

No Soup for You - SEC Commissioners Revoke Authority of Director of Enforcement to Launch Investigations

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In a famous Seinfeld episode, a master soup maker had strict rules for ordering his delicious confections. A violation of his rules, resulted in “No soup for you!” Just like the soup maker who had the power to withhold soup from anyone who violated the rules for ordering soup, the U.S. Securities and Exchange Commission (SEC) announced its [final rule rescinding the delegation of authority](#) that had allowed the SEC’s Director of the Division of Enforcement to “issue formal orders of investigation” — i.e., the authority to unilaterally open new investigations and issue subpoenas.

For the past 15 years, the SEC has afforded the Director the discretion to authorize and open formal investigations and issue subpoenas on behalf of the agency. This final rule effectively returns that authority solely to the SEC’s five Commissioners, restoring the pre-2009 framework. In other words, the Commissioners will exercise greater (and exclusive) control over whether to authorize formal orders to open investigations and issue subpoenas. [1]

According to the SEC, the change is based on its “experience with its nonpublic investigations” and “is intended to increase effectiveness by more closely aligning the Commission’s use of its investigation resources with Commission priorities.” [2] Centralizing this power with the full Commission may introduce more deliberation and oversight—but it could also lead to fewer or delayed investigations, depending on the Commission’s priorities and capacity to act.

This action follows vigorous criticism by FinTech companies that the SEC has been regulating the industry by enforcement and not through rules proposed by the SEC that are subject to public comment under the Administrative Procedure Act. SEC Commissioner Hester Peirce recently stated

she has been concerned the use of enforcement was “part of [a] ... larger strategy to use [the SEC’s] enforcement tool to regulate the crypto industry.” [3] The final rule stripping the Director of the power to launch investigations without the approval of the Commissioners will likely be cheered by the FinTech industry.

The new rule is set to become effective 30 days after its publication in the Federal Register.

[1] Release Nos. 33-11366; 34-102552; IA-6862; IC-35492 (March 10, 2025), available at <https://www.sec.gov/files/rules/final/2025/33-11366.pdf>.

[2] Id.

[3] Getting Back on Base: Statement of Commissioner Hester M. Peirce on the Dismissal of the Civil Enforcement Action Against Coinbase (Feb. 27, 2025), available at: <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-coinbase-022725>.

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