

[Securities Regulation Daily Wrap Up, TOP STORY—Acting SEC Chair Lee reinstates subpoena power for senior enforcement staff, \(Feb. 9, 2021\)](#)

Securities Regulation Daily Wrap Up

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Returning subpoena powers to senior SEC officials may indicate a more robust direction for the SEC's enforcement efforts under the Biden administration.

In a brief statement, Acting SEC Chair Allison Herren Lee announced that senior officers in the Division of Enforcement will now be allowed to subpoena documents and take sworn testimony. The action authorizes senior officers in the Division to approve the issuance of a Formal Order of Investigation. [According to Lee](#), this will enable the investigative staff to act more swiftly to detect and stop ongoing frauds, preserve assets, and protect vulnerable investors.

Enforcement powers: expanded and restricted. Under the leadership of SEC Chairs Mary Schapiro (2009-2012) and Mary Jo White (2013-2017), the SEC's Enforcement Division pursued an aggressive strategy against wrongdoers, such as White's "broken windows" policy that saw enforcement actions against minor violations as well as big-time securities law violators.

Following White's resignation in 2017 after the election of Donald Trump as president, Commissioner Michael Piowar was appointed acting chairman of the SEC, a title he held until the confirmation of President Trump's pick for chairman, Jay Clayton, in May 2017. During his brief tenure as acting chairman, Piowar scaled back the use of subpoenas by Enforcement Division staff, requiring approval from the head of the Division. This was a change from a policy implemented by Schapiro, which had delegated subpoena authority to Enforcement's associate directors. Before Schapiro's action, subpoenas were required to be approved by the Commission itself.

In August 2017, the SEC's Inspector General, in response to a letter from four senators, [determined](#) that Piowar's decision to scale back the Enforcement Division's subpoena powers did not exceed his authority as acting chairman. Senator Robert Menendez (D-NJ) brought attention to Piowar's action during the [confirmation hearing](#) of Commissioner Elad Roisman, who briefly served as acting chairman of the Commission prior to Lee's appointment as acting chair. At the time, Sen. Menendez expressed concern that such a move could undermine the SEC's enforcement capabilities.

Enforcement renaissance? President Biden has [nominated](#) former CFTC Chairman Gary Gensler to be the next chairman of the SEC. President Biden [sent](#) Gensler's nomination to the Senate on Tuesday, although a confirmation hearing has yet to be scheduled as impeachment proceedings against former President Trump are looming.

Observers of both agencies have speculated that Gensler's tenure at the CFTC indicates he will strengthen the SEC's enforcement capabilities. While the SEC's enforcement efforts have seen [record returns](#) in monetary sanctions and disgorgement in recent years, some critics have noted that despite the dollar returns, the number of enforcement actions commenced by the SEC have fallen since 2017.

In her statement, Acting Chair Lee said, "Returning this authority to the Division's experienced senior officers, who have a proven track record of executing it prudently, helps to ensure that investigative staff can work effectively to protect investors in an era when the pace of fraud—like the pace of markets themselves—is ever more rapid."

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