

Proposed Changes to Whistleblower Program Rules



The SEC is proposing two amendments to Exchange Act Rules 21F-3 and 6, the rules governing its whistleblower program:

- The first proposed amendment addresses instances when a whistleblower from the SEC's program receives an award from another, non-SEC, whistleblower program.
- The second affirms the Commission's authority to consider the dollar amount of a potential award for the limited purpose of increasing an award, but not to lower an award.

Why This Matters

Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act added Section 21F to the Securities Exchange Act of 1934, establishing the Commission's whistleblower program. Among other things, Section 21 authorizes the SEC to make monetary awards to eligible individuals who voluntarily provide original information that leads to successful SEC enforcement actions resulting in monetary sanctions exceeding \$1 million and certain successful related actions. Awards must be made in an amount equal to 10-30 percent of the monetary sanctions collected. Since the program's inception, the Commission has ordered more than \$1.2 billion to 245 individuals, whose information and cooperation assisted the Commission in bringing successful enforcement actions.

How This Rule Applies

Related Action Claims Covered by Another Whistleblower Program:

- Under Exchange Act Section 21F(b) and Rule 21F-11, a whistleblower who obtains an award based on a Commission covered action also may be eligible for an award based on monetary sanctions that are collected in an action brought by other statutorily-identified authorities.
- The proposing rule would allow the Commission to make an award for a related action that might otherwise be covered by an alternative whistleblower program even where the alternative whistleblower program has the more direct or relevant connection to the related action in certain circumstances. The proposing rule offers multiple potential approaches:
 - **Comparability:** Under this approach, if a claimant files a related-action award application, and the alternative award program is not comparable to the Commission's program, because the statutory award range is more

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limited, awards are subject to an award cap, or the other award program is discretionary and not mandatory, the Commission would treat the non-Commission action as “related” for purposes of the Commission’s award program, regardless of whether the alternative award program has a more direct or relevant connection to the action. The Commission also would make an award on a potential related action without regard to which program had the more direct and relevant connection to the action if the maximum award that the Commission could pay on the action would not exceed \$5 million.

- **Whistleblower Choice:** The proposed release offers an alternative option that would allow a meritorious whistleblower to decide whether to receive a related-action award from the Commission or the authority administering the other award program. The whistleblower would not be required to select which program to receive the award from until both programs had determined the award amount they would pay.
- **Offset Approach:** The Commission would determine the award percentage it would pay on the related action but offset from the Commission’s total award payment by the dollar amount the whistleblower received for the related action from the other award program.
- **Topping Off Approach:** The Commission would have the discretion to increase the award on the SEC covered action (up to 30 percent) if the Commission concludes that the other whistleblower program’s award for the related action was inadequate for any reason.
- Under the Comparability or Whistleblower Choice approach, the whistleblower would be required to make an irrevocable waiver of any claim to an award from the other whistleblower award program.

Discretion to Consider the Dollar Amount of the Award:

- In 2020, amendments added language to Rule 21F-6 stating that the Commission has discretion to consider the dollar amount of a potential award when making an award determination.
- The proposed changes would affirm the Commission’s authority to consider the dollar amount of a potential award for the limited purpose of increasing the award amount, but would eliminate the Commission’s authority to consider the dollar amount of a potential award for the purpose of decreasing an award.

Additional Information:

The public comment period will remain open for 60 days following publication of the proposing release on the SEC’s website or 30 days following publication of the proposing release in the Federal Register, whichever period is longer.