Agency Settlements and Legal Change
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ABSTRACT: Regulatory agencies, such as the SEC, rely heavily on settlements to resolve enforcement actions they bring. Enforcement settlements are efficient, because they preserve agency resources, quick, because they allow the defendant to put the matter behind quickly, and risk-reducing. Less appreciated are two secondary effects: first, settlements enable the agency to soften the sharp edges of mandatory regulatory policies, and second, they can undermine regulatory policies.

The article examines settlements before and after the implementation of rule 506(d) disqualification from private placements. SEC settlements with firm defendants after the new rule became effective in September 2013 avoid findings of violation and remedies that would trigger disqualifications, in particular for defendants that are publicly-trade financial institutions or their subsidiaries. The evidence suggests that pervasive reliance on settlement can undermine regulatory policies.