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Securities Enforcement Update

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SEC's Division of Enforcement Updates Its Enforcement Manual for First Time Since 2017

Notable updates go beyond procedural changes previously announced by Chairman Paul Atkins and Enforcement Director Margaret Ryan. Although updates had been anticipated in the past, the two most recent updates (2017 and 2026) both occurred under a Trump Administration.

The Securities and Exchange Commission's Enforcement Division announced updates to its [Enforcement Manual](#), reflecting revisions for the first time since 2017. The new version includes a provision that the Enforcement Manual will be updated annually going forward.

The accompanying [press release](#) describes the changes as the result of "the Commission's ongoing commitment to fairness, transparency, and efficiency in the investigations conducted by the Division." SEC Chairman Atkins described the revisions as a "long-overdue step," and the Director of the SEC's Division of Enforcement, Judge Ryan, said the revisions will "ensure greater uniformity" and "reflect the Division's best practices."

A. Two Key Changes

The changes relate primarily to: (1) the Wells Process, and (2) simultaneous consideration of enforcement settlement recommendations and statutory disqualification waivers.

1. *The Wells Process*

The revisions enact important, new procedures before Staff can issue a Wells Notice and throughout the Wells process, including:

- Additional approvals. Staff must now obtain approval from an Associate Director “*and then* approval from the Office of the Director” *before* issuing a Wells notice or determining to recommend an enforcement action without issuing a Wells notice. Previously, while coordination occurred with the Office of the Director, Staff only needed approval from an Associate Director or Regional Director.
- Oral notice to Wells recipient. Staff should “when feasible” give advance oral notice of the intention to send a written Wells notice. Previously, the manual provided that Staff “*may* give advance notice . . . by telephone.” In addition, the Staff considerations for whether or when to provide a Wells notice, including when there is a parallel criminal investigation, reflects that notice should likely be given. Staff should now consider if there is a parallel “*covert*” criminal investigation in deciding whether to provide a Wells notice, as compared to previously whether there was “*a*” parallel criminal investigation that may be adversely affected in providing notice.
- Information to Wells recipient. The updated manual directs Staff to provide access to evidence in the investigative file to the notice recipient, as Chairman Atkins outlined in a recent speech. Specifically, the updated Manual provides that (with emphases added):
 - “As part of the Wells process, staff *should* inform the recipient of the Wells notice of *salient, probative evidence* that the Staff has gathered or received, which the staff may have or should have reason to believe may not be known to the recipient...”
 - “In the interests of increasing transparency and efficiency of the investigative process and the Commission’s deliberations, the staff *should be forthcoming* about the content of the investigative file.”
 - “On a case-by-case basis, the staff *should make reasonable efforts* to allow the recipient of the Wells notice to review relevant portions of the investigative file that are not privileged, do not implicate Whistleblower information, do not contain BSA information, and are not subject to other confidentiality restrictions or statutes.”
 - In evaluating requests for access to the investigative file, the Staff should consider “whether access to portions of the file would facilitate the ability of the recipient of the Wells notice to respond meaningfully to the staff’s proposed recommendation.”

These changes appear clearly intended to encourage greater sharing of the investigative file. As we have discussed in our other alerts, we continue to observe a variation of practices among staff and offices when it comes to sharing evidence in the investigative record.

- Timeline. The manual provides that, in the absence of timing constraints, a four-week period should be allowed for the recipient to provide a Wells submission.

- Post-Wells notice meeting. The manual now states that a meeting—with a member of senior leadership, at the Associate Director level or above, in attendance—should be scheduled to occur no later than four weeks after receipt of the Wells submission.

What makes a Wells Submission helpful? According to the updated manual, the following are attributes of a helpful submission:

- accurately reflecting evidence and legal issues,
 - focusing on disputed factual or legal issues,
 - addressing evidence in *support* of the Staff's position while highlighting exculpatory evidence and adverse precedent,
 - addressing legal elements required to establish violations and explaining why the evidence does not satisfy those elements,
 - addressing litigation risks or other concerns,
 - providing documents and citations to the investigative record, including an expert where appropriate to discuss complex or technical charges, and
 - discussing the factors described in the Seaboard Report,^[1] if applicable.
2. ***Simultaneous consideration of enforcement settlement recommendations and statutory disqualification waiver requests.***

New Section 2.5.2.1 sets forth the Commission's September 2025 restoration of its prior practice of permitting a settling entity to request that the Commission simultaneously consider an offer of settlement and any related request to Commission Staff for statutory disqualification waivers. The section provides that a prospective defendant/respondent will typically have five business days to move forward with an approved settlement offer in situations where a waiver request is denied.

B. Additional Updates

There are a number of other notable updates to the Enforcement Manual, outlined below, including with respect to the framework for evaluating cooperation, the impact of cooperation on civil penalties, the formal order process, and referrals to criminal authorities.

Cooperation and related efforts.

- Self-reporting credit. Appropriate when a company reports misconduct *before* the Staff learns of misconduct from other sources and prior to imminent threat of disclosure or government investigation. In contrast to guidance issued on the same day by the U.S. Attorney's Office for the [Southern District of New York](#), the SEC takes the view that self-reporting credit will rarely be appropriate for conduct that has already received media attention or is subject to investigation by another regulator.

- Remediation. Examples of effective remediation include strengthening internal controls, clawing back compensation from responsible executives, improving training, and prompt corrective disclosures.
- Cooperation factors. Requires more than mere compliance with subpoenas for documents or testimony. Those factors include identifying key documents and witnesses, summarizing factual findings from internal investigations, summarizing interviews of witnesses located abroad, facilitating voluntary interviews of witnesses, and providing financial analyses conducted by external experts.
- Cooperation Committee. The manual adds a new section on the Division's Cooperation Committee, specifying that Cooperation Committee approval must be sought for all cooperation agreements, deferred prosecution agreements, non-prosecution agreements, and immunity requests.

Formal order process. The manual now provides detail on what the Staff should include in their memo describing the investigation and need for a formal order, and requires that the memo and accompanying Proposed Formal Order must be approved by the Commission. In March 2025, then-Acting Chairman Uyeda revoked the authority that had been delegated to the Director of the Division of Enforcement.

Criminal referrals. The manual adds a new section on Criminal Referral Factors, describing what the Staff should consider when deciding whether to refer potential violations to criminal law enforcement either at the federal or state level. The factors include:

- an assessment of the harm caused by the potential offense,
- the potential gain to the putative defendant,
- whether the putative defendant had specialized knowledge or expertise or was licensed in an industry related to the rule or regulation at issue,
- whether the putative defendant knew the conduct would cause harm or was illegal,
- whether the putative defendant has engaged in a pattern of misconduct, and
- whether the involvement of the DOJ or criminal authority will provide additional meaningful protection to investors.

Investigation prioritization. The manual includes a new requirement that Associate Directors/Unit Chiefs identify the "Top 5" priority matters on each of their dockets in order to make effective decisions regarding resources and priorities. The prior manual only specified that the Division designate significant matters as "National Priority Matters" but did not specify a number. This change reflects Chairman Atkins long-standing focus on cost-benefit analysis approach to both regulation and enforcement. The following criteria, among others (and which remain consistent with the prior manual though with some reordering of items 1 and 2), are provided for establishing the Top 5 List:

- "Whether the matter involves potentially widespread and extensive harm to investors" and
- "Whether the matter presents an opportunity to send a particularly strong and effective message of deterrence, including with respect to emergent issues in the market, or

involves matters that present limited opportunities to detect wrongdoing and thus to deter misconduct.”

Consolidated Audit Trail Data. The manual states that it may be appropriate to obtain and review Blue Sheet data, or query CAT data, in a variety of investigations, most typically those involving insider trading or manipulation. While data analytic capabilities have and are improving at the Commission, CAT has drawn scrutiny and last year Chairman Atkins noted his instruction to staff to undertake a comprehensive review of CAT, including the scope of what is collected.

Enforcement recommendations. The manual adds a new section with considerations for seeking various types of relief in enforcement actions, including that the Division may recommend that the Commission forgo seeking civil penalties, or seek reduced civil penalties, against an entity that has self-reported, self-policed, and/or engaged in remediation or cooperation. The manual also provides that the Division may forgo or seek reduced civil penalties against individuals. In addition, the manual notes that the Commission has adopted a small entity enforcement penalty reduction policy in compliance with Section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996.

Non-prosecution agreements. The manual changes the standard for issuing a non-prosecution agreement from “limited and appropriate circumstances” to “exceptional” circumstances,” and adds that the Cooperation Committee must approve before a non-prosecution agreement is recommended to the Commission.

Updated Statute of Limitations. The manual now reflects the requirements in the National Defense Authorization Act for Fiscal Year 2021 (NDAA), which established a 10-year limitations period for scienter-based disgorgement and equitable relief, including injunctions, bars, suspensions, or cease and desist orders—none of which existed in 2017.

Termination letters. The manual adds that Staff should continuously review the status of open investigations and send a termination letter where appropriate. In addition to named respondents, Enforcement Staff are encouraged to send termination letters to parties who made significant productions in an investigation and public companies whose stock was implicated in an insider trading investigation to alert those parties to the fact that the investigation has been closed.

[1] “Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions,” Securities Exchange Act Release No. 44969 (Oct. 23, 2001) (“Seaboard Report”).

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