

# **SECURITIES AND EXCHANGE COMMISSION**

## **17 CFR Part 200**

**[Release No. 34-64778]**

### **Delegation of Authority to the Director of its Division of Enforcement**

**Agency:** Securities and Exchange Commission.

**Action:** Final rule.

**SUMMARY:** The Commission is amending its rules to delegate authority to the Director of the Division of Enforcement to disclose information that could reasonably be expected to reveal the identity of a whistleblower (“whistleblower identifying information”) to those persons to whom disclosure may be made without loss of confidentiality under the whistleblower provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”).

**EFFECTIVE DATE:** July 7, 2011.

**FOR FURTHER INFORMATION CONTACT:** Kenneth H. Hall, Assistant Chief Counsel, 202 551-4936, Office of Chief Counsel, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-6553.

#### **SUPPLEMENTARY INFORMATION:**

Section 922 of the Dodd-Frank Act, Pub. L. No 111-203, 124 Stat. 1376, 1841 (2010), added Section 21F to the Securities Exchange Act of 1934, 15 U.S.C. 78u-6, which creates a new program authorizing the Commission to make monetary awards to whistleblowers who provide the Commission with “original information” that leads to the successful enforcement of a “covered judicial or administrative action” or a “related action,” as those terms are defined in Section 21F(a), 15 U.S.C. 78u-6(a). Awards may be paid in connection with original information concerning any violation of the federal securities laws, and may range from 10 to 30 percent of the amounts collected as monetary sanctions imposed in the covered judicial or

administrative action brought by the Commission or in related actions brought by other entities identified in the statute.

To protect the identity of whistleblowers, Section 21F(h)(2)(A), 15 U.S.C. 78u-6(h)(2)(A) provides that, except as otherwise permitted by that subsection, the Commission “shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower.” Such information may be disclosed by the Commission under Section 21F(h)(2)(A) to those entities identified in Section 21F(h)(2)(D)(i), 15 U.S.C. 78u-6(h)(2)(D)(i), “when necessary to accomplish the purposes of [the Securities Exchange Act] and to protect investors.” Otherwise, such information may be disclosed by the Commission only in accordance with the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, “unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or any entity described in [Section 21F(h)(2)(D)(i)].”

Whistleblower identifying information may be disclosed by the Commission to the following entities listed in Section 21F(h)(2)(D)(i): the Attorney General of the United States; an appropriate regulatory authority; a self-regulatory organization; a State attorney general in connection with any criminal investigation; any appropriate State regulatory authority; the Public Company Accounting Oversight Board; a foreign securities authority; or a foreign law enforcement authority. Domestic entities to which the Commission discloses such information “shall maintain such information as confidential in accordance with the requirements established under [Section 21F(h)(2)(A)].” Section 21F(h)(2)(D)(ii)(I), 15 U.S.C. 78u-6(h)(2)(D)(ii)(I). Foreign securities authorities and foreign law enforcement authorities to which the Commission discloses such information “shall maintain such information in accordance with such assurances

of confidentiality as the Commission determines appropriate.” Section 21F(h)(2)(D)(ii)(II), 15 U.S.C. 78u-6(h)(2)(D)(ii)(II).

The Commission is delegating authority to the Director of the Division of Enforcement to disclose whistleblower identifying information to the entities described in Section 21F(h)(2)(D), in accordance with the restrictions of Section 21F(h)(2)(A) and (D). The delegation will increase investor protection by facilitating administration of the whistleblower award program and the investigations and actions by those agencies and authorities that may receive whistleblower identifying information pursuant to this delegation.

Administrative Law Matters:

The Commission finds, in accordance with the Administrative Procedure Act (“APA”) (5 U.S.C. 553(b)(3)(A)), that this amendment relates solely to agency organization, procedure, or practice and does not relate to a substantive rule. Accordingly, the provisions of the APA regarding notice of the proposed rulemaking, opportunities for public participation, and publication of the amendment prior to its effective date, 5 U.S.C. 553, are not applicable. For the same reason, and because this amendment does not substantively affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(3)(C), are not applicable. Additionally, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or other law, 5 U.S.C. 603, are not applicable. Further, because the amendment imposes no new burdens on parties in investigations, the Commission does not believe it will have any anti-competitive effects for purposes of Section 23(a)(2) of the Securities Exchange Act, 15 U.S.C. 78w(a)(2). Finally, this amendment does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. Accordingly, the amendment is effective [Insert date of publication in the Federal Register].

**List of Subjects in 17 CFR Part 200**

Administrative practice and procedure, Authority delegations (Government agencies).

**Text of Amendment**

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

**PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS**

1. The authority citation for part 200, subpart A, continues to read in part as follows:

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 80a-37, 80b-11, and 7202, unless otherwise noted.

\* \* \* \* \*

2. Section 200.30-4 is amended by adding paragraph (a)(16) to read as follows:

**§ 200.30-4 Delegation of authority to Director of Division of Enforcement.**

\* \* \* \* \*

(a) \* \* \*

(16) To disclose information, in accordance with Section 21F(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-6(h)(2)), that would reveal, or could reasonably be expected to reveal, the identity of a whistleblower.

\* \* \* \* \*

By the Commission

Elizabeth M. Murphy  
Secretary

Dated: June 30, 2011