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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

March 12, 2021

VIA ELECTRONIC TRANSMISSION

The Honorable Gary Gensler
Nominee
Securities and Exchange Commission
100 F St. NE,
Washington, D.C. 20549

Dear Mr. Gensler:

If confirmed as the next Chairman of the Securities and Exchange Commission (SEC), you will be responsible for administering the agency's highly successful whistleblower program. Fortunately, you possess unique knowledge of this type of program since you previously oversaw the implementation of a similar one during your time as Chairman of the Commodities and Futures Trading Commission (CFTC).¹ Given your past experience, it is important for Congress to know what lessons you learned while managing the whistleblower program at the CFTC and how you would apply these well learned lessons should you be confirmed as Chairman of the SEC.

Since it was enacted in 2010, the SEC whistleblower program has awarded over \$676 million to whistleblowers whose disclosures have directly led to successful enforcement actions.² Under the previous SEC Chairman, Jay Clayton, the SEC program paid out record amounts to whistleblowers, including the two largest awards in SEC history, valued at \$114 million and \$50 million, respectively.³ Additionally, in 2020, the SEC made several important updates to the regulations concerning the whistleblower office that further strengthened the program, including a rule that established a presumption granting the statutory maximum award possible to whistleblowers in cases where the award amount is under \$5 million.⁴

¹ Commodity Futures Trading Commission, Former Commissioner Gary Gensler, <https://www.cftc.gov/About/Commissioners/FormerCommissioners/ggensler.html>.

² Press Release, U.S. Securities and Exchange Commission, SEC Issues Record \$114 Million Whistleblower Award (Oct. 22, 2020), <https://www.sec.gov/news/press-release/2020-266>.

³ *Id.*

⁴ Stephen M. Kohn, *The SEC Whistleblower Rule Changes Explained*, NATIONAL LAW REVIEW, Sept. 23, 2020, <https://www.natlawreview.com/article/sec-whistleblower-rule-changes-explained>.

I met with Chairman Clayton several times during his tenure to discuss different aspects of the SEC whistleblower program. During those meetings, his commitment to the program and his support for whistleblowers was apparent. As SEC Chairman, he also displayed a willingness to listen to the whistleblower community and carefully consider all of the potential effects of SEC regulations for whistleblowers. His dialogue with the whistleblower community and with my office ultimately led to important changes to proposed SEC regulations that strengthened the whistleblower program.

Should you be confirmed, I look forward to having similar discussions with you. I also trust that should future regulatory changes be considered, you will follow the example set by Chairman Clayton and meet with members of the whistleblower community to consider the impact that any proposed changes could have.

As you know, the maintenance of a strong whistleblower program is a critical component of the SEC's enforcement arsenal, established by Congress under the Dodd-Frank Act to help the SEC root out fraud and abuse in the securities industry. During the last decade, the program has helped the SEC recover hundreds of millions of dollars in fines and restitution for harmed investors that might otherwise have gone uncollected.⁵ A strong and successful whistleblower program is not only in the best interest of the SEC but also the American people.

To help Congress better understand how you will manage the SEC whistleblower program in the event that you are confirmed by the Senate, please answer the following questions no later than March 17, 2020.

1. During your tenure as CFTC chairman, the CFTC did not pay an award until 2014, even though the program was signed into law in 2010. To what do you attribute this delay in whistleblower program awards?
2. Under your leadership, the CFTC began using funds from its Customer Protection Fund to pay for administrative expenses, a practice that has created concern in the whistleblower community, but still continues today. The SEC, on the other hand, continues to rely on appropriated funds to pay for whistleblower office expenses. Do you anticipate a change to this policy?
3. Do you anticipate making any regulatory changes to the SEC whistleblower program? If so, how?
4. Will you commit to providing the whistleblower office with the necessary appropriated funding, resources and staffing to complete its mission?

⁵ U.S. SECURITIES AND EXCHANGE COMMISSION, *2020 Annual Report to Congress: Whistleblower Program*, (2020), https://www.sec.gov/files/2020%20Annual%20Report_0.pdf.

5. The SEC has historically had long delays when it comes to paying whistleblower awards. I introduced legislation in the 116th Congress to address this problem. Chairman Clayton was supportive of these efforts and informed me on at least one occasion that he agreed that processing times were taking too long. Will you commit to working with Congress to improve the processing times for SEC whistleblower awards? If so, how can we work together to continue this important goal?

Should you have any questions please reach out to Dario Camacho or Daniel Parker of my Judiciary staff at 202-224-5225.

Sincerely,



Charles E. Grassley
Ranking Member
Senate Committee on the Judiciary