

# Happening Now: Stocks extend gains, Dow opens up more than 1 percent

Personal Finance | Fri Oct 17, 2014 6:49pm EDT

Related: [Money](#), [Regulatory News](#), [Breakingviews](#)

## Private equity adviser, CEO settle with SEC over fee allocations

WASHINGTON | By Sarah N. Lynch



The headquarters of the U.S. Securities and Exchange Commission (SEC) are seen in Washington, July 6, 2009.

Reuters/Jim Bourg

An Arizona-based private equity adviser and its chief executive will pay roughly \$2.2 million to settle civil charges that they breached their fiduciary duty to investors by failing to disclose certain fees and expenses, a U.S. regulator said on Friday.

The Securities and Exchange Commission said that Clean Energy Capital LLC and its founder and CEO Scott Brittenham had settled the matter without admitting or denying the charges.

While Clean Energy Capital is not well known in the private equity arena, the case is significant because it was the first one the SEC filed as part of a broader crackdown into private equity fund fees.

## ADVERTISING

The SEC accused Brittenham of misallocating inappropriate expenses to the funds he managed, including rent, salaries, business cards and bottled water. The SEC said the expenses were never properly disclosed to investors.

The SEC's examiners have previously said they uncovered widespread problems with fee and expense misallocation since they started to review the industry, which is still relatively new to SEC regulation.

Aegis Frumento, an attorney with Stern Tannenbaum & Bell LLP for Clean Energy and Brittenham, said in a statement that his clients believe the settlement is "fair and in the best interests of all concerned."

The SEC has made private equity fee disclosure issues one of its top enforcement priorities after winning authority to police the private equity sector in the 2010 Dodd-Frank Wall Street reform law.

The final charges listed in the settlement documents, however, are a bit different from what was initially alleged.

When the SEC first charged Clean Energy Capital in February, the SEC said the firm and Brittenham had intentionally committed fraud. In the settlement, however, the SEC only charged them with fraud caused by negligence.

Clean Energy previously vowed to fight the charges, and up until recently was nearly about to go to trial in an SEC administrative proceeding.

Brittenham had argued, among other things, that he could not have intentionally done anything wrong because he had evidence to show he sought advice from his lawyer every step of the way.

The SEC had sought to exclude this evidence, saying it had not reviewed the advice because the defendants had previously claimed it was confidential under attorney-client privilege.

But an SEC administrative law judge struck down the agency's request to exclude it on July 22.

Just a few days later, SEC court records showed that the planned trial date was stayed pending a possible settlement of the case.

Marshall Sprung, a co-chief of the SEC's asset management unit in the enforcement division, said the case is important because it lays out problematic conduct and sends a message to the market.

“This is a very strong settlement that reinforces the message we want to send about transparency in the private equity space,” he told Reuters in an interview.

(Reporting by Sarah N. Lynch; Editing by [Diane Craft](#))

[Thomson Reuters](#) is the world's largest international multimedia news agency, providing [investing news](#), [world news](#), [business news](#), [technology news](#), headline news, [small business news](#), news alerts, [personal finance](#), [stock market](#), and [mutual funds information](#) available on Reuters.com, [video](#), [mobile](#), and interactive television platforms. Thomson Reuters journalists are subject to an [Editorial Handbook](#) which requires fair presentation and disclosure of relevant interests.

NYSE and AMEX quotes delayed by at least 20 minutes. Nasdaq delayed by at least 15 minutes. For a complete [list of exchanges and delays, please click here](#).