Claims Trends

A Review of Claims Activity in the Mutual Fund Industry (January 2024–March 2025)

ICIMutual

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Abbreviations used in this *Claims Trends*:

'33 Act	Securities Act of 1933
'34 Act	Securities Exchange Act of 1934
CFTC	U.S. Commodity Futures Trading Commission
DOJ	U.S. Department of Justice
DOL	U.S. Department of Labor
ERISA	Employee Retirement Income Security Act of 1974
EXAMS	Division of Examinations of the SEC
FINRA	Financial Industry Regulatory Authority
IAA	Investment Advisers Act of 1940
ICA	Investment Company Act of 1940
SEC	U.S. Securities and Exchange Commission

In addition, U.S. Courts of Appeals are referred to by their circuit number (e.g., First Circuit, Second Circuit).

Introduction

ICI Mutual's annual *Claims Trends* reports on significant civil lawsuits, regulatory enforcement proceedings, and operational errors involving fund advisers and their affiliates, registered investment companies, and fund directors and officers. The publication is designed to assist ICI Mutual's insureds to better assess and manage the risks associated with such matters, thereby reducing the potential for associated losses and reputational damage.

ICI Mutual measures claims activity by both *frequency* and *severity*. Although 2024 saw a year-over-year decrease in the overall number of claims submitted by ICI Mutual's insured fund groups, claims frequency for the year remained within historical norms. Over the five-year period 2020–2024, over 35% of ICI Mutual's insured fund groups have submitted at least one claim notice.

Unlike frequency, severity can be more difficult to assess, particularly for civil litigation and regulatory investigations and proceedings, where it can sometimes take years to establish the magnitude of losses (in the form of defense costs, settlements, and judgments). Even as the frequency of claims reported to ICI Mutual has remained within historical norms in recent years, ICI Mutual has seen increased claims severity in recent years. (See box on the upper right.)

Historically, higher severity claims have involved civil lawsuits or, in some cases, regulatory investigations and proceedings. Since the mid-2010s, however, in a marked break from past experience, ICI Mutual has also seen multiple high severity costs of correction claims.

For fund groups faced with civil litigation and/or regulatory investigations and proceedings, legal defense costs remain substantial. ICI Mutual's claims experience indicates that defense costs can quickly reach seven figures for affected fund groups and, in significant shareholder litigation or regulatory enforcement matters, can in some cases climb into eight figures.

Waves, One-Offs, and High Severity Clusters

ICI Mutual has long used the catchphrase "waves and one-offs" to describe the fund industry claims environment. This catchphrase has reflected the industry's experience over the decades with both waves of substantially similar claims involving multiple fund groups and one-off claims involving individual fund groups. Claims developments of late suggest that the catchphrase be amended to read "waves, one-offs, and high severity clusters." The amendment reflects the emergence of clusters of claims that have little in common apart from their proximity in time and their high severity (with the exposure in each claim ultimately totaling $10 million or more in settlements, defense costs, and/or corrective payments, prior to any insurance recovery).

ICI Mutual has itself experienced two high severity clusters in recent years, with the second having emerged over just the past few years. While it is difficult to assess how often high severity clusters may be arising in the fund industry as a whole, it seems unlikely that they are limited to fund groups insured by ICI Mutual.

New Appendix

This year's *Claims Trends* includes an appendix that serves as a primer and general overview of (1) the common underlying legal theories used in litigation against fund groups (e.g., '33 Act, '34 Act, ICA, state law, ERISA), (2) the structural forms of such litigation (e.g., class actions, derivative actions, quasi-derivative actions), and (3) the key procedural stages in litigation (e.g., motion to dismiss, discovery, motion for summary judgment, trial).

Disclosure

"Prospectus liability" lawsuits—i.e., shareholder class action lawsuits brought under the '33 Act that allege misrepresentations or omissions in fund offering documents—have long been a source of significant potential liability for funds and their directors, officers, advisers, and principal underwriters.[1] As discussed below, new prospectus liability lawsuits were filed in early 2025 (but none in 2024), and there were developments in earlier prospectus liability lawsuits.[2]

Plaintiffs have also challenged fund disclosure under the '34 Act (as opposed to under the '33 Act) or under state law. As discussed below, plaintiffs have historically had limited success in bringing these types of lawsuits against fund industry defendants.

Disclosure issues remain an area of interest for regulators as well and may lead to regulatory enforcement actions (see "Regulatory Developments" below).

Prospectus Liability Lawsuits

The fund industry's historical claims experience shows that prospectus liability lawsuits are often initiated in the wake of disruptions affecting certain industry sectors or the broader market, but also sometimes arise from discrete issues affecting individual fund groups. The currently active prospectus liability lawsuits are of the latter type.

New prospectus liability lawsuits were filed in early 2025, and there were developments in earlier prospectus liability lawsuits.

- *Alleged Misrepresentations of Certain Accounting Practices:* In March 2025, two prospectus liability lawsuits involving two separate fund groups were filed in New York state court alleging '33 Act violations. Each lawsuit alleges that certain mutual funds, their adviser, their trustees (including independent trustees) and certain officers, and their distributor, among others, misrepresented, in the funds' registration statements, the funds' accounting practices regarding the treatment of dividend income and capital gains.[3] These lawsuits are in their early stages.

- *Alleged Misrepresentations of Valuation Procedures:* In February 2021, two prospectus liability lawsuits alleging '33 Act violations were filed in New York state court. These lawsuits, subsequently consolidated, alleged that a mutual fund, its adviser, its trustees (including independent trustees) and certain officers, and its distributor, among others, misrepresented, in the fund's registration statement, how the fund valued swap contracts for purposes of calculating the fund's net asset value.[4] In December 2023, the court approved a final settlement for up to $48 million.[5]

  Many of the same defendants were involved in other lawsuits that were initiated in 2021 and 2022 and variously alleged '33 Act and/or '34 Act violations.[6] Each of these other lawsuits has concluded pursuant to voluntary dismissals, most recently in March 2024.[7] As noted in "Regulatory Developments" below, some of the defendants in these lawsuits are involved in separate actions brought by the SEC, the CFTC, and the DOJ.[8]

- *Alleged Failure to Follow Investment Objective:* In October 2020, a plaintiff filed a New York state court action alleging '33 Act violations against a registered fund, its adviser, its distributor, and its trustees (including independent trustees) and officers, alleging false and misleading registration statements and prospectuses.[9] The defendants' motion to dismiss, filed in May 2021, was granted in part and denied in part in February 2023.[10] The litigation remains pending.

Other Disclosure-Based Litigation

Previous *Claims Trends* have reported on fund shareholders' challenges to disclosure in class action "securities fraud" lawsuits brought under the '34 Act. Because these lawsuits typically are subject to legal requirements that can be difficult for plaintiffs to satisfy in the mutual fund context, plaintiffs have historically had limited success in pursuing these lawsuits against fund industry defendants.[11] Other than the aforementioned lawsuits that include allegations of '34 Act violations, there are no active '34 Act disclosure-based lawsuits.

Litigation under State Law

Lawsuits against fund groups have sometimes taken the form of (1) state or common law–based derivative actions—i.e., lawsuits purporting to be filed on behalf of funds themselves, that allege violations of state or common law by fund advisers and/or fund directors and officers, or (2) state or common law–based class actions—i.e., lawsuits purporting to be filed on behalf of groups (or "classes") of fund shareholders, that allege violations of state or common law by fund advisers, funds themselves, and/or fund directors and officers. This section describes recent developments in such actions and in similar state or common law–based lawsuits brought directly (as opposed to derivatively or as purported class actions) by shareholders.

In 2022, litigation was initiated in federal court against a fund adviser, fund trustees (including independent trustees), and various funds, alleging breach of fiduciary duty with respect to a reduction in minimum investment requirements for retirement plans investing in certain institutional funds.[12] The defendants' motions to dismiss, filed in January 2023, were granted in part and denied in part in November 2023.[13] In November 2024, the court granted preliminary approval of a $40 million settlement agreement reached by the parties.[14] In February 2025, the plaintiffs filed a motion for final approval of the settlement, which remains pending.[15] As discussed in Regulatory Developments below, the adviser also entered into settlement agreements with the SEC, the New York State Attorney General, and the North American Securities Administrators Association, and reportedly settled FINRA arbitration proceedings with certain affected individual investors.[16]

In October 2024, a class action lawsuit was filed against an investment adviser, trustees (including independent trustees), and officers of a registered money market mutual fund for breach of fiduciary duty by allowing certain shareholders to remain in a more expensive share class even when the shareholders qualified for a less-expensive share class.[17] A motion to dismiss, filed in January 2025, remains pending.[18]

Closed-End Fund Litigation: Litigation involving closed-end funds has often involved activist shareholders of closed-end funds. Although these challenges have historically involved state or common law issues, many recent closed-end fund lawsuits—chiefly initiated by one activist shareholder—raise a federal law issue (specifically, whether certain closed-end fund governance provisions violate the ICA).[19]

Closed-End Fund Litigation Alleging ICA Violations

Recent litigation, chiefly by one activist shareholder, has involved the permissibility under the ICA of "control share" bylaw amendments, which restrict the voting power of certain voting shares unless a majority of disinterested shareholders vote to permit the shares to be voted.[20] In a lawsuit filed in Massachusetts state court in July 2020, the same activist shareholder filed counterclaims against an investment adviser, certain closed-end funds, and their trustees (including independent trustees), challenging each fund's control share bylaw amendment, as well as another bylaw amendment that permits a trustee to be removed only by vote of more than half of all outstanding shares (the "majority rule" bylaw amendment).[21] In January 2023, in an order granting in part and denying in part the parties' motions for partial summary judgment, the court held that each fund's control share bylaw amendment violated the ICA and ordered rescission of the control share bylaw amendment.[22] Following a trial in October 2024, the state court issued a ruling permitted the majority rule bylaw amendment. The lawsuit is now concluded.[23]

In June 2023, the same activist shareholder filed another control share lawsuit against sixteen Maryland-domiciled closed-end funds and the trustees (including independent trustees) of certain of those funds challenging the funds' adoption of control share bylaw provisions under the ICA.[24] In August 2023, the fund defendants filed a motion to dismiss, which the district court granted as to five defendant funds (and their associated trustees, including independent trustees) and denied as to the remaining defendants in September 2023.[25] In October 2023, the remaining defendant funds (including independent trustees of certain funds) filed motions to dismiss, which, in December 2023, the district court denied and granted summary judgment to the plaintiffs, holding that the bylaws at issue violate the ICA and ordering the rescission of the bylaws.[26] In late December 2023 and early January 2024, a number of the defendants (including independent trustees) appealed the district court's decision.[27] In June 2024, the Second Circuit affirmed the district court's ruling.[28] The defendant/appellants filed a petition for writ of certiorari with the U.S. Supreme Court in September 2024, which remains pending.[29]

In January 2024 and March 2024, the activist shareholder involved in most of the "control share" lawsuits filed two additional complaints in federal court in New York alleging that certain other closed-end fund governance provisions violated the ICA. The first lawsuit, filed against a closed-end fund and its directors (including independent directors), alleges that the closed-end fund's "poison pill" plan violates the ICA.[30] In May 2024, the plaintiffs filed a motion for summary judgment, while the defendants filed a motion to dismiss the lawsuit.[31] The motions remain pending.

The second lawsuit, filed against a closed-end fund and its trustees (including independent trustees), alleges that a bylaw provision "entrenches" the board in violation of the ICA.[32] In August 2024, the plaintiff filed a motion for summary judgment; in November 2024, the defendants filed a motion for judgment on the pleadings.[33] In March 2025, the district court granted the plaintiff's motion for summary judgment; the defendants appealed the court's decision shortly thereafter.[34]

Other Closed-End Fund Litigation

In December 2021, a shareholder filed a derivative and class action lawsuit in Delaware state court against a closed-end fund's adviser, sub-adviser, and trustees (including independent trustees), alleging breaches of fiduciary duties and breach of contract with respect to the management of the fund during market volatility in 2020.[35] The defendants' motion to dismiss, filed in March 2021, was granted in part and denied in part in February 2023.[36] In July 2024, the state court approved an $18.8 million settlement between the adviser and the shareholders, thereby ending the lawsuit.[37]

Fees

Section 36(b) of the ICA imposes a fiduciary duty on investment advisers with respect to the compensation they receive for providing advisory services to registered investment companies. The section expressly authorizes both the SEC and fund shareholders to bring lawsuits in federal court for breaches of the fiduciary duty established by the section. Although no new section 36(b) proceedings were initiated against fund advisers in recent years, fund fees remain an enduring focus area for the plaintiffs' bar.

As discussed in prior *Claims Trends*, over the period 2000–2018, the plaintiffs' bar initiated twenty-nine section 36(b) lawsuits, involving a total of twenty-six fund groups.[38] This wave of excessive fee lawsuits finally ended in 2021, and no new section 36(b) lawsuits appear to have been filed since 2018.

On an overall basis, the results for the fund industry in this long-running wave were positive. Plaintiffs failed to secure any judgments in their favor, and defendant advisers prevailed on summary judgments or following trial in a number of cases. But these positive results came at a substantial cost, both in terms of external legal and other costs incurred by fund groups in the defense of these lawsuits, and in the time and other internal resources expended by fund groups in their defense efforts. ICI Mutual estimates that, on an industry-wide basis, defense costs incurred by fund groups in this wave of section 36(b) lawsuits totaled several hundred million dollars.

Regulatory Developments

The change in the presidential administration portends significant changes for the SEC and other regulators.

In that regard, there is new leadership at the SEC at the commission and staff levels (see box, below). Notably, commissioner Mark Uyeda has been named acting SEC chair, and former SEC commissioner Paul Atkins has been nominated to be SEC chair (and is expected to be confirmed by the U.S. Senate).[39]

In addition to the leadership changes, the new administration has taken a number of steps that may have an impact on the SEC and its regulatory and enforcement agendas, including the following:

- *Rulemaking Authority:* In January 2025, the new administration published an executive order that bars agencies from issuing new rules until reviewed by new executive appointees and requires the withdrawal of any rules not yet published in the Federal Register.[40] In February 2025, the administration issued an executive order that may have the effect of subjecting the SEC to oversight by the Office of Management and Budget.[41]

- *Potential Staffing and Budget Cuts:* The administration, in February 2025, issued an executive order directing agencies to reduce their workforces.[42] In March 2025, the SEC was reportedly ordered to terminate the leases of two regional offices.[43] Further, the SEC reportedly intends to eliminate the positions of the directors of ten regional offices as part of the administration's cost-cutting measures.[49]

- *Changes in Internal Operations:* In March 2025, the Commission voted to rescind the power of the Division of Enforcement's authority to issue formal orders of investigation.[50]

While it is too soon to predict exactly how the SEC's regulatory and enforcement agendas might be affected by the new presidential administration, significant future changes in the SEC's priorities, with implications for SEC enforcement activity both in general and in the asset management area, seem likely.[51] There are, for example, early indications of changes in some of the SEC's regulatory priorities, including with respect to digital assets and environmental, social, and governance ("ESG") matters.[52] The new administration may also seek changes in the federal securities regulations or conceivably even in certain provisions of the federal securities laws themselves.[53]

SEC Priorities

In the past, the SEC's agency-wide priorities were frequently reflected in proposed and adopted rules, and focus areas were often communicated by SEC staff in speeches and other guidance.

As relevant to the asset management industry, there were no significant new rule proposals in 2024. Rules adopted by the SEC in 2024 included amendments to Regulation S-P that were intended to enhance privacy

New Leadership at the SEC

In January 2025, Gary Gensler resigned his position as chair of the SEC. Republican Commissioner Mark Uyeda is acting as chair until President Donald J. Trump's appointee, Paul Atkins, is confirmed by the U.S Senate.[44] Democratic commissioner Jaime Lizárraga also stepped down,[45] leaving only three commissioners—Uyeda, Hester Peirce (Republican), and Caroline Crenshaw (Democrat). Caroline Crenshaw's term expired in June (although she will continue to serve until her successor's appointment), and commissioner Peirce's term expires this year.[46] There have also been a number of recent senior staff changes at the SEC, including naming acting heads of, among others, the Divisions of Enforcement, Examinations, Corporation Finance, Trading and Markets, and Economic and Risk Analysis, as well as of the Offices of the General Counsel, International Affairs, and the Chief Accountant.[47] Natasha Vij Greiner became the Director of the Division of Investment Management in March 2024.[48]

and data security and monthly reporting of portfolio holdings by mutual funds and ETFs.[54] Of note, a number of outstanding rules proposed prior to 2024 have not been adopted, including proposed rules relating to (1) environmental, social, and governance ("ESG") issues for registered funds,[55] (2) cybersecurity risk management for investment advisers and registered funds,[56] and (3) the growing use of artificial intelligence ("AI"), especially with the use of predictive analytics by broker-dealers and investment advisers.[57] Given the change in the administration and SEC leadership, the future of previously proposed rules may be in doubt.[58]

In addition to agency-wide priorities, other focus areas may be communicated by SEC commissioners and staff in speeches and other guidance. In a March 2025 speech, acting chair Uyeda described his views on the rulemaking process and goals, emphasized the SEC's investor protection mandate (particularly with regard to seniors), and discussed the SEC's role in fostering innovation.[59] The acting head of the SEC's Division of Enforcement stated in a speech in March 2025 that he expected the SEC to focus on individual accountability and to pursue traditional "bread and butter" cases (such as insider trading and accounting and disclosure fraud cases), as well as fraud cases involving digital assets, AI, and emerging technologies.[60]

Use of "Off-Channel" Electronic Communications

Throughout 2024 and into 2025, the SEC continued to settle administrative proceedings against registered entities, such as advisers and broker-dealers, for recordkeeping failures related to certain kinds of communication. In the press releases announcing these settlements, the SEC indicated that self-reporting and cooperation with the SEC resulted in lower fines (or even no fines) for certain institutions.[61] Some industry watchers speculate that the new administration is unlikely to continue the recordkeeping administrative actions, ending a years-long sweep.[62] In all, the SEC obtained over $2 billion in penalties and fines from the "off-channel" communications investigations.

SEC Enforcement Actions

In fiscal year 2024, the SEC brought 431 original or "standalone" enforcement actions (including eighty "standalone" proceedings against investment advisers or investment companies). In its announcement of enforcement results for fiscal year 2024, the SEC noted that it had collected a record $8.2 billion in financial remedies and highlighted that penalties were reduced for participants that proactively self-reported or remediated areas of non-compliance. The SEC emphasized its focus on, among other things, addressing widespread non-compliance with the securities laws, and holding entities and individuals accountable for their misconduct.[63]

In fiscal year 2024, approximately one quarter of the civil and standalone actions brought by the SEC's Division of Enforcement involved investment advisers and/or investment companies (including unregistered investment companies).[64] As in prior years, enforcement actions against entities outside the registered investment company space (e.g., unregistered funds and their advisers) outnumbered those within the registered fund space.

Administrative Proceedings

Administrative proceedings initiated and/or resolved by the SEC in 2024 and early 2025 against advisers (and/or their affiliates) of registered funds involved various issues, including recordkeeping failures relating to off-channel communications,[65] failure to disclose a social media influencer's role in marketing an ETF,[66] an impermissible joint legal fee arrangement with a registered fund,[67] material misstatements regarding the adviser's investment strategy,[68] failure by a business development company to properly custody certain assets,[69] improper valuation and cross trades,[70] failure to adhere to investment restrictions relating to ESG factors,[71] inaccurate disclosures regarding level of

consideration of ESG factors,[72] conflicts of interest relating to an agreement with an ETF adviser,[73] prohibited joint transactions and principal trades violations,[74] and misleading disclosures relating to potential tax consequences.[75]

With respect to administrative proceedings initiated and/or resolved by the SEC in 2024 and early 2025 against advisers (and/or their affiliates) outside the registered fund space, of particular note are two so-called "AI-washing" proceedings. In March 2024, the SEC settled with two investment advisers for misleading statements regarding the use of AI in managing advisory assets.[76] These proceedings came in the wake of an SEC investor alert, issued in early 2024, regarding potential fraudulent use of AI.[77]

Civil Litigation

In addition to administrative proceedings involving advisers (and/or their affiliates) of registered funds described above, the SEC may also initiate civil litigation against advisers (and/or their affiliates) of registered funds, as well as against fund officers, inside directors (and, less frequently, fund independent directors), and employees.

In May 2021, the SEC filed a lawsuit against investment advisers and portfolio managers for material misrepresentations and breaches of fiduciary duty relating to the risks of an options trading strategy for a mutual fund.[88] In January 2024, both parties filed motions for summary judgment.[89] In October 2024, the district court denied the defendants' motion for summary judgment and granted in part and denied in part the SEC's motion for summary judgment.[90] The litigation remains ongoing. In a parallel proceeding brought against the same defendants by the CFTC, the regulator alleged defendants deceived prospective and existing commodity pool participants through misleading statements or omissions regarding scenarios for the adviser's trading strategy.[91] In October 2024, the district court denied the parties' motions for summary judgment, and the litigation remains ongoing.[92]

ESG-Related Developments

2024 and early 2025 continued to see political and societal attention to environmental, social, and governance (ESG) issues. Of note, the new administration and SEC leadership have signaled a different approach to ESG issues (including to the ESG subcategory of diversity, equity, and inclusion (DEI) issues).[78] Meanwhile, other regulators, in state and foreign jurisdictions, continue to focus on these issues.

- **Enforcement Actions:** In October 2024, the SEC found that an investment adviser misrepresented to the board of trustees and investors that three ETFs would not invest assets in certain "controversial" companies and/or industries, while the ETFs did hold such investments. The adviser agreed to pay a $4 million civil money penalty.[79] In November 2024, the SEC settled an administrative action against another investment adviser for misleading disclosure of ESG investments held by a passive ETF.[80] The SEC levied a $17.5 million civil money penalty on the adviser for the misrepresentations.[81]
- **Regulation and Legislation:** In 2024, the SEC's proposed climate disclosure rules were finalized, but the effectiveness of the rules was stayed pending the completion of litigation now before the Eighth Circuit. In March 2025, the SEC voted to end its defense of the rules.[82] On the legislative front, while certain "anti-ESG" bills passed the U.S. House of Representatives, none of the bills were enacted into law. Industry watchers suggest that, with Republican majorities in the House and Senate, similar anti-ESG bills may gain traction in 2025.[83] At the same time, there has been legislation and/or regulation, both abroad and at the state level, aimed at strengthening certain ESG-related disclosure requirements, including the EU Corporate Sustainability Reporting Directive, as well as regulatory requirements implemented by certain states (for example, California's climate disclosure requirements).[84]
- **Litigation:** In recent litigation targeting the use of ESG-focused investment funds in ERISA plans, plaintiffs have seen some success. In January 2025, following a trial, a federal district court in Texas found that the defendants breached their fiduciary duties with respect to a 401(k) plan by pursuing non-economic ESG-focused objectives to the detriment of plan participants.[85] Some industry observers suggest that, in the wake of the court's ruling, fiduciaries may face more scrutiny for decisions to include funds with ESG strategies in ERISA plans.[86] With respect to potential ESG-related litigation, some industry watchers anticipate "greenhushing" lawsuits to be filed against advisers that are de-emphasizing their use of ESG factors in investment decisions.[87]

The Potential Impact of Three Supreme Court Decisions on Regulatory Authority and Process

In 2024, the U.S. Supreme Court issued three opinions—*Loper Bright Enterprises v. Raimondo*, *SEC v. Jarkesy*, and *Corner Post v. Board of Governors of the Federal Reserve System*—that may have a significant impact on the SEC's rulemaking and enforcement activities.

- In *Loper Bright*, the Court overturned the so-called *Chevron* doctrine, under which courts generally deferred to reasonable interpretations of ambiguous statutes by federal agencies. In *Loper Bright*, the Court held that courts must exercise independent judgment when evaluating an agency's interpretation of a statute and that courts, not agencies, should resolve statutory ambiguities under the Administrative Procedure Act.[93] The decision has the potential to broadly reshape administrative law by limiting the power of federal agencies to interpret statutes without judicial oversight.[94] Many industry observers expect that the *Loper Bright* decision will have a substantial impact on the enforcement and rulemaking activities of agencies, including the SEC, and may lead agencies to adopt a more conservative approach to enforcement actions under potentially vulnerable rules.[95]
- In *Jarkesy*, the Court ruled that defendants are entitled to a jury trial in certain securities fraud cases brought by the SEC where civil penalties are sought.[96] This decision effectively invalidates the SEC's practice of using administrative law judges ("ALJs") in such cases. Some industry observers have suggested that, as a practical matter, given constraints on the SEC's time and resources, the SEC may be more selective in bringing actions and may opt to settle earlier following *Jarkesy;* however, it is still unclear the effect the decision will have on the SEC's enforcement activity.[97]
- In *Corner Post*, the Court ruled that a plaintiff may sue an agency under the federal Administrative Procedures Act for harm caused by an agency's final actions from the date the plaintiff suffers harm.[98] Previously, plaintiffs were required to file suit within a specific period from the date the rule was issued.[99] In her dissenting opinion, Justice Brown voiced concerns about the ruling, especially in connection with the recent decision in *Loper Bright*.[100]

In another lawsuit, filed in February 2022, the SEC alleged that an officer and control person of a registered fund's investment adviser perpetrated a fraudulent valuation scheme to mask the fund's performance.[101] In a parallel action, the CFTC initiated a lawsuit against the same individual alleging improper valuation of swaps in registered commodity pools.[102] The SEC and CFTC lawsuits are both pending, and the CFTC filed a motion for summary judgment in March 2025.[103] In addition, the DOJ filed a criminal action against the same individual, who pled guilty in November 2022.[104] The district court's decision, in April 2023, to deny the defendant's motion to withdraw the guilty plea was appealed to the Second Circuit, which affirmed the lower court's ruling in October 2024.[105] The appellant filed a petition for rehearing in December 2024, which the court denied later that same month.[106]

In December 2022, the SEC filed a complaint against an asset management firm employee and another individual, alleging that they had fraudulently placed trades in certain securities ahead of trades made by the registered investment companies (and other clients).[107] The lawsuit remains in its early stages.

In May 2023, the SEC initiated litigation against a registered fund's adviser, its principals, and its trustees (including independent trustees), alleging that the fund failed to monitor the liquidity of the fund's investments and assigned inappropriate liquidity levels to certain securities.[108] In March 2025, the district court denied the defendants' motions to dismiss (filed in July 2023), but permitted the defendants to amend their motion to dismiss to add additional briefing in light of the U.S. Supreme Court's *Loper Bright* decision (see box above).[109]

In June 2023, the SEC filed a lawsuit against an investment adviser involved in the lawsuits noted above, alleging improper valuation of assets in both a registered mutual fund and a private fund.[110] The SEC obtained a judgment against the defendant later that same month.[111] As discussed in "Disclosure – Other Disclosure-Based Litigation" above, at the same time, several shareholder class action lawsuits relating to the same matter were filed.[112]

In November 2024, the SEC filed a lawsuit against a portfolio manager for alleged fraudulent allocations known as "cherry-picking," or providing better stock

allocations to favored clients.[113] This lawsuit was stayed in January 2025, pending resolution of a parallel criminal proceeding against the same defendant.[114]

In March 2025, the SEC filed a lawsuit against an investment adviser and its owner, alleging the adviser operated the fund as a highly concentrated fund in violation of the fund's investment mandate.[115] This litigation is in its early stages.

SEC Examination Priorities

The SEC communicates its examination priorities (which may indicate areas of future enforcement activity) in a variety of publications, speeches, and public statements from the chair, commissioners, and staff.

The SEC annually publishes the examination priorities of the SEC's Division of Examinations, or EXAMS.[116] For the SEC's 2025 fiscal year, EXAMS has indicated that, with respect to registered investment advisers, it will focus on advisers' fiduciary duties (including investment recommendations), dual registrants (advisers with affiliated broker-dealers, with respect to advice, disclosures, and conflicts of interest), effectiveness of compliance programs (especially with respect to compliance requirements under the IAA), examining advisers with private funds and examining never-examined advisers/recently registered advisers and those advisers that have not recently been the subject of examinations.

With respect to registered investment companies, EXAMS has indicated a focus on compliance programs, disclosure, governance practices, fund fees and expenses, oversight of service providers, portfolio management practices, and management of market volatility. EXAMS also stated that examinations will continue to monitor exposure to commercial real estate and compliance with new and amended rules.[117]

Throughout the year, EXAMS also issues risk alerts that provide information about its examination priorities and findings. In 2024, EXAMS issued risk alerts on a range of topics, including initial observations regarding Advisers Act marketing rule compliance[118] and insights into the examination process for registered investment companies.[119]

Other Regulators

The SEC is generally viewed as the primary regulator of the investment management industry. However, other regulators (including FINRA, the CFTC, the DOL, state securities regulators and attorneys general, and foreign regulators) may also institute enforcement actions that may involve and/or impact registered funds and/or their affiliated service providers.

In January 2025, FINRA, a self-regulatory organization for the broker-dealer industry, published its annual regulatory oversight report, which reports on findings from recent examinations and indicates where FINRA might focus its resources over the coming year. The report also discusses FINRA's priorities for the coming year, including cybersecurity/technology management, third-party vendors, anti-money laundering, and AI.[120]

The CFTC, which regulates the trading of commodities (including many futures and derivatives), often discusses its annual priorities through speeches and other public statements. The CFTC's chair and other commissioners have recently discussed, among other priorities, AI,[121] digital assets,[122] and innovative products.[123] It is unclear how the change in administration and CFTC leadership will have an impact on previously expressed priorities.[124]

In recent years, the CFTC and the SEC have frequently cooperated in their respective enforcement efforts, including through the initiation of parallel proceedings. As discussed in "Regulatory Developments – SEC Enforcement Actions" above, for example, the two

agencies in February 2022 filed simultaneous complaints against an officer of a registered fund and registered commodity pools with respect to valuation issues.[125] In September 2024, both the SEC and CFTC brought administrative actions against a number of financial institutions (chiefly, broker-dealers) for their failure to establish and maintain records of certain electronic communications.[126]

In December 2023, the Tennessee state attorney general sued an investment adviser alleging that the adviser's ESG activities violated the state's consumer protection laws.[127] In January 2025, the attorney general announced that the parties had reached a non-monetary settlement and the lawsuit was dismissed without prejudice.[128] In March 2024, the same investment adviser was the target of a cease-and-desist order issued by Mississippi's Secretary of State for the adviser's allegedly misleading disclosures regarding its approach to ESG investing.[129]

In November 2024, various state attorneys general filed a civil lawsuit alleging that three investment advisers collectively used their investments in publicly traded coal companies to reduce coal production, in violation of federal and state antitrust laws and of state deceptive trade practices and consumer protection laws.[130] Plaintiffs filed an amended complaint in January 2025.[131] In March 2025, the defendants filed motions to dismiss; the district court has yet to rule on the motions.[132]

In February 2025, a group of state attorneys general, led by the Montana attorney general, sent a letter to a group of asset managers alleging that they had misrepresented or omitted essential disclosures with respect to Chinese investments made by funds.[133] To date, no further public information appears to be available.

Portfolio Management Errors

A significant portion of all claim amounts paid by ICI Mutual has been for "costs of correction" claims—i.e., insurance claims by advisers or their affiliates for payments made by them, outside the litigation context, to remedy operational errors that have resulted in losses to funds or private accounts. Generally, costs of correction insurance coverage permits an insured entity to seek insurance reimbursement for certain costs incurred to correct an operational error, provided that the insured entity has actual legal liability for the resulting loss.[134] "Costs of correction" insurance coverage, long a feature of ICI Mutual's D&O/E&O policies, is highly valued by insured advisers for its role in facilitating timely and efficient remediations of operational errors and other operational mishaps.

Over its history, ICI Mutual has received and paid scores of insurance claims under this coverage. The frequency of costs of correction insurance claims received by ICI Mutual has remained relatively stable over time. Until fairly recently, the severity of such claims had likewise remained relatively stable, with dollar amounts at issue in individual claims rarely exceeding the mid-seven figures. Since the mid-2010s, however, in a marked break from past experience, ICI Mutual has received multiple high severity costs of correction insurance claims—i.e., claims that have involved (or that have had the clear potential to involve) dollar amounts of eight figures or more.[135]

A number of factors—including the size of fund groups, the scale of their operations, the magnitude of trades being executed on behalf of funds and other clients, the volatility of the securities markets, and operational challenges—may create the potential for operational errors resulting in costs of correction claims.

ICI Mutual has received claims associated with operational errors in a number of areas over the years. Recent examples include the following:

- *Cross Trades:* As a result of errors by an investment adviser to certain client accounts, a number of trades did not comply with the adviser's cross trade policies and procedures.
- *Valuation:* As a result of errors relating to the accounting for certain credit default swap index netting transactions, the net asset values per share of two mutual funds were understated.
- *Compliance with Investment Restrictions:* As a result of errors by an investment adviser to a mutual fund, certain securities were purchased for the fund in violation of the fund's investment restrictions.
- *Portfolio Diversification:* As a result of errors, an investment adviser failed to implement a change in diversification strategy for certain sub-advised registered investment companies.

When business operations are outsourced to affiliated or unaffiliated service providers, determining the extent to which costs of correction insurance coverage is available may be particularly challenging, especially in the context of certain types of events (e.g., cyberattacks),[136] where the actual legal liability of an insured fund service provider (as well as any measure of "damages" incurred) may be far from clear-cut.

ICI Mutual's costs of correction claims history illustrates the continued importance to fund groups of close attention to policies, procedures, and the use of technology designed to prevent and detect operational mistakes and oversights.

Other Litigation Developments

In addition to the disclosure and state law–based lawsuits already discussed, 2024 and early 2025 also saw other noteworthy litigation developments.

ERISA

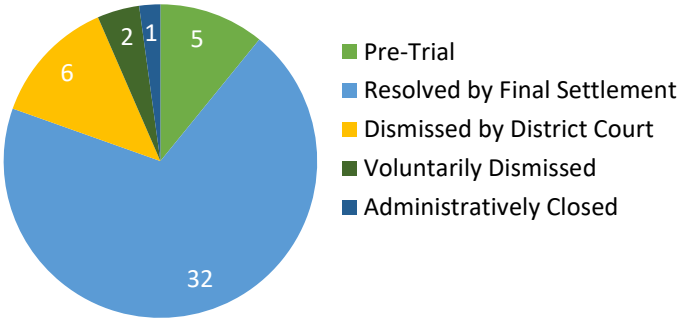
As reported in past *Claims Trends*, the plaintiffs' bar has used ERISA as a legal avenue to attack the fund industry.[137] While no new lawsuits were filed in 2024 and early 2025, there were developments in existing lawsuits involving asset managers and/or affiliates.

"PROPRIETARY FUNDS" LAWSUITS

Past *Claims Trends* have tracked ERISA-based lawsuits challenging the inclusion of "proprietary" mutual funds within the offerings of in-house 401(k) or similar employee benefit plans sponsored by asset managers and/or their affiliates.

Typically structured as class actions, these lawsuits frequently allege that the named defendants (which may include one or more entities, committees, and/or individuals) have breached their fiduciary duties under ERISA and/or engaged in "prohibited transactions," by including in their in-house plans proprietary mutual funds that allegedly have charged excessive fees and/or underperformed relative to purportedly similar *non-proprietary* funds (i.e., funds offered by other asset managers). Such lawsuits may also include other allegations (e.g., that the defendants engaged in self-dealing, failed to include in their in-house plans the lowest-cost share classes of the proprietary funds at issue, and/or failed to adequately investigate providing non-mutual fund alternatives such as collective trusts).

Procedural Status of Proprietary Funds Lawsuits
Initiated 2011–2023 (as of March 31, 2025)



Since 2011, the plaintiffs' bar initiated at least forty-six such lawsuits (on a consolidated basis) involving forty-three fund groups. As discussed below, five lawsuits remain in the pre-trial stage of the litigation process and forty-one are fully resolved. Of the fully resolved lawsuits, thirty-two lawsuits were resolved through final monetary settlements, six were dismissed by the courts, two were voluntarily dismissed by the parties, and one was administratively closed by the court.

The preliminary and final monetary settlements reached to date in these "proprietary funds" lawsuits collectively total over $530 million.[138]

- *Lawsuits in the Pre-Trial Stage:* Five lawsuits remain in the pre-trial stage of the litigation process. A motion to dismiss filed in November 2023 is pending in one lawsuit, and a motion for judgment on the pleadings filed in December 2023 is pending in a second lawsuit.[139] In a third lawsuit, the motion to dismiss was granted in part and denied in part in January 2024.[140] In August 2024, a district court denied defendants' motion to compel arbitration and a motion to dismiss in a fourth lawsuit; the defendants' appeal of the decision remains pending.[141] In a fifth lawsuit, in September 2024, the district court granted in part and denied in part a motion for summary judgment; a bench trial was held in late January and early February 2025.[142] To date, no decision has been issued.
- *Lawsuits Resolved by Final Settlements:* Thirty-two of the lawsuits reached final monetary settlements. Of these,

four lawsuits reached final monetary settlements in 2024 (totaling over $77 million).[143]

- *Lawsuits Dismissed by the Courts:* Six lawsuits were dismissed by the courts in favor of the defendants—three on motions to dismiss (with one decision affirmed on appeal), two on motions for summary judgment (with one decision affirmed on appeal), and one by judgment following a bench trial.[144]

- *Lawsuits Voluntarily Dismissed by the Parties:* Two lawsuits closed in 2018 pursuant to voluntary dismissals.[145]

- *Lawsuit Administratively Closed by the Court:* In one lawsuit, the district court stayed the action, noting that the plaintiff's individual claims were subject to an enforceable arbitration provision, and administratively closed the case.[146]

In addition to the lawsuits described above challenging the inclusion of proprietary *registered* funds as investment options in in-house retirement plans, at least three lawsuits (filed in 2020 and 2021) have challenged asset managers' inclusion of proprietary *non-registered* funds (typically, index funds and/or target date funds structured as collective investment trusts or separate accounts) as investment options in their in-house retirement plans. In one such lawsuit, in January 2025, the district court approved the parties' motion for preliminary approval of settlement.[147] In two other lawsuits, final approvals of settlements were granted in August 2024 and January 2025, respectively.[148]

MISMANAGEMENT LAWSUITS

The federal securities laws do not, in general, permit direct lawsuits against advisers for alleged mismanagement of assets. ERISA, however, provides an express right of action against plan "fiduciaries" for mismanagement of plan assets under their control—i.e., for failure to adhere to their duty of "prudent management."

In a "proprietary funds"–like class action lawsuit filed in June 2021, a plaintiff participating in her employer's retirement plan alleged that certain plan fiduciaries mismanaged participants' assets (and breached their fiduciary duties) through the selection and retention of mutual funds affiliated with the plan's investment adviser as underlying investments for plan assets.[149] These affiliated mutual funds, according to the plaintiff, had higher fees and lower performance than the fees and performance of similar funds. The defendants' motions for summary judgment (filed in October 2024) were granted in January 2025; a notice of appeal to the Eleventh Circuit was filed in March 2025.[150] The appeal remains pending.

Insurance Considerations for ERISA Litigation Involving In-House Plans

Broadly stated, "fiduciary liability" insurance insures against liabilities arising out of third-party claims brought against company-sponsored employee benefit plans, the sponsoring companies themselves, and/or certain other persons or entities associated with such plans, by reason of their breach of fiduciary duties under ERISA (and/or common and other statutory law) in providing services to "in-house" retirement plans. Historically, fiduciary liability coverage has been viewed by insurance markets as separate and distinct from other types of liability coverages, including both "directors and officers" (D&O) coverage and "errors and omissions" (E&O) coverage. Indeed, fiduciary liability coverage is generally offered as a separate, standalone insurance product.

Bankruptcy Claims Involving Issuers of Portfolio Securities

Mutual funds have sometimes been ensnared in proceedings arising from bankruptcies, for no reason other than the funds' status as passive holders or former holders of securities of the bankrupt issuers. In these "clawback" proceedings, bankrupt issuers and/or their creditors sought a return of pre-bankruptcy payments made to security holders or other creditors, including funds. Previous *Claims Trends* reported on the now-concluded bankruptcy proceedings of the Tribune Company and Sears Holdings, among others, as well as Puerto Rico's bankruptcy-like proceeding.

Another bankruptcy proceeding, this one relating to Nine West Holdings, reached a final resolution in 2024, at least with respect to fund industry defendants. This proceeding involved actual and constructive fraudulent conveyance claims under state law.[151] In August 2020, the district court issued an order dismissing certain claims as barred by a "safe harbor" provision of the federal bankruptcy laws.[152] An appeal of the dismissal of the "safe harbor" claims was filed in November 2020, and, in November 2023, the Second Circuit affirmed in part (including, in relevant part, with respect to fund industry defendants), vacated in part, and remanded the case for further proceedings.[153] The Second Circuit's decision with respect to the safe harbor and the fund industry defendants is final.[154]

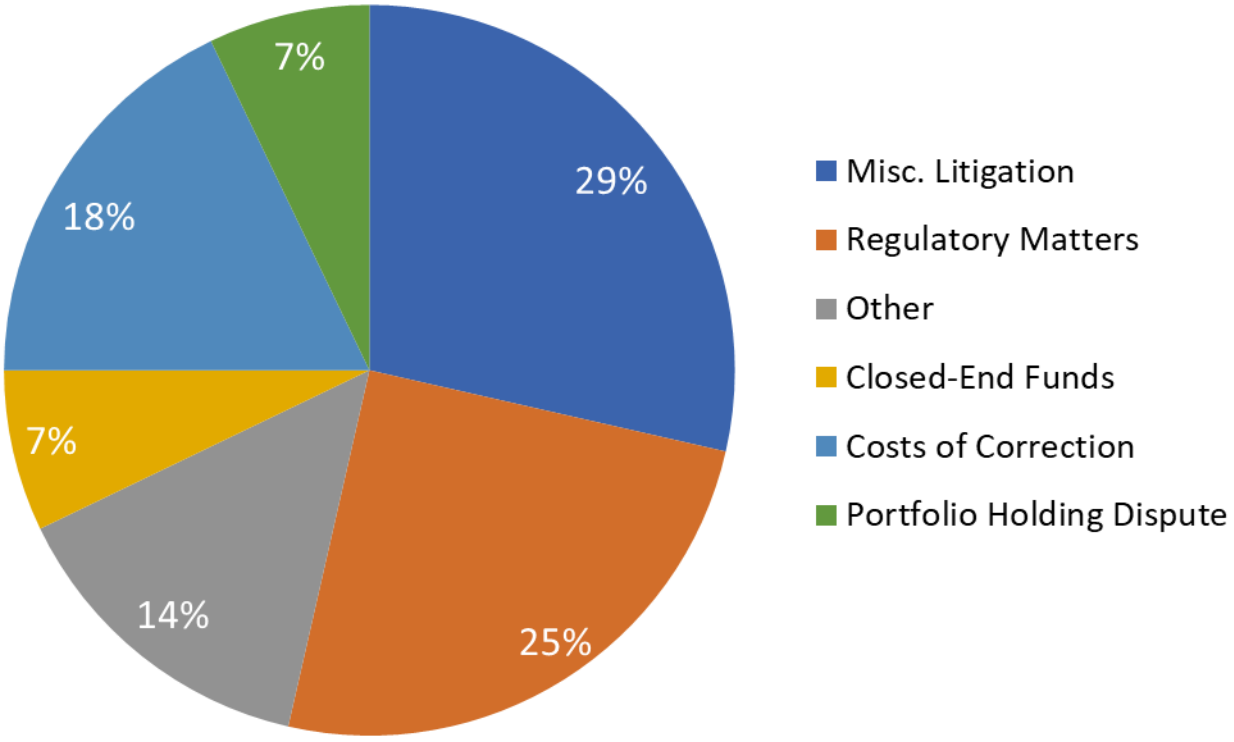
Note

This *Claims Trends* is current through March 31, 2025. For more recent information on the matters discussed herein, please refer to ICI Mutual's online *Litigation Notebook* (available at http://www.icimutual.com/litigation/notebook.php). The *Litigation Notebook* provides basic public information about recent lawsuits and regulatory enforcement proceedings involving funds, fund directors and officers, and fund advisers; free access to significant documents filed in those matters; and, to the extent applicable and available, additional public information about the matters, including procedural histories and links to relevant federal or state docket sheets or to the relevant regulators' websites.

D&O/E&O Claims Data

D&O/E&O Notices by Subject (2024)

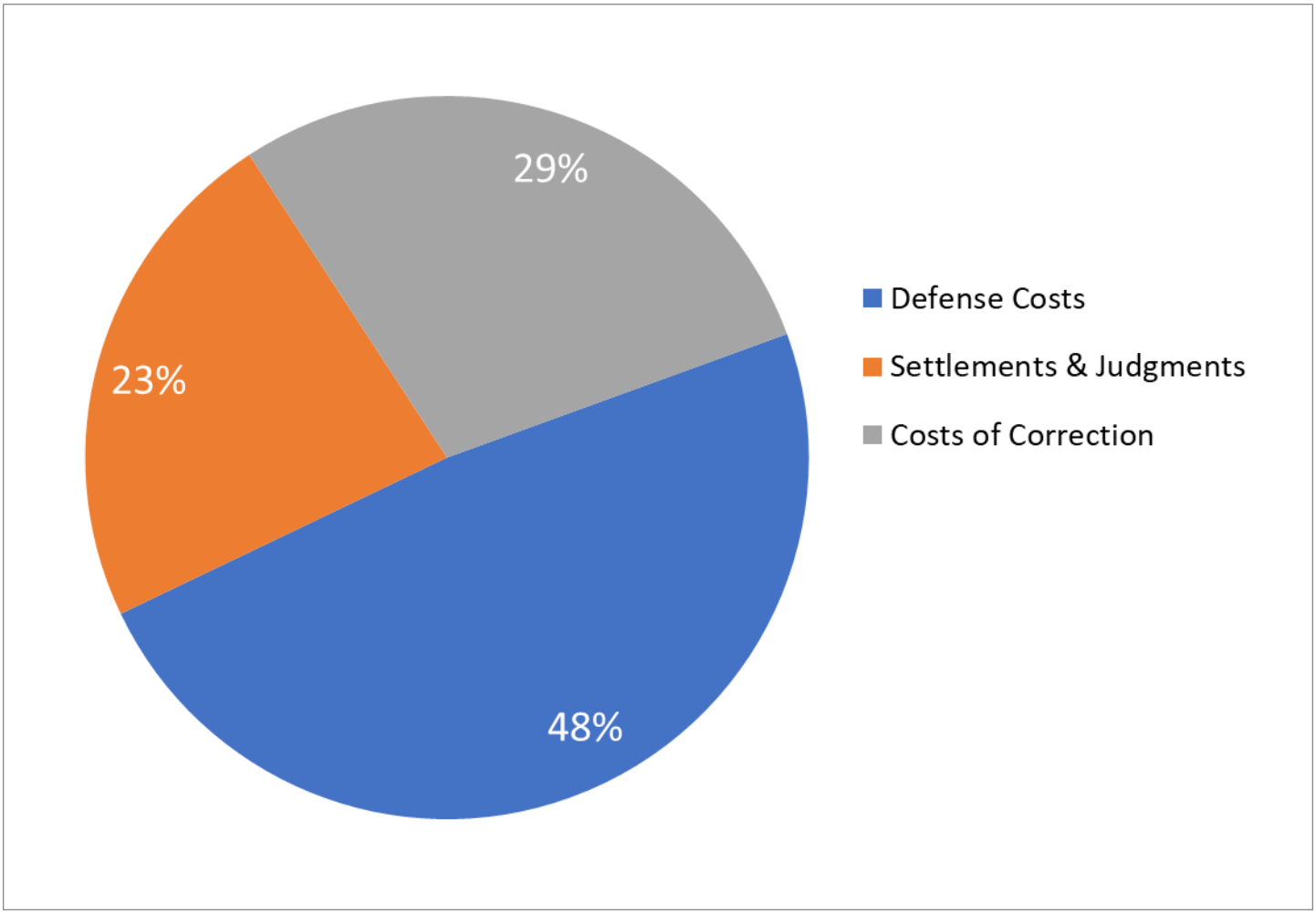
Miscellaneous litigation and regulatory matters constituted the most common subjects of claims notices submitted under ICI Mutual D&O/E&O policies in 2024.



D&O/E&O Claims Data

D&O/E&O Insurance Payments by Category (2000–2024)

The chart below shows the breakdown of payments (i.e., defense costs, settlements and judgments, and costs of correction) made by ICI Mutual on claims submitted under ICI Mutual D&O/E&O policies over the period January 1, 2000 through December 31, 2024.



Appendix

This appendix serves as a primer and general overview of (1) the common underlying legal theories used in litigation against fund groups (e.g., '33 Act, '34 Act, ICA, state law, ERISA), (2) the structural forms of such litigation (e.g., class actions, derivative actions, quasi-derivative actions), and (3) the key procedural stages in litigation (e.g., motion to dismiss, discovery, motion for summary judgment, trial).

Underlying Legal Theories

Relevant Law	Description	Typical Defendants
1933 Act	**"Prospectus liability"** lawsuits allege inadequate or inaccurate disclosure in mutual fund prospectuses, statements of additional information, or certain other documents filed with the SEC. Liability reaches only materially inaccurate or incomplete *disclosure*, but the plaintiffs' bar nevertheless often seeks to use this avenue to attack fund performance and/or various industry practices. **Typically structured as class actions**	Funds Fund Directors & Officers Distributors Advisers/Other Affiliates (as "control persons")
1934 Act	**"Rule 10b-5"** or **"securities fraud"** lawsuits may allege inadequate or inaccurate disclosure in mutual fund prospectuses, statements of additional information, annual and semi-annual reports, or certain other publicly available documents. For various reasons, including a requirement that the "class" of shareholders must have relied on the allegedly misleading disclosure and potential difficulties faced by plaintiffs in demonstrating "scienter" (i.e., an intent to deceive), it is relatively uncommon for the plaintiffs' bar to pursue disclosure-based litigation against fund groups under the '34 Act. **Typically structured as class actions**	Funds Fund Directors & Officers Advisers/Other Affiliates (as "control persons" or otherwise)
1940 Act	**"Section 36(b)"** or **"excessive fee"** lawsuits allege breach of a fiduciary duty imposed on fund advisers by section 36(b) of the ICA. Violation requires that an adviser "charge a fee that is so disproportionately large that it bears no reasonable relationship to the services rendered and could not have been the product of arm's-length bargaining." **Structured as quasi-derivative actions**	Advisers Other Affiliates (Fund Directors are not typically named as defendants, but are often key non-party witnesses.)
State Law	"**State law"** lawsuits allege breach of fiduciary duty or other violations of state law. Procedural requirements applicable to derivative actions, and developments in the jurisprudence applicable to state law-based class actions, can present challenges for the plaintiffs' bar in pursuing litigation under this legal avenue. **Typically structured as derivative actions (or sometimes as class actions)**	Fund Directors & Officers Advisers Other Affiliates (Funds are often named as "nominal defendants" in derivative actions, and may be named as defendants in state law-based class actions.)
ERISA	**ERISA-based** lawsuits allege failure to meet various of the obligations and duties that ERISA imposes on "plan fiduciaries" and other "parties in interest." One significant category of ERISA-based lawsuits—i.e., **"proprietary funds"** lawsuits—alleges liability on the part of advisers or their affiliates, as sponsors of "in-house" retirement plans, for including "proprietary" mutual funds in the menus of their in-house plans. **Often structured as class actions**	Advisers Other Affiliates

Structural Forms

Class Actions

A class action lawsuit is a "lawsuit in which the court authorizes a single person or a small group of people to represent the interests of a larger group." The individual plaintiff (or small group of plaintiffs) is thus proceeding ***directly*** in seeking recovery for the larger group (or "class") for which he or she is a representative.

Derivative Actions

A derivative lawsuit "permits an individual shareholder to bring suit to enforce a corporate cause of action against officers, directors, and third parties," and thereby "to protect the interests of the corporation from the misfeasance and malfeasance of 'faithless directors and managers' [including, in the fund industry context, fund advisers]." The individual is thus proceeding ***derivatively*** in seeking recovery for the company (e.g., fund) of which he or she is a shareholder.

Quasi-Derivative Actions

Section 36(b) lawsuits are sometimes described as "quasi-derivative" in nature, in that the individual serving as the plaintiff is proceeding ***directly*** in his or her capacity as a fund shareholder in bringing suit against the fund's adviser, but is acting ***derivatively*** in that any recovery in the lawsuit accrues to the fund itself (rather than to a class of shareholders of which the named fund shareholder is the representative). Under relevant federal court rules, such lawsuits are neither class actions nor traditional derivative lawsuits.

Key Procedural Stages

Settlement

Settlement: At any stage of the process, a plaintiff may withdraw his or her lawsuit, or the lawsuit may be resolved through a settlement (or otherwise through mutual agreement of the parties).

Other Key Stages in Certain Litigation

Class certification: At this stage in class action litigation, the lower court determines (typically following an opportunity for related factual investigation by the parties) whether a lawsuit can properly be brought as a class action under applicable rules of court procedure. If it can, then the class action is said to be "certified." In certain circumstances, the court order granting or denying class action certification may be appealed prior to the conclusion of the underlying lawsuit.

Shareholder derivative demands: For derivative lawsuits to proceed, applicable state law typically requires that shareholder derivative demands be made. In response, funds themselves—through appropriate fund representatives (e.g., an appropriate committee of directors)—usually conduct shareholder derivative demand investigations (SDDIs) to determine whether pursuing litigation would be in the best interests of the funds. Determinations not to pursue litigation that are "made in good faith by independent decision makers after reasonable inquiry" generally result in termination of the litigation by the courts.

Endnotes

[1] *See generally* ICI Mutual's 2010 Risk Management Study, MUTUAL FUND PROSPECTUS LIABILITY: UNDERSTANDING AND MANAGING THE RISK, https://www.icimutual.com.

[2] Investment vehicles not registered as investment companies under the ICA may also be involved in disclosure-based litigation that is substantially similar to disclosure-based litigation involving registered investment companies. For example, in June 2020, plaintiffs filed a class action lawsuit (subsequently consolidated with additional lawsuits) in federal court against the sponsor of an ETF that tracks crude oil prices, a commodity pool operator, certain officers, and various underwriters of the ETF's securities, challenging disclosures in the ETF's offering documents and alleging violations of the '33 Act and '34 Act. In re U.S. Oil Fund, LP Secs. Litig., No. 20-cv-4740 (S.D.N.Y. filed June 19, 2020). A motion to dismiss, filed in April 2021, remains pending. In re U.S. Oil Fund, LP Secs. Litig., No. 20-cv-4740 (S.D.N.Y. Apr. 29, 2021) (filing of motion to dismiss).

Fund groups may also be implicated in disclosure-based lawsuits under the '34 Act that do not involve fund disclosure. For example, in January 2024, plaintiffs alleged that an investment adviser and a payroll company misrepresented the qualifications of the distributor in sales of mutual funds to retirement plans. *See, e.g.*, Ylitalo v. ADP, Inc., No. 24-cv-7635 (D.N.J. July 9, 2024) (filing of complaint).

[3] Dandini v. First Eagle Funds, No. 154204-2025 (N.Y. Sup. Ct. filed Mar. 28, 2025); Morad v. JPMorgan Tr. I, No. 154203-2025 (N.Y. Sup. Ct. filed Mar. 28, 2025).

[4] In re Infinity Q Diversified Alpha Fund Secs. Litig., No. 651295-2021 (N.Y. Sup. Ct. Apr. 15, 2021) (order consolidating Hunter v. Infinity Q Diversified Alpha Fund, No. 651295-2021 (N.Y. Sup. Ct. filed Feb. 24, 2021) & Rosenstein v. Tr. for Advised Portfolios, No. 651302-2021 (N.Y. Sup. Ct. filed Feb. 25, 2021)).

[5] In re Infinity Q Diversified Alpha Fund Secs. Litig., No. 651295-2021 (N.Y. Sup. Ct. Dec. 21, 2023) (order approving settlement for a guaranteed $45 million, with a potential to reach $48 million).

[6] Schiavi + Dattani v. Tr. for Advised Portfolios, No. 22-cv-896 (E.D.N.Y. filed Feb. 17, 2022); Yang v. Tr. for Advised Portfolios, No. 21-cv-1047 (E.D.N.Y. filed Feb. 26, 2021) (later consolidated into Sokolow v. Tr. for Advised Portfolios, No. 21-cv-2317 (E.D.N.Y. filed Apr. 27, 2021)); Oak Fin. Grp., Inc. v. Infinity Q Diversified Alpha Fund, No. 21-cv-3249 (E.D.N.Y. filed June 8, 2021).

[7] Sokolow v. Tr. for Advised Portfolios, No. 21-cv-2317 (E.D.N.Y. filed May 10, 2021) (notice of voluntary dismissal); In re Infinity Q Diversified Alpha Fund and Infinity Q Volatility Alpha Fund, L.P. Secs. Litig., No. 21-cv-1047 (E.D.N.Y. Feb. 16, 2024) (parties' voluntary dismissal of lawsuit); Oak Fin. Grp., Inc. v. Infinity Q Diversified Alpha Fund, No. 21-cv-3249 (E.D.N.Y. Mar. 21, 2024) (order dismissing lawsuit pursuant to plaintiff's voluntary dismissal).

[8] SEC v. Velissaris, No. 22-cv-1346 (S.D.N.Y. filed Feb. 17, 2022) (alleging that a chief investment officer fraudulently manipulated valuations of fund-held securities to mask the funds' poor performance); CFTC v. Velissaris, No. 22-cv-1347 (S.D.N.Y. filed Feb. 17, 2022) (alleging that the same officer improperly valued swaps in registered commodity pools); USA v. Velissaris, No. 22-cr-105 (S.D.N.Y. filed Feb. 16, 2022) (filing of indictment against same officer). In September 2022, the SEC brought a lawsuit against the individual who served as chief risk officer, chief compliance officer, head of operations, and former portfolio manager of the funds in question for his role in the matter described in these lawsuits. SEC v. Lindell, No. 22-cv-8368 (S.D.N.Y. filed Sept. 30, 2022). The SEC obtained a final judgment against the individual in April 2024. SEC v. Lindell, No. 22-cv-8368 (S.D.N.Y. Apr. 12, 2024) (final judgment).

[9] Koza v. Mut. Fund Series Tr., No. 655297-2020 (N.Y. Sup. Ct. filed Oct. 14, 2020).

[10] Koza v. Mut. Fund Series Tr., No. 655297-2020, 2023 N.Y. Misc. LEXIS 672 (N.Y. Sup. Ct. Feb. 16, 2023) (order granting in part and denying in part defendants' motion to dismiss).

[11] Under section 10(b) of the '34 Act and rule 10b-5 thereunder, one such requirement is that a plaintiff demonstrate that defendants engaged in intentional or reckless misconduct (i.e., "scienter"). *See generally* ICI Mutual's 2010 Risk Management Study, MUTUAL FUND PROSPECTUS LIABILITY: UNDERSTANDING AND MANAGING THE RISK, https://www.icimutual.com (at pp. 6–7, discussing legal requirements applicable to "securities fraud" class action lawsuits brought under section 10(b) of the '34 Act and rule 10b-5 thereunder).

As reported in prior *Claims Trends*, a noteworthy development in the rule 10b-5 area came in 2011 with the U.S. Supreme Court's decision in *Janus Cap. Grp. v. First Derivative Traders*, 131 S. Ct. 2296 (2011). In considering whether an investment adviser to mutual funds (and the adviser's parent company) could be held liable for allegedly deceptive statements included in mutual fund prospectuses, the Court held that the adviser did not itself "make" any of the alleged prospectus misstatements at issue and therefore could not be liable as a "primary" violator in shareholder litigation brought under rule 10b-5.

[12] In re Vanguard Chester Funds Litig., No. 22-cv-955 (E.D. Pa. filed Mar. 14, 2022).

[13] In re Vanguard Chester Funds Litig., No. 22-cv-955 (E.D. Pa. Nov. 20, 2023) (order granting in part and denying in part motions to dismiss).

[14] In re Vanguard Chester Funds Litig., No. 22-cv-955 (E.D. Pa. Mar. 8, 2024) (filing of amended complaint).

[15] In re Vanguard Chester Funds Litig., No. 22-cv-955 (E.D. Pa. Feb. 4, 2025) (filing of motion for final approval of class action settlement). Since the time of that filing, several plaintiffs have filed objections to the settlement. *See, e.g.*, *Vanguard Plaintiffs Shred $40 Million Target-Date Settlement*, IGNITES (Feb. 19, 2025), https://www.ignites.com/c/4771694/643104. In March 2025, the court ordered the parties to file additional briefs by the end of that month. In re Vanguard Chester Funds Litig., No. 22-cv-955 (E.D. Pa. Mar. 12, 2025) (filing of order).

[16] *See* In re Vanguard Gr. Inc., No. 3-22435 (SEC Jan. 17, 2025), https://www.sec.gov/files/litigation/admin/2025/33-11359.pdf (noting that settlement amount was offset by, among other things, settlements of FINRA arbitration proceedings); Office of the New York State Attorney General, Press Rel., Attorney General James Secures $106 Million from Vanguard for Failing to Notify Investors of Changes to Retirement Funds (Jan. 17, 2025), https://ag.ny.gov/press-release/2025/attorney-general-james-secures-106-million-vanguard-failing-notify-investors; Press Rel., NASAA, NASAA Announces $106 Million Multi-State Settlement with Vanguard (Jan. 17, 2025), https://www.nasaa.org/74734/nasaa-announces-106-million-multi-state-settlement-with-vanguard.

As previously reported, in a related proceeding, the distributor entered into a multimillion-dollar settlement with respect to capital gains distributions by target date funds and the resulting tax implications for shareholders. *See, e.g.*, Andrew Welsch, *Vanguard to Pay Massachusetts Investors Millions Over Target-Date Fund Tax Hit*, BARRONS (July 7, 2022), https://www.barrons.com/advisor/articles/vanguard-target-date-capital-gains-massachusetts-51657222182; Palash Gosh, *Vanguard to pay $6 million to Massachusetts investors in some target-date funds*, PENSIONS & INVESTMENTS (July 8, 2022), https://www.pionline.com/investing/vanguard-pay-6-million-massachusetts-investors-over-capital-gains-target-date-funds (noting the state's allegation that the investment manager's target date funds distributed large capital gains to fund shareholders, resulting in "unexpectedly large tax bills").

[17] Davis v. Fidelity Research & Mgmt. Co., LLC, No. 24-cv-8142 (S.D.N.Y. filed Oct. 25, 2024) (filing of complaint).

[18] Davis v. Fidelity Research & Mgmt. Co., LLC, No. 24-cv-8142 (S.D.N.Y. Jan. 28, 2025) (filing of motion to dismiss).

[19] Closed-end fund matters often involve a so-called "demand" made on the fund's board of directors. In the demand, the shareholder typically requests that the fund board itself authorize and pursue litigation on behalf of the fund. The fund board, in order to make an informed decision as to how to respond to the demand—i.e., whether (1) to take over and assert the claims at issue (thereby displacing the shareholder), (2) to pursue an alternative remedy, or (3) to reject the shareholder's demand—will often appoint a special committee to conduct a shareholder derivative demand investigation (which is often conducted by an outside law firm retained by the special committee).

[20] Under laws of certain states, a company may be permitted to prevent or restrict changes in control of the company by restricting the voting power of certain voting shares, unless a majority of the company's disinterested shareholders vote to permit the person to vote the shares. An SEC staff statement indicated that the staff would not recommend enforcement action against a closed-end fund that availed itself of an applicable control share statute, subject to certain conditions. *See* SEC Staff Statement, Div. of Inv. Mgmt., *Control Share Acquisition Statutes* (May 27, 2020), https://www.sec.gov/investment/control-share-acquisition-statutes (withdrawing Boulder Total Return Fund, SEC No-Act. Ltr. (Nov. 15, 2010), https://www.sec.gov/divisions/investment/noaction/2010/bouldertotalreturn111510.htm, in which the staff articulated its view that it would be inconsistent with section 18(i) of the ICA if a closed-end fund availed itself of Maryland's control share statute).

In litigation involving that activist shareholder, the Second Circuit, in November 2023, affirmed a lower court's ruling that the "control share acquisition" bylaw amendments of several closed-end funds violated the ICA. Saba Cap. CEF Opportunities 1, Ltd. v. Nuveen Floating Rate Income Fund, 88 F.4th 103 (2d Cir. Nov. 20, 2023), *aff'g*, No. 21-cv-327, 2022 U.S. Dist. LEXIS 29252 (S.D.N.Y. Feb. 17, 2022) (order granting summary judgment). This lawsuit was brought by an activist shareholder in New York federal court against several closed-end funds and their trustees (including independent trustees), seeking rescission of the "control share acquisition" bylaw amendments adopted by the funds.

[21] Eaton Vance Sr. Income Tr. v. Saba Cap. Master Fund, Ltd., No. 2084-cv-1533 (Mass. Suff. Cty. Sup. Ct. filed July 15, 2020).

[22] Eaton Vance Sr. Income Tr. v. Saba Cap. Master Fund, Ltd., No. 2084-cv-1533 (Mass. Suff. Cty. Sup. Ct. Jan. 21, 2023) (order granting in part and denying in part motions for partial summary judgment and requiring rescission of control share amendment).

[23] Eaton Vance Sr. Income Tr. v. Saba Cap. Master Fund, Ltd., No. 2084-cv-1533 (Mass. Suff. Cty. Sup. Ct. Oct. 21, 2024) (order permitting the closed-end funds' use of the "majority rule" amendment).

[24] Saba Cap. Master Fund, Ltd. v. ClearBridge Energy Midstream Opportunity Fund Inc., No. 23-cv-5568 (S.D.N.Y. filed June 29, 2023).

[25] Saba Cap. Master Fund, Ltd. v. ClearBridge Energy Midstream Opportunity Fund Inc., No. 23-cv-5568 (S.D.N.Y. Aug. 15, 2023) (filing of motion to dismiss) & (S.D.N.Y. Sept. 26, 2023) (order granting in part and denying in part fund defendants' motion to dismiss) (the defendants that were released from the lawsuit each had forum selection clauses that applied to the plaintiffs' claim, meaning the action had to be brought in state or federal court in the state of Maryland).

[26] Saba Cap. Master Fund, Ltd. v. ClearBridge Energy Midstream Opportunity Fund Inc., No. 23-cv-5568 (S.D.N.Y. Oct. 30, 2023) (filings of various defendants' motions to dismiss) & (S.D.N.Y. Dec. 5, 2023) (order denying motions to dismiss and granting summary judgment to Saba) & (S.D.N.Y. Jan. 4, 2024) (opinion).

[27] Saba Cap. Master Fund, Ltd. v. ClearBridge Energy Midstream Opportunity Fund Inc., No. 23-8104 (2d Cir. filed Dec. 28, 2023) (filing of lead appeal).

[28] Saba Cap. Master Fund, Ltd. v. ClearBridge Energy Midstream Opportunity Fund Inc., No. 23-8104 (2d Cir. June 25, 2024) (opinion affirming district court's ruling that granted summary judgment to plaintiffs).

[29] FS Credit Opportunities Corp. v. Saba Cap. Master Fund, Ltd., No. 24-345 (S. Ct. filed Sept. 26, 2024) (filing of petition for writ of certiorari). On January 13, 2025, the Supreme Court invited the Solicitor General to file a brief in the case expressing the views of the United States. As of the date of publication, the Solicitor General had not filed a brief.

[30] Saba Cap. Master Fund, Ltd. v. ASA Gold & Precious Metals, No. 24-cv-690 (S.D.N.Y. filed Jan. 31, 2024) (filing of complaint).

[31] Saba Cap. Master Fund, Ltd. v. ASA Gold & Precious Metals, No. 24-cv-690 (S.D.N.Y. May 25, 2024) (filing of plaintiffs' motion for summary judgment and defendants' motion to dismiss).

[32] Saba Cap. Master Fund, Ltd. v. BlackRock ESG Cap. Allocation Tr., No. 24-cv-1701 (S.D.N.Y. filed Mar. 6, 2024); *see also* Joe Morris, *Saba Bombards BlackRock in New Closed-End Campaign*, IGNITES (Mar. 7, 2024), https://www.ignites.com/c/4445454/578014.

[33] Saba Cap. Master Fund, Ltd. v. BlackRock ESG Cap. Allocation Tr., No. 24-cv-1701 (S.D.N.Y. Aug. 30, 2024) (filing of motion for summary judgment); Saba Cap. Master Fund, Ltd. v. BlackRock ESG Cap. Allocation Tr., No. 24-cv-1701 (S.D.N.Y. Nov. 27, 2024) (filing of a motion for judgment on the pleadings).

[34] Saba Cap. Master Fund, Ltd. v. BlackRock ESG Cap. Allocation Tr., No. 24-cv-1701 (S.D.N.Y. Mar. 28, 2025) (court's order granting summary judgment); Saba Cap. Master Fund, Ltd. v. BlackRock ESG Cap. Allocation Tr., No. 24-cv-1701 (S.D.N.Y. Mar. 31, 2025) (filing of the appeal).

[35] Blaugrund v. Guggenheim Fund Inv. Advisors, LLC, No. 2021-1094 (Del. Ch. Ct. filed Dec. 17, 2021).

[36] Blaugrund v. Guggenheim Fund Inv. Advisors, LLC, No. 2021-1094 (Del. Ch. Ct. Feb. 23, 2023) (order granting in part and denying in part defendants' motion to dismiss).

[37] Blaugrund v. Guggenheim Fund Inv. Advisors, LLC, No. 2021-1094 (Del. Ch. Ct. July 9, 2024) (order approving $18.8 million settlement).

[38] These lawsuits were brought in the wake of a U.S. Supreme Court decision that affirmed the use of the so-called "*Gartenberg* standard" (as articulated in *Gartenberg v. Merrill Lynch Asset Mgmt., Inc.*, 694 F.2d 923 (2d Cir. 1982)) for assessing the liability of fund advisers in excessive fee cases brought under section 36(b). Jones v. Harris Assocs. L.P., 559 U.S. 335 (2010). The count of post-*Jones* lawsuits does not include cases that were consolidated into other cases.

[39] *See* Dave Michaels, *Trump Picks Paul Atkins to Run SEC*, WSJ (Dec. 4, 2024), https://www.wsj.com/finance/regulation/trump-picks-paul-atkins-to-run-sec-bd290d3c.

[40] Executive Order, Regulatory Freeze Pending Review, The White House (Jan. 20, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/regulatory-freeze-pending-review/.

[41] Executive Order, Ensuring Accountability For All Agencies, The White House (Feb. 18, 2025), https://www.whitehouse.gov/presidential-actions/2025/02/ensuring-accountability-for-all-agencies/.

[42] Executive Order, Commencing the Reduction of the Federal Bureaucracy, The White House (Feb. 19, 2025), https://www.whitehouse.gov/presidential-actions/2025/02/commencing-the-reduction-of-the-federal-bureaucracy/; Memorandum from Russell T. Vought, Director, Office of Management and Budget & Charles Ezell, Acting Director, Office of Personnel Management, Guidance on Agency RIF [Reductions in Force] and Reorganization Plans Requested by Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative (Feb. 26, 2025), https://www.opm.gov/policy-data-oversight/latest-memos/guidance-on-agency-rif-and-reorganization-plans-requested-by-implementing-the-president-s-department-of-government-efficiency-workforce-optimization-initiative.pdf.

[43] David Isenberg, *White House to Close SEC Offices in LA, Philly*, IGNITES (Mar. 4, 2025), https://www.ignites.com/c/4784024/645954.

[44] *See* SEC, Press Rel., Mark T. Uyeda Named Acting Chairman of the SEC (Jan. 21, 2025), https://www.sec.gov/newsroom/press-releases/2025-29.

[45] *See* Statement, Commissioner Lizárraga Statement on His Planned Departure from the Commission (Nov. 22, 2024), https://www.sec.gov/newsroom/speeches-statements/lizarraga-statement-departure-112224.

[46] *See* Joe Morris, *Uyeda Takes Over SEC, for Now*, IGNITES (Jan. 21, 2025), https://www.ignites.com/c/4742524/635524.

[47] *See* Matt Toledo, *Sam Waldon Named Acting SEC Enforcement Head*, CHIEF INVESTMENT OFFICER (Jan. 28, 2025), https://www.ai-cio.com/news/sam-waldon-named-acting-sec-enforcement-head/.

[48] *See* Press Rel., SEC Announces Departure of William Birdthistle; Natasha Vij Greiner Named Director of the Division of Investment Management (Feb. 28, 2024), https://www.sec.gov/newsroom/press-releases/2024-27.

[49] Chris Prentice, *Exclusive: US SEC plans to cut regional directors as agency prepares for DOGE scrutiny, sources say*, REUTERS (Feb. 24, 2025), https://www.reuters.com/world/us/us-securities-regulator-plans-cut-regional-directors-due-trump-administration-2025-02-24/.

[50] SEC Final Rule, Delegation of Authority to Director of the Division of Enforcement, 17 CFR Part 200 (Mar. 10, 2025), https://www.sec.gov/files/rules/final/2025/33-11366.pdf. Joe Morris, *It's Official: SEC Enforcement Has to Ask Before Launching Probes*, IGNITES (Mar. 11, 2025), https://www.ignites.com/c/4791634/645144.

[51] White & Case, *SEC Enforcement Year-End Overview*, ALERT (Dec. 20, 2024), https://www.whitecase.com/insight-alert/sec-enforcement-year-end-overview.

[52] For example, a day after the new administration took office, acting SEC Chair Uyeda created a new Crypto Task Force, with the goal of setting regulatory policy for the crypto industry, an apparent priority for the incoming administration. *See* Press Rel., SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force (Jan. 21, 2025), https://www.sec.gov/newsroom/press-releases/2025-30. In February 2025, the SEC announced that the Crypto Assets and Cyber Unit within the Division of Enforcement was renamed the Cyber and Emerging Technologies Unit, Sean Teehan, *SEC Broadens Crypto Fraud Squad Remit*, IGNITES (Feb. 21, 2025), https://www.ignites.com/c/4774054/643684.

[53] *See, e.g.*, Beth Sasfai, *The Changing Tides of the SEC Under the Second Trump Administration*, HARVARD L. SCH. FORUM ON CORP. GOVERNANCE (Mar. 3, 2025), https://corpgov.law.harvard.edu/2025/03/03/the-changing-tides-of-the-sec-under-the-second-trump-administration/.

[54] *See* Press Rel., SEC Adopts Rule Amendments to Regulation S-P to Enhance Protection of Customer Information (May 16, 2024, https://www.sec.gov/newsroom/press-releases/2024-58; Press Rel., SEC Adopts Reporting Enhancements for Registered Investment Companies and Provides Guidance on Open-End Fund Liquidity Risk Management Programs (Aug. 28, 2024), https://www.sec.gov/newsroom/press-releases/2024-110.

[55] *See* Press Rel., SEC Proposes to Enhance Disclosures by Certain Investment Advisers About ESG Investment Practices (May 25, 2022), https://www.sec.gov/newsroom/press-releases/2022-92.

[56] *See* Press Rel., SEC Proposes Cybersecurity Risk Management Rules and Amendments for Registered Investment Advisers and Funds (Feb. 9, 2022), https://www.sec.gov/newsroom/press-releases/2022-20.

[57] *See* Press Rel., SEC Proposes New Requirements to Address Risks to Investors from Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers (July 26, 2023), https://www.sec.gov/news/press-release/2023-140.

[58] *See, e.g.*, Beth Sasfai, *The Changing Tides of the SEC Under the Second Trump Administration*, HARVARD L. SCH. FORUM ON CORP. GOVERNANCE (Mar. 3, 2025), https://corpgov.law.harvard.edu/2025/03/03/the-changing-tides-of-the-sec-under-the-second-trump-administration/.

[59] Speech, Acting Director Mark T. Uyeda, Remarks to the Investment Company Institute's 2025 Investment Management Conference (Mar. 17, 2025), https://www.sec.gov/newsroom/speeches-statements/uyeda-ici-031725.

[60] *See, e.g.*, SEC, *FINRA Enforcement Heads Say Crypto Still A Focus*, LAW360 (Mar. 24, 2025), https://www.law360.com/articles/2315001/sec-finra-enforcement-heads-say-crypto-still-a-focus; Reuters, *SEC to focus on traditional cases under new leadership, acting director says*, Reuters (Mar. 24, 2025), https://www.reuters.com/world/us/sec-focus-traditional-cases-under-new-leadership-acting-director-says-2025-03-24/.

[61] Press Rel., Sixteen Firms to Pay More Than $81 Million Combined to Settle Charges for Widespread Recordkeeping Failures (Feb. 9, 2024), https://www.sec.gov/newsroom/press-releases/2024-18; SEC, Press Rel., Twenty-Six Firms to Pay More Than $390 Million Combined to Settle SEC's Charges for Widespread Recordkeeping Failures (Aug. 14, 2024), https://www.sec.gov/newsroom/press-releases/2024-98; SEC, Press Rel., Eleven Firms to Pay More Than $88 Million

Combined to Settle SEC's Charges for Widespread Recordkeeping Failures, (Sept. 24, 2024), https://www.sec.gov/newsroom/press-releases/2024-144; SEC, Press Rel., Twelve Firms to Pay More Than $63 Million Combined to Settle SEC's Charges for Recordkeeping Failures (Jan. 13, 2025), https://www.sec.gov/newsroom/press-releases/2025-6. *See also* Joe Morris, *Schwab Fined $10M in SEC's Messaging Probe*, IGNITES (Jan. 14, 2025), https://www.ignites.com/c/4736224/635464.

[62] White & Case, *SEC Enforcement Year-End Overview*, ALERT (Dec. 20, 2024), https://www.whitecase.com/insight-alert/sec-enforcement-year-end-overview. Certain brokerages are now trying to renegotiate their recordkeeping settlements with the SEC. *See also* Jake Martin, *Big Brokerages Ask for Redo on WhatsApp Settlements*, IGNITES (Mar. 7, 2025), https://www.ignites.com/c/4787974/646844 (reporting that certain firms that had settled with the SEC were seeking to renegotiate their settlements with the SEC; thus far the SEC has refused their requests).

[63] *See* Press Rel., SEC Announces Enforcement Results for FY 2024 (Nov. 22, 2024), https://www.sec.gov/newsroom/press-releases/2024-186. *See also* Cleary Gottlieb, SEC FY 2024 Enforcement Results: Record Dollars But Many Fewer Cases, *Cleary Enforcement Watch* (Nov. 26, 2024), https://www.clearyenforcementwatch.com/2024/11/sec-fy-2024-enforcement-results-record-dollars-but-many-fewer-cases/ (describing the SEC's focus on high impact enforcement actions).

[64] *See* Press Rel., SEC Announces Enforcement Results for FY 2024 (Nov. 22, 2024), https://www.sec.gov/newsroom/press-releases/2024-186, at addendum, https://www.sec.gov/files/fy24-enforcement-statistics.pdf (indicating that eighty, or approximately 23%, of its standalone actions in fiscal year 2024 were against investment companies/investment advisers).

[65] *See, e.g.*, In re Invesco Distributors, Inc. & Invesco Advisers, Inc., File No. 3-22165 (SEC Sept. 24, 2024), https://www.sec.gov/files/litigation/admin/2024/34-101141.pdf (finding that two advisers, one dually registered as a broker-dealer, failed to maintain books and records). *See also* Press Rel., Twelve Firms to Pay More Than $63 Million Combined to Settle SEC's Charges for Recordkeeping Failures (Jan. 13, 2025), https://www.sec.gov/newsroom/press-releases/2025-6; Press Rel., Sixteen Firms to Pay More Than $81 Million Combined to Settle Charges for Widespread Recordkeeping Failures (Feb. 9, 2024) https://www.sec.gov/newsroom/press-releases/2024-18.

[66] In re Van Eck Assocs. Corp., File No. 3-21857 (SEC Feb. 16, 2024), https://www.sec.gov/files/litigation/admin/2024/ic-35132.pdf (finding that an investment adviser failed to disclose a social media influencer's role in the launch of its new exchange-traded fund, a material fact in the 15(c) process).

[67] In re Catalyst Cap. Advisors, LLC, No. 3-21923 (SEC Apr. 29, 2024), https://www.sec.gov/files/litigation/admin/2024/ia-6597.pdf (finding that adviser entered into impermissible joint legal fee arrangement with a registered mutual fund client).

[68] In re Inspire Investing, LLC, File No. 3-22145 (SEC Sept. 19, 2024), https://www.sec.gov/files/litigation/admin/2024/ia-6710.pdf (finding that investment adviser made misleading statements regarding its investment strategy. The SEC also found the adviser had inadequate compliance procedures to comply with stated investment policies).

[69] In re SuRo Cap. Corp., File No. 3-22158 (SEC Sept. 23, 2024), https://www.sec.gov/files/litigation/admin/2024/ic-35331.pdf (finding that a registered business development company did not properly custody assets held in its portfolios).

[70] In re Macquarie Inv. Mgmt. Bus. Tr., File No. 3-22144 (SEC Sept. 19, 2024), https://www.sec.gov/files/litigation/admin/2024/ia-6709.pdf (finding an investment adviser used round-lot pricing to value odd-lot fixed income securities, which resulted in overvalued holdings within registered investment companies and private accounts).

[71] In re Wisdom Tree Asset Mgmt., No. 3-22268 (SEC Oct. 21, 2024), https://www.sec.gov/files/litigation/admin/2024/ia-6753.pdf (finding inaccurate disclosure and compliance failures by a registered investment adviser relating to the execution of ESG investment strategies in three EFTs).

[72] In re Invesco Advisers, Inc., No. 3-22306 (SEC Nov. 8, 2024), https://www.sec.gov/files/litigation/admin/2024/ia-6770.pdf (finding that an investment adviser, contrary to its disclosure, did not invest a substantial portion of an ETF's assets in ESG-related investments).

[73] In re 3D/L Cap. Mgmt., LLC, No. 3-21892 (SEC Mar. 6, 2024), https://www.sec.gov/files/litigation/admin/2024/ia-6568.pdf (finding that an investment adviser failed to fully disclose conflicts of interests with respect to its agreement with an investment manager to certain ETFs).

[74] In re JP Morgan Inv. Mgmt. Inc., No. 3-22282 (SEC Oct. 31, 2024), https://www.sec.gov/files/litigation/admin/2024/ia-6761.pdf (finding that an investment adviser engaged in principal trades violations); In re JP Morgan Inv. Mgmt. Inc., No. 3-22281 (SEC Oct. 31, 2024), https://www.sec.gov/files/litigation/admin/2024/ic-35373.pdf (finding an investment adviser engaged in prohibited joint transactions).

[75] In re The Vanguard Gr. Inc., No. 3-22435 (SEC Jan. 17, 2025), https://www.sec.gov/files/litigation/admin/2025/33-11359.pdf (finding that an investment adviser misrepresented tax implications to shareholders for lowering initial minimum investments on certain target date funds).

[76] Press Rel., SEC Charges Two Investment Advisers with Making False and Misleading Statements About Their Use of Artificial Intelligence (Mar. 18, 2024), https://www.sec.gov/news/press-release/2024-36; In re Delphia (USA) Inc., File No.

3-21894 (SEC Mar. 18, 2024), https://www.sec.gov/files/litigation/admin/2024/ia-6573.pdf; In re Global Predictions, Inc., File No. 3-21895 (SEC Mar. 18, 2024), https://www.sec.gov/files/litigation/admin/2024/ia-6574.pdf (finding that the advisers falsely claimed to use artificial intelligence in their investment processes).

77 SEC Investor Alert & Bulletin, Artificial Intelligence (AI) and Investment Fraud: Investor Alert (Jan. 25, 2024), https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-alerts/artificial-intelligence-fraud. *See* Wilmer Hale, *SEC Brings Two More "AI Washing" Enforcement Actions Against Investment Advisers, Continuing Its Pursuit of Misstatements Related to AI* (Mar. 27, 2024), https://www.wilmerhale.com/-/media/files/shared_content/editorial/publications/wh_publications/client_alert_pdfs/20240327-sec-brings-two-more-ai-washing-enforcement-actions-against-investment-advisers-continuing-its-pursuit-of-misstatements-related-to-ai.pdf.

78 Emma Goldberg, *Alarmed, Employers Ask: What Is 'Illegal D.E.I.'?*, NYTIMES (Feb. 10, 2025), https://www.nytimes.com/2025/02/10/business/trump-dei-employers.html; Brian Ponte, *Shops Quietly Keep ESG Practices – Even as Label Loses Luster*, IGNITES (Feb. 11, 2025), https://www.ignites.com/c/4761684/641374.

79 In re Wisdom Tree Asset Mgmt., No. 3-22268 (SEC filed Oct. 21, 2024), https://www.sec.gov/files/litigation/admin/2024/ia-6753.pdf (finding a registered investment adviser made misstatements and compliance failures related to the execution of ESG investment strategies in three EFTs).

80 In re Invesco Advisers, Inc., No. 3-22306 (SEC filed Nov. 8, 2024), https://www.sec.gov/files/litigation/admin/2024/ia-6770.pdf (finding a registered investment adviser made misleading statements regarding its passive ESG investments).

81 *Id. See also* David Isenberg, *Invesco to Pay $17.5 Million over ESG Disclosures*, IGNITES (Nov. 8, 2024), https://www.ignites.com/c/4680534/624714.

82 *See* Press Rel., *SEC Votes to End Defense of Climate Disclosure Rules* (Mar. 27, 2025) https://www.sec.gov/newsroom/press-releases/2025-58.

83 Ropes & Gray, *ESG in 2025 for Legal and Compliance Professionals: U.S. Federal Anti-ESG Legislation to Watch For*, INSIGHTS (Jan. 8, 2025), https://www.ropesgray.com/en/insights/viewpoints/102jsgl/esg-in-2025-for-legal-and-compliance-professionals-u-s-federal-anti-esg-legisla.

84 Ropes & Gray, *ESG in 2025 for Legal and Compliance Professionals: 25 Predictions for '25*, INSIGHTS (Jan. 6, 2025), https://www.ropesgray.com/en/insights/viewpoints/102jsd6/esg-in-2025-for-legal-and-compliance-professionals-25-predictions-for-25.

85 Spence v. Am. Airlines, Inc., No. 23-cv-552 (N.D. Tex. Jan. 10, 2025) (findings of fact and conclusions of law). The judge concluded that the defendants failed to act solely in the retirement plan's financial interests after noting the "circular" relationship between the 401(k) plan's employer and the investment adviser (the advised funds of which the 401(k) plan had selected to provide in its lineup of available investments). However, the plaintiffs did not prevail on their allegation that the adviser and retirement committee breached the duty of prudence.

86 *See, e.g.,* Kevin LaCroix, *Plan Fiduciaries' ESG Efforts Breached ERISA Duty of Loyalty, Court Holds*, D&O DIARY (Jan. 12, 2025), https://www.dandodiary.com/2025/01/articles/esg/plan-fiduciaries-esg-efforts-breached-erisa-duty-of-loyalty-court-holds/. *See also* Joe Morris, *ESG Advocacy Implicit in American Airlines 401(k) Breaches Erisa: Judge*, IGNITES (Jan. 13, 2025), https://www.ignites.com/c/4734154/633704.

87 *See* David Isenberg, *Gird for 'Greenhushing' Lawsuits: Lawyer*, IGNITES (Feb. 7, 2025), https://www.ignites.com/c/4756984/640854.

88 SEC v. LJM Funds Mgmt., Ltd., No. 21-cv-2859 (N.D. Ill. filed May 27, 2021) (filing of complaint).

89 SEC v. LJM Funds Mgmt., Ltd., No. 21-cv-2859 (N.D. Ill. Jan. 31, 2024) (filing of plaintiff's and defendants' motions for summary judgment).

90 SEC v. LJM Funds Mgmt., Ltd., No. 21-cv-2859 (N.D. Ill. Oct. 3, 2024) (ruling on parties' motions for summary judgment).

91 CFTC v. LJM Funds Mgmt., Ltd., No. 21-cv-2863 (N.D. Ill. filed May 27, 2021) (filing of complaint).

92 CFTC v. LJM Funds Mgmt., Ltd., No. 21-cv-2863 (N.D. Ill. Oct. 17, 2024) (order denying motions for summary judgment).

93 Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244 (U.S. June 28, 2024) (overruling Chevron U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837 (1984)).

94 *See* Moctezuma-Reyes v. Garland, 23-3561 (6th Cir. 2024) (Sixth Circuit issued a ruling asserting that, in light of *Loper Bright*, where explicit statutory authority is not granted, judicial interpretation trumps agency discretion).

95 *See, e.g.*, *How Loper Bright and the End to the Chevron Doctrine Impact the SEC*, PROMARKET (Sept. 9, 2024), https://www.promarket.org/2024/09/09/how-loper-bright-and-the-end-to-the-chevron-doctrine-impact-the-sec/; Guest Post: D&O Risk and Insurance in a Post-Chevron World, D&O DIARY (Oct. 1, 2024), https://www.dandodiary.com/

2024/10/articles/regulatory-enforcement-2/guest-post-do-risk-and-insurance-in-a-post-chevron-world/ (noting that the "potential demise of new rules will create uncertainty and compliance conundrums for management teams," who will need to prepare to comply with new rules, "while simultaneously preserving optionality if the courts later step in").

[96] SEC v. Jarkesy, 144 S. Ct. 2117 (U.S. June 27, 2024). The Court found that civil money penalties are legal, not equitable, in nature, stating that "money damages are the prototypical common law remedy" because they are designed to punish or deter, not restore the status quo. *See also* Kevin LaCroix, Guest Post: SEC Administrative Proceedings After SEC v. Jarkesy, D&O DIARY (Sept. 17, 2024), https://www.dandodiary.com/2024/09/articles/securities-litigation/guest-post-sec-administrative-proceedings-after-sec-v-jarkesy/.

[97] *See, e.g.*, *SEC v. Jarkesy: How Impactful Is It Really on the SEC's Enforcement Program?*, Womble Bond Dickinson (Jul. 9, 2024), https://www.womblebonddickinson.com/us/insights/alerts/sec-v-jarkesy-how-impactful-it-really-secs-enforcement-program; *SEC v. Jarkesy: A Groundbreaking Supreme Court Decision with Significant Implications for Securities Enforcement,* Greenberg Traurig LLP (June 28, 2024), https://www.gtlaw.com/en/insights/2024/6/sec-v-jarkesy-a-groundbreaking-supreme-court-decision-with-significant-implications-for-securities-enforcement; *Jarkesy Supreme Court Ruling Limits SEC's Enforcement Authority*, HARV. L. SCH. FORUM ON CORP. GOV. (July 11, 2024), https://corpgov.law.harvard.edu/2024/07/11/jarkesy-supreme-court-ruling-limits-secs-enforcement-authority/.

[98] Corner Post v. Board of Governors of the Federal Reserve System, 603 U.S. 799 (2024).

[99] *Id.*

[100] Corner Post v. Board of Governors of the Federal Reserve System, 603 U.S. 799 (2024) (Brown, J., dissenting) ("The tsunami of lawsuits against agencies that the court's holdings in this case and *Loper Bright* have authorized has the potential to devastate the functioning of the federal government."). *See also* Mayer Brown, *Decision Alert: Corner Post, Inc. v. Board of Governors of the Federal Reserve System, No. 22-1008*, INSIGHTS (July 1, 2024), https://www.mayerbrown.com/en/insights/publications/2024/07/decision-alert-corner-post-inc-v-board-of-governors-of-the-federal-reserve-system-no-22-1008.

[101] SEC v. Velissaris, No. 22-cv-1346 (S.D.N.Y. filed Feb. 17, 2022) (alleging that a fund's chief investment officer fraudulently manipulated valuations of fund-held securities to mask the fund's poor performance) (lawsuit stayed by the district court on March 30, 2022, pending the outcome of the criminal trial).

[102] CFTC v. Velissaris, No. 22-cv-1347 (S.D.N.Y. filed Feb. 17, 2022) (filing of complaint).

[103] CFTC v. Velissaris, No. 22-cv-1347 (S.D.N.Y. Mar. 27, 2022) (filing of motion for summary judgment).

[104] USA v. Velissaris, No. 22-cr-105 (S.D.N.Y. filed Feb. 16, 2022) (filing of indictment); No. 22-cr-105 (S.D.N.Y. Nov. 21, 2022) (filing of guilty plea).

[105] USA v. Velissaris, No. 22-cr-105 (S.D.N.Y. Apr. 10, 2023) (order denying motion for withdrawal of guilty plea); No. 23-cr-6379 (2d Cir. Oct. 16, 2024) (summary order and judgment dismissing the case).

[106] USA v. Velissaris, No. 23-cr-6379 (2d Cir. Dec. 3, 2024) (order denying petition for rehearing).

[107] SEC v. Billimek, No. 22-cv-10542 (S.D.N.Y. filed Dec. 14, 2022).

[108] SEC v. Pinnacle Advisors, LLC, No. 23-cv-547 (N.D.N.Y. filed May 5, 2023).

[109] SEC v. Pinnacle Advisors, LLC, No. 23-cv-547 (N.D.N.Y. Mar. 27, 2025) (denying, without prejudice, motions to dismiss filed on July 11, 2023 and permitting the defendants to re-file their motions with additional briefing on the assertion that the SEC lacked authority to promulgate the liquidity rule in question based on the U.S. Supreme Court's *Loper Bright* decision).

[110] SEC v. Infinity Q Cap. Mgmt., LLC, No. 23-cv-5081 (S.D.N.Y. filed June 16, 2023).

[111] SEC v. Infinity Q Cap. Mgmt., LLC, No. 23-cv-5081 (S.D.N.Y. filed June 30, 2023) (filing of judgment).

[112] Yang v. Tr. for Advised Portfolios, No. 21-cv-1047 (E.D.N.Y. filed Feb. 26, 2021); Sokolow v. Tr. for Advised Portfolios, No. 21-cv-2317 (E.D.N.Y. filed Apr. 27, 2021); Oak Fin. Grp., Inc. v. Infinity Q Diversified Alpha Fund, No. 21-cv-3249 (E.D.N.Y. filed June 8, 2021); Schiavi + Dattani v. Tr. for Advised Portfolios, No. 22-cv-896 (E.D.N.Y. filed Feb. 17, 2022).

[113] SEC v. Leech, No. 24-cv-9017 (S.D.N.Y. filed Nov. 25, 2024) (filing of complaint).

[114] SEC v. Leech, No. 24-cv-9017 (S.D.N.Y. Jan. 21, 2025) (order staying the lawsuit pending the resolution of U.S. v. Leech, No. 24-cr-658 (S.D.N.Y. filed Nov. 25, 2024)).

[115] SEC v. Chiueh, No. 25-cv-1920 (D.N.J. filed Mar. 17, 2025) (filing of complaint).

[116] SEC, EXAMS, 2025 Nat'l Exam Program Examination Priorities, 5–7 (Oct. 21, 2024), https://www.sec.gov/files/2025-exam-priorities.pdf.

[117] *Id.*

[118] SEC, EXAMS, Risk Alert: Initial Observations Regarding Advisers Act Marketing Rule Compliance (Apr. 17, 2024), https://www.sec.gov/files/exams-risk-alert-marketing-observation-2024.pdf.

[119] SEC, EXAMS, Risk Alert: Registered Investment Companies: Review of Certain Core Areas and Associated Documents Requested (Nov. 4, 2024), https://www.sec.gov/compliance/risk-alerts/registered-investment-companies-risk-alert-11042024.

[120] FINRA, 2025 Annual Regulatory Oversight Report (Jan. 28, 2025), https://www.finra.org/rules-guidance/guidance/reports/2025-finra-annual-regulatory-oversight-report. *See also* Sean Teehan, *Regulator Fires Warning Shot on Cybersecurity, Third-Party Vendor Risks*, IGNITES (Jan. 29, 2025), https://www.ignites.com/c/4750784/635994.

[121] *See, e.g.*, CFTC, Public Statements and Remarks, Statement of Commissioner Kristin N. Johnson on Future-Proofing Financial Markets: Assessing the Integration of Artificial Intelligence in Global Derivatives Markets (Dec. 5, 2024), https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement120524.

[122] *See* CFTC, Testimony of Chairman Rostin Behnam Before the Subcommittee on Financial Services and General Government, Committee on Appropriations, U.S. Sen. (Jun. 13, 2024), https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam47.

[123] *See id.*

[124] *See* CFTC, Public Statements and Remarks, CFTC Commissioner Christy Goldsmith Romero to Step Down from the Commission and Retire from Bonkers Federal Service (Feb. 25, 2025), https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement022625.

[125] SEC v. Velissaris, No. 22-cv-1346 (S.D.N.Y. filed Feb. 17, 2022); CFTC v. Velissaris, No. 22-cv-1347 (S.D.N.Y. filed Feb. 17, 2022). The DOJ also brought a criminal lawsuit against the same individual for his allegedly fraudulent manipulation of securities valuations. USA v. Velissaris, No. 23-cr-6379 (2d Cir. Oct. 16, 2024) (summary order and judgment dismissing the case); No. 23-cr-6379 (2d Cir. Dec. 3, 2024) (order denying petition for rehearing).

[126] *See, e.g.*, SEC, Press Rel., Sixteen Firms to Pay More Than $81 Million Combined to Settle Charges for Widespread Recordkeeping Failures (Feb. 9, 2024), https://www.sec.gov/newsroom/press-releases/2024-18; SEC, Press Rel., Twenty-Six Firms to Pay More Than $390 Million Combined to Settle SEC's Charges for Widespread Recordkeeping Failures (Aug. 14, 2024), https://www.sec.gov/newsroom/press-releases/2024-98; SEC, Press Rel., Twelve Firms to Pay More Than $63 Million Combined to Settle SEC's Charges for Recordkeeping Failures (Jan. 13, 2025), https://www.sec.gov/newsroom/press-releases/2025-6; CFTC, Press Rel. No. 8972-24, CFTC Orders Piper Sandler to Pay $2 Million for Recordkeeping and Supervision Failures for Firm-Wide Use of Unapproved Communication Methods (Sept. 23, 2024), https://www.cftc.gov/PressRoom/PressReleases/8972-24. *See also* White & Case, *SEC Announces Possible Last Wave of Off-Channel Communications Enforcement Actions*, ALERTS (Jan. 21, 2025), https://www.whitecase.com/insight-alert/sec-announces-possible-last-wave-channel-communications-enforcement-actions.

[127] State of Tenn. ex rel. Skrmetti v. BlackRock, Inc., No. 23-cv-618 (Cir. Ct. Tenn. filed Dec. 18, 2023).

[128] Press Rel., *Attorney General Jonathan Skrmetti Announces Landmark Settlement with BlackRock, Inc. Regarding ESG Practices* (Jan. 17, 2025, https://www.tn.gov/attorneygeneral/news/2025/1/17/pr25-3.html.

[129] Press Rel., *Mississippi Secretary of State Issues Order Against BlackRock for Alleged Securities Fraud Related to ESG Investment Strategy with Possible Multimillion-dollar Penalty* (Mar. 27, 2024), https://www.sos.ms.gov/press/mississippi-secretary-state-issues-order-against-blackrock-alleged-securities-fraud-related.

[130] States v. BlackRock Inc., No. 24-cv-437 (E.D. Tex. filed Nov. 27, 2024) (filing of complaint).

[131] States v. BlackRock Inc., No. 24-cv-437 (E.D. Tex. Jan. 16, 2025) (filing of amended complaint).

[132] States v. BlackRock Inc., No. 24-cv-437 (E.D. Tex. Mar. 17, 2025) (filing of motions to dismiss). *See also* David Isenberg, *BlackRock, State Street, Vanguard Unite to Fight GOP AGs*, IGNITES (Mar. 19, 2025), https://www.ignites.com/c/4799744/648694.

[133] *See* Press Rel., Attorney General Knudsen leads coalition probing asset managers' activity regarding Chinese investments (Feb. 6, 2025), https://dojmt.gov/attorney-general-knudsen-leads-coalition-probing-asset-managers-activity-regarding-chinese-investments/; Letter to Asset Manager from Austin Knudsen, Montana Att'y Gen. (Feb. 6, 2025), https://content.govdelivery.com/attachments/MTAG/2025/02/06/file_attachments/3156320/2025-02-06%20AG%20Ltr%20to%20Asset%20Managers%20re%20China%20-%20FINAL.pdf.

[134] The coverage also typically requires the insured to obtain the insurer's advance consent before incurring any costs for which the insured may seek reimbursement. *See generally* ICI Mutual's 2009 Risk Management Study, MUTUAL FUND D&O/E&O INSURANCE: A GUIDE FOR INSUREDS, at 35–36, https://www.icimutual.com (discussing costs of correction coverage).

[135] In light of this claims experience, ICI Mutual published a risk management study in 2021 entitled OPERATIONAL ERRORS AND INSURANCE: A GUIDE FOR INVESTMENT ADVISERS, https://www.icimutual.com. The study (1) provides general information

on the frequency, severity, and characteristics of larger operational errors in the fund industry, (2) outlines the various considerations that may come into play in assessing and resolving the issue of advisers' legal and financial responsibility for such errors, and (3) describes the role of costs of correction insurance in facilitating timely and efficient remediations by advisers of larger operational errors for which they bear legal responsibility.

[136] *See, e.g.*, ICI MUTUAL, *D&O/E&O Insurance Coverage For Network Security Events: Frequently Asked Questions*, Question 8 (Jan. 2017), https://www.icimutual.com.

[137] *See generally* ICI Mutual's 2010 Risk Management Study, ERISA LIABILITY: A GUIDE FOR INVESTMENT ADVISERS AND THEIR AFFILIATES, https://www.icimutual.com & ICI Mutual's 2014 Expert Roundtable Report, TRENDS IN FEE LITIGATION: ACTIONS BROUGHT UNDER SECTION 36(B) AND ERISA, https://www.icimutual.com.

[138] The 2024 final settlements were: Rocke v. Allianz Asset Mgmt. of Am., L.P., No. 23-cv-98 (C.D. Cal. Mar. 18, 2024) ($7.5 million); In re G.E. ERISA Litig., No. 17-cv-12123 (D. Mass. Mar. 8, 2024) ($61 million); Pecou v. Bessemer Tr. Co., No. 22-cv-377 (D.N.J. Feb. 4, 2024) ($5 million); Gomes v. State St. Corp., No. 21-cv-10863 (D. Mass. Aug. 12, 2024) ($4.3 million).

The pre-2024 final settlements were as follows: Feinberg v. T. Rowe Price Grp., Inc., No. 17-cv-427 (D. Md. Jul. 6, 2022) ($7 million); Karg v. Transam. Corp., No. 18-cv-134, 2019 U.S. Dist. LEXIS 140567 (N.D. Iowa Nov. 22, 2021) ($5.4 million); Baker v. John Hancock Life Ins. Co., No. 20-cv-10397 (D. Mass. Sept 30, 2021) ($14 million); Baird v. BlackRock Inst'l Tr. Co., N.A., No. 17-cv-1892 (N.D. Cal. Mar. 23, 2021) ($9.65 million); Karpik v. Huntington Bancshares Inc., No. 17-cv-1153 (S.D. Ohio Feb. 18, 2021) ($10.5 million); Moitoso v. Fidelity, No. 18-cv-12122 (D. Mass. Jan. 21, 2021) ($28.5 million); Bekker v. Neuberger Berman Grp., LLC, No. 16-cv-6123 (S.D.N.Y. Dec. 1, 2020) ($17 million); Beach v. JPMorgan Chase Bank, N.A., No. 17-cv-563 (S.D.N.Y. Oct. 7, 2020) ($9 million); Brotherston v. Putnam Invs., LLC, No. 15-cv-13825 (D. Mass. Sept. 9, 2020) ($12.5 million); In re M&T Bank Corp. ERISA Litig., No. 16-cv-375 (W.D.N.Y. Sept. 3, 2020) ($20.85 million); Cervantes v. Invesco Holding Co. (U.S.), Inc., No. 18-cv-2551 (N.D. Ga. Aug. 13, 2020) ($3.47 million); In re SunTrust Banks, Inc. 401(k) Plan Affiliated Funds ERISA Litig., No. 11-cv-784 (N.D. Ga. filed Mar. 24, 2020) ($29 million); Stevens v. SEI Invs. Co., No. 18-cv-4205 (E.D. Pa. Feb. 28, 2020) ($6.8 million); Velazquez v. Mass. Fin. Servs. Co., No. 17-cv-1124 (D. Mass. Dec. 5, 2019) ($6.875 million); Cryer v. Franklin Res., Inc., No. 16-cv-4265 (N.D. Cal. Oct. 4, 2019) ($26.75 million); Price v. Eaton Vance Corp., No. 18-cv-12098 (D. Mass. Sept. 24, 2019) ($3.45 million); Bowers v. BB&T Corp., No. 15-cv-732 (M.D.N.C. May 10, 2019) ($24 million); Pease v. Jackson Nat'l Life Ins. Co., No. 17-cv-284 (W.D. Mich. Apr. 23, 2019) ($4.5 million); Schapker v. Waddell & Reed Fin., Inc., No. 17-cv-2365 (D. Kan. Apr. 8, 2019) ($4.875 million); Moreno v. Deutsche Bank Am. Holding Corp., No. 15-cv-9936 (S.D.N.Y. Mar. 1, 2019) ($21.9 million); Urakhchin v. Allianz Asset Mgmt. of Am., L.P., 2018 U.S. Dist. LEXIS 54681 (C.D. Cal. July 30, 2018) ($12 million); Main v. Am. Airlines Inc., No. 16-cv-473 (N.D. Tex. Feb. 21, 2018) ($22 million); Richards-Donald v. TIAA-CREF, No. 15-cv-8040 (S.D.N.Y. Oct. 20, 2017) ($5 million); Andrus v. N.Y. Life Ins. Co., No. 16-cv-5698 (S.D.N.Y. June 15, 2017) ($3 million); Gordan v. Mass. Mut. Life Ins. Co., No. 13-cv-30184 (D. Mass. Nov. 3, 2016) ($30.9 million); Dennard v. Aegon USA LLC, No. 15-cv-30 (N.D. Iowa Oct. 28, 2016) ($3.8 million); Anderson v. Principal Life Ins. Co., No. 15-cv-119 (S.D. Iowa Nov. 13, 2015) ($3 million); Krueger v. Ameriprise Fin., Inc., 2015 U.S. Dist. LEXIS 91385 (D. Minn. July 13, 2015) ($27.5 million); Bilewicz v. FMR LLC, 2014 U.S. Dist. LEXIS 183213 (D. Mass. Oct. 15, 2014) ($12 million).

[139] Koroly v. Federated Hermes Inc., No. 23-cv-1563 (W.D. Pa. Nov. 20, 2023) (filing of motion to dismiss); Ravarino v. Voya Fin., Inc., No. 21-cv-1658, 2023 U.S. Dist. LEXIS 102404 (D. Conn. June 13, 2023) (order granting in part and denying in part motion to dismiss); Ravarino v. Voya Fin., Inc., No. 21-cv-1658 (D. Conn. Dec. 29, 2023) (filing of defendants' motion for judgment on the pleadings).

[140] Schissler v. Janus Henderson US (Holdings) Inc., No. 22-cv-2326, 2024 U.S. Dist. LEXIS 11060 (D. Colo. Jan. 22, 2024) (order granting in part and denying in part motion to dismiss).

[141] Pover v. The Cap. Grp. Cos., Inc., No. 23-cv-9657 (C.D. Cal. Aug. 12, 2024) (order denying motion to compel arbitration and motion to dismiss), *appeal docketed*, No. 24-5298 (9th Cir. Aug. 23, 2024) (filing of appeal).

[142] Waldner v. Natixis Inv. Mgrs., L.P., No. 21-cv-10273 (D. Mass. Sept. 10, 2024) (order granting in part and denying in part motion for summary judgment).

[143] Rocke v. Allianz Asset Mgmt. of Am., L.P., No. 23-cv-98 (C.D. Cal. Mar. 18, 2024) ($7.5 million); In re G.E. ERISA Litig., No. 17-cv-12123 (D. Mass. Mar. 8, 2024) ($61 million); Pecou v. Bessemer Tr. Co., No. 22-cv-377 (D.N.J. Feb. 4, 2024) ($5 million); and Gomes v. State St. Corp., No. 21-cv-10863 (D. Mass. Aug. 12, 2024) ($4.3 million).

[144] Falberg v. The Goldman Sachs Grp., Inc., No. 19-cv-9910 (S.D.N.Y. Sept. 14, 2022) (order granting defendants' motion for summary judgment), *aff'd*, 2024 U.S. App. LEXIS 3418 (2d Cir. Feb. 14, 2024); Patterson v. Morgan Stanley, No. 16-cv-6568, 2019 U.S. Dist. LEXIS 174832 (S.D.N.Y. Oct. 7, 2019) (order granting motion to dismiss); Wildman v. Am. Cent. Servs., LLC, No. 16-cv-737 (W.D. Mo. Nov. 8, 2017) (filing of motion for summary judgment) & 237 F. Supp. 3d 902 & 237 F. Supp. 3d 918 (W.D. Mo. Feb. 27, 2017) (orders denying motion to dismiss and granting in part and denying in part the defendants' motion for summary judgment); Wildman v. Am. Cent. Servs., LLC, 2019 U.S. Dist. LEXIS 10672 (W.D. Mo. Jan. 23, 2019) (order dismissing lawsuit); Meiners v. Wells Fargo & Co., 2017 U.S. Dist. LEXIS 80606 (D. Minn. May 26,

2017) (order granting motion to dismiss), *aff'd*, 898 F.3d 820 (8th Cir. Aug. 3, 2018); Bloom v. AllianceBernstein L.P., No. 22-cv-10576, 2024 U.S. Dist. LEXIS 54196 (S.D.N.Y. Mar. 25, 2024) (order granting motion to dismiss); Cho v. Prudential Ins. Co. of Am., (D.N.J. Dec. 19, 2024) (order granting defendants' motion for summary judgment).

145 Wayman v. Wells Fargo & Co., No. 17-cv-5153 (D. Minn. Feb. 13, 2018) (notice of voluntary dismissal); Patterson v. Cap. Grp. Cos., Inc., No. 17-cv-4399 (C.D. Cal. Feb. 14, 2018) (notice of voluntary dismissal, following court's granting of motion to dismiss).

146 Severson v. Charles Schwab Corp., No. 17-cv-285 (N.D. Cal. Nov. 20, 2019) (order staying lawsuit pending arbitration and administratively closing lawsuit).

147 Conlon v. Northern Tr. Co., No. 21-cv-2940 (N.D. Ill. Jan. 6, 2025) (order preliminarily approving $6.9 million settlement).

148 Gomes v. State St. Corp., No. 21-cv-10863 (D. Mass. Aug. 12, 2024) (order approving final $4.3 million settlement); Kohari v. MetLife Grp., Inc., No. 21-cv-6146 (S.D.N.Y. Jan. 14, 2025) (order approving final $4.5 million settlement).

149 Johnson v. Russell Inv. Mgmt., No. 21-cv-743 (W.D. Wash. filed June 7, 2021) (transferred to No. 22-cv-21735 (S.D. Fla. filed June 7, 2022)).

150 Johnson v. Russell Inv. Mgmt., No. 22-cv-21735 (S.D. Fla. Jan. 31, 2024) (order granting defendants' motions for summary judgment), *appeal docketed*, No. 25-10692 (11th Cir. filed Mar. 5, 2025).

151 In re Nine West LBO Secs. Litig., No. 20-md-2941 (S.D.N.Y. filed June 5, 2020).

152 In re Nine West LBO Secs. Litig., 482 F. Supp. 3d 187 (S.D.N.Y. Aug. 27, 2020) (order on motion to dismiss). Of particular interest in this decision was the court's holding that Nine West, by virtue of its relationship with Wells Fargo, was a "financial institution" for the purposes of the transfers, and the payments made to public shareholders were both (i) settlement payments and (ii) payments made in connection with a securities contract and, therefore, protected by the "safe harbor" of section 546(e) of the Bankruptcy Code. Moreover, the court found that certain shareholder defendants (in particular, investment companies registered under the ICA) independently qualified as protected "financial institutions."

153 In re Nine West LBO Secs. Litig., 87 F.4th 130 (2d Cir. Nov. 23, 2023) (order affirming in part, vacating in part, and remanding the case for further proceedings). Notably, the Second Circuit affirmed the dismissal of claims against the public shareholder defendants, but reversed the dismissal related to payments made to former directors, officers, and employees of Jones Group. The Second Circuit held that whether Nine West qualified as a "financial institution" for purposes of section 546(e) was properly analyzed on a transfer-by-transfer basis rather than a contract-by-contract basis. For an entity to qualify as a financial institution by virtue of another financial institution serving as its agent, the Second Circuit held that the agency relationship must pertain to the transaction at issue. The Second Circuit held that Nine West qualified as a financial institution as to the transfers to the public shareholders, but not as to the transfers to the directors, officers, and employees.

154 Although certain individual shareholders (directors, officers, and employees) filed a petition for certiorari to the U.S. Supreme Court (which was denied in May 2024), the issues in the petition were not relevant to the fund industry defendants and had no impact on the dismissal of the claims asserted against the fund industry defendants. Stafiniak v. Kirschner, No. 23-1081.

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