Practice Update

# SEC Enforcement: Recalibration, Impact, and Discipline

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Last week, I had the honor of speaking once again at the annual Government Enforcement Institute presented by The University of Texas School of Law. My panel on State Enforcement Priorities was filled with talented and very relevant enforcement perspectives from senior state regulators. But as I reflect on this year's discussions, the remarks by David Woodcock, the SEC's Director of Enforcement, continue to reverberate because his comments anchored on three words that reflect an enforcement direction emblematic of his leadership: **recalibration; impact; and discipline.** Industry participants and their counsel would be wise to dial their assessments of SEC enforcement risk based on Woodcock's recent comments.

During my time as the Deputy Securities Commissioner of Texas, Woodcock served as Regional Director of the SEC's Fort Worth Regional Office, which gave me the opportunity to work closely with him and to develop tremendous respect for his approach to securities enforcement. Against that background, I found his September 18 remarks particularly noteworthy because they described an Enforcement Division that intends to be selective about where it deploys its resources, but aggressive when it finds conduct that fits its priorities.

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The objective is to "get back to basics," particularly by focusing on conduct that harms investors, individual accountability, and opportunities to return money to harmed investors. Woodcock expressly identified fraud, insider trading, accounting fraud, compliance failures, and investment adviser conflicts and misrepresentations among the misconduct the Division will aggressively pursue.

## Recalibration: Fewer Numbers Do Not Necessarily Mean Less Enforcement Risk

Perhaps the most important theme of Woodcock's remarks was **recalibration**. The SEC's enforcement statistics have long provided fodder for year-over-year comparisons. How many cases did the Commission bring? How much money did it obtain in penalties and disgorgement? Woodcock was explicit that those numbers are not how he believes the success of the enforcement program should be assessed. Raw case counts and aggregate monetary remedies, he said, say relatively little about the quality or nature of the cases brought or whether the enforcement program is contributing to healthy capital markets.

More significantly, he acknowledged that the Division has undertaken a comprehensive review of its investigative docket. Matters that were inconsistent with the current Commission's focus on misconduct causing "genuine harm," or that offered little realistic prospect of meaningful redress for investors, were candidates for closure. In Woodcock's formulation, that process is evidence not of weakness but of discipline, because every investigation consumes finite staff time and resources.

That distinction matters enormously for industry participants assessing enforcement risk. A reduction in the number of investigations or enforcement actions should not necessarily be interpreted as an across-the-board reduction in enforcement intensity. Woodcock instead appears to be describing a concentration of enforcement resources. If the Division spends less time pursuing matters it regards as marginal, those resources become available for matters involving identifiable investor harm, fraud, conflicts, misleading disclosures, and individual misconduct.

In other words, **recalibration is not synonymous with retreat**.

## Impactful: Follow the Harm, Not the Headline

A second theme was Woodcock's repeated emphasis on **impact**.

His discussion of recent cases is instructive. He highlighted a traditional offering fraud, then juxtaposed it with newer forms of misconduct, including an alleged investment confidence scheme involving purported crypto platforms, social media, and supposedly AI-generated investment tips. His succinct observation captured the point: fraud may change shape, but investor harm remains the same.

That is an important lens through which to view the SEC's current priorities. "Back to basics" should not be read as "back to old markets" or "back to old technology." The basics are the enforcement objectives: protecting investors, pursuing fraud, and holding wrongdoers accountable. The technology or product through which the alleged misconduct occurs can be decidedly modern. Indeed, the new Retail Fraud Working Group is expressly intended to use data, technology, and intelligence-sharing to address retail fraud, including misconduct involving artificial intelligence and emerging technologies.

The same point is relevant for investment advisers. Woodcock specifically included **investment adviser conflicts and misrepresentations** among the areas the Division will continue to pursue aggressively. For advisers, that statement deserves attention. A Commission that is more selective about cases generally is not necessarily a Commission that will overlook conflicts or misleading communications where the staff believes investors have suffered meaningful harm.

## Discipline: An Expectation for the Staff and for Defense Counsel

The third word, **discipline**, may have the greatest immediate significance for lawyers and firms responding to an SEC investigation.

One of Woodcock's clearest messages was that the Division wants investigations to move faster. He encouraged the staff, where appropriate, to consider taking testimony before document productions have been completed rather than reflexively following the traditional sequence of completing extensive document discovery before testimony. Indeed, we have observed this shift in recent investigations where we serve as counsel.

Woodcock identified several potential benefits, including sharpening the investigation earlier, narrowing its scope, obtaining testimony while memories are fresh, and assessing cooperation more quickly. And he was emphatic that the availability of this investigative approach is "not a negotiable concept."

That should affect defense strategy.

Counsel accustomed to assuming that an SEC investigation will move sequentially from requests and subpoenas through lengthy productions, and only later to testimony, should not take that chronology for granted. Companies may need to develop the factual record, identify important witnesses, and assess substantive defenses earlier in the investigative process.

Woodcock said the Division expects counsel to respond promptly, schedule testimony expeditiously, avoid serial extensions without cause, raise issues early, and engage constructively in pre-enforcement dialogue. He also delivered a pointed warning concerning subpoena compliance: the Division will have little patience for what it regards as slow-rolling and is prepared to bring subpoena-enforcement actions sooner rather than allowing disputes over compliance to persist for years.

Perhaps equally notable is that Woodcock stated that **a meeting with a Deputy Director *is* a meeting with the "front office."** Deputy Directors, he explained, are empowered to hear counsel's arguments and resolve escalated issues, and a meeting with them satisfies a request to elevate concerns. The change is consistent with his broader message: meaningful process remains important, but process should not become a mechanism for delay.

## Self-Reporting and Cooperation Take on Greater Significance

There was also a very practical message for companies deciding what to do after discovering possible misconduct.

Woodcock's advice was direct: "It's better if you come to us first, because you will get a call from us." More importantly, he said a company that self-reports, cooperates fully, and remediates will not be treated the same as one that conceals, delays, or obstructs.

That does not make the decision whether to self-report automatic. Those decisions remain intensely fact-dependent. But it does make the issue one that companies and their counsel should evaluate early rather than defer until an internal investigation is substantially complete.

Put differently, in an enforcement environment focused on both impact and speed, **the early stages of a potential problem may carry greater strategic significance**. A company confronted with possible misconduct should be thinking simultaneously about the relevant facts, investor impact, remediation, disclosure obligations, preservation and production issues, potential individual responsibility, and the consequences of approaching the government before the government approaches the company.

## A More Focused Division Will Be a Formidable One

The SEC's organizational initiatives reinforce this interpretation of his broader message.

The Enforcement Division has created a new Financial Reporting and Accounting Unit intended to concentrate expertise on financial reporting fraud, accounting misconduct, and auditor violations. It has established the Retail Fraud Working Group to focus resources on fraud affecting retail investors. And its Office of Artificial Intelligence & Analytics is focusing on using AI and analytical tools to make the existing Enforcement workforce more efficient. Woodcock also emphasized coordination with other regulators and law-enforcement authorities, specifically discussing collaboration with the FDA, CFTC, PCAOB, and U.S. Attorneys' Offices.

Taken together, these initiatives point toward an Enforcement Division that is attempting to make better use of finite resources, not one that is simply doing less.

That is an important distinction for compliance officers, regulated entities, and their counsel. The relevant risk question may increasingly be not simply "How active is SEC Enforcement?" but instead **"How closely does this conduct align with the misconduct this Enforcement Division considers consequential?"**

## The Practical Takeaway

The SEC's Enforcement Division has been recalibrating. It is expressly moving resources away from matters that it believes offer insufficient enforcement value and toward matters involving genuine investor harm. It wants impactful cases rather than statistics for statistics' sake. And it expects discipline not just internally, but from the companies and counsel appearing before it.

That combination creates both opportunity and risk. Companies facing issues at the margins of the securities laws may encounter a staff more willing to ask whether an investigation warrants continued expenditure of government resources. But where the staff identifies fraud, meaningful investor harm, conflicts, material misrepresentations, accounting misconduct, or other conduct squarely within the Division's priorities, the prudent expectation is not leniency. It is a focused investigation that may move quickly.

Perhaps that is the most important takeaway from Woodcock's remarks: **do not mistake selectivity for softness**.

For industry participants and their counsel, recalibrating their own approach to SEC enforcement risk accordingly may prove every bit as important as the recalibration that has taken place inside the Enforcement Division.

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