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U.S. Securities and Exchange Commission
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Washington, DC 20549

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DODD-FRANK ACT
Title IX Investor Protections
Subtitle B—Increasing Regulatory Enforcement and Remedies
SEC. 922. WHISTLEBLOWER PROTECTIONS

Commission is requested to outsource its whistleblower function to third party providers

I am writing on behalf of zEthics, Inc. and the Business Integrity Alliance. The Business Integrity Alliance is one of eleven (11) firms selected to participate in the California Public Employees' Retirement System (CalPERS) Corporate Governance Research Spring-Fed Pool.

The zEthics technology platform provides a structured process for employees to anonymously disclose comprehensive and timely information about the impact on soft controls that are essential to manage the corporate culture. In addition, the zEthics technology platform provides the corporate entity an opportunity to take corrective actions and implement preventative measures to remedy non-conformances with the company's mission, goals, strategies, and objectives.

The Corporate Culture Index is an innovative new tool that measures the integrity of the corporate culture, verifies the tone-at-the-top, and protects shareholders and stakeholders by providing an early warning against corruption, fraud and management misconduct. The Corporate Culture Index provides a quantitative tool to measure the tone of the corporate culture at the Company level, Business Unit level, and Management level.

The zEthics online corporate culture surveys and reports provide the organization the knowledge and power to validate and continually improve the integrity of the most important part of the internal control system – the people.

PROPOSED RULE/REGULATION

In the interests of shareholders and for the protection of investors, the Commission is requested to outsource its whistleblower function to third party providers within the following guidelines:

1) Aid whistleblowers in disclosing information
2) Act as custodians of whistleblower information
3) Verify and authenticate whistleblower information as original
4) Quantify significance of information
5) Consolidate information, including supporting documentation and corroborating information from multiple sources
6) Make information available to other government agencies without loss of status of confidentiality
7) Provide whistleblowers real-time update about the status of claims
8) Aid whistleblowers in reporting discharge or discrimination by employers
9) Make information available to affected stakeholders without loss of status of confidentiality for the purpose of conducting independent investigations and to affect short-term and long-term remedies that prevent loss to investors
10) Provide stakeholders the private right of action to bring suit
11) Update investors and the public, as appropriate, about the status of claims
12) Website is clearly defined, user friendly, is highly publicized and is promoted on various websites, including the Commission, PCAOB, Federal and State regulatory agencies, etc.
13) Provide comprehensive reporting to Congress and the Inspector General of the Commission as required

SUPPORTING ARGUMENT

The SEC has long had a whistleblower program for insider trading. The results? According to a Senate report accompanying the Dodd-Frank Act, during its 20-year existence, the SEC's whistleblower program has paid out only $159,537 to five claimants.

<u>TRUST</u>

The U.S. Securities and Exchange Commission (SEC) missed the Bernie Madoff's decades-long Ponzi scheme and Allen Stanford's alleged $8 billion scam.

As witnessed with Bernard Madoff, Harry Markopolis tried relentlessly to inform the SEC of the fraud and was ignored. The SEC never even acted on the fraud, it was Madoff himself who confessed, even with no federal agency chasing him. The SEC also received numerous warnings about Sir Allan Stanford, yet didn't act upon them either.

“In January 2009, when Mary Schapiro took over the Securities and Exchange Commission, the agency was the butt of jokes. Though the SEC's whole purpose is to police the securities

industry, it had missed massive abuses such as Bernie Madoff's decades-long Ponzi scheme and Allen Stanford's alleged $8 billion scam," (Money Magazine, February 24, 2010).

A recent report by Securities and Exchange Commission's inspector general shows that the investigation of Bernard L. Madoff was not the only one to go badly awry. While the impact of the S.E.C.'s missteps were not nearly as significant as in the Madoff case, the report shows that the agency's enforcement division allowed itself to be manipulated by a company it should have been investigating more thoroughly while allowing former staff members to influence its decisions on how to proceed.

"The inspector general, H. David Kotz, raised significant concerns about how the S.E.C. conducted itself in its investigation of Allied Capital. The report made available by The Washington Post gives a fairly damning picture of the S.E.C. staff ignoring serious allegations of corporate misconduct while different offices failed to communicate about the subject matter of the investigation," (Peter J. Henning, New York Times, March 24, 2010)

The investigation by the compliance office was derailed because one of Allied Capital's representatives was a former S.E.C. staff member, and an associate director of the office said that anyone who had worked at the commission was "not going to be doing anything illegal." The report states that the office's examiner on the case – the only staff member assigned to it, in fact – "testified that she received considerable 'pushback' from the associate director with regard to her findings about Allied."

While that alone would be bad enough, the enforcement division's investigation was even more questionable. The original supervising attorney on the Greenlight Capital investigation was effectively pushed out of his job for performance reasons, and a year later he ended up registering as a lobbyist for Allied Capital.

The report notes that the former supervisor "learned a substantial amount of sensitive, nonpublic information regarding Einhorn and Allied." To make matters worse, when he sought clearance from the S.E.C.'s ethics office to represent the company, his response regarding prior involvement with the company while at the commission was "incomplete."

RESOURCES

When asked "Do you have the staff and budget to protect investors?" SEC Chair Mary Schapiro responded, " We clearly don't in order to do the job I want to be done. We are 3,800 people total, and we regulate 35,000 public entities: 12,000 public companies for their disclosure, 11,300 investment advisers, 8,000 mutual funds, 5,000 broker-dealers, 600 transfer agents, exchanges, clearinghouses."

The prospect of a cash bounty could result in the SEC's being inundated with tips, valid or not. The question is whether the SEC will pay heed to the legitimate claims, given its failure to act on early hints of Ponzi schemes run by Bernard Madoff and Robert Allen Stanford.

INDEPENDENCE

Critics contend that the SEC is too cozy with Wall Street.

"The SEC repeatedly has promised to get serious about enforcement and protecting the interests of investors, but the agency's support of dismantling one of the few investor protection reforms in recent years shows that its interests are ultimately more aligned with Wall Street than individual investors," (Jacob Zamansky, iStockAnalyst, March 23, 2010).

The Wall Street Journal reported in March that the SEC is supporting Wall Street's efforts to dismantle the provisions of a 2003 global settlement designed to ensure the integrity of Wall Street's research; i.e, provisions that prevent research analysts from talking to their firm's investment bankers without a compliance officer being present.

The regulation separated the research operations at banks and brokerage firms from their investment banking operations. Investigations had revealed how investors had been duped into buying bad stocks by research analysts who were promoting the stocks of companies that provided their firms with lucrative investment banking fees, even while calling the stocks 'dogs' and worse in their internal e-mails to each other.

A U.S. court in New York rejected the recent proposal to get certain sections repealed. The judge said, "The proposed modifications of the rule would deconstruct the firewall between research analysts and investment bankers."

It does raise questions about the sincerity of the SEC in working with Congress in the current process of coming up with meaningful regulations on the banking industry in the wake of the most recent financial collapse. And when it comes to anonymous reporting of corruption, fraud and misconduct, a neutral party would most likely be viewed as independent from Wall Street.

FINDING FRAUD

In the standard audit reports that accompany corporate financial statements, the auditor's responsibility for detecting fraud is not discussed. Indeed, the word fraud isn't mentioned at all. Yet whenever an accounting deception is uncovered, one of the first questions investors ask is, "Where were the auditors?"

The auditing profession calls the discrepancy between what investors expect and what auditors do an "expectations gap." In recent years, audit firms have attempted to close the gap by educating the public on their role. Last May, for instance, the Center for Audit Quality, the trade

group for audit firms, issued a brochure on public-company accounting that said auditors consider potential areas of misconduct for a particular company when deciding what areas of a business to review. However, the CAQ cautioned, "because auditors do not examine every transaction and event, there is no guarantee that all material misstatements, whether caused by error or fraud, will be detected."

Now, the Public Company Accounting Oversight Board (PCAOB) is also trying to close the expectations gap, based on a recommendation made more than a year ago by a Treasury Department–appointed advisory group that studied the auditing industry. The advisory group suggested that the audit report — which is the sole communication between auditors and investors on a particular company — explain the auditors' role and their limitations in finding fraud.

A 2009 study performed by researchers at the University of Massachusetts at Amherst demonstrates that external auditors are less likely to find manipulated earnings when management directs their attention away from areas of financial statements that contain errors. (The study was recently voted best research paper by the American Accounting Association's auditing section).

Some investors, such as those who responded to a 2008 CFA Institute survey, would like auditors to identify their clients' key risks as well as highlight areas that could possibly have questionable estimates made by management. "Investors want to know where the high risks are," said Mary Hartman Morris, a California Public Employees' Retirement System investment officer.

"Investors are not satisfied with the status quo, and I think that is justified, considering the disclosure of financial problems tends to come after the fact," (PCAOB board member Charles Niemeier).

Adair Morse, assistant professor of finance at the University of Chicago's Booth School of Business, and other researchers analyzed 216 cases of corporate fraud from 1999 through 2004, including the Enron, WorldCom and HealthSouth cases. They found that employees were the whistle- blowers in 17 percent of the cases – the highest percentage of any of the players. Short sellers ranked second, uncovering the fraud in 14.5 percent of the cases. Analysts were third, with 13.8 percent. The SEC detected only 6.6 percent.

A whistleblower website must provide a structured process for employees, short sellers and analysts to anonymously disclose timely and comprehensive information about fraud, corruption and misconduct, which can be provided to internal and external auditors for review, investigation and disclosure to investors, stakeholders and the public in a timely manner.

TRANSPARENCY

Under existing policy, companies and executives that settle lawsuits filed by the SEC typically pay a fine and agree to other sanctions, but they neither have to admit wrongdoing nor undergo a trial in which the details of their alleged misconduct would be unveiled. A settlement, the only public record of the case, can often be only a few pages in length.

The question of whether the SEC should publicize details of its probes came into sharp focus recently after a federal judge challenged the agency's handling of its lawsuit accusing Bank of America of lying to investors. The SEC had accused the bank of concealing plans to pay billions of dollars in bonuses to employees of Merrill Lynch, the Wall Street firm it was buying. In its settlement with Bank of America, the agency issued a cursory overview of the allegations and set a $33 million fine. The bank denied wrongdoing, saying it agreed to the settlement to avoid a costly tussle with one of its key regulators.

The judge in the case, Jed S. Rakoff of the Southern District of New York, initially rejected the settlement. "This case suggests a rather cynical relationship between the parties: the S.E.C. gets to claim that it is exposing wrongdoing on the part of the Bank of America in a high-profile merger; the Bank's management gets to claim that they have been coerced into an onerous settlement by overzealous regulators," he wrote at the time. "And all this is done at the expense, not only of the shareholders, but also of the truth."

COST

The cost of operating a whistleblower website could be shared by all stakeholders, and is not considered burdensome for any one particular stakeholder.

CONCLUSION

This section of the Dodd-Frank Act is intended to increase reporting of securities laws violations by enhancing existing rewards and protections for whistleblowers. When it requires an individual to put his/her paycheck, credentials and social network (coworkers) on the line in order to correct ethical problems, it takes an inordinate amount of personal courage and sacrifice.

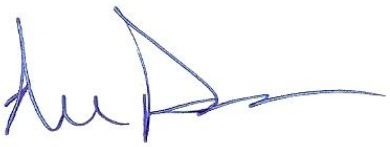
Trust, independence, transparency, integrity and accountability are vitally important to a successful whistleblower program. Employees can trust neither their employers nor federal regulators with anonymous reporting of fraud, corruption or misconduct. Instead, an independent neutral party should be entrusted with providing a structured process for employees, short sellers and analysts to anonymously disclose timely and comprehensive information about fraud, corruption and misconduct.

“A study published in The Journal of Management Studies [by James E. Hunton and Jacob M. Rose] has found that **…** audit committee members were less likely to follow up on a tip if it was

made anonymously, even though they believed that investigating an anonymous tip was no more time-consuming or expensive to investigate than one that was made by an non anonymous source. When they did follow up on an anonymous tip, they allocated less money to investigating the issue than if it had been a non-anonymous tip. The study also found that board members were less willing to treat the allegations as serious if they were serving on another board where such misdeeds were also taking place, indicating that they feared a reputation loss by missing the accounting trick at two separate companies. The study's authors conclude that a better way to protect shareholders … would be to mandate a trusted independent third party… to receive all whistle-blowing allegations." (*Big Obstacles for Anonymous Tips of Misdeeds,* Cyrus Sanati, New York Times Deal Blog, July 12)

Thank you for considering our comments and your robust, dynamic and transparent approach to regulation. If you would like to discuss any of the following points, please do not hesitate to contact me directly at (602) 358-9586 or Michael Brozzetti at (215)-687-7376.

Yours sincerely,



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Attachments:

A) Dodd Frank Act, Title IX, Subtitle B, Section 922
B) References

ATTACHMENT A
DODD-FRANK ACT

Subtitle B—Increasing Regulatory Enforcement and Remedies
SEC. 922. WHISTLEBLOWER PROTECTION.
(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 21E the following:
''SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND PROTECTION.
''(a) DEFINITIONS.—In this section the following definitions shall apply:
''(1) COVERED JUDICIAL OR ADMINISTRATIVE ACTION.—The term 'covered judicial or administrative action' means any judicial or administrative action brought by the Commission under the securities laws that results in monetary sanctions exceeding $1,000,000.
''(2) FUND.—The term 'Fund' means the Securities and Exchange Commission Investor Protection Fund.
''(3) ORIGINAL INFORMATION.—The term 'original information' means information that—
H. R. 4173—467
''(A) is derived from the independent knowledge or analysis of a whistleblower;
''(B) is not known to the Commission from any other source, unless the whistleblower is the original source of the information; and
''(C) 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, unless the whistleblower is a source of the information.
''(4) MONETARY SANCTIONS.—The term 'monetary sanctions', when used with respect to any judicial or administrative action, means—
''(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.
''(5) 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.
''(6) WHISTLEBLOWER.—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.
''(b) AWARDS.—
''(1) IN GENERAL.—In any covered judicial or administrative action, or related action, the Commission, under regulations prescribed by the Commission and subject to subsection (c), shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action, or related action, in an aggregate amount equal to—
''(A) not less than 10 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions; and

‘‘(B) not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions.
‘‘(2) PAYMENT OF AWARDS.—Any amount paid under paragraph
(1) shall be paid from the Fund.
‘‘(c) DETERMINATION OF AMOUNT OF AWARD; DENIAL OF AWARD.—
‘‘(1) DETERMINATION OF AMOUNT OF AWARD.—
‘‘(A) DISCRETION.—The determination of the amount of an award made under subsection (b) shall be in the discretion of the Commission.
‘‘(B) CRITERIA.—In determining the amount of an award made under subsection (b), the Commission—H. R. 4173—468
‘‘(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.
‘‘(2) DENIAL OF AWARD.—No award under subsection (b) shall be made—
‘‘(A) to any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the Commission, a member, officer, or employee of—
‘‘(i) an appropriate regulatory agency;
‘‘(ii) the Department of Justice;
‘‘(iii) a self-regulatory organization;
‘‘(iv) the Public Company Accounting Oversight
Board; or
‘‘(v) a law enforcement organization;
‘‘(B) to any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section;
‘‘(C) to any whistleblower who gains the information through the performance of an audit of financial statements required under the securities laws and for whom such submission would be contrary to the requirements of section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1); or
‘‘(D) to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule, require.
‘‘(d) REPRESENTATION.—
‘‘(1) PERMITTED REPRESENTATION.—Any whistleblower who makes a claim for an award under subsection (b) may be represented by counsel.
‘‘(2) REQUIRED REPRESENTATION.—
‘‘(A) IN GENERAL.—Any whistleblower who anonymously makes a claim for an award under subsection (b) shall be represented by counsel if the whistleblower anonymously submits the information upon which the claim is based.
‘‘(B) DISCLOSURE OF IDENTITY.—Prior to the payment of an award, a whistleblower shall disclose the identity of the whistleblower and provide such other information H. R. 4173—469 as the Commission may require, directly or through counsel for the whistleblower.

‘‘(e) NO CONTRACT NECESSARY.—No contract with the Commission is necessary for any whistleblower to receive an award under subsection (b), unless otherwise required by the Commission by rule or regulation.
‘‘(f) APPEALS.—Any determination made under this section, including whether, to whom, or in what amount to make awards, shall be in the discretion of the Commission. Any such determination, except the determination of the amount of an award if the award was made in accordance with subsection (b), may be appealed to the appropriate court of appeals of the United States not more than 30 days after the determination is issued by the Commission.
The court shall review the determination made by the Commission in accordance with section 706 of title 5, United States Code.
‘‘(g) INVESTOR PROTECTION FUND.—
‘‘(1) FUND ESTABLISHED.—There is established in the Treasury of the United States a fund to be known as the ‘Securities and Exchange Commission Investor Protection Fund’.
‘‘(2) USE OF FUND.—The Fund shall be available to the Commission, without further appropriation or fiscal year limitation, for—
‘‘(A) paying awards to whistleblowers as provided in subsection (b); and
‘‘(B) funding the activities of the Inspector General of the Commission under section 4(i).
‘‘(3) DEPOSITS AND CREDITS.—
‘‘(A) IN GENERAL.—There shall be deposited into or credited to the Fund an amount equal to—
‘‘(i) 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, or the rules and regulations thereunder, underlying such action, unless the balance of the Fund at the time the monetary sanction is collected exceeds $300,000,000;
‘‘(ii) 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) all income from investments made under paragraph (4).
‘‘(B) ADDITIONAL AMOUNTS.—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 H. R. 4173—470 in the covered judicial or administrative action on which the award is based.
‘‘(4) INVESTMENTS.—
‘‘(A) AMOUNTS IN FUND MAY BE INVESTED.—The Commission may request the Secretary of the Treasury to invest the portion of the Fund that is not, in the discretion of the Commission, required to meet the current needs of the Fund.
‘‘(B) ELIGIBLE INVESTMENTS.—Investments shall be made by the Secretary of the Treasury in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Fund as determined by the Commission on the record.
‘‘(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to the Fund.
‘‘(5) REPORTS TO CONGRESS.—Not later than October 30 of each fiscal year beginning after the date of enactment of this subsection, the Commission shall submit to the Committee on Banking, Housing, and

Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives a report on—
‘‘(A) the whistleblower award program, established under this section, including—
‘‘(i) a description of the number of awards granted; and
‘‘(ii) the types of cases in which awards were granted during the preceding fiscal year;
‘‘(B) the balance of the Fund at the beginning of the preceding fiscal year;
‘‘(C) the amounts deposited into or credited to the Fund during the preceding fiscal year;
‘‘(D) the amount of earnings on investments made under paragraph (4) during the preceding fiscal year;
‘‘(E) the amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to subsection (b);
‘‘(F) the balance of the Fund at the end of the preceding fiscal year; and
‘‘(G) a complete set of audited financial statements, including—
‘‘(i) a balance sheet;
‘‘(ii) income statement; and
‘‘(iii) cash flow analysis.
‘‘(h) PROTECTION OF WHISTLEBLOWERS.—
‘‘(1) PROHIBITION AGAINST RETALIATION.—
‘‘(A) IN GENERAL.—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 because of any lawful act done by the whistleblower—
‘‘(i) in providing information to the Commission in accordance with this section;
‘‘(ii) in initiating, testifying in, or assisting in any investigation or judicial or administrative action of H. R. 4173—471 the Commission based upon or related to such information; or
‘‘(iii) in making disclosures that are required or protected under the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), including section 10A(m) of such Act (15 U.S.C. 78f(m)), section 1513(e) of title 18, United States Code, and any other law, rule, or regulation subject to the jurisdiction of the Commission.
‘‘(B) ENFORCEMENT.—
‘‘(i) CAUSE OF ACTION.—An individual who alleges discharge or other discrimination in violation of subparagraph (A) may bring an action under this subsection in the appropriate district court of the United States for the relief provided in subparagraph (C).
‘‘(ii) SUBPOENAS.—A subpoena requiring the attendance of a witness at a trial or hearing conducted under this section may be served at any place in the United States.
‘‘(iii) STATUTE OF LIMITATIONS.—
‘‘(I) IN GENERAL.—An action under this subsection may not be brought—
‘‘(aa) more than 6 years after the date on which the violation of subparagraph (A) occurred; or
‘‘(bb) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the employee alleging a violation of subparagraph (A).
‘‘(II) REQUIRED ACTION WITHIN 10 YEARS.—Notwithstanding subclause (I), an action under this subsection may not in any circumstance be brought more than 10 years after the date on which the violation occurs.
‘‘(C) RELIEF.—Relief for an individual prevailing in an action brought under subparagraph (B) shall include—
‘‘(i) reinstatement with the same seniority status that the individual would have had, but for the discrimination;
‘‘(ii) 2 times the amount of back pay otherwise owed to the individual, with interest; and
‘‘(iii) compensation for litigation costs, expert witness fees, and reasonable attorneys’ fees.

‘‘(2) CONFIDENTIALITY.—
‘‘(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), 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 any entity described in subparagraph (C). For purposes of section H. R. 4173—472 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section.
‘‘(B) EXEMPTED STATUTE.—For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.
‘‘(C) RULE OF CONSTRUCTION.—Nothing in this section is intended to limit, or shall be construed to limit, the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.
‘‘(D) AVAILABILITY TO GOVERNMENT AGENCIES.—
‘‘(i) IN GENERAL.—Without the loss of its status as confidential in the hands of the Commission, all information referred to in subparagraph (A) may, in the discretion of the Commission, when determined by the Commission to be necessary to accomplish the purposes of this Act and to protect investors, be made available to—
‘‘(I) the Attorney General of the United States;
‘‘(II) an appropriate regulatory authority;
‘‘(III) a self-regulatory organization;
‘‘(IV) a State attorney general in connection with any criminal investigation;
‘‘(V) any appropriate State regulatory authority;
‘‘(VI) the Public Company Accounting Oversight Board;
‘‘(VII) a foreign securities authority; and
‘‘(VIII) a foreign law enforcement authority.
‘‘(ii) CONFIDENTIALITY.—
‘‘(I) IN GENERAL.—Each of the entities described in subclauses (I) through (VI) of clause (i) shall maintain such information as confidential in accordance with the requirements established under subparagraph (A).
‘‘(II) FOREIGN AUTHORITIES.—Each of the entities described in subclauses (VII) and (VIII) of clause (i) shall maintain such information in accordance with such assurances of confidentiality as the Commission determines appropriate.
‘‘(3) RIGHTS RETAINED.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.
‘‘(i) PROVISION OF FALSE INFORMATION.—A whistleblower shall not be entitled to an award under this section if the whistleblower—
‘‘(1) knowingly and willfully makes any false, fictitious, or fraudulent statement or representation; or
‘‘(2) uses any false writing or document knowing the writing or document contains any false, fictitious, or fraudulent statement or entry.
‘‘(j) RULEMAKING AUTHORITY.—The Commission shall have the authority to issue such rules and regulations as may be necessary H. R. 4173—473 or appropriate to implement the provisions of this section consistent with the purposes of this section.’’.
(b) PROTECTION FOR EMPLOYEES OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.—Section 1514A(a) of title 18, United States Code, is amended—

(1) by inserting ‘‘or nationally recognized statistical rating organization (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c),’’ after ‘‘78o(d)),’’; and
(2) by inserting ‘‘or nationally recognized statistical rating organization’’ after ‘‘such company’’.
(c) SECTION 1514A OF TITLE 18, UNITED STATES CODE.—
(1) STATUTE OF LIMITATIONS; JURY TRIAL.—Section 1514A(b)(2) of title 18, United States Code, is amended—
(A) in subparagraph (D)—
(i) by striking ‘‘90’’ and inserting ‘‘180’’; and
(ii) by striking the period at the end and inserting ‘‘, or after the date on which the employee became aware of the violation.’’; and
(B) by adding at the end the following:
‘‘(E) JURY TRIAL.—A party to an action brought under paragraph (1)(B) shall be entitled to trial by jury.’’.
(2) PRIVATE SECURITIES LITIGATION WITNESSES; NONENFORCEABILITY; INFORMATION.—Section 1514A of title 18, United States Code, is amended by adding at the end the following:
‘‘(e) NONENFORCEABILITY OF CERTAIN PROVISIONS WAIVING RIGHTS AND REMEDIES OR REQUIRING ARBITRATION OF DISPUTES.—
‘‘(1) WAIVER OF RIGHTS AND REMEDIES.—The rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.
‘‘(2) PREDISPUTE ARBITRATION AGREEMENTS.—No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section.’’.
(d) STUDY OF WHISTLEBLOWER PROTECTION PROGRAM.—
(1) STUDY.—The Inspector General of the Commission shall conduct a study of the whistleblower protections established under the amendments made by this section, including—
(A) whether the final rules and regulation issued under the amendments made by this section have made the whistleblower protection program (referred to in this subsection as the ‘‘program’’) clearly defined and user-friendly;
(B) whether the program is promoted on the website of the Commission and has been widely publicized;
(C) whether the Commission is prompt in—
(i) responding to—
(I) information provided by whistleblowers; and
(II) applications for awards filed by whistleblowers;
(ii) updating whistleblowers about the status of their applications; and
(iii) otherwise communicating with the interested parties;
(D) whether the minimum and maximum reward levels are adequate to entice whistleblowers to come forward with H. R. 4173—474 information and whether the reward levels are so high as to encourage illegitimate whistleblower claims;
(E) whether the appeals process has been unduly burdensome for the Commission;
(F) whether the funding mechanism for the Investor Protection Fund is adequate;
(G) whether, in the interest of protecting investors and identifying and preventing fraud, it would be useful for Congress to consider empowering whistleblowers or other individuals, who have already attempted to pursue the case through the Commission, to have a private right of action to bring suit based on the facts of the same case, on behalf of the Government and themselves, against persons who have committee securities fraud;

(H)(i) whether the exemption under section 552(b)(3) of title 5 (known as the Freedom of Information Act) established in section 21F(h)(2)(A) of the Securities Exchange Act of 1934, as added by this Act, aids whistleblowers in disclosing information to the Commission;
(ii) what impact the exemption described in clause
(i) has had on the ability of the public to access information about the regulation and enforcement by the Commission of securities; and
(iii) any recommendations on whether the exemption described in clause (i) should remain in effect; and
(I) such other matters as the Inspector General deems appropriate.
(2) REPORT.—Not later than 30 months after the date of enactment of this Act, the Inspector General shall—
(A) submit a report on the findings of the study required under paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House; and (B) make the report described in subparagraph (A) available to the public through publication of the report on the website of the Commission.

ATTACHMENT B
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