

# United States Senate

WASHINGTON, DC 20510

March 29, 2017

The Honorable Carl W. Hoecker  
Inspector General  
Securities and Exchange Commission  
Washington, D.C. 20551

Dear Mr. Hoecker:

We write today to ask you to conduct an investigation into recent actions taken by Securities and Exchange Commission (SEC) Acting Chairman Michael Piowar. Since President Trump named him Acting Chairman on January 23, 2017, Commissioner Piowar has directed the Commission staff to reconsider two congressionally mandated SEC final rules and scaled back the investigative powers of the agency's enforcement staff. We are concerned that Commissioner Piowar's actions may lack adequate justification, undermine the SEC's mission, exceed his authority as Acting Chairman, violate other procedural requirements, and could potentially prove to be a waste of the SEC staff's precious time and resources.

Commissioner Piowar's position as Acting Chairman is temporary. He has not been confirmed by the Senate as SEC Chairman and he will hold the Acting Chairman title only until the Senate confirms a permanent Chairman. In addition, the SEC has lacked a traditional quorum during Commissioner Piowar's entire tenure as Acting Chairman because there has only been one additional confirmed Commissioner.<sup>1</sup>

Nevertheless, Commissioner Piowar "has decided to jumpstart the deregulatory agenda, freezing unfinished Dodd-Frank requirements and opening the door to scaling back some completed rules he considers 'politicized' – a major exertion of authority for a position usually seen as a short-term caretaker."<sup>2</sup>

On January 31, 2017, Commissioner Piowar unilaterally "directed the staff to reconsider whether the 2014 guidance on the conflict minerals rule is still appropriate and whether any additional relief is appropriate."<sup>3</sup> Commissioner Piowar evidently required reconsideration of the guidance on this congressionally mandated rule – which concerns disclosures about conflict minerals originating from the Democratic Republic of Congo and adjoining countries – based exclusively on stories he heard while "visiting Africa last year."<sup>4</sup> Commissioner Piowar claims to have "heard first-hand from the people affected by this

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<sup>1</sup> 17 C.F.R. § 200.41 (establishing the SEC's quorum requirements).

<sup>2</sup> Andrew Ackerman & Dave Michaels, *Acting SEC Chief Explains Campaign to Jumpstart Trump Financial Deregulation*, Wall Street Journal (Feb. 15, 2017), at <https://www.wsj.com/articles/acting-sec-chief-explains-campaign-to-jumpstart-trump-financial-deregulation-1487106153>.

<sup>3</sup> Acting Chairman Michael S. Piowar, *Reconsideration of Conflict Minerals Rule Implementation* (Jan. 31, 2017), at <https://www.sec.gov/news/statement/reconsideration-of-conflict-minerals-rule-implementation.html>

<sup>4</sup> *Id.*

misguided rule,” and asserts that the rule is putting mining operators out of business while potentially undermining U.S. national security interests.<sup>5</sup>

Commissioner Piwowar has long disliked this required rule, calling it “yet another situation where politically-connected special interests are using shareholder resources to push their own agenda.”<sup>6</sup> But Commissioner Piwowar’s personal distaste for a congressional mandate is not sufficient grounds to attempt to weaken a final rule that has been approved by the SEC. We are also concerned that Commissioner Piwowar appears to have directed the agency staff to undertake this review before consulting with his only fellow Commissioner and seeking her approval.

Commissioner Piwowar’s next questionable action occurred on February 6, 2017. He sought new public input on a congressionally mandated final SEC rule requiring that publicly traded firms disclose how senior executives’ compensation compares with that of the firm’s average employee.<sup>7</sup> He explicitly solicited comments only on “any unexpected challenges that issuers have experienced as they prepare for compliance with the rule and whether relief is needed.”<sup>8</sup> He “directed the staff to reconsider the implementation of the rule based on any comments submitted and to determine as promptly as possible whether additional guidance or relief may be appropriate.”<sup>9</sup>

As with the conflict mineral disclosure rule, Commissioner Piwowar has previously expressed his personal distaste for the pay ratio rule. He called the congressional mandate “a blatant attempt to limit executive compensation” – one that “should come as no surprise to anyone familiar with the use of Saul Alinksyan tactic by Big Labor and their political allies.”<sup>10</sup>

Once more, Commissioner Piwowar’s political views are not a sound basis for undoing a congressional mandate and re-opening a final SEC rule for comments only on supposed industry hardship. And he once more appears to have acted without notifying or seeking the approval of Commissioner Stein.

On February 15, 2017, the Wall Street Journal reported that Commissioner Piwowar had taken unilateral administrative action to “impos[e] fresh curbs on the agency’s enforcement staff, scaling back their powers to initiate subpoenas and conduct investigations of alleged financial misdeeds.”<sup>11</sup> Those changes reversed policies “the Obama administration designed to make it easier for the [SEC] to launch probes in the wake of the financial crisis and a series of colossal

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<sup>5</sup> Id.

<sup>6</sup> Commissioner Michael S. Piwowar, *Dissenting Statement at Opening Meeting on Resource Extraction* (Dec. 11, 2015), at <https://www.sec.gov/news/statement/piwowar-dissenting-statement-at-open-meeting-resource-extraction.html>.

<sup>7</sup> Acting Chairman Michael S. Piwowar, *Reconsideration of Pay Ratio Rule Implementation* (Feb. 6, 2017) at <https://www.sec.gov/news/statement/reconsideration-of-pay-ratio-rule-implementation.html>.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Commissioner Michael S. Piwowar, *Dissenting Statement at Open Meeting on Pay Ratio Disclosure* (Aug. 5, 2015), at <https://www.sec.gov/news/statement/dissenting-statement-at-open-meeting-on-pay-ratio-disclosure.html>.

<sup>11</sup> Dave Michaels, *SEC Chief Scales Back Powers of Enforcement Staff*, Wall Street Journal (Feb. 15, 2017), at <https://www.wsj.com/articles/sec-chief-scales-back-powers-of-enforcement-staff-1487199642>.

investment scandals.”<sup>12</sup> It is not clear whether Commissioner Piwowar sought or obtained Commissioner Stein’s approval for these changes. Nor is it clear what evidentiary basis Commissioner Piwowar relied on for this significant restriction of the enforcement staff’s ability to hold companies accountable.

There is no evidence that any of these changes in the SEC’s course are desired, or have been sought, by the person nominated to be the next SEC Chair. At his confirmation hearing, SEC Chair-nominee Jay Clayton testified that he had not been consulted about Acting Chairman Piwowar’s change to enforcement policy, did not know enough to know whether it was appropriate to reopen the pay ratio rule, and had no specific plans to revisit any Dodd-Frank-mandated rules. Regardless of whether the SEC’s work on Acting Chairman Piwowar’s order results in a final action, agency staff will expend time and energy on these matters. As former Chair Mary Jo White has said, “[m]uch of [the SEC staff’s work] is behind the scenes, much of it out of the headlines[.]”<sup>13</sup> Should Mr. Clayton be confirmed, and should he disagree with the policy changes being pursued by Commissioner Piwowar, significant SEC staff work will have gone to waste.

Commissioner Piwowar has “exert[ed] unusual authority for an acting agency chair.”<sup>14</sup> We ask that you conduct an investigation into each of these decisions to determine whether they are legally permissible and in keeping with the SEC’s core mission. In addition to any other related matter that you find appropriate, we ask that you specifically investigate the following:

1. What specific changes in SEC policy, regulation, or guidance were made or initiated by Commissioner Piwowar during his tenure as Acting SEC Chair?
2. What impacts will these changes have on the SEC’s mission?
3. Did Commissioner Piwowar provide a valid substantive justification for these changes?
4. Did Commissioner Piwowar provide adequate public notice and comment periods, and did he follow all required SEC guidelines and rules for taking action, including the SEC’s quorum requirements?
5. Is Commissioner Piwowar carrying out these actions at his own initiative, or has he consulted with, or received direction from, anyone within or outside the Administration?

We thank you for your attention to this matter, and look forward to the results of your investigation.

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<sup>12</sup> Id.

<sup>13</sup> Chair Mary Jo White, *Knowing Your SEC: A Tribute to the SEC Staff*, Remarks at Practicing Law Institute’s 45th Annual Securities Regulation Institute (Nov. 6, 2013) available at <https://www.sec.gov/News/Speech/Detail/Speech/1370540284590>.

<sup>14</sup> Michaels, *supra*.

Sincerely,



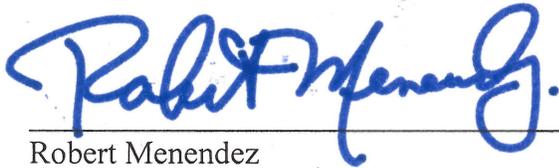
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Elizabeth Warren  
United States Senator



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Sherrod Brown  
United States Senator



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Robert Menendez  
United States Senator



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Brian Schatz  
United States Senator