

Chairman Atkins Calls for a “Revisiting and Refreshing” of the Wells Process in SEC Enforcement

By Junaid Zubairi, Rachel T. Copenhaver, Brooke E. Conner and Nitya Bhardwaj

October 27, 2025

At a keynote address delivered at Fordham University School of Law on October 7, 2025, Chairman Paul S. Atkins underscored the central role of fairness in the Securities and Exchange Commission’s (the “SEC” or the “Commission”) Enforcement Division’s “Wells process.” In doing so, Chairman Atkins emphasized the continued important role of the Wells process in enforcement matters, describing the Wells process as an extension of due process and fundamental constitutional rights designed to protect citizens from an agency that can potentially be viewed as “policeman, prosecutor, judge, jury, and executioner all in one.”

Preserving the Wells Process and Balancing Fairness and Resource Allocation

Through the Wells process, the SEC Enforcement Division staff (the “Staff”) notifies potential respondents or defendants of its plan to recommend an enforcement action to the Commission and invites potential respondents or defendants to make a responsive submission addressing the proposed charges. Chairman Atkins noted that Wells submissions often provide a final opportunity for potential respondents or defendants to persuade the Staff to limit the scope of an enforcement action or to decline to pursue it altogether. Should the Staff decide to move forward with its recommendation, Wells submissions are provided directly to the SEC Commissioners for their consideration prior to voting on whether or not to move forward with an enforcement action.

In his recent remarks, Chairman Atkins stated that Wells submissions “can and do change the trajectory of enforcement actions – not in every case...but in enough cases to matter.” He called upon the Staff to preserve the “original purpose” of the Wells process and to guard against “plain mistakes, extreme legal theories, misinformation, biases, and conflicts of interest.” He explained that the Enforcement Division’s key role in rooting out fraud and manipulation should be tempered by “fair process, good judgment, integrity, and rectitude.” Chairman Atkins noted that the limited resources of the SEC inevitably leads to hard decisions about what will merit an enforcement action. He specifically referenced the SEC’s actions regarding retention of books and records (commonly referred to as the off-channel communications initiative) as an example of past enforcement actions that consumed a significant amount of Commission resources that were not proportionate to or commensurate with investor harm.

Promoting Transparency in the Wells Process

Chairman Atkins emphasized the benefits of the Wells process for both the Staff and those subject to investigations, noting that the process should result in an open, informed, and thoughtful dialogue between the Enforcement Division and potential respondents or defendants, particularly in the context of complex matters. He said that the Wells process leads to accuracy by way of transparency.

In the spirit of enhancing transparency, Chairman Atkins stated that the Staff must be forthcoming about the materials in the investigative file, even if, and especially when, the information is not otherwise available to potential respondents or defendants. Without such transparency, he noted, enforcement matters have the potential to become a “gotcha’ game.” He elaborated that, in his view, transparency includes information about potential charges and the key evidence that forms the basis of any potential charges, including testimony transcripts and key documents, but not including the identity of whistleblowers.

Notably, Chairman Atkins advised that potential respondents and defendants will now be given at least four weeks to make written submissions in response to a Wells notice.

Engagement Between Enforcement Leadership and Defense Counsel

Following a written submission in response to a Wells notice, senior enforcement leadership will often meet with defense counsel to discuss the Wells notice and response before making a recommendation to the Commission, a process which Chairman Atkins believes should be followed in most cases. However, as Chairman Atkins noted, this does not necessarily entail multiple meetings.

Chairman Atkins also highlighted the significant benefits of early engagement with the Staff through pre-Wells discussions. Such discussions can be helpful in addressing perceived factual misunderstandings by the Staff prior to issuance of a Wells notice. In some cases, the Staff and defense counsel may agree to a “white paper” submission prior to receipt of a Wells notice, which can be particularly useful in cases where public disclosure of a Wells notice may be required or if a potential defendant or respondent wishes to reduce the expense associated with a full submission. Chairman Atkins noted that, like written Wells submissions, such white papers are provided to the Commissioners for review and consideration.

Marking a return to a previous SEC practice, Chairman Atkins noted that even if a recommendation to the Commission differs from the potential charges set forth in a Wells notice, based on a change in the charges or grounds for the Wells notice, all Wells submissions will still be shared with Commissioners, who may benefit from the additional background information provided therein.

Simultaneous Consideration of Settlements and Waiver Requests

Chairman Atkins also called for a revisiting, for the sake of fairness and transparency, of the simultaneous consideration of settlement offers and related requests for waivers from collateral consequences resulting from enforcement actions.

He explained that prior practice was to consider settlements and waiver requests in tandem. More recently, however, such requests have been handled separately with Enforcement Division staff negotiating settlements and the policy division considering waiver requests on different timelines. Chairman Atkins advocated for a return to the original process whereby the Enforcement Division and the policy division must present an offer of settlement in an enforcement action with a waiver request to the Commission for simultaneous consideration, unless the Commission decides it wishes to consider them separately. Chairman Atkins noted that such process will ensure that the relevant facts and the related analyses provide context to both channels at once, without requiring that the Commission accept the settlement offer. He noted that this provides the settling entity with the ability to assess its options when the Commission accepts its settlement offer but declines to approve its waiver request.

Chairman Atkins referred to such process as a “close cousin” to the Wells process, stating that “[b]oth aim to ensure that when the Commission exercises its enforcement authority, it does so fairly, transparently, and with the procedural rigor that engenders confidence in our work.”

Vision for Predictable and Efficient Enforcement

Chairman Atkins’ expressed vision for the enforcement process is intended to respect the rule of law and provide predictability and works to ensure efficient investigations, expedient recommendations or resolutions of enforcement actions, and execution of matters without unnecessary publicity. He emphasized that penalties sought by the Commission should be appropriately tailored to the misconduct at issue and levied in such a way that they do not add to shareholder injury.

Chairman Atkins emphasized the importance of consistent practices that promote transparency, such as the issuance of termination and closing letters to inform potential respondents and/or defendants that an investigation has concluded. Additionally, he noted that those subject to associational and penny stock bars (which he stated are intended to be protective, not punitive, measures) can seek reinstatement through certain measures.

If you have any questions about this article, please contact Junaid Zubairi at jzubairi@vedderprice.com, Rachel T. Copenhaver at rcopenhaver@vedderprice.com, Brooke E. Conner at bconner@vedderprice.com, Nitya Bhardwaj at nbhardwaj@vedderprice.com or any other Vedder Price attorney with whom you have worked.

vedderprice.com