



OFFICE OF
INSPECTOR GENERAL

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

May 24, 2021

TO: Gary Gensler, Chair

FROM: Carl Hoecker, Inspector General

SUBJECT: *Final Management Letter: Actions May Be Needed To Improve Processes for Receiving and Coordinating Investor Submissions*

During recent evaluations of the U.S. Securities and Exchange Commission's (SEC or agency) management of its Office of Investor Education and Advocacy (OIEA)¹ and its tips, complaints, and referrals (TCR) program,² the Office of Inspector General (OIG) identified matters that we believe warrant management's attention. As these matters were outside the scope and objectives of the evaluations, we did not fully assess the matters in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*, nor did we conduct an audit pursuant to generally accepted government auditing standards. However, based on the work performed, the OIG is providing this management letter to bring to your attention these matters, which we further describe below.

Executive Summary

In pursuit of the SEC's mission, agency divisions and offices assist investors and members of the public with complaints and questions about the SEC, the securities markets, and market participants, and receive and respond to TCRs about possible violations of the federal securities laws. Specifically, OIEA, the Division of Enforcement (Enforcement), and the SEC Ombudsman within the Office of the Investor Advocate provide assistance in response to a variety of concerns, as follows:

- OIEA – Assists with investor questions and complaints related to matters such as order handling, dividends, fees, and misleading disclosures by investment professionals.
- Enforcement – Responds to TCRs of suspected securities fraud or wrongdoings, including Ponzi schemes, insider trading, and theft or misappropriation of funds or securities.
- SEC Ombudsman – Handles investor concerns and questions about the SEC or a self-regulatory organization the SEC oversees, or questions about securities law and policy that submitters would like to discuss confidentially.

¹ U.S. Securities and Exchange Commission, Office of Inspector General, *The SEC's Office of Investor Education and Advocacy Could Benefit From Increased Coordination, Additional Performance Metrics, and Formal Strategic Planning* (Report No. 564; January 13, 2021).

² U.S. Securities and Exchange Commission, Office of Inspector General, *The SEC Can Further Strengthen the Tips, Complaints, and Referrals Program* (Report No. 566; February 24, 2021).

To address these concerns (hereafter collectively referred to as “investor submissions” or “matters”) and uphold the agency’s most recent strategic plan,³ the SEC must ensure that:

- public-facing instructions on how to ask a question, report a problem, or submit a TCR are clear and easily understood; and
- efficient and effective processes and controls exist for coordinating between divisions and offices.

During our recent evaluations of OIEA operations and the SEC’s management of its TCR program, we observed that OIEA sends thousands of investor submissions it receives to Enforcement’s TCR system; at the same time, Enforcement transfers to OIEA thousands of investor submissions that Enforcement receives. We note that the majority of matters received are not transferred, and, when needed, processes and controls are in place to transfer matters between OIEA and Enforcement. Nonetheless, during our evaluation of the TCR program, we identified 2 matters of 3,303 we reviewed that were not timely and properly transferred from OIEA to the TCR system.⁴ Notably, OIEA management took prompt corrective action and the vast majority of matters we reviewed were transferred properly when needed. However, if the SEC continues to maintain multiple reporting mechanisms, the agency may gain efficiencies and reduce certain risks if it can better ensure investors submit matters directly to the appropriate division or office.

We also noted that the majority of investor submissions are received from portals on the SEC’s public website. However, the primary landing page for the public to submit matters to the SEC (<https://www.sec.gov/complaint/select.shtml>) provides minimal information to help investors choose one reporting mechanism over another, and does not provide examples of common concerns associated with each option. In addition, other public-facing instructions, including a 2011 investor publication and a 2017 investor bulletin, provide conflicting information about how to file a complaint. These resources serve as enabling functions that affect the SEC’s mission and involve several divisions and offices. Therefore, the SEC may benefit from assessing and, as needed, revising information on its public website to ensure retail investors and others have clear and easily understood instructions for reporting matters to the SEC.

Lastly, the SEC Ombudsman receives a variety of matters, including matters the Ombudsman categorizes and publicly reports as “Allegations of Securities Law Violations/Fraud.” However, it appears that the Ombudsman has not always entered those matters into the agency’s TCR system because, in some cases, the Ombudsman did not believe the matters warranted a TCR. Use of the broad descriptive label “Allegations of Securities Law Violations/Fraud” for matters that do not warrant TCRs may unintentionally misrepresent the nature of matters submitted by investors. Management’s review of the handling, categorization, and public reporting of matters submitted to the Ombudsman, particularly those matters related to potential securities law violations and fraud, may be beneficial.

³ U.S. Securities and Exchange Commission, *Strategic Plan Fiscal Years 2018 – 2022*; Goal 3 and initiative 3.5.

⁴ Both matters originated in the TCR system and were transferred to OIEA’s IRIS system in 2018. After reviewing the matters, OIEA intended to transfer the matters back to Enforcement. However, the final transfers did not occur until May 2020 when we brought the matters to OIEA management’s attention.

We encourage management to review and respond to each of these concerns. Moreover, to help us determine whether further action by the OIG is warranted, we request that, no later than July 8, 2021, management provide the OIG a description of the actions taken or planned in response.

Background

According to the Code of Federal Regulations, the Director of OIEA is responsible for the SEC's investor education and investor assistance programs. These programs include but are not limited to:

- implementing and administering a nationwide system for resolving investor complaints against individuals and entities regulated by the SEC by processing complaints received and seeking to ensure that regulated individuals and entities process and respond to such complaints; and
- transmitting to other divisions and offices information provided by investors which concerns the responsibilities of those divisions and offices.⁵

OIEA annually receives thousands of complaints and other investor assistance matters that must be triaged and addressed. For example, in fiscal year (FY) 2020, OIEA received 21,320 investor assistance matters.

The Securities Exchange Act and the Code of Federal Regulations also state that the SEC has statutory authority to investigate securities frauds, manipulations, and other violations, and to impose and enforce legal sanctions.⁶ The SEC (1) encourages the public to submit credible allegations or statements of concern about possible violations of the federal securities laws or conduct reasonably related to securities that poses a possible risk of harm to investors, and (2) intakes referrals from other regulators regarding possible securities law violations. Such allegations and statements are collectively referred to as TCRs and, each year, the SEC receives thousands of TCRs that must be reviewed and analyzed by Enforcement staff. For example, in FY 2020, the SEC received more than 23,650 TCRs.

In addition, as set forth in Exchange Act Section 4(g)(8), 15 U.S.C. § 78d(g)(8), among other things, the SEC Ombudsman acts as a liaison between the SEC and retail investors in resolving problems that retail investors may have with the agency or with self-regulatory organizations. The Ombudsman also encourages persons to present questions to the Investor Advocate regarding compliance with the securities laws. Matters that come directly to the SEC Ombudsman and the Office of the Investor Advocate must also be reviewed and triaged. In FY 2020, investors contacted the Ombudsman for assistance with 1,647 matters.

Finally, investors also contact their local SEC regional office with issues and questions. Regional office staff usually document these matters in OIEA's Investor Response Information System (IRIS) or enter them into the TCR system.

⁵ 17 CFR § 200.24a, Director of the Office of Investor Education and Advocacy.

⁶ Section 21(a) of the Securities Exchange Act of 1934 and 17 CFR § 200.1(d) (General statement and statutory authority).

Because the SEC does not maintain a singular mechanism for receiving investor submissions, the agency's public website would ideally provide sufficient information so that individuals make informed decisions on how best to contact the appropriate SEC division or office. Nonetheless, divisions and offices throughout the agency reroute thousands of matters received each year.

According to the SEC's most recent strategic plan, the agency must (1) innovate to stretch its resources further for the benefit of its mission, (2) find ways to use data and technology to uncover risks to the markets and investors, and (3) conduct activities more efficiently.⁷ To support these efforts, the plan includes the following initiative:

3.5 Promote collaboration within and across SEC offices to ensure we are communicating effectively across the agency, including through evaluation of key internal processes that require significant collaboration.

Moreover, the strategic plan acknowledges that "effective and efficient partnership of staff across the agency" is critical to the SEC's ability to carry out its mission. Under initiative 3.5, the SEC committed to exploring new ways to promote effective collaboration and information sharing across the agency, and planned to review the collaborations connected to the SEC's major functional areas.

Results

Thousands of Investor Submissions Are Transferred Between OIEA and Enforcement Each Year, and a Review of the SEC's Public-Facing Instructions May Be Beneficial.

OIEA and Enforcement often receive investor submissions that would be better handled by the other division or office. Although processes and controls are in place to transfer these matters, and the majority of matters received are not transferred, the SEC may gain efficiencies and reduce certain risks if it can better ensure investors and others submit matters directly to the appropriate division or office. For instance, OIEA often receives complaints and other investor assistance matters that allege wrongdoing and should be handled by Enforcement. OIEA transfers those matters from its IRIS system to the TCR system. Similarly, Enforcement often receives matters through the TCR system that Enforcement determines should be handled by OIEA and forwards those matters to OIEA. Based on our review of closed TCR files, we determined that, in FY 2018 through FY 2020 Quarter 1 (that is, between October 1, 2017, and December 31, 2019), at least 5,712 matters were transferred between OIEA and Enforcement. Specifically, OIEA identified 3,485 investor matters it received that alleged wrongdoing and transferred those matters to the TCR system. During the same period, Enforcement received 2,227 TCRs that were transferred to OIEA for review and disposition.

Although OIEA and Enforcement have processes for transferring matters and some matters may require involvement from both groups, there may be delays and other risks. During our evaluation of the TCR program, we identified two matters that were mismarked in OIEA's IRIS system. As a result, OIEA did not timely and properly transfer the matters to the TCR system until about 2 years after OIEA reviewed the matters. OIEA management took corrective action, stating recurrence of this particular human error is unlikely due to new procedures now

⁷ U.S. Securities and Exchange Commission, *Strategic Plan Fiscal Years 2018 – 2022*; Information supporting Goal 3.

in place, including review and confirmation of all OIEA transfers to the TCR system. While we commend OIEA management's prompt corrective action and it appears that the vast majority of the 3,303 matters we reviewed were generally handled properly, we note that receiving timely, reliable information is critical to ensuring that the SEC protects investors and holds wrongdoers accountable.

We also observed that the majority of investor submissions are received from portals on the SEC's public website. For example, about half (or 20,035) of the 40,259 investor assistance matters OIEA closed between FY 2018 and FY 2020 Quarter 1 were received online.⁸ Similarly, about 68 percent (or 27,388) of the 40,198 TCRs Enforcement received during the same period were received online.⁹ It also appears that a significant number of investors contact the SEC Ombudsman through a form on the SEC's public website.¹⁰

However, the primary landing page for the public to submit matters to the SEC (<https://www.sec.gov/complaint/select.shtml>) may not clearly explain the options for investors to contact the SEC. The landing page links to several other pages, forms, and intake options, but does not detail the reasons for choosing one reporting mechanism over another or provide examples of common concerns associated with each option.

In addition, other public-facing instructions provide conflicting information about how to file a complaint. For example, a 2011 investor publication titled, "SEC Center for Complaints and Enforcement Tips" (<https://www.sec.gov/reportspubs/investor-publications/complaintshtml.html>) encourages investors to file complaints using the SEC's online TCR system and complaint form. Yet a 2017 investor bulletin titled, "Investor Complaints" (https://www.sec.gov/oiea/investor-alerts-bulletins/ib_complaints.html) directs investors to OIEA's investor complaint form, which links to the IRIS system. Both the publication and the bulletin state that investor complaints received either by Enforcement or by OIEA may be referred to or shared with other SEC divisions and offices. However, if the SEC continues to maintain multiple reporting mechanisms, it may benefit from assessing and, as needed, revising information on its public website to ensure retail investors and others have clear and easily understood instructions for reporting matters to the agency. Consistent with the SEC's strategic plan Goal 3 and initiative 3.5, such a review may improve investors' understanding of their concerns and the overall submission process, and promote more efficient and effective information sharing across the agency.

The SEC Ombudsman Receives a Variety of Matters, and a Review of the Handling, Categorization, and Reporting of Those Matters May Be Beneficial. The SEC Ombudsman receives a variety of matters, including matters the Ombudsman categorizes and publicly reports as possible securities law violations and fraud. For example, according to the

⁸ The remaining investor assistance matters closed during this period were received via phone (10,029), e-mail (8,064), mail (1,912) fax (217), or walk-in (2).

⁹ The remaining TCRs received during this period were manually entered by staff (9,325) or transferred from OIEA (3,485).

¹⁰ Between FY 2018 and 2020, the Ombudsman received about 47 percent of all new matters (or 1,670 out of 3,576) through an intake form on the SEC's public website. The Ombudsman also receives matters via telephone, e-mail, and other means.

Office of the Investor Advocate's most recent Report on Activities,¹¹ in FY 2020 investors contacted the Ombudsman for assistance with 301 matters that the Ombudsman categorized as "Allegations of Securities Law Violations/Fraud." This represented the third largest category of matters reported to the Ombudsman that year.¹² We sought to understand the relationship, if any, between those matters and the matters the Ombudsman entered into the SEC's TCR system. In response, we received a list of 14 TCRs filed by Office of the Investor Advocate staff between November 2017 and December 2019. We acknowledge that not all matters reported to the Ombudsman may require filing a TCR. However, without performing additional procedures, we were unable to reconcile the large disparity between (1) the number of matters received and reported by the Ombudsman in FY 2020 as potential securities law violations/fraud, and (2) the number of TCRs the Ombudsman filed.

We note that the SEC's *Commission-Wide Policies and Procedures for Handling TCRs* (TCR policy) defines a TCR as "any credible allegation or statement of concern about a possible violation of the federal securities laws or conduct reasonably related to securities that poses a possible risk of harm to investors." In addition, the Office of the Investor Advocate's *Report on Activities for FY 2020* describes allegations of wrongdoing reported to the Ombudsman, which resulted in the Ombudsman recommending that the investor submit a TCR, including one example of a possible advance fee fraud scheme. This does not appear to conform to the SEC's TCR policy, which states that all SEC staff are responsible for entering TCRs into the TCR system or forwarding them to a TCR point of contact within specified timeframes. Moreover, the TCR policy states that, "when in doubt, staff should err on the side of entering a TCR."

According to the Ombudsman, the Report on Activities may unintentionally give the mistaken impression that each matter in the "Allegations of Securities Law Violations/Fraud" category should have been submitted to the TCR system when, in some cases, the Ombudsman did not believe the matters warranted a TCR. Rather, the Ombudsman intended for the category to be a broad descriptive label to indicate to readers that, from the investor's perspective (but not necessarily that of the SEC), a securities law violation or fraud may have occurred. Additionally, as a courtesy, in some cases, the Ombudsman recommended that investors themselves submit a TCR. The Ombudsman also explained that descriptions of allegations of wrongdoing reported to the Ombudsman and included in the Report on Activities are simplified, composite, or hypothetical matter descriptions intended to help report readers understand the context of the investor experience when an investor contacts the Ombudsman. We appreciate the Ombudsman's clarification of these issues, but encourage management to assess related processes and procedures. Specifically, management's review of the handling, categorization, and public reporting of matters submitted to the Ombudsman,

¹¹ Section 4(g)(6) of the Securities Exchange Act of 1934, 15 U.S.C. § 78d(g)(6), requires the Investor Advocate to file two reports per year with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives. A Report on Objectives is due no later than June 30 of each year, and its purpose is to set forth the objectives of the Investor Advocate for the following fiscal year. In addition, a Report on Activities is due no later than December 31 of each year. The Report on Activities describes the activities of the Investor Advocate during the immediately preceding fiscal year. The most recent Report on Activities—*Report on Activities for FY 2020*—was filed on December 29, 2020. Both types of reports are posted to the SEC's website.

¹² According to the *Report on Activities for FY 2020*, the Ombudsman received a total of 1,647 matters between October 1, 2019, and September 30, 2020. The Ombudsman reported that those matters covered 12 primary issue categories. The largest category was "Investment Products/Retirement Accounts (383 matters). The second largest category was "Non-SEC/Other Matters" (367 matters). Other categories of matters included, but were not limited to, "SEC Questions/Complaints" (157 matters), "Securities Ownership" (54 matters), and "[Self-Regulatory Organization] Rules/Procedures" (2 matters).

particularly those matters related to potential securities law violations and fraud, may be beneficial.

Conclusion

To help us determine whether further action by the OIG is warranted, we request that management provide the OIG, no later than July 8, 2021, a description of the actions the agency has taken or plans to take to review and revise as needed:

1. the SEC's webpages (including its primary landing page), publications, and bulletins that provide guidance on submitting matters to the SEC; and
2. the processes and procedures for handling, categorizing, and publicly reporting matters submitted to the Ombudsman, particularly those that allege securities laws violations and fraud.

We encourage management to ensure key divisions and offices work together, as necessary, to address these concerns.

On May 4, 2021, we provided SEC management with a draft of our management letter for review and comment. In its May 18, 2021, response, management acknowledged the results of our review, stating that management would review the existing web pages, publications, and bulletins that provide guidance on submitting matters to the SEC and would review and revise as needed the processes and procedures for handling, categorizing, and publicly reporting matters submitted to the Ombudsman. Management's complete response is reprinted as an attachment to this final management letter.

We appreciate the courtesies and cooperation extended to us. If you have questions, please contact me or Rebecca Sharek, Deputy Inspector General for Audits, Evaluations, and Special Projects.

Attachment

cc: Prashant Yerramalli, Chief of Staff, Office of Chair Gensler
Heather Slavkin-Corzo, Policy Director, Office of Chair Gensler
Kevin Burris, Counselor to the Chair and Director of Legislative and Intergovernmental Affairs
Scott Schneider, Counselor to the Chair and Director of Public Affairs
Peter Gimbrere, Interim Managing Executive, Office of Chair Gensler
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Benjamin Vetter, Counsel, Office of Commissioner Peirce
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Matthew Keeler, Management and Program Analyst, Office of Chief Risk Officer

Lori Schock, Director, Office of Investor Education and Advocacy

Melissa Hodgman, Acting Director, Division of Enforcement

Kelly L. Gibson, Deputy Director, Division of Enforcement/Chair, TCR Oversight Board

Jennifer Diamantis, Chief, Office of Market Intelligence, Division of Enforcement

Margaret McGuire, Senior Counsel to the Director, and Chief, Financial Reporting and
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OFFICE OF THE CHAIR

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

May 18, 2021

Ms. Rebecca L. Sharek
Deputy Inspector General for Audits, Evaluations, and Special Projects
Office of the Inspector General (OIG)
U.S. Securities and Exchange Commission
Washington, D.C. 20549

Dear Ms. Sharek:

Thank you for the opportunity to review and comment on the Draft Management Letter, "Actions May Be Needed to Improve the Efficiency of Receiving and Coordinating Investor Submissions." As always, we value the OIG's perspectives and suggestions on this important component of the agency's mission.

We appreciate the OIG's acknowledgment that processes and controls are in place to transfer and share investor submissions when needed, and that the majority of investor submissions to the agency do not need to be transferred between systems. Transfers occur only when experienced staff in OIEA and Enforcement, working collaboratively pursuant to policies and procedures, determine that an investor submission would best be addressed by the other. In the limited instances where the OIG identified matters that were not timely transferred, OIEA took prompt corrective action. Despite the very low number of delayed transfers, we agree the SEC's external-facing webpages should be clear and user-friendly so the public understands where and how to submit information to the agency. We welcome the OIG's suggestion to review the existing web pages, publications, and bulletins that provide guidance on submitting matters to the SEC. Management will provide the OIG with additional information on this review by the requested date.

The letter also identifies processes and procedures for handling, categorizing, and publicly reporting matters submitted to the Ombudsman that may benefit from further management review. Although the Ombudsman's statutory responsibilities differ from Enforcement and OIEA, we view the Ombudsman's collaboration and communication with Enforcement and OIEA as essential to ensure that investor submissions are forwarded to and handled by the SEC programs best suited to respond. The "Allegations of Securities Law Violations/Fraud" category label, including the 301 matters reported in the "FY 2020 Office of the Investor Advocate Report on Activities," is representative of investors' descriptions and characterizations that an alleged securities law violation or fraud may have occurred. Similarly, the vignettes in the Report on Activities are simplified, composite descriptions meant to provide the reader with a sense of the variety of issues encountered, not detailed descriptions of actual complaints. We welcome the OIG's suggestions for the Office of the Investor Advocate to

Ms. Rebecca L. Sharek
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review and revise as needed the processes and procedures for handling, categorizing, and publicly reporting matters submitted to the Ombudsman. Management will provide OIG with an update on these efforts by the requested date.

Thank you again for sharing the observations noted in the Draft Management Letter. We look forward to enhancing the SEC's processes for interacting with investors, and handling investor submissions.

Sincerely,



Gary Gensler
Chair