

# SEC Enforcement Director Sets Aggressive Tone

October 14, 2021

Gurbir Grewal, the [recently-appointed](#) Director of the Securities and Exchange Commission's Division of Enforcement, comes from a law enforcement background. Before joining the SEC, he served as New Jersey Attorney General, where he presided over [cases against prominent companies](#) alleging violations of state environmental law. Before that, he served as an Assistant United States Attorney and Chief of the District of New Jersey's Economic Crimes Unit.

After three months on the job, Grewal's recent public statements demonstrate that he has brought his law enforcement background and mindset to his work at the SEC. According to Grewal, going forward, the SEC will take a more aggressive approach across its enforcement program. Corporations, registrants and executives should take note.

## Higher bar for compliance, cooperation, and penalties

In his first public speech, Grewal [stressed the importance](#) of robust and proactive compliance programs. In remarks focused on registered entities but equally applicable to public companies, Grewal stressed that firms should "model compliance efforts" and warned against "going right up to the edge of a rule or searching for some ambiguity in the text or a footnote" Grewal further cautioned that "push the envelope" on an issue or grey area is "a surefire way to foster misconduct and, potentially, lead to an enforcement action." Grewal urged firms to engage in proactive compliance efforts that go beyond "check-the-box training" by identifying misconduct and working with the SEC to address that conduct. Proactive compliance efforts are critical, he stressed, in a time of "rapid and profound technological change."

Grewal further warned that cooperation credit will not come easily. Cooperation credit will require some level of engagement with the Division above and beyond parties "simply living up to their legal and regulatory obligations." Self-reporting only when a violation is inevitably going to become public, for example, or presenting to the staff a "purportedly independent investigation...that does not fairly present the facts" will not be enough.

Importantly, Grewal also suggested that the Division of Enforcement will pursue higher civil penalties than it has in the past. Characterizing civil penalties as "among the most important" of the SEC's tools, Grewal warned that market participants will not be allowed to "simply 'price in' the potential costs of a violation." Grewal further explained that the Division will "be closely assessing whether prior penalties have been sufficient to generally deter the misconduct at issue. Where they have not been, you can expect to see us seek larger penalties, both in settlement negotiations and, if necessary, in litigation."

## Aggressive and empowered enforcement program

On October 13, 2021, in [remarks](#) at the "SEC Speaks" conference, Grewal announced several key features of his enforcement program. Pointing to a need for more aggressive enforcement to restore public trust in financial institutions, Grewal's initiatives recall the strict enforcement policies that followed the 2008 financial crisis.

In 2013, former Chair Mary Jo White [announced](#) that the SEC would more frequently seek admissions of wrongdoing in settled actions. In 2017, however, former Enforcement Director Steven Peikin [suggested](#) that the agency might withdraw from this policy. In his recent remarks, Grewal made clear that the admissions policy is back in force. According to Grewal, "hen it comes to accountability, few things rival the magnitude of wrongdoers admitting that they broke the law, and so, in an era of diminished trust, we will, in appropriate circumstances, be requiring admissions in cases where heightened accountability and acceptance of responsibility are in the public interest."

Grewal's remarks also signal increased authority for the line SEC Enforcement staff. Implicitly suggesting that the previous Enforcement leadership was too solicitous of defense counsel, Grewal stated that in many cases "it is not a productive use of anyone's time for the Director or Deputy Director to sit in on a second or third meeting with defense counsel at the end of an investigation." This policy stands in contrast to the ["great importance" placed on the Wells process](#) by the previous enforcement leadership. Under Grewal, line enforcement staff and their supervisors will be given greater influence and discretion in deciding whether to ultimately recommend charges to the Commission. This increased discretion, in turn, may empower SEC staff and supervisors to act more aggressively in challenging cases, secure in the

knowledge that they will be less likely to be overturned or second-guessed.

## Implications for market participants

Taking Grewal at his word, the Division of Enforcement will be taking a more combative approach across its docket, particularly when the staff views conduct as egregious. In this new regime, market participants and counsel must be prepared for the Division to (1) seek significantly higher civil penalties than in the recent past, (2) require more from companies in exchange for cooperation credit, and (3) in cases involving particularly serious or wide-reaching violations, seek admissions of wrongdoing. And, when the staff takes overreaching positions, it may be more difficult to gain an audience with senior leadership. As a result, the costs and consequences of enforcement scrutiny will increase. To avoid the Division of Enforcement's attention, market participants must ensure robust investment in compliance programs. When the Division decides to take action, market participants may face a difficult decision: settle to punitive remedies or litigate against the government.

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