

# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

August 24, 2010

## Via Electronic Transmission

The Honorable Mary L. Schapiro  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

Dear Chairman Schapiro:

As a senior member of the United States Senate and Ranking Member of the Committee on Finance, I have had a longstanding interest in ensuring that whistleblowers who report waste, fraud, abused, or mismanagement in the Federal government receive respect, protection, and fair treatment. You have previously assured me that in leading the Securities and Exchange Commission (SEC/Commission), you intend to value whistleblowers and ensure that they are able to make protected disclosures in order to help managers improve operations at the Commission.

However, it appears that this commitment to valuing dissent within the Commission is not being fully implemented. Current and former employees have reported retaliation by their senior managers for expressing reservations about a new Broker Dealer review program being implemented within SEC's Fort Worth Regional Office. The SEC Inspector General's Office Report of Investigation (Case No. OIG-494A, *Allegations of Retaliatory Personnel Actions*) recommended that the SEC consider disciplinary action against the supervisors who participated in the retaliation. Yet, I understand that no corrective action has been taken.

When my staff requested an explanation as to why the SEC failed to hold the supervisors accountable for whistleblower retaliation, your staff responded:

[P]rior to imposing discipline, the senior-level Ft. Worth managers had solicited advice . . . from other Commission officials responsible for disciplinary actions. It has not been alleged, nor is there any reason to believe, any of the advising parties had reason to retaliate against the two employees. Because the actions were deemed appropriate and senior-level Ft. Worth managers relied on the guidance that was provided, management determined their actions were not retaliatory.

The implication of this explanation is that a retaliatory personnel action can be laundered of its retaliatory intent by simply consulting with others who had no retaliatory intent and obtaining their concurrence. Such a policy would make a

mockery of whistleblower protections throughout government. Unless the “neutral” officials provided the employees with notice and an opportunity to be heard, then the employees have received no meaningful due process and the decision was blessed based on hearing only half of the story.

Your staff further indicated:

Management also disagrees with the assertion that one of the employees was placed in a job with far fewer responsibilities, as reported in the *Washington Post* article. She was recently selected to chair the Commission-led Southwest Regional Oil and Gas Task Force. . . . Her leadership role on the task force presents a highly visible opportunity commensurate with her position and strengths.

However, prior to being assigned to the position described above, her title was that of Assistant District Manager with supervisory responsibilities over twelve SEC personnel. Currently, she supervises zero employees, lacked a position description for her new duties for eighteen months, and received no performance evaluations since being placed in her new role. Moreover, her assignment to the task force took place only after she was issued a letter of reprimand and only after she attended mandated executive coaching sessions.

The situation surrounding the executive coach hired by the SEC is also of interest. As I understand it, the executive coach was an independent, outside consultant hired by the SEC to help facilitate a better working relationship between the employee and her supervisor. According to information provided to my office, after evaluating the situation and interviewing all of the parties, the independent executive coach reported to the SEC that the managers, not the employee in question, were primarily in need of better communication and conflict resolution skills. The SEC General Counsel’s office allegedly told the coach not to put any conclusions in writing. My staff attempted to interview this executive coach, but Commission officials instructed her not to answer our questions, despite the fact I have a waiver from the employee and taxpayer funds were used to pay the coach. The circumstances surrounding the hiring of the executive coach coupled with the fact that the SEC refuses to allow her to speak to my staff, raises several red flags about what exactly the SEC is trying to hide.

Lastly, my staff was also advised by one of the employees in question that when they inquired about filing an appeal to the letter of reprimand, an SEC Human Resources official discouraged it, indicating that senior-level Commission officials are not required to hear or consider such appeals.

These facts and circumstances are extremely disturbing and paint a picture of a culture at the SEC, which endorses retaliation against employees who attempt to improve operations by reporting mismanagement to headquarters. Accordingly, please make the senior-most SEC official responsible for these decisions available for a briefing with my staff. Prior to the briefing, please provide any and all records relating to communications between SEC personnel relating to the letters of reprimand or the decision not to impose discipline for whistleblower retaliation.

Thank you for your cooperation and attention to this important matter and I would appreciate receiving a response by September 15, 2010. Please respond to either Jason Foster or John DeDona at (202) 224-4515. All formal correspondence should be sent electronically in PDF format to Brian\_Downey@finance-rep.senate.gov or via facsimile to (202) 228-2131.

Sincerely,



Charles E. Grassley  
Ranking Member

cc: The Honorable H. David Kotz  
Inspector General  
United States Securities and Exchange Commission