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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.

By Michelle N. Tanney and Madison J. Gaudreau *

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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