

GIBSON DUNN



Securities Enforcement Update

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SEC Enforcement Director's First Public Remarks Highlight Process, Fraud, and Compliance Failures

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The SEC's Enforcement Division Director recently delivered her first public remarks and provided helpful insight into the Division's direction under her leadership. In her [Remarks to the Los Angeles County Bar Association](#), SEC Enforcement Director Judge Margaret Ryan outlined her guiding principles, approach to enforcement process, and substantive priorities. A brief Q&A with insightful commentary from Judge Ryan followed her remarks. In our experience, after a long transition, changes within the Division of Enforcement are taking shape.

Guiding Principles

- *Integrity, honor, fidelity to the law, and the judicious use of the federal government's power.* Judge Ryan wants to uphold the law while ensuring fair process for everyone who participates in the capital markets.
- *Past criticisms of the Division and course correction.* Judge Ryan stated it is a true privilege to lead an extraordinarily talented Staff while acknowledging that some prior criticisms of Enforcement were accurate. She noted that they have been or are

addressing those real concerns, but also cautioned against dwelling on issues that have already been addressed.

Enforcement Process

- *Transparent and fair enforcement processes, particularly with respect to the Wells framework.* Judge Ryan reiterated Chairman Atkins's [statement](#) last Fall that Wells recipients will have four weeks to respond and a meaningful opportunity to meet with senior enforcement leadership. Wells submissions will be reviewed by senior enforcement leadership and the Commission. Notably, Judge Ryan's official remarks did not touch on file sharing or Chairman Atkins's statement last Fall that “[t]he staff must be forthcoming about material in the investigative file.” But as discussed below, she did address that issue in a thoughtful way in her Q&A.
- *Informed, adversarial engagement though fairness should not be mistaken for leniency.* Judge Ryan emphasized that informed, adversarial engagement improves decision-making and helps ensure that enforcement recommendations are well-grounded. She cautioned, however, that fairness should not be mistaken for leniency, warning against tactics that delay investigations. Both Staff and parties, she said, are expected to move matters toward conclusion efficiently and in good faith.

Enforcement Priorities

- *Enforcement work continues.* Judge Ryan stated “reports that enforcement work at the SEC has been tossed to the wayside are not only greatly exaggerated but flat out wrong.”
- *Focus of the Division, quality and impact not “chasing numbers.”* Judge Ryan emphasized a “back-to-basics” enforcement approach aligned with Chairman Atkins’s direction, with a focus on quality and impact rather than enforcement statistics. Key priorities include fraud targeting retail investors, misconduct that undermines market integrity, and a more measured approach to non-fraud violations.
- *Market integrity includes certain enumerated conduct.* Judge Ryan highlighted specific types of conduct on market integrity issues including accounting fraud, insider trading, wash trading, and market manipulation schemes.
- *Significantly, Judge Ryan also discussed compliance with other provisions of the federal securities laws that are not “necessarily” on par with fraud.* Though confident that many violations of other provisions—such as a broker-dealer or investment adviser’s obligation to adhere to its fiduciary duties and financial responsibility rules, issuer reporting requirements, and books and records—should not result in enforcement cases and might be handled by other Divisions, there is a “middle ground.” Specifically, “where fraud is absent, but compliance has failed in a way that poses risks to investors, risks to the integrity of the market, or yields a benefit to the participant,” opportunity exists for thoughtful Enforcement resolutions emphasizing remediation and a path toward compliance. This last statement presents the most interesting possibility for contrast with prior Enforcement programs, which tended not to distinguish compliance failures from fraud, at least in terms of penalty assessments.

In addition to her prepared remarks, during a brief Q&A that followed insightful commentary covered a range of topics including on tips concerning the Wells process.

Q&A

- *Her view of the SEC as an outsider.* Responding to a question about her outsider role, Judge Ryan stated that her fresh viewpoint allows her to help move things towards a more streamlined and focused approach to investigations.
- In discussing the reorganization of the enforcement division, Judge Ryan said there should be greater uniformity in both process and resolution.
- *Evidence sharing.* Judge Ryan stated that the Staff's transparency of the record evidence will depend on the investigation's status. As it gets closer to the Wells process, the Staff will be more forthcoming. The Staff will provide relevant documents, but still protect work product, privilege, Bank Secrecy Act materials, and documents that could reveal the identity of a whistleblower. She reiterated that the goal is to provide a productive process that allows for an informed conversation about resolution.
- *Wells Submissions.* Judge Ryan provided some tips for the Wells process. Submissions should focus on the key issues in the case. She advised that defense counsel should be efficient and not rehash the same arguments. Any submission should cite to the record. She also cautioned against using hyperbolic arguments when presenting potential litigation or policy risks. She also advised that when there is a particularly technical issue, an expert submission could be helpful. Regardless, any submission should focus on factual and legal arguments and not merely stating that the case is "regulation by enforcement," claiming the Staff is just wrong, or touting the political connections of a target. Parties should instead focus on the key issues and provide solid legal analysis.
- *Cooperation.* When asked about her view on cooperation, Judge Ryan directed the room to the Seaboard factors and the Commission's 2006 [Statement](#) concerning financial penalties. She emphasized coming to the SEC early with timely cooperation and fulsome remediation. And even if the company has not done everything perfectly, the effort to accomplish these goals and honest recognition of where the company could have done better will be appreciated.
- *In closing.* She closed by emphasizing that enforcement is the final tool and she hopes that many issues or technical violations of securities laws could be solved through the SEC's other tools.

The following Gibson Dunn lawyers prepared this update: [David Woodcock](#), [Osman Nawaz](#), and [Greg Boden](#).

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