



Milbank Insights

White Collar Defense and Investigations

SEC Signals Possible New Flexibility in Settling Litigated Cases

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By George S. Canellos



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Kudos to the Commissioners and enforcement leadership of the Securities and Exchange Commission for introducing much-needed flexibility into the enforcement process. On February 10, 2026, the SEC announced an unconventional settlement of a fraud action against an asset manager and its chief compliance officer that had been pending in district court for more than four years.

The SEC dismissed, with prejudice, the district court action and simultaneously instituted a settled administrative cease-and-desist proceeding significantly milder than the allegations of the complaint that dropped one corporate respondent from the case, and downgraded the charges against others from a panoply of scienter-based claims (including Exchange Act Rule 10b-5, Securities Act Section 17(a)(1), and Investment Advisers Act Section 206(1)) to a single negligence-based claim (under Advisers Act Section 206(2)).

In agreeing to resolve the case administratively, the SEC also spared the respondents from collateral consequences that, absent exemption, would have automatically flowed from any injunctive resolution—including a five-year bar on participating in private placements under Regulation D,¹ a permanent bar on participating in the management or distribution of mutual funds,² and a permanent bar from acting as a paid solicitor for investment advisory services.³ The district court case that was dismissed as part of the settlement was *U.S. Securities and Exchange Commission v. Paris et al.*, No. 21-cv-03450 (N.D. Ill.). The settled administrative action was *Barrington Asset Management, Inc. and Gregory David Paris*, AP File No. 3-22590, Exchange Act Rel. No. 104793 (Feb. 10, 2026), available [here](#).

Why is this resolution potentially so significant? In the past, almost without exception, defendants in contested district court actions were left with a binary choice: they could litigate to clear their names of the allegations in the complaint, or they could accept the terms of a settlement that included a court-imposed injunction and precluded them from publicly disputing the allegations of the complaint.

That was true even if the evidence elicited in discovery suggested that some of the SEC's allegations were erroneous or overstated. That was true even if the SEC enforcement staff agreed there was no public interest in subjecting the defendants to the automatic—and often ill-fitting—collateral consequences that flow from a district court injunction. When asked whether the SEC would drop certain charges as part of a settlement, the answer, inevitably, was no. When asked whether the SEC would settle without imposing an injunction, the answer, inevitably, was no. When asked whether the SEC would clarify the public record by modifying or withdrawing allegations contained in the complaint, the answer was the same. The most the SEC would agree to do in almost any case was to permit the defendants to submit formal written applications for exemptions from collateral consequences triggered by an injunction—an uncertain bureaucratic process that often took many months, delayed the resolution of cases, and cost tens of thousands of dollars or more.

However, the settlement announced in *Barrington Asset Management* may signal a greater willingness on the part of the current SEC Commissioners to depart from this rigid (and sometimes seemingly mindless) template for settlements in appropriate cases. If so, it would be a welcome injection of common sense into SEC enforcement practice. In our view, the old template was deeply flawed. It forced cases to trial that otherwise could have been settled. It resulted in unnecessarily costly resolutions. Indeed, the injunctions employed to settle cases typically ordered defendants to do nothing more than obey the law (the violation of which is already subject to sanctions). The only practical effect of such an injunction was to subject defendants to collateral consequences that, in many or most cases, the SEC separately exempted them from. And, arguably most importantly, it deprived both the SEC and defendants of the ability to clarify or supplement the public record of the defendants' conduct with information that may not have been known when the complaint was filed or was proven inaccurate during discovery.

¹ 17 C.F.R. § 230.506(d).

² 15 U.S.C. § 80a-9.

³ 17 C.F.R. § 230.405.

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