

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 201

[RELEASE NO. 34-62921]

Rescission of Rules Pertaining to the Payment of Bounties for Information Leading to the Recovery of Civil Penalties for Insider Trading

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)¹ repealed former Section 21A(e) of the Securities Exchange Act of 1934, which had authorized the Securities and Exchange Commission (“Commission”) to make monetary awards to persons who provided information leading to the recovery of civil penalties for insider trading violations. Because the statutory basis for the insider trading bounty program has been removed, the Commission is rescinding rules promulgated to administer the program.

EFFECTIVE DATE: September 21, 2010.

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SUPPLEMENTARY INFORMATION: The Insider Trading and Securities Fraud Enforcement Act of 1988 authorized the Commission to award bounties to persons who provided information leading to the recovery of civil penalties for insider trading violations; the bounty provision was codified as former Section 21A(e) of the Securities Exchange Act of 1934

¹ Public Law 111-203, 124 Stat. 1376 (July 21, 2010).

(“Exchange Act”). In 1989, the Commission adopted procedural rules to administer the insider trading bounty program. See Applications for Bounty Awards on Civil Penalties Imposed in Insider Trading Litigation, Exchange Act Release No. 26994 (June 30, 1989).

The Dodd-Frank Act created a new and broader program for making monetary awards to whistleblowers, codified as Section 21F of the Exchange Act.² Under the new whistleblower program, the Commission is authorized to make awards to persons 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,” as those terms are defined by the Dodd-Frank Act. Unlike the insider trading bounty program, awards may be paid in connection with original information concerning any violation of the federal securities laws. Awards may range from 10 to 30 percent of the amounts collected as monetary sanctions imposed in the covered judicial or administrative action or related actions.

In connection with enactment of the new whistleblower provision, Congress repealed Section 21A(e).³ Because that statutory provision is no longer available as a basis for awarding bounties in insider trading cases, the Commission is rescinding its rules for administration of the insider trading bounty program.

Procedural and Other Matters

The Administrative Procedure Act (“APA”) generally requires an agency to publish notice of a proposed rulemaking in the Federal Register.⁴ This requirement does not apply, however, if the agency “for good cause” finds ... that notice and public procedure thereon are

² Section 922 of the Dodd-Frank Act.

³ Section 923(b) of the Dodd-Frank Act.

⁴ See 5 U.S.C. § 553(b).

impracticable, unnecessary, or contrary to the public interest.”⁵ Because the statutory authority for the insider trading bounty program has been repealed, the Commission is removing the rules administering the program from the Federal Register. These rules no longer have any practical effect, and their continued inclusion in the Federal Register might lead to public confusion. For these reasons, the Commission finds that good cause exists to dispense with public notice and comment because notice and comment would be unnecessary, impracticable and contrary to the public interest.⁶ For similar reasons the Commission finds good cause for this action to be effective immediately.⁷

Section 23(a)(2) of the Exchange Act requires the Commission to consider the competitive effects of rulemaking under the Exchange Act. Further, Section 3(f) of the Exchange Act requires us, when engaging in rulemaking where we are 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. Because Congress has repealed the insider trading bounty program, our removal of the procedural rules related to that program will not create any competitive advantages or disadvantages, or affect efficiency, competition, and capital formation.

Statutory Authority and Text of Amendments

The Commission is removing regulations pursuant to authority provided by Section 23(a) of the Exchange Act.

⁵ 5 U.S.C. § 553(b).

⁶ Similarly, the amendments do not require analysis under the Regulatory Flexibility Act. See 5 U.S.C. §§ 601(2) and 603(a) (for purposes of Regulatory Flexibility Act analysis, the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking).

⁷ Additionally, this finding satisfies the requirements for immediate effectiveness under the Small Business Regulatory Enforcement Fairness Act. See 5 U.S.C. § 808(2); see also 5 U.S.C. § 801(a)(4).

List of Subjects in 17 CFR Part 201

Administrative practice and procedure.

TEXT OF AMENDMENTS

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 201—RULES OF PRACTICE

1. The authority citation for part 201 continues to read as follows:

Authority: 15 U.S.C. 77s, 77sss, 78w, 78x, 80a-37, and 80b-11; 5 U.S.C. 504(c)(1).

Subpart C – [Removed and Reserved]

2. Remove and reserve Subpart C.

By the Commission.

Elizabeth M. Murphy
Secretary

Date: September 15, 2010