**INVESTMENT MANAGEMENT CLIENT ALERT**
BY JOHN HUNT AND BAILEY TRAVERS
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# The End of the Road for the SEC's Administrative Order "No-Deny" Rule

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The SEC has rescinded, effective immediately, its long-standing policy requiring a defendant or respondent, as a condition to settlement of an administrative proceeding, to agree not to publicly deny the allegations set forth in the relevant complaint or administrative order. The SEC has enforced this policy since 1972, and it is currently codified it in its informal rules of procedure. The SEC also announced that, effective immediately, it would not enforce "no-deny" clauses in SEC administrative orders already entered.

The purpose of the no-deny policy, from the SEC's perspective, was to avoid having persons the subject of an administrative decree from "creating, or permitting to be created, an impression that a decree was being entered or a sanctioned imposed, when the conduct alleged did not, in fact, occur." In rescinding the rule, the SEC said that it expected that it will have more flexibility in settling enforcement actions, which should allow it to conserve its resources, provide certainty, and potentially expedite the return of money to injured investors.

The SEC has long permitted settlements on a "neither admit nor deny" basis. However, the rescission of the no-deny policy is expected to create new strategic considerations for defendants evaluating the reputational implications of publicly denying allegations following settlement. For example, an investment adviser or fund manager responding to requests for proposal from potential clients and investors should have more flexibility in fully describing why it settled an enforcement proceeding, rather than simply relying on the statement in the order that it "neither admits nor denies" the purported violation.

**Further Observations**

We also note the following:

- The change does not limit the SEC's discretion to continue to settle matters on a "neither admit nor deny" basis, or, more importantly, require admissions in appropriate cases as part of a negotiated resolution.
- Rescission of Rule 202.5(e), the SEC rule that covered the policy, aligns the SEC more closely with the practices of other federal agencies.
- The rescission took effect immediately as a general statement of policy and was not subject to notice-and-comment rulemaking.

**For More Information**

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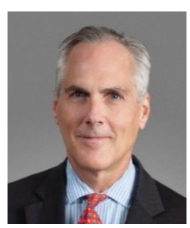

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