

More Aggressive Enforcement Sprouts at SEC

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The SEC has restored the authority of senior Division of Enforcement officials to initiate investigations without requiring approval by the SEC. This authority was originally established in 2009, but later revoked in 2017. On February 9, then-acting SEC Chair Allison Herren Lee reestablished senior enforcement staff's ability to issue subpoenas and take sworn testimony sua sponte. This approach will likely decentralize and accelerate the approval process for investigations and enhance the Enforcement Division's investigative autonomy.

Days later, the SEC also reversed course as to its procedure for waiving automatic disqualifications that the federal securities laws and regulations impose on so-called bad actors. On February 11, Lee announced that a settling party may no longer request joint consideration of enforcement action settlement offers with waiver requests. This reinstates a bifurcated process to consider offers of settlement separately from waiver requests. The announcement is a reversal of a procedure that then-SEC Chair Jay Clayton announced in July 2019. See "[SEC Now May Consider a Simultaneous Settlement Offer and Waiver Request](#)," *Expect Focus – Life, Annuity, and Retirement Solutions* (October 2019). As a consequence of the change, parties that offer to settle enforcement actions can expect a lengthier process and renewed uncertainty about the overall consequences of resolving SEC enforcement matters.

The waiver policy shift, however, stirred up controversy within the SEC. On February 12, SEC Commissioners Hester Peirce and Elad Roisman issued a statement criticizing this policy change. They rejected the notion that certain structural conflicts or pressures justify a bifurcated process and reaffirmed their support for considering and accepting simultaneous settlement offers and waiver requests.

Nonetheless, Lee's statements and other recent developments seem to mark the start of a more assertive Enforcement Division. Although incoming SEC Chair Gary Gensler, who formally took office

on April 17, will ultimately have a large say about the extent of any such policy shifts, he too may favor significant changes to the SEC's enforcement approach.

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