

# SEC updates its Enforcement Manual

February 27, 2026 | Client Update | 10-minute read

The updates formalize changes previously announced by SEC leadership and impose greater structure and transparency in the enforcement process.

On February 24, 2026, the SEC [announced](#) updates to its [Enforcement Manual](#) for the first time since 2017. Many of the revisions implement updates that Chairman Paul Atkins and Judge Margaret Ryan (Director of the Enforcement Division) previously announced, but other changes are new and may meaningfully impact engagement with the Enforcement Division. These changes include new guidance on termination letters, converting early-stage inquiries to investigations, and closing investigations, among others.

## Background

The Enforcement Manual serves as a reference for the Division of Enforcement in conducting investigations. In a press release accompanying the revised manual, the SEC explained the updates are intended to promote “fairness, transparency, and efficiency” and “enhance consistency and uniformity.” The SEC also announced that it will conduct yearly reviews of the Enforcement Manual going forward.

## New procedural changes

The revised manual includes various updates that have not previously been announced. These changes generally impose more rigor and discipline on the Enforcement Division’s practices and provide greater transparency about how the Division operates.

### Converting MUIs to investigations

The revised manual imposes new guardrails on the process of converting a matter under inquiry (MUI) to an investigation. A MUI is an initial, less formal inquiry meant to determine whether to invest resources in a more extended investigation. When converting a MUI to an investigation, the prior version of the manual required assessing various factors to determine whether the investigation had the potential to address “violative conduct.” The revised manual includes additional guidance that the staff should “endeavor” to identify the relevant “threshold issues of law or policy” and the potential violations of securities laws. Although a minor addition, the change appears aimed at directing the staff to focus on specific aspects of the securities laws and is consistent with prior statements by [Chairman Atkins](#) and [Judge Ryan](#) that emphasized balanced and informed enforcement processes.

### Action memos

An action memo is a formal, nonpublic summary of an investigation and the Enforcement Division’s recommendation to the SEC commissioners to approve the filing of an enforcement action. The prior version of the manual stated that action memos must contain a comprehensive explanation of the factual and legal foundations for the staff’s recommendations. In another minor change that nevertheless reflects one of new leadership’s priorities, the manual now states that this explanation must also be “objective,” and that staff must further “objectively address” significant evidentiary issues,

litigation risks, and the primary arguments raised in Wells submissions and white papers. While many action memos may already meet this standard, the decision by new leadership to state it expressly in the Enforcement Manual reflects their focus on balanced, objective enforcement work.

## Closing investigations

Among other factors relevant to deciding whether to close an investigation, the revised manual directs the staff to consider whether private litigation, another U.S. regulator or law enforcement authority, or a foreign regulator could more appropriately address the conduct. This is new guidance and reflects leadership's view that just because an SEC enforcement action could be brought does not mean it *should* be brought. It also reflects a focus on fairness and avoiding investigations where several regulators pursue duplicative investigations. The suggestion that private litigation could render a government action unnecessary may be a new concept for many Enforcement staff. This change may create a new opportunity for counsel to advocate to SEC staff that an investigation is unnecessary when there is pending civil litigation on similar issues.

## Termination letters

The revised manual "encourage[s]" the staff to send termination letters to any party that has made "significant productions" to the SEC. This new guidance should help companies get comfort that they may lift litigation holds, which can be both burdensome and long-term.

## Tolling agreements

The revised manual formalizes prior internal guidance on lengthier tolling agreements. Under the revised manual, Associate Directors and Unit Chiefs can approve tolling agreements for an initial period of up to 90 days, but the Director of the Enforcement Division or a Deputy Director must approve any request to extend tolling agreements beyond 90 days. The change seems designed to maximize staff accountability to senior Enforcement leadership about the length of investigations.

## Self-reporting credit

The revised manual adds guidance on the staff's approach to recommending cooperation credit, including self-reporting credit. Self-reporting credit is appropriate if a company reports misconduct before the staff learns about it from other sources and before there is an imminent threat of disclosure or government investigation. Notably, the revised manual states that self-reporting credit will rarely be appropriate if the underlying conduct has already received media attention or is subject to another regulatory investigation. The SEC's updated guidance contrasts with the approach of the U.S. Attorney's Office for the Southern District of New York, which recently released [new guidance](#) permitting self-reporting credit for financial crimes even where the conduct has received media attention.

## Document preservation letters

The revised manual now includes guidance on document preservation letters, formalizing practices that some of the staff had already adopted. Under the new guidance, the staff should consider sending document preservation letters as early as appropriate. Document preservation letters should explicitly request preservation of messaging app data, including on personal devices. This guidance may result in more frequent instances of a company receiving a preservation request covering sometimes-broad topics before it receives a request or subpoena for production of specific documents. Companies that receive broadly worded preservation requests that could impose a significant internal burden may try to negotiate a more limited scope to the preservation request.

## Suspicious activity reports

The revised manual clarifies that the staff will search the FinCEN database for SARs related to MUIs and investigations. Under the revised manual, designated staff members must "periodically" conduct these searches and should do so before making significant decisions like opening a MUI or investigation.

## Background questionnaires

Enforcement staff often ask witnesses to complete background questionnaires prior to testimony, usually for the purpose of making testimony more efficient. The SEC's template questionnaire included some invasive questions, including about personal bank and brokerage accounts and family members, and could be burdensome to complete. Enforcement staff sometimes agree to amend the questionnaires but often do not. The manual now directs flexibility: before asking witnesses to complete background questionnaires, the staff should determine whether all the questions are relevant and should adjust the questionnaire as needed. The staff may also collect sensitive information, like Social Security numbers, orally instead of in writing. These changes may help protect witnesses' sensitive personal information.

## Investigative delays

Several revisions to the Enforcement Manual caution against investigative delays. For example, the manual instructs the staff to refuse defense counsel's requests for extensions of time "where abused" and directs the staff to be "sensitive" to potential statute of limitations issues caused by these requests. In a similar vein, the manual also notes that Wells notice recipients have typically been aware of the investigation "for some time" before receiving a Wells notice and that these recipients "should recognize" that notices are provided only after the SEC has "thoroughly evaluated" the evidence. These revisions are consistent with Judge Ryan's prior warnings against delay tactics, which we discussed in a prior [client update](#).

## Private entities' internal investigations

The revised manual addresses an issue that has been the subject of SEC thought but not a public, formal policy: the risk that courts conclude the SEC directed a private entity's internal investigation. Under the revised manual, the staff should not direct private entities to conduct investigations or specify the manner of private entities' investigations, although the staff may continue to consider the thoroughness, effectiveness, and independence of these investigations when deciding whether to credit investigative findings.

## Previously announced updates

The revised Enforcement Manual also implements multiple changes that the SEC previously announced, most notably to the Wells notice process.

## Wells process

The Enforcement Manual includes significant changes to the Wells process, which Chairman Atkins announced in public remarks in October 2025. These changes impose a greater degree of uniformity and transparency.

Under the revised manual, the staff "should" inform recipients of Wells notices of salient, probative evidence that may not be known to the recipients. The staff should also be "forthcoming" about the contents of the investigative file and make "reasonable efforts" to allow recipients to review relevant, non-confidential parts of the file. On the other hand, the revised manual also maintains prior guidance that may limit access to investigative files. For example, the manual provides that staff should make "case-by-case" determinations on whether to provide access to investigative files. The staff should also refuse access to portions of these files that implicate whistleblower information, contain BSA information, or are subject to confidentiality restrictions. Overall, we expect that the new guidance will result in greater transparency about the investigative record, where prior willingness to identify the key evidence varied greatly across staff and investigations.

Under the revised manual, recipients will typically receive four weeks (rather than the previous default of two weeks, which could be negotiated) to prepare Wells submissions. The revised manual also provides guidance on the content of Wells submissions, including explaining that "helpful" submissions will focus on disputed factual or legal issues, address why the evidence will not satisfy the required legal elements, and assess litigation, policy, or programmatic risks posed by potential charges.

The revised manual also addresses a topic of debate in recent years—whether the Enforcement Director or Deputy Director would meet with counsel for Wells recipients. An Enforcement Director in the prior administration caused some controversy in [announcing](#) that not all Wells meetings would involve the Director or Deputy Director. The new guidance continues this policy (even though there now are multiple Deputy Directors) by stating that a Wells meeting will be attended by a member of "senior leadership at the Associate Director level or above." This guidance clarifies Judge Ryan's recent remarks on the Wells process, where "senior leadership" was not defined.

## Simultaneous consideration of waiver requests and settlement recommendations

The revised Enforcement Manual restores the SEC's prior practice of allowing settling parties to request that the Commission simultaneously consider settlement offers alongside requests for waivers from automatic disqualification and other collateral consequences that can result from an enforcement order. This change—which Chairman Atkins previously announced—may increase certainty and reduce risk for settling parties.

### Formal orders

The revised manual tracks the change announced in [March 2025](#) revoking the Division Director's delegated authority to approve formal orders and restoring that authority with the commissioners. Under the new approach, the staff will submit a proposed formal order and a memo describing the need for the formal order to the Commission. Prior administrations had delegated authority to the Enforcement Division to allow the staff to act more quickly in issuing subpoenas in a new investigation. The new language reverses this practice and prioritizes the commissioners' ability to exercise specific oversight of the staff's decisions about what matters to investigate.

### Other changes

The manual directs Associate Directors and Unit Chiefs to designate their "Top 5" priority matters on a quarterly basis. Although this practice already existed, this requirement is an example of how the revised manual increases transparency into the Enforcement Division's internal processes.

The revised manual also removes references to Regional Directors, a position the SEC eliminated in early 2025.

## Takeaways

The revised manual provides greater transparency about the Enforcement Division's processes and imposes more discipline and uniformity in following them. These changes may benefit respondents by making enforcement processes more predictable and structured, consistent with Chairman Atkins's prior remarks that enforcement "must be tempered by fair process, good judgment, integrity, and rectitude" and should "promote transparency."

The changes may also promote more efficient investigations, including by cautioning against investigative delays or investigations that are untethered to a potential violation of the federal securities laws. Chairman Atkins and Judge Ryan have both emphasized expeditious investigations in recent remarks.

While procedural in nature and in some instances implementing changes that were already announced, these updates to the Enforcement Manual may meaningfully and favorably impact the experience of engaging with the SEC during an investigation. Many of the updates in the revised manual formalize existing practices or implement changes that had already been announced. In other areas, the revised manual provides guidance on process but preserves the SEC and the staff's discretion—for example, the staff retains its ability to make case-by-case decisions about whether to provide Wells notice recipients with access to investigative files. The revised manual similarly continues the SEC's discretionary, flexible evaluation of cooperation.

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

**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

**Stefani Johnson Myrick**

+1 202 962 7165  
stefani.myrick@davispolk.com

**Paul J. Nathanson**

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

**Fuad Rana**

+1 202 962 7053  
fuad.rana@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.*