

Behind the SEC's New Interest in Immigration

By [Susan Berfield](#) on June 05, 2012

Ponzi schemes, affinity frauds, insider trading, market manipulation, stock option backdating, bribes: There is a long list of crimes the Securities and Exchange Commission usually investigates. Now lawyers who closely watch the commission say it is adding disclosure of undocumented immigrant violations to that list.

Chipotle ([CMG](#)), the fast-growing burrito chain, is the [highest-profile example](#) of a company that's caught the SEC's attention for its handling of a probe by U.S. Immigration and Customs Enforcement. ICE began an investigation in 2010, which resulted in Chipotle firing about 450 workers in Minnesota who couldn't confirm the validity of their work documents. It also conducted audits in other states. Chipotle says it provided more than 300,000 pages of documents to the government. And it had begun using the Department of Homeland Security's E-Verify program, which, as its name suggests, verifies the documents provided by potential employees. So Chipotle's co-Chief Executive Officer Montgomery Moran told a Morgan Stanley ([MS](#)) conference on May 23 that executives were "surprised" when the SEC called to say it would be subpoenaing documents. (Chipotle did not respond to requests for comment.)

Since January 2009, ICE has audited some 7,500 employers suspected of hiring illegal labor and imposed about \$80 million in sanctions, according to an ICE spokeswoman. Expect the SEC to ramp up its own activity accordingly. The SEC, which declined to comment by e-mail, would investigate a company's disclosures about an ICE audit to make sure they were complete, timely, and accurate, says Jacob Frenkel, a former SEC enforcement lawyer who stresses the commission's independence in these matters. It would also look at how the company discussed the risks of such an audit to its finances and reputation.

"It's the natural progression of enforcement," says [Dan Siciliano](#), a law professor at Stanford who specializes in corporate governance. "ICE has scaled. It has more capacity now to show up as accountants and negotiate fines with companies. The SEC is paying attention to that. By the end of the decade we will see regular securities-related enforcement."

There's a catch for companies that are under investigation by ICE. "There are no express disclosure requirements related to immigration and employment," says Frenkel. "Many qualified securities lawyers will counsel in favor of silence. Sometimes companies get in bigger trouble for speaking when they have the opportunity not to do so."

<http://www.businessweek.com/printer/articles/28804-behind-the-secs-new-interest-in-immigration>