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Will Rakoff's "Legal Error" Change SEC's View of Settlement Admissions?



On June 4, 2014, the Second Circuit Court of Appeals [vacated](#) Judge Rakoff's November 28, 2011 [Order](#) that had rejected the Citigroup-SEC settlement on a number of grounds, including that the SEC had allowed Citigroup to avoid admitting guilt.

The Appellate Court found that Judge Rakoff abused his discretion and committed "legal error" in requiring the SEC to establish the truth of the allegations against Citigroup as a condition to approval of the consent decree (or settlement) proposed by the parties. The Court also found that the Judge's disagreement with the "SEC's decisions on discretionary policy"—such as whether to settle without forcing the defendant to make an admission—was not sufficient to find that such a settlement rose to the level of being "against the public interest." The Second Circuit's decision comes almost three years after Judge Rakoff issued his Order. In the intervening time, the SEC announced that it would require admissions in cases where defendants were convicted, or had admitted to criminal conduct in related proceedings. Although such admissions have not become commonplace, the SEC does appear to weigh the decision of whether to force an admission from settling defendants with increasing regularity. The challenges the SEC faced with Judge Rakoff back in 2011—a time when it was often presumed that a settlement with the SEC could include the "no admit, no deny" language—likely precipitated its tentative move away from *no admission* settlements. Although the Second Circuit vacated Judge Rakoff's order, his 2011 Order has impacted SEC settlements in the intervening time and will likely continue to do so, regardless of the Citigroup settlement's final outcome.

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