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October 16, 2019

URGENT MATTER

Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
chairmanoffice@sec.gov

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

**Re: FOURTH SUPPLEMENTAL COMMENT: PROPOSED RULE 21F-9(e)
File Number S7-16-18**

Update: The Commission's Current Practice of Welcoming Complaints Outside of the Formal TCR Process Should be Continued and Whistleblowers Who Use these Authorized Channels Should Not be Barred from Filing under the Dodd-Frank Act Whistleblower Law.

Congress did not intend for the Dodd-Frank Act whistleblower reward program to *limit* the ways persons can alert the Commission to violations.

Dear Chairman Clayton and Secretary Countryman:

We are writing to further comment on the Securities and Exchange Commission's ("SEC" or "Commission") proposed amendment to Rule 21F-9(e) (hereinafter "Proposed Rule 9(e)" or "the proposed rule").¹ Given the devastating impact Proposed Rule 9(e) will have on the SEC's program, we wanted to address one of the defenses used to justify this proposal.

¹ See Whistleblower Program Rules, 83 Fed. Reg. 34,702 at 723-24, 750 (July 20, 2018), <https://www.govinfo.gov/content/pkg/FR-2018-07-20/pdf/2018-14411.pdf>. This letter is submitted for the official record and constitutes a formal supplemental comment to our initial comment filed on July 24, 2018. In regard to Proposed Rule 9(e) we filed three prior letters on this matter. See Letters from Kohn, Kohn & Colapinto, LLP dated [May 6, 2019](#); [September 12, 2019](#); and [October 8, 2019](#).

We understand that one argument used to justify Proposed Rule 9(e) is the belief that Commission staff will be in a position to alert would-be whistleblowers to the requirement to pre-file a TCR application prior to providing the Commission with any original information that could be used as a basis for a successful enforcement action. Although we appreciate that some members of the Commission will follow this practice, it is clear from a brief review of the current SEC website and our history of working with whistleblowers over the years, that this solution will not work and will result in hardships in numerous otherwise valid whistleblower cases.

Currently the SEC invites potential whistleblowers to alert the Commission about various violations by numerous methods, many of which are not associated with filing a TCR application. It would be unrealistic, counter-productive and counter to the mission of the SEC, to try to eliminate all of the alternative methods for “first filing” original information with the Commission regarding potential securities frauds. As explained below, currently there are numerous alternative methods for which potential whistleblowers can provide the SEC with original information regarding frauds, and these avenues, among others, should remain open.

The enclosure to our October 8, 2019 letter, [linked here](#), sets forth examples of current SEC online programs that encourage or permit potential whistleblowers to file original information with the Commission that could result in their disqualification for a reward under the proposed rule.² For your convenience two of those methods are also attached to this letter as Exhibits 1 and 2.

For example, Exhibit 1 to this letter are screenshots of an official on-line form taken on October 1, 2019 from the SEC’s website.³ This form, entitled “Investor Complaint Form,” asks would-be whistleblowers to provide information to the Commission about investment violations that could constitute serious securities violations. The Form asks many of the same questions as the Form TCR, including specific information such as the “Firm name” and the name of any “Broker” or “Advisor” that the potential whistleblower has a “complaint against.” The Form asks for specific information about the securities at issue, and asks the potential whistleblower to “describe your complaint, in as much detail as possible.” Like the Form TCR, the Investor Complaint Form asks about documents the potential whistleblower may have and asks “What Action” the potential whistleblower has taken, including internal complaints or complaints to “other regulators.”

There is no mention of the whistleblower reward program on this form, and no reference to the requirement to file a TCR form if the individual filing the “SEC Investor Complaint Form” ever wanted to qualify for a reward. Also, there is no warning that filing the Investor Complaint Form prior to filing a TCR would result in being disqualified from the Dodd-Frank Act’s mandatory reward law.

Exhibit 2 is a screenshot of the “Ombudsman Matter Management System (OMMS) Submission Form.”⁴ Like the Investor Complaint Form, these pages are a screenshot of the OMMS Submission Form that was published on the SEC website on October 1, 2019. Like the Investor Complaint Form, this Submission form asks for information similar to the information provided on a Form

² See Letter from Kohn, Kohn & Colapinto, LLP, Methods to Contact the SEC to Report Potential Violations at 85-99 (Oct. 8, 2019).

³ See also *id.* at 87-89.

⁴ See also *id.* at 91-93.

TCR, including a request to “describe” the “matter” which is the subject of the complaint “in detail.” Moreover, the Submission Form states that the form is related to the “Office of the Investor Advocate,” a unit of the SEC for which someone with original information of a violation of securities laws may logically contact.

Like the Form TCR and the Investor Complaint Form, the Submission Form can easily be filled out online, and contains no reference whatsoever to the requirement to file a Form TCR to qualify as a whistleblower for the purposes of obtaining a reward.

Page 95 of our October 8, 2019 letter is a screenshot taken from the SEC’s website on October 1, 2019 instructing persons where they can file “correspondence” with the SEC. Page 97 of that letter shows contact information (including an email addresses, toll-free phone numbers, and a street address) for the “Investor Advocate” available on the SEC website as of October 1, 2019. Neither of these webpages provides any information about the need to contact the Office of the Whistleblower with information about securities violations, nor are potential whistleblowers warned that the failure to file a Form TCR prior to submitting information via the contact information provided online by the SEC may disqualify potential whistleblowers from obtaining a reward.

Outside of the examples previously provided to the Commission, there are other pages on the current SEC website that promote or advertise numerous authorized methods in which persons can contact the SEC and provide original information about securities frauds without first filing a Form TCR.

For example, on a page entitled “Fast Answers – Key Topics,” published by the SEC at <https://www.sec.gov/answers.shtml>, the following information is provided:

Investors: Before you write or call us, use the alphabet bar or search box below — or scan our list of most frequently requested search terms — to find quick answers to common questions. If you wish to file an investor complaint, please use our online Investor Complaint Form.

If you don’t find what you’re looking for, please send us your question using our Question Form.

Industry participants: If you are (or represent) a corporate issuer, broker-dealer, investment adviser, investment company, or accountant -- and your question concerns the application or interpretation of a law or rule -- please contact the appropriate SEC division or office directly.

This page advises individuals with potential original information about a possible securities violation to fill out the Investor Complaint Form, or **directly contact** an “appropriate SEC division or office.” There is no mention of the requirement to file a Form TCR, and no warning that the failure to file a Form TCR may disqualify the individual from obtaining a reward.

Finally, the “Contact” link on the SEC’s homepage, <https://www.sec.gov/contact-information/sec-directory>, does not include the Office of the Whistleblower as one of the main offices persons may want to contact when contacting the SEC. Moreover, the first persons listed on the contact page are those of the SEC Commissioners. This includes direct email addresses for all five Commissioners. There is no warning whatsoever that sending original information about a potential securities fraud to any Commissioners may result in disqualification for a whistleblower reward. Furthermore, if a potential whistleblower sends an anonymous complaint to any of the Commissioners and includes original information about potential securities fraud, that anonymous filer would be disqualified for a reward under Proposed Rule 9(e) because the rule would require that whistleblowers first file a TCR to remain eligible.

In the comments justifying Proposed Rule 9(e), the Commission staff indicated that the proposed rule was codifying a current requirement that persons must file a Form TCR to qualify as a whistleblower. However, there is *nothing* in the current rules that places a time limit on such filings, nor prohibits the late-filing of a TCR. There is nothing in the current rules that states persons who “first contact” the SEC with original information about a securities violation are disqualified from thereafter filing a TCR in order to qualify for the mandatory rewards as provided by Congress.

It is inconceivable that the SEC would widely publicize numerous avenues for contacting the SEC without providing clear and explicit warnings to would-be whistleblowers that their communications with the SEC may completely preclude their qualification for a reward. The webpages cited above, and the existence of complaint forms that are *not* TCR forms, combined with the lack of specific warnings that providing information to the SEC about securities frauds outside the TCR process will result in a whistleblowers disqualification from obtaining a reward, all demonstrate that no such requirement currently exists.

In short, Proposed Rule 9(e) will create a new and radical barrier disqualifying numerous whistleblowers, and recreate a version of the “government knowledge” bar that was abolished in the 1986 amendments to the False Claims Act. *See* Letter from Kohn, Kohn and Colapinto, LLP dated September 12, 2019.

For your convenience, we have also attached a copy of the 1943 version of the False Claims Act enclosed as Exhibit 3 to this letter and pages 38-39 of our October 8, 2018 letter. Section 3491(C) of the 1943 law sets forth a similar government knowledge bar as contained in the proposed rule. This provision was interpreted by the courts to block whistleblowers who initially filed information with the Department of Justice or U.S. Government from obtaining a reward, even if they subsequently filed the proper legal papers and the sanction obtained by the government was based strictly on the whistleblower’s original information.

This provision of the 1943 law was highly criticized by Congress, and was eliminated in the 1986 amendments to the False Claims Act sponsored by Senator Charles Grassley and signed into law by President Ronald Regan. Eliminating this bar was viewed, at the time, as an absolutely critical reform and has *never* been questioned in any subsequent legislative action.⁵ The 1986 version of

⁵ *See* Letter from Kohn, Kohn and Colapinto dated September 12, 2019 for a more detailed discussion as to how the 1943 version of the False Claims Act was detrimental to the government’s anti-fraud efforts

the False Claims Act was enclosed at pages 41-43 of the October 8th letter, and is attached hereto for your convenience as *See* 31 U.S.C. § 3730(e)(4)(A) and (B). As you know, the False Claims Act was a model for the SEC whistleblower law, and that the Commission assured the Inspector General that the SEC would follow the best practices under the DOJ program. *See* Letter from Kohn, Kohn and Colapinto dated and October 8, 2019 Proposed Rule 9(e) radically violates one of the most fundamental principles of the False Claims Act: encouraging and permitting the reporting of frauds to the government outside the formal complaint process.

It is imperative that the current SEC website, which encourages individuals to alert the SEC to potential violations through a variety of avenues, not be altered to create barriers to the timely reporting of potential frauds. Any barrier to swift and easy communications to the Commissioners (or various staff members) about potential frauds is not in the public interest. The Commission's current practice of welcoming communications from individuals who may have information concerning violations is practical, consistent with the 1986 amendments to the False Claims Act, and ultimately is predicated on common sense. Proposed Rule 9(e) should not be approved. The rule should be modified as suggested in Exhibit 4 to this letter.⁶

In conclusion, **Congress did not intend for its reward program to *limit* the ways persons can alert the Commission to violations.**

Thank you for your careful attention to these matters.

Respectfully submitted,

/s/Stephen M. Kohn

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cc: Commissioner Robert J. Jackson Jr., via email;
Commissioner Allison Herren, Lee, via email;
Commissioner Hester M. Peirce, via email;
Commissioner Elad L. Roisman, via email;
Jane Norberg, Chief, Office of the Whistleblower, via email.

and was eliminated in 1986. The problems with the "government knowledge" jurisdictional bar was discussed in Senate Report 99-345, pp. 12-13 (1986), linked at https://www.kkc.com/assets/Site_18/files/FCA_Senate-Judiciary-Committee-report_July-28-1986.compressed.pdf.

⁶ *See also* Letter from Kohn, Kohn & Colapinto, LLP at 20, 101 (Oct. 8, 2019).

encls.: Exhibit 1 Investor Complaint Form
Exhibit 2 OMMS Submission Form
Exhibit 3 False Claims Act of 1943
Exhibit 4 Proposed Modification of Proposed Rule 9(e).

EXHIBIT 1

INVESTOR COMPLAINT FORM



U.S. Securities and Exchange Commission

Investor Complaint Form

You may use this form to send your complaint to the SEC. Although we use secure socket layer encryption, do not hesitate to print this form and send it by mail or fax if you have any concerns about security. Please read our Privacy Act Notice to learn more about how we may use the information you send to us.

Table with 2 columns: Field Name, Value. Includes OMB Number (3235-0547), Expires (October 31, 2020), and Estimated average burden hours per response (0.25).

Please read Investor Bulletin: Investor Complaints for information on what we will do with your complaint and other options for resolving your complaint.

Red outlined empty box for comment or notes.

- Radio button options: Yes, send the form to the firm or company. No, do not send the form to the firm or company. If you choose "no", we will record your complaint in our database, but we cannot help you any further.

Tell Us About Yourself

* You must complete this information.

Form fields for personal information: Title, First name, Middle initial, Last name, Street address, Address (cont.), City, State/Province, Zip/Postal code, Country, Daytime phone, Alternate phone, Fax, E-mail, Are you a.

Tell Us About the Firm or Individual You Have a Complaint Against

Form fields for firm information: Firm name, Type of firm, Broker, Advisor, or Salesperson, Street address, Address (cont.), City, State/Province, Zip/Postal code.

Country

Tell Us About Your InvestmentType of security Security symbol Name of Issuer or Security

Tell Us About Your Complaint

* Please describe your complaint in as much detail as possible, including the full name(s) on the account, the exact type of account, the dates of specific transactions or conversations, the name or ticker symbol of the security(ies) involved, and the names of all the people at the firm you have contacted about this complaint.

What types of documents would you be able to provide us if requested?

- Canceled Checks
- Correspondence to and from Firm
- Advertising or Marketing Materials
- Notes of conversation with Firm
- Other

Tell Us What Action You Have Taken

Have you complained to the firm?

Yes No

Have you contacted any other regulators?

Yes No

If yes, whom?

- FINRA (Financial Industry Regulatory Authority)
- State Regulators
- Other Federal Regulators
- Foreign Regulators
- Stock Exchange 
- Other

Have you taken legal action? If so, what type:

- Mediation
- Arbitration
- Court Action

Describe the details of the legal action you have taken.

I'm not a robot reCAPTCHA
Privacy - Terms

This collection of information has been reviewed by the Office of Management and Budget ("OMB") in accordance with the clearance requirements of 44 U.S.C. §3507. The applicable Privacy Act system of records (SORN) is SEC 65 and the routine uses of the records are set forth at 76 FR 30213 (May 24, 2011). This SORN is exempt from certain sections of the Privacy Act and the citation for the rule exempting the notice is 76 FR 57636 (September 16, 2011).

<https://www.sec.gov/oiea/Complaint.html>

[Home](#) | [Previous Page](#)

EXHIBIT 2

OMBUDSMAN MATTER MANAGEMENT SYSTEM SUBMISSION FORM



U.S. SECURITIES AND EXCHANGE COMMISSION

OMB Number: 3235-0748
Expires: September 30, 2019
Estimated average burden hours per response: 0.5

OMBUDSMAN MATTER MANAGEMENT SYSTEM (OMMS) SUBMISSION FORM

Thank you for contacting the Ombudsman for assistance. For more information about the Office of the Investor Advocate and how the Ombudsman may be able to assist you, please visit https://www.sec.gov/investorad

* = Required Field

IMPORTANT INFORMATION

(Click To Expand)

ABOUT YOU

Are you a Retail (Individual) Investor?*

Radio buttons for Yes and No

May we contact other U.S. Securities and Exchange Commission (SEC) Division(s) or Office(s), Self-Regulatory Organizations (SROs), individuals, and/or entities regarding this matter?*

Radio buttons for Yes and No

Prefix

Dropdown menu with --None-- selected

First Name*

Text input field for First Name

Last Name*

Text input field for Last Name

Address

Text input field for Address

City**Country****State/Province****Zip/Postal Code****Phone Number******Email****

**** You must provide either a phone number or an email address.**

YOUR MATTER**Is Your Matter About the U.S. Securities and Exchange Commission (SEC)?***

Yes No

Is your matter about a Self-Regulatory Organization (SRO)?*

Yes No

What is your matter about?***Describe your matter in detail.***

▶ ADDITIONAL MATTER DETAILS

(Click To Expand)

▶ ENTITIES AND INDIVIDUALS INVOLVED

(Click To Expand)

HAVE YOU ALREADY:**Contacted the SEC about this matter?*** Yes No**Contacted any Self-Regulatory Organizations (SROs) directly?*** Yes No**Contacted any other regulators and/or law enforcement agencies directly?*** Yes No**Taken any legal action?*** Yes No**CAPTCHA is required.***

I'm not a robot reCAPTCHA
Privacy - Terms

Note: You will have the option to upload supporting documents after clicking the Submit Form button below.

Submit Form**Cancel****Clear Form**

[HOME \(HTTPS://WWW.SEC.GOV/\)](https://www.sec.gov/) | [PREVIOUS PAGE](#)

The information referenced in the OMMS Submission Form is informal and is not binding on the staff or the Commission. The information is provided as a service to investors. It is neither a legal representation nor a statement of SEC policy. SEC staff cannot act as

your personal representative or attorney. For specific information on protecting your particular rights, or if you feel you need a definitive legal analysis of your particular situation, it may be in your best interest to consult with an attorney who specializes in securities law.

This collection of information has been reviewed by the Office of Management and Budget (OMB) in accordance with the clearance requirements of 44 U.S.C. §3507. The applicable Privacy Act System of Records Notice (SORN) is SEC 65 and the routine uses of the records are set forth at 76 FR 30213 (May 24, 2011). This SORN is exempt from certain sections of the Privacy Act and the citation for the rule exempting the notice is 76 FR 57636 (September 16, 2011).

Ombudsman | U.S. Securities and Exchange Commission | 100 F Street NE | Washington,
DC 20549

202.551.3330 | toll-free 877.SEC.2001 (877.732.2001) | fax 301.847.4722

Ombudsman@sec.gov (mailto:Ombudsman@sec.gov) | <https://www.sec.gov/ombudsman>
(<https://www.sec.gov/ombudsman>)

EXHIBIT 3

**FALSE CLAIMS ACT
OF
1943**

[CHAPTER 376]

AN ACT

To provide for the extension of certain oil and gas leases.

December 22, 1943
[S. 1576]
[Public Law 212]

Extension of certain
oil and gas leases.
30 U. S. C., Supp.
II, § 2265.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first section of the Act of July 29, 1942 (56 Stat. 726), entitled "An Act to grant a preference right to certain oil and gas leases", is hereby amended by adding at the end thereof the following new sentence: "The term of any five-year lease expiring prior to December 31, 1944, maintained in accordance with the applicable statutory requirements and regulations and for which no preference right to a new lease is granted by this section, is hereby extended to December 31, 1944."

Approved December 22, 1943.

[CHAPTER 377]

AN ACT

To limit private suits for penalties and damages arising out of frauds against the United States.

December 23, 1943
[H. R. 1339]
[Public Law 213]

Private suits arising
out of frauds against
U. S.

Jurisdiction of dis-
trict courts.

Institution of suit.

Withdrawal.

Notice to U. S.

Appearance.

Failure of U. S. to
carry on suit with due
diligence.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3491 of the Revised Statutes (U. S. C., title 31, sec. 232) be, and it hereby is, amended to read as follows:

"Sec. 3491 (A). The several district courts of the United States, the District Court of the United States for the District of Columbia, the several district courts of the Territories of the United States, within whose jurisdictional limits the person doing or committing such act shall be found, shall wheresoever such act may have been done or committed, have full power and jurisdiction to hear, try, and determine such suit.

"(B) Except as hereinafter provided, such suit may be brought and carried on by any person, as well for himself as for the United States, the same shall be at the sole cost and charge of such person, and shall be in the name of the United States, but shall not be withdrawn or discontinued without the consent, in writing, of the judge of the court and the district attorney, first filed in the case, setting forth their reasons for such consent.

"(C) Whenever any such suit shall be brought by any person under clause (B) notice of the pendency of such suit shall be given to the United States by serving upon the United States attorney for the district in which such suit shall have been brought a copy of the bill of complaint and by sending, by registered mail, to the Attorney General of the United States at Washington, District of Columbia, a copy of such bill together with a disclosure in writing of substantially all evidence and information in his possession material to the effective prosecution of such suit. The United States shall have sixty days, after service as above provided, within which to enter appearance in such suit. If the United States shall fail, or decline in writing to the court, during said period of sixty days to enter any such suit, such person may carry on such suit. If the United States within said period shall enter appearance in such suit the same shall be carried on solely by the United States. In carrying on such suit the United States shall not be bound by any action taken by the person who brought it, and may proceed in all respects as if it were instituting the suit: *Provided*, That if the United States shall fail to carry on such suit with due diligence within a period of six months from the date of its appearance therein, or within such additional time as the court after notice may allow, such suit may be carried on by

the person bringing the same in accordance with clause (B) above. The court shall have no jurisdiction to proceed with any such suit brought under clause (B) or pending suit brought under section 3491 of the Revised Statutes whenever it shall be made to appear that such suit was based upon evidence or information in the possession of the United States, or any agency, officer or employee thereof, at the time such suit was brought: *Provided, however,* That no abatement shall be had as to a suit pending at the effective date of this Act if before such suit was filed such person had in his possession and voluntarily disclosed to the Attorney General substantial evidence and information which was not theretofore in the possession of the Department of Justice.

Suits based on evidence, etc., in possession of U. S.

Nonabatement of certain pending suits.

Stay of further proceedings.

Notice to Attorney General.

Award if suit carried on by U. S.

“(D) In any suit whether or not on appeal pending at the effective date of this Act brought under Revised Statutes, section 3491, the court in which such suit is pending shall stay all further proceedings, and shall forthwith cause written notice, by registered mail, to be given the Attorney General that such suit is pending, and the Attorney General shall have sixty days from the date of such notice to appear and carry on such suit in accordance with clause (C).

“(E) (1) In any such suit, if carried on by the United States as herein provided, the court may award to the person who brought such suit, out of the proceeds of such suit or any settlement of any claim involved therein, which shall be collected, an amount which in the judgment of the court is fair and reasonable compensation to such person for disclosure of the information or evidence not in the possession of the United States when such suit was brought. Any such award shall in no event exceed one-tenth of the proceeds of such suit or any settlement thereof.

Award when suit not carried on by U. S.

“(2) In any such suit when not carried on by the United States as herein provided, whether heretofore or hereafter brought, the court may award to the person who brought such suit and prosecuted it to final judgment, or to settlement, as provided in clause (B), out of the proceeds of such suit or any settlement of any claim involved therein, which shall be collected, an amount, not in excess of one-fourth of the proceeds of such suit or any settlement thereof, which in the judgment of the court is fair and reasonable compensation to such person for the collection of any forfeiture and damages; and such person shall be entitled to receive to his own use such reasonable expenses as the court shall find to have been necessarily incurred and all costs the court may award against the defendant, to be allowed and taxed according to any provision of law or rule of court in force, or that shall be in force in suits between private parties in said court: *Provided,* That such person shall be liable for all costs incurred by himself in such case and shall have no claim therefor on the United States.”

Expenses and costs.

SEC. 2. Section 3493 of the Revised Statutes (U. S. C., title 31, sec. 234) is hereby repealed.

Repeal.

Approved December 23, 1943.

[CHAPTER 378]

AN ACT

To amend the Coast Guard Auxiliary and Reserve Act of 1941, as amended.

December 23, 1943
[H. R. 1616]
[Public Law 214]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Coast Guard Auxiliary and Reserve Act of 1941, as amended, is hereby further amended as follows:

Coast Guard Auxiliary and Reserve Act of 1941, amendments.

Strike out section 402 and substitute therefor the following:

56 Stat. 1020,
14 U. S. C., Supp.
II, § 382.
Ranks and ratings in Women's Reserve.

“Sec. 402. Members of the Women's Reserve may be commissioned or enlisted in such appropriate ranks and ratings, not above the

EXHIBIT 4

**PROPOSED MODIFICATION
OF
PROPOSED RULE 9(E)**

APPENDIX A
TEXT OF THE CURRENT PROPOSED RULE 17 CFR 240.21F-9(e)

(e) You must follow the procedures specified in paragraphs (a) and (b) [i.e. submitting the disclosure on a TCR Form] of this section the first time you provide the Commission with information that you rely upon as a basis for claiming an award. If you fail to do so, then you will be deemed ineligible for an award in connection with that information (even if you later resubmit that information in accordance with paragraphs (a) and (b) of this section). Notwithstanding the foregoing, the Commission, in its sole discretion, may waive your noncompliance with paragraphs (a) and (b) of this section if the Commission determines that the administrative record clearly and convincingly demonstrates that you would otherwise qualify for an award and you demonstrate that you complied with the requirements of paragraphs (a) and (b) of this section within 30 days of the first communication with the staff about the information that you provided.

APPENDIX B
TEXT OF PROPOSED REVISIONS TO 17 CFR 240.21F-9(e)²⁰

(e) You must follow the procedures specified in paragraphs (a) and (b) [i.e. submitting the disclosure on a TCR Form] of this section **when the first time** you provide the Commission with information that you rely upon as a basis for claiming an award. If you fail to do so, then you will be deemed ineligible for an award in connection with that information (even if you later resubmit that information in accordance with paragraphs (a) and (b) of this section) **if another whistleblower submits the same or substantially similar information in accordance with paragraphs (a) and (b) prior to your submission in accordance with paragraphs (a) and (b).** Notwithstanding the foregoing, the Commission, ~~in its sole discretion, may~~ **shall** waive your noncompliance with paragraphs (a) and (b) of this section if the Commission determines that the administrative record clearly and convincingly demonstrates that you would otherwise qualify for an award. ~~you demonstrate that you complied with the requirements of paragraphs (a) and (b) of this section within 30 days of the first communication with the staff about the information that you provided.~~

²⁰ The proposed changes are printed in bold.