

The top of the slide features a teal square in the upper left corner containing the text 'K&L GATES' in white. The background of the slide is a dark blue gradient with a stylized financial chart. The chart includes a series of teal candlesticks, a blue line graph with glowing points, and a series of purple rectangular blocks that resemble a bar chart.

K&L GATES

# Asset Management and Investment Funds Fall Conference

# Product Innovation Part 1: Trends in the Registered Funds Market

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**Mark Goshko**, Partner, K&L Gates

**Abigail Hemnes**, Partner, K&L Gates

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# Government Shutdown Updates

The background of the slide is a dark blue gradient. It features several abstract elements: a faint grid pattern, a series of glowing yellow and orange lines that curve across the middle, and a series of glowing blue lines that curve across the bottom. There are also some blurred, colorful shapes in shades of purple and pink, suggesting a financial or data-related theme.

# Government Shutdown and Registered Funds

- Impact on ETF Share Class Relief
- Impact on SEC Filings
  - New Funds
  - New Share Classes
- Other Impacts

The background of the slide features a dark blue gradient with faint, stylized financial charts. A white horizontal band across the middle contains the title. Below the band, there are abstract purple and blue geometric shapes and lines, including a glowing blue line that curves across the lower right.

# ETF Share Classes

# ETF Share Classes

- Update on Exemptive Relief
  - Dual Class Funds: Terms and Conditions
    - Transparency
    - Cross-Subsidization
    - Adviser's responsibilities vs. the Board's responsibilities
- Challenges
  - Operational Issues
  - Implementation Issues
  - Intermediary Resistance
    - Examples: Imposing new/different fees
- Opportunities

# Overview of the Retailization of Private Markets

The background of the slide is a dark blue gradient. It features several faint, stylized financial charts. On the right side, there is a candlestick chart with white and light blue bars. Below it, there are several large, semi-transparent purple rectangular blocks. A bright blue line, possibly representing a trend or a specific data point, cuts across the lower right portion of the image. The overall aesthetic is modern and tech-oriented, typical of a financial or corporate presentation.

# Overview of the Retailization of Private Markets

- Expansion of Private Markets
  - Increasing costs and burdens of taking companies public
- SEC Position
  - Initiative of SEC Chair, the current administration, and DOL
- Defining the Private Market
  - Private Funds
    - Loosening of restrictions on investments in private funds
    - SEC drops 15% limit in private funds for retail closed-end funds
    - Elimination of investment minimums & Accredited Investor status requirements for investors in certain closed-end funds
    - No investments in affiliated private funds
- Private Equity
- Private Credit/Debt



# Retail Open End Fund Access to the Private Markets

# Retail Open End Fund Access to the Private Markets

- ETFs
  - Example: SPDR SSGA IG Public & Private Credit ETF
- Mutual Funds
  - Investments in Private Equity
- Challenges
  - Issues that arise when a fund holds private investments
    - Examples: fund mergers and liquidations
  - Illiquidity and redemptions – 15%
- Opportunities

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# Retail Closed-End Fund Access to the Private Markets

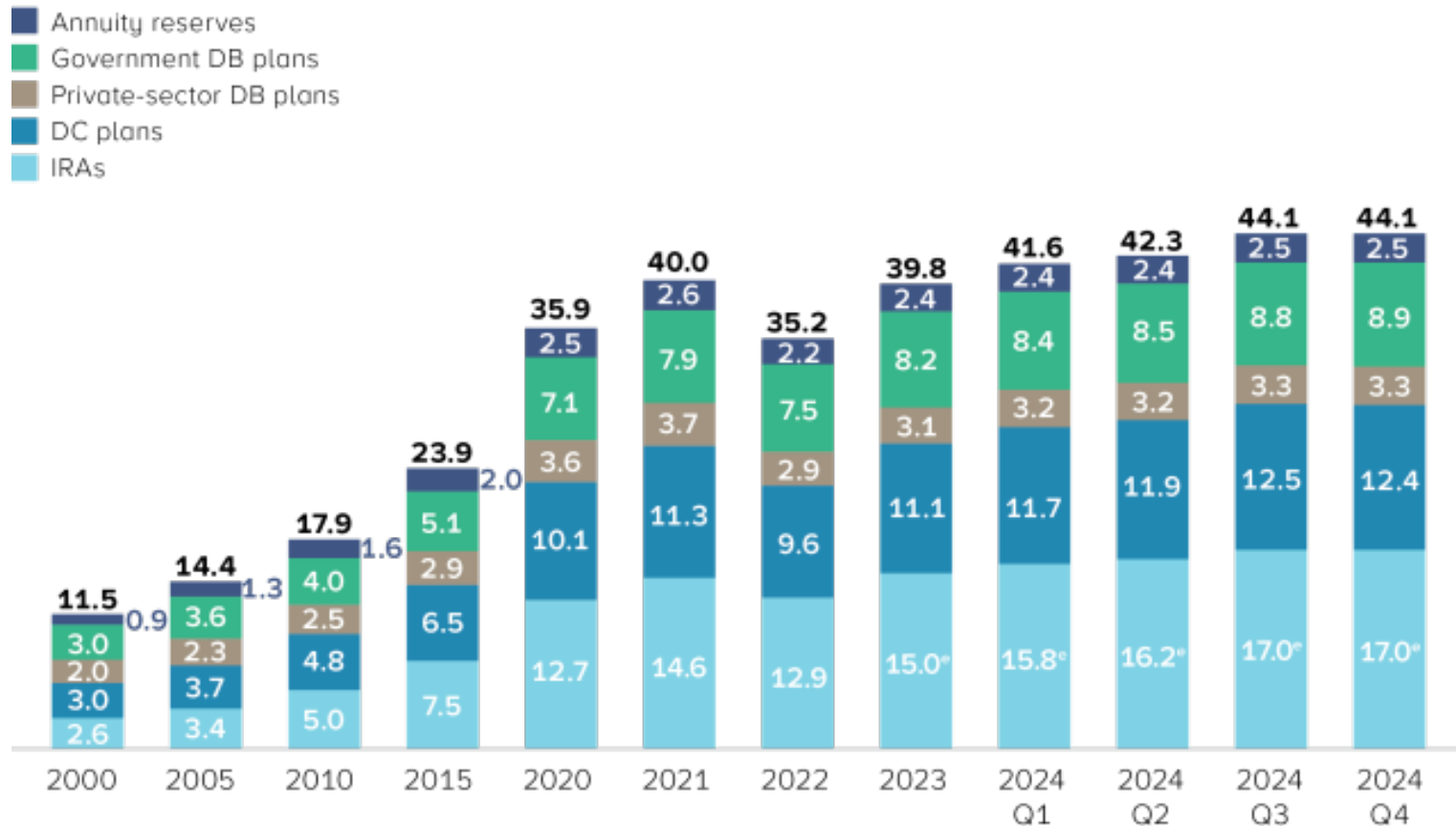
# Retail Closed-End Fund Access to the Private Markets

- Interval Funds/Tender Offer Funds
- Business Development Companies (“BDCs”)
- Expanded Co-Investment Relief
- Challenges
- Opportunities

# Alternative Investments in Retirement Plans

**Robert Sichel**, Partner, K&L Gates

# RETIREMENT ASSETS (\$ TRILLIONS)



Source: Investment Company Institute, "Retirement Assets Total \$44.1 Trillion in Fourth Quarter 2024".  
[https://www.ici.org/statistical-report/ret\\_24\\_q4](https://www.ici.org/statistical-report/ret_24_q4)

# TARGET DATE FUNDS

- Asset allocation funds that are immensely popular 401(k) plan investment options.
- Features
  - Follow a predetermined reallocation of assets over time based on a specified target retirement date
  - Rebalance to become less focused on growth and more focused on income as the fund approaches and passes its target date, which is usually indicated in the fund's name
  - Typically established as mutual funds or bank-sponsored collective investment trusts operated in a fund of funds structure
  - Typically serve as the default investment option

# CURRENT STATE

- Few 401(k) plans offer alternative assets due to liability concerns and distinct legal and operational issues
- In August, the Trump Administration issued an Executive Order with the stated purpose to relieve the regulatory burdens and litigation risks that impede retirement accounts from accessing funds that include investments in “alternative assets”

# EXECUTIVE ORDER

- DOL to identify the criteria that fiduciaries should use to prudently balance potentially higher expenses against the objectives of seeking greater long-term net returns and broader diversification
  - Clarify the duties a fiduciary owes plan participants when deciding whether to make a fund that includes alternative assets available to plan participants
- Safe harbor?
  - Roadmap?
  - Regulations or sub-regulatory guidance?

# STAKEHOLDERS

Stakeholders include plan participants and other parties

- Product manufactures
- Alternative investment managers
- Recordkeepers
- Plan consultants
- Plan fiduciaries, e.g., investment committees and plan sponsors

# MATTERS TO CONSIDER

Legal, operational,  
and practical  
matters

- Valuation
- Liquidity
- Fees
- Conflicts of Interest
- Transparency/Disclosures
- ERISA capacity

# Product Innovation Part 2: Trends in the Private Funds Market

**TJ Bright**, Senior Legal Counsel, Partners Capital

**Vincent Calcagno**, Head of U.S. Growth, Ocorian

**Robert Leonard**, Partner, K&L Gates

**Chris Phillips-Hart**, Associate, K&L Gates

# OVERVIEW

- State of the fundraising market
- Role of the secondary markets/liquidity in private funds
- Continuing retailization/democratization of private funds

# Product Innovation Part 3: Crypto and Digital Asset Evolution

**Tanya Kerrigan**, General Counsel and Chief Compliance Officer, Eaglebrook Advisors

**Grant Butler**, Partner, K&L Gates

**Jon-Luc Dupuy**, Partner, K&L Gates

**Rich Kerr**, Partner, K&L Gates

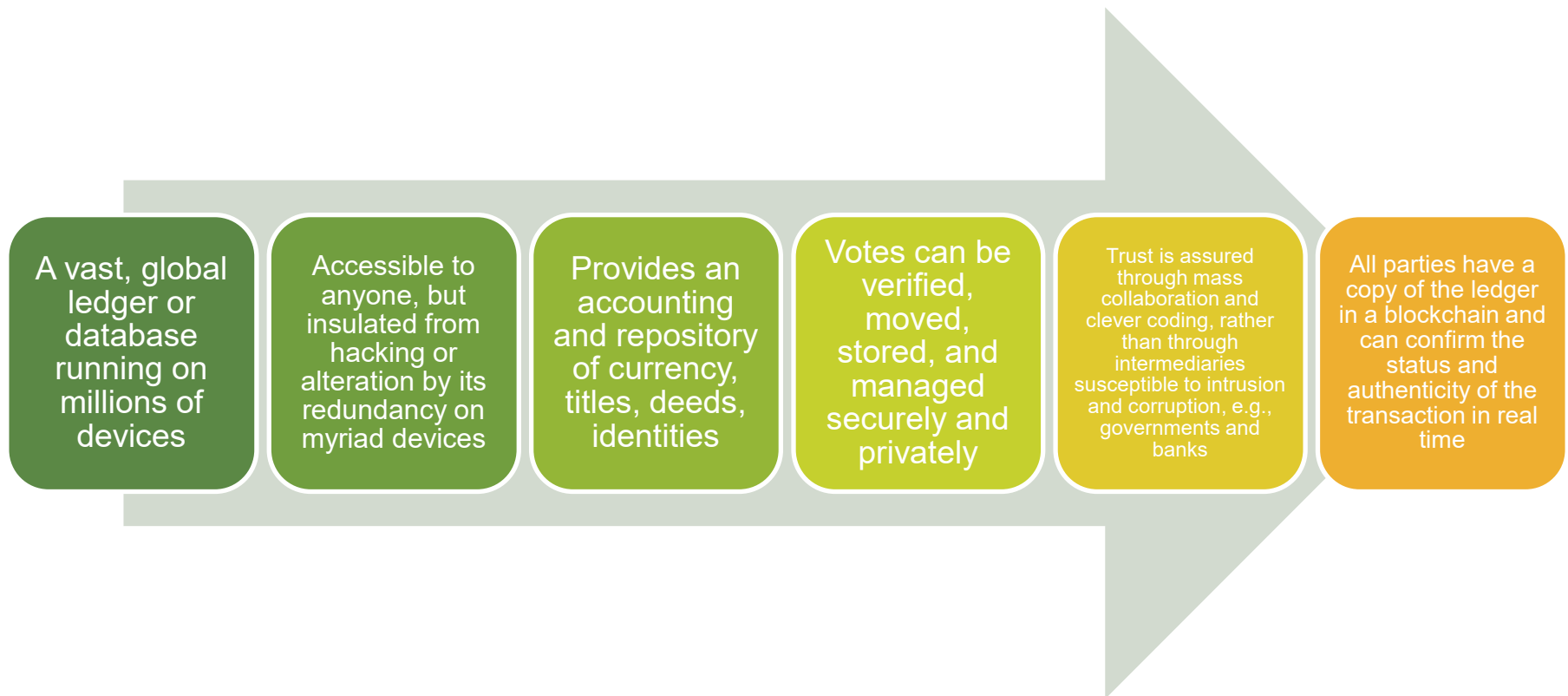
# OVERVIEW

- What is Blockchain Technology
- Types of Digital Assets
- Current (and future) Regulatory Environment
- Considerations for Adoption
- What's Next?

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# What is Blockchain Technology?

# DISTRIBUTED LEDGER TECHNOLOGY



# PERMISSIONED VS. PERMISSIONLESS BLOCKCHAINS

## Permissionless

- Requires no permission to join and interact with

## Characteristics

- Open, public
- No gatekeeper
- Decentralized
- Transparent
- Immutable

## Permissioned

- Requires permission to join and participate in consensus

## Characteristics

- Closed, only approved users
- Governance structure as a gatekeeper
- Partially decentralized
- Private

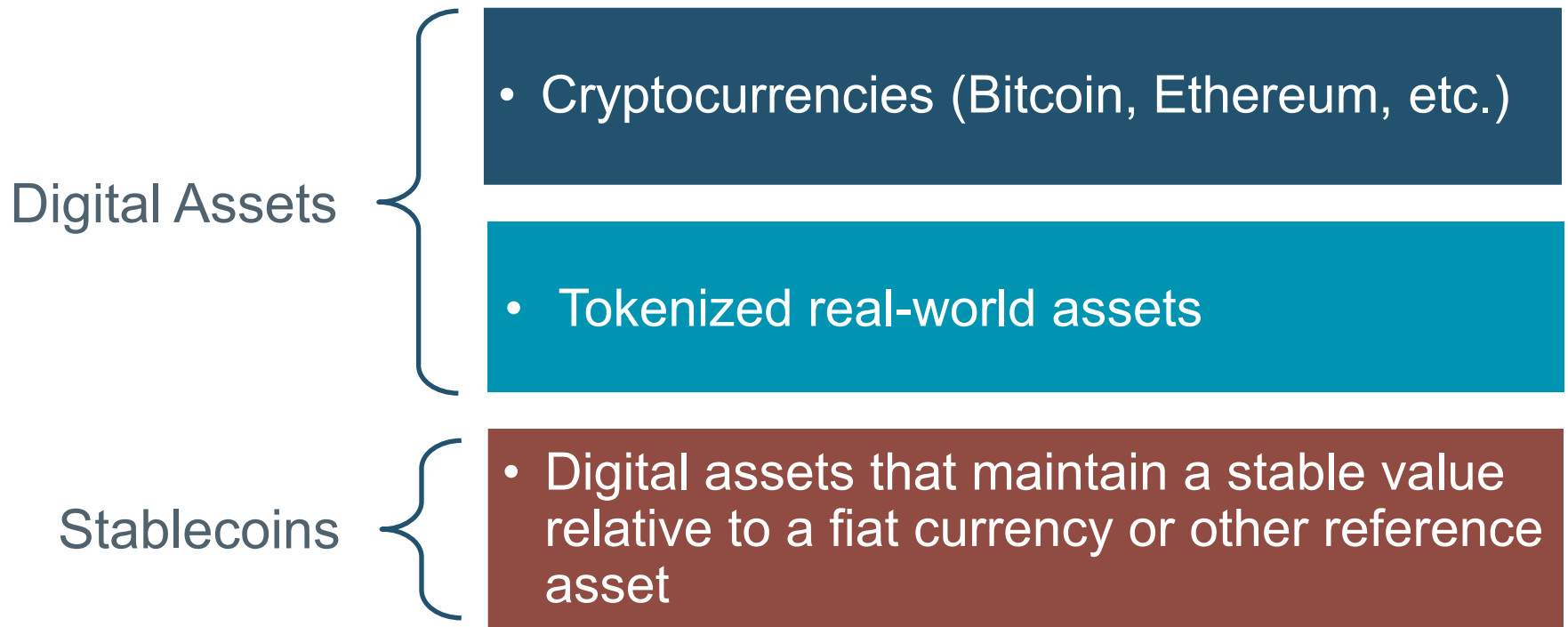


# Types of Digital Assets

# DIGITAL ASSETS: A COMMON VOCABULARY

- Terms are confusing because various stakeholders do not communicate and there is not consistent
  - Coders vs. Lawyers: “contract” & “code is law”
  - Marketers vs. Lawyers: “ICO”
- Key Terms to understand
  - Blockchain
  - Digital Assets
  - Tokenization
  - Tokens
  - Cryptocurrency
- Other Terms
  - Smart Contracts
  - DeFi
  - DAOs

# WHAT ARE DIGITAL ASSETS?



# CRYPTOCURRENCY

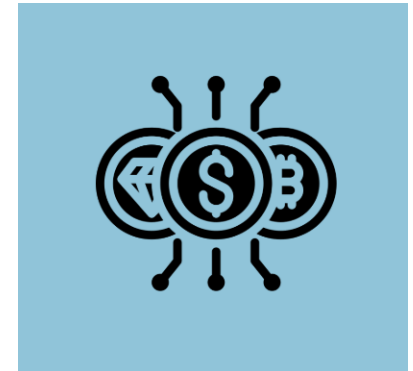
- Ledger to record ownership
- Decentralized
  - Does not rely on someone to control the ledger
  - Relies on multiple copies of the ledger being stored
- Different cryptocurrencies use different approaches to
  - Verifying transactions
    - Proof of work vs. proof of stake
  - Incentives for nodes
    - Mining rewards
    - Transaction fees

# TOKENIZATION DEFINED

- FIA Tokenization Working Group: Asset tokenization involves digital tokens that represent tangible or intangible assets, such as stocks, bonds, cash, or securities, and creating a record of ownership for such assets on blockchains.
- ISDA: “tokenization” broadly refers to a technological and legal process of attaching enforceable rights to entries in a DLT-based system.
  - Tokenization is not a single, uniform mechanism
- GMAC definition of “Tokenized Derivative”: a “digital twin” token that represents an underlying derivative instrument issued and recorded on a different platform, where such representation itself satisfies the definition of a derivative under relevant law.

# CHARACTERISTICS OF TOKENIZED ASSETS

- Who retains control of the tokenized asset, including the ability to update the underlying DLT record?
- How is transfer of the tokenized asset effectuated?
  - Option 1: updating the token balances on the DLT record
  - Option 2: transferring the token from one wallet to another
- Is the token itself an asset, or merely evidence of ownership (i.e., does the token have value, or is it a form of recordkeeping?)
- What's not a tokenized asset?
  - BTC, ETH, other “cryptocurrencies”



# STABLECOINS GENERALLY

- A type of digital asset that attempts to provide a stable value relative to a specified asset or pool of asset
  - Value of assets typically determines or affects value of coin
- Particular risks associated with stablecoins
- Payment stablecoins are defined and regulated by GENIUS Act, which was signed into law on July 17, 2025

# THE GENIUS ACT

- The first major piece of digital assets legislation passed by Congress
- Defines payment stablecoins
- Establishes reserve and redemption requirements for payment stablecoins
- Creates regime for chartering and supervision of payment stable coin issuers
- Subjects payment stablecoin issuers to bank-like regulations, including safety and soundness requirements and Bank Secrecy Act compliance
- Requires payment stablecoin issuers to comply with marketing rules to protect consumers from deceptive practices (including prohibiting issuers from claiming stablecoins are backed by the U.S. government, federally insured, or legal tender)

# MONEY MARKET FUND DEVELOPMENTS

- Reserve requirement for GENIUS Act  
Compliant payment stablecoins
- New or Revised Government Money Market Funds
- Tokenized Money Market Funds or Classes
  - Serve as the bridge from the traditional economy to the on-chain economy
  - Peer-to-peer transfer capabilities being developed
  - May be used for payment



# Current (and future) Regulatory Environment

# THEN

**SEC FORMER  
CHAIR GENSLER**

“These products [crypto assets] are subject to the securities laws and must work within our securities regime.”

**CFTC FORMER  
COMMISSIONER  
QUINTENZ**

“The SEC has no authority over pure commodities or their trading venues, whether those commodities are wheat, gold, oil... or #crypto assets”

# NOW

## SEC CHAIR ATKINS

“Despite what the SEC has said in the past, most crypto assets are not securities.”

## CFTC ACTING CHAIRMAN PHAM

“Under the prior administration, our agencies sent mixed signals about regulation and compliance in digital asset markets, but the message was clear: innovation was not welcome. That chapter is over.”

# FEDERAL REGULATION

- **Congressional bills**
  - GENIUS Act
  - Digital Asset Market Clarity Act of 2025 (proposed)
  - Cryptocurrency
  - Token Classification
- **Anti-Money Laundering Act of 2020**
- **SEC**
  - SEC Crypto 2.0 Working Group
- **CFTC**
- **Trump Administration**
  - Digital Assets Working Group
  - Issued report on U.S. digital asset policy
- **Federal Banking Regulators**
  - FRB
  - OCC
  - FDIC
- **FinCEN**
  - 2013 Guidance
  - 2019 Guidance

# BANK REGULATORY GUIDANCE ON CRYPTO-ACTIVITIES

- Withdrawn Interagency Guidance
  - Joint Statement on Crypto-Asset Risks to Banking Organizations (January 3, 2023)
  - Joint Statement on Liquidity Risks to Banking Organizations Resulting from Crypto-Asset Market Vulnerabilities (February 23, 2023)
- OCC, FDIC and Federal Reserve have ended supervisory non-objection process for digital asset activities
- Interagency joint statement on Crypto-Asset Safekeeping by Banking Organizations (July 14, 2025)
- FDIC issued FIL-7-2025 affirming that state non-member banks may engage in permissible activities, including activities involving new and emerging technologies such as crypto-assets and digital assets, provided that they adequately manage the associated risks
- FRB ended Novel Activities Supervision Program (August 15, 2025)

# OCC GUIDANCE

- OCC Interpretive Letters
  - Interpretive Letter 1170 permits crypto-asset custody services (July 22, 2020)
  - Interpretive Letter 1172 permits holding stablecoin reserves (September 21, 2020)
  - Interpretive Letter 1174 permits serving as node on and use of independent node verification networks to verify customer payments and use of stablecoins to facilitate payment transactions on a distributed ledger (January 24, 2021)
  - Interpretive Letter 1184 confirms that national banks may buy and sell assets held in custody at the custody customer's direction and are permitted to outsource bank-permissible crypto-asset activities, including custody and execution services to third parties, subject to appropriate thirdparty risk management practices
  - First three letters were issued by Jonathan Gould as Chief Counsel of the OCC, current Comptroller of the Currency
- OCC issues Interpretive Letter 1183 on March 7, 2025, which revokes Interpretative Letter 1179 and ends supervisory nonobjection process for crypto activities

# SEC JURISDICTION OVER DIGITAL ASSETS

- Whether a digital asset is a “security” depends on the facts and circumstances of the offer and sale of the particular asset.
- According to the seminal Howey test, an asset is an “investment contract” and thus a security if it involves “an investment of money in a common enterprise with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.”
  - Thus, whether a given digital asset is a security depends on the structure of the offered asset and the nature of the transaction (including public representations) rather than on the label applied to the asset.
- Acting Chairman Uyeda:
  - “Clarity regarding who must register, and practical solutions for those seeking to register, have been elusive. The result has been confusion about what is legal, which creates an environment hostile to innovation and conducive to fraud. The SEC can do better.”

## SEC JURISDICTION OVER DIGITAL ASSETS (CONT'D)

- While no formal rulemaking has taken place, the SEC has provided guidance and “clarity” to the industry at a pace that is unusual for regulators
- Highlights of Relevant Guidance and Action
  - Guidance Statements:
    - Statement on Meme Coins (February 2025)
    - Guidance on Disclosure for Offerings (April 2025)
    - Statement on Broker-Dealer Custody of Digital Asset Securities (May 2025)
    - Statement on Certain Protocol Staking Activities (May 2025)
    - Statement on Crypto Asset Exchange-Traded Product Disclosures (July 2025)
    - Statement on Certain Liquid Staking Activities (August 2025)
  - No Action Letters:
    - DoubleZero (September 2025)
    - State Chartered Bank Custody (September 2025)
  - Approvals:
    - Approval of In-kind Creates and Redeems for single-coin ETPs (July 2025)
    - Generic listing standard for single-coin ETPs (September 2025)

# CFTC Jurisdiction Over Digital Assets

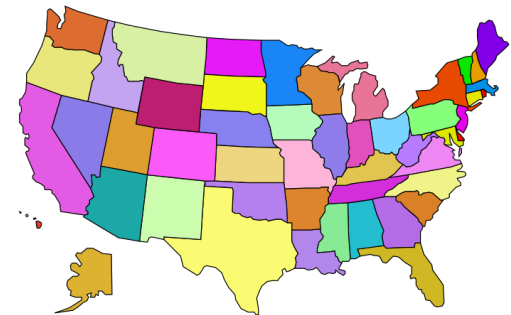
- The CFTC has full regulatory authority over derivatives transactions, including futures, swaps and options, and enforcement authority only over commodities such as oil, cotton, steel and certain digital assets, including Bitcoin and Ether
  - This means that the CFTC can police fraud and manipulation related to these digital assets
- Certain other leveraged or financed digital asset transactions offered to retail customers are also regulated in the same manner as futures contracts
  - SEC-CFTC Joint Statement on Spot Crypto

# THE INTERSECTION OF BLOCKCHAIN & MONEY TRANSMITTER LICENSING (MTL) LAWS

- MTL laws protect consumers
- Typically regulate nonbank entities that:
  - Receive and hold consumer funds, or
  - Issue or sell payment instruments
- Fiat Currency vs. Virtual Currency
- Do you need an MTL license?



- Receive consumer funds
- Issue proprietary tokens or coins
- Potential exemptions
- Challenges
- Active state regulators



## DIGITAL ASSET MARKET CLARITY ACT OF 2025 (OR 2026)

- As passed in the House, this Act would:
- Divide regulatory oversight between the SEC and CFTC, with the adoption of most rules required within one year
- Provide that investment contracts do not include “investment contract assets” (i.e., digital commodities)
- Exempt digital asset issuers from traditional securities registration
- Introduce new CFTC registration scheme for exchanges, brokers, and dealers

# DIGITAL ASSET MARKET CLARITY ACT OF 2025

The term ‘digital commodity’ means a digital asset that is intrinsically linked to a blockchain system, and the value of which is derived from or is reasonably expected to be derived from the use of the blockchain system.

Certain digital assets structured as traditional products (e.g., securities, payment stablecoins, banking deposits, commodities, and pooled investment vehicles) are excluded from this definition.

## When is a digital asset *intrinsically linked* to a blockchain system?

- When the digital asset is directly related to the functionality or operation of the blockchain system or to the activities or services for which the blockchain system is created or utilized, including where the digital asset is:
  - issued or generated by the programmatic functioning of the blockchain system;
  - used to transfer value between participants in the blockchain system;
  - used to access the activities or services of the blockchain system;
  - used to participate in the decentralized governance system of the blockchain system;
  - used or removed from circulation in whole or in part to pay fees or otherwise verify or validate transactions on the blockchain system;
  - used as payment or incentive to participants in the blockchain system to engage in the activities of the blockchain system, provide services to other participants in the blockchain system, or otherwise participate in the functionality of the blockchain system; or
  - used as payment or incentive to participants in the blockchain system to validate transactions, secure the blockchain system, provide computational services, maintain or distribute information, or otherwise participate in the operations of the blockchain system.

# SEC EXAMINATION FOCUS / LESSONS LEARNED

- Your Risk Assessment is key. Our Risk Assessment was heavily relied upon by exam staff to prove our policies were tailored to the unique risks of digital asset.
- Treat all digital assets like securities (at least for now) and fit them within your existing compliance infrastructure.
- Pay special attention to:
  - Trading processes - know how your exchanges trade and document it.
  - What is a trade error. Things such as max decimal points, dust, gas fees, transfer delays between cold wallets and exchange accounts are all new considerations for trade errors.
  - Best execution. Each exchange operates differently (matching on order book vs OTC). Best execution is difficult to measure but attempt is required.
  - Custody – unique system configurations at the custodian/exchange can cause you to have custody. Getting a surprise custody audit for digital assets can be difficult.
  - AML processes
  - Audits – yours and your counterparties (SOC, Pen testing, Cybersecurity, etc.)

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# Considerations for Adoption

# CONSIDERATIONS FOR ADOPTION

- Use of Blockchain for Infrastructure
  - Internally – adoption by fund sponsor/manager
  - Service provider adoption of blockchain
  - Vendor due diligence, integration and oversight
- Product Development
  - Tokenization of existing funds and new products
  - Building products that are compatible with onchain products
- Investment in Digital Assets
  - Stablecoins
  - Tokenized Shares
  - Cryptocurrencies

# WHAT TO DO NEXT / QUESTIONS TO ASK

1. What is the strategic rationale for adopting blockchain or tokenization in our business model?
  - Is this solving a real business problem or creating new efficiencies? Or are we pursuing it primarily as a trend?
2. What legal, regulatory, and compliance risks are we taking on – and how are we managing them?
  - Are we clear on how banking regulation, securities laws, tax codes, or jurisdictional regulations apply to our tokenized assets or blockchain activities?
3. What is our governance framework for blockchain-based operations or investment in digital assets?
  - Who controls smart contracts, token issuance, or access to blockchain infrastructure – and how is that oversight implemented?
  - What is the custodial arrangement for the fund and the tokens? Who manages private keys, how is ownership defined, and what safeguards are in place to protect client and fund assets?
4. Are we building or integrating blockchain systems in a way that ensures scalability, interoperability, and future resilience?
  - Will our infrastructure choices today lock us into a vendor, chain, or protocol that limits us tomorrow?
5. How are we assessing the resilience, security, and regulatory readiness of our blockchain technology or wallet management vendors?
  - Do we understand how these third parties manage key custody, smart contract upgrades, incident response, and compliance obligations – and what risks we're exposed to if they fail?

The background features a dark blue grid pattern. A stylized line graph with a yellow line and blue dots is overlaid, showing an upward trend. The text "What's Next?" is centered in the middle of the image.

What's Next?

## FURTHER DEVELOPMENTS AND WHAT'S NEXT?

- Industry optimism in the U.S. as the federal government takes steps to provide some level of regulatory clarity regarding oversight of digital assets in 2025 and beyond
- A broad array of sophisticated traditional financial services firms that had previously avoided digital assets entirely have become engaged.
- Exchanges filing listing rules for new types of exchange traded products
- New product development is not the only use for blockchain. The technology may rework traditional asset management infrastructure in a number of ways:
  - Tokenization – including of private funds, mutual funds, traditional securities and other real-world assets – effectively puts transfer agency on the chain
  - Operational Opportunities – including recordkeeping, reduction in settlement and clearance times
  - Cost Reduction - Lower intermediary costs by bypassing traditional intermediaries
  - Risk Reduction - by enabling simpler regulatory reporting and providing an immutable audit trail
  - Peer-to-peer – transfers of securities
  - Proxy voting: Allows companies to know in real time who has voted; prevents a person from voting twice
  - Securities lending: The escrow of digital assets held on a ledger could reduce risk in collateral management

# POTENTIAL BLOCKCHAIN USE CASES

- Blockchain has the potential to dramatically change the way we look at banking and securities transaction processing
- Transfer agents in registered investment company, public company space and private fund space
- Proxy voting: Allows companies to know in real time who has voted; prevents a person from voting twice
- Securities lending: The escrow of digital assets held on a ledger could reduce risk in collateral management
- Peer-to-peer transfers of fund interests
- Sharing of information for regulatory purposes AML/KYC: Gain efficiencies by allowing one organization's vetting and verification of a client to be accessed by another organization, without starting the process over

# Washington Update Part 1: Supreme Court Watch and SEC Enforcement

**Trevor Donelan**, Partner & Managing Director, AlixPartners

**Neil Smith**, Partner, K&L Gates

**Stephen Topetzes**, Partner, K&L Gates

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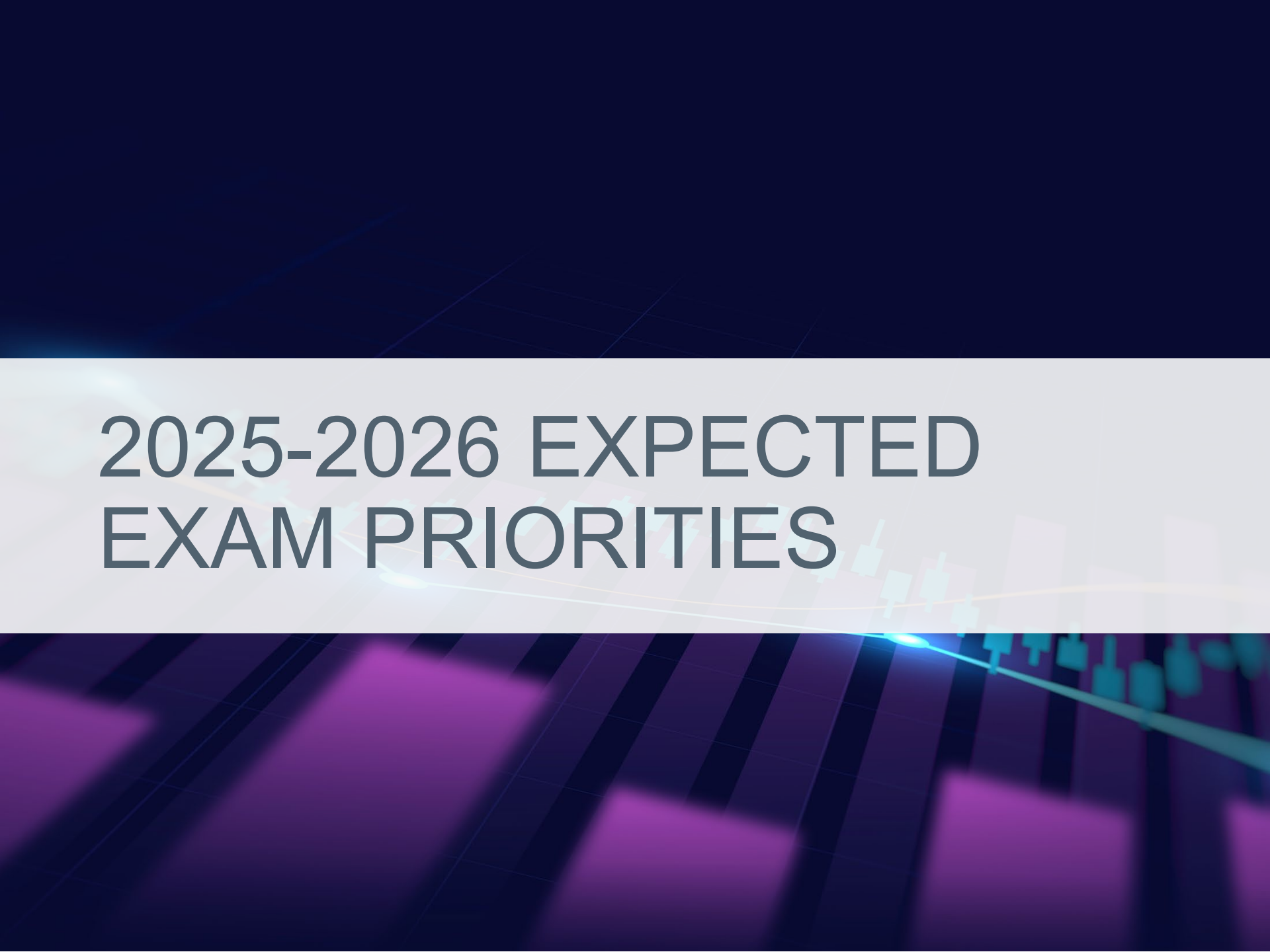
# STATE OF THE SEC AS OF NOVEMBER

# FEDERAL SHUTDOWN AND SEC OPERATIONS

- Most SEC enforcement other than ongoing litigation is paused, with the exception of a few new, non-emergency cases filed:
  - *SEC v. Luckey*, 25-cv-10026 (C.D. Cal.)
  - *SEC v. Le*, 25-cv-02324 (C.D. Cal.)
  - *SEC v. Santarelli*, 25-cv-02375 (C.D. Cal.)
  - *SEC v. Wander*, 25-cv-08565 (S.D.N.Y.)
  - *SEC v. Lichtenstein*, 25-cv-08742 (S.D.N.Y.)
- New cases lacked allegations of ongoing investor harm or motions for emergency relief
  - Only *Luckey* dealt with a statute of limitations issue
- Routine examinations by Division of Examinations are otherwise paused
  - Scheduled meetings or interviews will not occur

# FEDERAL SHUTDOWN AND SEC OPERATIONS

- Division of Trading and Markets and Division of Examinations will not:
  - Review pending filings;
  - Consider new or pending applications or registrations;
  - Provide interpretive advice; or
  - Issue no-action letters.
- Current Focus for the SEC
  - Cases terminated or paused: change in focus
  - Delays – bureaucratic and otherwise
  - Morale and staffing
  - Traditional fraud remains the priority



# 2025-2026 EXPECTED EXAM PRIORITIES

# SEC EXAM PRIORITIES FY 2025

- Investment Advisers
  - Fiduciary duty, compliance program effectiveness, private funds
- Investment Companies
  - Compliance program effectiveness, disclosures, governance, fees and expenses
- Broker-Dealers
  - Reg BI compliance, Form CRS compliance, trading practices
- Information Security and Operational Resiliency
  - Cybersecurity policies and procedures, vendor oversight, incident response
- Crypto and Fin Tech
  - Automated tools and use of AI, recommendations of crypto products
- AML
  - AML procedures and compliance with Bank Secrecy Act, SAR filing, OFAC compliance
- FY 2026 examination priorities are expected to be announced this month.

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# SEC ENFORCEMENT STATISTICS AND TRENDS

# OVERVIEW: ENFORCEMENT (FY 2025)

- Drivers of FY 2025 enforcement trends:
  - Chairman Atkins's pro-business approach
  - Delay in appointment of Director of Enforcement
- Common themes in FY 2025 enforcement:
  - Fewer actions overall;
  - Increased focus on “classic” fraud and retail investor harm;
  - Keeping up enforcement against registered actors; and
  - Continued emphasis on cooperation, self-reporting, and remediation.
- Key Enforcement Cases 2025 – Asset Management / Investment Funds
  - *TZP Management Associates LLC (August 15, 2025)*: Fund adviser failed to offset fund management fees with transaction fees received from portfolio companies as required
  - *North East Asset Management Group, Inc. (June 3, 2025)*: Registered adviser and principal charged in cherry-picking scheme
  - *Meridian Financial, LLC (September 4, 2025)*: Registered adviser charged with marketing rule and compliance violations associated with online advertisements

# SEC ENFORCEMENT STATISTICS (FY 2025)

- 506 total enforcement actions
  - 13% decrease from FY 2024
  - Decline in enforcement actions was driven by second half of FY 2025
- Second half of FY 2025 under Chairman Atkins
  - Increase in cases involving:
    - Cases against individuals
    - Securities offerings allegations
    - Parallel criminal investigations
  - Decrease in cases involving:
    - Financial reporting and disclosures cases
    - Violations of the Foreign Corrupt Practices Act (FCPA)
    - Broker-dealer fraud allegations

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# SEC ENFORCEMENT PRIORITIES

# ENFORCEMENT PRIORITIES UNDER CHAIRMAN ATKINS

## Priorities include:

- “Classic” fraud and retail investor harm
- Registered actors
  - Failure to disclose conflicts of interest
  - Not properly crediting investors’ accounts
  - Custody Rule violations
  - Cherry-picking
  - Marketing Rule violations
  - Fee & expense violations
- Rule 105 of Regulation M
- CCO liability & gross supervision failures

## Priorities exclude:

- ESG
- Recordkeeping and compliance faults
- Registration-related issues
- Crypto products or exchanges
- Off-channel communications
- Whistleblower protection rule violations
- FCPA violations
- Failure to warn of cybersecurity breaches

# ENFORCEMENT APPROACHES: SHIFT IN WELLS PROCESS

- Transparent, cooperative investigation and Wells Process
- Can expect:
  - Longer times to respond to Wells or submit pre-Wells white papers
  - More transparency of case theories, opening of investigative files to defense by Enforcement staff
  - Senior leadership's increased willingness to meet with defense counsel if staff-level negotiations fall short
  - Don't expect multiple meetings as a matter of course, but can expect at least one
- Expected impact on examinations:
  - More constructive engagement with CCOs
  - Lower risk of surprise enforcement referrals

# PARTICULAR FOCUS OF DEREGULATION: CRYPTOCURRENCY

- Commission is voluntarily dismissing lawsuits involving crypto asset-related conduct (e.g., failure to register securities)
  - Continuing, though, crypto enforcement involving allegations of clear fraud
- Consistent with broader Trump administration's reduction of crypto enforcement
  - For example, President Trump's October 2025 pardon of Binance founder, who pled guilty to violating US money laundering laws
    - White House Press Secretary Karoline Leavitt referred to founder's Biden-era prosecution as a "war on cryptocurrency"

# DEREGULATORY AND PROCEDURAL DEVELOPMENTS

- Broad deregulation agenda under the Trump administration
  - Includes launching the “10-to-1” deregulatory mandate to federal agencies.
  - Chairman Atkins: “Make IPOs Great Again”
- Key actions included:
  - Withdrawing 14 Gensler-era rules
  - Extending compliance dates for adopted rules and amendments
- SEC under Atkins has enacted several procedural changes:
  - Easing enforcement and emphasizing the Wells Process;
  - Requiring Commissioner approval for formal investigations;
  - Notifying technical violations prior to enforcement; and
  - Limiting press releases.

# SCOTUS UPDATES

The background features a dark blue gradient with a prominent white horizontal band across the middle. Below the band, there are abstract, colorful geometric shapes in shades of purple, pink, and teal, some appearing as if they are floating or moving. A thin, glowing blue line with a bright point of light at its end extends from the right side of the white band towards the bottom right corner.

# RECENT CERTIORARI DENIALS

- BDO USA LLP v. New England Carpenters Guaranteed Annuity and Pension Funds (2d Cir.)
  - Auditor's misstatement of compliance with PCAOB standards was material under Section 10(b) and Rule 10b-5, even though the audit's substance did not change after compliance
- Pirani v. Slack Technologies (9th Cir.)
  - No standing to sue under Sections 11 and 12(a)(2) for purchasing shares issued under a new NYSE rule allowing companies to offer shares to the public via direct listing
- Barr v. SEC (5th Cir.)
  - Whistleblowers are not eligible to receive whistleblower awards based on proceeds collected by the government in a voluntary bankruptcy proceeding

# ON THE DOCKET

- FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd. (2d Cir.)
  - Whether there is an implied private right of action under Section 47(b) of the Investment Company Act
  - Argument slated for December 10, 2025

# Washington Update Part 2: Regulatory Priorities for Asset Management

**Jamie Peterson**, Managing Director, Iron Road Partners

**Lance Dial**, Partner, K&L Gates

**Pamela Grossetti**, Partner, K&L Gates

**Pablo Man**, Partner, K&L Gates

# PANEL AGENDA

- Regulatory Stuffs
  - SHUTDOWN!!!
  - SEC Agenda / rules coming online
- Examination Issues for Retail Alts
- AI in financial services
- Happy Birthday Marketing Rule! 
- Questions & Answers

# SHUTDOWN!

- Under the Antideficiency Act, federal agencies must cease non-essential operations
- Impact on SEC:
  - The SEC will not:
    - review of registration statements;
    - approve of adviser registrations;
    - process exemptive relief; or
    - issue no action relief.
  - The SEC may:
    - Carry out emergency actions, maintain systems (e.g., EDGAR), and water plants.
- FINRA still open for business (except rule amendments)

# SEC AGENDA

- It's a “new day” at the SEC
- June: withdrew 14 proposals
- Ceases climate risk disclosure defense ... maybe
- September: New Reg Flex with 23 items. :
  - Access to private investments;
  - Crypto / Blockchain (7 items);
  - Efficiency
    - Rule 17a-7!!!;
    - Custody Rules;
    - Rule 144
  - Proxy voting / shareholder proposals
  - Dealer definition

# REG FLEX – DETAILS

- Significant new items
  - Asset-backed securities registration and disclosure enhancements
  - Increasing availability of Rule 144 safe harbor
  - Expanding accommodations for Emerging Growth Companies
  - Modernizing the shelf registration process
  - Expanding exempt offerings for private companies
  - Rationalizing disclosure practices for public companies
  - Revising the “small entity” definition
  - Dealer definition clarifications
  - Modernizing shareholder proposal rules
- Items removed from the Fall 2024 Reg Flex Agenda
  - Safeguarding Advisory Client Assets
  - Fund Fee Disclosure and Reform
  - Use of Predictive Data Analytics
  - Exchange-Traded Products
  - Enhanced ESG Disclosures
  - Cybersecurity Risk Management
  - Outsourcing

# NEW RULES COMING ONLINE

- Regulation S-P Amendments (large entities: December 3, 2025; all other covered institutions: June 3, 2026)
  - Broader Definition of Customer Information
  - Adoption of Incident Response Program
  - Notification Requirements
  - Service Provider Oversight
  - Recordkeeping and Annual Privacy Notice Requirements
- N-PORT Amendments (delayed to November 17, 2027 for larger entities; May 18, 2028 for others)
- N-CEN Amendments (effective November 17, 2025)
  - Identify liquidity service providers
- Form PF (delayed (again) until October 1, 2026)

# SEC UPDATE: EXAMINATIONS

## Drivers

Direction remains partially undefined

Significant reduction of resources

Focus on democratization of private assets

Permanent Director Not Yet In Place



## Result

- Examinations still commencing, are more focused but continue to be aggressive and focused on nuanced / technical issues.
- Slower moving examinations and fewer examinations due to lack of resources.
- Significant expertise has been lost, so some examinations may miss the mark.
- Sweeps focused on retail products: BDCs / Interval Funds

# REGULATORY LANDSCAPE FOR GENAI

In the absence of specific SEC rulemaking or guidance, the use of GenAI should align with existing, technology neutral compliance requirements for investment advisers, including:

- **Fiduciary Duty**
  - Duty of loyalty and care
  - Model risk management
- **Privacy Considerations**
  - Protection of proprietary information and client data
- **Vendors and Service Providers**
  - Monitoring, oversight, and due diligence
- **Marketing Rule Compliance**
  - SEC “AI-washing” enforcement
- **Books and Records**
  - Consideration of whether output of GenAI is a required book or record
- **Written Policies and Procedures**
  - Implementing policies and procedures reasonably designed to prevent violations

# MARKETING RULE BIRTHDAY

- Happy (belated) birthday! (Nov. 4, 2025)
- FAQ – We now know when to yield
- Predecessor Performance – Still open
- Substantiation – Common issue

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