

New SEC Enforcement Cookbook Serves Up a More Transparent Wells Process with a Side Order of Additional Defense Burdens

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On February 24, 2026, the U.S. Securities and Exchange Commission’s (the “SEC” or the “Commission”) Division of Enforcement (the “Division”) released the first material updates to its Enforcement Manual (the “Manual”) since 2017.¹ The Manual does not have the force of law, but it provides insight into how the Division should be expected to conduct investigations, make charging decisions, and interact with parties under investigation and their counsel.

The updates reflect the priorities of the current administration as previewed in speeches by Chair Paul Atkins and Enforcement Director Judge Margaret (“Meg”) Ryan. Those changes include requiring enforcement staff to make certain “probative” evidence available in the Wells process and reflecting the Commission’s policy of simultaneously considering settlement proposals and waiver requests. The updated Manual also reflects other significant developments in securities enforcement and memorializes certain long-standing staff practices. Below, we outline the most consequential changes, including:

- Providing respondents greater transparency into the investigative file after the issuance of a Wells notice, including probative evidence not otherwise available to the Wells recipient.
- Outlining a specific framework for what constitutes an effective Wells submission.
- Codifying simultaneous consideration of settlement offers and waiver requests.
- Describing changes to how the staff engages during the investigation with regard to document preservation, tolling agreements, privilege issues, and closing letters.

¹ *Enforcement Manual*, Division of Enforcement, U.S. Securities and Exchange Commission (Feb. 24, 2026), available [here](#).

During Fact-Finding: An Enhanced Focus on Preservation, Privilege, and Disclosure of Search Protocol

Messaging Apps and Personal Devices Are Now Explicitly in Scope of Preservation Notices

The Manual now instructs that document preservation notices should expressly address data that may be located in messaging apps, such as WhatsApp, iMessages, or Signal, and/or on personal devices.² This requirement reflects the findings of the off-channel enforcement actions of the Gensler era, which showed that historically business communications have occurred through a variety of technological means beyond workplace email. Although the current Commission has not continued to bring off-channel enforcement actions, this requirement confirms that the staff will be focused on the preservation and collection of relevant evidence, even if it is located outside an entity's approved communication channels.

In practice, this requirement means that preservation notices to entities may direct them to preserve all relevant entity data, as well as any communications that are in the personal possession of their employees. Entities should ensure that they have the appropriate policies and procedures, including undertakings by employees, to enable them to preserve these records.

Greater Scrutiny of Privilege Claims Looms

The 2026 Manual expands the substantive requirements for privilege logs. The Manual provides that for each document withheld on the basis of a claim of attorney-client privilege, the privilege log should include the identity of the attorney and client involved, and for each document withheld on the basis of the attorney work product doctrine, the privilege log should identify the litigation in anticipation of which the document was prepared.³ Work product claims in particular could be challenged more frequently if the staff is not satisfied with the details provided about the context for the preparation of the materials.

The Manual also makes subtle changes to how the staff deals with the inadvertent production of privileged materials. It instructs the staff to “not assume” that inadvertent production waives privilege.⁴ If the staff agrees to return a document, the staff is instructed to not only request a privilege log, but also request representations from the

² *Enforcement Manual* § 3.2.2 at 3-40; § 3.2.7.3 at 3-45.

³ *Id.*

⁴ *Id.* § 4.2 at 4-72.

producing party that it will retain the document for the duration of the investigation (presumably in case the staff decides to challenge the privilege assertion).⁵

Wells Process Changes — New Approval Requirements and Greater Transparency

The section of the Manual covering the Wells process has been substantially expanded and contains the most significant set of changes for parties and defense counsel.

Dual Approval Requirement for Wells Notices

Whereas previously any senior officer could authorize a Wells notice, the Manual now requires the approval of a senior officer (Associate Director or Unit Chief), as well as the approval of the Office of the Director.⁶ Depending on the process the Front Office implements for staff to request permission to issue a Wells notice, it is possible that this requirement may result in the most senior leadership of the Division being read into a case sooner and more deeply than in the past. However, the Office of the Director now includes Director counsel and deputies, so it is not clear the Director will read each Wells notice.

Transparency and Access to the Investigative File

Once a Wells notice is issued, the Manual also instructs that “[a]s part of the Wells process, staff should inform the recipient of the Wells notice of the 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 (subject to confidentiality or other constraints for sharing information).”⁷ The Manual calls for “transparency” with respect to the investigative file and instructs the staff to be “forthcoming” about its investigative file.⁸ Whereas the Manual previously gave the staff discretion to share information, it now instructs them that they “should make reasonable efforts to allow the recipient of the Wells notice to review relevant portions of the investigative file that are not privileged” and are not subject to confidentiality restrictions.⁹

This is a landmark change to the Wells process that addresses the most serious criticism of the Wells process—i.e., that Wells notice recipients must argue their case without knowledge of the staff’s key evidence. Whether this change will have real effect will depend on how broadly the staff interprets the exceptions to the transparency mandate

⁵ *Id.* § 4.2 at 4-72–73.

⁶ *Id.* § 2.3 at 2-21.

⁷ *Id.* § 2.3 at 2-23.

⁸ *Id.* § 2.3 at 2-24.

⁹ *Id.* § 2.3 at 2-24–25.

to protect confidential information. It is not clear, for example, how broadly the staff will interpret the confidentiality around whistleblower complaints, whether it is limited to information provided by the whistleblower, or the broader formulation of any information that might tend to reveal the identity of a whistleblower, which could be a much broader universe of documents and data. Additionally, this change may not apply where there is a parallel criminal investigation.

Guidance on Effective Wells Submissions

The 2026 Manual introduces, for the first time, a dedicated substantive framework setting out what constitutes an effective Wells submission—a provision entirely absent from the 2017 Manual, which addressed Wells submissions in purely procedural terms, covering only length limitations, deadlines, and format, without offering any guidance on content or quality.¹⁰ Under the 2026 Manual, accepted Wells submissions are described as most helpful when they focus on disputed factual or legal issues or raise significant legal risks or policy or programmatic concerns. The revised Manual enumerates eight specific criteria for an effective submission:

- Accurately reflecting the evidence and precedent;
- Focusing on disputed issues;
- Acknowledging and engaging with evidence and precedent supporting the staff's position while highlighting exculpatory material and adverse precedent;
- Addressing the legal elements required to establish violations and explaining why the evidence falls short of satisfying those elements;
- Raising litigation risks or policy or programmatic concerns that would arise if the staff recommended the charges or sought the relief identified in the Wells notice;
- Providing documentary or investigative record-based support for key factual or legal arguments;
- Where applicable, addressing the Seaboard cooperation factors; and
- In complex or technical matters, potentially including an expert report.¹¹

¹⁰ *Id.* § 2.3 at 2-24.

¹¹ *Id.*

As noted by Enforcement Director Judge Ryan in a recent speech,¹² this change is significant for practitioners advising Wells notice recipients, as it signals precisely what the Division regards as persuasive—in particular, the expectation that a submission will engage candidly with contrary evidence and precedent rather than present a one-sided narrative. Further, these criteria provide helpful guidance by explicitly recognizing the value of experts. It also formally opens the Wells process as a vehicle through which a recipient may advance cooperation credit arguments under the Seaboard framework.

Mandatory Rejection of Wells Submissions Containing Settlement Offers

Under the previous Manual, the staff “may” reject a Wells submission if it contains or discusses a settlement offer, and settlement offers may be made in a separate document. Under the 2026 Manual, the staff “will” reject a Wells submission that contains or discusses a settlement offer, and settlement offers may not be combined with or included in Wells submissions and instead must be made in a separate document.¹³ The 2026 Manual adds that rejected Wells submissions generally will not be provided to the Commission, but the basis for rejection will be communicated to the Commission.¹⁴ The change from permissive to mandatory rejection memorializes long-standing practice.

Post-Wells Notice Meetings—Timing and Senior Leadership Attendance

The 2026 Manual introduces two new, concrete requirements regarding post-Wells notice meetings. First, the post-Wells notice meeting should be scheduled within a reasonable time after the recipient makes a Wells submission and in any event no later than four weeks after receipt of the Wells submission.¹⁵ Second, the meeting will include a member of senior leadership at the Associate Director level or above.¹⁶ Notwithstanding this general language, given the consequential nature of a potential enforcement action, and based on past practices, we expect that the Director typically will participate in Wells meetings.

Contingent Settlements Are Back

The Manual now reflects the Commission’s September 2025 decision to restore its practice of permitting a party to request that the Commission simultaneously consider a

¹² Margaret Ryan, *Remarks to the Los Angeles County Bar Association*, 56th Annual Securities Regulation Seminar (Feb. 11, 2026), available at <https://www.sec.gov/newsroom/speeches-statements/margaret-ryan-02-11-26-remarks-los-angeles-county-bar-association/>.

¹³ *Enforcement Manual* § 2.3 at 2-24.

¹⁴ *Id.*

¹⁵ *Id.* § 2.3 at 2-25.

¹⁶ *Id.*

settlement offer and any related request to waive automatic disqualifications or collateral consequences resulting from the settlement.¹⁷ The Manual now requires the staff to present for the Commission's simultaneous consideration both the offer of settlement and the waiver request, along with recommendations from the relevant Division or Divisions.¹⁸ If the Commission accepts the settlement offer but rejects the waiver request, Enforcement and the relevant Division staff will promptly notify the prospective defendant or respondent and will typically request that they decide within five business days whether to move forward with the portion of the settlement offer accepted by the Commission.¹⁹

This change, which was a wholesale reversal from the practice under the Gensler SEC, is favorable to settling parties, as it allows them to have certainty about which automatic disqualifications would apply in the event of a settlement so they can make a decision about how to proceed. Its addition to the Manual may reflect an attempt to codify the practice, rather than be subject to future shifts under new administrations, although the Manual itself would not bind a future Commission from changing the policy.

Continuous Assessment of Termination Notices

There has long been a requirement that the staff send termination notices to parties involved in an investigation who have reason to believe they could face charges when the staff determines not to bring an action, but such notices have not always been forthcoming or timely. In keeping with the theme of greater transparency, the new Manual requires the staff handling a matter to “continuously review the status of open investigations and send a termination letter when appropriate.”²⁰ Moreover, although the Manual maintains the pre-existing list of parties who should receive termination notices (including parties listed in a Formal Order or receiving a Wells notice), it also includes new language “encourag[ing]” staff to send a termination letter to “any party who made significant productions in an investigation to enable that party to determine that the matter has been closed.”²¹

Although these tweaks do not radically change the instructions to the staff on termination letters, they do suggest that staff will be encouraged to follow through with sending them in a more timely way. The staff may also send letters to a larger number

¹⁷ *Id.* § 2.5.2.1 at 2-27.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* § 2.6.2 at 2-32.

²¹ *Id.*

of subpoena recipients, which could allow companies to better manage and sunset disclosures concerning SEC subpoenas.

Memorializing and Conforming Staff Practices

In addition to these key changes, the 2026 Manual also memorialized several other practices of note to practitioners. These revisions include:

- **Background questionnaires**—The staff is instructed to curate background questionnaires before sending them in advance of testimony.²² Previously, some staff did this, but the practice was inconsistent. Presumably, this new guidance will result in the staff removing questions about family members and personal financial accounts unless relevant.
- **Tolling authorization**—The Manual now reflects that associate directors and unit chiefs can approve tolling up to 90 days and that longer tolling requests require the approval of the Director or Deputy Director.²³ The Manual also makes clear that retroactive tolling agreements are disfavored.
- **Audio interview recordings**—Recording now requires supervisory approval.²⁴
- **Cooperation**—The Manual incorporates more detail on cooperation, including examples of what the Commission may consider effective remediation.²⁵ These changes largely reflect existing practice, but may focus the staff to recommend cooperation credit more consistently.
- **Investor Engagement**—The Manual now specifically notes that each “member of the Division shares a responsibility to be professional when communicating with investors.”²⁶

²² *Id.* § 3.3.5.2 at 3-60.

²³ *Id.* § 3.1.2 at 3-36.

²⁴ *Id.* § 3.3.3.2 at 3-58.

²⁵ *Id.* § 6.1.2 at 6-96.

²⁶ *Id.* § 3.3.6 at 3-63.

Conclusion

The 2026 Enforcement Manual represents a meaningful recalibration of SEC enforcement practice. We will be watching to see how these changes affect ongoing and future investigations.

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Please do not hesitate to contact us with any questions.



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