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Regulatory Update

FINRA Announces Updates to Enforcement Program

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On March 2, FINRA's Head of Enforcement Bill St. Louis [announced important changes](#) to FINRA's enforcement program. Many of the changes have the potential to benefit entities and individuals involved in FINRA enforcement investigations in certain circumstances.

The changes are part of FINRA's broader "[FINRA Forward](#)" initiative that seeks to improve FINRA's overall effectiveness and efficiency. Mr. St. Louis said the changes are "common-sense improvements" to the enforcement program with three main goals: improve transparency, improve efficiency and give member firms more opportunities to be heard. FINRA announced the changes to its enforcement program just a week after [the SEC announced revisions to its enforcement manual](#) to enhance transparency in SEC investigations.

Below is a summary of the changes.

1. Additional Transparency

FINRA adopted three changes that affect how FINRA interacts with firms before, during and at the conclusion of enforcement investigations.

Introductory Meeting With Enforcement Staff. FINRA now offers introductory meetings for firms at the beginning of the investigation and enforcement process. During the meetings, the enforcement staff will provide an overview of the process and FINRA's initial areas of focus. Firms can use the meeting to ask questions about the process and raise observations or concerns.

Regular Status Updates. While the investigation is in progress, FINRA now requires enforcement staff to provide status updates to firms at least every 90 days. FINRA has an internal tool to help ensure the 90-day updates occur.

Additional Meeting With Enforcement Staff. At the end of the investigation, FINRA now offers firms an additional meeting with the enforcement staff before the Wells process. Mr. St. Louis stated that the purpose of the additional meeting is to eliminate surprises once formal charges are proposed. During the meeting, the enforcement staff will share its investigative findings and the evidence underlying those findings. During or after the meeting, firms can respond to the enforcement staff — orally or in writing — to correct any factual inaccuracies or provide additional evidence or mitigating factors that the enforcement staff should consider before the Wells process.¹ Typically, this additional meeting does not include a discussion of the sanctions FINRA is considering. Mr. St. Louis said that this additional meeting is in addition to and does not replace the Wells process.

2. Efforts To Improve Efficiency

FINRA has adopted two changes to enhance the efficiency of its enforcement program.

Specialization Program. FINRA has introduced a specialization program “to support more complex matters — including matters involving systemic anti-money laundering and market-related issues.” Mr. St. Louis stated that this change allows FINRA “to assign matters requiring specialized knowledge to staff with deeper expertise and consistency across similar cases.”

Self-Reporting Pilot Program. FINRA has introduced a new pilot program related to firms’ self-reporting obligation under Rule 4530. Mr. St. Louis indicated that FINRA will review firms’ self-reports and engage in a dialogue with firms before commencing an investigation. He stated that a firm which discovers and self-reports an issue “can be well situated to undertake a thorough internal review,” and FINRA may refrain from conducting its own investigation during that review. Depending on the firm’s findings and remediation, FINRA may not conduct a full enforcement investigation.

3. Additional Opportunities To Be Heard

FINRA has adopted the following three changes to allow firms the opportunity to provide input before FINRA imposes a sanction.

Contact Before Cautionary Action Letter. FINRA enforcement attorneys now discuss their preliminary findings with firms before issuing a Cautionary Action Letter. This gives firms the opportunity to provide context or challenge FINRA’s conclusions before FINRA determines the appropriate resolution.

Contact Before Rule 8210 Request. FINRA enforcement attorneys now contact firms or their counsel before issuing Rule 8210 requests for information. This gives firms an opportunity to clarify the scope of the request and FINRA’s expectations.

Additional Time To Respond to Wells Notices. FINRA now allows respondents 30 calendar days to make a submission in response to Wells notices.

Looking Ahead

Mr. St. Louis committed to making additional changes to FINRA’s enforcement program, including clarifying FINRA’s approach for granting cooperation credit and remediation, additional disclosures regarding the enforcement process and possible alternatives to on-the-record testimony in certain circumstances. He also indicated that FINRA plans to publish an enforcement manual but that doing so will “take more time.”

On balance, the updates to FINRA’s enforcement program align with Mr. St. Louis’s goals of improving transparency, improving efficiency and giving member firms more opportunities to be heard. Whether the updates successfully achieve those goals will depend on how they are applied in practice. Still, individuals and firms subject to FINRA enforcement investigations should welcome the improved transparency and increased opportunities to be heard.



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¹ FINRA's Wells process is similar to the SEC's Wells process. The Wells process evolved from recommendations made by an advisory committee chaired by John Wells and published in 1972. See Procedures Relating to the Commencement of Enforcement Proceedings and Termination of Staff Investigations, Securities Act of 1933 Release No. 5310 (Sept. 27, 1972), <https://www.sec.gov/divisions/enforce/wells-release.pdf>. The SEC codified those recommendations in the SEC's Rules on Informal and Other Procedures, which allow entities and individuals subject to SEC investigation to submit a written statement to the commission setting forth their position in regard to the subject matter of the investigation. See 17 C.F.R. § 202.5(c).