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United States Senate

WASHINGTON, DC 20510

March 18, 2022

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

Dear Chair Gensler:

On September 19, 2021, the New York Times exposed how large accounting firms send their staff into high-ranking positions in the federal government to set new tax policy and then reward the same staff members with bigger paychecks and promotions upon their return.[1] Last month, two members of Congress wrote to the Department of the Treasury's Inspector General and Inspector General for Tax Administration, noting that their own investigation had corroborated these allegations and raised new concerns about the "accounting giants" that take advantage of "revolving-door schemes."[2]

I have similar concerns as to whether accounting firms are taking advantage of the revolving door between public service and private profit with respect to the Securities and Exchange Commission (SEC), particularly with respect to its reported efforts to address climate change and require other environmental, social, and governance (ESG) disclosures. In responses to then-Acting Chair Allison Herren Lee's 2021 request for public input, the four largest accounting firms – Deloitte & Touche LLP, Ernst & Young LLP, KPMG LLP, and PricewaterhouseCoopers LLP – all advocated for the adoption of climate change disclosure requirements based on global standards.[3]

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[1] See Jesse Drucker and Danny Hakim, *How Accounting Giants Craft Favorable Tax Rules from Inside Government*, NY Times, Sept. 19, 2021, available at https://www.nytimes.com/2021/09/19/business/accounting-firms-tax-loopholes-government.html.

[2] See Letter from Sen. Elizabeth Warren and Rep. Pramila Jayapal to Richard K. Delmar and J. Russell George, Feb. 18, 2022, available at https://www.warren.senate.gov/imo/media/doc/2022.02.18%20Letter%20to%20Treasury%20IGs%20on%20Revolving%20Door.pdf.

[3] Letter from Deloitte & Touche LLP, June 12, 2021, available at https://www.sec.gov/comments/climate-disclosure/cll12-8911341-244291.pdf; Letter from Ernst & Young LLP, June 11, 2021, available at https://www.sec.gov/comments/climate-disclosure/cll12-8906915-244218.pdf; Letter from KPMG LLP, June 12, 2021, available at https://www.sec.gov/comments/climate-disclosure/cll12-8911579-244359.pdf; Letter from PricewaterhouseCoopers LLP, June 12, 2021, available at https://www.sec.gov/comments/climate-disclosure/cll12-8905928-244100.pdf.

Representatives from three of these firms are current members of the Financial Stability Board's Task Force on Climate-Related Financial Disclosures.[4] These firms are some of the largest contributors to the IFRS Foundation,[5] which created the International Sustainability Standards Board to deliver "a comprehensive global baseline of sustainability-related disclosure standards."[6] They have also been among the largest donors to the Sustainability Accounting Standards Board.[7]

Unsurprisingly, the financial press has reported that the largest accounting firms are "jumping on a bandwagon" for environmental, social, and governance issues with visions of these new regulatory requirements creating significant commercial opportunities for those firms.[8]

The general ethics standards for public employees are set forth in law and regulations issued by the U.S. Office of Government Ethics. The SEC has recognized the need to go further and has adopted additional restrictions on practice by former members and employees that supplement the general government ethics provisions.[9] However, the existing SEC rules are not sufficient to address the conflicts of interest inherent in the revolving door related to climate change and ESG. Recently, Federal Reserve Board of Governors nominees pledged a four-year recusal from matters that they oversee, not to seek a waiver from these recusals, and not to seek employment or compensation from financial services companies for four years after leaving government service.[10]

Similarly, at a minimum, former SEC employees should be restricted for one year from representing, aiding, or advising any company, accounting firm, law firm, consulting firm, or other entity with respect to complying with new SEC disclosure obligations on climate change or ESG. Former SEC employees should further be barred for two years from participating in the profits of any entity that derives profits (e.g., as a partner in a law firm, consulting firm, or accounting firm) from offering advice, services, or products regarding, or defending against SEC enforcement actions related to, any SEC climate change or ESG regulations that may be implemented in the future.

With these restrictions, the public will have some assurance that any climate change and ESG

[4] See www.fsb-tcfd.org/members (last checked on Mar. 16, 2022).
[5] IFRS Foundation, *Annual Report 2020*, at 55, available at https://www.ifrs.org/content/dam/ifrs/about-us/funding/2020/IFRS-Annual-Report-2020.pdf.
[6] See www.ifrs.org/groups/international-sustainability-standards-board/#about (last checked on Mar. 16, 2022).
[7] Sustainability Accounting Standards Board, 2019 Annual Report, at 16, available at https://www.sasb.org/wp-content/uploads/2020/12/SASB-Annual-Report-2019-122320.pdf.
[8] Michael O'Dwyer and Andrew Edgecliffe-Johnson, *Big Four Accounting Firms Rush to Join the ESG Bandwagon*, Financial Times, Aug. 29, 2021, available at https://www.ft.com/content/4a47fb4a-4a10-4c05-8c5d-02d83052bee7; see also Ken Tysiac, *ESG Assurance Opportunities Likely to Grow for CPA Firms*, J. of Accountancy, Dec. 16, 2021, available at https://www.journalofaccountancy.com/news/2021/dec/esg-assurance-opportunities-cpa-firms-growth.html; Amanda Iacone and David Hood, *PwC Hunting for Tech M&A, Sees ESG as $1 Billion Opportunity*, Bloomberg, Nov. 19, 2021, available at https://news.bloomberglaw.com/financial-accounting/pwc-hunting-for-tech-m-a-sees-esg-as-1-billion-opportunity.
[9] See 17 CFR 200.735-8.
[10] Sen. Elizabeth Warren, *In Response to Senator Warren, Federal Reserve Nominees Make Historic Ethics Commitments*, Press Release, Feb. 10, 2022, available at https://www.warren.senate.gov/newsroom/press-releases/in-response-to-senator-warren-federal-reserve-nominees-make-historic-ethics-commitments.

regulations adopted by the SEC are free from the taint of the revolving door.

Therefore, I request that the SEC immediately amend the SEC ethics regulations to implement these restrictions, which can be done without notice and comment under the Administrative Procedure Act exception for "rules of agency organization, procedure, or practice."[11]

Additionally, I request that you promptly respond to the following questions about the revolving door between the country's top accounting firms and the federal government and inform my office of your findings:

1. To what extent do large accounting, consulting, and law firms hire former SEC employees, and to what extent does the SEC hire former employees of large accounting, consulting, and law firms, thereby creating a revolving door problem?

2. What roles do any such current SEC employees play with respect to the types of firms by which they were formerly employed, and what roles do former SEC employees now employed by accounting, consulting, and law firms play with respect to SEC-related matters?

3. Do these accounting, consulting, and law firms, via the employees placed at the SEC or hired from the SEC, obtain outsized influence over or information regarding department or agency policies?

4. What SEC policies are in place to protect department and agency policymaking and regulatory action from being unduly influenced by these employees' potential conflicts of interest?

5. Are the accounting, consulting, and law firms' codes of conduct and ethics policies sufficient to prevent abuse of the revolving door and conflicts of interest?

Thank you for your attention and I look forward to your response.

Sincerely,

Bill Hagerty
United States Senator

cc: The Honorable Hester M. Peirce, Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
Ms. Danae Serrano, Office of the Ethics Counsel

[11] 5 U.S.C. 553(b).