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Cadwalader Lawyers Say That Financial CHOICE Act Might Alter SEC Enforcement Strategies And Procedures.

In a recent [memorandum](#), Cadwalader attorneys Jason Halper, Jodi Avergun, Joe Moreno, Lex Urban, Kendra Wharton and Aaron Buchman posited that the [“Financial CHOICE Act of 2017”](#) (the “CHOICE Act”) could alter SEC enforcement strategies and procedures significantly. The CHOICE Act would make several changes to the current SEC practice of using in-house administrative proceedings rather than federal district courts for enforcement actions. The CHOICE Act would, among other things, (i) reform investigations by (a) establishing an “Enforcement Ombudsman,” (b) revising Wells notice procedures and (c) imposing further requirements for pre-enforcement analyses and evaluations, (ii) give respondents the choice between terminating SEC administrative proceedings and forcing the SEC to pursue action in federal court, or continuing administrative proceedings with the benefit of a higher “clear and convincing” burden of proof, (iii) strip Administrative Law Judges of the authority to issue barring orders, and (iv) require the SEC to announce and adopt any legal theory it would pursue through full notice-and-comment rulemaking before imposing that theory through an enforcement action.

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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