Zealous Advocacy and Offending the SEC: The SEC’s Lawyer Discipline Program

Although the SEC typically disciplines attorneys only after courts or state bar authorities have acted, recently the agency disciplined several lawyers based solely on its own findings. In one of these cases, the SEC based its disciplinary action on its own interpretation of New York ethics rules, and the Court of Appeals for the District of Columbia Circuit affirmed the SEC’s action. This article presents the results of the authors’ study of SEC disciplinary orders, describes the program and analyzes the cases in which the SEC acted on its own to discipline lawyers.

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Several seemingly independent events over the past couple of years have created the potential for a perfect storm of increased risk for lawyers who deal with the Securities and Exchange Commission (SEC). The SEC’s enforcement authority has increased, and senior leaders in the Division of Enforcement have indicated in multiple ways that lawyer conduct is under scrutiny, both for violations of the federal securities laws and for what the Division deems to be unethical or improper professional conduct in its investigations. Meanwhile, the SEC’s Office of General Counsel (OGC), which pursues disciplinary actions against lawyers, has both continued its traditional programs and pioneered new territory, even winning rare support from the Court of Appeals for the District of Columbia Circuit. Although much has been written about the SEC’s enforcement program, through which the SEC addresses violations of the federal securities laws, much less attention has been focused on the agency’s attorney disciplinary program, through which the SEC polices its own forum.

The Evolution of the Perfect Storm

Some developments contributing to increased attention on attorneys were not specifically focused on lawyers, instead affecting the SEC’s enforcement program more broadly. For example, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 permits the SEC to charge aiding and abetting claims more easily by allowing a claim of reckless conduct rather than requiring “knowing” conduct.¹ Since the SEC often approaches lawyer cases by alleging that the lawyer aided and abetted a client’s violation of the federal securities laws,
this expansion increases the availability of this charge for the SEC’s use against lawyers.2

Dodd-Frank also permits the SEC to seek monetary sanctions administratively against individuals and entities not registered with the SEC as an alternative to federal court.3 This change permits the SEC to move administratively against lawyers in cases seeking monetary penalties, which previously could only be sought in federal court. These developments increase the risk for lawyers who are under investigation for committing, causing or aiding and abetting violations of the federal securities laws, a continuing (and perhaps increasing) focus of the SEC’s Division of Enforcement.4

Risks also have increased for lawyers who are representing clients in SEC investigations. Beginning in the summer of 2011, the SEC’s Director of Enforcement, Robert Khuzami, warned that lawyers engaging in “questionable tactics” were frustrating, delaying, and increasing the costs of SEC investigations.5 Mr. Khuzami cited, as examples of these “questionable tactics,” representing multiple witnesses with seemingly adverse interests, having multiple witnesses provide “the same implausible explanation of events,” and even employing a “foot-tapping strategy” to signal to a client how to answer particular questions during testimony.6 Stating that the SEC “cannot remain passive when confronted with conduct that frustrates [its] investigations,” Mr. Khuzami warned that his Division “can and will” (a phrase employed seven times in his speech) increase its referrals to the SEC’s OGC, the Justice Department, and/or state bar associations of any defense counsel it has observed engaging in unethical or improper professional conduct during SEC investigations.7

As these developments unfolded, the SEC expanded the situations in which it pursued disciplinary action against lawyers. The SEC’s disciplinary rule, Rule 102(e), defines when the SEC may censure attorneys or prohibit them, by suspension or bar, from appearing or practicing before it.8 Since at least 2007, the OGC has maintained a unit specifically focused on lawyer disciplinary actions under this rule.9 While the SEC historically brought Rule 102(e) proceedings against lawyers only after a federal or state court or bar authority acted, that deference to other tribunals no longer occurs in every case.

To analyze this change, we reviewed the SEC’s Rule 102(e) orders disciplining attorneys in the five-and-a-half-year period from January 1, 2007, through June 30, 2012. By our count, the SEC issued 85 Rule 102(e) disciplinary orders against attorneys during this period, with two-thirds of those cases occurring since January 2009, evidencing an increasing pace. Our research confirmed that approximately 95 percent (81 of the 85 cases) were “follow-on” proceedings in which the SEC issued its findings and disciplinary order after a state, or federal court or state bar tribunal determination concerning the attorney conduct at issue.10 In that five-and-a-half-year period, the SEC moved first to discipline an attorney in four proceedings.

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In two of the four instances, the SEC disciplined an attorney simultaneously with its own administrative finding that the attorney violated, or aided and abetted violations of, the federal securities laws.11 In two other instances, the SEC disciplined lawyers based solely on its interpretation of non-federal securities law provisions.12 One of these cases involved a former SEC attorney, who the SEC found had violated a federal “revolving door” statute by accepting employment from an entity he had investigated while at the SEC.13 The other pioneering effort was rewarded by the Court of Appeals for the D.C. Circuit, which held in Altman v. SEC that the
SEC can suspend or bar attorneys from practicing before the agency, “in the appropriate circumstances,” based solely on the SEC’s own finding that the attorney violated state or local bar disciplinary rules. These developments converge to create the potential for more SEC disciplinary actions against lawyers.

The SEC’s Rule 102(e) Attorney Disciplinary Authority

The SEC, through the OGC, relies on Rule 102(e) to censure or restrict attorneys from “the privilege of appearing or practicing before it in any way.” Rule 102(e) provides three specific provisions for disciplining an attorney:

1. The SEC may censure the attorney or “deny, temporarily or permanently,” the privilege of appearing or practicing before the SEC if the SEC finds, after giving notice and opportunity for hearing, that the attorney (i) does not “possess the requisite qualifications to represent others,” (ii) lacks “character or integrity” or engaged in “unethical or improper professional conduct,” or (iii) “willfully violated, or willfully aided and abetted the violation” of federal securities laws, rules or regulations.

2. The SEC “shall … forthwith” suspend from appearing or practicing before the Commission an attorney who has been “suspended or disbarred” by a state or federal court, or whose license to practice as an attorney has been revoked or suspended in a state, or who has been convicted of a “felony or a misdemeanor involving moral turpitude.”

3. The SEC may temporarily suspend an attorney within 90 days of (i) a court-issued injunction in an enforcement case brought by the SEC, or (ii) a court order or SEC finding, in an SEC enforcement case, that the lawyer violated or aided and abetted a violation of the federal securities laws, rules or regulations.

The Traditional “Follow-On” Approach to SEC Attorney Discipline

Most frequently, the SEC has instituted improper professional conduct proceedings under Rule 102(e) after another authority has imposed sanctions. Its historical deference to other tribunals rested on the notion that, to avoid the risk or appearance of using government powers to quash zealous advocacy, an independent tribunal should decide that the attorney acted improperly before the SEC itself acts.

In 2003, the SEC implemented rules setting minimum standards of professional conduct for attorneys as mandated under Section 307 of the Sarbanes-Oxley Act of 2002. More commonly known as “up-the-ladder” reporting requirements, these rules apply only to attorneys “in the representation of an issuer,” and were intended to merely “supplement” applicable standards where an attorney is admitted or practices. The proposed version of the rules noted that Rule 102(e) does not establish professional standards; rather, it “enables the Commission to discipline professionals who have engaged in improper professional conduct by failing to satisfy the rules, regulations or standards to which they are already subject, including state ethical rules governing attorney conduct.” Although the proposed rules did include a definition of “improper professional conduct,” tracking the same language adopted for accountants under Rule 102(e)(1)(iv), the final rules did not include the proposed definition and mentioned only that the rules will “supplement” applicable standards where an attorney is admitted or practices. Then-SEC Chairman Harvey Pitt recognized that “there are risks inherent in giving an agency that sometimes faces corporate lawyers as adversaries the ability to regulate whether and how they satisfy our notions of appropriate professional behavior.”

Having declined to adopt its own attorney conduct standards, the SEC’s disciplinary program continued to rely on other tribunals to
One example addressing conduct in an SEC investigation involved Donald Mintmire, a Florida attorney convicted in 2005 for conspiring to obstruct an SEC investigation of a stock offering scheme. Specifically, Mr. Mintmire allegedly conspired with a former law firm partner to encourage a shareholder to withhold documents requested by an SEC subpoena, failed to personally produce subpoenaed documents, and falsely testified during an SEC deposition. In 2006, the Supreme Court of Florida barred Mr. Mintmire from the practice of law based on his criminal conviction. In this situation, the SEC entered its Order of Suspension roughly 17 months after Mr. Mintmire’s criminal conviction and nearly six months after he was suspended by the highest court in the state.

In more recent years, since the inception of the OGC’s lawyer discipline unit, the SEC generally has acted more quickly in follow-on Rule 102(e) proceedings. Our review confirmed that, when the SEC based its Rule 102(e) proceeding on a formal court decision or bar tribunal disbarment, the SEC typically acted between four and twelve months. When the SEC based its Rule 102(e) proceeding on a district court’s decision in its own enforcement action, the SEC typically acted within the 90-day period in Rule 102(e)(3).

The SEC Acting on Its Own to Discipline Attorneys

The SEC imposed Rule 102(e) sanctions in two cases during our study period where the basis for the sanctions was the SEC’s own finding, in the same administrative proceeding, of a federal securities law violation. Both of these cases settled simultaneously with the entry of the SEC’s order instituting proceedings. While this result may have been advocated by the respondents, for example to reduce the number of SEC proceedings, disciplinary sanctions filed against attorneys in this manner do not carry the imprimatur of an independent tribunal’s assessment as a basis for the discipline.

One case involved Charles E. Hall, Jr., the general counsel to two investment adviser firms as well as the chief compliance officer and managing member for one of them. The firms, two other individuals and Mr. Hall submitted offers of settlement and consented (without admitting or denying the findings) to the entry of an SEC Order finding that they “failed to disclose conflicts of interest, misused client assets, and engaged in improper self-dealing.” With respect to Mr. Hall, in the same administrative Order, the SEC found that he committed fraud and other violations, found that he “willfully aided and abetted and caused” the firms’ fraud; censured him; imposed a $100,000 monetary penalty; barred him from the investment adviser industry; and, pursuant to Rule 102(e), barred him from appearing or practicing before the SEC for three years with the right to reapply. Thus, the SEC acted on its own to address the securities law violations and to impose the disciplinary action, without relying on another tribunal to act first.

Similarly, the SEC combined a substantive cease-and-desist proceeding with a Rule 102(e) proceeding against Peter Atkinson in 2009. Mr. Atkinson held a variety of positions, including General Counsel, in Hollinger, Inc., which owned and operated newspaper publishing businesses. In an administrative order to which Mr. Atkinson consented without admitting or denying the findings, the SEC found that he participated in preparing, reviewing and approving the disclosures in various Hollinger SEC filings and knew or was reckless in not knowing that those filings were materially false and misleading.
Although Mr. Atkinson had been criminally convicted of mail fraud and was in jail at the time of the SEC’s order, the SEC did not base its Rule 102(e) proceeding on that criminal conviction (which appears to have involved neither a federal securities law violation nor a crime of moral turpitude, as required by the rule). Instead, the SEC acted based on its own subsequent finding that Mr. Atkinson committed securities fraud. Thus, this case technically involved the SEC acting on its own both to rule on the underlying violation and to impose the disciplinary sanction based on that violation, although at least in this instance a federal court had independently ruled on the attorney’s conduct.

**De Novo Determinations of Attorney Ethical Misconduct**

In two situations during our five-and-one-half-year study period, the SEC ordered Rule 102(e) sanctions *de novo*, without basing the discipline on a substantive finding or action by any tribunal, including itself. In these rare instances, the SEC disciplined lawyers based solely on its own finding that the lawyers violated a standard of conduct the SEC itself did not promulgate. 35

In one instance, the SEC acted on its own to address conduct by an attorney who previously served as Associate District Director for the SEC’s Fort Worth District Office, Spencer C. Barasch. 36 The SEC found that Mr. Barasch violated a federal “revolving door” statute by representing alleged ponzi schemer R. Allen Stanford, after having participated “personally and substantially” in several decisions relating to the SEC’s investigation of Mr. Stanford while Mr. Barasch was employed at the Commission. The SEC also concluded in this same Order that Mr. Barasch’s statutory violation constituted “improper professional conduct” under Rule 102(e)(1)(ii). Mr. Barasch consented to the Order without admitting or denying the SEC’s findings, and the SEC barred him from appearing or practicing before the Commission for one year with a right to reapply. Although Mr. Barasch also paid a $50,000 civil fine to the Department of Justice to settle the DOJ’s claims, such a civil settlement does not satisfy the predicate for a Rule 102(e) proceeding. Here, the predicate was the SEC’s own finding.

This leaves the one case during our five-and-one-half-year study in which the SEC ordered Rule 102(e) sanctions based solely on its own finding that a lawyer breached a state ethics code. This case involved a New York attorney, Steven Altman, who represented a personal friend who was seeking a severance package from her previous employers—a company that was under investigation by the SEC for certain books and records violations. The case initially began as a contested Order Instituting Proceedings. An administrative law judge (ALJ) concluded that Mr. Altman had acted with scienter by informing the attorney of his client’s former employer that he would “have his client act in ways that would thwart the Commission’s prosecutorial activities in exchange for benefits for his client.” 37 Transcripts of taped telephone calls not only served as evidence in the administrative trial and subsequent decisions, but also garnered significant publicity for the case. The ALJ imposed a nine-month suspension prohibiting Mr. Altman from appearing before the SEC during that period. 38

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**The Altman holding is narrow, focusing only on egregious conduct.**

The OGC appealed the sanction, and in late 2010, the SEC found that Mr. Altman had violated certain Disciplinary Rules of the New York Bar Association Lawyer’s Code of Professional Conduct and permanently denied him the privilege of appearing or practicing before the Commission. 39 Although Mr. Altman argued that he had not been charged with violating the federal securities laws, the SEC countered that such a violation was not a “prerequisite to the initiation
of a disciplinary proceeding under Rule 102(e)” and that, although the Commission had rarely initiated such cases, it had the authority to do so. The Commission further asserted that the Sarbanes-Oxley Act “confirm[ed] the SEC’s application of Rule 102(e) in these circumstances by codifying it substantially verbatim in Exchange Act Section 4C.”

Mr. Altman appealed. The SEC has the power to discipline attorneys for violations of state ethics rules. On December 16, 2011, the D.C. Circuit Court of Appeals unanimously upheld the SEC’s permanent bar against Mr. Altman. The Court stated in its opinion that, because the statute governing Rule 102(e) “does not unambiguously define ‘unethical or improper professional conduct,’ the question is whether the Commission’s interpretation of the statute to allow it to apply State Bar disciplinary rules to define the proscribed conduct is permissible.” Although finding that Mr. Altman’s conduct fell squarely within the “rule’s ambit,” in the end, the opinion does not ultimately articulate an answer to this question for cases where the underlying conduct at issue is not clearly “intentional improper conduct in the nature of ‘extreme departures’” from state disciplinary rules. In other words, the Altman holding is narrow, focusing only on egregious conduct. Based on the court’s ruling, it seems likely that the D.C. Circuit would not approve disciplinary action against an attorney based on an SEC interpretation of state ethical rules where the proven conduct does not obviously and egregiously depart from a state authority’s requirements. It also is notable that Mr. Altman appeared pro se, and he did not appeal the D.C. Circuit Court’s decision.

The D.C. Circuit Court of Appeals distinguished between what the SEC has the power to do and what it decides, in its discretion, not to do. The Court confirmed that the SEC has the power to discipline attorneys for violations of state ethics rules because attorneys, like Mr. Altman, are “on notice” of a duty to comply with those rules when practicing before the SEC. The Court noted that, even though the Commission had previously announced that it generally would not pursue attorney misconduct absent an initial judicial determination of relevant violations, such powers were “not lost by being allowed to lie dormant.” Where an attorney intentionally and egregiously breached the state’s rules, the Altman Court held, the SEC can forge ahead and base disciplinary action on its own interpretation. The Court quoted favorably the SEC’s statement before codifying Rule 102(e)(1)(ii) that it “perceives no unfairness whatsoever in holding those professionals who practice before [the Commission] to generally recognized norms of professional conduct.”

Advocates in SEC investigations serve a critical function. The factual findings in the Altman case were egregious, and the SEC’s victory against his pro se appeal was not a surprise. The D.C. Circuit held, “Whatever ambiguity may exist as to lesser mental states that might implicate Rule 102(e), intentional improper conduct in the nature of ‘extreme departures’ [citations omitted], such as Altman’s sanctioned conduct, falls within the rule’s ambit.” The Court’s message was clear: de novo SEC disciplinary sanctions resting on ethics charges should be limited to obviously intentional, egregious conduct.

The Public Is Better Served Through the Traditional “Follow-On” Approach

It is comforting that the OGC, and the SEC, have been very disciplined and responsible in this area for decades and take these risks seriously. Even so, the dangers and appearance issues are
real when the SEC pursues disciplinary action against lawyers and no other court or state bar has determined that the lawyer’s conduct was unethical.\(^5\) It is also helpful that the D.C. Circuit Court limited the SEC’s de novo determinations of “improper conduct” to conduct “in the nature of ‘extreme departures’” from established ethical rules.\(^5\) But the boundary of the SEC’s ability to interpret, \emph{stua sponte}, state ethical rules should end at the border where fact patterns differ from those in \textit{Altman} and the underlying conduct is not clearly intentional and plainly egregious.

In its own zeal to protect its forum, the SEC should remain mindful, as it has for many years, that the perception risks of pursuing disciplinary action against advocates who appear before it merit the added process of an independent tribunal ruling on the underlying facts. Advocates in SEC investigations serve a critical function, and their ethical actions in representing clients vigorously generally garner SEC Staff respect, not retaliation. In the same speech in which he confirmed that the Enforcement staff would be increasing referrals of troubling attorney conduct to OGC, state ethics boards and even prosecutors, Mr. Khuzami also stressed the importance of zealous advocacy and acknowledged that the “opposing narrative provided to us by good defense lawyers helps us to make fair and informed enforcement decisions.” Even so, these Rule 102(e) cases in which the SEC disciplined lawyers without the involvement of any independent tribunal demonstrate that the SEC is willing to take the first step against conduct that it deems to be offensive. Thus, the decade-old adage by the D.C. Circuit holds true that “attorneys practicing in the securities field will draw little comfort from the knowledge that their missteps will escape sanction as long as they do not ‘threaten the integrity of the Commission’s processes.’”\(^5\)

Notes
6. Id.
7. Id.
8. 17 C.F.R. § 201.102(e).
9. In 2007, Richard Humes, SEC Associate General Counsel, stated that the SEC had created a new unit in the OGC specifically to address professional misconduct by attorneys. Recognizing that this means two distinct SEC groups may investigate attorneys, he noted that the Division of Enforcement pursues violations of the federal securities laws while the OGC focuses on Rule 102(e). Richard M. Humes, \textit{Remarks of an SEC Associate General Counsel}, 57 Case W. Res. L. Rev. 341, 345 (2007).
10. See, e.g., \textit{In re Marc S. Dreier, Esq.}, Admin. Proc. File No. 3-13873, Rel. No. 62002 (Apr. 29, 2010) (a New York attorney suspended from appearing or practicing before the Commission after pleading guilty to committing securities fraud, receiving a 20-year criminal sentence, and being disbarred by the State of New York).
15. 17 C.F.R. § 201.102(e). The SEC has determined that it “may discipline individuals pursuant to Rule 102(e) even if those individuals did not appear or practice before the Commission while committing willful violations of the securities laws.” *In re Robert W. Armstrong, III*, Admin. Proc. File No. 3-9793, Rel. No. 51920 (June 24, 2005).
16. 17 C.F.R. § 201.102(e)(1).
17. 17 C.F.R. § 201.102(e)(2).
18. 17 C.F.R. § 201.102(e)(3). This provision would not apply if the attorney’s violation was found not to have been willful. If the attorney does not petition the SEC within 30 days to lift the temporary suspension, it becomes permanent. If the attorney does file a petition, the SEC must act within 30 additional days to set a hearing or lift the suspension. *Id.*
19. *See, e.g.*, Disciplinary Proceedings Involving Professionals Appearing or Practicing Before the Commission, Securities Act Release No. 33-6783, 41 SEC Docket 388, 394-95; 1988 SEC LEXIS 1365, at *22 (July 7, 1988) (stating that the SEC “has generally utilized Rule 2(e) proceedings against attorneys only where the attorney’s conduct has already provided the basis for a judicial or administrative order finding a securities law violation in a non-Rule 2(e) proceeding”); Implementation of Standards of Professional Conduct for Attorneys [under Section 307 of the Sarbanes-Oxley Act regarding issuers], 67 Fed. Reg. 71,670, 71,672 (proposed Dec. 2, 2002) (stating that the SEC “generally should not institute Rule 102(e) proceedings against attorneys absent a judicial determination that the lawyer has violated the federal securities laws”); Edward F. Greene, General Counsel, SEC, Remarks to the New York County Lawyers’ Association (Jan. 13, 1982) (stating that he “would generally not recommend Commission disciplinary proceedings against attorneys appearing as advocates” because such proceedings “could have a serious chilling effect on zealous representation and be a harbinger of prosecutorial abuse”). See also Giovanni P. Prezioso, General Counsel, SEC, Remarks before the Spring Meeting of the Association of General Counsel (Apr. 28, 2005) (acknowledging Mr. Greene’s earlier statement and noting that lawyer activities in the context of an investigation or enforcement proceeding “is where the adversarial nature of the lawyer’s role most needs protection”).
21. *Id.*
23. Proposed Rule at § 205.6(b). The Commission amended Rule 102(e) relating to accountants in 1998 by adding subpart 1(iv) to define the applicable mental state required to discipline accountants defining “improper professional conduct” to include either (i) “intentional or knowing conduct, including reckless conduct,” or (ii) negligent conduct comprised of either a single instance of “highly unreasonable conduct” or repeated instances of “unreasonable conduct.” See Amendment to Rule 102(e) of the Commission’s Rules of Practice, 63 Fed. Reg. 57,164, 57172 (Oct. 26, 1998) (codified at 17 C.F.R. § 201.102(e)(1)(iv)). This amendment was a result of *Checkosky v. SEC*, 139 F.3d 221 (D.C. Cir. 1998) where the Court of Appeals for the D.C. Circuit dismissed the Commission’s suspension of two accountants under Rule 102(e) on void for vagueness grounds. The Commission specified that the amendment to Rule 102(e) was “not meant to address the conduct of lawyers.” 63 Fed. Reg. 57,164, n.3 (Oct. 26, 1998).
27. 507 F.3d at 1274-75.
33. *See also In re Leaddog Capital Markets, LLC, Initial Decision Rel. No. 468, Admin. Proc. File No. 3-14623 (Sept. 14, 2012) (concluding in a single contested administrative proceeding that, among other things, an attorney committed securities fraud, and therefore that in addition to imposing other sanctions, ordering pursuant to Rule 102(e) that he was permanently denied the privilege of appearing and practicing before the SEC). Because the lawyer contested the SEC’s 2011 Order Instituting
Proceedings and this ALJ decision was entered after our study period, this case is not included in our totals.


35. Our study focused only on sanctions imposed during the period January 1, 2007, through June 30, 2012. Thus, SEC orders instituting proceedings during this period that were, or are still being, litigated would not appear in our study. For example, the SEC instituted Rule 102(e) proceedings against lawyer David Tamman in January 2011, and he chose to litigate rather than consenting to an order with findings. In re David M. Tamman, Esq., Admin. Proc. File No. 3-14207, Rel. No. 63785 (Jan. 27, 2011). OGC alleged that, after learning of an SEC examination of one of his clients, Mr. Tamman altered private placement memoranda to add language that his clients had not used at the time the memoranda were provided to investors, and that he removed metadata specifically requested by the SEC’s Enforcement Staff before sending documents to his client’s counsel for production. The SEC alleged that Mr. Tamman engaged in improper professional conduct, basing this conclusion on the SEC’s own interpretation of California Rules of Professional Conduct and of federal and state obstruction of justice statutes. In June 2011, a grand jury in the Central District of California indicted Mr. Tamman, relying on some of the facts alleged by the SEC. Both proceedings remain pending as of this writing. Because no Rule 102(e) sanction has been implemented against Mr. Tamman, his case does not appear in our study. Nevertheless, it serves as an additional example of the OGC pursuing disciplinary sanctions based solely on the SEC’s interpretation of laws, rules or regulations outside of its areas of expertise.


38. Id. at 35.


40. Id. at 24-27

41. Id. at 27-28.

42. Mr. Altman sued the SEC in federal district court in New York, stating that the Commission was “unconstitutionally usur[p]ing the authority” of the courts of New York and “wrongfully sought to ‘federalize’ the subject of attorney ethics and discipline.” Complaint at 2, Altman v. SEC, No. 10 Civ. 9141 (S.D.N.Y. filed Dec. 7, 2010). The case was dismissed for lack of jurisdiction because Mr. Altman was required to bring any action challenging his sanction in the U.S. Court of Appeals. Altman v. SEC, No. 10 Civ. 9141, 2011 U.S. Dist. LEXIS 23230, at *9 (S.D.N.Y. Mar. 6, 2011) (citing Section 25 of the Exchange Act, 15 U.S.C. § 78y). Mr. Altman subsequently appealed the federal district court’s jurisdictional ruling to the Court of Appeals for the Second Circuit simultaneously appealing the SEC Order to that court as well. Altman v. SEC, No. 10 Civ. 9141, 2011 U.S. Dist. LEXIS 23230, at *9 (S.D.N.Y. Mar. 6, 2011), appeal docketed, No. 11-2074 (2d Cir. May 17, 2011), affirmed, No. 11-2074 (2d Cir. June 12, 2012) (affirming the district court’s dismissal for lack of subject matter jurisdiction agreeing with the lower court’s “thorough and well-reasoned opinion”). At the same time, he filed a petition for review of the SEC Order to the Court of Appeals for the District of Columbia. Altman v. SEC, No. 11-1067 (D.C. Cir. filed Mar. 7, 2011).


44. Id. at 5.

45. Id. at 10.

46. Id. at 9.

47. Id. at 7, (citing United States v. Morton Salt Co., 338 U.S. 632, 647 (1950)).

48. Id. at 5, (citing Carter and Johnson, 47 S.E.C. 471, 508 & n. 65 (Feb. 28, 1981)).


50. Oral Remarks of Richard M. Humes, SEC Associate General Counsel, at the Practicing Law Institute’s “SEC SPEAKS in 2008” Conference, Washington, D.C. (Feb. 9, 2008) ( when asked at a securities conference what ethical standards the SEC would use to interpret and apply to Rule 102(e) cases, Mr. Humes stated that “[w]hat we have to go on is what the Commission did in [Altman].”).


52. Checkosky v. SEC, 139 F.3d 221, 224 (D.C. Cir. 1998).