

Understanding and Navigating the Use of Pre-Wells Notice White Papers in Formal SEC Investigations

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This article discusses an increasing trend in formal Securities and Exchange Commission (“SEC”) investigations — the use of positional “white papers” as part of the pre-Wells Notice investigation process. A “white paper,” in the context of an SEC civil investigation, is a detailed position paper submitted to the SEC by a participant in the investigation advocating why the SEC should take no action against the participant. Prior to this fairly recent development, investigation participants only made written submissions to the SEC after receiving a Wells Notice, and were governed by the procedural and temporal rules regarding written Wells submissions. As this article explains, white papers can be very resource intensive, but provide a useful mechanism to avoid a Wells Notice in the first place. However, as with Wells submissions, practitioners should fully understand all the potential implications — both positive and negative — before participating in the voluntary submission of a white paper to the SEC.

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