

## SEC Extracts Public Confession

December 01, 2013

The SEC's new policy of requiring more settling defendants to admit wrongdoing saw its first application in SEC v. Falcone, which was approved in the Southern District of New York on September 16, 2013. As part of that settlement, the defendants – hedge fund manager Philip Falcone and his advisory firm – admitted that they engaged in a market manipulation scheme; that, in order to pay his personal income taxes, Falcone improperly borrowed \$113.2 million from a client hedge fund; and that they offered preferential redemption terms to large investors to gain support for more restrictive terms for smaller investors without properly disclosing the arrangement to independent trustees or other investors. The defendants agreed not to deny, directly or indirectly, or make any statements to the effect that they have not admitted the SEC's allegations against them, in addition to agreeing to a five year industry bar and disgorgement of more than \$18 million. In announcing the new policy last June, SEC Chairperson Mary Jo White stated that such admissions, which stand in sharp contrast to the decades-old norm of settling defendants neither admitting nor denying wrongdoing, would be required in particularly egregious cases. This followed, among others, Southern District of New York Judge Jed Rakoff's highly publicized decision in 2011 (currently on appeal) refusing to approve a \$285 million settlement between the SEC and Citigroup in part because Citigroup was not required to admit wrongdoing. Proponents argue that the new policy will help deter misconduct by enhancing the reputational harm resulting from wrongdoing, while critics worry that it will needlessly prolong litigation as defendants, unwilling to admit wrongdoing for fear it will enhance their exposure in investor lawsuits, choose to take their chances at trial.

## **Related Practices**

Securities Litigation and Enforcement

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site

may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.