

Securities

This Week in Chancery Court: Hyzon Motors and Ukrainian Tycoons

Sept. 29, 2025, 2:00 AM PDT

The Delaware Chancery Court this week will consider a proposed settlement in a long-running challenge to the 2021 merger between Hyzon Motors Inc. and a blank-check company—but an objector from a related federal lawsuit may derail the accord.

Here's a look at the court's calendar:

Monday: Shulman v. Kolomoisky, Del. Ch., No. 2019-0678, oral arguments 9/29/25.

At issue: Two Ukrainian tycoons seek to dismiss the third iteration of a lawsuit claiming they stole \$30 million from an investor, laundered hundreds of millions through an Ohio steel company, and stripped it for parts. The investor claims he only uncovered the full extent of the alleged fraud in 2019, when Ukraine's PrivatBank filed similar allegations of fraud and money laundering against its former controllers, Igor Kolomoisky and Gennadiy Bogolyubov. PrivatBank, now controlled by the Ukrainian government, claims it's a victim of the alleged fraud scheme. In July, a London court held Kolomoisky and Bogolyubov responsible for a fraud scheme that cost PrivatBank billions of dollars.

Court action: Oral arguments on motions to dismiss will be heard in Wilmington, Del.

Oligarchs Laundered Cash Through Ohio Steel Plant, Suit Says (1)

Friday: Malork v. Anderson, Del. Ch., No. 2022-0260, settlement hearing 10/3/25.

At issue: Whether Vice Chancellor Paul A. Fioravanti Jr. will approve a \$8.8 million settlement proposed to resolve a class action claiming leaders and backers of the blank-check company that merged with Hyzon overstated the hydrogen-fuel-cell vehicle maker's customer base and financial health. The investor's attorneys seek a legal fee award of \$1.76 million. Fioravanti dismissed Hyzon and former CEO Craig Knight as defendants in May, after the company declared bankruptcy. The lead plaintiff in a related federal class action objects to the proposed settlement, arguing the deal unfairly releases viable federal claims without providing adequate compensation.

Court action: A settlement hearing will be held in Wilmington, Del.

Hyzon Motors, SPAC Merger Complaint May Proceed, Judge Says

Friday: OptimisCorp v. Atkins, Del. Ch., No. 2020-0183, oral arguments 10/3/25.

At issue: Vice Chancellor Morgan T. Zurn will hear post-trial arguments over how much three ex-directors of OptimisCorp should return from damages won on the physical therapy company's behalf in arbitration proceedings against its former lawyer. The arbitration award totaled about \$8.7 million. Zurn had already found that the directors breached their fiduciary duties when they withheld millions in damages from the arbitration award, and the sole issue considered in an April 2024 trial was the amount that should be returned. OptimisCorp argues the ex-directors should pay damages of \$12.4 million, plus pre- and post-judgment interest and attorney's fees and costs, while the defendants say they owe, at most, nominal damages.

Court action: Oral arguments will be held in Wilmington, Del.

Therapy Chain Gets Win Against Ex-Directors Who Kept Legal Award

— *This report was prepared with assistance from Bloomberg Automation.*

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Securities

Facial Machine Maker's Investors Advance Suit Over 64% Selloff

Sept. 26, 2025, 3:03 PM PDT

Beauty Health Co. investors can proceed with securities fraud claims against the spa and beauty parlor supplier for misrepresenting the success of a device that was allegedly "plagued with flaws," a federal court ruled.

The investors adequately alleged false or misleading representations, the necessary level of intent, and a connection between the targeted statements and their losses, Judge Sherilyn Peace Garnett said in an order docketed Thursday in the US District Court for the Central District of California.

The plaintiffs alleged that in the period after the Syndeo high-end facial system's introduction, Beauty Health and two then-executives praised its "flawless" launch and said they were "thrilled" with customer feedback. The former executives are named as defendants in the suit. Beauty Health's eventual announcement that it was taking a restructuring charge over the product caused a 64% stock collapse, according to the suit.

The Syndeo machine suffered from cosmetic, software-related, and design problems through two models, the investors said. Beauty Health allegedly kept sending new machines to customers to maintain its revenue stream from consumables used with the device.

In November 2023, the company announced \$63 million in restructuring charges, the departure of its CEO, and its abandonment of two models of the facial machine, causing the stock to close at \$1.39 on Nov. 14, 2023, the investors said. The 64% drop was the largest in the stock's history, according to data compiled by Bloomberg.

The complaint "exhaustively identifies the timing and means through which Defendants allegedly acquired knowledge about specific defects with Syndeo," Garnett said.

"Based on their alleged knowledge of the state of Syndeo and the content of their statements," the facts in the complaint "give rise to a compelling inference that Defendants either intended to mislead investors or were deliberately reckless" about doing so, she said.

Hagens Berman Sobol Shapiro LLP is lead counsel for the investors. Reed Smith LLP represents Beauty Health.

The case is Alghazwi v. The Beauty Health Co. , C.D. Cal., No. 2:23-cv-09733, docketed 9/25/25 .

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Securities

Zillow Investor Class Survives Appeal in Suit Over Home-Flipping

Sept. 26, 2025, 10:59 AM PDT

Zillow Group Inc. lost its bid to undo a class of investors alleging the real estate website misrepresented its house-flipping business prospects.

The district court properly applied the relevant legal standard—price impact analysis—when determining Zillow didn't rebut the presumption of reliance established by the Supreme Court, the US Court of Appeals for the Ninth Circuit said Friday in an unpublished opinion.

Under a 2021 Supreme Court ruling, a defendant can rebut a presumption that a class of shareholders relied on the company's stock price by showing that the alleged misrepresentation didn't actually affect the market price of the stock, the court said.

Zillow failed to show a sufficient mismatch between statements about the business' pricing model and what spurred market selloffs at the end of the class period, the panel ruled.

The district court's finding that Zillow failed to rebut the presumption wasn't "illogical, implausible, or without support in the record," the panel said. Zillow's argument that it never revealed the use of manual overlays until after the end of the class period doesn't mean that the district court erred by holding the alleged misrepresentations were sufficiently related to the back-end disclosures.

The alleged misrepresentations suggest Zillow, while struggling to get its pricing model right, had made progress in strengthening its pricing models, but then it later closed the entire home-buying side of its business because it couldn't accurately predict future home prices, the panel said. The back-end disclosures revealed new information about how Zillow's home-buying struggles threatened the business and suggested that its earlier statements may have obscured how Zillow's pricing model misfired, the court said.

A ruling siding with Zillow may have mandated a stronger link between alleged misrepresentations and market selloffs, attorneys had said, potentially impacting securities litigation in a circuit where many of these proposed class actions are filed.

Zillow had argued that it had presented a sufficient mismatch, but the lower court didn't take its evidence into account. An attorney said siding with the investor class would create a split with the Second Circuit, which decided to dismantle a Goldman Sachs Group Inc. investor class after the 2021 Supreme Court ruling.

In certifying the Zillow class, the district court allowed the presumption that a shareholder class relied on its stock price under a 1988 Supreme Court decision. *Basic Inc. v. Levinson* lets courts presume stocks trading in an efficient market take in all public information, including pertinent misrepresentations, and that investors rely on the price's integrity.

Zillow failed to demonstrate alleged misrepresentations and later corrective disclosures didn't impact its stock price, Seattle US District Judge Thomas S. Zilly said then.

Skadden Arps Slate Meagher & Flom LLP and Perkins Coie LLP represent Zillow, co-founder and co-executive chairman Rich Barton, former chief financial officer Allen Parker, and CEO Jeremy Wacksman. Hagens Berman is class counsel and Kessler Topaz Meltzer & Check LLP is additional counsel for Jaeger.

The case is Jaeger v. Zillow Grp., Inc. , 9th Cir., No. 24-6605, unpublished 9/26/25 .

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Class Action

Manage Newsletters

Illumina, Grail Beat Investor Suit Over Doomed Acquisition (2)

Sept. 29, 2025, 6:22 AM PDT; Updated: Sept. 29, 2025, 10:07 AM PDT

Summary by Bloomberg AI

AI Generated



- Illumina Inc. and Grail Inc. defeated allegations they misled shareholders during the re-acquisition of Grail.
- Investors failed to sufficiently tie stock selloffs to revelations of alleged fraud for pleading loss causation, according to Judge Linda Lopez.
- The suit was dismissed, but shareholders are allowed to re-plead by Oct. 27, after the court found they failed to adequately plead loss causation for a securities fraud claim.

Illumina Inc. and spun-off Grail Inc. defeated allegations the biotechnology company misled shareholders during the re-acquisition of the latter cancer-detection company.

Investors leading the case failed to sufficiently tie stock selloffs to revelations of alleged fraud for pleading loss causation, Judge Linda Lopez said. The investors' theory would require them to trace losses after disclosures of disappointing financial news and shareholder and regulatory scrutiny back to what both companies and then-executives allegedly lied about, not have the US District Court for the Southern District of California "guesstimate the connections."

The management companies failed to adequately plead loss causation for a securities fraud claim against Illumina, Grail, and current and former leaders, the Sept. 26 order said, meaning allegations of perpetuating a scheme to deceive investors and "control person" liability against current and former executives also fell short. Lopez dismissed the suit but is letting the shareholders re-plead by Oct. 27.

Illumina, which makes gene sequencing platforms, spun off Grail in 2016 then said it would re-buy the company in 2020. Investors alleged that both companies and executives overhyped the deal's benefits, Grail's worth, and its investigational cancer test's abilities, inflating Illumina's stock price. Despite US and European antitrust regulators' pending oppositions, Illumina announced the \$7.1 billion takeover closed in 2021.

Investors alleged this announcement and other revelations about the deal weighed on share prices at the end of the proposed class period, which would include those who got Illumina stock from Sept. 21, 2020, through Nov. 9, 2023. Meanwhile, then-board members and executives of Illumina purportedly braced themselves against losses by taking out a massive insurance policy and performing insider stock sales.

"Illumina is pleased that the lawsuit was dismissed in its entirety," the company said in an emailed statement. "We continue to focus on accelerating our company strategy and meeting the needs of our customers."

Illumina last year completed its divestment of Grail after an appellate legal blow and cross-Atlantic antitrust scrutiny. Grail said last week that it would present new data from an investigational study of its multi-cancer-early-detection test, which has not yet been approved by the Food and Drug Administration.

This stockholder suit was one of multiple filed over the unwound deal.

Bernstein Litowitz Berger & Grossmann LLP represents the German investment management companies leading the case, Universal-Investment-Gesellschaft mbH, UI BVK Kapitalverwaltungsgesellschaft mbH, and ACATIS Investment Kapitalverwaltungsgesellschaft mbH. Latham & Watkins LLP represents Grail and current and former executives. Neither of these law firms nor Grail immediately responded to emails seeking comment. Cooley LLP represents Illumina and former executives.

The case is *In re Illumina, Inc. Sec. Litig.*, S.D. Cal., No. 3:23-cv-02082, 9/26/25.

(Updates with Illumina's comment in the sixth paragraph.)

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Class Action

Manage Newsletters

Standard Lithium Defeats Investor Suit Over Extraction Progress

Sept. 29, 2025, 9:52AM PDT

Summary by Bloomberg AI

AI Generated



- A federal court ruled that Standard Lithium Ltd. investors can't proceed with a proposed securities class action claiming the company misrepresented its progress in commercializing lithium extraction.
- The investors failed to show how Standard Lithium's statements that its technology was "novel" and "proprietary" misled the market, according to Judge Eric R. Komitee.
- The judge said the investors fell short in showing the challenged statements were false or misleading and failed to adequately allege the necessary level of intent for securities fraud.

Standard Lithium Ltd. investors can't proceed with a proposed securities class action claiming the company misrepresented its progress in commercializing lithium extraction for battery manufacturing, a federal court ruled.

The investors also failed to show how Standard Lithium's statements that its technology was "novel" and "proprietary" misled the market, Judge Eric R. Komitee said Sept. 28 for the US District Court for the Eastern District of New York.

The demand for the metal for lithium-ion battery production and other uses has driven the search for extraction technologies, including from brine produced in gas and oil drilling. The Smackover region in Texas, Arkansas, and other states is a focus of this development.

The suit alleged the Canadian company made several statements in 2020 about its extraction of lithium from salt water at its Smackover demonstration plant in Arkansas. Those included statements about "recovery efficiencies" up to 90%; successful "proof of concept;" commercial viability; and the process being novel, proprietary, and protected by a series of patent applications, the investors said.

A Blue Orca Research short-seller report allegedly undermined Standard Lithium's recovery-rate and proof-of-concept statements, causing the stock price to fall 19%, closing at closing at \$8.01 on Nov. 18, 2021. And a Hindenburg Research report challenged the patent and proof-of-concept claims, sending the stock down 27% to close at \$5.29 per share on Feb. 3, 2022, the investors said.

But the investors fell short in showing the challenged statements were false or misleading, Komitee said. For example, the "recovery efficiencies" comment "was a statement about the potential capabilities of the Plant's technology, not a statement about the Plant's actual performance."

And Standard Lithium wasn't misleading about achieving "proof of concept" because it hadn't defined the term by a particular recovery rate, and the investors didn't dispute that the plant had met the three process criteria the company provided, the judge said.

The investors also failed to adequately allege the necessary level of intent for securities fraud, he said.

Glancy Prongay & Murray LLP was lead counsel for the investors. Skadden, Arps, Slate, Meagher & Flom LLP represented Standard Lithium.

The case is *Arata v. Std. Lithium Ltd.*, 2025 BL 346165, E.D.N.Y., No. 22-CV-507, 9/28/25 .

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Securities

Bayer's \$38 Million Investor Settlement Teed Up for Final OK (2)

Sept. 26, 2025, 9:28 AM PDT; Updated: Sept. 26, 2025, 2:57 PM PDT

Bayer AG's agreement to pay investors \$38 million to settle securities class claims stemming from Roundup-related personal injury liability should be given final approval, shareholders told a federal court.

The deal would provide investors with more than 9% of their \$417 million estimated maximum damages amount, according to pension funds representing the class. The funds on Thursday called it an excellent recovery, and they said the settlement should be approved as fair, reasonable, and adequate by Chief Judge Richard Seeborg of the US District Court for the Northern District of California.

The pension funds alleged Bayer didn't adequately vet Roundup herbicide maker Monsanto Co. before buying it for \$63 billion and didn't warn them about cancer litigation risks. Bayer securities lost 26% of their value—and Bayer lost \$12.87 billion in market capitalization—as a result of the company's due diligence failures, the funds alleged in the third version of their complaint.

Bayer has already paid out about \$11 billion in verdicts and settlements in the seven-year Roundup litigation and still faces 67,000 suits claiming its glyphosate-based Roundup causes cancer, according to its 2024 annual report. Bayer has said it's considering a range of options to protect the company from financial threats posed by the Roundup litigation.

"In February, Bayer reached an agreement in principle with plaintiffs to resolve this litigation, without any admission or finding of wrongdoing," the company said in an email Friday. The court "granted preliminary approval of the settlement in June," it said.

"A motion for final approval of the class settlement is a routine step in the legal process," it said. "The Company is pleased to put this matter behind us."

An attorney for the investors declined to comment in an email Friday.

In August, Seeborg allowed plaintiffs in the multidistrict product liability litigation against Monsanto to intervene in the securities suit. The MDL plaintiffs, who are seeking information about Bayer's and Monsanto's knowledge of Roundup's allegedly harmful effects, will be allowed to gain access to some documents exchanged in discovery, Seeborg said.

Seeborg certified a class in the securities suit in 2023.

Cohen Milstein Sellers & Toll PLLC is lead counsel for the investors. Morrison & Foerster LLP and Wachtell, Lipton, Rosen & Katz represent Bayer.

The case is Sheet Metal Workers Nat'l Pension Fund v. Bayer AG , N.D. Cal., No. 3:20-cv-04737, motion 9/25/25 .

(Updates story with response from investors' attorney in seventh paragraph.)

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Securities

Mass General Cleared for \$8.25 Million Retirement Fee Settlement

Sept. 26, 2025, 8:46 AM PDT

Mass General Brigham Inc. finalized an \$8.25 million class settlement benefiting workers who accused the Boston-based hospital of mismanaging their retirement plan through high fees and pricey funds.

The agreement covers more than 100,000 plan participants and beneficiaries since January 2016, and it represents between 20% and 30% of the participants' total estimated damages in the case. Judge Myong J. Joun granted final approval to the deal and awarded class counsel nearly \$2.8 million in attorneys' fees and costs in a pair of orders issued Thursday in the US District Court for the District of Massachusetts.

The lawsuit says the hospital mismanaged its retirement plan by filling it with expensive investments and allowing service providers to charge hefty fees

The court allowed the case to advance in 2023, and Mass General unsuccessfully sought an order allowing it to immediately appeal that decision

Hundreds of retirement plan fee lawsuits have been filed in federal courts in recent years, with several health systems signing class-wide settlements

Morgan, Lewis & Bockius LLP represents Mass General. Capozzi Adler PC and Muhic Law LLC represent the workers.

The case is Norton v. Mass Gen. Brigham Inc. , D. Mass., No. 1:22-cv-10045, 9/25/25 .

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Securities

Caesars Beats 401(k) Fund Claims While Russell Heads to Trial

Sept. 26, 2025, 4:50 AM PDT

Participants in Caesars Holdings Inc.'s 401(k) plan can go to trial on claims against Russell Investments Trust Co. saying their plan lost millions when Russell swapped out existing funds for its own affiliated offerings.

There's a genuine factual dispute as to why Russell chose its own funds for the Caesars plan, Judge Cristina D. Silva said in a Thursday order denying the investment company's motion for summary judgment. The plan investors produced evidence suggesting that Russell's arrangement with the gaming and hospitality company was a "special deal" intended to secure additional assets for Russell's funds, Silva said for the US District Court for the District of Nevada.

But Silva rejected the participants' claims against Caesars itself, saying they didn't show that the company used an imprudent process when evaluating the plan's Russell funds or contracting with the company. The Russell funds were also in the plan for only about four years, which is too short of a period to draw conclusions about their performance, the judge said.

The 42,000-person class action says Russell took control of the Caesars plan's investment lineup in 2017 while the gaming company was going through bankruptcy proceedings. Russell transferred all the plan's assets into its own proprietary funds, many of which had yielded disappointing results and lost other key investors, according to the lawsuit.

Silva in 2023 allowed the bulk of the case to proceed against both Caesars and Russell. A similar lawsuit challenging the Russell funds in Royal Caribbean Cruises Ltd.'s 401(k) plan fell flat in February, when a federal judge said the funds weren't objectively imprudent.

Nichols Kaster PLLP and Paul Padda Law PLLC represent the Caesars plan participants. Parsons Behle & Latimer and Milbank LLP represent Russell. Mayer Brown LLP and Littler Mendelson PC represent Caesars.

The case is *Wanek v. Russell Invs. Tr. Co.*, 2025 BL 343482, D. Nev., No. 2:21-cv-00961, 9/25/25.

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Securities

Capital One Strikes Deal in 401(k) Plan Forfeiture Use Lawsuit

Sept. 26, 2025, 7:47 AM PDT

Capital One Financial Corp. reached a settlement in a proposed class action saying it mismanages its employees' 401(k) plan by using forfeited contributions for its own benefit.

The parties reached an agreement after mediation and plan to submit details of their deal for preliminary court approval by Nov. 10, they said in a status report filed Thursday in the US District Court for the Southern District of New York.

The year-old lawsuit is among the dozens of recent cases saying employers violate federal benefits law when they opt to use the unvested 401(k) contributions forfeited by departing workers to reduce the amounts they'd otherwise have to contribute to their plans, instead of using that money to reduce workers' expenses.

This legal theory—which has been challenged by the US Department of Labor—has led to more early defense-side victories than plaintiff wins. Only a handful of cases so far have led to class-wide settlements.

The lawsuit against Capital One brings claims under the Employee Retirement Income Security Act on behalf of a proposed class of about 66,000 people covered by the company's retirement plan. It's assigned to Judge Margaret M. Garnett, who hasn't ruled on the merits of the dispute.

Morgan, Lewis & Bockius LLP represents Capital One. Capozzi Adler PC represents the employees.

The case is *Singh v. Cap. One Fin. Corp.*, S.D.N.Y., No. 1:24-cv-08538, status report 9/25/25 .

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Securities

Column

AI Will Scramble GCs' Calculus for Hiring Outside Counsel

Sept. 29, 2025, 1:30 AM PDT

With the transformation of in-house legal departments already underway, we also face a profound disruption of the relationship between corporate legal teams and outside counsel. AI will fundamentally reorganize the legal services market, creating new competitive dynamics that will redefine how legal work is structured, priced, and delivered.

For general counsel, understanding these market shifts will be a key element in building sustainable outside counsel strategies and positioning legal departments as drivers of enterprise value. Those decisions will inevitably shape what the legal market of the future looks like.

The External Partnership Evolution

AI's potential to restructure the law firm industry creates both opportunities and challenges for strategic partnerships between in-house and external counsel.

When both sides of the lawyer-client relationship are AI-enabled, the economics shift dramatically. McKinsey reports that companies optimizing data and applying AI effectively have unlocked cost reductions exceeding 30% in selected functions.

Some analysts suggest that 30% to 60% of current billable work could be compressed by AI—making hundreds of millions of billable-hour revenue vulnerable to displacement. Early estimates suggest that generative AI could lower overall law-firm rates to clients by 25% once routine drafting, research, and document review tasks are standardized across platforms.

But the more profound impact may be AI's role in reshaping the competitive landscape of legal services. My sense is that we'll see AI put an even greater premium on deep specialization and the kinds of expertise or resources that are essential for issues that truly matter—whether in litigation, transactions, or regulatory advice.

The Hollowing

This dynamic could lead to a hollowing out of the middle market in legal services. At one end, smaller or regional firms that are aggressive on rates may become more attractive for handling routine matters.

Even with AI enablement, some work—such as specialized IP work or regulatory filings—is still best handled by outside counsel but remains rate-sensitive by nature. These firms can leverage AI to deliver quality work at competitive prices. Indeed, one GC shared with me that their IP firm acknowledged the new efficiencies afforded by AI—which, they said, would be reflected in reduced bills. The result of this approach was both reduced legal spend and a strengthened client relationship.

At the other end of the market, the largest firms may find even greater alignment between high-value, high-stakes representations and their premium positioning. When matters genuinely require the most sophisticated expertise and resources, the premium for big firms becomes more justifiable, not less.

This may leave little space for midsize firms. They may not be able to offer the cost efficiency of smaller firms, and may be unable to command the high rates and high-prestige work of the largest firms. The traditional middle market is likely to face the greatest pressure.

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The Rise of the Elite Boutique

Conversely, AI may accelerate the rise of elite boutiques. Smaller firms can capitalize on deep benches of talent and specialized expertise without needing the “bodies” traditionally required for large, complex matters.

Consider document discovery and due diligence, historically a volume game requiring teams of typically junior lawyers. When AI can assume much of the work previously handled by arrays of associates, boutiques composed of premium talent become more competitive. They can deliver sophisticated legal services without the overhead structure that traditional scale required.

This suggests that the future legal services market may become increasingly bifurcated: cost-efficient providers leveraging AI for routine work, and premium specialists—whether large firms or elite boutiques—competing on expertise and judgment rather than raw capacity.

New Entrants

AI may also open the door to new entrants. AI-enabled firms, unburdened by legacy cost structures, are already emerging with the promise to use AI to deliver quality advice at massively reduced costs—especially in practices that rest primarily on expert knowledge but not strategic judgment, such as costly but critical due diligence review in M&A transactions or document review in litigation matters.

Offering this work at lower price points is already winning converts from legacy Big Law. As the scope of work from AI-enabled firms expands beyond specialized M&A and litigation work, it should also expand access for smaller businesses that have been priced out of Big Law. Private investment has already begun circling this space, suggesting we may see alternative models gain traction alongside traditional firms.

In addition, the entry of accounting firms into the legal services market may be accelerated by AI tools. Firms such as KPMG, which has had success in the UK legal market and recently entered the US, may find that their at-scale deployment of AI tools fuels their rise as competitors to Big Law—offering clients the cost-efficiency of AI-enablement with the brand equity associated with their marquee names.

The Defensive vs. Transformative Adoption Divide

Large law firms are increasingly touting their own embrace of AI—and being met with client skepticism. Clients' wariness stems from the economic realities of the traditional firm model. AI is often deployed as an insurance policy to protect billable hours and preserve leverage, rather than to fundamentally reimagine how legal work gets done. Firms market efficiency gains but are seen as retaining pricing structures that benefit them more than clients.

The result is a credibility gap: Clients are increasingly asking outside counsel whether innovation is pursued to improve outcomes or simply to defend margins. In contrast, many in-house teams—unencumbered by hourly billing and closer to business strategy—are better positioned to adopt AI as a genuinely transformative force.

Legal departments have incentives to reimagine workflows, build self-service tools, and integrate legal insights into enterprise platforms. As expectations for transparency and measurable impact accelerate, this divergence will widen—and define which firms remain trusted advisers.

Strategic Implications for General Counsel

For GCs, this restructuring creates both opportunities and challenges. We'll have more choices for cost-effective routine work, but we'll need to be more strategic about when and how to deploy premium legal resources. The middle-market firms that many companies have relied upon as a compromise between cost and capability may become less attractive options.

Anticipating this shift, future-facing law firms are already piloting joint AI-powered platforms that facilitate client-counsel collaboration and knowledge sharing. These platforms deliver gains beyond efficiency—enabling both new knowledge partnerships and stronger client-firm relationships.

For legal AI platforms, this shift creates a new value proposition. Instead of selling separate efficiency tools to each side, they'll sell collaboration itself—marketing to firms on their ability to deepen client partnerships, and to clients on their ability to integrate more effectively with outside counsel.

Rather than AI replacing lawyers, it may give birth to entirely new forms of legal collaboration between in-house teams and outside counsel. In deciding what value and collaboration look like in this new world, general counsel will be the fulcrum of this transformation.

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Author Information

Read the Series



AI represents a fundamental transformation, requiring GCs to reimagine legal practice and their role as strategic business partners.

Local professor weighs in on AI "hallucinations" in court



10news.com/news/national-news/local-professor-weighs-in-on-ai-hallucinations-in-court

Olivia Gonzalez-Britt

September 28, 2025

In California, one attorney learned about AI "hallucinations" the hard way. A state appeals court fined him \$10,000 after ChatGPT generated 21 out of 23 fake legal quotes in his filing. ABC 10News reporter Olivia Gonzalez-Britt talks to a USD professor about using AI in the legal field.

SAN DIEGO (KGTV) — AI is quickly becoming a tool many rely on in daily life.

"I use it at least a few times a week now," San Diego resident Jessica McKee says. "I home school one of my children, and you can ask it to do lesson plans, and you can have it tailored specifically to that child's needs."

Although the tool may not make mistakes every time, reality is that it *does* make mistakes.

"It gives erroneous information so you can kind of correct it, and I guess, lead it down the path of correcting itself," McKee says.

And those mistakes aren't rare. The New York Times [found](#) advanced AI tools make errors up to 79 percent of the time. Tech companies call them "hallucinations."

In California, one attorney learned that lesson the hard way. A state appeals court fined him \$10,000 after ChatGPT generated [21 out of 23 fake legal quotes](#) in his filing.

The growing use of AI is raising questions in the legal community.

"This is the first reported appellate opinion, but it's not the first time it's happened," professor at the University of San Diego School of Law, David McGowan says.

He adds that many people are using AI without understanding the potential risks. And for attorneys, the cost of not double-checking could be high.

"You can't say things to judges that aren't true," McGowan says. "Judges have discretion to sanction lawyers, which is basically fine them money."

McGowan also worries about people starting to skip lawyers altogether and using free AI tools to draft their own legal documents.

"If your document contains a case that's made up and just doesn't exist, that's something that should be caught," McGowan says. "Lawyers know how to do that. I don't know that ordinary people do."

Still, he does think the tool can be beneficial to attorneys *and* clients, if used correctly.

"If you could use an AI tool to produce something that was accurate and reliable in half the time it took a lawyer to do it on their own, that's good for the lawyer because they have more time to do other matters," McGowan says. "It's also good for the client because they pay less."

ABC 10 News reached out to the attorney fined by the appeals court for comment, but did not receive a response.

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Amazon's \$2.5 billion payout and a little-known law called ROSCA



reuters.com/legal/litigation/amazons-25-billion-payout-little-known-law-called-rosca-2025-09-29

Jenna Greene

September 29, 2025

Signage is seen at the Federal Trade Commission headquarters in Washington, D.C., U.S., August 29, 2020. REUTERS/Andrew Kelly [Purchase Licensing Rights, opens new tab](#)

Sept 29 (Reuters) - When Amazon last week agreed mid-trial to pay \$2.5 billion to [settle, opens new tab](#) allegations by the Federal Trade Commission that it duped customers into signing up for Prime and then made the service hard to cancel, the payout showcased what until recently had been regarded as a law of little consequence.

"Decidedly unremarkable" is how lawyers for Amazon in 2023 described the Restore Online Shoppers' Confidence Act, or ROSCA, which underpinned the FTC's case. The 2010 statute, which punishes deceptive online sales tactics such as unwanted or hard-to-cancel subscriptions, had been "cited in only a handful of opinions, and resulted in no significant judgments against legitimate businesses," Amazon's lawyers wrote in [court papers, opens new tab](#).

Their initial tone of incredulity is understandable. Prior to Amazon's September 25 settlement, the FTC had only twice before secured civil penalties (as opposed to consumer restitution) for ROSCA violations, according to the agency. One fine was for [\\$500,000, opens new tab](#) and the other for [\\$2 million, opens new tab](#), knocked down from \$10 million because the defendant didn't have the money to pay.

Not exactly the stuff that keeps a general counsel up at night.

Yet now Amazon, without admitting wrongdoing, agreed to a fine of \$1 billion to resolve alleged ROSCA violations, plus another \$1.5 billion in consumer redress. It was the biggest civil penalty for a rule violation in FTC history, the agency [said, opens new tab](#).

It prompts the question: How – and why – did this obscure law become such a formidable weapon? And should companies that have ROSCA cases pending against them, including ride-sharing company Uber Technologies, gym chain LA Fitness and software maker Adobe, be worried about being hit with substantial penalties?

Based on Amazon's settlement and a review of more than a dozen ROSCA cases the FTC has filed since 2022, the answer is yes.

FTC Chairman Andrew Ferguson "has made it clear that he will vigorously enforce the laws passed by Congress, including ROSCA," an FTC spokesman told me via email. "This includes taking Uber and LA Fitness to court, and securing the historic settlement from Amazon."

The FTC has filed about 47 ROSCA cases since the law was [passed by Congress, opens new tab](#) via voice vote without much fanfare in late 2010.

In the years following, the FTC's early ROSCA targets tended to be little-known companies peddling items such as dietary supplements, credit monitoring services or tooth whiteners.

ROSCA "kind of got forgotten about to a degree," Holland & Knight partner Brian Goodrich, who represents businesses facing FTC enforcement actions, told me.

When the agency went after big-league defendants for unfair or deceptive conduct, Goodrich said, it typically invoked its authority under the FTC Act. The 1914 law [established the agency, opens new tab](#) and gives it broad authority to protect consumers.

However, the U.S. Supreme Court in [AMG Capital Management v FTC](#) in 2021 severely curtailed the FTC's power to use a key provision of the act, known as Section 13(b), to compel wrongdoers to return ill-gotten gains. The high court ruled that Section 13(b) only allows the agency to seek injunctive relief, not consumer restitution or disgorgement of profits.

Deprived of its go-to weapon, the FTC turned to other sources of enforcement authority, including ROSCA, which empowers the agency to seek up to \$53,088 per violation plus consumer redress.

"The commission started looking for ROSCA violations under every rock," said Cooley partner Scott Dailard, who defends companies facing FTC actions. "There's been an obvious uptick in enforcement and investigation activity since the AMG decision."

The FTC also attempted to enact a "Click-to-Cancel" rule that would have required businesses to make it as easy to cancel subscriptions and memberships as it is to sign up, only to have the measure [struck down](#) by the 8th U.S. Circuit Court of Appeals in July. The agency filed its [ROSCA complaint, opens new tab](#) against Amazon in 2023 in Seattle federal court, alleging that the retail giant ran afoul of ROSCA by deceptively enrolling millions of online shoppers into its auto-renewing Prime membership and requiring them to click through a gauntlet of screens if they wanted to cancel.

Amazon lawyers from Covington & Burling, Hueston Hennigan and Davis Wright Tremain protested in court papers that the FTC's complaint rested on a "fatally vague standard" of compliance, and that ROSCA was only intended to target conduct that was plainly misleading or coercive, unlike Amazon Prime.

Litigation "is not a permissible way for an agency to enact new standards," they wrote in an unsuccessful motion to dismiss the case.

An Amazon spokesperson in a [statement, opens new tab](#) said the company and its executives have "always followed the law and this settlement allows us to move forward and focus on innovating for customers."

The FTC [sued Uber](#) in April, alleging that it charged consumers for its Uber One subscription service without their consent, failed to deliver promised savings and made it difficult to cancel.

An Uber spokesperson responded via email that the company is “disappointed” the FTC decided to move forward with the case, and that Uber One’s “sign-up and cancellation processes are clear, simple, and follow the letter and spirit of the law.”

A [suit](#) against the operators of LA Fitness and other gyms followed in August, with the FTC alleging it is “exceedingly difficult” for consumers to cancel gym memberships. LA Fitness did not respond to a request for comment.

The FTC [sued Adobe, opens new tab](#) and two of its executives in 2024, alleging the software maker deceived consumers by hiding the early termination fee for a popular subscription and made it difficult to cancel.

An Adobe spokesperson did not respond to a request for comment but the company, in court papers, denies wrongdoing. The case survived a motion to dismiss in May and is set for trial next year.

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Jenna Greene writes about legal business and culture, taking a broad look at trends in the profession, faces behind the cases, and quirky courtroom dramas. A longtime chronicler of the legal industry and high-profile litigation, she lives in Northern California. Reach Greene at jenna.greene@thomsonreuters.com

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California Brief

Meta Wants to Dodge Billions in Damages in Flo App Privacy Case

Sept. 26, 2025, 11:31 AM PDT

Meta Platforms Inc. is seeking to fend off a potentially multi-billion dollar judgment from a group of users of the menstrual tracking app Flo Health who won a jury verdict this summer finding Meta violated their privacy.

Meta should pay \$5,000 per class member as required by the California Invasion of Privacy Act, attorneys for the Flo users in a statement filed late Thursday to the US District Court for the Northern District of California. They didn't identify a specific damages number they sought from Meta. But they suggested the class, composed of California Flo users, could number in the millions.

Under that damages calculation, a class containing as few as 200,000 members would amount to a billion-dollar award. The parties will argue their cases at a Sept. 30 hearing before Judge James Donato.

The damages request comes two days after Flo, a London-based company founded in 2015, and Google LLC announced the details of their own separate settlement plans with the app users.

Google, which settled before trial, agreed to pay \$48 million to end the case, and Flo, which settled midway through trial, agreed to pay \$8 million.

The sweeping privacy class action filed in 2021 alleged that Meta and Google provide back-end data analytics services to Flo that allowed the two tech giants to surreptitiously collect sensitive menstrual health data from Flo users.

After two-weeks of trial, an eight-person jury found that Meta recorded Flo users' answers to questions about whether they wanted to get pregnant and the date of their last period through a piece of code known as a software development kit embedded on the app.

The verdict applies only to a class of California users who had the app during a 28-month stretch from late 2016 to early 2019. The jury found Meta violated the California Invasion of Privacy Act, a Cold War era wiretapping law that has since been deployed with some success by plaintiffs' attorneys in modern data privacy cases.

Meta sought to overturn the verdict, arguing the jury was given improper instructions and the plaintiffs had failed to prove the elements of a CIPA violation, but Donato rejected their bid earlier this month.

The company's Thursday statement argued that the court shouldn't yet determine damages and instead enter a partial judgment in favor of the named plaintiffs, which would allow Meta to appeal the case. Meta also argued that the plaintiffs' attempt to quickly distribute the funds without a thorough determination of the class size would result in fraud.

"Plaintiffs' proposal would also severely hamper Meta's ability to meaningfully challenge claims, by forbidding discovery of absent class members," Meta said.

Labaton Keller Sucharow LLP, Lowey Dannenberg PC, and Spector Roseman & Kodroff PC represent the plaintiffs and the class. Latham & Watkins LLP and Gibson Dunn & Crutcher LLP represent Meta.

The case is *Frasco v. Flo Health Inc.*, N.D. Cal., No. 3:21-cv-00757, 9/26/25 .

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9th Circuit denies Bank of America appeal in debit fraud class action

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[dailyjournal.com/articles/387810-9th-circuit-denies-bank-of-america-appeal-in-debit-fraud-class-action](https://www.dailyjournal.com/articles/387810-9th-circuit-denies-bank-of-america-appeal-in-debit-fraud-class-action)

Sep. 29, 2025

An appellate panel rejected Bank of America's bid to appeal a San Diego district judge's certification of a class in a consumer class action alleging it failed to safeguard unemployment benefits stolen from over 100,000 Californians during the pandemic.

Senior U.S. District Judge Gonzalo P. Curiel

A 9th U.S. Circuit Court of Appeals panel has denied Bank of America's appeal of a class certification order in a pandemic-era complaint alleging the financial institution failed to protect more than 100,000 customers who were eligible for unemployment and other public benefits through prepaid debit cards.

Attorneys representing the bank sought interlocutory review after Senior U.S. District Judge Gonzalo P. Curiel of San Diego granted plaintiffs' motion for class certification, arguing that some members of the classes were thieves who stand to get more money on top of their ill-gotten gains.

"The perpetrators of the fraud include an unknown but significant portion of the certified classes, who now stand to triple down on their frauds by collecting even more ill-gotten gains from [Bank of America] as 'damages,'" Goodwin Procter LLP attorney William M. Jay argued in the brief.

But two 9th Circuit judges, in an unsigned order Thursday, affirmed Curiel's class certification order, citing a 2005 circuit decision.

Judge Jennifer Sung and Judge Holly A. Thomas denied Bank of America's petition for permission to appeal. *In re: Bank of America California Unemployment Benefits Litigation*, 25-4072 (9th Circ., filed July 1, 2025).

Brian Danitz, a partner with Cotchett, Pitre & McCarthy LLP in Burlingame who represents the plaintiffs, praised the decision Friday. He and Michael Rubin, an attorney with Altshuler Berzon LLP in San Francisco, defended Curiel's decision on appeal.

"As alleged, the bank systematically violated consumer protection laws to protect its profits," Danitz wrote in an email. "A class action is the only way to hold the bank accountable."

The class action claims that about 109,000 Californians lost their unemployment benefits, which were stolen from their prepaid debit card accounts because Bank of America did not have adequate security measures in place.

The 9th Circuit opinion relied on a 2005 precedent that denied an interlocutory appeal by Ford Motor Co. in a class action for selling vehicles with a defective engine part.

The panel, in the Ford case, ruled that, while Federal Rule of Civil Procedure 23(a) allows review of class certification, it should be a "rare occurrence" that only is permitted if the decision is "manifestly erroneous."

The automaker's case did not qualify, the 9th Circuit panel ruled in a per curiam opinion. [Chamberlan et al. v. Ford Motor Company](#), 2005 DJDAR 3758 (9th Circ., filed Sept. 28, 2004).

Jay argued that Curiel's mistakes qualified for interlocutory review. "The district court committed multiple manifest errors, on important and recurring issues, in an enormous, high-stakes litigation," he wrote.

But Rubin said the bank had not made its case that Curiel's decision would require it to settle regardless of the merits. "The Bank provides no support for its implausible claim that denying its petition would sound the 'death knell' by forcing the Bank to settle," he wrote.

Goodwin Procter attorneys representing the bank could not be reached for comment Friday.

#387810

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'Big Law Has a Lot of Illusory Promises': The Case for a Career in Plaintiff's Law

Reid Collins & Tsai co-founder William T. Reid IV has released his debut book, "Fighting Bullies: The Case for a Career in Plaintiff's Law," based on his decades-long experience as a prosecutor and trial lawyer.

September 26, 2025 at 03:20 PM By **Laura Lorek**



William T. Reid IV, senior founding partner Reid Collins & Tsai. Courtesy photo

After decades of watching law students funnel into corporate defense firms only to burn out, veteran trial lawyer William T. Reid IV is fighting back with a book that challenges one of the legal profession's biggest myths: that meaningful work and financial success are mutually exclusive.

Reid's debut book, "Fighting Bullies: The Case for a Career in Plaintiffs' Law," published this week, aims to show law schools that he says present only one path to success—lucrative but often strenuous careers at "Big Law" firms—while ignoring opportunities to represent underdogs and still make good money.

"No one in law school prepared me for that," said Reid, co-founder of the Austin-based boutique firm Reid Collins & Tsai. He is also a former federal prosecutor. "I kind of had to go figure this out

for myself, so my book is aimed at short-circuiting that whole process."

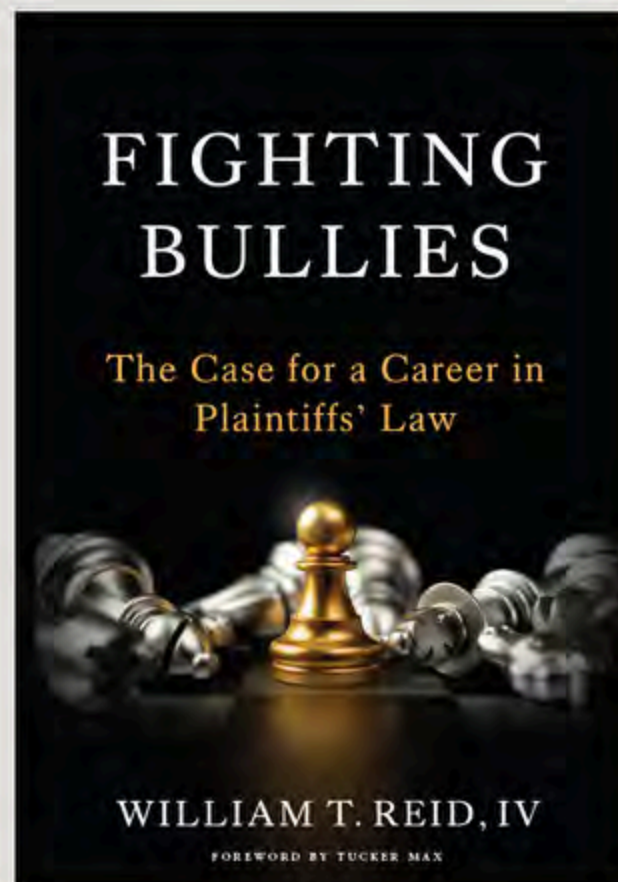
In his book, Reid advocates for banning on-campus recruiting until after students' first year and implementing medical school-style rotations to expose students to different practice areas.

Reid argues that meaningful plaintiffs' work can be as financially rewarding as Big Law careers, with his firm paying competitive salaries.

"I jokingly refer to myself as a minority lawyer because I am one of a scarce breed of veteran attorneys who love what I do," Reid said.

Reid, who graduated cum laude from St. John's University School of Law in New York, served as a clerk for Judge Reynaldo G. Garza of the U.S. Court of Appeals for the Fifth Circuit after graduating. He then worked as an assistant U.S. attorney in the 1990s, handling complex drug and corruption cases and achieving a high conviction rate.

"I just prioritized experience over any kind of salary, and eventually the chips kind of fell into place, and I found the job that I always wanted," he said.



"Fighting Bullies," by William T. Reid, IV. Courtesy of the publisher

Since 2000, Reid has applied his courtroom expertise to commercial trials in private practice. He focused on financial litigation from the plaintiff's side. "The moment that I got in the driver's seat of doing it, I realized that's what I'd always wanted to do," Reid said.

Additionally, Reid is an adjunct professor at the University of Texas Law School, where he teaches a course called Complex Financial Litigation, using a case-study method.

In his legal career, Reid focuses on representing victims rather than those who have committed wrongs.

One of Reid's most significant victories was in the Renren Inc. case in 2021, which resulted in a \$300 million cash settlement, one of the largest in a derivative action in history. The action alleges a complex scheme by Renren insiders to divert the company's billion-dollar investment portfolio for their own benefit. Reid served as lead counsel for the derivative plaintiffs.

"I called my book 'Fighting Bullies' for a reason," Reid said. "The bully is clearly the person victimizing, and no one really wants the bully to win."

"The biggest bully that you'll ever find is the federal government," Reid said in reference to his pro bono defense of Olga Hernandez in federal court. In 2017, Reid defended Hernandez, a San Antonio School Board member who was accused of bribery. A jury found her not guilty.

Reid's book is also critical of the legal industry, which reports high rates of addiction, depression, and suicide among lawyers. He links this to the lack of meaning in Big Law work and criticizes the treatment of associates by large law firms.

"Big Law has a lot of illusory promises to it, really, all that Big Law wants out of them is billable hours because it makes money from them," he said.

When the outcome desired by a client aligns with their lawyer's representation, both parties can achieve the sought-after result and benefit financially through collaboration, Reid said. This alignment often leads to more effective cooperation, he said. On the other hand, defense lawyers, as well as most professionals who bill hourly, including some class action plaintiffs lawyers, may focus on increasing billable hours, which can lead to higher fees, Reid said.

He predicts artificial intelligence will make success-fee firms more profitable while forcing hourly billing firms to change their business models.

Reid has been traveling to law school campuses to speak to students about their careers. He has talked to students at the University of Texas, the University of Pennsylvania, New York University, and Columbia. Next week, he's going to the law schools at the University of California, San

Francisco, and Stanford, and then to Georgetown and Harvard. He advises students to prioritize experience over salary and to seek opportunities to refine their skills.

According to Reid, his book outlines considerations for pursuing a career in plaintiffs' law. The book offers practical guidance on developing a legal career within this field. Combining personal narrative with informative content, it discusses reasons why plaintiffs' law may be a suitable option for lawyers seeking impactful work.

"We are very tempted to think about life in the short term," Reid said. "A lot of times in life, the easiest path is not the best path."

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Corporate Governance Update: The Forecast on Quarterly Reporting

This article explains that moving from quarterly to semi-annual reporting for U.S. public companies could reduce regulatory burdens without harming market transparency, based on EU and UK experience. While it won't eliminate short-termism or stop the decline in public companies alone, it could encourage long-term focus and ease pressures on management. With growing political and industry support, SEC reforms making semi-annual reporting optional are likely, potentially helping to revitalize U.S. public markets.

September 24, 2025 at 04:13 PM By **David A. Katz**

Laura A. McIntosh



David A. Katz, left, and Laura A. McIntosh, right. Courtesy photos

Every few years, the question arises as to whether quarterly reporting is the optimal timeframe for U.S. public companies. Now, with both President [Donald Trump](#) and Securities and Exchange

Commission (SEC) Chairman [Paul Atkins](#) as active proponents of ending quarterly SEC reporting, regulatory reform seems more likely than ever before.

Thanks to experimentation with reporting frequency in the European Union (EU) and the United Kingdom (UK), it is possible to make a few observations about potential reforms and a few predictions as to how regulatory change would affect financial reporting in practice.

Overall, reducing reporting from a quarterly to a semi-annual schedule is likely to have less effect than either its critics fear or its proponents hope, as demonstrated by the EU and UK experience.

Revising the mandatory reporting schedule will not, on its own, remove short-termism from the capital markets. And it will not suffice to reverse the long and troubling decline in the number of public companies in the United States. However, it would be a step in the right direction.

Quarterly Reporting and Quarterly Guidance

Public companies in the United States have been required to file quarterly reports since 1970. These reports include unaudited financial statements, earnings-per-share results, and the accompanying management's discussion and analysis, along with any other material information that is due to be timely reported.

The EU and the UK shifted to mandatory quarterly reporting in the mid-2000s, only to revert to six-month reporting requirements in the 2010s. However, even after the return to semi-annual reporting, some companies, particularly large multinational corporations, continued to produce some form of quarterly reporting in response to investor demand.

In addition to the information required to be contained in quarterly reports, many companies have voluntarily provided quarterly earnings guidance as part of their investor communications since the 1990s, when the passage of the Private Securities Litigation Reform Act established a safe harbor for forward-looking statements accompanied by appropriate cautionary language.

Regulation FD, adopted and implemented in 2000, required that any forward-looking guidance be released publicly if released privately, which further encouraged guidance to be delivered in a predictable and formal manner.

Over the years, a number of high-profile opponents of the practice of providing earnings guidance (including [Jamie Dimon and Warren Buffett](#)) have lamented its effect in encouraging short-termism to the detriment of the longer-term interests of the shareholders, the enterprise, and society more generally.

In fact, the number of S&P 500 companies providing quarterly earnings guidance has been falling: From a [high of 50% in 2004, it hit a low of 19% in 2024](#). However, [a recent report](#) noted that 112

S&P 500 companies issued earnings per share (EPS) guidance for 2025 third quarter, while 264 S&P 500 companies issued EPS guidance for the current fiscal year.

If a significant number of companies continue to provide earnings guidance, particularly on a quarterly basis, the proposed change to require only semi-annual periodic reporting is likely to have a very limited effect.

Though earnings guidance is provided by companies in response to investor demand (and is not legally required), [farther-reaching reforms](#) than those currently contemplated could require companies to situate any earnings guidance in the context of long-term strategic planning, which would be helpful regardless of whether guidance were provided quarterly or semi-annually.

Earnings Calls

A key element of the U.S. quarterly reporting schedule are the earnings calls that take place simultaneously with or shortly after the release of quarterly earnings and often precede the filing of the company's 10-Q by a few days or more. These interactive briefings are high-stakes performances for CEOs and CFOs, as missteps can have immediate repercussions on their company's stock price.

Company executives, with broad-based support from employees in finance, legal, investor relations, and communications, prepare extensively for these quarterly calls.

It is common to begin preparations at least two weeks in advance, meaning that for a minimum of two months each year, a significant amount of corporate time and energy is spent preparing and delivering earnings information to the market—time and energy that could be spent focusing on substantive priorities and executing on strategic goals.

A meaningful benefit of eliminating quarterly reporting requirements would be for earnings calls to follow suit and move to a semi-annual schedule. This would reduce a substantial burden on senior management and be a material step toward reducing short-termism.

Earnings calls arose in the 1990s initially as brokerage information sessions, and companies eventually took over the practice themselves to control their narrative and communicate directly with institutional investors and analysts; after Regulation FD took effect, the calls were no longer insider events but public performances.

The practice is now common globally, and, notably, conforms to a company's reporting schedule: In the EU and UK, companies generally hold earnings calls semi-annually, with large multinational corporations that choose to report quarterly also holding earnings calls on a quarterly timetable.

An Idea Whose Time Has Come?

During his first term, President Trump called on the SEC to study a possible shift from quarterly to semi-annual reporting. The SEC, then chaired by Jay Clayton, formally [requested](#) public comment on the issue and hosted a [roundtable](#) in 2019 on short-term/long-term public company management, the periodic reporting system, and regulatory requirements, though it took no further action.

This time, Trump has pushed directly for reform, [posting](#) on social media on September 15: “Subject to SEC Approval, Companies and Corporations should no longer be forced to ‘Report’ on a quarterly basis (Quarterly Reporting!), but rather to Report on a Six (6) Month Basis.” Chairman Atkins stated shortly thereafter that the SEC will propose a rule change that would enable companies to choose between quarterly and semi-annual reporting, allowing market forces to determine the flow of information.

The topic had resurfaced even before Trump’s statement on Truth Social. Earlier this year, Nasdaq released a [white paper](#) addressing the worrisome decline in the number of public companies in the United States and the accompanying growth in the private market: “Since 2000, the private equity-backed company count climbed from about 2,000 U.S. companies to more than 11,500, a 475% increase. Over the same period, the count of publicly-listed U.S. businesses on U.S. exchanges declined from roughly 7,000 to 4,500, shrinking 36%.”

The white paper, based on a survey of issuers to determine the “pain points” of being publicly traded, proposed myriad ways of relieving the burdens of being public, including the two-pronged recommendation of (1) standardizing guidelines for the quarterly press release to enable it to replace the 10-Q and (2) offering companies the option, where not detrimental to investors, to report semi-annually instead of quarterly.

The U.S. Chamber of Commerce published a [white paper](#) in June 2025 called “Unlocking America’s Capital Markets” that contained the same recommendation.

One organization has stated its intention to take action on the issue: The Long Term Stock Exchange (LTSE), a national exchange based in San Francisco, [announced](#) about a week before the president’s social media post that it plans to formally petition the SEC to allow companies to report semi-annually rather than quarterly.

The founding mission of the LTSE, which opened for trading in 2020, is to combat short-termism in the capital markets by enabling companies to focus on their long-term strategy and performance and engage with a broad-based group of stakeholders who are also focused on the long term.

While a common objection to eliminating quarterly reporting is that it may increase market volatility, long-term market participants argue that viewing events over a longer time period tends

to have the opposite effect, smoothing out bumps that would have an outsized impact if analyzed only within a short timeframe.

Looking Ahead

For a reform that has been suggested many times, the current moment seems more favorable than ever. The Trump Administration is pursuing deregulation broadly across the federal government, and the SEC can build on the information gathered in its 2019 roundtable and public comment period to pursue significant reform in this area.

The SEC has the authority to change the reporting requirement with a majority vote of the Commission, which currently has a majority of Republican appointees. A reform of this nature would likely take the SEC six to twelve months to implement through the administrative process of notice-and-comment rulemaking, although that timing could be accelerated.

Making quarterly reporting optional would not be a magic bullet to stop the decline in the number of U.S. public companies, nor would it eliminate short-termism from the market. However, it would ease the regulatory burden that discourages companies from going and remaining public.

And if the change in periodic reporting were to result in (1) a meaningful decrease in companies providing quarterly or semi-annual EPS guidance, and (2) quarterly earnings calls also moving to a six-month schedule, the market's focus on short-termism likely would be significantly reduced.

Companies, offered some relief from the relentless quarterly timetable of reporting, earnings calls, and guidance, would have more leeway to focus on their substantive, longer-term priorities; and the significance of EPS guidance would diminish within the larger strategic context in which it is provided.

Indeed, if semi-annual earnings calls were timed to occur simultaneously with the release of companies' semi-annual and Form 10-K periodic filings, the market might be satisfied with the flow of information and more companies might be able to forgo quarterly guidance altogether.

The EU and UK experience shows that reducing the reporting frequency to semi-annual is likely to have [little to no effect](#) on corporate investment decisions or market volatility and result in no meaningful loss of transparency, particularly if companies continue to produce quarterly press releases (whether voluntarily or in response to a scaled-down reporting requirement) that provide information useful to investors.

In the interest of promoting public markets—the engine of American economic growth—moving from quarterly to semi-annual reporting would be a positive step.

David A. Katz *is a partner at Wachtell, Lipton, Rosen & Katz. Laura A. McIntosh is a consulting attorney for the firm. The views expressed are the authors' and do not necessarily represent the views of the partners of Wachtell, Lipton, Rosen & Katz or the firm as a whole.*

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Opinion US Securities and Exchange Commission**Let the market decide how often companies report**

The SEC should take its thumb off the scales and put the interests of investors first

PAUL ATKINS

Paul Atkins: the scope of the Securities and Exchange Commission's authority is the compass that guides me as chair © Nathan Howard/Bloomberg

Paul Atkins

Published YESTERDAY



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The writer is chair of the US Securities and Exchange Commission

Capital markets thrive on many factors, but they endure on trust. In recent years, the US Securities and Exchange Commission has drifted from the precedent and predictability that sustain this confidence — and from the clear mandate that Congress set for the agency over 90 years ago. I am pleased to report that this chapter of mission creep has closed. The economic opportunity created by President Donald Trump's leadership has summoned the SEC back to its core mission of protecting investors, maintaining fair, orderly and efficient markets, and facilitating capital formation.

Central to the SEC's mandate is the principle of materiality. The US Supreme Court defined this term half a century ago, when Justice Thurgood Marshall explained that materiality is an objective concept tethered to how a reasonable investor would consider a piece of information with the aim of making a sound investment decision. Marshall explained that, without materiality, shareholders may be “bur[ied] . . . in an avalanche of trivial information” that is unhelpful to their decision-making.

Applied in the context of corporate disclosure, this means the SEC should only require companies to supply information under the objective standard of whether a reasonable investor would regard it as important to an investment decision. Rules written for shareholders who seek to effect social change or have motives unrelated to maximising the financial return on their investment fail this test — and fail investors.

That is why disclosure should not be driven by political fads or distorted objectives. Yet in Europe, recently adopted regulations such as the Corporate Sustainability Reporting Directive and the Corporate Sustainability Due Diligence Directive promote a “double materiality” approach, requiring the disclosure of matters that may be socially significant but are not generally financially material. These mandates risk imposing costs that fall on American investors and customers, while doing little to enhance the information that steers capital decisions.

I certainly welcome the EU's recent efforts, both through its commitments in the joint statement on a US-EU framework on an agreement on reciprocal, fair and balanced trade, as well as through its own omnibus simplification process, on inoculating transatlantic trade from undue restrictions. But if Europe wants to promote its capital markets by attracting more listings and investment, it should focus on reducing unnecessary reporting burdens. For our part, I am committed to ensuring that in the US, the SEC prioritises the wellbeing of investors above the wishes of ideologues.

The government should provide the minimum effective dose of regulation needed to protect investors while allowing businesses to flourish. And for that reason I am fast-tracking President Trump's proposal to equip companies with the option to report on a semi-annual basis, rather than locking them into the current quarterly reporting regime.

Of course, this concept is hardly novel. Quarterly reporting as we know it did not begin in the US until 1970 — more than 35 years after the US established the SEC itself. And even today, our regulatory landscape already permits such flexibility for select companies. For example, foreign companies listed on US exchanges are required to report semi-annually, though some continue to report earnings results each quarter. Likewise, since the UK returned to semi-annual reporting in 2014, some large companies have elected to still report quarterly.

It is time for the SEC to remove its thumb from the scales and allow the market to dictate the optimal reporting frequency based on factors such as the company's industry, size and investor expectations. Mandatory quarterly reporting is hardly a cornerstone of the dynamism that distinguishes our capital markets. Giving companies the option to report semi-annually is not a retreat from transparency. Instead, it puts a renewed focus on market-driven disclosure practices that favour the interests of companies and their investors over prescriptive regulatory mandates.

By reorienting the SEC towards its true mission and removing extraneous requirements that have disadvantaged American companies for too long, we are both restoring trust in the agency and the foundation upon which the US has stood as the great, global benchmark for financial markets. The scope of the agency's authority is the compass that guides me as chair. I am confident that it will lead us to meaningful results for American companies, investors, and markets.

Securities

SEC Head Vows to Fast-Track Plan to End Quarterly Reports (1)

Sept. 29, 2025, 6:26 AM PDT

Wall Street's top regulator pledged to fast-track Donald Trump's proposal to end quarterly reporting for most companies, the US president's latest foray into a long-running debate over transparency in American capitalism.

Paul Atkins, chairman of the US Securities and Exchange Commission, said the proposal will give companies the option to report on a semi-annual basis and many firms might still choose to publish quarterly results.



Paul Atkins, chairman of the US Securities and Exchange Commission
Photographer: Kent Nishimura/Bloomberg

"Giving companies the option to report semi-annually is not a retreat from transparency," Atkins said in a column for the Financial Times. "It is time for the SEC to remove its thumb from the scales and allow the market to dictate the optimal reporting frequency based on factors such as the company's industry, size and investor expectations."

Trump floated the idea of jettisoning quarterly reporting earlier this month, though it wasn't the first time he'd proposed such an idea. The SEC vetted the idea after Trump raised it during his first term in office, but momentum faded when no consensus emerged.

Even quick SEC rulemakings rarely take less than a year from start to finish and under normal procedures regulators would typically first draft ideas behind the scenes. Proposals could include dropping the quarterly reporting mandate entirely or giving companies the option of reporting twice a year, potentially depending on market value.

The SEC mandated for companies to report every quarter in 1970, part of its decades-long push to increase transparency following the stock market crash in 1929. Critics have argued that such reporting has its downsides. The practice increases costs, pushes companies to focus on the short term — hampering investment and innovation — and can lead to overreactions by investors, opponents say.

"The government should provide the minimum effective dose of regulation needed to protect investors while allowing businesses to flourish," Atkins said in the FT. Trump's proposal, he said, "puts a renewed focus on market-driven disclosure practices that favour the interests of companies and their investors over prescriptive regulatory mandates."

But those in favor of quarterly reporting have said the transparency helps investors and eliminating the practice could lead to companies burying bad news.

"While the goal would be to get investors and companies to become more long-term focused, it would increase uncertainty in the equity market and could lead to a lowering of valuations," Brian Nick, head of portfolio strategy at Newedge Wealth, said earlier this month.

Read More: End Quarterly Earnings Reports? Here's the Debate: QuickTake

While many of the world's largest economies operate on a quarterly disclosure basis, some only require semi-annual reports, including France and the United Kingdom. And even if the requirement to file quarterly reports was eliminated, companies could still choose to continue to issue earnings releases.

Atkins has previously said it is a good time to review how individuals receive information, noting in a CNBC interview many investors get more information from earnings calls rather than quarterly reports.

The SEC chief has frequently criticized an overload of disclosures for companies, and the agency has already taken steps to review rules for disclosures on executive compensation.

(Updates with details beginning in fifth paragraph.)

Securities

Manage Newsletters

Opinion

Matt Levine's Money Stuff: The Perfect AI Startup

Sept. 29, 2025, 11:18 AM PDT

Thinking Machines

If you run a big artificial intelligence lab in 2025, your company has two important sources of value:

1. Presumably you are building some sort of AI thing. *Probably* that thing (1) loses a lot of money now but (2) has some plausible path to making a gajillion dollars eventually. You are in the business of burning a lot of investor cash to build God, which would be valuable if you succeed.
2. You employ a lot of AI researchers, and their market value is, what, at least \$10 million each? Much more, if they're good?

The second point is not entirely satisfying. The AI researchers are worth buckets of money because they could be put to work *building AI things*, which will then make a gajillion dollars. The first point is the theoretically valid one: You have organized resources to do a risky project whose expected future cash flows are large. Those resources include AI researchers. If your project succeeds, the AI researchers will create billions of dollars of value for your company. If it fails, they will move on to another company that can make better use of them. Their value to you in that case will be approximately zero. California does not enforce non-competes.

On the other hand, the cash flows from your AI project really are extremely speculative – AI is moving fast, “[it may be difficult to know](#) what role money will play in a post-[artificial general intelligence] world,” and you might not even be sure what your revenue model will be – while the AI researchers [trade in a liquid market](#) with [clearly observable prices](#). You know exactly what Mark Zuckerberg will pay for them because he’s standing outside your office holding up giant novelty checks. If you plug “we have 30 top AI researchers” into a valuation model, and the valuation model does not spit out a value of at least several billion dollars, the model is wrong. If the model asks “but what are the AI researchers doing,” the model is missing the point.

In theory there is an incredible arbitrage here. If you are a top AI researcher, probably a lot of your friends are also top AI researchers. If you all got together, you could (1) hang out and have fun and (2) also do some top AI research. And then you could go out to investors and say “hey, look, top AI researchers here, give us a billion dollars.” And if the investors said “yes but what are you all doing together,” you could give them a disapproving look and take a step toward the door, and they would say “we’re so sorry, we don’t know what we were thinking, to make it up to you here’s \$2 billion.”

And then you'd have \$2 billion dollars to hang out with your friends. And do top AI research with them, if you want. You probably do want! That's how you got to be top AI researchers. But do you need to do boring stuff like *have a business plan or pursue revenue*? I don't ... I don't really see why you would?

The broad point is that if you start a company, the two ways to make money are (1) make products and sell them for more than they cost to produce and (2) sell stock. In very hot financing markets, one approach is much much much much easier than the other!

At the Information, Stephanie Palazzolo has an incredible article about Mira Murati's AI startup:

Not only has the one-year-old Thinking Machines not yet released a product, it hasn't talked publicly about what that product will be. Even some of the company's investors don't have a very good idea of what it is working on. While raising capital for Thinking Machines earlier this year and late last year, Murati shared few details about what it would be building, prospective investors said.

"It was the most absurd pitch meeting," one investor who met with Murati said. "She was like, 'So we're doing an AI company with the best AI people, but we can't answer any questions.'"

Despite that vagueness, Murati raised \$2 billion in funding—the largest seed round ever—at a \$10 billion pre-investment valuation from top Silicon Valley VC firms including Andreessen Horowitz, Accel and GV. The investors also made the highly unusual decision to give her total veto power over the board of directors.

I'm sorry but that's the best pitch ever! That is the platonic ideal of a tech startup pitch! Murati and her employees are extremely valuable, and they monetized that value directly. Why should they *have* to build a product?

Hedge fund talent agents

I feel like, if I was a hedge fund portfolio manager and my job was figuring out the correct prices of stocks, and I got paid tens of millions of dollars to do that, I would apply *some* of my skills, on a strictly extracurricular basis, to figuring out the correct prices of hedge fund portfolio managers. You know? Hedge fund PMs seem to move around a lot in a fairly active market, and I would be keenly interested in marking myself to market and selling high as frequently as possible. And I would presumably be good at things like understanding value and spotting market irrationality and taking advantage of counterparties' mistakes, all of which could help me maximize my paycheck.

But it's a *less* liquid and transparent market than the stock market – there are fewer data points and they are not usually public – so I suppose there's value in specializing. If you're a healthcare portfolio manager, you don't dabble in trading tech stocks, so why would you dabble in trading yourself? You want to get a guy for that. The Wall Street Journal has a story about a guy who's an agent for hedge fund portfolio managers:

A former portfolio manager at firms including Citadel and Millennium Management, [Ryan] Walsh is now parlaying his own experience to help clients navigate a manic marketplace for hedge-fund jobs.

"I'm looking to be the Scott Boras of the hedge-fund world," said Walsh, referring to the baseball superagent who negotiated record-breaking contracts for major-league sluggers like Juan Soto and Bryce Harper. Hanging on the wall of his office is a work of art featuring Ari Gold, the fictional agent from the TV series "Entourage." ...

Walsh, 43, said he has helped 12 clients land jobs as portfolio managers in deals worth a combined \$180 million since launching his firm, Laurel Lake Advisors. ...

Walsh saw a need for an agent after peers of his were getting offers worth \$50 million and relying on friends to opine on whether they were good deals. Portfolio managers who have been in the same job for years might not know what the going rate is for someone with a given specialty and track record, or which funds have specific needs or have agreed to certain terms with new recruits recently. Walsh hustles to get and share that intelligence.

I feel like the arc of all financial assets is:

1. First it doesn't trade: Bonds were mostly bought and held by sleepy insurance companies; investment professionals were mostly loyal to their employer and uninformed of opportunities elsewhere so could not move all that frequently.
2. Then it trades in a discretionary voice market: Bonds were traded by telephoning dealers who know what the market is; now portfolio managers have a guy who "hustles to get and share" intelligence about market levels.
3. Eventually it trades in algorithmic electronic markets.

We're probably a long way from that final outcome in the market for portfolio managers. (Or AI researchers.) But will, like, LinkedIn eventually offer an automated market where hedge funds can post bids and portfolio managers can post offers and a machine-learning model constantly scans market data points to create an up-to-the-minute price for every portfolio manager?

Also:

"The job he's doing, my sense is it requires a certain sense of chutzpah and commercial sense," said Cliff Sosin, who runs the hedge-fund firm CAS Investment Partners and has been friends with Walsh since they went to the same private high school together in New Haven, Conn. "You have to be willing to call these firms and say 'F you, this guy is worth more.'"

That *is* a valuable service. If for some reason I was in a situation where I could get tens of millions of dollars but only by swearing at Ken Griffin or Steve Cohen, I'd be happy to pay someone else a million dollars to do it.

Prediction markets

You know my theory:

1. Prediction markets like Kalshi, which only relatively recently [became available in the US](#) , are moving rapidly into offering sports gambling. (Sorry: sports *predicting*.) They have some huge advantages as sports gambling platforms. They are available in all 50 states: Some states ban sports gambling, but Kalshi has (so far mostly successfully) argued that, as a federally regulated commodities exchange, [it is exempt from those bans](#) , so it can offer sports betting everywhere. They are available *in your brokerage app*: Robinhood has [teamed up with Kalshi](#) to offer football bets, so you can bet on football from the same app that you use to invest your retirement savings. Also it seems likely that [the tax treatment of football bets on prediction markets](#) is significantly better than the treatment of football bets at a regular sportsbook (you can deduct 100% of your losing bets rather than 90%), so serious gamblers might prefer to do their betting on prediction markets.
2. This is [extremely weird](#) , but no one in the federal government seems interested in stopping it, so there you go.
3. Sports betting is [a very important business for prediction markets](#) . Prediction markets get a lot of academic and theoretical attention: It seems socially beneficial to have a market that produces probabilities for various important events. (If the market says there's an 80% chance of war, stock up on canned goods, that sort of thing.) But this theoretical benefit is hard to realize in practice , because prediction markets aren't always deep and liquid enough to incentivize people to make good predictions. (There are no index funds, and not many recreational bettors, betting on war, so if you do have a highly informed view that war is likely you can't make all that much money from it on Kalshi, so you won't bother trading to correct prices.) Traditionally, in the US, prediction markets get a ton of volume and attention every four years when there's a presidential election, and considerably less otherwise. But sports happen every week, and there *are* tons of recreational bettors who want to bet on them, so sports prediction markets can be deep and liquid and filled with noise traders for professionals to bet against. So the prediction markets can pay the bills, but they can also attract gamblers and get them addicted and have them branch out into *other*, less obvious sorts of predictions – weather, geopolitics, school board elections – to finally realize the dream of complete and informative prediction markets.

One way to think about it is the Grossman-Stiglitz paradox: To get an efficient market (here, prediction markets that accurately predict important events), you need to create conditions where informed traders can make a lot of money making prices correct, which means that you need some noise traders willing to trade at incorrect prices to entice the informed traders. And you entice the noise traders with football.

Anyway here's a Wall Street Journal article about Kalshi's efforts to disrupt football betting:

"This is the No. 1 thing that we talk about now," said Jordan Bender, a gaming-industry analyst at Citizens Capital Markets and Advisory. "It's this new, unknown opportunity. It feels like 50% of the conversations these days are around prediction markets."

Kalshi operates in a regulatory gray area. As an exchange licensed by the Commodity Futures Trading Commission, Kalshi makes its sports contracts available nationwide—even in states such as California and Texas, where online sports betting is illegal. Kalshi says its federal status means it doesn't need to abide by local regulations such as restrictions limiting gambling to those 21 and older.

In June, the attorneys general of 34 states signed a brief arguing that Congress never intended to create an "events-contract loophole" allowing Kalshi to offer sports wagers, and complaining that Kalshi was ignoring state safeguards against gambling addiction. ...

So far, Kalshi has faced little opposition from the administration of President Trump, whose oldest son, Donald Trump Jr., became an adviser to Kalshi in January. This month's start of the National Football League season powered record trading volumes at Kalshi, defying skeptics who expected the platform to struggle outside of election years. More than three-quarters of Kalshi's volume is now sports-driven.

Right the classic thing that people want to bet on is sports. But if you hook them with sports, maybe you can get them to bet on other stuff too.

Elsewhere in prediction markets:

On Sunday evening, the National Football League announced that Bad Bunny will headline the Super Bowl halftime show in 2026. Kalshi and Polymarket had contracts on this question, though Polymarket's is technically "Who will perform at Super Bowl halftime show?" (so it can resolve to more than one performer) and Kalshi's is technically "Who will headline the Pro Football Championship halftime show?" (because they [don't license "Super Bowl"](#) from the NFL). Both markets jumped up significantly on Sunday, *before* the announcement. We have talked about insider trading in prediction markets and, uh, I have a feeling it is going to keep coming up a lot. The people with academic and theoretical interest in prediction markets tend to *like* insider trading, because the social purpose of prediction markets is to *create accurate predictions*, so incorporating inside information is good. But the people with sports-betting interest in prediction markets tend to *dislike* insider trading, because it scares off casual bettors who provide all the revenue. Also it is not like there is all that much social benefit in knowing that Bad Bunny will perform at the Super Bowl hours before it is announced.

Also on Sunday, [Eric Adams dropped out](#) of the New York City mayoral race. A few weeks ago, we talked about Bill Ackman's proposal that Adams should (1) insider trade on Polymarket by betting that Andrew Cuomo would win that race, (2) drop out and throw his support to Cuomo and (3) profit when Cuomo's contract rallied. "There is no insider trading on Polymarket," Ackman tweeted. We discussed several problems with that trade, of which the ambiguity around prediction-market insider trading rules was the

least important and the lack of liquidity was the most important. As it turns out, Cuomo's contract on Polymarket rose from about 11% to about 14% so it wouldn't have worked very well anyway.

EA

Hey it's a new [largest leveraged buyout ever](#) :

Electronic Arts Inc. agreed to sell to a group of private investors in a deal that values the company at about \$55 billion, marking the largest leveraged buyout on record.

The consortium, which includes Silver Lake Management, Saudi Arabia's Public Investment Fund and Jared Kushner's Affinity Partners, agreed to pay \$210 per share in cash for the Redwood, California-based company, according to a statement Monday. That represents a 25% premium to where its shares traded before the talks leaked on Friday.

The deal will be funded by a \$36.4 billion equity commitment, plus a \$20 billion debt commitment from JPMorgan Chase & Co. The press release and 8-K do not seem to say how that equity commitment for the largest LBO in history will be split among Silver Lake, PIF and Affinity.

One can make some guesses however. Silver Lake, the press release says, "is a global technology investment firm, with more than \$110 billion in combined assets under management," and Dan Primack reports that it is investing out of a \$20.5 billion fund. The Saudi PIF has [\\$925 billion of assets](#) and "the gaming and esports industry is one of its priority sectors." Also PIF owns 9.9% of EA already, worth about \$5.2 billion at the deal price. It seems likely that PIF, with \$925 billion of assets and an existing investment in EA, is contributing a majority of that \$36 billion, and that Silver Lake – a big private equity sponsor with a lot of experience leading tech leveraged buyouts, but an order of magnitude smaller than PIF – is contributing less. (The equity check is almost twice the size of Silver Lake's entire \$20.5 billion fund.)

Meanwhile Affinity has "over \$5.4B under management," which is even smaller. If it put 20% of its assets in just this one deal, it would write about 3% of the equity check. Also the Saudi PIF is a big investor in Affinity. So the PIF, which was already a big investor in EA, had an existing relationship with management, and seems to be leading the deal, will presumably also invest in the deal through Affinity, a relatively small asset manager.

The New York Times notes, unrelatedly:

The buyout would need the approval of the Committee on Foreign Investment in the United States, a panel of government agencies that reviews international deals for security concerns. Some lawmakers have previously called for scrutiny of the Saudi fund's investments in sports for national security reasons.

"People don't often think about video games and national security together, but these are platforms that reach millions of Americans and often collect a lot of personal data," said Aaron Bartnick, a former official in the Biden administration who worked on national security reviews of foreign investments who is now a fellow at Columbia University. He suggested that the committee would "want to take a close look even if they ultimately end up signing off."

And Bloomberg News comments :

Most large deals with a foreign investor require some form of government approval. Affinity Partners – founded by Kushner, the president's son-in-law, during the first Trump administration – is participating in the deal. Affinity is backed by foreign investors, including some from the Middle East.

Just a series of facts there.

Is suspending Jimmy Kimmel securities fraud?

Look I don't like it either:

A group of Disney investors is alleging that the company prioritized "improper political" considerations over the best interests of stockholders with its brief suspension of Jimmy Kimmel last week. ...

Zoom in: In a Wednesday letter to CEO Bob Iger, lawyers representing the American Federation of Teachers, AFL-CIO and Reporters Without Borders said they are seeking answers about the suspension of "Jimmy Kimmel Live!" ...

The investors seek board minutes, internal communications, affiliate agreements and analyses of the suspension's financial impact. While the group applauded ABC for doing the "right thing" in bringing back the show, the letter noted the company still faces negative repercussions given President Trump's threat to "test ABC out on this."

The lawyers noted that "Disney's stock suffered significant declines in response to the Company's abrupt decision to suspend" the show. ...

"There is a credible basis to suspect that the Board and executives may have breached their fiduciary duties of loyalty, care, and good faith by placing improper political or affiliate considerations above the best interests of the Company and its stockholders," the lawyers wrote.

It's not really "securities fraud," but rather the technically distinct but practically related "breach of fiduciary duties." But you know what I say: Every bad thing a public company does is also securities fraud, and cancelling Jimmy Kimmel is arguably a bad thing (the stock went down!), so. So.

The main point that I want to make here is that this stuff is perfectly symmetrical. If Walt Disney Co. had *not* suspended Kimmel, (1) President Trump would have said mean things about it, (2) the stock would have gone down at some point (and up at other points!) and (3) some *different* collection of not-purely-economically-motivated shareholders would have hired lawyers to send Disney a letter like this. "There is a credible basis to suspect that the Board and executives may have breached their fiduciary duties of loyalty, care, and good faith by placing improper political or wokeness considerations above the best interests of the Company and its stockholders," etc.; the letter would have been almost exactly the same.

We have talked about this before. Back before Paramount Global paid Donald Trump to settle an absurd "60 Minutes" lawsuit, [I wrote](#) :

Paramount is apparently considering settling the lawsuit with some large payment to Trump. If it doesn't pay Trump and the deal is not approved by the FCC, that is bad for shareholders. If it does pay Trump there is at least a theoretical risk that it will get in trouble for violating bribery laws, as some US senators have threatened, and of course that would be bad for shareholders. Doing the thing that Trump wants will get you accused of corruption (you allegedly bribed him); not doing the thing that Trump wants can get you accused of corruption ("election interference" is apparently the problem with CBS News); either thing can be bad for shareholders and can get you in trouble.

Similarly, here, there are people who think that you have a fiduciary duty to suspend Jimmy Kimmel, and there are other people who think that you have a fiduciary duty not to suspend Jimmy Kimmel, and all of them are looking to sue.

What's Drake's head of security up to?

We [talked a month ago](#) about Eric Jackson, the fund manager and meme-stock cheerleader who has led Opendoor Technologies Inc.'s recent meme-stock rise. Specifically we talked about how he is standing outside Drake's house in Toronto with signs asking Drake to buy Opendoor. Why? Wrong question, buddy! "I'm sure that there is some reason for this," I wrote, "though I don't know what it is and don't especially want to find out." Just, like, meme stocks, man. You do silly stuff, people notice, the stock goes up. Don't overthink it.

This weekend [Bloomberg News had a story](#) about Eric Jackson standing outside Drake's house, which is definitely a thing he is doing, though not, like, for a *reason*:

"All these people are telling me to stop," Jackson said in an interview in front of Drake's house, on what he called Day 29 of his campaign to enlist the celebrity. "I'm just going to ignore them. I'm going to trust my gut."

Okay.

Jackson bristles at seeing Opendoor through the meme-stock lens. Instead, he prefers to think of it as a "cult stock," like a great film that's ignored on its release but attracts legions of fans as the years go by.

Okay.

Drake still hasn't bought in, as least as far as Jackson knows. He hasn't spoken to the rapper. Rob Schneider, the former Saturday Night Live comedian and star of the 1999 film *Deuce Bigalow: Male Gigolo*, became self-proclaimed "believer" in the company, though.

Others are curious. Outside of Drake's residence, Jackson suddenly received a cellphone call from the Toronto rapper's head of security, Bucky, who saw him through the cameras. Bucky wasn't chasing Jackson away. He wanted to talk more about Opendoor and said he wished he had caught the rally.

If you can get Rob Schneider and Bucky, Drake's head of security, interested in a stock, is that something? Does that make the stock go up?

Things happen

Citi's Wall Street Rebound Turns [Raghavan](#) Into CEO Contender. [First Brands](#) Files for Bankruptcy After Weeks of Lender Scrutiny. Apollo Sidestepped Blacklist to Short Ailing [First Brands' Loans](#) . The Credit Market Is Humming – and That Has Wall Street On Edge. Investors Pile Into Funds Betting on Elusive [Market Volatility](#) . Hedge Funds Turn Bearish on [London Cocoa](#) as Supplies Improve. "Never before has an individual seeking a US president's goodwill channeled so much money to the president's family." Why Microsoft Has Lower Borrowing Costs Than the U.S. A New Front Opens Between Zuckerberg and Musk Over Robots. White Men Make a Comeback in America's Boardrooms . AI can now pass the hardest level of the CFA exam in a matter of minutes.

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1. I [wrote the other day](#) that "at some point I am going to end up writing about a billion-dollar acquihire of some AI professor's research lab," same basic idea. In other news, the University of Chicago sold the Center for Research in Security Prices for \$375 million.
2. There are no index funds yet, but give it time. A couple of weeks ago, I wrote that there will be an exchange-traded fund for football bets within two years, and I feel good about that.
3. "Breach of fiduciary duties" is: You did a bad thing and the stock went down. "Securities fraud" is: You made shareholders believe you would do a good thing, then you did a bad thing, and the stock went down. It is fairly easy to transform one into the other, though they have different legal regimes. (Primarily securities fraud is federal and fiduciary duties are state law.)

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Securities

Manage Newsletters

Nidec Shares Slide After Widening Accounting Scandal Hurts Trust

Sept. 28, 2025, 7:38 PM PDT

Summary by Bloomberg AI AI Generated



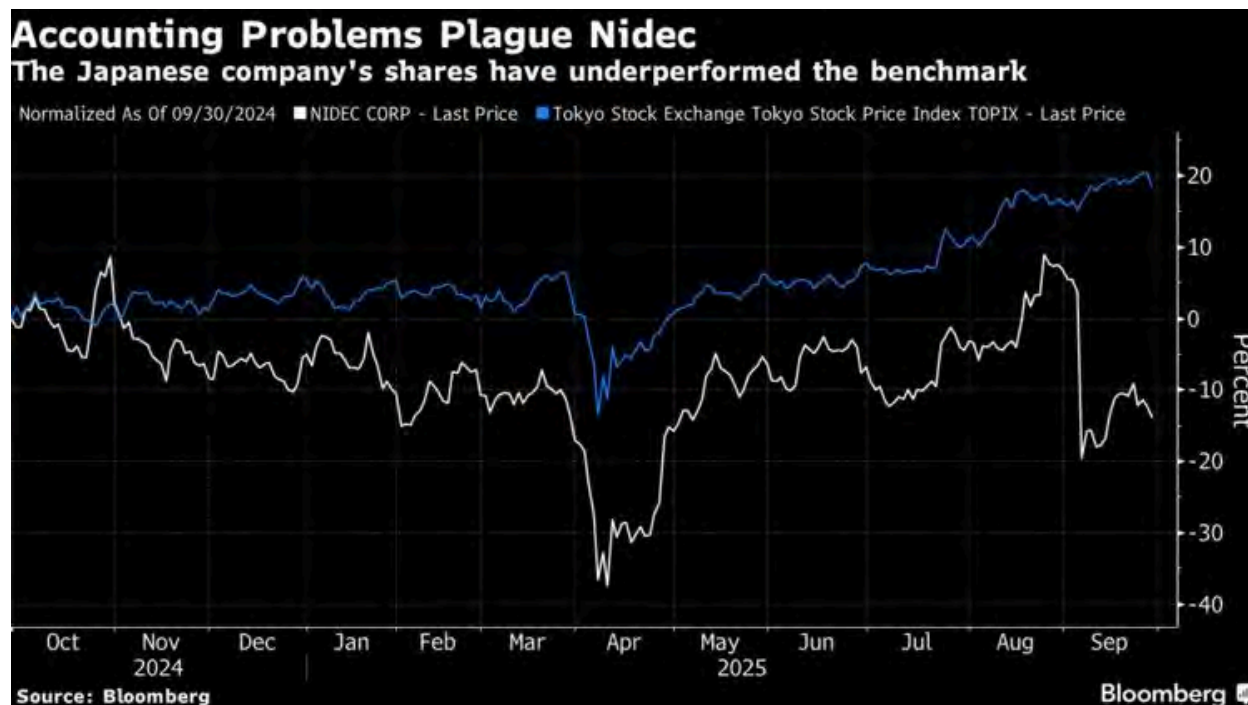
- Nidec Corp. shares slid after the company discovered more suspected cases of improper bookkeeping, heightening fears it may come under regulatory scrutiny for a potential delisting.
- The company found evidence of systemic accounting problems, including underreported duties on second-hand goods exported to China and exported products without completing the required paperwork.
- Auditor PwC Japan has withheld its signoff on Nidec's securities report, and under Tokyo Stock Exchange rules, the company can get labeled a "security on alert" and face delisting if the problems aren't addressed within a year.

Nidec Corp. shares slid after the company discovered more suspected cases of improper bookkeeping, heightening fears the world's biggest maker of mini motors may come under regulatory scrutiny for a potential delisting.

The latest revelations emerged from an [external](#) probe that began earlier this month when Nidec found evidence of systemic accounting problems. On Friday, it said in a financial report – submitted after a three-month delay – that it had unearthed new problems. Its car inverter business may have for years underreported duties on second-hand goods exported to China, and a Swiss unit may have exported products without completing the required paperwork.

Nidec's stock fell as much as 4.8% early on Monday, which was also an ex-dividend date for the company. The shares later recouped much of their losses and were down about 1.8% in late morning trading.

"Nidec might need some time to rebuild the trust into its financial reporting," **Julie Boote**, analyst at UK-based Japan equity research firm Pelham Smithers Associates, wrote in a report. It has over 300 group companies, and it's possible that more cases of improper accounting will emerge, given seemingly inadequate internal controls, she added. "The probability of a quick resolution of the accounting crisis is rapidly waning."



Read More: [Nidec Shares Sink 22% on Fears of Systemic Accounting Issues](#)

Auditor PwC Japan has withheld its signoff on the Kyoto-based company's securities report for the fiscal year ended March, saying it was unable to obtain enough evidence to form an opinion.

Under Tokyo Stock Exchange rules, any company found to have falsified statements can get labeled a "security on alert" and face delisting if the problems aren't addressed within a year. In the past, that label has been imposed on Toshiba Corp. and Olympus Corp. , although both avoided getting tossed off bourses.

Governance at Nidec, whose inverters and motors are found in cars, robots, home appliances and data centers around the world, is under scrutiny along with founder **Shigenobu Nagamori**'s tight grip on the company before he [stepped down](#) as chief executive officer last year.

"I can't say all negative factors have been accounted for," Citigroup analyst **Takayuki Naito** said, noting the auditor's disclaimer and more findings ahead from a third-party investigation into multiple cases of accounting irregularities. Shares will likely remain sluggish until the third-party committee's findings are made public, he said.

--With assistance from **Alice French**.

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Securities

Bryant Riley Seeks to Swap Years of Turmoil for Turnaround (1)

Sept. 26, 2025, 8:06 AM PDT

B. Riley Financial Inc. is still standing.

It's a remarkable statement, given what the brokerage and investment firm led by Chairman **Bryant Riley** has been through: More than \$1 billion of losses over the past three years, the bankruptcy of its key investment, a plunging stock price and an ongoing investigation by US regulators.

He's had to sell off prized pieces of his firm to cut debt while some of his top-producing brokers departed and counterparties balked at doing business. The company is so far behind on reporting official results that Nasdaq has threatened to delist the stock at the end of this month — an outcome B. Riley plans to appeal — and the firm has fired its longtime auditors.

The company will nevertheless recover, Riley said during two September interviews, backed by new lenders, new auditors, some initial signs of profit and a renewed focus on its core businesses. Riley said he's lost 18 pounds stressing out as he worked to turn around his Los Angeles-based company, which was hurt by soured investments and a scandal engulfing former business partner Brian Kahn that spilled over into B. Riley.



Bryant Riley at the company's Manhattan office in September.

Photographer: Michael Nagle/Bloomberg

He's trying to put the episode behind him as much as possible, Riley said, and focus on rebuilding the company that he co-founded in 1997. Before the setbacks, B. Riley had a solid niche in serving small and mid-cap public companies that the big Wall Street firms typically wouldn't handle.

"Obviously, I've not done anything but this because I can't get my mind off of it," Riley said at his firm's Park Avenue office in New York. "I feel like if I'm not doing something, I just can't relax."



Brian Kahn

Source: SEC Filings

B. Riley made some bad investments, he allowed, including Franchise Group Inc., Kahn's now-bankrupt collection of furniture chains, vitamin stores and pet supplies. The fundamentals seemed sound at the time, Riley said. What he didn't know, he said, was that Kahn was regarded by US prosecutors as an unindicted co-conspirator in a fraud case stemming from a defunct hedge fund.

"We just didn't underwrite for that," said Riley, who said he feels betrayed and angry at his old partner. "I don't like saying his name, honestly."

In the fallout, Riley and his firm received civil subpoenas from the US Securities and Exchange Commission. Kahn and Riley insist they didn't do anything illegal and they haven't been charged with wrongdoing.

But the scars show in their fractured relationship. Kahn exited under pressure as chief executive of Franchise Group, or FRG, in January 2024 as the firm was imploding. Riley said he has hired a civil lawyer to protect his own interests.

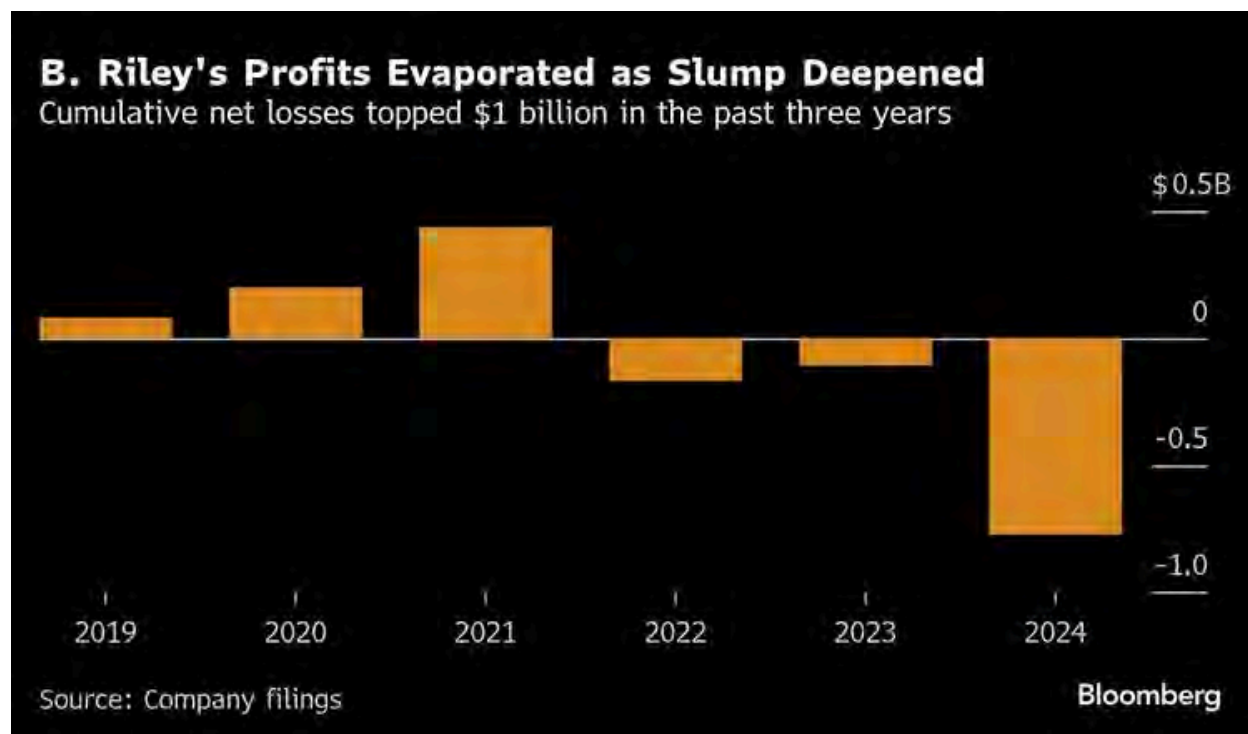
Market Maker

It's been a rough ride for B. Riley, whose business includes selling stock, marketing debt and providing analyst coverage and investment conferences for hundreds of lesser-known companies. Last year when it employed more than 2,000 full-time workers, the company made a market in over 1,500 securities and counted trading relationships with more than 1,000 money managers. Along the way, B. Riley has made loans and taken stakes in some of its clients, including FRG.

Riley, too, endured a personal setback during this year's wildfire that destroyed most of his neighborhood in California's Pacific Palisades. The fire came close to his home, but it's still standing, too, and the 58-year-old father of four says his family was safe.

The recovery plan for his company involves returning to its stock-picking and research roots. Riley noted the firm also offers advisory services that include debt restructuring — a subject he knows more thoroughly after his own company's experience.

To buy time for a turnaround, B. Riley reworked its debt to delay some of the due dates to 2028. The second quarter was profitable, according to preliminary figures, and B. Riley still has its wealth management business, albeit shrunk by departures and the sale of a key portion to Stifel Financial Corp. to cut debt.



Some of the stakes B. Riley took in firms that went sour are improving, Riley said, citing Magic Jack, whose devices provide internet phone service, and Babcock & Wilcox Enterprises Inc., the maker of power generators that rallied from about 22 cents a share last year to \$2.75. The latter has said it's working on plans to overcome doubt about its survival.

B. Riley will continue investing alongside clients if it helps their business thrive, he said, pointing out that some prior investments had indeed worked out well. But none will be anything like FRG.

"Yeah, we are not going to do any big outside deals," he said.

'Sweet Spot'

Companies are still choosing B. Riley to lead their securities offerings, Riley said, as he works with those in the firm's "sweet spot" — companies valued at around \$2 billion. "There's not a lot of companies that can do that," Riley said.

In August, B. Riley helped lead an initial public offering by WhiteFiber Inc., an artificial intelligence infrastructure firm that raised \$159 million. This month included a \$230 million offering for OTG Acquisition Corp., a blank-check company focused on digital infrastructure.

Some of the numbers on the way to recovery are daunting. Last year's loss alone was \$772 million, knocking shareholder equity to a negative \$488 million. Assets under management at the wealth unit fell to \$14.4 billion as of April, from \$25.4 billion at the end of 2023. While the 2024 audit was unqualified, it cited 10 weaknesses in the company's controls, including some from the 2023 report that went unfixed.



Debt stood at \$1.46 billion at midyear, with about \$470 million coming due in 2026. Riley said he's confident payments will be covered, citing income from core businesses and investments, and perhaps with more debt swaps or buying back notes at a discount. The firm also held about \$268 million of cash and equivalents on June 30.

Other challenges could include competition on its home turf, with JPMorgan Chase & Co. staging a hiring spree for middle-market bankers and the sector recently accounting for about a third of Bank of America Corp.'s investment banking revenue. Nasdaq's plan to tighten listing requirements for smaller "penny stock" offerings could cut into those opportunities, said **Jay Ritter**, a finance professor at the University of Florida who researches IPOs.

Despite all that, B. Riley's shares have clawed back from less than \$3 this year to as much as \$7.90 this month. (They were quoted at \$6.16 as of 11 a.m. in New York.) That's still far below the \$60 fetched in July 2023, though, and Nasdaq has warned B. Riley it would be delisted if it didn't catch up on all its regulatory filings. When the firm finally released its 2024 report on Sept. 19, B. Riley said it would miss a Sept. 29 deadline for this year's first- and second-quarter reports.

The company said in its filing it would ask Nasdaq to reconsider and grant extra time so it could continue trading. B. Riley said in a statement it intends to regain compliance. The exchange declined to comment.

Intangible Impact

Delisting sounds ominous, but it doesn't directly affect operations — a brokerage can stay in business if it meets capital requirements, said Tom Hazen at the University of North Carolina.

Still, delisting could make it harder for B. Riley to market its own securities. Being listed conveys that a firm is held to a higher standard, said James Cox at Duke University, so getting kicked off could send “a bad signal.” Brokers depend on a “steady stream of new clients to compensate for the churn in existing clients,” Ritter said. “For these firms, reputation does matter.”

The shares helped B. Riley clinch new financing earlier this year after its lenders led by Nomura Holdings Inc. backed out. Oaktree Capital Management, the investment firm founded by distressed-debt guru **Howard Marks**, plugged the hole with a financing package that included an equity kicker — warrants for Oaktree to buy more than 1.8 million common shares of B. Riley at \$5.14 each, good for seven years.

It's been a profitable deal for Oaktree, with interest payments from B. Riley hitting 12% and a multimillion-dollar paper gain on the warrants. In July, Oaktree amended the terms to support B. Riley's investment activities and potentially finance buybacks of its unsecured notes to ease the debt load even more.



Riley during an interview on September 9.

Photographer: Michael Nagle/Bloomberg

Oaktree, which also bought a majority stake in B. Riley's Great American restructuring unit, declined to comment.

Warrants also underpinned a swap of some junior debt maturing in 2026 — B. Riley's so-called "baby bonds." Holbrook Holdings started scooping them up at hefty discounts in 2023, according to founder **Scott Carmack**. Sometimes they were quoted for as little as 20 cents on the dollar, and Holbrook amassed a stake that he valued at around \$90 million by the end of last year.

Gaining Security

But the baby bonds were unsecured, with no claim on any specific asset if B. Riley couldn't pay them off. So Carmack agreed to swap: In return for delaying the due date until 2028, Carmack said he got new secured notes with plenty of collateral, along with 350,000 warrants to buy shares at \$10.

B. Riley's success will be "very dependent on their core business," Carmack said. He sees a tailwind coming because many small caps need to refinance, and a moat around B. Riley's niche. "There aren't too many companies that could really steal their market share," Carmack said.

The to-do list includes dealing with an inquiry by the SEC, which is investigating whether B. Riley gave shareholders an accurate picture of its health and its dealings with Kahn. The two men had worked closely on several acquisitions engineered by Kahn, and Riley served on the boards of some of Kahn's companies.

But in 2023, Kahn was deemed an unindicted co-conspirator by federal prosecutors in a fraud case stemming from the 2020 collapse of Prophecy Asset Management. Kahn helped manage that hedge fund, and Prophecy investors alleged in civil litigation that he used money improperly diverted from the hedge fund to acquire his stake in FRG.

Buyout Deal

B. Riley wound up owning some of those shares when it helped Kahn stage his leveraged buyout of FRG. The deal included a 31% stake for B. Riley and a \$200 million loan to Kahn — with more shares of FRG pledged by him to B. Riley as collateral. B. Riley initially didn't tell its own shareholders about the loan, and FRG subsequently went bankrupt last November — wiping out nearly all of B. Riley's investment.

"Should I have seen this? I mean, of course, but the same strategy is what built us," Riley said. "At the time we felt like we had a really good plan that was going to be executed, and so did a lot of others." That was derailed when the controversy about Brian Kahn arose, he said.

In the aftermath, Riley and the company have been subpoenaed by the SEC. Riley said he couldn't discuss the civil case but said he's cooperating, and two law firms hired by the company found no wrongdoing by B. Riley. Kahn, too, has said steadfastly he's innocent and that he was among the fraud's victims. (His attorney didn't respond to requests for comment; an SEC official declined to comment.)

Looking ahead, Riley said, he's focused on repairing the damage.

"I think about the people that work here," he said. "I don't think about Brian Kahn."

(Updates with today's share price.)

Two US senators urge probe of Tesla's Full Self-Driving response to rail crossings



reuters.com/business/autos-transportation/us-senators-urge-agency-probe-tesla-full-self-driving-response-railroad-2025-09-29

David Shepardson

September 29, 2025

Item 1 of 2 A Tesla Model 3 vehicle drives using FSD (Full Self-Driving) in Encinitas, California, U.S., October 18, 2023. REUTERS/Mike Blake

[1/2]A Tesla Model 3 vehicle drives using FSD (Full Self-Driving) in Encinitas, California, U.S., October 18, 2023. REUTERS/Mike Blake [Purchase Licensing Rights, opens new tab](#) WASHINGTON, Sept 29 (Reuters) - Two U.S. senators on Monday urged the country's auto safety regulator to investigate reported failures of Tesla's Full Self-Driving system to detect and safely respond to railroad crossings, citing risks of "catastrophic" collisions.

The Full Self-Driving system, according to Tesla's website, allows a vehicle to drive occupants "almost anywhere," handling everything from route navigation to lane changes, steering and parking, but still requires supervision by a human driver.

Democratic Senators Ed Markey and Richard Blumenthal, in a letter to the National Highway Traffic Safety Administration calling for a probe, cited a growing number of reported near-collisions.

"Although mistakes such as a missed traffic sign or an illegal lane change are dangerous, a miscalculation at a train crossing can lead to catastrophic, multi-fatality collisions involving vehicle occupants, train passengers, and rail workers," the senators wrote in the letter, which was released publicly.

Tesla ([TSLA.O](#)), [opens new tab](#) and the NHTSA did not immediately respond to requests for comment.

Tesla's Full Self-Driving system, which is more advanced than its Autopilot system, has already been under investigation by the NHTSA. The agency in October 2024 opened a probe [into 2.4 million Tesla vehicles equipped](#) with FSD after four reported collisions in reduced roadway visibility conditions like sun glare, fog or airborne dust, including a 2023 fatal crash.

The two senators said the NHTSA should consider imposing limitations on Tesla's use of the system.

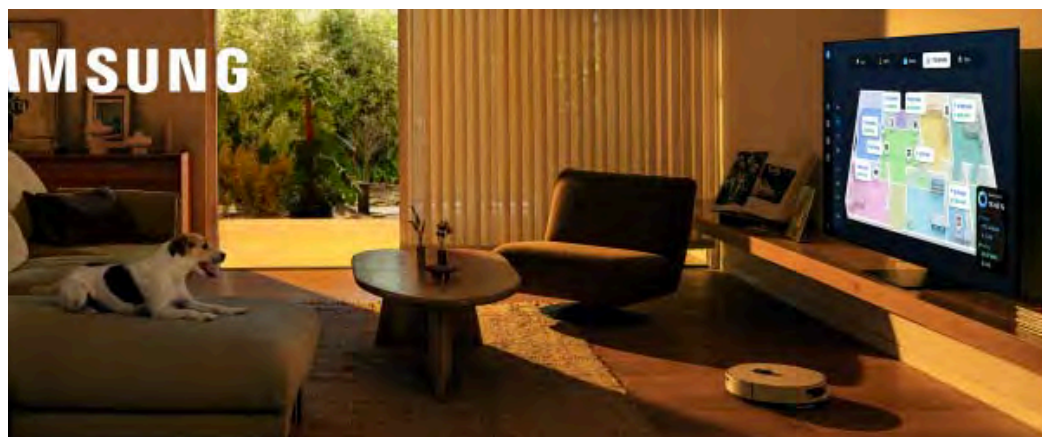
"The agency should consider clear and obvious actions to protect the public, including restricting Tesla's FSD to the road and weather conditions it was designed to operate in," they said.

Telsa's other automated vehicle features have also come under probe by the NHTSA.

In [January the agency opened a probe into 2.6 million](#) Tesla vehicles over reports of crashes involving a feature that allows users to move their cars remotely. The NHTSA is also scrutinizing Tesla's deployment of self-driving robotaxis in Austin, Texas, launched in June. In a July 1 email to Tesla, the agency said it was still reviewing the deployment and wanted to know if Tesla employees can remotely drive the vehicles.

Reporting by David Shepardson; Editing by Franklin Paul and Leslie Adler

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Robin Wigglesworth and Jill R Shah

Published YESTERDAY



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This summer, many systematic, algorithm-powered trading strategies suffered an abrupt and mysterious pummeling that was somewhat reminiscent of the infamous “[quant quake](#)” of 2007.

It wasn't nearly as violent as in 2007 — it was more an unpleasant quiver than an earthquake — but it was enough to [fray nerves](#) in some corners of the quantitative hedge fund industry.

The reversal might have been started by a “[garbage rally](#)” in heavily shorted stocks, but some think that it might have been exacerbated by one of the biggest new trends in quant investing: the growing overlap between market-making trading firms such as Citadel Securities, Hudson River Trading or Jane Street, and big hedge funds such as DE Shaw, Millennium, Point 72 or Qube Research & Technologies.

Some in the industry are sceptical that this increasing overlap was a factor in the July “quant quiver”, pointing out that the strategies that were the worst hit were mostly longer-term ones, rather the those using quicker signals, where competition is becoming more ferocious. Nonetheless, both proprietary trading firms and hedge funds concede that two industries — that for years virtually operated in separate worlds — are now starting to come together.

As a senior executive at one of the big multi-strategy hedge funds told FT Alphaville:

“

There are times when an industry’s structure changes. We’re now in the early stages of seeing a reorganisation of systematic trading, where some successful prop trading firms are going to increasingly resemble hedge funds, and some successful hedge funds will start to look like prop trading firms . . . There is an interplay and growing overlap in their skillsets and strategies. It will be interesting to see how it plays out, but they are definitely beginning to converge.

This trend has been quietly emerging since 2020-21, but has become much more apparent in the past year or so. The confluence also has myriad implications for both industries — and the markets where they’re increasingly colliding.

This may test your patience, but to understand how it happened and why it’s so interesting it’s probably worth first diving briefly into the parallel histories of high-frequency trading and the quantitative hedge fund strategy known as “statistical arbitrage”. Feel free to skip the next two sections if you know all this stuff already.



High-frequency trading has evolved dramatically in the decades since its genesis, whether you think this was the NYSE's first electronic "[designated order turnaround](#)" system in the 1970s, the "[bandits](#)" that preyed on the Nasdaq's Small Order Execution System in the 1980s, or the explosion of automated trading on "[electronic communication networks](#)" in the 1990s.

The cottage industry's first big inflection point came in 2005 with the SEC's introduction of Regulation National Market System — or RegNMS as it's usually called. By modernising the US equity market structure and encouraging greater competition, this became "the final structural move that set the stage for the current electronic trading revolution", as one academic noted in a [2010 study](#).

Just how far the revolution had come first became apparent to the general public in the 2010 "[Flash Crash](#)", when the US stock market suddenly careened lower at speeds humans struggled to comprehend. The normie view of high-frequency traders as financial parasites that ruin markets was then crystallised by Michael Lewis' bestselling 2014 book *Flash Boys*.

Many in the industry — who saw themselves as geeky disrupters that stuck it to Wall Street and made trading cheaper for investors — were horrified at their portrayal. In fact, when Ari Rubinstein, the head of Global Trading Systems, first heard that one of his favourite authors was writing a book about his industry he assumed that they'd naturally be the heroes of the tale. [As he told the FT a few years ago](#):

“

I thought, finally, someone is going to glorify what we've been able to do. A bunch of people were able to disrupt the industry, create a lot of efficiency, save people a lot of money and get rid of the middlemen in the process — and I was like, 'Holy cow! is he going to call us?' And then, when I found out that, 'Oh no, you're the villain', I was really surprised.

Politico really nailed the zeitgeist with this [illustrative gif](#) back in 2016.



However, the classic view of HFTs as a monolithic group of purely algorithmic, hyperactive speed merchants was never entirely correct, and is now a little outdated.

Pure speed is still essential to swaths of bread-and-butter market-making. What was once measured in milliseconds (thousandths of a second) became nanoseconds (billionths of a second) in the noughties, and is today often done in picoseconds (one trillionth of a second). In this space, microwave towers and “[co-location](#)” are still important.

But “low latency trading” — as people in the industry usually call this form of HFT — is butting up against the limits of physics. Moreover, intense competition has made it much less profitable. As one HFT executive says: “There is no alpha, it’s all latency. That gets all the focus, but it doesn’t actually make much money.”

As a result, there’s been a massive amount of consolidation in recent years, with many early HFT [pioneers](#) falling by the wayside and others simply stagnating.

The new HFT royalty are therefore primarily (if not exclusively) firms that have evolved into “*proprietary*” trading firms that also make bets with their own capital — as opposed to only pocketing the spreads between two-sided quotes on securities — and which have broken out from the pure speed game by holding positions for minutes, hours or even days.

The best examples are probably firms such as Jane Street, Citadel Securities, DRW, Susquehanna International Group and Hudson River Trading. Sure, most of these firms still do a lot of classic high-speed, high-frequency, high-volume trading, but increasingly the really big profits are coming from prop trading and slower signals.

And this is starting to bring them into territory historically ploughed by hedge funds that pursue a strategy called “statistical arbitrage”.



Sometime in the early 1980s a programmer named Gerry Bamberger pioneered something called “[pairs trading](#)” at Morgan Stanley. It quickly proved a phenomenon.

Bamberger must have cut an odd figure at Morgan Stanley. This was Wall Street’s Waspiest firm, and he was a tall, cerebral Orthodox Jew with a heavy smoking habit who ate [a packed tuna salad sandwich for lunch every single day](#). But the strategy he developed became a money machine for the bank, which called his new desk Advanced Proprietary Trading.

Pairs trading involved finding pairs of securities that were usually closely correlated — like Pepsi and Coke, Royal Dutch and Shell, or Berkshire Hathaway’s different share classes — but occasionally veer off in opposite directions. You then short one and long the other, betting that the historical link would reassert itself.

Over time this evolved into the broader strategy dubbed statistical arbitrage, where you constantly scour markets for *thousands* of opportunities like this, hedge out the overall stock market risk and try to just generate pure, sweet market-beating alpha.

These stat-arb bets can range from simple pairs trading to the more complex, such as [arbitraging divergences in the price of US equity market exposure](#) through individual stocks, marketwide ETFs, index options and futures. It quickly became a big deal, as former Morgan Stanley risk management supremo Richard Bookstaber later wrote in his book [A Demon of Our Own Design](#):

“

Thanks to Gerry Bamberger, who started as a programmer on Morgan's equity desk, the way trading was done and the function it performed had changed. As a result of his work, the computational power for statistical analysis was unleashed on the markets and — using the newfound execution capabilities of the equity market — a machine was created to harvest opportunities to provide liquidity. Bamberger had moved at least one segment of the market from that of hunter-gatherer to farming.

Bamberger later fell out with Morgan Stanley and left for Ed Thorp's pioneering quant hedge fund Princeton/Newport Partners. Morgan Stanley's APT desk was taken over by Nunzio Tartaglia, a famously swearsy Jesuit-educated former physicist, who for a period took it to new heights. In 1987 APT reportedly made [\\$50mn of profits](#) for Morgan Stanley, a fortune at the time and particularly remarkable given the Black Monday crash that year.

However, by the end of the decade returns started to fizzle, and many of the top quants on Morgan Stanley's APT desk headed to the exit. Among them was a brilliant technologist called David Shaw. He started his own hedge fund built on statistical arbitrage — which is today's \$70bn [DE Shaw](#).

DE Shaw in turn birthed Two Sigma — another giant of the quant hedge fund industry — while Morgan Stanley's APT desk was eventually resurrected in the form of [Peter Muller's Process Driven Trading Group](#). In 2012 this was spun off of the bank as the hedge fund PDT Partners. Between them, DE Shaw, Two Sigma and PDT reportedly manage roughly \$150bn, much of it in stat-arb strategies. Renaissance Technologies fabled [Medallion](#) fund is also said to mostly consist of statistical arbitrage.

Just like with HFTs, the stat-arb world is not monolithic. Strategies and holding periods can vary enormously. Some hedge funds might use signals that only hold positions for a few hours, but it's usually days, and they can be weeks.

HFTs also look for often pricing discrepancies that they can arbitrage, but over very different timeframes, and for a long time they overwhelmingly went home "flat" — in other words, most positions were closed out at the end of every trading day. After all, while hedge funds manage other people's money, prop firms usually only have their own partners' capital to play with, so they didn't want to lug around lots of risky positions on their balance sheet for too long.

As a result, they evolved as essentially two different industries, with remarkably little overlap despite being mostly staffed by the same types of programmers, mathematicians and scientists and pursued vaguely similar systematic financial trading strategies.

Until now, at least.



Industry insiders say the overlap first began in earnest in the wake of the Covid-19 trading boom, when several trading firms made so much money that they had to find new places to deploy it.

After all, in classic “low-latency” strategies there’s a limit to how much capital you can deploy at any given time, given how swiftly securities are traded. What works with \$1bn can actually work less well with \$10bn. However, longer term trades — and by longer term, we’re obviously talking in relative terms — allow firms to deploy more resources, in terms of capital, people and technology. As the head of one large US trading firm tells Alphaville:

“

It’s a capacity issue. To keep growing revenues you need to take larger positions. There’s been a lot of investment in research and compute, and those are very high fixed cost investments, so you want as much investment capacity as possible to earn that out.

At the same time, many trading firms saw with envy how much money Jane Street in particular was starting to make, mostly because of its ability and willingness to carry positions for a bit longer than the norm — the result of its role as a major market-maker for ETFs. [In the first half of 2020 alone Jane Street notched up \\$8.4bn of net trading revenues](#), more than twice that of its rival Citadel Securities.

Soon enough, more and more trading firms started adding “mid-range” trading strategies to their arsenal, which are now said to be particularly strong profit centres at the likes of Hudson River Trading. At HRT these signals are housed a separate unit called Prism, which [reportedly](#) notched up profits of more than \$2bn last year. At Tower Research, mid-frequency trading now accounts for about 25-30 per cent of revenues, up from under 10 per cent 2-3 years ago, according to a person familiar with the matter.

Citadel Securities has largely remained a classic market-maker — given that Ken Griffin’s separate hedge fund Citadel already does plenty of prop trading — but it too is said to be holding positions for longer these days. A spokesperson for the company said: “Depending on size, product, risk and liquidity dynamics, we warehouse this risk over a range of time durations, sometimes up to weeks.”

Naturally, this has meant that many hedge funds have been eyeing with equal jealousy the huge profits these trading firms have made in recent years.

After all, many of the hedge fund industry’s top names are closed to new investment because their existing strategies also have capacity constraints. As a result, they are constantly on the prowl for new ones that might allow them to keep more investor money [rather than sending billions of dollars' worth of gains out the door every year](#).

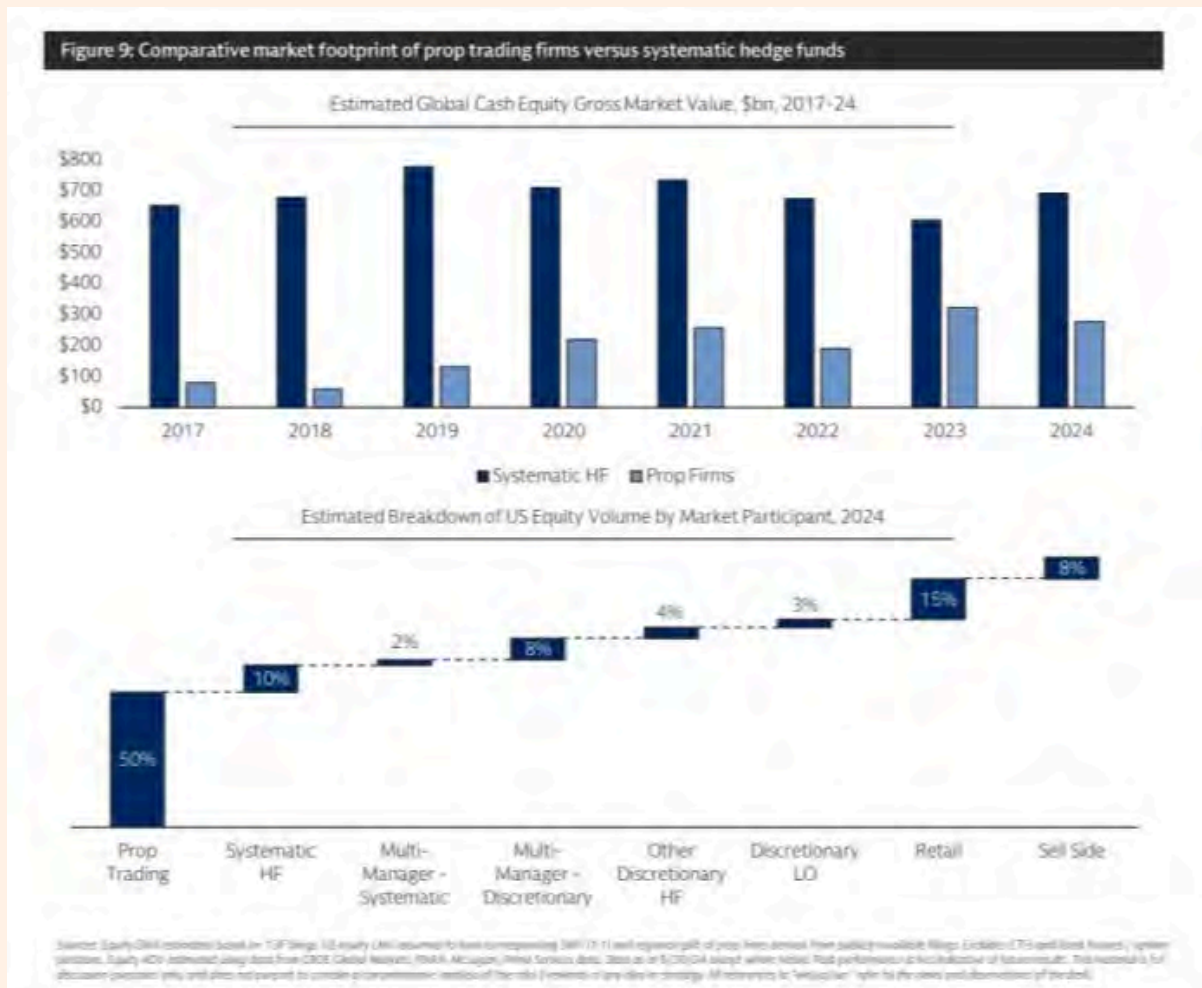
Moreover, faster, systematic strategies typically boast high “Sharpe ratios” — a measure of investment returns relative to their volatility — which can make a fund’s overall results look prettier, as one senior hedge fund executive notes:

“

Hedge funds need high Sharpe capacity strategies, because there is a barbell sort of complementarity between high Sharpe strategies with low capacity and high capacity strategies with low Sharpe ratios. So hedge funds want more high Sharpe strategies — and those are typically lower latency strategies — in order to support strategies like commodities or some fixed income.

As a result, hedge funds with stat-arb strategies and prop trading firms are increasingly competing in trading strategies with holding periods ranging from a few hours to a few days.

Here's a chart from Goldman's last annual survey of the quant hedge fund industry, which shows how the estimated market footprint of prop traders has expanded dramatically in recent years ([zoomable version](#)):



Some industry insiders argue the convergence is mostly a case of prop trading firms rolling their tanks on to the stat-arb lawn, rather than stat-arb hedge funds also speeding up and encroaching on prop trading turf.

But the head of one major quantitative hedge fund told Alphaville that he was definitely seeing a move towards lower-latency trading signals by his industry.

“

At the very short end [of latency], opportunities have compressed; at the very long end [of investment strategies], premia are crowded. Naturally, capital and talent migrate towards the middle. So you see prop firms with execution DNA stretching into multi-day signals, while classical stat-arb firms accelerate their cycles.

For now, prop trading firms are said to have been more successful in adding “slower” trading strategies than hedge funds have been at speeding up. As one quant hedge fund manager we spoke to observed: “It’s easier to go from building a Ferrari to building a Volkswagen, than from building a Volkswagen to a Ferrari.”

However, some prop trading firm executives say this understates the apparent success of some hedge funds such as Qube Research & Technologies and long-established quant powerhouses like DE Shaw, and reckon the trend will become even more pronounced in the coming years. As one put it to us:

“

The Venn diagram never overlapped before, and now it does. It started overlapping in a tiny way maybe five years ago, but in five years’ time the overlap will probably be even bigger than it is today.



So what does this all *mean*? Why do we even care? We shouldn’t, on a cosmic scale. But here are a handful of implications that Alphaville thinks are worth bearing in mind, in roughly ascending order of importance.

1 Hedge funds and prop trading companies are going to be increasingly competing not just for entry-level talent — freshly-graduated computer scientists, mathematicians and general brain boxes — but also for mid-career people.

Millennium’s [fateful](#) poaching of two Jane Street traders is therefore probably just the beginning. We’re going to see more of this happening — [given that some hedge funds can pony up \\$100mn packages for portfolio managers](#) — but we’re also likely going to see quant hedge fund people migrate to the prop trading world. [After all, even the interns make stupid money.](#)

2 Prop trading firms are becoming increasingly important clients of Wall Street, and this is just going to become even more pronounced. On the current trajectory they soon might rival hedge funds and private equity for importance.

Historically, prop trading firms operated fairly separately from the banks. They might route trades to or through them, but didn't rely on them in the symbiotic way that hedge funds do. As Jarrod Yuster, the chair and CEO of trading tech provider Pico, says:

“

It's a very technology-intensive business, and generally they don't hold positions overnight. You don't need financing for that, so the business they offered banks was just execution and trading fees. Banks therefore valued quant funds more than HFTs.

However, as prop trading firms have begun to spread their wings they need more financing and other services. As a result, they have [grown radically in importance to the prime brokerage units](#) of big banks that have usually catered only to hedge funds — even though the trading firms are in many respects rivals to other parts of the same bank.

As Goldman Sachs' markets supremo Ashok Varadhan [told IFR earlier this year](#):

“

As you grow and become more relevant, there are going to be times when your clients will be your competitors and you just have to manage through that and have the maturity to realise that you're going to collaborate in some areas and compete in others.

3 Prop trading firms are going to be raising more external capital, and hedge funds will become increasingly tempted to hive off their best trading strategies in internal funds for their own partners and employees. In fact, both of these things are already happening — at least in some form.

Citadel Securities, Hudson River Trading and Jane Street have all [tapped the debt markets](#) to boost the firepower offered by their retained profits. Given how much money these firms have made in recent years they may never want or need to start more traditional fund-like investment vehicles, but Tower Research — one of the HFT pioneers — has [talked to investors about doing so](#), and several industry insiders predict that “proper” HFT-powered long-short equity funds will inevitably emerge.

At the same time, some of the higher-profile star-arb hedge funds are either already entirely employee money (Renaissance's Medallion) or probably heading in that direction (DE Shaw's Valence fund). It's natural that more and more successful hedge funds start housing their low-capacity, high-Sharpe quasi prop-trading strategies in internal funds — even if it annoys investors no end and [needs to be done very carefully](#).

4 Increasing competition in mid-frequency trading — generally said to be in the 1-5 day range — could cause [crowding](#) in some signals. The dangers of this crowding are ramped up by the growing use of leverage to maximise profits.

There are good reasons to be sanguine about this. A more diverse set of participants is generally a healthy thing for a market. Prop trading firms overwhelmingly deploy their own money — the stickiest capital there is. Both prop firms and quant hedge funds are as a rule pretty obsessive about risk, and particularly assiduous about monitoring for signs of herd-like behaviour.

However, as the head of one big trading firm told Alphaville:

“

It is a concern how much crowding there is in stat arb signals right now. July was a sign that things could be very crowded . . . It's unclear how much of it is due to this, but there's a lot of money chasing similar strategies and signals in similar instruments, which can cause correlated drawdowns.

Where on the Richter scale the next quant quake will measure is beyond Alphaville. But we can see that having nearly two-thirds of US equity trading volume — or ca 20x the total trading volume of the entire long-only investment fund industry — potentially getting locked into correlated drawdowns might not be ideal.

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How DATs Are Bringing Crypto Fever to US Stock Market: QuickTake

Sept. 26, 2025, 10:12 AM PDT

Strategy. Metaplanet. KindlyMD. If you're an avid watcher of stock prices, you might have seen these names notching eye-popping gains in a single day. They belong to a burgeoning new trend of digital asset treasury companies, businesses that hold large amounts of cryptocurrency even when their day-to-day operations may have nothing to do with crypto or the blockchain technology it relies on.

DATs can be an attractive proxy for investors who want exposure to crypto but don't want to hold the tokens directly. Unfortunately, values can go down as quickly as they went up, and the market's getting crowded.

What are digital asset treasury companies?

Digital asset treasury companies, also known as DATs, are publicly listed businesses that seek to amplify their value by maintaining large holdings of cryptocurrencies on their balance sheet. Usually doing little else, they raise capital from shareholders to buy more tokens for their stockpile, hoping that as their prices go up, the value of the underlying stock will too.

The model was popularized by **Michael Saylor**, an entrepreneur and CEO whose software company, known at the time as MicroStrategy Inc., bought \$250 million worth of Bitcoin to hold on its balance sheet in August 2020. Now known more simply as Strategy, the company has continued to buy Bitcoin and is the largest institutional holder of the cryptocurrency, owning over \$71 billion worth of tokens as of Sept. 25. Investors responded positively, sending the company's shares up as much as 3,734% from when it started buying Bitcoin to reach an all-time high of \$473.83 in November 2024.



Michael Saylor during the Bitcoin 2025 conference in Las Vegas.

Photographer: Ronda Churchill/Bloomberg

More companies without a history of crypto have since followed in Strategy's footsteps, from biotechs and e-commerce businesses to nail salons. There are now more than 100 DATs on North American public markets alone, tracking tokens like Ether and Solana as well as Bitcoin, according to a Bloomberg analysis. They've also cropped up in other markets, like Japan with Bitcoin tracker Metaplanet Inc.

How do DATs work?

Many DATs begin life when a group of like-minded investors agree to create a vehicle that will accumulate a particular cryptocurrency and trade on a listed market. To make it happen, they seek out small companies to take over, or set up their own special purpose acquisition vehicle, often raising external capital to do so.

Once a DAT is established, the company begins acquiring its target cryptocurrency using incoming capital from traders eager to buy the stock. Sometimes, the initial investors will also pre-fund the company with cryptocurrency they'd already acquired. While there's little historical data on how these things may operate over time, in the case of Strategy, the company opted to issue more debt and securities to fund future purchases of the token, creating a complex web of tiered share structures and arrangements.

DATs can appeal to buyers as a publicly traded stock that offers access to crypto exposure with potential upside leverage, wrapped in a familiar equity format. But while some companies can still command healthy premiums, the market is now flooded with DATs and the confidence that sustained those valuations is beginning to fray.



Who invests in DATs?

So that they stand out from others in the market, many DATs have partnered with titans of finance and crypto to maximize their appeal. Industry heavyweights including Galaxy Digital Inc. and Pantera Capital are among the most prolific DAT power players, while SoftBank Group Corp., billionaire **Peter Thiel's** Founders Fund and Cantor Fitzgerald LP are other notable participants in the trend.

US President Donald Trump's family has also gotten involved. Biotech-turned-fintech company ALT5 Sigma Corp. reached a \$1.5 billion deal in August to create a treasury of WLFI, a cryptocurrency tied to the Trump family's decentralized finance project World Liberty Financial Inc. **Donald Trump Jr.**, **Eric Trump** and US envoy Steve Witkoff's son **Alex Witkoff** are all co-founders of World Liberty.

What are the risks?

While some larger digital asset treasury companies have attracted institutional buyers through inclusion of their shares in tracker funds, most buyers of DATs are retail investors. That can lead to more trading volatility. Some DAT investors want a leveraged way to invest in crypto, while others may not want to or be able to purchase tokens directly themselves.

A DAT often soars on its market debut, but the investment returns can quickly sour. In September, Eightco Holdings Inc. saw its shares climb by more than 3,000% when it announced a DAT tied to Worldcoin, the token created by OpenAI founder **Sam Altman**'s Tools for Humanity project. The stock then fell more than 70% in the two weeks following the announcement.

As more DATs continue to flood the market, consolidation has begun. Strive Inc., co-founded by former US presidential candidate **Vivek Ramaswamy**, agreed to acquire Semler Scientific Inc. in an all-stock deal in September, merging two Bitcoin treasury companies.

Being an early buyer can still pay off. While Strategy's shares had fallen about 28% from their peak by the start of September, they were up over 2,600% from before its Bitcoin pivot — even as earnings from the company's core enterprise analytics software business declined.

Some investors say DATs don't make sense: Why buy crypto through a company layered with expenses, risk, and equity dilution, instead of just holding coins directly or through an exchange-traded fund? Short-sellers including Jim Chanos have called on traders to short Bitcoin accumulators like Strategy, describing the yawning premium ascribed to Strategy's shares relative to the value of its Bitcoin holdings as unsustainable.

Are there regulatory concerns?

As DATs are publicly traded businesses, they face the same strict rules around investor protection and transparency as other listed companies. However, the advent of Strategy's Bitcoin accumulation plan created a headache for US financial regulators.

The Financial Accounting Standards Board published new accounting rules in 2023, allowing companies that hold crypto to mark the value of their stockpiles at market prices on their financial statements. Prior to the change, companies like Strategy had been classifying their crypto holdings as intangible assets — similar to patents or trademarks. That meant Strategy, as well as other Bitcoin holders like Tesla Inc. and Block Inc., had to permanently mark down the value of its holdings when Bitcoin dropped, while gains could only be recognized if tokens were sold (something Saylor has sworn to never do).

The change means that today, US-listed DATs are able to recognize the unrealized changes in the value of their crypto hoards. As a result, crypto's big price swings can result in a significant upside to their quarterly earnings, and also huge losses.

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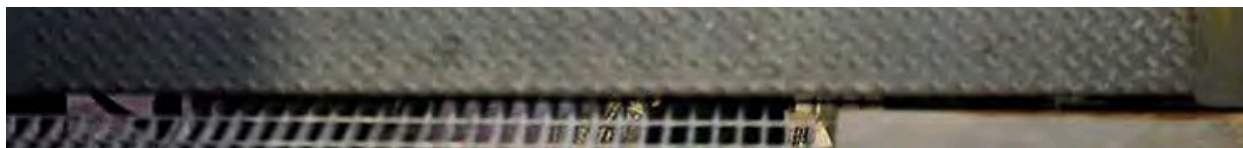
Justin Sun's Path From Crypto Pariah to Trump Family's Moneyman

Sept. 26, 2025, 7:00 AM PDT

After descending the stairs from his Airbus A330, the Chinese-born crypto billionaire Justin Sun bent down and placed a palm on the Los Angeles tarmac, as if to prove to himself he'd really reached the US. Then he stood and threw a celebratory fist in the air. It was May 16, and the cross-country victory tour of President Donald Trump's biggest crypto benefactor was just beginning.

Sun's excitement was understandable. For years he hadn't set foot in the US amid federal investigations that could have ruined his business. Now, after buying more than \$90 million worth of two of the Trump family's cryptocurrencies, he was returning as the president's guest and business associate.





Sun took his long-awaited spaceflight on Aug. 3.

Source: Blue Origin

One stop was Jeff Bezos' rocket company. Sun, who'd won a trip to space four years earlier with a \$28 million bid, could finally make preparations to blast off. Another was a Bitcoin conference in Las Vegas, where he posed for photos with one of the president's sons and a US senator from Tennessee who was steering key crypto legislation. In Washington he dropped in on one of Trump's crypto advisers at his office near the White House and presented him with a replica of a piece of conceptual art: a duct-taped banana. The original, by the artist Maurizio Cattelan, had cost Sun \$6.2 million at Sotheby's.

The highlight came at a dinner at the Trump National Golf Club in Virginia hosted by the president himself. Trump had auctioned off access to whoever bought the most of his memecoin. Sun took the No. 1 spot, with about \$15 million worth. On the street outside, dozens of protesters waved signs in the rain. "I hope you choke on your steak," one yelled. Sun walked in, wearing a bow tie, under an umbrella held by an assistant. His three cameramen followed, recording the moment for social media. Sun's prize was a Trump gold watch and a chance to deliver a speech after the president.

Sun spoke haltingly for a few minutes about Trump's embrace of his industry as more than 200 other memecoin investors in formalwear looked on. "Basically, like, 100 days ago they go after crypto people, like, everywhere," Sun said, and laughed awkwardly. "When I come to the United States, everybody's going to come here."

Critics of Sun's relationship with Trump, including Democratic Senator Elizabeth Warren and MSNBC host Chris Hayes, have focused on how corrupt they say it looks. White House spokesperson Anna Kelly responds that Trump "only acts in the best interests of the American public" and has no conflicts of interest. But Sun is a walking billboard advertising how the president sees nothing wrong with his family businesses accepting money from those who want something from him.

Sun was facing a fraud lawsuit from the US Securities and Exchange Commission. A few months after he started investing in Trump's cryptocurrencies, the case was put on hold pending the outcome of settlement talks. (The SEC declined to comment for this story.) Although both sides deny any impropriety, never before has an individual seeking a US president's goodwill channeled so much money to the president's family. As a foreign citizen—he holds a passport from St. Kitts and Nevis—Sun is barred from donating to US political campaigns. Nonetheless, he has generated more money for the Trumps through crypto than they make in a year from Mar-a-Lago. And he's pledged to buy an additional \$100 million of Trump memecoins.

But Sun has a more ambitious agenda. The blockchain network he founded, Tron, has become a global payments network that lets anyone transfer US dollars across borders cheaply, quickly and anonymously, using dollar-backed cryptocurrencies called stablecoins. Tron is already moving \$600 billion a month, more than four times what PayPal Holdings Inc. does. And Sun's new allies in Washington have been pushing rules that would allow the network to expand in the US. The Trumps are even introducing their own stablecoin using Tron.

Until recently, Tron operated in a regulatory gray area. Money laundering experts have warned it's becoming the go-to payment network for criminals, including terrorist groups such as Hamas; Russians evading sanctions; and Chinese gangsters, who use it to power scams on a vast scale. Sun has said he's helping authorities stop illicit activity on Tron, while disclaiming responsibility by saying that the network is decentralized and out of his control.

But in August, a Bloomberg Billionaires Index valuation called into question how decentralized the network is, prompting a lawsuit from Sun. Sun had shared an accounting of his wealth with the Billionaires Index in February, including his \$55 million art collection, his \$200 million Airbus and a list of what his representatives said were his crypto wallets. Using that data, the Billionaires Index calculated he held 60 billion Tron tokens, a majority of the supply, and reported that he was worth \$12.5 billion.

Sun's lawsuit, filed in federal court in Delaware, alleged the report included details he'd been promised wouldn't be published, something Bloomberg has denied in a court filing. He said that listing his crypto holdings put him at risk of hacking or kidnapping and sought a restraining order that would have blocked publication of this article. Sun's lawsuit also said that the list of holdings provided to Bloomberg in February mistakenly included ecosystem wallets and others that Sun doesn't own. His lawyers said Sun does not own a majority of Tron's tokens. But they wouldn't answer questions about which of the holdings his representatives had previously detailed did not belong to him, according to a Bloomberg court filing. (A judge ruled against Sun on Sept. 22, declining to issue the restraining order. The lawsuit is still pending.)

Before all that, at 11 p.m. one night, Sun called. For an hour and a half, he spoke in Mandarin about his career, the US investigations and his dealings with the Trumps. He argued that both he and Trump should get the benefit of the doubt, that their critics have been too quick to judge. "Even if Trump tries to help the poor, it might be twisted into him trying to buy public favor," he said. "Blockchains also may be misrepresented, as if the people behind were trying to exploit the crypto project somehow." He quoted a Chinese idiom, repeatedly made a confusing analogy about a policeman who bumped into an old lady's hens and compared himself to a comic-book superhero.

Tron, he said, was doing so much good for the world that criticizing his enterprise would be like criticizing Spider-Man for using excessive force to stop evildoers. "Spider-Man goes to school during the day, right? And protects the world at night, right?" Sun said. "We are essentially guarding world peace. But we don't talk about it."

In Mandarin there are two phrases for "scheme." One of them, *yin móu*, is the more direct translation, meaning a secretive and underhanded maneuver. A Sun associate used the second phrase to describe Sun's business dealings with Trump: *yáng móu*, a power play carried out openly.

That's always been Sun's style. He's amassed a fortune in crypto even as he's been dogged by allegations of plagiarism, dishonesty and market manipulation. Like his new presidential business buddy, whose book *Trump: The Art of the Deal* noted the merits of "truthful hyperbole," Sun has gained a reputation for being especially full of hot air—not easy in an industry where digital currencies based on jokes about dogs or farts have become blue-chip assets.

Sun's Rise

Early crypto investments fueled the future billionaire's expansion into his own coins—and those of the Trumps



2013: BITCOIN RICH

Sun says he made a fortune by investing in Bitcoin while finishing his master's degree at the University of Pennsylvania. One Bitcoin cost as little as \$13 that year.



2017: TRON ICO

Sun took advantage of a booming market for "initial coin offerings" to raise about \$70 million for Tron, completing the deal days before China banned ICOs.



2018: FIRST US BUSINESS VENTURE

Sun bought BitTorrent for \$140 million, with plans to merge the app best known for piracy with Tron. He also acquired crypto exchange Poloniex.



2023: REGULATORY CRACKDOWN

The SEC sued Sun and Tron for allegedly selling unregistered securities and manipulating the market for Tron with fake trades—allegations Sun has denied.



NOVEMBER 2024: WORLD LIBERTY

Sun was the first big investor in World Liberty Financial, one of the Trump family's crypto projects. He began purchasing \$75 million worth of the cryptocurrency. He also paid \$6.2 million for artist Maurizio Cattelan's duct-taped banana.



FEBRUARY 2025: SEC PAUSES SUN LAWSUIT

Three months after Sun first invested in World Liberty, the SEC's case against him was put on hold, pending settlement talks.



MAY 2025: MEET THE PRESIDENT

When Trump auctioned off access to a dinner at his golf club outside Washington, Sun was the top bidder. He bought \$15 million worth of Trump's memecoin.

Photo illustrations by Rui Pu; photos: Getty Images (19); Bloomberg reporting

Bloomberg

Leading US crypto companies Circle Internet Group Inc. and Coinbase Global Inc. have refused to do business with him. "Sun is infamous in the crypto community," lawyers for Coinbase said in a 2024 court filing. A Chinese podcaster last year called him a "scythe" because of his reputation for ruthless trading. ("I don't see ruthlessness as the biggest flaw," Sun told the podcaster. "I'd call it effective.")

Brash and imperious, he runs his ventures like a tin-pot dictator from *Tropico*, one of his favorite computer games, according to lawsuits from former employees. Two of them claimed he either punched or slapped an underling, and one said Sun repeatedly texted the employee “f--- your mother.” (Sun denied all this in court filings.) He also had them call him “His Excellency,” a title he acquired in 2021 after being appointed an ambassador to the World Trade Organization by Grenada. At the time, the island nation was selling diplomatic posts for \$150,000. (A lawyer for Sun denies any impropriety.) “There was massive, blatant, no-hesitation ass-kissing for the guy,” says Cody Snider, a former engineer for one of Sun’s companies. “It was like he was a king or a god.”

Sun is best known for his expensive publicity stunts, including commissioning a theme song for Tron by Oscar-winning composer Hans Zimmer, paying \$4.6 million for a meal with Warren Buffett and running for prime minister of the libertarian microstate Liberland. (He won.) In November he staged a press conference in Hong Kong at which he ate that \$6.2 million banana, saying it “can become a part of the artwork’s history.” When *CoinDesk* teased him about it in an article, he complained to the crypto publication’s owners. Three top editors were fired. (Sun says his public-relations team complained without his knowledge.)

Sun, 35, was born in Xining, a city in central China. By the time he created Tron, in 2017, he was living in Beijing, where he hosted a podcast called *The Road to Financial Freedom Revolution* and had acquired a social media startup called Peiwo that matches users and allows them to chat or livestream audio. Xinhua, the official state news agency, criticized the app for allowing pornographic content.

But Sun was determined to become a mogul like his idol, Jack Ma, co-founder of Alibaba Group Holding Ltd. “Like a devout preacher, I am not daunted by the snow-capped mountains ahead, nor do I shrink back because of my thin clothes,” Sun wrote in his autobiography, *Brave New World*, which he published when he was 26.

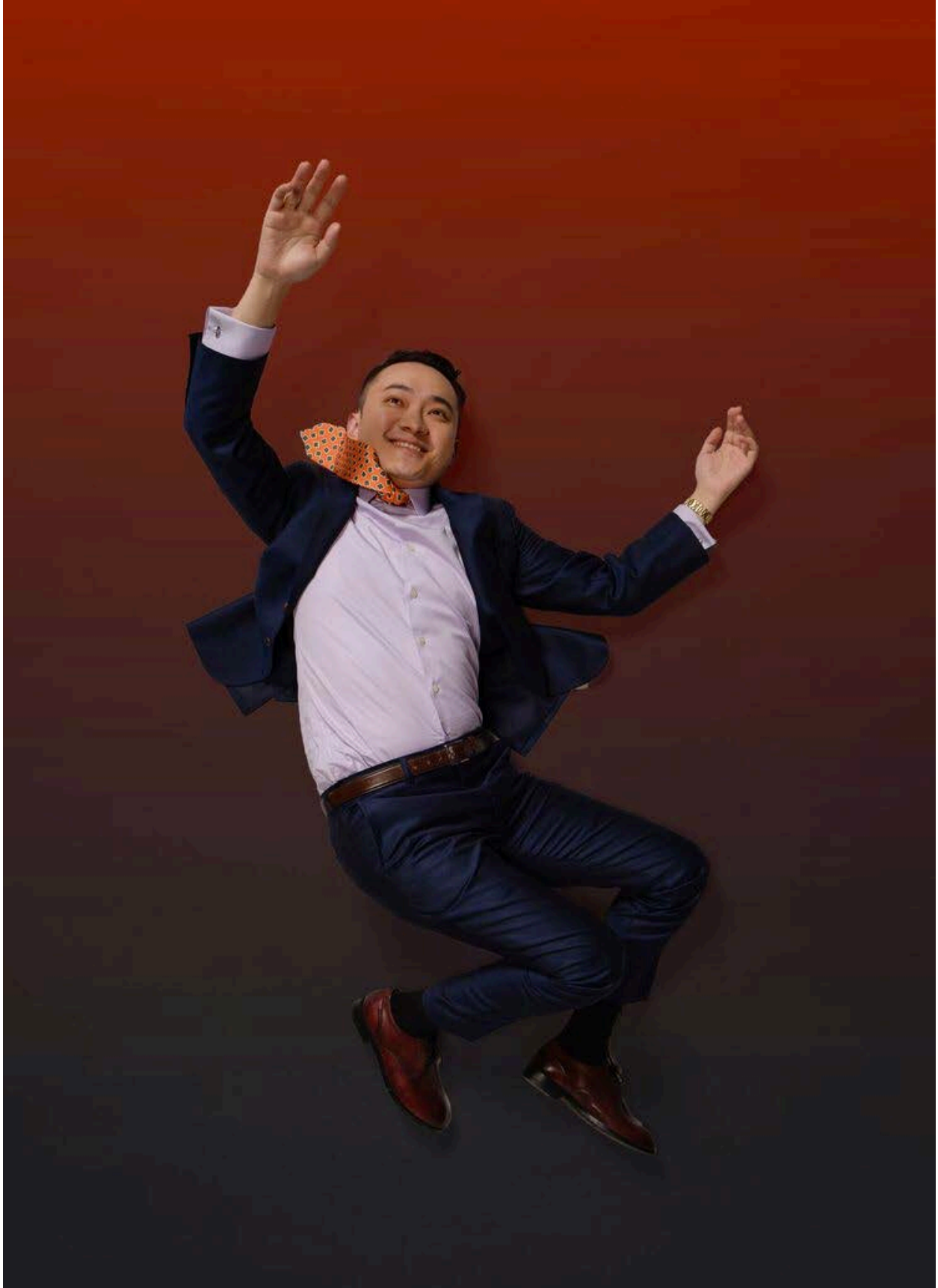
Tron was what was called an initial coin offering, or ICO—a company started by selling tokens of a new cryptocurrency, rather than stock—and at the time, they were booming. It seemed like practically anybody with a half-baked idea that involved the word “blockchain” could attract at least a small fortune with an ICO. In one particularly absurd example, Dentacoin, pitched as “the first Blockchain concept designed for the Global Dental Industry,” raised more than \$1 million.

It wasn’t clear exactly what Tron was for. At various times, Sun pitched it as an entertainment system, an app store and “an internet owned by the people.” Some described it as a copycat project that borrowed liberally from other coin offerings. But it didn’t matter. He raised \$70 million for Tron, completing his ICO on Sept. 2, 2017, two days before the Chinese government banned ICOs.

Much of the early activity on the network was gambling apps, and many of its users were fake, crypto analytics firm DappReview told *CoinDesk* in 2019. But Sun had the funds to acquire a then-US-based crypto exchange called Poloniex and to pay \$140 million for BitTorrent, the file-sharing app best known for rampant piracy, with plans to merge it somehow with Tron.

Sun spent time in San Francisco in 2018 overseeing his new ventures, then moved to Singapore two years later, trailed by the allegations of workplace abuse from former employees who had sued him. After an attempt to assert diplomatic immunity based on his Grenadian credentials failed, the suits were settled on undisclosed terms. (In the interview, Sun said all the claims were made up to extract money from him, which he said he now realizes is common in the US.)

In 2019, Sun hit upon what would become the main use for Tron: stablecoins. These are crypto tokens that maintain a steady value of \$1, because each digital coin is backed by \$1 of hard assets, held in reserve. That March, Sun struck a deal with Tether, the creator of one of the first stablecoins, that made it possible to send and receive them using his Tron network.





Justin Sun in New York in July 2025.

Photographer: Chris Buck for Bloomberg Businessweek; stylist: Oscar Sanchez/Dry Clean Only; hair and makeup: Emme George

Tether was then a small, secretive operation hounded by critics who questioned whether it really had the reserves it claimed. The stablecoin had been cooked up by an unlikely crew that included a child actor from *The Mighty Ducks* and an Italian plastic surgeon. And Tether was under investigation by New York's attorney general, who'd later reveal that the company's owners had raided its reserves to prop up a crypto exchange they owned. (They repaid the debt and settled a lawsuit with New York in 2021 by paying an \$18.5 million fine.)

But despite the questions around Tether, stablecoins filled a need in the crypto world. Many companies wanted to settle crypto trades in US dollars but had trouble finding banks to work with them because they were operating from offshore jurisdictions, some with questionable legality. These companies could simply buy stablecoins instead, because they were pretty much unregulated. And though Tether was available on other blockchains, Tron's was the fastest and cheapest. The combination took off.

Tron is now used to move about \$20 billion worth of stablecoins a day. Each transaction requires a small fee, payable in Tron coins. Tether and its ilk have become so central to Sun's business that he now describes Tron as a "digital dollar." Some of Tron's users are ordinary people hedging against high inflation in Argentina, Nigeria and other countries. But word of the new easy way to move US dollars also spread among the criminal underworld.

Among the early adopters were money launderers, sanctions evaders and scammers. Tron became the "preferred choice" for Asian crime syndicates to move money, according to the United Nations Office on Drugs and Crime.

For criminals the appeal was obvious. Any dollars that pass through the US banking system are scrutinized by compliance officers, who are required to check customers' identities and report suspicious transactions to the authorities. But the Tron network is pseudonymous, like other blockchains. Users are identified only by strings of letters and numbers. Using Tron, a drug dealer in London can send stablecoins to a cocaine supplier in Colombia without sharing identifying information with anyone. The system effectively works like PayPal but with accounts that are numbered, like those once offered by Swiss banks. "There's a reason why bad actors are using it," says Matt O'Neill, a former head of cyber investigations at the US Secret Service and now a security consultant. "They have very little fear of getting caught."

Brad Thorne would seem to be an unlikely Tron expert. He's worked for 19 years as a detective in the police department of Boise, Idaho, a city with a population of about a quarter of a million people. Bald, with a white goatee, he says that in a typical week, he investigates multiple scams involving Tron. He's seen locals fall for what's known as "pig butchering," in which scammers lure people with unsolicited texts promising friendship and fake investment gains, then trick them into sending crypto. That con is generally run from Southeast Asia, where, according to the UN, more than 200,000 people are trapped in compounds and forced to work as fraudsters. Other scammers pretend to be police seeking to collect a fine, or pose as grandkids who need emergency bail money. Sextortionists trick victims into sharing nudes, then demand money. Crypto makes it easier for the bad guys to move the proceeds. "There's a much better chance for me to get it back if it goes through the banking system," Thorne says, "and there's a much better chance for bankers to recognize the red flags and stop it."

Stablecoin issuers will generally comply with requests from law enforcement to freeze assets in wallets that can be linked to crime. But criminals can open new wallets and move money faster than law enforcement can obtain court orders to seize it, Thorne says. "That is the most frustrating thing for an investigator—to go onto a blockchain, see your victim's money, and you can't go get it."

Rich Sanders, an independent crypto tracer and volunteer for the Ukrainian military and police, says crypto companies don't do enough to seek out criminals using their products and stop them. "It's against their financial interest," Sanders says. Working independently in Odesa and around eastern Europe, he says, he's found drug dealers, saboteurs, sanctioned Russian companies and terrorists using Tron to move money. Finding them isn't too hard. In February, using the email address chocolategoddezz@proton.me, he contacted Hamas and asked how to donate. They replied with a 42-character Tron address.

Normally anyone processing payments electronically in the US is subject to stringent rules requiring such services to collect users' identities and report suspicious transactions. But decentralized blockchain networks have largely skirted those rules. Advocates say they're neutral software tools, like internet protocols, which can't be held responsible for what users do.

The Tron network says it's controlled by its community, which is led by 27 representatives elected by token holders in something akin to a one-coin, one-vote system. Sun sued Bloomberg when it published the Billionaires Index analysis, based on the data his representative provided in February, showing that he controls more than half of the total. Bloomberg defended its analysis in a court filing.

One of the harshest assessments of Tron came from the crypto-tracing company TRM Labs, which makes tools used by many law enforcement agencies to assist with investigations. In March 2024, TRM put out a research report saying Tron handled 45% of all illicit crypto activity, the most of any blockchain. It said Sun's network was used by drug dealers, North Korean hackers and terrorist financing entities.

Six months after the report was published, Sun deployed his fortune and turned his critic into an ally. He announced he was funding a new initiative called the T3 Financial Crime Unit that would employ TRM to deter crime on Tron, with help from Tether. So far the initiative has helped law enforcement freeze \$260 million in illicit funds, says Ari Redbord, global head of policy at TRM. The firm issued a new report in 2025 that praised Tron for “rooting out illicit actors,” though it noted that more than half of the crime it tracked in the previous year took place on the Tron blockchain.

Redbord says it's unfair to criticize Tron simply because some use it for bad purposes. “It's just a blockchain,” he says. “It's just infrastructure.” One of Sun's lawyers echoed that sentiment, writing in a letter, “Bad actors exist everywhere, and the blockchain is just the latest in the long history of agnostic technologies to be misused by them.”

Sun told *Bloomberg Businessweek* that Tron isn't enabling crime. Rather, he said, it's helping poor people around the world, especially those in countries with volatile currencies, by allowing them to easily access US dollars. “The entire world is already broken, and you need to fix it,” Sun said. “I feel I've been trying to fix everything.”

He compared T3 to NATO and its accomplishments to the Gates Foundation's work in Africa, which is widely credited with saving millions of lives. He said the group had helped fight “money laundering, investment fraud, extortion, human trafficking” and “North Korean terrorism financing. “These things could potentially create an atomic bomb that could kill everyone in the world,” Sun said. “We are messengers of justice.”

Sun's trouble with the US government started after the last crypto bubble popped in 2022. A \$40 billion fraud run by an abrasive, self-promoting engineer named Do Kwon collapsed, setting off a chain of defaults that revealed many of the industry's most prominent figures were insolvent. Crypto wunderkind Sam Bankman-Fried's exchange FTX also failed. He'd later be sentenced to 25 years in prison for fraud.

Regulators, who'd largely stood by as the bubble inflated, stepped in. The SEC, then led by Gary Gensler, filed lawsuits against some of the biggest companies in the industry, alleging, more or less, that most of the crypto trading that had been happening quite openly was illegal.

Sun was one of the targets. The agency alleged in a 2023 lawsuit that Sun employed a team of at least five employees who opened accounts on exchanges in the names of other people, at least one of whom wasn't aware of it, then traded Tron tokens back and forth to make the cryptocurrency look more popular.



Sun at his Businessweek photo shoot.

Photographer: Chris Buck for Bloomberg Businessweek; stylist: Oscar Sanchez/Dry Clean Only; hair and makeup: Emme George

The agency also said Sun violated disclosure rules by paying for Tron endorsements from celebrities who didn't make clear they'd been paid, including rapper Soulja Boy, porn performer Kendra Lust and actor Lindsay Lohan. Sun "used an age-old playbook to mislead and harm investors," the SEC said in a statement. Sun's lawyers moved to have the case dismissed on jurisdictional grounds. None of the celebrities responded to requests for comment.

In his *Businessweek* interview, Sun said Gensler was "basically a tyrant," so determined to go after crypto companies that he "completely made up charges." He speculated that Gensler may have been trying to advance his career by bringing high-profile cases. "He didn't care about the people in a place, whether they were good or bad," Sun said. "Gary Gensler just took a machine gun and killed everyone." Gensler didn't respond to a request for comment.

Concern about illicit uses of crypto and stablecoins reached the highest levels of government. "All these bad actors—North Korea, Russia, terrorist groups like Hamas—are turning to crypto," then-Senator Sherrod Brown, an Ohio Democrat, said at a Senate hearing in 2024. He didn't mention Tron specifically. "They know it's easier to move money in the shadows."

The US crackdown on crypto was an existential threat to the industry, which was split on how to respond. One of Sun's friends, Changpeng Zhao, the billionaire co-founder of Binance Holdings Ltd., agreed to come to the US from the United Arab Emirates and plead guilty to criminal charges relating to illicit use of his exchange. Binance paid a \$4 billion fine to settle related charges. (Zhao is now seeking a pardon from Trump, and his company has been assisting one of the Trump family's crypto ventures; a company spokesperson denies there's any connection.) Coinbase and other companies fought back by lobbying. Among the targets was Brown, who lost his reelection campaign after the crypto industry spent more than \$40 million to support his opponent.

Amid the crackdown, Sun left Singapore last year and moved to Hong Kong, which doesn't have an extradition treaty with the US. He rented a penthouse at a waterfront hotel; his lawyers fought the SEC in court. (A lawyer for Sun says he chose where to live and visit based on personal preferences, not any legal concerns.) Then, a few weeks before the US presidential election, Trump opened a new avenue for those seeking proximity to power.

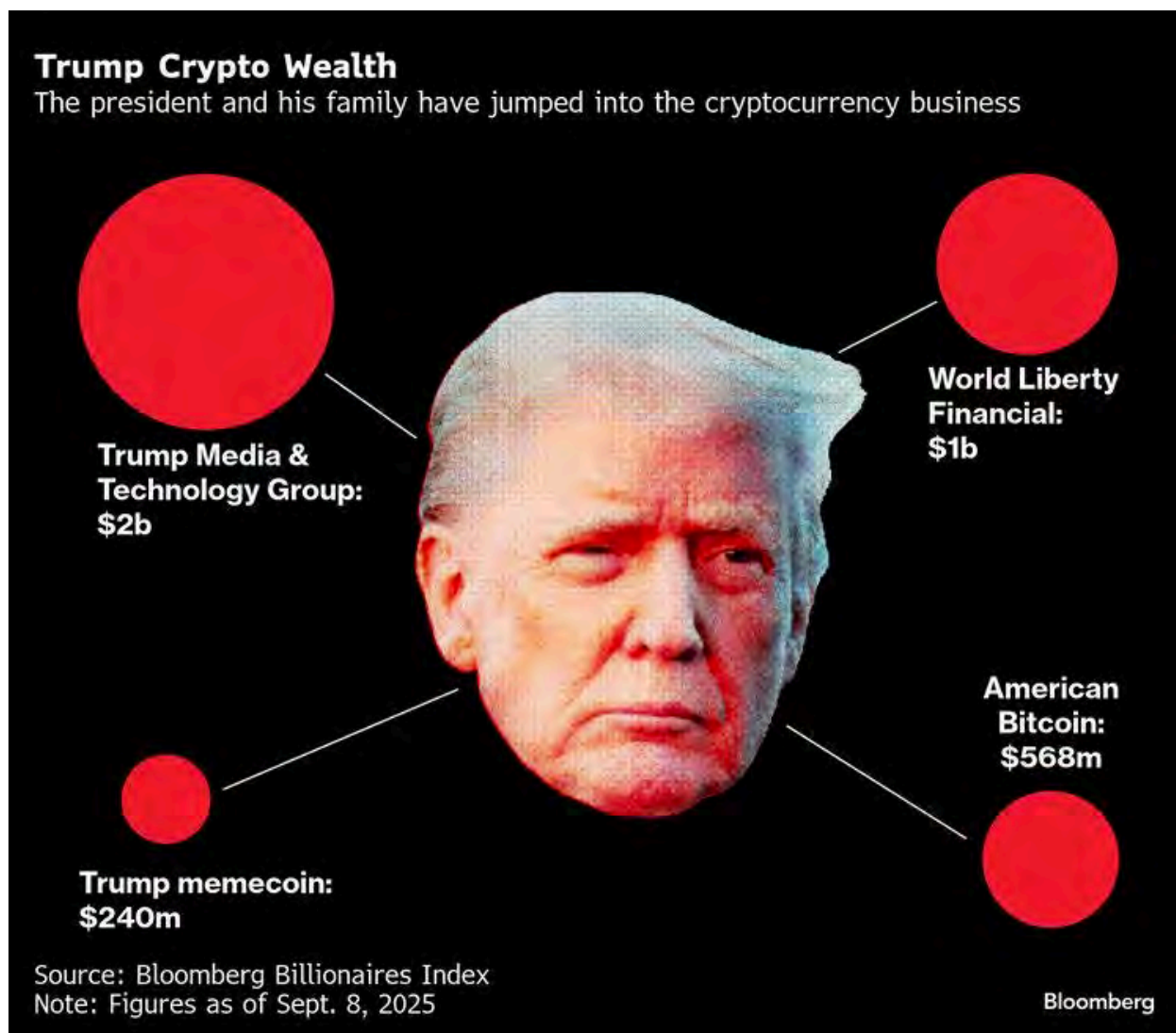
Trump had once been skeptical of cryptocurrencies. "They may be fake. Who knows what they are?" he said in 2021. But things changed after a small group of Bitcoin investors contributed about \$20 million to his campaign. In July 2024, four months before the presidential election, Trump took the stage at a Bitcoin convention in Nashville and promised to fire Gensler from the SEC and deregulate the industry. "If Bitcoin is going to the moon," Trump said, to applause, "I want America to be the nation that leads the way."

Trump started promoting his first cryptocurrency a few weeks later. He seemed as serious about it as he did about the guitars, sneakers and other tchotchkes he'd been pitching during the campaign—which is to say, not serious at all. It was called World Liberty Financial. Eric Trump said it would promote “financial independence,” but it wasn't clear how. Trump's youngest son, Barron, then an 18-year-old college freshman, was listed as the company's “chief DeFi visionary,” despite his lack of known experience in decentralized finance. “He's got four wallets or something, and I'm saying, ‘what is a wallet?’” Trump said in an interview promoting World Liberty, in which he didn't explain anything at all about the company, its coins or its business plans.

The guys behind it were two longtime internet hustlers who'd met Trump through the sons of one of the president's golf partners. One of the guys, Chase Herro, had previously marketed weight-loss “colon cleanses” and a \$149-a-month get-rich-quick class. He'd once called himself “the dirtbag of the internet” in a speech and said on a YouTube video that regulators should “kick s---heads like me out.” The other, Zachary Folkman, had run a service called Date Hotter Girls. Their only other known crypto venture had failed after a hack.

The terms of the offering were unappealing, and, at first, crypto investors largely rejected them. If the offering made any money, it wouldn't be given to token buyers. And after sales reached \$30 million, 75% of all the funds raised would be paid to the Trumps as a fee. Effectively, investing in World Liberty was like giving money to the Trump family.

The Trumps set out to sell \$300 million of World Liberty tokens, but by mid-November, even after Trump won the election, they'd sold only a few million dollars' worth, well below the threshold to trigger a payout to the president's family. Then Sun stepped in. On Nov. 25 he said he'd bought \$30 million of World Liberty coins. He was named an adviser to World Liberty and later bought an additional \$45 million. Others started buying too. In the end, World Liberty sold all of its tokens, about \$550 million worth, which means the Trumps likely collected a fee of about \$400 million.



Source: Bloomberg Billionaires Index

"This guy right here saw what very few people saw," Folkman, the World Liberty co-founder, said in February at a crypto conference in Hong Kong, gesturing toward Sun, sitting next to him onstage. Once Sun started buying, Folkman added, "everything kind of snowballed from there."

Sun has said he didn't ask for or expect any favors in exchange for his money. But he had several opportunities to press his case. In December, at a Bitcoin conference in Abu Dhabi, he talked with the president's son Eric about plans for World Liberty. He also met with Steve Witkoff, the golfing buddy who'd brought the World Liberty deal to Trump and who by then had been named the president's Middle East envoy. Sun said Witkoff had to cut the meeting short to deal with a "hostage problem," though he said they've stayed in touch to discuss US crypto policy. (World Liberty didn't respond to requests for comment. Witkoff has said he's divesting from World Liberty to avoid conflicts of interest, though he hadn't done so by mid-September.)

When Trump took office, Sun and the rest of the crypto industry got what they wanted. In February the SEC dropped the lawsuits it had filed against Coinbase and several other companies. The lawyer in charge of some of the cases was demoted to the agency's information technology department. The Tron case was put on hold. Corey Frayer, Gensler's crypto adviser at the SEC, says the decision was baffling because the case was one of the most straightforward he saw in his time at the agency. "Even the crypto industry, who disliked Gary's SEC, were essentially supportive," says Frayer, who left when Trump took office.

A lawyer for Sun said the agency's decision was "wholly unrelated" to the billionaire's investments in the Trump family's ventures. Kelly, the White House spokesperson, said in an email: "The President is working to secure GOOD deals for the American people, not for himself." Sun told *Businessweek* that the SEC's change of heart had pleased him. "I think it's fairer now, or at least more respectful," he said. "Now I think law enforcement agencies are much better."

Perhaps more important for Tron, the US government's position on stablecoins has flipped. Top officials once considered them a risk to financial stability; Trump administration officials see them as a way to promote the US dollar abroad. They also see them as a business opportunity. Bo Hines, the White House crypto adviser who got a duct-taped banana from Sun in May, resigned in August and took a job at Tether. And the Trumps introduced their own stablecoin, called USD1, through World Liberty. Sun said that he's "leading this effort" and that Tron and World Liberty together will take on the big banks.

"We can use World Liberty Financial to shape the world and really change the financial system," Sun said in May at a conference in Dubai, flanked by Eric Trump. "We're going to leave them in the dust, if they didn't join us, sooner or later, right?" The president's son echoed that boast: "If the banks don't embrace this, if they don't buy into it, if they don't embrace crypto right now, they're just going to be extinct."



Sun, World Liberty Financial co-founder Zach Witkoff and Eric Trump at a May crypto conference in Dubai. Photographer: Altaf Qadri/AP Photo

In July, with backing from Trump, Congress passed a law intended to regulate stablecoins and encourage their use. Among the crypto executives gathered at the White House for the signing ceremony was Paolo Ardoio, Tether's chief executive officer. The president told them stablecoins could "supercharge American economic growth" and bragged about all he'd done for their industry. "I got you guys out of so much trouble," Trump said.

There's no evidence that Trump has performed official favors in exchange for money or other things of value—the current legal definition of corruption, as narrowed by Supreme Court rulings. But people have certainly shown an eagerness to enrich the Trumps since the election. The family has made billions of dollars from crypto ventures (they have at least four) while the Trump administration deregulates the industry. And the family has struck deals to develop hotels in countries that are also negotiating with the administration over tariffs. "I could say, 'No, no, no,'" Trump said, explaining why his administration was accepting a \$400 million jet from the government of Qatar. "Or I could say, 'Thank you very much.'"



Sun rang the bell at Nasdaq on July 24, 2025.

Photographer: Vanja Savic/Nasdaq

In June, Sun's access to US markets started to pay off. Dominari Securities, a small investment bank that counts Donald Trump Jr. and Eric Trump as advisers, helped Sun bring Tron to the Nasdaq stock exchange in a complex maneuver, generating an estimated \$1 billion for Sun's family, according to the Bloomberg Billionaires Index. (The Trump sons didn't respond to requests for comment. Eric has denied he was involved in the venture, though he's noted that Sun is a friend.)

On July 24, Sun came to New York to ring the bell at Nasdaq's TV studio in Times Square, wearing a tux that looked like the one he wore to Trump's memecoin dinner. He pumped his fist as confetti fell to mark the opening of the day's trading. Afterward he posed for photos in front of a video billboard advertising Tron, then climbed into a black van and headed to a meeting downtown.

Sun had brought his mother, a former journalist in China, and he seemed to relax. He asked an associate which photo to post on social media. He handed a *Businessweek* reporter his shiny Trump watch and laughed as he talked about how the president had boosted his industry. Soon he'd head to West Texas for his ride into space on a Blue Origin rocket. "I love America," Sun said. "I've never loved America this much."

But Sun soon learned an old lesson: The Trumps can turn on an ally fast. In September, after speculation online that Sun was selling his World Liberty tokens, the company blocked him from trading. The coins he'd paid \$75 million for were placed in limbo. Sun denied he had been selling and said the move was unfair and antithetical to crypto's decentralized ethos. But because it was crypto, there was no regulator to call. Sun was reduced to begging for help on social media and pledging to invest more in the Trumps' projects. "I have contributed not only capital but also my trust and support," Sun wrote. "Let's move forward together toward the success of World Liberty." There was no reply from the Trumps. —*With Zachary R Mider, Nicola M White, Tom Maloney and Dylan Sloan*

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Utilizing 6th Circ.'s Expanded Internal Investigation Protection

By **Greg Brower and Adam Lyons** (September 26, 2025, 4:20 PM EDT)

A recent federal appellate court decision demonstrates one way that businesses can use a very limited showing to protect internal investigations from discovery in commercial litigation.

In **reversing** a district court decision to force disclosure, a unanimous U.S. Court of Appeals for the Sixth Circuit panel led by Chief U.S. Circuit Judge Jeffrey Sutton in *In re: FirstEnergy Corp.* observed on Aug. 7 that "[w]hat matters for attorney-client privilege is not what a company does with its legal advice, but simply whether a company seeks legal advice." Similarly, the court found work-product protection based only on circumstantial evidence of anticipated litigation.

Savvy clients looking to protect internal investigations can use this precedent to their advantage, while those looking to force production will need to employ a carefully calibrated approach.

Background

This political corruption scandal, likely the biggest in Ohio history, involved the state's electric utility, FirstEnergy, and then-Speaker of the Ohio House of Representatives Larry Householder.

In July 2020, Householder and four others were **charged** in a bribery scheme involving the payment of some \$60 million from a FirstEnergy affiliate to an organization controlled by Householder, who then used the money to both fund various efforts to support legislation favorable to FirstEnergy and fund certain of Householder's personal expenses.

In 2023, Householder was **convicted** and **sentenced** to prison. FirstEnergy admitted to conspiring with Householder and others and, in 2021, **reached** a deferred prosecution agreement with the U.S. Department of Justice that required it to pay a \$230 million fine.

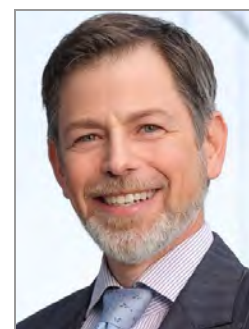
When FirstEnergy was implicated in the scheme, it engaged outside counsel to investigate its involvement. In one part of the ensuing litigation, a securities class action, the plaintiffs' counsel sought production of materials from FirstEnergy's internal investigations. FirstEnergy resisted, arguing that those materials were protected from disclosure by the attorney-client privilege and work-product doctrine.

In opposition to the production, FirstEnergy attempted to rely upon the declaration of one of its board members to prove the factual basis to support its protection claims. The declaration was defective, however, and the U.S. District Court for the Southern District of Ohio did not consider it.

In light of that fact and the plaintiffs' evidence that the subject investigation related to the "business and human resources/public relations arena, even if those same issues also logically overlap with anticipated litigation," the district court held that the discovery sought was not protected by the attorney-client privilege or work-product doctrine.



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FirstEnergy sought a stay from the Sixth Circuit, which found that the materials were likely protected and granted the stay.

Takeaways

The decision creates additional room to assert a privilege claim.

The Sixth Circuit rejected the district court's determination that the documents were not protected by the attorney-client privilege because they were used for a business purpose, and found that going to counsel, regardless of the reason, is enough. That reading of the privilege all but dismisses any consideration of whether the purpose for seeking the materials was the provision of legal advice.

Understanding the opinion to create a broad protection seems by design: The court flatly stated that "it is the rare company faced with such criminal and civil allegations that would not have a business-related reason for seeking such critical and essential legal advice." In other words, a business is expected to have a business-related reason for seeking legal advice.

Thus, the Sixth Circuit's reading of the law appears to be that evidencing a mixed purpose for the communication will not defeat the privilege. Instead, where the business can show that it did in fact go to counsel, regardless of whether the purpose of the inquiry was for legal reasons or for business purposes, the protection can be upheld.

Surrounding circumstances can be used to prove work-product protection.

As for the work-product question, the court determined that evidence of the circumstances in which the documents were created was sufficient to show the purpose behind the creation of the documents.

By the Sixth Circuit's reasoning, the timeline of when litigation could have been anticipated, when the investigation occurred and how quickly litigation followed demonstrated that the company conducted the investigations in anticipation of litigation. Facing an onslaught of external investigations, FirstEnergy was entitled to a de facto presumption that it initiated its internal investigation in anticipation of litigation.

Under this precedent, the relative timing and significance of oncoming litigation can be sufficient to demonstrate the applicability of the work-product doctrine. Challenges to work product based on the fact of a mixed purpose in seeking advice are unlikely to succeed.

Clients should consider whether their discovery practices may be creating risk.

Two specific aspects of the plaintiffs' litigation strategy influenced the opinion in instructive ways.

The class used a broad discovery request, seeking "production of all previously withheld documents ... related to the internal investigation." Additionally, the class agreed that FirstEnergy did not need to provide a privilege log for any documents exchanged with outside counsel that the investigators created after the arrest of an elected official involved in the case.

Those practices are common in litigation, but they were used here to defend the protections.

The class argued that FirstEnergy's failure to provide details supporting its claims of protection defeated its claims of privilege. The Sixth Circuit, however, excused the failure to provide details because (1) the class had agreed that no privilege log need be provided for postlitigation communications; and (2) of the broad request: "FirstEnergy's failure to identify any specific documents as privileged matched the plaintiffs' broad and undifferentiated request for 'all previously withheld documents ... related to the internal investigation.'"

At the same time, had FirstEnergy submitted an effective declaration, much of this dispute may never have occurred. Savvy clients should keep these points in mind.

Suggestions for Best Practices

The FirstEnergy decision raises several important points for consideration in defending or attacking attorney-client privilege and work-product claims.

First, it seems no longer necessary to prove that a communication was made for the purpose of seeking legal advice. Instead, the fact of seeking legal counsel seems sufficient to establish the attorney-client privilege.

That seems at odds with the long-standing principles that required establishing that the communication was for the purpose of seeking legal advice.^[1] Alternatively, it could be viewed as a presumption that communications to counsel are always made for the purpose of seeking legal advice.

Either way, as a practical matter, communications made to in-house counsel, seeking business advice, would be protected under the FirstEnergy standard. Challenges to privilege claims based on the dual role of counsel in various circumstances will need far stronger proof to show that the privilege does not apply.

Second, a party can support its claim that a document was prepared in anticipation of litigation solely through evidence of the circumstances surrounding the creation of the document.

FirstEnergy initially tried to prove the anticipation of litigation through a declaration, as is widely done in litigation. Because the declaration was excluded from evidence, FirstEnergy relied on the circumstances to prove it anticipated litigation.

On the one hand, this appears to be a lowering of the evidentiary requirements to prove the work-product protection. If circumstances could prove the claim, however, savvy litigants might be able to rely on circumstances to challenge a claim, asserting that those circumstances in another claim show that sworn testimony asserting the anticipation of litigation should not be accepted.

Third, common discovery practices can have a substantive impact on a privilege claim. It is fairly standard to agree that there is no need to log privileged documents that were created after litigation began, but that practice was used to help defend FirstEnergy's failure to provide details in support of its claims.

In many cases, the parties have no need to look into their opponent's communications with counsel. In cases similar to FirstEnergy, however, where one's litigation is only a part of a larger dispute and actions taken in response to that larger dispute are relevant, it is worth considering whether there are key communications that may be with counsel but which are important to one's case. In those circumstances, general practices regarding privilege logs may need to be reevaluated to avoid losing the opportunity to gain the information.

Fourth, and finally, counsel who are aware of these points can make use of them to the client's best advantage. Wise counsel plans from the beginning of the case for all the steps that are necessary to secure relief for their client. Thinking through whether examination of attorney-client privilege or work-product protection claims is necessary at the beginning of the case, and then taking the appropriate steps to avoid losing that opportunity, would seem to be the best practice.

As these four points show, there are positives and negatives to be seen in each aspect of this decision. Through foresight and sound advice, companies can use the principles announced in FirstEnergy to help protect internal investigations or develop precise strategies to go after such materials where they are being withheld.

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[1] See, e.g., *Fisher v. United States* (S. Ct. 1976).

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