

Investment Management Update

May 2026

No Comment: SEC Nixes “Neither Admit nor Deny” Settlement Requirement

On May 18, the SEC overturned a seminal settlement policy that has stood for over 50 years: remaining silent in settlement (otherwise known as the “gag rule”).

Previously, Rule 202.5(e) adopted the SEC’s policy that a civil lawsuit or administrative proceeding defendant could not consent to an order settling a matter while also denying the allegations. This policy popularized the “without admitting or denying” language so ubiquitous in SEC settlements. This is no longer the case.

Its abrupt rescinding of this policy means that the SEC will no longer require defendants to agree to such settlement conditions, *nor* seek to enforce them in existing settlements.

Rumors of potential policy changes have been brewing since August 2025, when the Ninth Circuit upheld the gag rule in *Powell v. SEC*, holding that defendants could voluntarily waive constitutional rights in settlement, but acknowledging that the rule raised “legitimate First Amendment concerns.”

SEC Chairman Paul Atkins [framed the change as a First Amendment protection](#), stating 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.”

Potential Consequences

In the wake of this move, parties may negotiate more heavily over settlement language and feel freer to make true (and not misleading) post-settlement statements.

However, the SEC may also push for admissions more frequently or seek more onerous terms or conditions.

What Will Change?

Industry experts question whether eliminating the gag rule will change much for the average defendant. Parties will be free to continue to pursue “neither admit nor deny” language, and they should consider that the SEC’s findings may still carry weight and responding may cause the story to linger. Many subjects of SEC action may prefer to minimize the media attention that comes with a public rebuke. And, importantly, the SEC retains discretion to demand admissions on a case-by-case basis.

Parties are strongly advised to consider retaining experienced regulatory counsel when negotiating settlement language with the SEC before insisting on including the option of commenting on the settlement.

FOR MORE INFORMATION

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