

SEC Enforcement Taking Shape: What's Changed, What's the Same, and What it Means for Those Under Investigation

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We are now just over a year into the new presidential administration, and the direction of the Securities and Exchange Commission's Division of Enforcement has begun to come into focus. Under the leadership of Chairman Paul Atkins and Judge Margaret Ryan, the new Director of Enforcement, the SEC has sought a clean break from certain priorities and practices associated with the prior administration. This article synthesizes the last year of enforcement activity, recent speeches by SEC officials and new policy announcements to discern a few clear themes. First, the Enforcement Division is not retreating from investigations of public companies and financial firms, despite what some in the media have reported. Second, the SEC will focus on "cases of quality and impact," such as those targeting individual bad actors, and "thoughtful resolutions" of regulatory violation investigations, which may mean off-ramps other than a highly publicized enforcement action with an outside penalty. Above all, the Commission has signaled a desire for meaningful dialogue with entities under investigation, with an emphasis on consistent process across cases.

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What does this mean for SEC practitioners? With the prospect of a more flexible, pragmatic and process-focused SEC, the need for effective advocacy will be paramount—as it was during the first Trump Administration. This article sets forth what Judge Ryan has stated are the “principles, process, and priorities” that will guide the Enforcement Division, as well as takeaways for those navigating an ongoing SEC investigation or hoping to nip one in the bud.

The Basics

There are presently three Republican Commissioners: Chairman Atkins and Commissioners Hester Peirce (expected to depart by year end) and Mark Uyeda. The administration may never move to fill the two Commission vacancies traditionally reserved for the minority party. In September 2025, Judge Ryan took over as Director of Enforcement. A former Marine, military lawyer, and appellate court judge, Judge Ryan came to the agency without significant securities law experience, but with a reputation for being highly intelligent, no-nonsense, and decisive.

Chairman Atkins has stated that SEC enforcement is “an exercise of government power that must be tempered by fair process, good judgement, integrity, and rectitude.”¹ In her first public speech, delivered on February 11, 2025, Judge Ryan echoed this view, declaring “an unwavering commitment to the fair and judicious use of the formidable power and resources the federal government has entrusted to me.”² She also said that her role is “to assist Chairman Atkins in righting the ship from some of the excesses of the prior administration.”³ Many perceived the SEC under the

leadership of former Chair Gary Gensler to have taken a maximalist approach, seeking the harshest sanctions even in cases of demonstrably technical violations with no investor harm, pushing novel or aggressive theories that struck many as “regulation by enforcement,” and in some cases seeming to rush to enforcement actions with little opportunity for entities to argue for different outcomes. This SEC will now be more likely to take the view that “our job as regulators is to apply the minimum effective dose of regulation—no more, no less.”⁴

So how will this SEC be different when it comes to enforcement? In our view, the differences will be felt in substantive priorities and the process afforded to those under investigation.

Enforcement Priorities

Fraud and Manipulation.

As Judge Ryan said, the two broad enforcement priorities will be pursuing “scams” that directly harm mom and pop investors and combatting “misconduct that clearly undermines market integrity, including accounting fraud, insider trading, wash trading, and market manipulation schemes.” In the last year, the SEC has brought a steady stream of insider trading cases against employees of public companies and financial services firms, and recently brought its first major public company accounting and disclosure case, obtaining a \$40 million penalty against an agribusiness company and charging three former executives with fraud.⁵ Additionally, the SEC will be particularly interested in fraud and manipulation that originates

¹ See Paul S. Atkins, Keynote Address at the 25th Annual A.A. Sommer, Jr. Lecture on Corporate, Securities, and Financial Law (Oct. 7, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-100925-keynote-address-25th-annual-aa-sommer-jr-lecture-corporate-securities-financial-law>.

² See Hon. Margaret Ryan, Remarks to the Los Angeles County Bar Association (Feb. 11, 2026), <https://www.sec.gov/newsroom/speeches-statements/margaret-ryan-02-11-26-remarks-los-angeles-county-bar-association>.

³ *Id.*

⁴ See Paul S. Atkins, Opening Remarks at Joint SEC-CFTC Harmonization Event – Project Crypto (Jan. 29, 2026), <https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-joint-sec-cftc-harmonization-event-project-crypto-012926>; see also Paul S. Atkins, Revitalizing America’s Markets at 250 (Dec. 2, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-120225-revitalizing-americas-markets-250>.

⁵ Press Release, *SEC Charges ADM and Three Former Executives with Accounting and Disclosure Fraud* (Jan. 27, 2026), <https://www.sec.gov/newsroom/press-releases/2026-15-sec-charges-adm-three-former-executives-accounting-disclosure-fraud>.

from overseas and is directed at U.S. markets, such as accounting fraud involving foreign companies with securities registered in the U.S., or manipulative trading by foreign actors in U.S.-listed securities. The first initiative of Judge Ryan’s tenure was the formation of a cross-border task force to combat fraud, which will focus on companies, auditors, broker-dealers, and traders operating overseas, with an initial focus on China.⁶

Regulatory Compliance by Public Companies, Broker-Dealers, and Investment Advisers.

In her February 11 speech, Judge Ryan made news by explaining that the Division will continue to pursue investigations of potential non-fraud violations of regulations that apply to public companies (such as reporting requirements and books and records and internal controls provisions) as well as to broker-dealers and investment advisers (such as fiduciary duty and financial responsibility obligations).

Acknowledging that these cases are “not necessarily” “on par with fraud” and that “many violations of these provisions should not—and do not—result in enforcement cases,” Judge Ryan nonetheless said that “enforcement of such rules is necessary to maintain the fairness of our capital markets.” She further clarified that enforcement actions in these type of cases are most appropriate where there is risk of harm to investors or market integrity or where someone benefits from the violation. But she also signaled a new flexibility in resolving such cases, which present an “opportunity” “to craft thoughtful resolutions . . . that recognize wrongdoing while rectifying the violation or charting a firmer path toward compliance.” While we have yet to see a non-fraud resolution in the public company reporting space, we expect this to change, and the Atkins SEC has kept up a steady pace of cases enforcing rules governing investment advisers and other regulated entities.

Individual Accountability.

Judge Ryan’s stated goal is to bring cases of “quality and impact” instead of “chasing numbers.” As Chairman Atkins has repeatedly noted, enforcement actions have the greatest deterrent effect when they pursue individual wrongdoers, and penalizing individuals avoids the risk that large corporate penalties will unfairly punish shareholders. And so the first year of the administration has seen a steady drumbeat of individual defendants in corporate cases, including cases where the SEC did not penalize the company but instead sought to claw back compensation from or impose penalties on former executives.

Out of Favor: Areas of Reduced Priority.

Through case closures and public comments, the SEC has also made clear the kinds of cases we are not likely to see under the current administration:

- Sweeps targeting non-fraud “best practices” of registrants, such as the “off-channel communication” cases, in which the SEC extracted billions in penalties from dozens of financial firms for what in many cases were isolated instances of fairly banal off-channel texting by employees.
- Registration violations by digital asset or fintech companies where there is no fraud or apparent risk of investor harm.
- Public company disclosures about environmental, social, and governance (“ESG”) issues that do not relate directly to financial performance—typified by cases in the last administration related to how companies handled workplace misconduct complaints or how recyclable products were. Still on the table, most likely, are cases where investment advisers make false or misleading claims about ESG investing strategies or fail to follow their own stated strategies.

⁶ See SEC Announces Formation of Cross-Border Task Force to Combat Fraud (Sept. 9, 2025), <https://www.clearygottlieb.com/news-and->

[insights/publication-listing/sec-announces-formation-of-cross-border-task-force-to-combat-fraud.](https://www.clearygottlieb.com/news-and-)

- Cybersecurity cases where the SEC flyspecks a public company’s cybersecurity practices and disclosure of a cyber incident, such as the now-dismissed case against SolarWinds and its chief information security officer. Still on the table will be investigations of companies that fail to disclose material incidents at all or make disclosures that fail to inform investors or customers that were affected by the breach.

The unifying theme is that the SEC is not keen to deploy resources where there is no harm and the risk to investors or market integrity is low. But this should not be taken as a green light to act with impunity—the SEC can and will pursue cases in these categories if it perceives a significant risk of harm, as it has shown by bringing several fraud cases in the crypto space in the last year.

Commitment to Process

On February 24, the SEC announced the first significant revisions to its Enforcement Manual since 2017.⁷ The update delivers on Chairman Atkins’s pledge to institute what he views as “long-overdue” reforms, which Judge Ryan joined by calling for “transparent and appropriate process” for those under investigation.⁸ The revisions mostly document existing best practices, but by formalizing them the SEC seeks to promote greater consistency in following these practices both within and across its multiple offices and specialty units. The revisions also may be aimed at making these practices more durable and less subject to change with each administration. While not binding law, the Enforcement Manual does speak to the best practices the Staff are expected to follow in most cases.

Wells Process.

The most notable revisions to the Enforcement Manual involve the Wells process, the formal process in which,

in almost all, the Enforcement staff will give the subject of an investigation notice that they plan to recommend that the Commission bring charges. Subjects are then provided an opportunity to state their side of the case in a written submission to the Division and the Commissioners. Judge Ryan called this process a “very meaningful opportunity” for those under investigation to “make their case.” The revised Enforcement Manual includes the following changes to the Wells process:

- In most cases, the recipient of a Wells notice will have four weeks to provide a written Wells submission. The previous default was two weeks, with widely varying practices with respect to extensions, which were denied in some cases or stretched well beyond four weeks in others.
- When recipients of a Wells notice request a meeting with Enforcement staff, those requests will “typically” be granted, the meeting will occur within four weeks of the Wells submission, and it will include a senior member of Enforcement leadership, such as the Director or a Deputy or Associate Director.
- Staff are encouraged to inform recipients of “salient, probative evidence” that supports the Staff’s theory and is likely not known to the recipient.
- Staff “should be forthcoming about the content of the investigative file.” What this means is largely left to the Staff’s discretion on a case-by-case basis, though Staff are encouraged to “make reasonable efforts” to provide access to documents in the investigative file where there is no countervailing consideration of privilege, whistleblower confidentiality, or other restriction. The Staff have long been empowered to share the investigative file with those under investigation,

⁷ See SEC’s Division of Enforcement Announces Updates to Enforcement Manual (Feb. 24, 2026); <https://www.sec.gov/newsroom/press-releases/2026-20-secs-division-enforcement-announces-updates-enforcement-manual>.

⁸ See Paul S. Atkins, Keynote Address at the 25th Annual A.A. Sommer, Jr. Lecture on Corporate, Securities, and Financial Law (Oct. 7, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-100925-keynote-address-25th-annual-aa-sommer-jr-lecture-corporate-securities-financial-law>.

but practices vary. The revisions are clearly meant to encourage consistency and transparency – time will tell if the Division delivers on this assurance.

- The revised Enforcement Manual now details factors that make a Wells submission effective, all of which have long been known but not aggregated in a formal policy. They include advocacy that addresses key evidence, both favorable and unfavorable, focuses on what is in dispute, addresses the legal elements and litigation risks of the case, and brings to bear any relevant technical expertise. In other words, advocacy is effective when it is on point.

Cooperation.

The revised Enforcement Manual memorializes longstanding factors affecting the credit given for self-reporting, cooperation, or remediation. The Enforcement Manual makes clear that cooperation means more than complying with subpoenas, instead reaching actions that streamline or otherwise advance the Staff’s investigation, such as summarizing internal investigations, providing technical expertise, or proactively identifying key documents and witnesses. According to the revised Enforcement Manual, a variety of benefits are on the table for those who cooperate, including reduced penalties or no-penalty resolutions, or even in some cases deferred or non-prosecution agreements. While the Enforcement Manual does not provide a formula for cooperation credit, it is a step toward greater transparency in an area that has long been a black box. The SEC’s cooperation factors are generally aligned with, though somewhat less formal than, the cooperation frameworks for federal criminal prosecution, including the corporate enforcement program for financial crimes recently announced by the U.S. Attorney’s Office for the Southern District of New York.⁹

Priority Matters.

The revisions introduce a requirement that each Associate Director or Unit Chief designate their “Top 5” priority matters as a guide to allocating resources and attention. While this reflected best practice for many Enforcement leaders, the Enforcement Manual aims to make the practice universal and more uniform, with a non-exclusive list of factors to consider in ranking investigations, most of which go to the degree of wrongdoing or harm. The factors also include whether the case “presents an opportunity to send a particularly strong and effective message of deterrence, including with respect to emergent issues in the market,” and whether the case involves “products, markets, transactions, or practices that pose particularly significant risks for investors or involve a systemically important sector of the market.”

The Need for Speed.

Several revisions, including the length of time for Wells submissions and meetings, designation of the “Top 5” priority cases, and conducting quarterly docket reviews at various levels of the Division, seem aimed at helping the Division accelerate the pace of investigations while still ensuring potential respondents and defendants have sufficient process and access to information. Currently, investigations in complex cases can last for years which may serve to blunt the impact of any ultimate enforcement action while imposing burdens on those under investigation. The list of cooperation factors skews towards those that help hasten investigations. Judge Ryan also made clear that she will not brook “tactical tardiness” by defense counsel. To the extent she perceives these practices are occurring, we believe she will exact consequences. In light of these changes we expect to see faster paced investigations going forward, and in our experience Staff teams have gotten the message, pushing for quicker responses to information requests.

⁹ See Press Release, SDNY Announces Corporate Enforcement and Voluntary Self-Disclosure and Cooperation Program for Financial Crimes (Feb. 24, 2026),

<https://www.justice.gov/usao-sdny/pr/sdny-announces-corporate-enforcement-and-voluntary-self-disclosure-and-cooperation>.

Takeaways

Taken together, the SEC’s recent speeches, policy pronouncements and its actions in individual enforcement investigation show that the agency still intends to be active and at times aggressive in the tactics or investigations it pursues, at least when Staff perceive there to be a risk to investors and market integrity. But the renewed emphasis on process for those under investigation, coupled with the focus on increasing the efficiency of investigations, creates opportunities to advocate for narrower inquiries, call for the closure of investigations when they hit insurmountable obstacles such as a lack of materiality, or to seek less punitive resolutions.

Foresight and Advocacy are Needed to Obtain “Thoughtful Resolutions” for Regulatory Violations.

Judge Ryan did not detail what kind of “thoughtful resolutions” she will be willing to entertain for compliance violations and what factors will matter most to her. If the SEC is truly committed to “thoughtful resolutions,” it will consider things like:

- Bringing no enforcement action if comprehensive remediation or other factors are present, even where there technically was a violation;
- Enforcement actions with no penalty or “springing penalties,” where the obligation to pay is suspended and only “springs” into place if the entity fails to comply with certain undertakings by a specific deadline;
- A willingness to consider deferred or non-prosecution agreements, in which no enforcement action is initiated at all if the entity complies with undertakings and completes a probationary period;
- The use of investigative reports under Section 21(a) of the Exchange Act, whereby the SEC can publish investigative findings for the purpose of educating the broader market, without penalizing the entity under investigation. Such reports are rare but can be appropriate in cases of first impression and/or involve interpretation of highly technical rules; and

- Where an investigation uncovers conduct that is believed to create undue risk but is not clearly covered by existing laws and regulations, to initiate rulemaking rather than employing “novel” interpretations of existing law in an effort to reach the conduct.

The Division of Enforcement is likely to consider some of the following factors in deciding what level of enforcement action, if any, is required in response to regulatory violations:

- The degree of risk involved;
- Whether other effective controls mitigated the impact of the violation;
- The overall compliance and control systems at the entity, including maintaining appropriate staffing, and management’s “tone at the top” regarding compliance and integrity;
- Whether the entity acted proactively and comprehensively to remediate compliance failures identified during the investigation; and
- Whether the entity maintains an effective system for internal whistleblowers and responded appropriately to any internal complaints about the issue.

These and other factors will surely be critical as the Enforcement Division exercises increased flexibility over how to resolve cases and entities under investigation will need a thoughtful strategy that speaks to the SEC’s concerns.

The SEC’s Renewed Commitment to Process Creates Opportunities for Effective Advocates.

Judge Ryan has made clear her view that the Division Staff should be committed to “open, informed, and thoughtful dialogue between staff and parties under investigation” For that opportunity to be meaningful—and to be materially different from the prior administration—the Division will need to consistently provide access to the entire factual record, except in truly rare instances where it would harm a vital interest, such as witness safety or a covert criminal investigation. Gaining a tactical advantage

over defense counsel should not be a valid reason for withholding witness statements or other important evidence. Old habits die hard, and in our view Division leadership will need to supervise compliance with the Enforcement Manual's new emphasis on transparency about the record to ensure that tactical reasons, or the Staff's desire to move quickly through the Wells process, do not result in the Staff picking and choosing what evidence to share.

On the defense side, as noted, Judge Ryan emphasized that "tactical tardiness," complaints about the length of investigations, and other gamesmanship will not be tolerated, and could undermine any claims to cooperation credit. Instead, it will be on-point advocacy that can make a difference with the SEC, advocacy that speaks to the SEC's concerns, highlights flaws in the SEC's case that are truly critical and would doom their case in court (as opposed to kitchen-sink issue spotting), and most importantly, provides a compelling narrative about what actually happened and why an aggressive enforcement action is not fair or necessary. These opportunities are not reserved for the end of an investigation: the revised Enforcement Manual welcomes white papers or other submissions that can be made earlier in investigations and can provide useful insights on a technical issue, a matter of statutory interpretation, or dispositive evidence on a key issue such as materiality, all of which can serve to significantly narrow the scope of an investigation or nip it in the bud altogether.

Conclusion

When all these developments are taken together, it is clear that the SEC will still actively investigate cases where there is considerable gray area. With increased flexibility in how to resolve those cases and a commitment to a meaningful dialogue, it will matter more than ever to have a thoughtful strategy and effective advocacy.

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