Rakoff revisited

The district court judge lost his battle against the SEC's settlement practices. But the regulator's new neither admit nor deny policy suggests he may have won the war.

In November 2011, US district court Judge Jed Rakoff refused to approve a settlement between the Securities and Exchange Commission (SEC) and Citigroup Global Markets. This sparked a storm of controversy with regard to the SEC's longstanding practice of allowing defendants to neither admit nor deny allegations in a complaint when a case is settled. In June 2014, the Second Circuit found that Judge Rakoff abused his discretion when he applied an incorrect legal standard in the court's review of the settlement. As a result, the Second Circuit vacated his decision and remanded the case.

While Judge Rakoff lost this battle with the SEC over its policies regarding the settlement of enforcement cases, he nevertheless prevailed in changing the regulator's policies. In between the time of Judge Rakoff's decision and the Second Circuit's decision, the SEC altered its policy of always allowing a defendant settling a case to neither admit nor deny the facts alleged in the complaint. Rather, in appropriate cases the SEC now requires the defendant to admit to the charges. The Department of Justice has also become more aggressive in pursuing financial institutions and recently required Credit Suisse to plead guilty to tax evasion. This was the first time a major financial institution has been required to admit to criminal charges since Drexl Burnham Lambert in 1989.

District court ruling

The SEC's complaint alleged that Citi created a billion-dollar fund that dumped some dubious assets on misinformed investors. This was accomplished by Citi's misrepresentations that the fund's assets were attractive investments rigorously selected by an independent investment adviser, when in fact Citi arranged to include in the portfolio dubious assets on misinformed investors. This sparked a storm of controversy with regard to the SEC's longstanding practice of allowing defendants to neither admit nor deny allegations in a complaint when a case is settled. In June 2014, the Second Circuit found that Judge Rakoff abused his discretion when he applied an incorrect legal standard in the court's review of the settlement. As a result, the Second Circuit vacated his decision and remanded the case.

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