

Former SEC Attorneys Express Concern About Reported Change to Investigative Authority at Commission

On February 12, 2025, a group of former Securities and Exchange Commission (SEC) attorneys sent a letter to the current members of the SEC and the Senate Whistleblower Protection Caucus expressing concern about reports that the SEC has changed the process to initiate a formal investigation.

The attorneys, who now represent whistleblowers in private practice, include former SEC Commissioner Allison Herren Lee. The letter was sent in response to recent reports that the Division of Enforcement would require Commission approval before initiating formal investigations. Their letter discusses the history of the delegation to the Division of Enforcement and points out some potential negative impacts of the change on whistleblowers and the SEC Whistleblower Program.

The attorneys explain that the authority to initiate a formal investigation – that is, to give the staff authority to use the Commission's statutory powers to issue subpoenas and take sworn testimony – has been delegated to the Division of Enforcement since just after the twin crises of 2008-09 – the Bernie Madoff scandal and the subprime meltdown. Since then, formal order authority has been delegated to the Division of Enforcement to make the staff more efficient and responsive to fast-moving events, to prevent harm to investors and markets, and to prevent the hiding or transfer of assets.

The letter expressed concern that the change to requiring Commission approval will create potentially significant bureaucratic obstacles for the staff, leading to delays and potentially discouraging the staff from pursuing certain meritorious investigations. It specifically notes that such impacts could create a chilling effect for whistleblowers, who will have less confidence that their tips – submitted at great personal risk – will be taken seriously and lead to a full investigation by the staff. The potential negative impacts on whistleblowers include increased fear of retaliation, reduced likelihood of reporting, and decreased trust in the SEC's ability to protect them.

The letter states, "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 letter also discusses the controls around the process that ensure that there is already robust oversight from the Commission, even when formal order authority is delegated to Enforcement.

The letter cites the existing regulation that delegates formal order authority to the Division of Enforcement, which was adopted by the Commission and appears to remain in force. This regulation was implemented to streamline the investigative process and ensure timely responses to potential threats to investors and markets. In light of that rule, the attorneys request transparency for whistleblowers and the public on whether the Commission has somehow overturned the rule or implemented some change that effectively renders it moot and further seeks an explanation of the rationale for such a change.

Fuente: https://whistleblowersblog.org/

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