PROGRAM MATERIALS
Program #2936
March 20, 2019

SEC Whistleblower Program: Where We Stand with Internal Investigations and Corporate Policies/ Procedures

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BRYAN CAVE LEIGHTON PAISNER

SEC WHISTLEBLOWER PROGRAM:

WHERE WE STAND WITH INTERNAL INVESTIGATIONS AND CORPORATE POLICIES/PROCEDURES

March 20, 2019

Presenters

Jennifer Mammen

Jennifer Berhorst

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THE STAKES ARE HIGH

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- Since the Dodd-Frank Whistleblower Program began in 2011:
  - Enforcement matters involving whistleblowers have resulted in orders to pay more than $1.7 billion in total monetary sanctions, including more than $901 million in disgorgement of ill-gotten gains and interest
  - The Commission has awarded 59 whistleblowers a total of more than $326 million
  - Whistleblowers have filed complaints from 119 foreign countries and all 50 states

- Last year, the SEC:
  - Awarded more than $168 million – more than the total amount awarded in all prior years combined
  - Issued two of its largest ever awards -- $83 million shared by three individuals and nearly $54 million shared by two individuals

- In FY 2018, the Commission:
  - Awarded thirteen whistleblowers a total of nearly $168 million
  - Received over 5200 tips and complaints from whistleblowers from 72 foreign countries and all 50 states
    - Highest increase in tips over the previous year
    - Seventy-six percent increase in annual tips since FY 2012
  - Returned nearly 2,770 calls in response to its Whistleblower Hotline

Topics for Today's Discussion

- Summary of Dodd-Frank Act Whistleblower Provisions
- FY 2018 Developments
- Implications for Internal Investigations and Compliance Programs

DODD-FRANK ACT WHISTLEBLOWER PROVISIONS

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Creation of the Whistleblower Program

- Regulations proposed on November 3, 2010, to implement § 922 of the Dodd-Frank Act
- Final regulations adopted by a 3-2 vote on May 25, 2011 (effective 60 days after publication in the Federal Register)
- Codified as Securities and Exchange Act § 21F

Dodd-Frank Whistleblower Program

- Whistleblowers who:
  - "voluntarily" provide the Commission with
  - "original information"
  - that leads to a "successful enforcement" action in a federal or administrative court
  - that results in monetary sanctions greater than $1,000,000
- are entitled to a mandatory award from the Commission between 10 and 30% of the monetary sanctions collected

When is Information Provided "Voluntarily"?

- When it is provided "before a request, inquiry, or demand [by the Commission or certain other authorities] that relates to the subject matter of your submission is directed to you [or your attorney]"

- Information is not voluntary if the whistleblower is required to report the information to the Commission due to a legal duty or a contractual duty owed to the Commission or certain other authorities

What is "Original Information"?

- Information about a "possible violation" of federal securities laws derived from "independent knowledge or independent analysis"
- Information that is not already known by the Commission unless the provider is the original source
- "Independent knowledge" is "factual information in your possession that is not derived from publicly-available sources"
- "Independent analysis" is one's own examination of information (including information that is available to the public) that reveals additional information not generally known or available to the public

What is not "Original Information"?

- Information obtained through attorney-client privileged communications or through legal representation of a client
  - ***Unless*** disclosure is otherwise permitted by the Commission and state rules

- Information that (a) an officer, director, trustee or partner of the entity at issue learned from someone else or through the entity's process for identifying violations, (b) obtained by compliance or audit personnel, (c) obtained by personnel otherwise investigating violations or (d) obtained by certain public accounting firms, ***unless***
  - There is a "reasonable basis" to believe the relevant entity will cause "substantial injury" to its or its investors' "financial interest or property" or the entity will impede an investigation of the misconduct or
  - 120 days has elapsed since the information was provided to one of several designated contacts within the entity

- Information obtained in a manner that violates a criminal law

What is "Information that Leads to a Successful Enforcement Action"?

- Information that is “[s]ufficiently specific, credible, and timely to cause the staff to commence an examination, open an investigation, reopen an investigation … or to inquire concerning different conduct as part of a current examination or investigation”
- Information that leads to the Commission bringing a judicial or administrative action that results in a monetary sanction based at least in part on conduct that was the subject of the original information
- If the original information is about conduct already under examination or investigation, the information may qualify if it “significantly contributed to the success of the action”

Who Counts as a Whistleblower?

- The Dodd-Frank Act defines a whistleblower as "any individual who provides … information relating to a violation of the securities laws **to the Commission**, in a manner established, by rule or regulation, by the Commission."

Compliance and Audit Personnel as Whistleblowers

- Compliance and internal audit personnel generally are not considered eligible for whistleblower awards. However, the rules carve out three exceptions in which compliance and internal audit personnel could become whistleblowers:
  - (1) when the whistleblower believes disclosure may prevent substantial injury to the financial interest or property of the entity or investors;
  - (2) when the whistleblower believes that the entity is engaging in conduct that will impede an investigation; or
  - (3) when at least 120 days have elapsed since the whistleblower reported the information to his or her supervisor or the entity's audit committee, chief legal officer, chief compliance officer – or at least 120 days have elapsed since the whistleblower received the information, if the whistleblower received it under circumstances indicating that these people were already aware of the information.

How is an Award Calculated?

- A whistleblower may receive an award of between 10-30% of the monetary sanctions collected
- Commission must consider factors that may increase the award:
  - Significance of the information to action's success
  - Whistleblower's assistance
  - Law enforcement interest
  - Whistleblower's efforts to involve company's internal compliance program
- Commission must consider factors that support not increasing award above 10%:
  - Culpability
  - Reporting delay
  - Interference with internal compliance program

What Amounts are Counted Toward the $1,000,000?

- Monetary sanctions from any administrative or judicial proceedings the Commission brings that "arise out of the same nucleus of operative facts"
  - Including penalties, disgorgement and interest
- A whistleblower may also receive an award based on certain non-SEC judicial or administrative actions based on the same original information
- Does not include amounts whistleblower has to pay due to own culpability or amounts an entity has to pay due to whistleblower's conduct

FY 2018 DEVELOPMENTS

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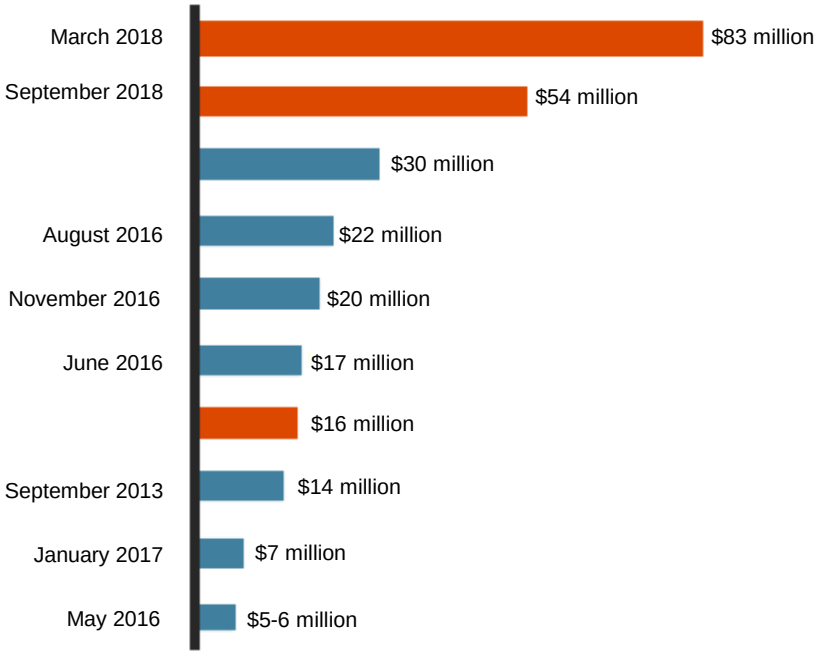
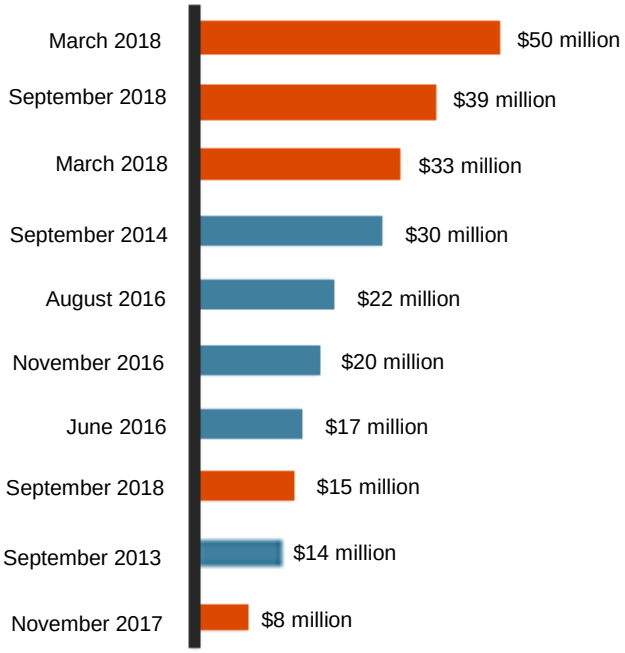
Significant Awards Continue to Accrue

Per Covered Action



Per Award Amount



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Reporting to Another Agency

- In April 2018, the SEC awarded more than $2.2 million to a former company insider who reported to the SEC after reporting to another federal agency.
- The “safe harbor” is available to a whistleblower who submits information to another federal agency and then submits the same information to the SEC within 120 days.
- To the extent that the SEC opens an investigation based on a referral from the other federal agency, the whistleblower may receive credit under the “leads to” standard.

Anti-Retaliation Protections: *Digital Realty Trust, Inc. v. Somers*

- Under Dodd-Frank, a qualified whistleblower receive protection from retaliation in three different circumstances:
  - (i) "in providing information to the Commission in accordance with [the whistleblower provision of Dodd-Frank],";
  - (ii) "in initiating, testifying in, or assisting in any investigation or . . . action of the Commission based upon" information provided to the Commission in accordance with the whistleblower provision; and
  - (iii) "in making disclosures that are required or protected under" Sarbanes-Oxley, the Securities Exchange Act of 1934, the criminal anti-retaliation prohibition at 18 U.S.C. § 1513(e) or "any other law, rule, or regulation subject to the jurisdiction of the Commission."

- "[A]n individual who falls outside the protected category of "whistleblowers" is ineligible to seek redress under the statute, regardless of the type of conduct in which that individual engages."

SEC Proposed Rule Amendments

- On June 28, 2018, the SEC voted to propose amendments to the rules governing its whistleblower program
- SEC identified various ways the program could benefit from additional rulemaking
- “The proposed rules are intended to help strengthen the whistleblower program by bolstering the Commission’s ability to more appropriately and expeditiously reward those who provide critical information that leads to successful enforcement actions.”

SEC Proposed Rule Amendments: Summary

- Additional Tools in Award Determinations
- Uniform Definition of "Whistleblower"
- Increased Efficiency in Claims Review Process
- Clarification and Enhancement of Certain Policies and Procedures
- Interpretive Guidance

SEC Proposed Rule Amendments: What's Next?

- Published in Federal Register on July 20, 2018
- Public comment period ended September 18, 2018
- Commission received 100 unique letters and almost 3,500 comments in the form of two form letters
- Commission is currently reviewing commentary
- Final rules have not been published . . . Stay tuned!

IMPLICATIONS FOR INTERNAL INVESTIGATIONS AND COMPLIANCE PROGRAMS

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What can you do?

- Review internal reporting policies and procedures
- Review company agreements
- Encourage continued internal reporting of compliance matters (federal and state securities laws)
- Encourage internal reporting of potential retaliation issues
- Investigate, respond and remediate
- Determine whether self-reporting to SEC is warranted

Essential Elements to Compliance Programs

- Risk assessment
- Tone at the top – commitment from senior management and clearly articulated policies
- Code of conduct, compliance policies & procedures
- Oversight, autonomy, and resources
- Training and continuing advice
- Incentives and disciplinary measures
- Third-party due diligence
- Confidential reporting and internal investigation

Review Internal Compliance Programs

- Effective compliance programs & internal controls are more important than ever
- Institute user-friendly and easy to understand policies and procedures to encourage employees to report internally
- Implement protocols identifying who should be notified of complaints and procedures for addressing high-priority, time-sensitive complaints
- Document results of investigation
- Consider retaining outside counsel for independent investigation for serious potential violations of law

Review Company Agreements

- Rule 21F-17 applies not only to company policies, but also governs agreements offered or entered into with employees
- Consider reviewing standard forms of the following:
  - Nondisclosure/Confidentiality Agreements
  - Employment/Restrictive Covenant Agreements
  - Severance/Settlement Agreements
  - Employee Handbooks/Codes of Conduct
  - Confidentiality Stipulations in litigation
  - Employee training materials

Forward Looking Compliance

- Schedule regular updates but provide flexibility to meet legal changes
- Frequency of updates may be based on risk assessment
- Communicate changes
- Update training
- Watch for industry sweeps

Encourage Internal Reporting

- Regularly train employees and management on the policies and procedures
- Provide avenues for anonymous/confidential reporting
- Keep the employee aware of investigation progress and resolution
- Establish direct contact for employee within human resources department to addressed perceived retaliation
- Prohibit and prevent retaliation

Benefits of Internal Reporting

- Internal reporting allows employers to:
  - Fix conduct before actual violations occur
  - Prepare for potential enforcement action
  - Self-report actual violations
  - Promote a culture of compliance
  - Recognize positive impact whistleblowers can have on organization

Consider Self-Reporting

- Not always the answer but considerations have changed
- Increased uncertainty as to what the SEC knows
- Avoid losing opportunity to receive mitigating credit
- Explain facts before governments' impressions develop
- Minimize loss of control of subsequent steps
- Consult outside counsel

What should you avoid?

- Company policies and practices may not impede whistleblowing complaints to SEC
- Rule 21F-17 provides:
  - No person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement.

Problematic Provisions

- Restricting an employee from voluntarily reporting a violation, cooperating with an investigation or providing documents or information to a government agency
- Limiting or restricting an employee's ability to collect a monetary award.
- Requiring an employee to provide advance notice that they are reporting a violation, providing information or cooperating in an investigation
- Requiring forfeitures or liquidated damages for breach if employee communicates with government

Permissible Restrictions

- Affirmation that an individual has disclosed any and all knowledge of potential wrongdoing
- Confirmation that an individual is or is not a whistleblower
- Notification of cooperation or otherwise speaking to the government
- Waiver of whistleblower awards or other incentives for reporting alleged misconduct.

SEC Approved Confidentiality Language

Protected Rights. Employee understands that nothing contained in this Agreement limits Employee's ability to file a charge or complaint with the EEOC, the NLRB, the OSHA, the SEC or any other federal, state or local governmental agency or commission. Employee further understands that this Agreement does not limited Employee's ability to communicate with any government agencies or otherwise participate in any investigation or proceeding that may be conducted by any government agency, including providing documents or other information, without notice to the Company. This agreement does not limited Employee's right to receive an award for information provided to any government agencies.

Presenters

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Jennifer Berhorst
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Subject: Proposed Rule Changes???
From: Dom LaViola
Affiliation: StockShortData.com

June 28, 2018

To all Commissioners and to whom it may concern,

First. I must express my disappointment with regard to the proposed whistleblower rule changes, which were not just proposed earlier today, with a notation that comments would be accepted for 60 days following the proposed rule changes appearing in the Federal Register, they were also summarily approved by the Commission an hour later.

As I write this, I cannot submit this letter officially, because it is not even on your website and has no case or file number associated with it. Still the Commission approved them while offering no notice to the public. There's nothing Democratic about that process...

While I have not digested the proposed rule changes completely, there is one aspect that is repeated with respect to the various "clarifications" the OWB has proposed, in that they are not in the best interest of whistleblowers, and for the most part, are vague in that they allow for any individual perception of events to determine the outcome of a claim.

The one standout to me, whom happens to be as a whistleblower who submitted 3 claims in 2016, and is in his third year of waiting for a decision which I had been told to expect by year end 2016, is in the request to clarify the definition of "independent analysis."

I have been subjected to retaliation of the non employer related type. I even included a plea for help within the claims I submitted. And received no help whatsoever.

The Commission wants people to come forward, but whistleblower retaliation laws do not protect a retail investor, who discovers a scheme intended to wipe out the investors in the stock he or she owns.

Such an investor is then fair game for retaliation and there is nothing anyone will do about it. This is true of EVERY RETAIL INVESTOR. WE RISK OUR VERY LIVES REPORTING INFORMATION TO THE COMMISSION, WITHOUT KNOWING THE RISKS INVOLVED.

Until the whistleblower ends up DEAD, there's no crime in the eyes of the law. The STASI were experts at forcing whistleblowers to commit suicide...they still are. Retail tipsters are ducks in a barrel...

i did not know when I submitted information to the Commission and encouraged others to do so as well, that my life would be completely destroyed or that it could cost me my life.

I do now. I know that the assassins are ex STASI and that they are employed at the US Dept of Homeland Security. I know they hacked the SEC and it was me that notified the Commission that it was hacked, and by whom, a year before it was made public.

I know why DHS was not notified immediately...it was because the hackers IP traced back to DHS. I also know it was not a test portion of the EDGAR system, but was instead the whistleblower database they were after.

I know this because of everything else they've done to date. Things that are established facts, that cannot be denied and have been admitted to in some instances. I have thousands of documents of evidence and yet not one investigator has ever asked for a statement, looked at the evidence nor so much as attempted to contact me.

I have attempted to report these things to every imaginable agent. At least five attempts to Chairman Clayton, and perhaps a hundred through the TCR portal as I was instructed by the OWB, when I tried reporting directly what I had found.

Even those instances in which I requested a personal.or human response, I received none.
Now the OWB seeks to clarify what is considered to be "independent analysis."

The proposed change however does NOT seek clarification, rather it seeks to completely change the law as it is written.

The law states specifically that information from a person's own research, including information derived from public sources, is acceptable.

The proposed law would end any claim the resulted from the Independent data analysis of public information, justifying the denial with an absurd reason that the SEC "COULD HAVE" discovered the wrongdoing on its own?

As an example, i was on the phone with an SEC investigator discussing one case, when I happened to be experiencing a different trading issue.

I told the investigator to pull up the symbol on level 2, and his response was that he did not have access to level 2.

Of course, if the SEC had allowed him access to level 2 quotes, the SEC "COULD HAVE" made the discovery on its own, but it did not. I sent him screenshots via email while discussing an unrelated case.

Three award eligible cases were posted as a result of that conversation. This new rule would allow for the denial of my claims based on what the SEC "COULD HAVE" figured out because of the public nature of the information.

It seems not only to be a proposal to halt such reporting, but also claims...including my own, after waiting more than two years for a decision. That is not fair. At the very least there should be a grandfather Clausewitz respect to existing claims

If this proposed clarification stands not only will the SEC have stolen the award I should have received well before the dictatorship-like approval of the change in the law, it will tarnish the intent of the program.

Chairman Clayton stated that he looked forward to public comments on these changes, and the changes were then adopted before the public could comment!

I have a feeling I'm being screwed after waiting all this time, because I figured something out...and saw something and said something, that no one else noticed.

The SEC was able to put a halt to what was happening, which limited the damage done to investors and our markets...and now after everyone has been paid, the SEC seeks to minimize the information I provided by saying it could have figured it out on its own...not even should have...COULD HAVE!

I've already had my life destroyed. To change the rules now to prevent an award payout is not just wrong, it's evil.

Dom LaViola
StockShortData.com

Subject: Comment letter to proposed rules change for Whistleblowers
From: Christopher Diiorio

July 2, 2018

https://www.sec.gov/news/press-release/2018-120

I am sending this e mail per SEC instructions as comments on the SEC proposed changes to the "Interpretive Guidance" for whistleblowers.
The SEC is proposing the following interpretive guidance:

"Under the proposed guidance, in order to qualify as "independent analysis", a Whistleblower's submission must provide evaluation, assessment, or insight beyond what would REASONABLY APPARRENT to the Commission from publicly available information."

WOW.

Let's focus on the chosen words "REASONABLY APPARENT"
For example, the Madoff Ponzi scheme. Ponzi's are infinitely simple to detect, There are no counter parties for trades. So, Ponzi's SHOULD qualify as "REASONABLY APPARENT".
Yet, it took the SEC a DECADE to finally investigate.
Gross incompetence and or corruption at the SEC is not a new phenomenon.
What SHOULD be "REASONABLY APPARENT" and what ARE "REASONABLY APPARRENT" to the grossly corrupt, criminal organization known as the SEC can leave a lot to interpretation.
How many SEC attorneys did it take to come up with the term "REASONABLY APPARENT"?
The same attorneys investigating WorldCom? Enron? HealthSouth? GE? Theranos? Knight/KCG/Virtu? Deutsche Bank Mirror trades? Oh, I forgot, there was NO SEC investigation for that, etc etc etc.
The SEC failures to detect and stop "REASONABLY APPARENT" Securities Law violations are too numerous to count. The Latest: "Bitcoin is not a security." when there is settled case law that if applied would CLEARLY PROVE it is in fact a security: SEC V SG Ltd.
SEC V SG Ltd would also show Bitcoin (Like Micro cap securities Jay) is a money laundering vehicle of choice for criminals.
The SEC failure to detect and stop "REASONABLY APPARENT" securities law violations is well documented. Which begs the question: WHY is the SEC changing the definition of "independent analysis"?
The grossly corrupt SEC proposed "Interpretive guidance" with regards to the "independent analysis" for Whistleblowers is an admission of guilt rather than an attempt to collect "More pertinent information".
What the SEC is admitting with the term "REASONABLY APPARENT":
"We know there are violations of Securities Laws. We just haven't done anything about it"
Because IF a whistleblower submits a tip where the Commission is already aware of

the "REASONABLY APPARENT" violation, then, WHY hasn't the SEC already brought a complaint??????
Quite the admission.
There are "REASONABLY APPARENT Securities Law violations the SEC is aware of but done ABSOLUTELY NOTHING to stop.
IF the "interpretive guidance" changes to Whistleblower information is changed as proposed, then the question for the investing public is:
WHY isn't the SEC prosecuting "REASONABLY APPARENT" Securities law violations?
Regards,
Christopher Diiorio
Whistleblower

Subject: File No. S7-16-18
From: T.J. Thompson

July 11, 2018

Dear Securities and Exchange Commission,

I write to strongly oppose the proposed amendments to the rules governing the SEC whistleblower program (File Number S7-16-18). The proposed rule amendments will weaken and undermine the deterrent effect of rewarding whistleblowers.

I call your attention to the public statements issued by Commissioners Stein and Jackson and the Law360 Op-ed "The Problem With SEC's Plan To Cap Whistleblower Awards." (https://bit.ly/2L0WTaJ) These statements outline my reasoning as to why the proposed amendments will undermine the policing of Wall Street.

Specifically, the proposed amendment to the rules capping rewards in the largest cases to the lowest percentage rate should be withdrawn. Furthermore, the SEC should ensure that every employee, regardless of position or title, can disclose corporate fraud directly to the SEC. Any requirement that compliance officers, managers or directors work internally with the company before reporting to the SEC must be struck from the rules.

One step at a time, citizen rights and capacity to live in a democracy are being destroyed...no personal privacy remains, courts side with multi-national and other large corporations in regard to workers conditions and rights to organize, as benefits are cut or promises of pensions simply broken, and those decisions are more and more bought by dark money from those very large donors. If no room remains for whistleblowers to speak out with no be penalties for doing so, then we might as well change our name from USA to USSR/Russia. This should remain a first amendment right, and admit a that a legal coup has occurred, and we are now a plutocracy, if not a dictatorship of the wealthy who buy their way into political office.

I request that you meet personally with whistleblower experts from the National Whistleblower Center to obtain additional information as to why the proposed amendments to the rules governing the SEC whistleblower program should not be implemented.

Sincerely,

Ms. T J Thompson

Subject: File No. S7-16-18
From: William Moody

July 11, 2018

Dear Securities and Exchange Commission,

I strongly oppose the shocking proposed amendments to the rules governing the SEC whistleblower program (File Number S7-16-18). Such rule amendments will sabotage and completely undercut the intended deterrent and open records effect of rewarding whistleblowers.

I call your attention to the public statements issued by Commissioners Stein and Jackson and the Law360 Op-ed "The Problem With SEC's Plan To Cap Whistleblower Awards." (https://bit.ly/2L0WTaJ) These statements outline my reasoning as to why and how the proposed amendments will undermine any enforceable policing of self-dealing, misleading the public and fraud, in the effort to assure more honest business practices associated with Wall Street.

Specifically, the proposed amendment to the rules capping rewards in the largest cases to the lowest percentage rate should be withdrawn. Furthermore, the SEC should ensure that every employee, regardless of position or title, can disclose corporate fraud and violations of laws directly to the SEC, and do so with impunity.

Any kangaroo "court" requirement that compliance officers, managers or directors work internally with the company before reporting to the SEC must be struck from the rules. What purpose would that serve other than pinpointing how and where to cover up any paper/digital trail? Or to withhold or destroy any evidence; or to impugn the character or competence of the reporting employee in a "he said / he said" debate with bosses or fellow workers? If there was no wrong done, open the books.

I request that you meet personally with whistleblower experts from the National Whistleblower Center, to obtain additional information clarifying why the proposed bootless amendments to the rules governing the SEC whistleblower program should not and must not be implemented!

Thank you for your careful consideration of this serious potential problem.

Sincerely,

Mr. William Moody

Subject: File Number S7-16-18
From: Julia Malleck

July 11, 2018

Dear Securities and Exchange Commission,

I write to strongly oppose the proposed amendments to the rules governing the SEC whistleblower program (File Number S7-16-18). The proposed rule amendments will weaken and undermine the deterrent effect of rewarding whistleblowers.

I call your attention to the public statements issued by Commissioners Stein and Jackson and the Law360 Op-ed "The Problem With SEC's Plan To Cap Whistleblower Awards." (https://bit.ly/2L0WTaJ) These statements outline my reasoning as to why the proposed amendments will undermine the policing of Wall Street.

Specifically, the proposed amendment to the rules capping rewards in the largest cases to the lowest percentage rate should be withdrawn. Furthermore, the SEC should ensure that every employee, regardless of position or title, can disclose corporate fraud directly to the SEC. Any requirement that compliance officers, managers or directors work internally with the company before reporting to the SEC must be struck from the rules.

I request that you meet personally with whistleblower experts from the National Whistleblower Center to obtain additional information as to why the proposed amendments to the rules governing the SEC whistleblower program should not be implemented.

Sincerely,

Ms. Julia Malleck

Subject: File Number S7-16-18
From: Gayle Janzen

July 12, 2018

Dear Securities and Exchange Commission,

Along with many brave whistleblowers, I OPPOSE the proposed amendments to the rules governing the SEC whistleblower program (File Number S7-16-18). The proposed rule amendments will weaken and undermine the deterrent effect of rewarding whistleblowers. People who put their livelihoods on the line to report corporate wrongdoing, should be rewarded for their efforts with no caps on monetary compensation. This proposal seeks to protect criminals on Wall Street so they can steal from the taxpayers once again and the taxpayers think that's wrong.

I call your attention to the public statements issued by Commissioners Stein and Jackson and the Law360 Op-ed "The Problem With SEC's Plan To Cap Whistleblower Awards." (https://bit.ly/2L0WTaJ) These statements outline my reasoning as to why the proposed amendments will undermine the policing of Wall Street.

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I request that you meet personally with whistleblower experts from the National Whistleblower Center to obtain additional information as to why the proposed amendments to the rules governing the SEC whistleblower program should not be implemented.

Sincerely,

Ms. Gayle Janzen

Subject: Whistleblowers Need Stronger Protections, Not Weaker Ones - File Number S7-16-18
From: Barbara

July 12, 2018

Chairman Clayton, Commissioner Piwowar, Commissioner Stein, Commissioner Peirce and Commissioner Jackson --

Some people are crooks, and unfortunately, they don't have "Crook" written across their foreheads. The only way we can hope to keep these people in line is by protecting the honest people who are willing to blow the whistle on the crooks. If anything, whistleblowers need stronger protections than they have now. Before you consider making any changes, you should educate yourselves about the situation, so you can make an informed decision. I didn't write the rest of this email, which was composed by someone at the National Whistleblower Center, but I do agree with what it says.

I write to strongly oppose the proposed amendments to the rules governing the SEC whistleblower program (File Number S7-16-18). The proposed rule amendments will weaken and undermine the deterrent effect of rewarding whistleblowers.

I call your attention to the public statements issued by Commissioners Stein and Jackson and the Law360 Op-ed "The Problem With SEC's Plan To Cap Whistleblower Awards." (https://bit.ly/2L0WTaJ) These statements outline reasoning as to why the proposed amendments will undermine the policing of Wall Street.

Specifically, the proposed amendment to the rules capping rewards in the largest cases to the lowest percentage rate should be withdrawn. Furthermore, the SEC should ensure that every employee, regardless of position or title, can disclose corporate fraud directly to the SEC. Any requirement that compliance officers, managers or directors work internally with the company before reporting to the SEC must be struck from the rules.

I request that you meet personally with whistleblower experts from the National Whistleblower Center to obtain additional information as to why the proposed amendments to the rules governing the SEC whistleblower program should not be implemented.

This is going to sound snarky, and maybe it should: The only reason I can think of that someone would want to weaken whistleblower protections is to prevent a whistleblower from informing on him/her or his/her friends and/or associates. If you're not part of the solution, you're part of the problem.

Sincerely,
Barbara

Subject: File No. S7-16-18
From: Peter Sivere

July 13, 2018

This is a very good idea and should be implemented immediately and retroactively.

Additional Tools in Award Determinations

Allowing awards based on deferred prosecution agreements (DPAs) and non-prosecution agreements (NPAs) entered into by the U.S. Department of Justice (DOJ) or a state attorney general in a criminal case, or a settlement agreement entered into by the Commission outside of the context of a judicial or administrative proceeding to address violations of the securities laws: This proposed amendment will ensure that whistleblowers are not disadvantaged because of the particular form of an action that the Commission, DOJ, or a state attorney general acting in a criminal case may elect to pursue. Currently, the Commissions whistleblower rules do not address whether the Commission may pay a related-action award when an eligible whistleblower voluntarily provides original information that leads to a DPA or NPA entered into by DOJ or a state attorney general in a criminal proceeding. Under the proposed amendment, the Commission would be able to make award payments to whistleblowers based on money collected as a result of such DPAs and NPAs, as well as under settlement agreements entered into by the Commission outside of the context of a judicial or administrative proceeding to address violations of the securities laws.

https://www.justice.gov/opa/pr/former-head-barclays-new-york-foreign-exchange-operation-indicted-orchestrating-multimillion

(Attached File #1: s71618-4048215-169003.pdf) (Attached File #2: s71618-4048216-169003.pdf)

Peter Z. Sivere
[redacted]

Director, Investor Relations
Barclays PLC
1 Churchill Place
London
E14 5HP

The Corporate Communications Department
Barclays Bank PLC
745 Seventh Avenue
New York, NY 10019
USA

June 29, 2015

Dear Barclays Board of Directors,

I am a current employee (compliance officer) of the Bank. For the past two years, I have been raising concerns that can be identified in EthicsPoint Investigative File #2904265015.

I have been assured that my concerns have been investigated as indicated in the attached letter (Tel.docx) from The Global Compliance Whistleblowing Team, dated January 28, 2015.

I would like to bring to your attention the attached highlighted portion of Barclays Annual Report – 2014 (Annual Report -2014.pdf).

I am concerned that the Board is not aware of EthicsPoint Investigative File #2904265015. In particular, I am concerned about certain advice and financial transactions Barclays provided to Hewlett-Packard in its acquisition of Autonomy prior to, during and after August 18, 2011, in which Barclays was subsequently named in several legal actions commencing in May 2013. Some of those concerns included confidentiality around FX trades, confidentiality around Contracts for Difference (CFD) trades and certain representations Barclays made to Hewlett-Packard in regard to a £5 billion ($8.3 billion) Bridge Credit Agreement that was pegged to a possible manipulated LIBOR rate entered into on August 18, 2011 between Hewlett-Packard and Barclays.

Barclays represented to Hewlett-Packard, among other things that it had "ethical wall" procedures intended to protect against the unlawful use of confidential information. That was not true in 2011, as I flagged several breaches during the transaction that can now be verified, in part, by the plea agreement that Barclays has recently entered into with the DOJ.

Again, I have been assured by The Global Compliance Whistleblowing Team that my concerns have been investigated, which would have included this particular transaction known as "Project Tesla."

After reading Barclays Annual Report - 2014, I reviewed several other companies' filings and none of them had as much focus and concern about the adequacy and effectiveness of their whistleblowing processes as Barclays did.

In regard to EthicsPoint Investigative File #2904265015 and the information provided by me including but not limited to Project Tesla, I wanted to alert the Board (above and beyond what is expected from me using the EthicsPoint reporting mechanism) of my concerns while Barclays is currently in the process of engineering further improvements in the information that it is presenting to the Board, in particular, information regarding potential fraud raised by compliance whistleblowers, such as myself.

There is a Fairness Hearing on July 24, 2015, Federal Court in San Francisco, U.S. District Court Judge Charles Breyer regarding the approval of a $100 million settlement relating to Project Tesla, in which Barclays is a party.

I believe that Barclays Compliance has not scrutinized certain "other derivative" transactions entered into with Hewlett-Packard surrounding Project Tesla. I believe that Barclays Board is not aware of my concerns regarding potential fraud. The Serious Fraud Office (SFO) has concluded that there was nothing sinister about Autonomy's accounting and dropped its investigation against it this past January. It is my opinion that the Hewlett-Packard write down of $8.8 billion of Autonomy in 2012 was caused by "other derivative" transactions that were sinister and covered up by both Hewlett-Packard and Barclays. Some of these transactions included FX trades, a dollar/sterling option and CFD's traded prior to the announcement (and also the bridge loan pegged to a possible manipulated LIBOR rate). The unwinding of such derivative transactions most likely occurred during 2012 which should have raised suspicions of what exactly the Hewlett-Packard write down was related to if not for Autonomy's purported accounting improprieties, misrepresentations and disclosure failures

I have raised these concerns only internally and looked for Barclays to live up to its public pronouncements of a commitment to identifying and addressing unlawful and unethical conduct.

Barclays' position is that the information that I submitted through EthicsPoint has been and continues to be handled in accordance with their processes and they will not give me any assurances that the Board has been made aware of my concerns.

Thank You,

Peter Sivere

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
ENFORCEMENT

July 19, 2017

Emily Pasquinelli, Deputy Chief
Office of the Whistleblower
Phone: (202) 551-4790
Fax: (703) 813-9322

Peter Sivere
psivere@aol.com

TCR Submission number: TCR1441991965487
Submission dated: September 11, 2015
Additional information dated: July 12, 2017

Dear Mr. Sivere:

This letter will confirm our receipt of the additional information you provided in connection with the referenced TCR submission. We appreciate your providing this additional information and have updated your file.

Thank you for your continued interest in the Whistleblower Program.

Best Regards,

Emily Pasquinelli

Subject: rule comment on https://www.sec.gov/news/press-release/2018-120 (s7-16-18)
From: Che Ameer

July 14, 2018

It is common sense that this rule is a further gift to crime perpetrating big financial institutions because people will be less inclined to blow the whistle if the payout is lower. Please keep the payout the same for whistle blowers and do not cap it. This is common sense.

https://www.sec.gov/news/press-release/2018-120

File no. S7-16-18

Mr. Clarence N. Daniels
[redacted]

RECEIVED
JUL 16 2018
OFFICE OF THE SECRETARY

Brent Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Subject: File No: S7-16-18, Amendments to the Commission's Whistleblower Program Rules

Dear Brent Fields,

I would like to offer my comments concerning a specific section of the proposed subject changes as follows:

"IV. Request for comment regarding a potential discretionary award mechanism for Commission actions that do not qualify as covered actions, involve only a de minimis collection of monetary sanctions, or are based on publicly available information."

The above proposed change would be an infinitely positive incentive to reluctant or risk averse whistleblowers that may be near certain that their TCR(s) would or could result in a Commission successful enforcement action, or a "covered action", but for, "the particular form of an action that the Commission, DOJ, or a state attorney general acting in a criminal case may elect to pursue.", or "involve only a de minimis collection of monetary sanctions".

The proposed change would unmistakably solidify the Congress and the Commission's forthright intent to appropriately incentivize and absolutely reward whistleblower TCR(s) that result in any of the Commission's successful enforcement actions or "a particular form of an action", on a discretionary basis when enforcement actions resulting in monetary sanctions over $1 million are not made or pursued in a particular form of an action.

*Congress explicitly noted the critical importance of providing financial incentives to promote whistleblowing to the SEC as it determined that "a critical component of the Whistleblower Program is the minimum payout that any individual could look towards in determining whether to take the enormous risk of blowing the whistle in calling attention to fraud." See "The Restoring American Financial Stability Act of 2010" report from the Committee on Banking, Housing, and Urban Affairs (April 30, 2010).

Thank you,

Clarence N. Daniels

* SECURITIES EXCHANGE ACT OF 1934 Release No. 79804 / January 17, 2017 ADMINISTRATIVE PROCEEDING File No. 3-17786 In the Matter of BlackRock, Inc., Respondent.

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A 501(c)(3) Non-Profit Foundation
EIN 34-1937820

Think Computer Foundation

July 17, 2018

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: Comments on RIN 3235-AM11 (Amendments to the Commission's Whistleblower Program Rules)

To Whom It May Concern:

Think Computer Foundation is a 501(c)(3) non-profit organization that focuses in large part on transparency issues, including issues that affect public markets. Through our PlainSite public access website (https://www.plainsite.org) that we jointly run with Think Computer Corporation, we have now published two in-depth "Reality Check" reports on publicly traded corporations Credit Acceptance Corporation (NASDAQ: CACC) and Herbalife Nutrition, Ltd. (NYSE: HLF). In producing these reports, we frequently come across individuals wishing to act as whistleblowers, find information that could constitute a "tip" to the Securities and Exchange Commission (SEC), and produce finished content that may inspire others to act as whistleblowers. Accordingly, we offer the following comments on the proposed amendments to the Commission's Whistleblower Program Rules.

I. Overview

The SEC's whistleblower program has arguably been one of the most effective (and least controversial) aspects of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which emerged from the wreckage of the 2008 financial crisis. While most of the legislative efforts to rein in reckless and harmful financial practices have arguably failed as regulatory measures, in a nutshell, the SEC whistleblower program works. While the SEC's proposed rulemaking release for RIN 3235-AM11 focuses to a large extent on the program's expenses and distributions to whistleblowers, it is worth explicitly noting that the whistleblower program is still widely regarded as successful despite its obvious and necessary costs.[1] Accordingly, any changes to the program should seek to preserve its fundamental structure as intended by Congress, while streamlining any glaring inefficiencies. We believe some of the SEC's proposed changes go too far.

[1] *Forbes*, July 18, 2017, "One Billion Reasons Why The SEC Whistleblower-Reward Program Is Effective."

II. Proposed Amendment to Exchange Act Rule 21F-4(d) defining an "action"

Think Computer Foundation does not object to defining a deferred prosecution agreement (DPA) or a non-prosecution agreement (NPA) as an "action" for the purpose of allowing whistleblowers to receive reward payments. However, we do object to the high frequency with which the SEC and United States Department of Justice (DOJ) appear to use DPAs and NPAs to resolve cases of wrongdoing where *actual admissions of guilt and/or criminal prosecutions are necessary* to ensure the proper functioning of markets.

If and when a DPA or NPA *must* be used for lack of any other option, we believe it is proper for the SEC to treat these agreements as the result of administrative actions, and monetary payments obtained therefrom could reasonably be called monetary sanctions. This logic could also apply to other kinds of settlement agreements obtained by the Commission, but again, DPAs, NPAs and settlement agreements should only be entered into as an absolute last resort. The SEC is not a mere mediator acting on behalf of the American public. The SEC is a financial regulator, and the entities it regulates are almost without exception legally savvy. If violation of securities law is widely thought to involve nothing more than an automatic settlement with the federal government—which is already the case thanks to years to lax enforcement efforts—then the SEC has failed to do its job.

To the extent that DPA, NPA and other settlements are classified as administrative actions for the purposes of the whistleblower program, detailed statistics on their frequency of use must be made available on an annual basis to the general public.

Generally, the SEC should give the broadest possible interpretation to any statutory language that would allow a whistleblower to be rewarded for providing valuable, original or especially insightful information to the government for the benefit of the public. It would follow that any monetary payment to the SEC by an entity accused of wrongdoing, after and because of the commencement of an SEC inquiry, could be fairly classified as the result of an administrative action, even if the matter does not proceed to be heard by an administrative judge.

III. Proposed Amendment to Exchange Act Rule 21F-4(e) defining "monetary sanctions"

We do not believe that receivership fees and costs, taxes, and attorney's fees should count under the definition of "monetary sanctions" used to calculate SEC whistleblower payments, unless a whistleblower has simultaneously filed a separate whistleblower claim with the Internal Revenue Service (IRS), in which case federal taxes collected may be relevant for those calculations.

The phrase "as relief" may be too narrow to classify the kinds of payments that should be taken into consideration for computation of whistleblower payments. If a court orders a defendant in a hypothetical securities action to pay $1 million in restitution payments and $1 million in punitive damages, the SEC could justifiably argue that only $1 million, as opposed to $2 million, was paid "as relief" (the restitution portion). In fact, the whistleblower would have been responsible for $2 million of total disgorgements. The SEC should accordingly use broader terminology, without substantially changing the way it calculates qualifying payments from the way it does now.

IV. Proposed Amendment to Exchange Act Rule 21F-3(b)(1) defining "related action"

In any case where two whistleblower claims under separate state or federal programs are related, a whistleblower should be entitled to choose which program to proceed under (presumably, whichever program pays the highest award) once each program's reward total has been calculated. Or, if the law permits and circumstances merit it—meaning that monetary collections do ultimately take place across multiple agencies—a whistleblower in this situation should be able to proceed under multiple programs. The SEC's stated view on page 34 of its rulemaking brief that Congress intended a 30% cap for whistleblower programs *across multiple agencies* and over time is totally without merit.

Similarly, the SEC's fear about whistleblowers taking "multiple bites at the apple" is overblown and also moot. If a hypothetical drug cartel uses a publicly traded company to launder money through the United States *and* is evading taxes, and a whistleblower presents information about all of the cartel's wrongdoing to the SEC, obvious jurisdictional issues would prevent the SEC from investigating the tax aspects of the case. The same obvious jurisdictional issues would prevent the IRS from looking into securities law violations. Our federal government is deliberately structured such that absolute authority is never vested in one single office or location, but fraudulent activity rarely respects the boundaries of statutory slicing and dicing. Disincentivizing whistleblowers from addressing various parts of the federal government simultaneously if and when large, complex frauds arise would harm the public. Reward should be commensurate with risk, and exposing extremely large and complex frauds might reasonably involve extreme risks, as more money is at stake. The government should enthusiastically welcome cases where multiple awards from different agencies might be merited.

We do believe that the SEC's exception for dual SEC and CFTC claims is sensible given that the SEC and CFTC regulate very similar and at times overlapping markets. It is worth noting, however, that the 30% figure used in the SEC rulemaking briefing is a discretionary *maximum*, and typical IRS whistleblower rewards are often much closer to 15%.

A repeal of Exchange Act Rule 21F-3(b)(3) seems sensible in the interest of simplifying a Rule that is likely to be invoked rarely.

V. Proposed Amendment to Exchange Act Rule 21F-6 regarding awards to a single whistleblower below $2 million or in cases yielding at least $100 million in collected monetary sanctions and guidance on the meaning of "unreasonable delay" under Rule 21F-6

The SEC proposes using a variety of discretionary factors to adjust upward or downward the amount of a whistleblower reward such that the amount falls within a target range. To be blunt, this is a terrible proposed change that could destroy what has been thus far a successful program.

While Think Computer Foundation generally supports initiatives that can reward whistleblowers for information that ensures the efficient functioning of markets, the SEC's proposed changes to Rule 21F-6 introduce a thick fog of uncertainty that would strongly disincentivize individuals with important infor-

mation from coming forward. Generally, the more opaque criteria that the SEC factors into its reward computations, the less clear it will be to whistleblowers that they have a reasonable chance of success when taking the risks involved with coming forward. The best signal the SEC can send to potential whistleblowers is that 30% really means 30% (or that *x*% really means *x*%), and that the Commission will not endeavor to reduce awards based on arbitrary factors that may or may not even be disclosed to the whistleblower.

If the SEC wishes to impose a cap of $100 million—or some other large amount—on awards, it should seek to do so in a separate proposed rulemaking and in terms as clear as possible. Manipulating reward percentages based on fuzzy terms, such as "reasonably necessary," should be avoided at all costs. The program's goal is to provide whistleblowers a guarantee of an award in exchange for information that by definition is worth considerably more. Altering, qualifying and retreating from that guarantee will harm the program more than anything else short of imperiling the safety of participants. The additional wiggle room for the SEC also makes the program vulnerable to abuse by potentially overly political Commission staff, some of whom are political apointees.

The Commission's proposed floors, thresholds and other modifications to this section are inappropriate, overly complex, and will assuredly harm the program.

The SEC should evaluate "unreasonable delay" on a case-by-case basis. It may, in some circumstances, be completely reasonable to avoid burdening SEC staff with confusing or peripheral information that could take two quarters (180 days) or more to materialize and manifest as material to a case. This proposed change especially seems vulnerable to abuse.

VI. Proposed Amendment to Exchange Act Rule 21F-2 addressing whistleblower status and certain threshold criteria related to award eligibility, heightened confidentiality from identity disclosure, and employment anti-retaliation protection

It is reasonable to require information provided to the SEC to be in writing, and the SEC's Form TCR portal provides a good channel for information—provided that the SEC adequately protects the contents of the associated database. Testifying under oath in an investigation or judicial or administrative action of the Commission should count as an additional "manner" of providing information to the Commission, given that such testimony would necessarily produce a written transcript.

VII. Proposed Amendment to Rule 21F-8 to add new paragraph (d) to provide the Commission with additional flexibility regarding the forms used in connection with the whistleblower program (and corresponding amendments to Rule 21F-10, Rule 21F-11, and Rule 21F-12)

These proposed changes appear to be reasonable. Preferably, the Commission should amend its forms at most once per year.

VIII. Proposed Amendment to Rule 21F-8 to add new paragraph (e) to clarify and enhance the Commission's authority to address claimants who submit false information to the Commission or who abuse the award application process

It is definitely appropriate for the Office of the Whistleblower to advise a claimant of the Office's assessment that the claimant's award application for a Commission action is frivolous, and to offer the claimant the opportunity to withdraw his or her award application(s), such that the application(s) would not be considered by the Commission in determining whether to impose a bar. This process should take no more than 15 days; applicants should not have to wait prolonged periods of time to find out that the SEC considers their input frivolous, since in some cases the Commission's determination may be wrong.

It is similarly appropriate for the Commission to adopt a rule that would permanently bar any applicant after he or she has been found by either the Commission to have submitted at least three frivolous award applications *within one year*, provided that the above notification procedure is followed.

IX. Proposed Amendments to Rule 21F-9 to provide additional flexibility and clarity regarding Form TCR (and corresponding technical amendments to Rule 21F-10, Rule 21F-11, and Rule 21F-12)

The proposed changes to Rule 21F-9(a) are reasonable so long as the SEC has a process in place to address technical security issues with the TCR portal that may be identified by a member of the public. A dedicated e-mail address and phone number should be allocated and made clearly visible for the receipt of information that could help the Commission rectify urgent security issues that could jeopardize whistleblower safety and/or information.

X. Proposed Amendment to Rule 21F-12 regarding the materials that may form the basis of the Commission's award determination

These proposed amendments appear to be reasonable, except that the full administrative record for purposes of appeal *should* include "internal deliberative process materials" prepared exclusively to assist the Commission or the Claims Review Staff (CRS) for the purpose of evaluating a case.

If for some reason the Commission or the CRS makes an error in its evaluation of a case, that error may be contained in "deliberative materials" that are currently excluded from the full record, making such an error nearly impossible for a whistleblower to find. Note that this is not inconsistent with Federal Rule of Appellate Procedure (FRAP) 16, which the Commission seeks to accord with. FRAP 16(a)(2) references as part of the record the "report on which [the order involved] is based," which in this context could mean SEC internal deliberative process materials. FRAP 16(a)(3) further references, "the pleadings, evidence, and other parts of the proceedings before the agency." SEC internal deliberative process materials could also squarely fit into "other parts of the proceedings before the agency," and could further be construed as "evidence" of the Commission's thought process. The Commission has no stated basis for excluding these materials from the record, and the justification of avoiding potential future embarrassment is insufficient as a legal rationale.

XI. Proposed Rule 21F-18 establishing a summary disposition process

The SEC should not implement a summary disposition process. Such a process reeks of the unconstitutional procedures already implemented by many federal appellate courts for *pro se* litigants, in which "Staff Attorneys" review and summarize cases before they ever make it to a judge's desk; the role of the judicial panel thereafter is effectively to act as a rubber stamp. These types of procedures—also implemented in the name of efficiency, cost savings, etc.—have recently been the subject of justifiably harsh criticism by now-retired Judge Posner of the United States Court of Appeals for the Seventh Circuit.[2] (Judge Posner retired to assist *pro se* litigants who are so often affected by these unfair procedures.) Should the SEC decide to implement a summary disposition process, there is a high likelihood that it would be challenged in federal court (possibly on due process grounds, among others), and it would do damage to the whistleblower program by decreasing potential whistleblowers' certainty that their information would ever be taken seriously—a certainty that is already murky at best.

Generally, whenever the Commission considers making a new process, it should first ask itself whether better and more transparent communication with whistleblowers (or other types of stakeholders) might achieve its objectives faster and at lower expense.

XII. Proposed interpretive guidance regarding the meaning and application of "independent analysis" as defined in Exchange Act Rule 21F-4(b)(3)

The SEC's proposed verbiage for this significant proposed change is insufficiently clear to provide whistleblowers with useful guidance as to what is required of them in order to qualify for an award. The terms "significant independent information" and "bridge the gap" immediately raise the question of what it means to build a "significant" "bridge"—a question that the SEC itself does not sound like it is prepared to answer. This is unacceptable.

Furthermore, use of the False Claims Act (FCA) as a basis for the SEC whistleblower program is problematic insofar as the Commission is already effectively in the business of facilitating the publication of open information about publicly traded companies (e.g. SEC Forms 10-K, 10-Q, 8-K, etc.) which, unlike many *qui tam* scenarios (where a company need not even be publicly traded to defraud the United States), will inevitably factor into the analysis of virtually every company about which the SEC will receive whistleblower information. Therefore, the Commission should proceed under the assumption that there will *almost always* be publicly available information involved in whistleblower submissions, leaving the quality of the whistleblower's analysis as the key variable in most cases except perhaps the most brazen frauds.

The proposed changes also imply that for analysis to be "significant," there must be a large quantity of analysis. For example, if merely pointing out "observations" based on a filed Form 10-K is not enough to meet the "significant" threshold according to the SEC's guidance, is pointing out the material result of a mathematical calculation based on *two* data points from a Form 10-K enough to constitute a "significant" tip that "bridges the gap?" The Commission's present guidance suggests not, but is unclear.

[2] *See* Reforming the Federal Judiciary: My Former Court Needs to Overhaul Its Staff Attorney Program and Begin Televising Its Oral Arguments by Richard A. Posner (2017). Available from Amazon.com via the CreateSpace Independent Publishing Platform at https://www.amazon.com/Reforming-Federal-Judiciary-Televising-Arguments/dp/1976014794/ref=as_li_ss_tl.

The SEC further states, "If the violations can be inferred by the Commission from the available and/or assembled publicly available information, without more, then the whistleblower has not contributed significant independent information that reveals the violations." This sets the bar unreasonably high. There are countless examples of cases where the Commission could and should have made inferences of myriad violations based on publicly available information *in its possession*, yet it did not, possibly due to resource availability or staffing issues, or possibly due to sheer incompetence. If the SEC means to suggest—in a document opaquely referencing its infamous complete and total failure to heed the wisdom of Harry Markopolos regarding the unprecedented Madoff fraud—that it is always supremely competent and willing and able to detect fraud in any filing, while in reality it leaves countless cases of fraud unaddressed for years, there will always be an unresolvable tension between the Commission's expectations of whistleblowers and its performance in reality that will jeopardize the entire program.

In other words, if the SEC tells whistleblowers, "We could have figured that out on our own for years—we just didn't," whistleblowers will reasonably ask, "Why not?" Therefore, the Commission may want to consider a situation where a whistleblower points to public information indicating a securities violation *that has an urgent temporal nature* (e.g. impending bankruptcy, loss of funds, etc.) that SEC staff has missed to be one where the whistleblower has provided additional insight above and beyond the information on the page.

Before implementing any changes to the "independent analysis" standard, the SEC needs to provide many, many more examples of what it believes should and should not count as "independent analysis" so that the public can assess where and how the Commission draws the line. The Commission should also address whether "independent analysis" must be kept confidential for the entire duration of an SEC investigation, which could drag on for years or take years post-tip to even commence.

Most importantly, the Commission needs to use clearer language that avoids vague metaphors. Whistleblowers do not build bridges. They provide information. The SEC needs to be explicit as to the kind of information that it does and does not want.

XIII. Request for comment regarding a potential discretionary award mechanism for Commission actions that do not qualify as covered actions, involve only a de minimis collection of monetary sanctions, or are based on publicly available information

We believe this to be a particularly odd request for comment. If Congress has not provided a mechanism for the Commission to make an award outside of a monetary collection scenario—and the SEC has not identified any such statutory authority—then it is unclear how the public can help by commenting other than to lobby Congress to grant that authority. While there must be some flexibility, we do not believe that executive branch agencies can simply invent their own authority if and when they choose to do so.

Given the success of the existing whistleblower program, another parallel program for unusual circumstances seems unnecessary and ripe for abuse. The Commission should focus its efforts on its existing program and on holding Wall Street accountable, where its record is dismal and likely to suffer further.

XIV. General Request for Public Comment

We incorporate by reference into our comments the entirety of the July 9, 2018 *Naked Capitalism* post "SEC Knifes Its Whistleblower Program" by Yves Smith, attached hereto.

The SEC could do a far better job in the domain of reporting and transparency. The Commission should provide in real-time to the public the number of whistleblower cases pending, and should even consider providing a real-time breakdown of pending, completed, and disregarded cases by CUSIP or stock ticker. Record high stock market indices indicate that we have long since entered the third equity bubble period in less than 30 years, and in such times, accountability is sorely needed. Generally speaking, the SEC staff has been missing in action, busying itself with minor violations and Initial Coin Offerings (ICOs) that affect a tiny percentage of the population while the American public suffers at the hands of a Wall Street that is greedier and more destructive than ever.

Please feel free to contact me at [redacted] or [redacted] with any questions regarding this letter.

Sincerely,

Aaron Greenspan
President
Think Computer Foundation

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SEC Knifes Its Whistleblower Program

Posted on July 9, 2018 by Yves Smith

The SEC always hated the whistleblower program that Congress imposed on it as part of Dodd Frank reforms. Congress was responding to the SEC's grotesque institutional failure in ignoring Harry Markopolos' repeated, detailed warnings about the Bernie Madoff fraud, a Ponzi scheme that reached $65 billion due to SEC inaction.

But as we'll describe, the SEC issued new guidance – on a Saturday night in the summer – that guts

the whistleblower program by imposing new standards that look to be contrary to the intent of Congress by making it difficult to win awards for large-scale frauds, and then reducing the payouts on them. It looks like career-minded SEC officials who resented that whistleblower filings could force them to probe wrong-doings of prospective employers are making sure the agency will only hand out parking tickets.

Admittedly, Congress had set out to enfeeble the SEC, by keeping it budget-starved and having Congressmen like Joe Lieberman threaten to cut its funding even further if it went too aggressively after big financiers. The agency had retreated to focusing enforcement almost entirely on insider trading, to the degree that became almost incapable of seeing the world any other way. For instance, it botched its first major crisis case involving the collapse of two Bear Stearns hedge funds, by bizarrely pursuing the execs managing the funds as insider traders, rather than understanding that they were victims of other Wall Street firms (and perhaps even Bear's own trading desks) that were selling toxic subprime mortgage securities and CDOs. '

Nevertheless, the new whistleblower program established an awards fund entirely outside the SEC's budget, and also tasked the SEC to set up a "Whistleblower Office." The agency was obligated to pay sources compensation set as a portion of the SEC's recovery if they contributed information that was valuable to an enforcement action.

The program went live in 2012, and under Chairman Mary Jo White, the SEC feigned enthusiasm for the new initiative, dutifully reporting how many tips it had received and asking for more funding to do a better job, even as high level SEC insiders grumbled about how the whistleblower program trampled on the agency's discretion.

Last Saturday, in the dead of night, the SEC moved to make explicit, with the release of draft rule revisions, what close observers long suspected, that despite the agency's weak support for whistleblowers, they have proven nevertheless too successful.

The proposed new rules have two main thrusts. First, they would change the formula for computing whistleblower awards so that large awards would receive fewer dollars. Second, new barriers to receiving awards would be placed in front of whistleblowers who include ***any*** public information in their evidence of wrong-doing. The reason that matters, as we'll explain in detail, is that whistleblowers who provide evidence of widespread or systemic frauds will almost certainly be relying significantly on public information. Perversely, that could even been deemed to include information the whistleblower got into the public domain via FOIA>

In recent years, whistleblowers have complained to us that the SEC has simply failed to respond to award applications. Mind you, we are not talking about the SEC ignoring tips about potential wrong-doing. Most of the SEC filings are along the lines of "Everything JP Morgan does is crooked," as opposed to actionable information.

Instead, what the SEC frequently doesn't respond to are the formal "award applications" that whistleblowers submitted after the SEC made an enforcement action where the whistleblower believes his filing made a contribution. The SEC requires that whistleblowers submit these requests in order to be considered for an award within 60 days of the SEC announcing a settlement.

The SEC has been remarkably and indefensibly, opaque about what is clearly a massive backlog of unresolved award claims. The agency produces a ludicrous annual report to Congress of its whistleblower program, full of useless statistics, such as the number of tips received by state, yet it

has refused to disclose the number of outstanding award applications or their average age. Only once, in 2015, has it even reported on how many award claims it received in the previous year, which was 120. Contrast this figure with the fact the agency has been resolving about 40 claims a year in recent years. That means the SEC's backlog of unresolved claims has been growing by approximately two years with each passing year. Its total backlog could realistically be more than five years at this point. That wait to receive an answer on an award is typically on top of the three to four years wait for an enforcement action to be prosecuted and resolved.

The SEC publishes heavily-redacted final orders ruling on each whistleblower award application. We found two recent ones where the agency took around five years to decide (5.25 years in one case and just under five years in the other):

https://www.sec.gov/files/PUBLIC%20FINAL%20ORDER%20-%202012-72.pdf

https://www.sec.gov/files/PUBLIC%20FINAL%20ORDER%20-%202012-24.pdf

In 2015, a Wall Street Journal article entitled SEC Backlog Delays Whistleblower Awards offered a similar snapshot of delay, as well as, the SEC resistance to disclosure:

> Of the 297 whistleblowers who have applied for awards since 2011, about 247—or roughly 83%—haven't received a decision from the SEC, according to data obtained by The Wall Street Journal in response to a public-records request. Some of the award claims have been delayed more than two years.

Later in 2015, the Wall Street Journal also reported on a whistleblower who sued the SEC demanding an answer after waiting three years with no response to his award application. Almost immediately, the SEC coughed up a response, which Wikipedia, for what it's worth, says was favorable.

Even when the SEC does rouse itself to rule in favor of an award application, the agency has shown a clear bias in favor of penny-ante cases.

Since the inception of the program, more than 60 percent of the awards have been for less than $2 million. While $2 million can seem like a life-changing windfall, keep in mind that many whistleblowers are represented by contingency fee counsel who will take a quarter of the award, and many awards are shared among multiple whistleblowers. As a result, a $2 million total award could ultimately amount to no more than a few hundred thousand dollars to a whistleblower after taking into account these factors, plus taxes. And bear in mind that the best positioned whistleblowers in many cases are highly-placed people in the financial industry who might be making a million or more dollars annually who risk never working again by becoming whistleblowers.

This brings us to the proposed changes to the program. ***By law***, the SEC is required to pay an award to whistleblowers equal to between 10 and 30 percent of any fines, disgorgement, restitution, and interest paid by a defendant in an enforcement case, with the exact amount based on a formula keying off how helpful the whistleblowers were (for example, delay in reporting a fraud lowers the percentage). The SEC is now proposing to include a new factor in the formula, which is how large the recovery is, where larger recoveries would result in a penalty to the formula and small recoveries would receive a formula bonus.

This favoring of small-bore enforcement reflects the longstanding institutional bias of the SEC to chase petty frauds while overlooking big ones, a tendency that is more obvious during Republican administrations but operative in Democratic ones as well.

Trump's SEC chairman, Jay Clayton, has explicitly promoted an enforcement agenda of re-directing resources away from frauds impacting institutional investors toward frauds impacting retail investors. His patter is, "We're here for the little guy, and the big guys can fend for themselves," though that assertion falls apart when you recognize that the institutional frauds he is tolerating impact millions of ordinary people. For example, as we have extensively covered, private equity firms defraud their public pension fund investors. That hurts public workers and taxpayers. Similarly, banks securitize mortgages and sell designed-to-fail CDOs to institutional investors and other banks, which had the effect of severely exacerbating the foreclosure crisis.

Clayton has instead amped up the SEC's focus on penny stock fraud and very small Ponzi schemes. These frauds impact a tiny sliver of the investing public. Mary Jo White, the SEC chair under Obama, had her own version of this bias, which she articulated as a "broken windows" theory of enforcement. In practice, this meant citing big institutions for petty infractions under the supposed theory that Goldman Sachs and Bank of America would refrain from major frauds if they were fined a few hundred thousand dollars for technical infractions. This approach allowed White, as a good Democrat, to issue press releases naming powerful Wall Street enforcement targets while sparing those targets any real pain.

To their credit, when it was brought before them last week, the two Democratic commissioners on the five person board did vote against the entire proposal to change the whistleblower rules. Commissioner Kara Stein went so far as to question whether the proposed changes were even legal under the Dodd-Frank enabling statute. Their dissent makes it clear that insiders understand the genesis of the proposal, not as some re-balancing justifiable as an improvement to the whistleblower program, but as an explicit attempt to weaken it, including the incentive to report large frauds. After all, if the SEC were concerned merely that the financial incentive to report smaller frauds is too weak, it could simply change the formula to give a bonus in the smallest cases without penalizing awards in the largest cases. This is especially true because the SEC is effectively unconstrained by budget authority in this instance, since Congress appropriated $550 million to initially prime the award pump and authorized the SEC to pay awards from the fines it receives once that initial amount runs low.

Much of the initial press focus has been on the proposal to limit large awards, given the easy-to-grasp hostility to whistleblowers evident in this scheme. However, the much more impactful part of the SEC's proposal imposes a new standard, misleadingly labeled as a "clarification" of the existing rule, which disqualifies many award claimants whose initial tips include what the SEC expansively considers "public records." The SEC's talking point here is that nobody should get paid a whistleblower award for sending the SEC New York Times articles about sketchy financial behavior.

But this extreme example, which Congress already disallowed in the enabling Dodd-Frank legislation, is a red herring.

The real issue is that massive evidence of financial and corporate fraud exists in public documents, including the SEC's own publicly-accessible databases. The SEC proposes to deny awards based on such public records if the agency determines, in its own opinion, that it could have figured out the fraud without the whistleblower's help, had it reviewed the public records presented by the whistleblower:

> [A] whistleblower's submission must provide evaluation, assessment, or insight beyond what would be reasonably apparent to the Commission from publicly available information. In assessing whether this requirement is met, the Commission would determine based on its own review of the relevant facts during the award adjudication process whether the violations could have been inferred from the facts available in public sources.

Whistleblower lawyers call this as the "woulda, coulda, shoulda" standard, where the SEC would be relieved from arguing that it ***did*** know about a securities law violation prior to receiving a whistleblower's public records, but instead would merely have to assert that it ***could have*** known if it had, for whatever reason, independently reviewed the documents presented by the whistleblower.

This proposal amounts to a middle finger directed at the entire securities analysis industry, where thousands of experts toil over public records looking for, among other things, signs of fraud. Make no mistake, given the resources allocated to them, professional investors are by far the most likely source of insight about credible, large-scale corporate fraud. Those insights are derived largely from public SEC filings. It must be very uncomfortable, whenever the SEC meets with such whistleblowers and asks them to explain the source of their evidence about fraud unknown to the SEC, and the whistleblowers effectively say, "I found it in your file cabinets."

By contrast, Mary Jo White loved to sing the praises of corporate insider whistleblowers, whom she repeatedly described in public statements as giving the SEC insight into wrong-doing that would otherwise never have been visible to the agency. In other words, to some degree, the agency made its peace with the good citizen, corporate insider "see something, say something" paradigm, especially since the SEC staff was able to tell itself that these people have information advantages that no outside law enforcement person could ever hope to replicate. Stock analysts and professional fraud hunters like Ted Siedle, on the other hand, are at a clear information ***disadvantage*** relative to SEC staff, since they can't do things like subpoena corporate records. Yet we've seen lots of evidence that these people are running circles around the SEC staff, In other words, it looks like resentment is driving this proposed change.

It's also important to recognize that many of the most important securities law violations, in the sense of those that rise to the level of "industry practice," can really only be uncovered with public records. The obvious reason is that, other than accountants and lawyers, who are barred from receiving awards, almost nobody is an insider at more than one company at a time, so if something pervasive is to be unearthed, it will almost certainly involve information that has leaked into the public domain.

The stock option back-dating scandal from the early 2000s is a classic example of outsiders finding what the SEC missed with the SEC's won information, though it predated the whistleblower award program. A series of academic papers, leading to a Wall Street Journal series of articles, demonstrated that companies were pervasively back-dating stock options. The revelation leading to the resignation of more than 50 senior executives. How had the professors and the Wall Street Journal unearthed the practice? They simply compared the dates on companies' more widely viewed SEC filings, which showed earlier dates for the option issuance, with the dates on more obscure, seldom viewed SEC filings, which showed that the options had been issued later.

Had this backdating been unearthed by a whistleblower, would they meet the standard for an award? Who knows? The SEC could merely claim that, if it had bothered to compare these different filings in the relevant cases, it would have spotted the date discrepancy. Notably, the SEC would not

need to claim that there is any likelihood that it would have ever looked at this on its own, just that if it had reviewed the needles-in-a-haystack documents, once the whistleblower had done the work of pulling them out of the haystack, they would have figured it out.

Moreover, the SEC's proposal tries to give comfort by claiming that public documents are admissible if the whistleblower uses them as a basis for "independent analysis," which means revealing the pattern of fraud that otherwise would not be apparent to the SEC. The SEC contrasts this hazy standard with the non-qualifying action of a whistleblower who merely "aggregates information from multiple different sources." Again, there is a reasonable argument that, basically, the academics and Wall Street Journal did little more than "aggregate information from multiple sources" in the options backdating case, since once the work of assembling the documents had been completed, it needed effectively no analysis.

We've heard over and over that the SEC hates cases implicating a large number of firms in wrong-doing. Such cases present severe staffing challenges for the agency. But more important, they challenge a core ideological assumption of the SEC, which is that wrong-doing is a problem of "a few bad apples."

This orthodoxy is so strong within the agency that, when evidence of industry-practice lawbreaking emerges, the SEC is known to engage in "it's me, not you" self-flagellation. This means the SEC embracing a narrative that it failed in some way to properly educate the industry about its legal obligations with respect to the practice where the widespread law-breaking is occurring. You can see how this attitude leads to a hostility toward the people bringing them evidence of widespread wrong-doing and results in the current effort to choke off incentives for such individuals to come forward.

It's also worth noting that the concept of what the SEC considers a public record is extremely broad and encompasses many types of documents that the agency would effectively never have access to without whistleblowers. For example, a whistleblower might fly from the U.S. to Botswana and then travel hundreds of miles over dirt roads to access records of mine production that exist only on paper in a local government office there. These records could contradict statements that the mine owner makes in SEC filings about their mine productivity, thereby exposing a fraud. Yet the whistleblower in this case would get no credit for knowing the one location on Earth where the mine record exists or for having expended considerable effort to obtain it. Instead, the SEC would apply a test where it would look at the Bostwana mine record and the mining company's SEC filings, and if the agency considered the fraud to be self-evident based on those, the whistleblower would be barred from an award.

Ultimately, the SEC whistleblower program closely parallels many financial reform initiatives we have chronicled on the blog. They are announced with great fanfare and hailed as showing real promise of implementing lasting reform. But success proves fragile and hostile forces look for every opportunity to weaken the initiative through inaction and bureaucratic strangulation. In moments when they are powerful, as the whistleblower program foes are now, they seek structural changes, often dressed up as mere administrative accommodations, that would permanently kill the program in all but name.

This entry was posted in Legal, Politics, Regulations and regulators, Ridiculously obvious scams on July 9, 2018 by Yves Smith.

10 COMMENTS

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AbateMagicThinking but Not Money
July 9, 2018 at 6:03 am

So SEC means Scrutiny Entirely Comical?

Pip Pip!

Reply ↓

Jim Young
July 9, 2018 at 9:54 am

SEC – Secretly Enabling Criminals?

Reply ↓

AbateMagicThinking but Not Money
July 9, 2018 at 7:01 pm

When it comes to farce following tragedy, the poacher does not turn gamekeeper, they just hire public-relations (in all its forms).

Pip-Pip! (are we no allowed to laugh at farce?)

Reply ↓

allan
July 9, 2018 at 10:47 am

> "They are announced with great fanfare and hailed as showing real promise of implementing lasting reform. But success proves fragile and hostile forces look for every opportunity to weaken the initiative through inaction and bureaucratic strangulation …"

… and judicial activism. Which is about to get a whole lot worse.

Reply ↓

John Wright
July 9, 2018 at 11:13 am

The STOCK act history may give some evidence that Congress is not interested, as a matter of self interest, in disclosure, enforcement or whistle-blowing in financial matters.

The original STOCK act (Stop Trading on Congressional Knowledge) was passed on April 4, 2012.

From https://en.wikipedia.org/wiki/STOCK_Act

"The bill was introduced by Joe Lieberman, independent United States Senator for Connecticut, on January 26, 2012, and passed in the Senate by a 96–3 vote. Later the House of Representatives passed it by a 417–2 vote. The bill was supported heavily by vulnerable incumbents and signed into law by President Obama"

But then at tax filing time a year later:

"The STOCK Act was modified on April 15, 2013, by S.716. This amendment modifies the online disclosure portion of the STOCK Act, so that some officials, but not the President, Vice President, Congress, or anyone running for Congress, can no longer file online and their records are no longer easily accessible to the public. In Section (a)2, the amendment specifically does not alter the online access for trades by the President, the Vice President, Congress, or those running for Congress. The reasoning for this change was to prevent criminals from gaining access to the financial data and using it against affected persons. This bill was introduced by Senator Harry Reid on April 11, 2013. It was considered by the Senate and passed by unanimous consent. In the house, S.716 received only 14 seconds before being passed by unanimous consent."

If I'm reading this correctly, Congress allowed its staffers (and maybe their own relatives?) to avoid disclosing trades in an easily accessible manner. Notice the "can not file online or have easily accessible records", even if the filing individual was willing to ignore this option.

Here's more information: https://www.opensecrets.org/news/2013/04/action-alert-stock-act-reversal-signed/

"The elements of the STOCK Act that were removed include:"

"Creation of searchable, sortable disclosure of the information contained in reports even for Congress, the president, vice president, the president's cabinet and congressional candidates."

"Required electronic filing for Congress, the president, vice president, the president's cabinet and congressional candidates, as well as high-level executive and congressional branch employees. Even images of the staffers' filings will not be available for viewing on the web."

This modification occurred under Obama.

Note: the information might be very valuable to investors, as some previous studies showed that US senators did very well, even better than corporate insiders investing in their own companies.

From: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1633123

"The common stock investment portfolios of United States Senators beat the market by 12% a year, on average, between 1993 and 1998, according to a study by economist Alan J. Ziobrowski and his collaborators. In sharp contrast, the common stock investment portfolios of U.S. households as a whole
underperformed the market on average by 1.4% a year during the relevant period."

"Even more striking, corporate insiders investing in their own company's stock only beat the market by about 6% a year on average during that period."

The STOCK act's history may indicate the the possibility of reform of the SEC via the Congress is very low.

Reply ↓

Chauncey Gardiner
July 9, 2018 at 11:44 am

… *All done on a "Saturday night in the summer."* In their efforts to neuter whistleblowers, it has become crystal clear who a majority of commissioners at the SEC really work for.

Corrective measures to deter this type of behavior by senior government officials, and the indirect granting of free passes to those who violate the law, calls for a very public investigation and action to address this issue by legislators. Review and approval of whistleblower awards needs to be taken away from and made independent of senior agency officials of the agency involved, perhaps being transferred to an adequately funded Consumer Financial Protection Bureau.

This little slice of life in the swamp, and the concluding paragraph of Yves' excellent post, also reflect the need for a Litmus Test for the next Supreme Court justice of a willingness to reverse the *Citizens United* decision which essentially legalized the corruption of our public officials and indirectly fosters an environment that enables this type of behavior. (See John Wright's related comment at 11:13 am mark, above.)

Reply ↓

Arizona Slim
July 9, 2018 at 1:57 pm

All done on a Saturday night in the summer? Like this notable event from history?

https://en.wikipedia.org/wiki/Watergate_scandal

BTW, one of my friends was driving across Kansas with one of her daughters. On the morning of Sunday, June 18, 1972, they were reading the paper together. ISTR my friend saying that they were in a restaurant near the Kansas Turnpike.

Well, they came across the story of the Watergate break-in and they began howling with laughter. Their fellow restaurant patrons started looking their way, but that sure didn't stop my friend and her daughter.

Even then, these two newspaper readers knew that the Nixon White House had **something** to do with this break-in.

Reply ↓

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ds
July 11, 2018 at 12:13 am

Can we, also, fix the revolving door problem? There has to be less than no appetite for real change in appointments. Seems this article itself could go under the Guillotine Watch header in the daily links.

Reply ↓

Susan the other
July 9, 2018 at 3:30 pm

The Securities % Exchange Commission is a lot like the Comptroller of the Currency. Nobody seems to be controlling it. Does the SEC fall within the authority of Treasury. And if so, does Treasury have any jurisdiction using the FBI or the DOJ over the SEC? And also does Treasury and/or the SEC have any jurisdiction over the Fed and the big banks involved in all securities and exchanges from the ground floor all the way to the top – regarding setting (illegally) short or long futures of US treasuries in an attempt to determine the Fed's interest rate changes? Who controls the SEC directly? It just stands to reason that it would be an imperative to rely on enforcement above and beyond whistleblowers because it deals directly with our sovereign currency. To be so feckless as the SEC is is to ask for more fudging like LIBOR and all the other irregularities. And all they ever do is go around in circles on this stuff.

Reply ↓

Murgatroy
July 10, 2018 at 10:27 am

Dell didnt like being a public company- now it does? Go figure!

Reply ↓

Leave a Reply

Your email address will not be published. Required fields are marked *

Comment

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Subject: File Number S7-16-18
From: Glen Anderson
Affiliation:

Jul. 18, 2018

Dear Securities and Exchange Commission,

THE AMERICAN PEOPLE VALUE -- AND DESPERATELY NEED -- WHISTLEBLOWERS.

Whistleblowers PROTECT THE PUBLIC INTEREST.

Therefore, I STRONGLY OPPOSE the proposed amendments to the rules governing the SEC whistleblower program (File Number S7-16-18). SHAME ON YOU FOR TRYING TO WEAKEN AND UNDERMINE the deterrent effect of rewarding whistleblowers.

I call your attention to the public statements issued by Commissioners Stein and Jackson and the Law360 Op-ed "The Problem With SEC's Plan To Cap Whistleblower Awards." (https://bit.ly/2L0WTaJ) These statements outline my reasoning as to why the proposed amendments will undermine the policing of Wall Street.

Specifically, the proposed amendment to the rules capping rewards in the largest cases to the lowest percentage rate should be withdrawn. Furthermore, the SEC should ensure that every employee, regardless of position or title, can disclose corporate fraud directly to the SEC. Any requirement that compliance officers, managers or directors work internally with the company before reporting to the SEC must be struck from the rules. Finally, rules must be implemented that require the timely payment of rewards to qualified whistleblowers.

I request that you meet personally with whistleblower experts from the National Whistleblower Center to obtain additional information as to why the proposed amendments to the rules governing the SEC whistleblower program should not be implemented.

Sincerely,

Mr. Glen Anderson
5015 15th Ave SE
Lacey, WA 98503
3604919093

I am providing these comments with regards to the proposed Whistleblower rules.

1. There is a question as to what time period any changes to the rules should effect. It is my belief that any changes to the rules should be implemented Modified Retrospectively. What I mean by Modified Retrospectively is that if the rule change is positive for the whistleblower it should be enacted retrospectively, but if it would reduce an award or otherwise make a whistleblower or other informant ineligible for an award it should not be retrospective. This would provide for a seamless transition from old to new rules for already submitted TCR's and would more than likely avoid issues that may arise with whistleblowers.

2. I believe the question presented if the SEC should have discretion to provide for awards if whistleblowers would not otherwise qualify under current rules is a very good proposal. I believe that this can only be a positive as a way for the SEC to recognize a whistleblower in their discretion if for some reason they are not eligible for an award but have contributed to an enforcement effort. Since such an award (similar to the IRS program) would be in the SEC's discretion, I do not see any negative outcome. I believe the SEC would be well within their rights to pay for information. I am not aware of any legal standard or law that would prohibit payments and the Commission should implement this on a Modified Retrospective basis for all TCR's filed after the initial effective date of the law (i.e. if there is a benefit to a someone that has already submitted a TCR the SEC should be permitted to grant them with an award at the Commissions discretion).

3. I also want to make a very important note regarding the public disclosure bar. When the SEC rules were implemented Congress intentionally added language that allowed for Independent Knowledge and Independent Analysis based on public information. This is a far cry from the FCA Public Disclosure bar and the difference was intentional. I believe, in the financial services industry where participants have specialized knowledge and/or experience reviewing financial statements, contracts, and filings and might be able to identify fraud this is important. The FCA public bar was implemented so relators would not take advantage of the system, whereas Congress specifically wanted industry professionals to add their analysis with regards to the SEC program to help root out fraud. I believe the Commission should keep the definitions as broad as possible to encourage outside whistleblowers to compile research and analysis that the Commission may otherwise never have seen or would otherwise never have come to their attention.

4. With regards to the specific discussion on independent analysis, I believe it leaves out a number of key items. First, the Commission provides an example of independent analysis based on mathematical calculations, but there are many other ways to provide independent analysis – including qualitatively. Qualitative analysis is incredibly important and the skill, training, and experience involved in reviewing documents can certainly be

considered Independent Analysis. I urge the Commission to provide greater leeway for defining Independent Analysis as the key hurdle should be whether or not the submission led to an enforcement action. I can agree that the submission of a public news article would not qualify, but providing insights and analysis of complex situations based on detailed review of other public source material certainly is Independent Analysis and should be recognized by the Commission accordingly. Let us all not forget the main goal of the program – to encourage people to bring forward and root out securities violations and Congress certainly indented that outsiders with certain skills and background should be and are encouraged to participate.

5. Lastly, I comment regarding the requirement that an outside attorney or accountant "be expected to contribute insights or revelations that would not be reasonably evident to an accountant or attorney on the Enforcement staff who reviewed the same publicly available information". This footnote appears to me that the Commission is attempting to continue to narrow the definition of Independent Analysis further than was originally intended. This definitional language was not included in the original rules and appears to try to set a new, higher bar for analysis. Nowhere do I see where this high of a bar was originally contemplated. In fact, the Commissions own example of Markopolis that the Commission itself believes was Independent Analysis might have been reasonably evident to Enforcement Staff if they had reviewed the various items that Markopolis himself reviewed. In fact, I believe the bar not only should be – but by the current rules, is much lower than the Commission has articulated in this footnote. I encourage the Commission to maintain that the rules read in plain English – did the submission provide independent analysis or not? The Commission surely needs to disregard whether someone else theoretically could have performed such an analysis only whether the Whistleblower performed the analysis that led to an enforcement action.

In general I encourage the Commission to widen the definitions and expand the access to the Whistleblower program so we can root out as many securities violations as possible. I believe the intention was to include outsiders and I hope that the Commission recognizes the substantial value and contributions that outsiders with deep financial knowledge can provide in this process.

Thank you for your time.

Subject: File Number S7-16-18
From: Richard Bentley

July 18, 2018

Dear Securities and Exchange Commission,

I write to strongly oppose the proposed amendments to the rules governing the SEC whistleblower program (File Number S7-16-18). The proposed rule amendments will weaken and undermine the deterrent effect of rewarding whistleblowers.

I call your attention to the public statements issued by Commissioners Stein and Jackson and the Law360 Op-ed "The Problem With SEC's Plan To Cap Whistleblower Awards." (https://bit.ly/2L0WTaJ) These statements outline my reasoning as to why the proposed amendments will undermine the policing of Wall Street.

Specifically, the proposed amendment to the rules capping rewards in the largest cases to the lowest percentage rate should be withdrawn. Furthermore, the SEC should ensure that every employee, regardless of position or title, can disclose corporate fraud directly to the SEC. Any requirement that compliance officers, managers or directors work internally with the company before reporting to the SEC must be struck from the rules. Finally, rules must be implemented that require the timely payment of rewards to qualified whistleblowers.

I request that you meet personally with whistleblower experts from the National Whistleblower Center to obtain additional information as to why the proposed amendments to the rules governing the SEC whistleblower program should not be implemented.

These proposed amendments effectively make the SEC complicit with those committing fraud, and is a corrupt subversion of the SEC's purpose for existing.

Sincerely,

Mr. Richard Bentley

Subject: File Number S7-16-18
From: Robert Anderson
Affiliation:

Jul. 20, 2018

Dear Securities and Exchange Commission,

I write to strongly oppose the proposed amendments to the rules governing the SEC whistleblower program (File Number S7-16-18). According to NWC executive director, S.M. Kohn, "...an effective anti-corruption program can work only if telling the truth and reporting frauds is more profitable then committing the crimes. The proposed rule ignores this reality. It disincentives the most important potential whistleblowers in the securities industry and takes away the Commission's best advertisement for promoting honesty in the markets." I fully agree with this opinion, and therefore urge the SEC to withdraw proposed rule amendments regarding the whistleblower program.

Sincerely,

Mr. Robert Anderson

KOHN, KOHN & COLAPINTO, LLP

PROTECTING WHISTLEBLOWERS

July 24, 2018

Hon. Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: File No. S7-16-18, Amendments to the SEC's Whistleblower Program Rules

Dear Mr. Chairman:

We are writing in regard to the proposed Amendments to the Commission's Whistleblower Program Rules, Release No. 34-83557; File No. S7-16-18, RIN 3235—AM11, 83 *Federal Register* 34702 (July 20, 2018) (hereinafter, "Proposed Rules"). Please file this letter on the public record as a formal comment submitted by the law firm Kohn, Kohn & Colapinto, LLP.

Our firm has represented whistleblowers in securities cases since 1999.[1] At that time there were no effective protections for Wall Street whistleblowers and the U.S. Securities and Exchange Commission ("SEC") had no effective whistleblower program. In 2001, during the ENRON scandal, the problems caused by the lack of protections for corporate whistleblowers became readily apparent to the general public. Based on our extensive experience representing employees in publicly traded companies, we recommended to staff of the U.S. Senate Committee on the Judiciary a corporate whistleblower bill. Thereafter, we worked with staff from that Committee and offered guidance on the legislative language that was needed in order to provide meaningful and effective whistleblower protection to corporate employees. Our assistance resulted in the enactment of the whistleblower protection provision of the Sarbanes-Oxley Act ("SOX").[2] Unfortunately, for a number of different reasons, SOX did little to ameliorate engrained corporate hostility toward whistleblowers.[3]

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[1] Nash, Jeff. *Linda's Lawyers Tripp To Wall Street: Whistleblower Firm Has a Broker in Fold Already*, Nov. 1, 1999. http://www.investmentnews.com/article/19991101/SUB/911010731/lindas-lawyers-tripp-to-wall-street-whistleblower-firm-has-a-broker.

[2] *See* 18 U.S.C §1514A.

[3] The Senate Report on the SOX whistleblower law described this culture as follows: "These examples further expose a culture, supported by law, that discourage employees from reporting fraudulent behavior not only to the proper authorities, such as the FBI and the SEC, but even internally. This ''corporate code of silence'' not only hampers investigations, but also creates a climate where ongoing wrongdoing can occur with virtual impunity. The consequences of this corporate code of silence for investors in publicly traded companies, in particular, and for the stock market, in general, are serious and adverse, and they must be remedied."

SOX was ineffective and six years later the stock market crashed. A movement to enact meaningful Wall Street reforms emerged from the 2007-2008 financial crisis, which resulted in the passage of the Dodd-Frank Act ("DFA"). Among the key reforms was the creation of a whistleblower program within the SEC modeled on the highly effective False Claims Act ("FCA") (a/k/a "Lincoln's Law") and the equally effective Internal Revenue Service whistleblower award law. These laws incentivized company insiders to report fraud by offering substantial monetary awards based on the FCA's *qui tam* model of paying whistleblower awards between 10-30% based on the amount of fines and damages recovered by the government due to the whistleblower's disclosure of wrongdoing. In the wake of the 2007-2008 financial crisis and subsequent market crash that led to the "Great Recession," the Senate sponsors of the DFA recognized that the SEC needed to pay "ample rewards to promote the integrity of the financial markets."[4] Staff from the Senate Banking Committee contacted us to provide input into the new securities whistleblower protection provisions that were under consideration by Congress. Based on our experience representing whistleblowers since 1984 we strongly supported enacting a provision within that law to protect internal whistleblowers.

After the enactment of the DFA, SEC Chair Mary Schapiro's staff reached out to the non-profit organization we founded, the National Whistleblower Center ("NWC"). We met with her staff on August 23rd, 2010 and provided suggestions for the whistleblower rules the Commission was starting to develop.[5] After the Commission published its proposed whistleblower rules, we had the opportunity to meet one-on-one with each of the five Commissioners, as well as with the Commission staff that was drafting the whistleblower rules.[6] On behalf of the National

https://www.kkc.com/assets/site_18/files/senate%20report%20107-146%20(2002)%20_%20legislative%20history%20of%20sox%20whistleblower%20provisions.pdf
Stephen M. Kohn, *The New Whistleblower's Handbook: A Step-by-Step Guide to Doing What's Right and Protecting Yourself*, 3rd ed. (Guildford, CT: Lyons Press, 2017), 34, 35, 38, 182, 282, 293, 306.

[4] Dodd-Frank Act Senate Report. https://www.kkc.com/assets/site_18/files/dodd-frank-act-111-176.pdf; Reuben, Ernesto and Stephenson, Matt. Nobody likes a rat: On the willingness to report lies and the consequences thereof, 2012. https://www.kkc.com/assets/site_18/files/resources/ernesto%20reuben-nobody%20lies%20a%20rate-%20on%20the%20willingness%20to%20report%20lies%20and%20the%20consquences%20thereof.pdf.

[5] *See https://www.sec.gov/comments/df-title-ix/whistleblower/whistleblower-9.pdf*.

[6] January 25, 2011 meeting with Division of Enforcement.
https://www.whistleblowers.org/storage/documents/DoddFrank/1.25.2011enforcementmeetingmemo.pdf.
February 10, 2011 meeting with Commissioner Aguilar.
https://www.whistleblowers.org/storage/documents/DoddFrank/2.10.2011aguilarmeetingmemo.pdf.
February 11, 2011 Meeting with Commissioner Paredes.
https://www.whistleblowers.org/storage/documents/DoddFrank/2.11.2011paredesmeetingmemo.pdf.
February 15, 2011 Meeting with Commissioner Walter.
https://www.whistleblowers.org/storage/documents/DoddFrank/2.15.2011waltermeetingmemo.pdf.
March 11, 2011 Meeting with Commissioner Casey.
https://www.whistleblowers.org/storage/documents/DoddFrank/3.11.2011caseymeetingmemo.pdf.
March 28, 2011 Meeting with Chairman Schapiro.
https://www.whistleblowers.org/storage/documents/DoddFrank/3.28.2011schapiromeetingmemo.pdf.

Whistleblower Center, we drafted numerous letters, reports and rulemaking proposals,[7] many of which were incorporated into the final whistleblower rules.[8]

Currently, we represent a number of whistleblowers who have filed TCR complaints and WB-APP applications with the SEC's Office of the Whistleblower. We also represented the NWC in its *amicus* brief filed with the U.S. Supreme Court strongly supporting the SEC's position in the case of *Digital Reality.*[9] We have advocated on behalf of the rights of internal whistleblowers and corporate compliance officers for over 33 years, and in 1985, one of our partners was a primary contributor to an *amicus* brief on that issue.[10] We are also responsible for the litigation that resulted in the SEC's landmark holding that prohibits companies from stifling whistleblowers through the use of restrictive confidentiality agreements.[11]

We have had the opportunity to work with the staff of the Office of the Whistleblower, as well as various SEC investigators and staff attorneys assigned to cases for which we have filed. We have found your whistleblower staff and enforcement investigators to be extremely competent, highly professional, and a credit to the Commission. They have been responsive to our client's concerns, and the investigators and staff attorneys have fully protected the identity of our confidential whistleblowers.

Based on our experience we offer the following comments on the main features of the Proposed Rules:

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[7] Letter to SEC opposing corporate lobby position, including comments from Baker Donelson and Arent Fox. https://www.whistleblowers.org/storage/documents/nwclettersecwbrulemaking.pdf;
Letter to Chairman Schapiro explaining that Proposed Rules violate Congressional intent, https://www.whistleblowers.org/storage/documents/DoddFrank/11.22.2010lettertoschapiro.pdf;
Formal rulemaking letter with report entitled "Impact of Qui Tam Rules on Internal Compliance," https://www.whistleblowers.org/storage/documents/DoddFrank/12.18.2010secformalcommentupdated.pdf;
Letter to Commissioners explaining the proposed rules' impact on the ability of U.S. to enforce the Foreign Corrupt Practices Act, https://www.whistleblowers.org/storage/documents/DoddFrank/2.10.2011lettertocommissionersfcpa.pdf;
Letter to Chairman Schapiro responding to Chamber of Commerce's incorrect attacks of the NWC's December 17, 2010 report, https://www.whistleblowers.org/storage/documents/DoddFrank/3.7.2011lettertoschapiroreplychamber.pdf;
Letter to SEC with provision-by-provision analysis of proposed rules with suggested revisions and justifications for revisions, https://www.whistleblowers.org/storage/documents/DoddFrank/3.17.2011lettertosecrulerecommendations.pdf;
Letter to Chairman Schapiro and Gensler regarding the impact of the first reported decision under the Dodd-Frank Acton the rulemaking process, https://www.whistleblowers.org/storage/documents/DoddFrank/5.16.2011lettertoschapiroandgensler.pdf.

[8] NWC was cited over 40 times in the SEC *Federal Register* notice approving the final rules. *See* Whistleblower Incentives and Protections, https://www.kkc.com/assets/site_18/files/sec-final-rules-for-dodd-frank.pdf.

[9] *See* NWC *Amicus* Brief filed in *Digital Realty Trust v. Somers*, https://www.kkc.com/assets/site_18/files/nwcsomersamicus.pdf.

[10] Stephen M. Kohn. *Digital Reality V. Somers May Kill Corporate Compliance*. 2017 https://www.kkc.com/news/?id=637 ; Kohn. *Clarifying Anti-Retaliation Protections Under Dodd-Frank*. 2017 https://www.kkc.com/news/?id=636. *Kansas Gas & Electric v. Brock*, 780 F.2d 1505 (10th Cir. 1985, https://www.kkc.com/assets/site_18/files/kansas-gas-electric-v.-brock-780-f.2d-1505.pdf.

[11] See https://www.sec.gov/news/pressrelease/2015-54.html#.VRwcovnF_To ; https://www.whistleblowersblog.org/2015/04/articles/corporate-whistleblowers/sec-sanctions-kbr-for-illegal-non-disclosure-agreement/.

10% Rate Cap

The SEC's proposed rate-cap is a drastic step in the wrong direction. Whistleblower laws that have capped rewards have universally failed and there is not a single whistleblower award program that has a cap on awards that is successful. For example, the Financial Institution Reform, Recovery, and Enforcement Act (FIRREA) capped rewards at over $1 million.[12] That law has been virtually ignored by potential whistleblowers since it was enacted years ago, resulting in the prior administration's Attorney General calling for an end to these caps.[13] Other whistleblower award laws that lack mandatory awards and/or cap awards have universally failed, as there is no incentive for whistleblowers to risk their careers to file complaints with the government under these ineffective programs.[14]

The SEC's proposed 10% cap on large whistleblower rewards will be the greatest rulemaking setback for whistleblowers under *qui tam* or other reward programs since the FCA's *qui tam* amendments were enacted in 1986. It will have a devastating impact on the deterrent effect of the DFA, a law designed to discourage corruption on Wall Street by incentivizing informants to disclose criminal activity. It will discourage potential whistleblowers in many of the largest or most important financial fraud cases.[15] The cap would send the wrong message to both fraudsters and employees contemplating taking the risk of blowing the whistle on major corporate and financial fraud.[16]

Our firm has significant experience working with reluctant employees who must decide whether or not to risk their careers (and even their freedom, if they reside in certain countries) to expose corporate crimes and major financial fraud. For example, our firm represented Swiss bank whistleblower Mr. Bradley Birkenfeld, whose historic case achieved unprecedented reforms concerning illegal offshore banking, money laundering, and tax evasion.[17] In 2012, Mr. Birkenfeld obtained the largest monetary award provided to an individual whistleblower, $104 million. Unquestionably, the payment of this large award has been the primary motivating factor that caused several whistleblowers we represent who reside in dangerous countries and/or who hold high-level corporate positions, to blow the whistle. Although Mr. Birkenfeld's case had a direct impact on the willingness of highly placed employees to become whistleblowers in the tax cases, it impacted the willingness of whistleblowers to step forward in other areas, such as the Foreign Corrupt Practices Act ("FCPA") and other serious securities law violations by high-level executives and corporations. Based on our experience, the size of Birkenfeld's award is the primary reason many employees agree to take risks involved with whistleblowing, regardless of the level of position they hold or the country in which they reside. Indeed, there are several other potential

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[12] 12 U.S.C. §§ 4201-10.

[13] https://www.politico.com/story/2014/09/eric-holder-wall-street-whistleblower-reward-111056 ("Risky behavior is creeping back into the financial industry six years after the 2008 crisis and Congress could do more to help prosecutors combat emerging crimes, including increasing the amount of reward money paid to whistleblowers, U.S. Attorney General Eric Holder said in a speech on Wednesday.").

[14] *See, e.g.,* 10 U.S.C. § 1031(g).

[15] Stephen M. Kohn. *The Problem with SEC's Plan To Cap Whistleblower Awards*. 2018 https://www.kkc.com/news/?id=651.

[16] *CFTC Announces Its Largest Ever Whistleblower Award of Approximately $30 million*. July 12, 2018. https://www.cftc.gov/PressRoom/PressReleases/7753-18.

[17] *Meet the Whistleblower*: Bradley Birkenfeld https://www.kkc.com/whistleblowers/?id=41.

whistleblowers we have spoken with who have forgone blowing the whistle even with the current financial incentives that exist because they view the risk-to-reward-ratio too steep a hill to climb.

Significantly, the size of the Birkenfeld award achieved two purposes. First and foremost, it sent a message that the United States was serious about paying awards. Many employees are skeptical about ever receiving a payment. Adding to this skepticism is the popular culture surrounding whistleblowing, which contradicts any expectation that the government will treat them properly: most news articles about whistleblowing concern retaliation and the destruction of a whistleblower's career. Furthermore, because of the high-profile nature of some of the leak-related stories, many whistleblowers fear government prosecution, knowing that whistleblowers have been criminally prosecuted and imprisoned, even if the whistleblower subjectively believes he or she is serving the public interest.[18] These factors weigh heavily against an employee ever taking the enormous risk that nearly all whistleblowers confront.

The payment of the large reward in the Birkenfeld case has enabled our firm to counter these messages. We can explain to potential whistleblowers that if whistleblowing is done lawfully, and information is provided to agencies such as the IRS or SEC, the U.S. government will be their friend and supporter. We can further explain that stereotypes of employees who raise concerns, as well as the government's so-called "War on Whistleblowers," are not applicable to the SEC program. Nothing permits us to make these arguments better than pointing to the Birkenfeld whistleblower award. It is our #1 argument that convinces skeptical employees to trust working with U.S. law enforcement.

The Proposed Rule sends the opposite message. It tells whistleblowers that agencies like the SEC are interested in reducing awards or using their administrative powers to find technical reasons for denying rewards. It creates an appearance of bias against whistleblowers, especially in light of the fact that there are no caps on executive compensation or other profit-based motives that proliferate the culture within the financial services industry. The proposed rule sends a message that agencies will use legal tactics to reduce awards, even outside the 10%-rate cap. The message the rule sends is that whistleblowers, who suffer so much serving the public interest, are unworthy of large awards, while others on Wall Street, who commit crimes or whose actions are purely selfish or greed-driven, have no caps on their salaries, and are often paid massive salaries and bonuses.

The risks facing Wall Street whistleblowers are enormous. An employee marked as a whistleblower risks losing his or her place in these highly-compensated labor markets. Even if the whistleblower is not currently a high-earning executive or money manager, the whistleblower usually forfeits the opportunity to ever obtain those levels of compensation or status within the financial services or corporate job markets.

[18] We appreciate the fact that a publicly identified whistleblower has never served as an SEC Commissioner, nor to our knowledge held a high-level management position in the SEC. But regardless of this lack of subjective experience, the Commission's Office of the Whistleblower has demonstrated sensitivity to the issues faced by whistleblowers. Prior to the publication of the Proposed Rules, the Office of the Whistleblower proudly publicized its handful of large rewards. That practice sent the right message. Large rewards do motive whistleblowers, some of whom will report massive criminal activity, often condoned (and supported) by top corporate officials. .

Additionally, the Proposed Rule indicates that the SEC is changing its enforcement priorities and is previous strong commitment toward whistleblowers. By establishing a 10% rate cap rule in cases over $30 million, the SEC is sending a message that it is not willing to fully compensate whistleblowers who might know about the largest and most significant frauds. Many whistleblowers have already reported big corporate and securities fraud schemes that exceed $100 million and many of those whistleblowers took huge risks in deciding whether to even report that fraud. The Commission clearly does not want to convert its program into one that emphasizes the reporting of smaller frauds, while it disincentives well placed informants risking their careers to report the largest frauds. The policy the Commission must advance is simple: The larger the suspected fraud, the larger the inducement to blow the whistle.

The Commission's proposed 10% rate cap rule has already sent a harmful message to potential whistleblowers and should be immediately withdrawn and repudiated. Whistleblowers are well aware of the substantial delay in recovering a reward and are equally aware of the small percentage of claims that ultimately result in a reward. Given these headwinds, capping a reward at this juncture will have a devastating impact on the number of whistleblower willing to come forward.

In analyzing the impact of the Birkenfeld case, it becomes very clear how the public benefits from large whistleblower rewards. Mr. Birkenfeld's case demonstrated, beyond any doubt, that large rewards can have a remarkable impact on protecting the public interest and forcing corporations to implement reforms. The Commission must look beyond its preconceived notions about paying large awards to whistleblower, and the clear prejudices corporate executives have against paying large rewards, and objectively consider what is necessary, in practice, to make whistleblower rewards work in practice. Whistleblower laws need to be effective tools for detecting, deterring, and eradicating corruption.

The positive impact of Mr. Birkenfeld's whistleblowing is clear. The IRS, in evaluating his eligibility for an award under the U.S. tax laws, explained why they were approving the largest-ever individual whistleblower reward:

> *Birkenfeld provided information on taxpayer behavior that the IRS had been unable to detect, provided exceptional cooperation, identified connections between parties to transactions (and the methods used by UBS AG), and the information led to substantial changes in UBS AG business practices and commitment to future compliance. The actions against UBS AG and the attendant publicity also contributed to other compliance programs. Each of these factors could support an increase in the award percentage above the statutory minimum. The comprehensive information provided by the whistleblower was exceptional in both its breadth and depth.* ***While the IRS was aware of tax compliance issues related to secret bank accounts in Switzerland and elsewhere, the information provided by the whistleblower formed the basis for unprecedented actions against UBS AG, with collateral impact on other enforcement activities and a continuing impact on future compliance by UBS AG.***[19]

[19] IRS Summary Reward Report. https://www.kkc.com/assets/site_18/files/whistleblowers/birkenfeld-award.pdf (emphasis added).

In 2009, capitalizing on the fear of detection triggered by Mr. Birkenfeld's disclosures, the IRS launched an *Offshore Voluntary Disclosure Program*, allowing taxpayers with undisclosed offshore accounts to self-report their crimes, reduce their penalties, and possibly avoid criminal prosecution. As of 2018, more than 56,000 delinquent taxpayers had come forward and the IRS had collected $11.1 billion in back taxes.[20]

Numerous other Swiss bankers were also motivated by Birkenfeld's historic whistleblower payment and started to blow the whistle on their banks. As of 2014 nearly every Swiss bank had executed a settlement or plead guilty to tax crimes, often on the basis of whistleblower disclosures.[21] In addition to the $11.1 billion collected from individual tax cheats, the United States collected an additional $5.09 billion from numerous Swiss banks.[22] Thus, triggered by one whistleblower, the largest fraud prosecutions in U.S. history were successfully completed, and the U.S. taxpayers have, to date, recovered $16.19 billion. [23]

The Swiss banking industry quickly realized the impact of paying a whistleblower a $104 million award would have on other employees working in that industry. Days after the Birkenfeld award was announced, bankers and their consultants held a major industry meeting in Geneva, Switzerland. At this meeting, the attendees "seethed" at Birkenfeld and attacked his "total lack of morality" for blowing the whistle on them. According to a reporter from *Agence France-Presse* who attended the meeting, Birkenfeld had "driven the nail into the heart of the once seemingly invincible Swiss bank secrecy" system. A respected banking consultant was reported declaring that their U.S. client offshore banking program was "over."[24]

The day after the Birkenfeld award was announced, the publication *SwissInfo*[25] reported on the reaction to the award in the Swiss newspapers and published the following summarizes of these Swiss press stories:

> *The Blick tabloid newspaper said…it proves how ruthlessly US officials are pursuing tax evaders and how determined they are to dry up tax havens.*

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[20] *IRS to end offshore voluntary disclosure program; Taxpayers with undisclosed foreign assets urged to come forward now*, March 13, 2018. https://www.irs.gov/newsroom/irs-to-end-offshore-voluntary-disclosure-program-taxpayers-with-undisclosed-foreign-assets-urged-to-come-forward-now.

[21] Department of Justice, *Swiss Bank Program*. https://www.justice.gov/tax/swiss-bank-program.

[22] Stephen M. Kohn. *13.769 Billion Reasons to Thank Whistleblowers on Tax Day*, April 18, 2016. https://www.whistleblowersblog.org/2016/04/articles/tax-whistleblowers/13-769-billion-reasons-to-thank-whistleblowers-on-tax-day/.
IRS Offshore Voluntary Disclosure Efforts Produce $6.5 Billion; 45,000 Taxpayers Participate. https://www.irs.gov/newsroom/irs-offshore-voluntary-disclosure-efforts-produce-65-billion-45000-taxpayers-participate.

[23] The impact of Mr. Birkenfeld's whistleblowing, and the IRS's payment of the $104 million award, continues to reverberate in Switzerland. On July 19, 2018 the Swiss publication *SwissInfro* reported on another Swiss bank reaching a settlement with the Department of Justice, and agreeing to pay a $5 million sanction. https://www.swissinfo.ch/eng/business/-5-million-fine_swiss-bank-settles-us-tax-evasion-probe/44267588.

[24] Stephen M. Kohn, *The New Whistleblower's Handbook: A Step-by-Step Guide to Doing What's Right and Protecting Yourself*, 3rd ed. (Guildford, CT: Lyons Press, 2017). Pg. 89.

[25] Bradley, Simon. "Birkenfeld reward may tempt other bankers." *SwissInfo*, Sep. 12, 2012. https://www.swissinfo.ch/eng/whistleblower-payoff_birkenfeld-reward-may-tempt-other-bankers/33500198.

> *Zurich's Tages-Anzeiger went further describing it as a "seductive offer for bankers." "This enormous reward show how the US are raising the stakes in their tax fight with Switzerland…in promising such high compensation the IRS are hoping that more incriminating material is handed over."*
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> *The French-speaking daily Le Temps agreed that Birkenfeld's huge reward could encourage other bank employees to follow his example.*

It was clear to these industry leaders that Swiss bankers could make far more money turning in their U.S. clients, rather than servicing them. Eventually, all known illegal U.S. accounts in Switzerland were closed, and *billions upon billions* of dollars in monies formally held in illegal offshore accounts were repatriated to the U.S. economy. These monies will be taxed forever and become part of the lawful U.S. economy.

In a 2014 article in the *Villanova Law Review*, University of California-Davis professor of law and Chairman of the IRS Advisory Council Dr. Dennis J. Ventry described the "collateral impact" Birkenfeld's case had on Swiss bank secrecy: "'Collateral impact' hardly does justice to the effect of Birkenfeld's whistleblowing." He not only triggered the "UBS debacle," but also "everything that followed," including "more than 120 criminal indictments of U.S. taxpayers," "additional indictments against foreign bankers, advisor, and lawyers," "closure of prominent Swiss banks—including the oldest private bank," other persons "ratting out banks," and "banks themselves disclosing the names and accounts of [US] clients.[26]

Professor Ventry also discussed the deterrent effect of whistleblowing, citing to specific studies:

> *Whistleblowers can do more than just uncover and report knowing violations of the law. They can also prevent noncompliance from happening in the first place. An effective whistleblower program (run either through a state's FCA or as a standalone statute) would add significant risk to noncompliance by increasing the probability of detection and the likelihood of potential penalties, the two most important variables in traditional tax deterrence models. In turn,* ***increased aversion to noncompliance—due to increased fear of detection*** *and palpable penalties as well as additional variables such as moral, ethical and reputational inputs—would result in increased revenue collection…*

Professor Ventry (emphasis added). [27]

The Birkenfeld case was the trigger that ultimately resulted in the entire Swiss banking industry changing its practices concerning illegal and undeclared private banking. As reported in the July 19, 2018 edition of *SwissInfo:* "The tax evasion battle between the Swiss financial sector and the DOJ began a decade ago when whistleblower Bradley Birkenfeld provided evidence that his former employer, UBS, was helping wealthy Americans evade taxes . . . . The tax evasion spat as a whole forced Switzerland to end its tradition of providing strict banking secrecy, a practice

[26] Ventry Jr., Dennis. *Not Just Whistling Dixie: The Case For Tax Whistleblowers In The States*. 59 Villanova Law Review 425 (2014).
[27] Id.

that had shielded foreign tax evaders from the scrutiny of their home tax authorities." *SwissInfo*, "Swiss Bank Settles US Tax Evasion Probe." [28]

This is the power of anti-fraud whistleblowing. These are the kind of fraud-deterrence and compliance results Congress wanted to achieve when it passed the DFA. The absolutely essential cornerstone to the Birkenfeld case was the incredibly insightful decision of the IRS to pay Mr. Birkenfeld a 26% award based on *all* of the back taxes and penalties paid by UBS. The IRS Office of the Whistleblower fully understood the positive impact a widely publicized award would have on its program, and its ability to ensure that the voluntary disclosure program was effective and that other whistleblowers would step forward. Significantly, IRS officials strongly encouraged Mr. Birkenfeld's counsel to call widespread attention to the award.

Prior to the Birkenfeld case and the effective implementation of an international reward program, all attempts to crack Swiss bank secrecy had failed, or were inconsequential in comparison. It was the fear of detection that triggered the unprecedented repatriation of offshore monies to the United States.

This is precisely why Attorney General Eric Holder called for eliminating the caps on the FIRREA. Based on the history of the non-capped reward programs, the former Attorney General supported "modifying the FIRREA whistleblower provision," to mirror the False Claims Act in order "to increase its incentives for individual cooperation." He pointed out that lifting the caps on FIRREA "could significantly improve the Justice Department's ability to gather evidence of wrongdoing while complex financial crimes are still in progress – making it easier to complete investigations and to stop misconduct before it becomes so widespread that it foments the next crisis."[29]

Since the passage of the FCA, no whistleblower law has been amended to impose a cap on rewards. Likewise, no regulatory agency ever imposed a rate-cap by rule ore regulation. The movement has been in the precise opposite direction, as evidenced by the support within the Department of Justice to eliminate caps in FIRREA.

In regard to the integrity of the Investor Protection Fund (the special fund established to compensate whistleblowers), Congress ensured that monies would be available to compensate whistleblowers directly from the monies obtained in cases for which the whistleblower was responsible, regardless of the amount of money in the Fund. *See* 15 U.S.C. § 78u-6(g)((3)B). Furthermore, Congress explicitly prohibited the Commission from taking into consideration the amount of money in the Fund when deciding an appropriate award. 15 U.S.C. § 78u-6(c)(1)((B)(ii)("In determining the amount of an award . . . the Commission . . . shall not take into consideration the balance of the Fund.").

Finally, in its justification for the 10% cap, the Commission pointed to old non-binding instructions from the Department of Justice permitting the department to take the size of a potential reward

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[28] https://www.swissinfo.ch/eng/business/-5-million-fine_swiss-bank-settles-us-tax-evasion-probe/44267588.

[29] Attorney General Holder Remarks on Financial Fraud Prosecutions at NYU School of Law https://www.kkc.com/assets/site_18/files/firrea_ag-holders-speech-sep-17-2014.pdf. Although the cap on FIRREA awards is low, the financial limitations that triggered the former Attorney General's concerns are equally applicable to the impact on whistleblower-perceptions caused by any caps.

into consideration in setting the percentage of reward given to the whistleblower. This non-binding memorandum is *not* a formal rule and lacks the force and effect of law. It is also completely inapplicable in the context of the DFA. Under the FCA, a whistleblower who does not agree with the percentage of his or her award can challenge that percentage in Court. In fact, the whistleblower has standing to oppose any settlement between the United States and the fraudster on the basis that the settlement was not "fair, adequate, and reasonable."[30] These challenges are not ancillary to an FCA case. A whistleblower has standing to challenge the entire settlement between the United States and a fraudster on the basis that his or her reward is not large enough. Thus, whistleblowers have strong due process rights in FCA cases, and have the right to argue before a judge that their awards should be paid at the highest rate. These due process protections have resulted in the settlement of most issues related to the size of a whistleblower's award, and there are very few public disputes over the "relator share" in FCA cases.

The DFA is completely different. The percentage award granted by the Commission is not subject to appeal, as long as the whistleblower is awarded 10% of the collected proceeds. Still, it is not uncommon for multiple whistleblowers to emerge to find that this 10% share must be divided between multiple whistleblowers. Under the FCA, there is a "first to file" rule, which essentially guarantees that the first whistleblower who comes forward will recover not less than 15%.

In the DFA Congress prohibited whistleblowers from challenging the percentage of an SEC award in Court. Thus, in practice, the SEC's decision to reduce rewards will be difficult, if not impossible, to challenge. However, imposing an arbitrary cap will likely increase judicial appeals, as whistleblowers can challenge the legality of the rule. If judicial challenges to the rate-cap rule are not successful, rewards will be arbitrarily reduced regardless of the hardships whistleblowers suffer. Thus, regardless of the impact of retaliation on their income, years of delay in obtaining compensation, the nature of their contributions to the public interests and/or the emotional distress triggered by the experience of becoming a whistleblower, the Commission staff will rely on the rule to cut rewards.

The arbitrary nature of the cap is reinforced by the scientific literature that demonstrates the severe stress suffered by whistleblowers, even those who obtain large *qui tam* awards.[31] Once the rate-cap is imposed, the Commission will not be able to effectively waive the cap in cases of documented hardship. First, it is the difficult to prove emotional distress damages like those documented in the *New England Journal of Medicine.* Would the SEC require whistleblowers to produce medical or psychiatric records? Would the Claims Review Staff hold hearings on the damages suffered by claimants that would support waiving the rule? Second, any work-around the rule would trigger more delays in deciding cases and waste Commission staff time. It would impose additional burdens on claimants, and potentially force them to produce embarrassing or private information. By following the clear intent of Congress the Commission should continue its policy of paying rewards under the current rules, and using these rewards to stimulate additional strong disclosures and deter misconduct.

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[30] *See* 30 U.S.C. § 3730(c)(2)(B).

[31] Kesselheim, Aaron S., Studdert, David, and Mello, Michelle. *Whistle-Blowers' Experiences in Fraud Litigation against Pharmaceutical Companies*, 2010. The New England Journal of Medicine. https://www.nejm.org/doi/full/10.1056/NEJMsr0912039

***Digital Realty* and Internal Disclosures**

The SEC justified issuing the Proposed Rules due in part to the Supreme Court's decision in *Digital Realty Trust, Inc. v. Somers.*[32] As stated in the rulemaking proposal: "The amendments that we are proposing to this rule are in response to the Supreme Court's recent decision in *Digital Realty Trust, Inc. v. Somers*." In that decision, the Court held that Section 21F(a)(6) of the Exchange Act required that individuals report securities law violations to the SEC to be considered a "whistleblower" under the DFA. The Proposed Rule conforms the anti-retaliation provisions of the SEC's rules to the Supreme Court's decision. It requires that whistleblowers provide information to the Commission, and disqualifies employees who only report their concerns to internal compliance programs from protection under the DFA. However, the Commission ignored the impact of that decision on other rules related to internal reporting requirements. The Commission rules that encourage internal reporting under the DFA, or force various classes of employees to report internally in order to be classified as a "whistleblower" under the DFA, are now, at best, inconsistent with *Digital*. Given the unanimous ruling of the Supreme Court, these rules violate the DFA, and could now be successfully challenged in Court. The Commission must review all of its DFA rules regarding internal reporting, and amend these rules to be consistent with the ruling in *Digital*.

When the Commission issued its final DFA rules in 2012, it had been heavily lobbied by the Chamber of Commerce, corporate lawyers, trade organizations and publicly traded companies to ensure that the DFA not undermine corporate compliance. The Commission responded to this intense lobbying effort by enacting specific rules covering internal whistleblowing. On the one hand, they issued a rule to strongly protect employees who work in or report to compliance programs from retaliation. On the other hand, they issued a number of rules to promote internal reporting, going so far as to restrict the right of some employees to report directly to the Commission. All of the rules promoting internal reporting and restricting the rights of employees to directly report concerns to the Commission were predicated on the Commission's understanding that as part of its rulemaking authority, it had the power to override the Congressional mandate that all individuals should be encouraged to report directly to the Commission.

The U.S. Supreme Court unanimously struck down this interpretation of the DFA. The Court held that the Commission lacked authority to protect internal whistleblowers. If the Commission lacked the authority under the DFA to protect internal whistleblowers, it follows that the Commission likewise lacked the authority to encourage or require internal reporting. It is a clear abuse of discretion for the SEC to encourage activity which would leave employees unprotected under the DFA's anti-retaliation law. As confirmed by the Supreme Court, the DFA is perfectly clear. It was designed to encourage reporting directly to the SEC. The Commission must now conform all of its DFA whistleblower rules regarding internal whistleblowing to that mandate.

In this rulemaking proceeding the Commission *must* eliminate all provisions of the rules that promote internal reporting, at the expense of directly reporting concerns to the Commission. Furthermore, the Commission *must* rescind all restrictions on various classes of employees who, unquestionably, have a right to report their concerns directly to the Commission, even if they work

[32] 138 S. Ct. 767 (2018).

as auditors or directors. The Supreme Court clarified that the "core purpose" of the DFA was to encourage direct reporting to the Commission, not to promote internal compliance programs.[33]

In *Digital* the Supreme Court explained its reasoning:

> Dodd-Frank's purpose and design corroborate our comprehension of §78u–6(h)'s reporting requirement. The "core objective" of Dodd-Frank's robust whistleblower program . . . is "to motivate people who know of securities law violations to *tell the SEC*," S. Rep. No. 111–176, at 38 (emphasis added). By enlisting whistleblowers to "assist the Government [in] identify[ing] and prosecut[ing] persons who have violated securities laws," Congress undertook to improve SEC enforcement and facilitate the Commission's "recover[y] [of] money for victims of financial fraud." *Id.,* at 110. To that end, §78u–6 provides substantial monetary rewards to whistleblowers who furnish actionable information to the SEC. *See* §78u–6(b).
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> [The SEC before the Supreme Court] express concern that our reading would jettison protection for auditors, attorneys, and other employees subject to internal-reporting requirements. See Brief for Respondent 35; Brief for United States as *Amicus Curiae* 21. Sarbanes-Oxley, for example, requires auditors and attorneys to report certain information within the company before making disclosures externally. *See* 15 U. S. C. §§78j–1(b), 7245; 17 CFR §205.3. If the whistleblower definition applies, Somers and the Solicitor General fear, these professionals will be "le[ft] . . . vulnerable to discharge or other retaliatory action for complying with" their internal-reporting obligations. Brief for United States as *Amicus Curiae* 22 (internal quotation marks omitted).
>
> **Our reading shields employees in these circumstances, however, *as soon as they also provide relevant information to the Commission*. True, such employees will remain ineligible for Dodd-Frank's protection until they tell the SEC, but this result is consistent with Congress' aim to encourage SEC disclosures. . . .**

[33] We note that the Commission's attempt to balance the Chamber of Commerce's former policy of promoting internal compliance with the clear mandates of the DFA to encourage direct reporting to the SEC were noble and well-reasoned. As the Commission is aware, our firm represented the NWC in its brief before the Supreme Court in defending the Commission's rule filed in the *Digital* case. However, the Chamber of Commerce and other industry leaders took an opposite view. Despite the arguments raised by the Commission, the NWC and counsel for Mr. Somers, the Supreme Court issued a clear and unequivocal ruling that now must be fully implemented. The Proposed Rule takes a haphazard approach, and only amends the rules that explicitly helped whistleblowers, but keeps in place rules that help potential retaliators, placing whistleblowers at risk and undermining the intent behind the DFA. The Supreme Court's decision in *Digital* cannot be selectively implemented. In its brief before the Supreme Court the Chamber of Commerce identified itself as "the world's largest business federation" representing "300,000 direct members" and "indirectly" "the interests of more than three million companies and professional organizations of every size, in every industry sector, from every region of the country." Not one member of the Chamber protested the position taken by its representative. Not one member filed a brief before the Supreme Court explaining the importance of protecting internal whistleblowers in order to ensure the integrity of corporate compliance programs. *See Amicus* Brief of the U.S. Chamber of Commerce, https://www.kkc.com/assets/site_18/files/blog/chamberamicussomers.pdf.

> Overlooked in this protest is **Dodd-Frank's core objective: to prompt reporting to the SEC.** *Supra,* at 3–4, 11. In view of that precise aim, it is understandable that the statute's retaliation protections, like its financial rewards, would be reserved for employees who have done what Dodd-Frank seeks to achieve, *i.e.,* they have placed information about unlawful activity before the Commission to aid its enforcement efforts.

Digital, 138 S.Ct. 767 (2018) (emphasis added).

Thus, the "core objective" of the DFA is to encourage employees to report directly to the SEC. Rules enacted by the SEC that conflict with this "core objective" are contrary to law and unenforceable.

The Chamber of Commerce and the regulated community petitioned the courts to strip internal whistleblowers of protection under the DFA. Having prevailed, the Chamber of Commerce and the regulated community must be held accountable to the full ramifications the loss of internal whistleblower protections triggered. The Director of the Office of the Whistleblower publicly warned the regulated community that they should be "careful about what they wish for" when urging the Supreme Court to strip internal whistleblowers of the rights under the DFA.[34] The Commission *must* conform *all* of it DFA whistleblower rules to the mandates of the Supreme Court, not just the anti-retaliation provisions.

These changes should be as follows:

First, existing rule 240.21F-6(a)(4) must be removed. This rule was intended to encourage employees to report concerns first to their internal compliance programs. However, as the Supreme Court has made perfectly clear, the core purpose of the DFA is to encourage employees to report directly to the SEC, and as such the Court held that the Commission was without legal authority to provide any protection to employees who report internally. The current rule not only has no support in law, but badly misleads employees. It encourages employees to file internally with companies, without warning them that if they do, they can lose *all* of the employment rights under the DFA. The rule flouts the explicit holding of the Supreme Court and undermines the Congressional intent behind the DFA, as explained by the Court. The rules on calculating the amount of an award must conform to the *Digital* mandate interpreting the "core purpose" of the DFA, and there is simply no place in this calculation for promoting internal reporting.

Second, Rule 240.21F-4(b)(4)(iii) must be deleted. This rule place restrictions on the right of certain employees, otherwise fully qualified as "whistleblowers" under Congress' definition of that term, to qualify for a reward. Under this rule, company directors, officers, auditors, and compliance officials could not report their concerns directly to the SEC, but instead would have to wait at least 120 days to file such a report.

Under the *Digital* decision these restrictions are clearly illegal. The DFA provided an explicit definition of "whistleblower" and set forth an explicit definition of those classes of persons

[34] Jane Norberg, quoted in Think *Advisor* (June 29, 2017*),* https://www.thinkadvisor.com/2017/06/29/sec-whistleblower-chief-be-careful-what-you-wish-f/?slreturn=20180617222357

excluded from the reward provisions. Directors, officers, auditors and compliance officials were not excluded from coverage under the DFA, and all are included within the definition of "whistleblower." These classes of employees often have the most significant evidence of corporate crimes and must be actively encouraged to blow the whistle.

The regulated community strongly argued that potential whistleblowers employed as directors, officers, auditors or compliance officials were not protected under the DFA if they simply reported their concerns internally. The Chamber of Commerce and the regulated community cannot now be heard to protest the impact of their own arguments, successfully raised in numerous courts.

The Commission must amend *all* of its DFA whistleblower rules to conform with the *Digital* decision.

Clarification of the Definition of "Compliance"

The *Digital* decision also opens up the question as to what precisely a corporate compliance program is. The current rules use the term "compliance" thirteen times. The Commission's publication of the Proposed Rules referenced internal compliance programs on pages 19, 41, 71, 73 and 134, and again used the term "compliance" without defining precisely what constitutes a corporate compliance program. Although it is well recognized that a company has wide discretion in creating a compliance program, a company's branding of a department with the title "compliance program" does not create a compliance department. For example, a company cannot transform its law department into a compliance department simply by calling one of the law department's sub-offices a "compliance" department.

It is absolutely essential that the Commission define the meaning of a corporate compliance program as understood in the DFA whistleblower rules and prohibit the practice of confusing a company's legal department with a company's corporate compliance program.

Circuit Judge Brett Kavanaugh made it perfectly clear in his decision in *In re Kellogg Brown & Root, Inc.*[35] that law departments within corporations have a duty to protect and defend their client (i.e. the corporation). These law departments serve a radically different purpose than an independent compliance program. Unlike an independent compliance program, law departments have the ability to keep information confidential from the United States government, even when that information may contain direct evidence of criminal activity.[36] This is so, even if the law department operates under the misleading title of "compliance."[37] As the Supreme Court

[35] *See In re Kellogg Brown & Root, Inc.,* 756 F.3d 754 (D.C. Cir. Jun. 27, 2014). https://www.kkc.com/assets/site_18/files/resources/in-re-kellogg-brown-root-no.-14-5055-jun-27-2014.pdf.

[36] The problems with the KBR decision were spelled out in a White Paper published by the Rand Corporation: Greenberg, Michael D., *Transforming Compliance: Emerging Paradigms for Boards, Management, Compliance Officers, and the Government*. Pgs. 61-65 https://www.kkc.com/assets/site_18/files/resources/rand-compliance-white-paper-2014.pdf.

[37] The Commission should review the entire record of the KBR case, in which the district court judge, *in camera*, reviewed documents that KBR maintained were attorney client privileged. *See U.S. ex rel Barko v. Halliburton Co.,* No. 1:05-cv-2276 (U.S. District Court for the District of Columbia). The district court discussed the contents of these documents in two decisions, and the materials being secreted by the law department clearly contained factual evidence of criminal activity and contracting fraud. The documents in question were created by non-lawyer

recognized in *Upjohn,* the legal department of a corporation has a duty to protect its client, even at the expense of the whistleblower.

As demonstrated by the underlying fact in *KBR*, compliance programs that are managed by attorneys have broad powers to suppress information and their conduct is not tied to any purported compliance functions performed by a corporation. The U.S. Court of Appeals for the District of Columbia Circuit permitted KBR to keep its compliance records secret despite the following uncontested findings by the district court:

> *The investigators prepared the documents to comply with government contractor regulations, specifically the Department of Defense regulation requiring contractors to discover and report improper conduct regarding Government contracts. Nothing suggests the reports were prepared to obtain legal advice. Instead, the reports were prepared to try to comply with KBR's obligation to report improper conduct to the Department of Defense.*
>
> ***
>
> *None of the documents give legal advice. Investigators, not attorneys, conducted the interviews and wrote the reports. The investigators wrote the reports when no litigation had been filed. KBR investigators wrote the reports and conducted the interviews to comply with federal defense contracting regulations, not to secure legal advice.*

U.S. ex rel. Barko v. Halliburton Co., 4 Supp.3d 162 (D.C.D.C. 2014), *reversed* 756 F.3d 754 (D.C. Cir. 2014).

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investigators for KBR's compliance program pursuant to the company's Code of Business Ethics. The D.C. Circuit overruled the district court's decision that the documents be produced in discovery based on its finding that the Iraq-based compliance program was ultimately managed KBR's Office of General Counsel in Houston. The compliance documents suppressed by the appeals court included evidence that subcontractors paid for by taxpayer money were given "preferential treatment," employees accepted payoffs to illegally steer business to an unqualified subcontractor, contracts were approved by KBR that were more expensive than those submitted by honest applicants, and where a preferred subcontractor had regularly tried to "double bill" the government. The suppressed documents included evidence that contracts were given that were twice as expensive as contracts offered by more qualified companies. S*ee U.S. ex rel. Barko v. Halliburton Co*., 37 F.Supp.3d 1 and 4 Supp.3d 162 (D.C.D.C. 2014), *reversed* 756 F.3d 754 (D.C. Cir. 2014). Despite this direct evidence of fraud, and despite the fact that employees provided this evidence to a department with the title of "compliance," Judge Kavanaugh ruled that the materials could not be produced in discovery, as they were, as a matter of law, the property of KBR's law department.

To make matters worse, the KBR compliance investigators utilized a non-disclosure agreement (NDA) that improperly restricted the right of the employees to blow the whistle. The Commission found that the NDA used in the KBR case also created a chilling effect on potential whistleblowing. KBR's nondisclosure agreements were eventually found void by the SEC (and KBR agreed to pay a fine based on the NDA the company used in the *Barko* case. *In re KBR,* SEC Ad. Action No. 3-16466 (4-1-15), https://www.kkc.com/assets/site_18/files/resources/in%20the%20matter%20of%20kbr,%20inc.,%20securities%20and%20exchange%20commission%20file%20no.%203-16466%20(april%201,%202015).pdf. However, Judge Kavanaugh permitted KBR to rely on this illegal NDA to meet its notice requirements under the *Upjohn* precedent. In other words, KBR was permitted to use an illegal NDA to silence employees, and still rely on that NDA as proof that the investigatory interviews should be covered under KBR's attorney-client and work product privileges.

Furthermore, a so-called compliance program managed by company attorneys can suppress critical facts demonstrating fraud. In the *KBR* case the district court judge explained why KBR wanted to keep its compliance documents secret:

> *KBR's embarrassment that its internal investigation raised major suggestions of bribery, raised major questions whether KBR employees were steering contracts to favored contractors, raised major questions whether KBR improperly approved change orders that sometimes doubled the cost of agreed contracts, and raised major questions why additional contracts were given to contractors who had miserably failed to complete earlier work.*

U.S. ex rel. Barko v. Halliburton Co., 4 Supp.3d 162, *reversed* 756 F.3d 754 (D.C. Cir. 2014).

Despite this evidence, the D.C. Circuit suppressed the release of these documents simply because the compliance investigators ultimately reported to the company's law department.

The DFA rules must make it clear that the term "compliance," when used to discuss a compliance program or a compliance officer, means an independent compliance program not subject to a corporate attorney-client or work product privilege. Whenever a compliance program is managed by the law office, the company can invoke its attorney-client privilege and, as KBR did in the *In re KBR* case, invoke that privilege and block the release of compliance documentation, including information provided by whistleblowers that may demonstrate fraud. Thus, the lawyer run compliance program is, as a matter of law, simply an arm of the law department, and should be classified under the rules for what it is. Under *In re KBR* there is simply no question that a legal department program entitled "compliance" has the discretion to conceal information and utilize its "compliance" program to collect information for the purpose of defending the company from an SEC regulatory investigation and to unmask the identity of internal whistleblowers. Corporate law departments can serve a legitimate purpose, but that purpose cannot be confused with a compliance program that is blessed by the Commission.

There is no public interest in the SEC encouraging employees to report information to the company's law department if that department has the full authority to hide the information it collects pursuant to the attorney-client and work product privileges.[38] Moreover, the Commission

[38] Inherent conflicts of interest exist whenever a compliance program is managed by attorneys. As explained by Jeffrey Eglash, Senior Counsel for General Electric, Gordon A. Greenberg, attorney with McDermott Will & Emery, and Professor Laurie L. Levenson, Chair of Ethical Advocacy Loyola Law School: "*Because of [the] risk to individual employees who cooperate in internal investigations, corporate counsel and outside counsel retained to conduct internal investigations must warn their interviewees that statements they make are subject to disclosure if the corporation decides to waive the privilege as to the statements. . . . At a minimum, a proper Upjohn warning informs the interviewee that: (1) the attorney is there to conduct a privileged and confidential interview of the employee; (2) the attorney represents the company, not the individual; (3) the company, not the individual, enjoys an attorney-client privilege with the attorney; and (4) the company may, as it sees fit, disclose the employee's information and statements to third parties, including the government.*" *See* ABA Section of Litigation Corporate Counsel CLE Seminar, February 11-14, 2010, "I am Not Your Lawyer: Best Practices Concerning Upjohn Warnings in Corporate Internal Investigations," *https://www.kkc.com/assets/site_18/files/resources/avoiding-the-pitfalls-of-internal-corporate-investigations-proper-use-of-upjohn-warnings.pdf*. SEC rules must carefully explain that attorney-managed "compliance" programs do not meet the definition of a compliance program, and furthermore

actually creates serious ethical and conflict of interest issues by promoting employee disclosures to company lawyers. As explained by U.S. Senator Charles Grassley: "It doesn't take a pig farmer from Iowa to smell the stench of conflict in that arrangement."[39]

This distinction is very important, as most corporations do not provide their employees with the notice required/recommended by the applicable bar associations. Specifically, the New York Bar fully understood that a lawyer-managed compliance program was in fact an arm of the company's law office, and non-lawyer intake officials were required to notify employees of this status. In New York Bar Ethics Opinion 650, the bar considered what type of warnings corporate compliance employees whose report to a company attorney must give to employees filing a concern with the lawyer-managed compliance program. They approved the following warning: "*If the caller is unrepresented by counsel"* the compliance intake officer should "*make the following statement*:"

> *I want to caution you that I am an attorney for the Company and not for you or other employees. Therefore, while I can record your complaint, I cannot and will not give you legal advice, and you should not understand our conversation to consist of such advice. I do advise you to seek your own counsel, however, as your interests and the Company's may differ. Having said this, I would be happy to listen to your complaint.*

This requirement is consistent with the rules of other state bar associations.[40] Moreover, the New York Bar guidance also instructed companies that have lawyer-managed compliance programs to decline accepting information from employees who are represented by counsel. Instead, these programs were advised to inform employees so represented to contact their own lawyers and have their lawyers communicate to the company's compliance program.

The current SEC rules have not been changed in light of either the *In re KBR* or the strong ethics guidance issued by the New York Bar. The New York Bar's ethics guidance became extremely relevant to the functioning of attorney-run compliance programs after the KBR decision. The SEC rules unintentionally mislead employees into cooperating with corporate law departments, without fully understanding that the program can be, in fact, simply a tool of the company lawyers. Furthermore, the SEC rules do not require lawyer-managed compliance programs to adhere to the controlling bar rules. Such lawyer-managed programs not only can keep critical information secret under the attorney client and work product privilege, but they can also use any information the obtain from or about the whistleblower to discredit the whistleblower or even make the whistleblower a scapegoat for the wrongdoing he or she reveals. It is absolutely imperative that the SEC clarify its rules as to the actual meaning of a compliance program, as distinct from a company law department.

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must explicitly instruct all regulated entities to ensure that employees are not confused by companies that fail to provide warnings to employees consistent with those set forth above, and the New York State bar recommendations.

[39] Kohn, *The New Whistleblower's Handbook*, p. 222.

[40] Jeffrey Eglash, *et al*., "Avoiding the Perils and Pitfalls of Internal Compliance Investigations: Proper Use of *Upjohn* Warnings, ABA Section of Litigation Corporate Counsel; D.C. Bar Ethics Op. 269; ABA Model Rules of Professional Conduct 4.2 and 4.3; Donna Boehme, "DOJ Tells HSBC and Corporate America: Reform Your Compliance Departments," *Corporate Counsel* (Dec. 20, 2012); Jacelyn Jaeger, "The Importance of Splitting Legal and Compliance," *Compliance Week* (December 2011).

Related Action

The Proposed Rule requires whistleblowers to directly provide their "original information" to agencies for which he or she may later seek a "related action" reward. Proposed Rule, p. 38.[41] Currently, there is no such requirement.

This Proposed Rule is highly problematic and should not be approved. First, the rule must conform to the actual language of the DFA. The DFA does not require whistleblowers to directly file information with agencies that could ultimately issue sanctions that quality as a related action. Because no such requirement exists in the statute, it would be an abuse of discretion to create new criteria restricting whistleblower rights.

In this manner, the Proposed Rule on "related action" is in conflict with the U.S. Supreme Court's recent decision in *Digital Realty v. Somers.* In interpreting the DFA, the Supreme Court concluded that when the DFA "includes an explicit definition, we must follow that definition, even if it varies from a term's ordinary meaning." Congress provided an explicit definition of "related action:"

> The term ''related action'', when used with respect to any judicial or administrative action brought by the Commission under the securities laws, means any judicial or administrative action brought by an entity described in subclauses (I) through (IV) of subsection (h)(2)(D)(i) that is based upon the original information provided by a whistleblower pursuant to subsection (a) that led to the successful enforcement of the Commission action.

15 U.S.C. § 76u-6(a)(5).

The current rules directly incorporate this definition:

> A *related action* is a judicial or administrative action that is brought by: (i) The Attorney General of the United States; (ii) An appropriate regulatory authority; (iii) A self-regulatory organization; or (iv) A state attorney general in a criminal case, and is based on the same original information that the whistleblower voluntarily provided to the Commission, and that led the Commission to obtain monetary sanctions totaling more than $1,000,000.

§ 240.21F-3(b)(1).

[41] The Commission rules also permit a whistleblower to qualify for a "related action" award if the SEC provides the sister-agency with the whistleblowers information. However, the whistleblower has no control over the Commission's decision to make such a referral, and also has no control over what information provided by the whistleblower is provided to the sister-agency. The whistleblower may never even be informed of this referral. Thus, as explained above, should this rule be implemented whistleblowers would be forced to provide information directly to all potential agencies that could conceivably issue a sanction qualifying as a related action in nearly every case, even if the SEC has already made the referral. Unfortunately, unlike the Commission's referral, if the whistleblower directly provides the information to the sister-agency, that disclosure will not be covered under the strict confidentiality rules of the DFA.

These definitions only require that the original information be directly provided by the whistleblower to the Commission, not to other federal or state agencies.

Under the DFA's explicit definition, when a "related" agency issues an order that relied on the original information provided by the whistleblower, regardless of whether or not the whistleblower directly provided that information to the agency, the whistleblower meets the definition necessary to qualify for a related action reward.

The DFA defines "original information" as "information that (A) is derived from the independent knowledge or analysis of a whistleblower; (B) is not known to the Commission from any other source . . . (C) is not exclusively derived from an allegation made in a judicial or administrative hearing [unless the source of that information is the whistleblower]." 15 U.S.C. § 76u-6(a)(3). The whistleblower is only required to provide the original information directly to the SEC. He or she is not required to submit his or her information, shotgun-style, to every federal or state agency that may also issue a sanction based on his or her information. The key to this rule is not who hands the whistleblower's information over to the sister-agency, but whether or not the sister-agency relied upon the whistleblower's original information. This is a factual analysis, not subject to the prophylactic rule proposed by the Commission.

Second, the Proposed Rule focuses on whether or not a whistleblower provided information directly to the agency that issued the related action sanction. However, this iron-clad rule is at war with Congress' clear instruction that the identity of the whistleblower must be protected. When an agency does not have a Whistleblower Office designed to protect the identity of a whistleblower, or specific binding regulations permitting the agency to accept confidential or anonymous whistleblower disclosures, the SEC simply cannot require whistleblowers to submit their information to those agencies, or risk losing their entitlement to a related action award.

Numerous federal and state agencies that could potentially issue sanctions covered under the "related action" provision do not have whistleblower offices, mandatory rules protecting confidential informants, and/or anonymity requirements consistent with the DFA. It would violate a central premise of the DFA to force a whistleblower to file his or her information with an agency that fails to provide confidentiality protections consistent with those in the DFA in order to qualify for a "related action" award.

Third, the Proposed Rule creates a prophylactic rule that will not fit every case. For example, there will be cases for which it is beyond dispute that a whistleblower's original information triggered the related action sanction, such as where the whistleblower's original information is provided to a sister-agency by agencies such as the Department of Justice (that protects the identity of confidential informants and often works together with the SEC on investigations, including those under the DFA). Additionally, whistleblowers may make disclosures to entities such as Congress, or provide testimony in a Grand Jury or in a shareholder lawsuit, that could result in a "related action" sanction by a regulatory agency. Thus, in cases for which there is a direct casual nexus between the "original information" provided to the Commission and the sanction issued by a sister-agency, a related action award must be given, even if the whistleblower did not personally provide the sister-agency with the information.

Finally, employees who work for publicly traded companies outside the United States can be essential sources of information. Based on numerous precedents concerning the extraterritorial jurisdiction of employment laws, most of these employees are not covered under the anti-retaliation protections afforded under the DFA or the Sarbanes-Oxley Act. *See Asadi v. G.E. Energy*, 2012 U.S. Dist. LEXIS 89746 (S.D. Tex. 2012). These employees would be at great risk if they were forced to file claims with state or federal agencies that had no whistleblower program, and no rules guaranteeing confidentiality. Worse still, in many countries providing information to U.S. law enforcement agencies may be illegal. These employees would risk not just termination, but imprisonment.

Consistent with the DFA, the SEC also cannot require whistleblowers to directly provide any information to any federal or state agency that does not have explicit (and enforceable) rules protecting whistleblowers' confidentiality. Even if the DFA did not explicitly define "related action," it would still be an abuse of discretion for the SEC to require any individual to provide information to a sister-law enforcement agency that fails to provide the same level of protection for whistleblowers as provided by DFA and SOX. This would include the strict confidentiality requirements and the right to file claims anonymously, as permitted under the DFA.

For these reasons, the Proposed Rule mandating that whistleblowers directly provide agencies outside the SEC with their whistleblower disclosures in order to qualify for a "related action" award must be withdrawn.

Delay and the Summary Decision Procedures

The most significant problem with the SEC's current whistleblower program is not the rare instance where a whistleblower obtains a large reward, but rather the prolonged delay in processing reward applications. These delays can drag on for years and based on our direct experience, can be as long as four (4) years and running. It is simply unacceptable that the Commission can take the duration of an entire Presidential term to decide on an award in a whistleblower case, *after* the Commission has completed its investigation into the underlying misconduct and collected the sanctions from the wrongdoer. Moreover, because the Commission staff would have directly worked with the whistleblower and/or used the whistleblower's "original information" to sanction the wrongdoer, the Commission should be in a position to expeditiously approve rewards.

When the SEC staff completes its investigation, and the Commission approves a sanction against a corporation the staff and its investigators know what individuals provided "original information" that contributed to the sanction. Obviously, the SEC employees directly involved in the case would clearly know who the real whistleblowers were, and would be in a position to immediately make recommendations to the Office of the Whistleblower as to who was qualified for a reward. In order to prevent undue delay the rules need to be amended to reflect this reality, and ensure that the reward process commence without undue delay.

The experience in FCA cases is analogous. As in the DFA, the FCA permits a reward for whistleblowers whose original information results in the United States obtaining a monetary judgment against a wrongdoer. Also, as in the DFA, the United States officials who investigated and/or prosecuted the FCA case would have very specific information as to who the whistleblower

was, and their contribution to the case. In both the FCA and DFA, the officials who participated in the investigation would be in a position to make recommendations as to the amount of payment a whistleblower should receive even before the final settlement is reached between the United States and the corporate wrongdoer.

But here is where the similarities end. Under the FCA, the whistleblower's reward is usually decided *before* the sanction against the corrupt government contractor is presented to a court for approval. This has been the practice in the FCA for 30-years, and there have been few problems with this practice, even in cases for which there are multiple whistleblowers and more than one FCA complaint filed. Whistleblowers are usually paid within days of the United States collecting the sanction from the wrongdoer.

Instead of following the FCA practice, the Commission's current rules permit any person to file an application (known as a WB APP) for a reward within 90 days of the posting that the Commission obtained a sanction against a wrongdoer. The WB APP merely commences a prolonged process of determining a whistleblower's award. Whereas in FCA cases the decision-making process regarding the payment of a reward is usually concluded *before* the sanction is obtained from the wrongdoer, in SEC cases, the collection of a sanction merely commences an internal and complex multi-layer adjudication that can take years to complete.

The Commission has now apparently realized that this free-for-all application process encourages frivolous filings, wastes Commission resources, and delays the processing of valid award applications. The Commission's proposed solution is to expedite the decision-making process for frivolous filings. This is understandable, but the Proposed Rules contain no reforms that address the root cause of these delays and does not directly address the long delays experienced in meritorious whistleblower cases. It is the delay in reaching a final decision in meritorious cases that should be of primary concern to the Commission.

The rules must be amended in order to ensure that undue delays are avoided, decisions are expeditiously rendered, and the Congressional intent behind the DFA is fulfilled. The solution offered by the Commission in the Proposed Rules is woefully inadequate to ensure that whistleblower reward decisions are not unduly delayed.

As a threshold matter, the Commission's current program violates the Administrative Procedure Act's requirement that administrative decisions in DFA cases not be "unreasonably delayed." 5 U.S.C. § 706(1). Likewise, section 922(d)(1)(C) of the DFA establishes a public policy that requires the SEC to act "promptly" when deciding applications for whistleblower awards. It requires that the SEC Inspector General review the Commission's actions as to "whether the Commission is prompt in . . . responding to . . . applications for rewards filed by whistleblowers."

In order to ensure that the Commission pays rewards in a timely manner consistent with the requirements of the Administrative Procedure Act and the Congressional intent reflected in section 922(d)(1)(C) of the DFA, Congress set aside $450 million to permit the Commission to immediately start paying awards. Congress sent a clear message that they wanted rewards to be paid in a timely manner as "the Committee…has determined that enforceability and relatively predictable level of payout will go a long way to motivate potential whistleblowers to come

forward and help the Government identify and prosecute fraudsters." The Restoring American Stability Act of 2010, S Rep. No. 111-176, 112 (2010). Nearly eight years after the passage of the DFA, the Commission still has not spent the initial funds allocated by Congress to pay awards.

Significantly, between FY 2012-17, the Commission has paid less in rewards then either the Department of Justice under the False Claims Act or the IRS under the tax whistleblower law. Based on the number of TCR and APP applications filed in Commission proceedings, there is no justification for the SEC to be lagging behind these other agencies, especially given the very liberal related action rules that expand the basis for the amount of potential rewards.

As stated above, the delays in issuing rewards is in violation of the requirements of the Administrative Procedure Act, Pub. L. 79-404, 60 Stat. 237 (1946) (codified at 5 U.S.C. § 551, *et seq*.). The APA makes it unequivocally clear that agency actions are to be conducted on a timely basis." Although the APA is over 70-years old, its legislative history is still instructive when deciding the meaning of "unreasonable delay" in section 706. During hearings held before the House Committee on the Judiciary, the following policy statements were issued on the record:

> "…**[I]t is the declared policy of Congress that administrative adjudications shall be made speedily**, and matters not susceptible of prompt informal disposition shall be set for formal hearing forthwith, and promptly heard, argued, and decided. "[42]

> "That no such person or party shall in any manner be made to suffer, through the subsequent exercise of administrative powers or otherwise, the consequences of any **unwarranted or avoidable administrative delay in determining any such matter**."[43]

While discussing another previous version of the bill during a May 3, 1946 meeting, the House Committee on the Judiciary elaborated on the meaning and purpose of a phrase inserted into the statute to ensure swift administrative action:

> "The requirement that agencies proceed 'with reasonable dispatch to conclude any matter presented' means that no agency shall in effect deny relief or fail to conclude a case by mere inaction, or proceed in dilatory fashion **to the injury of the persons concerned. No agency should permit any person to suffer injurious consequences of unwarranted official delay."**[44]

In the spring of 1946, the Senate held proceedings on the bill that would become the APA. Senator Edwin C. Johnson of Colorado placed onto the record an address discussing the bill by Allen Moore, a member of the Colorado bar. Mr. Moore's address reads, in relevant parts:

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[42] *Administrative Procedure: Hearing on H.R. 184, H.R. 339, H.R. 1117, H.R. 1203, H.R. 1206, and H.R. 2602 Before the H. Comm. on the Judiciary*, 79th Cong. 170 (1946).
[43] *Id.* at 178-79.
[44] H.R. Rep. No. 79-1980, at 264 (1946) (emphasis added).

> "**A second provision** [of the part of the bill that discusses ancillary matters] **is designed to do what is possible to remedy delays in the administrative process**, since '**expedition in the disposition of cases is commonly a major objective of the administrative process.'** It relieves the private parties from consequences of unwarranted or unavoidable administrative delay [and] provides that cases shall be promptly set and determined…"[45]

Remarks by Senator Adolph J. Sabath provide further evidence that Congress thought preventing administrative delay was of paramount importance when drafting the bill. Sabath remarked:

> "The object of the bill is, as I have stated, to improve the administration of rules and regulations made by the agencies under grants of power from Congress, and to establish uniformity of practice **so that any citizen may have his day in court with a minimum of delay and expense**."[46]

The concerns and policies reflected in this legislative history were unquestionably addressed in the final version of the Administrative Procedure Act, which granted persons (such as whistleblowers awaiting award determinations by the Commission) the right to challenge delays in federal court. Thus, the APA permits individuals to bring an action in federal court to "compel agency action unlawfully withheld or unreasonably delayed[.]" 5 U.S.C. § 706(1). Congress created this private right of action for parties appearing before administrative agencies to provide a remedy for administrative delay. The statute's legislative history confirms that its drafters sought to ensure that any party involved in an action before an administrative agency would not be burdened by crushing delays.

Forcing whistleblowers to wait years in order to obtain a reward has and will cause financial and emotional harm to whistleblowers.

In order to prevent undue delay, the current rules should be amended in a manner consistent with current practice under the FCA. As required under *Digital Reality* in order to qualify for a reward whistleblowers must provide their information directly to the SEC. Thus, the Commission's staff knows, well before issuing a sanction, the identity of every whistleblower who provided information to the SEC, and for which the SEC relied upon when issuing the sanction. The Commission is in a position to make their reward recommendations simultaneous with the Commission's approval of any sanction. The Commission should consider requiring the staff to make these recommendations immediately after the issuance of a sanction, and providing these recommendations to the whistleblowers for comment.

Like in FCA cases, the Commission staff and the whistleblower should also be encouraged to informally discuss the appropriate reward immediately after the Commission approves the sanction, and attempt to reach a stipulation on this issue. That stipulation, along with the SEC staff justification, can be immediately forwarded to the Claims Review Staff or the Commission for immediate approval.

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[45] S. Doc. No. 293, 79th Cong., at 333 (1946) (emphasis added).
[46] *Id.* at 345-46 (emphasis added).

Moreover, just as whistleblowers must adhere to strict timing requirements for filing TCR and APP applications, the SEC staff should similarly be bound by strict time requirements for approving reward applications. We strongly suggest that the Commission be required to approve all reward applications within 90 days of the issuance of the sanction for which the Commission action was based, and that other policies and procedures to amended to accommodate this 90 day requirement.

Finally, the Commission should adopt a rule requiring that all whistleblower rewards be paid in the fiscal year for which the collected proceeds/sanctions are obtained. This will help ensure that the Investor Protection Fund can directly use the sanctions obtained from the whistleblower cases to pay rewards, and not require the Commission to obtain these funds from other sources as would be required under 15 U.S.C. § 78u-6(g)(3)(B).

Adjudication of "Related Action" and "Commission Action" Proceedings

When adjudicating reward applications, the Commission should not combine its decision-making process concerning a "related action" with its decision-making process related to "Commission actions." Combining these two proceedings can result in prolonged delays, as the decision-making process in a related action proceeding can be distinct from a Commission action proceeding.

Reward determinations based on final orders issued by the SEC (i.e. a "Commission Action") are far easier to decide then those based on sanctions obtained by a separate state or federal agency (i.e. a "related action"). Because the Commission is fully aware of who filed a TCR complaint and knows how that information was used during the investigation the Commission has the ability (and responsibility) to issue an immediate preliminary determination. Given the fact that the Commission knows who the valuable whistleblowers were, the Commission must render Commission action awards within the 90 day time period outlined above. The same may not be true for a "related action" award.

First, in order for a related action to be paid, the whistleblower must qualify for a reward under the "Commission action" rules. Related action awards can only be paid if the SEC obtains a sanction of $1 million or more in an SEC proceeding, regardless of the amount of penalty obtained by a sister-agency. Thus, the SEC must always initially render a decision on the Commission action before turning to the related action. There is simply no reason to delay issuing the determination on the Commission action award, as that decision is a condition precedent for a related action claim.

Second, a related action claim may become ripe well after the Commission action claim. For example, the DOJ could issue a related action sanction months or years after the Commission issued its sanction. There should be no delay in immediately processing the Commission action decision, even if the related action sanctions were approved shortly after the Commission action ruling.

Third, a related action adjudication will almost always take more time than a Commission action. In regard to Commission actions, the staff of the SEC will have all of the information normally necessary to decide a Commission action case. Whereas, in order to decide a related action claim,

the staff of the SEC may have to reach out to another federal or state agency for information, a matter that would cause delay.

Fourth, if the Commission action is denied, there is simply no reason to spend any time deciding the related action claim, as a related action is subordinate to the Commission action and can only be granted if the whistleblower has a valid Commission action.

Fifth, because the related action concerns actions taken outside of the SEC's direct knowledge, deciding level of contribution or reward will almost always be more difficult than in a Commission action.

Sixth, the related action award need not be paid at the same percentage as a Commission action award. Thus, a related action award may need to undergo a separate decision-making process to determine the rate of payment, which would almost always cause delay in issuing a Commission action award.

The existing regulations already call for two separate proceedings when deciding Commission and related action, and there are no provisions permitting the two proceedings to be consolidated. 17 C.F.R. § 240.21F-10 (Commission action adjudications); 17 C.F.R. § 240.21F-11 (related action adjudications). Currently, there are separate application and appeal procedures set forth for these rewards. Also, the percentage paid to a whistleblower for a Commission Action and a related action proceeding are not tied-together.[47] Finally, the Commission's current regulations specifically mention that "[a]dditional procedures apply to the payment of awards in related actions."[48]

Because the issues on appeal concerning a related action and a Commission action may be separate and distinct, combining these two proceedings has resulted in unnecessary delays. Delay in the adjudication of a whistleblower claim is inconsistent with the Congressional purposes behind the whistleblower provisions. This is made clear in Section 922(d)(1)C) of the DFA, in which Congress required the SEC Inspector General to review and report on whether or not the Commission is "prompt" in "responding to applications for awards." Furthermore, the Administrative Procedure Act requires expeditious determinations of administrative cases and permits a party to file an appeal in cases of undue delay. 5 U.S.C. § 706(1).

The Commission, through this rulemaking, should clarify that the normal practice should be to decide Commission claims on the most expeditious basis possible. If deciding a related action claim simultaneous with a Commission action claim would result in any delay, the Commission action claim should be decided first. Thereafter, a separate decision should be rendered on the related action claim.

Interpretive Guidance on "Independent Analysis"

The Commission has proposed issuing "interpretive guidance" on the meaning of "independent analysis." This guidance could materially impact the rights of "analysts" as defined in the

[47] *Id.* § 240.21F-5(b).
[48] *Id.* § 240.21F-3(b)(2)(ii).

definition of a "whistleblower." We are concerned that the proposal sketched out in the Proposed Rule would materially restrict the rights of analysts under the DFA. The Commission should publish a draft of this guidance, and permit comment on the draft. Regardless, the Commission cannot deviate from Congress' definition of "independent analysis" and must ensure that the purposes behind the DFA are strictly implemented.

Impact on Current Cases

The current rulemaking proceeding initiated by the Commission should not be used to justify a delay in the decision-making process of pending cases.

First, the current delays are already intolerable and contrary to the Congressional intent behind the DFA. They also violate the Administrative Procedure Act and are harmful to whistleblowers.

Second, changing rules to negatively impact a whistleblower or reducing or limiting an award through a cap after a whistleblower has filed his or her TCR and/or APP application could be highly prejudicial. Whistleblowers took the risk of suffering retaliation when they filed their initial TCRs and worked with the SEC on enforcement investigations. When they took these risks, they relied upon the rules that are currently in place. Thus, Proposed Rules that create new barriers or limits on whistleblower awards should not be applied to pending cases.[49]

Third, whistleblowers in pending cases, especially those who wish to remain completely anonymous, will not be in a position to respond to each and every comment filed in the rulemaking proceeding that could impact the Commission's final decision. This raises major due process issues, especially in light of the adjudicatory nature of the Commission's decision-making process in reviewing recommendations issued by the Whistleblower Office or the Claims Review Staff ("CRS").

Fourth, the Commission can use its adjudicatory authority to issue decisions on a case-by-case basis until the final rules are approved, even if some of the issues in these pending cases are addressed in the Proposed Rules.

Finally, in regard to the Commission's proposed "interpretive guidance" concerning the meaning of "independent analysis," inasmuch as the Commission's guidance strictly conforms to the statutory definition.

[49] To the extent there are Proposed Rule changes that simply provide clarification to increase or expand whistleblower rights it would be appropriate to apply those to pending cases. We reserve the right to address this issue separately before the public comment period is over.

Conclusion

For the reasons set forth above, the Proposed Rules should be changed, and the current rules amended, as set forth in this letter.

Thank you for your attention to these matters. Please feel free to contact us at your convenience by email at contact@kkc.com or by phone at 202-342-6980.

Respectfully submitted,

/s/

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cc: Kara M. Stein, Commissioner
Robert J. Jackson, Commissioner
Hester M. Peirce, Commissioner
Secretary, SEC, *Via e-mail rule-comments@sec.gov*

Subject: File Number S7-16-18
From: Anonymous

Jul. 25, 2018

Thank you for the opportunity to comment on SEC File No. S7-16-18.

According to SEC data, there have only been 3 large whistleblower awards. The SEC receives over 3,000 whistleblower tips a year. The odds are already stacked against a large SEC whistleblower, who then has the majority of her award eaten up by taxes and legal fees. As further evidence of whistleblower difficulties, the most recent large SEC award, received by a Florida resident, took 8 years, from first observing the securities violation, to receiving the SEC monetary award. The SEC is well aware of these dynamics which already disadvantage large whistleblowers. This SEC proposal to further handicap large whistleblowers is irregular.

I believe the SEC must be seeing something that has caused them to make this irregular proposal. For example, Facebook securities violations, and Facebook investigations (by multiple federal agencies) have currently been in the news. At the same time, a Facebook SEC Whistleblower tip has been in the news (I have not submitted this tip). Whichever situation is causing the SEC to propose this change, I believe the SEC must be candid about what they are seeing that has caused them to make this irregular proposal.

The proposed rule would also reduce or eliminate whistleblower awards if the SEC later determines the violations would have been reasonably apparent to the SEC. I regret saying so, but the agency that was advised 5 times of the Bernie Madoff fraud, and still failed to investigate, should not later be able to declare "they would have" discovered a fraud by utilizing the massive in-house talent available at the SEC.

I believe the whistleblower community should come together, because the real reason for this proposal will be brought to light in the coming months. The SEC should say what they are seeing now, otherwise the underlying securities matter that has actually caused this irregular proposal, will also come into question. If, for instance, the recent Facebook matter is the real impetus for this SEC proposal, will the underlying Facebook matter be properly investigated by the SEC, or will that also be covertly diminished to hobble the whistleblower?

I ask the SEC to be forthright concerning their reasons for this proposal.

Thank you

Subject: File No. S7-16-18
From: Anonymous

July 28, 2018

The proposed amendment to include any eligible reports leading to a arrangements to collect money from offenders by the commission is a step in the right direction. As it stands now the whistle blower law of the SEC only pay monetary awards to eligible reports that leads to monetary sanctions exceeding $1,000,000. In this kind of situation, people may not be interested in reporting actions of illegal financial activities which they assume to be less than $1,000,000. This still leave more room for people to take advantage of other people especially the middle class and the poor whose investments are not up to $1,000,000. The new proposal will bring more protection consumers in the financial industry.

Subject: File No. S7-16-18
From: Samantha Rondinelli

July 29, 2018

The proposed ruling for changes to the Whistleblower Program further encourages and rewards individuals that come forward with information that leads to the successful enforcement of an action by the SEC. Encouraging more individuals to come forward will ultimately result in a more effective agency to discover and prosecute wrongdoers. The discovery of more violations protects employees and shareholders. Increased pressure to discover violations will hopefully further discourage unlawful and misleading practices. On the other hand, this could also lead to unnecessary witch hunt, suspicions, and people getting into other peoples businesses all because of the lure of the monetary rewards of whistle blowing. I fully support the proposed changes to Whistleblower Program Rules.

Subject: File No. S7-16-18
From: G Johnson

July 29, 2018

The proposed amendments to SEC Whistleblower rule Section 21F appears to be a genuine attempt to clarify the situations which will result in monetary awards as well as the amounts awarded to those whistleblowers whose tips are actionable. The basis for this policy is embedded in the idea that we as the investing public benefit from full information when making decisions to invest in publicly traded securities. Whether we do so directly or simply are beneficiaries of such investments including mutual funds, ETFs, or pension funds, our best interests are served as owners of these entities when management practices ethical financial reporting. History seems to predict that ultimately these nefarious activities will be discovered. Many times, it is too late for the average investors, since they are not usually active participants in the market. Thus, it makes sense for several reasons to widen the discretion of the SEC to award whistleblowers serving the public good.

First, it decreases the uncertainty which whistleblowers are faced with when deciding to pursue a claim. The downside risk of an unsuccessful claim can be loss of job, career, even professional peers. Should the SEC choose to take an administrative action not resulting in an award, this leaves the whistleblower likely worse off. Giving the SEC more flexibility in determining an award based on mutually agreed upon actions taken by the subject company and the SEC removes some of the uncertainty faced by the whistleblower.

Second, the flexibility in amount awarded helps bolster actions taken which the whistleblower might not otherwise engage in due to lower expected claims. While smaller actions against smaller companies may be less beneficial from an award perspective, the investors money is no less important than that of a Fortune 500 investor.

Third, the clarifications show that the SEC is becoming more active in adopting the whistleblower program. This means that companies must not only be concerned with government agencies investigating questionable practices, but now every individual involved with such an action can be a potential liability. Board members who are conferenced about shareholder wellbeing would be more conscientious of this liability and therefore encourage ethical practices by management, even surprise audits by objective third parties. This cost would likely not be impactful given the tradeoff for downside risk.

Fourth, when employees become incentivized like this, the economic incentive of pay for performance substitutes for more agency employees who may or may not be efficiently contributing to a better investing environment. Opponents of excessive government spending should embrace a policy that does not add a dollar to the agency budget but instead focuses the taxing mechanism on companies that are behaving badly. This should provide some relief of tax burden which would traditionally be distributed over all taxpayers.

In conclusion, penalizing immoral behavior and awarding ethical behavior should lead to a more transparent and lawful investing market which serves the greater good of

both society and the organizations which rely on these capital markets to fuel the engine of the economy.

Carrie Devorah
PUBLIC INVESTOR 12-03894
TELLING INVESTMENT CLIENTS & INVESTMENT ADVISORS THINGS WARREN BUFFETT DOES NOT KNOW TO TELL THEM
[redacted]ANT EXPOSED

SEC Mail Processing

JUL 30 2018

Washington, DC

Commission's Public Reference Room
100 F Street, NE
Washington, DC 20549

Amendments to the Commission's Whistleblower Program Rules
File Number S7-16-18
Proposed Changes To:

Email To: rule-comments@sec.gov

OVERVIEW:

I read each of the 184 pages of the SEC staff Whistleblower Act update proposal.

I did.

The SEC staff was paid to write 184 pages of fan fiction. I am countering with a detailed response answered from experience and with actual documents. No apologies for its length. You get once chance to make that impression.

I did not give the SEC employee Keith Kanyan permission to share my contact details with anyone else. The next thing I knew was getting multiple calls from the SEC Investigators responsive to my cold call to the SEC that Keith Kanyan fielded. In fact, I told Kanyan I did not want to pursue anything until I figured out what the hell was going on. I received multiple calls from the SEC Philadelphia office Investigators. I became an SEC Requested Investment Client Whistleblower when the SEC Investigators pursued me to become their whistleblower, after I cold called the SEC to ask how one proves they hired a fee advisor when there is no contract.

The SEC *'curates'* cases to fit the story the SEC wants heard. Let me restate that. The SEC *'curates'* stories and pleadings the SEC needs being read to assure the SEC is not caught distorting fiction in to *'fact'* the SEC wants heard by Judges, legislators, Investing public, law enforcement and lawmakers.

The proposal reads like a bad game of Broken Telephone where one says something and the other person passes forward what they believe they heard so by the time the conversation gets to the end, the conversation is nothing at all with what the first repeated words were.

There is no coincidence of the SEC staff *'updating'* the Whistleblower Act. I began a public conversation exposing the SEC and the SEC Whistleblower office are cheating Whistleblowers of earned awards. I speak with my experience. I speak with my documents. I share what I see.

I was covering Warren Buffett testifying in the Senate hearings. Warren forgot his beat up bag under the Witness table in the Senate room. I raced down the hall to return Warren's bag to Warren. I bet all of Warren Buffett's billions to my buying Warren a replacement for that ratty

tag on Warren's beat up bag. If Warren does know but never told the Oracle Of Wall Street's following what I am the whistleblower exposing on Wall Street's back story that '*Keeps Wall Street Criminal Criminaling On*" then...

By now I learned the SEC curates cases to cut out submitted party names, using that initially submitted information to form a new case, cutting the Whistleblower out of the award. The SEC aggregates the info for other cases, involved directly or indirectly. The SEC cuts whistleblowers out of awards intentionally.

The SEC knows too well by now my conversations, my documents I share make for change for Investment Clients and Investment Advisors and criminal justice reform for felons:

(i) Congressman Keith Ellison's Act against forced arbitration Bill HR 1098. More information on the 'hail mary pass' Wall Street deceives Investment Clients with was learned by me after Ellison proposed his Bill. Bill HR 1098 as proposed is wrong.

(ii) Rapid resignation of FINRA former CEO Linda Fienberg

(iii) Rapid resignation of SEC former Commissioner Michael Piwowar

(iv) with SEC employees lack of knowledge of the Whistleblower Experience coming across as survivors of Stockholm Syndrome[1]. Whistleblower Rules as updated are no better for Citizen Whistleblowers then what is currently written.

(v) SCOTUS decisions in EPIC SYSTEMS v LEWIS; SEC v LUCIA and SEC v BANDIMERE the SEC denied because it was a mirror of LUCIA. The former Freytag cite by FINRA is gone. One must take away the obstacle to let change continue

(vi) Finding and publishing the papers confirming Madoff told the truth when Madoff said "they knew." "They" did, 50+ years ago.
FINRA/NASD knew.

SEC knew. Morseo, the SEC knew that Bernard Madoff went in to the family business, 1960.

(vii) One article I wrote was the way forward for former VA Governor Terry McCauliffe signature claim of restoring voting rights to felons after failing at his effort for as long as he jawed about it until I called his team post McCauliffe's failure in VA SCOTUS challenge by Judicial Watch. My article is idiot proof, a marketers term. Hundreds of thousands of VA felons are voting because of what Wall Street- the SEC and FINRA/NASD decided to teach me- a lesson. Yes, those exact words sit in the

[1] Stockholm syndrome is a condition that causes hostages to develop a psychological alliance with their captors as a survival strategy during captivity.

FINRA official digital audio moment of Arbitration 12-03894, the Hot Mic moment by FINRA trained arbitrators Susan Mathews, TS Perlman and Ed Statland.

(viii) Of course, there remains the still ongoing matter the SEC Philly based 'investigators' asked me to whistleblow on, chasing me, guilting me with 'someone has to do the right thing.' That is my moral fiber, my DNA, I have at times come to regret but once started, once unravelling one mess to find another yet another, I committed to seeing this through.

Facts are:
(i) Investment Advisors are not oversight of the SEC[2]
(ii) Investment Clients are not oversight of the SEC[3]
(iii) Investment Advisors and Investment Client issues go to Cops, Courts, JAMS and AAA [4]not to the SEC or FINRA/NASD. How the hell could so many people over so many decades go along with this fraud without speaking up unless they did not know or care to know which means they are accountable for each and every con on consumers. That is who I care about, consumers, the Investment Client that me that became a victim. Until.... one day the SEC and FINRA/NASD went too far, with me.

This proposal is a sham coverup intended to force out credible whistleblowers, nothing more, nothing less. The only thing missing in all of this 184 pages is one letter, *"e", "shame."* Lives are destroyed while SEC employees laugh as was the case with a phone call response to a FOIA request, because the staffer did not agree lives are at stake. It was just a few days prior, yet another Wall Street victim did a nose dive off a New York posh building.

I went from being an art school grad with an Associates Degree in to solving why Whistleblowers Awards are chiseled away at with a game of 3 card monty I remember from the streets of New York, the least person one would ever anticipate would work this until change is done, at least by my seeing me.

The SEC sat on credible information of 3 SEC securities Broker-Dealers plus Independent Contractors, co-owners, Independent Contractors and employees were named over the past 8+ years until one party got caught in a Waldorf bank breaking a Federal law.

One SEC ALJ Court witness Bradley Mascho was lead, with intent, by former SEC attorney Michael Rinaldi in to '*shaming*' me in his ALJ Court testimony available to the public to read. Rinaldi knew who I was, document submission after document submission after document submission since 2010 aiding the SEC shape their cases, yes, plural.

I laugh when I ask people I engage with on this matter *'now, who do you want to play you in the movie?"* Don't laugh. Every Madoff biopic that came out got it wrong, Madoff told the truth "they knew." Things can only improve globally, the reach of the SEC and FINRA/NASD MoUs,

[2] https://www.finra.org/arbitration-and-mediation/investment_advisers
[3] https://www.finra.org/arbitration-and-mediation/investment_advisers
[4] https://www.finra.org/arbitration-and-mediation/investment_advisers

Memorandums of Understanding, with this story being told. Even living this story since 2014, with flashbacks to 1995 and 2010, I still don't believe that
(i) I figured this out
(ii) the more to be told
(iii) that there are people wicked enough to intentionally conspire to hurt nice, innocent hard working people.

I come from a world of branding and design. One needs a sense of humor challenging scum colluding to feed off unsuspecting victims. My theme song I drive myself with when I flag is Miley Cyrus "*Wrecking Ball.*" I brought together, in a loosely imaged team, other whistleblowers each with their own compelling story. my name, my avatar, I chose is "*Six Pack Sally Swinging At Low Hanging Fruit On Wall Street,*" teamed up with Alpha Grunt, Sherloko, Anonymous, Mitre Box, Prudent Champion. There are more. I don't stand alone. I found community by leading a movement.

The SEC and FINRA/NASD made me in to the author of this comment today- the first every Investment Client found in Bad Faith for exposing truths Wall Street wants covered up. More change is underway I will talk about only after the change is done.

The SEC FOIA office reminds me they have responsibility to not abuse USG dollars. The dollars wasted by SEC employees keeping decades of Wall Street crimes going. The SEC failed to take action against Western International Securities, Western International Investment Advisor, JP Morgan Clearing and employees and Independent Contractors all of whom are overseen by the SEC. The SEC wasted dollars of other agencies I cross submitted papers to- IRS, USPIS, DOL, FTC, FCC, CFTC. The CFPB supposed to protect Investment Clients is a fail, too.

My notes on the 184 pages of the SEC staff whistleblower proposal. are aggregated below , telling, with firsthand expertise and documents, the story I am living. Not one page of the 184 pages of this Whistleblower Act update proposal includes real life experiences of Citizen Whistleblowers who put their everything on the line to do the right thing. Remember, I did not set out to whistleblow on the SEC and FINRA/NASD and their employees. I was recruited.

This is our jump off point, the collective failure of the SEC and other agencies, the still unknown victims of the Securities Broker-Dealers and Investment Advisors I got taken by, the still unknown amount of losses- factors that propel me to clean up Wall Street, one document exposure at a time.

Congress says you can clear my name. You refuse. I ask you again, clear my name.

Carrie Devorah, DTM
Public Investor 12-03894:
SEC Requested Investment Client Whistleblower Found In Bad Faith For Telling The Truth Wall Street Wants Covered Up

CHRONOLOGICAL INDEX OF TOPICS ADRESSED IN COMMENT:

BRIEF HISTORY OF MY BEGINNING AS A WHISTLEBLOWER.....

WHISTLEBLOWER LEARNING CURVE TAKES PLACE GRADUALLY OVER TIME.....

WALL STREET v MAIN STREET
2 DIFFERENT SETS OF LAWS IS NOT THE WAY THE LAW WORKS except on Wall Street.....

SEC FOIA CONFIRMS SEC INVESTIGATORS ARE NOT TRAINED INVESTIGATORS, just lawyers.....

FINRA & SEC ENFORCEMENT THE SAME AS LAW ENFORCEMENT... NOPE, IT'S A CON ON COPS.....

SEC QUESTIONS HOW MUCH CITIZEN WHISTLEBLOWERS SHOULD BE PAID . HOW MUCH MONEY THE SEC IS INTENTIONALLY NOT PAYING CITIZEN WHISTLEBLOWERS THE SEC WANTS TO GIVE TO THE SEC SLUSH FUND IS THE QUESTION.....

THE SEC WHISTLEBLOWER ACT PROPOSED UPDATE INCREASES HARMS FOR INVESTORS & THE PUBLIC FROM THE SEC.....

SEC STAFF PROPOSAL IS NOTHING ABOUT PAYING OUT AWARDS TO CITIZEN WHISTLEBLOWERS, THE SEC STAFF PROPOSAL IS EVERYTHING ABOUT NOT PAYING AWARDS OUT TO CITIZEN WHISTLEBLOWERS TO KEEP THE MONEY IN THE IPF SLUSH FUND.....

CITIZEN WHISTLEBLOWERS ARE INVESTMENT CLIENT VICTIMS AND INVESTMENT ADVISORS WILLING TO BREAK THEIR NDAs, NON DISCLOSURE AGREEMENTS TO STAND UP FOR THEMSELVES & STRANGERS ARE PUBLICLY LIBELED #metoo.....

ANONYMITY, CONFIDENTIALITY & IDENTITY SHARING.....

THE SEC IS TAKING CRIMES AWAY FROM STATES & ATTORNEY GENERAL OVERSIGHT.....

TIMELINE OF SELECTED DOCUMENTS EDUCATING WHY WHISTLEBLOWERS ARE ENTITLED TO EVERY PENNY OF AN AWARD & MORE. ATTACHMENTS PROVIDE INSIGHT IN TO WHAT WHISTLEBLOWERS GO THROUGH TO GET LAW ENFORCEMENT INVOLVED IN CRIMES AGAINST INVESTMENT CLIENTS.....

TCR: EMPLOYEE, INDEPENDENT CONTRACTOR, D.O.L.....

WHISTLEBLOWER LAWYERS & PROMOTED WHISTLEBLOWER ASSISTANCE.....

DOL: EMPLOYMENT . INDEPENDENT CONTRACTOR

FINAL NOTES.....

BRIEF HISTORY OF MY BEGINNING AS A WHISTLEBLOWER:

I am Carrie Devorah, Public Investor 12-03894. Before I became Public Investor 12-03894, I was Public Investor 10-04856. Before that I was Public Investor 95-00217.

All three cases came to roost in FINRA DRS 12-03894. Defendants counsel the FBI call FBI Lawyer 1, raised those prior arbitrations against my character, alleging conclusions that were not quite what I remembered and, as since documented, not what took place. I was ill during the arbitration not stupid.[5]

95-00217: 100% recovery and then some, just not paid to me. The matter is shared with law enforcement, regulators and media. That is what whistleblowers do.

10-04856: An online client since 2002 with RBC, prior with Prudential, I did not learn until 5+ months post settling in FINRA/NASD where the Claim was led by Respondents, that my identity had been stolen by the RBC team even before I became an RBC client. Imagine looking at documents RBC provided in 2012, discovering your accounts were at RBC in February 2002 seven months before you signed to become an RBC client, August 2002. The matter is shared with law enforcement, regulators and media. That is what whistleblowers do.

12-03894: I walked away with almost all my principal then was forced to payout money to the Respondent whose lawyer was not licensed to argue law for pay in the District of Columbia. To reclaim my name, I took my conversation public. The matter is shared with law enforcement, regulators and media. That is what whistleblowers do.

The FINRA/NASD and SEC patterns in these crimes shaped before my eyes as I handled documents. I shared these patterns with law enforcement, regulators and online with my social media via Linkedin www.linkedin.com/in/carriedevorah, Twitter @godingovt, Facebook and my website www.centerforcopyrightintegrity.com . That is what whistleblowers do.

FINRA/NASD and SEC patterns include stating 'you got your principal back so what did you lose' knowing that if Investment Client victims got their 'principal' back the profits are kept by the criminals.

By being an Investment Client in each of the 3 matters, I was able to also expose how client statements are manipulated, falsified, recreated; how holdings values are not consistent to their value of that market time frame ie. 'points' are shaved; matters how Investment Client documents are manipulated; how client accounts are kept open long after a client closes their account[6] providing to law enforcement, regulators et al documents not often seen because these

[5] https://www.dietsinreview.com/diet_column/01/freelance-white-house-photog-carrie-devorah-dropped-8-sizes-after-knee-injury-and-hip-replacement/

[6] I received notice 2/2018 my self-managed Scottrade account was open 9 years after I closed the account. I reported to the DISB etc back programs were operating abusing client orders

Investment Client Complaints are taken away from Courts where adjudication is conducted secretely in FINRA/NASD hiding facts from public needing to be warned these crimes took place and with whose help- the lawyers, the arbitrators, the Securities Broker-Dealers, the s.r.o. employees knowing the rules and the SEC that has oversight.

There were, there are countless other victims of the same crimes I was unwittingly a victim, too, not knowing they are victims. They know the case their lawyer pled in the private, secret FINRA/NASD. Investment Client victims go to Courts.[7]

Cases pled in courts are archived. Documents remain accessible for decades+. FINRA/NASD and the SEC destroy documents 3-5 years in a secret forum. What is public for other victims, lawyers, regulators, legislators to read is finrabrokercheck.org pushed by Senator Ed Markey. FINRA/NASD banks in Massachusetts. FINRAbrokercheck is self written by the Industry Respondent without vetting.[8]

The Whistleblower staff want to put a dollar amount on what is paid to whistleblowers. There is not enough money in the world to compensate for every moment a whistleblower invests in to righting a wrong usually beginning from the Whistleblower's personal experience. Compound that with the shaming, the shunning, time lost that cannot be replaced, all because we caught the wrong someone else usually knew but wanted covered up.

Former RBC (10-04856) CEO John Taft testified to Barney Frank, former House majority FSC committee chair that even the brightest of CEOs could not do what Taft's people can do. Taft is right. Main Street goes to jail. Cops never hear about Wall Street. Despite signing a *"Truth in Testimony"*, Taft did not tell the Committee RBC was under investigation for harming investors.

I was a news photographer sent to the hearing that morning to get headshots coincidental to battling with my former RBC Investment Advisor Scott Sangerman over monies I saw melt away before my eyes as the market crashed months prior. It was not until 2012 I learned my Investment Advisor refused to sell me out because my money was not in my accounts.

Usually in and out of hearings in 15 minutes, 10-6-2009, I stayed the whole of Panel 1. RBC CEO John Taft "*investor protection*"[9] testimony[10] under *'Truth in Testimony'* about RBC client experience was not my RBC Wealth Management client experience I was going through at that exact hour in time, corresponding with Taft's staff in Beverly Hills and Minnesota. Taft was testifying for SIFMA.[11] Taft said nothing to the FSC Committee about the multi state

[7] https://www.finra.org/arbitration-and-mediation/investment_advisers
[8] www.centerforcopyrightintegrity.com Please defer to my website for more on this topic, search Markey, search Warren, search Massachusetts[8]
[9] https://www.sec.gov/comments/265-25-02/265-25-02-6.pdf
[10] https://www.sec.gov/comments/265-25-02/265-25-02-6.pdf
[11] www.sifma.org

investigation[12] in to RBC CA and RR frauds on Investment Client accounts. 2013-2014, RBC under John Taft signed a multi-state agreement across the country settling the Investigation. I still cannot get a straight answer as to who initiated the multi-state investigation or where the settlement millions paid by RBC ended up being used in the states. The stolen millions are not restored back to the victims. In fact, States nor RBC told victims and prospective clients, between November 2008 of these crimes I would never have known about had it not been for the RBC attorney Carolyn Guy rubbing it in my face *'there is nothing you can do.'* Double Jeopardy. You can't sue twice for the same claim even if you were deceived in to the Securities Broker-Dealer only forum, signing Broker-Dealer not *'Special Submission'* papers.

The matter of SEC and FINRA/NASD abuse of NDAs and Wall Street creating Double Jeopardy by taking Investment Client victims and Investment Advisors in to FINRA/NASD DRS is shared with law enforcement, regulators and media. That is what whistleblowers do.

I had been an RBC client for 8+ years, a client of that RBC team for almost 10+ years. It was not until after 5+ months after the FINRA/NASD DRS, I was told Investment Client victims are party to, did I learn my identity had been stolen inside of RBC and JP Morgan.

RBC attorney Carolyn Guy sent me the Encrypted CD only after the RBC matter I knew about, failure to sell was settled. RBC would not provide me with statements responsive to my prior requests. My online RBC statements were wiped off line. 2013, I learned from the RBC Encrypted CD that JP Morgan employee, Bryan Gasche is named in the digital footprint, manipulating my RBC accounts within 3 weeks of my FINRA/NASD DRS arbitration. The manipulated RBC account statements show 100+ transfers back and forth between RBC and JP Morgan. JP Morgan confirmed 2014, I was not a JP Morgan Client.

The SEC, FINRA/NASD, regulators, law enforcement on the Federal level knew. That is what whistleblowers do.

Cops on the local level were unaware FINRA operates out of the District of Columbia, conducting DRS in DC in rented suites. I told them. I told them FINRA is the NASD with a name change only, both 100% owned by the New NASD Holdings. I told them that FINRA Dispute Resolution was not sanctioned by Congress yet operated out of the District of Columbia, disappearing from being registered with the DCRA until I made that public, too. The matter is shared with law enforcement, regulators and media. That is what whistleblowers do.

I shared forward what the cops told me of their experiences with Financial fraud. Cops are limited to crimes under their state or city laws on the books. There are not laws on the books, yet, for what I document. Cant change laws on crimes covered up for decades. That is what whistleblowers do. Whistleblowers quarterback change being made.

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12 https://disb.dc.gov/sites/default/files/dc/sites/disb/publication/attachments/RBCCapitalMarketsLLCAdmOrder011014.pdf

In time, whistleblowers realize they are telling the criminals how to cover up the cons. 'Things' of concern I wrote about would '*disappear*' to this day. Criminals, cons, the SEC, FINRA/NASD read, too. Things only the SEC and FINRA/NASD knew were damaging were disappearing like Panel 1 of SIFMA 10-6-2009 hearing disappeared of the Archived hearing.

I let every staffer I had met and spoken personally to what was removed from the FSC archive. Panel 1 was restored. That chunky monkey in the well is me. Witnesses RBC John Taft, FINRA Rick Ketchum, NASAA and another are seated. Unadressed is who on the FSC Committee tampered with the archive first removing then replacing Witness panel 1.

I let the SEC, FINRA/NASD, regulators, law enforcement know that FINRA/NASD indicated RBC Wealth Management was listed under both RBC Private Counsel USA and RBC Capital Markets and that RBC said in its annual SEC filing RBC Wealth Management was a trademark. I was an RBC Wealth Management client or so I thought, here, learning my life savings were with a Brand.

That is what Whistleblowers looking to clear their Bad Faith name when they told the truth do.

Soon, after I shared the printed papers, RBC Private Counsel *'changed'* on finrabrokercheck. In and around that time, RBC was charged by the SEC with money laundering. My unfunded accounts showed IPOs, Options and KIDDS bought after my accounts were emptied but left open.

As for moving forward, I '*curated*' information I would share especially with FINRA/NASD.

As if it cannot get worse looking, I stepped from RBC right in to what has become the *'model'* through which I can explain, back to back experience like stereo, what the hell is going on, in real time with real papers, the stuff the SEC now wants to cover up more. There was a Social Security number ACAT rejection I did not understand until receiving the RBC encrypted CD in 2012.

WHISTLEBLOWER LEARNING CURVE TAKES PLACE GRADUALLY OVER TIME:

It has been quite the learning curve for me.[13], [14] It would have been nice to win but the realized needed goal was to put papers otherwise covered up in FINRA/NASD in to the public record. I share with other Investment Client victims and Investment Advisor victims '*...it is not you, you did the right thing, you trusted, you believed....*' I share '*...it is them, a conspiracy we could never have anticipated...* ' The failure is all the way up and down the Wall Street plumb line.

[13] https://www.pacermonitor.com/public/case/3541718/SECURITIES_et_al_v_DEVORAH_et_al ; FINRA 12-03894

[14] https://www.pacermonitor.com/public/case/6561047/DEVORAH_v_ROYAL_BANK_OF_CANADA_et_al ; Case ID 10-04856

Moreso, I caution Investment Client victims Yeah, the last people you want to trust is the lawyer stating your case goes in to FINRA/NASD for resolution.

A good honest lawyer knows all Investment Client and Investment Advisor claims go to Courts, JAMS and AAA.[15]

By keeping Investment Client and Investment Advisor claims out of Courts, the SEC and FINRA/NASD have groomed Judges and clerks for decisions favoring the Wall Streeters. Case in point, Western International Securities lawyer FBI Lawyer 1 suing me in Judge Ellen Huvelle's courtroom in DC District court, filing a case by a Securities Broker-Dealer against me alleging cause is *"Promissory Loan."*

"Promissory Loan" is the sham used by Securities Broker-Dealers to *'joinder'* employees of the Securities Broker-Dealers *'cousin'* the Investment Advisory firm, a completely different company, in to FINRA/NASD DRS to get the money the firm wants.

The Judges and Clerks need cleaning up to. SCOTUS decisions with Epic Systems v Lewis, SEC v LUCIA and Bandimere are a step towards adressing the SEC and FINRA/NASD frauds that have permeated the Courts.

In my whistleblower journey, Western International Securities filed their claim against me as a *"Promissory Loan"* because it was a Claim addressed in the FINRA/DRS that is for Securities Broker-Dealers only.
(i) I am not industry. I am an Investment Client. There is/was no "*Promissory Loan*". There was a fraud perpetrated on the Court
(ii) Judge Ellen Huvelle who 'signed' the Order was paralyzed out of state on that Order date, only able to move one toe according to the WAPO article of July 2015, almost 9 months later. The "*order*" was presented by FBI Lawyer 1 a lawyer not licensed in DC or the District Court.

We are not intended to know what happens after we give strangers Barrons[16] boasts over all of the elements of Identity and Financial theft. They give us nothing of their identity- no income, no address, no Social Security number, nothing.
The SEC implemented whistleblower award program, over the course of the years, not being transparent, has covered up the grounds upon which awards are made. In that the SEC has been overstepping the parameters set by Congress, Securities Broker-Dealer only, makes it clear the SEC is not competent to determine whether awards "*may be denied on relatively straightforward grounds because they do not implicate novel or important legal or policy questions...*"

FINRA/NASD slush fund[17] to the Investor Protection Fund for lawyers arguing cases in the SEC and FINRA/NASD forums neither of which have authority for these cases, as I address later.

[15] https://www.finra.org/arbitration-and-mediation/investment_advisers
[16] https://www.barrons.com/articles/SB124406321197382541
[17] https://www.financial-planning.com/news/warren-piaba-call-for-finra-fund-to-pay-arbitration-awards

The SEC has to be brought down a peg or two. The SEC has no authority to make policy let alone legal decisions, Congress does, moreso since the SEC has overstepped Congress parameter of what the SEC '*covers*'... Securities Broker-Dealers only.

More detailed notes of my personal knowledge of the 184 Whistleblower Act proposal pages are aggregated below.

When whistleblowers look at papers, there is always something that pops out. I am concerned spotting the minutiae the SEC wants eyes to look at. I know in being a whistleblower what the SEC wants people reading the 184 pages to look at- what the SEC paints itself as which is what the SEC is not.

What stuck out to me reading about the Investor Protection Fund is knowing about the FINRA/NASD Education Fund and another SEC & FINRA/NASD slush fund being pushed by Senators Markey and Warren, their proposed Protection Fund to be for lawyers arguing cases in the SEC and FINRA/NASD forums wanting a payment pool.

(i) FINRA/NASD banks in Warren/Markey's state
(ii) FINRA/NASD is racking up money decisions for lawyers trafficking clients in to the FINRA DRS where neither Investment Clients and Investment Advisors go for claims adjudication[18]

The SEC Whistleblower Act update proposal agenda to silence whistleblowers is affirmed with statements the Proposal contains, such as, *"By permanently barring applicants that make frivolous or fraudulent award applications, proposed Rule 21F-8(e) could help free up staff resources that could be used to expedite the processing of potentially meritorious award applications as well as the payment of awards."*

Employees time would be used well if SEC employees knew their jobs and did the work the employees are paid to do. Giving the SEC the ability to bar individuals *"from submitting whistleblower award applications"* the SEC deems *"are found to have submitted false"* allows the SEC to cover up more agency failures and more crimes by SEC overseen securities Broker-Dealers.

The SEC staff define Whistleblowing as *"...the information relates to a possible violation of the federal securities laws (including any law, rule, or regulation subject to the jurisdiction of the Commission) that has occurred, is ongoing, or is about to occur..."*

There is a problem how the SEC is currently operating against Whistleblowers.

The SEC is limited to taking action against Securities violations by Securities Broker-Dealers. The SEC is taking action against persons and entities that are not under SEC oversight but are under Law Enforcement, State and Local Law oversight. The SEC is covering up crimes to mitigate Securities Broker-Dealer exposure.

[18] https://www.finra.org/arbitration-and-mediation/investment_advisers

Ponzi schemes are not SEC oversight even if the person alleges to victims the person is selling securities or investments.

I am stunned how this has gone ignored for so long. That said, one lawyer said to me *'it was easier.'* Another lawyer said *'...its where he makes a lot of money..."*

It is important to note the SEC has no statutory authority to propose and adopt a rule. The SEC can only do what Congress says it can do. Congress must authorize and approve even the SEC having staff work on the Whistleblower Proposal. The SEC cannot write policy. The SEC cannot abuse CRA as is being done.

The SEC Whistleblower Act update proposal states very important guidance the SEC has intentionally skirted and ignored, writing *"Supreme Court's admonition"* that *"Section 21F, as enacted by Dodd-Frank"* is *"a law concerned only with encouraging the reporting of '...securities law violations..."*

Most recently the Supreme Court Justices decisions of EPIC v Lewis, SEC v Lucia, the Supreme Court Of The United States denying Bandimere, roiled SEC doing *'business as usual'* covering up securities Broker-Dealer crimes intent to contain fallout, intending to protect the Securities Broker-Dealers the SEC has oversight of, only, not Investment Advisors, not Investment Clients.

The SEC was getting away with 'financial murder' of Investment Client victims and Investment Advisors.

Congress's use of the phrase *"administrative action"*, Section 21F, is clear. SEC is limited to considering whistleblower awards from investigations resolved through formal adjudicatory administrative proceedings. SEC has no authority for ALJ Courts although SEC has pretended to have for years. Crimes go to court. SEC taken in Broker-Dealer crimes to mitigate Broker-Dealer exposure. The Commission only began the Commission's *"enforcement cooperation program, forms of settlement agreements outside of the context of a judicial or administrative proceeding"* in 2010 *"as an alternative mechanism to resolve securities law violations."*

The SEC has, unfettered in the SEC reach, pursuing more than *'...securities law violations..."* SEC employees forget SEC employees are accountable to Cops. The SEC holds Main Street SEC and FINRA/NASD participants accountable. The SEC does not hold SEC employees, self-regulators and securities Broker-Dealers accountable to those same standards.

Congress wants to do the right thing. Between the *'right thing'* and Congress are the usual witnesses called to Congressional hearings- the NASD/FINRA, NASAA, PIABA, SIFMA, SIPC and others in that *'advocating pool.'*

Whistleblowers are the *'see something, say something'* extra eyes.

The updated Whistleblower Act must state at its beginning, first few lines
(i) SEC is a creation of Congress, created by Congress solely, only, exclusively to regulate Securities Broker-Dealers
(ii) SEC has oversight only of Securities Broker-Dealers
(iii) SEC has no oversight of Investment Advisors and Investment Clients
(iv) Investment Advisor complaints and financial crimes are reported to Law Enforcement not to the SEC and/or FINRA/NASD
(v) Investment Client victims complaints and financial crimes are reported to Law Enforcement not to the SEC and/or FINRA/NASD

The SEC is nothing about Investment Advisors and Investment Clients the SEC and FINRA/NASD recite in their mantra *'investor protection through regulating markets.'* More correctly the SEC and FINRA/NASD are about *'regulating markets by alleging investor protection.'*

The term *"whistleblower"* means any individual who provides, or 2 or more individuals acting jointly who provide, information relating to a violation of the securities laws to the Commission, in a manner established, by rule or regulation, by the Commission. Whistleblower status starts when an individual within the SEC asks accepts documents- digitally, by delivery or via the US Mails.

Whistleblowers must be compensated for doing good work whistleblowers risk doing, including SEC misusing resources and abusing funds, for example, sending SEC Requestors to NARA, National Archives Record Center, OGIS, Office of Government Information Services, a regulator tool to delay cases to the point of tolling/blowing statutes.

SEC employees don't do the work the SEC Whistleblower Act update proposal misleads is being done. SEC staff gets bonuses for crappy work and failures. The SEC curating information convenient to the story the SEC has to tell to *'present'* the image the SEC is compliant to laws Congress wrote is not only deceptive, it is criminal, misleading US Attorney Offices and Judges at the same time creating a false narrative in Court records at a cost to truth. But when another states Attorney General is told to stand down, there is a question of tampering.

2017, Congress signed the Whistleblowers Act, deciding, with the help of lawyers representing employee whistleblowers against federal employers that the only whistleblowers are Federal employees not Citizen Whistleblowers.[19] *Individual"* in Section 21F(a)(6) whistleblower definition should state both *"citizen whistleblower"* and *"employee whistleblower"* not just Federal employee. The update change that must happen is within the SEC agency.

[19] Congress in 2015 established a new motor-vehicle-safety whistleblower award program that allows employees or contractors of a motor-vehicle manufacturer, parts supplier, or dealership who report serious violations of federal vehicle-safety laws to obtain awards of 10 percent to 30 percent of any monetary sanction over $1 million that the Federal Government collects based on that information.

2011, the SEC stated "*Congress primarily intended our program 'to motivate those with inside knowledge to come forward and assist the Government to identify and prosecute persons who have violated the securities laws" has* become a way to '*smoke out*' information that may harm Securities Broker-Dealer members of the FINRA/NASD, friends, past or present, of the SEC.

It is appropriate to amend Rule 21F-2 to propose Rule 21F-2(a) will give a uniform definition for whistleblower status to include citizen whistleblowers along with Federal Employees and their *"award eligibility, confidentiality protections, and anti-retaliation protections..."*

Some of the things written in the 184 page missive are mind boggling. Whistleblowers are reporting on issues the SEC and its appointed s.r.o. self regulatory organizations failed to catch. If the SEC had caught the crimes, there would be nothing for the Whistleblower to whistleblow on.

Commissioner Kara Stein nailed the SEC at the recent Sunshine meeting. The sole Commission *"No"* vote on the SEC staff 1000+ page *"Best Interest"* proposal. Kara reminded the online and in person audience that day, Wall Street began with the two line Buttonwood Tree agreement, facetious two lines morphed in to 1000 pages SEC staff proposed that day, two lines versus the 184 pages proposed here for the Whistleblower proposed changes.

24 salesmen, stock brokers, outside of 68 Wall Street, signed a 2 provision agreement,

> *"...We the Subscribers, Brokers for the Purchase and Sale of the Public Stock, do hereby solemnly promise and pledge ourselves to each other, that we will not buy or sell from this day for any person whatsoever, any kind of Public Stock, at a less rate than one quarter percent Commission on the Specie value and that we will give preference to each other in our Negotiations. In Testimony whereof we have set our hands this 17th day of May at New York, 1792..."*

The 24 signers would
(1) deal only with each other eliminating auctioneer
(2) keep commissions at 0.25%
Modern day regulators might call this *'restraint of trade'* or *'price fixing.'*

Decades later, Wall Street still shares a '*group hug.*' It is called *"Brokers Protocol"* keeping the *"it"* within the family. Investment Clients are Wall Street punts back and forth.
Kicking these puppies are the Wall Street business leagues bastardizing the words *'investor protection'* in to red flags diverting attention from what Wall Street does not want seen such as the I.P.F. Investor Protection Fund which I have not heard of from the SEC in 8+ years of more victims.

Another impetus for the Whistleblower proposal may have been me. I figured out how the SEC is cheating Whistleblowers.

I am a Citizen Whistleblower. Citizen Whistleblower not covered by the Senate Whistleblower Act Chuck Grassley takes pride in. Citizen Whistleblowers are of no interest to lawyers wanting the *'deep pockets'* whistleblower employers provide. Citizen Whistleblowers are of a unique breed. Citizen Whistleblowers not receiving protections from Chuck Grassley's Act are harmed.

I was harmed.

I am SEC requested Investment Client whistleblower, Public Investor 12-03894, the only Investment Client you will meet found in Bad Faith for telling truths Wall Street wants covered up.

Jaques Houssou, MBA FCMI, an SEC whistleblower was harmed. Houssou says "*...I am basically a whistleblower because of my integrity and sense of purpose, I always take action when its the right thing to do when I am faced with indifference...*" Houssou told the SEC about Pedro Fort Berbel's international crimes, 3+ years ago. The SEC did not advise Houssou the SEC does not report crimes to Cops. The SEC covered up Berbel's crimes inside the SEC. Houssou, after becoming a victim of Pedro Fort Berbel, became a private Investigator, FL License # 1700227.

In my 8+ years of more victims by the Investment Advisors, Securities Broker-Dealer and Clearing House the SEC asked me to whistleblow on, I have never heard the initials I.P.F. mentioned once.

I took a few minutes to look up I.P.F. I had not understood, until I began to read Google search hits, what SEC attorney Michael Rinaldi meant back when Rinaldi hissed at me I would get nothing for my being a whistleblower, that I would never see a dime on the matters the SEC pursued me to be their Investment Client whistleblower on.

I.P.F. began in 2010, pursuant to Section 922 of the Dodd-Frank Act.

Page 5 states "*...the Fund will be used to finance the operations of the SEC office of the Inspector General's suggestion program...*"[20] available to "*...funding the activities of the Inspector General of the Inspector General of the Commission...*"

I was shocked to read the SEC puts money stolen from Investment Client victims in to a Treasury fund that more correctly is Treasury securities the Treasury can use for other purposes. What part of "*stolen*" do the Securities Broker-Dealers forming the I.P.F. Advisory '*managing*' monies the SEC put in to the Custodial Fund, not get, or do they which understanding as I do the moves of the SEC and FINRA/NASD scams on Investment Clients- moving money just not back to victims which is what would have happened had the SEC, a regulator with no enforcement ability, should have done as Congress wrote the SEC had to do.

September 30, 2010 the Fund was fully funded.

[20]Exchange Act 21F(g)(2)(B)

October 2010 the SEC published its *"Annual Report On Whistleblower Program."*

The Investor Protection Fund ending balance was $451,909, 854.07 did not go to make Investment Client victims whole. The SEC found yet another way to cycle cash back in to the League of Wall Street business.

The SEC the Investor Protection Fund (IPF) amendments to ensure Congress' established a way to exploit, effectively and appropriately, meritorious whistleblowers limiting pay to meritorious whistleblowers in a manner intended to leverage the IPF to further the SEC's objectives which does not include turning over criminals to cops.

The Investor Protection Fund (IPF) is a simpler Main Street terms is a slush fund without serious intent to collect funds for payout rather intending the funds being kept *"in"* in the Industry. The SEC's goal is not to collect funds rather, circulate the cash, funnel the cash back to the SEC collaborators. The *'fines'* are curated, so to speak.

In the matter of Bennett Group, one victim, alone, Philips Peter lost $17.6 million. The SEC ALJ Court Judge Alan Grimes fined Bennett $4 million. The SEC former lead attorney Michael Rinaldi did not file the SEC ALJ Opinion in the Court, to collect the award. The IPF is the reason why. Filing an *"Opinion"* in the Court would return monies to victims.

It is important to make note, the *"Award"*, the *"Fine"* is not filed against the Securities Broker-Dealer.

California's Whistleblower law says it best *"...If funds are recovered by the California Attorney General or political subdivision as a result of the whistleblower's qui tam case, whistleblower rewards equal 15 percent to 33 percent of the recovery obtained...."*

Other example cash circulation similar to SEC IPFs money movement are;
(i) FINRA/NASD trained arbitrators formula for 1/10th back on a claimed loss by an Investment Client and/or Investment Advisor taken away from Courts, JAMS, AAA in to FINRA DRS
(ii) NASD using FIRST COMMAND FINANCIAL arbitrators fine/award to begin the NASD Education Fund currently called the FINRA Education Fund.

Page 5 of the SEC *"Investor Protection Fund Report to Congress: Financials"* states *"...the Investor Protection fund was established in July 2010 and funded by transfers from SEC's Disgorgement and Penalty Amounts Held For Investors"* in Treasury Account Fund System 50X6563 deposit account.

The *"Financials"* report states clearly *"...These transfers do not meet the criteria of reportable revenue on the Income Statement as defined in the Statement of Financial Accounting Concepts Number 5 "Recognition and Measurement in Financial Statements of Business Enterprises"* or Statement of Federal Financial Accounting Standards Number 7 *"Accounting for Revenue and*

Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting..." further stating "*Income Statement was not prepared...*"

The Fund Report To Congress further said "*...The SEC is comprised of a single federal bureau*" continuing "*...the Investor Protection Fund is a fund within the SEC...*"

The Fund Report says "*...the SEC remains liable for paying the whistleblower...*" further stating "*...whistleblower payments may be made from the Investor Protection Fund as a result of monetary sanctions paid to other agencies in related actions...*" continuing "*...all funds maintained by the Investor Protection Fund are considered earmarked funds...*", "*...entity assets...*" with "*...all of its banking activity in accordance with directives issue by the United States Department of Treasury Financial Management Service...*" with the SEC intent to "*...invest the Investor Protection Funds in short term Treasury securities...whenever practicable...*" as practicable "*...in a special receipt fund account...*" the SEC "*...may invest them in overnight and short-term market-based Treasury bills through a facility provided by the Bureau of Public Debt...pending their distribution...*" with no definition of "*whenever practicable.*"

Page 6 of the report states "*...the SEC is working with the BPD in establishing an account and process to invest these funds in FY 2011...*" while the SEC would record the amounts paid to whistleblowers and reimburse "*...expenses the Inspector General incurs to operate the suggestion program...*" continuing "*...J. Revenue and Other Financing Sources...The Investor Protection Fund will be financed by receiving a portion of monetary sanction collected by the SEC in judicial or administrative actions brought by the SEC under the securities laws that are not added to the disgorgement fund or other fund other section 308 of the Sarbanes-Oxley Act of 2002*[21]*...*" continuing "*...or otherwise distributed to victims of a violation of the Securities laws...*" continuing "*...considered financing sources...*" continuing "*...the SEC may request the Secretary of the Treasury to invest Investor Protection Fund amounts in Treasury Obligations...*"

The Whistleblower proposal states, page 13,

> "*...whenever the reserve in the IPF falls below $300 million, Section 21F(g)(3) requires the Commission to replenish the IPF.118 These funds otherwise would be directed to the Treasury, where they could be made available for use in funding other valuable public programs...*"

What could the SEC be more concerned about, for this Investor Protection Fund money stolen from victims that the Treasury could use for special undefined projects?

The SEC had plans,[22] "*...The SEC plans to invest the* Investor Protection Funds *in short-term Treasury securities, whenever practicable. ... The interest earned on the investments is a*

[21] 15 U.S.C. 7246
[22] *https://www.sec.gov/files/whistleblower_report_to_congress.pdf*

component of the SEC fund balance and available to be used for expenses of the Investor Protection Fund. Oct 26, 2010..."

I remembered the recent article I researched and wrote[23] on FINRA/NASD adjudicating a $12.5 million fine in the matter of FIRST COMMAND Advisory[24], serving military and veterans. ¾ of the $12.5 million NASD/FINRA fine went to funding SEC research on Investors, ¼ of that $12.5 million went to creating a FINRA Fellowship that never worked right for military spouses moving zipcode to zipcode. Some money, from a curated period the SEC and FINRA/NASD determined would be the time period to sue in and for, went to the harmed heroes, pennies on the *"other valuable public programs"* the SEC *"made available"* from fines.

Neither the SEC nor FINRA/NASD took the First Command matter to cops. Keeping crimes from cops in our 'see something, say something' culture is a crime. The SEC and FINRA/NASD took the Investment Advisory complaints in to the Securities Broker-Dealer forum, a crime in itself, a silencing of victims.... trusting lawyers curating *'protection'* from cops.

FINRA/NASD is a securities Broker-Dealer only forum.[25]

> *"...lawyers who represent investors and those who represent investment advisers (IAs) which are not FINRA members about the availability of FINRA's arbitration and mediation forum to resolve their disputes. Currently, such disputes are resolved in court or in non-FINRA dispute resolution forums..."*

The SEC, a securities Broker-Dealer only regulator, approving a FINRA/NASD funding *"...valuable public program..."* that strategizes ways to get Investment Clients to invest is suspect, running victims cash to make the Treasury *"other valuable public programs"* run.

FINRA/NASD, is an IRS approved 501(c)(6) dues collecting business league for Securities Broker-Dealers only. FINRA/NASD is not a business league for Investment Advisors or Investment Clients. The SEC directing funds away from harmed Investment Client victims to send funds to the Treasury then use those same funds to help securities Broker-Dealers is a scam, Wall Street, the SEC, FINRA/NASD actively kept cops away from moreso via IPF, Investor Protection Fund, looks like money movement, some might call laundering.

Details of the IPF Advisory Board took a while to find. Members of the 2012 IPF Advisory Board are not Investment Clients, Whistleblowers and/or Investment Advisors:

Darcy Bradbury, Managing Director and Director of External Affairs, D.E. Shaw & Co., L.P.

- J. Robert Brown, Jr., Law Professor, University of Denver
- Joseph Dear, Chief Investment Officer, California Public Employees' Retirement System
- Eugene Duffy, Partner and Principal, Paradigm Asset Management Co. LLC

[23] www.centerforcopyrightintegrity.com
[24] www.centerforcopyrightintegrity.com
[25] https://www.finra.org/arbitration-and-mediation/investment_advisers

- Roger Ganser, Chairman of the Board of Directors of Better Investing
- James Glassman, Executive Director, George W. Bush Institute
- Craig Goettsch, Director of Investor Education and Consumer Outreach, Iowa Insurance Division

Joseph Grundfest, William A. Franke Professor of Law and Business, Stanford Law School

Mellody Hobson, President and Director of Ariel Investments, LLC

Stephen Holmes, General Partner and Chief Operating Officer, InterWest Partners

Adam Kanzer, Managing Director and General Counsel of Domini Social Investments and Chief Legal Officer of the Domini Funds

Roy Katzovicz, Partner, Investment Team Member and Chief Legal Officer, Pershing Square Capital Management, L.P.

Barbara Roper, Director of Investor Protection, Consumer Federation of America

Kurt Schacht, Managing Director, CFA Institute

Alan Schnitzer, Vice Chairman and Chief Legal Officer, The Travelers Companies, Inc.

Jean Setzfand, Director of Financial Security for the AARP

Anne Sheehan, Director of Corporate Governance, California State Teachers' Retirement System

Damon Silvers, Associate General Counsel for the AFL-CIO

Mark Tresnowski, Managing Director and General Counsel, Madison Dearborn Partners, LLC

Steven Wallman, Founder and Chief Executive Officer, Foliofn, Inc.

Ann Yerger, Executive Director, Council of Institutional Investors..."

2017 IPF Advisory Committee:

Matthew Furman, General Counsel, Willis Towers Watson plc

Stephen Holmes, General Partner Emeritus, InterWest Partners

William Lee, Senior Vice-President and Chief Investment Officer, New York-Presbyterian Hospitals

Paul Mahoney, David and Mary Harrison Distinguished Professor of Law, University of Virginia School of Law

Jennifer Marietta-Westberg, Senior Economist, Cornerstone Research

Lydia Mashburn, Managing Director, Center for Monetary and Financial Alternatives, Cato Institute

Mina Nguyen, Jane Street Capital

Barbara Roper, Director of Investor Protection, Consumer Federation of America

Damon Silvers, Director of Policy and Special Counsel, AFL-CIO

Anne Simpson, Investment Director, Sustainability, California Public Employees' Retirement System

Jerome Solomon, Fixed-income Portfolio Manager, Capital Group

Heidi Stam, Former Managing Director and General Counsel (Retired), Vanguard

J.W. Verret, Associate Professor of Law (with tenure), Antonin Scalia Law School, George Mason University and Senior Scholar, Mercatus Center

Susan Ferris Wyderko, President and CEO, Mutual Fund Directors Forum

Anne Sheehan, Chairman, Former Director of Corporate Governance, California State Teachers' Retirement System (Retired)

Elisse Walter, Vice Chairman, Former Chairman U.S. Securities and Exchange Commission

Craig Goettsch, Secretary, Director of Investor Education and Consumer Outreach Iowa Insurance Division

Nancy LeaMond, Assistant Secretary, Executive Vice President Chief Advocacy and Engagement Officer Community, State and National Affairs, AARP

Allison A. Bennington, Partner and General Counsel, Value Act Capital

John Coates, John F. Cogan Jr. Professor of Law and Economics at Harvard Law School and Research Director of the Center on the Legal Profession

Lisa Fairfax, Leroy Sorenson Merrifield Research Professor of Law and Director of Conference Programs, C-LEAF, The George Washington University Law School

Rick Fleming, Investor Advocate, U.S. Securities and Exchange Commission

H. David Kotz, Inspector General of the SEC, 2010, wrote to then SEC Commissioner Mary Schapiro the SEC OIG relied on

> *"...the GAOs work on the Commission's internal control over financial reporting as the Investor Protection Fund's financial reporting is part of the Commission's overall financial reporting and the Investor Protection Funds financial reporting is part of the Commission's consolidated financial statements..."*

The 2010 *"Report to Congress: Financials"* does not state, anywhere in it, the Treasury can spend the monies on Treasury special projects. The Advisory Board are accountable as accessories.

The SEC is recycling compromised funds. These funds are taken from victims. On Main Street, these finds are called 'stolen.' Not on Wall Street.

The idea that stolen monies are passed forward to the IPF instead of back to victims is mindboggling, unconscionable but when this SEC system was curated to circumvent cops that, in my mind makes the SEC employees complicit, in cop talk... accessories. The FINRA/NASD structure of AWC Acceptance Waiver Consent is a con. Crimes go to cops. Stolen funds are restored to victims.

The 2010 *"Report to Congress: Financials"* does not state, anywhere in it, the SEC can recycle stolen funds.

I learned;
(i) the SEC asks the whistleblowers for all the information the whistleblower can give the SEC (refer to letter 12-2-2010)

(ii) the whistleblower might turn in information on more than one entity and/or individuals. The SEC response letter limits who the SEC lists may be credited to the whistleblower

(iii) the SEC may be told about a crime that goes on for years. The SEC arguing lawyers select the window of time the SEC lawyers form their argument(s) around ie. in my situation as an SEC requested Investment Client whistleblower, my personal involvement began 2009. Documents I added went back 2005 and earlier all the way up to present date. The SEC lawyers selected an 18 month period within which to curate the SEC case

(iv) The SEC attorneys curate the SEC case to fit areas of SEC *'oversite'*, that is, understanding the SEC has no oversight of Investment Advisors, Investment Clients and Ponzi schemes. It is in the interest of the SEC to keep crimes by Investment Advisors, Investment Clients and Ponzi schemers away from cops who would expose the true numbers of financial crimes and the real numbers of FINCEN stats otherwise

covered up when the FINRA/NASD take crimes away from cops in to the Securities Broker-Dealer only dispute resolution forum.[26]

SEC motivation is money. Investment Advisor fines and penalties contribute as a source of revenue to the *"I.P.F."* fund explaining why SEC ALJ Judge fines are out of whack with reality of the crime numbers ie. 3-16801, the "Hoodoo Investment Advisor" one victim alone Philips Peter lost $17.6 million. The SEC ALJ Judge only fined the *"Hoodoo Investment Advisor"*[27] $4 million. SEC Commissioners Michael Piwowar and Kara Stein relied on SEC & Freytag. SCOTUS, Supreme Court of the United States revisited Freytag as SEC precedence with the SEC adjudication of SEC v Lucia and Epic Systems v Lewis.

The SEC went on to file a 2nd case.[28] The "*Hoodoo Investment Advisor*" crimes were known to the SEC back in the 1990s. SEC knew about Madoff's crimes back in 1963, fifty years before Madoff turned himself in. 1 month after the FINRA/NASD fined Madoff, again, for *"No Product."*

My reading about I.P.F. Investor Protection Fund was pattern, what the SEC does, has done over the years, accepted as pattern and practice.

What remains are the facts, $175 million front load for the time period the NASD/SEC carved out to *'investigate'* military complaints within.

$4.4 million *'went'* to the FINRA Foundation Military Spouse Fellowship program.

$12.5 million *'went'* to creating the NASD Education Foundation.

First Command has been around since the 1950's.

The SEC *'curated'* investigation period was limited to a few years, carving *'covered action'* to benefit the story the SEC needs to present publicly to be compliant with laws Congress wrote the SEC is the regulator to see are followed except like Cinderella's mean sisters trying to shove their feet in to the glass slipper, just because the foot can be wedged in does not mean the shoe fits, just *'shoved'* in to look like it does.

The $12.5 million did not go back to the harmed military.

The $175 million front load and the $12.5 million *'fit'* the SEC/FINRA-NASD formula of restoring 1/10th of funds to victims. Military heroes deserve better. Investment Client victims deserve better too.

The curious timing of the SEC *'whistleblower proposal'* is understood if the SCOTUS Supreme Court decisions on Epic Systems v Lewis, SEC v Lucia and SCOTUS denial to hear Bandimere a repeat of SEC v Lucia, are looked at.

SCOTUS confirmed the SEC has no right to take Investment Advisor cases away from JAMS or AAA. The SEC had no right to engage Investment Clients nor did FINRA/NASD, a source of funds for the I.P.F., Investor Protection Fund will be lost.

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[26] https://www.finra.org/arbitration-and-mediation/investment_advisers
[27] http://www.whitesecuritieslaw.com/2017/04/04/dawn-bennett-ordered-pay-4-million-sec/
[28] http://www.dailymail.co.uk/news/article-4840938/Radio-host-ran-Ponzi-scheme-tried-cast-spell-SEC.html

The SEC is funding the I.P.F. with stolen client funds along with fines against Investment Advisors the SEC and FINRA/NASD have no oversight of, is a sad bottom line knowing had these crimes gone to copys, victims would have their assets restored to them while the SEC plays industry robbing hood, robbing from the poor to give to the rich.

The Whistleblower proposal states *"...In advancing proposed paragraph (d), we are mindful of our own responsibility to investors and the general public to ensure that the Investor Protection Fund (IPF) that Congress established to fund awards is used efficiently and effectively to achieve the program's objectives..."* Congress established an Investor Protection Fund in the 1970s.[29]

The Whistleblower proposal states *"...Multiple such awards would, in turn, cause the funds in the IPF to be diminished..."* The SEC cannot pull cash from Investment Advisors brought in to SEC ALJ Courts anymore. SCOTUS decisions of Epic v Lewis, SEC v Lucia and denial to hear #metoo SEC v Bandimere makes diminishment of IPF funds a reality.

That same Act states *"...(Sec. 419) Directs the SEC to adopt a rule that prohibits registered investment advisers from maintaining custody of client assets in excess of $10 million, unless the assets are kept by a qualified custodian, maintained in separate accounts under the client's names, or retained in an account of which the investment adviser is the trustee. Prohibits the qualified custodian from directly or indirectly providing investment advice to the funds it holds in custody..."*[30] also stating *"...(Sec. 506) Increases from $250,000 to $850,000 the total amount of claims of all customers of a small firm whose failure the SIPC may resolve using the direct payment procedure (instead of using a judicial liquidation proceeding..."*[31] continuing *"...(Sec. 302) Amends the Investment Company Act of 1940 to direct the SEC to issue rules for imposing fees on registered investment advisers to recover its cost of inspecting and examining them...."*[32] continuing *"...(Sec. 306) Directs the SEC to report on the implementation of reforms which it outlined in the wake of the discovery of fraud by Bernie Madoff...."*[33]

The Act requires the SEC to complete enforcement action within 180 days, *"...(Sec. 209) Requires the SEC to complete enforcement investigations and determine whether or not to file an action within 180 days after its staff provides a written Wells notice to any person. Allows an exception to this deadline for complex actions to permit additional 180-day extensions in certain circumstances...."*[34] The SEC took action in 2017.

The same Act also states *"...Title II: Enforcement and Remedies - (Sec. 201) Amends the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940 to authorize the SEC to restrict mandatory pre-dispute arbitration affecting customers or clients of an investment*

[29] *https://www.sipc.org/about-sipc/history*
[30] https://www.congress.gov/bill/111th-congress/house-bill/3817
[31] https://www.congress.gov/bill/111th-congress/house-bill/3817
[32] https://www.congress.gov/bill/111th-congress/house-bill/3817
[33] https://www.congress.gov/bill/111th-congress/house-bill/3817
[34] https://www.congress.gov/bill/111th-congress/house-bill/3817

adviser... "[35] continuing *"...(Sec. 202) Directs the Comptroller General to study the costs to parties of an arbitration proceeding using the arbitration system operated by the Financial Industry Regulatory Authority (FINRA) and overseen by the SEC as compared to litigation... "*[36]

The SEC want people to believe the *"proposed rule will result in more awards being paid from the IPF because awards would be paid for non- prosecution and deferred prosecution agreements entered into by the U.S. Department of Justice... "* alleging *"...Proposed Rule 21F-3(b)(4) and proposed Rule 21F-6(d) could foster a more efficient use of the IPF by avoiding awards that are not reasonably necessary in light of the whistleblower program's goals and the interests of investors and the broad public interest... "*

WALL STREET v MAIN STREET
2 DIFFERENT SETS OF LAWS IS NOT THE WAY
THE LAW WORKS except on Wall Street:

The rumoring as to why Wall Street CEOS do not go to jail while Main Street does stopped being a rumor when I wrote my article *"Congress Created Madoff."* And then was the NASAA Spring conference I attended, gobsmacked, sitting in the audience of a panel talking on DPAs, deals that are cut keeping the big guys out of jail, voting, while the little fish are trotted off in to jail for a decade or so. Watching the DOJ panelists jawing it with other *'experts'* at the front of the room on the mini stage was mindblowing at what the panelists were so eager to fill resumes with as *'panelist at NASAA spring conference'* when the law is clear. Or what was made too clear was how cozy the DOJ is with the SEC that lawyers are willing to lose legal licenses. Watch this long enough you realize the DOJ takes the case the SEC wants pled, accepts *'facts'* the SEC feeds without doing diligence of vetting facts or, at times, trusting that Investment Client victims information can be credible. Or when the Agent does trust the credible victim, will that Agent risk standing up to the people he answers to.

That answer is more often a *'no.'*

Around this time I was making public why the Eric Garners and Freddie Grays are found by cops for each and every arrest and why the big whales law enforcement really want to go after are not caught, let alone known of.

It was Madoff's saying *"they knew"* that kept driving me until I could find and document the answer, to clear my name, to stop these crimes against Investment Client victims from going on just like I told Eleanor Holmes Norton I will do, 'shut FINRA down'.

[35] https://www.congress.gov/bill/111th-congress/house-bill/3817
[36] https://www.congress.gov/bill/111th-congress/house-bill/3817

The industry sets out lawyers in advance to curate results and way forwards the Industry, Wall Street wants.

DPAs and NPAs are part of that formula Wall Street curated. DPAs are Deferred Prosecutions. NPAs are Non-Prosecution Agreements.

1960, Bernard Madoffs' parents were told by the SEC 'not to do it again.' I found the article. I made it public. In todays terms, Bernie's mom and dad had a DPA and/or NPA and, very possibly, traded information to protect... maybe Bernie. It was only 3 years later that Bernie had Bernie's first *'AWC'* acceptance waiver consent, sanctioned $500 by the NASD, the forerunner of FINRA. Ruth was Bernie's bookkeeper then and after.

To understand the difference between a DPA and NPA, I invite you to sit 9/13, or 10/4/- 11/4 in the Greenbelt MD courtroom of presiding Judge Paula Xinis. More important I ask you to arrive at Judge Xinis' courtroom to sit and watch *'white privilege'* even when the Judge busts through lawyers cons that leave the Respondent in the hands of the Public Defender. You are watching *'white privilege.'* Sit. Watch the other cases before this truly incredible maturing Judge. Young African American men don't get the DP or NPA agreements white collar criminals have escaped jail with for decades or that Bennett's sole charged co-conspirator pled to- 2 counts down from 17. In the eyes of Judge Xinis, these young men I saw, got a dose of empathy for effort made, after all these young men's history are their criminal record while the *"Hoodoo Investment Advisors"*[37] record of AWC, acceptance waiver consent, possible financial crimes not taken to cops for evaluating as crimes are covered up.

Answering the age old question, why don't the CEOs go to jail, the DPA and NPA are the answers why the CEOs do not go to jail.

No, there should be absolutely no Deferred Prosecutions or non-prosecution agreements as proposed unless the law applied to Main Street is replaced with AWC, acceptance waiver consent, too. That will never happen.

Proposed Rule 21F-4(d)(3) must never happen unless all SEC employees and complicit parties including but not limited to legislators, regulators, lawyers, FINRA/NASD, PIABA and others are held accountable as Accessories- before, during and after; withholding evidence, witness tampering, evidence tampering. There is one law. The SCOTUS got *'it'*, *'one law'* with their rulings in SEC v LUCIA, Bandimere and Epic v Lewis that exposed how Wall Street has been violating signed Investment Advisory Employment Agreements by pulling Investment Advisors and Investment Clients in to FINRA/NASD's Securities Broker-Dealer only DRS.[38]

The SEC has no investigative or prosecutorial or law enforcement power. The SEC is a regulator doing what Congress tells the SEC to do, only. The SEC has no authority to write policy. The SEC has no authority for the ALJ Courts that are *"Court"* in name only, not operating by the

[37] http://www.dailymail.co.uk/news/article-4840938/Radio-host-ran-Ponzi-scheme-tried-cast-spell-SEC.html
[38] https://www.finra.org/arbitration-and-mediation/investment_advisers

same rules real courts operate under- with subpoena power, with the ability for the Judge to scream "off with their heads" and have that happen. Judgements, *"monetary sanctions"* the SEC ALJ Court issues are more like *'suggestions'* in that the SEC does not register the *"Opinion"* either.

The SEC has no authority, period. The SEC staff who wrote this proposal know, writing, "*...the Commission has previously exercised its interpretive authority to pay a whistleblower award with respect to a DPA entered into by DOJ on the basis that such agreements are filed in a federal court action that charges the defendant with violations of law...*"

What the #*$& is *"interpretive authority"* ?

Making a Deferred prosecution and a non-prosecution agreement by the DOJ or a state attorney general in a criminal case, or a settlement agreement entered into by the Commission outside of the context of a judicial or administrative proceeding deemed a "monetary sanction" ia wrong. Doing that is a violation of the one law that applies to Main Street and Wall Street equally.

Proposed Rule 21F-4(d)(3) must not *"..provide that, for purposes of making a whistleblower award, a DPA or NPA entered into by DOJ or a state attorney general in a criminal case would be deemed to be an "administrative action" and any money required to be paid thereunder would be deemed a "monetary sanction..."* The Citizen Whistleblower gets paid what they are owed for doing the job the SEC got caught keeping covered up. These crimes are known, the higher up the SEC and FINRA/NASD *'food chain'* one goes.

The SEC staff have to *'get it'* what the SEC staff believes on *"the statutory term "administrative action" is sufficiently ambiguous and broad enough to permit us to interpret the term to include DPAs and NPAs when these instruments are employed by DOJ or a state attorney general, or settlement agreements entered into by the Commission outside of the context of judicial or administrative proceeding..."* means nothing. The SEC staff are accountable to the law. The SEC staff trying to carve themselves out a pass on the law is deemable as a conspiracy to circumvent the law, the SEC staff have already been circumventing for decades.

SEC FOIA CONFIRMS SEC INVESTIGATORS ARE NOT TRAINED INVESTIGATORS, just lawyers:

The "*HOODOO Investment Advisor*"[39] is proof positive SEC investigators are not of such quality to cause SEC staff to open securities fraud investigations, or otherwise contribute to a successful enforcement action, as set forth in Rule 21F-4(c). The SEC *'investigators'* are lawyers not investigators. The SEC '*investigative staff*' *'investigate'* securities fraud, violations of Federal law. '*Financial fraud*' is investigated by law enforcement, that is '*if*' not when law enforcement learns of financial fraud. The SEC covers financial fraud up from cops.

[39] SEC 3-16801

ie Darren Goins. Goins penned the infamous *'I see no fraud'* email sent on behalf of the SEC *'investigators'* based in Philly. That was 7+ years of more victims ago. 7+ years of more victims later it is confirmed by FOIA, none of the SEC *'investigative team'* are trained investigators, just lawyers.

The SEC staff writing this Whistleblower Act update proposal complain about delays in crime solving. 8+ years of delay by the SEC is something to complain about, I agree. I believe greater efficiency in detecting SEC employee violations would speed up the public disclosure of such violations by SEC employees on the securities markets and on Investment Clients.

SEC staff is clueless deciphering what is meritorious complaint. The SEC staff is clueless to deciphering what is a potentially meritorious award applications, what is a credible whistleblower.

FINRA & SEC ENFORCEMENT THE SAME AS LAW ENFORCEMENT… NOPE, IT'S A CON ON COPS:

Criminal accountability is lacking. The erroneous belief is the SEC cannot be sued. Sorta. The SEC agency cannot be sued. SEC employees can and should be. A federal job is not a gateway out of accountability for failure to act on a federal or other crime. SEC employees that knowingly, with intent, deceive Magistrates and Presiding Judges by withholding key facts the Judges are not told is criminal as is SEC employees curating a case to *'fit'* SEC laws regulating SEC oversight of Securities Broker-Dealers. It is withholding evidence, tampering, false writing, intent to mislead or hinder.

If you or I did what the SEC staff are doing we would go to jail. Via FOIA I confirmed few SEC staff complaints, violations of laws, federal and criminal, are referred out to cops. It is the role of cops to be cops, not the SEC.

The SEC staff wrote the SEC receives on average approximately 700 Forms TCR and 110 Forms WB-APP annually. Do the math.

There are 590 Citizen Whistleblowers who did not know when to submit their WB-APP form to the SEC, required to 'be considered' or 'entertained' by the SEC to receive their Whistleblower Award. This is 700 potential credible financial crimes not reported to Cops.

No number is given how many of the 700 Citizen Whistleblower tips are submitted by lawyers representing clients.

No number is given how many of those 110 WB-APP submitters are Citizen Whistleblowers or represented by Counsel.

The SEC staff mislead on the value of Tips for law enforcement crime statistics, co-morbitities and for FINCEN stats. A database must be created with the guidance of law enforcement, not picked by the SEC staff.

The SEC staff details on whistleblower tips does not reflect true crime value. The SEC staff knew about the Bennett crimes in 2009. The SEC staff narrowed the tip down to a window of 14 months, narrowing the severity of the financial fallout, minimizing the amount of the award the SEC would slap on the wrist of the *"employee"* Investment Advisor, not on the responsible firm behind their salesperson, covering up criminal charges from happening and from being presented as such in the Investment Advisor's history.... One doesn't do the time, if there is no crime....

Lack of law enforcement involvement is sorta not law enforcements fault. If I could figure this out, they could to. It seems FINRA/NASD fan out education taught to cops that I call the "koolaid" teaching cops that FINRA is the first step of enforcement for financial crimes.

FINRA is not.

Enforcement is not law. Enforcement is like me telling you walk to my right but when you walk to my left I enforce that with writing you with a chore like 10 squats, while if you walked to my right in the middle of traffic, then law enforcement will write you up for breaking a law.

Explaining *'enforcement'* v *'law enforcement'* this way, cops get it.

The SEC staff further mislead writing *"...we are also aware that DOJ might pursue law-enforcement actions that potentially implicate both the Commission's whistleblower program and the whistleblower award program that the IRS..."*

The SEC did not call cops on the *"HOODOO Investment Advisor."* A clerk in a Waldorf Bank called the cops, bringing the FBI in on crimes that went on as far back as 2009 and maybe earlier. Keeping crimes away from cops is Accessory To A Crime, Before, During or After; Witness Tampering; Evidence Tampering, and so on.

Section 21F(a)(6) of the Exchange Act requiring an individual report a possible securities law violation to the Commission in order to qualify for employment at the SEC, the reader presume. People on Wall Street don't often comply with rules or do what they are told. Case in point, lawyers lead Investment Clients and Investment Advisors away from courts where they belong in the courts instead taking them in to the FINRA/NASD securities only dispute resolution forum for their dues paying members, the securities Broker-Dealers the Investment Client victims are suing, where the Investment Advisor does not belong.

And if one takes time to do a deep dive in documents in to a *"broker"* listed in finrabrokercheck, one of the first things that wont be found is that there is no such thing as a broker in the securities world, and, (ii) take time to research the Investment Advisor in other courts, jurisdictions, etc. Amazing what shows up more often than not- all that stuff that should have been in the finrabrokercheck and is not, too late for the Investment Client victims.

The SCOTUS decisions on EPIC v Lewis, SEC v Lucia, the Supreme Court Of The United States denying Bandimere has upended SEC business as usual, covering up crimes to protect the Securities Broker-Dealers the SEC has oversight of only.

The SEC staff is not reporting how many of the Whistleblower tips that lead to monetary awards are turned over to law enforcement. I asked that question.

None. Data on whistleblower tips leading to successful enforcement actions prior to the establishment of the Commission's whistleblower program is distorted intentionally by the SEC regulatory agency failing for decades, with intent. The SEC staff are not competent to decipher who is frivolous or fraudulent. The SEC staff behavior is fraudulent through this lens.

The Commission fakes the date windows and parties against whom crime are done controlling data release on whistleblower program monetary awards, faking data, controlling data that is released., as it stands now.

Silencing good hearted people intent to right a wrong. Honesty should not be collateral.

SEC employee failure to tell cops about a crime is a crime.

Allowing criminals to be recividous remaining uncaught under AWC, Acceptance Waiver Consent is criminal. SEC FOIA response confirms there is no written confirmation from Congress on AWC in securities Broker-Dealer, allowing SEC handled criminal matters to avoid pleading *"guilty or not guilty."*

Denying victims Due Process is criminal. Interesting how the words "*Due Process*", "*Victims*" and "*Criminal*" appear nowhere in the SEC staff 185 page proposal.

Denying victims DOJ support system is criminal.

Allowing men and women to remain uncaught- Madoff, Murphy, Bennett- while other are incarcerated for life for crimes they did not do- Matthew Otis Charles, Lamar Johnson, Mary Johnson- is unconscionable yet SEC staff appear to not be bothered.

The SEC is not law enforcement, not cops. The SEC should have no sole discretion, to decide if a Citizen Whistleblower *"failed to comply with the procedural requirement."* The SEC has already shown what the SEC is- the problem.

What Cops see is the SEC curated contrived *"success"* of '*enforcement.*'
The SEC staff is not independent analysis ie Bennett 1 victim alone $17.6 mil and ALJ Judge decision was $4.4 mil

The notion "*Independent Analysis*" will free up SEC staff resources to concentrate on "*meritorious claims or the more difficult determinations*" is colored by , what is real, the SEC

staff is not educated to what is meritorious claim and that meritorious claims is denied under the SEC staff "*...summary disposition process while other claims may remain pending under the Rule 21F-10 or Rule 21F-11 process...*"

SEC staff *'do'* what person before them told them to do. Sad. So many lives are destroyed.

SEC QUESTIONS HOW MUCH CITIZEN WHISTLEBLOWERS SHOULD BE PAID . HOW MUCH MONEY THE SEC IS INTENTIONALLY NOT PAYING CITIZEN WHISTLEBLOWERS THE SEC WANTS TO GIVE TO THE SEC SLUSH FUND IS THE QUESTION:

My experience as a whistleblower, from *'tip'* submission through to filing the WB-APP, whistleblower application provides insight. The SEC is complaining about having to do work responding to *"a small number of claimants have imposed an undue burden on the award determination process by submitting dozens and in some cases over a hundred award applications that lack any colorable connection between the tip that they provided and the Commission enforcement actions for which they are seeking awards..."*

My submission documents connected the *'Investment Advisor'*, the *'Broker-Dealer'*, the Clearing House and respective employees.

What the SEC and these agencies lack is a tipsheet, a handbook, a simplified plainly written in English not lawyer. This failure to comply with the Plain Writing Act[40] is a failure of the SEC not an opportunity to *"utilizing the procedural opportunities to object to an award..."*

Would mitigate having to write *"You should carefully review those rules before you submit any information that you may later wish to rely upon to claim an award."* SEC complying with Plain Writing Act would simplify whistleblowers complying with the cross- referenced rules, especially proposed Rule 21F-9(a) and (b), which require the submission of information to the Commission either on Form TCR or through www.sec.gov.

The SEC posts online it adopted the Plain Writing Act of 2010. You would not know it if you read correspondences the SEC sends out.[41] The CFPB has a Plain Writing Act compliance report.[42] So does the SEC.[43] Amazingly the SEC has a *"Plain English Handbook."*[44]

[40] https://www.govtrack.us/congress/bills/111/hr946
[41] *https://www.sec.gov/plainwriting.shtml*
[42] https://www.consumerfinance.gov/data-research/research-reports/plain-writing-act-compliance-report-2015/
[43] *https://www.sec.gov/files/PWAComplianceReport2018.pdf*
[44] https://www.sec.gov/pdf/handbook.pdf

The SEC returned '*confirmation letter*' from SEC Investigator Cindy Hoekstra listed only BGFS, Bennett Group Financial Services. Bennett Group Financial Services is/was an SEC approved Financial Advisory Firm. Qualifying firms must meet SEC requirements. If a firm matches the SEC requirements is only confirmable via FOIA, that is if the SEC cooperates. Multiple *'there are no documents'* FOIA responses later, a copy of the *'filed' 'acceptable'* SEC application was provided, containing digital footprints of red lined numbers and strike outs, raising question as to the firm's SEC qualification. 8+ years of more victims later post the SEC requesting I be their Investment Client whistleblower, the matter is in the Maryland District Court only. Securities Broker-Dealers and Investment Advisors are licensed state to state. Other state(s) were told to stand down.

The SEC 12-2-2010 TIP/document confirmation letter only indicates in the subject line *"Bennett Group Financial Services."*

The SEC does not list in the subject line the also reported Western International Securities, JP Morgan that Cleared for Western International Securities in the Western International Securities/Bennett '*relationship*' nor the named employees that were reported to the SEC Philly based Investigator team of Hoekstra, Goins, Thomas and others.

The SEC has '*massaged*' out Securities Broker-Dealer Western International Securities the SEC has oversight of.

The SEC has *'massaged'* out Securities Broker-Dealer JP Morgan the SEC has oversight of.

The SEC has *'massaged'* out the CEO of Bennett Group Financial Services. The SEC has no oversight of Investment Advisors.

The SEC has *'massaged'* out the CEOs of Western International Securities and JP Morgan that the SEC has no oversight of and the named *"employees."* The *"employees"* of Bennett Group Financial Services are Independent Contractors of Western International Securities, all listed on the SEC IADP sight as "*Investment Advisors*." The SEC has no oversight of Investment Advisors.

You see how the SEC *'removes'* from the Whistleblower Award potential key named parties reducing the amount of the Whistleblowers Award presuming the SEC Investigators do diligence as the time post reporting moves forward ethically. Rule of thumb, once a liar usually that is who they are, its just that you didn't catch the next lie, yet.
The SEC *"investigators"*, confirmed by FOIA, are not trained Investigators. The SEC *"investigators"* are lawyers. It took me a while to understand why the SEC employs lawyers to *"investigate"* fraud and crimes. The SEC lawyers are assuring the SEC steps taken are *'compliant'* with SEC rules Congress wrote which the SEC must follow. SEC *"investigators"* are about keeping the SEC out of trouble not putting the reported crimes and criminals in to law enforcement clutches.

The SEC is presumed to be operating with the best interest of Investment Clients at heart. The SEC is operating with the best interest of the entities, the Securities Broker-Dealers, at heart, using the words *"investor protection"* as the kool aid Main Street and legislators drink, a kool aid that is force fed to law enforcement consistently being told by FINRA to *'stand down.'*

The TIP is mailed or emailed to the SEC whistleblower office.

The Tipster receives a confirming letter that contains absolutely no information connecting the Tipster to which of the Tipsters submissions, just a TCR number and a date.

The Tipster does not receive a tip sheet, a *'handbook'/'guidebook'* of what the next steps are. The Tipsters receives the letter like the 12-2-2010 letter I received from Cyndi Hoekstra, stating, *"Cooperation in furnishing information is very important to us in fulfilling our enforcement and regulatory responsibilities under the federal securities laws..."* continuing *"...your documents have been referred to the appropriate people within the Commission..."*
The letter does not state the documents are refered to Law Enforcement. The documents are not provided to law enforcement. The SEC does not tell cops. Telling cops would tip law enforcement to a crime. The SEC protects crimes, Ponzi schemes, independent contractors and bad Investment investors from cops.

The SEC *"investigators"* letter alleges SEC 'investigation' is confidential to *"...protect the integrity of an investigation from premature disclosure and to protect the privacy of persons with respect to whom unfounded charges may be found..."*

In fact, what the SEC is doing is tolling statutes that law enforcement is bound to, that Investment Clients are bound to. Tolling statutes runs the time within which claims can be pursued except what the SEC Investigators and prosecuting lawyers do is, on the SEC end, with no legal or Congressional permission, independently *"freeze"* the statutes as the SEC Philly based Investigator/Lawyers did in the case of the *"HOODOO Investment Advisor."*[45]

The SEC writes there are exceptions to the *'SEC rule'* stating ability to get *"disgorgement within 5 years of the date the violation occurred."* The SEC disclaimer the *"Commission must bring any enforcement action seeking to obtain civil penalties within five years of the date the violation occurred"*[46] is obtuse.

(i) The SEC is not the law. Crimes go to cops
(ii) In the world of the Criminal Code, there is *"cold case files"*. *"Cold Case"* do not toll. They stay open until solved.

The next way you will see how the SEC winnows down the parties the Whistleblower is entitled to compensation from Tips the Whistleblower brought in is by, what I call *"curating"* the window of time the SEC Investigator/Lawyers choose to limit the crime story to.

[45] Page 25, Initial Default decisions 3-16801
[46] 127 17 CFR 240.21F-6(b)(2)

I brought in tips detailing pre 2014, pre 2009, pre 2006 even pre 2005 even as far back as 1990's as the document trail, I assembled, was showing. The SEC investigators narrowed their 'curated' story window to about 18 months winnowing down even further compensation from Tips the Whistleblower brought in the Whistleblower is entitled to.
The next SEC step in curating the case based upon the Tips the Whistleblower brings in is to not report suspected crime to law enforcement. Investment Clients are misled in to believing the victims only outlet to report the crimes is the SEC and FINRA/NASD. This is an intentional *'curate'* intended to keep crimes from cops, remembering at the same time statutes a Court holds to are being *'lost'* for cops and Investment Client victims.

Enforcement is not law enforcement. Investment Client and Investment Advisor victims presume the directions they are receiving to follow are from competent professionals knowing the law. Yes. Sometimes knowing the law is to understand how to circumvent the law as the SEC lawyers do by taking in and 'prosecuting' cases in the SEC ALJ Court.

The case of the *"HOODOO Investment Advisor"* is model for what takes place in an SEC ALJ Court
(i) defendants cannot be forced or subpoenaed to appear in the court. SEC ALJ Court is not a court. SEC ALJ Court does not operate under Court rules
(ii) Investment Advisors cannot be forced or subpoenaed to appear in the court. The SEC has no oversight of Investment Advisors or Investment Clients. There is nothing the SEC can threaten Investment Advisors or Investment Clients who refuse to appear with for not appearing before the Judge as requested. Appearances, btw, are telephonic for a large part. Usually appearance in person are forced upon celebrities. The SEC does factor in for cases that can be high profile ie Martha Stewart
(iii) The SEC lawyers walk the ALJ Judge through the case, telling the ALJ Judge how to proceed (court transcripts screengrabs www.centerforcopyrightintegrity.com)
(iv) the SEC ALJ Judge listens to SEC curating lawyer '*cherry picked*' witness/victims. Victim/witness Phillips Peter testified he lost no less than $17.6 million.
(v) The SEC ALJ Judge issued an opinion for $4 million, only
(vi) Awards must be collected, the SEC say. The SEC did not file the SEC ALJ Judge *'opinion'* in to a Court, required for collection of the SEC ALJ Judge ordered fine.
(vii) In the case of the"*HOODOO Investment Advisor*", presiding Judge Xinis states concern source of payments are from victims' funds. *"HOODOO Investment Advisor"* was running a Ponzi scheme predating the SEC Investigator/lawyer '*curated*' period SEC lawyers restricted litigation to.[47]

You can see how with the one victim the SEC did state stolen funds 'loss' of , how the whistleblowers TIP is reduced from a piece of $17 million to a piece of $4 million. Maybe.

Former SEC lawyer Michael Rinaldi told me I would get nothing. In fairness, with my learning the above, Rinaldi is correct. The SEC team works to cheat Whistleblowers out of their award.

[47] SEC Commissioner Michael Piwowar told me the Commissioners meet to decide what cases the Commission will take to prosecution looking for cases that bring prominence and attention to the Commission's work

The number of victims are not known to the Whistleblower. Potential amounts of victims are known to the SEC. Phillips Peter did not file a FINRA/NASD arbitration against the "HOODOO Investment Advisor", her securities Broker-Dealer and/or JPMCC the Clearing firm that had no contractual ability to clear BGFS client cash. Omega, Mount Vernon Ladies Association and Dimensions[48] did not file an action in FINRA/NASD either. None of their names are listed in the SEC CRD states securities commissioners have. The CRD names 15+ victims.

The CRD does not name denied[49] complaints, expunged complaints or victims unable to get lawyer representation because lawyers did not feel the amount lost, regardless of the amount being life savings, is not adequate for the lawyer to make money from. Lawyers are more often about the money rather than the law. Lawyers do have expenses to cover, just a fact of life, victims lose because of.

Claims are also *"expunged"* from the CRD without going through the *'required'* expungement process.

In all of this time, there is no communication from the SEC post the TIP being submitted.

There is no notice from the SEC where the TIP is in the SEC investigating track.

There is no communication from the SEC if the SEC is taking the Whistleblower's submissions and updates, and if that information is being used by the SEC to launch investigation in to the other named parties.

The Whistleblower does receive confirmation emails from the SEC advising the submission is received, and the submission date that update is being connected to ie 8/13/2013.

The SEC does not advise the Whistleblower if the SEC is using the Whistleblower's information to begin investigating the other named firms and parties.

There is no notification if the WB-APP period of 90 days begins to toll. The WB-APP 90 day period is the time in which the Whistleblower must submit their claim to the award to the SEC.

You now have a vignette in to how the SEC curates Whistleblower tips to cheat whistleblowers out of earned awards.

[48] SEC 3-16801, Initial Default Decision

[49] FINRAbrokercheck, Senator Ed Markey's *'baby'*, lists victims claims as being denied when victims claims are negotiated. Senator Markey would not provide comment, though asked repeatedly. A conflict of interest for Markey and Warren is that FINRA banks in the Senators' state of Massachusetts.

THE SEC WHISTLEBLOWER ACT PROPOSED UPDATE INCREASES HARMS FOR INVESTORS & THE PUBLIC FROM THE SEC:

The SEC pulling crimes away from cops is gone on for decades. SEC misconduct concerns have been ongoing for decades via false, fictitious, flowing information streams, *"...fraudulent statement or representation, or false writing or document with intent of misleading or otherwise hindering authority..."* coming from the SEC itself and SEC employees. SEC employees can be held accountable for what SEC employees do and do not do.

The Sec has no final order or authority; The SEC does what Congress tells it to do.

The SEC is asking that the Whistleblower Act update give the SEC sole approval to permanently bar Whistleblower Award applicants. Aside from not providing a folio of document samples the SEC staff are alleging issue with, the SEC is not, conversely, providing accountability standards for SEC employees breaking rules and/or laws, in the SEC whistleblower process and in dealing with Investment Clients victims and whistleblowers, ie turning SEC violators over to law enforcement.

There must a provided declaration of the violations of Rule 21F-8(c)(7). There should be a cure period. No bar should be permanent. The SEC whistleblowers materials must be returned to them to turn over to law enforcement to review if the SEC discretion to permanently bar alleged violators.

The SEC and FINRA/NASD have for Investment Advisors what are termed *'bar'* periods ie 3 weeks, 3 months, where the Investment Advisors cannot work with a dues paying FINRA/NASD business league Securities Broker-Dealer member before the Investment Advisor can resume their Investment Advisor relationship with the Securities Broker-Dealer. The cure here for Whistleblowers the SEC staff rule request[50] of wanting to ban Whistleblowers from submitting future award applications, should be no different than the Industry *'cure'*, a cool down period followed by a *'resume'* period.

The SEC staff must provide a *"denying Award"* form. Award denials must be explained in writing, signed by a staffer with their complete name printed and handwritten. Initials only are not acceptable. Psuedo names are not acceptable. ID Numbers without a name are not acceptable. The Whistleblower must receive a copy of that form explaining the reason for denial, the amount award the SEC staff decided, along with the SEC Final Opinion and hyperlink to the related Court case.

The Whistleblower is entitled to know the name of the SEC lawyers, investigators et al, just as one would know in a Court matter.

[50] Rule 21F-8(c)(7)

The Whistleblower is entitled to know the status of all parties the SEC whistleblower named to the SEC in the original complaint and updates.

The Whistleblower is to receive the name of related cases the SEC opened; status of related complaints the SEC did not pursue, and why.

SEC STAFF PROPOSAL IS NOTHING ABOUT PAYING OUT AWARDS TO CITIZEN WHISTLEBLOWERS, THE SEC STAFF PROPOSAL IS EVERYTHING ABOUT NOT PAYING AWARDS OUT TO CITIZEN WHISTLEBLOWERS TO KEEP THE MONEY IN THE IPF SLUSH FUND:

That the SEC staff writing the Whistleblower Act update proposal is inconsequential. What is more of consequence is that harmed Investment Clients and harmed Investment Advisors have *"an issue"* with SEC employees getting payments, pensions and other perks for not doing the job Citizen Whistleblowers are doing, reporting on crime, recidivous criminals, fraud coverups and protecting the global marketplace. Who cares about what the SEC staff think other than why are they not doing, knowing and understanding their job laid out clearly in the Acts of 1933, 1934 and 1940.

The SEC staff writing *"a whistleblower who delays reporting to the Commission should expect that his or her "reward" for reporting might well be negatively impacted... "* is blasphemous. The SEC squelched my tip and updates on the criminal even the SEC presiding ALJ Court Judge said is worse than Madoff. And the SEC sat on Madoff's crimes plus Madoff's parents crimes for 53+ years of more victims while the *"violations were ongoing, whether investors continued to experience harm or the whistleblower continued to profit from the wrongdoing during the period of the whistleblower's delay or whether the delay had a discernable impact on the monetary sanctions that were ordered in the enforcement action"*, the SEC staff who wrote this bizarre Whistleblower Act update that was intended to seek coverup from my public disclosures on how the SEC Whistleblower Department is cheating Citizen Whistleblowers.

SEC did not address. Madoff, 50+ years. Bennett, 20+ years. First Command, since 1958.

The SEC did not turn Madoff over to cops, Bennett over to cops and even First Command the funder of the NASD/FINRA Educational Fund over to cops since 1958.

The audacity of the SEC staff to write in their proposal *"...a whistleblower can have a debilitating impact on the Commission's ability to make a full recovery of ill-gotten gains and to obtain civil penalties and, in this way, delay may impair our ability to return funds to investors who have been harmed by the wrongdoing... "* is hair wrenching. The SEC does not want to

restore funds to wronged investors. SEC former attorney now at the DOJ Michael Rinaldi thought he was funny goading with "you will not see a dime." Got to give Rinaldi this, Rinaldi was right with how the Whistleblower fund is structured to date. Moreso, SEC cannot force the funds from Investment Advisors to be repaid. Investment Advisors, you say? Yep. When is the last time you read Wall Street industry articles on the '*barred advisor of the week*'? Firms are not people.

Premier securities attorney Phillip Aidikoff told me way back in 1990's that collecting NASD awards rarely happen because of the way NASD/FINRA awards are structured by NASD/FINRA on the shell companies not on the people. Aidikoff would know. Aidikoff, the Chairman Emeritus of PIABA, the dues collecting business league for lawyers who do securities law, has been sitting on NASD/FINRA committees since as far back as then.

All it takes for this blockage to clear up is to have law enforcement sit down to read, review and write recommendations on the way forward for the FINRA/NASD and the SEC to channel suspected crimes directly to cops. Won't ever happen if FINRA/NASD have anything to do with correcting this wrong on Citizen Whistleblowers. The SEC and FINRA/NASD want to tighten the leak I kicked public on Citizen Whistleblowers awards carved down via *'policy'* written as law to cut Citizen Whistleblowers out of earned awards.

The SEC did not file S-3-16801 in to the courts to collect the funds, nor on Madoff in 1963, 1975, 2000 and those are just a few of the complaints not settled, expunged, denied, aged out of the SEC system.

"*Unreasonable delays*" are the SEC's doing running this *'regulator' 'ALJ Court'* performance art scam for decades. SCOTUS confirmed are ALJ Courts are unconstitutional, tolling statutes that preclude Law Enforcement doing the job cops do if and once law enforcement learns about the crime.

Limiting whistleblowers to 180 days is intentional to coverup the crime and victim loss, to discredit the whistleblower. SEC freezing statutes of Respondents brought to the SEC ALJ Court. This is criminal. That said, this is the SEC. If you broke the law, would a Judge *'freeze'* your statutes? Nope.

"*Unreasonable delays*" is a two way street. When, not if, when the SEC does not turn a Securities Broker-Dealer or Investment Advisor over to another regulatory agency, the SEC is delaying that agency from beginning that agency's own investigation requirements which must be done for that agency to determine crimes under their regulatory oversight.

The SEC can only "*consider the nature, scope, and impact of the misconduct charged in the purported related action, and its relationship*" under federal securities laws.

The SEC bemoaning in the SEC Proposal[51], the SEC might have to pay a Whistleblower award near the maximum $240 million level under SEC existing rules asking "to reduce downward the hypothetical $240 million to a hypothetical lower $80 million minimum" is insane to think the SEC staff would ask such a question rather than to applaud the Citizen Whistleblower for making the SEC look good rather than failures at their work.

The SEC is honest, got to give them that, for writing "the request is made from deference to the SEC Securities Broker-Dealers who would be asked to make up the shortfall to the IPF, Investor Protection Fund..." I have no sympathy for the Securities Broker-Dealers needing to make up the shortfall based upon my experiences with RBC, JP Morgan and Western International Securities. They are after all the Superior Respondeat for what goes on under their Corporate umbrella.

Harvey Weinstein, Bill Cosby and other men are taking the fall for screwing with women, the same applies here too #CitizenWhistleblowersmetoo . A crime is a crime. Knowledge of a crime is a crime. Coverup of a crime is a crime. What is the SEC missing. Bottom line is if the SEC employees were diligent doing their job as written by Congress, these crimes that are caught would not be taking place.

The elephant remaining in the SEC room is the curating of cases to fit the window of time convenient to the SEC, that lawyers argue despite evidence otherwise in hand in an SEC ALJ court Congress had not written law for. Crimes go to cops and court.

The SEC writing, *"...We believe that the proposed rule language would provide additional clarity to potential whistleblowers to further alert them to the importance of following the procedures specified in Rules 21F-9(a) and (b)..."* is laughable. The SEC is not following the procedures Congress wrote. SEC has no authority from Congress to create policy. What counts is what Congress writes as law SEC must follow.

The SEC suggesting the SEC *'entertains' "[i]n considering an award determination pursuant to this rule, the Office of the Whistleblower and the Commission may rely upon the items specified in Rule 21F-12(a), an award application under Rule 21F-10 or Rule 21F-11..."* is laughable unless you have documented, as a Citizen Whistleblower, what the SEC Philly *'investigators'* and Lawyers do not produce, responsive to a Citizen Whistleblower FOIA request to confirm what the Philly office did or did not tell other SEC offices and staffers about.

300 or so pages responsive to months of paperwork provided to SEC former attorney Rinaldi were returned to that Citizen Whistleblower *'balance and check'* request, only. The SEC staff has a credibility issue with the SEC staff. Rule of thumb. WHEN the Citizen Whistleblower sends documents, copies are kept, *'balance and check'*.

[51] Rule 21F-6

There is no '*entertaining*' by the SEC staffers as to who gets paid what. This is not guessing how many jelly beans in the Jelly Bean jar. Ahhh, yes I forgot… the SEC FOIA office sometimes '*cant find papers*' or deems they searched long or hard enough. Not quite. There is the paper trail and not the FBI. FBI stance is they do the job the Special Agents are told to work on, so they email.

The SEC has no authority, no expertise to evaluate a Citizen Whistleblower individual's potential entitlement to an award yet the SEC staff think they do. The SEC OIG? Worthless to Citizen Whistleblowers. As wrote GAO employee Cynthia Hogue "*...If there are any issues in your allegations that relate to GAO programs and operations, we will take substantive action on your complaint. However, if the matter pertains to the conduct of employees of other federal agencies, you matter would be referred from our office, as our statutory authority is limited to programs and operations of the Government Accountability Office...*"

The GAO website states "*...The U.S. Government Accountability Office (GAO) is an independent, nonpartisan agency that works for Congress. Often called the "congressional watchdog," GAO investigates how the federal government spends taxpayer dollars...*"[52] continuing "*...auditing agency operations to determine whether federal funds are being spent efficiently and effectively; investigating allegations of illegal and improper activities; reporting on how well government programs and policies are meeting their objectives; performing policy analyses and outlining options for congressional consideration; and issuing legal decisions and opinions, such as bid protest rulings and reports on agency rules. We advise Congress and the heads of executive agencies about ways to make government more efficient, effective, ethical, equitable and responsive. Our work leads to laws and acts that improve government operations, saving the government and taxpayers billions of dollars...*"

SEC staff that have been working in the SEC all the time these abuses have gone on are valueless. SEC staff that have come from the culture of FINRA/NASD are valueless to Investment Client protection and marketplace integrity. SEC staff work to cover up their corporate culture. FINRA/NASD staff work to cover up theirs and the SEC corporate culture.

Former SEC Commissioner Michael Piwowar is a celebration against that SEC and FINRA/NASD culture of celebrating not doing the job Congress limited the SEC too. Piwowar's sudden resignation was post being exposed for hustling Camp Pendelton serving military on investing, a conflict of interest since Commissioner Piwowar was overseeing Securities Broker-Dealers Investors Investment Clients sue.

There is no potential for credibility when trust is broken.

The SEC staff is asking for the Office of the Whistleblower would issue a Preliminary Summary Disposition[53] denying an application "*in lieu of the Preliminary Determination that the Claims Review Staff would issue...*" Adressed above, the staff are vested in Company culture of

[52] https://www.gao.gov/about/
[53] Rule 21F-10 or Rule 21F-11

protecting the SEC hence lacking the *'arms length'* needed for a judicial answer that does not favor the SEC staff employer, the SEC.

The recommendation that "a Claimant" should have a 30-day period to reply with a written response is a no-starter the way the SEC has things now. Post the submission of TIP and receiving the TCR, the Citizen Whistleblower is told to expect not to hear back from the SEC, citing confidentiality. Without a permanent track set up from the get-go through which the Citizen Whistleblower can follow their TIP, sorta like the USPS and FEDEX letting people track shipped packages in the system, the Citizen Whistleblower would have no way of knowing when that "30-day period to reply with a written response" begins or.... not. The SEC, as is the system currently, is gunning for the Citizen Whistleblower having no clue when to file *"the timely written response"*, a failure the SEC is counting on in just the same way the system works, or is not working, with the WB-APP. The SEC wants to deny the award, have awards become Final Orders with no payout to Citizen Whistleblowers.

The SEC is not happy that 55 TIPS out of 700 actionable complaints received from over 22,000 submissions were paid out.

This 185 page proposal is a way to pay less. This is not rocket science.

CITIZEN WHISTLEBLOWERS ARE INVESTMENT CLIENT VICTIMS AND INVESTMENT ADVISORS WILLING TO BREAK THEIR NDAs, NON DISCLOSURE AGREEMENTS TO STAND UP FOR THEMSELVES & STRANGERS ARE PUBLICLY LIBELED #metoo:

Whistleblowing is not *"an individual decision that is generally guided by a complex mix of pecuniary elements and non-pecuniary elements"* as the SEC staffers wrote in their proposal.

There is a difference with what whistleblowers are. There are whistleblowers represented by lawyers submitting their tips to the Commission anonymously. There are citizen whistleblowers, public, these lawyers do not want. Citizen Whistleblowers are not a ticket to Federal government deep pockets. Citizen Whistleblowers are not looking for job security. Citizen whistleblowers are just men and women with a deep sense of ethics willing to stand up against personal attacks by the people intentionally doing wrong things harming good people, withstanding the loss of quality of life, the pushback, the doubters.

Whistleblowing are often victims of the crimes they whistleblow against or related to victims of the crimes and criminals. There is something sincere about supportive strangers reminding whistleblowers to continue doing the right thing.

Whistleblowers, as a result of their whistleblowing activities, do experience significant harmful consequences. Beyond ongoing large financial sacrifices, cost of pursuing the reporting of the

crimes, there are career-ending ramifications along with intended public shaming to embarrass the whistleblower. Lawyers and 3rd parties affiliated with the lawyers make threats against Citizen whistleblowers and their families. The NDAs non disclosure agreements and threats against whistleblowers are for their lifetime.[54] Citizen whistleblowers need lifetime protection[55] lasting a lifetime.

The SEC Acts allow the SEC to clear up FINRA/NASD DRS frauds and failed decision failures such as in my instance, found in Bad Faith[56] for telling the truth the SEC wants covered up. The SEC has repeatedly been asked for help, with no response.

There are penalties already on the books for Defamation and Libel. The SEC must write in to the updated Whistleblower Proposal penalties for SEC willful refusal and failure to restore Goodname and Goodwill to whistleblowers, compounded for each request the SEC refuses to take action for, or prevent, moreso when SEC employees are complicit in leading lines conversations in to the libel. The SEC must determine an Appropriate and upward ward level that is compliant with laws accordant to defamation, libel and repeated failure to take action over.

The *"HOODOO Investment Advisor"* is incarcerated pre-trial, unfortunately too late for the 8+ more years of victims that could have been saved from financial ruin but were not because of SEC decision to sit on credible information for almost a decade.

ANONYMITY, CONFIDENTIALITY & IDENTITY SHARING:

The SEC staff falsely allege in the Whistleblower Act update proposal that Citizen Whistleblowers seek anonymity, stating *"...critically, the ability of whistleblowers to remain anonymous through the course of an investigation and resulting enforcement action..."*

SEC Investigators 12-2-2-10 confirmation letter to me states, *"...Although cooperation by the public furnishing information is very important in our work, our work is confidential..."* continuing *"...This is done to protect the integrity of an investigation from premature disclosure and to protect the privacy of persons with respect to whom unfounded charges may be made..."* continuing *"...Thus, subject to applicable division of the Freedom of Information Act, as amended, the existence or non0existence of an investigation is generally not disclosed unless it is made a matter of public record in proceedings instituted before the Commission or in the courts. As a result, we will not be able to provide you with any future updates on the status of your complaint or of any pending Commission investigations..."*

[54] Proposed Rule 21F-2(d)(1)(iii)

[55] Section 21F(h)(1)(A), clause (iii)

[56] http://www.brokeandbroker.com/2313/finra-arbitration-attorneys-fees/

The SEC writes it is their *"...experience to date has been that approximately one-half of the whistleblowers who have received awards for information regarding their current or former employers took advantage of the opportunity to submit their tips to the Commission anonymously..."* continuing *"...the ability to report anonymously is an additional attractive feature of our program that helps to encourage company insiders and others to come forward by lessening their fear of potential exposure..."*

Anonymity is not a Citizen Whistleblower decision to make. Often, the Citizen Whistleblower is left no choice but to be as public as the Citizen Whistleblower can on the crimes reporting on. Anonymity is not the whistleblowers choice. Anonymity covers up what the SEC is doing or not doing.

The SEC Whistleblower TIP Form sort of makes it clear that if no lawyer is fronting your complaint there is no anonymity so there is no heightened whistleblower confidentiality protections, wrong of the SEC staff to suggest differently.

The letter from SEC Investigators, the SEC Investigators tell Citizen Whistleblowers, SEC Investigators wont be getting back to the Citizen Whistleblowers, deceptive for the SEC staff to have written otherwise in the Whistleblower Act update proposal. Whistleblower documentation goes in to a black hole. Moreso, in an internet world. Everything online is copied, shared, curated, in limbo waiting to be abused usually as blackmail and threats.

Any suggestion that SEC officers or employees *"...shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower but they do..."* is mindboggling again. The SEC has a relationship with Thomson Reuters. Imagine my surprise when I got an *"out of the blue"* email from Thomson Reuters advising me how much my request was going to cost me.

What request? I never made one. I learned the SEC did then sent my name, contact details and request to Reuters.

Section 21F(h)(2) already allows the SECto share information received from whistleblowers with *"...certain domestic and foreign regulatory and law enforcement agencies..."* That the statute requires domestic entities to *"...maintain such information as confidential, and requires foreign entities to maintain such information in accordance with such assurances of confidentiality as the Commission deems appropriate..."* in this world of gotcha, iphones and the Internet that Vint Cerf says 50+ years later has no security.

Not to worry, though. Section 21F(h)(2) allows the Commission to share information received from whistleblowers with *"...certain domestic and foreign regulatory and law enforcement agencies. However, the statute requires the domestic entities to maintain such information as confidential, and requires foreign entities to maintain such information in accordance with such assurances of confidentiality as the Commission deems appropriate..."*

The SEC did not tell the USPIS, the CFTC, the CFPB, Maxine Waters, Elizabeth Warren, Ed Markey etc.

Citizen Whistleblowers do.

THE SEC IS TAKING CRIMES AWAY FROM STATES & ATTORNEY GENERAL OVERSIGHT:

Securities Broker-Dealers and Investment Advisors are licensed state to state. Securities Broker-Dealers and Investment Advisors are under oversight of the State Securities Commissioners and State Attorney Generals.

States do offer Whistleblower awards to whistleblowers on crimes regulated by the States.

SEC oversight of Securities Broker-Dealers. The SEC modus operandi is to put forward Investment Advisors and Independent Contractors as accountable, protecting the Securities Broker-Dealers and Clearing Houses from the law. Investment Advisors are salesmen for the Securities Broker-Dealers. The Securities Broker-Dealers are Superior Respondeat.

The SEC and it's s.r.o. self-regulatory organization FINRA/NASD have flipped that.

Whistleblowers are entitled to receive payments from all levels of awards the Whistleblower reported on. A Uniform Communication code/language is needed to facilitate law enforcement understanding on a Criminal Code basis how the Investment Industry crimes relate to local and state approach.

Correcting the SEC and FINRA/NASD decades old deception is taking time. States are enforcement. Local is enforcement. FINRA/NASD is a private business with no authority to enforce, let alone to tell law enforcement to step down and let FINRA/NASD adjudicate complaints from customers. Law enforcement are understanding better.

There are crimes the s.r.o. perpetrated that should be corrected. SEC and FINRA/NASD Crimes perpetrated on serving military and veterans is despicable. Active duty military are being pulled in to the FINRA/NASD for arbitrations that are conducted telephonically, in itself, is despicable moreso when the Investment Client victim is scammed by an Investment Advisor. Investment Client victim disputes with Investment Advisor disputes are not oversight of the SEC or FINRA/NASD.[57]

[57] https://www.finra.org/arbitration-and-mediation/investment_advisers

TIMELINE OF SELECTED DOCUMENTS EDUCATING WHY WHISTLEBLOWERS ARE ENTITLED TO EVERY PENNY OF AN AWARD & MORE. ATTACHMENTS PROVIDE INSIGHT IN TO WHAT WHISTLEBLOWERS GO THROUGH TO GET LAW ENFORCEMENT INVOLVED IN CRIMES AGAINST INVESTMENT CLIENTS:

S. 1869	Senate *"Whistleblower Protection Coordination Act"*
1963	FINRA/NASD Madoff Fine $500 *"No Product"*
SEC Form WB-APP	
SEC Notice Of Covered Action Confirmation	
Office Of The Whistleblower *"Claim An Award" "Notice Of Covered Actions"*	
SEC Whistleblower Proposal	Page(s) 125-127, 136, 140-141 (re) mathematics of Whistleblower awards
DC Whistleblower Select Pages On Independent Contractors & Employees & DOL Fiduciary Rule	
12-2-2010	SEC Investigator Cindy Hoekstra Letter To SEC Requested Whistleblower Carrie Devorah (investment client) Confirming SEC Whistleblower SEC wrote for *"Bennett Group Financial Services"* While Devorah Reported More Firms and Individuals
Tue, Dec 14, 2010 at 11:07am	Email from SEC Requested Whistleblower Carrie Devorah (investment client) to DC DISB Department of Insurance, Securities & Banking employee Theodore Cross
Mon, Sep 25, 2017 at 9:33am	Email from SEC Benjamin Kalish Re Holding Companies
Thu, Mar 10, 2011 at 11:46am	Email from SEC Requested Whistleblower Carrie Devorah (investment client) to DC DISB Department of Insurance, Securities & Banking employee Theodore Cross

Thu, Mar 17, 2011 at 3:54pm	Email from DC DISB Department of Insurance, Securities & Banking employee Theodore Cross to SEC Requested Whistleblower Carrie Devorah (investment client)
Wed, Apr 27, 2011 at 11:00am	Email from SEC Investigator Darren Goins to SEC Requested Whistleblower Carrie Devorah (investment client)
Mon, May 9, 2011 at 10:11am	Email from DC DISB Department of Insurance, Securities & Banking Securities Financial Examiner Theodore Cross to SEC Requested Whistleblower Carrie Devorah (investment client) cc' Senayet Meaza stating *'file is not public information'* [Author's Note: Consistently agencies crimes are reported to state the *'file is not public information'* hence whistleblowers cross file learning complaints are not shared with other agencies]
Wed, June 5, 2013 at 9:59am	Email from former FINRA CEO Linda Fienberg to SEC Requested Whistleblower Carrie Devorah (investment client) to discuss arbitration matters of RBC, BGFS/WIS and FINRA [Author's Note: Former FINRA DRS CEO Linda Fienberg resigned after I made this email public concurrent to media articles on FINRA/NASD being a Kangaroo Court[58]]
Tue, Aug 6, 2013 at 1:30pm	Email from IARDLIVE@sec.gov SEC Division of Investment Management, Investment Adviser Regulation Office to SEC Requested Whistleblower Carrie Devorah (investment client) Post Email to SEC Keith Kanyan (SEC cold call 1st contact)
Fri, Dec 20, 2013 at 9:12am	Email from SEC Requested Whistleblower Carrie Devorah (investment client) to JP Morgan Julie Moy regarding RBC accounts (i) [Author's Note: SEC Requested Whistleblower Carrie Devorah (investment client) was a whistleblower on both RBC et al, Bennett/WIS et al]

[58] http://www.finra.org/newsroom/2014/dispute-resolution-president-linda-fienberg-retire-finra

[redacted]

(ii) 9-6-2017 Letter to JP Morgan requesting account history on check

(iii) 7-24-09 RBC Statement indicating autopay from JP Morgan Chase

(iv) RBC Dain Rauscher form sent for signing to Carrie Devorah by RBC Dain Rauscher Investment Advisor Scott Sangerman Account # ending in 7049

(v) Pjwill5349@aol.com email address turns up in RBC account for SEC Requested Whistleblower Carrie Devorah (investment client). RBC had website changed

(vi) JP Morgan employee Bryan Gasche modified SEC Requested Whistleblower Carrie Devorah (investment client) RBC account info on the encrypted CD sent by RBC attorney Carolyn Guy after forcing case settlement refusing to provide client account statements. Info was changed within 3 weeks after the FINRA/NASD DRS complaint was filed and led in to FINRA/NASD DRS, only for Securities Broker-Dealers not Investment Clients and Investment Advisors

(vii) Bryan Gasche prior LINKEDIN profile. It was removed then replaced after the complaint was circulated by SEC Requested Whistleblower Carrie Devorah (investment client)

(viii) SEC Requested Whistleblower Carrie Devorah (investment client) received this "client standard account agreement" on the encrypted CD received from RBC attorney Carolyn Guy. SEC Requested Whistleblower Carrie Devorah (investment client) address had no 522 in it.

Fri, Jan 10, 2014 at 10:14am — Email from JP Morgan Jamie Dimont Office stating "we are unable to locate accounts ending in 7049 and 1326"

RBC Wealth Management Check ending in #7049 issued by Carrie Devorah

February 10, 2014 — Facebook friend of FBI Lawyer 1 (MD 8:17-cr-0472-PX) posts *'article'* on FINRA 12-03894 ruling finding SEC Requested Whistleblower Carrie Devorah (investment client) in Bad Faith for telling the truth SEC and FINRA/NASD want covered up. FINRA/NASD *'code of*

rules and procedures' state FINRA/NASD DRS are to be withheld for 14 days post final decision. Piece was released within 10 days, the only record of the decision. 2012 *'arbitration'* is not a red dot on the finrabrokercheck timeline otherwise DRS would not have public record
[Author's Note: SEC is a securities Broker-Dealer regulator only; FINRA/NASD is an SEC appointed Securities Broker-Dealer only DRS dispute resolution forum not for Investment Advisors and Investment Clients[59]]

Thu, Mar 2014 at 9:42am

Email from JP Morgan Vice President Barbara Feigelman to SEC Requested Whistleblower Carrie Devorah (investment client) stating *"you are a client of Western International Securities Inc, a broker-dealer firm for which we provide clearance services on a fully disclosed basis..."*

[Author's Note: There is no contract with Western, the broker dealer. There is no contract with Bennett/BGFS, the Investment Advisor. There is a contract with JP Morgan Clearing. There is no mention of either WIS or BGFS in the JPMCC contract with SEC Requested Whistleblower Carrie Devorah (investment client). There is a contract between WIS and Bennett Financial Group an Independent Contractor, with Dawn Bennett as CEO. BFG is not the firm BGFS Investment Client victims hired. JPMCC had no contract to clear BGFS client cash. Broker Agreement 7-27-2009 between Securities Broker-Dealer Western International Securities and "Bennett Financial Group"]

[Author's Note: JP Morgan was providing "FOR JP MORGAN USE ONLY" Clearing Agreements to WIS to give to WIS Independent Contractors to have Investment Clients sign so Investment Clients were contracted to sue JP Morgan. Bennett/WIS victims had no contract with either Bennett or WIS. JPMCC makes it clear in emails the JPMCC relationship was with WIS not Bennett. As it turns out WIS clearing contract access to JPMCC was not with BGFS but with a different firm Investment Victims were not clients of. This information was provided to SEC, SEC investigators, SEC Rinaldi, FBI, and FINRA/NASD etc]

[59] https://www.finra.org/arbitration-and-mediation/investment_advisers

Fri, Mar 28, 2014 at 12:32pm	Fraud Report to USPIS [Author's Note: The postal service and the wires were used for the Frauds]
Tue, May 27, 2014 at 9:58am	Email from CFTC Attorney-Advisor Judy Ringle advising CFTC has a whistleblower program
Thu, Jun 19, 2014 at 11:32am	Email from SEC Requested Whistleblower Carrie Devorah (investment client) to CFTC following up to Submission 2014-06-09. CFPB was notified, too.
Fri, Aug 1, 2014 at 11:59am	SEC Requested Whistleblower Carrie Devorah (investment client) emailed Congresswoman Eleanor Holmes Norton's longtime staffer Bradley Truding confirming meeting on FINRA/NASD & SEC covering up crimes. FINRA/NASD & SEC have brick locations in Holmes' Norton's District.
Wed, Aug 6, 2014 at 1:20am	SEC Requested Whistleblower Carrie Devorah (investment client) sent follow up correspondence to Legislative staff SEC Requested Whistleblower Carrie Devorah (investment client) had met with 'whistleblowing' to Congress on FINRA/NASD & SEC complicity in covering up crimes against Investment Clients. Named staffers are from the offices of Rep Keith Ellison, Rep Eleanor Holmes Norton the District of Columbia's Congresswoman ("HOODOO Investment Advisor's crimes were operating from inside the District), Rep Maxine Waters currently chairing the House Minority Financial Services Committee
Thu, Aug 7, 2014 at 9:36am	Rep Keith Ellison Acting Legislative Director Carol Wayman acknowledges receipt of SEC Requested Whistleblower Carrie Devorah (investment client) Aug 6, 2014 at 1:20am pre Meeting-FINRA Notes/Files email
Mon, Aug 18, 2014 at 4:20pm	Email from DC DISB Department of Insurance, Securities & Banking employee Brad Kunzweiler to SEC Requested Whistleblower Carrie Devorah (investment client) cc'd colleague Senayet Meaza [Author's Note: NASAA is a private business a 501(c)(3) affiliated with FINRA a private business 501(c)(6). NASAA is not government]
Wed, Sep 3, 2014 at 3:09pm	Email from SEC Program Specialist Keith Kanyan directing SEC Requested Whistleblower Carrie Devorah

	(investment client) to contact SEC Requested Whistleblower Carrie Devorah (investment client) to SEC Office of Acquisition or SEC FOIA office to get copies of contracts
Fri, Sep 5, 2014 at 11:42am	Email from FINRA Senior Examiner Kevin Suh to SEC Requested Whistleblower Carrie Devorah (investment client) stating both exams- RBC Scott Sangerman and WIS Bennett closed without action. FINRA/NASD has no oversight over Investment Advisors and Investment Clients. FINRA/NASD takes the reported information, guides their dues paying business league member what to clean up. As does the SEC, FINRA opened a Whistleblower Office[60] alleging 'expedited' review by FINRA. FINRA heard about Dawn Bennett from me pre 2103. Statement of Claim was filed in 2012.[61] Bernie Madoff made it easier for cons to be covered up. Investment Client victims believed a tip would turn in to law enforcement action. RBC was a credible tip from me. Bennett/WIS was a credible tip from me. Neither FINRA nor WIS reported the tips to cops.
Fri, Sep 5, 2014 at 12:36am	Email from FINRA Senior Examiner Kevin Suh to SEC Requested Whistleblower Carrie Devorah (investment client) misstated WIS eligibility in the District of Columbia. WIS was barred from DC until 4/5/2010 six months after SEC Requested Whistleblower Carrie Devorah (investment client) became a client.
Mon, Sep 8, 2014 at 3:04pm	Email from DC DISB Department of Insurance, Securities & Banking employee Lucinda Martin to SEC Requested Whistleblower Carrie Devorah (investment client) *"recalled"*. Martin cc'd colleagues Theodore Miles, Maurice Goff, Brad Kunzweiler, Dena Reed, Senayet Meaza

[60] http://www.finra.org/newsroom/2009/finra-announces-creation-office-whistleblower
[61] http://www.finra.org/newsroom/2009/finra-announces-creation-office-whistleblower

[Author's Note: DISB is a state securities regulator responsive to laws Congress writes. DISB takes information from FINRA a private business as guidelines. FINRA is not government]

Mon, Mar 9, 2015 at 4:34pm

DC former City Attorney Bennett Rushkoff had been a contact for months. Rushkoff was aware I brought the FINRA matters and concerns to Congress. Rushkoff forwarded the fruits of my effort on the Hill, a bill proposed by Congressman Keith Ellison "*NINE GROUPS URGE FINRA TASK FORCE TO RELEASE DATA ON MANDATORY ARBITRATION FOR INVESTORS*"

[Author's Note: I figured out soon after how the *"mandatory arbitration for investors"* con was schemed making this bill obsolete]

Tue, Mar 24, 2015 at 11:34pm

Email from SEC Requested Whistleblower Carrie Devorah (investment client) to CFTC on RBC, FINRA and *"HOODOO Investment Advisor"*

[Author's Note: Documents provided by RBC to SEC Requested Whistleblower Carrie Devorah (investment client) indicate closed unfunded accounts were open being used for purchasing IPOs, options and KIDDS. CFTC sued RBC for money laundering.[62] SEC Requested Whistleblower Carrie Devorah (investment client) BGFS/WIS/JPMCC accounts were kept open 2+ known years after accounts closed. SEC Requested Whistleblower Carrie Devorah (investment client) Scottrade accounts were discovered open 10+ years after accounts were closed. 2012, RBC post FINRA DRS provided encrypted CD with documents RBC knew Devorah accounts robbed for 10+ years mirroring another multi-state matter RBC settled in FINRA/NASD & SEC without crimes reported to law enforcement[63]. Victims and RBC clients were not alerted to frauds in accounts. Victims were taken by FINRA/NASD & SEC in to FINRA/NASD dues paying business league Securities Broker-Dealer only account]

[62] https://www.cftc.gov/PressRoom/PressReleases/pr7086-14
[63] www.dbo.ca.gov/ENF/pdf/2013/RBCCapMrkt_ConsentOrder.pdf

Mon, Mar 31, 2014 at 4:55pm	Email from DC DISB Claudine Alula to SEC Requested Whistleblower Carrie Devorah (investment client) cc'd Dena Reed re FOIA
Tue, Jun 3, 2014 at 7:50am	Email from Cynthia Hogue, GAO to SEC Requested Whistleblower Carrie Devorah (investment client)
Thu, Jun 26, 2014 at 2:37pm	Email from FINRA/NASD Sr VP and General Counsel Terri Reicher stating *"we will not be responding to you any further and I have instructed Dispute Resolution to forward any future voicemails, correspondence and email to me"* knowing FINRA/NASD is a Securities Broker-Dealer only forum not for Investment Clients and Investment Advisors[64]. SEC Requested Whistleblower Carrie Devorah (investment client) is an Investment Client FINRA/NASD led away from Court where FINRA states online Investment Clients belong not in FINRA/NASD DRS a forum for Securities Broker-Dealer only
Mon, Oct 6, 2014 at 3:17pm	Email from JP Morgan Vice President Barbara Feigelman to SEC Requested Whistleblower Carrie Devorah (investment client) stating *"There will be no further comment from us on your email inquiry"* [Author's Note: SEC Requested Whistleblower Carrie Devorah (investment client) exposed JP Morgan was clearing Investment Client cash that JP Morgan had no contract to access to clear. JP Morgan had access to clear Western International Securities cash from Independent Contractor "*Bennett Financial Group*"]
Tue, Mar 24, 2015 at 11:34pm	Email from CFTC to SEC Requested Whistleblower Carrie Devorah (investment client)
Mon, Mar 30, 2015 at 4:29pm	Email from SEC Requested Whistleblower Carrie Devorah (investment client) to Washington Field Office FBI on RBC matter.
Thu, Sep 17, 2015 at 12:55pm	Email from SEC Requested Whistleblower Carrie Devorah (investment client) to former MPDC Chief Lanier and team

[64] https://www.finra.org/arbitration-and-mediation/investment_advisers

Fri, Oct 9, 2015 at 3:08pm	Email from SEC Requested Whistleblower Carrie Devorah (investment client) to legislators. Rep Keith Ellison Legislative Aide Carol Wayman requested to be bcc'd not cc'd
Tue, Oct 6, 2015 at 10:26pm	Email from SEC Requested Whistleblower Carrie Devorah (investment client) to what becomes an 'everyone' in trying to get the serious matter addressed. Preet Bharara's team was talked to. Washington Field office was talked to
Fri, Oct 16, 2015 at 2:13pm	Email from SEC Requested Whistleblower Carrie Devorah (investment client) to GAO Cynthia Hogue [Author's Note: The GAO has oversight of government spending. Reporting the SEC et al to the GAO was a correct step in stopping these crimes against unsuspecting Investment Clients and Investment Advisors]
Thu, Jan 7, 2016 at 4:42pm	CFPB Whistleblower thanking SEC Requested Whistleblower Carrie Devorah (investment client) for contacting the CFPB (RBC/BGFS et al)
Thu, Feb 25, 2016 at 5:42pm	SEC Requested Whistleblower Carrie Devorah (investment client) email to former SEC attorney Michael Rinaldi lead on SEC 3-16801 responding to Rinaldi inappropriate comment(s)
Mon, Mar 14, 2016 at 5:43pm	
Sat, Mar 26, 2016 at 6:19pm	Email from DoJ Shawn Weede to SEC Requested Whistleblower Carrie Devorah (investment client) cc'd to FBI Special Agent Keith Custer
Mon, Mar 28, 2016 at 3:38pm	Email from SEC Requested Whistleblower Carrie Devorah (investment client) to US DoJ Shawn Weede and FBI Special Agent Keith Custer. Weeded introduced SEC Requested Whistleblower Carrie Devorah (investment client) to FBI Special Agent Custer. [Author's Note: FBI Custer 2016 case includes Defendant DJB Holdings. SEC Requested Whistleblower Carrie Devorah (investment client) FINRA DRS 12-03894, filed in 2012, addressed DJB Holdings, 4+ years of more victims before FBI brought in by SEC. FINRA/NASD & SEC found SEC Requested Whistleblower Carrie Devorah (investment client) in Bad Faith alleging there was no case

	to SEC Requested Whistleblower Carrie Devorah (investment client)'s claim. There was MD, 8:17-cr-0472-PX]
Tue, May 31, 2016 at 3:01pm	Email from SEC former attorney Michael Rinaldi requesting a file *"to send securely"*
Thu, Jun 2, 2016 at 9:24am	Email from FBI Special Agent Custer to SEC Requested Whistleblower Carrie Devorah (investment client0. USAO and FBI presented MD District Court Judge Paula Xinis defendant DJB Holdings was a 2013 startup company [Author's Note: DJB Holdings was addressed in FINRA DRS 12-03894. DJB Holding was not a 2013 startup as the SEC represented to USAO, FBI and MD District Court Presiding Judges]
Fri, Aug 5, 2016 at 4:17pm	Email to SEC Requested Whistleblower Carrie Devorah (investment client) directing SEC Requested Whistleblower Carrie Devorah (investment client) to *"make a written Freedom of Information Act, FOIA, request for the additional information that you are seeking..."*
Thu, May 5, 2016 at 12:01pm	OGIS, NARA, National Archives Records Administration Office of Government Information Services sends "Final Response" to SEC Requested Whistleblower Carrie Devorah (investment client) letter. SEC FOIA Appeals Office Directs FOIA Requesters to seek assistance from NARA OGIS May 4, 2016- OGIS regurgitates SEC provided stated information further writing *"...OGIS carefully reviewed your submission of information and we understand that you submitted a request....AP 3-16801...expedited processing and a fee waiver... SEC FOIA determined...you did not demonstrate a "compelling need" to obtain the requested record on an expedited basis...Specifically, you asked OGIS for assistance in obtaining expedited processing...* ***(page 2, dated 04/28/2016, page 1 is dated 05/04/2016) In working with agencies on cases similar to yours, we have learned that requesters must be able to provide the required elements for expedited processing and meet the required factors for fee waivers****... *I understand that this is not the response and outcome you had hoped to receive...At this time, there is no further assistance that*

OGIS can offer you in this case..., Sincerely, James VML Holzer, Director, cc. John Livornese, FOIA Public Liaison, SEC (requesting feedback at surveymonkey.com)"

**** The agencies, SEC, NARA and other agencies 'template' answers as you see in this NARA response with Page 1 dated May 4 and Page 2 dated one month earlier 4/28***

[Author's Note: The NARA OGIS employee Hirsch Kravitz is correct. Kravitz's letter was not the answer I wanted. Victims were actively being solicited and victimized 8+ years of more victims after the SEC asked me to be the SEC Requested Investment Client Whistleblower, two only of the Whistleblower parties- Investment Advisors out of the Investment Advisors, Securities Broker-Dealer and Clearing House- were arrested for the scam the USG USAO testified to MD presiding Judge Paula Xinis is still running, being directed from prison in 2018]

Mon, Sep 25, 2017 at 9:33am	Email from Ben Kalish, SEC to SEC Requested Whistleblower Carrie Devorah (investment client) clarifying the SEC only can take action against Holding Companies registered with the SEC. SEC defendants in 2nd Bennett BGFS matter includes DJB Holding which was not of SEC oversight
Thu, Nov 16, 2017 at 7:59pm	Email from Senate Judiciary Committee Republican Oversight and Investigations staff Whistleblower to SEC Requested Whistleblower Carrie Devorah (investment client)
Thu, Dec 17, 2015 at 12:35pm	CFPB Whistleblower thanking SEC Requested Whistleblower Carrie Devorah (investment client) for contacting the CFPB (RBC/BGFS et al)

TCR: EMPLOYEE, INDEPENDENT CONTRACTOR, D.O.L.

The SEC staff Whistleblower Act update proposal pages provide Tables and numbers on pages 125-127, 136, 140-141.

Table 1 adresses awards of enforcement actions, estimates of current annual wages; Table 4 adresses *"annual income generated by a twenty year annuity"*; Table 5 adresses *"annual income generated by a forty year annuity"* that *"we"* the SEC *"...calculate different annual incomes by varying the upfront payment from $5 million to $50 million increments and by varying the rate of return on the annuity from 2% per annum to 10% per annum in 2% increments..."*; Table 6 adresses *"annual income generated by a sixty year annuity; Table 7 adresses "annual income generated from a perpetuity..."* continuing *"...we assume that a lump sum upfront payment is invested in a perpetuity to generate annual income in perpetuity..."* continuing *"...we calculate different annual incomes by varying the upfront payment from $5 million to $50 million in $5 million increments and by varying the rate of return on the annuity from 2% per annum o 10% per annum in 2% increments..."*

The SEC staff further states *"...the annuity figures in Tables 4 through 7 are consistent with our belief that the proposed $30 million floor should not negatively impact the overall pecuniary incentives faced by most..."*

Whistleblowers can only learn the status of the Whistleblower's TCR by filing FOIAs. There is no other way to learn.

There is no assigned contact person for Whistleblowers to check in with on their TCR status. The SEC should follow the IRS model of coding and tipping TCR numbers in a way for the Whistleblower to recognize what company, entities are connected to the Whistleblower.

The IRS goes further to facilitate the Whistleblower matching the TCR to the Tip sent in. The IRS set up is to provide a Master Number accompanied with a subset of numbers for the multiple persons/entities named in the Tip. Each subset number is accompanied with some letters from the name/identity of the person that subset number connects to.

Credible Citizen Whistleblowers update the SEC with additional documents as can be read in the accompanying TCRs. The IRS model allows the Citizen Whistleblower to mark the update correctly.

When a Whistleblower requests by FOIA the status of the Whistleblower's TCR from the SEC FOIA office, the FOIA office demands the Whistleblower FOIA requestor provide Identification the FOIA requestor is who the SEC Whistleblower office knows the FOIA requestor to be. Whistleblowers are demanded to provide their Identity with Identification.

There is no connection between the TCR numbers and the Citizen Whistleblower able to track their case. The SEC requires the Citizen Whistleblower to claim the Citizen Whistleblowers award using the Form WB-APP. Problem is the WB-APP form requirement is not detailed in the TIP sheet the Citizen Whistleblower filed.

The Whistleblower TIP Sheet must be a Uniform Sheet designed with and for Law Enforcement needs not the Code of Federal Regulations. This is not guesswork.

The SEC must place the WB-APP click button on the SEC Whistleblowing TIP sheet website, setting up a page similar to the SEC FOIA/APPEAL page.

The SEC staff preparing the Whistleblower Act update complain how Individuals seeking awards losing out on awards making mistakes in the filling out the Form WB-APP. There is no Handbook. A Handbook is needed.

Citizen Whistleblowers should be assigned *'Case Managers'* as are in the Courts system.

Citizen Whistleblowers should be offered a *"calendar"* just like Judges provide to the Defense and Plaintiffs council in court settings.

The SEC staff wrote "*...grounds for denial include, among other things, the fact that the individual did not comply with the form-and-manner requirements as specified in Rule 21F-9 for submitting information to be eligible for an award, or that the information was not used by the staff responsible for investigating, preparing and litigating the covered action and thus the individual's information did not "lead to" the success of the covered action...*"

It is important to remember the SEC carves out what is *"covered action."* I was asked by the SEC to provide information on 1 Investment Advisory firm, 1 Clearing House, 1 Securities Broker-Dealer, Independent Contractors, Investment Advisors, two only of which the SEC took action against, that said, knowing the SEC has no authority from Congress for 'covered action' over those two Investment Advisors.

In that vein, Rules 21F-9(a) and (b), the SEC wanting to bar Citizen Whistleblowers from resubmitting same information to the Commission, is in appropriate considering when there are multiple people conspiring in crimes where the information is incorporate as in my experience where SEC curated its case down to 1 individual and 1 company then after that individual broke a Federal law the SEC opened a second case, naming that Individual, a conspirator and 2nd company I named beginning from back in 2010 to present date, stating in writing to the SEC I am entitled to each and every claim the SEC did not pursue back post 2010, names memorialized in to the DC District Court record 3+ years of more victims before the SEC took action and, did not call cops in then either.

Different agencies have different roles. The SEC is for Securities Broker-Dealers. The CFTC is for Commodities. The IRS is for Taxes, and so on. While the Citizen Whistleblower does legwork, there are different oversights the Citizen Whistleblower must prepare to maintain oversight of to quarterback for surety the criminal is caught and stopped. Not wanting to pay on Simultaneous Submissions to the Citizen Whistleblower is insulting in that there would be con conversation of these crimes in the Citizen Whistleblower's life if the SEC had been doing its job and told Cops at the getgo.

Moreso, the SEC is interfering in cases going to Law Enforcement, Cops and the DOJ. Turning crimes over to Cops is no *"enforcement discretion"* of the SEC. The Sec has no authority to determine what is a crime or frivolous.

The SEC and the SEC Office of the Whistleblower have no authority to assess *"crime"* and awards, let alone deeming what is abusive and who is a *"repeat submitters."* Not turning crimes over to cops is a crime.

Absolutely no Rule should be adopted to let the Commission bar any applicant, from seeking awards. SEC employees should be barred for what the SEC is doing to cover up tracks bv barring people keeping the SEC accountable. Again, Elizabeth Holmes and Theranos are not under SEC oversight either as a Securities Broker-Dealer or qualifying Investment Advisory Firm; DJB Holding is not a Holding Company registered with the SEC; Lucia, Bandimere, Bennett and so many other Investment Advisors the SEC pulled in to SEC ALJ Courts away from city and State Cops are not Securities Broker-Dealers overseen by the SEC. The SEC has no oversight of Investment Advisors and Investment Clients. Congress should bar SEC employees complicit in coverups to be recommended for criminal charges under the law Main Street is accountable to. Moreso, returning past salaries, pensions and perks for having failed to do the job Congress write in the Criminal Code.

Citizen Whistleblowers will submit multiple Tips and award applications. Citizen Whistleblowers are entitled to every dime and more for picking up the slack on work SEC employees failed or did not know to do.

In my experience, the SEC has selective vision as to where the SEC sees crime. SEC Investigator Darren Goins said there was no merit (letter attached). 20+ years of AWC Acceptance Waiver Consents Signed with FINRA/NASD showed merit blocked by the SEC and failed oversight of the 501(c)(6) SEC approved for Securities Broker-Dealers only pulling Investment Advisor and Investment Clients away from Courts, JAMS and AAA, as stated on FINRA website.[65]

> *"...FINRA Office of Dispute Resolution has received inquiries from lawyers who represent investors and those who represent investment advisers (IAs) which are not FINRA members about the availability of FINRA's arbitration and mediation forum to resolve their disputes. Currently, such disputes are resolved in court or in non-FINRA dispute resolution forums..."*

The Law requires Agencies let related agencies know about crimes. Through my experience and FOIA confirmation, the SEC is not information sharing, letting other agencies know about the crimes.

Living in the DMV, I presented my ID in person. Again.

I was making my request, again, and again and again. I have no confirming answer from the SEC still.

Mark Mensack, an SEC whistleblower, has no answer still.

Jacques Houssou, an SEC whistleblower, has no answer, still.

[65] https://www.finra.org/arbitration-and-mediation/investment_advisers

August 16, 2013	SEC Requested Whistleblower Carrie Devorah (investment client) submitted data to the SEC OWB Office of Whistleblower
Wed, Dec 4, 2013 at 7:45am	D. Rivers in the OWB, Office Of Whistleblower emailed an *"acknowledgement letter as it pertains to your recent TCR submission..."*
November 25, 2013	The TCR submission was dated two weeks earlier. The submission was given a TCR Submission number. There is nothing in the TCR Submission number identifying the named in the tip. I provided multiple named. The SEC curates cases to cut out industry preferred being protected, at the same time to deny full monies the whistleblower is entitled to.
July 8, 2014	Submission dated- June 11, 2014 Signed by former director OWB, Sean McKessy The letter states *"...I addition we encourage you to submit any additional supporting information or materials that you believe will assist us in analyzing and fully understanding this matter..."* continuing *"...Members of the staff of the Division of Enforcement may contact you for additional assistance or information..."* The letter states *"...thank you again for taking the opportunity to submit your information to us..."* continuing *"...Efforts by persons such as yourself are critical to the success of this program..."* The letter had started *"...the success of the whistleblower program depends on individuals providing the Commission with specific, timely and credible information..."*

Whistleblowers can only learn the status of the Whistleblower's TCR by filing FOIAs. There is no other way to learn.

There is no assigned contact person for Whistleblowers to check in with on their TCR status.

I believed that until I no longer believed that.

The SEC Office of Enforcement never reached out to me.

The SEC Philly based "investigators" who are lawyers not trained investigators responded to me when I reached out to them, asking for more information and tips, still on the Voice Message.

I provided information updates.

I got TCR Submission confirmations.

The SEC investigators did not contact me to interview me.

The SEC lawyers did not contact me to interview me.

May 31, 2016 Submission dated, April 30, 2016
Signed by Jane Norberg, Deputy Chief OWB. TCR letter was updated to include *"As a matter of policy, the SEC conducts its investigations on a confidential basis. The purpose of this policy is to protect the integrity of any investigation from premature disclosure and to protect the privacy of persons involved in our investigations..."*

Jane Norberg's letter continues, *"...although working with whistleblower and their counsel is very importat to us, there may be very limited information we can share with you regarding what action, if any, we are taking in response to your submission..."* continuing *"...I hope you understand these limitations..."*

Jane Norberg's letter continues *"...the Commission is only authorized to conduct investigations into possible violations of the federal securities laws..."* further stating *"..you should not expect the Commission to take any actions to the extent your information relates to conduct outside the scope or coverage of federal securities laws...."* adding *"...we may, however, in appropriate circumstances, refer your matter to another regulatory or law enforcement agency..."*

Jane Norberg's words *"...efforts by persons such as yourself are critical to the success of this program..."*

Mon, Sep 12, 2016 at 4:18pm SEC Jeffrey Ovall emailed SEC Requested Whistleblower Carrie Devorah (investment client) question as to the status of her TCRs stating "...Please note that the SEC conducts is investigations on a confidential basis and we are not able to provide updates on the status of a complain..." continuing *"...if you are the person who submitted the whistleblower complaints, if you provide proof of identity as explained in the letter Mr. Jackson sent you today, we may be able to provide a small amount of information..."*

As of present date, I have not received the *"...small amount of information..."*

Tue, May 2, 2017 at 6:06pm SEC Requested Whistleblower Carrie Devorah (investment client) emailed OWB director Jane Norberg, bcc'ing FBI Special Agent Keith Custer, demanding the SEC restore the value of the case. SEC Requested Whistleblower Carrie Devorah (investment client) had learned how the SEC curated case values down and away from the Whistleblower. SEC Requested Whistleblower Carrie Devorah (investment client) demanded the SEC clear her name of Bad Faith, the tool used inside the

FINRA/NASD Securities Broker-Dealer only DRS forum. SEC Requested Whistleblower Carrie Devorah (investment client) had made public the SEC and FINRA/NASD knew they were complicit in pulling crimes against Investment Advisors and Investment Clients away from cops.

SEC Requested Whistleblower Carrie Devorah (investment client) stated to SEC attorney Jack Mccreery to "*...advise me how to collect 1- my portion of the ALJ decision award. I am a victim; - my whistleblower award for cooperating with the SEC since 2010...*" continuing "*...we do need to talk about the rest – the SEC's role. And what the SEC has yet to get right. And got wrong...*"

SEC Requested Whistleblower Carrie Devorah (investment client) ended up whistleblowing on the SEC. There is no mystery why SEC Requested Whistleblower Carrie Devorah (investment client) is in Bad Faith for telling the truth the SEC, FINRA/NASD, Wall Street want covered up.

There is no mystery why the SEC seeks to update the Whistleblower Act.

August 9, 2017 The new Deputy Chief of the Office of the Whistleblower Emily Pasquinelli confirmed to SEC Requested Whistleblower Carrie Devorah (investment client) receipt of "*Notice of Covered Action 2017-77 In The Matter Of Bennett Group Financial Services LLC, et al*" writing "*...The Office of the Whistleblower is evaluating your claim and may contact you if we need additional information...*"

Mon, Aug 21, 2017 at 1:00pm SEC Chief Jane Norberg emailed SEC Requested Whistleblower Carrie Devorah (investment client) responsive to an email SEC Requested Whistleblower Carrie Devorah (investment client) sent to a group of recipients in and out of the SEC. The SEC challenged SEC Requested Whistleblower Carrie Devorah (investment client) eligibility for the WB award.

What is the award for whistleblowing on the SEC scam?

Tue, Oct 24, 2017 at 11:12am SEC Requested Whistleblower Carrie Devorah (investment client) sent a group email to recipients in the SEC, FINRA/NASD, FBI, DOJ, Congress, Executive Office, MPDC, media & the USAO arguing MD 8:17-cr-0472-PX presenting incorrect facts to the presiding Judges

Dawn Bennett was arrested by the FBI 8-25-2017.

Bradley Mascho was arrested soon after. Co-owner Tim Augustin was not arrested nor were the other accessories named to the SEC 2010 including but not limited to the Securities Broker-Dealer the SEC has oversight of, nor was Securities Broker-Dealer JPMorgan the SEC has oversight of, nor Royal Alliance the SEC has oversight of.

The SEC has no oversight of Investment Advisors.

The SEC has no oversight of Investment Advisory firms not meeting the SEC required benchmarks.

The SEC has no oversight of Ponzi schemers. The DOJ does. The SEC and FINRA/NASD has not been turning Ponzi schemers over to the DOJ. MD 8:17-cr-0472 is addressed in court records as a Ponzi scheme.

The SEC had no oversight of Pedro Fort Berbel, Ponzi scheme. The DOJ did.

The SEC had no oversight of Elizabeth Holmes, Ponzi scheme. The DOJ did.

The SEC had no oversight of Dawn Bennett and Bradley Mascho, Investment Advisors Ponzi schemes. The DOJ does.

The DC DISB and every state securities Commission regulator and Attorney Generals have oversight over the crimes in their state(s).

Local police financial crime units has oversight of financial crimes within those polices' jurisdiction. It starts with police officers. Police officers are the local enforcement. The FINRA/NASD and the SEC employees complicit in covering up crimes from local cops are subject to local laws first for local law violations; Attorney Generals have oversight of the FINRA/NASD and the SEC employees complicit in violation state law violations; the DOJ has oversight of FINRA/NASD and the SEC employees and lawyers complicit in Federal violations.

It starts with the local police, first and final. There is common ground. It is clear, cops fist, ground up. Every FINRA/NASD, SEC, lawyer and Judge complicit in the deceptions FINRA/NASD is enforcement as in the word 'law', that the SEC is enforcement as in the word law should be retired asap without salary and pension.

The SEC had no oversight of Bernard Madoff, William Murphy, Lucia, Bandimere, Investment Advisors. The DOJ does have oversight of Ponzi schemes and Investment Advisor crimes.

The DOJ has oversight over regulatory agency employees.

The DOJ provides victims of crimes with counseling and other services. The SEC and FINRA/NASD do not. The SEC and FINRA/NASD know the harm and mental health issues of being a financial fraud victim.

WHISTLEBLOWER LAWYERS & PROMOTED WHISTLEBLOWER ASSISTANCE:

There is sort of a Stokholm Syndrome in the SEC with SEC employees identifying with the Criminals and Defense Counsel rather than with the Citizen Whistleblowers putting themselves at risk as happened in my experience with former SEC attorney Michael Rinaldi.

I am surprised how out of touch the SEC staff Whistleblower Proposal update is with the reality that Whistleblowers experience. There is a big business in SEC Whistleblowers and other Federal agencies. In fact, there is a National Whistleblower Center Attorney Referral Network, besides

1- not every whistleblower is a Federal employee
2- not every whistleblower is represented by counsel.

A large of the SEC Whistleblower program failure is due to lawyers. The SEC alleges the SEC has no rules for lawyers. Lawyers are bound to local law. The SEC Whistleblower program must provide criminal charges for lawyers on local, state and federal. The Investment Act of 1940 does address "*aiding and abetting*" to rein lawyers in from giving Investment Client victims inappropriate representation, taking Investment Client victims in to FINRA/NASD DRS away from the Courts where they belong, in to the FINRA/NASD forum where records are destroyed, expunged and/or information aged out in the system. Lawyers work for their clients. Wall Street lawyers clients are Securities Broker-Dealers crafting rules for Securities Broker-Dealer client protection, ie. allowing destruction of records after 3-5 years by the SEC and its s.r.o. FINRA/NASD, and/or binding Investment Client victims to Confidentiality Agreements and Non-Disclosure agreements to silence claims from becoming public information.

The Bar associations cannot be relied up. Bar Associations like the DC Bar are 501(c)(6), dues collecting business leagues, like FINRA/NASD, protecting the rights of their dues paying members.

The SEC staff is incorrect on the a financial arrangements lawyers have with Whistleblower clients, alleging (iv) Counsel will bill on average: (i) three hours to complete a Form TCR, and (ii) two hours to complete a Form WB-APP.283. Some lawyers are paid by the hour. Some lawyers are paid on a contingency, a percentage.

The SEC staff segment on how lawyers are compensated makes sense. SEC lawyers jump ship to law firms that sue the SEC ie. former SEC Sean McKessy is at Phillips & Cohen immediately post leaving the Agency.

> *"...No whistleblower law firm knows the SEC whistleblower program better than Phillips & Cohen. Sean McKessy, a Phillips & Cohen partner who until last year was the Chief of the SEC Office of the Whistleblower, led the SEC's efforts to set up the program and its*

> *policies and processes. For five years, he was in charge of evaluating whistleblower claims and making whistleblower reward recommendations..."*[66]

I would have thought there would be a period of time McKessy would be bound to not take a position with a firm that sues the SEC.

Securities Broker-Dealers and Investment Advisors are licensed state to state. Attorney Generals should be notified state by state. Securities Broker-Dealers and Investment Advisors should be sued state by state for Qui Tam, False Claims and the other. Whistleblowers should be rewarded state by state.

The District of Columbia has False Claim laws. The statute of limitations is 10 years. The District Of Columbia rewards Whistleblowers. [67] The DC AG was notified about these crimes.[68]

The presumption is all Whistleblowers are Industry. This is the farthest thing from the truth. Reality is there are Citizen Whistleblowers.

I am a Citizen Whistleblower.

'*Whistleblower*' lawyers *'gather'* information from prospective whistleblower clients, *'gather'* meaning the lawyers let Citizen Whistleblowers believe the cases will be taken, the Whistleblower explains detail of the case, send information the lawyers request to see. The lawyers walk away the richer with the Whistleblower's information the lawyer benefits from, the lawyers use.

There is the disclaimer email from the lawyer that listening to the call and reading the documents does not mean the lawyer took the case, didn't, and don't forget your statutes tolling to file a claim

There are persons marketing themselves as "*whistleblowers*" presenting themselves to have a network of *'lawyers'* they work with. There are never enough questions to ask to discern who is a genuine Whistleblower handler or there is more to the story.[69]

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[66] https://www.phillipsandcohen.com/whistleblower-practice-areas/sec-whistleblower-program-lawyers/?gclid=CjwKCAjwyrvaBRACEiwAcyuzRP5Sh_ZPNGi8S3IIdLMwK791Nmw2dROzTCyfgMRYPZkVsAJ8ANqIQBoCGVAQAvD_BwE

[67] https://www.phillipsandcohen.com/district-of-columbia/

[68] § 2-381.03. Attorney General for the District of Columbia investigations and prosecutions; powers of prosecuting authority; civil actions by individuals as qui tam plaintiffs; jurisdiction of courts. (a) The Attorney General for the District of Columbia shall investigate, with such assistance from other District agencies as may be required, violations pursuant to § 2-381.02 involving District funds. If the Attorney General for the District of Columbia finds that a person has violated or is violating the provisions of § 2-381.02, the Attorney General for the District of Columbia may bring a civil action against that person in the Superior Court of the District of Columbia

[69] https://www.nbcnews.com/news/investigations/pro-obama-group-fires-fundraiser-who-diverted-felon-s-100k-n39491

DOL: EMPLOYMENT . INDEPENDENT CONTRACTOR

Bennett FINRA created CRD and finrabrokercheck.org state Bennett was employed by Western International Securities.

Western International Securities agreements confirmed Bennett et al are Independent Contractors. The "contract" FBI Lawyer 1 provided in the FINRA DRS was not a contract relevant to the FINRA/NASD DRS between SEC Requested Whistleblower Carrie Devorah (investment client). The contract, provided by FBI Lawyer 1 was for a different entity unrelated to FINRA DRS 12-03894, Bennett Financial Group. The *"Broker Agreement"* contract is bate-stamped intentionally submitted knowing it was a false document in to evidence in a Securities Broker-Dealer only DRS forum without the correct submission agreements signed.

Calling an Independent Contractor an employee is a state and federal violation.

Calling an employee an Independent Contractor is a state and federal violation.

The Retail Investment Act of 1940 applies of 1940 states a lawyer found *"aiding and abetting"* is liable for jail and fine.

FINAL NOTES:

A recent Forbes article[70] states there are 1 billion reasons why the SEC Whistleblower program is effective.

The SEC thinks so, to, writing

> "..." *...Original information provided by whistleblowers has led to enforcement actions in which the Commission has obtained over $1.4 billion in financial remedies, including more than $740 million in disgorgement of ill-gotten gains and interest, the majority of which has been or is scheduled to be returned to harmed investors..."*

continuing,

> *"After nearly seven years of experience administering the whistleblower program, we have identified various ways in which the program might benefit from additional rulemaking. We believe that the changes that we are proposing will build on the program's success by continuing to encourage individuals to come forward and by permitting us to more efficiently process award applications, among other potential benefits..."*

The SEC Whistleblower Act proposal claims falsely *"...the amendments are designed to help ensure that an eligible, meritorious whistleblower is appropriately rewarded for his or her*

[70] https://www.forbes.com/sites/realspin/2017/07/18/one-billion-reasons-why-the-sec-whistleblower-reward-program-is-effective/#2b80eb893009

efforts... " is less about the whistleblowers than it is about knowing the dirt whistleblowers dug up on Securities Broker-Dealers.

Encouraging individuals to come forward gives the SEC more opportunity to protect securities Broker-Dealer crimes and crimes of the *'employees'* and Independent Contractors working for the securities Broker-Dealer.

From where I sit, my knowledge as an SEC Investment Client Whistleblower offering Comment on why the SEC Whistleblower program fails, there are 2 billion+ reasons why the SEC Whistleblower program is not effective nor, in my knowledge and opinion will ever be.

2018, the SEC staff who wrote the SEC 184 page Whistleblower Act modification proposal said, there are *"... three key tenets of the program...monetary awards, confidentiality, and retaliation protections..."* 22,000 disclosures of confidential Whistleblower complaints that were reported to the securities Broker-Dealers regulator, the SEC says.

22,000 other whistleblowers learning as I did that complaints I turned in to the SEC and FINRA/NASD turned over to the Securities Broker-Dealers to know what to cover up, go dark on... documented. A firm I was Investment Client whistleblower on let me know what they were told, twice, in a letter and in an email.

2009, the world listened as Harry Markopolous testified to legislators and lawmakers that Madoffs crimes were ongoing since the 1990s. The SEC has determined Harry is the benchmark for what qualifies as *"independent analysis"* as *"...as defined in our whistleblower rules (and explained further in this guidance) if submitted today..."* The SEC writes *"...Markopolos's submissions included information that would qualify as" Markopolos's information was "highly-probative..."* further stating that *"...Markopolous 'his expertise as a certified fraud examiner and his knowledge of the options markets to demonstrate that Madoff's purported investment strategy could not have produced his claimed investment returns..."*

Harry purported Madoff managed between $3 billion and $7 billion in assets.

I am not a certified fraud examiner. All I have to give the SEC are documents, found in plain sight the SEC did not know of nor did Preet Bharara's team that wrote the counts up against Madoff.

The SEC writes *"...to be considered "analysis," the whistleblower's submission must include some insight—beyond the existence of the publicly available information—that is revelatory; that is, the whistleblower's evaluation of the publicly available information should do the work of making known and opening up to view for the Commission the possible securities violations..."*

I found the papers proving Madoff's crimes were known decades prior to Harry Markopolous. My discovery qualifies as *"revelatory"* on the SEC pretending the SEC had no clue about Madoff's crimes.

My discovery makes me a whistleblower on Madoff's crimes predating Harry's claim. I have made that request to the SEC already and multiple times since.

I received no response unless this SEC request to silence credible whistleblowers with this proposal to block whistleblowers the SEC want silenced is my response from the SEC.

I put Madoff documents in one article I wrote, "*Congress Created Madoff*"[71], before the former Governor of Virginia Terry McCauliffe. I wrote McCauliffe's way forward to give 100s of 1000s of Virginia felons back their voting rights. Moreso, I confirmed that Madoff told the truth, 1963, the Sec knew about 50+years of Madoff's crimes, before Bernard turned himself in.

I covered Markopolous' Congressional hearings. People think of Whistleblowers they think of Markopolous. I don't. I think of a man that did not tell lawmakers Madoff's crimes were known to the SEC and NASD since 1963. Harry did not tell lawmakers Madoff's parents crimes were known to the NASD and SEC since 1960 yet what Harry told Congress is what the Dodd-Frank Act call for the SEC Whistleblower Agency and Investor Protection fund are predicated upon.

Less than a decade later, I made public papers that told Congress, lawmakers, legislators, regulators, law enforcement, telling nose-to-nose there is a problem with the SEC for decades. I told Congressman Ed Royce at Reagan DCA, minutes later bumping in to Senator Al Franken, telling Al the same that Madoff's crimes were known to the SEC in 1963.

These crimes have gone on for decades. The only difference between Markopolous testimony and now is the increased sophistication for Industry avoidance, using victims funds, IPF.

The true cost of Madoff's crimes to Investment Victims will never be known.

The SEC states, "*...The Commission has received over 22,000 whistleblower tips since the inception of the program through the end of Fiscal Year 2017...*" continuing "*...The Commission has ordered over $266 million in whistleblower awards to 55 individuals whose information and cooperation assisted the Commission in bringing successful enforcement actions and, in some instances, other enforcement authorities in bringing related actions against wrongdoers...*", the SEC clarifies "*...50 whistleblower awards to 55 individuals or joint whistleblowers...,*" at least those are the numbers the SEC wants you to believe are true numbers. The SEC carves crime window to fit a crime timeline story SEC wants told[72], a story that does not fit regulatory orders ie First Command, Madoff, Bennett.

22,000 tips leading to awards to 55 individuals?

The SEC Whistleblower Act update proposal stating the Whistleblower Act is "*twin goals of protecting investors and increasing public confidence in the markets*" is total crap. The Whistleblower Act proposal is *'all about the bro'*, the brotherhood of Wall Street.

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[71] http://www.centerforcopyrightintegrity.com/congress-created-madoff.html
[72] Exchange Act Rule 21F-820

The SEC employee proposal states *"... information and cooperation assisted the Commission in bringing successful enforcement actions and, in some instances, other enforcement authorities in bringing related actions against wrongdoers..."* continuing *"...After nearly seven years of experience administering the whistleblower program, we have identified various ways in which the program might benefit from additional rulemaking. We believe that the changes that we are proposing will build on the program's success by continuing to encourage individuals to come forward and by permitting us to more efficiently process award applications, among other potential benefits..."*

further stating,

"...Original information provided by whistleblowers has led to enforcement actions in which the Commission has obtained over $1.4 billion in financial remedies, including more than $740 million in disgorgement of ill-gotten gains and interest, the majority of which has been or is scheduled to be returned to harmed investors..."

The SEC Whistleblower Proposal states does not state the true value of disgorgements of profits the SEC chose not to pursue, intentionally kept away from law enforcement. The SEC Whistleblower Proposal states the DOJ received $450 million in criminal penalties, the Commission received $350 million in disgorgement of profits further. The SEC Whistleblower Proposal fails to state the DOJ, the US Attorneys Office gets the case the SEC lawyers curated to fit the story the SEC wants told to District Court Judges. Documents are withheld. Facts are... misplaced.

FINRA/NASD and the SEC are for securities Broker-Dealers only, needing being said over and over again until it gets drummed in- not Investment Client victims and Investment Advisors.

The proposed Act is huge. Must be simplified down to a Handbook similar to the SEC Plain English writing handbook.[73]

Proposed Rule 21F-2(a) must clarify in the whistleblower definition by whistleblower status is an individual who *"provides the Commission with information "in writing"* clarifying *"in writing"* includes handwritten, electronic communication and voice protocol along with leaving room for emerging technological and other such digital innovations.

SCOTUS decisions pre 2018, pre EPIC v Lewis, SEC v LUCIA, must be revisited in light of documents given to the SCOTUS the SEC, FINRA/NASD covered up tainting case precedence moreso in light of the SEC pretending to be Cop when the SEC has no investigative or enforcement ability- like a dog or a bull with its cohones cut off.
The Whistleblower Proposal does not clarify if the disgorgement of profits was from Securities Broker-Dealers the SEC has oversight of or from Ponzi schemers, Investment Advisors and Investment Clients the SEC has no oversight of. The Whistleblower Proposal does not clarify on

[73] https://www.sec.gov/pdf/handbook.pdf

whom the DOJ received Criminal Penalties- the Securities Broker-Dealers the SEC took action against, or the Investment Advisors and Investment Clients the SEC has no oversight of.

S. 1869

One Hundred Fifteenth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Wednesday, the third day of January, two thousand and eighteen

An Act

To reauthorize and rename the position of Whistleblower Ombudsman to be the Whistleblower Protection Coordinator.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Whistleblower Protection Coordination Act".

SEC. 2. REAUTHORIZATION.

(a) IN GENERAL.—Section 3(d) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1)(C)—

(A) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively, and adjusting the margins accordingly;

(B) by striking "Ombudsman who shall educate agency employees—" and inserting the following: "Coordinator who shall—

"(i) educate agency employees—";

(C) in subclause (I), as so redesignated, by striking "on retaliation" and inserting "against retaliation";

(D) in subclause (II), as so redesignated, by striking the period at the end and inserting the following: ", including—

"(aa) the means by which employees may seek review of any allegation of reprisal, including the roles of the Office of the Inspector General, the Office of Special Counsel, the Merit Systems Protection Board, and any other relevant entities; and

"(bb) general information about the timeliness of such cases, the availability of any alternative dispute mechanisms, and avenues for potential relief."; and

(E) by adding at the end the following:

entity regarding the timely and appropriate handling and consideration of protected disclosures, allegations of reprisal, and general matters regarding the implementation and administration of whistleblower protection laws, rules, and regulations.";

(2) in paragraph (2), by striking "Ombudsman" and inserting "Coordinator";

(3) by redesignating paragraph (3) as paragraph (4); and

(4) by inserting after paragraph (2) the following:

"(3) The Whistleblower Protection Coordinator shall have direct access to the Inspector General as needed to accomplish the requirements of this subsection.".

(b) RESPONSIBILITIES OF CIGIE.—Section 11(c) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following:

"(5) ADDITIONAL RESPONSIBILITIES RELATING TO WHISTLEBLOWER PROTECTION.—The Council shall—

"(A) facilitate the work of the Whistleblower Protection Coordinators designated under section 3(d)(C); and

"(B) in consultation with the Office of Special Counsel and Whistleblower Protection Coordinators from the member offices of the Inspector General, develop best practices for coordination and communication in promoting the timely and appropriate handling and consideration of protected disclosures, allegations of reprisal, and general matters regarding the implementation and administration of whistleblower protection laws, in accordance with Federal law.".

(c) REPORTING.—Section 5 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (a), by amending paragraph (20) to read as follows:

"(20)(A) a detailed description of any instance of whistleblower retaliation, including information about the official found to have engaged in retaliation; and

"(B) what, if any, consequences the establishment actually imposed to hold the official described in subparagraph (A) accountable;"; and

(2) in subsection (b)—

(A) in paragraph (3)(D), by striking "and" at the end;

(B) by redesignating paragraph (4) as paragraph (5); and

(C) by inserting after paragraph (3) the following:

"(4) whether the establishment entered into a settlement agreement with the official described in subsection (a)(20)(A), which shall be reported regardless of any confidentiality agree-

(2) RETROACTIVE EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on November 26, 2017.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

COMPLAINT FINAL 12/08/63
FINES & COSTS PAID 11/20/63.

Reporting Source:	Firm
Current Status:	Final
Allegations:	VIOLATION OF NASD RULES 2230 AND 2110
Initiated By:	NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
Date Initiated:	07/01/1963
Docket/Case Number:	COMPLAINT NO. NY-802
Principal Product Type:	No Product
Other Product Type(s):	

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www.finra.org/brokercheck User Guidance

FINRA

Principal Sanction(s)/Relief Sought:	Censure
Other Sanction(s)/Relief Sought:	
Resolution:	Decision
Resolution Date:	11/08/1963
Sanctions Ordered	Censure Monetary/Fine $500.00
Other Sanctions Ordered:	
Sanction Details:	FINED IN THE AMOUNT OF $500 AND ASSESSED COSTS OF THE PROCEEDING IN THE AMOUNT OF $60.65. THE FINE AND COSTS OF THE PROCEEDINGS WERE PAID IN FULL IN NOVEMBER 1963.
Firm Statement	THE FINDING OF A VIOLATION OF NASD RULE 2230 WAS LIMITED TO A TECHNICAL INFRACTION.

Disclosure 9 of 9	
Reporting Source:	Regulator
Current Status:	Final
Allegations:	
Initiated By:	NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
Date Initiated:	11/22/1974

NASD

MADOFFS crimes were known by the SEC in 1963 50+ years before Bane turned himself in.

Other Product Type(s):

Principal Sanction(s)/Relief Sought:

Other Sanction(s)/Relief Sought:

Resolution: Decision

Resolution Date: 01/02/1975

Regulator Statement: NASDAQ COMPLAINT N-VS-86
FILED 11-22-74
ACCEPTED 12-4-74 PAID $25.00

1975

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FINRA

FINAL 1-2-75

Reporting Source: Firm

Current Status: Final

Allegations: INFORMATION NO LONGER AVAILABLE DUE TO AGE OF THE COMPLAINT

Initiated By: NATIONAL ASSOCIATION OF SECURITIES DEALERS INC

Date Initiated: 11/22/1974

Docket/Case Number: N-NV-86

Principal Product Type: No Product

Other Product Type(s):

Principal Sanction(s)/Relief Sought: Other

Other Sanction(s)/Relief Sought: FINE

No Product

$ 2,500

Resolution: Decision

Resolution Date: 11/19/1974

Sanctions Ordered: Monetary/Fine $25.00

Other Sanctions Ordered:

Sanction Details: FINE IN THE AMOUNT OF $25.00 NO OTHER INFORMATION IS AVAILABLE DUE TO THE AGE OF THE COMPLAINT.

OMB APPROVAL	
OMB Number	3235-0686
Expires:	March 31, 2021
Estimated average burden hours per response.	2

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM WB-APP

APPLICATION FOR AWARD FOR ORIGINAL INFORMATION SUBMITTED PURSUANT TO SECTION 21F OF THE SECURITIES EXCHANGE ACT OF 1934

A. APPLICANT'S INFORMATION (REQUIRED FOR ALL SUBMISSIONS)

1. Last Name | First | M.I. | Social Security No.

2. Street Address | Apartment/ Unit #

City | State/ Province | ZIP Code | Country

3. Telephone | Alt. Phone | E-mail Address

B. ATTORNEY'S INFORMATION (IF APPLICABLE – SEE INSTRUCTIONS)

1. Attorney's Name

2. Firm Name

3. Street Address

City | State/ Province | ZIP Code | Country

4. Telephone | Fax | E-mail Address

C. TIP/COMPLAINT DETAILS

1. Manner in which original information was submitted to SEC: SEC website Mail Fax Other

2a. Tip, Complaint or Referral number | 2b. Date TCR referred to in 2a submitted to SEC / /

2c. Subject(s) of the Tip, Complaint or Referral:

D. NOTICE OF COVERED ACTION

1. Date of Notice of Covered Action to which claim relates: / / | 2. Notice Number:

3a. Case Name | 3b. Case Number

E. CLAIMS PERTAINING TO RELATED ACTIONS

1. Name of agency or organization to which you provided your information

2. Name and contact information for point of contact at agency or organization, if known.

3a. Date you provided your information / / | 3b. Date action filed by agency/organization / /

4a. Case Name | 4b. Case number

F. ELIGIBILITY REQUIREMENTS AND OTHER INFORMATION

1. Are you, or were you at the time you acquired the original information you submitted to us, a member, officer or employee of the Department of Justice, the Securities and Exchange Commission ("SEC" or "Commission"), the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision; the Public Company Accounting Oversight Board; any law enforcement organization; or any national securities exchange, registered securities association, registered clearing agency, or the Municipal Securities Rulemaking Board? YES NO

2. Are you, or were you at the time you acquired the original information you submitted to us, a member, officer or employee of a foreign government, any political subdivision, department, agency, or instrumentality of a foreign government, or any other foreign financial regulatory authority as that term is defined in Section 3(a)(52) of the Securities Exchange Act of 1934 (15 U.S.C. §78c(a)(52))?

YES ☐ NO ☐

3. Did you obtain the information you are providing to us through the performance of an engagement required under the federal securities laws by an independent public accountant? YES ☐ NO ☐

4. Did you provide the information identified in Section C above pursuant to a cooperation agreement with the SEC or another agency or organization? YES ☐ NO ☐

5. Are you a spouse, parent, child, or sibling of a member or employee of the Commission, or do you reside in the same household as a member or employee of the Commission? YES ☐ NO ☐

6. Did you acquire the information you are providing to us from any person described in questions F1 through F5? YES ☐ NO ☐

7. If you answered "yes" to any of questions 1 through 6 above, please provide details. Use additional sheets if necessary.

8a. Did you provide the information identified in Section C above before you (or anyone representing you) received any request, inquiry or demand that relates to the subject matter of your submission (i) from the SEC, (ii) in connection with an investigation, inspection or examination by the Public Company Accounting Oversight Board, or any self-regulatory organization; or (iii) in connection with an investigation by the Congress, any other authority of the federal government, or a state Attorney General or securities regulatory authority?

YES ☐ NO ☐

8b. If you answered "No" to question 8a, please provide details. Use additional sheets if necessary.

9a. Are you currently a subject or target of a criminal investigation, or have you been convicted of a criminal violation, in connection with the information upon which your application for an award is based? YES ☐ NO ☐

9b. If you answered "Yes" to question 9a, please provide details. Use additional sheets if necessary.

G. ENTITLEMENT TO AWARD

Explain the basis for your belief that you are entitled to an award in connection with your submission of information to us, or to another agency in a related action. Provide any additional information you think may be relevant in light of the criteria for determining the amount of an award set forth in Rule 21F-6 under the Securities Exchange Act of 1934. Include any supporting documents in your possession or control, and attach additional sheets, if necessary.

H. DECLARATION

I declare under penalty of perjury under the laws of the United States that the information contained herein is true, correct and complete to the best of my knowledge, information and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information, my other dealings with the SEC, or my dealings with another authority in connection with a related action, I knowingly and willfully make any false, fictitious, or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry.

Signature Date

Privacy Act Statement

This notice is given under the Privacy Act of 1974. We are authorized to request information from you by Section 21F of the Securities Exchange Act of 1934. Our principal purpose in requesting this information is to assist in our evaluation of your eligibility and other factors relevant to our determination of whether to pay a whistleblower award to you under Section 21F of the Exchange Act.

However, the information provided may be used by SEC personnel for purposes of investigating possible violations of, or to conduct investigations authorized by, the federal securities law; in proceedings in which the federal securities laws are in issue or the SEC is a party; to coordinate law enforcement activities between the SEC and other federal, state, local or foreign law enforcement agencies, securities self regulatory organizations, and foreign securities authorities; and pursuant to other routine uses as described in SEC-42 "Enforcement Files."

Furnishing this information is voluntary, but a decision not do so, or failure to provide complete information, may result in our denying a whistleblower award to you, or may affect our evaluation of the appropriate amount of an award. Further, if you are submitting this information for the SEC whistleblower program and you do not execute the Declaration, you may not be considered for an award.

Questions concerning this form may be directed to the SEC Office of the Whistleblower, 100 F Street, NE, Washington, DC 20549-5631, Tel. (202) 551-4790, Fax (703) 813-9322.

General

- This form should be used by persons making a claim for a whistleblower award in connection with information provided to the SEC or to another agency in a related action. In order to be deemed eligible for an award, you must meet all the requirements set forth in Section 21F of the Securities Exchange Act of 1934 and the rules thereunder.

- You must sign the Form WB-APP as the claimant. If you provided your information to the SEC anonymously, you must now disclose your identity on this form and your identity must be verified

in a form and manner that is acceptable to the Office of the Whistleblower prior to the payment of any award.

- If you are filing your claim in connection with information that you provided to the SEC, then your Form WB-APP, and any attachments thereto, **must be received by the SEC Office of the Whistleblower within ninety (90) days of the date of the Notice of Covered Action to which the claim relates.**

- If you are filing your claim in connection with information you provided to another agency in a related action, then your Form WB-APP, and any attachments thereto, must be received by the SEC Office of the Whistleblower as follows:
  - If a final order imposing monetary sanctions has been entered in a related action at the time you submit your claim for an award in connection with a Commission action, **you must submit your claim for an award in that related action on the same Form WB-APP that you use for the Commission action.**
  - If a final order imposing monetary sanctions in a related action has not been entered at the time you submit your claim for an award in connection with a Commission action, **you must submit your claim on Form WB-APP within ninety (90) days of the issuance of a final order imposing sanctions in the related action.**

- You must submit your Form WB-APP to us in one of the following two ways:
  - By mailing or delivering the signed form to the SEC Office of the Whistleblower, 100 F Street NE, Washington, DC 20549-5631; or
  - By faxing the signed form to (703) 813-9322.

Instructions for Completing Form WB-APP

Section A: Applicant's Information

Questions 1-3: Provide the following information about yourself:

- First and last name, and middle initial
- Social Security Number
- Complete address, including city, state and zip code
- Telephone number and, if available, an alternate number where you can be reached
- E-mail address

Section B: Attorney's Information. If you are represented by an attorney in this matter, provide the information requested. If you are not represented by an attorney in this matter, leave this Section blank.

Questions 1-4: Provide the following information about the attorney representing you in this matter:

- Attorney's name
- Firm name
- Complete address, including city, state and zip code
- Telephone number and fax number, and
- E-mail address.

Section C: Tip/Complaint Details

Question 1: Indicate the manner in which your original information was submitted to the SEC.

Question 2a: Include the TCR (Tip, Complaint or Referral) number to which this claim relates.

Question 2b: Provide the date on which you submitted your information to the SEC.

Question 2c: Provide the name of the individual(s) or entity(s) to which your complaint related.

Section D: Notice of Covered Action

The process for making a claim for a whistleblower award begins with the publication of a "Notice of Covered Action" on the Commission's website. This Notice is published whenever a judicial or administrative action brought by the Commission results in the imposition of monetary

Office of the Whistleblower

Claim an Award

We post Notices of Covered Action for each SEC action where a final judgment or order, by itself or together with other prior judgments or orders in the same action issued after July 21, 2010, results in monetary sanctions exceeding $1 million.

The inclusion of a Notice means only that an order was entered with monetary sanctions exceeding $1 million. By posting a Notice for a particular case, we are not making any determinations either that (i) a whistleblower tip, complaint or referral led to the SEC opening an investigation or filing an action with respect to the case or (ii) an award to a whistleblower will be paid in connection with the case.

Subject to the Final Rules, individuals who voluntarily provided the SEC with original information after July 21, 2010 that led to the successful enforcement of a covered action listed below are eligible to apply for a whistleblower award.

Once a Notice of Covered Action is posted, individuals have 90 calendar days to apply for an award by submitting a completed Form WB-APP to the Office of the Whistleblower by midnight on the claim due date listed for that action. Please send completed forms to the Office of the Whistleblower by mail at 100 F Street NE, Mail Stop 5631, Washington, DC 20549 or by fax at (703) 813-9322.

Notice of Covered Action Updates

Sign up to receive notifications of new listings.

Email address

[redacted]

Contact Us

100 F Street NE
Mail Stop 5631
Washington, DC 20549
Phone: (202) 551-4790
Fax: (703) 813-9322

Modified: Aug. 26, 2017

Notice of Covered Actions

SAMPLE FEW PAGES

Year:

-View All-

Notice No.	Action	Notice Date	Claim Due Date
	JUNE 2018		
2018-56 New	In the Matter of Visium Asset Management, LP **Administrative Proceeding File No.:** 3-18473 **Date Filed:** May 8, 2018 **Date of Qualifying Judgment/Order:** May 8, 2018	06/29/2018	09/27/2018
2018-55 New	SEC v. SW Argyll Investments, LLC (d/b/a Argyll Investments, LLC), James T. Miceli, Douglas A. McClain, Jr., Amerifund Capital Finance, LLC, and Jeffrey Spanier **Case Number:** 12-cv-00646 (United States District Court for the Southern District of California) **Date Filed:** March 15, 2012 **Date of Qualifying Judgment/Order:** April 26, 2018	06/29/2018	09/27/2018
2018-54 New	SEC v. GC Resources, LLC and Brian J. Polito **Case Number:** 15-cv-01048 (United States District Court for the Northern District of Texas) **Date Filed:** April 6, 2015 **Date of Qualifying Judgment/Order:** May 7, 2018	06/29/2018	09/27/2018
	MAY 2018		
2018-53	In the Matter of Altaba Inc., f/d/b/a Yahoo! Inc. **Administrative Proceeding File No.:** 3-18448 **Date Filed:** April 24, 2018 **Date of Qualifying Judgment/Order:** April 24, 2018	05/31/2018	08/29/2018
2018-52	In the Matter of PNC Investments LLC **Administrative Proceeding File No.:** 3-18426 **Date Filed:** April 6, 2018 **Date of Qualifying Judgment/Order:** April 6, 2018	05/31/2018	08/29/2018
2018-51	SEC v. Merrill Robertson, Jr., Sherman C. Vaughn, Jr., and Cavalier Union Investments, LLC **Case Number:** 16-cv-00667 (United States District Court for the Eastern District of Virginia) **Date Filed:** August 10, 2016 **Date of Qualifying Judgment/Order:** April 3, 2018	05/31/2018	08/29/2018
2018-50	SEC v. Capital Cover Bancorp LLC; Christopher M. Less aka Rashid K. Khalfani	05/31/2018	08/29/2018

← NO TCR # from which Whistleblower can identify the wrongful SEC marked the T

Notice No.	Action	Notice Date	Claim Due Date
	Case Number: 15-cv-00980 (United States District Court for the Central District of California) **Date Filed:** June 19, 2015 **Date of Qualifying Judgment/Order:** March 22, 2018		
2018-49	In the Matter of The Dun & Bradstreet Corporation **Administrative Proceeding File No.:** 3-18446 **Date Filed:** April 23, 2018 **Date of Qualifying Judgment/Order:** April 23, 2018	05/31/2018	08/29/2018
2018-48	In the Matter of Panasonic Corporation **Administrative Proceeding File No.:** 3-18459 **Date Filed:** April 30, 2018 **Date of Qualifying Judgment/Order:** April 30, 2018	05/31/2018	08/29/2018
2018-47	In the Matter of Geneos Wealth Management, Inc. **Administrative Proceeding File No.:** 3-18425 **Date Filed:** April 6, 2018 **Date of Qualifying Judgment/Order:** April 6, 2018	05/31/2018	08/29/2018
2018-46	In the Matter of Securities America Advisors, Inc. **Administrative Proceeding File No.:** 3-18424 **Date Filed:** April 6, 2018 **Date of Qualifying Judgment/Order:** April 6, 2018	05/31/2018	08/29/2018
2018-45	SEC v. North Dakota Developments, LLC, Robert L. Gavin, and Daniel J. Hogan **Case Number:** 15-cv-00053 (United States District Court for the District of North Dakota) **Date Filed:** May 5, 2015 **Date of Qualifying Judgment/Order:** April 25, 2018	05/31/2018	08/29/2018
	APRIL 2018		
2018-44	SEC v. Lucita A. Zamoras **Case Number:** 17-cv-02528 (United States District Court for the Northern District of Illinois) **Date Filed:** April 3, 2017 **Date of Qualifying Judgment/Order:** March 9, 2018	04/30/2018	07/29/2018
2018-43	SEC v. McKinley Mortgage Co. LLC, McKinley Mortgage Company, LLC, Tobias J. Preston, Charles G. Preston, Caleb J. Preston, and Laura A. Sanford **Case Number:** 18-cv-00616 (United States District Court for the Eastern District of California) **Date Filed:** March 22, 2018	04/30/2018	07/29/2018

Notice No.	Action	Notice Date	Claim Due Date
	Date of Qualifying Judgment/Order: March 27, 2018		
2018-42	In the Matter of Voya Investments, LLC and Direct Services LLC **Administrative Proceeding File No.:** 3-18393 **Date Filed:** March 8, 2018 **Date of Qualifying Judgment/Order:** March 8, 2018	04/30/2018	07/29/2018
2018-41	In the Matter of Maxwell Technologies, Inc., Van M. Andrews, David J. Schramm, and James W. DeWitt, Jr., CPA **Administrative Proceeding File No.:** 3-18408 **Date Filed:** March 27, 2018 **Date of Qualifying Judgment/Order:** March 27, 2018	04/30/2018	07/29/2018
2018-40	In the Matter of Steven Zoernack and EquityStar Capital Management, LLC **Administrative Proceeding File No.:** 3-17157 **Date Filed:** March 8, 2016 **Date of Qualifying Judgment/Order:** February 26, 2018	04/30/2018	07/29/2018
2018-39	In the Matter of Merrill Lynch, Pierce, Fenner & Smith Incorporated **Administrative Proceeding File No.:** 3-18392 **Date Filed:** March 8, 2018 **Date of Qualifying Judgment/Order:** March 8, 2018	04/30/2018	07/29/2018
2018-38	Matthew W. Fox and Wayne Energy, LLC **Case Number:** 17-cv-00271 (United States District Court for the Eastern District of Texas) **Date Filed:** April 19, 2017 **Date of Qualifying Judgment/Order:** March 8, 2018	04/30/2018	07/29/2018
2018-37	SEC v. Howard B. Present **Case Number:** 14-cv-14692 (United States District Court for the District of Massachusetts) **Date Filed:** December 22, 2014 **Date of Qualifying Judgment/Order:** March 22, 2018	04/30/2018	07/29/2018

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
PHILADELPHIA REGIONAL OFFICE
Mellon Independence Center
701 Market Street
SUITE 2000
PHILADELPHIA, PENNSYLVANIA 19106-1532

December 2, 2010 [redacted]

Ms. Carrie Devorah
[redacted]

Re: Bennett Group Financial Services

gave the SEC Investigators BGFS, WLS, JPMCC et al SEC Investigators only named BGFS, not the Broker-Dealers

Dear Ms. Devorah:

This is to confirm that we have received the documents that you sent to us relating to the above-referenced matter. Cooperation in furnishing information is very important to us in fulfilling our enforcement and regulatory responsibilities under the federal securities laws. Your documents have been referred to the appropriate people within the Commission.

This should not be construed as an expression of opinion on the part of the Commission or its staff that any violation of law has occurred, nor should it reflect adversely on the character or reliability of any person or entity or on the merits of any security involved.

Although cooperation by the public in furnishing information is very important in our work, our work is confidential. This is done to protect the integrity of an investigation from premature disclosure and to protect the privacy of persons with respect to whom unfounded charges may be made. Thus, subject to applicable provisions of the Freedom of Information Act, as amended, the existence or non-existence of an investigation is generally not disclosed unless it is made a matter of public record in proceedings instituted before the Commission or in the courts. As a result, we will not be able to provide you with any future updates on the status of your complaint or of any pending Commission investigations.

FOIA? hmmm

Additionally, we are not authorized to render legal or financial advice, nor may we represent any individual in connection with the assertion of his personal claims or rights. You have the right to consult a lawyer to explore any remedies that may be available to you. To do so, however, you must initiate legal action promptly or you may lose your legal rights to recover funds.

55
(i)

I have enclosed an SEC Form 1662 that governs information given to the Commission. Thank you for contacting the Commission and taking the time to send in your documents.

Very truly yours,

Cynthia Hoekstra

Cynthia Hoekstra
Attorney

Enclosure:
SEC Form 1662

they harassed me by phone calls after I called the SEC to ask how do you prove you hired a fee not a commission 8/15

Gmail

Carrie Devorah [redacted]

note from Carrie Devorah RBC Capitol Markets Corp

1 message

WB → RBC

[redacted] Tue, Dec 14, 2010 at 11:07 AM

[redacted]

Dear Mr. Cross

December 10 I received a letter from you stating you have not received my letter and papers on RBC. My papers were delivered. I sent you proof of service in a letter dated 11/23.

USPS tracking showned you received the letter 11/26, certified return receipt requested. I sent you a second set of papers yesterday. Return Receipt 7010 0290 0001 7941 7932. Please be on the lookout for the papers.

Sincerely
Carrie Devorah
[redacted]

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this happens "alot" allege "never got the papers" hence expenses of USPS Certified mail.

Gmail

Carrie Devorah [redacted]

Re: Complaint Against RBC

1 message

[redacted] Thu, Mar 10, 2011 at 11:46 AM

So the statements you are looking at are mine then?

On Thu, Mar 10, 2011 at 11:29 AM, Cross, Theodore V. (DISB) <theodore.cross@dc.gov> wrote:

I am still waiting for requested information from RBC.

[redacted]

Sent: Thursday, March 10, 2011 11:18 AM
To: Cross, Theodore V. (DISB)
Subject: Re: Complaint Against RBC

never got an answer from DISB. I did show them the statements RBC sent me 2012 5+ months post selling the FINRA DES. I had no documents. I got encrypted PDFs that show my identity was stolen since 2002 by RBC + JP Morgan employees

Dear Mr cross
I will answer when I return to my PC. Did RBC send you statements from 2002 to 2010 or just 2008? Also did they send you the Advisors agreement too?
Carrie

Sent on the Sprint® Now Network from my BlackBerry®

From: "Cross, Theodore V. (DISB)" [redacted]

Date: Thu, 10 Mar 2011 11:11:22 -0500

To: [redacted]

Subject: Complaint Against RBC

Ms. Devorah:

In reviewing some of the trade confirmations we received from RBC we noticed that trades (mostly purchases of securities)from your accounts between October 7, 2008 and December 2, 2008 were made. We want to verify whether or not Scott Sangerman had your authorized approval to make such trades during this period and if so, please provide supporting documentation such as an email or other written correspondence highlighting your approval. This information is needed to properly review your complaint against RBC and Scott Sangerman.

Your cooperation is very much appreciated. Thank you.

Preventing terrorism is everybody's business.

If you SEE something, SAY something.

Call the Metropolitan Police Department at **(202) 727-9099** or email at SAR@DC.GOV to report suspicious activity or behavior that has already occurred.

Gmail

Carrie Devorah [redacted]

Forwarded Emails from Theodore Cross Dept of DOI: Complaint Against RBC

1 message

[redacted] Thu, Mar 17, 2011 at 5:34 PM

On Thu, Mar 10, 2011 at 11:11 AM, Cross, Theodore V. (DISB) <[redacted]> wrote:

Ms. Devorah:

In reviewing some of the trade confirmations we received from RBC we noticed that trades (mostly purchases of securities)from your accounts between October 7, 2008 and December 2, 2008 were made. We want to verify whether or not Scott Sangerman had your authorized approval to make such trades during this period and if so, please provide supporting documentation such as an email or other written correspondence highlighting your approval. This information is needed to properly review your complaint against RBC and Scott Sangerman.

Your cooperation is very much appreciated. Thank you.

Preventing terrorism is everybody's business.

If you SEE something, SAY something.

It is a slap in the face to read these words knowing how the DISB capped my FOIA rumor

Call the Metropolitan Police Department at **(202) 727-9099** or email at SAR@DC.GOV to report suspicious activity or behavior that has already occurred.

Call **911** to report in-progress threats or emergencies.

To learn more, visit **http://www.mpdc.dc.gov/operationtipp**.

–
Sincerely
Carrie Devorah
www.godinthetemplesofgovernment.com
www.facebook.com/godingovt
@godingovt

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Sec 1st case v Bennett 3-168c
re DS senayet meaza

Bennett provided financial advisory services to the Association's investment committee from 2006 to October 27, 2009. OIP ¶ 39; Ex. 175.

Bennett told OCIE examiners in 2011 that at that time she provided $100 million in short-term cash management to the Association. Ex. 151. During her investigative testimony, Bennett stated that although she was terminated by the Association in October 2009, she had to "unwind [its] positions" and she "helped" Barton Groh, the Association's CFO and a personal client of Bennett's, "with some other issues." Ex. 361 at 56-57. As such, she claimed that her relationship with the Association continued through 2010 and 2011. *Id.* at 57. In support of this, Bennett provided records that purported to show that she participated in "[w]eekly [c]all[s]" with the Association up until April 2010, after Bennett Group was terminated in October 2009. *See* Ex. 179; Ex. 361 at 409. Bennett also claimed to have performed pension consulting services – "clean up, re-organize . . . paperwork . . . set up the investments" – on approximately $6.5 million of the Association's assets. Ex. 361 at 203; *see* Exs. 80-82, 84.

Groh testified he was the CFO of the Association from January 2006 through October 2010 and the COO from then until April 2014. Tr. 79. As CFO, Groh was responsible for all the finances, internal controls, audit, and management of investment funds. Tr. 79. Groh testified that Bennett first managed $7.5 million and later $30 to $35 million for the Association, with other advisors handling the remainder of the endowment. Tr. 80-83. Bennett Group did not manage $100 million for the Association as short-term cash or in any other way; and while Bennett made a pitch to manage the pension plan, she was not selected for either the Association's pension or 403(b) retirement plan. Tr. 82-83. Groh also testified that at the time Bennett was terminated, Groh spoke with Bennett and made clear to her that she would no longer provide investment management services for the Association and there would be no further opportunities in the foreseeable future for her to do so. Tr. 84. On October 27, 2009, the date the Association terminated her services, the Association directed Bennett to immediately transfer all funds she managed to the Association's bank account. OIP ¶ 40; Ex. 175. When asked about the documentation of Bennett's claimed weekly calls, Groh testified that he did not initiate any calls to Bennett or anyone else at Bennett Group regarding the Association's investments. Tr. 85.

no one took action re perjury in FINRA DR DS + in other mg

G. False statements to the District of Columbia securities regulator[6]

In October 2013, Senayet Meaza, Director of Market Examination for the District of Columbia Department of Insurance, Securities and Banking (District of Columbia securities regulator), wrote Bennett regarding the AUM claims in the June 2009 Barron's ranking. Ex. 87. The letter stated, in part:

SEC cannot charge re perjury SEC is a regulator re lawenforc

[6] Although Bennett was not charged with making false statements to the District of Columbia securities regulator, I may consider facts outside the OIP when assessing sanctions. *See Robert Bruce Lohmann*, Exchange Act Release No. 48092, 2003 SEC LEXIS 3171, at *11 n.20 (June 26, 2003) (permitting consideration of conduct not charged in the OIP for purposes of assessing sanctions).

Department of Insurance, Securities and Banking

The Department of Insurance, Securities and Banking has a new address: 1050 First Street, NE, Suite 801, Washington, DC 20002.

Department of Insurance, Securities and Banking

DISB

Office Hours
Monday to Friday, 8:15 am to 4:45 pm, except District holidays

Connect With Us
1050 First Street, NE, 801, Washington, DC 20002
Phone: (202) 727-8000
Fax: (202) 535-1196
TTY: 711
Email: disb@dc.gov

Ask the Commissioner
Agency Performance

Listen

SHARE

Market Examinations Division

Senayet Meaza, Director Market Examinations

The Market Examinations Division:

- conducts on-site examinations of all domiciled insurance companies, inspections of investment advisers broker-dealers, District-chartered banks and non-depository financial services institutions doing business the District of Columbia;

she never took a bus, an UBER, a cab, a bike to go look at the offices from 2012 →

Department of Insurance, Securities and Banking

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Department of Insurance, Securities and Banking

DISB

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Phone: (202) 727-8000
Fax: (202) 535-1196
TTY: 711
Email: disb@dc.gov

Ask the Commissioner
Agency Performance

On-site Examinations of DC-registered Broker-Dealers and Investment Advisers

DISB conducts on-site inspections or examinations of DC-registered broker-dealers and investment advisers. DISB's on-site examinations follow the guidelines of the agency's risk-based examination program and are conducted on a surprise basis. DISB also has a "Meet and Greet" program designed for new investment adviser and broker dealer firms ("Registrants").

DISB "Meet and Greet" Program for New Registrants

looks good on paper
Staff should be replaced with
Staff who are trained to be
They handled
interview

Within 180 days of registration, DISB will contact new Registrants for this meeting. During this time, Examinatic Division staff introduces themselves to the Registrant, provides the Registrant with a copy of the investment adviser or broker dealer rules, describes the examination process, and answers any questions the Registrant m have about the examination process or the Department.

DISB On-site Examinations

All examinations, except for the initial Meet and Greet, are conducted on a surprise basis, meaning that the Registrant will not receive prior notice that the Examination Division will be conducting an examination. To minimize the disruption to your firm's business, DISB examiners conduct an extensive pre-examination review o your firm and its activities prior to the on-site inspection. Following the exam, there will be an exit interview and discussion with the manager about the preliminary findings and any issues that they have identified during the examination. If you are new to the examination process, there are ways you can prepare.

Tips for Preparing for Your On-site Examination

Although examinations are conducted on a surprise basis, there are still steps you can take to prepare for an examination:

1. Make sure that you have readily accessible all the books and records required by Rule 181 for IA's and Rul 120 for BD's, including documentation of your compliance program and activities.
2. Make sure that your files are reasonably organized and up to date so that the examiners can easily find th documents they need.
3. Be prepared to provide the examiners with a copy of your supervisory or procedures manual.

On the day of the examination, the examiners will need access to the following:

- A clear place to work and review documents,
- A copier, fax machine, or other electronic equipment that allows the examiners to bring or send document back to their offices, and
- Appropriate personnel to be interviewed by the examiners –principals, supervisors and managers.

The key to a successful examination is cooperation. Examiners will be asking for a lot of documents and information, so work with the examiner to provide the material in the most efficient manner.

- Recommended Best Practices for Coordinated Investment Advisers Examinations

If you have any further questions about DISB's examination process, contact Senayet Meaza at Senayet.meaza@dc.gov or call (202) 442-4794. Please note, however, that information concerning specific inspections/examinations is generally non-public information that may not be disclosed.

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Carrie Devorah [redacted]

RE: Western International Securities FINRA (Matter of Bennett Group Financial Services/ Dawn Bennett)

1 message

Goins, Darren A. [redacted]
To: carrie devorah

Wed, Apr 27, 2011 at 11:00 AM

Ms. Devorah,

I hope this email finds you well! In regards to your inquiry of Bennett Group Financial Services, LLC ("BGFS"), registered investment advisor. I have been in contact with the staff at BGFS and there are a couple of things I would like to clear up with you:

You stated your intent for hiring BGFS was for them to provide you Investment Advisory services for a bundled fee. This bundled fee would include the investment management fee as well as any commissions related to executing trades in your account. This arrangement is typically referred to as a 'Wrap Fee Program'. BGFS is not a sponsor of nor do they provide investment advice for any Wrap Fee Programs. Additionally, you would have signed an Investment Advisory Agreement showing what services you would receive and what fee would be charged to your account. You mentioned and we confirmed that you did not sign such an agreement with BGFS. You did however open a brokerage account and provided Dawn Bennett with limited power of attorney to place non-discretionary trades on your behalf. The non-discretionary description means that BGFS would need your permission in order to execute trades on your behalf.

In terms of your account, I have reviewed your statements personally and verified that you were charged approximately $10,000 in commissions up front when BGFS implemented your asset allocation for the two accounts. I have also verified that they disclosed this charge to you up front in an email and that you authorized them to make the transactions. Additionally, there was no transfer fee charged to your account by Western International Securities.

Also, I am aware of the history of Western International Securities and that of Donald Bizub. In terms of an affiliation between Western International Securities and BGFS: Bennett Group Financial is an independent Registered Investment Advisor, the employees of BGFS (Dawn Bennett, Stuart Rogers, etc.) are Registered Representatives of Western International Securities (the Broker/Dealer). There is no common ownership between the two entities which usually leads to them being affiliated. As registered representatives, Western has some supervisory jurisdiction over the broker/dealer aspects, but not full responsibility over BGFS.

I hope this clears up some of your concerns, please contact me if you have any further questions.

Sincerely,

Darren A. Goins
Securities Compliance Examiner

U.S. Securities & Exchange Commission
Mellon Independence Center
701 Market Street, Suite 2000
Philadelphia, PA 19106

: This e-mail and any attachments are federal property and are to be considered confidential and privileged. If you are not the named recipient, or have otherwise received this communication in error, please notify us immediately by returning the entire e-mail. Under only strictly prescribed circumstances may the contents of this e-mail or its attachments be disclosed to any other person. Use of such information for any purpose and the storage or duplication of such information in any medium is strictly prohibited. Thank you for your cooperation.

From: carrie devorah [mailto:]
Sent: Tuesday, April 26, 2011 11:38 PM
To: Thomas, Robert S.
Cc: Goins, Darren A.; Bradly Marks
Subject: FYI: Western International Securities FINRA (Matter of Bennett Group Financial Services/ Dawn Bennett)

Dear Mssrs Goins & Thomas

I took a moment to google Western International Securities and to look up Western International Securities on FINRA's Broker check. It seems Western International Securities has a history of being investigated by FINRA. I was not aware of Bennetts involvement with Western. Very clearly Bennetts website still says there is no affiliation between the two. Please search Donald Bizub and Western International Securities on FINRA.org

Sincerely

Carrie Devorah

@godingovt

Gmail

Carrie Devorah <[redacted]>

RE: note from Carrie Devorah

1 message

Cross, Theodore V. (DISB) <[redacted]> Mon, May 9, 2011 at 10:11 AM
To: carrie devorah <[redacted]>
Cc: "Meaza, Senayet (DISB)" <[redacted]>

It should be sealed earlier dated would have seen when job DISB was done

Dear Ms. Devorah:

Our investigation file is not public information. As previously cited in our April 29, 2011 email, you can get the information directly from RBC. Thank you.

information from RBC come 5+ months after the matter was settled in what I was learned is a Securities Broker-dealer only forum not for Investment Clients + Investment Advisors

Theodore Cross
Securities Financial Examiner
Department of Insurance, Securities & Banking
810 First Street NE
Suite 701
Washington, D.C. 20002

email: [redacted]
ph: [redacted]
fax: (202) 576-6716

From: carrie devorah [redacted]
Sent: Wednesday, May 04, 2011 11:16 AM
To: Cross, Theodore V. (DISB)
Subject: note from Carrie Devorah

DISB would not let me see my statements the DISB said RBC sent them. Does I got in 2012 showed ID theft + fraud even after I became an RBC client

Dear Mr Cross

I hope you are doing well.

Before you made your decision we spoke about the opportunity for me to review some of the documents regarding this matter. Some of the documents in you letter, I have no knowledge of. I hope your office would extend me the courtesy to review the documents. If you like you can mail me a copy or I can come down to review them in your office, which ever is easier for you.

I appreciate your time. I look forward to your response.

Sincerely

Carrie Devorah

www.godinthetemplesofgovernment.com

www.facebook.com/godingovt

@godingovt

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Call **911** to report in-progress threats or emergencies.

To learn more, visit **http://www.mpdc.dc.gov/operationtipp**.

Gmail Carrie Devorah [redacted]

meeting
1 message

Fienberg, Linda [redacted]
To: [redacted]
Cc: "Niedermayer, Jackie" [redacted]

Wed, Jun 5, 2013 at 9:59 AM

Dear Ms. Devorah,

I work with Rick Ketchum who has asked me to get in touch with you. I would be happy to meet with you at your convenience to discuss the matters that you raised in your email or to discuss your arbitration matters.

She sends both FINRA docs for RBC+ W/S/BGD

By way of background, I'm in charge of the arbitration/mediation program at FINRA; I also am the Chief Hearing Officer in charge of disciplinary hearings.

Please let me know when would be convenient for us to meet in person or by telephone. I am free next Monday afternoon from noon on if that is good for you.

I look forward to hearing from you, Linda Fienberg

Linda D. Fienberg

President

FINRA Dispute Resolution

1735 K Street, NW

Washington, DC 20006-1506

tel 202 728-8407

fax 202 728-8833

www.finra.org

[redacted]

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Gmail [redacted]

(no subject)
1 message

Carrie Devorah [redacted] Fri, Dec 20, 2013 at 9:12 AM
To: [redacted]

Thank you Julie.

The numbers ar[redacted] paper is signed 1-20-08
paper is signed 12/31/07
I had made a note stating "This is the 3rd such transfer request I have signed-returned"
These are the only two of these papers I was provided with.

I want my complete history
Sincerely
CARRIE Devorah
[redacted]

Someone setup a checking account for a JP Morgan confirmed 2014 the account never existed. But I was writing checks of this account number on it

DISCLAIMER :
With the continuing crossing and interfacing of platforms both on & off line both with & without our knowledge nor approval to note nothing sent over the Internet anymore is ever private nor should be presumed to be so. If it is that much of a secret, say nothing. If you must? Take a lesson from our military- hand write the note, chew then swallow

Gmail

Carrie Devorah [redacted]

JP Morgan Chase Executive Office
1 message

Compton, Brandon [redacted]
To: "carriedev@gmail.com" [redacted]

Fri, Jan 10, 2014 at 10:14 AM

Executive Office CHASE

We are unable to locate accounts ending in [redacted]

Dear Ms. Devorah:

This is in response to your email to us about viewing your checking account activity online and your request to receive the complete history of accounts ending in [redacted] We regret to hear you have contacted us multiple times to receive this information and apologize for any inconvenience experienced.

We researched our banking system

I can confirm our banking system and records were reviewed and we are unable to locate the referenced accounts in your name based on your social security number and the account numbers provided to us. We regret that we are unable to provide statements or other documentation reflecting the history of the accounts. Additionally, we were unable to locate an online banking profile in your name to determine information concerning viewing your checking account activity online.

Banks must abide by federal and applicable state record retention laws and may dispose of any records that have been retained or preserved for the period set forth in those laws. The record retention period governing an account is seven years. You may wish to visit www.unclaimed.org (searchable by owner name) or www.missingmoney.com to search for the accounts as they may have been escheated. You can search by "All States" and include your name. If a listing is found, you would submit the request through that state. Our records do not reflect we maintained or escheated these accounts.

We located a checking account in your name

We located information on checking account ending in [redacted] of which you were a joint owner. The funds in the account were escheated on November 10, 2010. We are required to report inactive or dormant accounts to the state of the account holder's last known address of record as abandoned or unclaimed property. Each state has specific years of inactivity to qualify as abandoned property. The

state of California requires Bank's to escheat, remit or transfer account balances and property to the State after a three-year period of inactivity. Should you wish to pursue collection of the funds, please contact the California Office of State Controller at 1-800-992-4647 or by email at www.sco.ca.gov/scocontactus/otherinquiries.aspx. You may also contact them at the address below:

California Office of State Controller

Unclaimed Property Division

P.O. Box 942850
Sacramento, CA 94250-5873

For your privacy, we are unable to send bank statements via email but we're happy to mail the final statement generated for the account to the address on your letter sent to my attention dated December 22, 2013.

Ms. Devorah, we hope this information is helpful. While we understand this matter is important to you, we regret we are unable to be of further assistance. Thank you for the past business you placed with us. I can be reached at 1-877-658-5560, extension 129-1038 should you have cause to contact me.

Sincerely,

Brandon Compton

Brandon Compton

Chase Executive Office

This transmission may contain information that is privileged, confidential, legally privileged, and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or use of the information contained herein (including any reliance thereon) is STRICTLY PROHIBITED. Although this transmission and any attachments are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by JPMorgan Chase & Co., its subsidiaries and affiliates, as applicable, for any loss or damage arising in any way from its use. If you received this transmission in error, please immediately contact the sender and destroy the material in its entirety, whether in electronic or hard copy format. Thank you.

DATE=12/08/2009 SEQUENCE=47129799

Account=[redacted] Serial Number=[redacted] Amount=$398.00

CARRIE DEVORAH

[redacted]

5685

Date 12-2-09

Pay to the order of CareFirst Blue Cross $ 398 00

Three hundred ninety eight dollars Dollars

RBC Wealth Management

Investment Access® Account

Expense Code

For [redacted]

⑈00000398⑈

SUNTRUST BLT 12082009
ORLANDO, FL
3249-814 ⑆063102152⑆

[redacted]

276 859579 B9PU1 02 0102 138 120809
138 120809 000102 138 0000000000D9D3278357
2 CREDIT TO THE WITHIN NAMED PAYEE
LACK OF END GTD SUNTRUST BANK

26 Sept 7 - 1345

CARRIE DEVORAH

[redacted]

JP Morgan
PO Box 36520
Louisville, KY 40233

September 6, 2017

To Whom It May Concern

Enclosed is
(1) a copy of my driver's license
(2) a check from 12-2-2009.

I want an account history for September 2009 – March 2010, authenticating this enclosed check that is drawn against my Investment Account. Please confirm that my check #5685 was routed through the routing number ([redacted] for the account #[redacted]

Please confirm the check was "payable through JP Morgan Chase, NA Delaware.

Send me the account opening papers. Notate for my memory, my advisor at the opening and closing of my account.

Thanking you in advance

Sincerely

Carrie Devorah

10-7-2017

JACK LEVONIAN
NOTARY PUBLIC
REG# 7524340
MY COMMISSION EXPIRES
02/29/2020
COMMONWEALTH OF VIRGINIA

ASSET DETAIL

** The Unrealized Gain/Loss may not reflect your investments' total return. Specifically, the net cost does not include dividend and capital gains distributions which have been reinvested. Additionally, the information that appears in these columns may be based on information provided by you or at your direction. RBC has not verified such data. Please see "About Your Statement" on page 2 for further information.*

Your Financial Consultant has elected to display Asset Detail with the following options: asset purchases (tax lots) listed individually, reinvested dividends and capital gains distributions consolidated, and the cost of reinvested dividends and capital gains distributions excluded from totals.

CASH AND MONEY MARKET

DESCRIPTION	SYMBOL/CUSIP	QUANTITY	MARKET PRICE	CURRENT MARKET VALUE	PREVIOUS STATEMENT MARKET VALUE	YTD INCOME
PRIME MONEY MARKET FUND RBC INVESTOR CLASS	TPMXX	4,848.790	$1.000	$4,848.79	$31,829.93	$2.35
TOTAL CASH AND MONEY MARKET				$4,848.79		$2.35

ACTIVITY DETAIL

Realized gain/loss column includes fees and commissions. It does not include accrued interest.

Purchases, sales and other activity all represent an exchange of cash and/or money market funds for securities and, as such, do not represent deposits to or withdrawals from your account. Account value changes due to commissions, mark ups, mark downs and accrued interest are shown in the "Change in value of priced securities" line of the Account Value Summary.

** Information that appears in these columns may be based on information provided by you or at your direction; RBC has not verified such data. Please see "About Your Statement" on page 2 for further information.*

DEPOSITS

Cash deposits

DATE	DESCRIPTION	AMOUNT	COMMENTS
07/08/09	TFR FROM CARRIE DEVORAH LIVING U/A DTD 12/11/1992 TRANSFER ASSETS IN	$1,000.00	
07/24/09	AUTOPAY FROM JPMORGAN CHASE BANK, NA AUTOPAY FROM	$5,000.00	
Total cash deposits		$6,000.00	
TOTAL DEPOSITS		$6,000.00	

RBC Dain Rauscher

Member NYSE/SIPC

* 1101 [redacted] 6 BH56
Firm ID Account Number FC #

SET-UP FORM:
ELECTRONIC FUNDS DEPOSITS/PAYMENTS (ACH)

Financial Consultant Name: S. SANGERMAN

[redacted]

RBC Dain Rauscher Account Information

Account Title *(as shown on client statement)*
CARRIE DEVORAH LIVING TRUST

Bank Account Information

Attach a voided check for account verification (not a deposit ticket)

Bank Name: JP MORGANCHASE

Account Name: CARRIE DEVORAH

Account Type: ☐ Checking ☒ Savings

Transit Routing #: 044115511

Account # [redacted]

Deposits/Incoming ACH

Systematic Deposits to RBC Dain Rauscher account from bank account

			Weekly	Bimonthly	Monthly	Quarterly	Semi-Annual	Annual
Start Date: _____	End Date: _____ *(Not Required)*	$ _____	☐	☐	☐	☐	☐	☐
Start Date: _____	End Date: _____ *(Not Required)*	$ _____	☐	☐	☐	☐	☐	☐

For Branch Use ONLY - Contribution Code for Retirement Accounts: _____ ☐ Current Year ☐ Prior Year

Payments/Outgoing Electronic Funds

Dividend/Interest/Retirement Distribution

Currently scheduled PAYMENTS to bank account

☐ Dividends/Interest *Branch must change account coding to 4C or 4F* ☐ Retirement Distribution *Distribution form must be submitted to Retirement Operations* ☐ Money-Market Dividends

Systematic Payments from RBC Dain Rauscher account to bank account.
(Section below not for Retirement Distributions. You must use the Retirement Distribution Form)

			Weekly	Bimonthly	Monthly	Quarterly	Semi-Annual	Annual
Start Date: _____	End Date: _____ *(Not Required)*	$ _____	☐	☐	☐	☐	☐	☐
Start Date: _____	End Date: _____ *(Not Required)*	$ _____	☐	☐	☐	☐	☐	☐

PLEASE INITIAL

On-Demand Telephone Authorization (Not available for Retirement Accounts)

CD By initialing here, I/we authorize RBC Dain Rauscher to effect On-Demand transactions consistent with current agreement terms & conditions. This choice indicates that a telephone (on-demand) authorization has been designated for this account. Authorized persons are permitted to transfer, deposit or pay money from or to this account in varying amounts on the basis of instructions provided solely over the telephone.

NOTE: If a distribution falls on a weekend or bank holiday, the transactio[n] ...cessed the next business day.

RBC Dain Rauscher Inc. ("RBC Dain") can initiate credit or debit entries to the ...ed above. The bank identified in this authorization will accept such credit or debit entries to the specified account, without respons... ...thereof or the existence of any subsequent authorization relating thereto. This new deposit/transfer will start within thirty (30) ... ...notice or on the given start-date (whichever is later) and will remain in effect until the given end-date or another date selected by the ...uthorization may be changed or canceled by giving RBC Dain Operations written notice fifteen (15) days in advance of the effective date of ... ...ge or cancellation. I also understand that scheduled payments to a bank account may vary in amount depending on the amount of div...nds an... ...nterest available in the RBC Dain Rauscher account, and any prior notice of such a variation is waived.

SIGN & DATE

- I understand that my use of ACH Services is subject to the terms and conditions of the Customer Authorization and Agreement for Electronic Funds Deposits/Payments (Automated Clearing House) Services and Disclosure (the "Agreement").
- I have received and reviewed a copy of the Agreement.
- The Agreement has not been amended, altered or revised in any way by me, and I agree to be bound by, and to comply with, its terms and conditions in their entirety.

Carrie Devorah 6/8/06
Authorized Signature Date

Authorized Signature (if Joint Account) Date

Financial Consultant Signature Date

Branch Director & Assistant Complex Manager Date

RBC Dain is entitled to rely upon the information provided in this form until written notice of its revocation is delivered to us.

aca 7/05

Type: Adobe Acrobat Document
Author: Bryan Gasche
Subject: Client statements
Date Modified: 12/8/2010 5:41 PM
Size: 7.74 KB

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Bryan Gasche

3rd

Technology Director, JPMorgan

Tampa/St. Petersburg, Florida Area Financial Services

Current JPMorgan
Previous HSBC, Royal Bank of Canada (RBC Dain Rauscher)
Education University of Minnesota

Connect

143 connections

www.linkedin.com/pub/bryan-gasche/9/65a/332

Background

Summary

Specialties:Building & managing global technology teams
Multi-platform application design & integration (zOS, Tandem & Java/Unix)
Global funds transfer
Brokerage back-office & securities clearing/settlement
Banking and Financial Services
Document composition technologies
High-volume print & mail technology solutions

Experience

Technology Director
JPMorgan
November 2006 – Present (7 years 6 months)

JPMorgan Treasury Services

Manager, Business Systems
HSBC
2004 – 2006 (2 years)

Global Systems, Document Services

Sr Developer
Royal Bank of Canada (RBC Dain Rauscher)
August 1995 – March 2004 (8 years 8 months)

Skills & Endorsements

Top Skills

19 Banking
14 Financial Services
10 SDLC

Miriam Weston, BA...
SPEAKER, Editor at JCE, Singer, Vati...

? This person knows 1 or more people who can introduce you to Bryan

Bryan 3rd

▶ Discover our opportunities.

People Also Viewed

Luke Moranda
Managing Director, Clearing Technology at JP Morgan

David Collins
VP at JPMC

Kevin McNeil
Managing Director - JPMorganChase

Beata Shepherd
Technology Project Manager at J.P. Morgan

Rozalija Krstanoska
Software Developer in Test

John Castano
Vice President, IT Quality Assurance at JPMorgan Chase

Susan Brown
Vice President Technology Project Manager at

PLEASE SIGN PAGE 3

RBC Dain Rauscher

Member NYSE/SIPC

Firm ID	Account Number	FC #
11011	[redacted]	BH56

CLIENT STANDARD ACCOUNT AGREEMENT

CARA DEBRA MARKS, TTEE
CARA DEBRA MARKS LIV TR UAD 12/11/92

Name & Address	Name & Address II
CARA DEBRA MARKS [redacted] Suite 522 Beverly Hills CA 90212-1671	not the adviser I used PO Box

As used in this Agreement, the terms "you", "I", and "me" refer to the client of RBC Dain Rauscher Inc. who seeks to open a standard account agreement, and the term "RBC Dain" refers to RBC Dain Rauscher Inc. In consideration of your continuing or now and hereafter opening an account or accounts for the purchase and sale of securities and commodities for me, or in my name, I agree that all transactions with respect to any such account shall be subject to the following terms:

1. Client Representations.
(a) If you are an individual, you represent and warrant that you are of legal age, that no one except you has an interest in your account and you are not an employee of any exchange or of a member firm of any exchange or the National Association of Securities Dealers, Inc. ("NASD"), any other self-regulatory organization, or of a bank, trust company, or insurance company unless you have notified RBC Dain to that effect, and you will promptly notify RBC Dain if you become so employed.
(b) If you are a corporation, trust, partnership or other entity, you represent and warrant that you are duly formed and existing under the laws of your state or jurisdiction of formation and are qualified and (if you are a corporation) in good standing in every jurisdiction in which you do business; the person(s) designated to act for you have been duly authorized by all necessary and appropriate institutional action; such person or persons have full authority to execute this Agreement and all related documents on your behalf and to act for you in all matters regarding your account(s); RBC Dain may at all times rely on the fact of such authorization without any duty to investigate into either the authenticity or extent thereof of such authorization; and the party or parties designated as authorized signatories constitute(s) all of the proper and necessary authorized signatories.

2. Client's Obligation.
I agree to notify RBC Dain immediately upon receipt of my confirmation and/or monthly statement of any trades or transactions that were executed without my authorization, any transactions which are not properly reflected on my confirmation or monthly statement or any other activities or omissions by RBC Dain, its agents or employees that I believe to be improper. Unless I immediately object in writing, confirmations of transactions and statements for my account shall be binding on me. Any communications regarding errors or misunderstandings with respect to my account should be addressed to the Branch Manager of the branch office where my account is maintained.

3. Communications.
Notices and communications may be sent to you at your address given above or at such other address as you may hereafter give RBC Dain in writing, and all communications so sent, whether by mail, telegraph, messenger or otherwise, shall be deemed given to you personally, whether actually received or not.

4. Accuracy Of Account Information.
I agree to notify RBC Dain in writing of any material change in my financial circumstances or any change in my investment objectives. I will address such notice to the Branch Manager of the branch office where my account is maintained. Any information I give RBC Dain on or relating to this account will be subject to verification, and I authorize RBC Dain to obtain a credit report about me at any time and to share the credit report with any of RBC Dain's affiliates.

5. RBC Dain "Financial Consultant" Title.
The RBC Dain professionals who serve retail clients use the title of "Financial Consultant." This title was selected in recognition of the wide and expanding variety of financial products and services RBC Dain offers its clients. The term "Financial Consultant", as used by RBC Dain, is not intended to imply that its professionals are financial planners as the term is defined by certain state rules and regulations. RBC Dain professionals engage in providing a broad range of financial services and products some of which are offered by affiliated companies. These professionals maintain the necessary licenses required to offer financial products and services including the trading, distribution and sale of investments such as, for example, stocks, bonds, mutual funds, options and insurance and annuity contracts. RBC Dain's professionals are compensated by various means, including commissions or fixed fees, and their compensation may be affected by the overall value of the assets and any margin balances in the accounts which they service.

6. Order Routing Policies And Payment For Order Flow.
RBC Dain has established order routing arrangements with certain exchanges, broker/dealers and/or other market centers (collectively, "market participants") in equity securities and options. These arrangements have been entered into with a view toward the perceived execution quality provided by these market participants, evaluated on the basis of price improvement performance, liquidity enhancement and speed of execution. RBC Dain regularly assesses the execution performance of these market participants on the basis of these three factors. This assessment includes a periodic review of statistics concerning speed of execution, liquidity enhancement and price improvement performance, as well as an evaluation of these factors as they relate to the size of orders routed to these market participants.

All client orders that are subject to these order routing arrangements are sent to market participants that have represented to RBC Dain that they will execute market and marketable limit orders (except large market or marketable limit orders) at prices no worse that the displayed NBBO*. Each of these market participants provides the opportunity for execution of these orders at prices better than the NBBO when the spread between the best bid and best offer price is greater than the minimum variation. Several of these market participants offer RBC Dain automated routing and execution services that offer advantages to smaller client orders in terms of speed and certainty of execution.

RBC Dain receives payment in the form of cash, rebates, or credits against fees and/or research in return for routing client orders in equity and option securities pursuant to these order routing arrangements. Any remuneration that RBC Dain receives for directing orders to any market participant reduces the Firm's execution costs and will not accrue to my account. RBC Dain may also benefit from these order routing arrangements by receiving favorable adjustments of trade errors from these market participants.

Gmail

Carrie Devorah [redacted]

RE: follow up - RBC/ BGFS

1 message

Suh, Kevin [redacted]
To: Carrie Devorah [redacted]

Fri, Sep 5, 2014 at 11:42 AM

Ms. Devorah,

Your allegations against RBC and Ms. Bennett were reviewed under STAR # [redacted] and [redacted] respectively. Both exams have been closed without action. Should you have any questions/concerns, please feel free to contact me.

Regards,

Kevin Suh

213-613-2632

From: Carrie Devorah [mailto:[redacted]
Sent: Wednesday, September 03, 2014 8:34 AM
To: Suh, Kevin
Subject: follow up - RBC/ BGFS

Kevin, hi

Hoping all is well. You were to get back to me on

1- the status of your investigation in to RBC

2- the status of the original business card I was given by BGFS in 2009 that did not have WIS on its back. The card back is clear.

Please update me.

Sincerely

CARRIE Devorah

[redacted]

Confidentiality Notice: This email, including attachments, may include non-public, proprietary, confidential or legally privileged information. If you are not an intended recipient or an authorized agent of an intended recipient, you are hereby notified that any dissemination, distribution or copying of the information contained in or transmitted with this e-mail is unauthorized and strictly prohibited. If you have received this email in error, please notify the

FINRA
Financial Industry Regulatory Authority

News Release

For Release: Thursday, March 5, 2009
Contact(s): Nancy Condon (202) 728-8379
Herb Perone (202) 728-8464

FINRA
Financial Industry Regulatory Authority

FINRA Announces Creation of "Office of the Whistleblower"

Dedicated Team to Handle High-Risk Tips

Washington, DC — The Financial Industry Regulatory Authority (FINRA) announced today that it has established a new Office of the Whistleblower to expedite the review of high-risk tips by FINRA senior staff and ensure a rapid response for tips believed to have merit.

"One of the important lessons learned from the recent scandals is the need for regulators to recognize and react to regulatory intelligence offered by whistleblowers," said Stephen Luparello, FINRA's Interim CEO. "We want to encourage individuals with evidence of, or material information about, potentially illegal or unethical activity to come forward. This new initiative will ensure that individuals with significant information will reach senior staff, who can quickly assess the level of risk involved and make sure that each tip is properly evaluated. Those tips warranting additional review and investigation will be subject to an expedited regulatory response."

To facilitate the submission of whistleblower information, FINRA's new Office of the Whistleblower has established a toll free phone number — 1-866-96-FINRA (1-866-963-4672) — and has posted a dedicated web page — www.finra.org/whistleblower, where individuals may email their information to FINRA.

Any whistleblower tips that fall outside FINRA's jurisdictional reach will be referred to the appropriate regulatory or law enforcement agencies.

The new office will be overseen by FINRA Senior Vice President Cameron Funkhouser.

FINRA's new whistleblower initiative will not replace the agency's longstanding processes for handling thousands of routine regulatory tips and customer complaints each year. FINRA typically receives between 4,500 and 6,000 formal investor complaints annually, which are vetted by FINRA's Front End Cause Unit. Complaints that appear to have merit are forwarded to the appropriate FINRA District Office or Department - such as Enforcement, Member Regulation or Market Regulation - for further investigation.

Some of FINRA's most significant enforcement actions have resulted from investor complaints or anonymous or insider tips. They include FINRA's 2007 action against Citigroup Global Markets, ordering the firm to pay a $3 million fine and $12.2 million in restitution to customers to settle charges of misleading Bell South employees in North and South Carolina at early retirement seminars; FINRA's 2006 fine of $5 million against Merrill Lynch to resolve charges related to supervisory violations at its customer Call Center; FINRA's 2005 landmark action against the Kansas firm Waddell & Reed, Inc., in which the firm was fined $5 million and ordered to pay $11 million in restitution to customers to resolve charges related to variable annuity switching; and, FINRA's 2002 action against Credit Suisse First Boston to resolve charges of siphoning tens of millions of dollars of customers' profits in exchange for "hot" IPO shares, which resulted in a $50 million fine imposed by FINRA and an additional $50 million fine imposed by the Securities and Exchange Commission.

Investors can obtain more information about, and the disciplinary record of, any FINRA-registered broker or brokerage firm by using FINRA's BrokerCheck. FINRA makes BrokerCheck available at no charge. In 2008, members of the public used this service to conduct 11.6 million reviews of broker or firm records. Investors can access BrokerCheck at www.finra.org/brokercheck or by calling (800) 289-9999.

FINRA, the Financial Industry Regulatory Authority, is the largest independent regulator for all securities firms doing business in the United States. FINRA is dedicated to investor protection and market integrity through comprehensive regulation. FINRA touches virtually every aspect of the securities business - from registering and educating all industry participants to examining securities firms; writing and enforcing rules and the federal securities laws; informing and educating the investing public; providing trade reporting and other industry utilities; and administering the largest dispute resolution forum for investors and firms.

For more information, please visit our Web site at www.finra.org.

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Gmail Carrie Devorah [redacted]

RE: follow up - RBC/ BGFS

1 message

Suh, Kevin [redacted] Fri, Sep 5, 2014 at 12:36 PM
To: Carrie Devorah [redacted]

Ms. Devorah,

STAR is our database system. I was simply giving you the exam numbers under which your allegations were reviewed.

no. Banned until 4/5/2010. FINRA is self reported ri Vetted

Our records indicate that WIS became registered with NASD (n/k/a FINRA) and SEC in November 1995 and in DC in July 2000. Ms. Bennett was registered with Royal Alliance until October 2009 at which time she became registered with WIS. Moreover, BGFS was an investment adviser and not under FINRA jurisdiction. To the extent Ms. Bennett gave you incorrect business cards during this time of transition, we will not be pursuing an enforcement action.

Bennett is an Investment Advisor not under FI Jurisdiction. In the meantime FINRA knows what to d

Finally, the individual who you claimed to have hacked into your account was one of the architect of RBC's IT system hence his name appears as a creator of the files your received from RBC.

they does paying busine league member

We consider your case to be closed at this time unless new and relevant facts come to light. Thank you for your patience. don

Regards,

Kevin Suh

From: Carrie Devorah [mailto: [redacted]
Sent: Friday, September 05, 2014 8:50 AM
To: Suh, Kevin
Subject: Re: follow up - RBC/ BGFS

I am contacting you, Kevin

.

1- what is Star

2- Dawn Bennett gave me 7 business cards without WIS on its back in 2009, with Royal Alliance Associates on all card fronts, months after 7/29/2009 the date Dawn Bennett was under contract with Western International Securities. WIS was not licensed in DC until 4-5-2010 and you are saying there is no wrong doing?

3- RBC knew for ten years my accounts were being hacked by an individual at another firm, never told me, until two years after the 1st matter was

Gmail

Carrie Devorah [redacted]

RE: Adress request

1 message

IARDLIVE <IARDLIVE@sec.gov>
To: Carrie Devorah [redacted]

Tue, Aug 6, 2013 at 1:30 PM

Hello Carrie,

Information about the SEC's Office of the Whistleblower may be found at http://www.sec.gov/about/offices/owb/owb-about.shtml . Please contact them with any questions you may have. Thank you.

U.S. Securities and Exchange Commission

Division of Investment Management, Investment Adviser Regulation Office

100 F Street, N.E.

Washington, DC 20549-8549

Phone | 202.551.6999

www.SEC.gov

Guidance provided by staff via the telephone or email is informal and is not binding on the staff or the Commission. When submitting tips, complaints, questions, or other information to the SEC, please read the Privacy Act Statement located at: www.sec.gov/privacy.htm

From: Carrie Devorah [mailto:[redacted]
Sent: Sunday, July 28, 2013 3:06 PM
To: Kanyan, Keith
Subject: Adress request

Keith

Hope you are well. What is the correct adress/office for the SEC Whistleblower Award for data to be sent to.

Thanks
Carrie

Contact Bill Singer: 917-520-2836 rrbdlawyer@gmail.com (mailto:rrbdlawyer@gmail.com)

f (http://facebook.com/brokeandbroker)
(http://twitter.com/brokeandbroker)
g+ (https://plus.google.com/105473943180031336590/)
in (http://www.linkedin.com/in/brokeandbroker)

BROKEANDBROKER
(http://www.brokeandbroker.com/index.php)

An Irreverent Wall Street
by Bill S

Public Customers Hit With Attorneys Fees In Arbitration (http://www.brokeandbroker.com/2313/finra-arbitration-attorneys-fees/)

February 10, 2014

If you're gonna file a lawsuit, you're gonna need evidence -- and, sometimes, even that isn't enough. In a recent FINRA arbitration, the panel of arbitrators chided a public customer claimant for failing to present *credible* evidence. On top of that, the claimant was forced to cough up the respondents' legal fees.

In a Financial Industry Regulatory Authority ("FINRA") Arbitration *Statement of Claim* filed in November 201 Claimants alleged, among other causes of action, fraud and breaches of fiduciary duty and contract. The allega arose in connection with alleged account discrepancies and purportedly unauthorized trades. Initially, Claiman sought $350,000 in compensatory damages, punitive damages, and $7,500 in costs and fees. By the close of th hearing, however, the claim for compensatory damages were reduced to $28,000. In the Matter of the FINRA Arbitration Between Carrie Devorah IRA, Carrie Devorah Living Trust, and Carrie Devorah, *Claimants*, versus Western International Securities, Inc., Dawn Bennett, and Bennett Group Financial Services, LLC, *Respondents* (FINRA Arbitration 12-03894, January 30, 2014).

Respondents generally denied the allegations and asserted various affirmative defenses.

During the final hearing, the Panel denied Claimants' *Motion for a Directed Verdict* but at the conclusion of Claimants' case-in-chief, the Panel granted Respondents' *Motion to Dismiss* based upon a finding that:

> Claimants failed to present credible evidence with respect to any theory advanced i their Statement of Claim and brief. . .

Not merely content to wag a finger at Claimants, the Panel ordered them to pay $35,000 in attorneys' fees to Respondents. In explaining the rationale for such an award, the Panel explained:

> The Panel relied on common law to the effect that when both parties request an av of attorneys' fees in their pleadings, the arbitrators have the authority to grant ther either party. Respondent made an ore tenus motion for attorneys' fees. Claimants a Respondents agreed that the Panel had the authority to award attorneys' fees in th case. The crux of the cases on this issue is that the party against whom a ruling is made brought (or defended) the action or maintained it in bad faith, or without a justifiable basis.

In the FINRA Dispute Resolution Arbitrator's Guide *Attorneys' Fees* section is this guidance:

> The authority for granting attorneys' fees must be included in the award. If the arbitrators have doubts regarding their authority to award such fees, they should request the parties to brief the issue. There are three situations when parties may pursue attorneys' fees:
> - a contract includes a clause that provides for the fees;
> - the fees are allowed as part of a statutory claim; or
> - all of the parties request or agree to such fees.
>
> Arbitrators must award reasonable attorneys' fees to claimants who prevail under certain statutes, including Title VII actions for discrimination based on race, color, religion, sex or national origin. If the panel determines that a party has a right to reimbursement for attorneys' fees, that party must prove the amount to the satisfa of the panel.

Prevailing Respondents' Counsel was David E. Robbins, Esq (http://www.kaufmanngildin.com/Attorneys/Dav E-Robbins.shtml)., Kaufmann Gildin & Robbins LLP, New York, NY.

Bill Singer's Comment

A short-and-sweet *Decision* that presents us with the rationale for this Panel's sanctions against Claimants -- compliments to this FINRA panel of arbitrators!

We see the impatience of the arbitrators with a Claimants' case that failed to present credible evidence about a ***theory.*** That's as harsh a condemnation as is apt to issue forth from a FINRA Arbitration Panel. One can alm smell the fumes from this fuming group of arbitrators. It's as if they are uttering a "really?" followed by "are yo serious?" followed by "are you kidding us?" followed by "gee, thanks for wasting our time."

Should the Claimants pursue an appeal to the courts, it will be interesting to see whether the award of lawyers'

stands. When one sees a reference to "common law," that's a sign that lawyers aren't exactly standing on firm g -- there's no actual law, rule, or regulations that we can cite in support of our position but, hey, you know, for generations and centuries there's the *common law* where we think, we believe, we urge, we strongly suggest th what we're asking for is okay, usually, normally, sort of.

Sensing the need to justify their award of attorneys' fee to the Respondents, the Panel goes to some pains to no common law principle that *when both parties request an award of attorneys' fees in their pleadings, the arbitrators have the authority to grant them to either party.* That's normally a fairly sound proposition but nc that always stands up on appeal. Thankfully, Respondents' legal counsel specifically asked on the record for an award of attorneys' fees -- that extra fillip by a veteran lawyer may ultimately save the day. The other bit of wei that may tip the balances in Respondent's favor is the Panel's clear-cut rationale for making the award of attor fees: the Claimant brought the action or maintained it in ***bad faith,*** or ***without a justifiable basis.***

Also READ:

- Frivolous Customer Claims Fall To Eligibility Rule (http://www.brokeandbroker.com/index.php?a=blog id=2165/finra-eligibility-frivolous/&print=1)
- Penson and Merrill Lynch Suffer Setbacks With Attorneys' Fees in FINRA Arbitrations (http://www.brokeandbroker.com/1021/penson-merrill-finra-arbitration-attorneys-fees/)
- Raymond James Wins Attorneys' Fees In Florida FINRA Arbitration To Recover On Employee Promisso Notes (http://www.brokeandbroker.com/1153/raymond-james-finra-promissory-note-arbitration/)

Attorneys Fees (http://www.brokeandbroker.com/index.php?a=topic&topic=attorneys-fees)
Fees (http://www.brokeandbroker.com/index.php?a=topic&topic=fees)
FINRA (http://www.brokeandbroker.com/index.php?a=topic&topic=finra)
Arbitration (http://www.brokeandbroker.com/index.php?a=topic&topic=arbitration)
Evidence (http://www.brokeandbroker.com/index.php?a=topic&topic=evidence)
BrokeAndBroker (http://www.brokeandbroker.com/index.php?a=topic&topic=brokeandbroker)
Bill Singer (http://www.brokeandbroker.com/index.php?a=topic&topic=bill-singer)

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Permalink (http://www.brokeandbroker.com/2313/finra-arbitration-attorneys-fees/)

Next Post → (http://www.brokeandbroker.com/2314/raymond-james-sexual-orientation-disabil

← Previous Post (http://www.brokeandbroker.com/2312/u5-loa-efl-arbitration/)

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Customer Agreement
For Introduced Clearance Accounts

THIS DOCUMENT IS A BINDING CONTRACT AND CONTAINS OBLIGATIONS THAT CAN BE ENFORCED AGAINST YOU. PLEASE READ CAREFULLY.

JP Morgan is handling Clearing Contracts + its IA hair clients sign Neither the BD nor IA are mentioned

- Complete all sections, sign and return.

Account Number(s) [redacted]

Account Title

Carrie Devorah Living Trust, Carrie Devorah TTEE, U/A DTD 12/11/1992

Your brokerage firm ("Brokerage Firm"), acting on your behalf, introduces your account(s) to J.P. Morgan Clearing Corp. ("Clearing Agent"), a subsidiary of J.P. Morgan Securities Inc., which, in turn, carries your account(s) and clears (i.e., processes) your securities transactions as your Brokerage Firm directs. This agreement ("Agreement") sets forth the terms and conditions on which Clearing Agent and J.P. Morgan Securities Inc., its successor firms, present and future direct or indirect subsidiaries, affiliates and assigns will open and maintain account(s) ("Account(s)") in your name.

The parties to this Agreement shall consist of you and J.P. Morgan Securities Inc., its successor firms, present and future direct or indirect subsidiaries, affiliates and assigns with which you transact business. (Each affiliate is referred to as a "Clearing Agent entity" and all Clearing Agent entities together with J.P. Morgan Securities Inc. are referred to collectively as the "Clearing Agent Group" or "JP Morgan".) You agree that your Brokerage Firm and its employees are third-party beneficiaries of this Agreement, and that the terms and conditions hereof, including the arbitration provision, shall be applicable to all matters between or among any of you, your Brokerage Firm and its employees and the Clearing Agent Group and its employees. Your signature below confirms that you agree to all terms set forth in this Agreement.

1. NATURE OF SERVICES.

(a) A Clearing Agent entity will execute transactions accepted by it and/or will provide such other clearance, settlement and custody services in connection with carrying your Account(s) at the Clearing Agent Group.

(b) The Clearing Agent Group is acting as a clearing broker-dealer and custodian, and not as (1) an investment adviser under the Investment Advisers Act of 1940, or (2) a "fiduciary" as defined in Section 3(21) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") or Section 4975 of the Internal Revenue Code of 1986, as amended ("Code"), with respect to your Account(s) under this Agreement. Brokerage activities are regulated under different laws and rules than advisory activities and generally do not give rise to the fiduciary duties that an investment adviser has to its clients. When acting in a brokerage capacity, JP Morgan has a duty to deal fairly with brokerage clients but may face certain conflicts of interest and as such, JP Morgan's interests may differ than yours. Neither the Clearing Agent Group nor its employees are authorized to provide, and shall not provide, legal, tax or accounting advice or services and you will not solicit or rely upon any such advice from them whether in connection with transactions in any of your Accounts or otherwise. You have consulted or will consult with your own technical, legal, regulatory, tax, business, investment, financial and accounting advisors to the extent you deem necessary in determining the investment and trading strategy appropriate for you and the appropriateness of each transaction. You hereby agree and acknowledge that any such advice you may receive is provided by your Brokerage Firm or other source independent of the Clearing Agent Group. For the avoidance of doubt, while your Brokerage Firm may provide you with investment research or market interpretations it has received from the Clearing Agent Group or with access to a Clearing Agent Group web site containing such information, your Brokerage Firm is solely responsible for your use of any such materials and any investment recommendations made therein.

(c) The Clearing Agent Group shall not be obligated to take any action or render any advice with respect to the voting of proxies related to issues of securities held in your Account(s). Further, there may be instances when you may not be able to exercise voting or other rights of ownership, including, but not limited to, the circumstances described in Section 11 below. The Clearing Agent Group will forward all proxies received by it, including proxy solicitation material and other related material, including interim reports, annual reports and other issuer mailings ("Proxy and Related Material") to you or a third party as you instruct. If you receive Proxy and Related Material regarding investments in your Account(s), you are responsible for providing the Clearing Agent entity with any applicable instructions or directions contemplated by such communications. If you notify the Clearing Agent Group that you have revoked a third party's authority, all Proxy and Related Material will be sent to you on a going forward basis from the date the revocation is effected by the Clearing Agent Group until you notify the Clearing Agent Group to send all Proxy and Related Material to another third party.

(d) You hereby acknowledge receipt of the disclosure statement mailed by the Clearing Agent Group pursuant to Rule 382 of the New York Stock Exchange, Inc. As disclosed in such statement, the Clearing Agent Group is responsible only for certain specific functions related to processing your transactions, carrying your account(s) and extending credit in your margin account(s), if any, your Brokerage Firm is solely and completely responsible for all other functions required of registered securities brokerage firms by Applicable Laws, including, but not limited to, all investment advice and recommendations made to you, including but not limited to the purchase or sale of securities. Your Brokerage Firm is neither an affiliate nor an agent of the Clearing Agent Group.

(e) Your Brokerage Firm is responsible for accepting from you and executing (or arranging for the execution of) orders for your account(s) to buy or sell securities, or to transfer or deliver funds or securities to you or third parties. Accordingly, unless a Clearing Agent entity receives from you prior written notice to the contrary, the Clearing Agent Group may accept and process from your Brokerage Firm, without any inquiry or investigation: (i) orders, which the Clearing Agent Group has agreed to clear, for the purchase or sale of securities and other property in your account(s), on margin or otherwise, or for the delivery of funds to you or third parties, and (ii) any other instructions concerning your account(s) or the property therein (including, without limitation, an instruction to provide your account information to third parties for performance reporting or other purposes). The Clearing Agent Group also has the right, exercisable in its sole discretion, to refuse to accept orders, cancellations or any other instruction for your account(s) and to require you to furnish any additional documentation it deems necessary. You understand and agree that the Clearing Agent Group shall have no responsibility or liability to you for any acts or omissions of your Brokerage Firm, its officers, employees or agents.

1A. INVESTMENT ADVISOR AUTHORIZATIONS.

(a) If you or your Brokerage Firm notifies the Clearing Agent Group that you have granted an investment advisor ("Investment Advisor") trading authorization over your Account(s), you authorize the Clearing Agent Group to follow the trading instructions of that Investment Advisor in every respect concerning the applicable Account(s), including instructions related to purchases, sales or other transactions and instructions with respect to margin. You acknowledge and agree that the Clearing Agent Group may refuse to accept instructions from any Investment Advisor, or any other third party at any time.

Gmail

Carrie Devorah [redacted]

RE: Procedural questions addressing Accounts Cleared Through JP Morgan

1 message

Feigelman, Barbara [redacted]
To: Carrie Devorah [redacted]
Cc: "Moy, Julie" [redacted]

Thu, Mar 27, 2014 at 9:42 AM

Ms. Devorah:

As discussed today and as indicated previously, you are a client of Western International Securities Inc., a broker dealer firm for which we provide clearance services on a fully disclosed basis.

No contract

Regarding the points you listed in your below email and your similar recent telephone requests, please note the following:

- Regarding the receipt of your account assets from another firm during December 2009 for each of your accounts, these asset transfers can be found as "Received" entries in the Transaction Detail section of your December 2009 statement.
- Regarding trade information, JPMCC provides a monthly clearing statement to all its fully disclosed broker dealer firms. The clearing statement reflects all trades cleared by JPMCC for the Broker Dealer. Among other information, the monthly report includes trade details and commissions / fees charged by the broker dealer.
- Regarding Certificates of Deposit transactions, they are not traded on an exchange, as such, are not time stamped.

not present at IRS

Western International Securities, Inc., is responsible for the overall conduct of your account which includes the responsibility of reviewing and responding to complaints and inquiries regarding your account. Please be advised that J.P. Morgan Clearing Corp. will provide no further information or documentation regarding these matters.

↑ I heard that alot :)

Barbara Feigelman | Vice President | Investment Bank | Client Services | **J.P. Morgan** | 3 Chase Metrotech Center, NY1-H051, Brooklyn, NY 11245 | T: 347 643 2575 | F: 973 463 5300 | barbara.feigelman@jpmorgan.com | jpmorgan.com

From: Carrie Devorah [mailto:[redacted]
Sent: Wednesday, March 26, 2014 9:46 AM
To: Feigelman, Barbara; Suh, Kevin
Subject: Fwd: Procedural questions adressing Accounts Cleared Through JP Morgan

Ms. Feigelman

I have two questions I want answered today if you will:

1- does JP Morgan time stamp, to the hour/minute/second new accounts being cleared in? If JP Morgan has another process by which the accounts exact moment of arrival is, please advise.

2- what is JP Morgan's process for providing numbers, ie. a total of an accounts commissions and/or fees to a Firm client, for the purpose of use in a legal proceeding of any kind or/in response to a written query

(i) does JP Morgan create charts that are sent to the person requesting

(ii) does JP Morgan send the charts/calcuations of on paperwork

(iii) is that paperwork stamped/identified as from JP Morgan
(iv) is that paperwork not stamped/identified as from JP Morgan

(v) are there specific guidances to the person making a request for a history of commissions/fees on how that information can be used

Because of the pushback in our call, I am cc'ing this email to FINRA. I want these general procedural questions answered today. The call fielded by Ms Julie Moy, has not been responded to. The email to Nick Davis was not responded to.

Sincerely

CARRIE Devorah

[redacted]

This email is confidential and subject to important disclaimers and conditions including on offers for the purchase or sale of securities, accuracy and completeness of information, viruses, confidentiality, legal privilege, and legal entity disclaimers, available at http://www.jpmorgan.com/pages/disclosures/email.

Gmail

Carrie Devorah [redacted]

In Response To Your Mail Fraud Report C#16[redacted]

1 message

CISCFCSExternal@uspis.gov <CISCFCSExternal@uspis.gov> Fri, Mar 28, 2014 at 12:32 PM
To: [redacted]

Thank you for contacting the U.S. Postal Inspection Service. The information you provided has been entered into our national Fraud Complaint System. Your reference number is C#16[redacted]. If we need more information, you will be contacted directly. Please hold on to any original documents related to your complaint.

Please note that Postal Inspectors do not have the authority to ensure that your losses are refunded.

We may share the information you provided with other agencies when there is a possible violation within their jurisdiction.

In the future, if you have complaints about mail fraud or mail theft, you can visit our website, http://postalinspectors.uspis.gov, to file a complaint online.

United States Postal Inspection Service

This is a system-generated email message. Please do not reply to this message.

Gmail

Carrie Devorah [redacted]

RE: Adressing BGFS and Dawn Bennett- FINRA Audio

1 message

Ringle, Judith A [redacted] Tue, May 27, 2014 at 9:58 AM
To: Carrie Devorah [redacted] "owbcorrespondence@sec.gov" <owbcorrespondence@sec.gov>

Dear Ms. Devorah:

I apologize for not getting back to you sooner. I meant to respond to your correspondence of May 12 (attached). From what you have disclosed to CFTC OIG, it appears that the SEC Office of Whistleblower may be the appropriate contact. CFTC OIG is charged with responsibility for identifying and making recommendations regarding the alleviation of fraud, waste and abuse in the programs and operations of the CFTC. Essentially we receive allegations of improper conduct by the Agency and its employees. I meant to tell you that.

But CFTC also has a whistleblower program. You can get more information about them here -- http://www.cftc.gov/ConsumerProtection/WhistleblowerProgram/index.htm -- and they can be reached at whistleblower@cftc.gov and by phone at (866)873-5675. Complaints regarding misconduct by market professionals who are regulated by CFTC should be made to the CFTC's Division of Enforcement (enforcement@cftc.gov or (866)366-2382) or the whistleblower program.

Sincerely,

Judy Ringle, Attorney-Advisor

CFTC OIG

From: Carrie Devorah [mailto [redacted]
Sent: Tuesday, May 27, 2014 1:42 AM
To: Ringle, Judith A; owbcorrespondence@sec.gov
Subject: Adressing BGFS and Dawn Bennett- FINRA Audio

It occured to me you might want

the FINRA audio recording

1- Dawn Bennett's testimony and that of Brad Mascho too

2- it does contain my testimony

3- it does contain the Hot Mic moment with the Panel

The file was sent by email from FINRA. If you have drop box, I can send it to you. It is important to recall any and all testimony re RBC/Scott Sangerman

is moot in that the Encrypted CD sent, as you are aware, by RBC's attorney Carolyn Guy in 2012, showed there was fraud known to RBC they failed to advise me about but impacted on the paperwork presented during the WIS/BGFS/Bennett arbitration. Any and all data on the Encrypted CD is worthless in that my RBC accounts were, and to this day since the accounts are opened but unfunded, were/are being manipulated by a JP Morgan employee Bryan Gasche. I did my best to answer the RBC matter was under review by the USPS Mail Fraud, IRS, and SEC. But as the Panel said in their hot mic moment, I was the unbelievable person.

FYI, I located yet another matter with Bennett she failed to advise about. She was designing in other business matters prior to my being her client. I am sending along the documents I located. The statement of claim confirms it is "our" Dawn Bennett.

Please advise what you want to do re the FINRA audio. Judy, the SEC will take lead. I will send it to them, they will provide it to you.

Sincerely

CARRIE Devorah

[redacted]

DISCLAIMER :

With the continuing crossing and interfacing of platforms both on & off line both with & without our knowledge nor approval to note nothing sent over the Internet anymore is ever private nor should be presumed to be so. If it is that much of a secret, say nothing. If you must? Take a lesson from our military- hand write the note, chew then swallow

Re_ Your recent letter (received May 1, 2014).pdf
594K

Gmail

Carrie Devorah [redacted]

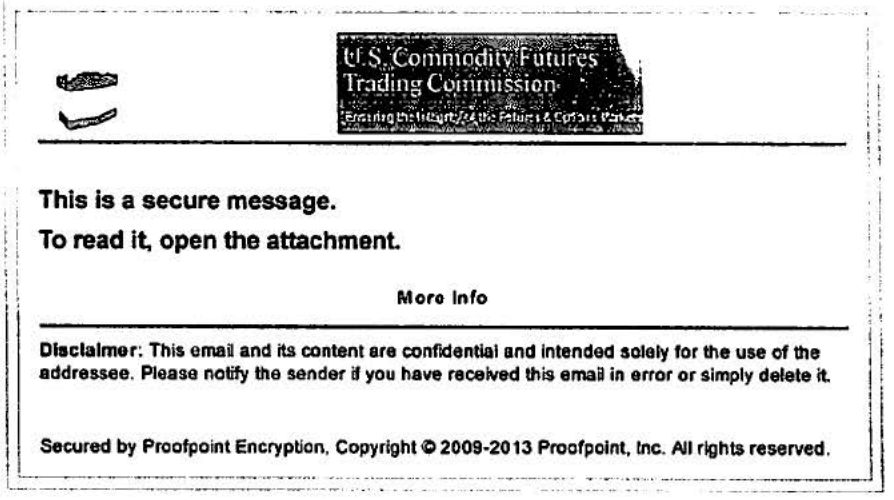
Re: Notice from the U.S. Commodity Futures Trading Commission -wb-

1 message

Carrie Devorah [redacted] Thu, Jun 19, 2014 at 11:32 AM
To: Whistleblower <Whistleblower@cftc.gov>

I received this today. This form has been sent in, filled in, notarized already. You have received a few mailings from me, all Certified Return Receipt Requested. You have the Form TCR completed
Carrie Devorah
(submission 2014-06-09)

On Wed, Jun 11, 2014 at 9:16 AM, Whistleblower <Whistleblower@cftc.gov> wrote:



--
Sincerely
CARRIE Devorah
[redacted]

Founder
THE CENTER FOR COPYRIGHT INTEGRITY
www.centerforcopyrightintegrity.com @godingovt
Where ARTS, IP, ID, IT and ENFORCEMENT Come Together In One Voice Against Online Theft Of Content and Commerce

CCIA : Profiler : trained MPI : LACBA-DRS : CA-BSIS Actively built the 1st discrete site crime analysis lab on a campus in North America

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2014 6 19 CFTC06192014.pdf
3925K

Gmail

Carrie Devorah [redacted]

RE: Follow Up With Notes/Files To Meeting- FINRA

1 message

Wayman, Carol [redacted] Thu, Aug 7, 2014 at 9:36 AM
To: Carrie Devorah [redacted]

Thanks

Carol Wayman
Acting Legislative Director
Congressman Keith Ellison (MN-05)
2244 Rayburn House Office Building
Washington, DC 20515
202.225.4755
[redacted]

Follow us on twitter

Find us on Facebook

From: Carrie Devorah [mailto:[redacted]
Sent: Wednesday, August 06, 2014 1:21 AM
To: Wayman, Carol; Truding, Bradley; Bradley, Katelynn
Subject: Follow Up With Notes/Files To Meeting- FINRA

Dear Carol, Kristofor, Katelynn, Bradley and Darrell,

I took some time to expand on the initial zipped file I sent, locating and organizing data that will facilitate you. (1) An overview letter adressing the iniquity of Loss of Civil Liberties to people stealing to put food on their table in contrast to Wall Street thieves allowed to keep alot of the funds they stole and benefitting from Expungement cleansing their backgrounds, letting them enjoy civil liberties and continue robbing new unsuspecting victims unaware of covered up crimes (2) are five folders of data I glossed over while we spoke.

FINRA INFO 1.zip

I know where/how to locate the info or have recall of what I looked at or documents I have from the situations I was/am party to.

2- FOLDER (Recommended Order To Open In)

(i) 2014 8 5 ZIP FILE OF EARLIER EMAILED DOCUMENTS PRESENTED TO STAFFERS

(ii) 2014 8 5 THE ATTACHMENTS TO ACCOMPANY THE OVERVIEW LETTER

(iii) Laws Potentially Broken

(iv) FINRA Official DEVORAH Arbitration record digital HOT MIC Files 154-160

(v) FINRA GUIDE TO INVESTORS What To Do When Problems Arise

(vi) FINRA ARBITRATORS GUIDE (88 pages)

(vii) 2012- FINRA Inc. Form 990

(viii) 2012-FINRA DRS Form 990

(ix) 2012-FINRA INVESTOR EDUCATION FUND

(x) 2012-FINRA Regulation Inc Form 990

(xi) FINRA Maryland Department Of Corporations filings showing FINRA Members have stock

(xii) PIABA Form 990

(xiii) 2009-10-6 RBC USA President John Taft Written Testimon (listen to the Audio for Q&A

--

Sincerely

CARRIE Devorah

[redacted]

Founder
THE CENTER FOR COPYRIGHT INTEGRITY

www.centerforcopyrightintegrity.com @godingovt

Where ARTS, IP, ID, IT and ENFORCEMENT Come Together In One Voice Against Online Theft Of Content and Commerce

CCIA : Profiler : trained MPI : LACBA-DRS : CA-BSIS Actively built the 1st discrete site crime analysis lab on a campus in North America

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Gmail

Carrie Devorah [redacted]

Follow up to call & links in advance of Monday meeting

1 message

Carrie Devorah <[redacted]
To: "Truding, Bradley" [redacted]

← Congressman Eleanor Holmes Norton

Fri, Aug 1, 2014 at 11:59 AM

Dear Bradley

Thank you for taking time for my call. I look forward to our meeting Monday at 2:00.

Here are my comments filed with the SEC and FINRA I said I would send along. The links are on my site landing page
www.centerforcopyrightintegrity.com

COMMENT: FINRA Rule 2210 - HYPERLINKING INDUSTRY WEBSITES TO FINRA BROKERCHECK

THE SEC CROWDFUNDING MANIFESTO..... MORE

COMMENT: FINRA Rule 2210 - HYPERLINKING INDUSTRY WEBSITES TO FINRA BROKERCHECK

--
Sincerely
CARRIE Devorah
[redacted]

Founder
THE CENTER FOR COPYRIGHT INTEGRITY
www.centerforcopyrightintegrity.com @godingovt
Where ARTS, IP, ID, IT and ENFORCEMENT Come Together In One Voice Against Online Theft Of Content and Commerce
https://www.youtube.com/watch?v=l93F73UYmsw&feature=youtu.be

CCIA : Profiler : trained MPI : LACBA-DRS : CA-BSIS Actively built the 1st discrete site crime analysis lab on a campus in North America
COFFEE @ CLOCKERs "A Sense Of Place"
https://www.youtube.com/watch?v=kvEVS-GIXrU

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Gmail

Carrie Devorah <[redacted]>

RE: touching base/ question

1 message

Kanyan, Keith [redacted]
To: Carrie Devora[redacted]

Wed, Sep 3, 2014 at 3:09 PM

Hello Carrie,

You will have to ask the SEC's Office of Acquisitions or SEC's FOIA office for any information or copies of contracts. See http://www.sec.gov/oacq for information about making a request.

KEITH KANYAN

Program Specialist

U.S. Securities and Exchange Commission

Division of Investment Management

100 F Street, N.E.

Washington, DC 20549-8549

Phone | 202.551.6737

Room 8648

www.SEC.gov

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From: Carrie Devorah [mailto:[redacted]
Sent: Wednesday, September 03, 2014 11:32 AM
To: Kanyan, Keith
Subject: touching base/ question

Hi Keith

Hoping all is well.

I heard the SEC has a contract with FINRA. I want to see that contract. How can I see it? Can I find it online?

Sincerely

Gmail

Carrie Devorah [redacted]

Recall: Form ADV

1 message

Martin, Lucinda (DISB) <[redacted]> Mon, Sep 8, 2014 at 3:04 PM
To: "Alula, Claudine (DISB)" [redacted] "Carrie Devorah [redacted]
Cc: "Miles, Theodore (DISB)" [redacted], "Goff, Maurice (DISB)" [redacted] "Kunzweiler, Brad (DISB)" [redacted] "Reed, Dena C. (DISB)" <[redacted] "Meaza, Senayet (DISB)" <[redacted]

Martin, Lucinda (DISB) would like to recall the message, "Form ADV".

Give your kids a smart start. Come to the MLK Library for the STAR Family Festival on Sept. 13 at 11 a.m. and see how easy and fun early learning can be. For more information, visit <http://dclibrary.org/starfestival>

Gmail

Carrie Devorah <[redacted]>

RE: FINRA arbitration - letter to Task Force

1 message

Rushkoff, Bennett (OAG) <[redacted]>
To: Carrie Devorah <[redacted]>

Mon, Mar 9, 2015 at 4:34 PM

Copy of letter is attached.

NINE GROUPS URGE FINRA TASK FORCE TO RELEASE DATA ON MANDATORY ARBITRATION FOR INVESTORS

WASHINGTON, D.C. – January 21, 2015 – Nine groups today urged the FINRA Dispute Resolution Task Force to improve the transparency of mandatory arbitration for investors by releasing a wide range of data not now publicly available. The joint letter is available online at http://www.piaba.org.

The groups included Americans for Financial Reform, the Alliance for Justice, the Center for Justice and Democracy, Consumers Union, National Consumers League, Public Citizen, the National Association of Consumer Advocates, US PIRG, and the Public Investors Arbitration Bar Association (PIABA).

The letter from the nine groups arrives one day before the FINRA Dispute Resolution Task Force is to meet in Washington, D.C.

In their joint letter, the groups wrote: " ... we request that you support the release of information, including data in the form of studies and reports, that FINRA and/or the SEC have collected regarding investor awareness and understanding of predispute binding mandatory (or forced) arbitration; effectiveness of FINRA's arbitrator selection process; prevalence of forced arbitration clauses in brokerage firm and investment advisory contracts; and other feedback that FINRA has collected from investors about any or all of these issues."

The letter notes: "Mandatory arbitration deprives investors doing business with brokerage firms and investment advisers of the right to a judge and jury. Investors do not receive open hearings and often do not receive fair ones. In addition, the process is unlikely to result in adequate awards against brokers to deter misconduct and compensate injured investors. There is even evidence that brokers have been able to use the arbitration process to clean their records of investor complaints, as if they never occurred. Although it is intended as a substitute for public

courts, FINRA's arbitration system stunts development of critical legal policy. It also can deprive investors of the benefits of the law because arbitrators are not obligated to follow it, and written opinions are closed to the public or may not be issued at all. Meanwhile, important information about arbitrator selection and other elements of FINRA's arbitration system remain unavailable to the public."

The letter points out: "The Public Investor Arbitration Bar Association (PIABA), an organization of lawyers who primarily represent investors, has, during the last year, released a series of studies examining some of the structural and procedural traits of FINRA arbitration. The published data in PIABA's reports indicates that FINRA arbitration proceedings foster secrecy of information that should be available to investors and that aspects of the system suggest partiality towards industry participants ... the studies found that most stockbrokers' requests to remove investor complaints from their public record are granted, resulting in the omission of critical information from FINRA BrokerCheck system; that the BrokerCheck system also omits other critical information concerning prior conduct of stockbrokers and broker-dealer firms that investors need to make informed decisions; and that FINRA's arbitrator selection process is not only secretive but it results in an arbitration roster that lacks diversity." Recently, PIABA went to court to compel the Securities and Exchange Commission (SEC) to release certain arbitration data under the Freedom of Information Act, but the request was denied.

In its conclusion, the joint letter outlines specific steps that FINRA can take to facilitate meaningful disclosure:

"We urge FINRA to encourage transparency and to facilitate the release of data and information as described below.

- We request that FINRA support the release of information, including data in the form of studies and reports, that FINRA and/or the SEC have collected regarding investor awareness and understanding of predispute binding mandatory (or forced) arbitration; data to support stated goals of FINRA's arbitrator selection process; the prevalence of forced arbitration clauses in brokerage firm contracts; and other feedback that FINRA has collected from investors about any or all of these issues.
- We request the FINRA support release of any data from investigations regarding arbitration awards, in particular any data allowing comparison of cases where investors are awarded a fraction of their losses to those where investors are fully compensated for their losses.
- We request that FINRA support release of any data or analysis by the SEC or FINRA concerning arbitrators' records, including any analysis of the percentage of cases in which individual arbitrators have found in favor of a brokerage firm over an investor or vice versa.
- We request that FINRA support release of any SEC or FINRA analysis of data on the likelihood of an investor prevailing on any particular type of claim or the likelihood of any

particular arbitrator issuing an award in favor of an investor or a brokerage firm.

We request that FINRA support release of any data or information addressing whether investor protection is less secure in the investment advisory context where the choice of arbitration providers is solely within the discretion of the investment advisers or in FINRA arbitration, the required forum for brokerage firms."

MEDIA CONTACT: Will Harwood, (703) 276-3255 or wharwood@hastingsgroup.com; and Christine Hines, (202) 454-5135 or chines@citizen.org.

Letter to FINRA Arbitration Task Force (January 21, 2015).pdf
458K

Gmail

Carrie Devorah [redacted]

Follow up to conversation with Deborah Breneani

1 message

Carrie Devorah [redacted] Tue, Mar 24, 2015 at 11:34 PM
To: whistleblower@cftc.gov

Deborah

I filed out the online form.

After I completed the TRC form, I was asked for a name and password, not before. I did look to see if I could locate where to fill out a Password entry. I did not locate it so I printed out the form that I filed in and am sending the printed WB form along to you as one of the attachments.

The details you want are in the filings 1:15-cv-00032 (CRC) and in the papers filed with the OSC, the other two attachments. The Court matter is current in DC.

My Motions filed with the Court are sent to you, in one of the attachments. The other attachment are filed with the OSC.

In that I have quarterbacked, RBC, JP Morgan and FINRA in to the filing with the focus on RBC, I recommend that as you need assistance, call and or arrange for us to meet, in that I a clarity from a POV missed in your filings.

Sincerely
Carrie Devorah

2015 3 24 CFTC WB.pdf

CFTC.zip

RBC DC Court filings SEND TO CFTC.zip

--
Sincerely
CARRIE Devorah
[redacted]

DISCLAIMER :
With the continuing crossing and interfacing of platforms both on & off line both with & without our knowledge nor approval to note nothing sent over the Internet anymore is ever private nor should be presumed to be so. If it is that much of a secret, say nothing. If you must? Take a lesson from our military- hand write the note, chew then swallow

Keith Ellison Bill HR 2998.pdf
7241K

Gmail

Carrie Devorah [redacted]

Whistleblower Office - Automated Response

1 message

Whistleblower <Whistleblower@cftc.gov> Tue, Mar 24, 2015 at 11:36 PM
To: Carrie Devorah [redacted]

Thank you for contacting the Whistleblower Office of the Commodity Futures Trading Commission. We are eager to hear from and provide assistance to persons who would like to be considered for an award under the whistleblower program. We will respond to your questions as quickly as we can. Please note the following:

· This email address should be used only to ask questions about the whistleblower program. Please do not attempt to send a whistleblower submission by email.

· If you would like to become a whistleblower, please file a Form TCR either electronically, by mail or by facsimile. To file electronically, please click on the "File a Tip or Complaint" button located on the right-hand side of the Commission's home page, www.cftc.gov, and click on the form under the description of the whistleblower program. To file by mail or facsimile, please print a blank Form TCR, complete it, and mail or fax it to the address or number below:

Commodity Futures Trading Commission

Whistleblower Office

1155 21st Street, NW

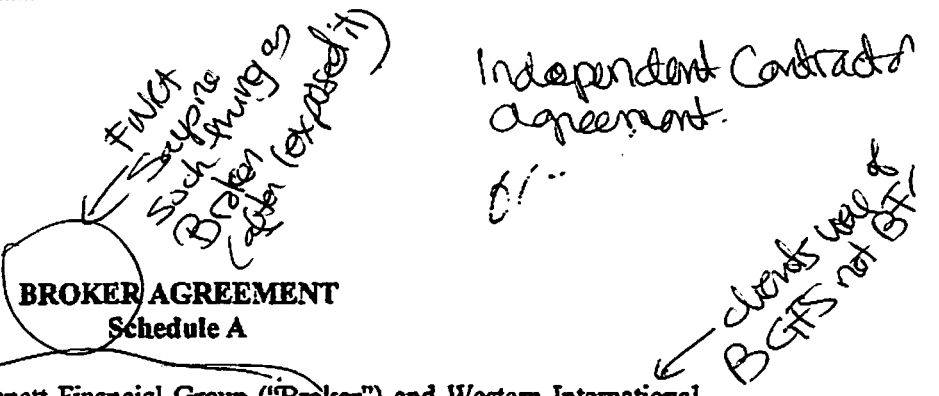
Washington, DC 20581

Fax: (202) 418-5975

· While the Whistleblower Office can explain the law and rules behind the whistleblower program, we cannot provide you with legal advice or an opinion about your particular whistleblower submission or award claim.

· Please understand that any further inquiry conducted by the Commission as a result of any information you provide is confidential. The fact that the Commission may investigate a firm or person generally will not be disclosed until such time as a public proceeding is brought either before the Commission or in federal court.

· You can learn more about the whistleblower program by visiting the "Whistleblower Program" page of the Commission's website, www.cftc.gov, where you will find the rules for the whistleblower program, frequently asked questions, and filing instructions.



BROKER AGREEMENT
Schedule A

This agreement between Bennett Financial Group ("Broker") and Western International Securities, Inc. ("Western") is dated July 24, 2009. This agreement is to be used in conjunction with the Independent Contractor Agreement (ICA) and is designed to encompass specific payout and expense issues not addressed in that Agreement. Bennett Financial Group will be bound by the terms of the ICA with regard to regulatory requirements and responsibility for errors and losses attributed to her business.

Payout

The payout on all brokerage, management and advisory business (regardless of whose RIA is used) will be 92% based on maintaining two million per year in overall production.

Ticket Charges

All J.P. Morgan (or other clearing broker-dealer) fees will be passed on to Broker for brokerage business. For advisory business the fee can be passed on to the customer. The most common ticket charges by J.P. Morgan are as follows:

Stocks	$15.95 per ticket.
Bonds	$19.95 per ticket
Options	$15.95 per ticket plus $1.50 per contract

Mutual funds are no charge if done directly with the fund or within a JP Morgan Fund Circuit account. Funds done over the wire will be charged $11 per ticket, $7.50 for mutual fund exchanges. The vast majority of our listed business is executed third market and that is the default for MORCOM Order Entry System. If you direct a trade to a listed exchange or get special handling from a JP Morgan trading desk, there may be additional execution fees. There may also be per share fees to execute on certain algorithm trading systems. Customers will pay a $4.75 service fee.

Registration and fees

- Western will pay for the cost to transfer. Bennett Financial Group series 7 and up to four state license fees. Bennett Financial Group will be responsible for all renewal fees. Western adds a $15 per state processing fee to each state registration. Bennett Financial Group will also be responsible for Western's annual association fee beginning in summer 2010. The association fee covers the firm's Fidelity bond and the cost of registration in all of the states and runs approximately $490 per year.

- Errors and omissions insurance is obtained by Western, and is mandatory for all independent contractors who hold a series 6 or 7 regardless of production. The amount will be determined annually based on the premium and is currently

$2,299.62 per year and our policy renews in March, Bennett Financial Group will pay a prorated portion monthly until renewal.

- Any further expenses of operating your office will be billed to and paid by you. Western will offer JP Morgan access for $60 a terminal. Western will provide a mandatory NASD/SEC compliant email address and instant messenger service for $25 a month per address. There may be additional charges to use a custom domain.

There is an annual office compliance inspection and it will be provided by Western at a cost of $595.

Western will charge back all fees versus Bennett Financial's monthly production. If the production does not cover the fees, Western will allow Bennett Financial to carry a debit. If the debit exceeds $1000, the entire amount must become current in 45 days.

Transition Support

Western will provide transition support money based on the following schedule:

- $125k upon receiving the first 100 ACAT forms
- $100k ninety days after arrival (to be paid by JP Morgan)
- $25k when $1.5 million in gdc is reached (must occur within the first 14 months)
- $150k when $3 million in gdc is reached (must occur within the first 14 months)
- $25k when $4 million in gdc is reached (must occur within the first 14 months)
- $25k when $5 million in gdc is reached (must occur within the first 14 months)
- $25k when $6 million in gdc is reached (must occur within the first 14 months)
- $25k when $7 million in gdc is reached (must occur within the first 14 months)

This money will be the only contribution Western will make to cover transition expenses, including but not limited to: ACAT fees, repapering, postage, IRA termination, and check writing fees.

Media

To the extent compliant with rules and regulations of FINRA, the SEC and other applicable regulatory authorities, Broker may make personal and promotional appearances without pre-approving content, including but not limited to television and radio appearances, print interviews, internet commentary and web pages. Any advertising will be pre-approved before use and any non-advertising material used later as advertising, i.e., TV appearances and print interviews, which do not meet the compliance standards, will be withdrawn from use immediately upon notice.

Advertising materials and compliance submissions

Evaluation and adjudication of Broker compliance submissions will generally be completed within 24 hours of submission.

International accounts

To the extent compliant with rules and regulations of FINRA, the SEC, other applicable regulatory authorities, and J.P. Morgan (or other clearing firms Western may use in its discretion), Broker will be supported in opening customer accounts and transacting business through offices, partners and affiliates in international locations. Broker intends to market, serve clients and sell product from these offices in compliance with all applicable regulatory authorities. Broker understands that international business may trigger additional compliance oversight by Western or Western's clearing firm, in order to comply with applicable law, including anti-money laundering compliance under the US Patriot Act. Western and its clearing broker reserve the right to close or restrict any accounts as may be deemed necessary in their discretion to comply with applicable law. It is understood that to the degree international expansion increases Western's cost structure (e.g., if the creation of such offices requires extraordinary compliance oversight by Western or its clearing firm) Broker agrees to bear such costs.

Regulatory interaction

Broker reserves the right to appeal to the appropriate regulatory authority in any questions arising from compliance submissions. Broker shall first submit to Western any such communications Broker intends to submit to a regulatory authority.

Product development

Broker reserves the right to create investment products that are licensed and sold domestically and internationally by other financial institutions and insurance companies, provided that Broker fully complies with FINRA Rules 3030 and 3040, Western's compliance requirements and other applicable regulatory authority. It is understood that to the degree these product expansions impact the Western's cost structure (e.g., if extraordinary compliance oversight is necessary), Broker agrees to bear such costs.

Other

Western respects a Broker's right to transfer his/her customers if he/she chooses and Western will facilitate a negative transfer with a sixty day notice. Western will not interfere with the transfer of Bennett Financial Group's clients to a new firm and will not solicit them. The terms of your Schedule A are confidential and not to be shared with others.

WESTERN INTERNATIONAL SECURITIES, INC.

Donald M. Bizub, CEO

8-6-9
Date

Bennett Financial Group

7/27/09.
Date

Gmail

Carrie Devorah [redacted]

FOIA Request/Tracking # 129/ACKNOWLEDGMENT

1 message

Alula, Claudine (DISB) [redacted]
To: "Carrie Devorah [redacted]
Cc: "Reed, Dena C. (DISB) [redacted]

Mon, Mar 31, 2014 at 4:55 PM

Good afternoon Ms. Devorah,

This acknowledges your Freedom of Information Act (FOIA) request of March 30, 2014 to the D.C. Department of Insurance, Securities and Banking (DISB) in which you seek:

Lucinda,

Hoping all is well. Thank you for the answer. I am not clear on it to understand it.

Does an advisor need a U4 to represent themselves as an advisor in general and specifically in the District of Columbia? YES. NOTE RE FIRM AS SOLE PROP.

Does a broker(dealer) need a U4 to represent themselves as a broker(dealer) and specifically in the District of Columbia? YES. NOTE RE FIRM AS SOLE PROP.

Did Bennett Group Financial Services have a U4 for 2010 or any other license for it to operate in the District of Columbia? CHECK THIS AGAINST THE INFO IS MS. BENNETT'S LETTER. NOTE IF IT WAS IN A DIFFERENT NAME.

Did Bennett Group Financial Services licenses and specifically in the District of Columbia provide for it, between 2006 - 2013, to operate as
(I) an RIA for Pools, Pensions or AGAIN, PERHAPS DIFFERENT NAMES.
(ii) an RIA for Individuals or AGAIN, PERHAPS DIFFERENT NAMES.
(iii) in insurance for Pools, Pensions or I"M NOT SURE IF THIS – "INSURANCE FOR POOLS, PENSIONS" -- IS AN ACTUAL CATEGORY. ALSO, IT SEEMS TO BE MORE OF AN INSURANCE CATEGORY THAN A SECURITIES CATEGORY.
(iv) in insurance for Individuals THIS IS AN INSURANCE CATEGORY.
(v) all of the above JUST ANSWER THE SPECIFIC QUESTIONS.
(vi) none of the above JUST ANSWER THE SPECIFIC QUESTIONS.

I laid out the questions allowing you to type your answers, Yes or No, beside the question(s) The answers and documentation, if any, are needed immediately. I WOULD NOT PROVIDE DOCUMENTATION. THAT TURNS IT INTO A FOIA REQUEST

Your request was received by this office on March 31, 2014 and assigned **FOIA Tracking # 129.**

DISB staff is currently reviewing records to determine what, if any, responsive documents exist. DISB will make every effort to meet the 15 business day deadline as required by law to process your request. However, if DISB determines that an adequate search for records will take longer that the 15 business days, DISB may invoke the 10-working day extension. Should DISB need the 10-working day extension, DISB will inform you expeditiously in writing including informing you of the reasons for the extension and the expected date of completion of your request.

The FOIA fee schedule is found in District regulations at DCMR 1-408. Those fees include a research fee ($10 per occurrence), Review fees (hourly rate based on the number of employees and their hourly salary) and copy fees ($0.25 per page).

The specific fees for this request would be based on the number of pages of documents copied, plus research and review fees based on the number and salary of each employee involved in responding to the request.

I will of course inform you of any research and review fees and duplication fees, before copies are made. You should expect to pay such fees before receiving copies of any records found in this search. I will keep you informed of timelines and costs. Please do not hesitate to contact me if you have any questions.

Sincerely,

Claudine Ollula, **MLS**

Paralegal Specialist/FOIA Officer

Office of the Attorney General for D.C.

Office of the General Counsel

Department of Insurance, Securities and Banking

810 First Street, NE, Suite 701
Washington, DC 20002

(P) 202-442-7808/(F) 202-576-8903

[redacted]

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Gmail

Carrie Devorah [redacted]

RE: Follow Up

1 message

Hogue, Cynthia [redacted]
To: Carrie Devorah [redacted]

Tue, Jun 3, 2014 at 7:50 AM

Ms. Devorah, your issues do not fall within the jurisdiction of the GAO Inspector General. There is nothing that our office can do to assist you regarding your allegations. I provided the physical mailing address for the Social Security Administration OIG, as you requested.

Thank you for contacting the GAO OIG.

Cynthia Hogue

From: Carrie Devorah [mailto:[redacted]
Sent: Monday, June 02, 2014 4:10 PM
To: Hogue, Cynthia
Subject: Fwd: Follow Up

Thank you Cynthia.

I am prepping papers for Patrick. I have a partial set going to the GAO. Let me leave it at what you are getting first.

I must appreciate your taking me at face value. I am stunned by the "experts" who say what took place in the second matter, documented in to audio, never too place. Ok. Then explain the audio. Something is very wrong with alot of the Arbitration that ended in an award against me. There are steps of what can be done to yank the whole matter. It is in plain English if the "experts" read the papers they decide lives on.

It is looking to me like there is an imperfection in the process of the papers given to the court, that and the ongoing investigation(s).

I am forwarding to you my email to Linda. She knew ALL of this back in June 2013. In my culture we use the word Chutzpah for her to make the statement she did to thinkadvisor.com

There are some people I did not list in the round up of who is aware of what is going on. I did meet with a Secret Service officer. I told him I would do a timeline. With all else going on and twenty days to answer the Motion Western/BEnnett filed in the courts, you could say I am a bit distracted.

You know, I was disabled for 5 years and then I was almost killed in a car crash. I really need to start living again. AND I want my money plus everything I am owed on top of that.

The funny thing is, even this morning, someone said you are too bright to have let this happen, what college did you go to? I didnt go to college. I went to art school. I have an aptitude for puzzles and reading AND eventually, putting the puzzle pieces together in the way they fit.

I trained as the stuff I did because I wanted a job after I did well with my baby art. Couldnt get hired because I didnt go to college. I did what I have done my whole life- figured things out. Was hanging around horses shooting finishes at that time. This seem an ideal thing to study towards building databases of breakdowns. Well, I learned in time the track didnt care (Frank Stronach, Dinny Phipps.) The backstrech trusted me. I was asked to look up some data by a trainer. Nothing more needs to be said, I was in England a few months later, leaving my finances in the good hands of my advisor.....

Now you know the rest of the story.

Read the attached Hot Mic moment from the Arbitration. Says enough.

Thanks for taking me at face value.

If you have questions as to my authenticity, I know you could ask Terry Gainer. Cathy should remember me. I show up every so often. Do you recall when a month out from the inauguration, all cab drivers were pulled over? Me. I caught something- let Terry, Cathy, Sharon McGinnis, and an executive in the White House know. Public would not have heard where the tip came from. It wasnt important. Having a safe inauguration was.

Sincerely
Carrie Devorah

——— Forwarded message ———
From: **Carrie Devorah** [redacted]
Date: Fri, May 30, 2014 at 7:40 PM
Subject: Follow Up
To: "Fienberg, Linda" [redacted]
Cc: "Niedermayer, Jackie" [redacted]

Dear Linda,

It has been almost a year since I came to your office. I believe I was still on my cane. And as it was, less than a week later my back was diagnosed broken. I came out of the "cage" 2 days before my December 2013 arbitration that left me publicly branded "

You are quoted in Article One, stating "FINRA staunchly defends its forum. "We have no evidence whatsoever that the hearings are rigged," says Linda Fienberg, president of FINRA's dispute resolution and chief hearing officer, in Washington, D.C. "I would deny that it's a kangaroo court. We're audited internally by the SEC from time to time and by the Government Accountability Office (GAO). Brokers would be no better off in court, perhaps worse off versus arbitration."

Nothing is further from the truth than your words. Attached is a partial transcription of my Arbitration the result of which has publicly defamed me http://www.brokeandbroker.com/2313/finra-arbitration-attorneys-fees/ as you see.

As you can read in the 15 minute Hot Mic moment that Susan Matthews was very aware of what the Senate is concerned over (attachment 2).

That's two bordering Three, Ms. Fienberg. Regulators are on notice with carefully compiled, organized data.

Schedule a meeting for us next week.We have a "rigged hearing" to adress, your words, "a kangaroo court." You will find a solution to adress the scam pulled on my counsel and me. I dont know how the hell you ever give me back a birthday I lost, time, energy or other.

Ma'am, I was sick not stupid. You underestimated me. Frankly, I underestimated me. There are going to be alot of changes in FINRA. I am leading that change.

Cordially
Carrie Devorah

(1)
http://www.thinkadvisor.com/2014/05/20/finras-total-warfare-against-brokers-in-arbitratio
(2)
http://www.thinkadvisor.com/2013/08/05/finra-review-investor-choice-act-highlight-arbitra

On Wed, Jun 5, 2013 at 9:59 AM, Fienberg, Linda [redacted] wrote:

Dear Ms. Devorah,

I work with Rick Ketchum who has asked me to get

in touch with you. I would be happy to meet with you at your convenience to discuss the matters that you raised in your email or to discuss your arbitration matters.

By way of background, I'm in charge of the arbitration/mediation program at FINRA; I also am the Chief Hearing Officer in charge of disciplinary hearings.

Please let me know when would be convenient for us to meet in person or by telephone. I am free next Monday afternoon from noon on if that is good for you.

I look forward to hearing from you, Linda Fienberg

Linda D. Fienberg

President

FINRA Dispute Resolution

1735 K Street, NW

Washington, DC 20006-1506

tel 202 728-8407

fax 202 728-8833

www.finra.org

[redacted]

Gmail

Carrie Devorah [redacted]

FINRA Dispute Resolution Case No. 12-03894

1 message

Reicher, Terri [redacted] Thu, Jun 26, 2014 at 2:37 PM

To: "carriedev@gmail.com" [redacted]

Dear Ms. Devorah:

I have been asked to respond to your most recent inquiries concerning your award, and the motion to confirm pending in the U.S. District Court for the District of Columbia.

The motion to confirm arbitration award pending in federal court is governed by the Federal Arbitration Act, not by FINRA rule, and the FINRA rule you cite has no bearing on the merits of the motion to confirm the award. FINRA rules bind FINRA firms and their registered representatives, but do not impose conditions precedent to a filing in federal court to confirm or vacate an arbitration award. FINRA's determination about your ability to pay the forum fees assessed against you has no bearing on the motion to confirm filed in federal court. They are two separate matters.

FINRA is inapplicable to investment adv
FINRA = Securities Broker-Dealers only

Moreover, the FINRA rule you cite is completely inapplicable to your award, in which the arbitrators found in favor of the respondents and awarded costs and attorneys fees to the respondents. The rule you cite only applies in to arbitration awards that award damages to a claimant against a firm or registered representative. Since the award in this case did not award you, the claimant, any damages, there was no requirement that the respondents notify FINRA in advance of filing the motion to confirm arbitration award.

Finally, I have reviewed your numerous complaints about the arbitration. Your sole remedy is to seek relief from the court, as Dispute Resolution generally loses jurisdiction over the arbitration once the award is issued. Dispute Resolution has responded to your complaints to the best of its ability, and considers this file to be closed. We will not be responding to you any further, and I have instructed Dispute Resolution to forward any future voicemails, correspondence and email to me.

We are sorry that you did not obtain the result in arbitration that you evidently felt entitled to, but we can do nothing further in this matter.

Very truly yours,

Terri L. Reicher
Associate Vice President
Associate General Counsel
FINRA
1735 K Street, N.W.
Washington, DC 20006
(202) 728-8967
FAX (202) 728-8894

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Gmail

Carrie Devorah <[redacted]>

RE: CONFIDENTIAL: note from Carrie Devorah

1 message

Feigelman, Barbara [redacted]
To: Carrie Devora[redacted]
Cc: "Moy, Julie" <[redacted]>

Mon, Oct 6, 2014 at 3:17 PM

Dear Ms. Devorah:

This is to acknowledge our receipt of your recent email correspondence dated October 2, 2014.

There will be no further comment from us on your email inquiry.

Barbara Feigelman | Vice President | Investment Bank | Client Services | **J.P. Morgan** | 3 Chase Metrotech Center, NY1-H051, Brooklyn, NY 11245 | T: 347 643 2575 | F: 973 463 5300 | barbara.feigelman@jpmorgan.com | jpmorgan.com

From: Carrie Devorah [mailto[redacted]
Sent: Thursday, October 02, 2014 9:40 AM
To: Feigelman, Barbara; Moy, Julie
Subject: Re: CONFIDENTIAL: note from Carrie Devorah

Dear Barbara and Julie

October 23 2014 is the filing date for papers in to the DC District Court in which Dawn Bennett, as you saw, along with Western International Securities, BGFS, and frequent FINRA attorney, not licensed to practice law in DC, David E Robbins.

You are notified I appealed the award of attorney fees to a non-licensed attorney, violating FINRA rules that require all lawyers appearing before FINRA to be licensed in that jurisdiction. You are aware of Bennett's Declaration claiming her/WIS/BGFS are allowed to use JP Morgan's IP, clearly marked for JP Morgan use only.

I am providing you/JP Morgan the opportunity to mitigate JP Morgan's exposure to the actions of WIS/BGFS and Bennett. It isnt a question of 'what'. It is a matter of 'how much' JP Morgan is exposed for.

Writing a clear stated letter to the court stating along with lines that 'this contract is between Devorah and JP Morgan, this contract is not between Devorah and WIS/JP Morgan, plain english, a requirement of the administration and SEC rules will be a step towards mitigating JP Morgan's exposure.

I recommend you consider writing a plain english letter not the prior letters that state the sky is ethereal and yada yada. You are aware the our correspondences are shared, this will be, too.

An email directed to the Courts or an email with the JPMCC letter attached is acceptable. Mitigating is important, Barbara. It weighs in, down the road, showing JPMCC/supervisory took pro-active steps to protect JPMCC and JPMCC client. Doing nothing, writing JPMCC is ceasing communication, is a PR nightmare.

Cordially
Carrie Devorah

On Sun, Sep 7, 2014 at 2:11 PM, Carrie Devorah [redacted] wrote:

[redacted]

Dear Barbara
Your letter says you are going to do nothing about the crime to me from your client using your contract in court proceedings pretending it is their contract. I am sending you this email from WIS' Karen Chung. Your firm cannot pretend this crime did not occur, harming me. Your firm should have known this false representation of JP Morgan's contracts were taking place.
Sincerely
Carrie Devorah

-------- Forwarded message --------
From: **Karen Chung** [redacted]
Date: Thu, Aug 12, 2010 at 12:56 PM
Subject: RE: CONFIDENTIAL: note from Carrie Devorah
To: [redacted]

Ms. Devorah:

Pursuant to your request on the other account, the information can be found on page 4, Item 9 (a) on Service Fees. I have also included the first and last page of the document for your review.

Karen Chung

Associate Director , Compliance

Western International Securities

70 S Lake Ave, 7th Floor, Pasadena, CA 91101

T: 626-710-3104| F: 626-628-1757

[redacted] **www.wisdirect.com**

the JPMCC Clearing agreement
Signed directly by JPMCC not WIS as BGFS.
JP Morgan says

Member FINRA / SIPC

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Please consider the environment before printing this e-mail.

From: carriedev@gmail.com [mailto:[redacted]
Sent: Thursday, August 12, 2010 9:20 AM
To: Karen Chung
Subject: CONFIDENTIAL: note from Carrie Devorah

Karen
Why is it you sent me the agreement for a retirement account rather than a general accoint agreement? Please send me the general account agreement.

Sincerely
Carrie Devorah

Sent via BlackBerry from T-Mobile

From: "Karen Chung" <[redacted]

Date: Thu, 12 Aug 2010 11:12:43 -0500

To: <carriedev@gmail.com>

Subject: CONFIDENTIAL: note from Carrie Devorah

Ms. Devorah:

Pursuant to your request, I am including the "Individual Retirement Account Agreement" for you to review. Please note on the bottom of page 9 of the agreement in regards to commissions for transactions associated with the account.

page 1 fees + requirements

I have also attached a copy of your signed agreement for your review.

Should you have any further questions, please contact Brad Kaiser at 626-793-7717.

Karen Chung

Associate Director , Compliance

Western International Securities

70 S Lake Ave, 7th Floor, Pasadena, CA 91101

T: 626-710-3104| F: 626-628-1757

kchung@wisdirect.com www.wisdirect.com

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Please consider the environment before printing this e-mail.

From: carrie devorah [mailto:[redacted]
Sent: Thursday, August 12, 2010 5:29 AM

To: Karen Chung
Subject: CONFIDENTIAL: note from Carrie Devorah

Dear Karen

I looked again at the paper you said indicates my agreement to pay either commission or fee. I dont see the paper as agreeing to either mode of agreement. Are clients papers/agreements filed by your independent contractors with you? Is this a paper you would have in your records. Let us try this, will you please email to me the paper you want me to look for in my papers. Please send that paper to me today. Again this correspondence, our communication(s) are in absolute confidence not to be discussed outside of you and your boss until notice is given by me.

Sincerely

Carrie Devorah

–

Sincerely

CARRIE Devorah

[redacted]

Founder
THE CENTER FOR COPYRIGHT INTEGRITY

www.centerforcopyrightintegrity.com @godingovt

Where ARTS, IP, ID, IT and ENFORCEMENT Come Together In One Voice Against Online Theft Of Content and Commerce

CCIA : Profiler : trained MPI : LACBA-DRS : CA-BSIS Actively built the 1st discrete site crime analysis lab on a campus in North America

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–

Sincerely

CARRIE Devorah

[redacted]

DISCLAIMER :

With the continuing crossing and interfacing of platforms both on & off line both with & without our knowledge nor approval to note nothing sent over the Internet anymore is ever private nor should be presumed to be so. If it is that much of a secret, say nothing. If you must? Take a lesson from our military- hand write the note, chew then swallow

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Gmail

Carrie Devora[redacted]

Follow up to phone call Monday 3:39pm

1 message

Carrie Devorah [redacted] Mon, Mar 30, 2015 at 4:29 PM
To: washington.field@ic.fbi.gov

I am following up to a call I made to your office Monday at 3:39pm

January 9, 2015 I filed a case in the DC court, case number 1:15-cv-00032 (CRC).

January 2012, I received in the mail an encrypted CD from the defendants, specifically from the Minnesota office. That office is under management of John Taft. The CD was sent to me through the US mails by Carolyn Guy, the firm's former attorney.

The encrypted CD took all of this time to grasp its content.

Concisely- from the day my accounts were transferred to RBC by the financial advisor I was a client of, my accounts were being robbed. I have reason to believe my accounts were being robbed earlier. The advisor was working at Prudential in 2002 before moving to RBC. The Prudential account statement on the Encrypted CD contains a Social Security number that is not mine.

I was living in CA in 2001, UK 2002, DC through 2013. I moved to Virginia in 2013. I reside in VA now.

The attached filings are detailed. The filings should be clear. What I laid out for you is the crime, the balance and check I did, that details the involvement of another entity, in the crime, FINRA. If you said you dont know what FINRA is, I would not be surprised.

FINRA is the "they" in the Bernie Madoff "They knew" statement that Madoff's crimes were known long before Madoff turned himself in.

In the run up to filing this matter in the DC court, I had already been providing data to the IRS and the USPS criminal fraud unit. As you see, RBC's attorney Carolyn Guy, emailed me the USPS confirmation notice of the Encrypted CD status.

The OSC is aware; as is the FCC, the FTC, the CFTC even notice was sent to the NY US attorneys along with to State security Bureaus that signed on to the Administrative Consent.

It is as if we were in parallel universes of the multi-states beginning their investigation in to RBC and me, covering Capitol Hill, telling both RBC and FINRA's CEOs their testimony was nothing like my experience with RBC as a "wealth management client." Moreso, I must have freaked out John Taft, RBC's CEO, because here he had just testified under Oath to Barney Frank, and me, one of the news photogs covering the event walks up to him and says 'Dude, ummm, that was not the truth' (paraphrased). Lying under oath to a legislator or lying in testimony to a government agent is a Federal Crime.

After the fact of receiving the Encrypted CD, I learned that RBC hastened to file corporate filings in states it had been operating in. In fact, the Beverly Hills office, of where I was (am technically still a client because my accounts are open just unfunded) is not licensed in the City of Beverly Hills. You have to be licensed to do business according to local law.

Again, the pleadings are pretty clear of what I uncovered on the encrypted CD- things like my accounts being at RBC 7 months before I signed papers to become an RBC client in 08/2002; faked Tax papers; faked account statements.

No one could have anticipated that within a week of the court matter being filed that someone wrote the IRS alleging to be writing on my behalf, requesting a change to IRS tax papers filed in 1999. I filed no such request.

In 1999, I became a client of Scott Sangerman, the investment advisor that moved me as a client of his with him to his new job at RBC where the crimes where taking place and known of by RBC through 2012 and present date.

Throughout the papers filed, you are going to read of references to FINRA. FINRA is under review by several entities. FINRA presents itself as being authorized by a statute of Congress. It is not. FINRA presents itself as being a protector of investors. It is not. FINRA is a private organization, filed with the IRS as a business league which must collect dues from its members. One such member is RBC. Another such member is JP Morgan where the hacker of my accounts works, still.

I did not know until 2014, the details of FINRA I now know of how FINRA operates. Nor does the Securities bureaus and others. Now they are learning. I attached for your education the disciplinary 'actions' taken by FINRA in December through March of 2015. You will read AWC, acceptance, waiver and consents, one after the other, for crimes that if you and I did them, we would be in jail for. So now you know how Bernie Madoff got away with his crimes as long as he did.

FINRA Disciplinary downloads & RBC request CFTC crime...

The CFTC and the states are benefiting from my papers. Bottom line, I set in to this to get back my funds. That is my goal. Helping others is adjunct.

Gmail

Carrie Devorah [redacted]

Re: Remember we talked about FINRA- I did this Cathy.... patience is a virtue

1 message

Carrie Devorah [redacted] Thu, Sep 17, 2015 at 12:55 PM
To: "Lanier, Cathy (MPD)" [redacted]

Dear Chief

I wanted to update you on FINRA.

As you can see from the attached emails, that FINRA found no wrong with the Investment Advisors in either matter as you can read in the email that FINRA senior examiner Kevin Suh. Suh forwarded my exchanged papers to DC.

LA based Suh said FINRA find no fault with either financial advisor. I had given documents to the SEC along with related agencies.

Your team has learned more about FINRA. I attached the SEC charges. I attached the Notice of the 10-13-2015 hearing to keep you ahead of the ball. FINRA does confirm the Respondent is licensed in DC, along with running businesses, several, in the DC area.

Additional papers are viewable via Pacer. gov, 1-14-819ESH. More answers are there. The judge decision to uphold the FINRA decision was followed with the Appeal that was filed but forced to withdraw. I dont have that case number. The odd thing was the Judge was out sick with a severe back injury during this time period. Legal news said her cases were sent to another judge. I was not.

There is more to every story as your team knows. I have diligently been peeling back the FINRA story, sharing both experiences with legislators including Eleanor, compelling enough to get the Bill HR 1098 circulating. I was able to show how FINRA keeps crimes from law enforcement. As you can read, FINRA determined the IA's did nothing wrong. FINRA closed the file.

The SEC opened it. The SEC is regulatory. Victims do not get compensated. Here is a piece where I cross compare FINRA sanctions to President Obama's commutants. You will see papers I found confirming FINRA misled enforcement when FINRA said they did not know Madoff sold 'no product.' FINRA did, since 50 years prior, decades that Madoff was not charged for.

The court papers in both matters tell a compelling story about harm to DC, VA, MD and other states' victims exacerbated if even covered up by FINRA. The SEC Acts of 1935, 1940, etc made it clear, by Congress, crimes detailed were what gets reported to cops.

I am aware of a few victims in VA and I know for sure 1 in MD. You see there is nothing in 2012. There was another DC case located in the DC courts, that does not appear on the U4. I was in 2012 as you see in the filings. Removal of data must be done via an expungement arbitration. FINRA confirmed in writing no arbitration hearing was held yet the data is gone.

Thank you again for all you do Chief. It is a hard job. I quarterbacked my PD on 9/11.
Sincerely
Carrie Devorah

On Thu, Sep 10, 2015 at 11:04 AM, Carrie Devorah [redacted] wrote:
http://www.investmentnews.com/article/20150909/FREE/150909911/dawn-j-bennett-charged-by-sec-with-inflating-assets-and-exaggerating

On Fri, Dec 14, 2012 at 4:20 PM, Lanier, Cathy (MPD) [redacted] wrote:
Carrie, where did this accident occur? I need follow up with the appropriate Commander.

On Dec 14, 2012, at 3:43 PM, "Carrie Devorah" [redacted] wrote:

Vincent Gray [redacted]
Allen Lew [redacted]
Cathy Lanier [redacted]
Gwen Benson Walker [redacted]
Sharon Mcinnis [redacted]

December 14 2012

DC has a campaign stating "SEE SOMETHING SAY SOMETHING." http://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/seesay_poster.pdf

I saw something. I spoke up. I am escalating speaking up. I have the training to see this credible concern falling between the crack.

In preparing to address the matter of Bay Cab 20 (December 4) with my insurer, I learned firsthand, December 11th unlicensed drivers are driving cabs in the District. Coincidentally, December 11th was the day DC coordinated inauguration preparedness. I am concerned. This is a risk for passengers, residents and guests to DC. This is a security concern.

I am cross credentialed as noted below. My certification as a CCIA is attached. I quarterbacked my PD on 9/11. I retired covering news in DC. I would rather be wrong than be right. I would feel I failed my credentialing if I was right and did not bring this oversight of cross-department dialogue to light.

My car shows no damage [Attachment 1]. Sharon Mcinnis of the Taxi Commission office ran the three names of a driver of Bay Cab 20 who represented to MPDC officer the damage on the cab [Attachment 2] was due to my car [Attachment 3]. Sharon advised me it is known that cab owners do rent their cars to drivers by the day/week or longer. The rental of a cab by its owner to an unlicensed driver is discovered only when someone makes this point to the cab commission unless the MPDC officer knows the regs a Hack must have the drivers DC Hack license prominently displayed in the cab- visor/back/etc. If a license is not present, the ONLY step an MPDC officer should take is calling the Hack Inspectors to respond to the site to address the cab/driver. This was not the case. The officer should not have released the hack driver and/or cab based on the driver not being licensed let alone citing in to the report the car is owned by "Moe" [Attachment 4]. "Moe" is Mohamed according to cab ownership located at another adress.

I called the cab number in Sharon's office. We both heard "Tony" say "Moe" isn't present. I drove past the site after my visit with Sharon. The address given to the cab owner "MOE" is an auto body shop. [Attachment 5] "Tony" appears to be the body shop next door. My insurance adjuster recognized the shop/address from the photo. All this in front of us, I am not understanding why it was not an alert on December 11 to the pre Inaugural meeting to make sure the various levels of enforcement are on the same page. Everyone wants to go home at the end of the day. How difficult should it be for MPDC to be told to call DC Taxi to vet that a driver of a cab is in fact licensed. How difficult is it for DC Taxi to have inspectors do the address drive by as I did.

I found Sharon to be professional. Her hands may be tied in driving the point home on taking her office seriously, my hands are not.

There is one month to the Inauguration. I volunteered to Sharon Mcinnis to write the tip sheet putting MPDC and DC Taxi on the same page [Attachment 5]. My offer stands.

Sincerely
CARRIE Devorah
[redacted]
CCIA : Profiler : trained MPI : LACBA-DRS : CA-BSIS

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<CARRIE DEVORAH CRIME ANALYSIS CERTIFICATION.pdf>

<2012 cab scan (notes to Gray).pdf>

Gmail

Carrie Devorah [redacted]

Update BGFS-WIS

1 message

Carrie Devorah [redacted] Tue, Oct 6, 2015 at 10:26 PM

[redacted]

Litigation clients are being solicited by law firms looking for injured clients of BGFS/WIS. The papers are organized "to tell a story." Papers are clustered in to folders.

Any of your oversight outside of the OIP has to be structured from your regulatory and enforcement oversight.The SEC agenda is restricted to the OIP.

Sincerely
Carrie Devorah

2015 10 5 Updated papers BGFS WIS ROBBINS devo...

--
Sincerely
CARRIE Devorah
[redacted]

DISCLAIMER :
With the continuing crossing and interfacing of platforms both on & off line both with & without our knowledge nor approval to note nothing sent over the internet anymore is ever private nor should be presumed to be so. If it is that much of a secret, say nothing. If you must? Take a lesson from our military- hand write the note, chew then swallow

Gmail

Carrie Devorah [redacted]

Bennett Group Financial Services, LLC and Dawn J. Bennett

1 message

Carrie [redacted] Fri, Oct 9, 2015 at 3:08 PM
To: [redacted]
Bcc: [redacted]

You are now walking the process of the sec regulatory process of financial crime against investors. This is the reality flip side to your fiduciary hearing just held, of the nice fiduciaries that testified alleging fiduciary papers being signed is a 'hardship' for them.

The RIAs must sign SeC AdV Part IIs with client interviewees before calling them clients. That can contain the fiduciary disclosure page 1 page top dead center in red.

Ms Bennett gave me neither a Form .ADV or the contract I was told to sign that she said would be signed then sent to me. I was told the copier wasn't working. Plausible reason.

At this time all signatures are accompanied with dates. Times should be required too along with the RIAs CRD and other numbers which should be on their business cards, websites, emails, etc. the URL to their FINRA broker check should be provided to.

I would go so far as to alert investors with a PSA warning that states if the investor believes they have been robbed to contact their local law enforcement. The accepted alert is 'See something say something.'

Investors do not understand that FINRA is not a government agency and not entitled to government protections.

I was in conversation w PIABa where a case precedence for FINRA claim is to be a quasi government agency was raised as their reluctance to sue FINRA. I told their lead guy that I have two emails that correct that fraud perpetrated on the top Court

1- that FINRA is a private business league and government does not sanction private businesses w government protections

2- the email from FINRA stating the same basically. This email is from a FINRA executive

Customers do not understand that the SEC in their 'judgment' will determine if the SEC ruling will provide investors a way to get their money back or as you see here, settle.

This fiduciary, below, has had client fiduciary problems for over a decade.

FINRA's email to be states clearly that FINRA, the forum disputes with fiduciary are funneled in to, saw no problem w this fiduciary the SEC has charged.

The process will be interesting for you to follow in balance to the testimony you heard.

I will testify if and when asked.

Sincerely
Carrie Devorah

https://www.sec.gov/alj/aljorders/2015/ap-3205.pdf

Gmail

Carrie Devorah [redacted]

Fwd: FINRA, Rep Leutkemayer & Cousin Dave (referred by Mark Mensak)

1 message

Carrie Devorah <info@centerforcopyrightintegrity.com> Fri, Oct 16, 2015 at 2:13 PM
Reply-To: editor@centerforcopyrightintegrity.com
To: [redacted]

Dear Cynthia

I wrote you almost two years ago. You found no merit in my complaint. The SEC charged the advisor. To whom does one complain about the GAO to when the GAO staff gets their "judgement call" wrong.

You got it wrong. I just took the next step. Your step is to get it right, this time. Other people have been harmed since 1963 when Madoff was selling no product. The SEC had oversight. FINRA/NASD emerged promoting itself as a quasi government agency. It is a .org It is not a .gov

Sincerely
Carrie Devorah

ps
The below is a letter that was cc'd to a legislator and a committee. I have learned alot in the past two years. I have learned to let others know that others know.

Dear XXXX

XXXX XXXXX and I have something in common- FINRA. Mark is one of the many harmed by FINRA. I am an anomaly. FINRA found me in Bad Faith. If you dont believe me, listen for yourself as the FINRA trained arbitrators collude to end my arbitration then and there so the poor 'woman' could get back to work.

She got back to work. The Financial Advisor was charged by the SEC 9/9/2015. The charges? Everything I testified to under oath, even stating the matter was under investigation by the SEC, the IRS and the USPS.

Listen to the arbitrators debate who to believe. As you can see, FINRA trained arbitrators dont believe investors. As you can hear, FINRA trained arbitrators are aware of the Fiduciary conversations Congress continues to hold.

Now what? Well, I already had met with the staff of Sheila, Keith, Maxine and Eleanor and others. Bill HR 1098, The Investor Choice Act is out there.

I shared my documents with Congress and others. I share the lessons I learned along the way. Did you know that FINRA has NO Authority from Congress to engage with investment clients and investment advisors. FINRA does.

Did you know FINRA is not a neutral for investment DRS? FINRA cannot be a neutral. FINRA is a 501 c-6.

There is more you may not know that I continue to uncover and clarify for investors, media, legislators.

But start here, I was found in Bad Faith for telling a truth FINRA did not want told.
www.brokeandbroker.com/2313/finra-arbitration-attorneys-fees

Everything the SEC charged her with is what I testified about
www.sec.gov/litigation/admin/2015/33-9910.pdf
www.finra.org search her broker check.

I cant get lawyers willing to take on FINRA so I do my journalist thing and continue to write relevant to my themes of IP, ID theft, fraud. I do my investigator thing and dig up documents like the ones that show in fact FINRA/NASD knew 50 years ago that Madoff was selling No Product. Did you know that my Clearing House account the advisor should have closed in 2010 was still open in 2012 two years after I left? Did you know that the SEC and FINRA know that clients dead accounts are 'adopted' for financial fraud by Wall Street criminals? Respecting all I am is an investor, FINRA calls the term adoption. You will find an example in the piece I wrote cross comparing President Obama's commutants to FINRA frauds Congress laws are distorted to let them 'walk' without being jailed as was Eric Garner.

And I screen grab things to my site like those papers of Madoff. My pitch on the Bill, in addition to my papers was
"Think Eric Garner, I cant breathe and think Wolf Of Wall Street." Then I show how the street cops knew where to find Eric and why Congress wrote rules that keep Wall Street criminals back on the streets hurting more people.

Then I tell people, "Think American Greed." I want that show to go off air from having no more victims to air US attorney tales of...

As you can read, Page 2, https://www.sec.gov/alj/aljorders/2015/ap-3205.pdf the SEC is pushing settlement, not jail as with Madoff and every other

potential Ponzi scheme case that happens because Congress wrote the SEC crime escape hatch laws.

As you can see the SEC investigator Darren Goins never confirmed with me the data he received from the IA. The SEC attorney, the SEC investigator state they use their judgment. I tell them bluntly they have no judgment. They have laws they must follow.

As you can read, FINRA said they would take no steps.

As you are seeing, the investor is the toy used for others to make their monies- NASAA, PIABA, FINRA- all business leagues. All this time these and other non-profit business leagues have played along with FINRA presenting itself to be a quasi government agency. No. You cannot be a little bit pregnant. FINRA is a .org not a .gov. FINRA takes SEC info at a zero dollar contract as I write in pieces I disseminate through my social media connections and website www.centerforcopyrightintegrity.com (search SEC, FINRA, Madoff)

The CFPF, the state securities commissions, SIPC, CFTC, FCC & FTC are regulatory oversite as is the GAO have their oversight- regulatory. It seems I am the only one telling investors Go To The Cops if you think you are robbed.

No one is looking out for the investor.

Moreso, FINRA using expungement to clear Wall Street backgrounds had created false financial crime statistics. Look at FINRA disciplinary monthlies, those are no where near the real number of frauds. Look there and know the financial crime valuations is off the FINCEN richter scale of the loss to constituents.

Read the FINRA LA investigator's email that no action was taken. Another email states he sent my files to DC headquarters.

Read the SEC investigator email. My emails/letters say nothing about a wrap fee; he read statements we provided evidence of in the arbitration that had been faked (dates out of sync, no printing on the back, data misplaced etc); no SEC Form ADV Part II a document not adressed by any of the witness fiduciaries, a key paper requiring fee/commission disclosures to be made to the potential client at the get go; commissions taken by an SEC approved fee only advisor not licensed to work with individuals...

The "numbers" the Arbitrators are discussing came from the Respondent who appeared at the arbitration. The firm, well, one needs to hear the lawyer say it himself. My accountant witness was not allowed to testify. All that said, read the SEC charges.

It took time. The SEC got it more right, from my papers.

4 FINRA DEVORAH Arbitration HOT MIC Files 154-1...

So there you go. If a government agency ever needs the ability to see the run around investors/constituents are sent on along with the push back to believing the consumer over the "regulator", here you go.

51 social media aliases.

Law firms advertising looking for victims to take in to FINRA.

Lawyers representing, for payment, clients in states the lawyer is not licensed in misrepresenting that FINRA gives them permission. Local cops having to fit these crimes in to their ordinances on the books.

FINRA is unhappy that I am circulating their emails. That is ok. I am unhappy. Investors that sued for $1.95 mil and got back $200K are unhappy.

In DC 3 shootings is a crime wave worthy of a Press Conference. No less than 7 published financial crimes reported against a Wall Streeter, and there is no press conference alerting other victims. Congress and the SEC do not alert the Wall Streeter customer list. Moreso, the charged Wall Streeter continues with business as usual- podcasts, radio show, dinner solicitations, etc. without a warning to the new potential client.

I am able to continue cooperating with Congress since my cooperation began in 2013. I live in Arlington. I will come to see you. When shall we meet.

Sincerely
Carrie Devorah
562 688 2883

Founder
THE CENTER FOR COPYRIGHT INTEGRITY
www.centerforcopyrightintegrity.com
Where ARTS, IP, ID, IT and ENFORCEMENT Come Together In One Voice Against Online Theft Of Content and Commerce
https://www.youtube.com/watch?v=I93F73UYmsw&feature=youtu.be

CCIA : Profiler : trained MPI : LACBA-DRS : CA-BSIS
Actively built the 1st discrete site crime analysis lab on a campus in North America

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Gmail

Carrie Devorah [redacted]

CFPB Whistle Blower - AutoReply

1 message

CFPB_WHISTLEBLOWER <CFPB_WHISTLEBLOWER@cfpb.gov>
To: Carrie Devorah [redacted]

Thu, Dec 17, 2015 at 12:35 PM

Thank you for contacting CFPB. The information you provided may help inform CFPB's priorities and investigations.

If you perform work related to a bank or other consumer financial service provider and you report or object to a possible violation of consumer financial protection laws, you may be protected from employment retaliation. You have 180 days from the date of retaliation to submit a complaint to the Department of Labor. For further details, visit http://www.whistleblowers.gov/acts/dfa_1057.html.

If you contacted CFPB for assistance resolving an issue that affected you personally, please submit your complaint to our Consumer Response team at (855) 411-CFPB (2372) or http://www.consumerfinance.gov/complaint/.

Regards,

Consumer Financial Protection Bureau

Gmail

Carrie Devorah [redacted]

CFPB Whistle Blower - AutoReply

1 message

CFPB_WHISTLEBLOWER <CFPB_WHISTLEBLOWER@cfpb.gov> Thu, Jan 7, 2016 at 4:42 PM
To: Carrie Devorah [redacted]

Thank you for contacting CFPB. The information you provided may help inform CFPB's priorities and investigations.

If you perform work related to a bank or other consumer financial service provider and you report or object to a possible violation of consumer financial protection laws, you may be protected from employment retaliation. You have 180 days from the date of retaliation to submit a complaint to the Department of Labor. For further details, visit http://www.whistleblowers.gov/acts/dfa_1057.html.

If you contacted CFPB for assistance resolving an issue that affected you personally, please submit your complaint to our Consumer Response team at (855) 411-CFPB (2372) or http://www.consumerfinance.gov/complaint/.

Regards,

Consumer Financial Protection Bureau

Gmail Carrie Devorah [redacted]

Adressing Disgorgement

1 message

Carrie Devorah <[redacted]>
To: rinaldim@sec.gov

Thu, Feb 25, 2016 at 5:42 PM

Mr. Rinaldi

If all lawyers were ethical there would be no Bar Associations, Rules, Ethics, disciplinary committees, Unauthorized Practice of Law committees or jails bunking them with 3 squares a day and clean clothes.

A phrase I grew up being guided with is 'you sleep with dogs you get fleas.' I stand by my hearing your wanting to do a good job. I want you to do the greatest job you can. For that reason alone, I have continued to cooperate with the SEC since 2010.

The SEC wasnt seeing the proverbial rest of the story.

Now it is. Shame you dont offer investors the same respect you described. Your job is not to be bezzies with Defense counsel but to be friend the citizens Defense counsels scam. Without that perspective clear for who you work for, defense counsels I had the honor to meet make great livings defending clients.

Below is a list of data the ethical attorney I am sure has voluntarily disclosed to you in his lovely exchanges with you.

Attached are relevant documents.

Cordially

Carrie Devorah

[A starting list of funds to be disgorged from Bennetts/WIS and JPMCCs for return to investment clients is below]

MONIES TO BE DISGORGED

_____Where Claw Back of Dawn Bennett's $15 million will come from [SEC Announces Intent For $15 Million and Disgorgement] (Attached- www.law360.com/articles/751663/sec-wants-1)

COURT: Fees were paid to the DC court to file the Civil matters (i) Bennett v Devorah (ii) Bennett v SEC

FINRA:

Fees paid to FINRA for the DRS. Each side splits the expense.

DELAWARE (corporation filing fees)

BROKERAGE(s):

ROYAL ALLIANCE ASSOCIATES

WESTERN INTERNATIONAL SECURITIES

ACCOUNTANT(S)/AUDITOR(S):

CLEARING HOUSE:

_____JP Morgan Clearing Corp.
Attention: General Counsel 7th floor
One Metrotech Center North Brooklyn
NY 11201-3859 T: 347
643 2575 | F: 973 463 5300 www.jpmorgan.com

BARRONS MAGAZINE:

Matthew Barthel the Barron's editor told me that sometimes people pay a fee to get listed in the Top 5 of the Top 100. Bennett did not have $1.1 billion under management. Bennett had to produce papers to be vetted to qualify in the top 100, let alone the Top 5. This leads one to conclude, until proven otherwise, that a fee will have been paid to Barrons, money to be disgorged to Bennett's clients.

(i) Gary Holland| Publisher, Vice President

gary.holland@barrons.com www.barronsmag.com
t. 212.597.5928 (direct)
f. 212.597.5688
1155 Avenue of the Americas
New York, NY | 10036

(ii) Matthew Barthel

Matthew.Barthel@barrons.com
matthewbarthel@hotmail.com

(iii) Barron's Winner Circle
http://www.barrons-conferences.com/advisor-rankings.html

BENNETT SEMINARS Tysons Corner and Maryland:

_____Bennett, not licensed on U4 for giving education, conducted seminars at restaurants and hotels in Tyson's Corner and Maryland

BENNETT RADIO SHOW: (i)

Bennett paid for radio time for shows on:
wmal.com 202 686 3100
Their public relations firm is Golden Solutions (PR) 212 319 3451
CUMULUS MEDIA INC.

(ii) Radio America COO **Mike Paradiso** http://www.talkers.com/tag/dawn-bennett/ http://www.radioamerica.com/program/financial-myth-busting/

Financial Myth Busting Producer- Tom Elliott www.linkedin.com/in/tomselliott

Bennett's relationship with Peter Schiff www.schiffradio.com, www.europac.com

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Bennett Group of Mutual Funds, Bennett Group Master Funds (Caymans) _____

_____

2 Maplewood Drive, Ellington Court 06029 DCISB (page 31 of 60- U4)

5620 Wisconsin Avenue #21C Chevy Chase MD 20815 Serial Number 77090399 [USPTO "Bitch Elegant Trademark]

5610 Wisconsin Avenue Chevy Chase MD 20818

5335 Wisconsin Avenue NW
Washington DC 20015
202 216 4880

5335 Wisconsin Avenue NW Suite 500,
Bennett Group Financial Services LLC
Washington DC 20015

5335 Wisconsin Avenue NW Suite 501 Bennett Group Financial Services LLC Washington DC 20015

1400 K Street NW #501 Was hington DC 20005

Dawn J Bennett Holding LLC Filed Delaware, 6-29-2007, File # 4381031
5335 Wisconsin Avenue NW suite 500
Washington DC 20015

DJB Holdings Inc
4106 Howard Avenue
Kensington MD 20895 301 897 2185
www.djbennett.com

BENNETT EMPLOYEES (FINANCIAL):

EMPLOYEE SALARIES/FEES /COMMISSIONS (BGFS/WIS)

John Koorey Chief Operations Manager CRD #703117

Bradley Mascho CRD # 2039720

Kathleen Cassandra Pruess Operations Specialist, alleged UPSTO filings was an attorney (no longer at BGFS)

Michele Lee Morris Financial Advisor (no longer at BGFS)
Not FINRA registered since 10/2009 * (update; is working again in VA)

Stuart Whitney Rogers President
CRD #5708679

Tim Augustin Chief Operating Officer
Chief Compliance Officer
(626) 793 7717

WESTERN INTERNATIONAL SECURITIES STAFF (IARD #39262)
5335 Wisconsin Avenue NW #500
Washington DC 20015

Concept Brokerage Holdings (100% owner Western International) Donald Bizub President California Foreign Corporation (3/23/2009)
File Number: C3195292 1700 Lincoln St Ste 2200 Denver Colorado 80203-4522
File Number: 2/1/2010
Registered Agent: Darcie Jean Coy 1700 Lincoln St Ste 2200 Denver Colorado 80203-4522
(720) 932 6723

1642 S Parker Road Denver Colorado 80231-2915
(303) 369 0799

Bradley Clifford Kaiser CRD# 2523397

Karen Chung Associate Director Compliance kchung@wisdirect.com

-

ATTORNEYS (FUND/LITIGATION):

BGFS ATTORNEYS:
Matt Okolita (not licensed in DC in 2013 www.dcbar.org)

Harry J. Jordan 1101 17th Street NW #609 (licensed in DC)
Washington DC 20036-4718
202 296-2900
hjjlaw@msn.com
(represented Bennett & WIS in civil matters (i) to collect FINRA award in the DC Court of Judge Ellen Huvelle (ii) threatened DJB SEO Contractor Scott Pierson

Kaufmann Gildin Robbins & Oppenheim LLP
David E. Robbins (represented Bennett/Wis/BGFS/Bizub in FINRA arbitration)
Sam A. Silverstein
www.kaufmanngildin.com (worked on the case)
Arthur Baer www.kaufmanngildin.com
777 Third Avenue, 24th Floor
New York, NY 10017
David E Robbins *(licensed in NY, not in DC. Unauthorized practice of law to represent Bennett in FINRA)* (212) 755 3100
drobbins@kaufmanngildin.com

BIRGE & MINCKLEY, P.C. (Sent first letter responsive to notice of FINRA complaint)
Thomas D Birge
(direct
dial)(303)869-7341
tbirge@birgeminckley.com
9055 East Mineral Circle Suite110
Centennial Colorado 80112
(303) 860
7100 (Fax)
(303) 80 7338

Greenberg Traurig (was involved in a different BGFS FINRA arbitration)
Dennis J.
Block (appeared for WIS - Kerry Edwards FINRA 13-00612)
blockd@gtlaw.com
Daren A Luma
200 Park
Avenue
NY NY 10012
(212) 801 9200

Kuglar Law (was involved in a different BGFS FINRA arbitration)

Craig H Kuglar (represented
Royal Alliance Associates) (matter of Kerry Edwards FINRA
13-00612) 309 N Highland Avenue
NE, Suite A Atlanta GA
30307

Markun Zusman Freniere Compton LLP (was involved in a different BGFS FINRA arbitration)
Jeffrey K
Compton
17383 West Sunset Blvd Suite A380
Pacific Palisades CA 90272
(Involved in the Arbitration of Kerry v
Bennett)

Trademark Attorney(s)
Law Office of Michael J Souders
Dawn Bennett and Jonathan D Reichman Esq
Kenyon & Kenyon LLP
1 Broadway
NY NY 10004-1007
212 405 7200
tmdocketny@kenyon.com

BENNETT GROUP OF FUNDS:
.(BENNETT CONSERVATIVE CAYMAN SERIES, BENNETT MODERATE CAYMAN SERIES, BENNETT GROWTH CAYMAN SERIES, and BENNETT AGGRESSIVE GROWTH CAYMAN SERIES (the "Cayman Series") have duly caused this Registration Statement to be signed on their behalf by the undersigned, thereunto duly authorized, in Washington, DC on the 6th day of June, 2011)
(i) Jonathan M. Kopcsik, Esq
Stradley Ronon Stevens & Young LLP

2600 One Commerce Square
Philadelphia PA 19103

Murray L. Simpson Esq
O'Melveny & Myers LLP
2765 Sand Hill Road
Menlo Park, CA 94025

David G. Chrencik*, Stephen Bosworth*, Ronald E. Toupin, JR* * By Stuart W. Rogers, (Attorney-In-Fact)(Pursuant to a power of attorney previously filed and incorporated by reference)

OTHER BUSINESSES LISTED ON FINRA Brokercheck:

05/01/2013-PRESENT; NIR; GENERAL AGENT; FIXED ANNUITIES; 5/5/HRS/MO (Attached- FINRA brokercheck.org- Dawn Bennett PDF)

08/2013-PRESENT; IR; PRECIOUS METALS TRADING; FIDELITRADE, INC. 4/4/HRS/MO; 2601 N MARKET ST (Attached- FINRA brokercheck.org- Dawn Bennett PDF)

WILMINGTON DE; PYTHIA, OWNER, NOT INVESTMENT RELATED 5335 WISCONSIN AVE.NW WASHINGTON DC (Attached- FINRA brokercheck.org- Dawn Bennett PDF)

1 HR/MO BEHAVIORAL TESTING SOFTWARE (Attached- FINRA brokercheck.org- Dawn Bennett PDF)

Big Media Productions
Financial Myth Busting
HG
Royal Alliance Associates Inc

www.buygoldandsilver.info (www.bennettgroupfinancial.com website)

BUSINESSES (DELAWARE CORPORATE SEARCH):
Financial Group (Attached- broker agreement 7/29/2009)
Bennett Holding LLC *(Bennett says "she financed the venture herself"* www.bizapedia.com /us/Dawn-j-bennett-holding-llc.html)
Dawn J. Bennett Holding LLC (https://icis.delaware.gov/Ecorp/entitysearch/namesearch/aspx)
Financial Advisors LP
Financial Marketing and Products LLC
Financial Media LLC
Financial Services II LLC
Financial Services LLC
Master Funds
Of Funds
Group Family Fitness and Finance Foundation

Bennett
Dawn J
(Attached-
Bennett Group
Bennett Group
Bennett Group
Bennett Group
Bennett Group
Bennett Group
Bennett Group
The Bennett
The Bennett

Group Foundation For Family, Fitness and Finance
Group International LLC
Group Inc
Bennett Group Ltd
Services Inc (https://icis.delaware.gov/Ecorp/entitysearch/namesearch/aspx#)
(https://icis.delaware.gov/Ecorp/entitysearch/namesearch/aspx#)

The Bennett
The Bennett
The
BGFS
BGFS Holdings LLC

BUSINESS(es) FASHION:

DJB HOLDING LLC; NON-INVESTMENT RELATED; HOLDING COMPANY FOR CLOTHING LINE (Attached- FINRA brokercheck.org- Dawn Bennett PDF)

bElegance
Bitch Elegance
DJ Bennett
Dawn J Bennett Holding Llc
Dawn J Bennett Holding LLC
615 S Dupont Highway, Dover DE 19901, Filing Date 7-6-2007 Z12010542
5335 Wisconsin Avenue NW #501 Stuart Rogers
(Registered Agent), 12-7-2011, L0000055537 DJB
Holding LLC
www.djbennett.com

BENNETT EMPLOYEES (FASHION):

BENNETT FASHION:

President/ Vice President (DJBennett Collection) Marion Schwindeman and life partner Paula Romano (Redding, Connecticut)
phone: 203-917-0337
adventuresmarketing@gmail.com
promano@djbennett.com

DJBennett's chief merchant: Bonnie Pressman (former buyer for Barney's)
Bonnie Pressman's title says "Board of Advisors"

SEO consultant- Scott Pierson
203-952-8442
scottepier@yahoo.com
scott@theexecutiveseo.com
theexecutiveseo@gmail.com

BGFS Attorney/model: Justin Sampson JD, Georgetown Law jsampson@djbennett.com
DJBennett COO & General Counsel

Schuyler Rice 603-513-2382 Schulyer Rice srice@djbennett.com [whois.com
] Schuyler Rice Design and Marketing Consultant

Leigh Ann Saperstone- photographer Production

Associate- DJ Bennett April 2012-May 2013 (1 year, 2 months)

Anderson McNeill VP-GMM at DJ Bennett "The World Of Sporting Luxury"

Marketwired.com (does the press releases)

Dawn Bennett Vogue TV showing the highly skilled chinese Dawn Bennett imports and employs to paint Bennett's 6000+ patented jeans with removable brooch; the model, the shoot, Juan Carlos Castro the shoot director, the model "UBA"(?), the vintage inspired pieces of museum quality luggage that Bennett's patented jeans are packed in, etc. The video shows furniture and artwork and clothing in this video the teams will look for (i) in receipts (ii) physically in person (www.youtube.com/watch?v=VpCj4llniMA) (www.youtube.com/watch?v=VpCj4llniMA)

Payments to Boutique PR agency (Attached- https://warschawski.com/)

Press Releases issued through Releasewire distributions released through worldnow.com

-

FASHION

FASHION COLLECTION ATTORNEY:
Justin Sampson (not licensed in DC while doing legal work for BGFS). Also male model for DJBennett collection

BENNETT CHARITY:

THEY'RE JUST KIDS FOUNDATION; NON-INVESTMENT RELATED; BOARD MEMBER (Attached- FINRA brokercheck.org- Dawn Bennett PDF) [Note: The IRS had taken away the Non Profit status]

Ms. Bennett's charity http://www.theyrejustkids.org/ had its IRS status removed. The charity is cross promoted, still, on Bennett's website(s) and FINRA brokercheck.

PATENT (PANTS WITH REMOVABLE BROOCH): _
Design patent- Pants- D682510 (Attached- http://www.freepatentsonline.com/D682510.pdf)

BENNETT TRADEMARK FEES PAID TO THE USPTO:

(Bennett testified under oath her fashion business started after I left being her client) Bitch Elegance, Classic Chase, Baby Bitch Elegance, Dawn J Bennett's Fairy Tale Finances, B.EleganceWorld, fancy, Belegance, Classic Chase, C. Chase, Lady Leatherpop Trademarks "Bitch Elegant and Classic Chase" licensed lines. Bennett had upwards of 70+ trademarks, researchable either on the USPTO TESS site or via sites like Trademarkia. Trademarkia also lists the name(s) of employees and law firms that were paid by Bennett (http://www.trademarkia.com/dawn-bennetts-inside-out-finance-78932761.html)

B.ELEGANCE 5610 Wisconsin Avenue #21C
Chevy Chase MD 20815

BITCH ELEGANCE 5610 Wisconsin Avenue #21C
Chevy Chase MD 20815

Dawn Bennett Collection www.dawnbennettcollectionn.com
Property of DJB Holding
Vogue TV www.youtube.com/watch?v=VpCj4llniMA

-

LUXURY ITEMS (payments)

Penthouse: $,1801,666b(5610 Wisconsin Avenue)(Attached- www.city-data.com/montogmery-county/w/wisconsin-avenue-63.html)

Jaguar payments:

Trips to China (refer to Vogue TV youtube video)
Expansion in to China (2013) Attached- www.marketwired.com/press-release/djbennett-launches-luxury-sports-retail-destinations.1700510.htm)

DJ Bennett (showroom Chevy Chase) items in including but not limited to leather chair vintage ice ax signed by Sir Edmund Hillary (http://www.urbandaddy.com/dc/gear/21123/DJ_Bennett_Appointment_Only_Sporting_Goods_in_Chevy_Chase_DC_DC_Store)

Inventory includes but is not limited... $502
fishing boots
$680 skiing hats
$13,500 golf bags
$650 neoprene suits
$450 snowboarding googles with built in GPD capabilities

COWBOY STADIUM:
Ms. Bennett leased an executive suite at Cowboy Stadium since 2007, at the cost of $500,000 a year. Bennett owed funds for 2012 and 2013. Cowboys sued. ($500K X (2007-present date= __) Settled $7.3 million law suit.
Cowboys attorney, Arnold Shokouhi[1], managing partner in McCathern Law settled the matter with Bennett aware the SEC investigation was underway with a potential disgorgement for funds paid by Bennett

832-533-8689
F: 832-213-4842
Arnold Shokouhi arnolds@mccathernlaw.com
http://www.mccathernlaw.com/contact
http://bizbeatblog.dallasnews.com/2014/11/dallas-cowboys-sue-financial-advisor-for-7-3-million-over-att-stadium-luxury-suite.html/)

-

BENNETT SOCIAL NETWORKING ALIAS: (Each domain name, each site host requires payment for that online presence access)

1. https://about.me/dawnjbennett
2. http://www.advisorperspectives.com/commentaries/bennett_123013.php
3. www.belegance.com
4. http://www.bennettgroupfinancial.com/dawn-j-bennett
5. *Bennett Group Of Funds* http://www.sec.gov/Archives/edgar/data/1501521/000113542812000474/bennett_485bpos.htm
6. http://www.businesswire.com/news/home/20060222005464/en/Dawn-J.-Bennett-Associates-Launch-Bennett-Group#.Vh3nPivYFWF
7. https://www.connectcv.com/people/**Dawn-J--Bennett**/B1421780869511
8. http://www.coroflot.com/dawn-jbennett

9. https://www.crunchbase.com/person/dawn-j-bennett#/entity
10. http://cv.myresume.com.au/people/Dawn-J--Bennett/B1421780869511
11. http://dawn-bennett.com/
12. www.djbennett.com
13. http://dawn-j-bennett.com
14. http://dawnjbennettblog.com/
15. ***dawn-j-bennett.com/contact-dawn-bennett/***
16. http://dawnjbennett.net/
17. http://dawn-j-bennett.tumblr.com/
18. https://**dawnjbennett**.wordpress.com/tag/**dawn-j-bennett**
19. https://www.emaze.com/@AOTTRZZT/Dawn-J-Bennett-Certified-Financial-Analyst
20. https://m.facebook.com/DawnJBennett
21. http://www.fa-mag.com/author/157/dawn_bennett
22. http://www.forbes.com/smartfinancialplanning/
23. http://gabriel9lai.nation2.com/dawn-j-bennett
24. https://plus.google.com/+DawnBennettFinancialMythBusting/posts
25. https://www.haikudeck.com/meet-dawn-j-bennett-business-presentation-LXYAn9KyAq
26. http://identyme.com/user/get-resume/?user_id=18027
27. ***https://www.linkedin.com/pub/dawn-j-bennett/5/120/54a***
28. http://linkis.com/D5wlU
29. http://www.lookuppage.com/users/dawnjbennett/
30. http://www.magcloud.com/user/dawn-j-bennett
31. ***https://themeefy.com/dawn%20jbennett/dawnjbennettafinancialguru***
32. https://www.mendeley.com/profiles/dawn-j-bennett/
33. http://www.onwallstreet.com/article_listings/dawn-bennett-795.html
34. https://www.pinterest.com/oddsvino/**dawn-j-bennett/**
35. www.radioamerica.com/program/financial-myth-busting/
36. http://www.releasewire.com/multimedia/photos/dawn-j-bennett-chief-executive-officer-39855.htm ***(content distributed through worldnow.com)***
37. https://www.resumonk.com/nXz_r4gTQPCXHMvxgOZIxw
38. http://tracks.roojoom.com/r/21739
39. http://cdn.stationcaster.com/stations/wmal/rss/6081.rss
40. http://www.sbwire.com/press-releases/financial-myth-busting-radio-show-with-host-dawn-bennett-interviewed-kishore-mahbubani-author-professor-public-policy-at-the-national-university-of-singapore-on-the-coming-asian-dominance-435533.htm

41. http://www.scoop.it/t/financial-advice-by-dawn-j-bennett/p/4034679480/2015/01/05/why-dawn-j-bennett-is-a-financial-voice-we-can-trust

42. http://www.slideshare.net/DawnJBennett

43. https://start.me/p/WaaELn/dawn-j-bennett?locale=ko

44. https://storify.com/DawnJBennett/financial-myth-busting-with-dawn-bennett

45. https://www.sunzu.com/dawn-j-bennett

***46.* http://www.thinglink.com/scene/614490158258978817**

47. ***http://tunein.com/radio/Financial-Myth-Busting-p238348/***

***48.* https://twitter.com/Dawn_J_Bennett**

***49.* https://vimeo.com/dawnjbennett**

50. http://vizualize.me/dawnjbennett#.Vh3VQSvYFWE

51. wealthmanagement.com/author/dawn-bennett

52. ***dawnjbennett**.weebly.com/*

53. https://m.youtube.com/channel/UCn-fzXTJwkhQcYs0AsV36QQ

54. http://www.nbcrightnow.com/story/29865094/dawn-bennett-host-of-radio-show-financial-myth-busting-interviews-chris-whalen-senior-managing-director-and-head-of-research-of-kroll-bond-rating

55. Releasewire distributions done through worldnow.com (last count was over 60+ sites, not including sites to which Bennett's Financial Myth Busting transcribed interviews were attached to)

[1] http://www.mccathernlaw.com/attorneys/partners/shokouhi

–
Sincerely
CARRIE Devorah
562 688 2883
https://www.linkedin.com/today/author/carriedevorah
@godingovt

DISCLAIMER :
With the continuing crossing and interfacing of platforms both on & off line both with & without our knowledge nor approval to note nothing sent over the internet anymore is ever private nor should be presumed to be so. If it is that much of a secret, say nothing. If you must? Take a lesson from our military- hand write the note, chew then swallow

2016 2 25 SEC DOJ pre March 2 cluster 2.pdf
21992K

Gmail

Carrie Devorah <[redacted]>

Re: SEC Charged/Tried DC Investment Advisor with multiples of DE corporations Bringing to your attention

1 message

Weede, Shawn (USADE) <[redacted]>
To: Carrie Devorah <[redacted]>
Cc: "Custer, Keith A. (BA) (FBI)" <[redacted]>

Sat, Mar 26, 2016 at 6:19 PM

Copied here.

Sent from my iPhone

On Mar 26, 2016, at 10:07 AM, Carrie Devorah <carriedev@gmail.com<mailto:[redacted]> wrote:

Dear Shawn

Please send me Mr. Custer's contact information.

Sincerely
Carrie Devorah

On Tue, Mar 22, 2016 at 2:09 PM, Weede, Shawn (USADE) <Shawn.Weede@usdoj.gov<mailto:Shawn.Weede@usdoj.gov>> wrote:
Ms. Devorah,

The assigned case agent is in the Baltimore division. His name is Special Agent Keith Custer.

Shawn A. Weede
Assistant United States Attorney
United States Attorney's Office for the District of Delaware
1007 N. Orange Street
Wilmington, DE 19801
302.573.6081<tel:302.573.6081>

From: Carrie [mailto:[redacted]
Sent: Tuesday, March 22, 2016 12:58 PM
To: Weede, Shawn (USADE)
Cc: Hall, Jennifer (USADE); Van Pelt, Elizabeth L.(USADE); Englehart, Megan (CIV); Hannigan, Patricia (USADE); Paxton, Lauren (USADE); Shannon.singleton@usdoj.gov<mailto:Shannon.singleton@usdoj.gov>; McCall, Jamie (USADE); Welsh, Jennifer (USADE)
Subject: Re: SEC Charged/Tried DC Investment Advisor with multiples of DE corporations Bringing to your attention

Thank you for writing, Shawn.

Yea this is the best email adress to reach me at. There is prior data that has been shared I will provide to agent Ford.

Sincerely
Carrie Devorah

Sent from my iPhone

On Mar 22, 2016, at 11:59 AM, Weede, Shawn (USADE) [redacted] wrote:
Ms. Deborah,

I have forwarded this email to Special Agent Tom Ford with the FBI. Is your email address below the best means to contact you?

Shawn A. Weede
Assistant United States Attorney
United States Attorney's Office for the District of Delaware
1007 N. Orange Street
Wilmington, DE 19801
302.573.6081<tel:302.573.6081>

From: Carrie Devorah [mailto:[redacted]
Sent: Monday, March 21, 2016 4:04 PM
To: Hall, Jennifer (USADE); Van Pelt, Elizabeth L.(USADE); Englehart, Megan (CIV); Hannigan, Patricia (USADE); Paxton, Lauren (USADE); [redacted]<mailto:[redacted]>; McCall, Jamie (USADE); Weede, Shawn (USADE); Welsh, Jennifer (USADE)
Subject: SEC Charged/Tried DC Investment Advisor with multiples of DE corporations Bringing to your attention

Hello
My name is Carrie Devorah. My techniques are outside the box and effective. You are now looped in to a matter that is multi-state, with DE's role being where this individual has created multiples of entities. For what gain? I think that the SEC has charged the person answers that question for you.
The SEC messed up. I made sure the SEC got things headed in the right direction. I explain I was active in building the 1st discrete site crime analysis lab on a college campus on the continent- UCLA PD. 9/11 despite being told we were in the fall path of the Fed building, I went to work. I quarterbacked my officers. That alone, should profile for you that wrong must be adressed.
The SEC asked for my help 2010 with WIS and BGFS. The SEC screwed up. Admittedly, by them, moreso seen that their 'credited' investigator Goins was not called to testify at the hearing.
There are parties/persons not in the loop, as I call the aggregate of names that was built up from securities commissions to only recently include media contacts.
My methodology is simple. Let everyone know what everyone else knows so no one can say they did not know, that people can pitch in and work together.
Delaware's reputation for corporate invincibility is what drives people like Bennett to have so many DE entities (list included). I read your Title 8 I think it is. Lawful, is the word that jumped off the page.

https://www.sec.gov/litigation/admin/2015/33-9910.pdf
I did call the DE AG's office Friday. I was surprised at the receptionist. I researched cases your office brought forward which is how I got the names on top.
I dont know which names will go through. Whoever gets the email, you then are on official notice of this matter.
I can backsend you emails with data you will want to move forward.
Lawful.... that is your defining word. Someone the SEC is seeking $15 million from is not lawful.
You are in the loop

Sincerely
Carrie Devorah

---------- Forwarded message ----------
From: Carrie Devorah <[redacted]
Date: Mon, Mar 21, 2016 at 12:51 PM
Subject: BENNETTS DC Office Design with 'couture jeans' corner by VA designers wins award; BGFS interns; and Celebs named with DJBennett fashion

[redacted]

Gmail

Carrie Devorah [redacted]

NOTE FROM CARRIE DEVORAH- re Bennett Group, Dawn Bennett

1 message

Carrie Devorah <[redacted]>
To: "Keith A. Custer" [redacted]

Mon, Mar 28, 2016 at 3:38 PM

Hi Mr. Custer

You have just received as a bcc, an email you can see has alot of recipients.

I am Carrie Devorah, that Shawn Weede cc'd you on. I am the person that got the SEC back on track with the BGFS/WIS crime. I also happened to have built the crime lab at UCLA PD, maybe not a great thing to state when one has been victim to a crime. That said, I am the person that found and released the papers showing Madoff's crimes were known in 1963.

I figured out via my Bennett experience how these financial crimes have not been criminalized while Eric Garner was.

For whatever it is worth, the above said, I stand with officers. 9/11 I went to my PD without a second thought.

There is a history of papers with regards to Dawn Bennett and Western. I have done with this matter what I did with my officers
(i) I figured out what was wrong
(ii) I figured out what could be done to make things better

The Dawn Bennett matter is the 'model' others in the loop are learning from. The loop as I call the aggregated people are from different industries relevant to security and the fraud that comes with it. I sorta describe this is SERIAL in real time.

In a nutshell/Hollywood pitch- Dawn Bennett has had financial crimes covered up by a MD self regulatory entity since 1998 the date I found in the DC courts. Fast forward 2009, Bennett was the industry #5 out of 100 Barron's Top Women Advisors in America. Fast forward 2010, the SEC asked for my help, 8 months after I became and left being Bennett's client. I was disabled at the time but not sick enough to not know that I hired a fee advisor not a commission advisor.

The SEC screwed matters up. You will, as you research the matter, note that credited Darren Goins did not participate in the SEC hearing.

The hearing, the SEC is the problem. They are regulatory. What my papers are showing to my loop is that no one 'called the cops.' I knew all about FI cards, etc. The more papers I read, the more I realized where the balls were being dropped, hence my loop, sewing facts together.

There is no missing the multiples of crimes Bennett, her team, Western even JP Morgan are guilty of. Someone has got to get the guilt/crime part going.

Western International Securities a like a Walmart style brokerage, signed with Dawn Bennett CEO on July 27 2009 to give Bennett and her company access to Clearing privileges of JP Morgan Clearing.

JP Morgan gave clearing privileges to Bennett via the JPMCC client Western. There is a problem. The names on the statements that JPMCC sent to clients, allegedly, every month were for Western International Securities and a Bennett Group Financial Services, CEO Dawn Bennnett. BUT the agreement WIS signed with CEO Dawn Bennett was for a firm called BENNETT FINANCIAL GROUP.

Bennett Financial Group is not the name on the client statements. Moreso, WIS was not licensed back in DC until 4/5/2010. WIS signed with two corporation CEO Dawn Bennett on 10/1/2009 giving Bennett and her staff 'employment' across the country.

So you see this matter is not so cut and dry. By quarterbacking this matter, by aggregating, sorting, sharing data I have continued to pull this matter forward. The SEC is looking good. I am doing the work sorting out details like FINRA the brokers business league does not report crimes like Bennetts to law enforcement. Sorta sad for me to hear from the AG he didnt know what FINRA is.

He does now.

Making things more muddled is that Bennett has been running multiple businesses out of the same office. Clients suing Bennett/WIS/Royal Alliance et al were unable to get discovery to confirm accounts are not being commingled.

Enough of the data I was pulling intimated at the mix of funds in to Bennett's 'funding herself' fashion empire. Last week I found an online brag by the design firm DCS for their winning Bennett Group Financial Services & couture jean showroom.

The SEC has asked for $15 million and disgorgement and then some. I asked for something a bit more personal- removal of the bad faith that I got hit with in a slam dunk arbitration that was intended to shutter me inside a silent siloed business league forum investors are not granted by Congress to be taken in to.

Go look at Bennett's brokercheck. There is no red dot on 2012. There should be one, at least a redhead, the one at the other end of this email.

When do you want me to drive to Baltimore. I cannot lift boxes because of the disability residual. I can bring my PC or you can come here to Arlington.

The crime is nationwide. Bennett set her office up in DC, lives in MD, has other offices in MD, corporate setup in DE, radio show and 'classes' in VA and Chevy Chase

And Bennett did file a claim of unconstitutionality in MD which gives you nexus.

I have something I want to finish writing on the lawyers role in all of this, by April 7. I can come to you after April 7. You can come to me earlier.

Bottom line, all the elements are in place, it will be easy for you to see what are the laws that you can apply. Western, btw, had their DC license removed in 2006. Doesnt state that on WIS brokercheck. Their word is expunged. My word is Eric Garner did not get his crimes expunged. Law enforcement knew where to find him. Things are changing.

All we need now is law enforcement. I have several entities I will introduce you to coordinate. They have been in the loop with their permission since I met them. All we need now is you, a clarification for law enforcement that FINRA/NASD are covering up crimes and the accomplice attorneys (PIABA and others) that fly state to state falsely alleging they can represent clients inside FINRA's closed business league, without being licensed in that state, covering up crimes.

That is false.
http://www.finra.org/arbitration-and-mediation/notice-attorneys-and-parties-represented-out-state-attorneys

Ms. Bennett used lawyers in DC and the SEC matter. The ACT of 1940 is clear, lawyers that aid and abet are fined $10,000 and even imprisonment.

Ms. Bennett was an investment advisor. WIS were investment advisors. Brokerage has been defined by FINRA to 'meet' Congress definition.
http://www.finra.org/arbitration-and-mediation/guidance-disputes-between-investors-and-investment-advisers-are-not-finra

FINRA expunges crimes. https://piaba.org/piaba-newsroom/piaba-report-data-show-finra-efforts-slow-expungement-broker-misconduct-has-failed-oc

Again, no red dot for me in 2012 on Bennett/WIS brokercheck. Read what the entities write cautiously. The aggregate of my documents, that I got things to where they are now by organizing and reorganizing for each need the papers, speaks the volumes that will help you.

When do we meet? Where?

Sincerely
Carrie Devorah

ps go to my website www.centerforcopyrightintegrity.com Search FINRA, search Madoff. I made it easy. You will see a side by side comparison of the FINRA disciplined v President Obamas 45 commuted.

My site is colorful. I went to art school not college. That said, the screengrabs state everything.

—
Sincerely
CARRIE Devorah
[redacted]
https://www.linkedin.com/today/author/carriedevorah
@godingovt

DISCLAIMER :
With the continuing crossing and interfacing of platforms both on & off line both with & without our knowledge nor approval to note nothing sent over the Internet anymore is ever private nor should be presumed to be so. If it is that much of a secret, say nothing. If you must? Take a lesson from our military- hand write the note, chew then swallow

Gmail

MICHAEL RINALDI

Carrie Devorah [redacted]

File Request - File Transfer

1 message

[redacted]

To: [redacted]

Tue, May 31, 2016 at 3:01 PM

rinaldim@sec.gov has requested a file from you.
Use the link below to send securely.

Per my earlier e-mail message.

Send Files Securely:
Please click on the link below to send files back:
https://wft.sec.gov/a/wreq/zio08889wCafAIJNavYb5hmPKvHJjGmB

The secure link is valid for 7 days or up to 1 transactions.

Secured by Ac

Gmail

Carrie Devorah [redacted]

RE: Pnc - BGFS debit card

1 message

Custer, Keith A. (BA) (FBI) [redacted] Thu, Jun 2, 2016 at 9:24 AM
To: Carrie [redacted]

Ms. Devorah,

Actually I will be in Phoenix for another case the week of June 13th. The Bennett case is moving forward. When the investigation goes overt I will let you know. I am getting the information I need for the case we are building. If I need something that I think you might be able to help with I will let you know. Please be aware that this case is one of a dozen cases that I am currently investigating and as a result I must constantly prioritize my time and resources to keep each case moving. I understand you want to meet, but I don't think that is a good use of either person's time at this point. We are focused on a very specific allegation that doesn't involve you as a party. Thank you for your patience and understanding.

Best,

I already had that entry in my 2012 Report entered to DC District Court 2014

Special Agent Keith A. Custer, FBI

2600 Lord Baltimore Drive

Baltimore, MD 21244

[redacted]

From: Carrie [mailto:[redacted]
Sent: Wednesday, June 01, 2016 9:37 PM
To: Custer, Keith A. (BA) (FBI)
Subject: Pnc - BGFS debit card

Dear Mr Custer

I am coming to meet you in person face to face on Tuesday June 14, expect me at 11:00am

You asked me to pull back on sharing data w other enforcement. I did.

I want to confirm my blind faith in conceding to your request.

The BGFS matter got to where it has because of my persistence. I want to affirm my decision.

I will see you Tuesday.

Carrie

Btw, BGFS used PNC for debit cards allegedly and JP Morgan for their checks.

BGFS had no clearing ability through JP Morgan

I would check the PNC - Bennett Financial group combo and the JP Morgan - BGFS combo and converse

Sent from my iPhone

Begin forwarded message:

From: "Kathleen Pruess" [redacted]
Date: February 9, 2010 at 2:57:01 PM EST
To: "carrie devorah" [redacted]
Subject: RE: question

Ms. Devorah,

I am stuck at home so I cannot tell you positively if you requests to have your trust set up with banking privileges, but if you did, it would either be through PNC (for the debit card) and JP Morgan Chase for the checks.

I will check when I'm able to get back into the office.

Very respectfully,

Kathleen C. Pruess

Operations Specialist

Bennett Group Financial Services, LLC

Toll-Free: (866) 288-2268
Direct: (202) 216-4880 Ext 105
Fax: (202) 216-4908
E-mail: kpruess@bennettgroupfinancial.com
Website: www.bennettgroupfinancial.com

BGFS is a Family, Fitness and Finance™ Firm
Advising Affluent Investors for over 20 Years.
We Measure What We Manage.

For over a quarter century, the experienced advisors of Bennett Group Financial Services, LLC have been successfully guiding clients through the complexities of wealth management. Bennett Group Financial Services provides individual investors, corporations and foundations with holistic investment strategies using unique portfolio solutions across a breadth of asset classes. The insight into market trends demonstrated by Bennett Group Financial Services has made the group a staple in the media with regular appearances on **Fox News Channel, CNBC, Bloomberg TV,** and **MSNBC** as well as being featured in **Business Week, Fortune, The NY Times, The NY Sun, Washington Business Journal** and others. Through attentive service and prudent, thoughtful advice, Bennett Group Financial Services, LLC strives to consistently provide its clients with the highest quality of guidance and personalized service available.

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P Please consider the environment before printing this e-mail. Thank you.

From: carrie devorah [mailto[redacted]
Sent: Monday, February 08, 2010 8:24 AM
To: Kathleen Pruess
Subject: question

Hi Kathleen

I am curious if I did/had asked you to set up a bank/checking account for/with me what bank would it have been ie. Citi, BofA or another.

Sincerest Regards

Carrie Devorah

Gmail

Carrie Devorah [redacted]

SEC Response HO::~00576309~::HO

1 message

"Help" <help@sec.gov> <help@sec.gov> Fri, Aug 5, 2016 at 4:17 PM
To: [redacted]>

Dear Ms. Devorah:

Thank you for your follow up emails to the U.S. Securities and Exchange Commission (SEC).

You will need to make a written Freedom of Information Act (FOIA) request for the additional information that you are seeking. You may make such a request using any of the following three methods:

•Use our online Request for Copies of Documents form, available at https://tts.sec.gov/cgi-bin/request_public_docs
•Send a fax to (202) 772-9337; or
•Submit a Freedom of Information Act (FOIA) written request to:

Securities and Exchange Commission
Office of FOIA and Privacy Act Operations
100 F Street, NE
Mail Stop 2736
Washington, DC 20549-2736
Phone: 202-551-7900 or 202-551-8300
Fax: 202-772-9337
Email: foiapa@sec.gov

Please note there may be a fee associated with a FOIA request. Instructions on how to make a FOIA request can be found athttp://www.sec.gov/foia/howfo2.htm#send.

We also encourage you to review our Frequently Asked Questions for FOIA services, located at http://www.sec.gov/Article/foia-frequently-asked-questions.html.

You also inquired as to what FINRA stands for. FINRA stands for the Financial Industry Regulatory Authority, a non-governmental agency regulating the securities industry which previously was known as the National Association of Securities Dealers (NASD).

Once again, thank you for contacting the SEC.

Sincerely,

Ms. Kerry McGovern
Investor Assistance Specialist
Office of Investor Education and Advocacy
U.S. Securities and Exchange Commission
(800) 732-0330

ref:_00D30JxQy._500a017jWCFAA2:ref

Gmail

Carrie Devorah [redacted]

OGIS Case Number 2016-00789

1 message

Hirsh Kravitz [redacted] Thu, May 5, 2016 at 12:01 PM
To [redacted]
Cc: "Livornese, John J." [redacted]

Dear Ms. Devorah:

Please see the attached response to your request for assistance. Thank you

Hirsh Kravitz
Attorney-Advisor
Office of Government Information Resources (OGIS)
National Archives and Records Administration
[redacted]

2016-00789 Devorah Final Letter.pdf
116K

Top

Committee Membership

Archivist of the United States David Ferriero appointed 20 members to the FOIA Advisory Committee in May 2014. The Committee consists of members from within the Federal government and 10 non-governmental members who have considerable FOIA expertise and who were selected to achieve a balanced representation. Committee members are appointed to serve a two-year term. Dr. James Holzer, Director of OGIS, is the Committee Chair.

Government Members

- **Dr. James Holzer, Chair**
  Office of Government Information Services
- **Brentin V. Evitt**
  Defense Intelligence Agency
- **Karen Finnegan Meyers**
  U.S. Department of Defense
- **Larry Gottesman**
  Environmental Protection Agency
- **James Hogan**
  U.S. Department of Defense
- **Martin Michalosky**
  Consumer Financial Protection Bureau
- **Ramona Branch Oliver**
  U.S. Department of Labor
- **David M. Pritzker**
  Administrative Conference of the United States
- **Melanie A. Pustay**
  U.S. Department of Justice

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OGIS
OFFICE of GOVERNMENT INFORMATION SERVICES

OFFICE of GOVERNMENT INFORMATION SERVICES

May 4, 2016— Sent via e-mail

Ms. Carrie Devorah
1505 Crystal Drive 303
Arlington, VA 22202

Re: Case No.: 2016-00789
NG: HK

NATIONAL ARCHIVES and RECORDS ADMINISTRATION

8601 ADELPHI ROAD
OGIS
COLLEGE PARK, MD
20740-6001

web: www.ogis.archives.gov
e-mail: ogis@nara.gov
phone: 202-741-5770
toll-free: 1-877-684-6448
fax: 202-741-5769

Dear Ms. Devorah:

This responds to your April 22, 2016, request for assistance from the Office of Government Information Services (OGIS). Your request for assistance pertains to your Freedom of Information Act (FOIA) request to the Securities and Exchange Commission (SEC). Thank you for contacting OGIS.

Congress created OGIS to complement existing FOIA practice and procedure; we strive to work in conjunction with the existing request and appeal process. The goal is for OGIS to allow, whenever practical, the requester to exhaust his or her remedies within the agency, including the appeal process. OGIS has no investigatory or enforcement power, nor can we compel an agency to release documents. OGIS serves as the Federal FOIA Ombudsman and our jurisdiction is limited to assisting with the FOIA process.

After opening a case, OGIS gathers information from the requester and the agency to learn more about the nature of the dispute. This process helps us gather necessary background information, assess whether the issues are appropriate for mediation, and determine the willingness of the parties to engage in our services. As part of our information gathering, OGIS carefully reviewed your submission of information, and we understand that you submitted a request for transcripts of testimony and exhibits from Administrative Proceeding (AP) 3-16801 (*In the Matter of Bennett Group Financial Services*). You asked for expedited processing and a fee waiver.

SEC FOIA determined that your request would be processed under the Commission's normal guidelines because you did not demonstrate a "compelling need" to obtain the requested record on an expedited basis. SEC FOIA also denied your request for a fee waiver. You appealed and the decision was upheld.

You contacted OGIS for assistance. Specifically, you asked OGIS for assistance in obtaining expedited processing and a fee waiver.

NATIONAL ARCHIVES

OGIS
OFFICE of GOVERNMENT INFORMATION SERVICES

OFFICE of GOVERNMENT INFORMATION SERVICES

May 4, 2016 – Sent via e-mail

Ms. Carrie Devorah
1505 Crystal Drive 303
Arlington, VA 22202

Re: Case No.: 2016-00789
NG: HK

NATIONAL ARCHIVES and RECORDS ADMINISTRATION

8601 ADELPHI ROAD
OGIS
COLLEGE PARK, MD
20740-6001

web: www.ogis.archives.gov
e-mail: ogis@nara.gov
phone: 202-741-5770
toll-free: 1-877-684-6448
fax: 202-741-5769

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NATIONAL ARCHIVES

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You contacted OGIS for assistance. Specifically, you asked OGIS for assistance in obtaining expedited processing and a fee waiver.

In working with agencies on cases similar to yours, we have learned that requesters must be able to provide the required elements for expedited processing and meet the required factors for fee waivers.

As SEC stated in the April 19, 2016, response to your appeal, a FOIA request may be processed on an expedited basis when the requester demonstrates a "compelling need." 5 U.S.C. § 552(a)(6)(E)(i); 17 C.F.R. § 200.80(d)(5)(iii). For the purposes of expedited processing, a compelling need means that a failure to obtain the records expeditiously "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual," or if the requester is "primarily engaged in disseminating information, and there is urgency to inform the public concerning actual or alleged federal government activity. 5 U.S.C. § 552(a)(6)(E)(v); 17 C.F.R. § 200.80(d)(5)(iii). According to SEC, you did not claim to be primarily engaged in disseminating information nor have you shown a compelling need how the transcripts and exhibits of the administrative proceeding *In the Matter of Bennett Group Financial Services* requires expedited processing.

As it relates to your request for a fee waiver, the agency also explained the four factors a FOIA requester needs to show in order to qualify for a fee waiver. 17 C.F.R. § 200.80(e)(4)(ii).

As stated in SEC's April 19, 2016 response to your appeal, the commission determined that although your fee waiver request satisfies the first factor as the information you seek relates to the operations of the Commission, your request does not satisfy the remaining public interest factors as you fail to identify with any specificity how disclosure of the information would contribute to an understanding of specific government operations or activities. You also have not explained how you intend to utilize the requested materials, nor have you explained how the information you seek is of interest to a broad segment of the public.

I understand that this is not the response and outcome you had hoped to receive. However, I hope you find the explanation provided above useful to understanding why SEC responded as it did to your FOIA request and appeal. At this time, there is no further assistance that OGIS can offer you in this case.

Thank you for bringing this matter to OGIS. We will close your case.

Sincerely,

James V.M.L. Holzer, I

JAMES V.M.L. HOLZER
Director

cc: John Livornese, FOIA Public Liaison, SEC

We appreciate your feedback. Please visit https://www.surveymonkey.com/s/OGIS to take a brief anonymous survey on the service you received from OGIS.

Gmail

Carrie Devorah [redacted]

Thank you for your recent contact

1 message

Whistleblower (Judiciary-Rep) <Whistleblower@judiciary-rep.senate.gov> Thu, Nov 16, 2017 at 7:59 PM
To: Carrie Devorah <[redacted]>

Thank you for taking the time to contact the Judiciary Committee's Republican Oversight and Investigations staff. Your email has been received and will be reviewed. If you are a constituent of Senator Grassley's from Iowa, and did not provide your physical address please contact the personal office at the following link to ensure that you receive a reply: http://www.grassley.senate.gov/constituents/questions-and-comments

Unfortunately, if you are not a constituent, you may not receive an individual response due to the high volume of emails from around the country and the office's limited resources. You may wish to consider contacting your home state senators: http://www.senate.gov/general/contact_information/senators_cfm.cfm?OrderBy=state&Sort=ASC

We will contact you if further information is needed to inquire into the issues you have raised.

Although we cannot pursue every allegation that we receive, that does not mean your concerns may not have merit. You should consider reporting waste, fraud, abuse, or mismanagement elsewhere as well, if you have not already done so. Confidential, protected whistleblower disclosures can also be made to:

- the Office of Special Counsel (https://osc.gov/pages/file-complaint.aspx)
- the Office of the Inspector General for the Department of Justice (http://www.justice.gov/oig/hotline/), or
- the office of inspector general at another relevant agency (https://www.ignet.gov/contact-us).

If you report your concerns to one of these agencies, please let us know so that we can ensure that the agency treats it appropriately. Should you have additional information to provide, please do not hesitate to forward it to us at this email address. All disclosures are treated as protected, and none of the information will be used without consulting with you first. Thank you.

FBP:TPW GDB USAO 2016R00057

U.S. DISTRICT COURT
2017 NOV 29 P 4:06

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	*	CRIMINAL NO. PX-17-472
v.	*	
DAWN J. BENNETT and BRADLEY C. MASCHO,	*	(Conspiracy to Commit Securities Fraud, 18 U.S.C. § 371; Securities Fraud, 15 U.S.C. §§ 78j(b) & 78ff; Wire Fraud Conspiracy, 18 U.S.C. § 1349; Wire Fraud, 18 U.S.C. § 1343; Bank Fraud, 18 U.S.C. § 1344; False Statements on Loan Application, 18 U.S.C. § 1014; Aiding and Abetting, 18 U.S.C. § 2; Forfeiture, 18 U.S.C. §§ 981(a)(1)(C) and 982(a)(2)(A), 21 U.S.C. § 853, and 28 U.S.C. § 2461))
Defendants	*	
	*	
	*	

Gmail

Carrie Devorah [redacted]

RE: Holding company

1 message

Kalish, Benjamin [redacted]
To: Carrie Devorah [redacted]

Mon, Sep 25, 2017 at 9:33 AM

Carrie,

I think you may be confusing an Investment Company and an operating holding company. Operating companies can organize their businesses using a structure with a parent and many wholly-owned subsidiaries, having the parent hold the securities of those subsidiaries. Those wholly-owned subsidiaries typically are primarily engaged in multiple different lines of the operating company's business. In such cases, these companies are likely not investment companies subject to the Investment Company Act and therefore would not need to make the required disclosures under this Act.

However, there can be times that a parent holding company could become an investment company, such as where it no longer primarily engages in its operating business through its wholly- owned subsidiaries and instead primarily engages in investing, reinvesting, or trading in securities. Additionally, where a company holds, owns, invests, reinvests, or trades in securities totaling 40% of its assets it can be deemed an investment company and therefore subject to the Act.

Short of the above stated conditions, a parent holding company would typically not be subject to the Investment Company Act. If such a company were public, i.e. it sells its securities to the public, they would be required to file a registration statement with the Commission and file reports quarterly and annually after that which make certain disclosures. If you wish to know whether these operating companies make their securities holdings public, I can refer you to our Division of Corporation Finance who can better assist you with that question. I hope this helps.

Ben

From: Carrie Devorah [mailto:[redacted]
Sent: Monday, September 25, 2017 9:04 AM
To: Kalish, Benjamin
Subject: Re: Holding company

Benjamin

Does a Holding Company have to disclose transparently everything that is in it?

Can the Holding Company have holdings in it, project it is working on that it does not tell people about?

Holding companies- are they only Holding Companies if it has investors?

Can it be a Holding Company if it does not have investors?

Is the Investor information public information?

Carrie

On Mon, Sep 25, 2017 at 8:35 AM, Kalish, Benjamin [redacted] wrote:

Carrie,

I am still not sure I understand what information you are looking for. Please feel free to give me a call and we can discuss further so I can better assist you.

Ben

Benjamin Kalish
Chief Counsel's Office
Division of Investment Management
U.S. Securities & Exchange Commission

202-551-7361 | [redacted]

DISCLAIMER: Guidance provided by staff via the telephone or email is informal and is not binding on the staff or the Commission. When submitting tips, complaints, questions, or other information to the SEC, please read the Privacy Act Statement located at: www.sec.gov/privacy.htm

From: Carrie Devorah [mailto:[redacted]
Sent: Wednesday, September 20, 2017 10:30 PM
To: Kalish, Benjamin
Subject: Re: Holding company

Benjamin

A holding company is for securities/investments.

Entities put entities in to holding companies ie Alphabet put Google in to it, etc.

Explain

Also, my understanding is Holding Companies must be transparent. Industry practice is more to use the Holding Company as a veil.

Explain

Carrie Devorah

TCRs

TCRs
TCRs
TCRs
TCRs
TCRs
TCRs

From SEC Staff WHISTLE BLOWER ACT UPDATE

there would be no need for whistleblo
if SEC staff knew + did their jobs as outlie

as joint whistleblowers).[304] Table 1 reports the frequency distribution of these awards by award size. Forty-two of these awards were less than $5 million, of which thirty-one awards were less than $2 million. Of the remaining eight awards, five were at least $5 million but less than $30 million and three exceeded $30 million.[305] According to the Office of the Whistleblower, of the 55 individuals who have received awards, approximately 10 percent are high-ranking corporate executives at companies of varying sizes and a large majority of these executives received awards that were under $5 million.

by Congress in to 2a

Table 1: Frequency distribution of whistleblower awards. We use awards issued to whistleblowers by the SEC Whistleblower Program from August 2012 through April 2018. Number is the number of awards that fall within an award size category. Percent is the number of awards in an award size category as a fraction of the total number of awards.

Award size category	Number	Percent
Less than $2 million	31	62%
At least $2 million but less than $5 million	11	22%
At least $5 million but less than $10 million	2	4%
At least $10 million but less than $15 million	1	2%
At least $15 million but less than $20 million	1	2%
At least $20 million but less than $30 million	1	2%
At least $30 million	3	6%
Total	50	100%

[304] These totals treat as single awards several cases where whistleblowers' original information led to multiple covered actions that were processed together in one award order recognizing the total contributions of the whistleblower. Similarly, consistent with the approach proposed above governing cases where we grant an award for both a Commission enforcement action and a related action by another agency based on the same information provided by the whistleblower (*see* 17 CFR 240.21F-3(b)), we consider covered-action awards together with their corresponding related-action awards as single whistleblower awards.

[305] One of the three awards that exceeded $30 million was issued in September 2014 in a Commission action and related actions. *See Order Determining Whistleblower Award Claim*, Exchange Act Release No. 34-73174 (Sept. 22, 2014), *available at* https://www.sec.gov/rules/other/2014/34-73174.pdf. The other two awards were issued in March 2018 for $49 and $33 million, respectively, to three individuals (two of whom were acting as joint whistleblowers). *See Order Determining Whistleblower Award Claim*, Exchange Act Release No. 34-82897 (March 19, 2018), *available at*, https://www.sec.gov/rules/other/2018/34-82897.pdf. We note that these three awards alone reduced the balance of the IPF by approximately $112 million.

In addition to summarizing the distribution of awards to whistleblowers, we also summarize the distribution of awards by enforcement action. For each enforcement action, we identify all whistleblowers who receive an award for that enforcement action and sum up their awards to arrive at the aggregate award for that enforcement action. Table 2 indicates that between August 2012 and April 2018, there were 45 enforcement actions for which the Commission issued whistleblower awards.[306] Thirty-seven enforcement actions had awards of less than $5 million, of which twenty-eight awards were less than $2 million. Of the remaining eight actions, six had aggregate awards of at least $5 million but less than $30 million and only two had an aggregate award that exceeded $30 million.

Table 2: Frequency distribution of awards by enforcement action. We use awards issued to whistleblowers by the SEC Whistleblower Program from August 2012 through April 2018. For each enforcement action, we identify all whistleblowers who receive an award for that enforcement action and sum up their awards to arrive at the aggregate award for that enforcement action. We then plot the distribution of aggregate awards by enforcement action. Number is the number of aggregate awards that fall within an award size category. Percent is the number of aggregate awards in an award size category as a fraction of the total number of awards.

Award size category	Number	Percent
Less than $2 million	28	62%
At least $2 million but less than $5 million	9	20%
At least $5 million but less than $10 million	3	7%
At least $10 million but less than $15 million	2	4%
At least $15 million but less than $20 million	0	0%
At least $20 million but less than $30 million	1	2%
At least $30 million	2	4%
Total	45	100%

[306] As noted, we aggregate related actions with their corresponding Commission actions for purposes of this analysis.

4. Estimates of current annual wages

Prospective whistleblowers' annual wages are potentially relevant to various aspects of the proposed rules. Table 3 presents, by industry, the pre-tax annual wages per employee ("average wages") estimated by the Bureau of Labor Statistics for 2016.[307] Average wages vary from a low of $22,445 in the leisure and hospitality industry to a high of $98,458 in the information industry.

These averages do not reflect the substantial degree of within-industry wage variation. For example, more senior employees involved in financial activities likely earn higher wages than their more junior counterparts, and staff that supply significant expertise may earn more than those that do not. A survey of 2,499 firms registered with the Commission and included in the Russell 3000 Index as of May 2017 revealed median total CEO compensation at approximately $3.8 million.[308] A study of the 200 largest pay packages awarded to CEOs at U.S. public companies in fiscal year 2016 revealed that the median pay for this group of CEOs was $16.9 million, while the average pay was $19.7 million.[309] A 2017 report documenting survey responses from 377 financial professionals included average base salaries for senior-level financial executives of between $133,859 and $342,154, depending on title and whether

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[307] Wage data used for calculating the annual wages per employee are derived from the quarterly tax reports submitted to state government workforce agencies by employers, subject to state unemployment insurance laws, and from Federal agencies subject to the Unemployment Compensation for Federal Employees program. Further information is available at https://www.bls.gov/cew/cewbultn16.htm.

[308] *See* "CEO and Executive Compensation Practices: 2017 Edition" (available at: https://www.conference-board.org/publications/publicationdetail.cfm?publicationid=7584).

[309] *See* "Equilar 200: Ranking the Largest CEO Pay Packages" (available at http://www.equilar.com/reports/49-equilar-200-ranking-the-largest-ceo-pay-pakages-2017.html) for a summary of the study and its findings. See "Equilar 200: The Largest CEO Pay Packages of 2016" (available at http://www.equilar.com/reports/49-table-equilar-200-ranking-largest-ceo-pay-packages.html) for the ranking of CEOs by their pay packages. See "How the C.E.O. Rankings Were Done" (https://www.nytimes.com/2017/05/26/business/how-the-ceo-rankings-were-done.html) for a discussion of the study's methodology.

Table 4: Annual income generated by a twenty year annuity. We assume that a lump sum upfront payment is invested in a twenty-year annuity to generate annual income over twenty years. We calculate different annual incomes by varying the upfront payment from $5 million to $50 million in $5 million increments, and by varying the rate of return on the annuity from 2% per annum to 10% per annum in 2% increments.

	Rate of return				
	2%	4%	6%	8%	10%
Upfront payment					
$5,000,000	$303,530	$363,588	$429,859	$501,864	$579,013
$10,000,000	$607,060	$727,176	$859,717	$1,003,728	$1,158,026
$15,000,000	$910,590	$1,090,765	$1,289,576	$1,505,592	$1,737,039
$20,000,000	$1,214,120	$1,454,353	$1,719,435	$2,007,456	$2,316,052
$25,000,000	$1,517,650	$1,817,941	$2,149,293	$2,509,320	$2,895,065
$30,000,000	$1,821,180	$2,181,529	$2,579,152	$3,011,184	$3,474,078
$35,000,000	$2,124,710	$2,545,117	$3,009,010	$3,513,048	$4,053,091
$40,000,000	$2,428,240	$2,908,706	$3,438,869	$4,014,912	$4,632,104
$45,000,000	$2,731,770	$3,272,294	$3,868,728	$4,516,776	$5,211,117
$50,000,000	$3,035,300	$3,635,882	$4,298,586	$5,018,640	$5,790,130

Table 5: Annual income generated by a forty year annuity. We assume that a lump sum upfront payment is invested in a forty-year annuity to generate annual income over forty years. We calculate different annual incomes by varying the upfront payment from $5 million to $50 million in $5 million increments, and by varying the rate of return on the annuity from 2% per annum to 10% per annum in 2% increments.

	Rate of return				
	2%	4%	6%	8%	10%
Upfront payment					
$5,000,000	$181,695	$250,763	$330,128	$417,187	$509,488
$10,000,000	$363,391	$501,526	$660,256	$834,374	$1,018,975
$15,000,000	$545,086	$752,289	$990,385	$1,251,561	$1,528,463
$20,000,000	$726,782	$1,003,052	$1,320,513	$1,668,748	$2,037,950
$25,000,000	$908,477	$1,253,815	$1,650,641	$2,085,935	$2,547,438
$30,000,000	$1,090,172	$1,504,578	$1,980,769	$2,503,122	$3,056,925
$35,000,000	$1,271,868	$1,755,342	$2,310,897	$2,920,309	$3,566,413
$40,000,000	$1,453,563	$2,006,105	$2,641,025	$3,337,496	$4,075,900
$45,000,000	$1,635,258	$2,256,868	$2,971,154	$3,754,683	$4,585,388
$50,000,000	$1,816,954	$2,507,631	$3,301,282	$4,171,870	$5,094,875

Table 6: Annual income generated by a sixty year annuity. We assume that a lump sum upfront payment is invested in a sixty-year annuity to generate annual income over sixty years. We calculate different annual incomes by varying the upfront payment from $5 million to $50 million in $5 million increments, and by varying the rate of return on the annuity from 2% per annum to 10% per annum in 2% increments.

	Rate of return				
	2%	4%	6%	8%	10%
Upfront payment					
$5,000,000	$143,163	$220,042	$308,505	$403,373	$501,274
$10,000,000	$286,326	$440,083	$617,011	$806,746	$1,002,548
$15,000,000	$429,489	$660,125	$925,516	$1,210,119	$1,503,821
$20,000,000	$572,652	$880,166	$1,234,022	$1,613,492	$2,005,095
$25,000,000	$715,815	$1,100,208	$1,542,527	$2,016,865	$2,506,369
$30,000,000	$858,978	$1,320,249	$1,851,033	$2,420,238	$3,007,643
$35,000,000	$1,002,141	$1,540,291	$2,159,538	$2,823,611	$3,508,917
$40,000,000	$1,145,304	$1,760,332	$2,468,044	$3,226,984	$4,010,191
$45,000,000	$1,288,466	$1,980,374	$2,776,549	$3,630,357	$4,511,464
$50,000,000	$1,431,629	$2,200,415	$3,085,055	$4,033,730	$5,012,738

Table 7: Annual income generated from a perpetuity. We assume that a lump sum upfront payment is invested in a perpetuity to generate annual income in perpetuity. We calculate different annual incomes by varying the upfront payment from $5 million to $50 million in $5 million increments, and by varying the rate of return on the annuity from 2% per annum to 10% per annum in 2% increments.

	Rate of return				
	2%	4%	6%	8%	10%
Upfront payment					
$5,000,000	$100,000	$200,000	$300,000	$400,000	$500,000
$10,000,000	$200,000	$400,000	$600,000	$800,000	$1,000,000
$15,000,000	$300,000	$600,000	$900,000	$1,200,000	$1,500,000
$20,000,000	$400,000	$800,000	$1,200,000	$1,600,000	$2,000,000
$25,000,000	$500,000	$1,000,000	$1,500,000	$2,000,000	$2,500,000
$30,000,000	$600,000	$1,200,000	$1,800,000	$2,400,000	$3,000,000
$35,000,000	$700,000	$1,400,000	$2,100,000	$2,800,000	$3,500,000
$40,000,000	$800,000	$1,600,000	$2,400,000	$3,200,000	$4,000,000
$45,000,000	$900,000	$1,800,000	$2,700,000	$3,600,000	$4,500,000
$50,000,000	$1,000,000	$2,000,000	$3,000,000	$4,000,000	$5,000,000

The annuity figures in Tables 4 through 7 are consistent with our belief that the proposed $30 million floor should not negatively impact the overall pecuniary incentives faced by most

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C 20549

DIVISION OF
ENFORCEMENT

[redacted] 2013

Sean McKessy, Chief
Office of the Whistleblower
Fax: (703) 813-9322
McKessyS@sec.gov

Ms. Carrie Devorah
[redacted]

TCR Submission number: TCR13[redacted]
Submission dated [redacted] 16, 2013

Dear Ms. Devorah:

This letter will confirm our receipt of the additional information you provided in connection with the referenced TCR submission. We appreciate your providing this additional information and have updated your file.

Thank you for your continued interest in the Whistleblower Program.

Sincerely,

Sean McKessy

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
ENFORCEMENT

[redacted]2014

Sean McKessy, Chief
Office of the Whistleblower
Phone: (202) 551-4790
Fax: (703) 813-9322

Ms. Carrie Devorah
[redacted]

TCR Submission number: TCR14[redacted]
Submission dated: [redacted] 11, 2014

Dear Ms. Devorah:

Thank you for the information that you submitted under the SEC's Whistleblower Program. We greatly appreciate your bringing this matter to our attention. The success of the whistleblower program depends on individuals providing the Commission with specific, timely, and credible information.

Members of the staff of the Division of Enforcement may contact you for additional assistance or information. In addition, we encourage you to submit any additional supporting information or materials that you believe will assist us in analyzing and fully understanding this matter.

On August 12, 2011 the final Whistleblower rules went into effect. It is now required that you submit a signed Form-TCR (including the declarations page) in order to be considered for a whistleblower award. You are encouraged to submit the form using our online questionnaire, which you can access at www.sec.gov/whistleblower. That website also has a link to a pdf of the Form-TCR that you may also complete and sign and send to us via hard copy at Office of the Whistleblower, 100 F Street, NE, Mail Stop 5971, Washington, DC 20549 or fax it to (703) 813-9322.

Thank you again for taking the opportunity to submit your information to us. Efforts by persons such as yourself are critical to the success of this program.

Please do not hesitate to contact the Office of the Whistleblower if you have any questions or concerns.

Best regards,

Sean McKessy

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
ENFORCEMENT

[redacted] 2016

Jane Norberg, Deputy Chief
Office of the Whistleblower
Phone: (202) 551-4790
Fax: (703) 813-9322

Carrie Devorah
[redacted]

TCR Submission number: TCR 14[redacted]
Submission dated: [redacted]30, 2016

Dear Ms. Devorah :

Thank you for the information that you submitted under the SEC's Whistleblower Program. We greatly appreciate your bringing this matter to our attention. The success of the whistleblower program depends on individuals providing the Commission with specific, timely, and credible information.

Members of the staff of the Division of Enforcement may contact you for additional assistance or information. In addition, we encourage you to submit any additional supporting information or materials that you believe will assist us in analyzing and fully understanding this matter.

As a matter of policy, the SEC conducts its investigations on a confidential basis. The purpose of this policy is to protect the integrity of any investigation from premature disclosure and to protect the privacy of persons involved in our investigations. Accordingly, although working with whistleblowers and their counsel is very important to us, there may be very limited information we can share with you regarding what action, if any, we are taking in response to your submission. I hope you understand these limitations.

The Commission is only authorized to conduct investigations into possible violations of the federal securities laws. You should not expect the Commission to take any actions to the extent your information relates to conduct outside the scope or coverage of the federal securities laws. We may, however, in appropriate circumstances, refer your matter to another regulatory or law enforcement agency.

Thank you again for taking the opportunity to submit your information to us. Efforts by persons such as yourself are critical to the success of this program.

Please do not hesitate to contact the Office of the Whistleblower if you have any questions or concerns.

Best regards,

Jane Norberg

Gmail

Carrie Devorah [redacted]

RE: Status was requested not disclosure: 16[redacted]-FOIA ID VERIFICATION

1 message

Ovall, Jeffery L. [redacted]
To: Carrie Devorah [redacted], "Jackson, Warren" [redacted]

Mon, Sep 12, 2016 at 4:18 PM

Good afternoon, Ms. Devorah. We understand that you are asking for the status of various TCR whistleblower submissions in the range TRC13[redacted] to TRC13[redacted]. Please note that the SEC conducts its investigations on a confidential basis and we are not able to provide updates on the status of a complaint. However, if you are the person who submitted the whistleblower complaints, if you provide proof of identity as explained in the letter Mr. Jackson sent you today, we may be able to provide a small amount of information.

I'm attaching the portion of our regulations that discuss verification of identity (17 CFR Section 200.303). The pertinent section is highlighted in yellow.

I hope this helps.

Thanks

From: Carrie Devorah [mailto:[redacted]
Sent: Monday, September 12, 2016 3:36 PM
To: Jackson, Warren; Ovall, Jeffery L.
Subject: Status was requested not disclosure: 16-04255-FOIA ID VERIFICATION

Jackson,

Let me repeat myself. I am not asking for disclosures. I requested status.

Definition "Status"

The position of affairs at a particular time, especially in political or commercial contexts: "an update on the status of the bill"

Definition "Disclosure"
the action of making new or secret information known: "a judge ordered the disclosure of the government documents"

In that I prefer being above board in letting people know what I am doing

1) I am re-asking 3rd time for the status of all those cases

(i) completed (ii) denied (iii) limbo (iv) paid out whistleblower case

2) The next time I get the response you sent to me twice, I will expand the recipients as you are aware

Let me make it simpler. Trusting people are telling the SEC about crimes that have occurred. By law the SEC is obligated to report crimes to cops, to law enforcement. Failure to report crimes to cops makes that person, government or otherwise an accomplice to crimes. Being a USG employee does not make you exempt from failure to report crimes to cops. Being a USG employee holds you to an even higher standard of accountability to cops.

Your choice. The answers, or the world sees sooner than later that the SEC FOIA staff need assistance looking up word definitions because parsing participles makes the good people in your agency doing good work look bad.

Simple as that
(i) completed (ii) denied (iii) limbo (iv) paid out whistleblower case

Sincerely

Carrie Devorah

On Mon, Sep 12, 2016 at 3:16 PM, Jackson, Warren [redacted] wrote:

--

Sincerely

CARRIE Devorah

[redacted]

https://www.linkedin.com/today/author/carriedevorah
@godingovt

DISCLAIMER :

With the continuing crossing and interfacing of platforms both on & off line both with & without our knowledge nor approval to note nothing sent over the Internet anymore is ever private nor should be presumed to be so. If it is that much of a secret, say nothing. If you must? Take a lesson from our military- hand write the note, chew then swallow

17 CFR Section 200.303 (Verification of Identity).pdf
1013K

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

September 13, 2016

Ms. Carrie Devorah
1505 Crystal Drive #303
Arlington, VA 22202

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. 16-[redacted]-FOPA through 16-[redacted]-FOPA

Dear Ms. Devorah:

This letter is in response to your requests, dated and received in this office on August 29, 2016, for information regarding the status of various TCR submissions. We assigned a separate FOIA tracking number for each request:

Request ID	Request Description
16-00115-FOPA	status of TCR1455654094355 - TCR1455654094365
16-00116-FOPA	status of TCR1413482853036 - TCR1413482853046
16-00117-FOPA	status of TCR1411492819354 - TCR1411492819364
16-00118-FOPA	status of TCR1404246693088 - TCR14042446693098
16-00119-FOPA	status of TCR1384444671984 - TCR1384444671994
16-00120-FOPA	status of TCR1384444126843 - TCR1384444126853
16-00121-FOPA	status of TCR12640071085 - TCR12640071093
16-00122-FOPA	status of TCR1384444671888 - TCR1384444671898
16-00123-FOPA	status of TCR138444439880 - TCR138444439890
16-00124-FOPA	status of TCR1384443632297 - TCR13844436323077
16-00125-FOPA	status of TCR1376655913680 - TCR1376655913690
16-00126-FOPA	status of TCR1392062486027 - TCR1392062486037

On August 31, 2016 we wrote to inform you that to continue processing your requests we needed your verification of identify or third-party authorization by September 7, 2016.[1] You sent an email later that day and wrote that the verification of identity "is not relevant to the FOIA form I filled out online." On September 8, 2016, Ms. Smith sent you an email to inform you that your requests would be closed because we did not receive the requested authorization.

[1] In that same letter we denied your requests for expedited processing and a fee waiver.

You responded that same day by email and wrote that you did provide the necessary authorization and attached two documents to your email. However, those attachments were copies of our August 31, 2016 letter (to which you attached a blank copies of a verification of identity form and the online FOIA request form), and Ms. Smith's September 8, 2016 email advising you that your requests would be closed.

Given that we have not received the proper authorization, we can neither confirm nor deny the existence of any records responsive to your request. If such records were to exist, they would be exempt from disclosure pursuant to FOIA Exemptions 3, 6 and/or (7)(C), 5 U.S.C. §552(b)(3), (6) and (7)(C), 17 CFR § 200.80(b)(3), (6) and (7)(iii), for the following reasons.

Under Exemption 3, certain responsive information is specifically exempted from disclosure by statute. Pursuant to 15 USC § 78u-6, the Commission shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower.

Under Exemption 6 the release of this type of information would constitute a clearly unwarranted invasion of personal privacy. Under Exemption 7(C) release of such information could reasonably be expected to constitute an unwarranted invasion of personal privacy. By outlining the provisions of these exemptions, we do not mean to imply in any way that records responsive to your request exist.

You have the right to appeal my decision to the SEC's General Counsel under 5 U.S.C. § 552(a)(6), 17 CFR § 200.80(d)(5)(iv). The appeal must be received within ninety (90) calendar days of the date of this decision. Your appeal must be in writing, clearly marked "Freedom of Information Act Appeal," and should identify the requested records. The appeal may include facts and authorities you consider appropriate.

You may file your appeal by completing the online Appeal form located at https://www.sec.gov/forms/request_appeal, or mail your appeal to the Office of FOIA Services of the Securities and Exchange Commission located at Station Place, 100 F Street NE, Mail Stop 2465, Washington, D.C. 20549, or deliver it to Room 1120 at that address. Also, send a copy to the SEC Office of the General Counsel, Mail Stop 9612, or deliver it to Room 1120 at the Station Place address.

If you have any questions, please contact me at smithLR@sec.gov or (202) 551-8328. You may also contact me at foiapa@sec.gov or (202) 551-7900.

You also have the right to seek assistance from me as a (202) 551-7900 as a FOIA Public Liaison, or contact the Office of Government Information Services (OGIS) for dispute resolution services. OGIS can be reached at 1-877-684-6448 or https://ogis.archives.gov/?p=/ogis/index.html.

Sincerely,

L Katilius

Lizzette Katilius
FOIA Branch Chief

Gmail

Carrie Devorah <[redacted]>

The Commission Decision on Bennett

1 message

Carrie Devorah <[redacted]>
To: [redacted]
Bcc: "Keith A. Custer" [redacted]

Tue, May 2, 2017 at 6:06 PM

Dear Ms. Norberg

I sent this email to Jack. I am sending it to you. I am the whistleblower on this matter. Documented.

Provide me details on
1- collecting from the ALJ awarded $4 million award
2- my whistleblower award

Restore the value of my case.

Clear my name of the Bad Faith. I read the Acts and Regs. Your agency could have done that along time ago.

Compensate me for unnecessary attempted public shaming for doing the job your agency failed at.

Ms. Norberg, 2010 to 2017, unconscionable at how an agency could screw up a case so badly countless more unsuspecting victims are harmed.

Cordially
Carrie Devorah
Public Investor 12-03894

---------- Forwarded message ----------
From: Carrie Devorah [redacted]
Date: T To: [redacted]

Jack,

Advise me how to collect
1- my portion of the ALJ decision award. I am a victim
2- my whistleblower award for cooperating with the SEC since 2010

We do need to talk about the rest- the SEC's role. And what the SEC has yet to get right. And got wrong.

Carrie Devorah
Public Investor 12-03894

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
ENFORCEMENT

August 9, 2017

Emily Pasquinelli, Deputy Chief
Office of the Whistleblower
Phone: (202) 551-4790
Fax: (703) 813-9322

Ms. Carrie Devorah
[redacted]

Re: Notice of Covered Action 2017-[redacted]
In the Matter of Bennett Group Financial Services, LLC, et al.

Dear Ms. Devorah:

This will confirm our receipt of your application for a whistleblower award via Form WB-APP dated [redacted] 27, 2017, and supporting materials, for the above-referenced matter. The Office of the Whistleblower is evaluating your claim and may contact you if we need additional information.

In the meantime, please retain this notice for future reference and keep us apprised of any change in your contact information. Of course, feel free to call, fax, or mail us any questions you may have.

Thank you for submitting this application and for your participation in the SEC's whistleblower program.

Sincerely,

Emily Pasquinelli

Gmail

Carrie Devorah [redacted]

RE: To be added to my WB-APP dated 7-27-2017

1 message

Norberg, Jane [redacted]
To: Carrie Devorah <[redacted]>

Mon, Aug 21, 2017 at 1:00 PM

Ms. Devorah,

There is no document attached. Can you please resend?

Thanks,

Jane

From: Carrie Devorah [mailto:[redacted]]
Sent: Monday, August 21, 2017 12:04 PM
[redacted]
Subject: To be added to my WB-APP dated 7-27-2017

I began as an SEC WB in 2010. I continued through present date. I was going through papers where I came across Rinaldi's 2015 letter yesterday.

Please add this attached 2015 letter from Michael Rinaldi to the already filed WB-APP papers for my Whistlblower award.

Sincerely

Carrie Devorah

Public Investor 12-03894

Gmail

Carrie Devorah [redacted]

RESEND Of The Commission Decision on Bennett email & Resend of 2nd WB APP

1 message

Carrie Devorah <[redacted]> Tue, Oct 24, 2017 at 11:12 AM

[redacted]

My 2nd WB APP was sent in by me. The corrections you requested made are done. The email I am sending the corrected snd WB-APP affirms to the record my request(s) for compensation are in your record. In your record, too, is the agency sent no "here are your steps to follow" to file the WB-APP-timing et al.

Harvey Weinstein's NDAs are no where near as egregious as yours and that of your agency's sole approved SRO, FINRA/NASD. You are to restore my good name, my good will, to immediately remove the "Bad Faith" designation I got slapped with, a request I have made of your agency for over a year now. The Acts state the SEC can do this. You are to assure it is removed from the Internet. You are to remove the restriction I cannot share documents from this matter that I was bound to in your SRO FINRA/NASD to cover up crimes and criminals being reported to cops becoming part of public archives researchable by lawyers, Investment Clients and media.

You "adjudicated" the first WB-APP. My application was filed. My thought is knowing you are going to be working Bennett again through your ALJ Court, that let me get my application in now, so it is in the public record for BGFS, DJB, WIS, JPMCC, FINRA and all the related parties you pull away from the Courts, interfering with Justice. That is a crime, Ms. Norberg- tampering.

Bennett didn't show up to your ALJ hearing that Congress never authorized. You did nothing. Bennett pulled the same stunt in front of Greenbelt MD Magistrate Sullivan, he tossed her in jail for that and other violations. Rinaldi notated in his pleadings the SEC took no steps against Bennett for perjury to the DISB nor did the DISB report Bennett to MPDC.

That is not how the law works, Ma'am. One law for all.

I gave the SEC, FINRA information on DJB Holdings/Bennett/WIS et al 5 years before the FBI filed their case8/2017.

Your SEC regulatory forum that has absolutely none, no, zip law enforcement authority nor authority to conduct ALJ courts. The ALJ court customizes Investment Client stolen funds in to a carved down total the SEC then feeds to the Treasury without putting the criminal in jail.

Bennett, 3-16801: $17.6 million plus paid from Phillips Peter a cybersecurity expert with Tom Ridge's firm yet the SEC ALJ Judge orders a $4 million fine against Bennett, that is unconscionable.

Wes Johnston, a witness in your 3-16801 case, according to Bennett's public defender is one of 3 'clients' running a firm your first pleadings state began in 2013. My documents confirm DJB Holdings began in 2007 even earlier.

Everene said you, the SEC, have no idea what I want. My answer was and remains "answers" to stop these crimes against Investment Clients the SEC and its employees are complicit to by covering crimes up through tolling statutes on the Investment Client victims and keeping away from the Courts.

The SEC as are other regulatory agencies, neutered, snipped, no power to make decisions or write policy. The Executive Office and Congress write policy and decisions. The SEC just puts the dots where Congress says to and erases the dots when Congress tells to.

The SEC WB reward payout is structured to mitigate and/or lose WB their rewards by missing deadlines (ii) to mitigate and/or lose WB rewards by alleging the monies collected did not meet the million dollar benchmark.

Bennett is a prime example of this SEC tactic. We are not on to the 2nd SEC case against Bennett. There should be cases against WIS and its execs. Bennett is not the first WIS "ICA" the SEC took action against. Then there is the case the SEC did not take against BGFS co-owner Brad Mascho or DJB exec Stuart Rogers or BGFS Foundation Tim Augustin or Dawn Bennett Group exec Kathleen Pruess, documented.

Here and now, and again moving forward without a cutoff date, this 2nd and my 1st WB APP are 'placeholders' on all actions the SEC takes against the parties I have named and those known or unknown in the sphere of BGFS, WIS, Bizub, Bennett, JPMorgan, FINRA et al. This will save me time chasing fireflies so to speak.

Greenbelt MD Judge Paula Xinis warned Bennett Defense counsel Schamel not to 'poke the bear.' I like that expression. That I was even taken in to a FINRA forum for DRS is inconceivable with what I have learned since.

You 'poked this bear' and now, the frauds against Investment Clients are being cleared up. Bennett is your gamechanger.

For the public record, the case presented by former SEC attorney Michael Rinaldi was distorted, some elements corrected in the opinion written by Brent Fields, with knowledge of Michael Piwowar.

I have stated before (i) reimburse my loss of case value I filed for, (ii) reimburse out of pockets I have incurred in the process of being your WB while your investigators and others failed their investigation (iii) reimburse the $25,000 I was forced to pay so ordered by the FINRA arbitrators to FBI Lawyer 1.

I had no contract with Bennett Group Financial Services.

I had no contract with Western International Securities.

I signed a Clearing Agreement with JPMCC. I did not sue JPMCC.

I did not sign a "Special Submission Agreement" to go into FINRA, as I learned later is required of investment clients.

I signed a "Brokers Submission Agreement." I am not a Broker, a brokerage or an investment advisor.

I sued an investment advisor who had as I since discovered and revealed an Investment Advisor who had no clearing privileges with JPMCC.

I did not belong in FINRA. You know that as the overseeing agency appointed by Congress.

For the public record, the amount of this award in light of the data brought in since 2010 and the information emerging, continually, the award amount should be larger, not calculated case by case as the SEC does to cheat Whistleblowers speaking up at a cost.

2017 10 23 Resend WB-APP.zip

Character matters. Your agency lacks character.

Sincerely

Carrie Devorah

Public Investor 12-03894

——— Forwarded message ———
From: **Carrie Devorah** [redacted]
Date: Tue, May 2, 2017 at 6:06 PM
Subject: The Commission Decision on Bennett
To: [redacted]

Dear Ms. Norberg

I sent this email to Jack. I am sending it to you. I am the whistleblower on this matter. Documented.

Provide me details on
1- collecting from the ALJ awarded $4 million award
2- my whistleblower award

Restore the value of my case.

Clear my name of the Bad Faith. I read the Acts and Regs. Your agency could have done that along time ago.

Compensate me for unnecessary attempted public shaming for doing the job your agency failed at.

Ms. Norberg, 2010 to 2017, unconscionable at how an agency could screw up a case so badly countless more unsuspecting victims are harmed.

Cordially
Carrie Devorah
Public Investor 12-03894

——— Forwarded message ———
From: **Carrie Devorah** <[redacted]
Date: T To: MCCREERYJ@sec.gov

Jack,

Advise me how to collect
1- my portion of the ALJ decision award. I am a victim
2- my whistleblower award for cooperating with the SEC since 2010

We do need to talk about the rest- the SEC's role. And what the SEC has yet to get right. And got wrong.

Carrie Devorah
Public Investor 12-03894

Whistleblower Lawyers & Promoted Whistleblower Assistance

Whistleblower Lawyers &
Promoted Whistleblower Assistance
Whistleblower Lawyers &
Promoted Whistleblower Assistance

Gmail

Carrie Devorah [redacted]

WAF

1 message

An[redacted]blowersagainstfraud.com> Sat, Apr 25, 2015 at 12:59 AM
To: [redacted]
Cc: Sarah Chas[redacted]

Hello Carrie,
I hope that this email finds you well and that you have arrived safely in NYC. It was a pleasure speaking with you and discussing your case.

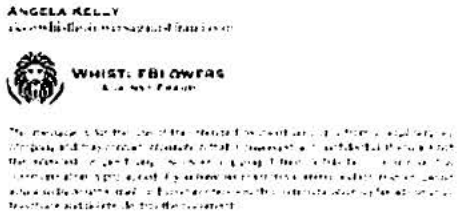
I spoke with WAF CEO, Dr. Joseph Piacentile, and Chief of Staff, Sarah Chase, regarding your case and they are both available to meet with you this Saturday or Sunday after 3pm. I explained that you are looking for a "pitbull" attorney to represent you in your current lawsuit against RBC but would also be interested in a potential partnership with WAF in a whistleblowing action against RBC, FINRA and JP Morgan Chase. I attached Dr. Joe's professional and personal bio which includes a sampling of WAFs settled cases. I also attached a copy of the Common Interest Agreement that we talked about for your review. This agreement only pertains to the whistleblowing action that you are interested in partnering with WAF on. Please feel free to reach out anytime with questions or concerns you may have.

As we discussed on the phone, I agree that it will be easier to discuss your case and concerns in person. Are you able to meet with them on either day for an introductory meeting? I will let them know that you are staying in the Battery Park area while in NYC and will also copy Sarah Chase on this email for the purpose of scheduling ease. Let me know times that work best for you and a location that would be convenient or you.

Warmest Regards,
Angela Kelly Silva

Chief Fraud Analyst
WAF Asia
+66 902706335 Thailand
1-917-284-6128 New York

4 attachments



WAF-Angela-email-footer.jpg
50K

Joseph Piacentile, M.D. WAF Bio 2015.pdf
2520K

Dr. Joe Bio and Piacentile Family Foundation 3.26.15.pdf
1853K

CIA- Carrie Devorah.pdf
560K

BRACH | EICHLER LLC

Anthony M. Rainone
Direct Dial: 973-364-8372
Direct Fax: 973-618-5972
E-mail: [redacted]

June 20, 2015

VIA E-MAIL (CARRIEDEV@GMAIL.COM)

Carrie Devorah

Re: Whistleblowers Against Fraud v. Kelly

Dear Ms. Devorah:

I am an attorney representing Whistleblowers Against Fraud, LLC ("WAF"). You are receiving this letter because WAF has identified you or your company as an interested party to the information set forth herein.

As you may be aware, WAF recently terminated one of its investigators based in Thailand, Angela Nkrasu Kelly a/k/a Angela Kelly-Silva. After her termination, Ms. Kelly engaged in a series of acts that WAF believed violated her restrictive covenant agreement and New Jersey law including, but not limited to, contacting and soliciting several of WAF's clients, prospective clients, and business relations, as well as making disparaging remarks about WAF. The disparaging comments included wrongly claiming to WAF clients that the Common Interest Agreements between WAF and the clients are legally unenforceable.

WAF wrote to Ms. Kelly demanding that she cease her unlawful activities but she refused to do so and, in fact, escalated her campaign thereafter. As a result, WAF commenced a civil lawsuit against Ms. Kelly on June 4, 2015 in the Superior Court of New Jersey, Bergen County, Chancery Division, bearing the caption *Whistleblowers Against Fraud, LLC v. Kelly*, Docket No. BER-C-166-15 ("Lawsuit"). WAF is seeking money damages against Ms. Kelly as well as injunctive relief barring her from engaging in any activities that violate her restrictive covenants, her consulting agreement in general, or New Jersey law.

As part of that Lawsuit, WAF requested from the Court an immediate temporary restraining order ("TRO") barring Ms. Kelly from engaging in the allegedly unlawful activities during the pendency of the Lawsuit. On June 8, 2015, the Court found that WAF's claims against Ms. Kelly are likely to succeed and that her activities are likely to cause WAF irreparable harm if the Court did not intervene immediately. The Court therefore entered the enclosed TRO

barring Ms. Kelly from continuing to engage in her unlawful activities. Ms. Kelly is currently restrained by the Court's Order from, among other things:

- Soliciting, diverting, or attempting to solicit or divert, alone or in concert with others, any clients or prospective clients of WAF who were clients or prospective clients of WAF from October 1, 2014 through May 31, 2015.

- Making any disparaging or negative remarks about WAF or its affiliates, officers, or executives to any person or entity.

- Destroying any of WAF's proprietary information.

WAF is providing you this information and a copy of the enclosed TRO to ensure that you receive accurate and truthful information regarding this matter. WAF encourages you to contact it directly if you have any questions about this matter and it looks forward to continuing to work with you in the future. Mr. Stephen Gretz, CFO of WAF (201-788-1377/sdg@whistleblowersagainstfraud.com) is available at your convenience to answer any questions you may have.

Very truly yours,

Anthony M. Rainone

AMR/jps
Enclosure

cc: Whistleblowers Against Fraud, LLC (via email)

Gmail

Carrie Devorah [redacted]

Follow up from Whistleblowers Against Fraud

1 message

Steve Gretz <sdg@whistleblowersagainstfraud.com> Mon, Jun 8, 2015 at 12:44 PM
To: [redacted]

Hi Carrie, my name is Steve Gretz and I work for WAF. I apologize for the break in communication - Angie is no longer with us and we're still working on reassigning her cases and leads.

I'd love to hear how things are going and whether your case survived the motion to dismiss.

We're quite interested in looking at the possibility of a qui tam case with you - let me know when you're available for a call about that.

Thanks!

Steve Gretz

--

STEPHEN GRETZ
sdg@whistleblowersagainstfraud.com

MOBILE: [redacted]
FAX: 201-829-0840

WHISTLEBLOWERS
AGAINST FRAUD

This message is for the use of the intended recipient only. It is from a legal services company and may contain information that is privileged and confidential. If you are not the intended recipient any disclosure, copying, future distribution, or use of this communication is prohibited. If you have received this communication in error, please advise us by return e-mail, or if you have received this communication by fax advise us by telephone and delete/destroy the document.

FILED
JUN - 8 2015
Robert P. Contillo
P.J.Ch.

Anthony M. Rainone, Esq. (Bar No. 024132003)
Lucas Markowitz, Esq. (Bar No. 023802011)
BRACH EICHLER L.L.C.
101 Eisenhower Parkway
Roseland, New Jersey 07068-1067
(973) 228-5700
- and -
Jonathan Pickhardt, Esq. (*pro hac vice motion to be filed*)
QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
(212) 849-7000
Attorneys for Plaintiff
Whistleblowers Against Fraud, LLC

WHISTLEBLOWERS AGAINST FRAUD, LLC,

Plaintiffs,

vs.

ANGELA NKRASU KELLY a/k/a Angela Kelly-Silva,

Defendant.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: BERGEN COUNTY

DOCKET NO.: C-166-15

Civil Action

ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINTS AND SPECIAL APPOINTMENT FOR SERVICE OF PROCESS IN THE COUNTY OF THAILAND

THIS MATTER being brought before the court by Anthony M. Rainone, Esq. of Brach Eichler, LLC, attorney for Plaintiff Whistleblowers Against Fraud, LLC, seeking relief by way of temporary restraints pursuant to *R.* 4:52, based upon the facts set forth in the Verified Complaint filed herewith; and for a special appointment for service of process in the Country of Thailand pursuant to *R.* 4:4-4(b)(1)(B)

based upon the Affidavit of Diligent Inquiry filed herewith; and it appearing that Defendant Angela Nkrasu Kelly a/k/a Angela Kelly Silva has notice of this application and for good cause shown.

It is on this 8th day of June, 2015

ORDERED that Defendant Angela Nkrasu Kelly appear and show cause before the Superior Court at the Bergen County Courthouse in Hackensack, New Jersey at 9 o'clock in the fore noon or as soon thereafter as counsel can be heard, on the 10th day of July, 2015 why an order should not be issued:

A. Preliminarily enjoining and restraining Defendant from, during the pendency of the lawsuit, soliciting, diverting or attempting to solicit or divert, alone or in concert with others, any clients or prospective clients of Plaintiff who were clients or prospective clients of Plaintiff from October 1, 2014 through May 31, 2015;

B. Preliminarily enjoining and restraining Defendant from, during the pendency of this lawsuit, making any disparaging or negative remarks about Plaintiff or its affiliates, officers or executives to any person or entity;

C. Compelling Defendant to identify and turn over any of Plaintiff's "Proprietary Information," as that terms is defined and described in the Verified Complaint, in whatever form Defendant possesses the Proprietary Information (*i.e.*, electronically, paper/hard copy, or otherwise) and to prohibit Defendant from using or relying upon the Proprietary Information in any manner whatsoever;

D. Compelling Defendant to identify and turn over for a computer forensic inspection all personal electronic devices including but not limited to, desktop computers, laptop computers, tablets, smart phones, IPhones, Android devices, PDAs, hard drives, thumb/flash drives that Defendant has used, owned, or possessed from October 1, 2014 to the present date, in order to recover from

Defendant all of Plaintiff's proprietary information;

E. Compelling Defendant to identify and turn over her login and password credentials for any and all remote/cloud based electronic storage platforms that she has used, owned, or accessed from October 1, 2014 to the present date; and

F. Granting such other relief as the court deems equitable and just.

And it is further *ORDERED* that pending the return date herein, Defendant is temporarily enjoined and restrained from:

A. Soliciting, diverting or attempting to solicit or divert, alone or in concert with others, any clients or prospective clients of Plaintiff who were clients or prospective clients of Plaintiff from October 1, 2014 through May 31, 2015;

B. Making any disparaging or negative remarks about Plaintiff or its affiliates, officers or executives to any person or entity;

C. Moving, copying, altering, modifying, deleting, or destroying, any of Plaintiff's "Proprietary Information," as that terms is defined and described in the Verified Complaint, in whatever form Defendant possesses the Proprietary Information (*i.e.*, electronically, paper/hard copy, or otherwise) and further prohibited from using or relying upon the Proprietary Information in any manner whatsoever;

D. Moving, disposing, transferring, selling, altering, modifying, wiping, or otherwise altering all personal electronic devices including but not limited to, desktop computers, laptop computers, tablets, smart phones, IPhones, Android devices, PDAs, hard drives, thumb/flash drives that Defendant has used, owned, or possessed from October 1, 2014 to the present date; and

E. Moving, disposing, transferring, selling, altering, modifying, wiping, or otherwise altering the

contents of any of remote/cloud based electronic storage platforms that Defendant has used, owned, or accessed from October 1, 2014 to the present date.

And it is further *ORDERED* that:

1. The defendant may move to dissolve or modify the temporary restraints herein contained on two (2) days notice to the Plaintiff's attorney, Anthony M. Rainone, Esq. of Brach Eichler, LLC.

2. A copy of this order to show cause, Verified Complaint, legal memorandum and any supporting affidavits or certifications submitted in support of this application be served upon the Defendant by personal service by a representative of Process Service Network, LLC, who by this Order to Show Cause is specially appointed by the Court to serve this process personally on Defendant in the country of Thailand, in addition to service by mail by any recognized international delivery service such as Federal Express or United Parcel Service, to Defendant's dwelling house or usual place of abode, in addition to Plaintiff emailing Defendant a copy of these papers to her personal "gmail" email address, within * days of the date hereof, in accordance with *R.* 4:4-3 and *R.* 4:4-4, this being original process.

3. The Plaintiff must file with the court his/her/its proof of service of the pleadings on the Defendant no later than ~~three (3)~~ * days before the return date.

4. Defendant shall file and serve a written response to this order to show cause and the request for entry of injunctive relief and proof of service by * , 2015. The original documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at http://www.judiciary.state.nj.us/prose/10153 deptyclerklawref.pdf.

Defendant take notice that you must send a copy of your opposition papers directly to Judge Contillo , whose address is Room 421 10 Main Street , Hackensack , New

Jersey. You must also send a copy of your opposition papers to Plaintiff's attorney, Anthony M. Rainone, Esq. of Brach Eichler, LLC.. A telephone call will not protect your rights; you must file your opposition and pay the required fee of $ * and serve your opposition on your adversary, if you want the court to hear your opposition to the injunctive relief the Plaintiff is seeking.

5. The Plaintiff must file and serve any written reply to the Defendant's order to show cause opposition by * 2015. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge Contillo.

6. If the Defendant does not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the Plaintiff files a proof of service and a proposed form of order at least three days prior to the return date.

7. If the Plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three (3) days before the return date.

8. Defendant take notice that the Plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The Verified Complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer to the complaint and proof of service within 35 days from the date of service of this order to show cause; not counting the day you received it.

These documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf. Include a $ *

filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your Answer to Plaintiff's attorney, Anthony M. Rainone, Esq. of Brach Eichler. A telephone call will not protect your rights; you must file and serve your Answer (with the fee) or judgment may be entered against you by default. Please note: Opposition to the order to show cause is not an Answer and you must file both. Please note further: if you do not file and serve an Answer within 35 days of this Order, the Court may enter a default against you for the relief plaintiff demands.

9. Defendant further take notice that if you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJLAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf.

10. The court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than * days before the return date.

~~J.S.C.~~

ROBERT P. CONTILLO, P.J.Ch.

* see attached rider

CASE NAME: Whistleblowers Against Fraud v. Kelly
DOCKET NUMBER: C-166-15

SUPPLEMENTAL PROVISIONS TO ORDER TO SHOW CAUSE

RETURNABLE: Friday July 10, 2015 at 9:00 a.m.

SERVICE OF PLEADINGS

A copy of this order to show cause, verified complaint, legal memorandum and any supporting affidavits or certifications submitted in support of this application shall be served upon the defendant **personally within 5 working days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.**

PROOF OF SERVICE

The plaintiff must file with the court his/her/its proof of service of the pleadings on the defendant **no later than five (5) days before the return date.**

DEFENDANT'S OSC/INJUNCTIVE RELIEF RESPONSE REQUIREMENTS

Defendant shall file and serve a written response to this order to show cause and the request for entry of injunctive relief and proof of service by June 25, 2015. **Such response shall not exceed 15 pages in length. If these papers contain exhibits, the exhibits must be properly indexed using tabs that allow for easy access to each individual exhibit.** The original documents must be filed with the clerk of the Superior Court, Room 418. You must send a copy of your opposition papers directly to Judge Robert P. Contillo, whose address is Room 420, Courthouse, Hackensack, New Jersey. You must also send a copy of your opposition papers to the plaintiff's attorney whose name and address appears at the top of these papers, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file your opposition and pay the required fee and serve your opposition on your adversary, if you want the court to hear your opposition to the injunctive relief the plaintiff is seeking. NOTE: These papers are not the Answer to plaintiff's complaint, which must be filed within 35 days (see below).

PLAINTIFF'S REPLY RESPONSIBILITY

The plaintiff must file and serve any written reply to the defendant's order to show cause opposition by July 2, 2015. **Such response shall not exceed 10 pages in length. If these papers contain exhibits, the exhibits must be properly indexed using tabs that allow for easy access to each individual exhibit.** The reply papers must be filed with the Clerk of the Superior Court and a copy of the reply papers must be sent directly to the chambers of Judge Contillo.

OSC MAY PROCEED EX-PARTE

If the defendant does not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the plaintiff files a proof of service and a proposed form of order at least three days prior to the return day.

PREHEARING SUBMISSION FORM OF ORDER/JUDGMENT

If the defendant has not already done so, a proposed form of order addressing the relief sought on the return day (along with a self-addressed return envelope with return address and postage) must be submitted to the court **no later than 3 days before the return day.**

NOTICE TO DEFENDANT – LAWSUIT ANSWER RESPONSIBILITY

Defendant, take notice that the plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer to the complaint and proof of service within 35 days from the day of service of this order to show cause; not counting the day you received it. These documents must be filed with the Clerk of the Superior Court. Include the filing fee, payable to the "Treasurer, State of New Jersey." You must also send a copy of your Answer to the plaintiff's attorney whose name and address appear on these papers, or to the plaintiff, if no attorney is named. A telephone call will not protect your rights; you must file and serve your Answer (with the fee) or judgment may be entered against you by default. Please note: Opposition to the order to show cause is not an Answer and you must file both. Please note further: If you do not file and serve an Answer within 35 days of this Order, the Court may enter a default against you for the relief plaintiff demands.

LEGAL SERVICES NOTICE

If you cannot afford an attorney, you may call the Legal Services office in the county in which you live. If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services.

RETURN DAY TESTIMONY

The Court will entertain argument, **but not testimony,** on the return day of the order to show cause, unless the court and parties are advised to the contrary **no later than 3 days before the return day.**

Hon. Robert P. Contillo P.J.Ch.

Gmail

Carrie Devorah <[redacted]>

Whistleblowers Against Fraud v. Kelly

1 message

Rainone, Anthony <[redacted]>
To: [redacted]

Sat, Jun 20, 2015 at 7:33 PM

Dear Ms. Devorah:

Please see attached letter on behalf of my client, Whistleblowers Against Fraud, LLC. If you have any questions, please feel free to contact me.

Anthony M. Rainone, Esq.
BRACH EICHLER
101 Eisenhower Parkway | Roseland, New Jersey 07068
Direct: [redacted] | Firm: 973-228-5700 | Fax: 973-618-5972
bio | email | vcard | website
New York City | Roseland | Palm Beach

Please visit our Employment Services Blog

This email is from Brach Eichler LLC, a law firm, and may contain information that is confidential or privileged. If you are not the intended recipient, do not read, copy or distribute this e-mail or any attachments. Instead, please notify the sender and delete this e-mail and any attachments.

2 attachments

BRACH EICHLER **115062019340200639.gif**
2K

2015.06.20 Ltr to Devorah with TRO.PDF
461K

This explains the Wall Street fashion of the D.O.L.

DOL.:

EMPLOYEE

INDEPENDENT CONTRACTOR

Independent Contractor is not an employee

BROKER AGREEMENT
Schedule A

This agreement between Bennett Financial Group ("Broker") and Western International Securities, Inc. ("Western") is dated July 24 2009. This agreement is to be used in conjunction with the Independent Contractor Agreement (ICA) and is designed to encompass specific payout and expense issues not addressed in that Agreement. Bennett Financial Group will be bound by the terms of the ICA with regard to regulatory requirements and responsibility for errors and losses attributed to her business.

Payout
The payout on all brokerage, management and advisory business (regardless of whose RIA is used) will be 92% based on maintaining two million per year in overall production.

Ticket Charges
All J.P. Morgan (or other clearing broker-dealer) fees will be passed on to Broker for brokerage business. For advisory business the fee can be passed on to the customer. The most common ticket charges by J.P. Morgan are as follows:

Stocks	$15.95 per ticket.
Bonds	$19.95 per ticket
Options	$15.95 per ticket plus $1.50 per contract

Mutual funds are no charge if done directly with the fund or within a JP Morgan Fund Circuit account. Funds done over the wire will be charged $11 per ticket, $7.50 for mutual fund exchanges. The vast majority of our listed business is executed third market and that is the default for MORCOM Order Entry System. If you direct a trade to a listed exchange or get special handling from a JP Morgan trading desk, there may be additional execution fees. There may also be per share fees to execute on certain algorithm trading systems. Customers will pay a $4.75 service fee.

Registration and fees

- Western will pay for the cost to transfer Bennett Financial Group series 7 and up to four state license fees. Bennett Financial Group will be responsible for all renewal fees. Western adds a $15 per state processing fee to each state registration. Bennett Financial Group will also be responsible for Western's annual association fee beginning in summer 2010. The association fee covers the firm's Fidelity bond and the cost of registration in all of the states and runs approximately $490 per year.

- Errors and omissions insurance is obtained by Western, and is mandatory for all independent contractors who hold a series 6 or 7 regardless of production. The amount will be determined annually based on the premium and is currently

$2,299.62 per year and our policy renews in March, Bennett Financial Group will pay a prorated portion monthly until renewal.

- Any further expenses of operating your office will be billed to and paid by you. Western will offer JP Morgan access for $60 a terminal. Western will provide a mandatory NASD/SEC compliant email address and instant messenger service for $25 a month per address. There may be additional charges to use a custom domain.

There is an annual office compliance inspection and it will be provided by Western at a cost of $595.

Western will charge back all fees versus Bennett Financial's monthly production. If the production does not cover the fees, Western will allow Bennett Financial to carry a debit. If the debit exceeds $1000, the entire amount must become current in 45 days.

Transition Support

Western will provide transition support money based on the following schedule:

- $125k upon receiving the first 100 ACAT forms
- $100k ninety days after arrival (to be paid by JP Morgan)
- $25k when $1.5 million in gdc is reached (must occur within the first 14 months)
- $150k when $3 million in gdc is reached (must occur within the first 14 months)
- $25k when $4 million in gdc is reached (must occur within the first 14 months)
- $25k when $5 million in gdc is reached (must occur within the first 14 months)
- $25k when $6 million in gdc is reached (must occur within the first 14 months)
- $25k when $7 million in gdc is reached (must occur within the first 14 months)

This money will be the only contribution Western will make to cover transition expenses, including but not limited to: ACAT fees, repapering, postage, IRA termination, and check writing fees.

Media

To the extent compliant with rules and regulations of FINRA, the SEC and other applicable regulatory authorities, Broker may make personal and promotional appearances without pre-approving content, including but not limited to television and radio appearances, print interviews, internet commentary and web pages. Any advertising will be pre-approved before use and any non-advertising material used later as advertising, i.e., TV appearances and print interviews, which do not meet the compliance standards, will be withdrawn from use immediately upon notice.

Advertising materials and compliance submissions

Evaluation and adjudication of Broker compliance submissions will generally be completed within 24 hours of submission.

International accounts

To the extent compliant with rules and regulations of FINRA, the SEC, other applicable regulatory authorities, and J.P. Morgan (or other clearing firms Western may use in its discretion), Broker will be supported in opening customer accounts and transacting business through offices, partners and affiliates in international locations. Broker intends to market, serve clients and sell product from these offices in compliance with all applicable regulatory authorities. Broker understands that international business may trigger additional compliance oversight by Western or Western's clearing firm, in order to comply with applicable law, including anti-money laundering compliance under the US Patriot Act. Western and its clearing broker reserve the right to close or restrict any accounts as may be deemed necessary in their discretion to comply with applicable law. It is understood that to the degree international expansion increases Western's cost structure (e.g., if the creation of such offices requires extraordinary compliance oversight by Western or its clearing firm) Broker agrees to bear such costs.

Regulatory interaction

Broker reserves the right to appeal to the appropriate regulatory authority in any questions arising from compliance submissions. Broker shall first submit to Western any such communications Broker intends to submit to a regulatory authority.

Product development

Broker reserves the right to create investment products that are licensed and sold domestically and internationally by other financial institutions and insurance companies, provided that Broker fully complies with FINRA Rules 3030 and 3040, Western's compliance requirements and other applicable regulatory authority. It is understood that to the degree these product expansions impact the Western's cost structure (e.g., if extraordinary compliance oversight is necessary), Broker agrees to bear such costs.

Other

Western respects a Broker's right to transfer his/her customers if he/she chooses and Western will facilitate a negative transfer with a sixty day notice. Western will not interfere with the transfer of Bennett Financial Group's clients to a new firm and will not solicit them. The terms of your Schedule A are confidential and not to be shared with others.

WESTERN INTERNATIONAL SECURITIES, INC.

Donald M. Bizub, CEO

8-6-9
Date

Bennett Financial Group

7/27/09.
Date

000000727

Individual 1567051 - BENNETT, DAWN

Reportable Events

Regulatory Action DRP **DRP Version** 05/2009

2009 and 2011.

Critically, despite over four years of investigation, the SEC did not charge that customers of BGFS lost money due to any misconduct on the part of Ms. Bennett or BGFS.

Ms. Bennett and her colleagues at BGFS have acted with integrity in building their company. Their business model is based on the integrity of the markets and the need for financial advisors to abide by conduct consistent with just and equitable principles of trade. Litigation will demonstrate that the SEC's allegations against Bennett and her firm are without merit.

Consequently, Ms. Bennett denies all allegations of any wrongdoing. She will vigorously defend this case at the earliest possible moment, but in the proper forum. When all facts come to light, not just those the SEC chooses to focus on, Ms. Bennett anticipates she will be completely vindicated.

Filing ID 46129599 **Form (Form Version)** U6 (05/2009)
Filing Date 03/31/2017
Source United States Securities and Exchange Commission
Disclosure Questions Answered

Regulatory Action DRP **DRP Version** 05/2009

1. Regulatory Action initiated by:

A. Initiated by:	Securities and Exchange Commission
B. Full name of regulator:	UNITED STATES SECURITIES AND EXCHANGE COMMISSION
2. Sanction(s) sought:	Other: n/a
3. Date initiated/Explanation:	09/09/2015
4. Docket/Case#:	3-16801
5. Employing firm:	Bennett Group Financial Services, LLC
6. Product type(s):	No Product
7. Allegation(s):	SEC Admin Release 33-9910/34-75864/IA Release 4191/Investment Company Act Release 31810/September 9, 2015: The Securities and Exchange Commission (Commission) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (Securities Act), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (Exchange Act), Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (Advisers Act), and Section 9(b) of the Investment Company Act of 1940 (Investment Company Act) against Dawn J. Bennett. From at least 2009 through February 2011, a firm and its founder, majority owner, and CEO, Bennett, made material misstatements and omissions regarding assets that were purportedly "managed" for investors and regarding investment returns for the purpose of retaining existing customers and attracting new customers.

employer is not an independent contractor.

Individual 1567051 - BENNETT, DAWN

Reportable Events

Regulatory Action DRP

DRP Version 05/2009

Then, during the investigation of this matter, Bennett and the firm made additional misstatements in an effort to obstruct the investigation and to "cover up" their prior fraud. In short, Bennett and the firm grossly overstated the amount of assets they "managed," by at least $1.5 billion, in a calculated effort to inflate their profile and prestige. They made the false and fraudulent claims to a national financial advisor ranking service knowing that the ranking service would publish the misstatements. They also made the misstatements on a Washington, D.C.-area radio program hosted by Bennett, and in a variety of other advertisements and communications with existing and prospective customers and clients. The purpose of these overstatements was to create the impression that Bennett and her firm were larger and more successful players in the industry than they were. Bennett and the firm also made material misstatements and omissions during the radio show regarding the firm's investment returns and performance. Bennett frequently touted her firm's highly profitable investment returns and claimed that those returns placed the firm in the "top 1%" of firms worldwide. In violation of her legal disclosure duties and specific advice she received, Bennett failed to disclose that the purported "returns" were simply those of a "model portfolio" and did not reflect actual customer returns. In addition to the material misstatements and omissions about these matters, Bennett and the firm failed to adopt and to implement adequate written policies and procedures related to the calculation and advertisement of assets managed and of investment returns. During the investigation of this matter, in order to substantiate their prior fraudulent claims regarding assets managed and to obstruct this investigation, Bennett and the firm made additional false statements. They falsely asserted that they gave advice regarding short-term cash management to three corporate clients regarding over $1.5 billion in corporate assets. In reality, they never provided the advice, and these were simply lies meant to deceive the Division of Enforcement. Bennett and the firm never provided any form of management for assets in excess of approximately $407 million. As a result of the conduct described above, Bennett willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 206(1) and 206(2) of the Advisers Act. Bennett willfully aided and abetted and caused the firm's violations of, Section 206(4) of the Advisers Act and Rules 206(4)-1(a)(5) and 206(4)-7 thereunder.

8. Current status: Final

9. Limitations or restrictions while pending: No

10. If on appeal:

A. Appealed to:

B. Date appealed/Explanation:

C. Limitations or restrictions while on appeal:

11. Resolution details:

A. Resolution detail: Order

Individual 1567051 - BENNETT, DAWN

Reportable Events

Regulatory Action DRP DRP Version 05/2009

B. Full name of regulator:	UNITED STATES SECURITIES AND EXCHANGE COMMISSION
2. Sanction(s) sought:	Other: N/A
3. Date initiated/Explanation:	09/09/2015
4. Docket/Case#:	3-16801
5. Employing firm:	BENNETT GROUP FINANCIAL SERVICES, LLC
6. Product type(s):	No Product
7. Allegation(s):	OVERSTATED FIRM'S ASSETS UNDER MANAGEMENT AND INVESTMENT RETURNS
8. Current status:	Pending
9. Limitations or restrictions while pending:	No
10. If on appeal:	
A. Appealed to:	
B. Date appealed/Explanation:	
C. Limitations or restrictions while on appeal:	
11. Resolution details:	
A. Resolution detail:	
B. Resolution date/Explanation:	
12. Final order:	
13. Sanction detail:	
A. Sanctions ordered:	
B. Other sanctions:	
C. Sanction type details:	
D. Requalification type details:	
E. Monetary related sanction type details:	
14. Comment:	Bennett Group Financial Services ("BGFS") and Dawn Bennett, despite facts to the contrary, were recently charged by the SEC with misrepresenting the amount of "assets under management" and the results of their investment model used to make recommendations to their to brokerage clients. The reputed misstatements are said to have occurred almost five years ago in statements made on Ms. Bennett's syndicated radio show, "Financial Mythbusting," in which Ms. Bennett and her guests debate government economic policies, and in a publication in

Individual 1567051 - BENNETT, DAWN

Reportable Events

SRO Arbitration/Reparation DRP **DRP Version** 05/2009

1. Case name:	Steven Santagati vs. Western International Securities, Inc., Dawn Bennett, Bennett Group Financial Services, LLC
2. Arbitration/Reparation filed with:	FINRA
3. Date initiated:	02/21/2014
4. Docket/Case#:	14-00575
5. Employing firm:	Western International Securities, Inc.
6. Allegation(s):	breach of the general duties of reasonable care, honesty and disclosure; recommending unsuitable investments in violation of Fla. Stat. Section 517.301; common law fraud; breach of fiduciary duty; negligence
7. Product type:	Other: exchange traded fund
8. Alleged compensatory damage amount:	$850,000.00
9. Currently pending resolution:	No
10. Resolution details:	
A. Resolution:	Award
B. Resolution date:	03/21/2017
C. Disposition details:	Bennett is jointly and severally liable for violations of Fla. Stat Section 517.301 including, but not limited to, recommending unsuitable investments and shall pay to Claimant the sum of $763,740 in compensatory damages. Bennett is also jointly and severally liable for and shall pay to Claimant interest on the above-stated sum at the Florida statutory rate from the date of the Award until it is paid in full.
11. Comment:	

Occurrence#	1768131	**Disclosure Type**	Customer Complaint
FINRA Public Disclosable	Yes	**Reportable**	Yes
Material Difference in Disclosure	No		

Filing ID	38910895	**Form (Form Version)**	U4 (05/2009)
Filing Date	04/24/2015		
Source	39262 - WESTERN INTERNATIONAL SECURITIES, INC.		
Disclosure Questions Answered	14I(1)(a)		

Customer Complaint DRP **DRP Version** 05/2009

1. Customer name(s):	CATHERINE E. BOLAND AND RICHARD C. GRAVES
2. Residence information:	
A. Customer(s) state of residence:	Maryland
B. Other state(s) of residence/ detail:	

Individual 1567051 - BENNETT, DAWN

Reportable Events

Customer Complaint DRP **DRP Version** 05/2009

A. Customer(s) state of residence:	Florida
B. Other state(s) of residence/ detail:	
3. Employing firm:	WESTERN INTERNATIONAL SECURITIES, INC.
4. Allegation(s):	DESPITE HIS APPROVAL FOR ALL TRANSACTIONS, CLAIMANT ALLEGED THAT CERTAIN TRANSACTIONS VIOLATED A BREACH OF DUTY, AND NEGLIGENCE IN HIS ACCOUNT DURING THE PERIOD MAY 2010 THROUGH NOVEMBER 2013. THE RECORDS REFLECT THE CUSTOMER AUTHORIZED THE TRANSACTIONS. THE ALLEGATIONS ARE WITHOUT MERIT AND DENY THE ALLEGATIONS.
5. Product type(s):	Debt-Government Equity Listed (Common & Preferred Stock)
6. Alleged compensatory damage amount:	$850,000.00
Explanation:	
7. Customer complaints:	
A. Oral complaint:	
B. Written complaint:	
C. Arbitration/CFTC reparation or civil litigation:	
i. Arbitration/Reparation forum court name/location:	
ii. Docket/Case#:	
iii. Arbitration or civil litigation filing date:	
D. Date received by/Served on firm/Explanation:	
8. Complaint, arbitration/CFTC reparation, civil litigation pending:	
9. Complaint, arbitration/CFTC reparation or civil status:	
10. Status date/Explanation:	
11. Settlement/Award/Monetary judgment:	
A. Award amount:	
B. Contribution amount:	
12. Arbitration/CFTC reparation information:	
A. Arbitration/CFTC reparation claim filed with:	FINRA

Individual 1567051 - BENNETT, DAWN

Reportable Events

Filing ID	36629720	**Form (Form Version)**	U6 (05/2009)
Filing Date	05/09/2014		
Source	FINRA		
Disclosure Questions Answered			

SRO Arbitration/Reparation DRP **DRP Version** 05/2009

1. Case name:	JOHN D. CROWLEY AND LAMIA A, CROWLEY VS. WESTERN INTERNATIONAL SECURITIES, INC., AND DAWN BENNETT
2. Arbitration/Reparation filed with:	FINRA
3. Date initiated:	02/13/2013
4. Docket/Case#:	13-00467
5. Employing firm:	WESTERN INTERNATIONAL SECURITIES, INC.,
6. Allegation(s):	BREACH OF CONTRACT; NEGLIGENCE; BREACH OF FIDUCIARY DUTY; CHURNING; UNAUTHORIZED TRADING; MISREPRESENTATIONS AND OMISSIONS AND UNSUITABILITY.
7. Product type:	Other: EXCHANGE TRADED FUNDS AND FIXED INCOME PRODUCT
8. Alleged compensatory damage amount:	$1,935,230.00
9. Currently pending resolution:	No
10. Resolution details:	
A. Resolution:	Award
B. Resolution date:	05/06/2014
C. Disposition details:	RESPONDENT IS FOUND JOINTLY AND SEVERALLY LIABLE AND SHALL PAY TO CLAIMANTS COMPENSATORY DAMAGES IN THE AMOUNT OF $150,000.00, PLUS COMPOUND INTEREST
11. Comment:	

Occurrence#	1652718	**Disclosure Type**	Customer Complaint
FINRA Public Disclosable	Yes	**Reportable**	Yes
Material Difference in Disclosure	No		

Filing ID	37698214	**Form (Form Version)**	U4 (05/2009)
Filing Date	10/31/2014		
Source	39262 - WESTERN INTERNATIONAL SECURITIES, INC.		
Disclosure Questions Answered	14I(1)(b)		

Customer Complaint DRP **DRP Version** 05/2009

1. Customer name(s):	KERRY EDWARDS
2. Residence information:	
A. Customer(s) state of residence:	Virginia

Individual 1567051 - BENNETT, DAWN

Administrative Information
Composite Information

Full Legal Name	BENNETT, DAWN
State of Residence	MD
Active Employments	<<No Current Active Employments found for this Individual.>>
Reportable Disclosures?	Yes
Statutory Disqualification?	SDRQRSRVW
Registered With Multiple Firms?	No
Material Difference in Disclosure?	No

Registrations with Current Employer(s)

<<No Registrations with Current Employer(s) found for this Individual.>>

Registrations with Previous Employer(s)

From 10/01/2009 To 11/24/2015 WESTERN INTERNATIONAL SECURITIES, INC.(39262)
Reason for Termination Permitted to Resign
Termination Comment Firm decision following discovery of promissory notes with Firm customers by registered representative's company.

Regulator	Registration Category	Status Date	Registration Status	Approval Date
CT	AG	11/25/2015	TERMED	10/01/2009
FINRA	GS	12/01/2015	TERMED	10/01/2009

From 10/16/2006 To 09/06/2013 BENNETT GROUP FINANCIAL SERVICES, LLC(145989)
Reason for Termination
Termination Comment
<<No Registrations with Previous Employer(s) found for this Individual.>>

From 02/16/2006 To 10/05/2009 ROYAL ALLIANCE ASSOCIATES, INC.(23131)
Reason for Termination Voluntary
Termination Comment

Regulator	Registration Category	Status Date	Registration Status	Approval Date
CT	AG	10/07/2009	TERMED	02/16/2006
FINRA	GP	10/07/2009	T_NOREG	
FINRA	GP	10/07/2009	T_NOREG	
FINRA	GP	10/07/2009	T_NOREG	
FINRA	GP	10/07/2009	T_NOREG	
FINRA	GS	10/07/2009	TERMED	02/16/2006
FINRA	MP	10/07/2009	T_NOREG	

From 02/21/2006 To 02/21/2006 CITIGROUP GLOBAL MARKETS INC.(7059)
Reason for Termination Voluntary
Termination Comment

Regulator	Registration Category	Status Date	Registration Status	Approval Date
CBOE	GS	02/24/2006	TERMED	02/21/2006
NYSE-ARCA	GS	02/24/2006	TERMED	02/21/2006

Individual 1567051 - BENNETT, DAWN

Reportable Events

SRO Arbitration/Reparation DRP **DRP Version** 10/2005

ACTUAL/COMPENSATORY DAMAGES, RELIEF REQUEST IS WITHDRAWN/SETTLED/ETC, AWARD AMOUNT JOINTLY AND SEVERALLY;
ACTUAL/COMPENSATORY DAMAGES, RELIEF REQUEST IS WITHDRAWN/SETTLED/ETC, AWARD AMOUNT JOINTLY AND SEVERALLY;
ACTUAL/COMPENSATORY DAMAGES, RELIEF REQUEST IS WITHDRAWN/SETTLED/ETC, AWARD AMOUNT JOINTLY AND SEVERALLY;
INTEREST, RELIEF REQUEST IS WITHDRAWN/SETTLED/ETC, AWARD AMOUNT
JOINTLY AND SEVERALLY; OTHER COSTS, RELIEF REQUEST IS
WITHDRAWN/SETTLED/ETC, AWARD AMOUNT JOINTLY AND SEVERALLY;
ATTORNEY'S FEES, RELIEF REQUEST IS WITHDRAWN/SETTLED/ETC, AWARD
AMOUNT JOINTLY AND SEVERALLY; PUNITIVE/EXEMPLARY DAMAGES,
RELIEF REQUEST IS WITHDRAWN/SETTLED/ETC, AWARD AMOUNT JOINTLY
AND SEVERALLY

Occurrence#	1652687	**Disclosure Type**	Customer Complaint
FINRA Public Disclosable	Yes	**Reportable**	Yes
Material Difference in Disclosure	No		

Filing ID	37212328	**Form (Form Version)**	U4 (05/2009)
Filing Date	08/11/2014		
Source	39262 - WESTERN INTERNATIONAL SECURITIES, INC.		
Disclosure Questions Answered	14I(1)(a)		

Customer Complaint DRP **DRP Version** 05/2009

1. Customer name(s): JOHN AND LAMIA CROWLEY
2. Residence information:
   A. Customer(s) state of residence: Maryland
   B. Other state(s) of residence/ detail:
3. Employing firm: WESTERN INTERNATIONAL SECURITIES, INC.
4. Allegation(s): DESPITE THEIR FINANCIAL SOPHISTICATION AND WEALTH OF EXPERIENCE, CLIENTS, WHO AUTHORIZED ALL TRADES BEFORE THEY WERE ENTERED, ALLEGE BREACH OF VARIOUS DUTIES ARISING FROM "UNSUITABLE" TRANSACTIONS FROM 2010-2012, A PERIOD THAT WAS FIVE YEARS AFTER THEY BEGAN THEIR RELATIONSHIP. BECAUSE THE ALLEGATIONS ARE WITHOUT MERIT AND ARE BROUGHT IN BAD FAITH, WE INTEND TO SEEK A DISMISSAL OF THE

employee. What should I do?

If there are job openings, you can apply for an employee position. But, if the company insists on calling you and paying you as an independent contractor, and you feel that the job you are doing fits the IRS and DOL factors defining an employee, the solution may be difficult.

First, you should talk to an attorney who can help you analyze your situation. Then, you can decide whether going to management or going to a government agency is the best way to address your concern. Where a company is avoiding employment laws by calling large numbers of workers independent contractors, the DOL may act to enforce federal law

back to top

21. I don't think my company is operating under the IRS standards. Should I report them to the IRS?

First, you should talk to an attorney who can help you analyze the IRS factors. Even though reporting IRS violations is a protected activity, you might expose yourself to unlawful retaliation. If you want the IRS to determine whether you are an employee, you can file an IRS Form SS-8.

The IRS also has a hotline (800-829-0433) where you can make a report. For more information, and/or other ways to report IRS violations, see the IRS page, How Do You Report Suspected Tax Fraud Activity?

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22. Who enforces the law?

The IRS, the DOL, and similar state agencies enforce wage, hour, and tax laws. Independent contractors must rely on the terms of their independent contractor agreement, or the implied understanding, and would have to go to court to enforce that agreement or understanding. Possible claims might include breach of contract and breach of promise, sometimes called promissory estoppel. For more information, see our site's contracts page.

The Fair Labor Standards Act (FLSA) is enforced by the Wage-Hour Division of the DOL. The Wage-Hour Division's enforcement of the FLSA is carried out by investigators stationed across the U.S. who conduct investigations and gather data on wages, hours, and other employment conditions or practices in order to determine whether an employer has complied with the law. Where violations are found, they also may recommend changes in employment practices to bring an employer into compliance.

It is a violation of the FLSA to fire, or in any other way discriminate against an employee, for filing a complaint or participating in a legal proceeding.

Willful violations may be prosecuted criminally and the violator fined up to $10,000. A second

Maryland Independent Contractors: What you need to know

Whether a worker is an "employee" or an "independent contractor" is critical when it comes to such important issues as pension eligibility, workers' compensation coverage, wage and hour law, and many other matters. In some situations, federal law will govern, but the question is most often resolved by looking to state law, particularly in areas such as unemployment tax liability, workers' compensation, and state wage and hour requirements.

Workplace Fraud Act (WFA). The state of Maryland has enacted a WFA specifically designed to address issues of employee misclassification in the construction and landscaping industries. The WFA requires employers in the construction and landscaping industries to give an individual classified as an independent contractor or an exempt person with whom they contract notice of their classification and an explanation of what that classification means. A copy of the notice in both English and Spanish is available on Maryland's Division of Labor and Industry's website at www.dllr.state.md.us/workplace (http://www.dllr.state.md.us/workplace/).

Employers in the landscaping and construction industries must also keep, for at least 3 years, records containing the following information:

1. The name, address, occupation, and classification of each employee or independent contractor;
2. The rate of pay for each employee or method of payment for each independent contractor;
3. The amount paid each pay period to each employee or independent contractor;
4. For each independent contractor or exempt person hired, the regulations further require that the employer keep at the worksite or place of business: a. A description of the employers' business or a contract between the employer and the independent contractor ...

Read more about Independent Contractors (http://hr.blr.com/topics.aspx?

District of Columbia Independent Contractors: What you need to know

Whether a worker is an "employee" or an "independent contractor" is critical when it comes to such important issues as pension eligibility, workers' compensation coverage, wage and hour law, and many other matters. In some situations, federal law will govern, but the question is most often resolved by looking to state law, particularly in areas such as unemployment tax liability, workers' compensation, and state wage and hour requirements.

For a Limited Time receive a FREE HR Report on the "Critical HR Recordkeeping". This exclusive special report covers hiring records, employment relationships, termination records, litigation issues, electronic information issues, tips for better recordkeeping, and a list of legal requirements. Download Now (http://hrdailyadvisor.blr.com/2013/06/28/critical-hr-recordkeeping)

An employer-employee relationship is a prerequisite for determining whether an individual is eligible for workers' compensation coverage (*DC Code Sec. 32-1501*). The District of Columbia Court of Appeals has ruled that the test for deciding this question is whether the individual is hired to do work in which the employer specializes. The test has two parts. First, the nature and character of the individual's work must be examined, including the degree of skill involved, the extent to which it is a separate calling or business, and the extent to which, when performing this work, an individual can be expected to carry his or her own accident burden. The second part of the test is the relationship of the work to the employer's business, including the extent to which the work is a regular part of the employer's regular business, whether the work is continuous or intermittent, and whether the duration of the job is sufficient to amount to the hiring of continuing services, as distinguished from contracting for the completion of a particular job (*Gross v. District of Columbia Dept. of Employment Services*, 826 A.2d 393 (D.C., 2003)).

Subject: File Number S7-16-18
From: David Addison
Affiliation:

Jul. 30, 2018

Dear Securities and Exchange Commission,

I very strongly oppose the proposed amendments to the rules governing the SEC whistleblower program (File Number S7-16-18). The proposed rule amendments will drastically weaken and undermine the deterrent effect of rewarding whistleblowers.

If you have not already done so, please read the public statements issued by Commissioners Stein and Jackson and the Law360 Op-ed "The Problem With SEC's Plan To Cap Whistleblower Awards." (https://bit.ly/2L0WTaJ) These statements outline my reasoning as to why the proposed amendments will undermine the policing of Wall Street.

Specifically, the proposed amendment to the rules capping rewards in the largest cases to the lowest percentage rate should be withdrawn. Furthermore, the SEC should ensure that every employee, regardless of position or title, can disclose corporate fraud directly to the SEC. Any requirement that compliance officers, managers or directors work internally with the company before reporting to the SEC must be struck from the rules. Finally, rules must be implemented that require the timely payment of rewards to qualified whistleblowers.

Finally, please meet personally with whistleblower experts from the National Whistleblower Center to obtain additional information as to why the proposed amendments to the rules governing the SEC whistleblower program should not be implemented.

Sincerely,

Mr. David Addison

Subject: File No. S7-16-18
From: Ben Wang

July 31, 2018

Grandfather Status Shall be Established for the In-Progress Cases in Terms of Award Percentage Determination

The proposed rule changes need to address the circumstances where cases have been in progress for many years and are pending final conclusions. The whistleblowing Grandfathers who had contributed substantially to the SEC program on or before June 28, 2018 shall be treated accordingly, in the event the proposed changes are adopted.

August 2, 2018

Fw: Comment letter to proposed rules change for Whistleblowers

Further comment on SEC proposed "Interpretive guidance for Whistleblowers"

Over the last several years I have filed extensive TCR's with the SEC under the Whistleblower rules. My claims detail a massive fraud on the markets which is in the BILLIONS of dollars. My information could not be any more clear, straight forward, and in fact verified by third parties as well as the SEC and FINRA themselves.

Central to my claims is the Criminal enterprise known as US registered Broker Dealer Knight/KCG/VIRT. It's securities fraud, accounting fraud violations I hve detailed for 7 years. This criminal enterprise continues to pose a significant risk to the investing public as a result of SEC (and others) criminal obstruction of my claims. ALL of the information in my claims continues unabated as a direct result of this SEC criminal obstruction. In furtherance of a massive conspiracy which is facilitated by a corrupt SEC.

As recently as July 2018, the Goldman Sachs analyst confirmed the basis of my claims on the VIRT 2Q 2018 conference call:

The Knight/KCG/VIRT trading model is very significantly leveraged to OTC shell share volumes. And, HOW does the criminal enterprise Knight/KCG/VIRT generate trading profits in OTC shells that trade down to "trop zeroes" (.0001) on billions of shares? Standing on the bid and buying as a "vital source of liquidity"? The core business at Knight/KCG/VIRT is and always has been:

Naked shorting OTC shells to facilitate money laundering. Verifying this allegation would be so simple that the SEC could pay an intern who would come to the same conclusion in less than 2 weeks.

Knight/KCG/VIRT is NOT engaged in "Bona Fide market making" in its OTC shell business. Abusive naked shorting is manipulation according to the SEC itself. It's virtually riskless. Manipulation. In fact, abusive naked shorting turns a trade with unlimited risk (a legit short) into a trade with virtually no risk (abusive naked shorting).

The effects of this manipulation (securities law violations) are evident on the Knight/KCG/VIRT balance sheet. This criminal enterprise has been insolvent on more than 1 occasion. Most recently: 2Q 2017. Which is why VIRT CEO Douglas Cifu won't "publish" KCG 2Q 2017 financials. In July/Aug 2018 Knight/KCG/VIRT teeters or is insolvent once again as a result of the activity I have detailed to the SEC over the last 7 years+ continuing unabated.

During the last 7 years+, the corrupt SEC has allowed several public offerings and 2 mergers at valuations that are complete fraud :Tangible book value. Again, ignoring its mandate to protect the investing public.

The SEC is a corrupt, criminal enterprise itself. Bought and paid for by Wall Street. As a result, criminal activity at Knight/KCG/VIRT and the OTC shell market remains a massive risk to the investing public.

Rather than shutting down this criminal activity the SEC gives speeches about the definition of "fiduciary" in Latin

https://www.sec.gov/news/speech/speech-peirce-072418

SEC.gov | What's in a Name? Regulation Best Interest v. Fiduciary

What's in a Name? Regulation Best Interest v. Fiduciary Remarks at the National Association of Plan Advisors D.C. Fly-In Forum

www.sec.gov

And brings complaints like this

https://www.sec.gov/litigation/litreleases/2018/lr24221.htm

$14,000 insider trading complaint while the multi billion fraud involving Knight/KCG/VIRT/OTC shells remains very much up and running.

Which begs the question:

WHY is the SEC changing "interpretive guidance for Whistleblowers"?

Cheers!

Christopher Diiorio

Whistleblower

From: Chris DiIorio

Sent: Monday, July 2, 2018 5:12 AM

To: rules-comments@sec.gov; oig@sec.gov; chairmanoffice@sec.gov; CHICAGO

Subject: Comment letter to proposed rules change for Whistleblowers

https://www.sec.gov/news/press-release/2018-120

I am sending this e mail per SEC instructions as comments on the SEC proposed changes to the "Interpretive Guidance" for whistleblowers.

The SEC is proposing the following interpretive guidance:

"Under the proposed guidance, in order to qualify as "independent analysis", a Whistleblower's submission must provide evaluation, assessment, or insight beyond what would REASONABLY APPARRENT to the Commission from publicly available information."

WOW.

Let's focus on the chosen words "REASONABLY APPARENT"

For example, the Madoff Ponzi scheme. Ponzi's are infinitely simple to detect, There are no counter parties for trades. So, Ponzi's SHOULD qualify as "REASONABLY APPARENT".

Yet, it took the SEC a DECADE to finally investigate.

Gross incompetence and or corruption at the SEC is not a new phenomenon.

What SHOULD be "REASONABLY APPARENT" and what ARE "REASONABLY APPARRENT" to the grossly corrupt, criminal organization known as the SEC can leave a lot to interpretation.

How many SEC attorneys did it take to come up with the term "REASONABLY APPARENT"?

The same attorneys investigating WorldCom? Enron? HealthSouth? GE? Theranos? Knight/KCG/Virtu? Deutsche Bank Mirror trades? Oh, I forgot, there was NO SEC investigation for that, etc etc etc.

The SEC failures to detect and stop "REASONABLY APPARENT" Securities Law violations are too numerous to count. The Latest: "Bitcoin is not a security." when there is settled case law that if applied would CLEARLY PROVE it is in fact a security: SEC V SG Ltd.

SEC V SG Ltd would also show Bitcoin (Like Micro cap securities Jay) is a money laundering vehicle of choice for criminals.

The SEC failure to detect and stop "REASONABLY APPARENT" securities law violations is well documented. Which begs the question: WHY is the SEC changing the definition of "independent analysis"?

The grossly corrupt SEC proposed "Interpretive guidance" with regards to the "independent analysis" for Whistleblowers is an admission of guilt rather than an attempt to collect "More pertinent information".

What the SEC is admitting with the term "REASONABLY APPARENT":

"We know there are violations of Securities Laws. We just haven't done anything about it"

Because IF a whistleblower submits a tip where the Commission is already aware of the "REASONABLY APPARENT" violation, then, WHY hasn't the SEC already brought a complaint??????

Quite the admission.

There are "REASONABLY APPARENT Securities Law violations the SEC is aware of but done ABSOLUTELY NOTHING to stop.

IF the "interpretive guidance" changes to Whistleblower information is changed as proposed, then the question for the investing public is:

WHY isn't the SEC prosecuting "REASONABLY APPARENT" Securities law violations?

Regards,

Christopher Diiorio

Whistleblower

Subject: File No. S7-16-18
From: Dom L Laviola
Affiliation: StockShortData.com

August 9, 2018

This proposal is nothing short of Grand Larceny, and the evidence of this attempted crime in progress, is within the proposal itself.

The OWB is mandated by Congress to have issued awards to whistleblowers that follow the FINAL rules the OWB has operated by and reported to the Inspector General as needing no changes.

The part of the proposal targeting independent analysis by redefining the rules in such a way as to fend off any lawsuits and prevent any grandfathering provisions, by classifying them as "clarifications," which any idiot can read the Final rules and know without any doubt that the misrepresentations being made by the OWB, are wrong.

The footnotes state that the OWB intends to dent future and EXISTING claims, if the proposal is approved, and goes on to state that even if the proposed rules are not approved, the OWB intends to substitute its own rules for the Final rules, that govern the agency.

Rather than award eligible whistleblowers that risked everything by coming forward, as mandated by Congress, the OWB has hoarded hundreds of claims without issuing a decision on them, and now seeks not only a complete revision of the rules everyone but the OWB followed, but also wants the power of God, in deciding whether the SEC 'COULD HAVE" figured it out without the whistleblowers tip, which is a condition that can be used to deny EVERY claim submitted or allow the agency to pick and choose those colleagues and fields which they are more in touch with.

They will be able for example, to decide not to award a claim, because the SEC doesnt want to make a big deal out of naked short selling cases.

Ther proposal states that the SEC has always defined the rules as they are falsely asserting them to be, and the proof of that is the fact that here they are, requesting permission to redefine...or clarify existing rules as if US citizens have no reading comprehension ability, and they go on to assume to know what Congress intended, yet the basis foir the rules from Dodd - Frank were hammered out and agreed to and voted on and the SEC had a good deal of input in the entire process.

All of the above is for the sole purpose, of allowing the SEC's OWB to deny what are presumably, award eligible claims under the majority definition of the rules, or they would not need the change in order to deny the AWARTD ELIGIBLE claims as they stand today....Not awarded to the tipsters that earned them, is defiance of the directive of Congress to issue those awards

Why would they hoard hundreds of claims such as these? I'd bet that the ones they have ready to burn in a fire, are those that are not represented by an attorney, but thats just a guess...

A better hypothesis is the fact that the SEC has had its budget cut, and sees the more than $400 million set aside for the payment of the awards the agency has hoarded

instead of paying to the people that earned it, as the means to an end. By denying the awards, that money cvan be allocated to other SEC purposes...70-90% wasnt enough for the Commission...they have to steal the 10 to 30 % the people that brought these cases to the attention of the SEC, should have been awarded already, but have not been ...in preparation for the theft of $400 million from the SEC's own whistleblowers.

This is a white collaar crime in progress that makes the crimes the SEC investigates look like shoplifting cases.

There would be no other reason that they would lie about what is an obvious directive and definitiuon of what constitutes a whistleblower....the only reason to lie, is to cover up another lie...a wrongdoing of some kind...the lies would be unneccessary if the proposal was genuine. the request to include a clarification that in no way shape or form, is fitting for the subject matter as it stands...wreaks of corruption.

The person that put those footnotes should be commended. I suspect they knew that the truth had to be known and that it would expoise the lie.

No one is THIS stupid. They are stealing 400 million from whistleblowers and assisting in whatever retaliation the whistleblowers have been subjected to, by now looking to leave them high and dry after years of waiting, with no possible means to correct the injustice...all because of a word...a lie...clarifications.

and to state that they will adopt their invented definition whether the measure is passed or not, is criminal in and of itself. This is not North Korea, Cuba , Nazi Germany or the like...we live in a democracy...perhaps the powers that be over there shoud be looked into...because this is no less than the theft of 400 million in progress..and any votes for it, should be investigated fully by auithorities...someone knows this is a theft and has help getting it done...it cannot be permitted, and those awards MUST be paid, or the SEC might as well close its doors and open a case against itself for making Wall Street look like Saints.

Every dollar taken from an award goes back to the SEC....400 million plus right now..you tell me this is about anything else, and I'll tell you that you're in on it. Grand Larceny that should be looked into criminally....Americans are NOT stupid.

This will not stand.

Do your jobs and stop screwing your own wb's. WTF is wrong with you people? Pay them. Check the news....they're dying out there waiting on you. Google it

Subject: File Number S7-16-18 Proposed Whistleblower rule amendments
From: Joe Fischer
Affiliation:

Aug. 9, 2018

I support the whistleblower rule amendments and particularly the additional tools in award determinations. There are various forms of prosecution agreements including DPAs and NPAs, and various routes to employ such as Federal departments, state attorney generals, etc. Whistleblowers come forth seeking justice and change. Their reward should not be administratively confined as it is today because they didn't choose the right venue, or the one they selected pursued agreements or results that did not yield a monetary award. The expanded tools will strengthen the whistleblower award incentive for persons to take time and maybe expose themselves to report what should be reported.

Also some whistleblowers are not represented or do not want to be represented by attorneys that help navigate with whom to make a claim. Using attorneys can also erode their potential award which is a dis-incentive for their reporting. The rule amendment would give more comfort and confidence the SEC would help as an advocate and focal point for complaints. In essence, the rule amendment would better facilitate a one-stop-shop for whistleblower bringing forward valuable information and entrust it's in good hands.

Kind regards,

Subject: File No. S7-16-18
From: Anonymous Whistleblower

August 14, 2018

I am very concerned with the changes proposed. Specifically, the proposed changes appear to be based on personal opinions rather than a concrete study.

Originally, the Whistleblower Office was set up with the expectation that it would receive 30,000 tips per year (https://www.sec.gov/rules/final/2011/34-64545.pdf).

If the Whistleblower office is unable to handle the current number of tips (which is much lower than 30,000 per year) than the SEC should allocate more staff and resources to improving the efficiency of the operation.

Subject: File No. S7-16-18
From: Peter Sivere

August 14, 2018

"Instead, the DOJ required the company to pay $12.9 million in restitution to HP and disgorge any profits."

So the DOJ used a whistle blower's tip to collect restitution but because the SEC does not take enforcement action, the whistle blower is not eligible for an award.

The SEC even asked for the contact at the FBI, so why did the SEC not act? Had a call to the FBI not been taken, who knows if the SEC would have ever relayed the message to them or collected any restitution.

The SEC has some explaining to do to the public.

The DOJ nailed it but unfortunately for the whistle blower that does not count for being eligible for an SEC award.

https://www.schnader.com/files/Publication/7fbc43bd-13e7-42f2-8fa0-8b2866520cfc/Presentation/PublicationAttachment/5b5a5e92-55bd-4deb-b696-928e4b6ff7f7/Alert - DOJ Extends Self-Reporting Under FCPA Enforcement Policy.pdf

Subject: File No. S7-16-18
From: Anonymous Anonymous

August 15, 2018

I am very concerned that these rules and the rule making process is not being executed in good faith. There appears to be a lack of concrete data on the process and a unusual swiftness in which these changes were proposes and voted on.

Moreover, a more concerning fact is that the months immediately preceeding and proceeding the release of these rules there has been a significant slowdown in the adjudication of Whistleblowr Claims. Is the Commission trying to delay the processing of Whistleblower Claims so they can apply these new rules? This deserves additional attention and I hope the SEC can take action to increase the confidence in the Whistlebloer Program and not decrease confidence.

COMMENTS ON PROPOSED AMENDMENTS TO THE COMMISSIONS WHISTLEBLOWER PROGRAM RULES

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
rule-comments@sec.gov

RE: File Number S7-16-18

Dear Mr. Fields,

I appreciate the opportunity to comment on the above referenced proposed rule changes (the "Proposed Rule Changes") by the Securities and Exchange Commission (the "Commission" or "SEC").

Although as it stands, the management and staffing of the whistleblower program ("WP") accounts for a fraction of the SEC's annual budget, the administration of the WP can make or break confidence in our financial markets and save or fail victims of major financial frauds. While other rules or rule changes may only affect a sub-set of financial markets, the WP program is all-including and any changes to the program should only be made after extensive thought and consideration.

As a long time whistleblower myself, I feel that I am uniquely positioned to provide perspective and comment. Indeed, for over the past 3 years I have had routine interactions with the SEC's Office of the Whistleblower (the "OWB") and SEC enforcement staff. Given my experience I feel obligated to provide first hand comment on the areas of the program that are performing well as well as areas needing significant improvement.

As an individual who has made significant personal and professional sacrifices in the hopes of stopping fraud I believe the proposed rule changes will only detract from the WP and significantly disincentive would-be-whistleblowers from reporting fraud to the SEC.

It is my concern that the Proposed Rule Changes:

1. **Require significant additional consideration before being implemented;**

2. **Should be expanded in scope to tackle many other problems the OWB is facing - such as inadequate staffing and poor communication;**

3. **Should take into consideration the viewpoints, opinions, and discussion with actual whistleblowers to avoid the interjection of bias and personal opinions from those who have not personally been in the position of a whistleblower;**

4. **Should be put on hold pending the public release of objective operating metrics. Without factual data on how the OWB is using its time, resources, and budget, it is impossible for the public to submit useful comments for consideration;** and

5. **Should be subject to a costs and benefit analysis and consideration of alternate solutions by the Office of Information & Regulatory Affairs.**

The current Proposed Rule Changes appear to be very premature and the apparent rushed nature of these Proposed Rule Changes are very dangerous.

Put another way, as they are now, the Proposed Rule Changes will likely lead the SEC to make significant miscalculations as it did when it originally estimated 30,000 whistleblower tips per year.[1] Given the current status of the program and years of operating history it would be careless to make seemingly unsupported changes to the program without a full and complete discussions and analysis of the operating data. If the Proposed Rule Changes pass without an informative discussion it is likely that these Proposed Rule Changes will be off by a factor of 10,000% as the SEC's original estimation of 30,000 tips per year was compared to actual tips of 3,001 per year in 2012.[2]

It is my hope that the SEC will consider further consideration of rule changes and revisit the Congressional history of whistleblower rules before making drastic changes to a program that thousands of would be whistleblowers, billions of dollars in proceeds, and the entirety of the global financial markets.

I am happy to provide additional information or elaboration that is helpful to the SEC.

Sincerely Yours,
Anonymous

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[1] https://www.sec.gov/rules/final/2011/34-64545.pdf
[2] Although the SEC estimated and constructed the OWB to intake 30,000 tips per year, it only received 3,001 tips. See https://www.sec.gov/news/press-release/2012-2012-229htm

Subject: File No. S7-16-18
From: Peter Sivere

August 16, 2018

The Project Tesla Fraud was referred to the SEC OWB by Denver Enforcement on October 4, 2016 this was two years prior to the DOJ Indictment.

The SEC has still not taken any action against Barclays, in contrast to the DOJ.

WB is entitled to $0 of what the DOJ has collected. Had the SEC collected the money possible award 10% to 30%, $1,289,601 to $3,868,803.

Pursuant to this letter agreement, Barclays agrees to pay $12,896,011 USD in combined restitution and disgorgement (the "Disgorgement Amount") to the U.S. Treasury. The
Disgorgement Amount shall be offset by any amount that Barclays pays to HP as restitution for the offense conduct described above (the "Restitution Amount").

-----Original Message-----
From:
To:
Sent: Tue, Oct 4, 2016 10:01 am
Subject: RE: TCR - 1441991965487

,

I have referred your inquiry to the SECs Office of the Whistleblower, which I believe has been in contact with you. In the event they have not, you may reach that Office at 202 551-4790. Please contact the Whistleblowers Office going forward.

Regards,

File Number S7-16-18

COMMENTS ON PROPOSED AMENDMENTS TO WHISTLEBLOWER PROGRAM RULES

Mr. Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: File Number S7-16-18

Dear Mr. Fields,

I appreciate the opportunity to comment on the above referenced proposed rule changes (the "Proposed Rule Changes") by the Securities and Exchange Commission (the "Commission" or "SEC").

I would like to express my concern that the Proposed Rule Changes run contrary to statute, intent, and legislative history. A plain reading of the statute and legislative history shows that there was never any intent or discussion about lowering the awards available for Whistleblowers. Furthermore, the Commission through the OIG and its Annual Dodd-Frank Whistleblower report has never once mentioned or discussed the lowering of awards. This is of great concern and has definitively discouraged Whistleblowers from reporting wrongdoing.

Additionally, the Proposed Rule Changes do not provide any more certainty to Whistleblowers and instead provide more confusion which will motivate them to remain quiet and not submit a Whistleblower tip. Among the various vague aspects of the Proposed Rule Changes is the concern of who these new rules would apply to? Will individuals that previously submitted Whistleblower Tips but have yet to file a Claim for An Award be subject to the Proposed Rules Changes or the older rules? Please clarify this.

Finally, I would like to express my concern that the Proposed Rules Changes are misguided in that they do not focus on the very cleary intent of Congress and legislative history. In fact, the SEC's Whistleblower Program and Whistleblower Office has often strayed away from the original Congressional intent and legislative history - yet these Proposed Rule Changes do not address the more clear cut statutory requirements and instead appear to based off personal opinions and subjective concerns about awarding money to those who blow the whistle.

To provide more clarity, I have attached an email chain along with attachments which shows that the SEC's Whistleblower Program is not properly meeting its statutory requirements to maintain the confidentiality of Whistleblower Tips. It is my believe that the proposed rules should focus on solving fundamental cracks in the Whistleblower Program such as the problems illustrated in the attached email and documents.

Sincerely Yours,

Taylor Amarel

URGENT - Action Required - Potential Violation of Dodd-Frank Whistleblower Rules

Sent: **May 9, 2018 12:13 PM**

From: **Taylor.s.amarel taylor.s.amarel@protonmail.com**

To: **Norbergj Norbergj@sec.gov, oig oig@sec.gov**

CC: **whistleblower@judiciary-rep.senate.gov whistleblower@judiciary-rep.senate.gov**

Dear Ms. Norberg,

As you know, I have routinely expressed my concerns that sending Whistleblower tip information via mail is highly risky, insecure, and not compatible with the requireonments of Dodd-Frank that require the SEC to take action to maintain the confidentiality of a Whistleblower. I have routinely voiced these concerns and requested that I be given access to an Accellion link to transfer files to avoid the unnecessary risks associated with shipping items. Although I repeated my concerns I did not get a satisfactory answer and was still requested to ship large document sets via mail.

Put shortly, and as supported by the attached pictures: My identity as a Whistleblower has been exposed as the result of the illegal opening of my package sent to the SEC and the theft of a flash drive containing large amounts of highly confidential (and extremely useful) information that was requested by SEC staff in relation to at least one ongoing investigation.

Now, I wish to express my very real and serious concerns as a result of what just happened, despite my repeated warnings. I want the SEC to immediately take remedial action to:

1. Investigate why package LK156275627HK was not delivered to your office;
2. At what point and why did the package get marked as "return to sender";
3. Did SEC or USPS employees interact or influence the shipping of the package;
4. When, where, how, and why, was the package clearly ripped open and the flash drive taken out (see attached pictures); and
5. Take immediate action to ensure that these faults in the sending of information are not allowed to happen in the future, including but not limited to launching an investigation into USPS delivery services, SEC mail receiption, etc.

Ms. Norberg, this at least the second time a flash drive has been stolen from mailings to the SEC. Please provide an alternative method to submit information. I will be following up with a certified letter asking for a formal investigation into what is going on.

Best,
Taylor Amarel

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7 files attached

WhatsApp Image 2018-05-09 at 12.00.14 PM.jpeg (157.14 KB)

WhatsApp Image 2018-05-09 at 12.00.14 PM (1).jpeg (116.31 KB)

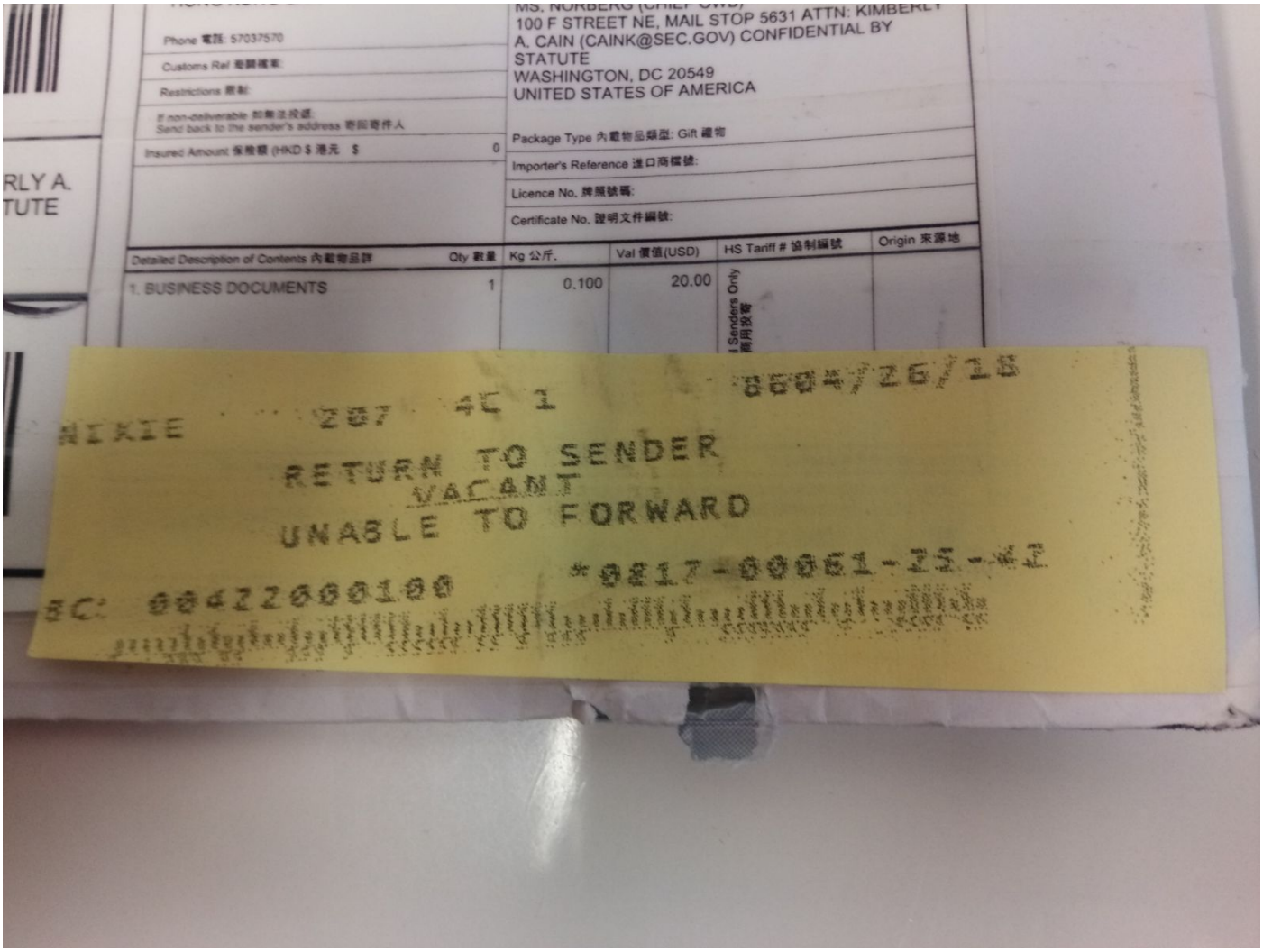
WhatsApp Image 2018-05-09 at 12.00.13 PM.jpeg (73.59 KB)

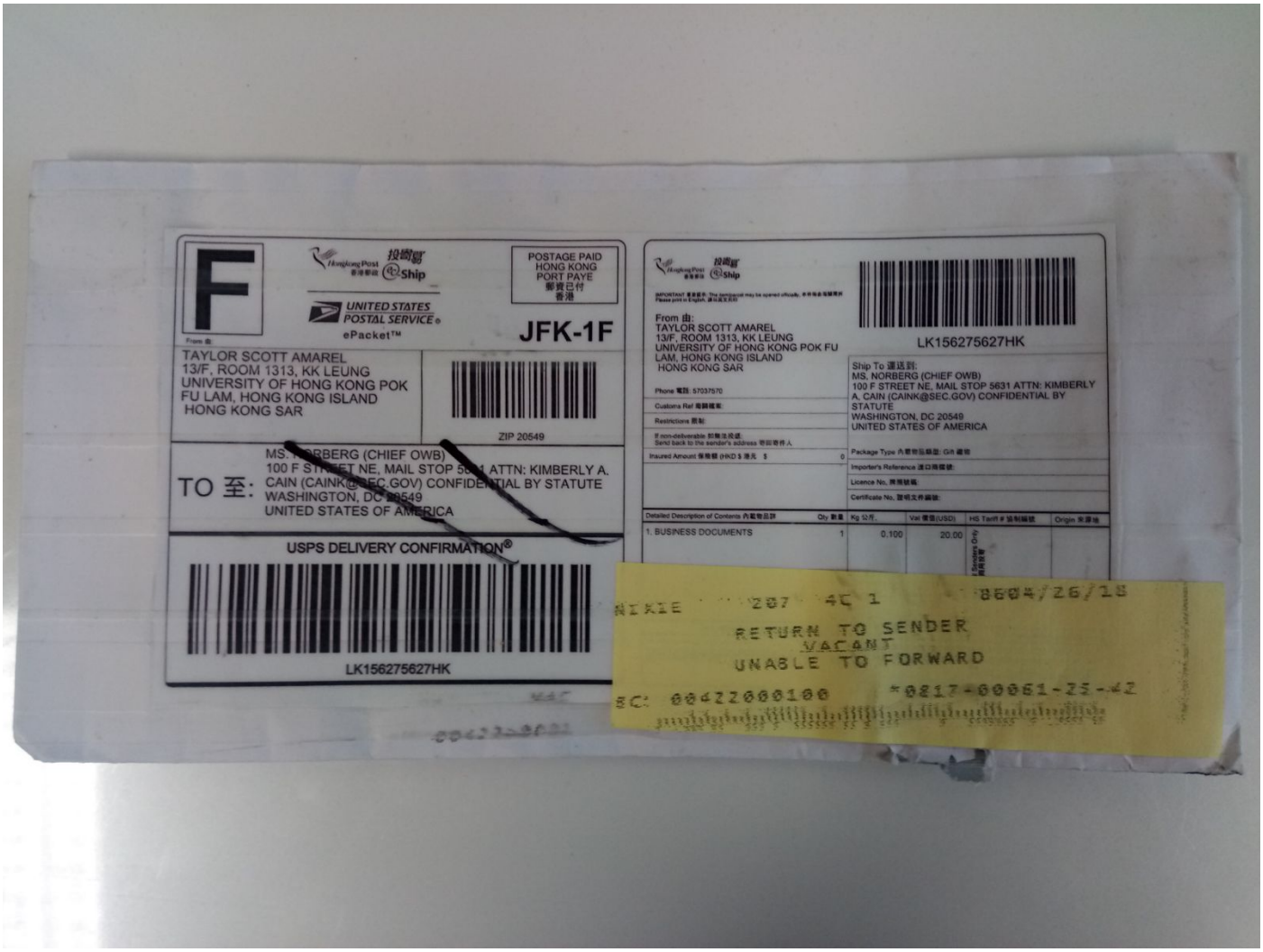
WhatsApp Image 2018-05-09 at 12.00.13 PM (1).jpeg (112.33 KB)

WhatsApp Image 2018-05-09 at 12.00.12 PM.jpeg (86.28 KB)

WhatsApp Image 2018-05-09 at 12.00.12 PM (1).jpeg (108.59 KB)

WhatsApp Image 2018-05-09 at 12.00.11 PM.jpeg (147.69 KB)


Phone 電話: 57037570
Customs Ref 報關檔案:
Restrictions 限制:
If non-deliverable 如無法投遞:
Send back to the sender's address 寄回寄件人
Insured Amount 保險額 (HKD $ 港元 $ 0
MS. NORBERG (CHIEF OWB)
100 F STREET NE, MAIL STOP 5631 ATTN: KIMBERLY
A. CAIN (CAINK@SEC.GOV) CONFIDENTIAL BY
STATUTE
WASHINGTON, DC 20549
UNITED STATES OF AMERICA
Package Type 內載物品類型: Gift 禮物
Importer's Reference 進口商檔號:
Licence No. 牌照號碼:
Certificate No. 證明文件編號:
Detailed Description of Contents 內載物品詳
Qty 數量
Kg 公斤.
Val 價值(USD)
HS Tariff # 協制編號
Origin 來源地
1. BUSINESS DOCUMENTS
1
0.100
20.00
For Senders Only 僅供寄客
8804/26/18
NIXIE 207 4C 1
RETURN TO SENDER
VACANT
UNABLE TO FORWARD
*0817-00061-25-42
BC: 004220000100



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TAYLOR SCOTT AMAREL
13/F, ROOM 1313, KK LEUNG
UNIVERSITY OF HONG KONG POK
FU LAM, HONG KONG ISLAND
HONG KONG SAR

ZIP 20549

TO 至:
MS. NORBERG (CHIEF OWB)
100 F STREET NE, MAIL STOP 5631 ATTN: KIMBERLY A.
CAIN (CAINK@SEC.GOV) CONFIDENTIAL BY STATUTE
WASHINGTON, DC 20549
UNITED STATES OF AMERICA

USPS DELIVERY CONFIRMATION®

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IMPORTANT 重要提示: The item(s)/gift may be opened officially. 此物品/此禮物可供開啟
Please print in English. 請以英文填寫

From 由:
TAYLOR SCOTT AMAREL
13/F, ROOM 1313, KK LEUNG
UNIVERSITY OF HONG KONG POK FU
LAM, HONG KONG ISLAND
HONG KONG SAR

Phone 電話: 57037570

Customs Ref 海關檔案:

Restrictions 限制:

If non-deliverable 如無法投遞,
Send back to the sender's address 寄回寄件人

Insured Amount 保險額 (HKD $ 港元 $) 0

LK156275627HK

Ship To 運送到:
MS. NORBERG (CHIEF OWB)
100 F STREET NE, MAIL STOP 5631 ATTN: KIMBERLY
A. CAIN (CAINK@SEC.GOV) CONFIDENTIAL BY
STATUTE
WASHINGTON, DC 20549
UNITED STATES OF AMERICA

Package Type 內裝物品類型: Gift 禮物

Importer's Reference 進口商檔號:

Licence No. 牌照號碼:

Certificate No. 證明文件編號:

Detailed Description of Contents 內裝物品詳	Qty 數量	Kg 公斤	Val 價值 (USD)	HS Tariff # 協制編號	Origin 來源地
1. BUSINESS DOCUMENTS	1	0.100	20.00		

(If Senders Only 僅供寄件人)

NIXIE 207 4C 1 8604/26/18
RETURN TO SENDER
VACANT
UNABLE TO FORWARD
BC: 0047Z000100 *0817-00061-25-42

Subject: File No. S7-16-18
From: Anonymous Anonymous

August 17, 2018

I am concerned that the proposed rules are will not affect the changes desired by Whistleblowers and will result in a decrease in the effectiveness of the Whistleblower program.

In addition to the comments by others, the proposed rule changes appear to contradict the plain reading of the statute, congressional intent, and legislative history.

Moreover, the proposed changes to allow summary denials and the subjective exclusion of "reasonably apparent" information will not result in a drastic improvement of Whistleblower processing times.

Indeed, a significant portion of the time spent reviewing a Whistleblower claim is spent waiting for the Regional SEC Staff to provide information to the Whistleblower Office.

The proposed rule changes do nothing to address the unreasonably long amount of time it takes to obtain all the information necessary for the Claims Review Staff.

If the SEC is honest in its desire to decrease the time Whistleblowers spend waiting for a claim to be processed a more efficient process should be used that removes unnecessary waiting time. The proposed rule changes will have a limited effect on waiting times but will cause significant doubt for would-be Whistleblowers.

To this end, I respectfully request that the SEC do a complete study to quantitatively determine why a backlog of claims exists, especially since that Whistleblower office was setup to handle 30,000 tips per year. Based on the SEC's disclosures and operations the delays are more likely due to ineffective and inefficient claims processes and data tracking systems - yet, unfortunately, the proposed rule changes do nothing to fix this issue.

I would like to ask: What is the average time the Whistleblower Office and Claims Review Staff takes to obtain all the necessary information, documents, or statements from Regional Offices and Staff?

COMMENTS ON PROPOSED AMENDMENTS TO WHISTLEBLOWER PROGRAM RULES

Mr. Brent J. Fields:

RE: File Number S7-16-18

Dear Mr. Fields,

I appreciate the opportunity to comment on the above referenced proposed rule changes (the "Proposed Rule Changes") by the Securities and Exchange Commission (the "Commission" or "SEC").

If implemented, the Proposed Rule Changes would significantly disincentivize would-be Whistleblowers from reporting wrongdoing the the Commission and therefore hinder the SEC's ability to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

Specifically, the vague language that would allow the SEC to deny a Whistleblower an award or protections based on whether the information is "publicly" available is of grave concern. As Congress and the SEC is well aware, Harry Markopolos was able to detect one of the largest ponzi-schemes in history using publicly available knowledge and information. However, it took extraordinary efforts on his part to report this wrongdoing and was routinely turned down by SEC Staff, who were none-the-wiser, and unable/unwilling to detect the fraud themselves. If the SEC implements the proposed rules as written, the broad discretion given to the SEC to deny Whistleblowers based off the source of the information will lead to less Whistleblowers willing to come forward and significantly fracture the Whistleblower program.

The language used by the SEC is beyond scary to a Whistleblower who is thinking of mortgaging his future professional and personal life in order to help the SEC carry out its mission - not only that but the Congressional intent and legislative history specifically took input from Harry Markopolos and at no point was there discussion or even intent to deny Whistleblowers the right to report fraud based on public information, to the contrary the intent and plain reading of the statutes specifically provides for and was meant to encourage other individuals like Harry Markopolos who can report significant fraud that is off the SEC's radar.

I would encourage the SEC to review the Congressional intent and legislative history of Dodd-Frank as well as watch video Congressional testimonies that clearly illustrate why implementing the Proposed Rule Changes would be disastrous to the effectiveness of the Whistleblower program as well as to the confidence in our financial markets.

To illustrate this point further, I wish to enquire to the SEC what exactly does "reasonably apparent" mean? The attached document is a screenshot of an EDGAR filing that shows a company under the SEC's jurisdiction violating Cybersecurity regulations and SEC rules by posting their companies bank account credentials online.[1] Would the SEC consider this "reasonable apparent" because the data is on a public SEC website? If so, where is the line drawn?

Anonymous

[1] This was reported to the SEC in 2015, yet no apparent action to remove the sensitive information or investigation of the subject entity has taken place.

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Fast Business Funding will also require viewing access to your bank account, prior to funding, as part of our underwriting process.

Please fill out the form below with the information necessary to access your account.

* Be sure to indicate capital or lower case letters.

Name of Bank: Chase

Bank portal website: Chase.com

Username: yellowcap3 all lower case

Password: creative4 all lower case

Security Question / Answer 1: _____

Security Question / Answer 2: _____

Security Question / Answer 3: _____

Any other information necessary to access your account:

Sec. Code 8599 FIN Lower Case

Source:
https://www.sec.gov/Archives/edgar/data/1497074/000114420415005996/ex4-25pg11.jpg

Subject: File No. S7-16-18
From: Peter Sivere

August 20, 2018

We propose an amendment that would expressly allow for the payment of awards based on money collected under these types of arrangements - NPA's, DPA's.

Need to include Declination Letters.

Subject: File No. S7-16-18
From: Anonymous Anonymous

August 20, 2018

I find that the Proposed Rules do not adequate address the problems currently inflicting the Whistleblower Program. The Proposed Rules appear to "cherry pick" problems and assume opinions of stakeholders rather than concretely show the concerns of interested parties.

I would request that the SEC, the OWB, and the Commissioners read the problems discussed within this article: http://www.brokeandbroker.com/2735/sec-oig-owb/ - and include solutions to the problems mentioned.

(Attached File #1: s71618-4239056-172917.pdf)

SEC Whistleblower Program Is A Black Hole Of Despair (http://www.brokeandbroker.com/2735/sec-oig-owb/)

April 9, 2015

As part of my law practice, I represent whistleblowers, and for several years, I have been representing one such client before the Securities and Exchange Commission ("SEC") and dealing with the federal regulator's *Office of the Whistleblower* ("OWB"). Frankly, the experience has been incredibly frustrating. I simply cannot persuade the OWB that it needs to adjust its mind-set and understand that my client is not an adversary or a defendant/respondent in a criminal/regulatory case. If OWB's attitude doesn't change, it will undermine the SEC's Whistleblower Program and dissuade informants from coming forward and deter lawyers from representing those individuals on a contingency basis.

As a former regulator with two Wall Street self-regulatory organizations, I fully understand and respect the need for prosecutors and regulators to scrupulously maintain whatever confidentiality is mandated for investigations and trials/hearings. Since I represent individuals and entities that are often industry defendants/respondents **and** I also represent defrauded public customers, I am particularly vested in ensuring that the regulatory and criminal justice processes remain legal and ethical. I understand the rules of the game and I honor the rulebook. It is in that spirit that I urge the SEC to implement more deadlines within its Rule 21F. Also, I urge the SEC to investigate its *Office of the Inspector General* ("OIG") and determine whether the use of third-party service providers is appropriate for the intake of complaints directed to that office.

90 Days to Claim An Award

Section 21F of the Securities Exchange Act of 1934: *Securities Whistleblower Incentives and Protection*, requires the SEC "to pay awards, subject to certain limitations and conditions, to whistleblowers who provide the Commission with original information about violations of the federal securities laws." In furtherance of Exchange Act Section 21F, the SEC promulgated Rule 21F.

Under Rule 21F-10 *Procedures for making a claim for a whistleblower award in SEC actions that result in monetary sanctions in excess of $1,000,000.*, we are informed in relevant part that:

> (b) To file a claim for a whistleblower award, you must file Form WB-APP, Application for Award for Original Information Provided Pursuant to Section 21F of the Securities Exchange Act of 1934 (referenced in § 249.1801 of this chapter). You must sign this form as the claimant and submit it to the Office of the Whistleblower by mail or fax. All claim forms, including any attachments, must be received by the Office of the Whistleblower within ninety (90) calendar days of the date of the Notice of Covered Action in order to be considered for an award.

As such, after a whistleblower has submitted a *Form TCR* informing OWB of the nature of the information to be disclosed, after OWB has forwarded the whistleblower to SEC Staff for purposes of investigation, after a matter has been settled or adjudicated, and after the SEC publishes a *Notice of Covered Action* ("NoCA"), we arrive at the stage of the process where claims for an award may be made by the whistleblower. As set forth in Rule 21F-10(b), such claims must be made via *Form WB-APP* within 90 calendar days after the publication of a *NoCA*. If you fail to meet that deadline, your subsequent efforts to claim an award may be rebuffed as untimely filed.

Following An Evaluation

In contrast to the 90 days for filing the *Form WB-APP* in 21F-10(b), note the lack of deadlines in Rule 21F-10(d):

(d) Once the time for filing any appeals of the Commission's judicial or administrative action has expired, or where an appeal has been filed, after all appeals in the action have been concluded, the staff designated by the Director of the Division of Enforcement ("Claims Review Staff") will evaluate all timely whistleblower award claims submitted on Form WB-APP (referenced in § 249.1801 of this chapter) in accordance with the criteria set forth in these rules. In connection with this process, the Office of the Whistleblower may require that you provide additional information relating to your eligibility for an award or satisfaction of any of the conditions for an award, as set forth in § 240.21F-(8)(b) of this chapter. Following that evaluation, the Office of the Whistleblower will send you a Preliminary Determination setting forth a preliminary assessment as to whether the claim should be allowed or denied and, if allowed, setting forth the proposed award percentage amount.

Under 21F-10(d), a *Claims Review Staff* ("CRS") is designated to "evaluate all timely " claims. When is the designation of the CRS supposed to be made? After how many days or weeks . . . by what deadline or guideline? No . . . that is not set forth in the Rule.

After CRS is appointed, how long does the Rule provide for the evaluation of a *Form WB-APP*? That too is not designated.

As best as I can discern, the deadlines for completion under Rule 21F-10(d) are *whenever* CRS is appointed, *whenever* CRS gets around to evaluating a *Form WB-APP*, and *following whenever* that evaluation is completed. *Whenever* and *following* are amorphous concepts so meaningless as to not even rise to the level of "vague."

How long is permitted for OWB to take before forwarding to the whistleblower the *Preliminary Determination*? That time is purportedly the elastic "following the evaluation."

Rule 21F-10(d) injects far too much uncertainty into the process and causes friction between claimants and their attorneys, on the one hand, and, on the other hand, OWB. This section of the Rule is a horrific black hole in which time ceases to exist.

30 and 60 Day Deadlines For Contesting Preliminary Determination

Let's assume that you are an unhappy camper upon reading the *Preliminary Determination*. Your claim has been denied. You are not credited with what you deem a fair percentage of the award. Here are your options, in pertinent part, under Rule 21F-10(e):

(e) You may contest the Preliminary Determination made by the Claims Review Staff by submitting a written response to the Office of the Whistleblower setting forth the grounds for your objection to either the denial of an award or the proposed amount of an award. The response must be in the form and manner that the Office of the Whistleblower shall require. You may also include documentation or other evidentiary support for the grounds advanced in your response.
(1) Before determining whether to contest a Preliminary Determination, you may:
(i) Within thirty (30) days of the date of the Preliminary Determination, request that the Office of the Whistleblower make available for your review the materials from among those set forth in § 240.21F-12(a) of this chapter that formed the basis of the Claims Review Staff's Preliminary Determination.
(ii) Within thirty (30) calendar days of the date of the Preliminary Determination, request a meeting with the Office of the Whistleblower; however, such meetings are not required and the office may in its sole discretion decline the request.
(2) If you decide to contest the Preliminary Determination, you must submit your written response and supporting materials within sixty (60) calendar days of the date of the Preliminary Determination, or if a request to review materials is made pursuant to paragraph (e)(1) of this section, then within sixty (60) calendar days of the Office of the Whistleblower making those materials available for your review. . .

Under Rule 21F-10(e) a whistleblower must request the production of further materials or a meeting with OWB within 30 days of the issuance of the *Preliminary Determination*. Note that even when a meeting with OWB is timely requested, that office is "not required and the office may in its sole discretion decline the request." How long does OWB have to decline your request for that meeting? That's not set forth in the Rule.

If you decide to contest the *Preliminary Determination*, you must do so within 60 calendar days of the determination or the provision of requested materials by OWB. Perhaps by now you are noticing the developing pattern: *Deadlines exist in order to prompt action by whistleblowers but when action is required by the SEC, the Rule fails to spell out specific deadlines*..

Considering Your Contest of the *Preliminary Determination*

Assuming that you timely contested the *Preliminary Determination,* how long does CRS have to consider your arguments? Rule 21F-10(g) explains that:

(g) If you submit a timely response pursuant to paragraph (e) of this section, then the Claims Review Staff will consider the issues and grounds advanced in your response, along with any supporting documentation you provided, and will make its Proposed Final Determination.

Once again, nary a word about 30 days or 60 days or any deadline whatsoever. Under the Rule, CRS is granted whatever time is inherent in the word "consider." *Are we talking days, weeks, months, or years?* In response to such a request for guidance, OWB explains that the application is being evaluated, there are many other applications pending, and you should be patient.

30 Days Notice Of *Proposed Final Determination*

Next, we truly fall into an abyss. As if by alchemy, the *Preliminary Determination* is rendered a *Proposed Final Determination*. When the *Proposed Final Determination* is submitted to the Commissioners for approval or denial, you would imagine that at this point in time, we would have some certainty as to the deadline for their action. Consider Rule 21F-10:

(h) The Office of the Whistleblower will then notify the Commission of each Proposed Final Determination. Within thirty 30 days thereafter, any Commissioner may request that the Proposed Final Determination be reviewed by the Commission. If no Commissioner requests such a review within the 30-day period, then the Proposed Final Determination will become the Final Order of the Commission. In the event a Commissioner requests a review, the Commission will review the record that the staff relied upon in making its determinations, including your previous submissions to the Office of the Whistleblower, and issue its Final Order.

(i) The Office of the Whistleblower will provide you with the Final Order of the Commission.

How long can OWB sit with a *Proposed Final Determination* before presenting it to the Commissioners? There is no deadline. There is, however, a 30-day limit on the time any Commissioner may request a review; and if no such review is sought, the *Proposed Final Determination* become a *Final Order*.

How soon after the passage of the 30-day waiting period must the proposal be drafted into a *Final Order* and then published? That is not prescribed.

Although Rule 21F(10)(i) provides that OWB will provide whistleblower claimants with the *Final Order*, oddly, there is no deadline for such action.

In my handling of a matter that went to a *Proposed Final Determination,* OWB refused to inform me as to the date when the notification was provided to the Commissioners, thus making it impossible for me to calculate the expiration of the 30-day deadline. Even after a period far in excess of what I deemed to be 30 days had passed, OWB continued to stonewall queries as to when it would issue a *Final Order* and provide same to my law firm.

Getting Paid By The "Following"

Finally, let's assume that your patience was rewarded and you are entitled to an award. Let's consider, in pertinent part, the mechanics of cutting the check and getting the dollars into your hands;

§ 240.21F-14 Procedures applicable to the payment of awards.

(a) Any award made pursuant to these rules will be paid from the Securities and Exchange Commission Investor Protection Fund (the "Fund").
(b) A recipient of a whistleblower award is entitled to payment on the award only to the extent that a monetary sanction is collected in the Commission action or in a related action upon which the award is based.
(c) Payment of a whistleblower award for a monetary sanction collected in a Commission action or related action shall be made following the later of:
(1) The date on which the monetary sanction is collected; or
(2) The completion of the appeals process for all whistleblower award claims arising from:
(i) The Notice of Covered Action, in the case of any payment of an award for a monetary sanction collected in a Commission action; or
(ii) The related action, in the case of any payment of an award for a monetary sanction collected in a related action. . .

Under Rule 21F-14(a) we're simply told that the source of funds will be from the SEC *Investor Protection Fund*. Under Rule 21F-14(b) we're told that claimants will get paid only after the SEC has actually "collected" the sanction. Under (c) we're told

that payment shall be made following the later of the date of collection or the completion of the *NoCA* appeals process or a related action.

There is a serious flaw in that rulemaking. It's one that many lawyers and whistleblowers have missed.

There is no date certain or even a time limit by which the SEC must pay you -- even after it is in full receipt of all fines and even after the lapse of all times for appeals. You may think that it's provided in the rule, but it's not. What is provided is simply that payment "shall be made following . . ." *Following* as in one day, one week, one month, one year, one decade???? Even after the monetary sanction is collected and/or the appeals process is complete, there is no sense of urgency, there is no limit upon how much longer the SEC may take to render payment of the award. "

Case In Point

In light of the need to preserve a client's confidentiality, I am constrained to refer to the informant solely as "the Whistleblower client," and to avoid characterizations or references to the Respondent or the underlying investigation/matter. I will note that the Whistleblower client had no liability or exposure in the underlying matter and the client's cooperation was substantial and material during the investigative phase.

> **SIDE BAR:** The Whistleblower client's and my experience with the SEC Divisional Staff conducting the investigation was superb. In my three decades of Wall Street experience, I have rarely dealt with more competent and courteous regulators. The difficulties set forth in this article are not about the SEC Divisional Staff, who did the grunt work, but about my dealings with the OWB Staff and the nameless, faceless personages of the OIG.

At various stages in my representation of the Whistleblower client, I found myself confronted by those timeless gaps in the SEC's Rule 21F noted above.After the publication of the *NoCA* and my client's timely submission of *Form WB-APP*, I sought guidance as to how long it would likely take for the issuance of a *Preliminary Determination*. I asked OWB if they thought it would be days, weeks, months or years. We were essentially told that it would take whatever time it would take and to be patient.

When the determination was finally rendered, my whistleblower client did not object to the proposed award and waived the right of appeal; notwithstanding, we then went through another waiting game. When we asked OWB to provide us with the date of submission of the *Proposed Final Determination* to the Commissioners, that was declined -- thus making it impossible for me to calculate when the 30-day review period had expired.

You may imagine my exasperation when trying to divine the date on which a *Proposed Final Determination* and an *Order* would be forthcoming. In response to such queries for guidance, OWB gave polite but essentially non-responsive replies.

Understand that we are talking about an SEC regulatory matter that has been going on for several years from the date of the cited misconduct through the processing of the *WB-APP*. The evaluation of my client's eligibility for an award has now taken longer than the investigation by the SEC of the Respondent's misconduct!

November 2014 OIG Complaint

In November 2014, after several more failed attempts to elicit guidance from OWB as to where in the pipeline my Whistleblower client's award stood, I telephoned the SEC OIG and filed a complaint against OWB's policies, procedures, and practices pertaining to the office's refusal to provide me and my client with reasonable guidance as to how much longer it would like take until an approval or denial was forthcoming. Pursuant to OIG's website mission statement, my complaint satisfied several of their mandates:

> Mission of the SEC Office of Inspector General (http://www.sec.gov/about/offices/inspector_general_about.shtml#.VSQNe_nF98E)
>
> The mission of the Office of Inspector General (OIG) is to promote the integrity, efficiency, and effectiveness of the critical programs and operations of the U.S. Securities and Exchange Commission. This mission is best achieved by having an effective, vigorous, and independent office of seasoned and talented professionals. Those individuals carry out the OIG's mission by:
>
> - conducting independent and objective audits, evaluations, inspections, investigations, and other reviews of Commission programs and operations;
> - preventing and detecting fraud, waste, abuse, and mismanagement in Commission programs and operations;
> - identifying vulnerabilities in Commission systems and operations and recommending constructive solutions;
> - offering expert assistance to improve Commission programs and operations;

- communicating timely and useful information that facilitates management decisionmaking and the achievement of measurable gains; and
- keeping the Commission and the Congress fully and currently informed of significant issues and developments.

The OIG uses a curious process for the intake of complaints about the SEC and its divisions and staff. You can utilize an online filings system (http://iwf.tnwgrc.com/secoig/InternationalSplashPage/tabid/183/language/en-US/Default.aspx) or a toll-free hotline telephone number. Apparently both are serviced by third-party service provider. I opted to file my grievance via telephone. The telephone call in November 2014 was protracted, during which time I was asked a series of questions (likely from a script) and, in response, I provided names, dates, rules, and events in support of my complaint. I know that OIG got the complaint because they provided me with a Report number and sent to me this email on November 20, 2014:

> OIG
> 4:14 PM (0 minutes ago)
>
> to me
> Dear Mr. Singer,
>
> Thank you for contacting the U.S. Securities and Exchange Commission (SEC) Office of Inspector General (OIG). We have received the report of your complaint (Report No. 120583993) concerning the SEC Office of the Whistleblower. We will contact you if we require further information.
>
> Thank you again for contacting the OIG.
>
> Respectfully,
>
> The Office of Inspector General
> U.S. Securities and Exchange Commission
> 100 F Street, NE, Washington, DC 20549-2977
> fax 202-772-9265; oig@sec.gov

OIG Silence

After about a month of not hearing back from anyone at OIG, I telephoned the third-party service provider and was told that they had my complaint on file and someone would get back to me if needed.

After still not having heard back from anyone at OIG and encountering yet further stonewalling by OWB, on April 2, 2015, I again telephoned OIG's third-party provider, received the same confirmation of the complaint being on file, received a confirmation of my earlier query for a status update, and was assured that they would inform OIG of my concerns. Growing increasingly frustrated with the runaround, I also sent this email to OIG's publicly disclosed OIG@sec.gov email address on April 2, 2015:

> Query from Bill Singer, Esq. # 120583993
>
> Bill Singer
> Apr 2 (4 days ago)
>
> to oig
>
> On or about November 20, 2014, I submitted an initial complaint through your telephonic third-party service provider but have never had any follow-up communication from anyone in OIG. The number assigned to the matter was 120583993. I have left two queries with your third-party service but have not had any response to either during the past four-plus months.
>
> Bill Singer

Talk To OWB About Your Complaints About OWB

In response to either or both the April 2 telephone call and email, OIG replied on April 3, 2015, with an email that referenced two attached PDF files, one of which included the following message:

From: OIG
To:
Subject: SEC OIG Hotline Report No. 120583993
Date: Friday, April 03, 2015 8:16:00 AM

Dear Mr. Singer,

For information about the administration of the SEC's Whistleblower Program, you should visit the website www.sec.gov/whistleblower or contact the SEC Office of the Whistleblower directly at (202) 551-4790.

Respectfully,

The Office of Inspector General
U.S. Securities and Exchange Commission
100 F Street, NE, Washington, DC 20549-2977
fax 202-772-9265; oig@sec.gov

In response to the above OIG message, on April 3, 2015 I emailed this reply:

I do not seek information about the administration of the SEC's Whistleblower program. I am a 33-year veteran industry attorney and am seeking to prompt an investigation by OIG into the manner in which OWB administers the program based upon a number of troubling experiences that I have encountered when dealing with the office.

Despite having cooperated fully with the intake procedures that OIG has implemented, it seems that OIG either lost, destroyed, or misplaced the notes of my November 2014 complaint. Inexplicably, in response to complaints about OWB's policies and practices, OIG waited four months before referring me back to OWB.

Would You Do Our Work For Us?

In response to my April 3rd email message above, I received yet another April 3rd email reply from OIG:

Dear Mr. Singer,

Please provide specific information or evidence to the OIG as follows: (1) the rules, regulations, or statutes that you believe the employee allegedly violated; (2) if known, the identity of the employee(s) involved; (3) the specific nature of the alleged misconduct; and (4) other persons who might be aware of this alleged misconduct.

Thank you again for contacting the OIG.

Respectfully, . . .

Respectfully, indeed.

As I painstakingly made clear in November 2014 during the OIG intake interview, I was complaining to OIG about OWB's conduct in connection with a **CONFIDENTIAL** informant. If OIG staff had reviewed its file for Case #120583993, it should have been apparent that the Whistleblower matter of which I was complaining involved a confidential whistleblower.

During recent interaction with OWB, they have transmitted correspondence using the SEC's encrypted *Zixmail* program, which requires passwords to open a transmission and email replies to OWB are purportedly forwarded to an encrypted SEC confidential email address. Shockingly, OIG requests that I disclose information and identities in a reply back to its relatively insecure OIG@sec.gov address. It should be noted that I avoided any reference to my Whistleblower client's identity or the underlying regulatory matter in my emails to OIG@sec.gov.

Inadvertent TCR Production

I would respectfully refer OIG to In the Matter of J. Kenneth Alderman, CPA et al (http://www.sec.gov/alj/aljorders/2013/ap-755.pdf). (*Order on Motion For Protective Order*, Securities And Exchange Commission, Admin Pro. Rulings Release No. 755, Admin. Proc. File #3-15127, March 5, 2013) and direct OIG's attention to the disclosure in that case that "(4) an email forwarding a complaint from the Commission's Tips, Complaints, and Referrals (TCR) system" was inadvertently disclosed by

the SEC to respondents in a disciplinary matter unrelated to the issues set forth in the TCR. I trust that OIG is aware that the initial whistleblower tip is supposed to be submitted via the TCR. OIG can also read about the incident at:

- " (http://www.brokeandbroker.com/1906/email-sec-whistleblower/)Inadvertent Email Production By Securities And Exchange Commission Raises Concerns About Whistleblower Tips" (http://www.brokeandbroker.com/1906/email-sec-whistleblower/)(*BrokeAndBroker.com Blog*, March 6, 2013)

Further, OIG might also take notice that on https://www.sec.gov/about/offices/owb/owb-tips.shtml (https://www.sec.gov/about/offices/owb/owb-tips.shtml) , the SEC discusses the TCR system, and also assures informants of the various confidentiality protections provided thereunder -- I doubt that OIG@sec.gov offers the appropriate security.

From The Sublime To The Ridiculous

OWB apparently forgets that the SEC's Whistleblower program was, in some measure, prompted by the SEC's failures to promptly act in the Stanford Financial and Madoff frauds -- notwithstanding the efforts of whistleblowers, such as Harry Markopolos, who were largely ignored by the SEC.

- ***READ***: "Federal Court Cites the Securities And Exchange Commission Dithering (http://www.brokeandbroker.com/2732/zelaya-sec/)" (*BrokeAndBroker.com Blog*, April 6, 2015)

In reading the questions set forth in OIG's April 3rd email to me, it appears that the office can't locate the initial complaint that I filed because they are seeking information from me that I had previously provided to their service provider during the intake telephone call. It seems that OIG did nothing for four months -- and for OIG to refer me back to OWB for answers to my complaints, when I am complaining to OIG about OWB, is beyond comprehension.

When the Whistleblower client stepped forward, the SEC was eager to conduct interviews or obtain written responses -- at times, the client and I worked on weekends, at nights, and during inconvenient hours in order to timely and professionally respond. Now, when it comes time to rewarding the Whistleblower client's diligence and efforts, the SEC dithers.

Visit the BrokeAndBroker.com Whistleblower Archives (http://www.brokeandbroker.com/index.php?a=topic&topic=whistleblower)

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About Bill Singer (http://www.rrbdlaw.com/bios_singer.html)

BILL SINGER is a lawyer who represents securities-industry firms, individual registered persons, Wall Street whistleblowers, and defrauded public investors. For over three decades, Singer has represented clients before the American Stock Exchange, the New York Stock Exchange, the Financial Industry Regulatory Authority (formerly the NASD), the United States Securities and Exchange Commission, and in criminal investigations brought by various federal, state, and local prosecutors. He has the distinction of representing witnesses during Congressional investigations. In 2015, Singer achieved a significant award in excess of $1 million from the Securities and Exchange Commission on behalf of a whistleblower client.

Singer is presently Of Counsel to a law firm and the publisher of the BrokeAndBroker.com Blog, which was rated as one of the industry's top eight destination websites and the leading legal/regulatory blog by "Investment News."

Before entering the private practice of law, Singer was employed in the Legal Department of Smith Barney, Harris Upham & Co.; as a regulatory attorney with both the American Stock Exchange and the NASD (now FINRA); and as a Legal Counsel to Integrated Resources Asset Management. Singer was formerly Chief Counsel to the Financial Industry Association; General Counsel to the NASD Dissidents' Grassroots Movement; and General Counsel to the Independent Broker-Dealer Association. He was registered for a number of years as a Series 7 and Series 63 stockbroker.

Singer regularly appears as a commentator on television and radio, and is frequently quoted in the press. He is an outspoken critic of ineffective regulation and an advocate for economic and political sanity.

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Subject: File No.: S7-16-18
From: Anonymous
Affiliation:

Aug. 20, 2018

The Proposed Rules should not and can not be implemented because they conflict with the plain language of the statute.

Specifically, the Proposed Rules attempt to add "Interpretive Guidance" to "help clarify the meaning of 'independent analysis' as that term is defined in Exchange Act Rule 21F-4 and utilized in award applications.

Under the proposed "Interpretive Guidance", in order to qualify as 'independent analysis,' a whistleblower's submission must provide evaluation, assessment, or insight beyond what would be reasonably apparent to the Commission from publicly available information."

However, the statute was constructed to say that "independent analysis" is "examination and evaluation of information that reveals information that is not generally known or available to the public." (Emphasis added on "not generally known or available to the public.")

The SEC's proposed "Interpretive Guidance" attempts to re-write the statute to replace "not generally known or available to the public" with "not readily apparent to the Commission"

In essence, the Proposed Rules, as written would affect an illegal change of statutory language that also conflicts of Congressional Intent and Legislative History.

Indeed, as revealed in Senate Hearings and Congressional Testimony, large frauds such as the Bernie Madoff scam can be "readily apparent" if the SEC takes the appropriate action, such as checking if trades actually exist. However, the SEC often does not take this action, so it would be inappropriate and inconsistent with the enforcement goals to discourage Whistleblowers from submitting information.

Finally, the ambiguity in the statement "reasonably apparent to the Commission from publicly available information" is extremely frightening. Who in the Commission will make a decision if it is "reasonably apparent"?

If one employee of the 4,000+ SEC employees believes it is "reasonably apparent" but the other staff are unable to make the connections, would the Commission deny the Whistleblower the opportunity for an award?

If the goal of the SEC's Whistleblower program is to help stop fraud and increase the efficiency of the SEC's Enforcement program than the SEC should welcome all types of tips. Even if the SEC believes it is reasonably apparent, maybe the SEC wouldn't have analysed the publicly available data until years later.

Put bluntly, there is no reason to have this rule, the SEC already has a procedure to evaluate tips that relate to already ongoing investigations and presumably, if the information was readily apparent to the Commission then the SEC would already have an open investigation into the matter.

To elaborate further, there are so many ICO schemes that siphon off hundreds of millions of dollars from investors. If a Whistleblower reports the fraud based off an analysis of the ICO website years before the SEC would have conducted a similar analysis, would the SEC allow him to be eligible for an award?

The SEC's rules discount a time variable. If a Whistleblower reports a fraud years before the SEC would have independently discovered it, then the value that the Whistleblower is providing is enormous, however, the SEC rules entirely discount this time element.

The net result is, there is zero incentive for a Whistleblower to report a fraudulent ICO scheme (or other scheme) if he or she is able to determine that is is a growing fraud.

I can almost guarantee you that there are hundreds of ICO scam websites match characteristics of https://www.howeycoins.com/index.html. Furthermore, given the SEC's limited resources, it is unreasonable to believe that the SEC will locate all of these websites and analyze them before they grow.

Having the assistance of Whistleblower tips and properly motivating Whistleblowers to report these frauds before they continue to grow should be a cornerstone of the SEC's Enforcement policy - yet the rules as proposed provide zero incentive for Whistleblowers to report these types of fraud.

This creates a significant hazard and does not mesh well with the SEC's stated mission, the intent of Congress, statute, and the ability to inspire confidence in the financial system.

Subject: File No. S7-16-18
From: Peter Sivere

August 21, 2018

The Government collected this money (to date) because of a tip from a whistle blower. Because the DOJ executed the enforcement action and not the SEC, the whistle blower is not eligible for an award.

This is $12.9 the Government would not have recouped, but for the tip from the whistle blower.

To date, the SEC has chosen not to take enforcement action against Barclays, thus leaving the whistle blower with no ability to collect a reward under the current SEC Whistle blower Program.

AMENDMENT TO FEBRUARY 28,2018 AGREEMENT BETWEEN THE DEPARTMENT OF JUSTICE, CRIMINAL DIVISION, FRAUD SECTION AND BARCLAYS PLC

WHEREAS, the February 28, 2018 agreement between the Department of Justice, Criminal Division, Fraud Section (the "Fraud Section") and Barclays PLC ("Barclays") required Barclays by May 29, 2018 (or any period thereafter that is mutually agreeable to both Barclays and the Fraud Section), to pay $12,896,011 to the U.S. Treasury, less any restitution paid to Hewlett-Packard Company ("HP")....

https://www.justice.gov/criminal fraud/file/1066901/download

Subject: File No. S7-16-18
From: Anonymous Anonymous

August 21, 2018

From fiscal year 2013 through 2017 and fiscal year 2018 (through July 18) there have been 889 properly-filed WP-APP Forms. (https://www.sec.gov/files/18-02437-FOIA_Redacted.pdf)

During that same time there were only 126 Whistleblower Award Orders. This averages out to 2.1 Whistleblower Award Orders per month.

At the rate of 2.1 Whistleblower Award Orders per month and assuming there are 763 not yet decided Whistleblower properly-filed Whistleblower Claims:

1.) A Whistelblower that submits a properly-filed Whistleblower Claim today can expect to wait 363 months (30.25 years) before a final Whistleblower Order
2.) A Whistleblower that submits a Whistleblower Tip today can expect to wait 363 months (30.25 years) plus an additional 2-5 years of time for enforcement staff to investigate and/or litigate.

30.25 years is a LONG time to wait for a Whistleblower Award. In fact, it is beyond contemplation and beyond many would-be-whistleblower's own life expectancy (especially so for senior management).

Response to SEC Proposed Rule: Amendments to the Commission's Whistleblower Program Rules, File Number S7-16-18

We believe the SEC's Whistleblower Program is an important avenue for individuals who want to aid regulators in their efforts to police the capital markets. This comment letter discusses our views on two areas within the operation of the Whistleblower Program that, if amended, we feel would make the program much more effective:

(1) the prolonged delay by the Whistleblower Office to make preliminary and final determinations following applications for an award, and
(2) credible evidence of illegal activities and large-scale frauds brought to the Commission are being overlooked and the whistleblower's analysis is unused.

Delayed SEC Communications

We believe the SEC's efforts to amend the Whistleblower Program Rules should focus on providing a remedy for the extended length of time individuals wait between timely filing of a WB-APP form and receiving a preliminary and final determination from the SEC. Although whistleblowers have strict deadlines in which to file information and responses with the SEC Whistleblower Office, the SEC does not have any firm deadlines. Consequently, many whistleblowers have been waiting an inordinate amount of time to receive any determinations from the Whistleblower Office.[1]

Therefore, we support the statements of Kohn, Kohn & Colapinto, LLP contained in the public comment filed July 24, 2018, with regard to *Delay and the Summary Disposition Procedures*. Specifically, we would like to reiterate the following:[2]

> "The most significant problem with the SEC's current whistleblower program is not the rare instance where a whistleblower obtains a large reward, but rather the prolonged delay in processing reward applications. These delays can drag on for years and based on our direct experience, can be as long as four (4) years and running. It is simply unacceptable that the Commission can take the duration of an entire Presidential term to decide on an award in a whistleblower case, after the Commission has completed its investigation into the underlying misconduct and collected the sanctions from the wrongdoer. Moreover, because the Commission staff would have directly worked with the whistleblower and/or used the whistleblower's "original information" to sanction the wrongdoer, the Commission should be in a position to expeditiously approve rewards."

---

[1] Rachel Louise Ensign and Jean Eaglesham, *SEC Backlog Delays Whistleblower Awards*, The Wall Street Journal, May 4, 2015 https://www.wsj.com/articles/sec-backlog-delays-whistleblower-awards-1430693284
SEC Whistleblower Program Delays: What You Need to Know, Katz, Marshall & Banks, LLP, December 21, 2015 https://www.kmblegal.com/sec-whistleblower-blog/sec-whistleblower-program-delays-what-you-need-know
Yves Smith, *SEC Knifes Its Whistleblower Program*, Naked Capitalism, July 9, 2018 https://www.nakedcapitalism.com/2018/07/sec-knifes-whistleblower-program.html
Dave Michaels, *SEC Whistleblower Payouts Slow Amid Deluge of Reward Seekers*, The Wall Street Journal, August 5, 2018 https://www.wsj.com/articles/sec-whistleblower-payouts-slow-amid-deluge-of-reward-seekers-1533474001?mod=hp_lead_pos3

[2] Letter from Kohn, Kohn & Colapinto, LLP to SEC Chairman Jay Clayton, July 24, 2018, Re: File No. S7-16-18, Amendments to the SEC's Whistleblower Program Rules https://www.sec.gov/comments/s7-16-18/s71618-4107169-170275.pdf

Whistleblower Program Performance Metrics

A 2013 Evaluation of the SEC's Whistleblower Program by the SEC Office of Inspector General ("OIG") found the Office of the Whistleblower ("OWB") and the Office of Market Intelligence ("OMI")[3] deficient in established performance metrics:[4]

> "In two particular areas OIG found that OWB and OMI have not established any performance metrics. First, with respect to OMI, there is no standard on how long a TCR should remain in manual triage. Our sample testing indicated the average time a TCR is designated as NFA in the manual triage process is 31 days. This included a TCR designated as NFA on the same day it was received, as well as a TCR that was designated as NFA 249 days after it was submitted to the SEC. On average TCRs assigned to a POC were in manual triage for 10 days. These timelines may be appropriate; however **there is no standard by which performance can be measured**. **Thoughtfully chosen performance metrics will strengthen the whistleblower program's internal controls and ensure consistency in its processes and procedures** as new personnel are assigned to OMI and turnover occurs. **A lack of performance metrics may result in the degradation in performance and unnecessary long response times to whistleblower information**."
>
> "**OWB did not have a performance metric for the maximum length of time staff should respond to applications for awards filed by whistleblowers**. Our audit found OWB sent an acknowledgement letter to a whistleblower applicant 122 days after the application was submitted. Though there were no adverse consequences for this delayed response, there could have been consequences."

The Office of Inspector General report recommended the Division of Enforcement should ensure that:

a) "the Office of Market Intelligence (OMI) assesses the manual triage process and establishes key performance metrics that can be used to measure process performance." and
b) "the Office of the Whistleblower (OWB) assesses the key performance measures that are contained in their internal control plan and develop performance metrics where appropriate."

In response, the Division of Enforcement concurred with both recommendations.

Two years later, in 2015, Senators Charles Grassley and Elizabeth Warren requested an update on actions taken by the SEC following the Inspector General report and asked a series of important questions regarding performance metrics for the Whistleblower Program.[5]

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[3] The Office of Market Intelligence is responsible for the collection, analysis, and monitoring of the tips, complaints, and referrals the SEC receives.
[4] *Evaluation of the SEC's Whistleblower Program*, January 18, 2013, U.S. Securities and Exchange Commission Office of Inspector General Office of Audits https://www.sec.gov/about/offices/oig/reports/audits/2013/511.pdf
[5] Letter from Senator Charles Grassley and Senator Elizabeth Warren to the Securities and Exchange Commission, dated November 16, 2015, https://www.warren.senate.gov/files/documents/SEC_Whistleblower_Letter_111615.pdf

We believe it is essential the SEC Commissioners report publicly each quarter on all whistleblower cases, including the status, aging, and disposition of each case. Timely reporting from the Commissioners as the senior body overseeing the SEC is crucial to the credibility of the Whistleblower Program.

Intent of the SEC Whistleblower Program

The Commission's example of "independent analysis" was the information collected by Harry Markopolos regarding the ongoing Ponzi scheme perpetrated by Bernard Madoff. As the Commission discussed, Harry Markopolos provided evidence of Madoff's fraud beginning in 2000. Markopolos' "independent analysis" had uncovered and documented the fraudulent dimensions of the scheme. However, Madoff was not charged by authorities until December 2008, but only after Madoff's sons approached authorities and told them Madoff admitted to the scheme.

Following the Madoff fraud and the financial crisis, the SEC Whistleblower Office was established at the direction of Congress to provide a *fast response* to actionable tips from those with knowledge of illegal activities. It was intended to *fast track* the response of the SEC to halt illegal schemes and protect investors and the markets.

When the first SEC whistleblower award was issued in 2012, then-Chair Mary Shapiro stated:[6]

> "The whistleblower program is already becoming a success. We're seeing high-quality tips that are **saving our investigators substantial time and resources**."

In a 2014 speech, Andrew Ceresney, then-Director of the SEC Division of Enforcement stated:[7]

> "The program creates a powerful inducement for those aware of wrongdoing to break their silence and it has been very successful, even transformative, in its impact. **Whistleblowers have alerted us to conduct that we would otherwise have been unaware of, allowed us to expedite our investigations, and provided us with a detailed roadmap for misconduct**. The kind of evidence they provide us often cannot be obtained from other sources."

In 2015, then-Chair Mary Jo White spoke about the Whistleblower Program:[8]

> "As the program has grown, not only have we received more tips, but we also continue to receive higher quality tips that are of **tremendous help to the Commission in *stopping ongoing and imminent fraud***, and lead to significant enforcement actions on a ***much faster timetable* than we would be able to achieve without the information and assistance from the whistleblower.**"

---

[6] SEC Issues First Whistleblower Program Award, August 21, 2012 http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171483972#.UjNEd9JONXE

[7] Remarks at 31st International Conference on the Foreign Corrupt Practices Act, Andrew Ceresney, November 19, 2014 https://www.sec.gov/news/speech/2014-spch111914ac

[8] The SEC as the Whistleblower's Advocate, Chair Mary Jo White, April 30, 2015 https://www.sec.gov/news/speech/chair-white-remarks-at-garrett-institute.html

> "To sum up, after nearly four years of experience, what is our assessment of the Dodd-Frank whistleblower program and how should companies be responding? First, we know that the regime does, in fact, create powerful incentives to come to the Commission with real evidence of wrongdoing that harms investors and it **meaningfully contributes to the efficiency and effectiveness of our Enforcement program**."

Harry Markopolos provided valuable, original information which was insufficiently examined by the SEC and illustrates how *not* to handle whistleblower information. When a fraud continues for 8 years without adequate investigation, it results in 8 years of unnecessary harm to investors, capital formation and the reputation of the financial markets.

Conclusion

As joint whistleblowers that continuously provided original information and extensive data analysis from 2012 through 2017, we filed 7 WB-APP forms beginning in January 2015 that remain pending and have not received a preliminary determination by the SEC. We have been waiting nearly 4 years for the SEC to issue a preliminary decision in connection with an enforcement action that was concluded and sanctions collected in 2014.

The continued success of the Whistleblower Program depends on transparency and regular (quarterly) reporting from the Commissioners. If the SEC made timely determinations it would encourage active whistleblowers to continue working with the program and hesitant whistleblowers to come forward. Making whistleblowers wait an indefinite amount of time for a determination will undermine the programs' integrity and effectiveness.

The independent analysis provided to the SEC since 2012 by the whistleblowers authoring this comment letter contained highly detailed information and data regarding an ongoing large-scale fraud that is jeopardizing investor monies, publicly traded companies and the financial system itself. We feel the SEC even today with the Congressionally-mandated Whistleblower Program, is both failing to act promptly or expeditiously on valuable information detailing illicit activity. This failure is allowing risky and illegal behavior to continue and further permeate the capital markets.

While the Whistleblower Program has proven to be a positive tool to have at the disposal of the SEC since its' conception, it is always wise to re-evaluate and improve on existing programs and methods to ensure that the processing of information reaps the most and best results. We ask for your consideration of our thoughts on these two issues to make the Whistleblower Program an even greater asset to the United States capital markets.

Thank you.

Subject: File No. S7-16-18
From: Anonymous Anonymous

August 21, 2018

The Proposed Rules do not address the fundamental issues causing a backlog of Whistleblower claims.

The Proposed Rules claim that by allowing summary denial of claims more resources will be available to process other claims more quickly.

However, this line of reasoning is not supported by any data and is fact contradicted by a review of the current Whistleblower Claims Queue and processing procedures.

At present, the Whistleblower Office and Claims Review Staff put "frivolous" at the end of the Whistleblower Claims Queue and actively place "non-frivolous" claims in a higher priority for processing.

Therefore, summary denial of claims would not provide for more staff to process other claims because staff is currently not spending much time processing the "frivolous" claims.

Although these Proposed Rules masquerade as a method to decrease backlog of Whistleblower claims - the desired results will not be met.

Until the SEC gets serious about increasing the efficiency of Whistleblower operations, improving communication with Whistleblowers, and allocating more resources and staff to the Whistleblower Program the already low confidence in the Whistleblower Program will continue to erode.

Subject: File No. S7-16-18
From: Anonymous Anonymous

August 21, 2018

Although I believe the SEC Whistleblower Program has many areas that need improvement - the Proposed Rules shy away from addressing the most critical areas.

For example, the Proposed Rules do nothing to help maintain the confidentiality of Whistleblowers. This is needed because on numerous occasions it has been proven that the mechanisms that the SEC and instructions given to Whistleblowers are inadequate and often conflict with the SEC's obligation to protect the identity of Whistleblowers.

Indeed, attached is a letter sent from the SEC that shows information sent via physical mail is at significant risk of theft - thus disclosing the Whistleblowers identity. I do not believe this is the only case of Whistleblower documents being intercepted or stolen.

More concerning is the fact that when queried, the SEC refused to provide any sort of "key" or encryption mechanism for documents sent via physical mail and further refused to use the secure Accellion upload system that the SEC already pays for.

This lack of concern for Whistleblower confidentiality shows a poor commitment to Whistleblowers and is just one of the many reasons Whistleblowers are losing trust in the Whistleblower program.

(Attached File #1: s71618-4239053-172915.pdf)

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Writer's Direct Dial: (305) 982-6398
Writer's Fax: (703) 813-6925
Writer's e-mail: masela@sec.gov

November 3, 2016

Via U.S. Mail

Mr. Taylor Scott Amarel
10420 Jitney Lane
Grass Valley, CA 95945

RE: Your September 30, 2016 correspondence

Dear Mr. Amarel:

Our office received your September 30, 2016 letter and enclosures in a U.S. Postal Service envelope (see copies enclosed for your reference). I am sending you these copies for your reference, because in your letter you described sending us a flash drive, but as you see from the enclosed copies, your envelope came ripped open and with no flash drive inside. All we received were the materials I enclose, and the U.S. Postal Service envelope containing them. If you can send another flash drive, we are of course happy to receive it. You may send it to my attention.

Best regards,

Scott A. Masel
Attorney Adviser

Subject: File No. S7-16-18
From: Anonymous Anonymous

August 21, 2018

Whistleblowers risk so much when they report fraud to the SEC. However, reporting the fraud is the first of many steps and the start of a very prolonged wait.

Indeed, from tip-to-award Whistleblowers can wait 5+ years. During this long wait the Whistleblower could be jobless, require legal assistance, and a host of other time consuming and costly effects of blowing the Whistle.

To help Whistleblowers not lose faith, encourage more Whistleblowers to come forward, and reduce the backlog of claims the SEC should consider paying Whistleblowers a small percentage of their award immediately upon issuance of a preliminary determination.

This would help the Whistleblower obtain the necessary funds needed to deal with Whistleblower fallout and also avoid unnecessary waits for appeals or final determination. (Especially if an action involved 2 or more Whistleblowers and one Whistleblower may accept the preliminary determination while the other Whistleblower(s) appeal the preliminary determination causing the first Whistleblower to wait significantly longer.)

Subject: File No. S7-16-18
From: Anonymous Anonymous

August 21, 2018

I am very disappointed that the SEC has not taken into consideration recent Whistleblower Research and Literature discussing the true cost of Whistleblowing on Whistblowers and their families.

The SEC should consider reading and digesting the most up-to-date studies such as:

1.) http://journals.sagepub.com/eprint/3Skum7q6neUwRvBcEQNI/full

Or

2.) https://www.accaglobal.com/content/dam/ACCA_Global/Research/ACCA-ESRC Effective Speak-Up Arrangements for Whistle-Blowers.pdf

Subject: Re: Thank you for your comment (s7-16-18)
From: Mary Braud
Affiliation:

Aug. 22, 2018

Something about the new rule/law stinks. Whom/who is BENEFITING from this? Certainly not the whistleblowers. They're the ones putting their lives, livelihood, and their families lives on the line. NOT a handful of bureaucrat in Washington DC. I always say follow the money. And as for you all, you MUST REALIZE that the optics are not good. They're NOT favorable to you.

Best regards,

Mary Braud

Subject: File No. S7-16-18
From: Terry Smith
Affiliation:

Aug. 22, 2018

To the SEC:

I believe I am in a unique position to comment on the proposed rule changes for the SEC Whistleblower Program.

I have recently been refused an SEC Whistleblower award by the SEC Claims Review Staff.

In the aforementioned refusal, the SEC cites SEC Investigator #1 (SEC1). SEC1 states my TCR was "closed" because it failed to contain information that was "not already known" to the SEC. SEC1 reiterates this comment later in SEC1's declaration on this matter. Multiple other SEC investigators state that my TCR did not contain information that was "not already known" to the SEC.

If the SEC does not already know information contained in a TCR, that information should be considered for the purposes of an award. The SEC is holding to this standard in its private communications.

The SEC should not, after years of information have been laid on the table, arbitrarily determine that TCR information was "reasonably apparent", if they did not already know it.

The SEC encourages "timely" TCRs. "Timely" TCRs may reveal information that is "readily apparent" only after many years have passed in an SEC investigation. The SEC should reward TCR information that they do not already know, EVEN in the event that this policy is good for the public. A policy that is good for the general public may not consolidate power in large financial institutions, or the SEC and its employees, still, I believe policies that benefit the public should be considered by the SEC.

Thank you,
Terry Smith

Referenced: TSR1*20752**092*

Re: Comments on the proposed Amendments to the Commission's Whistleblower Program Rules.

In addition to the comments I submitted on August 20, 2018, I would like to add the below letter dated July 31, 2017 to my comments. There are a number of compelling points to be made with respect to that letter. I would also like to inform the Commission of what I have previously stated. At this juncture, considering the depth of what has occurred, I do not believe it is humanly possible for the process to ever be fair; too much wrong, bias and prejudice has engulfed this process from the early stages.

Therefore, I would like to request Federal Court and Congressional intervention. The serious nature of what has occurred here demands it.

Respectfully Submitted.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

ISION OF
ORCEMENT

July 31, 2017

Jane Norberg, Chief
Office of the Whistleblower
Phone: (202) 551-4790
Fax: (703) 813-9322

Mr. Edward J. Sanders
346 Fern Cliff Ave.
Temple Terrace, FL 33617

Re: SEC v. First Mortgage Corporation, Inc., et al.
Notice of Covered Action 2016-101

Dear Mr. Sanders:

I have received your letter dated July 14, 2017 in which you inquired about the status of your pending award claim and requested to speak directly with the Claims Review Staff about this matter. Please be assured that all of the materials you submitted in connection with your award claim will be reviewed by the Claims Review Staff ("CRS"); however, the whistleblower rules do not provide for a claimant to meet with the CRS. Further, as I explained in my previous letter of March 13, 2017, we cannot provide you with an estimate of when the CRS will make its preliminary determination on your award claim. Again, when the CRS does issue its preliminary determination, we will forward it to you promptly along with a letter from our office explaining the next steps in the review process.

We appreciate your continued patience. Please do not hesitate to contact us if you have additional questions.

Sincerely,

Jane Norberg

Referenced: TSR1*20752**092*

Re: Comments on the proposed Amendments to the Commission's Whistleblower Program Rules.

I am respectfully submitting the following comments to the Commission: It is my belief the proposed changes to the Dodd Frank Whistleblower Program the SEC has undertaken is, at minimum, associated in part with complaints I have made about the program and the way it is being administered by the SEC. What is published by the SEC to entice whistleblower participation is far from the unpleasant experience I have had as a SEC whistleblower. My experience is that the SEC goes to great length to allure the efforts and sacrifice a whistleblower

must make; and are quick to use a whistleblower's information, assistance and support. But they are also quick to unjustly mistreat and misuse a whistleblower, paving way for defamation, injustice and an outcome as flawed as the process itself.

The fraud I reported was not only occurring in the company I worked for, but also inclusive of a Government Association who's inadequate leadership left a mass of investors unguarded. Their failure to adequately establish and innovate sufficient, protective internal controls, particularly after the 2008 financial crises, exposed investors to unnecessary losses and risk not competently disclosed.

The additional complaints I have put forth are based upon the nefarious way I have been treated as a SEC whistleblower; it has been a terribly unfair process. It has also been more than 3 1/2-years since submitting my original SEC whistleblower complaint, 2-years after submitting my whistleblower reward application, and I am still being subjected to a deplorable degree of unfairness and abuse. That being said, there still remains a very real and healthy motive for people to cause harm to me and my family, and create chaotic disruption in our lives. All this in spite of being told prior to submitting my application that the Commission, as they understood it, wished to acknowledge my extraordinary effort, sacrifice and the quality of information I provided as the only whistleblower in the matter. To that end, the last letter I received almost 8-months ago stated; ***"the Commission endeavors to complete all of its whistleblower award claims as expeditiously as possible"***

The gravity of what has occurred to me, and what I have been subjected to as a SEC whistleblower, is so malignant it should never be aloud to happen again. It should never happen to a citizen, much less a government whistleblower. My complaints have not been buffered on any front, and continue to be addressed not only to the SEC, but the DOJ, FBI & OIG as well. Moreover, it is my unwavering belief that other material information has been obtained from me using less than lawful means and measures. I also believe that in all likelihood a good portion of the tenure staff departures at the SEC over the past 2-years are in someway a product of my complaints, and also a product of being left as a sacrificial lamb in a highly compromised process. In this regard, the most recent departure was the SEC Regional Director of the Regional Office responsible for administering the underlying process.

To conclude, I want to parallel a recent June 2018, U.S. Supreme Court decision as being indicative of my experience as a SEC whistleblower. If the Commission desires follow up on any aspect of my comments herewith, please feel free to contact me directly at any time.

Respectfully Submitted.

Subject: File No. S7-16-18
From: Anonymous Anonymous

August 24, 2018

If enacted, the Proposed Rules will significantly weaken the SEC's ability to protect investors and cause the SEC to be inefficient in its investigations.

I wish to reiterate the comments by others that the Proposed Rules are:

1.) Based on non-existent or insufficient data
2.) Do not properly take into account the calculous of would be Whistleblowers
3.) Will result in less Whistleblower tips and longer delays in processing claims
4.) Does not address any of the fundamental efficiency or structure problems of the Whistleblower program
5.) Etc.

Furthermore, I wish to specifically point out the fact that the SEC's Whistleblower program does not provide the appropriate avenues of due process as provided for by the Administrative Procedure Act (APA).

For example, although statute and case law requires any Administrative Adjudication Office to accept requests for expedited processing, the SEC's Whistleblower Office has categorically denied or ignored requests for expedited processing - even when this unjustly prejudices the Whistleblower and causes unfair risk to life, loss of properly, and other damages.

Subject: File No. S7-16-18
From: Peter Sivere

August 27, 2018

From 2012

(Attached File #1: s71618-4287175-173186.pdf) (Attached File #2: s71618-4287901-173186.pdf)

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:
RANKING MEMBER,
STATE, FOREIGN OPERATIONS, AND
RELATED PROGRAMS

LABOR, HEALTH AND HUMAN SERVICES,
AND EDUCATION

HOMELAND SECURITY

Nita M. Lowey
Congress of the United States
18th District, New York

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Chairwoman Mary L. Schapiro
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

September 21, 2012

Dear Chairwoman Schapiro:

I have been alerted by a constituent to a deeply troubling matter involving the disclosure of a whistleblower's identity by a Securities and Exchange Commission (SEC) employee to the employer of the whistleblower. These allegations, which are confirmed in the Office of Inspector General Case Number 501 (OIG-501) report, raise questions as to how the SEC has disciplined wrongdoing by employees and what, if any, steps the SEC has taken to make sure a similar incident will not occur in the future.

The OIG-501 findings state that:

> The OIG investigation uncovered testimonial evidence that definitely shows that SEC NYRO Staff Attorney [Redacted] disclosed non-public information about an informant during the course of an ongoing Enforcement investigation. In addition, we uncovered evidence that [Redacted] not only gave outside counsel for JPMorgan permission to use the non-public information about an informant against him, but actually encouraged such use.

The report went on to request disciplinary action against the person or persons who disclosed this information, but the SEC has not taken action. Why hasn't the SEC abided by the recommendations of the OIG? In addition, what steps has the SEC taken to ensure the protection of the identity of whistleblowers and how will the SEC correct this mistake and ensure that such a disclosure will not occur in the future?

Those who have the courage to speak up, often at risk to their career and livelihood, should be protected from retaliation. I am frustrated that after being confronted with a report by the OIG, the SEC has taken no action. It is important for the SEC to send a strong signal that the disclosure of whistleblowers will not be tolerated, particularly among SEC employees who are entrusted with upholding the law. As our economy continues to recover, investors will not have faith in the market if SEC employees are disclosing the identities of those who bring valuable information to light.

PRINTED ON RECYCLED PAPER

I look forward to receiving this information from you. Should you have any questions, please free to contact me or Dana Miller on my staff, who can be reached at [redacted] or [redacted].

Sincerely,

Nita M. Lowey
Member of Congress

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

THE CHAIRMAN

November 14, 2012

The Honorable Nita M. Lowey
U.S. House of Representatives
2365 Rayburn House Office Building
Washington, DC 20515

Dear Representative Lowey:

Thank you for your letter dated September 21, 2012 concerning an alert you received from a constituent of yours about the alleged disclosure of a whistleblower's identity by a Commission employee. Your letter referenced Report Number 501 by the Commission's Office of Inspector General dated March 30, 2009 (OIG-501). The underlying events discussed in OIG-501 occurred in 2003, 2004, and 2005. According to OIG-501, a Commission staff attorney disclosed non-public information concerning an informant during the course of an ongoing enforcement investigation.

A few months after the issuance of OIG-501, on September 11, 2009, the attorney involved in this matter resigned from the staff for personal reasons. Meanwhile, senior management in the Division of Enforcement had reviewed OIG-501, considered thoroughly all the facts as well as the evidence developed in the Inspector General's investigation, and responded to the Inspector General on July 27, 2009. Because this case involved a confidential personnel matter, I cannot disclose what supervisory response, if any, was made in this particular case prior to the attorney's resignation.

I can assure you that we have taken steps to ensure that we protect the identity of whistleblowers since the Dodd-Frank Wall Street Reform and Consumer Protection Act established a new whistleblower program at the SEC in 2010. In connection with the passage of Dodd-Frank, we created the Office of the Whistleblower ("OWB") to implement the new whistleblower program and to serve as a resource to staff when they have questions or there is uncertainty around whether a particular course of action may inadvertently reveal the identity of a whistleblower. Since its creation, OWB has undertaken a number of initiatives to safeguard the confidentiality of whistleblowers, including:

- Conducting training programs for staff across the Commission about the whistleblower program, with a special emphasis and focus on the statutory obligation not to directly or indirectly identify whistleblowers;
- In conjunction with the Enforcement Division's Office of Chief Counsel, providing written guidance about the confidentiality provisions of Dodd-Frank and posting this guidance on an intranet site for staff reference;
- Providing subject matter expertise to Enforcement staff about how our statutory obligations must be carried out in a variety of specific factual circumstances; and

- Implementing a process for OWB review of any request to share information that might directly or indirectly identify a whistleblower to any person outside of the Commission.

We believe the new whistleblower program is a very important tool in our arsenal that will further our mission of detecting securities fraud and protecting investors. I certainly agree that it is vitally important that whistleblowers have the confidence that they can come forward to report wrongdoing to the Commission without fear that their identities will be disclosed.

Thank you again for bringing this matter to my attention. Please call me at ([redacted], or have your staff contact Timothy B. Henseler, Acting Director of the Office of Legislative Affairs, at [redacted] if you have any questions or comments.

Sincerely,

Mary L. Schapiro

Mary L. Schapiro
Chairman

Subject: File No. S7-16-18
From: Peter Sivere

August 27, 2018

If an agency wanted to show how incompetent the SEC is, the DOJ has done it.

The DOJ was much more effective in their investigation surrounding the Project Tesla Fraud than the SEC ever was.

The DOJ has already disgorged $12.9 million from Barclays. The SEC CRS are like a bunch of deer caught in head lights.

The SEC OWB is being micro managed by Steve Peikin, he has too much baggage associated with Barclays.

Steve Peikin cares about Steve Peikin not "Main Street Investors."

(Attached File #1: s71618-4265421-173143.pdf) (Attached File #2: s71618-4265420-173143.pdf)

(2) report to the Criminal Division, Fraud Section all credible information regarding criminal violations of U.S. law concerning fraud, including securities or commodities fraud by the defendant or any of its employees as to which the defendant's Board of Directors, management (that is, all supervisors within the bank), or legal and compliance personnel are aware.

5. With the exceptions of the paragraphs above, all terms of the Agreement remain the same.

Sincerely,

JEFFREY H. KNOX
Chief
Criminal Division, Fraud Section
United States Department of Justice

By: _____
Albert B. Stieglitz, Jr., Assistant Chief
L. Rush Atkinson, Trial Attorney

AGREED AND CONSENTED TO:

Barclays Bank PLC

By: _____ 19 JUNE 2014
Robert F. Hoyt, Esq. Date
General Counsel, Barclays Bank PLC

APPROVED:

By: _____ 19 June 2014
Steven R. Peikin, Esq. Date
David H. Braff, Esq.
Jeffrey T. Scott, Esq.
Sullivan & Cromwell LLP
Attorneys for Barclays Bank PLC

Subject: File No. S7-16-18
From: Peter Sivere

September 2, 2018

In pertinent part, McFadden stated:

Let me take this opportunity to address a few additional matters regarding our FCPA enforcement practices. The Criminal Divisions aims are not to prosecute every company we can, nor to break our own records for the largest fines or longest prison sentences. Our goal is for companies and individuals to voluntarily comply with the law. And it is by working with companies transparently and in partnership that we can achieve this goal. Indeed, working with cooperating businesses is a very important element in fighting corruption, whether by preventing violations before they occur or dealing with past violations. We recognize that businesses are our partners in the fight against corruption, because they are in the best position to detect risk, to take preventative measures, and to educate those who act on their behalf on appropriate best practices.

With that in mind, the Fraud Sections FCPA prosecutions are intended to level the playing field for honest businesses that are undercut by businesses that engage in corrupt behavior. Our responsibility as prosecutors is to follow the facts wherever they lead us. Sometimes the facts lead us to stop and close an investigation. Other times, the facts convince us that a criminal resolution is required. When we do not have evidence of the requisite criminal intent, there is no justification for a Criminal Division resolution, and we will defer to our regulatory colleagues to handle the matter. As prosecutors, we have significant enforcement tools, but we also have heightened evidentiary and scienter standards, and we take those requirements seriously.

As you may know, in the last year as part of the FCPA Pilot Program, the Fraud Section has begun publishing information on cases we have declined to prosecute, where we would have brought criminal cases but for the companies voluntary self-disclosure, full cooperation, and comprehensive remediation. There have already been five such cases. Of course, this number does not include the many cases we routinely decline for various reasons including insufficient evidence of corporate criminal misconduct. This is part of our long-standing effort to lay out transparent and clear guidelines and benefits for those companies and individuals subject to the FCPA.

Transparency about our enforcement policies and practices is important. The Fraud Sections Pilot Program is one example of an effort to provide more transparency and consistency for our corporate resolutions. The program began a year ago, and we are now conducting a full assessment of it. In our review, we are examining whether there is more that we can do to promote voluntary compliance with the law and what more we can be doing to provide appropriate transparency regarding our expectations and prosecutorial priorities. In the meantime, the Program will continue in full force. (emphasis added).

Even though McFadden provided a sensible framework for analyzing DOJ declinations, it should be noted (as highlighted in prior posts here and here) that in three of the five DOJ self-declared declinations (all before McFadden assumed his

position at the DOJ) the salient question needed to be asked: just what viable criminal charges did the DOJ actually decline. Based on the only information in the public domain about the enforcement actions, the answer appears to be none.

McFadden next spoke about the timing of FCPA investigations.

In terms of background, FCPA Professor (see here) and many others, including perhaps most prominently Paul Pelletier (former Principal Deputy Chief of the DOJs fraud section) (see here and here) have frequently written about the long time periods often associated with FCPA inquiries. (See here for the FCPA Flash podcast episode with Pelletier in which he discusses this issue).

On this issue, McFadden stated:

We are also making a concerted effort to move corporate investigations expeditiously, and we expect cooperating companies to do so as well. This will maximize our ability to bring cases against responsible individuals, before applicable statutes of limitations have run or evidence is lost. Of course, this should also be good for cooperating companies. No executive wants to deal with a lingering government investigation or the associated costs and distraction from the companys mission. Over the last few years, we have hired additional trial attorneys in the Criminal Divisions Fraud Sections FCPA Unit to help investigate cases more quickly, and the Fraud Section leadership and I are focused on wrapping up old investigations. We expect cooperating companies to work with us to prioritize internal investigations and to respond to Fraud Section requests promptly to ensure there are no unnecessary delays. My intent is for our FCPA investigations to be measured in months, not years.

Subject: File No. S7-16-18
From: Peter Sivere

September 2, 2018

2. Are there other types of arrangements (e.g., the use of declination letters in cases where the subject company pays all disgorgement, forfeiture amounts and/or restitution resulting from the misconduct at issue) that should be included in any rule the Commission adopts? How would any such arrangements satisfy the statutory requirements that they constitute a judicial or administrative action brought by the Commission or a related-action authority and that they include monetary sanctions (i.e., moniesordered to be paid) that are imposed in the action?

Yes, the attached.

(Attached File #1: s71618-4295299-173166.pdf)

U.S. Department of Justice

Criminal Division

Fraud Section
1400 New York Avenue, NW
Washington, DC 20005

February 28, 2018

Alexander J. Willscher
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004

Joel S. Green
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006

Dear Messrs. Willscher and Green:

The Department of Justice, Criminal Division, Fraud Section (the "Department") is closing its investigation of your client, Barclays PLC ("Barclays"), a publicly traded corporation headquartered in London, United Kingdom, concerning frontrunning of foreign exchange ("FX") transactions connected to the Hewlett-Packard Company ("HP") from August to October 2011.

The Department's investigation found that Barclays, through its employees and agents, misappropriated confidential information provided to Barclays by HP in regard to FX options and spot transactions, and deceived HP about the nature of its trading, in violation of duties to HP, as described in the indictment returned in *United States v. Bogucki*, 18-CR-00021 (N.D. Cal.). Specifically, Barclays FX traders (1) traded ahead of large HP spot and options purchases in August 2011, increasing the price that HP paid to Barclays; (2) manipulated the "Bloomberg fix" by purchasing British pounds in a manner which increased the profits of individual Barclays traders; (3) traded ahead of HP's "unwind" of options in September and October 2011, decreasing the price that HP ultimately received from Barclays; and (4) actively deceived HP about the causes of market movements during this period.

The Department's decision to close its investigation of this matter is based on a number of factors, including but not limited to: (1) Barclays' timely, voluntary self-disclosure of the matters described above; (2) Barclays' thorough and comprehensive investigation; (3) Barclays' full cooperation in this matter (including its provision of all known relevant facts about the individuals involved in or responsible for the misconduct); (4) the steps Barclays has taken and continues to take to enhance its compliance program; (5) Barclays' full remediation, including its agreement to provide full restitution to HP and disgorge any ill-gotten gains; and (6) Barclays' agreement to continue to cooperate with the Department in this or any related matters pursuant to paragraph 17 of Barclays' Plea Agreement with the Department dated May 20, 2015.

Pursuant to this letter agreement, and to the extent that such policies and procedures are not already in place, Barclays will promulgate compliance policies and procedures designed to reduce the prospect of violations of U.S. federal law concerning fraud and market manipulation and violations of Barclays' compliance code within Barclays' FX business, and Barclays will take appropriate measures to encourage and support the observance of ethics and compliance policies and procedures against violation of U.S. federal law concerning fraud and market manipulation by personnel at all levels of Barclays' FX business. These policies and procedures shall apply to all directors, officers, and employees within Barclays' FX business. Barclays shall notify all current employees within Barclays' FX business that compliance with the policies and procedures is the duty of individuals at all levels of Barclays, its affiliates, and subsidiaries. Such policies and procedures shall:

a. address the treatment of confidential client information directly relating to contemplated, potential, or actual orders, or transactions in situations where Barclays or its employees have agreed to confidentiality obligations with clients or potential clients ("Confidential Business Information"), including, with respect to Barclays' FX business: (i) maintaining documentation sufficient to prove that each Barclays employee responsible for handling Confidential Business Information was informed, at or before the time the employee is handling the Information, of Barclays' obligations relating to the client's Confidential Business Information; and (ii) the retention and maintenance of Barclays documents and information related to Confidential Business Information, including e-mails, audio files, and client agreements in a manner consistent with Barclays' retention policies and designed to be readily accessible in response to internal and external requests;

b. address appropriate conduct in responding to potential conflicts of interest with clients that place orders for execution by Barclays, including procedures for the timing of the execution of client orders; and

c. reasonably ensure that current employees within Barclays' FX business are aware of this Agreement, and Barclays' obligations contained herein.

Pursuant to this letter agreement, Barclays agrees to pay $12,896,011 USD in combined restitution and disgorgement (the "Disgorgement Amount") to the U.S. Treasury. The Disgorgement Amount shall be offset by any amount that Barclays pays to HP as restitution for the offense conduct described above (the "Restitution Amount"). Barclays shall pay the Disgorgement Amount no later than ninety days after the execution of this letter agreement (or any period thereafter that is mutually agreeable to both Barclays and the Fraud Section), pursuant to payment instructions provided by the Fraud Section. In the event that the Disgorgement Amount exceeds the Restitution Amount, the remaining funds shall be retained by the U.S. Treasury. The Disgorgement Amount has been determined by the Fraud Section to be the full amount of restitution and disgorgement owed by Barclays, including disgorgement of certain of Barclays' profits from the conduct at issue, and the Fraud Section agrees to not seek further disgorgement from Barclays relating to the HP transaction. Barclays acknowledges that no tax deduction may be sought in connection with any part of its payment of the Disgorgement Amount. Barclays further agrees that it will not seek or accept direct or indirect reimbursement or indemnification from any source with regard to the Disgorgement Amount.

This letter agreement does not provide any protection against prosecution of any individuals, regardless of their affiliation with Barclays. If the Department learns information that changes its assessment of any of the factors outlined above, it may reopen its inquiry.

Sincerely,

Benjamin D. Singer, Chief
Brian R. Young, Assistant Chief
Justin D. Weitz, Trial Attorney
Securities and Financial Fraud Unit
Fraud Section

Barclays agrees and consents to the facts and conditions set forth herein:

Date: 2-28-18 BY:

Matthew S. Fitzwater
Global Head of Litigation, Investigations and Enforcement
Barclays PLC

Date: Feb. 28, 2018 BY:

Alexander J. Willscher
Sullivan & Cromwell LLP

Joel S. Green
Wilmer Cutler Pickering Hale and Dorr LLP
Counsel for Barclays PLC

Referenced: TSR1*20752**092*

Re: Comments on the proposed Amendments to the Commission's Whistleblower Program Rules.

In addition to my previous comments regarding the above subject matter, I would also like to add the last letter I received from the SEC dated Jan. 23, 2018. At your earliest convenience, please take a moment to read my Jan. 03, letter as referenced in the SEC's Jan. 23, response. There is no continuity between the two letters. And despite the fact my Jan. 03, letter did not request a response, the SEC's Jan. 23, response was actually non-responsive to any aspect of what I stated in my Jan. 03, letter.

Respectfully Submitted

July 31, 2017 letter:

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
ENFORCEMENT

July 31, 2017

Jane Norberg, Chief
Office of the Whistleblower
Phone: (202) 551-4790
Fax: (703) 813-9322

Mr. Edward J. Sanders
346 Fern Cliff Ave.
Temple Terrace, FL 33617

Re: SEC v. First Mortgage Corporation, Inc., et al.
Notice of Covered Action 2016-101

Dear Mr. Sanders:

I have received your letter dated July 14, 2017 in which you inquired about the status of your pending award claim and requested to speak directly with the Claims Review Staff about this matter. Please be assured that all of the materials you submitted in connection with your award claim will be reviewed by the Claims Review Staff ("CRS"); however, the whistleblower rules do not provide for a claimant to meet with the CRS. Further, as I explained in my previous letter of March 13, 2017, we cannot provide you with an estimate of when the CRS will make its preliminary determination on your award claim. Again, when the CRS does issue its preliminary determination, we will forward it to you promptly along with a letter from our office explaining the next steps in the review process.

We appreciate your continued patience. Please do not hesitate to contact us if you have additional questions.

Sincerely,

Jane Norberg

January 23, 2018 letter:

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
ENFORCEMENT

January 23, 2018

Jane Norberg, Chief
Office of the Whistleblower
Phone: (202) 551-4790
Fax: (703) 813-9322

Mr. Edward J. Sanders
346 Fern Cliff Ave.
Temple Terrace, FL 33617

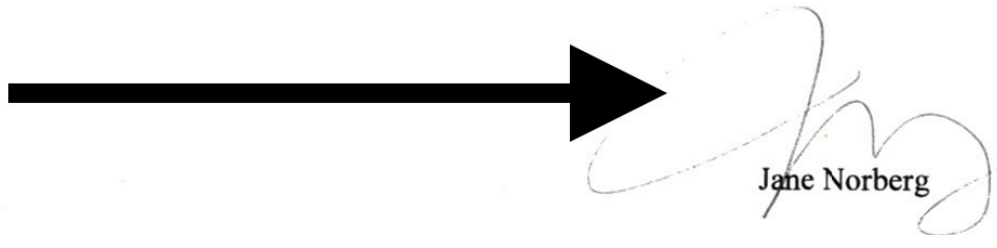
Re: SEC v. First Mortgage Corporation, Inc., et al.
Notice of Covered Action 2016-101

Dear Mr. Sanders:

I received your letter dated January 3, 2018. Unfortunately, I have no update I can provide you on the review of your whistleblower award application. The Commission endeavors to complete all of its whistleblower award claim reviews as expeditiously as possible; however, we cannot provide an estimate as to when a decision will be made for your claim. Please be assured though that, when the Claims Review Staff issues its preliminary determination, we will promptly forward it to you, along with a letter from my office addressing the next steps in the review process.

Again, I appreciate your concerns and your interest in obtaining an expedititious resolution of your award claim.

Sincerely,



Jane Norberg

On Aug 23, 2018, at 10:01, Joe Sanders <[redacted]> wrote:

Referenced: TSR1*20752**092*

Re: Comments on the proposed Amendments to the Commission's Whistleblower Program Rules.

In addition to the comments I submitted on August 20, 2018, I would like to add the below letter dated July 31, 2017 to my comments. There are a number of compelling points to be made with respect to that letter. I would also like to inform the Commission of what I have previously stated. At this juncture, considering the depth of what has occurred, I do not believe it is humanly possible for the process to ever be fair; too much wrong, bias and prejudice has engulfed this process from the early stages.

Therefore, I would like to request Federal Court and Congressional intervention. The serious nature of what has occurred here demands it.

Respectfully Submitted.

<image1.jpeg>

Sent from Joe's iPhone

On Aug 20, 2018, at 11:56, Joe Sanders [redacted] wrote:

Referenced: TSR1*20752**092*

Re: Comments on the proposed Amendments to the Commission's Whistleblower Program Rules.

I am respectfully submitting the following comments to the Commission: It is my belief the proposed changes to the Dodd Frank Whistleblower Program the SEC has undertaken is, at minimum, associated in part with complaints I have made about the program and the way it is being administered by the SEC. What is published by the SEC to entice whistleblower participation is far from the unpleasant experience I have had as a SEC whistleblower. My experience is that the SEC goes to great length to allure the efforts and sacrifice a whistleblower must make; and are quick to use a whistleblower's information, assistance and support. But they are also quick to unjustly mistreat and misuse a whistleblower, paving way for defamation, injustice and an outcome as flawed as the process itself.

The fraud I reported was not only occurring in the company I worked for, but also inclusive of a Government Association who's inadequate leadership left a mass of investors unguarded. Their failure to adequately establish and innovate sufficient, protective internal controls, particularly after the 2008 financial crises, exposed investors to unnecessary losses and risk not competently disclosed.

The additional complaints I have put forth are based upon the nefarious way I have been treated as a SEC whistleblower; it has been a terribly unfair process. It has also been more than 3 1/2-years since submitting my original SEC whistleblower complaint, 2-years after submitting my whistleblower reward application, and I am still being subjected to a deplorable degree of unfairness and abuse. That being said, there still remains a very real and healthy motive for people to cause harm to me and my family, and create chaotic disruption in our lives. All this in spite of being told prior to submitting my application that the Commission, as they understood it, wished to acknowledge my extraordinary effort, sacrifice and the quality of information I provided as the only whistleblower in the matter. To that end, the last letter I received almost 8-months ago stated; ***"the Commission endeavors to complete all of its whistleblower award claims as expeditiously as possible"***

The gravity of what has occurred to me, and what I have been subjected to as a SEC whistleblower, is so malignant it should never be aloud to happen again. It should never happen to a citizen, much less a government whistleblower. My complaints have not been buffered on any front, and continue to be addressed not only to the SEC, but the DOJ, FBI & OIG as well. Moreover, it is my unwavering belief that other material information has been obtained from me using less than lawful means and measures. I also believe that in all likelihood a good portion of the tenure staff departures at the SEC over the past 2-years are in someway a product of my complaints, and also a product of being left as a sacrificial lamb in a highly compromised process. In this regard, the most recent departure was the SEC Regional Director of the Regional Office responsible for administering the underlying process.

To conclude, I want to parallel a recent June 2018, U.S. Supreme Court decision as being indicative of my experience as a SEC whistleblower. If the Commission desires follow up on any aspect of my comments herewith, please feel free to contact me directly at any time.

Respectfully Submitted.

File Number S7-16-18

RECEIVED
SEP 07 2018
OFFICE OF THE SECRETARY

September 7, 2018

Secretary, Securities and Exchange Commission,
100 F Street, NE,
Washington, DC 20549-1090.

Regarding Section II - E

It is my contention that the Supreme Court decision in Digital Realty v. Somers did NOT comport with the intent of Congress. The SEC should NOT change the definition of "whistleblower", but rather should challenge the Somers decision with another retaliation case brought by the SEC on behalf of another whistleblower.

In deciding Somers, the Court applied strict constructionism only to the term "whistleblower". Fair construction demands that strict constructionism apply equally to the term "Commission". Doing so results in a glaring absurdity.

The statutory definition of "Commission" reads, "There is hereby established a Securities and Exchange Commission (hereinafter referred to as the "Commission") to be composed of five commissioners to be appointed by the President by and with the advice and consent of the Senate." 15 U.S. Code § 78d(a)

Applying strict constructionism, the "Commission" is ONLY the five Commissioners.

The Office of the Whistleblower is NOT the Commission. The USPS is NOT the Commission. Similarly, a whistleblower's supervisor is NOT the Commission.

Under strict constructionism, there presently exists no mechanism whatsoever for a "whistleblower" to provide information directly to the Commission, other than to personally deliver information to all five commissioners simultaneously.

The assertion that the whistleblower must provide information directly to the "Commission" is an absurdity.

To remedy this potential absurdity, Congress directed the "Commission" to define the manner in which a whistleblower may be deemed to provide information to the Commission. The Commission did so via rule making. The Commission defined the deemed receipt by the Commission to have occurred at the precise moment a person provides information regarding a securities law violation to their employer, or to the Office of the Whistleblower, or to the USPS, among others.

When that person provides information to any one of these trusted intermediaries, as defined in the SEC rules, the information is immediately deemed to be received by

the "Commission", and that person immediately fits the definition of "whistleblower". To assert otherwise would result in absurdity and render the whistleblower provisions (as well as substantial portions of the Securities and Exchange Act) superfluous.

At oral argument, Justice Ginsburg herself noted that the Court would have upheld the SEC's interpretation of the term "whistleblower" if respondent or amicus had argued that such an absurdity would result from the narrower definition of "whistleblower".

The statutory definition of "whistleblower" is, "The term "whistleblower" means any individual who provides, or 2 or more individuals acting jointly who provide, information relating to a violation of the securities laws to the Commission, in a manner established, by rule or regulation, by the Commission." 15 U.S.C. 78u-6(a)(6).

Truncating the last eleven words of the above definition is another violation of fair construction. It is within those eleven words that Congress explicitly directed the Commission to define the manner in which a "whistleblower" provides information to the "Commission"

To comport with the intent of Congress, the SEC should NOT change the definition of "whistleblower", but rather should challenge the Supreme Court's decision in Somers by initiating another retaliation case in a Distrct Court. The SEC is allowed to bring such a case on a whistleblower's behalf, in order to demonstrate the absurdity upon which the Somers decision was based.

The ideal case for this challenge would be one in which an employee provided information about a securities law violation to their employer, was terminated, then provided that same information to the Commission AFTER termination, but within the 120 day "lookback" provision. That (former) employee fits the SEC's existing single definition of a whistleblower for both an award and retaliation protection. This result comports with the intent of Congress. To assert otherwise, results in an absurdity.

I have withheld my identity since I am a long-suffering unemployed whistleblower, blacklisted by my former employer, and awaiting a decision on my award application for *years*. The award, to which I am fully entitled, although large, would pale in effectiveness as a deterrent next to the better result of re-instatement with my former employer with double back pay. Congress intended that whistleblowers remain at the company to prevent further violations, and explicitly said so in law.

I have already given permission to the Commission to publicly try my case.

The Somers decision was the opposite of Congress' intent. Were a case such as mine to be argued competently, Somers would be overturned.

Subject: File No. S7-16-18
From: Anonymous Anonymous

September 8, 2018

As mentioned in previous letters, Ms. Wharton stated to me both verbally and through email that I would be able to access copies of my Whistleblower tips in advance of filing a claim for an award. However, despite my repeated requests neither Ms. Wharton or the Whistleblower office has responded to my requests.

Indeed, on multiple occasions the OWB stated that it can not provide me with any documents and that I should request the documents via the FOIA/PA processes. However, this process is inadequate to and causes significant and irreparable damage to my due process and Whistleblower rights, among other things, the lack of communication by the OWB and refusal to provide my tips causes:

An unreasonable and inappropriate delay in obtaining the information needed to file an efficient and effective Whistleblower claim. Indeed, currently the SECs FOIA/PA office is aggregating all of my requests for information into one request that is likely to take 3-5 years before it even begins to be processed. I was told by the SECs OWB that I would be provided these documents directly from the OWB upon request but now I will have to wait years before I get the information necessary and as a result I will be forced to exercise my appeal rights to obtain more information from the OWB, in the middle of the Whistleblower Claims process - which will cause significant and unnecessary work for the OWB compared to an alternative where I was provided the documents as promised. Not only does this impact my right but as conceded by the SEC it will impact the processing time for other Whistleblowers waiting for awards because the appeal process will delay the payment of any Whistleblower awards for a certain covered action.

Subject: File No. S7-16-18
From: Anonymous Anonymous

September 8, 2018

Reading through the Comments on S7-16-18, there is a lot of concern regarding the operations of the SEC's Whistleblower Program. Particularly around communication and addressing the concerns of Whistleblowers.

I would like to inquire why the SEC has not addressed these concerns in the proposed rules? It is unacceptable if the SEC's Whistleblower Office can just ignore a Whistleblower who is inquiring on the most effective way to submit information or inquiring about the status of a Whistleblower Claim.

I would like to see the SEC track the number of Whistleblower Complaints and get feedback from actual Whistleblowers so that appropriate changes and improvements can be made to address the concerns of the Whistleblowers who are risking their life, their future, and their jobs in order to protect others from financial fraud.

Subject: File No. S7-16-18
From: Anonymous Anonymous

September 9, 2018

The Whistleblower Office continues to shy away from initiatives that would help the confidence in the program. For example, rather than waiting the 60+ days it takes for some defendants to make payment and then posting a Notice of Covered Action, the Commission could post a Notice of Covered Action immediately with a simple disclaimer that the full funds have not been collected yet. This would substantially reduce the amount of time Whistleblowers have to wait . In previous responses by the SEC, it was stated this was not possible. However, it is well within letter and spirit of the law to make such exceptions, indeed, the SEC has regularly used the ability to make exceptions to the Whistleblower Rules on a number of previous occasions.

Subject: File No. S7-16-18
From: Anonymous Anonymous

September 9, 2018

The IRS made an award in excess of 100 million, however, they never once commented or thought about reducing the reward calculations. Why has the SEC taken a very different path than the IRS Whistleblower Program? And how did the SEC come up with 30,000,000 as the threshold. I am very worried that the SEC did not talk to a single whistleblower and simply guessed when making up these numbers, which is a grave mistake.

Indeed, I am sure the primary reason would-be-whistleblowers do not come forward is that they know it can take years and years (and decades) of waiting before they receive any sort of monetary compensation - and during these years of waiting they risk their jobs, their professional careers, their reputation, and on numerous occasions their own safety or their families financial security.

Subject: File Number S7-16-18
From: Anonymous

September 9, 2018

To whom this may concern,

Please see the quoted text below as a comment. This should be published under the name 'Anonymous'. Thank you.

"There is undoubtedly significant concern regarding the backlog of whistleblower claims and the multi-year (potentially decade-long) process which a whistleblower has to wait through before obtaining any concrete information or a potential award. I find this very detrimental to the purpose of the whistleblower program and these long delays significantly nullify the benefits of the whistleblower program as many whistleblowers would be unwilling to wait for an extended period of time, especially if the process is not transparent.

The proposed rule changes do not adequately address the delays nor do they provide for increased transparency. (In many ways the proposed rule changes cause whistleblowers more unwelcome and disincentivizing uncertainty.)

Throughout my experience with the SEC's Whistleblower Office, it is clear that the Whistleblower Office spends far too much time answering frequently asked questions, organizing supplemental information submissions, and responding to regular queries from whistleblowers.

1.) in more detail, the SEC's Whistleblower Office manually responds to hundreds of inquiries about how to submit information to the SEC that is larger than 50MB or how to submit information on a portable media device.

2.) Also, the SEC spends hundreds if not thousands of hours organizing supplemental information submissions into previous TCRs.

3.) Furthermore, the SEC manually responds to numerable whistleblowers that have asked for clarification on when they will receive an update, when a preliminary determination will be made, or if any more information is needed.

4.) Etc, (please see my previous suggestions to Ms. Norberg about improves to the information available at https://www.sec.gov/whistleblower that would significantly reduce the number of inquiries received from Whistleblowers and thus improve the efficiency of the Whistleblower office.)

Unfortunately, the proposed rules do nothing to address the above items that take up a considerable amount of staff time and resources. It is very disheartening that the proposed whistleblower rules have not been based off a study of staff hours and tasks and instead appear to be based off subjective opinions of cause and effect. In any case, to reach a tangible level of improvement and reduce the backlog of whistleblower claims the SEC should:

1.) Provide a more detailed FAQ section that touches on common questions about how to submit large files via flash drive or CD, what is the best format of a

whistleblower tip, does the SEC want more information or less information, are exhibits required or is a narrative enough? Etc.

2.) The SEC should allow a whistleblower to upload supplemental information directly via the online Whistleblower Portal. Secure whistleblower submission systems, such as SecureDrop already allow a whistleblower to add supplemental information to their initial submissions. Doing so is not technically challenging and would allow the SEC to spend less time organizing supplemental information and significantly reduce the time for the supplemental information to reach enforcement staff.

3.) Most other federal agencies provide respondents and claimants with a timeline or monthly bulletin of processing times as well as what to expect during the waiting process. However, the SEC does not provide this information on its website, thus numerous whistleblowers inquire to the SEC on a regular basis requesting updates. The SEC then has to manually respond to these requests that could have been avoided should satisfactory information be available on the SEC's website."

Subject: File No. S7-16-18
From: Anonymous Anonymous

September 9, 2018

According to 240.21F-8, the Commission may, in its sole discretion, waive any of certain procedures based upon a showing of extraordinary circumstances.

In consideration of such, the Commission already has the authority to operate outside the current whistleblower rule procedures - therefore, it is unclear as to why the SEC is proposing new rules when the Commission may already use its discretion to make changes in its operations.

Subject: File No. S7-16-18
From: Anonymous Anonymous

September 9, 2018

I would like to seek clarification if a Whistleblower submits information to the SEC, the SEC then forwards that information to FINRA, and FINRA takes action against the company that was subject to the original SEC Whistleblower complaint.

In this situation, under the proposed rules, would the Whistleblower be eligible for a Whistleblower Award? If not, the Whistleblower rules need to be amended to make it clear that action by FINRA based on information submitted via the Whistleblower program are eligible for an award.

Subject: File No. S7-16-18
From: Anonymous Anonymous

September 9, 2018

In relation to the proposed changes that would decrease the whistleblower claim backlog it appears as though zero calculations about the action impact has been done? Will the proposed rules decrease the time for processing claims by 10% 20% or 50%. Arguably, the additional variables used to calculate rewards for very small and very large payouts will increase the processing times. Therefore, I am uncertain of what impact on the backlog the SEC expects these news rules to have. Furthermore, if the backlog is such a big problem - why doesnt the SEC increase the number of OWB staff or engage in efficiency improving initiatives. A whistleblower has a 90 day window for file a Claim for an Award, yet the SEC has no deadline (or even internal estimations) for adjudication time frames.

Subject: File No. S7-16-18
From: Anonymous Anonymous

September 9, 2018

There are a lot of nonsensical aspects of the proposed rules and the Whistleblower Program operations.

For example, the Whistleblower form still asks a series of confusing questions that a Whistleblower may not have complete information to answer. The Whistleblower form asks would-be-whistleblowers if they are under investigation. However, I do not know and am generally incapable of knowing if I am under investigation and neither would anyone else. It is a general policy of law enforcement (and common sense) to not inform potential suspects that they are under investigation. Therefore, it is nearly impossible to answer certain questions with confidence. Worse, the form does not allow for a Not Available, Other, or Unknown selection - thus forcing Whistleblowers to choose between Yes and No when neither may be applicable answers. This same problem exists if the information is obtained through a source, especially sources in danger that do not reveal any details about themselves. There is no way for me or anyone else to know if a particular source of information is under investigation if they are providing me documents through unidentifiable online conversations or drop-box like folders.

I hope that the SEC can address these and many other additional issues by taking into consideration this comment and other comments. It is critical that the SEC utilize the feedback of real life Whistleblowers because they are the only ones who know the calculous that Whistleblowers go through when deciding on when and how to report misconduct.

Subject: File No. S7-16-18
From: Anonymous Anonymous

September 9, 2018

Based on Annual Reports, OIG Report, and internal documents the Whistleblower office conducts a number of operations as listed below. However, because no data has been released it is impossible to determine how much time and resources the SEC dedicates to each area, therefore while the proposed rule changes may address one or two areas, they do not address other areas which when combined may take up the bulk of the OWBs time:

1.) Managing intake of tips
2.) Managing intake of Whistleblower claims
3.) Collecting documents needed for Whistleblower adjudication
4.) Drafting and deciding on Whistleblower claim
5.) Presenting claim to commission.

Furthermore, in my personal experience that OWB spends significant time and resources dealing with the following matters:

1.) Answering queries from the public (could be solved with a better FAQ)
2.) Corresponding with and communicating with Whistleblowers (often scheduling multiple calls to repeat the same information to multiple Whistleblowers - could be solved with a better FAQ.)
3.) Adding supplemental information to previous tips
4.) Accepting documents via physical mail
5.) Forwarding documents to enforcement staff
6.) Recovering spoiled whistleblower information
7.) Etc.

Although the SEC is of the position that the proposed rules will decrease the processing time for Whistleblower claims it only addresses a very small portion of the OWB duties and is therefore will only have a limited impact (if any) on the processing times.

Subject: File No. S7-16-18
From: Peter Sivere

September 10, 2018

DOJ and SEC given the same evidence by a whistle blower. DOJ takes action. SEC takes no action. Under current rules, the whistle blower is not entitled to any of the $12.9 million disgorgement collected by the Government because currently a Declination Letter does not count towards an award. Same goes with DPA's and NPA's. That needs to change, especially if the Government uses the evidence to collect monies that were illegally gained.

Department of Justice
Office of Public Affairs
FOR IMMEDIATE RELEASE
Tuesday, January 16, 2018
Former Head of Barclays New York Foreign Exchange Operation Indicted for Orchestrating Multimillion-Dollar Front-Running Scheme

The former head of Barclays Capital Inc.s (Barclays) New York foreign exchange trading operation was charged yesterday in an indictment for his alleged role in a scheme to defraud a client of Barclays through a method commonly referred to as front-running. The charges relate to the manipulation of foreign exchange options in advance of an exceptionally large trade by the Palo Alto, California-based Hewlett-Packard Company (HP) in 2011.

Acting Assistant Attorney General John P. Cronan of the Justice Departments Criminal Division, Acting U.S. Attorney Alex G. Tse of the Northern District of California and Inspector General Jay N. Lerner of the Federal Deposit Insurance Corporation (FDIC) made the announcement.

Robert Bogucki, 45, of East Setauket, New York, was charged in an indictment filed in the Northern District of California on Jan. 16, with one count of conspiracy to commit wire fraud and six counts of wire fraud. Bogucki will make his initial appearance on Wednesday, Jan. 17, at 2:00pm in Brooklyn, New York, before U.S. Magistrate Judge Cheryl L. Pollak of the Eastern District of New York.

Robert Bogucki and others allegedly not only betrayed his clients confidences, but also risked undermining public trust in the foreign exchange options market, said Acting Assistant Attorney General Cronan. The Criminal Division and our law enforcement partners remain committed to protecting American interests by investigating and prosecuting sophisticated schemes such as the one alleged in this indictment.

The indictment returned today charges a fraudulent manipulation scheme where the defendant betrayed Barclays client by lying and misusing the client information, and then masked the activities, said Inspector General Lerner. We are pleased to work with our law enforcement partners in investigating these matters and protecting the integrity of the banking system against such alleged abuses.

According to the indictment, in September and October 2011, Bogucki misused information provided to him by HP, which had hired Barclays to execute a foreign

exchange transaction related to the planned acquisition of a UK-based company. Barclays was selected to execute the foreign exchange transaction which required the sale of 6 billion British pounds worth of options in September 2011. The defendant and other Barclays employees assured HP and its employees that they understood the need to keep the planned transaction, which was exceptionally large, and therefore market-moving, confidential. Instead, Bogucki and other Barclays employees allegedly used the confidential information they received to manipulate the price of volatility, a metric that affects the value of foreign exchange options. During conversations with Bogucki, one Barclays trader stated that he and other traders would bash the sht out of and spank the market to depress the price of volatility. Other Barclays traders also discussed hammering the market lower in order to decrease the value of the HPs options.

The indictment alleges that, as part of the scheme, Bogucki made misrepresentations to HP and its employees about Barclays activities and the state of the options market that concealed the self-serving nature of Barclays actions. Specifically, the indictment alleges that Bogucki directed options trading in a way that was designed to depress the price of volatility, to the benefit of Barclays and at HPs expense.

The charges in the indictment are merely allegations, and the defendant is presumed innocent unless proven guilty beyond a reasonable doubt in a court of law. This is the second indictment brought against the head of a foreign exchange desk of a global financial institution related to the Criminal Divisions ongoing investigation of fraud and manipulation in the foreign exchange markets.

The investigation is being conducted by the FDICs Office of Inspector General. Assistant Chief Brian Young and Trial Attorney Justin Weitz of the Criminal Divisions Fraud Section are prosecuting the case. The U.S. Attorneys Office for the Northern District of California provided substantial assistance in this matter.

Attachment(s):
Download Bogucki Indictment
Topic(s):
Financial Fraud
Component(s):
Criminal Division
Press Release Number:
18-47

September 11, 2018

VIA FAX [redacted]

Office of the Whistleblower
C/O Ms. Jane Norberg
100 F Street NE, Mail Stop 5631
Washington, DC 20549

RE: WB Reward Application – Covered Action 2016-101

Dear Ms. Norberg,

It has now been more than (2) full years. Please provide me with a status update as expeditiously as possible. Sincerely,

Sincerely,

Joe Sanders
[redacted]

Subject: RE: Comments on Proposed Rule: Amendments to the Commission's Whistleblower Program Rules [Release No. 34-83557; File No. S7-16-18]
From: Bill Singer
Affiliation:

Sep. 12, 2018

BILL SINGER, Esq

[redacted]
http://rrbdlaw.com
http://brokeandbroker.com

RE: Comments on Proposed Rule: Amendments to the Commission's Whistleblower Program Rules [Release No. 34-83557; File No. S7-16-18]

rule-comments@sec.gov

I am a 36-year Wall Street veteran lawyer, who represented the first in-house compliance officer to whom an SEC whistleblower bounty was paid. Presently, I am handling or consulting on nearly a dozen filed Forms TCR..

In "SEC Whistleblower Program Is A Black Hole Of Despair" (BrokeAndBroker.com Blog, April 9, 2015), http://www.brokeandbroker.com/2735/sec-oig-owb/ I detailed my frustration with the SEC's Office of the Whistleblower ("OWB"), which prompted me to file a complaint in November 2014 with the SEC Office of Inspector General ("OIG"). In "SEC Denies Three Whistleblower Awards" (BrokeAndBroker.com Blog, August 26, 2015) http://www.brokeandbroker.com/2876/sec-whistleblower/, I noted, in part, this:

"As more fully set forth in the April 9th BrokeAndBroker article, in November 2014, I filed a complaint with the SEC's Officer of Inspector General ("OIG") and requested an investigation of what I deemed OWB's dilatory conduct. In submitting my complaint, I was required to participate in a substantial telephone interview by the third-party service provider that the SEC retains for such purposes. During that interview, I provided the sum and substance of my complaint. I then awaited some meaningful follow-up. And I waited. And I still wait.

"In my futile attempts to communicate with OIG, I have referenced the April 9th BrokeAndBroker.com Blog article, which details my exasperation with both OWB and OIG. In response, OIG referred me back to OWB! Additionally, OIG persists in asking me to provide information that I had previously submitted -- but OIG will not acknowledge that it has either misplaced or lost that information and I will not cooperate further without such an admission or explanation to the contrary. Ten months have passed since the filing of my complaint with OIG and there has be no effort to contact me to discuss my concerns.

"Keep in mind that my client was finally awarded about $1.6 million after the publication of the April 9th BrokeAndBroker.com Blog. It's one thing to write me off as disgruntled because my client's claim was denied but it's quite another thing when you're trying to marginalize the grievances of someone who provided substantial assistance to the SEC and eventually gained a sizable award. The system is broken and needs to be fixed.

"Although the SEC and OIG would likely prefer to dismiss my complaints as the cranky musings of a crackpot and gadfly, it turns out that about a month after the BrokeAndBroker.com Blog article, the Wall Street Journal published two articles about the same issues:"

>"SEC Backlog Delays Whistleblower Awards / Claimants are often kept waiting for a decision, data show" (Wall Street Journal, Reporters Rachel Louise Ensign and Jean Eaglesham, May 4, 2015).

>"Whistleblowers Find SEC Rewards Slow and Scarce / The Securities and Exchange Commission offers financial rewards for information on wrongdoing. But many tipsters have found it tough to collect" (Wall Street Journal, Reporters Rachel Louise Ensign and Jean Eaglesham, May 25, 2015).

Those of us who represent whistleblowers frequently practice regulatory law and are often former regulators. We fully appreciate that there are certain responses that would be inappropriate, improper, and, at times, illegal for OWB to provide. Most of us are mindful of that threshold and do not cross it. That being said, it is frustrating and insulting to be treated as if we are representing criminal defendants or regulatory respondents when asking OWB for an status update or guidance on where it the ill-defined pipeline of consideration a given matter stands.. Both OWB staff and whistleblowers are victimized by the lack of specific deadlines from the date of filing of a NoCA and/or WB-APP, to being considered for an award, to being notified of the granting or denial of an award, and the calculation of the percentage of an award. Those cited issues pose deficiencies that are far more pressing than anything set forth in the proposal.

For the reasons noted above, the proposal strikes me as a cynical bit of regulatory grandstanding because the SEC has failed first to respond to historic, substantive complaints about:

unreasonable delays in OWB's intake process, persistent failures to timely and courteously communicate matters of status with whistleblowers and their counsel, and the counter-productive protocol of delay and non-responsive communications that accompany the NoCA and WB-APP filings. Before tackling limits on awards and the promulgation of expanded regulatory discretion, the SEC should first enhance the transparency of the purely procedural/administrative aspects of its whistleblower program.

Ultimately, File No. S7-16-18 comes off as a series of answers to questions that no one is asking – and as a classic example of second things first.

Subject: File No. S7-16-18
From: Taylor S Amarel

September 12, 2018

The SEC's Whistleblower Program is underfunded, understaffed, and most importantly undervalued.

Much of the discussing for these proposed rules is aimed at addressing a backlog in whistleblower claims. However, throughout the Commissions discussion and proposal of these rules - not a single reason was given as to why this backlog could not be addressed by increasing funding and the number of staff in the SEC's Whistleblower Office.

Currently, the number of staff presently assigned to the OWB is only 21 and the total annual expenditure for FY17 was $2,753,111.

For a program that has led to hundreds of millions of dollars in fines and sanctions, it is definitely worth considering increasing the number of staff to address the backlog. As they are written, the proposed rules are not guaranteed to have any impact on the backlog but will most definitely provide additional concerns and ambiguity to would-be-whistleblowers and perhaps discourage them from reporting wrongdoing.

(Attached File #1: s71618-4334228-173237.pdf) (Attached File #2: s71618-4334229-173237.pdf)

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

September 12, 2018

Mr. Taylor Amarel
10420 Jitney Lane
Grass Valley, CA 95945

RE: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **18-02358-FOIA**

Dear Mr. Amarel:

This is the final response to your request, dated July 3, 2018 and received in this office on July 17, 2018, for information regarding Office of the Whistleblower (OWB) staff and budget levels. Specifically, you seek:

1. The number of staff presently assigned to the OWB;
2. The salaries or government pay levels of the OWB staff; and
3. The most recent annual expenditure for the OWB, exclusive of Whistleblower payments.

On July 20, 2018 I responded to No. 1 of your request by stating that the number of staff presently assigned to the OWB is 21. With respect to No. 2, access is granted in full to the attached spreadsheet. For No. 3, please be advised that the most recent annual expenditure available for the OWB is for FY 2017. The total annual expenditure for FY17 was $2,753,111.

If you have any questions, you can contact me at sifordm@sec.gov or (202)551-7201. You may also contact the SEC's FOIA Public Service Center at foiapa@sec.gov or (202) 551-7900. For further assistance you can contact a SEC FOIA Public Liaison by calling (202) 551-7900 or visiting https://www.sec.gov/oso/help/foia-contact.html.

Sincerely,

Mark P. Siford
Counsel to the Director/Chief FOIA Officer
Office of Support Operations

Attachment

WAMPLER BUCHANAN WALKER
CHABROW BANCIELLA & STANLEY, P.A.
ATTORNEYS AND COUNSELORS AT LAW

September 14, 2018

Via Email: rule-comments@sec.gov

Re: File Number S7-16-18

Honorable Commissioners:

On behalf of the public vulnerable to predators' fraud schemes, we, a law firm with extensive experience in SEC whistleblower actions, false claims actions and public service, write to object to the proposed amendment to Exchange Act Rule 21F-6, 17 CFR §240.21F-6, that would allow the Commission to "determine that an exceedingly large potential payout resulting from the assessment under paragraphs (a) and (b) of the Rule was not reasonably necessary to fulfill the purposes of the program and thus exercise its discretion to reduce the award to an appropriate amount." 83 Fed.Reg. 34702, 34713 (July 20, 2018). We also object to the proposed guidance on the meaning of "unreasonable delay" under Rule 21F-6.

The reasons for our objections are:

(1) The Securities Whistleblower Incentive and Protection statute, 15 U.S.C. §78u-6, was clearly written to provide for an award of 10 to 30 percent of the total collected monetary sanctions that the whistleblower's original information led the SEC and related agency to recover. Congress decided that 10 to 30 percent of the recovery achieved by the SEC and related agency would provide the best possible incentive for future whistleblowers to report the biggest frauds on the public. Congress knew the money to pay the award would not come from the defendant or have to be appropriated from agency or general Government funds because the awards were only to be paid from already collected monetary sanctions that the Government had in its coffers. 15 U.S.C. §78u-6(b)(2). All of the collected funds from the monetary sanctions are directed to be deposited either into the SEC's Investor Protection Fund ("IPF") according to a formula or the excess to Secretary of the Treasury to invest as a credit to the IPF to replenish the IPF if and when necessary. 15 U.S.C. §78u-6(g) (2), (3), & (4).

(2) There is no statutory authority for funding "other valuable programs" with monies recovered from covered actions and related actions that are derived from the whistleblower program. The statute authorizes only two uses of the funds deposited in the IPF: (1) paying awards to whistleblowers, and (2) funding the activities of the Inspector General of the Commission. 15 U.S.C. §78u-6(g)(2).

(3) The proposed amendment to Exchange Act Rule 21F-6 directly violates the statutory directive in 15 U.S.C. §78u-6(c)(1)(B)(ii) that, in determining the amount of the award, the Commission "shall not take into consideration the balance of the Fund."

(a) The proposed amendment would mandate the Commission to consider "the potential impact any adjustment might have on the IPF." 83 Fed. Reg. 34702, 34715 (July 20, 2018).

(b) Thinly veiled statements of the Commission's consideration of the effect (inferring an adverse effect) of an exceedingly large award on the balance of the IPF and that an unnecessarily excessive award should be husbanded for purposes of the program and sent to the Treasury where it could be used for funding other valuable programs, abound throughout the Commission's stated justification for the proposed amendment. See 83 Fed. Reg. 34702, 34715 - 34716.

(4) The Commission's subjective proposals to determine criteria for "an exceedingly large potential award"... "that was not reasonably necessary to fulfill the purposes of the program" and to adjust such awards downward, do not fulfill the twin purposes of the program to reward whistleblowers and incentivize future whistleblowers. First, for example, a $100 million award is not what a whistleblower would retain. In the vast majority of award applications the award to the whistleblower will be reduced by attorneys' contingency fees, costs, and significant federal, state and local income taxes, leaving the whistleblower a net of less than 40% of the award. Also, the Commission's criteria are not egalitarian. Structuring a statistical matrix of categories of whistleblowers' job titles, salaries and what reward they should receive based on projected lifetimes earnings subject to an algorithm related to a wealth matrix of U.S. citizens (or the whistleblower's country of origin's statistics) has nothing to with the value of the "voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial.....or related action...." Whether the whistleblower is a warehouse manager or a high-level executive of a global business is irrelevant. The size of the award should be determined by the quality of the evidence, the assistance the whistleblower provided, and the SEC's and related agency's ability to use the evidence provided by the whistleblower to prove the securities violations and damages. 15 U.S.C. § 78u-6(b)(1) and 6(c)(1)(B)(i). What possible sum would induce a high-level official in a major international corporation to risk his/her life, future employment, and family's welfare to expose fraudulent corporate activity? Congress legislated that the best inducement was a requirement to pay 10%-30% of whatever total recovery is made from the SEC's and related agency's judgments. There is nothing in the statute to suggest that awards should be reduced because the SEC in its judgment determines them to be exceedingly large. There are no caps, no throttles, and no governors on a large award between 10%-30% of the total recovery.

(5) The proposed criteria do not value the vast deprivations in the quality of the life, health, and safety of whistleblowers that are caused by the whistleblowing. There are the effects of stress and health of the whistleblower going through the length of time necessary to investigate and complete an enforcement and related agency action, and the award process. Whistleblowers are likely to have reasonable concern for their personal safety from retribution from disgruntled officials whose employment were terminated by a defendant corporation in its efforts to qualify for providing substantial assistance to lower the Government's penalties charged against the defendant corporation.

(6) The Commission's proposal to provide guidance regarding the meaning of "unreasonable delay" under existing Rule 21F-6(b)(2) and proposed rule 21F-6(c) would allow for an automatic reduction of the amount of an award to a whistleblower for any delay in reporting securities law violations to the Commission beyond 180 days is unreasonable. Such a guidance penalizes a whistleblower's attempts to pursue internal corporate compliance procedures, which are unlikely to have reached the point within the 180 day period that would allow a corporation to take appropriate remedial action and self-report to the SEC. A whistleblower that is genuinely pursuing internal corporate compliance procedures should not be penalized by having an award reduced if reporting does not occur until after 180 days. We submit that a whistleblower's actions to seek first that its employer correct the unlawful actions are in keeping with current rules and that an award should not be adversely affected because of reporting delay due to such efforts. 17 CFR §240.21F-6(b)(2). The SEC should not decrease a whistleblower's award if the whistleblower did not file a TCR with the SEC within 180 days of obtaining knowledge of securities violations if the whistleblower acted reasonably in following internal reporting channels. Rule 17 CFR § 240.21F-6(a)(4).

(7) The public commentary to the first set of proposed rules caused the Commission to add participation in internal compliance systems to the list of factors that may increase the amount of a whistleblower's award. 17 CFR § 240.21F-6(a)(4)("Internal Reporting Factor"). The Commission adopted the Internal Reporting Factor because it agreed with the public commentary that the best public policy for addressing fraudulent or unlawful actions was to first encourage a business to correct such violations through its own internal corporate compliance system. The SEC wanted companies, after being alerted to the unlawful activity, to take corrective action to comply with the law and discipline or terminate the guilty employees. The presumption was that the corporate executives and board members who were not participating in the violations and had no knowledge of the illegal activity, when confronted with the reports of corporate illegal activity through the company's internal compliance program, would take action to end the violations. This was deemed by the Commission as the best policy instead of a policy that would encourage whistleblowers to first run to the SEC and file complaints prior to allowing the company's executives to correct the problem internally. See Claire M. Sylvia, *Future Development—The SEC Whistleblower Program—The Internal Compliance Debate,* The False Claims Act: Fraud Against

the Government, §2:26, (Supp. June 2018); Rebecca Katz and James Weir, *Plaintiffs' Perspective: The SEC's Final Rules for Whistleblowers Offer A Balanced Approach to an Important New Program*, 8 Sec. Litig. Rpt. 11 (July/August 2011); Umang Desai, *Crying Foul: Whistleblower Provision of the Dodd-Frank Act of 2010*, 43 Loy. U. Chi. L.J. 427, 468 (2012).

(8) Finally, we respectfully suggest that the SEC request Congress to pass a law that extends the statute of limitations in SEC civil enforcement actions involving disgorgements and other penalties from five years to an appropriate later time (10 or 20 years). Such extension of the statute of limitations would enable justice to be done and not to penalize whistleblowers for taking reasonable actions in pursuing internal corporate compliance procedures.

Respectfully submitted,

WAMPLER BUCHANAN WALKER
CHABROW BANCIELLA & STANLEY, P.A.

Atlee W. Wampler III, Esq.

Ricardo A. Banciella, Esq.

AWW/tr

Subject: File No. S7-16-18
From: Anonymous Anonymous

September 14, 2018

Instead of providing a simple and clear whistleblower program (as legally required by the Dodd-Frank Act), these proposed rules further complicate and disincentivize whistleblowers from coming forward.
Whether it is on purpose of not, the SEC is not creating forces that encourage would-be-whistleblowers from coming forward and instead if creating a market for whistleblower lawyers - this is very dangerous and will negatively impact the effectiveness of the whistleblower program.

If a whistleblower needs a lawyer to understand the rules or answer questions about the probable timeline, then a whistleblower may stop there and no longer pursue any potential whistleblower tips.
This is incredibly damaging. I would encourage the SEC to review the comments from actual and would-be-whistleblowers and enact policies to ensure that everyone is well informed about the operations of the program, there are methods to request basic information, and whistleblowers are able to understand the timeline and submission process without seeking legal counsel.

Furthermore, the SEC MUST ensure that the whistleblower program abides by the Administrative Procedures Act, by among other things:
1.) Allowing whistleblowers to request expedited processing
2.) Allowing whistleblowers to request the recusal of biased Claims Review Staff
3.) Allowing a whistleblower to submit relevant motions
4.) Disclosing to whistleblowers a clear and concise timeline for adjudications and
5.) Hiring adequate staff in order to process claims and respond to inquiries in a timely and complete manner.

Subject: File No. S7-16-18
From: Peter Sivere

September 14, 2018

STREET SCENE

The Price of Silence on Wall Street
By William D. Cohan
Aug. 25, 2015

In response to Mr. Siveres claims, a Barclays spokeswoman, Kerrie Cohen, wrote in an email: Prior to requesting to be placed on leave in July 2013, Mr. Sivere raised concerns about a transaction. Barclays investigated those concerns and concluded that there was no evidence of wrongdoing or misconduct related to them. While out on leave, Mr. Sivere has raised other potential issues relating to events before and after he went on leave. As part of its whistle-blowing program, Barclays encourages employees to speak out if they believe they have learned of potentially inappropriate behavior, so that the company can investigate and take action as appropriate. If Barclays determines that any of the issues warrant further action, Barclays will take appropriate action.

https://www.nytimes.com/2015/08/26/business/dealbook/the-price-of-silence-on-wall-street.html

(Attached File #1: s71618-4345122-173273.pdf)

U.S. Department of Justice

Criminal Division

Fraud Section
1400 New York Avenue, NW
Washington, 20005

February 28, 2018

Alexander J. Willscher
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004

Joel S. Green
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006

Dear Messrs. Willscher and Green:

The Department of Justice, Criminal Division, Fraud Section (the "Department") is closing its investigation of your client, Barclays PLC ("Barclays"), a publicly traded corporation headquartered in London, United Kingdom, concerning frontrunning of foreign exchange ("FX") transactions connected to the Hewlett-Packard Company ("HP") from August to October 2011.

The Department's investigation found that Barclays, through its employees and agents, misappropriated confidential information provided to Barclays by HP in regard to FX options and spot transactions, and deceived HP about the nature of its trading, in violation of duties to HP, as described in the indictment returned in *United States v. Bogucki*, 18-CR-00021 (N.D. Cal.). Specifically, Barclays FX traders (1) traded spot August by purchasing British pounds in a manner which increased the profits of individual Barclays traders; (3 traded ahead of HP's "unwind" of options in September and October 2011, decreasing the price that HP ultimately received from Barclays; and (4 actively deceived HP about the causes of market movements during this period.

The Department's decision to close its investigation of this matter is based on a number of factors, including but not limited to: (1) Barclays' timely, voluntary self-disclosure of the matters described above; (2) Barclays' thorough and comprehensive investigation; (3) Barclays' full cooperation in this matter (including its provision of all known relevant facts about the individuals involved in or responsible for the misconduct); (4) the steps Barclays has taken and continues to take to enhance its compliance program; (5) Barclays' full remediation, including its agreement to provide full restitution to HP and disgorge any ill-gotten gains; and (6) Barclays' agreement to continue to cooperate with the Department in this or any related matters pursuant to paragraph 17 of Barclays' Plea Agreement with the Department dated May 20, 2015.

Pursuant to this letter agreement, and to the extent that such policies and procedures are not already in place, Barclays will promulgate compliance policies and procedures designed to reduce the prospect of violations of U.S. federal law concerning fraud and market manipulation and violations of Barclays' compliance code within Barclays' FX business, and Barclays will take appropriate measures to encourage and support the observance of ethics and compliance policies and procedures against violation of U.S. federal law concerning fraud and market manipulation by personnel at all levels of Barclays' FX business. These policies and procedures shall apply to all directors, officers, and employees within Barclays' FX business. Barclays shall notify all current employees within Barclays' FX business that compliance with the policies and procedures is the duty of individuals at all levels of Barclays, its affiliates, and subsidiaries. Such policies and procedures shall:

a. address the treatment of confidential client information directly relating to contemplated, potential, or actual orders, or transactions in situations where Barclays or its employees have agreed to confidentiality obligations with clients or potential clients ("Confidential Business Information"), including, with respect to Barclays' FX business: (i) maintaining documentation sufficient to prove that each Barclays employee responsible for handling Confidential Business Information was informed, at or before the time the employee is handling the Information, of Barclays' obligations relating to the client's Confidential Business Information; and (ii) the retention and maintenance of Barclays documents and information related to Confidential Business Information, including e-mails, audio files, and client agreements in a manner consistent with Barclays' retention policies and designed to be readily accessible in response to internal and external requests;

b. address appropriate conduct in responding to potential conflicts of interest with clients that place orders for execution by Barclays, including procedures for the timing of the execution of client orders; and

c. reasonably ensure that current employees within Barclays' FX business are aware of this Agreement, and Barclays' obligations contained herein.

Pursuant to this letter agreement, Barclays agrees to pay $12,896,011 USD in combined restitution and disgorgement (the "Disgorgement Amount") to the U.S. Treasury. The Disgorgement Amount shall be offset by any amount that Barclays pays to HP as restitution for the offense conduct described above (the "Restitution Amount"). Barclays shall pay the Disgorgement Amount no later than ninety days after the execution of this letter agreement (or any period thereafter that is mutually agreeable to both Barclays and the Fraud Section), pursuant to payment instructions provided by the Fraud Section. In the event that the Disgorgement Amount exceeds the Restitution Amount, the remaining funds shall be retained by the U.S. Treasury. The Disgorgement Amount has been determined by the Fraud Section to be the full amount of restitution and disgorgement owed by Barclays, including disgorgement of certain of Barclays' profits from the conduct at issue, and the Fraud Section agrees to not seek further disgorgement from Barclays relating to the HP transaction. Barclays acknowledges that no tax deduction may be sought in connection with any part of its payment of the Disgorgement Amount. Barclays further agrees that it will not seek or accept direct or indirect reimbursement or indemnification from any source with regard to the Disgorgement Amount.

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: File No. S7-16-18, Amendments to the SEC's Whistleblower Program Rules

Dear SEC Commissioners,

Thank you for your service to our country and for considering my comments. I also want to thank the many others at the Commission who work with diligence and determination to protect the financial interests of those who invest in and rely on our markets.

I have read through the 184 pages of Proposed Amendments to the Commission's Whistleblower Program Rules. There is a lot of information and ideas to digest, so I am going to focus my feedback in this letter solely on the Commission's desire to expedite Preliminary Determinations and Final Orders of Whistleblower Awards.

As one who has been waiting to receive a Preliminary Determination, I was encouraged to see that the Commission is looking for ways to streamline the determination process. Thank you for caring about the delays. In the life of a whistleblower, waiting for a Preliminary Determination can feel like a hopeless eternity. My wife commented to me recently that she was unsure "if it has been worth it," when pondering if a future monetary reward of any size has been worth the risks we have taken, the troubles we have endured or the time and experiences we have lost as a family? How do you put a value on time lost, as there is no way to get it back? Waiting years for a determination can feel like a lifetime, especially for those of us who lack the financial resources to stay afloat while waiting for an award, or for those of us who just want to bring finality and closure to the difficulties endured as a whistleblower.

While communicating the Proposed Amendment to Rule 21F-8 (pertaining to claimants who submit false information to the Commission or who abuse the award application process) the Commission stated on page 77:

> "Processing these frivolous award applications uses staff resources that could be devoted to potentially meritorious award applications. Beyond the diversion of staff resources, we have found that, by utilizing the procedural opportunities to object to an award, these repeat applicants can significantly delay the processing of meritorious award applications and the eventual payment of awards."

Thank you for proposing to permanently ban any applicant from seeking an award after the Commission determines that the applicant has abused the process by submitting three or more frivolous award applications. I am in favor of this component of the proposed amendments.

Further, while communicating the Proposed Amendment to Rule 21F-18 (pertaining to establishing a summary disposition process), the Commission stated on page 91:

> "Over the course of the years that the Commission has implemented the whistleblower award program, it has become apparent to us that a significant number of award applications may be

> denied on relatively straightforward grounds because they do not implicate novel or important legal or policy questions. These grounds for denial include, among other things, the fact that the individual did not comply with the form-and-manner requirements as specified in Rule 21F-9 for submitting information to be eligible for an award, or that the information was not used by the staff responsible for investigating, preparing and litigating the covered action and thus the individual's information did not "lead to" the success of the covered action.
>
> In an effort to provide a more timely resolution of relatively straightforward denials, we are proposing a summary disposition process. This process would be in lieu of the claims adjudication processes that are specified in Rule 21F-10 and Rule 21F-11. The principal difference between the proposed summary disposition process and the existing processes specified in Rule 21F-10 and 21F-11 is that for a claim designated for summary disposition the CRS would not be involved in reviewing the record, issuing a Preliminary Determination, considering any written response filed by the claimant, or issuing the Proposed Final Determination; these functions would be assumed by the Office of the Whistleblower in an effort to streamline the Commission's consideration of denials that are relatively straightforward."

Thank you for proposing this streamlined process. I appreciate that you are addressing a learned bottleneck (the involvement of the Claims Review Staff [CRS] on such matters) and for proposing an excellent solution (letting the Office of the Whistleblower [OWB] handle the resolution of relatively straightforward denials). I am in favor of this component of the proposed amendments.

The Commission has also communicated that it desires to create a 30-day period for claimants to reply to a Preliminary Summary Disposition, which was noted as being shorter than the allowed 60-day period for replying to a Preliminary Determination. I propose that a claimant be allowed, and automatically granted (by notifying the commission in writing) an additional 30-day extension when responding to a Preliminary Summary Disposition. Thus, a claimant would have up to 60 days to reply. This would represent a compromise between what the Commission believes is appropriate and what is best for claimants who are legitimately trying to contest the denial. For claimants who do not contest the denial within the 30-day period, the Preliminary Summary Disposition could automatically become the Final Order. The issue that I have with only allowing a 30-day window to contest a Preliminary Summary Disposition is that a claimant's attorney (or even the actual claimant) may be buried deep in other urgent matters, and as such, may be unable to quickly pivot to working on contesting the denial. I believe the data shows that hundreds of claimants have and continue to wait several years before receiving any type award determination. When claimants have no knowledge nor advance notice as to when they may hear any news or feedback from the Commission on an award claim, to expect claimants to reply within 30 days seems potentially problematic.

The Commission also stated on page 94 that the proposed Preliminary Summary Disposition process could also be employed on award claims where multiple claimants are involved, "even if other of the applications are subjected to the regular consideration processes specified in Rules 21F-10 and 21F-

11." The Commission believes "this could free up staff resources to concentrate on the meritorious claims or the more difficult determinations," and "may potentially permit the Commission to more promptly pay any meritorious whistleblower on any award that may eventually result from the final order issued under the Rule 21F-10 or Rule 21F-11 process." I am in favor of this component of the proposed amendments but reiterate that I believe a claimant should have up to 60-days to respond to a Preliminary Summary Disposition.

I hope that the proposed amendments to streamline the awards process will make a big difference in expediting Preliminary and Final Determinations for eligible whistleblowers. I recently read a Freedom of Information Act Request, pertaining to the total number of properly filled out whistleblower award claims for SEC Covered Actions since the beginning of the Whistleblower Program through June 8, 2018 (https://www.sec.gov/files/18-02174-FOIA.pdf)

The Division of Enforcement stated that 1,004 WB-APPs have been properly filled out. By utilizing the Final Orders section of the Office of the Whistleblower website, I was able to approximate 419 Denial Orders and 57 Award Orders from inception through September 13, 2018. The calculations by year are:

- 2012 – 2 Denials / 1 Award
- 2013 – 58 Denials / 5 Awards
- 2014 – 153 Denials / 8 Awards
- 2015 – 113 Denials / 9 Awards
- 2016 – 29 Denials / 15 Awards
- 2017 – 48 Denials / 13 Awards
- 2018 – 16 Denials / 6 Awards

I hope that my calculations are wildly incorrect, as I became discouraged when adding up the numbers. It appears that 476 decisions have been made (528 still undecided), out of 1,004 claimants waiting to for a determination (or stated another way, 52.59% of all claimants have not received a decision on their award claim).

The first Award Order was issued 7/18/2012 and the most recent Commission Order was issued on 9/06/2018. During this nearly 74 month window, the Office of the Whistleblower employed the following number of attorneys during the year (based on information communicated in the Annual Whistleblower Reports):

- 2012 – 8 attorneys
- 2013 – 9 attorneys
- 2014 – 9 attorneys
- 2015 – 10 attorneys (report stated that 2 additional attorneys would be hired)
- 2016 – 11 attorneys (it appears the 2nd attorney was not added)
- 2017 – 11 attorneys

When adding up the attorneys and then dividing by 6 years, the Office of the Whistleblower has employed 9.67 attorneys per year [(8+9+9+10+11+11) / 6 years].

By analyzing the above date, I suggest for consideration that:

- 476 Orders have been issued during the 74 month span (from 7/2012 – 9/2018), or about 77.19 Orders per year [(476 Orders / 74 months) * 12 months].

- On average, an Office of the Whistleblower attorney can handle 7.98 Award or Denial Orders per year [77.19 Orders / historical average of 9.67 OWB attorneys]. If 11 staff attorneys are currently employed at the OWB, then the OWB can process 87.78 Award or Denial Orders per year [7.98 Orders per attorney * 11 attorneys].

- If the Office of the Whistleblower is employing 11 attorneys in 2018, and if the OWB maintains 11 attorneys into the future, then it will take over 6 years (72.18 months) to work through the 528 undecided award applications. [528 undecided claims / 87.78 claims per year that can be determined with an 11 attorney staff at the OWB].

- It is important to note that the above figures include low hanging fruit denials (one claimant was denied on 196 orders and another claimant was denied on 25 orders). If these two claimants were excluded from the above calculations, the number of orders that an OWB attorney could close during a year would decline, and it could potentially take much longer than 72 months to work through the current determination backlog.

- If the 221 outlier denials (the frivolous claims submitted by the two claimants) are excluded from the 476 decisions made to date, then there has effectively been 198 denials and 57 awards. This factors out to 22.35 awards and 77.64 denials per every 100 claims. [57 Award Orders / 255 total determinations]. With an estimated 528 claims still undecided, it is possible that there are 118 Award Orders yet to be determined [22.35% Award Orders * 528 undecided claims].

- Of the 476 denial or award decisions rendered, 46.42% of all decisions made relate to the 221 frivolous claims submitted by the two problematic claimants [221 frivolous claims / 476 total determinations].

- In 2016 there were 44 Final Orders, 2017 had 61 Final Orders, and 2018 has seen 22 Final Orders (through 9 months – or a projected 29 Final Orders for all of 2018). Thus, the ratio of Final Orders to OWB attorneys for the last 3 years is:
    - 2016 – 44 Final Orders / 11 attorneys = 4.00 Final Orders per attorney
    - 2017 – 61 Final Orders / 11 attorneys = 5.55 Final Orders per attorney
    - 2018 – 29 Final Orders (est) / 11 attorneys = 2.64 Final Orders per attorney

So, it seems a good question to ask is this: Is the bottleneck due to (1) an understaffed Office of the Whistleblower, (2) an overcommitted Claims Review Staff, (3) process inefficiencies, (4) frivolous award claims or (5) all of the above?

If the problem is with an understaffed OWB, and each OWB attorney can currently handle 4 determinations per year (averaging out the 3-year average of 2016-2018), then it will take approximately 12 years to process the current 528 claimant backlog [528 / (11 OWB attorneys * 4 orders per year)].

If the problem is with an overcommitted Claims Review Staff, then it seems that more Claims Review Staff (or support staff working on claim reviews) needs to be added, combined with the proposed amendments to reduce the types of determinations the CRS needs to be involved with.

If the problem is with process inefficiencies, and the inefficiencies are being address with the proposed amendments, would the Commission be willing to temporarily deploy an additional 20 - 30 attorneys to the OWB or CRS to assist with working through the current backlog?

I do not believe the bottleneck is currently affected by frivolous award applicants (when looking at the overall scope and magnitude of Preliminary Determination delays. The Commission stated on page 147 that:

> "…. two individuals have submitted approximately 24% of all award applications in connection with Commission covered actions. All but one of the applications submitted by these two individuals have been found by the Office of the Whistleblower to be entirely frivolous."

I believe the Commission is referring in large part to the Denial Orders on March 19, 2013 (51 claims) and May 12, 2014 (143 claims) and August 5, 2015 (25 claims). Again, I completely agree that eliminating frivolous award claims is necessary. However, it appears that delays in the awards process is unrelated to frivolous claims, as these two claimants had their claims denied 65, 48 and 37 months ago respectively. Frivolous claims may be problematic in the future, but it does not seem to answer the question as to why delays exist right now in processing award applications.

It appears that a much larger problem is a shortage of Commission staff to handle whistleblower matters. I request that the Division of Enforcement fully evaluate ways to increase staff – in the CRS, OWB, or both.

Consider the 2017 Annual Whistleblower Report, which stated that:

> "In FY 2017, we received over 4,400 tips, an increase of nearly 50 percent since FY 2012, the first year for which we have full-year data."
>
> and also
>
> "During FY 2017, we returned nearly 3,200 calls from members of the public, exceeding the number of calls returned the prior fiscal year. Since May 2011 when the hotline was established, OWB has returned over 18,600 calls from the public."

In my humble opinion, it seems impossible for eleven attorneys and a support staff to handle 4,400 tips per year along with 3,200 calls per year (often with at least two attorneys on the call). How are eleven attorneys supposed to handle all of this, then also research, investigate, document and promptly recommend Award or Denial Orders?

I have recently wondered if the Division of Enforcement has shaped the whistleblower program (as currently constructed and staffed) to primarily focus on the intake and maintenance of tips, and the program may not be designed to quickly process award claims. As an example, look at the two of the Denial Orders from September 11, 2017 – as both pertain to NOCAs from 2012, which were five years earlier. When a whistleblower sees delays like this, it is really discouraging.

I believe in the past it was possible to make award determinations quickly. I am reminded of the Final Award Order on September 30, 2013. The Preliminary Determination had been made on September 5, 2013, and the award involved a Notice of Covered Action in which the Claim Due Date was just six weeks before the Preliminary Determination was made (I realize that this award involved a single claimant and was not appealed). This example was over five years ago, and so I wonder if this is the decision-making speed that is still possible when not dealing with a massive backlog.

There is a certain computer company's business model, where one specs out a desired build-to-order computer on the website, and then the company provides an anticipated delivery date. Every single time I have placed an order with this company, the computer has always arrived a few days early. The company does a great job of setting my expectations, and then beating my expectations by delivering the computer early. I encourage the OWB and/or CRS to do something similar and provide claimants with a calendar date that they will receive a Preliminary Determination by. As Stephen Covey has stated in *The Seven Habits of Highly Effective People*, "The key is not to prioritize what's on your schedule, but to schedule your priorities." Please make claimant determinations a greater priority. By providing claimants with a date, claimants can have peace of mind knowing that their claims are actively being worked on, and the Commission will have a much better idea of staffing requirements needed to meet the delivery dates.

When a whistleblower is forced to wait months or even years for a Preliminary Determination or an Award Order, it can create many challenges and difficulties. There may be a misconception that since a whistleblower can remain anonymous, then in general they can live their lives, keep their jobs and go about as if nothing ever happened. What about the whistleblowers who don't have a soft landing?

In conclusion, I ask the Commission to do everything possible to expedite award determinations. I fully believe in the OWB and the CRS, and I have confidence that the delays in issuing determinations can be resolved. Please promptly reward eligible whistleblowers who have taken many risks to do what is right. Expediting determinations can help to bring closure to some of the chapters in whistleblowers' lives that we would like to put behind us. I look forward to the day when I will be able to think of myself as a former whistleblower, rather than as a whistleblower in the present tense.

Thank you for considering my comments.

Subject: File No. S7-16-18
From: Anonymous Anonymous

September 14, 2018

I would like to better understand why the SEC is proposing these rule changes. Unlike other rule proposals, these changes appear to be rushed, not based on fact and formed based off personal opinions.

One specific area I would like to comment on is the following:

-Why is the SEC seeking the ability to summarily dismiss claims? And Why does the SEC claim that this ability to dismiss claims will reduce the backlog of whistleblower claims?

In practice, the SEC places these 'frivolous' whistleblower claims at the very back of the claims adjudication queue. Given such, it is unclear how the ability to summarily dismiss claims will actually increase the efficiency of whistleblower operations.

In fact, the process of conducting a summary dismissal may be more time consuming than simply placing these 'frivolous' claims at the very back of the queue and only allocating time and resources to 'non-frivilous' claims.

If the SEC is confident that these proposed rule changes will reduce the backlog, could the SEC please disclose a quantifiable amount of impact? Will these rules reduce the backlog by 6 months, 12 months, etc.

As other commenters have pointed out, at the current rate of claim adjudication, it could take multiple decades for a whistleblower to have his claim adjudicated. This is a serious problem, so rather than taking a stab in the dark, as these proposed rules do, I would like to SEC to set a goal, such as 95% of whistleblower claims adjudicated within 12 months, and take the necessary steps to make that goal a reality.

Re: File Number S7-16-18 (Proposed Amendments to Whistleblower Rules)

Dear Commissioners:

As most of us recall, the global financial crisis and the Bernie Madoff ("Madoff") scandal were direct catalysts for the enactment of the SEC whistleblower program. I was called to testify before the House of Representatives concerning my efforts to expose Madoff. I arrived armed with the 2008 Association of Certified Fraud Examiner's biennial report on white-collar fraud. Therein were statistics showing that whistleblowers were the number one method of detecting fraud – more than twenty times as effective as law enforcement alone. I testified on the need for a whistleblower program, and Congress agreed with me. At that time, our nation's banking and securities laws and enforcement procedures were ill-equipped to detect large, complex financial fraud schemes that were led from the C-suite. The SEC Whistleblower Program was meant to act as a pendulum swing.

Today, the SEC Whistleblower Program receives thousands of tips from investors and finance professionals from around the globe. Thanks to the hard work of the Commission's Office of the Whistleblower ("OWB") and whistleblowers themselves, exam teams can be sent out on highly focused exams and know what to inspect to find fraud – all because an insider or outside analyst came in and laid bare the fraud scheme. The Commission is doing the largest cases in its history, relying on whistleblowers who have been incentivized to report wrongdoing. The FBI and the U.S. Department of Justice ("DOJ") are also beneficiaries of the SEC's program, receiving a steady stream of solid criminal referrals leading to convictions that put securities fraudsters behind bars where they belong.

With those positive developments as a backdrop, I am happy to have an opportunity to comment on the proposed amendments to certain whistleblower rules. I hope that whatever rule changes are ultimately enacted serve to enhance the program and allow the Commission to continue to prosecute even more creative and larger-scale frauds that are taking place all too frequently in this country.

Below are my views on some of the proposed rules:

a. <u>False Filers – Proposed Amendment to Rule 21F-8 with new paragraph (e).</u>

My impression is that there are far too many false filers – those who file Whistleblower Applications for Reward ("WB-APPs"), or related appeals, on cases for which they have no basis to expect an reward. Those false filers appear to have a "you have to be in it, to win it" mentality, as though the SEC whistleblower program were a state lottery. Such a mentality, however, greatly undermines the efforts of legitimate whistleblowers by hindering the WB-APP evaluation process and increasing government skepticism of whistleblower tips.

My advice is to be ruthless with false filers, especially those who haven't filed a TCR and haven't provided actionable information to the Commission. I believe it should be "one and done" for false filers, not "three strikes and you're out." It also seems that attorneys are filing some of the frivolous claims. Barring offending attorneys from practicing before the Commission and publicizing their punishment should prove a good deterrent for others that are similarly inclined to file for an award without legitimate grounds. This program is too important for the smooth functioning of our capital markets to let these false filers diminish its efficacy.

That said, Proposed Amendment to Rule 21F-8 (along with Proposed Rule 21F-18 establishing a summary disposition procedure) is a good start, and I endorse any effort to bring the false filing problem under control. The "three strikes" policy under the Proposed Rule is more leeway than I would afford false filers, but it is a necessary and practical first step. I also support the use of formal adjudicatory proceedings to deal with false statements by purported whistleblowers, as this serves the public function of shining light on the wrongdoing and showing would-be false-filers that it is not something worth attempting. *See Proposed Rules*, at 79, n. 189.

b. Clarifying Payments for Cases in Federal Bankruptcy

The Proposed Amendment to Exchange Act Rule 21F-4(e) defining "monetary sanctions" is unclear, and seemingly fails to address a critical gap in cases that settle and/or go into federal bankruptcy court instead of receivership. The Commission needs to treat recoveries by a Commission-forced bankruptcy trustee as qualifying for an award under the whistleblower program in the same manner as it would recoveries by a Commission-forced receiver.

While Ponzi cases often go into receivership, public company accounting frauds, *e.g.,* Enron, often end up in federal bankruptcy court. It is important for corporate whistleblowers to know they will be rewarded for turning in their company even if exposing the fraud ends up bankrupting the company. Accounting fraud is a scourge that raises the cost of capital for every honest company that keeps an accurate set of books. The Commission needs to make clear that the whistleblower program rewards accountants who come in and expose cooked books. A real-world example is WorldCom, where the company's Chief Audit Executive, Cynthia Cooper, turned whistleblower, sending WorldCom spiraling into bankruptcy. Another real-world example is the whistleblower who turned in the Life Partners Holdings Inc. ("LPHI") case, sending that company into bankruptcy court, which has resulted in more than ***$1 billion*** being repaid to investors. Brave, honest people like that need to be rewarded.

Perhaps the Commission is already addressing this issue. I noted with interest in the proposed amendments to the "monetary sanctions" definition that the Commission appears to view receivers and bankruptcies trustees as alternative procedural mechanisms to accomplish the goal of returning funds to investors. As the Commission noted elsewhere in the proposed rule, "our view [is] that Congress did not intend for meritorious whistleblowers to be denied awards simply because of the procedural vehicle that the Commission (or the other authority) has selected to pursue an enforcement matter." To me that suggests that the Commission would not see any substantive difference between a receiver and trustee in bankruptcy when it comes to evaluating the pool of funds with respect to which a whistleblower qualifies for an award. If so, that is a positive development, but to remove any confusion it should be clarified or codified in any final rule. Otherwise, whistleblowers such as the one in LPHI will be discouraged for fear that a bankruptcy might ruin their chance at a much-deserved award. Remember, it is the largest, most widespread frauds that bankrupt companies and the Commission does not want to be in a position of discouraging whistleblowers from bringing cases that may result in such a proceeding, which undoubtedly would benefit the company's shareholders.

c. "Independent Analysis" – Proposed Interpretative Guidance

The Commission's proposed interpretive guidance on "independent analysis" references my team's work on the Madoff case, so I have four comments that speak to some of the widespread fear

among my whistleblower colleagues that this proposed provision has invoked. *See Proposed Interpretive Guidance*, at pp. 103-105.

First, in 1943 the False Claims Act ("FCA") whistleblower program was rendered largely useless for four decades because of the public knowledge bar enacted by Congress: Any information in the government's possession was off limits to whistleblowers, ensuring that there were no successful whistleblowers until 1986 when President Reagan signed a revamped version of the FCA into law. The Commission's proposed rules could bring the program down that same path that the FCA was forced in 1943. I hope that is not the case, as it would truly undermine the public-private partnership that is being established between the Commission and its whistleblowers.

Second, we all know that many securities frauds are hiding in plain sight and can be solved using publicly available information. There is certainly more to it than compiling negative press reports and claiming credit for identifying a fraud, so I agree with the Commission's logic to the extent that merely reading the newspaper and filing a TCR shouldn't qualify for an award. But having the capability to assemble disparate information from multiple sources and build a cohesive set of fraud theories is no easy task. Indeed, there is often a need to choose the right math or accounting rules and apply them correctly to prove that a fraud theory holds merit. There is also the question of what can be deemed "publicly available," as many cases can be identified using information that, while technically in the public domain, is largely inaccessible to all but the most experienced researcher. The fact is that a thorough presentation of publicly available information resulting from exhaustive research into obscure public sources can triangulate fraudulent conduct in ways that inside information – which can often be compartmentalized – cannot. I have seen it done on numerous occasions.

So, a balance must be struck.

I enjoyed reading that my team's work to uncover the Madoff fraud would have made the cut under the Commission's current standards. Under the Proposed Interpretive Guidance, however, even my team could not have been certain of recovering a whistleblower award because of the "20/20 Hindsight" nature of the guidance. Indeed, I am not sure that I would re-submit that same level of work product going forward if the "independent analysis" rule is amended as proposed. The primary problem is that it does not provide for an objective standard protecting whistleblowers who submit independent analysis. Under the proposed rule, it would be far too easy for the Commission, in hindsight, to claim that it could have or would have learned of a fraud on its own. Instituting a sensible objective standard would both protect the SEC Whistleblower Program from paying out unearned awards, while also protecting the whistleblower from having a misguided SEC employee say, "we would have caught that on our next exam anyway, so why pay the whistleblower?"

Every securities fraud is obvious when looking in the rear-view mirror. In real-time, however, the schemes are always opaque and seem plausible on the surface. So, in my view, it would be unjust and against the spirit of the whistleblower program to adopt language allowing the Commission to deny a whistleblower award, in essence, because it "could have" used publicly available information to identify a fraud when it did not and the whistleblower did. Therefore, if any changes are made to this provision – and I question whether they truly are necessary – then the Commission instead should take caution only to limit whistleblower eligibility in those circumstances where there is a concrete indication that the government did not need the whistleblower's tip to identify and dismantle a fraud. For example, any Proposed Rule allowing the Commission discretion to reject a whistleblower's application for an award should require the following test showing that, prior to the filing of the

whistleblower's TCR, the Commission had already commenced an investigation or exam for the issues raised in that TCR. Otherwise, credit must be given to the whistleblower.

Finally, there is a gray area where a TCR is filed and it successfully leads the Commission to file an enforcement action or discuss settlement with the investigation target(s). Defendants in that position sometimes refuse to settle on the more serious issues raised by the whistleblower but do agree to settle for less serious infractions not included in the TCR. Given that the TCR in my hypothetical scenario essentially launched the enforcement action, acting as a catalyst to a successful settlement, I would hope that the Commission would include language allowing the whistleblower to receive proper credit and be paid for those efforts.

d. Proposed Discretionary Cap on Large Awards in Proposed Amendment to Rule 21F-6.

I strongly disagree with the proposed discretionary cap on awards exceeding $100 million. Although well-intentioned, this provision would be a gift to the major investment banks and other large public companies, as it would deter high-ranking officers at those entities from turning whistleblower.

It was my hope all along – a hope shared with many at the Commission who designed the program – that the potential rewards from blowing the whistle would be lucrative enough to draw in high-ranking industry professionals. The thinking behind this was "*what if, in 2004, the deputy head of capital markets for a major bank had come in and disclosed that the MBS deals, the CDOs, and the CDO squared and cubed, were all backed by falsified, worthless liar loans? Could we have prevented the 2007-2009 Global Financial Crises if a program had been in place?*" But so far that hasn't happened. To my knowledge, no one from the C-Suite or anywhere near the top of the corporate pyramid has filed a TCR disclosing securities fraud. The folks running these major financial institutions usually earn millions of dollars annually and have eight figures more in company stock that has yet to vest. Capping awards would all but ensure that the elephant never walks through the Commission's doors – only rabbits and the occasional zebra. Imagine if a direct report to the C-Suite became a whistleblower, disclosed a multi-billion-dollar fraud scheme, and volunteered to wear a wire for the FBI that results in C-Level prison terms. That should be the goal. This program should always aim high, not low or average. That was how it was designed and it is how it should remain.

There is currently no legislative limit on the amount of money an investment bank, Ponzi operator, or public company cooking its books can steal from investors. Nor is there any cap on the amount of fines levied against large financial institutions caught engaging in securities fraud. Indeed, if there were caps on fines, think of the blow to morale that would strike within the Commission's exam and enforcement ranks. Well, that's exactly how whistleblowers are going to react if the Commission unilaterally imposes any kind of a cap – even a discretionary one – on large awards.

And then there is the human toll. Many whistleblowers who have been fired and then industry black-listed suffer from depression. Depression often leads to poor health, divorce, along with other stressors. How can emotional well-being be quantified in dollars? I'm not sure, but it's clear that merely replacing lost wages is not enough of a reward for the emotional hell that whistleblowers often face. Capping an award – even on a discretionary basis – when the whistleblower exposes a massive fraud and deals with the likely emotional onslaught that follows disincentivizes integrity.

Another issue that must be considered is that individual whistleblowers do not receive the ***gross*** whistleblower award granted by the Commission. There are always taxes and attorneys' fees to pay – both of which can combine to reduce the gross award significantly. In addition, awards are often shared among multiple whistleblowers or a whistleblower team. Consequently, a $100 million gross award, for example – after 40% attorneys' fees, 37% federal income tax, and 10% state and local taxes – quickly turns into less than a $32 million award, nearly 68% lower than the original award. If the case involved a whistleblower team – and many large cases do – each whistleblower's recovery could be a fraction of that amount. Therefore, I worry that if the Commission imposes any kind of cap on award that high-level executives and/or highly qualified industry professionals will not come forward with large cases because it won't make economic sense for them to do so – especially when it takes 6 to 8 years to get paid after filing a case, the SEC's investigation, the settlement process, issuing a notice of covered action, filing a whistleblower application for reward, *etc.* On a risk/reward and time value of money basis, netting only 32% of the gross award (or a fraction thereof) is already unattractive to many whistleblowers.

Finally, enacting a cap would be extremely unfair to individuals who disclose industry-wide frauds. If a whistleblower's case transforms an industry, likely resulting in tens of billions saved by investors, what kind of message does capping an award send to those who made that level of impact and, in all likelihood, can no longer work in their chosen field?

The bottom line is that a minimum allowable award should be paid only when there are compelling negative factors involved in the whistleblower's submission. Perhaps the whistleblower waited until he/she was fired or laid off before filing the TCR or was one of the key people involved in the scheme, or both. The Commission needs to send a message that TCR submissions that involve poor ethical behavior by the whistleblower will be punished come award time. But capping awards only punishes whistleblowers who did everything right by taking numerous risks to assist the Commission in dismantling the largest of frauds.

e. <u>Adjusting Upward Awards Potentially Below $2 Million</u>

Yes, adopting Rule 21F-6 (c) to extend the program to smaller cases is good public policy. Stopping securities frauds when they're small and below the $2 million threshold is much better than stopping them when they're big and harming more investors. Otherwise there's a perverse incentive for whistleblowers to let small frauds get bigger (which always happens) and ensnare more victims before turning them in. The Commission should eliminate incentivizes for waiting to turn in fraud.

f. <u>Rewarding Successful Cases Involving Non-Prosecution Agreements and Deferred Prosecution Agreements</u>

Yes, thank you for looking to extend the program and incentivizing integrity while at the same time encouraging whistleblower cooperation with DOJ and State Attorneys General. Extending the program will result in increased detection and punishment of securities fraud, thereby lowering the cost of capital for honest businesses.

g. Allowing Alternative Mechanisms for Submitting TCRs when the Commission's Website Goes Down

Yes, by all means allow submission of a TCR via e-mail, registered mail, or any other means deemed suitable delivery by the Commission.

Here's some inside history that never fails to bring a smile to anyone hearing it from me. During the program's first week, in order to help it get started, I filed a *pro bono* case involving a very tiny Ponzi scheme that was less than eight months old and had yet to take in a lot of money, although one of the victims was a famous celebrity. Unfortunately, we made our filing on a Sunday night and the Commission's brand-new whistleblower website consistently crashed five lines into the online TCR submission. I called the applicable Regional Director at home (we knew each other quite well as he was also on the Commission's whistleblower committee) and told him about the case and the website's problems. The Regional Director had me email him the case on Sunday night and had his exam and enforcement teams read it the next morning and participate on a conference call with my whistleblower team on Monday afternoon. First thing Monday morning I called the Director of the OWB who said words to the sanitized effect of, "Oh no, I wonder how many cases we missed this past weekend!" He then had me input my TCR line by line to each failure point while he had his programmer fix each broken section of code. If memory serves we finally got stumped on page two or three and it took several days of reprogramming to get the website up and running properly. So, yes, allowing an alternate means of case submission is a wonderful idea because with hackers, normal IT glitches, power blackouts, hurricanes, *etc.*, it always pays to have a backup means of communication on which whistleblowers and the Commission can rely.

h. Additional Considerations in Making Award Determinations

The Commission has asked for comments on additional considerations that should be assessed in making award determinations and I have a few suggestions.

First, cases that have higher favorable economic impact on the capital markets need to be more widely advertised by the Commission to Congress and the public. The Commission's successful enforcement actions are saving investors billions of dollars going forward, yet the investing public wouldn't know it because the Commission doesn't quantify and publicize the agency's true value added to the capital markets with its enforcement actions. Right now, the Commission is vastly understating its successes because it's not conducting economic analysis of successful cases and publicizing the results. Those success stories should be presented in the statistics that the Commission submits to Congress and makes available to the public. The Commission has a very good story to tell, but it needs to find a better, more modern way to tell it in the most compelling way possible.

Second, as a corollary to the foregoing point, add a plus factor to each award if the whistleblower(s) agrees to waive anonymity at the end of the process and allow the Commission to use his/her name to assist in promoting the program. The current method of issuing a press release and, possibly, hosting a press conference is insufficient in the modern media era. Allowing the Commission to promote the stories of successful whistleblowers plants a seed that will germinate into better quality cases going forward, while also serving as a deterrent to anyone considering becoming a securities fraudster.

Third, consider the expenses that whistleblowers commit to large, complex transnational securities fraud cases run by the biggest financial services firms. Often those cases require the expenditure of many thousands of hours of investigative and legal work. Not only are the cases labor-intensive, they usually also require the purchase of expensive financial data sets and/or the hiring of consultants to assist in analyzing that data to prove that fraud is occurring and/or come up with a means to quantify actual monetary damages. Thus, in my view, cases like that deserve a plus factor in the award determination.

Fourth, in my experience, there is somewhat of a disconnect between enforcement attorneys and the OWB. That can create inefficiencies because enforcement staff does not always have a fulsome understanding of the process that awaits a whistleblower after a successful enforcement action. I, myself, have had an enforcement attorney react in surprise that I had not yet received an award on a successful case on which I had worked with that attorney years earlier. As a means of increasing efficiency in resolving award applications and educating enforcement staffers on the critical role they play in the process, the Commission should require enforcement attorneys, ***prior to resolving any case in which they considered whistleblower information***, to provide OWB with a written summary of all of the assistance that the whistleblower(s) and the TCR provided during the case. I understand that enforcement attorneys ultimately provide OWB with a declaration describing their interactions with a whistleblower, but often those documents are prepared years after working with the whistleblower. Instead, they should be completing detailed questionnaires/checklists/rating charts about the whistleblower's assistance when it is fresh in their memories, so that the OWB staff can more easily and quickly make the proper preliminary determination of an award. In other words, don't let any whistleblower cases settle until the OWB's paperwork is completed. That should significantly improve the speed and accuracy of the process.

Fifth, currently there is no safe way to file a whistleblower case concerning a securities fraud case led by organized crime figures. I've had several conversations with FBI officials regarding this point and they agree. The key gap is that the Commission is simply not set up to handle organized crime cases that protect whistleblowers like the FBI, Drug Enforcement Administration and U.S. Postal Inspectors, and other law enforcement agencies do. An anonymous TCR is simply not enough protection for whistleblowers and their attorneys in a case where the perpetrators have a propensity toward violence. If the Commission cannot enact a whistleblower protection program comparable to federal confidential source protection programs, there needs to be a protocol in place whereby the attorney and whistleblowers can go to a criminal law enforcement agency with an organized crime led securities fraud and have that agency file a TCR for them, assigning confidential informant numbers in place of names. Such cases then need to be kept segregated within the Commission and available only to a select few on a "need to know" basis. It is the least the Commission can do for whistleblowers brave enough to take those life-threatening risks.

Once again, I appreciate this opportunity to comment on the proposed rule changes and interpretive guidance and wish the Commission only continued success on this vital government program.

Sincerely,
/s/ Harry Markopolos
Harry Markopolos
Markopolos Research LLC

Subject: File No. S7-16-18
From: Anonymous Anonymous

September 14, 2018

I would like to reiterate the concerns voiced by Dom L Laviola, in an August 9, 2018 comment (https://www.sec.gov/comments/s7-16-18/s71618-4199136-172813.htm).

Specifically, it is reprehensible that the SEC is trying to change the rules of the program mid-game. Hundreds if not thousands of Whistleblowers have put their personal lives and professional careers on the line with noble desire to help others and fight against fraud and corruption.

If the SEC does not provide a grandfather mechanism for individuals who have submitted Whistleblower tips before the implementation of these rules - the SEC will have committed a great disservice to our financial system and trust in the Whistleblower program.

In fact, what the SEC is proposing can be appropriately described as a "bait-and-switch" scheme and completely analogous to a fraudster raising funds for one project and then misappropriating those investor funds to another project or otherwise unilaterally changing the allowed use of those funds without providing for the investor's legal rights.

Additionally, I would like to inquire about how the SEC orders its adjudication queue and would like to seek a complete and detailed response as to why the award determinations on August 13, 2018, September 6, 2018, and September 14, 2018 were processed before the implementation of these rules? The SEC has not provided a definitive answer as to whether claims are processed in a first-in-first-out method or processed in a queue that is at the discretion of SEC staff. Therefore, myself and the public deserve to know why these claims were processed in a manner that makes them exempt from the new rules and whether or not pending claims will be granted the same treatment.

The SEC must provide a grandfather clause and if it doesn't - many Whistleblowers will consider this program just as fraudulent as the scams they are reporting.

I will say it one last time, it is completely inappropriate to change the rules mid-game and the SEC should take immediate corrective action and make it clear that previous Whistleblower tips and Claims will be grandfathered in with the previous rules.

Subject: File No. S7-16-18
From: Anonymous Anonymous

September 15, 2018

From reading the SEC's Proposed Rules, there is clearly a disconnect between what the Commission thinks Whistleblowers care about versus what Whistleblowers actually care about.

Furthermore, the SEC is making its job more difficult and less efficient by failing to properly inform and communicate with Whistleblowers.

For example:

1.) The SEC does not provide Whistleblowers with any estimated time frame for processing Whistleblower Tips or Award Applications. As a result, the SEC wastes time manually responding to numerous inquiries that could be more effectively addressed if the SEC simply posted average adjudication times online.

2.) The SEC provides zero guidance on how Whistleblowers should format their tips nor does the SEC provide any guidance on what information a Whistleblower should include in their Claim for an Award (and Form WB-APP is misleadingly short, meaning Whistleblowers may be led into a situation where they submit supplemental material after filing Form WB-APP).

As previously suggested, it would save the SEC thousands of hours if a more complete FAQ section is posted online that include items such as:

A.) Examples of how to format Whistleblower tips for common cases such as embezzlement, material misstatements, ponzi schemes, etc. (I personally have been told different things by different enforcement staff, some staff preferring to review all of the documents at once while other staff just want to read a quick 3-5 sentence description before deciding if further investigation is needed.)

B.) The Form WB-APP should be modified so that Whistleblowers have a specific section on the form to address each of the seven factors affecting an award determination. This would encourage Whistleblowers to submit information upfront and avoid additional resources expending to review supplemental information that is submitted later.

C.) The SEC should take additional measures to properly communicate with Whistleblowers, by properly guiding Whistleblowers I am sure that the SEC can significantly reduce the administrative burden required to address Whistleblowers concerns and questions and would reduce the frequency in which unplanned 'corner-cases' occur.

Subject: File No. S7-16-18
From: Anonymous Anonymous

September 15, 2018

While the Office of the Whistleblower operates without any deadlines in processing Whistleblower Claims, these proposed rules extend additional deadline and requirements on Whistleblowers - some of whom have been misled by conflicting information provided by the Office of the Whistleblower.

For example, Mr. McKessy, Ms. Wharton, and others all have told Whistleblowers that in advance of filing a Claim for an Award, they could request their TCR records by contacting the Whistleblower Office and providing their name and description of TCR submission. Not only was this communicated privately, but the SEC's Website prominently stated:

"Please retain this submission number for your reference, but don't worry if you lose it, we will always be able to find your TCR by your name." (https://web.archive.org/web/20160328043849/http://www.sec.gov/about/offices/owb/owb-what-happens-to-tips.shtml)

However, when myself and others have asked the Office of the Whistleblower to provide these TCR records, no response was given. As a result of the Office of the Whistleblower's inadequate and factually incorrect communications, the SEC has unnecessarily added delays to the processing of numerous Whistleblower Claims. Let me explain why.

Whistleblowers face retaliation, family problems, and professional problems should it be discovered that they have submitted information to the SEC. (Although there are 'protections' in place, to realize those protections a Whistleblower likely needs to retain counsel and go through the time and stress of navigating uncharted waters, something very few do.) Due to the risks associated with being a Whistleblower, it is not often safe or possible to maintain copies of TCR records. For example, what if the Whistleblower lives in a company-subsidized apartment/on site living, uses a company provided computer, etc.

For a Whistleblower reporting significant fraud, it would be unfathomable for the Whistleblower to risk keeping the TCR records in a location that the company may find out and retaliate. This is especially true for Whistleblower tips involving multi-national companies or investment schemes that have a connection overseas or relate to fraud committed by quasi state owned enterprises. The potential fall-out for a Whistleblower, if found out, could be drastic.

Additionally, there exists the less precarious and potentially more common situation where a flash drive or storage medium used to save the TCR records becomes lost, corrupt, or even confiscated at a border crossing.

Therefore, myself and other Whistleblowers have, believing the SEC would make good on its word to provide copies of TCR tips before submitting a Whistleblower Claim, been unable to safely keep TCR records.

During my personal experiences, I communicated these problems to the SEC and was assured that I would be able to request a copy of my TCR records before the submission of a Whistleblower Claim.

However, I was very wrong. Once it came time to submit a claim, the Office of the Whistleblower stated it was not possible for them to provide me with a copy of my TCR records (even with a very short 90 day deadline to make a claim) and instructed me to go through the FOIAPA process, which has a backlog of nearly half a decade for complex FIFO requests.

Given such, the SEC has placed me (and others) in a very detrimental situation where we are unable to submit thorough Whistleblower Claims within the 90 day deadline for a Notice of Covered Action - and therefore will be forced to:

1.) Submit information on a continuous basis, as it becomes available either through FOIAPA process of other avenues
2.) Likely exercise our appeal rights immediately in order to gain access to the records that the SEC initially promised would be disclosed before filing a claim (causing subsequent delays to other Whistleblowers if they have also applied for the same Notice of Covered Action)
3.) Spend unnecessary time and money on the FOIAPA process when the SEC previously stated they would provide the documents directly through the Office of the Whistleblower

The Office of the Whistleblower and the Commissioners should be well aware of these adverse events and miscommunication by the Office of the Whitleblower, yet the proposed rules and continued operations of the Whistleblower Program shows that there is no good faith effort to avoid this situation and as written the proposed rules may make the situation even worse.

Unless the SEC provides an avenue for a Whistleblower to obtain a copy of his or her TCR records in advance of filing a Whistleblower Claim (such as through an automated online portal), numerous Whistleblowers who can not safely store their TCR records, or Whistleblowers who lost their TCR records will be prejudiced by the deadline to submit information before the end of the Notice of Covered Action 90 day deadline and will cause significant delays to other claims as they try to remediate this prejudice my exercising their appeal rights.

Subject: File No. S7-16-18
From: Anonymous Anonymous

September 15, 2018

The proposed rules make a lot of sacrifices. From changing the game on Whistleblowers who already submitted a tip or a Whistleblower Claim to providing additional uncertainty on how awards will be processed - almost every aspect of new the proposed rules is likely to deter Whistleblowers from submitting information to the Commission.

Therefore, if these rules are truly the rules that the Commission wishes to adopt, there needs to be adequate calculation that the negative impacts of these rules will not outweigh the positive effects. However, in the released documents by the SEC, there is insufficient calculation to determine the true cause and effect of these changes.

For example, because the SEC has not disclosed the percentage or number of pending Whistleblower tips that could be subject to summary procedures, public commenters are unable to come to an adequately educated opinion to determine whether a limited level of due process is worth an unknown level of increased expediency.

This is very concerning and I am beginning to wonder if the SEC has done any internal calculations on this matter. I'm sure commenters would have very different opinions on this matter if the SEC revealed that 90% of pending Whistleblower Claims could be subject to summary procedures versus a situation where only 10% or 50% of pending Whistleblower Claims could be subject to summary procedures.

Similarily, without the SEC disclosing the actual impact of these changes (reduction of backlog, reducing wait time by a certain number of months), it is impossible for the public to make an informed comment on whether these changes and the subsequent sacrifices that it causes are worth the currently not-disclosed-benifits.

Subject: File No. S7-16-18
From: john doe

September 15, 2018

I filed this pro se this past week with the US Court of Appeals for the DC Circuit, after not being able to obtain Counsel.

If the attorneys out there are interested now, let me know. leave a note and ill call you

Comments Attached

(Attached File #1: s71618-4351228-173305.pdf)

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In re: JOHN DOE,

No. _____

Petitioner

Emergency Petition for a Writ of Mandamus

Directed to
The United States Securities and Exchange Commission to Compel Agency Action that Has Been Unreasonably Delayed & Unlawfully Withheld

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Pursuant to 5U.S.C§706(1) and 28U.S.C.§1651(a), petitioner John Doe requests that the Court issue a writ of mandamus directing the Securities and Exchange Commission ("SEC") to issue a decision, prior to the implementation of new rules, changes to existing rules and definitions / clarifications which can negatively affect award eligibility, within 30 days, under 17C.F.R.§240.21F-10(d) on Petitioner's applications for monetary awards under the SEC's Whistleblower Program, and according to the Final Rules established by SEC & Congress that created and have governed the Whistleblower Program since inception.

ISSUES PRESENTED

1. Has the SEC's decision on Petitioner's claims been unreasonably delayed?
    a. Does the SEC's statement to the Petitioner that he "should expect a decision by the first quarter of 2017, at the latest," establish a self-imposed deadline on the SEC and warrant a finding of unreasonable agency delay?
2. Does the arrangement between the parties establish a contract between them?
3. Does SEC have the authority to change the terms, rules and definitions of the Final Rules, without an act of Congress?
    a. If so, does that include the authority to create rules to justify an act of conspiracy, fraud, theft, larceny, etc ?
4. Is the SEC applying its proposed rule changes to all pending and existing claims, to render award eligible claims under the established final rules, ineligible for awards under the newly created rules?
5. Has the SEC unlawfully withheld a decision on Petitioners claims, with the intent of changing the rules, in order to render his award eligible claims, ineligible??

Statement of Facts

Petitioner provided the Respondent (“SEC”) with information involving security law violations, directly to Mr. [redacted] at the SEC , who explained that “under the "new" whistleblower program” as it was at the time, the Petitioner had to initiate contact in order to receive an award, if anything they were about to discuss led to a fine of more than one million dollars, to which he added that obstacle was removed the moment the call was made and answered, Petitioner was unaware of the whistleblower program and potential award until then.

[redacted] administered an oath of truthfulness, which was sworn to by Petitioner. Petitioner proceeded to provide details of what he knew and suspected. As the conversation continued, Petitioner instructed [redacted] to "pull up the symbol on level 2," to show him what was happening at that moment. [redacted] answered that he had no access to level 2 quotes, Petitioner then sent via email, while on the phone call, screenshots which captured a separate crime in progress, to [redacted]

Near the end of the call, [redacted] informed the petitioner **that he was the first and only person that had brought these issues to SEC's attention** and **that he was forwarding all of it to the investigations division**. He then made certain that the Petitioners information was correct, and subsequently **proceeded to fill out a TCR form, for the Petitioner, for award purposes.** Petitioner was [redacted] had only the pseudonym, initially.

Petitioner provided original information previously unknown to the Commission, resulting from his independent analysis, which led to the opening of at least 3 investigations ending with sanctions well above $1 million each. Petitioner has been plagued by acts of criminal retaliation ever since.

In 2015, a Wall Street Journal article reported backlogs of award claims at the SEC, which suggested over 300 (83%+) of claims had not received a preliminary determination.

Another claimant subsequently filed a petition Writ of Mandamus based on unreasonable delay, which went farther into the alleged problem at the SEC[2].

Based on what little information was available, it was thought that claims were not being processed on a first in / first out basis, because they seemed to follow no logical order in that many claims were decided while others that had been submitted before those remained undecided.

The SEC provides Congress an update every year, and has never reported any backup in the award claim process, and had reported that it took on average;

1) Approximately 9 months from the time the 90 day window closed until a preliminary determination was made, (12 months total) and

2) approximately 11 months from the time a Notice of Covered Action (NOCA) is posted on the SEC's website.

Both of those estimates, were inline with what the Petitioner was told. Petitioner submitted to SEC's Office of the Whistleblower ("OWB"), three (3) whistleblower award claims in May of 2016, (Exhibit A) and was told by the OWB that he "should expect a decision by approximately year end 2016, perhaps the first quarter of 2017, at the latest."

In the first quarter of 2017, Petitioner was informed by OWB that the reason he had not been contacted was that his "claims were complete and required no follow up information." Petitioner reasoned that his claims were being processed and that a decision was imminent.

In [redacted] 2017, a Congressional Inquiry was submitted by [redacted] to SEC regarding the status of Petitioner's claims. The response (Exhibit B) indicated OWB would contact the Petitioner when a decision was made, and that the OWB, was just busy.

More than one full year later, Petitioner has still not received a decision and the reason for the delay, became clear on June 28, 2018, when the SEC announced and approved a proposal to change the Final Rules the program was established by and operates under.[2]

2 SECURITIES AND EXCHANGE COMMISSION 17 CFR Parts 240 and 249 Release No. 34-83557; File No. S7-16-18 RIN 3235 – AM11

Based on what little information is available, it takes an average of 16 months from the time a NOCA is posted until a preliminary determination is made, ranging from two(2) to thirty(30) months. It has been 31 months since 2 of the 3 cases were posted, for which no preliminary decision has been made.

File Number	NOCA Date	Prelim.	MONTHS
2012-01	5/8/2012	8/21/2012	3
2012-02	5/18/2012	7/18/2012	2
2013-01	4/13/2012	12/19/2012	9
2013-03	12/19/2012	8/30/2013	9
2013-04	4/23/2013	9/5/2013	5
2014-01	8/12/2011	11/5/2012	15
2011-142	8/12/2011	9/14/2012	13
	11/26/2011	11/5/2012	12
	3/10/2012	11/5/2012	8
2011-136	8/12/2011	12/19/2012	15
2011-144	8/12/2011	4/9/2013	20
2011-184	10/5/2011	6/26/2013	22
2011-158	10/5/2011	1/3/2014	27
2011-046	8/12/2011	1/8/2014	29
2011-108	8/12/2011	1/8/2014	29
2011-106	8/12/2011	1/8/2014	29
	11/26/2011	3/13/2014	28
	9/13/2013	3/13/2014	6
2012-081	8/1/2012	5/5/2014	21
2011-194	12/1/2011	6/16/2014	30
	12/12/2014	2/13/2015	2
2012-089	9/4/2012	12/15/2014	27
Average		=	16.4
Petitioner	2/28/2016	- ? =	31

Source: addendum 2, John Doe V SEC, USCA Case #15-1444 Document #1587949

SEC states its intention of retroactively applying **only some** of the proposed changes to all pending and existing claims that have not reached **a final decision** from the commission. .

> "The Commission anticipates this proposed rule change, if adopted, would apply to all new whistleblower award applications filed after the effective date of the amended final rules***, as well as all whistleblower award applications that are pending and have not yet been the subject of a final order of the Commission by the effective date…"*** [3]

The carefully chosen changes SEC intends to apply to existing claims, are only those changes that will result in **award eligible claims under the current rules, being rendered ineligible for awards,** after the changes are adopted.

Summary of Argument

Petitioner argues that SEC, may not have the authority to change the Final Rules as SEC proposed, including changes with or without approval to be applied on an at-will basis and changes which SEC intends to apply to all existing, pending whistleblower award claims including the Petitioner's which SEC has unlawfully withheld a decision on for more than two years, with the criminal intention of fraudulently rendering award eligible claims under the established rules as ineligible after the changes become effective, due to budget concerns and the potential misappropriation of more than a billion dollars that should have been set aside for the payment of a whistleblower award claims, thus creating the unreasonable delay in this case which began when SEC failed to issue a decision by its self-imposed deadline of " the first quarter of 2017, at the latest. "

[3] See pages 96-98 of rule change proposal

Argument

Unlawful Withholding of Claim Decisions

It is more likely than not the case that the SEC has unlawfully withheld issuing an official decision on claims that were processed yet set aside based on some internal directive or unwritten policy,(i.e. claimants are not represented by counsel, and/or claims apply to cases involving financial firms) until rule changes could be made that will render the petitioner's claims ineligible, and potentially hundreds of others..

Petitioner's claims should have been relatively easy to process. The SEC, according to agency reports from the Office of the Inspector General (OIG) and the OWB, tracks whistleblower tips:

- "OWB staff tracks investigations where a whistleblower has provided information or assistance to Enforcement staff. This case-tracking initiative provides early information to OWB about which matters may ultimately result in an award payout[4] …"

- "…, during this Phase, OWB—tracks whistleblower cases to document the whistleblower's cooperation and the content and helpfulness of whistleblower information"…" Furthermore, OWB documents information needed to process whistleblower awards.[5]"

[4] OWB 2017 Annual Report to Congress - page 6

5 OIG 2013 Report on Whistleblower Program -page 4 (13th page overall,) subtitled Phase 3 Claim an Award

Given that the SEC tracks cases so diligently, SEC should know that the Petitioner's information resulted in the opening of investigations that qualifies Petitioner for the monetary awards associated with each case.

SEC is unlawfully withholding the issuance of a decision, until new rules can be applied to all pending claims that have not received a final order from the Commission, to render the petitioners award eligible claims under the rules that have been in effect from the beginning through the more than two years the SEC has had possession of the Petitioner's claims, ineligible under the new rules, once adopted.

The SEC has conspired to steal the award money from whistleblowers, through an act of fraud that dwarfs those SEC prosecutes, which most likely resulted from the misappropriation of well over $1 billion that should have been set aside for the payment of whistleblower claims.

SEC does not have the money[6] to repeatedly replenish the award fund that was established for the payment of whistleblower awards, which SEC had to do earlier this year.[7] Petitioner's claims which are worth roughly $28 million combined.

6 Big SEC Whistleblower Awards Triggered Fund Refill for First Time | https://www.bna.com/big-secwhistleblower-n73014477334/

7 SEC, strapped for funds, can't police financial markets | http://thehill.com/opinion/finance/396064-secstrapped-for-funds-cant-protect-investors

After sitting on Petitioner's claims for more than two years, SEC approved a proposal just after it was announced to change the Final Rules established by the SEC and Congress that established and govern the SEC's whistleblower program: SEC's authority to make those changes, is questionable in and of itself.

There is no possibility that the increased restrictions and barriers created by the changes proposed will render an ineligible claim, eligible.

The only possible outcome, and thus motive, in applying the changes retroactively, is that award eligible claims under the current rules, will become ineligible.

The fact that SEC intends to apply the proposed changes to claims it has withheld an official decision on, means that…

- SEC has already decided the pending cases are award eligible,
- SEC unlawfully withheld issuing a preliminary decision on them.
- SEC knows the rule changes are **required** to justify the denial of those set aside claims, and...
- SEC knows that absent any rule changes[8], the claims cannot be denied according to the established Final Rules,

…which by default reveals the targeted claims to be award eligible claims that SEC seeks to render ineligible. This explains the unreasonable delays in this case, and others, while explaining also why the SEC seems to skip claims rather than use a first in, first out basis for processing claims.[9]

Evidence of this intended fraud is found in the proposed rule changes. Knowing that the SEC intends to change the rules to justify the denials of valid claims it has withheld a decision on, is only the first step.

Step two comes in the only other change that SEC intends to apply to those pending claims, which is the implementation of a summary disposition process, which as SEC states, will only be used for those claims which are obvious denials, but not just any denials…denials under the rules they are proposing to change![10]

Not satisfied with defrauding claimants using specific rule changes, SEC gives itself a blanket denial option as well:

> "In addition, the proposed rule would provide that other defective or nonmeritorious award applications could be subject to the summary disposition process under appropriate circumstances"

Making this even more egregious, is that the proposed change is stated to be used, "only to deny claims," and goes on to restrict those denials from being reviewed by claims review staff; denies the claimant a review of the record; requires the claimant respond in half the time currently allowed, with the intention of issuing a final order of denial in those cases as a result

[8] The term Rule Changes is meant to also include the redefinitions of rules SEC refers to in its proposal as clarifications, which SEC intends to use in order to redefine terms and understandings to deny existing claims also, to avoid any grandfather provision from being included when the changes are adopted.

[9] See [10] John Doe V SEC, USCA Case #15-1444 Document #1587949 Filed: 12/10/2015

[10] Proposed rule 21f18 page 151

of a claimant failing to jump through the hoop, that most existing claimants have no idea is going to be there, because it was not part of the program 6 to 8 years ago, just as it is not part of the program today, yet SEC again shows the true motive in applying this new process to the existing claims, that require a rule change; to disqualify them!

SEC refers to these claims as “straightforward denials,” but bases that statement on the rule changes that are proposed, which is inadvertently a confession, that the set aside claims of the petitioner, and perhaps hundreds of other claimants, have already been reviewed and somehow set aside as “ineligible **after** the changes are implemented,” and that the claims **under the current rules and understanding of those rules, are award eligible claims.**

The cases were set aside in defiance of the requirement that awards are to be issued and paid in a timely manner to eligible claimants. The smoking gun, which proves the SEC's intent is inadvertently proven by SEC, within the footnotes of each proposed rule change of the proposal SEC authored.

Specifically, of the proposed changes in which a rule change cannot alter a claimants’ eligibility for an award, SEC states the intention of applying those changes only to future claims!

> “The Commission anticipates these proposed rule changes would apply only to whistleblower submissions that are made after the effective date of the proposed rules.”

It is **ONLY** in those proposed rule changes **that will render award eligible claims under the current rules, ineligible under the new ones**, that SEC intends to apply to all pending claims:

> "The Commission anticipates this proposed rule change, if adopted, would apply to all new whistleblower award applications filed after the effective date of the amended final rules**, as well as all whistleblower award applications that are pending** and have not yet been the subject of a final order of the Commission by the effective date." [11]

As mentioned, the only other intended retroactively applied rule, is the fast track , no appeal possible, rights revoked summary disposition process. The double standard being applied here, answers the question of intent.

There is absolutely no other reason to apply the changes to existing claims, except to defraud eligible claimants out of their rewards! SEC knows that there is no possibility that an ineligible claim under the current rules will be reversed to eligible once the proposed rules are adopted, because the rules create greater restrictions and barriers to award eligibility.

Conversely, SEC knows that applying the changes to award eligible claims as they exist today, will result in denials that cannot be reversed once the new rules, granting SEC omnipotent discretionary powers, are in place.

[11] SEC Rule Change Proposal, page 96, footnotes

Why would SEC apply only those changes to existing claims, rather than make them effective from the date the proposed rules become effective like the other rules SEC proposes? The answer is motive and intent. SEC has effectively confessed to its intended crime, which was set into motion the moment the rule change proposal was announced. Certainly, SEC is aware of this and in fact, designed it this way, in a blatant display of abuse of power to the detriment and permanent damage to the petitioner.

Questionable Authority and Abuse of Power

The SEC entered into a contract with the petitioner, and now SEC is changing the terms of the contract to avoid its obligations, by usurping the power of Congress and this Court, by giving SEC such discretion, that no challenge can succeed.. The SEC seems to think it can do anything SEC wants to do, simply by stretching any amount of authority given to the agency, even if the purpose behind the action, is criminal in intent.

One example is in the Final Rules which were established which the Whistleblower program operates under. Claimants are expected to follow the rules to the letter and for the past 8 years, any denials were accompanied by reasons taken directly from the **final rules**.

The **FINAL rules** have been the core of the whistleblower program. The OIG reported to Congress, with a good deal of input from the head of the OWB and staff,

that the **Final Rules** as they exist met with the objectives Congress had set out to achieve, in the third year of the program.

SEC is claiming the authority to make changes to these final rules, under the authority given the agency to IMPLEMENT the whistleblower program. Immediately, the SEC must know it has a problem in that the reality is, the SEC has no authority to change the Final Rules.

> "As mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("the Dodd-Frank Act"), the Commission's Office of the Inspector General ("OIG") conducted an audit of the Commission's whistleblower program and released its report on January 18, 2013 OIG concluded that overall the Commission's whistleblower program was effective and operated appropriately Specifically, OIG found that the Commission's final rules implementing the whistleblower provisions of the Dodd-Frank Act to be clearly defined and user-friendly for those with a basic knowledge..." [12]

SEC, in a most diabolical manner, is now re-identifying the "FINAL RULES" as they are known to be by anyone familiar with the Whistleblower program,(EXHIBIT G) by referring to the Final Rules as, the "**Implementing Rules** and is creatively claiming to still be implementing the program!"

This achieves the objective for the SEC of removing the concept that the rules as they were established by the SEC and Congress, were ever meant to be **Final** Rules, and by calling them the "**Implementing** Rules" instead, the SEC is overstepping the authority given to create rules to **implement** the whistleblower program.

In reality, it is a blatant lie, that gives birth to the criminal fraud and conspiracy the SEC has initiated, to steal the monetary awards from its own whistleblowers

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[12] - 2013 OWB Report To Congress, Opening Message, Page 1

Petitioner believes the lack of funds to cover the award eligible claims has led to the unlawful withholding of his claim decision, which in turn, created the unreasonable delay that has resulted. There is plenty of evidence to support this line of thinking, and it seems more is being added every day.

This blatant abuse of power is displayed repeatedly, in the proposal authored by SEC. In the footnotes SEC cites as its authority to make the proposed changes and redefined terms, the power granted to SEC to implement the program. Not administer[13] the program which is now in its eighth year.

> We are relying on our broad rulemaking authority to propose the amendments in this section. As noted earlier, Section 21F(j) of the Exchange Act, 15 U.S.C. 78u-6(j) grants us "the authority to issue such rules and regulations as may be necessary or appropriate to implement" the whistleblower award program. Similarly, Section 23(a)(1) of the Exchange Act, 15 U.S.C. 78w(a)(1), expressly provides the Commission the "power to make such rules and regulations as may be necessary or appropriate to implement the provisions" of the Exchange Act, and has long been understood to provide the Commission with broad authority to issue rules and regulations carrying the force of law.

Within the proposal itself, there are dozens of references to the SEC implementing the program in 2011. The program has been implemented. Petitioner argues that the authority to rewrite and redefine and alter the original intentions of Congress expired, and an act of Congress is needed to extend the authority.

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[13] 2014 OWB Report to Congress, Opening message, Page 1

(Administered, not implemented)

During Fiscal Year 2014, the Office of the Whistleblower ("OWB" or "Office") administered the Commission's whistleblower program with an eye to furthering each of these objectives.

SEC notes that ("it) has long been understood to provide the Commission **with broad authority to issue rules and regulations carrying the force of law.**" That broad authority becomes an abuse of power when used to facilitate multiple felonies. The "broad authority" granted relates to financial crimes, similar to the ones being committed by the SEC, in this case.

SEC does not have the authority to alter rules for the purpose of committing, conspiring to commit nor concealing criminal acts of conspiracy and theft by fraud of whistleblower award money, potential misappropriation or larceny of the award funds and / or potential cover up of one or the other or both.

Furthering this allegation, is the *SEC's stated intention of applying new definitions to the existing rules under the guise of "clarifications," **whether the proposal is approved or not**. Those changes that are in complete opposition to the clearly written rules, could In and of themselves, result in hundreds of claims being denied which could not be denied without the rewrite by the SEC.*

SEC is using the term "clarifications' to avoid a grandfather provision, and SEC indicates the intention of implementing those ***changes whether or not the proposal is adopted.***

> "Although we are proposing this interpretive guidance for public comment, the Commission **may determine to rely on the principles articulated therein for any whistleblower claims that are currently pending** because we believe that this guidance clarifies the existing rules that define and apply the term "independent analysis." -SEC Release No. 34-83557; File No. S7-16-18], page 96.

SEC is requesting approval for “clarifications" they “MAY” decide to interpret differently depending on a given situation, with or without consent of any regulatory body, while claiming the underlying facts have always been interpreted in the proposed way. If true, there would be no need to request approval for them. SEC offers a clue that the agency is being deceitful with respect to the proposed 'clarifications’, beyond the apologetic footnote above, in another:

> “… In addition, **we have broad definitional authority** pursuant to Section 3(b) of the Exchange Act, 15 U.S.C. 78c(b**), which provides us with the “power by rules and regulations to define … terms used in [the Exchange Act**].” -SEC Release No. 34-83557; File No. S7-16-18], page 20.

Once again, the authority to create and define and redefine does not extend to acts of criminal purpose and intent.

The changes as proposed grant the SEC such broad discretion[14] to deny claims, based on what SEC “believes, thinks or feels could have been inferred from public sources” using 20/20 hindsight and including court documents and FOIA requests had the whistleblower not provided a tip to the SEC, that the right of appeal is essentially revoked.

Faced with budget cuts, the SEC seems to be intent on using creative financing at the expense of its whistleblowers to generate cash, by refusing to pay awards. One

[14] SEE The National Law Journal : Testing Power, SEC Wants More Discretion to Set Whistleblower Awards Available at https://www.law.com/nationallawjournal/2018/06/28/sec-testing-power-wants-more-discretion-toset-whistleblower-awards/

need only look at the evidence SEC provides in the rule change proposal itself, to realize the only thing SEC did not provide, was a signed confession.

SEC Whistleblower Blowing the Whistle on the SEC

The rule change proposal very clearly carries a theme in which it seeks to limit awards and creates more restrictions and barriers in qualifying for awards. One proposal seeks to create a fast track denial process, which offers less time for claimants to submit reconsideration requests, before the denial orders becomes final. It is designed to expedite denials, rather than what the SEC should be doing which is expediting award eligible claims. The proposed changes are all about limiting awards and increasing claim denials, and all have the commonality of paying out less and retaining more for the SEC itself.

SEC claims its whistleblower program has been a success. For the SEC, that is certainly true. For most Whistleblowers that risked and lost everything coming forward, it has been an abysmal failure. The reality is this:

There have been 1180 award eligible cases posted to the SEC's website since the start of the Whistleblower program. In each case, the sanction was at least $1 million. Many were much, much higher. The whistleblower's share ranges from 10 to 30 % of the money ***collected***.

Of those **1180** Notices of Covered action (NOCA(s)), the SEC has issued just 129 final orders. Of those 129 final orders, only **42** have been award orders. The remainder were denied. The SEC does not look to reward. The SEC seeks to find

justification to deny claims. SEC has only issued awards in 3.56% of eligible cases since inception.

Some back of the napkin math can illustrate the point here. Each NOCA must have had a minimum fine of $1 million. The maximum payout on a $1 million case, would be $300,000.00. If we round down the NOCAs to be an even 1000, and multiply that by the minimum 300,000.00 that should have been set aside, we arrive at a minimum of $300 million that would need to be in place to cover all of the NOCAS posted since inception, if all were fined just the $1 million minimum.

The award fund was established with $400 million. Combined that would mean deposits into the fund, would be at least 700 million. Bear in mind of course, that most of the fines levied by the SEC are often well over and beyond one million. Petitioner's claims at 30% are worth approximately $28 million combined, regarding 3 NOCAS.

The reality then is that deposits into the fund or monies set aside to be deposited into the fund in a perfect world, would have surpassed $1 Billion the past 8 years. Such deposits were never made.

The fund was depleted instead, and again referring to the rule change proposal, the SEC informs us that the statutory minimum balance was hit and triggered a requirement that the SEC replenish the fund, earlier this year.

This is the "A-ha! Moment." Based on the timing of the fund replenishment requirement, it is easy to see how that event, would give birth to the ideas in the rule change proposal, that have forced SEC to figure out a way to mass deny all the existing claims in which the whistleblowers share was spent on other things, much like

the criminals SEC prosecutes do by spending investor monies on private jets, yachts and mansions.

The SEC is dealing with budget cuts already. SEC has paid out just over $250 million in awards since inception. How can it be then, that the fund triggered a statutory minimum replenishment requirement?

Altered Reality: Changing the Rules, Changing the Outcome

How damaging are these changes to eligibility prospects? Severe! They even ignore established precedents the SEC itself, established!

One such change ignores a precedent that was established when an award was issued to a claimant that had submitted information directly to SEC rather than through the TCR system, in which a sworn oath was allowed in place of the electronically signed sworn statement that the TCR system requires.

SEC's proposed changes seek to require that to be eligible for an award, information must have been submitted and sworn to via the TCR portal. Meaning that even though the Petitioner’s information was submitted in a manner prescribed by SEC as acceptable on that day, according to the Final Rules that have been in effect since the start of the program and program precedent, SEC may deny the claims based on the new rule, on the grounds it was not submitted through the TCR portal, which is proposed to be a mandatory action that must have taken place in award to qualify for an award

Another disallows awards based on information derived from data that was publicly available, even if in the petitioner's case, SEC would not have known what to do with the information.

SEC would not have made the connections which exposed the naked short sale scheme; in fact, SEC denied naked short selling existed and failed to investigate complaints of the activity, for decades.

The SEC in its proposed rule change, states that it was never the intention of Congress that an award should be paid to a whistleblower that submits information based on publicly available information. (In fact, the SEC wants to deny claims in which any public information is used in the discovery of a reported fraud. Yet again, in the fine print of its own proposal, SEC reveals the truth behind the lie:

> 245 *See* S. REP. NO. 111-176 at 111 (2010). The Senate Report stated: "'Original information' is defined as information that is derived from the independent analysis or knowledge of the whistleblower and is not derived from an allegation in court or government reports and is not exclusively from news media. In circumstances when bits and pieces of the whistleblower's information were known to the media prior to the emergence of the whistleblower, and that for the purposes of the SEC enforcement the critical components of the information was supplied by the whistleblower, the intent of the Committee is to require the SEC to reward such person(s) in accordance with the degree of assistance that was provided."

One more time:

> **"… the intent of the Committee is to require the SEC to reward such person(s)…"]**

and one more time:

“[redacted] informed the petitioner that he was the first and only person that had brought these issues to the SEC's attention…” … “and that he was forwarding all of it to the investigations division…”

There exists no other means to correct the injustices being played out here. The Claims Review Staff at the SEC has approved all SEC final orders involving a challenge to a preliminary determination, which as you may have guessed, is also taken directly from the footnotes of the Rule Change Proposal.

The SEC has had the discretion since the start of its whistleblower program, to award late filed claims that were filed late, for good reason. Although there have been many such claims and appeals for reconsideration based on timeliness that the claimant felt was excusable, the denial based on timeliness was upheld in every case.

Despite having the discretion to allow for claims to be paid, SEC has demonstrated that it will not apply that discretion to the benefit of claimants. Consider that the program was new, and as such, there was very little information available.

Attorneys were not familiar with the program, limiting the available counsel. In petitioner’s case, he had no knowledge at the time that SEC had implemented a whistleblower program.

According to the 2013 report by the OIG however, the process is spelled out, and includes a statement that the **SEC will call a whistleblower to advise them of how to proceed** and the timeline in which the tipster would have to submit the required forms by.

> "When OWB or Enforcement staff know that a whistleblower has provided a tip that led or significantly contributed to a successful action, they contact the whistleblower and inform him or her that a Notice of Covered Action has been posted on its website in connection with the tip or information he or she provided. OWB also advises the whistleblower on the process and timeline to apply for the award."

This shows that the early submissions gave the impression that if the SEC knew a tip had opened an investigation, that the SEC would contact the whistleblower. The responsibility of having to figure it out was not mentioned in those early days. That said, SEC refuses to award any claim submitted once the 90 day window had closed, for any reason.

As the beneficiary of the award money that is not paid, of course SEC will use its discretion to deny claims…discretion SEC seeks even more of within the proposal, to further its abuse of power initiatives.[15]

The OIG report on SEC's whistleblower program, which included a good amount of input from OWB staff and the Division Chief, determined the Final Rules were working as intended, were easy to understand and the program was being promoted well.

Petitioner, was never advised of a 90 day window requirement, nor that he would have to discover the action on the SEC's website. One of his three claims in fact

[15] The National Law Journal : Testing Power, SEC Wants More Discretion to Set Whistleblower Awards Available at https://www.law.com/nationallawjournal/2018/06/28/sec-testing-power-wants-more-discretion-toset-whistleblower-awards/

was filed late, and he received a preliminary denial for that one claim, only, and submitted a reconsideration request within the permitted time to do so. That was 6 months ago…

Even now, the OWB states that people can sign up to receive NOCA alerts. The Petitioner is signed up for those alerts and several others from the SEC. Petitioner has NEVER to this day received a NOCA alert and thinking he may have failed to sign up for them, has revisited the SEC's website and adjusted the notifications again and again, and still has never received a NOCA alert.

The SEC, having discretionary authority to award claims that are filed late, has never done so. SEC has denied all of them, as well as every reconsideration request received. The SEC when left to its own discretion, will deny a claim for any reason it can find, as evidenced by the mere 42 award orders that have resulted from 1180 award eligible cases over the past 8 years, and is about to grant itself even more discretion, to superimpose the will of the SEC to justify the denials of even more claims, over the intentions of Congress and the will of the American people the Congress represents, in a manner that makes appeal pointless, as no appeal can overcome discretion, when the law is erased and individual perception is substituted.

There are dozens more examples in the proposal, which cannot be addressed due to word limits regarding this petition. Petitioner strongly urges the Court to review the proposal and advises that the SEC has indicated it may implement those terms without the approval of the Commission, which makes this Petition the only hope, for a lot of people…petitioner included.

Reasons Writ Should Issue

As this Court has held, "Claims of unreasonable agency delay clearly fall into that narrow class of interlocutory appeals from agency action over which we appropriately should exercise our jurisdiction." Telecommunications Research and Action Center v. FCC, 750 F.2d 70, 79 (D.C. Cir. 1984) ("TRAC"). [16]

Mandamus petitions may be considered under the TRAC standard: "whether the agency's delay is so egregious as to warrant mandamus." The TRAC standard involves six factors:

1. **The time agencies take to make decisions must be governed by a "rule of reason";**

   It has been 27 months since SEC received Petitioner's claims. 20-17 months have passed since the deadline SEC established when SEC told Petitioner to expect a decision by approx. year-end 2016, or by the first quarter of 2017**, at the latest**. It has been approximately a year and a half since SEC informed Petitioner that his claims were complete and as such, they had no follow-up questions to ask, implying the process of determining award eligibility, was completed.

2. **where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed, that statutory scheme may supply content for this rule of reason;**

[16] John Doe V SEC, USCA Case #15-1444 Document #1587949 Filed: 12/10/2015

"…But at the same time, it balanced that goal against the interest in "providing finality to the application period so that the Commission can begin the process of assessing any applications and **making a timely award to any qualifying whistleblowers**[.]" SEC Release No. 34-64545 at 172, 76 Fed. Reg. 34299, 34343 (June 13, 2011) 2011 WL 2045838 at *80 (emphasis added).[17]

3. **delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake:** Petitioner eluded to retaliation he has faced, that is not employment related. Petitioner fears for his life and as such, has sought a speedy resolution in this matter. The details of which have been sent to the SEC and FBI, without response.

   Petitioner reserves the right to submit such as a separate addendum, or in a manner specified and requested by this Court.

   a. **the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority.** The competing priority here is obvious. SEC intends to change the rules, with the intention of fraudulently altering claims from eligible to ineligible, in a matter of days.

[17] See John Doe V SEC, USCA Case #15-1444 Document #1587949 Filed: 12/10/2015

4. **the court should also consider the nature and extent of the interests prejudiced by delay;** Interests include the public trust in our markets and the regulators that oversee them. If the SEC can perpetrate such a fraud, how then can it prosecute fraud? How can the SEC be trusted to protect investors when it steals from its own whistleblowers? How can the whistleblower program be trusted by anyone weighing the potential risks and loss of their career if at the end of the day, the SEC picks the pocket of the people that came forward and leaves them with nothing?

5. **and the court need not find "any impropriety lurking behind agency lassitude"** to hold that agency action is unreasonably delayed.

Impropriety abounds! Not applicable!

The Petitioner has sought the assistance of his elected officials, who are simply unavailable to him. This Court is the Petitioner's only option, and this Petition is his only chance to prevent the theft of his once certain monetary award.

The SEC has indicated that it may apply select changes to the rules as well as their definitions/ understandings, with or without the approval to do so, on what amounts to be on an as needed basis, per the discretion of the SEC, knowing that the discretion in and of itself, prevents any potential appeal of being successful for a claimant.

> "We acknowledge the potential that certain aspects of the proposed rule might make it more difficult for whistleblowers to respond to the denial of award applications."[18] -

> Having issued only 42 award orders in 8 years out of 1180 potential award eligible cases, SEC is seeking to make it more difficult, and wants to invalidate valid claims. That was NOT the intention of the program. The SEC is operating above the law, changing terms as SEC sees fit to change or twist the meanings of rules, to avoid its responsibilities under a contract SEC entered into to get out of paying for the service that was rendered, in this case by the Petitioner, whom kept up his end of the deal and jumped through every hoop SEC put in the way, until now.

A writ of mandamus here would send a clear message to the SEC, that this Court has taken notice, which should suffice to correct the abuse of power being displayed

and allow the SEC to police itself and remedy the internal problem it clearly has, on its own. Ideally, for the good of all, that is a best-case scenario at this point. Finally, granting mandamus in this case would not pose a danger of diverting resources from higher priorities. Petitioner's claim has in all likelihood been decided already.

[18] SEC rule change proposal – page 153

Moreover, and perhaps more importantly, a writ of mandamus will allow the SEC to withdraw its rule change proposal on its own initiative, rather than be the subject of a writ of prohibition that this Court may on its own motion, issue as well.

Conclusion

There is sufficient evidence in the rule change proposal submitted by the SEC itself, to indicate the agency has withheld the decision unlawfully, to change the outcome and reverse the decision to an unappealable denial, with willful intent to defraud the petitioner out of the monetary award he has certainly earned.

With that in mind, whatever the reason is that the SEC has set aside award eligible claims in order to change them into ineligible claims through the rule changes the agency intends to put into place, the SEC is violating Federal Law, the public trust and putting our markets at risk, by doing so.

While the SEC is not under a specific legal deadline beyond the established "timely manner" requirement, the SEC set a deadline for itself, when SEC told Petitioner he **"should EXPECT a decision by approximately year end 2016, or first quarter of**
2017, at the latest." The decision is long overdue based on the estimated time that was given, to a point of cruelty.

A writ of mandamus is appropriate. Issuing a writ of mandamus here would send a message that fraud of any type, will not be tolerated in our markets, nor in the oversight of them. **The ONLY reason to apply the proposed changes (with or**

without approval), is to alter the eligibility for an award on existing claims that are pending.

The order to render a proper decision under the established rules, which will be review-able by this Court, should require an immediate decision, as it has more likely than not, already been made and unlawfully withheld, and should prohibit the application of unlawful rule changes SEC may invent, before a final Commission order is made in Petitioner's case, given the clear abuse of power being exhibited by SEC.

STATEMENT OF RELIEF SOUGHT

Pursuant to 5 U.S.C. § 706(1) and 28 U.S.C. § 1651(a), petitioner John Doe requests that the Court issue a writ of mandamus directing the Securities and Exchange Commission ("SEC") to issue a decision, prior to the implementation of new rules, changes to existing rules and definitions / clarifications which can negatively affect award eligibility, within 30 days, under 17 C.F.R. § 240.21F-10(d) on Petitioner's applications for monetary awards under the SEC's Whistleblower Program, and according to the Final Rules and precedents established by SEC & Congress that created and have governed the Whistleblower Program since inception.

Subject: File No. S7-16-18
From: Anonymous Anonymous

September 15, 2018

Some have described the SEC's Whistleblower Process as "A Black Hole Of Despair" (http://www.brokeandbroker.com/2735/sec-oig-owb/) and it appears as though the rulemaking process is no exception.

For example, the Proposed Rules single out "a summary disposition process" as the only significant rule that would be applied to already submit and pending Whistleblower Award Applications (See footnote 217 of https://www.sec.gov/rules/proposed/2018/34-83557.pdf).

The applicability of these proposed rules to pending Whistleblower Award Applications is of huge consequence, yet the SEC has done little to factually justify this change. As with other proposed changes, the SEC has not conducted an objective analysis nor has it quantified the impact of such changes. Worse, the SEC has not published data to allow comments to make informed comments on these matters.

I would specifically like the SEC to conduct a thorough analysis and calculation to determine:

1.) An estimated number of pending applications that would be subject to summary decisions
2.) The net effect on the backlog as a result of these summary decisions: How many more applications can the SEC adjudicate per month? How many months will the backlog decrease?
3.) Why does the Office of the Whistleblower need this power? Why doesn't the Claims Review Staff make these decisions?
4.) Has the SEC studied any alternatives?

Subject: File No. S7-16-18
From: Anonymous Anonymous

September 15, 2018

I do not believe that section K of the proposed rules provides an honest and good faith solution towards expediting the processing of Whistleblower Award Applications.

Proposed Rule 21F-18 establishes a summary disposition process, however, the Commission should consider the following:

1.) No alternative analysis has been conducted, making this proposed rule precarious at best. The Commission would be wise to conduct an analysis for an alternative method of decreasing the backlog of Whistleblower Award Applications. One obvious alternative method would be to increase the staffing of the Whistleblower Office and ensuring the Claims Review Staff are subject to deadlines (just like Whistleblower are).

2.) The Commission should clarify whether Whistleblower Award Applications that are presently pending are subject to these new procedures.

3.) The Commission needs to be more transparent about what causes Whistleblower awards to be processed so slowly. Is the bottleneck with the Claims Review Staff or is it with the Office of the Whistleblower, if it is the latter, these proposed rules would actually give the Office of the Whistleblower MORE work and not less work - precisely because the Office of the Whistleblower would be responsible for a summary denial - rather than the Claims Review Staff.

Unless clarified further the proposed rules are causing the Whistleblower program to have less conformity and be less clear.

Subject: File No. S7-16-18
From: Anonymous Anonymous

September 15, 2018

I do not believe the proposed rules have been fully studied - and I am concerned that the impact of these rules are uncertain.

This is especially true because there is very little quantified impact of the proposed rules and the fact that the SEC's Whistleblower Office and its rules of operation were previously setup to handle 30,000 Whistleblower Tips per year. Something that SEC's Whistleblower Office is unable to handle.

I hope that the SEC's Whistleblower Office will not make the same mistakes as it did previously. Furthermore, I hope that the SEC's Whistleblower Office can shed light on the quantifiable impact of these proposed rules.

One key fact that is critical to commenting on these rules in the average time it takes to adjudicate a 'non-frivilous' Whistleblower Claim and the number of 'non-frivilous' Whistleblower Claims currently pending adjudication before the Commission.

Myself and other Whistleblowers have inquires to the SEC and Whistleblower Office to ask two basic questions:

1.) The position in the Whistleblower Claims queue of certain pending Whistleblower Claims and
2.) The average time per adjudication of a Whistleblower Claim.

Although these numbers are very basic and indeed critical to the proper functioning and management of the Whistleblower Program - the SEC has been unable to respond to these basic requests for information. This needs to change.

After what myself and other Whistleblowers have gone through and having our concerns repeatedly mismanaged or ignored by the SEC, I actually believe that I would discourage other Whistleblowers from reporting fraud to the SEC if any would-be-whistleblower would ask me for advice.

Subject: File Number S7-16-18
From: Glen Anderson
Affiliation:

Sep. 17, 2018

Dear Securities and Exchange Commission,

I STRONGLY OPPOSE the proposed amendments to the rules governing the SEC whistleblower program (File Number S7-16-18).

The SEC should be PROTECTING PEOPLE FROM ABUSE, but you are heading in the WRONG DIRECTION!!!

The SEC proposed these changes with no input from the whistleblower community, yet adopted a position consistent with the long-standing and flimsy viewpoint advanced by the anti-whistleblower U. S. Chamber of Commerce ("Chamber").

It is my understanding that the National Whistleblower Center filed a Freedom of Information Act (FOIA) request seeking documents related to lobbying efforts by Wall Street firms and the Chamber of Commerce that gave rise to the SEC's proposed rules. The SEC determined that the NWC had a "compelling need" to receive these documents "on an expedited basis" and determined that there were 15,877 emails that could be responsive to NWC's request. These included 1,078 emails that referenced both "whistleblower" and "Chamber of Commerce" created between January 2, 2017 and June 29, 2018.

Despite its agreement to expedite he release of these documents, the SEC will not release them until after the comment period.

Therefore, I urge the SEC, in the interest of transparency, extend the public comment period for its proposed rules on the Whistleblower Program until 60 days after the documents requested by the NWC's FOIA request have been released.

If the comment period is not extended, I agree with the concerns raised in the NWC's letter filed with the Commission on September 17, 2018, linked here: https://bit.ly/2xqGUts.

Sincerely,

Mr. Glen Anderson
5015 15th Ave SE
Lacey, WA 98503
3604919093

Subject: File Number S7-16-18
From: James Cunningham
Affiliation:

Sep. 17, 2018

Dear Securities and Exchange Commission,

I write in regard to the proposed amendments to the rules governing the SEC whistleblower program (File Number S7-16-18).

The SEC proposed these changes with no input from the whistleblower community, yet adopted a position consistent with the long-standing and flimsy viewpoint advanced by the anti-whistleblower U. S. Chamber of Commerce ("Chamber").

It is my understanding that the National Whistleblower Center filed a Freedom of Information Act (FOIA) request seeking documents related to lobbying efforts by Wall Street firms and the Chamber of Commerce that gave rise to the SEC's proposed rules. The SEC determined that the NWC had a "compelling need" to receive these documents "on an expedited basis" and determined that there were 15,877 emails that could be responsive to NWC's request. These included 1,078 emails that referenced both "whistleblower" and "Chamber of Commerce" created between January 2, 2017 and June 29, 2018.

Despite its agreement to expedite the release of these documents, the SEC will not release them until after the comment period. This is typical of Trump Admnistation efforts to undermine our democratic republic and consistent with the rampant corruption which has characterized this administration since it's inception.

Therefore, I urge the SEC, in the interest of transparency, honesty and fundamental ethics to extend the public comment period for its proposed rules on the Whistleblower Program until 60 days after the documents requested by the NWC's FOIA request have been released.

If the comment period is not extended, I agree with the concerns raised in the NWC's letter filed with the Commission on September 17, 2018, linked here: https://bit.ly/2xqGUts.

This type of un-American charade is just like the handling of the recent Supreme Court hearings by the Senate majority, discarding decades of precedent in order to harm our nation with their egregious corruption. The jihad of political corruption that defines the Trump Administration and the Republican Party must be stopped if the United Sates of America is to survive.

Sincerely,

Mr. James Cunningham
205 W Reindeer Drive
Powell, OH 43065
614-326-0730

Subject: File Number S7-16-18
From: stacy rauch
Affiliation:

Sep. 17, 2018

Dear Securities and Exchange Commission,

I write in regard to the proposed amendments to the rules governing the SEC whistleblower program (File Number S7-16-18). When any department wants to change rules, I believe it is a right of the public to not only know what is being changed, but how the changes will effect the actions of that department or its end results. I fully support whistleblowers and want their input made public at all times. I am tired of games being played between departments with oversight requirements and the companies/institutions they are supposed to oversee, working together to keep things 'quiet'. That is NOT the role of the SEC and it should not be party to any type of changes that will achieve this silence, under the rug, wink, wink behavior.

The SEC proposed these changes with no input from the whistleblower community, yet adopted a position consistent with the long-standing and flimsy viewpoint advanced by the anti-whistleblower U. S. Chamber of Commerce ("Chamber"). The chamber is not a friend of consumers.

It is my understanding that the National Whistleblower Center filed a Freedom of Information Act (FOIA) request seeking documents related to lobbying efforts by Wall Street firms and the Chamber of Commerce that gave rise to the SEC's proposed rules. The SEC determined that the NWC had a "compelling need" to receive these documents "on an expedited basis" and determined that there were 15,877 emails that could be responsive to NWC's request. These included 1,078 emails that referenced both "whistleblower" and "Chamber of Commerce" created between January 2, 2017 and June 29, 2018.

Despite its agreement to expedite the release of these documents, the SEC will not release them until after the comment period. The delay makes me question the commitment the SEC should have regarding transparency and respect for the public's interest.

Therefore, I urge the SEC, in the interest of transparency, and the public's right to know, extend the public comment period for its proposed rules on the Whistleblower Program until 60 days after the documents requested by the NWC's FOIA request have been released.

If the comment period is not extended, I agree with the concerns raised in the NWC's letter filed with the Commission on September 17, 2018, linked here: https://bit.ly/2xqGUts.

Sincerely,

Ms. stacy rauch
30 Park Ave
New York, NY 10016
212-555-1122

Subject: File Number S7-16-18
From: Linda Massey+
Affiliation:

Sep. 17, 2018

Dear Securities and Exchange Commission,

I write in regard to the proposed amendments to the rules governing the SEC whistleblower program (File Number S7-16-18).

The SEC proposed these changes with no input from the whistleblower community, yet adopted a position consistent with the long-standing and flimsy viewpoint advanced by the anti-whistleblower U. S. Chamber of Commerce ("Chamber").

It is my understanding that the National Whistleblower Center filed a Freedom of Information Act (FOIA) request seeking documents related to lobbying efforts by Wall Street firms and the Chamber of Commerce that gave rise to the SEC's proposed rules. The SEC determined that the NWC had a "compelling need" to receive these documents "on an expedited basis" and determined that there were 15,877 emails that could be responsive to NWC's request. These included 1,078 emails that referenced both "whistleblower" and "Chamber of Commerce" created between January 2, 2017 and June 29, 2018.

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If the comment period is not extended, I agree with the concerns raised in the NWC's letter filed with the Commission on September 17, 2018, linked here: https://bit.ly/2xqGUts.

The SEC must show to the people of this country the necessity of transparency or it will show that it is hiding inappropriate behaviors and transactions.

Ms. Linda Massey+
8510 Main St
Edmonds, WA 98026
2066676655

Subject: File Number S7-16-18
From: Harold Johnsen
Affiliation:

Sep. 17, 2018

Dear Securities and Exchange Commission,

I write in regard to the proposed amendments to the rules governing the SEC whistleblower program (File Number S7-16-18).

The SEC proposed these changes with no input from the whistleblower community, yet adopted a position consistent with the long-standing and flimsy viewpoint advanced by the anti-whistleblower U. S. Chamber of Commerce ("Chamber").

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THE TRAITORS TRUMP AND PENCE: IMPEACH, PROSECUTE, AND IMPRISON FOR LIFE THE MORALLY REPUGNANT TRAITORS AND CAREER CRIMINALS TRUMP AND PENCE AND ALL THEIR EQUALLY REPUGNANT AND INHUMANE REPUBLICAN APPOINTEES AND OTHER ETHICALLY BANKRUPT REPUBLICAN CRIMINAL CREATURES AND JOE DONNELLY WHO HAVE AIDED AND ABETTED THESE TRAITORS TO AMERICA!

Sincerely,

Mr. Harold Johnsen
7326 Van Buren Ave
Hammond, IN 46324
2198531223

Cornell University
Law School

Lawyers in the Best Sense

WILLIAM A. JACOBSON
Clinical Professor of Law
Director, Cornell Securities Law Clinic
138 Hughes Hall
Ithaca, NY 14853
T: [redacted]
F: [redacted]
E: [redacted]

September 17, 2018

Brent Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549–1009

RE: Comments on File No. S7-16-18 (Amendments to the Commission's Whistleblower Program Rules)

Dear Secretary Fields,

The Cornell Securities Law Clinic (the "Clinic") submits this comment to the U.S. Securities and Exchange Commission (the "Commission") in regard to the proposed amendments to the Whistleblower Program Rules, Release No. 34-83557; File No. S7-16-18 (the "Proposal").

We write particularly to oppose (1) the proposed discretionary adjustments of large awards and (2) the proposed modification of the definition of "related action" to eliminate double-recovery. Both of these proposed amendments would significantly limit the potential awards for whistleblowers, thereby effectively discouraging or disincentivizing would-be whistleblowers from coming forward.

I. Discretionary Adjustment of Large Awards

The Proposal calls to empower the Commission to make discretionary adjustments of awards to amounts the Commission determines to "more appropriately achieve[] the [whistleblower] program's objectives of rewarding

meritorious whistleblowers."[1] In practice, this proposal will most likely result in downward-adjustments of large whistleblower awards and effectively discourage would-be whistleblowers from coming forward with their information.

Although the Commission "anticipates" that it will consider "the personal and professional sacrifices [the whistleblower makes] in reporting the information"[2] when deciding whether to adjust the award, such anticipations are less than reassuring. Each and every potential whistleblower thoroughly and carefully makes these considerations themselves before deciding whether to come forward and nobody will choose to do so if they fear their potential reward might not outweigh their guaranteed sacrifices. Such fears would be substantiated by a rule that allows the Commission to adjust the whistleblower's award down below what the whistleblower decided was sufficient to outweigh their personal and professional sacrifices. The proposal's parallel possibility of upward-adjustment is unlikely to motivate whistleblowing because the sacrifices would be guaranteed while any possibility of extra gains would be uncertain.

II. Redefining "Related Action"

Modifying the definition of "related action" to eliminate double-recovery would also disincentivize whistleblowing. In situations where an individual would be rewarded under a different program with an award cap substantially lower than their desired compensation (e.g., FIRREA's $1.6 million limit), that would-be whistleblower would not come forward with his or her information when they otherwise would have. Such a rule that substantially limits a whistleblower's award—their only incentive—would work against the Commission's goal to foster a whistleblower-friendly environment.

[1] Whistleblower Program Rules, 83 Fed. Reg. 34702 (proposed July 20, 2018).
[2] *Id.*, footnote 8.

Conclusion

For the foregoing reasons, the Clinic opposes the proposed amendments to the Commission's Whistleblower Program Rules.

Respectfully submitted,

William A. Jacobson

_____

William A. Jacobson, Esq.
Clinical Professor of Law
Director, Cornell Securities Law Clinic

Basem Besada

_____

Basem Besada
Cornell Law School, 2020

COHENMILSTEIN

Gary L. Azorsky
[redacted]

September 17, 2018

VIA EMAIL

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: ***Comments on Proposed Rules Relating to the Commission's Whistleblower Program***
Release No. 34-83557; File No. S7-16-18

Dear Mr. Fields:

We respectfully submit these comments in response to the U.S. Securities and Exchange Commission's proposed rules relating to the Commission's Whistleblower Program (the "Proposed Rules").

As counsel for whistleblowers, we are appreciative of the Commission's efforts to strengthen its Whistleblower Program and we support many aspects of the Proposed Rules. Among other improvements, increasing the awards for whistleblowers who would otherwise receive a small financial incentive for reporting fraud will encourage more individuals to come forward. Likewise, empowering the Commission to efficiently dispose of frivolous claims will enable the Commission to respond more quickly to the meritorious tips it receives.

However, we believe certain aspects of the Proposed Rules would have the unintended consequence of undermining the Whistleblower Program by discouraging individuals from reporting information to the Commission and unduly denying awards to whistleblowers who provide useful information of which the Commission was, and would likely remain, unaware. Based on our experience dealing with individuals who ultimately decide to become whistleblowers as well as with those who decide the risks outweigh the benefits, we respectfully offer below our comments and suggestions on some of the Proposed Rules.

- Proposed Amendment to Definition of an "Action": We support the proposed amendment to Exchange Act Rule 21-F4(d) to include deferred prosecution and non-prosecution agreements entered into by the Department of Justice or state attorneys general under the definition of "administrative actions." As noted in the Proposed Rules, federal and state prosecutors often elect to resolve enforcement actions through these agreements rather than through litigation and settlement, and whistleblowers should be eligible to receive the same awards regardless of the procedural vehicle used by the government to obtain a monetary recovery.

- Proposed Amendment to Definition of "Related Action": We acknowledge the Commission's goal to prevent situations in which an individual would obtain two or more awards under different whistleblower programs totaling more than 30% of the same recovery in the same matter. However, we believe the proposed amendment to Rule 21F-3(b) is overbroad and would potentially deprive an otherwise-eligible SEC whistleblower of an appropriate award in cases in which that whistleblower provided information to the Commission that led to a monetary recovery in a related action but was not granted a substantial whistleblower award under a separate whistleblower program that was potentially applicable to the same action. We believe a simpler rule would more effectively achieve the Commission's aim: in cases in which the Commission independently determines that a whistleblower is entitled to a larger award (say, 20% of the recovery) than the whistleblower receives from a different agency program (say, 15% of the recovery), the Commission will make a separate partial award to the whistleblower in an amount (5% of the recovery) that provides the whistleblower with a combined total award that the Commission believes is appropriate (20%). This approach would avoid payments for multiple "bites of the apple," while also ensuring that a whistleblower is given the highest award that either the Commission or another whistleblower program determines is appropriate.

- Proposed Amendments to Criteria for Determining Amount of Awards: We support Proposed Rule 21F-6(c) to allow the Commission to adjust upwards any award that would otherwise be below $2 million to a single whistleblower. By increasing the incentive for potential whistleblowers to report all types of frauds, including those that have not yet resulted in widespread investor harm, this amendment will strengthen the ability of the Whistleblower Program to prosecute frauds in their early stages and thereby enhance its protection of investors.

  In contrast, Proposed Rule 21F-6(d) – allowing the Commission to decrease awards where the total monetary sanctions collected is at least $100 million and the potential payout to a single whistleblower would exceed $30 million – would lessen the incentive to report wrongdoing in those cases in which harm to investors is greatest. Oftentimes those with the best evidence of widespread fraud are at the highest levels and earn the highest compensation in their industry. These are also the individuals with the most to lose if

their future career prospects are impaired by disclosure, or even rumors suggesting, that they acted as a whistleblower. We believe the necessity for increased incentives to report the largest frauds is why Congress did not instruct the Commission to consider a large award as a reason to *lower* it, and instead expressly prohibited the Commission from considering the status of the Investor Protection Fund when determining awards.[1]

- Proposed Amendment to Address Individuals who make False or Frivolous Claims: We support Proposed Rule 21F-8(e) allowing the Commission to bar applicants who submit three frivolous award applications from seeking future awards under the Whistleblower Program. Individuals who abuse the procedures of the Whistleblower Program make it more difficult for the Commission to investigate and act on meritorious whistleblower submissions, and a permanent bar is an appropriate sanction for those who repeatedly file clearly frivolous applications so long as the appropriateness of such a sanction in any specific case is reviewable in a court of law.

- Proposed Guidance Regarding the Meaning and Application of "Independent Analysis": The opportunity for financial professionals to provide non-public (and previously unknown) information derived from their own analyses to the Commission is an important aspect of the Whistleblower Program, as many sophisticated investment frauds require substantial application of time and resources to uncover. In its proposed guidance for interpreting when whistleblower information constitutes "independent analysis" as that term is defined in Exchange Act Rule 21F-4 and utilized in the definition of "original information," the Proposed Rules risk weakening this crucial incentive by applying a restrictive and retrospective test for determining a potential whistleblower's eligibility for an award.[2] We are concerned that, among other things, by focusing on whether the Commission determines (after being informed of the conclusions of the whistleblower's analysis) that an "inference of the possible violations" alleged was apparent from publicly-disclosed facts, the concept that "hindsight is 20/20" will operate to deprive deserving whistleblowers of awards. A more appropriate standard, in our opinion, would be to condition eligibility for a whistleblower award on the provision of "independent

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[1] The repeated references in the Proposed Rules to the size of the IPF, the effect on the IPF of future large awards, and the ramifications if the IPF were to fall below $300 million raises concern that the Proposed Rules do not follow the prohibition in § 21F(c)(1)(B)(ii) against considering the status of the IPF as a factor in determining the amount of whistleblower awards.

[2] In response to the Proposed Rules' reference to jurisprudence concerning the False Claims Act's public disclosure bar, we note that the False Claims Act expressly permits the government to allow relators to pursue actions notwithstanding public disclosure objections, 31 U.S.C. § 3730(e)(4)(A), and permits courts to grant awards to relators even where the action is based primarily on public information, 31 U.S.C. § 3730(d)(1).

analysis" that supplies the Commission with non-public information (its conclusions) that the Commission did not previously possess.

Thank you in advance for your consideration of the views expressed in this letter. Should you have any questions regarding the points we have raised, or any other issues related to the Commission's Whistleblower Program, please contact the co-chairs of our Whistleblower Practice Group, Gary L. Azorsky or Jeanne A. Markey at [redacted].

Sincerely,

Cohen Milstein Sellers & Toll PLLC

/s/ Gary L. Azorsky
Gary L. Azorsky
1717 Arch Street, Suite 3610
Philadelphia, PA 19103
[redacted]

Comments by Arthur "Two Sheds" Jackson on S7-16-18 (Sec. III)

[redacted])

On June 28, 2018, the SEC issued a 183-page document proposing amendments to the whistleblower program mandated by Dodd-Frank. While the changes are framed as improvements to the program, if adopted they will serve only to enhance the SEC's ability to selectively enforce the law. **The SEC lacks both the integrity and intelligence to manage the whistleblower program effectively. It should be removed from the SEC's jurisdiction completely and administered in an independent grand jury setting.** The changes suggested in Section III are testament to the program's twisted sense of purpose, little more than the rationalizations of a spoiled child unwilling to clean their own room.

Most offensive among the proposals (and cleverly placed at the very bottom of the press release) is the SEC's desire to exclude whistleblowers providing analysis that *"would be reasonably apparent to the Commission from publicly available information."* Here's the problem, you idiots: Failing to act on things that should be reasonably apparent is the hallmark of the SEC. It's what you do best. The whistleblower inbox is overflowing with analysis of public information not so much because people are greedy but because the SEC is a cesspool of incompetence and corruption. *Get it?*

Giving crooked cops unchecked power to investigate only matters they choose to and distribute reward money as they see fit is a recipe for disaster. Here's a compelling example of probable malfeasance that is ironically, *"reasonably apparent from publicly available information."*:

> In February 2011, the SEC announced the Whistleblower program created by the Dodd-Frank Act had been funded with $452 million and would be headed by **Sean X. McKessy.** (Link) In September 2014, McKessy announced an award of more than $30 million (the largest award ever at the time). (Link) The SEC provided minimal details, but the same day, Washington-based law firm **Phillips & Cohen** proudly announced it represented the whistleblower and that the settlement was actually over $32 million. (Link) **Less than two years later, McKessy left the SEC to join Phillips and Cohen.** (Link) (Link)
>
> The whistleblower program is currently headed by **Jane Norberg,** who served as deputy chief under McKessy. We would speculate that McKessy was instrumental in Norberg's hiring. (Link)

Can you smell that?

Contrary to the Hollywood cloak and dagger fantasies of those who designed and currently administrate the whistleblower program, the footprints of graft and abuse can often be found in plain sight by citizens not complicit in wrongdoing. No "cool stuff" (wire-tapping, plea-bargaining, undercover assignments in the Caymans) is required to take action, just an inclination to step up and do the right thing.

Open source investigators (i.e. people using publicly available information to uncover potential wrongdoing) need a forum where their concerns can be objectively reviewed and acted upon. It is painfully obvious the SEC is incapable of providing such a forum, primarily because the commission's failings are usually part and parcel of the wrongdoing reported. In other words, they're blowing the whistle on the SEC itself. Anyone evaluating such concerns must be prepared to confront that the SEC

has screwed up *again.* When the evaluators are employees of the SEC, no one can expect them to be objective.

Anyone thinking the SEC openly welcomes internal criticism is unfamiliar with the saga of **Kathleen Furey**, an SEC attorney whose struggles against her employer came to light in May 2013. (Court docs) (Taibbi) (Bloomberg) (HuffPo)

> Furey's exemplary career was derailed in late 2007 when she expressed concerns that investigations into a certain investment manager *(the name is redacted)* begun in December 2004 had stalled. **George N. Stepaniuk**, Assistant Director of the New York Regional Office (NYRO) told her ***"We don't do investment management cases in this group,"*** which Furey considered *"a violation of law, gross mismanagement, and abuse of authority."* Furey's complaints were ignored by her superiors, so she became an internal whistleblower, taking the allegations to SEC inspector General **H. David Kotz**, who was also indifferent. Reprisals against Furey began shortly thereafter.
>
> A year later the Madoff scandal exploded on the NYRO's doorstep, giving those involved much bigger worries than Kathleen Furey.
>
> Furey began requesting documents under the Freedom of Information Act (FOIA) in late 2011. The requests were made regarding both the public interest and her case specifically. Frustrated with the commission's inadequate responses, she took legal action against her employer in May 2013. Furey's case was settled quietly in August 2014, with the SEC releasing 13,000 unredacted records for her use exclusively and approximately 3,500 redacted pages for use publicly. (Court documents can be found at PACER)

While we applaud Ms. Furey's courage and integrity, we believe them to be an outlier at the SEC. We still see a dearth of cases brought against sizable investment managers, so we assume *regulatory capture* is alive and well. We know of no efforts to slow the revolving door between the regulator and the regulated. We could tell countless *Where Are They Now?* stories to illustrate the blatantly self-dealing (**Honorable Mary Schapiro**, we're looking in your direction). (Link) (Link) (Link) (Link) (D'oh!) (Link) (Link) (Link) (Link) (Link) (Link)

The whistleblower program is campaigning for the right to dismiss open source submissions on technicalities. *Not original! Reasonably apparent! Not probative enough! Low quality analysis! Frivolous!* Like they're judging a science fair or something. At no point does the proposal entertain the notion that these submissions often contain highly-compelling facts that the SEC missed, opting instead to refrain *"We don't have to listen! We don't have to listen!"*

Consider the following example:

> *"Everyone at my church has been putting money into an investment fund run by a long-time member of our congregation, and other members keep approaching me to invest as well, because he has made at least 10% every year for the last 15 years. I feel pressured and think there might be something fishy going on. Please help."*

Not a sophisticated submission, but anyone with a novice level understanding of fraud knows this is most certainly one (99.99% is close enough). You don't give it the benefit of the doubt, you go kick the

doors in. It is horrifying to know that such a tip will likely be discarded because it doesn't meet certain meaningless "standards." From this moment forward, the SEC is obstructing justice, whether it understands that or not. It may as well be a co-conspirator.

Bernie Madoff is credited with operating the largest Ponzi scheme in world history, but to be precise, he should probably only be credited with the largest *known* Ponzi. It is critical to recall federal agents arrested Madoff in late 2008 only *after* he confessed to his crime. (Link) **Despite government posturing in the media, he was not "caught" by authorities.** (Don't forget that)

> In the days following Madoff's arrest, reports began to surface that a citizen named **Harry Markopolos** had been warning the SEC of Madoff fraud for more than eight years. (Link) (Link) Markopolos has stated repeatedly that he knew that Madoff's returns were not real after examining the strategy for "**about 5 minutes**" in 1999. (Link) (Link) He first contacted the SEC in May 2000. (Link) In November 2005, Markopolos submitted a 25-page account of his suspicions to the SEC, entitled **The World's Largest Hedge Fund is a Fraud.** The opening paragraph states *"...every single one of the senior managers I spoke with told me that Bernie Madoff was a fraud."* On page two, he declares it *"highly likely"* that Madoff is "*the world's largest Ponzi*," and that he is alerting the SEC not because he is expecting to be rewarded, but "***because it's the right thing to do***."
>
> **In response to the admirably articulated Markopolos allegations, the dimwits at the SEC did less than nothing, they defended Madoff and focused instead on Markopolos' "motives," because serving justice (doing "*the right thing*") was alien concept to them.** An SEC accountant named **Peter Lamore** wrote *"I think he is on a fishing expedition and doesn't have the detailed understanding of Madoff's operations that we do."* (Link)

Fun Facts:

- The aforementioned "detailed understanding" was derived from the SEC's comically insane and completely unverified notion that Madoff traded in Europe (Madoff said it in May 2005 and the SEC believed). (Link) (Link)
- Not only is Peter Lamore still employed by the SEC, his base salary has risen from $76.1k at the time of the dismissive remarks above to $206.6k in 2017. (Link) Note that incompetent boobery of this magnitude is generally not so richly rewarded in the private sector. [Citation Not Really Needed]
- Armed with the Markopoulos report in 2006, Peter Lamore and **William D. Ostrow, examined Madoff's operation onsite for two months…and completely whiffed again. Madoff was "astonished" that they did not ask for Depository Trust Company (DTC) records and said that they "spent 90% of their time looking through emails."** (Sweet Mother of Mercy)
- **Shana Madoff** (Peter Madoff's daughter, Bernie's niece) served as a compliance officer and attorney at Bernard L. Madoff Investment Securities (BLMIS) from 1995 until Madoff's confession and arrest in 2008. **She is married to former SEC attorney Eric Swanson.** They met in 2003, during one of the SEC's many botched Madoff investigations. *(Ain't love grand?)*. **Shana Madoff was never criminally charged in connection with the Madoff scandal**. *(Link)*

- S7-16-18 devotes three pages to pontificating on the merits of Harry Markopolos's extensive work on the Madoff case and concedes that it qualifies as "independent analysis." *Thanks a lot, pinheads.*

Conclusions

- Darwinian forces do not exist at the SEC. As a result, the agency has no ability to accurately access threats, set priorities or achieve results efficiently. The SEC is uniquely unqualified to manage the whistleblower program and we reject the idea that the commission is capable of evolving into an organization that can honestly address its own failings.
- The whistleblower program should be focused solely on determining what action needs to be taken and seeing that appropriate action is taken swiftly, regardless of source. Pondering the probative merits of the information shouldn't be part of the process, nor should considering what embarrassment the SEC might face.
- We believe the SEC is presently sitting on a powder keg of valid whistleblower submissions that it is deliberately delaying taking action on for a variety of reasons. We suspect that investment manager cases comprise a large percentage of the stalled actions.
- We believe that the public interest would be best served if the whistleblower program was administered in a grand jury setting, completely independent of the agency. The grand jury will evaluate submissions in secrecy, determine courses of action and monitor results.

About the author

Arthur "Two Sheds" Jackson (pseudonym) is a seasoned private fund due diligence researcher who recently became unemployed through no fault of his own *(Swear to God!).* He was employed by a pension consultant and performed over 250 "deep dive" investigations into hedge funds and other alternative investments based in the US, Europe, Asia and various offshore tax havens. His work relied heavily on details gleaned from open sources (Registrations, regulatory documents, leak databases, public profiles, news stories and other media), which he considers indispensable in constructing an accurate opinion of these funds and the people who run them.

His duties included performing a daily news sweep of the financial world with a focus on private funds, reporting key developments to clients. Conservatively he has read 50,000 news stories on hedge funds.

His work has occasionally uncovered clear evidence of fraud, but in the words of Forest Gump, *"that's all I have to say about that."*

He hopes to continue protecting investors in relative obscurity and is seeking a suitable position at another consultancy firm or family office. If interested contact [redacted]

Subject: File No. S7-16-18
From: Anonymous Anonymous

September 17, 2018

In order to more fully understand the calculus and impact of these proposed rules, I would like to SEC to address the following:

1.) How many (if any) complaints has the SEC received for overly large or overly small whistleblower awards?
2.) What percentage of time has the SEC dedicated to what may constitute "frivolous" whistleblower claims?
3.) How many (if any) complaints has the SEC received for very lengthy processing times?
4.) How many (if any) complaints has the SEC received regarding inadequate communication or inadequate funding in relation to the Whistleblowr program?

Redactions in Original Submission

Commentary Regarding
SEC Public Consultation Concerning
Proposed Amendment to Exchange Act Rule 21F-6
(in triplicate)

For the attention of:
The Secretary
Securities and Exchange Commission
100 F Street NE
Washington DC 20549-1090
United States of America

BY COURIER

Reference: File Number S7-16-18

Comments pertaining to: https://www.sec.gov/rules/proposed/2018/34-83557.pdf
More specifically the proposed amendments; (1) to reduce rewards for whistleblowers in large monetary recoveries, (2) to clarify whistleblowers entitlement to awards pertaining to cases pursued by other governmental agencies, and (3) to add 'guidance' to the "*independent analysis*" standard regarding what qualifies as "*original information*".

1. **Cautionary Note, Disclaimer, Forward-Looking Statements and Format**

1.1. Please refer to the last page of this letter regarding Cautionary Note, Disclaimer and Forward-Looking Statements before reading the below.

1.2. Please note that all comments and observations below is based on my interpretation of the facts and circumstances.

1.3. Due to the fact that the SEC Commissioners have launched this *public enquiry* without setting up a separate 'non-public' secure line of enquiry, protecting the identities of large case whistleblowers like me and potential ongoing investigations like the Case, aimed at extracting as much relevant information as possible in the context of the proposed amendments from the very whistleblowers who enables the Whistleblower Program and are the target of the Reduced Award, below I am forced to 'black-out' the names of the parties involved and refer to them simply by 'letters'.

2. **The Author and Purpose of this Letter**

2.1. My name is Richard Jansson and I am currently acting as a whistleblower (the "**Whistleblower**" or "**I**") in a potential ongoing large case investigation under the whistleblower program (the "**Whistleblower Program**").

2.2. I am from Sweden and thus indifferent to US domestic politics; the only thing that matters to me is the protection of the interests of Main Street Investors and that significant whistleblowers (like myself) will be accurately awarded for the value we potentially create in line with what has been explicitly stipulated by statue of law and promoted through the Office of the Whistleblower, in enticing us to come forward through the Whistleblower Program.

3. **Executive Summary - consequences of the proposed implementation of the Reduced Award**

3.1. The Reduced Award will not, as alleged by the SEC Chairman, "*help strengthen*" the Whistleblower Program, it will in fact achieve the direct opposite, as the introduction of the Reduced Award will *weaken and undermine* the Whistleblower Program, in accordance with the below summary:

3.1.1. The Reduced Award will create 'competition' for sensitive information and encourage *'back-door-deals'* between whistleblowers and large case offenders.

3.1.2. The Reduced Award will make offenders in large cases *more skilful* in committing fraud and breaching the Securities Laws as they will learn first-hand from whistleblowers who has 'caught them out'.

3.1.3. The Reduced Award will *encourage concealment* of information related to large cases.

3.1.4. The Reduced Award will make the investigative work of the SEC *more difficult* as offenders in large cases will be warned in advance of a potential investigation.

3.1.5. The Reduced Award will *remove the alignment* in between the SEC and the whistleblower in large cases.

3.1.6. The Reduced Award will *remove the incentive* of the whistleblower to supply further information once a meritorious case has been filed in large cases.

3.1.7. The Reduced Award will *conceal the most serious* systematic fraud, which means that such abuse will carry on behind the scenes in an even more refined manner.

3.1.8. The Reduced Award will, given the political implications, encourage potential whistleblowers of large cases to try to *'time' their cases* in order to be 'properly' awarded.

3.1.9. The Reduced Award will introduce subjectivity and make the majority of the SEC Commissioners omnipotent in large cases, which will in turn introduce hugely complex issues of *conflicts of interest*.

3.1.10. The Reduced Award will dangerously change a system that is recognized by all SEC Commissioners to *already work* perfectly well.

3.1.11. The implementation of the Reduced Award will be *against the law*, as the Commissioners will exceed their authority.

3.1.12. The Reduced Award will *discourage* whistleblowers to come forward in large cases.

3.1.13. The Reduced Award will make the whistleblower program *less effective*.

3.1.14. The Reduced Award will *undermine the public trust* in the SEC as well as whistleblower's trust in the same.

3.1.15. The Reduced Award will encourage *journalists* and the likes of *Netflix* to investigate the most serious fraud and breaches of the Securities Law in cooperation with whistleblowers.

3.2. In summary and as will be further explained below; the Reduced Award will create one set of rules for 'small fry' and another for 'big fish', protecting the large offenders whilst exposing the small ones, creating a 'two-tear legal system' where one group of offenders are treated differently compared to another, undermining the very essence of democracy.

3.3. In the opinion of the Whistleblower, the Reduced Award is a 'clever' way for the establishment (who the Chairman is ultimately an ambassador of) to sabotage the Whistleblower Program to their benefit at the expense of Main Street Investors.

3.4. In light of the above, this letter is further set out to illustrate that the Reduced Award is not the product of an arm's length, independent analysis and simply cannot be adopted since *the SEC Chairman is conflicted* in voting in favour of implementing the Reduced Award.

4. The Whistleblower's Case filed with the Whistleblower Program

4.1. The case the Whistleblower has brought to the attention of the Whistleblower Program relates to the merger of [redacted] ("[redacted]" "**A**") and [redacted] ("[redacted]" "**B**"), resulting in the merged entity [redacted] ("**C**"), through which allegedly very large amounts of ill-gotten gains have been made by a wide group of corporate offenders, primarily the investment bank [redacted] ("[redacted]" "**D**")[1], the law firm [redacted] ("[redacted]" "**E**")[2], the auditors [redacted] ("[redacted]" "**F**")[3] in addition to certain individuals in their capacities as former beneficial [redacted] shareholders, primarily [redacted] ("[redacted]" "**Mr. G**") and [redacted] ("[redacted]" "**Mr. H**") who both simultaneously also were board members of A and B at the same time (all together the "**Alleged Offenders**")[4] at the expense of vulnerable and defenceless former A retail investors (the "**Case**").

4.2. In brief, the value transfer was primarily enabled by D and E advising B's board and controlling shareholders (Mr. G and Mr. H) on <u>how to move</u> from an exchange ratio of [redacted] (which [redacted]% of the A majority shareholders had enjoyed)[5] down to [redacted] shares in C, a

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[1] Appointed by B.
[2] Appointed by both A and B.
[3] Appointed as "*independent*" merger auditor for B.
[4] The Alleged Offenders also includes [redacted] ("**H**") ("*independent*" merger auditor for A), [redacted] ("**I**"), [redacted] ("**J**"), [redacted] ("**K**") and [redacted] ("**L**") (who all issued so-called "*fairness opinions*" for A 'justifying' D's Reduced Ratio and therefore the Value Transfer).
[5] The shareholders *accepting* the voluntary offer ended up with [redacted] shares in C for every [redacted] shares in A, a ratio of [redacted] ([redacted]/[redacted]).

reduction of more than one third (the "**Reduced Ratio**")[6] enforced upon the remaining [redacted]% owned by the A minority shareholders, which meant that the latter ended up with approx. [redacted] million *fewer* shares in C (and the former with approx. [redacted] million *more* shares), worth approx. $1 billion at the time (the "**Value Transfer**")[7].

4.3. In facilitating this Value Transfer, investment bank D came up with two highly biased valuations primarily based on so-called 'forward-looking statements' (i.e. *'A will develop poorly and B will prosper'*)[8] in order to 'justify' the Reduced Ratio. In the SEC filings however, D was misleadingly portrayed as simply having supplied one out of five 'fairness opinions' on the said ratio.

4.4. When reality caught up (before the merger exchange ratio was agreed and implemented) and showed that the subjective plan (which was based on the earlier false forward-looking-statements) was way off 'target' more than half way through as A continued to outperform B, D and E assisted B to come up with more and more 'creative predictions' to the detriment of A and to the benefit of B (i.e. a 'double-whammy effect') with the end-goal of pushing through the orchestrated Value Transfer.

4.5. In order to enable the Value Transfer, the Explanatory Memorandum 'justifying' D's Reduced Ratio was carefully re-worded by D in close collaboration with E, which I suggest ultimately mislead the SEC and the A minority shareholders, ending up costing the latter approx. $1 billion.

4.6. F and I were retained as *"independent auditors"* (as requested by law) in order to ultimately protect the defenceless A minority shareholders from an exchange ratio which was not *"relevant and reasonable"*.

4.7. In undertaking this work, D portrayed their role to the merger auditors as if they were an *"independent expert"* in calculating the Reduced Ratio, despite obviously working for the interests of the majority shareholders, i.e. D was evidently *conflicted* in deeming the Reduced Ratio 'adequate' for the A minority shareholders as it massively benefited their ultimate clients, Mr. G and Mr. H.

4.8. E was also allegedly 'independent' but worked as legal counsel to A and B simultaneously and given that B owned in excess of [redacted]% of A, they were also *conflicted* in 'arranging' and 'coordinating' the establishment of the Reduced Ratio, as their ultimate clients, Mr. G and Mr. H, stood to make in the magnitude of half a billion dollars in between them by having the Reduced Ratio implemented.

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[6] The shareholders *not accepting* the voluntary offer ended up with only [redacted] shares in C for every [redacted] shares in A, a ratio of [redacted] ([redacted]) and given that a total of approx. [redacted] million A shares became subjected to D's Reduced Ratio, the A minority shareholders ended up with approx. [redacted] million too few shares in C whilst the ultimate A majority shareholders ended up with [redacted] million too many shares in C; at the time of the announcement worth approx. one billion dollars.

[7] With penalty interest at 8% per annum, the total damage caused to the former A minority can today be estimated at $2.3 billion in total.

[8] The likes of D typically 'coaches' their clients (B) in merger transactions as to *'how the future will likely develop'* for the companies involved and by coming up with so-called *'forward-looking-statements'* to the benefit of 'one currency' (the B stock) and to the disadvantage of the 'other currency' (the A stock), they can create a value transfer from one group of shareholders (minority) over to another (majority), and as the future is unknown by definition and the management (i.e. the majority) is allegedly *'most capable to predict the future for the businesses in question'* despite the obvious conflict of interest at hand, majorities can come up with highly biased assessments in order to enrich themselves at the expense of Main Street Investors, i.e. 'forward-looking-statements' are the *'wholly grail'* of the M&A industry to defraud the defenseless. The SEC Chairman is acutely aware as an 'M&A expert' how this works and if he really wanted to protect the interest of Main Street Investors, this is where his focus ought to be, not to disincentivize large case whistleblowers from coming forward or 'partner' with such offenders.

4.9. Further, the boards of A and B were identical, i.e. Mr. G and Mr. H sat on both boards concurrently. Despite this, it was incomprehensibly stated in SEC filings that the Reduced Ratio had been agreed *"through arm's length negotiations"*. In other words, Mr. G and Mr. H 'negotiated' with themselves in enabling the $1 billion Value Transfer out of which they were in between them by far the biggest beneficiaries, i.e. they were also evidently conflicted.

4.10. As lawyers, E's role in 'convincing' the auditors F and I to approve the Reduced Ratio was significant, they even re-wrote F's 'independent merger report' to fit the end-goal of enabling the Value Transfer from the A minority shareholders over to Mr. G, Mr. H and the other former B shareholders.

4.11. Legal counsel E even worded and inserted F's final concluding Opinion, which stated that the Reduced Ratio was *"relevant and reasonable"*, which ultimately enabled the $1 billion transfer, as without a such conclusion, the Value Transfer would not be implementable by law.

4.12. Interestingly, the merger auditor F had previously written in their report that it did *"not address whether"* the ratio received by [redacted]% (i.e. [redacted]) was *"more relevant and reasonable than"* D's Reduced Ratio (i.e. [redacted]), a section which was nowhere to be found in the final signed version which enabled the Value Transfer, after having been deleted by legal counsel E.

4.13. Also investment bank D engaged extensively in re-writing F's 'independent' auditor's report, in close collaboration with the lawyers at E, to make sure it was 'solid', i.e. making certain that the A minority investors subjected to the $1 billion Value Transfer could not challenge it.

4.14. It further appears as if D provided extensive 'advice' to both boards (A and B) and the 'independent' merger auditors against all arguments raised by the defenceless A minority shareholders, making sure that such arguments were 'crushed'; whereafter the $1 billion was 'transferred' from the A minority shareholders over to the A majority shareholders, i.e. to D's and E's true ultimate clients (i.e. primarily Mr. G and Mr. H).

4.15. In a letter however, D bizarrely wrote that they *"did not advise"* A; how is that even possible when they advised B who in turn owned in excess of [redacted]% of A whilst they both had identical boards?

4.16. The board of A even stated inexplicably in their SEC filing that the implementation of the Reduced Ratio, i.e. to transfer $1 billion in this way, would be *"in the best interest"* of the A minority shareholders and that the board *"unanimously"* recommended them to vote *""FOR" the decision"*.

4.17. A and B further mislead investors and regulators in the SEC filings by stating that the boards decisions to implement the Reduced Ratio and therefore enable the Value Transfer had been *"unanimous"*, when in fact two prominent directors, Mr. [redacted] (**"Mr. N"**) and Mr. [redacted] (**"Mr. O"**), refused to participate in the decisions to shift the $1 billion in this way and thus left the room as the proposals were being passed under the careful supervision of both investment bank D and legal counsel E; among them [redacted],

now *"Vice Chairman of The* [redacted] *and Chief Executive Officer of* [redacted]"[9] and the 'M&A specialist' [redacted] of E[10].

4.18. Mr. N was also one of A's largest shareholders and converted all his shares at the favourable ratio of [redacted] and was thus one of the key beneficiaries in having D's Reduced Ratio of [redacted] implemented, but given that he was evidently conflicted in participating, he refused to participate in the decisions to shift the $1 billion. Both Mr. G and Mr. H remained in the board room however and voted 'happily' in favour of the Value Transfer, despite their evident conflicts of interest.

4.19. According to annual reports, Mr. H was allegedly an *"independent"* board member of both A and B, despite being one of B's largest shareholders and a close friend and associate of Mr. G; both benefitting enormously from having the Reduced Ratio implemented at the expense of the A minority shareholders.

4.20. As merger auditor I eventually refused to put their name to verifying D's Reduced Ratio as *"relevant and reasonable"*, which was required by law, Mr. H and Mr. G as board members of A decided to replace I the very same day as the report was being signed by a 'shell company' with no assets or track record, which 'willingly' verified the Reduced Ratio as *"relevant and reasonable"*, in order to force through the Value Transfer.

4.21. In the SEC filing it was inexplicably stated that this sudden replacement of I was *"unrelated to the merger"* and that this 'shell company' was *"selected"* by the board[11] based on its *"reputation"* and *"expertise"*, despite it hardly existing, with a total balance sheet of some $100k the preceding year. To put this in its right context, this auditor 'approval' enabled the Value Transfer of $1 billion as described above, i.e. an 'asset cover' for the victims of 0.01%[12].

4.22. When A minority shareholders objected to the auditors, legal counsel E stepped in and advised the merger auditors on how to intimidate them into compliance: *"state in the letter that you reserve all our rights to seek appropriate damages in particular with respect to any inaccurate public statements that they have made or will make in the future. This may be a way to limit any possible leaks through the press"*[13].

4.23. As a result of F (perhaps not too surprisingly given I's sudden resignation described above) becoming anxious of being sued for providing this highly controversial 'service', i.e. 'blessing' the manipulated and orchestrated Reduced Ratio which D had come up with, they asked B for and were given, as it appears without any questions being asked, a total *indemnification* against any and all risks of being sued by the A minority shareholders who was the subject of the Value Transfer, pretty much working like a 'bribe' - *'you help us to shift a billion dollars over to us from the A minority and we will protect you from any negative consequences'* - totally undermining F's independence, which was a legal requirement.

4.24. In the SEC filings it was despite the above stated that F had not received any *"special advantages"*, misleadingly portraying F again as *"independent"*, when they were not.

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[9] https://www.[redacted]

[10] https://www.[redacted]

[11] i.e. Mr. G, Mr. H and others - but not likely Mr. N and Mr. O despite allegedly being *"unanimous"* in the SEC filings.

[12] Perhaps not too surprising that no A minority shareholder victim dared to pursue this empty 'shell company' for damages.

[13] Email dated [redacted].

4.25. At the same time, it was made crystal clear in the SEC filings that B had agreed to *"indemnify"* investment bank D *"against certain liabilities"* arising out of their engagement, i.e. D could be as 'creative', reckless and immoral as they wanted as if they ever were to be financially exposed for their alleged fraudulent 'services', B would any way in the end pick up the 'tab', i.e. D was provided with *'all the authority but no responsibility'*.

4.26. Shortly after the Value Transfer had materialised, Mr. G was retained by the CEO of investment bank D, [redacted] ("[redacted]" "**Mr. P**") as an *"independent director"* to serve on the *"Corporate Governance"* Committee of D[14], i.e. Mr. G would, after having been assisted by D in accordance with the above, keep a 'watchful eye' over the 'ethics' of Mr. P and his team at investment bank D; i.e. *'if you scratch my back, I'll scratch yours'* and *'we can carry on with our lucrative business as usual at the expense of the defenceless'*[15].

4.27. In total, it appears as if D, E and F invoiced A and B some $[redacted]m[16] for their merger related 'services', out of which a significant proportion was related to enabling the Value Transfer which gained the majority shareholders roughly a billion dollars. In other words, everyone involved in the merger apart from the A minority shareholders were on this lucrative 'gravy train', who ended up paying for 'the party' by losing out a billion dollars of value at the time.

4.28. There is a whole chain of further disturbing and incriminating circumstances, like for example that investment bank D was one of the key financiers who put together a $[redacted] billion financing package for B and that the people at auditing firm F who ultimately signed off on D's Reduced Ratio enabling the Value Transfer had in fact worked 'successfully' with B for some 15 years before being mandated as *"independent"* merger auditors.

4.29. The above, which in the opinion of the Whistleblower would best be described as sophisticated *'financial abduction'*, is a highly consolidated summary of a very long and complex series of events in relation to one of the largest M&A transactions ever, which took place over a period of 2 years.

4.30. From a layman perspective and by applying common sense, one would have thought that the above actions are a chain of rather serious breaches of the Securities Law or constitutes fraud, manipulation, deceit, deliberate misrepresentation and/or reckless disregard. If such behaviour were to be permitted by the SEC, there is no such thing as protection for Main Street Investors, as there was incomplete and inaccurate disclosure of important information and rudimentary safeguards were actively circumnavigated by the Alleged Offenders; at this point I am rather confident that the reader of this letter wonders;

> *- What on earth does all this have to do with the proposed amendment to implement the Reduced Award for whistleblowers in large SEC Recoveries?*

5. Conflicts of Interest - Lack of Impartiality

5.1. The answer to the above question will be addressed. However, any suggestion that the proposed Reduced Award (as defined below) is the product of an *independent process*, developed with the best interest of Main Street Investors at heart is misconceived. This is

[14] https://www.[redacted]

[15] The inappropriateness of the above appointment reminds strongly of the choice of Jay Clayton as Chairman for the SEC, given that he is inherently conflicted at the very outset, given his background.

[16] This amount includes the costs associated with the other Alleged Offenders, see SEC Filing [redacted], page [redacted].

definitely not the case given that the ultimate enabler is the SEC Chairman, who is, in my view, conflicted and not independent in the context of promoting the Reduced Award.

5.2. According to the Whistleblower, the Reduced Award is equally as deceptively worded as the Explanatory Memorandum which 'justified' the Reduced Ratio (as described above) and therefore enabled the Value Transfer, as carefully 'developed' by investment bank D and legal counsel E for the ultimate benefit of primarily Mr. G and Mr. H.

5.3. In other words, as will be further developed below, the Reduced Award is as orchestrated and manipulated as the Reduced Ratio enforced upon the defenceless A minority shareholders; the only difference this time around is that now the target of the establishment is instead the Whistleblower who has caught D, E and F out and reported it to the Whistleblower Program, to the potential detriment of them, Mr. G, Mr. H and the lucrative financial advisory industry the SEC Chairman is ultimately an ambassador of.

5.4. Please note that legal counsel E and Sullivan & Cromwell ("**Sullivan & Cromwell**"), at which Chairman Clayton has been a Partner for more than a decade and a half before being appointed as SEC Chairman, are more or less identical '*Wall Street law firms of preference*' for the likes of investment bank D (and their Big Business clients like Mr. G and Mr. H); below follows briefly what their 'teams' are recognized for;

5.4.1. **E**: "[redacted]"[17].

5.4.2. **Sullivan & Cromwell**: "*An exceptional choice for high-stakes M&A, regularly called upon by leading multinationals to handle their transactions. Well supported by strong complementary departments such as antitrust, tax, litigation and employee benefits and executive compensation. Frequently sought after by clients in the energy, financial services, healthcare and insurance industries*"[18].

5.5. Sullivan & Cromwell has been investment bank D's preferred law firm for generations and Chairman Clayton has advised D on some of their most important transactions, like "*the* [redacted]", whilst Mr. Clayton's [redacted]"[19].

5.6. Before getting into the details and the circumstances surrounding the 'push' for having the Reduced Award implemented, please allow me to first stress the importance of true independence for the SEC Commissioners in considering their respective integrity and define *conflict of interest*:

5.6.1. **Conflict of Interest**: "*A conflict of interest (COI) is a situation in which a person or organization is involved in multiple interests, financial or otherwise, and serving one interest could involve working against another. Typically, this relates to situations in which the personal interest of an individual or organization might adversely affect a duty owed to make decisions for the benefit of a third party. The*

[17] https://www.[redacted]
[18] https://www.chambersandpartners.com/12806/1437/editorial/5/1/usa-new-york-corporate-m-a-the-elite
[19] https://www.[redacted]

presence of a conflict of interest is independent of the occurrence of impropriety. Therefore, a conflict of interest can be discovered and voluntarily defused before any corruption occurs. A conflict of interest exists if the circumstances are reasonably believed (on the basis of past experience and objective evidence) to create a risk that a decision may be unduly influenced by other, secondary interests, and not on whether a particular individual is actually influenced by a secondary interest"[20].

5.7. The staff at the SEC are well versed on what the issue of conflicts of interest entails as for example on 20 August 2018 they announced that *"Merrill Lynch, Pierce, Fenner & Smith has agreed to pay approximately $8.9 million to settle charges that it failed to disclose a conflict of interest arising out of its own business interests"*[21].

5.8. When it comes to conflicts of interest it is of the utmost importance that each and every one of the SEC Commissioners are acting with the highest integrity in close consultation with the commission's Ethics Officer and ultimately as role models and implies a zero tolerance for lack of impartiality, as otherwise they will create arbitrary double standards which will undermine the credibility of the office of the SEC.

6. **The Mission of the SEC, Independence and Conflict of Interest**

6.1. The SEC shall be an *"independent"* (in the true meaning of the word) *"agency of the United States federal government"*[22] and is therefore perceived to be the last and truly non-partial bastion of integrity and fair play and a resource for the harmed and defenceless in any David and Goliath corporate scenario and it is precisely for this reason the SEC has been granted its sweeping powers.

6.2. The mission of the SEC is to protect defenceless retail investors ("**Main Street Investors**") by *"maintaining fair, orderly, and efficient markets; and facilitate capital formation"*. The framework for this is the securities regulation in the United States (the "**Securities Law**").

6.3. The SEC shall thus primarily act as a 'counter-weight' to important and influential financial institutions and corporations like company B ("**Big Businesses**") who may fraudulently and in breach of the Securities Law, carefully guided by so-called 'experts' (investment bankers like D, lawyers like E and auditors like F - who are also Big Businesses in their own right), shift money from Main Street Investors over to themselves, in order to protect those who do not have the know-how or simply cannot afford to retain such equivalent expensive 'experts' to advise them on how to best shelter themselves from such abuse.

6.4. Central to the SEC mission is to stamp out fraud and manipulation in situations where conflict of interests enables and results in breaches of the Securities Law (like in paragraph 5.7 above); i.e. conflict of interest goes to the very heart of what the SEC is appointed to investigate, namely how offenders are willing to compromise their integrity in order to enrich themselves fraudulently at the expense of others.

6.5. The SEC stands for catchwords such as candour, confidence, fairness, faithfulness, frankness, honour, integrity, loyalty, morality, probity, rectitude, responsibility, self-respect, sincerity, trustworthiness, veracity, virtue, bluntness, conscientiousness, equity, fidelity,

[20] https://en.wikipedia.org/wiki/Conflict_of_interest
[21] https://www.sec.gov/news/press-release/2018-159
[22] https://en.wikipedia.org/wiki/U.S._Securities_and_Exchange_Commission

genuineness, goodness, impeccability, incorruptibility, justness, openness, outspokenness, plainness, principle, reputability, right, scrupulousness, soundness, straightforwardness, straightness, trustiness, uprightness and even-handedness; which all together boils down to maintaining true independence and therefore avoid conflict of interest.

6.6. The problem with being 'conflicted' is the same as with being *"independent"* in relation to the Case above, i.e. that there is not a clear-cut line but rather a scale, i.e. it always boils down to having good judgement based on integrity and ethics. One 'acid test' is to put oneself 'in the shoes' of the one who asserts conflict, to determine if it would be acceptable if one was on 'the other side of the argument', as it is ultimately boiling down to the ability to judge right from wrong and apply common sense.

6.7. In this context, the SEC Commissioners must now be cautious to avoid any such conflict of interests in undertaking their roles and make sure that the SEC truly is a *"responsible steward of the public trust"*[23] in relation to casting their votes regarding the proposed Reduced Award.

7. The Whistleblower Program - Purpose and Award Structure

7.1. The Whistleblower Program was introduced in 2010 through the Dodd–Frank Wall Street Reform and Consumer Protection Act (the "**DFA**") in light of the systematic misbehaviour by Big Businesses which caused the financial crisis, in order to encourage whistleblowers with inside knowledge and understanding of how fraud and other breaches of the Securities Law are orchestrated behind the scenes, to come forward and expose wrongdoers against a significant award when Recoveries of in excess of $1 million materialises, in order to enable the SEC to efficient be able to effectively investigate and hold offenders responsible for their illicit acts, with the end-goal of restituting victims of the past and preventing future such abuse and in the extension yet another financial crisis.

7.2. The size of the award was set *high enough* to effectively encourage and attract all lines of whistleblowers to come forward and at the same time work as a 'frightening' deterrent for Big Businesses to fall for the temptation to breach the law and the percentages were applied irrespective of the size of the Recovery, i.e. no manoeuvrability was provided to the SEC Commissioners to arbitrarily evaluate the award in dollar terms.

7.3. The overriding aim of the Whistleblower Program is thus to *prevent* abuse in the future and *restitute* the victims of the past (all - not just in the small and non-controversial situations), *not conceal* the significant illicit events of the past resulting in yet another financial crisis building up which will make such behaviour repeat itself in the future and be even more difficult to uncover, to the detriment of the very same Main Street Investors the SEC is appointed to protect and more generally, the US tax payer, which had to pick up the 'tab' last time around and will have to do the same in the future on behalf of the actions of reckless Big Business offenders and their advisors.

8. The Current Award Rule versus The Proposed Award Rule

8.1. Under the current implementation of the award rule, a meritorious large case whistleblower is entitled to a *minimum* of 10% up to a *maximum* of 30% (the "**Current Award**") of the monetary sanctions recovered (the "**Recovery**"), i.e. a potential discretionary uplift of 0-20% over and above the guaranteed floor of 10%, based on the role

[23] https://www.sec.gov/news/press-release/2018-120

played, the level of support provided and added value supplied by the whistleblower in question, determined in accordance with a clear framework set out in law[24] (the "**Current Award Rule**") - see further details below.

8.2. Under the now proposed implementation of the award rule through the Reduced Award, ultimately enabled by the SEC Chairman, an equivalent meritorious large case whistleblower will be entitled to a *minimum* of $30m up to a 'potential' *maximum* of 10% of the Recovery, *irrespective* of (a) the role played, (b) the level of support provided and (c) the added value supplied by the whistleblower in question, arbitrarily decided by a simple majority of the five SEC Commissioners (the "**Proposed Award Rule**").

8.3. In other words, the proposed amendment will result in a *significant reduction* in award size for whistleblowers in large cases such as the Case, through the implementation of the Proposed Award Rules (the "**Reduced Award**").

8.4. The Reduced Award will thus make whistleblowers in large cases *less incentivized* to come forward and blow the whistle on Big Businesses committing fraud and breaches against the Securities Law, which means that the proposed Reduced Award creates *double standards*, as relatively small cases (recoveries up to a maximum of $100m) will most likely reach the Whistleblower Program whilst larger cases where the potential recoveries are perhaps billions of dollars may risk being covered up by offenders in close collaboration with potential whistleblowers or remain un-reported to the SEC; i.e. one set of rules for 'small fry' and another for 'big fish', protecting the large offenders whilst the exposing small ones (see further below).

8.5. The Proposed Award Rule is further misleadingly portrayed in the context of the proposed amendment as if it was all about a "*clarification*" of the Current Award Rule and providing "*interpretive guidance*". The Current Award Rule is already totally clear and has been implemented by the SEC Commissioners for almost a decade to date without any interpretive guidance required, i.e. what the SEC Chairman actually means is that his subjective interpretation of the Current Award Rule shall be 'clarified' in order for him to implement the now proposed Reduced Award.

8.6. As part of the rhetoric to try to 'justify' and impose the Reduced Award for large cases, the SEC Chairman focuses simultaneously on the small-case whistleblowers who may only end up with a few hundred thousand of dollars for blowing the whistle, proposing that they ought to receive a greater share. If this were to be a true concern of the SEC Chairman, there is no reason why he and the other Commissioners could not turn to Congress and ask for a change to that effect, without undermining the Whistleblower Program related to fraud and breaches of the Securities Law pertaining to Big Businesses.

8.7. There is further an implied rhetoric that the SEC works for 'the little guy' and that the 'big guys can fend for themselves'. This is not correct, as in relation to the Case for example, among the largest minority shareholders in A were big banks whose shares in turn were owned by pension funds and the likes, i.e. indirectly primarily Main Street Investors and taxpayers.

[24] https://corpgov.law.harvard.edu/2018/07/28/proposed-amendments-to-whistleblower-rules/

9. **The law behind the Discretionary Uplift of the Current Award**

9.1. The DFA clearly sets out that any whistleblower award must be adjusted in accordance with certain 'factors' that may increase or decrease the ultimate percentage awarded, limited to;

9.1.1. For *Increase* Adjustment;

9.1.1.1. the *significance* of the information provided by the whistleblower,
9.1.1.2. the *assistance* provided by the whistleblower,
9.1.1.3. the *law enforcement interest*; and
9.1.1.4. the *participation* in internal compliance systems.

9.1.2. For *Decrease* Adjustment;

9.1.2.1. the whistleblower's *involvement* in any violation,
9.1.2.2. any unreasonable *delay* in reporting, and
9.1.2.3. any *interference* with internal compliance and reporting systems.

9.2. In practice the above means that a whistleblower under the Current Award Rule can never get less than 10% of the Recovery for blowing the whistle but has he or she been the 'ideal whistleblower' and done everything 'by the book' in accordance with the above criteria, the SEC Commissioners are obliged to increase the percentage closer to 30% of the Recovery (the "**Discretionary Uplift**"), based on the guidance and recommendations provided by the Claims Review Staff (the "**CRS**").

9.3. The apparent key logic behind the Discretionary Uplift (from 10% up to 30%), which to a layman can appear to be perfectly balanced by Congress, is to encourage meritorious whistleblowers not only to blow the whistle in the first instance, but also, subsequently, being highly incentivized, carry on providing assistance and provide further information to an ongoing investigation by independently analysing the case in question in order to facilitate for the SEC in their work in holding offenders to justice, obviously driven by the desire of the whistleblower to convince the CRS and the Commission that the whistleblower in question ultimately deserves rather 30% than just 10% of any such Recovery.

9.4. Notably, the DFA does not allow the Commission to arbitrarily consider the *size* of an award in dollar terms in determining the percentage amount, which 3 out of 5 SEC Commissioners now want to change by furnishing the Reduced Award; effectively resulting in a significantly reduced incentive for whistleblowers exposing breaches against the Securities Law and fraud pertaining to Big Businesses; something 2 out of 5 SEC Commissioners are strongly opposed to.

10. **The SEC Chairman's Commercial Track Record**

10.1. As explained above, the SEC Chairman has a background as a lawyer at Sullivan & Cromwell, specializing and advising clients in *"mergers and acquisitions transactions"* [25], just like legal counsel E provided such advice and services to investment bank D, company A and B, but ultimately to the controlling shareholders Mr. G and Mr. H in relation to the Case.

10.2. The SEC Chairman *"earned $7.6 million in 2016 from his firm"*[26].

[25] https://en.wikipedia.org/wiki/Jay_Clayton_(attorney)
[26] https://en.wikipedia.org/wiki/Jay_Clayton_(attorney)

10.3. Among the SEC Chairman's former lucrative clients are many 'prominent' Wall Street firms, one of which happens to be investment bank D (see paragraph 5.5 above).

10.4. The SEC Chairman is *"an elite lawyer who has defended big banks for their financial crisis-era misbehavior"*[27], i.e. the Chairman has likely advised and defended D and other Big Businesses in relation to fraud cases and breaches of the Securities Law[28].

10.5. The SEC Chairman has accumulated a family wealth worth up to *"$130.4 million"*[29].

10.6. In light of the above, one can conclude that the SEC Chairman has (1) enabled the consideration of the Reduced Award and (2) accumulated his significant wealth by providing services to Big Businesses (including D) throughout his career.

10.7. It is also perhaps worth pointing out that the wealth of the SEC Chairman puts him in the range of the top 99.99 percentile of the U.S. population by net worth[30], i.e. an amount more than 4 times larger than the proposed Reduced Award now being promoted by the Chairman himself as *"reasonably necessary"*.

10.8. It could be concerning that the SEC Chairman is as far from being a typical Main Street Investor as one can come, yet it is his subjective judgement which is determining what is 'required to protect' the very same Main Street Investors when implementing the Reduced Award.

11. The SEC Chairman's alleged rationale for promoting the Reduced Award - it will *"help strengthen"* the Whistleblower Program

11.1. When the five SEC Commissioners voted on the matter whether or not to consider the Reduced Award, the two Democrats Kara Stein and Robert Jackson voted against[31] whilst the two Republicans Hester Peirce and Michael Piwowar voted for the Reduced Award[32].

11.2. The politically *"independent"*[33] SEC Chairman Jay Clayton (the "**SEC Chairman**") 'tipped the balance' in favour of considering the Reduced Award and thus voted with the Republicans[34], as according to him the Proposed Award Rules will *"help strengthen the whistleblower program"*[35].

11.3. Given the structure and composition of the SEC Commission, it is thus the SEC Chairman alone who ultimately has enabled the consideration of the Reduced Award and therefore he has an enormous responsibility to act with integrity and avoid any kind of

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[27] https://baltimorejewishlife.com/news/news-detail.php?SECTION_ID=2&ARTICLE_ID=82190

[28] The relationship with a former client could potentially entail assisting such clients in committing such actions as described above and thus potentially being part of an alleged offence, subjected to an SEC investigation, i.e. it cannot be ruled out that the SEC Chairman and/or his former firm may have played an equivalent role as E, as described above.

[29] https://www.reuters.com/article/us-sec-nominee/sec-nominee-clayton-vows-separation-from-his-wall-street-law-firm-idUSKBN16F24W

[30] https://www.barrons.com/articles/penta-millionaires-the-new-rising-class-1474086236

[31] The dissent of the two democrats on the SEC Commission makes it clear that insiders understand the true clandestine purpose of the Reduced Award, not as some kind of 're-balancing' justifiable as an improvement to the whistleblower program, but as an explicit attempt to weaken it by disincentivize reporting of large fraud cases and breaches of the Securities Law pertaining to Big Businesses.

[32] https://www.marketwatch.com/story/sec-proposes-to-limit-whistleblower-awards-2018-06-28

[33] https://en.wikipedia.org/wiki/Jay_Clayton_(attorney)

[34] https://www.marketwatch.com/story/sec-proposes-to-limit-whistleblower-awards-2018-06-28

[35] https://www.sec.gov/news/press-release/2018-120

conflicts of interest in relation to the potential implementation of the proposed amendment, post the public enquiry.

12. **The Whistleblower's view on the Reduced Award - it will *undermine* and therefore *weaken* the Whistleblower Program - as illustrated by the Case below**

12.1. Had the Whistleblower at the time of filing the Case known about the proposed Reduced Award, i.e. that the Current Award Rule (a minimum of 10% up to a maximum of 30% of the Recovery) would potentially be replaced by the Proposed Award Rule ('discretionary' and arbitrary $30m or 'perhaps' 10% as ultimately decided by the sole discretion of the SEC Chairman who has partly built his fortune by protecting investment bank D who is one of the key alleged offenders in relation to the Case) resulting in the massively Reduced Award, the Whistleblower *could* have chosen to go with all know-how now supplied to the Whistleblower Program straight to Mr. G and Mr. H (who in turn could have liaised with investment bank D, legal counsel E and the other Alleged Offenders) instead and try to cut a 'back-door deal' with them directly, as it cannot be ruled out that the Alleged Offenders would have offered to pay the Whistleblower in excess of $30 million to prevent an SEC investigation which may ultimately turn out to cost them (directly and/or indirectly) billions of dollars in penalties.

12.2. In order to put the scale of the Case in perspective; the now by the Chairman promoted award limitation ($30m) represents (1) less than one tenth of the estimated total related *transaction costs* for the merger event in question, or alternatively (2) a mere 1.3% of the estimated to date alleged *ill-gotten gain*.

12.3. Obviously, would the reward potentially be 'as high as' 10% as the Reduced Award appear to potentially suggest[36], there would still be a 90%+ 'discount' for Mr. G, Mr. H and the other Alleged Offenders to acquire the information ahead of it reaching the Whistleblower Program.

12.4. The above numbers do not take into account potential associated claims[37], reputational damage and SEC penalties on top, so in reality the 'saving' in this context would likely be significantly larger in practice (closer to 100%), i.e. 'small change' relatively speaking for the likes of the Alleged Offenders, especially if they were to split such 'costs' in between them, to cover it all up permanently.

12.5. The Reduced Award thus encourages the Whistleblower (and other significant whistleblowers) to consider selling information and know-how to large case offenders involved instead of supplying it to the Whistleblower Program, which will ultimately make such offenders more skilful in concealing their illicit activities better in the future, something one cannot rule out could appeal to the likes of the Alleged Offenders (who are typical former clients to the SEC Chairman), given the degree of lucrativeness associated with such arrangements.

12.6. In other words, it would potentially be extremely 'good value' for the likes of the Alleged Offenders to 'outbid' the Whistleblower Program for sensitive information in order to 'clean things up' behind the scenes, without the scrutiny of the SEC.

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[36] The SEC Commissioner Stein states that she *"believe that the means by which the proposal provides such flexibility would have the practical effect of serving as a cap."*, i.e. a maximum of $30 million.

[37] Perhaps the Case is not a one-off event, but a systematic abuse within D, E and the other Alleged Offenders which means that there are numerous such situations 'at risk' of being exposed, i.e. the potential threat may be significantly larger.

12.7. Had the Reduced Award been adopted earlier and had the information pertaining to the Case instead been 'acquired' by Mr. G, Mr. H and the other Alleged Offenders on say the same terms as the Reduced Award suggests (instead of being supplied to the Whistleblower Program as is now the case), they would have;

12.7.1. (1) not only hidden their alleged misconduct this time around and potentially saved a fortune (approx. $2 billion, plus potential penalties etc.), but also

12.7.2. (2) be able to refine their skills in repeating the very same alleged offences and concealing it better, by learning first hand from the Whistleblower how to better cover up their tracks next time around, to the continued detriment of the Main Street Investors the SEC is ultimately appointed to protect, undermining the entire purpose of the Whistleblower Program.

12.8. Big Businesses would accordingly, as a mirror-effect, be 'incentivised' and encouraged by the Reduced Award to consider 'paying off' significant whistleblowers and make potential SEC investigations 'disappear', but more importantly, enable them to continue with their fraudulent activities, continue enriching themselves at the expense of Main Street Investors, whilst only relatively small cases of fraud or breaches of the Securities Law would be brought to the attention of the SEC, weakening the Whistleblower Program.

12.9. In other words, the Reduced Award opens up the potential for competition with the Whistleblower Program as to who will potentially offer the most for critical information and only once such potential attempts have failed will the information likely reach the Whistleblower Program; information which may in fact not be so crucial on the occasions that may happen as most serious offenders would perhaps prefer to 'clean things up' behind the scenes and without the scrutiny of the SEC, not least in order to protect and maintain the ability to carry on repeating the same illicit and highly lucrative acts in a more refined manner going forward.

12.10. The Reduced Award would further enable offenders who would not 'pay off' potential whistleblowers to use the information 'pre-offered for sale' to their advantage and take preparatory actions ahead of the information potentially and eventually reaching the Whistleblower Program; i.e. it may in fact further undermine the ability for the SEC to lay hand on evidence in a timely manner, question untampered witnesses and convict in cases of serious infringements, again undermining the entire purpose of the Whistleblower Program.

13. **The effect of the removal of the Discretionary Uplift element**

13.1. In relation to the Case, the Whistleblower has since the initial filing submitted no fewer than [redacted] additional extensive submissions over a significant time period and spent thousands of hours to develop the initial merits of the Case in order to assist the SEC in exposing the very complex underlying actions allegedly taken by the various Alleged Offenders, based on the Whistleblower's independent analysis and based on supplied Original Information in order to help the SEC to better and more effectively evaluate the chain of events and circumstances which ultimately resulted in the Value Transfer.

13.2. As explained above, the incentivisation in providing such additional support to the SEC post the initial filing is obviously motivated by the desire of the Whistleblower to

convince the CRS and the Commissioners that the Whistleblower ultimately deserves the full Discretionary Uplift (rather 30%) than just 10% of any Recovery.

13.3. Given the fact that the Proposed Award Rule would *remove* the applied Discretionary Uplift element means that in this scenario, once I filed the Case (which I am totally convinced is meritorious) with the Whistleblower Program, given the removal of this Discretionary Uplift, the further 'added value' I as a Whistleblower can bring to the table does not any longer bring any corresponding added value for me; totally undermining the alignment in between the SEC and the Whistleblower and therefore again weakening the Whistleblower Program.

14. **Further implications of the Reduced Award - applied to the Case**

14.1. Take the Case of the Whistleblower as an example, which was filed quite some time ago, to illustrate how inappropriate the implementation of the Reduced Award would be; let's assume that the SEC ultimately fines investment bank D say $1 billion and that, given the Whistleblower's considerable 'added-value' to the investigation, the CRS issues a Preliminary Determination recommending a 30% award, i.e. $300m, based on the 'tools' the DFA law under the Current Award Rule has furnished them with.

14.2. Let's further assume that the 2 Democratic Commissioners agree with the CRS's recommendation whilst the 2 Republican Commissioners *"believe that the $30 million floor is appropriate"*[38] under the Proposed Award Rule. In this situation, it would be the SEC Chairman who would effectively cast the deciding vote ('tip the balance' - in the same way as with the consideration of the proposed Reduced Award) as to whether the Whistleblower shall receive the $300m proposed by the CRS and the 2 Democratic Commissioners, or just one tenth of it as proposed by the 2 Republican Commissioners, $30m; for the Whistleblower in effect enabling the implementation of this huge fine in the first place and, more importantly, making sure that the same alleged fraud and breaches of the Securities Law will not be repeated in the future and cause any further harm to Main Street Investors.

14.3. We already know that the SEC Chairman as a lawyer at Sullivan & Cromwell *"has defended big banks for their financial crisis-era misbehavior"*[39] and has built part of his wealth by supplying such services to investment bank D, who now is the subject of this theoretical huge fine.

14.4. In this context, it is absolutely preposterous to allege that the SEC Chairman would be suitable to ultimately at his subjective and absolute sole discretion (given the divide among the Commissioners) be permitted to decide to reduce my potential Case reward by some 96%[40] for 'exposing' his former lucrative client D to this massive fine.

14.5. It ought to be clear to anyone with integrity that it is totally unacceptable to have someone who has partly built his fortune by assisting organizations who are potentially committing fraud (the SEC Chairman) to arbitrarily decide highhandedly the level of award for the person that has potentially exposed the very same organization (D) to huge fines (the Whistleblower).

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[38] Page 21 in; https://www.sec.gov/rules/proposed/2018/34-83557.pdf

[39] https://baltimorejewishlife.com/news/news-detail.php?SECTION_ID=2&ARTICLE_ID=82190

[40] 30/(2,300x30%)-1 = -95.7%

14.6. Now let's assume that the Whistleblower instead went to D and offered the Case information for sale instead of supplying it to the Whistleblower Program and that D concluded that they were at a considerable risk to end up being fined $1 billion, but more importantly, given the huge implications of being exposed in this context, D would perhaps value the potential reputational damage to a further 10% reduction in its market capitalisation, potentially wiping off some $[redacted] billion in share value, as a direct consequence of the Whistleblower supplying the sensitive information to the SEC through the Whistleblower Program, subsequently exposing the scale of the wrongdoing to the stock market.

14.7. To illustrate that a such stock market reaction is not unlikely, Bayer, the owner of Roundup [redacted], *"plunged more than 10 per cent on Monday, as investors feared that the German pharmaceuticals and chemicals group could face an avalanche of costly legal defeats"*[41].

14.8. In other words, in the above scenario, investment bank D has a $[redacted] billion 'concern' and is now being offered by the Whistleblower to 'clean this up' behind the scenes; what is it worth to them, more than $30m or 'perhaps' 10% of the likely initial fine ($100m) in isolation that the Reduced Award suggests? A such 'premium' for getting rid of and concealing this issue would thus cost D something like [redacted]% of the potential damage, which is an extremely cheap 'insurance premium'.

14.9. More importantly perhaps for D, if they acquire this information and bury their alleged conduct this time around, they would thanks to the Whistleblower be able to become more skilled in concealing their actions next time around and therefore be able to carry on allegedly defrauding Main Street Investors in the same illicit way also going forward, i.e. there is much more 'hidden value' to D at stake in this scenario, so the real cost for 'outbidding' the Whistleblower Program in order to 'secure' the know-how and information of the Whistleblower is probably down to tiny fractions of the potential down-side-risk associated with the Whistleblower handing the sensitive information over to the Whistleblower Program.

14.10. At this point, D perhaps starts to evaluate the potential claims associated with the Case, as perhaps the Case may not be a one-off event, but a systematic abuse within D which means that there are numerous such situations 'at risk' of being exposed if the Whistleblower turns to the SEC via the Whistleblower Program, i.e. the potential threat may be significantly larger.

14.11. Given the above and the fact that investment bank D has been indemnified by company B in orchestrating the Reduced Ratio as it appears and enabled the $1 billion Value Transfer, D must perhaps now turn to Mr. G and Mr. H for guidance. At this point they realise that D is not alone in this, but all Alleged Offenders enabling the Reduced Ratio and therefore the Value Transfer are at risk of being exposed to fines, i.e. the scale of the alleged fraud has huge accumulative risks and given that B has indemnified, as it appears, all alleged conspiring parties, it would likely be B who is ultimately the most at risk to lose out huge amounts from an SEC investigation based on the know-how and information of the Whistleblower.

[41] https://www.ft.com/content/a3840e1a-9ee0-11e8-85da-eeb7a9ce36e4

14.12. Given the above, the very existence of D and B may be at stake, assuming the SEC takes the matter seriously enough; how much is it worth at this point for the Alleged Offenders to stop it, more than $30m?

14.13. In between them, D and B have a net income of some $[redacted] billion per annum, or $[redacted] million per working day, i.e. the Reduced Award supported by the SEC Chairman implies that in order to 'outbid' the SEC through the Whistleblower Program for this sensitive information and clean things up behind the scenes, D and B would forego less than one working days' worth of bottom line profits.

15. **Size of fines – Important Implications**

15.1. For fines to serve a purpose, they must be at a level to deter the offender from re-committing the same offence and also deter others who otherwise may be tempted to unduly enrich themselves in the same manner. It is in the interest of Main Street Investors that alleged offenders like D and B loses out billions (as opposed to a few millions) of dollars and are properly punished for serious offences, as only then will they realize that such malpractice is not worth it going forward, as the downside risk will by far outweigh the potential upside. Further, offenders such as D ought to be forced to make an official apology to the victims on top and as part of their 'rehabilitation' take full responsibility 'Japanese style' for their mal practice.

15.2. A such scenario would make the competition of D to think twice before defrauding investors and would as such work as a very strong 'marketing tool' for the SEC to deter other potential offenders from committing the same offence, truly giving the SEC ""*most "bang for its buck" through its Whistleblower Program*"".

15.3. Under the current perceived 'soft-soft-approach' by the SEC on penalizing Big Businesses it has the direct opposite effect, namely that they can 'happily live with the tiny fines' when they 'occasionally' are 'caught out', typically negotiated down by 'great' lawyers (like the SEC Chairman), removing such serious financial and reputational consequences.

15.4. When the SEC Chairman has now 'switched chair' from acting as a such lawyer (making a fortune in assisting offenders like D from escaping huge fines) to head up the SEC, how likely is it that serious offenders like D will be properly taught a lesson by facing serious financial and reputational consequences for their alleged offences?

15.5. It has to be recognized that in the vast majority of fraud situations, Big Business offenders will not pay a single dime in fine, simply because they will never be 'caught out', i.e. from an overall 'average' perspective, committing offences will always over time be more lucrative for the offenders than paying the relatively small fines, if and when exposed.

15.6. And as if this was not enough, the SEC Chairman has now enabled the consideration of the implementation of the Reduced Award to financially 'punish' the brave ones who blow the whistle on the most serious and notorious Big Business offenders; but still to date he has not acknowledged that he is totally conflicted in this context, not least given that he would hold the entire arbitrary balance of power himself given the divide among the SEC Commissioners.

15.7. It is also important to acknowledge that without the support of the Whistleblower, the SEC would most certainly not have been able to identify any of the Case related

conclusions and alleged breaches against the Securities Law or alleged fraud, i.e. without the initial initiative and follow-up participation of the Whistleblower, there would simply not be a case for the SEC to pursue in the first place, so just by furnishing the proposed Reduced Award the SEC Chairman is diminishing my (and other major whistleblowers) importance immensely in the context of uncovering such malpractice, removing the alignment and breaching the implicit trust in between us.

16. **Qualification for Whistleblower Award - SEC's Optionality of using Supplied Information**

16.1. Given that the Whistleblower has done the 'right thing' (one would have thought) and supplied the information related to the Case to the Whistleblower Program (as opposed to offering it to the Alleged Offenders) and assuming that the SEC has started to analyse the information at hand, they naturally need to decide *how to pursue* their investigation and a potential claim against the Alleged Offenders.

16.2. As repeatedly stated in SEC's confirmation letters, the SEC *"is only authorized to conduct investigations into possible violations of the federal securities law"* and the SEC will not take any action *"outside the scope or coverage of the federal securities law"*. It is further stated that the SEC *"may"* (i.e. if they so wish) refer the 'tip' *"to another regulatory or law enforcement agency"*.

16.3. In other words, the SEC retains the right to handle any information supplied by a whistleblower as they see fit, yet the entitlement to a whistleblower award under the Current Award Rule, is only formally applicable in the case that the SEC pursues a Recovery pertaining to *"violations of the federal securities law"*.

17. **SEC's Optionality of using Supplied Information in relation to the Case**

17.1. In view of what I have supplied to the Whistleblower Program to date in relation to the Case, I am rather confident that I have provided hard core evidence which confirms that Mr. G and Mr. H, in their capacities as board members of both A and B, actively lied in the SEC filings and thus mislead Main Street Investors in A and numerous regulators, including the SEC, as guided by D and E in orchestration with the other Alleged Offenders.

17.2. In my opinion, this ought to be rather serious offences which ought to result in an SEC order stipulating a significant fine, over and above compensating the victims of the Value Transfer, plus interest. If a such claim is being pursued by the SEC is currently unknow to the Whistleblower.

17.3. On the other hand, given that also fraud may have been committed in relation to the Case in light of the huge Value Transfer, it cannot be ruled out that the SEC may be inclined to supply the Whistleblower information provided to the Department of Justice (the "**DOJ**") and let them pursue the Recovery instead of the SEC, which is very difficult for the Whistleblower to evaluate as the only thing I know for sure is that what happened in relation to the Value Transfer in plain unacceptable from any perspective. In a such scenario, the SEC may have 'chosen' a strategy which will technically disqualify the Whistleblower from the award.

17.4. Let's now assume that the SEC, out of their 'discretion', choses to supply the Whistleblower information to say the DOJ who in turn, based on the whistleblower information, pursues the Alleged Offenders and secures a significant Recovery; then the

whistleblower would not *technically* be entitled to an award under the Current Award Rule under the Whistleblower Program, despite having enabled the Recovery in the first place.

17.5. The above is apparently a huge concern to whistleblowers, as they have no influence whatsoever over which route the SEC may or may not, at their sole discretion, chose to pursue.

17.6. Given the implications of the Reduced Award and the related issue of conflict of interest at the level of the Commissioners could mean that it is ultimately the SEC Chairman who can decide or influence what kind of claim shall or shall not be pursued against various offenders, including the Alleged Offenders, which may result in whistleblowers fearing that the SEC may circumnavigate their obligation to pay whistleblower rewards by 'preferring' to pass on such information as related to the Case to the DOJ and thereby disqualifying the Whistleblower.

17.7. A typical hurdle in being able to pursue a case is time limitations. However, when the authorities *want* to hold someone liable, time limitations are 'merely a rounding mark', as illustrated by a recent tweet by President Trump; "*"Justice" took a 12 year old tax case, among other things*" to convict Mr. Manafort[42].

17.8. A whistleblower cannot be expected to understand the very complex underlying considerations the SEC may take into account in deciding on how to best use the information supplied and which legal route to pursue.

17.9. Whistleblowers shall be confident that if their information is used, they shall be rewarded accordingly, irrespectively of which governmental agency is ultimately pursuing the Recovery. The only thing a whistleblower can instinctively be confident about is that something must be wrong, if that is an event which will be investigated by the SEC or the DOJ or whoever (perhaps as 'a preference' rather than anything else), is almost impossible for a whistleblower to judge, so if the SEC wants credibility for the Whistleblower Program, any information used must trigger the right to award.

18. Deferred Prosecution Agreements and Non-Prosecution Agreements

18.1. The SEC Commissioners have recognised how unreasonable the circumstances described above are and in light of that now furnished a proposal to amend the interpretation of the Current Award Rule, so that Deferred Prosecution Agreement ("**DPA**") and Non-Prosecution Agreements ("**NPA**") "*entered into by the U.S. Department of Justice ("DOJ") or a state attorney general in a criminal case, or a settlement agreement entered into by the Commission outside of the context of a judicial or administrative proceeding to address violations of the securities laws*" would "*expressly allow for the payment of awards based on money collected under these types of arrangements*" (the "**Widening Interpretation**").

18.2. This is clearly an important step in the right direction as it would remove any uncertainty that if the SEC decides to pursue a case one way or the other, the whistleblower in question shall irrespectively be entitled to the award, which is plain common sense for any third-party observer.

[42] https://www.nytimes.com/2018/08/22/us/politics/trump-cohen-manafort.html

19. **Implications regarding changes to whistleblower entitlement under DPA's and NPA's**

19.1. The problem with the above proposal which at a first glance appears to truly *"help strengthen"* the Whistleblower Program, is that it is 'linked' in with *"Rule 21F-4(d)"*, i.e. the implantation of the Reduced Award, which gets us back to the very serious negative consequences of the Reduced Award, as summarized under the Executive Summary above under paragraphs 3.

19.2. For this reason it is important that the Widening Interpretation which will include whistleblower award entitlement under for example a DPA do not at the same time weaken and undermine the Whistleblower Program by the introduction of the Reduced Award, disincentivizing potential whistleblowers to stay quiet or instead encourages 'back-door-deals' in between such whistleblowers and offenders, as described above.

19.3. There may now be cause for further concern among whistleblowers that the SEC Chairman may block this proposal which will help strengthen the Whistleblower Program by making it conditional upon the implementation of the Reduced Award, despite there being close to zero correlation in between the two. Again, the issue of conflict of interest must be at the very centre of these decisions.

19.4. In other words, the Widening Interpretation is a good and logical clarification, but it should not be mixed up with the detrimental Reduced Award for large cases as in that case, nothing has really been achieved in order to strengthen the Whistleblower Program.

20. **Deferred Prosecution Agreement - implications of double standards**

20.1. After having viewed the Netflix program called Dirty Money about HSBC's $880m money laundering activities for drug cartels[43], I learnt that HSBC ended up settling the claim by *"forfeiting $1.256 billion as part of its deferred prosecution agreement (DPA) with the Department of Justice, HSBC has also agreed to pay $665 million in civil penalties"*[44].

20.2. In other words, HSBC was caught out knowingly laundering money originating from drugs, but instead of facing the full force of the law as any other criminal would, this DPA was agreed whereby HSBC paid a total fine of $1,921m. Given that HSBC typically generates a net income of some $8 billion per annum, this meant that HSBC 'had to' give up one quarters worth of bottom line earnings in order to get out of this very awkward situation. No one within HSBC faced any jail time as far as I am aware.

20.3. I further understand that the DPA allowed HSBC to retain its banking licence and even avoid a criminal record by reaching this agreement with the DOJ.

20.4. In my opinion, the above is a very concerning development, as what we see here is yet again one set of rules for Big Businesses and another set of rules for the ordinary man who perhaps is providing financial services to Main Street Investors (the "**Financial Service Provider**"), as if the latter was caught out laundering drugs money, he or she would for sure end up in jail and loose the right to provide any further such services.

20.5. To make a metaphor comparison; let's say that there has been two identical 'hit and run' accidents, one committed by HSBC and one committed by the Financial Service

[43] https://www.marketwatch.com/story/netflix-documentary-re-examines-hsbcs-881-million-money-laundering-scandal-2018-02-21
[44] https://www.justice.gov/opa/pr/hsbc-holdings-plc-and-hsbc-bank-usa-na-admit-anti-money-laundering-and-sanctions-violations

Provider and a whistleblower reports the identical crimes to the police who investigates and hands it over to the prosecution office who takes it to court which reaches guilty verdicts for both. By applying the theory of the DPA in relation to these crimes, the verdicts will be very different; the Financial Service Provider will go to jail for a very long time, loose the driving licence (and licence to provide financial services) and pay life changing damages whilst the HSBC 'driver' will not go to jail, will retain the driving licence (and therefore licence to continue to provide financial services) and pay damages that are the equivalent of a quarter's salary for the Financial Service Provider. The difference in between the two is clearly staggering.

20.6. Naturally, there are more complex matters to be considered here like the implications of HSBC for example losing their banking license with thousands of employees at risk, systemic risks etc (too large to be failed), but the issue at heart remains, namely that there is one set of rules for Big Businesses and another set of rules for the rest of us, and clearly there are some massive forces at work here.

20.7. The most alarming matter about the above, is that it undermines the very essence of democracy and actually sends the message to the likes of HSBC that if they play dirty and get caught (as rarely as that will happen), they will always be able to buy their way out, for them, 'on the cheap'.

21. A potential Deferred Prosecution Agreement - applied to the Case

21.1. The Whistleblower does not know if the SEC has handed the Case information to DOJ who are now in the process of negotiating a DPA with investment bank D, legal counsel E and the other Alleged Offenders, but in the opinion of the Whistleblower, if a such route is being pursued, the DOJ/SEC must make sure that the Alleged Offenders is taught a proper lesson and faces serious consequences. The Alleged Offenders should be obliged to fully restitute the A minority victims plus interest which today stands at an estimated $2.3 billion, plus steep SEC penalties to the general fund of the US Treasury etc. as otherwise investment bank D will not take their alleged crimes seriously enough to better themselves going forward, as it will be viewed just like another 'speeding ticket' which they can 'live with'. The Alleged Offenders shall also be made to officially apologise for their actions, as a deterrent to others.

21.2. Perhaps it makes sense for the SEC to pursue the Case in a different jurisdiction, by for example assisting the Serious Fraud Office in England (the "**SFO**") to pursue the matter, where most of the alleged offences may have occurred (although a substantial part took place out of New York). Again, a such 'choice' is entirely out of the hands of the Whistleblower and should again not be used to circumnavigate the Whistleblower's entitlement to rewards, as that would severely undermine the credibility of the Whistleblower Program, especially if the SEC Chairman influences such decisions despite the degree of conflicts of interest at hand.

22. What is the *Alleged Rationale* for Implementing the Reduced Award?

22.1. The purpose of adopting the Reduced Award is simply to introduce an 'award model' which would allow a simple majority of the SEC Commissioners (3 out of 5 as is now the case) a 'capricious discretion' to subjectively interpret the law pertaining to the DFA differently, by limiting awards significantly for larger recoveries ($100m+) so that such

awards according to the SEC Chairman do *"not exceed an amount that is reasonably necessary to reward the whistleblower"* [45].

22.2. The Reduced Award is further according to the SEC Chairman *"intended to make sure that the Commission is a responsible steward of the public trust"*[46]. This is rhetoric in its purest form, since it is obvious that if the SEC truly acted as a *"responsible steward of the public trust"*, they would not undermine the Whistleblower Program in this conspicuous way in order to protect the likes of Mr. G, Mr. H, D, E and the other Alleged Offenders.

22.3. To further 'justify' the rhetoric behind the adoption of the Reduced Award, the SEC Chairman states that the difference in between the Current Award and the Reduced Award, i.e. some kind of 'clever saving', *could* be used more *"efficiently"* by the US Treasury for *"similarly important public purposes"* (see further below).

23. **Was the decision to move forward with the Reduced Award unanimous among the SEC Commissioners?**

23.1. As referred to above, following the SEC press release it was reported that the *"SEC voted 3-2 Thursday to propose a limit limiting whistleblower payouts"* and that the two who voted against the Reduced Award were Democrats, namely Kara Stein and Robert Jackson, which means that the two Republicans, Hester Peirce and Michael Piwowar, alongside the SEC Chairman, acting as politically *"independent"*, voted for the Reduced Award[47].

23.2. It was further stated that the key reason for the Democrat Robert Jackson to vote against the Reduced Award was that it would add uncertainties so that *"would-be whistleblowers will stay quiet"* whilst the Democrat Kara Stein *"added at the hearing that she is not sure the SEC has the authority to cap awards under the Dodd-Frank Reform Act of 2010 that set up the payments"* [48].

23.3. It is thus evident that certain SEC Commissioners are pushing hard for having the Reduced Award ratified whilst other Commissioners are strongly opposed to it and that the SEC Chairman, casting the decisive vote, is the one ultimately enabling the process to consider its implementation.

23.4. From the above, one could thus get the impression that there is a political divide at the top of the SEC which is concerning given its requirement for being non-partial with the focus of defending the interests of vulnerable Main Street Investors.

23.5. Given the inherent complexities and in order to put all Commissioner's expressed opinions in their right context, below follows a brief summary of the various Public Statements issued by the five SEC Commissioners in relation to the Reduced Award with comments from the Whistleblower underneath, namely; (1) Chairman Jay Clayton - *"Independent"*, (2) Michael Piwowar - Republican (3) Hester Peirce - Republican, (4) Kara Stein - Democrat and (5) Robert Jackson - Democrat.

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[45] https://corpgov.law.harvard.edu/2018/07/28/proposed-amendments-to-whistleblower-rules/
[46] https://www.sec.gov/news/press-release/2018-120
[47] https://www.marketwatch.com/story/sec-proposes-to-limit-whistleblower-awards-2018-06-28
[48] https://www.marketwatch.com/story/sec-proposes-to-limit-whistleblower-awards-2018-06-28

24. **Public Statement by the "*independent*" SEC Chairman of the Commissioners Jay Clayton**

24.1. Mr. Clayton has asked the question whether under the current interpretation of the award rules, it received *"specific, timely, and credible high-quality tips that would lead to successful enforcement actions"*. To this question he responds with a *"resounding "yes.""*.

24.1.1. So if that is the case, why start to 'fiddle' with something that apparently already works perfectly well? The answer to this would probably be *'because it can work even better'*, which I disagree with for the reasons explained within the scope of this letter.

24.1.2. The fact that I have come forward with the Case illustrates that the Whistleblower Program works under the Current Award Rules.

24.1.3. The fact that I am now, in light of the proposed Reduced Award, hesitant to come forward with my second case (see further below) illustrates that the Proposed Award Rule is weakening the Whistleblower Program.

24.2. Mr. Clayton alleges that each *"of the proposed amendments is important to achieve"* the objective of making the Whistleblower Program *"more effective"*.

24.2.1. It is unclear how the introduction of the Reduced Award would make the program more *"effective"* and the Whistleblower disagree with this assessment for the reasons explained in this letter, as it will make the program *ineffective* as larger whistleblower cases will likely remain concealed as such whistleblowers will chose to either stay quiet or 'partner' with offenders instead, with all that entails.

24.2.2. It appears as if the SEC Chairman wants to vote through a 'package' and within it hide the fact that the Reduced Award will weaken the Whistleblower Program, i.e. *'you cannot have one without the other'*, which is clearly not the case.

24.3. Mr. Clayton alleges that the introduction of the Reduced Award would provide *"greater flexibility to get more money into the hands of worthy whistleblowers"*.

24.3.1. This is again clearly pure rhetoric, worthy according to who? Are there 'unworthy' whistleblowers according to the SEC Chairman and if so, who are they and why is that?

24.3.2. Are whistleblowers of larger cases like me 'unworthy' because we dare to expose wrongdoing of Big Businesses, on which he himself has built his fortune as an M&A lawyer advising the likes of D?

24.3.3. What about implications related to evident situations of conflicts of interest among the individual SEC Commissioners in determining awards subjectively?

24.4. Mr. Clayton alleges that the introduction of the Reduced Award would *"make sure that <u>we</u> are responsible stewards of the public trust"*.

24.4.1. Who are "*we*", two Republicans plus the "*independent*" 'Big Business friendly' Chairman tipping the balance in favour, against the two strongly opposed Democrats of the Commission?

24.4.2. Shall politics dictate which whistleblowers are 'worthy' from time to time according to the mix of the five SEC Commissioners?

24.4.3. What about the implication that a President exceedingly 'friendly' to Big Business and exceedingly 'unfriendly' to whistleblowers who may expose them may indirectly support fraud by appointing Commissioners who are willing to undermine the Whistleblower Program?

24.4.4. Shall a 'tactical' potential whistleblower wait to blow the whistle, hoping that a 'more compensation friendly' group of SEC Commissioners takes majority control over the Commission and if so, how will that make the program more "*effective*" according to the SEC Chairman?

24.4.5. Is it according to the SEC Chairman reasonable that politics shall be allowed to ultimately dictate the behaviour of the SEC Commission in rewarding whistleblowers whilst it is totally clear that the SEC should be <u>non-partial</u> and act with total integrity?

24.5. Mr. Clayton alleges that it is "*appropriate for the Commission to have discretion to consider the size of the payout*".

24.5.1. Why is a such "*discretion*" "*appropriate*" given that they already have a such discretion through the Discretionary Uplift in the DPA; is it in order to discourage large case whistleblowers like me from coming forward and thereby protect Big Businesses at the expense of Main Street Investors through 'back-door-deals', or punish those whistleblowers who are 'attacking' the 'friends and associates' (including former clients) of certain SEC Commissioners, from time to time?

24.6. Mr. Clayton further states that "*we*" (i.e. the 2 Republicans and the SEC Chairman) are "*proposing a rule that would allow us the ability to determine whether a truly large award was <u>reasonably necessary</u> to advance the program's goals, or whether some reduction of the award amount is appropriate*".

24.6.1. This statement erratically suggests that certain SEC Commissioners are in possession of some kind of 'magical ball' which in hindsight will make a simple majority of them 'equipped' to determine what would have been "*reasonably necessary*" for making the whistleblower in question to come forward in the first place. This 'capability' must be better explained by the SEC Chairman, how does it work?

24.6.2. Isn't it true that the only thing a such approach would achieve is to create uncertainty which will undermine the Whistleblower Program as it cannot be ruled out that that is the true clandestine purpose of the Reduced Award being furnished?

24.7. Mr. Clayton alleges that the proposed $30m or 'perhaps' 10% *"has been set to ensure that we are not in any practical way reducing the incentive to blow the whistle"*.

24.7.1. Really? Who came up with these 'magical numbers' and what concrete evidence is there to actually support what is alleged?

24.7.2. How about the flip-side of the coin; inviting serious offenders to outbid the SEC for sensitive information at a minimum of 90%+ discount, even before associated claims and potential SEC penalties, but perhaps more importantly, before reputational damages?

24.8. Mr. Clayton further refers to the *"retaliation protection"*[49] as *"a key component of the whistleblower program"* and states that the SEC *"will bring charges against companies or individuals who violate the anti-retaliation protections when appropriate"*.

24.8.1. What about the apparent risk that certain SEC Commissioners wants to retaliate against whistleblowers who has blown the whistle on 'friends and associates' (former clients or colleagues) of such Commissioners by improperly lowering award amounts in such large cases?

24.9. Within his statement, Mr. Clayton further provides 'support' for the reduced and subjectively determined award by referring to the Investor Protection Fund, stating that by *"law"* the SEC Commissioners are *"required to divert money to replenish the fund. That money otherwise would go to the United States Treasury, where it could be used for other similarly important public purposes. It is therefore important for us to make sure that the money in the fund is used efficiently"*.

24.9.1. Is the Chairman insinuating that the Whistleblower Program is inefficient and not important in its own right and ought to financially support other *"important public purposes"* at the expense of whistleblowers who exposes fraud committed by Big Businesses?

24.9.2. *"That money"* appears to refer to the spread in between award payments under the Current Award Rules (a minimum of 10% and a maximum of 30%) and the highly reduced amount ($30m or 'perhaps' 10%) to be paid out *if* the Proposed Award Rules were to be adopted subject to the SEC Chairman in hindsight deeming the information *"reasonably necessary"* for the whistleblower coming forward in the first place; i.e. some kind of 'clever saving' for the US Treasury according to the judgement of the SEC Chairman?

24.9.3. Is the SEC Chairman in this context trying to portray himself as a 'good citizen' looking after the financial interests of the US Treasury and therefore the general public by 'appropriating excessive amounts' from 'greedy' large case whistleblowers? Such rhetoric could as well have been written by investment bank D, legal counsel E or Sullivan & Cromwell for that matter, who all by their very nature despise whistleblowers causing them and/or their lucrative client's headaches.

24.9.4. It is difficult for a whistleblower to understand how this would be relevant for implementing the Reduced Award given that in a '**scenario A**' (like the Case) the

[49] The protection of whistleblowers against repercussions from their employer in light of blowing the whistle.

whistleblower under the Current Award Rule actually blow the whistle and the SEC successfully pursues the case and recovers 100% out of which 10-30% is paid to the whistleblower, whilst in a '**scenario B**' (like in my second case) the whistleblower under the Proposed Award Rule does not blow the whistle and therefore the SEC is not successful in pursuing the potential case and therefore recovers 0% out of which nothing is paid to the potential whistleblower, who decided to stay quiet or instead cooperate with the offenders. Can the SEC Chairman please explain his logic?

24.9.5. In 'scenario B', which the SEC Chairman appear to be in favour of, the offenders may, as already explained above, continue to rip off Main Street Investors; can the SEC Chairman comment please as to how 'scenario B' is the preferred option in the context that the *"money in the fund is used efficiently"* under the Proposed Award Rule?

24.9.6. Does the SEC Chairman have any credible evidence to prove that whistleblowers for large cases would not stay quiet or not 'partner' with offenders behind the scenes if the Proposed Award Rule was to be implemented, or is it based on pure speculation and wishful thinking on his behalf?

24.10. Mr. Clayton is allegedly politically *"independent"* and is clearly a strong supporter of the Reduced Award as described above, as he appears convinced that it will *"help strengthen"* the Whistleblower Program, a view that needs to be much better understood by Main Street Investors, in order to win the support of the general public.

24.11. In the opinion of the Whistleblower, the above described likely consequences of the potential introduction of the Reduced Award ought to have been pretty obvious to the SEC Chairman who is a highly skilled M&A lawyer by profession, who despite this seems to be of the opinion that it will *"help strengthen"* the whistleblower program when in fact the opposite seems obvious for any third-party, truly arm's length observer, which makes one wonder what ulterior motives lies behind the introduction of the Reduced Award.

25. Public Statement by Republican Commissioner Piwowar

25.1. Mr. Piwowar refers to that he and his colleagues at the Commission are now *"armed with the wisdom of observation and experience"* and that they therefore are in a position to *"propose thoughtful improvements to our rules that help advance the Commission's essential work"* and that the *"last seven years have given us a great deal of experience with the operation of our whistleblower rules"*.

25.1.1. If the Commissioners are as full of *"wisdom"* and *"experience"* as alleged, why is it that they have launched this public inquiry into the Whistleblower Program without even offering whistleblowers like myself, who are the direct target of the Reduced Award and who's identifies the Whistleblower Program has an obligation to protect, to be able to supply transparent feedback on the proposed amendments without being forced to expose our identities and cases in this way?

25.1.2. Perhaps it would have been more beneficial to the Whistleblower Program to get into the mindset of the large whistleblowers instead of effectively excluding

them from the process and allege that the SEC Commissioners are 'so experienced' that they know better what makes such whistleblowers step forward?

25.2. Mr. Piwowar also, like the SEC Chairman, praises the success of the Whistleblower Program to date by concluding that whistleblowers *"provided the Commission with valuable information and often extensive assistance that enabled us to bring successful enforcement actions in cases that we might not have uncovered on our own"*.

25.2.1. Same comment as above, why start to 'fiddle' with something that apparently already works perfectly well?

25.3. Mr. Piwowar concludes that he is *"happy to support"* the Reduced Award and that he has *"no questions"*.

25.3.1. Does this mean that Mr. Piwowar has already fully understood what is explained within the scope of this letter and the extended implication it may have on the Whistleblower Program?

25.3.2. Will Mr. Piwowar (and the other Commissioners) keep an open mind pending the public enquiry and take a fresh view and self critically question their initial views thereafter in light of the increased learning curve, before making their minds up, or is the public enquiry just a 'farce' to silence those in opposition to the Reduced Award, which shall be implemented irrespectively?

25.4. The process to date regarding the 'consideration' of the Reduced Award strongly reminds of how the Reduced Ratio was portrayed as being 'independently' derived at when it was not, as the Value Transfer was already 'a given' at the very outset, irrespective of the arguments brought forward by the A minority shareholders; i.e. the process which lead up to the $1 billion transfer was also like a farce. In other words, I fear that I (and all others who are critical) am addressing certain Commissioners with 'deaf ears'.

26. Public Statement by Republican Commissioner Peirce

26.1. Mrs. Peirce starts by expressing gratitude for the *"responsiveness to my questions, comments, and edits"*.

26.1.1. Does this mean that the SEC Commissioners themselves have been personally involved in drafting the Reduced Award (see further below)?

26.2. Mrs. Peirce further states that *"what works and what can be improved"* needs to be assessed from time to time.

26.2.1. Does Mrs. Peirce then take into account the apparent risks associated with 'fiddling' with the award side for Big Businesses of the Whistleblower Program, which may undermine what actually is acknowledged by all Commissioners to already work perfectly well?

26.3. Mrs. Peirce goes on to state that she wants the Commission to get *"most "bang for its buck" through its Whistleblower Program"*.

26.3.1. How does Mrs. Peirce measure the risk of getting *no bang at all* combined with the consequences of potential whistleblowers siding with Big Business offenders who are enabled to continue to commit fraud by abusing the Securities Law to the very detriment of the defenceless Main Street Investors the SEC is appointed to protect?

26.3.2. Again, the fact that I have come forward with the Case illustrates that it works under the Current Award Rule and that in light of the proposed Reduced Award, I am now hesitant to come forward with my second case (see further below), which illustrates that the Proposed Award Rule is undermining the entire purpose of the Whistleblower Program, can Mrs. Peirce please explain her rationale?

26.4. Mrs. Peirce empathizes the importance of the SEC *"appropriately rewarding people"* who bring important information to their attention and that *"these amendments provide the Commission with greater flexibility—within the range of discretion that Congress provided us—to ensure that our payouts are appropriate"*.

26.4.1. Mrs. Peirce must specify more precisely where Congress has made the provision to limit awards to $30m or 'perhaps' 10% in large cases and allow the introduction of the capricious discretion the Reduced Award entails, as if it is such an obvious 'clear cut' as alleged by Mrs. Peirce that the Commissioners already have this 'discretion', why on earth have you furnished the proposal of the Reduced Award?

26.4.2. Further, if the introduction of the Reduced Award is as 'clear cut' as alleged by Mrs. Peirce, has the SEC sourced any truly independent legal opinions to support such a view to confirm this, and if so, why have such opinions not been made publicly available for the scrutiny of the general public you are supposed to serve?

26.5. Mrs. Peirce is further concerned that the current rules are *"overcompensating whistleblowers"*.

26.5.1. Really? If I had not brought the Case to the attention of the Whistleblower Program there would most certainly be zero in recovery and the potential fraud would most likely still be ongoing; Mrs. Peirce needs to explain how I as a whistleblower can be 'overcompensated' in that context?

26.5.2. The key value whistleblowers bring to the table is evidently not the financial recovery itself, irrespective of the amount, as the Whistleblower Program is most importantly about *preventing future breaches* of the Securities Law to make sure Main Street Investors are not also harmed going forward. So, in isolation, how does Mrs. Peirce value that future prevention of fraud I as a Whistleblower have potentially created in the context of limiting my potential award as proposed to $30m?

26.5.3. Take for example Mr. Birkenfeld who blew the whistle on systematic tax evasion by American citizens at a Swiss bank, through which DOJ reached a DPA with UBS resulting in a *"US$780 million fine and the release of previously privileged information on American tax evaders"*. What does Mrs. Peirce believe

has created the most value for the US taxpayer; the $780m Recovery minus the whistleblower award or the fact that all other major banks subsequently 'came clean' and that this has now prevented such tax evasion for the decades and centuries to come?[50]

26.6. Mrs. Peirce also, like Mr. Piwowar, refers to the Commissioners *"extensive experience administering the Whistleblower Program"*, suggesting that they are indeed capable of understanding all the consequences of implementing the Reduced Award to the benefit for the Whistleblower Program and the US Treasury.

26.6.1. If the SEC Commissioners were as 'experienced' as some of them allege, they would at least have covered all the points I have brought forward in this letter in their public statements or in the proposed amendment, which is clearly not the case. In this context the public enquiry is very important, so who among the SEC Commissioners insisted on having this public enquiry, the Chairman? Were any of the Commissioners ever opposed to having this public enquiry?

26.6.2. As briefly stated above, the SEC Commissioners should at least have had the insight to ask the Whistleblower Program to set up a separate 'non-public' secure line of enquiry, protecting the identities of whistleblowers like me and potential ongoing investigations like the Case, aimed at extracting as much relevant information as possible in the context of the proposed amendment from the very whistleblowers who enables the Whistleblower Program and are the target of the Reduced Award; is Mrs. Peirce of the opinion that the Commissioners are 'enough experienced' to simply ignore the opinions of such whistleblowers?

26.6.3. Have the SEC Commissioners retained truly independent third-party experts to provide opinions regarding the *potential implications* of adopting the Reduced Award and if so why are they not supplied in the public enquiry, or do they believe that they are sufficiently 'experienced' to judge all the implications themselves?

26.7. Mrs. Peirce wishes her Republican colleague Piwowar, who is leaving the Commission, all well in his *"next job"*, stating that Mr. Piwowar has *"begun to fancy himself somewhat of a lawyer"*.

26.7.1. This again raises the potential issue of conflict of interest, as it seems as if one of the SEC Commissioners enabling the implementation of the Reduced Award may start to work for the likes of E or Sullivan & Cromwell, i.e. Big Businesses which are clearly favoured by the implementation of the Reduced Award, given that whistleblowers will be less incentivized to expose them and their lucrative clients like investment bank D to SEC fines going forward (see further below), could Mrs. Peirce please elaborate on this delicate issue?

26.7.2. It is difficult for a whistleblower to understand the relevance and context of this comment in relation to the Reduced Award itself, perhaps Mrs. Peirce can also explain why she has brought this up in such an important enquiry?

[50] One would have hoped that Mrs. Peirce recognizes that Mr. Birkenfeld obviously may have saved the US Treasury 10's of billions of dollars over time, over and above the $780 million penalty.

26.8. Mrs. Peirce further refers to her Republican colleague Piwowar and states that in a couple of instances, the courts have sided with Piwowar *"when he has taken a different view of the law than Commission lawyers"*.

26.8.1. Who are the *"Commission lawyers"*? Are they 100% in-house or for example representatives of E or Sullivan & Cromwell, or former such employees and if so what agenda are they likely trying to implement as far as succeeding in implementing the Reduced Award, disincentivizing whistleblowers to expose their Big Business clients and themselves potentially committing fraud?

26.9. Mrs. Peirce is also *"happy to support"* the Reduced Award and has *"no questions"*.

26.9.1. Does this mean that Mrs. Peirce, just like Mr. Piwowar, has already fully understood what is explained within the scope of this letter and all the implication it may have on the Whistleblower Program?

26.9.2. Will Mrs. Peirce also keep an open mind pending the public enquiry and take a fresh view and self critically question her views thereafter in light of the (hopefully) increased learning curve, before making her mind up, or is the public enquiry just a 'farce' to silent those in opposition to the Reduced Award which shall be implemented irrespectively to satisfy the interests of Big Businesses and their suppliers?

27. **Public Statement by Democrat Commissioner Stein**

27.1. Mrs. Stein fears that the Reduced Award *"could threaten the Program's ongoing success"* given that the Commission *"in its sole discretion"* can (by simple majority) reduce an award if it 'thinks' the award is *"too large"* and that this *"subjective determination"* would undermine the whistleblower program.

27.1.1. I agree with this assessment in accordance with this letter.

27.2. Mrs. Stein is further *"deeply troubled that the proposal would give the Commission authority to depart from its normal analysis for determining the amount of an award in certain circumstances"* meaning that *"this subjective determination will be used as a means to weaken the Whistleblower Program"*.

27.2.1. I agree with this assessment in accordance with this letter.

27.3. Mrs. Stein further states that there is *"no evidence that there is a problem"* with the current interpretations of the rules, yet the subjective *"proposal states this change is needed to ensure that whistleblower awards do not "exceed an amount that is appropriate to achieve the goals and interests of the program.""*.

27.3.1. I agree with this assessment in accordance with this letter, the wording of the Reduced Award is rhetorical at best.

27.4. Mrs. Stein further states that she is not sure that the Commissioners *"actually have the authority to take today's proposed action"*, i.e. implement the Reduced Award.

27.4.1. Given that Mrs. Stein doubts that the SEC Commissioners have the authority to implement the Reduced Award, how can Clayton, Piwowar and Peirce be so

sure that they do have such an authority, and what hard facts are there to support such a position Mr. Chairman?

27.5. Mrs. Stein further refers to a *"legalistic nonsense"* in light of the alleged reason for implementing the Reduced Award and that it *"appears inconsistent with the explicit instructions we received from Congress"* and that the introduction of the Reduced Award constitutes a *"departure from the law"*, and on that basis Mrs. Stein rejects the adoption of the Reduced Award.

27.5.1. Given that Mrs. Stein believe that the implementation of the Reduced Award would be a *"departure from the law"*, how can Clayton, Piwowar and Peirce be so sure that they are acting within the law when limiting awards arbitrarily by implementing the Reduced Award?

27.5.2. The U.S. Supreme Court held unanimously that the Commission *"had exceeded its authority"* in relation to Digital Realty Trust, Inc. v. Somers, i.e. there is an evident risk that the Commission by implementing the Reduced Award would again exceed its authority[51], what is the Chairman's view on this please?

27.5.3. Are there any truly independent third-party *legal opinions* available regarding a potential introduction of the Reduced Award to support the views of Clayton, Piwowar and Peirce and if not, why has that not been requested and supplied to the public inquiry, given the significant underlying complexities?

27.6. Interestingly, Mrs. Stein also asks the question; *"So why do we have today's proposal before the Commission to limit the size of whistleblower awards?"*.

27.6.1. From the perspective of Main Street Investors, who's interests the SEC through the Whistleblower Program is supposed to ultimately protect, it is clearly rather worrying that one of the key decision makers in relation to the Reduced Award who is a 'pure insider' in this context does not even herself understand the rationale behind the proposal being furnished, which again suggests ulterior motives. What is the SEC Chairman's view on this please?

28. **Public Statement by Democrat Commissioner Jackson**

28.1. Mr. Jackson *"respectfully dissent"* the proposed Reduced Award as he firmly believes that *"uncertainty and politics"* has nothing to do with whistleblowing and that the Reduced Award introduces both those elements into the equation and that it *"risks harming investors"* as it will undermine the Whistleblower Program.

28.1.1. I agree with this assessment in accordance with this letter.

28.2. In relation to exposing wrongdoers, Mr. Jackson states that when whistleblowers *"take these risks for the benefit of all investors, what they need from us is certainty"* and that awards *"must be significant and clear"* as adding *"uncertainty to that process risks that would-be whistleblowers will stay quiet"*.

28.2.1. I completely agree in accordance with this letter, alternatively will large case whistleblowers cut 'back-door-deals' with offenders as explained, whereby the

[51] https://corpgov.law.harvard.edu/2018/07/28/proposed-amendments-to-whistleblower-rules/

abuse will continue behind the scenes in an even more refined manner, which ought to be of grave concern to the SEC Chairman who is allegedly keen to be a "*responsible steward of the public trust*"[52]?

28.3. Mr. Jackson states further that he is very concerned that the Reduced Award "*injects*" "*political uncertainty*" into the "*whistleblower process*" and "*decreases whistleblowers' incentives to come forward*" and that the "*size of their awards should not depend on who occupies the Membership of this Commission*".

28.3.1. I agree in accordance with this letter.

28.4. Mr. Jackson states further that once "*federal appointees have arrogated more power to themselves, they are unlikely to give it up*", suggesting that the Reduced Award may be irreversible if adopted, i.e. that the Whistleblower Program may be permanently damaged and undermined to expose fraud related to Big Businesses due to the implementation of the Reduced Award. What is the SEC Chairman's views on this significant risk please?

29. **The Whistleblower's Concluding Comments to the Public Statements by the SEC Commissioners**

29.1. In summary, by drastically cutting the awards for larger Recoveries through the Reduced Award, significant cases of breaches of the Securities Law and fraud will likely end up being 'settled behind the scenes' in between large case whistleblowers and the offenders instead of reaching the SEC for investigation via the Whistleblower Program, and therefore in turn will such fraudulent activities be even more concealed going forward and continue to harm Main Street Investors in an even more refined manner, whilst simultaneously the likes of E and Sullivan & Cromwell may carry on providing enriching services to their lucrative clients like D, 'protected' and well concealed under the attorney-client-privilege.

29.2. Given the urgent need for full transparency in light of the obvious controversy surrounding the proposed Reduced Award, the SEC Chairman ought to answer all the related questions contained within this letter in detail in writing so that Main Street Investors who's interests he and the other SEC Commissioners are ultimately appointed to protect can judge themselves the credibility of the true motive for furnishing the Reduced Award and to what extent it would "*help strengthen*" the Whistleblower Program, as alleged by the SEC Chairman and 40% of the SEC Commissioners, or *undermine* it, as alleged by the Whistleblower and 40% of the SEC Commissioners.

29.3. The burden of proof does not rest with anyone else but the SEC Chairman who wants to make a significant and risky change to something that according to himself already works perfectly well. After all, it is primarily the Main Street Investors (in their capacities as tax payers) who are ultimately remunerating the SEC Commissioners and they obviously have an absolute right to know and understand the true rationale for proposing to implement such intervening changes as the drastically Reduced Award suggests and thereby significantly discourage whistleblowing in relation to Big Businesses as described above.

[52] https://www.sec.gov/news/press-release/2018-120

30. **The Political Divide among the Commissioners of the SEC**

30.1. The Whistleblower does not know who initially came up with the idea of developing the Reduced Award in the first place but if it was someone with a political agenda who 'pulled strings' with the ultimate aim to 'protect' Big Businesses and their dependent lawyers, that is a very serious matter as the independence and integrity of the SEC must never be compromised.

30.2. All five SEC Commissioners have been appointed by President Trump and Mr. Clayton was nominated to chair the SEC on 20 January 2017 and sworn in on 4 May 2017[53].

30.3. There has over time been a considerable presence at the White House of [redacted][54].

30.4. Mr. H[55] is a former banker of [redacted][56], although I have personally no detailed knowledge of President Trump's pre-White House activities and business practices with Mr. H.

30.5. It is further believed that Mr. P of investment bank D and Mr. H are well connected after his days at [redacted]. CNBC reported for example on [redacted][57].

30.6. In other words, the Reduced Award suggests that there is a strong political will to protect the interests of Big Businesses as well as high ranking individuals like Mr. H from exposure from whistleblowers, which clearly must not be allowed to interfere with the independence of the SEC. Politics can never be allowed to undermine the trust and integrity of the SEC in order to protect Big Businesses at the expense of Main Street Investors.

30.7. When it comes to rules and regulations, the same principles simply must apply to all, as otherwise society is not, by definition, a democracy.

31. **The Reduced Award creates Double Standards - Protecting Big Businesses at the expense of Main Street Investors**

31.1. Given the above implications, it is inevitable that the effect of implementing the Reduced Award would create double standards, i.e. one set of rules for 'small fry' and another for 'big fish'. If this is the reason why the Reduced Award has come to the table, to undermine the exposure of the 'big fish', it must be blocked.

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[53] https://www.sec.gov/biography/jay-clayton

[54] http://[redacted]

[55] It appears as if it is not the first time Mr. H and his organisation is involved in enriching themselves at the expense of others who have entrusted them with fiduciary duties as the SEC made [redacted] with US$ [redacted] in [redacted] which in itself resulted in a penalty to the general fund of the United States Treasury: https://www.sec.gov/litigation [redacted]

[56] https://[redacted]

[57] https://[redacted]

31.2. As an example, [redacted], a former investment bank D analyst, were charged with insider trading by the DOJ [redacted] having pocketed a total of $[redacted]m in ill-gotten gains, risking each up to 25 years in prison and a multimillion dollar fine if convicted on the criminal charges[58]. It is difficult for a layman to see any significant difference in this case from what went on in relation to the Case, as the $1 billion was 'appropriated' as described above, i.e. the Case is a [redacted] times more serious in monetary terms, yet no one of the Alleged Offenders have as far as the Whistleblower knows faced any such harsh justice as yet, which again suggests that double standards are systematically being implemented by the SEC, as ultimately guided by its perceived 'Big Business friendly' Chairman.

31.3. If it is politicians making up the establishment (from time to time) who ultimately will 'influence' which cases 'ought to' end up with the Whistleblower Program or not as they try to 'protect' their own economic interests or friends in 'high places' it will in the end be the likes of the *International Consortium of Investigative Journalists* (who are truly serving the people by questioning the establishment and therefore the interests of the Main Street Investors) scrutinizing significant cases of breaches against the Securities Law, rather than the SEC, who will end up focusing on, relatively speaking, 'petty crime' violations, as potential whistleblowers for larger cases will likely side with the offenders instead or stay quiet if the Reduced Award were to be introduced.

31.4. The Reduced Award thus undermines the trust in the system and therefore the credibility of the Whistleblower Program, which is the single most important factor when encouraging whistleblowers to come forward. If (some of) the SEC Commissioners are prepared to alter one of the key pillars of the Whistleblower Program (the reward) subjectively in the manner the Reduced Award suggest, why not alter others (like the right to protection of anonymity)?

31.5. In a way, that is exactly what the SEC Commissioners are already doing by presenting the Reduced Award as at least I have now, through this public consultation, been provoked/forced to step forward and defend the interests of other significant whistleblowers and Main Street Investors against Big Businesses, exposing myself in this context.

31.6. As soon as the SEC Commissioners starts to 'fiddle around' with the interpretation of the fundamentals (award) of the DFA in this way, whistleblowers like me will also naturally begin to ask ourselves *when* (not if) is the next arbitrary change coming and what negative effects will that likely have on us acting as whistleblowers? If the award can be reduced in this arbitrary way to $30m or 'perhaps' 10%, why would it not be brought down to say $5m and 2% in 3 years' time when my Case may potentially come up for an award decision at the level of the SEC Commissioners?

31.7. In other words, if it can be arbitrarily changed once, it can most certainly be changed again and a deceptive section in the Reduced Award suggests that such a 'liberty' has already been catered for by 3 out of the 5 SEC Commissioners; *"we recognize that future experience in the years ahead could suggest that some adjustment is appropriate"*[59].

[58] https://[redacted]

[59] Page 21 in; https://www.federalregister.gov/documents/2018/07/20/2018-14411/whistleblower-program-rules#footnote-113-p34715

31.8. How the SEC Commissioners relate to conflicts of interest may also cause alarming double standards, i.e. one set of rules for the likes of *"Merrill Lynch, Pierce, Fenner & Smith"* who recently ended up being fined $8.9 million as they failed to disclose a conflict of interest (please see point 5.7 above), and one set of 'interpretation' for the likes of investment bank D and the SEC Chairman, leading to a corrupt practice which erodes the credibility of the SEC and ultimately undermines democracy, as the law will be applied differently to various parties committing identical offences.

32. **The Reduced Award cannot be implemented - the SEC Chairman is Conflicted**

32.1. The above circumstances evidently raise the issue of *conflict of interest* in relation to the Reduced Award since the Case (and perhaps many other cases) is aimed at the actions of amongst other a former lucrative client of the SEC Chairman (investment bank D), i.e. the SEC Chairman himself is inherently conflicted as he may be inclined to undermine the entire Whistleblower Program by hindering whistleblowers like me to come forward by limiting awards in relation to Big Businesses in order to in turn reduce the risk of exposing Sullivan & Cromwell (the Chairman's law firm) for fines (like with legal counsel E in relation to the Case) linked to such mal practice and naturally also their important clients (such as D).

32.2. For the reasons explained above, the SEC Chairman is evidently conflicted in relation to the Reduced Award and is consequently prevented to vote on the matter and accordingly the Reduced Award cannot be adopted as it now stands, as it is 2 (Jackson and Stein) against 2 (Piwowar and Peirce) among the other SEC Commissioners - a draw - assuming the other Commissioners would 'stick to their guns' and not be also deemed conflicted and thereby prevented to vote.

32.3. The two Republicans, Piwowar and Peirce, who have voted for considering the Reduced Award, now ought to carefully consider their views on the potential *implementation* of the Reduced Award, given what they have learnt from this letter and other people raising concern regarding the underlying ulterior motives.

33. **Who has actually taken the initiative for promoting the Reduced Award?**

33.1. At the beginning of her Public Statement, Mrs. Stein thanks *"the staff in the Whistleblower's Office, the Office of the General Counsel, and the Division of Economic and Risk Analysis for their hard work on this proposal"*. So the question arises, who actually came up with the idea to bring the Reduced Award to this junction in the first place? The staff at the Whistleblower's Office? The staff at the Office of the General Counsel? The staff at the Division of Economic and Risk Analysis, or was it directly/indirectly encouraged through certain SEC Commissioners on behalf of Big Businesses who do not want whistleblowers to be too incentivized to blow the whistle at them?

33.2. In the opinion of the Whistleblower, the following additional questions (unless already covered above) ought to be answered in writing by the SEC Chairman;

33.2.1. On who's initiative was the Reduced Award launched and how did it subsequently evolve to become the final proposal now furnished for this public enquiry?

33.2.2. Which lawyers have been engaged in drafting the wording of the Reduced Award, names, career history, input provided and who decided (or pushed for) to retain them?

33.2.2.1. The SEC Commissioners may ask, *"- Why would that be of importance?"* The answer is pretty obvious for any person with integrity, namely if they are representatives of Big Businesses themselves, like E for example, who is now potentially the subject of the Case investigation by the SEC, such lawyers may be subjected to huge fines for their mal practice in relation to the Case (and other cases) and therefore are naturally keen to dis-incentivize whistleblowers to come forward in order to reduce their risk of exposure to such fines, i.e. they may be conflicted in undertaking work related to the Reduced Award already at the very outset as they by the very nature do not primarily have the best interests of Main Street Investors at heart, but that of Big Businesses, like themselves .

33.2.2.2. Further, if one assumes that lawyers with a conflicting history have been involved in drafting the Reduced Award, they may also serve or have served highly lucrative Big Business clients such as investment bank D, meaning that they are inclined to undermine the Whistleblower Program in the same way by discouraging whistleblowers to come forward by limiting awards in order to reduce their client's risk of exposure to such fines, i.e. they may be further conflicted in undertaking work related to the Reduced Award in this regard.

33.2.3. To what extent have the SEC Commissioners themselves been involved in the drafting of the Reduced Award?

33.2.3.1. If they have, let's assume that one Commissioner had one strong opinion and another the opposite opinion, how was a such section finally worded in the Reduced Award, before being approved to be considered?

33.2.4. Who else has drafted and guided the development of the text of the Reduced Award?

33.2.4.1. Has President Trump himself been briefed and consulted on the Reduced Award, and if so, what were his views and how were they motivated and integrated in the final product?

33.2.4.2. It is known that the President has "*asked the US Securities and Exchange Commission to study*" the periodical reporting within the finance industry[60]; has he also 'asked' the SEC to 'study' how to dis-incentivize whistleblowing pertaining to Big Businesses (like investment bank D) and the likes of [redacted] Mr. H?[61]

33.2.4.3. Or is the Reduced Award even a Presidential order?

33.2.4.4. One would have thought that it is ultimately the Main Street Investors who elects the President and that no one ought to fight their corner (rather than the corner of the likes of Mr. H) harder than the President himself, does the SEC Chairman agree?

[60] https://www.ft.com/content/c1d133aa-a211-11e8-85da-eeb7a9ce36e4

[61] The problem with abolishing quarterly reporting is that in M&A transactions, it will become even easier for malevolent majority shareholders like Mr. G and Mr. H to conceal the true performance of the 'asset' being appropriated (like the minority shares in A in relation to the Case), as false 'forward-looking statements' will be easier concealed.

33.2.4.5. Has Mr. H, who allegedly was one of them who stood to gain the most from being assisted by legal counsel E and investment bank D to enable the huge Value Transfer in relation to the Case been briefed and consulted (directly and/or indirectly via the President or others) on the proposed Reduced Award, and if so, what were his views and how were they motivated and taken into account in the drafting, especially if Mr. H were to be the subject of an ongoing SEC investigation into his alleged conduct in relation to the Case?

33.2.5. In light of current matters surrounding the President, the attorney-general, Jeff Sessions, who recused himself from supervising the Mueller investigation due to conflict of interests or lack of impartiality, stated that while he is attorney general *"the actions of the Department of Justice will not be improperly influenced by political considerations"*[62]. How does the SEC Chairman view Mr. Sessions judgement to step aside in light of his conflicts of interest in this context?

33.2.6. The President may fire the attorney general, but he *"does not possess the power to fire the appointed Commissioners, a provision that was made to ensure the independence of the SEC. This issue arose during the 2008 presidential election in connection with the ensuing financial crises"*[63]. So, will the SEC Chairman, as opposed to the attorney-general, allow the office of the SEC to be influenced by political considerations?

33.2.7. Have the SEC Commissioners engaged truly independent third-party experts to provide truly arm's length opinions regarding the potential implications of larger case whistleblowers *not coming forward or siding with offenders* if adopting the proposed significantly Reduced Award?

33.2.7.1. If so, what conclusions did they draw and how well do they match with the contents of this letter?

33.2.7.2. If the SEC Commissioners did not retain such advice, why, given the potentially huge ramifications by risking undermining the ability to expose fraud pertaining to Big Businesses through the Whistleblower Program?

33.2.8. Have the SEC Commissioners engaged truly independent third-party experts to provide truly arm's length opinions regarding the *legal implications* of adopting the Reduced Award?

33.2.8.1. If so, what conclusions did they arrive at?

33.2.8.2. If the SEC Commissioners did not retain such advice, why, given the potentially huge ramifications by undermining the ability to expose fraud pertaining to Big Businesses through the Whistleblower Program?

[62] https://www.ft.com/content/54b93202-a69b-11e8-926a-7342fe5e173f
[63] https://en.wikipedia.org/wiki/U.S._Securities_and_Exchange_Commission

33.2.9. Why has certain SEC Commissioners launched this public inquiry into the Reduced Award without inviting whistleblowers like the Whistleblower an opportunity to participate without forcing us to expose ourselves and our cases in this way?

33.2.10. The SEC Chairman further ought to respond in detail to each and every one argument put forward under the executive summary in paragraph 3 above as to why in his opinion the Whistleblower's concerns that the Reduced Award will weaken the Whistleblower Program are irrelevant according to his assessment and will in effect instead *"help strengthen"* it.

34. **Who actually are *"we"* in the context of the wording of the Reduce Award?**

34.1. The proposed amendment is undersigned by Brent Fields, Secretary to the Commission, on behalf of the SEC Commissioners, i.e. it appears from the wording as if all five SEC Commissioners are in support of the Reduced Award, which is clearly not the case given the above.

34.2. Throughout the Reduced Award and in relation to numerous subjective statements and opinions therein, it is consistently referred to *"we"*; so who are *"we"* in reality? As examples, please see a few quotes below:

> *..."we are proposing a new paragraph (d)"..."we believe that it is in the public interest that we scrutinize"..."What paragraph (d) would do, as we explain below"..."We believe that adopting paragraph (d) to afford us a discretionary mechanism to make such common-sense adjustments to extraordinarily large awards"..."we believe it is reasonable and appropriate to consider the adjustments that we make"..."We think that this is particularly important"..."we do not intend that it would be applied as such"..."we would not lower any award that is subject to a reduction"..."We believe that the $100 million collected-monetary-sanctions threshold reflects the appropriate level"..."we think the potential for a whistleblower award to exceed the amount necessary"..."heightened scrutiny under the rule that we are proposing"..."We similarly believe that the $30 million floor is appropriate"..."We thus believe it is appropriate and reasonable to afford the agency a mechanism"..."we recognize that future experience in the years ahead could suggest that some adjustment is appropriate"..."we propose to establish a mechanism by which the Commission may"..."we are mindful of our own responsibility to investors and the general public"..."We believe that in determining whether a payout exceeds what is appropriate to achieve the program's objectives"..."we anticipate that in those cases"..."we generally anticipate"..."We preliminarily contemplate that"..."We would similarly expect that the Commission could apply this rule if"..."We do not believe that the proposed rule conflicts with"..."we believe it is appropriate to provide guidance"..."the rule that we are proposing, we would typically expect"..."we would still consider"*...and *"Finally, we caution that"...*

34.3. The entire 'support' for the Reduced Award is thus built on subjective words and highly relative expressions such as; *"reasonably necessary"*, *"responsible steward"*, *"in the public interest"*, *"common-sense adjustments"*, *"reasonable and appropriate to consider"*, *"reflects the appropriate level"*, *"exceed the amount necessary"*, and *"to achieve the program's objectives"*.

34.4. The above statements are clearly lacking any concrete evidence to support them, expressed and supported by *certain* (3 out of 5) Commissioners who are in favour of implementing the Reduced Award giving the impression that all the Commissioners are in agreement (*"we"*). Yet it is known for sure that Commissioners Stein and Jackson are strongly opposed, yet the Reduced Award misleadingly portrays it to the general public as if it is the consensus, unanimous position of the SEC Commissioners, when clearly it is not[64].

34.5. It is concerning to Main Street Investors and the Whistleblower that the two SEC Commissioners with a deviating opinion to the two Republicans and the Chairman appear to have been refused to 'make their voices heard' properly within the scope of the Reduced Award (only through very brief separate public statements which may never be picked up by relevant observers), which suggests some kind of abuse of power (oppression) in relation to a highly important constitutional process.

35. **The Size of the Award**

35.1. Clearly, the risks taken on when becoming a whistleblower varies from case to case and are inherently difficult to measure, due to their uncertain and stochastic nature. Some whistleblowers take enormous risks, perhaps much greater risks than the Whistleblower.

35.2. An award of $30m can at a first glance appear to be 'more than enough' for motivating any significant whistleblower to step forward, but that really depends on the individual circumstances as no whistleblower situation is identical to another.

35.3. The Reduced Award, aimed specifically at large case whistleblowers, seems to take the dangerous and naive view that *'let's lower the reward to an amount we think we can get away with'* without properly recognizing the other side of the coin, namely that such whistleblowers may stay quiet or 'partner' with offenders which all that entails as described above.

35.4. How certain of the SEC Commissioners arrived at $30m or 'perhaps' 10% (depending on the SEC Chairman's mood of the day it appears) as being the 'magical numbers' (for now at least) is a complete and utter riddle to the Whistleblower. Let's assume for the sake of the argument that a potential whistleblower lives in an apartment worth more than the proposed $30m threshold (as I do) and has a net worth of say $300m, would such a whistleblower voluntarily and necessarily step forward with sensitive information for a potential $30m reward?

35.5. Would a such potential whistleblower 'back-stab' his/hers valuable network for a such amount, especially if he or she alternatively can approach the offenders and cut a 'friendly' deal with them directly and clean things up behind the scenes, allowing the lucrative abuse to continue?

35.6. By the very nature, wealthy and influential individuals, who are the most likely to expose fraud associated with Big Businesses, typically move around in similar circles which means that the 'club' will 'stay shut' as far as whistleblowing is concerned, as far from all potential whistleblowers are 'typical employees' earning a 'typical salary' with a 'typical

[64] In a way, the process above reminds about the false SEC filings in relation to the Case, where it was alleged that the decision to implement the $1 billion Value Transfer was *"unanimous"*, when it was not (see 4.15 above), but in that situation, the two who refused to participate in the decision, Mr. N and Mr. O, did not issue any public statements, but instead, to the contrary, kept quiet and allowed things to progress despite realizing that the Reduced Ratio was orchestrated, likely comforted by the belief that they had at least not actively participated in the alleged fraud.

career', which the Reduced Award naively seem to assume, as the SEC Chairman elaborates on annuities etc. in the proposed amendment in relation to an award of $30m in order to try to 'justify' the Reduced Award as the 'sufficient' amount to make all lines of whistleblowers come forward.

35.7. I dare to say that the biggest fraud cases are only understood by a very small and wealthy group of individuals who would never ever even consider stepping forward as whistleblowers. The SEC Commissioners must recognise that people who sit on really sensitive information are often the ones who have made the most serious amounts of ill-gotten gains by breaching the Securities Law and they will likely never step forward, irrespective of the size of the monetary incentive.

35.8. But there are always the odd pieces of information filtering through from such 'closed groups' and it is such potential whistleblowers that could perhaps be 'convinced' to submit a tip which may open up a 'can of worms', from the offender's perspective. Such people may perhaps *know* about the issue but therefore not necessarily *understand* why it is fraudulent, and by subjectively limiting awards and interpretations of "*original information*" etc. as the Chairman seems to be in favour of, such people will choose not to risk blowing the whistle.

35.9. It is perhaps understandable that handing out huge amounts (in a spending context) to whistleblowers may be a potential eyesore in the view of parts of the general public, but even more so for Big Businesses and ultra-high net worth individuals like Mr. G being potentially 'caught out' and subjected to actually pay such huge fines, along the likes of Mr. H, D, E and Sullivan & Cromwell. Such parties would most certainly agree with Mrs. Peirce that the current rules are "*overcompensating whistleblowers*" as they naturally work against their and their client's inherent interests, namely not to be exposed to huge fines for their potential abuse.

35.10. What needs to be properly explained by the SEC Commissioners, as the general public will unlikely be able to recognise the underlying complexities any way, as opposed to Big Businesses who are fully in the loop and are naturally lobbying as best they can for implementing the Reduced Award, is that every whistleblower situation is dynamic and if you can receive $1,586.4m by playing Powerball by picking a few numbers[65], or accumulate a net worth of $1,310m by being one of the best paid sports personality in the world[66], there is nothing remarkable in a whistleblower making such amounts, given that whistleblowing entails significant personal risk and sacrifice and is actually creating huge value (as opposed to a lottery) for the state financially but also, more importantly, prevents future market abuse and therefore further harm to Main Street Investors.

35.11. If I were to ever be blessed with such resources at my disposal I would primarily use them to help other victims of corporate abuse where the SEC is out of the reach for protection, i.e. a large proportion of such funds would go back to the very same cause the Whistleblower Program set out to achieve, namely protect Main Street Investors from abuse.

35.12. The SEC Commissioners must ask themselves why should a whistleblower who exposes individuals (or entities) who have perhaps made billions by systematically breaching the Securities Law not be entitled to 10-30% of the recoveries which would most

[65] https://en.wikipedia.org/wiki/Lottery_jackpot_records
[66] https://www.therichest.com/top-lists/top-100-richest-athletes/

certainly have remained concealed had the whistleblower not stepped forward and, more importantly, prevent future such breaches of the Securities Law, protecting the interests of Main Street Investors?

35.13. What also needs to be properly understood by the SEC Commissioners is that whistleblowers may have a whole pyramid of people beneath them who have assisted in order to be able to become skilful whistleblowers who must be 'looked after' although the potential award could be in the name of a single whistleblower, i.e. a whistleblower may end up with far from all of an award.

35.14. Further, it could be the case that a whistleblower has spent significant amounts on various expert advice to develop and refine the know-how to the level shared with the Whistleblower Program, i.e. that a whistleblower may be significantly 'in the red' already before stepping forward as a whistleblower, but without this valuable expertise there would perhaps not be a clear-cut case for the SEC to pursue, i.e. this valuable expertise may be transferred 'for free' to the SEC by the whistleblower in question.

35.15. The SEC shall not be reluctant to pay out large awards - quite the contrary - it is part of the 'marketing tool' and shall be used as an explicit deterrent as it shows that no one is above the law and that the SEC will pursue offenders irrespective of the circumstances as only then will the SEC through the Whistleblower Program achieve its true end-goal; namely a finance industry which is self-regulated as no one 'dares' to commit fraud given its huge implications; it must be made clear to offenders that the downside risk is far greater than the potential gain; only then will the industry come clean. The Reduced Award sends the opposite message.

36. Big Businesses - their intrinsic view on whistleblowing

36.1. Big Businesses would typically view whistleblowing as a betrayal and a threat. This is partly because such whistleblowing not rarely exposes part of their 'secret and lucrative, yet highly immoral business model', namely how to take advantage of their superior position in order to unduly enrich themselves and their clients by defrauding others. Instead of cooperating with authorities and implementing a zero-tolerance policy in the first place, cover-up is not an uncommon 'solution' to manage such sensitive issues.

36.1.1. Take Barclays, one of the SEC Chairman's former clients, as an example. After an employee sent an anonymous letter to the board warning about an individual but given that the individual in question was a *"friend and former colleague"* of the CEO, the CEO *"tried to hunt down the author of the letters, using the bank's internal security unit"*[67].

36.1.2. Take a recent lawsuit against another of the SEC Chairman's former clients, Rollins v. Goldman Sachs. In this case a *"former executive claims in a lawsuit that the bank retaliated against him for blowing the whistle on its failure to comply with anti-money-laundering policies"*[68]. Perhaps not too surprisingly, Goldman Sachs denies any wrongdoing, as for example VW did for a very long period of time in relation to the so-called emission-scandal[69] and HSBC did in relation to the money laundering activities of the Mexican Sinaloa Cartel[70], but

[67] https://www.theguardian.com/business/2018/apr/20/barclays-ceo-jes-staley-facing-fine-over-whistleblower-incident
[68] https://www.bloomberg.com/news/articles/2018-08-09/goldman-sachs-sued-by-ex-managing-director-over-whistle-blowing
[69] https://www.theguardian.com/tv-and-radio/2018/jan/27/dirty-money-review-netflix-alex-gibney-vw
[70] https://www.marketwatch.com/story/netflix-documentary-re-examines-hsbcs-881-million-money-laundering-scandal-2018-02-21

the fact remains that whistleblowers are typically viewed as enemies of Big Businesses instead of a resource to reach excellence.

36.2. The above illustrates precisely why the Reduced Award is so dangerous, as if offenders are prepared to take such actions, why would they not consider acquiring sensitive information in order to conceal their mal practice ahead of it reaching the office of the Whistleblower with potentially huge implications for them?

37. **Whistleblower's True Added Value**

37.1. As explained above, the real value whistleblowers bring to the table is obviously not the amounts recovered, irrespective of their size, but the consequences of exposing wrongdoers and their hidden methodologies, i.e. that misconduct is to be stamped out and not repeated in the future, protecting Main Street Investors.

37.2. In other words, the true value-add from a whistleblower is the *prevention* of offenders to be opportunistic in committing the same fraud again against defenceless shareholders, as they will (hopefully) be made aware of the very grave consequences of their actions, assuming people like the Whistleblower really blow the whistle and the SEC investigates and punishes accordingly, which the Reduced Award significantly reduces the probability of happening.

38. **Likely legal challenges ahead regarding the Reduced Award - implications for the Whistleblower Program**

38.1. If the Reduced Award were to be introduced there will most likely be a significant number of legal challenges ahead given that even certain SEC Commissioners themselves believe that they do not have *"the authority to cap awards under the Dodd-Frank Reform Act of 2010 that set up the payments"* [71]. This is a view shared by Harvard Law School, Forum on Corporate Governance and Financial Regulation, in an article stating that *"incentives for larger cases may be disincentivized, since large awards could be modified downward. Commissioner Stein's skepticism about the SEC's statutory authority to modify award amounts downward may also foreshadow future legal challenges should the proposed rule become final"*[72].

38.2. Further, whistleblowers who are retrospectively being deceived by the implementation of the Reduced Award will also be forced to take legal action. Such potential challenges would undoubtedly expose the very same whistleblowers whose identities the Whistleblower Program has a legal obligation to protect, creating a 'circular reference', which will for sure scare off other potential whistleblowers to come forward, undermining the Whistleblower Program even further, which would in turn perhaps please Big Businesses such as B and D and their legal advisors, like E and Sullivan & Cromwell.

38.3. If the Reduced Award were to be introduced, which would likely lead to numerous such legal challenges, it would irrevocably give the impression to new potential whistleblowers that they may in the end need to sue the state in order to be properly remunerated and therefore lose their right to anonymity, which will for sure turn such whistleblowers off in coming forward.

[71] https://www.marketwatch.com/story/sec-proposes-to-limit-whistleblower-awards-2018-06-28
[72] https://corpgov.law.harvard.edu/2018/08/13/proposed-amendments-to-secs-whistleblower-program/

38.4. The proposed Reduced Award does not even state as from which date this 'new biased interpretation' of the award rules shall start to take effect, which illustrates how arbitrarily drafted it is as one cannot suddenly change the rules retrospectively without losing all credibility and face serious consequences.

38.5. If the SEC Commissioners would implement the Reduced Award despite all the reasons not to, one would at least have hoped that they have the judgement to make the new rules applicable only to new cases filed after say 1 January 2019, not least in order to honour the current arrangements and protect the significant whistleblowers who have come forward on the current basis for reward, or are just in the process of coming forward, so that such whistleblowers are not being compromised.

38.6. The SEC risks removing the credibility and integrity of the entire Whistleblower Program if the Reduced Award were to be implement, which will undermine the trust in the system, which is the single most important factor when encouraging people like me to take the very difficult decision to become whistleblowers and thereby putting our families and loved ones at risk by exposing very powerful wrongdoers who systematically breaches Securities Law in order to enrich themselves at the expense of Main Street Investors.

39. Personal Implications

39.1. When I decided to become a whistleblower I could never in my wildest dreams (or perhaps nightmares) imagine that I would end up being deceived by the SEC Commissioners themselves in this way through the Reduced Award and dragged into messy US domestic politics.

39.2. I never wanted this to become personal and despite the fact that certain SEC Commissioners allege that they are *"armed with the wisdom of observation and experience"*, I doubt they understand even a fraction of what it actually could entail by taking the step of becoming a whistleblower and therefore I feel obliged to become the voice of those whistleblowers out there who are too afraid to come forward, by providing the SEC Commissioners with a bit of my background and the implications it has had for me to date to come forward.

39.3. Clearly no whistleblower situation is identical to another. A 'tip-off' can consist of 'one sentence' whilst another, like mine, is based on the efforts of an entire career where taking the step to become a whistleblower is the same as almost giving up my entire life as I knew it. I am from Sweden and therefore US domestic politics do not directly impact on me, but more importantly, I am fortunate enough to have my independence, pride and integrity intact, which may not be the case for most potential large case whistleblowers in my position.

39.4. Based on the letter of the law and the perceived credible structure of the Whistleblower Program; guaranteed protection of *anonymity* and a clearly understood *incentivisation* model based on total alignment; I took the crucial decision to spend my entire time (given the immense underlying complexities) in analysing the Case and really aim to provide the SEC with what I believe was compelling, crucial know-how and original information in order to make sure that the above referred to Alleged Offenders were held accountable for their actions, ultimately resulting in the huge Value Transfer, which today stands at approx. $2.3 billion according to the estimates of the Whistleblower, to make sure

that such behaviour would not be allowed to damage the interests of Main Street Investors again in the future.

39.5. I have spent my entire life defending minority shareholders who are the genuine victims of corporate abuse, often based on the shortcomings of the law and their inability to understand and take on the offenders, after my two uncles joined forces against my mother in the mid 90's to acquire our inherited 37% share of Sweden's second largest coffee company 'on the cheap'. We subsequently sold our stake in the family business some 20 years ago for a price higher than the now by the Chairman proposed $30m limit in relation to the Reduced Award.

39.6. After going through that process I realised that there was no one out there able to help people in my mother's exposed situation, so I established an advisory business specialising in such problems. Since then I have helped and protected a significant number and a wide variety of minority shareholders in primarily closely held family businesses, before I was retained as advisor to the proprietary trading division of one of the world's largest banks, who was caught up in such equivalent situations, but on a significantly larger scale.

39.7. I have thus seen first-hand, how majority shareholders of Big Businesses, carefully guided by their advisors, i.e. 'clever' lawyers like E and investment bankers like D, are systematically enriching themselves at the expense of defenceless minority shareholders through their huge know-how and information ascendancy and based on this I have developed a sharp-edged understanding and a set of skills of these very complex issues over a career that now spans 25 years, with the aim of simply being the best in this super narrow field.

39.8. At an important junction in life and in light of the perceived strength of the Whistleblower Program I took the paramount decision to become a whistleblower; my opportunity to contribute to a better world by creating fairness (in the true sense of the word) and hopefully be able through the reward to secure real resources to take my quest against majority abuse to the next level.

39.9. I have done this <u>without even having a clue</u> whether the SEC has even instigated an investigation in relation to the Case information I have supplied, and I still have no idea if a such is forthcoming, although I certainly do not doubt the underlying merits of the Case. What I do start to doubt however in light of the proposed Reduced Award, is if the SEC really wants to go after the likes of investment bank D, not least given the commercial history of its Chairman.

39.10. Had I known that the Reduced Award was coming, especially given this very public consultation which has now forced me into the 'store window' despite all guarantees of having my identity 'protected' by the Whistleblower Program, I would most certainly have thought about it long and hard before deciding to become a whistleblower; is it really worth it given how uncertain and biased it all seems?

39.11. I have in fact given up our way of life and to some extent my career (who dares to retain me as a consultant going forward if they were to know I may expose their commercial wrongdoings) for this and now I feel that this newly proposed limitation of the award is a betrayal, undermining my trust in the Whistleblower Program and the SEC more generally, especially as it all appears politically driven.

39.12. I thought (perhaps naively) that the SEC and the whistleblowers were on the same side and that the SEC stood above politics given their non-partisan requirement, but that may clearly not be the case going forward, assuming the Reduced Award were to be implemented.

39.13. Given the actions I have taken to date by becoming a whistleblower, ultimately *against* some of the world's wealthiest and most influential individuals and organizations, I feel that I have significantly exposed not only myself, but also my beloved family. I do not want to exaggerate this, but the fact remains that against this background I have retained close protection to look after us, which doesn't come cheap.

39.14. Not only may I effectively prevent these individuals and organisations from continuing to enrich themselves in an alleged fraudulent way, I may also indirectly make them pay back their ill-gotten gains plus steep penalties by filing the Case; i.e. few people will have more serious enemies than me as a consequence of stepping forward as a whistleblower, should my identity be exposed, which is now a fact given that certain SEC Commissioners have started to 'fiddle' with the Whistleblower Program by pushing for the Reduced Award.

39.15. My question to Mr. Clayton, Mr. Piwowar and Mrs. Peirce, who have created this situation, how will you guarantee my safety from here on? If anything bad ever were to happen to me or my loved ones in light of this, whatever you object with, you will each and every one of you bare the ultimate responsibility.

40. Publicly available information, "*independent analysis*" and "*original information*"

40.1. In addition to the Reduced Award, it is also proposed to add 'guidance' to the "*independent analysis*" standard. The Whistleblower Program requires, in order to qualify for an award, that the whistleblower provide "*original information*" which is information that is based on either "*independent knowledge*" or "*independent analysis*"[73].

40.2. The proposed 'guidance' is to 'clarify' the type of analysis of publicly available information that constitutes "*independent analysis*" and the Commission (or 3 out of 5 as far as I understand) now proposes; in order "*to qualify as 'independent analysis,' a whistleblower's submission must provide evaluation, assessment or insight beyond what would be reasonably apparent to the Commission from publicly available information*".

40.3. The evident problem with this proposal is exactly the same as those brought forward in relation to the Reduced Award (i.e. the proposed definition "*reasonably necessary*"), i.e. it will ultimately weaken the Whistleblower Program, as it again will allow a simple majority of the SEC Commissioners (or the SEC Chairman himself in effect) a 'capricious discretion' to subjectively interpret what would be "*reasonably apparent*" to the SEC Commission from publicly available information and to what degree such information disqualifies an award, which again creates uncertainty which in turn will make potential whistleblowers chose to stay quiet or instead 'partner' with the offenders, in which case Main Street Investors will continue to be subjected to the abuse in question which the SEC Commissioners have failed in protecting them from by yet another biased rule.

[73] https://corpgov.law.harvard.edu/2018/07/28/proposed-amendments-to-whistleblower-rules/#13

40.4. This proposal moves the 'goalposts' massively to the detriment of the whistleblower as the SEC would go from what they in fact *'did know'* to what they in theory *'could have known'*. One way to put it; if it was *"reasonably apparent"* to the SEC Chairman in hindsight from publicly available information that say a fraud had been committed, why had not the SEC acted on this information earlier?

40.5. In the opinion of the Whistleblower, for the above reasons, the SEC Commissioners shall not adopt any arbitrary limitations as to the definition of what qualifies as *"original information"*.

41. **My next (potential) Submission to the Whistleblower Program**

41.1. I am actually working diligently on another submission to the Whistleblower Program which relates to an even larger event than the Case and where fraud and the breaches of the Securities Law in my opinion are even of a more severe nature than the ones exposed in relation to the Case. In this case it even appears as if numerous courts have been actively misled by the offenders.

41.2. This potential second case to date relates to a conservatively estimated ill-gotten gain totalling $3.7 billion for the entities involved and their ultimate clients. This second case also happens to involve one of the SEC Chairman's former clients, yet again illustrating the very serious issue of conflicts of interest.

41.3. If one for the sake of the argument assumes that the Proposed Award Rule were to be applied in relation to this second case and the above amount would be the ultimate Recovery by the SEC, the Whistleblower would receive 0.81% as opposed to 'up to 30%' (with a minimum of 10%) of the Recovery under the Current Award Rule, i.e. a reduction of up to 97.3%, as arbitrarily decided by the SEC Chairman, whose former lucrative client is the potential subject also to this fine. In other words, the degree of dis-incentivisation if the Reduced Award were to be adopted is significant, evidently undermining the entire purpose of the Whistleblower Program.

41.4. In light of the now furnished Reduced Award, the natural reflection of the Whistleblower at this point; shall I ignore the Whistleblower Program/SEC this time around and instead approach the offenders in this second case and offer to help them 'clean up' what they have done and see how much they are willing to pay me for assisting them in this regard?

41.5. The SEC Commissioners must now ask themselves what is best; (A) to never learn about this new potential case and have this previous unknown line of abuse (alleged fraud) continue behind the scenes in an even more disguised form, continuing to rip off Main Street Investors, or (B) recover 70-90% of the ill-gotten gain (net of the Whistleblower reward), restitute the victims and prevent this abuse from ever repeating itself in the future? If the former is the preferred option, they shall perhaps vote for the Reduced Award, if the latter is the preferred option, the SEC Commissioners who are not already disqualified as conflicted must vote against the Reduced Award.

41.6. In other words, the Commissioners of the SEC, and Chairman Clayton in particular given that he is (hopefully) the only one without a political agenda (or other form of loyalty) as *"independent"*, must ask themselves; how much would they personally pay in theory to get rid of a meritorious potential claim against them of $3.7 billion plus penalties if they

were the target of a potential SEC investigation; more than $30 million[74]? If the answer to this question, hand on heart, is yes, they must vote against the Reduced Award, as otherwise they are undermining the integrity of the entire Whistleblower Program, unless of course that is the whole purpose behind furnishing the Reduced Award.

41.7. In this second case the Whistleblower has access to certain internal emails and information which in the opinion of the Whistleblower exposes the evidence needed by the SEC to efficient be able to effectively investigate and convict those offenders, where significant US retail investors were allegedly defrauded of huge amounts, i.e. the effect of the introduction of the Reduced Award (which the SEC Chairman appears to be in favour of) may in fact leave those significant offenders 'off the hook', which in turn means that they can refine and carry on with the same alleged fraudulent activities going forward; at the expense of the very same Main Street Investors the SEC Commissioners are appointed to protect.

41.8. The Whistleblower's next case may even have bigger implications than the Case as to who is likely ultimately involved in enabling that huge value transfer. If there is a limit as to what the SEC can or wants to handle, then the proposed limitation for a reward perhaps ought to be introduced, but if the SEC intends to treat anyone abusing the Securities Law or committing fraud the same, then the Reduced Award must be voted down.

41.9. If the Reduced Award were to be adopted and given the fact that the SEC is keeping me totally 'in the dark', I cannot draw any other conclusion then that the likes of investment bank D are 'above the law' and that my Case has been buried in some kind of 'deep drawer' within the SEC in order to be permanently concealed. A such development is totally unacceptable to me, as I cannot live with myself seeing the Alleged Offenders getting away with their deplorable behaviour, by unduly enriching themselves, their clients and suppliers at the expense of defenceless Main Street Investors.

42. **Perhaps the SEC Chairman believes that it is more "*effective*" to have the likes of Netflix investigate larger cases of breaches of the Securities law?**

42.1. Alternatively, and clearly I am just speculating here, perhaps the film series Dirty Money by Netflix would be interested to acquire the rights in relation to this second case in order to expose what went on and explain how (assuming so is the case) politics was allowed (assuming the Reduced Award were to be implemented) to undermine the integrity of the SEC in order to protect 'Big Businesses' at the expense of Main Street Investors. That a such development can become rather embarrassing for the Chairman and the SEC more generally is probably an understatement.

42.2. This would clearly not be the appropriate forum in the opinion of the Whistleblower, but the SEC Commissioners shall not underestimate the creativity of potential whistleblowers when they propose to change the award rules in such an arbitrary way and deceive whistleblowers who put their lives and livelihoods on the line.

42.3. To turn the Whistleblowing Program into entertainment instead of having regulators holding very serious offenders accountable to the letter of the law, would in my opinion bring the SEC in disrepute and be a very regrettable development and undermine the trust entirely.

[74] Or perhaps in the context of the SEC Chairman, how much would he advice his 'theoretical client' to pay to cover this up, after all it is likely viewed as a commercial decision, to 'settle' a claim before it reaches the authorities, and no one is guilty until found guilty.

42.4. Thereafter you might as well close down the Office of the Whistleblower, to the total satisfaction of those who are systematically enriching themselves fraudulently at the expense of the defenceless and wants to continue doing so.

43. Concluding Comment

43.1. During the financial crisis it was often said that certain institutions were *'too big to fail'*; the Reduced Award suggests that certain fraud and breaches of the Securities Law are *'too big to be exposed'*.

43.2. It is forbidden by law as a whistleblower to mislead the SEC[75], yet the Reduced Award evidently suggests that the SEC is allowed to mislead the very same whistleblower, by first enticing them to come forward against a reward of '10-30%' of the Recovery, to then suddenly be arbitrarily lowered to a fraction determined by the same people who are potentially involved in committing the underlying fraud which has led to the action in question.

43.3. The Reduced Award is clearly not a properly thought through idea (unless there is political desire to protect the 'financial elite' from responsibility and just 'frame' the 'small fish') as it will clearly not be in the best interest of Main Street Investors and undermine the ability for the SEC to receive timely, critical information through the Whistleblower Program and discourage people like me to step forward whilst encourage us to 'partner' with large case offenders instead, with all that entails.

43.4. The Reduced Award is thus a flagrant attempt to try to 'suffocate the dynamics' of the current award system in order to protect Big Businesses at the expense of Main Street Investors. There is a saying that *'you can put rotten meat in the freezer to stop it smelling, but it's still rotten'* and the same principle applies here; if the Reduced Award were to be implemented despite all its deficiencies.

43.5. If an entitled majority of the SEC Commissioners were to conclude that the introduction of the Reduced Award is desirable despite all its evident shortcomings and the serious issue of conflicts of interest they must go back to Congress and ask for permission to have the law changed and not *'take the law into their own hands'* in this manner and undermine the entire purpose of the law.

43.6. In a such scenario I will agree to testify before the United States Congress in order to explain in more detail the implications of the implementation of the Reduced Award and answer any questions the senators and representatives may have in this regard. In the opinion of the Whistleblower, the SEC Chairman ought to subsequently be heard by Congress so that they can get to the bottom with all the ulterior motives behind the Reduced Award.

43.7. There is no concrete evidence supplied whatsoever to support that the SEC Chairman in favour of the Reduced Award is particularly fit to make judgements on how to 'appropriately' limit awards in his sole discretion, especially in light of the almost infinite complexities of balancing issues of conflicts of interest as explained above, which would in turn also be subjectively determined in a situation where the Reduced Award were to have been adopted.

[75] https://www.sec.gov/about/forms/formtcr.pdf

43.8. The Reduced Award appears to be yet another example of oppression and power abuse by the establishment, trying to 'cover-up' to protect their privilege at the expense of the ordinary person who is yet again in 'the firing line' of being harmed. The SEC Commissioners must ask themselves if they are appointed to protect the masses or the privileged few who systematically enrich themselves at their expense, who the SEC Chairman is ultimately an ambassador of?

43.9. When the SEC starts to promote the interests of the establishment (like in the case with the Reduced Award) as opposed to be a resource for the harmed and defenceless in any David and Goliath corporate scenario, something is seriously wrong.

43.10. The Reduced Award has in my opinion already caused significant harm to the Whistleblower Program (this letter is in fact evidence to that effect) and the only way to restore it is to now swiftly withdraw that part of the proposed amendment and get all SEC Commissioners firmly behind the Whistleblower Program and adopt the elements of the proposed amendment that actually will *"help strengthen"* the program as discussed above and show its resilience in pursuing all offenders irrespective of size and background who are committing fraud or are breaching the Securities Laws in order to set examples which hopefully will prevent Big Businesses and their advisors from committing fraud against vulnerable Main Street Investors in the future, creating a truly better and fairer investment world.

43.11. There is still time for the SEC Commissioners to turn this situation into something positive and use this opportunity to promote the integrity of the Whistleblower Program and encourage whistleblowers of all backgrounds to come forward in order to bring about to see who the first whistleblower billionaire will be. After that 'marketing effect', the likes of the Alleged Offenders will for sure think twice before they decide to defraud investors.

43.12. The SEC shall portray whistleblowers as true heroes, not as greedy and opportunistic individuals, which the Reduced Award implies.

43.13. Given the fact that the SEC Chairman Jay Clayton has the casting vote as *"independent"* on the SEC Commission, he has in my opinion a massive responsibility to not vote in relation to the Reduced Award given that he is evidently conflicted in so doing.

If you would like to meet up in person in order to discuss the above in more detail I am willing to come and see you on short notice at a time and location of your convenience.

I kindly ask the Secretary to confirm receipt of this communication at his earliest convenience.

4 September 2018

Sincerely,

Richard Jansson

c/o Legal Counsel
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Disclaimer and Forward-Looking Statements

The material contained in this letter represents the views and opinions of the Whistleblower.

This information has been prepared by the Whistleblower. It is for your general information only. This material has been prepared based upon information the Whistleblower believes to be reliable. However, the Whistleblower does not represent that this material is accurate, complete and up to date and accepts no liability if it is not. Opinions expressed are current opinions only as of the date indicated. The Whistleblower does not accept any responsibility to update any opinions or other information contained in this document.

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NWC | NATIONAL WHISTLEBLOWER CENTER

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September 17, 2018

Submitted via e-mail to rule-comments@sec.gov

Mr. Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Comments of the National Whistleblower Center on the SEC's Proposed Rulemaking: Whistleblower Program Rules (File No. S7-16-18)

Request for Extension of the Comment Period

Dear Chairman Clayton:

The National Whistleblower Center ("NWC") hereby requests an enlargement of the comment period related to the various amendments proposed by the U.S. Securities and Exchange Commission ("SEC" or "Commission") to the current SEC whistleblower program. *See* Whistleblower Program Rule Amendments, Rel. No. 34-83557, File No. S7-16-18, RIN 3235 – AM11 (June 28, 2018); 83 Fed. Reg. 34,702 (July 20, 2018).[1] In addition, because the current deadline for filing comments is September 18, 2018, the NWC hereby files its first preliminary comments on the proposed rule.[2] These comments are being filed without prejudice to the NWC's filing its complete response after it obtains access to the documents requested in its FOIA, and has adequate time to draft its responses in light of these materials.

REQUEST FOR EXTENSION OF THE COMMENT PERIOD

Shortly after the whistleblower amendments were proposed, the NWC filed a Freedom of Information Act ("FOIA") request with the Commission. Materials responsive to this FOIA would include communications between the Commission and the Chamber of Commerce. The NWC filed this FOIA request to discern what special interests had lobbied for Proposed Rule (d)(2). After nearly two months, the Commission finally identified **15,877** emails that could be in response to NWC's request. These include **1,078** emails with the Commission that reference

[1] The proposed rules, along with comments by the Commissioners regarding the rules and other relevant information was linked in the blog by Ben Kostyack, "SEC Proposes Rules that will Undermine Whistleblower Rights," *The Whistleblower Blog* (July 9, 2018), at https://www.kkc.com/blog/sec-proposes-rules-that-will-undermine-whistleblower-rights.

[2] The NWC also hereby endorses the concerns raised by attorneys who work, *pro bono,* with the National Whistleblower Center. *See* Kohn, "The Problem with the SEC's Plan to Cap Whistleblower Awards," Law360 (July 10, 2018), at https://www.kkc.com/news/?id=651; Kohn, et al., to Clayton, "Rule Comment" (July 24, 2018), reprinted at https://www.kkc.com/assets/site_18/files/sec/secrulemakingletter-final.pdf.

both "whistleblower" and "Chamber of Commerce" between January 2, 2017 and June 29, 2018.

However, the Commission has yet to actually ***release*** the responsive materials. Furthermore, it is unlikely that the Commission will release all requested materials – if any – prior to the end of the comment period it has imposed, as Commission staff made clear that even materials prioritized by NWC (communications including "whistleblower" and "Chamber of Commerce") "will [be] provide[d in] rolling releases as they become available."

Yet, by granting NWC's expedited processing request, the Commission agreed that NWC had "identified an important Government activity that is current" and demonstrated a compelling "urgency to inform the public." The materials NWC requested are imperative to the public's understanding of the reasoning behind the Proposed Rule, the impact it will have on the whistleblower program, and the influence the Chamber of Commerce and other members of the regulated community had on this rulemaking.

The SEC is the first administrative agency to adopt policies modelled on those advocated for by the Chamber of Commerce, to the detriment of whistleblowers and the whistleblower program. In doing so, the Commission is incorporating a misleading position on award caps – a position rejected by Congress on numerous occasions because it would undermine the core objective of the whistleblower program by discouraging the most important whistleblowers from risking everything and stepping forward.

The Commission's amendments to the whistleblower program were made in secret, potentially relying on anti-whistleblower interests instead of the experts in the whistleblowing community. The public has a right to know who proposed these changes, who had input into the proposal, and what the motives behind these deleterious alterations were in order to understand how the rule – and the new program – would function in practice.

The public must have access to the relevant information with enough time to give competent, fully-informed feedback to the Commission on proposed rules that will completely undermine one of the most important aspects of the agency's enforcement and recovery capability.

Given the unmistakable complexity of the Proposed Rule, its potential to have a significant impact on both whistleblowers and the Commission's ability to detect securities laws violations, and the public's right to know which special interests had a role in shaping the rule, the Commission must extend the comment period by ***a minimum of 60 days***, to begin ***after*** the Commission has released ***all materials related to the proposed amendments***.

The NWC is also concerned that some of the proposals announced by the Commission reflect the policy positions of the U.S. Chamber of Commerce. The Chamber has staked out a radically anti-whistleblower position, and for years has sought to "cap" the amount of rewards available to whistleblowers. [3] Congress has repeatedly rejected these proposals. The SEC is

[3] *See* National Whistleblower Center, "Saving America's 'Most Important Tool to Uncover and Punish Fraud (July 30, 2014), reprinted at

the first executive agency to endorse "caps" in a proposed rule, and based on the public comments of the Commissioners, appears poised to be the first agency to ever adopt this discredited and highly destructive Chamber of Commerce proposal. Consequently, there is a compelling need for full and complete transparency as to why the Commission proposed this rule, and what lobbying efforts were behind the proposals.

INITIAL COMMENTS

Inasmuch as the current deadline for filing a response to the proposed rules is September 18, 2018 the NWC is compelled to file its initial comments on two of the Commission's proposals. We specifically call your attention to the new Proposed Rule, § 240.21F-6(d)(2) [hereinafter "Proposed Rule (d)(2)"] and the "proposed interpretive guidance regarding the meaning and application of 'independent analysis' as defined in Exchange Act Rule 21F-4(b)(3)" [hereinafter "Proposed Analyst Guidance"]. Both are highly destructive to the Commission's existing whistleblower program and contrary to Congressional intent and the statutory language governing the program, undermining the incentives intended for analysts and those blowing the whistle on the most insidious securities laws violations.

Proposed Rule (d)(2), contrary to Supreme Court precedent and Dodd-Frank's "core objective," disincentivizes whistleblowers who identify the largest violations of securities laws at potentially much greater personal risk. Similarly, by utilizing the operative word "could," the Proposed Analyst Guidance discourages whistleblowing. The Proposed Analyst Guidance essentially allows the Commission to reject any analyst merely because the information the analyst relied on was public, even if it was information the Commission would never have used to initiate an investigation of its own volition.

I. The Commission Must Apply the Holding of *Digital Realty* When Evaluating the Proposed Cap on Whistleblower Rewards Under Proposed Rule (d)(2)

As a threshold matter, the Commission must review all of its proposed rule changes in light of the recent guidance offered by the U.S. Supreme Court in *Digital Realty Trust v. Somers*. In that case, the Court held that the Commission violated the Congressional intent of the Dodd-Frank Act in enacting certain rules and administrative guidance regarding the Commission's whistleblower program.

The Court was perfectly clear as to the fundamental mission of the Dodd-Frank Act's whistleblower law:

> Dodd-Frank's purpose and design corroborate our comprehension of § 78u-6(h)'s reporting requirement. The "core objective" of Dodd-Frank's robust whistleblower program . . . is "to motivate people who know of securities law violations to *tell the SEC*," S. Rep. No. 111–176, at 38 (emphasis added). By enlisting whistleblowers to "assist the Government [in] identify[ing] and

https://www.whistleblowers.org/storage/documents/RebuttalDocs/final%20fca%20report.pdf. The report rebuts a proposal by the U.S. Chamber of Commerce to cap rewards under the False Claims Act.

> prosecut[ing] persons who have violated securities laws," Congress undertook to improve SEC enforcement and facilitate the Commission's "recover[y] [of] money for victims of financial fraud." *Id.,* at 110. To that end, § 78u-6 provides ***substantial*** monetary rewards to whistleblowers who furnish actionable information to the SEC. See § 78u-6(b).

Digital Realty Trust v. Somers, 138 S. Ct. 767, 777 (2018) (emphasis added).

Thus, every proposed rule offered by the Commission must be evaluated in light of these fundamental principles. Do the proposals "motivate people who know of securities law violations to tell the SEC" about these violations? If the proposed rules do not promote this "core objective" of the law, indeed if they are openly hostile to it, they should not be approved.

Proposed Rule (d)(2) establishes a cap on the amount of compensation offered to whistleblowers whose original information identifies the largest and most outrageous violations of securities laws. Only in such large fraud cases would whistleblowers suffer a radical reduction in the amount of compensation for which they are eligible. Proposed Rule (d)(2) reduces the compensation available to the most important whistleblowers to the ***lowest possible amount***, thereby discouraging the reporting of large frauds by well-placed insiders worldwide.

It is beyond question that establishing a rule that would limit the amount of awards available to whistleblowers who disclose large frauds that result in fines and sanctions in excess of $100 million against fraudsters would ***not*** help motivate whistleblowers to step forward.[4] These large fraudsters – many of whom act with the knowledge or consent of top ranking corporate officials, or themselves hold top corporate jobs – are often in a position to impact the career and reputation of employees. Reducing the amount of awards available to employees who courageously risk retaliation from these high-ranking or well-placed fraudsters violates the "core objective" of the SEC whistleblower law.

Simply stated, capping the amount of an award in the largest cases does not "motivate people who know of securities law violations to tell the SEC," it discourages them, impermissibly contradicting Supreme Court precedent and defying common sense.

II. The Commission's Proposed Analyst Guidance Undermines the Dodd-Frank Act's Statutory Definition of a "Whistleblower"

The Proposed Analyst Guidance completely undermines one of the most important features of the securities laws whistleblower program. Congress explicitly required the Commission to recognize independent analysts. Nevertheless, the Commission's "interpretive guidance" regarding the Analyst Rule is so broad as to completely undermine the statutory incentives

[4] *See* Dyck, et al., "Who Blows the Whistle on Corporate Fraud," *The Initiative on Global Markets Working Paper No 3,* University of Chicago Booth School of Business (Oct. 2008), reprinted at *https://www.whistleblowers.org/storage/documents/univofchicagowhoblowswhistle.pdf*. *Also see,* Index of Documents for *The New Whistleblower's Handbook,* Rule 30 ("Whistleblowing Works), linked at https://www.kkc.com/handbook/never-forget-whistleblowing-works.

provided to analysts, and effectively cut off from eligibility the overwhelming majority of analysts otherwise covered under the law.

The Dodd-Frank Act's definition of a "whistleblower" includes "analysts." Analysts, by definition, are not "insiders" who meet the stereotypical definition of a whistleblower. Instead, they are typically non-employees who base their disclosures on their "analysis" of publicly available information. Prior to the recession of 2008, many analysts relied upon publicly available information to identify the securities violations that triggered the market collapse, and frauds engaged in by notorious criminals such as Bernie Madoff. Congress recognized that these atypical whistleblowers had the potential to provide significant assistance to the Commission's enforcement staff (which unquestionably is not large enough to uncover every fraud) and protect investors.

Encouraging "analysts" to aid in Commission enforcement efforts was one of the major advances in whistleblower protection approved by Congress in the wake of the disastrous market collapse of 2008.

The new "Independent Analysis Standard" proposed by the Commission would, in effect, completely undermine Congress' requirement in the Dodd-Frank Act that analysts be treated as whistleblowers. This method is crafty, and smacks of the linguistic manipulations often employed by the Chamber of Commerce and other special interests to oppose every important whistleblower initiative.

In the Commission's proposed standard for "assessing" whether a whistleblower's submission provides sufficient "analysis" of "publicly available information," the "Commission would determine based on its own review of the relevant facts during the award adjudication process whether the violations ***could*** have been inferred from the facts available in public sources."

The trick is in the use of the word "could." Any publicly available information "could" have been relied upon by the Commission staff in discovering a violation. The problem arises when the publicly available information did ***not*** result in the Commission discovering the violation on its own. Whether or not the Commission staff "could" have theoretically discovered the violation is absolutely irrelevant. The fact is that an analyst only qualifies for a reward in cases in which the Commission did ***not*** discover the violation, and the analyst's submission triggered (or contributed to) the investigation.

The universe of publicly available information related to the misconduct of publicly traded companies is immense, and it is obvious that the Commission staff cannot not properly evaluate this information in the vast number of circumstances. For example, the Commission staff "could" have uncovered the massive frauds committed by Madoff, but unfortunately for those who lost millions, they did not. Whether the Commission "could" have relied on public information to prevent the collapse of numerous financial institutions or publicly traded companies such as Enron or Bear Stearns is simply not relevant. What is important to investors is not what the Commission "could" have done. It is what the Commission ***did*** do.

Employing the manipulative term "could" gives the Commission discretion – contrary to Congressional intent – to deny an award to an analyst that is responsible for uncovering a securities violation that leads to a successful Commission enforcement and recovery, even where the Commission failed to discover – and may not ever have discovered – the underlying offense that would have enabled it to initiate an investigation.

CONCLUSION

The Commission must extend the comment period for this rulemaking by a minimum of 60 days to begin after the Commission has released all materials related to the proposed amendments covered under the FOIA request filed by the NWC. If no enlargement is granted, the Commission should not approve the cap on rewards associated with the enforcement of large frauds as set forth in Proposed Rule (d)(2), and must reject the Proposed Analyst Guidance concerning the definition of independent analysis.

Sincerely,

/s/ Jane Turner
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September 17, 2018

Hon. Jay Clayton, Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: File No. S7-16-18, Amendments to Commission's Whistleblower Program Rules

Dear Mr. Chairman:

Thank you for the opportunity to comment on the proposed amendments to the Commission's Whistleblower Program rules. As a SEC whistleblower currently in the program, I was pleased to read your June 28, 2018 "Statement at Open Meeting on Amendments to the Commission's Whistleblower Program Rules" in which you confirmed the value and continued need for the program.

I am a SEC whistleblower who fought the good fight and lost everything, having been terminated only days after exhausting all internal remedies under the Company's "Code of Ethics for Chief Executive Officer and Chief Financial Officer". The resulting personal financial losses and emotional trauma for protesting unlawful behavior and practices have been devastating and unrelenting with no relief or upside. The SEC Whistleblower Bounty Award Program provides a vestige of hope for financial remedy and justice.

Commissioner Robert J. Jackson, Jr.'s June 28, 2018 "Statement on Proposed Rules Regarding SEC Whistleblower Program" closely describes my whistleblower circumstances (albeit with a smaller public company) when he stated:

> *Let's start from the perspective of an employee who is witnessing a significant corporate fraud. Especially if she is a high-ranking insider at a large public company—the whistleblowers who are most valuable to us in protecting our markets—there are major risks for the employee if she comes forward. She may lose her job and her salary, but worse, she faces the very real prospect of never working in a senior position in her field again.*

Commissioner Jackson urged "*commenters to come forward and provide us with their views regarding today's proposals, and in particular data that might help us understand the proposal's effects on whistleblowers' incentives to help us uncover frauds and protect investors".*

With this mandate, I've included relevant circumstances of my whistleblower activities to show the brutal consequences of being a single gatekeeper who endeavors to instill strong internal controls, uphold compliant accounting practices and transparent, accurate public disclosures under Exchange law and other regulations. Please oblige my long letter, as I have much to say about SEC whistleblower retaliation. And, I believe much can be learned by sharing my retaliation experience with the Commission and others who may read my comment letter. Moreover, it will shed light on two key areas of debate regarding proposed changes to the SEC Whistleblower program under Dodd-Frank:

1) restrictions on who can directly report concerns to the SEC based on the current SEC rule that requires certain employees to exhaust all internal remedies before filing a whistleblower award claim under the Dodd-Frank Act, and

2) definition of a whistleblower under the retaliation provisions of the Dodd-Frank Act, to comport with the Supreme Court's recent decision in Digital Realty Trust, Inc. v. Somers.

Of note, my retaliation claim is not impacted by the Supreme Court decision, as I timely filed my claim with the Department of Labor/OSHA under provisions of the Sarbanes-Oxley Act of 2002, as amended.

I'm a senior corporate finance, accounting, internal audit, and governance professional with over 35 years' experience in senior roles at large publicly traded commercial and federal government contracting companies. From 2003 to 2005 I worked on the WorldCom/MCI financial restatement and internal controls remediation process, conducted under Federal Bankruptcy Court-ordered monitoring. The 2002 WorldCom bankruptcy resulted from $11 billion in fraudulent accounting entries and a complete breakdown of internal controls. WorldCom remediation included replacing their entire board of directors, the CEO, and most of the senior management staff. Approximately a half-dozen former employees were sentenced to prison, with the former CEO and CFO receiving the longest terms. There were no "sacred cows".

Hence, I'm keenly aware of an integrated framework of internal control deficiencies, fraudulent accounting, earnings smoothing, misleading and erroneous public reporting, classifying period expense as a depreciating or amortizing asset, unwarranted shifting between expense and cost, misallocations, goodwill impairment from acquisitions, and efforts to deflect or suppress fact-finding. I'm also aware of the strengthened U.S. sentencing guidelines enacted under the Sarbanes-Oxley Act of 2002, as amended. As such, I took my responsibilities regarding Company accounting practices, internal controls, and full and accurate public reporting and disclosures very seriously. And, I expected the same from the CFO, CEO, Chairman of the Board, Audit Committee, and outside legal counsel of the Company for whom I worked. If any one of these leaders ignores or doesn't understand the COSO Framework of Internal Controls and instances of accounting and disclosure fraud, they are not qualified to hold a position practicing before the Securities and Exchange Commission.

During the six years prior to my termination, I held senior finance roles at this smaller reporting public company that provides professional services to government agencies. My responsibilities included, but were not limited to: preparation of consolidated and consolidating financial statements for internal, board, bank loan covenants, and public reporting; preparation and filing of quarterly and annual reports with the SEC including Management Discussion and Analysis and forward looking business trends; preparation of quarterly earnings releases, earnings call scripts, and investor presentations; financial modeling for strategic five-year business plans including potential acquisitions or sale of the business; and compliance on federal government contracts including the composition of overhead rates and allocation processes under the Federal Acquisition Regulations (FAR). Up until the last six months of my employment, I continually received outstanding performance feedback from the CEO and CFO, salary increases, stock option awards, and received among the largest annual bonus awards among my peers.

Problems began when the Company acquired a small private professional services company. Immediately after the acquisition, the major customer cut back on requirements that significantly reduced expected revenue and cash flows generated by the newly acquired business. That is when the Company machinations began, internal controls were thwarted, my public financial reporting responsibilities were diminished and then removed, my internal protests up through the Chairman of the Board and outside legal counsel were ignored, I was abruptly terminated without notice, and asked to sign a separation agreement that waived my rights to due process and remedies, specifically naming the retaliation provisions of the Sarbanes-Oxley Act of 2002. I did not sign the agreement.

During my internal protests that spanned six months until I was abruptly terminated, I provided regulatory guidance, specific examples and detailed independent analysis to support my assertions to the CFO, CEO, Chairman of the Board/Audit Committee Financial Expert, and the Company's outside legal counsel. Because the Company eliminated the position of Chief Compliance Officer in 2014, I was on my own. Neither the Chief Executive Officer nor the Chairman of the Board/Audit Committee Financial Expert acknowledged or responded to my emails, nor contacted me to get clarification or a better understanding of my concerns and allegations. They apparently ignored the advice of Sean McKessy, the Commission's first Chief of the Office of the Whistleblower who warned: Denial Is Not a Strategy (FEI Daily 6/24/14 by Edith Orenstein):

> On the heels of the first whistleblower retaliation case filed by the SEC, FEI Daily asked Sean McKessy, Chief of the SEC's Office of the Whistleblower, what the broader message is for the financial reporting community.
>
> *"Denial is not a strategy around this program," the SEC's Sean McKessy told FEI Daily in an exclusive interview. "Adjust your mindset if the thought was to pretend there is no whistleblower program or pretend there is no ability for employees to report, or not educate your employees. Part of my job is to spread the word this program exists, and there is a mechanism for people to report wrongdoing when they see it. …*

If you are determined to never encounter our office, then the best thing you can do is take a fresh look at your compliance program to try and create a culture that if your employees encounter wrongdoing, they feel comfortable reporting it internally so that they see it is stopped, and they won't be punished for reporting it, even if they are wrong about the existence of an underlying violation. …

The message for senior financial executives and senior officers is: If I don't really want to have a whistleblower go to the SEC, what do I need to do so an employee comes to us, what do I have to do to create an environment where my employees believe that an internal report will result in a credible, transparent investigation."
https://daily.financialexecutives.org/denial-is-not-a-strategy-whistleblower-watchdog-warns/

It was shortly after this first SEC whistleblower retaliation case in 2014 that the Company eliminated the position of Chief Compliance Officer.

In order to exhaust all internal remedies before submitting a TCR form to the SEC, I filed a formal internal complaint under the Company Code of Ethics for Chief Executive Officer and Chief Financial Officer. Over a period of six weeks prior to my termination, I sent emails to the Chairman of the Board, who was also the Audit Committee Financial Expert, and the Company outside legal counsel. My emails painstakingly described my allegations of fraud, misleading disclosures, and deficient internal controls and showed the life cycle of a whistleblower: recognition and reward for excellent performance and contributions that evolve into hostility, diminution of responsibilities once protests begin and intensify, and in the worst case, abruptly terminated without notice as I was a few days after the Audit Committee and outside legal counsel completed their investigation into my allegations and concerns with "no findings".

Midway through my formal internal protest, the Chairman of the Board asked the Company outside legal counsel to open an investigation into my concerns. This was met by an immediate increase of egregious hostility and removal of my job responsibilities. My emails sent to the Board Chairman and outside legal counsel describing the intensified retaliation were ignored. If outside legal counsel had found wrongdoing, but the Chairman of the Board and Board Audit Committee did not, the outside legal counsel was required under SOX to report the findings to the SEC. This did not happen. In fact, the same outside legal counsel who conducted the internal investigation also prepared the Company's answer to my OSHA retaliation complaint, in which counsel chastised me for using the internal grievance process under the Company Code of Ethics for CEO and CFO. Three days after the Company's legal counsel advised me that neither he nor the Chairman of the Board/Audit Committee found any wrongdoing, the Company cut off my computer access, terminated my employment without notice, and sent me a request to sign a severance agreement that included, in part:

General Release: "waive any and all claims, causes of action and damages against the Company …. including, but not limited to, the retaliation provisions of the Sarbanes-Oxley Act of 2002."

> *Covenant Not To Sue: "waive Your right to any monetary or equitable recovery … and promise not to seek or accept any award, settlement or other monetary or equitable relief from any source or proceeding brought by any person or governmental entity or agency on Your behalf…*

I did not sign the agreement. Moreover, SEC Rule 21F-17(a) prohibits such waivers in a Separation Agreement, as it constitutes an unlawful impediment to communicate with the agency. https://www.sec.gov/whistleblower/retaliation#protections :

> *Protections Against Actions Taken to Impede Reporting*
>
> *In addition to protecting whistleblowers who have reported possible securities law violations from retaliation, Commission Rule 21F-17(a) prohibits any person from taking any action to prevent you from contacting the SEC directly to report a possible securities law violation. The Rule states "[n]o person may take action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement…with respect to such communications."*
>
> *Unlike the anti-retaliation protections, the protections against actions taken to impede reporting possible securities law violations are not limited to the employee-employer context. Only the SEC, however, may file an enforcement action for a violation of Rule 21F-17(a).*

My Comments on the Commission's proposed changes re File No. S7-16-18 are as follows:

Digital Realty and Internal Disclosures

I was caught in the retaliation crossfire of the SEC rule that certain classes of employees must exhaust all internal remedies before qualifying for a SEC Whistleblower Award under the Dodd-Frank Act. Because I fell into one of those classes of employees, I fully exhausted all internal remedies before reporting to the SEC. My reasons for doing so were:

1) ensure that the Company officers and directors fully understood my allegations and the serious consequences of same;
2) provide them with an opportunity to remediate the internal controls deficiencies and restate publicly reported financial misstatements; and
3) ensure that I fully qualified for the SEC bounty award program and at the highest award percent possible.

After the Company Chairman of the Board, Audit Committee, and outside legal counsel found no wrongdoing, no fraud, and no serious internal control deficiencies under the Code of Ethics for CEO and CFO, I then proceeded to prepare a TCR form to the SEC Office of the Whistleblower. However, three days after the Company notified me that they found no

violations, the Company disconnected my computer access and terminated my employment without notice.

Consequently, I did not have enough time to complete the TCR form required by the SEC before the Company fired me. Had I known that the Supreme Court would narrow the definition of retaliation under the Dodd-Frank Act, as a placeholder I would have submitted my concerns to the SEC months earlier while I was still employed by the Company. While I still would have chosen to file a retaliation claim under SOX/OSHA, I would want to retain the option of filing a personal claim of retaliation under Dodd-Frank which provides a much longer statute of limitations. This is especially beneficial where whistleblowers, for whatever reason, have exceeded the 180-day statute of limitations for filing a retaliation claim with the Department of Labor/OSHA and Dodd-Frank is their only remaining option.

Therefore, I recommend that the Commission amend all Dodd-Frank Act whistleblower rules to conform with the Digital decision. This was well stated in the Kohn, Kohn & Colapinto, LLP, comment letter submitted to the SEC dated July 24, 2018, re File No. S7-16-18, copied here as follows:

> *"First, existing rule 240.21F-6(a)(4) must be removed. This rule was intended to encourage employees to report concerns first to their internal compliance programs. However, as the Supreme Court has made perfectly clear, the core purpose of the DFA is to encourage employees to report directly to the SEC, and as such the Court held that the Commission was without legal authority to provide any protection to employees who report internally. The current rule not only has no support in law, but badly misleads employees. It encourages employees to file internally with companies, without warning them that if they do, they can lose all of the employment rights under the DFA. The rule flouts the explicit holding of the Supreme Court and undermines the Congressional intent behind the DFA, as explained by the Court. The rules on calculating the amount of an award must conform to the Digital mandate interpreting the "core purpose" of the DFA, and there is simply no place in this calculation for promoting internal reporting.*
>
> *Second, Rule 240.21F-4(b)(4)(iii) must be deleted. This rule place restrictions on the right of certain employees, otherwise fully qualified as "whistleblowers" under Congress' definition of that term, to qualify for a reward. Under this rule, company directors, officers, auditors, and compliance officials could not report their concerns directly to the SEC, but instead would have to wait at least 120 days to file such a report."*
>
> *Under the Digital decision these restrictions are clearly illegal. The DFA provided an explicit definition of "whistleblower" and set forth an explicit definition of those classes of persons excluded from the reward provisions. Directors, officers, auditors and compliance officials were not excluded from coverage under the DFA, and all are included within the definition of "whistleblower." These classes of employees often have the most significant evidence of corporate crimes and must be actively encouraged to blow the whistle.*

Monetary Awards

1. Proposed change allowing awards based on deferred prosecution agreements ("DPAs") and non-prosecution agreements ("NPAs") entered into by the U.S. Department of Justice ("DOJ") or a state attorney general in a criminal case, or a settlement agreement entered into by the Commission outside of the context of a judicial or administrative proceeding to address violations of the securities laws.

I agree with the SEC's proposed amendment that would expressly allow for the payment of awards based on money collected under these types of arrangements. It provides a significant and beneficial enhancement for whistleblowers under the Bounty Award Program

2. Elimination of potential double recovery under the current definition of related action: We propose an amendment to our rules to clarify that a law-enforcement action would not qualify as a related action if the Commission determines that there is a separate whistleblower award scheme that more appropriately applies to the enforcement action.

If I'm interpreting the change correctly, I respectfully disagree with the proposed amendment. When the SEC conducts an investigation based on a whistleblower's tip and supporting information, and the SEC prevails in a successful enforcement, the SEC will collect disgorgement, fines, and penalties from the offending Company. The SEC should honor the award earned by the whistleblower under the Dodd-Frank Act. I will call upon the "but for" rule from my government contract accounting days: The SEC would not have recovered the money, but for the fact that a whistleblower provided the necessary information. The SEC would still retain between 70% and 90% of the collected monies. It's not easy, quick, or frequent for a whistleblower to receive a bounty award under the Dodd Frank Act, and this recommendation exacerbates an already painful process.

3. Additional considerations for small and exceedingly large awards.

I respectfully disagree with the Commission's recommendation of limits on exceedingly large awards. The Dodd Frank Act established specific criteria for monetary awards that ranged from 10% to 30%, and the SEC established criteria for increasing or decreasing award percentages. I don't believe that the SEC should place arbitrary restrictions on the award percentage based on an assumption of "enough". I will again refer to the government contract accounting "but for" rule: The SEC would not recover an exceedingly large award, but for the fact that a whistleblower provided the necessary information. The SEC would still retain between 70% and 90% of the exceedingly large recovery. There are likely many hands to feed from the award, including large takings from contingency-fee plaintiff attorneys that may dwarf the whistleblowers' share of the award.

Regarding the SEC's proposed change allowing a $2 million minimum award for small awards that meet or exceed the Dodd-Frank requirement of at least $1 million collected by the SEC, I

believe the SEC already has the authority to award a whistleblower up to the maximum of 30% and that no change is necessary. The Dodd Frank Act established monetary awards that ranged from 10% to 30%, and the SEC established rules for increasing or decreasing award percentages that already provide flexibility.

Regarding proposed changes where the monetary sanctions collected are de minimis; i.e. less than the Dodd-Frank requirement of at least $1 million collected by the SEC. This is a beneficial and worthwhile change. Whistleblowers are harmed whether they work for a very large or very small company, and must work just as hard to prove their allegations to the SEC. However, it appears that the Dodd-Frank Act would need to be amended to remove the $1 million minimum collections hurdle.

SEC recommendations to expedite awards to whistleblowers

My faith and trust that the Company's officers, directors, audit committee, and outside legal counsel would uphold Exchange law were groundless. They have since richly rewarded themselves while I've been reduced to living on social security wages and moving in with family to make ends meet, patiently pursuing claims under SOX/OSHA and Dodd-Frank. All valid SEC whistleblowers, especially those who've lost their income from retaliation, need an expedient reward process. Kohn, Kohn & Colapinto, LLP provided a sensible, expedited process in their comment letter to the SEC dated July 24, 2018, re File No. S7-16-18. I totally agree with the KKC LLP recommendations and have copied selected parts of their letter below, with edits:

> *Under the current process, whistleblowers often wait years to obtain a reward, exacerbating and prolonging financial and emotional harm to whistleblowers. To prevent undue delay, the current rules should be amended in a manner consistent with current practice under the False Claims Act.*
>
> *As required under Digital Reality to qualify for a reward, whistleblowers must provide their information directly to the SEC. Thus, the Commission's staff knows, well before issuing a sanction, the identity of every whistleblower who provided information to the SEC and for which the SEC relied upon when issuing the sanction. The Commission is in a position to make their reward recommendations simultaneous with the Commission's approval of any sanction. The Commission should consider requiring the staff to make these recommendations immediately after the issuance of a sanction and providing these recommendations to the whistleblower(s) for comment. Once the SEC staff completes their reward recommendation, they can immediately forward their justification to the Claims Review Staff or the Commission for immediate approval.*
>
> *Moreover, just as whistleblowers must adhere to timing requirements for filing TCR and APP applications, the SEC staff should similarly be bound by time requirements for approving reward applications. One suggestion is that the Commission approve all reward applications within 90 days of the issuance of the sanction for which the*

Commission action was based, and that other policies and procedures are amended to accommodate this 90-day requirement.

Finally, the Commission should adopt a rule requiring that all whistleblower rewards be paid in the fiscal year for which the collected proceeds/sanctions are obtained. This will help ensure that the Investor Protection Fund can directly use the sanctions obtained from the whistleblower cases to pay rewards.

Conclusion:

Thank you again Chairman Clayton for your steadfast commitment to the SEC whistleblower award program. I sincerely appreciate the opportunity to provide comments on the Commission's proposed changes. Under signed certifications (SEC Whistleblower's Declaration), I've submitted detailed financial analysis, expansive narratives, supporting documents, and estimated restated earnings from those filed by the Company before and after I was terminated. I stand behind my assertions, evidence, and supporting analysis provided to the SEC Office of the Whistleblower and the Department of Labor/OSHA. I'm confident and ready to defend my allegations under oath before any regulatory entity, court, or member of Congress.

Respectfully submitted,

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September 18, 2018

Secretary
Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549–1090

Re: File Number S7–16–18

Dear Chair Clayton and Members of the Commission:

Thank you for the opportunity to comment on the Securities and Exchange Commission (SEC or the Commission) proposal to amend its regulations implementing the whistleblower provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The Dodd-Frank Act's whistleblower provisions have had a "transformative impact on enforcement" of investor protection laws.[1] Many organizations, including companies and governments agencies, fail to appreciate the value of dissenting voices within to ensure compliance with rules and to maintain the trust of those the organization interacts with and the broader public. Whistleblowers play a critical role in our ability to enforce rules in a corporate context. Without enforcement, laws and regulations are useless, and effective enforcement requires the ability to detect when rules are broken.

Those who control corporations have potentially weak incentives to ensure compliance with rules meant to protect investors, customers, employees or the public, particularly if the evasion of the rule remains undetected. They may in fact benefit personally from some wrongdoing within the corporation and might put in place incentives for others to evade the rules for the purpose of improving metrics associated with "shareholder value" or their compensation such as accounting profits or share prices.

In this environment, potential whistleblowers face grim ethical, financial, and social choices. As discussed in more detail below, whistleblowers pay an immediate cost along multiple dimensions while being unsure that they would recover even their direct and indirect financial loss, let alone ever be fully compensated for such things as anguish and social isolation. We must ensure that

[1] Chair Mary Jo White, "A New Model for SEC Enforcement: Producing Bold and Unrelenting Results," Nov. 18, 2016, available at: https://www.sec.gov/news/speech/chair-white-speech-new-york-university-111816.html

whistleblowers are able to express their concerns with the knowledge that the proper action will be taken as a result of their reports. We must also do our best to reduce the cost of whistleblowing and ensure that legitimate and honest reports do not lead to retaliation.

There is reason for concern about the current treatment of whistleblowers by corporations and government agencies. For example, in the case of Wells Fargo Bank's account sales practices scandal, an audit by the Office of the Comptroller of the Currency's ombudsman found both that Wells Fargo executives dismissed the seriousness of 700 whistleblower complaints that had been brought to their attention, and that the OCC lacked proper procedures to pursue the 14 whistleblower complaints that it had received.[2]

In another recent example, in 2017, the CEO of one of the world's largest banks, Barclays, was fined for pursuing a whistleblower who had raised issues about one of the company's executives who was close to the CEO, despite being warned by compliance staff and the general counsel against taking such retaliatory actions.[3]

Last week, on September 11, 2018, there were reports that the prospective Chairman and CEO of the nation's fifth-largest bank holding company, Goldman Sachs, responded to a whistleblower complaint by urging the whistleblower to "let go of his grievances and focus instead on his job," and dismissing troubling behavior as simply reflecting "the way Wall Street worked[.]"[4]

In the case of the laboratory startup Theranos, whose top executives were charged by the Commission with securities fraud,[5] one whistleblower was berated by a company executive; threatened by his employer with legal action over disclosing trade secrets necessitating $400,000 in legal expenses; and was pressured by his family and the company's outside legal counsel.[6]

In short, while progress has been made in furthering support for whistleblowers, there is clearly more work to be done. With that in mind, we offer the following comments on the SEC's proposed whistleblower amendments.

1. The Commission should expand the definition of "action" to include all Deferred Prosecution Agreements and Non-prosecution Agreements

The problem of how to detect law evasion and create proper accountability in a corporate context is deep and complex. The best policies in this regard would need to address many factors, and

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[2] *See* Office of Enterprise Governance and the Ombudsman, Office of the Comptroller of the Currency, "Lessons Learned Review of Supervision of Sales Practices at Wells Fargo" at 5, 7, Apr. 19, 2017, available at: https://www.occ.gov/publications/publications-by-type/other-publications-reports/pub-wells-fargo-supervision-lessons-learned-41917.pdf

[3] *See* Max Colchester, *Barclays CEO's Penalties Over Whistleblower Saga Top $1.5 Million*, WALL ST. J., May 11, 2018, available at: https://www.wsj.com/articles/barclays-ceo-jes-staley-is-hit-with-u-k-fine-of-about-850-000-1526035711.

[4] Emily Flitter, Kate Kelly & David Enrich, *A Top Goldman Banker Raised Ethics Concerns. Then He Was Gone.*, N.Y. TIMES, Sept. 11, 2018, available at: https://www.nytimes.com/2018/09/11/business/goldman-sachs-whistleblower.html.

[5] *See* S.E.C. v. Holmes, et al., Case No. 5:18-cv-01602 (N.D. Cal., Mar. 14, 2018) available at: https://www.sec.gov/litigation/complaints/2018/comp-pr2018-41-theranos-holmes.pdf

[6] *See* John Carreyrou, *Theranos Whistleblower Shook the Company—and His Family*, WALL ST. J., Nov. 18, 2016, available at: https://www.wsj.com/articles/theranos-whistleblower-shook-the-companyand-his-family-1479335963

would require comprehensive reforms that address the incentives and information asymmetries of everyone involved. A full discussion of the issues is beyond the scope of this comment letter.[7]

The SEC's proposal to expand the scope of whistleblower award-eligible actions to include all deferred prosecution agreements (DPAs) and non-prosecution agreements (NPAs) is a step in the right direction. Whistleblowers should not be penalized as a result of the government's decision to pursue a particular litigation strategy. The agency, in turn, must make its decisions on the merit of each case using the full range of legal options without the whistleblower award potentially distorting these decisions.

Beyond this useful step in the short run, the Commission should seriously reconsider its policies favoring settlements, DPAs, and NPAs with corporations and rarely pursuing responsible individuals, particularly higher up in the corporation. These practices create the impression that corporations paying fines is "the cost of doing business" and that little is done to create proper accountability or deter future law evasion.[8]

2. The Commission should not decrease the maximum amount of whistleblower awards

The Commission's proposal would give the SEC discretion to limit the recovery for all whistleblowers in cases where the penalty exceeds $100 million to the greater of either 10 percent of the penalty or $30 million.[9] We are concerned that the proposed approach will weaken the whistleblower program for the following reasons.

A. The proposal introduces uncertainty that could reduce the incentives of potential whistleblowers to come forward.

Monetary incentives have been found to motivate people to blow the whistle.[10] One whistleblower called the potential of an award "a powerful incentive."[11] Encouraging more reports of potential wrongdoing requires rules that govern the consequences for the person reporting to be as clear, unambiguous, and uniform as possible. The goal of whistleblower awards should be to pay the highest amount possible so that the combined probability of recovery and the amount of the award match or exceed the overall costs to blowing the whistle,

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[7] Jesse Eisinger, THE CHICKENSHIT CLUB: WHY THE JUSTICE DEPARTMENT FAILS TO PROSECUTE EXECUTIVES (Simon & Schuster 2017), for example, discusses some of the issues.

[8] *See* Jed S. Rakoff, *Justice Deferred Is Justice Denied*, N.Y. REV. OF BOOKS, Feb. 19, 2015, available at https://www.nybooks.com/articles/2015/02/19/justice-deferred-justice-denied/.

[9] The Commission's proposed revisions reference four of the SEC's 55 whistleblower awards, which the Commission appears to believe may have been excessive, necessitating the proposed amendments. *See* 83 Fed. Reg., at 34,703. These payouts involved only two SEC actions. In all, it appears that the maximum amount by which the Commission might be able to reduce the cumulative awards under its proposal may be $27 million. (One award was between $30 million and $35 million. *See* Securities & Exchange Comm'n, Order Determining Whistleblower Award Claim, File No. 2014-10, Sept. 22, 2014, available at: https://www.sec.gov/rules/other/2014/34-73174.pdf. The other awards were $49 million and $33 million. *See* Securities & Exchange Comm'n, Order Determining Whistleblower Award Claim, File No. 2018-6, Mar. 19, 2018, available at: https://www.sec.gov/rules/other/2018/34-82897.pdf.)

[10] *See* Alexander Dyck, Adair Morse & Luigi Zingales, Who Blows the Whistle on Corporate Fraud? 4, Chicago GSB Research Paper No. 08-22 (Oct. 1, 2008) available at SSRN: https://ssrn.com/abstract=891482.

[11] *See* Eric Ben-Artzi, *We Must Protect Shareholders from Executive Wrongdoing*, FIN'L TIMES, Aug. 18, 2016, available at: https://www.ft.com/content/b43d2d96-652a-11e6-8310-ecf0bddad227.

without encouraging frivolous claims.[12] It is difficult to know exactly what the specific thresholds are, and they may differ for different individuals and contexts (for example, depending on the whistleblower status, employability elsewhere, how many others can corroborate the report, etc.).[13]

Whistleblowing almost always imposes high costs on the whistleblower. Retaliation of some sort is pervasive and may occur before any agency action once the corporation suspects or finds out about the report. Whistleblower awards, however, if any, are likely to take years to come about. The legal prohibitions against retaliation do not change the reality that whistleblowers can be marginalized within their own firms, demoted or terminated on the basis of supposedly unrelated reasons that are hard to fight, or quit under duress.[14] Whistleblowing can effectively end their careers.[15]

Executives and even lower-level employees who leave their firms may be subject to non-disclosure agreements that expose them to legal liability or forfeiture of vested compensation or severance pay and which may interfere with their ability to find another job.[16] Some research suggests that compensation arrangements like stock option grants may offer an additional financial disincentive to whistle blowing.[17]

In addition to financial costs, whistleblowing can impose psychic costs like emotional distress and social alienation.[18] It may also impact the quality of their lives by forcing them to move to another state, city, or town to avoid retribution.[19]

The SEC and other relevant agencies, and individuals within the agencies, have discretion in deciding whether to initiate an enforcement action and, more generally, their response to whistleblowers' report, the amount of the penalty, and the bounty to be paid as whistleblower award.[20] The agencies and their personnel may be subject to direct or indirect pressures from the corporations being reported.[21] For a prospective whistleblower, these dynamics introduce additional uncertainty into any calculation of the likelihood of receiving any whistleblower award, and thus into the decision whether to come forward. Ideally, the whistleblower would

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[12] *See*, *e.g.*, David Freeman Engstrom, Bounty Regimes 7-8, Stanford Public Law Working Paper (June 22, 2017) available at: https://ssrn.com/abstract=2991387.

[13] Yehonatan Givati, *A Theory of Whistleblower Rewards*, 45 J. OF LEGAL STUDIES 43 (Jan. 2016) offers a theoretical discussion of the issues.

[14] *See* Dyck, Morse & Zingales, *supra*, at 23.

[15] *See* Anat R. Admati, It Takes a Village to Maintain a Dangerous Financial System 8, Working Paper, May 31, 2016, available at http://bankersnewclothes.com/wp-content/uploads/2016/11/Takes-a-Village-final.pdf; *see also* Dyck, Morse & Zingales, *supra*, at 23 ("The lawyer of James Bingham, a whistleblower in the Xerox case, sums up Jim's situation as: 'Jim had a great career, but he'll never get a job in Corporate America again.'"); *see also* Ben-Artzi, *supra* ("I did not agree and was fired. My Wall Street career was ruined.").

[16] *See* Flitter, Kelly & Enrich, *supra*, note 4.

[17] *See*, *e.g.*, Andrew Call, Simi Kedia & Shivaram Rajgopal, Blinded by Incentives: Do Rank and File Stock Options Deter Employee Whistle-Blowing?, AFA 2013 San Diego Meetings Paper (Feb. 15, 2012) available at: https://ssrn.com/abstract=2023596.

[18] *See* Dyck, Morse & Zingales, *supra*, at 23.

[19] *See id.*

[20] *See* Engstrom, *supra*, at 4.

[21] *See* William Cohan, *Was This Whistleblower Muzzled?*, N. Y. TIMES, Sept. 21, 2013, available at: https://www.nytimes.com/2013/09/22/opinion/sunday/was-this-whistle-blower-muzzled.html.

have more options than depending fully on the agency's action on the report, akin to the *qui tam* provision of the False Claims Act.[22]

The whistleblower may also not be in a position to evaluate the legality of the behavior he or she observed, which might require significant legal expertise. The act of whistleblowing has the potential to expose whistleblowers to the risk, or perceived risk, of civil or criminal liability.[23] This problem can arise in a variety of whistleblower contexts, ranging from whistleblowers who have had a minimal role in some illegal acts or schemes to whistleblowers who incorrectly believe that they may have participated in illegal behavior.[24] The result is fewer potential whistleblowers.

A survey of whistleblowers quoted many respondents as saying, "If I had to do it over again, I wouldn't."[25] In the face of all of the potential cost and uncertainty outlined above, it is important for the SEC to provide as much clarity as possible about both the likelihood of financial recovery and the potential amount. The Commission should explore ways to encourage more honest whistleblowing, not introducing additional uncertainty into what is already a difficult situation for potential whistleblowers.

B. The Commission's proposal fails to establish that the costs of the current system are excessive.

There is no evidentiary basis for the claim that the largest whistleblower bounties are excessive. The Commission's proposal looks at "net worth" and says that the awardee would be among the upper echelons of the wealthiest Americans, and also cites comparisons to average industry wages.

A whistleblower is likely to have little if any future employment opportunity within or even outside the industry.[26] The proper benchmark for an award amount is not how the whistleblower would compare with the rest of society, but rather the whistleblower's future income after blowing the whistle. For certain industries and executives, the cumulative amount of such a calculation would likely be quite high.

While not directly analogous, the availability of *qui tam* lawsuits has been found to encourage whistleblowing.[27] Such suits may result in awards that exceed the Commission's largest bounties that this proposal would limit, suggesting that the awards are in line with other compensation mechanisms.[28]

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[22] *See* 31 U.S.C. § 3730.
[23] *See* Miriam H. Baer, *Reconceptualizing the Whistleblower's Dilemma*, 50 U.C. DAVIS L. REV. 2215, 2227 (2017); *see also id.*, at 2271-72.
[24] *See id.*, at 2241-50.
[25] Dyck, Morse & Zingales, *supra*, at 5.
[26] By stark contrast, as shown in a paper by Amit Seru and others, people with history of misconduct seem to have little trouble finding employment quickly, especially if they are males. *See* Mark Egan, Gregor Matvos & Amit Seru, The Market for Financial Adviser Misconduct, Working Paper, Jan. 2017, available at https://www.gsb.stanford.edu/sites/gsb/files/publication-pdf/ssrn-id2739170.pdf.
[27] *See id.*, at 24 (note that this study was conducted before passage of the Dodd-Frank Act).
[28] *See id.* (citing three settlements of $35 million, $35 million, and $70 million).

The proposal notes that any funds from the settlements that are not paid to the whistleblower would go to the United States Treasury.[29] Unlike whistleblower bounties, this use of the funds does not provide benefits to society in terms of detecting, deterring, or punishing wrongdoing. The SEC should not prioritize funding unidentified government programs over its own missions of investor protection and ensuring orderly and efficient markets that are "vital to the capital markets and investors."[30]

C. The proposal's minimums and caps will reduce the incentives of high-level whistleblowers to come forward.

Rather than considering a downward adjustment in the whistleblower reward that could make the tradeoffs even less attractive to high-ranking executives, the Commission should revise the rules so that they encourage more high-level whistleblowing from those within the corporation who have greater access to information but who are also likely to have a greater sense of allegiance to their company.[31] The monetary cap and potential downward adjustment in the Commission's proposal runs counter to such an approach.

The Commission acknowledges that only 10 percent of the current whistleblower award recipients are "high-ranking corporate executives."[32] By simultaneously increasing the smallest awards and decreasing the largest awards, as outlined in its proposal, the SEC risks encouraging more low-level employees to report minor fraud while potentially deterring high-level executives from reporting major fraud. Such a change could have the effect of furthering the "broken windows" type of enforcement for which the Commission has been criticized in the past.[33]

3. Rather than reducing whistleblower awards, the Commission should focus on holding individuals within the corporation more accountable, including senior managers.

Consistent with the concerns with the lack of individual accountability raised above, penalties against executives in the whistleblowing context are insufficient. For example, Barclays' CEO, mentioned above, was fined $868,501 by U.K. regulators and docked £500,000 for pursuing a whistleblower.[34] Experts characterized the penalty as "pitifully low," but regulators reportedly chose not to take more punitive steps – including removing the C.E.O. – for fear that such actions could destabilize the bank.[35]

Rather than revising the rules to limit payouts to whistleblowers whose claims have been validated, the SEC should do better to hold individual executives accountable, consistent with the priorities laid out by its former Chair. [36] One way of doing this, proposed by a past SEC

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[29] *See* 83 Fed. Reg., at 34,715.
[30] Chair Mary Jo White, "The Importance of Independence," Oct. 3, 2013, available at: https://www.sec.gov/news/speech/spch100113mjw
[31] *See* Engstrom, *supra*, at 25. For example, some have suggested an increase in the percentage of bounty recovery as the magnitude of the underlying fraud increases. *See id.*, at 9.
[32] 83 Fed. Reg., at 34,735.
[33] Commissioner Michael S. Piwowar, "Remarks to the Securities Enforcement Forum 2014," Oct. 14, 2014, available at: https://www.sec.gov/news/speech/2014-spch101414msp.
[34] *See* Colchester, *supra*, note 3.
[35] *See id.*
[36] *See* White, "A New Model for SEC Enforcement," *supra*, note 1.

whistleblower, is to claw back the amount of any award – or a portion of the overall fine itself – from responsible executives.[37] For example, Chair White proposed a system such as a "performance bond" that could be made available for such a purpose.[38] In sum, the Commission should use its authority under sections 922 and 956 of the Dodd-Frank Act to hold executives personally responsible for paying whistleblower awards instead of the company's shareholders.

Thank you again for considering our views on this important rule.

Sincerely,

Anat R. Admati ([redacted])
Faculty Director
Corporations and Society Initiative

Graham S. Steele [redacted])
Director
Corporations and Society Initiative

Cc: Hon. Kara Stein
Hon. Hester Peirce
Hon. Robert Jackson
Hon. Elad Roisman

[37] *See* Ben-Artzi, *supra.*
[38] *See* White, "A New Model for SEC Enforcement," *supra*.

Subject: File Number S7-16-18
From: Liam Foster
Affiliation:

Sep. 18, 2018

Dear Sirs,
I refer to your proposed rule changes.

I have direct experience of the Whistleblower Program as I submitted a number of TCR's in the past.

There are a number of flaws in the program but from experience I believe these were deliberate with the purpose to deceive the public and deceive ordinary shareholders.

I can't be very specific as I am aware that comments will be published. I am an Accountant and I am aware that a former Employer was allowed to engage in significant Accounting Fraud. A number of employees were also working for the Intelligence Agencies and these employees were involved with a number of the programs disclosed by Edward Snowden.

The Whistleblower program includes wording to prevent retaliation from an Employer but it doesn't cover retaliation by a third party eg retaliation by the Intelligence Agencies. The Office of the Whistleblower have stated that they close cases in the "public interest" without making information public. This practice should cease as ordinary shareholders and employees are not being made aware of significant Accounting Fraud and are therefore not in a position to take class actions. The Office of the Whistleblower frequently used the term "Enhanced Communication" in their conversations with me. The definition of this term and why they use it should be included in the rule changes. The office of the Whistleblower should explain why they close cases without a proper investigation. They stated to me it was for various reasons including the fact that Accounting Fraud is not listed as a priority for the SEC; because of lack of resources etc. Sufficient , impartial and independent resources need to be given to the program. The SEC only grant awards after a "successful enforcement". Awards should be granted where cases are closed without enforcement because of the perceived "public interest". The SEC should allow for TCR submissions by e-mail. The SEC are allowing whistleblowers such as myself to sign Confidential Non Disclosure Agreements with former employers. I tried to share all my direct knowledge of Accounting Fraud with the SEC but the SEC were not interested in meeting with me and allowed me to destroy evidence of Accounting Fraud. The program should address the issue of confidentially agreements and take action against Employers & Third Parties that coerce employees and former employees into signing these type of agreements. The implications of the US Patriot Act and other rulings by the FISA courts should be disclosed in the proposed rule changes,
If you need any additional information or clarification you can get back

to me.

I would be grateful if you can confirm receipt of this e-mail.

Regards
Liam

Subject: File Number S7-16-18
From: David Schwartz
Affiliation:

Sep. 18, 2018

Dear Securities and Exchange Commission,

I write in regard to the proposed amendments to the rules governing the SEC whistleblower program (File Number S7-16-18).

The SEC proposed these changes with no input from the whistleblower community, yet adopted a position consistent with the long-standing and flimsy viewpoint advanced by the anti-whistleblower U. S. Chamber of Commerce ("Chamber").

It is my understanding that the National Whistleblower Center filed a Freedom of Information Act (FOIA) request seeking documents related to lobbying efforts by Wall Street firms and the Chamber of Commerce that gave rise to the SEC's proposed rules. The SEC determined that the NWC had a "compelling need" to receive these documents "on an expedited basis" and determined that there were 15,877 emails that could be responsive to NWC's request. These included 1,078 emails that referenced both "whistleblower" and "Chamber of Commerce" created between January 2, 2017 and June 29, 2018.

Despite its agreement to expedite the release of these documents, the SEC will not release them until after the comment period.

Therefore, I urge the SEC, in the interest of transparency, extend the public comment period for its proposed rules on the Whistleblower Program until 60 days after the documents requested by the NWC's FOIA request have been released.

If the comment period is not extended, I agree with the concerns raised in the NWC's letter filed with the Commission on September 17, 2018, linked here: https://bit.ly/2xqGUts.

Additionally, I am extremely concerned that the process to date of changing the rules on the Whistleblower Program reflects a strong bias against the Whistleblower Program, against transparency in the SEC and government. I support stronger protections and rules that promote and strengthen the Whistleblower Program.

Sincerely,

Dr. David Schwartz
1170 N Federal Hwy, Unit # 1103
Ft. Lauderdale, FL 33304
2023023978

WHISTLEBLOWER LAW COLLABORATIVE, LLC

20 Park Plaza, Suite 438 | Boston, MA 02116-4334

September 18, 2018

Submitted via e-mail to rule-comments@sec.gov

Mr. Jay Clayton
Chairman U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Comments of the National Whistleblower Center on the SEC's Proposed Rulemaking: Whistleblower Program Rules (File No. S7-16-18)

Dear Commissioners:

Thank you for the opportunity to comment on your proposed regulations on the Whistleblower Program, as articulated in Release No. 34-83557; File No. S7-16-18.

The undersigned are the Managing Members of the Whistleblower Law Collaborative LLC, a Boston-based law firm representing whistleblowers nationwide. We each have over fifteen years' experience successfully representing whistleblowers, and a comparable amount of experience earlier in our careers in the Department of Justice and the Maryland and Massachusetts U.S. Attorney's Office.

First, let us take this opportunity to congratulate and thank you and your colleagues for the initial success of the Commission's whistleblower program. It has made an impressive start and has done much to detect fraud patterns that would not otherwise have come to light. We hope the success of this program will only grow in the years ahead. As we have seen both here and in other areas of the law, incentivizing whistleblowers to report fraud is the single most effective fraud recovery tool in the American legal system. No matter how competent law enforcement investigators may be, without insiders coming forward with relevant information, investigators' hands are largely tied and fraudsters remain two steps ahead.

Second, we echo the comments of our colleagues at Taxpayers Against Fraud ("TAF") in their recent submission in connection with these same proposed rule changes. We will not elaborate further here beyond what TAF has already submitted.

There are, however, two specific areas that TAF did not address or where we offer additional specific comments. These are Request Numbers 5 and 6 (p. 28), with reference to the proposed changes to the definition of "monetary sanctions" under Rule 21F-4(e).

Request for Comment Number 5: "Should 'monetary sanctions' be defined as those obligations to pay money that are obtained 'as relief' for the violations that are charged in a Commission enforcement action or a related action? Why or why not?

> **Response**: We do not believe this change is necessary, as many of commenters, including TAF, have stated. In the event, however, that the Commission believes a change is necessary, we respectfully suggest that this change, as currently worded, is confusing, not consistent with the statutory definition, and may well be counter-productive.

This proposed change drops critical language from the statute and the current definition that could have unforeseen adverse effects on the eligibility of whistleblowers for an award under the program and will almost certainly lead to confusion and uncertainty. Specifically, the change from monies ***"ordered" to be paid*** to monies ***"required" to be paid*** may in some circumstances lower the number from which the whistleblower award is calculated, and would therefore discourage whistleblowers from taking the risk of coming forward.

We are not sure of the reason for the proposed change, but it appears to come from two sources. *First*, in cases where the monies are paid under a Deferred or Non Prosecution Agreement or Commission settlement agreement, there may not be an "order" and thus the Commission may view the word "require" to be helpful in enabling whistleblowers to recover an award in those situations. *See* discussion of the Proposed Regulations and Request for Comment Numbers 1-2 at pp. 9-10, 16-22 and fns. 32, 38, and 42, frequently using the words "require" or "required" and discussing "monetary sanctions"). *Second,* it appears from the paragraphs preceding Request for Comment Number 5 (specifically pages 26-28), that the Commission's has some concern about distinguishing between certain kinds of payments that are ordered and how this impacts the gross amount ordered to be repaid to defrauded investors, and the net amount actually paid to defrauded investors. If this is the intent behind the proposed rule change, then a whistleblower's award may be calculated only on the net amount actually paid.

Such a change could have a chilling effect on whistleblowers. Why? Because there are many cases where the costs of recovery and administration of claims of victims cannibalizes a substantial portion – or all – of the available funds to go back to defrauded investors. In a $100 million fraud case where a receiver successfully recovers $10 million but bills $7.5 million in professional expenses and fees, it would seem unduly harsh to calculate the award on $2.5 million.

While we appreciate the Commission's expressed interest in making sure that the Investor Protection Fund is not depleted, we believe this proposed change is unnecessary and would discourage potential whistleblowers. The Commission specifically set up the Whistleblower Program in a way that would ensure that whistleblower awards would not be taken or withheld from harmed investors but rather come from the separate Investor Protection Fund. This proposed change is inconsistent with the original intent of the Program, which was designed to encourage whistleblowers to identify and report fraud. We are concerned that this proposed change, would, in fact, punish whistleblowers by reducing their awards because of billings from attorneys, accountants, or other professionals. The award should be based on the full gross amount recovered, which is a truer measure of the tip's value and a more valid measure of the scope of the fraud uncovered.

As written, the proposed rule could act as a "poison pill" that would undercompensate the whistleblower and denigrate the magnitude of what was actually accomplished. A few harsh results under this scenario would chill future whistleblowers from coming forward.

Accordingly, if the Commission nevertheless decides to change the longstanding *statutory and regulatory* language of the current definition of "monetary sanctions," we propose that the wording be as follows to be consistent with the statutory (and current regulatory definition): the words "or ordered" be inserted after the word "required" in both sections 1(i) and (ii). In addition, we propose that the words "restitution, forfeiture, and prejudgment interest" be added to (1)(i) (compare Commission's discussion at fn. 42, p. 20 describing types of monetary relief in DPAs, NPAs, and administrative settlements).

Request for Comment Number 6: **Are there additional classes of monetary requirements or payment obligations (beyond those discussed above) that may be ordered in an action covered by the Commission's whistleblower award program that the Commission should specifically consider or address in clarifying the definition of "monetary sanctions"?**

> **Response:** Yes. As several other commenters have noted, there are situations where other proceedings are directly connected to the contribution of the whistleblower and where payments are ordered that nonetheless may be deemed to fall outside the proposed definition of "monetary sanctions." *See, e.g.*, Mr. Markopolous' comment submitted on September 14, 2018, in which he points out that proceedings in bankruptcy court may well be the result of a successful whistleblower tip and enforcement action, yet monies collected and distributed pursuant to bankruptcy proceedings would, under the proposed rule, fall outside of the definition and not be counted.

We believe there are other, similar, situations where sanctions or settlements result because of the Commission's work and/or the whistleblower's tip but would potentially be outside the proposed definition and therefore not eligible for an award. As in the bankruptcy scenario, as one example, these situations could result in a technical exclusion unduly harsh to the whistleblower.

If the Commission wants whistleblowers to come forward, as we believe it does and should, the definition of "monetary sanctions" should be sufficiently flexible (as we believe it currently is) to allow the Commission to consider sanctions obtained in any proceeding which results from the Commission's action (or a "related action"), where there is a strong nexus (e.g., a common nucleus of operating facts) between the matter in question and the whistleblower's tip and the ensuing investigation, and results in monetary relief for injured parties such as investors. In other words, the Commission's definition of "monetary sanction" should be sufficiently flexible to accurately reflect what the whistleblower's tip accomplished in the form of relief to defrauded investors. Otherwise, potential whistleblowers may not receive adequate numeric credit for the full value of their tips, and Congress' intent in enacting the whistleblower program will be undermined.

Thank you for your consideration.

Respectfully submitted,

/s/

Robert M. Thomas, Jr.
Suzanne E. Durrell
WHISTLEBLOWER LAW COLLABORATIVE LLC

TAF
TAXPAYERS AGAINST FRAUD

THE FALSE CLAIMS ACT LEGAL CENTER

September 18, 2018

Mr. Brent J. Fields
Secretary, United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number S7-16-18
Proposed Amendments to the SEC's Whistleblower Program Rules
Submitted by electronic mail to rule-comments@sec.gov

Dear Secretary Fields:

The Securities and Exchange Commission recently announced a proposal to amend certain aspects of the rules governing the SEC Whistleblower Program. As the leading non-profit organization dedicated to the promotion and protection of the effectiveness of federal whistleblower programs, Taxpayers Against Fraud (TAF) takes this opportunity to comment on the proposed rule changes.

We also commend to the Commission's attention the comments jointly submitted by the National Employment Lawyers Association, the Government Accountability Project and Public Citizen, which focus on the proposed rules implementing the anti-retaliation provision of 15 U.S.C., § 78u-6(h); the comments submitted by Robert M. Thomas, Jr. and Suzanne E. Durrell of the Whistleblower Law Collaborative; and the comments submitted by Harry Markopolos.

TAF is a non-profit organization whose mission is to maintain the integrity and advance the effectiveness of whistleblower reward and private enforcement provisions contained in federal and state laws, including the Securities Exchange Act, the Commodity Exchange Act, the federal and state False Claims Acts, and the Internal Revenue Code. These laws empower and encourage citizens and organizations in the private sector to report incidents of fraud, waste and abuse that improperly divert taxpayer funds from government agencies and programs.

TAF is uniquely situated to comment on the factors necessary to build and sustain a successful whistleblower program. Since 1986, TAF's members, in partnership with the Department of Justice, have represented whistleblowers in federal False Claims Act ("FCA") matters that have generated tens of billions of dollars in civil and criminal recoveries. The FCA's whistleblower provisions are recognized as DOJ's chief civil fraud enforcement tool and are a model for the states and the Internal Revenue Service, which have adopted similar whistleblower statutes. FCA whistleblower enforcement has also yielded serious efforts to improve internal compliance within the business community and is estimated to have saved tens of billions of dollars through deterrent effects.

There are at least five key factors to the FCA's success. First, the statute provides a guaranteed, non-discretionary award if the whistleblower's information leads to the government's recovery or judgment. Second, the statute provides federal court oversight over the whistleblower award determination. Third, the statute creates a structure for whistleblower collaboration in investigation and prosecution, bringing needed private resources to bear. Fourth, there are limited and discrete bases for denying an award under the statute, and it creates no broad disqualifications based on an individual's status. Fifth, the statute does not require that an individual exhaust internal reporting procedures before filing a whistleblower action.

Whistleblowers, therefore, have confidence that if they provide information that leads to an FCA judgment or settlement, they will almost certainly receive a guaranteed award. They are assured that the award can be reviewed by a court, if the Justice Department does not adequately value their contribution. This certainty has encouraged more than 10,000 whistleblowers to report allegations of fraud to the Department of Justice through the False Claims Act, and the payoff to taxpayers has been huge. Altogether, the US Treasury and state governments have recovered well over $60 billion in civil settlements and criminal fines as a result of *qui tam* cases since Congress strengthened the whistleblower provisions of the FCA in 1986.

Introduction

At the outset, we would like to acknowledge the thoughtfulness of the Commission's staff in drafting the comments and encouraging members of the public to weigh in. In particular, we greatly appreciate the SEC's clear recognition that the Whistleblower Program has been an extraordinary success and has contributed significantly to the Enforcement Division's fight against fraud and other wrongdoing. In our view, any proposed changes to these rules must be viewed through the prism of the general acknowledgment of the program's successful development over the past decade.

We wholeheartedly support the proposed changes that build on the program's successes and address areas in demonstrated need of improvement. These include enhanced efficiency of the intake and award-making processes, which we believe will augment the efficiency and credibility of the program. We also embrace the proposed rules that provide clear answers to questions concerning eligibility to participate in the program, consistent with Congress's intent to encourage concerned individuals to bring meritorious cases to the attention of the Commission's enforcement personnel.

At the same time, we are concerned that the proposed limits to award payouts threaten to undermine this same central element of Congress's clear intent when it enacted the Whistleblower Program in 2010: the creation of incentives for a broad pool of potential whistleblowers to come forward and report wrongdoing. Accordingly, we oppose those proposed rules that would inject unnecessary and unsupportable ambiguity into the operation of the Whistleblower Program. These changes would create uncertainty and drive potential whistleblowers away, causing many who might otherwise have come forward with meritorious cases to decline to participate in the program.

The SEC Whistleblower Program is a revolutionary investor protection initiative that incentivizes individuals to voluntarily provide the Commission with original information about violations of the federal securities laws. The Program was crafted in response to a series of financial frauds that caught the public and the Commission unawares and led to massive financial devastation across global markets and for individual investors. By any objective measure, the Program has been a resounding success, in large part because of its robust incentive structure. Since 2012, the first full year of data on the program, tips have increased more than 50%. Mary Jo White, the 31st Chair of the SEC, applauded the growth in quantity and quality of whistleblower submissions in her 2015 speech "The SEC as the Whistleblower's Advocate." In her remarks, she noted that

> . . . the regime does, in fact, create powerful incentives to come to the Commission with real evidence of wrongdoing that harms investors and it meaningfully contributes to the efficiency and effectiveness of our Enforcement program. And whether the whistleblowers are reluctant or eager, motivated by a desire to do what's right or by the prospect of financial reward, or both, they have, and will continue to, come forward.

The Whistleblower Program offers attractive incentives and powerful protections to the public, thereby encouraging individuals to take the enormous risks inherent in reporting significant financial fraud schemes. The SEC deliberately set no ceiling on the amount of an award, focusing on the nature and extent of the substance and assistance offered by

the whistleblower to prevent or stop ongoing wrongdoing rather than the motives of the witness. Consider how large-scale frauds that extended over many years, such as those involving Siemens and Enron, might have been stopped sooner if a whistleblower had been emboldened to come forward. By contrast, the resolution of the Merrill Lynch case in 2016 demonstrates that whistleblowers who are able to rely upon the protections and incentives of the Program can help detect and punish misconduct that puts billions of dollars of customer funds at risk and potentially return millions of dollars to wronged investors.

Comments

Request for Comment #1, p. 22
Deferred Prosecution Agreements (DPAs) and Non-Prosecution Agreements (NPAs)

We support this proposed amendment. Clarity is critical for participants in the Whistleblower Program, and this proposed change will eliminate uncertainty as to an important consideration for potential whistleblowers (*i.e.*, that they do not run the risk of losing an award depending on the procedural tool the SEC or another regulator uses to impose sanctions on the wrongdoer). This is consistent with Congress's intent to incentivize and reward whistleblowers who assist the government in preventing potential violations or stopping ongoing misconduct, and is also consistent with current SEC practice. We agree with the staff that it would be contrary to congressional intent to deprive a whistleblower of a payout based on the nature of the enforcement proceeding a regulator decided to bring.

Requests for Comment ## 2-3, pp. 22-23
Alternate Proceedings

The intent of Congress was to incentivize and reward Whistleblowers who assist the SEC and related regulators to bring successful actions, regardless of how the actions and related monetary sanctions are documented. The rules should make clear that if the information assists the SEC and related regulators in obtaining monetary sanctions, the whistleblower will be eligible for an award, regardless of the mechanism by which the sanctions were levied.

Monetary sanctions exceeding $1 million that are ordered and paid in connection with any type of resolution based on whistleblower information that "led to" or significantly contributed to that resolution should be included in the proceeds subject to such an award. For example, this should include sanctions exceeding $1 million imposed in connection with an Office of Compliance Inspections and Investigations (OCIE) exam

based on whistleblower information that led to or significantly contributed to the exam, regardless of whether the matter was referred to the Division of Enforcement.

We are concerned about a lack of transparency in the proposed approach, which may have negative consequences on an otherwise deserving whistleblower. The rules should include a more clearly defined procedure for the Office of the Whistleblower to notify the public and potential whistleblowers that monetary sanctions exceeding $1 million have been levied, akin to the Notice of Covered Action process currently followed by the Office. The notice process should be designed to facilitate the provision of awards to meritorious whistleblowers. It is neither just nor efficient to start the 90-day clock for the application process with the issuance of a press release or (even worse) the execution of an agreement by the final signatory, occurrences of which a whistleblower is unlikely to be aware.

Request for Comment ## 5 and 6, p. 28

"Should 'monetary sanctions' be defined as those obligations to pay money that are obtained 'as relief' for the violations that are charged in a Commission enforcement action or a related action?"

Are there additional classes of monetary requirements or payment obligations (beyond those discussed above) that may be ordered in an action covered by the Commission's whistleblower award program that the Commission should specifically consider or address in clarifying the definition of "monetary sanctions"?

Far from clarifying the process for determining the appropriate circumstances under which whistleblowers qualify for awards, this proposal inserts unnecessary ambiguity and does not appear to be justified by any actual problem. In our view, and with the single exception noted immediately below, there is no reason to alter a clear definition of monetary sanctions or to eliminate any category of collected funds from the pool.

We do, however, see a need for clarification of one aspect of "monetary sanctions." In providing relevant examples, the proposed rule unambiguously reflects the Commission's understanding that "monetary sanctions" includes funds obtained by an SEC-requested receiver. In our view, the Commission should also make clear that funds obtained by a SEC-requested trustee in bankruptcy will receive the same treatment. The primary purpose of the two proceedings is essentially the same: to place control of the company in the hands of a disinterested party in order to properly run, reorganize or liquidate the business and protect investors and creditors. Indeed, while there are procedural differences, "receiverships are the historical progenitor of the modern Chapter 11, and they share many functional analogs. The 1978 Bankruptcy Code incorporated many aspects of the equity receivership and authorized the appointment of a trustee with

powers similar to that of a receiver." Kevin Moore, *The SEC's Role in American Corporate Reorganization: A Historical Analysis*, 2011 Ann. Surv. of Bankr. Law 6 (2011).

The Commission itself has stated in the proposed rule that "our view [is] that Congress did not intend for meritorious whistleblowers to be denied awards simply because of the procedural vehicle that the Commission (or the other authority) has selected to pursue an enforcement matter." Accordingly, we see every reason for the Commission to make explicit that whistleblowers are entitled to an award based on recoveries by an SEC-requested bankruptcy trustee just as they would be entitled to an award based on recoveries by an SEC-requested receiver.

Requests for Comment ## 7-9, pp. 39-40

Proposal to bar a whistleblower's recovery from the SEC where there is a potential related action that is arguably more closely related to another whistleblower program

We oppose this proposal because it injects ambiguity into what should be (and what Congress intended to be) a straightforward process to reward eligible whistleblowers whose information leads or significantly contributes to a successful SEC action in which sanctions exceed $1 million. As the SEC release acknowledges, "the Commission never paid an award on a matter where a second whistleblower program also potentially applied to the same matter," so there is no need for the proposed change.

Consider the likely disincentives this change would create and the adverse outcomes that would result. A potential whistleblower with significant information about a federal securities law violation might well decide not to report to the SEC because s/he is forced to guess which payment program is more closely associated with the wrongdoing. The risk that the Commission might declare after the fact that a state statutory incentive award program is more directly applicable to the allegations raised by the whistleblower would create a powerful disincentive to file with the SEC.

We believe that it is in no way inconsistent with congressional intent to reward a whistleblower under multiple programs in the unique circumstance where s/he possesses information that a company has cheated the IRS out of rightfully owed taxes while at the same time withholding material information from its investors about its actual profits. What if a whistleblower knew that an insider sold shares ahead of the announcement of a restatement of profits due to the payment of back taxes and penalties? Why would the SEC discourage the reporting of such violations by designating them as solely IRS matters?

The efficiency of the SEC Whistleblower Program drives whistleblowers and their counsel to advocate reporting information to the Commission either concurrently or to the exclusion of other potentially affected agencies whose award programs they consider less effective, much to the benefit of the SEC. The Commission risks the loss of this benefit by telling whistleblowers that even if they come to the SEC and help bring a successful action, the Commission may later decide to force them to seek an award elsewhere. The release includes no legal or factual justification for such a fundamental change in the program.

Requests for Comment ## 12-14, pp. 57-58
Proposal to allow the Commission to limit awards in large cases

As the SEC contemplates whether to shoehorn a "reasonableness" standard into the rules governing its consideration of the appropriate size of an award to a whistleblower who helped the Commission bring a substantial successful action, it is important to note that the size of whistleblower awards has no impact on the SEC's budget or individual taxpayers. To the contrary, awards come from an Investor Protection Fund that is funded solely by monetary sanctions from enforcement actions. The Commission's release refers to the proposed new guidelines as a means to protect the Investor Protection Fund, but the proposal contravenes the statutory language specifically stating that the balance in the fund must not be taken into account when making whistleblower award amount determinations. The inclusion of the phrase "the potential impact the adjustments might have on the Investor Protection Fund" is specifically at odds with the statute.

Payments to whistleblowers, which have totaled approximately $265 million to date, have been the direct result of the imposition of $1.4 billion in sanctions recovered on the basis of the information they provided. The proposal to limit awards is suggested as a mechanism "appropriate to achieve the goals and interests of the program," but these goals and interests are being achieved as a result of the incentive structure currently in place. With the exception of just three awards, payments to whistleblowers have been well below the $30 million threshold set forth in the proposal. Indeed, more than 60% of all awards have been in amounts smaller than $2 million.

In addition, the Commission must take into account the relationship between the magnitude of the awards and a key element of the Whistleblower Program's success: the public's awareness of the program specifically and its engagement with the agency generally. For the two week period from March 19, 2018, when the SEC announced its record-setting $83 million awards in the Merrill Lynch case, traffic to www.sec.gov surged by an estimated 300%, and Google searches for the term "SEC whistleblower" tripled.

Additionally, the proposed rule alters the statutory requirement that the Commission make an award determination of between 10% and 30% of sanctions ordered based upon specific factors. Under the proposal, the Commission would likely apply the mandatory statutory 10-30% consideration only to whistleblowers whose actions resulted in sanctions from $1 million to $99,999,999. Actions resulting in $100 million in sanctions would receive a guaranteed 30% because the proposed rule specifies that the award cannot be less than $30 million in these circumstances. Cases resulting in sanctions from $100 million to $300 million would receive a fixed dollar amount of $30 million, and whistleblowers providing information for actions with sanctions exceeding $300 million (assuming a $30 million "floor") would inevitably be paid a fixed minimum percentage of 10%.

There is nothing in the statute that indicates that the Commission may consider such a tiered system of payout considerations or variations between percentages and fixed amounts. Likewise, there is no statutory language that suggests that the amount of sanctions collected in connection with a whistleblower-eligible case should be considered when setting the appropriate award percentage. The statute specifies that the Commission has discretion in setting the award amount in the 10%-30% range, but it does not anticipate that the SEC will adopt a rule that removes Commission discretion in larger cases by setting a fixed dollar amount for certain matters, a fixed payout of $30 million for cases with sanctions from $100 million to $300 million and a fixed percentage of 10% in cases with sanctions exceeding $300 million. Yet this tiered structure – eliminating Commission discretion in all cases with sanctions exceeding $100 million – is exactly what would result from the proposed rule.

It is counterintuitive for the SEC to propose altering its incentive structure so that only "super-whistleblowers" (those with information about massive frauds resulting in the largest sanctions imposed) are placed in a category for the Commission to consider a downward adjustment to an award percentage, based on a nebulous standard of what is reasonably necessary to award those super-whistleblowers. On the contrary, the Commission should provide greater incentive percentages to those who bring forward information concerning the most serious frauds. The SEC's own data show that this proposed radical alteration of whistleblower payout considerations is a solution in search of a problem. Only five of 58 whistleblowers who have received awards to date collected in excess of $15 million, and there is no justification for such a radical change and no data indicating the need to drive down "excessive" payouts. The introduction of an additional layer of uncertainty – that an award may be reduced based upon what the Commission considers "reasonably necessary to achieve the programs goals" – will inevitably reduce the pool of individuals willing to take the extraordinary risks inherent in reporting the kinds of massive frauds that the program was designed to ferret out.

Request for Comment # 19, p. 60
Guidance making a delay beyond 180 days "unreasonable"

We support an improved level of clarity on this issue, as certainty is valuable in incentivizing potential whistleblowers to come forward. We support a "bright line" test of 180 days going in both directions, with delays of less than 180 days presumed reasonable and delays exceeding 180 days presumed unreasonable. Under both circumstances, the Commission could and should have discretion to determine otherwise if the facts and circumstances warrant doing so.

Requests for Comment ## 20-25, pp. 72-73
Reporting and Retaliation Provisions

We believe strongly that the imposition of an "in writing" requirement for a whistleblower to be entitled to anti-retaliation protections is too restrictive. A whistleblower who reports information concerning a potential securities law violation should be protected from retaliation in all circumstances. Situations may arise in which a whistleblower has an urgent need to make an oral report of wrongdoing, particularly if s/he fears retaliation and is unwilling to communicate in writing. An individual who declines to submit information in writing may nevertheless provide the SEC with substantial assistance, such as submitting to a voluntary interview or providing trial testimony, and should benefit from the program's protection from retaliation under such circumstances.

The SEC should also be expansive in its interpretation of what constitutes retaliation, to include "downstream" conduct through which a former employer prevents a whistleblower from securing future employment or causes her/him to be blackballed. The rules should also limit language that can be read as incentivizing internal reporting to avoid causing potential whistleblowers to lose protection from retaliation by failing to report to the Commission concurrently with internal reports (or earlier). In addition, because the Supreme Court has determined that a whistleblower must report to the SEC to avail her/himself of anti-retaliation protections, the Commission should no longer consider internal reporting – or the failure to report internally – as a factor in determining the appropriate whistleblower award percentage.

Requests for Comment ## 26, 30, 31, pp. 76 and 85
Updating Forms

We support the SEC's proposal to allow for flexibility in making adjustments to the online form and suggest that there should be a 30-day grace period for anyone who

submitted under the "old form" after the Commission issues a new one. We also urge the SEC to consider allowing the submission of forms to the Office of the Whistleblower by electronic mail in addition to current permissible methods (the online form and facsimile).

Requests for Comment ## 27-29, p. 80
Barring frivolous claimants

We strongly support the Commission's careful exercise of the authority to ban frivolous claimants from the program for life. The Commission has imposed lifetime bans from the program on two individuals, but was required to expend an inordinate amount of time and resources in order to do so. The credibility and efficiency of the program are enhanced when the resources of the Office of the Whistleblower can be focused on providing timely Preliminary Determinations and Final Orders on good faith, non-frivolous claims. Clearing out the few repeat offenders who create nuisance work for program staff and the Commission is a well-founded idea whose time has come. In keeping with the principle that every claimant is given at least a second chance, the number of frivolous claims justifying exclusion should be reduced to two, and we see no benefit in extending a third chance to a claimant who clearly is acting in bad faith. At the same time, we support the idea of providing a one-time opportunity to reconsider and withdraw frivolous applications as a means of conserving resources.

Requests for Comment ## 30-31, p. 85
Requiring the submission of TCR forms no later than 30 days after initially contacting SEC

We have concerns that this proposal conflicts with other Whistleblower Program rules and may usurp Congressional intent by unilaterally and arbitrarily limiting the types of information for which an individual can claim whistleblower credit. Whistleblowers can receive credit under the Rules for providing the Commission with original information and analysis even if the Commission previously received that information ***entirely*** from another source, such as Congress or the media. *See* § 240.21F-4(b)(2)(ii)-(iii). The whistleblower need only demonstrate later that s/he is the original source of the information the Commission obtained from an alternative source. *Id.* Congress thus contemplated that the Commission would make use of some whistleblower information and analysis well before the whistleblower even knows s/he has assisted an enforcement action. Under the proposed rule, however, individuals in such situations would not be eligible for an award because their TCR filing would necessarily be made long after the Commission received and used their work.

This is not a hypothetical concern. Our members have reported circumstances where whistleblowers had no idea their work assisted a Commission enforcement action until

some aspect of the matter became public, *e.g.*, through the disclosure of a subpoena or the filing of a complaint. Indeed, we understand that in more than one enforcement action the Commission indicated that the underlying investigation originated due to certain public disclosures when, in fact, the original source of that publicly available information was a whistleblower. Individuals who find themselves in such situations should have a reasonable window of time thereafter to file a TCR to formalize the assistance that their original information and analysis has already provided to the Commission.

There are also circumstances in which whistleblowers have brought information to the Commission's attention but are unaware that their information may qualify for a whistleblower award. As strange as that may sound to the Commission, the reality is that while the Whistleblower Program has grown in stature and become more visible over the years, there are still many potential whistleblowers who are unaware of its benefits.

We are not convinced that a "deficiency letter," which we understand to be discretionary, would allay whistleblower concerns. The unfortunate reality is that the letters may not even reach whistleblowers in time to permit them to seek representation or advice and meet the submission deadline. Moreover, deficiency letters will have no impact on those whose original information and analysis, unbeknownst to them, was used by the Commission to initiate an enforcement action. Accordingly, to the extent that the Commission enacts any time restriction on the filing of a TCR, we propose in the alternative that the deadline be tethered to the latest date on which the individual could reasonably be aware that (1) her/his original source information assisted the Commission in opening, advancing or re-opening an enforcement action; and (2) s/he is eligible for a whistleblower award.

Requests for Comment ## 32-33, pp. 87-88

Limiting the CRS record to timely submissions and/or submissions made in response to requests by the Office of the Whistleblower

We do not support the proposal to establish the WB-APP deadline as the date after which the Office of the Whistleblower will no longer consider information received by a whistleblower relevant to her/his award application. Our understanding is that many whistleblowers wait three years or more to receive a preliminary determination on their award applications, and a great deal can happen in that span of time that will have significant impact on the Commission's calculus. A primary example is the domino effect that a whistleblower's case against a single company can have on other companies if the fraud turns out to be industry-wide – a plus factor that the Commission must consider in reaching its preliminary determination. What happens if those dominos do

not begin to fall until after a whistleblower's deadline for filing a WB-APP? Among the many other relevant developments that could occur after the filing of a WB-APP are changes in law, additional hardships suffered by the whistleblower or the collection of additional funds on behalf of affected investors, such as monies returned to investors in related bankruptcy proceedings. A whistleblower must be permitted to notify the Commission that the information exists, since there is simply no other procedural mechanism available to assure that such information will become part of the appellate record.

We understand and appreciate the Commission's attempt through this proposed rule change to increase efficiency in the award determination process. In our view, however, a more reasonable approach that sufficiently protects whistleblower interests would be to limit the size and scope of any supplemental submission related to a whistleblower application to a reasonably short presentation of: (1) information requested by the Commission; and/or (2) information that could not reasonably have been known to the whistleblower at the WB-APP deadline. Such a change would strike the appropriate balance between increased efficiency and whistleblower advocacy.

Request for Comment # 35, p. 95
Summary disposition process

We support this proposed enhancement to the program, and agree that the proposed criteria for the exercise of summary disposition power by the Office of the Whistleblower are appropriate (no evidence that a TCR was filed, no evidence that staff bringing the action ever saw the TCR, etc.). We appreciate the proposal to ensure the provision of due process by allowing for an accelerated appeal process following a summary disposition notice, and we believe this approach will promote efficiency while helping to ensure that meritorious cases do not fall through the cracks.

Requests for Comment numbered 30 and 31, pp. 109-110
Proposed guidance on "Independent Analysis"

Absent some evidence of a problem in need of fixing, we do not support affirmative changes to a program that is working well. The proposing release provides no evidence of occasions where the current definition of and approach to "independent analysis" has caused any identifiable problems. Indeed, the release introduces the issue with an extensive discussion of the efforts of Harry Markopolos, the model outsider who blew the whistle on Bernie Madoff's historic Ponzi scheme years before the Office of the Whistleblower was established. Markopolos provided the SEC with extensive original analysis of the Madoff scheme more than eight years before Madoff's children turned

their father in to the authorities, and he clearly would have qualified for a whistleblower award had the program existed when he came forward.

There is no question that a person who simply submits public information like a news article is not providing original analysis, while a submission containing detailed analysis and reflecting significant expertise and a great deal of hard work (a "Markopolos submission") clearly meets the standard. The difficulty lies between these two extremes, and the proposed rule does not provide helpful interpretive guidance for cases in this middle ground. The proposed "fix" injects uncertainty into a process that needs to be as unambiguous as possible to maximize the pool of potential whistleblowers. We do not support this proposed guidance and strongly urge that it not be included in the final rules.

The proposal to limit awards based on "original analysis" to submissions that provide insight "beyond what would be reasonably apparent to the Commission from publicly available information" is a step backward if the intention is to provide additional clarity. It raises many questions, including the following:

- Who determines what would be "reasonably apparent to the Commission?"

- At what point in time must that determination be made? As of the time of the submission or after the fact? With the benefit of hindsight virtually anything can be classified as "reasonably apparent," and the assessment of an applicant's eligibility for an award based on independent analysis will be made many years after the original submission was made. If the staff who worked on the investigation have moved on and are not available, who can state what was "reasonably apparent" while the investigative work was going on?

- Can the Commission reject an application on the "reasonably apparent" standard even if no one at the Commission had opened an investigation until the whistleblower made her/his submission? Shouldn't the opening of an investigation based on the submission be dispositive of the question of whether the alleged conduct was "reasonably apparent"?

- When a whistleblower's award petition is being considered, years after the original submission and following the completion of a complex investigation, isn't it counterproductive and unfair to investigative staff to ask them to acknowledge that facts now evidently true were not "reasonably apparent" at the time of the submission?

Whistleblowers, including those who are not insiders, assume significant risk when they decide to submit information to the SEC, and this proposed guidance sends them precisely the wrong message. The Commission would be telling them that they are welcome to provide information based on publicly available documentation, but after a long and complex investigation they may not be rewarded and will be at the mercy of a nebulous assessment conducted by unknown persons about what might have been "reasonably apparent" years earlier. The proposed guidance would disincentivize Markopolos-type whistleblowers without resolving any identified problem and should not be adopted.

Request for Comment IV, pp. 110-111
Discretionary Award process

The membership of the TAF Education Fund includes practitioners with significant experience representing clients who have made submissions to the Office of the Whistleblower. Some of their whistleblower clients have received Final Award orders in cases where no funds were collected; others have provided significant assistance in matters where the imposed sanctions did not meet the $1 million threshold for an award. We appreciate the proposed idea of "spot" awards in such instances and the helpful intention behind it, but we're not sure there is statutory support for such discretionary payments. We are also concerned that the availability of spot awards might produce a high volume of requests for such awards and require the expenditure of staff time and resources not justified by the proposed benefit.

Conclusion

We thank the Commission for this opportunity to comment on its proposed rulemaking. The success of the Whistleblower Program over the past decade clearly demonstrates the benefits to investors and the public at large when major frauds are detected, deterred and remedied as early as possible, and the Commission is to be commended for its efforts in safeguarding the public trust. We respectfully submit that this trust was most dangerously eroded in the first decade of this century when federal law enforcement did not have early, actionable intelligence to assist it in uncovering and stopping misconduct. The result was that businesses were shuttered, retirement accounts disappeared and Americans lost their homes in shocking numbers. We cannot afford to miss another epidemic of fraud on such a massive scale. The SEC's Whistleblower Program is developing into one of the most successful public-private partnerships in American history, and the Commission has a great deal to be proud of in this regard.

Taxpayers Against Fraud commends your efforts to strengthen the program, and strongly urges you to avoid making rule changes that would weaken it.

Sincerely yours,

Robert Patten
President and Chief Executive Officer
Taxpayers Against Fraud and the TAF Education Fund

Courtesy copies (via First Class Mail) to:

Secretary Brent J. Fields
Chairman Jay Clayton
Commissioner Kara M. Stein
Commissioner Robert J. Jackson, Jr.
Commissioner Hester M. Peirce
Commissioner Elad L. Roisman
Ms. Jane Norberg, Chief, SEC Office of the Whistleblower

Subject: File Number S7-16-18
From: Anonymous
Affiliation:

Sep. 18, 2018

To the SEC:

As a member of the investing public, I would like to reemphasize the entirety of the SEC Whistleblower rule comments (File number S7-16-18) given in Jane Turner's, September 17, 2018, letter to the SEC. Please do not end the rule comment period while the lobbying of the Chamber of Commerce remains concealed from the public.

It also should be noted that the mortgage markets, and the world's 2 largest financial markets, Libor and Foreign Exchange, have each generated financial penalties of several billion dollars within the last 6 years. Any whistleblower awards in the markets just listed would have easily eclipsed $100 million dollars. But there have been no awards in those amounts. The SEC has not introduced policies liberal enough to induce whistleblowers to come forward in the largest financial markets. The SEC should introduce larger whistleblower awards, and greater whistleblower protections, until these largest financial markets also receive the benefits of increased transparency, and therefore better serve the public.

In addition, I do not believe the SEC should cite the interests of the public in attempting to "cap" the largest whistleblower awards. A whistleblower award of, say, $500 million dollars would generate worldwide interest. Within 10 years of such an award, we'd have vastly improved capital markets, and just as importantly, vastly improved public confidence in our capital markets. In 10 years, under the foregoing circumstances, the suggestion of an enormous financial fraud might be met with skepticism, and perhaps the comment "No fraud that large could happen. Someone would have turned it in to the SEC for the whistleblower award". I believe that's the world we should aspire to in the future.

Anonymous

AFR Americans for Financial Reform

Education Fund

September 18, 2018
Secretary
Securities and Exchange Commission
100 F ST NE
Washington, DC 20549

File Number S7-16-18

RE: Amendments to the Commission's Whistleblower Program Rules.

To Whom It May Concern:

Americans for Financial Reform Education Fund (AFREF) appreciates the opportunity to comment on the above referenced amendments to the U.S. Securities and Exchange Commission (the "SEC" or "Commission") Whistleblower Program (the "Program") rules. AFREF is a coalition of more than 200 national, state, and local groups who have come together to advocate for reform of the financial industry. Members of the AFR Education Fund include consumer, civil rights, investor, retiree, community, labor, faith based, and business groups.[1]

AFREF supports the SEC Whistleblower Program for its widely recognized success as a highly effective post crisis enforcement mechanism.[2] Since the Office of the Whistleblower was established, the valuable information and cooperation whistleblowers offer have become critical tools for the SEC to detect fraud, protect investors, and maintain fair, orderly markets that facilitate capital formation. Through the end of 2017, whistleblowers have provided over 22,000 tips that have led the Commission to obtain more than $1.4 billion in financial penalties from wrongdoers.[3] Harmed investors have been or are scheduled to be compensated from those funds. The Commission has also ordered over $266 million in awards to 55 whistleblowers for the information and cooperation they provided.[4]

We appreciate the Commission's efforts to improve the Program and we support some of the proposed amendments that could enhance the ongoing success of the Program by incentivizing more whistleblowers to come forward. Specifically, we support the proposed amendment authorizing upward adjustments of whistleblower awards for certain potential awards that would yield a payout of less than $2 million. We also strongly support allowing payment awards to whistleblowers based on deferred prosecution and non-prosecution agreements (DPAs and

[1] The Americans for Financial Reform Education Fund is an unprecedented coalition of more than 200 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, faith-based and business groups. A list of coalition members is available at: http://ourfinancialsecurity.org/about/our-coalition/

[2] Notably, all SEC Commissioners lauded the Program as crucial for SEC enforcement efforts on their respective statements regarding the Proposed Amendments to the Program rules. The statements are available at: https://bit.ly/2OCBqDH.

[3] See Proposed Rule at 34703. Available at: https://bit.ly/2xmwVGJ.

[4] Ibid.

NPAs, respectively) entered by the U.S. Department of Justice ("DOJ") or a state attorney general in a criminal case, or a settlement agreement with the SEC outside of a judicial or administrative action based on the eligible whistleblower's original information. Given the large number of instances in which DPAs and NPAs are used even in cases where clear wrongdoing takes place, we consider it crucial that whistleblowers be rewarded in such cases.

However, while we generally support the proposed amendments mentioned above, we are concerned that a number of other proposed changes would initially undermine the Whistleblower Program and ultimately weaken the SEC ability to discover fraud, protect investors, and facilitate stable markets. This is especially true for large-award cases that may be most crucial to the public interest. We address those concerns below.

Below we express our support or concerns with specific issues raised by questions in the proposal.

Question 1. Should DPAs and NPAs entered by DOJ or a state attorney in a criminal case be treated as administrative actions, and the monetary payments obtained through these DPAs and NPAs treated as monetary sanctions, for purposes of making whistleblower awards? Should the same result follow for settlement agreements entered by the Commission to resolve securities law violations? Why or why not?

We strongly support amending the definition of the term "administrative action" to expressly include monetary payments from DPAs and NPAs. This change would provide greater incentives for whistleblowers to come forward. The way in which prosecutors and regulators choose to pursue a case is out of the hands of the whistleblower. Headline-grabbing settlements of eye-popping dollar amounts give prosecutors their own incentives to enter into these agreements, and risk averse prosecutors might choose the safety of settling instead of battling to prove their case in court.[5] In such cases, under current rules, the whistleblower could be deemed ineligible for a monetary award. This leaves would-be whistleblowers with a high degree of uncertainty about a potential reward payment—they would not receive an award if the prosecutors fail to win monetary sanctions over $1 million, nor if the prosecutors choose to take the easy win.

Removing such uncertainty would be beneficial to the Program, especially given the increasing frequency into which federal and state prosecutors are entering DPAs and NPAs with corporations. A recent study found that out of 500 of these settlements dating from 1992 through September 2018, almost 80 percent have been entered in the last ten years.[6] We believe that using DPAs and NPAs settlements as a default enforcement action is corrosive for regulatory institutions, and instead many cases should be pursued to the full extent of the law—after all no top banker from the major financial firms were prosecuted for their role in the 2008 financial

[5] See: Jesse Eisinger, *The Chickenshit Club: Why The Justice Department Fails To Prosecute Executives,* NY: Simon and Schuster, 2017.
[6] Brandon L. Garret and Jon Ashley, Corporate Prosecution Registry, University of Virginia School of Law and Duke University School of Law, http://lib.law.virginia.edu/Garrett/corporate-prosecution-registry/about.html

crisis. However, a meritorious whistleblower should clearly be rewarded when a DPA or NPA brings resolution to a DOJ or state attorney general investigation, as well as when the SEC resolves an enforcement action outside of the context of judicial or administrative proceedings.

Question 7. Is the proposed "direct or relevant" standard appropriate for assessing whether an action should qualify as a related action? Are there alternative formulations that should be adopted instead?

Under current rules, any whistleblower who obtains a payment award based on a Commission enforcement action may still be eligible for an additional award based on monetary sanctions collected in a "related action" by other authorities, based on the same original information provided by the whistleblower to the Commission and that led to the successful Commission enforcement action.[7] We object to the proposed amendments to Exchange Act Rule 21F-3(b)(1) that seek to modify the definition of the term "related action" to make it impossible for whistleblowers to collect both SEC awards and potential additional awards from separate monetary programs established at Federal or state level or by a self-regulatory organization.

The proposed rule states that "when Congress established the Commission's whistleblower program, it set a firm ceiling on the aximum amount that should be awarded for any particular action—'*not more* [Proposed Rule emphasis] than 30 percent, in total, of what has been collected of the monetary sanctions imposed' in the action."[8] The Commission uses that language to argue that it was Congress' intention to place a cross-agency, cross-whistleblower-program award ceiling of 30 percent of any monetary action over $1 million. Respectfully, we disagree with the Commission's read of Congress's intent, as the language regarding awards in the Securities Exchange Act is clearly referring to what *the Commission* "*shall pay*" and shall pay "from the [SEC Investor Protection] Fund,"[9] and is in no way addressing nor placing any ceiling on the maximum amount a whistleblower *could receive* from different, separate whistleblower programs by other Federal, state agencies or self-regulatory organizations.

The proposed amendments also provide that "even if the Commission determines to deem the action a related action, the Commission will not make an award to [the whistleblower] for the related action if you have already been granted an award by the authority responsible for administering the other whistleblower award program." The Commission provides no logic for this course of action, and does not contemplate exemptions for cases where multiple awards would not even reach the supposed ceiling mentioned above. For example, the IRS awards to meritorious whistleblowers have averaged only 18.4 percent of the amounts collected for last three fiscal years—considerably under the 30 percent cap authorized by Congress.[10]

[7] Proposed Rule at 34709.
[8] Proposed Rule at 34710.
[9] 15 U.S.C. 78u–6(b), Securities and whistleblower incentives and protection.
[10] See: IRS Whistleblower Program, Fiscal Year 2017, Annual Report to Congress, available at: https://bit.ly/2mvBzNd.

This amendment could lead to greatly increasing uncertainty and delay for whistleblowers concerning the reward they are eligible for from the Commission, or indeed, whether they will receive any reward at all. It goes against the stated goals in the proposed rule of "further [enhancing] the incentives for an individual to come forward"[11] and "[increasing] the speed and efficiency of the award determination process … as well as the payment of awards."[12] Moreover, even "if the Commission makes an award before an award determination is finalized by the authority responsible for administering the other award scheme, the Commission would condition its award on the meritorious whistleblower making a prompt, irrevocable waiver of any claim to an award from the other award scheme."[13] Again, the Commission provides no rationale why whistleblowers could not, at least, wait for the other program's award determination and then choose which award they prefer.

These proposed amendments to the Exchange Act Rule 21F-3(b)(1) defining "related action" would dramatically increase the uncertainty potential whistleblowers face in advance of a life-changing decision to blow the whistle on—by definition—some of the most complex, widespread, multi-level illegal activities that would require the jurisdiction of several agencies and authorities. All while the individuals are risking their careers, reputations, and sometimes even their own and their families' safety.

Q 8. Instead of adopting the proposed rule, which would authorize the Commission on a case-by-case basis to consider whether an action should qualify as a related action, should the Commission adopt a categorical exclusion from the definition of related action for any judicial or administrative action that may have an alternative applicable award scheme?

Definitely no, that would be inappropriate for the reasons explained above. The SEC should not use the SEC whistleblower program as a club to require whistleblowers to waive other applicable awards in order to receive the Commission's.

Question 10. With respect to proposed paragraph (c), is it appropriate to consider increasing smaller awards and would doing so help to further incentivize insiders and others to come forward with tips? If so, is the $2 million ceiling for invoking the rule appropriate or is it either too high or too low? Please explain.

We would support this change. According to the frequency distribution of whistleblower awards, from 2012 through April 2018, 62 percent of individuals who came forward voluntarily with material information about fraudulent activities have received awards of less than $2 million.[14] Given that the majority of awards have historically fallen under the $2 million threshold, the discretion to revise smaller awards upwards is likely to create additional incentives to potential

[11] Proposed Rule at 34710.
[12] Proposed Rule at 34743.
[13] Proposed Rule at 34709.
[14] Proposed Rule at 34735.

whistleblowers, especially on small amount frauds that hurt retail investors but that would not grant a large award payout.

Question 11. Would the proposed amendments to paragraph (d) of Rule 21F–6 appropriately balance the Commission's various programmatic interests, in particular encouraging company insiders and others to come forward while also ensuring that awards are not unnecessarily large beyond an amount that is sufficient to compensate whistleblowers and achieve the Commission's law-enforcement interests? If not, is there an alternative formulation of the proposed rule that the Commission should adopt to guard against payouts that are in excess of amounts that are reasonably necessary to further the Commission's goals?

We oppose this change and do not believe the Commission has legal authority to make it. Under the current rules, individuals who provided valuable information and cooperation that led to a successful enforcement action that resulted in more than $1 million in monetary sanctions shall receive from the Commission—specifically, from the Investor Protection Fund—between 10 and 30 percent of what has been collected of the monetary sanctions imposed in the action.[15] Potential whistleblowers know this, and can calculate their expected payouts with to obtain some degree of confidence about the financial incentive to come forward.

The proposed rule, however, would give the Commission discretion to revise downwards award payments on actions that collected over $100 million in monetary sanctions. Obscuring the award calculations and introducing a discretionary element for payments above $100 million does not further the Commission's goal of uncovering the fraudulent activities. The negative effects of this change are likely to be most pronounced for the largest, most significant frauds and the highest ranking whistleblowers – precisely the cases that pose the greatest threat to the public interest.

The proposed rule argues that the principle underlying these change is the potential for significant diminishing marginal benefit to the program from really large payments—that is, payments that are vaguely described as not "reasonably necessary to achieve the program's goals."[16] The Commission does not present any study, data, or reference any evidence to back up that vague claim, nor does the Commission explain to the public how they arrived at the $30 million threshold at which the next additional dollar in payment awards results in smaller incentives for future whistleblowers and smaller benefits to the program.

The $30 million threshold is not a quantitative determination, instead is a qualitative, subjective assessment that runs the risk of becoming an unofficial barrier for necessary large payouts. This "glass ceiling," as Commissioner Stein put it in her statement regarding the proposed rule, could prevent top executives who already are making millions of dollars from coming forward with

[15] 15 U.S.C. 78u–6(b).
[16] Proposed Rule at 34716.

material information.[17] The largest financial institutions, like Goldman Sachs, tie their most senior bankers and partners with nondisclosure agreements (NDAs) that prevent them from discussing potential concerns with regulators or even board members—in a recently reported case, a Goldman partner signed an NDA in exchange for up to $10 million in stock compensation, and walked away from the firm after exhausting all internal whistleblower channels to report a range of unethical practices.[18] This is an example of precisely the individual with extensive insider knowledge and better situated to have a bird's eye view of the implications and the systemic risks of pervasive fraudulent activities.

Moreover, the proposed rule also states that large awards could "substantially diminish the IPF [Investor Protection Fund], requiring the Commission to direct more funds to replenish the IPF rather than directing those funds to the United States Treasury."[19] This, as well as other references to the balance of the Investor Protection Fund through the proposed rule, are inappropriate in the context of a determination of the amount of an award. Congress expressly provided that the Commission "shall not take into consideration the balance of the Fund" when considering the amount of an award.[20]

Question 31. Should any aspect of the interpretation be codified in rule text? For example, should the Commission adopt rule text that would make clear that for a whistleblower to be credited with providing ''original information'' through ''independent analysis,'' the whistleblower's examination and evaluation should contribute ''significant independent information'' that ''bridges the gap'' between the publicly available information and the possible securities violations?

We oppose codifying the proposed interpretative guidance regarding the meaning and application of "independent analysis" in rule text. The language in the guidance is overly vague and leaves several aspects of the supposed clarification ambiguous and needing further interpretation.

Under established rules, to qualify for an award a whistleblower needs to provide "original information" "derived from the independent knowledge or analysis of a whistleblower."[21] The difference in the definitions of the terms "independent knowledge" and "independent analysis" is that the former "is not derived from publicly available sources" and the later includes "examination and evaluation of information that may be publicly available, but which reveals information that is not known or available to the public."[22]

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[17] Kara M. Stein, Statement on Proposed Amendments to the Commission's Whistleblower Program Rules, SEC Public Statement, June 28, 2018, available at: https://bit.ly/2NmZQo2.
[18] Emily Flitter, Kate Kelly and David Enrich, "A Top Goldman Banker Raised Ethics Concerns. Then He Was Gone," *The New York Times,* September 11, 2018, available at: https://nyti.ms/2NAuWaV.
[19] Proposed Rule at 34704 and at 34739.
[20] 15 U.S.C. 78u–6(c)(1)(B)(ii).
[21] 15 U.S.C. 78u–6(a)(3).
[22] 17 CFR § 240.21F-4

The proposed amendments would make it very difficult for "independent analysts" to qualify as eligible whistleblowers based on their insights from publicly available information. The independent analysis standard would require that whistleblowers provide "evaluation, assessment, or insight *beyond what would be reasonably apparent to the Commission* [emphasis added] from publicly available information."[23] What would be "reasonably apparent," is not explained in the proposed rule, except for a sentence providing that if the Commission's own review determines that "the violations could have been inferred from the facts available in public sources … without more, then the whistleblower has not contributed significant independent information that reveals the violations."[24]

The Commission should not deprive whistleblowers of incentives based on the fact that the violation *could* have been inferred from publicly available information if there is no evidence that the Commission's staff has in fact analyzed this data and found the misconduct independently of the whistleblower's information. For example, if a whistleblower detects a Ponzi scheme based on publicly available information and informs the Commission of this violation, it would be plainly unfair to deprive the analyst of compensation because the Commission could hypothetically have detected the scheme but failed to do so.

Concluding comments

While we appreciate the Commission's effort to strengthen one of the most effective enforcement mechanisms to come out of the Dodd-Frank Act, we are concerned that the positive and helpful amendments here are accompanied by other amendments that would undermine and weaken the Whistleblower Program. Any proposal to build upon successes of the Program should not increase uncertainty for potential whistleblowers in the largest and most significant cases. However, key changes in this proposal would do so.

Thank you for the opportunity to comment on this Proposed Rule. If you have questions, contact AFREF's Policy Researcher, Oscar Valdes-Viera, at [redacted].

Sincerely,
Americans for Financial Reform Education Fund

[23] Proposed Rule at 34728.
[24] Proposed Rule at 34731.

NWC | NATIONAL WHISTLEBLOWER CENTER

P.O. Box 25074, Washington, D.C. 20027 | (202) 342-1903 | www.whistleblowers.org

September 18, 2018

Submitted via e-mail to rule-comments@sec.gov

Mr. Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Proposed Rule File Number S7-16-18, Whistleblower Program Rules

Dear Chairman Clayton,

The following comment is submitted on behalf of the National Whistleblower Center ("NWC") pursuant to File Number S7-16-18. This comment provides additional information related to the concerns identified in the comment submitted on behalf of the NWC on September 17, 2018[1]. The proposal by the U.S. Securities and Exchange Commission ("SEC") for changes to the Whistleblower Reward Program, specifically to Section 21F of the Securities Exchange Act of 1934, would be damaging to the effectiveness of the SEC's whistleblower program and would not serve the best interests of the public. This proposed change is inconsistent with the intention of Congress, as well as basic rules underpinning the effectiveness of whistleblower laws.

Congress explicitly required the SEC to consider the deterrent effect of paying awards when setting the amount payments. 15 U.S.C. § 78u-6(c)(1)(B)(i)(III). As set forth below, and consistent with the prior comments of the National Whistleblower Center and other persons, a cap on awards would undermine the deterrent effect of paying awards.

Putting a cap on rewards has no known effect ensuring that the SEC would become a "responsible steward of the public trust"[2], as noted by Chairman Clayton; instead, it will only deter whistleblowers from coming forward. Moreover, the existence of high rewards ensures good governance in a myriad of ways. Two functions deserve more careful explanation:

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[1] https://www.whistleblowers.org/storage/docs/sec-nwc-9-17-18-final.pdf.

[2] Clayton, Jay, Chairman. "Statement at Open Meeting on Amendments to the Commission's Whistleblower Program Rules." SEC.Gov. June 28, 2018. https://www.sec.gov/news/public-statement/statement-open-meeting-amendments-commissions-whistleblower-program-rules-_ftn1.

- High rewards increase the likelihood that more whistleblowers will come forward to the SEC with their information; and

- Whistleblower rewards encourage companies to create robust internal compliance programs. Bolstering compliance programs aligns with the mission of the SEC as they prevent fraud from occurring in the first place.

In drafting this submission, NWC has reviewed hundreds of blogs, webpages, and news articles concerning the role/promise large rewards play in effectuating the "core objective" of the Dodd-Frank Act's whistleblower provision.[3] Significantly, many corporate law firms that represent regulated industries have noted the positive impact that large rewards (whether actual or simply anticipated) can have on motivating employees to step forward. Statements by these law firms acknowledge that big rewards promote compliance and transparency within any workplace.

High Rewards Encourage More Disclosures:

Like any rational actor, humans weigh trade-offs before making decisions. Should a whistleblower find the trade-off not worth their while, the SEC will rarely ever uncover another fraud case. Marc J. Fagel, an associate at Gibson Dunn LLC, stated,

> "**It seems evident that the promise of a huge payoff will lure increasing numbers of self-proclaimed whistleblowers**, **not to mention their counsel, into the awaiting arms of the SEC.** Even if many (or even most) of these claims lack merit (as suggested by some of the more colorful illustrations in the SEC's claim denials), companies confronted with whistleblower allegations have no choice but to treat them seriously. Failing to do so — or worse, taking steps viewed as discouraging whistleblowers from coming forward — can result in stand-alone enforcement proceedings by the SEC, or tougher sanctions if an underlying securities violation is found and charged by the agency."[4]
>
> *Statement released after award of $17 million given by the SEC on June 9, 2016* (emphasis added).

Should the SEC adopt the changes to the cap, this "promise of a huge payoff" is no longer a certainty, discouraging many potential whistleblowers.

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[3] "The 'core objective"'of Dodd-Frank's robust whistleblower program . . . is 'to motivate people who know of securities law violations to *tell the SEC*' . . . To that end, §78u–6 provides **substantial** monetary rewards to whistleblowers who furnish actionable information to the SEC." *Digital Realty Trust,* 138 S.Ct. 767 (2018) (emphasis added).

[4] Fagel, Marc J. "SEC's Whistleblower Program Is Gaining Steam." Gibsondunn.com. August 1, 2016. https://www.gibsondunn.com/wp-content/uploads/documents/publications/Fagel-SECs-Whistleblower-Program-is-Gaining-Steam-DJ-8-1-16.pdf.

Not only will the SEC lose out on potential whistleblowers in the U.S., the changes will also discourage those living abroad. Under the Foreign Corrupt Practices Act ("FCPA"), the SEC is authorized to accept tips from those outside of U.S. borders. This transnational mandate is of the utmost importance. The FCPA creates a more transparent international arena and facilitates fair trading practices. This program is very robust; in fact, from 2011 through 2017, the SEC received 2,655 tips from 113 countries, outside the U.S. Eduardo Singerman and Paul Hugel of BDO USA LLP and Clayman & Rosenberg LLP, respectively, state a similar opinion:

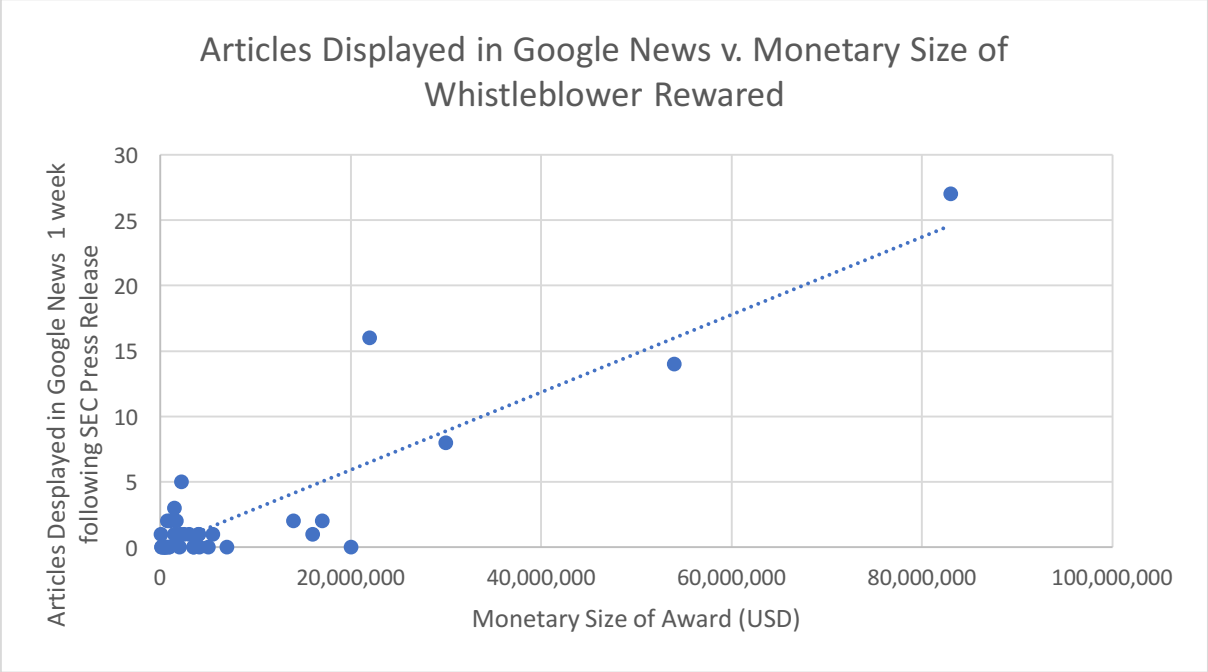
> "The SEC whistleblower program encourages individuals, both U.S. citizens and residents and foreign nationals worldwide, to report to the commission violations of federal securities laws and the Foreign Corrupt Practices Act. **The program's success is based on the possibility of significant monetary awards**, its anti-retaliation protection, and the confidentiality of the whistleblower's identity."[5]
>
> *This statement released after the announcement of the report of the SEC's fiscal year in monetary rewards of almost $50 million to 12 whistleblowers* (emphasis added).

Only if an individual with the relevant information is able to see that the U.S. government is willing to reward those who expose fraud and corruption, in consideration of the risk endured by them as well as the substantial financial windfall that the U.S. Treasury obtains as a result of that information, will such an individual be willing to come forward and report such corruption to the SEC. Those with such information, particularly those living abroad, often learn about whistleblower rewards through media channels. Media publicity not only educates the public (and potential whistleblowers) as to the existence of the program, but also has a strong deterrent effect on potential wrongdoers.

The graph below uses data analyzed by the National Whistleblower Center and demonstrates that large rewards receive significantly more media attention than small rewards. This includes all whistleblower reward press releases listed on the SEC website as of September 17, 2018. This graph utilizes articles displayed in Google News one-week post-press release, charted against the amount of the reward. In other words, the NWC reviewed each press release issued by the Commission regarding every award issued. Thereafter, the NWC did an identical Google News search to find articles covering the award using the search terms "SEC" and "whistleblower." By clicking the blue dots on the chart, you can see the underlying statistics. We will make the excel spreadsheet available upon request.

As demonstrated in the chart, larger rewards generate significantly greater publicity which both incentivizes perspective whistleblowers and deters criminal activity/securities fraud.

[5] Singerman, Eduardo, and Paul Hugel. "Voices The Dodd-Frank Whistleblower Program Keeps Whistleblowers Busy in 2017." Accountingtoday.com. January 9, 2018. https://www.accountingtoday.com/opinion/the-dodd-frank-whistleblower-program-keeps-whistleblowers-busy-in-2017.



As the chart above demonstrates, the amount of reporting on whistleblower awards broadly increases with larger awards. Should the SEC continue to provide these large rewards, the detection of fraud will continue through whistleblower tips. As noted by law firm Bryan Cave Leighton Paisner LLP, generous rewards encourage employees to blow the whistle:

> "This award shows that it is not only your company's employees who may take internal issues to the SEC. Instead, outside contractors and even government employees may go to the SEC. **This award suggests that the SEC will continue to publicize large monetary awards to encourage whistleblowers to provide evidence of larger-scale issues**."[6]
>
> *Statement released in response to $2.5 million-dollar rewards given by the SEC on July 25, 2017* (emphasis added).

High Rewards Encourage Robust Compliance Programs:

Not only will capping awards at 10% disrupt the quantity of awards received, it will discourage companies from maintaining adequate internal compliance programs. Experts from many fields of law agree that strong whistleblower rights and protections encourage companies to beef up

[6] Srere, Mark A., Elaine D. Kock, Jennifer K. Mammen, and Jennifer L. Berhorst. "$2.5 Million SEC Whistleblower Award Goes to Government Employee." Bryancave.com. July 27, 2017. https://www.bryancave.com/en/thought-leadership/2-5-million-sec-whistleblower-award-goes-to-government-employee.html.

compliance programs and adhere to standards set out by the SEC. Should the proposed cap go into effect, many companies will be less incentivized to promote a transparent and fraud free workplace. Jason Kaufman and John Fullerton III of Epstein Becker Green, LLC recently wrote,

> "These recent awards are a good reminder that employers must be more diligent and cautious than ever when it comes to securities compliance and investigating internal complaints by would-be whistleblowers, as *the awards available to tipsters under the "bounty" program are a tremendous incentive to report to the SEC.*"[7]
>
> *Statement released was in response to $49 million reward from the SEC on March 19, 2018* (emphasis added).

Both lawyers maintain that awards are the primary incentive for reporting to the SEC **and** that reporting to the SEC is the primary incentive for companies to be diligent in their securities compliance.

A client memorandum from law firm Davis Polk & Wardwell LLP, it was warned that with the rulemaking,

> "reporting incentives for larger cases may be disincentivized," and that,
>
> "in considering whistleblowers' rights and when drafting separation agreements, employment agreements, compensation plans, policies and other company documents, companies should continue to keep in mind that protecting and encouraging whistleblowers has been a priority for the enforcement division of the SEC as well as the SEC's Office of the Whistleblower."[8]
>
> *Statement made in response to the proposed rule amendment from the SEC on June 28, 2018*

Law firms have agreed with this sentiment for many years now. A memorandum from Dechert LLP notes that,

> "The continued increase in whistleblower reports to the SEC, and resulting awards to individuals who provide information leading to significant enforcement actions, suggest that companies must take credible steps to respond to internal reports of

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[7] Kaufman, Jason, and John F. Fullerton, III. "SEC Issues Largest Dodd-Frank Whistleblower "Bounty" Awards Ever." Financialservicesemploymentlaw.com. March 21, 2018. https://www.financialservicesemploymentlaw.com/2018/03/21/sec-issues-largest-dodd-frank-whistleblower-bounty-awards-ever/.

[8] "SEC's Proposed Amendments to Its Whistleblower Program May Increase Reporting of Potential Securities-Law Violations to the SEC." Davispolk.com. July 6, 2018. https://www.davispolk.com/files/2018-07-06_secs_proposed_amendments_to_its_whistleblower_program_may_increase_reporting_of_potential_securities-law_violations_to_the_sec.pdf.

> potential violations of the securities laws. If not, there is a significant risk that individuals – even if they are located outside of the United States and/or have compliance or internal audit responsibilities – who feel that their concerns are going unaddressed may turn to the SEC in the hopes of reaping potentially significant awards, necessarily at their employers' eventual expense."[9]
>
> "These developments demonstrate the need for companies to aggressively take steps to address compliance concerns raised internally by their own employees, or else run the risk that employees may choose to report concerns to the SEC in the hope of obtaining potentially significant monetary rewards and protection from retaliation by their employers."[10]
>
> *Statement released after the SEC released their annual report to Congress on the Dodd-Frank Whistleblower Program in 2014.*

These law firms acknowledge the importance that large rewards have on the way companies will comply with their employees and take the steps necessary to fix and settle internal reports that go on in the workplace. Not only do U.S. employees get protected by the government, but also foreign workers have the ability to blow the whistle to the U.S. government and receive a generous reward from the SEC as well. Foreign employees cannot benefit from the Dodd-Frank/Sarbanes-Oxley Acts anti-retaliation provisions, so their only motive for ever blowing the whistle is the prospect of a generous financial reward. Implementing this cap will also decrease the amount of fraud detected in foreign countries.

Other notable law firms have released material noting the importance of companies enhancing their compliance programs due to the threat of whistleblowers being incentivized by rewards. According to Willkie Farr & Gallagher LLP,

> "It is therefore important for companies not only to have compliance policies that include robust procedures for responding to internal reports of misconduct but also to be committed to following those procedures through timely and appropriate action. To do otherwise is to risk opening the door to the whistleblower program to the company's own compliance officers."[11]

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[9] Zucker, Jeremy, Darshak Dholakia, and Elisa Wiygul. "Overview of Compliance Concerns Raised by Recent U.S. SEC Whistleblower Developments." Info.dechert.com. December 9, 2014. https://info.dechert.com/10/4069/landing-pages/overview-of-compliance-concerns-raised-by-recent-u.s.-sec-whistleblower-developments.asp.

[10] "Overview of Compliance Concerns Raised by Recent US SEC Whistleblower Developments." Dechert.com. December 17, 2014. https://www.dechert.com/knowledge/onpoint/2014/12/overview-of-compliance-concerns-raised-by-recent-us-sec-whistleb.html.

[11] Weinstein, Martin, Robert Meyer, and Jeffrey Clark. "Company Compliance Officer Wins a Dodd-Frank Whistleblower Award." Willkie.com. April 27, 2015. https://www.willkie.com/~/media/Files/Publications/2015/04/Company_Compliance_Officer_Wins_a_Dodd_Frank_Whistleblower_Award.pdf.

Statement released after reward of more than $1 million from the SEC on April 22, 2015

Internal compliance programs within the workplace give the employers enough time to investigate the reported misconduct and take the measures necessary to keep a transparent workplace. According to Paul, Weiss, Rifkind, Wharton & Garrison LLP,

> "The recent whistleblower awards serve as a powerful reminder of the importance of corporate compliance programs. It remains extremely beneficial for companies to maintain internal reporting channels for employees who would like to report potential misconduct, to develop procedures designed to prevent and detect misconduct, and to investigate any potential misconduct promptly."[12]
>
> *Statement released after CFTC awarded multiple whistleblowers a total of more than $45 million on August 2, 2018.*

Companies must take the internal reporting seriously. If they do not, the generous rewards from the SEC will encourage employees to give tips to the government and blow the whistle. According to Weil, Gotshal & Manges LLP,

> "In the meantime, companies should remain vigilant in encouraging internal reporting and diligently investigating all potential wrongdoing…This award – and the quite considerable lengths to which the SEC went to protect the identity of the whistleblower – will embolden more whistleblowers to report securities violations"[13]
>
> *Released after SEC's announcement of its first whistleblower reward on August 21, 2012.*

Statements by these law firms concur that large monetary rewards reinforce compliance programs within companies and decrease federal violations. According to Arent Fox LLP,

> "To regulated entities, this week's unprecedented whistleblower awards reinforce the need for robust compliance programs that decrease the likelihood of federal

[12] "CFTC Issues Largest Ever Whistleblower Award and First Award to a Foreign Whistleblower." Paulweiss.com. July 30, 2018. https://www.paulweiss.com/practices/litigation/financial-institutions/publications/cftc-issues-largest-ever-whistleblower-award-and-first-award-to-a-foreign-whistleblower?id=26829.

[13] Bartholomew, Christian, and Sarah Nilson. "SEC Issues First Whistleblower Award." Weil.com. August 2012. https://www.weil.com/~/media/files/pdfs/securities_litigation_enforcement_weil_alert_august_2012.pdf.

> securities-law violations, as well as internal controls that facilitate reporting and remediation of potential compliance lapses within the company."[14]
>
> *Statement released in response to award from the SEC of over $83 million on March 19, 2018.*

The Commission's Justification for the Rate Cap is Not Supported in Law or in Fact:

In the rulemaking proposal the Commission postulated two justifications for the cap. First, to preserve the Investor Protection Fund or "IPF." Second, to generate revenue to be used for other programs that serve the public interest. Both are not supportable.

As for protecting the amount of money in the IPF, Congress anticipated that the Commission may try to reduce awards based on the amount of monies in the IPF. Thus, the DFA's statute clearly prohibits the Commission from taking into consideration the balance of the IPF when making reward decisions. Significantly, while prohibiting the Commission from considering the balance in the IPA, Congress **required** the Commission to consider the deterrence effect of an award when weighing how large of an award to pay. The statute states:

> In determining the amount of an award made under subsection (b), the Commission—
>
> (i) shall take into consideration—
> (I) the significance of the information provided by the whistleblower to the success of the covered judicial or administrative action;
> (II) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in a covered judicial or administrative action;
> (III) **the programmatic interest of the Commission in deterring violations of the securities laws by making awards to whistleblowers** who provide information that lead to the successful enforcement of such laws; and
> (IV) such additional relevant factors as the Commission may establish by rule or regulation; and
> (ii) **shall not take into consideration the balance of the Fund.**
>
> 15 U.S.C. § 78u-6(c)(1)(B) (emphasis added)

In direct conflict with this statutory prohibition, the Commission explicitly stated that one of the goals of the cap on rewards was to protect the amount of monies in the IPF. In its discussion on the cap, the Commission stated:

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[14] Fiorentino, Lynn R., Peter V. B. Unger, and Michael F. Dearington. "Whistle While They Work: SEC Announces Largest-Ever Dodd-Frank Whistleblower Awards." Arentfox.com. March 23, 2018. https://www.arentfox.com/perspectives/alerts/whistle-while-they-work-sec-announces-largest-ever-dodd-frank-whistleblower.

> "*These awards could substantially diminish the IPF, requiring the Commission to direct more funds to replenish the IPF rather than making that money available to the United States Treasury, where they could be used for other important public purposes.*"

In violation of Congressional intent, the proposed rules provide the Commission with the authority to do precisely what Congress has prohibited:

> "*Finally, in any order that adjusts any of the dollar amounts [of the rewards] . . . the Commission shall consider . . . the potential impact any adjustment might have on the IPF.*"

The Dodd-Frank Act's whistleblower program is **not** simply a revenue-producing statute. The core purpose of the law is to encourage the reporting of securities violations, to protect investors and to utilize the deterrent impact of "substantial rewards" to stop corporate crimes before they even occur. A collateral benefit is to encourage firms to institute strong and independent compliance programs. The cap proposed by the Commission undermines all of these goals.

The fact that an effective whistleblower program can be revenue producing is of no consequence, and it is highly improper for the Commission to weigh its desire to spend the proceeds collected by the government due to whistleblower disclosures on other "important public purposes" when considering whether or not to reduce whistleblower rewards. "The 'core objective' of Dodd-Frank's robust whistleblower program . . . is 'to motivate people who know of securities law violations to *tell the SEC*,'" *Digital Realty Trust*, 138 S.Ct. 767 (2018) (emphasis in the original), not to generate revenue for other programs the Commission believes are "important."

Conclusion:

The National Whistleblower Center strongly concurs with the authors of *fcpablog.com*, which provides substantial legal commentary on relevant legal developments. As noted,

> We encourage the SEC to reconsider this amendment. Whistleblowers are critical to the SEC's mission of protecting investors and market integrity. They risk their careers, livelihoods, and reputation when they come forward. A robust whistleblower reward program encourages individuals to report wrongdoing to the SEC despite the serious risks and personal losses they face.[15]
>
> *Statement released after SEC's proposed its amendment to their whistleblower program on June 28, 2018.*

Generous rewards given (or promised) to whistleblowers from the SEC provide strong motivation for whistleblowers to come forward and expose securities violations, often at great personal risk.

[15] Tillipman, Jessica, and Paige Brownlow. "Tillipman and Brownlow: Is the SEC about to Weaken the Whistleblower Program?" Fcpablog.com. August 15, 2018. http://www.fcpablog.com/blog/2018/8/15/tillipman-and-brownlow-is-the-sec-about-to-weaken-the-whistl.html.

Reducing the amount and putting a cap on the rewards will discourage them from putting everything they have on the line if they do not get the reward they deserve. Without whistleblowers coming forward and giving tips to the government, fraud and corruption will thrive.

Large whistleblower rewards give employers a reason to create a transparent work environment and be encouraging of employee internal disclosures.

The quotes cited above by corporate law firms highlight the importance of large monetary rewards given (or promised) by the SEC. These firms are in the business of defending publicly traded corporations, and their comments on the impact of large rewards (whether given or promised) on incentivizing employees to report, and incentivizing companies to enhance their compliance programs, should be carefully considered. This is especially true as these comments were made before the cap was proposed by the SEC.

The rate cap proposal will be detrimental to the goals of the whistleblower program, ethical corporate governance, and the protection of investors. The rule should not be approved.

Thank you in advance for your careful to this letter and other comments submitted on behalf of the NWC. We would like to meet one-on-one with each Commissioner and to meet directly with the Commission staff responsible for reviewing the public comments and finalizing the rule. You can reach me at contact@whistleblowers.org.

Sincerely,

/s/ Stephen M. Kohn[16]
Executive Director
National Whistleblower Center
3238 P Street, N.W.
Washington, D.C. 20007
[redacted]
contact@whistleblowers.org

[16] This comment is filed on behalf of the National Whistleblower Center. It does not necessarily reflect the opinion of clients individually represented by Mr. Kohn in his capacity as an attorney-at-law or as a partner in the law firm of Kohn, Kohn and Colapinto. The NWC would like to thank its public interest interns Cesar Marquez and Anna Wysen for their invaluable assistance in analyzing the media documentation and their contributions to the comment.

September 18, 2018

Submitted via email to rule-comments@sec.gov

Emily Pasquinelli, Office of the Whistleblower, Division of Enforcement
Brian A. Ochs, Office of the General Counsel
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Comments from NELA, GAP, and Public Citizen to Proposed Amendments to the Securities and Exchange Commission (Commission or SEC) Whistleblower Program Rules; File No. S7-16-18

These comments are submitted on behalf of the National Employment Lawyers Association (NELA), the Government Accountability Project (GAP), and Public Citizen. These comments focus on the proposed rules implementing the anti-retaliation provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 15 U.S.C. § 78u-6(h). Amendments to the Commission's Whistleblower Program Rules, Release No. 34-83557, 83 Fed. Reg. 34702 (to be codified at 17 C.F.R. §§ 240, 249) (proposed June 29, 2018) ("Proposed Rulemaking").

NELA's Work Protecting Workers from Retaliation

NELA is the largest professional membership organization in the country comprising lawyers who represent workers in labor, employment, and civil rights disputes. Founded in 1985, NELA advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. NELA and its 69 circuit, state, and local affiliates have a membership of over 4,000 attorneys who are committed to working on behalf of those who have been treated unlawfully in the workplace. NELA's members practice before nearly every relevant state and federal court and administrative agency. This experience provides NELA with a unique perspective on how the principles announced both by courts and regulatory bodies actually play out on the ground.

GAP's Work Protecting Whistleblowers

GAP was created in 1977 at the Institute for Policy Studies (IPS) in response to several whistleblowers, such as Daniel Ellsberg, who came to IPS about White House, FBI, and Pentagon scandals. Since that time, GAP has served as a lifeline to employees of conscience and has helped them release critical information that serves the public interest and the common good. A non-partisan public-interest group, GAP litigates whistleblower cases, helps expose wrongdoing to the public, and actively promotes government and corporate accountability. GAP has helped over 8,000 whistleblowers.

GAP's mission is to ensure government and corporate accountability by advancing occupational free speech, defending whistleblowers, and presenting their verified concerns to appropriate officials, groups, or journalists. GAP has become not only the most prominent whistleblower support organization, but also an important government and corporate accountability organization both domestically and internationally.

Working with the media, public interest allies, and public officials, GAP and its clients have achieved numerous highly public results. Noteworthy examples include the end of plutonium production in the U.S. before the end of the Cold War; the cancellation of three nuclear power plants under construction, and construction halts at a few other nuclear facilities; the dismantling of several national deregulatory schemes to turn meat and poultry production quality control over to food processors and slaughter houses; the resignation of World Bank President Paul Wolfowitz; the end or sharp curtailment in the manufacturing and marketing of several unsafe but widely used drugs, most notably Vioxx and Avandia; the exposure of rampant mortgage and securities fraud at Citibank, Deutsche Bank, Bank of America, and Countrywide Financial; the exposure of White House efforts to edit science reports summarizing the results of billions of federal research dollars to make it seem like climate change was either not happening or was not caused by human activity; and the exposure of warrantless and illegal wiretapping and surveillance by national security agencies during the George W. Bush Administration, and the expansion of that activity during the Obama Administration by having represented whistleblowers including Edward Snowden, Thomas Drake, and John Kiriakou, to name a few.

GAP also continuously advocates for the enactment of laws and policies providing stronger free speech rights for whistleblowers, and then monitors their implementation and enforcement to expose and correct loopholes that undermine protection. GAP has been a leader in the campaigns for 34 domestic and international free speech laws or policies, including all four generations of the Whistleblower Protection Act, the Sarbanes Oxley and Dodd-Frank statutes; the SEC's first rules for implementation of the Dodd-Frank Act; and internationally the laws or policies of the United Nations, Organization of American States, World Bank, African Development Bank, and Serbia. It is a founding member of the Whistleblowers International Network, and actively participates through contributions to the International Whistleblower Research Network.

Public Citizen's Decades Of Work Serving The Public Interest

Public Citizen is a national public interest organization with more than 500,000 members and supporters. Since 1971, we have advocated for stronger health, safety, consumer, whistleblower protection and other rules, as well as for a robust regulatory system that curtails corporate wrongdoing and advances the public interest. Whistleblowers are integral to our mission to protect the public interest, since they serve as our eyes and ears to government and corporate misconduct.

I. Narrowing the Anti-Retaliation Provision of the Dodd-Frank Act Would Undermine the SEC Whistleblower Program and Dissuade Whistleblowers from Reporting Potentially Unlawful Activity

In a June 28, 2018 public statement at the open meeting announcing the Proposed Rulemaking, Chair Clayton stated: "Many have asked whether the SEC will continue to enforce the anti-retaliation provisions of Dodd-Frank. Let me be clear: retaliation protections are a key component of the whistleblower program, and we will bring charges against companies or individuals who violate the anti-retaliation protections when appropriate." Statement at Open Meeting on Amendments to the Commission's Whistleblower Program Rules, *available at* https://www.sec.gov/news/public-statement/statement-open-meeting-amendments-commissions-whistleblower-program-rules. We welcome Chair Clayton's statement as an important emphasis that recognizes that deterring retaliation is a fundamental pillar of the SEC Whistleblower Program. We commend the SEC for taking an active role in enforcing the anti-retaliation provision of the Dodd-Frank Act and taking steps to combat retaliation that remains all too prevalent in the workplace.[1] The proposed amendments narrowing the scope of Dodd-Frank whistleblower protection, however, are a step in the wrong direction. They would limit the SEC's ability to protect whistleblowers and may cause courts to construe the statute inappropriately narrowly.

In a seminal speech titled *The SEC as the Whistleblower's Advocate*, former Chair White remarked, "[w]e want whistleblowers — and their employers — to know that employees are free to come forward without fear of reprisals." Chair Mary Jo White, U.S. Secs. & Exch. Comm'n, *The SEC as the Whistleblower's Advocate* (Apr. 30, 2015), *available at* https://www.sec.gov/news/speech/chair-white-remarks-at-garrett-institute.html. That objective should be the measuring stick by which to evaluate proposed rules implementing the whistleblower protection provision of the Dodd-Frank Act.

Unfortunately, several of the new proposals, such as limiting protection to written disclosures and imposing a "related subject matter" requirement, have the opposite effect. Indeed, the proposed modifications to Dodd-Frank's whistleblower protection would restrict the scope of the statute far beyond the Supreme Court's interpretation in *Digital Realty Trust, Inc. v. Somers*, 138 S.Ct. 767 (2018).

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[1] On September 29, 2016, the SEC ordered International Game Technology ("IGT") to pay a $500,000 penalty for terminating the employment of a whistleblower because he reported to senior management and to the SEC that the company's financial statements might be distorted. *See* Exchange Act Release No. 78991 (Sept. 29, 2016). In 2015, the SEC charged KBR Inc. with violating whistleblower protection Rule 21F-17 when it required witnesses in certain internal investigations interviews to sign confidentiality statements with language warning them that they could face discipline and even be fired if they discussed the matters with outside parties without the prior approval of KBR's legal department. KBR agreed to pay $130,000. *See* Press Release (Apr. 1, 2015), https://www.sec.gov/news/pressrelease/2015-54.html. In August 2016, the SEC fined Health Net $340,000 for including in a settlement agreement a provision that the employee waive any SEC whistleblower award. *See* Press Release (Aug. 16, 2016), https://www.sec.gov/news/pressrelease/2016-164.html.

A 2010 report of the Ethics & Compliance Initiative [ECI, formerly the Ethics Resource Center] concluded that, "one of the critical challenges facing both [Enforcement and Compliance] officers and government enforcement officials is convincing employees to step forward when misconduct occurs." *Blowing the Whistle on Workplace Misconduct*, Dec. 2010, *available at* https://www.whistleblowers.org/storage/documents/DoddFrank/ercwhistleblowerwp.pdf. This year, ECI's *2018 Global Business Ethics Survey*, p. 6, found that the most effective way to enhance favorable ethics program outcomes is to make sure that employees "felt encouraged to SPEAK UP even with bad news[.]" When they do feel encouraged, favorable outcomes increase by 14 fold.

We urge the SEC to abandon proposals that narrow Dodd-Frank whistleblower protections. Instead, we recommend that the Commission adopt rules that effectuate the purpose of the statute and further the SEC's mission. In so doing, the Commission can overcome unintentional flaws in the statutory language that caused the Supreme Court in *Digital Realty* to drastically reduce the scope of whistleblower protections.

II. Dodd-Frank Whistleblower Protection Should Not Be Limited to Written Disclosures

Proposed Rule 21F-2(a)(1) would limit protection to an individual who provides the Commission with information "in writing." 83 Fed. Reg. at 34718. There is no precedent for this limitation in the language of the Dodd-Frank Act or in the construction or enforcement of other federal whistleblower protection statutes. The proposed rulemaking offers two justifications for this substantial narrowing of Dodd-Frank whistleblower protection: 1) requiring written disclosures presents "a minimal burden to individuals who want to blow the whistle to the Commission while facilitating the staff's ability to track its use of the information"; and 2) "additional manners of reporting for anti-retaliation purposes (such as placing a telephone call), the Commission's staff could be ensnared by disputes in private anti-retaliation lawsuits over what information was provided to whom on what dates." The SEC also requests input on whether testifying under oath in an investigation or judicial or administrative action of the Commission is an additional "manner" of providing information to the Commission.

Per the definition of "whistleblower" in the statute, any individual providing information relating to a potential violation of the securities laws to the SEC consistent with its rules should be protected, regardless of whether the information is provided in writing. *See* 15 U.S.C § 78u-6(a)(6). Nothing in the statutory language requires or signals that a whistleblower may only be protected from retaliation if he or she provides information in writing. Imposing a writing requirement is inconsistent with the remedial purpose of the statute (provide robust protection to whistleblowers) and a significant departure from a well-developed body of precedent construing similar whistleblower protection laws. This rules change would create a significant new loophole.

Instead, consistent with Department of Labor regulations implementing analogous whistleblower protection laws and well-established precedent, the SEC should deem oral disclosures and testimony to the SEC protected whistleblowing under Dodd-Frank. For example,

the whistleblower protection provision of the Sarbanes-Oxley Act, 18 U.S.C. § 1514A, protects persons providing information, orally or in writing, about potential securities violations. *See Kuhns v. Ledger*, 202 F. Supp. 3d 433, 440 (S.D.N.Y. 2016) ("there is no requirement that the provision of information pursuant to Section 1514A must be in writing"); *Leshinsky v. Telvent GIT, S.A.*, 942 F. Supp. 2d 432, 442, 444-48 (S.D.N.Y. 2013) (denying summary judgment based on plaintiff's oral statement regarding potential mail and wire fraud); *Barker v. UBS AG*, 888 F. Supp. 2d 291, 297 (D. Conn. 2012) (denying summary judgment based, in part, on finding plaintiff's discussions with management about potential violations of securities laws constituted protected activity); *Sequeira v. KB Home*, 716 F. Supp. 2d 539, 555 (S.D. Tex. 2009) ("Plaintiff engaged in protected activity . . . when he met with [his supervisor] to discuss the company's lack of internal controls related to inventory and vendor contracts."); *Collins v. Beazer Homes USA, Inc.*, 334 F. Supp. 2d 1365, 1369 (N.D. Ga. 2004) (denying summary judgment based, in part, on finding plaintiff engaged in protected activity when making oral complaints of suspected fraud). In its implementing regulations, the United States Department of Labor declined to limit protected conduct to written disclosures, and no court has held that SOX protected conduct is limited to written disclosures.[2] The statute also expressly prohibits employers from retaliating against employees for "testifying" in Commission investigations. 15 U.S.C. § 78u-6(h)(1)(A)(ii).

The proposed writing requirement is also contrary to the Supreme Court's construction of the anti-retaliation provision of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 215(a)(3). In *Kasten v. Saint–Gobain Performance Plastics Corp.*, 131 S. Ct. 1325, 1335 (2011), the Court held that the phrase "filed any complaint" encompasses oral as well as written complaints, so long as the complaint is "sufficiently clear and detailed for a reasonable employer to understand it, in light of both content and context, as an assertion of rights protected by the statute and a call for their protection." *See also id.* at 1334 ("To limit the scope of the antiretaliation provision to the filing of written complaints would also take needed flexibility from those charged with the Act's enforcement. It could prevent Government agencies from using hotlines, interviews, and other oral methods of receiving complaints."). Both of the justifications for the proposed rule imposing this incongruous writing requirement are speculative and insufficient to warrant weakening Dodd-Frank whistleblower protection. The first is that the writing requirement would facilitate the staff's ability to track information disclosed by the whistleblower. There are few, if

[2] In *Williams v. Mason & Hanger Corp.*, ARB No. 98 030, ALJ No. 1997 ERA 14 (Nov. 13, 2002), the ARB described general principles relating to protected activity under the whistleblower provision of the Energy Reorganization Act: "Within the context of nuclear power plant operation and repair, the Secretary, the Board and a number of the United States Courts of Appeals have repeatedly addressed the issue of which activities qualify for ERA protection. That body of case law provides the following guidelines. First, safety concerns may be expressed orally or in writing. *See, e.g., Stone & Webster Eng'g v. Herman*, 115 F.3d 1568, 1573 (11th Cir. 1997) (holding that when "an employee talks about safety to a plant fire official, an employer and an industry regulator, he or she acts squarely within the zone of conduct that Congress marked out under 42 U.S.C. §5851(a)(1)"), *aff'g Harrison v. Stone & Webster Eng'g*, No. 93-ERA-44 (Sec'y Aug. 22, 1995); *Bechtel Const. Co. v. Sec'y of Labor*, 50 F.3d 926, 931 (11th Cir. 1995) (agreeing with Secretary's characterization of "questioning one's supervisor's instructions on safety procedures as 'tantamount to a complaint.'"), *aff'g Nichols v. Bechtel Const. Co.*, No. 87-ERA-0044 (Sec'y Oct. 26, 1992).

any, barriers for the SEC's staff to track an oral disclosure. An oral disclosure requires the same amount of work for staff to log, follow up, and/or investigate as a written disclosure. Additionally, an oral disclosure is easily reduced to writing at the time of its disclosure and at any point thereafter. Moreover, in light of the substantial financial whistleblower incentive for submitting a written disclosure (a TCR Form) to the SEC Whistleblower Office, most of the protected disclosures will be written (to qualify for a whistleblower award). Therefore, most will be amenable to tracking. Any anticipated effort caused by the small number of oral disclosures will be minimal, at best.

The second justification is that the "staff could be ensnared by disputes in private anti-retaliation lawsuits over what information was provided to whom on what dates." Yet the SEC does not provide any evidence whatsoever of this speculative burden, either, particularly when it has protected oral disclosures under Dodd-Frank for the past eight years. And the Proposed Rulemaking ignores the fact that oral disclosures to the SEC have been protected for more than 16 years under SOX's anti-retaliation provision. If such protection created a significant burden on the staff, then presumably the SEC would have and could cite to data showing how many times SEC staff became ensnared in SOX or Dodd-Frank retaliation litigation, but they have been unable to do so. Moreover, the environmental whistleblower protection statutes which have been in place for nearly four decades at the Environmental Protection Agency (EPA),, and the EPAhas not felt the need to limit protected conduct under those statutes to avoid ensnaring the EPA in whistleblower retaliation litigation. This "reform" is a solution in search of a problem.

By excluding oral disclosures from the scope of Dodd-Frank protection, the SEC is sanctioning retaliation against whistleblowers who make oral disclosures. Adding this writing requirement eight years after Congress enacted the Dodd-Frank Act (without including any writing requirement for protected conduct), the SEC is failing to consider the reliance interests of whistleblowers that have made oral disclosures. In other words, employees who believed that they made protected disclosures by reporting potential securities law violations to the SEC will now suddenly find themselves unprotected.

We urge the SEC to abandon the proposed writing requirement and also expressly protect testimony to the SEC. As a law enforcement agency, the SEC has a strong interest in ensuring that employees of registrants and other entities subject to SEC jurisdiction can testify without fear of reprisal. Moreover, the second form of protected conduct set forth in the whistleblower protection provision of Dodd-Frank – "initiating, testifying in, or assisting in any investigation or judicial or administrative action of the Commission" is statutory language that requires protection of witnesses who testify before the SEC or otherwise assist with an SEC enforcement proceeding. 15 U.S.C. § 78u-6(h)(1)(A)(ii).

III. Protecting Disclosures of Potential Violations is Consistent with Well-Established Precedent

NELA, GAP, and Public Citizen agree with the SEC's proposal to clarify that Dodd-Frank protects disclosures of potential violations of the federal securities laws, in particular

information that "relates to a possible violation of the federal securities laws (including any law, rule, or regulation subject to the jurisdiction of the Commission) that has occurred, is ongoing, or is about to occur." Proposed Rule 21F-2(a)(1), 83 Fed. Reg. at 34718. The SEC's reasoning for this clarification is sound, and we note that protecting disclosures of possible violations is consistent with well-established precedent under analogous whistleblower protection laws.

For example, federal courts consistently have construed the whistleblower protection provisions of SOX to include disclosures of potential violations. *See, e.g.*, *Beacom v. Oracle America, Inc.*, No. 15-1729, 2016 WL 3144730, at 3 (8th Cir. June 6, 2016); *Rhinehimer v. U.S. Bancorp Invs., Inc.*, 787 F.3d 797 (6th Cir. 2015); *Nielsen v. AECOM Tech. Corp*., 762 F.3d 214, 220–21 (2d Cir. 2014); *Wiest v. Lynch*, 710 F.3d 121 (3d Cir. 2013); *Stewart v. Doral Fin. Corp.*, 997 F. Supp. 2d 129, 135–36 (D.P.R. 2014); *Leshinsky v. Telvent GIT, S.A.*, 942 F. Supp. 2d 432, 443 (S.D.N.Y. 2013). Courts also have interpreted the whistleblower protection provision of the False Claims Act (FCA), 31 U.S.C. 3730(h), to encompass disclosures of potential violations of the FCA. *See, e.g.*, *United States ex rel. Yesudian v. Howard Univ.*, 332 U.S. App. D.C. 56, 153 F.3d 731 (1998); *Young v. CHS Middle E., LLC*, 611 Fed. App'x 130 (4th Cir. May 27, 2015); *Mikhaeil v. Walgreens Inc.*, No. 13-14107, 2015 WL 778179 (E.D. Mich. Feb. 24, 2015); *Ickes v. NexCare Health Sys., L.L.C.*, No. 13-14260, 2016 WL 1275543 (E.D. Mich. Mar. 31, 2016).

As explained by a district judge construing the scope of SOX whistleblower protection, protecting disclosures of potential violations is fundamental to effectuating the purpose of a whistleblower protection statute:

> This Court agrees with the Third Circuit and the [Administrative Review Board] that imminent crimes, or at least crimes in their infancy, are within the scope of Section 806. As the *Wiest* court noted, "[i]t would frustrate [the purpose of Sarbanes–Oxley] to require an employee, who knows that a violation is imminent, to wait for the actual violation to occur when an earlier report possibly could have prevented it." [*Weist v. Lynch*, 710 F.3d 133 (3d Cir. 2013)]; *cf. Walters v. Deutsche Bank AG*, No. 2008 SOX 70, 2009 WL 6496755, at *9 (ALJ Mar. 23, 2009) ("Senator Leahy justified the protection Section 806 affords to whistleblowers based on the importance of the unique, inside, financial perspective they can provide ... [Section 806 was] designed to encourage insiders to come forward without fear of retribution."). **It furthers the purpose of Section 806 to nip corporate wrongdoing in the bud, rather than permitting a scheme to blossom into a full-fledged crime before whistleblower protections take effect. Whistleblowers should not be asked to wait until executives have dotted the i's and crossed the t's before sounding an alarm**.

Leshinsky, 942 F. Supp. 2d at 446 (emphasis added). In *Wallace v. Tesoro Corp*., 796 F.3d 468, 480 (5th Cir. 2015), the court held that SOX protects "an employee who is providing information about a potential fraud or assisting in a nascent fraud investigation" because "[l]eaving those employees unprotected would have grave consequences for the statutory scheme of employee

protection embodied in § 1514A and would do so in a way that appears completely unrelated to whether a belief actually is reasonable."

In sum, the SEC is correct to construe Dodd-Frank as protecting both disclosures of possible violations of federal securities laws and disclosures grounded in an employee's reasonable belief that a violation has occurred.[3]

IV. The SEC Should Not Limit Dodd-Frank Whistleblower Protection to the Subject Matter of the Whistleblower's Submission to the SEC

Proposed Rule 21F-2(d)(1)(iii) would limit anti-retaliation protection to lawful acts that "relate to the subject matter" of the person's submission to the SEC, 83 Fed. Reg. 34720, thereby construing this remedial provision more narrowly than its statutory language or the Supreme Court's reasoning in *Digital Realty* would permit. Such a requirement is not compelled by the statute and would inject uncertainty, thereby weakening Dodd-Frank's whistleblower protection provisions and dissuading whistleblowers from coming forward.

Nothing in the statutory language of Dodd-Frank limits an employee's protection from retaliation protection to lawful acts that "relate to the subject matter" of the person's SEC submission. Both the definition of whistleblower and the delineation of lawful acts articulate the substance of the whistleblowers protected disclosure to the Commission. *See* 15 U.S.C. § 78u-6(a)(6), (h)(1)(A). Neither provision requires any connection between the retaliation experienced by the employee and her protected disclosure to the SEC. By creating this nexus, the SEC proposed to narrow protections to employees that was not contemplated by Congress or written into Dodd-Frank.

Significantly, none of the parties or *amici curiae* in *Digital Realty* proposed reading this limitation into Dodd-Frank. Indeed, as Justice Ginsburg noted, in expressing the views of the government, the Solicitor General wrote in his brief: "Moreover, nothing in Subsection (a)'s definition of 'whistleblower,' or in petitioner's interpretation of the statute, requires a temporal or topical connection between the violation reported to the Commission and the internal disclosure for which the employee suffers retaliation." 138 S. Ct. at 780-81 (citing Brief for the United States as *Amicus Curiae* 25, *available at* https://www.justice.gov/sites/default/files/briefs/2017/10/23/16-1276_digital_realty.pdf). The Court reiterated an example provided by the Solicitor General: "an employee who was fired for reporting accounting fraud to his supervisor in 2017 would have a cause of action under [§ 78u–6(h)] if he had reported an insider-trading violation by his previous employer to the Commission in 2012." *Id.* at 781. And the Court noted that Petitioner, Digital Realty, affirmed this position, stating that Congress "could reasonably have made the policy judgment that individuals who report securities-law violations to the SEC should receive broad protection over time against retaliation for a variety of disclosures." *Id.* (citing Reply Brief for the Petitioners 11).

[3] *See e.g.*, *Van Asdale v. Int'l Dame Tech.*, 577 F.3d 989, 1001 (9th Cir. 2009) (holding that to demonstrate an objectively reasonable belief that a violation has occurred, an employee need only plead facts that "approximate" the elements of a securities fraud claim).

The proposed subject matter requirement would also inject uncertainty in that it is unclear how close the nexus must be between the disclosures to the SEC and any other protected conduct, such as a disclosure to the employer. Narrowing the scope of protection and injecting uncertainty would weaken Dodd-Frank whistleblower protection.

V. Whistleblower Status Should Be Accorded Upon Disclosing a Potential Violation to an Internal Ethics or Compliance Program

The SEC's Proposal Fails to acknowledge that an employee's internal disclosure to corporate compliance programs should be protected as whistleblowing under the Dodd-Frank Act. Proposed Rule 21F-2(d)(2) would clarify that "a person does not need to qualify as a whistleblower under Rule 21F-2(a) before performing the lawful act described in Rule 21F-2(d)(1)(iii), in order to be eligible for anti-retaliation protection. In other words, whether conduct is protected from retaliation would not depend on whether the person performing that conduct reported to the Commission beforehand or afterward (in order to qualify as a whistleblower). Section 21F is silent on this issue, and we believe that this clarification will help maintain appropriate incentives for persons to make the internal reports described in Section 21F(h)(1)(A)(iii) before or at the same time as reporting to the Commission. Proposed Rule 21F-2(d)(2) would reiterate, however, that a person must qualify as a whistleblower under proposed Rule 21F-2(a) before experiencing retaliation. Thus, for example, an individual who experiences repeated retaliation for a prior lawful act, and who first reports to the Commission while the retaliation is still ongoing, would be protected with respect to any retaliation experienced after the Commission report but not for any retaliation experienced before the Commission report." 83 Fed. Reg. at 34720.

This "timing" solution would create an arbitrary loophole. As recognized in the Commission's whistleblower incentive rules, commonly whistleblowers make initial internal disclosures, and then report to the Commission due to lack of corporate corrective action. Paradoxically, under the proposed language, an employer's admission that they fired a whistleblower in retaliation for the initial corporate disclosure, not the subsequent SEC disclosure, could in effect operate as a potential defense. This would give unscrupulous employers a perverse incentive to terminate whistleblowers promptly for internal disclosures, before they go to the SEC. This interpretation threatens the purpose of Dodd Frank protections by encouraging in-house retaliation for defending the law.

We propose that the SEC modify this proposal to clarify that an employee's internal disclosure of violations of securities laws to corporate audiences with relevant responsibilities, such as supervisory, ethics, audit or compliance personnel, qualify as an initial step for SEC disclosures under the Commission's rules. The rule should then require the employer to forward those internal disclosures and its response to the SEC. By this mechanism, an employee's internal disclosure meets Dodd-Frank's statutory definition of whistleblower because the employee provided information relating to a violation of the securities laws to the SEC in a manner established by the SEC's rules or regulations. *See* 15 U.S.C. § 78u-6(a)(6). In terms of the Dodd Frank anti-retaliation shield, this procedure would credit relevant internal disclosures

as indirect communications to the SEC. In short, through this Rule the SEC can accomplish the objectives it set forth in its *Digital Realty amicus* brief, in light of the Court's decision. This is precisely the approach the Supreme Court took for a wage theft whistleblower in *Kasten v. Saint–Gobain Performance Plastics Corp*., 131 S. Ct. 1325 (2011).

Other courts have recognized that such protection must begin at the inception of an employee's choice to use the normal channels of raising issues at the workplace. In the seminal case on the scope of protection, the United States Court of Appeals for the District of Columbia held that the Federal Mine Safety Act protected internal whistleblowing, even though the statute required the employee to make a complaint to the Secretary of the Interior before gaining the protection of the statute's anti-retaliation provision. *See Phillips v. Interior Bd. of Mine Operations Appeals*, 500 F.2d 772, 779 (D.C. Cir. 1974), *cert. denied*, 420 U.S. 938 (1975). Given the public policy considerations of the statute and its broad, remedial purpose, the court found that a miner's notification to a foreman of possible safety dangers was "an essential preliminary stage in both the notification to the Secretary (A) and the institution of proceedings (B), and consequently brings the protection of the [Federal Mine Safety Act] into play." *Id.* The court explained as follows:

> Safety costs money. The temptation to minimize compliance with safety regulations and thus shave costs is always present. The miners are . . . in the best position to observe the compliance or noncompliance with safety laws. Sporadic federal inspections can never be frequent or thorough enough to insure compliance. Miners who insist on health and safety rules being followed, even at the cost of slowing down production, are not likely to be popular with mine foreman or mine top management. Only if the miners are given a realistically effective channel of communication re [*sic*] health and safety, and protection from reprisal after making complaints, can the Mine Safety Act be effectively enforced. To hold that Phillips was not protected . . . would nullify not only the protection against discharge but also the fundamental purpose of the Act to compel safety in the mines.

Id. at 778 (footnote omitted). *Accord, Munsey v. Fed. Mine Safety and Health Review Comm'n*, 595 F.2d 735, 741 (D.C. Cir. 1978).[4]

After these decisions made clear that whistleblower protection statutes would be construed broadly to protect employees making internal disclosures, Congress used similar wording to protect employees engaged in other areas of public interest. In 1976, Congress enacted the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2622, to protect employees who, "commenced, caused to be commenced, or [are] about to commence or cause to be commenced a proceeding under this chapter." *See also* 42 U.S.C. § 7622 (Clean Air Act); 42 U.S.C. § 5851 (Energy Reorganization Act).

[4] Congress later amended the Federal Mine Safety Act to expressly include protections for internal whistleblowers. *See* Federal Mine Safety and Health Amendments Act of 1977, Pub. L. No. 95-164, 91 Stat. 1290, 1303 (Nov. 9, 1977).

In *Kansas Gas & Electric Co. v. Brock*, 780 F.2d 1505, 1511-12 (10th Cir. 1985), the Court elaborated on the protections contained in these statutes:

> [T]he legislative history of the [Federal Mine Safety Act] amendment shows that Congress did, in fact, intend the older version of the amendment to afford protection to internal complaints and the older version of the amendment is what the [Energy Reorganization Act] provision was modeled after. "The committee intends to insure the *continuing* vitality of various judicial interpretations of § 110 of the Coal Act which are consistent with the broad protections of the bill's provisions; *see e.g.*, *Phillips v. IBMA*, 163 U.S. App. D.C. 104, 500 F.2d 772 (D.C. Cir. 1974); *Munsey v. Morton*, 165 U.S. App. D.C. 379, 507 F.2d 1202 (D.C. Cir. 1974)." S. Rep. No. 186, 36, 95th Cong. 1st Sess. 1977, U.S. Code Cong. 2nd Ad. News, 3436.

(emphasis added). With Dodd-Frank, the reason to protect and encourage the use of internal controls is stronger in light of how the Act now requires public companies to maintain internal compliance programs.

We agree, however, with the SEC's proposal to clarify that the statute does not impose any requirement on the whistleblower to prove that the employer knew about the disclosure to the SEC when the employer retaliated against the whistleblower. An employer that retaliates against an employee for an internal disclosure about a potential securities law violation violates Dodd-Frank if that employee has also made an anonymous disclosure to the SEC. Indeed, the Court adopted that approach in *Digital Realty*:

> [Dodd-Frank] protects a whistleblower who reports misconduct both to the SEC and to another entity, **but suffers retaliation because of the latter, non-SEC, disclosure. That would be so, for example, where the retaliating employer is unaware that the employee has alerted the SEC.** In such a case, without clause (iii), retaliation for internal reporting would not be reached by Dodd-Frank, for clause (i) applies only where the employer retaliates against the employee "because of" the SEC reporting. §78u–6(h)(1)(A). Moreover, even where the employer knows of the SEC reporting, the third clause may operate to dispel a proof problem: The employee can recover under the statute without having to demonstrate whether the retaliation was motivated by the internal report (thus yielding protection under clause (iii)) or by the SEC disclosure (thus gaining protection under clause (i)).

Digital Realty Trust, Inc., 138 S. Ct. at 779 (emphasis added).

VI. The SEC Should Construe Prohibited Retaliation Broadly

The Proposed Rulemaking requests comment on whether the SEC should specify additional types of misconduct that fall within the prohibition in Section 21F(h)(1)(A) against "any other manner [of] discriminat[ion] against[] a whistleblower"? 83 Fed. Reg. at 34721. In particular, the SEC asks whether the rules should clarify that "if an employer rejects a prospective employee, or a past employer attempts to cause such rejection, because that individual had engaged in activity protected under Rule 21F-2, this would be a form of retaliation covered by Section 21F(h)(1)(A)?" *Id.*

Consistent with well-established precedent construing analogous whistleblower protection laws, we propose that the SEC construe prohibited retaliation to include any employment action that is *reasonably likely to deter employees from engaging in protected activity.* The Supreme Court articulated that standard in ***Burlington Northern & Santa Fe Railway Co. v. White***, 548 U.S. 53 (2006), a seminal decision construing the anti-retaliation provision of Title VII. In *Robinson v. Shell Oil*, 519 U.S. 337, 346 (1997), the Supreme Court made clear that reprisals undertaken after the termination of employment would still be actionable as they arise from the prior status as an "employee" and such an interpretation would further the broad remedial purpose of maintaining "unfettered access to statutory remedial mechanisms."

In particular, we suggest that the SEC clarify in the proposed rule that retaliation includes the following acts:

> No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner retaliate against, including, but not limited to, intimidating, threatening, restraining, coercing, blacklisting, constructively discharging or disciplining, any person, including an applicant or former employee, with respect to the employee's compensation, terms, conditions, or privileges of employment because the person, acting alone or jointly with another individual, because the employer perceived that the person was assisted, was about to or engaged in, or was associated with protected whistleblowing.

This proposed clarification of the scope of prohibited retaliation is similar to the DOL's rule implementing the anti-retaliation provision of SOX, *see* 29 C.F.R. § 1980.102(a), and incorporates jurisprudence construing analogous whistleblower protection laws.

VII. The SEC Should Not Eliminate Internal Whistleblowing as a Basis to Increase an Award

Request for Comment No. 24 asks: "In determining the amount of an award, the Commission considers participation in internal compliance systems. Given the change in anti-retaliation protections, should the Commission still use this criterion in determining the size of

whistleblower awards? Why or why not?" 83 Fed. Reg. at 34721. We do not propose eliminating this upward adjustment factor, but we propose that the SEC take steps to warn whistleblowers of limitations on protection for internal disclosures. For example, the SEC should state those limitations on the website of the SEC Office of the Whistleblower and in the final rules.

Thank you for considering these comments, and feel free to contact us for any additional information or feedback.

Sincerely,

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September 18, 2018

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Securities and Exchange Commission
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Via email: rule-comments@sec.gov

Re: File Number S7-16-18; Whistleblower Program Rules

Dear Ms. Pasquinelli and Mr. Ochs,

On behalf of more than 500,000 members and supporters of Public Citizen, we offer the following comments on the Securities and Exchange Commission (SEC)'s proposed rule "Whistleblower Program Rules" [File Number S7-16-18], ("proposal") to amend the SEC's implementation of its whistleblower rules.[1] We are concerned with a number of elements in this proposal. With this comment, we specifically oppose the proposed arbitrary cap on whistleblower awards in cases over $30 million. However, we do support the portion of the proposal that would authorize the SEC to adjust the award percentage upward for small awards.[2] These comments are supplemental to group comments submitted by the National Employment Law Project, the Government Accountability Project, and Public Citizen on additional portions of the proposal.

Since 1971, Public Citizen has advocated for stronger health, safety, consumer, whistleblower protection and other rules, as well as for a robust regulatory system that curtails corporate wrongdoing and advances the public interest. Whistleblowers are integral to our mission to

[1] Whistleblower Program Rules, 83 Fed. Reg. 34702 (Jul. 20, 2018) (to be codified at 17 C.F.R. 240, 17 C.F.R. 249) https://bit.ly/2Mzd9MV.
[2] Whistleblower Program Rules, 83 Fed. Reg. 34702 (Jul. 20, 2018) (to be codified at 17 C.F.R. 240, 17 C.F.R. 249) https://bit.ly/2Mzd9MV.

protect the public interest since they serve as eyes and ears to rooting out government and corporate misconduct. We thank you for the opportunity to comment on this proposal.

Background

This year marks the 10th year since the economic collapse, where massive fraud led to the inflation of a housing bubble whose rupture caused widespread hardship. This month also marks the 10th year since the bankruptcy of Lehman Brothers. This major global investment bank figured at the center of the mortgage fraud that precipitated the crash. In the months leading up to Lehman's demise, Matthew Lee, a senior-vice president in Lehman Brothers' finance division, made internal disclosures about accounting problems within the bank. In a memorandum to senior management, he identified six allegations of unethical accounting.[3] His whistleblowing prompted an investigation by Lehman's outside auditor, Ernst & Young, but that major accounting firm allegedly did not disclose to Lehman's independent directors what it learned in that inquiry about Lehman's risky activities[4]. About a month after Lee's disclosures, he was terminated by Lehman in what the firm claimed was a layoff.[5] In 2010, then-New York Attorney General Andrew Coumo asserted in a lawsuit Ernst & Young that Lehman had engaged in a "massive accounting fraud" with Ernst & Young's assistance "in order to create a false impression of Lehman's liquidity, thereby defrauding the investing public."[6]

Unfortunately, Lee's story is just one of countless of Wall Street whistleblowers who risked their careers in an effort to prevent the financial crisis a decade ago. The story of Lee is true of most whistleblowers, especially those near the center of exposing major frauds. Whistleblowers not only face possible demotion and termination for speaking truth to power, but often end up facing a lifetime blacklisted from their industry. Some face retaliatory criminal investigation and prosecution. They can suffer in their family life and emotional well-being.[7] If management and regulators heeded the warnings of whistleblowers, and if more whistleblowers had come forward, we may have been able to avert the greatest financial crisis of recent history.

The lessons learned from the Great Recession, including the mistreatment of financial industry whistleblowers, led to passage of the Dodd Frank Financial Reform and Consumer Protection Act of 2010 (Dodd Frank). Dodd Frank was intended to institutionalize greater accountability by the financial industry, and to encourage and protect whistleblowing within the financial industry.

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[3] Andrew Clark, *Lehman Whistleblower Lost his Job Weeks After Raising Alarm*, THE GUARDIAN (Mar. 16, 2010), https://bit.ly/2OsaJBm.

[4] UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK, REPORT OF ANTON R. VALUKAS, EXAMINER 956 – 960 (2010) https://goo.gl/Zmqmdt.

[5] *Id.*

[6] Kevin Reed, *E&Y Sued Over Lehmans Audit*, ACCOUNTANCY AGE (Dec. 21, 2010), https://bit.ly/2xfFuTA; Karen Friefeld, *Ernst & Young Settles With N.Y. for $10 million over Lehman Auditing*, REUTERS (Apr. 15, 2015) https://goo.gl/H3WpVS.

[7] TOM DEVINE AND TAREK MAASSARANI, THE CORPORATE WHISTLEBLOWER'S SURVIVAL GUIDE (Berret-Koehler, 1st ed. 2011).

Among other reforms, it allows whistleblowers to report wrongdoing directly to the SEC, rather than requiring employees to approach their employer directly.[8] Further, Congress authorized the SEC to provide substantial financial awards to whistleblowers "when they provide the SEC with original timely and credible information" that leads to an SEC enforcement action with over $1 million in sanctions. The award ranges between 10 percent and 30 percent of the money recovered.[9]

The SEC has awarded more than $320 million to 57 whistleblowers since 2012 when it issued its first award. The payments are made from an investor protection fund (IPF) that is financed through monetary sanctions paid to the SEC by other securities law violators. According to the SEC, "[n]o money has been taken or withheld from harmed investors to pay whistleblower awards."[10] In September 2018 the SEC announced its second highest whistleblower award under Dodd Frank, at more than $39 million for one individual – which exceeded the previous high of $33 million in March 2018, and $30 million four years earlier. While awards this large are rare, the recoveries against wrongdoers that are significantly substantial often result from whistleblower disclosures.

In response to the March award, Jane Norberg, Chief of the SEC Office of the Whistleblower commented on the public policy significance: "These awards demonstrate that whistleblowers can provide the SEC with incredibly significant information that enables us to pursue and remedy serious violations that might otherwise go unnoticed." She concluded, "We hope that these awards encourage others with specific, high quality information regarding securities laws violations to step forward and report it to the SEC."[11]

The SEC's Office of the Whistleblower, established under Dodd Frank, states, "Assistance and information from a whistleblower who knows of possible securities law violations can be among the most powerful weapons in the law enforcement arsenal of the Securities and Exchange Commission."[12] Based on their unique knowledge, these employees of conscience are in a positon to help the SEC "identify fraud and other violations much earlier than might otherwise have been possible." Their role provides significant benefits to the SEC, including reducing harm to investors, better preserving the integrity of the U.S. capital markets, and holding wrongdoers

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[8] *Dodd Frank Whistleblower Protections*, GOVERNMENT ACCOUNTABILITY PROJECT (viewed on Sept. 14, 2018), https://bit.ly/2NiS7Hq.
[9] *Office of the Whistleblower*, U.S. SECURITIES AND EXCHANGE COMMISSION (viewed on Sept. 14, 2018), https://bit.ly/1L3dXUO.
[10] Press Release, U.S. Securities and Exchange Commission, *SEC Awards More Than $54 Million to Two Whistleblowers* (Sept. 6, 2018), https://bit.ly/2oYYnFF.
[11] Press Release, U.S. Securities and Exchange Commission, *SEC Announces Its Largest Ever Whistleblower Awards* (Mar. 19, 2018), https://bit.ly/2OnNrMZ.
[12] *Office of the Whistleblower*, U.S. SECURITIES AND EXCHANGE COMMISSION (viewed on Sept. 14, 2018), https://bit.ly/1L3dXUO.

accountable more quickly.[13] The SEC whistleblower awards program models earlier proven incentive programs.

Whistleblower rewards programs have a long and fruitful history in other venues as well. Under the False Claims Act (FCA), individuals and entities with evidence of fraud against the federal government can sue the wrongdoer on behalf of the government and receive 15 percent to 25 percent of the recoveries. It is considered the most effective tool is combating fraud against the federal government. From 1987 to 2017, the federal government has recovered more than $56 billion through the False Claims Act (FCA), and more than 70 percent of recoveries resulted from whistleblower disclosures. Senate Judiciary Chairman Charles Grassley (R-IA), the author of the FCA modern whistleblower protections, spoke in support of awards programs during this year's National Whistleblower Appreciation Day, "Tens of billions of dollars once lost to fraud has been returned to the federal treasury, all because of whistleblowers."[14] Notably, the FCA does not have a 10 percent cap on awards.

Proposed Cap on Awards

We disagree with the proposal to establish a 10 percent rate cap rule in cases over $30 million. As part of its justification for the cap, the proposal claims:

> [T]he Commission may find itself faced with the possibility of paying out significantly large awards that are in excess of the amounts appropriate to advance the goals of the whistleblower program. These awards could substantially diminish the IPF [Investor Protection Fund], requiring the Commission to direct more funds to replenish the IPF rather than making that money available to the United States Treasury, where they could be used for other important purposes.[15]

The SEC's rationale fails to acknowledge that the IPF is funded by the monetary sanctions the SEC collects from wrongdoers – a fund that is largely dependent on whistleblower disclosures. Placing an arbitrary cap on awards could discourage some of the highest stakes whistleblowing and subsequently shrink the size of the IPF. In addition to lacking sound justification, it is also callous to the individuals who put their careers on the line to blow the whistle, and SEC is not in a position to quantify the lifetime hardships that whistleblowers face, compared to their income if they had remained silent observers.

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[13] *Id.*

[14] Press Release, Chuck Grassley, United States Senator for Iowa, *Grassley: Whistleblowers Deserve Our Profound Gratitude* (Jul 30, 2018), https://bit.ly/2OtsOzb.

[15] Whistleblower Program Rules, 83 Fed. Reg. 34702 (Jul. 20, 2018) (to be codified at 17 C.F.R. 240, 17 C.F.R. 249) https://bit.ly/2Mzd9MV.

Senate Judiciary Chairman Charles Grassley (R-IA), in his remarks during the 2018 National Whistleblower Appreciation Day, discussed the value of whistleblower rewards programs:

> The whistleblower reward provisions don't just provide an incentive for them to step forward. In many cases the rewards are there to make them whole for the retaliation they suffer. It just makes sense—the government would never know all the ways it was getting ripped off without these whistleblowers. So whatever the government recovers because of their information, whistleblowers ought to receive a share of that.[16]

Sen. Grassley emphasized that "It is vitally important" that whistleblowers in important cases are "awarded what Congress has determined they are entitled to." He said that the SEC must not "arbitrarily decide what it thinks is 'appropriate.'" He noted: "There would be no recoveries in these cases if there were no whistleblowers. That's just how it works."[17] We support Sen. Grassley's estimation of the critical role the reward program plays to enable the Commission to receive quality intelligence about wrongdoing in the financial industry.

In the financial sector, compensation can be extraordinary. In 2007, 50 individuals at Lehman Brothers who were not senior executives received a collective $700 million in compensation. The best paid individual received more than $50 million, in one year, and more than $100 million over the three years leading up to the crash.[18] Some of these individuals may have been part of the reckless practices and fraud that led to Lehman's bankruptcy. Others, undoubtedly, conducted themselves honestly. If the SEC caps awards, it may be less likely that those who stand to earn sums in these proportions would step forward and risk the inevitable recriminations and loss of future income to report fraud. Again, the threat to whistleblowers is substantial. Recently, the *New York Times* described a Goldman Sachs senior banker who alerted management to what he considered misconduct. He expected an investigation. "Then he was gone," the newspaper reported. [19] Such high profile, well publicized narratives serve as a chilling reminder to the potential fate of the whistleblower. To counter this, the SEC must not cap its current whistleblower award.

Conclusion

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[16] Press Release, Chuck Grassley, United States Senator for Iowa, *Grassley: Whistleblowers Deserve Our Profound Gratitude* (Jul 30, 2018), https://bit.ly/2OtsOzb.

[17] *Id.*

[18] *Lehman Compensation Documents,* LOS ANGELES TIMES (viewed on Sept. 17, 2018) http://documents.latimes.com/lehman-report/

[19] Emily Fitter, Kate Kelly, and David Enrich, *A Top Goldman Banker Raised Concerns. Then He Was Gone* NEW YORK TIMES(Sept. 11, 2018) https://www.nytimes.com/2018/09/11/business/goldman-sachs-whistleblower.html

The SEC whistleblower awards program was established to incentivize whistleblowers, including within in some of the highest stakes financial industry cases. Placing an arbitrary cap of 10 percent on some awards sends a message to potential whistleblowers that their information is less valued, undermining the potential for the SEC whistleblower program. We urge you to rescind this portion of the proposal and instead focus on ensuring better implementation of SEC's anti-retaliation protections for whistleblowers.

For questions, please contact Shanna Devine at [redacted], or Bartlett Naylor, at [redacted].

Sincerely,

Public Citizen

September 18, 2018

Mr. Brent J. Fields
Secretary, Securities and Exchange Commission
Attn: Emily Pasquinelli, Office of the Whistleblower
Attn: Brian A. Ochs, Office of the General Counsel
100 F Street NE
Washington, DC 20549-1090

Re: File No. S7-16-18, Amendments to the Commission's Whistleblower Program Rules

Dear Secretary Fields and Colleagues:

I write today as an interested market participant who has provided the Securities and Exchange Commission ("SEC" and the "Commission") with several voluntary submissions. In my opinion, the SEC's whistleblower program promotes the submission of high-quality information and original analysis detailing apparent violations of federal securities laws. Based upon public disclosures and my personal knowledge, several of my whistleblower submissions have prompted or significantly contributed to investigations and enforcement actions by the Commission.

Many whistleblowers, including myself, provide information to the Commission out of a sense of duty and without necessarily having any expectation of reward. However, to the extent the submissions may be eligible for compensation, whistleblowers should be treated fairly and consistently.

While there are positive aspects to the proposed amendments, I have significant concerns regarding the proposed changes to Rule 21F-9, the interpretative guidance redefining "independent analysis," the failure of the proposed amendments to adequately address the significant backlog of award applications, and other specific proposals. As someone who takes the whistleblower program seriously and wants it to succeed, I hope the Commission will take these comments seriously in turn.

* * *

To date, I have filed one WB-APP after the publication of a Notice of Covered Action. The Commission has not issued a Preliminary Determination more than 18 months after receiving my WB-APP. The relevant Notice of Covered Action concerned a small, expeditiously resolved administrative proceeding. The adjudication of my application should have been a straightforward exercise that is not particularly resource-intensive. Yet, without any explanation from the Claims Review Staff, my application has languished without response for even longer than the apparent duration of the associated investigation, which is both perplexing and frustrating. I understand that many other applicants are similarly situated.[1]

While I applaud the Commission's attempt to eliminate frivolous claims and the resulting backlog of WB-APPs, the Commission can begin to address this problem without waiting for the outcome of the rulemaking process. Specifically, the Commission should: i) hire additional attorneys in the Office of the Whistleblower and/or appoint additional individuals to the Claims Review Staff;[2] ii) prioritize easily

[1] On page 114, the Commission reveals that the Office of the Whistleblower has received approximately 660 properly completed WB-APPs over the past six years, not including repeat submissions from frivolous claimants. During that time, the Commission has issued 128 final orders. Since many orders cover multiple applications and preliminary determinations are not publicly available, the size of the current backlog is unknown.

[2] According to the 2017 Annual Report of the SEC's Whistleblower Program, the 11 attorneys in the Office of the Whistleblower assess each award application before making a recommendation to the 5 senior Enforcement

processed claims; iii) establish a reasonable deadline for issuing each Preliminary Determination; and iv) provide applicants with periodic updates on the status of pending claims.

Accordingly, I wholeheartedly agree with the comment letter issued by Kohn, Kohn & Colapinto, LLP on July 24, 2018 (the "Kohn Letter"), which stated: "The most significant problem with the SEC's current whistleblower program is…the prolonged delay in processing reward applications. These delays can drag on for years and based on our direct experience, can be as long as four (4) years and running."

I was particularly disappointed that the proposed rule changes did not establish a deadline for the initial review of WB-APPs. The Kohn Letter opines, "Moreover, just as whistleblowers must adhere to strict timing requirements for filing TCR and APP applications, the SEC staff should similarly be bound by strict time requirements for approving reward applications." A formal deadline would help ensure that the Office of the Whistleblower would process claims in a timely fashion. Considering the potential complexity of competing claims and burdens on Claims Review Staff, I would be satisfied with any reasonable deadline, as long as the deadline was explicitly documented. This requirement could be easily included in Section 240.21F-11(d), which as proposed by the Commission states, "Following this evaluation, the Office of the Whistleblower will send you a Preliminary Determination setting forth a preliminary assessment[.]" It would only take a minor edit to establish this much needed deadline. Moreover, such a change follows directly from the stated goal of the amendments to "more efficiently process award applications."

* * *

The remainder of this letter responds to many of the enumerated and general requests for comment. My responses are based on my familiarity with the SEC's whistleblower program. Where a question is omitted, I do not have any substantive comment on the amendment as proposed or lack sufficient basis to make a meaningful contribution.

Questions Regarding Proposed Rule 21F-3(b)(4)

The discussion of the proposed rule does not address that collections in a "related action" are only eligible for compensation where the Commission has itself brought a successful enforcement action. If the Commission was concerned about avoiding multiple recoveries, it could simply decline to bring an enforcement action. But, if the Commission receives original information that results in an enforcement action, an award application should not be denied because another body might possibly provide an award of its own. Therefore, I do not believe that the proposed Rule 21F-3(b)(4) should be adopted.

7. Is the proposed "direct or relevant" standard appropriate for assessing whether an action should qualify as a related action? Are there alternative formulations that should be adopted instead?

I believe the SEC's proposed standard is untenable and imposes an unreasonable burden on potential whistleblowers. The application of this proposed rule would impose an undue burden on whistleblowers by forcing them to submit their original information to several government entities. In addition, this proposed rule change might extend how long it takes for a whistleblower to be compensated as differing governmental agencies determine who is best suited to compensate the meritorious whistleblower. This proposed change ignores the fact that most whistleblower programs have different eligibility considerations and confidentiality protections, which could make some whistleblowers

officers who act as Claims Review Staff. At a rate of 110 WB-APPs each year, each attorney could conceivably be tasked with making a recommendation on one application per month. If this is overly burdensome, I encourage the Commission to consider devoting additional resources to processing award applications.

unwilling or unable to claim compensation through another whistleblower program. Moreover, even without this rule, the Commission is already empowered to deny claims resulting from original information that did not lead to the covered action in question, making the SEC's proposed change largely irrelevant.

Some of the Commission's own examples do not clearly detail how this proposed rule would apply, evidencing the difficulty in applying the SEC's proposed standard. For instance, on page 33, the Commission provides a hypothetical "scheme to avoid tax obligations." In this example, the Department of Justice ("DOJ") charges a scheme to avoid tax obligations and imposes monetary sanctions. The Commission suggests that "such an action would lack a more direct or relevant connection to the Commission's whistleblower program relative to the IRS's award program." If a whistleblower provided information regarding tax evasion to the Commission and the DOJ was the only governmental agency that subsequently took action, there would be no covered action and no additional rulemaking is required for the Commission to deny an award claim. However, if a whistleblower provided the SEC with original information regarding tax evasion by a public company *that involved violations of federal securities laws*, the whistleblower should not be denied recovery under the SEC's whistleblower program because the whistleblower might someday, hypothetically, also be able to recover under the IRS's whistleblower program.

In my personal experience, I submitted a TCR concerning an FDIC-regulated financial institution under investigation by the SEC. I provided original information to both the FDIC and the SEC. If the FDIC imposes civil monetary penalties for related conduct, those penalties could form the basis for a related action claim, assuming that the Commission also brings an enforcement action. One reading of the proposed rule could exclude the value of the civil monetary penalties from the definition of "related action" because other whistleblower award programs exist, even though the other programs have significant limitations. Specifically, FDIC whistleblowers may have eligibility for an award of up to $1.6 million under FIRREA, which has additional procedural requirements when compared to the SEC whistleblower program that I did not meet. As written, the proposed rule could inappropriately exclude from the definition of "related action" all monies collected by the FDIC, regardless of whether I actually received, or could receive, any compensation from the FDIC.

8. Instead of adopting the proposed rule, which would authorize the Commission on a case-by-case basis to consider whether an action should qualify as a related action, should the Commission adopt a categorical exclusion from the definition of related action for any judicial or administrative action that may have an alternative applicable award scheme?

The Commission should not adopt a categorical exclusion. In fact, that would be an even worse result than the proposed rule, for the same reasons set forth above. If the Commission is concerned about duplicate awards, the SEC could consider reducing a whistleblower award by the amount of compensation a whistleblower actually received from other whistleblower programs. It is unfair that the proposed rule prospectively excludes the potential recovery from other whistleblower programs because of the delays and uncertainty associated with award applications to every whistleblower program.

9. Should we repeal existing Exchange Act Rule 21F-3(b)(3) so that proposed Rule 21F-3(b)(4) would apply instead to afford a uniform treatment for all potential related actions for which multiple whistleblower programs might apply? Please explain.

Rule 21F-3(b)(3) adequately addresses the concerns the new rule attempts to resolve and should not be repealed. In the alternative, Rule 21F-3(b)(3) could be expanded to encompass other regulatory authorities.

Questions Regarding Proposed Rule 21F-6

While I agree with other commenters that the proposed rule sends the wrong message to prospective whistleblowers, and I struggle to understand how such a proposal reflects the program's policy priorities, I believe there are narrow circumstances in which it could be appropriate. There is a public policy interest in allowing the Commission to make discretionary adjustments to awards with otherwise unreasonably large or small absolute values, provided the Commission uses its discretion fairly and judiciously and claimants maintain due process. The proposed discretion to increase awards is particularly appropriate for situations where collections were less than the sanctions awarded. In those limited circumstances, the Commission should also consider applying the proposed rule retroactively.

13. With respect to proposed paragraph (d), are the $100 million collected sanctions threshold and the $30 million floor appropriate? Is there another threshold or floor that the Commission should adopt? If so, please explain what should be the appropriate threshold or floor.

I support the proposed thresholds because there is not necessarily a correlation between the size of a judgment and the seriousness of the violation. For numerous reasons, an accounting misstatement by a multi-billion-dollar company may result in a larger sanction than for a fraud committed by a microcap company. The size of the sanction, however, is not always indicative of how much assistance a whistleblower provided on a case. In fact, a whistleblower may spend more time and face greater risks with a smaller case.

There could be situations where an uncomplicated whistleblower submission could earn a whistleblower a significant personal windfall, even if the SEC only awarded 10% of the total recovery. This could be perceived as unjust, especially if the whistleblower did not suffer any retaliation or hardship from providing information to the Commission. It is reasonable, though hardly a priority, for the Commission to consider limiting awards in these rare situations, while still ensuring that whistleblowers are well-compensated given the impact of their information. Given the breadth of discretion proposed, whistleblowers should be allowed to appeal any discretionary reduction applied pursuant to the proposed rule.

15. In the context of two or more individuals acting together as a whistleblower, should the $30 million floor in proposed paragraph (d) apply where the aggregate award to both individuals exceeds $30 million or where the award to each individual would potentially exceed $30 million? Please explain the reasons for your views.

The Commission should apply the floor on an individual basis because many individuals have other agreements that reduce their share of an award, such as cost reimbursements and contingency-fee arrangements with counsel.

Questions Regarding Proposed Rule 21F-8

27. Is it appropriate for OWB to advise a claimant of the Office's assessment that the claimant's award application for a Commission action is frivolous, and to offer the claimant the opportunity to withdrawal his or her award application(s), such that the application(s) would not be considered by the Commission in determining whether to impose a bar?

This proposal would still allow a bad faith actor to make multiple award applications and withdraw the applications, without any negative consequences, after notification from the Commission.

This would still waste Commission resources on frivolous applications. While notification is a good idea in principle, vexatious claimants should not receive an infinite number of warnings, while legitimate claimants await rulings from the Commission. The Commission should allow vexatious claimants to withdraw their first frivolous claim, after which additional frivolous claims would count towards the "three strikes" proposal, ultimately leading to the vexatious claimant's permanent ban.

28. Is it appropriate for the Commission to adopt a rule that would permanently bar any applicant after he or she has been found by either the Commission to have submitted at least three frivolous award applications? Should the number of frivolous award applications be fewer or greater before a bar would be imposed?

I support this well-considered rule change and hope that this will help resolve the backlog of unanswered award applications.

Questions Regarding Proposed Rule 21F-9

Based on my experience with the Commission's whistleblower program, this proposed rule appears to be far removed from the actual day-to-day practice of Enforcement Staff. Timely intervention in ongoing, serious securities violations often results from contact with members of the public. Several SEC employees have told me that they welcome direct contact regarding potential violations of the securities laws and that follow-up TCR submissions are acceptable. When a matter is time sensitive, these interactions can allow the SEC employees to act quickly without waiting for the TCR system to triage any pertinent information. By excluding these communications from consideration when granting an award, the Commission would create a procedural roadblock and discourage individuals from providing information through the most expedient channels, thereby contradicting the program's mission.

The only stated rationales for this amendment are confidentiality protections and the Commission's previously unannounced approach of excluding from award eligibility any information that a whistleblower submits directly to the SEC's staff. When whistleblowers reach out to SEC staff beyond the TCR system, they do so to save time and protect the public interest, while potentially compromising their own anonymity. These whistleblowers should not also have to waive their right to a potential award.

In order to draft an effective TCR submission, a whistleblower and their counsel often spend a significant amount of time developing their submission. During this process, whistleblowers and/or their counsel often reach out to SEC employees to discuss the upcoming TCR submission. The proposed rule would illogically preclude a whistleblower from receiving an award for information contained in those communications with the SEC, despite the information's clear contribution to the SEC's investigation. The proposed rule's limited exception – which is discretionary – would be the only protection for these communications.

31. Please comment on [whether] the limited exception provided for in proposed Rule 9(e) [is] appropriate. Should the exception be adopted? If so, should it be narrowed or broadened? Should the 30-day time period be extended or reduced?

The limited exception is insufficient. If the whistleblower's original information leads to a successful enforcement action and the whistleblower complies with the requirements of Rules 21F-9(a)-(b), the means of the whistleblower's initial communication with the Commission should not alter the whistleblower's eligibility for an award. The proposed rule would otherwise significantly chill the communication of time sensitive information from whistleblowers to the Commission. Whistleblowers

would have to routinely file a TCR *before* every email or phone call with SEC employees to maintain award eligibility.

If the proposed rule is adopted, the Commission should expand the exception to encompass any information provided in written or oral communication with SEC employees that is *subsequently* documented in a TCR submission. I strongly encourage the Commission to consult with SEC employees to discuss the nature of their communications with whistleblowers. The proposed rule even appears to prejudice supplemental submissions, which often provide ongoing assistance throughout an investigation.

In my experience, a 30-day time period is insufficient for the preparation of a TCR submission, which often amounts to a substantial legal brief. I have filed TCR submissions the same day as my discussions with SEC staff, but I have also filed TCR submission almost a year after my initial discussions with the SEC. The significant variation depends on the complexity of the allegations, the progress of my research at the time of the initial communication, and the nature of the initial interaction.

Lastly, it is possible that the direct submission of original information outside of the TCR system could prompt an investigation and result in an enforcement action, without a whistleblower knowing the significance of the contribution. In such circumstances, the Commission should allow whistleblowers to remedy any perceived formal defects in a submission.

Questions Regarding Proposed Rule 21F-18

35. We seek comments about the proposed summary disposition process, including whether the categories of award applications that would be eligible for summary disposition are appropriate, whether the proposal would afford claimants sufficient process, and whether there are any specific modifications that we should consider making to the proposed process.

I support this proposed rule subject to my comments on Rule 21F-9 presented above.

Questions Regarding the Interpretative Guidance on the Meaning of Independent Analysis

The proposed Interpretative Guidance muddies the waters, introducing additional subjective standards for assessing the originality of independent analysis. This subjective standard could prejudice award applicants and discourage submissions from incorporating useful public information along with other analysis. Moreover, I am concerned that this subjective standard could not be applied uniformly.

The proposed *ex post* determination by the Commission, potentially many years later, of "whether the violations could have been inferred from the facts available in public sources" is vague and hypothetical. Unlike this proposal, a workable standard would assess whether the Commission actually inferred the violations from available public information. If this threshold was satisfied, it would establish a rebuttable presumption that a whistleblower did not submit original information. Conversely, if the Commission did not infer violations from the public record, the violations were clearly not "reasonably apparent." I believe that the presumption against the originality of a whistleblower's information should not be based on a hypothetical inference of what the Commission could have recognized at the time of the whistleblower's submission.

As noted in the guidance, original information must still "lead to" a successful enforcement action to establish award eligibility. It is highly unlikely that unsophisticated public information (*e.g.*, share prices, news articles, press releases, or SEC filings) without further analysis would slip past the SEC. Therefore, it seems implausible that less substantive tips simply providing this basic information could "lead to" a successful enforcement action.

The examples provided in the interpretative guidance would benefit from threshold analysis. The proposal cites the information provided by Harry Markopolos against Bernie Madoff as an example of qualifying original information, but it is unclear whether the example is meant to represent the minimum threshold for independent analysis, an exemplary contribution, or something in between. The SEC could clarify its position by providing the public with several detailed examples that apply to the new subjective standard.

Additionally, the SEC's guidance dismissively describes some types of data as public information, ignoring the expertise required to obtain and understand the information. For example, information obtained from a FOIA request may be public, but it can be costly and time consuming to obtain. Providing the Commission with independently sourced FOIA materials as part of a submission detailing a fraud appears to be highly probative analysis, although the documents were technically publicly available. The Markopolos example relied on open interest data, which is public, but its significance may not be. I am concerned that the Commission's examples raise significant questions, while trivializing the difficulty of assembling and analyzing information from disparate public sources. The Commission risks seriously undermining the incentives for the type of rigorous and long-term investigatory work many whistleblowers conduct in order to expose pernicious frauds. If this incentive is taken away, many of the best independent analysis provided to the Commission may begin to dry up.

36. [captioned 30. on p.109]. We seek comment on the interpretation of "independent analysis" in light of the background set forth above. Are there additional considerations that the Commission should factor into the interpretation? For example, should the interpretation address more explicitly cases in which an individual selects, compiles, and presents publicly available information in a new way for the staff? If so, how?

As stated above, to the extent that almost all non-insider submissions rely at least in part on public information, it would be helpful to have clear examples that detail the Commission's proposed standards for independent analysis.

37. [captioned 31. on p.109]. Should any aspect of the interpretation be codified in rule text? For example, should the Commission adopt rule text that would make clear that for a whistleblower to be credited with providing "original information" through "independent analysis," the whistleblower's examination and evaluation should contribute "significant independent information" that "bridges the gap" between the publicly available information and the possible securities violations?

No, this is an inherently subjective determination. Interpretative guidance is the better mechanism for presenting this information. Without a robust definition of "bridging the gap," it is not clear that a rule change would accomplish anything.

Comment on the Discretionary Mechanism

Beyond the specific rule proposals and interpretations expressly advanced above, we invite public comment on whether the Commission could at a future point propose a rule that would permit the Commission on a discretionary basis to pay awards to whistleblowers in Commission enforcement actions that do not result in an order for monetary sanctions that exceeds $1,000,000 or enforcement actions where the whistleblower's tip consisted of publicly available information. Similarly, do we have the statutory authority to propose and adopt a rule that would permit the Commission on a discretionary basis to make award payments that are not tied to the monetary payments collected where a meritorious whistleblower has received an award determination in a covered action, but the ordered monetary sanctions cannot be collected or the amount collected would result in a de minimis payment?

Alternatively, would a legislative change be required for the Commission to establish the type of discretionary award mechanisms described in this section? Moreover, whether by rule or legislative change, would such discretion to make awards in these instances be in the public interest? Please explain the grounds for your views.

All of the concerns addressed in this letter would be moot if the Commission consistently rewarded individuals who report violations to the Commission. Any mechanism for doing so, even when the information technically fails to qualify for an award or monetary sanctions, would certainly be welcomed and consistent with the purpose of the whistleblower program. Moreover, this additional discretion could incentivize individuals to provide additional information to the Commission, which would have previously been left unreported.

* * *

I appreciate the opportunity to comment and hope that my opinions and analysis will help the Commission with its proposed rulemaking. If there are any questions, I am available to discuss at your convenience, and can be reached through counsel.

CENTER FOR CAPITAL MARKETS COMPETITIVENESS

TOM QUAADMAN
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September 18, 2018

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U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: **Amendments to the Commission's Whistleblower Program Rules; 17 CFR Parts 240 and 249; Release No. 34-83557; File No. S7-16-18; RIN 3235–AM11**

Dear Mr. Fields:

The U.S. Chamber of Commerce (the "Chamber") created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century global economy.[1] The CCMC welcomes the opportunity to comment on the proposed rules issued by the Securities and Exchange Commission (the "SEC" or "Commission"), entitled Amendments to the Commission's Whistleblower Program Rules (the "Proposing Release").[2]

The Chamber views a strong and fair SEC as an essential element of maintaining efficient capital markets by providing investors and businesses with the certainty needed to transfer capital for its best use. A rigorous enforcement regime ensures efficient markets by rooting out fraudsters and other bad actors, but if not properly calibrated, could discourage public capital market activities. This issue is especially acute in light of the declining number of public companies—in the past twenty years, the number of US public companies has been cut in half.

[1] The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector, and region.

While the Chamber has some continuing concerns about the Whistleblower program as mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and believe that other reforms should be undertaken, we are encouraged that elements of the Proposing Release seek to rationalize discrete elements of the Section 21F rules. This effort helps to provide proper balance to the program and allow Whistleblowers to report wrongdoing. In brief the Chamber:

- Believes that a person who knowingly participates in wrongdoing that harms investors should not profit from having unclean hands by being eligible for a bounty award of any kind. Rule 21F-2(a) should therefore be revised to make this point abundantly clear;

- Does not support the proposed redefinition of the term "action" to include deferred prosecution agreements ("DPAs"), non-prosecution agreements (NPAs (each defined below) or other kinds of settlement agreements;

- Supports the narrow definition of "monetary sanctions" proposed by the Commission;

- Generally supports the proposed amendments that would eliminate the potential for double recovery under the current definition of "related action" by preventing a bounty seeker from receiving multiple recoveries for the same information from different whistleblower programs;

- Does not support granting the Commission broad discretion to vary the conditions of payment in the case of smaller and extraordinarily large bounties;

- Supports the Commission in its desire to conform its whistleblower definition to the criteria laid out by the Supreme Court, but urge the Commission to amend its rules to eliminate the possibility of making payments to bounty seekers with unclean hands;

- Supports conforming the forms used by SEC whistleblowers to those that are already referenced in the code of Federal Regulations;

- We are supportive of the Commission's efforts to root out fraud and abuse associated with bounty seekers who submit false information or otherwise abuse the bounty application process;

- Supports proposed amendments that provide greater clarity regarding the criteria required to obtain a large bounty, however the Commission should not retain the right to waive this criteria as it would likely open the SEC to endless waiver requests from bad actors;

- Supports limiting abuse of the program by unscrupulous bounty seekers, we support the proposed amendments to limit the administrative record on appeal;

- Agrees that the Commission and its staff should not devote the agency's limited resources to a prolonged process concerning non-meritorious claims and support the proposed amendments to the summary disposition mechanism;

- Generally supports the Commission's proposed guidance concerning "independent analysis", but believe a bounty seeker must, in conducting that analysis, provide concrete, actionable information to the Commission rather than the mere "inference" of wrongdoing; and

- Does not support creating an additional discretionary award mechanism for matters outside those contemplated by Congress under Section 21F.

These points are discussed in more detail below.

DISCUSSION

The bounty program established by the Dodd-Frank Act and administered by the SEC has operated on a broad set of nebulous and subjective criteria. While a certain degree of confidentiality is required under Section 21F of the Exchange Act the paucity of details in the orders granting (and denying) bounty awards provides little if any decision-useful information to regulated persons as to what conduct they should avoid.

We continue to be concerned about the ongoing impact the Commission's bounty rules have had on the efficacy of internal corporate compliance programs. The bounty program also suffers from a significant structural flaw in that it permits a wrongdoer—one who actually planned, aided, abetted or caused a violation of law—to be eligible to receive a bounty. Rather than undertaking a top to bottom assessment as to how the bounty rules have impacted the marketplace, however, the bulk of the proposed amendments would simply provide the SEC additional leeway in making award determinations.

Definition of an "Action"

As the Proposing Release notes, the SEC's bounty rules currently do not address whether the SEC may pay a related-action award when an eligible whistleblower voluntarily provides original information that leads to a DPA or NPA entered into by the US Department of Justice or a state attorney general in a criminal proceeding. Under the proposed amendments, the SEC would be able to make award payments to whistleblowers based on money collected as a result of such DPAs and NPAs, as well as under settlement agreements entered into by the SEC outside of the context of a judicial or administrative proceeding to address violations of the securities laws.

We do not support the proposed redefinition of the term "action" to include DPAs, NPAs or other kinds of settlement agreements. As the Proposing Release itself concedes, these types of agreements are not always filed in court or subject to judicial oversight, which we believe is an important check and balance on the process. Moreover, the Commission does not have any particular expertise in the myriad of state laws that may come into play with respect to a settlement with a particular state attorney general, and the standards of culpability under state law may differ considerably from those under the federal securities laws. New York's Martin Act,[3] for example, contains no scienter requirement and is largely a strict liability regime for securities fraud. Introducing these kinds of awards into the bounty system on a regular basis would lead to inconsistency in the eligibility standards under the Commission's rules, and could create an imbalance among the states.

[3] New York General Business Law article 23-A, §§ 352-353.

We also respectfully disagree with the Proposing Release's assertion that "the statutory term 'administrative action' is sufficiently ambiguous and broad enough to permit" the Commission "to include DPAs and NPAs . . . or settlement agreements entered into by the Commission outside of the context of judicial or administrative proceedings . . . ." Such a novel interpretation is contrary to the plain meaning of the term "action", conflicts with the current usage of the term "action" in the Commission's existing Section 21F rules, lacks any basis in judicial precedent, and also lacks any basis in the Dodd-Frank Act itself—a statute that runs nearly 900 pages in length. Instead, DPAs, NPAs and settlement agreements are bilateral (or multilateral) contracts among regulators and third parties, are entered into voluntarily by those third parties, and cannot be unilaterally implemented by any individual regulator. In sum, to redefine "action" to include DPAs, NPAs and settlement agreements far exceeds the deference arguably afforded to the Commission under *Chevron*.[4] Indeed, because the text of Section 21F of the Exchange Act is clear on its face, there is no need (or authority) to probe deeper into any hidden meanings under *Chevron* in the first instance.

Definition of "Monetary Sanctions"

We support the narrower definition of "monetary sanctions" proposed by the Commission. We do not, however, support the proposed amendments to the extent they would permit bounty payments in respect of DPAs, NPAs and settlement agreements, as explained in the preceding section of this letter.

Definition of "Related Action"

The proposed amendments would also eliminate the potential for double recovery under the current definition of "related action" by preventing a bounty seeker from receiving multiple recoveries for the same information from different whistleblower programs. We are supportive of this objective and believe it would improve the Commission's stewardship over the disbursement of public funds. However, unlike the proposed revision that would authorize the Commission to determine on a case-by-case basis whether an action qualifies as a related action, we believe the Commission should categorically exclude any judicial or administrative

[4] *See generally* Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984).

action that may have an alternative award scheme. The CCMC cannot conceive a situation in which a bounty seeker should ever receive a double recovery, which eliminates the need for any discretion to make a duplicative award.

Considerations for Smaller and Extraordinarily Large Bounties

The proposed amendments would provide additional discretion to the Commission when considering for smaller and extraordinarily large bounties. For bounties less than $2 million, the proposed amendments would authorize the SEC in its discretion to adjust the bounty percentage upward under certain circumstances (subject to the 30% statutory maximum) to an amount up to $2 million. For bounties of at least $100 million, the proposed amendments would authorize the SEC in its discretion to adjust the award percentage so that it would yield a bounty payment (subject to the 10% statutory minimum) that "does not exceed an amount that is reasonably necessary to reward the whistleblower and to incentivize other similarly situated whistleblowers." However, in no event would the bounty be adjusted below $30 million under the proposed amendments.

The CCMC supports the Commission bringing more discipline to the payment of bounties. We are troubled by the wide, subjective discretion that the Commission has previously granted itself in the payment of bounties, which undermines public confidence in the agency. We also continue to be concerned that the payment of life-altering bounties has had a material adverse impact on the efficacy of internal compliance systems. Due to the Dodd-Frank Act and in pursuit of multi-million-dollar payouts, large numbers of employees with knowledge of potential wrongdoing now go directly to the SEC rather than make use of internal reporting channels, allowing potentially violations of law to continue unabated, undermining internal controls and harming investors in the process.[5]

Internal compliance systems are often more efficient than external reporting in correcting financial misstatements and increasing the accuracy of management's assessment of internal controls. Because the Commission's bounty rules provide little countervailing incentive for employees to report internally, employees now choose

[5] Since the objective of Section 404 of the Sarbanes-Oxley Act is to improve internal controls, it seems odd to us to incentivize behavior that has the opposite effect.

between their own financial benefit and the health of their company, all to the detriment of investors.

For these reasons, we do not support any effort to "round up" bounty payments below $2 million. If a particular tip does not justify a bounty payment in excess of that amount under the Commission's already generous criteria, we see no policy reason to provide even more discretion to top off a lower award. Likewise, we see no reason why collecting monetary sanctions above $100 million (itself an arbitrary number) should alter the criteria for payment to a bounty seeker or otherwise provide any kind of floor. We therefore oppose the proposed amendments to Rule 21F-6 in their totality.

Additionally, in order to incentivize the use of internal compliance systems, the SEC should also consider imposing a significant discount on any award in which a whistleblower does not make a report to the company involved at the same time they report to the SEC. There is nothing in the statute that would preclude such a discount, and a bright line standard would have a motivating influence upon whistleblowers to report to companies as well as the SEC.

Status, Eligibility, Confidentiality, and Anti-Retaliation

In response to the Supreme Court's ruling in the *Digital Realty* case,[6] the Proposing Release also proposes a uniform definition of "whistleblower" that would apply to all aspects of Section 21F of the Exchange Act, including the reward program, the heightened confidentiality requirements and the employment anti-retaliation protections. The SEC would confer whistleblower status only on (1) an individual (2) who provides the SEC with information "in writing" and only if (3) "the information relates to a possible violation of the federal securities laws (including any law, rule, or regulation subject to the jurisdiction of the SEC) that has occurred, is ongoing, or is about to occur."

We support the Commission in its desire to conform its whistleblower definition to the criteria laid out in *Digital Realty*. We agree that clarifying that reports must be made "in writing" is a sensible condition. However, for purposes of anti-

[6] Digital Realty Trust, Inc. v. Somers, 583 US ___ , 138 S. Ct. 767 (2018).

retaliation protection, we believe that protection should only attach at such time as a bounty seeker submits Form TCR to the Commission. The Proposing Release lays out a series of complicated hypotheticals regarding competing email and TCR submissions that make the case for having a bright line test for anti-retaliation protection. Confidentiality only attaches under the Commission's rules when Form TCR is submitted, and a bounty seeker is only eligible for an award when she submits Form TCR. We believe it will be much more straightforward for anti-retaliation protection to attach at the same time and not be subject to a different test.

We firmly believe that a person who knowingly participates in wrongdoing that harms investors should not profit from having unclean hands by being eligible for a bounty award of any kind. Rule 21F-2(a) should therefore be revised to make this point abundantly clear.

Accordingly, Rule 21F-2(a) should be further modified to read as follows:

> (a) *Whistleblower status.* (1) You are a whistleblower for purposes of Section 21F of the Exchange Act (15 U.S.C. 78u-6) as of the time that, alone or jointly with others, you provide the Commission with information in writing **on Form TCR** that relates to a possible violation of the federal securities laws (including any law, rule or regulation subject to the jurisdiction of the Commission) **by another person** that has occurred, is ongoing, or is about to occur**, and you did not directly or indirectly participate in, plan, direct, facilitate, control, aid, abet or cause such violation**.
>
> (2) A whistleblower must be an individual. A company or other entity is not eligible to be a whistleblower.

Because a culpable person would no longer be eligible for any bounty award, Rule 21F-6(b)(1)—which at present merely treats culpability as a factor that may or may not decrease a bounty payout—becomes unnecessary and should also be deleted in its entirety.

To clarify eligibility for retaliation protection, we would also revise proposed Rule 21F-2(d) (3) as follows:

(3) To qualify for retaliation protection, you ~~do not need to~~ **must** satisfy the procedures and conditions for award eligibility in Rules 21F-4, 21F-8, and 21F-9 (§§ 240.21F-4, 240.21F-8, and 240.21F-9).

Use of Forms

On the basis of the Commission's assurance that "the forms designated on the Commission's website for use in the whistleblower program would be substantially similar to those currently referenced in the Code of Federal Regulations", we do not object to the proposed amendments described in Part II.F of the Proposing Release. To allow the public sufficient time to become familiar with any revised forms, we agree that any revisions to paper Form TCR or Form WB-APP should not take effect until the expiration of a 30-day period after posting on the Commission website.

False Information and Abuse of Process

Since the SEC's bounty rules were first proposed in 2010, we have repeatedly expressed our deep apprehension that the prospect of lottery-sized payouts would inundate the Commission and its staff with all manner of frivolous complaints by unscrupulous bounty seekers, distracting SEC personnel and diverting the agency's limited resources away from investigating meritorious cases. We are not surprised then that the Proposing Release concedes that some "claimants have imposed an undue burden on the award determination process by submitting dozens and in some cases over a hundred award applications that lack any colorable connection" to information they have provided and completed enforcement actions.

A recent analysis from the *Wall Street Journal*, for example, found that over the life of the bounty program, individuals who received awards waited on average about 210 days for a decision, while those individuals who were rejected got word of their rejection within an average of 730 days.[7] We suspect that absent significant reforms to the bounty program, these wait periods will only grow, and it will become more difficult for the Commission to separate frivolous cases from those which have merit.

[7] SEC Whistleblower Payouts Slow Amid Deluge of Reward Seekers. Wall Street Journal August 5, 2018.

We are supportive of the Commission's efforts to root out fraud and abuse associated with low-quality complaints. We therefore support the proposed amendments to Rule 21F-8 to enhance the Commission's authority over bounty seekers who submit false information or abuse the bounty application process. The apparent abuse of the system provides further support for our objections to several of the proposed amendments detailed elsewhere in this comment letter. We urge the Commission to reconsider how the proposed amendments to the Section 21F rules would have the unintended but entirely predictable effect of further encouraging baseless or exaggerated complaints and further misuse of the bounty program by numerous bad actors.

Form TCR

We support the proposed amendments to Rule 21F-9 to the extent they provide greater clarity about the parameters around the criteria for obtaining a bounty and, consistent with our earlier remarks, would discourage frivolous activity on the part of bounty seekers. We do not support granting the Commission discretion to waive these same criteria in proposed Rule 9(e) because doing so would open the agency to endless waiver requests from the same bad actors that the agency is trying to limit elsewhere in the proposed amendments to the Section 21F rules.

Materials That May Form the Basis of an Award Determination

In further support of the objective of limiting the burden placed on SEC staff associated with processing non-responsive or non-timely submissions, we support the proposed amendment to Rule 21F-12(a)(3) regarding timely submission of information. Likewise, we similarly support the proposed amendments to Rule 21F-12(a) (6).

Administrative Record on Appeal

Again with a view toward limiting abuse of the program by unscrupulous bounty seekers, we support the proposed amendments to Rule 21F-13.

Summary Disposition Process

As noted elsewhere in this comment letter, we wholeheartedly support measures that permit the Commission to deploy its limited resources in pursuit of meritorious actions and away from frivolous or non-serious claims. We agree that agency staff should not waste time unnecessarily in processing non-meritorious claims. Accordingly, we support the proposed amendments to the summary disposition process.

Interpretive Guidance Regarding "Independent Analysis"

The CCMC continues to be concerned that SEC staff who could be pursuing genuine enforcement cases are instead sidelined separating wheat from chaff when bounty seekers submit information that is already in the public record and contains no original analysis. As the Proposing Release suggests, we believe there is merit in grounding the "independent analysis" framework in the federal case law under the False Claims Act and the public disclosure doctrine. The federal courts frequently look to whether essential facts that are sufficient to give rise to an inference of fraud are in the public domain. Therefore, we support the general approach that the Commission's proposed interpretive guidance that no "analysis" exists if the facts disclosed in public documents are already sufficient to raise an "inference" of the possible violations provided in the bounty seeker's purported tip.

Although we support this approach in general terms, we believe that the term "inference" does much of the work under the proposed interpretive guidance. We are concerned that it sets too low a standard and may be inconsistent with the False Claims Act jurisprudence and the Commission's own standard under current Rule 21F-4(b) (3). A mere "inference" is, to us, associated too closely with hearsay and innuendo, not "information that is not generally known or available to the public." Rather than a standard that supports a simple "inference" of wrongdoing, the tip should provide concrete, actionable information to the Commission.

Potential Discretionary Award Mechanism

Part IV of the Proposing Release seeks comment on a broad discretionary award mechanism that could be created in the future. We do not believe that such a program is a wise use of public funds.

A recurring theme in the Proposing Release—one that we support—is rationalizing the various processes under the Commission's bounty seeker program to discourage frivolous complaints so that agency resources are deployed to more productive uses. We do not believe it is sensible to tack in the opposite direction and create a program with no criteria. Chaos would follow.

Removing the guardrails established by Congress and the SEC will encourage trivial, non-actionable claims and overwhelm the SEC staff who must process them. Because this broader program goes beyond what Congress intended under Section 21F of the Exchange Act, we also do not believe that the Commission could (or should) redistribute public funds in this way without a specific appropriation from Congress.

For these reasons, we do not support creating a mechanism that goes beyond the limits set by Congress.

Other Issues

Respectfully, we are disappointed that the Proposing Release abruptly warns commenters that the Commission "is not proposing any other changes to the whistleblower program rules . . . , nor is the Commission otherwise reopening any of those rules for comment." Such a bold statement is an unwelcome departure from Commission practice in virtually every other notice of proposed rulemaking, which typically foster a broad debate of the issues and encourage the public's input on a wide range of issues. More fundamentally, in limiting itself in this way the Commission is missing the opportunity to probe additional avenues to improve the operation of the Section 21F rules for the benefit of investors.

Conclusion

We believe the Proposing Release is a small but nonetheless important step towards improving the Commission's bounty rules. The Proposing Release itself concedes that many of the unintended consequences the CCMC warned about when the Section 21F rules were first proposed in 2010 have now come to pass. We are disappointed but not surprised that the Commission has found itself overwhelmed at times by a large number of low-quality complaints advanced by putative bounty seekers more concerned with enriching themselves than truly protecting investors. We encourage the Commission to continue studying ways to improve this well-intentioned but at times unfocused program.

We thank you for your consideration of these comments and are available to discuss them further with the Commissioners or Staff at your convenience.

Sincerely,

Tom Quaadman

cc: The Honorable Jay Clayton
The Honorable Kara M. Stein
The Honorable Robert J. Jackson, Jr.
The Honorable Hester M. Peirce
The Honorable Elad L. Roisman

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United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

September 18, 2018

VIA ELECTRONIC SUBMISSION

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549–1090

Re: File No. S7-16-18, Amendments to the SEC's Whistleblower Program Rules

Dear Mr. Chairman:

I am writing in regard to the Commission's Proposed Amendments to the Whistleblower Program Rules, Release No. 34-83557; File No. S7-16-18, RIN 3235–AM11, 83 *Federal Register* 34702 (July 20, 2018) (hereinafter, "Proposed Rule(s)"). Please file this letter on the public record as a formal comment submitted by Senator Charles E. Grassley, Chairman of the U.S. Senate Committee on the Judiciary.

I. Award Determinations in Cases of Large Recoveries

The Commission proposes "a mechanism . . . to conduct an enhanced review of awards in situations where a whistleblower has provided information that led to the success of one or more covered or related actions that, collectively, result in at least $100 million in collected monetary sanctions."[1] As the Commission notes, under the statute the minimum total award for a whistleblower(s) who contributes to that success would be 10% for any "specific action," or $30 million as a "total payout for any award(s) resulting from the whistleblower's original information."[2]

[1] Proposed Rule 17 C.F.R. §§ 240.21F-1–17, *available at* Amendments to the Commission's Whistleblower Program at 43 (proposed July 20, 2018), https://www.sec.gov/rules/proposed/2018/34-83557.pdf (hereinafter "Proposed Rule").
[2] *See id.* at 44.

The Commission's proposed rule is replete with references to what it terms "not reasonably necessary," "exceedingly large," "extraordinarily large," and "unnecessarily large" awards in cases where monetary sanctions recovered due to the assistance of whistleblowers are themselves very significant. The Commission's primary, if not only, apparent concern with such awards is the fact that they are, indeed, large. The Commission suggests that awards that are apparently too large are not "appropriate."[3]

As an initial matter, it is worth noting that the Inspector General does not appear to share the Commission's concerns about award size. The program's award levels were evaluated by the Commission's Office of Inspector General (OIG) in 2013, pursuant to the Congressional mandate set forth in the Dodd-Frank Act of 2010.[4] The OIG was specifically required to evaluate "whether the minimum and maximum reward levels are adequate to entice whistleblowers to come forward with information and whether the reward levels are so high as to encourage illegitimate whistleblower claims."[5] The OIG's evaluation states that:

> "The SEC's whistleblower program's award levels are comparable to the award levels of other federal government whistleblower programs, and range from 10 to a maximum 30 percent. Based on our review of past experience of other whistleblower programs and practical concerns in the administration of the SEC's program, *we determined the SEC's award levels are reasonable and should not change at this time*."[6]

The Commission has not pointed to any compelling reason to veer from award levels that are working and that are comparable to other federal award programs. Moreover, the 2013 report also evaluated the "two most detailed empirical studies" addressing how monetary award levels influence whistleblowing behavior. Both studies concluded that "*high rewards* can motivate potential whistleblowers to come forward because the monetary amount may mitigate the cost of professional and social sanctions that can result."[7] Despite the Inspector General's report, the Commission proposes that it is in the "public interest" for the Commission to reduce a whistleblower's award in the most successful of cases, even if the award otherwise would fall below the 30% statutory maximum.[8]

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[3] *Id.* at 43–46.
[4] *See generally* Pub. L. No. 111–203 § 922(d) (2010).
[5] *Id.* § 922(d)(1)(D).
[6] *See* U.S. SEC. AND EXCHANGE COMM'N, Office of Inspector General, Office of Audits, *Evaluation of the SEC's Whistleblower Program*, Rep. No. 511 at v–vi (Jan. 18, 2013) (emphasis added), https://www.sec.gov/about/offices/oig/reports/audits/2013/511.pdf.
[7] *Id.* at 23 (emphasis added).
[8] *See* 17 C.F.R. § 240.21F-5(b) (2011); Proposed Rule at 44, n 102 (illustrating the Commission's proposed paragraph (d), noting that "[i]f the collected amount is $150 million, the Commission could exercise its discretion to reduce a potential payout of 25% ($37.5 million), but the Commission could not reduce the award below $30 million.").

The Commission offers two basic reasons to question the "appropriateness" of potentially large awards.[9]

First, the Commission asserts that large awards are not necessary to achieve the program's goals. But the Commission's analysis is incomplete. In establishing the whistleblower award program, Congress was not concerned about a reward figure being "too big." If anything, the legislative history shows that Congress was more concerned about potential whistleblower awards being too stingy. As the Senate Committee report opined: "[t]he Committee intends for [the whistleblower] program to be used actively with *ample rewards* to promote the integrity of the financial markets."[10] Merriam–Webster's Dictionary defines "ample" in several ways: (1) "*generous or more than adequate* in size, scope, or capacity"; (2) "*generously sufficient* to satisfy a requirement or need"; and (3) "*having a greater size, expanse, or amount than that deemed adequate*."[11] Far from intending that the Commission nickel and dime awards to the most successful whistleblowers, Congress placed great weight on the value of a predictably comfortable award margin.[12]

Further, Congress provided a set of criteria for the Commission to consider when determining the amount of a whistleblower award, and a guide to setting the outer boundaries—the minimum and maximum—of potential awards in each case.[13] Congress's criteria are: "(I) the significance of the information provided by the whistleblower to the success of the covered judicial or administrative action; (II) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in a covered judicial or administrative action; (III) the programmatic interest of the Commission in deterring violations of the securities laws by making awards to whistleblowers who provide information that lead to the successful enforcement of such laws; [and] (IV) such additional relevant factors as the Commission may establish by rule or regulation[.]"[14] Although Congress provided for the Commission to consider other relevant factors, it is instructive that those factors Congress explicitly noted were crucial for the success of the whistleblower program are directed to the value the whistleblower provides to the SEC in the particular case—the quality of assistance, significance of information, and the message the award sends to others potentially contemplating similar securities laws infractions. Moreover, by setting minimums and maximums in percentage terms, Congress instructed the Commission to weigh these factors and set the amount of the award specifically in relation to the amounts recovered. None of these factors contemplate the potential dollar number itself as a factor in determining the final warranted award.

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[9] Proposed Rule at 44, 46.
[10] S. REP. NO.111 –176 (2010) at 112 (emphasis added).
[11] *See* MERRIAM–WEBSTER'S DICTIONARY, https://www.merriam-webster.com/dictionary/ample (last visited on Sept. 17, 2018) (emphasis added).
[12] S. REP. NO. 111–176 (2010) at 110–112.
[13] 15 U.S.C. § 78u–6(c)(1)(B); *id.* § 78u–6(b).
[14] *Id.* at § 78u–6(c)(1)(B)(i). *See also* 17 C.F.R. § 240.21F-6 (2011) (providing that the Commission, when assessing the appropriate whistleblower award amount, consider: (1) the significance of information provided to the Commission; (2) the assistance provided in the Commission action; (3) law enforcement interest in deterring violation by granting awards; (4) participation in internal compliance systems; (5) culpability; (6) unreasonable reporting delay; and (7) interference with internal compliance and reporting systems.).

The Commission makes much of the notion that the $30 million/10% limitation is a *floor* and not a *ceiling*. That particular number may not be a ceiling, but the Commission's proposal nevertheless would operate as an arbitrary cap. It says that whistleblowers who provide information that results in very, very successful cases and who otherwise could receive a much larger award based on their assistance likely will have their potential awards docked for reasons that have nothing to do with the value of the whistleblower's information or the whistleblower's behavior.

Additionally, for all of its focus on the supposed lack of need for very large awards to achieve the program's goals, the proposal seems to underestimate the impact of very large awards on a potential whistleblower's decision whether to report, and does not adequately consider the deterrent effect of very large sanctions and awards on future potential violators. The counsel of whistleblower advocates familiar with these cases is instructive.[15] According to their experience, it appears that the strength of the anti-fraud message delivered by a whistleblower award (not to mention its effectiveness in encouraging reports in large, serious cases) is directly proportional to the award size. The bigger the award, the more potent the message sent to the nefarious-minded that while crime may pay in the short run, speaking up about it pays very well, too. Those individuals contemplating breaking the rules know their colleagues are watching them—and in cases of potentially very large awards will have significantly less to lose by disclosing bad conduct. This is even more important in cases of the most well-informed whistleblowers—who are usually the most highly-placed in a company, and who should not be subjected to artificial award limits when those who commit wrongdoing or stay silent will not likewise face artificially limited executive compensation rates.[16]

Second, the Commission asserts that it might be better to use the extra money it withholds from a whistleblower in very large cases to pay for something else. That, the Commission says, is "good public policy."[17] This reasoning is not supported by the text or the legislative history establishing the program. Congress made a very clear policy choice to prioritize *amply* rewarding a whistleblower above *other priorities*.[18] That is because there would be *no recovery at all* in these cases—to spend on *any* policy priority—were it not for the whistleblower.[19] It is difficult to understand how Congress could intend that "other priorities,"

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[15] Kohn, Kohn & Calapinto, LLP, *Submitted Comment on Proposed Rule: Amendments to the Commission's Whistleblower Program Rules* at 4–9 (July 24, 2018), https://www.sec.gov/comments/s7-16-18/s71618-4107169-170275.pdf.

[16] *Id.* at 5 (The Proposed Rule "creates an appearance of bias against whistleblowers, especially in light of the fact that there are no caps on executive compensation or other profit-based motives that proliferate the culture within the financial services industry.").

[17] Proposed Rule at 46.

[18] 15 U.S.C. § 78u–6(g)(3)(B) ("If the amounts deposited into or credited to the Fund under subparagraph (A) are not sufficient to satisfy an award made under subsection (b), there shall be deposited into or credited to the Fund an amount equal to the unsatisfied portion of the award from any monetary sanction collected by the Commission in the covered judicial or administrative action on which the award is based."); *see also* S. REP. NO. 111-176 (2010) at 112.

[19] S. REP. 111-176 (2010) at 111-112 ("[T]he intent of the Committee is to reward the whistleblower prior or at the same time as paying such victims, recognizing that were it not for the whistleblower's actions, there would have been no discovery of the harm to the investors and no collection of any sanctions for their benefit.") (emphasis added).

particularly those not even mentioned in the statute, should be a factor in determining the size of an award.

The statute also specifically directs the Commission not to take into account the dollar balance of the Investor Protection Fund (IPF) when determining the size of a whistleblower award.[20] This is another clear indication that Congress was not concerned about the dollar amount of a potential award, even in its relation to the size of the IPF. If it was, then Congress certainly would have said so here. Instead Congress did the opposite, by ensuring that even if the fund was depleted, the *whistleblower* would be first in line and would still receive her well-earned share of the recoveries.

Finally, unlike the case of awards under, for example, the False Claims Act, there is no ability for a whistleblower to appeal the size of an award outside of the Commission.[21] This means there is no way for a whistleblower to challenge the "appropriateness" of an award amount before an independent federal judge. The unavailability of an appeal dampens the assurances potential whistleblowers can have that awards are predictably and consistently determined and enforced.[22] That concern is only heightened when a potential award determination may be untethered to the standards Congress has clearly emphasized.

II. Confidentiality and Related Actions

In designing the Commission's whistleblower award program, Congress intended for the Commission to safeguard all information "which could reasonably be expected to reveal the identity of a whistleblower[.]"[23] The statute provides for limited sharing of information with other governmental agencies but "[w]ithout the loss of its status as confidential in the hands of the Commission"[24] Indeed, the statute requires entities that do receive the information to treat it as confidential.[25] This is because whistleblowers whose identity is exposed are often subject to reprisal and, in the private sector, blacklisting. A whistleblower who speaks up against a wealthy and well-connected corporation often finds him or herself unable to work in that industry ever again. Protecting a whistleblower's confidentiality is a linchpin of the SEC's program.

The Proposed Rule provides that "a law-enforcement action would not qualify as a related action if the Commission determines that there is a separate whistleblower award scheme that more appropriately applies to the enforcement action."[26] The proposed rule also requires whistleblowers to directly provide "original information" to agencies for which they may later

[20] 15 U.S.C. § 78u–6(c)(1)(B)(ii) ("In determining the amount of an award . . . the Commission . . . shall **not** take into consideration the balance of the Fund.") (emphasis added).
[21] 15 U.S.C. § 78u–6(f).
[22] S. REP. 111-176 (2010) at 112.
[23] 15 U.S.C. § 78u–6(h)(2)(A).
[24] *Id.* § 78u–6(h)(2)(D)(i).
[25] *Id.* § 78u–6(h)(2)(D)(ii).
[26] Proposed Rule at 10.

seek a related action award.[27] However, although the Proposed Rule recognizes confidentiality as one of the "three key tenets" that is critical to the success of the whistleblower program, the Rule does not describe how it will safeguard a whistleblower's identity or information when it must be shared under these rules.

For example, not all award programs have or will have similarly strict confidentiality requirements. The Commission should seriously consider whether the denial of a related action award in cases of more relevant award programs, as well as the proposed information sharing requirements with other entities, would adequately protect the confidentiality of the whistleblower, and if so, how. The Commission also should take steps to ensure that wherever the whistleblower is required to share his or her information, or with whatever entity the Commission shares the information, that the entity will take all necessary steps to safeguard the whistleblower's identity.

III. Internal Reporting

Given the Supreme Court's recent decision in *Digital Realty Trust, Inc. v. Somers*, whistleblowers are no longer protected for reporting wrongdoing internally.[28] Under this framework, the Commission should cease to promote internal reports by considering them as a factor in award determination analysis.[29] It makes no sense to increase an award to a whistleblower for doing something that leaves him legally defenseless, and withhold such an increase from a whistleblower who acts to protect himself. It is simply not practical to assume that whistleblowers will always be able to submit reports simultaneously to the Commission and to an internal compliance program. The Commission also should consider withdrawing rules that effectively deny protections to certain classes of employees, who are required under the rule to report internally first and must wait six months before reporting to the Commission.[30]

IV. Delays

The current delays are contrary to both the Administrative Procedure Act, and the Congressional purposes behind the creation of the whistleblower program.[31] Therefore, the Commission is right to be concerned about delays.

Congress, in requiring the Inspector General of the Commission to conduct a study and publicly report on "whether the Commission is prompt in responding to information . . . and applications for awards filed by whistleblowers" clearly expects the Commission to avoid delays.[32] Further, the text of the Dodd-Frank Act highlights the importance of the Commission's

[27] *Id.* at 37.
[28] 138 S. Ct. 767 (2018).
[29] *See* 17 C.F.R. § 240.21F-6(a)(4).
[30] *See id.* § 240.21F-4(b)(4)(iii).
[31] *See* 5 U.S.C. § 706(1) (stating that agency action shall not be "unreasonably delayed.").
[32] *See* Pub. L. No.111-203 § 922(d)(1)(C)(i)(I)–(II).

timely handling of whistleblower reports. For example, Congress specifically emphasized the need for the Inspector General to determine whether the Commission is communicating with, and updating whistleblowers about their award applications.[33]

According to the Proposed Rule, it is the Commission's belief that the changes being proposed will allow the Commission to "more efficiently process award applications, among other potential benefits."[34] The Commission is right to be concerned about delays. However, the Proposed Rule only offers a single attempt to address the severely long delays, which are sometimes years.[35] The Commission proposes to bar repeat whistleblowers that submit multiple frivolous claims, thereby helping to speed up the award determination process for other submissions. While this specific attempt is a start, the Commission's Proposed Rule fails to adequately address the long delays experienced in whistleblower cases that are not frivolous.[36] Should the Commission allow these long delays to persist, the resulting lengthy award determination process could deter future potential whistleblowers.[37]

Thank you for consideration of these comments. Please contact my committee staff at (202) 224-5225 with any questions.

Sincerely,

Charles E. Grassley
Chairman

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[33] *Id.* at § 922(d)(1)(C)(ii)–(iii).
[34] Proposed Rule at 9.
[35] Kohn, Kohn & Calapinto, LLP, *Submitted Comment on Proposed Rule: Amendments to the Commission's Whistleblower Program Rules* at 20 (July 24, 2018) (noting that based on the firm's "direct experience" the "undue delay" can be as long as four years, which is unacceptable).
[36] *See id.* at 21 (suggesting that the Commission consider moving the award determination decision to an earlier point in the process before sanctions are obtained, as in FCA cases, rather than waiting until the end and permitting any person to file an award application); Rachel Louise Ensign & Jean Eaglesham, *SEC Backlog Delays Whistleblower Awards*, Wall St. J. (May 4, 2015, 11:44 AM), https://www.wsj.com/articles/sec-backlog-delays-whistleblower-awards-1430693284 (last visited Sept. 17, 2018) (stating that "Of the 297 whistleblowers who have applied for awards since 2011, about 247--or roughly 83%--haven't received a decision from the SEC, according to data obtained by The Wall Street Journal in response to a public-records request. Some of the award claims have been delayed more than two years.").
[37] Rachel Louise Ensign & Jean Eaglesham, *SEC Backlog Delays Whistleblower Awards*, Wall St. J. (May 4, 2015, 11:44 AM), https://www.wsj.com/articles/sec-backlog-delays-whistleblower-awards-1430693284 (last visited Sept. 17, 2018) ("Experts worry that long delays, if allowed to persist, could deter future tipsters.").

Re: File No. S7-16-18, Proposed Amendments to the SEC's Whistleblower Program Rules

Dear SEC Commissioners,

I want to reiterate a comment Harry Markopolos provided to you regarding the Proposed Amendments to Whistleblower Rules.

I appreciate his detailed and well thought out positions regarding multiple components of the proposed amendments, and I would like to note his point on Clarifying Payments for Cases in Federal Bankruptcy. Mr. Markopolos cited the need for the Commission to treat recoveries by a Commission-forced bankruptcy trustee as qualifying for an award under the whistleblower program in the same manner it would recoveries by a Commission-forced receiver.

The Life Partners Holdings Inc. ("LPHI") example cited by Mr. Markopolos involved a legal maneuver by bad actors at the company to stave off the likely appointment of a Commission-forced receiver. It has been reported that in the eleventh hour the company filed for bankruptcy protections and attempted to have a LPHI hand-picked examiner appointed. Ultimately a trustee was appointed by the bankruptcy court, and this trustee was reported to be the same person who had previously been considered for the receiver role, if a receiver had been appointed prior to the bankruptcy filing. Had LPHI been put into receivership, the receiver immediately would have replaced the company management, and the executives at LPHI knew that. As such, whistleblowers should not be disqualified (for purposes of calculating an award) when perpetrators attempt to game the system – in this example, by filing for bankruptcy to avoid a receivership.

In late 2017 the LPHI bankruptcy case was selected to receive the 2017 Turnaround Management Association's ("TMA") Large Company Turnaround and Transaction of the Year Award. To date, thousands of harmed investors have received distributions, and the trustee has projected that more than $1.2 Billion will be distributed back to Main Street Investors (which will exceed 90% of the amounts initially invested).
(https://turnaround.org/sites/default/files/Turnaround%20-%20Life%20Partners_FINAL.pdf)

I believe the Commission has previously given guidance that it views bankruptcy and receivership recoveries in the same regard.

The Report Pursuant to Section 308(c) of the Sarbanes Oxley Act of 2002 provides some clarity on how the Commission has historically viewed the similarities and correlation between receivers and trustees (https://www.sec.gov/news/studies/sox308creport.pdf). The staff of the Commission conducted a review and analysis of its enforcement actions over the five years preceding the enactment of the Sarbanes-Oxley Act to identify how such proceedings may best be utilized to provide restitution for injured investors. This report discussed a number of topics, including how "the appointment of a receiver, where appropriate, enhances the Commission's ability to maximize investor recovery" (page 1). The report also highlighted the Commission's desire to "improve its record of compensating (injured) investors," (page 1) and listed some initiatives taken to help further this cause.

When discussing Distributions in Federal District Court Actions on pages 10-12, the Commission stated (with my underlines added for emphasis):

Most of the money returned to investors comes from the successful conclusion of actions filed in federal district court. Eighty-seven district court actions involving 358 defendants were reviewed in which, at the outset of the litigation, there was reason to believe that a payment to investors might result. In 34 of these cases, payments totaling a little over one billion dollars were made directly to approximately 125,000 investors. The cases reviewed also included 14 where a payment to investors is expected, but has not yet been made. In four cases, payment of disgorgement was made to investors through an alternative method, e.g., payment into an investor fund established in a private shareholder lawsuit, or payment to a bankruptcy trustee for distribution to creditors, including investors. (page 10)

and …

In some cases, the Commission may ask a court to place an entity in receivership, to continue operating a business until the receivership estate can be wound up and a distribution of assets made to investors. Similarly, the Commission may seek the appointment of a trustee or distribution agent (or claims administrator) to take control of assets, or otherwise collect and liquidate assets from the defendants and their agents and assigns, and distribute the money collected to investors. For purposes of this report, a receiver, distribution agent or trustee will each be referred to as a "receiver." As an agent of the court, a receiver acts independently of both the Commission and the defendant in carrying out its prescribed duties. Generally, the appointment of a receiver, where appropriate, facilitates investor recovery. (page 11 – Payment By Receivers)

and …

In SEC v. John Aptt, et al., approximately 200 investors recovered an estimated $4,500,000 based in large part on the efforts of the receiver. Applying his international business, international law and real estate expertise, the receiver took over the defendants' primary asset (a real estate development in Costa Rica), finished the real estate projects in process and sold them for the investors' benefit. He also forced the entity into bankruptcy for the investors' protection. (page 12 – Payment By Receivers)

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The fact that a distribution in a Commission action has not been made does not necessarily mean that investors have not been compensated. During the course of some civil actions, assets that would have ordinarily been distributed through a receiver may be turned over to a bankruptcy trustee for disposition through a bankruptcy proceeding. For example, in John F. Aptt, *supra*, the Commission first obtained an asset freeze against the defendant corporation, securing approximately $5,000,000. When the company filed for liquidation in bankruptcy, the frozen amount was transferred to the bankruptcy estate. After receiver and bankruptcy trustee fees, 200 investors received a net payment of $4,500,000. (page 12 – Payment By Alternative Methods)

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Commission referred to a trustee interchangeably as a receiver, and also highlighted how a receiver forced a bankruptcy and then utilized the bankruptcy trustee to return funds to harmed investors.

Fast forward to the current whistleblower rules, and I believe that the definition of monetary sanctions applies to investor recoveries in both bankruptcy and receivership matters. I agree with Mr. Markopolos that it is ideal for the Commission to clarify any possible confusion on the definition of monetary sanctions for the purpose of calculating whistleblower awards. Listing out examples such as an asset freeze, court appointed receiver or court appointed bankruptcy trustee would help to provide clarity to potential whistleblowers who may be reluctant to come forward due to concerns that traditional disgorgement and penalties may not exceed the $1M threshold needed to qualify for a whistleblower award. The Commission has already made Award Orders for Notice of Covered Actions involving hundreds of millions in asset freezes as well as a recovery through a court appointed receiver, so explaining further the definition of monetary sanctions in the amendments is a good suggestion.

Thank you for considering my comments.

Re: File No. S7-16-18, Proposed Amendments to the SEC's Whistleblower Program Rules

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Thank you for considering my comments.

September 18, 2018

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Whistleblower Program Rules (Release No. 34-83557; File No. S7-16-18)

Dear Mr. Fields:

Better Markets[1] appreciates the opportunity to comment on the above-captioned proposal ("Proposal") released for comment by the Securities and Exchange Commission ("SEC" or "Commission").

By any measure, the statutorily mandated Whistleblower Program has been a wild success, yet the Commission is proposing changes that risk snatching defeat from the jaws of victory. When considering any changes to this program and risking that success, the Commission should deeply reflect on its failure to stop the egregious and historically costly Madoff Ponzi scheme notwithstanding high-quality, specific whistleblower information provided to the SEC on multiple occasions.

That failure, which harmed so many investors, was the primary motivation for Congress to enact very strong whistleblower provisions that would reward and protect meritorious whistleblowers. It was also the reason that the statute was so explicitly mandatory and limited SEC discretion. After all, the Madoff whistleblower, Harry Markopolos, approached the SEC multiple times and provided detailed analysis and concrete conclusions about Madoff's scheme. It was as loud and clear a whistle as anyone could blow. Yet, the SEC not only ignored that whistleblower, it ridiculed him. We now know that Madoff's decades-long fraudulent scheme was rudimentary and paper thin, which any minimally competent investigation would have uncovered.

[1] Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

The SEC's failure to act on such information was a dereliction of duty that cost investors billions of dollars and untold non-monetary harm. For example, in May 2000, when Mr. Markopolos first submitted detailed analysis to the SEC concluding that Madoff was a Ponzi scheme and implored the SEC to stop the fraud, Madoff was managed between $3 billion and $7 billion.[2] By the time of Madoff's confession in December 2008, according to the SEC's complaint, the fund had grown to the astronomical level of $50 billion.[3] Just imagine how many investors' savings and lives would have been protected if the SEC had just done its job and taken appropriate action.

That is why, in creating the Whistleblower Program, Congress was methodical, specific and clear in limiting the SEC's discretion in implementation and execution of the Program. The SEC should act in this area only with the greatest humility and recognition that Congress specifically dictated that the Commission enact a comprehensive, rigorous and highly effective Whistleblower Program that maximally incentivizes whistleblowers to take the huge risk and sacrifice to report information to the Commission.

These specific proposed changes must be critically evaluated against two governing principles: will the changes make the Whistleblower Program even more user-friendly and attract an even greater number of whistleblowers with quality information to the Commission that would stop or deter serious investor harm? And, are the proposed changes in-line with Congress's specific intentions with regards to the Whistleblower Program, and the mandates and limitations Congress imposed on the SEC as it administers this Program?

Unfortunately, the Proposal taken as a whole, dismally fails these two fundamental tests. The Proposal would make the Whistleblower Program user-**unfriendly**, is contrary to Congress's intent, vision and express direction, and the changes are inconsistent with the purposes of the Whistleblower Program, as designed and enacted by Congress. In short, it puts investors needlessly at risk, increases the likelihood of fraud going unreported and therefore undetected, and makes missing future Madoff Ponzi schemes distinctly possible. The Commission should withdraw the Proposal and embrace and strengthen the Program.

SUMMARY

- The Proposal, as a package, must not be approved as released. The amendments to the Whistleblower Program would arbitrarily, and contrary to Congress's will, send a chilling message to all whistleblowers: if you provide original information that leads to large sanctions, your award will be capped at 10%, the bare minimum required under by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) – the Act that created the SEC Whistleblower Protection.

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2 *See* "Investigation of Failure of the SEC to Uncover Bernard Madoff's Ponzi Scheme." U.S. Securities and Exchange Commission, Office of Investigations. p.62. Available at https://www.sec.gov/files/oig-509.pdf.

3 *See* SEC's Litigation Release No. 20834 (December 19, 2008). Available at https://www.sec.gov/litigation/litreleases/2008/lr20834.htm. This number was later revised-up to $64.8 billion. (*See* "Madoff mysteries remain as he nears guilty plea." Reuters (March 11, 2009). Available at https://www.reuters.com/article/us-madoff/madoff-mysteries-remain-as-he-nears-guilty-plea-idUSTRE52A5JK20090311).

- Congress never intended for the SEC to cap awards at minimum levels, and it certainly did not permit the SEC to use any award level, in terms of absolute dollar amounts, as a metric to analyze and determine an award. Simply put, the $30 million threshold being set in the Proposal is an SEC construct that is contrary to Congress's will. Congress afforded sufficient discretion to the SEC to determine award levels, but this new proposed threshold and methodology goes impermissibly and arbitrarily beyond what Congress intended and permitted. This change taken with some of the other proposed so-called improvements would make the program less attractive, and thus subvert the purposes of the Whistleblower Program, as Congress designed and enacted, in the process exposing countless investors to continual harm.

- The Proposal would make it easier for the Commission to dismiss and disqualify otherwise meritorious whistleblower submissions. The interpretive guidance on "independent analysis" impermissibly narrows the definition of "original information" and would arbitrarily, and against Congress's express wish, disqualify original information provided by whistleblowers when that information, in addition to original analysis, contains information that the Commission could have inferred from public sources. In other words, according to the Proposal, when a whistleblower provides original information to the Commission that may contain a news article or other publicly available information, the Commission would argue that this whistleblower's information is unoriginal since bits and pieces of it are based on publicly available information which the Commission – in due time – would have gleaned and acted upon.

- The only positive aspect of the Proposal should be de-coupled from the Proposal and approved separately as a standalone provision. We agree that awards should extend over deferred prosecution agreements and non-prosecution agreements.

BRIEF DESCRIPTION OF THE PROPOSAL

This comment letter focuses largely on two of the most important aspects of the Proposal, which are briefly described below.

1. The Proposal adds two additional considerations that the Commission and staff would use in determining award levels: (a) The Proposal recommends that the Commission adjust any whistleblower awards that are below $2 million to be closer to the statutory maximum of 30% of the collected funds; and, (b) More importantly, the Proposal imposes heightened scrutiny in determining awards above $30 million but stipulates that the award would not be less than the 10% statutory minimum.[4]

While the comments below focus on this second provision, we oppose both ideas based on the same principle: Congress did not authorize the Commission to apply any dollar amount threshold as a consideration for an award and did not intend for the Commission to reduce the incentive for whistleblowers to report fraud.

[4] Release at 34748.

2. The Proposal provides an interpretive guidance as to the meaning of "independent analysis" within the definition "original information" by further limiting whistleblower's use of public information (*i.e.*, news articles, testimony, etc.) in his or her submission.[5] This inappropriately provides the Commission with too much discretion and fails to give potential whistleblowers sufficient certainty, which will needlessly discourage them: the exact opposite of the intent of Congress. Allowing the Commission to dismiss and disqualify otherwise meritorious submissions due to an after the fact claim that it would have otherwise independently identified the information, done an investigation, connected all the dots, and brought a case is simply baseless speculation that introduces ambiguity into a very clear and unambiguous statutory scheme.

COMMENTS

Congress Did Not Authorize the Commission to Set Any Dollar Thresholds and Determine Award Levels Using Any Dollar Thresholds as Part of its Award Consideration

In designing the SEC and CFTC Whistleblower Programs, Congress studied various successful and unsuccessful federal whistleblower rewards and bounty programs, including SEC's own "insider trading-only" whistleblower program. The universal lesson drawn from that study was that those programs that amply and predictably reward whistleblowers are successful. Those that create hurdles, are not user-friendly, and are stingy with their rewards are subsequently ignored by whistleblowers, and hence those regulators are deprived of the high-quality information that the whistleblowers would provide, which would complement and augment the regulator's capabilities. Therefore, Congress created the SEC Whistleblower Program intending it "to be used actively with ample rewards to promote the integrity of the financial markets."[6]

Congress also recognized – after hearing expert testimony and talking to whistleblowers and their representatives – that whistleblowers "often face the difficult choice between telling the truth and the risk of committing 'career suicide,'" and decided that the program should "amply reward[] whistleblower(s) between 10% and 30% of monetary sanctions that are collected based on the 'original information' offered by the whistleblower."[7] Congress purposefully decided against setting either a minimum or maximum dollar threshold and instead, opted for percentage-based formula that would be pegged to the collected penalties and sanctions derived out of the contributions of the whistleblower's information. In conceptualizing the SEC Whistleblower Program, Congress looked to the very successful whistleblower bounty program at the Internal Revenue Service, that, too, has awards set similarly to a 15-30% range, and **not to any**

5 Release at 34730.

6 *See* the Senate Banking Committee Report that accompanied Senate's passed version of the Dodd-Frank Act, which served as the "base-text" for the purposes of Dodd-Frank's bicameral legislative conference. S. Rep. No. 111–176 at 110–12 (2010).

7 *Id.* p.111.

dollar threshold. Of course, the whistleblower does not get any reward if none are collected from the violator.

Congress was so focused on ensuring the SEC Whistleblower Program will amply incentivize and reward whistleblowers that it created a separate, permanent fund at the Treasury for this very purpose. This "Investor Protection Fund" holds upwards of $300,000,000 million in reserve to be used to amply reward whistleblowers (and an unrelated program for SEC's Inspector General). The Fund is replenished, up to its $300,000,000 limit, from monetary sanctions (including any sanctions collected due to a whistleblower's original information) and various disgorgement funds under SEC's control **that are unused or undistributed to investors**. However, as the clearest indication of Congress's intent to not limit the dollar amount a whistleblower can receive, Congress wrote an additional, very specific provision into the funding mechanism of the Investor Protection Fund that would serve as a backstop to the Fund and guarantee that any particular whistleblower is maximally rewarded, even if that award exceeds the Fund's $300,000,000 reserves.[8]

After considerable debate both internally and with then-SEC staff working for Chairman Mary Shapiro and the SEC's Office of General Counsel, the staff of the Senate Committee on Banking wrote into the bill a provision (that remained unchanged through the legislative process) that would guarantee that a whistleblower would receive all he or she is due (within the 10-30% range) of the collected sanctions without regards to the actual dollar amount. This provision stipulates:

> "If the amounts deposited into or credited to the Fund…are not sufficient to satisfy an award…there shall be deposited into or credited to the Fund an amount equal to the unsatisfied portion of the award from monetary sanction collected by the Commission in the covered judicial or administrative action on which the award is based."[9]

This provision simply says that if the Fund does not have enough reserve to satisfy a particular whistleblower award, then the SEC must take a portion of the collected sanctions that is designated for a disgorgement fund or other distribution (*i.e.,* is meant for investors) and award the whistleblower. In other words, a whistleblower's portion must be satisfied before anyone else, including investors. This of course makes sense: there would be no money but for the whistleblower and there would be no whistleblower but for the incentive of the reward.

To further emphasize Congress's clear intent, the Committee report accompanying Senate's version of the Dodd-Frank Act wrote:

> "Whenever a whistleblower or whistleblowers tip leads the SEC to collect sanctions and penalties that are determined to be distributed to victims of the fraud, the intent of the Committee is to reward the whistleblower prior to or at

8 *See* 15 U.S.C. 78u–6(g)(3)(B).
9 *Id.*

> the same time as paying such victims, recognizing that were it not for the whistleblower's actions, there would have been no discovery of the harm to the investors and no collection of any sanctions for their benefit."[10]

There can be no doubt that Congress maximally prioritized awarding whistleblowers, even if it meant victims of the fraud would receive marginally less. In other words, Congress specified that the whistleblower must be paid **before** investors, in full (as determined within the statutorily set range of 10-30%), and if this award happened to be more than the reserves of the Investor Protection Fund, that is if the award was more than $300,000,000, then Congress stipulated that the unsatisfied portion of the award must come from the funds that are apportioned for the investors.

With this clear instruction Congress expressed its unequivocal belief that for maximum investor protection, Congress must reward those who provide the Commission actionable information that lead to detection and stopping of fraud and other investor harm. Congress also saw in its wisdom that to maximally attract whistleblowers, thus reducing the severity of investor harm from ongoing fraud or most effectively deter future fraud by sanctioning violators, Congress needed to send the strongest possible message to whistleblowers by placing their awards and interest ahead of all other consideration.

The Proposal undermines Congress's clear intentions and subverts the purposes of the Program as Congress designed and enacted. By giving itself the discretion to apply dollar threshold as a criterion for an award, the Commission introduces uncertainty, unpredictability, arbitrariness and stinginess into the widely successful program. And the Commission does all of these using the least convincing argument: In the view of this Commission, whistleblowers should be content by the dollar threshold proposed in their Proposal. In addition to being speculative, this Commission is substituting its judgment for the judgment of Congress.[11]

Given Congress's in-depth and considered study of these issues and in contrast to the SEC's history of failure regarding Madoff and other whistleblowers, the Commission should not even think of substituting its judgment here. Moreover, if this Commission were authorized to make such determinations, it raises the inevitable question of what tomorrow's Commission might think of the dollar threshold. Will this proposed level be too high for their liking? That is one of the many good reasons Congress did not authorize the Commission to make such decisions and decided against setting dollar limits at all. Congress intended the Whistleblower Program to be structured as set forth in the statute and expected the Commission to implement it as clearly and unambiguously directed. The Commission should not attempt to supplant its views with the considered judgments of Congress.

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10 *See* S. Rep. No. 111–176 at 112 (2010).

11 The Proposal goes through some length to justify the $30 million threshold number. The Proposal includes analysis that serves as justification and determination that $30 million is sufficient income for a lifetime for any whistleblowers. We do not observe the Commission applying similar rigor in generally regulating executive compensation or, at a minimum, the kind of compensation that often leads to reckless risk-taking. The Commission is yet to approve any of the executive compensation clawback provisions of the Dodd-Frank Act. If executives are permitted to earn unlimited compensation – even if this compensation is due to dangerous risk-taking or outright fraud – then whistleblowers who stop fraud and protect investors should be rewarded as appropriately as Congress determined.

The Commission's Interpretation of Independent "Analysis" is Also Contrary to Congress's Express Intent and Understanding, and Would Impermissibly Disqualify Otherwise Meritorious Submissions and Result in More Fraud and Investor Victims

Needlessly introducing another ambiguity that will discourage whistleblowers, again contrary to express Congressional intent, the Commission is suggesting that it is no longer willing to reward whistleblowers who, in addition to their expertise and knowledge, also rely on publicly derived information, and include that information as part of their total submission to the Commission for a reward. In sum, if this provision of the Proposal is approved as released, the Commission would disqualify analysts from becoming whistleblowers.

The Commission is arguing that a "whistleblower's examination and evaluation of publicly available information does not constitute ''analysis'' if the facts disclosed in the public materials on which the whistleblower relies and in other publicly available information are sufficient to raise an inference of the possible violations alleged in the whistleblower's tip. This is because, where the violations that the whistleblower alleges can be inferred by the Commission from the face of public materials, those violations are not ''reveal[ed]'' to the Commission by the whistleblower's tip or any purported analysis that the whistleblower has submitted. Rather, in order for a whistleblower to be credited with providing ''independent analysis,'' the whistleblower's examination and evaluation should contribute ''significant independent information'' that ''bridges the gap'' between the publicly available information and the possible securities violations."[12]

This hyper-technical reading and baseless claims and speculation are inconsistent with the intent of Congress to do whatever is necessary to incentivize and reward whistleblowers to take huge personal and professional risks to report fraud and protect investors. This is, frankly, a good example of why Congress determined that it would be inappropriate and unwise to delegate much discretion to the Commission in connection with the Whistleblower Program, and further speaks to the Congressional foresight in including a provision that affords judicial review that whistleblowers can seek over almost all of SEC's determinations as it relates to the Whistleblower Program.[13]

The Commission is speculatively claiming that if a whistleblower was able to infer wrongdoing from publicly available information, then the Commission, too, would in due course see, recognize, and analyze this public information and arrive at the same conclusion that investor harm is being perpetrated, and would commence its own enforcement proceedings without needing any help from whistleblowers. This "go-it-alone," "we-got-this, thanks" attitude would be laughable if it was not so serious. The SEC failed to see, recognize, analyze, and act on specific whistleblower information presented to it repeatedly regarding Bernie Madoff's decades-long Ponzi Scheme that cost investors more than $60 billion. This benighted attitude reflects a broken culture the Dodd-Frank Act aimed to fix by mandating the Whistleblower Program. Congress envisioned that by rewarding and protecting whistleblowers, the Commission would attract valuable contributions, which would in turn augment SEC's own regulatory reach and capabilities

12 Release at 34730.
13 *See* 15 U.S.C. 78u–6(f).

and help detect and stop fraud that otherwise would go either undetected or, at a minimum, cause more harm to investors for a longer period.

When defining "original information," Congress specified that so long as the submitted information "is not **exclusively** derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit or investigation, or from the news media," then the submission should qualify as original information. Obviously, the key determinative word here is "exclusively."

In the Committee Report, Congress elaborated on the definition of "original information:" Congress intended original information to mean that which is:

> "derived from the independent analysis or knowledge of the whistleblower, and is not derived from an allegation in court or government reports, and is not **exclusively** from news media. In circumstances when bits and pieces of the whistleblower's information were known to the media prior to the emergence of the whistleblower, and that for the purposes of the SEC enforcement [and related actions] the critical components of the information was supplied by the whistleblower, the intent of the Committee is to **require the SEC** to reward such person(s) in accordance with the degree of assistance that was provided."[14]

With this language, Congress clearly instructed the SEC to not disqualify a submission that contained public information. The exact opposite is true: Congress wanted and instructed the SEC to welcome analysts-*cum*-whistleblowers and reward those who submit original information that leads to recoveries. One of those very kinds of analysts was Harry Markopolos, who neither worked for Madoff nor was any other kind of an insider. Mr. Markopolos was a Certified Financial Analyst who, based on his expertise and publicly available information, conducted rigorous and accurate analysis that demonstrated Madoff's fraud. If the Commission adopts the "original information" interpretation as released, the Commission would disqualify future Markopoloses and analysts like him, proving that the Commission is acting inconsistent with the statute and Congressional intent.

Finally, Congress did not authorize the SEC to apply the "we too could have figured this out on our own by reading the newspaper" principle to assess the originality of the whistleblower's submission, or the extent of the independent-ness of the analysis. Quite the contrary, Congress instructed to the SEC to welcome and appreciate the submissions of whistleblowers, and reward them appropriately, even if those submissions include some public information. Frankly, given the Commission's history with Madoff and others, it should not speculate how flawless it would be in seeing, recognizing, analyzing, and acting on even entirely publicly available information of fraud.

CONCLUSION

[14] *See* S. Rep. No. 111–176 at 111 (2010) (emphasis added).

We end where we started: The Whistleblower Program is a wild success as Congress intended and designed it to be. The SEC needs to recognize that, accept it, and let the Program continue to work.

With too much to do and being under-resourced and understaffed, the Commission should be incredibly reluctant to even attempt to "fix" something that is working so well for investors and our markets. If anything, the Commission should be striving to make the Whistleblower Program even more whistleblower and investor-friendly, not ignoring Congress's express intentions and clear instructions. This Proposal violates the express provisions of the statute and intent of Congress. It should not be approved.

Sincerely,

Dennis M. Kelleher
President & CEO

Lev Bagramian
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cc: Chairman Jay Clayton
Commissioner Kara M. Stein
Commissioner Robert J. Jackson, Jr.
Commissioner Hester M. Peirce
Commissioner Elad L Roisman

sifma
Invested in America

September 18, 2018

Via E-Mail to rule-comments@sec.gov

Mr. Brent Fields, Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Whistleblower Program Rules, Exch. Act Rel. No. 83557, File No. S7-16-18

Dear Mr. Fields:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to comment on the Securities and Exchange Commission's ("SEC's" or "Commission's") proposed amendments to its Whistleblower Program Rules. SIFMA has supported and continues to support Congress' and the SEC's efforts to identify and address potential violations of the federal securities laws and regulations. SIFMA generally supported the SEC's current whistleblower rules when they were first proposed in 2010,[2] and SIFMA recognizes the value of robust and effective whistleblower rules.

SIFMA strongly encourages as the best practice for the SEC and other regulatory agencies periodically to conduct a retrospective review of their rules to evaluate whether they have been as effective and efficient as possible, and SIFMA applauds the SEC for doing so with respect to the whistleblower rules in such a timely fashion as the end of their first decade approaches. SIFMA is pleased that some of the negative consequences feared by critics of the original whistleblower rules – that they might undermine internal corporate compliance programs and encourage baseless complaints – appear to have been limited in practice. But we agree that it is always worthwhile to review whether changes are needed to preserve or improve upon the delicate balance intended by Congress and the Commission. In that spirit, SIFMA submits these

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly one million employees, we advocate on legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] Letter from Ira D. Hammerman, Senior Managing Director and General Counsel, SIFMA to Ms. Elizabeth Murphy, Secretary, SEC re: Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934 (Dec. 17, 2010) (https://www.sec.gov/comments/s7-33-10/s73310-161.pdf).

comments on the Commission's Proposing Release[3] concerning possible amendments to its current whistleblower rules (the "Proposed Rules").

I. Executive Summary

SIFMA supports many of the Commission's ideas set forth in the Proposing Release.

- SIFMA agrees that the definition of "action" triggering a potential whistleblower award should be expanded to include Non-Prosecution Agreements or Deferred Prosecution Agreements entered into with the US Department of Justice ("DOJ") or the SEC itself. These important prosecutorial tools should not deprive whistleblowers of an award where companies earn these resolutions through strong compliance programs, cooperation and substantial remediation.

- SIFMA finds merit in the Commission's idea that (within the statutorily mandated 10% minimum whistleblower award and the 30% maximum whistleblower award), some very large whistleblower awards could be reduced so as to increase the size of some of the smaller whistleblower awards.

- That being said, SIFMA is skeptical whether the Commission has legal authority to adopt a discretionary award program for whistleblowers who do not meet the statutory standards for a whistleblower award. There are strong policy reasons not to do so.

- SIFMA agrees that the Commission has inherent authority to sanction people who abuse the whistleblower program and waste both the Commission's and the regulated community's resources by filing baseless whistleblower claims.

- While SIFMA recognizes that the Commission must update its whistleblower rules to reflect the US Supreme Court's decision in the *Digital Realty Trust, Inc. v. Somers* case, SIFMA continues to believe that the first and best line of defense against violations of the securities laws is a robust internal compliance program responding to internal reporting of whistleblower claims. In the wake of *Digital Realty*, it is critical that the Commission strengthen its rules to maximize the incentives to encourage internal reporting of potential violations, and if necessary work with Congress to achieve that objective.

- SIFMA encourages the Commission to provide clear guidance about what language private sector firms may use in employment agreements, severance agreements and during internal investigations to protect nonpublic customer information and trade secrets and preserve firms' attorney-client privilege and work product protections, without running afoul of the whistleblower rules. The Commission has brought several settled enforcement actions in this area which have created a need for clearer industry guidance.

[3] Exch. Act Rel. No. 83557 (June 29, 2018) (the "Proposing Release").

- SIFMA encourages the Commission to review whether the current provisions of the whistleblower rules relating to culpable participants, which in some cases permit awards to individuals who participated in the violations at issue, effectively achieve the goal of preventing misconduct in the first place.

II. SIFMA Supports Broadening the Definition of "Action" Triggering Potential Eligibility for a Whistleblower Award

The Proposing Release suggests allowing Non-Prosecution Agreements (NPAs) or Deferred Prosecution Agreements (DPAs) entered into with the DOJ or a state attorney general, or a similar cooperation-based resolution of an investigation with the SEC, to trigger eligibility for a whistleblower award.[4] SIFMA supports this proposal, and agrees with the Proposing Release that the Commission has statutory authority to adopt it. The DOJ has adopted guidelines that make corporations and individuals eligible for NPAs or DPAs if they have strong compliance programs and provide extraordinary cooperation in DOJ investigations.[5] NPAs and DPAs can involve monetary recoveries in the tens or even hundreds of millions of dollars – well over the $1 million threshold for a whistleblower award. In rare cases, the SEC has also utilized NPAs[6] or DPAs[7] for companies that have provided extraordinary cooperation in investigations.

The DOJ and the Commission have concluded, very reasonably, that providing incentives for strong internal compliance programs, cooperation during investigations and remediation furthers the nation's interest in preventing or detecting wrongdoing in the first place. NPAs and DPAs are effective tools for providing those incentives. At the outset of an investigation, it is impossible for a whistleblower to know if the investigation will result in a formal enforcement action or in a DPA or NPA.[8] SIFMA also believes it would be contrary to the public interest in encouraging vigorous compliance programs and extraordinary cooperation in investigations if the DOJ or SEC decided not to offer a company a DPA or an NPA, for fear that as a result, a whistleblower who contributed to the success of the investigation would not receive a

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[4] *See generally* Proposing Release at pp. 17-18.

[5] *See* US Attorney's Manual 9-47.120 (Mar. 2018) (https://www.justice.gov/criminal-fraud/file/838416/download) (announcing presumption of declination of prosecution in certain FCPA matters); Deputy Attorney General Rod Rosenstein, Remarks at the 32nd Annual ABA National Institute on White Collar Crime (Mar. 2, 2018) (https://www.justice.gov/opa/speech/deputy-attorney-general-rosenstein-delivers-remarks-32nd-annual-aba-national-institute) (discussing cooperation credit more generally).

[6] *See, e.g.*, SEC Announces Two Non-Prosecution Agreements in FCPA Cases (June 7, 2016) (https://www.sec.gov/news/pressrelease/2016-109.html).

[7] *See, e.g.*, Regions Financial Corporation (June 25, 2014) (https://www.sec.gov/news/press/2014/2014-125-dpa.pdf). *See generally* Securities and Exchange Commission, Enforcement Cooperation Program (listing SEC DPA and NPA agreements) (https://www.sec.gov/spotlight/enforcement-cooperation-initiative.shtml).

[8] In statutory terms, SIFMA agrees with the Proposing Release that both a DPA and an NPA comfortably fit within the definition of a "covered action" in Section 21F of the Securities Exchange Act of 1934 ("Exchange Act"), so there is no legal obstacle to the SEC's proposed change in the regulatory definition to include these types of actions.

whistleblower award. Similarly, it is unfair to whistleblowers who provide timely information about potential misconduct to be deprived of an award simply because of positive conduct by the very entities on which they are reporting. Allowing awards to whistleblowers whose information leads to a successful DPA or NPA will fairly balance the important goals of both rewarding whistleblowers, and also encouraging companies to adopt effective compliance programs and to cooperate fully during investigations in the hope of obtaining a DPA or NPA.

III. SIFMA Supports Giving the Commission the Ability to Adjust Whistleblower Awards Based on Size

A. Adjusting Whistleblower Awards Based on Size

The Proposing Release suggests giving the Commission the discretion to adjust upward some whistleblower awards less than $2 million, and to adjust downward some whistleblower awards in cases involving recoveries greater than $100 million (but always within the 10% minimum floor and 30% maximum ceiling set by the statute).[9] SIFMA supports this proposal. The whistleblower program is effective if it provides potential whistleblowers with a sufficient incentive to take the risks involved in coming forward. SIFMA agrees with the Proposing Release that awards over $30 million (the maximum award in a case with a recovery over $100 million) provide little marginal incentive for a whistleblower to come forward; individuals who win awards over that amount should be financially secure for the rest of their lives. It is simply not necessary to pay a whistleblower $45 million (instead of $30 million) to convince that person to come forward in the first place, particularly when the amount of a potential penalty is virtually impossible for a whistleblower to predict in the first place.[10]

By contrast, a whistleblower who receives an award of less than $2 million may have taken substantial career and personal risks for an award amount that (while generous) still likely requires them to find future employment under difficult circumstances. Because award amounts are inherently uncertain, a whistleblower might well choose not to come forward if he or she did not think the likely award would be sufficient to warrant the risk, and increasing that person's potential award might make the difference in convincing that person to become a whistleblower in the first place. SIFMA believes that providing a marginally greater incentive to whistleblowers at the lower end of the award scale (and funding that incentive through a marginal reduction in the payouts at the very highest end of the scale) is a beneficial tradeoff that, among other things, would produce the most valuable mix of whistleblower tips to the Commission's enforcement program.

[9] *See generally* Proposing Release pp. 43-44.

[10] Awards substantially over $30 million also create a potential public perception of "jackpot justice" that may harm the overall credibility of the Commission's enforcement program.

B. Discretionary Awards Not Involving A "Covered Action" or "Original Information"

The Proposing Release also seeks comment on the concept of a discretionary whistleblower awards to individuals whose tips do not involve a "covered action" or "original information" or that result in a sanction that cannot be collected.[11] SIFMA's view is that the Commission does not currently have statutory authorization to make discretionary awards to individuals whose tips do not meet the standards set forth in Section 21F of the Exchange Act. As the Proposing Release itself explains, Congress made specific policy determinations when it required whistleblowers to provide "original information" and not just "public information" to be eligible for an award.[12] SIFMA does not believe the Commission should (or is permitted to) overturn unilaterally Congress' determination on this matter; if the SEC believes that Section 21F strikes the wrong balance, then it should ask Congress to amend the statute.

Similarly, SIFMA believes that Congress made a specific set of policy determinations when it defined a "covered action" eligible for an award. In particular, Congress made a considered determination to create incentives for whistleblowers to provide information about serious violations which would result in recoveries over $1 million. In the wake of the financial crisis, Congress wanted the SEC and DOJ to focus on potential large frauds, given their limited resources, and not to waste time and effort on insignificant violations.

Congress understood the costs and burdens that SEC and DOJ investigations impose on SEC-regulated firms, and desired that firms only incur those costs when there is a likelihood of finding a significant violation as a result. For smaller matters, it is better for firms to handle those matters internally and remediate themselves or in the context of the examination program, which is far less expensive and more efficient for the Commission. Encouraging reporting of minor violations by whistleblowers is, therefore, not good policy. Statistics from the SEC Whistleblower Office do not substantiate a need to increase incentives for reporting minor violations. On the contrary, the office's most recent annual report indicates that the number of whistleblower tips has grown to over 4,400 per year, an increase of almost 50% per year since the program began.[13]

For the reasons discussed above, SIFMA does not believe the SEC should (or can) unilaterally overturn the statute's carefully constructed balance in defining the eligibility for whistleblower awards, nor do we believe there are compelling policy arguments to do so.[14]

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[11] *See generally* Proposing Release at p. 110. Notably, the Proposing Release does not actually propose a rule to create such a discretionary awards program.

[12] *See* Proposing Release at pp. 98-102.

[13] SEC Office of Whistleblower, 2017 Annual Report to Congress ("2017 Annual Report") at p. 23 (https://www.sec.gov/files/sec-2017-annual-report-whistleblower-program.pdf).

[14] SIFMA notes that the Anti-Deficiency Act, 31 U.S.C. § 1341, prohibits federal agencies from making expenditures of federal funds without congressional authorization. Creating a discretionary awards fund (and

IV. The Commission Can and Should Sanction Individuals Who Make Abusive Whistleblower Claims

The Commission suggests in the Proposing Release (at pp. 76-79) strengthening the Commission's authority to sanction claimants who submit false information or otherwise abuse the whistleblower process.[15] The Commission states in the Proposing Release that a small number of claimants have made frivolous claims (often on a repeated basis), and thus have diverted SEC staff attention away from potentially meritorious cases.[16] SIFMA agrees that the SEC can and should sanction individuals who abuse the Commission's processes in this way. SIFMA observes that in addition to wasting the SEC staff's time and attention, such meritless claims also can waste substantial amounts of time, money and attention at private-sector firms registered with or regulated by the SEC, which must respond to sometimes expensive and burdensome enforcement inquiries based on those abusive claims.

The courts have long held, in the context of what is now SEC Rule of Practice 102(e), that the Commission has inherent authority to sanction individuals who abuse the Commission's processes.[17] The same logic that applies to professionals who appear before the SEC should apply to purported whistleblowers who abuse the Commission's processes. The Commission has inherent authority to sanction individuals who make abusive whistleblower claims, and it should not hesitate to use that authority. The Commission should not allow a small number of mostly repeat offenders to hijack what has otherwise been a generally effective whistleblower program.

V. The Commission Should Review Its Rules to Encourage Whistleblowers to Report Violations Internally

The Proposing Release suggests amending Exchange Act Rule 21F-2 to reflect the holding of the US Supreme Court in *Digital Realty Trust, Inc. v. Somers*, 138 S. Ct. 767 (2018), that someone who reports a potential securities law violation internally to an employer, but does not report that violation directly to the Commission itself, does not qualify as a "whistleblower" for the purposes of Section 21F of the Exchange Act.[18]

SIFMA has long been concerned that the whistleblower rules should encourage internal corporate compliance reporting systems, which are a critical component of what the Commission

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making payments out of that fund) without any legislative authorization or appropriation would present significant concerns under the Anti-Deficiency Act.

[15] *See generally* Proposing Release at pp. 76-79.

[16] *Id.*

[17] *See, e.g., Touche Ross & Co. v. SEC*, 609 F.2d 570, 578 n.13 (2d Cir. 1979); *accord Sheldon v. SEC*, 45 F.3d 1515, 1518 (11th Cir. 1995); *Checkosky v. SEC*, 23 F.3d 452, 455-56 (D.C. Cir. 1994); *Davy v. SEC*, 792 F.2d 1418, 1421 (9th Cir. 1986); *see also Polydoroff v. ICC*, 773 F.2d 372 (D.C. Cir. 1985) (upholding ICC's inherent authority to sanction individuals who appear before it).

[18] *See generally* Proposing Release at pp. 60-62.

has recognized is the first and most important line of defense against securities law violations.[19] Internal corporate compliance reporting systems are particularly important in the financial services industry, and the industry has spent billions of dollars developing and improving these systems. Indeed, the desirability of encouraging internal reporting to corporate compliance programs was the primary theme of SIFMA's 2010 comment letter on the original whistleblower rules. Whistleblower complaints generally can be resolved most quickly, effectively and efficiently by allowing the company itself to investigate and respond in the first instance (although in many cases the SEC staff then will want to validate the conclusions of the company's internal investigation). The result of the decision in *Digital Realty* – that whistleblowers must report directly to the Commission so as to be treated as a whistleblower – is directly contrary to the goal of encouraging internal reporting.

SIFMA recognizes that the Commission has no alternative but to recognize the Supreme Court's decision in *Digital Realty*. At the outset of the program, the Commission recognized the critical importance of encouraging whistleblowers to use their internal compliance programs.[20] That being said, SIFMA urges the Commission to think broadly about how it can provide additional incentives to encourage the use of internal reporting systems. SIFMA appreciates that in the current whistleblower rules, the Commission has provided explicitly that voluntary internal reporting can increase the amount of an award, and interfering with internal compliance and reporting systems can decrease the amount of an award – provisions that are legally unaffected by the Supreme Court's decision. Practically, however, SIFMA fears that the *Digital Realty* decision will have a major impact on the incentives the Commission intended to create.[21]

To mitigate the harm to compliance programs that may result from *Digital Realty*, SIFMA suggests that the Commission consider an explicit program providing that in appropriate cases, that the Commission staff give a company an opportunity to conduct its own internal investigation of whistleblower allegations (even if in coordination with the staff) and report the results, before the Commission staff takes substantial investigative steps. If a whistleblower goes directly to the Commission without using corporate internal reporting channels (because of *Digital Realty*), in appropriate cases the Commission should allow the company to investigate the potential misconduct in the first instance.[22] Such a policy would encourage strong internal

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[19] *See e.g.*, Adopting Release, Implementing Whistleblower Provisions of Section 21F of the Securities Exchange Act, Exch. Act Rel. No 64545, at p. 90 (May 25, 2011) ("2011 Adopting Release") (https://www.sec.gov/rules/final/2011/34-64545.pdf) ("compliance with the federal securities laws is promoted when companies have effective programs for identifying, correcting, and self-reporting unlawful conduct by company officers or employees").

[20] *See, e.g.*, Opening Statement of Chairman Mary L. Schapiro, Whistleblower Program (May 25, 2011) (https://www.sec.gov/news/speech/2011/spch052511mls-item2.htm) ("But, perhaps, no issue received more focus during this process than the role of internal compliance programs. As I have often said, internal compliance programs play an extremely valuable role in the fraud prevention arena.").

[21] The most recent SEC Office of the Whistleblower Annual report states that 83% of tips received by the Commission first had been reported internally. 2017 Annual Report at p. 17.

[22] SIFMA recognizes that in some circumstances in which a firm's senior executives are an integral part of an intentional fraudulent scheme, it would not be appropriate to notify the company before the SEC staff began its own

corporate compliance and investigative programs and would maximize the Commission's own investigative resources. The Commission should consider additional and more explicit incentives for internal reporting – whether before or, at least simultaneous with, reporting to the Commission. For example, remediation resulting from a whistleblower's internal complaint could be used as a factor to drive the award up to 30%. Without additional incentives, SIFMA fears the result of *Digital Realty* may be to undermine compliance programs.

SIFMA also suggests the Commission consider addressing the holding in *Digital Realty* with Congress. The case was decided on pure statutory analysis grounds, so Congress maintains the authority to amend the statute in response to the decision. The precise scenario at issue in *Digital Realty* was the controversial issue of anti-retaliation protection. Congress could restore award eligibility to whistleblowers who report through internal compliance programs.[23] Such a step would achieve the SEC's original goal, which SIFMA strongly supports, of encouraging whistleblowers to use internal reporting channels where they are available and effective.

VI. The Commission Should Provide Clearer Guidance About Permissible Terms in Employment and Severance Agreements and Disclosures to Employees During Internal Investigations

Exchange Act Rule 21F-17(a) prohibits employers from taking actions that impede their employees from reporting potential securities law violations to the Commission. SIFMA supports the intent of this rule – clearly (for example) an employee severance agreement that purports explicitly to forbid an employee from reporting potential misconduct to the SEC should not be permitted. The Commission, however, has brought a series of enforcement actions under this rule (all of which were settled, and thus of limited precedential value), and those enforcement actions have created substantial uncertainty in the regulated community about what is permissible conduct.[24] Some of those enforcement actions involve conduct that (on their face – SIFMA recognizes that settlements are negotiated documents) does not appear to involve obvious violations of the rule. SIFMA urges the Commission to provide clear guidance (with an opportunity for the regulated community to provide input on that guidance) about what types of provisions the Commission believes are permissible and not permissible in this area. This area is an example where the regulated community would welcome the Commission's guidance. The

investigation. Although the SEC must always be aware of the potential for these types of situations, SIFMA believes them to be exceptional.

[23] Included as Appendix A is proposed statutory language to accomplish this step. The proposed language would add to Section 21F(a)(6), the statutory definition of "whistleblower", language adapted from the current Exchange Act Rule 21F-4(b)(7), which includes internal whistleblowers within the coverage of the award scheme so long as they subsequently report to the Commission.

[24] *See* Securities and Exchange Commission, Office of the Whistleblower, Enforcement Actions Based on Actions to Impede Reporting (https://www.sec.gov/whistleblower/retaliation#protections).

SEC staff has provided guidance to employees about the anti-retaliation provisions,[25] and SIFMA suggests that the Commission or its staff provide similar guidance to regulated entities.

There are strong and legitimate reasons that firms need to protect confidential information from being disclosed to third parties. For example, the safeguarding provisions of Regulation SP require firms to take reasonable steps to protect the non-public financial information of customers.[26] As a result, financial services firms typically, in employment agreements and severance agreements as well as in employee codes of conduct, restrict employees' ability to disclose nonpublic customer financial information to third parties, or to retain that information when they leave their firm. Similarly, for the legitimate purpose of preserving intellectual property rights protected by federal and state law, financial services firms generally forbid their employees from misappropriating the firm's trade secrets, or from misappropriating firm information protected by copyright, trademark, patent and other intellectual property doctrines. In many cases, the firms might lose some or all of those intellectual property protections if they do not take reasonable steps to protect that information, including by informing employees of the firm's rights (and the employee's lack of rights) to that information.[27]

When conducting internal investigations of potential misconduct or in anticipation of potential litigation, firms also have legitimate attorney-client privilege and attorney work-product protections recognized by the US Supreme Court in cases such as *Upjohn Co. v. United States*, 449 U.S. 383 (1981), and *Hickman v. Taylor*, 329 U.S. 425 (1947). The preservation of these protections, however, depends in part on the firm adequately informing employees who are asked to participate that the investigation is confidential and privileged and that the employees should treat it as such.[28]

In short, there are a variety of situations in which firms regulated by the SEC can and should inform employees that certain information belongs to the firm and not to the employee, and that the employee cannot (either during or after their employment) disclose that information to third parties. These warnings are not intended to chill the ability of current or former employees to disclose potential violations of the securities laws to the SEC or other regulators. Yet some of the SEC's enforcement actions in the anti-retaliation area have alleged (again, in negotiated

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[25] *See* Securities and Exchange Commission, Office of the Whistleblower, Protections Against Retaliation, Frequently Asked Questions (https://www.sec.gov/whistleblower/retaliation#protections).

[26] *See* 17 C.F.R. § 248.30.

[27] In *Anheuser-Busch InBev SA/NV*, Exch. Act Rel. No. 78957 (Sept. 28, 2016), the Commission sanctioned a company for using form confidentiality provisions in severance agreements which did not mention communications with the SEC, but had been designed to prevent employees from disclosing confidential customer information or trade secrets. The order found that one employee had interpreted the agreement to apply to communications with the SEC, but did not allege that the company had intended to prevent communications with the SEC.

[28] *See, e.g., KBR, Inc*. Exch. Act Rel. No. 74619 (Apr. 1, 2015) (sanctioning issuer for confidentiality warning during internal investigation, despite the fact that the instructions did not direct the employees not report misconduct to the SEC, and lack of any evidence that any employee in fact was deterred from reporting to the SEC or that the company sought to use the warning to prevent employees from reporting to the SEC).

settlements which lack precedential value) that general warnings of the duty not to disclose confidential information could in some way, to employees who are not legally sophisticated, chill those employees' ability to disclose potential misconduct to the SEC in violation of Exchange Act Rule 21F-17(a).[29]

SIMFA believes that this area – the conflict between firms' legitimate desire to protect customer and firm information, and employees' legitimate desire to be able to report whistleblower concerns – is an example where the regulated industry would happily follow whatever guidance the SEC would provide. But because to date the SEC has not provided clear guidance consistent with its rules, firms have been left to grapple with uncertainty when drafting basic documents such as employment agreements, severance agreements, employee handbooks or codes of conduct, and warnings for internal investigations.

SIFMA urges the Commission or its staff to provide guidance about contract terms and policy provisions that they believe do and do not comport with Exchange Act Rule 21F-17(a). Ideally, the Commission or its staff should provide an opportunity for notice and comment on this guidance, so that the regulated community may provide input to the Commission on the types of warnings that should be permissible (or even required), and are not likely to mislead employees about their whistleblower rights and protections, given firms' need to protect confidential information. Uncertainty in this area poses a significant cost to the regulated community, which is exactly what careful regulatory guidance can prevent. SIFMA believes that providing greater certainty in this area would promote better compliance on the part of the regulated industry, and would protect both firms and employees from inadvertent violations.

VII. The Commission Should Review Whether Its Rule Provisions Concerning Culpable Whistleblowers Are Contributing to Additional Violations

In our 2010 comment letter, SIFMA argued that culpable employees – employees who had participated in a securities law violation – should not be eligible to profit from that violation through making a whistleblower complaint. SIFMA's view was based on the common sense notion that crime should not pay – the Commission should not provide financial incentives through which individuals can profit from their own misconduct. In its final version of the whistleblower rules, the SEC took a different view. The current Exchange Act Rule 21F-16 provides that if an individual "substantially directed, planned, or initiated" the misconduct, then sanctions imposed for that misconduct will not count toward the $1 million threshold for a "covered action," but for other individuals, Exchange Act Rule 21F-6(b) provides that culpable misconduct will count only as a potential negative factor in calculating the amount of their award (subject to the 10% statutory floor). As the Adopting Release for the original whistleblower

[29] In no way does SIFMA endorse or defend the steps alleged to have been taken in some other enforcement actions, such as *Homestreet, Inc*., Exch. Act Rel. No. 79844 (Jan. 17, 2017), in which the company was alleged to have used severance or indemnity agreements actively to impede whistleblowers from communicating with the SEC.

rules acknowledged, the culpable participant provisions were among the most controversial portions of the rules.[30]

There are legitimate questions whether the current rules regarding culpable whistleblowers are working as intended, because of the lack of public information available regarding this aspect of the program. When wrongdoers themselves go to the Commission rather than to internal compliance programs, there is a substantial cost on firms imposed by the very people whose conduct may be at issue. Indeed, regulated entities are concerned that low-level conduct of which they are not made aware deprives them of immediate opportunities to remediate before the conduct gets worse, with the potential result that the wrongdoer can benefit.[31] This is not what SIFMA thinks Congress or the Commission meant to encourage.

SIFMA suggests that the Commission review and report publicly on whether the culpable participant portions of the whistleblower rules are working as intended. The current Proposing Release does not address this issue at all. Section 21F(h)(2) of the Exchange Act and Exchange Act Rule 21F-7 require that the Commission keep whistleblower submissions confidential, even at the award stage. As a result, there is no public transparency concerning whether the Commission is making awards to culpable whistleblowers, whether the Commission is making downward departures as anticipated pursuant to Exchange Act Rule 21F-6(b), whether making culpable participants eligible for awards is allowing the SEC staff to find misconduct that would otherwise remain undetected, or whether the culpable participant provisions are in fact providing an incentive for individuals to join in misconduct or to allow misconduct to continue.

SIFMA continues to believe that allowing individuals to be rewarded for misconduct in which they took part creates a very dangerous set of incentives. Because of the lack of public transparency in the whistleblower award process, SIFMA cannot evaluate how serious that problem may be – therefore we believe it is incumbent upon the Commission to review that issue. There should be objective metrics that can reveal how this aspect of the program is operating, while protecting the identity of individual whistleblowers. If the Commission will not report on its awards to culpable whistleblowers, then Congress should consider oversight hearings. Financial awards to people who participate in violations of the securities laws have the potential to erode public trust in the fair administration of those laws, and the Commission or Congress should provide assurance that the current rules rewarding culpable employees are not subject to abuse.

***

SIFMA appreciates the opportunity to submit this comment letter on these important issues. We would be happy to meet with the Commission staff to discuss the issues in this letter. Please contact me at [redacted] or Bernard V. Canepa, Vice President and Assistant General

[30] *See* 2011 Adopting Release at p. 192.

[31] *See* Exch. Act Rel. No. 84125 (Sept. 14, 2018), in which a whistleblower received an award (although the amount of the award was reduced), despite having unreasonably delayed in reporting the misconduct to the Commission with the result that the misconduct grew larger and the amount of the sanction increased.

Counsel at [redacted], or our outside counsel at Sidley Austin LLP, W. Hardy Callcott at [redacted], or Stephen Cohen at [redacted], if you have any questions or would like to discuss these issues further.

Respectfully submitted,

Ira D. Hammerman
Executive Vice President and General Counsel

cc: Chairman Jay Clayton
Commissioner Kara M. Stein
Commissioner Robert L. Jackson
Commissioner Hester M. Peirce
Commissioner Elad L. Roisman

Appendix A:

Suggested statutory amendment to restore whistleblower award eligibility to internal whistleblowers. Add, at the end of Section 21F(a)(6) of the Exchange Act:

> If an individual provides information pursuant to an entity's internal whistleblower, legal, or compliance procedures for reporting allegations of possible violations of law, and the individual, within 120 days, submits the same information to the Commission, then, for purposes of evaluating the individual's claim to an award under Section 21F(b) of this chapter, the Commission will consider that the individual provided information as of the date of the individual's original disclosure, report or submission made pursuant to those internal procedures.

CENTER FOR WORKPLACE COMPLIANCE

1501 M Street, NW | Suite 1000 | Washington, DC 20005 TEL: 202.629.5650 email: info@cwc.org www.cwc.org

September 18, 2018

Submitted via the Commission's internet comment form
(*http://www.sec.gov/rules/proposed.shtml*)

The Honorable Jay Clayton, Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. S7-16-18, Amendments to the SEC's Whistleblower Program Rules

Dear Mr. Chairman:

The Center for Workplace Compliance welcomes the opportunity to submit the following comments on the Securities and Exchange Commission's (SEC or Commission) proposed revisions to its whistleblower rules. We commend the Commission on its efforts to refine and improve the whistleblower program and look forward to assisting it in that endeavor.

Statement of Interest

Founded in 1976, the Center for Workplace Compliance (CWC) (formerly the Equal Employment Advisory Council (EEAC)) is the nation's leading nonprofit association of employers dedicated exclusively to helping its members develop practical and effective programs for ensuring compliance with fair employment and other workplace requirements. Its membership includes nearly 250 major U.S. corporations, collectively providing employment to millions of workers.

CWC's directors and officers include many of industry's leading experts in the fields of equal employment opportunity and workplace compliance. Their combined experience gives CWC a unique depth of understanding of the practical, as well as legal, considerations relevant to the proper interpretation and application of fair employment policies and requirements.

Nearly all of CWC's members are publicly traded companies subject to the federal securities laws, and thus will be affected directly by the amendments to the SEC's whistleblower regulations. In addition, most if not all of CWC's member companies have established internal complaint procedures designed to encourage employees who wish to report unlawful or otherwise inappropriate conduct to bring their issues forward within the company. These procedures allow the company to investigate and resolve employee concerns quickly and effectively.

Proposed Amendment to Exchange Act Rule 21F–2 Addressing Whistleblower Status and Certain Threshold Criteria Related to Award Eligibility, Heightened Confidentiality From Identity Disclosure, and Employment Anti-Retaliation Protection

Amending the Rule To Conform to the Supreme Court's Decision in Digital Realty Trust *Is Appropriate*

CWC agrees with the reasons stated in the Preamble to the Proposed Rule that amending the Rule to conform to the Supreme Court's decision in *Digital Realty Trust, Inc. v. Somers*, 138 S. Ct. 767 (2018), is appropriate. In *Digital Realty Trust*, the Court ruled unanimously that the plain text of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) explicitly protects from retaliation only those whistleblowers who provide information to the Commission. The proposal properly corrects the Rule to make it consistent with the Court's interpretation of Dodd-Frank.

Request for Comment

The Commission is seeking public comment on a number of specific questions relating to proposed amendment to Exchange Act Rule 21F-2. CWC's comments to those questions follow.

1. Is it reasonable to require that an individual provide information to the Commission "in writing" to qualify as a whistleblower? Is this approach either too restrictive or too broad? Are there situations in which only some other form of communication would be possible or preferred? Please explain.

It is quite reasonable, and well within the Commission's discretion, to require that an individual provide information to the Commission in writing to qualify as a whistleblower. As the Proposed Rule correctly observes, requiring a written submission, while imposing only a minimal burden on the individual, provides certainty as to *when* the individual provided information to the Commission, as well as *what* information was provided. And Section 21F(a)(6) specifically authorizes the Commission to establish, by rule or regulation, the "manner" in which qualifying information must be provided. 15 U.S.C. § 78u-6(a)(6).

To facilitate documentation of when the Commission received the information, CWC recommends that, if it does not already do so, the Commission make it a practice to physically or electronically date-stamp each communication *when received*, regardless of the date that the informant puts on the Form TCR or other writing submitted.

2. Should our whistleblower rules enumerate any other "manner" of providing information to the Commission for purposes of anti-retaliation protection? For example, should our rules enumerate testifying under oath in an investigation or judicial or administrative action of the Commission as an additional "manner" of providing information to the Commission?

In CWC's view, the Commission is correct not to include any other manner of providing information to the Commission (such as the actions listed in Section F(h)(1)(A)(ii)) for the

purpose of conferring anti-retaliation protection. As the Preamble accurately points out, Section 21F(h)(1)(A)(ii) specifically cross-references the action listed in Section 21F(h)(1)(A)(i), *i.e.*, "providing information to the Commission in accordance with this section." Thus, Section 21F(h)(1)(A)(ii) indeed "is best read as extending employment retaliation protections to acts of continued cooperation by a person who has *already* provided information to the Commission." 83 Fed. Reg. 34702, 34718 n.144 (July 20, 2018) (emphasis added).

3. Does the proposed rule reasonably require that the lawful acts done by the whistleblower must relate to the subject matter of the whistleblower's submission to the Commission in order for the employment retaliation protections to apply? Should a different standard apply? Why or why not?

In CWC's view, the proposed rule quite reasonably requires that the lawful acts done by the whistleblower must relate to the subject matter of the whistleblower's submission to the Commission in order for the employment retaliation protections to apply. Simply put, any other approach would extend anti-retaliation protection well beyond the scope of the statutory language.

The individual's submission to the Commission essentially establishes the parameters of anti-retaliation protection. Extending that protection to acts that do not relate to the information the individual provided thus would greatly, and improperly, expand coverage to any number of other activities that have nothing whatsoever to do with the matter brought to the Commission's attention.

4. Does the proposed rule appropriately address the timing of an individual's report to the Commission relative to the protected conduct and to any retaliation?

The proposed rule appropriately requires that an individual must meet the fundamental requirement for becoming a protected whistleblower, *i.e.*, must provide information to the Commission, *before* experiencing any alleged retaliation in order to qualify for anti-retaliation protection. The contrary approach would be inconsistent with the Supreme Court's ruling in *Digital Realty Trust* that an individual who has not provided information to the Commission is not eligible for anti-retaliation protection under Dodd-Frank. Moreover, it is simply impossible for an employer to commit retaliation *because of* a protected activity that has not yet occurred.

5. In determining the amount of an award, the Commission considers participation in internal compliance systems. Given the change in anti-retaliation protections, should the Commission still use this criterion in determining the size of whistleblower awards? Why or why not?

As explained above, participation in internal compliance systems produces a number of benefits for both employer and employee, and thus should be encouraged. For that reason, in order to continue to incentivize employees to utilize internal dispute resolution processes, the Commission should continue to use this criterion in determining the size of whistleblower awards.

6. Would it be necessary or appropriate to specify additional types of misconduct that fall within the prohibition against "any other manner [of] discriminat[ion] against[] a whistleblower"? For example, should our rules clarify that if an employer rejects a prospective employee, or a past employer attempts to cause such rejection, because that individual had engaged in protected activity, this would be a form of retaliation?

In CWC's view, it is neither necessary nor appropriate to specify additional types of misconduct that fall within the prohibition against "any other manner [of] discriminat[ion] against[] a whistleblower." Section 21F(h)(1)(A) already makes it unlawful to "discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower ...." That language provides sufficient clarification on its own. In the employment discrimination context, there has been considerable litigation over whether or not a particular action or course of action is sufficient to constitute discrimination.

For example, in *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993), the Supreme Court announced that actionable "hostile environment" sexual harassment occurs only when conduct is sufficiently severe or pervasive to alter the conditions of an individual's employment or create an abusive working environment. Since then, courts have wrestled with numerous cases in which the primary issue was whether or not the alleged conduct met the threshold. CWC respectfully submits that the Commission should not attempt to resolve such issues via regulatory action.

Moreover, while the Commission is correct that in *Robinson v. Shell Oil Co.*, 519 U.S. 337, 346 (1997), the Supreme Court ruled that the term "employees," as used in § 704(a) of Title VII of the Civil Rights Act of 1964, includes *former* employees, the law is far less settled as to whether or not alleged retaliation by an employer against a *prospective* employee is actionable.

For example, in *Dellinger v. Science Applications International Corp.*, 649 F.3d 226 (4th Cir. 2011), the U.S. Court of Appeals for the Fourth Circuit ruled that job applicants cannot bring a Fair Labor Standards Act (FLSA) claim of retaliation against a prospective employer because the law's anti-retaliation provisions are intended to cover only current or former employees who have exercised their rights under the law. Accordingly, CWC recommends that the Commission not expand anti-retaliation protection to cover prospective employees.

Proposed Amendment to Exchange Act Rule 21F-3(b)(1) Defining "Related Action"

CWC supports the proposed amendment to Exchange Act Rule 21F-3(b)(1) defining "related action" to avoid multiple recoveries by the same individual in the event there are overlapping award schemes. As the Preamble correctly observes, multiple awards have the potential to exceed the maximum 30% award established by Congress. We agree with the Commission that "a whistleblower should neither have two recoveries on the same action nor multiple bites at the adjudicatory apple." 83 Fed. Reg. 34702, 34711 (July 20, 2018) (footnote omitted).

Proposed Amendment to Rule 21F–8 To Add New Paragraph (e) To Clarify and Enhance the Commission's Authority To Address Claimants Who Submit False Information to the Commission or Who Abuse the Award Application Process

CWC supports the Commission's proposal to add new paragraph (e) to Rule 21F-8 to clarify and enhance the Commission's authority to permanently ban from the program anyone who has submitted three frivolous award applications, including those lacking a colorable connection between the information submitted to the Commission and the Commission's action. Similarly, we support the proposal to allow the Commission to permanently ban an applicant who has violated Rule 21F–8(c)(7), which makes an applicant ineligible for an award if he or she, in dealing with the Commission or another authority, "knowingly and willfully make[s] any false, fictitious, or fraudulent statement or representation, or use[s] any false writing or document knowing that it contains any false, fictitious, or fraudulent statement or entry with intent to mislead or otherwise hinder the Commission or another authority." 83 Fed. Reg. at 34722-23.

As with frivolous – or fraudulent – cases filed in court, award applications meeting this description significantly burden the system, unnecessarily and wastefully taking staff time away from meritorious cases. Codifying the Commission's current practice into a formal Rule should serve as a warning to individuals who might otherwise be tempted to engage in such behavior.

Proposed Amendment to Exchange Act Rule 21F–6 Regarding Awards in Cases Yielding at Least $100 Million in Collected Monetary Sanctions

CWC supports the Commission's proposal to add a new paragraph (d) to Rule 21F-6 that would provide a mechanism for the Commission to conduct an advanced review in situations involving at least $100 million in collected monetary sanctions, to determine whether an exceedingly large potential payout may not fulfill the purposes of the program. As the Preamble points out, enormous awards are likely to provide incrementally diminishing return value to the program. Thus, it is indeed in the public interest for the Commission to conduct such a review.

Proposed Rule 21F–18 Establishing a Summary Disposition Process

CWC agrees with the Commission's proposal that would provide for a summary process to quickly dispose of award applications that are untimely, noncompliant, or can otherwise be denied on relatively straightforward grounds. Such a process would save significant staff time, allowing meritorious claims to be resolved more quickly.

Request for Comment Regarding a Potential Discretionary Award Mechanism for Commission Actions That Do Not Qualify as Covered Actions, Involve Only a *De Minimis* Collection of Monetary Sanctions, or Are Based on Publicly Available Information

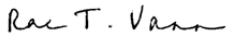
In CWC's view, the Commission lacks the statutory authority to provide discretionary awards in situations where the Commission action does not qualify as a covered action under Dodd-Frank, involves only a *de minimis* collection of monetary sanctions, or is based solely on publicly available information. Section 21F(b)(1) specifically limits the Commission's authority to pay awards in a *covered action*, to a whistleblower who provided *original information* that *led*

to the successful enforcement action, in amounts based on *what has been collected* of the monetary sanctions imposed. Section 21F(a)(1) states expressly that a "covered action" is one that "results in monetary sanctions exceeding $1,000,000." Section 21F(a)(3) defines "original information" to exclude publicly available information. Thus, the Commission lacks the authority to make discretionary awards absent a legislative change.

Conclusion

CWC appreciates the opportunity to submit the foregoing comments.

Very truly yours,



Rae T. Vann
General Counsel

Subject: File No. S7-16-18
From: Annie Bell
Affiliation: Pro Bono Weiquan

September 18, 2018

The SEC's June 2018 proposed whistleblower rules and other interpretive guidance must be revised to only apply to TCRs filed after June 28, 2018. They violate federal common law by attempting to retrospectively destroy the legitimate expectations of bona fide whistleblowers that detrimentally relied on existing SEC rules and guidance in filing TCRs before their public release.

In deciding whether to stop an agency from retrospectively applying a rulemaking activity, federal courts look at (1) whether the particular case is one of first impression, (2) whether the new rule represents an abrupt departure from well established practice or merely attempts to fill a void in an unsettled area of law, (3) the extent to which the party against whom the new rule is applied relied on the former rule, (4) the degree of the burden which a retroactive order imposes on a party, and (5) the statutory interest in applying a new rule despite the reliance of a party on the old standard.

For example, these factors cut against the SEC retrospectively applying its proposed rulemaking (rules and other interpretive guidance) in the case of pre-existing TCRS in large cases that would face limitations on the size of their awards and TCRs based on independent analysis.

This aspect of the proposed rulemaking is not a case of first impression because the Obama era SEC thoughtfully rejected restrictions on the size of awards or TCRs solely based on independent analysis of public information. The proposed rulemaking is an abrupt departure from the pre-existing rules that rejected imposing the caps and use of public information the pre-existing SEC rules.

These TCRs were filed by people that risk divorce, suicide, firing, blacklisting at jobs in corporate America, bankruptcy, alcoholism, and worse. Drastic problems faced by whistleblowers are well documented by public servants, like Tom Devine. The risks are as much faced by industry insiders as company insiders. Harry Markopolos was an industry insider and has spoken about the risks and injuries he suffered. The life changing damages and risks faced by company insiders and industry insiders outweigh the SEC's interest in its proposed rules, which the SEC laid out in its proposals. The SEC did not even articulate reasons for its proposals to apply to its existing inventory of TCRs.

The SEC has a well documented reputation granting so few awards that there are minimal incentives for company and industry insiders to suffer or risk suffering the well documented damages that whistleblowers face, absent the existing SEC rules that do not limit awards based on the size of the case and that do not deny TCRs based on independent analysis except in phenomenally rare circumstances.

Subject: File Number S7-16-18
From: Glenn Marcus
Affiliation:

Sep. 19, 2018

Dear Securities and Exchange Commission,

The FOIA is a protection for all, especially CITIZENS. Honor your promise, and release those documents in a timely fashion.

I write in regard to the proposed amendments to the rules governing the SEC whistleblower program (File Number S7-16-18).

The SEC proposed these changes with no input from the whistleblower community, yet adopted a position consistent with the long-standing and flimsy viewpoint advanced by the anti-whistleblower U. S. Chamber of Commerce ("Chamber").

It is my understanding that the National Whistleblower Center filed a Freedom of Information Act (FOIA) request seeking documents related to lobbying efforts by Wall Street firms and the Chamber of Commerce that gave rise to the SEC's proposed rules. The SEC determined that the NWC had a "compelling need" to receive these documents "on an expedited basis" and determined that there were 15,877 emails that could be responsive to NWC's request. These included 1,078 emails that referenced both "whistleblower" and "Chamber of Commerce" created between January 2, 2017 and June 29, 2018.

Despite its agreement to expedite he release of these documents, the SEC will not release them until after the comment period.

Therefore, I urge the SEC, in the interest of transparency, extend the public comment period for its proposed rules on the Whistleblower Program until 60 days after the documents requested by the NWC's FOIA request have been released.

If the comment period is not extended, I agree with the concerns raised in the NWC's letter filed with the Commission on September 17, 2018, linked here: https://bit.ly/2xqGUts and its comment filed on September 18, 2018, linked here: https://bit.ly/2QETvCa

Sincerely,

Mr. Glenn Marcus

Subject: S7-16-18 Comments
From: Joe Sanders
Affiliation:

Sep. 27, 2018

Referenced: TSR1*20752**092*

Re: Comments on the proposed Amendments to the Commission's Whistleblower Program Rules.

Continuation....

Respectfully, on Sept. 11, I emailed the Commission, via this available portal, a copy of the letter I faxed to The Office of the Whistleblower that same day requesting an updated status on my reward claim. Since I did not hear back from the SEC in the following two weeks, I faxed a follow up letter on Tues, Sept 25. After faxing the follow up letter, I received the below email notification from UPS stating a package would be delivered to my house the following day (Sept. 26), and the sender was the SEC (see below). However, when checking the status today, UPS reflected a status of "canceled" as of this morning. This is a little baffling considering the package was supposed the be delivered yesterday, that should have rendered any ability to cancel today not possible (see below).

Respectfully Submitted.

Sent from Joe's iPhone

Subject: File No. S7-16-18
From: mac vineyard

September 29, 2018

According to the proposed rule for 240.21F-4(e) (i.e., where "otherwise required as relief for the violations that are the subject of the covered action or related action" is covered by the definition of "monetary sanctions"), a scenario in which an investor discovers that securities are missing from his or her retail brokerage account, and that the brokerage is either unwilling or unable to rectify the mistake, the harmed customer would be limited to a 10-30% recovery of the missing securities because of how awards are determined. If this interpretation of the proposed rule is accurate, the situation would be similar to one in which law enforcement stops a thief but decides to return just a portion of the original stolen property, even though all of it has been found.

Subject: DF Title IX - Whistleblower Award Program:
From: Rick Fankhauser
Affiliation:

Oct. 12, 2018

Re: SEC Title IX – Investor Protection and Improvements to the Regulation of Securities

Source: https://www.sec.gov/spotlight/regreformcomments.shtml

My rule comments are based on my frustration with the current SEC Whistleblower program that allow an Auditor and the company they represent to bully those that flag major Audit issues. While the SEC has many good people, the processes are non-existent/broken to address the problems I have submitted in several prior submissions.

As a Six Sigma Black Belt, with over 12 year experience helping people redesign processes, I can say for certain, several SEC processes are broken.

Please challenge me as I have earned a response.

6 attachments (much more submitted in my past Whistleblower submissions)

Rick Fankhauser
[redacted]

From: Rick Fankhauser [redacted]
Sent: Friday, October 12, 2018 8:34 AM
To: Investoradvocate@sec.gov
Cc: 'Rick Fankhauser' <rick@rickfankhauser.com>
Subject: FW: WHISTLEBLOWER COMPLAINT - Vonage Auditor BDO > e911 Tax > Request for 2011 Ruling from PCAOB No Response From BDO Required / BDO Threatening Whistleblower

Ms. Kerry McGovern
Investor Assistance Specialist
Office of Investor Education and Advocacy
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-0213
Fax 1202-772-9295
Investoradvocate@sec.gov

What is the status on this?

6 attachments

Rick Fankhauser
[redacted]

From: Rick Fankhauser [redacted]
Sent: Wednesday, October 10, 2018 9:03 AM
To: Investoradvocate@sec.gov
Cc: 'Rick Fankhauser' <rick@rickfankhauser.com>
Subject: FW: WHISTLEBLOWER COMPLAINT - Vonage Auditor BDO > e911 Tax > Request for 2011 Ruling from PCAOB No Response From BDO Required / BDO Threatening Whistleblower

Ms. Kerry McGovern
Investor Assistance Specialist
Office of Investor Education and Advocacy
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-0213
Fax 1202-772-9295
Investoradvocate@sec.gov

I am obviously very concerned about going back over ground already covered with the SEC. Can someone advise about the SEC Records Management System as it sounds like some of the prior submissions have been missed and that could cause the entire case to fail. This is just one of many below.

6 attachments

Thank you

Rick Fankhauser
[redacted]

From: Rick Fankhauser [redacted]
Sent: Monday, August 6, 2018 9:19 AM
To: Investoradvocate@sec.gov
Cc: 'Rick Fankhauser' <rick@rickfankhauser.com>
Subject: FW: WHISTLEBLOWER COMPLAINT - Vonage Auditor BDO > e911 Tax > Request for 2011 Ruling from PCAOB No Response From BDO Required / BDO Threatening Whistleblower

Ms. Kerry McGovern
Investor Assistance Specialist
Office of Investor Education and Advocacy
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-0213
Fax 1202-772-9295
Investoradvocate@sec.gov

See attached that has not yet been acknowledged by the SEC. There has been much documentation of harassment and intimidation by those tied to Vonage/Windstream and their Auditors that are covering up this Fraud/Audit Fraud.

It is difficult for me, with limited knowledge, to keep sending you this

documentation as support as you ignore them completely per your 7-31-18 email and other vague responses.

SEC TCR sent 12-6-17 after discussions with SEC Whistleblower group as I have met and exceeded Whistleblower status.

Let me know by reply how to proceed.

Rick Fankhauser
[redacted]

From: Rick Fankhauser [redacted]
Sent: Monday, July 23, 2018 9:33 AM
To: Investoradvocate@sec.gov
Subject: FW: WHISTLEBLOWER COMPLAINT - Vonage Auditor BDO > e911 Tax > Request for 2011 Ruling from PCAOB No Response From BDO Required / BDO Threatening Whistleblower

U.S. Securities and Exchange Commission
Office of Investor Education and Advocacy
100 F Street, N.E.
Washington, DC 20549-0213 Fax 1202-772-9295 Investoradvocate@sec.gov

Re: WHISTLEBLOWER COMPLAINT - Vonage Auditor BDO > e911 Tax > Request for 2011 Ruling from PCAOB No Response From BDO Required / BDO Threatening Whistleblower

Please add this to my existing complaint submissions against Vonage, Windstream etc… regarding e911 taxes

This documentation shows the Audit cover-up has existed since 2011 and prior if they are required to defend their position.

I simply don’t understand why an Auditor is allowed to spin the cover-up of their bad work into Harassment. No one wants to do their job.

If this e911 tax problem isn’t resolved, people will be hurt unnecessarily and others will die.

Please let me know if you need anything else on this subject.

6 attachments

Thank you for your help from your angle!

Rick Fankhauser
[redacted]

From: Rick Fankhauser [redacted]
Sent: Monday, July 23, 2018 9:01 AM
To: 'Tips' <Tips@pcaobus.org>

Cc: 'Rick Fankhauser' <rick@rickfankhauser.com>
Subject: WHISTLEBLOWER COMPLAINT - Vonage Auditor BDO > e911 Tax > Request for 2011 Ruling from PCAOB No Response From BDO Required / BDO Threatening Whistleblower

Public Company Accounting Oversight Board
1666 K Street, NW
Washington, DC 20006-2803
Fax: 1202-862-0757
Phone: (202) 207-9100
tips@pcaobus.org

Re: WHISTLEBLOWER COMPLAINT - Vonage Auditor BDO > e911 Tax > Request for 2011 Ruling from PCAOB No Response From BDO Required / BDO Threatening Whistleblower

Please add this to my existing submissions of documentation.

Vonage, 23 Main Street, Holmdel, NJ 07733
https://pcaobus.org/pages/AuditorSearch.aspx?u=https%3A%2F%2Fpcaobus%2Eorg&k=vonage
BDO is show as having some Audit duties for Vonage

In 2010 and 2011, I challenged Vonage and their Auditor BDO regarding e911 fees and other fraud, similar to what I have reported to you in my other submissions. I didn't just start sending long faxes to Vonage and BDO as they would like you to believe. Vonage and BDO refused to respond to my line item requests and they spun it into a harassment complaint against me to avoid the issues. They had attorneys contact me at work by phone and certified letter so I would not contact them again regarding this Audit fraud. Note – BDO never responded to the e911 fee fraud I surfaced.

It is goes against the common good to retaliate against a Whistleblower that surfaces Audit fraud like this, especially when it involves a public safety issue. If Auditors are allowed to spin what they don't like into harassment, Audit quality will continue to suffer. I understand this is against the law in different forms.

The PCAOB ruled that both BDO had no obligation to respond to me. The lady from the PCAOB that called me was very kind, but I didn't think at the time to ask for something in writing.

REQUEST: I am requesting something official in writing on that ruling from the PCAOB and regarding the BDO Whistleblower Retaliation threats made against as it was spun into a different issue to hide the fraud.

Thank you so much for your help.

6 attachments

Rick Fankhauser
[redacted]

Attached Files

Subject: File No. S7-16-18
From: Anonymous
Affiliation:

Oct. 17, 2018

To the SEC:

I am writing in regard to the SEC's Proposed Amendments to the Whistleblower Program Rules, Release Number 34-83557, File Number S7-16-18.

The newly proposed amendments create the opportunity for the SEC to use whistleblower information, and then not compensate the whistleblower for his information.

Information submitted by a whistleblower that is "not already known" to the SEC, can later be used by the SEC in an investigation. Then, during the SEC award process, the SEC can declare the whistleblower information to be "readily apparent", even if THE SEC DID NOT ALREADY KNOW IT.

In this way, the SEC created a way to steal a whistleblower's information, that the SEC did not already know, use that information in an SEC investigation, and later dodge the payment of an SEC whistleblower award.

The SEC's tortured logic on this issue, as outlined in many other comment letters, and parallel efforts to hobble large whistleblower awards, demonstrates this effort to steal a whistleblower's information is intentional, and that the SEC, in fact, set out from the start to design a new rule to allow themselves to steal whistleblower information.

Sincerely,

Anonymous

One last email for this week. Below is a **working draft** of what I intend to submit next week in response to the message I received from the Office the Secretary related to the comments I submitted.

Referenced: TSR1*20752**092*

Re: Comments on the proposed Amendments to the Commission's Whistleblower Program Rules.

With all due respect to the Office of the Secretary', I am extremely disappointed at the poor quality and lack of continuity in what I received in response to the previous comments I have submitted.

Respectfully Submitted

(202) 551-2000
Washington, DC
October 18, 2018 at 08:08

Transcription Beta

"Good morning Mr. _____ my name is Steve Johnston I'm returning at the securities and exchange commission you to our office ___ the secretary or ____ _____ a staff __ their your whistle blew a complaint asking about him updated status on your reward claim you should direct your inquiry to our office of the whistleblower and their phone number is 202-551-4790 thank you..."

Subject: File No. S7-16-18
From: Anonymous
Affiliation:

Oct. 29, 2018

To the SEC:
I am writing in regard to the SEC's Proposed Amendments to the Whistleblower Program Rules, Release Number 34-83557, File Number S7-16-18.
In the newly proposed rules, the SEC disparages tips that rely on multiple sources of publicly available information (see page 107 of the SEC's analysis of the new whistleblower rules). Obviously, there will be cases where the SEC will not investigate frauds if such tips are not submitted to the SEC. Does the SEC prefer to not, or at least later in time, investigate frauds (some of them serious), because they wish to discourage tips with publicly available information? The SEC already has a method to deal with tips of this kind. I was refused a whistleblower award. In the refusal, the SEC stated my tip failed to produce information that was "not already known" to the SEC. That's fair. The SEC should continue with that method. But by discouraging tips that draw on multiple sources of publicly available information, the SEC undoubtedly will not, and perhaps never, investigate some serious frauds effecting the public, because some of those tips will be the only impetus for an SEC investigation. All tips utilizing publicly available information should be encouraged, as long as the tips point to a conclusion that is "not generally known". That is the current standard. Then, if the SEC already knows the information in the tip, they can disallow an award because the SEC already knew the information.
Also, for the whistleblower, there is a somewhat darker aspect of the newly proposed rules regarding publicly available information. This is a quote from an October 17th whistleblower comment:
"Information submitted by a whistleblower that is "not already known" to the SEC, can later be used by the SEC in an investigation. Then, during the SEC award process, the SEC can declare the whistleblower information to be "readily apparent", even if THE SEC DID NOT ALREADY KNOW IT. In this way, the SEC created a way to steal a whistleblower's information, that the SEC did not already know, use that information in an SEC investigation, and later dodge the payment of an SEC whistleblower award."
If the SEC is concerned with paying whistleblower awards on information that LATER becomes publicly known, the SEC should move earlier on suspected frauds, as they have recently done with the Elon Musk tweets in the matter of Tesla. That situation was addressed by the SEC in a few hours or days. But discouraging whistleblower tips on frauds that may NEVER BE INVESTIGATED OTHERWISE, when the remedy is already at hand (i.e. denying an award because the information was already known to the SEC), is a punitive and unnecessary strike against the public. The SEC should not penalize the public for using information the SEC does not already know, or worse yet, in the scenario outlined by the October 17th commentator, utilize the public's TCR knowledge, and then seek to "dodge" a legitimate whistleblower award.
Thank you,
Anonymous

Subject: File No. S7-16-18
From: ANONYMOUS anonymous

October 31, 2018

Given how greed can impact reasoning, I personally think awards should be substantial but limited. This is not Powerball.

I also think that the SEC should have the flexibility to adjust an award upwards/downwards as it sees fit so long as reasoning is provided.

Further, expediency in adopting new rules and in tackling its backlog is key, otherwise what is the point if the process takes years upon years to receive a determination.

Subject: File No. S7-16-18
From: Anonymous
Affiliation:

November 4, 2018

To the SEC:

Thank you for the ability to comment on the SEC's proposed changes to the whistleblower rules.

I have previously submitted a whistleblower TCR to the SEC. That whistleblower TCR was submitted under the existing rules which allow information from multiple public sources when that information points to a conclusion that is "not generally known".

Please do not make the new language of "bridging the gap" retroactive to the existing TCRs. "Bridging the gap" is different from "not generally known". At the very least, search the existing TCRs for the term "not generally known" to discover which TCRs have relied on the "not generally known" standard.

Thank you,
Anonymous

Subject: File No. S7-16-18
From: Taylor S Amarel
Affiliation:

November 9, 2018

To the SEC:

Thank you for the ability to comment on the SEC's proposed changes to the whistleblower rules.

I have previously submitted a whistleblower TCR to the SEC. That whistleblower TCR was submitted under the existing rules which allow information from multiple public sources when that information points to a conclusion that is "not generally known".

Please do not make the new language of "bridging the gap" retroactive to the existing TCRs. "Bridging the gap" is different from "not generally known". At the very least, search the existing TCRs for the term "not generally known" to discover which TCRs have relied on the "not generally known" standard.

Thank you,

Subject: File No. S7-16-18
From: Taylor S Amarel

November 16, 2018

In the 2018 Annual Whistleblower Report, the OWB vigorously uses the term "meritorious whistleblowers" in a vague but highly impactful manner.

Specifically, the 2018 Report stated:

"The OWB prioritizes those claims that, based on our initial triaging and communications with investigative staff, appear to be award-eligible."

However, neither the proposed rules, statements from the OWB, or any publicly available material or guidance for Whistleblowers discusses this so called "triaging".

As mention in earlier comments, if the SEC already has a method of "triaging" this process should be disclosed to individuals and made available to the public so that the public can better understand the how the proposed rules may impact the current "triaging" system.

Furthermore, I wish to further voice my concerns that the SEC is not providing enough guidance to Whistleblowers regarding what a "meritorious" whistleblower claim or tip would look like.

As I can personally attest to, the forms, process, and style of tips that the SEC requests differs from office to office. In fact, during calls with the SEC discussing Whistleblower tips, certain enforcement staff instructed me to provide "condensed" versions of tips (while specifically instructing me not to submit large files such as video evidence), while other staff from different regional offices requested me to provide all of the information organised or in raw format.

The SEC devotes significant resources writing and publishing guidance for public companies but it does not public any guidance to Whistleblowers, leaving them in a precarious situation where they may forced to retain counsel, or simply give up due to the confusion nature and lack of information or clarity from the OWB.

Instead of implementing the proposed rules the SEC should take a step back to and consider the feedback of actual whistleblowers and those who have hit numerous roadblocks during the current whistleblower process.

I am 100% confident if the SEC was better at communicating the process to Whistleblowers and better at providing guidance or examples of good and bad whistleblower tips or claims - then there would be no need to implement rules that prejudice honest whistleblowers who are trying to report fraud to the SEC but get tripped up by the non-transparent nature of the current process.

Subject: Re: File No. S7-16-18
From: Per Krook
Affiliation:

Nov. 19, 2018

Dear Sir,

My comment has not been published, and I am curious as to why?

Best regards,
Per Krook

Den fre 9 nov. 2018 kl 05:20 skrev Per Krook [redacted]:

The "anonymous" opinion filed on Oct. 31, 2018 states that "Given how greed can impact reasoning, I personally think awards should be substantial but limited. This is not Powerball"; clearly this person does not understand that Powerball is simply based on luck, whilst whistleblowing is based on skill, integrity, bravery, brains and an ambition to prevent abuse in the financial markets which once exposed, will benefit all Main Street Investors (i.e. each and everyone of us who are savers!), as once the misconduct is exposed it will simply not be repeated and the perpetrators will not be able to carry on enriching themselves in the same way at our expense going forward, i.e. whistleblowing is all about the Power of having the Balls to expose wrongdoing..!

Do you work for Goldman Sachs
[https://www.washingtonpost.com/world/national-security/us-accuses-ex-goldman-sachs-bankers-in-massive-malaysian-money-laundering-scheme/2018/11/01/b1441b5a-dde0-11e8-b732-3c72cbf131f2_story.html?utm_term=.e56a542e77c8] or Sullivan & Cromwell
[https://www.sullcrom.com/goldman-sachs-group-inc-completes-acquisition-clarity-money-2018] by any chance or perhaps both just like the conflicted SEC Chairman did who has enabled the proposal to limit awards for large case whistleblowers (i.e. cases pertaining to the likes of his former clients and his very own firm!)?

The same "anonymous" person think that "the SEC should have the flexibility to adjust an award upwards/downwards as it sees fit so long as reasoning is provided". Please explain to us, who is "the SEC" in your opinion; the all but impartial Chairman with the casting vote who has built his fortune on advising the likes of Goldman Sachs in relation to transactions like the one pertaining to 1MDB? I'm confident he as a lawyer is more than able to motivate any award to be reduced so that hardly any whistleblower will see it worthwhile to step forward.

Since only transparency can convince the general public, when will Chairman Clayton address all the questions raised within the scope of

this enquiry?

God Bless the Staff with integrity at the SEC who are relentlessly working to protect us all from the establishment who has now infiltrated the SEC through politics, God Bless Whistleblowers and God Bless America

Per Krook

NWC | NATIONAL WHISTLEBLOWER CENTER
3238 P Street, NW, Washington, D.C. 20007 | (202) 342-1902 | www.whistleblowers.org

MEMORANDUM FOR THE COMMISSION
WHISTLEBLOWER PROGRAM RULE AMENDMENTS

Submitted by:

Stephen M. Kohn, Executive Director
Michael D. Kohn, President
David K. Colapinto, General Counsel
Maya Efrati, Policy Counsel

On behalf of the

National Whistleblower Center
www.whistleblowers.org.

December 14, 2018

ENSURING THE INTEGRITY OF THE INVESTOR PROTECTON FUND WHILE TIMELY AND PROPERLY PAYING WHISTLEBLOWER CLAIMS

The National Whistleblower Center hereby submits this proposal as a formal supplemental comment to the public record regarding the Whistleblower Program Rule Amendments, Rel. No. 34-83557. This proposal is submitted in order to ensure that whistleblowers can be properly paid in accordance with the Congressional intent and plain language of the Dodd-Frank Act, without threatening the integrity of the Investor Protection Fund.

A. Understanding the "Related Action" Provision

One of the most important features of the U.S. government's whistleblower programs is that reward payments are generated directly from sanctions obtained by fraudsters. As there is an uppermost award limit set at a percentage of the collected proceeds, which in the case of the SEC is 30%, the U.S. government profits from the ability of whistleblowers to detect frauds and provide the government with high quality information, even distinct from any other benefits that whistleblower tips provide to the government's law enforcement capacity. When the SEC is the organ of government collecting the sanctions obtained in whistleblower cases, the process works quite well. In such situations, the SEC claims between 70% - 90% of the monies recovered as a result of whistleblower cases; as a result, there should always be ample funding for any SEC case.

In order to ensure that whistleblowers are adequately compensated, Congress established the Investor Protection Fund, as part of the Dodd-Frank Act.[1] This Fund is required to maintain a minimum balance in order to ensure the payments required under law.[2] When funding for the Fund

[1] 15 U.S.C. § 78u–6(g)
[2] 15 U.S.C. § 78u–6(g)(3)

drops below that balance, the SEC is required to use sanctions it obtains from enforcement cases to replenish the Fund.[3]

The SEC fulfills its obligation to provide monetary rewards to whistleblowers who voluntarily provide the SEC with original and high-quality information which results in a successful prosecution – at no expense to the taxpayer or those that have been wronged by criminal actions. When the SEC announce a whistleblower reward, the statement notes:

"The money paid to whistleblowers comes from an investor protection fund established by Congress at no cost to taxpayers or harmed investors. The fund is financed through monetary sanctions paid by securities law violators to the SEC. Money is not taken or withheld from harmed investors to pay whistleblower awards."

However, the SEC is not always the government entity which collects the sanctions obtained in whistleblower cases in which the whistleblower voluntarily submitted the original information to the SEC. The Dodd-Frank Act also contains a provision concerning "Related Actions."[4] The provision authorizes the SEC to pay a financial award to a whistleblower based not only on the voluntary disclosure of the original information provided to the SEC and resulting in a successful prosecution, but also as a result of successful prosecutions (or other decisions that result in monetary sanctions) that are based on the same information but to another government enforcement entity or under another law. A whistleblower is entitled to a reward based on collected proceeds obtained from fraudsters in "related action" cases. This system rewards whistleblowers no matter how their information is used, recognizing that the law enforcement would not be possible without the assistance of the whistleblower – even if the fraud is not brought to justice by the SEC itself.

However, because the sanctions obtained by the U.S. government in a related action case are not paid directly to the SEC, the SEC does not receive the direct source of funding to pay rewards in related action cases. Instead, the money to pay a reward in a related action case must come from sanctions obtained in SEC cases. The dilemma that this creates is readily apparent. If the SEC is required to pay a large related action-based reward, the monies for that reward must come from SEC cases, in which the recoveries may be far smaller. Additionally, the related action reward requirement is triggered whenever the SEC issues a sanction of $1 million, regardless of the size of the related action.[5] Even if smaller, these amounts can add up and be potential problematic as well. As a result, paying such related action rewards could result in the exhaustion of monies in the Investor Protection Fund and paralyze the ability of the SEC to pay rewards, at least until the SEC collects sufficient additional funds through its own law enforcement efforts.

Here's an example: Take a case in which the SEC has sanctioned Company "A" for $1 million. If the SEC paid the maximum reward ($300,000), there would be ample funds at the SEC from

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[3] Id.

[4] Under the statute, the term "related action" is defined as "any judicial or administrative action brought by an entity described in subclauses (I) through (IV) of subsection (h)(2)(D)(i) that is based on upon the original information provided by a whistleblower…" 15 U.S.C. § 78u–6(a)(5). The use of the term "commission action" means "Covered judicial or administrative action" as defined by subsection (a)(1).

[5] 15 U.S.C. § 78u–6(b)(2).

this very sanction to compensate the whistleblower. The amount available in the Investor Protection Fund is not at risk in this situation, as the funding mechanisms governing that Fund provide ample authority for ensuring that rewards predicated on sanctions obtained from Commission actions are available for whistleblowers. *See* 15 U.S.C. § 78u–6(g)(3). This includes a very broad worst-case scenario funding mechanism.[6] However, if in the same case, the DOJ issues a related action sanction against the same company for $100 million, the SEC the ability of the SEC to pay the reward could be placed in jeopardy. For example, even if the SEC only paid a 10% reward on this related action claim, the SEC would owe the whistleblower $10 million. Yet, the SEC itself only collected $1 million from the fraudster; the rest of the money (the $100 million) is not part of the SEC's available funds and the risk of depleting the fund too fast is real once several related action awards are paid.

As a result, even if a related action at a different agency would result in an award larger than the total amount sanctioned by the SEC, the SEC still must pay a whistleblower reward on the related action amount.

Based on the public record, a related action collection can often be much larger than a direct SEC action. As such, the potential for related action recoveries to exhaust the Investor Protection Fund is an appropriate concern.

This concern can have a significant detrimental impact on the entire whistleblower program. It could result in the SEC attempting to narrowly construe related actions as a means to preserve funding for SEC action-based awards, even if such behavior in the determination process is in fact explicitly prohibited in the statute.[7] Whistleblowers, who should be and are otherwise incentivized to voluntarily submit information and continue to work with the government during the case investigation, may see that their efforts with other agencies are not in their best interests. Moreover, the premature exhausting of the Investor Protection Fund would result in the delay of payments to other future whistleblowers in SEC cases, a particularly egregious result as many of those payments are small rewards to whistleblowers who have lost their jobs or otherwise need the compensation.

B. A cap is not the solution

Crucially, just as setting precedents to narrowly construe related actions cases would create problematic disincentives, a whistleblower reward cap (a hard number rather than a percentage as utilized in other U.S. whistleblower reward programs) is not a solution to this concern. Aside from

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[6] 15 U.S.C. § 78u–6(g)(3)(B) ("If the amounts deposited into or credited to the Fund under subparagraph (A) are not sufficient to satisfy an award made under subsection (b), there shall be deposited into or credited to the Fund an amount equal to the unsatisfied portion of the award from any monetary sanction collected by the Commission in the covered judicial or administrative action on which the award is based.")

[7] Congress has explicitly prohibited the SEC from taking into consideration the amount of money in the Investor Protection Fund when making an award determination. 15 U.S.C. § 78u–6(c)(1)(B)(ii).

risking violating the express terms of the Dodd-Frank Act itself, a reward cap would not address the core problem: it would still allow for the premature exhaustion of funds in the Investor Protection Fund in certain circumstances. As demonstrated in a comparison of FIRREA and FCA reward provisions and the efficiency of these laws over three decades, a reward amount cap pulls the rug out from any incentive a whistleblower has to step forward and has proven to be bad public policy. As a result, it is an incomplete solution that comes packaged with significant downsides as well, and as such should be wholly rejected.[8]

Reward programs with caps don't incentivize whistleblowers: There are many different types of whistleblowers. On one end of the spectrum is a whistleblower who has blown the whistle, is known to and was retaliated against by an employer, and has already filed information with the SEC. Yet other whistleblowers may be at an extremely high level in their organization or professional career. While this individual knows about wrongdoing, they are not known as a whistleblower and can remain anonymous. As a result, this individual is still in a position to choose whether to blow the whistle. In fact, this is the type of whistleblower who could be most valuable to the SEC, as this individual is likely to voluntarily come forward with high-quality information about significant wrongdoing – if motivated to do so. It is this whistleblower that tip and enforcement programs mandated by Congress are designed to target. If incentivized, this whistleblower will do the right thing and come forward. Yet, it is exactly this whistleblower who will take into consideration the reward potential when making a decision on whether to come forward. As a result, whistleblower reward caps are particularly dis-incentivizing to potential whistleblowers, as reward caps undermine the psychological surety that the government will, at the end, make sure that a whistleblower is made whole from the suffering they endure as a result of their decision to bravely blow the whistle.

The data proves that programs with caps are certain to fail: The NWC examined the data from over three decades from the Securities Financial Instruments Reform, Recovery and Enforcement Act (FIRREA), as well as the False Claims Act. The data clearly demonstrates that the reward cap built into the FIRREA whistleblower reward provision has acted as a deterrent to whistleblowers coming forward with information, muting the abilities of law enforcement to hold accountable financial fraud. In comparison, the significant successes of the FCA, specifically in providing law enforcement the ability to claw back millions and millions of dollars of illicit funds as sanctions and fines, has been powered by whistleblowers who voluntarily submit high-quality information

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[8] Arguments against any form of cap were set forth by numerous respected experts on whistleblower/fraud detection/securities enforcement during the comment period. *See, e.g. See* Kohn, Kohn and Colapinto, LLP Comment filed on July 24, 2018; Harry Markopolos Comment filed on September 14, 2018; Professor William Jacobson, Cornell University School of Law Comment filed on September 17, 2018; Taxpayers Against Fraud Comment filed on September 18, 2018; National Whistleblower Center Comment filed on September 17, 2018; Corporations and Society Initiative, Stanford University Graduate School of Business, Comment filed on September 18, 2018; Americans for Financial Reform Education Fund Comment filed on September 18, 2018; Public Citizen Comment filed on September 18, 2018; Chairman of the Senate Judiciary Committee Comment filed on September 18, 2018; Better Markets Comment filed on September 18, 2018; Law 360: The Problem With SEC's Plan To Cap Whistleblower Awards.

and are rewarded following the conclusion of a success case. In fact, government agencies which administer the whistleblower reward programs recognize the essential contribution of whistleblowers and oppose reward caps as ineffective. It would be extremely detrimental to the success of the existing SEC whistleblower program to implement any reward cap.

C. The SEC has discretion on timing the payout

While the SEC is prohibited from considering the balance of funds as a factor in determining the amount paid to a whistleblower, it has been granted some flexibility by Congress in structuring other aspects of its whistleblower reward program.[9] Namely, the SEC has clear legal authority to structure the timing of payments (rather than the amount to be paid) in order to ensure that the lack of monies in the Investor Protection Fund does not result in undue delays in the payment of rewards to needy whistleblowers or other whistleblowers who have waited years for a final decision, nor create a disincentive based on delays triggered by a lack of funding available to pay rewards.[10] This would also ensure that the whistleblower program be a drain on funds for the SEC, as originally intended and anticipated by Congress.

This valid concern can be resolved by spreading out the payment, rather than cutting it and running afoul with practices prohibited in the law.

Thus, the SEC should modify its current rules regarding the timing of payments in certain cases. This adjustment can be done by formal rulemaking, as is currently under consideration, or by an internal operating procedure published to the whistleblower community. With this modification to the program, the SEC's ability to control the timing of payments would mitigate any potential harm caused by the reduction of monies in the Investor Protection Fund due to large related action type awards.

Finally, such a proposal would be a familiar structure to many in the whistleblower community. Indeed, deferred payments are common in whistleblower employment cases. In these cases, a structured payment plan over time provides benefits to the whistleblower themselves, such as an opportunity to lower their tax burden, fund retirement plans over time, and provide long-term financial stability after what is often a career interrupted as a result of retaliation from blowing the whistle. It is likely that existing whistleblowers and potential future whistleblowers would welcome such a plan, just as those in the whistleblower advocacy community would understand that this proposal is both consistent with the law as well as addresses a legitimate concern for the SEC whistleblower program without unduly limiting or capping awards.

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[9] Significantly, when Congress set the criteria for payment, it clearly excluded any form of monetary cap in the definition. 15 U.S.C. § 78u–6(c)(1)(B). However, concerning the determination of the amount of reward, there is no reference to the timing of the payment.

[10] Although it is clear that the SEC may not take the balance of the fund into consideration when determining the (size of) an award, it is also clear that the SEC has rulemaking authority to ensure that the program is administered "consistent with the purposes" of the Dodd-Frank Act's whistleblower reward provision. 15 U.S.C. § 78u–6(j). It is apparent that ensuring that the payment of SEC awards are not unfairly delayed because of a temporary exhaustion of the fund stemming from a higher related action reward is consistent with the aims of the Act.

D. Deferred or Bifurcated Payment Structure

The SEC should adopt a deferred partial payment rule, which would bifurcate the payment structure of rewards for whistleblowers. An amendment to the current rules could simply provide the SEC with the authority to make deferred partial payments in which payments in a related action case which could either exhaust the monies available to make payments in SEC actions and/or could reasonably be anticipated to result in undue delays in payments for SEC actions. This would allow the SEC to retain flexibility in the timing of the payments of reward, and such bifurcation would create a more effective and efficient SEC whistleblower reward program.

A deferred payment program should include the following aspects, subject to further modification by the SEC:

1. The deferred payment program would only be needed in a very small number of cases that meet the following criteria: (a) the whistleblower was immediately given a partial payment of $30 million; (b) the reward payment above the $30 million threshold concerned a reward that was generated pursuant to the "related action" provision of the DFA, i.e. the sanctions were collected by an agency which did not provide the SEC with the funding to cover the award; (c) the SEC staff concluded that paying the full award would deplete the monies available in the Investor Protection Fund and result in undue delays in the payment of rewards under the $30 million threshold. All three criteria must be met before a deferred payment plan was approved.

2. In regard to setting the minimum payment threshold of $30 million, this number is based on the amount currently being proposed by the SEC in the proposed rule. This proposal should not be construed as an endorsement of this amount, but rather a good faith proposal based on the Commission's calculations. The NWC maintains that this amount is not sufficient to adequately incentivize potentially high-quality/well placed whistleblowers, whose annual compensation could be higher than $15 million per/year.[11] But because the whistleblower would ultimately be properly rewarded in accordance with Congressional intent and the criteria approved in the 2011 rules, the adverse impact resulting from deferred payments on the incentive nature of the DFA rewards should be sufficiently mitigated. It is not uncommon in other contexts that large awards are paid other time.

3. The deferred payment program would only cover the large "related action" awards. There would be no deferred payment for Commission actions, as the monies necessary to fully and immediately pay those awards would be derived directly from sanctions obtained in the whistleblower's case, which always result in a minimum profit to the SEC of between 70-90%.

4. For a "related action" award there would be no delay in payment for any award at the $30 million or lower level. But if a total award was over $30 million, the Commission would have the discretion to delay payments above the $30 million threshold as set forth below:

[11] https://www.justice.gov/opa/speech/attorney-general-holder-remarks-financial-fraud-prosecutions-nyu-school-law

A. Compensation should only be delayed over a maximum period of five years. The whistleblower needs to be informed of the precise dates and procedures that would be implemented in a structured payment plan, and have an opportunity to comment on the plan. For tax planning purposes, the rule or internal operating procedure should require that the Commission staff discuss the deferred payment procedures with the whistleblower, and attempt to work out an agreeable process so that whistleblower can engage in appropriate financial planning.

B. If a deferred payment is authorized, the Commission should increase the percentage of an award in order to compensate the whistleblower for the delay in obtaining payments.

C. A whistleblower should always be able to obtain, up front, an amount equal to ten years front-pay. Thus, in a case in which a high-level executive is paid the average executive bonus of $15 million per/year (as identified in fn. 10), that executive should be able to provide the Commission with documentation as to his or her executive bonus and obtain immediate compensation for any loss that exceeds $30 million over a ten-year period.

D. An exception should be made for hardship cases, such as if the whistleblower is terminally ill or has any legitimate need for an immediate payment.

Ultimately, Congress should amend the DFA and require that agencies that obtain collected proceeds in "related action" cases compensate the SEC's Investor Protection Fund whenever a reward is paid. But until such time, this bifurcated or deferred payment procedure both protects the program from the valid concern of premature exhaustion of funds in the Investor Protection Fund that is necessary to timely pay whistleblowers the rewards they need and are entitled to. The NWC strongly supports the SEC attempts to ensure that its whistleblower reward program remains an effective and crucial aspect of its law enforcement capacity, and a model for whistleblower reward programs throughout other government entities.

NWC | NATIONAL WHISTLEBLOWER CENTER

Assessing Whistleblower Reward Incentives and Caps: What the Data Demonstrates

Evaluating the impact of whistleblower reward caps on incentives for whistleblowers to voluntarily step forward with high-quality information.

DECEMBER 2018

National Whistleblower Center

Executive Summary

- Reward laws with caps have universally failed. This is demonstrated by an in-depth analysis of the FIERRA and FCA whistleblower provisions, and the efficacy of those laws over three decades.

  In fact, government agencies which administer the whistleblower reward programs recognize the essential contribution of whistleblowers and oppose reward caps as ineffective. *See Sec. E*

- The SEC rejected the cap proposal in 2011 and no commissioner dissented from that rejection. *See Sec. F*

  Indeed, no publicly-traded company, bank, or financial institution has supported the 2018 SEC rule change proposal.

- The proposed cap fails the front-pay test for executive compensation. *See Sec. E*

- The overwhelming weight of authority in the materials provided to the SEC by those who filed comments on this proposal demonstrates that the cap would significantly undermine Congressional intent as well as overall efficacy of the program.

The National Whistleblower Center strongly urges the SEC to reject the whistleblower reward cap proposal.

Securities Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA)

FIRREA was passed in 1989, only two years after the False Claims Act ("FCA"). Unlike the FCA, FIRREA includes a cap on whistleblower rewards.

The la created a liability for violations of 14 underlying criminal laws as they relate to federally insured financial institutions. These laws include: 1) mail and wire fraud; 2) making false statements to government officials; and 3) financial institution fraud.

On a practical level, FIRREA means that a person can also be held liable for money damages; that is, civil charges in addition to criminal charges.

Prosecutions under FIRREA have a reduced burden of proof, from "beyond a reasonable doubt" in a criminal matter to a mere "preponderance of evidence" in a civil case. This standard of proof is often described as "more likely than not."

FIRREA applies broadly. Courts have held that a bank could be held liable for FIRREA violations committed by its own officials, which caused harm to the institution itself. The statutory language of FIRREA (specifically the term "affected") should be interpreted so that any federally insured financial institution could be found to be both the victim and perpetrator in an action. *United States v. The Bank of New York Mellon*.

The ability of the government to prevail in a bank fraud case under FIRREA is likely to be far easier than obtaining a criminal conviction.

Whistleblower Reward Provision: 12 U.S.C. §§ 4201(d)(1)(A)

A. The law provides for whistleblower rewards under certain circumstances, and caps the highest rewards.

The language of the law reads:

(i) The declarant shall be entitled to 20 percent to 30 percent of any recovery in the first $1,000,000 recovered, 10 percent to 20 percent of the next $4,000,000 recovered, and 5 percent to 10 percent of the next $5,000,000 recovered.

(ii) In calculating an award under clause (i), the Attorney General may consider the size of the overall recovery and the usefulness of the information provided by the declarant.

This means that the most that a whistleblower can receive is $1.6 million, provided that the whistleblower's information results in at least $10 million recovered, and the whistleblower is awarded the maximum allowed in all segments of that award. This is a 16% reward, within the range of the FCA (the percentage gets higher as the total fine is reduced).

However, additional restrictions apply:

"As a general proposition, the maximum fine is set at $1.1 million per violation. 12 U.S.C. § 1833a(b)(1) (1966). *See* 28 C.F.R. § 85.3(a)(6). For continuing violations, the penalty may not exceed the lesser of $1.1 million each day or $5.5 million in total. 12 U.S.C. § 1833a(b)(2) (1966), as adjusted, per 28 C.F.R. § 85.3(a)(7)." Source.

This means that a $1.1 million fine per violation could result in a maximum $320,000 reward, which is nearly 30% of the total fine, and a $5.5 million fine for continuing violations could result in a maximum of a $1,150,000 reward, which is approximately 20% of the total fine. Note that this is within the range of FCA; in fact, it's on the high end of it.

A tale of two results: FIRREA

B. The effect of FIRREA on halting and holding accountable financial fraud has been muted.

The effect of FIRREA on halting and holding accountable financial fraud has been muted. Originally passed in the wake of the Savings and Loan Crisis, FIRREA has been derided as a "little-used statute" that has resulted in a "dearth of cases" during its nearly 30 year history." Although FIRREA was enacted in 1989, scholars and policymakers have said it was virtually ignored as a vehicle to address financial fraud until the global financial crisis.

Then, for a few years, blockbuster FIRREA prosecutions targeted banks' behavior precipitating the global financial crisis, including $1.38B from S&P, $5B from Bank of America, $4B from Citigroup, and $2B from JP Morgan Chase & Co. Yet, nearly a decade later, when noteworthy FIRREA prosecutions are compiled by notable experts in the field, they can still be counted on one hand.

Even successful FIERRA prosecutions are attributable to the incentive of un-capped whistleblower reward provisions.

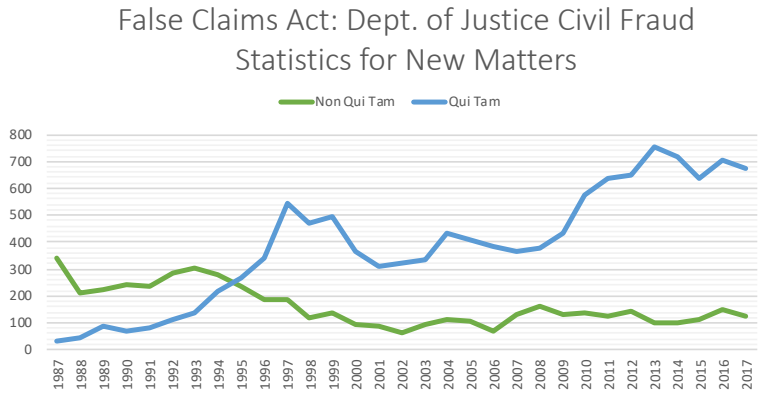
Whistleblower Edward O'Donnell, a former Countrywide Vice President, voluntarily provided original information about widespread fraud by Countrywide Bank under *qui tam* provisions of the False Claims Act. While the FCA charges were later removed, the government proceeded on FIRREA charges and the parties reached a $1.27 billion dollar settlement, with $57 million set aside for the whistleblower reward.

The *qui tam* provisions of the FCA triggered the disclosure, even though the case was decided under FIRREA. This is evidence that whistleblower rewards are key to the detection of large-scale financial fraud.

Whistleblowers have stayed away from FIRREA. NWC searched the entire LexisNexis database from 1996 to 2017 for all federal cases that cited to the 12 U.S.C. § 4201, the whistleblower provision of the FIRREA statute, and found only four cases. In those four cases, not a single plaintiff prevailed on their whistleblower claim. This demonstrates the surprising fact that the whistleblower provision of FIRREA has never, by itself, been successfully utilized by a whistleblower to obtain an award, beginning from the passage of the act until the present day. A prior NWC Freedom of Information Act ("FOIA") request confirmed this finding.

False Claims Act ("FCA"):

C. At the same time that FIRREA has foundered, whistleblower cases under the FCA have increased dramatically.



In the 30 years since the passage of the False Claims Act, the DOJ has seen a substantial upward trend in the such cases, known as new matters. **The DOJ reported that there have been 5,066 new matters over the 19 years between FY 1987 and FY 2005, and 6,914 new matters in just the 12 years between FY 2006 and FY 2017.**

These instances are not just submitted tips, but cases in which the government has intervened – and, having determined the validity of these tips, is moving forward.

This trend also suggests that whistleblowers provide better information for law enforcement agents as compared to other ways of investigating or discovering information on criminal activity.

In January 2006, the U.S. Government Accountability Office ("GAO") reported that the median whistleblower award under the False Claims Act was $123,000. Similarly, according to data released in 2017 by the Department of Justice ("DOJ"), Civil Division, which has prosecutorial jurisdiction over the False Claims Act:

	Median number of qui tam (whistleblower) new matters, per year	Median amount of relator share awards, total per year
FY 1987 – 2005	311	$64,392,552
FY 2006 – 2017	636.5	$425,305,014

Note that we estimate the average whistleblower reward is $447,830 (this is a very rough average, because of data limitations).

D. The Story of the Oct. 2018 Mega Millions Lottery

- Worth = $1,600,000,000
- How many bought a $2 ticket?
- Odds of winning = 1 in 302.5 million
- Chance of being struck by lightning: 1 in 700,000
- Chance of becoming a saint: 1 in 20 million

- In just one year, the lottery raised $16 billion for education, $2.5 billion for state general funds, and $1.7 billion for social programs.

Everyone knows it's true: the wide-spread publicity of the enormous sum results in a rush to buy tickets.

E. Dept. of Justice Advocates **Against** Caps

In 2014, Attorney General Eric Holder, on behalf of the Dept. of Justice, called for the reform of FIRREA's whistleblower reward provision. He asked Congress to increase the percentage of the reward to 30% of the sanctions imposed – equal to the False Claims Act - in order **"to increase its incentives for individual cooperation."**

He pointed out that lifting the caps on FIRREA **"could significantly improve the Justice Department's ability to gather evidence of wrongdoing while complex financial crimes are still in progress – making it easier to complete investigations and to stop misconduct before it becomes so widespread that it foments the next crisis."**

The Dept. of Justice's concerns about the FIRREA reward cap is equally applicable to the impact on whistleblower perceptions, and in doing so the incentive for whistleblowers to step forward, caused by any reward caps, including the current misguided SEC proposal to implement a cap.

The Dept. of Justice understood that the reward cap built in the FIRREA whistleblower provision was undermining its efficiency.

An arbitrary limit disconnected from the reality on-the-ground.

"Like the False Claims Act, FIRREA includes a whistleblower provision. But unlike the FCA, the amount an individual can receive in exchange for coming forward is capped at just $1.6 million – a paltry sum in an industry in which, last year, the collective bonus pool rose above $26 billion, and median executive pay was $15 million and rising"

"In this unique environment, what would – by any normal standard – be considered a windfall of $1.6 million is unlikely to induce an employee to risk his or her lucrative career in the financial sector. That's why we should think about modifying the FIRREA whistleblower provision – perhaps to False Claims Act levels – to increase its incentives for individual cooperation."

-- Dept. of Justice Attorney General Eric Holder, 2014

As A.G. Holder, on behalf of the Dept. of Justice, noted, the median executive pay in 2014 was $15 million – and rising. An individual in this position, who has high-quality information about criminal actions, would not be incentivized to disclose that information using appropriate law enforcement avenues, for such a (relatively) small sum.

In fact, for those with the experience of litigating whistleblower cases, this number highlights why a rewards cap is such a mismatch for the industry. When a court is determining damages, front pay (or future lost earnings) is often used as an alternative to reinstatement, to ensure that a whistleblower who was retaliated against is made whole. *McNight v. General Motors,* 908 F.2d 104 (7th Cir. 1990); *U.S. v. Burke*, 504 U.S. 229, footnote 9 (1992). With a cap on whistleblower rewards at $1.6 million in even the best of circumstances, it's no wonder that whistleblowers are not inclined to utilize FIRREA in the way that the FCA has been utilized over the past decades. **As a result, this cap proposal fails the front-pay test for executive compensation.**

F. The SEC Should, Again, Reject a Reward Cap Proposal

FIRREA is an apt comparison for the FCA. The median reward for FCA was $123,000 when the program was audited by the GAO in 2006, and the average awards today are similarly significant. This is less than the maximum reward amount in the FIRREA. Moreover, the reward percentages under FIRREA are within the same ranges as permitted by the FCA. Finally, the FCA and FIRREA have been law for roughly the same number of years, as FIRREA was passed only two years after the FCA.

So, why are the results so drastically different?

» We know that there is in fact fraud at financial institutions, as demonstrated by successful prosecutions under FIRREA on the heels of the global financial crisis. Congress agreed when it passed the law.

» Perhaps Congress intended FIRREA to be much narrower than the FCA. But, it's highly unlikely that Congress would intend for a law to be widely derided as "little used" and in need of substantial reform, including by the head of the Department of Justice. And, narrow should not mean inefficient.

The FIRREA structure implements the logic of the Chamber of Commerce in advocating for a SEC whistleblower reward cap. It reduces the total reward, using the percentage metric, for whistleblowers who tip the government to fraud that results in certain awards.

This was in fact proposed when the SEC reformed its whistleblower program in 2011 by the Chamber of Commerce and their big business allies, and it was soundly rejected.

"Although we have considered the views of commenters who recommended that the presence or absence of certain criteria should have a distinct and consistent impact on our award determinations, the final rule does not establish such a methodology that would permit a mathematical calculation of the appropriate award percentage…. Accordingly, no attempt has been made to list the factors in order of importance, weigh the relative importance of each factor, or suggest how much any factor should increase or decrease the award percentage. Depending upon the facts and circumstances of each case, some factors may not be applicable or may deserve greater weight than others…. In the end, we anticipate that the determination of the appropriate percentage of a whistleblower award will involve a highly individualized review of the facts and circumstances surrounding each award using the analytical framework set forth in the final rule."

Whistleblower rewards are a crucial component of an effective program.

Whistleblower advocates who work directly on these laws, as well as the government agency officials in charge of the implementation of these laws, agree with what the data shows: whistleblower reward caps do not incentivize those with information to come forward using the appropriate legal avenues and help the government catch fraud and corruption. It would be highly destructive to the SEC's law enforcement capacity for the agency to implement any sort of cap in its whistleblower reward programs.

Moreover, the proposed SEC whistleblower cap was been largely opposed by the public; in fact, more than 99% of the comments posted on the SEC's public comment page spoke out against the limit. The groups that put forth over 3,500 comments in opposition to the proposed changes included whistleblowers, whistleblower attorneys, corporate law firms, as well as Senator Charles Grassley's office. Much of the criticism focused around the impact the proposed changes would have on the incentive for whistleblowers of large frauds to come forward.

The SEC "whistleblower program . . . has rapidly become a tremendously effective force-multiplier, generating high quality tips, and in some cases virtual blueprints laying out an entire enterprise, directing us to the heart of the alleged fraud."

— Chairman Mary Jo White, Securities and Exchange Commission, Remarks at the Securities Enforcement Forum, Washington DC (October 2013)

G. Additional Resources

Comments in Opposition to Proposed Rule:

- National Whistleblower Center
- National Whistleblower Center, extension request.
- Sen. Charles Grassley, Chairman of the Senate Judiciary Committee
- Kohn, Kohn & Colapinto
- Taxpayers Against Fraud
- Better Markets, Lev Bagramian,
- Public Citizen
- Americans for Financial Reform

Whistleblower Protection Blog:

- https://www.whistleblowersblog.org/2018/09/articles/sec-whistleblowers/secs-receives-extensive-criticism-in-comments-on-proposed-changes-to-whistleblower-program/
- https://www.whistleblowersblog.org/2018/09/articles/sec-whistleblowers/sec-whistleblower/
- https://www.whistleblowersblog.org/2018/07/articles/sec-whistleblowers/action-needed-to-protect-sec-whistleblower-program/
- https://www.whistleblowersblog.org/2018/07/articles/dodd-frank-whistleblowers/proposed-sec-whistleblower-rule/

"Capping awards would all but ensure that the elephant never walks through the [SEC's] doors, only rabbits and the occasional zebra," wrote Harry Markopolos, a financial fraud investigator well-known for exposing the Ponzi scheme perpetrated by Bernie Madoff.

Acknowledgements

Maya Efrati is the Policy Counsel for the National Whistleblower Center. Her work focuses on strengthening democratic institutions, promoting anti-corruption and good governance reforms and advocating on behalf of increased whistleblower protection. She earned her J.D. from the University of Michigan Law School, simultaneously earning her M.P.P. from the University of Michigan Gerald R. Ford School of Public Policy. In a legal capacity, she previously worked for the Michigan Innocence Clinic, the Center for American Progress, FairVote, and Represent.US. Before law school, she also worked for a large Congressional campaign, AFSCME Council 36, and the Peres Center for Peace, among others.

Additional thanks to NWC Legal Fellow **Sarah Khan** and intern **Anna Wysen** for assistance compiling data and finalizing the report.

Stephen M. Kohn serves pro bono as the Executive Director of the National Whistleblower Center, and is a founding partner of the whistleblower law firm of Kohn, Kohn & Colapinto in Washington, DC. He has represented whistleblowers since 1984, successfully setting numerous precedents that have helped define modern whistleblower law and obtained the largest reward ever paid to an individual whistleblower ($104 million for exposing illegal offshore Swiss banking practices). He is widely recognized as the leading U.S. authority on whistleblower laws, and helped draft whistleblower provisions in the Sarbanes-Oxley, Dodd-Frank, and Whistleblower Protection Enhancement Acts. He teaches a seminar on whistleblower law at Northeastern University of Law, and has published numerous books on whistleblower law, including The New Whistleblower's Handbook: A Step-by-Step Guide to Doing What's Right and Protecting Yourself (Lyons Press, 2017), the seminal guide on whistleblowing. He currently represents confidential and anonymous clients in North America, Asia, Africa, and Europe.

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NWC NATIONAL WHISTLEBLOWER CENTER

When Whistleblowers Get Rewards: Assessing the SEC's Whistleblower Reward Program

An analysis of the U.S. Securities and Exchange Commission ("SEC") Office of the Whistleblower program and whistleblower reward determinations.

DECEMBER 2018

National Whistleblower Center

The U.S. Securities and Exchange Commission (SEC) Office of the Whistleblower has proven to be a highly successful program over the past decade.

Over $1.7 billion in total monetary sanctions from wrongdoers as a result of whistleblower tips.

More than $901 million in disgorgement of ill-gotten gains and interest.

Approximately $452 million has been or is scheduled to be returned to investors.

Over $326 million awarded to 59 individual whistleblowers.

WHISTLEBLOWERS:

A. The U.S. Securities and Exchange Commission ("SEC") Office of the Whistleblower's reward program has fulfilled its obligation to compensate informants.

The National Whistleblower Center has conducted an analysis of SEC awards to whistleblowers who report crucial information for successful prosecutions. This data includes all laws enforced by the SEC which include a whistleblower reward mandate.

An approximate six-year span between 2012 to 2018 includes 131 distinct prosecutions with documented and publicly-available whistleblower award proceedings. Of these cases, 45 resulted in whistleblower awards. As some cases included several whistleblowers, these 45 cases resulted in 59 total awardees.

In contrast, during this same time period there were 86 cases in which a whistleblower petition for award resulted in the complete denial of any award to a whistleblower. Note that additionally, 32 individual claimants were denied while other whistleblowers in the same case were given awards. The courts and the SEC are clearly looking carefully at whistleblower petitions and ensuring that only the most deserving are granted a reward.

Since the first positive whistleblower award determination in 2012, the documents show that the SEC has awarded whistleblowers at least $318.78 million, while the SEC reported to Congress that it has awarded whistleblowers over $326 million.

Therefore, it is apparent that the lack of complete data, as a result of redactions and missing documentation, underestimates the value of whistleblowers to SEC's enforcement capacities.

Over $326 million has been awarded to whistleblowers.

B. The importance of whistleblowing, after under a decade of rewards data, is quite clear: those who blow the whistle are a crucial law enforcement component.

The data paints a picture of the crucial nature of whistleblowers to these prosecutions. The most common reasons for why a whistleblower should receive a reward was that the whistleblower prompted the investigation.

The words of the SEC's own law enforcement agents and policy implementers are enormously significant, and show the true power of whistleblowers. **Here's what they said:**

- **Extensive or ongoing assistance**
- **Significance of information contributed**
- **Hardship or retaliation endured**
- **Voluntarily offering information, including to other government agencies**
- **Saved investigatory resources**
- **Hard to detect violations**
- **Information helped to end an investigation**
- **Provided independent knowledge or analysis not otherwise available.**

The whistleblowers who bring wrongdoing to the government's attention are instrumental in preserving the integrity of government.

-- Former Principle Deputy Assistant Attorney General Stuart Delery, U.S. Department of Justice, remarks made at the American Bar Association's 10th Annual National Institute on the Civil False Claims Act and Qui Tam Enforcement (2012)

[A whistleblower] "admission often brings... [an] added measure of public accountability."

-- Chairman Mary Jo White, Securities and Exchange Commission, remarks at the Securities Enforcement Forum, Washington DC (2013)

C. A snapshot of 2018

Much can also be learned by what is happening in just the six months. NWC compiled a snapshot of all notices of covered actions by the SEC cases, regardless of the law at issue, in which whistleblowers were involved. This data is particularly useful as it covers all cases investigated and prosecuted by the SEC and involving whistleblowers where the SEC believes that a whistleblower (or several whistleblowers) may have a valid claim for a reward. The data also details whether a complaint has been filed or the case has been settled and the amount of sanctions either brought in or to be brought in by the government through each case.

In just six months, the SEC has brought in at least $449,489,571 through 24 cases involving whistleblowers. The average case brought over $18.7 million in fines.

This data would indicate that at least 24 foreign whistleblowers may be entitled, per case, to between $1.21 and $3.63 million (between 10% and 30% for each case).

These figures prove that the SEC's whistleblower program works and is necessary for effective prosecution. While these cases are not necessarily prosecutions for violations of the FCPA, the program analyzed here is the same used by some FCPA whistleblowers. The general effectiveness of the program parallels the reasonable expectations of whistleblowers' influence on successful FCPA prosecutions.

Six months
$449,489,571
24 cases

D. Whistleblowers are a proven way to obtain high-quality information.

A strong monetary incentive to blow the whistle does motivate people with information to come forward... without the negative side effects often attributed to them.

[T]here is no evidence that having stronger monetary incentives to blow the whistle leads to more frivolous suits.

-- Alexander Dyke, et al., University of Chicago Booth School of Business

Statements from elected leaders, law enforcement officials who work directly with whistleblowers on the ground, and appointed leadership in the agencies that implemented whistleblower programs demonstrate high regard for whistleblowers. Statistics on the use of whistleblower tips by the relevant agencies verify their effectiveness.

Whistleblower tips are by far the most used detection method for U.S. agencies. *See Fig 1*. Additionally, reports released by the SEC Office of the Whistleblower on the use of whistleblower tips verify the effectiveness of these tips.

For example, approximately 15% of whistleblower tips received by the SEC lead to some form of investigation. By comparison, the DOJ has an intervention rate (including settlements) of nearly 25% in *qui tam* False Claims Act cases that are filed by whistleblowers. Further, in FY 2017, the U.S. government recovered over $3.7 billion through its civil fraud program. Of this amount, whistleblowers were directly responsible for the detection and reporting of over $3.4 billion (92%), under *qui tam* provisions. As a result of this assistance, whistleblowers were awarded $392 million (11.5%).

» **Statements** from elected and appointed leadership in the agencies that implement whistleblower programs.
» **Statements** from law enforcement officials who work directly with whistleblowers on the ground.
» **Statistics** on the use of whistleblower tips by the relevant agencies.
» **Data** on the amount of money collected by the government and distributed to whistleblowers after successful prosecutions and settlements that are only or largely possible because of whistleblower information.

Whistleblowers play an integral role in keeping institutions honest, ethical, and safe, providing information to both law enforcement for prosecutions and to civil society for accountability to the public.

The whistleblower program . . . has rapidly become a tremendously effective force-multiplier, generating high quality tips, and in some cases virtual blueprints laying out an entire enterprise, directing us to the heart of the alleged fraud.

-- Former Chairman Mary Jo White, Securities and Exchange Commission, remarks at the Securities Enforcement Forum, Washington DC (2013)

Fig 1 | Detection Method, by Region

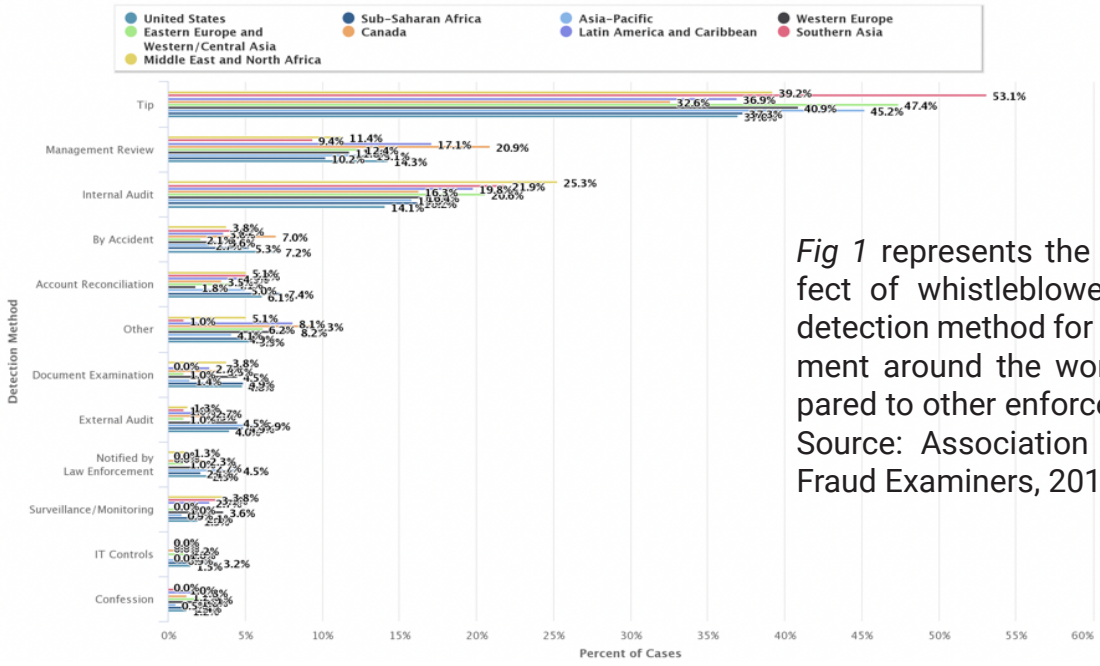

Fig 1 represents the outsized effect of whistleblower tips as a detection method for law enforcement around the world, as compared to other enforcement tools. Source: Association of Certified Fraud Examiners, 2016.

E. Internal Reporting is Strengthened by SEC Oversight.

The 2018 SEC Office of the Whistleblower Report to Congress acknowledges the interaction between internal reporting and compliance programs, and the SEC's own whistleblower reward program:

"There is no requirement under the Whistleblower Rules that an individual be an employee or company insider to be eligible for an award. However, approximately 69% of the award recipients to date were current or former insiders of the entity about which they reported information of wrongdoing to the SEC. Of the award recipients who were current or former employees of a subject entity, approximately 83% raised their concerns internally to their supervisors, compliance personnel, or through internal reporting mechanisms, or understood that their supervisor or relevant compliance personnel knew of the violations, before reporting their information of wrongdoing to the Commission."

[When the SEC] "whistleblower program was being set up, many in the securities bar… worried that the program would undermine internal compliance efforts. [But it has] the opposite effect… Companies are beefing up their internal compliance and making it clear… [that] internal reporting will be treated seriously and fairly. And most in-house whistleblowers that come to us went the internal route first."

– Former Chairman Mary Jo White, Securities and Exchange Commission, remarks at the Securities Exchange Forum, Washington D.C. (2013).

F. Whistleblowing Outside of U.S. Borders

In Dec. 2017, a whistleblower was awarded more than $4.1 million for stepping forward with information despite the risk he would suffer retaliation for his bravery.

This whistleblower exemplifies much of what we know about how information is kept secret and how illicit profits are made. A "former company insider," he both alerted the SEC about a criminal enterprise "and continued to provide important information and assistance throughout the … investigation." This original information was critical for the SEC to even know that a violation of the law was occurring.

Yet his concerns also reflect the types of worries by the right person with the right information – that the laws wouldn't be enough to protect him after he stepped forward. As a "foreign national working outside the" U.S., the SEC award determination notes that the whistleblowers' concerns that American "employment anti-retaliation protections" may not be meaningful outside of U.S. borders. As a result, the financial reward provides important motivation; it incentivizes those with original insider information to come out of the shadows.

Similarly, in 2014 the SEC announced what was then its largest-ever award to a whistleblower: over $30 million. The SEC noted that this individual "provided key original information," and was thus a crucial component for halting this ongoing crime. And again, in 2018 a whistleblower was awarded $4 million, and the SEC noted that the whistleblower "provided extensive assistance... throughout the course of the investigation."

While the SEC maintained the confidentiality of these whistleblowers, the agency did disclose in all cases that the whistleblower was living in a foreign country. As a result, this was necessarily a violation of the Foreign Corrupt Practices Act ("FCPA").

> **Whistleblowers from all over the world should feel similarly incentivized to come forward with credible information about potential violations of the U.S. securities laws.**
>
> -- Former Chief of the SEC's Office of the Whistleblower, Sean X. McKessy (2018)

G. The international reach out of SEC whistleblower program.

The effectiveness of the SEC program is driven in part by the extensive allowances for international jurisdiction by U.S. law enforcement authorities. This global reach helps ensure transparency, accountability, and ethical business practices worldwide.

For example, the FCPA is often known as the law used to prosecute bribes paid abroad by companies directly or indirectly connected to the U.S. The law does something that the average layperson may think is not possible: the FCPA establishes U.S. jurisdiction for bribes paid in foreign countries by foreign nationals to foreign government officials.

According to the SEC, since 2011, **a total of 3,305 whistleblowers from 119 countries outside of the U.S.** have filed claims under whistleblower reward provisions. *See Fig 2*.

It is clear that those in charge of implementing the law understand the importance of whistleblower tips to their ongoing law enforcement success. In 2017, the SEC confirmed that high-quality whistleblower tips and allegations have triggered over 700 pending or ongoing investigations.

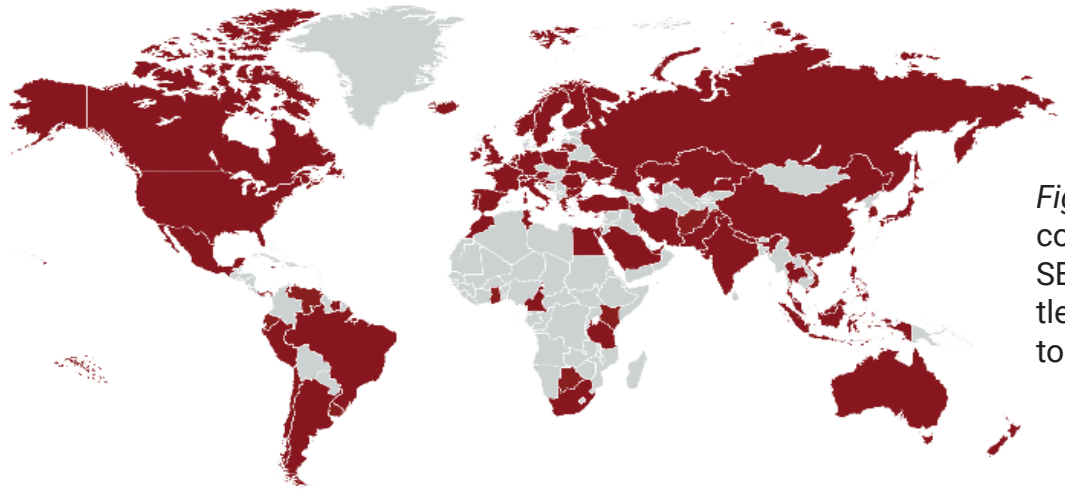

Fig 2 illutrates the 119 countries from which the SEC has recieved whistleblower tips from FY 2011 to FY 2018.

The SEC program has recieved a total of **28,100** whistleblower tips between FY 2011 and FY 2018.

The number of individuals submitting tips from abroad constitutes **11.76%** of the individuals who participated in the SEC whistleblower program. However, international whistleblowers submit particularly high-quality tips leading to more often successful prosecutions: international whistleblowers are **20.3%** of whistleblowers who receive a reward through the SEC whistleblower program.

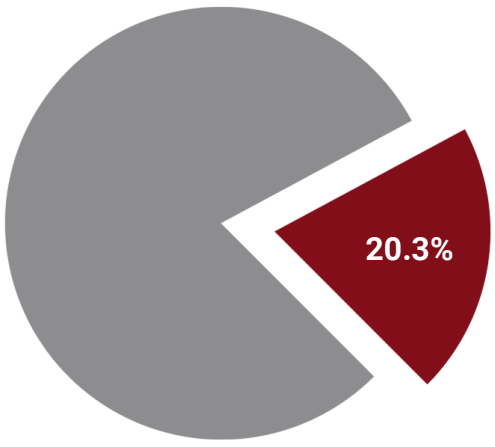

Fig 3, above, illustrates the international whistleblowers who have received awards

> **International whistleblowers can add great value to our investigations.**
>
> -- Former Director Andrew Ceresney, Division of Enforcement, U.S. Securities and Exchange Commission, remarks made at the Sixteenth Annual Taxpayers Against Fraud Conference (2016)

G. Conclusion

Whistleblowers are powerful tools for detecting fraud and corruption. Laws which utilize whsitleblower rewards have been proven to incentivize whistleblowers to come forward using appropriate law enforcement avenues with high-quality information. These tips are crucial for the continued success of our law enforcement programs against fraud, corruption, and other criminal behavior.

Supporting protection and reward programs for brave individuals who blow the whistle should be of the utmost importance to anyone seeking to implement laws worldwide.

Acknowledgements

Maya Efrati is the author of this report, and the Policy Counsel for the National Whistleblower Center. Her work focuses on strengthening democratic institutions, promoting anti-corruption and good governance reforms and advocating on behalf of increased whistleblower protection. She earned her J.D. from the University of Michigan Law School, simultaneously earning her M.P.P. from the University of Michigan Gerald R. Ford School of Public Policy. In a legal capacity, she previously worked for the Michigan Innocence Clinic, the Center for American Progress, FairVote, and Represent.US. Before law school, she also worked for a large Congressional campaign, AFSCME Council 36, and the Peres Center for Peace, among others.

Additional thanks to NWC Legal Fellow **Sarah Khan** and intern **Anna Wysen** for assistance compiling data and finalizing the report.

Stephen M. Kohn serves pro bono as the Executive Director of the National Whistleblower Center, and is a founding partner of the whistleblower law firm of Kohn, Kohn & Colapinto in Washington, DC. He has represented whistleblowers since 1984, successfully setting numerous precedents that have helped define modern whistleblower law and obtained the largest reward ever paid to an individual whistleblower ($104 million for exposing illegal offshore Swiss banking practices). He is widely recognized as the leading U.S. authority on whistleblower laws, and helped draft whistleblower provisions in the Sarbanes-Oxley, Dodd-Frank, and Whistleblower Protection Enhancement Acts. He teaches a seminar on whistleblower law at Northeastern University of Law, and has published numerous books on whistleblower law, including The New Whistleblower's Handbook: A Step-by-Step Guide to Doing What's Right and Protecting Yourself (Lyons Press, 2017), the seminal guide on whistleblowing. He currently represents confidential and anonymous clients in North America, Asia, Africa, and Europe.

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@StopFraud

National Whistleblower Center

Website: whistleblowers.org | Blog: whistleblowersblog.org

Taylor Scott Amarel
Researcher | Private Investigator | Whistleblower
[redacted]

December 18, 2018

VIA ELECTRONIC MAIL AND REGISTERED MAIL

Mr. Brent Fields, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Petition for Rulemaking and Policy Statement the SEC Whistleblower Program

Dear Mr. Fields:

Pursuant to Rule 192 of the Rules of Practice of the United States Securities and Exchange Commission, I write on my own behalf, voicing my personal concerns and the concerns of numerous similarly situated persons, to respectfully request that the Commission clarify, improve, and strengthen certain aspects of the SEC Whistleblower Program.

Please find the attached rulemaking petition that urges the Commission, among other things, to increase transparency, provide additional guidance to whistleblowers, implement policies to prevent delays, set deadlines for whistleblower claim processing, engage in appropriate rulemaking and issue a policy statement outlining the initiatives and efforts the SEC will undertake to support current and would-be-whistleblowers.

Since Dodd-Frank was enacted in 2010, the SEC Whistleblower Program has enabled the SEC to become more effective and efficient in policing the marketplace. Most recently, the SEC Whistleblower Program has lead to record payouts and significant enforcement actions as a result of courageous whistleblowers who mortgaged their professional and personal future in an effort to protect others from wrongdoing.

Unfortunately, while the large payouts continue to make headlines, there exist many lurking issues that could prove fatal to the continued success of the SEC Whistleblower Program . Until these and other problem areas are addressed, hundreds if not thousands of whistleblowers will make a conscious decision not to report wrongdoing to the SEC, quiet simply because the SEC Whistleblower Program provides little guidance or support to whistleblowers and has been documented and publicly reported to be understaffed, non-transparent, painfully slow, poor at communication, and extremely inefficient at utilizing their current resources.

Respectfully submitted,

Taylor Scott Amarel

Enclosures
CC: Chairman Clayton, Commissioner Stein, Commissioner Jackson, Commissioner Peirce, Commissioner Roisman, Co-Director Avakian, Co-Director Peikin, Chief Norberg.

Taylor Scott Amarel
Researcher | Private Investigator | Whistleblower
[redacted]

December 18, 2018

VIA ELECTRONIC MAIL AND REGISTERED MAIL

The Honorable Jay Clayton
US Securities and Exchange Commission
100 F Street, NE
Washington DC 20549

Dear Mr. Clayton:

I write on my own behalf, voicing my personal concerns and the concerns of numerous similarly situated persons, to express growing concern for the extremely damaging inefficiencies and poor operating practices of the Office of the Whistleblower. Concerns over poor performance of the Office of the Whistleblower have been growing since at least 2015[1] and unless prompt action is taken the efficacy of the SEC Whistleblower Program will be largely undermined.

I invite you and your staff to review the enclosed information and take prompt action to address the concerns via a new rulemaking or by way of incorporating the requests in this petition into File No.: S7-16-18.

Should you have any questions or concerns or would like to receive additional information regarding my concerns please do not hesitate to contact me further at [redacted]

Respectfully submitted,

Taylor Scott Amarel

[1] https://www.warren.senate.gov/files/documents/SEC_Whistleblower_Letter_111615.pdf

PROBLEM AND EXAMPLES	DAMAGING RESULTS	PROPOSED SOLUTION / RULEMAKING
Poor Communication ● OWB Staff are slow to respond to queries and requests for assistance. Numerous follow-ups are needed to get a basic response; ● On multiple occasions OWB Staff provided incorrect instructions on how to submit partitioned files larger than 10MB; ● OWB Staff routinely do not provide confirmation on whether a Form WB-APP has been accepted for processing;	● Whistleblowers quickly lose confidence in the OWB and feel ignored which results in less tips; ● As a result important whistleblower information did not make it to the OWB for nearly a year, delaying an investigation and allowing wrongdoing to continue longer; ● OWB Staff should promptly confirm receipt of messages and follow a consistent protocol for receiving claim forms;	The SEC should: 1. Require a response to email inquiries within 3 business days; 2. Provide whistleblowers with proper instructions on how to submit files that are larger than 10MB and create policies that allow whistleblowers to use the large file upload systems already used by the SEC; 3. Require a response to all Form WB-APPs within 3 business days;
Lack of Transparency ● Unlike other federal agencies - the OWB does not provide any estimates on how long the whistleblower adjudication process will take; ● OWB Staff provide conflicting answers on the requests for information. On one occasion OWB Staff stated claims are processed in a first in first out basis while other times OWB Staff state they have a TRIAGE system in place;	● Whistleblowers are unable to estimate when they could receive compensation. This uncertainty causes many whistleblowers to not file a tip; ● Whistleblowers become more confused and lose confidence in the OWB. Not only do they not get an estimate timeline but the conflicting answers from the OWB make it feel like the OWB doesn't know what they are doing either;	The SEC should: 1. The OWB should publicly post estimates on how long whistleblower claims take to adjudicate. The OWB should also list the total number of claims in the queue; 2. The OWB should be transparent about its TRIAGE process. If the OWB is not transparent would-be-whistleblowers will not feel comfortable making tips and will not have confidence in the OWB's operations;
Lack of Guidance to Whistleblowers: ● The OWB does not provide any guidance on what type of information they are looking for - let alone what format it should be submitted in. Furthermore, SEC Staff provide different and conflicting advice on how to submit tips;	● Whistleblowers become confused and discouraged from submitting information because the OWB Staff may instruct whistleblowers to submit 'short' tips while enforcement staff tell the whistleblower they need to submit more details and redo their tips;	The SEC should: 1. Create standards and publish examples of what a quality whistleblower tip looks like. This should include guidance on how to submit large files such as videos, databases, etc;

● The various forums or industry events that OWB Staff attend are usually only open to lawyers or are prohibitively expensive for many people to attend. This leaves whistleblowers with a precarious choice - to either navigate the non-transparent whistleblower process themselves or attempt to retain counsel;	● Many would be whistleblowers are unable to obtain counsel due to work, family, or financial obligations. Although many state that most whistleblower lawyers work on contingency this does not mean it is free for the whistleblower who has to sacrifice time, money, and incidental expenses just to search for an attorney - a process that could very well be detected by an employer;	2. Provide these resources in a easy to understand manner so whistleblowers are not burdened or forced to retain counsel to parse through the inconsistent statements of the SEC and OWB;
Non-Optimal Processing Policies: ● Numerous meritorious whistleblower claims have been irrationally put on a complete hold as the OWB parses through appeals that are related to the same covered action, this cases delays which have been known to exceed many years[1] - even after a favorable preliminary determination was accepted;	● Whistleblowers are becoming aware that the reward process can take years if not decades. As a result numerous whistleblowers are deciding a potential payout after five years is not worth the sacrifice and uncertainty of reporting wrongdoing now;	The SEC should: 1. Promulgate rules that allow the SEC to make a partial payout of an award while the appeals process drags on. The partial payout can be adjusted based on the percentage of the preliminary determination and the number of whistleblowers pursuing an appeal in the same covered action;
Zero Accountability for Timely Processing of Claims ● From fiscal year 2013 through 2017 and fiscal year 2018 (through July 18) there have been 889 properly-filed WP-APP Forms. (https://www.sec.gov/files/18-02437-FOIA_Redacted.pdf) During that same time there were only 126 whistleblower award orders. This averages out to 2.1 whistleblower award orders per month;	● At the rate of 2.1 whistleblower Award Orders per month and assuming there are 763 not yet decided whistleblower whistleblower Claims: ○ A whistleblower that submits a properly-filed whistleblower Claim today can expect to wait 363 months (30.25 years) before a final whistleblower Order ○ A whistleblower that submits a whistleblower Tip today can expect to wait 363 months (30.25 years) plus an additional 2-5 years of time for enforcement staff to investigate and/or litigate. ● 30.25 years is a LONG time to wait for a whistleblower award. In fact, it is beyond contemplation and beyond many would-be-whistleblower's own life expectancy (especially so for senior management);	The SEC should: 1. Promulgate rules that require the SEC to reach a preliminary award determination within 90 days of the deadline to submit a WP-APP Form. Whistleblowers are required to make their arguments and submit a WP-APP Form within 90 days of a covered action being posted - yet the SEC currently has no deadlines or even guidelines on how long it will take to process the claims and make a preliminary determination. If whistleblowers are held to a 90 day deadline the SEC should be held to similarly rigid deadlines to ensure timeliness;

[1] https://www.wsj.com/articles/bernie-madoffs-legacy-whistleblower-inc-1544245273

Taylor Scott Amarel
2 January 2019

AMBIGUITY AND LACK OF CLEAR COMMUNICATION IS NEGATIVELY IMPACTING THE SEC'S WHISTLEBLOWER PROGRAM

Emily Pasquinelli
Office of the Whistleblower
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
[redacted]

Brent Fields, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Simple Changes in Communication Could Significantly Increase the Efficiency and Effectiveness of the SEC's Whistleblower Program and Drastically Reduce the Growing Delays in Processing Whistleblower Claims.

Dear Ms. Pasquinelli, Mr. Fields, and concerned parties:

I am writing today to express very serious and well documented concerns that the SEC's Whistleblower Program is shooting itself in the foot by implementing a confusing, difficult, and often ambiguous communication policy. The poor communication of the SEC's Whistleblower Program has negatively impacted the effectiveness of the Whistleblower Program, prejudiced Whistleblower rights, and worked contrary to the intent of Congress.[1]

To carry out the intent of Congress and letter of Dodd-Frank, the SEC must take immediate action to reduce the complexity of its communications so that individual Whistleblowers are not forced to retain counsel to shift through the legalese and regularly ambiguous or conflicting communications from the SEC's Whistleblower Office. The SEC needs to reduce the complexity of its communications and set expectations correctly.

Indeed, while there have been numerous non-public instances of the SEC's Whistleblower Program communicating false, mis-leading, or detrimental information to Whistleblowers,[2] this letter will focus on more obvious and public statements by the SEC's Whistleblower Program - which often cause confusion rather than clarity.

[1] Please note, this is not the first instances of Whistleblowers and members of Congress voicing their concerns about the ineffective communication of the SEC's Whistleblower Program. In fact, lawyers, Whistleblowers, and members of Congress have expressed their concerns about poor communication almost continuously since at least 2015. Unfortunately, not much action has been taken to improve the communication of the SEC's Whistleblower Program.

[2] Previous concerns of failed communication include: A.) Incorrectly instructing Whistleblowers how to submit large files in 10MB partitions. It took the SEC months to realize that the instructions given to the Whistleblower actually resulted in the corruption of Whistleblower tips; B.) Failing to provide Whistleblowers with a means to submit large documents via mail in an encrypted manner; C.) Telling some Whistleblowers that tips are processed in a first-in-first-out order, while telling others Whistleblowers that there is a triage process; D.) Many other communication errors such as some enforcement staff telling Whistleblowers to submit all of the relevant documents while other enforcement staff instructed Whistleblowers to submit concise and succinct tips not to exceed 5-7 paragraphs.

Unnecessarily Ambiguous and Complex Language:

In the table below, one of the many complex statements by the Whistleblower Program is analyzed by its readability scores. It is noted and further emphasized that a significant number of very critical SEC statements or form instructions are rated near the top of the scales for their difficulty in reading. Furthermore, statements such as question 8a in the Form WB-APP are ambiguous in their meaning. As a result, Whistleblowers may be forced to retain counsel to properly navigate the confusing Whistleblower process - or Whistleblowers may interpret an ambiguous statement in a way that is different from the SEC's interpretation.

Statement	Flesch–Kincaid Reading Ease Score [3]	Gunning Fog Index[4]
8a. Did you provide the information identified in Section C above before you (or anyone representing you) received any request, inquiry or demand that relates to the subject matter of your submission (i) from the SEC, (ii) in connection with an investigation, inspection or examination by the Public Company Accounting Oversight Board, or any self-regulatory organization; or (iii) in connection with an investigation by the Congress, any other authority of the federal government, or a state Attorney General or securities regulatory authority?	23.86	28.11

Further emphasis is warranted by the fact that the text "before you" can be interpreted as meaning: "in front of you"; or "previous to". The complexity of this language makes it unclear as to what the SEC is actually asking and leaves significant room for a Whistleblower to interpret this question in a grammatically correct manner but with multiple potential meanings. This is very serious, because whistleblowers that interpret "before you" as "in front of you" may answer the Yes or No question in a different manner that could negatively impact their Whistleblower rights.

Lack of Examples:

Despite having a list of potential illegal activity that can be reported[5], the SEC has not provided any examples or guidance on how to report various violations and how the Whistleblowers tips could be formatted to ensure maximum efficiency.

Poorly Formatted Forms:

The Form WB-APP should have sections for all of the factors used by the Whistleblower Program to increase or decrease an award. Without these factors being mentioned on the the Form WB-APP, the SEC's Whistleblower Program is giving Whistleblowers the impression that it is not necessary or helpful to provide this information.

[3] https://en.wikipedia.org/wiki/Flesch%E2%80%93Kincaid_readability_tests
[4] https://en.wikipedia.org/wiki/Gunning_fog_index
[5] https://www.sec.gov/whistleblower/frequently-asked-questions

As a result Whistleblowers often leave this information out, the Whistleblower then receives a preliminary determination that was below the Whistleblowers expectations. As a result, the Whistleblower then initiates an appeal that takes additional SEC resources and delays the payment of other Whistleblower awards. The SEC should proactively identify ways to reduce the reasons why an Whistleblower would appeal an preliminary determination and providing better communication, expectations, and having a more organized Form WB-APP is an excellent and highly effective start.

Sincerely Yours,

Taylor Scott Amarel

Subject: File No. S7-16-18
From: Anonymous Anonymous

January 4, 2019

In light of the news that Jina Choi, Head of the SEC's SF Office, has stepped down. I would like to reiterate my concerns that the delays in processing Whistleblower claims inappropriately prejudice a Whistleblowers right to due process and fair adjudication.

As in my situation, I had substantial communication with Jina Choi and the SEC's SF Office. However, now that Jina Choi and some of her staff have left, how will the SEC act to preserve a record of my Whistleblower assistance and actions for the purpose of adjudicating my claims?

If Jina Choi is not an SEC employee, will the SEC be able to seek information and 'testimony' from Jina Choi for review by the Claims Review Staff?

I am very concerned that the continued delays in processing Whistleblower claims will only cause this problem to expand exponentially.

The current backlog which has been calculated to be between 5 and 20 years would mean it is unlikely the the enforcement staff involved in a case would still be working for the SEC by the time a preliminary determination is issued.

Subject: File No. S7-16-18
From: Anonymous Anonymous

January 4, 2019

To Whom This May Concern:

On December 12, 2018 a settlement was reached with three developers regarding a fraudulent EB-5 offering. See: https://www.sec.gov/news/press-release/2018-279.

Despite the settlement being completed on December 12, 2018 and the monetary recovery already completed, the SEC has not posted a NoCA regarding this case. See https://www.sec.gov/whistleblower/claim-award.

Given that the monetary recovery has already been completed and the settlement already executed - why has the OWB not posted the NoCA on the OWB website?

The SEC is currently debating proposed rules that institute a number of fundamental and very controversial changes to the SEC's Whistleblower Program for the purpose of reducing the backlog of claims. However, if the SEC simply posting NoCA in a timely manner the SEC could reduce the backlog, speed up processing of claims, better take care of Whistleblowers, and more effectively run the Whistleblower Program WITHOUT any new rules.

I look forward to receiving a response as to why these very basic improvements are not being implemented despite the growing pressure and significant backlog.

Subject: File Number S7-16-18
From: Terry Davis
Affiliation:

Feb. 24, 2019

This is a comment on the SEC's proposed changes to the whistleblower rules.

Within the last thirty days, a 70% federal income tax has become a popular source of discussion in Washington D.C. With a legal fee of one-third a whistleblower award, many whistleblowers will receive a mortifyingly small recovery for placing their careers at risk. In states with large financial centers (for example New York, Chicago) high state and local taxes could leave the whistleblower owing money to some external party.

As you know, payment of whistleblower awards can take many years. A higher tax rate, at the time an award is paid, is a possibility. Taxes and legal fees are not easily evaded. A sympathetic ear is unlikely to be found, even if a whistleblower award causes bankruptcy. Accordingly, the SEC need not continue on it's course to disadvantage the public whistleblower, that work is usually being accomplished elsewhere.

Finally, the temptation to disadvantage the public whistleblower may prove too strong for some government employees. Whistleblowers are a diverse group. They add no political influence, even if an award is successfully paid. So, because whistleblower lawyers and advocates seem to gather here, I would like to suggest the cautious, respectful naming of government employees who will influence the new whistleblower rules. Those names can then be discussed, for their influence on whistleblower policy, both good and bad. Reddit.com has an anonymous discussion area called "Wall Street". All respectful comments are welcome there. Other internet sites are also available. A person unjustly impeding whistleblowers might have their activities displayed as their top internet search result. This may help alleviate the pressure to disadvantage whistleblowers, who are usually individuals without political competence.

Please report, or discuss on the internet, any personnel who attempts to go unnoticed, while unjustly causing a disadvantage to whistleblowers.

Thank you,

Terry Davis

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–83557; File No. S7–16–18]

RIN 3235–AM11

Whistleblower Program Rules

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing for public comment several amendments to the Commission's rules implementing its whistleblower program. Section 21F of the Securities Exchange Act of 1934 (''Exchange Act'') provides, among other things, that the Commission shall pay an award—under regulations prescribed by the Commission and subject to certain limitations—to eligible whistleblowers who voluntarily provide the Commission with original information about a violation of the federal securities laws that leads to the successful enforcement of a covered judicial or administrative action, or a related action. On May 25, 2011, the Commission adopted a comprehensive set of rules to implement the whistleblower program. The proposed rules would make certain changes and clarifications to the existing rules, as well as several technical amendments. The Commission is also including interpretive guidance concerning the terms ''unreasonable delay'' and ''independent analysis.''

DATES: Comments should be received on or before September 18, 2018.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–16–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–16–18. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's internet website (*http://www.sec/gov/rules/proposed.shtml*). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Emily Pasquinelli, Office of the Whistleblower, Division of Enforcement, at (202) 551–5973; Brian A. Ochs, Office of the General Counsel, at (202) 551–5067, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing to amend 17 CFR 240.21F–3 (''Rule 21F–3''), 240.21F–4 (''Rule 21F–4''), 240.21F–6 (''Rule 21F–6''), 240.21F–8 (''Rule 21F–8'') through 240.21F–13 (''Rule 21F–13''). The Commission is also proposing to add a new rule that would be codified as 17 CFR 240.21F–18 (''Rule 21F–18'').

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I. Background

A. The Whistleblower Award Program

In July 2010, Congress amended the Exchange Act to add new Section 21F.[1] That provision, entitled ''Securities Whistleblower Incentives and Protection,'' established the Commission's whistleblower program. Among other things, Section 21F directs that the Commission pay awards, subject to certain limitations and conditions, to whistleblowers who voluntarily provide the Commission with original information about a violation of the securities laws that leads to the successful enforcement of an action brought by the Commission that results in a covered judicial or administrative action [2] and certain related actions.[3]

In May 2011, the Commission adopted a comprehensive set of rules to implement the whistleblower program. Those rules, which are codified at 17 CFR 240.21F–1 through 240.21F–17, provide the operative definitions, requirements, and processes related to the whistleblower program. Among other things, these rules:

- Define key terms and phrases in Section 21F that determine whether an individual's information qualifies for an award—terms such as ''original information,'' ''voluntary,'' and ''leads to successful enforcement'';
- specify the form and manner in which an individual must submit information to qualify as a whistleblower eligible for an award;
- establish the procedures for anonymous submissions;
- exclude certain individuals from eligibility, such as individuals who are, or were at the time that they acquired the original information provided to the Commission, a member, officer, or employee of a foreign government;
- explain which law-enforcement proceedings undertaken by other authorities may qualify for a related action award from the Commission;
- establish the procedures for determining awards both in Commission actions and related actions; and
- identify the criteria that the Commission will consider in setting the percentage amount of an award.

The Commission's whistleblower program has made significant contributions to the effectiveness of the Commission's enforcement of the federal securities laws. The Commission has received over 22,000 whistleblower tips since the inception of the program through the end of Fiscal Year 2017. Original information provided by whistleblowers has led to enforcement actions in which the Commission has obtained over $1.4 billion in financial remedies, including more than $740 million in disgorgement of ill-gotten gains and interest, the majority of which has been or is scheduled to be returned to harmed investors. The Commission has ordered over $266 million in whistleblower awards to 55 individuals whose information and cooperation assisted the Commission in bringing successful enforcement actions and, in some instances, other enforcement authorities in bringing related actions against wrongdoers. That said, approximately $112 million of that amount was paid to just four individuals in connection with two Commission enforcement actions and a related action.[4]

We recognize that individuals who step forward to provide information to the Commission may do so at great personal peril and professional sacrifice. We view the three key tenets of the program—monetary awards, confidentiality, and retaliation protections—as complementary and critical to the success of the program.

B. Overview of the Proposed Rule Changes and Other Items

After nearly seven years of experience administering the whistleblower program, we have identified various ways in which the program might benefit from additional rulemaking. We believe that the changes that we are proposing will build on the program's success by continuing to encourage individuals to come forward and by permitting us to more efficiently process award applications, among other potential benefits.

Based on our experience to date, we propose the following substantive amendments to our rules:

- *Allowing awards based on deferred prosecution agreements (''DPAs'') and non-prosecution agreements (''NPAs'') entered into by the U.S. Department of Justice (''DOJ'') or a state attorney general in a criminal case, or a settlement agreement entered into by the Commission outside of the context of a judicial or administrative proceeding to address violations of the securities laws:* We propose an amendment that would expressly allow for the payment of awards based on money collected under these types of arrangements. Currently, our whistleblower rules do not address whether the Commission may pay an award when an eligible whistleblower voluntarily provides original information that leads to a DPA or NPA entered into by DOJ or a state attorney general in a criminal proceeding. Nor do our rules currently address whether the Commission may pay an award to an eligible whistleblower who voluntarily provides information that leads to a settlement agreement entered into by the Commission outside of the context of a judicial or administrative proceeding to address violations of the securities laws. We are proposing to amend the definition of an ''action'' in Rule 21F–4(d) [5] to include, as administrative actions, these arrangements, with the money paid under such arrangements deemed to be ''monetary sanctions'' under Rule 21F–4(e),[6] and, thus to expressly permit us to pay awards thereon.
- *Elimination of potential double recovery under the current definition of related action:* We propose an amendment to our rules to clarify that a law-enforcement action would not qualify as a related action if the Commission determines that there is a separate whistleblower award scheme that more appropriately applies to the enforcement action. Although neither Section 21F of the Exchange Act (nor the whistleblower program rules thereunder) expressly addresses this situation, the Commission and the Claims Review Staff in the context of processing award applications have interpreted the term ''related action'' under Section 21F to exclude those matters brought by one of the entities listed in Rule 21F–3(b)(1) [7] for which there is a more directly applicable award program. The proposed rule would codify this interpretation.
- *Additional considerations for small and exceedingly large awards:* In the context of potential awards that could yield a payout of $2 million or less to a whistleblower, the proposed rules would authorize the Commission to adjust the award percentage upward under certain circumstances (subject to the 30% statutory maximum) to an

[1] 15 U.S.C. 78u–6.
[2] 15 U.S.C. 78u–6(a)(1).
[3] 15 U.S.C. 78u–6(a)(5).
[4] The average (mean) of these awards was approximately $38 million and the median award was approximately $33 million.
[5] 17 CFR 240.21F–4(d).
[6] 17 CFR 240.21F–3(b)(1).

amount that the Commission determines more appropriately achieves the program's objectives of rewarding meritorious whistleblowers and sufficiently incentivizing future whistleblowers who might otherwise be concerned about the low dollar amount of a potential award. Relatedly, in the context of potential awards that could yield total collected monetary sanctions of at least $100 million, the proposed rules would authorize the Commission to adjust the award percentage so that it would yield a payout (subject to the 10% statutory minimum) that does not exceed an amount that is reasonably necessary to reward the whistleblower and to incentivize other similarly situated whistleblowers; however, in no event would the award be adjusted below $30 million.[8] Currently, the whistleblower rules do not expressly permit the Commission to consider whether a relatively small or exceedingly large potential payout is appropriate to advance the program's goals of rewarding whistleblowers and incentivizing future whistleblowers. We are proposing to amend the whistleblower program rules to include these considerations as additional award criteria.

The three proposed rule changes described above are intended to serve two important and related objectives. *First,* the amendments are designed to help ensure that an eligible, meritorious whistleblower is appropriately rewarded for his or her efforts when the Commission or a related-action authority recovers monetary sanctions from wrongdoing that violates the securities laws. *Second,* the amendments would help ensure that the Investor Protection Fund (IPF) that Congress has established to pay meritorious whistleblowers is used in a manner that effectively and appropriately leverages the IPF to further the Commission's law-enforcement objectives.[9]

We believe that using the IPF to compensate whistleblowers who come forward with original information that leads to a DPA or NPA entered into by DOJ or a state attorney general, or a settlement agreement entered into by the Commission outside of the context of a judicial or administrative proceeding (provided the total money required to be paid in the action, including any other proceedings that arise out of the same nucleus of operative facts, exceeds $1,000,000) achieves both of these objectives. We similarly believe that these objectives are furthered by providing the Commission with additional discretion to determine that an action does not qualify as a related action if Congress or another authority has established a more directly applicable or relevant award program. Additionally, we believe that these two objectives are furthered by authorizing the Commission to adjust upward the award percentage in certain cases where the award would otherwise yield a payout of $2 million or less to a whistleblower, as well as to consider whether, in the context of an award issued in connection with certain large Commission or related actions, any whistleblower award exceeds an amount that is reasonably necessary to advance the program's goals. Absent this last amendment, the Commission may find itself faced with the possibility of paying out significantly large awards that are in excess of the amounts appropriate to advance the goals of the whistleblower program. These awards could substantially diminish the IPF, requiring the Commission to direct more funds to replenish the IPF rather than making that money available to the United States Treasury, where they could be used for other important public purposes.[10]

Beyond the amendments discussed above, we are proposing to modify Exchange Act Rule 21F–2.[11] The amendments that we are proposing to this rule are in response to the Supreme Court's recent decision in *Digital Realty Trust, Inc.* v. *Somers.*[12] In that decision, the Court held that Section 21F(a)(6) of the Exchange Act unambiguously requires that an individual report a possible securities law violation to the Commission in order to qualify for employment retaliation protection, and that the Commission's rule interpreting the anti-retaliation protections in Section 21F(h)(1) more broadly was therefore not entitled to deference.[13] We are proposing to modify Rule 21F–2 so that it comports with the Court's holding by, among other things, promulgating a uniform definition of ''whistleblower'' that would apply to all aspects of Exchange Act Section 21F. We are also proposing to provide certain related clarifications to Rule 21F–2 and to address certain other interpretive questions that have arisen in connection with the Court's holding.

In addition to the foregoing amendments, we are proposing several other amendments that are intended to clarify and enhance certain policies, practices, and procedures in implementing the program. We are proposing to revise Exchange Act Rule 21F–4(e)[14] to clarify the definition of ''monetary sanctions'' so that it codifies the agency's current understanding and application of that term. We are also proposing to revise Exchange Act Rule 21F–9[15] to provide the Commission with additional flexibility to modify the manner in which individuals may submit Form TCR (Tip, Complaint or Referral). We are similarly proposing to revise Exchange Act Rule 21F–8[16] to provide the Commission with additional flexibility regarding the forms used in connection with the whistleblower program.[17] Further, we are proposing an amendment to Exchange Act Rule 21F–12[18] to clarify the list of materials that the Commission may rely upon in

[8] In determining whether a large award would provide a payout that goes beyond what would be necessary to achieve the program's goals, we anticipate that the Commission would consider, among other factors, the value of the whistleblower's information and the personal and professional sacrifices made in reporting the information.

[9] By statute, the IPF ''is established in the Treasury of the United States'' and ''is available to the Commission, without further appropriation or fiscal year limitation,'' to pay ''awards to whistleblowers'' under Section 21F(b). Exchange Act § 21F(g)(1), 15 U.S.C. 78–6(g)(1). The IPF may also be used to fund certain limited activities of the Inspector General and the Office of the Whistleblower. As of the end May 2018, the balance of the IPF for the first time fell below the $300 million threshold that triggers the statutory replenishment mechanism; this occurred when the Commission paid $83 million—its largest payout to date on an enforcement action—to three individuals. For a complete description of the mechanisms that Congress established to replenish the IPF, see Section 21F(g)(3) of the Exchange Act, 15 U.S.C. 78–6(g)(3). Generally speaking, the IPF is funded in the following way: (i) Deposits of any monetary sanction collected by the Commission in any judicial or administrative action brought by the Commission under the securities laws that is not added to a disgorgement fund or other fund under section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246) or otherwise distributed to victims of a violation of the securities laws, unless the balance of the IPF at the time the monetary sanction is collected exceeds $300,000,000; (ii) deposits of any monetary sanction added to a disgorgement fund or other fund under section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246) that is not distributed to the victims for whom the fund was established, unless the balance of the disgorgement fund at the time the determination is made not to distribute the monetary sanction to such victims exceeds $200,000,000; and (iii) if the amounts deposited in the IPF under item (i) and (ii) above are not sufficient to satisfy a whistleblower award, the Commission must deposit money into the fund from the monetary sanctions collected in the covered action that the whistleblower's information led to (even if the money could have been directed to victims of the violation) in an amount equal to the unsatisfied portion of the award.

[10] Any funds used to replenish the IPF otherwise would be directed to the Treasury for use in funding other public programs.

[11] 17 CFR 240.21F–2.

[12] 138 S. Ct. 767 (2018).

[13] 138 S. Ct. at 781–82.

[14] 17 CFR 240.21F–4(e).

[15] 17 CFR 240.21F–9.

[16] 17 CFR 240.21F–8.

[17] 17 CFR 249.1800 and 249.1801.

[18] 17 CFR 240.21F–12.

making an award determination. We are also proposing an amendment to Rule 21F–13 [19] to clarify the materials that may comprise the administrative record for purposes of judicial review.

Two further changes are designed to help increase the Commission's efficiency in processing whistleblower award applications. We are proposing to add paragraph (e) to Exchange Act Rule 21F–8 [20] to clarify the Commission's ability to bar individuals from submitting whistleblower award applications where they are found to have submitted false information in violation of Exchange Act Section 21F(i) [21] and Rule 8(c)(7) [22] thereunder, as well as to afford the Commission the ability to bar individuals who repeatedly make frivolous award claims in Commission actions. We are also proposing to add new Exchange Act Rule 21F–18 to afford the Commission with a summary disposition procedure for certain types of likely denials, such as untimely award applications and those applications that involve a tip that was not provided to the Commission in the form and manner that the Commission's rules require.

We are also proposing a technical correction to Exchange Act Rule 21F–4(c)(2) [23] to modify an erroneous internal cross-reference, as well as several technical modifications to Exchange Act Rules 21F–9, 10, 11, and 12 [24] to accommodate certain of the substantive and procedural changes described above.

We have included two additional items beyond the proposed amendments to our rules. *First,* we are including proposed interpretive guidance to help clarify the meaning of ''independent analysis'' as that term is defined in Exchange Act Rule 21F–4 and utilized in the definition of ''original information.'' Second, we are including a general inquiry for public comment regarding whether the Commission in a future rulemaking could establish a potential discretionary award mechanism for Commission enforcement actions that either do not qualify as covered actions, are based on publicly available information (and not ''original information'' as that term is defined in Exchange Act Rule 21F–4(b)(1)(i) [25]), or where the monetary sanctions collected are *de minimis.*[26]

[19] 17 CFR 240.21F–13.

[20] 17 CFR 240.21F–8.

[21] 15 U.S.C. 78u–6(i).

[22] 17 CFR 240.21F–8(c)(7).

[23] 17 CFR 240.21F–4(c)(2).

[24] 17 CFR 240.21F–9 through 240.21F–12.

[25] 17 CFR 240–21F–4(b)(1)(i).

[26] In July 2014, the Commission received two petitions for rulemaking relating to the whistleblower program. The petitions for rulemaking can be found on the Commission's website at this location: *https://www.sec.gov/rules/petitions.shtml.* Both petitions sought the same or similar amendments to the whistleblower program rules in two respects. In connection with issuing this proposing release, we have considered the two petitions and determined to proceed as follows. *First,* to the extent that the petitions requested clarification through rulemaking in connection with employment anti-retaliation protections for internal reporting, we believe that the amendments we are proposing to Exchange Act Rule 21F–2 (discussed above) appropriately address this issue following the Supreme Court's recent decision in *Digital Realty. Second,* to the extent the rulemaking petitions request that we add clarifying language to Exchange Act Rule 21F–17(a), 17 CFR 240.21F–17(a), we find the amendments unnecessary at this juncture because, as noted by the petitioners, ''the plain language of Rule 21F–17 and existing case law compel the conclusion'' that the contracts the petitioners are concerned with are already ''unenforceable[.]'' See Exchange Act Rule 21F–17(a), 17 CFR 240.21F–17(a) (providing that no person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement (other than agreements dealing with information covered by § 240.21F–4(b)(4)(i) and (ii) of the chapter related to the legal representation of a client) with respect to such communications.). In fact, the Commission has successfully brought nine enforcement actions for violations of Rule 21F–17. *See generally* SEC National Exam Program Risk Alert: Examining Whistleblower Rule Compliance at 1–2 & n. 3 (October 24, 2016), *available at https://www.sec.gov/ocie/announcement/ocie-2016-risk-alert-examining-whistleblower-rule-compliance.pdf* (summarizing Commission enforcement actions). Finally, in accordance with Rule 192 of the Commission's Rules of Practice, *see* 17 CFR 201.192, the Secretary of the Commission shall notify the petitioners of the action taken by the Commission following the publication of this proposing release in the **Federal Register**.

II. Discussion of Proposed Amendments

The proposed amendments are set forth below.

A. Proposed Amendment to Exchange Act Rule 21F–4(d) [27] *Defining an ''action''* [28]

Section 21F of the Exchange Act authorizes us to pay whistleblower awards in relation to the ''successful enforcement'' of ''covered judicial or administrative actions'' brought by the Commission and certain ''related actions'' of other authorities, most notably DOJ.[29] Awards range between 10 percent and 30 percent ''of what has been collected of the monetary sanctions imposed'' in the action.[30] Proposed Rule 21F–4(d)(3) would provide that, for purposes of making a whistleblower award, a DPA or NPA entered into by DOJ or a state attorney general in a criminal case would be deemed to be an ''administrative action'' and any money required to be paid thereunder would be deemed a ''monetary sanction.'' The same result would follow for a settlement agreement entered into by the Commission outside of the context of a judicial or administrative proceeding to address violations of the securities laws. The premise of proposed Rule 21F–4(d)(3) is the same as that underlying current Rule 21F–4(d)(1) [31]: Our view that Congress did not intend for meritorious whistleblowers to be denied awards simply because of the procedural vehicle that the Commission (or the other authority) has selected to pursue an enforcement matter.[32]

Moreover, we also believe that the statutory term ''administrative action'' is sufficiently ambiguous and broad enough to permit us to interpret the term to include DPAs and NPAs when these instruments are employed by DOJ or a state attorney general, or settlement agreements entered into by the Commission outside of the context of judicial or administrative proceedings, as an appropriate resolution to a law-enforcement investigation.[33] We find it

[27] 17 CFR 240.21F–4(d).

[28] The Commission anticipates that this proposed rule change, if adopted, would apply to all new DPAs, NPAs, and Commission settlement agreements covered by the proposed rule that are entered into after the effective date of the rules. The proposed rule would not apply to any such agreements entered on or before the effective date of the rules.

[29] 15 U.S.C. 78u–6(b)(1). A ''covered judicial or administrative action'' is any judicial or administrative action brought by the Commission under the securities laws that results in monetary sanctions exceeding $1 million. *Id.* 6(a)(1). A ''related action'' is a judicial or administrative action brought by any of several authorities designated in the statute that is based upon the original information provided by a whistleblower that led to successful enforcement of a Commission covered action. *Id.* 6(a)(5).

[30] *Id.* 6(b)(1)(A)–(B).

[31] 17 CFR 240.21F–4(d)(1).

[32] *See Securities Whistleblower Incentives and Protections,* Exchange Act Release No. 64545, 76 FR 34300, 34327 (June 13, 2011). Recognizing that an ''action'' is generally considered to be a single captioned case or matter, the Commission adopted Rule 21F–4(d)(1) to clarify that it would treat two or more separate cases that arise out of the same nucleus of operative facts as a single ''action'' for purposes of making an award. In this way, the sanctions ordered in closely connected proceedings, even if individually under $1 million, are aggregated for purposes of assessing whether the actions reach the $1 million ''covered action'' threshold that is necessary to permit consideration of whistleblower award claims. The critical principle behind this rule is that a whistleblower should not be denied an award for his or her contributions to the closely connected cases or matters merely because the Commission (or other authority) determined not to bring these cases as one captioned law-enforcement case.

[33] In DOJ's practice, DPAs and NPAs occupy an important middle ground between declining prosecution and obtaining the conviction of a corporation in circumstances where the collateral consequences of a corporate conviction for innocent third parties would be significant. *See United States Attorneys' Manual* 9–28.200, 9–28.1100, *available at https://www.justice.gov/usam/united-states-attorneys-manual.* As one example, DPAs and NPAs

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particularly telling that Congress used the term ''action'' in Section 21F of the Exchange Act, rather than the term ''proceeding,'' to describe the universe of administrative enforcement outcomes that might give rise to a whistleblower award. As used elsewhere in Section 21F, as well as in other provisions of the securities laws and the Commission's rules thereunder, the term ''proceeding'' refers to various specifically identified formal processes instituted before the Commission.[34] Therefore, the use of the term ''administrative action'' in describing actions that can give rise to whistleblower awards suggests that Congress did not clearly intend to limit the scope of the Commission's authority under Section 21F (outside of judicial actions) to only the Commission's formal adjudicatory proceedings specified in the securities laws (or adjudicatory proceedings of designated related action authorities).

The Commission has previously exercised its interpretive authority to pay a whistleblower award with respect to a DPA entered into by DOJ on the basis that such agreements are filed in a federal court action that charges the defendant with violations of law.[35] However, as is further discussed below, DOJ's practice with respect to NPAs has been *not* to commence an accompanying proceeding in either a judicial or administrative tribunal. Moreover, we have entered into settlement agreements outside of judicial or administrative proceedings. Notwithstanding this distinction in form (*i.e.,* whether an accompanying judicial or administrative proceeding was undertaken), these agreements are all similar in important respects: Typically, they reward meaningful cooperation, are premised on significant remedial and compliance commitments, and obtain monetary remedies for past violations. Based on our experience with the whistleblower program, we are of the view that the entry of each of these types of agreements should be considered the successful enforcement of an administrative action within the meaning of Section 21F, and that whistleblowers who voluntarily provide original information that leads to such enforcement should not be disadvantaged because DOJ, a state attorney general in a criminal case, or the Commission, in the exercise of enforcement discretion, may elect to proceed in a form that does not include the filing of a complaint or indictment in federal (or state) court, or the institution of an administrative proceeding.[36] For this reason, we are proposing Rule 21F–4(d)(3) to clarify that these agreements would be treated as ''administrative actions'' upon which whistleblower awards may be based (provided the total money required to be paid in the Commission action, including any other proceedings that arise out of the same nucleus of operative facts, exceed $1,000,000).

In arriving at this preliminary interpretation, we have found several considerations to be persuasive. *First,* we believe that our rulemaking authority under the Exchange Act and our authority to define Exchange Act terms is best read as permitting us to incorporate such agreements within the definition of an ''action.'' [37] *Second,* as discussed above, we do not believe that Congress's use of the phrase ''administrative action'' in Section 21F limits us to considering whistleblower awards only when investigations are resolved through formal adjudicatory administrative proceedings. This is especially so given that such an approach would appear to draw arbitrary distinctions among otherwise meritorious whistleblowers based solely on the vehicle that we, DOJ, or a state criminal law authority, in the exercise of enforcement discretion, may view as the most appropriate in a particular case. *Third,* we are cognizant of the context in which Section 21F was enacted. Congress enacted the Commission's whistleblower program in 2010, which is the same year that the Commission initiated, as part of its enforcement cooperation program, forms of settlement agreements outside of the context of a judicial or administrative proceeding as an alternative mechanism to resolve securities law violations.[38] Given that Commission actions are the primary focus of the whistleblower program, it is reasonable to understand that Congress may not have focused on the implications of such agreements when enacting Section 21F of the Exchange Act.

For similar reasons, we believe that the payments required of a company under the terms of the agreements that would be covered by the proposed rule should be deemed to be ''monetary sanctions'' within the meaning of Section 21F of the Exchange Act.[39] Section 21F(b)(1) authorizes us to pay meritorious whistleblowers between 10 percent and 30 percent ''of what has been collected of the monetary sanctions imposed in the action or related actions.'' [40] ''Monetary sanctions'' are defined, in pertinent part, as money that are ''ordered to be paid'' as a result of a judicial or administrative action.[41] Although the actions that would be covered by the proposed rule take the form of an agreement between a company and the Government, payment of disgorgement or other amounts is required of the company in order to resolve a Commission enforcement investigation or a DOJ criminal investigation without formal action by a court or agency.[42]

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have been a prominent tool in DOJ's criminal enforcement of the Foreign Corrupt Practices Act (''FCPA''), 15 U.S.C. 78dd–1 *et seq.,* an area that overlaps with our own enforcement jurisdiction. In 2017, DOJ entered into six DPAs or NPAs to resolve FCPA investigations of corporate entities, securing over $1.4 billion in monetary recoveries. *See FCPA Related Enforcement Actions: 2017, available at https://www.justice.gov/criminal-fraud/case/related-enforcement-actions/2017.*

[34] *See, e.g.,* Exchange Act Sections 21F(h)(2)(A), 15 U.S.C. 78u–6(h)(2)(A) (disclosure of whistleblower identities to a ''respondent in connection with a public proceeding instituted by the Commission''), 21B, 15 U.S.C. 78u–2 (''Civil Remedies in Administrative Proceedings''), 21C, 15 U.S.C. 78u–3 (''Cease-and-Desist Proceedings''); Securities Act of 1933 Section 8A, 15 U.S.C. 77h–1 (''Cease-and-Desist Proceedings''); Investment Advisers Act Section 203(i), 15 U.S.C. 80b–3(i) (''Money Penalties in Administrative Proceedings''); Investment Company Act Section 9(d), 15 U.S.C. 80a–9(d) (''Money Penalties in Administrative Proceedings''); *see also* SEC Rule of Practice 101(4), 17 CFR 201.101(4) (defining ''enforcement proceeding'').

[35] *See generally* DOJ Criminal Division and SEC Enforcement Division, *A Resource Guide to the Foreign Corrupt Practices Act* at 74 (2012), *available at https://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf* (''FCPA Resource Guide'') (describing function and operation of DPAs).

[36] *See United States* v. *Fokker,* 818 F.3d 733, 737 (D.C. Cir. 2016) (''In certain situations, rather than choose between the opposing poles of pursuing a criminal conviction or forgoing any criminal charges altogether, the Executive may conclude that the public interest warrants the intermediate option of a deferred prosecution agreement.'').

[37] Section 21F(j) of the Exchange Act, 15 U.S.C. 78u–6(j), grants us ''the authority to issue such rules and regulations as may be necessary or appropriate to implement'' the whistleblower award program. Similarly, Section 23(a)(1) of the Exchange Act, 15 U.S.C. 78w(a)(1), expressly provides the Commission the ''power to make such rules and regulations as may be necessary or appropriate to implement the provisions'' of the Exchange Act. In addition, we have broad definitional authority pursuant to Section 3(b) of the Exchange Act, 15 U.S.C. 78c(b), which provides us with the ''power by rules and regulations to define . . . terms used in [the Exchange Act].''

[38] *SEC Announces Initiative to Encourage Individuals and Companies to Cooperate and Assist Investigations,* SEC Press Release 2010–6 (Jan. 13, 2010). To date, we have entered into 17 settlements outside of judicial or administrate proceedings requiring payment of disgorgement, prejudgment interest, and penalties totaling more than $53 million.

[39] Our view on this issue would not be impacted by the revisions that we are proposing in the next section to the definition of ''monetary sanctions.''

[40] 15 U.S.C. 78u–6(b)(1).

[41] *Id.* (a)(4); 17 CFR 240.21F–4(e).

[42] We believe that the agreements covered by this proposed rule impose monetary sanctions for purposes of Section 21F of the Exchange Act because they effectively compel or require monetary payments. For example, when the Commission has utilized certain agreements entered outside of

Accordingly, our view is that it is reasonable to treat the monetary components of the agreements that would be covered by the proposed rule as ''monetary sanctions'' that are ''imposed'' within the meaning of Section 21F. Proposed Rule 21F–4(d)(3) thus would clarify that any money required to be paid under a DPA or NPA will be deemed a monetary sanction.[43]

Finally, we are proposing conforming amendments to Rule 21F–11(b)[44] to make clear that the time period for filing a claim for an agreement covered by this proposed rule would run from earliest public availability of the instrument reflecting the arrangement if evidenced by a press release or similar dated publication notice, or, absent such publication notice, the date of the last signature necessary for the agreement.[45]

Request for Comment

1. Should DPAs and NPAs entered by DOJ or a state attorney general in a criminal case be treated as administrative actions, and the monetary payments obtained through these DPAs and NPAs treated as monetary sanctions, for purposes of making whistleblower awards? Should the same result follow for settlement agreements entered by the Commission to resolve securities law violations? Why or why not?

2. Are there other types of arrangements (*e.g.,* the use of declination letters in cases where the subject company pays all disgorgement, forfeiture amounts and/or restitution resulting from the misconduct at issue[46]) that should be included in any rule the Commission adopts? How would any such arrangements satisfy the statutory requirements that they constitute a ''judicial or administrative action brought by'' the Commission or a related-action authority and that they include ''monetary sanctions'' (*i.e.,* ''monies . . . ordered to be paid'') that are ''imposed'' in the action?[47]

3. Are there specific standards that we should apply in determining whether other vehicles for resolving investigations should be deemed to be administrative actions upon which whistleblower awards can be based? Is it sufficient that a resolution results in a monetary payment?

4. As discussed above, we are proposing conforming amendments to Rule 21F–11(b)[48] to make clear that the time period for filing a claim for an agreement covered by this proposed rule would run from earliest public availability of the instrument reflecting the arrangement if evidenced by a press release or similar dated publication notice, or, absent such publication notice, the date of the last signature necessary for the agreement. Please comment on whether this conforming edit fully covers all potential agreements covered by proposed Rule 21F–4(d)(3). If there are other types of arrangements that should be included, would any additional changes to this rule be necessary or appropriate?

B. Proposed Amendment to Exchange Act Rule 21F–4(e)[49] *Defining ''monetary sanctions''*[50]

We propose to amend the definition of ''monetary sanctions'' to provide additional clarity concerning the class of payments that fall within the term's scope. The proposed definition, which is based on the Commission's experiences to date in administering the program, codifies the understanding of the term ''monetary sanctions'' that is already employed by the agency.

Under Section 21F, the determination of what qualifies as a monetary sanction is important for two reasons. *First,* a Commission action qualifies as a ''covered action'' for which a whistleblower award might be made only if the action ''results in monetary sanctions exceeding $1,000,000.''[51] Whether a payment obligation is a ''monetary sanction'' is thus a threshold question for the Commission in determining whether to post a Notice of Covered Action.[52] *Second,* to the extent that one or more whistleblowers receives an award, award payments are calculated based upon the amount that ''has been collected of the monetary sanctions imposed in the action or related actions.''[53]

Section 21F(a)(4) of the Exchange Act defines the term ''monetary sanctions,'' when used with respect to any judicial or administrative action, to mean: (A) Any monies, including penalties, disgorgement, and interest, ordered to be paid; and (B) any monies deposited into a disgorgement fund or other fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.[54]

Exchange Act Rule 21F–4(e) is substantively identical. Based on our experience to date in administering the program, we believe that it would be beneficial to provide additional clarity regarding the scope of the potential payments that are encompassed within subparagraph (A) of the statutory definition.[55]

The language used in subparagraph (A) of Section 21F(a)(4), when read in isolation, could potentially be understood to direct that the Commission treat any order to pay money that is entered in a judicial or administrative action as a monetary sanction for purposes of the whistleblower award program. Interpreted in this way, monetary

judicial or administrative proceedings, the Commission has reserved the authority under the agreement to pursue an enforcement action if the individual or company fails to pay the monetary obligations. *Enforcement Manual* 6.2.2 (Nov. 28, 2017), *available at https://www.sec.gov/divisions/enforce/enforcementmanual.pdf.* When the Commission has utilized certain other settlement forms entered outside of judicial or administrative proceedings, the staff has to date retained its ability to recommend an enforcement action to the Commission against the individual or company. *Id.* at 6.2.3. DOJ DPAs and NPAs have similar mechanisms available to effectively require an individual or company to comply with the monetary obligations specified therein or face prosecution for the violations that are the subject of the agreement. *See* U.S. Gov't Accountability Off., GAO–10–110, *DOJ Has Taken Steps to Better Track Its Use of Deferred and Non-Prosecution Agreements, but Should Evaluate Effectiveness* at 11 (2009) (''As part of DPAs and NPAs, companies are generally *required* to comply with a set of terms for a specified duration in exchange for prosecutors deferring the decision to prosecute or deciding not to prosecute,'' including ''monetary payments—such as restitution to victims of crime, forfeiture of the proceeds of the crime, and monetary penalties *imposed* by DOJ . . . .'') (emphasis added).

[43] We believe the statute and our current rules already authorize payment of a related action award in connection with a settlement reached pursuant to the Financial Industry Regulatory Authority's Acceptance, Waiver, and Consent (''AWC'') process. An AWC is a form of FINRA disciplinary proceeding in which sanctions, including fines can be imposed on a member firm or associated person. *See* FINRA Rule 9216, *available at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=3926.*

[44] 17 CFR 240.21F–11(b).

[45] In a rare case where a claimant could demonstrate that compliance with this proposed rule was impracticable because an agreement covered by it was not made available to the public before the passage of the claim deadline calculated under the rule, the Commission could consider exercising its authority to waive compliance with the rule. *See* Section 36(a) of the Exchange Act, 15 U.S.C. 78mm(a), and Exchange Act Rule 21F–8(a), 17 CFR 240.21F–8(a).

[46] *See United States Attorneys' Manual* 9–47.120 *available at https://www.justice.gov/usam/usam-9-47000-foreign-corrupt-practices-act-1977#9-47.120.*

[47] *See* 15 U.S.C. 78u–6(a)(1), (4) and (5) and (b)(1)(A)–(B).

[48] 17 CFR 240.21F–11(b).

[49] 17 CFR 240.21F–4(e).

[50] The Commission anticipates that this proposed rule change, if adopted, would be utilized by the Commission after the effective date of the final rules in determining whether an action qualifies as a ''covered action'' and in calculating any outstanding payments to be made to meritorious whistleblowers.

[51] 15 U.S.C. 78u–6(a)(1).

[52] *See* Exchange Act Rule 21F–10(a), 17 CFR 240.21F–10(a).

[53] 15 U.S.C. 78u–6(b)(1).

[54] 15 U.S.C. 78u–6(a)(4).

[55] We are not proposing to provide any additional clarification regarding subparagraph (B) as we believe that it does not create uncertainty as to the scope of the money that it covers.

sanctions would include, for example, orders to pay discovery sanctions, receivership fees and costs, taxes, and even attorney's fees imposed under the Equal Access to Justice Act (''EAJA'').[56]

We believe, however, that other portions of Section 21F counsel in favor of a narrower understanding of which money ''ordered to be paid'' in an action should be treated as monetary sanctions for purposes of the whistleblower program. We find particularly relevant the definition of a ''covered action'' in Section 21F(a)(1),[57] which provides that the Commission action must ''*result[] in* monetary sanctions exceeding $1,000,000'' in order for a whistleblower award to be considered. We believe that the phrase ''results in'' suggests that Congress was addressing those monetary obligations that the action secures ''as relief'' for the violations that are the subject of the Commission's enforcement action.[58] Similarly, we believe that the phrase ''monetary sanctions imposed in the action'' in Section 21F(b)(1)[59] indicates that the congressional focus was on monetary obligations that are in the nature of relief for the violations. So, for example, while in normal parlance a person might say that civil penalties were ''imposed'' as a result of a securities-law violation, we do not believe that one would say that a court order approving a court-appointed receiver's request for fees or costs ''impos[ed]'' a monetary sanction.

Finally, we find support for our proposed approach in the purpose of Section 21F to reward whistleblowers for their contributions to the ''successful enforcement'' of Commission actions and related actions,[60] and in the common-sense understanding that relief against wrongdoers is perhaps the essential measure of an action's success. Given this context, we believe that the term ''monetary sanctions'' is better understood to mean those requirements to pay money that the Commission or a related-action authority obtain ''as relief'' in the underlying action.

Based on the language within Section 21F, therefore, we believe that the language in subparagraph (A) of the statutory definition is better understood to encompass only those required payments in a Commission action or related action that are designed as relief for the violations successfully resolved in the action. Accordingly, we propose to amend Exchange Act Rule 21F–4(e) to provide that the term ''monetary sanctions'' means: (1) A required payment that results from a Commission action or related action and which is either (i) expressly designated as disgorgement, a penalty, or interest thereon, or (ii) otherwise required as relief for the violations that are the subject of the covered action or related action; or (2) any money deposited into a disgorgement fund or other fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.[61]

We believe that paragraph (e)(1)(i) of the proposed definition should generally be straightforward to apply. This part of the rule encompasses any payment requirement that is expressly designated as disgorgement, a penalty, or interest thereon. That money paid by a wrongdoer in satisfaction of a disgorgement or penalty obligation may thereafter be used to pay costs of a receiver, trustee, or fund administrator would not change the analysis under this part of the proposed rule. Because the wrongdoer was ordered to pay such money pursuant to a disgorgement or penalty obligation, paragraph (e)(1)(i) would be satisfied.

With respect to paragraph (e)(1)(ii), only requirements to pay money as relief for the underlying violations would qualify. Thus, for example, if a court orders an asset freeze and appoints a receiver in a Commission enforcement action, and, without separately entering a disgorgement order, the court subsequently issues an order approving the receiver's plan to distribute money to injured investors, we would treat that second order as a monetary sanction under paragraph (e)(1)(ii) of the proposed rule.[62] However, if the receiver requests approval to use frozen funds to pay creditors, taxes to a governmental authority, attorney's fees, or other costs of the receivership, such payments would not qualify ''as relief'' obtained because of the successful enforcement action and would not constitute monetary sanctions under paragraph (e)(1)(ii).

In proposing the amended rule language, we have also considered the legislative purpose underlying whistleblower award provisions generally. In our view, these types of award programs are intended to allow a whistleblower to receive a percentage of the monetary relief that the government is able to obtain as remedies for the violations that are the subject of the action to which the whistleblower's information led. The approach outlined above would comport with this understanding of how whistleblower award programs generally operate.[63] We have also considered the fact that a broader approach could lead to potentially irrational results such as the Commission paying whistleblowers a share of any discovery sanctions or EAJA fees imposed on the government, even though such monetary sanctions would have no connection to the information the whistleblower provided that led to the enforcement action and that contributed to the success of that action.

Request for Comment

5. Should ''monetary sanctions'' be defined as those obligations to pay money that are obtained ''as relief'' for the violations that are charged in a Commission enforcement action or a related action? Why or why not?

6. Are there additional classes of monetary requirements or payment obligations (beyond those discussed above) that may be ordered in an action covered by the Commission's whistleblower award program that the

[56] *See* 5 U.S.C. 504; 28 U.S.C. 2412.

[57] 15 U.S.C. 78u–6(a)(1).

[58] *See generally* Black's Law Dictionary 1541 (10th ed. 2014) (defining a ''sanction'' as ''[a] penalty or coercive measure that *results from* a failure to comply with a law, rule, or order'') (emphasis added).

[59] 15 U.S.C. 78u–6(b)(1)(A) and (B).

[60] *See* 15 U.S.C. 78u–6(b)(1).

[61] Our use of the phrase ''required payment'' rather than ''ordered'' is intended to be consistent with proposed Rule 21F–4(d)(3), and recognizes that whistleblower tips may be important to successful enforcement actions that the agreements described in that proposed rule in which the Commission, DOJ, or a state attorney general in a criminal case require substantial monetary relief that is not, however, contained in a Commission order a court order, or an order issued by an administrative-law judge. *See* discussion of proposed Rule 21F–4(d)(3), *supra.* In our view, a payment that is required as part of such a resolution is reasonably treated as ''ordered'' when the agency has some mechanism to compel the payment either directly or indirectly. This could include, but does not necessarily require, the ability to obtain a court order requiring the payment. In the context of the agreements described in proposed Rule 21F–4(d)(3), the mechanism to compel the payment could include the ability either to revive an action or to bring an action if the signatory does not make the payments provided for in the agreement.

[62] Where a receiver is appointed to gather assets for potential distribution to harmed investors, an award payment to a meritorious whistleblower would not need to await actual distribution of the receivership assets to the harmed investors. In our view, the statutory requirements that the monetary sanctions be both ''ordered'' and ''collected'' before a payment to a whistleblower can be made would typically be satisfied at the time a court approves the distribution to the harmed investors of assets within the receiver's control. *See* Exchange Act section 21F(a)(4) (''ordered'') & 21F(b)(1) (''collected''), 15 U.S.C. 78u–6(a)(4), & 78u–6(b)(1).

[63] *Cf.* S. Rep. 111–176 at 110 (2010) (''The Whistleblower Program aims to motivate those with inside knowledge to come forward and assist the Government to identify and prosecute persons who have violated securities laws and recover money for victims of financial fraud.'').

Commission should specifically consider or address in clarifying the definition of ''monetary sanctions''?

C. Proposed Amendment to Exchange Act Rule 21F–3(b)(1)[64] *Defining ''related action''* [65]

Under Exchange Act Section 21F(b)[66] and Rule 21F–11,[67] any whistleblower who obtains an award based on a Commission enforcement action may be eligible for an award based on monetary sanctions that are collected in a related action. Exchange Act Section 21F(a)(5)[68] and Rule 21F–3(b)(1)[69] provide that a related action is a judicial or administrative action that is both: (i) Brought by DOJ, an appropriate regulatory authority (as defined in Rule 21F–4(g)),[70] a self-regulatory organization (as defined in Rule 21F–4(h)[71]), or a state attorney general in a criminal case; and (ii) based on the same original information that the whistleblower voluntarily provided to the Commission and that led to the successful enforcement of the Commission action.

The proposed amendment adding paragraph (b)(4) to Rule 21F–3 would apply in situations where both the Commission's whistleblower program and a second, separate whistleblower award scheme have potential application to the same action. During the implementation and administration of our whistleblower program, it has become increasingly apparent to us that additional, separate whistleblower award schemes might apply to an action that could otherwise qualify as a related action. In this regard we note that, since the adoption of our whistleblower program rules, two states have adopted their own whistleblower award programs in connection with state securities-law enforcement actions.[72] We are also aware that DOJ might pursue law-enforcement actions that potentially implicate both the Commission's whistleblower program and the whistleblower award program that the Internal Revenue Service (''IRS'') administers.[73] Further, Congress in 2015 established a new motor-vehicle-safety whistleblower award program that allows employees or contractors of a motor-vehicle manufacturer, parts supplier, or dealership who report serious violations of federal vehicle-safety laws to obtain an award of 10 percent to 30 percent of any monetary sanction over $1 million that the Federal Government recovers based on that information.[74] To date, the Commission has never paid an award on a matter where a second whistleblower program also potentially applied to the same matter, nor has the Commission ever indicated that it would do so.

Proposed paragraph (b)(4) would expressly authorize two mechanisms for the Commission to use in situations where at least one other award scheme might also apply. *First,* the first sentence of proposed paragraph (b)(4) would provide that, notwithstanding the definition of related action in Rule 21F–3(b)(1), if a judicial or administrative action is subject to a separate monetary award program established by the Federal Government, a state government, or a self-regulatory organization, the Commission will deem the action a related action only if the Commission finds (based on the unique facts and circumstances of the action) that its whistleblower program has the more direct or relevant connection to the action.[75] In analyzing this question, the Commission will consider whether Congress (or a state) has enacted a specific whistleblower program that appears to apply directly to the case at hand; if so, we will generally determine that Congress reasonably would not have intended our more general, secondary ''related action'' award mechanism to sweep in the case. In reaching this determinination, we would look to the complaint in the action, the overall monetary sanctions recovered (*e.g.,* are they principally tied to a different whistleblower program for which Congress provided an award mechanism), and the court's final order to assess which award program has the closer relationship to the overall case. We might also consult the agency involved with that other case to obtain its overall assessment of whether the action is in fact one that is primarily tied to violations for which Congress (or the states) have established a more specifically applicable whistleblower program and for which our general, ''related action'' award mechanism should not apply. Critically, this standard would not yield a clear brightline but would turn on the particular facts and circumstances of the case at hand and the Commission would explain the grounds for its conclusion in any final order.

Second, the second sentence of proposed paragraph (b)(4) provides that even if the Commission determines to deem the action a related action, the Commission will not make an award to you for the related action if you have already been granted an award by the authority responsible for administering the other whistleblower award program; further, if you were denied an award by the other award program, you will not be permitted to readjudicate any issues before the Commission that the authority responsible for administering the other whistleblower award program resolved against you as part of the award denial.[76] The proposed rule provides that, if the Commission makes an award before an award determination is finalized by the authority responsible for administering the other award scheme, the Commission would condition its award on the meritorious whistleblower making a prompt, irrevocable waiver of any claim to an award from the other award scheme.

The proposed rule also provides that, in determining whether a potential related action has a more direct or relevant connection to the Commission's whistleblower program than another award program, the Commission would consider the nature, scope, and impact of the misconduct charged in the purported related action, and its relationship to the federal securities laws. This inquiry would include consideration of, among other things: (i) The relative extent to which the misconduct charged in the potential related action implicates the public policy interests underlying the federal securities laws (*e.g.,* investor protection) versus other law-enforcement or

[64] 17 CFR 240.21F–3(b)(1).

[65] The Commission anticipates this proposed rule change, if adopted, would apply only to covered-action and related action award applications that are connected to a Notice of Covered Action (*see* Exchange Act Rule 21F–10(a), 17 CFR 240.21F–10(a)) posted on or after effective date of the final rules.

[66] 15 U.S.C. 78u–6(b).

[67] 17 CFR 240.21F–11.

[68] 15 U.S.C. 78u–6(a)(5).

[69] 17 CFR 240.21F–3(b)(1).

[70] 17 CFR 240.21F–4(g).

[71] 17 CFR 240.21F–4(h).

[72] In 2011, Utah established a whistleblower-award scheme to provide rewards of up to 30 percent of the money collected in state securities-law enforcement actions. Utah Code Annotated 61–1–101 *et seq.* The following year, Indiana enacted a whistleblower award scheme to provide rewards up to 10 percent of the monies collected in a state securities-law enforcement action. Indiana Code 23–19–7–1 *et seq.*

[73] 26 U.S.C. 7623.

[74] 49 U.S.C. 30172 (enacted by Section 24352 of the Fixing America's Surface Transportation Act of 2015 (FAST Act), Pub. L. 114–94).

[75] Notably, the Utah whistleblower-award program (*see* note 72, *supra*) provides that a person may not receive an award thereunder if he or she ''qualifies for an award as described in Section 21F of the Securities Exchange Act, 15 U.S.C. Sec. 78u–6, and regulations issued under that section.'' We assume that this provision is intended to prevent a double recovery on a Utah criminal-enforcement action brought by the State's Attorney General that could potentially be covered by both the Commission's whistleblower program and the Utah program.

[76] This sentence of proposed paragraph (b)(4) is modeled after existing Rule 21F–3(b)(3), 17 CFR 240.21F–3(b)(3), which is discussed further below.

regulatory interests (*e.g.,* tax collection or fraud against the Federal Government); (ii) the degree to which the monetary sanctions imposed in the potential related action are attributable to conduct that also underlies the federal securities law violations that were the subject of the Commission's enforcement action; and (iii) whether the potential related action involves state-law claims and the extent to which the state may have a whistleblower award scheme that potentially applies to that type of law-enforcement action.[77] Thus, for example, if an action by DOJ charges a scheme to avoid tax obligations and imposes monetary sanctions, we would expect that such an action would lack a more direct or relevant connection to the Commission's whistleblower program relative to the IRS's award program.[78] As a second example, where a state whistleblower award program is available to award a whistleblower whose tip leads to state criminal charges in connection with a fraudulent securities offering, we anticipate that the Commission would not view such an action as a related action under the test in proposed paragraph (b)(4). In this circumstance, the state program would be the more direct or relevant program and the appropriate avenue for the whistleblower to seek an award.

In proposing paragraph (b)(4), we acknowledge that, on its face, Exchange Act Section 21F does not exclude from the definition of related actions those judicial or administrative actions that have a less direct or relevant connection to our whistleblower program than another whistleblower scheme. We nonetheless perceive ambiguity when considering this language in the context of the overall statutory scheme. We believe that an understanding focused exclusively on the statutory definition of related action would produce a result that Congress neither contemplated nor intended. We believe that our rulemaking authority under the Exchange Act and our authority to define Exchange Act terms permit us to reach this interpretation.[79] We base this determination on several considerations.

First, when Congress established the Commission's whistleblower program, it set a firm ceiling on the maximum amount that should be awarded for any particular action—''*not more* than 30 percent, in total, of what has been collected of the monetary sanctions imposed'' in the action.[80] Indeed, it appears that in establishing federal whistleblower award programs in the modern era Congress has determined that an award of more than thirty percent on any particular action is not necessary or appropriate.[81] Yet if both the Commission's whistleblower program *and* another whistleblower award scheme were to apply to the same action, this would create the potential for a total award exceeding the 30-percent ceiling due to a dual recovery.

Second, the purpose of the related action award component of the Commission's whistleblower program was to allow meritorious whistleblowers the opportunity to obtain additional financial awards for the ancillary recoveries that may result from the same original information that the whistleblowers gave to the Commission. In this way, the potential for a related action recovery can further enhance the incentives for an individual to come forward to the Commission. But neither the text of Section 21F, nor the relevant legislative history[82] suggests that Congress considered the unusual situation in which there may be a separate whistleblower award scheme that has a more direct or relevant connection to the judicial or administrative action,[83] and that would therefore be providing a financial incentive to encourage individuals to report misconduct without the need for the incentive effect produced by the related-action component of the Commission's award program.

Third, we believe that permitting potential whistleblowers to recover under both our award program and a separate award scheme for the same action would produce the irrational result of encouraging multiple ''bites at the apple'' in adjudicating claims for the same action and potentially allowing multiple recoveries.[84] In the adopting release that accompanied the original whistleblower rules, the Commission recognized the irrational result that would flow from allowing a whistleblower to have multiple separate opportunities to adjudicate his or her contributions to a case and to potentially obtain multiple separate rewards on that same enforcement action. Further, the Commission barred this result from occurring in the specific contexts that the Commission considered at the time it adopted the whistleblower program rules. Specifically, the Commission adopted Rule 21F–3(b)(3), which provides that the Commission will not pay on a related action if the whistleblower program administered by the Commodity Futures Trading

[77] To the extent that a state adopts a whistleblower award program relating directly to securities law violations, we would generally anticipate the Commission would find that the state award scheme should apply over the Commission's award program. However, to the extent that the particular state criminal action may implicate an award scheme that is not directed at securities-law violations (such as a state-award scheme focused on consumer protection), the Commission might conclude that our whistleblower program should not apply based on an assessment of the particular facts and circumstances of the state action.

[78] By contrast, to the extent that a DOJ enforcement action centers on insider-trading violations that are based on the same misconduct that was the subject of the Commission's covered action, and that most of the monetary sanctions arise from the insider-trading violations, the Commission would likely treat the matter as a related action notwithstanding any potential restitution ordered due to any tax violations included within the case.

[79] Section 23(a)(1) of the Exchange Act, 15 U.S.C. 78w(a)(1), expressly provides the Commission the ''power to make such rules and regulations as may be necessary or appropriate to implement the provisions'' of the Exchange Act, and has long been understood to provide the Commission with broad authority to issue rules and regulations carrying the force of law. Similarly, Section 21F(j), 15 U.S.C. 78u–6(j), grants us ''the authority to issue such rules and regulations as may be necessary or appropriate to implement'' the whistleblower award program. In addition, we have broad definitional authority pursuant to Section 3(b) of the Exchange Act, 15 U.S.C. 78c(b), which provides us with the ''power by rules and regulations to define . . . terms used in [the Exchange Act].''

[80] 15 U.S.C. 78u–6(b)(1)(B).

[81] *See, e.g.,* 7 U.S.C. 26 (providing under the CFTC's whistleblower program for awards of ''not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions''); 26 U.S.C. 7623(b)(1) (providing under the IRS administered whistleblower award program for ''an award . . . not more than 30 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts)''); 31 U.S.C. 3730 (providing in a False Claims Action that a *qui tam* plaintiff shall receive ''not more than 30 percent of the proceeds of the action or settlement''). Our preliminary analysis indicates that Congress's determination not to go above a 30-percent ceiling for awards appears to comport with a similar determination by those states that have adopted their own false claims acts and securities-law whistleblower programs.

[82] *See generally* S. Rep. No. 111–176 at 110–12 (2010).

[83] *See generally Radzanower* v. *Touche Ross & Co.,* 426 U.S. 148, 153 (1976) (''It is a basic principle of statutory construction that a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum.''); Anthony Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts (2012) at 183 (noting that a specifically applicable statutory provision should govern a more general provision because ''the specific provision comes closer to addressing the very problem posed by the case at hand and is thus more deserving of credence''); *id.* at 184 (explaining that ''the general/specific canon [of statutory construction] does not meant that the existence of a contradictory specific provision voids the general provision[,]'' but rather that ''its application to cases covered by the specific provision is suspended'').

[84] *Mova Pharmaceutical Corp.* v. *Shalala,* 140 F.3d 1060, 1068 (D.C. Cir. 1998) (''If a literal construction of the words of a statute be absurd, the act must be so construed as to avoid the absurdity.''); *see also United States* v. *X–Citement Video, Inc.,* 513 U.S. 64, 68–69 (1994) (rejecting the ''most natural grammatical reading'' of a statute to avoid ''absurd'' results).

Commission (''CFTC'') has issued an award for the same action, nor will the Commission allow a whistleblower to readjudicate any issues decided against the whistleblower as part of the CFTC's award denial. In adopting that rule, the Commission made clear its view that a whistleblower should neither have two recoveries on the same action nor multiple bites at the adjudicatory apple.[85] Relatedly, the Commission explained in the adopting release that it would for similar reasons not make an award to a whistleblower who was also a *qui tam* plaintiff under the False Claims Act.[86] Although at the time of the original rulemaking for the whistleblower program the Commission did not expressly consider the potential for multiple separate awards due to the existence of any other award schemes (such as the whistleblower program administered by the IRS), the principles underlying Rule 21F–3(b)(3) appear similarly relevant to that circumstance.

To illustrate the significance of our existing rule and the rule that we are proposing, consider a future DOJ enforcement action involving predominately tax claims that results from the same original information that a Commission whistleblower shared with both the Commission and the CFTC. In this scenario, it is entirely possible based purely on the words of the relevant statutes that the SEC and the CFTC could *each* have to pay up to 30 percent on the DOJ action, and that the IRS could have to pay an additional 30 percent; the Commission whistleblower could thus take home an amount that is equal to as much as 90 percent of the money collected for the violations in the DOJ action. In our view, this is an ''obviously *unintended*'' outcome that would ''make[ ] no substantive sense,'' [87] and the rule that we already have in place and the rule that we are proposing would prevent it and similar duplicative payments from multiple whistleblower programs.

In addition to the foregoing, we are also proposing two amendments to the definition of ''related action'' in Rule 21F–3(b)(1). *First,* the proposed amendment would add clarity to the existing requirement that, to potentially obtain an award for a related action, a whistleblower must have provided to the other entity (or the Commission must have shared with the other entity) the same original information that the whistleblower provided to the Commission and that led to the successful enforcement of the Commission action.[88] We think that where the Commission staff determines to share the whistleblower's information with the other entity, it is consistent with the purposes of the program to allow an award even if the whistleblower did not directly step forward to that agency.[89]

This new language to the definition of ''related action'' merely clarifies what is already required by Exchange Act Rule 21F–11(c),[90] which provides in relevant part that a whistleblower must ''demonstrate [that the whistleblower] directly (or through the Commission) voluntarily provided the governmental agency, regulatory authority or self-regulatory organization the same original information that led to the Commission's successful covered action[.]'' Further, we believe that this interpretation is consistent with the requirement in Section 21F(a)(5) of the Exchange Act [91] that a related action must be ''based upon the original information provided by a whistleblower.'' To be ''based upon'' the whistleblower's original information, in our view, the same information that the whistleblower provided to the Commission must have been provided to the other authority and that information must have itself directly contributed to the other authority's investigative or litigation efforts leading to the success of that authority's enforcement action. In practice, this can occur either because the whistleblower provided the original information to the other authority, or because the Commission through its information sharing mechanisms provided the original information to the other authority, and in either case the authority utilized that information directly in its own investigation and/or its resulting enforcement action.

We note that, under our existing interpretation of the ''based upon'' language in Section 21F(a)(5) and the clarifying rule that we are proposing, the other authority's enforcement action would not be a related action in circumstances where the other authority's enforcement action was in some manner ''based upon'' the results or findings of the Commission's enforcement action without the other authority ever actually receiving and utilizing the whistleblower's original information. Rather, in this situation the whistleblower's original information could, at best, be described as a derivative factor potentially contributing to the success of the other authority's action, and we deem this too attenuated a causal connection to meet the ''based upon'' standard, which in our view requires actual reliance on the whistleblower's original information by the other entity.[92] Indeed, in these circumstances any claim for an award would fail under Rule 21F–3(b)(2), which unambiguously requires that the success of a related action be based upon ''the same original information that the whistleblower gave to the Commission'' as a predicate to the Commission authorizing a related action award.[93]

Second, we are making a technical modification to the definition of ''related action'' in Rule 21F–3(b)(1) that would make clear that the existing clause ''based on'' the same original information that the whistleblower voluntarily provided to the Commission, and that ''led the Commission to obtain monetary sanctions totaling more than $1,000,000,'' applies to all related actions and not just criminal actions brought by a state attorney general. This technical modification would conform the definition in the rule to the substantive requirements of the statutory definition as set forth in Section 21F(a)(6) of the Exchange Act.[94]

Request for Comment

7. Is the proposed ''direct or relevant'' standard appropriate for assessing whether an action should qualify as a

[85] 76 FR 34300, 34305/3.

[86] *Id.* n.52 (''[W]e do not believe Congress intended Section 21F of the Exchange Act to permit additional recovery for the same action above what it specified in the False Claims Act.'').

[87] Scalia & Garner, *supra* note 33, at 235, 239 (emphasis in original).

[88] *See* Rules 21F–3(b)(2), 17 CFR 240.21F–3(b)(2), and 21F–4(c)(1)–(3), 17 CFR 240.21F–4(c)(1)–(3).

[89] Section 21F provides express authority for the Commission to share information that may identify a whistleblower with other authorities that may, in turn, bring related actions. *See* 15 U.S.C. 78u–6(a)(5) and (h)(2)(D)(i).

[90] 17 CFR 240.21F–11(c).

[91] 15 U.S.C. 78u–6(a)(5).

[92] The ''based upon'' language in Exchange Act section 21F(a)(5), 15 U.S.C. 78u–6(a)(5) is separate and distinct from the requirement that the whistleblower's original information must have ''led to'' the success of the other entity's action, *see* Exchange Act section 21F(b)(1), 15 U.S.C. 78u–6(b)(1); *see also* Exchange Act Rule 21F–4(c), 17 CFR 240.21F–4(c). Even if a whistleblower satisfies the ''based upon'' standard because his information was directly provided to the other entity by the whistleblower or the Commission, and used in some fashion by that entity, this does not mean the whistleblower's information necessarily ''led to'' the success of that action.

[93] 17 CFR 240.21F–3(b)(2). Rule 21F–3(b)(2) contemplates that ''the Commission may seek confirmation of the relevant facts regarding the whistleblower's assistance from the authority that brought the related action,'' and we will deny a related action award where sufficient and reliable information cannot be obtained from the other authority. 76 FR 34300, 34305/1. These requirements would be rendered null if the ''based upon'' requirement could be satisfied without the other authority actually receiving and utilizing the whistleblower's original information.

[94] 15 U.S.C. 78u–6(a)(6).

related action? Are there alternative formulations that should be adopted instead?

8. Instead of adopting the proposed rule, which would authorize the Commission on a case-by-case basis to consider whether an action should qualify as a related action, should the Commission adopt a categorical exclusion from the definition of related action for any judicial or administrative action that may have an alternative applicable award scheme?

9. As part of this rulemaking, we are considering whether to repeal Exchange Act Rule 21F–3(b)(3), 17 CFR 240.21F–3(b)(3),[95] so that proposed Rule 21F–3(b)(4) would also apply to potential related actions that might produce a double recovery with the CFTC's whistleblower program. Existing Rule 21F–3(b)(3) applies somewhat differently than our proposed Rule 21F–3(b)(4), as it does not provide the Commission express authority to determine whether a potential related action is more closely connected with the SEC's whistleblower program or the CFTC's whistleblower program. Should we repeal existing Exchange Act Rule 21F–3(b)(3) so that proposed Rule 21F–3(b)(4) would apply instead to afford a uniform treatment for all potential related actions for which multiple whistleblower programs might apply? Please explain.

D. Proposed Amendment to Exchange Act Rule 21F–6 Regarding Awards to a Single Whistleblower Below $2 Million or in Cases Yielding at Least $100 Million in Collected Monetary Sanctions[96] *and Guidance on the Meaning of ''Unreasonable Delay'' Under Rule 21F–6.*

Rule 21F–6[97] establishes the analytical framework that the Commission follows both in setting the appropriate percentage amount of an award in connection with a particular Commission or related action and in determining an individual percentage award for each whistleblower where the Commission makes awards to more than one whistleblower in connection with the same action. In the adopting release accompanying the promulgation of the whistleblower program rules, the Commission explained that Rule 21F–6 ''provides general principles without mandating a particular result'' and ''the determination of the appropriate percentage of a whistleblower award will involve a highly individualized review of the facts and circumstances surrounding each award using the analytical framework set forth'' in the rule.[98]

Rule 21F–6 identifies four criteria that may increase an award percentage and three criteria that may decrease a whistleblower's award percentage. As provided in Rule 21F–6(a), the criteria that may increase an award percentage are: (1) Significance of the information provided by the whistleblower; (2) assistance provided by the whistleblower; (3) law-enforcement interest in making a whistleblower award; and (4) participation by the whistleblower in internal compliance systems. As provided in Rule 21F–6(b), the criteria that may decrease an award percentage are: (1) Culpability of the whistleblower; (2) unreasonable reporting delay by the whistleblower; and (3) interference with internal compliance and reporting systems by the whistleblower.

Proposed paragraph (c) would add to Rule 21F–6's existing analytical framework by providing a mechanism for the Commission to adjust upwards any awards that would potentially be below $2 million to a single whistleblower. Specifically, proposed Rule 21F–6(c) would provide that, if the resulting award after applying the award factors specified in paragraphs (a) and (b) would yield a potential payout to a single whistleblower below $2 million (or any such greater amount that the Commission may periodically establish through publication of an order in the **Federal Register**), the Commission may adjust the award upward so that the likely total award payout to the whistleblower reflects a dollar amount that the Commission determines is appropriate to achieve the program's objectives of rewarding meritorious whistleblowers and sufficiently incentivizing future whistleblowers who might otherwise be concerned about the low dollar amount of a potential award; provided that in no event shall this provision be utilized to raise a potential award payout (as assessed by the Commission at the time it makes the award determination) above $2 million (or by such other amount as the Commission may designate by order) or will the total amount awarded to all whistleblowers in the aggregate be greater than 30 percent.

We believe that proposed paragraph (c) could provide an important new tool for the Commission to ensure that even in cases where the collected monetary sanctions may be relatively small (and award amounts correspondingly modest), whistleblowers could receive an appropriate award for their efforts in coming forward to the Commission. We also anticipate that, where the proposed rule is triggered, there would be a presumption in favor of some award enhancement, though the precise amount of the enhancement may vary from case to case depending on the unique facts and circumstances at issue. In this way, we believe proposed paragraph (c) could provide an important additional incentive for potential whistleblowers to come forward.[99]

We note that the new authority proposed in paragraph (c) would come with important limitations. Specifically, the Commission will not adjust an award upward under the proposed provision if any of the negative award factors that are identified in Exchange Act Rule 21F–6(b)[100]—and which are specified above—were found to be present with respect to the whistleblower's award claim, or if the

[95] Exchange Act Rule 21F–3(b)(3) provides that the Commission will not make an award to an individual for a related action if the individual has already been granted an award by the CFTC for the same action pursuant to its whistleblower program under Section 23 of the Commodity Exchange Act (7 U.S.C. 26). Similarly, if the CFTC has previously denied an award to an individual in a related action, the individual will be precluded from relitigating any issues before the Commission that the CFTC resolved against the individual as part of an award.

[96] The Commission anticipates this proposed rule change, if adopted, would apply only to covered-action and related-action award applications that are connected to a Notice of Covered Action (*see* Exchange Act Rule 21F–10(a), 17 CFR 240.21F–10(a)) posted on or after effective date of the final rules.

[97] 17 CFR 240.21F–6.

[98] 76 FR 34300, 34331/2.

[99] We believe that proposed paragraph (c) would in many respects work similar to proposed paragraph (d), as discussed further below; this would include, for example, how we would determine whether the $2 million threshold is met in cases involving joint whistleblowers. To the extent that either proposed paragraph (c) or proposed paragraph (d) is triggered by a potential award, it would open up discretion for the Commission to assess the award factors in Exchange Act Rules 21F–6(a)–(b), 17 CFR 240.21F–6(a)–(b), in terms of dollar amounts, not merely in terms of award percentages. This would give the Commission, for example, the authority to boost a 20 percent award upwards based on a reassessment of the positive factors relative to the actual dollar amounts at issue in the particular award. Thus, even if the whistleblower might otherwise receive a 20 percent award on a small case (for example, one with collections of $100,000), the Commission could reassess the whistleblower's contributions in dollar terms and determine to enhance the award upwards (potentially up to the 30 percent maximum, which in the particular example would yield a payout of $30,000). The Commission could do so if it determines that this enhancement in dollar terms would better acknowledge the whistleblower's contribution and better help incentivize similarly situated future whistleblowers. Further, in assessing whether the $2 million threshold has been, or likely will be satisfied, the Commission will consider collectively the total award amounts from all the Commission and related actions that were the result of the whistleblower's original information.

[100] 17 CFR 240.21F–6(d).

award claim triggers Exchange Act Rule 21F–16 (concerning awards to whistleblowers who engage in culpable conduct).[101] Thus, for example, if a whistleblower whose award claim might otherwise be eligible for an enhancement under this provision were found by the Commission to have unreasonably delayed reporting to the Commission under Exchange Act Rule 21F–6(b)(2), then the Commission could not increase his or her award under this provision.

In addition, we are proposing a new paragraph (d) that would add to Rule 21F–6's existing analytical framework by providing a mechanism for the Commission to conduct an enhanced review of awards in situations where a whistleblower has provided information that led to the success of one or more covered or related actions that, collectively, result in at least $100 million in collected monetary sanctions. As we explain below, under proposed paragraph (d), the Commission, first, would consider the dollar amount of an award at given percentage levels in determining whether and how to adjust the award based on the positive and negative factors in paragraphs (a) and (b) of this section; and second, the Commission could determine that an exceedingly large potential payout resulting from the assessment under paragraphs (a) and (b) was not reasonably necessary to fulfill the purposes of the program and thus exercise its discretion to reduce the award to an appropriate amount. The Commission's ability to reduce an award under this provision would be subject to two significant limitations. *First,* in no event could the Commission reduce the total payout for any award(s) resulting from the whistleblower's original information below $30 million. *Second,* the Commission could not reduce the award for any specific action such that the total amount paid to all whistleblowers for that action would go below the 10 percent minimum statutory floor of collected monetary sanctions in that action.[102]

An important principle underlying proposed paragraph (d) is that, as the dollar value of an award amount grows exceedingly large, there is a significant potential for a diminishing marginal benefit to the program in terms of compensating the whistleblower and incentivizing future whistleblowers. In these situations, we believe that it is in the public interest that we scrutinize the dollar impact of these awards more carefully in considering award enhancements and reductions under the existing award criteria of paragraphs (a) and (b) of this section and, further, where appropriate, adjust an award downward so that the dollar amount of the payout is more in line with the program's goals of rewarding whistleblowers and incentivizing future whistleblowers from a cost-benefit perspective (again, subject to the $30 million floor for any whistleblower subject to a reduction under this provision and the 10 percent statutory minimum referenced above).

As an illustration of a potential situation to which proposed paragraph (d) might be utilized, consider the settlements that the Commission and DOJ entered with Siemens AG in 2008. The total monetary sanctions collected in these two actions was $800 million (the Commission received $350 million in disgorgement of profits [103] and DOJ received $450 million in criminal penalties [104]). Suppose that these two actions occurred today and that these actions were based on original information voluntarily provided to the Commission by an eligible whistleblower. In such a situation, the Commission would be required to pay an award to that whistleblower of between $80 million (a 10 percent award) and $240 million (a 30 percent award) for the two actions. Critically, under the existing framework of Rule 21F–6—without proposed paragraph (d)—the Commission in setting the appropriate amount of an award would be unable to consider the extraordinarily large dollar amounts that would be associated with any assessments and adjustments made when applying the existing award factors of Rule 21F–6; the Commission would also lack the authority to adjust the award amount downward if it found that amount unnecessarily large for purposes of achieving the whistleblower program's goals. So if the hypothetical meritorious whistleblower were an individual who did everything right in connection with his or her whistleblowing (that is, he or she were the model whistleblower), the Commission would almost certainly be obligated to pay this individual an award at or near the maximum $240 million level under the existing rules. What paragraph (d) would do, as we explain below, is to afford the Commission the discretion to determine whether such an extraordinarily large payout is actually necessary to further the whistleblower program's goals of rewarding whistleblowers and incentivizing future whistleblowers, and if not, proposed paragraph (d) would afford the Commission the ability to adjust the actual payout to an award amount that is closer to the $80 million minimum that would be required to be paid pursuant to Section 21F(b). We believe that adopting paragraph (d) to afford us a discretionary mechanism to make such common-sense adjustments to extraordinarily large awards to ensure that they do not exceed an amount that is appropriate to achieve the goals and interests of the program is, to put it simply, good public policy.

Turning to the text of proposed paragraph (d), this new provision would do two important things that should help us ensure that any large awards are in fact aligned with the program's goals and not unnecessarily large to achieve the program's goals. *First,* proposed paragraph (d)(1) would permit the Commission to consider the potential dollar amount of the payout to a whistleblower resulting from his or her original information (in any Commission actions or related actions, collectively) when applying each of the existing award criteria; when the potential amount of an award payout could be in the range of 10 to 30 percent of at least $100 million, we believe it is reasonable and appropriate to consider the adjustments that we make for each award factor in dollar terms rather than to apply exclusively a percentage assessment that does not take into account what those percentage adjustments would translate to in actual dollars paid to the whistleblower.[105]

[101] 17 CFR 240.21F–16.

[102] For example, if the collected amount is $150 million, the Commission could exercise its discretion to reduce a potential payout of 25% ($37.5 million), but the Commission could not reduce the award below $30 million. In another example, if the collected amount is $400 million, the Commission could exercise its discretion to reduce a potential payout of 25% ($100 million), but the Commission could not reduce the award below 10% ($40 million). Finally, if the collected amount is $150 million and the potential payout is 18% ($27 million), then the Commission could not reduce that award because it already is below the $30 million floor.

[103] *See* SEC Litigation Release No. 20829 (dated Dec. 15, 2008) (discussing the settlement reached *SEC* v. *Siemens Aktiengellschaft,* Civ. Action No. 08–CV–02167 (D.D.C.)).

[104] *See* DOJ Press Release entitled ''Siemens AG and Three Subsidiaries Plead Guilty to FCPA Violations and Agree to Pay $450 Million in Combined Criminal Fines'' (dated Dec. 15, 2008) (available at: *www.justice.gov/archive/opa/pr/2008/December/08-crm-1105.html*).

[105] The statutory framework that Section 21F establishes appears to permit—and at a minimum does not expressly prohibit—the Commission from considering the dollar amount of a potential award. Indeed, the language in Section 21F refers to the ''amount of the award,'' which appears to afford the Commission discretion to set the awards based on a consideration of the appropriate dollar amount that should be paid (provided that this dollar amount is between 10 percent and 30 percent of the collected monetary sanctions). Notwithstanding the

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This would allow us to consider the relative (or marginal) value of the actual dollar amounts associated with any enhancements that we are considering under the positive award factors. We think that this is particularly important where the percentage enhancements are corresponding with particularly large dollar enhancements because, to the extent that individuals are motivated to come forward based on a potential award, it is the total dollar payout that would be relevant to them. Allowing us to assess each enhancement or reduction in dollar terms should permit us to more realistically and concretely assess the appropriate amount that is reasonably necessary to recognize a whistleblower's contributions in cases involving large potential awards.

Second, proposed paragraph (d)(2) would permit the Commission to adjust the award downward if, after consideration of the existing award factors in paragraphs (a) and (b) of this section, the Commission finds that the potential award amount (from any Commission actions and related actions, collectively) exceeds what is reasonably necessary to reward the whistleblower and to incentivize similarly situated whistleblowers.[106] Importantly, proposed paragraph (d)(2) would *not* mandate that the Commission make a downward adjustment. Further, proposed paragraph (d)(2) would make clear that any adjustment to a whistleblower's award under that paragraph shall not yield a potential award payout (as assessed by the Commission at the time that it makes the award determination) below $30 million, nor may any downward adjustment result in the total amount awarded to all the meritorious whistleblowers, collectively, for each covered or related action constituting less than 10 percent of the monetary sanctions collected in that action.

Critically, the $30 million reference in proposed rule (d)(2) would *not* be a ceiling on awards, and we do not intend that it would be applied as such. Rather, $30 million for a potential payout is the floor below which we would not lower any award that is subject to a reduction under the proposed rule. Further, the proposed amendment would be triggered *only* in situations where a whistleblower (including two or more individuals who acted together as a joint whistleblower) provides information that leads to the success of one or more covered actions and related actions that results in at least $100 million in collected monetary sanctions.[107] In the nearly seven years of experience that we have had in implementing and administering the whistleblower program, we have issued final orders granting 50 whistleblower awards to 55 individuals (including, as explained above, individuals who acted as joint whistleblowers).[108] To date, only two Commission covered actions and related actions have crossed the threshold of collecting at least $100 million in monetary sanctions and for which the payout exceeded our proposed $30 million floor.[109] Those two actions taken alone involved the payment of $112 million to four individuals.

We believe that the $100 million collected-monetary-sanctions threshold reflects the appropriate level at or above which it would be reasonable for the Commission to consider whether the likely award payout from the collected monetary sanctions will exceed an amount that is appropriate to achieve the program's goals. For matters involving collected sanctions at or above the $100 million threshold, we think the potential for a whistleblower award to exceed the amount necessary to achieve the program's goals exists and that awards based on $100 million or more are sufficiently large to warrant heightened scrutiny under the rule that we are proposing. Our proposed approach in triggering proposed paragraph (d) based on the amount of monetary sanctions collected is not unlike the approach that the DOJ utilizes (and which some courts also utilize) in the context of the False Claims Act (''FCA'') when determining the appropriate amount of an award to a relator. Specifically, DOJ has developed a series of guidelines to determine the appropriate size of an award, and one consideration that may lead to a downward adjustment is whether the ''FCA recovery was relatively large.'' [110]

We similarly believe that the $30 million floor is appropriate. In our view, there is a potential that as the payout to a whistleblower grows beyond the $30 million floor, the marginal benefit of each additional dollar paid may decrease to such an extent that, in terms of furthering the program's overall goals, the payout may be more than is reasonably necessary. In our judgment $30 million represents a reasonable line at which to draw the floor.[111] In this

statutory language, the Commission's existing rules do not expressly authorize the Commission to consider the dollar amount of a potential award when setting the award percentage. Proposed paragraph (d) would make it clear that the Commission may consider the dollar amount of a potential award when setting the award percentage where at least $100 million in monetary sanctions has been collected.

[106] Notably, this authority to make a downward adjustment would be available only if the resulting payout after applying the existing award factors would be at least $30 million (or such greater alternative amount that the Commission may periodically establish through publication of an order in the **Federal Register**).

[107] In assessing whether the $100 million threshold has been crossed to invoke proposed paragraph (d), we preliminarily anticipate considering not just the likely payout in any Commission covered actions that resulted from the whistleblower's information, but also any potential payout that might result from any related actions that resulted from the whistleblower's information. Thus, for example, if a Commission covered action and a related action brought by the Department of Justice, and a related action brought by an appropriate regulatory authority, collectively, resulted in the collection of at least $100 million in monetary sanctions based on a whistleblower's original information, then proposed paragraph (d) would be triggered. We would then decide whether one or more of the awards should be adjusted downward to yield a total payout that complies with the terms of the proposed rule. Further, we note that in the context of a joint whistleblower, for purposes of applying the proposed rule, we would treat them collectively as one whistleblower in applying proposed paragraph (d), including in assessing whether the $100 million threshold is satisfied; however, in determining whether and to what extent to make a downward adjustment, we would expect to consider the need to appropriately incentivize individuals even when acting jointly to come forward and report to the Commission.

[108] These totals are through April 2018 and treat as single awards several cases where whistleblowers' original information led to multiple covered actions that were processed together in one award Order recognizing the total contributions of the whistleblower. Similarly, consistent with the approach proposed above governing cases where we grant an award for both a Commission enforcement action and a related action by another agency based on the same information provided by the whistleblower (*see* 17 CFR 240.21F–3(b)), we consider covered-action awards together with their corresponding related action awards as single whistleblower awards.

[109] One of the awards that exceeded $30 million was issued in September 2014 for more than $30 million in a Commission action and related actions. *See Order Determining Whistleblower Award Claim,* Exchange Act Release No. 34–73174 (Sept. 22, 2014), *available at https://www.sec.gov/rules/other/2014/34-73174.pdf.* Two other awards were issued in March 2018 for $49 and $33 million, respectively, to three individuals (two of whom were acting as joint whistleblowers) in a single covered action. *See Order Determining Whistleblower Award Claim,* Exchange Act Release No. 34–82897 (March 19, 2018), *available at https://www.sec.gov/rules/other/2018/34-82897.pdf.*

[110] *See* Claire M. Sylvia, The False Claims Act: Fraud Against the Government section 8.4 (updated June 2018) (citing DOJ Relator's Guidelines, reprinted in 11 *False Claims Act and Qui Tam Q. Rev.* 17 (Oct. 1997); *see also U.S. ex rel. Simmons* v. *Samsung Electronics Am., Inc.,* 116 F. Supp. 3d 575, 580–81 (quoting and applying the DOJ award guidelines).

[111] *See, e.g., WorldCom, Inc.* v. *FCC,* 238 F.3d 449, 462 (D.C. Cir. 2001) (citation omitted) (explaining that ''[a]n agency has 'wide discretion' in making line-drawing decisions and '[t]he relevant question is whether the agency's numbers are within a zone of reasonableness' ''); *see also, e.g., National Shooting Sports Foundation, Inc.* v. *Jones,* 716 F.3d 200, 214, (D.C. Cir. 2013) (citation omitted) (''An agency 'is not required to identify the optimal threshold with pinpoint precision. It is only required to identify the standard and explain its relationship to the underlying regulatory concerns.'').

regard, we note that utilizing 2016 data on net worth, an individual who received *just the $30 million floor*—even allowing for a reduction due to taxes—would find himself or herself in the range of the the top 99.5 percentile to 99.9 percentile of the U.S. population by net worth.[112] Further, the analysis conducted in Part VII(B)(5) demonstrates for us that even this sum (again, allowing for a reduction due to taxes) if modestly invested should produce a reasonable lifetime income stream for most potential whistleblowers. We thus believe it is appropriate and reasonable to afford the agency a mechanism to more closely scrutinize awards that exceed this floor to determine whether and to what extent they are necessary to reward the whistleblower or incentivize similarly situated whistleblowers.

While we believe that the $30 million floor should reflect an amount that in most cases would be an extremely attractive inducement for company insiders across many industries to come forward to report securities-law violations, we recognize that future experience in the years ahead could suggest that some adjustment is appropriate.[113] Accordingly, to the extent that our experience with the program in future years may suggest that an adjustment to the floor is appropriate, we propose to establish a mechanism by which the Commission may publicly notice an order announcing such an increase by publishing it in the **Federal Register**.

In considering the appropriateness of the $30 million floor below which we could not make a downward departure for any payouts stemming from a whistleblower's original information, we also note that the monetary incentive may often be an important reason a whistleblower comes forward, but it is typically not the only reason in our experience to date. In this regard, we note that the monetary incentive is one component in a package of reporting incentives made available under Section 21F, which includes employment retaliation protections and confidentiality requirements (including, critically, the ability of whistleblowers to remain anonymous through the course of an investigation and resulting enforcement action).[114] Indeed, our experience to date has been that approximately one-half of the whistleblowers who have received awards for information regarding their current or former employers took advantage of the opportunity to submit their tips to the Commission anonymously; the ability to report anonymously is an additional attractive feature of our program that helps to encourage company insiders and others to come forward by lessening their fear of potential exposure.

In advancing proposed paragraph (d), we are mindful of our own responsibility to investors and the general public to ensure that the Investor Protection Fund (IPF) that Congress established to fund awards is used efficiently and effectively to achieve the program's objectives.[115] We recognize that the Commission has obtained significant monetary judgments against parties in enforcement actions in recent years. Several individual matters involved orders in excess of $300 million in monetary sanctions in FY–2016 and FY–2017.[116] If there were an eligible whistleblower in one of these matters, and assuming the Commission collected the amounts ordered, an exceedingly large whistleblower award, beyond what we believe was intended when the program was established, could result. Multiple such awards would, in turn, cause the funds in the IPF to be diminished. As of the end May 2018, the balance of the IPF for the first time fell below the $300 million threshold that triggers the statutory replenishment mechanism; this occurred when the Commission paid $83 million—its largest payout to date on an enforcement action—to three individuals.[117] Whenever the reserve in the IPF falls below $300 million, Section 21F(g)(3) requires the Commission to replenish the IPF.[118] These funds otherwise would be directed to the Treasury, where they could be made available for use in funding other valuable public programs.

In light of the foregoing, we believe that, where a whistleblower's original information leads to Commission or related actions that, collectively, involve at least $100 million in collected monetary sanctions, it is consistent with the interests of investors and the broader public interest that the Commission have a mechanism to ensure that the payout does not exceed an amount beyond what is reasonably necessary to achieve the program's goals and, to the extent that it is, to adjust the award percentage so that it better aligns with those goals. In our view, proposed paragraph (d) would provide such a mechanism if adopted.

We generally anticipate that the Commission's application of proposed paragraph (d) would be based on the unique facts and circumstances of each award matter. We believe that in determining whether a payout exceeds what is appropriate to achieve the program's objectives, the Commission would carefully assess the potential payout in relation to both any unusually detrimental circumstances that impact the whistleblower and the level of financial incentive that may be necessary to encourage future similarly situated whistleblowers to come forward. Facts that would be relevant to determining whether the large payout may be appropriate given the specific whistleblower's circumstances include, for example, whether the whistleblower made an extraordinary and highly unusual sacrifice by coming forward (such as placing himself or herself in legal jeopardy to bring the Commission information that it would otherwise not have been able to obtain or demonstrably suffering career-ending consequences commensurate with the potential large award). In a situation involving two or more individuals acting as a joint whistleblower, we would consider the need to appropriately incentivize individuals even when acting jointly to come forward and report to the Commission.

[112] In 2016, approximately 0.5 percent of the U.S. population had a net worth of $16.12 million while 0.1 percent of the U.S. population had a net worth of $43.1 million. *See https://dqydj.com/net-worth-brackets-wealth-brackets-one-percent/.*

[113] The economic analysis, *infra* Part VII, discusses various potential annual incomes that a meritorious whistleblower might obtain from investing a $30 million award payout in various types of annuities. We note that, to the extent that certain whistleblowers may experience significant harmful consequences, such as large financial sacrifices or career-ending ramifications, as a result of their whistleblowing activities, the proposed rule (should it be triggered by the potential payout) would allow the Commission the flexibility to consider these particular facts and circumstances to determine an appropriate award level. Proposed paragraph (d) would allow the Commission similar flexibility in situations involving multiple individuals acting as a joint whistleblower.

[114] *See* 15 U.S.C. 78u–6(d) (anonymity); *id.* 78u–6(h)(1) (employment retaliation protection); *id.* 78u–6(h)(2) (confidentiality protections); *see also* 17 CFR 240.21F–9(c) and 240.21F–10(c).

[115] *See* Exchange Act section 21F(g), 15 U.S.C. 78u–6(g).

[116] *See, e.g.,* SEC Division of Enforcement Annual Report for 2017 (Nov. 15, 2017), *available at https://www.sec.gov/files/enforcement-annual-report-2017.pdf.*

[117] At the end of 2010, the IPF had just under $452 million in it, with no awards having yet been made. *See* Annual Report on the Dodd-Frank Whistleblower Program, Fiscal Year 2011, at 8 (available at: *https://www.sec.gov/files/whistleblower-annual-report-2011.pdf*), and by the end of fiscal year 2017, the IPF had approximately $322 million in it. Thus, from the end of 2010 until the end of fiscal year 2017, approximately $130 million in awards were paid out. The $83 million awards that were just paid for a single enforcement action were approximately equal to 64% of the sum of all of the other awards that the Commission had paid up through fiscal year 2017.

[118] *See* 15 U.S.C. 78u–6(g)(3).

Facts that would be relevant to determining whether the large payout is necessary and appropriate to encourage future similarly situated whistleblowers to come forward include the industry in which knowledgeable whistleblowers might work, the type of position held by that whistleblower,[119] and the compensation levels within that industry,[120] and whether potential whistleblowers may be located overseas and the likely compensation levels in those countries (to the extent available).[121]

In making any downward adjustment to a large award, the Commission would retain discretion to determine the appropriate award amount and proposed paragraph (d) is not intended to mandate any specific reduction or one-size-fits-all result. Nonetheless, we anticipate that in those cases where proposed paragraph (d) is triggered and the Commission determines that a downward adjustment is warranted, the extent to which the Commission exercises its authority to decrease such awards would vary along a sliding scale that corresponds with the overall size of the potential award in dollar terms. For example, we generally anticipate that the nature and magnitude of any decrease applied to an award in the $35–40 million range would typically be less than the magnitude of the decrease applied to an award in the $100–$150 million range. In our view, this sliding-scale approach would make sense because the larger the dollar amount of a payout away from the $30 million floor, the greater the likelihood of diminishing marginal benefits to the program from each additional dollar paid to the whistleblower. In no event, however, would the Commission decrease an award below the $30 million floor (or whatever future floor the Commission might establish by order) using the authority afforded to the Commission pursuant to the proposed rule.

We preliminarily contemplate that proposed paragraph (d) would be applied in any instance where the Commission determines to process two or more separate covered actions together in the same final order, provided that both actions involve the same information submitted by the whistleblower. We would similarly expect that the Commission could apply this rule if, after having made an award to a whistleblower, the Commission subsequently processes an award application for that whistleblower (either in connection with a second covered action or a related action) and the subsequent award application is based on the same general information from the whistleblower as the earlier award determination.

We do not believe that the proposed rule conflicts with the statutory directive in Section 21F(c)(1)(B)(ii)[122] that ''[i]n determining the amount of an award,'' the Commission ''shall not take into consideration the balance of the [IPF].'' This statutory provision prevents the Commission from adjusting an individual award based on the availability of money in the IPF. Critically, proposed paragraph (d) would not permit the Commission to consider the balance of the IPF when determining whether an award should be reduced. Rather, as noted above, paragraph (d) would only authorize the Commission to consider whether a potential award payout exceeds an amount that is reasonably necessary to achieve the program's goals. In this way, proposed paragraph (d) would provide a mechanism for the Commission to ensure that it is granting awards in an efficient and effective manner that serves the ''twin goals of protecting investors and increasing public confidence in the markets''[123] and our adoption of this proposed rule would be within our authority to adopt ''additional relevant [award] factors.''[124] To make this clear, we are adding a provision to proposed pararagraph (d) stating that the Commission shall not take into account the balance of the IPF in determining whether to make a downward adjustment under the proposed paragraph or in making any other award determinations under Exchange Act Rule 21F–6.

Finally, the proposed rule would provide certain standards for the Commission to consider in determining whether to issue an order that adjusts the $2 million award threshold, the $100 million threshold, and the $30 million award(s) floor under proposed paragraphs (c) or (d), respectively. Specifically, the proposed rule would state that in issuing such an order ''the Commission shall consider (among other factors that it deems relevant) whether the adjustment is necessary or appropriate to encourage whistleblowers to come forward and the potential impact the adjustments might have on the Investor Protection Fund.''

* * * * *

Guidance regarding the meaning of ''unreasonable delay'' in existing Rule 21F–6(b)(2) and proposed Rule 21F–6(c). In proposing the foregoing modifications to the criteria that govern award determinations, we believe it is appropriate to provide guidance on our approach regarding ''unreasonable delay'' as relates to an award determinations. We believe that any delay in reporting to the Commission beyond 180 days is presumptively unreasonable. In light of the Supreme Court's recent decisions in *Kokesh* v. *SEC*[125] and *Gabelli* v. *SEC,*[126] delay on the part of a whistleblower can have a debilitating impact on the Commission's ability to make a full recovery of ill-gotten gains and to obtain civil penalties and, in this way, delay may impair our ability to return funds to investors who have been harmed by the wrongdoing. Further, although this 180-day presumption is not expressly codified in either Exchange Rule 21F–6(b)(2),[127] which deals with ''unreasonable delays,'' or the rule that we are proposing, we would typically expect to treat any delay exceeding this period as unreasonable for purposes of both rules going forward. That said, in assessing unreasonable delay under both the existing rule and the proposed rule, we would still consider any highly unusual facts and circumstances of a particular award application in assessing unreasonable delay, such that the general presumption of ''unreasonable delay'' might be overcome in certain rare instances. Finally, we caution that

[119] According to the Office of the Whistleblower, of the 55 individuals who have received awards, approximately 10 percent were high-ranking corporate executives at companies of varying sizes. Each whistleblower award determination is based on the facts and circumstances of the case, including the monetary sanctions collected. Based on this subset of prior cases, a large majority of these executives received awards that were under $5 million.

[120] We would generally contemplate using publicly available data on compensation levels in making this determination. Award applicants could submit information as part of their award application to the extent that they are concerned that the proposed rule might be implicated by their application.

[121] The existence of any of these facts would not foreclose the Commission from finding that any large payout that exceeded the $30 million floor in proposed rule 21F–6(d) was nonetheless not reasonably necessary to achieve the program's goals and to thus reduce the award to an appropriate amount. Conversely, the absence of special circumstances or extraordinary sacrifices does not mean that the Commission would in all cases determine to reduce the amount of the award.

[122] 15 U.S.C. 78u–6(c)(1)(B)(ii).

[123] 76 FR 34300, 34356/2.

[124] Exchange Act section 21F(c)(1)(B)(iv); 15 U.S.C. 78u–6(c)(1)(B)(iv).

[125] 137 S. Ct. 1635 (2017) (providing that the Commission must bring any enforcement action seeking to obtain disgorgement within five years of the date the violation occurred).

[126] 568 U.S. 442 (2013) (providing that the Commission must bring any enforcement action seeking to obtain civil penalties within five years of the date the violation occurred).

[127] 17 CFR 240.21F–6(b)(2).

shorter periods of delay (*i.e.,* less than 180 days) may also readily qualify as unreasonable depending on the particular facts and circumstances at issue, including, for example, whether the violations were ongoing, whether investors continued to experience harm or the whistleblower continued to profit from the wrongdoing during the period of the whistleblower's delay or whether the delay had a discernable impact on the monetary sanctions that were ordered in the enforcement action. Put simply, a whistleblower who delays reporting to the Commission should expect that his or her ''reward'' for reporting might well be negatively impacted.

Request for Comment

10. With respect to proposed paragraph (c), is it appropriate to consider increasing smaller awards and would doing so help to further incentivize insiders and others to come forward with tips? If so, is the $2 million ceiling for invoking the rule appropriate or is it either too high or too low? Please explain.

11. With respect to proposed paragraph (c), should the enhancement authority be unavailable in the situation where a whistleblower's award was reduced under Rule 21F–6(b) or Rule 21F–16? Please explain.

12. Would the proposed amendments to paragraph (d) of Rule 21F–6 appropriately balance the Commission's various programmatic interests, in particular encouraging company insiders and others to come forward while also ensuring that awards are not unnecessarily large beyond an amount that is sufficient to compensate whistleblowers and achieve the Commission's law-enforcement interests? If not, is there an alternative formulation of the proposed rule that the Commission should adopt to guard against payouts that are in excess of amounts that are reasonably necessary to further the Commission's goals?

13. With respect to proposed paragraph (d), are the $100 million collected sanctions threshold and the $30 million floor appropriate? Is there another threshold or floor that the Commission should adopt? If so, please explain what should be the appropriate threshold or floor.

14. In considering whether to make a downward adjustment to a potential award under proposed paragraph (d), is it reasonable for the Commission to consider the likely amount of the award in relation to the whistleblower program's goals of rewarding meritorious whistleblowers and sufficiently incentivizing future similarly situated whistleblowers?

a. In the release, we explain that facts that would be relevant to determining whether the large payout may be appropriate given the specific whistleblower's circumstances include, for example, whether the whistleblower made an extraordinary and highly unusual sacrifice by coming forward (such as placing himself or herself in legal jeopardy to bring the Commission information that it would otherwise not have been able to obtain or demonstrably suffering career-ending consequences commensurate with the potential large award). Are there other (or additional) considerations that the Commission should assess in making that determination?

b. Also in the release, we explain that facts that would be relevant to determining whether the large payout is needed and appropriate to encourage future similarly situated whistleblowers to come forward include the industry in which knowledgeable whistleblowers might work, the type of position held by that whistleblower, and the compensation levels within that industry, and whether potential whistleblowers may be located overseas and the likely compensation levels in those countries (to the extent available). Are there other (or additional) considerations that the Commission should assess in making that determination?

15. In the context of two or more individuals acting together as a whistleblower, should the $30 million floor in proposed paragraph (d) apply where the aggregate award to both individuals exceeds $30 million or where the award to each individual would potentially exceed $30 million? Please explain the reasons for your views.

16. In determining whether the $100 million threshold has been met for application for the proposed rule, should the Commission consider not just the likely payout in any Commission covered action that results from the original information that the whistleblower provided to the Commission, but also any potential payout that might result from any related actions? Why or why not?

17. As discussed above, the Commission could apply proposed paragraph (d) if, after having made an award to a whistleblower, the Commission subsequently processes an award application for that whistleblower (either in connection with a second covered action or a related action) and the subsequent award application is based on the ''same general information'' from the whistleblower as the earlier award determination. Is there a different standard that the Commission should apply for invoking the rule in these situations? In particular, should the proposed rule be applicable in either a narrower or a broader set of circumstances where information provided by a whistleblower results in multiple actions? Please explain the reasons for your view.

18. Proposed paragraph (d) would permit the Commission to consider the potential dollar amount of the award when applying each of the existing award criteria in Exchange Act Rule 21F–6(a) and 6(b), provided that the Commission determined that the likely total payout to the whistleblower resulting from the original information that he or she provided was $100 million or greater. As explained above, this would allow the Commission to consider each award factor in dollar terms rather than to apply exclusively a percentage assessment that does not take into account what those percentage adjustments would translate to in actual dollars paid to the whistleblower.

a. Should the Commission consider the dollar value of an award that involves the collection of at least $100 million in monetary sanctions in determining the size of the award? Why or why not?

b. As part of this rulemaking, should we expand this approach so that it would cover all awards considered under Exchange Act Rule 21F–6, even those below the $100 million threshold? Would such a revision to the award determination approach under Exchange Act Rule 21F–6 allow us to better assess each enhancement or reduction in dollar terms (as well as percentage terms) so that we could more realistically and concretely assess the impact of each award factor on the overall award to ensure that we are appropriately rewarding the whistleblower and incentivizing future whistleblowers? Why or why not?

19. With respect to the interpretive guidance concerning ''unreasonable delay,'' is the 180-day rebuttable presumption of unreasonable delay appropriate? Does establishing such a presumption help to put individuals on notice that they should come forward without an inappropriate delay? Please explain.

E. Proposed Amendment to Exchange Act Rule 21F–2 [128] Addressing Whistleblower Status and Certain threshold Criteria Related to Award Eligibility, Heightened Confidentiality From Identity Disclosure, and Employment Anti-Retaliation Protection [129]

As adopted by the Commission in 2011, Rule 21F–2(a) [130] describes the qualifications to be a whistleblower for purposes of the award program and heightened confidentiality protections, and Rule 21F–2(b) [131] provides a separate, broader definition of the term that is applicable to the employment anti-retaliation provisions in Section 21F(h)(1) of the Exchange Act.[132] Specifically, unlike Rule 21F–2(a), Rule 21F–2(b) defines a whistleblower not by reference to the statutory definition of the term in Exchange Act Section 21F(a)(6) [133]—*i.e.,* as one who reports to the Commission—but instead by reference to the protected activities described in Section 21F(h)(1)(A)(i)–(iii), including the internal reporting described in clause (iii) of that provision.[134] The Supreme Court recently held in *Digital Realty Trust, Inc.* v. *Somers,*[135] however, that a whistleblower under Section 21F of the Exchange Act must report a possible securities law violation to the Commission in order to qualify for employment retaliation protection under Section 21F(h)(1), and that the Commission's rule interpreting the term more broadly in connection with Section 21F's retaliation protections was therefore not entitled to deference.[136] The Court reasoned that Dodd-Frank's definition of ''whistleblower,'' codified in Section 21F(a)(6), requires such a report to the Commission as a prerequisite for anti-retaliation protection, and that this definition is ''clear and conclusive.'' [137] The Court also determined that strict application of the definition's reporting requirement in the employment anti-retaliation context is consistent with Congress's core objective of '' 'motivat[ing] people who know of securities law violations to tell the SEC.' '' [138]

Accordingly, we believe that it is appropriate to amend Rule 21F–2 to conform to the Supreme Court's construction of Section 21F. Proposed Rule 21F–2(a) would provide a uniform definition for whistleblower status to apply for all purposes under Section 21F—award eligibility, confidentiality protections, and anti-retaliation protections—consistent with the Supreme Court's application of the whistleblower definition in Section 21F(a)(6), which defines the term ''whistleblower'' as any individual who provides, or 2 or more individuals acting jointly who provide, information relating to a violation of the securities laws to the Commission, in a manner established, by rule or regulation, by the Commission.[139]

Proposed Rule 21F–2(a) would track this whistleblower definition by conferring whistleblower status only on (i) an individual (ii) who provides the Commission with information ''in writing'' and only if (iii) ''the information relates to a possible violation of the federal securities laws (including any law, rule, or regulation subject to the jurisdiction of the Commission) that has occurred, is ongoing, or is about to occur.'' We address these three points in turn.

First, proposed Rule 21F–2(a)(2) would provide whistleblower status to individuals and not to legal entities (such as corporations). This proposed provision would carry forward the similar language in existing Rule 21F–2(a)(1) without substantive change. We believe this position follows from the use of the term ''individual'' in the whistleblower definition in Section 21F(a)(6) and is consistent with the focus in Section 21F(h)(1)(A) on retaliation by employers in the terms and conditions of employment.

Second, proposed Rule 21F–2(a)(1) would afford whistleblower status only to an individual who provides the Commission with information ''in writing.'' As the Supreme Court recognized,[140] the whistleblower definition in Section 21F(a)(6) gives the Commission express authority to establish the required ''manner'' of reporting by rule or regulation. In the awards eligibility and confidentiality contexts, our whistleblower rules (specifically, Rule 21F–2(a)(2) [141] and Rule 21F–9(a) [142]) already require that information be provided to the Commission in writing either through the online portal at *www.sec.gov* or by mailing or faxing a Form TCR (Tip, Complaint or Referral) to the Commission's Office of the Whistleblower. We now believe it is appropriate to exercise our discretion to require that an individual provide information ''in writing'' to the Commission to qualify as a ''whistleblower,'' not only in the awards and confidentiality context but also in the anti-retaliation context.[143] Our experience to date in the awards context suggests that requiring that information be provided in writing presents, at most, a minimal burden to individuals who want to blow the whistle to the Commission while facilitating the staff's ability to track its use of the information. Moreover, if we recognized additional manners of reporting for anti-retaliation purposes (such as placing a telephone call), the Commission's staff could be ensnared by disputes in private anti-retaliation lawsuits over what information was provided to whom on what dates. Requiring that any reporting be done in writing obviates these difficulties.[144]

Third, proposed Rule 21F–2(a)(1) would afford whistleblower status only to an individual who provides the Commission with information that ''relates to a possible violation of the

[128] 17 CFR 240.21F–2.

[129] The Commission anticipates that this proposed rule change, if adopted, would apply as follows: With respect to employment retaliation claims, the proposed rule would apply only to employment-retaliation violations occurring after the effective date of the rules; with respect to award eligibility and confidentiality protections, the proposed rule would apply only to information about a potential securities law violation that is submitted for the first time by an individual after the effective date of the rules.

[130] 17 CFR 240.21F–2(a).

[131] 17 CFR 240.21F–2(b).

[132] 15 U.S.C. 78u–6(h)(1).

[133] 15 U.S.C. 78u–6(a)(6).

[134] 15 U.S.C. 78u–6(h)(1)(A)(i)–(iii).

[135] 138 S. Ct. 767 (2018).

[136] *Digital Realty,* 138 S. Ct. at 781–82.

[137] *Id.*

[138] *Id.* at 777 (quoting S. Rep. No. 111–176, at 38 (2010)).

[139] 15 U.S.C. 78u–6(a)(6).

[140] *Digital Realty,* 138 S. Ct. at 781 (''[T]he statute expressly delegates authority to the SEC to establish the 'manner' in which information may be provided to the Commission by a whistleblower.'') (citing Section 21F(a)(6)).

[141] 17 CFR 240.21F–2(a).

[142] 17 CFR 240.21F–9(a).

[143] We believe that Section 21F(a)(6) and *Digital Realty* do not *require* a uniform ''manner'' of providing information for all purposes under Section 21F, and that we have discretion whether to specify different manners for the awards, confidentiality, and retaliation contexts. But we believe that specifying a uniform ''manner'' of providing information—that is, in writing—for all three contexts is appropriate for the reasons that follow in the discussion above. *See also* 15 U.S.C. 78u-6(c)(2)(D) (''No award under subsection (b) shall be made . . . to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule, require.'').

[144] We believe it appropriate not to enumerate the activities in Section 21F(h)(1)(A)(ii) (specifically, ''initiating, testifying in, or assisting in any investigation or judicial or administrative action of the Commission'') as additional manners of providing information to the Commission under Section 21F(a)(6). *See Digital Realty,* 138 S. Ct. at 781 (''Nothing in today's opinion prevents the agency from enumerating additional means of SEC reporting—including through testimony protected by clause (ii)'' of Section 21F(h)(1)(A).). Given clause (ii)'s cross-reference to ''such information'' provided under clause (i), we believe that clause (ii) is best read as extending employment retaliation protections to acts of continued cooperation by a person who has already provided information to the Commission.

federal securities laws (including any law, rule, or regulation subject to the jurisdiction of the Commission) that has occurred, is ongoing, or is about to occur.'' Much of this language carries over from existing Rule 21F–2 [145] and simply reflects the extent to which that provision already tracked the whistleblower definition in Section 21F(a)(6). At the same time, we are mindful of the whistleblower definition's focus on ''information relating to a violation of *the securities laws*'' [146] and of the Supreme Court's admonition that Section 21F, as enacted by Dodd-Frank, is ''a law concerned only with encouraging the reporting of '*securities* law violations,' '' as opposed to other types of misconduct.[147] Consistent with that statutory language and purpose, we believe it is appropriate to clarify what is implicit in the phrase ''securities laws''—namely, that whistleblower status (and thus Section 21F's employment retaliation protection) extends only to reports of possible violations of federal law, not state law, and that it extends broadly to reports of possible violations of any law, rule, or regulation subject to the jurisdiction of the Commission.[148] Although Section 3(a)(47) of the Exchange Act defines the phrase ''securities laws'' more narrowly as encompassing only certain statutes,[149] by its terms that definition only applies ''unless the context otherwise requires.'' [150] We believe that the context of Section 21F requires departing from that definition, given the textual clues that Congress designed Section 21F to encompass whistleblowing with respect to the full sweep of federal securities statutes, rules, and regulations,[151] given Congress's core objective of '' 'motivat[ing] people who know of securities law violations to tell the SEC,' '' [152] and given the many securities regulations whose reported violations would fail to trigger award eligibility and anti-retaliation protection if ''securities laws'' were more narrowly defined.[153]

Additionally, proposed Rule 21F–2(a) would confer whistleblower status ''as of the time that'' an individual meets all three of the above conditions. We believe that this language would clarify that whistleblower status is conferred only prospectively and not retrospectively once all three conditions to achieve whistleblower status are met.

Proposed Rule 21F–2(b), (c), and (d) would specify how the whistleblower status conferred by subsection (a) operates across the various contexts of awards eligibility, confidentiality protections, and anti-retaliation protections, respectively. Much like current Rule 21F–2(a), proposed Rule 21F–2(b) would specify that, to be eligible for an award in a Commission action based on information provided to the Commission, a person ''must comply with the procedures and the conditions described in Rules 21F–4, 21F–8, and 21F–9 (respectively, sections 240.21F–4, 240.21F–8, and 240.21F–9 of this chapter).'' [154] Proposed Rule 21F–2(b) reiterates, ''You should carefully review those rules before you submit any information that you may later wish to rely upon to claim an award.'' We believe that this proposed language will adequately alert individuals who intend to claim an award that they must comply with the cross-referenced rules, especially proposed Rule 21F–9(a) and (b), which require the submission of information to the Commission either on Form TCR or through *www.sec.gov,* accompanied by a declaration sworn under penalty of perjury that the information submitted is true and correct.[155] In our experience to date in the awards context, compliance with existing Rule 21F–9(a) has proven to be beneficial for enabling the Commission to determine, in a precise and reliable manner, which persons submitted which information on which dates.

Proposed Rule 21F–2(c) would specify that, to qualify for confidentiality protections afforded by Section 21F(h)(2) of the Exchange Act [156] based on information provided to the Commission, a person ''must comply with the procedures and the conditions described in'' Rule 21F–9(a)—that is, must submit information using the Commission's online portal or Form TCR.[157] We believe it is appropriate to adopt this provision both to codify the current practice of the Commission's staff and to clarify for future whistleblowers the conditions for receiving confidentiality protections. Further, requiring whistleblowers to adhere to the procedures specified in Rule 21F–9(a) helps the staff to appreciate quickly and clearly which whistleblowers are seeking the heightened confidentiality protections provided by Section 21F(h)(2) of the Exchange Act when, among other things, sharing the whistleblowers' information with other governmental agencies.[158]

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[145] 17 CFR 240.21F–2(a)(1).

[146] 15 U.S.C. 78u–6(a)(6) (emphasis added).

[147] *Digital Realty,* 138 S. Ct. at 781 (quoting S. Rep. No. 11–176, at 38).

[148] As proposed, Rule 21F–2 would not repeat the parenthetical ''(including any law, rule, or regulation subject to the jurisdiction of the Commission)'' when the phrase ''federal securities laws'' reappears later in the rule. This would be strictly for concision and ease of reading, and not to imply any difference of meaning.

[149] Section 3(a)(47) of the Exchange Act states that the term ''securities laws'' means the Securities Act of 1933 (15 U.S.C. 78a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Sarbanes-Oxley Act of 2002, the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), the Investment Advisers Act of 1940 (15 U.S.C. 80b *et seq.*), and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa *et seq.*).

15 U.S.C. 78c(a)(47).

[150] 15 U.S.C. 78c(a).

[151] *See, e.g.,* Section 21F(h)(1)(A)(iii) (protecting ''disclosures that are required or protected under . . . any other law, rule, or regulation subject to the jurisdiction of the Commission'').

[152] *Digital Realty,* 138 S. Ct. at 777 (quoting S. Rep. No. 111–176, at 38).

[153] *See American Bankers Assn* v. *SEC,* 804 F.2d 739, 753 (D.C. Cir. 1986) (''We read the context clause [in Section 3 of the Exchange Act] as meaning only that if in the case of a frequently occurring statutory term, its immediate context suggests that a literal application of the statutory definition would produce absurd consequences *or run counter to the obvious thrust of the section,* the agency may appropriately modify the definition.'') (emphasis added).

[154] We note that, under the Commission's existing rules, in order to make an award in connection with a related action brought by one of the regulatory or law-enforcement entities listed in Rule 21F–3(b)(1) (17 CFR 240.21F–3(b)(1)), we must determine that the same original information that the whistleblower gave to the Commission also led to the successful enforcement of the related action under the same criteria that govern awards made in connection with Commission actions (*see* Rule 21F–3(b)(2), 17 CFR 240.21F–3(b)(2)). This means that a whistleblower must comply with the other procedures and conditions described in Rules 21F–4 and 21F–8 (17 CFR. 240.21F–4 and 240.21F–8) for a related action in the same manner and to the same degree as is required for the Commission action to which the other entity's action is related. For example, under Rule 21F–4(c) (17 CFR 240.21F–4(c)) the whistleblower must provide the same original information that he or she provided to the Commission directly to the other regulatory or law-enforcement entity and that the information the whistleblower gave to the other entity must lead to successful enforcement of that entity's action using the same criteria described in Rule 21F–4(c)(1)–(3) (17 CFR 240.21F–4(c)(1)–(3)) for Commission enforcement actions. However, we are proposing to modify this requirement through our amendments to Exchange Act Rule 21F–3 (17 CFR 24.21F–3) to also permit an award in situations where the Commission itself shares the whistleblower's information with the other agency.

[155] We believe that additional express authority in this regard is conferred by Section 21F(c)(2)(D) of the Exchange Act. *See* 15 U.S.C. 78u–6(c)(2)(D) (''No award under subsection (b) shall be made . . . to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule, require.'').

[156] 15 U.S.C. 78u–6(h)(2).

[157] 17 CFR 240.21F–9(a).

[158] We are proposing to make a conforming amendment to Exchange Act Rule 21F–7(a) (17 CFR 240.21F–7(a)) to acknowledge the proposed requirement that a whistleblower must submit information according to the procedures specified in Exchange Act Rule 21F–9(a) (17 CFR 240.21F–9(a)) in order to qualify for the heightened confidentiality protections provided for in Exchange Act 21F(h)(2), 15 U.S.C. 78u–(h)(2).

Proposed Rule 21F–2(d) would revise existing Rule 21F–2(b) to define the scope of anti-retaliation protections in a way that mirrors the Supreme Court's authoritative reading of Section 21F. As the Court explained in *Digital Realty,* the whistleblower definition in Section 21F(a)(6) ''first describes *who* is eligible for protection—namely, a whistleblower who provides pertinent information 'to the Commission,' '' [159] while ''[t]he three clauses of [Section 21F(h)(1)(A)] then describe what *conduct,* when engaged in by a whistleblower, is shielded from employment discrimination.'' [160] Consistent with that reading, proposed Rule 21F–2(d) would explain both who is eligible for protection as a whistleblower and also what conduct by such a person is protected from employment retaliation, by requiring a person to satisfy several criteria listed in paragraph (d)(1).

In explaining who is eligible for employment retaliation protection, proposed Rule 21F–2(d)(1)(i) would first require that a person ''qualify as a whistleblower under subsection (a) before experiencing the retaliation'' for which redress is sought. We believe that this proposed rule implements the most natural reading of Section 21F(h)(1)(A), which prohibits retaliation ''against[ ] a *whistleblower*'' (emphasis added) [161] and also follows from the Supreme Court's focus in *Digital Realty* on whether the plaintiff had reported to the Commission before the alleged retaliation.[162] In addition, proposed Rule 21F–2(d)(1)(ii) would carry forward the requirement in existing Rule 21F–2(b)(1)(i) [163] that the person ''reasonably believe'' that the information provided relates to a possible securities law violation.

In explaining what conduct is protected from retaliation, Rule 21F–2(d)(1)(iii) requires that a person must perform a ''lawful act'' that both is performed in connection with any of the activities described in Section 21F(h)(1)(A)(i)–(iii) [164] and ''relate[s] to the subject matter of'' the person's submission to the Commission under proposed Rule 21F–2(a).[165] We believe that extending protection to all such lawful acts is most consistent with the text of Section 21F(h)(1)(A), which prohibits retaliation not simply for the activities described in Section 21F(h)(1)(A)(i)–(iii) but for ''any lawful act done by the whistleblower'' in performing those activities. Given the breadth of Congress's language, we preliminarily anticipate that anti-retaliation protection under proposed Rule 21F–2(d)(1)(iii) will properly encompass actions that are preparatory to the conduct described in Section 21F(h)(1)(A)(i)–(iii), such as printing and completing a Form TCR and depositing the completed form in a mailbox. We also preliminarily anticipate that protected conduct under proposed Rule 21F–2(d)(1)(iii) will not be limited strictly to reports to the Commission, since that limitation would render clauses (ii) and (iii) of Section 21F(h)(1)(A) superfluous, given clause (i)'s express coverage of Commission reports.[166]

At the same time, proposed Rule 21F–2(d)(1)(iii) would limit anti-retaliation protection to lawful acts that ''relate to the subject matter'' of the person's submission to the Commission under proposed Rule 21F–2(a). Given the silence of Section 21F and the Supreme Court's reluctance to address whether any subject-matter connection should be required,[167] we believe it appropriate to clarify that, to receive protection, a lawful act must relate to the subject matter of the submission to the Commission.[168]

Proposed Rule 21F–2(d)(2) would address a timing issue under Section 21F's anti-retaliation provisions by clarifying that a person does not need to qualify as a whistleblower under Rule 21F–2(a) before performing the lawful act described in Rule 21F–2(d)(1)(iii), in order to be eligible for anti-retaliation protection. In other words, whether conduct is protected from retaliation would not depend on whether the person performing that conduct reported to the Commission beforehand or afterward (in order to qualify as a whistleblower). Section 21F is silent on this issue, and we believe that this clarification will help maintain appropriate incentives for persons to make the internal reports described in Section 21F(h)(1)(A)(iii) before or at the same time as reporting to the Commission. Proposed Rule 21F–2(d)(2) would reiterate, however, that a person must qualify as a whistleblower under proposed Rule 21F–2(a) before experiencing retaliation. Thus, for example, an individual who experiences repeated retaliation for a prior lawful act, and who first reports to the Commission while the retaliation is still ongoing, would be protected with respect to any retaliation experienced after the Commission report but not for any retaliation experienced before the Commission report.

Proposed Rule 21F–2(d)(3) would carry forward existing Rule 21F–2(b)(1)(iii) [169] without substantive change. That provision states that the anti-retaliation protections apply regardless of whether a person satisfies the procedures and conditions to qualify for an award described in Rules 21F–4, 21F–8, and 21F–9 (such as, for example, submitting the information to the Commission using the electronic TCR portal on whe Commission's website or completing the required declaration as to the accuracy of the information submitted in the whislteblower's tip).

Proposed Rule 21F–2(d)(4) would carry forward existing Rule 21F–2(b)(2) [170] without substantive change. That provision states that the retaliation prohibition in Section 21F(h)(1) [171] and the rules thereunder shall be enforceable in an action or proceeding brought by the Commission.

To illustrate how we anticipate proposed Rule 21F–2 would operate in practice, consider the following hypothetical scenario: An employee at a

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[159] 138 S. Ct. at 777 (quoting Section 21F(a)(6), 15 U.S.C. 78u–6(a)(6)).

[160] *Id.* (citing Section 21F(h)(1)(A)(i)–(iii), 15 U.S.C. 78u–6(h)(1)(A)(i)–(iii)).

[161] 15 U.S.C. 78u–6(h)(1)(A).

[162] *See* 138 S. Ct. at 778 (''Somers did not provide information 'to the Commission' before his termination, § 78u–6(a)(6), so he did not qualify as a 'whistleblower' at the time of the alleged retaliation. He is therefore ineligible to seek relief under § 78u–6(h).'').

[163] 17 CFR 240.21F–2(b)(1)(i).

[164] 15 U.S.C. 78u–6(h)(1)(A)(i)–(iii).

[165] We are not proposing to define the term ''lawful act'' under Section 21F(h)(1)(A) or otherwise to offer guidance as to its meaning. We note that the term does appear in a number of federal employment anti-retaliation statutes, but it does not appear that any of these statutes define the term. *See, e.g.,* Marcella Auerbachian and Michael W. Paddock, *Legal Ethics: Lines in the Sand—The Intersection of Bringing and Defending a* Qui Tam *False Claims Act Case,* 20141006 AHLA Seminar Papers 19 (Oct. 6, 2014) (available on Westlaw) (''The FCA does not define 'lawful acts' '').

[166] We are aware of one circuit decision suggesting in dicta, before the *Digital Realty* decision, that anti-retaliation protection under Section 21F(h)(1) should be limited exclusively to reports to the Commission. *See Martensen* v. *Chicago Stock Exch.,* 882 F.3d 744, 746 (7th Cir. 2018). We preliminarily believe that, in this respect, *Martensen* is inconsistent with the Supreme Court's subsequent decision in *Digital Realty. See* 138 S. Ct. at 779 (''With the statutory definition incorporated, clause (iii) protects a whistleblower who reports misconduct *both* to the SEC and to another entity, but suffers retaliation because of the latter, non-SEC, disclosure.'').

[167] *See Digital Realty,* 138 S. Ct. at 780–81.

[168] We preliminarily believe that this clarification helps avoid the incongruous result that a person could qualify just once as a whistleblower and then receive lifetime protection for any non-Commission reports described in clause (iii) with respect to distinct securities law violations that occur years later. Given the Supreme Court's instruction that Congress's core objective was to encourage reports to the Commission, 138 S. Ct. at 777, it makes more sense that such a person needs to return to the Commission to report the later violations in order to receive protection.

[169] 17 CFR 240.21F–2(b)(1)(iii).

[170] 17 CFR 240.21F–2(b)(2).

[171] 15 U.S.C. 78u–6(h)(1).

publicly traded issuer overhears a conversation by colleagues discussing a scheme to create an artificial boost for reported sales. The employee investigates and discovers that sales invoices are being generated without any corresponding movement of inventory, and then reports the possible misconduct to the issuer's chief compliance officer. But a week passes without any action being taken on the report. If the Commission then receives an email from that employee in which the employee reports the same possible misconduct, and in sending the email the employee reasonably believed that the report relates to a possible securities laws violation, then the employee would qualify as a whistleblower under Rule 21F–2(a) and would be eligible for anti-retaliation protections under Rule 21F–2(d)(1)(i)–(ii) as of the time the employee provides the information to the Commission. Assuming that the employee's internal report was within the scope Section 806(a) of Sarbanes-Oxley, that internal report itself would be a protected ''lawful act'' under Rule 21F–2(d)(1)(iii). The fact that the employee made the internal report before the Commission report would not make a difference for anti-retaliation protections under Rule 21F–2(d)(2). That said, if the employee wanted to be eligible for an award under Rule 21F–2(b) and to qualify for confidentiality protections under Rule 21F–2(c), he or she would need to make his or her first report of that information to the Commission using Form TCR or through the online portal at *www.sec.gov,* as required by Rule 21F–9(a), and not through an email to the Commission. To qualify for an award, the employee would additionally need to comply with the procedures and the conditions described in Rules 21F–4, 21F–8, and 21F–9.

Request for Comment

20. Is it reasonable to require that an individual provide information to the Commission ''in writing'' to qualify as a whistleblower? Is this approach either too restrictive or too broad? Are there situations in which only some other form of communication would be possible or preferred? Please explain.

21. Should our whistleblower rules enumerate any other ''manner'' of providing information to the Commission for purposes of anti-retaliation protection? For example, should our rules enumerate testifying under oath in an investigation or judicial or administrative action of the Commission as an additional ''manner'' of providing information to the Commission? [172]

22. Does the proposed rule reasonably require that the lawful acts done by the whistleblower must relate to the subject matter of the whistleblower's submission to the Commission in order for the employment retaliation protections to apply? Should a different standard apply? Why or why not?

23. Does the proposed rule appropriately address the timing of an individual's report to the Commission relative to the protected conduct and to any retaliation?

24. In determining the amount of an award, the Commission considers participation in internal compliance systems. Given the change in anti-retaliation protections, should the Commission still use this criteria in determining the size of whistleblower awards? Why or why not?

25. Would it be necessary or appropriate to specify additional types of misconduct that fall within the prohibition in Section 21F(h)(1)(A) against ''any other manner [of] discriminat[ion] against[ ] a whistleblower''? For example, should our rules clarify that if an employer rejects a prospective employee, or a past employer attempts to cause such rejection, because that individual had engaged in activity protected under Rule 21F–2, this would be a form of retaliation covered by Section 21F(h)(1)(A)? [173]

[172] *See Digital Realty,* 138 S. Ct. at 781 (''Nothing in today's opinion prevents the agency from enumerating additional means of SEC reporting—including through testimony protected by clause (ii)'' of Section 21F(h)(1)(A).).

[173] The Supreme Court has held that a former employer's retaliatory negative reference was actionable under Title VII. *See, e.g., Robinson* v. *Shell Oil Co.,* 519 U.S. 337, 346 (1997). Other federal anti-retaliation statutes have been held to cover such conduct, which is often referred to as ''blacklisting.'' *See* Black's Law Dictionary (10th ed. 2014) (defining ''blacklist'' as ''[t]o put the name of (a person) on a list of those who are disfavored and are therefore to be avoided or punished,'' and giving as an example, ''the firm blacklisted the former employee''). The Department of Labor's regulations implementing Section 806 of the Sarbanes-Oxley Act of 2002 expressly prohibit ''blacklisting'' of an employee, 29 CFR 1980.102(a), and define an ''employee'' as ''an individual presently or formerly working for a covered person, an individual applying to work for a covered person, or an individual whose employment could be affected by a covered person.'' *Id.* § 1980.101(g). In relevant part, Section 806 of the Sarbanes-Oxley Act is similar to Section 21F(h), providing that no covered entity or person may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment, and, under Section 21F(h)(1)(A), that no employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment. Both statutes broadly prohibit ''any . . . manner'' of discrimination in the terms or conditions of employment. *See also Wanamaker* v. *Columbian Rope Co.,* 108 F.3d 462, 466 (2d Cir. 1997) (noting that former employees can state a claim for retaliation under the Age Discrimination in Employment Act for ''blacklist[ing]''); *Boscarello* v. *Audio Video Sys., Inc.,* 784 F. Supp. 2d 577, 582 (E.D. Va. 2011) (former contractor stated a retaliation claim under the Fair Labor Standards Act against former employer by alleging blacklisting).

F. Proposed Amendment to Rule 21F–8 To Add New Paragraph (d) To Provide the Commission With Additional Flexibility Regarding the Forms Used in Connection With the Whistleblower Program (and Corresponding Amendments to Rule 21F–10, Rule 21F–11, and Rule 21F–12) [174]

Currently an applicant seeking to submit information to the Commission in order to qualify as a whistleblower (for purposes of the award and confidentiality components of the whistleblower program) must submit this information by using one of two methods: (1) By providing the information through an online portal on the Commission's website, or (2) by submitting the paper Form TCR that was adopted by the Commission as part of the original whistleblower rulemaking in 2011.[175] Periodically the Commission has determined that it would be beneficial to modify the online portal. However, this has resulted in discrepancies forming over time between the information collected through the online portal and that elicited by Form TCR.

To provide the Commission with the ability to make timely corresponding adjustments to the Form TCR when the Commission determines to modify the online portal, the Commission proposes to modify Exchange Act Rule 21F–8 [176] by adding a new paragraph (d)(1) providing that the Commission will periodically designate on the Commission's web page a Form TCR

[174] The Commission anticipates that proposed Rule 21F–8(d)(1), if adopted, would apply only in connection with submissions of information that are made by an individual after the effective date of the proposed rules. Further, the Commission preliminarily anticipates that proposed Rule 21F–8(d)(2), if adopted, would apply only to covered-action and related-action award applications that are connected to a Notice of Covered Action (*see* Exchange Act Rule 21F–10(a), 17 CFR 240.21F–10(a)) posted on or after effective date of the final rules.

[175] *See* Exchange Act Rule 21F–9(a), 17 CFR 240–21F–9(a). Under the proposed amendments to Exchange Act Rule 21F–2, 17 CFR 240.21F–2, these procedures will remain necessary in order for a whistleblower to be eligible for an award and to obtain the confidentiality protections afforded by Exchange Act Section 21F(h)(2), 15 U.S.C. 78u–6(h)(2), even though an individual's status as a ''whistleblower'' would no longer turn on compliance with these procedures.

[176] 17 CFR 240.21F–8.

(Tip, Complaint, or Referral) that individuals seeking to be eligible for an award through the process identified in § 240.21F–9(a)(2) shall use.

In addition to the paper Form TCR, the Commission also adopted a paper Form WB–APP when it adopted the existing rules for the whistleblower program. Individuals seeking awards must make their award request using Form WB–APP. Like Form TCR, Form WB–APP can only be modified by amending the Code of Federal Regulations. However, we believe that it may be beneficial to provide the Commission with greater administrative flexibility to modify the form. Providing the Commission with the ability to modify the form's informational requirements in a timely fashion should also help promote the program's overall efficiency. Accordingly, the Commission proposes to modify Exchange Act Rule 21F–8 by adding a new paragraph (d)(2) providing the Commission will also periodically designate on the Commission's web page a Form WB–APP for use by individuals seeking to apply for an award in connection with a Commission covered judicial or administrative action (15 U.S.C. 21F(a)(1)), or a related action (§ 240.21F–3(b)(1) of the chapter).

In proposing this additional flexibility, we note that both Form TCR and Form WB–APP elicit information used by the Commission to administer its whistleblower award program and are not public disclosure documents. Moreover, we anticipate that the forms designated on the Commission's website for use in the whistleblower program would be substantially similar to those currently referenced in the Code of Federal Regulations.

In accordance with the changes discussed above, the following corresponding amendments would be made. *First,* the Form TCR [177] that the Commission adopted when it promulgated its whistleblower rules in 2011 would be repealed and the parenthetical Code of Federal Regulation citations to that form in Exchange Act Rule 21F–9(c) [178] and Rule 21F–12(a)(2) [179] would be removed. *Second,* the existing Form WB–APP currently referenced in the Code of Federal Regulations would be repealed and Rule 21F–10,[180] Rule 21F–11,[181] and Rule 21F–12 [182] would be amended by removing the parenthetical references found throughout those rules to the Code of Federal Regulation citation to the current Form WB–APP.

Request for Comment

26. Are there any additional considerations or limitations that the Commission should consider in connection with the proposed rule change? For example, should we provide that any revisions to paper Form TCR or Form WB–APP shall not take effect for a 30-day period after posting on the Commission website?

G. Proposed Amendment to Rule 21F–8 To Add New Paragraph (e) To Clarify and Enhance the Commission's Authority To Address Claimants Who Submit False Information to the Commission or Who Abuse the Award Application Process [183]

In our experience implementing the whistleblower award program to date, a small number of claimants have imposed an undue burden on the award determination process by submitting dozens and in some cases over a hundred award applications that lack any colorable connection between the tip that they provided and the Commission enforcement actions for which they are seeking awards. Processing these frivolous award applications uses staff resources that could otherwise be devoted to potentially meritorious award applications. Beyond the diversion of staff resources, we have found that, by utilizing the procedural opportunities to object to an award, these repeat applicants can significantly delay the processing of meritorious award applications and the eventual payment of awards.

To prevent these repeat submitters from continuing to abuse the award application process to the detriment of potentially meritorious applicants, we believe that it would be appropriate to adopt a rule that would permit the Commission to permanently bar any applicant from seeking an award after the Commission determines that the applicant has abused the process by submitting three frivolous award applications.[184] Specifically, under our proposal, if an applicant submits three or more award applications for Commission actions that the Commission finds to be frivolous or lacking a colorable connection between the tip (or tips) and the Commission action, the Commission may permanently bar the applicant from submitting any additional award applications (either for Commission actions or related actions) and the Commission would not consider any other award applications that the claimant has submitted or may seek to submit in the future.[185]

The proposed rule would expressly provide, however, that the Office of the Whistleblower shall as an initial matter (*i.e.,* before any preliminary determination or preliminary summary disposition would be issued) advise any claimant of the Office's assessment that the claimant's award application for a Commission action is frivolous or lacking a colorable connection between the tip and the action for which the individual has sought an award. If the applicant withdraws the application at that time, it would not be considered by the Commission in determining whether to exercise its authority to impose a bar for three or more frivolous applications or applications lacking a colorable connection between the tip and the Commission action for which the award was sought.

In addition, the proposed rule would codify the Commission's current practice with respect to applicants who violate Rule 21F–8(c)(7).[186] That rule provides that an applicant shall be ineligible for an award if, in the whistleblower's submission, his or her other dealings with the Commission, or his or her dealings with another authority in connection with a related action, he or she knowingly and willfully make any false, fictitious, or fraudulent statement or representation, or use any false writing or document knowing that it contains any false, fictitious, or fraudulent statement or entry with intent to mislead or otherwise hinder the Commission or

[177] 17 CFR 249.1800.

[178] 17 CFR 21F–9(c).

[179] 17 CFR 21F–12(a)(2).

[180] 17 CFR 21F–10.

[181] 17 CFR 21F–11.

[182] 17 CFR 21F–12.

[183] The Commission anticipates these proposed rule changes would apply only to whistleblower submissions that are made after the effective date of the proposed rules.

[184] We are relying on our broad rulemaking authority to propose the amendments in this section. As noted earlier, Section 21F(j) of the Exchange Act, 15 U.S.C. 78u–6(j) grants us ''the authority to issue such rules and regulations as may be necessary or appropriate to implement'' the whistleblower award program. Similarly, Section 23(a)(1) of the Exchange Act, 15 U.S.C. 78w(a)(1), expressly provides the Commission the ''power to make such rules and regulations as may be necessary or appropriate to implement the provisions'' of the Exchange Act, and has long been understood to provide the Commission with broad authority to issue rules and regulations carrying the force of law.

[185] Under the proposed rule, the Commission would *not* consider any applications made for related actions in assessing whether an applicant has submitted three or more award applications that are frivolous or lack any colorable connection between the tip and the enforcement action. The Commission would assess only applications submitted for Commission actions.

[186] 17 CFR 240.21F–8(c)(7).

another authority.[187] The Commission has issued two final orders that have permanently barred the applicants from submitting any further whistleblower award applications based on violations of Rule 21F–8(c)(7). The proposed rule would clarify and codify the Commission's authority to bar applicants by providing that if the Commission finds that a claimant has violated paragraph (c)(7) of Rule 21F–8, the Commission may permanently bar the applicant from making any future award applications, and shall decline to process any other award applications that the claimant has already submitted.

In our view, it is appropriate to assess whether an applicant who engages in egregious behavior vis-à-vis the Commission in violation of Rule 21F–8(c)(7) should be permanently ineligible from obtaining an award. Such egregious conduct can result in the unnecessary and wasteful diversion of staff resources and in extreme cases it may expose investors and the public to potential harm (particularly where the misconduct concerns ongoing Commission law-enforcement actions).[188] Moreover, we believe that this proposed rule could discourage individuals from engaging in the egregious conduct prohibited by Rule 21F–8(c)(7), particularly when they are submitting their award applications, because they should recognize that it may not only lead to a denial of their current award claim but may also permanently disqualify them from obtaining a whistleblower award.

Under the proposed rule, the Commission would consider a permanent bar in the context of processing an award application. We expect that the preliminary determination or preliminary disposition addressing the award application would include a recommendation that the applicant be permanently barred; this should serve to place the applicant on notice that a bar is being considered and afford the applicant an opportunity to advance any arguments in connection with a potential bar before the Commission issues a final order.[189]

Request for Comment

27. Is it appropriate for OWB to advise a claimant of the Office's assessment that the claimant's award application for a Commission action is frivolous, and to offer the claimant the opportunity to withdrawal his or her award application(s), such that the application(s) would not be considered by the Commission in determining whether to impose a bar?

28. Is it appropriate for the Commission to adopt a rule that would permanently bar any applicant after he or she has been found by either the Commission to have submitted at least three frivolous award applications? Should the number of frivolous award applications be fewer or greater before a bar would be imposed?

29. Are there any additional procedures, considerations, or limitations that the Commission should consider in connection with the proposed rule change?

H. Proposed Amendments to Rule 21F–9 To Provide Additional Flexibility and Clarity Regarding Form TCR (and Corresponding Technical Amendments to Rule 21F–10, Rule 21F–11, and Rule 21F–12)[190]

As noted above, Exchange Act Rule 21F–9(a)[191] currently provides that to qualify as a whistleblower an individual may submit information about a possible securities law violation by one of two methods: ''(1) Online, through the Commission's website located at *www.sec.gov,*'' or ''(2) [b]y mailing or faxing a Form TCR (Tip, Complaint or Referral) (17 CFR 249.1800) to the SEC Office of the Whistleblower, 100 F Street NE, Washington, DC 20549–5631, Fax (703) 813–9322.'' We propose to amend this rule to conform to the proposed amendments to Exchange Act Rule 21F–2 and to clarify that online submissions must be made through the Commission's online TCR portal. Similarly, we propose to revise the rule text to provide the Commission additional discretion in designating where paper Form TCRs may be sent and how whistleblowers may submit information to the Commission to qualify for an award or confidentiality protections.

The revised language in Rule 21F–9(a) would provide that to submit information in a manner that satisfies § 240.21F–2(b) and (c) of the chapter, an individual must submit his or her information to the Commission by either of these methods: (1) Online, through the Commission's website located at *www.sec.gov,* using the Commission's electronic TCR portal (Tip, Complaint or Referral); (2) by mailing or faxing a Form TCR to the SEC Office of the Whistleblower at the mailing address or fax number identified on the SEC's web page for making such submissions; or (3) by any other such method that the Commission may expressly designate on its website as a mechanism that satisfies § 240.21F–2(b) and (c).[192] We believe that the clarifications and flexibility afforded by the proposed revisions should help to make the whistleblower program more user-friendly for potential whistleblowers.[193] New paragraph (b)(3) would, among other things, afford the Commission discretion to identify alternative mechanisms for submitting information in instances where, for example, the Commission's on-line portal may be unavailable due to a maintenance or replacement.[194]

We are also proposing to add new paragraph (e) to Exchange Act Rule 21F–9 to clarify that the first time an individual provides information to the Commission that the individual will rely upon as a basis for claiming an award, the individual must provide that

[187] *See* Exchange Act section 21F(i), 15 U.S.C. 78u–6(i).

[188] Importantly, the proposed rule would apply to false, fictitious, or fraudulent representations, statements, or documents beyond those made in connection with an award determination. For example, if the Commission finds that an individual knowingly or willfully made a false representation in testimony to the Commission in one matter, the Commission could bar that individual in connection with a whistleblower award submitted by that individual for an entirely separate matter. In this way, we believe that the proposed rule would provide an important additional incentive for individuals to behave truthfully and honestly with the Commission in all aspects of their dealings with the agency.

[189] We do not intend to foreclose the potential that the Commission could impose such a bar in the context of a formal adjudicatory proceeding to which the individual was a respondent if the Enforcement Division made such a request and the parties litigated it before the Commission.

[190] The Commission anticipates these proposed rule changes, if adopted, would apply only in connection with submissions of information that are made by an individual to qualify as a whistleblower after the effective date of the proposed rules.

[191] 17 CFR 240.21F–9(a).

[192] For purposes of the Exchange Act Rule 21F–12(a)(2), which provides that a ''whistleblower's Form TCR'' may be included within the administrative record upon which the Commission relies in considering a whistleblower award application, the reference to Form TCR in this rule refers to both the online submission made through the Commission's electronic TCR portal and the paper Form TCR.

[193] The changes that we are proposing to Exchange Act Rule 21F–2, 17 CFR 240.21F–2—specifically the unified definition of ''whistleblower'' that would apply in the award, employment anti-retaliation, and confidentiality contexts—as well as the amendments that we are proposing to Exchange Act Rule 9(a), 17 CFR 240.21F–9(a), would render inapplicable on a going-forward basis the formal interpretation that the Commission issued in 2015 regarding the meaning of Exchange Act Rule 21F–9. *See* 80 FR 47829, 47830/1, 2015 WL 4710732 (Aug. 10, 2015) (''Rule 21F–9(a) . . . specif[ies] the reporting procedures that must be followed by an individual who seeks to qualify as a whistleblower under Rule 21F–2(a). . . .'').

[194] We are making a conforming amendment to Exchange Act Rule 21F–9(b), 17 CFR 240–21F–9(b), to make clear that if a whistleblower provides information pursuant to a method permited by proposed section 9(b)(3), the whistleblower must also complete the declaration required by Exchange Act Rule 21F–9(b).

information in accordance with the procedures specified in Rules 21F–9(a) and (b). If an individual fails to do so, the individual will—subject to the limited exception discussed below—be barred from subsequently resubmitting the same information to the Commission in accordance with Rules 21F–9(a) and (b) and seeking to obtain an award based on that information, even if the individual has previously qualified as a whistleblower under the proposed amendment to Rule 21F–2(a) by submitting the information in some other written form.[195] To date, this has been the approach that the Commission has followed in making award determinations.[196] We believe that the proposed rule language would provide additional clarity to potential whistleblowers to further alert them to the importance of following the procedures specified in Rules 21F–9(a) and (b).[197] In proposing this amendment, we observe that compliance with the procedures in Rules 21F–9(a) and (b) advances many programmatic purposes. These include allowing the Commission to promptly determine whether an individual who submits information is subject to heightened whistleblower confidentiality protections; helping the staff efficiently process the information and other documentation provided by the individual and assess its potential credibility; and assisting the Commission in eventually evaluating the individual's potential entitlement to an award.

Proposed paragraph (e) would also incorporate a limited exception that would permit the Commission, in its sole discretion, to make an award to a whistleblower who failed to comply with the procedural requirements of Rules 21F–9(a) and (b) when the individual first provided information to the Commission. The limited exception permitted by paragraph (e) would provide that notwithstanding the foregoing, the Commission, in its sole discretion, may waive an individual's non-compliance with paragraphs (a) and (b) of Rule 21F–9 if the Commission determines that the administrative record clearly and convincingly demonstrates that the individual would otherwise qualify for an award and the individual demonstrates that he or she complied with the requirements of paragraphs (a) and (b) within 30 days of the first communication with the staff about the information that the individual provided.[198] There may be some situations where an individual will have provided information to the Commission about a potential securities law violation but may have failed to perfect his or her submission in accordance with the procedures required to be a whistleblower eligible for an award. For example, an individual may learn about a potential securities law violation that is about to occur and may telephonically inform the staff in an effort to permit the Commission to take action before the violation occurs. Similarly, the Office of the Whistleblower periodically receives letters from individuals seeking to report securities law violations and the Office will generally provide deficiency notices to these individuals to the extent that it appears that these individuals want to become whistleblowers eligible for an award.[199] We believe that, to the extent that the information that any such individual might provide could be the basis for the Commission bringing a successful enforcement action, the Commission should have within its discretion the ability to make an award provided that the individual complies with Rules 21F–9(a) and (b) within 30 days of receiving a deficiency letter (or having any other communication with the staff concerning the information that the individual provided).[200]

Request for Comment

30. Does proposed Rule 21F–9(a) provide additional clarity and flexibility that may help make the submission of information by potential whistleblowers more user-friendly? Are there any additional factors that the Commission should assess in connection with the proposed rule amendments?

31. Please comment on the limited exception provided for in proposed Rule 9(e) appropriate. Should the exception be adopted? If so, should it be narrowed or broadened? Should the 30-day time period be extended or reduced?

[195] To illustrate the intersection of proposed amended Rule 21F–2(a) and proposed Rule 21F–9(e): An individual who provides the Commission with information about a possible violation of the federal securities laws in writing will qualify as a whistleblower and obtain the retaliation protections provided under Section 21F(h)(1) of the Exchange Act, 15 U.S.C. 78u–6(h)(1). However, to be eligible for an award as to that information, the individual must make the initial submission of that information in accordance with the procedures set forth in Rules 21F–9(a) and (b); *i.e.,* the individual must submit the information on Form TCR or through the Commission's online TCR portal and must execute the required declaration. The individual may remain award-eligible for any new information that is submitted in accordance with the Rule 21F–9 procedures, but not for the information that was previously submitted without following those procedures.

[196] In a few instances, the Commission has allowed individuals to perfect a defective submission provided that the individual did so promptly and before any significant investigative steps had occurred with respect to the submission. Any opportunity to perfect a defective submission would, under the proposed rule, be governed by the limited exception provided therein (which is generally consistent with the opportunities the Commission has to date provided in allowing individuals to perfect their submissions).

[197] If the proposed amendments in this release are adopted, Exchange Act 21F–9(a) would be revised to provide that to submit information in a manner that satisfies § 240.21F–2(b) and (c) of the chapter an individual must submit his or her information to the Commission by any of these methods: (1) Online, through the Commission's website located at *www.sec.gov,* using the Commission's electronic TCR portal (Tip, Complaint or Referral); (2) Mailing or faxing a Form TCR to the SEC Office of the Whistleblower at the mailing address or fax number designated on the SEC's web page for making such submissions; or (3) By any other such method that the Commission may expressly designate on its website as a mechanism that satisfies § 240.21F–2(b) and (c). Based on the proposed modifications to Exchange Act Rule 21F–9(b), it would provide that, further, to be eligible for an award, the individual must declare under penalty of perjury at the time he or she submits the information pursuant to paragraph (a)(1), (2), or (3) of the section that the information is true and correct to the best of his or her knowledge and belief.

[198] By requiring that the Commission must find that the administrative record ''clearly and convincingly'' demonstrates that the individual would (but for the untimely compliance with the requirements of Exchange Act Rules 21F–9(a) and (b)) qualify for an award, we mean to make this discretionary mechanism available only in those cases where there can be no serious doubt about the individual's contribution to the successful action and the individual's compliance with the award criteria and eligibility conditions. Otherwise, in determining whether to employ its discretion, the Commission would have to potentially expend considerable staff time and effort carefully developing an administrative record and analyzing whether the applicant would have been a meritorious whistleblower, and only then turn to decide whether to exercise its discretion to waive what is otherwise a threshold procedural requirement.

[199] Individuals do not have an entitlement to a deficiency letter and their failure to receive one will not be deemed a basis to excuse their failure to comply with the terms of Exchange Act Rule 21F–2. It is each individual's own responsibility to comply with the requirements of the Commission's rules with respect to submitting information to qualify for an award.

[200] We believe that using a 30-day time period is sufficient here. We note that in connection with judicial proceedings 30-day filing deadlines are not uncommon—indeed, Congress itself provided only a 30-day window for unsuccessful whistleblowers to challenge a Commission final order denying their award application, *see* Exchange Act section 21F(f), 15 U.S.C. 78u–6(f)—and that our proposed Rule 21F–18, discussed *infra,* affords a 30-day time period for applicants to respond to preliminary summary dispositions that would be issued under that proposed rule.

I. Proposed Amendment to Rule 21F–12 Regarding the Materials That May Form the Basis of the Commission's Award Determination [201]

Rule 21F–12 [202] lists the materials that the Commission and the Claims Review Staff (''CRS'') may rely upon to make a whistleblower award determination. We are proposing to make two clarifying amendments to that rule.

First, Rule 21F–12(a)(3) [203] currently permits the Commission and the CRS to rely upon the whistleblower's Form WB–APP, including attachments, and ''any other filings or submissions from the whistleblower in support of the award application.'' Based on this provision's silence as to the timeliness of such ''other filings or submissions,'' some whistleblower award claimants have submitted hundreds of pages of supplemental information on an ongoing basis even after expiration of the respective time periods for responding to a Notice of Covered Action or a Preliminary Determination, resulting in significant administrative burdens on the Office of the Whistleblower and potential delays to the whistleblower claims process. We believe that expressly excluding untimely supplemental submissions from consideration by the Commission and the CRS would incentivize applicants to make thorough submissions in the first instance when responding to the Notice of Covered Action and the CRS's Preliminary Determination (or a Preliminary Summary Disposition issued by the Office of the Whistleblower under Proposed Rule 21F–18, discussed *infra*), which should reduce these administrative burdens and the potential for delays to the claims process.

Accordingly, we propose amending Rule 21F–12(a)(3) to clarify that the Commission and the CRS (and the Office of the Whistleblower when processing a claim pursuant to proposed Rule 21F–18) may rely upon materials *timely* submitted by the whistleblower in response either to the Notice of Covered Action, to a request from the Office of the Whistleblower or the Commission, or to the Preliminary Determination. The deadline for filing a claim for a whistleblower award is ninety (90) days after the relevant Notice of Covered Action under Rule 21F–10(a) & (b) [204] and Rule 21F–11(a) & (b).[205] Consistent with Rule 21F–8(b),[206] the Commission may specify a deadline when it requests additional information from the whistleblower in support of an award application. The time frame for responding to the Preliminary Determination is expressly established by Rule 21F–10(e) [207] and Rule 21F–11(e).[208] Under our proposal, materials submitted outside those respective time frames would not be considered absent extraordinary circumstances excusing the delay.[209]

Second, we propose amending Rule 21F–12(a)(6),[210] which currently provides in pertinent part that the Commission and the Claims Review Staff in making an award determination may consider any ''documents or materials including sworn declarations from third-parties that are received or obtained by the Office of the Whistleblower to assist the Commission resolve the claimant's award application, including information related to the claimant's eligibility.'' We propose to modify this provision to clarify that it applies only to materials submitted by third parties, because some claimants have misinterpreted it as also encompassing materials submitted by the claimants themselves. Moreover, in light of the modification that we are proposing to Rule 21F–12(a)(3) to require that a claimant make a ''timely'' submission in response to a Preliminary Determination, we believe that it is important to clarify that Rule 21F–12(a)(6) does not apply to information provided by whistleblowers.

Request for Comment

32. Does the proposed amendment as to timeliness provide an appropriate safeguard against abusive supplemental filings by whistleblower award claimants?

33. Do the proposed amendments provide sufficient clarity? Is there alternative language that might provide greater clarity about the materials that the Commission and the CRS may rely upon in making an award determination?

J. Proposed Amendment to Rule 21F–13 Regarding the Administrative Record on Appeal [211]

Rule 21F–13 [212] describes the availability of judicial review and the record on appeal of a whistleblower award determination by the Commission. Rule 21F–13(b) provides that the record on appeal will consist of the Preliminary Determination (or a Preliminary Summary Disposition issued under proposed Rule 21F–18, discussed *infra*), the Final Order of the Commission, ''and any other items from those set forth in Rule 21F–12(a) of this chapter that either the claimant or the Commission identifies for inclusion in the record.'' [213] That provision thus ensures that the record on appeal will include the materials described in Rule 21F–12(a) that were the basis for the Commission's award determination.

Some claimants have interpreted Rule 21F–13(b) as permitting them to designate materials for inclusion in the record on appeal that technically meet the descriptions in Rule 21F–12(a) but that were never actually before the Commission in issuing the Final Order. However, that interpretation creates significant tension with the basic principle of administrative law that, on appeal, ''the court's review is limited to the administrative record before the agency at the time of its decision.'' [214] That interpretation also would inappropriately expand the record on appeal beyond the limits in Rule 16 of the Federal Rules of Appellate Procedure.[215]

As amended, Rule 21F–13(b) would eliminate the designation of items for inclusion in the record on appeal and instead would define the record on appeal in a manner that conforms more closely to Rule 16 of the Federal Rules of Appellate Procedure. Materials designated or submitted by a whistleblower for the first time after the Commission issues its Final Order

[201] The Commission anticipates this proposed rule change, if adopted, would apply only to covered-action and related-action award applications that are connected to a Notice of Covered Action (*see* Exchange Act Rule 21F–10(a), 17 CFR 240.21F–10(a)) posted on or after effective date of the final rules.

[202] 17 CFR 240.21F–12.

[203] 17 CFR 240.21F–12(a)(3).

[204] 17 CFR 240.21F–10(a) & (b).

[205] 17 CFR 240.21F–11(a) & (b).

[206] 17 CFR 240.21F–8(b).

[207] 17 CFR 240.21F–10(e).

[208] 17 CFR 240.21F–11(e).

[209] *See* Exchange Act Rule 21F–8(a), 17 CFR 240.21F–8(a).

[210] 17 CFR 240.21F–12(a)(6).

[211] The Commission anticipates this proposed rule change, if adopted, would apply only to covered-action and related action award applications that are connected to a Notice of Covered Action (*see* Exchange Act Rule 21F–10(a), 17 CFR 240.21F–10(a)) posted on or after effective date of the final rules.

[212] 17 CFR 240.21F–13.

[213] 17 CFR 240.21F–13(b).

[214] *EarthReports, Inc.* v. *FERC,* 828 F.3d 949, 959 (D.C. Cir. 2016).

[215] Rule 16(a) states,

The record on review or enforcement of an agency order consists of:

(1) The order involved;

(2) any findings or report *on which it is based;* and

(3) the pleadings, evidence, and other parts of the proceedings *before the agency.*

Fed. R. App. P. 16(a)(1)–(3) (emphases added).

would not be deemed part of the administrative record.

Under amended Rule 21F–13(b), the record on appeal therefore would include the Final Order of the Commission, any materials that were considered by the Commission in issuing the Final Order, and any materials that were part of the claims process leading from the Notice of Covered Action to the Final Order. In the interest of clarity, Rule 21F–13(b) would specify that this includes, but is not limited to, the materials that are part of the claims process described in Rules 21F–10 and 21F–11 and proposed Rule 21F–18: The Notice of Covered Action, whistleblower award applications filed by the claimant, the Preliminary Determination (or Preliminary Summary Disposition), materials that were considered by the Claims Review Staff in issuing the Preliminary Determination (or by the Office of the Whistleblower in issuing a Preliminary Summary Disposition), and materials that were timely submitted by the claimant in response to the Preliminary Determination (or the Preliminary Summary Disposition). Additional materials not specifically listed in the parenthetical in proposed Rule 21F–13(b) might become part of the claims process and therefore part of the record if, for example, the Office of the Whistleblower obtains materials from a third party and provides them to the Commission for its consideration in resolving a whistleblower award application. *See* Rule 21F–12(a)(6).

In addition, we are proposing to amend the second sentence of Rule 21F–13(b) to clarify that the record on appeal would not include any pre-decisional or internal deliberative process materials that are prepared exclusively to assist *either* the Commission *or* the CRS. That provision currently references only the Commission. This change would clarify the Commission's current practice in order to give greater clarity to claimants pursuing appeals.

We also propose adding a third sentence to Rule 21F–13(b) providing that, when more than one claimant applies for an award under a single Notice of Covered Action, the Commission may exclude from the record on appeal any materials that exclusively concern any claimant other than the claimant who brought the appeal, as necessary to comply with the confidentiality protections in Section 21F(h)(2)(A) of the Exchange Act.[216] This sentence would codify the Commission's current practice in order to give greater clarity to claimants pursuing appeals.

Request for Comment

34. We seek comments about whether the proposed language sufficiently conforms to Rule 16 of the Federal Rules of Appellate Procedure and whether alternative language would provide greater conformity or clarity.

K. Proposed Rule 21F–18 Establishing a Summary Disposition Process[217]

Over the course of the years that the Commission has implemented the whistleblower award program, it has become apparent to us that a significant number of award applications may be denied on relatively straightforward grounds because they do not implicate novel or important legal or policy questions. These grounds for denial include, among other things, the fact that the individual did not comply with the form-and-manner requirements as specified in Rule 21F–9 for submitting information to be eligible for an award, or that the information was not used by the staff responsible for investigating, preparing and litigating the covered action and thus the individual's information did not ''lead to'' the success of the covered action.

In an effort to provide a more timely resolution of relatively straightforward denials, we are proposing a summary disposition process. This process would be in lieu of the claims adjudication processes that are specified in Rule 21F–10 and Rule 21F–11.[218] The principal difference between the proposed summary disposition process and the existing processes specified in Rule 21F–10 and 21F–11 is that for a claim designated for summary disposition the CRS would not be involved in reviewing the record, issuing a Preliminary Determination, considering any written response filed by the claimant, or issuing the Proposed Final Determination; these functions would be assumed by the Office of the Whistleblower in an effort to streamline the Commission's consideration of denials that are relatively straightforward.

The proposed summary disposition process incorporates two other modifications that should help expedite the processing of denials. *First,* the 30-day period for replying to a Preliminary Summary Disposition would be shorter than the 60-day period for replying to a Preliminary Determination provided for by Rule 21F–10(e)(2)[219] and 21F–11(e)(2).[220] We believe that this shorter period should be sufficient for a claimant to reply and that it is appropriate given that the matters subject to summary disposition should be relatively straightforward. *Second,* under the proposed summary disposition process, a claimant would not have the opportunity to receive the full administrative record upon which a Preliminary Denial would have been based. Instead, the Office of the Whistleblower would (to the extent appropriate given the nature of the denial) provide the claimant with a staff declaration that contains the pertinent facts upon which the Preliminary Summary Disposition is based. Given the relatively straightforward nature of the matters that would generally be eligible for summary disposition, we believe that this modification from the record-review process specified in Rules 21F–10 and 21F–11 should still afford any claimant a sufficient opportunity to provide a meaningful reply to a Preliminary Summary Denial. This should eliminate the delay that can arise when a claimant does not expeditiously request the record, thereby helping to further expedite the summary adjudication process.

The proposed summary disposition process would be available for any non-meritorious award application that falls within any of the following five categories: (1) Untimely award application;[221] (2) noncompliance with the requirements of Rule 21F–9,[222] which concerns the manner for submitting a tip to be eligible for an

[216] 15 U.S.C. 78u–6(h)(2)(A).

[217] The Commission anticipates that proposed Rule 21F–18, if adopted, would apply to any whistleblower award application for which the Commission has not yet issued a Preliminary Determination as of the effective date of the proposed rules, as well as to any future award applications that might be filed.

[218] 17 CFR 240.21F–10; 17 CFR 240.21F–11.

[219] 17 CFR 240.21F–10(e)(2) (providing that if an individual decides to contest the Preliminary Determination, he or she must submit his or her written response and supporting materials within sixty (60) calendar days of the date of the Preliminary Determination, or if a request to review materials is made pursuant to paragraph (e)(1) of the section, then within sixty (60) calendar days of the Office of the Whistleblower making those materials available for your review.).

[220] 17 CFR 240.21F–11(e)(2). We believe that 30-day response period is sufficient and have considered the fact that judicial proceedings often rely on this same time period for filing responsive materials. *See, e.g.,* Fed. R. of App. P. 31(a)(1) (establishing a default 30-day time period for an appellee or respondent to file a response brief to the appellant or petitioner's opening brief). *See also* Rule 450(a) of the SEC's Rules of Practice (providing that in adjudicatory proceedings pending before the Commission ''[o]pposition briefs shall be filed within 30 days after the date opening briefs are due'').

[221] The time periods for submitting an award application are specified in Rule 21F–10(b) and Rule 21F–11(b). *See* 17 CFR 240.21F–10(b) & 240.21F–11(b).

[222] 17 CFR 240.21F–9.

award; (3) claimant's information was never provided to or used by the staff handling the covered action or the underlying investigation (or examination), and those staff members otherwise had no contact with the claimant; (4) noncompliance with Rule 21F–8(b),[223] which requires an applicant to submit supplemental information that the Commission may require [224] and to enter into a confidentiality agreement; and (5) failure to specify in the award application the submission that the claimant made pursuant to Rule 21F–9(a) [225] upon which the claim to an award is based. In addition, the proposed rule would provide that other defective or non-meritorious award applications could be subject to the summary disposition process under appropriate circumstances.

Under the proposed summary disposition process, the Office of the Whistleblower would issue a Preliminary Summary Disposition denying an application. This Preliminary Summary Disposition would be in lieu of the Preliminary Determination that the Claims Review Staff would issue under Rule 21F–10 or Rule 21F–11. A claimant would then have a 30-day period to reply with a written response explaining the grounds for contesting the denial. Failure to file a timely written response would constitute a failure to exhaust the administrative process and the Preliminary Summary Disposition would automatically become the final order with respect to that applicant's award claim. If an applicant does file a timely response, the Office of the Whistleblower would consider the full record, including the applicant's response (and any materials the applicant timely submitted therewith), and prepare a Proposed Final Summary Disposition to be provided to the Commission.[226] Similar to the procedure under Rule 21F–10 and 21F–11, the Commission would have thirty (30) days to consider the Proposed Final Summary Disposition; if no Commissioner requests that the full Commission consider the Proposed Final Summary Disposition within the 30-day period, it would become the final order of the Commission. If a Commissioner does request full Commission consideration, the Commission would consider the matter and issue a final order. The Office of the Whistleblower would then notify the claimant of the final order.

If the Commission has received more than one award application for a particular matter, the Office of the Whistleblower could use the summary disposition process for any of those award applications that qualify, even if other of the applications are subjected to the regular consideration processes specified in Rules 21F–10 and 21F–11. Even in the multiple whistleblower context, we believe that there could be efficiencies in summarily considering and disposing of applications that constitute reasonably straightforward denials. For example, this could free up staff resources to concentrate on the meritorious claims or the more difficult determinations. Relatedly, to the extent that a claim is denied under the summary disposition process while other claims may remain pending under the Rule 21F–10 or Rule 21F–11 process, this should allow the summarily denied claimant an earlier ability to exhaust his opportunities for judicial review.[227] This, in turn, may potentially permit the Commission to more promptly pay any meritorious whistleblower on any award that may eventually result from the final order issued under the Rule 21F–10 or Rule 21F–11 process.[228]

Finally, the proposed rule would clarify that Rule 21F–12,[229] which governs the items that may be considered when the Commission entertains an award application under Rule 21F–10 or Rule 21F–11, applies in the context of summary dispositions. Specifically, the proposed rule would state that ''[i]n considering an award determination pursuant to this rule, the Office of the Whistleblower and the Commission may rely upon the items specified in [Rule 21F–12(a)]. Further, [Rule 21F–12(b)] applies to summary dispositions.''

Request for Comment

35. We seek comments about the proposed summary disposition process, including whether the categories of award applications that would be eligible for summary disposition are appropriate, whether the proposal would afford claimants sufficient process, and whether there are any specific modifications that we should consider making to the proposed process.

L. Technical Amendment to Rule 21F–4(c)(2) [230]

We propose to amend Rule 21F–4(c)(2) [231] concerning the definition of information that led to a successful enforcement action because it contains an erroneous cross-reference. The reference is intended to be to Rule 21F–4(b)(5) regarding the definition of original source. The rule currently refers to paragraph (b)(4) of the section.

III. Proposed Interpretive Guidance Regarding the Meaning and Application of ''independent analysis'' as Defined in Exchange Act Rule 21F–4(b)(3) [232]

Two core requirements of the whistleblower award program are: (1) That the whistleblower must have provided ''original information'' to the Commission; and (2) that such information must have ''led to'' the successful enforcement of an action. Congress defined ''original information'' in relevant part as information that is derived from *either* a whistleblower's ''independent knowledge'' *or* the whistleblower's independent ''analysis.'' This guidance addresses the potential availability of a whistleblower award in cases where information provided by a whistleblower is not based on the whistleblower's

[223] 17 CFR 240.21F–8(b).

[224] The authority to require additional information of an applicant is delegated to the Office of the Whistleblower. *See* 17 CFR 240.21F–10(d).

[225] 17 CFR 240.21F–9(a).

[226] Although the CRS has to date approved all proposed final orders involving a challenge to a preliminary determination, we do not believe the absence of the CRS's role at the comparable stage of the proposed summary disposition process should have a meaningful impact given the relatively straight-forward nature of the claims that would be processed under the proposed rule. Further, as a matter of agency internal procedure, all proposed final orders are reviewed by the Office of the General Counsel and we anticipate that this review would occur in connection with all Proposed Summary Dispositions issued under this proposed rule, further reducing any potential negative impact from the elimination of the CRS's role.

[227] We note that, the Commission has consistently interpreted Rules 10 and 11 to require that all claims processed under those rules should be addressed in one omnibus final order. The summary disposition process that we are proposing would, we believe, permit a more expeditious adjudication of any relatively straightforward denials that might otherwise have been folded into a final order under Rule 10 or 11.

[228] Pursuant to Rule 21F–14(c)(2), 17 CFR 240.21F–14(c)(2), the Commission cannot pay an award to any meritorious whistleblower in a particular matter until the completion of the appeals process for all whistleblower award claims has been exhausted.

[229] 17 CFR 240.21F–12.

[230] The Commission anticipates this proposed rule change, if adopted, would apply to all new whistleblower award applications filed after the effective date of the amended final rules, as well as all whistleblower award applications that are pending and have not yet been the subject of a final order of the Commission by the effective date.

[231] 17 CFR 240.21F–4(c)(2).

[232] 17 CFR 240.21F–4(b)(3). Although we are proposing this interpretive guidance for public comment, the Commission may determine to rely on the principles articulated therein for any whistleblower claims that are currently pending because we believe that this guidance clarifies the existing rules that define and apply the term ''independent analysis.''

''independent knowledge'' but, instead, is premised on information derived from the whistleblower's ''independent analysis'' of publicly available information. Such cases implicate both the scope of the independent analysis prong of the ''original information'' requirement and what is necessary for independent analysis to ''lead to'' the successful enforcement of an action.

In formulating our views on how a whistleblower may satisfy the requirement of ''original information'' through the alternative of ''independent analysis,'' we have considered Congress's and the Commission's determinations to substantially restrict any role for publicly available information in potential whistleblower awards. When the Commission in 2011 adopted the rules implementing the whistleblower program, it explained that paying awards for publicly available information was not consistent with Congress's purpose in establishing the program. Specifically, the Commission stated that ''Congress primarily intended our program 'to motivate those with inside knowledge to come forward and assist the Government to identify and prosecute persons who have violated the securities laws[.]' '' [233] The Commission further acknowledged that Congress sought to make awards available in cases where ''highly-probative, expert analysis of data . . . suggest[s] an important new avenue of inquiry, or otherwise materially advance[s] an existing investigation.'' [234] But critically, the Commission made clear that, in its view, Congress did not intend to base awards ''on information that is available to the general public.'' [235]

Independent Analysis Standard. Consistent with these understandings of congressional intent and consistent with the Commission's views when it adopted the definition of ''original information'' in the original whistleblower rulemaking, we are proposing the following standard: In order to qualify as ''independent analysis,'' a whistleblower's submission must provide evaluation, assessment, or insight beyond what would be reasonably apparent to the Commission from publicly available information. In assessing whether this requirement is met, the Commission would determine based on its own review of the relevant facts during the award adjudication process whether the violations could have been inferred from the facts available in public sources. While we recognize that this standard does not constitute a bright line, we believe that it should provide a solid foundation for the Commission to apply when assessing awards involving potential independent analysis.

The Independent Analysis Must ''Lead to'' the Success of the Enforcement Action. Even when this standard is met, however, a whistleblower's independent analysis must still have ''led to'' a successful covered enforcement action. This standard requires an assessment of whether the whistleblower's analysis—as distinct from the publicly available information on which the analysis was based—either (1) was a principal motivating factor in the staff's decision to open its investigation, or (2) made a substantial and important contribution to the success of an existing investigation.

In the sections that follow, we explain the relevant background and reasoning for the standards that we have set forth above.

A. Background: ''Original Information'' and Publicly Available Information

In formulating this guidance, we have considered the *qui tam* provisions of the False Claims Act,[236] the federal government's principal bounty statute and an important forerunner of the Commission's whistleblower award authority.[237] The False Claims Act requires that *qui tam* relators must provide their own, independent information—and not publicly available information—in order to avoid the so-called ''public disclosure bar.'' [238] Specifically, in its present form (and excluding one exception that is not relevant here [239]), the public disclosure bar requires a court to dismiss a *qui tam* action ''if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed'' in certain designated sources.[240]

In Section 21F, Congress similarly limited awards to ''original information''—defining the term to require a whistleblower's own, independent information rather than publicly available information.[241] While not taking precisely the same approach as in the False Claims Act, Congress nonetheless required that ''original information'' for purposes of the Commission's award program must not be exclusively derived from the news media or certain other public sources.[242] Further, Congress affirmatively required that ''original information'' be derived from a whistleblower's ''independent knowledge or analysis.'' [243] The Senate report issued in connection with Dodd-

[233] 76 FR 34300, 34311/3.

[234] *Id.* at 34312/3.

[235] *Id.* at 34311/3. We note that although publicly available information may not serve as the basis for an award, the provision of such information to the Commission can be an important public service.

[236] 31 U.S.C. 3730.

[237] *See Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934,* Release No. 34–63237, 75 FR 70488, 70491 n.14 (Nov. 3, 2010) (noting that cases interpreting the *qui tam* provisions of the False Claims Act can provide helpful guidance in the interpretation of Section 21F, though not necessarily controlling or authoritative in all circumstances).

[238] *See Graham County Soil and Water Conservation Dist.* v. *United States ex rel. Wilson,* 559 U.S. 280, 294 (2010) (explaining that, through the public disclosure bar, Congress sought ''the golden mean between adequate incentives for whistle-blowing insiders with genuinely valuable information and discouragement of opportunistic plaintiffs who have no significant information to contribute of their own'') (*quoting, United States ex rel. Springfield Terminal Railway* v. *Quinn,* 14 F.3d 645, 649 (D.C. Cir. 1994)).

[239] 31 U.S.C. 3730(4)(A).

[240] Not all public sources of information implicate the public disclosure bar. The sources specified in the statute are a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party; a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or the news media. There is a limited exception for situations where the *qui tam* relator was an original source of the information. 31 U.S.C. 3730(e)(4)(A).

[241] Although the term ''original information'' does not appear in the False Claims Act, courts have used the term to differentiate a *qui tam* relator's own, independent information upon which an award may be based from information that is available in the designated public sources. *See, e.g., United States ex rel. Colquitt* v. *Abbott Labs,* 858 F.3d 365, 374–75 (5th Cir. 2017); *United States* v. *Walker,* 438 F. A'ppx 885, 888 (11th Cir. 2011); *United States ex rel. JDJ and Associates LLP* v. *Natixis,* 2017 U.S. Dist. Lexis 164106, *33 (S.D.N.Y. 2017). In *United States ex rel. Marcus* v. *Hess,* 317 U.S. 537 (1943), a seminal False Claims Act case that prompted Congress to enact a forerunner of the public disclosure bar, the Court permitted a *qui tam* suit to proceed where the same defendants had been criminally indicted for the same conduct alleged in the *qui tam* action. In dissent, Justice Jackson termed it a ''misuse of the statute'' to permit an action where the averments in the complaint substantially copied the indictment and it was not shown that the petitioner ''had any original information, that he added anything by investigations of his own, ...'' 317 U.S. at 558 (Jackson, J., dissenting). ''Original information'' as a term to describe information upon which an award may be based has been a part of various federal bounty statutes for more than 100 years. *See, e.g., United States* v. *Simons,* 7 F. 709 (E.D. Mich. 1881) (discussing statute that permitted awards for ''original information concerning any fraud upon the customs revenue'').

[242] 15 U.S.C. 78u–6(a)(3)(C). These other sources are allegations made in a judicial or administrative hearing, or in a governmental report, hearing, audit, or investigation (unless the whistleblower is a source of the information). Further, we note that both the False Claims Act and the Internal Revenue Service whistleblower statute permit discretionary awards of up to 10% in the event that the government proceeds with a case based principally on public disclosures. *See* 31 U.S.C. 3730(d)(1); 26 U.S.C. 7623(b)(2)(A). Congress did not include any similar discretionary award authority in Section 21F.

[243] 15 U.S.C. 78u–6(a)(3)(A).

Frank, which enacted Section 21F,[244] explained Congress's expectation that in order to obtain an award a whistleblower would be required to provide the ''critical components'' of information that supported an enforcement action beyond any information about the matter that was publicly available.[245]

In promulgating rules to implement the whistleblower program, the Commission further restricted any role for publicly available information in a potential whistleblower award. While Congress had defined ''original information'' as that which is derived from a whistleblower's ''independent knowledge'' or ''independent analysis,'' Congress did not define either of these terms. The Commission's definitional rules, however, effectively preclude awards merely for the submission of publicly available information.

First, the Commission excluded publicly available information as a source of a whistleblower's ''independent knowledge,'' which the Commission defined as ''factual information in [the whistleblower's possession] that *is not* derived from publicly available sources.'' [246] At the adopting stage for the whistleblower rules, the Commission considered comments that were critical of this blanket exclusion and that recommended some allowance for particular kinds of public information.[247] The Commission rejected such an approach and chose to adopt the broad exclusion of *any* publicly available information that had been proposed.[248] Moreover, the Commission interpreted ''publicly available sources'' expansively to include not only sources that are widely disseminated (such as corporate press releases and filings, media reports, and information on the internet), but also sources that, though not widely disseminated, are generally available to the public (such as court filings and documents obtained through Freedom of Information Act requests).[249]

Second, in defining the term ''independent analysis,'' the Commission permitted a whistleblower to employ publicly available information, but required that the whistleblower produce insights that are non-public, providing that *independent analysis* means an individual's own analysis, whether done alone or in combination with others and *analysis* means an individual's examination and evaluation of information that may be publicly available, but which reveals information that is not generally known or available to the public.[250]

Significantly, the Commission considered—and rejected—a suggestion that the proposed definition of ''independent analysis'' be revised to permit an award to a whistleblower whose tip brings publicly available information to the staff's attention:

> We believe that ''independent analysis'' requires that the whistleblower do more than merely point the staff to disparate publicly available information that the whistleblower has assembled, whether or not the staff was previously ''aware of'' the information. ''Independent analysis'' requires that the whistleblower bring to the public information some additional evaluation, assessment, or insight.[251]

In setting forth the standard for ''independent analysis'' in this guidance, we are particularly mindful that the appropriate standard should be sufficiently demanding that it would not undermine the clear exclusion of public information from the definition of ''independent knowledge.'' Any other approach would, in our view, undermine the overall framework that was established by the Commission in 2011 when it adopted the definitions of ''independent knowledge'' and ''independent analysis.''

B. ''Independent Analysis''

As noted, the Commission defined ''analysis'' as the whistleblower's ''examination and evaluation of information that may be publicly available, but which reveals information that is not generally known or available to the public.'' [252] Thus, if a whistleblower submits publicly available information in a TCR and alleges a fraud or other securities violations on the basis of that information, the Commission must determine whether the whistleblower's ''examination and evaluation'' of the publicly available information ''reveal[ed]'' the possible violations.

To ''reveal'' means to make something known that was previously secret or hidden, or to open something up to view.[253] Accordingly, to be considered ''analysis,'' the whistleblower's submission must include some insight—beyond the existence of the publicly available information—that is revelatory; that is, the whistleblower's evaluation of the publicly available information should do the work of making known and opening up to view for the Commission the possible securities violations.

As a principal illustration of how to apply our rule on ''independent analysis,'' we look to the model that Congress had before it at the time it enacted the whistleblower program; the work of Harry Markopolos in his efforts to expose Bernard Madoff's Ponzi scheme.[254] Among other things, Markopolos brought to bear his expertise as a certified fraud examiner and his knowledge of the options markets to demonstrate that Madoff's purported investment strategy could not have produced his claimed investment returns.[255] For example, in a 2000 submission, beginning from the premise that Madoff purported to manage between $3 billion and $7 billion in assets pursuant to his ''split-strike conversion'' strategy, Markopolos explained that the strategy as described

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[244] Public Law 111–203, section 922(a), 124 Stat. 1376, 1841 (July 21, 2010).

[245] *See* S. Rep. No. 111–176 at 111 (2010). The Senate Report stated: '' 'Original information' is defined as information that is derived from the independent analysis or knowledge of the whistleblower, and is not derived from an allegation in court or government reports, and is not exclusively from news media. In circumstances when bits and pieces of the whistleblower's information were known to the media prior to the emergence of the whistleblower, and that for the purposes of the SEC enforcement the critical components of the information was supplied by the whistleblower, the intent of the Committee is to require the SEC to reward such person(s) in accordance with the degree of assistance that was provided.''

[246] 17 CFR 240.21F–4(b)(2) (emphasis added).

[247] For example, one commenter suggested that the Commission should exclude only information from sources such as news media and governmental reports that are specifically set forth in the statute. *See Securities Whistleblower Incentives and Protections,* Release No. 34–64545, 76 FR 34300, 34311/3 (June 13, 2011) (citing comment letter from Taxpayers Against Fraud).

[248] *Id.*

[249] 76 FR 34300, 34311/1.

[250] 17 CFR 240.21F–4(b)(3).

[251] 76 FR 34300, 34305, 34312/3.

[252] 17 CFR 240.21F–4(b)(3).

[253] *See* Merriam-Webster Dictionary, *available at https://www.merriam-webster.com/dictionary/reveal;* Oxford English Dictionary, *available at https://en.oxforddictionaries.com/definition/reveal;* Cambridge Dictionary, *available at http://dictionary.cambridge.org/us/dictionary/english/reveal;* Black's Law Dictionary (10th ed. 2014) (citing ''to reveal'' as one definition of ''disclose''); *see also* 15 U.S.C. 78u–6(h)(2)(A) (prohibiting the Commission or staff from disclosing information ''which could reasonably be expected to *reveal* the identity of a whistleblower. . . .'') (emphasis added).

[254] *See* S. Rep. No. 111–176 at 110 (2010) (citing to Markopolos's testimony).

[255] Markopolos also submitted a large amount of information that likely would have satisfied the ''independent knowledge'' prong of ''original information'' under Rule 21F–4(b)(2), 17 CFR 240.21F–4(b)(2). For example, he described his own firm's inability to duplicate Madoff's returns using the same strategy and provided information about Madoff's claims and purported operations that he obtained from speaking with third parties who invested with Madoff. *See Investigation of Failure of the SEC to Uncover Bernard Madoff's Ponzi Scheme,* Report No. OIG–509 (Aug. 31, 2009) (''OIG Report''), Exh. 137, *available at https://www.sec.gov/news/studies/2009/oig-509/oig-509_exhibits.htm.*

in public materials ''would require lots of options trading and lots of options in open interest'' [256] for hedging purposes. Based upon his calculations of the total value of call option open interest on the Chicago Board Option Exchange and of OEX put option open interest, Markopolos revealed that '''hedging cannot be taking place as described. . . . [I]f only $3 billion are allocated to this strategy then there still aren't enough options in open interest for this type of hedging to occur, since Madoff would be at least ⅓ of the open interest and we know that is not the case.' '' [257] Similarly, in a 2005 submission, Markopolos offered a specific mathematical illustration of how he believed the income and protection parts of Madoff's strategy would be expected to function under real-world market conditions, arguing that the income that might be expected from stock dividends and the sale of equity call options offset by the cost of purchasing put options, made Madoff's claimed returns ''way too good to be true.'' [258] In the same submission, Markopolos also calculated that Madoff would have had to account for more than 100% of the total OEX put option open interest in order to hedge his stock holdings as depicted in certain marketing literature.[259]

Markopolos's submissions included information that would qualify as ''independent analysis'' as defined in our whistleblower rules (and explained further in this guidance) if submitted today. Markopolos's information was ''highly-probative,'' [260] going beyond the publicly available information itself to ''reveal'' that Madoff's claimed returns were unachievable under real market conditions. We anticipate that we may find a requisite level of ''analysis'' in analogous cases where an individual with a high level of specialized training or expertise reviews publicly available information and illuminates for the Commission possible violations that are obscured because of the technical nature of the source material.[261]

Importantly, this is not to suggest that ''independent analysis'' is limited to persons with technical expertise or other specialized training. In each case, the touchstone is whether the whistleblower's submission is revelatory in utilizing publicly available information in a way that goes beyond the information itself and affords the Commission with important insights or information about possible violations.

While ''independent analysis'' is evident in Markopolos's tips, other submissions that utilize publicly available information may not be so clear. However, we believe that case law interpreting the False Claims Act's public disclosure bar generally suggests a helpful framework for distinguishing tips in which the whistleblower's ''independent analysis'' of publicly available information reveals important information about possible violations beyond the public sources themselves. The public disclosure bar precludes recovery when ''substantially the same allegations or transactions'' as alleged by the *qui tam* relator were previously disclosed publicly in one of the designated sources. The D.C. Circuit and other federal courts of appeals have held that fraudulent transactions are publicly disclosed—and a *qui tam* suit thus barred—when essential facts that are sufficient to give rise to an inference of fraud are in the public domain.[262] This rule bars *qui tam* suits when publicly disclosed information provides ''the government . . . [with] enough information 'to investigate the case and to make a decision whether to prosecute' or . . . 'could at least have alerted law-enforcement authorities to the likelihood of wrongdoing.' '' [263] Conversely, where a *qui tam* relator ''supplie[s] the missing link between the public information and the alleged fraud,'' and thereby '' 'bridge[s] the gap by [his] own efforts and experience,' the public disclosure bar does not apply.'' [264] In this way, *qui tam* awards are reserved for relators who '' 'contributed significant independent information' about a possible fraud.'' [265]

Relying in part on the False Claims Act framework to assist us in formulating a proposed standard for interpreting Exchange Act Rule 21F–4(b)(3), we believe the following is appropriate: A whistleblower's examination and evaluation of publicly available information does not constitute ''analysis'' if the facts disclosed in the public materials on which the whistleblower relies and in other publicly available information are sufficient to raise an inference of the possible violations alleged in the whistleblower's tip. This is because, where the violations that the whistleblower alleges can be inferred by the Commission from the face of public materials, those violations are not ''reveal[ed]'' to the Commission by the whistleblower's tip or any purported analysis that the whistleblower has submitted. Rather, in order for a whistleblower to be credited with providing ''independent analysis,'' the whistleblower's examination and evaluation should contribute ''significant independent information'' that ''bridges the gap'' between the publicly available information and the possible securities violations.

As noted, ''significant independent information'' that ''bridges the gap'' in revealing violations may be found in the application of technical expertise, but this is not required.[266] However, we have received tips in which a whistleblower merely offers observations drawn from publicly available information. In these cases, the whistleblower typically directs the staff to publicly available information and states that the information itself suggests a fraud or other violations. Examples would be where the whistleblower points to common hallmarks of fraud on the face of the public materials (*e.g.,* impossibly high, guaranteed investment returns or extravagant claims in press releases) or to public discourse (*e.g.,* discussions on a public message board) in which investors or others are alleging a fraudulent scheme. Further, it would not matter whether the individual relied on only one source (*e.g.,* a single website) to collect the publicly available information that demonstrates the

[256] OIG Report, Exh. 134.

[257] OIG Report at 62, *quoting* Markopolos 2000 submission, Exh. 134.

[258] OIG Report, Exh. 268.

[259] OIG Report, Exh. 268.

[260] 76 FR 34300, 34312/3.

[261] However, we caution that we expect this standard may be particularly demanding for attorneys and accountants who seek whistleblower awards based on their review of publicly available information. As the Enforcement staff is substantially comprised of experienced attorneys and accountants, an outside attorney or accountant would generally be expected to contribute insights or revelations that would not be reasonably evident to an accountant or attorney on the Enforcement staff who reviewed the same publicly available information.

[262] *See, e.g., United States ex rel. Oliver* v. *Philip Morris USA Inc.,* 826 F.3d 466, 471–73 (D.C. Cir. 2016), *reh. en banc denied,* 2016 U.S. App. Lexis 17161 (D.C. Cir. 2016); *Amphastar Pharmaceuticals Inc.* v. *Aventis Pharma SA,* 856 F.3d 696, 703 (9th Cir. 2017); *Cause of Action* v. *Chicago Transit Authority,* 815 F.3d 267, 278 (7th Cir. 2016), *cert. denied,* 137 S. Ct. 205 (2016).

[263] *Phillip Morris USA,* 826 F.3d at 472; *see also United States ex rel. Solis* v. *Millennium Pharms., Inc.,* 885 F.3d 623, 626 (9th Cir. 2018) (''A prior disclosure and an allegation may be substantially similar when the prior public disclosure put the government 'on notice to investigate the fraud before the relator filed his complaint.'").

[264] *United States ex rel. Shea* v. *Cellco Partnership,* 863 F.3d 923, 935 (DC Cir. 2017).

[265] *Id.* at 933 (*quoting United States ex rel. Springfield Terminal Railway* v. *Quinn,* 14 F.3d 645, 653 (D.C. Cir. 1994)).

[266] For example, non-experts may configure publicly available information in a non-obvious way that reveals patterns indicating possible violations that would not be otherwise inferable from the public information or may engage in highly probative calculations or some other meaningful exercise with the information that may demonstrate the possibility of securities violations.

hallmarks of the fraud, or whether the individual relied on a multitude of different publicly available sources to collect the information. These tips generally would not qualify as ''independent analysis'' under our interpretation because the whistleblower's essential contribution is merely that he or she directed the staff to publicly available information that gives rise to an inference of violations; the whistleblower's tip has not ''bridged the gap'' between public information that does not itself provide a basis for inferring a possible violation and a conclusion that a violation may have occurred. Further, we believe that this same result would generally obtain whether the whistleblower directs the staff to a single piece of publicly available information or the whistleblower aggregates information from multiple different sources.[267] If the violations can be inferred by the Commission from the available and/or assembled publicly available information, without more, then the whistleblower has not contributed significant independent information that reveals the violations.[268]

Thus, in each case the Commission should consider whether publicly available information (both that supplied by the whistleblower and other public sources) was sufficient to give rise to an inference of the violations alleged by the whistleblower, or whether the whistleblower's examination and evaluation of public source material revealed new, significant, and independent information that ''bridged the gap'' for the staff in demonstrating the possibility of violations. Moreover, under our rules the whistleblower will be notified of any preliminary determination that his or her tip did not constitute ''independent analysis,'' and will have an opportunity to contest that determination in a written submission to the Commission.[269]

C. Leads to Successful Enforcement

Assuming that a whistleblower's submission meets the threshold requirement that it constitute ''independent analysis,'' for the whistleblower to be eligible for an award the ''information that . . . is derived from the . . . [whistleblower's] analysis'' must also lead to a successful enforcement action. This determination turns ''on an evaluation of whether the analysis is of such high quality that it either causes the staff to open an investigation, or significantly contributes to a successful enforcement action, as set forth in Rule 21F–4(c).'' [270] Further, if the staff looks to other information as well in determining to open an investigation, the Commission will only find that the independent analysis ''led to'' the success of the enforcement action if the Commission determines that the whistleblower's analysis was a ''principal motivating factor'' in the staff's decision to open the investigation.[271]

Thus, even an otherwise compelling analysis may not satisfy the ''leads to'' requirement depending on the nature of other information already in the staff's possession. For example, if the staff has already obtained testimony from insiders describing the facts of a violation, a subsequent whistleblower submission that demonstrates the possibility of the violation through independent analysis of publicly available information would not likely qualify for an award because, against the backdrop of the facts already known to the staff, the whistleblower's analysis would not significantly contribute to the staff's investigation.

Request for Comment

30. We seek comment on the interpretation of ''independent analysis'' in light of the background set forth above. Are there additional considerations that the Commission should factor into the interpretation? For example, should the interpretation address more explicitly cases in which an individual selects, compiles, and presents publicly available information in a new way for the staff? If so, how?

31. Should any aspect of the interpretation be codified in rule text? For example, should the Commission adopt rule text that would make clear that for a whistleblower to be credited with providing ''original information'' through ''independent analysis,'' the whistleblower's examination and evaluation should contribute ''significant independent information'' that ''bridges the gap'' between the publicly available information and the possible securities violations?

IV. Request for Comment Regarding a Potential Discretionary Award Mechanism for Commission Actions That Do Not Qualify as Covered Actions, Involve Only a *De Minimis* Collection of Monetary Sanctions, or Are Based on Publicly Available Information

Beyond the specific rule proposals and interpretations expressly advanced above, we invite public comment on whether the Commission could at a future point propose a rule that would permit the Commission on a discretionary basis to pay awards to whistleblowers in Commission enforcement actions that do not result in an order for monetary sanctions that exceeds $1,000,000 [272] or enforcement actions where the whistleblower's tip consisted of publicly available information.[273] Similarly, do we have the statutory authority to propose and adopt a rule that would permit the Commission on a discretionary basis to make award payments that are not tied to the monetary payments collected where a meritorious whistleblower has received an award determination in a covered action, but the ordered monetary sanctions cannot be collected or the amount collected would result in a *de minimis* payment? Alternatively, would a legislative change be required for the Commission to establish the type of discretionary award mechanisms described in this section? Moreover, whether by rule or legislative change, would such discretion to make awards in these instances be in the public interest? Please explain the grounds for your views.

V. General Request for Public Comment

We request and encourage any interested person to submit comments

[267] As noted above, we explained in the adopting release for our whistleblower rules that a whistleblower would need to do more than point us to disparate public information in order to provide ''independent analysis'' within the meaning of our rule. 76 FR 34300, 34305, 34312/3.

[268] The Commission, in its adjudicatory capacity, routinely draws reasonable inferences from facts in the record. *See, e.g.,* SEC Rule of Practice 250, 17 CFR 201.250 (drawing reasonable inferences from factual allegations in deciding dispositive motions). ''Drawing inferences from direct and circumstantial evidence is a routine and necessary task of any factfinder. 'The very essence of [the factfinder's] function is to select from among conflicting inferences and conclusions that which it considers most reasonable.' '' *Siewe* v. *Gonzalez,* 480 F.3d 160, 166 (2d Cir. 2007) (*quoting Tennant* v. *Peoria and Pekin Union Railway,* 321 U.S. 29 (1944)).

[269] *See* 17 CFR 240.21F–10(e).

[270] 76 FR 34300, 34312/3. This would require that the whistleblower's analysis made a substantial and important contribution to the action. *See* Whistleblower Award Proceeding 2016–9, Release No. 34–77833 (May 13, 2016).

[271] 75 FR 70488, 70497/2.

[272] For example, could we propose and adopt a rule that would authorize the Commission on a discretionary basis to utilize the IPF to pay awards to whistleblowers who make significant contributions in Commission Enforcement actions that do not qualify as covered actions for which we can currently pay awards?

[273] These would be situations where, under the existing statute and our current rules, the information provided by the whistleblower would not qualify as information that was derived from the whistleblower's ''independent knowledge'' or independent analysis,'' *see* Exchange Act Rule 21F–4(b)(2) & (3), 17 CFR 240.21F–4(b)(2) & (3), and thus would not be ''original information'' upon which the Commission could base an award, *see* Exchange Act Rule 21F–4(b)(1)(i), 17 CFR 240.21F–4(b)(1)(i).

on any aspect of the proposed rule amendments, interpretations, or other items specified above. With respect to any comments on the economic analysis contained below, we note that such comments would be of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed therein and by alternatives to our proposals where appropriate.

Finally, other than the items specifically identified in this release, persons wishing to comment are expressly advised that the Commission is not proposing any other changes to the whistleblower program rules (*i.e.,* Exchange Act Rules 21F–1 through 21F–17), nor is the Commission otherwise reopening any of those rules for comment.

VI. Paperwork Reduction Act

A. Background

The proposed amendments would affect certain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[274] The Commission is submitting the proposal to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[275] The titles for the affected collections of information are:

''Electronic Data Base Collection System—TCR'' (OMB Control No. 3235–0672); and ''Form TCR'' and

''Form WB–APP'' (OMB Control No. 3235–0686).

Currently an applicant seeking to submit information to the Commission in order to qualify as a whistleblower must submit this information by using one of two methods: (1) By providing the information through an online portal on the Commission's website that is designed for receiving electronic submissions, or (2) by submitting the paper Form TCR that was initially adopted by the Commission as part of the original whistleblower rulemaking in 2011.[276] In addition to the paper Form TCR, the Commission also adopted a paper Form WB–APP when it adopted the existing rules for the whistleblower program. Individuals seeking awards must make their award request using Form WB–APP. The hours and costs associated with preparing and submitting information through the online portal and affected forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid OMB control number.

B. Summary of the Proposed Amendments

As described in more detail above, to provide the Commission with the ability to make timely corresponding adjustments to the paper Form TCR when it determines to modify the online portal, the Commission proposes to modify Exchange Act Rule 21F–8 [277] by adding a new paragraph (d)(1) providing that the Commission will periodically designate a Form TCR (Tip, Complaint, or Referral) that individuals seeking be eligible for an award through the process identified in § 240.21F–9(a)(2) shall use. In addition, to provide the Commission with greater administrative flexibility to modify Form WB–APP, the Commission proposes to modify Exchange Act Rule 21F–8 by adding a new paragraph (d)(2) providing that the Commission will also periodically designate a Form WB–APP for use by individuals seeking to apply for an award under either § 240.21F–10 or § 240.21F–11.

In connection with these proposed amendments, we propose to reorganize the OMB control numbers and associated burden estimates for the collections of information contained in the Commission's online portal, Form TCR and Form WB–APP. Although the online portal and Form TCR collect substantially the same type of information—information alleging potential securities law violations—they currently have separate OMB control numbers. In addition, although Form TCR and Form WB–APP collect different types of information, the latter of which collects information from individuals applying for whistleblower awards, these collections of information are currently gathered pursuant to the same OMB control number.

Pursuant to the proposed reorganization, both the online portal and Form TCR would fall under the same OMB control number (No. 3235–0672). The title for this collection of information and the associated burden estimate would be adjusted accordingly to reflect the submission of relevant information through both the online portal and the paper Form TCR (*see* Table 2 of section VI(C)). Form WB–APP would this have its own OMB control number (No. 3235–0686) and the collection of information would be retitled accordingly (*see* Table 2 of section VI(C)).

C. Burden and Cost Estimates Related to the Proposed Amendments

We do not anticipate that the proposed amendments would increase the burden or cost to individuals preparing and submitting the required information through the online portal and affected forms. Although we intend to make certain modifications to Form TCR so that the information elicited by the form is consistent with the information collected through the online portal, we do not believe that these conforming modifications will increase appreciably the burden for individuals completing the form.

We estimate that the combined burden associated with both paper Form TCR and the online complaint form is 9,050 hours annually. We anticipate that the burdens imposed by the online complaint form will vary depending on the complexity of the alleged violations that are the subject of the tip and the amount of information possessed by the individual submitting the tip. We estimate that it takes a complainant, on average, 30 minutes to complete the online complaint form. Based on an estimate of 16,000 annual responses, we estimate that the annual PRA burden for the online complaint form is 8,000 hours. Although the completion time will depend on the complexity of the alleged violation and the amount of information the whistleblower possesses in support of the allegations, we estimate that it takes a whistleblower, on average, one and one-half hours to complete and submit Form TCR. We estimate that it may take individuals more time to complete Form TCR than the online complaint form because a person will have to hand write in the required information and spend time mailing and faxing the form to the Commission. Based on the receipt of an average of approximately 700 annual Form TCR submissions for the past three fiscal years, the Commission estimates that the annual reporting burden of Form TCR is 1,050 hours.

We estimate that it takes a whistleblower, on average, one hour to complete Form WB–APP, though the completion time depends largely on the complexity of the alleged violation and the amount of information the whistleblower possesses in support of his or her application for an award. Based on the receipt of an average of approximately 110 annual properly filed Form WB–APP submissions for the past

[274] 44 U.S.C. 3501 *et seq.*

[275] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[276] *See* Exchange Act Rule 21F–9, 17 CFR 240–21F–9(a).

[277] 17 CFR 240.21F–8.

six fiscal years,[278] the Commission estimates that the annual reporting burden of Form WB–APP is 110 hours.

We do not believe that the proposed amendments would increase the professional costs associated with preparing and submitting the affected forms. Under the whistleblower rules, an anonymous whistleblower who is seeking an award is required, and a whistleblower whose identity is known may elect, to retain counsel to represent the whistleblower in the whistleblower program. We expect that in most instances the whistleblower's counsel will complete, or assist in the completion, of some or all of the required forms on behalf of the whistleblower. However, we expect that in the vast majority of cases in which a whistleblower is represented by counsel, the whistleblower will enter into a contingency fee arrangement with counsel, providing that counsel be paid for the representation through a fixed percentage of any recovery by the whistleblower under the program. Thus, we expect most whistleblowers will not incur any direct out of pocket expenses for attorneys' fees for the completion of the affected forms.

We expect that a very small number of whistleblowers (no more than 5%) enter into hourly fee arrangements with counsel.[279] In those cases, a whistleblower will incur direct expenses for attorneys' fees for the completion of the required forms. To estimate those expenses,[280] we make the following assumptions:

(i) The Commission will continue to receive on average approximately 700 Forms TCR and 110 Forms WB–APP annually;

(ii) Individuals will pay hourly fees to counsel for the submission of approximately 35 Forms TCR and 6 Forms WB–APP annually; [281]

(iii) Counsel retained by whistleblowers pursuant to an hourly fee arrangement will charge on average $400 per hour; [282] and

(iv) Counsel will bill on average: (i) Three hours to complete a Form TCR, and (ii) two hours to complete a Form WB–APP.[283]

For purposes of the PRA, we estimate that each year whistleblowers will incur the following total amounts of attorneys' fees in connection with completing Forms TCR and WB–APP: (i) $42,000 [284] for the reporting burden of Form TCR; and (ii) $4,800 [285] for the reporting burden of Form WB–APP.

The tables below summarize the burden and cost estimates associated with the online portal and affected forms both currently and after the proposed reorganization of the relevant control numbers:

TABLE 1 OF SECTION VI(C)—CURRENT BURDEN ESTIMATES

Title	OMB control No.	Burden hours	Costs
"Electronic Data Base Collection System—TCR"	3235–0672	8,000	$0
"Form TCR" and "Form WB–APP"	3235–0686	1,160	46,800

TABLE 2 OF SECTION VI(C)—REVISED BURDEN ESTIMATES UNDER THE PROPOSED REORGANIZATION

Title	OMB control No.	Burden hours	Costs
"Tips, Complaints and Referrals (TCR)"	3235–0672	9,050	$42,000
"Form WB–APP"	3235–0686	110	4,800

D. Mandatory Collection of Information

A whistleblower is required to complete either a hardcopy Form TCR or submit his or her information electronically through the online portal and to complete Form WB–APP to qualify for a whistleblower award.

E. Confidentiality

As explained above, the statute provides that the Commission must maintain the confidentiality of the identity of each whistleblower, subject to certain exceptions. Section 21F(h)(2) states that, except as expressly provided the Commission and any officer or employee of the Commission shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, United States Code, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or certain specific entities listed in paragraph (C) of Section 21F(h)(2).

Further, as discussed above, we are proposing Rule 21F–2(c) to require that an individual who is seeking this heightened confidentiality protection must submit his or her information to the Commission using the online portal or by completing a hardcopy Form TCR. If an individual fails to do so, then

[278] This figure does not include Form WB–APP submissions which were facially deficient, subsequently withdrawn or submitted by individuals who have been barred by the Commission from participation in the whistleblower program.

[279] This estimate is based, in part, on the Commission's belief that most whistleblowers likely will not retain counsel on an hourly basis to assist them in preparing the forms.

[280] Individuals submitting their information in writing who are not seeking to be eligible for the Commission's whistleblower award program are not required to retain an attorney, even if they choose to submit their information anonymously, and thus are not required to use either the Form TCR or the Form WB–APP. As such, for purposes of calculating the estimated costs of the forms, we have only included the potential costs associated with completing and submitting the Form TCR and Form WB–APP.

[281] These amounts are based on the assumption, as noted above, that no more than 5% of all whistleblowers will be represented by counsel pursuant to an hourly fee arrangement.

[282] The Commission uses this hourly billing rate for purposes of estimating the professional costs of other rules, and we believe it is an appropriate billing rate to use in this context, recognizing that some attorneys representing whistleblowers may not be securities lawyers and may charge different average hourly rates.

[283] The Commission expects that counsel will likely charge a whistleblower for additional time required to gather from the whistleblower or other sources relevant information needed to complete Forms TCR and WB–APP. Accordingly, we estimate that, on average, counsel will bill a whistleblower three hours for the completion of Form TCR and two hours for completion of Form WB–APP (even though we estimate that a whistleblower acting without counsel will be able to complete the Form TCR in 1.5 hours and Form WB–APP in 1 hour).

[284] $35 \times (\$400 \times 3) = \$42,000$.

[285] $6 \times (\$400 \times 2) = \$4,800$.

under our proposed rule he or she would be ineligible for the heightened confidentiality protections.

Section 21F(h)(2) also permits the Commission to share information received from whistleblowers with certain domestic and foreign regulatory and law enforcement agencies. However, the statute requires the domestic entities to maintain such information as confidential, and requires foreign entities to maintain such information in accordance with such assurances of confidentiality as the Commission deems appropriate.

In addition, Section 21F(d)(2) provides that a whistleblower may submit information to the Commission anonymously and still be eligible for an award, so long as the whistleblower is represented by counsel. However, the statute provides that a whistleblower must disclose his or her identity prior to receiving payment of an award.

F. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Evaluate the accuracy of our assumptions and estimates of the burden of the proposed collection of information;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;
- Evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- Evaluate whether the proposed amendments would have any effects on any other collection of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct their comments to the Office of Management and Budget, Attention: Desk Officer for the U.S. Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy to, Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, with reference to File No. S7–08–17. Requests for materials submitted to OMB by the Commission with regard to the collection of information should be in writing, refer to File No. S7–08–17 and be submitted to the U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this proposed rule. Consequently, a comment to OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

VII. Economic Analysis

The Commission is sensitive to the economic consequences of its rules, including the benefits, costs, and effects on efficiency, competition, and capital formation. Section 23(a)(2) [286] of the Securities Exchange Act of 1934 requires the Commission, in promulgating rules under the Exchange Act, to consider the impact that any rule may have on competition and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Further, Section 3(f) of the Exchange Act [287] requires the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The economic analysis in this part focuses on the proposed amendments to Rule 21F–2, Rule 21F–4(d)(3), Rule 21F–6, Rule 21F–3(b)(4), Rule 21F–8, newly proposed Exchange Act Rule 21F–18, and the proposed interpretive guidance. As discussed above, the proposed amendments to Rule 21F–2 are in response to the Supreme Court's recent decision in *Digital Realty Trust, Inc.* v. *Somers;* [288] proposed Rule 21F–4(d)(3) would allow awards based on non-prosecution agreements or deferred prosecution agreements entered into by the DOJ or state attorneys general, and settlement agreements entered into by the Commission; proposed Rule 21F–3(b)(4) would eliminate potential double recovery under the current definition of related action; proposed amendments to Rule 21F–6 would allow additional considerations for small and large awards; proposed Rule 21F–8(e) would provide authority to bar applicants from future award applications in certain limited situations; proposed Rule 21F–18 would provide a streamlined award consideration process for certain limited categories of non-meritorious applications; and the proposed interpretive guidance would help clarify the meaning of ''independent analysis'' as that term is defined in Exchange Act Rule 21F–4 and utilized in the definition of ''original information.'' The other proposed amendments in this release are either procedural, technical in nature or codify existing practice, and therefore we do not expect them to significantly impact efficiency, competition, and capital formation.

Many of the benefits and costs discussed below are difficult to quantify. For example, although the analysis that follows details the specific ways in which we expect the proposed rules to affect whistleblower incentives, we lack the data necessary to estimate the magnitudes of these effects separately or in the aggregate. Similarly, we do not know the precise cost—in terms of awards paid out of the IPF—of defining a non-prosecution agreement or deferred prosecution agreement entered into by the DOJ or a state attorney general or a settlement agreement entered into by the Commission as an ''administrative action'' and any money required to be paid thereunder as a ''monetary sanction.'' Moreover, we do not know the funds that might be conserved in the IPF by the avoidance of double recoveries for the same action and the avoidance of large awards that are not reasonably necessary to achieve the goals of the whistleblower program. Therefore, while we have attempted to quantify economic impacts where possible, much of the discussion of economic effects is qualitative in nature.

A. Economic Baseline

To examine the potential economic effects of the amendments, we employ as a baseline the comprehensive set of rules that the Commission adopted in May 2011 to implement the whistleblower program. The baseline also includes: The Supreme Court's recent decision in *Digital Realty Trust, Inc.* v. *Somers;* a description of whistleblower programs administered by other regulatory authorities; and a discussion of the IPF (including its replenishment mechanism), summary statistics that describe the distribution of awards paid by the whistleblower program under the 2011 rules, and estimates of wages and salaries obtained from a number of surveys.

[286] 15 U.S.C. 78w(a)(2).

[287] 15 U.S.C. 78c(f).

[288] 138 S. Ct. 767 (2018).

1. Whistleblower Programs

In this section, we discuss a non-exhaustive list of the various federal and state whistleblower programs that are currently administered by other agencies or authorities and which might be implicated by the proposed rules.[289] The CFTC administers its own whistleblower award program under section 23 of the Commodity Exchange Act.[290] Both the SEC and CFTC programs were established by the Dodd-Frank Act and are substantially identical in their substantive terms.[291] As discussed above, since the adoption of our whistleblower program rules, two states have adopted their own whistleblower award programs in connection with state securities-law enforcement actions. In 2011, Utah established a whistleblower-award scheme to provide rewards of up to thirty percent of the money collected in state securities-law enforcement actions.[292] The following year, Indiana enacted a whistleblower award scheme to provide rewards up to ten percent of the money collected in a state securities-law enforcement action.[293] We are also aware that DOJ might pursue law-enforcement actions that potentially implicate both the Commission's whistleblower program and the whistleblower award program that the IRS administers.[294] Further, Congress in 2015 established a new motor-vehicle-safety whistleblower award program that allows employees or contractors of a motor-vehicle manufacturer, parts supplier, or dealership who report serious violations of federal vehicle-safety laws to obtain awards of 10 percent to 30 percent of any monetary sanction over $1 million that the Federal Government collects based on that information.[295]

2. Supreme Court Decision in *Digital Realty Trust, Inc.* v. *Somers*

The Supreme Court recently held in *Digital Realty Trust, Inc.* v. *Somers*,[296] that Section 21F(h)(1) of the Exchange Act unambiguously requires that a person report a possible securities law violation to the Commission in order to qualify for employment retaliation protection, and that the Commission's rule interpreting the retaliation protections in Section 21F more broadly was therefore not entitled to deference.[297] The Court reasoned that the definition of ''whistleblower'' codified in Section 21F(a)(6) requires such a report to the Commission as a prerequisite for employment retaliation protection, and that this definition is ''clear and conclusive.'' [298] The Court also determined that strict application of the definition's reporting requirement in the employment anti-retaliation context is consistent with Congress's core objective of '' 'motivat[ing] people who know of securities law violations to tell the SEC.' '' [299]

3. IPF and Awards Issued by the SEC Whistleblower Program

In Section 21F(g) of the Exchange Act, Congress established the IPF to provide funding for the payment of whistleblower awards. The IPF has a permanent indefinite appropriation that is available without further appropriation or fiscal year limitation for the purpose of funding awards to whistleblowers (and to fund the Office of Inspector General's Employee Suggestion Program).[300]

As of the end of Fiscal Year 2017, the balance of the IPF was approximately $322 million.[301] Whenever the reserve in the IPF falls below $300 million, Section 21F(g)(3) requires the Commission to replenish the IPF.[302] In May 2018, the balance of the IPF for the first time fell below the $300 million threshold that triggers the statutory replenishment mechanism; [303] this occurred when the Commission paid $83 million—its largest payout to date on an enforcement action—to three individuals.

From August 2012 through April 2018, the Commission's whistleblower program issued 50 whistleblower awards to 55 individuals (including, as explained above, individuals who acted as joint whistleblowers).[304] Table 1 of Section VII(A)(3) reports the frequency distribution of these awards by award size. Forty-two of these awards were less than $5 million, of which thirty-one awards were less than $2 million. Of the remaining eight awards, five were at least $5 million but less than $30 million and three exceeded $30 million.[305] According to the Office of the Whistleblower, of the 55 individuals who have received awards, approximately 10 percent are high-ranking corporate executives at companies of varying sizes and a large majority of these executives received awards that were under $5 million.

TABLE 1 OF SECTION VII(A)(3)—FREQUENCY DISTRIBUTION OF WHISTLEBLOWER AWARDS

[We use awards issued to whistleblowers by the SEC Whistleblower Program from August 2012 through April 2018. Number is the number of awards that fall within an award size category. Percent is the number of awards in an award size category as a fraction of the total number of awards.]

Award size category	Number	Percent
Less than $2 million	31	62
At least $2 million but less than $5 million	11	22

[289] Although we discuss several federal whistleblower programs that we believe are more likely to be implicated by the proposed rules, there are other federal whistleblower programs that are not discussed but which could potentially be implicated.

[290] 7 U.S.C. 26.

[291] *See* Securities Whistleblower Incentives and Protections Proposing Release, 75 FR at 70490.

[292] Utah Code Annotated 61–1–101 *et seq.*

[293] Indiana Code 23–19–7–1 *et seq.*

[294] 26 U.S.C. 7623.

[295] 49 U.S.C. 30172 (enacted by Section 24352 of the Fixing America's Surface Transportation Act of 2015 (FAST Act), Pub. L. 114–94).

[296] 138 S. Ct. 767 (2018).

[297] *Id.* at 781–82.

[298] *Id.*

[299] *Id.* at 777 (quoting S. Rep. No. 111–176, at 38 (2010)).

[300] However, the Commission is required to request and obtain an annual apportionment from the Office of Management and Budget to use these funds. *See* SEC Agency Financial Report for 2017 (Nov. 14, 2017), available at *https://www.sec.gov/files/sec-2017-agency-financial-report.pdf.*

[301] *See* Section II.D, above.

[302] *See* 15 U.S.C. 78u–6(g)(3).

[303] For a description of the IPF's statutory replenishment mechanisms, see Section 21F(g)(3) of the Exchange Act, 15 U.S.C. 78u–6(g)(3).

[304] These totals treat as single awards several cases where whistleblowers' original information led to multiple covered actions that were processed together in one award order recognizing the total contributions of the whistleblower. Similarly, consistent with the approach proposed above governing cases where we grant an award for both a Commission enforcement action and a related action by another agency based on the same information provided by the whistleblower (*see* 17 CFR 240.21F–3(b)), we consider covered-action awards together with their corresponding related-action awards as single whistleblower awards.

[305] One of the three awards that exceeded $30 million was issued in September 2014 in a Commission action and related actions. *See Order Determining Whistleblower Award Claim,* Exchange Act Release No. 34–73174 (Sept. 22, 2014), *available at https://www.sec.gov/rules/other/2014/34-73174.pdf.* The other two awards were issued in March 2018 for $49 and $33 million, respectively, to three individuals (two of whom were acting as joint whistleblowers). *See Order Determining Whistleblower Award Claim,* Exchange Act Release No. 34–82897 (March 19, 2018), *available at, https://www.sec.gov/rules/other/2018/34-82897.pdf.* We note that these three awards alone reduced the balance of the IPF by approximately $112 million.

TABLE 1 OF SECTION VII(A)(3)—FREQUENCY DISTRIBUTION OF WHISTLEBLOWER AWARDS—Continued

[We use awards issued to whistleblowers by the SEC Whistleblower Program from August 2012 through April 2018. Number is the number of awards that fall within an award size category. Percent is the number of awards in an award size category as a fraction of the total number of awards.]

Award size category	Number	Percent
At least $5 million but less than $10 million	2	4
At least $10 million but less than $15 million	1	2
At least $15 million but less than $20 million	1	2
At least $20 million but less than $30 million	1	2
At least $30 million	3	6
Total	50	100

In addition to summarizing the distribution of awards to whistleblowers, we also summarize the distribution of awards by enforcement action. For each enforcement action, we identify all whistleblowers who receive an award for that enforcement action and sum up their awards to arrive at the aggregate award for that enforcement action. Table 2 of section VII(A)(3) indicates that between August 2012 and April 2018, there were 45 enforcement actions for which the Commission issued whistleblower awards.[306] Thirty-seven enforcement actions had awards of less than $5 million, of which twenty-eight awards were less than $2 million. Of the remaining eight actions, six had aggregate awards of at least $5 million but less than $30 million and only two had an aggregate award that exceeded $30 million.

TABLE 2 OF SECTION VII(A)(3)—FREQUENCY DISTRIBUTION OF AWARDS BY ENFORCEMENT ACTION

[We use awards issued to whistleblowers by the SEC Whistleblower Program from August 2012 through April 2018. For each enforcement action, we identify all whistleblowers who receive an award for that enforcement action and sum up their awards to arrive at the aggregate award for that enforcement action. We then plot the distribution of aggregate awards by enforcement action. Number is the number of aggregate awards that fall within an award size category. Percent is the number of aggregate awards in an award size category as a fraction of the total number of awards.]

Award size category	Number	Percent
Less than $2 million	28	62
At least $2 million but less than $5 million	9	20
At least $5 million but less than $10 million	3	7
At least $10 million but less than $15 million	2	4
At least $15 million but less than $20 million	0	0
At least $20 million but less than $30 million	1	2
At least $30 million	2	4
Total	45	100

4. Estimates of Current Annual Wages

Prospective whistleblowers' annual wages are potentially relevant to various aspects of the proposed rules. Table 3 of Section VII(A)(3) presents, by industry, the pre-tax annual wages per employee (''average wages'') estimated by the Bureau of Labor Statistics for 2016.[307] Average wages vary from a low of $22,445 in the leisure and hospitality industry to a high of $98,458 in the information industry.

These averages do not reflect the substantial degree of within-industry wage variation. For example, more senior employees involved in financial activities likely earn higher wages than their more junior counterparts, and staff that supply significant expertise may earn more than those that do not. A survey of 2,499 firms registered with the Commission and included in the Russell 3000 Index as of May 2017 revealed median total CEO compensation at approximately $3.8 million.[308] A study of the 200 largest pay packages awarded to CEOs at U.S. public companies in fiscal year 2016 revealed that the median pay for this group of CEOs was $16.9 million, while the average pay was $19.7 million.[309] A 2017 report documenting survey responses from 377 financial professionals included average base salaries for senior-level financial executives of between $133,859 and $342,154, depending on title and whether companies are public or private.[310] Notwithstanding the foregoing, we think it is relevant to observe that although the compensation of CEOs and other senior ranking officials provides insights into the wage variation within a particular industry, in our experience a company's workforce typically consists of far more lower-

[306] As noted, we aggregate related actions with their corresponding Commission actions for purposes of this analysis.

[307] Wage data used for calculating the annual wages per employee are derived from the quarterly tax reports submitted to state government workforce agencies by employers, subject to state unemployment insurance laws, and from Federal agencies subject to the Unemployment Compensation for Federal Employees program. Further information is available at *https://www.bls.gov/cew/cewbultn16.htm.*

[308] *See* ''CEO and Executive Compensation Practices: 2017 Edition'' (available at: *https://www.conference-board.org/publications/publicationdetail.cfm?publicationid=7584*).

[309] *See* ''Equilar 200: Ranking the Largest CEO Pay Packages'' (available at *http://www.equilar.com/reports/49-equilar-200-ranking-the-largest-ceo-pay-pakages-2017.html*) for a summary of the study and its findings. See ''Equilar 200: The Largest CEO Pay Packages of 2016'' (available at *http://www.equilar.com/reports/49-table-equilar-200-ranking-largest-ceo-pay-packages.html*) for the ranking of CEOs by their pay packages. See ''How the C.E.O. Rankings Were Done'' (*https://www.nytimes.com/2017/05/26/business/how-the-ceo-rankings-were-done.html*) for a discussion of the study's methodology.

[310] *See* ''Financial Executive Compensation Report 2017'' Grant Thornton, 2017 (available at: *https://www.grantthornton.com/~/media/content-page-files/tax/pdfs/FEI-financial-exec-comp-survey-2017/FEI-survey-results-2017.ashx*).

paying positions, relatively speaking. For example, the average base salary for securities professionals working in New York City in 2015 (the last year for which such data is available) was $388,000 and the nominal value of the average annual bonus for that year was approximately $146,200.

TABLE 3 OF SECTION VII(A)(3)—2016 ANNUAL WAGES PER EMPLOYEE BY INDUSTRY

[This table presents the pre-tax annual wages per employee at privately owned establishments aggregated by industry as reported by the Bureau of Labor Statistics]

Industry	Annual wages per employee ($)
Natural resources and mining	$56,115
Construction	58,647
Manufacturing	64,870
Trade, transportation, and utilities	44,764
Information	98,458
Financial activities	88,841
Professional and business services	69,992
Education and health services	48,058
Leisure and hospitality	22,445
Other services	35,921
Unclassified	51,837

B. Analysis of Benefits, Costs, and Economic Effects of the Proposed Rules

In this section, we discuss the potential benefits, costs, and economic effects of the proposed rules. For proposed Rule 21F–6(c), we also discuss alternatives to the approach contemplated in the proposed rule as well as reasons for rejecting those alternatives.

1. Proposed Amendments to Rule 21F–2

Most of the proposed amendments to Rule 21F–2 are either in response to the Supreme Court's decision in *Digital Realty Trust, Inc.* v. *Somers*[311] or do not differ substantively from current rules and practice. Two proposed amendments, however, do represent changes relative to the economic baseline, and their potential benefits, costs, and economic effects are discussed here. Proposed Rule 21F–2(a)(1) would extend employment retaliation protection only to an individual who provides the Commission with information ''in writing.'' Proposed Rule 21F–2(d)(1)(iii) would, among other things, limit employment retaliation protection to lawful acts that ''relate to the subject matter'' of the person's submission to the Commission under proposed Rule 21F–2(a).

a. Proposed Rule 21F–2(a)(1)

Proposed Rule 21F–2(a)(1) could potentially impose a burden on those individuals who want to report potential violations to the Commission and wish to qualify as a ''whistleblower'' solely for employment retaliation protection. Such individuals might decide not to report to the Commission if the reporting burden is perceived to outweigh the benefits associated with retaliation protection. Our experience to date in the awards context suggests that requiring that information be provided in writing presents, at most, a minimal burden to individuals who want to report violations to the Commission. To the extent that this experience is informative about the reporting burden in the retaliation context, such a burden would also be, at most, minimal. Accordingly, the proposed rule would likely not have an adverse impact on the whistleblowing incentives of those individuals who wish to qualify as a ''whistleblower'' solely for employment retaliation protection.

We have considered several alternatives to the approach contemplated in proposed Rule 21F–2(a). The first alternative is to require information to be provided to the Commission through the online portal at *http://www.sec.gov,* or mailing or faxing a Form TCR to the Office of the Whistleblower. The second alternative is to permit additional manners of reporting for anti-retaliation purposes (such as placing a telephone call).

We rejected the first alternative because it would, in our view, unnecessarily limit the means of reporting to the Commission by individuals who are merely seeking employment retaliation protection. Limiting whistleblower status to those individuals who follow the first alternative could result in the unnecessary exclusion of individuals from the benefits of Section 21F(h)(2)'s employment retaliation protections without providing any accompanying benefit to the Commission, whistleblowers, or the public generally. Further, requiring individuals to report ''in writing'' could potentially impose lower costs (including time spent) on these individuals than the costs they would have borne under the first alternative.

We rejected the second alternative because of potential costs that could arise if the Commission's staff became ensnared by disputes in private anti-retaliation lawsuits over what information was provided to whom on what dates. Requiring that any reporting be done in writing obviates these potential costs.

b. Proposed Rule 21F–2(d)(1)(iii)

Proposed Rule 21F–2(d)(1)(iii) helps avoid the result that an individual could qualify just once as a whistleblower and then receive lifetime protection for any non-Commission reports described in clause (iii) of Section 21F(h)(1)(A). For individuals who want to make non-Commission reports about potential violations to their employers and desire employment retaliation protection for such lawful acts, the proposed rule could increase the incentives of these individuals to instead report directly to the Commission. These individuals would only qualify for employment retaliation protection if they report to the Commission under the proposed rule. Reporting to the Commission ''in writing'' as contemplated under proposed Rule 21F–2(a) could potentially impose a burden on these individuals. In light of the analysis of proposed Rule 21F–2(a)(1) *supra,* we believe that such a reporting burden would, at most, be minimal and would

[311] 138 S. Ct. 767 (2018).

likely not limit the reporting incentives afforded by proposed Rule 21F–2(d)(1)(iii).

2. Proposed Rule 21F–3(b)(4)

Proposed Rule 21F–3(b)(4) would provide that a law-enforcement action will not qualify as a related action if the Commission determines that there is a separate whistleblower award scheme that more appropriately applies to the enforcement action. Further, proposed Rule 21F–3(b)(4) would provide that the Commission will not make an award to the whistleblower for the related action if the whistleblower has already been granted an award by the authority responsible for administering the more applicable whistleblower award program. Further, under proposed Rule 21F–3(b)(4), if the whistleblower was denied an award by the other award program, the whistleblower would not be permitted to readjudicate any issues before the Commission that the authority responsible for administering the other whistleblower award program resolved as part of the award denial.

The proposed rule would prevent a whistleblower from adjudicating his or her contributions in separate forums and potentially obtaining two separate awards on the same enforcement action. While the existing rules preclude this result when an action is applicable to both the Commission's whistleblower program and the CFTC's whistleblower program,[312] the existing rules do not expressly preclude this result when the non-SEC whistleblower program is administered by an authority other than the CFTC. Thus, the proposed rule would help the Commission avoid paying awards that are not reasonably necessary in light of the whistleblower program's goals in cases where an action is applicable to the Commission's whistleblower program and the whistleblower program of an authority other than the CFTC.

The proposed rule would likely not have an adverse impact on the incentives of individuals who may report violations that result in enforcement actions potentially implicating both the Commission's whistleblower program and the whistleblower program of another authority other than the CFTC. As discussed earlier in Section II(C), to date, the Commission has never paid an award on a matter where a second whistleblower program also potentially applied to the same matter, nor has the Commission ever indicated that it would do so. Given that the proposed rule codifies the Commission's current practice, we believe that these potential whistleblowers would have already taken such current practice into account when deliberating on whether to report.

3. Proposed Rule 21F–4(d)(3)

Proposed Rule 21F–4(d)(3) would provide that, for purposes of making a whistleblower award, a non-prosecution agreement or deferred prosecution agreement entered into by the DOJ or a state attorney general in a criminal case, or a settlement agreement entered into by the Commission outside of the context of a judicial or administrative proceeding to address violations of the securities laws will be deemed to be an ''administrative action'' and any money required to be paid thereunder will be deemed a ''monetary sanction.'' The proposed rule will result in more awards being paid from the IPF because awards would be paid for non-prosecution and deferred prosecution agreements entered into by the U.S. Department of Justice or a state attorney general as well as settlement agreements entered into by the Commission in addition to judicial or administrative proceedings covered by the existing rules. While potentially increasing payouts from the IPF, the proposed rule should enhance the incentives for whistleblowers to come forward in a timely manner to the extent that it signals to prospective whistleblowers that a wider array of enforcement resolutions may result in awards.

4. Proposed Rule 21F–6(c)

Proposed Rule 21F–6(c) would provide a mechanism for the Commission to adjust upwards any awards that would potentially be below $2 million to a single whistleblower. However, this new authority would come with important limitations. Specifically, the Commission will not adjust an award upward if any of the negative award factors that are identified in Exchange Act Rule 21F–6(b) [313] were found to be present with respect to the whistleblower's award claim, or if the award claim triggers Exchange Act Rule 21F–16 (concerning awards to whistleblowers who engage in culpable conduct).[314]

The proposed rule could enhance the whistleblowing incentives of those individuals who anticipate receiving awards below $2 million and do not expect to be subject to any of the above conditions that would preclude an application of the award enhancement mechanism. The prospect of a larger award could encourage these individuals to report violations to the Commission. By withholding the upward adjustment if a whistleblower unreasonably delayed reporting to the Commission after learning the relevant facts, the proposed rule could increase whistleblowing incentives by encouraging individuals to report violations promptly and thereby facilitate the Commission's ability to protect investors.

The proposed rule could have a deterrent effect on potential violators because these individuals understand that they would lose the opportunity for an award enhancement if they engage in securities law violations and subsequently act as whistleblowers of those violations. Similarly, the proposed rule could have a deterrent effect on potential whistleblowers who contemplated interfering with an internal compliance and reporting system by denying award enhancements to such potential whistleblowers.

From a cost perspective, the proposed rule could potentially result in larger awards being paid from the IPF because an award that would yield a potential payout to a single whistleblower below $2 million may be adjusted upward. As indicated in Table 1 of Section VII(A)(3), the Commission has granted 31 whistleblower awards (*i.e.,* 62% of awards) that were below $2 million. To the extent that the distribution of past awards provides a reasonable estimate of the distribution of likely future awards, smaller awards are likely in the future, some of which could be subject to the proposed rule.

5. Proposed Rule 21F–6(d)

a. Consideration of Proposed Rule

Proposed Rule 21F–6(d) would provide a mechanism for the Commission to conduct an enhanced review of awards where the total monetary sanctions collected in the Commission or related actions would equal at least $100 million and where the potential payout to a single whistleblower in connection with those actions would exceed $30 million. Where these two conditions are met, the proposed rule would afford the Commission the discretion to determine if it is appropriate to adjust the award downward. The goal of any downward adjustment is to ensure that the likely total award payout to the whistleblower does not exceed an amount that the Commission determines is appropriate to achieve the program's objectives of rewarding meritorious whistleblowers and sufficiently incentivizing future whistleblowers. However, consistent with the statutory mandate, in no event

[312] *See* 17 CFR 240.21F–3(b)(3).

[313] 17 CFR 240.21F–6(b).

[314] 17 CFR 240.21F–16.

would the total amount awarded to all whistleblowers in the aggregate be less than 10 percent of the monetary sanctions collected from the action. Further, an application of the proposed rule would not result in a reduction of an award below $30 million. We believe that the proposed rule could foster a more efficient use of the IPF by reducing the likelihood of awards that are excessive in light of the whistleblower program's goals and the interests of investors and the broad public interest. As indicated in Table 1 of Section VII(A)(3), we have granted three whistleblower awards that exceeded $30 million. These three awards alone reduced the balance of the IPF by approximately $112 million. To the extent that the distribution of past awards provides a reasonable estimate of the distribution of likely future awards, large awards are likely in the future, some of which could be subject to the proposed rule. Absent the proposed rule, the Commission may find itself faced with the possibility of paying out significantly large awards that are in excess of the amounts appropriate to advance the goals of the whistleblower program, the interests of investors and the broad public interest. These awards could also substantially diminish the IPF, requiring the Commission to direct more funds to replenish the IPF rather than directing those funds to the United States Treasury where they could be used for other important public purposes.[315]

As whistleblowers consider their reporting decisions, they weigh, among other things, the expected size of the award and the expected costs associated with their whistleblowing. We acknowledge that proposed paragraph 6(d) could shift the upper end of the distribution of expected awards. However, we recognize that realized awards to date are typically substantially smaller in magnitude. In addition, according to the Office of the Whistleblower, of the 55 individuals who have received awards, approximately 10 percent are high-ranking corporate executives at companies of varying sizes and a large majority of these executives received awards that were under $5 million. This indicates to us that, as a practical matter, even those whistleblowers with the most to lose in terms of potential income have been willing to come forward for a recovery below the proposed $30 million floor. Thus, the data available does not indicate that proposed paragraph 6(d) would discourage whistleblowers from coming forward.

Additional factors further support the view that potential whistleblowers will not be discouraged from coming forward as a result of proposed paragraph 6(d). As discussed earlier, $30 million would be a floor, not a ceiling on large awards. Rather, $30 million is the point above which we would begin to consider whether the likely award is consistent with the program's objectives; we may choose not to reduce the award.

Further, the operation of proposed paragraph 6(d) would likely affect only a small subset of potential whistleblowers. As discussed in Section VII(A)(3) above, to date we have issued 50 whistleblower awards to 55 individuals (including, as explained above, individuals who acted as joint whistleblowers) and only three awards (*i.e.,* 6% of awards) have exceeded $30 million.[316] To the extent that the distribution of past awards provides a reasonable estimate of the distribution of likely future awards, and potential whistleblowers do not systematically over- or underestimate the size of recoveries,[317] only a minority of potential whistleblowers would be potentially affected by the proposed rule.[318]

Additionally, our review of the academic literature relevant to whistleblower incentives indicates that whistleblowers are often willing to report notwithstanding the absence of financial incentives. Non-monetary incentives that can motivate individuals to report include: (i) A desire to see wrongdoers punished, (ii) an interest in ''doing the right thing'' for the sake of investors or others who might be harmed by the wrongdoing, or (iii) a desire to protect one's own self-interests.[319]

Moreover, even at the $30 million floor that we are proposing, it appears to us that a $30 million award could yield a lump sum that, if invested in an annuity, could generate an annual return that is attractive in light of the wage and salary data presented in Section VII(A)(4).[320] A number of non-mutually exclusive factors can contribute to making the lump sum smaller than the whistleblower award. *First,* to the extent that the whistleblower wishes to remain anonymous through the course of an investigation and resulting enforcement action, that whistleblower must have an attorney represent him or her in connection with a submission of information and claim for an award.[321] The payment of attorney fees out of the whistleblower award would likely reduce the lump sum that could be invested in an annuity. *Second,* if the whistleblower award is awarded to two or more individuals who acted together as a joint whistleblower, then the award would likely be divided among the individual whistleblowers. Such a division of the award among the individual whistleblowers would reduce the lump sum that each individual could invest in an annuity.

To illustrate the annual income that a whistleblower could potentially receive by investing the lump sum residual award that remains after accounting for the factors discussed above, we annuitize a range of possible lump sums to generate different streams of payments. Such payments could potentially replace the stream of wage payments that a whistleblower would lose by leaving his or her employer. Alternatively, if the whistleblower experiences no change in his or her employment situation, the payments could be interpreted as additional income.

In Table 4 in Section VII(B)(5)(a), we report the annual income that could be generated over twenty years by

[315] *See* Section VII(A)(3) for a discussion of the IPF and its replenishment mechanism.

[316] One award that exceeded $30 million was issued in September 2014 in a Commission action and related actions. *See Order Determining Whistleblower Award Claim,* Exchange Act Release No. 34–73174 (Sept. 22, 2014), *available at https://www.sec.gov/rules/other/2014/34-73174.pdf.* The second and third awards that exceeded $30 million were issued in March 2018 in a Commission action. *See Order Determining Whistleblower Award Claim,* Exchange Act Release No. 34–82897 (March 19, 2018), *available at https://www.sec.gov/rules/other/2018/34-82897.pdf.*

[317] The proposed rule could affect a larger subset of potential whistleblowers if potential whistleblowers systematically overestimate the size of the recovery; conversely, the proposed rule could affect a smaller subset of potential whistleblowers if potential whistleblowers systematically underestimate the size of the recovery.

[318] We acknowledge that there are other pending awards that could exceed the $30 million floor. We do not discuss those matters here because they have not been finalized, but we note that such awards would still constitute a relatively small proportion of the overall future potential awards that the Commission is likely to make.

[319] *See* Anthony Heyes & Sandeep Kapur, *An Economic Model of Whistleblower Policy,* 25 J. L. Econ. & Org. 164–166 (2009) (providing a short review of academic literature on sociology and psychology and listing non-monetary motives for whistleblowing); *see also* Aaron S. Kesselheim *et al., Whistle-Blower's Experience in Fraud Litigation Against Pharmaceutical Companies,* 362 New England J. Med. 1834, 1835 (2010) (listing self-preservation, justice, integrity, altruism or public safety as primary motivations for *qui tam* lawsuits). *See* Securities Whistleblower Incentives and Protections, Exchange Act Release No. 64545, 76 FR at 34360, note 453 (June 13, 2011).

[320] We note that the annual incomes presented below are pre-tax numbers, as are the wage and salary data presented in Section VII(A)(4).

[321] *See* 17 CFR 240.21F–7(b)(1).

investing a lump sum upfront payment in a twenty-year annuity.[322] To capture the potential effects associated with taxes, attorneys' fees, and award division among individuals acting as a joint whistleblower, we calculate different annual incomes by varying the upfront payment from $5 million to $50 million in $5 million increments, and by varying the rate of return on the annuity from 2% per annum to 10% per annum in 2% increments. As an example, investing an upfront amount of $20 million in the annuity at 2% per annum generates an annual income of approximately $1.2 million.[323] Table 4 indicates that increasing the upfront payment while holding the rate of return constant increases the annual income; in addition, increasing the rate of return while holding the upfront payment constant also increases the annual income. To illustrate the effects of lengthening the duration of income generation, we repeat the calculations assuming a lump sum investment in a forty-year annuity (Table 5 in Section VII(B)(5)(a)), a sixty-year annuity (Table 6 in Section VII(B)(5)(a)), and a perpetuity[324] (Table 7 in Section VII(B)(5)(a)). In Tables 5, 6, and 7, we continue to calculate different annual incomes by varying the upfront payment from $5 million to $50 million in $5 million increments, and by varying the rate of return on the annuity from 2% per annum to 10% per annum in 2% increments.[325]

TABLE 4 IN SECTION VII(B)(5)(a)—ANNUAL INCOME GENERATED BY A TWENTY YEAR ANNUITY

[We assume that a lump sum upfront payment is invested in a twenty-year annuity to generate annual income over twenty years. We calculate different annual incomes by varying the upfront payment from $5 million to $50 million in $5 million increments, and by varying the rate of return on the annuity from 2% per annum to 10% per annum in 2% increments]

Upfront payment	Rate of return				
	2%	4%	6%	8%	10%
$5,000,000	$303,530	$363,588	$429,859	$501,864	$579,013
10,000,000	607,060	727,176	859,717	1,003,728	1,158,026
15,000,000	910,590	1,090,765	1,289,576	1,505,592	1,737,039
20,000,000	1,214,120	1,454,353	1,719,435	2,007,456	2,316,052
25,000,000	1,517,650	1,817,941	2,149,293	2,509,320	2,895,065
30,000,000	1,821,180	2,181,529	2,579,152	3,011,184	3,474,078
35,000,000	2,124,710	2,545,117	3,009,010	3,513,048	4,053,091
40,000,000	2,428,240	2,908,706	3,438,869	4,014,912	4,632,104
45,000,000	2,731,770	3,272,294	3,868,728	4,516,776	5,211,117
50,000,000	3,035,300	3,635,882	4,298,586	5,018,640	5,790,130

TABLE 5 IN SECTION VII(B)(5)(a)—ANNUAL INCOME GENERATED BY A FORTY YEAR ANNUITY

[We assume that a lump sum upfront payment is invested in a forty-year annuity to generate annual income over forty years. We calculate different annual incomes by varying the upfront payment from $5 million to $50 million in $5 million increments, and by varying the rate of return on the annuity from 2% per annum to 10% per annum in 2% increments]

Upfront payment	Rate of return				
	2%	4%	6%	8%	10%
$5,000,000	$181,695	$250,763	$330,128	$417,187	$509,488
10,000,000	363,391	501,526	660,256	834,374	1,018,975
15,000,000	545,086	752,289	990,385	1,251,561	1,528,463
20,000,000	726,782	1,003,052	1,320,513	1,668,748	2,037,950
25,000,000	908,477	1,253,815	1,650,641	2,085,935	2,547,438
30,000,000	1,090,172	1,504,578	1,980,769	2,503,122	3,056,925
35,000,000	1,271,868	1,755,342	2,310,897	2,920,309	3,566,413
40,000,000	1,453,563	2,006,105	2,641,025	3,337,496	4,075,900
45,000,000	1,635,258	2,256,868	2,971,154	3,754,683	4,585,388
50,000,000	1,816,954	2,507,631	3,301,282	4,171,870	5,094,875

[322] The other assumptions used in the calculations are: A fixed income is paid at the end of every month; monthly compounding of interest; there is no residual income at the end of the annuity; the annuity has $12 \times 20 = 240$ monthly payments; income is pre-tax; annual income is 12 multiplied by the monthly income generated by the annuity (*e.g.,* for an upfront payment of $20 million and a 2% rate of return per annum, the annuity generates a monthly income of $101,176.67. Multiplying $101,176.67 by 12 yields the $1,214,120 figure reported in the table.) These assumptions notwithstanding, we note that only a portion of the fixed income generated by a purchased commercial annuity is taxable under IRS rules. *See* Internal Revenue Service Publication 939, General Rule for Pensions and Annuities available at *https://www.irs.gov/pub/irs-pdf/p939.pdf.*

[323] *Id.*

[324] A perpetuity is a stream of fixed, periodic payments that go on indefinitely.

[325] The other assumptions used in Table 6–8 are: A fixed income is paid at the end of every month; monthly compounding of interest; there is no residual income at the end of the annuity; the annuity has monthly payments; income is pre-tax; annual income is 12 multiplied by the monthly income generated by the annuity. These assumptions notwithstanding, we note that only a portion of the fixed income generated by a purchased commercial annuity is taxable under IRS rules. *See* Internal Revenue Service Publication 939, General Rule for Pensions and Annuities available at *https://www.irs.gov/pub/irs-pdf/p939.pdf.*

TABLE 6 IN SECTION VII(B)(5)(a)—ANNUAL INCOME GENERATED BY A SIXTY YEAR ANNUITY

[We assume that a lump sum upfront payment is invested in a sixty-year annuity to generate annual income over sixty years. We calculate different annual incomes by varying the upfront payment from $5 million to $50 million in $5 million increments, and by varying the rate of return on the annuity from 2% per annum to 10% per annum in 2% increments]

Upfront payment	Rate of return				
	2%	4%	6%	8%	10%
5,000,000	$143,163	$220,042	$308,505	$403,373	$501,274
10,000,000	286,326	440,083	617,011	806,746	1,002,548
15,000,000	429,489	660,125	925,516	1,210,119	1,503,821
20,000,000	572,652	880,166	1,234,022	1,613,492	2,005,095
25,000,000	715,815	1,100,208	1,542,527	2,016,865	2,506,369
30,000,000	858,978	1,320,249	1,851,033	2,420,238	3,007,643
35,000,000	1,002,141	1,540,291	2,159,538	2,823,611	3,508,917
40,000,000	1,145,304	1,760,332	2,468,044	3,226,984	4,010,191
45,000,000	1,288,466	1,980,374	2,776,549	3,630,357	4,511,464
50,000,000	1,431,629	2,200,415	3,085,055	4,033,730	5,012,738

TABLE 7 IN SECTION VII(B)(5)(a)—ANNUAL INCOME GENERATED FROM A PERPETUITY

[We assume that a lump sum upfront payment is invested in a perpetuity to generate annual income in perpetuity. We calculate different annual incomes by varying the upfront payment from $5 million to $50 million in $5 million increments, and by varying the rate of return on the annuity from 2% per annum to 10% per annum in 2% increments]

Upfront payment	Rate of return				
	2%	4%	6%	8%	10%
5,000,000	$100,000	$200,000	$300,000	$400,000	$500,000
10,000,000	200,000	400,000	600,000	800,000	1,000,000
15,000,000	300,000	600,000	900,000	1,200,000	1,500,000
20,000,000	400,000	800,000	1,200,000	1,600,000	2,000,000
25,000,000	500,000	1,000,000	1,500,000	2,000,000	2,500,000
30,000,000	600,000	1,200,000	1,800,000	2,400,000	3,000,000
35,000,000	700,000	1,400,000	2,100,000	2,800,000	3,500,000
40,000,000	800,000	1,600,000	2,400,000	3,200,000	4,000,000
45,000,000	900,000	1,800,000	2,700,000	3,600,000	4,500,000
50,000,000	1,000,000	2,000,000	3,000,000	4,000,000	5,000,000

The annuity figures in Tables 4 through 7 in Section VII(B)(5)(a) are consistent with our belief that the proposed $30 million floor should not negatively impact the overall pecuniary incentives faced by most potential whistleblowers considering whether to come forward to the Commission to report potential misconduct.[326]

In addition, to the extent that the costs associated with whistleblowing include social stigma and a possible job loss for the whistleblower, the employment anti-retaliation protections and confidentiality requirements (including, critically, the ability of whistleblowers to remain anonymous) can serve to reduce the costs associated with whistleblowing to some extent.[327] Indeed, our experience to date has been that many company insiders have submitted their tips to the Commission anonymously.

b. Estimating Incentives To Provide Information

The Commission has sought to provide a quantitative estimate of the incentives to provide information via the whistleblower program. We acknowledge that a rigorous approach to analyzing the potential impact of the proposed changes on whistleblower incentives, would be to compare the number of whistleblower tips that resulted in successful enforcement actions before and after the establishment of the Commission's whistleblower program. Such a comparison could elucidate changes in behavior due to the whistleblower program, including potentially those due to the provision of monetary awards. However, data on whistleblower tips that led to successful enforcement actions prior to the establishment of the Commission's whistleblower program is not available, thus rendering such a comparison infeasible. Even absent such data, the Commission has engaged in a limited comparison of a pre-2011 awards program with the current whistleblower program. Section 21A(e) of the Exchange Act, added in 1988, authorized the Commission to award a bounty to a person who provides information leading to the recovery of a civil penalty from an insider trader, from a person who tipped information to an insider traders, or from a person who directly or indirectly controlled an insider trader. Section 21A(e) also established a limit on bounties of 10% of the amount recovered.

A March 2010 report by the SEC's Office of the Inspector General documented bounty applications and awards under the Commission's bounty program since its inception in 1989.[328] Between 1989 and 2010, the program had paid a total of $159,537 to five claimants in seven insider trading cases, at the statutory limit of 10% of

[326] It is possible that the proposed rule could introduce uncertainty or ambiguity about the likely size of the whistleblower award, which may affect the incentives of individuals to report potential violations. *See e.g.,* Itzhak Gilboa & David Schmeidler, Maxmin Expected Utility with Non-Unique Prior, 18 J. Mathematical Econ. 141 (1989) (proposing an axiomatic foundation of a decision rule based on maximizing expected minimum payoff of a strategy). *See also infra* note 330.

[327] *See* 15 U.S.C. 78u–6(d) and (h); 17 CFR 240.21F–9(c).

[328] *See* U.S. Securities and Exchange Commission, Office of the Inspector General, *Assessment of the SEC's Bounty Program,* March 29, 2010.

recoveries.[329] In contrast, since the inception of the whistleblower program in 2011 the Commission has ordered a single whistleblower payout related to an insider trading case, and that payout was less than $500,000.

Any comparison of the bounty program and the whistleblower program is limited by substantial differences between the bounty program and the whistleblower program in scope and process. Although the number of payments in insider trading cases has declined under the current program, the larger scope and breadth of the whistleblower program has resulted in a substantial increase in the number and magnitude of payments overall. Differences in measures of whistleblower incentives before and after the establishment of the whistleblower program likely will reflect a combination of changes to Commission processes that occurred simultaneously or very close in time, limiting our ability to identify the impact of any single change on whistleblower incentives. For example, while the 2011 rules implemented an increase in the maximum award percentage to 30% from the previous 10% maximum, they also established a 10% minimum award percentage.[330] Further, the 2011 rules also increased the scope of potential claims to include actions beyond insider trading and established an Office of the Whistleblower, actions that likely served to increase the prominence of the whistleblower program relative to the bounty program that preceded it. The implementing rules also set forth an updated process for the submission and evaluation of claims following criticisms that the bounty program was opaque and difficult for whistleblowers to navigate. Further, the statutory changes to the Exchange Act that established the whistleblower program also included explicit whistleblower protections. As we acknowledge that these factors limit the degree to which we can assess the potential impact on incentives of the proposed changes to the whistleblower program based on the transition from the bounty program to the whistleblower program, the Commission welcomes comment on changes to other whistleblower programs or alternative analytical methods that would permit more precise identification and quantification of the proposal's potential impacts.

c. Alternatives

The Commission has considered several alternatives to proposed Rule 21F–6(d). We discuss each of those alternatives below.

The first alternative is to set the floor at $5 million, and the second alternative is to set the floor at $50 million.

We believe that a $5 million floor could potentially apply to awards that are not the focus of the proposed amendment. As indicated in Table 1 of Section VII(A)(3), approximately 16% of past whistleblower awards are at least $5 million. To the extent that the distribution of past awards is a reasonable estimate of the distribution of likely future awards, this floor could result in the enhanced review of awards that are aligned with the program's goals. Because the focus of the proposed rule is on large awards that are not reasonably necessary to achieve the program's goals and that could disproportionately diminish the IPF, the $5 million floor is not preferable to the proposed approach.

A $50 million floor is not preferable to the proposed approach. We have not granted awards that are at least $50 million. Even if there were some cases where the proposed rule might be triggered, our discretion to make a meaningful and appropriate downward adjustment would be substantially reduced. Thus, the $50 million floor would likely not support the proposed rule's goal of ensuring that the likely total award payout to the whistleblower does not exceed an amount that the Commission determines is appropriate to further the goals of the whistleblower program. Because of this concern, we believe that the $50 million floor is not preferable to the proposed approach.

6. Proposed Rule 21F–8(e)

Under proposed Rule 21F–8(e), if an applicant submits three or more award applications that the Commission finds to be frivolous or lacking a colorable connection between the tip and the Commission action, the Commission may permanently bar the applicant from submitting any additional award applications (either for Commission actions or related actions) and the Commission would not consider any other award applications that the claimant has submitted or may seek to submit in the future.

The proposed rule would expressly provide, however, that the Office of the Whistleblower shall as a preliminary matter advise any claimant of the Office's assessment that the claimant's award application for a Commission action is frivolous or lacking a colorable connection between the tip and the action for which the applicant has sought an award. If the applicant withdraws the application at that time, it would not be considered by the Commission in determining whether to exercise its authority to impose a bar.

In addition, the proposed rule would generally codify the Commission's current practice with respect to applicants who violate Rule 21F–8(c)(7).[331] That rule provides that an applicant shall be ineligible for an award if, in his or her whistleblower submission, his or her other dealings with the Commission, or his or her dealings with another authority in connection with a related action, the individual knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or uses any false writing or document knowing that it contains any false, fictitious, or fraudulent statement or entry with intent to mislead or otherwise hinder the Commission or another authority. The Commission has issued two final orders that have permanently barred the applicants from submitting any further whistleblower award applications based on violations of Rule 21F–8(c)(7). The proposed rule would clarify and codify the Commission's authority to bar applicants by providing that if the Commission finds that a claimant has violated paragraph (c)(7) of Rule 21F–8, the Commission may permanently bar the applicant from making any future award applications, and shall decline to process any other award applications that the claimant has already submitted.

The proposed rule could increase the speed and efficiency of the award determination process.[332] By permanently barring applicants that make three or more frivolous award applications, as well as not processing any future applications from these barred applicants, the proposed rule could help free up staff resources that could then be devoted to processing potentially meritorious award applications. In the Commission's experience to date, two individuals have submitted approximately 24% of all award applications in connection with Commission covered actions. All but one of the applications submitted by

[329] *Id* at 5.

[330] *See* S. Rep. No. 111–176 at 110–12 (2010) at 111 (noting the majority view that "the critical component of the Whistleblower Program is the minimum that any individual could look towards in determining whether to take the enormous risk of blowing the whistle in calling attention to fraud").

[331] 17 CFR 240.21F–8(c)(7).

[332] We acknowledge that this potential benefit rests, in part, on the premise that the applicants covered by the proposed rule would likely not change their behavior with respect to the overall award determination process. For example, an applicant that has been found to submit multiple frivolous award applications in the past would likely continue to do so in the future.

these two individuals have been found by the Office of the Whistleblower to be entirely frivolous. To the extent that the agency's historical experience is informative about the likely behavior of applicants that submit multiple frivolous award applications in the future, the proposed rule would have a meaningful impact in terms of freeing up staff resources that could then be devoted to processing potentially meritorious award applications. This redeployment of staff resources in turn could expedite the processing of potentially meritorious award applications. More broadly, staff resources that are freed up as a result of the proposed rule could be devoted to other work related to the whistleblower program including, but not limited to, the posting of Notices of Covered Actions, determining potential payouts, and manning the whistleblower hotline.[333] Further, as discussed in Section II(F), *above,* we have found that the repeat applicants that would be covered by proposed Rule 21F–8(e)(1) can significantly delay the processing of meritorious award applications and the eventual payment of awards by utilizing the procedural opportunities to object to an award. By barring such applicants, the proposed rule could reduce the delay in processing meritorious award applications and the eventual payment of awards.

The abovementioned benefit would also potentially arise from the proposed rule's deterrent effect to the extent that the proposed rule discourages individuals from submitting frivolous award applications because they recognize that the submission of frivolous award applications may ultimately permanently disqualify them from obtaining a whistleblower award.

Overall, the proposed rule could increase the speed and efficiency of the award determination process by expediting the processing of potentially meritorious award applications, as well as the payment of awards. To the extent that faster award application processing and award payment motivate whistleblowing, individuals are more likely to come forward and report potential violations as a result of the proposed rule.

The proposed rule could help protect investors and the public from potential harm (particularly where the misconduct concerns ongoing Commission actions) that may flow from the provision of false, fictitious, or fraudulent statement or representation, or false writing or document with intent of misleading or otherwise hindering the Commission or another authority. This benefit would potentially arise because the proposed rule would grant the Commission discretion to permanently bar applicants that violated Rule 21F–8(c)(7) from submitting any future award applications.[334] This benefit would also potentially arise from the proposed rule's deterrent effect to the extent that the proposed rule discourages individuals from engaging in the conduct prohibited by Rule 21F–8(c)(7), particularly when they are submitting their award applications, because they should recognize that it may not only lead to a denial of their current award claim but may also permanently disqualify them from obtaining a whistleblower award.

Individuals who are permanently barred under the proposed rule might subsequently have information about possible securities law violations that could be provided to the Commission. To the extent that these barred individuals' decision to report is based solely on the pecuniary motivation of obtaining a whistleblowing award, these individuals may decide not to report even if they have information about possible violations because they can no longer obtain a whistleblower award as a result of the proposed rule. We believe that this potential cost of the proposed rule could be mitigated by a number of factors.

First, the number of individuals who may be permanently barred by the proposed rule for submitting three or more frivolous applications and who might subsequently have information about possible securities law violations that could be provided to the Commission is likely to be a small fraction of the population of award applicants. Based on our experience to date, we have found that individuals that submitted three or more award applications make up 6.6% of the population of covered action award applicants. This estimate constitutes an upper bound of the actual fraction of applicants that submitted three or more frivolous applications and subsequently had information about possible securities law violations that could be provided to the Commission.[335] To the extent that our estimate is informative of the likely fraction of award applicants who may be permanently barred by the proposed rule, the potential cost associated with the proposed rule would be limited.

Second, as discussed above, the Commission has issued two final orders that have permanently barred the applicants from submitting any further whistleblower award applications based on violations of Rule 21F–8(c)(7). The proposed rule would clarify and codify the Commission's authority to bar applicants by providing that if the Commission finds that a claimant has violated paragraph (c)(7) of Rule 21F–8, the Commission may permanently bar the applicant from making any future award applications, and shall decline to process any other award applications that the claimant has already submitted. Given that the proposed rule codifies the Commission's current practice, we believe that individuals who have been barred on the basis of Rule 21F–8(c)(7) would have already taken such current practice into account when deliberating on whether to report, even in the absence of the proposed rule.

Finally, as discussed in the adopting release that accompanied the original whistleblower rules, whistleblowing is an individual decision that is generally guided by a complex mix of pecuniary elements and non-pecuniary elements.[336] Individuals that are permanently barred from applying for whistleblower awards may still come forward and provide information about possible violations if they are sufficiently motivated by non-pecuniary elements.[337]

We also acknowledge the possibility that individuals who have made fewer than three frivolous award applications [338] might be discouraged from reporting possible securities law violations because their next award application could be determined to be frivolous, which would increase the likelihood of a permanent bar from making any future award applications.

[333] To help promote the SEC's whistleblower program and establish a line of communication with the public, the Office of the Whistleblower operates a hotline where whistleblowers, their attorneys, or other members of the public with questions about the program may call to speak to the Office of the Whistleblower's staff. During FY 2017, the Office of the Whistleblower returned nearly 3,200 calls from members of the public, exceeding the number of calls returned the prior fiscal year. Since May 2011 when the hotline was established, the Office of the Whistleblower has returned over 18,600 calls from the public. *See* SEC Whistleblower Program 2017 Annual Report to Congress (Nov. 15, 2017), available at *https://www.sec.gov/files/sec-2017-annual-report-whistleblower-program.pdf.*

[334] *See supra* text accompanying notes 184–189, 331.

[335] To date, four applicants submitted three or more applications that were determined to be potentially meritorious and not frivolous.

[336] *See* Securities Whistleblower Incentives and Protections Adopting Release, 76 FR at 34355, note 433.

[337] *Id.* An example of a non-pecuniary element is a sense of "doing the right thing."

[338] These individuals include those who are considering reporting a possible violation for the first time, those who have made one frivolous claim, and those who have made two frivolous claims.

We believe that this potential cost of the proposed rule could be mitigated by a number of factors.

First, as discussed above, the proposed rule would expressly provide that the Office of the Whistleblower shall as a preliminary matter advise any claimant of the Office's assessment that the claimant's award application for a Commission action is frivolous or lacking a colorable connection between the tip and the action for which the applicant has sought an award. If the applicant withdraws the application at that time, it would not be considered by the Commission in determining whether to exercise its authority to impose a bar. We believe that this aspect of the proposed rule should alleviate the concerns among those individuals who have made fewer than three frivolous award applications that their next award application could be determined to be frivolous, which would increase the likelihood of a permanent bar from making any future award applications. *Second,* the claims adjudication processes that are specified in Rule 21F–10 and Rule 21F–11 afford a whistleblower the opportunity to demonstrate the meritorious nature of her claim should her claim be preliminarily denied on the grounds of being frivolous. Thus, the claims adjudication processes should help ensure that potentially meritorious claims will be considered as such by the Commission. *Third,* as discussed above, whistleblowing is an individual decision that is generally guided by a complex mix of pecuniary elements and non-pecuniary elements.[339] Individuals who are concerned about being permanently barred from applying for whistleblower awards may still come forward and provide information about possible violations if they are sufficiently motivated by non-pecuniary elements.[340]

7. Proposed Rule 21F–18

Proposed Rule 21F–18(a) provides that the Office of the Whistleblower may use a summary disposition process to deny any award application that falls within any of the following categories: (1) Untimely award application; [341] (2) noncompliance with the requirements of Rule 21F–9,[342] which concerns the manner for submitting a tip to qualify as a whistleblower and to be eligible for an award; (3) claimant's information was never provided to or used by the staff handling the covered action or the underlying investigation (or examination), and those staff members otherwise had no contact with the claimant; (4) noncompliance with Rule 21F–8(b),[343] which requires an applicant to submit supplemental information that the Commission may require [344] and to enter into a confidentiality agreement; or (5) failure to specify in the award application the submission that the claimant made pursuant to Rule 21F–9(a) [345] upon which the claim to an award is based. In addition, the proposed rule would provide that other defective or non-meritorious award applications could be subject to the summary disposition process under appropriate circumstances. Proposed Rule 21F–18(b) specifies the procedures that shall apply to any award application designated for summary disposition.

The proposed rule could reduce the diversion of staff resources and time that it might otherwise take to process claims that may be rejected on straightforward grounds. An award application that is processed by the proposed summary disposition process would not require the Claims Review Staff to review the record, issue a Preliminary Determination, consider any written response filed by the claimant, or issue the Proposed Final Determination; these functions would be assumed by the Office of the Whistleblower. The summary disposition process incorporates two other modifications. *First,* the 30-day period for replying to a Preliminary Summary Disposition is shorter than the time period for replying to a Preliminary Determination provided for in Rules 21F–10(e)(2) [346] and 21F–11(e)(2).[347] This shorter period should be sufficient for a claimant to reply and that it is appropriate given that the matters subject to summary disposition should be relatively straightforward. *Second,* a claimant would not have the opportunity to receive the full administrative record upon which the Preliminary Denial was based. Instead, the Office of the Whistleblower would (to the extent appropriate given the nature of the denial) provide the claimant with a staff declaration that contains the pertinent facts upon which the Preliminary Summary Disposition is based. This modification from the record-review process specified in Rules 21F–10 and 21F–11 should still afford any claimant a sufficient opportunity to provide a meaningful reply to a Preliminary Summary Disposition. This should eliminate the delay that can arise when a claimant does not expeditiously request the record (which in turn delays the start of the 60-day period for a claimant to submit a response to a preliminary determination); elimination of these delays should help further expedite the summary adjudication process that we are proposing.

As with Proposed Rule 21F–8(e), staff resources that are freed up as a result of the proposed rule could be devoted to processing potentially meritorious award applications. This, in turn, could expedite the processing of potentially meritorious award applications. To the extent that faster processing of potentially meritorious award applications motivates whistleblowing, individuals may be more likely to come forward and report potential violations as a result of the proposed rule. Further, as noted in the discussion of proposed Rule 21F–8(e) above, staff resources that are freed up as a result of the proposed rule could be devoted to other work related to the whistleblower program.

We acknowledge the potential that certain aspects of the proposed rule might make it more difficult for whistleblowers to respond to the denial of award applications. The proposed rule might reduce the whistleblowing incentives of those individuals who consider the ease of responding to award application denials when deciding whether to come forward and report potential violations.

However, certain factors limit this potential for increased difficulties for whistleblowers. *First,* given that the matters subject to summary disposition should be relatively straightforward, we believe that the 30-day period for replying to a Preliminary Summary Disposition and the provision of a staff declaration (where applicable) should afford any claimant a sufficient opportunity to provide a meaningful reply to a Preliminary Summary Disposition. *Second,* as discussed above, the proposed rule may only be used to deny award applications that fall under certain restricted categories. *Third,* as discussed in the adopting release that accompanied the original whistleblower rules, whistleblowing is an individual decision that is generally guided by a complex mix of pecuniary elements and non-pecuniary

[339] *See* Securities Whistleblower Incentives and Protections Adopting Release, 76 FR at 34355, note 433.

[340] *Id.* An example of a non-pecuniary element is a sense of ''doing the right thing.''

[341] The time periods for submitting an award application are specified in Rule 21F–10(b) and Rule 21F–11(b). *See* 17 CFR 240.21F–10(b) & 11(b).

[342] 17 CFR 240.21F–9.

[343] 17 CFR 240.21F–8(b).

[344] The authority to require additional information of an applicant is delegated to the Office of the Whistleblower. *See* 17 CFR 240.21F–10(d).

[345] 17 CFR 240.21F–9(a).

[346] 17 CFR 240.21F–10(e)(2).

[347] 17 CFR 240.21F–11(e)(2).

elements.[348] Individuals who may be concerned with the ease of responding to award application denials may still come forward and provide information about possible violations if they are sufficiently motivated by non-pecuniary elements.

8. Proposed Interpretive Guidance Regarding the Meaning and Application of ''independent analysis'' as Defined in Exchange Act Rule 21F–4(b)(3) [349]

The proposed interpretive guidance helps to clarify the meaning of ''independent analysis'' as that term is defined in Exchange Act Rule 21F–4 and utilized in the definition of ''original information.'' As discussed earlier, a whistleblower's examination and evaluation of publicly available information does not constitute ''analysis'' if the facts disclosed in the public materials on which the whistleblower relies and in other publicly available information are sufficient to raise an inference of the possible violations alleged in the whistleblower's tip. In order for a whistleblower to be credited with ''analysis,'' the whistleblower's examination and evaluation should contribute ''significant independent information'' that ''bridges the gap'' between the publicly available information and the possible securities violations. Assuming that a whistleblower's submission meets the threshold requirement that it constitutes ''independent analysis,'' for the whistleblower to be eligible for an award the ''information that . . . is derived from the . . . [whistleblower's] analysis'' must also be of such high quality that it leads to a successful enforcement action.

The interpretive guidance could potentially reduce the whistleblowing incentives of those individuals who wish to satisfy the ''independent analysis'' prong of the ''original information'' requirement by examining publicly available information and providing observations that do not go beyond the information itself and reasonable inferences to be drawn therefrom. In light of the interpretive guidance, these individuals may decide not to provide such public information knowing that such information would not be credited as ''independent analysis'' and therefore not eligible for a whistleblower award. To the extent that the provision of public information improves Commission enforcement or otherwise provides a benefit, any potential reduction in such provision would be a cost associated with the interpretive guidance. Nevertheless, individuals who are aware that public information would not be credited with ''independent analysis'' may still come forward and provide public information to the Commission if they are sufficiently motivated by non-pecuniary elements.

The interpretive guidance could increase the whistleblowing incentives of those individuals who possess ''significant independent information'' that ''bridges the gap'' between the publicly available information (and reasonable inferences therefrom) and the conclusion that possible securities violations are indicated, but may decide against reporting to the Commission because they do not fully understand the meaning of ''independent analysis'' in the absence of the interpretive guidance. To the extent that these individuals come forward and report such significant independent information to the Commission in light of the interpretive guidance, the quantity and quality of reported information might increase, which in turn might improve the Commission's ability to enforce Federal securities laws, detect violations and deter potential future violations. Further, the clarification afforded by the interpretive guidance might also reduce the number of award applications that are made solely on the basis of the provision of public information and do not meet the ''independent analysis'' threshold. To the extent that the number of such claims declines as a result of the interpretive guidance, staff resources could be freed up and devoted to processing potentially meritorious award applications and other work related to the whistleblower program as discussed earlier.[350]

C. Effects of the Proposed Rules on Efficiency, Competition, and Capital Formation

As discussed earlier, the Commission is sensitive to the economic consequences of its rules, including the benefits, costs, and effects on efficiency, competition, and capital formation. The Commission believes that the proposed amendments will make incremental changes to its whistleblower program. Thus, the Commission does not anticipate the effects on efficiency, competition, and capital formation to be significant.

The proposed rules could have a positive indirect impact on investment efficiency and capital formation by increasing the incentives of potential whistleblowers to provide information on possible violations.[351] Providing such information could increase the effectiveness of the Commission's enforcement activities More effective enforcement could lead to earlier detection of violations and increased deterrence of potential future violations, which should assist in a more efficient allocation of investment funds. Serious securities frauds, for example, can cause inefficiencies in the economy by diverting investment funds from more legitimate, productive uses.[352]

Additionally, to the extent that the proposed rules increase deterrence of potential future violations, investors' trust in the securities markets would also increase. This increased investor trust will promote lower capital costs as more investment funds enter the market, and as investors generally demand a lower risk premium due to a reduced likelihood of securities fraud.[353] This, too, should promote the efficient allocation of capital formation.

At the same time, some proposed rules could reduce whistleblowing incentives in certain cases, although any such reduction in whistleblowing incentives—to the extent that it occurs—is justified in light of the positive indirect impact on investment efficiency and capital formation discussed earlier. Proposed Rule 21F–6(d) could reduce the whistleblowing incentives of those potential whistleblowers who anticipate receiving awards in excess of $30 million and make their reporting decision by trading off the expected size of the award against the expected costs associated with whistleblowing.[354] Proposed Rule 21F–8(e) might reduce the whistleblowing incentives of (i) those individuals who are permanently barred under the proposed rule from submitting award applications and (ii)

[348] *See* Securities Whistleblower Incentives and Protections Adopting Release, 76 FR at 34355, note 433.

[349] 17 CFR 240.21F–4(b)(3).

[350] *See supra* Sections VII(B)(6) and VII(B)(7).

[351] *See supra* Section VII(B) for a discussion of how proposed Rules 21F–2(d)(1)(iii), 21F–4(d)(3), 21F–6(c), 21F–8(e), 21F–18, and the interpretive guidance could increase whistleblowing incentives.

[352] *See* Securities Whistleblower Incentives and Protections Adopting Release, 76 FR at 34362.

[353] *See id.* note 466, which explains the link between investor trust in the fairness of the market and capital cost (''If investors fear theft, fraud, manipulation, insider trading, or conflicted investment advice, their trust in the markets will be low, both in the primary market for issuance or in the secondary market for trading. This would increase the cost of raising capital, which would impair capital formation—in the sense that it will be less than it would or should be if rules against such abuses were in effect and properly enforced and obeyed.''). *See also* Ko, K. Jeremy, ''Economics Note: Investor Confidence'', October 2017, available at *https://www.sec.gov/files/investor_confidence_noteOct2017.pdf.*

[354] *See supra* SectionVII(B)(4).

those individuals who have made fewer than three frivolous award applications. Proposed Rule 21F–18 might reduce the whistleblowing incentives of those individuals who consider the ease of responding to award application denials when deciding whether to come forward and report potential violations. The interpretive guidance might reduce the whistleblowing incentives of those individuals who wish to rely on the provision of solely public information to satisfy the ''independent analysis'' prong of the ''original information'' requirement for a whistleblower award. These potential reductions in whistleblowing incentives may be limited for reasons discussed earlier.[355] Further, we reiterate our belief that any such reduction in whistleblowing incentives—to the extent that is occurs—is justified in light of the positive impact on investment efficiency and capital formation discussed earlier.

The proposed rules that provide the Commission with additional considerations for awards may have opposite, albeit indirect, impacts on investment efficiency and capital formation by potentially altering the level of monetary incentives that whistleblower would expect at different recovery levels. On one hand, proposed Rule 21F–6(d) could reduce the whistleblowing incentives of those individuals who anticipate receiving awards in excess of $30 million by reducing their anticipated award to an amount of $30 million or greater; on the other hand proposed Rule 21F–6(c) could enhance the whistleblowing incentives of those individuals who anticipate receiving awards below $2 million by increasing their anticipated award to an amount of up to $2 million.

The proposed rules could also improve other forms of efficiency. Proposed Rule 21F–3(b)(4) and proposed Rule 21F–6(d) could foster a more efficient use of the IPF by avoiding awards that are not reasonably necessary in light of the whistleblower program's goals and the interests of investors and the broad public interest. Further, certain proposed rules could promote efficiency in the processing of award applications. By permanently barring applicants that make frivolous or fraudulent award applications, proposed Rule 21F–8(e) could help free up staff resources that could be used to expedite the processing of potentially meritorious award applications as well as the payment of awards. Staff resources that are freed up as a result of proposed Rule 21F–18 could also expedite the processing of potentially meritorious award applications. As discussed in Sections VII(B)(6) and VII(B)(7) above, to the extent that faster award application processing and award payment motivate whistleblowing, individuals are more likely to come forward and report potential violations as a result of proposed Rule 21F–8(e) and proposed Rule 21F–18. To the extent that the proposed rules promote the timely reporting of possible violations by increasing whistleblowing incentives and prevent the provision of false, fictitious, or fraudulent statement or representation, or a false writing or document with intent of misleading or otherwise hindering the Commission or another authority,[356] the efficiency in detecting violations would be enhanced in the sense that violations could be detected sooner, reducing losses associated with the misuse of resources. Greater efficiency in detecting violations could also speed up the public disclosure of such violations to securities markets. Price efficiency could be improved if earlier public disclosure of violations speeds up the incorporation of such news into security prices.

Similar to the effects on capital formation, the effects of the proposed rules on competition would be indirect, and would flow from their effects on whistleblowing incentives. To the extent that the proposed rules increase the likelihood of detecting misconduct by increasing whistleblowing incentives, the proposed rules could reduce the unfair competitive advantages that some companies can achieve by engaging in undetected violations.[357] Conversely, to the extent that the proposed rules decrease the likelihood of detecting misconduct by reducing whistleblowing incentives, the proposed rules could increase the unfair competitive advantages that some companies can achieve by engaging in undetected violations.

Request for Comment

The Commission seeks commenters' views on all aspects of its economic analysis of the proposed amendments. In particular, the Commission asks commenters to consider the following questions:

1. Are there costs and benefits associated with the proposed amendments that the Commission has not identified? If so, please identify them and if possible, offer ways of estimating these costs and benefits.

2. Do, and if so at what point, awards become unreasonably large in light of the goals of the whistleblower program? Please explain and provide details.

3. Are there effects on efficiency, competition, and capital formation stemming from the proposed amendments that the Commission has not identified? If so, please identify them and explain how the identified effects result from one or more amendments.

4. How will lowering award amounts based on dollar figures impact the incentives of whistleblowers to provide the Commission with information on misconduct? Will potential whistleblowers view the $30 million floor as a cap? Why or why not?

5. Are there data sources or data sets that can help the Commission refine its estimates of the lost wages earned by whistleblowers from their previous jobs? Besides lost wages, are there other ways to determine the effectiveness of whistleblower awards?

6. Are there alternatives to the proposed rules that the Commission has not identified? If so, please identify and describe them.

IX. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[358] the Commission solicits data to determine whether the proposed rule amendments constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

Commenters should provide empirical data on (a) the potential annual effect on the economy; (b) any increase in costs or prices for consumers or individual industries; and (c) any potential effect on competition, investment or innovation.

X. Regulatory Flexibility Act Certification

Section 603(a) of the Regulatory Flexibility Act[359] requires the Commission to undertake an initial regulatory flexibility analysis of the proposed rules unless the Commission certifies that the proposed rules, if

[355] *See supra* Sections VII(B)(4), VII(B)(6), VII(B)(7), and VII(B)(8).

[356] *See supra* Section VII(B)(6).

[357] *See* 76 FR at 34362.

[358] Public Law 104–121, tit. II, 110 Stat 857 (1996).

[359] 5 U.S.C. 603(a).

adopted, would not have a significant economic impact on a substantial number of small entities.[360]

Small entity is defined in 5 U.S.C. 601(6) to mean ''small business,'' ''small organization,'' and ''small governmental jurisdiction'' as defined in 5 U.S.C. 601(3)–(5). The definition of ''small entity'' does not include individuals. The proposed rules apply only to an individual, or individuals acting jointly, who provide information to the Commission relating to the violation of the securities laws. Companies and other entities are not eligible to participate in the whistleblower program as whistleblowers. Consequently, the persons that would be subject to the proposed rule are not ''small entities'' for purposes of the Regulatory Flexibility Act.

For the reasons stated above, the Commission certifies, pursuant to 5 U.S.C. 605(b) of the Regulatory Flexibility Act, that the proposed rules would not have a significant economic impact on a substantial number of small entities.

Solicitation of Comments: We encourage the submission of comments with respect to any aspect of this Regulatory Flexibility Act Certification. To the extent that commenters believe that the proposed rules might have a covered impact, we ask they describe the nature of any impact and provide empirical data supporting the extent of the impact. We will place any such comments in the same public file as comments on the proposed amendments themselves.

XI. Statutory Basis

The Commission proposes the rule amendments, as well as the removal of references to various forms, contained in this document under the authority set forth in Sections 3(b), 21F, and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 240 and 249

Securities, Whistleblowing.

Text of the Proposed Amendments

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78n–1, 78*o*, 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.*; and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1887 (2010); and secs. 503 and 602, Pub. L. 112–106, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

Section 240.21F is also issued under Pub. L. 111–203, § 922(a), 124 Stat. 1841 (2010).

* * * * *

■ 2. Section 240.21F–2 is revised to read as follows:

§ 240.21F–2 Whistleblower status, award eligibility, and confidentiality and retaliation protections.

(a) *Whistleblower status.* (1) You are a whistleblower for purposes of Section 21F of the Exchange Act (15 U.S.C. 78u–6) as of the time that, alone or jointly with others, you provide the Commission with information in writing that relates to a possible violation of the federal securities laws (including any law, rule, or regulation subject to the jurisdiction of the Commission) that has occurred, is ongoing, or is about to occur.

(2) A whistleblower must be an individual. A company or other entity is not eligible to be a whistleblower.

(b) *Award eligibility.* To be eligible for an award under Section 21F(b) of the Exchange Act (15 U.S.C. 78u–6(b)) based on any information you provide that relates to a possible violation of the federal securities laws, you must comply with the procedures and the conditions described in §§ 240.21F–4, 240.21F–8, and 240.21F–9. You should carefully review those rules before you submit any information that you may later wish to rely upon to claim an award.

(c) *Confidentiality protections.* To qualify for the confidentiality protections afforded by Section 21F(h)(2) of the Exchange Act (15 U.S.C. 78u–6(h)(2)) based on any information you provide that relates to a possible violation of the federal securities laws, you must comply with the procedures and the conditions described in § 240.21F–9(a).

(d) *Retaliation protections.* (1) To qualify for the retaliation protections afforded by Section 21F(h)(1) of the Exchange Act (15 U.S.C. 78u–6(h)(1)), you must satisfy all of the following criteria:

(i) You must qualify as a whistleblower under paragraph (a) of this section before experiencing the retaliation for which you seek redress;

(ii) You must reasonably believe that the information you provide to the Commission under paragraph (a) of this section relates to a possible violation of the federal securities laws; and

(iii) You must perform a lawful act that meets the following two criteria:

(A) First, the lawful act must be performed in connection with any of the activities described in Section 21F(h)(1)(A)(i) through (iii) of the Exchange Act (15 U.S.C. 78u–6(h)(1)(A)(i) through (iii)); and

(B) Second, the lawful act must relate to the subject matter of your submission to the Commission under paragraph (a) of this section.

(2) To receive retaliation protection for a lawful act described in paragraph (d)(1)(iii) of this section, you do not need to qualify as a whistleblower under paragraph (a) of this section before performing the lawful act, but you must qualify as a whistleblower under paragraph (a) of this section before experiencing retaliation for the lawful act.

(3) To qualify for retaliation protection, you do not need to satisfy the procedures and conditions for award eligibility in §§ 240.21F–4, 240.21F–8, and 240.21F–9.

(4) Section 21F(h)(1) of the Exchange Act (15 U.S.C. 78u–6(h)(1)), including any rules promulgated thereunder, shall be enforceable in an action or proceeding brought by the Commission.

■ 3. Section 240.21F–3 is amended by:

■ a. Revising paragraph (b)(1); and

■ b. Adding paragraph (b)(4).

The revision and addition read as follows:

§ 240.21F–3 Payment of awards.

* * * * *

(b) * * *

(1)(i) A *related action* is a judicial or administrative action that is brought by one of the entities listed in paragraphs (b)(1)(i)(A) through (D) of this section, that is based upon information that either the whistleblower provided directly to the entity or the Commission itself passed along to the other entity pursuant to the Commission's procedures for sharing information, and which is the same original information that the whistleblower voluntarily provided to the Commission and that led the Commission to obtain monetary sanctions totaling more than $1,000,000.

(A) The Attorney General of the United States;

(B) An appropriate regulatory authority;

(C) A self-regulatory organization; or

(D) A state attorney general in a criminal case.

[360] 5 U.S.C. 605(b).

(ii) The terms *appropriate regulatory authority* and *self-regulatory organization* are defined in § 240.21F–4.

* * * * *

(4)(i) Notwithstanding paragraph (b)(1) of this section, if a judicial or administrative action is subject to a separate monetary award program established by the Federal Government, a state government, or a self-regulatory organization, the Commission will deem the action a related action only if the Commission finds (based on the unique facts and circumstances of the action) that its whistleblower program has the more direct or relevant connection to the action.

(ii) In determining whether a potential related action has a more direct or relevant connection to the Commission's whistleblower program than another award program, the Commission will consider the nature, scope, and impact of the misconduct charged in the potential related action, and its relationship to the federal securities laws. This inquiry may include consideration of, among other things:

(A) The relative extent to which the misconduct charged in the potential related action implicates the public policy interests underlying the federal securities laws (such as investor protection) versus other law-enforcement or regulatory interests (such as tax collection or fraud against the Federal Government);

(B) The degree to which the monetary sanctions imposed in the potential related action are attributable to conduct that also underlies the federal securities law violations that were the subject of the Commission's enforcement action; and

(C) Whether the potential related action involves state-law claims and the extent to which the state may have a whistleblower award scheme that potentially applies to that type of law-enforcement action.

(iii) If the Commission does determine to deem the action a related action, the Commission will not make an award to you for the related action if you have already been granted an award by the authority responsible for administering the other whistleblower award program. Further, if you were denied an award by the other award program, you will not be permitted to readjudicate any issues before the Commission that the authority responsible for administering the other whistleblower award program resolved against you as part of the award denial. Additionally, if the Commission makes an award before an award determination is finalized by the authority responsible for administering the other award scheme, the Commission shall condition its award on the meritorious whistleblower making a prompt, irrevocable waiver of any claim to an award from the other award scheme.

■ 4. Section 240.21F–4 is amended by:

■ a. Revising paragraph (c)(2);

■ b. In paragraph (d)(2), removing the period from the end of the paragraph and adding in its place ''; and'';

■ c. Adding paragraph (d)(3); and

■ d. Revising paragraph (e).

The revisions and addition read as follows:

§ 240.21F–4 Other definitions.

* * * * *

(c) * * *

(2) You gave the Commission original information about conduct that was already under examination or investigation by the Commission, the Congress, any other authority of the federal government, a state Attorney General or securities regulatory authority, any self-regulatory organization, or the PCAOB (except in cases where you were an original source of this information as defined in paragraph (b)(5) of this section), and your submission significantly contributed to the success of the action.

* * * * *

(d) * * *

(3) For purposes of making an award under §§ 240.21F–10 and 240.21F–11, the following will be deemed to be an administrative action and any money required to be paid thereunder will be deemed a monetary sanction under paragraph (e) of this section:

(i) A non-prosecution agreement or deferred prosecution agreement entered into by the U.S. Department of Justice or a state attorney general in a criminal case; or

(ii) A settlement agreement entered into by the Commission outside of the context of a judicial or administrative proceeding to address violations of the securities laws.

(e) *Monetary sanctions* means:

(1) A required payment that results from a Commission action or related action and which is either:

(i) Expressly designated as disgorgement, a penalty, or interest thereon; or

(ii) Otherwise required as relief for the violations that are the subject of the covered action or related action; or

(2) Any money deposited into a disgorgement fund or other fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.

■ 5. Section 240.21F–6 is amended by adding paragraphs (c), (d) and (e) to read as follows:

§ 240.21F–6 Criteria for determining amount of award.

* * * * *

(c) *Additional considerations in connection with certain smaller awards.* When considering any meritorious whistleblower award application where the Commission—after applying the award factors specified in paragraphs (a) and (b) of this section—determines that the resulting payout to that whistleblower for the original information that he or she provided that led to one or more successful covered or related action(s), collectively, would be below $2 million (or any such greater amount that the Commission may periodically establish through publication of an order in the **Federal Register**), the Commission may adjust the award upward as provided for in this paragraph (c).

(1) The Commission may make an upward adjustment that it determines is appropriate to ensure that the total payout to the whistleblower more appropriately achieves the program's objectives of rewarding meritorious whistleblowers and sufficiently incentivizing future whistleblowers who might otherwise be concerned about the low dollar amount of a potential award;

(2) The Commission shall not adjust an award upward under this paragraph (c) if any of the negative award factors specified in paragraph (b) of this section were found present with respect to the whistleblower's award claim, or if the award claim triggers § 240.21F–16 (concerning awards to whistleblowers who engage in culpable conduct);

(3) In no event shall the Commission make an upward adjustment under this section to raise a potential payout (as assessed by the Commission at the time it makes the award determination) above $2 million (or by such other amount as the Commission may designate by order); and

(4) The total amount awarded to all whistleblowers in the aggregate may not be greater than 30 percent of the total monetary sanctions collected, or likely to be collected, in any action (as assessed by the Commission at the time it makes the award determination).

(d) *Additional considerations in connection with certain large awards where the monetary sanctions collected would equal or exceed $100 million.* When considering any meritorious whistleblower award application where the whistleblower's original information led to one or more successful covered or related action(s), collectively, that

resulted in the collection of $100 million or more in monetary sanctions or will likely result in such collections (as assessed by the Commission at the time it considers the award application(s)), the Commission shall determine the award amount as specified in paragraphs (d)(1) through (4) of this section. (For purposes of this rule, the Commission may adjust the $100 million threshold upward through publication of an order in the **Federal Register**.)

(1) When applying the award factors in paragraphs (a) and (b) of this section, the Commission shall make any upward or downward adjustments by considering the impact of the adjustments on both the award percentage and the approximate corresponding dollar amount of the award. If the resulting payout would be below $30 million (or such greater alternative amount that the Commission may periodically establish through publication of an order in the **Federal Register**), then the downward adjustment provided for in paragraph (d)(2) of this section shall not be applicable.

(2) After completing the award analysis required by paragraph (d)(1) of this section and determining the total dollar amount of the potential award for any action(s) based upon the whistleblower's original information, the Commission shall consider whether that amount exceeds what is reasonably necessary to reward the whistleblower and to incentivize similarly situated whistleblowers. If the Commission finds that the total payout for any action(s) based upon the whistleblower's original information would exceed an amount that is reasonably necessary, it may adjust the total payout for the action(s) downward to an amount that it finds is sufficient to achieve those goals. As is the case with every aspect of any award determination under this section, the Commission shall not consider the balance of the Investor Protection Fund (''IPF'') when determining whether to make an adjustment to an award under this paragraph (c).

(3) Any downward adjustment to a whistleblower's award for any actions based upon the whistleblower's original information under paragraph (d)(2) of this section shall under no circumstances yield a potential total payout on all the actions, collectively, (as assessed by the Commission at the time that it makes the award determination) of less than either $30 million or such greater alternative amount that the Commission may periodically establish through publication of an order in the **Federal Register**.

(4) Further, any adjustments under paragraph (d)(2) of this section shall in no event result in the total amount awarded to all meritorious whistleblowers, collectively, for each covered or related action constituting less than 10 percent of the monetary sanctions collected in that action.

(e) *Future adjustments.* Finally, in any order that adjusts any of the dollar amounts specified under paragraph (c) or (d) of this section, the Commission shall consider (among other factors that it deems relevant) whether the adjustment is necessary or appropriate to encourage whistleblowers to come forward and the potential impact any adjustment might have on the IPF.

■ 6. Section 240.21F–7 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 240.21F–7 Confidentiality of submissions.

(a) Pursuant to Section 21F(h)(2) of the Exchange Act (15 U.S.C. 78u–6(h)(2)) and § 240.21F–2(c), the Commission will not disclose information that could reasonably be expected to reveal the identity of a whistleblower provided that the whistleblower has submitted information utilizing the processes specified in § 240.21F–9(a), except that the Commission may disclose such information in the following circumstances:

* * * * *

■ 7. Section 240.21F–8 is amended by:

■ a. Revising the section heading.

■ b. Adding paragraphs (d) and (e).

The revision and addition read as follows:

§ 240.21F–8 Eligibility and forms.

* * * * *

(d)(1) The Commission will periodically designate on the Commission's web page a Form TCR (Tip, Complaint, or Referral) that individuals seeking to be eligible for an award through the process identified in § 240.21F–9(a)(2) shall use.

(2) The Commission will also periodically designate on the Commission's web page a Form WB–APP for use by individuals seeking to apply for an award in connection with a Commission-covered judicial or administrative action (15 U.S.C. 21F(a)(1)), or a related action (§ 240.21F–3(b)(1)).

(e) Submissions or applications that are frivolous or fraudulent, or that would otherwise hinder the effective and efficient operation of the Whistleblower Program may result in the Commission issuing a permanent bar as part of a final order in the course of considering a whistleblower award application from you. If such a bar is issued, the Office of the Whistleblower will not accept or act on any other applications from you, in the following circumstances:

(1) If you make three or more award applications for Commission actions that the Commission finds to be frivolous or lacking a colorable connection between the tip (or tips) and the Commission actions for which you are seeking awards; or

(2) If the Commission finds that you have violated paragraph (c)(7) of this section. Before any Preliminary Determination or Preliminary Summary Disposition is issued, the Office of the Whistleblower shall advise you of any assessment by that Office that your award application is frivolous or lacking a colorable connection between the tip and the action for which you have sought an award. If you withdrawal your application at that time, it will not be considered by the Commission in determining whether to exercise its authority under paragraph (e)(1) of this section. The Commission will consider whether to issue a permanent bar in connection with an award application that would trigger such a bar; the Preliminary Determination or Preliminary Disposition must state that a bar is being recommended and the applicant would thereafter have an opportunity to submit a response in accordance with the award processing procedures specified in §§ 240.21F–10(e)(2) and 240.21F–18(b)(3).

■ 8. Section 240.21F–9 is amended by:

■ a. Revising paragraphs (a) and (b);

■ b. In paragraphs (c) and (d), removing the parenthetical phrase ''(referenced in § 249.1800 of this chapter)'' wherever it appears; and

■ c. Adding paragraph (e).

The revisions and addition read as follows:

§ 240.21F–9 Procedures for submitting original information.

(a) To submit information in a manner that satisfies § 240.21F–2(b) and (c) you must submit your information to the Commission by any of these methods:

(1) Online, through the Commission's website located at *www.sec.gov,* using the Commission's electronic TCR portal (Tip, Complaint or Referral);

(2) Mailing or faxing a Form TCR to the SEC Office of the Whistleblower at the mailing address or fax number designated on the SEC's web page for making such submissions; or

(3) By any other such method that the Commission may expressly designate on

its website as a mechanism that satisfies § 240.21F–2(b) and (c).

(b) Further, to be eligible for an award, you must declare under penalty of perjury at the time you submit your information pursuant to paragraph (a)(1), (2), or (3) of this section that your information is true and correct to the best of your knowledge and belief.

* * * * *

(e) You must follow the procedures specified in paragraphs (a) and (b) of this section the first time you provide the Commission with information that you rely upon as a basis for claiming an award. If you fail to do so, then you will be deemed ineligible for an award in connection with that information (even if you later resubmit that information in accordance with paragraphs (a) and (b) of this section). Notwithstanding the foregoing, the Commission, in its sole discretion, may waive your noncompliance with paragraphs (a) and (b) of this section if the Commission determines that the administrative record clearly and convincingly demonstrates that you would otherwise qualify for an award and you demonstrate that you complied with the requirements of paragraphs (a) and (b) of this section within 30 days of the first communication with the staff about the information that you provided.

■ 9. Section 240.21F–10 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 240.21F–10 Procedures for making a claim for a whistleblower award in SEC actions that result in monetary sanctions in excess of $1,000,000.

* * * * *

(b) To file a claim for a whistleblower award, you must file Form WB–APP, Application for Award for Original Information Provided Pursuant to Section 21F of the Securities Exchange Act of 1934. You must sign this form as the claimant and submit it to the Office of the Whistleblower by mail or fax (or any other manner that the Office permits). All claim forms, including any attachments, must be received by the Office of the Whistleblower within ninety (90) calendar days of the date of the Notice of Covered Action in order to be considered for an award.

(c) If you provided your original information to the Commission anonymously, you must disclose your identity on the Form WB–APP, and your identity must be verified in a form and manner that is acceptable to the Office of the Whistleblower prior to the payment of any award.

(d) Once the time for filing any appeals of the Commission's judicial or administrative action has expired, or where an appeal has been filed, after all appeals in the action have been concluded, the staff designated by the Director of the Division of Enforcement (''Claims Review Staff'') will evaluate all timely whistleblower award claims submitted on Form WB–APP in accordance with the criteria set forth in these rules. In connection with this process, the Office of the Whistleblower may require that you provide additional information relating to your eligibility for an award or satisfaction of any of the conditions for an award, as set forth in § 240.21F–8(b). Following that evaluation, the Office of the Whistleblower will send you a Preliminary Determination setting forth a preliminary assessment as to whether the claim should be allowed or denied and, if allowed, setting forth the proposed award percentage amount.

* * * * *

■ 10. Section 240.21F–11 is amended by revising paragraphs (b) and (d) to read as follows:

§ 240.21F–11 Procedures for determining awards based upon a related action.

* * * * *

(b) You must also use Form WB–APP to submit a claim for an award in a potential related action. You must sign this form as the claimant and submit it to the Office of the Whistleblower by mail or fax (or any other manner that the Office permits) as follows:

(1) If a final order imposing monetary sanctions has been entered in a potential related action at the time you submit your claim for an award in connection with a Commission action, you must submit your claim for an award in that related action on the same Form WB–APP that you use for the Commission action. For purposes of this paragraph (b)(1) and paragraph (b)(2) of this section, a final order imposing monetary sanctions is entered on the date of a court or administrative order imposing the monetary sanctions; however, with respect to any agreement covered by § 240.21F–4(d) (such as a deferred prosecution agreement or a nonprosecution agreement entered by the Department of Justice), the Commission will deem the date of the entry of the final order to be the date of the earliest public availability of the instrument reflecting the arrangement if evidenced by a press release or similar dated publication notice; otherwise, the date of the last signature necessary for the agreement.

(2) If a final order imposing monetary sanctions in a potential related action has not been entered at the time you submit your claim for an award in connection with a Commission action, you must submit your claim on Form WB–APP within ninety (90) days of the issuance of a final order imposing sanctions in the potential related action.

* * * * *

(d) Once the time for filing any appeals of the final judgment or order in a potential related action has expired, or if an appeal has been filed, after all appeals in the action have been concluded, the Claims Review Staff will evaluate all timely whistleblower award claims submitted on Form WB–APP in connection with the related action. The evaluation will be undertaken pursuant to the criteria set forth in these rules. In connection with this process, the Office of the Whistleblower may require that you provide additional information relating to your eligibility for an award or satisfaction of any of the conditions for an award, as set forth in § 240.21F–8(b). Following this evaluation, the Office of the Whistleblower will send you a Preliminary Determination setting forth a preliminary assessment as to whether the claim should be allowed or denied and, if allowed, setting forth the proposed award percentage amount.

* * * * *

■ 11. Section 240.21F–12 is amended by:

■ a. Revising the introductory text of paragraph (a);

■ b. In paragraph (a)(2), removing the parenthetical phrase ''(referenced in § 249.1800 of this chapter)''; and

■ c. Revising paragraphs (a)(3) and (6).

The revisions read as follows:

§ 240.21F–12 Materials that may form the basis of an award determination and that may comprise the record on appeal.

(a) The following items constitute the materials that the Commission, the Claims Review Staff, and the Office of the Whistleblower may rely upon to make an award determination pursuant to §§ 240.21F–21F–10, 240.21F–11, and 240.21F–18:

* * * * *

(3) The whistleblower's Form WB–APP, including attachments, any supplemental materials submitted by the whistleblower before the deadline to file a claim for a whistleblower award for the relevant Notice of Covered Action, and any other materials timely submitted by the whistleblower in response either:

(i) To a request from the Office of the Whistleblower or the Commission; or

(ii) To the Preliminary Determination or Preliminary Summary Disposition;

* * * * *

(6) Any other documents or materials from third parties (including sworn declarations) that are received or

obtained by the Office of the Whistleblower to resolve the claimant's award application, including information related to the claimant's eligibility. (Neither the Commission, the Claims Review Staff, nor the Office of the Whistleblower may rely upon information that the third party has not authorized the Commission to share with the claimant.)

* * * * *

■ 12. Section 240.21F–13 is amended by revising paragraph (b) to read as follows:

§ 240.21F–13 Appeals.

* * * * *

(b) The record on appeal shall consist of the Final Order, any materials that were considered by the Commission in issuing the Final Order, and any materials that were part of the claims process leading from the Notice of Covered Action to the Final Order (including, but not limited to, the Notice of Covered Action, whistleblower award applications filed by the claimant, the Preliminary Determination or Preliminary Summary Disposition, materials that were considered by the Claims Review Staff in issuing the Preliminary Determination or that were provided to the claimant by the Office of the Whistleblower in connection with a Preliminary Summary Disposition, and materials that were timely submitted by the claimant in response to the Preliminary Determination or Preliminary Summary Disposition). The record on appeal shall not include any pre-decisional or internal deliberative process materials that are prepared exclusively to assist the Commission and the Claims Review Staff in deciding the claim (including the staff's Draft Final Determination in the event that the Commissioners reviewed the claim and issued the Final Order). When more than one claimant has sought an award based on a single Notice of Covered Action, the Commission may exclude from the record on appeal any materials that do not relate directly to the claimant who is seeking judicial review.

■ 13. Add § 240.21F–18 to read as follows:

§ 240.21F–18 Summary disposition.

(a) Notwithstanding the procedures specified in §§ 240.21F–10(d) through (g) and in 240.21F–11(d) through (g), the Office of the Whistleblower may determine that an award application that meets any of the following conditions for denial shall be resolved through the summary disposition process described further in paragraph (b) of this section:

(1) You submitted an untimely award application;

(2) You did not comply with the requirements of § 240.21F–9 when submitting the tip upon which your award claim is based;

(3) The information that you submitted was never provided to or used by the staff handling the covered action or the underlying investigation (or examination), and those staff members otherwise had no contact with you;

(4) You did not comply with § 240.21F–8(b);

(5) You failed to specify in the award application the submission pursuant to § 240.21F–9(a) upon which your claim to an award is based; and

(6) Your application does not raise any novel or important legal or policy questions and the Office of the General Counsel concurs that the matter is appropriate for summary disposition.

(b) The following procedures shall apply to any award application designated for summary disposition:

(1) The Office of the Whistleblower shall issue a Preliminary Summary Disposition that notifies you that your award application has been designated for resolution through the summary disposition process. The Preliminary Summary Disposition shall also state that the Office has preliminarily determined to recommend that the Commission deny the award application and identify the basis for the denial.

(2) Prior to issuing the Preliminary Summary Disposition, the Office of the Whistleblower shall prepare a staff declaration that sets forth any pertinent facts regarding the Office's recommendation to deny your application. At the same time that it provides you with the Preliminary Summary Disposition, the Office of the Whistleblower shall, in its sole discretion, either:

(i) Provide you with the staff declaration; or

(ii) Notify you that a staff declaration has been prepared and advise you that you may obtain the declaration only if within fifteen (15) calendar days you sign and complete a confidentiality agreement in a form and manner acceptable to the Office of the Whistleblower pursuant to § 240.21F–8(b)(4). If you fail to return the signed confidentiality agreement within fifteen (15) calendar days, you will be deemed to have waived your ability to receive the staff declaration.

(3)(i) You may reply to the Preliminary Summary Disposition by submitting a response to the Office of the Whistleblower within thirty (30) calendar days of the later of:

(A) The date of the Preliminary Summary Disposition; or

(B) The date that the Office of the Whistleblower sends the staff declaration to you following your timely return of a signed confidentiality agreement.

(ii) The response should identify the grounds for your objection to the denial (or in the case of paragraph (a)(5) of this section, correct the defect). The response must be in the form and manner that the Office of the Whistleblower shall require. You may include documentation or other evidentiary support for the grounds advanced in your response.

(4) If you fail to submit a timely response pursuant to paragraph (b)(3) of this section, the Preliminary Summary Disposition will become the Final Order of the Commission. Your failure to submit a timely written response will constitute a failure to exhaust administrative remedies.

(5) If you submit a timely response pursuant to paragraph (b)(3) of this section, the Office of the Whistleblower will consider the issues and grounds advanced in your response, along with any supporting documentation that you provided, and will prepare a Proposed Final Summary Disposition. The Office of the Whistleblower may supplement the administrative record as appropriate. (This paragraph (b)(5) does not prevent the Office of the Whistleblower from determining that, based on your written response, the award claim is no longer appropriate for summary disposition and that it should be resolved through the claims adjudication procedures specified in either § 240.21F–10 or § 240.21F–11).

(6) The Office of the Whistleblower will then notify the Commission of the Proposed Final Summary Disposition. Within thirty (30) calendar days thereafter, any Commissioner may request that the Proposed Final Summary Disposition be reviewed by the Commission. If no Commissioner requests such a review within the 30-day period, then the Proposed Final Summary Disposition will become the Final Order of the Commission. In the event a Commissioner requests a review, the Commission will consider the award application and issue a Final Order.

(7) The Office of the Whistleblower will provide you with the Final Order of the Commission.

(c) In considering an award determination pursuant to this rule, the Office of the Whistleblower and the Commission may rely upon the items specified in § 240.21F–12(a). Further, § 240.21F–12(b) shall apply to summary dispositions.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 14. The general authority citation for part 249 continues to read as follows and sectional authorities for §§ 249.1800 and 249.1801 are removed:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112–106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112–106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114–94, 129 Stat. 1312 (2015), unless otherwise noted.

* * * * *

Subpart S—[Removed and Reserved]

■ 15. Remove and reserve subpart S.

By the Commission.

Dated: June 28, 2018.

Brent Fields,

Secretary.

[FR Doc. 2018–14411 Filed 7–19–18; 8:45 am]

BILLING CODE 8011–01–P

2018 ANNUAL REPORT TO CONGRESS

Whistleblower Program

U.S. SECURITIES AND EXCHANGE COMMISSION

DISCLAIMER

This is a report of the Staff of the U.S. Securities and Exchange Commission. The Commission has expressed no view regarding the analysis, findings, or conclusions contained herein.

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MESSAGE FROM THE CHIEF OF THE OFFICE OF THE WHISTLEBLOWER

Fiscal Year (FY) 2018 was a record-breaking year for the U.S. Securities and Exchange Commission's (SEC or Commission) whistleblower program. The whistleblower program continued to grow and make substantial contributions to the Commission's enforcement and investor protection efforts. The Commission ordered its largest whistleblower awards to date this past fiscal year. In fact, the Commission awarded more dollars in FY 2018 to meritorious whistleblowers who provided new and critical information than in all prior years combined. The Commission also received more whistleblower tips in FY 2018 than in any other previous year.

> "...the Commission awarded more dollars in FY 2018 to meritorious whistleblowers who provided new and critical information than in all prior years combined."

While the dollars awarded and volume of tips received are reflections of the program's success, we are most proud of the program's added value in the protection of the Main Street investor. Since the program's inception, the SEC has ordered wrongdoers in enforcement matters brought with information from meritorious whistleblowers to pay over $1.7 billion in total monetary sanctions, including more than $901 million in disgorgement of ill-gotten gains and interest, of which approximately $452 million has been, or is scheduled to be, returned to harmed investors.

Finally, FY 2018 also saw proposed changes to the program's implementing regulations (Whistleblower Rules), following the Supreme Court's ruling in *Digital Realty Trust, Inc. v. Somers*[1] (*Digital Realty*), as well as other changes proposed by the Commission.

Substantial Dollars Awarded in Fiscal Year 2018

The Commission has awarded over $326 million to 59 individuals since the beginning of the whistleblower program. In FY 2018 alone, the SEC awarded more than $168 million in whistleblower awards to 13 individuals whose information and cooperation assisted the Commission in bringing successful enforcement actions. This amount exceeds the total amount awarded in all prior years combined and reflects the significance of the information that whistleblowers are reporting to the Commission.

In addition, the SEC made two of its largest-ever whistleblower awards this past fiscal year—a total combined $83 million award shared by three individuals, and an award of almost $54 million shared by two individuals. The recipients of these large awards provided significant information regarding serious violations that otherwise may have gone unnoticed and resulted in substantial enforcement actions.

Prioritizing Meritorious Claims

The main goal of the whistleblower program is to incentivize the reporting of specific, timely, and credible information to the Commission. Therefore, one of the top priorities of the Office of the Whistleblower (OWB) has been, and will continue to be, processing meritorious award claims. As such, OWB prioritizes those claims that, based on our initial triaging and communications with investigative staff, appear to be award-eligible.

1 138 S. Ct. 767 (2018).

As demonstrated by the awards made this fiscal year, meritorious whistleblowers have, among other things, helped the Commission by alerting the agency to widespread, multi-year securities violations, and supplying information and documentation of violations that impacted retail customers. Meritorious whistleblowers in FY 2018 were diverse and included, among others, a company outsider and whistleblowers residing or working overseas. We hope that by rewarding whistleblowers who provide valuable information to the Commission staff, more individuals will come forward and report information of securities violations, which in turn, helps the Commission better protect investors and the marketplace.

"Anti-retaliation protections continue to be a critical component in the success of the Commission's whistleblower program."

Increase in Whistleblower Tips Received in Fiscal Year 2018

The Commission received over 5,200 whistleblower tips in FY 2018. This represents the highest increase in tips since the beginning of the program—a nearly seventy-six percent increase since FY 2012. Additionally, there was an increase in tips received in the months following the Supreme Court ruling in the *Digital Realty* case, which may have been attributable, in part, to the ruling.

Whistleblower Protections in Fiscal Year 2018

In *Digital Realty*, the Supreme Court held that the whistleblower provisions of the Securities Exchange Act of 1934 (Exchange Act) require that a person report a possible securities law violation to the Commission in order to qualify as a whistleblower protected against employment retaliation under Section 21F(h) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), thus invalidating the Commission's rule interpreting that provision's anti-retaliation protections to apply regardless of whether a report of possible securities law violations was made to the Commission, to a different government agency, or internally to an employer. The ruling resolved a Circuit Court split regarding whether individuals who had reported only to their employers, rather than to the Commission, were protected under Dodd-Frank's anti-retaliation protections. This is a significant change in whistleblower protections, and potential whistleblowers should be mindful of this ruling when deciding when to report their concerns to the Commission. Following the ruling, the Commission proposed amendments to bring the Whistleblower Rules in line with the holding of the Court.

Anti-retaliation protections continue to be a critical component in the success of the Commission's whistleblower program. Individuals who fear reprisal from their companies for reporting will be less likely to bring their information to the Commission. Supporting enforcement actions against companies and individuals who retaliate against whistleblowers or take actions to impede whistleblowers' communications with the Commission will remain a focus of OWB's mission in the upcoming fiscal year. We will continue to work to ensure that whistleblowers can freely report information to the Commission without fear of reprisal.

Proposed Amendments to Whistleblower Rules

Capitalizing on its nearly seven years of experience administering the whistleblower program, the Commission proposed amendments to the Whistleblower Rules during FY 2018 to build upon the success of the program. In addition to clarifying the requirements for anti-retaliation protection under the whistleblower statute, the proposed amendments would provide the Commission with additional discretion in making whistleblower awards to ensure that meritorious whistleblowers are appropriately rewarded for their efforts and increase efficiencies in the whistleblower claims review process.

The proposing release was published in the Federal Register on July 20, 2018, and the comment period ended on September 18, 2018.[2] Pages 26–28 of this report provide a fuller discussion of the proposed rule amendments.

Conclusion

The impact of the whistleblower program on the Commission's enforcement efforts and its contributions to the protection of Main Street investors continue to be strong. We are proud of the accomplishments of the whistleblower program in FY 2018. We look forward to the enduring success of the program in the years ahead.

We encourage those who believe they have credible information concerning a potential federal securities law violation to expeditiously submit a tip via the Commission's online portal (www.sec.gov/whistleblower).

If individuals or their counsel have any questions about the program, including questions about how to submit a tip to the Commission, we encourage them to call OWB's whistleblower hotline at (202) 551-4790.

JANE NORBERG
Chief, Office of the Whistleblower
November 15, 2018

2 Amendments to the Commission's Whistleblower Program Rules, 83 Fed. Reg. 34,702 (proposed July 20, 2018).

HISTORY AND PURPOSE

Dodd-Frank[3] amended the Exchange Act[4] by, among other things, adopting Section 21F,[5] entitled "Securities Whistleblower Incentives and Protection." Section 21F directs the Commission to make monetary awards to eligible individuals who voluntarily provide original information that leads to successful Commission enforcement actions resulting in monetary sanctions over $1 million and successful related actions.[6]

"It is OWB's mission to administer a vigorous whistleblower program that will help the Commission identify and halt securities frauds early and quickly to minimize investor losses."

Awards must be made in an amount equal to 10 to 30 percent of the monetary sanctions collected.[7] To ensure that whistleblower payments would not diminish the amount of recovery for victims of securities law violations, Congress established a separate fund, called the Investor Protection Fund (Fund), from which eligible whistleblowers are paid.

The Commission established OWB, an office within the SEC's Division of Enforcement (Enforcement), to administer and effectuate the whistleblower program. It is OWB's mission to administer a vigorous whistleblower program that will help the Commission identify and halt securities frauds early and quickly to minimize investor losses.

In addition to establishing an awards program to encourage the submission of high-quality information, Dodd-Frank and the Commission's Whistleblower Rules[8] also establish confidentiality protections for whistleblower submissions,[9] including the ability to file a whistleblower tip anonymously with the assistance of an attorney. Employers are prohibited from retaliating against whistleblowers for providing information to the Commission.[10] The Commission's proposed rule amendments would modify the Whistleblower Rules to comport with the ruling in the *Digital Realty* case that an employee must report possible securities law violations to the Commission to qualify for protection against retaliation.[11]

Dodd-Frank's Section 924(d) requires OWB to report annually to Congress on OWB's activities, whistleblower complaints received, and the response of the Commission to such complaints.[12] In addition, Section 21F(g)(5) of the Exchange Act requires the Commission to submit an annual report to Congress that addresses the following subjects:

- The whistleblower award program, including a description of the number of awards granted and the types of cases in which awards were granted during the preceding fiscal year;
- The balance of the Fund at the beginning of the preceding fiscal year;

3 Pub. L. No. 111-203, § 922(a), 124 Stat. 1841 (2010).
4 15 U.S.C. § 78a, *et seq*.
5 *Id*. § 78u-6.
6 "Related actions" is defined at 15 U.S.C. § 78u-6(a)(5) and 17 C.F.R. § 240.21F-3.
7 15 U.S.C. § 78u-6(b)(1).
8 17 C.F.R. §§ 240.21F-1 through 21F-17.
9 *Id*. § 240.21F-7.
10 15 U.S.C. § 78u-6(h)(1).
11 *See* Amendments to the Commission's Whistleblower Program Rules, 83 Fed. Reg. 34,702 (proposed July 20, 2018).
12 15 U.S.C. § 78u-7(d).

- The amounts deposited into or credited to the Fund during the preceding fiscal year;
- The amount of earnings on investments made under Section 21F(g)(4) during the preceding fiscal year;
- The amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to Section 21F(b);
- The balance of the Fund at the end of the preceding fiscal year; and
- A complete set of audited financial statements, including a balance sheet, income statement, and cash flow analysis.[13]

OWB, in consultation with other offices within the Commission, has prepared this report, which covers the period October 1, 2017 through September 30, 2018, to satisfy the reporting requirements of Section 924(d) of Dodd-Frank and Section 21F(g)(5) of the Exchange Act. The sections in this report addressing the activities of OWB, the whistleblower tips received during FY 2018, and the processing of whistleblower tips primarily address the requirements of Dodd-Frank's Section 924(d). The sections addressing the Fund and whistleblower incentive awards made during FY 2018 primarily address the requirements of Section 21F(g)(5) of the Exchange Act.

13 15 U.S.C. § 78u-6(g)(5).

ACTIVITIES OF THE OFFICE OF THE WHISTLEBLOWER

Section 924(d) of Dodd-Frank directed the Commission to establish a separate office within the Commission to administer and enforce the provisions of Section 21F of the Exchange Act. Jane Norberg heads the Office as Chief of OWB. There are two Assistant Directors and twelve attorneys who are dedicated to the work of the Office, including, among other things, processing award claims, as well as an attorney devoted to communications with the public. OWB is also staffed by four paralegals and an administrative assistant. Following is an overview of OWB's primary responsibilities and activities over the past fiscal year.

Assessment of Award Applications

The whistleblower program was designed, in part, to provide monetary incentives to individuals with relevant information concerning potential securities violations to report their information to the Commission. As such, much of OWB's work relates to the assessment of claims for whistleblower awards.

OWB posts a Notice of Covered Action (NoCA) on its webpage (www.sec.gov/whistleblower/claim-award) for every Commission enforcement action that results in monetary sanctions of over $1 million. Those individuals who have submitted whistleblower tips pursuant to the program's requirements and whose information significantly advanced the particular investigation that led to the Covered Action may submit an application in response to a posted NoCA.

Although it is ultimately a whistleblower's responsibility to make a timely application for an award, OWB may contact whistleblowers who have been actively working with investigative staff—or who have previously contacted OWB about the posting of a particular Covered Action—to confirm they are aware of the posting and applicable deadline for submitting claims for award.

Based on an initial review, as well as communications with the relevant investigative staff, OWB prioritizes those claims that appear to be award-eligible. OWB attorneys assess the application and the eligibility of the claimant and confer with relevant investigative or other Commission staff to understand the contribution of the claimant, if any, to the success of the Covered Action. OWB then makes recommendations to the Claims Review Staff, currently comprised of five senior officers in Enforcement, as to award eligibility. Pages 9–15 of this report provide a fuller explanation of how applications for awards are processed at the Commission, as well as what awards were made during this past fiscal year.

Advancing Anti-Retaliation Protections and Combating Efforts to Impede Reporting

OWB identifies and monitors whistleblower complaints alleging retaliation by employers or former employers in response to an employee's reporting of possible securities law violations. The Commission may bring an enforcement action against companies or individuals who violate the anti-retaliation provisions of Dodd-Frank. But, in a change from prior years, such enforcement actions can only be brought when a whistleblower reports to the Commission. This change reflects the Supreme Court's ruling in *Digital Realty* regarding who qualifies as a whistleblower covered by Section 21F(h)'s anti-retaliation protections, which is discussed more in depth at pages 18–19 of this report. OWB continues to view anti-retaliation protections as a high priority to ensure that whistleblowers can report to the Commission without fear of reprisal. OWB will continue to work with investigative staff to identify cases where companies take reprisals for whistleblowing efforts that may be appropriate for enforcement action.

In addition, OWB monitors the usage of confidentiality, severance, and other kinds of agreements, or engagement in other practices, to interfere with individuals' ability to report potential wrongdoing to the SEC. Exchange Act Rule 21F-17(a) provides that "[n]o person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcement, or threatening to enforce, a confidentiality agreement…with respect to such communications."[14] OWB continues to work closely with investigative staff to identify and investigate practices in the use of confidentiality and other kinds of agreements, or other actions, that may violate Rule 21F-17(a).

> "OWB continues to view anti-retaliation protections as a high priority to ensure that whistleblowers can report to the Commission without fear of reprisal."

Intake of Whistleblower Tips

The Commission's Tips, Complaints, and Referrals Intake and Resolution System (TCR System) serves as a central repository for all tips and complaints received by the Commission, as well as referrals from self-regulatory organizations and other government agencies. In January 2018, the Commission released an updated, more user-friendly version of the TCR System. OWB encourages all individuals to submit their whistleblower tips and any additional information electronically through the Commission's online portal. There are several benefits of using the online portal, including the fact that individuals receive an immediate acknowledgement of their submission along with a confirmation number. The tip is also automatically populated in a queue for staff who triage tips and complaints. For greater efficiency and quicker review, OWB recommends electronic submission over hard-copy submission.

For more information on the number and types of tips received, please refer to pages 20–23 of this report.

14 17 C.F.R. § 240.21F-17(a).

"During FY 2018, the Office returned nearly 2,770 phone calls from members of the public."

Communications with Whistleblowers

OWB serves as the primary liaison between the Commission and individuals who have submitted information or are considering whether to submit information to the agency concerning a possible securities violation. OWB created a whistleblower hotline, in operation since May 2011, to respond to questions from the public about the whistleblower program. Individuals may leave messages on the hotline by calling (202) 551-4790. All calls to the hotline are returned by OWB attorneys within 24 business hours.

During FY 2018, the Office returned nearly 2,770 phone calls from members of the public. Since the hotline was established, OWB has returned over 21,380 calls from the public.

Many of the calls OWB receives relate to how the caller should submit a tip to be eligible for an award, how the Commission will maintain the confidentiality of a whistleblower's identity, requests for information on the investigative process or tracking an individual's complaint status, and whether the SEC is the appropriate agency to handle the caller's tip. OWB provides a menu of options with answers to frequently asked questions on the voicemail hotline.

In addition to communicating with the public through the hotline, the Office communicates with whistleblowers who have submitted tips, claims for awards, and other correspondence to OWB.

Public Outreach and Education

One of OWB's primary goals is to promote public awareness of the Commission's whistleblower program. As part of that outreach effort, the Office aims to promote the program and educate the public about the program through OWB's webpage (www.sec.gov/whistleblower). The webpage contains information about the program, copies of the forms required to submit a tip or claim an award, a listing of enforcement actions for which a claim for award may be made, links to helpful resources, including a section dedicated to retaliation-related issues, and answers to frequently asked questions.

OWB also actively participates in numerous webinars, media interviews, presentations, press releases, and other public communications. In FY 2018, OWB participated in many public engagements aimed at promoting and educating the public about the Commission's whistleblower program. The Office's target audience generally includes potential whistleblowers, whistleblower counsel, and corporate compliance counsel and professionals. OWB's Chief also participates in legal panels and other forums with other federal agencies with similar whistleblower programs.

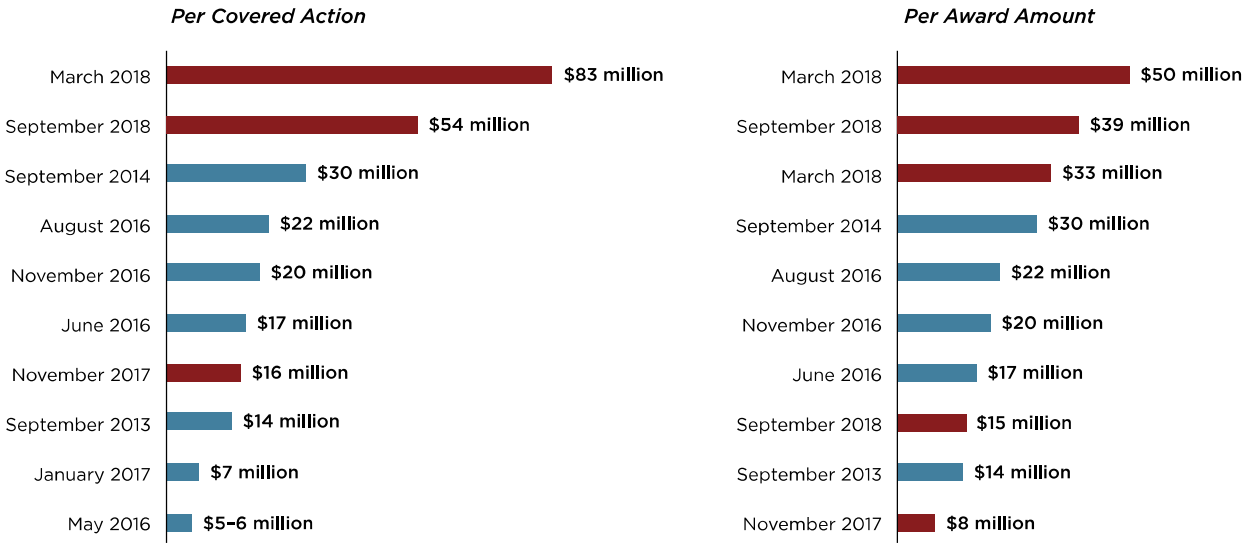
CLAIMS FOR AWARDS

Whistleblower Awards Made in Fiscal Year 2018

In FY 2018, the Commission ordered whistleblower awards of approximately $168 million to 13 individuals, each of whom voluntarily provided original information that either led to the opening of an investigation or significantly contributed to a successful enforcement action.

Below are the top ten highest awards made under the SEC's whistleblower program both by Covered Action (*i.e.*, considering all awards made within a single Covered Action) and by award amount through FY 2018. The awards highlighted in red were made this past fiscal year.

TOP 10 SEC WHISTLEBLOWER AWARDS



From program inception to end of Fiscal Year 2018, the SEC awarded over $326 million to 59 individuals.

The Commission's $83 million award in March 2018 included an almost $50 million joint award to two individuals, which is also the Commission's highest award to date, as well as an award of $33 million to a third individual. The Commission also made a $54 million award in September 2018, with a $39 million award to one individual, and a $15 million award to a second individual.

Below is an overview of the whistleblower awards made by the Commission during the past fiscal year.

Three Individuals Receive Largest-Ever Awards Totaling Almost $83 Million

On March 19, 2018, the Commission announced two of its largest-ever whistleblower awards, with two individuals sharing a nearly $50 million joint award and another whistleblower receiving more than $33 million.[15] The first two individuals jointly provided significant information that prompted the Commission to open the first of two investigations and ongoing assistance that saved the Commission a substantial amount of time and resources. The third individual supplied the Commission with additional information that initiated and acted as the cornerstone of the Commission's second investigation resulting in the Covered Action.

More Than $54 Million to Two Whistleblowers

On September 6, 2018, the Commission announced an award of more than $54 million to two whistleblowers, $39 million to one whistleblower and $15 million to another, whose critical information and continued assistance helped the agency bring an important enforcement action.[16] The $39 million award is the second-largest individual award in the history of the program.

More Than $16 Million Awarded to Two Whistleblowers

On November 30, 2017, the Commission announced an award of more than $16 million to two whistleblowers.[17] The first whistleblower alerted the staff to the particular misconduct that was the focus of the staff's investigation and the cornerstone of the subsequent action and provided continuing assistance, including the identification of potentially relevant documents and witnesses. The second whistleblower provided additional significant information and ongoing cooperation to the staff during the investigation that saved a substantial amount of time and agency resources.

Former Company Insider and Foreign National Receives $4.1 Million Award

On December 5, 2017, the Commission announced an award of more than $4.1 million to a former company insider who both alerted the Commission to a widespread, multi-year securities law violation and continued to provide important information and assistance throughout the SEC's investigation.[18] The whistleblower was a foreign national working outside of the United States.

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15 *See* Order Determining Award Claim, Exchange Act Rel. No. 82897, File No. 2018-6 (Mar. 19, 2018); SEC Press Rel. No. 2018-44, "SEC Announces Its Largest-Ever Whistleblower Awards."

16 *See* Order Determining Award Claim, Exchange Act Rel. No. 84046, File No. 2018-11 (Sept. 6, 2018); SEC Press Rel. No. 2018-179, "SEC Awards More Than $54 Million to Two Whistleblowers."

17 *See* Order Determining Award Claim, Exchange Act Rel. No. 82181, File No. 2018-2 (Nov. 30, 2017); SEC Press Rel. No. 20187-216, "More Than $16 Million Awarded to Two Whistleblowers."

18 *See* Order Determining Award Claim, Exchange Act Rel. No. 82214, File No. 2018-3 (Dec. 5, 2017); SEC Press Rel. No. 2017-222, "Former Company Insider Earns More Than $4.1 Million for Whistleblower Tip."

Nearly $4 Million to Overseas Whistleblower

On September 24, 2018, the Commission announced an award of nearly $4 million to an overseas whistleblower whose tip prompted the Commission to open an investigation.[19] The whistleblower provided continuing and extensive assistance that helped the Commission bring a successful enforcement action.

$2.2 Million Award to Whistleblower Who First Reported to Another Federal Agency Before the SEC

On April 5, 2018, the Commission announced an award of more than $2.2 million to a former company insider who first reported the information to another federal agency but later provided the same information to the SEC, which helped the SEC bring the successful action.[20] This was the first award paid under the "safe harbor" of Exchange Act Rule 21F-4(b)(7), which provides that if a whistleblower first submits information to another federal agency but submits the same information to the SEC within 120 days, the SEC will treat the information as though it had been submitted to the SEC at the same time that it was submitted to the other agency.

Former Company Insider Receives $2.1 Million Award

On April 12, 2018, the Commission announced an award of more than $2.1 million to a former company insider who provided information that led to multiple successful enforcement actions and who provided ongoing assistance during the investigation.[21]

Award of Approximately $1.5 Million

On September 14, 2018, the Commission announced an award of more than $1.5 million to a whistleblower who provided the SEC with vital information and ongoing assistance that proved important to the overall success of the enforcement action.[22]

Award of More Than $1 Million

On October 12, 2017, the Commission announced an award of more than $1 million to a company outsider who provided new information and substantial corroborating documentation of a securities law violation by a registered entity that impacted retail customers.[23]

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19 *See* Order Determining Award Claim, Exchange Act Rel. No. 84270, File No. 2018-13 (Sept. 24, 2018); SEC Press Rel. No. 2018-209, "SEC Awards Almost $4 Million to Overseas Whistleblower."

20 *See* Order Determining Award Claim, Exchange Act Rel. No. 82996, File No. 2018-8 (Apr. 5, 2018); SEC Press Rel. No. 2018-58, "SEC Awards More Than $2.2 Million to Whistleblowers Who First Reported Information to Another Federal Agency Before SEC."

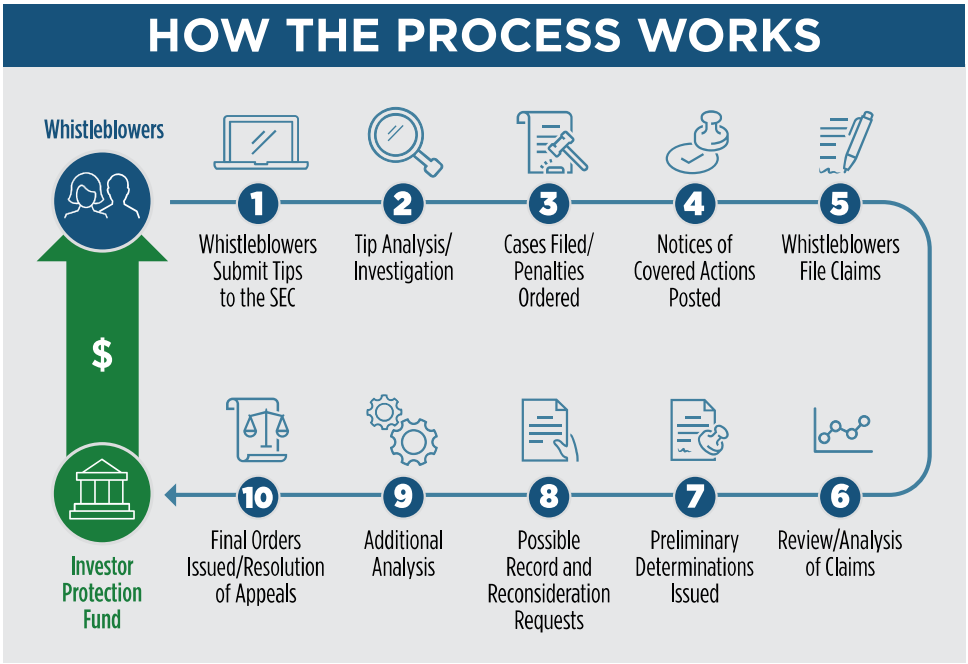
21 *See* Order Determining Award Claim, Exchange Act Rel. No. 83037, File No. 2018-9 (Apr. 12, 2018); SEC Press Rel. No. 2018-64, "SEC Awards Whistleblower More Than $2.1 Million."

22 *See* Order Determining Award Claim, Exchange Act Rel. No. 84125, File No. 2018-12 (Sept. 14, 2018); SEC Press Rel. No. 2018-194, "Whistleblower Receives Award of Approximately $1.5 Million."

23 *See* Order Determining Award Claim, Exchange Act Rel. No. 81857, File No. 2018-1 (Oct. 12, 2017); SEC Press Rel. No. 2017-195, "SEC Announces Whistleblower Award of More Than a Million Dollars."

Overview of Award Process

For a whistleblower to receive an award, there are a number of preconditions that must be met. The diagram below provides a snapshot of the overall process, from the filing of the whistleblower tip to payment of the whistleblower award. As reflected, the time between the submission of a whistleblower tip and when an individual may receive an award payment can be several years, particularly where the underlying investigation is especially complex, where there are multiple, competing award claims, or where there are claims for related actions. OWB undertakes extensive due diligence to ensure a careful and thorough evaluation of all award claims.



The discussion below focuses on the award claims process, from the posting of the NoCA (Step #4 above) to the issuance of a Final Order by the Commission (Step #10 above).

NoCA Posted

OWB posts on its webpage a NoCA for each Commission enforcement action where a final judgment or order, by itself or together with other judgments or orders in the same action issued after July 21, 2010, results in monetary sanctions exceeding $1 million.[24] During FY 2018, OWB posted 142 NoCAs.

OWB sends email alerts to GovDelivery when the NoCA listing is updated.[25] Whistleblowers and other members of the public may sign up to receive an update via email every time the list of NoCAs on OWB's webpage is updated. OWB posts new NoCAs on its webpage on the last business day of each month.

24 By posting a NoCA for a particular case, the Commission is not making a determination either that a whistleblower tip, complaint, or referral led to the Commission opening an investigation or filing an action with respect to the case or that an award to a whistleblower will be paid in connection with the case.

25 GovDelivery is a vendor that provides communications for public-sector clients.

Whistleblowers File Claims

Once a NoCA is posted, claimants have 90 calendar days to apply for an award by submitting a completed award application on Form WB-APP to OWB.[26] Only claimants who have a clear nexus between the information they submitted on their whistleblower tip to the Commission and the charges in the underlying action should apply for an award in any given matter. In making that determination, claimants are encouraged to (i) consider whether they had any communications with the relevant Enforcement staff who brought the action and (ii) review the relevant charging documents and consider the proximity between the Commission's specific charges and the claimant's tip. As discussed in more detail at pages 26–28 of this report, the proposed amendments to the Whistleblower Rules include tools that could deter frivolous claims, which drain resources and slow down the review process for meritorious claims. Frivolous claims can substantially complicate and delay the award process.

While OWB endeavors to contact whistleblowers who have worked with investigative staff to inform them of the application deadline, it is the responsibility of the claimant to make a timely application for award. The Commission has denied late-filed award claims. The Court of Appeals for the Second Circuit upheld the Commission's denial of two claimants whose award applications were submitted approximately two years after the required deadline.[27] As such, OWB encourages whistleblowers and their counsel to regularly review the monthly NoCA postings or to sign up to receive emails to alert them as to when new NoCAs are posted.

Review and Analysis of Award Claims

Based on an initial review of the award application and in consultation with investigative staff, OWB makes a preliminary assessment of the whistleblower claim. In keeping with OWB's goal of processing meritorious claims, claims that appear to be eligible for an award are prioritized for processing.

OWB attorneys evaluate each application for a whistleblower award. In addition to analyzing the information provided by the claimant on the Form WB-APP, OWB attorneys look at prior correspondence between the claimant and the Commission and consult intra-agency databases to understand the origin of the case and what tips or other correspondence the claimant may have submitted to the Commission. In addition, whenever possible, OWB attorneys work closely with investigative staff responsible for the relevant action, and/or other Commission staff who may have interacted with the claimant or have other relevant knowledge, to understand the contribution or involvement the claimant may have had in the matter.

Utilizing the information and materials provided by the claimant in support of the application, as well as other relevant materials reviewed, OWB attorneys prepare a recommendation to the Claims Review Staff as to whether the claimant meets the criteria for receiving an award, and if so, the recommended percentage of the award. Depending on the complexity of the award claim and the number of claimants who applied, this due diligence process may take a significant amount of time for OWB attorneys to conduct. While a less diligent process could result in quicker determinations for claimants, OWB strives to reach the soundest, not the quickest, result.

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26 17 C.F.R. §§ 240. 21F-10(a), (b).

27 *See* Order Determining Whistleblower Award Claim, Exchange Act Release No. 77368 (Mar. 14, 2016), *pet. for rev. denied sub nom. Cerny v. SEC*, 707 F. App'x 29 (2d Cir. 2017), *cert. denied*, 138 S. Ct. 2005 (2018).

Most award claim recommendations also generally go through a multi-tiered, robust review process, including review and comment by Enforcement's Office of Chief Counsel and the Commission's Office of General Counsel.

"Award percentages are based on the particular facts and circumstances of each case, and are not based on any predetermined mathematical formula."

Preliminary Determinations Issued

The Claims Review Staff, designated by the Co-Directors of Enforcement, considers OWB's recommendation on the award application in accordance with the criteria set forth in Dodd-Frank and the Whistleblower Rules. The Claims Review Staff currently is composed of five senior officers in Enforcement, including the Co-Directors of Enforcement. The Claims Review Staff then issues a Preliminary Determination setting forth its assessment of whether the claim should be approved or denied and, if approved, setting forth the proposed award percentage amount.[28]

The Whistleblower Rules outline a number of positive and negative factors that the Commission and Claims Review Staff may consider in assessing an individual's award percentage.[29] Award percentages are based on the particular facts and circumstances of each case, and are not based on any predetermined mathematical formula.

Factors that may increase an award percentage include the significance of the information provided by the whistleblower, the level of assistance provided by the whistleblower, the law enforcement interests at stake, and whether the whistleblower reported the violation internally through his or her firm's internal reporting channels or mechanisms.[30]

Factors that may decrease an award percentage include whether the whistleblower was culpable or involved in the underlying misconduct, interfered with internal compliance systems, or unreasonably delayed in reporting the violation to the Commission.

Possible Record and Reconsideration Requests

A claimant may submit a written request within 30 calendar days of the date of the Preliminary Determination asking for a copy of the record that formed the basis of the Claims Review Staff's decision as to the claim for award. As a precondition to receiving a copy of the record, OWB requires claimants and their counsel, if the claimant is represented, to execute a confidentiality agreement limiting the use of such materials to the claims review process.[31] In keeping with our statutory obligation of confidentiality, OWB carefully redacts each record to remove any information that could identify another whistleblower in the matter. A claimant also has 30 calendar days to request a meeting with OWB, which OWB may grant at its discretion.

Claimants may seek reconsideration of the Preliminary Determination by submitting a written response to OWB within 60 calendar days of the later of (i) the date of the Preliminary Determination, or (ii) if the record was requested, the date when OWB made the record available for a claimant's review.[32] If a claim is denied and the claimant does not object within the time period prescribed under the Whistleblower Rules, then the Preliminary Determination of the Claims Review Staff becomes the Final Order of the Commission.

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28 17 C.F.R. § 240.21F-10(d).
29 *Id.* § 240.21F-6.
30 *But see* the discussion of the *Digital Realty* decision on pages 18–19 of this report.
31 *Id.* § 240.21F-12(b). Rule 21F-12(b) states, "The Office of the Whistleblower may also require you to sign a confidentiality agreement, as set forth in § 240.21F-(8)(b)(4) of this chapter, before providing [Preliminary Determination] materials."
32 17 C.F.R. § 240.21F-10(e).

Requests for reconsideration should include new information or argument and not simply restate what was included in the original award claim application. OWB attorneys may spend a considerable amount of time evaluating requests for reconsideration. OWB attorneys analyze claimants' legal arguments and take other steps before recommending a Proposed Final Determination for the Claims Review Staff to submit to the Commission. Because of the amount of time it takes to process reconsideration requests, OWB encourages claimants and their counsel to consider the merits of their reconsideration request in a particular matter and not to ask for reconsideration as a matter of course.

Final Order Issued and Resolution of Appeals

After considering any requests for reconsideration, the Claims Review Staff makes a Proposed Final Determination, and the matter is submitted to the Commission for its decision.[33]

All Preliminary Determinations of the Claims Review Staff that involve granting an award are submitted to the Commission for consideration as Proposed Final Determinations irrespective of whether the claimant objected to the Preliminary Determination.[34]

Within 30 days of receiving the Proposed Final Determination, any Commissioner may request that the Proposed Final Determination be reviewed by the Commission. If no Commissioner requests such a review within the 30-day period, then the Proposed Final Determination becomes the Final Order of the Commission. Claimants who are issued a denial have a right to appeal the Commission's Final Order within 30 days of issuance to the United States Court of Appeals for the District of Columbia Circuit, or to the circuit where the claimant resides or has his or her principal place of business.[35]

Final Orders of the Commission are publicly-available on the Commission's website and OWB's webpage. The public Final Orders are redacted to protect award claimants' confidentiality.

There are a number of factors that may affect the length of time it takes for OWB to review an award claim and for the Commission to issue a Final Order. For example, the number of claimants, both meritorious and non-meritorious, applying for an award in connection with a Covered Action affects the time it takes to process a claim. Similarly, the presence of novel issues, or the need to supplement the record with additional information from the claimant, may also lengthen the time it takes to process a claim. There may be a delay when there is a claim for an award in connection with a related action, requiring OWB to coordinate with or receive assistance from another regulator to understand what contribution the whistleblower may have made in the related action. Additionally, requests for the record and for reconsideration can substantially delay the issuance of a Final Order. We anticipate increased efficiencies in the claims review process if certain proposed rule amendments are adopted by the Commission.

For more information about the proposed rule amendments, please see pages 26–28 of this report.

33 *Id.* §§ 240.21F-10(g)-(h).
34 *Id.* §§ 240.21F-10(f), (h).
35 *Id.* § 240.21F-10(h). A whistleblower's rights of appeal from a Commission Final Order are set forth in Section 21F(f) of the Exchange Act, 15 U.S.C. § 78u-6(f), and Exchange Act Rule 21F-13(a), 17 C.F.R. § 240.21F-13(a).

PROFILES OF AWARD RECIPIENTS

"Since program inception, the Commission has issued awards of over $326 million to 59 individuals in connection with 48 Covered Actions, as well as in connection with several related actions."

Protecting whistleblower confidentiality is an integral component of the whistleblower program. Dodd-Frank prohibits the Commission and its staff from disclosing any information that reasonably could be expected to reveal the identity of a whistleblower, subject to certain exceptions. Consequently, information that may tend to reveal a whistleblower's identity is redacted from Commission orders granting or denying awards before they are issued publicly. This may include redacting the name of the enforcement action upon which the award is based.

Consistent with our statutory obligation to maintain whistleblower confidentiality but in an effort to provide more transparency, this section provides information about the profiles of past award recipients—from the whistleblower program's inception to the end of FY 2018—while still protecting the identity of any particular individual.

Since program inception, the Commission has issued awards of over $326 million to 59 individuals in connection with 48 Covered Actions, as well as in connection with several related actions. Many of the tips or complaints that were submitted by these successful whistleblowers share similar characteristics. The information provided by each award recipient was specific. For example, the whistleblowers identified particular individuals involved in the misconduct, or provided specific documents that substantiated their allegations or explained where such documents could be located. In some instances, the whistleblowers identified specific financial transactions that evidenced fraud, or provided detailed assessment of the wrongdoing. The misconduct reported by award recipients is often relatively current or ongoing at the time it was reported to the Commission. Additionally, nearly all of the award recipients provided Commission staff with additional assistance and/or information (*e.g.*, answered staff questions or provided testimony) after they submitted their initial tips.

An individual may be eligible to receive an award where her or his information leads to a successful enforcement action—meaning generally that the original information either caused the staff to open an examination or investigation, or the original information significantly contributed to a successful enforcement action where the matter was already under examination or investigation. Of the whistleblowers who have received awards under the program, approximately 67% provided original information that caused staff to open an investigation or examination, and approximately 33% received awards because their original information assisted with an already-existing investigation or examination. In assessing whether information assisted with an ongoing matter, the Commission considers factors such as whether the information allowed the Commission to bring an action in significantly less time or with fewer resources, and whether it supported additional successful charges, or successful claims against additional individuals or entities.[36] When the Commission has found claimants to be ineligible for awards on non-procedural grounds, it is often because the claimants' information did not result in the opening of an investigation or examination, opening of a new line of inquiry in an existing investigation or examination, nor significantly contribute to an ongoing investigation or examination.

36 Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34,300, 34,325 (June 13, 2011).

There is no requirement under the Whistleblower Rules that an individual be an employee or company insider to be eligible for an award. However, approximately 69% of the award recipients to date were current or former insiders of the entity about which they reported information of wrongdoing to the SEC. Of the award recipients who were current or former employees of a subject entity, approximately 83% raised their concerns internally to their supervisors, compliance personnel, or through internal reporting mechanisms, or understood that their supervisor or relevant compliance personnel knew of the violations, before reporting their information of wrongdoing to the Commission.

Award recipients have also included investors who had been victims of the fraud, professionals working in the same or related industry, or other types of outsiders, such as individuals who had a personal relationship with the wrongdoer or individuals who have a special expertise in the market.

Whistleblowers have helped the Commission bring cases against a variety of individuals and entities, many of which are involved in the financial services industry. Individuals comprised approximately 44% of the defendants and respondents in cases resulting in whistleblower awards. Approximately 34% of the defendants and respondents in cases in which a whistleblower received an award concerned entities registered with the Commission, including broker-dealers, investment advisers, or other registered market participants. Unregistered entities comprised approximately 22% of the defendants and respondents.

In addition, whistleblowers have assisted the Commission in bringing enforcement cases involving an array of securities violations. A number of the award recipients reported information to the Commission concerning offering frauds, such as Ponzi, or Ponzi-like, schemes. Other award recipients provided tips to the Commission relating to false or misleading statements in a company's offering memoranda or marketing materials, false pricing information, accounting violations, internal controls violations, and FCPA violations, among other types of misconduct.

Under the Whistleblower Rules, individuals are permitted to jointly submit a tip to the Commission. Seven of the matters for which whistleblower awards were ordered involved two or more whistleblowers jointly submitting information to the Commission.

Individuals who provide information that leads to successful SEC actions resulting in monetary sanctions over $1 million also may be eligible to receive an award if the same information led to a related action, such as a parallel criminal prosecution. Six of the award recipients to date have received payments based, in part, on collections made in related criminal or other qualifying related actions.

Past whistleblower award recipients hail from several different parts of the United States, and twelve recipients were foreign nationals or residents of foreign countries at the time they submitted their tips to the Commission.

"... whistleblowers have assisted the Commission in bringing enforcement cases involving an array of securities violations."

PRESERVING INDIVIDUALS' RIGHTS TO REPORT TO THE COMMISSION AND SHIELDING EMPLOYEES FROM RETALIATION

Section 21F(h)(1) of Dodd-Frank expanded protections for whistleblowers and broadened prohibitions against retaliation.[37] Following the passage of Dodd-Frank, the Commission implemented rules that enabled the SEC to take legal action against employers who have retaliated against whistleblowers. To date, the Commission has brought three anti-retaliation enforcement actions.

Exchange Act Rule 21F-17(a) prohibits any person from taking any action to prevent an individual from contacting the SEC directly to report a possible securities law violation. The Rule states that "[n]o person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement . . . with respect to such communications."[38] To date, the Commission has brought nine enforcement actions involving violations of Rule 21F-17.

FY 2018 saw a major shift with respect to the scope of the Dodd-Frank anti-retaliation protections. Under the Commission's Whistleblower Rules, the anti-retaliation protections applied to employees who reported possible securities law violations, whether internally, to other law enforcement agencies, or to the SEC. Recognizing the important role that internal compliance programs play in helping the Commission prevent, detect, and stop securities law violations, there are multiple provisions in the Whistleblower Rules meant to support individuals who choose to report internally in the first instance, including a potential increase in award percentage.

The federal courts of appeals, however, were divided over whether the Dodd-Frank anti-retaliation protections applied to employees who report potential violations of the securities laws internally without also reporting to the Commission. The United States Supreme Court granted certiorari in *Digital Realty* to address the scope of the Dodd-Frank anti-retaliation protections.

In February 2018, the Court in *Digital Realty* held that the whistleblower provisions of the Exchange Act require that an employee report a possible securities law violation to the Commission to qualify for protection against employment retaliation under Section 21F. The Court thus invalidated the Commission's rule interpreting Section 21F's anti-retaliation protections to apply in cases where an employee had reported only internally. In the months following the *Digital Realty* decision, there was an increase in the number of whistleblower tips received by the Commission, which may have been attributable, in part, to the decision.

37 15 U.S.C. § 78u-6(h)(1).
38 17 C.F.R. § 240.21F-17(a).

Following the *Digital Realty* decision, the Commission issued proposed rule amendments to Rule 21F-2. The proposed rule would modify Rule 21F-2 so that it comports with the Court's holding by, among other things, establishing a uniform definition of "whistleblower" that would apply to all aspects of Exchange Act Section 21F.

Retaliation protection remains a key tenet of the whistleblower program, and OWB will continue to support enforcement investigations where retaliation occurred after the whistleblower reported securities violations to the Commission. Furthermore, OWB will continue to support the enforcement of the whistleblower protections of Exchange Act Rule 21F-17(a), which prohibits any person from taking any action to prevent an individual from contacting the SEC directly to report a possible securities law violation. OWB will continue to work closely with investigative staff to identify and investigate practices in the use of confidentiality and other kinds of agreements, or engagement in other practices, to interfere with individuals' ability to report potential wrongdoing to the SEC.

"OWB will continue to support enforcement investigations where retaliation occurred [and] . . . will continue to support the enforcement of the whistleblower protections of Exchange Act Rule 21F-17(a) . . ."

WHISTLEBLOWER TIPS RECEIVED

"From FY 2012 . . . to FY 2018, the number of whistleblower tips received by the Commission has grown by approximately seventy-six percent."

The Whistleblower Rules specify that individuals who would like to be part of the whistleblower program must submit their tip via the Commission's online portal or by mailing or faxing their tip on Form TCR to OWB.[39] Whistleblowers who use the online portal to submit a tip receive a computer-generated confirmation of receipt with a TCR submission number. For those who submit a hard-copy Form TCR by mail or fax, OWB sends an acknowledgement letter, which includes a TCR submission number, or a deficiency letter explaining that the information was not properly submitted under the Whistleblower Rules. All whistleblower tips referring to potential securities law violations received by the Commission are entered into the TCR System and are evaluated by the Commission's Office of Market Intelligence (OMI) within Enforcement. The Commission's TCR System was recently updated to include more user-friendly features, including the ability to upload much larger attachments. OWB encourages individuals and their counsel to submit tips using the Commission's online portal, rather than through a hard-copy Form TCR. Furthermore, claimants and their counsel are encouraged to submit their tip via only one method. For example, the same tip should not be entered through the online portal and then mailed in hard copy to the office. This can create duplication of work for OWB intake staff.

Increase in Whistleblower Tips

Throughout the history of the whistleblower program, the Commission's receipt of whistleblower tips has reflected an upward trajectory, and the number of tips received this past fiscal year proves to be no exception to this trend. Since August 2011, the Commission has received over 28,000 whistleblower tips, and in FY 2018 alone, received more than 5,200 tips. The table below shows the number of whistleblower tips received by the Commission on a yearly basis since the inception of the whistleblower program.[40]

FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018
334	3,001	3,238	3,620	3,923	4,218	4,484	5,282

As reflected in this table, from FY 2012, the first year for which we have full-year data,[41] to FY 2018, the number of whistleblower tips received by the Commission has grown by approximately seventy-six percent.[42]

39 17 C.F.R. § 240.21F-9(a).

40 The Commission also receives tips from individuals who do not wish to be part of the whistleblower program. The data in this report is limited to whistleblower tips and does not reflect all tips or complaints received by the Commission during the fiscal year.

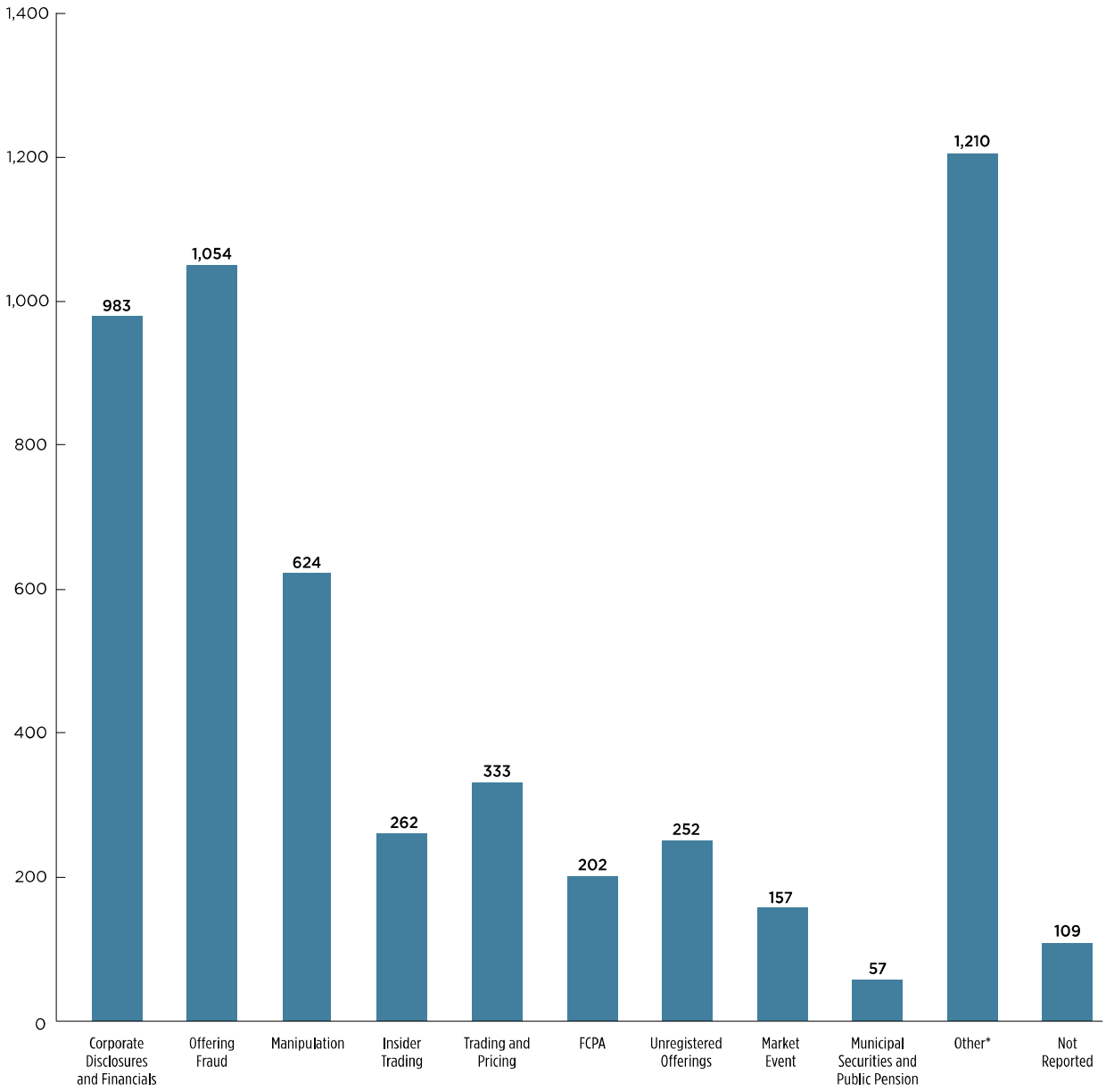
41 Because the Whistleblower Rules became effective on August 12, 2011, only seven weeks of whistleblower data is available for FY 2011.

42 In FY 2016 and FY 2017, the Commission received an unusually high number of whistleblower tips from two individuals, and received an unusually high number of whistleblower tips from one individual in FY 2018. The data for these fiscal years excludes tips received from these individuals—both in this section of the report and in the appendices to this report.

Whistleblower Allegation Type

Whether submitting tips on Form TCR or through the online portal, whistleblowers should identify the nature of their complaint allegations. In FY 2018, the most common complaint categories reported by whistleblowers were Offering Fraud (20%), Corporate Disclosures and Financials (19%), and Manipulation (12%).[43]

The following graph reflects the number of whistleblower tips received in FY 2018 by allegation type.[44]



43 This breakdown reflects the categories selected by whistleblowers and, thus, the data represents the whistleblower's own characterization of the violation type.

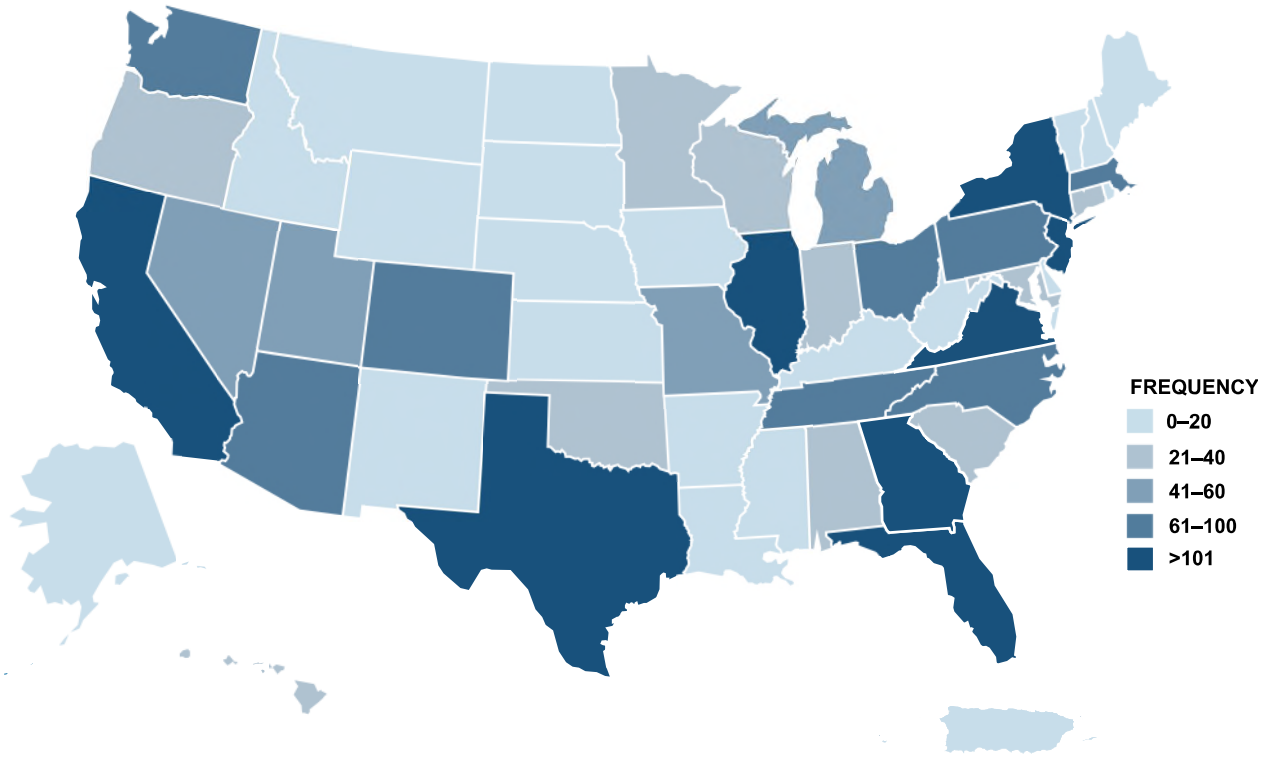
44 The category of "Other" indicates that the submitter identified the whistleblower TCR as not fitting into any allegation category that is listed on the questionnaire.

The types of securities violations reported by whistleblowers have remained generally consistent over the last seven years. Since the beginning of the program, Corporate Disclosures and Financials, Offering Fraud, and Manipulation have consistently ranked as the three highest allegation types reported by whistleblowers. Appendix A to this report provides a comparison among the number of whistleblower tips by allegation type that the Commission received during FY 2015 through FY 2018. In addition, in this past fiscal year, 39 tips were submitted as involving "Initial Coin Offerings and Cryptocurrencies," an allegation category added to the TCR System in the fourth quarter of FY 2018. The addition of this allegation category reflects a desire to refine data capture to better understand misconduct in the developing digital asset arena.

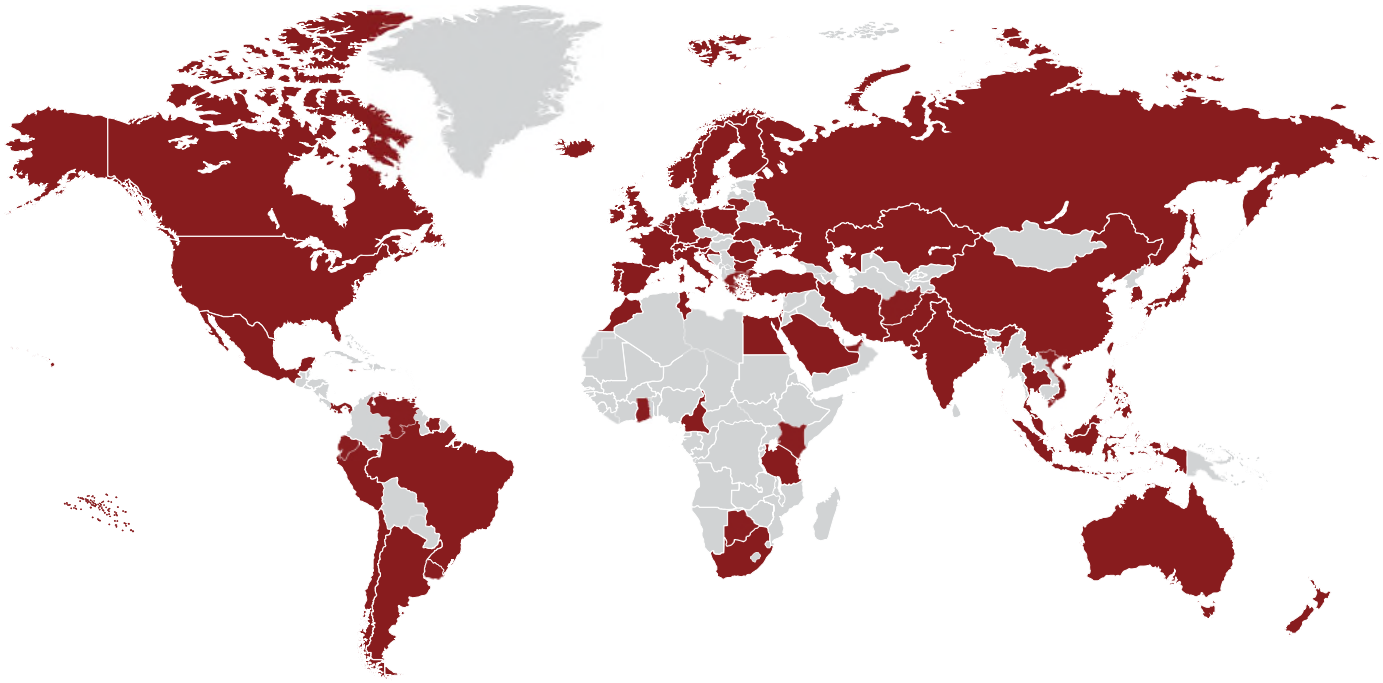
Geographic Origin of Whistleblower Tips

Through OWB's extensive outreach efforts to publicize and promote the Commission's whistleblower program, the Commission continues to receive whistleblower submissions from individuals throughout the United States, as well as internationally.

During FY 2018, California, New York, Florida, Texas and New Jersey yielded the highest number of whistleblower tips.



Since the beginning of the whistleblower program, the Commission has received whistleblower tips from individuals in 119 countries outside the United States. In FY 2018 alone, the Commission received whistleblower submissions from individuals in 72 foreign countries. After the United States, OWB received the highest number of whistleblower tips this past fiscal year from individuals in Canada, the United Kingdom, and Australia. The map below reflects the countries in which whistleblower tips originated during FY 2018.



Appendices B and C to this report provide detailed information concerning the sources of domestic and foreign whistleblower tips that the Commission received during FY 2018.

PROCESSING OF WHISTLEBLOWER TIPS

OMI evaluates incoming whistleblower TCRs and assigns specific, credible, and timely TCRs to members of the Commission staff for further analysis or investigation.

> "... whistleblower tips that are specific, credible, and timely, and which are accompanied by corroborating documentary evidence, are more likely to be forwarded to investigative staff for further analysis or investigation."

TCR Evaluation

OMI reviews every TCR submitted by a whistleblower to the Commission that references a possible securities law violation. OMI examines each tip to identify those with high-quality information that warrant the additional allocation of Commission resources. Generally, when the evaluation of a tip could benefit from the specific expertise of another Division or Office within the SEC, the tip is forwarded to staff in that Division or Office for further analysis. When OMI determines that a tip should be considered for investigation, OMI assigns the tip to one of the Commission's eleven regional offices, a specialty unit, or to an Enforcement group in the Home Office. Tips that relate to an existing investigation are forwarded to the staff working on the matter.

The Commission may use information from whistleblower tips in several different ways. For example, the Commission may initiate an enforcement investigation based on the whistleblower's tip. Even if the tip does not cause an investigation to be opened, it may still help lead to a successful enforcement action if the whistleblower provides additional information that significantly contributes to an ongoing or already-existing investigation. Tips may also prompt the Commission to commence an examination of a regulated entity, which may lead to an enforcement action or to the entity correcting the problem or clarifying an issue.

OWB tracks whistleblower tips that are referred to Enforcement staff for investigation. OWB currently is tracking over 900 matters in which a whistleblower's tip has caused a Matter Under Inquiry or investigation to open, or has been forwarded to Enforcement staff for review and consideration in connection with an ongoing investigation. Not all of these matters, however, will result in an enforcement action, or an enforcement action where the required threshold of over $1 million in monetary sanctions will be ordered. Whistleblower tips may also be used to open an examination or referred to examination staff in connection with a planned or ongoing exam.

In general, whistleblower tips that are specific, credible, and timely, and which are accompanied by corroborating documentary evidence, are more likely to be forwarded to investigative staff for further analysis or investigation. For instance, if the tip identifies individuals involved in the scheme, provides examples of particular fraudulent transactions, or points to non-public materials evidencing the fraud, the tip is more likely to be assigned to Enforcement staff for investigation. Tips that make blanket assertions or general inferences based on market events are less likely to be forwarded to or investigated by Enforcement staff.

In certain instances, OMI or other Enforcement staff may determine it is more appropriate that a whistleblower's tip be investigated by another regulatory or law enforcement agency. When this occurs, the tip is referred to the other agency in accordance with the Exchange Act's whistleblower confidentiality requirements.

Tips that relate to the financial affairs of an individual investor or a discrete investor group usually are forwarded to the Commission's Office of Investor Education and Advocacy (OIEA) for resolution. Comments or questions about agency practice or the federal securities laws also are forwarded to OIEA.

Assistance by OWB

OWB supports the tip allocation and investigative processes in several ways. When whistleblowers submit tips on a Form TCR in hard-copy by mail or fax, OWB enters the information into the TCR System so it can be evaluated by OMI. Tips submitted by whistleblowers through the Commission's online portal are automatically forwarded to OMI for evaluation. During the evaluation process, OWB may assist by contacting the whistleblower to obtain additional information to help in the triage process.

After submitting an initial tip, a whistleblower is free to, and often does, submit additional information or materials to buttress his or her earlier allegations. Additional information may be submitted through the online portal, with reference to the original TCR submission number (if known), or may be submitted directly to the investigative staff if the whistleblower is working with staff on the matter. To the extent additional information is sent to OWB in hard-copy by mail or fax, OWB then uploads the additional information to the TCR System. While OWB sends acknowledgement letters confirming receipt of Form TCRs or deficiency letters where appropriate, due to the increasing volume of additional information submitted in paper form to OWB, and the ready availability of electronic submissions, OWB does not provide acknowledgement letters in response to additional information.

PROPOSED WHISTLEBLOWER RULE AMENDMENTS

"The proposed amendments are intended to increase efficiencies in the whistleblower claims review process . . ."

The proposed amendments to the Whistleblower Rules were published in the Federal Register on July 20, 2018. The public comment period ended on September 18, 2018.[45] The Commission received approximately 100 unique letters and two form letters from commenters. Commission staff is currently reviewing the comments.[46] The proposed amendments are intended to increase efficiencies in the whistleblower claims review process, provide the Commission with additional tools in making whistleblower awards to ensure that meritorious whistleblowers are appropriately rewarded for their efforts, and align the requirements for anti-retaliation protection under the Whistleblower Rules with the holding in *Digital Realty*. The proposed amendments would make certain modifications and clarifications to the existing rules, as well as several technical amendments.

Increased Efficiencies in Claims Review Process

The proposed rule amendments are intended to increase efficiencies in the claims review process by clarifying the Commission's ability to bar individuals from submitting whistleblower applications where they are found to have submitted false information to the Commission or where they repeatedly make frivolous award claims in Commission actions. The proposed rules would codify the Commission's current practice with respect to barring applicants who submit false, fictitious, or fraudulent statements in their dealings with the Commission and permit the Commission to permanently bar any applicant from seeking an award after the Commission determines that the applicant has abused the process by submitting three award applications that the Commission finds to be frivolous or lacking a colorable connection between the tip (or tips) and the Commission action. The proposed rule would expressly provide, however, that OWB shall advise any claimant of the Office's assessment that the claimant's award application for a Commission action is frivolous or lacking a colorable connection between the tip and the action for which the individual has sought an award. If the applicant withdraws the application at that time, it would not be considered by the Commission in determining whether to exercise its authority to impose a bar for three or more frivolous applications or applications lacking a colorable connection between the tip and the Commission action for which the award was sought.

In addition, the proposed rule amendments would provide the Commission with a summary disposition procedure for certain types of likely denials, such as untimely award applications, applications that involve a tip that was not provided to the Commission in the form and manner that the rules require, and applications where the claimant's information was never provided to or used by investigative staff. The proposed summary disposition procedure is intended to help facilitate a more timely resolution of such relatively straightforward denials, while freeing up staff resources to focus on processing potentially meritorious award claims.

45 *See* Amendments to the Commission's Whistleblower Program Rules, 83 Fed. Reg. 34,702 (proposed July 20, 2018).
46 Comments to the proposed rules are available at: https://www.sec.gov/comments/s7-16-18/s71618.htm

Additional Tools in Award Determinations

The proposed rule amendments would provide the Commission with additional tools in making awards, including by: (i) allowing awards based on deferred prosecution agreements (DPAs) and non-prosecution agreements (NPAs) entered into by the U.S. Department of Justice or a state attorney general in a criminal case, or a settlement agreement entered into by the Commission outside of the context of a judicial or administrative proceeding to address violations of the securities laws; (ii) providing additional considerations for small and exceedingly large awards; and (iii) eliminating potential double recovery under the current definition of "related action."

Allowing awards based on NPAs, DPAs, and settlement agreements outside of the context of a judicial or administrative proceeding would help ensure that whistleblowers are not disadvantaged because of the particular form of an action that was pursued.

In the context of potential awards that could yield a payout of less than $2 million to a whistleblower, the proposed rules would authorize the Commission in its discretion to adjust the award percentage upward under certain circumstances (subject to the 30% statutory maximum) to an amount up to $2 million.

Under the proposed rules, if a potential award could yield total collected monetary sanctions of at least $100 million, the Commission could exercise its discretion to adjust the award percentage so that it would yield a payout (subject to the 10% statutory minimum) that does not exceed an amount that is reasonably necessary to reward the whistleblower and to incentivize other similarly situated whistleblowers. In no event, however, would the award be adjusted below $30 million (or below the 10% statutory minimum). This proposed rule would apply to award applications that are connected to a NoCA posted on or after the effective date of the rules.

In addition, the proposed amendments would clarify that a law-enforcement or separate regulatory action would not qualify as a "related action" if the Commission determines that there is a separate whistleblower award scheme that more appropriately applies to the enforcement action.

Uniform Definition of "Whistleblower"

As discussed elsewhere in this report, the proposed amendments would modify Rule 21F-2 so that it comports with the Supreme Court's holding in *Digital Realty*. The Court in *Digital Realty* held that the whistleblower provisions of the Exchange Act require that a person report a possible securities law violation to the Commission in order to qualify for protection against employment retaliation, thus invalidating the Commission's rule interpreting Section 21F's anti-retaliation protections to apply in cases of internal reports. The proposed amendments would, among other things, establish a uniform definition of "whistleblower" that would apply to all aspects of Exchange Act Section 21F—*i.e.*, the award program, the heightened confidentiality requirements, and the employment anti-retaliation protections. To qualify for anti-retaliation protection, the rule proposal notes that the individual must have submitted his or her information to the Commission "in writing."

Interpretive Guidance

In addition to the proposed rule amendments, the Commission published proposed interpretive guidance to help clarify the meaning of "independent analysis" as that term is defined in Exchange Act Rule 21F-4(b)(3) and utilized in award applications. To be considered "analysis," the Commission's rule requires that a whistleblower's examination and evaluation of publicly available information "reveal[] information that is not generally known or available to the public."[47] Under the proposed guidance, in order to qualify as "independent analysis," a whistleblower's submission must provide evaluation, assessment, or insight beyond what would be reasonably apparent to the Commission from publicly available information.

The full text of the proposed rule amendments is available at:
https://www.sec.gov/rules/proposed/2018/34-83557.pdf

47 17 CFR § 240.21F-4(b)(3).

SECURITIES AND EXCHANGE COMMISSION INVESTOR PROTECTION FUND

Section 922 of Dodd-Frank established the Investor Protection Fund to provide funding for the Commission's whistleblower award program, including the payment of awards in related actions.[48] As required by statute, all payments are made out of this Fund, which is financed entirely through monetary sanctions paid to the SEC by securities law violators. No money has been taken or withheld from harmed investors to pay whistleblower awards. The Fund also is used to finance the operations of the suggestion program of the SEC's Office of Inspector General.[49] The suggestion program is intended for the receipt of suggestions from SEC employees for improvements in work efficiency, effectiveness, productivity, and the use of resources at the Commission, as well as allegations by SEC employees of waste, abuse, misconduct, or mismanagement within the Commission, and is operated outside of OWB.[50]

Section 21F(g)(5) of the Exchange Act requires certain Fund information to be reported to Congress on an annual basis. Below is a chart containing Fund-related information for FY 2018.

	FY 2018
Balance of Fund at beginning of fiscal year[51]	$ 297,387,453.49
Unavailable amounts from FY 2017 available during fiscal year[52]	$ 310,478.00
Amounts deposited into or credited to Fund during fiscal year	$ 179,626,352.60
Amount of interest receipts from investments during fiscal year	$ 5,746,262.10
Amount of receipts during fiscal year that are unavailable[52]	$ (12,234,592.57)
Amounts paid from Fund during fiscal year to whistleblowers	$ (94,348,311.00)
Amounts estimated to be paid from Fund during fiscal year to whistleblowers	$ (77,127,230.29)
Amount disbursed to Office of the Inspector General during fiscal year	$ (26,430.51)
Balance of Fund at end of fiscal year	$ 299,333,981.82

48 Section 21F(g)(2)(A) of the Exchange Act, 15 U.S.C. § 78u-6(g)(2)(A).

49 Section 21F(g)(2)(B) of the Exchange Act, 15 U.S.C. § 78u-6(g)(2)(B), provides that the Fund shall be available to the Commission for "funding the activities of the Inspector General of the Commission under section 4(i)." The Commission's Office of General Counsel has interpreted this section to refer to Exchange Act Section 4D, which established the Inspector General's suggestion program. That section provides that the "activities of the Inspector General under this subsection shall be funded by the Securities and Exchange Commission Investor Protection Fund established under Section 21F." *Id.* § 78d-4(e).

50 Section 4D(a) of the Exchange Act, *id.* § 78d-4(a).

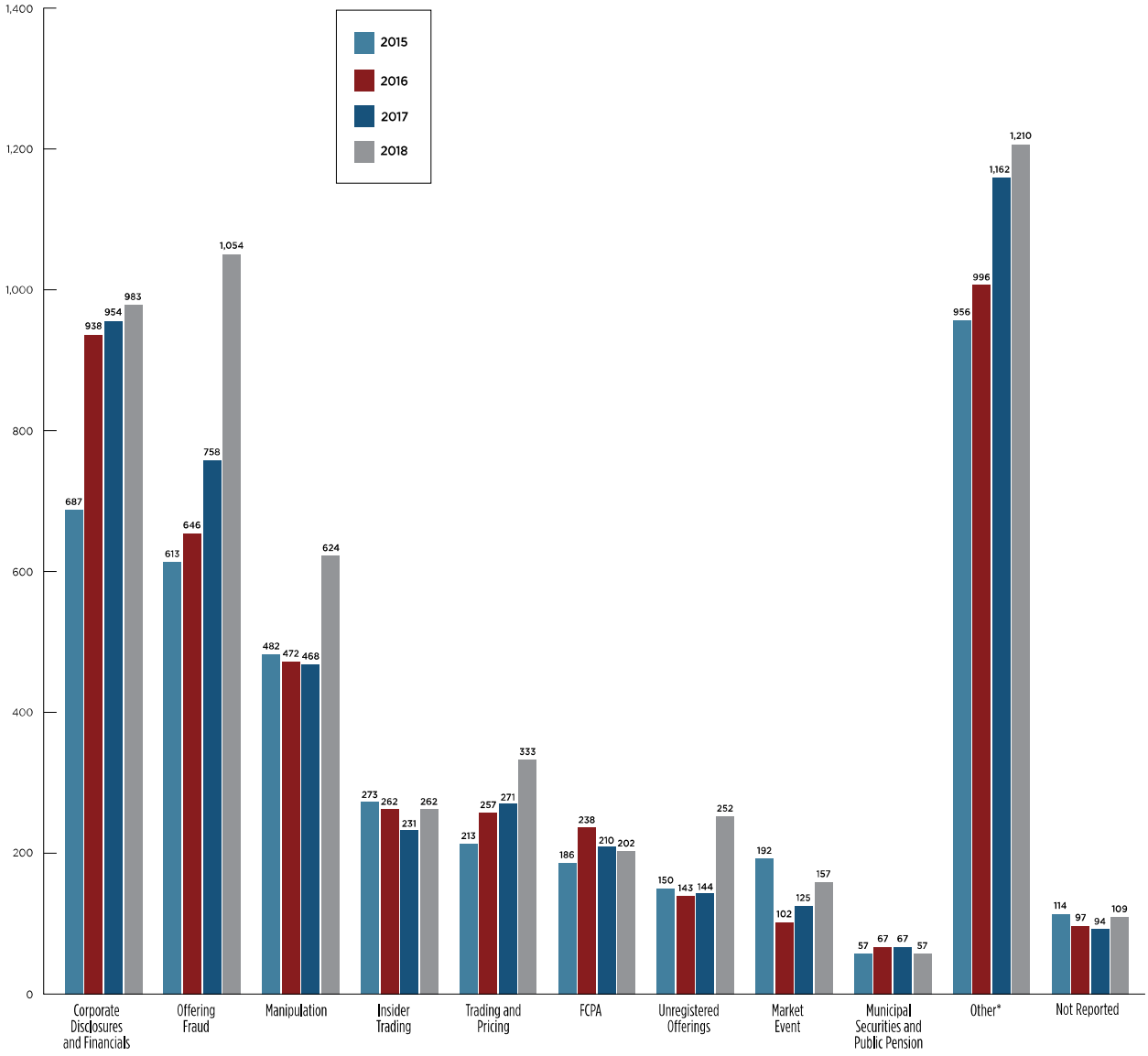
51 During FY 2018, the SEC changed how the balance of the Fund is defined for replenishment purposes. Prior to FY 2018, the balance was defined as total assets of the Fund. Beginning in FY 2018, the SEC changed to the available unobligated balance. As a result, the beginning balance differs from what was previously reported as the ending balance for FY 2017.

52 Amounts relate to available resources temporarily reduced during the fiscal year as a result of the Budget Control Act of 2011. These amounts become available at the beginning of the following fiscal year.

Whenever the balance of the Fund falls below $300 million, a statutory replenishment mechanism is triggered. For a complete description of the mechanisms that Congress established to replenish the Fund, see Section 21F(g)(3) of the Exchange Act, 15 U.S.C. 78-6(g)(3).

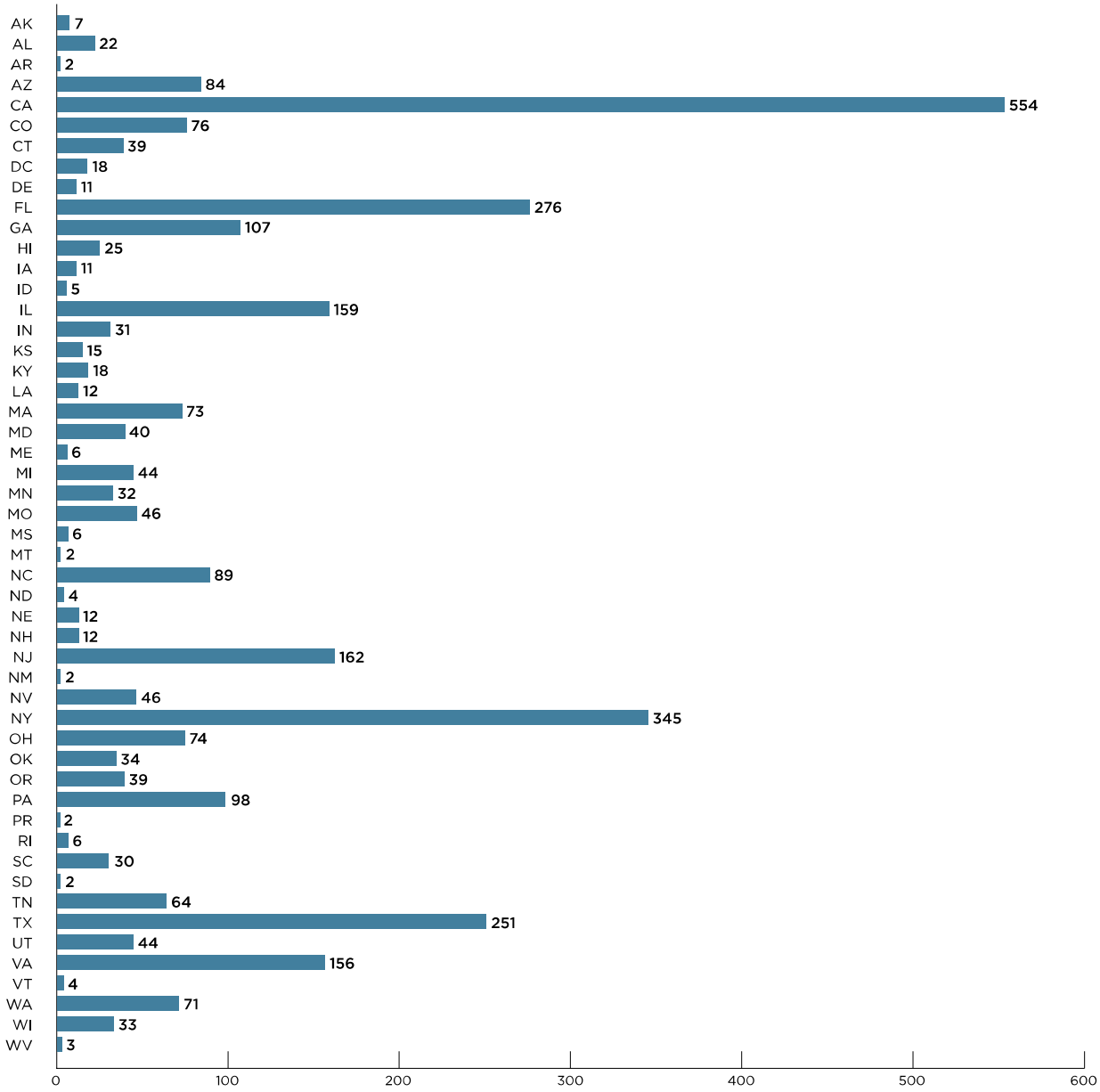
Section 21F(g)(5) of the Exchange Act also requires a complete set of audited financial statements for the Fund, including a balance sheet, income sheet, income statement, and cash-flow analysis. That information will be included in the Commission's Agency Financial Report, which will be separately submitted to Congress.

APPENDIX A
WHISTLEBLOWER TIPS BY ALLEGATION TYPE
COMPARISON OF FISCAL YEARS 2015–2018



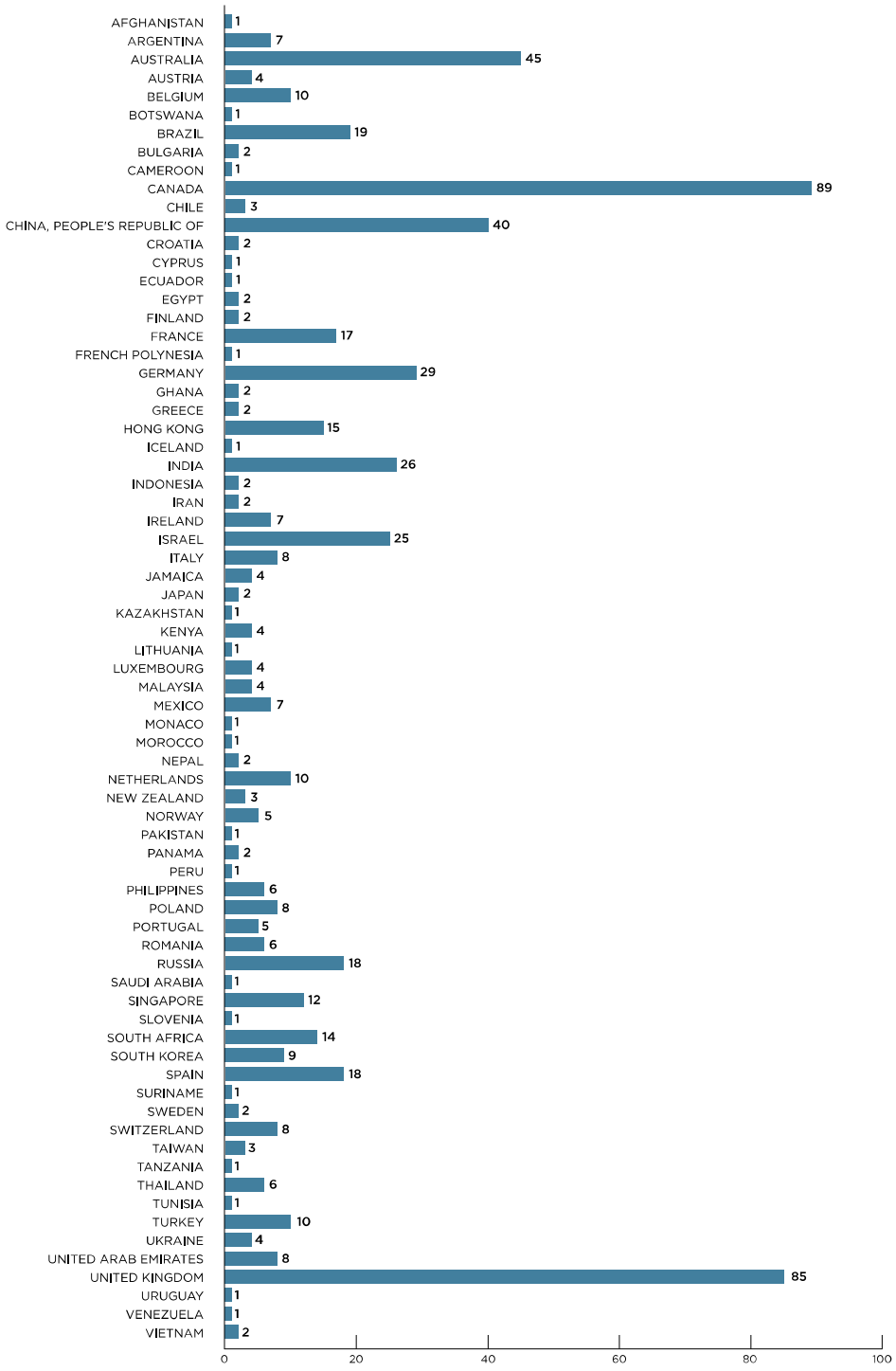
*The category of "Other" indicates that the submitter identified the whistleblower TCR as not fitting into any allegation category that is listed on the questionnaire. Also, in the interest of space, this chart does not reflect 39 tips submitted under "Initial Coin Offerings and Cryptocurrencies," an allegation category introduced during the fourth quarter of FY 2018.

APPENDIX B
WHISTLEBLOWER TIPS RECEIVED BY GEOGRAPHIC LOCATION UNITED STATES AND ITS TERRITORIES, FISCAL YEAR 2018*



*Multiple individuals may jointly submit a TCR under the Commission's whistleblower program. Appendix B reflects the number of individuals submitting WB TCRs to the Commission within the United States, or one of its territories, and not the total number of domestic WB TCRs received by the Commission during FY 2018. For example, a WB TCR that is jointly submitted by two individuals—one in New York and one in New Jersey—would be reflected in Appendix B as a submission from both New York and New Jersey. The total number of individuals submitting WB TCRs in the United States or a U.S. territory during FY 2018 exceeded 3,300 and constituted about 62% of the individuals participating in the Commission's whistleblower program for this period. Additionally, over 1,350 individuals, constituting approximately 26% of the total number of persons participating in the Commission's whistleblower program in FY 2018, submitted WB TCRs without any foreign or domestic geographical categorization or submitted them anonymously through counsel.

APPENDIX C
WHISTLEBLOWER TIPS RECEIVED BY GEOGRAPHIC LOCATION INTERNATIONAL, FISCAL YEAR 2018*



*As with domestic WB TCRs, multiple individuals from abroad may jointly submit a TCR under the Commission's whistleblower program. Appendix C reflects the number of individuals submitting WB TCRs to the Commission from abroad, and not the total number of foreign WB TCRs received during FY 2018. The number of individuals submitting WB TCRs from abroad during FY 2018 exceeded 650, and constituted approximately 12% of the individuals participating in the Commission's whistleblower program.

OFFICE OF THE WHISTLEBLOWER

Washington, DC

U.S. Securities and Exchange Commission

The following Letter Type A, or variations thereof, was submitted by individuals or entities.

Letter Type A:

Dear Securities and Exchange Commission,

I write to strongly oppose the proposed amendments to the rules governing the SEC whistleblower program (File Number S7-16-18). The proposed rule amendments will weaken and undermine the deterrent effect of rewarding whistleblowers.

I call your attention to the public statements issued by Commissioners Stein and Jackson and the Law360 Op-ed "The Problem With SEC's Plan To Cap Whistleblower Awards." (https://bit.ly/2L0WTaJ) These statements outline my reasoning as to why the proposed amendments will undermine the policing of Wall Street.

Specifically, the proposed amendment to the rules capping rewards in the largest cases to the lowest percentage rate should be withdrawn. Furthermore, the SEC should ensure that every employee, regardless of position or title, can disclose corporate fraud directly to the SEC. Any requirement that compliance officers, managers or directors work internally with the company before reporting to the SEC must be struck from the rules.

I request that you meet personally with whistleblower experts from the National Whistleblower Center to obtain additional information as to why the proposed amendments to the rules governing the SEC whistleblower program should not be implemented.

Sincerely,

http://www.sec.gov/comments/s7-16-18/s71618-typea.htm

U.S. Securities and Exchange Commission

The following Letter Type B, or variations thereof, was submitted by individuals or entities.

Letter Type B:

Dear Securities and Exchange Commission,

I write in regard to the proposed amendments to the rules governing the SEC whistleblower program (File Number S7-16-18).

The SEC proposed these changes with no input from the whistleblower community, yet adopted a position consistent with the long-standing and flimsy viewpoint advanced by the anti-whistleblower U. S. Chamber of Commerce ("Chamber").

It is my understanding that the National Whistleblower Center filed a Freedom of Information Act (FOIA) request seeking documents related to lobbying efforts by Wall Street firms and the Chamber of Commerce that gave rise to the SEC's proposed rules. The SEC determined that the NWC had a "compelling need" to receive these documents "on an expedited basis" and determined that there were 15,877 emails that could be responsive to NWC's request. These included 1,078 emails that referenced both "whistleblower" and "Chamber of Commerce" created between January 2, 2017 and June 29, 2018.

Despite its agreement to expedite he release of these documents, the SEC will not release them until after the comment period.

Therefore, I urge the SEC, in the interest of transparency, extend the public comment period for its proposed rules on the Whistleblower Program until 60 days after the documents requested by the NWC's FOIA request have been released.

If the comment period is not extended, I agree with the concerns raised in the NWC's letter filed with the Commission on September 17, 2018, linked here: https://bit.ly/2xqGUts.

Sincerely,

http://www.sec.gov/comments/comments/s7-16-18/s71618-typeb.htm

BRYAN
CAVE
LEIGHTON
PAISNER