



# Milbank Insights

## **White Collar Defense and Investigations**

### SEC Enforcement Division Revises Its Playbook: What the Updated Manual Signals About Enforcement Practices and Defense Strategy

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On February 24, 2026, the SEC Division of Enforcement (“Division”) released the first updates to its [Enforcement Manual](#) (“Manual”) since 2017. The updates—which the SEC characterized as underscoring its “ongoing commitment to fairness, transparency, and efficiency in the investigations conducted by the Division”—are an important window into the Division’s expected approach to investigations and will influence strategic decision-making by respondents and their counsel. While many early commentators have described the changes as significant, the revisions are better understood not as a sharp break from the past, but as a formalization of approaches the Division has employed in recent years with targeted enhancements layered on top.

The most notable and welcome changes relate to the Wells process, including a presumption that staff be forthcoming with relevant evidence in the investigative file and a longer default period for responding to Wells notices. These changes, if implemented as intended, could expand opportunities for advocacy on the merits before enforcement recommendations are finalized. At the same time, a nuance missed by some practitioners and legal press is that the updates reflect continuity as much as change—embracing and codifying, rather than displacing many policies associated with the Division during the prior administration. This suggests that the practical impact of the revisions will ultimately turn less on the text of the Manual and more on how staff apply it in practice.

The Commission has committed to annual reviews of the Manual going forward. This alert offers perspective on key changes to the Manual, including our take on their practical impact, where meaningful new opportunities for advocacy may emerge, and where expectations of significant change may prove overstated.

### The Wells Process: Formalized Approval Requirements, Timelines and Access to Investigative Files and Evidence

#### Director-Level Approval Required for Wells Notices

The revised Manual formalizes the requirement that issuance of a Wells notice now requires two levels of approval: “an Associate Director’s or Unit Chief’s approval and then approval from the Office of the Director.”<sup>1</sup> While not required under the prior Manual, recent Enforcement Directors in practice required that staff provide prior notification of, and the opportunity to, review Wells notices before they were issued. This typically functioned as a negative-consent mechanism to identify and elevate for additional review those matters that turn on novel or doubtful legal theories or present unintended policy concerns. Under the updated Manual, the current and future Directors may follow the same process, which would not necessarily involve a detailed review of the merits of the underlying case. If this continues to be how things work, then the specified approval process simply codifies past practice.

However, if the introduction of the formal requirement of Director approval signals an expectation on the part of the Commission that the Director’s Office perform detailed review of each case—and, where appropriate, consult the Commission before a Wells notice is authorized—then this change could have significant consequence for future practice. First, it could create a bureaucratic logjam that slows the progress of investigations towards charging decisions. Second—and ironically—it could prompt senior leadership of the Division (and, in some cases, the Commissioners themselves) to form firm views on the merits of a case before potential respondents have an opportunity to present any meaningful advocacy. This concern is underscored by recent anecdotal experience with staff, without warning, proposing settlements to companies or individuals while explaining that the proposed charges and remedies have already been vetted by the Enforcement Director and, in some cases, the Commission. If this is the case, the most consequential advocacy may increasingly need to occur before the Wells stage, elevating the importance of early engagement with the staff and Division leadership. These nuances are not apparent from the Manual itself, underscoring that the real impact of the revisions will likely turn on implementation rather than changes to the words on the page.

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<sup>1</sup> EM at 2-21 to 2-22

## Timing of Wells Submissions and Meetings

The Manual now codifies the practice of giving Wells notice recipients adequate time to respond. Specifically, staff are directed to set “reasonable limitations on the length of any submission,” including “in the absence of timing constraints, a four-week time period allowed for the recipient to provide a Wells submission.”<sup>2</sup> It remains to be seen whether the establishment of a lengthier default time period for responding to a Wells notice—something that the Chairman had previously urged<sup>3</sup>—will reduce the number of extensions that the staff will be willing to give.

In many respects, four weeks reflects what has already become the floor in complex matters (albeit with some resistance from the staff in certain cases). The more consequential question is whether that default period will operate as a minimum benchmark or, instead, harden into a presumptive ceiling. If interpreted and applied rigidly, the four-week standard could, counterintuitively, reduce flexibility relative to prior practice, where extensions beyond four weeks were often granted in appropriate cases.

That risk is particularly acute in investigations involving individuals, where counsel may be retained late in the process and where staff may not have clearly signaled that an individual Wells notice was under consideration. In those circumstances, meaningful advocacy frequently requires additional time to assess the investigative record, develop defenses, and engage with staff. Indeed, the updated Manual directs staff to provide broad access to the investigative file in most situations, as discussed further below; in many cases, counsel and respondents may thus require more time to meaningfully engage with the evidentiary record. How the Division applies the four-week default in practice will therefore be a key indicator of whether this revision expands or constrains opportunities for advocacy.

The updated Manual also requires that a Wells meeting with senior leadership at the Associate Director level or above “should be scheduled” within four weeks after receipt of the Wells submission.<sup>4</sup> While this guidance promotes greater predictability in timing and access, it stops short of creating any entitlement to engagement with the Director of Enforcement or a Deputy Director, leaving the level of senior leadership participation—and the potential influence of such meetings—dependent on the circumstances of the investigation. In short, other than the establishment of a presumptive timeframe, this revision does not appear to deviate from past practice, where meetings with senior leadership including the Director or Deputy Director were commonly granted, and only time will tell whether it is a harbinger of increased opportunities to advocate directly to the Division’s most senior leaders.

When it comes to meetings with senior leadership, the Manual also formalizes the long-standing prohibition on defense counsel going over the heads of staff by arranging one-on-one meetings with supervisors that exclude the investigative staff. Specifically, “[o]utside persons involved in investigations, such as defense attorneys, seeking to contact the staff of the Division, including senior officials (at the Associate Director/Unit Chief level and above), should in the first instance seek to schedule any such discussions through an appropriate staff attorney or Assistant Director assigned to the matter.”<sup>5</sup>

## Content of Wells Notices

The revised Manual also provides that Wells notices should identify not only the potential charges under consideration but also “the types of relief” staff contemplates recommending. That requirement codifies past practice in which the staff invariably informed recipients of Wells notices, in broad strokes, of the forms of relief the staff believed were appropriate (e.g., penalty; disgorgement; industry bars or suspensions; injunctive relief; imposition of monitors, receivers, or consultants).

The revised Manual also provides concrete guidance on what makes a Wells submission most effective. In substance, the Division signals that persuasive submissions are those that grapple directly with disputed factual or legal issues, engage candidly with adverse evidence and precedent, analyze the elements of the alleged violations, and meaningfully address litigation risk and policy considerations. The guidance further encourages citation to the investigative record, discussion of cooperation principles where applicable, and the use of expert analysis in complex matters.

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<sup>2</sup> EM at 2-23

<sup>3</sup> See [SEC.gov | Keynote Address at the 25th Annual A.A. Sommer, Jr. Lecture on Corporate, Securities, and Financial Law](#) (“The staff must also be realistic about time periods for submissions, especially in long, complicated cases. Going forward, the staff will provide the other side with at least four weeks to make Wells submissions. Potential respondents and defendants should be reasonable with their requests and recognize that the staff is seeking to meet time deadlines and reach conclusions within reasonable time periods.”)

<sup>4</sup> EM at 2-25

<sup>5</sup> EM at 3-33

While many of these themes have been articulated over the years in speeches by prior Enforcement Directors and senior staff, the Manual now consolidates that advice into formal written policy. For practitioners, the implication is clear: the Division is signaling that Wells submissions carry the greatest weight when they demonstrate how the case would fare in litigation rather than when they simply argue that the staff is wrong. Submissions that confront adverse facts, engage the legal elements rigorously, and assess litigation risk with credibility are more likely to influence decision-makers than those that rely on broad denials, advocacy rhetoric unsupported by legal or evidence-based arguments, or negotiation posturing.

All of the same guidance presumably (but not explicitly) applies to White Papers—substantive voluntary submissions other than Wells submissions—that the Manual confirms will, if accepted by the staff, “generally be provided to the Commission along with any recommendation from the staff for an enforcement action against the submitting party.”<sup>6</sup> Consistent with our perception that pre-Wells engagement on the merits may increasingly be the most productive forum for advocacy, preparation and submission of persuasive White Papers at the right stage is a key strategic judgment for entities and individuals under investigation and their counsel.

## Disclosure of Evidence to Wells Notice Recipients

In a significant shift toward transparency, and one consistent with the Chairman’s previous remarks on the topic, the Manual now directs that “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 of information).”<sup>7</sup>

The Manual further states that “[i]n 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.”<sup>8</sup> 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.”

Although the Manual continues to accord staff discretion regarding the scope of file access, it strongly encourages sharing relevant materials. When considering such requests, staff are directed to weigh whether access “would be a productive way for both the staff and the recipient of the Wells notice to assess the strength of the evidence,” and whether access “would facilitate the ability of the recipient of the Wells notice to respond meaningfully to the staff’s proposed recommendation.”<sup>9</sup> Historically, practices with regard to sharing relevant evidence varied widely among different SEC offices and across investigative teams, with respondents in some matters receiving substantial visibility into the record and others receiving very little. If implemented as described, this guidance has the potential to harmonize practice within the Division in favor of affording subjects of investigation access to the evidence from alleged victims and other third parties and allowing adversarial presentations as to that evidence in submissions to Division leadership and the Commission. At the same time, because the policy preserves some degree of staff discretion, its practical impact will depend heavily on how consistently it is applied across investigations.

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<sup>6</sup> EM at 2-26

<sup>7</sup> EM at 2-23. See [SEC.gov | Keynote Address by Paul Atkins at the 25th Annual A.A. Sommer, Jr. Lecture on Corporate, Securities, and Financial Law](#) (“Providing the potential respondent or defendant with information about potential charges and the key evidence that forms the basis of those potential charges is critical to due process, fairness, and transparency,”....[m]y expectation is that the enforcement staff, in giving a Wells notice, will provide sufficient information for potential respondents or defendants to understand the potential charges and the evidentiary basis for those charges, such as testimony transcripts and key documents. The staff must be forthcoming about material in the investigative file. Some materials in the file will not be available to potential respondents or defendants, and the staff must make every effort to share information that it has gathered, while scrupulously adhering to statutory and programmatic limitations—for example, information the Commission needs to keep confidential, including whistleblower-identifying information, and matters that would implicate a parallel criminal investigation.”)

<sup>8</sup> EM at 2-24 to 2-25

<sup>9</sup> EM at 2-25

## Cooperation, Penalty Mitigation and Alternative Resolution Tools

### Reduced or No Penalties for Cooperation

The updated Manual emphasizes the Division's authority to recommend penalty reductions or elimination in recognition of cooperation. Specifically, "[t]he Division may recommend that the Commission forgo seeking civil penalties, or seek reduced civil penalties, against an entity in consideration of any self-policing, self-reporting, remediation, and cooperation by the entity."<sup>10</sup> The Manual extends similar treatment to individuals, noting that "[t]he Division may also recommend that the Commission forgo, or seek reduced civil penalties, against individuals."<sup>11</sup> The Division has historically emphasized the benefits of cooperation, including the possibility of reduced penalties, in Commission Orders over the last several Commissions, and we will be watching to see whether the renewed emphasis in the updated Manual results in a noticeable increase in no-penalty or nominal-penalty resolutions.

### Framework for Evaluating Corporate Cooperation

The Manual details the existing SEC framework for evaluating cooperation by companies—known as the Seaboard factors—identifying four broad measures: self-policing, self-reporting, remediation, and cooperation with law enforcement authorities.<sup>12</sup> The Manual emphasizes that "[s]elf-reporting credit is 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."<sup>13</sup>

Critically, "[w]hen evaluating cooperation, the staff should consider ways in which the company provided assistance beyond what was required by law."<sup>14</sup> The Manual makes clear that "[s]taff will not recommend credit based merely on compliance with subpoenas for documents or testimony."<sup>15</sup> These updates formalize what Division Directors and senior staff have previously conveyed to the defense bar and make explicit the kinds of conduct that will qualify as exemplary cooperation, including summarizing factual findings from internal investigations, summarizing interviews of witnesses located abroad, identifying key documents and witnesses, translating foreign-language documents, providing detailed explanations and summaries of factual issues, providing financial analyses conducted by external experts, and facilitating voluntary interviews of witnesses.<sup>16</sup>

### Consistency and the Cooperation Committee

Building on the framework described above, the revised Manual also expands discussion of the Division's Cooperation Committee and the availability of deferred prosecution agreements (DPAs), non-prosecution agreements (NPAs), and cooperation agreements. Although much of this formalizes processes that already existed in practice, its inclusion in the Manual reinforces that decisions regarding cooperation credit, charging discretion, and the use of alternative resolution vehicles should be subject to centralized review rather than left solely to individual investigative teams.

By more clearly defining the Cooperation Committee's role, the Manual signals that cooperation determinations, including whether a matter warrants a DPA, NPA, reduced charges, or penalty mitigation, should be evaluated against Division-wide standards. For entities considering self-reporting or enhanced cooperation, this emphasis on consistency may provide greater predictability and we will be looking to see how and whether this emphasis on uniformity plays out in charging decisions and settlement negotiations.

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<sup>10</sup> EM at 2-26

<sup>11</sup> EM at 2-26

<sup>12</sup> EM at 6-95 to 6-96

<sup>13</sup> EM at 6-96.

<sup>14</sup> EM at 6-96 to 6-97

<sup>15</sup> EM at 6-96.

<sup>16</sup> EM at 6-96 to 6-97

## Simultaneous Consideration of Settlements and Waiver Requests

The Manual now enshrines “the Commission’s prior practice of permitting a settling entity to request that the Commission simultaneously consider an offer of settlement and any related request for Commission waivers from automatic disqualifications and other collateral consequences that result from the underlying enforcement action.”<sup>17</sup> In such matters, “staff will present for the Commission’s simultaneous consideration both the offer of settlement and the waiver request, along with recommendation(s) from the relevant Division(s).”<sup>18</sup>

Although this codifies existing practice, recently reinstated by the current Chairman,<sup>19</sup> the clarification provides important certainty in cases where collateral consequences—such as automatic disqualifications under the securities laws—can be as significant as the underlying charges. Allowing the Commission to consider settlement terms and related waiver requests at the same time reduces the risk that a party resolves an enforcement action only to face lingering uncertainty about its regulatory status. For firms whose business models depend on maintaining regulatory eligibility, the ability to align settlement strategy with waiver outcomes can materially affect both negotiating leverage and ultimate resolution decisions.

## Tolling Agreements

The Manual also introduces new guidance on tolling agreements. Most notably, “retroactive tolling agreements are disfavored.”<sup>20</sup> Staff seeking a tolling agreement “should in the first instance obtain approval from the appropriate Associate Director/Unit Chief for up to 90 days.”<sup>21</sup> Any requests for tolling agreements “beyond the initial 90 days require approval from the Director or appropriate Deputy Director.”<sup>22</sup> This requirement was imposed by some former Division leadership, but has now been formalized.

Although framed as procedural guardrails, these changes carry meaningful implications for case management. In the aftermath of the Financial Crisis of 2008, one of the significant criticisms of SEC enforcement practice was that investigations took too long, allowing misconduct to go unpunished for many years. Tolling agreements were perceived to have been overused, and Enforcement Director Robert Khuzami prohibited the staff from entering into tolling agreements without specific approval of the Office of Director. This requirement—designed to encourage discipline in pursuing investigations within the applicable statute of limitations—was later relaxed, and tolling agreements again became commonplace. The guidance introduced in the Manual tips the scale towards post-Credit Crisis practice. By elevating approval for extended tolling to senior leadership—and expressly discouraging retroactive extensions—the Manual signals that prolonged investigations should not simply be sustained through automatic extensions of limitations periods. Instead, the policy reinforces the expectation that investigative teams actively prioritize and advance their matters, consistent with the broader emphasis on senior oversight and the maintenance of prioritized case lists. If implemented rigorously, this framework could reduce reflexive tolling requests and put greater pressure on staff to expedite investigations and limit the time for advocacy at the conclusion of investigations.

## Prohibition on Directing Private Entity Investigations

The Manual now explicitly prohibits staff from directing private entities conducting internal investigations. Section 3.1.4 addresses parallel investigations with private entities (such as SROs, companies, or law firms), clarifying that “the staff should not direct the private entity to conduct an investigation or mandate the manner in which the private entity conducts an investigation or the investigative steps taken by the private entity.”<sup>23</sup>

This is significant because the Manual recognizes the litigation risk that can arise if a private investigation is viewed as fairly attributable to the government. The policy reinforces that cooperation does not permit the SEC to control or shape a private investigation in a way that could convert private conduct into state action. For companies and counsel, this provides stronger

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<sup>17</sup> EM at 2-27

<sup>18</sup> EM at 2-27

<sup>19</sup> [SEC.gov | Statement on Simultaneous Commission Consideration of Settlement Offers and Related Waiver Requests](#)

<sup>20</sup> EM at 3-37

<sup>21</sup> EM at 3-36 to 3-37

<sup>22</sup> EM at 3-37

<sup>23</sup> EM at 3-39

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footing to maintain investigative independence, protect privilege, and resist requests that could blur the line between voluntary cooperation and government direction. At the same time, the Manual makes clear that independence will remain a factor in assessing the credibility and effectiveness of internal investigative findings, preserving incentives for self-reporting.

## Conclusion

The updated Enforcement Manual largely codifies practices that had already taken root within the Division in recent years and embeds them within a structured and centralized framework that focuses on procedural fairness, transparency and senior oversight in SEC enforcement proceedings. The changes should provide companies and individuals under investigation with enhanced visibility into the evidentiary record, clearer expectations regarding Wells timelines and content, and more defined standards for cooperation credit and alternative resolutions. At the same time, the practical impact of these changes will depend on how rigorously and uniformly they are implemented. Counsel should account for these developments not only at the Wells stage, but throughout the investigative process, where early, strategic engagement may increasingly shape outcomes.

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