

Paul Atkins' Past Speeches Offer A Glimpse Into SEC's Future

By **Gerald Hodgkins and Michael Cunniff** (March 27, 2025, 4:03 PM EDT)

Nearly four months after first being tapped to lead the U.S. Securities and Exchange Commission, Paul S. Atkins' nomination is finally moving forward, as a hearing before the Senate Banking Committee occurred on March 27.

Atkins previously served as an SEC commissioner from 2002 to 2008, where he generally favored a lighter regulatory approach from the commission. In the hearing, he was grilled by several Democratic senators about that approach and the mistakes the agency made in the lead-up to the financial crisis of 2008.

However, a line of questioning about the Public Company Accounting Oversight Board from Sen. Chris Van Hollen, D-Md., touched on changes to securities regulation that Atkins may oversee as the SEC chair.

Van Hollen noted that Project 2025, the Heritage Foundation's policy manifesto, called for the abolishment of the PCAOB,[1] and noted that Atkins had a special mention in its discussion. Before the Senate Banking Committee, Atkins was noncommittal about the board's future, noting that it was a decision for Congress, but the future of the PCAOB is one of several structural and procedural changes the agency could undergo under Atkins' leadership.

Although Atkins did not suggest during his testimony that significant changes should be anticipated, on March 24, Sam Waldon, acting director of the SEC's Division of Enforcement, confirmed a few consensus predictions about changes in enforcement priorities in remarks at the Securities Industry and Financial Markets Association. For example, Waldon said, "Penalties — remedies in general, but penalties included — are an area where I do think it's likely we'll see changes." [2]

Perhaps in anticipation of Atkins' arrival, the SEC is already making procedural changes in line with his desire for more commission control over its staff's actions. On March 10, the agency finalized a rule requiring the full commission to issue formal orders of investigation — previously, that power had been delegated to the Division of Enforcement. [3]

Drawing on public remarks Atkins made while serving as an SEC commissioner, we anticipate a number of structural and procedural changes at the SEC once he takes over. Here are eight possible changes worth considering.



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Potential Structural Changes

1. One Commission to Regulate Them All

Shortly after Atkins' nomination was announced, a Wall Street Journal editorial[4] called for the merger of the SEC, which regulates securities markets, and the U.S. Commodity Futures Trading Commission, which primarily regulates the U.S. derivatives markets.

Such a merger has been proposed in the past, and the idea could have new life as the Trump administration continues its attempts to shrink the administrative state. Atkins has previously championed the idea, as the editorial noted, saying in 2015 that the Dodd-Frank Wall Street Reform and Consumer Protection Act "blew" an opportunity to streamline "our crazy quilt of financial services regulators." [5]

2. Rethinking Examinations

The Division of Examination — formerly the Office of Compliance Inspections and Examinations, or OCIE — which conducts on-site reviews of registrants with the SEC, was created in 1995 and has more than 1,100 employees around the country.[6]

In his first term on the commission, Atkins reacted favorably to a congressional proposal to move the SEC's examination authority to the Division of Market Regulation — now the Division of Trading and Markets — and the Division of Investment Management.[7] In doing so, Atkins pointed to a lack of coordination between OCIE and other divisions as a reason to restructure the commission's examination authority.

Atkins said in a 2006 speech,

Consultations between OCIE and the divisions out of which it was pulled are not occurring as routinely as when examiners were directly in their respective divisions. The rule-writers need to hear from the people who are out in the field visiting registrants, and the compliance folks need to check with the rule-writers to make sure that their messages are consistent with the purposes of the rules. As a result, sometimes conflicting messages come out of our regulatory and compliance staffs. This puts registrants and the SEC in a very difficult position.[8]

In separate 2006 remarks, Atkins flagged the issue of "how best to ensure the full and effective integration of our examiners — our eyes and ears — into our policy-setting and regulatory framework" as one of the challenges the SEC faced.[9]

3. A Streamlined Enforcement Division

Shortly after the financial crisis of 2008, the Division of Enforcement established five specialized units within it: the Asset Management Unit, the Public Finance Abuse Unit,[10] the Complex Financial Instruments Unit,[11] the Foreign Corrupt Practices Unit and the Market Abuse Unit. A Cyber Unit was established in 2017, but was recently rebranded as the Cyber and Emerging Technologies Unit, shifting its focus away from cryptocurrency and toward other technology-focused areas of risk.

Some or nearly all of these units could be cut as part of a reevaluation of enforcement priorities. While Atkins has not said anything specific about these units, he has previously discussed the need to

"periodically engage in self-reflection to see if its structure meets its mission." [12]

With FCPA enforcement paused [13] at least until the summer and the mandates of a couple of other units ill-defined, and given the Trump administration's deregulatory bent, we are likely to see some kind of shake-up in how the Division of Enforcement is structured, with units likely being the first casualties.

4. A New Wells Committee?

Both during and after his time on the commission, Atkins extolled the success of the Wells Committee — the 1970 external advisory committee established by then-SEC Chairman William J. Casey, which was led by Jack A. Wells. Atkins has praised the use of advisory committees generally, noting in a 2007 speech that they can "play a key role in the review and improvement of SEC rules and processes." [14]

As chair, he may make more use of such external advisory boards and committees to help shape his vision of the commission's mandate.

In that same 2007 speech, Atkins specifically called for a "new 'Wells-like' advisory committee to review the policies and procedures of [the commission's] enforcement program." He also praised specific recommendations of the Wells Committee, and more generally highlighted how it was made up of people from outside of the SEC.

In a separate 2007 speech lauding the benefits of such committees, he said: "In order to satisfy the SEC's statutory missions, it is incumbent on the Commission to seek the best advice from outside sources, including the securities bar and the regulated community, to refine the agency's policies and practices." [15]

Atkins could establish a new committee comprising securities law luminaries from outside the SEC to reevaluate Division of Enforcement policies and procedures, giving them broad latitude to rethink the enforcement program.

Potential Changes to Internal Processes

1. Tightened Control Over Staff Settlement Authority

Atkins may seek to impose new restrictions on staff settlement discussions. Currently, Division of Enforcement staff is empowered to negotiate settlements with prospective defendants once a formal investigation has been opened, and the full commission only has input at the end of the process in deciding whether to accept or reject a proposed settlement offer.

In 2007, Atkins discussed the history of settlement authority, noting that staff had previously been required to get commission approval before engaging in settlement negotiations, per a 1970 memo by Chairman Hamer Budge, and suggested that a return to such a requirement would be consistent with the SEC's historic practice. [16] If implemented, this extra layer of process could provide prospective defendants with more leverage in their engagement with enforcement staff.

2. Less Focus on Enforcement Stats

The press release announcing the SEC's fiscal year 2024 Division of Enforcement results begins by stating the number of enforcement actions (538) and the amount in financial remedies secured — \$8.2 billion,

which the release notes is "the highest amount in SEC history." [17]

Under Atkins, expect a shift away from prioritizing financial recoveries from corporations, which he has often noted are ultimately borne by shareholders. But more broadly, anticipate fewer matters brought and a shift away from seeing the number of enforcement actions as a barometer of the success of the SEC's enforcement program.

Atkins has been critical of the Division of Enforcement's emphasis on statistics on penalties imposed and the number of actions brought, and in 2008, he called for a "re-evaluation of the incentives" for Division of Enforcement staff to bring such actions, which he noted include "promotions, awards, and public recognition." [18]

3. No Rules Without Rulemaking

Atkins has consistently criticized the SEC's use of staff guidance, including staff accounting bulletins and no-action letters, as being inconsistent with the rulemaking procedures under the Administrative Procedure Act, saying in 2005 that the agency has "often been too casual in allowing staff-level decisions to be treated as if they have a Commission imprimatur." [19]

In criticizing a specific staff accounting bulletin on materiality, Atkins said in 2008:

Would it surprise you to learn that SAB 99 does not necessarily represent the views of the Commission? As the title implies, it is a Staff Accounting Bulletin. The process of issuing Staff Accounting Bulletins is organized to avoid "complications" with the Administrative Procedure Act. Is that how a full-disclosure agency should operate? The Commission never voted on the views espoused within any SAB, so it does not and cannot represent the views of the SEC. Worse yet, SEC staff developed SAB 99 without public input. Substantive policy ought not to be made by the staff in private meetings, and ought not to be made based solely on the wisdom and experiences of SEC staff. [20]

Relatedly, Atkins has also cautioned against the use of enforcement actions as "informal rulemaking," which has been a particular concern of the crypto industry. In a 2005 speech, he said:

In instances in which our hindsight tells us that a particular action should have been prohibited, it is tempting to punish people for behavior that was not clearly prohibited by statute or SEC rule at the time the behavior took place. The Commission needs to ensure that enforcement actions are premised on statutes and regulations that were on the books at the time of the behavior in question. [21]

Because of the time-intensive nature of the rulemaking process, Atkins' views on informal staff guidance will likely lead to fewer enforcement actions related to novel areas of the securities laws, a marked departure from former Chair Gary Gensler's approach. Waldon, the acting enforcement director, hinted as much in his remarks on Monday, saying, "Creativity is probably not where we want to be," [22] regarding the Division of Enforcement staff's interpretation of the securities laws.

4. Punish the Bad Guys, Not the Industry

Much has been said about the SEC's about-face on regulating cryptocurrency since President Donald Trump's inauguration. Combining the SEC and CFTC could also be a boon to the crypto industry, as part of the regulatory limbo has been over whether most cryptocurrencies should be classified as securities

(regulated by the SEC) or commodities (regulated by the CFTC). The crypto industry has reacted enthusiastically^[23] to Atkins' nomination, and the commission has already taken crypto-friendly steps, including dropping Division of Enforcement proceedings against **Coinbase Global Inc.**, **Ripple Labs Inc.**, **Payward Inc.** and **Robinhood Crypto LLC.**^[24]

Specific steps an Atkins-led SEC will take toward crypto are hard to predict. But his clear skepticism of government intervention extends to new products and technologies.

"Government should not judge the merit of products or business models, set prices, or select as between competitors. Government should keep barriers to entry low so that new entrants can test their ideas in the marketplace," he said in a 2006 speech.^[25]

While Atkins has earned a reputation for having a laissez-faire philosophy for regulating the financial markets, whether fair or unfair, he has shown no sympathy to perceived bad actors within the industries regulated by the SEC. Speaking in 2004 about a proposed rule aimed at enhancing corporate governance of mutual funds in the wake of a series of enforcement actions related to late trading and misuse of material nonpublic information, Atkins said:

As for those firms and individuals whose conduct was clearly reprehensible, we have demonstrated that our agency has the power to punish them. In the most egregious cases, we have permanently barred individuals from the industry. I applaud our enforcement efforts and believe that they will serve to deter future unethical, immoral, and illegal behavior.

However, as we discharge our regulatory responsibilities, we need to be mindful that morality and ethics cannot be legislated into existence, and criminal conduct cannot be legislated out of existence.^[26]

Applying that logic to crypto, we could see the SEC attempt to create an environment where cryptocurrencies can flourish with minimal government intervention, relying on market forces and enforcement actions to protect investors.

Conclusion

Thursday's committee hearing was Atkins' first public remarks since his nomination was announced in December. The subject of structural and procedural reform was only briefly touched upon in the hearing, which focused more on his work with the crypto industry and others with business before the SEC,^[27] as well as the claim by some, including Sen. Elizabeth Warren, D-Mass., that his private sector work will bias him in favor of Wall Street.

But in the long term, Atkins' approach to the structure and internal workings of the SEC could have as much impact on securities regulation as any specific case that comes before the commission in his tenure.

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[1] https://static.project2025.org/2025_MandateForLeadership_CHAPTER-27.pdf.

[2] White, N. M. (March 24, 2025). SEC, CFTC Leaders Predict Shifting Priorities, Penalty Policies. Bloomberg. <https://news.bloomberglaw.com/securities-law/sec-cftc-leaders-predict-shifting-priorities-penalty-policies>.

[3] <https://www.sec.gov/files/rules/final/2025/33-11366.pdf>.

[4] <https://www.wsj.com/opinion/how-doge-can-streamline-financial-rules-policy-regulation-markets-057c7643?page=1>.

[5] <https://www.wsj.com/opinion/how-doge-can-streamline-financial-rules-policy-regulation-markets-057c7643?page=1>.

[6] <https://www.sec.gov/files/2025-exam-priorities.pdf>.

[7] <https://www.sec.gov/news/speech/2006/spch091306psa.htm>.

[8] <https://www.sec.gov/news/speech/2006/spch091306psa.htm>.

[9] <https://www.sec.gov/news/speech/spch030306psa.htm>.

[10] Formerly the Municipal Securities and Public Pension Unit.

[11] Formerly the Structured and New Products Unit.

[12] <https://www.sec.gov/news/speech/2006/spch091306psa.htm>.

[13] <https://www.whitehouse.gov/presidential-actions/2025/02/pausing-foreign-corrupt-practices-act-enforcement-to-further-american-economic-and-national-security/>.

[14] <https://www.sec.gov/news/speech/2007/spch100907psa.htm#5> target="_blank" rel="noopener noreferrer"><https://www.sec.gov/news/speech/2007/spch100907psa.htm#5>.

[15] <https://www.sec.gov/news/speech/2007/spch100907psa.htm>.

[16] <https://www.sec.gov/news/speech/2007/spch100907psa.htm>.

[17] <https://www.sec.gov/newsroom/press-releases/2024-186>.

[18] https://www.sechistorical.org/collection/papers/2000/2008_0601_AtkinsEnforcementTr.pdf.

[19] <https://www.sec.gov/news/speech/spch111105psa.htm>.

[20] <https://www.sec.gov/news/speech/2008/spch020808psa.htm>.

[21] <https://www.sec.gov/news/speech/spch040405psa.htm>.

[22] White, N. M. (March 24, 2025). SEC, CFTC Leaders Predict Shifting Priorities, Penalty Policies. Bloomberg. [news.bloomberglaw.com/securities-law/sec-cftc-leaders-predict-shifting-priorities-penalty-policies](https://www.bloomberglaw.com/securities-law/sec-cftc-leaders-predict-shifting-priorities-penalty-policies).

[23] <https://cointelegraph.com/news/everything-know-pro-crypto-sec-chair-paul-atkins>.

[24] <https://www.cnn.com/2025/03/22/cryptos-long-battle-with-sec-comes-to-a-close-with-ripple-victory.html>.

[25] <https://www.sec.gov/news/speech/2006/spch102706psa.htm>.

[26] <https://www.sec.gov/news/speech/spch062304psa.htm>.

[27] <https://www.politico.com/news/2025/03/26/sec-atkins-trump-senate-banking-conflicts-00249750>.