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The Non-Revolving Door: New Evidence Of Capture At The SEC

For decades, commentators have warned about the “revolving door” between the SEC and the regulated industry. So far, however, the debate has overlooked a different professional “door” SEC personnel might walk through. Joining a plaintiffs’ side securities litigation firm would seem to be an appealing option for SEC attorneys looking to continue pursuing the same “mission” – holding companies accountable for fraud and misconduct. There is substantial overlap between the legal regimes, types of cases, and legal skills relevant to both SEC enforcement and private securities litigation. And joining an elite plaintiffs’ firm would not necessarily entail a financial sacrifice and might even offer the prospect of higher compensation than defense-side work. Given all this, one might expect that SEC attorneys regularly make their way to the plaintiffs’ bar – and vice versa.

That’s not the case. This paper presents an original empirical study showing that door between the SEC and the plaintiffs’ bar does not revolve. The study presented here shows that none of the leading plaintiffs’-side firms employ any attorneys with recent SEC experience doing traditional plaintiffs’ side work, and none of the current upper- and middle-managers in the SEC’s enforcement division have any plaintiffs’ side experience (though the overwhelming majority have worked for defense-side firms).

This “non-revolving door” provides important new insights into how the revolving door may facilitate SEC capture. First, it raises the prospect that SEC attorneys may be subject to a kind of “cultural capture,” embracing the defense bar’s hostile and skeptical view of the social value of securities class action litigation, with significant consequences for the securities enforcement landscape. Second, it might confirm a core premise of the rent-seeking theory of how the revolving door produces agency capture – that the most valuable commodity that an attorney acquires from working at the SEC is not legal skill or knowledge, but personal connections.