



SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 202

[Release 34-103277]

Policy Statement Concerning Agency Referrals for Potential Criminal Enforcement

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; policy statement.

SUMMARY: Pursuant to Executive Order 14294, the Securities and Exchange Commission (“Commission”) is publishing this framework for staff consideration of whether to refer potential violations, including of criminal regulatory offenses, to the Department of Justice.

DATES: This final rule and policy statement is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Samuel Waldon, Acting Director, Division of Enforcement, at (202) 551-4500, Division of Enforcement, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

On May 9, 2025, the President issued Executive Order 14294 (“Executive Order”), titled Fighting Overcriminalization in Federal Regulations. 90 FR 20363 (published May 14, 2025). Among other things, the Executive Order directs each agency to publish guidance in the *Federal Register* describing its plan to address criminally liable regulatory offenses, including by considering certain factors when deciding whether to refer alleged violations of criminal regulatory offenses to the Department of Justice. The Executive Order defines a criminal regulatory offense to mean “a Federal regulation that is enforceable by a criminal penalty.” In accordance with the Executive Order, the Commission is publishing this framework for Commission staff consideration of whether to refer potential violations, including of criminal regulatory offenses, to the Department of Justice.

Administrative Law Matters

The provisions of the Administrative Procedure Act (“APA”), 5 U.S.C. 553, regarding notice of proposed rulemaking, opportunities for public comment, and prior publication are not applicable to general statements of policy, such as this policy statement. Similarly, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601-602, apply only when notice and comment are required by the APA or another statute and are therefore not applicable. For similar reasons, the provisions of the Small Business Regulatory Enforcement Fairness Act are not applicable. *See* 5 U.S.C. 804(3)(C) (the term “rule” does not include “any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties”). This statement does not impose any collection of information requirements as defined by the Paperwork Reduction Act of 1995. *See* 5 CFR 1320.3(c).

List of Subjects in 17 CFR Part 202

Administrative practice and procedure.

Text of Amendment

For the reasons set out in the preamble, the Commission is amending title 17, chapter II of the Code of Federal Regulations as follows:

PART 202—INFORMAL AND OTHER PROCEDURES

1. The general authority citation for part 202 is revised to read as follows:

Authority: 15 U.S.C. 77s, 77t, 77sss, 77uuu, 78d-1, 78u, 78w, 80a-37, 80a-41, 80b-9, 80b-11, and 7202, unless otherwise noted.

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2. Add § 202.14 to read as follows:

§ 202.14 Policy statement concerning agency referrals for potential criminal enforcement.

(a) Subject to appropriate exceptions and to the extent consistent with law, in considering whether to refer potential violations, including of criminal regulatory offenses, to the Department of Justice, the staff of the Commission should consider, among other factors:

(1) The harm or risk of harm, pecuniary or otherwise, caused by the potential offense, including whether the putative defendant's conduct harmed or risked harming many victims;

(2) The potential gain to the putative defendant that could result from the offense;

(3) Whether the putative defendant held specialized knowledge, expertise, or was licensed in an industry related to the rule or regulation at issue;

(4) Whether the putative defendant knew the conduct would cause harm or that it violated the law;

(5) Whether the putative defendant is a recidivist or has otherwise engaged in a pattern of misconduct; and

(6) Whether the involvement of the Department of Justice will provide additional meaningful protection to investors.

(b) This general policy is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

By the Commission.

Dated: June 16, 2025.

Vanessa A. Countryman,

Secretary.

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