

February 12, 2025

Via Federal Express and Email

The Honorable Charles E. Grassley
Chairman, Whistleblower Protection Caucus
135 Hart Senate Office Building
Washington, D.C. 20510

Whistleblower Protection Caucus
c/o Senator Ron Wyden
221 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Mark T. Uyeda, Acting Chair
The Honorable Caroline A. Crenshaw,
Commissioner
The Honorable Hester M. Peirce,
Commissioner
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Reported Changes to the SEC's Investigative Authority and the Potential Impact on the Whistleblower Program

Dear Senator Grassley, Acting Chair Uyeda, and Commissioners Peirce and Crenshaw:

We write as attorneys who previously served in various roles at the U.S. Securities and Exchange Commission (“Commission”), including as a Commissioner, and who now, in whole or in part, represent whistleblowers providing information to government enforcement authorities, including the Commission. Given our experience with the Commission and our ongoing commitment to the integrity of the securities markets, we are concerned by recent reports that the SEC’s Division of Enforcement (“Division”) may again be required to obtain Commission approval before initiating formal investigations. If accurate, this change represents a departure from recent practice—including during President Trump’s first term—and represents an unnecessary impediment to the Commission’s ability to effectively enforce the securities laws and carry out its core mission, including its administration of the whistleblower program established under the Dodd-Frank Act.

The federal securities laws grant the Commission broad authority to “make such investigations as it deems necessary to determine whether any person has violated, is violating, or is about to violate any provision” of the securities laws. To initiate an investigation, the Commission issues a “formal order of investigation,” which, among other things, designates certain investigative staff as officers of the Commission for the purposes of the investigation. This designation allows those staff members to exercise the Commission’s statutory authority to issue subpoenas for documents or other evidence and to compel witnesses to provide testimony under oath—critical tools for conducting effective investigations.

At various points in its history, the Commission has delegated the authority to issue a formal order of investigation to staff within the Division. In recent history, following the Bernie Madoff scandal and the 2008-2009 financial crisis, the Commission implemented a series of reforms aimed at increasing efficiency and responsiveness to fast-moving misconduct that posed risks to investors and markets. As part of these reforms, the Commission delegated formal order authority to the Director of the Division, who in turn granted it to certain high-ranking officials within the Division. *See* 17 CFR § 200.30-4(a)(1) (“Rule 30-4(a)(1)”). That system remained in place until 2017 when approval authority was centralized with the Director of the Division, which remained the policy throughout the first Trump administration. In 2021, the delegation of authority to senior officers in the Division was restored and has since remained.

The whistleblower program was created to encourage individuals with knowledge of potential securities law violations to come forward, with the assurance that their information would be taken seriously and, where warranted, investigated and litigated in a timely manner. The success of this program—and public

confidence in the SEC's enforcement process—rests on the Commission's ability to evaluate and act expeditiously on credible information concerning potential securities-law violations.

Unfortunately, news reports suggest that the delegation of formal order authority to the Division has been revoked or otherwise rendered inoperative. As a result, investigative staff in the Division would need to seek a full Commission vote before initiating investigations—a process that has historically delayed such authority until after lengthy memos are prepared and evidence is gathered through voluntary requests, which are often met with resistance or indifference, or worse, a scramble to hide or transfer investor assets. The removal of this delegation will inevitably slow investigations and discourage staff from pursuing legitimate cases due to the bureaucratic obstacles to proceeding.

For whistleblowers in particular, this shift raises concerns that even meritorious tips could face delays or be disregarded due to procedural obstacles. Such a shift risks discouraging whistleblower reporting and also weakening the Commission's ability to detect and address securities fraud. In the long-term, this policy threatens to make the whistleblower program less effective and less capable of fulfilling the Commission's investor-protection mandate.

The purported change is also unnecessary. Significant controls have long ensured that the authority to formally investigate is exercised responsibly. Staff must provide justification for each request for formal authority to a designated senior officer, and those justifications are available to the Director of the Division. Moreover, the Commission is kept fully informed of formal orders issued pursuant to delegated authority, and any commissioner may request that a given formal order determination be made at the Commission level rather than by staff. In practice, Commissioners regularly exercise this authority, reviewing and, at times, overriding staff-level determinations. Indeed, Steve Peikin, who served as the Division's Director during President Trump's first term, described the apparent recent removal of the formal order delegation as "a huge waste of Commission resources." Finally, it is important to remember that formal order authority is only the first step in an enforcement investigation, and any enforcement action requires review and approval by a majority of the Commissioners serving on the Commission.

The whistleblower program is built on the premise that properly incentivized whistleblowers will often take tremendous risks to provide actionable information to the Commission. If the likelihood of even the commencement of a meaningful SEC investigation—let alone a final enforcement action—diminishes, whistleblowers may be less inclined to participate in the program or to invest the necessary time in drafting, structuring, and presenting high-quality submissions. This, in turn, would lead not only to fewer whistleblower reports but also to a decline in the quality of information reaching Enforcement staff—the kind of well-prepared, actionable tips that ultimately save investigative staff valuable time and resources.

Given these concerns, we respectfully request, at a minimum, transparency for whistleblowers and the public as to whether in fact the Commission has voted to overturn Rule 30-4(a)(1) and/or has otherwise implemented a change that, as a practical matter, results in all formal orders requiring full Commission approval. Such transparency has always been a key element of the Commission's commitment to protecting whistleblowers and to maintaining a robust enforcement program, and in keeping with the mission and tradition of the Commission, should provide the public with a rationale for such a change, including the various factors weighed.

We appreciate your time and attention to these matters and stand ready to discuss further at your convenience.

Sincerely,

/s/ Allison Herren Lee

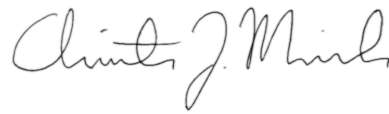
Allison Herren Lee
Commissioner (2019-2022)
Acting Chair (2021)

/s/ Christopher Ehrman

Christopher Ehrman
Division of Enforcement (2001-2013)

/s/ Andrew Feller

Andrew H. Feller
Senior Counsel, Division of Enforcement (2007-2019)
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Christina Z. Milnor
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Office of General Counsel (2019-2023)
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/s/ Christina K. McGlosson

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Senior Counsel to the Director of Enforcement
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Division of Economic and Risk Analysis (2013-2017)
Senior Counsel to the Chief Economist (2013-2017)