

How The SEC's New 'User-Friendly' Manual Provides Uniformity

By **Jessica Corso**

Law360 (February 26, 2026, 9:38 PM EST) -- The U.S. Securities and Exchange Commission's recently announced updates to its enforcement manual largely standardize common practices at the agency, but former enforcement attorneys say the changes provide transparency to the investigative process in a few key ways.

On Feb. 24, the SEC announced that it was updating its enforcement manual for the first time since 2017, with Chairman Paul Atkins saying it was a "long-overdue step" that demonstrates the agency's "commitment to transparency, fairness and process."

The announcement detailed changes to the process that occurs after agency staff informs an individual or business through a document known as a Wells notice of their intent to recommend that the SEC bring an enforcement action against them.

Prospective defendants will now be given four weeks instead of two to respond to that notice through the filing of a Wells submission, which lays out their side of the story. They are also promised that a senior leader in the enforcement division will sit in on any meetings that happen after the submission is made.

Rebecca Fike of Reed Smith LLP said that in practice, those updates are not a substantial change from how things were typically handled when she was last with the SEC in 2022. Prospective defendants often requested extensions on their two-week Wells submission deadlines and usually received them, Fike said, adding that she couldn't recall holding a Wells meeting where there wasn't a high-ranking division member present.

But having these policies in writing is helpful both to those who fall under SEC suspicion and their attorneys, some of whom may not be frequent practitioners before the agency, she added.

"I think it is a little bit about making the SEC more user-friendly," Fike said.

Another common practice at the agency prior to the recent manual changes was to give prospective defendants access to the agency's investigative file, though that didn't happen at every regional office, according to both Fike and former enforcement attorney Robin Andrews of Pierson Ferdinand LLP.

The agency's updates requiring division staff to be "forthcoming about the content of the investigative file" therefore standardizes a process where there were previously some outliers, Andrews said.

However, Carolyn Welshhans of Morgan Lewis & Bockius LLP, also a former SEC enforcement attorney, noted that it wasn't a given that prospective defendants would get access to all parts of an investigative file under the recent manual update; the newly released manual includes a caveat that recipients of Wells notices should not receive privileged information, like that pertaining to whistleblowers.

"I think Wells recipients and their counsel should be careful not to overread these changes," Welshhans said.

"There's an expectation of greater transparency and access here, but I think that there are going to be instances where the SEC believes it does not need to follow regular procedures. And so I don't think that people should expect it in every single instance," she added.

Another notable change is an update to the provision on who gets sent a termination notice, which informs parties when an investigation has closed without the recommendation of an enforcement action. The new guidelines state that staff are not to just send such notices to the parties under investigation; they are also encouraged to communicate the end of an investigation to any party that has produced documents or other evidence in the matter.

Andrews of Pierson Ferdinand said this is a helpful change. He recalled how, as an SEC enforcement attorney, he once spent a year gathering information from a company that had access to bank and trading records that were relevant to a fraud case he was investigating as an SEC attorney.

That third party "didn't do anything wrong, and we weren't suspecting anything wrong," he said. "But they had the very significant burden of having to give me lots and lots of documents for over a year because I kept coming across more examples of where they just happened to be the ones that had all the records that helped me prove my case against the actual bad guy."

Giving such a third party notice that an investigation has ended relieves them of having to wait around to possibly produce more documents, as well as potentially relieving them of any agency order that they not destroy documents that could be tied to the investigation, Andrews said.

"I think that is additional fairness and transparency for someone who wasn't suspected of doing any wrongdoing, but for whom there is a substantial burden in the investigation due to no fault of their own," he said.

The updated manual also revived a policy that allows settling defendants to simultaneously request a waiver from the commission that could protect them from collateral consequences, such as automatic disqualifications from issuing certain securities or acting as an investment adviser, that come with settling certain violations.

Under the first Trump administration, the SEC allowed for the submission of settlements with built-in waivers, with then-Chair Jay Clayton saying the policy shift was necessary as a way to save resources and avoid complicating settlement negotiations. However, the agency under the Biden administration did away with the policy, with then-acting Chair Allison Herren Lee saying that granting waivers should not be the agency's default position.

"This is something that has gone back and forth over time," Welshhans of Morgan Lewis said. "Now it is something that is baked into the enforcement manual."

The offer of a built-in waiver may encourage more companies to settle, Andrews said, because the lack of one could mean that they are out of significant business unless the commission decides to grant the waiver further down the line.

That helps the agency, too, because it won't be forced to expend resources putting together a case for both a waiver and a settlement in order to close the same investigation, he added.

"The uncertainty hurts both sides, and so it's a good idea to do it all at once," he said.

--Additional reporting by Al Barbarino. Editing by Alanna Weissman and Drashti Mehta.