

# SEC Formally Rescinds ‘No Deny’ Settlement Policy and Says It Won’t Enforce Existing Gag Provisions

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## KEY POINTS

- The SEC has rescinded Rule 202.5(e), ending its “no deny” settlement policy that since 1972 conditioned enforcement settlements on defendants’ agreement not to publicly deny the Commission’s allegations.
- The SEC has stated it will not enforce existing “no deny” provisions in prior settlements and will not seek to vacate settlements or reopen administrative proceedings if settling defendants now publicly deny the allegations.
- The SEC’s “neither admit nor deny” settlement framework remains in place, and the agency retains discretion to settle without admissions or to require admissions as a condition of settlement.
- By eliminating mandatory “no deny” clauses, the SEC has significantly changed how companies and individuals assess reputational risk, disclosure strategy, and follow-on litigation when considering whether to settle an enforcement action.
- The SEC’s rescission of Rule 202.5(e) and its decision not to enforce existing “no deny” provisions may affect the Powell/New Civil Liberties Alliance First Amendment challenge to the SEC’s “gag rule” now moving toward possible Supreme Court review.

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On May 12, we [wrote](#) about the U.S. Securities and Exchange Commission’s (SEC) longstanding “no?deny” settlement policy heading “for a crossroads” at the Office of Management and Budget (OMB) and the Supreme Court. That crossroads arrived quickly. Just six days later, the SEC [announced](#) that it has rescinded Rule 202.5(e), the informal rule that, since 1972, conditioned settlement of an enforcement action on a defendant’s agreement not to publicly deny the Commission’s allegations. In its press release, the SEC said the policy had set the agency apart from most other federal regulators and may have created the misimpression that the Commission was trying to insulate itself from criticism, and it emphasized that ending the policy will give the SEC greater flexibility to resolve cases while preserving resources and speeding relief to investors.

The most significant practical point is that the SEC is not only eliminating the policy going forward, but also disavowing enforcement of existing no?deny provisions. The Commission stated that it is not aware of ever having moved to reopen a case based on a breach of a no?deny clause, and that in light of the rescission it will not seek to vacate prior settlements or reopen administrative proceedings if a settling defendant now publicly denies the allegations. In other words, defendants and respondents who previously signed settlements containing no?deny language may, as a matter of SEC policy, speak publicly about their cases without fear that the Commission will invoke those clauses to unwind the deal. Of course, any such statements remain subject to other applicable laws (for example, antifraud and defamation principles).

The SEC also made clear what has not changed. The agency’s basic “neither admit nor deny” settlement

framework remains intact, and the rescission does not limit the Commission's ability either to settle without admissions or, in appropriate cases, to require admissions as a condition of settlement. What has changed is that the agency will no longer require a blanket promise of silence or nondenial as the price of resolving an enforcement action. For companies and individuals, including regulated entities, this is a major shift in the enforcement landscape that will affect how parties evaluate the collateral consequences of settling, including reputational risk, disclosure strategy, and follow-on litigation.

Finally, this development directly intersects with the Powell/New Civil Liberties Alliance challenge we discussed in our prior post, which attacks the "Gag Rule" on First Amendment grounds and is headed toward a potential Supreme Court consideration. The SEC's decision to rescind Rule 202.5(e) and to decline to enforce existing no-denial provisions may reshape, or even moot, aspects of that litigation, depending on how the Court views the impact of the SEC's action in rescinding Rule 202.5(e). Either way, the Commission's action is a watershed moment in SEC settlement practice and opens the door to significantly more public debate, by former SEC targets themselves, about the merits and fairness of past enforcement actions.

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