

# THE JOURNAL OF FEDERAL AGENCY ACTION

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*Victoria Prussen Spears*

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# Securities and Exchange Commission Enforcement Taking Shape: What’s Changed, What’s the Same, and What It Means for Those Under Investigation

Matthew C. Solomon, Nowell D. Bamberger, Thomas A. Bednar,  
Christopher R. Kavanaugh, Jonathan S. Kolodner, and  
Samuel Levander\*

*In this article, the authors examine the principles and priorities that appear to be guiding the Securities and Exchange Commission’s Division of Enforcement and offer takeaways for those navigating an ongoing SEC investigation or hoping to nip one in the bud.*

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We are over a year into the second Trump administration, and the direction of the Securities and Exchange Commission’s (SEC’s) Division of Enforcement has begun to come into focus. Under the leadership of Chairman Paul Atkins and the new Director of Enforcement, David Woodcock, the SEC has sought a clean break from certain priorities and practices associated with the prior administration. Going forward, we expect the SEC will continue to be selective in what cases it chooses to pursue, with a “back-to-basics” approach. The last year of enforcement activity, recent speeches by SEC officials, and new policy announcements reveal a few clear themes, including a continued prioritization of certain kinds of investigations of public companies and financial firms with a focus on “quality over quantity” and cases with discernible harm to investors, while also providing more consistent due process for those subject to SEC investigations.

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 examines the principles and

priorities that appear to be guiding the Enforcement Division and offers takeaways for those navigating an ongoing SEC investigation or hoping to nip one in the bud.

## The Basics

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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 March 2026, Judge Margaret Ryan unexpectedly departed as Enforcement Director just seven months into her term.<sup>1</sup> Following her departure, Principal Deputy Director Sam Waldon was named as Acting Director of the Division.<sup>2</sup> David Woodcock was subsequently appointed as the Director of the Division, effective May 4, 2026.<sup>3</sup> We can expect that the priorities pursued during Ryan's tenure, such as a focus on individual accountability, investor protections, and increased process, will continue under Director Woodcock.

At the onset of his tenure, Chairman Atkins pronounced that it was a “new day . . . at the SEC” with the Commission returning to its “core mission” of “protecting investors; furthering capital formation; and safeguarding fair, orderly, and efficient markets.”<sup>4</sup> Atkins has reiterated that SEC enforcement is “an exercise of government power that must be tempered by fair process, good judgment, integrity, and rectitude.”<sup>5</sup> Many perceived the SEC under the leadership of former Chairman 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.”<sup>6</sup>

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

## Enforcement Priorities

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### Fraud and Manipulation

In his first public statement as Director, Director Woodcock reaffirmed that the Enforcement Division will prioritize getting “back to basics” with a focus on “identifying and stopping fraud and manipulation in all its forms—for instance, offering frauds, accounting and disclosure fraud, insider trading, market manipulation, fraud by foreign actors targeting U.S. markets and investors, and breaches of fiduciary duties by advisers misusing client assets.”<sup>7</sup>

In the past 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.<sup>8</sup> Additionally, the SEC will be particularly interested in fraud and manipulation that originates from overseas and is directed at U.S. markets, such as accounting fraud involving foreign companies with securities registered in the United States, or manipulative trading by foreign actors in U.S.-listed securities. Notably, the first initiative of Judge Ryan’s tenure was the formation of a cross-border task force to combat fraud, with a focus on companies, auditors, broker-dealers, and traders operating overseas, with an initial emphasis on China.<sup>9</sup> In his recent statement, Director Woodcock affirmed his “commitment to continuing the important work of the SEC’s Cross-Border Task Force,” noting its current focus on “investigating potential violations of the U.S. federal securities laws related to foreign-based companies[,] . . . potential violations by underwriters, auditors, and other gatekeepers who facilitate a foreign company’s access to U.S. markets for fraudulent purposes[,] . . . [and] potential securities law violations related to companies from foreign jurisdictions.”<sup>10</sup>

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

The SEC has also signaled that it 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). But the agency's recent messaging suggests a more targeted approach compared to the prior administration.

Director Woodcock recently emphasized the Division's "deliberate[] shift[] toward an emphasis on quality over quantity" and moving away from "prosecuting firms or individuals for honest mistakes that cause no investor harm."<sup>11</sup> This echoes former Acting Director Waldon's previous comments that "[i]f you are someone who makes an honest mistake, recognizes it's a mistake, fixes the mistake, takes steps to remediate, improves internal controls, reimburses harmed investors—that's not something that's likely to result in enforcement action."

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**

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.
- 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.<sup>12</sup> 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.<sup>13</sup> 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 past year.

## **Commitment to Process**

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On February 24, the SEC announced the first significant revisions to its Enforcement Manual since 2017.<sup>14</sup> The update delivers on Chairman Atkins’s pledge to institute what he views as “long-overdue” reforms.<sup>15</sup> 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 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. 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, 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 long-standing 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 revised 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.<sup>16</sup>

## **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 revised 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 where target deadlines and the cause of any delays are to be discussed, 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 toward those that help hasten investigations. Prior to her resignation, Judge Ryan made clear that the Division will not brook “tactical tardiness” by defense counsel. In light of these changes, we expect to see faster-paced investigations going forward, and in our experience, Staff have gotten the message, pushing for quicker responses to information requests.

## Takeaways

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Taken together, the SEC’s recent speeches, policy pronouncements, and actions in enforcement investigations show that the agency still intends to be active—and at times aggressive—in the tactics or investigations it pursues, particularly where Staff perceive a risk to investors and market integrity. But the renewed emphasis on process and efficiency 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 Favorable Resolutions for Regulatory Violations

If the SEC is truly committed to allowing individuals and companies to fix their mistakes 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**

The Enforcement Manual updates, along with recent rhetoric from senior Enforcement Staff indicate a commitment to thoughtful, transparent dialogue between the 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 Judge Ryan noted before her resignation and as reflected in the Enforcement Manual updates, “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. And newly appointed Director Woodcock recently emphasized that “conduct matters” both before and after an investigation begins, as companies that “self-report[], cooperate[] fully, and remediate[] will not be treated the same as one that conceals or obstructs.” 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

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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 an effective advocacy approach.

## Notes

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1. See SEC Announces Enforcement Division Director Judge Margaret A. Ryan Has Resigned from Agency (Mar. 16, 2026), <https://www.sec.gov/newsroom/press-releases/2026-27-sec-announces-enforcement-division-director-judge-margaret-ryan-has-resigned-agency>.

2. *Id.*

3. See SEC Appoints David Woodcock as Director of the Division of Enforcement (Apr. 8, 2026), <https://www.sec.gov/newsroom/press-releases/2026-35-sec-appoints-david-woodcock-director-division-enforcement>.

4. Paul S. Atkins, Opening Remarks at the SEC Town Hall (May 6, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-townhall-05062025>.

5. 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>.

6. 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>.

7. See David Woodcock, Director Division of Enforcement, Remarks at the MFA Legal & Compliance 2026 Conference, SEC (May 13, 2026), [https://www.sec.gov/newsroom/speeches-statements/woodcock-remarks-mfa-legal-compliance-2026-conference-051326?utm\\_medium=email&utm\\_source=govdelivery](https://www.sec.gov/newsroom/speeches-statements/woodcock-remarks-mfa-legal-compliance-2026-conference-051326?utm_medium=email&utm_source=govdelivery).

8. 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.

9. 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>.

10. See David Woodcock, Director Division of Enforcement, Remarks at the MFA Legal & Compliance 2026 Conference, SEC (May 13, 2026), [https://www.sec.gov/newsroom/speeches-statements/woodcock-remarks-mfa-legal-compliance-2026-conference-051326?utm\\_medium=email&utm\\_source=govdelivery](https://www.sec.gov/newsroom/speeches-statements/woodcock-remarks-mfa-legal-compliance-2026-conference-051326?utm_medium=email&utm_source=govdelivery).

11. See David Woodcock, Director Division of Enforcement, Remarks at the MFA Legal & Compliance 2026 Conference, SEC (May 13, 2026), [https://www.sec.gov/newsroom/speeches-statements/woodcock-remarks-mfa-legal-compliance-2026-conference-051326?utm\\_medium=email&utm\\_source=govdelivery](https://www.sec.gov/newsroom/speeches-statements/woodcock-remarks-mfa-legal-compliance-2026-conference-051326?utm_medium=email&utm_source=govdelivery).

12. The SEC's now-dismissed complaint alleged that SolarWinds and its chief information security officer concealed the company's known cybersecurity risks in the lead up to the Sunburst attack in 2020 and subsequently made an incomplete disclosure about the scope and severity of the attack. See Litigation Release, SEC Dismisses Civil Enforcement Action Against SolarWinds and Chief Information Officer (Nov. 20, 2025), <https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26423>; Press Release, SEC Charges SolarWinds and Chief Information Security Officer with Fraud, Internal Control Failures (Oct. 30, 2023), <https://www.sec.gov/newsroom/press-releases/2023-227>.

13. In announcing the enforcement results for fiscal year 2025, the SEC's press release emphasized the Commission filed 246 enforcement actions "addressing a broad range of misconduct" which "demonstrate the Commission's prioritization of cases that directly harm investors and the integrity of the U.S. securities markets, including offering frauds, market manipulation, insider trading, issuer disclosure violations, and breaches of fiduciary duty by investment advisers." Press Release, SEC Announces Enforcement Results for Fiscal Year 2025 (Apr. 7, 2026), <https://www.sec.gov/newsroom/press-releases/2026-34>.

14. 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>.

15. See Atkins, *supra* note 5.

16. 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>.