

SEC Division of Enforcement Releases Revised Enforcement Manual

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Marking the first comprehensive update in eight years, the SEC's Division of Enforcement (the Division) released a revised edition of its [Enforcement Manual](#) (the 2026 Manual). SEC Chairman Paul Atkins [called the update a "long-overdue step,"](#) and Division Director Margaret Ryan said the changes are intended to "ensure greater uniformity" and "reflect the Division's best practices."

Although the 2026 Manual has many changes from the previous version, some will have a greater impact. Below, we highlight the most significant revisions and discuss their practical implications.

1. WELLS PROCESS CHANGES

A central focus of the 2026 Manual is the Wells process, the procedure by which the SEC notifies individuals and entities of potential charges and affords them an opportunity to submit a written response before the Commission authorizes enforcement action. The 2026 Manual introduces several changes to the Wells process that could benefit subjects of investigations, including:

- A. **Access to the investigative file.** The 2026 Manual now provides that staff should inform Wells notice recipients of the "salient, probative evidence" gathered during the investigation. The 2026 Manual also includes a new directive that staff "should be forthcoming" about the content of the investigative file and "should make reasonable efforts" to allow Wells notice recipients to review relevant portions of the file.
- B. **Higher-level approval.** Staff must now obtain approval from the Office of the Director before issuing a Wells notice or recommending enforcement action, adding a layer of leadership review that was not previously required.
- C. **Standardized timelines and procedures.** Absent time constraints, recipients now have four weeks to submit a Wells response, replacing the prior approach of staff-set "reasonable limitations." Requests for post-Wells meetings are "typically granted," must be scheduled within four weeks, and require attendance by a senior leader at the Associate Director level or above.
- D. **Guidance on effective Wells submissions.** The 2026 Manual also sets out factors that make a Wells submission "most helpful," including accurately reflecting evidence and legal issues, addressing the staff's evidence head-on, highlighting exculpatory evidence, addressing litigation risks or policy concerns, citing the investigative record and documents, and including an expert report where charges are complex or technical.

E. Revised standards for rejecting Wells submissions. The 2026 Manual states that staff “will” (rather than “may” as in the 2017 Manual) reject Wells submissions that seek to limit admissibility under Federal Rule of Evidence 408, prevent use of the submission for the purposes described in Form 1662, or include settlement discussions. The 2026 Manual also now provides that settlement offers must (not “should”) be made in a separate document.

2. FORMAL ORDERS NOW REQUIRE COMMISSION APPROVAL

The Commission has revoked the delegation of authority that previously allowed the Director of Enforcement to issue formal orders of investigation. Staff must now submit formal order requests directly to the Commission for approval, a change that adds a significant additional step to the investigative process.

3. STRENGTHENED COOPERATION FRAMEWORK

The 2026 Manual revises and clarifies the Division’s approach to cooperation, including oversight, eligibility standards, and potential credit.

- A. Cooperation Committee.** The 2026 Manual formally recognizes the Division’s Cooperation Committee for the first time and gives it a more clearly defined role within the Division’s framework. The 2026 Manual explains that the Cooperation Committee is designed to ensure that decisions regarding cooperation are made in an appropriate and consistent manner and to recommend improvements to the cooperation program when needed. The 2026 Manual further provides that staff should seek Cooperation Committee approval for all cooperation agreements, deferred prosecution agreements, and non-prosecution agreements.
- B. Self-reporting credit.** The 2026 Manual limits self-reporting credit to circumstances in which “a company reports misconduct before the staff learns of misconduct from other sources and prior to imminent threat of disclosure or government investigation.” Self-reporting credit will “rarely be appropriate” for conduct that has already attracted media attention or regulatory scrutiny.
- C. Remediation and cooperation.** The 2026 Manual lists examples of effective remediation, including employee discipline, compensation clawbacks, corrective disclosures, and retention of independent compliance consultants. The 2026 Manual also lists examples of exemplary cooperation, including summarizing internal investigation findings, identifying key documents and witnesses, translating foreign-language materials, and facilitating voluntary witness interviews. Mere compliance with subpoenas does not qualify as cooperation.
- D. Heightened standard for non-prosecution agreements.** The standard for non-prosecution agreements has been changed from “limited and appropriate” circumstances to “exceptional” circumstances. This change is suggestive of a tighter standard, but it is unclear how meaningful the difference will be.

4. REINSTATEMENT OF SIMULTANEOUS REVIEW OF SETTLEMENT OFFERS AND WAIVERS

The 2026 Manual formally reinstates the Commission’s past practice of permitting settling parties to request simultaneous consideration of their settlement offer and related waiver requests (e.g., waivers from automatic disqualifications or other collateral consequences). Under this procedure, if the Commission approves a settlement offer but denies the accompanying waiver request, the party will typically have five business days to decide whether to proceed with the approved settlement offer, notwithstanding the denial of the waiver.

5. EXPANDED DOCUMENT PRESERVATION OBLIGATIONS

The 2026 Manual adds new requirements reflecting the modern communications landscape. Document preservation letters must now explicitly request preservation of communications on “any and all messaging platforms and messaging applications, including those communications sent or received on personal devices, such as smartphones or tablets.” And the definition of “document” in the subpoena context has been expanded to include communications on platforms such as WhatsApp, iMessage, Signal, Teams, Slack, Discord, and Telegram.

6. CRIMINAL REFERRAL FACTORS

The 2026 Manual incorporates a new Criminal Referral Policy Statement issued in June 2025, pursuant to Executive Order 14294. The 2026 Manual identifies six factors staff should consider when deciding whether to refer potential

violations to criminal authorities, including harm to investors, the defendant’s potential gain, specialized knowledge, the defendant’s awareness of harm, recidivism, and whether DOJ involvement would provide additional meaningful protection.

7. LONGER STATUTE-OF-LIMITATIONS EXPOSURE

The 2026 Manual reflects an extended limitations period for certain violations and remedies under the National Defense Authorization Act for Fiscal Year 2021—ten years for scienter-based securities law violations and “equitable remedies” such as injunctions, bars, suspensions, and cease-and-desist orders. The general period for disgorgement remains five years. The 2026 Manual further requires staff to record and update the applicable limitations date in the Division’s tracking system as matters proceed, and notes that retroactive tolling agreements are “disfavored.”

KEY TAKEAWAYS

The 2026 Manual signals a shift toward greater procedural transparency and standardization in SEC enforcement, particularly through additional Commission oversight of formal orders of investigation and enhanced Wells process protections that may give subjects stronger footing to mount effective defenses. Practitioners should note expanded document preservation obligations, which make it critical for clients to review and update their retention policies immediately. Tightened cooperation standards underscore the importance of early, proactive self-reporting and remediation to maximize potential credit. Practitioners should also note that the Enforcement Manual is now expected to undergo annual reviews.

5 Min Read

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