

SEC Rescinds “No-Deny” Settlement Policy: What Changes?

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The SEC has [rescinded Rule 202.5\(e\)](#), the no-admit/no-deny policy originally adopted in 1972 that prohibited settling defendants from publicly denying the allegations in an SEC complaint or administrative order. The SEC can still settle cases on a no-admissions basis, and can still seek admissions in particular cases, but settling parties will no longer be required by Rule 202.5(e) to agree not to deny the allegations. The change may alter settlement dynamics in a handful of ways.

1. Settling parties have more room to speak. A company or individual that settles with the SEC will no longer be barred by the settlement itself from saying it disagrees with the allegations. That may matter where the reputational stakes are high. But public denials still carry risk. They may affect relationships with regulators, invite scrutiny from the press, or complicate related private litigation.

2. The SEC staff may be less motivated to negotiate the factual allegations. If a settling party is no longer required to remain silent, the staff may be less willing to negotiate every word of the order. The response may be: if you disagree with the allegations, say so publicly or prove your case in court. That could make settlement faster, but it may also leave settling defendants with more aggressive factual allegations.

3. Private plaintiffs may get more useful material. SEC orders often become roadmaps for allegations in follow-on civil suits. If defendants have less ability to soften the order’s language, private plaintiffs may have more to work with at the pleading stage. In many private securities matters, the real fight is whether the complaint survives a motion to dismiss.

4. Admissions may become more common. The SEC emphasized that the rescission does not change its ability to require admissions. If settling parties can now deny the allegations after settlement, future Commissions may press harder for admissions, especially in more serious cases or with certain types of defendants.

In sum, the change will give settling parties more freedom to speak, but not necessarily more control. The tradeoff is fewer restrictions after settlement in exchange for potentially less leverage over the SEC's narrative before settling.

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