

SEC Policy Statement Outlines Framework for Criminal Referrals of Potential Regulatory Violations to DOJ

Posted in: DOJ, SEC, SEC Enforcement

Posted on: June 23, 2025

Among other factors, SEC staff will consider the risk of harm, the gain to the defendant, whether the defendant knew the conduct violated the law and whether DOJ involvement will provide additional meaningful protection to investors

The SEC has issued a new [policy statement](#), effective June 20, 2025, outlining how staff will address referrals of alleged regulatory violations to the Department of Justice (DOJ) for potential criminal enforcement.

The policy statement was [published](#) in response to President Trump's May 2025 Executive Order, [Fighting Overcriminalization in Federal Regulations](#), which states that it is the policy of the United States that **criminal enforcement of regulatory offenses is disfavored (particularly strict liability offenses)** and that unwitting Americans should not be prosecuted for violations of regulations they have no reason to know exist. Rather, criminal prosecutions of regulatory offenses "should focus on matters where a putative defendant is alleged to have known his conduct was unlawful."

Among other things, the order directs all federal agencies, within 45 days of the date of the order, to publish guidance in the *Federal Register* describing their plans to address criminally liable regulatory offenses. In accordance with this directive, the SEC's policy statement adds new Section 202.14 to the agency's Rules of Practice for Informal and Other Procedures providing that, **when SEC staff are deciding**

whether to refer alleged violations of criminal regulatory offenses to DOJ, they 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 or 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 violate 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 DOJ will provide **additional meaningful protection to investors**.

Legal Disclaimer: *Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP ("Gunderson") has provided these materials for general informational purposes only and not as legal advice. Our provision and your use of these materials do not create an attorney-client relationship between Gunderson and you. These materials may not reflect the most current legal developments and knowledge, and accordingly, you should seek legal counsel before using or relying on these materials or the information contained herein. Gunderson assumes no responsibility for any consequences of your use or reliance on these materials.*

Featured Insights

EVENTS

Gunderson Dettmer and Alpha Edison Launch PitchLive.LA to Spotlight Pre-Seed and Seed Founders During LA Tech Week

EVENTS

PLI's Noncompetes and Restrictive Covenants 2025: An In-Depth Look into What Every Lawyer, Human Resources Professional, and Key Strategic Decisionmaker Needs to Know

INSIGHTS

Gunderson Dettmer Releases 2025 Mid-Year Venture Capital Report

INSIGHTS

The Power of Focus: Founding partner Tom Villeneuve reflects on the last 30 years

PUBLIC VENTURES

'A New Day at the SEC': New SEC Rulemaking Agenda Outlines Chair Atkins's (De)Regulatory Priorities Through April 2026

INSIGHTS

The American Lawyer Features Jeff Higgins in "While Venture Capital Activity Slows, Gunderson Has No Intention of Moving Away From the 'Innovation Economy'"

PUBLIC VENTURES

California Climate Disclosure Laws: CARB Releases Clarifying Guidance for Inaugural Climate Risk Reports Due January 1, 2026

CLIENT NEWS

Gunderson Dettmer represented Statsig in its \$1.1B acquisition by OpenAI

CLIENT NEWS

Prosus Leads Intella \$12.5M Series A with Participation from HearstLab

EVENTS

Gunderson Dettmer Partner Maggie White Co-Leads a Roundtable To Discuss "Secondaries, Liquidity & the Pressure Cook"

CLIENT NEWS

Commonwealth Fusion Systems Announces \$863M Series B2

CLIENT NEWS

Mexico-Based Auto Insurer Momento Seguros Raises \$10M Series A