

Miller Canfield Victory Leads SEC to Abandon Longstanding Reentry Standard

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In a major regulatory win, attorneys from Miller Canfield persuaded the U.S. Securities and Exchange Commission (SEC) to eliminate its decades-old “extraordinary circumstances” test for reentry into the securities industry, marking a significant policy shift with national implications.

The SEC’s decision, issued by the full Commission, allows Miller Canfield’s client, a former investment advisor barred in 2018, to reenter the financial services industry, and establishes new precedent for how similar applications will be reviewed going forward.

“This decision represents not only a victory for our client, but a meaningful correction to how agencies interpret and apply their own rules,” said Matthew Allen, principal attorney on the case. “We’re proud to have helped this client and that the SEC has brought clarity and fairness to the reinstatement process.”

The firm’s client was barred by the SEC in 2018 following an enforcement action. The bar did not include a provision for reapplication—a so-called “unqualified” bar. After contacting Miller Canfield in 2021, the client sought reinstatement through SEC Rule of Practice 193, which allows previously barred individuals to return to the industry if doing so is in the public interest.

Over the course of two and a half years, Miller Canfield’s team argued that the SEC’s reliance on a 1994 interpretive release requiring “extraordinary circumstances” for reentry violated the Administrative Procedure Act (APA) and the U.S. Constitution’s non-delegation doctrine. The firm contended that the 1994 release effectively imposed a legislative rule without following proper notice-and-comment procedures.

In its final order, the Commission agreed to discontinue use of the “extraordinary circumstances” standard, stating: “We no longer intend to use the ‘extraordinary circumstances’ test in evaluating applications for consent to associate under Rule 193.”

In addition to Allen, Miller Canfield attorneys Thomas Cranmer and Joel Bryant led the representation.

“This result affirms our client’s right to be evaluated under the law as written—not an unwritten, overly burdensome standard,” Allen said. “We hope this change will open the door for other qualified professionals to seek reinstatement through lawful and fair procedures.”

Miller Canfield’s white collar and regulatory group regularly represents clients in complex enforcement, compliance and administrative matters nationwide.