

# Continuity and reform in SEC's updates to Enforcement Manual

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APRIL 16, 2026

It is hard to consider Paul Atkins' leadership of the Securities and Exchange Commission ("SEC") as its current Chairman, without being reminded that he once served as an SEC Commissioner. Between 2002 and 2008, Commissioner Atkins was able to make important contributions at the SEC, but never steered the agency's agenda.

However, if Commissioner Atkins' mind ever drifted during long meetings to what he would do if he ever got the chance to lead the agency, those ideas may well have survived the many years to be included in recent changes to the Division of Enforcement's Enforcement Manual (<https://bit.ly/41u2l6b>), which were publicized (<https://bit.ly/4tEHfTE>) in February.

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On February 24, 2026, the SEC's Division of Enforcement announced its first update to the Enforcement Manual in nine years. In its press release, the SEC appropriately highlighted changes reflecting the Division's commitment to "fairness, transparency, and efficiency" in its investigative processes, as well as its efforts to promote greater consistency and uniformity across the Division's practices.

But in addition to changes designed to advance these two honorable goals, several of the recent changes to the Manual, both significant and small, reflect Chair Atkins' well-publicized views on the proper relationship between the Commission and its staff, as well as criticisms of SEC's enforcement program that the defense bar (and likely Chairman Atkins) have voiced for years.

Here are a few notable changes to the Manual:

### Changes to the Wells process

**Four-week deadline for Wells Submissions.** This change reflects a commitment Chairman Atkins made during an October 2025 speech (<https://bit.ly/47ZOvBF>). Moreover, this change is not really a change at all from long-standing practice.

For most of the last 25 years, four weeks to make a Wells Submission has been the rule rather than the exception. But by putting this "new" policy in the Enforcement Manual, the SEC is imposing much-needed uniformity across the Division of Enforcement regarding how much time parties have to draft Wells Submissions.

For defense counsel, each experience with the Division of Enforcement's Wells process became a guessing game as to what deadlines would be imposed. That appears to be changing.

**Wells Submission content guidance.** The revisions also include guidance regarding what makes a Wells Submission effective.

For securities enforcement defense counsel, how to make a Wells Submission effective is already well understood. However, by putting its wish list in writing, the Division has now created a structure for the consideration of Wells Submissions that will make it harder for the staff to dismiss or undervalue submissions that score highly across all areas of interest to the Commission.

This change to the Manual, like the change to four-week Wells deadlines, is more about enforcing uniformity than providing new rules.

Specifically, the new Enforcement Manual suggests that Wells Submissions can be most effective by:

- Accurately reflecting the evidence, legal issues, and precedent;
- Focusing on disputed factual or legal issues;
- Acknowledging and addressing evidence and precedent in support of the staff's position, while highlighting exculpatory evidence and adverse precedent;

- Addressing legal elements required to establish violations and explaining why the evidence would not satisfy those elements;
- Addressing litigation risks or policy or programmatic concerns that would arise if the staff recommended the charges or sought the relief in the Wells notice;
- Providing documents or citations to the investigative record or legal precedent to support key factual or legal arguments;
- If applicable, discussing the factors described in the “Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions,” Securities Exchange Act Release No. 44969 (Oct. 23, 2001) (“Seaboard Report,” <https://bit.ly/4cnDxqZ>); or
- Adding an expert report where charges are particularly complex or technical.<sup>1</sup>

### What does “cooperation and remediation” mean?

Similar to the new list in the Manual describing what the Commission wants to see in Wells Submissions, the SEC has, for the first time, also set out in the Manual what it expects from parties cooperating with an SEC investigation or remediating legal compliance problems identified either by the parties or by the SEC’s investigative staff.

*Implicit in these edits is a reminder that the Commission can take away that delegated authority just as quickly as it was granted.*

Like the Wells Submission guidance, the new list in the Manual setting out expectations for cooperation and remediation is not actually new. The Commission, past and present, has described on several occasions what forms of cooperation and remediation will be rewarded in enforcement settlements.

Nevertheless, expressly stating its expectations in a manual it publishes will promote uniformity in policies and practices across all of the SEC’s offices nationwide.

For cooperation, the SEC will consider ways in which a party provided assistance beyond what was required by law. Exemplary cooperation can include:

- 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;
- Facilitating voluntary interviews of witnesses; and/or
- Any other measures that meaningfully advance the Commission’s investigation.
- The commission will also consider the timeliness of cooperation.<sup>2</sup>

Like cooperation, the SEC has also provided examples of effective remediation:

- taking appropriate action with respect to employees involved in the misconduct;
- strengthening internal controls;
- clawing back compensation from responsible executives;
- making prompt corrective disclosures;
- hiring new financial and accounting staff to address accounting and disclosure issues;
- improving training for relevant personnel; and
- retaining independent compliance consultants to advise on additional remedial measures.<sup>3</sup>

### One-stop consideration of settlement recommendations and waiver requests

- The updated Enforcement Manual also reflects that, in September 2025, the Commission restored its prior practice of permitting a settling party to request that the Commission *simultaneously* consider a settlement offer and any related request for a waiver from automatic disqualifications or other collateral consequences arising from the underlying enforcement action.
- Under this restored framework, SEC staff will present both the agreed-upon settlement and the related waiver request to the Commission at the same time. If the Commission approves the settlement but denies the waiver request, staff will promptly notify the prospective defendant or respondent and typically request a decision — generally within five business days — on whether the party wishes to proceed with the portion of the settlement approved by the Commission. If the party declines to proceed or withdraws its settlement offer, staff will then determine whether to negotiate a revised settlement or recommend that the matter proceed to litigation.<sup>4</sup>

### SEC caution when pursuing confidential law firm records

- In a well-publicized lawsuit (<https://bit.ly/4ckgm0A>) against our firm in 2023, the SEC pursued confidential records associated with legal representation of our clients. Perhaps in response to the cries of foul raised in amicus

briefs by the U.S. Chamber of Commerce, the Association of Corporate Counsel and dozens of law firms, the SEC has added cautionary guidance for its staff before pursuing law firm records.

- The Enforcement Manual now includes the following: “A subpoena or voluntary request to an attorney or law firm can raise complex issues. Before issuing a subpoena or voluntary request to an attorney or law firm for an attorney’s documents or testimony, staff should first consult with [the Division of Enforcement’s Office of Chief Counsel] and the Commission’s Professional Responsibility Counsel.”<sup>5</sup>

### Expanding the use of termination letters

- Although the SEC already has guidelines for when to notify a party that an investigation has been closed through a termination letter, many parties who would benefit from that process often do not receive such a letter. One edit to the Manual meaningfully addresses this issue. Now, the Enforcement staff is “encouraged to send a termination letter to any party who made significant productions in an investigation to enable that party to determine that the matter has been closed.”<sup>6</sup>
- The onus is now on the staff to give companies that have been keeping document repositories active during multi-year SEC investigation a clear indication that the matter has been closed, allowing the companies to end the hefty fees associated with retaining the documents.

### A gentle reminder of who is in charge

- For years before becoming Chairman of the SEC, Paul Atkins has politely reminded (<https://bit.ly/4eminvK>) SEC staff that only the Commission, not its staff, has the ability to write securities-related rules for public companies and other participants in the financial markets. In more than one speech, he has criticized the SEC staff when (in his view) it has enforced interpretations of the federal securities laws that are either novel or never endorsed by the Commission itself.
- The new Enforcement Manual includes several subtle changes that clarify that the staff’s authority stems from delegation of that authority by the Commission. Implicit in these edits is a reminder that the Commission can take away that delegated authority just as quickly as it was granted.
- One example of such a change is a revision clarifying that the Commission has delegated to the Office of the General Counsel the authority to refer defendants in SEC enforcement actions to professional associations and licensing boards for disciplinary proceedings.<sup>7</sup>

### Commissioner Atkins of 2008 gets his wish

- One notable change to the Enforcement Manual, coming from the Chairman’s practices twenty years ago when

he was just a Commissioner, is the requirement that all Wells Submissions and White Papers submitted by parties against whom enforcement actions are recommended shall be submitted to the Commission before considering such recommendations — even when the parties have offered to settle the matter.

- In the mid-2000s, then-Commissioner Atkins insisted on receiving all written advocacy from prospective defendants — even those who submitted settlement offers and, thereby, withdrew their Wells Submissions — because he believed that parties sometimes settle not due to strong evidence of wrong-doing, but because the costs and risks of litigating against the government leave them with little practical choice. To mitigate the risk that the staff was forcing a settlement on a party in an otherwise weak case, Commissioner Atkins asked to see all arguments made by the settling party, regardless of the procedural posture of the matter when it was considered by the Commission.
- By putting this practice in the Manual, perhaps Chairman Atkins is hoping that the practice of reviewing all written advocacy by defendants or respondents will continue even after his tenure as Chairman is over.

### A more flexible approach to the testimony background questionnaire

- Many years ago, the SEC created a background questionnaire (<https://bit.ly/4vuga7R>) for witnesses to complete in advance of providing investigative testimony. The purpose of the questionnaire was to speed up testimony by allowing the SEC staff to forgo spending time on questions during testimony that related only to personal information, such as bank and brokerage account details, educational and employment background, and social security and telephone numbers.
- The background questionnaire is quite intrusive, but given the staff’s broad authority to elicit information during testimony, nearly all witnesses agree to fill out the questionnaire, which is voluntary, in order to shorten their testimony.
- Thanks to edits to the Enforcement Manual, the Commission is encouraging the staff to be flexible about the questionnaire. If certain questions that are personal in nature are truly irrelevant to the investigation, defense counsel can now point to the Enforcement Manual when asking the staff to forego seeking that information in the questionnaire or in testimony.<sup>8</sup>

### Conclusion

A comparison of the 2026 edition of the SEC’s Enforcement Manual to the 2017 version shows that the Manual has been extensively edited. A closer review, however, reveals that most of the changes consist of updates, structural revision, purely

grammatical edits, or revised and more extensive articulations of various policies and practices already reflected in the 2017 version.

In fact, the biggest takeaway from a close review of the update is how much of the Manual has not changed. The whole exercise is a reminder that, regardless of which administration is in power, the men and women who have led the SEC have consistently been true believers in the broad powers, comprehensive policies and practices and well-oiled bureaucracy of the agency's enforcement program.

Still, kudos to the SEC for giving the Enforcement Manual a refresh. After all, nothing is perfect, not even the SEC's testimony background questionnaire.

### Notes:

<sup>1</sup> SEC. & EXCH. COMM'N, DIVISION OF ENFORCEMENT, ENFORCEMENT MANUAL, Acceptance of a Wells Submission at 29 (2026), available at <https://bit.ly/41u2l6b>.

<sup>2</sup> SEC. & EXCH. COMM'N, DIVISION OF ENFORCEMENT, ENFORCEMENT MANUAL,

61.2. Framework for Evaluating Cooperation and Related Efforts by Companies at 10-102 (2026), available at <https://bit.ly/41u2l6b>.

<sup>3</sup> SEC. & EXCH. COMM'N, DIVISION OF ENFORCEMENT, ENFORCEMENT MANUAL, 61.2. Framework for Evaluating Cooperation and Related Efforts by Companies at 101-102 (2026), available at <https://bit.ly/41u2l6b>.

<sup>4</sup> SEC. & EXCH. COMM'N, DIVISION OF ENFORCEMENT, ENFORCEMENT MANUAL, 25.2.1. Simultaneous Consideration of Enforcement Settlement Recommendations and Waiver Requests at 32 (2026), available at <https://bit.ly/41u2l6b>.

<sup>5</sup> SEC. & EXCH. COMM'N, DIVISION OF ENFORCEMENT, ENFORCEMENT MANUAL, 3.2.6. Subpoenas and Document Requests to the News Media at 48 (2026), available at <https://bit.ly/41u2l6b>.

<sup>6</sup> SEC. & EXCH. COMM'N, DIVISION OF ENFORCEMENT, ENFORCEMENT MANUAL, 2.6.2 Termination Notices at 37 (2026), available at <https://www.sec.gov/divisions/enforce/enforcementmanual.pdf>.

<sup>7</sup> SEC. & EXCH. COMM'N, DIVISION OF ENFORCEMENT, ENFORCEMENT MANUAL, 5.6. Referrals from the Division to Other Authorities at 91 (2026), available at <https://bit.ly/41u2l6b>.

<sup>8</sup> SEC. & EXCH. COMM'N, DIVISION OF ENFORCEMENT, ENFORCEMENT MANUAL, 3.3.5.2. Using a Background Questionnaire at 65 (2026), available at <https://bit.ly/41u2l6b>.

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This article was first published on Westlaw Today on April 16, 2026.