

SEC Announces New Cooperation Tools for Enforcement

On Wednesday, January 13, 2010, the Securities Exchange Commission ("SEC") announced broad changes to the agency's enforcement division. The changes come on the heels of prolonged criticism of the SEC for its failure to detect past instances of high-profile securities fraud, such as Bernie Madoff's Ponzi scheme, and the new changes are designed to address those criticisms. First, the SEC will streamline its enforcement staff into specialized "units." Additionally, the agency will encourage companies and individuals to cooperate with the SEC's civil actions through formal written agreements that could result in lesser penalties or no enforcement action at all for cooperators and whistleblowers.

The SEC's investigation arm will be divided into specialized units, following the pattern of the Justice Department and other federal prosecutorial agencies. Under the new scheme, the SEC's enforcement staff will each be assigned to one of six specialized investigative units: asset management, market abuse, structured and new products, foreign corrupt practices, and municipal securities and public pensions. Prior to this change, the SEC's enforcement staff were largely generalists, working on any number of securities fraud issues, which according to some critics, left the SEC without the skills to discover complex problems. By developing expertise in a particular area, the SEC's staff may be able to more quickly spot trends in the markets and identify possible connections among cases.

The SEC also announced that it will now employ "cooperation tools" not previously available to the agency, including:

- **Cooperation Agreements** — Formal written agreements in which SEC staff recommend that an individual receive credit for cooperating in an investigation;
- **Deferred Prosecution Agreements**— Formal written agreements in which the SEC agrees to forego an enforcement action against a cooperator if the individual or company agrees to cooperate;
- **Non-prosecution Agreements** — Formal written agreements in which the SEC agrees not to pursue an enforcement action against a cooperator if the individual or company agrees to cooperate.

The SEC again took a page from the Justice Department in establishing these new cooperation tools, using the same language that the Department of Justice uses for its agreements in criminal prosecutions. Prior to these changes, resolving a criminal case with the SEC often required agreeing to an SEC injunction and penalty, but companies and individuals may now be able to secure an agreement to forgo any punishment on the civil side, a move that can encourage increased cooperation.

If you have any questions regarding these changes, please contact [John Henry](mailto:jhenry@millermartin.com) at jhenry@millermartin.com, [Beth Sims](mailto:bsims@millermartin.com) at bsims@millermartin.com or any other member of Miller & Martin's Securities Practice Group.

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