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Updated SEC Enforcement Manual Emphasizes Engagement and Transparency

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On February 24, 2026, the US Securities and Exchange Commission (SEC) announced major updates to its Enforcement Manual (Manual), a guidance document the SEC staff uses when conducting investigations of potential securities law violations. This is the first time the SEC has updated the Manual since 2017, but the announcement reflects it will undergo yearly reviews going forward. The Manual incorporates several reforms the SEC announced last year, including updates to the Wells process, simultaneous consideration of settlement offers and waiver requests, updates to the formal order process and a number of other changes.

Overall, the updates reflect the current SEC administration's focus on engagement and transparency – indeed, "engagement" has been added to the Manual's mission statement, which states that the SEC intends to "engag with harmed investors and other members of the public in a professional manner." Also, in the press release announcing the changes, the SEC stated that it encourages "open, informed, and thoughtful dialogue between SEC staff and potential respondents and defendants." On their face, these statements suggest that companies and individuals facing SEC investigations may be provided more meaningful opportunities through proactive engagement and effective advocacy during the investigative process to persuade the SEC not to bring an enforcement action or to settle on more favorable terms.

Below, we summarize the most important updates in the Manual.

Updates to Wells process

The Wells process is triggered with a formal notice from the staff that it has made a preliminary determination to recommend an enforcement action against the individual or entity. Thereafter, that individual or entity under SEC investigation is entitled to submit a written or video statement to the Division of Enforcement, typically with the intent of convincing the staff that no enforcement action is warranted. In October 2025, SEC Chairman Paul Atkins previewed procedural changes to the Wells process to promote fairness and transparency, including an extended timeline for submission, opportunities for Wells meetings and access to the SEC's investigation files. The Manual incorporates these changes and several other procedural updates.

Additional approval required before issuing a Wells notice.

The Manual requires the staff to obtain approval from the Office of the Director (in addition to an associate director or unit chief) before issuing a Wells notice. This additional approval requirement provides the director with the opportunity to weigh in on potential charges and remedies earlier in the process, and in some cases, they might recommend changes to reflect consistency across the Division of Enforcement and more closely align with Commission priorities.

Circumstances in which a Wells notice is issued.

The Manual states that a "Wells notice will be provided in most cases" in which the staff makes a preliminary determination to recommend that the Commission file an action or institute a proceeding. The previous manual did not provide any prescriptive guidance concerning how often Wells notices should be issued, and traditionally practices have varied among the staff and across different administrations. The Manual also limits the circumstances in which the staff should consider not providing a Wells notice to "parallel covert criminal investigation(s)" as opposed to parallel criminal investigation more generally. Historically, the staff often did not issue a Wells notice when there was a parallel criminal investigation, even if it was overt, due to a concern that undertaking the process could lead to a delay in the filings. This change will mean that either the staff will issue Wells notices earlier in the process in order to build in enough time to coordinate the timing of SEC charges with criminal charges, or the SEC will file charges following their criminal counterparts.

Extended time period for Wells submission.

Recipients of a Wells notice will now be allowed four weeks to make a Wells submission and can seek extensions,

although the staff could deny such requests for "good cause." This change isn't likely to have a significant impact on the process, as historically the staff gave recipients two weeks to respond, but generally granted extensions.

Sharing of other evidence not known to Wells recipients.

While Wells recipients were often given the opportunity to review material produced to the SEC by third parties, there was no written policy regarding the sharing of such evidence with potential respondents or defendants. The updated Manual changes that, directing the staff to inform Wells notice recipients of "salient, probative evidence" that the staff reasonably believes the recipients may not know, subject to "confidentiality or other constraints" for information sharing.

Access to SEC's investigative files.

Previously, the staff had discretion whether to allow Wells recipients access to its investigative files. Now, the Manual directs the staff to be "forthcoming about the content of the investigative file" and to "make reasonable efforts" to allow recipients to review the files. This change will likely lead to more consistency in practices across the Division of Enforcement, which historically have varied with some staff providing substantial access and other staff providing none. However, the Manual still provides the staff some discretion in determining whether and how much to share. Among other things, the staff may consider whether the Wells recipient "was unresponsive to staff requests, failed to cooperate, or otherwise refused to provide information during the investigation."

Requests for Wells meetings are 'typically granted.'

As former staff noted early last year (see our March 18, 2025 blog post), the current SEC administration is more receptive to Wells meetings compared to the previous one. The Manual provides that requests for Wells meetings are "typically granted" and should be scheduled within four weeks of the Wells submission. However, what has not changed is that Wells recipients generally will only be accorded one post-Wells notice meeting. The Manual also states that the post-Wells notice meeting will include a member of senior leadership at the associate director level or above, so it will not necessarily include the director or a deputy director.

Guidelines for 'helpful' Wells submissions.

The updated Manual now includes guidelines for "helpful" Wells submissions, including that they should "focus on disputed factual or legal issues, or raise significant legal risks or policy or programmatic concerns." Among other things, submissions are deemed helpful when they "cknowledge and address evidence and precedent in support of the staff's position, while highlighting exculpatory evidence and adverse precedent." This guidance provides helpful transparency concerning the factors the staff considers "helpful," potentially leading to a more productive dialogue during the Wells process.

White papers will be provided to the Commissioners.

Outside the Wells process, persons may voluntarily submit materials (such as white papers and legal memos) to the staff. Materials accepted by the staff "will generally be provided to the Commission along with any recommendation from the staff for an enforcement action against the submitting party." The previous manual did not require staff to share white papers with the Commission, although the general practice was to do so. This change will likely encourage parties to submit white papers and similar materials more frequently during the Wells process, as they are sure to garner a broader review audience.

These updates increase transparency and balance the information playing field between the staff and Wells recipients.

Simultaneous consideration of settlement offers and waiver requests

As explained in this October 22, 2025 Governance Beat blog post, the Division of Enforcement is tasked with negotiating settlement terms with potential defendants and respondents where the staff determines there were violations of the securities laws. If a settlement in principle is reached, the staff presents its recommendation to bring an enforcement action and the proposed settlement terms to the Commission. Certain settlement terms can result in statutory disqualifications with significant collateral consequences to a settling party's business, such as loss of "well-known seasoned issuer" status or disqualification from relying on Reg D safe harbor.

To avoid these consequences, parties may submit waiver requests to the Division of Corporation Finance, which evaluates the requests and makes a recommendation to the Commission whether to grant or deny the waiver. Since

2021, settlement negotiation and the waiver process have proceeded in parallel workstreams, with each division making separate recommendations to the Commission. In practice, however, parties typically await feedback on their waiver requests before submitting signed settlement offers.

In September 2025, Chairman Atkins announced the SEC will restore its pre-2021 practice of "permitting a settling entity to request that the Commission simultaneously consider an offer of settlement that addresses both an underlying Commission enforcement action and any related waiver request." The new process is now documented in the Manual, which provides that if the Commission accepts the settlement offer but rejects the waiver request, the respondent has five business days to decide whether to move forward with the settlement.

Revised process for formal orders of investigation

As discussed in our March 18, 2025 blog post, the SEC adopted a final rule reversing the process for formal orders of investigation that had been in place for the past 15 years. The new rule requires a majority of the Commissioners to agree before the SEC formally opens an investigation. Previously, that power was delegated to the director of the Division of Enforcement.

The new rule is incorporated into the Manual, which provides that the staff must obtain two levels of approval – first from the Office of the Director, then from the Commission – before a formal order can be issued. In practice, this may lead to staff seeking information on a voluntary basis for a longer time period while they await subpoena authority.

Formalized criminal referral policy

In June 2025, the SEC issued a Criminal Referral Policy Statement pursuant to Executive Order 14294. The policy statement identified factors the staff should consider when deciding whether to refer potential securities law violations to the US Department of Justice for criminal prosecution. Those factors include harm to victims, potential gain to defendants, the defendants' knowledge and expertise, recidivism and whether a criminal referral could provide more investor protection. These factors are now incorporated into the Manual.

In addition, the Manual establishes formal procedures for criminal referrals. For non-urgent matters, the staff must obtain approval from the director of the Division of Enforcement for the referral decision. For expedited matters, the associate director or unit chief has discretion to notify leadership after the referral has been made. The staff generally will not refer conduct that solely implicates strict liability offenses to criminal authorities. The previous manual did not contain formal referral procedures and allowed the staff to "informally refer a matter to federal or state criminal authorities."

Expanded cooperation framework

Since 2001, the SEC has relied on the analytical framework set forth in the Seaboard Report to evaluate a company's cooperation in an SEC investigation. The Seaboard Report identifies four measures for evaluation: self-policing, self-reporting, remediation and cooperation. Compared to the 2017 version, the updated Manual expands upon each of the measures and provides detailed guidance to companies on the steps they can take to potentially receive cooperation credit.

- **Self-policing** – The Manual makes clear that self-policing requires not only "establishing" an effective compliance program but also "implementing" said program.
- **Self-reporting** – Self-reporting credit is generally not available if the misconduct has already received media attention, if the staff learned of it from another source or if there is an "imminent threat of disclosure or government investigation."
- **Remediation** – The Manual provides a list of "effective" remediation measures, including disciplining employees, strengthening internal controls, clawing back executive compensation, making corrective disclosures, hiring new staff and improving training.
- **Cooperation** – To receive cooperation credit, companies must go beyond merely complying with subpoenas. "Exemplary cooperation" could include summarizing internal investigation findings, identifying key documents and witnesses, translating foreign language documents or providing experts' financial analyses.

The Manual emphasizes the importance of "timeliness" of cooperation and encourages companies to provide assistance during the early stages of investigation.

In addition, the Manual states that the SEC's cooperation program is overseen by the Division of Enforcement's "Cooperation Committee" that will approve "all cooperation agreements, deferred prosecution agreements, non-prosecution agreements, and immunity requests." While this committee and process is not new, its mention and description in the Manual provides additional transparency to the public.

Preservation, document production and privilege log

Although document preservation notices are not new, there has been no formal policy regarding the form and timing of such notices – until now. The updated Manual directs the staff to "consider sending a document preservation letter as early as is appropriate in an investigation," and requires the letter to "explicitly request the preservation of all relevant communications" on messaging apps, including those on personal devices. Notably, for the first time, the term "document" is defined to include text and other electronic messages. Thus, while the current SEC administration may be retreating from enforcement over off-channel communications, it is not overlooking text messages in the gathering of evidence.

The Manual also updates guidance for production cover letters, requiring the producing party to describe the steps taken to identify responsive documents, including who searched and reviewed the documents, what sources were searched, the location of the original documents and who maintained them.

The previous manual did not include any specific requirements with respect to the content of privilege logs. The updated Manual now requires that, for each document withheld for attorney-client privilege, the privilege log must identify the attorney and client involved. For each document withheld under the work product doctrine, the privilege log must identify the anticipated litigation at issue.

Takeaways

The significant updates to the Manual reflect the SEC's commitment to engagement, transparency and fairness. They also reflect an effort to increase consistency in practices across the Division of Enforcement. Companies and individuals facing SEC investigations should take advantage of the enhanced Wells process – including access to third parties' productions and the SEC's investigative files, as well as Wells meetings – to present their case effectively before any enforcement recommendation is made. Early and proactive cooperation, including self-reporting and timely remediation, can yield significant benefits. Overall, these updates present an opportunity for respondents to engage more constructively with the staff and potentially achieve more favorable outcomes.

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