

Even Defense Attys Miss SEC During Record Gov't Shutdown

By **Rachel Graf**

Law360 (January 14, 2019, 7:36 PM EST) -- With the government shutdown now the longest on record at 24 days, even the attorneys who defend clients against inquiries by the U.S. Securities and Exchange Commission are anxious for the agency to get back to work.

Any benefits defense attorneys might have enjoyed from extra time to work on cases during the start of the partial government shutdown are waning, as additional work they might do preparing witnesses, for example, will likely be forgotten by the time the government reopens, said McDermott Will & Emery LLP partner Mike Piazza, who regularly defends clients against SEC allegations. Meanwhile, settlements the SEC approved before the shutdown are not being implemented, and ongoing investigations that clients were hoping to resolve during the first quarter could now stretch into the second or third quarter.

"It's nice to have a little extra time, but we're ready to go," Piazza said.

President Donald Trump's partial government shutdown, over his demand for a wall along the U.S.-Mexico border, became the longest on record this weekend, and political leaders have made little public progress with border security negotiations.

During the shutdown, the SEC has a limited number of staff tasked with responding to emergencies and maintaining systems such as the Edgar database of financial reports. Many ongoing investigations will be put on hold as the agency focuses instead on stopping imminent investor loss.

"When you look at who is essential and who needs to fulfill that law enforcement responsibility to protect people's property, it's typically not going to be those traditional investigations," said King & Spalding LLP partner Aaron Lipson, who previously led the SEC's enforcement program in Atlanta.

Also, the Office of Compliance Inspections and Examinations has halted its routine inquiries during the shutdown. The office carried out more than 3,150 examinations last year and referred more than 160 matters for enforcement, it said in December.

During past shutdowns, including the previous recordholder that lasted 21 days during the Clinton administration, the SEC was able to stay open by drawing on funds carried over from the previous year.

This time around, the agency was down to minimal staff levels on Dec. 27, five days after the shutdown began.

"I would say that this [shutdown] has both a different tone and flavor," said Haynes and Boone LLP partner Kit Addleman, who experienced multiple government shutdowns during her 21 years at the SEC.

Attorneys say they haven't been able to reach SEC staff since the end of December.

David Chase, who worked in the SEC's enforcement division before opening his own law firm defending against securities claims, was scheduled to bring a client in to testify in an SEC

investigation on Wednesday. The meeting is presumably canceled, but Chase has gotten only automated email responses when he's tried to confirm, he said.

Piazza has similarly struggled to get anyone to address an ongoing investigation that was on track to be resolved in the first quarter before everyone had "blown past" deadlines in recent weeks.

The client in that particular investigation can't move forward with a planned transaction until the probe is resolved, Piazza said.

"We have documents ready to go, we have witnesses ready to testify, but we have nobody to talk to," he said.

The longer the investigations take to resolve, the more likely it is that companies will have to disclose them in quarterly regulatory filings and potentially take a reputational hit.

Even companies that aren't the subject of an active investigation are suffering from a lack of SEC resources available to issue guidance or otherwise help answer questions, Addleman said.

When the government does reopen, the SEC could face problems of its own. Agency staff had expected to go back to work when the new Congress was sworn in during the first week of January, Piazza said, and the longer-than-expected delay could weigh on morale.

Enforcement staff will also have to work their way through what's expected to be a significant backlog of documents.

"I've got to believe when the government finally gets back up and running and the SEC cranks up its operations, there's going to be a real lag time just to kind of catch up and get acclimated again," Chase said.

The shutdown could also have a **chilling effect** on the market for initial public offerings.

Federal litigation involving the agency has been stalled as well. Federal courts in Rhode Island and New York recently granted bids to stay SEC lawsuits over an allegedly **fraudulent bond offering** and a former investment fund manager's **supposed insider trading** until the government reopens.

"We're just kind of all in a standstill right now waiting for something to happen," Piazza said.

--Additional reporting by Jody Godoy. Editing by Brian Baresch and Alanna Weissman.