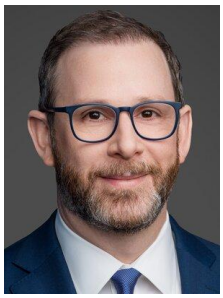
Claiming The Narrative Before The SEC Files Charges

By **Scott Schneider** (May 22, 2026)



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For more than 50 years, settling a U.S. Securities and Exchange Commission enforcement action came with a significant communications constraint: Accept the penalty, decline to admit wrongdoing and agree not to deny the allegations either. The company got finality. The SEC got its order. And the agency's account of what happened became, in effect, the public record.

That constraint is now gone. On May 18, the SEC formally rescinded Rule 202.5(e), the provision that had conditioned settlement on a defendant's promise not to publicly deny the agency's allegations. SEC Chairman Paul Atkins framed it in First Amendment terms, saying the prior policy had prohibited speech critical of the government, and that such speech is an important part of the American tradition.

The rescission also carries a notable retroactive effect: The commission has stated that it will not enforce existing no-deny provisions already in place, meaning that companies that settled years ago under the old rule are no longer bound by its silence requirement.

The legal and constitutional dimensions of the restriction were already drawing attention, even before the policy change, including a pending U.S. Supreme Court certiorari petition in Powell v. SEC, a case that would test broader questions about SEC enforcement authority. But the communications implications are receiving less scrutiny. They should not.

Whether a company is in the early stages of a regulatory inquiry, facing a Wells notice or actively negotiating a settlement, the rescission changes both the options available and the risks attached to those options. Getting it right requires a communications strategy that runs parallel to the legal strategy from the start, not something assembled after the settlement press release goes out.

That's because the reputational risks of an investigation arise long before the settlement negotiations.

Consider this scenario, which might feel familiar: It's late on a Friday afternoon when your communications team calls. A reporter is about to publish a story that the SEC is investigating your company and its senior executives for disclosure violations.

The problem is not just that the story is coming. It's that the reporting is wrong. The SEC did make contact, but it was an initial inquiry. It is focused on the company's auditors, not its executives. No one has alleged wrongdoing.

In an ideal world, the SEC could set the record straight. A statement from the agency would carry far more weight than anything the company could say. That, however, is not how the process works.

That first reporter call is jarring. Government investigations are supposed to be confidential. The general counsel may still be trying to understand the scope of the inquiry. Yet for many companies, regulatory scrutiny becomes public not when charges are filed, but when information — accurate or not — lands on a reporter's desk.

This is why treating an investigation as purely a legal problem is a mistake. The legal process may be confidential, but the narrative will not be.

I watched this play out from the government side of the phone. During my time leading the SEC's communications function, reporters regularly called to ask about investigations, often with detailed allegations about specific companies, executives or board members. Sometimes they were right; sometimes they were wrong.

In nearly every case, however, my response was the same: "I cannot comment on the existence or nonexistence of a potential investigation." That is not evasion. It is the law.

That tension is still relevant, even in the current low-enforcement environment. Earlier this month, Atkins confirmed that the agency is investigating allegations of fraud in the private credit markets, but said he couldn't discuss any specific cases.

That is the dynamic in miniature: The regulator acknowledges that investigations exist but declines to say anything more, and the narrative fills in around the silence. Investigations of all kinds become public long before charges are filed, and often in ways that are incomplete or incorrect.

The news media will continue to do its job as well, uncovering those investigations and writing stories that corporate executives do not want to see published.

When reporters call, corporate leaders need to understand that the SEC generally will not correct the record if a reporter gets the story wrong. For many, "declined to comment" becomes "must be true." Or at least "must be serious."

Companies facing meaningful regulatory scrutiny should start by having the right response structure in place. The C-suite and board should work in advance with legal and communications teams to identify which executives will speak to which audiences, who holds approval authority and what the escalation chain looks like if the matter moves quickly.

Companies should also prepare the materials that each audience will need, including, at a minimum, holding statements and an internal message from leadership. The goal is to have frameworks that allow the company to move swiftly and consistently when it needs to.

In-house and outside counsel set and articulate the legal strategy so that communications teams can support it. They share the best facts so that management can tell the best version of the story to employees, investors, customers and the press. They set the guardrails to define what can and cannot be said and why. And they identify legal risk areas, including what testimony or evidence could be damaging, so communications can anticipate and address the corresponding reputational exposure before it becomes the headline.

The general counsel is often the executive who manages both the legal team and its relationship with the communications team, and can ensure that the two functions are working from the same playbook rather than operating in separate lanes.

Investigation communications should be practical: correcting what can be corrected safely, making clear that serious people inside the company are in charge of the response and reassuring those who need it that leadership is doing the right thing. Executives should

avoid letting silence imply that the worst rumors are true.

They must also have message discipline. In addition to legal risk, mixed messages create credibility problems, and credibility is hard to recover once it is lost. Different audiences may need different levels of detail, but they should not get different stories.

The credibility gap that matters most is rarely with the press. It is with employees and investors who sense that leadership is managing optics rather than the issue itself.

That speaks to the value of direct stakeholder engagement. Executives who reach key stakeholders directly, before or immediately after a story publishes, have a meaningful advantage. A direct message from the CEO can change the narrative dynamic entirely. It demonstrates that leadership is in command of the situation, and it denies the vacuum that speculation fills.

There is also a strategic asymmetry that is worth naming directly. During an investigation, the company can speak, so long as it is careful and truthful, while the SEC will not speak at all.

That asymmetry is an advantage, one that often frustrated me as an SEC spokesperson. To the extent that an investigation plays out in the court of public opinion, targets of those investigations are permitted to make their cases publicly, through X posts, media interviews or conference panels. Public debates can become one-sided.

Executives who understand this advantage can use it to stabilize their employees, reassure customers and frame events for investors before the government's version becomes the only one. The companies that use the precharge period well are not the ones that say the most or pound their chests the hardest. They are the ones that say the right things, deliberately and consistently, from the start.

That asymmetry eventually shifts if and when charges are filed or a settlement is announced. Whether it is a complaint in federal court or a settled order, the SEC's narrative is likely to become the dominant one. The company's relative narrative freedom is therefore greatest before a case is filed.

The rescission of the no-deny policy changes the calculus at the settlement stage. Settling parties can now accept penalties while shaping the narrative around what happened, what they dispute and why they chose to resolve the matter anyway.

A denial is a sentence, not a strategy. Stakeholders who read a settlement order will still want to know what the company believes happened, what it disputes and why its executives chose to resolve the matter anyway. The communications plan needs to answer the questions that a denial raises before they are asked.

The SEC's order will still function as the most credible public account of the underlying facts for most audiences. Companies considering a public challenge to the agency's account should think carefully about how that dispute lands with investors, employees, customers and counterparties, not just with reporters covering the announcement.

For companies that settled before the rescission, the retroactive scope creates a temptation worth resisting. The commission has confirmed it will no longer enforce existing no-deny provisions, so prior settling parties are now free to speak. But most should not.

Relitigating a past settlement draws renewed attention to a prior enforcement action, reminds every audience that the company was once under investigation and raises a natural question: Why should I believe you? The better instinct is to stay focused on what the company is doing now, not on what the SEC alleged years ago.

The period before the SEC files charges remains the window of greatest narrative freedom. Companies that use it to prepare audiences, establish credibility, and align communications and legal strategies will be better positioned regardless of how the policy environment continues to evolve. The companies that treat the settlement announcement as the starting point for communications planning will be catching up in a contest where the other side already has more content and more credibility.

Not every development requires a public response. Executives should know in advance what kinds of developments will trigger proactive and reactive statements: a detailed media inquiry, contact with multiple employees, receipt of a Wells notice or reason to believe news of the investigation is likely to leak. Waiting until the story is already moving is rarely the right time to start deciding who speaks and what can be said.

Reputational risk develops faster than legal exposure. If counsel is only focused on the regulator, the narrative problem may already be running ahead of it.

While investigations are confidential, news is not. I spent years on the side that could not respond, watching companies gracefully navigate or stumble through the gap between those two realities. The teams that fared best were the ones that had already decided what they would say, and to whom, long before the reporter called.

Narrative responsibility ultimately rests with management. Counsel should help ensure that management exercises that responsibility deliberately.

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