
SEC Settlement Dynamics May Change

BY LIAM BURKE

The SEC's Enforcement Director, Robert Khuzami, recently stated that the SEC may begin to make public more details about the facts underlying settlements that the SEC announces. Typically, the SEC has not revealed the underlying facts that have resulted in an investigation, charge, or sanction, if the accused agrees to a settlement. Rather, such details remain confidential and the accused neither admits nor denies wrongdoing.

Any change in these longstanding practices could dramatically increase the number of securities class action lawsuits, as private plaintiffs are provided better "roadmaps" for their claims. Participants in settlement negotiations with the SEC also would be concerned about potential reputational damage (both to the company and to the individuals involved) that would result from any increased disclosure of relevant facts.

In many cases, the possibility of such increased disclosure would doubtless make an accused company significantly less willing to settle with the SEC. Even if the SEC is willing to negotiate with the company over the wording of any factual disclosures, such negotiations would tend to prolong settlement timetables.

On the other hand, the threat of publicizing underlying factual details could strengthen the SEC's bargaining position in settlement negotiations. Such increased disclosure could also facilitate court approval of settlements. Recently, in two closely-watched cases that have become an embarrassment for the SEC, courts have refused to approve settlement agreements and were critical of the SEC's lack of transparency, among other things.



Could disclosures trash settlements?



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- Updates on settlements and trials of individual and class action cases involving life insurance, annuities, mutual funds and ERISA plans.
- A panel of litigation experts and federal and state regulators will explore recent regulatory activities, their impact on insurance and securities products – including potential new SEC regulation of fixed annuities as securities, and recent attacks on 12b-1 plans – and what they may portend for litigation in the insurance and mutual fund industries.
- Update on retirement plan litigation, including "revenue sharing" and "stock drop" class actions, and the latest developments in major legal and strategic issues involving ERISA litigation.
- A panel of class action litigation experts, moderated by the Honorable Wayne R. Andersen, of the U.S. District Court, Northern District of Illinois, will analyze the latest developments in class action battles, including expert witness uses, choice of forum, evolving evidentiary standards, and settlement procedures.

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