

Recent SDNY Remarks Signal Renewed Focus on Private Fund Adviser Valuations

December 2, 2025

Federal authorities appear primed to probe private fund advisers' valuations for potential fraud. Based on recent remarks made by U.S. Attorney for the Southern District of New York and former U.S. Securities and Exchange Commission ("SEC") Chair Jay Clayton, it appears that there is increased regulatory and enforcement interest in how private fund advisers value their portfolio assets, and particularly in whether private fund advisers' valuations are calculated in ways that result in increased fees for investors.¹

Enforcement cases based on valuation methodologies and valuation of illiquid assets have historically been difficult to bring even as civil cases—where they have most frequently taken the form of probing the adequacy of relevant disclosures and policies and procedures. Criminal cases, which carry an even higher evidentiary burden and have tended to involve parallel civil actions and charges against culpable individuals, have generally involved schemes to materially inflate valuations and artificially inflate a fund's net asset value ("NAV"), resulting in overstated performance and excess management fees. There have been a handful of such cases over the past several years, but recent coverage around bankruptcies of certain private credit borrowers, reports of opened probes, and public statements like those recently made by Clayton signal a renewed focus, which should serve as a reminder for firms to review their valuation methodologies, related policies and procedures, and related disclosures, particularly to address potential conflicts of interest and instances where illiquid assets are transferred between affiliated funds.

Background

U.S. Attorney for the Southern District of New York and former SEC Chair Jay Clayton recently expressed interest in how private fund advisers value private assets and potential regulatory and enforcement appetite for cases that involve private fund

¹ Sridhar Natarajan, *Private Credit's Sketchy Marks Get Warning Shot From Top DOJ Cop*, Bloomberg (Nov. 25, 2025), <https://www.bloomberg.com/news/articles/2025-11-25/private-credit-s-sketchy-marks-get-warning-shot-from-wall-street-s-top-cop> ("Clayton Bloomberg Interview").

advisers “cherry-picking prices” that benefit advisers through higher fees at the expense of their funds’ investors.

Valuation is not an exact science and there can be differences in how competing firms value private assets in their portfolios, particularly where assets lack observable market data points. Nevertheless, considerable difference in assigned values, particularly with respect to assets that are transacted between firm affiliates, like continuation vehicles—and particularly within the context of increasing activity in the private credit market in recent years—appear to be garnering increased regulatory and enforcement interest. For example, Clayton stated during his Bloomberg interview that regulators are monitoring how managers assign prices and that “an area ‘to watch out for is marks on assets with no trading when things are moved around from vehicle to vehicle.’ . . . ‘If someone is moving a position from Fund A to Fund B and if you can just name a price internally, the opportunity to pick a price that benefits the house over investors is pretty high.’”² He added that “[t]here are definitely some areas of concern . . . in private markets” and that “[p]eople should know that the financial regulators and the department are looking at those.”³

While federal regulatory and enforcement authorities’ focus on valuations is certainly not new,⁴ this renewed emphasis has recently been reflected in a variety of sources. For example, this focus is consistent with recent priorities announced by the SEC’s Division of Examinations that listed among the “developing areas of interest” to monitor registered investment companies “that use complex strategies and/or have significant holdings of less liquid or illiquid investments (e.g., closed end funds), including any associated issues regarding valuation and conflicts of interest.”⁵ It also tracks with questions raised earlier this year by Representative Elise Stefanik and fits within the narrative of recent bankruptcies of borrowers in the private credit market, including subprime auto lender Tricolor.⁶

² *Id.*

³ *Id.*

⁴ See, e.g., Austin Weinstein, *SEC’s Top Cop Concerned About Private Credit Valuations, Opacity*, Bloomberg (June 27, 2024), <https://www.bloomberg.com/news/articles/2024-06-27/sec-s-top-cop-concerned-about-private-credit-valuations-opacity>.

⁵ 2026 Examination Priorities at 6, Division of Examinations, U.S. Securities and Exchange Commission (Nov. 17, 2025), <https://www.sec.gov/files/2026-exam-priorities.pdf>; see also Debevoise & Plimpton LLP, 2026 SEC Division of Examinations Priorities (Nov. 21, 2025), <https://www.debevoise.com/insights/publications/2025/11/2026-sec-division-of-examinations-priorities>.

⁶ See, e.g., Jonathan Weil, *Private Equity Caught in Crosshairs of Elise Stefanik’s Attack on Harvard*, WSJ (July 1, 2025), https://www.wsj.com/finance/investing/private-equity-caught-in-crosshairs-of-elise-stefaniks-attack-on-harvard-e5088539?gaa_at=eafs&gaa_n=AWEtSqdsA_iPn_kCnk6tZoXt1VaK00lWn3DQPILbPKrWip6fNOCvMMkCx20a&gaa_ts=692b91cc&gaa_sig=CI0ptflgOf171qmM0ydhkZdusr8Rft0nUjlHb4xHMIew8WUCpifFibGKq8g6YHEmjs438Njli-1sSAcgYZLkMw%3D%3D; Amelia Pollard et al., *US justice department probes fraud allegations at*

Sample of Relevant Past Enforcement

While cases probing valuation methodologies and private fund managers' valuations have historically been difficult to bring, there are a number of SEC and Department of Justice ("DOJ") cases that tend to highlight some recurring themes.

Criminal cases have generally alleged substantive or conspiracy violations of securities fraud, investment adviser fraud, or wire fraud in connection with schemes to materially inflate valuations that artificially overstate fund profits and a fund's NAV, thereby leading to fewer redemptions and the charging of management and performance fees on an inflated asset base. Criminal cases, which are subject to a higher burden of proof, involve significant individual misconduct with compelling evidence of intent coming from a cooperator or communications reflecting bad faith, and have in some cases involved complicit third parties (e.g., purportedly independent valuation agents). These criminal cases charged by U.S. Attorney's Offices have also often involved charges against culpable individuals associated with the investment advisers and parallel SEC civil enforcement actions generally alleging scienter-based fraud through material misrepresentations and omissions under the antifraud provisions of the federal securities laws. For example:

- **Infinity Q Capital Management, LLC.** In June 2023, the SEC charged New York-based investment adviser Infinity Q with materially inflating reported NAVs for its mutual funds and hedge funds as part of an overvaluation scheme conducted through its founder and chief investment officer ("CIO").⁷ Both DOJ and the SEC charged the firm's CIO and another former senior officer for their roles in the scheme. According to DOJ and the SEC, Infinity Q represented to its investors that it valued certain OTC positions based on fair value and that it used an independent third-party valuation service to calculate the fair value. The CIO, however, manipulated the valuation process, including by mismarking positions by altering code and making false entries in the third-party pricing service system, which caused the third party to report artificially inflated values, which in turn overstated performance and fees. These positions were later sold for significantly less than their purported market values in the third-party system and resulted in substantial losses to the funds' investors. Among other allegations, the CIO fabricated and produced notes to the SEC staff purporting to be from monthly valuation committee meetings

subprime car lender Tricolor, Financial Times (Sept. 10, 2025), <https://www.ft.com/content/8055b8e6-39ea-4012-a60a-a2c2f43ee7e4>.

⁷ SEC Release No. 25750, *SEC Charges Infinity Q Investment Adviser with Fraud; Seeks Monitor to Oversee Return of Remaining Funds to Harmed Investors of the Infinity Q Private Fund* (June 16, 2023), <https://www.sec.gov/enforcement-litigation/litigation-releases/lr-25750>.

that were referenced in investor materials. The CIO pleaded guilty in 2022, agreed to forfeit approximately \$22 million, and was sentenced to 15 years in prison.⁸

- **Premium Point Investments LP.** In May 2018, the SEC charged New York-based investment adviser Premium Point, its founder/CEO/CIO, and several others in connection with a scheme to inflate the value of private funds by more than \$100 million. Both DOJ and the SEC charged the founder and a former trader, who were each convicted at trial and sentenced to 50 months and 40 months in prison, respectively. According to the government's charging papers, the scheme involved the adviser sending trades to a "friendly" broker-dealer in exchange for receiving inflated price quotations for mortgage-backed securities. It also involved the adviser routinely imputing its own mid-point valuations, even when it could obtain them from brokers, causing the funds to report materially overstated NAVs, which enabled the adviser to charge higher management and performance fees and to ward off redemptions. The adviser used performance targets to stay competitive with peer firms, regardless of actual performance and market conditions, and to meet the targets traders allegedly backed into marks, which they could get from friendly brokers at "essentially any price."⁹
- **Visium Asset Management LP.** In May 2018, New-York based investment adviser Visium agreed to pay more than \$10 million to settle SEC charges that it falsely inflated the value of securities held by funds Visium advised, which caused the funds to overstate their NAV and the liquidity of the fund's holdings, which led to inflated fees to the adviser. The portfolio managers were criminally charged with securities and wire fraud in connection with the scheme and related insider trading and were convicted or pleaded guilty, and the adviser's CFO settled charges that he did not reasonably supervise the portfolio managers by appropriately responding to red flags of their mismarking. According to the government's charging documents, two of the adviser's portfolio managers solicited and relied upon sham price quotes from employees of "friendly" broker-dealers to improperly override prices calculated by the fund's administrator. They also identified relatively illiquid securities and created a list reflecting the prices at which they wanted each security to be marked and received price quotes from the brokers that they had themselves dictated to the

⁸ DOJ Press Release No. 23-129, *Founder And Former Chief Investment Officer Of Infinity Q Sentenced To 15 Years In Prison* (Apr. 10, 2023), <https://www.justice.gov/usao-sdny/pr/founder-and-former-chief-investment-officer-infinity-q-sentenced-15-years-prison>.

⁹ DOJ Press Release No. 19-404, *Premium Point Investments Founder And CEO Anilesh Ahuja Sentenced To 50 Months In Prison Following Conviction At Trial For Securities Mismarking Scheme* (Nov. 26, 2019), <https://www.justice.gov/usao-sdny/pr/premium-point-investments-founder-and-ceo-anilesh-ahuja-sentenced-50-months-prison>; SEC Litigation Release No. 25890, *SEC Obtains Judgment Against Former Hedge Fund Trader Related to Hedge Fund Valuation Scheme* (Nov. 8, 2023), <https://www.sec.gov/enforcement-litigation/litigation-releases/lr-25890>; Complaint at 9, *SEC v. Premium Point Investments LP*, Case No. 18-cv-04145 (S.D.N.Y. May 9, 2018), <https://www.sec.gov/files/litigation/complaints/2018/comp-pr2018-83.pdf>.

brokers, giving the price quotes only the appearance that they had come from an independent source in compliance with the fund's existing valuation procedures.¹⁰

The SEC's civil cases are subject to a lower burden of proof. Those that have not had a parallel criminal component in particular have most frequently probed whether an investment adviser adopted and implemented written valuation policies and procedures that were reasonably designed in light of the adviser's business and or the adequacy of relevant disclosures under the negligence-based antifraud provisions of the Investment Advisers Act of 1940 (i.e., Sections 206(2) and Section 206(4) and Rule 206(4)-8 thereunder (and the compliance rule (Section 206(4) and Rule 206(4)-7) thereunder)). Because the alleged failure to adequately value assets can in turn impact the calculation of fees and performance reporting, the SEC has also focused on fee-calculation cases where valuations determine the fee base. For example:

- **Sciens Investment Management LLC and Sciens Diversified Managers, LLC.** In May 2023, New-York based investment adviser Sciens agreed to pay a \$275,000 penalty to resolve SEC charges under the compliance rule for failure to implement written valuation policies and procedures that were reasonably designed in light of the nature of its funds' investment mandate, which primarily invest in assets where there is often no readily available pricing information. According to the SEC's order, the adviser's policies provided only minimal guidance regarding how to value the investments in accordance with GAAP and lacked procedures designed to promote consistency in the valuation process. The SEC's order also found that because the adviser's auditor provided qualified opinions as a result of being unable to obtain

¹⁰ SEC Press Release No. 2018-81, *Hedge Fund Firm Charged for Asset Mismarking and Insider Trading* (May 8, 2018), <https://www.sec.gov/newsroom/press-releases/2018-81>; Order, *In re Visium Asset Management, LP*, Securities Act Release No. 10494 (May 8, 2018), <https://www.sec.gov/files/litigation/admin/2018/33-10494.pdf>; DOJ Press Release No. 17-174, *Former Visium Portfolio Manager Stefan Lumiere Sentenced To 18 Months In Prison Following Conviction At Trial For Securities Mismarking Scheme* (June 14, 2017), <https://www.justice.gov/usao-sdny/pr/former-visium-portfolio-manager-stefan-lumiere-sentenced-18-months-prison-following>. See also DOJ Press Release, *Platinum Partners' Founder And Chief Investment Officer Among Five Indicted In A \$1 Billion Investment Fraud* (Dec. 19, 2016), <https://www.justice.gov/usao-edny/pr/platinum-partners-founder-and-chief-investment-officer-among-five-indicted-1-billion>; SEC Press Release No. 2016-267, *SEC Charges Platinum Funds and Founder With Defrauding Investors* (Dec. 19, 2016), <https://www.sec.gov/newsroom/press-releases/2016-267> (December 2016 DOJ and SEC charges against Platinum Partners New-York based investment advisers and several executives in connection with scheme to inflate illiquid and privately-held assets to extract more than \$100 million in management fees); Order, *In re Edward J. Strafaci*, Securities Exchange Act Release No. 50422 (Sept. 22, 2004), <https://www.sec.gov/enforcement-litigation/administrative-proceedings/34-50422> (October 2003 DOJ and SEC charges against a portfolio manager at New York-based investment adviser Lipper & Company in connection with making materially false and misleading statements to investors about valuation of fund's portfolio).

appropriate evidence supporting the fair value of certain assets, the adviser was on notice that its valuation procedures may have been insufficient.¹¹

- **AlphaBridge Capital Management.** In July 2015, Connecticut-based investment adviser AlphaBridge agreed to pay \$5 million to resolve SEC charges that the adviser and its two owners inflated the prices of thinly-traded securities held by funds it managed, including by misrepresenting to investors, its administrator, and its auditor that the firm obtained independent price quotes when it instead dictated its internal valuations to broker-dealers. The inflated valuation of residential mortgage-backed securities caused the funds to pay higher management and performance fees. According to the SEC's order, the adviser's auditor asked to speak directly to the third party as the adviser's prices increasingly diverged from other valuation sources, and the adviser agreed but "scripted the registered representative's responses to the auditor's inquiries, further misleading the auditor and the funds' investors."¹²

Takeaways

In light of public statements like those recently made by Clayton, fund managers can expect that their valuations will be subject to heightened scrutiny, with particular focus on participants in the private credit space and on advisers that transfer less liquid assets between affiliates. This is particularly so given the increased retailization of private funds where investors will be subscribing or redeeming more frequently based on NAVs that contain private asset marks. Below are some tips/takeaways for consideration to help firms withstand increased scrutiny amid potentially heightened enforcement risk.

- Take steps to ensure that adequate valuation policies and procedures and robust accounting controls are in place, that they are reasonably designed and incorporate data points from independent third-party valuation agents, that those policies and procedures are followed in practice and documented, and that the compliance function is conducting relevant testing.
- Adopt and consider ways to improve the disclosure process to better ensure that potential material risks are escalated to relevant management for disclosure consideration and that disclosures adequately reflect the risks related to valuations of

¹¹ Order, *In re Sciens Investment Management, LLC and Sciens Diversified Managers, LLC*, Investment Adviser Act Release No. 6315 (May 24, 2023), <https://www.sec.gov/files/litigation/admin/2023/ia-6315.pdf>.

¹² SEC Press Release No. 2015-134, *SEC Charges Hedge Fund Advisory Firm With Conducting Fraudulent Fund Valuation Scheme* (July 1, 2015), <https://www.sec.gov/newsroom/press-releases/2015-134>; Order, *In re AlphaBridge Capital Management, LLC*, Investment Advisers Act Release No. 4135 (July 1, 2015), <https://www.sec.gov/files/litigation/admin/2015/ia-4135.pdf>.

assets, particularly when transferred between affiliated entities. Prior valuation cases underscore that mismatches between disclosures and actual practice, including related to the robustness of valuation procedures, are cases enforcement authorities are willing to bring.¹³

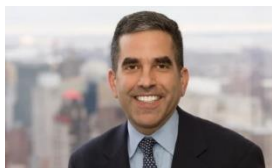
- Take steps to ensure that the valuation methodologies being utilized are appropriate for the investment adviser's particular business and risk profile and that the methodologies are applied consistently. Regulators are skeptical when there is inconsistency in approaches.¹⁴
- There is often a tension between relying on independent valuation expertise while also acknowledging that the investment team has the best understanding of the investment and the market. That tension is usually resolved through some combination of the two working together, but striking that balance is always challenging and warrants particularly close attention.

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Please do not hesitate to contact us with any questions.

¹³ Several prior cases have specifically focused on instances where advisers affirmatively misrepresent a certain level of reliance upon third-party valuations. For example, in March 2021, the SEC charged former fund managers at Indiana-based investment adviser Foundry Capital Group with misleading investors about fund holdings and valuation procedures, including by determining the value of certain fund holdings at cost despite representing to investors that the adviser would obtain independent valuations. See, e.g., SEC Press Release, *SEC Charges Former Private Fund Managers for Disclosure and Management Failures, and Investment Adviser with Failing to Disclose Conflicts of Interest* (Mar. 24, 2021), <https://www.sec.gov/enforcement-litigation/administrative-proceedings/ia-5707-s>.

¹⁴ For example, in July 2019, a portfolio manager at a Connecticut-based fund adviser was charged with mispricing investments for a private fund, which artificially inflated fund profits, overstated the fund's monthly NAV in periodic statements, inflated management fees, and led to \$600,000 in excess compensation to the portfolio manager. The SEC found that the portfolio manager inconsistently used valuation methods (for example, different discount curves) for similar assets, which led to unsubstantiated profits. Order, *In re Swapnil Rege*, Investment Advisers Act Release No. 5303 (July 18, 2019), <https://www.sec.gov/files/litigation/admin/2019/ia-5303.pdf>; SEC Press Release No. 2019-135, *SEC Charges Portfolio Manager with Mispricing Fund Investments* (July 18, 2019), <https://www.sec.gov/newsroom/press-releases/2019-135>.



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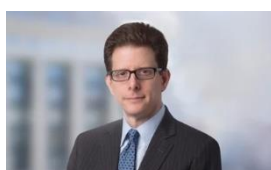
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