

SEC changes enforcement practice for settlement offers in cases involving waivers

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Parties considering whether to settle an SEC enforcement investigation or criminal proceeding have a reasonable expectation that they will know the likely consequences of a settlement. This includes whether they can expect to receive a waiver from certain statutory disqualifications. Yesterday, however, the Acting Chair of the SEC announced that the Enforcement Division will not recommend any settlement offer that is conditioned on the settling party receiving a waiver. If this statement reduces transparency between SEC staff and parties negotiating a possible settlement, the result likely will be a more difficult and protracted process for both sides as it becomes difficult for settling parties to make informed decisions about the full implications of a resolution.

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