

SEC DIVISION OF ENFORCEMENT NO LONGER RECOMMENDING SETTLEMENT OFFERS CONTINGENT ON WAIVERS

Feb 12, 2021

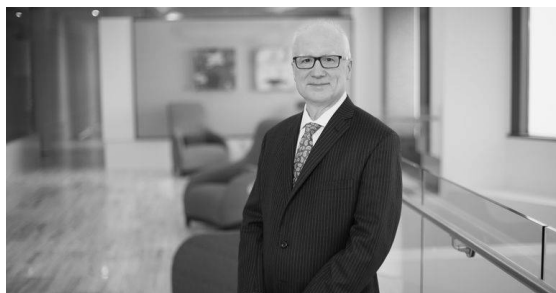
In a [Statement](#) released on February 11, 2021, Acting SEC Chair Allison Herren Lee announced that, in a return to the longstanding practice of the SEC Division of Enforcement (the “Division”), the Division will no longer recommend a settlement offer conditioned on the grant to the company of a waiver from automatic disqualifications triggered by certain securities law violations and sanctions. Such automatic disqualifications can, for example, prevent a company from being considered a Well-Known Seasoned Issuer (WKSII), engaging in certain private securities offerings under Rule 506 of Regulation D, and serving in certain capacities for an investment company.

In taking this action, Acting Chair Lee noted that while in many instances a waiver may be appropriate, the waiver determination should, as a policy matter, be made separately from considerations relating to the settlement of an enforcement case. She further noted that waivers should not be used as a bargaining chip in settlement negotiations, and that reinforcing this critical separation ensures that both processes are fair and that consideration of requested waivers is “forward-looking and focused on protecting investors, the market, and market participants from those who fail to comply with the law.” Going forward, waiver requests will be reviewed by the SEC’s Divisions of Corporation Finance and Investment Management under standards separate from the law enforcement mandate.

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