

MEMORANDUM

TO: File No. S7-33-10, Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934

FROM: Christian L. Broadbent
Counsel to Commissioner Elisse B. Walter

DATE: December 14, 2010

RE: Meeting with Representatives and Members of the Center for Capital Markets Competitiveness, U.S. Chamber of Commerce

On December 9, 2010, Commissioner Walter, along with Christian Broadbent of Commissioner Walter's office, met with representatives and members of the Center for Capital Markets Competitiveness to discuss the Commission's whistleblower proposals.

The agenda, list of attendees, and other materials provided pursuant to the meeting are attached to this Memorandum.

Meeting with SEC Commissioner Elisse Walter, December 9, 2010
Attendee List

Alexandra Rebay
Senior Vice President, Deputy General Counsel and Chief Compliance Officer
Verizon

William Horton, Jr.
Senior Vice President, Deputy General Counsel and Corporate Secretary
Verizon

John Coburn
Corporate Secretary & Global Governance Counsel
NIKE, Inc.

Susan Rosborough
Corporate Counsel
Allstate Insurance Company

Frank Steeves
General Counsel, Corporate Secretary and Sr. Vice President
Emerson Electric Co.

Amar Sarwal
Associate General Counsel
Association of Corporate Counsel

George Terwilliger
Partner
White & Case LLP

John Wells
Associate
White & Case LLP

Frank Zarb
Partner
Katten Muchin Rosenman LLP

David Hirschmann
President and Chief Executive Officer
Center for Capital Markets Competitiveness, U.S. Chamber of Commerce

Amanda Engstrom
Sr. Vice President
Center for Capital Markets Competitiveness, U.S. Chamber of Commerce

Tom Quaadman
Vice President
Center for Capital Markets Competitiveness, U.S. Chamber of Commerce

Alice Joe
Sr. Director
Center for Capital Markets Competitiveness, U.S. Chamber of Commerce

Agenda

- I. Introductions
- II. Corporate Compliance Programs
- III. SEC's proposed Whistleblower Rules
 - a. Definition of a Whistleblower
 - b. Internal Reporting
 - c. Anti-Retaliation Provisions

December 7, 2010

Ms. Elizabeth Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Via email: rule-comments@sec.gov

Re: File Number S7-33-10, Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934, Release No. 34-63237 (Nov. 3, 2010)

Dear Ms. Murphy:

The undersigned associations and companies represent every sector of the economy, employing millions of workers worldwide. As such, we recognize that strong corporate governance and compliance programs are a fundamental building block for successful businesses and a growing economy.¹

We welcome this opportunity to comment on the U.S. Securities and Exchange Commission's ("SEC" or "Commission") proposed rules implementing the whistleblower provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").² While the Proposed Rules address some of the issues arising from the Dodd-Frank provisions, we still have very serious concerns on the impact these whistleblower requirements will have on critical aspects of sound governance of public companies and on those companies' responsibilities to act in the best interests of their shareholders.

Accordingly, we believe that the Proposed Rules can be improved through the following modifications:

- **Exclude culpable individuals from award eligibility;**
- **Exclude individuals with legal, compliance, audit, ethics responsibilities, or those who have a professional privilege from award eligibility, subject to a narrow exception;**

¹ White & Case LLP has provided assistance to the undersigned associations and companies in analyzing the Proposed Rules and preparing this comment letter.

² Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934, Release No. 34-63237 (Nov. 3, 2010) *available at* <http://www.sec.gov/rules/proposed/2010/34-63237.pdf> ("Proposed Rules"); *see* Press Release, U.S. Sec. & Exch. Comm'n, SEC Proposes New Whistleblower Program Under Dodd-Frank Act, Press Release No. 2010-213 (Nov. 3, 2010) *available at* <http://www.sec.gov/news/press/2010/2010-213.htm>.

- **Condition award eligibility on the use of an available internal reporting system;**
- **Establish a policy under which the SEC will share information it receives with entities that are the subject of a complaint and provide those entities with an opportunity to fully investigate the allegations before they are reviewed by the Commission;**
- **Extend the 90-day grace period provided for whistleblowers to report information to the SEC after reporting it internally to 180 days; and**
- **Clarify that good-faith employment actions taken by a corporation that is the subject of a complaint are not retaliatory if based on factors other than an individual's whistleblower status.**

Our specific concerns and proposals are discussed in full below.

I. Proposed Rules and Corporate Compliance Programs

Dodd-Frank was signed into law by President Barack Obama on July 21, 2010. Section 922 (a) of Dodd-Frank amends existing laws regarding whistleblowers. Dodd-Frank defines whistleblowers as individuals who provide information to the SEC in a manner established by rule or regulation and authorizes the SEC to pay awards to qualifying whistleblowers. Following an open meeting of the Commissioners, the SEC issued the Proposed Rules on November 3, 2010 to implement the Dodd-Frank whistleblower provisions.

As Commissioner Elisse B. Walter stated at the open meeting announcing the Proposed Rules, it is “critical” to investors that “existing and effective company compliance and other internal processes for responding to violations of federal securities laws . . . remain robust” even as rules implementing the program are implemented.³

As the commentary accompanying the Proposed Rules recognizes, they were drafted with the aim of preserving the role of corporate compliance programs and ensuring their continued effective functioning.⁴ We applaud the Commission’s recognition of the important role that internal corporate programs have in promoting compliance with securities and other laws, and submit that preserving that role should be a policy touchstone in formulating rules to implement the Dodd-Frank whistleblower provisions. As the Commission’s statements in the commentary recognize, corporate compliance programs have evolved to become critical components of sound corporate governance. These programs also are designed to meet

³ Elisse B. Walter, Commissioner, U.S. Sec. & Exch. Comm’n, Implementation of 21F of the Exchange Act, “Whistleblower Incentives and Protection” (proposed rules and forms) (Nov. 3, 2010) *available at* <http://www.sec.gov/news/speech/2010/spch110310ebw-whistleblowers.htm>.

⁴ *See, e.g.*, Proposed Rules, *supra* note 2, at 24 (“Compliance with the federal securities laws is promoted when companies implement effective legal, audit, compliance, and similar functions.”).

incentives and policy prescriptions issued by the federal government itself regarding the elements of adequate corporate compliance procedures. Federal enforcement authorities, including the U.S. Sentencing Commission, the Department of Justice, the SEC and others have long encouraged corporations to implement compliance programs by providing credit or leniency to corporations with effective internal compliance programs at the time charging decisions or penalty assessments are made concerning wrongdoing by corporate employees.⁵ These policies recognize that compliance programs provide corporations a means to identify and address potential misconduct at an early stage, and aid enforcement efforts by providing law enforcement with high quality information regarding actionable misconduct.⁶ By offering means to ameliorate the negative consequences of corporate misconduct, these policies have long offered corporations an opportunity and an incentive to demonstrate good corporate citizenship in addressing wrongdoing.⁷

Effective compliance programs rely heavily on internal reporting of potential violations of law and corporate policy to identify instances of non-compliance. These internal reporting mechanisms are cornerstones of effective compliance processes because they permit companies to discover instances of potential wrongdoing, to investigate the underlying facts, and to take remedial actions, including voluntary disclosures to relevant authorities, as the circumstances may warrant.

We are very concerned that certain aspects of the Proposed Rules may undermine the functioning of effective corporate compliance programs by relegating them to the sidelines in the process of identifying and remedying violations of securities laws. Linda Thomsen, former

⁵ See, e.g., U.S. Sentencing Guidelines Manual § 8B2.1 (2010) (defining “effective compliance and ethics program”); *id.* §§ 8C2.5, 8D1.4 (describing sentencing credit in exchange for such programs); U.S. Dep’t of Justice, U.S. Attorneys’ Manual § 9-28.300 (identifying factors for a prosecutor to consider in charging decisions, including “the existence and effectiveness of the corporation’s pre-existing compliance program”); Commission Statement on the Relationship of Cooperation to Agency Enforcement Decision, Exchange Act Release No. 44969 (Oct. 23, 2001) (describing factors considered by SEC personnel when making enforcement decisions, including the compliance procedures in place at a corporation, corporate culture towards misconduct within the organization, steps taken by the corporation to address misconduct after is uncovered, and remedial actions taken by the corporation to prevent future misconduct).

⁶ See Lucinda Low et al., The Uncertain Calculus of FCPA Voluntary Disclosures, Paper for the March 2007 American Conference Institute FCPA Conference (March 2007) *available at* <http://www.abanet.org/intlaw/spring07/World%20Bank%20Anticorruption%20Programs/Low%20-%20The%20Uncertain%20Calculus%20of%20FCPA%20Voluntary%20Disclosures.pdf> (describing increase in voluntary disclosures made to both the SEC and the Department of Justice and providing examples of federal agencies receiving information as a result of internal investigations); see also Gary G. Grindler, Acting Deputy Attorney General, Remarks at the 2010 *Compliance Week* Conference (May 25, 2010) *available at* <http://www.justice.gov/dag/speeches/2010/dag-speech-100525.html> (“As I hope has been clear in my discussion of our enforcement efforts, there is a consistent theme of the importance of sharing information and partnering with the private sector in its anti-fraud efforts.”).

⁷ See, e.g., Lanny A. Breuer, Assistant Attorney General, Criminal Division, U.S. Dep’t of Justice, Remarks at the 24th National Conference on the Foreign Corrupt Practices Act, (Nov. 16, 2010) *available at* <http://www.justice.gov/criminal/pr/speeches/2010/crm-speech-101116.html> (“Establishing a top-notch compliance program will not only help to prevent misconduct from occurring, but it will also improve your position with us in any eventual investigation.”).

director of the SEC's enforcement division recently stated: "the underlying premise of the statute is that if you pay people a lot of money you are going to get higher quality tips. If tested, I think you would find it unfounded".⁸ Even assuming an increase in the number and size of enforcement actions, a whistleblower program that does not account for and fully maintain the vitality of corporate integrity programs will not be a net positive development for the interests of shareholders and the investing public. Moreover, if the effectiveness of corporate compliance programs in identifying potential wrongdoing is undermined, their attendant benefits, such as promotion of a culture of compliance within corporations, as well as their value to enforcement efforts, will likewise be diminished.⁹

Further, notwithstanding the Commission's recognition of the importance of these programs, several aspects of the Proposed Rules appear to be formulated for companies with inadequate or ineffective compliance systems. We urge the Commission to avoid this approach, geared toward accounting for the "lowest common denominator" of compliance culture, and instead to formulate rules recognizing that most public companies operate robust compliance programs, in which they have made significant financial investments and which reflect a top-down commitment to conduct business operations in compliance with law and standards of ethical business practices. We make provisions in our recommendations for circumstances where companies do not have adequate compliance procedures and/or internal reporting systems. We urge that such exceptional circumstances be recognized as such and dealt with accordingly in the Proposed Rules, rather than orienting administration of the whistleblower program to the exceptional circumstances of companies with inadequate compliance systems.

We suggest modifications to the Proposed Rules to preserve the role of robust compliance programs, while also fulfilling the stated goal of the Proposed Rules to "maximize the submission of high-quality tips and to enhance the utility of the information reported to the Commission."¹⁰ Our recommendations reflect several underlying principles:

- **First, corporate employees should not be rewarded if they engage in, perpetuate, or fail to take action to stop *internal wrongdoing*.** Individuals who participated in wrongdoing should be excluded from award eligibility.

⁸ See Edward Wyatt, *For Whistle-Blowers, Expanded Incentives*, N.Y. Times, Nov. 14, 2010, available at <http://www.nytimes.com/2010/11/15/business/15whistle.html>.

⁹ See, e.g., Donald C. Langevoort, *Monitoring: the Behavioral Economics of Corporate Compliance with Law*, 2002 Colum. Bus. L. Rev. 71, 81-82 (2002); see also Corporate Compliance Comm., ABA Section of Bus. Law, *Corporate Compliance Survey*, 60 Bus. Law 1759, 1759 (2005) (noting that in order to "achieve compliance with applicable legal regulations and internal ethical standards," compliance programs aim both to "create an ethical corporate culture that educates and motivate the organization's employees" and also "deter and detect violations through risk assessment, monitoring, auditing, and appropriate discipline").

¹⁰ Proposed Rules, *supra* note 2, at 5.

Accordingly, Proposed Rule 21F-2's definition of "whistleblower" should be revised to cover only individuals who report violations of the securities laws "by another person, and who did not participate in or facilitate the violations."

- **Second, corporate employees and others who have compliance responsibilities within corporations should not be rewarded if they take actions inconsistent with those obligations.**

Accordingly, Proposed Rule 21F-4(b)(4)'s exclusions from award eligibility for personnel with legal, audit, supervisory, or governance responsibilities for an entity, and for information gained through legal, compliance, audit, or similar functions should be revised to

(i) make clear that such individuals are ineligible, and such information does not give rise to eligibility, absent an applicable exception to the general exclusions; and

(ii) require that any exception to these exclusions be subject to an "up before out" requirement, such that a whistleblower would be required to inform a company's chief legal officer, chief compliance officer, and/or a member of its board of directors of the substance of an allegation and any alleged inadequacy in the company's compliance systems or in its response to such an allegation before reporting to the Commission.

- **Third, it should be the policy of the Commission, reflected in the rules implementing the whistleblower program, to ensure that corporations are informed of potential wrongdoing involving their employees or others acting on their behalf.** Corporations and their management and directors have a duty to address internal malfeasance and are dependent on internal reporting of such instances to meet that responsibility. Moreover, companies themselves are often best positioned to quickly and effectively investigate potential wrongdoing. Policies that deprive them of such information—from internal sources or from information received by the Commission from whistleblowers—would likely have a widespread negative effect on legal and regulatory compliance by public companies. Such policies also could weaken companies' internal controls over financial reporting, which management must assess, and to which external auditors must attest. Thus, individuals with relevant information should be incentivized to utilize internal reporting mechanisms, rather than discouraged from doing so.

Accordingly, Proposed Rule 21F-8 should be revised to require individuals to utilize available internal reporting systems, following prescribed procedures, as a condition of award eligibility. Any exception to such a rule for inadequate reporting systems should be determined as a matter of the Commission's sole discretion based on objective criteria, rather than on a whistleblower's subjective beliefs or conclusions.

Relatedly, the SEC should adopt a policy, which could be set forth in a new rule 21F-16, providing that it will notify any affected company of a whistleblower's allegations, subject to limited exceptions in extraordinary circumstances, so that the company may take such further action based on those allegations as it deems appropriate. Such a policy should state that, provided a company receiving such information from the SEC responds appropriately with an investigation, appropriate corrective action, and reporting of substantiated violations of law, it will be given full credit under applicable SEC policies as if it had self-reported.

- **Fourth, the 90-day grace period provided for whistleblowers to report information to the SEC if they first report it through an internal reporting system should be extended.** Ninety days will in many circumstances be insufficient time for a corporation to investigate a report of potential wrongdoing fully. Extending this time period would permit investigation of the facts and analysis of those facts under applicable legal principles, and thus benefit both corporations and the Commission.

To permit full investigation and consideration of reports of potential wrongdoing, the 90-day grace period in the Proposed Rules should be extended to 180 days.

- **Lastly, the whistleblower program should not be implemented in a way that inhibits companies from taking appropriate employment or other action against internal wrongdoers.** Modifying the Proposed Rules to exclude from the definition of "retaliation" good faith employment actions based on factors other than whistleblower status would help mitigate the risk.

To avoid uncertainty concerning Dodd-Frank's anti-retaliation and whistleblower protection provisions, the implementing rules should make clear that personnel actions taken by a company for reasons other than an employee's whistleblower status do not violate the anti-retaliation provisions of Section 21(h) of the Exchange Act. Such clarification could appropriately be made in a separate rule in addition to those in the Proposed Rules.

II. Suggested Modifications to the Proposed Rules

A. Rule 21F-2: Exclude Culpable Individuals from Award Eligibility.

Culpable individuals who participated in the conduct that is the subject of a whistleblower complaint and subsequent successful SEC enforcement action should not be eligible for any award. Proposed Rule 21F-15 provides that any amount imposed in enforcement actions for “liability . . . based substantially on conduct that the whistleblower directed, planned, or initiated” is excluded from the calculation of whether the \$1 million threshold is satisfied and the calculation of the amount of an award.¹¹ Culpable individuals who did not direct, plan or initiate misconduct, however, are not subject to the exclusion, even if they actively participated in the misconduct underlying the successful enforcement action. Moreover, even culpable individuals that directed, planned, or initiated the misconduct, may be eligible for an award for successful enforcement actions that are not based “substantially on conduct that the whistleblower directed, planned, or initiated.”¹²

The Proposed Rules should be modified to ensure that all culpable individuals, including those who did not substantially direct, plan, or initiate conduct on which liability is based, are not eligible for an award. To avoid encouraging misconduct, participation in any wrongdoing that results in a successful enforcement action by the SEC should result in the exclusion from award eligibility.¹³ Such exclusion could be accomplished by defining a “whistleblower” in rule 21F-2, as one who reports violations of the securities laws, “*by another person,*” (as the Commission has suggested¹⁴) “*and who did not participate in or facilitate the violations.*”¹⁵

B. Rule 21F-4 and Form TCR: Clarify Exclusions for Information Obtained by a Person with Legal, Compliance, or Similar Responsibilities, and for

¹¹ Proposed Rules, *supra* note 2, at 149.

¹² *Id.*

¹³ Of course, a wrongdoer’s decision to come forward voluntarily will still remain a positive factor that prosecutors, enforcement agencies and judges may take into account in assessing the appropriate enforcement action and/or penalties for the wrongdoer’s conduct. *See, e.g.*, 17 C.F.R. § 202.12 (2010) (SEC policy statement concerning cooperation by individuals in investigations); U.S. Dep’t of Justice, U.S. Attorneys’ Manual § 9-27.230 (consideration of cooperation in initiating and declining charges); U.S. Sentencing Guidelines Manual §5K2.16 (2010) (consideration of voluntary disclosure of offense in sentence calculation).

¹⁴ In Request for Comment 1, the Commission states: “In other provisions of these Proposed Rules – *e.g.*, Proposed Rule 21F-15 – we propose that whistleblower not be paid awards based on monetary sanctions arising from their own misconduct, based on the notion that the statute is not intended to reward persons for blowing the whistle on their own misconduct. Consistent with this approach, should we define the term ‘whistleblower’ to expressly state that it is an individual who provides information about potential violations of the securities laws ‘by another person’?” Proposed Rules, *supra* note 2, at 8.

¹⁵ Under the modified Rules as suggested herein, Proposed Rule 21F-15 regarding the calculation of awards for culpable individuals, would no longer be necessary in light of the complete exclusion of culpable individuals from award eligibility set forth in modified Rule 21F-2. The modified Rules set forth in the Appendix to this letter therefore do not contain Proposed Rule 21F-15 and have been renumbered accordingly.

Information Otherwise Obtained From or Through an Entity's Legal, Compliance, or Similar Functions.

The Proposed Rules contain, in Rule 21F-4(b)'s definition of "original information," several important exclusions from award eligibility based on the manner in which an individual obtained the information submitted. Two of the exclusions relate specifically to existing compliance programs, one addressing company personnel with legal, compliance, or similar responsibilities, and the other addressing information obtained through a company's legal, compliance, audit, or supervisory functions.¹⁶ Neither exclusion applies, however, where a corporation acts in "bad faith" or does not report information it receives to the SEC within a "reasonable time."¹⁷ While the goal of these provisions is an important one, the exclusions and related carve-outs present potential problems of application that should be addressed in the rules.

In this regard, the Proposed Rules contain the following request for comment:

Do the proposed exclusions for information obtained by a person with legal, compliance, audit, supervisory, or governance responsibilities for an entity under an expectation that the person would cause the entity to take steps to respond to the violation, and for information otherwise obtained from or through an entity's legal, compliance, audit, or similar functions strike the proper balance? Will the carve-out for situations where the entity does not disclose the information within a reasonable time promote effective self-policing functions and compliance with the law without undermining the operation of Section 21F? Should a "reasonable time" be defined in the rule and, if so, what period should be specified (e.g., three months, six months, one year)? Does this provide sufficient incentives for people to continue to utilize internal compliance processes? Are there alternative or additional provisions the Commission should consider that would promote effective self-policing and self-reporting while still being consistent with the goals and text of Section 21F?¹⁸

The commentary to the Proposed Rules further indicates that these exclusions are specifically intended to avoid "creating incentives for company personnel to seek a personal financial

¹⁶ Proposed Rule 21F-4(b) (4) (iv) provides that an individual cannot qualify for an award if the information was received "because" the individual was a person with "legal, compliance, audit, supervisory, or governance responsibilities . . . and the information was communicated to [the individual] with the reasonable expectation that [the individual] would take steps to cause the entity to respond appropriately." Proposed Rule 21F-4(b) (4) (v) states that information obtained "[o]therwise from or through an entity's legal, compliance, audit, or similar functions or processes for identifying, reporting and addressing potential non-compliance with the law" will not qualify any individual for an award. Proposed Rules, *supra* note 2, at 129-130.

¹⁷ *Id.* at 129-130.

¹⁸ *Id.* at 30.

benefit by ‘front running’ internal investigations and similar processes that are important components of effective company compliance programs.”¹⁹

These exclusions are important if corporate compliance programs are to continue to operate effectively. If personnel charged with responding to internal reports of wrongdoing were in a position to benefit financially from disclosing such information to the SEC, corporate compliance functions could soon grind to a halt. The very people charged with orchestrating a company’s response could choose financial self-interest over corporate responsibility. These persons also would have a personal incentive to maximize any eventual fine or other penalty paid by the company. For this reason, the exclusion from eligibility for persons who have compliance or similar responsibility within a company, or who learn information through a compliance or similar function, needs to be carefully drawn, strongly enforced, and any exceptions limited as much as possible consistent with the parameters of the enabling statute.

Several modifications to the Proposed Rules and accompanying forms are needed. First, to enable the Commission to determine whether whistleblowers submitting information fall into excluded categories, Form TCR, on which a whistleblower is required to describe his or her allegations, should be amended to request that information. Specifically, a new Question 3a should be added, as follows:

3a. Are you a person with legal, compliance, audit, supervisory, or governance responsibilities for the entity about which you are providing information?

Second, to permit the Commission to determine whether a whistleblower learned the information reported from or through an entity’s compliance function, the instructions for completing Form TCR should be modified to include the following for responding to Question 8:

In particular, describe whether you learned any of the information you are reporting through any system or procedure maintained by the entity for reporting of potential violations of law, including the compliance office, internal hotline, or ombudsman or from any person or source, directly or indirectly, with responsibility in or for such system or procedure.

Without requiring this information from a whistleblower, application of Proposed Rule 21F-4(b) in the manner intended by the Commission would be extremely difficult.

Further, to provide guidance to potential whistleblowers who may be covered by the applicable exclusions, the rules should provide that any individual who has a legal, compliance, or similar function in a company will be ineligible for a whistleblower award unless he or she has first reported the information in question to an entity’s chief legal officer, chief compliance officer, and/or a member of the Board of Directors.

¹⁹ *Id.* at 26.

Finally, the Commission should modify the Proposed Rules to avoid the suggestion—reflected in the Proposed Rules as currently drafted—that it should be the company’s obligation to disclose all information it receives about any potential SEC violation. Such a requirement would not only place an unrealistic responsibility on companies, but it would also unduly burden the SEC, which would find itself inundated with and having to review and process a high volume of poor quality tips and frivolous or otherwise meritless allegations. This does not appear to have been the Commission’s intent in promulgating the Proposed Rules, since the Commentary elsewhere clearly recognizes the need to “provide a mechanism by which some of those erroneous cases may be eliminated before reaching the Commission, without otherwise adversely affecting the incentives on the part of potential whistleblowers.”²⁰ Requiring companies to disclose within a reasonable time only information concerning substantiated securities laws violations would better reflect the Commission’s objectives and would substantially reduce the burden on SEC resources.

These objectives could be effectuated through the following modifications to Proposed Rule 21F-4(b) (4) (iv) and (v):

(iv) Because you were a person with legal, compliance, audit, supervisory, or governance responsibilities for an entity, and the information was communicated to you with the reasonable expectation that you would take steps to cause the entity to respond appropriately to the violation, unless *you disclosed the information to the chief legal officer, chief compliance officer, and/or a member of the Board of Directors* and the entity proceeded in bad faith or failed to disclose information *concerning substantiated violations of the securities laws* to the Commission within a reasonable time; or

(v) Otherwise from or through an entity’s legal, compliance, audit or other similar functions or processes for identifying, reporting and addressing potential non-compliance with law, unless *you disclosed the information to the chief legal officer, chief compliance officer, and/or a member of the Board of Directors* and the entity proceeded in bad faith or failed to disclose information *concerning substantiated violations of the securities laws* to the Commission within a reasonable time.

Such provisions would ensure that, before a corporation could be deemed to have acted in bad faith or failed to disclose required information to the SEC in a reasonable time, a senior officer or director of the company had been made aware of the allegation and afforded an opportunity to direct the company to respond appropriately.

C. Rule 21F-8 and Form TCR: Require Whistleblowers to Utilize Available Internal Reporting Systems as a Condition of Award Eligibility.

The Proposed Rules contain the following request for comment:

²⁰ *Id.* at 113.

*Should the Commission consider a rule that, in some fashion, would require whistleblowers to utilize employer-sponsored complaint and reporting procedures? What would be the appropriate contours of such a rule, and how could it be implemented without undermining the purposes of Section 21F?*²¹

We submit that such a rule must be implemented if corporate compliance programs are to remain effective after the implementation of these Rules.

Many corporate compliance programs and/or employee codes of conduct impose an obligation on all employees to report conduct that violates law or corporate policy, including violations of the securities laws, via internal channels. The possibility of a whistleblower award, however, provides a potentially overwhelming monetary incentive for whistleblowers to ensure that any report they make to the SEC is credited as “original information” under Proposed Rule 21F-4(b), and to avoid any action that might threaten that status.²² Because the Proposed Rules do not require that a whistleblower demonstrate that he or she has used an available internal reporting system to be eligible for an award, they would inevitably lead whistleblowers to bypass internal reporting systems. This will unavoidably undermine the effective functioning of corporate compliance programs, including by depriving corporations of information they need to investigate and address misconduct quickly and effectively.

To avoid such problematic consequences, Proposed Rule 21F-8, addressing whistleblowers’ eligibility for awards, should be modified to provide that a whistleblower who does not, prior to the submission of information to the Commission, report information relating to a potential violation of the securities laws through an available internal reporting system, is ineligible for an award unless the company in question lacked an internal reporting mechanism.

The following modifications to Proposed Rule 21F-8(c) and Form TCR would implement this change. First, the following new subsection (1) could be added to Proposed Rule 21F-8(c):

(c) You are not eligible to be considered for an award if you do not satisfy the requirements of paragraphs (a) and (b) of this section. In addition, you are not eligible if:

(1) You do not report the information relating to a potential violation of securities laws through an available internal reporting system following applicable internal procedures prior to your submission of information to the Commission. Use of an available internal reporting system is not required, however, if the Commission, in its sole discretion based on the information required to be submitted in Form TCR, Question 4d,

²¹ *Id.* at 36-37.

²² For example, if there is no penalty for failing to report internally, a potential whistleblower who perceives even a slight risk that an internal report could be mischaracterized by his employer, which would later be required to certify the date and content of the report, may decide, so as not to jeopardize his eligibility for an award, that he should not report internally.

determines that the entity offered no practical method of reporting violations or no procedures to safeguard anonymity of reports.

Second, to permit the Commission to assess whistleblowers' eligibility for awards under this standard, Form TCR could be modified to add a new Question 4d, requiring the whistleblower to provide the following information:

- (i) Does the entity that is the subject of the information you are providing have an internal hotline for reporting misconduct?*
- (ii) Does the entity's internal reporting system permit anonymous reporting?*
- (iii) Does the entity's code of conduct or other policy prohibit retaliation for reporting potential misconduct?*
- (iv) Did you report the alleged misconduct internally, using existing reporting procedures? If not, why? If you did report the alleged misconduct internally, what if any response did you receive and/or what if any action did the entity take, to your knowledge?*

Conditioning an award on appropriate utilization of internal reporting processes would provide a strong incentive for whistleblowers to report internally, which would enable companies to continue to receive essential information about potential misconduct necessary to maintaining robust corporate compliance programs. Such a requirement is well within the discretion afforded to the Commission by Dodd-Frank in implementing the new whistleblower program,²³ and, with an appropriate grace period for a whistleblower to alert the SEC after reporting internally and awaiting internal action,²⁴ internal disclosure would not prevent any individual from establishing eligibility for an award. Finally, an internal reporting requirement would assist in filtering out low-quality or non-securities related tips and obviate the need to deploy SEC resources on such matters.

D. New Rule 21F-16: Establish SEC Policy on Information Sharing with Corporations.

Many corporate compliance programs and/or employee codes of conduct impose an obligation on all employees to report conduct that violates law or corporate policy, including

²³ Dodd-Frank defines a "whistleblower" as an individual who provides information to the SEC "in a manner established, by rule or regulation, by the Commission." Securities Exchange Act of 1934, § 21F (a) (6) *amended by* Dodd-Frank, Pub. L. No. 111-203, § 922(a) (2010). Dodd-Frank authorizes the SEC to pay awards to qualifying whistleblowers "under regulations prescribed by the Commission." Securities Exchange Act of 1934, § 21F (b) (1) *amended by* Dodd-Frank, Pub. L. No. 111-203, § 922(a) (2010). Finally, the legislative history of Dodd-Frank indicates that the SEC is granted broad discretion to determine whether an individual is eligible for an award. See S. Rep. No. 111-176, at 112 (2010) (Conf. Rep.) ("The SEC has discretion in determining the amount and whether or not a whistleblower is eligible to be awarded.").

²⁴ See Part II (E), *infra*.

violations of the securities laws, via internal channels. The commentary accompanying the Proposed Rules indicates that the SEC considered but rejected the possibility of requiring that an individual first report through such “in-house complaint and reporting procedures, thereby giving employers an opportunity to address misconduct, before they make a whistleblower submission to the Commission.”²⁵ The SEC indicates that “among [its] concerns” with this approach was that “while many employers have compliance processes that are well-documented, thorough, and robust, and offer whistleblowers appropriate assurances of confidentiality, others lack such established procedures and protections.”²⁶ We respectfully submit that the exceptional circumstances of companies with inadequate compliance programs should not be the touchstone of enforcement policy in the proposed rules.²⁷

Rather, the Proposed Rules should provide that the SEC will inform any company that is the subject of a whistleblower report and furnish such details concerning the report so as to provide the company an opportunity to investigate, absent an objective basis to conclude that the company will not respond in good faith. This formulation would preserve the Commission’s discretion to make exceptions from a policy of prompt notification to affected companies where there are objective and articulable grounds for such an exception, namely, an objective basis for concluding that the company will not respond in good faith. The Commission, however, rather than adopting a policy grounded in the belief that exceptional circumstances exist with respect to some companies, should accept the burden of identifying those exceptional circumstances, by determining that an entity offered no practical method of reporting violations or no procedures to safeguard anonymity of reports.

An appropriate modification could be accomplished by the addition of a new rule 21F-16 to the Proposed Rules, as follows:

After receipt of a whistleblower report, the Commission will promptly provide an entity that is the subject of such a report with sufficient information about the allegations contained in the report to permit the entity to conduct an investigation into the allegations, absent a determination by the Commission, based on the information submitted in Form TCR, Question 4d, that the corporation will not proceed in good faith upon receiving the information. The Commission will allow the entity a reasonable time, but not less than 180 days unless the Commission determines otherwise for good cause, to perform all tasks necessary for an adequate investigation of the allegations, including but not limited to, interviews of relevant individuals, collection and review of documents and other relevant information, and an analysis of the relevant information with the assistance of internal or external counsel. In providing information to an entity that is the subject of a whistleblower report, the

²⁵ Proposed Rules, *supra* note 2, at 34.

²⁶ *Id.*

²⁷ For example, federal securities laws already require that public issuers maintain confidential reporting mechanisms and documented procedures to address tips regarding accounting and auditing matters. 15 U.S.C. § 78j-1(m) (4) (2006).

Commission will protect the anonymity of those individuals that utilize the procedures for anonymous submission of information to the Commission. Where an entity responds in good faith to such information from the Commission, which may include conducting an investigation, reporting the results of such an investigation to the Commission, and taking appropriate corrective action, the entity will receive credit as if it had self-reported the information, and its actions in response to such information will be evaluated, in accordance with the Commission's Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions.

Articulating such a policy of information sharing would both enhance corporate compliance efforts and improve the efficiency of enforcement efforts. By affirming the importance of internal corporate information gathering and reporting processes, the Commission would allow those processes to remain viable and effective. This in turn would enable corporations not only to continue identifying potential misconduct and addressing wrongdoing but also to continue providing valuable assistance to the SEC in the form of vetted and validated information. Specifically, the SEC would be able to rely on corporate investigatory efforts as the first line of defense against wrongdoing. Internal investigations conducted by corporations would help the agency effectively handle low-quality tips and serve as a screening mechanism to help ensure that the SEC devotes the bulk of its resources to investigating high-quality tips, as envisioned by the Proposed Rules.

E. Rule 21F-4(b) (7): Provide Corporations with a Reasonable Time for Internal Investigations.

Relatedly, and as the Commission has aptly recognized in the Proposed Rules, there are mutual benefits to the SEC as well as to the continued viability of corporate compliance programs in including a “grace period” for “a potential whistleblower to provide information to legal or compliance personnel within his or her company ... without compromising his or her eligibility for an award under the Program.”²⁸ After seeking redress internally and allowing time for internal review, the whistleblower could still report the alleged wrongdoing to the SEC within the “grace period,” without jeopardizing his or her eligibility for an award. As the Commentary to the Proposed Rules recognizes, providing such a “grace period” will not only reaffirm the importance of internal corporate processes to investigate and address wrongdoing, but, by filtering out poor quality tips and information through internal corporate validation processes, it will also enable the SEC to better allocate its resources to focus on high quality information regarding potential misconduct.²⁹

²⁸ Proposed Rules, *supra* note 2, at 112.

²⁹ As the Commentary to the Proposed Rules explains:

One economic benefit of providing this grace period is that the individual could be mistaken about securities laws, and the compliance personnel would likely be better informed about whether certain conduct constitutes a violation of securities laws. Without this grace period, individuals, regardless of

In Proposed Rule 21F-4(b) (7), the Commission has suggested a 90-day grace period, but has requested comment regarding whether this is the appropriate period.³⁰ We submit that the grace period should be changed to 180 days, to better reflect the reality of internal investigations and preserve as “voluntary” the decision of a corporation to disclose the results of an investigation to the Commission or other authorities.

Ninety days will in many circumstances be insufficient time for a corporation to fully investigate a report of potential wrongdoing and determine whether it has merit. The relevant facts must be collected and analyzed in order to reach an informed conclusion about the merits of the complaint. At a minimum, this will often require interviews of relevant individuals and the collection and review of relevant documents. In more complicated cases, an entity may have to engage forensic or accounting experts to determine the import of the collected facts. After the facts are established, an analysis of those facts and the legal implications presented must be performed, which typically involves internal or external counsel, or both. Finally, depending upon the allegations in a complaint, senior management or members of the board may have to be consulted on the appropriate course of action for the company. The amount of time required to perform an investigation will naturally vary depending upon the allegations in a complaint, but unless the complaint and the factual and legal issues raised are quite simple and straightforward, 90 days will rarely be sufficient for a corporation to complete the often time-consuming and resource-intensive steps required to reach an informed decision.

The Proposed Rules’ 90-day window would in effect require self-reporting to the SEC by a corporation, regardless of whether its investigation is complete and regardless of whether it has reached a determination concerning the merits of the allegation. The benefit of permitting a corporation’s internal compliance processes to assess a report of misconduct in the first instance, and of avoiding an incentive to “front-run” such investigations, thus would be undercut by this relatively short time frame. Allowing corporations to more fully investigate internal reports and weed out frivolous complaints would permit more informed corporate decisions about disclosure of the results of internal investigations, and would also reduce the burden on the SEC by sparing the Commission from processing and filtering a large volume of poor quality submissions. This in turn would further the Commission’s goal of increasing high-quality tips without being flooded by frivolous tips or tips unrelated to securities law violations.

whether their judgments regarding certain violations were correct, could be motivated to report a suspicious finding as soon as possible. The overall effect could be an overflow of noisy signals—that is, a large number of tips of varying quality—causing the Commission to incur costs to process and validate the information. Allowing for this proposed grace period, we believe, provides a mechanism by which some of those erroneous cases may be eliminated before reaching the Commission, without otherwise adversely affecting the incentives on the part of potential whistleblowers.

See id. at 112-113.

³⁰ *Id.* at 36 (“Is the 90-day deadline for submitting Forms TCR and WB-DEC to the Commission (after initially providing information about violations or potential violations to another authority or the employer’s legal, compliance, or audit personnel) the appropriate timeframe?”).

These objectives can be accomplished by changing the 90-day window to a longer 180-day window for whistleblowers to report to the SEC complaints that they have reported internally.

F. New Rule 21F-17: Provide Guidance on Anti-Retaliation Provisions of Dodd-Frank.

Dodd-Frank provides that:

[n]o employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower—

- (i) in providing information to the Commission in accordance with this section;
- (ii) in initiating, testifying in, or assisting any investigation or judicial or administrative action of the Commission based upon or related to such information; or
- (iii) in making disclosures that are required or protected under the Sarbanes-Oxley Act of 2002.³¹

The law creates a private cause of action as a means to enforce these anti-retaliation provisions.

The Proposed Rules do not specifically address adverse actions against whistleblowers or the anti-retaliation provisions of Dodd-Frank, beyond making clear that “provisions of Section 21F of the Exchange Act do not provide amnesty to individuals who provide information to the Commission relating to a violation of the securities laws.”³² The Proposed Rules do not expressly address a company’s ability to take legitimate employment action to redress misconduct committed by whistleblower employees. Moreover, because “whistleblower” is broadly defined to include any individual who provides information to the SEC concerning a potential violation of the securities laws, and because the anti-retaliation provisions of Dodd-Frank are deemed to apply to any whistleblower, the risk of litigation in which “retaliation” is alleged is significant.³³

³¹ Securities Exchange Act of 1934, § 21F (h) (1) (A) *amended by* Dodd Frank, Pub. L. No. 111-203, § 922(a) (2010).

³² Proposed Rules, *supra* note 2, at 82.

³³ *See id.* at 124-125.

The Commission has requested comment on whether it should implement modifications to clarify the Proposed Rules.³⁴ We submit that modifications are essential to prevent companies from being barraged with meritless lawsuits cloaked in the mantle of “retaliation” claims. Otherwise, because the Proposed Rules provide little guidance regarding the anti-retaliation provisions or the parameters of conduct that may potentially subject an employer to retaliation claims under Dodd-Frank, employers will not be able to effectively address violations of law or of company policy by employees without risking allegations of retaliation in litigation.³⁵ While, as a matter of law, employers should be free under the provisions of Dodd-Frank to take adverse employment action against employees for non-retaliatory reasons—e.g., involvement in culpable conduct—even where such employees have provided information to the SEC, as a practical matter, absent clarifying rules reaffirming this legal principle, the broad anti-retaliation provisions of the statute will prompt a wave of litigation alleging retaliation even in such circumstances. Companies will then be forced to devote significant resources to defending against the onslaught of meritless litigation, at the expense of jobs and innovation.

Accordingly, we urge the Commission to make clear in the Rules that the anti-retaliation provisions of Dodd-Frank do not apply to employment actions based on factors other than whistleblower status. In particular, the Proposed Rules should address what may be relatively common issues under the whistleblower program—whether an employer may take employment action against an employee for involvement in wrongdoing reported to the Commission, for involvement in any other wrongdoing in violation of the company’s code of conduct and policies, or for failure to report information concerning potential wrongdoing internally as required by a code of conduct. Under the anti-retaliation provisions of Dodd-Frank, such action is permissible, and the rules should make explicit this common sense principle, so as to forestall costly (even if ultimately unsuccessful) employment litigation.

The clarification could be accomplished by the addition of a new rule 21F-17, reading as follows:

§ 240.21F-17 Anti-Retaliation Provisions of Whistleblower Program

The protections against retaliation provided to whistleblowers by Section 21F(h) of the Exchange Act shall not affect the ability of employers to take non-

³⁴ See *id.* at 89-90 (“Are there rule proposals that the Commission should consider promulgating to ensure that the anti-retaliation provisions are not used to protect employees from otherwise appropriate employment actions (i.e., employment actions that are not based on reporting potential securities law violations)?”).

³⁵ See generally Mary L. Schapiro, Chairman, U.S. Sec. & Exch. Comm’n, Testimony on Implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (September 30, 2010) *available at* <http://www.sec.gov/news/testimony/2010/ts093010mls.htm> (noting that the SEC has already experience an “uptick” in the number of whistleblower complaints after the enactment of Dodd-Frank); Melissa Klein Aguilar, *More Whistleblower Reforms in Dodd-Frank Act*, Compliance Week, August 17, 2010 *available at* <http://www.complianceweek.com/index.cfm?fuseaction=article.viewArticle&articleId=6114&&msg=> (describing Dodd-Frank’s expansion of whistleblower protection and noting that it may well lead to an increase in retaliation lawsuits).

retaliatory action against employees. The anti-retaliation provisions of Section 21F(h) do not apply if an employment action is taken for any reason other than an individual's status as a whistleblower under these Rules. For example, adverse action taken because of an employee's involvement in wrongdoing does not constitute retaliation, irrespective of whether the employee reported that wrongdoing to the Commission. Likewise, if an employer's code of conduct requires the use of an available internal reporting system in the event that an employee becomes aware of potential misconduct, requires truthful cooperation with any investigation of potential misconduct, or prohibits the theft or misuse of company property or information, adverse action against an employee for failure to adhere to such requirements does not constitute retaliation, regardless of whether the individual provided information to the Commission.

In addition to avoiding a significant economic burden, this modification to the Proposed Rules would be fully consistent with longstanding policies of the SEC, as well as the Department of Justice, the Sentencing Commission and other federal enforcement agencies, which have repeatedly underscored that a key element of an effective corporate compliance program is the company's demonstrated practice of imposing discipline and corrective actions to address compliance violations.³⁶ Clarifying the Proposed Rules as suggested would enable companies to continue to meet this critical element of an effective compliance program. Without the clarification, the continued viability of internal disciplinary compliance processes is jeopardized, which would be contrary to longstanding federal government policy.

III. Conclusion

We recognize that no individual or company is perfect and that mistakes are made. As a part of that recognition, many companies have spent millions of dollars and employ dedicated teams of employees, often going beyond what the law requires, to construct robust compliance programs that identify and correct mistakes, and inform government entities of wrongdoing

³⁶ In order to qualify as an "effective compliance and ethics program" under the federal Sentencing Guidelines, "[t]he organization's compliance and ethics program shall be promoted and enforced consistently throughout the organization through (A) appropriate incentives to perform in accordance with the compliance and ethics program; and (B) appropriate disciplinary measures for engaging in criminal conduct and for failing to take reasonable steps to prevent and detect criminal conduct." U.S. Sentencing Guidelines Manual § 8B2.1 (b) (6) (2010). In describing how to evaluate a corporation's compliance program, section 9.28-800 of the U.S. Attorneys' Manual instructs federal prosecutors to consider, among other factors, "any remedial actions taken by the corporation, including, for example, disciplinary action against past violators uncovered by the prior compliance program and revisions to corporate compliance programs in light of lessons learned." U.S. Dep't of Justice, U.S. Attorneys' Manual § 9.28-800. Finally, the Seaboard Report lists thirteen different criteria that the SEC will consider when determining whether, and how much, to credit a corporation for its cooperation efforts. Among other criteria, the agency will consider: "What steps did the company take upon learning of the misconduct? Did the company immediately stop the misconduct? Are persons responsible for the misconduct still with the company? If so, are they still in the same positions?" U.S. Sec. & Exch. Comm'n, Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement, Exchange Act Release No. 44969 (Oct. 23, 2001).

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identified and corrective action taken, when appropriate. The Proposed Rules have the potential to incentivize employees and others to act in ways that could undermine corporate compliance programs and related systems such as financial reporting safeguards. Simply put, if those systems are endangered or degraded, the ability of public companies in the United States to police their own conduct will be diminished, as will their ability to provide valuable information and assistance to enforcement efforts, and the culture of compliance that so many have worked hard to build will be significantly weakened.

Our proposals seek to achieve the goals of ensuring the Commission receives quality tips while at the same time preserving the important functions of corporate compliance programs. The undersigned stand ready to work with the Commission to achieve a fair and rational implementation of Dodd-Frank's whistleblower provisions. Thank you for your consideration of our comments.

Sincerely,

Americans for Limited Government

Ryder Systems, Inc.

Financial Services Institute, Inc.

U.S. Chamber of Commerce

Verizon

White & Case, LLP

CC: The Honorable Mary L. Schapiro, Chairman
The Honorable Kathleen L. Casey, Commissioner
The Honorable Elisse B. Walter, Commissioner
The Honorable Luis A. Aguilar, Commissioner
The Honorable Troy A. Paredes, Commissioner
Robert S. Khuzami, Director, Division of Enforcement

IX. STATUTORY AUTHORITY

The Commission proposes the new rules and forms contained in this document under the authority set forth in Sections 3(b), 21F and 23(a) of the Exchange Act.

List of Subjects

17 CFR Parts 240 and 249

Securities

TEXT OF THE PROPOSED RULES

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows.

Part 240 – General Rules and Regulations, Securities Exchange Act of 1934

1. The authority citation for part 240 is amended by adding the following citation in numerical order to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78-i, 78j, 78j,-1, 78k, 78k-1, 78 l, 78m, 78n, 78 o, 78 o-4, 78p, 78q, 78s, 78u-5, 78w, 78x, 78 ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 *et seq.*; 18 U.S.C. 1350; and 12 U.S.C. 5221(e)(3) , unless otherwise noted.

Section 240.21F is also issued under Pub. L. No. 111-203, §922(a), 124 Stat. 1841 (2010).

2. By adding § 240.21F-1 through § 240.21F-16 to read as follows:

§ 240.21F-1 General.

Section 21F of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78u-6), entitled "Securities Whistleblower Incentives and Protection," requires the Securities and Exchange Commission ("Commission") to pay awards, subject to certain limitations and conditions, to whistleblowers who provide the Commission with original information about violations of the federal securities laws. These rules describe the whistleblower program that the Commission has established to implement the provisions of Section 21F, and explain the procedures you will need to follow in order to be eligible for an award. You should read these procedures carefully because the failure to take certain required steps within the time frames described in these rules may disqualify you from receiving an award for which you otherwise may be eligible. Unless expressly provided for in these rules, no person is authorized to make any offer or promise, or otherwise to bind the Commission with respect to the payment of any award or the amount thereof. The Securities and Exchange Commission's Whistleblower Office administers our whistleblower program. Questions about the program or these rules should be directed to the SEC Whistleblower Office, 100 F Street, N.E., Washington, DC, 20549.

§ 240.21F-2 Definition of a Whistleblower.

(a) You are a whistleblower if, alone or jointly with others, you provide the Commission with information relating to a potential violation of the securities laws [by another person, and you did not participate in or facilitate the violations](#). A whistleblower must be an individual. A company or another entity is not eligible to be a whistleblower.

(b) The retaliation protections afforded to whistleblowers by the provisions of paragraph (h)(1) of Section 21F of the Exchange Act (15 U.S.C. 78u-6(h)(1)) apply irrespective of whether a whistleblower satisfies the procedures and conditions to qualify for an award. Moreover, for purposes of the anti-retaliation provision of paragraph (h)(1)(A)(i) of Section 21F, 15 U.S.C. 78u-6(h)(1)(A)(i), the requirement that a whistleblower provide "information to the Commission in accordance" with Section 21F (15 U.S.C. 78u-6) is satisfied if an individual provides information to the Commission that relates to a potential violation of the securities laws.

(c) To be eligible for an award, however, a whistleblower must submit original information to the Commission in accordance with the procedures and conditions described in § 240.21F-4, -8, and -9 of this chapter.

§ 240.21F-3 Payment of awards.

(a) Subject to the eligibility requirements described in § 240.21F-2 and § 240.21F-8 of this chapter, and to § 240.21F-14 of this chapter, the Commission will pay an award or awards to one or more whistleblowers who:

- (1) Voluntarily provide the Commission
- (2) With original information
- (3) That leads to the successful enforcement by the Commission of a federal court or administrative action
- (4) In which the Commission obtains monetary sanctions totaling more than \$1,000,000.

The terms voluntarily, original information, leads to successful enforcement, action, and monetary sanctions are defined in § 240.21F-4 of this chapter.

(b) The Commission will also pay an award based on amounts collected in certain “related actions.” A related action is a judicial or administrative action that is brought by:

- (1) The Attorney General of the United States;
- (2) An appropriate regulatory agency;
- (3) A self-regulatory organization; or
- (4) A state attorney general in a criminal case

and is based on the same original information that the whistleblower voluntarily provided to the Commission, and that led the Commission to obtain monetary sanctions totaling more than \$1,000,000. The terms appropriate regulatory agency and self-regulatory organization are defined in § 240.21F-4 of this Chapter.

(c) In order for the Commission to make an award in connection with a related action, the Commission must determine that the same original information that the whistleblower gave to the Commission also led to the successful enforcement of the related action under the same criteria described in these rules for awards made in connection with Commission actions. The Commission may

seek assistance and confirmation from the authority bringing the related action in making this determination. If the Commission determines that the criteria for an award are not satisfied, or if the Commission is unable to obtain sufficient and reliable information about the related action to make a conclusive determination, the Commission will deny an award in connection with the related action. Additional procedures apply to the payment of awards in related actions. These are described in § 240.21F-11 and § 240.21F-13.

(d) The Commission will not make an award to you for a related action if you have already been granted an award by the Commodity Futures Trading Commission ("CFTC") for that same action pursuant to its whistleblower award program under section 23 of the Commodity Exchange Act, 7 U.S.C. 26. Similarly, if the CFTC has previously denied an award to you in a related action, you will be collaterally estopped from relitigating any issues before the Commission that were necessary to the CFTC's denial.

§ 240.21F-4 Other Definitions.

(a) *Voluntary submission of information.*

(1) Your submission of information is made voluntarily within the meaning of § 240.21F of this chapter if you provide the Commission with the information before you or anyone representing you (such as an attorney) receives any request, inquiry, or demand from the Commission, the Congress, any other federal, state, or local authority, any self-regulatory organization, or the Public Company Accounting Oversight Board about a matter to which the information in your submission is relevant. If the Commission or any of these other authorities make a request, inquiry, or demand to you or your representative first, your submission will not be considered voluntary, and you will not be eligible for an award, even if your response is not compelled by subpoena or other applicable law.

(2) For purposes of this paragraph, you will be considered to have received a request, inquiry or demand if documents or information from you are within the scope of a request, inquiry, or demand that your employer receives unless, after receiving the documents or information from you, your employer fails to provide your documents or information to the requesting authority in a timely manner.

(3) In addition, your submission will not be considered voluntary if you are under a pre-existing legal or contractual duty to report the securities violations that are the subject of your original information to the Commission or to any of the other authorities described in paragraph (1) of this section.

(b) Original information

(1) In order for your whistleblower submission to be considered original information, it must be:

(i) Derived from your independent knowledge or independent analysis;

(ii) Not already known to the Commission from any other source, unless you are the original source of the information;

(iii) Not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless you are a source of the information; and

(iv) Provided to the Commission for the first time after July 21, 2010 (the date of enactment of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*).

(2) Independent knowledge means factual information in your possession that is not derived from publicly available sources. You may gain independent knowledge from your experiences, communications and observations in your business or social interactions.

(3) Independent analysis means your own analysis, whether done alone or in combination with others. Analysis means your examination and evaluation of information that may be generally available, but which reveals information that is not generally known or available to the public.

(4) The Commission will not consider information to be derived from your independent knowledge or independent analysis if you obtained the knowledge or the information upon which your analysis is based:

(i) Through a communication that was subject to the attorney-client privilege, unless disclosure of that information is otherwise permitted by § 205.3(d)(2) of this chapter, the applicable state attorney conduct rules, or otherwise;

(ii) As a result of the legal representation of a client on whose behalf your services, or the services of your employer or firm, have been retained, and you seek to use the information to make a whistleblower submission for your own benefit, unless disclosure is authorized by § 205.3(d)(2) of this chapter, the applicable state attorney conduct rules, or otherwise;

(iii) Through the performance of an engagement required under the securities laws by an independent public accountant, if that information relates to a violation by the engagement client or the client's directors, officers or other employees;

(iv) Because you were a person with legal, compliance, audit, supervisory, or governance responsibilities for an entity, and the information was communicated to you with the reasonable expectation that you would take steps to cause the entity to respond appropriately to the violation, unless ~~the entity did not~~ you disclosed the information to the chief legal officer, chief compliance officer, and/or a member of the Board of Directors and the entity proceeded in bad faith or failed to disclose ~~the~~ information concerning substantiated violations of the securities laws to the Commission within a reasonable time ~~or proceeded in bad faith~~; or

(v) Otherwise from or through an entity's legal, compliance, audit or other similar functions or processes for identifying, reporting and addressing potential non-compliance with law, unless ~~the entity did not~~ you disclosed the information to the chief legal officer, chief compliance officer, and/or a member of the Board of Directors and the entity proceeded in bad faith or failed to disclose ~~the~~ information concerning substantiated violations of the securities laws to the Commission within a reasonable time ~~or proceeded in bad faith~~;

(vi) By a means or in a manner that violates applicable federal or state criminal law; or

(vii) From any of the individuals described in paragraphs (b)(4)(i) - (vi) of this section.

(5) The Commission will consider you to be an original source of the same information that we obtain from another source if the information satisfies the definition of original information and the other source obtained the information from you or your representative. In order to be considered an original source of information that the Commission receives from Congress, any other federal, state, or local authority, any self-regulatory organization, or the Public Company Accounting Oversight Board, you must have voluntarily given such authorities the information within the meaning of these rules. You must establish your status as the original source of information to the Commission's satisfaction. In determining whether you are the original source of information, the Commission may seek assistance and confirmation, from one of the other authorities described above, or from another entity (including your

employer), in the event that you claim to be the original source of information that an authority or another entity provided to the Commission.

(6) If the Commission already knows some information about a matter from other sources at the time you make your submission, and you are not an original source of that information under paragraph (b)(5) of this section, the Commission will consider you an original source of any information you provide that is derived from your independent knowledge or analysis and that materially adds to the information that the Commission already possesses.

(7) If you provide information to Congress, any other federal, state, or local authority, any self-regulatory organization, the Public Company Accounting Oversight Board, or to any of the persons described in paragraphs (b)(4)(iv) and (v) of this section, and you, within ~~90~~180 days, submit the same information to the Commission pursuant to § 240.21F-9 of this chapter, as you must do in order for you to be eligible to be considered for an award, then, for purposes of evaluating your claim to an award under §§ 240.21F-10 and 240.21F-11 of this chapter, the Commission will consider that you provided information as of the date of your original disclosure, report or submission to one of these other authorities or persons. You must establish the effective date of any prior disclosure, report, or submission, to the Commission's satisfaction. The Commission may seek assistance and confirmation from the other authority or person in making this determination.

(c) *Information that leads to successful enforcement*

The Commission will consider that you provided original information that led to the successful enforcement of a judicial or administrative action in the following circumstances:

(1) If you gave the Commission original information that caused the staff to commence an examination, open an investigation, reopen an investigation that the Commission had closed, or to inquire concerning new or different conduct as part of a current examination or investigation, and your information significantly contributed to the success of the action; or

(2) If you gave the Commission original information about conduct that was already under examination or investigation by the Commission, Congress, any other federal, state, or local authority, any self-regulatory organization, or the Public Company Accounting Oversight Board (except in cases

where you were an original source of this information as defined in paragraph (b)(4) of this section), and your information would not otherwise have been obtained and was essential to the success of the action.

(d) Action means a single captioned judicial or administrative proceeding.

(e) Monetary sanctions means any money, including penalties, disgorgement, and interest, ordered to be paid and any money deposited into a disgorgement fund or other fund pursuant to Section 308(b) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7246(b), as a result of a Commission action or a related action.

(f) Appropriate regulatory agency means the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and any other agencies that may be defined as appropriate regulatory agencies under Section 3(a)(34) of the Exchange Act (15 U.S.C. § 78c(a)(34)).

(g) Self-regulatory organization means any national securities exchange, registered securities association, registered clearing agency, the Municipal Securities Rulemaking Board, and any other organizations that may be defined as self-regulatory organizations under Section 3(a)(26) of the Exchange Act (15 U.S.C. § 78c(a)(26)).

§ 240.21F-5 Amount of award.

(a) If all of the conditions are met for a whistleblower award in connection with a Commission action or a related action, the Commission will then decide the amount of the award pursuant to the procedures set forth in §§ 240.21F-10 and 240.21F-11 of this chapter. The amount will be at least 10 percent and no more than 30 percent of the monetary sanctions that the Commission and the other authorities are able to collect. The percentage awarded in connection with a Commission action may differ from the percentage awarded in connection with a related action.

(b) If the Commission makes awards to more than one whistleblower in connection with the same action or related action, the Commission will determine an individual percentage award for each whistleblower, but in no event will the total amount awarded to all whistleblowers as a group be less than 10 percent or greater than 30 percent of the amount the Commission or the other authorities collect.

§ 240.21F-6 Criteria for determining amount of award.

In determining the amount of an award, the Commission will take into consideration:

- (a) The significance of the information provided by a whistleblower to the success of the Commission action or related action;
- (b) The degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the Commission action or related action;
- (c) The programmatic interest of the Commission in deterring violations of the securities laws by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws; and
- (d) Whether the award otherwise enhances the Commission's ability to enforce the federal securities laws, protect investors, and encourage the submission of high quality information from whistleblowers.

§ 240.21F-7 Confidentiality of submissions.

- (a) The law requires that the Commission not disclose information that could reasonably be expected to reveal the identity of a whistleblower, except that the Commission may disclose such information in the following circumstances:
 - (1) When disclosure is required to a defendant or respondent in connection with a federal court or administrative action that the Commission files or in another public action or proceeding that is filed by an authority to which we provide the information, as described below;
 - (2) When the Commission determines that it is necessary to accomplish the purposes of the Exchange Act and to protect investors, it may provide your information to the Department of Justice, an appropriate regulatory agency, a self regulatory organization, a state attorney general in connection with a criminal investigation, any appropriate state regulatory authority, the Public Company Accounting Oversight Board, or foreign securities and law enforcement authorities. Each of these entities other than foreign securities and law enforcement authorities is subject to the confidentiality requirements set forth in Section 21F(h) of the Exchange Act, 15 U.S.C. 78u-6(h). The Commission may determine what assurances of confidentiality it deems appropriate in providing such information to foreign securities and law enforcement authorities.

(3) The Commission may make disclosures in accordance with the Privacy Act of 1974 (5 U.S.C. § 552a).

(b) You may submit information to the Commission anonymously. If you do so, however, you must also do the following:

(1) You must have an attorney represent you in connection with both your submission of information and your claim for an award, and your attorney's name and contact information must be provided to the Commission at the time you submit your information;

(2) You and your attorney must follow the procedures set forth in § 240.21F-9 of this chapter for submitting original information anonymously; and

(3) Before the Commission will pay any award to you, you must disclose your identity and your identity must be verified as set forth in § 240.21F-10 of this chapter.

§ 240.21F-8 Eligibility.

(a) To be eligible for a whistleblower award, you must give the Commission information in the form and manner that the Commission requires. The procedures for submitting information and making a claim for an award are described in § 240.21F-9 to § 240.21F-11 of this chapter. You should read these procedures carefully because you need to follow them in order to be eligible for an award, except that the Commission may, in its sole discretion, waive any of these procedures based upon a showing of extraordinary circumstances.

(b) In addition to any forms required by these rules, the Commission may also require that you provide certain additional information. If requested by Commission staff, you may be required to:

(1) Provide explanations and other assistance in order that the staff may evaluate and use the information that you submitted;

(2) Provide all additional information in your possession that is related to the subject matter of your submission in a complete and truthful manner, through follow-up meetings, or in other forms that our staff may agree to;

(3) Provide testimony or other evidence acceptable to the staff relating to whether you are eligible, or otherwise satisfy any of the conditions, for an award; and

(4) Enter into a confidentiality agreement in a form acceptable to the Whistleblower Office, including a provision that a violation may lead to your ineligibility to receive an award.

(c) You are not eligible to be considered for an award if you do not satisfy the requirements of paragraphs (a) and (b) of this section. In addition, you are not eligible if:

(1) You [do not report the information relating to a potential violation of securities laws through an available internal reporting system following applicable internal procedures prior to your submission of information to the Commission. Use of an available internal reporting system is not required, however, if the Commission, in its sole discretion based on information required to be submitted in Form TCR, Question 4d, determines that the entity offered no practical method of reporting violations or no procedures to safeguard anonymity of reports.](#)

(2) You are, or were at the time you acquired original information, a member, officer, or employee of the Department of Justice, an appropriate regulatory agency, a self-regulatory organization, the Public Company Accounting Oversight Board, or any law enforcement organization;

(23) You are, or were at the time you acquired original information, a member, officer, or employee of a foreign government, any political subdivision, department, agency, or instrumentality of a foreign government, or any other foreign financial regulatory authority as that term is defined in Section 3(a)(52) of the Exchange Act (15 U.S.C. 78c(a)(52));

(34) You are convicted of a criminal violation that is related to the Commission action or to a related action (as defined in § 240.21F-4 of this chapter) for which you otherwise could receive an award;

(45) You obtained the information that you gave the Commission through an audit of a company's financial statements, and making a whistleblower submission would be contrary to the requirements of Section 10A of the Exchange Act (15 U.S.C. § 78j-1)); or

(56) You acquired the information you gave the Commission from any of the individuals described in paragraphs (c)(1), (2), (3) or (4) of this section;

(67) You are the spouse, parent, child, or sibling of a member or employee of the Commission, or you reside in the same household as a member or employee of the Commission; or

(78) In your whistleblower submission, your other dealings with the Commission, or your dealings with another authority in connection with a related action, you knowingly and willfully make any false,

fictitious, or fraudulent statement or representation, or use any false writing or document, knowing that it contains any false, fictitious, or fraudulent statement or entry.

§ 240.21F-9 Procedures for submitting original information.

The submission of original information to the Commission is a two-step process:

(a) First, you will need to submit your information to us. You may submit your information:

(1) online, through the Commission's Electronic Data Collection System, or;

(2) By completing Form TCR (*Tip, Complaint or Referral*) (referenced in § 249.1800 of this chapter) and mailing or faxing the form to the SEC Whistleblower Office, 100 F Street NE, Washington, DC 20549-XXXX, Fax (202) XXX-XXXX.

(b) Second, in addition to submitting your information pursuant to paragraph (a) of this section, you will also need to complete and provide to the Commission a *Form WB-DEC, Declaration Concerning Original Information Provided Pursuant to §21F of the Securities Exchange Act of 1934*, signed under penalty of perjury. Your Form WBDEC must be submitted as follows:

(1) If you submit your information online, your FORM WB-DEC (referenced in § 249.1801 of this chapter) must be submitted either:

(a) Electronically (in accordance with the instructions set forth on the Commission's website); or

(b) By mailing or faxing the signed form to the SEC Whistleblower Office. Your Form WB-DEC (referenced in § 249.1801 of this chapter) must be received within thirty (30) days of the Commission's receipt of your information in the Electronic Data Collection System.

(2) If you submit a Form TCR (referenced in § 249.1800 of this chapter), your Form WB-DEC (referenced in § 249.1801 of this chapter) must be submitted by mail or fax at the same time as the Form TCR.

(c) Notwithstanding paragraph (b) of this section, if you submitted your original information to the Commission anonymously, then you must provide your attorney with the completed and signed Form WB-DEC (referenced in § 249.1801 of this chapter). In addition, your attorney must also provide the Commission with a separate Form WBDEC certifying that he or she has verified your identity, has reviewed the form for completeness and accuracy, and will retain the signed original of your Form WB-

DEC in his or her records. Such certification must be submitted in the manner described in paragraph (b) of this section.

(d) If you submitted original information in writing to the Commission after July 21, 2010 (the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act) but before the effective date of these rules, you will be eligible for an award only if:

(1) In the event that you provided the original information to the Commission in a format or manner other than that described in paragraph (a) of this section, you either submit your information online through the Commission's Electronic Data Collection System or complete Form TCR (referenced in § 249.1800 of this chapter) within one hundred twenty (120) days of the effective date of these rules and otherwise follow the procedures set forth in paragraph (b) of this section; or

(2) In the event that you provided the original information to the Commission in the format or manner described in paragraph (a) of this section you submit a Form WB-DEC (referenced in § 249.1801 of this chapter) within one hundred twenty (120) days of the effective date of this section in the manner set forth in paragraph (b) of this section.

§ 240.21F-10 Procedures for making a claim for a whistleblower award in SEC actions that result in monetary sanctions in excess of \$1,000,000.

(a) Whenever a Commission action results in monetary sanctions totaling more than \$1,000,000, the Whistleblower Office will cause to be published on the Commission's website a "Notice of Covered Action." Such Notice will be published subsequent to the entry of a final judgment or order that alone, or collectively with other judgments or orders previously entered in the Commission action, exceeds \$1,000,000; or, in the absence of such judgment or order, within thirty (30) days of the deposit of monetary sanctions exceeding \$1,000,000 into a disgorgement or other fund pursuant to Section 308(b) of the Sarbanes-Oxley Act of 2002. A claimant will have sixty (60) days from the date of the Notice of Covered Action to file a claim for an award based on that action, or the claim will be barred.

(b) To file a claim for a whistleblower award, you must file Form WB-APP, *Application for Award for Original Information Provided Pursuant to §21F of the Securities Exchange Act of 1934* (referenced in § 249.1802 of this chapter). You must sign this form as the claimant and submit it to the Whistleblower Office by mail or fax. All claim forms, including any attachments, must be received by the

Whistleblower Office within sixty (60) calendar days of the date of the Notice of Covered Action in order to be considered for an award.

(c) If you provided your original information to the Commission anonymously, you must disclose your identity on the Form WB-APP (referenced in § 249.1802 of this chapter), and your identity must be verified in a form and manner that is acceptable to the Whistleblower Office prior to the payment of any award.

(d) Once the time for filing any appeals of the Commission's judicial or administrative action has expired, or where an appeal has been filed, after all appeals in the action have been concluded, the Whistleblower Office and designated staff ("Claims Review Staff") will evaluate all timely whistleblower award claims submitted on Form WB-APP (referenced in § 249.1802 of this chapter) in accordance with the criteria set forth in these rules. In connection with this process, the Whistleblower Office may require that you provide additional information relating to your eligibility for an award or satisfaction of any of the conditions for an award, as set forth in § 240.21F-(8)(b) of this chapter. Following that evaluation, the Whistleblower Office will send you a Preliminary Determination setting forth a preliminary assessment as to whether the claim should be allowed or denied and, if allowed, setting forth the proposed award percentage amount.

(e) You may contest the Preliminary Determination made by the Claims Review Staff by submitting a written response to the Whistleblower Office setting forth the grounds for your objection to either the denial of an award or the proposed amount of an award. You may also include documentation or other evidentiary support for the grounds advanced in your response.

(1) Before determining whether to contest a Preliminary Determination, you may:

(i) Within thirty (30) days of the date of the Preliminary Determination, request that the Whistleblower Office make available for your review the materials that formed the basis of the Claims Review Staff's Preliminary Determination. The Whistleblower Office will make these materials available to you subject to any redactions necessary to comply with any statutory restrictions or protect the Commission's law enforcement and regulatory functions. The Whistleblower Office may also require you to sign a confidentiality agreement, as set forth in § 240.21F-(8)(b) of this chapter, prior to providing these materials.

(ii) Within thirty (30) calendar days of the date of the Preliminary Determination, request a meeting with the Whistleblower Office; however, such meetings are not required and the office may in its sole discretion decline the request.

(2) If you decide to contest the Preliminary Determination, you must submit your written response and supporting materials within thirty (30) calendar days of the date of the Preliminary Determination, or if a request to review materials is made pursuant to paragraph (e)(1) of this section, then within thirty (30) calendar days of the Whistleblower Office making those materials available for your review.

(f) If you fail to submit a timely response pursuant to paragraph (e) of this section, then the Preliminary Determination will become the Final Order of the Commission (except where the Preliminary Determination recommended an award, in which case the Preliminary Determination will be deemed a Proposed Final Determination for purposes of paragraph (h) of this section). Your failure to submit a timely response contesting a Preliminary Determination will constitute a failure to exhaust administrative remedies, and you will be prohibited from pursuing an appeal pursuant to § 240.21F-12 of this chapter.

(g) If you submit a timely response pursuant to paragraph (e) of this section, then the Claims Review Staff will consider the issues and grounds advanced in your response, along with any supporting documentation you provided, and will make its Proposed Final Determination.

(h) The Whistleblower Office will then notify the Commission of each Proposed Final Determination. Within thirty 30 days thereafter, any Commissioner may request that the Proposed Final Determination be reviewed by the Commission. If no Commissioner requests such a review within the 30-day period, then the Proposed Final Determination will become the Final Order of the Commission. In the event a Commissioner requests a review, the Commission will review the record that the staff relied upon in making its determinations, including your previous submissions to the Whistleblower Office, and issue its Final Order.

(i) The Office of the Secretary of the SEC will provide you with the Final Order of the Commission.

§ 240.21F-11 Procedures for determining awards based upon a related action.

(a) If you are eligible to receive an award following a Commission action that results in monetary sanctions totaling more than \$1,000,000, you also may be eligible to receive an award based on the monetary sanctions that are collected from a related action (as defined in § 240.21F-3 of this chapter).

(b) You must also use Form WB-APP (referenced in § 249.1802 of this chapter) to submit a claim for an award in a related action. You must sign this form as the claimant and submit it to the Whistleblower Office by mail or fax as follows:

(1) If a final order imposing monetary sanctions has been entered in a related action at the time you submit your claim for an award in connection with a Commission action, you must submit your claim for an award in that related action on the same Form WB-APP (referenced in § 249.1802 of this chapter) that you use for the Commission action.

(2) If a final order imposing monetary sanctions in a related action has not been entered at the time you submit your claim for an award in connection with a Commission action, you must submit your claim on Form WB-APP (referenced in § 249.1802 of this chapter) within sixty (60) days of the issuance of a final order imposing sanctions in the related action.

(c) The Whistleblower Office may request additional information from you in connection with your claim for an award in a related action to demonstrate that you directly (or through the Commission) voluntarily provided the governmental agency, regulatory authority or self-regulatory organization the same original information that led to the Commission's successful covered action, and that this information led to the successful enforcement of the related action. The Whistleblower Office may, in its discretion, seek assistance and confirmation from the other agency in making this determination.

(d) Once the time for filing any appeals of the final judgment or order in a related action has expired, or if an appeal has been filed, after all appeals in the action have been concluded, the Claims Review Staff will evaluate all timely whistleblower award claims submitted on Form WB-APP (referenced in § 249.1802 of this chapter) in connection with the related action. The evaluation will be undertaken pursuant to the criteria set forth in these rules. In connection with this process, the Whistleblower Office may require that you provide additional information relating to your eligibility for an award or satisfaction of any of the conditions for an award, as set forth in § 240.21F-(8)(b) of this chapter. Following this evaluation, the Whistleblower Office will send you a Preliminary Determination setting forth a preliminary assessment as to whether the claim should be allowed or denied and, if allowed, setting forth the proposed award percentage amount.

(e) You may contest the Preliminary Determination made by the Claims Review Staff by submitting a written response to the Whistleblower Office setting forth the grounds for your objection to either the denial of an award or the proposed amount of an award. You may also include documentation or other evidentiary support for the grounds advanced in your response.

(1) Before determining whether to contest a Preliminary Determination, you may:

(i) Within thirty (30) days of the date of the Preliminary Determination, request that the Whistleblower Office make available for your review the materials that formed the basis of the Claims Review Staff's Preliminary Determination. The Whistleblower Office will make these materials available to you subject to any redactions necessary to comply with any statutory restrictions or protect the Commission's law enforcement and regulatory functions. The Whistleblower Office may also require you to sign a confidentiality agreement, as set forth in § 240.21F-(8)(b) of this chapter, prior to providing these materials.

(ii) Within thirty (30) days of the date of the Preliminary Determination, request a meeting with the Whistleblower Office; however, such meetings are not required and the office may in its sole discretion decline the request.

(2) If you decide to contest the Preliminary Determination, you must submit your written response and supporting materials within thirty (30) calendar days of the date of the Preliminary Determination, or if a request to review materials is made pursuant to paragraph (e)(1)(i) of this section, then within thirty (30) calendar days of the Whistleblower Office making those materials available for your review.

(f) If you fail to submit a timely response pursuant to paragraph (e) of this section, then the Preliminary Determination will become the Final Order of the Commission (except where the Preliminary Determination recommended an award, in which case the Preliminary Determination will be deemed a Proposed Final Determination for purposes of paragraph (h) of this section). Your failure to submit a timely response contesting a Preliminary Determination will constitute a failure to exhaust administrative remedies, and you will be prohibited from pursuing an appeal pursuant to § 240.21F-12 of this chapter.

(g) If you submit a timely response pursuant to paragraph (e) of this section, then the Claims Review Staff will consider the issues and grounds that you advanced in your response, along with any supporting documentation you provided, and will make its Proposed Final Determination.

(h) The Whistleblower Office will notify the Commission of each Proposed Final Determination. Within thirty 30 days thereafter, any Commissioner may request that the Proposed Final Determination be reviewed by the Commission. If no Commissioner requests such a review within the 30-day period, then the Proposed Final Determination will become the Final Order of the Commission. In the event a Commissioner requests a review, the Commission will review the record that the staff relied upon in making its determinations, including your previous submissions to the Whistleblower Office, and issue its Final Order.

(i) The Office of the Secretary of the SEC will provide you with the Final Order of the Commission.

§ 240.21F-12 Appeals.

(a) Section 21F of the Exchange Act, 15 U.S.C. 78u-6, commits determinations of whether, to whom, and in what amount to make awards to the Commission's discretion. A determination of whether or to whom to make an award may be appealed within 30 days after the Commission issues its final decision to the United States Court of Appeals for the District of Columbia Circuit, or to the circuit where the aggrieved person resides or has his principal place of business. Where the Commission followed the statutory mandate that it award not less than 10 percent and not more than 30 percent of the monetary sanctions collected in the Commission or related action, the Commission's determination regarding the amount of an award (including the allocation of an award as between multiple whistleblowers) is not appealable.

(b) The record on appeal shall consist of the Whistleblower Office's Preliminary Determination, any materials submitted by the claimant or claimants (including the claimant's Form TCR (referenced in § 249.1800 of this chapter) or any electronic submission made by the whistleblower, the Forms WB-DEC (referenced in § 249.1801 of this chapter) and WB-APP (referenced in § 249.1802 of this chapter), and materials filed in response to the Preliminary Determination), and any other materials that supported the Final Order of the Commission, with the exception of internal deliberative process materials that are prepared exclusively to assist the Commission in deciding the claim (including the staff's Draft Final Determination in the event that the Commissioners reviewed the claim and issued the Final Order).

§ 240.21F-13 Procedures applicable to the payment of awards.

(a) Any award made pursuant to these rules will be paid from the Securities and Exchange Commission Investor Protection Fund (the "Fund").

(b) A recipient of a whistleblower award is entitled to payment on the award only to the extent that a monetary sanction is collected in the Commission action or in a related action upon which the award is based.

(c) Payment of a whistleblower award for a monetary sanction collected in a Commission action or related action shall be made following the later of:

(1) The date on which the monetary sanction is collected; or

(2) The completion of the appeals process for all whistleblower award claims arising from:

(i) The Notice of Covered Action, in the case of any payment of an award for a monetary sanction collected in a Commission action; or

(ii) The related action, in the case of any payment of an award for a monetary sanction collected in a related action.

(d) If there are insufficient amounts available in the Fund to pay the entire amount of an award payment within a reasonable period of time from the time for payment specified by paragraph (c) of this section, then subject to the following terms, the balance of the payment shall be paid when amounts become available in the Fund, as follows:

(1) Where multiple whistleblowers are owed payments from the Fund based on awards that do not arise from the same Notice of Covered Action (or related action), priority in making these payments will be determined based upon the date that the collections for which the whistleblowers are owed payments occurred. If two or more of these collections occur on the same date, those whistleblowers owed payments based on these collections will be paid on a pro rata basis until sufficient amounts become available in the Fund to pay their entire payments.

(2) Where multiple whistleblowers are owed payments from the Fund based on awards that arise from the same Notice of Covered Action (or related action), they will share the same payment priority and will be paid on a pro rata basis until sufficient amounts become available in the Fund to pay their entire payments.

§ 240.21F-14 No Amnesty.

The Securities Whistleblower Incentives and Protection provisions do not provide amnesty to individuals who provide information to the Commission. The fact that you may become a whistleblower and assist in Commission investigations and enforcement actions does not preclude the Commission from bringing an action against you based upon your own conduct in connection with violations of the federal securities laws. If such an action is determined to be appropriate, however, the Commission will take your cooperation into consideration in accordance with its Policy Statement Concerning Cooperation by Individuals in [SEC] Investigations and Related Enforcement Actions (17 CFR § 202.12).

~~§ 240.21F-15 Awards to Whistleblowers Who Engage in Culpable Conduct.~~

~~In determining whether the required \$1,000,000 threshold has been satisfied (this threshold is further explained in § 240.21F-10 of this chapter) for purposes of making any award, the Commission will not take into account any monetary sanctions that the whistleblower is ordered to pay, or that are ordered against any entity whose liability is based substantially on conduct that the whistleblower directed, planned, or initiated. Similarly, if the Commission determines that a whistleblower is eligible for an award, any amounts that the whistleblower or such an entity pay in sanctions as a result of the action or related actions will not be included within the calculation of the amounts collected for purposes of making payments.~~ **§ 240.21F-16 Staff Communications with Whistleblowers.**

(a) No person may take any action to impede a whistleblower from communicating directly with the Commission staff about a potential securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement (other than agreements dealing with information covered by § 240.21F-4(b)(4)(i) & (ii) of this chapter related to the legal representation of a client) with respect to such communications.

(b) If you are a whistleblower who is a director, officer, member, agent, or employee of an entity that has counsel, and you have initiated communication with the Commission relating to a potential securities law violation, the staff is authorized to communicate directly with you regarding the subject of your communication without seeking the consent of the entity's counsel.

§ 240.21F-16 Commission Policy on Information Sharing

After receipt of a whistleblower report, the Commission will promptly provide an entity that is the subject of such a report with sufficient information about the allegations contained in the

report to permit the entity to conduct an investigation into the allegations, absent a determination by the Commission, based on the information submitted in Form TCR, Question 4d, that the corporation will not proceed in good faith upon receiving the information. The Commission will allow the entity a reasonable time, but not less than 180 days unless the Commission determines otherwise for good cause, to perform all tasks necessary for an adequate investigation of the allegations, including but not limited to, interviews of relevant individuals, collection and review of documents and other relevant information, and an analysis of the relevant information with the assistance of internal or external counsel. In providing information to an entity that is the subject of a whistleblower report, the Commission will protect the anonymity of those individuals that utilize the procedures for anonymous submission of information to the Commission. Where an entity responds in good faith to such information, which may include conducting an investigation, reporting the results of such an investigation to the Commission, and taking appropriate corrective action, the entity will receive credit as if it had self-reported the information, and its actions in response to such information will be evaluated, in accordance with the Commission's Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions.

§ 240.21F-17 Anti-Retaliation Provisions of Whistleblower Program

The protections against retaliation provided to whistleblowers by Section 21F(h) of the Exchange Act shall not affect the ability of employers to take non-retaliatory action against employees. The anti-retaliation provisions of Section 21F(h) do not apply if an employment action is taken for any reason other than an individual's status as a whistleblower under these Rules. For example, adverse action taken because of an employee's involvement in wrongdoing does not constitute retaliation, irrespective of whether the employee reported that wrongdoing to the Commission. Likewise, if an employers' code of conduct requires the use of available internal reporting system in the event that an employee becomes aware of potential misconduct, requires truthful cooperation with any investigation of potential misconduct, or prohibits the theft or misuse of company property or information, adverse action against an employee for failure to adhere to

[such requirements does not constitute retaliation, regardless of whether the individual provided information to the Commission.](#)

PART 249 – FORMS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 249 is amended by adding the following citations in numerical order to read as follows:

Authority: 15 U.S.C. 78a, *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

Section 249.1800 is also issued under Pub. L. No. 111.203, §922(a), 124 Stat 1841 (2010).

Section 249.1801 is also issued under Pub. L. No. 111.203, §922(a), 124 Stat 1841 (2010).

Section 249.1802 is also issued under Pub. L. No. 111.203, §922(a), 124 Stat 1841 (2010).

4. Add Subpart S to read as follows:

Subpart S -- Whistleblower Forms

Sec. 249.1800 Form TCR, Tip, Complaint or Referral

Sec. 249.1801 Form WB-DEC, Declaration of Original Information Submitted Pursuant to Section 21F of the Securities Exchange Act of 1934

Sec. 249.1802 Form WB-APP, Application for Award for Original Information Submitted Pursuant to Section 21F of the Securities Exchange Act of 1934.

§ 249.1800 Form TCR, Tip, Complaint or Referral.

This form may be used by anyone wishing to provide the SEC with information concerning a violation of the federal securities laws. The information provided may be disclosed to federal, state, local, or foreign agencies responsible for investigating, prosecuting, enforcing, or implementing the federal securities laws, rules, or regulations consistent with the confidentiality requirements set forth in Section 21F(h)(2) of the Exchange Act, 15 U.S.C. 78u-6(h)(2), and § 240.21F-7 of this chapter.

§ 249.1801 Form WB-DEC, Declaration of Original Information Submitted Pursuant to Section 21F of the Securities Exchange Act of 1934.

This form must be used by persons who provide the SEC with information concerning a violation of the federal securities laws and who wish to be considered for a whistleblower award pursuant to the SEC's whistleblower program. The information provided will enable the Commission to determine your

eligibility for payment of an award pursuant to Section 21F of the Securities Exchange Act of 1934, 15 U.S.C. 78u-6. This information may be disclosed to Federal, state, local, or foreign agencies responsible for investigating, prosecuting, enforcing, or implementing the federal securities laws, rules, or regulations consistent with the confidentiality requirements set forth in Section 21F(h)(2) of the Exchange Act, 15 U.S.C. 78u-6(h)(2), and § 240.21F-7 of this chapter. Furnishing the information is voluntary, but a decision not to do so may result in you not being eligible for award consideration.

§249.1802 Form WB-APP, Application for Award for Original Information Submitted Pursuant to Section 21F of the Securities Exchange Act of 1934.

This form must be used by persons making a claim for a whistleblower award in connection with information provided to the SEC or to another agency in a related action. The information provided will enable the Commission to determine your eligibility for payment of an award pursuant to Section 21F of the Securities Exchange Act of 1934, 15 U.S.C. 78u-6. This information may be disclosed to Federal, state, local, or foreign agencies responsible for investigating, prosecuting, enforcing, or implementing the federal securities laws, rules, or regulations consistent with the confidentiality requirements set forth in Section 21F(h)(2) of the Exchange Act, 15 U.S.C. 78u-6(h)(2) and § 240.21F-7 of this chapter. Furnishing the information is voluntary, but a decision not to do so may result in you not being eligible for award consideration.

Note: The text of these Forms does not, and this amendment will not, appear in the Code of Federal Regulations.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**FORM TCR
TIP, COMPLAINT OR REFERRAL**

A. INFORMATION ABOUT YOU			
1. Last Name		First	M.I.
2. Street Address			Apartment/ Unit #
City	State/ Province	ZIP/ Postal Code	Country
3. Telephone	Alt. Phone	E-mail Address	Preferred method of communication:
4. Your Occupation			
B. ATTORNEY'S INFORMATION (If Applicable - See Instructions)			
1. Attorney's Name			
2. Firm Name			
3. Street Address			
City	State/ Province	ZIP/ Postal Code	Country
4. Telephone	Fax	E-mail Address	
C. TELL US ABOUT THE INDIVIDUAL OR ENTITY YOU HAVE A COMPLAINT AGAINST			
Individual/Entity 1:		If an individual, specify profession:	
1. Type: Individual Entity		If an entity, specify type:	
2. Name			
3. Street Address			Apartment/ Unit #
City	State/ Province	ZIP/ Postal Code	Country
4. Phone	E-mail Address	Internet address	

Individual/Entity 2:		If an individual, specify profession:	
1. Type: Individual Entity		If an entity, specify type:	
2. Name			
3. Street Address			Apartment/ Unit #
City	State/ Province	ZIP/ Postal Code	Country
4. Phone	E-mail Address	Internet Address	
D. TELL US ABOUT YOUR COMPLAINT			
1. Occurrence Date (mm/dd/yyyy): / /		2. Nature of complaint:	
3. Are you complaining about an entity of which you are or were an officer, director, employee, consultant or contractor?			YES ___ NO
3a. Are you a person with legal, compliance, audit, supervisory, or governance responsibilities for the entity about which you are providing information?			YES ___ NO
4a. Have you taken any prior action regarding your complaint?			YES ___ NO
4b. If you answered "yes" to question 4a, please provide details. Use additional sheets if necessary.			
4c. Date on which you took the action(s) described in question 4b (mm/dd/yyyy): / /			
4d. (i) Does the entity that is the subject of the information you are providing have an internal hotline for reporting misconduct? YES ___ NO ___			
(ii) Does the entity's internal reporting system permit anonymous reporting? YES ___ NO ___			
(iii) Does the entity's code of conduct or other policy prohibit retaliation for reporting potential misconduct? YES ___ NO ___			
(iv) Did you report the alleged misconduct internally, using existing reporting procedures? If not, why? If you did report the alleged misconduct internally, what if any response did you receive and/or what if any action did the entity take, to your knowledge?			
5a. Type of security or investment, if relevant			
5b. Name of issuer or security, if relevant		5c. Security/ Ticker Symbol or CUSIP no.	
6. State in detail all facts pertinent to the alleged violation. Explain why you believe the acts described constitute a violation of the federal securities laws. Use additional sheets if necessary.			

7. Describe all supporting materials in your possession and the availability and location of any additional supporting materials not in your possession. Use additional sheets, if necessary.

8. Describe how you obtained the information that supports this claim. If any information was obtained from a public source, identify the source with as much particularity as possible. Attach additional sheets if necessary.

9. Provide any additional information you think may be relevant.

Privacy Act Statement

This notice is given under the Privacy Act of 1974. The Privacy Act requires that the Securities and Exchange Commission (SEC) inform individuals of the following when asking for information. This form may be used by anyone wishing to provide the SEC with information concerning a violation of the federal securities laws. If you are submitting information for the SEC's whistleblower award program pursuant to Section 21F of the Securities Exchange Act of 1934 (Exchange Act), the information provided will enable the Commission to determine your eligibility for payment of an award. The information provided may be disclosed to federal, state, local, or foreign agencies responsible for investigating, prosecuting, enforcing, or implementing the federal securities laws, rules, or regulations consistent with the confidentiality requirements set forth in Section 21F(h)(2) of the Exchange Act and Rule 21F-7 thereunder. If you are submitting information for the SEC's whistleblower award program anonymously, you must be represented by an attorney and you must provide the information requested about your attorney on this form. Otherwise, furnishing the information requested herein is voluntary.

Questions concerning this form may be directed to the SEC Whistleblower Office, 100 F Street, NE, Washington, D.C. 20549-XXXX, Tel. (800) XXX-XXXX, Fax (202) XXX-XXXX

Submission Procedures

- After manually completing this Form TCR, please send it by mail or delivery to the SEC Whistleblower Office, 100 F. Street, NE, Washington, D.C. 20549-XXXX, or by facsimile to (202) XXX-XXXX.
- You have the right to submit information anonymously. If you are submitting anonymously and you want to be considered for a whistleblower award, however, you *must* be represented by an attorney in this matter and Section B of this form must be completed. Otherwise, you may, but are not required, to have an attorney. If you are not represented by an attorney in this matter, you may leave Section B blank.
- **If you are submitting information for the SEC's whistleblower award program, you *must* submit your information either using this Form TCR or electronically through the SEC's**

- **Electronic Data Collection System, available on the SEC web site at [insert link]. In addition to submitting your information by either of these methods, you must also submit a declaration on Form WB-DEC.** The Form WB-DEC can be printed out from our web site or obtained from the SEC Whistleblower Office, and it must be manually signed by you under penalty of perjury. To learn more about this program and its special requirements, please visit the Whistleblower Office's website at [INSERT LINK].

Instructions for Completing Form TCR:

Section A: Information about You

Questions 1-3: Please provide the following information about yourself:

- Last name, first name, and middle initial
- Complete address, including city, state and zip code
- Telephone number and, if available, an alternate number where you can be reached
- Your e-mail address (to facilitate communications, we strongly encourage you to provide your email address), and
- Your preferred method of communication.

Question 4: State which of the following best describes your occupation:

- accountant, attorney, auditor, broker-dealer, compliance officer, financial representative, foreign officer, fund manager, investment advisor, investor, other company officer or senior manager, registered representative, trader, transfer agent, underwriter, government official (federal, state, or local), law enforcement personnel (federal, state, or local), or other (specify).

Section B: Information about Your Attorney. Complete this section only if you are represented by an attorney in this matter. You must be represented by an attorney, and this section must be completed, if you are submitting your information anonymously and you want to be considered for the SEC's whistleblower award program.

Questions 1-4: Provide the following information about the attorney representing you in this matter:

- Attorney's name
- Firm name
- Complete address, including city, state and zip code
- Telephone number and fax number, and
- E-mail address

Section C: Tell Us about the Individual and/or Entity You Have a Complaint Against. If your complaint relates to more than two individuals and/or entities, you may attach additional sheets.

Question 1: Choose one of the following that best describes the individual or entity to which your complaint relates:

- **For Individuals:** accountant, analyst, attorney, auditor, broker, compliance officer, employee, executive officer or director, financial planner, fund manager, investment advisor, stock promoter, trustee, unknown, or other (specify).
- **For Entity:** bank, broker-dealer, clearing agency, day trading firm, exchange, Financial Industry Regulatory Authority, insurance company, investment company, Individual Retirement Account or 401(k) custodian/administrator, market maker, municipal securities dealers, mutual fund, newsletter company/investment publication companies, on-line trading firm, private fund company (including hedge fund, private equity fund, venture capital fund, or real estate fund), private/closely held company, SEC or other federal agency, transfer agent/paying agent/registrar, underwriter, unknown, or other (specify).

Questions 2-4: For each subject, provide the following information, if known:

- Full name
- Complete address, including city, state and zip code
- Telephone number,

- E-mail address, and
- Internet address, if applicable

Section D: Tell Us about Your Complaint

Question 1: State the date (mm/dd/yyyy) that the alleged conduct began.

Question 2: Choose the option that you believe best describes the nature of your complaint. If you are alleging more than one violation, please list all that you believe may apply. Use additional sheets if necessary.

- Theft/misappropriation (advance fee fraud; lost or stolen securities; hacking of account)
- Misrepresentation/omission (false/misleading marketing/sales literature; inaccurate, misleading or non-disclosure by Broker-Dealer, Investment Adviser and Associated Person; false/material misstatements in firm research that were basis of transaction)
- Offering fraud (Ponzi/pyramid scheme; other offering fraud)
- Registration violations (unregistered securities offering)
- Trading (after hours trading; algorithmic trading; front-running; insider trading, manipulation of securities/prices; market timing; inaccurate quotes/pricing information; program trading; short selling; trading suspensions; volatility)
- Fees/mark-ups/commissions (excessive or unnecessary administrative fees; excessive commissions or sales fees; failure to disclose fees; insufficient notice of change in fees; negotiated fee problems; excessive mark-ups/markdowns; excessive or otherwise improper spreads)
- Corporate disclosure/reporting/other issuer matter (audit; corporate governance; conflicts of interest by management; executive compensation; failure to notify shareholders of corporate events; false/misleading financial statements, offering documents, press releases, proxy materials; failure to file reports; financial fraud; Foreign Corrupt Practices Act violations; going private transactions; mergers and acquisitions; restrictive legends, including 144 issues; reverse stock splits; selective

disclosure – Regulation FD, 17 CFR 243; shareholder proposals; stock options for employees; stock splits; tender offers)

- Sales and advisory practices (background information on past violations/integrity; breach of fiduciary duty/responsibility (IA); failure to disclose breakpoints; churning/excessive trading; cold calling; conflict of interest; abuse of authority in discretionary trading; failure to respond to investor; guarantee against loss/promise to buy back shares; high pressure sales techniques; instructions by client not followed; investment objectives not followed; margin; poor investment advice; Regulation E (Electronic Transfer Act); Regulation S-P, 17 CFR 248, (privacy issues); solicitation methods (non-cold calling; seminars); suitability; unauthorized transactions)
- Operational (bond call; bond default; difficulty buying/selling securities; confirmations/statements; proxy materials/prospectus; delivery of funds/proceeds; dividend and interest problems; exchanges/switches of mutual funds with fund family; margin (illegal extension of margin credit, Regulation T restrictions, unauthorized margin transactions); online issues (trading system operation); settlement (including T+1 or T=3 concerns); stock certificates; spam; tax reporting problems; titling securities (difficulty titling ownership); trade execution.
- Customer accounts (abandoned or inactive accounts; account administration and processing; identity theft affecting account; IPOs: problems with IPO allocation or eligibility; inaccurate valuation of Net Asset Value; transfer of account)
- Comments/complaints about SEC, Self-Regulatory Organization, and Securities Investor Protection Corporation processes & programs (arbitration: bias by arbitrators/forum, failure to pay/comply with award, mandatory arbitration requirements, procedural problems or delays; SEC: complaints about enforcement actions, complaints about rulemaking, failure to act; Self-Regulatory Organization: failure to act; Investor Protection: inadequacy of laws or rules; SIPC: customer protection, proceedings and Broker-Dealer liquidations;

- Other (analyst complaints; market maker activities; employer/employee disputes; specify other).

Question 3: Indicate whether you were in the past, or are currently, an officer, director, employee, consultant, or contractor of the entity to which your complaint relates.

Question 4a: Indicate whether you have taken any prior action regarding your complaint, including whether you reported the violation to the entity, including the compliance office, whistleblower hotline or ombudsman; complained to the SEC, another regulator, a law enforcement agency, or any other agency or organization; initiated legal action, mediation or arbitration, or initiated any other action.

Question 4b: If you answered “yes” to question 4a, provide details, including the date on which you took the action(s) described, the name of the person or entity to whom you directed any report or complaint and contact information for the person or entity, if known, and the complete case name, case number, and forum of any legal action you have taken. Use additional sheets if necessary.

Question 5a: Choose from the following the option that you believe best describes the type of security or investment at issue, if applicable:

- 1031 exchanges
- 529 plans
- American Depositary Receipts
- Annuities (equity-indexed annuities, fixed annuities, variable annuities)
- Asset-backed securities
- Auction rate securities
- Banking products (including credit cards)
- Certificates of deposit (CDs)
- Closed-end funds
- Coins and precious metals (gold, silver, etc.)
- Collateralized mortgage obligations (CMOs)
- Commercial paper

- Commodities (currency transactions, futures, stock index options)
- Convertible securities
- Debt (corporate, lower-rated or “junk”, municipal)
- Equities (exchange-traded, foreign, Over-the-Counter, unregistered, linked notes)
- Exchange Traded Funds
- Franchises or business ventures
- Hedge funds
- Insurance contracts (not annuities)
- Money-market funds
- Mortgage-backed securities (mortgages, reverse mortgages)
- Mutual funds
- Options (commodity options, index options)
- Partnerships
- Preferred shares
- Prime bank securities/high yield programs
- Promissory notes
- Real estate (real estate investment trusts (REITs))
- Retirement plans (401(k), IRAs)
- Rights and warrants
- Structured note products
- Subprime issues
- Treasury securities
- U.S. government agency securities
- Unit investment trusts (UIT)
- Viaticals and life settlements
- Wrap accounts
- Separately Managed Accounts (SMAs)
- Unknown

- Other (specify)

- Question 5b: Provide the name of the issuer or security, if applicable.
- Question 5c: Provide the ticker symbol or CUSIP number of the security, if applicable.
- Question 6: State in detail all the facts pertinent to the alleged violation. Explain why you believe the facts described constitute a violation of the federal securities laws. Attach additional sheets if necessary.
- Question 7: Describe all supporting materials in your possession and the availability and location of additional supporting materials not in your possession. Attach additional sheets if necessary.
- Question 8: Describe how you obtained the information that supports your allegation. [In particular, describe whether you learned any of the information you are reporting through any system or procedure maintained by the entity for reporting of potential violations of law, including the compliance officer, internal hotline, or ombudsman or from any person or source, directly or indirectly, with responsibility in or for such system or procedure.](#) If any information was obtained from a public source, identify the source with as much particularity as possible. Attach additional sheets if necessary.
- Question 9: Please provide any additional information you think may be relevant.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM WB-DEC

**DECLARATION OF ORIGINAL INFORMATION SUBMITTED
PURSUANT TO SECTION 21F OF THE SECURITIES EXCHANGE ACT OF 1934**

A. SUBMITTER'S INFORMATION			
1. Last Name		First	M.I.
2. Street Address			Apartment/ Unit #
City	State/ Province	ZIP Code	Country
3. Telephone	Alt. Phone	E-mail Address	
B. ATTORNEY INFORMATION (If Applicable - See Instructions)			
1. Attorney's name			
2. Firm Name			
3. Street Address			
City	State/ Province	ZIP Code	Country
4. Telephone	Fax	E-mail Address	
C. TIP/COMPLAINT DETAILS			
1. Manner in which information was submitted to SEC: SEC website Mail Fax Other			
2a. Tip, Complaint or Referral (TCR) number: (Required if you submitted your information through SEC website)		2b. Date TCR referenced in 2a submitted to SEC / /	
2c. Individual or entity to which Tip, Complaint or Referral relates:			
3a. Has the submitter or counsel had any communication(s) with the SEC concerning this matter?			YES ___ NO ___
3b. If the answer to 3a is "Yes," name of SEC staff member with whom the submitter or counsel communicated			
4a. Has the submitter or counsel provided the information to any other agency or organization?			YES ___ NO ___
4b. If the answer to 4a is "Yes," please provide details. Use additional sheets if necessary			
4c. Name and contact information for point of contact at agency or organization, if known			
D. ELIGIBILITY REQUIREMENTS			
1. Are you, or were you at the time you acquired the original information you submitted to us, a member, officer or employee of the Department of Justice, the Securities and Exchange Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision; the Public Company Accounting Oversight Board; any law enforcement organization; or any national securities exchange, registered securities association, registered clearing agency, the Municipal Securities Rulemaking Board?			
			YES ___ NO ___

2. Are you, or were you at the time you acquired the original information you submitted to us, a member, officer or employee of a foreign government, any political subdivision, department, agency, or instrumentality of a foreign government, or any other foreign financial regulatory authority as that term is defined in Section 3(a)(52) of the Securities Exchange Act of 1934 (15 U.S.C. §78c(a)(52))?		YES	NO
3. Did you obtain the information you are providing to us through the performance of an engagement required under the federal securities laws by an independent public accountant ?		YES	NO
4. Did you provide the information identified in Section C above pursuant to a cooperation agreement with the SEC or another agency or organization?		YES	NO
5. Are you a spouse, parent, child, or sibling of a member or employee of the Commission, or do you reside in the same household as a member or employee of the Commission? YES NO			
6. Did you acquire the information you are providing to us from any person described in questions D1 through D5?		YES	NO
7. If you answered "yes" to any of questions 1 through 6 above, please provide details. Use additional sheets if necessary.			
8a. Did you provide the information identified in Section C above before you (or anyone representing you) received any request, inquiry or demand from the SEC, Congress, or any other federal, state or local authority, or any self regulatory organization, or the Public Company Accounting Oversight Board about a matter to which the information your submission was relevant?		YES	NO
8b. If you answered "no" to question 8a, please provide details. Use additional sheets if necessary.			
9a. Are you currently a subject or target of a criminal investigation, or have you been convicted of a criminal violation, in connection with the information upon which your application for an award is based? YES NO			
9b. If you answered "Yes" to question 9a, please provide details. Use additional sheets if necessary.			
E. DECLARATION			
I declare under penalty of perjury under the laws of the United States that the information contained herein, and all information submitted to the SEC – either in the TCR referenced in Section C of this form or in the Form TCR accompanying this Form WB-DEC - is true, correct and complete to the best of my knowledge, information and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information, my other dealings with the SEC, or my dealings with another authority in connection with a related action, I knowingly and willfully make any false, fictitious, or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry.			
Signature		Date	
F. COUNSEL CERTIFICATION			
I certify that I have verified the identity of the whistleblower who completed Form WB-DEC in connection with the information referenced in Section C of this form by viewing the whistleblower's valid, unexpired government issued identification (e.g., driver's license, passport), that I have reviewed the whistleblower's Form WB-DEC for completeness and accuracy, and that I will retain an original, signed copy of the Form WB-DEC completed by the whistleblower in my records.			
Signature		Date	

Privacy Act Statement

This notice is given under the Privacy Act of 1974. The Privacy Act requires that the Securities and Exchange Commission (SEC) inform individuals of the following when asking for information. The information provided will enable the Commission to determine your eligibility for payment of an award pursuant to Section 21F of the Securities Exchange Act of 1934. This information may be disclosed to Federal, state, local, or foreign agencies responsible for investigating, prosecuting, enforcing, or implementing the federal securities laws, rules, or regulations consistent with the confidentiality requirements set forth in Section 21F(h)(2) of the Exchange Act and 21F-7 of this chapter. Furnishing the information is voluntary, but a decision not to do so may result in you not being eligible for award consideration.

Questions concerning this form may be directed to the SEC Whistleblower Office, 100 F Street, NE, Washington, D.C. 20549-XXXX, Tel. (800) XXX-XXXX, Fax (202) XXX-XXXX.

General Information

- Submitting information for the SEC's whistleblower award program is a two-step process. First, you must provide us with your information, which you may do in either of two ways. You may submit information electronically through the SEC's Electronic Data Collection System available on the SEC web site at [insert link]. Utilizing the SEC's online database is quick and easy and will enable you to print and retain a date and time-stamped confirmation of the information you provided to us. If you prefer, you may complete Form TCR ("Tip, Complaint, or Referral") manually, and mail or deliver it to us in hard copy following the instructions set forth on the form.
- **Submitting your information to us is the first step. If you want to be considered for a whistleblower award, you must also submit this Form WB-DEC and it must be manually signed under penalty of perjury.**
- ***If you submitted your information electronically through our web site, we must receive your completed Form WB-DEC within 30 days of your submission. If you did not submit your information electronically but instead are submitting your information on Form TCR, you must submit your declaration on Form WB-DEC at the same time that you submit your Form TCR.*** Follow the instructions set forth below for submitting this Form WB-DEC.

- If you follow these steps, and the information you submit leads to the successful enforcement of an SEC judicial or administrative action, or a related action, you will have an opportunity at a later date to submit a claim for an award. That is a separate process and is described in our whistleblower rules, which are available at [insert link for WBO website].
- You have the right to submit information anonymously. If you are doing so, please skip Part I of these instructions and proceed directly to Part II. Otherwise, please begin by following the instructions in Part I.

Part I: Instructions for filers who are disclosing their identity

- You are required to complete Sections A, C, D, and E of this form. If you are represented by an attorney in this matter, you must also complete Section B. Specific instructions for answering these questions can be found in Part IV below.
- If you previously submitted your complaint electronically through the SEC's web site, you may submit this Form WB-DEC to us in any of the following ways:
 - o By mailing or delivering the signed form to the SEC Whistleblower Office, 100 F Street NE, Washington, D.C. 20549-XXXX; or
 - o By faxing the signed form to (202) XXX-XXXX; or
 - o By scanning and emailing the form in PDF format to [insert email address].

Please note that we must receive your Form WB-DEC within thirty (30) days of when you submitted your information to us through our web site.

- If you did *not* previously submit your complaint electronically through the SEC's web site, but instead intend to send us a Form TCR, then you must submit your completed Form TCR and your declaration on this Form WB-DEC together. You may do so in one of two ways:

- By mailing or delivering the form TCR and the signed form WB-DEC to the SEC Whistleblower Office, 100 F Street NE, Washington, D.C. 20549-XXXX; or
- By faxing the form TCR and the signed form WB-DEC form to (202) XXX-XXXX.

Part II: Instructions for anonymous filers

- If you are submitting information anonymously, you *must* be represented by an attorney in this matter.
- If you previously submitted your complaint anonymously through the SEC's web site, make sure your attorney knows this.
- If you or your attorney did *not* previously submit your complaint electronically through the SEC's web site, but instead sent a Form TCR to us, then complete your Form TCR and give it to your attorney.
- You are also required to complete Sections B, C, D, and E of this form, and give the signed original to your attorney. Specific instructions for answering these questions can be found in Part IV below.
- In order for you to be eligible for a whistleblower award, your attorney must retain your signed original of Form WB-DEC in his or her records, and submit both your Form TCR (if you filled one out instead of submitting your complaint to us electronically) and an attorney declaration to us. You are encouraged to confirm that your attorney followed these steps.

Part III: Instructions for attorneys representing anonymous whistleblowers

- Obtain a completed and signed original of Form WB-DEC from your client. You must retain this signed original in your records because it may be required at a later date if your client files a claim for a whistleblower award.
- You must prepare your own Form WB-DEC, completing only Sections B, C and F. Specific instructions for answering these questions can be found in Part IV below.
- If your client previously submitted his or her complaint electronically through the SEC's web site, you may submit your attorney Form WB-DEC to us in any of the following ways:
 - By mailing or delivering the signed form to the SEC Whistleblower Office, 100 F Street NE, Washington, D.C. 20549-XXXX; or
 - By faxing the signed form to (202) XXX-XXXX; or
 - By scanning and emailing the form in PDF format to [insert email address].

Please note that we must receive your Form WB-DEC within thirty (30) days of when your client submitted the information to us through our web site.

- If your client did *not* previously submit his or her complaint electronically through the SEC's web site, but instead intends to submit a Form TCR to us, then you must submit your client's complaint on Form TCR and your attorney declaration on this Form WB-DEC together. You may do so in one of two ways:
 - By mailing or delivering the Form TCR and the signed Form WB-DEC to the SEC Whistleblower Office, 100 F Street NE, Washington, D.C. 20549-XXXX; or
 - By faxing the Form TCR and the signed Form WB-DEC to (202) XXX-XXXX.

Part IV: Instructions for Completing Form WB-DEC:

Section A: Submitter's Information

Questions 1-3: Provide the following information about yourself:

- First and last name, and middle initial
- Complete address, including city, state and zip code
- Telephone number and, if available, an alternate number where you can be reached
- E-mail address

Section B: Information about Your Attorney. Complete this section only if you are represented by an attorney in this matter. You must be represented by an attorney, and this section must be completed, if you submitted your information anonymously.

Questions 1-4: Provide the following information about the attorney representing you in this matter:

- Attorney's name
- Firm name
- Complete address, including city, state and zip code
- Telephone number and fax number, and

- E-mail address

Section C: Tip/Complaint Details

- Question 1: Indicate the manner in which the information was submitted to the SEC.
- Question 2a: Include the TCR (Tip, Complaint or Referral) number, if available. **THE TCR NUMBER MUST BE INCLUDED ON FORM WB-DEC IN CASES WHERE THE ORIGINAL INFORMATION WAS SUBMITTED THROUGH THE SEC WEBSITE**
- Question 2b: Provide the date on which the TCR referenced in 2a was submitted to the SEC.
- Question 2c: Provide the name of the individual or entity to which your complaint relates.
- Question 3a: Indicate whether the submitter or counsel have had any communication(s) with the SEC concerning this manner.
- Question 3b: If you answered “yes” to question 3a, provide the name of the SEC staff member with whom the submitter or counsel communicated.
- Question 4a: Indicate whether the submitter or counsel have provided the information being submitted to the SEC to any other agency or organization.
- Question 4b: If you answered “yes” to question 4a, provide details, including the name of the agency or organization, the date on which you provided your information to the agency or organization and any other relevant details.
- Question 4c: Provide a name and contact information for your point of contact at the other agency or organization, if known.

Section D: Eligibility Requirements

- Question 1: State whether you are currently, or were at the time you acquired the original information that you submitted to the SEC a member, officer, or employee of the Department of Justice; the Securities and Exchange Commission; the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision; the Public Company Accounting Oversight Board; any law enforcement organization; or any national securities exchange, registered securities association, registered clearing agency, the Municipal Securities Rulemaking Board

- Question 2: State whether you are, or were you at the time you acquired the original information you submitted to the SEC, a member, officer or employee of a foreign government, any political subdivision, department, agency, or instrumentality of a foreign government, or any other foreign financial regulatory authority as that term is defined in Section 3(a)(52) of the Securities Exchange Act of 1934.
- Section 3(a)(52) of the Exchange Act (15 U.S.C. §78c(a)(52)) currently defines “foreign financial regulatory authority” as “any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate participation of its members in activities listed above.”
- Question 3: Indicate whether you acquired the information you provided to the SEC through the performance of an engagement required under the securities laws by an independent public accountant.
- Question 4: State whether you provided the information submitted to the SEC pursuant to a cooperation agreement with the SEC or with any other agency or organization.
- Question 5: State whether you are a spouse, parent, child or sibling of a member or employee of the Commission, or whether you reside in the same household as a member or employee of the Commission.
- Question 6: State whether you acquired the information you are providing to the SEC from any individual described in Question 1 through 5 of this Section.
- Question 7: If you answered “yes” to questions 1 through 6, please provide details.
- Question 8a: State whether you provided the information identified submitted to the SEC before you (or anyone representing you) received any request, inquiry or demand from the SEC,

Congress, or any other federal, state or local authority, or any self regulatory organization, or the Public Company Accounting Oversight Board about a matter to which the information your submission was relevant.

Question 8b: If you answered “no” to questions 8a, please provide details. Use additional sheets if necessary.

Question 9a: State whether you are the subject or target of a criminal investigation or have been convicted of a criminal violation in connection with the information upon which your application for award is based.

Question 9b: If you answered “yes” to question 7a, please provide details, including the name of the agency or organization that conducted the investigation or initiated the action against you, the name and telephone number of your point of contact at the agency or organization, if available and the investigation/case name and number, if applicable. Use additional sheets, if necessary.

Section E: Declaration

To be completed and signed by person submitting the information

Section F: Counsel Certification

To be completed and signed by attorney for an anonymous person submitting information

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**FORM WB-APP
APPLICATION FOR AWARD FOR ORIGINAL INFORMATION SUBMITTED
PURSUANT TO SECTION 21F OF THE SECURITIES EXCHANGE ACT OF 1934**

A. APPLICANT'S INFORMATION (REQUIRED FOR ALL SUBMISSIONS)				
1. Last Name		First	M.I.	Social Security No.
2. Street Address				Apartment/ Unit #
City	State/ Province	ZIP Code		Country
3. Telephone	Alt. Phone	E-mail Address		
B. ATTORNEY'S INFORMATION (IF APPLICABLE – SEE INSTRUCTIONS)				
1. Attorney's name				
2. Firm Name				
3. Street Address				
City	State/ Province	ZIP Code		Country
4. Telephone	Fax	E-mail Address		
C. TIP/COMPLAINT DETAILS				
1. Manner in which original information was submitted to SEC:		SEC website Mail Fax Other		
2a. Tip, Complaint or Referral number		2b. Date TCR referred to in 2a submitted to SEC / /		
2c. Subject(s) of the Tip, Complaint or Referral:				
D. NOTICE OF COVERED ACTION				
1. Date of Notice of Covered Action to which claim relates: / /			2. Notice Number:	
3a. Case Name			3b. Case Number	
E. CLAIMS PERTAINING TO RELATED ACTIONS				
1. Name of agency or organization to which you provided your information				
2. Name and contact information for point of contact at agency or organization, if known.				
3a. Date you provided your information / /			3b. Date action filed by agency/organization / /	
4a. Case Name			4b. Case number	
F. ELIGIBILITY REQUIREMENTS				
1. Are you, or were you at the time you acquired the original information you submitted to us, a member, officer or employee of the Department of Justice, the Securities and Exchange Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision; the Public Company Accounting Oversight Board; any law enforcement organization; or any national securities exchange, registered securities association, registered clearing agency, the Municipal Securities Rulemaking Board?				
YES NO				

2. Are you, or were you at the time you acquired the original information you submitted to us, a member, officer or employee of a foreign government, any political subdivision, department, agency, or instrumentality of a foreign government, or any other foreign financial regulatory authority as that term is defined in Section 3(a)(52) of the Securities Exchange Act of 1934 (15 U.S.C. §78c(a)(52))?	YES ☐ NO ☐
3. Did you obtain the information you are providing to us through the performance of an engagement required under the federal securities laws by an independent public accountant?	YES ☐ NO ☐
4. Did you provide the information identified in Section C above pursuant to a cooperation agreement with the SEC or another agency or organization?	YES ☐ NO ☐
5. Are you a spouse, parent, child, or sibling of a member or employee of the Commission, or do you reside in the same household as a member or employee of the Commission?	YES ☐ NO ☐
6. Did you acquire the information you are providing to us from any person described in questions F1 through F5?	YES ☐ NO ☐
7. If you answered "yes" to any of questions 1 through 6 above, please provide details. Use additional sheets if necessary.	
8a. Did you provide the information identified in Section C above before you (or anyone representing you) received any request, inquiry or demand from the SEC, Congress, or any other federal, state or local authority, or any self regulatory organization, or the Public Company Accounting Oversight Board about a matter to which the information your submission was relevant?	
YES ☐ NO ☐	
8b. If you answered "yes" to question 8a, please provide details. Use additional sheets if necessary.	
9a. Are you currently a subject or target of a criminal investigation, or have you been convicted of a criminal violation, in connection with the information upon which your application for an award is based? YES NO	
9b. If you answered "Yes" to question 9a, please provide details. Use additional sheets if necessary.	
G. ENTITLEMENT TO AWARD	
Explain the basis for your belief that you are entitled to an award in connection with your submission of information to us, or to another agency in a related action. Provide any additional information you think may be relevant in light of the criteria for determining the amount of an award set forth in Rule 21F-6 under the Securities Exchange Act of 1934. Include any supporting documents in your possession or control, and attach additional sheets, if necessary.	
H. DECLARATION	
I declare under penalty of perjury under the laws of the United States that the information contained herein is true, correct and complete to the best of my knowledge, information and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information, my other dealings with the SEC, or my dealings with another authority in connection with a related action, I knowingly and willfully make any false, fictitious, or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry.	
Signature	Date

Privacy Act Statement

This notice is given under the Privacy Act of 1974. The Privacy Act requires that the Securities and Exchange Commission (SEC) inform individuals of the following when asking for information. The information provided will enable the Commission to determine your eligibility for payment of an award pursuant to Section 21F of the Securities Exchange Act of 1934. This information may be disclosed to Federal, state, local, or foreign agencies responsible for investigating, prosecuting, enforcing, or implementing the federal securities laws, rules, or regulations consistent with the confidentiality requirements set forth in Section 21F(h)(2) of the Exchange Act and Rule 21F-7 thereunder. Furnishing the information is voluntary, but a decision not to do so may result in you not being eligible for award consideration.

Questions concerning this form may be directed to the SEC Whistleblower Office, 100 F Street, NE, Washington, D.C. 20549-XXXX, Tel. (800) XXX-XXXX, Fax (202) XXX-XXXX.

General

- This form should be used by persons making a claim for a whistleblower award in connection with information provided to the SEC or to another agency in a related action. In order to be deemed eligible for an award, you must meet all the requirements set forth in Section 21F of the Securities Exchange Act of 1934 and the rules thereunder.
- You must sign the Form WB-APP as the claimant. If you provided your information to the SEC anonymously, you must now disclose your identity on this form and your identity must be verified in a form and manner that is acceptable to the Whistleblower Office prior to the payment of any award.
 - o If you are filing your claim in connection with information that you provided to the SEC, then your Form WB-APP, and any attachments thereto, **must be received by the SEC Whistleblower Office within sixty (60) days of the date of the Notice of Covered Action to which the claim relates.**
 - o If you are filing your claim in connection with information you provided to another agency in a related action, then your Form WB-APP, and any attachments there to, must be received by the SEC Whistleblower Office as follows:

- If a final order imposing monetary sanctions has been entered in a related action at the time you submit your claim for an award in connection with a Commission action, **you must submit your claim for an award in that related action on the same Form WB-APP that you use for the Commission action.**
- If a final order imposing monetary sanctions in a related action has not been entered at the time you submit your claim for an award in connection with a Commission action, **you must submit your claim on Form WB-APP within sixty (60) days of the issuance of a final order imposing sanctions in the related action.**
- You must submit your Form WB-APP to us in one of the following two ways:
 - o By mailing or delivering the signed form to the SEC Whistleblower Office, 100 F Street NE, Washington, D.C. 20549-XXXX; or
 - o By faxing the signed form to (202) XXX-XXXX.

Instructions for Completing Form WB-APP

Section A: Applicant's Information

Questions 1-3: Provide the following information about yourself:

- First and last name, and middle initial
- Complete address, including city, state and zip code
- Telephone number and, if available, an alternate number where you can be reached
- E-mail address

Section B: Attorney's Information. If you are represented by an attorney in this matter, provide the information requested. If you are not representing an attorney in this matter, leave this Section blank.

Questions 1-4: Provide the following information about the attorney representing you in this matter:

- Attorney's name
- Firm name
- Complete address, including city, state and zip code
- Telephone number and fax number, and
- E-mail address.

Section C: Tip/Complaint Details

Question 1: Indicate the manner in which your original information was submitted to the SEC.

Question 2a: Include the TCR (Tip, Complaint or Referral) number to which this claim relates.

Question 2b: Provide the date on which you submitted your information to the SEC.

Question 2c: Provide the name of the individual(s) or entity(s) to which your complaint related.

Section D: Notice of Covered Action

The process for making a claim for a whistleblower award begins with the publication of a "Notice of a Covered Action" on the Commission's website. This notice is published whenever a judicial or administrative action brought by the Commission results in the imposition of monetary sanctions exceeding \$1,000,000. The Notice is published on the Commission's website subsequent to the entry of a final judgment or order in the action that by itself, or collectively with other judgments or orders previously entered in the action, exceeds the \$1,000,000 threshold.

Question 1: Provide the date of the Notice of Covered Action to which this claim relates.

Question 2: Provide the notice number of the Notice of Covered Action.

Question 3a: Provide the case name referenced in Notice of Covered Action.

Question 3b: Provide the case number referenced in Notice of Covered Action.

Section E: Claims Pertaining to Related Actions

Question 1: Provide the name of the agency or organization to which you provided your information.

Question 2: Provide the name and contact information for your point of contact at the agency or organization, if known.

Question 3a: Provide the date on which that you provided your information to the agency or organization referenced in question E1.

Question 3b: Provide the date on which the agency or organization referenced in question E1 filed the related action that was based upon the information you provided.

Question 4a: Provide the case name of the related action.

Question 4b: Provide the case number of the related action.

- Section 3(a)(52) of the Exchange Act (15 U.S.C. §78c(a)(52)) currently defines “foreign financial regulatory authority” as “any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate participation of its members in activities listed above.”

Question 3: Indicate whether you acquired the information you provided to the SEC through the performance of an engagement required under the securities laws by an independent public accountant.

Question 4: State whether you provided the information submitted to the SEC pursuant to a cooperation agreement with the SEC or with any other agency or organization.

Question 5: State whether you are a spouse, parent, child or sibling of a member or employee of the Commission, or whether you reside in the same household as a member or employee of the Commission.

- Question 6: State whether you acquired the information you are providing to the SEC from any individual described in Question 1 through 5 of this Section.
- Question 7: If you answered “yes” to questions 1 through 6, please provide details.
- Question 8a: State whether you provided the information identified submitted to the SEC before you (or anyone representing you) received any request, inquiry or demand from the SEC, Congress, or any other federal, state or local authority, or any self regulatory organization, or the Public Company Accounting Oversight Board about a matter to which the information your submission was relevant.
- Question 8b: If you answered “no” to questions 8a, please provide details. Use additional sheets if necessary.
- Question 9a: State whether you are the subject or target of a criminal investigation or have been convicted of a criminal violation in connection with the information upon which your application for award is based.
- Question 9b: If you answered “yes” to question 9a, please provide details, including the name of the agency or organization that conducted the investigation or initiated the action against you, the name and telephone number of your point of contact at the agency or organization, if available and the investigation/case name and number, if applicable. Use additional sheets, if necessary. If you previously provided this information on Form WB-DEC, you may leave this question blank, unless your response has changed since the time you submitted your Form WB-DEC.

Section G: Entitlement to Award

Use this section to explain the basis for your belief that you are entitled to an award in connection with your submission of information to us or to another agency in connection with a related action. Specifically address how you believe you voluntarily provided the Commission with original information that led to the successful enforcement of a judicial or administrative action filed by the Commission, or a related action. Refer to Rules 21F-3 and 21F-4 under the Exchange Act for

further information concerning the relevant award criteria. You may attach additional sheets, if necessary.

Rule 21F-6 under the Exchange Act provides that in determining the amount of an award, the Commission will evaluate the following factors: (a) the significance of the information provided by a whistleblower to the success of the Commission action or related action; (b) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the Commission action or related action; (c) the programmatic interest of the Commission in deterring violations of the securities laws by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws; and (d) whether the award otherwise enhances the Commission's ability to enforce the federal securities laws, protect investors, and encourage the submission of high quality information from whistleblowers. Address these factors in your response as well. Additional information about the criteria the Commission may consider in determining the amount of an award is available on the Commission's website at [insert WBO web page address]

Section G: Declaration

This section must be signed by the claimant.

