

THE REVIEW OF SECURITIES & COMMODITIES REGULATION

AN ANALYSIS OF CURRENT LAWS AND REGULATIONS
AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

Vol. 59 No. 11

June 10, 2026

WELL, WELL, WELLS: A LOOK AT THE SEC AND CFTC'S WELLS REFORMS

Despite its intended function as a mechanism for fairness and informed decision-making, the Wells process historically operated with considerable informality, resulting in inconsistent disclosure, compressed response periods, and uneven opportunities for meaningful advocacy. Recent reforms by the SEC and the CFTC represent a notable effort to recalibrate that framework. Announced in late 2025, these changes reflect a shared objective of strengthening pre-charging procedures while preserving enforcement effectiveness. This article situates the Wells process within its historical and doctrinal context, and evaluates how the agencies' reforms alter both the structure and consequences of pre-charging engagement. In this recalibrated environment, the Wells process has emerged as a consequential point of regulatory judgment — one in which the timing, substance, and framing of advocacy can materially influence enforcement outcomes.

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For decades, the Wells process has served as a central feature of the enforcement regimes of the U.S. Securities and Exchange Commission (“SEC”) and the U.S. Commodity Futures Trading Commission (“CFTC”).¹ The process — through which individuals and entities under investigation may respond to potential charges before enforcement staff make a formal recommendation to the Commission — has long been viewed as a critical safeguard of procedural fairness. In practice, however, the scope, timing, and transparency of the Wells process

have varied, often leaving respondents uncertain as to the theories, evidence, or trajectory of an investigation.

The impetus for procedural reform lies in those gaps; in late 2025, both the SEC and the CFTC announced significant changes to their respective Wells frameworks. These reforms, which reflect a renewed focus on transparency and engagement within the enforcement process, mark a notable shift in how the agencies approach pre-charging advocacy. Among other things, the changes address the form and timing of Wells notices and submissions, the disclosure of enforcement theories, and the internal handling of submissions by enforcement staff and Commission leadership.

¹ “Commission” in this article refers to the SEC and CFTC interchangeably unless otherwise noted.

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This article examines the recent changes to the SEC and CFTC Wells processes, compares the agencies' respective approaches, and assesses the practical implications for individuals and entities facing investigation. In doing so, it offers strategic considerations for counsel navigating enforcement matters in an environment where early engagement with regulators is increasingly structured — and potentially more consequential — than in years past.

HISTORY AND PURPOSE OF THE WELLS PROCESS

The Wells process traces its origins to the early 1970s, when the SEC undertook an internal review of its enforcement practices. During this period, then-Chair William J. Casey expressed concern about the fairness and procedural regularity of enforcement investigations, including the reputational and practical consequences such investigations could impose on their subjects. In late 1971, Casey appointed New York attorney John A. Wells to chair the Advisory Committee on Enforcement Policies and Practices,² tasking the Committee with examining the SEC's enforcement program from the standpoint of due process, notice, and the protection of reputational interests, at a time when the Commission's enforcement authority and activity were expanding rapidly.³

The Advisory Committee, known as the "Wells Committee," was charged with examining the SEC's enforcement practices and recommending reforms to improve both the effectiveness and fairness of the agency's enforcement program.⁴ The Committee's mandate reflected concern that enforcement staff's

decisions were often developed with limited opportunity for investigation subjects to understand or respond to the staff's legal theories before the commencement of an enforcement action.

On June 1, 1972, the Wells Committee issued its report, which contained 43 recommendations addressing a broad range of the Commission's enforcement practices.⁵ Most notably, the Wells Committee recommended that, except where the nature of a case precluded, prospective respondents be notified of the substance of enforcement staff's proposed charges and afforded an opportunity to submit a written response before the staff formally recommended that the Commission authorize an enforcement action.⁶ The Wells Committee reasoned that providing respondents an opportunity to address the factual and legal bases for potential charges would improve the quality of enforcement decision-making by allowing factual disputes to be addressed, legal theories to be refined, and errors to be corrected at an earlier stage.⁷

In September 1972, the SEC formally issued a press release addressing the Wells Committee's recommendations.⁸ While the Commission noted that it agreed with the underlying objective of affording investigation subjects an opportunity to present their positions prior to the authorization of enforcement proceedings, it concluded that it would not be in the public interest to adopt formal rules implementing this objective. Instead, the SEC determined that the process should operate, where practicable, on a "strictly informal basis."⁹ The Commission emphasized the need to

² Sec. & Exch. Comm'n Hist. Soc'y, *Creating the Division of Enforcement, 1969-1972, The Wells Commission*, https://www.sechistorical.org/museum/galleries/enf/enf03a_well-s-commission.php (last visited Mar. 11, 2026).

³ William J. Casey, Chairman, Sec. & Exch. Comm'n, Address at the New York State Bar Association (Jan. 27, 1972).

⁴ Memorandum from the Advisory Comm. on Enf't. Policies & Pracs. (Mar. 1, 1972).

⁵ See generally John A. Wells et al., Report of the Advisory Committee on Enforcement Policies and Practices (June 1, 1972).

⁶ See generally *id.*

⁷ See generally *id.*

⁸ Press Release, Sec. & Exch. Comm'n, Proc. Relating to the Commencement of Enf't Procs. & Termination of Staff Investigations (Sep. 27, 1972).

⁹ *Id.*

preserve flexibility and discretion in enforcement matters, concluding that a formalized procedure could unduly constrain the agency's ability to respond effectively to potential violations.¹⁰ As a result, the Wells process remains uncoded in statute or formal rulemaking.

The Wells process continues to reflect an institutional judgment that enforcement outcomes are improved when regulators hear directly from those they propose to charge. From the respondent's perspective, it provides a critical opportunity to address the staff's factual and legal theories before the initiation of a public enforcement action. Thus, from the agency's perspective, the process serves to test staff recommendations against competing interpretations of the facts and law, thereby promoting more informed Commission-level decision-making. Consistent with these principles, the CFTC — created in 1974 and vested with independent enforcement authority — later adopted a similar approach, incorporating Wells-style notices and submissions into its own investigative practices.

THE WELLS PROCESS IN PRACTICE PRIOR TO REFORMS

Although the Wells process was conceived as a meaningful opportunity for pre-charging advocacy, its operation in practice prior to the 2025 reforms often reflected the informality the SEC deliberately preserved when it declined to codify the process in the early 1970s. Over time, that informality came to define not only the flexibility of the Wells process — for both the SEC and, eventually, the CFTC — but also its variability.

Wells notices are typically issued near the conclusion of an investigation and identify the violations that enforcement staff intend to recommend to the Commission. Historically, however, the Wells notices' level of detail varied significantly. In many cases, Wells notices consisted of legal citations and high-level descriptions of the alleged misconduct, with limited disclosure of the evidentiary basis underlying the staff's recommendations. As a result, respondents were often required to prepare Wells submissions without full visibility into the investigative file or understanding of how staff viewed disputed facts or legal issues.

Timing further impacted the practical utility of the Wells process. Prior to the 2025 reforms, submission deadlines were frequently compressed, with respondents commonly afforded 14 days to prepare and submit a

response. Although extensions were sometimes granted, such requests were discretionary and depended on the stage of the investigation or the preferences of individual enforcement teams. Particularly in complex matters involving voluminous records, novel legal issues, or parallel proceedings, these timelines constrained the ability of respondents to gather evidence and meaningfully address the staff's theories.

These dynamics also created implications for Commission-level decision-making. Because enforcement staff recommendations and Wells submissions were developed on largely asymmetrical records, the agencies were often asked to evaluate charging decisions without the benefit of a fully balanced presentation. Thus, the practical effectiveness of the Wells process turned on the extent of staff disclosure and engagement, and the time afforded for response.

Concerns that the Wells process, as it had evolved in practice, did not consistently fulfill its original purpose of enhancing the accuracy and fairness of enforcement outcomes (due, in particular, to compressed timelines, limited transparency, and significant variability) ultimately prompted the SEC and CFTC to examine and undertake their respective reforms in 2025. Those reforms sought to recalibrate the Wells process while preserving its role as a pre-charging safeguard.

THE SEC'S CHANGES TO THE WELLS PROCESS

On October 7, 2025, SEC Chair Paul Atkins announced a series of reforms to the Wells process aimed at increasing transparency, predictability, and substantive value of pre-charging advocacy.¹¹ These changes have since been formalized through significant updates to the Division of Enforcement's Enforcement Manual in February 2026 — the first comprehensive revisions to the manual since 2017.¹² Together, these reforms signal the SEC's effort to recalibrate the Wells process while preserving its ability to pursue timely and effective enforcement actions in furtherance of its mission of protecting investors, maintaining fair and orderly markets, and facilitating capital formation.

¹⁰ *Id.*

¹¹ Paul Atkins, Chairman, Sec. & Exch. Comm'n, Keynote Address at the Fordham University School of Law A.A. Sommer, Jr. Lecture on Corporate, Securities, and Financial Law (Oct. 7, 2025).

¹² Press Release, Sec. & Exch. Comm'n, SEC's Div. of Enf't Announces Updates to Enf't Manual (Feb. 24, 2026).

A. The SEC's Key Wells Reforms

1. Endorsement of Pre-Wells Engagement and White Papers

A notable feature of the SEC's 2025 reforms is the agency's express endorsement of pre-Wells engagement, including the use of written submissions — often referred to as “white papers” — before an investigation reaches the Wells stage.¹³ Historically, respondents have felt constrained by the timing of the Wells process in that by the time a Wells notice was issued, enforcement staff's factual and legal theories were often substantially developed, and advocacy felt more performative than deliberative. This reform, therefore, reflects an apparent recognition that advocacy may be most effective before these positions harden.

It should be noted, however, that early engagement does not signal a retreat from enforcement. Rather, it reflects a judgment that enforcement resources are best deployed when staff has the benefit of informed advocacy at an earlier stage — consistent with the Commission's stated emphasis on bringing well-defined cases grounded in established law. For respondents and counsel, the SEC's endorsement of pre-Wells advocacy elevates the strategic importance of early, focused engagement in shaping how enforcement staff will best understand the facts and legal issues before a charging recommendation is made.

2. Enhanced Transparency and Disclosure

The SEC's reforms also address concerns regarding the level of information available to respondents at the Wells stage. Under the updated Enforcement Manual, enforcement staff are now expected to be forthcoming about the basis underlying the potential charges, including key documents and testimony from the investigative file. The immediate impact is in reducing the risk that respondents are forced to respond to vague or shifting allegations, ultimately resulting in more tailored arguments.

3. Extended Timelines

One of the most consequential changes in the announced reforms concerns timing. Previously, respondents were often provided only two weeks to prepare a Wells submission, with extensions granted at the enforcement staff's discretion. Under the revised framework, respondents are now provided with at least

four weeks to submit a response, with the possibility of additional time in certain appropriate circumstances.¹⁴

This expanded timeframe should allow respondents to engage in more thoughtful internal investigations, coordinate with parallel proceedings, engage with business stakeholders, and then develop a coherent advocacy strategy rather than a reactive response. The additional time also reframes expectations around the Wells process itself: by extending submission deadlines, the Commission has created space for more fully developed legal and factual advocacy, and correspondingly, reduced the justification for incomplete and underdeveloped submissions.

4. Commission-Level Engagement

The decision to provide a response, informed by these heightened expectations, is further influenced by the Commission's direct engagement with the process. Under the new framework, the Commissioners are provided every Wells submission, regardless of whether the matter is ultimately settled or litigated.¹⁵

Practically, this means that Wells submissions should be written with a broader audience in mind. Respondents are no longer advocating solely to line staff or even division leadership, but to Commissioners who may bring different perspectives on enforcement priorities, litigation risk, and regulatory policy. This shift also increases the institutional significance of Wells submissions because they may influence how enforcement recommendations are evaluated and authorized at the Commission level.

5. Opportunities to Engage with SEC Staff

In addition to expanded timelines and enhanced disclosure, the SEC has also sought to foster greater engagement between enforcement staff and respondents during the Wells process. The revised Enforcement Manual provides that post-submission Wells meetings will ordinarily be scheduled within four weeks and include participation by senior leadership within the Enforcement Division.¹⁶

These changes are intended to ensure that respondent advocacy is presented to decision-makers with sufficient authority to assess enforcement theories before

¹³ Atkins, *supra* note 12.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Press Release, *supra* note 13.

recommendations are finalized. While the process remains discretionary, the presence of senior leadership may increase the likelihood that these meetings serve a meaningful purpose rather than a purely procedural step.

B. Takeaways from the Wells Reforms and Focus on Fairness and Transparency

Although many of the SEC's changes to the Wells process are procedural, they reflect a broader enforcement philosophy centered on fairness and transparency. Indeed, the reforms have been framed as part of a renewed commitment to enforcing the securities laws in a manner that respects the rule of law, promotes consistency, and ensures that enforcement resources are deployed efficiently.¹⁷ In that sense, the Wells-related changes operate alongside and reinforce wider adjustments to how investigations are conducted, evaluated, and resolved.

Thus, a central theme of this framework is investigatory efficiency. The Commission has signaled that enforcement matters should be advanced deliberately and without unnecessary delay or publicity, reflecting sensitivity to the significant business, reputational, and personal costs that investigations themselves can impose.¹⁸ Under the revised approach, there is a clearer expectation that matters will be moved forward — either toward an enforcement recommendation or toward closure — once the relevant facts and legal issues have been sufficiently developed. From the respondent's perspective, this emphasis strengthens the basis for requesting status updates, pressing for investigative milestones, and advocating for closure where the evidentiary record does not support enforcement.

The SEC has also emphasized enhanced transparency in both charging and closing decisions.¹⁹ Orders instituting proceedings are expected to make clear why particular conduct violates the securities laws and why specific remedies are warranted — an approach that serves not only public accountability, but also assists respondents in assessing collateral consequences, follow-on litigation risk, and compliance remediation. Equally significant, the Commission has indicated that closing and termination letters should provide more

meaningful information regarding the scope and resolution of investigations.²⁰

Consistency across offices and cases is another pillar of the SEC's current enforcement posture. The Commission has expressly committed to treating similarly situated parties similarly, regardless of which office or unit investigates.²¹ For respondents, this emphasis on consistency heightens the relevance of precedent — both formal Commission actions and observable resolution patterns — and strengthens arguments against outlier theories or disproportionate remedies.

Finally, the SEC has acknowledged that internal incentive structures shape enforcement outcomes.²² Specifically, rewarding staff solely for bringing cases can discourage appropriate closures and create pressure to pursue marginal matters.²³ By affirming that closing investigations is a legitimate and valued outcome where warranted, the Commission has sought to realign incentives with its broader enforcement philosophy.

Taken together, these developments reflect a shift away from enforcement as an end in itself and toward enforcement as a disciplined regulatory tool. They also underscore why the Wells process has assumed greater practical significance: it is often the point at which the Commission's commitments to fairness, transparency, consistency, and efficient use of resources are tested most directly in practice.

C. The SEC's Additional Reforms

The SEC has also revised its settlement-related procedures in considering settlement offers simultaneously with related waiver requests addressing collateral consequences, such as disqualification events or loss of well-known seasoned issuer status.²⁴ This change allows the Commission to evaluate the full regulatory impact of a proposed resolution in a single, integrated decision, rather than assessing enforcement sanctions and collateral consequences in isolation. At the same time, the SEC has made clear that it retains discretion to accept a settlement while denying a waiver

¹⁷ Atkins, *supra* note 12.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

request, underscoring that waivers are neither automatic nor ancillary to the enforcement analysis.²⁵

These procedural changes do not stand alone. Rather, they reflect a broader enforcement philosophy articulated by Chair Atkins and former Director of Enforcement, Hon. Margaret “Meg” Ryan,²⁶ both of whom described the SEC’s approach to enforcement as “back to basics.” While that phrase is intentionally concise, it signals a deliberate recalibration of enforcement priorities and processes, grounded in the Commission’s recommitment to its traditional mission of investor protection and the maintenance of fair and orderly markets.

From an enforcement perspective, however, this translates into a more deliberate focus on pursuing cases involving clear, well-defined violations of law, rather than novel or expansive theories that are viewed as stretching statutory language beyond established boundaries. Consistent with this approach, Chair Atkins has emphasized that SEC resources should be deployed judiciously and directed toward cases involving genuine harm and clearly defined misconduct.²⁷ This focus suggests continued prioritization of matters involving fraud, misrepresentation, and materially false or misleading disclosures — conduct that directly undermines investor protection and market integrity. Collectively, these reforms reflect an effort to position enforcement as a calibrated regulatory tool, informed by fairness, transparency, and institutional restraint, with the Wells process occupying a central role in giving those principles operational meaning.

THE CFTC’S CHANGES TO THE WELLS PROCESS AND OTHER REFORMS

While the SEC’s reforms largely operate through guidance and internal process enhancements, the CFTC has pursued similar objectives through formal amendments to its Rules of Practice, ultimately resulting in a more prescriptive and rule-based approach to its Wells process.²⁸

On December 1, 2025, the CFTC adopted amendments to its Rules of Practice and Rules Relating to Investigations designed to enhance transparency, objectivity, and due process in enforcement proceedings.²⁹ In announcing the reforms, then-Acting Chairman Caroline Pham described them as “much-needed” changes to both the Wells process and the CFTC’s enforcement program more broadly, emphasizing the importance of ensuring that enforcement recommendations presented to the Commission are objective, comprehensive, and grounded in the evidentiary record.³⁰

Generally, the CFTC’s reforms parallel many of the SEC’s recent changes, but do so through binding rulemaking rather than guidance.³¹ As amended, the rules require that, where the Division of Enforcement elects to provide a Wells notice, the notice must be in writing — or confirmed in writing if initially conveyed orally — and must identify the specific charges the Division intends to recommend.³² Potential respondents must now be afforded a minimum of 30 days to submit a Wells response, a significant expansion from the prior 14-day period and from practices that, in some cases, afforded even less time.³³ Any shortening of that period now requires a showing of good cause and approval by specified senior enforcement officials.³⁴ In addition, Wells submissions will be transmitted to the Commission as part of the enforcement record, rather than only at the request of the submitting party, ensuring that Commissioners receive a more complete and balanced presentation when considering whether to authorize enforcement action.³⁵

The CFTC also amended its Rules of Practice governing settlements and internal enforcement memoranda.³⁶ Under the revised framework, the Commission may accept a settlement by issuing an opinion and order based on the settlement offer, thereby

²⁵ *Id.*

²⁶ On March 16, 2026, the SEC announced that Enforcement Director Ryan has resigned from her position.

²⁷ *Id.*

²⁸ Amendments to CFTC Rules of Practice and Rules Relating to Investigations, 90 Fed. Reg. 230 (Dec. 3, 2025) (to be codified at 17 C.F.R. pts. 10, 11).

²⁹ Press Release, Commodity Futures Trading Comm’n, Acting Chairman Pham Announces Reforms to Wells Process, Amends Rules of Prac. & Rules Relating to Investigations (Dec. 1, 2025).

³⁰ *Id.*

³¹ See generally 90 Fed. Reg. 230, *supra* note 28.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

terminating the proceeding as to the respondent.³⁷ The Division of Enforcement’s recommendation to accept a settlement must be supported by an objective memorandum that complies with applicable rules of professional conduct, provides a comprehensive explanation of the factual and legal basis for the recommendation, distinguishes unfavorable facts and legal precedent, and is supported by citations to the investigative record or party stipulations.³⁸ These requirements are intended to ensure that enforcement recommendations presented to the Commission reflect the full record and are not one-sided or conclusory.

Taken together, the CFTC’s reforms reflect an explicit effort to reinforce fairness, transparency, and institutional rigor in enforcement decision-making. While the substance of the CFTC’s changes closely tracks the SEC’s recent reforms, the CFTC’s decision to implement its approach through formal amendments to its rules marks a more prescriptive model — one that constrains staff discretion and provides respondents with clearer procedural guardrails at the Wells and settlement stages.

ALL’S WELLS THAT ENDS WELLS?

Under both the SEC’s and CFTC’s revised frameworks, the decision to submit a Wells response has assumed heightened significance. Expanded transparency and disclosure, longer response periods, and greater Commission-level engagement increase the potential impact of Wells advocacy; but, at the same time, these changes do not render a Wells submission advisable in every case. As a result, the Wells process is no longer merely a procedural waypoint, but a substantive inflection point in enforcement decision-making.

Notably, the reforms do not eliminate the strategic risks historically associated with Wells submissions. Written responses remain part of the administrative record, may shape staff and Commission perceptions, and can influence subsequent litigation or settlement posture. In some matters — particularly those involving parallel proceedings — non-submission or more limited engagement may remain a prudent choice.

The practical implication of the reforms, therefore, is not that Wells submissions are always advisable, but that the decision whether and how to engage must be made with greater care and with a clearer understanding of

how advocacy will be evaluated by enforcement staff and the Commission.

The decision whether to submit requires a candid assessment of the likelihood that advocacy can alter the outcome, the completeness of the investigative record, litigation strategy and risk tolerance, and the potential impact on collateral consequences, including settlement. A Wells submission is a strategic tool, not an obligation, and under the SEC’s and CFTC’s recalibrated frameworks, the most effective Wells decisions are those grounded in timing, strategy, and institutional awareness.

A. Submitting a Wells Response

Where a Wells submission is deemed appropriate, certain considerations weigh in favor of presenting disciplined and persuasive advocacy that is cognizant of the regulatory mindset shift.

To be clear, longer timelines do not mean lower stakes. While additional time creates greater opportunity for advocacy, it also raises expectations. Under the revised frameworks, enforcement staff and Commissioners are likely to expect more disciplined, well-supported presentations that reflect careful factual development, legal analysis, and institutional judgment. For compliance and legal teams, this means treating the Wells stage not as a procedural delay, but as a moment of heightened scrutiny in which the quality of the record and the seriousness of the response can materially influence outcomes.

Accordingly, the reforms underscore the importance of early, coordinated, internal engagement. A focused, privileged internal review — bringing together legal, compliance, finance, and, where appropriate, corporate leadership — can help ensure that facts are assessed consistently, legal theories are tested, and exposure is understood before positions harden. The Wells process also provides an opportunity to demonstrate compliance maturity, including remediation steps, governance enhancements, and accountability measures implemented in response to identified issues. Where relevant, respondents should also be prepared to address cooperation and self-reporting considerations, as well as the potential collateral consequences of proposed relief.

One additional judgment call bears emphasis: Wells advocacy that accepts enforcement staff’s factual framing wholesale and contests only legal interpretation may inadvertently reinforce the staff’s theory rather than undermine it. Where appropriate, effective advocacy may require presenting a credible alternative framing of

³⁷ *Id.*

³⁸ *Id.*

the facts or highlighting mitigating context the staff has discounted — not to dispute the record, but to ensure that the Commission’s evaluation is not anchored to a single narrative. This underscores that Wells advocacy is not purely a legal exercise, but one that turns on how facts, context, and judgment are presented to decision-makers.

FINAL THOUGHTS

The recent reforms to the SEC and CFTC’s Wells process represent more than procedural change. They reflect a recalibration of how federal financial regulators approach enforcement decision-making through an emphasis on fairness, transparency, and disciplined use of institutional authority. Although the agencies have pursued these objectives through different mechanisms, their core commitments are closely aligned: clearer notice of potential charges, more meaningful opportunities for advocacy, enhanced scrutiny of enforcement recommendations, and greater Commission-level oversight.

At the same time, these reforms do not diminish the seriousness of the Wells stage. Expanded timelines and increased disclosure create greater opportunity for engagement, but they should also raise expectations. Enforcement staff and Commissioners are likely to

demand more focused, well-supported advocacy and a clearer accounting of facts, legal theories, and remedial efforts. In this environment, the Wells process has evolved from a procedural waypoint into a consequential moment of judgment — one that can materially influence whether a matter proceeds, how it is framed, and how it is resolved.

For firms and individuals, the implications extend beyond the decision whether to submit a Wells response. The revised frameworks underscore the importance of compliance programs that generate credible records, support timely internal review, and demonstrate institutional responsiveness when issues arise. They also reinforce the value of early engagement, disciplined investigation, and proportionate remediation as factors shaping enforcement outcomes well before formal charges are considered.

Ultimately, the Wells reforms reflect a broader shift away from enforcement as an end in itself and toward enforcement as a calibrated regulatory tool. Whether that shift delivers greater consistency and fairness in practice will depend on how these frameworks are applied over time. What is clear, however, is that under the revised regimes, judgment — by regulators, counsel, and compliance professionals alike — has become the central currency of the Wells process. ■