

Articles + Publications | January 29, 2025

# Securities Investigations and Enforcement Newsletter — January 2025

## WRITTEN BY

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## YOU ARE INVITED: SEC ENFORCEMENT PRIORITIES WEBINAR

Thursday, February 6, 2025 | 12:00 – 1:00 pm ET

Please join Troutman Pepper Locke for a discussion hosted by the Atlanta Bar Association with Regional Securities and Exchange Commission Directors Nicholas Grippo (Philadelphia Regional Office) and Nekia Jones (Atlanta Regional Office) on the SEC’s 2025 enforcement and examination priorities.

Invitation and more details to follow.

[Click here to register.](#)

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## In the Spotlight

Domenic Cervoni, a partner in Troutman Pepper Locke’s New York office, represents financial institutions, fintech companies, and major corporations in complex, sensitive, and high-profile litigation in federal and state courts. As former associate general counsel for HSBC North America Holdings, Inc., he has driven case strategy for class actions, banking, antitrust, securities, and corporate trustee litigation. Domenic is also a dedicated mentor and frequent speaker on leadership, best practices for outside counsel, and mental health awareness in the legal industry. For more information, see Domenic’s [bio](#).

Jay Dubow was recently recognized by Securities Docket on its “[Enforcement Elite](#)” [list for 2024](#), which honors the top securities enforcement defense lawyers.

Jay Dubow was recently quoted in:

- “[Trump Nominee for SEC Chair May Slow Rulemaking, Enforcement](#),” *FundFire*, December 2024.
- “[A Paul Atkins-Led SEC Will Be More Industry Friendly, Accommodating to Crypto, Experts Say](#),” *Pensions & Investments*, December 6, 2024.
- “[Trump Picks Crypto-Friendly Former Commish to Chair SEC](#),” *FundFire*, December 5, 2024.
- “[Trump Picks SEC Alum to Chair Regulator](#),” *PlanAdviser*, December 4, 2024.

- [“Gensler’s Chapter Leading SEC Approaches Close,”](#) *FundFire*, November 22, 2024.
- [“SEC Chair Gensler to Step Down When Trump Takes Office,”](#) *Law360*, November 21, 2024.

Ghillaine Reid was recently quoted in:

- [“Recent Charges Against Financial Firms Show That the SEC’s Texting Probe Is Far From Over,”](#) *International Banker*, October 14, 2024.

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## Safeguarding Individual Rights in a Digital Era

### **US V. BROWN: DISTRICT OF COLUMBIA CIRCUIT RULES ON COMPELLED BIOMETRIC UNLOCKING OF CELLPHONES**

By [Jay Dubow](#), [Ghillaine Reid](#), and [Isabela Herlihy](#)

On January 17, the District of Columbia Circuit issued a pivotal opinion regarding the Fifth Amendment rights of a defendant-appellant compelled by the FBI to unlock his cellphone using his thumbprint. The D.C. Circuit’s decision in [United States v. Brown](#) has significant implications for law enforcement practices and the protection of constitutional rights in the digital age.

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## SEC Updates

### **REGULATORY MONITOR: SEC UPDATE**

*This article was originally published in the January 2025 issue of [The Investment Lawyer](#) and is republished here with permission.*

By [Genna Garver](#) and [Theodore Edwards](#)

It’s been only two years since the required compliance date for the US Securities and Exchange Commission’s (SEC) amended Rule 206(4)-1 (the Marketing Rule) under the Investment Advisers Act of 1940, as amended (Advisers Act). Since the Marketing Rule’s adoption, the SEC Staff of the Division of Investment Management (IM) has issued four FAQs and the SEC’s Division of Examinations (EXAMS) has issued three risk alerts on the rule. Despite this guidance, advisers are still struggling with implementation and interpretation issues, making the Marketing Rule ripe for further regulation through enforcement.

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### **SEC 2024 ENFORCEMENT RESULTS: A DECLINE IN TOTAL ENFORCEMENT, BUT A RECORD-BREAKING RECOVERY OF FINANCIAL REMEDIES**

By [Jay Dubow](#), [Ghillaine Reid](#), [Casselle Smith](#), and [Isabela Herlihy](#)

On November 22, the Securities and Exchange Commission (SEC) [announced](#) its enforcement results for fiscal

year (FY) 2024. As compared to FY 2023, the Division of Enforcement (the division) reported a 26% decline in the total volume of enforcement actions filed, accompanied by a \$3.2 billion increase in the orders obtained for financial remedies. Below is a high-level summary of the [division's FY 2024 statistics](#) and key takeaways regarding the division's substantive focus.

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## EVOLUTION OF ADMINISTRATIVE ADJUDICATION POST-JARKESY

By [Jay Dubow](#), [Ghillaine Reid](#), and [Alyssa Cavanaugh](#)

On June 27, 2024 the US Supreme Court released its 6-3 decision in *SEC v. Jarkesy, et al.*, ending the Securities and Exchange Commission's (SEC) long-standing use of in-house Administrative Law Judge (ALJ) tribunals in cases involving allegations of fraud in which the SEC seeks civil penalties. The majority held that the Seventh Amendment entitles the defendant to trial by jury when the SEC seeks civil penalties for securities fraud, thus requiring that the action be brought in a court of law. This effectively closes one of the SEC's key enforcement avenues for seeking financial penalties when it believes investors have been misled and forces the SEC to bring more of its actions in courts of law.

[Click here to read the full article in \*The Investment Lawyer\*.](#)

## THE SEC'S DIVISION OF EXAMINATIONS ANNOUNCES 2025 PRIORITIES

By [Jay Dubow](#), [Genna Garver](#), [Ghillaine Reid](#), and Tim Bado

On October 21, the Securities and Exchange Commission's (SEC) Division of Examinations announced its 2025 [examination priorities](#) (2025 guidance) for registered investment advisers and investment companies, broker-dealers, clearing agencies, self-regulatory organizations, and other registered entities that are subject to inspection by the Division. The annual guidance aims to align with the Division's four pillars: to promote and improve compliance, prevent fraud, monitor risk, and inform policy. The 2025 guidance lists plenty of familiar topics, but also includes new priorities that reflect the evolution of U.S. and global markets. Next year's examinations will prioritize areas such as fiduciary duties and standards of conduct for investment advisers, and cybersecurity, artificial intelligence (AI), and anti-money laundering (AML) for various market participants. More generally, the Division's acting director, Keith Cassidy, stated the 2025 guidance aims to "identify the key areas of potentially increased risks and related harm for investors" In addition to conducting examinations in core areas such as disclosures and governance practices, the Division will also examine compliance with new rules, the use of emerging technologies, and the soundness of controls intended to protect investor information, records, and assets.

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## Securities Class Action Updates

### THE INCREASE IN ARTIFICIAL INTELLIGENCE-RELATED SECURITIES CLASS ACTIONS

By [Jay Dubow](#), [Joanna Cline](#), and [Millie Krnjaja](#)

With the increasing prominence of Artificial Intelligence technology (AI), the potential for legal disputes regarding its use has grown. While the full scope of AI-related legal risks is still developing, both the Securities and Exchange Commission (SEC) and Federal Trade Commission (FTC) have revealed the kinds of AI-related corporate behaviors they consider problematic. The problematic corporate behavior the agencies emphasized the most is “AI Washing”—the practice of making unfounded claims about AI capabilities.

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