

THE SEC SPEAKS: IS ANYONE LISTENING?

Last week the SEC held its 54th *SEC Speaks* conference in Washington, DC, an event dating back to the Nixon Administration and the year the Wells Commission issued its now infamous report ushering in what is known today as the Wells process. The number of attendees at this year's conference was difficult to gauge due to the popularity of remote attendance, but the SEC senior staff certainly came out in force. "Change" was the password of the day, with some speakers heralding it and others warning against too much of it.

The "change" focus was proclaimed early and loudly in the conference by Keynote Speaker Paul Atkins, the SEC's recently-confirmed chairman, who stated unequivocally that "It *is* a new day at the SEC" (heavy emphasis on the word "is"). The next commissioner up was Mark T. Uyeda, a Gensler regime holdover who found himself on the wrong end of nearly every hot-button 3-2 vote over the last few years. He exhaled deeply, "what a difference a year makes," before going on to declare that the "Commission [had] entered a new period in its 90-year history."

But what the message from the top had in clarity, it lacked in precision. Next to speak, the staff was largely left to right the ship and fill in the blanks. Notably, every division chief to take the podium (save one) was an "acting director," a sharp indication that change is coming not only in policy but in leadership. The staff had its work cut out for it.

Sam Waldon, the Acting Director of the Division of Enforcement acknowledged the basic math: 15% fewer staff means doing more with less. He also acknowledged the move to process all formal-order requests through the Commission itself, a time-consuming procedure as history teaches. He wrote off one other change as cosmetic – the elimination of the nine regional director positions – with three new "deputy" directors organized by region and the fourth in charge of the specialized units. (The three regions are the Northeast, the Southeast, and the West – highly reminiscent of the famous Sol Hirschfield New Yorker cover depicting everything west of the Hudson River as "The West.")

The tenor of the other speakers was largely one of back-to-basics, with the acting directors hesitant to say exactly what that will look like. Still, some observations can be made.

Gone is the era of "regulation by prosecution," whereby policy initiatives were sometimes introduced via after-the-fact enforcement actions rather than by prior notice. Also gone is the assault on crypto registration waged by the Gensler Commission. Chairman Atkins was quite clear that this commission will be far more accommodating to new technology, crypto first and foremost.

The "new" commission will be focused on "old" frauds: insider trading, market manipulation, Ponzi schemes, and financial fraud, with senior and "affinity" frauds receiving strong emphasis. Individual liability still looms large on the landscape, although money penalties against corporations are likely to come down. As one enforcement panel speaker stated, "enforcement is a central function of the Commission and it is not going away."

Direction on the accessibility of the staff to defense counsel was murkier. One conference speaker noted a desire for a "more open and effective dialogue," while at the same time announcing that the staff won't engage with defense counsel until the end of an investigation, "when all of the evidence has been assembled and evaluated."

If past is prologue, practice will vary from region to region and from attorney to attorney. But the taciturnity displayed by senior staff at the conference suggests that cards will be held close to the vest as the staff gauges the temperature and direction charted by the new Commission.

One thing remains certain, however. As former Commissioner Elad Roisman observed, "the death of the Enforcement Division is overplayed." Still, the epitaph for this young commission will take years to write.



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