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NAVIGATING SEC INVESTIGATIONS UNDER TRUMP 2.0: DOES THE ADMINISTRATION CHANGE AFFECT PRE-LITIGATION STRATEGY?

As the SEC undergoes structural and procedural changes under the second Trump administration, companies and counsel navigating enforcement investigations face a shifting landscape. This article examines the implications of the Commission's rollback of formal order authority, anticipated changes in transparency around cooperation credit, and evolving practices in the Wells process. Drawing on recent regulatory developments and public statements, this article analyzes how these changes may affect strategic decision-making at key stages of an investigation. The article offers practical guidance for counsel seeking to engage proactively with Enforcement staff, maximize cooperation credit, and leverage new opportunities for dialogue and transparency in the investigative process.

By Tracy S. Combs and Luke Fiedler *

As the Securities and Exchange Commission (“SEC” or “Commission”) undergoes structural and procedural shifts in the first months of the second Trump administration, entities, individuals, and their advisors may be recalibrating their strategies in responding to the SEC’s Division of Enforcement’s investigations. This article discusses the potential changes relative to the Division of Enforcement’s investigative process under Trump 2.0 and analyzes how those changes might impact some of the crucial stages of responding to an SEC investigation, specifically: (1) responding to investigative requests for documents and testimony; (2) deciding whether to self-report possible securities law violations and/or cooperate with an investigation; and (3) engaging in the Wells process. Overall, we anticipate the investigative process may involve more robust dialogue with the Enforcement staff at both its beginning and end, and that the Commission and/or the staff will provide more concrete, detailed guidance

regarding credit for self-reporting, cooperation, and remediation under the new administration.

FORMAL ORDER PULLBACK: STRATEGIC IMPLICATIONS

Effective March 15, 2025, the Commission amended its regulations to rescind its long-standing delegation of authority to the Director of the Division of Enforcement to issue formal orders of investigation.¹ Formal orders provide the Enforcement Division’s staff with the authority to issue subpoenas for documents and witness testimony in their investigations. Prior to March 2025, delegation of formal order authority from the Commission to the Enforcement Division’s Director had been in place for over 15 years. Since 2009 and in the

¹ Rel. No. 33-11366; 34-102552; IA-6862; IC-35492 (2025).

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