



With the Second Circuit's recent reaffirmation of the SEC's substantial discretion in negotiating the terms of settlement—notably [vacating Judge Jed Rakoff's rejection](#) of the proposed \$285 million settlement in *SEC v. Citigroup Global Markets, Inc.*—eyes are turning to the decision's immediate impact on at least one other high-stakes case: a \$602 million insider trading settlement between the SEC and CR Intrinsic Investors, an affiliate of S.A.C. Capital Advisors.

Similar to the SEC-Citigroup settlement, CR Intrinsic was not required to admit wrongdoing in settling the SEC's charges. Judge Victor Marrero had conditionally approved the settlement pending the outcome of the Citigroup appeal. To settle the SEC's allegations that CR Intrinsic and S.A.C. Capital had participated in an insider trading scheme, CR Intrinsic agreed to pay a disgorgement of \$275 million in profits gained and losses avoided, \$52 million in pre-judgment interest, and \$275 million as a civil penalty, for a total of \$602 million in

monetary relief. Judge Marrero concluded that the monetary relief was fair and reasonable but declined to unconditionally approve the proposed settlement, choosing instead to await the Second Circuit's pronouncement of a district court's authority to reject settlements on account of their neither-admit-nor-deny provision. On June 4, 2014, the Second Circuit decided the Citigroup appeal and held that a district court may **not** reject a settlement on the basis of a neither-admit-nor-deny provision and require parties to establish the truth of the SEC's allegations. Furthermore, the appellate court held, a district court may not reject a settlement on the basis that the SEC failed to bring proper charges against the private party, for such a decision is matter of the SEC's discretion. In a statement about the Citigroup decision, SEC Enforcement Director Andrew Ceresney said that while the SEC will continue to seek admissions in appropriate cases, settlements without admission also enable regulatory agencies to serve the public interest by returning money to harmed investors more quickly. [Judge Marrero's order](#) had provided that his conditional approval of the CR Intrinsic settlement would become final upon the Second Circuit's determination that district courts lack authority to reject settlements on account of their neither-admit-nor-deny provision. It is not clear how, if at all, Judge Marrero will address the concerns he had raised about the ability of regulators and courts to protect the public interest and hold wrongdoers accountable for financial scandals that are "unlikely to have happened without substantial misconduct" in an era when the notion of "[too big to fail](#)" has gained currency throughout commercial markets.

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