By the Numbers: Navigating the New SEC Landscape - What Institutional Investors Need to Know

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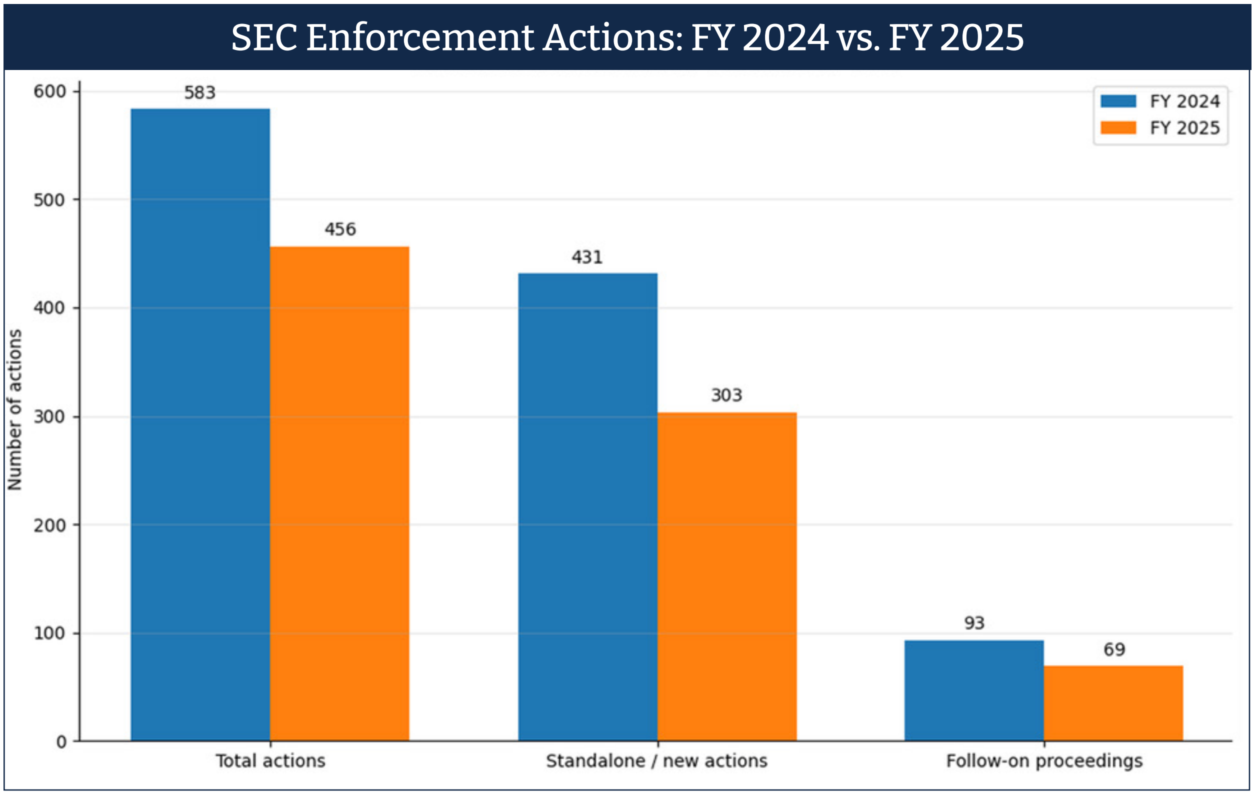
The SEC's enforcement pullback in fiscal year 2025 marks a significant shift for institutional investors. With fewer regulatory actions and lower investor recoveries, investors can no longer rely on the SEC as the primary accountability and recovery mechanism. Private securities litigation and Delaware fiduciary duty actions are increasingly important tools for protecting portfolio value.

The Numbers Behind the Shift

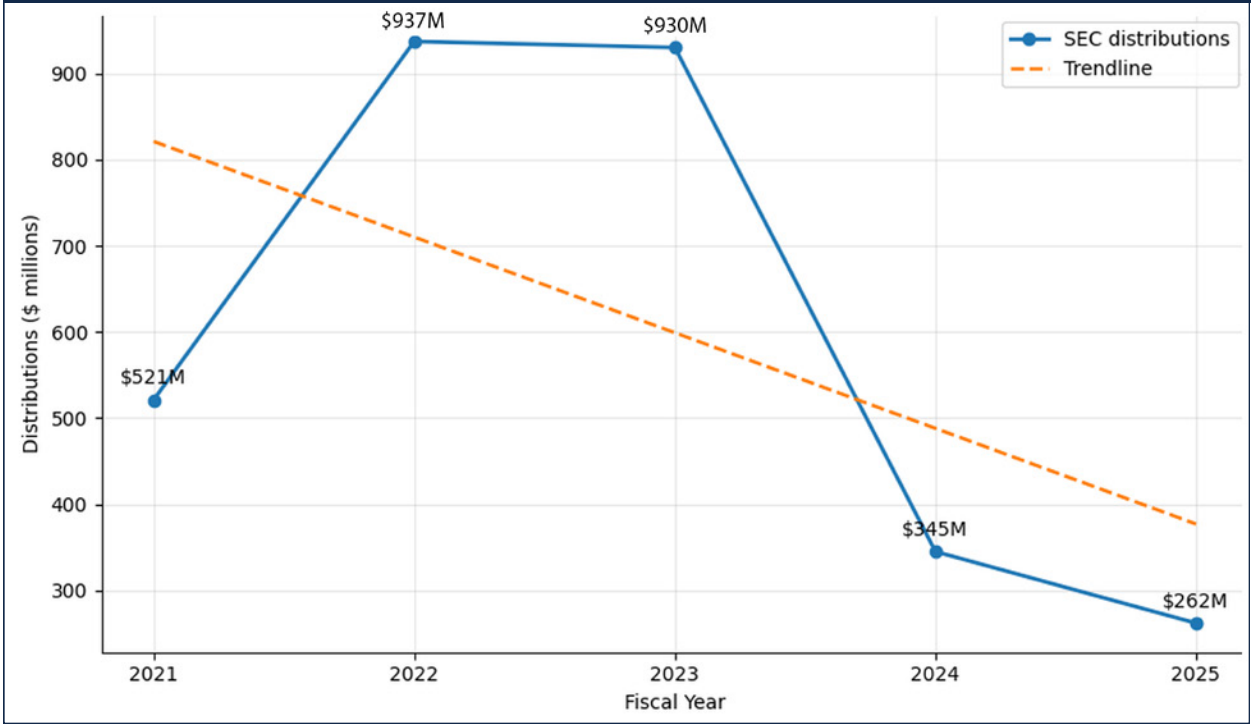
The SEC's FY 2025 enforcement results confirm a substantial decline in activity. The agency filed 456 enforcement actions, down 22% from 583 in FY 2024, while standalone actions fell 30%, from 431 to 303.[1]



Although the SEC reported $17.9 billion in monetary relief, that figure was largely driven by a single $14.9 billion judgment tied to a long-running Ponzi scheme after more than 15 years of litigation.[2] Excluding that outlier, recoveries were closer to $2.7 billion.

Most significantly, the SEC distributed only $262 million to harmed investors in FY 2025, down from $345 million in FY 2024 and the lowest level in five years.

SEC Distribution to Harmed Investors, FY 2021-FY 2025



Whistleblower awards also declined sharply. Despite a record number of tips, complaints, and referrals, the SEC awarded only $60 million to whistleblowers in FY 2025, compared to $255 million the prior year, potentially affecting the pipeline of fraud investigations that uncover significant investor harm.

Understanding the SEC's New Priorities

SEC leadership has described FY 2025 as a deliberate shift away from "regulation by enforcement" with a narrower focus on fraud, market manipulation, and cases involving clear investor harm.

That shift is evident in the SEC's treatment of prior enforcement priorities. The Commission has criticized them for producing substantial penalties without corresponding investor-protection benefits.

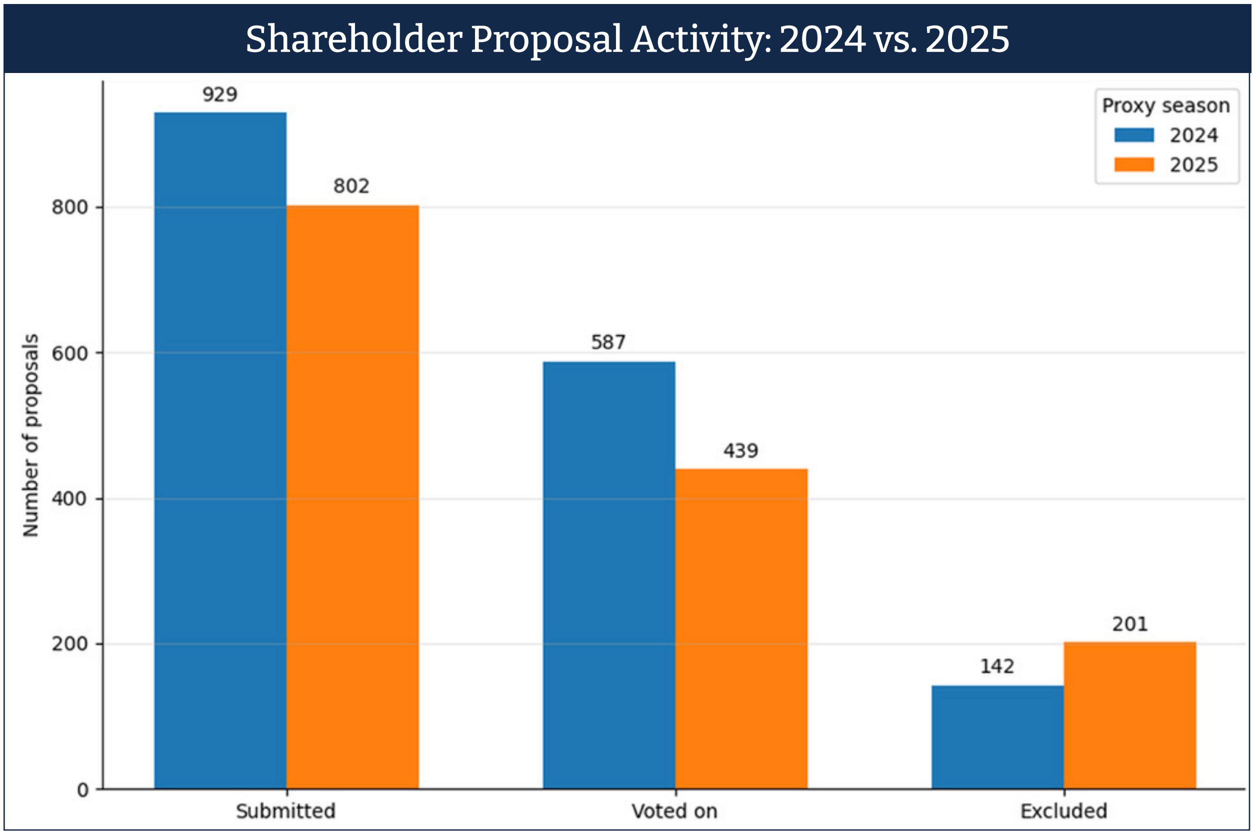
The SEC's cryptocurrency approach has also evolved. While several crypto-related cases were dismissed, the agency created specialized units focused on cybersecurity, emerging technologies, crypto assets, and cross-border fraud.[3]

One exception is individual accountability. Approximately two-thirds of standalone cases involved charges against individuals, and the SEC imposed 119 officer-and-director bars in FY 2025. When the agency acts, executives increasingly face personal consequences.

Shareholder Engagement: Fewer Channels, Higher Stakes

While enforcement activity has declined, shareholder engagement tools have also become constrained. Recent SEC guidance has expanded the grounds for excluding shareholder proposals and reduced SEC involvement in no-action request disputes, making traditional governance channels more challenging.[4]

The data reflects this trend. In 2025, fewer shareholder proposals were submitted or reached a vote, while more were excluded.[5] For many institutional investors, litigation is increasingly the primary accountability mechanism when engagement fails.



Private Litigation Is Filling the Gap

As SEC enforcement wanes, private securities litigation has become the principal avenue for recovering losses and addressing corporate misconduct.

Although securities class action filings declined modestly in 2025, case size increased dramatically. Disclosure Dollar Loss reached a record $694 billion, Maximum Dollar Loss rose to $2.862 trillion, and median settlements reached their highest level in nearly a decade.

Private litigation is also adapting to emerging risks. Courts are seeing more claims involving artificial intelligence disclosures, "AI-washing," and other technology-related misrepresentations as companies face greater scrutiny over AI-related statements.

Delaware courts remain critical to shareholder protection, reinforcing investors' ability to enforce merger agreements, obtain books and records, and pursue fiduciary-duty claims for information, accountability, and governance reforms.

The message is clear: investors cannot rely solely on the SEC for loss recovery or corporate deterrence. Proactive engagement with private litigation channels is now essential.

Strategic Considerations for Institutional Investors

This environment requires a more proactive approach to risk management and recovery:

- **Prioritize portfolio monitoring** to identify potential recovery opportunities early.
- **Act quickly when losses emerge**, preserving rights in both securities and Delaware actions.
- **Monitor emerging risks,** particularly AI-related disclosures and technology-driven business claims.
- **Use litigation strategically** to pursue governance reforms and hold boards and executives accountable when traditional engagement channels are unavailable.

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Endnotes:

1. SEC Announces Enforcement Results for Fiscal Year 2025, SEC (Apr. 7, 2026), available at (https://www.sec.gov/newsroom/press-releases/2026-34); Key highlights from the SEC 2024 enforcement report, Baker Tilly (Jan. 21, 2025), available at (https://www.bakertilly.com/insights/key-highlights-from-the-sec-2024-enforcement-report).

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3. SEC Announces Cyber and Emerging Technologies Unit to Protect Retail Investors, SEC (Feb. 20, 2025), available at (https://www.sec.gov/newsroom/press-releases/2025-42); SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force, SEC (Jan. 21, 2020), available at (https://www.sec.gov/newsroom/press-releases/2025-30); SEC Announces Formation of Cross-Border Task Force to Combat Fraud, SEC (Sept. 5, 2025), available at (https://www.sec.gov/newsroom/press-releases/2025-113-sec-announces-formation-cross-border-task-force-combat-fraud).

4. Preparing for Your 2025 Form 10-K and 2026 Proxy Season, K&L Gates (Jan. 13, 2026), available at (https://www.klgates.com/Preparing-for-Your-2025-Form-10-K-and-2026-Proxy-Season-1-12-2026).

5. Shareholder Proposal Developments During The 2025 Proxy Season, Harvard Law School Forum on Corporate Governance (Aug. 30, 2025), available at https://corpgov.law.harvard.edu/2025/08/30/shareholder-proposal-developments-during-the-2025-proxy-season/).