

PAUL ATKINS, PRESIDENT TRUMP'S NOMINEE FOR CHAIR OF THE U.S. SECURITIES AND EXCHANGE COMMISSION, IS BOTH SOMETHING OLD AND SOMETHING NEW

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President-elect Donald Trump will nominate Paul Atkins to chair the U.S. Securities and Exchange Commission (SEC). A Republican controlled Senate will easily confirm him absent new information: Atkins previously served as an SEC commissioner from 2002 to 2008 under President George W. Bush. He is widely regarded as knowledgeable of the securities laws and markets and is highly influential in Republican circles. Both current Republican SEC Commissioners, Hester Peirce and Mark Uyeda, served as counsel to Atkins during his previous stint as an SEC Commissioner. Paul Atkins co-authored a [2008 article](#) in the The Fordham Journal of Corporate and Financial Law, titled "Evaluating The Mission: A Critical Review Of The History And Evolution Of The SEC Enforcement Program," in which both Commissioners Peirce and Uyeda are credited for their contributions.

Atkins' tenure at the SEC coincided with significant regulatory challenges: He was appointed less than a year after Enron's and the same month as WorldCom's bankruptcy. Sarbanes-Oxley passed the day before his appointment. Despite this environment, Atkins is known for his commitment to light-touch regulation. As the SEC considered regulations during the fallout from the tech crash, he consistently opposed what he saw as overreach in regulatory policy. In that sense, he is very much in line with what has defined establishment Republican thought about the securities markets for more than two decades.

But what has the crypto industry most excited is not Atkins' establishment bona fides. In recent years, his work has focused on financial technology and digital assets, areas where he has emerged as a prominent voice advocating for clear, innovation-friendly policies. As a co-chair of the Token Alliance, a digital asset industry group, Atkins has been pivotal in advocating for best practices for tokenized networks and trading platforms.

Likely Priorities in His First Year

- 1. Reforming Cryptocurrency Regulation:** Atkins is expected to prioritize a shift away from enforcement-driven regulation pursued by outgoing SEC Chair Gary Gensler toward establishing clearer rules for the cryptocurrency industry. This would align with President-elect Trump's broader pro-crypto agenda. It is also consistent with remarks by both Commissioners Peirce and Uyeda, who have frequently commented on the need for clear crypto guidance. This means that a majority of SEC Commissioners will favor reform. But reform could go beyond "crypto" to accelerate the adoption of innovative technology for trading in the securities markets. Atkins is a member of the advisory board of Securitize, a company that offers tokenized exposure to private securities funds on the public blockchain.
- 2. Streamlining Regulations:** Atkins' leadership is likely to focus on reducing bureaucratic hurdles, particularly for public companies and financial industry participants. His pro-business stance will likely include revisiting rules perceived as stifling growth, such as those on corporate disclosures. He will refocus the SEC on analyzing the cost of compliance with regulations, an issue he prioritized in his prior term as SEC Commissioner. Under the Regulatory Flexibility Act (RFA), which requires government agencies to periodically review and assess the impact of regulation on U.S. businesses, this will be not just a consideration for new regulations, but also retrospectively applied. An Atkins chaired SEC will likely scale back initiatives such as ESG disclosure, if not eliminating them entirely. Atkins has also spoken out against "shareholders' advisory resolutions," which he has described as "the tyranny of the minority," a view that finds support in a speech by Commissioner Uyeda this year.
- 3. Democratizing Capital Markets:** Under Atkins, the SEC will also likely shift toward further "democratizing" of the capital markets by investigating reforms to make IPOs more attractive to issuers and make private investments more accessible to retail investors. In a 2010 *Wall Street Journal* editorial opposing Dodd-Frank, he expressed concern for what he viewed as "merit regulation" of investments, which he described as harmful to investors and market participants. Initiatives such as previously proposed safe harbors for private placement "finders" to avoid registration as broker-dealers and an expanded definition of "accredited investors" are likely to be considered.
- 4. Enforcement Focused on Traditional Agenda, but More Focused on Individuals Rather than Corporate Wrongdoers:** Enforcement will continue to occur, but priorities will likely shift away from edge cases that tested the SEC's authority. Instead, enforcement will focus on traditional fraud, insider trading and other matters that more directly affect investors. There will likely be very few ESG and far fewer crypto-related cases, and matters involving cybersecurity-related disclosures are likely to recede. There will also be fewer enforcement actions involving process or records keeping violations, and fines for those matters will be smaller when those matters are brought. For example, the off-channel communications sweep that brought in a total of \$2.7 billion in SEC fines since 2021 will probably no longer result in hundred-million-dollar settlements. While an SEC Commissioner, Atkins was a frequent critic of large fines, especially large corporate fines that he viewed as

punishing shareholders of issuers instead of culpable individuals. It is also likely that the SEC will be less aggressive in issuing subpoenas. In his 2008 article, for example, Atkins expressed the view that the SEC should “minimize costs through the formulation of detailed procedures to address preservation notices and production requests for electronic data.” Under Atkins, the SEC is likely to draft more narrowly tailored document requests that consider the burden of responding. Additionally, a key theme of Atkin’s proposal for a review of the SEC’s enforcement program in 2008 was that the SEC should more aggressively pursue individual bad actors when corporate violations are identified, especially those involving fraud. He wrote then, “Corporations do not act; individuals do.”

Challenges Ahead

Atkins will face challenges in balancing the drive for innovation with the need to protect investors and ensure market integrity. Crypto advocates might be disappointed by the speed with which the SEC addresses these issues under Atkins: Investor protection and market integrity still raise difficult policy and technical issues to resolve. Additionally, implementing significant regulatory shifts in a politically charged environment will require careful navigation of legislative and public scrutiny.

Of particular significance to the SEC, constitutional and statutory challenges to its authority are likely to continue. While the SEC will shift policy in a direction consistent with the goals of many of the litigants that have already challenged it in federal courts, it will find an entirely new group of litigants eager to test a reform agenda.

In addition, there are ongoing existential challenges to the existence of self-regulatory organizations like the Financial Industry Regulatory Authority (FINRA), which could have significant impacts on the SEC’s agenda under Atkins. If the SEC is forced to assume more of the work performed by FINRA to regulate broker-dealers, this will be a substantial diversion of the SEC’s resources.

About the Author

Financial industry participants face constant challenges from evolving regulations and changing enforcement priorities. As a partner with Bell Nunnally’s Litigation practice group, John Guild leverages more than a decade of sophisticated commercial litigation experience and several years serving as an enforcement attorney for the Financial Industry Regulatory Authority (FINRA) to provide efficient, practical solutions to financial institutions and executives in regulatory investigations or litigation. John also represents clients of all types in high-stakes and complex business disputes.

John most recently served as senior counsel in FINRA’s Department of Enforcement. At FINRA, he led investigations into securities violations and prosecuted formal disciplinary actions against broker-dealer firms and their registered representatives in matters involving securities fraud under Section 10(b) of the Securities Exchange Act of 1934 and misrepresentations in the sale of securities under Sections 11 and 17 of the Securities Act of 1933. He also prosecuted matters involving violations of Regulation Best Interest, the registration requirements of Section 5 of the Securities Act, the Anti-Money Laundering provisions of



Bank Secrecy Act, data privacy issues under Regulation S-P, and off-channel communications and other records retention violations under Section 17(a)(1) of the Securities Exchange Act.

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