

Re: The Commission's Whistleblower Program Rules
File No.: S7-07-22
Docket: 34-94212
3/20/2022

To Whom It May Concern,

Thank you for the opportunity to comment on the proposed rulemaking, *The Commission's Whistleblower Program Rules*. I am a third-year law student at American University Washington College of Law, studying administrative law and government oversight. For a class assignment, I was required to comment on a proposed rulemaking within my subject area of interest. I chose to comment on this proposed rulemaking because whistleblowing is a crucial element of our oversight framework.

The SEC should prioritize incentivizing and properly compensating meritorious whistleblowers. Thus, I support the Commission's decision to propose changes to two of the 2020 rules, which the Commission properly assessed might, over time, "inadvertently" disincentivize reporting possible securities-law violations to the SEC. However, this does not mean that the SEC is wrong to place some limits on the awards a meritorious whistleblower receives.

The Multiple Recovery Rule

First, I wish to address the proposed changes to the Multiple Recovery Rule. The 2020 amendments to the SEC's whistleblower program placed overly restrictive limits on whistleblower awards. This rule prohibited the Commission from awarding a meritorious whistleblower potentially covered by a second awards program unless the SEC whistleblower program has more "direct or relevant connection to the [non-Commission]" program. Though it's still early to tell, it is reasonable to believe that the Rule might unfairly limit recovery in practice.

As mentioned in the notice of proposed rulemaking, some whistleblower programs lack a comparable award for meritorious claimants or have low statutory caps to whistleblowers' recovery in the action. For instance, the rulemaking points the Indiana securities-law whistleblower awards program, which only allows recovery up to 10%. According to the SEC's Report to Congress for the 2021 fiscal year, the SEC received ninety-six whistleblower tips from Indiana that year. Clearly many of the tips will not result in meritorious claims. But, why should these ninety-six be immediately put at a disadvantage if they fall under their state program's purview and the SEC deems the state program more "relevant"? Shouldn't their bravery for speaking out against financial crimes be rewarded to the same extent as a whistleblower in a comparable case whose claim is slightly more "relevant" to the SEC's program? Therefore, a key reason I agree that the Multiple Recovery Rule should be replaced is simply on fairness considerations—to level the playing field to some extent.

That being considered, it is logical to retain some limits to multiple awards for the same disclosure. The SEC presents several interesting alternatives to the Multiple Recovery Rule. Out the proposed options to replace the Rule, the SEC should consider implementing the "Whistleblower's Choice" approach. Under this approach, the Commission would independently assess the amount due, irrespective of whether a separate award program might also apply. The meritorious claimant would get to determine which award to accept, and then sign an irrevocable waiver, disavowing his right to collecting an award from another program in the same action. The Whistleblowers Choice option gives the meritorious whistleblower agency over their own claim.

Apart from giving the meritorious whistleblower a level of agency, this is the preferable option for other reasons. First, this option would require the Commission to simply consider the

merits and eligibility of the whistleblower under the requirements of just the SEC program. This makes sense to me. Whether or not another program applies should not impact the SEC's ultimate decision after applying the facts of the case to the already established requirements of the program. A whistleblower would have multiple opportunities to show that they deserve the award, without the taint of a failed or lower result under the requirements of the other program.

Critics argue that this approach increases the administrative workload. However, the Whistleblower's Choice removes a step from how the Commission currently processes claims by no longer requiring the SEC to go through the inquiry of whether another program is more "direct or relevant." It also does not require the SEC to communicate and coordinate with the other agency. It makes the process more clear, straightforward, and understandable for the average claimant.

On Criteria the Commission Can Consider

The 2020 amendments clarified that the Commission can take dollar amounts into consideration when determining the amount of an award, instead of just looking to the percentages in its analysis of the amount a meritorious claimant is due. I support the Commission's proposal to only consider the dollar amounts when *increasing* the amount of the potential award. The public should have confidence in the process of determining these awards. A claimant's award should not be decreased at the tail end of the process simply because the amount they deserve is high number. If the government is benefiting from a sizeable award from a legal action, the whistleblower should benefit proportionately. It seems arbitrary, and could disincentivize whistleblowing.

In summary, I support the Commission's decision to rescind these two 2020 amendments in favor of alternatives I believe will serve to increase meritorious claimants' awards and incentivize whistleblowing.

Sincerely,

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