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Government Investigations & White Collar Alert

NOVEMBER 12, 2021

The SEC plans more aggressive enforcement-securities-fraud strategy

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Gatekeepers beware — SEC Chair Gary Gensler announces aggressive shift in remedial enforcement policies, including heightened punishments and powerful deterrence tools.



What's the Impact?

- / The Commission believes those in positions of power must serve as the front-line defense against securities fraud
- / Companies and in-house counsel should consider creating or reviewing policies to prevent potential securities fraud

Harkening back to the SEC's early mission to instill public trust in financial institutions, SEC Chair Gary Gensler recently summarized his enforcement agenda by quoting the Commission's first chair, Joseph Kennedy: "The Commission will make war without quarter on any who sell securities by fraud or misrepresentation."¹ Gensler indicated that the Commission would pursue prosecutions against securities offenders more aggressively and emphasize remedies aimed at

¹[Prepared Remarks at the Securities Exchange Forum](#) (Nov. 4, 2021).

deterrence more powerfully. The Commission has not limited enforcement measures to corporate actors and attorneys, but also is extending its reach to its accounting professionals, signaling a broad initiative.

The goal of these new policies is to quicken investigations, prosecute higher-impact cases, and increase accountability and the responsibility of wrongdoers. To meet these goals, the Commission will leverage federal-government resources while working in parallel with state, international, and internal regulatory agencies; provide incentives for whistleblowers through payouts; and encourage cooperation. Echoing earlier remarks by the SEC's Director of Enforcement Gubir Garwal,² Gensler said the Commission has also committed to using powerful deterrence tools such as admissions of wrongdoing and officer/director bars. "When it comes to accountability," Gensler said, "few acts rival admissions of misconduct."³

In addition to outlining more-aggressive enforcement principles, Gensler directed his remarks at individuals in positions of power (Gatekeepers), specifically corporate attorneys. Gensler believes attorneys are the first line of defense in preventing securities fraud — a belief that places attorneys in the delicate position of not only advising their clients, but protecting the public. Attorneys in the corporate and finance sector should take these remarks as notice to increase their due diligence efforts, and to avoid counseling clients to "play in the grey areas or walk right up to the line," which Gensler warned "creates significant risk."⁴

Companies and in-house counsel should update or create policies to ensure they are appropriately situated if an enforcement inquiry arises. These measures should include reviewing or updating internal whistleblower programs. Evidence suggests that before reporting compliance issues to the SEC, employees first report them internally. Creating open, direct lines of communication between employees and counsel may help defuse a compliance issue before government intervention. Companies should consider installing a process to review and audit internal whistleblower reports to ensure the proper handling of complaints and identify trends. Firms should also engage counsel to review compliance by audit partners at corporate accounting firms to avoid ancillary effects of third-party wrongdoing.

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²[Prepared remarks of SEC Director Division of Enforcement at "SEC Speaks," Gubir Grewal](#), October 13, 2021.

³See Note 1.

⁴See Note 1.