

SECURITIES AND EXCHANGE COMMISSION HISTORICAL SOCIETY

REGIONAL DIRECTORS ROUNDTABLE

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SEC REGIONAL DIRECTORS ROUNDTABLE¹

I. The Role of SEC Regional Offices and Directors

- A. The Securities and Exchange Commission (SEC or Commission) currently has 11 regional offices located in Atlanta; Boston; Chicago; Denver; Fort Worth, Texas; Los Angeles; Miami; New York City; Philadelphia; Salt Lake City; and San Francisco.²
- B. Unique within the Commission's reporting structure, regional offices dually report to the Director of Enforcement and the Director of the Office of Compliance, Inspections and Examinations (OCIE).³
- C. From its origins in the years after 1934, the SEC has maintained regional offices with regional directors (or "administrators"). The First Annual Report of the Securities and Exchange Commission for the fiscal year ended 1935⁴ discusses the process of dividing the United States into eight zones, exclusive of the area that fell under the direct administration of the main office in Washington, DC. The offices for these "regions" were located in New York City; Boston; Atlanta; Chicago; Fort Worth, Texas; Denver; San Francisco; and Seattle. Each office had a "regional administrator" who was responsible for "all administration, investigation, and enforcement activities of the Commission within his respective zone."
- D. The SEC has on several occasions adjusted this structure. The current organization of 11 regional offices was implemented in 2007 and moved from a structure of six district offices reporting to five regional offices that in turn reported to SEC headquarters. The purpose of the reorganization was "to facilitate the regional offices' cooperation with state and federal regulators, law enforcement agencies and consumer groups at the local level to better protect investors no matter where they live or with whom they invest."⁵ "The reorganization also should help eliminate the potential for redundancy and overlap in the Commission's inspection and enforcement procedures."⁶
- E. "Each Regional Director is responsible for the direction and supervision of his or her work force and for the execution of all programs in his or her office's region, . . . in accordance with established policy, and reports, on enforcement matters, to the Deputy Director of the Division of Enforcement who is responsible

¹ Unless otherwise noted, this outline was drafted by G. Jeffrey Boujoukos, Danielle Novelly, and Ben Indek. The outline does not represent the views of their law firm or the other panelists or the Securities and Exchange Commission.

² SEC Organizational Chart, <https://www.sec.gov/about/secorg.pdf>.

³ Securities and Exchange Commission, Regional Office Reorganization, 73 Fed. Reg. 32,222 (June 5, 2008).

⁴ First Annual Report, at 6-7, <https://www.sec.gov/files/1935.pdf>.

⁵ Securities and Exchange Commission, Regional Office Reorganization, 73 Fed. Reg. 32,222 (June 5, 2008).

⁶ *Id.*

for Regional Office enforcement matters and, on examination matters, to the Director of the Office of Compliance Inspections and Examinations. The Director of Regional Office Operations interacts with the Regional Directors and their staff on operational and administrative/management issues and serves as their representative in the Commission’s Washington Headquarters in those areas.”⁷

II. The Panel of Regional Directors

A. Over the last year, there have been several changes in the leadership of the regional offices. These include those outlined below.

B. **Marc Berger**⁸

Marc Berger is the SEC Deputy Director of the Division of Enforcement. Prior to serving in this role, Mr. Berger was the Director of the SEC’s New York Regional Office from 2017 to August 2020. As Director of the New York Regional Office, Mr. Berger oversaw 400 professional staff, including enforcement attorneys, accountants, investigators, and compliance examiners involved in the investigation and prosecution of enforcement actions and the performance of compliance inspections in the New York region. The New York Regional Office is responsible for the largest number of SEC-registered financial institutions, including more than 4,000 investment banks, investment advisers, broker-dealers, mutual funds, and hedge funds.

C. **Michele Layne**⁹

Michele Layne is the Regional Director of the Los Angeles Regional Office. Ms. Layne has served as Regional Director since 2012. Ms. Layne began her SEC career 25 years ago and has held various positions, including staff attorney in the Division of Enforcement and Associate Regional Director for Enforcement in the Los Angeles Regional Office. During her tenure at the SEC, she has worked on many significant enforcement cases involving a wide variety of securities law violations. Among many other significant cases, Ms. Layne played a leadership role in the enforcement action against Countrywide CEO Angelo Mozilo that resulted in the largest SEC penalty ever paid by a public company’s senior executive, and the CSK Auto matter that marked the SEC’s first ever Sarbanes-Oxley Act “clawback” case against an individual who was required to return bonuses and stock profits while not personally charged for the company’s misconduct.

⁷ *Id.*

⁸ Press Release, SEC, SEC Names Marc P. Berger as Deputy Director of Enforcement (Aug. 19, 2020), <https://www.sec.gov/news/press-release/2020-186>.

⁹ Press Release, SEC, SEC Veteran Michele Wein Layne Named Director of Los Angeles Office (July 19, 2012), <https://www.sec.gov/news/press-release/2012-2012-140htm>.

D. **Richard Best**¹⁰

Richard Best was named the Director of the New York Regional Office in August 2020, assuming the role previously held by Marc Berger. Mr. Best joined the SEC in June 2015 as the Regional Director of the SEC’s Salt Lake City Regional Office, and in 2018 he was named Regional Director of its Atlanta Regional Office. Under Mr. Best’s leadership, the Atlanta Regional Office investigated and litigated a number of impactful cases, such as the Commission’s action against a former CIO of Equifax who was charged with insider trading ahead of the company’s September 2017 announcement about a data breach that exposed the personal information of approximately 148 million customers. Mr. Best has also played a key role in many of the Commission’s efforts to reach out to and connect with investors in a variety of ways and settings.

E. **Kelly Gibson**¹¹

Kelly Gibson was named Director of the Philadelphia Regional Office in February 2020. Ms. Gibson joined the SEC in 2008 as a staff attorney in the Division of Enforcement in the Philadelphia Regional Office. When the division reorganized, she joined the Market Abuse Unit. In 2013, Ms. Gibson was promoted to Assistant Regional Director and was promoted again in 2017 to Associate Regional Director of the Philadelphia Regional Office. Throughout her SEC career, Ms. Gibson has investigated or supervised dozens of enforcement matters involving a variety of securities violations, including cases against defendants who engaged in a Ponzi-like scheme, raising more than \$345 million from 230-plus investors across the United States and a case against a Pennsylvania investment adviser for operating a \$100 million investment advisory fund.

III. SEC Examinations & Enforcement in COVID-19 Era¹²

- A. While it was not “business as usual,” the SEC navigated through the beginning of the coronavirus crisis and its work moved forward. The SEC was uniquely prepared for a remote workplace, with 91% of its staff having teleworked at least situationally in 2017.¹³
- B. The Division of Enforcement “brought over 700 actions in FY 20, a significant percentage of which were brought after March 15. The Commission obtained financial remedies of more than \$4 billion; an amount above that of last year. The

¹⁰ Press Release, SEC, Richard R. Best Named Director of SEC’s New York Regional Office (Aug. 19, 2020), <https://www.sec.gov/news/press-release/2020-187>.

¹¹ Press Release, SEC, Kelly L. Gibson Named Director of SEC’s Philadelphia Office (Feb. 27, 2020), <https://www.sec.gov/news/press-release/2020-45>.

¹² For information on the SEC’s work in the early stages of the COVID-19 era, see the April 21, 2020 LawFlash published by Morgan Lewis. The note was written by G. Jeffrey Boujoukos, Ariel Gursky, and Ben Indek. <https://www.morganlewis.com/pubs/sec-examinations-and-enforcement-in-the-covid-19-era-cv19-lf>.

¹³ US Office of Pers. Mgmt., Status of Telework in the Federal Government 89, 94, 142 (2019).

Division’s activities during the pandemic have included three dozen trading suspensions, six COVID-related fraud actions, and over 150 newly opened COVID-related investigations and inquiries.”¹⁴

- C. In connection with its active whistleblower program, “the Commission awarded a record 39 individuals approximately \$175 million — more, much more, than in any prior fiscal year.”¹⁵
- D. For the period from mid–March 2020 through the end of its fiscal year on September 30, 2020, the Division of Enforcement brought more than 470 cases, opened more than 640 new matters (a 7% increase over the same period in 2019), and triaged more than 15,000 tips, complaints, and referrals (a 68% increase over the same period in 2019).¹⁶
- E. The Division of Enforcement also created the “Coronavirus Steering Committee to coordinate the Division of Enforcement’s response to coronavirus-related enforcement issues.”¹⁷ The Steering Committee is composed of approximately two dozen leaders from across the division, including representatives from specialized units, from the Washington, DC office and various regional offices, and from the Office of Market Intelligence. “The Steering Committee’s mandate is to proactively identify and monitor areas of potential misconduct, ensure appropriate allocation of our resources, avoid duplication of efforts, coordinate responses as appropriate with other state and federal agencies, and ensure consistency in the manner in which the women and men of the Division address coronavirus-related matters. The Steering Committee is focused on identifying key areas of potential market and investor risk.”
- F. OCIE “conducted examinations that covered 15 percent of all SEC-registered investment advisers.”¹⁸ According to the SEC’s Chair, “OCIE also continued its complementary and highly effective asset verification program — in the same time period of FY 2020, OCIE verified 4.8 million investor accounts totaling \$3.4 trillion in assets. In FY 2020 OCIE conducted over 300 outreach events.”¹⁹
- G. Remote work influenced the ways Division of Enforcement investigations and OCIE examinations were conducted. From an enforcement perspective, the staff adapted by seeking proffers from entities and individuals early in the process, issuing “interrogatory based document requests” and seeking information directly

¹⁴ Jay Clayton, Chairman, US Sec. & Exch. Comm’n, Public Statement: An Update on FY 2020 Results – Remarks at SEC Speaks (Oct. 8, 2020).

¹⁵ *Id.*

¹⁶ Marc Berger, Deputy Director, Division of Enforcement, US Sec. & Exch. Comm’n, Remarks at SEC Speaks 2020 (Oct. 9, 2020).

¹⁷ Steven Peikin, Co-Director, Division of Enforcement, US Sec. & Exch. Comm’n, Keynote Address: Securities Enforcement Forum West 2020 (May 12, 2020).

¹⁸ Jay Clayton, Chairman, US Sec. & Exch. Comm’n, Public Statement: An Update on FY 2020 Results – Remarks at SEC Speaks (Oct. 8, 2020).

¹⁹ *Id.*

from third parties to the conduct under investigation, among other approaches.²⁰ The Division of Enforcement also pressed ahead with investigations and litigation, seeking direction from the courts where appropriate. For example, the SEC recently prevailed in opposing a defendant’s request to stay in discovery due to the coronavirus, where the court imposed a number of conditions to allow remote discovery to proceed.²¹

- H. The current work-from-home environment will spur data-driven investigations. SEC specialized groups charged with developing data-driven, analytical strategies for identifying practices in the securities markets and generating enforcement matters will be allocated additional resources in this environment. The SEC may also leverage resources on mission-driven initiatives, such as broad investigations into pricing, compensation, and disclosure that are detectable through data analytics. “Recognizing that the economic impacts of any downturn may vary across different industries and sectors, the Steering Committee has developed a systematic process to review public filings from issuers in highly-impacted industries, with a focus on identifying disclosures that appear to be significantly out of step with others in the same industry. We are also looking for disclosures, impairments, or valuations that may attempt to disguise previously undisclosed problems or weaknesses as coronavirus-related.”²²
- I. The Division of Enforcement also repeatedly emphasized the importance of appropriate handling and use of nonpublic information. Such statements indicate that the Division of Enforcement will vigorously pursue actions involving material nonpublic information in the COVID-19 era. “These market conditions, along with a regular stream of potentially market-moving announcements by issuers, provide increased opportunities for insider trading and market manipulation. To detect such misconduct, the Steering Committee is working with the Division’s Market Abuse Unit to monitor trading activity around announcements made by issuers in industries particularly impacted by COVID-19 and to identify other suspicious market movements for possible manipulation.”²³

IV. SEC Event and Emerging Risk Examination Team

- A. On July 28, 2020, the SEC announced the creation of the Event and Emerging Risks Team (EERT) in OCIE.²⁴ The Commission believes that “the EERT will proactively engage with financial firms about emerging threats and current market

²⁰ Anita Bandy, Associate Director, Division of Enforcement, US Sec. & Exch. Comm’n, Remarks at SEC Speaks 2020 (Oct. 9, 2020).

²¹ *SEC v. Commonwealth Equity Services*, Case No. 19-cv-11655 (D. Mass. Sept. 16, 2020).

²² Steven Peikin, Co-Director, Division of Enforcement, US Sec. & Exch. Comm’n, Keynote Address: Securities Enforcement Forum West 2020 (May 12, 2020).

²³ *Id.*

²⁴ Press Release, SEC, SEC Announces Creation of the Event and Emerging Risk Examination Team in the Office of Compliance Inspections and Examinations and the Appointment of Adam D. Storch as Associate Director (July 28, 2020), <https://www.sec.gov/news/press-release/2020-165>.

events and quickly mobilize to provide expertise and resources to the SEC’s regional offices when critical matters arise.”²⁵

- B. “OCIE is responsible for conducting examinations of SEC-registered investment advisers, investment companies, broker-dealers, self-regulatory organizations, and transfer agents, among others.”²⁶ Working collaboratively with OCIE, the EERT will focus on implementing OCIE exam priorities.²⁷ “The EERT will help ensure, through examinations and other firm engagement and monitoring activities, that firms are better prepared to address exigent threats, incidents, and emerging risks.”²⁸ The EERT will work with OCIE to “provide expertise and support in response to significant market events that could have a systemic impact or that place investor assets at risk, such as exchange outages, liquidity events, and cyber-security or operational resiliency concerns.”²⁹
- C. Adam D. Storch was named the Associate Director of the EERT.³⁰ Mr. Storch will oversee a multidisciplinary team of specialized examiners, industry experts, accountants, and qualitative analysts.³¹

V. SEC Whistleblower Program

- A. The SEC whistleblower program was established by Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which added Section 21F to the Securities Exchange Act of 1934.³² Among other things, this section “authorized the SEC to make monetary awards to eligible individuals who voluntarily provide original information that leads to a successful SEC enforcement action resulting in monetary sanctions over \$1 million.”³³ The program was created to incentivize individuals to report high-quality tips to the Commission and assist the agency in its efforts to combat wrongdoing and better protect investors and the marketplace.³⁴ The awards can range from 10%-30% of the monetary sanctions collected when the sanctions exceed \$1 million.³⁵ All payments are made from the Investor Protection Fund established by Congress.³⁶ This fund is financed through monetary sanctions paid to the SEC by securities law violators.³⁷ “No money has been taken or withheld from harmed investors to

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Press Release, SEC, SEC Adds Clarity, Efficiency and Transparency to Its Successful Whistleblower Award Program (Sept. 23, 2020), <https://www.sec.gov/news/press-release/2020-219>.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Press Release, SEC, SEC Whistleblower Program Ends Record-Setting Fiscal Year With Four Additional Awards (Sept. 30, 2020), <https://www.sec.gov/news/press-release/2020-240>.

pay whistleblower awards.”³⁸ “As set forth in the Dodd-Frank Act, the SEC protects the confidentiality of whistleblowers and does not disclose information that could reveal a whistleblower’s identity.”³⁹

- B. On September 23, 2020, the Commission voted to adopt amendments to the rules governing its whistleblower program.⁴⁰ In adopting the changes, the SEC stated that “the amendments are intended to provide greater transparency, efficiency, and clarity, and to bolster the program in several ways.”⁴¹ According to the Commission, the amendments also increase efficiencies around review and processing of claims and provide the SEC with additional tools to appropriately award whistleblowers for their efforts.⁴²

Among other things, the amendments provide:

1. A mechanism for whistleblowers with potential awards of less than \$5 million (historically this represents nearly 75% of all whistleblower awards), subject to certain criteria, to qualify for a presumption that they will receive the maximum statutory award amount.⁴³
2. That award amounts—which the Commission can determine in percentage terms, dollar terms, or some combination—are determined exclusively based on the application of the award factors set forth in the Commission’s whistleblower rules.⁴⁴
3. That whistleblowers will not be disadvantaged because of the particular form of an action that the Commission or the Department of Justice (DOJ) may elect to pursue, including deferred prosecution agreements or nonprosecution agreements entered into by the DOJ or settlement agreements entered into by the Commission outside of a judicial or administrative proceeding.⁴⁵
4. A uniform definition of “whistleblower” that will apply to all aspects of the award program, the heightened confidentiality requirements, and the employment anti-retaliation protections.⁴⁶
5. The Commission may waive compliance with the tip, complaint, and referral (TCR) filing requirements if a whistleblower complies with the

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Press Release, SEC, SEC Adds Clarity, Efficiency and Transparency to Its Successful Whistleblower Award Program (Sept. 23, 2020), <https://www.sec.gov/news/press-release/2020-219>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

requirements within 30 days of first providing information or first obtaining actual or constructive notice of the TCR filing requirements.⁴⁷

In addition to the rule amendments, the Commission published interpretive guidance to help clarify the meaning of “independent analysis” as that term is defined in Exchange Act Rule 21F-4 and utilized in award applications.⁴⁸ “[I]n order to qualify as ‘independent analysis,’ a whistleblower’s submission must provide evaluation, assessment, or insight beyond what would be reasonably apparent to the Commission from publicly available information.”⁴⁹ The Office of the Whistleblower also issued staff guidance regarding the process for determining award amounts for eligible whistleblowers.⁵⁰

- C. Since issuing its first award in 2012, the SEC has paid almost \$562 million to 102 individuals.⁵¹ In the past three and a half years, the Commission has made the five largest awards in the program’s history—two at \$50 million, and one each at \$39 million, \$37 million and \$33 million.⁵²
- D. The Commission’s 2020 fiscal year was a record-setting period for the whistleblower program.⁵³ The SEC awarded a record 39 individual awards of approximately \$175 million, more than in any other prior fiscal year.⁵⁴ On September 30, 2020, the SEC announced awards to four individuals with total payments of almost \$5 million.⁵⁵ The SEC noted that these whistleblowers “provided critical information that alerted the Commission of the alleged wrongdoing and resulted in successful enforcement action.”⁵⁶
 - 1. The first whistleblower was awarded nearly \$2.9 million for alerting the Commission to hard-to-detect violations and providing critical information and evidence that conserved SEC time and resources.⁵⁷
 - 2. In connection with the second whistleblower, a former company insider was awarded more than \$1.7 million for providing extensive and ongoing assistance to the investigation team over the course of an investigation.⁵⁸

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ SEC, Office of the Whistleblower Guidance for Whistleblower Award Determinations (Sept. 23, 2020), https://www.sec.gov/files/OWB%20Guidance%20for%20WB%20Award%20Determinations_0.pdf.

⁵¹ Press Release, SEC, SEC Whistleblower Program Ends Record-Setting Fiscal Year With Four Additional Awards (Sept. 30, 2020), <https://www.sec.gov/news/press-release/2020-240>.

⁵² Press Release, SEC, SEC Adds Clarity, Efficiency and Transparency to Its Successful Whistleblower Award Program (Sept. 23, 2020), <https://www.sec.gov/news/press-release/2020-219>.

⁵³ Press Release, SEC, SEC Whistleblower Program Ends Record-Setting Fiscal Year With Four Additional Awards (Sept. 30, 2020), <https://www.sec.gov/news/press-release/2020-240>.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

3. The third and fourth whistleblowers were awarded nearly \$400,000 for jointly providing a tip and giving continuing assistance during the course of the investigation.⁵⁹ These two whistleblowers also “internally reported their concerns and suffered personal hardships as a result of the reporting.”⁶⁰

⁵⁹ *Id.*

⁶⁰ *Id.*