

GIBSON DUNN



Securities Enforcement Update

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Undeniably Deniable: SEC Rescinds Policy on Denials of Enforcement Settlements

The SEC's rescission of its longstanding "no-deny" policy could have profound implications for how parties approach settlement strategy and manage post-settlement messaging to relevant constituencies. It will allow parties to settle enforcement actions while publicly denying the agency's allegations.

On May 18, 2026, the Securities and Exchange Commission [announced](#) the rescission of its "no-deny" policy in settlements of enforcement actions. Rule 202.5(e) of the Commission's rules of informal procedure, often referred to by critics as the "gag rule," prevented a defendant or respondent from consenting to a judgment or order imposing sanctions while publicly denying the SEC's allegations. In addition, the Commission will not enforce the no-deny provisions in prior settlements. Though practical implications will take time to play out, the impacts on SEC enforcement investigations, settlements, and follow-on proceedings may be substantial.

Key Takeaways

The May 18, 2026 policy change:[\[1\]](#)

- Repeals Rule 202.5(e), eliminating the requirement that settling defendants agree not to publicly deny the Commission's allegations as a condition of settlement;
- Provides that the Commission will not enforce existing no-deny provisions in already-entered settlements and will not take actions to vacate a settlement or reopen a proceeding in connection with a breach of an existing no-deny provision;

- Aligns the Commission with the overwhelming majority of federal agencies that do not have a comparable no-deny policy;
- Does not change the Commission’s existing ability to require admissions in certain cases, including those involving parallel criminal proceedings or when negotiating deferred or non-prosecution agreements; and
- Gives settling parties opportunity to publicly dispute the contents of settlement documents.

Background: The No-Deny Policy in Enforcement Settlements

In 1972, the SEC adopted Rule 202.5(e), setting out a policy that in any civil lawsuit brought by the Commission or in any accusatory administrative proceeding pending before it, a defendant or respondent could not consent to a judgment or order imposing a sanction while denying the Commission’s allegations.^[2] For over fifty years, such no-deny provisions have been a core feature of SEC enforcement, incorporated into thousands of settlement agreements.

In practice, no-deny provisions are typically paired with a statement that a defendant or respondent is not admitting to the allegations or liability—a “no admit/no deny” framework—and prohibit settling parties from directly or indirectly challenging the SEC’s factual allegations. While the SEC has not often sought to reopen proceedings based on breaches of a no-deny provision, the policy has nevertheless proposed practical challenges for settling parties. Particularly in the case of high-profile matters, where reputational management is as important as legal exposure, no-deny provisions force parties to acquiesce to the SEC’s public narrative and impose a meaningful barrier to settlement.

Recent Legal Challenges to Rule 202.5(e)

The rescission of Rule 202.5(e) follows several years of growing criticism. Settling parties and industry groups have long argued that the broad restraint on speech has presented legitimate challenges. In recent years, however, some of that criticism has expanded to courts.

The no-deny policy has faced multiple unsuccessful legal challenges since 2021; while both the Second and Ninth Circuits held that the rule is constitutional,^[3] judges in other Circuits have questioned whether Rule 202.5(e) could be an unconstitutional prior restraint.^[4] And when the Ninth Circuit rejected a *facial* challenge to Rule 202.5(e), it noted that the policy *as applied* to a specific settlement agreement could “present different issues” if the facts and circumstances of the particular settlement “sweep more broadly than Rule 202.5(e) itself,” which could implicate the “important values associated with permitting criticism of the government.”^[5] Petitioners in that case filed a petition for a writ of certiorari which is currently pending before the Supreme Court.^[6]

Chairman Atkins’ statement accompanying the policy announcement appeared to recognize the criticism of the so-called gag rule, noting that “[s]peech critical of the government is an important part of the American tradition. This rescission ends the policy prohibiting such criticism by settling defendants.”^[7]

Practical Implications

While it will take time for individuals, firms, and practitioners to understand the full breadth of the rescission's impact, the policy change is likely to influence the entire scope of an enforcement action—from the investigation stage to any follow-on proceedings:

- ***Investigation***
 - For parties currently in the midst of SEC investigations or settlement negotiations, the rescission warrants reassessment of their negotiating posture. Parties who may have been reluctant to enter settlement discussions because of the no-deny requirement can now reconsider whether settlement offers a more favorable risk-adjusted outcome.
- ***Settlement***
 - For some parties, the no-deny requirement was itself a barrier to settlement. By eliminating this condition, the rescission may make settlement a more attractive option for parties who would otherwise have chosen to litigate rather than accept a speech restriction they viewed as unjust or commercially damaging.
 - On the other hand, if settling parties will be free to dispute the content of settlement documents, will the Commission staff seek more admissions or exhibit less flexibility in negotiating the language of a settlement document? If the latter, could settled orders read more like unsettled complaints? The press release announcing the rescission generally disavowed seeking more admissions,^[8] but that position could change over time.
- ***Post-Settlement and Follow-On Proceedings***
 - The rescission creates new opportunities for settling parties to manage the narrative accompanying settled enforcement actions. Public companies that settle SEC actions will now be free to communicate more openly with investors, analysts, and the market about the circumstances of the settlement—including by disputing the factual basis of the Commission's allegations.
 - On the other hand, while the policy change gives settling parties the opportunity to publicly dispute the facts and their liability, the content of public statements will require careful calibration to achieve the desired messaging. More speech can lead to more media coverage and more inquiries from investors and other stakeholders. Will the opportunity to speak raise the expectations of the audience for a more substantive response? Relatedly, if a settling party publicly disputes the facts on which a settlement is based, will the Commission staff feel a need to respond publicly with commentary outside the four corners of the settlement documents?

Simply put, the rescission of the no-deny policy opens the door to a range of strategic decision-making and potential consequences that will play out over the coming years.

[1] Rescission of Policy Regarding Denials in Settlements of Enforcement Actions, Securities Act Release No. 33-11417, Exchange Act Release No. 34-105504, Investment Company Act Release No. IC-6965, Investment Advisers Act Release No. IA-36158 (May 18, 2026), <https://www.sec.gov/files/rules/final/2026/33-11417.pdf>.

[2] See 17 C.F.R. § 202.5(e).

[3] See *SEC v. Romeril*, 15 F.4th 166 (2d Cir. 2021); *Powell v. SEC*, 149 F.4th 1029 (9th Cir. 2025).

[4] See *SEC v. Novinger*, 40 F.4th 297, 308 (5th Cir. 2022) (Jones, J., joined by Duncan, J., concurring) (“If you want to settle, SEC’s policy says, ‘Hold your tongue, and don’t say anything truthful—ever’—or get bankrupted by having to continue litigating with the SEC. A more effective prior restraint is hard to imagine.”).

[5] *Powell*, 149 F.4th at 1045.

[6] See *Thomas Joseph Powell, et. al., v. Securities and Exchange Commission*, No. 25-1100 (U.S. Mar. 19, 2026).

[7] Press Release, U.S. Sec. & Exch. Comm’n, No. 2026-45, SEC Rescinds Policy Regarding Denials of Settlements in Enforcement Actions (May 18, 2026), <https://www.sec.gov/newsroom/press-releases/2026-45-sec-rescinds-policy-regarding-denials-settlements-enforcement-actions>.

[8] See *id.* (“The Commission generally does not require settling defendants to admit to allegations. Today’s rescission does not affect the Commission’s practice related to admissions in settlements and does not affect the Commission’s discretion to settle with defendants who decline to admit facts or liability or its discretion to negotiate for admissions as part of a settlement.”).

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