

Public Statement

Statement on Proposed 2011 Fraud-Detection Program and Related 2012 Opinion of the DOJ Office of Legal Counsel

Acting Chairman Elad L. Roisman
Commissioner Hester M. Peirce
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Investor protection is a paramount component of the Commission's core mission, and vigorous enforcement of our securities laws is essential to investor protection. The Commission has statutory authority to refer potential criminal securities violations to the Department of Justice (DOJ), and cooperation with DOJ and other governmental authorities is an important facet of the Commission's enforcement program.

In 2012, with the Commission's approval, the Commission's staff sought advice from DOJ's Office of Legal Counsel (OLC) on a potential program, conceived in 2011, in which designated, trained Commission staff members would pose as interested investors in responding (by telephone, mail, or electronically) to individuals suspected of engaging in conduct that could constitute criminal violations of the federal securities laws. In 2012, OLC issued an unpublished legal opinion confirming that, as proposed, the program would qualify for an exemption from the Privacy Act of 1974, meaning that the Commission's staff members posing as investors could communicate with suspect individuals without disclosing their affiliation with the Commission. OLC has now made the 2012 opinion public, and the Commission would like to clarify that the program was not implemented.

If the Commission were to put into place a program such as the one contemplated by OLC's 2012 opinion, any such program would have to be approved in advance by the Commission pursuant to an appropriate process and with appropriate safeguards. Members of the public who wish to submit views on this matter may send an email to privacyactopinion@sec.gov. The Commission anticipates making submissions public.