

CFTC announces changes to investigations and resolution process

December 9, 2025 | Client Update | 4-minute read

On December 1, 2025, the U.S. Commodity Futures Trading Commission (CFTC) announced amendments to its Rules Relating to Investigations and Rules of Practice. The amendments are aimed at enhancing transparency and due process protections, including with respect to the Wells process.

Acting CFTC Chairman Caroline Pham recently announced [amendments](#) to the CFTC's Rules Relating to Investigations that govern the Agency's Wells process and to the Rules of Practice. The former—which are consistent with recently announced changes to the Securities and Exchange Commission's (SEC) Wells process—focus on affording constitutional due process by giving responding parties insight into charging recommendations and by extending the length of time those parties have to respond to a Wells notice. Changes to the Rules of Practice, meanwhile, add new content and form requirements for the Division of Enforcement's (DOE) recommendation memoranda, promising greater transparency and more accurate recordkeeping. According to Acting Chair Pham, “these reforms will end lawfare so that all are treated fairly with respect for basic rights in CFTC enforcement actions.” Taken together with [prior policy revisions by the CFTC](#), these amendments are consistent with this Administration's more traditional approach to corporate enforcement.

Key updates to the Rules Relating to Investigations

The most notable of the CFTC's recent amendments are those aimed at making the Wells process more transparent and productive.

The CFTC amendments affect both the notice and response components of the Wells process.

The Wells notice

Although Wells notices—by which the CFTC staff informs a party of its intention to recommend an enforcement action—remain discretionary, the amendments require that notices be in writing—either in the first instance, or, if made orally, via a written confirmation. The writing must identify the specific charges the DOE plans to recommend to the Commission and may include the specific evidence that forms the basis for the recommendation. According to Acting Chairman Pham, the intended effect is to discontinue the practice of “[secret charges](#).”

The Wells submission

The CFTC also amended the rules relating to Wells submissions. Specifically, the CFTC staff must now provide a minimum of 30 days to respond to a Wells notice, as compared to the prior response time of 14 days. Acting Chairman Pham noted in her announcement that, in practice, parties have received as few as two days under the prior rules.

The amendments further provide that the period to respond to a Wells notice can only be shortened upon a finding of good cause and, as previously required, with the approval of specified senior attorneys. Finally, under the amendments, a party may request its Wells submission go to the Commission “promptly,” as opposed to waiting until the DOE issues a recommendation. If the DOE recommends commencing an enforcement action, the party’s submission will be automatically forwarded to the Commission.

Key updates to the Rules of Practice

The CFTC also amended its Rules of Practice. In addition to several more routine updates, such as removing references to provisions no longer in effect, it made two primary substantive revisions.

First, the amended CFTC Regulation Section 10.108(b) clarifies that the Commission may accept an offer of settlement by issuing an order instituting proceedings pursuant to the Commodity Exchange Act that makes findings and imposes remedial sanctions—instead of doing so through adjudicatory proceedings.

Second, the amended rules establish requirements for the recommendation memorandum that the DOE provides to the Commission when it recommends that the Commission accept or reject a party’s offer of settlement. The recommendation memorandum must:

- Be an objective memorandum that adheres to the applicable rules of professional conduct;
- Provide a comprehensive explanation of the factual and legal foundation for the recommendation;
- Distinguish unfavorable facts or legal precedents; and
- Be supported by citations to evidence in the investigative report, stipulations by the parties, and relevant legal authorities.

Takeaways for CFTC enforcement

The amendments to the CFTC’s Rules are a welcome development for those under investigation by the CFTC because they both add procedural safeguards and ensure additional time and transparency for those facing potential charges. Taken together with prior policy announcements by the CFTC, these updates are consistent with broader enforcement trends in the Trump Administration—which has taken a more traditional and transparent enforcement approach—and similar to changes to SEC enforcement protocol [announced](#) in late October that we previously [flagged](#).

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Greg D. Andres

+1 212 450 4724
greg.andres@davispolk.com

Sidney Bashago

+1 212 450 4826
sidney.bashago@davispolk.com

Martine M. Beamon

+1 212 450 4262
martine.beamon@davispolk.com

Robert A. Cohen

+1 202 962 7047
robert.cohen@davispolk.com

Daniel S. Kahn

+1 202 962 7140
daniel.kahn@davispolk.com

Neil H. MacBride

+1 202 962 7035
neil.macbride@davispolk.com

Tatiana R. Martins

+1 212 450 4085
tatiana.martins@davispolk.com

Fiona R. Moran

+1 202 962 7137
fiona.moran@davispolk.com

Paul J. Nathanson

+1 202 962 7055
+1 212 450 3133
paul.nathanson@davispolk.com

Gabriel D. Rosenberg

+1 212 450 4537
gabriel.rosenberg@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.