

Statement

Statement on the Denial of a Rulemaking Petition Regarding the Commission's No-Admit/No-Deny Policy



Chair Gary Gensler

Jan. 30, 2024

Today, the Commission denied a Petition for Rulemaking^[1] to amend Rule 202.5(e), more commonly known as the Commission's no-admit/no-deny policy. I was pleased to support the Commission's decision.

The Commission's no admit/no deny policy was adopted in 1972. As the Commission said at the time: "The Commission has adopted the policy that in any civil lawsuit brought by it or in any administrative proceeding of an accusatory nature pending before it, it is important to avoid creating, or permitting to be created, an impression that a decree is being entered or a sanction imposed, when the conduct alleged did not, in fact, occur."^[2]

As the Commission under then-Chair Bill Casey said at the time of the adoption: "a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations."^[3]

Entering into a settlement is a consequential choice for both the SEC and the defendant. The Commission, in agreeing to settle a case, is relinquishing the opportunity to present the case in court. The defendant, on the other hand, relinquishes the right to defend the case in court, in the press, and in the eyes of the public. Both parties are agreeing to a set of terms based upon this 1972 policy.

More than 50 years on, I think this policy has served the public and the Commission well. I believe that amending this policy in the manner proposed by the Petitioner would alter the impact of enforcement settlements if defendants could deny any wrongdoing in the court of public opinion and dismiss sanctions as the cost of doing business without the Commission being able to revive its ability to have its day in court.

Further, an essential component of settlements is the public recitation of the facts. It informs the market as to what conduct is violative of the securities laws. It alerts investors that the Commission seeks to deter that conduct, and it helps other market participants comply with the law. A settlement that allows the denial of wrongdoing undermines the value provided by the recitation of the facts, and it muddies the message to the public.

Finally, an important part of the Commission's responsibility is determining how best to deploy the resources that Congress entrusts to us. We thoughtfully consider the timing and priorities of our regulatory agenda and how to best utilize our talented and hardworking staff. Discretion to determine the priorities of our regulatory agenda, especially with respect to discretionary rulemaking like that requested by the Petitioner, is a critical element of our

ability to faithfully execute Congress's mandate. It is important that the Commission maintain discretion to direct focus to whichever parts of the capital markets need updated regulation.

[1] See Petition for Rulemaking – In re SEC Rule Imposing Speech Restraints in Consent Orders
<https://www.sec.gov/files/rules/petitions/2018/petn4-733.pdf>.

[2] 17 C.F.R. § 202.5(e); see also Consent Decrees in Judicial or Administrative Proceedings, Rel. No. 33-5337, 37 Fed. Reg. 25224 (Nov. 29, 1972).

[3] *Id.*