Why The Wells Process Is No Longer A One-Sided Exercise

By **Ashwin Ram** (April 30, 2026)

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On Feb. 24, the U.S. Securities and Exchange Commission announced comprehensive revisions to its Enforcement Manual — the first major overhaul since 2017. At the Practising Law Institute's annual SEC Speaks conference weeks later, Sam Waldon — who had by then assumed the role of acting enforcement director — elaborated on what those revisions mean in practice, and the picture that emerged fundamentally alters how the Wells process works.

For the first time, the manual creates an affirmative expectation that staff will share "salient, probative evidence" with Wells notice recipients before they submit their responses. That is not a procedural tweak. It rewrites the informational asymmetry that has defined SEC defense for decades.

Until now, defense lawyers drafted Wells submissions largely in the dark — guessing at which documents the staff considered most damaging, what testimony it viewed as establishing scienter and how it intended to prove materiality.

The revised manual changes that dynamic in ways that are both significant and bounded.

What the Staff Must Now Disclose

Waldon's remarks — and those of Mark Cave, the Enforcement Division's chief counsel, who elaborated on the specifics at SEC Speaks — read alongside the manual revisions, identify four categories of evidence that Wells recipients in fraud cases who have not obstructed the investigation should generally expect to see.

Documents Evidencing the Alleged Misrepresentation or Omission

This is the core documentary evidence: the filings, statements or communications that the staff contends are false or misleading. This is the narrowest category and the least surprising; in many cases, the target already knows what statements are at issue.

Documents Evidencing Falsity and Scienter

This is the category that matters most. These documents include internal emails, text messages, board materials or other communications showing that the target knew the public statements were false when made — or was reckless about their accuracy.

In practice, these are often the documents that decide whether a case settles or fights. Getting them before the Wells submission transforms the defense posture.

Documents Relevant to Materiality

These documents include analyst reports, market reaction data, trading patterns or internal assessments that go to whether the alleged misstatement actually moved the needle.

Materiality remains the SEC's burden, and seeing how the staff intends to carry it gives

defense counsel the opportunity to attack it head-on in the submission.

Testimony Transcripts or Excerpts

Last, this category includes investigative testimony from the target, cooperating witnesses or third parties.

The manual does not specify whether this means full transcripts or selected excerpts, and the difference matters enormously.

A selected excerpt can be misleading without its surrounding context. Defense counsel should press for full transcripts — and document any refusal.

The Procedural Guardrails That Come With It

The revised manual imposes several other procedural changes that defense counsel must account for.

Four-Week Submission Deadline

Wells submissions are now ordinarily due four weeks after the Wells notice is issued. The qualifier preserves staff discretion to compress or extend the timeline — but in practice, four weeks is the new default. And that clock starts running whether or not the staff has provided the evidence production.

Defense counsel who want to build evidence-specific submissions must demand the production immediately and escalate any delays before the deadline eats into their drafting time.

Single Post-Wells Meeting

Postsubmission engagement with staff is now generally limited to a single meeting, held within four weeks of the submission, with senior Enforcement Division leadership in attendance.

The old practice of extended back-and-forth dialogue is gone. That one meeting must be used strategically — and the submission itself must do the heavy lifting.

Mandatory Rejection of Submissions That Include Settlement Terms

The revised manual converts what was previously discretionary — "may reject" — into a requirement: The staff will reject any Wells submission that discusses settlement terms, is labeled as subject to Rule 408 of the Federal Rules of Evidence or purports to limit the commission's ability to share files with other government agencies.

This is a trap for the unwary. Defense counsel who reflexively stamp submissions with Rule 408 headers — a common practice — will have their submissions returned unread.

Dual-Approval Requirement Before Wells Notices Issue

The supervising associate director or unit chief and the Office of the Director must both approve before a Wells notice can be issued or an enforcement action recommended without one.

This internal check means that by the time a target receives a Wells notice, the case has already cleared two levels of senior review — making it less likely, though not impossible, that the investigation will simply go away.

What the Evidence Provisions Are Not

The manual is explicit that the evidence-sharing framework is not Brady — the constitutional rule, derived from the U.S. Supreme Court's 1963 decision in Brady v. Maryland, requiring prosecutors to disclose material exculpatory evidence to the defense.

This is a notable distinction because Rule 230 of the SEC's Rules of Practice — Title 17 of the Code of Federal Regulations, Section 201.230(b) — already imposes Brady-like disclosure obligations in administrative proceedings, requiring the Enforcement Division to produce investigative files, including exculpatory material, within seven days of the order instituting proceedings.

In federal court enforcement actions, by contrast, the staff takes the position that it has no obligation to turn over all exculpatory evidence. Whether that position remains tenable is an open question after the Supreme Court's 2024 decision in SEC v. Jarkesy, in which the justices recognized that SEC civil penalties are "the prototypical common law remedy" warranting Seventh Amendment protections — a reasoning that may well extend to Fifth Amendment due process obligations, including Brady.

The staff has no obligation to turn over all exculpatory evidence. The revised provisions do not create a right to a complete investigative file, and the manual preserves broad discretion to withhold evidence that implicates witness safety, personally identifiable information, trade secrets or ongoing investigation integrity.

That distinction matters for two reasons. First, defense counsel cannot assume that the absence of favorable evidence from the staff's production means favorable evidence does not exist. The asymmetry is reduced, not eliminated.

Second, the staff retains the ability to make strategic choices about what it shares — which means the production itself is an advocacy document. What the staff chooses to show you tells you something about its theory. What it chooses to withhold may tell you more.

How This Changes Defense Strategy

Wells submissions should now be evidence-specific, not theory-general.

The old approach — write a broad legal and factual narrative that anticipates the government's likely case — gives way to a more targeted response.

If you know the three emails the staff considers its best scienter evidence, your submission should dissect those emails line by line: the surrounding context, the prior communications that explain them, the subsequent actions that are inconsistent with fraudulent intent.

Generic arguments about the client's good faith carry less weight when the staff has put its evidentiary cards on the table.

Defense teams should demand production before drafting.

The manual creates an expectation, but the timing is left to the staff.

Defense counsel should send a formal request immediately upon receiving a Wells notice, specifically identifying the four evidence categories and requesting production before the submission deadline begins running.

If the staff delays or refuses, that refusal should be documented and raised with supervisory staff — and ultimately referenced in the submission itself.

Evaluate the staff's production as a window into case quality.

A thin production — two or three documents with ambiguous scienter implications and a single cooperator transcript — tells you something about how strong the staff believes its case to be. A thick production with unambiguous internal admissions tells you something else entirely.

The production is now a data point in the settle-or-fight analysis, and defense counsel should treat it as one.

Use the production to identify cooperators and their vulnerabilities.

Testimony excerpts will reveal who has been cooperating with the staff, what they said and where their accounts may be inconsistent with other evidence.

This is information that was previously unavailable until litigation discovery. Getting it during the Wells process opens a window for impeachment preparation that can inform both the submission and any subsequent negotiation.

Preserve objections to selective disclosure.

If the staff provides excerpted testimony rather than full transcripts, or shares only inculpatory documents while withholding context, the Wells submission should note the limitation.

The commission reads Wells submissions. A submission that says, "the staff shared three emails but withheld the 20 preceding messages in the same thread," reframes the evidentiary picture in a way that raw legal argument cannot.

The Harder Question: Does This Help or Hurt?

Defense lawyers will instinctively welcome more information. But the reforms cut both ways.

A Wells submission that fails to address the staff's strongest evidence — because it now has no excuse for not knowing about it — will be weaker than one filed in ignorance. The old regime allowed defense counsel to take sweeping positions about the insufficiency of the case without reckoning with specific documents. That latitude is gone.

The reforms also accelerate the triage decision. Defense teams that receive a Wells production showing overwhelming scienter evidence should advise their clients accordingly — and early. The worst outcome is a Wells submission that takes aggressive positions contradicted by evidence the defense has already seen. The commission will read both.

For targets who are genuinely innocent — who have explanations for the circumstantial evidence that the staff has compiled — the reforms are an unambiguous benefit. A Wells submission grounded in specific rebuttal of specific evidence is far more persuasive than one built on generalities.

The prior regime penalized innocent targets by forcing them to guess at the case against them. The new regime lets them fight the actual case.

What Comes Next

The revised manual took effect immediately. Every Wells notice issued from this point forward operates under the new framework.

Defense counsel who are currently in the Wells process should contact staff promptly to request production under the revised provisions. Counsel who have recently submitted Wells responses without the benefit of the new disclosures may have grounds to supplement their submissions.

Whether the specific contours survive the next administration remains to be seen, but the transparency norm, once established, will be difficult to retract.

For now, the message is straightforward: The Wells process is no longer a one-sided exercise. Defense counsel who adapt their strategy to the new informational landscape will produce better submissions, give better advice and achieve better outcomes. Those who continue drafting Wells responses as if they are still guessing at the government's case will be leaving their most powerful tool on the table.

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