Securities
Insight

Private Investors Pick Up Slack for Plummeting SEC Enforcement

July 30, 2026, 3:30 AM CDT

The Securities and Exchange Commission is drastically reducing enforcement of the federal securities laws even as the SEC encourages companies to block private securities litigation, including through forced arbitration.

By threatening to deprive investors impacted by corporate misconduct of meaningful recoveries, these developments confirm the importance of robust investor vigilance and private enforcement of the federal securities laws.

Declining Enforcement Efforts

In the past 18 months, the SEC's enforcement efforts have significantly declined. This appears to be by design. Commission Chair Paul Atkins recently acknowledged: "Over the past year, the Commission has put a stop to regulation by enforcement" as it recenters enforcement on the agency's "core mission."

The SEC's published metrics reveal a clear trend of both declining enforcement actions and reduced distributions to investors. For fiscal years 2019 to 2024, the SEC filed an average of 734 enforcement actions and distributed an average of $755 million to harmed investors each year. In fiscal year 2025 (ending Sept. 30, 2025), however, the SEC filed 456 total enforcement actions and distributed just $262 million to harmed investors — 38% and 65% declines, respectively, from the SEC's 2019-2024 averages.

While the SEC has stated that its current enforcement efforts "focus on protecting the interests of retail investors," this appears to target narrow types of misconduct like Ponzi schemes and affinity frauds — not misstatements that impact the share prices of large, widely traded public companies. As a result, the SEC's shift threatens to leave the most significant and far-reaching securities violations unaddressed as a matter of federal enforcement.

As the SEC has scaled back enforcement, it has encouraged companies to impede private securities litigation. One prominent example is the SEC's September 2025 "policy statement" greenlighting mandatory arbitration provisions for federal securities claims in initial public offerings.

As former Commissioner Caroline A. Crenshaw explained, such mandatory arbitration would strip investors of due process and their ability to pursue claims in court. Other commentators have questioned such provisions' legality based on the federal securities laws' anti-waiver provisions, state law, due process, and other grounds.

Nonetheless, companies are beginning to adopt these provisions. For example, SpaceX's registration statement for its IPO — the largest in history — attempts to funnel shareholder claims to arbitration. The SEC's endorsement of mandatory arbitration for federal securities claims threatens to deprive investors of their most effective response to corporate fraud.

Shareholders' Critical Role

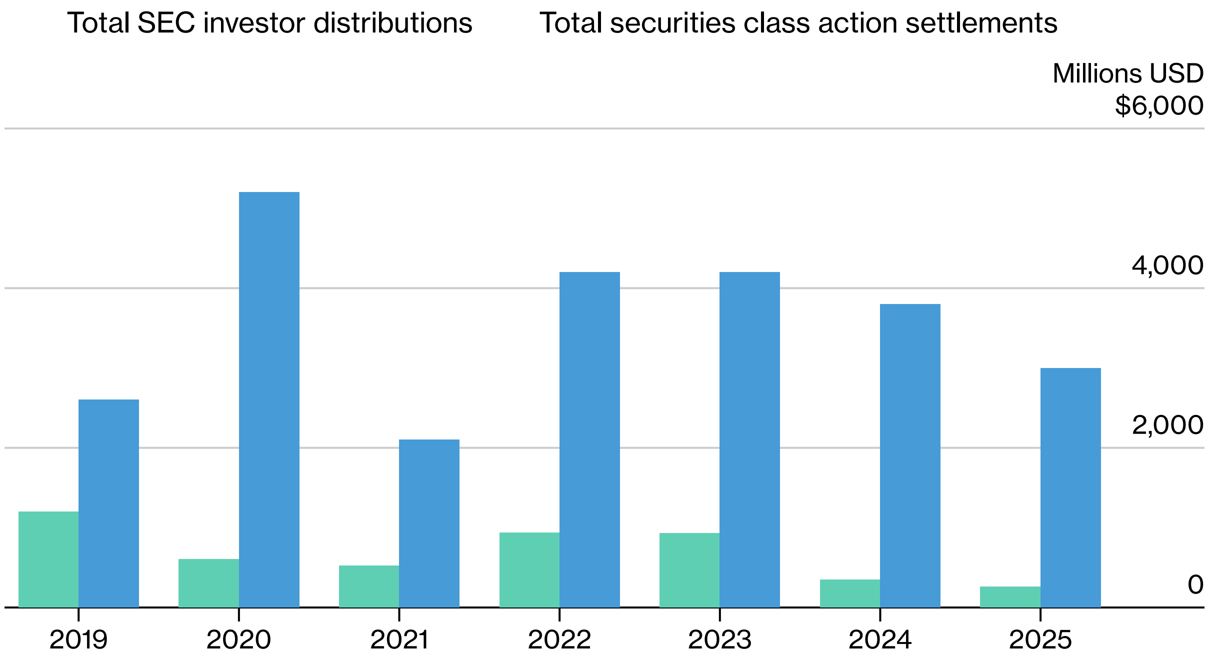
Given the SEC's declining enforcement efforts, private enforcement through securities class actions serves an increasingly important role in protecting investors and deterring misconduct. Over a decade ago, academic research concluded that "private plaintiffs' attorneys, if anything, provide greater deterrence against more serious securities law violations compared with the SEC."

Empirical data supports that conclusion. Recoveries in private securities litigation have consistently exceeded the SEC's distributions to investors. From 2019 to 2025, SEC investor distributions have averaged $685 million annually, while private securities class action settlements have recovered an average of $3.6 billion annually before accounting for attorneys' fees. That means recoveries in private securities class actions have been, on average, 5.2 times as large as the SEC's distributions to investors.

Significantly, this ratio has recently increased, as shown below, reaching 11.5:1 in 2025. Put another way, private securities litigation recovered $11.5 million for every $1 million the SEC distributed to investors. Given the SEC's declining enforcement efforts and the lag between enforcement actions and investor distributions, this ratio is likely to continue increasing in 2026.

Private Class Settlements Dwarf SEC Enforcement

Private securities class actions have recovered multiples of what the SEC distributes to investors in enforcement cases



Source: SEC, Cornerstone Research

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The superior effectiveness of private securities class actions is also borne out in individual cases. For example, our firm was lead counsel in an investor class action against Granite Construction that yielded a $129 million settlement. By contrast, the SEC's enforcement actions only obtained a $12 million settlement from Granite and less than $2 million from Granite's CEO and CFOs — none of which was returned to investors. For investors who suffer losses from misconduct at the hands of public companies, private enforcement is often the only practical means of recovery.

In summary, the SEC's declining enforcement efforts and policy shifts underscore the importance of federal securities class actions in protecting investors' rights and deterring corporate misconduct.

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