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Chairman Atkins Discusses SEC Enforcement: An Exercise of Government Power "Tempered by Fair Process, Good Judgement, Integrity and Rectitude"

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U.S. Securities and Exchange Commission ("SEC" or "Commission") Chairman Paul S. Atkins outlined some foundational themes for SEC enforcement in a recent keynote address at Fordham Law's 25th Annual A.A. Sommer, Jr. Lecture on Corporate, Securities, and Financial Law.[1] This was the Chairman's second important enforcement-related speech in his career. The first one came 18 years ago at the same A.A. Sommer, Jr. Lecture, when then-Commissioner Atkins discussed the Wells process and potential reforms to the SEC's enforcement program. This time, as Chairman, he used the speech to begin shaping enforcement the way he has long discussed.

We recently provided some of our thoughts on the Wells process and although more changes and clarity are likely ahead, the Chairman's remarks provide context for this Commission's approach to enforcement and insight for parties engaged with enforcement staff. Specifically, Chairman Atkins used his remarks to bring attention to the Wells process, highlight simultaneous consideration of settlements and waivers, and discuss how faithfully stewarding the public's trust in the Commission will set priorities for enforcement staff.

Chairman Atkins began by referencing former Commissioner Al Sommer's "insistence that process matters." In other words, how the SEC carries out its enforcement mission can matter as much as the mission itself. The Chairman's remarks, outlined below, reflect his philosophy on enforcement, and likely provide insight into the direction of the enforcement program under the new leadership of Judge Meg Ryan.

Enforcement Actions Should Focus on Bad Actors and Fair Process, Not Benign Mistakes

- Reinforcing the theme of enforcement focused on lying, cheating, and stealing, Chairman Atkins indicated that the SEC would prioritize "cases of genuine harm and bad acts" and "view cases of benign or innocent actions differently."
- Enforcement procedures should emphasize rule-of-law adherence, predictability, and tailored sanctions that avoid additional harm to shareholders.

The Wells Process Is a Critical Due Process Device for Respondents

- Chairman Atkins described the Wells process as a critical due-process safeguard that gives respondents notice and a meaningful opportunity to respond before enforcement actions are recommended.
- *Lucia v. SEC* and *Jarkesy v. SEC* are key reminders that due process and constitutional rights apply fully within administrative proceedings.

Strengthening the Wells Process to Achieve Better Outcomes

- Enforcement staff should provide detailed Wells notices that allow respondents to "understand the potential charges and evidentiary basis for those charges, such as testimony transcripts and key documents."
- Respondents should be given realistic submission deadlines, which at a minimum means no less than four weeks.

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- Early engagement prior to the Wells process is encouraged, such as the use of “white papers” and professional, transparent dialogue between staff and counsel to address concerns about mistaken facts and legal theories.
- When requested timely, senior enforcement leadership will meet with defense counsel at least once before making a recommendation to the Commission.
- Commissioners should personally review all Wells submissions to ensure accuracy and context.

Restoring Simultaneous Settlement and Waiver Review

- The Commission will return to reviewing settlements and waiver requests together, ending fragmented, siloed decision-making, which is expected to increase predictability, reduce inefficiency, and strengthen overall confidence in negotiated resolutions.

Promoting Transparency and Accountability

- Chairman Atkins urged clearer public explanations of enforcement outcomes—especially with respect to penalty determination and cooperation credit.
- He also advocated for consistency in issuing termination letters, closing notices, and guidance on reinstatement standards for barred individuals.

Realigning Staff Incentives

- The Chairman warned that rewarding staff purely for bringing cases risks distorting priorities and stretching legal boundaries.
- He advocated incentive structures that reward discernment, quality work, and sound judgment—even when that means declining to pursue a case.

The Road Ahead – Building Trust Through Fair Process

- Chairman Atkins praised the Wells process as “one of the Commission’s great procedural innovations” in need of a long-overdue refresh after remaining unchanged for more than 45 years.
- He emphasized that reforms to promote fairness and transparency in the Wells process will further strengthen the integrity and effectiveness of the SEC’s enforcement program.

As noted, Chairman Atkins has twice delivered Fordham Law’s Annual A.A. Sommer, Jr. Lecture, and both times he placed the SEC’s enforcement program at center stage. His recent remarks on reforming the Wells process, integrating settlements and waivers, and focusing on transparency signals a deliberate effort to find a better balance between enforcement vigor and procedural safeguards.

For those involved in matters with enforcement, Chairman Atkins’ remarks reinforce the significance of different engagement opportunities to influence the direction of an investigation—via early staff dialogue, white papers, meeting with senior enforcement leadership, and Wells submissions. Knowing how to best engage, with whom, and on what issues, will be important. In short, the Chairman’s message is unmistakable: process integrity is at the center of SEC enforcement.

**With assistance from associates Bryan Clegg and Hayden McGovern.*

Related Capabilities

Securities Enforcement

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