ALERT MEMORANDUM

Deny With Care: SEC Rescinds Settlement "Gag Rule," Creating Risks and Opportunities for Settling Defendants

May 19, 2026

Yesterday, the Securities and Exchange Commission rescinded its so-called "gag rule," which for fifty years had prohibited a settling defendant from publicly denying the allegations in a settled SEC Enforcement action.[1] The policy shift has received significant media attention, but we believe it will have little effect on the experience of most individuals and entities facing SEC investigation, many of whom are keen to resolve an investigation and move on without drawing additional attention to themselves. But the change does create potential pitfalls for those trying to resolve SEC investigations, and heightens the need to think strategically when negotiating resolutions and pursuing public denials of wrongdoing. We have investigated, settled, and litigated numerous SEC enforcement investigations, both on behalf of the agency and in private practice. Outlined below are some of the potential knock-on effects we see from this policy change.

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[1] *See* Press Release: SEC Rescinds Policy Regarding Denials of Settlements in Enforcement Actions (May 18, 2026) *https://www.sec.gov/newsroom/press-releases/2026-45-sec-rescinds-policy-regarding-denials-settlements-enforcement-actions*.

Background

Under the old policy, SEC enforcement settlements were required to be entered on a "no-admit/no-deny" basis. The SEC would publish a charging document describing conduct that allegedly violated the securities laws, and the defendant would consent to judgment without having to admit the truth of the allegations underlying the alleged violations. But the defendant also would not be allowed to publicly deny them, upon the theoretical threat of further sanctions, including undoing the settlement. Critics of this rule have long argued that it represses the freedom to speak out against the Government, reduces transparency, and undermines regulatory integrity.[2] When the SEC announced it was rescinding the gag rule, it noted that there was no known instance of it actually being enforced. Recent legal challenges to the rule so far have been unsuccessful. Both Chair Paul Atkins and Commissioner Hester Peirce made statements supporting the rule rescission, asserting that criticism of the agency would be good for transparent markets.[3] The policy change brings the SEC in line with most federal agencies, which often allow no-admit settlements without restricting the defendant's public denials. The policy does not restrict the SEC's ability to require that a defendant make factual and legal admissions when settling, which is done very rarely. The SEC stated that it will not enforce existing no-deny provisions that have already been entered. The rescission of the mandatory rule does not prevent defendants from entering into a settlement with the SEC on a "no-admit/no-deny" basis going forward.

On paper, the policy change is a boon for those under investigation and no doubt the Commission will come under criticism from some quarters for taking action that favors defendants. But would-be defendants still will need to think strategically to make sure that the right to deny SEC allegations works in their favor and not against them, and should get advice from counsel with experience crafting SEC settlements. Here are some things to look out for:

— **The wording of charging documents still matters tremendously.** SEC settlements result in a publicly filed charging document, usually an order instituting administrative proceedings and sometimes a federal district court complaint and final judgment. While the Commission approves settlements and in many cases reviews the charging document, the Enforcement Division staff play an outsized role in shaping the wording of the SEC's allegations, which in the administrative context are called "findings." These documents carry the weight of a federal agency and can be widely reported on by media outlets, even when the SEC does not publicize the settlement with a press release, as it sometimes does. In the past, settling defendants have haggled with the SEC staff over the charges and remedies they will face, such as money penalties, and also over the wording of the charging document. A defendant will not have a free hand to re-write the allegations, but typically can negotiate to omit especially sensitive or salacious allegations. As a result, settled complaints are often far more watered down than the "war complaints" the SEC files against a litigating defendant, which contain the SEC's most serious allegations and strong wording calculated to catch the eye of the judge, jury, and press. Preventing such allegations from ever being made is far better than denying them. If the settling defendant's new-found right to deny the SEC's allegations makes the Enforcement staff less willing to make concessions on their wording, on the grounds that the defendant is free to tell his own story, the result will be a net negative for some defendants. Public perception is not the only thing at stake: settlements often contain an order to cease-and-desist from certain violations of the law,

[2] *See, e.g.*, Commissioner Hester M. Peirce, Statement: Unsettling Silence: Dissent from Denial of Request for Rulemaking to Amend 17 C.F.R. § 202.5(e) (Jan. 30, 2024), https://www.sec.gov/newsroom/speeches-statements/peirce-nand-013024.

[3] *See id.;* Press Release: Somewhere Between Cacophony and Euphony (May 18, 2026) https://www.sec.gov/newsroom/speeches-statements/peirce-statement-settlements-enforcement-actions-051826.

and the allegations in the charging document, whether denied or not, outline what the SEC might consider to be a violation in the future. Allegations thus have some forward-looking effect and do not solely relate to the past. Would-be defendants should insist on continuing to negotiate these points.

— **Public denials still carry risk and should be part of a thoughtful public relations and legal strategy.** Just because public denials are no longer prohibited by the gag rule does not mean they are risk-free. Any public statement by a settling defendant can be used against it by state regulators, plaintiffs' lawyers, and shareholders, who will be watching closely. In addition, if denials are not just backward-looking but take the form of statements about how a defendant will operate its business in the present or future, they may come under fresh scrutiny if the SEC considers them to be a new, materially misleading statement and could also provide fodder for future private lawsuits. Denying some specific allegations may also be taken as an admission that other allegations are true. Our preliminary take, therefore, is that denials should be factual, thoughtful, and consistent with the defendant's prior statements on the topic.

— **Regulated entities have other stakeholders and should keep them in mind when considering public denials.** A public company has directors, external auditors, and shareholders who may read an Enforcement settlement and ask whether the company has remediated the issues that led to the settlement and whether the company has the right tone at the top. Public denials by the company or its management should keep that in mind. So too should broker-dealers and other financial institutions, who may also answer to FINRA, exchanges, and other regulatory organizations.

— **The SEC has a bigger megaphone than many defendants.** The SEC has a professional press staff and devoted media coverage, especially from financial media outlets. If they call a press conference, people will come. The efficacy of a defendant's right to deny allegations will turn on the size of its megaphone. A defendant that wants to make sure its denials receive equal attention to the SEC's allegations will need to engage in a thoughtful media strategy – which may be difficult for many defendants to do and of course may have the negative effect of further drawing attention to the case. Plus, while we would like to think that government regulators will not act vindictively, "repeat player" defendants – like global financial institutions that are likely to receive future inquiries from the SEC – need to protect their flank against future retribution that may be subtle, but damaging, to the enterprise.

— **Winning is still better than denying.** It's nice to be able to deny SEC allegations, but it's even better if the SEC never makes the allegations. Entities and individuals under investigation can increase the chances of closing an investigation outright by engaging counsel who can establish a relationship of credibility with investigative staff from the outset; educate the staff on key factual and legal issues, which may include helping them understand a complex industry, accounting rule, or financial transaction; and knowing when and how to forcefully advocate in a way that highlights that a contested enforcement action is not consistent with SEC priorities or carries untenable litigation risk for the SEC. And counsel who have a proven ability to litigate and win SEC cases have particular credibility when discussing the litigation and programmatic risks to the agency of pursuing cases before a judge or jury. If the SEC insists on bringing an enforcement action with allegations that the defendant thinks are simply false, a win in court will provide far better vindication than a debate in the media. Wins don't come easy—they are built on a factual record and legal strategy that must be developed from the earliest stages.

The bottom line is that getting rid of the gag rule is nice in theory, but may not have a material impact on SEC practice. And, if defendants fail to thoughtfully chart out the pros and cons of denying settled conduct, those denials could come back to bite them in ways

they may not have anticipated. In some cases, denials may make sense. But defendants should think strategically to make sure their conduct following the rule change does not do them more harm than good.

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