

**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 statute 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-tier 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 ██████ ("█████" "A") and ██████ ("█████" "B"), resulting in the merged entity ██████ ("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 ██████ ("█████" "D")¹, the law firm ██████ ("█████" "E")², the auditors ██████ ("█████" "F")³ in addition to certain individuals in their capacities as former beneficial ██████ shareholders, primarily ██████ ("█████" "Mr. G") and ██████ ("█████" "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 how to move from an exchange ratio of ██████ (which ██████% of the A majority shareholders had enjoyed)⁵ down to ██████ shares in C, a

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 ██████ ("H") ("independent" merger auditor for A), ██████ ("I"), ██████ ("J"), ██████ ("K") and ██████ ("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 ██████ shares in C for every ██████ shares in A, a ratio of ██████ (█████/█████).

reduction of more than one third (the “**Reduced Ratio**”)⁶ enforced upon the remaining █% owned by the A minority shareholders, which meant that the latter ended up with approx. █ million fewer shares in C (and the former with approx. █ 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 █% 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.

⁶ The shareholders *not accepting* the voluntary offer ended up with only █ shares in C for every █ shares in A, a ratio of █ (█/█) and given that a total of approx. █ million A shares became subjected to D’s Reduced Ratio, the A minority shareholders ended up with approx. █ million too few shares in C whilst the ultimate A majority shareholders ended up with █ 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 █% (i.e. █) was “*more relevant and reasonable than*” D’s Reduced Ratio (i.e. █), 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 █% 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. █ (“Mr. N”) and Mr. █ (“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 █,

now "Vice Chairman of The [REDACTED] and Chief Executive Officer of [REDACTED]"⁹ and the 'M&A specialist' [REDACTED] of E¹⁰.

- 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 board¹¹ 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.

⁹ [https://www.\[REDACTED\]](https://www.[REDACTED])

¹⁰ [https://www.\[REDACTED\]](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 D¹⁴, 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]m¹⁶ 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.\[REDACTED\]](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.\[REDACTED\]](https://www.[REDACTED])

¹⁸ <https://www.chambersandpartners.com/12806/1437/editorial/5/1/usa-new-york-corporate-m-a-the-elite>

¹⁹ [https://www.\[REDACTED\]](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 efficiently 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 law²⁴ (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_\(attorney\)](https://en.wikipedia.org/wiki/Jay_Clayton_(attorney))

²⁶ [https://en.wikipedia.org/wiki/Jay_Clayton_\(attorney\)](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 Law²⁸.
- 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 worth³⁰, 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 against³¹ whilst the two Republicans Hester Peirce and Michael Piwowar voted for the Reduced Award³².
- 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 Republicans³⁴, 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

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_\(attorney\)](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 suggest³⁶, 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 claims³⁷, 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 lucrateness 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.

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 ■ 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).

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 $30/(2,300 \times 30\%) - 1 = -95.7\%$

- 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 \$ 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 \$ 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 % 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 downside-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 \$ billion per annum, or \$ 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 unknown 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 is 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', chooses 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. Manafort⁴².
- 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 cartels⁴³, 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-hsbc-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, lose 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 retribute 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 Award⁴⁷.

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.

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 we 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 non-partial 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 reasonably necessary 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. Piowar 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. Piowar concludes that he is "*happy to support*" the Reduced Award and that he has "*no questions*".

25.3.1. Does this mean that Mr. Piowar 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. Piowar (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 authority⁵¹, 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 2017⁵³.

30.3. There has over time been a considerable presence at the White House of [REDACTED]
[REDACTED]⁵⁴.

30.4. Mr. H⁵⁵ is a former banker of [REDACTED]
[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]
[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.

⁵³ <https://www.sec.gov/biography/jay-clayton>

⁵⁴ [http://\[REDACTED\]](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>

⁵⁶ [https://\[REDACTED\]](https://[REDACTED])

⁵⁷ [https://\[REDACTED\]](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 charges⁵⁸. 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://\[REDACTED\]](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 industry⁶⁰; 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 not⁶⁴.
- 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 numbers⁶⁵, or accumulate a net worth of \$1,310m by being one of the best paid sports personality in the world⁶⁶, 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-scandal⁶⁹ and HSBC did in relation to the money laundering activities of the Mexican Sinaloa Cartel⁷⁰, 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 without even having a clue 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), retribute 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 million⁷⁴? 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 SEC⁷⁵, 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

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