

SEC Whistleblower Proposals Continue Reversal of Trump-Era Rules

May 11, 2022

The SEC has proposed to amend its whistleblower rules in ways that exacerbate a continuing clash among Democratic and Republican commissioners over rolling back SEC rules adopted under President Donald Trump.

SEC Chair Gary Gensler promoted the latest proposals as helping to “ensure that whistleblowers are both incentivized and appropriately rewarded for their efforts in reporting potential violations of the law to the Commission.” Commissioner Hester Peirce, a Republican appointed by Trump, lamented that the proposals are “an imprudent use of our resources.”

The first proposal would let the SEC pay whistleblower awards for certain actions that other federal agencies bring in cases where those awards might otherwise be paid under the other entity’s whistleblower program. Gensler has explained that this “rule change is designed to ensure that a whistleblower is not disadvantaged by another whistleblower program that would not give them as high an award as the SEC would offer.”

The second proposal would let the SEC consider the dollar amount of a potential award for the limited purpose of increasing the award amount and eliminate the SEC’s authority to consider the dollar amount of a potential award for the purpose of decreasing the award. Gensler has said that “[t]his would give whistleblowers additional comfort knowing that the SEC could consider the dollar amount of the award only in such cases.”

Peirce dissented. As for the proposals per se, she condemned them as “unnecessary and unpersuasive” and “a solution in search of a problem.” As for the larger issue of rolling back rules, Peirce warned that “revisiting recently adopted rules subverts the regulatory consistency and certainty essential to well-functioning markets.”

Peirce has previously expressed similar views in the context of Gensler’s broader rulemaking agenda. Last December, she and then-Commissioner and Republican Elad Roisman publicly objected to announcements that Gensler planned “to undo rulemakings that the Commission only recently completed.” They complained that they “have not seen any new information that would warrant opening up any of these rules for further changes at this time.”

These rules have involved not only the SEC’s whistleblower rules but also rules relating to proxy solicitation and shareholder proposals, the resource extraction payments rule, and the rules pertaining to the accredited investor definition and the private offering exemption integration framework. The rules, orchestrated under Trump-appointed Chair Jay Clayton, drew the ire of Democratic Commissioners Allison Herren Lee and Caroline Crenshaw. Also, in an unusually harsh accusation, the SEC’s Investor Advocate reported to Congress that the rule on shareholder proposals was “in contravention” of the Securities Exchange Act and, “at the very least, the spirit of the Administrative Procedure Act.”

Roisman, appointed by Trump, resigned from the SEC last January and will be replaced by another Republican. Lee has recently announced that she will not seek reappointment to serve after her term expires in June, although she will continue to serve until her replacement (another Democrat) is confirmed. Peirce’s term ends next January.

Authored By



Gary O. Cohen

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