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SEC RESCINDS "NO-DENY" POLICY

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Effective May 21, 2026, the Securities and Exchange Commission has rescinded a rule that governed settlements in judicial or administrative enforcement proceedings. Specifically, since 1972, the Commission had maintained a policy that when it chose to settle an enforcement action, it would settle only if the defendant or respondent also agreed not to publicly deny the allegations in the complaint or administrative order. That policy has now been eliminated.

The policy originated from the Commission's view that imposing a sanction against someone who publicly denied the underlying charges risked creating the impression that the Commission was punishing innocent conduct. In recent years, however, there have been challenges to no-deny settlements, with some arguing that such agreements violated their First Amendment rights and that the Commission did not comply with the Administrative Procedure Act in adopting the policy.

In rescinding the policy, the Commission concluded that allowing defendants and respondents to deny allegations in a settled order had minimal negative effect on the public interest. In addition, the Commission cited four principal reasons for rescinding the policy:

1. **The policy's remedy was never used.** If a settling defendant who agreed to a no-deny provision later publicly denied the allegations, the Commission's only recourse was to ask a court to vacate the settlement or reopen an adjudicatory proceeding. However, there is no known instance in which the Commission has done so.

2. **Social media has created compliance ambiguity.** Technological changes in communication — particularly the use of social media — have made the policy more challenging to implement. The line between public and private statements is not always clear in such an online forum.

3. **Most federal agencies lack a comparable rule.** Eliminating the no-admit-no-deny policy aligns the Commission with the majority of federal agencies—including the Department of Justice—that do not have a similar rule

4. **Rescission facilitates settlements and conserves resources.** Rescinding the policy gives the Commission more flexibility in settling enforcement actions, which conserves resources, provides certainty, and may speed the return of money to injured investors.

In light of the rescission, the Commission has also stated that it will not enforce existing no-deny provisions in settlements that have already been entered.

Notably, however, the rescission does not affect the Commission's discretion to negotiate for admissions as part of a settlement, particularly where the respondent or defendant has pled guilty or been convicted in a parallel criminal case.

We view this as a welcome development. SEC enforcement actions are often not clear-cut, and a defendant or respondent may sincerely believe that he or she has done nothing wrong and does not deserve to be sanctioned. Under the old regime, such a defendant or respondent faced an uncomfortable choice: accept a settlement that barred any future public denial of the charges, or expend the significant time and resources necessary to litigate the enforcement action to its conclusion. The new policy allows a respondent to maintain its position on the merits without forfeiting the practical benefits of settlement. For the same reason, the change should also conserve the Commission's resources, which can be redirected toward pursuing other misconduct. Respondents in existing or pending enforcement actions should consider how this development may affect their negotiating posture and settlement strategy.

Although the SEC has rescinded its policy, companies should still evaluate settlement terms and post-settlement communications in light of other regulatory obligations, including Rule 10b-5, Regulation FD, litigation concerns and other regulatory risks. Financial institutions and others should continue to consider whether FINRA, state securities regulators or others reassess similar settlement provisions.

Related Capabilities

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