

SEC Announces Return to Simultaneous Consideration of Settlement Offers and Related Waiver Requests

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On September 26, Securities and Exchange Commission (SEC) Chair Paul S. Atkins announced a return to the SEC's prior practice of allowing individuals and entities facing enforcement actions to request that the SEC simultaneously consider both their settlement offers and any related waiver requests. Waivers may be necessary to avoid automatic disqualifications and collateral consequences that can result from enforcement actions, such as the loss of well-known seasoned issuer status, safe harbor protections, private offering exemptions, or the ability to serve in certain regulated capacities.

Key Policy Change:

- The SEC will now evaluate settlement offers and related waiver requests together, rather than in separate, siloed processes.
- This change restores the SEC's prior practice from 2019, which was reversed in 2021. It is intended to promote fairness, efficiency, and certainty for parties seeking to resolve enforcement matters, while ensuring comprehensive review in the best interests of investors and the markets.

Impact on Parties Facing Enforcement Actions:

- **Streamlined Process:** Individuals and entities can address both the enforcement action and any necessary waivers in a single, coordinated submission, potentially reducing delays and uncertainty.
- **No Guarantee of Waiver Approval:** The SEC retains full discretion to approve, deny, or impose conditions on waiver requests. Approval is not automatic, and the analysis will remain rigorous and focused on investor protection and market integrity.
- **Decision Point:** If the SEC accepts a settlement but denies a waiver, the party must promptly decide whether to proceed with the settlement as accepted or withdraw. Delays in response may jeopardize the settlement and lead to litigation.
- **Comprehensive Review:** The SEC will consider the facts, conduct, and consequences holistically, with input from relevant divisions, to determine whether the proposed resolution aligns with its mission.

Parties facing SEC enforcement actions should be aware of this procedural shift, which may offer greater efficiency and certainty in resolving matters. However, the considerations typically undertaken by the SEC in connection with their evaluation of a waiver will remain the same — the difference here is the timing of that consideration (jointly with the settlement proposal), not the facts and circumstances that the staff will consider. Waiver requests remain subject to thorough review, and outcomes are not guaranteed. Prompt communication with SEC staff will be critical if a settlement is accepted but a waiver is denied.

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