

NATIONAL WHISTLEBLOWER CENTER
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October 3rd, 2019

Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090
rule-comments@sec.gov

Re: File Number S7-16-18

Dear Chairman Clayton and Members of the Commission:

Thank you for the opportunity to comment on the Securities and Exchange Commission (SEC) proposed rule changes regarding the whistleblower provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. We are writing today to comment specifically on the proposed amendments to Rule 21F-6 and Rule 21F-9(e).

Rule 21F-6 would disincentivize whistleblowers from coming forward by placing an arbitrary limit on potential awards, regardless of the size of the fraud reported. As we noted in our December 14th, 2018 comment, whistleblower laws that have capped rewards have universally failed. This is why Congress has repeatedly rejected such limits: it recognizes that they discourage whistleblowers from bringing forward major fraud cases. It is critical that whistleblower rewards are based on the quality of the information and its contribution to a successful prosecution.

Rule 21F-9(e) would create an unrealistic reporting procedure that bars whistleblowers from recovery simply because they informed the SEC of fraud prior to filing a formal complaint (TCR). To do so would undermine the intention of the Dodd-Frank Act, which aims to motivate those who know of violations to tell the SEC. Furthermore, history proves that this type of rule does not work. As the law firm of Kohn, Kohn, & Colapinto noted in a September 12th comment, this rule change bears a remarkable similarity to a since-overturned provision in the 1943 amendment to the False Claims Act (FCA).

From 1943 to 1986, most whistleblower *qui tam* cases under the FCA were dismissed due to a provision that barred whistleblowers from receiving rewards if the government knew of their allegations prior to the filing of a formal FCA lawsuit—even if the whistleblower was the source of the government’s knowledge. Congress amended the False Claims Act in 1986 to fix a number of problems created by the 1943 amendments, particularly this provision. It was clear to Congress that such a rule was in opposition to the core purpose of the FCA. The same is true of Rule 21F-9(e): if enacted, it would directly contravene the purpose of Dodd-Frank.

Whistleblowers have helped the SEC recover over \$1.7 billion in sanctions from wrongdoers over the past decade. It is critical not to undermine the success of one of the best whistleblower programs in the country as well as one of the most effective checks on corporate fraud. I urge you to reconsider these proposed amendments to ensure that your robust whistleblower program continues.

Thank you again for your consideration. Please feel free to contact us at your convenience by email at info@whistleblowers.org or by phone at 202-342-1903.

Sincerely,

A handwritten signature in black ink, appearing to read "John Kostyack". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke at the end.

John Kostyack
Executive Director
National Whistleblower Center