betting on didn't happen.

This is neither legal nor investing advice but most of the time, if you fall into the first category, you suck it up. Sometimes customers make bets that don't work out, and that's their problem.

Much of the time, if you fall into the second category — particularly if you are a high-net-worth individual or a small corporate or institutional client — you at least complain, perhaps you sue, and quite possibly you get your money back. The bank, in some loose approximate sense, "tricked" you. Sure sure sure sure it showed you accurate disclosures, but the example payoff graphs and the general tenor of the disclosures were, at least in hindsight, misleading. You thought you were betting that the dollar would go up, and the dollar did go up, and you didn't get the bet you thought you were making, even if the fine print of the trade made the risks clear.

The second category is common enough, and makes people angry enough, that people have learned to recognize the pattern. "FX derivatives mis-selling," it is called. "I bought a complicated derivative from a bank and then I lost all my money," you will say, and everyone will be like "oh yes, those banks are so tricky, you should get your money back."

And this bleeds into the third category. "I bought a complicated Dollar Go Up derivative from a bank and then I lost all my money," you say, and everyone is like "oh yes, so tricky, you lost all your money even though the dollar went up, you should get it back," and you are like "actually the dollar did go down though," and they're like "ehh you should get your money back anyway, so tricky."

We talked once about a series of complicated equity derivatives trades that Goldman Sachs Group Inc. sold to the Libyan Investment Authority; the trades all went to zero and Libya sued. (Goldman ended up winning.) Two stylized facts about these trades are:

1. They were complicated, the LIA team that bought them might not have been especially sophisticated, and Goldman arguably did not explain all of the nuances in readily understandable ways.
- 2. They were big bets that a bunch of international bank stocks would go up, made in January 2008.

International bank stocks did *not* go up, in 2008. The subtle nuances of these trades were not what blew up the LIA; what blew them up is that they bet on bank stocks going up, and there was a banking crisis. (One bet was a complicated leveraged derivatives trade on Citigroup Inc., which had a 100% loss, but just buying regular Citigroup stock in January 2008 would have gotten you an 84% loss by November.)

This is an important risk for banks: If they sell you a weird derivative, and it works out in your favor, they will lose money. If they sell you a weird derivative, and it works out poorly for you for weird reasons, they will make money, but they will get complaints and refund requests and bad publicity and lawsuits. If they sell you a weird derivative, and it works out poorly for you for normal reasons — because the market moved against the bet you thought you were making — they will also get some complaints. "That derivative was weird," you will say, and they will say "sure but the weirdness did not affect your outcome," and you will say "yes but it was weird."

Anyway I am not 100% sure from this story which category these trades were in:

UBS is in talks to compensate some clients for losses after they were sold complex foreign-exchange derivatives that wiped out much of their investments when U.S. President Donald Trump's tariffs sparked wild moves in currencies, sources familiar with the matter said. ...

Among those asking for compensation from UBS for the losses incurred are wealthier retail customers who argue they were sold complex products that they did not understand, the second source said, adding that they were only suitable for sophisticated investors.

In one example, a UBS client has lost more than 50% of an investment made in February into an FX derivative designed to bet on the direction of the dollar versus the Swiss francs, according to a document detailing the performance of the investment dated May 9 and seen by Reuters. ...

UBS sold clients 'conditional target redemption forwards', a February prospectus of the product seen by Reuters and sources said.

These are exotic derivative FX products that allow clients to buy dollars and sell Swiss francs at a more favourable rate than the prevailing market rate, but can cause big losses if the rate moves past certain levels over a set period of time, according to the prospectus. Losses accumulate and can exceed an initial investment.

In the example of the product that caused more than 50% losses, the investor agreed to buy dollars and sell francs in \$300,000 chunks if the market rate moved above or below certain thresholds, according to a prospectus for the investment dated February 10 and seen by Reuters.

But below a 'kick-in level' defined in the terms of the investment, the customer is forced to buy dollars at an exchange rate that locks in a loss, the term sheet showed.

My rough understanding of target redemption forwards is that they are a trade in which the customer wants to buy a foreign currency — here, buying US dollars with Swiss francs — over time, and the bank offers the customer a good deal with a small catch. "Instead of selling you \$1 million for CHF 831,000 in a month," the bank will say, "we will sell you \$1 million for CHF 825,000" or whatever. "Except that if the dollar is trading *below* 0.825 francs, we will sell you *two* million dollars at that price." That is, if the dollar goes up or stays flattish, the clients buy the amount of dollars that they wanted, at a fixed price a bit below today's price. If the dollar goes down, though, the clients buy *more* dollars than they wanted, at that same fixed price. They get a discount in the good case, but they pay for it in the bad case.

So there is a catch: If the dollar goes down, you buy extra dollars at a price that looked good when you started the trade (when the dollar was above the strike price) but looks bad now (when the dollar is below the strike price). Bad for the clients! On the other hand, it was "an FX derivative designed to bet on the direction of the dollar versus the Swiss francs," and they bet ... wrong? The *simple* thing they were doing was buying dollars, and buying dollars is fundamentally a bet that the dollar will go up. The dollar went down. The clients made quite *complicated* bets that the dollar would go up, but the dollar did pretty simply go down.

### **\$5 wrench attack**

We talked on Thursday about the hack of Coinbase Global Inc., in which hackers got access to some customers' personal data, but *not* to their crypto. Given the long history of hackers getting into crypto exchanges and stealing all the crypto, I counted this as a win for Coinbase, writing:

If you are really dedicated to hacking Coinbase, you can bribe a customer service employee, get some customer email addresses and use them for scams and social engineering projects. But you can't bribe the person with the keys to give you Coinbase's crypto.

This was perhaps too optimistic. I am used to hacks of regular banks, where (1) it's very hard for hackers to steal the money but (2) the consolation prize is personal data that hackers can use to do scams. But in crypto things are different. The Coinbase data included not just email addresses but home addresses, and if you give criminals a list of addresses of crypto customers, their first thought might not be "scam" or "social engineering" but rather "kidnapping." Bloomberg's Emily Nicolle reports:

Even before Coinbase Global Inc. disclosed that hackers had stolen the home addresses and account balances of its customers, Jethro Pijlman was seeing an uptick in interest from concerned clients with large crypto holdings who were looking for bodyguards and other forms of protection. ...

"We've had more inquiries, more long-term clients, and more proactive requests from crypto investors who don't want to be caught off guard," said Pijlman, a managing director at Infinite Risks International. "They're realizing that intelligent security measures are part of the cost of doing business at this level."

People with crypto wealth face unique physical risks because public blockchain networks like Bitcoin and Ethereum allow tokens to be transferred instantly and anonymously. This means that if an individual is coerced into giving up the access credentials to their holdings, their assets can vanish within seconds with little chance of recovery. Conversely in traditional financial services, bank accounts can be frozen or seized by law enforcement, allowing more chances to get back lost money. ...

"Crypto traders are acutely concerned about their privacy during data leaks," said Ronghui Gu, co-founder of blockchain security firm CertiK and associate professor of computer science at Columbia University. "Cryptocurrency can be transferred with just a private key, and is extremely difficult to recover," he added. "This makes crypto traders prime targets for criminals."

And here is a Wall Street Journal story along similar lines:

The brazen attack [on the family of a crypto executive in Paris] was the latest in a wave of violent abductions around the world, including several in the U.S., targeting crypto executives and their families. Victims have been pistol whipped, abducted, and—in two cases—had fingers severed.

The criminals' goal: millions of dollars in ransom in cryptocurrency.

The assaults are often called "wrench attacks" because they rely on simple tools for inflicting pain to coerce victims, rather than sophisticated tools for hacking them.

Hacking has long been the primary risk for the crypto rich. But to thwart hackers, savvy cryptocurrency investors have increasingly taken their digital wallets offline in favor of physical devices, making remote theft more difficult. Real-world crypto crime bypasses those safeguards.

"A lot of people are getting to the hide-your-gold-under-the-mattress level of security," said Jameson Lopp, the co-founder of bitcoin security company Casa. "But if you are a high-profile person...that's when you have to worry about the physical attack."

I think sometimes about the term structure of crypto futures. Buying a Bitcoin for delivery in seven months costs about \$4,000 (3.8%) more than buying a Bitcoin today. Some of that is time value of money — I could get interest on my dollars for the seven months, which is probably less true of the Bitcoin — but some of it is what I have half-jokingly referred to as storage costs. If I buy a Bitcoin future, I don't have to put the Bitcoin anywhere for seven months; if I buy an actual Bitcoin, I *do* have to store it. It's not like storing crude oil, in that I don't need a big storage tank; the Bitcoin is electronic and storing it just means remembering the password. But it turns out that storing your Bitcoins *is* very expensive. You have to remember the password *and* pay bodyguards.

Similarly, I am perpetually baffled by the fact that MicroStrategy Inc. (1) is a publicly traded pot of Bitcoin and (2) trades at roughly twice the value of its Bitcoins. But presumably you won't get kidnapped for your shares of MicroStrategy; perhaps that is worth paying a premium for.

### Stealthy wealthy

I guess a stylized story would be:

1. Everyone wants to work in finance, because it is prestigious and you can make a lot of money.
- 2. The central skill of finance is identifying a good trade, an arbitrage, a *mistake*, an asset that the market undervalues, a place where you can buy a dollar for 50 cents.
- 3. You get enough finance people thinking about things for a while and eventually some of them will notice: Hey, everyone wants to get into finance. That suggests that finance is overvalued, and not-finance might be undervalued.
- 4. Therefore, the arbitrage opportunity is to get into not-finance.
- 5. In some crude sense "not-finance" could mean "building large language models," sure sure sure, but it might be a better bet to get into an industry that is as not-finance as possible.
- 6. You know what it is!
- 7. It's pest control!

And this shift is well underway; I should rename this newsletter Pest Control Stuff. We talk all the time around here about how the most desirable and prestigious jobs for the top students at top MBA programs, these days, are in pest control, and about how there is a whole apparatus for reframing pest control jobs as fancy financial jobs — private equity, search funds, AI rollups — so that ambitious young people can get both the financial rewards of going into lucrative unglamorous businesses and the psychic rewards of going into lucrative glamorous businesses.

Still, that apparatus isn't perfect, and some people get rich by doing lucrative unglamorous businesses unglamorously. Here's a Wall Street Journal article about "the stealthy wealthy":

Finance and Silicon Valley offer glamorous, high-profile paths that can lead to significant wealth. But a vast universe of traditional routes focused on providing goods and services has become increasingly central to the accumulation of significant, if less obvious, wealth in the U.S.

"We call it the stealthy wealthy," said Owen Zidar, a Princeton University economist who has studied the group with University of Chicago economist Eric Zwick. ...

Behind a paycheck, the largest source of income for the 1% highest earners in the U.S. isn't being a partner at an investment bank or launching a one-in-a-million tech startup. It is owning a medium-size regional business. Many of them are distinctly boring and extremely lucrative, like auto dealerships, beverage distributors, grocery stores, dental practices and law firms, according to Zidar and Zwick. ...

In his 37-year career, [Rockefeller Capital Management Chief Executive Officer Greg] Fleming has seen significant wealth created by carwashes, residential-lighting companies and companies that distribute parts for industrial appliances in need of repair.

I assume that there are enormous regulatory and cultural impediments to doing a private equity rollup of auto dealerships, but I would be interested to hear from someone who's trying. Elsewhere here's a profile of Brad Jacobs, who seems to have fun :

In 1989, Jacobs had another lightbulb moment. He was scanning research reports and came across one about environmental services. That's when he realized he could bring consolidation to unglamorous industries that typically go unnoticed.

He started with garbage collectors, buying up mom-and-pop businesses under a company called United Waste. One of his go-to strategies is using technology to improve operations—for example, by rerouting garbage trucks to cover pickups more efficiently. Eight years later, he sold United Waste for around \$2 billion.

Right I mean, in the early 1990s, if you got into the garbage collection business, you probably did not have to compete with the most sophisticated private equity firms, and there was probably money to be made.

### Things happen

SEC to Look at Rules for Investing in Private Funds. Jamie Dimon's Would-Be Successors Audition for the Top Job at JPMorgan. Lutnick Divests Cantor Fitzgerald to His Children, 26North. New CLO Managers Are Pouring Into the Market. 23andMe Sells Gene-Testing Business to DNA Drug Maker Regeneron. Nvidia seeks to build its business beyond Big Tech. International Paper Is on a Quest to Build a Better Cardboard Box. Will Anyone Take the Factory Jobs Trump Wants to Bring Back to America? Stricter US border controls prompt business travel rethink. "Are we going to have Russian oil tycoons owning Frisbee teams and world cups in Saudi Arabia for ultimate Frisbee?" "Alcohol used to occupy a much bigger share of people's entertainment and joy."

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- 1. Some mandates will have various exceptions, smoothing functions, etc., and I am assuming only one rating instead of thinking about the actual mix of ratings, but you get the idea.
- 2. The “customer of a large reputable investment bank” qualifier is important there. If you are an individual investor \*generally\*, overwhelmingly the most common way to lose all your money on FX derivatives is that you are trading on some sort of sketchy FX trading platform where everyone loses all their money.
- 3. You know what I mean. That trade — a big binary USD/CHF option — is actually a pretty complicated FX trade for a bank, but it’s simple to describe. The vanilla FX trade is more like “in a month, I will give you 8.4 million francs for 10 million dollars,” but that is more complicated to describe and the details don’t actually matter here.
- 4. This taxonomy suggests a fourth option, “you make a simple bet and lose for complicated reasons.” I am not sure exactly what that looks like, though it might rhyme with “you wanted to take some market risk but you were also taking counterparty credit risk.” I guess if you were a Robinhood customer just trying to buy GameStop Corp. stock in January 2021, and you couldn’t because Robinhood did not have enough capital to meet margin requirements at the clearinghouse, you could reasonably complain that you lost a simple bet for complicated reasons. I am confident that I will get better examples from my readers, though.
- 5. Very loosely speaking. They hedge, so they’re not exactly taking the opposite directional bet from you.
- 6. The most useful explanation I have found of a target redemption forward is this Stack Exchange post. “Fundamentally, a forward contract can be replicated with put and call options. ... The core idea of a TARF is to provide a ‘better’ forward rate (strike). To achieve this, the downside is usually leveraged (higher notional). ... A TARF is really a strip of options which ceases to exist (knock out) once a cumulative Target profit is reached. This target caps the upside.” That is, a TARF is a strip of trades in which the client is long a call option (at a strike below the forward price) and short \*more\* put options (at the same strike). If the trade is in-the-money for the client, she buys a fixed amount of dollars at a favorable price. If the trade is out-of-the-money, she buys a larger amount of dollars at that price. The client pays for the in-the-money call options by (1) selling (say) 2 puts for every 1 call she buys and (2) selling a knock-out, where the calls disappear after she has made a target amount of profit: Her profit is capped (if the calls remain in-the-money), but her downside is not (if the spot price drops and the puts are in-the-money). And you can add various other knock-ins and knock-outs and bells and whistles; a “conditional target redemption forward” is one with a knock-in to start the product. Here is another useful explanation from Mercer Street Advisors, and here is a less technical explanation. Here are product disclosures from Crédit Agricole and Nordea.
- 7. His book is called “How to Make a Few Billion Dollars,” honestly the best book title.
- 8. Stereotypically you did have to compete with the Mafia, so you’d have to worry about \$5 wrench attacks.

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## News from Bloomberg Terminal

### Get Your Research From an AI Video

May 20, 2025, 10:48 AM PDT

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By Matt Levine

(Bloomberg Opinion) --

#### AI analyst

One thing that sell-side research analysts do is write reports: long detailed reports situating a company in its industry and giving a buy or sell recommendation, earnings previews pointing out what to watch for, quick updates for news, etc. These reports get published to clients and are historically the most salient and noticeable and regulated thing that the analysts do.

Another thing that sell-side research analysts do is one-on-one phone calls with buy-side investors. An analyst publishes a report, investors read it, and they call her to ask questions like “have you thought about the risk that AI poses to earnings?” or “could you give me some detail about how you got to those growth assumptions?” or “when you met with the chief executive officer last month was he unfeasibly tanned?” The investors might get more out of the phone calls than they do out of the reports; certainly they get something *different*. Every client can read the same reports, but the clients who ask the best questions get the best answers on the phone calls.

A third thing that sell-side research analysts do, I guess, is record little videos of themselves talking about their reports? Like you write a report about the payments industry and then someone on the video team comes to you and is like “hey some of our clients prefer watching two-minute videos rather than reading reports; could you summarize the highlights of your report in a video?” And then you are like “what, no, I don’t believe you, surely our sophisticated hedge fund clients actually want to see the details of the model, not just watch me talk awkwardly into a camera?” And the video people are like “I know it seems implausible, but it’s 2025, get with the program you dinosaur.” I don’t know if any of this is true. I might be projecting.

I assume that eventually artificial intelligence models will be better than the research analysts at producing the research reports, which will be an existential problem for the research analysts.

Will the AI models also be better than the research analysts at doing one-on-one interactions with buy-side investors? Ehh, maybe; that’s a more complicated question. An AI chatbot might be substantively better at answering detailed follow-up questions from an investor; it might have more information and more patience and better analysis. On the other hand the human element might be important. The (human) investors might *like* the human analyst and want to talk to her. Also some of the value of the human analyst is that she talks to *lots* of investors and can be a clearinghouse for their views; that is an *implicit* function of a human analyst, and an AI will have to either make it explicit (by saying “be warned that I may use what you tell me to inform my conversations with other investors”<sup>1</sup>) or not do it.

When will the AI models be better than the research analysts at recording dutiful video versions of themselves reading their research reports into a camera? The Financial Times reports that the future is now:

UBS has started using artificial intelligence to turn its analysts into avatars, sending videos of the simulated bankers to clients in a move the lender said would free up staff to focus on more productive tasks.

The Zurich-based bank is using OpenAI and Synthesia models to create AI-generated scripts and avatars of its analysts following increased client demand for research in video format, UBS said.

"It's not a parlour trick," Scott Solomon, head of global research technology at UBS's investment bank, told the Financial Times. ...

To create a video, UBS analysts can use a language model to analyse their reports and generate a script. They can then review the script before it is turned into a lifelike video using their avatar. ...

Solomon said that UBS had seen greater demand from clients for video content in recent years, amid a rise in the popularity of short-form video apps such as TikTok.

"Think about how we, in our consumer lives, consume so much more video content now than we did five years ago," he said. "We publish about 50,000 documents a year, [but video production] has been fixed at about 1,000 a year, because that's basically our studio capacity. But the number of views on those videos has gone up dramatically."

In like a month you'll be able to watch a dead-eyed AI avatar of me droning a summary of this column into a camera, which I guess is what you want. The good news is that I won't have to do it!

## Aa1

We talked yesterday about Moody's Ratings' decision to downgrade the credit rating of United States government debt from Aaa to Aa1. For a long time US government debt was the safest sort of debt, with perfect AAA/Aaa ratings, but now all three of the biggest US ratings agencies – Moody's, Standard & Poor's and Fitch – give the US their second-highest rating (AA+ or Aa1).

The main point I wanted to make was that, while Moody's does of course have some specialized expertise in evaluating the creditworthiness of sovereign borrowers, it's not, you know, *that* much. A lot of people pay attention to the fiscal situation of the US government! Many of them are, in various ways, professionals at it; there are economists and politicians and research analysts and investment managers and pundits with a professional interest in evaluating the creditworthiness of the US, and if you turn on a television at any time of day or night you can hear their opinions about it. It is possible that the Moody's team is the single best evaluator of the creditworthiness of the US government – that Moody's ratings are "correct" in the way that, I don't know, Ray Dalio's or Ken Griffin's or Larry Summers' or Stephanie Kelton's or Scott Bessent's or Elon Musk's opinions are not – but it would honestly be pretty weird.

Instead, Moody's decision is salient for two reasons. One is that it is sort of a symbolic lagging indicator; Moody's downgrade arguably suggests a broadening market consensus that the US is less creditworthy than it used to be. Moody's main product is its credibility, and arguably it wouldn't go out and do a downgrade that would get a lot of attention unless it thought that the market more or less agreed with it.

But I think the more important reason is that, in *most* of the world of debt, a downgrade by Moody's is in some sense *binding*. Various investors are constrained by various rules to only hold debt with certain ratings, only recognized ratings agencies can assign those ratings, and so when a ratings agency lowers its rating on an issuer, that can force some investors to sell the debt and thus raise the issuer's borrowing costs. This is not (just) a matter of reasoned analysis and specialized expertise; it is a matter of legal and contractual requirements. Investment-grade bond fund managers don't read a Moody's downgrade report and think "yes this company does seem to be too risky for me, so I will sell its bonds." They see that Moody's downgraded the company to Ba1, they are only allowed to hold bonds rated Baa3 or better, so they sell the bonds.

And, I argued, that *could* be true of US government debt, but it mostly *isn't*. You could *imagine* a lot of investors having mandates or contracts or regulatory requirements saying "you can only hold debt rated Aaa by Moody's," and having to dump US Treasuries on the downgrade, but empirically that seems mostly not to be true. Instead, most of the relevant regimes are more like "you can only hold debt with a rating of at least \_\_\_\_\_, but also you can hold US Treasuries no matter what, those are *Treasuries*." So the downgrade doesn't have the same effect on US government debt that it might have on a more normal issuer.

But that is just *mostly* true, and if you look hard enough surely you can find some investor that *might* be required to sell US government debt on a downgrade. Bloomberg's Greg Ritchie and Echo Wong found Hong Kong pension managers:

Funds operating under the city's HK\$1.3 trillion (\$166 billion) Mandatory Provident Fund system are only allowed to invest over 10% of their assets in Treasuries if the US has a AAA or equivalent rating from an approved agency. After last week's cut by Moody's, the only remaining such score is from Japan's Rating & Investment Information Inc.

The Hong Kong Investment Funds Association has raised managers' concerns to the Mandatory Provident Fund Schemes Authority and the Financial Services and the Treasury Bureau, said the people, asking not to be named because the information is private. The association recommended that authorities make an exception for US Treasuries, by allowing funds to invest in the assets even if they are rated one notch below AAA, the people said.

The situation underscores the risks of the US falling foul of the unusually strict investment mandates governed by Hong Kong laws. The bulk of global investors do not require the top-tier rating to invest freely in US Treasuries – a factor which minimizes the risk of forced sales.

Note that the fund association suggested the obvious solution here, which is not "diversify away from US Treasuries, which Moody's has alerted us are riskier than we thought" but rather "change the rules to allow us to hold Treasuries no matter what their rating is."

### Private credit is the new etc.

One thing that I like to say about private credit is that we are in a weird, probably brief in-between place where a company or private equity sponsor that wants to borrow money will have to have two sets of meetings. It will meet with investment bankers, who will say "here are the terms that we could get you on an underwritten bond offering or a syndicated loan." Then it will meet with private credit lenders, who will say "here are the terms that we would give you on a direct loan." And then it will decide on one or the other or occasionally a mix. And that is *obviously* inefficient and bad customer service, and in the long run investment bankers will just have to show up at their meetings and say "here are the terms that we could get you on a bond deal, or syndicated loan, or private credit loan." There just has to be a third column in the pitchbook.

For boring reasons, putting that third column in the pitchbook appears to require some reorganization of investment banks, so that is happening. We talked in January about Goldman Sachs Group Inc. combining its bankers who advise on regular credit (bonds, broadly syndicated loans) with its private credit teams, and now here's HSBC:

The London-based lender said in a statement Friday that it was creating a new Capital Markets and Advisory group to house all of its disparate worldwide financing and investment banking activities under a single management structure, confirming an earlier Bloomberg News report. ...

HSBC is among lenders seeking to step up offerings in private credit, a \$1.6 trillion global asset class that's luring more and more players as demand rises from borrowers seeking safer options amid the chaos set off by the Trump administration's trade policies. Among attractions is higher management fees. ...

Under HSBC's new set-up, the bank's financing solutions units, which includes its debt capital markets, leveraged and acquisition finance, and private credit operations, will sit alongside its corporate finance and strategic advisory businesses.

Adam Bagshaw, global head of investment banking, will take charge of CMA with a mandate to grow the lender's private credit business, as well as consolidating its position as one of the leading finance businesses in Asia and the Middle East.

Right now, private credit has a certain novelty, but in the long run corporate lending tends toward a certain fungibility.

Similarly: One important selling point of private credit, to borrowers, is that if things go wrong for a borrower, private credit lenders will be more relationship-focused, and more willing to work with the borrower to fix things, than public lenders would be. Is that true? I mean:

- probably, but
- we are in a big private credit boom and let's see what happens as defaults increase.

So Bloomberg's Edward Clark reports:

Private credit funds are increasingly turning to restructuring advisers to sort out their problem loans, suggesting that while the hot asset class is still raking in capital, there are risks simmering under the surface.

"The amount of work we've been doing with private credit has doubled in the last three to four years and we weren't doing any ten years ago," said David Morris, head of UK restructuring and chief operating officer of EMEA corporate finance at FTI Consulting. ...

The opaque nature of private credit means that some distress can stay hidden. Fixes for struggling companies like covenant waivers and maturity extensions can happen behind closed doors. But consultants will come in when a situation is beyond this point, and if lender thinks a debt-for-equity swap is necessary to preserve value.

In a huge boom for private credit, the most important skill of a private credit manager is putting money to work in new deals. If the money dries up and the old deals start defaulting, the most important skill might be maximizing recovery.

### Trump and dump

Other people must have a more sophisticated understanding of memecoins than I do. As I understand it, the way a memecoin works is:

1. There's some thing or person that people are paying attention to, a "meme." A squirrel goes viral on the internet, say.
2. Someone – who may or may not be affiliated with the meme – launches a crypto token referencing the meme and markets it as being somehow connected to the meme. "The PNUT token is the token of Peanut the viral squirrel," etc.
3. People are like "oh that meme is cool" and they buy the token as a way to express their fandom for the meme.
4. The token goes up as a lot of people pay attention and express that attention by buying tokens.
5. Squirrels do not go viral for that long! Eventually – in, like, a day? a week? – people stop paying attention to the meme, there are no buyers for the memecoin, and the price collapses to approximately zero.

You can have variations on this. A meme can go viral more than once, if the squirrel, you know, does a second thing.<sup>2</sup> Some memetic things are pretty enduring. The silly-talking Shiba Inu dog "Doge" has been a meme since 2013, has a US government department named after him, and also the Doge cryptocurrency has taken on a life of its own even apart from the dog. Donald Trump has gotten a lot of attention for decades.

But when we talk about, you know, Hawk Tuah Coin, or \$MELANIA, I do not understand what other people see that I don't. "Hawk Tuah" got the purest imaginable 15 minutes of fame – just one viral video on someone else's YouTube – and it got turned into a memecoin. The memecoin went up, during the 15 minutes, and then down, afterwards.

Yet I keep seeing people who are somehow surprised and disappointed that some memecoin was a “pump and dump,” that the insiders who promoted the coin made a lot of money while later buyers lost money. There’s nothing else! That’s what this whole thing is! The whole pitch is “buy this coin while everyone is paying attention to it”; the whole game is knowing if you are buying in Minute 13 or Minute 15. I am aware that some memecoins have lockups or vesting schedules for their promoters, so the promoters can’t sell all their coins and tank the price too quickly, but the natural lifespan of attention is gonna tank the price pretty quickly anyway, and if the promoters aren’t making any money then what *are* they doing?

Anyway Donald Trump’s meme token – “\$TRUMP” or “Trumpcoin” – is a somewhat unusual memecoin in that Trump *has* been getting attention for decades, and he *does* keep doing things. But the essential analysis is the same, just repeated. He does a thing, the token goes up, people sell it, it goes down. We have talked a couple of times recently about the latest thing, which is that he announced he would have a dinner party where he invited whoever bought the most Trumpcoin. “The democratization of ... bribery,” I called it.

There was, as it were, a record date for the dinner: Whoever owns the most Trumpcoins as of May 12 gets to go to the dinner. It is now May 20. If you bought enough Trumpcoins to be on the list on May 12, you get to go to the dinner. You don’t need them anymore. The buying pressure to get to the dinner pumped the price, and now, you know. The Financial Times reports:

Traders who won a ticket to a banquet with Donald Trump by entering a contest to buy large amounts of the president’s memecoin may have netted multimillion-dollar profits, a Financial Times analysis has revealed.

The competition, announced on April 23, offered dinner to people who held the largest quantities of the \$TRUMP memecoin over a specified window in a publicly visible crypto wallet. The contest helped push the price of the token from \$9.26 to \$15.33 when it was announced.

Many traders started moving tokens out of their wallets as the window closed on May 12 and their place at the dinner at the Trump National Golf Club in Virginia was confirmed – despite the contest website’s exhortation to “Hold Big. Hold Strong. Hold \$TRUMP”.

The FT has identified that 16 of the 25 winning “VIP” accounts, which have been awarded seats at “an unforgettable Gala DINNER with the President” plus an “exclusive Reception . . . with YOUR FAVORITE PRESIDENT” and a VIP tour, now have no Trump coins left in their public wallets. The event is due to be held on May 22.

Of course? What else would anyone be doing? Do you think Trump cares? Do you think if you show up and say “lol I dumped all my coins on May 13,” he’ll be like “I can’t believe you do not have long-term confidence in my meme token”? Come on. Do you think the Trump-connected promoters of the coin were selling it into the demand for the dinner? What are we doing here?

Obviously it’s bad for the president of the United States to be doing this nonsense but what are you gonna do. Elsewhere: “A Tiny Bank in Trump Tower Is Enriching the President’s Sons.”

## Things happen

America's Fiscal Situation Threatens the Good Mood on Wall Street. KKR Says Bonds' Role as Portfolio 'Shock Absorbers' Is Eroding. Nvidia Pushes Further Into Cloud With GPU Marketplace. GOP's Tax on Foundations Takes Aim at Billionaire Philanthropy. Crypto Billionaire Accused of Defrauding Creditors, Propelling Industry's 2022 Collapse. Microsoft-Backed Builder.ai to Enter Insolvency Proceedings. Blackstone Infrastructure to Buy TXNM Energy for \$5.7 Billion. Austin's Reign as a Tech Hub Might Be Coming to an End. Levi Strauss Will Sell Dockers to Authentic Brands for \$311 Million. Qatar's \$524 Billion QIA Warns Private Credit Is Getting Crowded. Qatar PM Defends Plane Gift to Trump, Calling It a 'Normal' Transaction. "VC-funded millennial slop bowl."

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1. This is approximately the model of Trata, which we discussed earlier this year.
2. Please do not email me to be like "that particular squirrel went viral for being killed," I know, that's not the point.

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# OpenAI defeats radio host's lawsuit over allegations invented by ChatGPT

 [reuters.com/legal/litigation/openai-defeats-radio-hosts-lawsuit-over-allegations-invented-by-chatgpt-2025-05-19](https://www.reuters.com/legal/litigation/openai-defeats-radio-hosts-lawsuit-over-allegations-invented-by-chatgpt-2025-05-19)

Mike Scarcella

May 19, 2025

OpenAI logo is seen in this illustration taken May 20, 2024. REUTERS/Dado Ruvic/Illustration/File Photo Purchase Licensing Rights, opens new tab

May 19 (Reuters) - OpenAI has prevailed in a lawsuit in Georgia that accused the ChatGPT maker of defaming a radio host by fabricating allegations and a fictional lawsuit against him.

In a early test of legal claims involving false information generated by artificial intelligence, Judge Tracie Cason of Gwinnett County Superior Court ruled, opens new tab that plaintiff Mark Walters had not shown he was defamed and said OpenAI's chatbot ChatGPT puts users on notice that it can make errors.

Get a quick look at the days breaking legal news and analysis from The Afternoon Docket newsletter. Sign up here.

A lawyer for Walters, John Monroe, on Monday said they were reviewing the court's decision.

OpenAI in a statement welcomed the order and said it appreciated the judge's "careful decision and its findings about our efforts to responsibly educate users and improve our models."

The company has denied any wrongdoing.

Walters, a radio host who advocates for firearms rights, sued OpenAI in 2023, claiming ChatGPT responded to a reporter's query about gun-related litigation by inventing a fictional case against him.

The reporter, editor of a website called AmmoLand.com, determined that the details were false. The reporter is not a party in the lawsuit.

Walters told the court in a filing that ChatGPT's statements about him "were complete fiction and they were obviously defamatory." He pointed to OpenAI's disclaimers about being prone to error as evidence that the company was aware it circulates false information.

The judge said Walters failed to show that OpenAI's statements about him were negligent or made with "actual malice," a key legal standard in defamation lawsuits.

"OpenAI's 'industry-leading efforts' to reduce errors of this kind and its extensive warnings to users that errors of this kind could occur negate any possibility that a jury could find OpenAI acted with actual malice here," Cason wrote.

The case is Walters v OpenAI LLC, Superior Court of Gwinnett County, State of Georgia, No. 23-A-04860-2.

For plaintiff: John Monroe of John Monroe Law P.C.

For defendant: Theodore Boutrous Jr of Gibson, Dunn & Crutcher; and Matthew Macdonald of Wilson Sonsini Goodrich Rosati

Read more:

Judge in Meta case warns AI could 'obliterate' market for original works

Judge explains order for New York Times in OpenAI copyright case

OpenAI must face part of Intercept lawsuit over AI training

Thomson Reuters wins AI copyright 'fair use' ruling against one-time competitor

Our Standards: The Thomson Reuters Trust Principles., opens new tab



**Chuck Wendig** @chuckwendig.bsky.social · 5h

Wait, is this -- is this real? They actually published a list of books that may or may not exist? (The Last Algorithm by Andy Weir is, for example, not an actual book!) Please, jfc, tell me this isn't real. I'm not finding it online anywhere, which makes me hope it's fake? Gotta be fake, please?

**Rachael King** @rachaelking70.bsky.social · 7h

This was just posted by @tbretc.bsky.social on another platform. The Chicago Sun-Times obviously gets ChatGPT to write a 'summer reads' feature almost entirely made up of real authors but completely fake books. What are we coming to?



68 269 1.2K ...



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May 20, 2025 at 7:19 AM

85 reposts 538 quotes 402 likes

507 623 402 ...



**Chuck Wendig** @chuckwendig.bsky.social · 5h

Update: looks like it's real! We are so fucking fucked. Just totally cooked. Nothing matters anymore. The boundaries of real information have collapsed utterly, and we are all living in a dream-slurry of garbage puked up by billionaire computers. Anything is true and everything is false.

**Chuck Wendig** @chuckwendig.bsky.social · 5h

Wait, is this -- is this real? They actually published a list of books that may or may not exist? (The Last Algorithm by Andy Weir is, for example, not an actual book!) Please, jfc, tell me this isn't real. I'm not finding it online anywhere, which makes me hope it's fake? Gotta be fake, please?

31

254

1K

...



**En Björn**

@nollbok.bsky.social

+ Follow

Librarian here. Got an email from a patron about our "poor selection" of books on AI, w/ list of new books that we HAD to get so ppl could stay informed about this important subject. Title, author, synopsis.

Of 11 titles on the list, 10 Did Not Exist. At all.

"Yeah, I got it from Ch\*tGPT, why?"

May 20, 2025 at 5:45 AM · [Translate](#)

435 reposts 72 quotes 1.4K likes

26

507

1.4K

...



Write your reply



**En Björn** @nollbok.bsky.social · 5h

Same thing there as with the Weir example; several of the authors on the list have written other books about generative AI - but Ch\*tGPT didn't recommend those, instead it made up non-existent ones.

2

13

266

...



**Pheldonimous Griff** @raeven.bsky.social · 2h

Crucially, from the machine's perspective, a false answer and a "true" answer are identical. What a joke.

1

3

30

...



**AGTMADCAT** UN @agtmadcat.bsky.social · 1h

All it knows is that they're both answer-shaped!

1

3

34

...

<https://bsky.app/profile/nollbok.bsky.social/post/3lpm4jjk67227>

**Securities Law News**

# Theft of Coinbase Customer Data Probed by Justice Department (1)

May 19, 2025, 2:54 PM PDT

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The US Justice Department has opened a probe into a recent breach at the leading cryptocurrency exchange Coinbase Global Inc., according to a person familiar with the matter.

Investigators, including those in the department's criminal division in Washington, are digging into the circumstances surrounding the breach, said the person, who asked not to be identified discussing the investigation. Coinbase has said the hack involved criminals bribing employees and contractors in India to obtain client data.

A representative for the Justice Department declined to comment.

Coinbase brought the incident to the attention of authorities and the company itself is not under DOJ investigation, said Paul Grewal, the company's chief legal officer.

"We have notified and are working with the DOJ and other US and international law enforcement agencies and welcome law enforcement's pursuit of criminal charges against these bad actors," Grewal said. UK and Irish data regulators said they are "assessing" the situation after receiving reports from Coinbase.

The largest US crypto exchange disclosed on Thursday that hackers bribed customer representatives to steal the data and then asked for \$20 million in ransom to cover it up. Coinbase said in the filing that it received an anonymous email from the hackers making the ransom demand on May 11.

In its filing last week, Coinbase added that in the months leading up to that email it had detected instances of customer support agents outside of the US collecting data from internal Coinbase systems. Those people have been fired, Coinbase said. The company estimated the incident could cost the firm as much as \$400 million to remedy.

The perpetrators deployed what's called social engineering attacks — where criminals use people to gain unauthorized access to data, rather than exploiting flaws in computer code. The thieves, armed with information that included users' names, addresses, phone numbers, government-issued ID images and other information, aimed the social-engineering attacks directly at Coinbase's customers.

## Securities Law

### **Crypto Entrepreneur Justin Sun Will Join Trump's Memecoin Dinner**

May 20, 2025, 8:40 AM PDT

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Controversial crypto entrepreneur **Justin Sun** announced that he's joining a high-profile dinner with the US President Donald Trump later this week.

Sun, the China-born founder of the Tron blockchain, said on the social media platform X that he is the top holder of TRUMP coin, a memecoin launched by Trump-linked entities, and will be attending the dinner at Trump National Golf Club in Potomac Falls, Virginia, on Thursday. Sun did not immediately respond to a request for comment.

"Honored to support @POTUS and grateful for the invitation from @GetTrumpMemes to attend President Trump's Gala Dinner as his TOP fan!" Sun wrote on X. As the top holder of \$TRUMP, I'm excited to connect with everyone, talk crypto, and discuss the future of our industry."

The memecoin's issuer announced in April that the top 220 holders of the memecoin are invited to a dinner with the president on May 22 where Trump will talk about the future of crypto. The top 25 holders will be eligible for a tour of the White House.

Trump's plan to host the event has drawn criticism, with Democratic Senators Elizabeth Warren and Adam Schiff demanding a federal ethics investigation into what they called "pay to play" scheme of "corruption and foreign influence," since many of the traders in the coin appear to be from other countries.

*Read:*

*Top Trump Crypto Buyers Vying for Dinner Seats Are Likely Foreign, Data Shows*

This is not the first Trump-linked business that Sun has invested in. He previously [said](#) he's invested a total of \$75 million in WLFI, the token of World Liberty Financial, another crypto project linked to Trump and his family. Sun is also an adviser to the project.

Sun was sued by the US Securities and Exchange Commission in 2023, alleging at the time that he worked with companies he owns and controls – the Tron Foundation, BitTorrent Foundation Ltd., and Rainberry Inc. – to engineer the offer and sale of unregistered securities. After former SEC chair Gary Gensler left the agency, the SEC and lawyers of Sun are seeking to [pause](#) the case.

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Dave Liedtka

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<https://www.wsj.com/finance/currencies/crypto-billionaire-accused-of-defrauding-creditors-propelling-industrys-2022-collapse-2cce4f22>

MARKETS & FINANCE | CURRENCIES

# Crypto Billionaire Accused of Defrauding Creditors, Propelling Industry's 2022 Collapse

Creditors' lawsuits allege the crypto winter began earlier than believed, and with actions by Digital Currency Group's founder, Barry Silbert

By [Kevin T. Dugan](#) [Follow](#)

May 19, 2025 7:22 pm ET



Crypto entrepreneur Barry Silbert speaking at a conference. PHOTO: HEIDI GUTMAN/CNBC/NBCU/GETTY IMAGES

In the depths of the brutal 2022 meltdown in the digital-assets market, billionaire crypto entrepreneur Barry Silbert had a message for investors like [Mark Cuban](#) who were worried about getting wiped out: Stay calm, your money is safe, we're solid.

His own actions didn't show the same confidence, according to new filings in lawsuits filed by creditors of Silbert's now-bankrupt lending business, Genesis Capital.

That April, Silbert demanded repayment of more than \$100 million in loans that he and the companies he controlled had made to Genesis, according to the creditors, who

are alleging a wide-ranging fraud. The calls started one day after Silbert received a dire warning of a “market crash” from consulting firm Oliver Wyman, they allege.

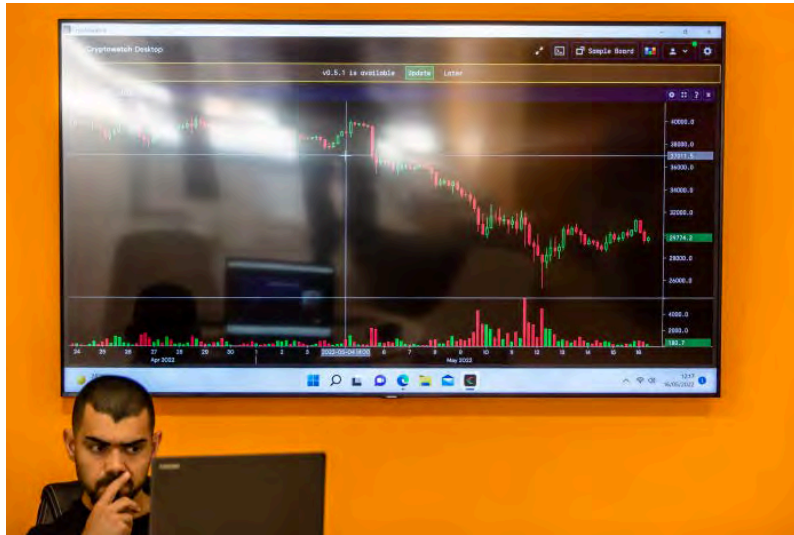
Silbert was one of the crypto market’s first moguls. Founded in 2015, his Digital Currency Group built a large venture-capital portfolio, launched an asset manager that oversaw crypto funds (Grayscale Investments) and, through Genesis, lent to other investors.

Creditors allege that Silbert ran his companies with lax controls and misrepresented the depth of their financial problems so he could personally profit. They also said Silbert, his closest executives, and his brother Alan withdrew millions of dollars in loans while telling investors to keep their money on the platform. His actions, they argued, led to Genesis’s failure.

“Silbert and his cronies recklessly operated, exploited, and then bankrupted Genesis following a spectacular campaign of fraud and self-dealing,” wrote the creditors, who represent the bankrupt Genesis Capital and its Asia Pacific arm. The 202-page filing, made public Monday in Delaware Chancery Court as part of ongoing proceedings in a case the creditors brought last year, is partially redacted, with internal messages and other company details kept out of the public eye. More information may be unredacted in the coming weeks.

“This is a baseless lawsuit that recycles the same tired, two-year old claims in an opportunistic attempt by sophisticated investors to extract additional value from DCG,” a DCG spokeswoman said in a statement. “We worked in good faith with a wide range of stakeholders to try to achieve a comprehensive resolution of the DCG-related aspects of the Genesis bankruptcy. We will vigorously defend ourselves against these spurious claims.”

The filings rewrite the history of the 2022 crypto winter, a volatile period that culminated in the collapse of Sam Bankman-Fried’s FTX. According to the creditors, the trouble started in 2021, more than a year ahead of the marketwide selloff, when DCG’s [Grayscale Bitcoin Trust](#), a fund that held bitcoin, started to trade at a discount to the digital currency.



A price chart at a cryptocurrency exchange in 2022. PHOTO: ANGEL GARCIA/BLOOMBERG NEWS

The slide pushed Genesis into technical insolvency, and eventually helped trigger the crypto market's ferocious downturn, the creditors said. Throughout 2022, Silbert, his companies and his business associates bled the lender of more than \$800 million in more than 140 transactions, the creditors said.

The creditors are seeking \$2.3 billion in Delaware Chancery and Manhattan federal bankruptcy courts, and want to be paid in digital currencies that may continue to rise. DCG has previously [settled with the Securities and Exchange Commission](#) for its oversight of its lender, [but has been at odds](#) with Genesis over [a settlement facilitated](#) by the New York attorney general's office that would return \$2 billion to customers who lent the platform money. DCG has denied wrongdoing in the continuing civil fraud suit against DCG filed by the attorney general's office.

The crypto market's 2022 collapse erased some \$2 trillion in paper holdings. At the time, many investors believed that the problems started that May when two crypto tokens—the TerraUSD stablecoin and the Luna token—lost about \$60 billion. The creditors argue that the seeds of the selloff were first sown much earlier—in about February 2021, when crypto markets were still on a bull run but the Grayscale fund was starting a yearslong decline.

In early 2021, Grayscale Bitcoin Trust was one of the few vehicles that enabled investors to buy access to bitcoin without owning the digital currency itself. But it charged a high fee—2% on the assets it managed—and subjected new investors to a six-month lockup period before they could sell.

Genesis was then still a behemoth, too. That year, it originated \$130 billion in loans to crypto investors, a nearly sevenfold increase from the year before.

In 2021, the single largest holder of Grayscale Bitcoin Trust was Three Arrows Capital, the filings claim. The creditors say the hedge fund took advantage of the market distortions created by the lockup period, which had helped keep the Grayscale fund's market value floating above the value of all the bitcoins it owned.

By February 2021, Grayscale Bitcoin Trust no longer traded at a premium. Nevertheless, Genesis encouraged Three Arrows to pledge its Grayscale Bitcoin Trust holdings to borrow more, even as the fund's price continued to slide, the creditors allege. A representative for Three Arrows Capital couldn't immediately be reached for comment.

FTX founder Sam Bankman-Fried leaving federal court in New York in 2023. PHOTO: TIMOTHY A. CLARY/AGENCE FRANCE-PRESSE/GETTY IMAGES

As the trust's premium disintegrated to a discount, DCG pushed Genesis to mismark the value of the fund when it was used as collateral, the creditors claim. DCG also forbade the lender from selling or hedging Grayscale Bitcoin Trust. The trust's collapse left Three Arrows underwater, but the hedge fund was still allowed to use its trust holdings as collateral to borrow even more from Genesis, according to the filings. The hedge fund would become one of the largest holders of TerraUSD and Luna, which [were quickly becoming popular](#).

In April of that year, Oliver Wyman shared with Silbert and DCG a report that portended the market meltdown, offering a series of scenarios of the turmoil that would follow if some of the company's largest trading partners went bankrupt, and the "ripple effects across [the] broader crypto market." DCG, the consultant wrote, was likely unprepared.

Silbert's response to the consultant's warnings came just one day later, when he called \$4 million in loans he made to Genesis, the creditors allege. And in the days that followed, DCG and its international subsidiary demanded Genesis repay another \$125 million.

In the months that followed, Oliver Wyman's report would prove prescient. Genesis, as the world would soon learn, had the most exposure to Three Arrows Capital.

After Three Arrows collapsed in June 2022, Genesis had a \$1.1 billion hole in its balance sheet. This also set off a race to keep the company afloat by the end of the month.

When crypto prices began to fall sharply, DCG told its own clients not to pull their money, according to the creditors. These requests convinced two of its largest customers, the exchanges Bitvavo and Gemini, not to pull more than \$3 billion. A Genesis executive told Cuban, the "Shark Tank" star who was then an owner of the Dallas Mavericks, that the lender was facing "no liquidity issues," according to the new allegations. Cuban said he had nothing to add regarding the filing. "First I've heard of it," he said in an email.

Silbert would send a message internally that "the hole in Genesis equity due to the Three Arrows exposure is something...we will need to fill by 6/30," according to the filings.

The creditors allege that, amid this collapse, DCG turned to its investment bank, Ducera Partners, for help, and the firm soon helped put together a \$1.1 billion "promissory note" that was due in 10 years, at a 1% interest rate. The bank, which is named as a defendant, "clearly understood that the June 30 Balance Sheet was materially false and misleading," the creditors claim.

Representatives for Oliver Wyman didn't immediately return requests for comment. A spokesman for Ducera declined to comment.

Write to Kevin T. Dugan at [kevin.dugan@wsj.com](mailto:kevin.dugan@wsj.com)

*Appeared in the May 20, 2025, print edition as 'Crypto Billionaire Is Accused Of Fraud'.*

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## Videos

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# UnitedHealth Built a Giant. Now Its Model Is Faltering.

Growing public scrutiny and tighter regulation are testing a long successful vertical-integration strategy

By [David Wainer](#) [Follow](#)

May 20, 2025 5:30 am ET



UnitedHealth's health services operate under the Optum brand. PHOTO: CAPTURE FILM CO. FOR OPTUM/BUSINESS WIRE/AP

For years, [UnitedHealth](#) UNH **0.00%** ▲ Group was the envy of the healthcare industry —[a vertically integrated behemoth](#) that controlled the insurer, the doctor, the pharmacy and the software connecting them. That structure fueled years of dominance and outsize growth.

But now, what made UnitedHealth so formidable is becoming a liability. As [medical costs surge](#), regulations tighten, and [political scrutiny intensifies](#), the very integration that once gave UnitedHealth an edge is making it vulnerable. Its stock is down nearly 40% this year. Its [chief executive, Andrew Witty, is out](#). And the strategy once seen as the [future of healthcare](#)—and emulated by peers—now faces its toughest test.

So should the empire be broken up? Investors aren't there just yet. Selling off pieces of the juggernaut would be too complicated given how tightly integrated the health services business—known as Optum—is to the insurance side, says Jeff Jonas, a

portfolio manager at Gabelli Funds, which owns UnitedHealth shares. Many investors still want to give CEO Stephen Hemsley, the [returning leader who built up](#) the company, a chance to fix it. But the blind trust once put on UnitedHealth's ability to consistently beat earnings estimates is gone—and so is the valuation premium that set it apart.

UnitedHealth's DNA [has been rooted in acquisition](#). It initially expanded mainly by acquiring other insurers. In recent decades, the company shifted its focus to healthcare services—building up its unit Optum by buying up physician groups, clinics, pharmacy-benefit managers and tech platforms. The strategy was in part a response to new Affordable Care Act regulations that capped insurer profits by requiring insurers to spend at least 80 cents of every dollar taken in.

The strategy paid off handsomely. Some [deals were large](#), such as the \$12.8 billion acquisition of Catamaran, a pharmacy-benefit manager. Most [deals were smaller](#) and targeted—largely flying under the antitrust radar.

Together, they allowed earnings to grow much more quickly than peers. In the decade between 2013 and 2023, UnitedHealth's net income rose from \$5.6 billion to \$22 billion, and its stock returned 715% versus a 158% gain for the S&P 500.

American healthcare is a patchwork of markets: government-run programs such as Medicare and Medicaid alongside a commercial sector dominated by employer-sponsored insurance. UnitedHealth became a major player in most markets. It was in the privatized version of Medicare, known as Medicare Advantage, where UnitedHealth's scale made an outsize impact on profits, helping it grow faster and capture more revenue from taxpayers.

Andrew Witty, then the CEO of UnitedHealth, testified before a Senate committee last May. PHOTO: KENT NISHIMURA/GETTY IMAGES

The idea behind the program is that by managing care more actively, private insurers could reduce costs for the government. Yet over time, [news reports](#), lawsuits, and whistleblower claims have alleged that insurers exploited the program's design to overbill. A Wall Street Journal investigation last year found that UnitedHealth [collected billions in additional payments](#) tied to questionable diagnoses.

As long as Medicare Advantage [remained highly profitable](#), UnitedHealth's size was a clear advantage. Its leadership in the program, both as an insurer and as a provider through Optum, prompted rivals such as [CVS Health](#) **CVS 1.00% ▲** to seek to imitate [its vertical integration strategy](#).

The landscape began to shift, however. Amid mounting scrutiny, the Biden administration introduced policy changes that reduced what insurers could bill. The changes landed just as medical costs were accelerating—a one-two punch that squeezed both revenue and margins.

The entire sector felt the pressure: [Humana](#) **HUM 1.01% ▲** and CVS saw their stocks crater last year as costs escalated, crimping their margins. At first, UnitedHealth appeared relatively protected. When competitors pulled back, it doubled down—absorbing more patients across both its insurance and provider businesses in 2024.

But elevated medical utilization caught up with it, too. And because UnitedHealth doesn't just insure patients—it also runs clinics that treat them through Optum—when costs rise more than expected, it gets hit as an insurer having to pay out more in claims, and again as a provider, absorbing the higher cost of delivering that care. The pain is made worse when regulation cuts the payments that flow through this system.

In the past, UnitedHealth might have offset margin pressure by making sure that its patients are coded for as many conditions as its [army of doctors](#) see fit. With new constraints in place, that [lever became harder to pull](#). “The inability to code...well above the rest of the industry represents a potentially fundamental impairment of UNH's historical competitive advantage,” wrote Ryan Langston, an analyst at TD Cowen.

At the same time, UnitedHealth's use of certain tools to control costs might have eased up. The insurance arm uses things such as artificial intelligence analytics and prior authorization as ways to control utilization. But [those same tools](#) also [drew scrutiny](#) that intensified amid a political backlash.

In 2024, a cyberattack on Change Healthcare, a clearinghouse for medical payments [acquired just two years earlier](#), disrupted swaths of the healthcare system. Witty [was called before Congress](#), where lawmakers raised questions about whether UnitedHealth's size posed a systemic risk. Sen. Elizabeth Warren (D., Mass.) called for a breakup.

Then came the December [assassination of Brian Thompson](#), who led the insurance unit. The incident was widely condemned by political leaders. But it also [triggered public support](#) for the suspect in the shooting and death threats against industry executives, leading to heightened security measures across the industry.

Amid the [rising political pressure](#), UnitedHealth began relaxing some of its prior-authorization protocols. On a January earnings call, Witty pledged to “speed up turnaround times for approval of procedures and services for Medicare Advantage patients.” For instance, starting in January, UnitedHealthcare [waived prior authorization](#) for Medicare members before certain outpatient therapy visits. The

company pointed to such changes as part of an effort to modernize the system and said that they weren't to blame for higher medical costs in the first quarter.

Still, some analysts have wondered if the loosening of prior authorization controls are emerging as cost drivers. "UNH may be relaxing prior authorization and other claims controls in response to policy pressures," wrote Lance Wilkes, an analyst at Bernstein.

Even after the recent turbulence, UnitedHealth remains the industry goliath, with nearly 400,000 employees that serve millions of Americans nationwide. With mounting financial and political pressure, however, the company's tremendous size might have become more of a burden than a strategic advantage.

Write to David Wainer at [david.wainer@wsj.com](mailto:david.wainer@wsj.com)

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<https://www.wsj.com/business/media/senators-question-shari-redstone-over-efforts-to-reach-cbs-settlement-with-trump-fb832200>

EXCLUSIVE MEDIA

# Senators Question Shari Redstone Over Efforts to Reach CBS Settlement With Trump

Lawmakers raise concerns that CBS News parent Paramount risks violating bribery laws in pursuit of potential Trump settlement

By [Joe Flint](#) [Follow](#)

May 20, 2025 6:00 am ET



Paramount Global Chair Shari Redstone PHOTO: JOHN NACION/VARIETY/GETTY IMAGES

A trio of senators is seeking information about [Paramount Global's](#) **PARA -0.08%** efforts to settle a lawsuit by President Trump against the company's CBS News, probing whether the company risks violating a federal bribery statute.

In a letter to Paramount Global Chair Shari Redstone, Sens. Elizabeth Warren (D., Mass.), Ron Wyden (D., Ore.) and Bernie Sanders (I., Vt.) said they are concerned that the media company “may be engaging in improper conduct involving the Trump Administration in exchange for approval of its merger with Skydance Media.”

Trump is suing CBS News for \$20 billion over how the network's "60 Minutes" edited an interview with Democratic presidential candidate [Kamala Harris](#) last October. The suit alleges the interview was deceitfully edited to make her sound better. CBS has said it was neither doctored nor deceitful.

Redstone hasn't seen the letter, which was sent Tuesday night, a spokeswoman said. She said Redstone has recused herself from the settlement talks.

The suit has become a potential roadblock for Paramount's [merger with Skydance](#). CBS and Trump representatives [have had talks with a mediator](#) to attempt to reach a resolution to the suit.



CBS has said its '60 Minutes' interview with Vice President Kamala Harris was neither doctored nor deceitful. PHOTO: CBS NEWS/60 MINUTES

The deal also requires approval from the Federal Communications Commission, which is led by Trump-appointed Chairman Brendan Carr.

A Paramount spokesman has previously said the legal battle with Trump is unrelated to the FCC approval process and that the company will "abide by the legal process to defend our case." He declined to comment on the senators' letter.

When Trump sued CBS last fall, the network said it was "completely without merit." The three senators said that, given the company's stance then and its efforts to have the suit dismissed, any settlement or a "quid pro quo" to help get the deal closed "may be breaking the law."

The three senators sought information about any changes to "60 Minutes" content made at the request of anyone at Paramount, and whether company officials have discussed making concessions to Trump in the name of securing merger approval.

The senators' powers are limited given Republican control of the Senate and their inability to compel an answer to the letter. Still, the concerns the senators are raising about the [appearance of bribery](#) have also been discussed at Paramount, The Wall Street Journal previously reported.

Wendy McMahon, the head of [CBS News, is exiting the company](#) following tension with the leadership of Paramount Global over the Trump suit. One sticking point was McMahon's unwillingness to sign off on an apology to Trump over the Harris interview as part of any potential settlement of the lawsuit, the Journal reported.

Last month, "60 Minutes" executive producer [Bill Owens departed](#), saying he had lost editorial independence of the show to management.

Write to Joe Flint at [Joe.Flint@wsj.com](mailto:Joe.Flint@wsj.com)

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## Videos

## Securities Law

### **B. Riley Names Yessner to Replace Ahn as Chief Financial Officer**

May 19, 2025, 4:24AM PDT

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B. Riley Financial Inc. named Scott Yessner, who has been serving as a strategic adviser for the past two months, to succeed Chief Financial Officer **Phillip Ahn** as the company grapples with overdue regulatory filings and probes.

Yessner will take over as CFO on June 3, the firm said in a [statement](#) Monday. Ahn is leaving “to pursue another opportunity,” according to the statement.

B. Riley earlier this month missed the deadline to file its quarterly results as soured investments mounted. It’s still working on its full-year report for 2024, the Los Angeles-based financial services firm told the US Securities and Exchange Commission. B. Riley had vowed to resume reporting on time in 2025 after failing to produce timely quarterly reports in 2024, and the annual report is late for a third year.

The task has been complicated by regulatory probes of the company and writedowns on several investments, including its holding in Franchise Group Inc. The retailer of furniture, vitamins and pet supplies collapsed into bankruptcy last year. B. Riley’s stock, which briefly topped \$40 last year, now trades for less than \$3.50.

Yessner was previously CFO of California Expanded Metal Products Co. and before that held the same post at Universal Technical Institute, according to the statement.

Read More: [B. Riley Overshoots Another Deadline for Filing Results With SEC](#)

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**Securities Law News**

# EY Accused of Negligence at £2 Billion Trial Over NMC Health (1)

May 19, 2025, 7:24 AM PDT

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EY continued to audit NMC Health Plc despite suspicions that management withheld key documents that revealed its true debt position, lawyers for the collapsed firm argued at the start of a £2 billion (\$2.7 billion) London trial.

NMC's administrator, Alvarez & Marsal sued EY in London alleging negligence and failure to spot the billions of hidden debt between 2012 and 2018 when EY was the auditor. NMC was put into administration in 2020 following allegations of fraud at the health care provider.

"It is remarkable that, despite its suspicions that management was lying about being unable to provide access to the group's general ledger, EY continued to conduct the audits," lawyers for NMC said on the first day of the London trial.

EY denies the allegations and said the claims were "unfounded." "Even a bloodhound was likely to be deceived in this case, let alone a competent watchdog," lawyers for the audit firm said in court filings.

The collapse of NMC sparked a flurry of lawsuits and investigations in the UK and US as different sides point the finger of blame. The UK's markets watchdog previously censured the fallen Middle Eastern hospital operator, saying the once-FTSE100 listed firm misled investors about its debt position by as much as \$4 billion.

NMC's case is "enormously inflated" and the "true losses, if any, are far less than its headline claim," lawyers for EY said in court filings. "NMC's pleaded case depends on both an exaggerated conception of the scope of EY's duty and an unrealistic premise as to how auditors faced with challenging client circumstances should behave."

The health care company was put into administration in 2020 by a London court as the scale of the firm's troubles emerged following a short seller's report.

"This was a complex, pervasive and collusive fraud, and responsibility for it lies squarely with its perpetrators, including NMC's owners, directors and the treasury and finance team," EY's spokesperson said in a statement.

The firm's founder **Bavaguthu Raghuram Shetty**, who is not a party to the case, has previously denied any wrongdoing saying he was a victim of the fraud. Shetty, who was sued separately by NMC, blamed former senior executives and EY for the alleged fraud. Shetty's lawyers didn't immediately comment on the trial.

EY agreed to remove auditors who sought more information from NMC, replacing them with people "hand-picked" by the collapsed hospital operators' top shareholders, lawyers for NMC alleged.

The auditor was the victim of "active concealment" of the fraud and it had risen to the challenges posed by "bombastic style" of functioning by the majority shareholders' representative on the firm's board, according to EY's lawyers.

(Updates with details from court documents throughout.)

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# EY negligently missed huge fraud at collapsed hospital operator, \$3 bln UK trial hears

 [reuters.com/sustainability/boards-policy-regulation/ey-negligently-missed-huge-fraud-collapsed-hospital-operator-3-bln-uk-trial-2025-05-19](https://www.reuters.com/sustainability/boards-policy-regulation/ey-negligently-missed-huge-fraud-collapsed-hospital-operator-3-bln-uk-trial-2025-05-19)

Sam Tobin

May 19, 2025

The EY company logo is seen at their headquarters in London, Britain, April 16 2023.  
REUTERS/Peter Nicholls/File Photo Purchase Licensing Rights, opens new tab

## NMC Health PLC - NMC.L - DELISTED

LONDON, May 19 (Reuters) - EY failed to spot a major fraud by main shareholders of UAE hospital operator NMC Health in what lawyers for the firm's administrators described as disgraceful auditing, at the start of a roughly \$3 billion London trial on Monday.

The administrators of NMC – a FTSE 100 company when it collapsed in 2020 after disclosing more than \$4 billion in hidden debt – are suing over audits from 2012 to 2018, when EY gave an unqualified opinion that NMC's accounts were accurate. Make sense of the latest ESG trends affecting companies and governments with the Reuters Sustainable Switch newsletter. Sign up here.

The company's administrators Alvarez & Marsal say EY, one of the world's "Big Four" auditors and formerly known as Ernst & Young, was negligent in failing to get proper access to NMC's books, missing billions in unreported borrowing.

EY, however, denies the negligence allegation and argues that it was NMC's own senior personnel who perpetrated the fraud and manipulated its accounts, hiding the fraud from EY.

The 12-week trial at the High Court which began on Monday is the latest lawsuit brought against a major auditor and comes after recent criticism of EY specifically over work for travel firm Thomas Cook and German payments company Wirecard.

Advertisement · Scroll to continue

NMC Health PLC listed in London in 2012 and joined the FTSE 100 in 2017, before short-seller Muddy Waters questioned its financials in December 2019 sending NMC's shares tumbling by almost a third in a day.

NMC's administrators were seeking up to 2.7 billion pounds from EY in damages for losses, largely relating to undisclosed guarantees, but court filings for the trial put the figure at around 2 billion pounds plus interest.

Their lawyer Simon Salzedo said EY's audits over seven years were among the "most fundamentally flawed examples of big-firm auditing that have disgraced a courtroom in this jurisdiction".

Salzedo accepted that auditors giving a wrong opinion did not amount to negligence, but said: "Two wrong opinions looks very much like carelessness and to give seven in a row is rather harder to explain away."

But EY's lawyers argued in court filings the auditing firm was "itself a principal target and victim of the fraud" committed by NMC staff for the benefit of its principal shareholders.

NMC's case was based on expecting an auditor "to do the impossible by uncovering a pervasive and collusive fraud being practised and covered up in effect by the directors and management", EY's lawyers said.

NMC has separately brought litigation against its founder BR Shetty, who denies any wrongdoing, and others in London, the UAE and the United States.

Our Standards: The Thomson Reuters Trust Principles., opens new tab

## Securities Law

### Retail Brokers Sidestep Market-Making Giants With Private Rooms

May 20, 2025, 5:05AM PDT

In the cut-throat world of US stock trading, some smaller players have devised a tactic to sidestep the giant high-speed market makers who have come to dominate the business of buying and selling shares.

A handful of upstart brokers are taking retail orders – equity trades placed by individual investors – into special off-exchange venues known as [private rooms](#).

These gated arenas are set up within dark pools, trading platforms [originally designed](#) specifically for only the biggest institutional business. But private rooms are luring in more modest activity from firms keen to pick and choose who they deal with in order to control their trading experience.

While it's a small slice of the market for now, it's a big contrast to the so-called wholesale model that dominates the industry, where retail orders are [routed direct](#) to the likes of Citadel Securities or Virtu Financial to be filled from their balance sheets. Citadel Securities has already [flagged concerns](#) about the growth of the new venues to US regulators.

But some brokers say private rooms offer a path to tap new liquidity beyond these big wholesalers – and often better pricing along the way.

"The aggregate execution quality for our portfolio of orders is often far better than what it had been in recent history when relying on a wholesaler model," **John Krudop**, retail trader at Wells Fargo Securities, told a Bloomberg market structure event last year.

#### Retail Rerouted

The emerging popularity of private rooms is part of a broader migration of US trading away from public venues. [More than half](#) of activity in the world's largest equity market now regularly occurs off-exchange, spurring worries about transparency and fragmentation.

Rooms remain a small part of overall activity in alternative trading systems, or ATS (the formal term for dark pools), but adoption by retail brokers has been a key driver of growth over the past 18 months. Demand is also rising from liquidity providers keen to interact with retail orders.

[Read more: Wall Street's 'Private Rooms' Are Making Dark Pools Even Darker](#)

Trading by individual investors surged during the pandemic and [accounted for 20.5%](#) of US equity volume in the first quarter of this year, according to data compiled by Bloomberg Intelligence. That activity is attractive to many counterparties because it tends to be less volatile than large institutional business, and a firm is less likely to see unfavorable price moves immediately after agreeing to fill an order.



But under the wholesale model, giants like Citadel Securities and Virtu have [hoovered up](#) much of the retail business thanks to their technology and speed, which frequently means they can offer superior pricing.

Not having the ability to give institutional clients access to retail orders is “a significant market structure issue” for bank brokers like Evercore ISI, according to **Brian Suth**, the firm’s head of electronic trading. So a year and a half ago it set up specific private rooms with retail brokers at the dark pools OneChronos and IntelligentCross.

“We’re now offering unique access to retail,” said Suth. Private rooms aren’t the only or most-popular way to route a trade, but the more retail brokers sign up “the more meaningful that marketplace becomes,” he said.

#### Gathering Momentum

Wells Fargo was among the first retail brokers to utilize a private room for its retail arm at the end of 2023, mirroring a shift the firm had already made with its institutional business. Instead of going direct to wholesalers, orders are sent to dark pools such as IntelligentCross, where Wells Fargo runs private rooms.

Filings show Wells Fargo Securities sent 80% of market orders to IntelligentCross in March, up from 69% in January and 53% a year earlier. While it’s impossible to see whether the orders go to the broader ATS or a private room, the data indicates a reduced reliance on wholesalers. For instance, Citadel Securities received 2.5% of Wells Fargo held orders in March, down from 11% a year earlier.

A representative for Wells Fargo declined to comment.

Following Wells Fargo's lead, other retail brokers like Raymond James have set up private rooms within dark pools. Some, like Interactive Brokers and Stifel, operate their own ATS, where firms interacting on the venue know that what they are filling is a retail order.

Typically a retail broker going to an ATS will look to fill orders both in the main dark pool (which is open to all, and where it won't know who it's dealing with) and in the private rooms that it has set up and invited others to join. It can also send orders to exchanges and single-dealer platforms before finally, if they haven't been filled, resorting to a wholesaler.

The key advantage of a private room is a firm knows exactly who its counterparty is, which allows it to control the quality of the trade, according to **Mehmet Kinak**, global head of equity trading at asset manager T. Rowe Price.

"If the other party doesn't provide good or better liquidity, you don't go back to them," said Kinak.

### Disruptive Strategy

In a private room, firms like Evercore or T. Rowe will sit with an expressed order to buy or sell a stock at a certain price. If that matches an order that comes into the room, the trade is executed with both parties immediately aware of their counterparty. If there's no match, the order remains invisible.

London-based market maker XTX Markets participates in multiple hosted rooms on the dark pools IntelligentCross, Level and OneChronos. Some operate like a single-dealer platform where orders are sent directly to the firm, and in others it is one of multiple liquidity providers available to a broker.

"We had a potential counterparty who said, 'Are you already connected here? Why don't we set up a room?' And we went from there," said **Eric Swanson**, CEO of Americas for XTX. The firm has seen a "wide variety of interest from retail brokers" looking to interact either with one or multiple liquidity providers like XTX, he said.

Swanson stressed that the use of private rooms is not about XTX versus the wholesalers, who are free to participate in the rooms if they wish. (XTX itself also operates a single-dealer platform where it can offer bilateral liquidity outside of private rooms.) Instead, it's about challenging the dominant trading model.

"This is a strategy to be disruptive and produce better outcomes for investors," he said.

### Raising Concerns

A private room can be constructed so trades are executed at the midpoint between bid and ask prices – an optimal arrangement for retail brokers looking to give their clients the best execution.

The downside is an order will only be fully filled in the private room if it matches what a firm like T. Rowe has indicated it is willing to fill, Kinak says. In contrast, a wholesaler is obligated to fill a whole order and can make a market in any name.

Private rooms are therefore not necessarily the right venue for every order. Less than 3% of T. Rowe's overall trading activity currently happens in private rooms, some of which are constructed for retail orders, Kinak said. About 6.8% of trading activity on IntelligentCross happened in private rooms in the first quarter, according to recently released data on the firm's website.

Meanwhile, the bigger market makers aren't participating in private rooms because their own infrastructure lets them connect directly with any client.

"We don't feel the need to use private rooms for retail execution," said **Joe Mecane**, head of execution services at Citadel Securities. "Our existing interactions and models do a better job of delivering value to retail brokers and their end clients."

That's why private-room activity remains just a very small part of the retail market, Mecane said.

Nonetheless, in late April Citadel Securities wrote to the US Securities and Exchange Commission to raise concerns about the growth of the venues, citing issues of transparency and oversight.

[Read more: Citadel Securities Warns SEC of Private Rooms, 24-Hour Trading](#)

"We are flagging early that this development seems to be avoiding the disclosure regime," Mecane said. "If it is circumventing existing rules, then they should review whether the activity is something that should be restructured, or the disclosure regime should get enhanced significantly."

An SEC spokesperson declined to comment.

(An AI summary previously at the top of the story was removed for overstating the realized benefits.)

--With assistance from **Nicola M White**.

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**Ann M. Lipton**

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at some point, an enterprising finance bro is going to realize there's a market for products that enable Americans saving for retirement to diversify the fuck away from the US economic system

May 20, 2025 at 7:36 AM 🌐 Everybody can reply

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2



1



11



Write your reply



**Matt Kelly** @radicalcompliance.bsky.social · 3h

And from crypto



**Topher Brennan (he/they)** @topherbrennan.bsky.social · 3h

There are already mutual funds / ETFs that do this, e.g. VXUS and BNDX.



1



**Ann M. Lipton** @annmlipton.bsky.social · 3h

believe me i am very aware. not enough



1



**Topher Brennan (he/they)** @topherbrennan.bsky.social · 3h

Okay, now I'm curious—what are you envisioning?



1



**Ann M. Lipton** @annmlipton.bsky.social · 3h

i want to get away from dependence on US regulatory systems. also dollar-denominations. foreign bank accounts, available without physically traveling to canada, that kind of thing



2



1



**Ann M. Lipton** @annmlipton.bsky.social · 3h

also maybe a bond fund that's exclusively non US sovereign debt



1



1



**Topher Brennan (he/they)** @topherbrennan.bsky.social · 3h

Yeah—the thing about most foreign bond funds is they're all currency-hedged, I've definitely wished for one that wasn't.



1





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# MicroStrategy Faces Investor Suit Over Bitcoin Strategy

By **Sydney Price**

Law360 (May 19, 2025, 7:16 PM EDT) -- Analytics software company MicroStrategy was hit with a proposed shareholder class action alleging that it downplayed the risk of major financial losses that would follow an update to its crypto accounting methodology.

According to the suit filed by shareholder Anas Hamza, MicroStrategy, which does business as Strategy, began referring to itself as a "bitcoin treasury company" nearly two years ago to reflect its increasing focus on purchasing and holding bitcoin.

After adopting the Financial Accounting Standards Board's updated accounting standards in January, which changed the way Strategy was required to account for its bitcoin, Strategy's shares fell nearly 9% when the company announced in April a nearly \$6 billion loss on its digital assets for the first quarter of 2025, the suit said.

According to the complaint, the updated FASB accounting standards known as ASU 2023-08 called for Strategy to provide more accurate assessments of the fair value of crypto assets.

"ASU 2023-08 requires publicly traded companies to measure their crypto assets at fair value in their financial statements, with gains and losses from changes in the fair value of those assets recognized in net income in each reporting period," the suit said.

Strategy confirmed earlier this month that it had recorded an unrealized fair value loss on digital assets of approximately \$5.9 billion during the first quarter of the year, which it attributed to applying the fair value accounting methodology to its bitcoin assets following bitcoin's "steep depreciation in value" during the period, according to the suit.

In addition to Strategy, its CEO Phong Le, Executive Chairman Michael J. Saylor and Chief Financial Officer Andrew Kang are individual defendants in the suit.

The suit's proposed class period begins April 30, 2024, the day after Strategy released its first quarter 2024 financial results. The suit said that for several months, Strategy continued to downplay the risks of bitcoin volatility and the potential negative effect of changing the way it accounted for its bitcoin.

For example, the defendants told investors in February that adopting the new accounting strategy would transform its financial results, "bringing more transparency to the value generation and profitability" of its treasury operations, the suit said.

But the truth emerged, the suit said, on April 7 when Strategy announced it had recognized a \$5.91 billion unrealized loss on its digital assets for the first quarter of 2025, which it expected to result in a net loss for the quarter. The company also warned investors that it may not be able to regain profitability in future periods.

On that news, shares of Strategy fell \$25.47 each, or about 9%, to close at \$268.14 per share on April 7, 2025, the suit said.

A few weeks later, on May 1, Strategy announced its official financial results for the first quarter of the year, which affirmed the \$5.91 billion loss, the suit said.

The suit accuses Strategy and the individual defendants of acting with scienter, or actual knowledge of wrongdoing or reckless disregard, and violating the Exchange Act.

Representatives for the parties did not immediately respond to requests for comment Monday.

Hamza is represented by Steven J. Toll, Daniel S. Sommers and S. Douglas Bunch of Cohen Milstein Sellers & Toll PLLC and Jeremy A. Lieberman and J. Alexander Hood II of Pomerantz LLC.

Counsel information for Strategy and the individual defendants was not immediately available Monday.

The case is Hamza v. MicroStrategy Inc. et al., case number 1:25-cv-00861, in the U.S. District Court for the Eastern District of Virginia.

--Editing by Stephen Berg.

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# Cepton Sued In Del. Over \$125M Koito Take-Private Deal

By **Jeff Montgomery**

Law360 (May 19, 2025, 10:00 PM EDT) -- A Cepton Inc. stockholder has launched a proposed class action challenging the light detection and ranging technology company's \$3.17-per-share, \$125.4 million take-private acquisition by Japan-based Koito Manufacturing Inc. in Delaware's Court of Chancery, alleging fiduciary breaches by the company's CEO, four directors and the deal's investment banker.

The complaint by stockholder James Ding says Koito invested \$200 million in Cepton and its advanced lidar driver assistance tech and other sensing and control technologies before closing the merger on Jan. 7. At the time, Koito — one of the world's largest producers of automotive lighting equipment — controlled 30% of Cepton's voting power and held two of seven board seats.

Ding's suit, filed under seal May 12 and amended under seal on Thursday, accuses Cepton's CEO and board of breaching their fiduciary duty in accepting unfairly low terms for the company. One discounted cash flow estimate pegged Cepton's value at \$7.42 per common share, with other estimates still higher, according to the complaint.

Among the disputed terms was inclusion of a liquidation preference in the per-share valuation that Ding says would otherwise have supported a valuation of \$6.86 per unit.

"Given Koito's substantial ownership of Cepton common stock (30.1% as of Sept. 1, 2024, including preferred stock convertible into common stock)," the complaint says, Koito "created a nearly insurmountable obstacle to Cepton considering competing bids."

Those named in the suit include Jun Pei, Cepton's CEO, board president and chairman; Jun Ye, director and deal special committee member; board member George Syllantavos; and board and special committee members Mei Wang and Xiaogan Zhang.

Also named as a corporate defendant is investment banker Craig-Hallum Capital Group LLC, which was a capital markets adviser to the special purpose acquisition company that took Cepton public in 2022, and later was special committee adviser for the merger.

Koito asked Cepton's board to form the special committee to negotiate an acquisition on Oct. 30, 2023, at the same \$3.17-per-share price approved more than a year later.

The suit alleges that Pei "would have desperately wanted to avoid the risk that Koito might walk away because, from Pei's standpoint, even a deal at a suboptimal price" was better than none at all.

The complaint says "Ye, Syllantavos, Wang and Zhang each knew that the proxy was materially omissive and misleading" because of disclosure failures but does not say what those faults were.

Craig-Hallum, meanwhile, is accused of knowing that Cepton was worth \$7.42 per share based on a "proper" discounted cash flow analysis, but "fighting for a higher sales price might cause Koito to walk away, and then Craig-Hallum would not get paid any transaction fee at all," the suit says.

Cepton was taken public on Aug. 5, 2021, at a \$1.5 billion valuation by Growth Capital Acquisition Corp., a SPAC for which Syllantavos was co-CEO and chief financial officer. Craig-Hallum was capital markets adviser to Growth Capital in the deal. Cepton's price "steadily declined" afterward, falling to

\$2.53 per share on July 26, 2024, the suit says.

Among other issues, the suit says Cepton failed to disclose management projections issued in February 2024, which prevented public stockholders from weighing that month's outlook against one issued in June.

"The opportunity to make such a comparison would have been important to reasonable Cepton stockholders in connection with evaluating the fairness of the merger consideration," the complaint says, alleging that "Koito justified its refusal to increase its bid above \$3.17 per share based in part on the June" projection, implying a buyer concern about Cepton trends.

The valuation, according to the suit, improperly included a potential right for Koito to force a liquidation preference discount as part of its valuation given Cepton's status as a going concern, a difference that could have obscured the \$6.86 figure.

Craig-Hallum, the complaint also argues, "manipulated" a key input into value calculations, and used comparable public company estimations that generated "wildly disparate conclusions."

Cepton and Craig-Hallum did not immediately respond to a request for comment Monday.

Ding is represented by Blake A. Bennett of Cooch & Taylor PA, Juan E. Monteverde of Monteverde & Associates PC and Joshua E. Fruchter of Wohl & Fruchter LLP.

Counsel information for the defendants was not immediately available Monday.

The case is James Ding et al. v. Jun Pei et al., case number 2025-0519, in the Court of Chancery of the State of Delaware.

--Editing by Melissa Treolo.

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# Spirits Maker Haunted By Inventory Woes, Investor Suit Says

By **Katryna Perera**

Law360 (May 19, 2025, 6:44 PM EDT) -- The top brass of alcoholic beverage company MGP Ingredients Inc. has been hit with a shareholder derivative suit alleging they misled investors about how well the company was managing its inventory levels, only to reveal that excess inventory following the height of the COVID-19 pandemic was impacting the business.

MGPI shareholder Phillip Kruitwagen filed a **complaint** Thursday against MGPI interim CEO Brandon Gall, its two former CEOs, David Bratcher and David Colo, and several board members for alleged breach of fiduciary duties between May 4, 2023, and Oct. 30, 2024.

According to the complaint, MGPI manufactures, distills and sells alcoholic beverages such as bourbon, whiskey, tequila, gin and vodka that include Dos Primos Tequila and Penelope Bourbon. The company has distilleries and bottling operations in the United States, Mexico and Northern Ireland.

The complaint states that during the COVID-19 pandemic, there was a "considerable rise" in alcohol consumption in the United States, but by late 2022, the demand for liquor began to slow down, leading to an industrywide restocking, or the sale of excess inventory in spirits.

Kruitwagen claims that during the relevant period, the defendants made several false or misleading statements and falsely assured investors that MGPI was "ahead of the game," having sold or "cycled through" its inventory, and that the company's overstocking was smaller than others in the industry and that destocking was "not a core issue" because "MGPI had properly monitored and managed inventory levels."

Kruitwagen also points to a May 2023 press release issued by the company in which Colo, CEO of MGPI at the time, stated: "Demand for our products in each of our three segments remains strong and we believe our business continues to be well positioned."

However, the truth began to come to light in February 2024 when Brachter, then president and CEO of MGPI, disclosed during an earnings call with investors that "inventory destocking at a wholesale level will remain an issue for the branded spirits industry in 2024."

"Bratcher attempted to assure investors that the company 'work[ed] closely with our distributors throughout 2023' and 'made significant progress in managing wholesaler inventory for our portfolio,'" the complaint states. "Bratcher further asserted that '[h]ealthy demand for our products continue[s] and we believe our business remains well-positioned.'"

On this news, Kruitwagen says, MGPI's stock price fell by \$13.65 per share, or nearly 15%, from \$91.83 on Feb. 21, 2024, to \$78.18 on Feb. 22, 2024.

A second alleged disclosure occurred Oct. 17, 2024, when MGPI admitted that low demand and high inventories were undermining sales, according to the complaint. Kruitwagen says that on this news, the company's stock price dropped again, this time by \$24.07 per share, or nearly 30%, from \$81.57 on Oct. 17, 2024, to \$57.50 on Oct. 22, 2024.

The suit says a third and final disclosure occurred Oct. 31, 2024, when the company revealed that the excess inventories would have an "even greater impact" on sales in 2025 than previously stated and that due to the "softening American whiskey category trends and elevated industry-wide barrel

inventories," MGPI had to "further lower our net aging whiskey put away, scale down our whiskey production, and optimize our cost structure to mitigate lower production volumes."

Kruitwagen says that during a corresponding earnings call, Bratcher conceded that "slower growth and higher inventories are leading to lower demand, lower prices and reduced visibility on our contract distilling sales."

"Defendant Gall, then-chief financial officer of the company, added that MGPI was 'significantly reducing our brown goods production to better align with demand in 2025. At the same time, softer American whiskey growth and elevated barrel inventories continue to constrain demand for aged whiskey and increasingly our new distillate,'" the complaint states.

On this news, MGPI's stock price fell by \$8.27 per share, or 14.7%, according to the complaint, from \$56.31 on Oct. 30, 2024, to \$49.04 on Oct. 31, 2024. On Monday, MGPI's stock was trading around \$32.

Kruitwagen further contends that during the relevant period, the defendants harmed MGPI by causing it to reinitiate repurchases of its common stock.

"In total, the company spent approximately \$10 million to repurchase approximately 128,360 shares of its own common stock at artificially inflated prices from March 2024 through July 2024. This was an overpayment of about \$3.7 million," the complaint states.

The suit seeks damages, attorney fees, a jury trial, and improvements and reforms to MGPI's corporate governance and internal procedures.

Representatives for the parties did not immediately respond to requests for comment Monday.

Kruitwagen is represented by Brent LaPointe and Phillip Kim of The Rosen Law Firm PA.

Counsel information for the defendants was not immediately available.

The case is Kruitwagen v. Bratcher et al., case number 2:25-cv-02262, in the U.S. District Court for the District of Kansas.

--Editing by Kristen Becker.



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## Binance Argues All Class Members Must Arbitrate Claims

By **Elaine Briseño**

Law360 (May 19, 2025, 6:43 PM EDT) -- Crypto exchange Binance has urged a New York federal judge to require arbitration for all plaintiffs in a proposed class action accusing the crypto exchange of improperly selling securities, saying its terms of use include a class action waiver.

U.S. District Judge Andrew L. Carter Jr. had already **ruled March 28** that the company could not compel arbitration for a group of plaintiffs who had purchased tokens between April 1, 2017, and Feb. 20, 2019, the day its amended terms of use were put in place. The judge also denied without prejudice the motion to compel arbitration with respect to a second group of plaintiffs whose claims accrued after that February 2019 date, but before they had actual notice of the arbitration clause. However, he vacated his decision April 16 so the parties could file supplemental briefing materials on the March 28 order.

In his reasoning relating to this second group, the judge said he needed more information before he could decide. On Friday, Binance made another bid for the court to compel all members of the proposed class into arbitration, including for claims the court's prior order said cannot be arbitrated.

"First, when plaintiffs accepted the 2019 terms of use, they expressly agreed, at minimum, to arbitrate all claims arising on or after Feb. 20, 2019 — the effective date of the 2019 terms," according to Friday's filing supporting the motion to compel. "Courts routinely hold that plaintiffs who accept an arbitration clause are required to arbitrate disputes accruing before the date of notice."

The March 28 order examined whether the 2019 terms of use are applicable to claims accrued prior to the dates that the plaintiffs had actual notice of the clause and the viability of the class action waiver included in the 2019 terms. Judge Carter said in his April order that he will issue a new opinion and order taking into consideration his prior decision and the issues raised in the current briefs.

The amended terms added language stating that any disputes would be arbitrated under the rules of the Singapore International Arbitration Centre. Binance Holdings Ltd. owns and operates the offshore digital-asset exchange Binance.com. The lawsuit also names Binance founder Changpen Zhao, who **pled guilty** to a criminal charge of failing to maintain an effective anti-money laundering program. Zhao and Binance also made \$150 million and \$2.7 billion settlements with the Commodity Futures Trading Commission.

The plaintiffs are digital-asset traders located in California, Nevada and Texas.

Binance has asked the courts to, at the very least, require plaintiffs to arbitrate claims that accrued after Feb. 20, 2019, and to find that the class action waiver in the 2019 terms is enforceable for all the lawsuit's claims.

The parties did not immediately respond to a request for comment Monday.

The investors are represented by Jordan Goldstein and Corey Stoughton of Selendy Gay PLLC.

Binance is represented by Samson A. Enzer, Herbert S. Washer, Landis C. Best, Edward N. Moss and Miles C. Wiley of Cahill Gordon & Reindel LLP and Matt Gregory of Gibson Dunn & Crutcher LLP.

Zhao is represented by Christopher Kercher, Jianjian Ye, Arman Cuneo, Avi Perry and Emily Kapur of Quinn Emanuel Urquhart & Sullivan LLP.

The case is Lee et al. v. Binance et al., case number 1:20-cv-02803 in the U.S. District Court for the Southern District of New York.

--Additional reporting by Caroline Simson. Editing by Kelly Duncan.

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## Carrier's Kidde-Fenwal Ch. 11 Deal Barred By Purdue, AGs Say

By **Lauren Berg**

Law360 (May 19, 2025, 10:38 PM EDT) -- Connecticut and other states Monday objected to Carrier Global Corp.'s proposed \$540 million deal releasing it from "forever chemicals" litigation liability through its ownership of bankrupt firefighting foam manufacturer Kidde-Fenwal Inc., saying the U.S. Supreme Court shot down a similar deal in drugmaker Purdue Pharma LP's bankruptcy case.

The states argue in their **objection** that the proposed deal, which was **initially revealed** in an October U.S. Securities and Exchange Commission filing, is an attempt to unlawfully release the parent company of Kidde-Fenwal — now known as KFI Wind-Down Corp. — from liability for chemical contamination from aqueous film-forming foam, which is used to put out fires.

Connecticut, along with California, Colorado, Delaware, New York and the District of Columbia, asked the Delaware federal bankruptcy court to reject KFI's disclosure statement, saying it misleads creditors about the scope and value of the liquidation plan, including a failure to disclose its intention to release Carrier from billions of dollars of liabilities stemming from the firefighting foam.

"The debtor intends to accomplish its objective by unlawful means: the proposed plan will compel nonconsensual third-party releases disguised as a settlement of claims that are property of the estate," the states said. "It does not matter that the Plan calls them estate releases instead of third-party releases; what it does is take away creditors' claims for their own injuries."

The U.S. Supreme Court's **decision last year** in **Harrington v. Purdue Pharma LP** "forecloses Carrier's grift," the states added. The justices shot down the validity of nonconsensual third-party releases, which can extinguish a creditor's claim against a person or entity other than the one that filed for bankruptcy, without that creditor's permission.

In the **case of Purdue**, the members of the Sackler family who own the company agreed to contribute up to \$6 billion to the estate in exchange for a release of claims tied to its potential liability for the opioid crisis.

But the Office of the U.S. Trustee opposed the releases, arguing that they are not an "appropriate" provision because they give what amounts to a discharge of liability for the Sacklers without requiring them to submit to the authority of the bankruptcy courts.

Kidde-Fenwal **filed for bankruptcy** in May 2023 because of the thousands of lawsuits it faces from firefighters, water suppliers, governmental entities and others over its firefighting foam product.

Claimants assert that the product contains per- and polyfluoroalkyl substances, or PFAS, that are dangerous to public health and the environment. The company was facing more than \$1 billion in claims when it entered Chapter 11.

In its SEC filing in October, Carrier explained it will enter three distinct settlement agreements: one with KFI, a second with the official committee of unsecured creditors appointed in KFI's bankruptcy case, and a third with the co-leads of the plaintiffs' executive committee appointed in the **firefighting foam multidistrict litigation** in South Carolina federal court.

In their objection Monday, the states argue that the Purdue decision prohibits the KFI plan's releases for Carrier and other affiliated nondebtors.

"Non-debtor Carrier, much like the Sackler family in Purdue, is trying to use another's bankruptcy to buy a release for less than it would have to pay on its own," the states said. "What it seeks is unlawful, and this court should not approve the disclosure statement until Carrier and the debtor have submitted a plan that complies with the Bankruptcy Code."

Though Carrier initially stated it had set aside at least \$615 million, the states say the proposed plan would have Carrier shell out \$540 million to creditors over five years, and that any recovery on KFI's insurance policies after litigation would be split between Carrier and its creditors, up to \$3.5 billion, with any remaining recovery going to creditors.

In return, KFI would grant Carrier a release seeking to eliminate all firefighting foam-related claims against the parent company, the states said.

The states want the bankruptcy court to hold off on approving the plan's disclosure statement, which would send the plan to creditors for a vote, until Carrier and KFI submit a plan that does not run afoul of bankruptcy law.

"Whether you are a family of billionaires or a multinational corporation worth billions of dollars, you cannot hide from liability behind someone else's bankruptcy," Connecticut Attorney General William Tong said in a statement Monday. "We fought this in the Purdue bankruptcy and this question went all the way up to the Supreme Court. This is settled law."

"PFAS chemicals are a toxic menace to human health and our environment, and the cost to remediate this public health and environmental catastrophe will be massive," Tong added. "We will not allow Carrier to abuse the bankruptcy process to evade liability."

Counsel for the committee of unsecured creditors declined to comment.

Attorneys for Carrier and KFI did not immediately respond to requests for comment Monday evening.

The states are represented by their respective attorneys general.

Carrier is represented by Paul M. Basta, Kenneth S. Ziman and Robert A. Britton of Paul Weiss Rifkind Wharton & Garrison LLP.

The official committee of unsecured creditors is represented by David J. Molton, Cathrine M. Castaldi and Eric R. Goodman of Brown Rudnick LLP, and Sander L. Esserman of Stutzman Bromberg Esserman & Plifka PC.

KFI is represented by Andy Dietderich, Brian D. Glueckstein, Justin J. DeCamp and Benjamin S. Beller of Sullivan & Cromwell LLP, and Derek C. Abbott and Andrew R. Remming of Morris Nichols Arsht & Tunnell LLP.

The case is In re: KFI Wind-Down Corp., case number 1:23-bk-10638, in the U.S. Bankruptcy Court for the District of Delaware.

--Additional reporting by Vince Sullivan and Emily Lever. Editing by Linda Voorhis.

## Vanguard \$40M Deal Rejected In Investors' Tax Fight

By Anna Scott Farrell

Law360 (May 19, 2025, 10:48 PM EDT) -- A Pennsylvania federal judge on Monday rejected a \$40 million proposed settlement between Vanguard and investors, blocking the investors' attorneys from netting \$13 million in fees and embracing the objections of one investor who called out the deal — meant to compensate for surprise tax bills — as worthless.



A Pennsylvania federal judge said a \$40 million proposed settlement with Vanguard would leave a class of investors worse off than a subsequent SEC deal because they would have to share \$13 million of the proceeds with their attorneys. (Kristoffer Tripplaar/Sipa USA via AP Images)

U.S. District Judge John F. Murphy said the proposed class settlement **was not "fair, reasonable, and adequate"** as required by law because the investors would get the full \$40 million, without having to share the pot with their attorneys, under a parallel regulatory ruling by the U.S. Securities and Exchange Commission.

"If a class is guaranteed to get more money if we reject a proposed settlement than approve it, are we obliged to reject it?" Judge Murphy said in the ruling, narrating what he called "a strange situation."

"Our answer is yes," the judge said.

The investors filed a putative class action against Vanguard in 2022, saying it breached its fiduciary duty and failed to protect its smaller investors in an attempt to lower fees. Investors in what are known as set-it-and-forget-it funds were forced to sell off as much as 15% of their assets, leaving those with taxable

accounts holding the bag, they said.

Vanguard agreed to settle the suit in September after mediation, and the investors said they considered the \$40 million, a roughly 15% recovery of their claimed losses, "an excellent result."

Judge Murphy gave his initial **approval** in November. But then, in January, the SEC announced its own deal requiring Vanguard to pay \$135 million to settle the same sorts of claims made by class members regarding the asset sell-off, which stuck investors with unexpected capital gains tax.

The SEC deal — which resulted from a multistate coalition led by Connecticut, New Jersey and New York — included a provision that Vanguard make good on its pending \$40 million for the class members in Judge Murphy's court, whose separate deal, at that time, was all but done.

Following the SEC announcement, investor John Hughes, who is an attorney at Milbank LLP and works on class action lawsuits, wrote to the court in his personal capacity as an investor, saying the proposed class deal epitomized "class action abuse" and actually stripped value from the class. The SEC deal guaranteed the investors the money regardless of the proposed class settlement, and they wouldn't have to share some of the \$40 million with their attorneys, Hughes argued.

His objections prompted Judge Murphy in March **to question** whether the attorneys representing the investors had a conflict of interest in pushing for the proposed class settlement. He echoed those concerns in his ruling Monday, noting that the court learned of the SEC deal through Hughes, not from Vanguard or the named plaintiffs. The plaintiffs' attorneys said they didn't know about the SEC deal when the proposed class deal was struck during mediation, but acknowledged that Vanguard would have known about it, according to the ruling.

The judge said he was still concerned about "the lack of proactive disclosure from class counsel regarding the impact of the SEC settlement."

"But in the end, it is moot," the judge said. Ultimately, he concluded, any conflict of interest is eliminated by the rejection of the proposed class settlement.

The named class members in the case argued that because the SEC settlement came out months after the class's mediation agreement, it was only "a backstop" guaranteeing payment if the class settlement with Vanguard fell through. They also claimed that the class members would have to wait longer for a payout from the SEC.

Judge Murphy found the SEC settlement's guarantee of the \$40 million "is unambiguously invoked if we reject the proposed settlement."

In seeking approval of the proposed class deal, Vanguard had asked the court to read into the terms of the SEC settlement, the judge said. Under Vanguard's reading, the \$40 million payment from the SEC would only be triggered if the Pennsylvania federal court rejected the deal "on its own terms."

Judge Murphy described the SEC's settlement language as "clear" and said the court "will not modify it through purported contract interpretation so that Vanguard may escape the consequences of its agreement."

He also rejected Vanguard's public policy argument that rejecting the proposed settlement would undermine regulatory dealmaking between companies and government regulators, saying Vanguard could have proposed that regulators added language limiting guarantee provisions.

According to the ruling, the class members would only receive about \$25.4 million if Judge Murphy agreed to approve the deal. That includes reductions for the \$13 million in attorney fees, plus \$985,000 in litigation expenses and \$240,000 for the named plaintiffs.

Hughes declined to comment.

Attorneys for Vanguard and the plaintiffs did not immediately respond to requests for comment.

The plaintiff investors are represented by Gregory Dovel, Julien Adams, Jonas B. Jacobson, Christin Cho and Simon Carlo Franzini of Dovel & Luner LLP, Joshua Baker, Phillip Kim, Jonathan Stern, Erica L. Stone and Jacob A. Goldberg of The Rosen Law Firm PA, Kenneth J. Grunfeld of Kopelowitz Ostrow Ferguson

Weiselberg Gilbert, Mark C. Rifkin and Matthew M. Guiney of Wolf Haldenstein Adler Freeman & Herz LLP, Richard M. Golomb and Kevin W. Fay of Golomb Legal, W. Daniel Miles III and James B. Eubank of Beasley Allen Law Firm, and Timothy Brown of The Brown Law Firm PC.

Vanguard and its officers are represented by Brandon Fetzer, Elliot Greenfield and Maeve O'Connor of Debevoise & Plimpton LLP, and Samuel W. Silver of Welsh & Recker PC.

The independent trustees managing the funds are represented by Andrew J. Ehrlich and Daniel J. Kramer of Paul Weiss Rifkind Wharton & Garrison LLP, and Francis P. Devine III and Michael E. Baughman of Troutman Pepper Locke LLP.

The case is In re: Vanguard Chester Funds Litigation, case number 2:22-cv-00955, in the U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Bruce Goldman.



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# Insurer Drops Fight Over \$9M OpenText Merger Settlement

By **Danielle Ferguson**

Law360 (May 19, 2025, 7:31 PM EDT) -- Allied World National Assurance Company on Monday ended its lawsuit seeking a declaration that it wasn't obligated to contribute to a \$9 million settlement in a shareholder class action stemming from Covisint Corp.'s merger with OpenText.

Allied World voluntarily dismissed its **April complaint** in which it had said its first-layer excess policy issued to Covisint did not include indemnity coverage for the underlying shareholder action brought against the company's former directors and officers over a 2017 merger with software company OpenText.

Allied World alleged that third-level excess insurer Berkley Insurance Company agreed to fund the settlement but later demanded Allied World pay for a portion of the deal.

The defendants in the case had not yet filed a response or made counsel appearances as of Monday.

Attorneys for Allied World and a representative for Berkley did not immediately respond to requests for comment.

Allied World had argued its policy contained an exclusion barring coverage for any amount paid to resolve shareholder actions alleging compensation they received as part of a merger or acquisition was unfair or inadequate. As such, the insurer said the \$9 million settlement was not a covered loss.

Covisint shareholders filed the class action against certain former Covisint directors and officers in Michigan state court in June 2017. The most recent amended complaint included a claim for breach of fiduciary duties in connection with OpenText's acquisition of Covisint stock.

The shareholders alleged the merger agreement was unfair and deprived them of their investment in Covisint and that senior management steered the company toward an inadequate deal with OpenText because it was in their self-interest.

A Michigan state judge granted final approval of the \$9 million class action settlement in October 2024. The class was **certified** in October 2023.

Allied World had **attempted to join a suit** from Wesco Insurance Co. seeking a declaration it had no duty to indemnify the shareholder class action. U.S. District Judge Linda V. Parker **held in March** the dispute was moot because the insurer's coverage limit was already exhausted.

According to the Allied World suit, Wesco paid the former directors' and officers' defense expenses in the class action. Allied World, as an excess insurer, said it paid the remaining defense expenses under the same insurance agreement. Allied World then said Berkley Insurance agreed to fund the settlement but later demanded Allied World pay for part of it, which Allied World refused to do.

Allied World is represented by Andrew J. Kolozsvary and Brent H. Olson of Dykema Gossett PLLC.

Counsel information for the defendants was not immediately available.

The case is Allied World National Assurance Co. v. Berkley Insurance Co. et al., case number 2:25-cv-10932, in the U.S. District Court for the Eastern District of Michigan.



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# NCAA Defends Latest NIL Deal Revisions In Bid For Approval

By **David Steele**

Law360 (May 19, 2025, 4:57 PM EDT) -- Contrary to claims by some athletes that they will be harmed by roster limitations in a proposed \$2.78 billion name, image and likeness settlement, the NCAA has told a California federal judge the latest changes will ensure "beyond a doubt" those athletes are treated fairly.

U.S. District Court Judge Claudia Wilken will now consider responses to the objecting athletes submitted on Friday by the National Collegiate Athletic Association and on Thursday by a class of athletes in deciding whether to grant final approval to the settlement.

The responses by the two sides defended the settlement's roster limit provisions against objectors who **argued** in filings last week that the latest revisions still give schools the option to drop them from teams in order to comply with the settlement's terms.

Assurances in a May 7 **revision** that schools would be allowed to "designate" spots on rosters for athletes whose places would otherwise be jeopardized — thus allowing roster limits to be exceeded — satisfy Judge Wilken's demand that all members of the settlement's injunctive class not be harmed, the NCAA said in its reply.

"[T]he class members identified by the court are in the same position as prior to the settlement's announcement ... they can be on a roster without being subject to roster limits for the entirety of their eligibility period," the reply said.

"Because the parties have now ensured, beyond a doubt, that the settlement treats all class members 'equitably relative to each other,'" the NCAA continued, "there is no obstacle to final approval."

The athlete class said in their reply that by claiming the revisions do not go far enough to ensure restoration of their promised roster spots, the objectors "seek to dictate schools' roster decisions in a manner that has never existed in college sports and is completely untethered to any antitrust claims or viable antitrust injunctive relief."

The objectors — three groups of athletes who testified at the April 7 final approval hearing and were allowed to respond to the NCAA's revisions last week — have argued that exchanging scholarship limits for roster limits, ostensibly to give athletes opportunities for full scholarships instead of partial grants, reduced the number of places for athletes on a team, as many schools preemptively retracted offers to recruits and cut athletes from teams.

They claimed in their responses that the plan to "grandfather" athletes onto their previous rosters was still too restrictive.

In demanding that the schools not make the roster spots optional, the athlete class said in their reply, the objectors "move the goal posts and seek something they never had and that was never available to them: a guaranteed roster spot."

The NCAA and the athletes refused to change the roster limits the first time Judge Wilken ordered a revision after the final approval hearing, prompting her to order the second revision on April 23, giving them two weeks to change the provision or risk having approval denied.

In its reply to the objectors, the NCAA said on Friday that it has "fully addressed the court's remaining concerns and that there are no legal obstacles standing in the way of this historic settlement."

The athletes are represented by Steve W. Berman, Emilee N. Sisco, Stephanie Verdoia, Meredith Simons and Benjamin J. Siegel of Hagens Berman Sobol Shapiro LLP, Jeffrey L. Kessler, David G. Feher, David L. Greenspan, Adam I. Dale, Neha Vyas and Jeanifer E. Parsigian of Winston & Strawn LLP, and Jeffrey L. Kodroff and Eugene A. Spector of Spector Roseman & Kodroff PC.

The NCAA is represented by Rakesh N. Kilaru, Beth A. Wilkinson, Kieran Gostin, Calanthe Arat and Matthew R. Skanchy of Wilkinson Stekloff LLP and Jacob K. Danziger of ArentFox Schiff LLP.

The case is In re: College Athlete NIL Litigation, case number 4:20-cv-03919, in the U.S. District Court for the Northern District of California.

--Editing by Philip Shea.

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# Uber Pushes To Move Sex Assault Cases To Related Districts

By **Y. Peter Kang**

Law360 (May 19, 2025, 9:58 PM EDT) -- Uber has asked a California federal judge to move various bellwether trials in multidistrict litigation accusing the rideshare company of failing to prevent drivers from sexually assaulting passengers to the federal districts where the alleged incidents occurred, citing the forum selection clause in its terms of use.

Uber Technologies Inc. on Friday asked U.S. District Judge Charles R. Breyer to send 13 of 20 bellwether cases to the various federal districts where the alleged sexual assaults occurred, saying its terms of use state all personal injury claims must be adjudicated "exclusively in the state or federal courts in the state in which the incident or accident occurred."

"Federal law does not allow plaintiffs to renege on the parties' forum-selection agreement. To the contrary, the 'strong federal policy in favor of enforcing forum-selection clauses' mandates transfer to the agreed-upon forums," the company **said in its motion**, citing case law. "No 'extraordinary circumstances' exist to warrant departure from that rule."

Specifically, plaintiffs in 16 of the 20 bellwether cases want to have their trials held in the MDL's district, the Northern District of California. But Uber said the majority of those cases belong in other states, including Texas, Illinois, Arizona, Pennsylvania and Georgia.

"Uber's terms of use — including the forum-selection clause — constitute a valid and enforceable contract, which each relevant plaintiff executed," the company said. "Accordingly, federal law presumptively requires transfer 'to the forum specified' in the terms' 'valid forum-selection clause.'"

An Uber spokesperson and counsel for the plaintiffs did not immediately respond to requests for comment on Monday.

Uber is currently facing a sprawling MDL **alleging** the company, despite knowing since 2014 that drivers for its ride-hailing app preyed on and sexually assaulted passengers, failed to adopt safety measures such as cameras and enhanced background checks.

The parties are nearing the end of fact discovery, and 20 cases are slated to serve as bellwether trials. An "initial wave" of six cases selected by the district court are scheduled to start later this year, according to court papers.

The plaintiffs are represented, among others, by Sarah R. London and Andrew Kaufman of Girard Sharp LLP, Rachel B. Abrams of Peiffer Wolf Carr Kane Conway & Wise LLP, Roopal P. Luhana and Steven D. Cohn of Chaffin Luhana LLP, Alexandra Walsh of Anapol Weiss, Sara M. Peters of Walkup Melodia Kelly & Schoenberger, and Samantha Hoefs of Nigh Goldenberg Raso & Vaughn PLLC.

Uber is represented by Laura Vartain, Allison M. Brown and Jessica Davidson of Kirkland & Ellis LLP, Sabrina H. Strong and Jonathan P. Schneller of O'Melveny & Myers LLP, and Patrick L. Oot Jr., Alycia A. Degen, Michael B. Shortnacy and Christopher V. Cotton of Shook Hardy & Bacon LLP.

The case is In re: Uber Technologies Inc. Passenger Sexual Assault Litigation, case number 3:23-md-03084, in the U.S. District Court for the Northern District of California.

--Additional reporting by Hailey Konnath and Rae Ann Varona. Editing by Lakshna Mehta.