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Under Biden administration, and a Democratic Congress, SEC investigations likely to increase

By Robert Fisher, Brian Kelly, and Lauren Maynard

On February 9, SEC Acting Chair Allison Herren Lee announced that the agency would allow more enforcement supervisors to authorize investigations, a power that had been scaled back during the Trump administration. The SEC under the Trump administration had allowed only two officials to authorize formal investigations. Now, a total of 36 senior officials will have the power to launch investigations—giving them the authority to subpoena companies and individuals for records and testimony. While SEC staff can engage in informal inquiries, those inquiries must be closed or converted into a formal investigation within 60 days. Expanding the authority to launch formal investigations will speed up the process of initiating matters and likely lead to an increase in active investigations.

SEC Acting Chair Lee stated that “[r]eturning this authority to the division’s experienced senior officers, who have a proven track record of executing it prudently, helps to ensure that investigative staff can work effectively to protect investors in an era when the pace of fraud—like the pace of markets themselves—is ever more rapid.”

The *Wall Street Journal* reported that “[t]he number of new investigations fell every year during the Trump administration, from 1,063 in 2016 to 827 in 2019, according to the most recent figures published by the SEC.” The SEC’s move to speed up the investigative process is likely to be only the first step in reversing that trend, signaling that the Biden administration, and the Democratic Congress, will be advocating for a much more aggressive approach to enforcement of the financial and banking sectors in general. In the near term, industry participants can expect to see more SEC subpoenas as a result of the additional formal investigations, and it is imperative that they seek the guidance of experienced SEC counsel.

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