

## SECURITIES WHISTLEBLOWER INCENTIVES AND PROTECTIONS

SOURCE: 17 Code of Federal Regulations Parts 240.21F-1 through 240.21F-18

### §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 Office of the Whistleblower administers our whistleblower program. Questions about the program or these rules should be directed to the SEC Office of the Whistleblower, 100 F Street, NE., Washington, DC 20549-5631.

### §240.21F-2 Whistleblower status, award eligibility, confidentiality, and retaliation protections.

(a) *Whistleblower status.* (1) You are a whistleblower for purposes of Section 21F of the Exchange Act (15 U.S.C. 78u-6) as of the time that, alone or jointly with others, you provide the Commission with information in writing that relates to a possible violation of the federal securities laws (including any law, rule, or regulation subject to the jurisdiction of the Commission) that has occurred, is ongoing, or is about to occur.

(2) A whistleblower must be an individual. A company or other entity is not eligible to be a whistleblower.

(b) *Award eligibility.* To be eligible for an award under Section 21F(b) of the Exchange Act (15 U.S.C. 78u-6(b)) based on any information you provide that relates to a possible violation of the federal securities laws, you must comply with the procedures and the conditions described in §§240.21F-4, 240.21F-8, and 240.21F-9. You should carefully review those rules before you submit any information that you may later wish to rely upon to claim an award.

(c) *Confidentiality protections.* To qualify for the confidentiality protections afforded by Section 21F(h)(2) of the Exchange Act (15 U.S.C. 78u-6(h)(2)) based on any information you provide that relates to a possible violation of the federal securities laws, you must comply with the procedures and the conditions described in Rule 21F-9(a) (§240.21F-9(a)).

(d) *Retaliation protections.* (1) To qualify for the retaliation protections afforded by Section 21F(h)(1) of the Exchange Act (15 U.S.C. 78u-6(h)(1)), you must satisfy all of the following criteria:

(i) You must qualify as a whistleblower under paragraph (a) of this section before experiencing the retaliation for which you seek redress;

(ii) You must reasonably believe that the information you provide to the Commission under paragraph (a) of this section relates to a possible violation of the federal securities laws; and

(iii) You must perform a lawful act that meets the following two criteria:

(A) First, the lawful act must be performed in connection with any of the activities described in Section 21F(h)(1)(A)(i) through (iii) of the Exchange Act (15 U.S.C. 78u-6(h)(1)(A)(i) through (iii)); and

(B) Second, the lawful act must relate to the subject matter of your submission to the Commission under paragraph (a) of this section.

(2) To receive retaliation protection for a lawful act described in paragraph (d)(1)(iii) of this section, you do not need to qualify as a whistleblower under paragraph (a) of this section before performing the lawful act, but you must qualify as a whistleblower under paragraph (a) of this section before experiencing retaliation for the lawful act.

(3) To qualify for retaliation protection, you do not need to satisfy the procedures and conditions for award eligibility in §§240.21F-4, 240.21F-8, and 240.21F-9.

(4) Section 21F(h)(1) of the Exchange Act (15 U.S.C. 78u-6(h)(1)), including any rules promulgated thereunder, shall be enforceable in an action or proceeding brought by the Commission.

[85 FR 75942, Nov. 5, 2020]

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### **§240.21F-3 Payment of awards.**

(a) *Commission actions*: Subject to the eligibility requirements described in §§240.21F-2, 240.21F-8, and 240.21F-16 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.

NOTE TO PARAGRAPH (a): The terms *voluntarily*, *original information*, *leads to successful enforcement*, *action*, and *monetary sanctions* are defined in §240.21F-4 of this chapter.

(b) *Related actions*: The Commission will also pay an award based on amounts collected in certain related actions.

(1) A *related action* is a judicial or administrative action that is brought by one of the governmental entities listed in paragraphs (b)(1)(i) through (iii) of this section or a self-regulatory

organization as specified in paragraph (b)(1)(iv) of this section (collectively “governmental/SRO authority”), that yields monetary sanctions, and that is based upon information that either the whistleblower provided directly to a governmental/SRO entity or the Commission itself passed along to the governmental/SRO entity pursuant to the Commission’s procedures for sharing information, and which is 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.

- (i) The Attorney General of the United States;
- (ii) An appropriate regulatory authority (as defined in §240.21F-4); or
- (iii) A state Attorney General in a criminal case; or
- (iv) A self-regulatory organization (as defined in §240.21F-4).

(2) 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. The Commission will deny an award in connection with the related action if:

- (i) The Commission determines that the criteria for an award are not satisfied; or
- (ii) The Commission is unable to make a determination because the Office of the Whistleblower could not obtain sufficient and reliable information that could be used as the basis for an award determination pursuant to §240.21F-12(a) of this chapter. Additional procedures apply to the payment of awards in related actions. These procedures are described in §§240.21F-11 and 240.21F-14 of this chapter.

(3) The following provision shall apply where a claimant’s application for a potential related action may also involve a potential recovery from another whistleblower award program for that same action.

(i) Notwithstanding paragraph (b)(1) of this section, if a judicial or administrative action is subject to a separate monetary award program established by the Federal Government, a state government, or a self-regulatory organization, the Commission will deem the action a related action only if the Commission finds (based on the facts and circumstances of the action) that its whistleblower program has the more direct or relevant connection to the action.

(ii) In determining whether a potential related action has a more direct or relevant connection to the Commission’s whistleblower program than another award program, the Commission will consider the nature, scope, and impact of the misconduct charged in the potential related action, and its relationship to the Federal securities laws. This inquiry may include consideration of, among other things:

(A) The relative extent to which the misconduct charged in the potential related action implicates the public policy interests underlying the Federal securities laws (such as investor protection) rather than other law-enforcement or regulatory interests (such as tax collection or fraud against the Federal Government);

(B) The degree to which the monetary sanctions imposed in the potential related action are attributable to conduct that also underlies the Federal securities law violations that were the subject of the Commission's enforcement action; and

(C) Whether the potential related action involves state-law claims and the extent to which the state may have a whistleblower award program that potentially applies to that type of law-enforcement action.

(iii) If the Commission determines to deem the action a related action, the Commission will not make an award to you for the related action if you have already been granted an award by the governmental/SRO entity responsible for administering the other whistleblower award program. Further, if you were denied an award by the other award program, you will not be permitted to readjudicate any issues before the Commission that the governmental/SRO entity responsible for administering the other whistleblower award program resolved against you as part of the award denial. Additionally, if the Commission makes an award before an award determination is finalized by the governmental/SRO entity responsible for administering the other award program, the Commission shall condition its award on the meritorious whistleblower making a prompt, irrevocable waiver of any claim to an award from the other award program.

[76 FR 34363, June 13, 2011, as amended at 85 FR 70943, Nov. 5, 2020]

#### **§240.21F-4 Other definitions.**

(a) *Voluntary submission of information.* (1) Your submission of information is made *voluntarily* within the meaning of §§240.21F-1 through 240.21F-17 of this chapter if you provide your submission before a request, inquiry, or demand that relates to the subject matter of your submission is directed to you or anyone representing you (such as an attorney):

(i) By the Commission;

(ii) In connection with an investigation, inspection, or examination by the Public Company Accounting Oversight Board, or any self-regulatory organization; or

(iii) In connection with an investigation by Congress, any other authority of the Federal government, or a state Attorney General or securities regulatory authority.

(2) If the Commission or any of these other authorities direct a request, inquiry, or demand as described in paragraph (a)(1) of this section 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. However, your submission of information to the Commission will be considered voluntary if you voluntarily provided the same information to one of the other authorities identified above prior to receiving a request, inquiry, or demand from the Commission.

(3) In addition, your submission will not be considered voluntary if you are required to report your original information to the Commission as a result of a pre-existing legal duty, a contractual duty that is owed to the Commission or to one of the other authorities set forth in paragraph (a)(1) of this section, or a duty that arises out of a judicial or administrative order.

(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 publicly 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 in any of the following circumstances:

(i) If you obtained the information through a communication that was subject to the attorney-client privilege, unless disclosure of that information would otherwise be permitted by an attorney pursuant to §205.3(d)(2) of this chapter, the applicable state attorney conduct rules, or otherwise;

(ii) If you obtained the information in connection with the legal representation of a client on whose behalf you or your employer or firm are providing services, and you seek to use the information to make a whistleblower submission for your own benefit, unless disclosure would otherwise be permitted by an attorney pursuant to §205.3(d)(2) of this chapter, the applicable state attorney conduct rules, or otherwise; or

(iii) In circumstances not covered by paragraphs (b)(4)(i) or (b)(4)(ii) of this section, if you obtained the information because you were:

(A) An officer, director, trustee, or partner of an entity and another person informed you of allegations of misconduct, or you learned the information in connection with the entity's processes for identifying, reporting, and addressing possible violations of law;

(B) An employee whose principal duties involve compliance or internal audit responsibilities, or you were employed by or otherwise associated with a firm retained to perform compliance or internal audit functions for an entity;

(C) Employed by or otherwise associated with a firm retained to conduct an inquiry or investigation into possible violations of law; or

(D) An employee of, or other person associated with, a public accounting firm, if you obtained the information through the performance of an engagement required of an independent public accountant under the Federal securities laws (other than an audit subject to §240.21F-8(c)(4) of this

chapter), and that information related to a violation by the engagement client or the client's directors, officers or other employees.

(iv) If you obtained the information by a means or in a manner that is determined by a United States court to violate applicable Federal or state criminal law; or

(v) *Exceptions.* Paragraph (b)(4)(iii) of this section shall not apply if:

(A) You have a reasonable basis to believe that disclosure of the information to the Commission is necessary to prevent the relevant entity from engaging in conduct that is likely to cause substantial injury to the financial interest or property of the entity or investors;

(B) You have a reasonable basis to believe that the relevant entity is engaging in conduct that will impede an investigation of the misconduct; or

(C) At least 120 days have elapsed since you provided the information to the relevant entity's audit committee, chief legal officer, chief compliance officer (or their equivalents), or your supervisor, or since you received the information, if you received it under circumstances indicating that the entity's audit committee, chief legal officer, chief compliance officer (or their equivalents), or your supervisor was already aware of the information.

(vi) If you obtained the information from a person who is subject to this section, unless the information is not excluded from that person's use pursuant to this section, or you are providing the Commission with information about possible violations involving that person.

(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 authority of the Federal government, a state Attorney General or securities regulatory 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 the Congress, any other authority of the Federal government, a state Attorney General or securities regulatory authority, any self-regulatory organization, or the Public Company Accounting Oversight Board, or to an entity's internal whistleblower, legal, or compliance procedures for reporting allegations of possible violations of law, and you, within 120 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 any of the following circumstances:

(1) You gave the Commission original information that was sufficiently specific, credible, and timely to cause the staff to commence an examination, open an investigation, reopen an investigation that the Commission had closed, or to inquire concerning different conduct as part of a current examination or investigation, and the Commission brought a successful judicial or administrative action based in whole or in part on conduct that was the subject of your original information; or

(2) You gave the Commission original information about conduct that was already under examination or investigation by the Commission, the Congress, any other authority of the federal government, a state Attorney General or securities regulatory authority, any self-regulatory organization, or the PCAOB (except in cases where you were an original source of this information as defined in paragraph (b)(5) of this section), and your submission significantly contributed to the success of the action.

(3) You reported original information through an entity's internal whistleblower, legal, or compliance procedures for reporting allegations of possible violations of law before or at the same time you reported them to the Commission; the entity later provided your information to the Commission, or provided results of an audit or investigation initiated in whole or in part in response to information you reported to the entity; and the information the entity provided to the Commission satisfies either paragraph (c)(1) or (c)(2) of this section. Under this paragraph (c)(3), you must also submit the same information to the Commission in accordance with the procedures set forth in §240.21F-9 within 120 days of providing it to the entity.

(d) An *action* generally means a single captioned judicial or administrative proceeding brought by the Commission. Notwithstanding the foregoing:

(1) For purposes of making an award under §240.21F-10 of this chapter, the Commission will treat as a Commission action two or more administrative or judicial proceedings brought by the Commission if these proceedings arise out of the same nucleus of operative facts; or

(2) For purposes of determining the payment on an award under §240.21F-14 of this chapter, the Commission will deem as part of the Commission action upon which the award was based any subsequent Commission proceeding that, individually, results in a monetary sanction of \$1,000,000 or less, and that arises out of the same nucleus of operative facts.

(3) For purposes of making an award under §§240.21F-10 and 240.21F-11, the following will be deemed to be an administrative action and any money required to be paid thereunder will be deemed a monetary sanction under §240.21F-4(e):

(i) A non-prosecution agreement or deferred prosecution agreement entered into by the U.S. Department of Justice; or

(ii) A similar settlement agreement entered into by the Commission outside of the context of a judicial or administrative proceeding to address violations of the securities laws.

(e) *Monetary sanctions* means:

(1) An order to pay money that results from a Commission action or related action and which is either:

(i) Expressly designated as a penalty, disgorgement, or interest; or

(ii) Otherwise ordered as relief for the violations that are the subject of the covered action or related action; or

(2) 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 such action or any settlement of such 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) *Appropriate regulatory authority* means an appropriate regulatory agency other than the Commission.

(h) *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)).

[76 FR 34363, June 13, 2011, as amended at 85 FR 70943, Nov. 5, 2020]

#### **§240.21F-5 Amount of award.**

(a) The determination of the amount of an award is in the discretion of the Commission.

(b) 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 percentage amount of the award applying the criteria set forth in §240.21F-6 of this chapter and 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.

(c) 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 in the aggregate 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 exercising its discretion to determine the appropriate award, the Commission may consider the following factors (and only the following factors) in relation to the facts and circumstances of



each case in setting the dollar or percentage amount of the award. In the event that awards are determined for multiple whistleblowers in connection an action, these factors will be used to determine the relative allocation of awards among the whistleblowers.

(a) *Factors that may increase the amount of a whistleblower's award.* In determining whether to increase the amount of an award, the Commission will consider the following factors, which are not listed in order of importance.

(1) *Significance of the information provided by the whistleblower.* The Commission will assess the significance of the information provided by a whistleblower to the success of the Commission action or related action. In considering this factor, the Commission may take into account, among other things:

(i) The nature of the information provided by the whistleblower and how it related to the successful enforcement action, including whether the reliability and completeness of the information provided to the Commission by the whistleblower resulted in the conservation of Commission resources;

(ii) The degree to which the information provided by the whistleblower supported one or more successful claims brought in the Commission or related action.

(2) *Assistance provided by the whistleblower.* The Commission will assess the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the Commission action or related action. In considering this factor, the Commission may take into account, among other things:

(i) Whether the whistleblower provided ongoing, extensive, and timely cooperation and assistance by, for example, helping to explain complex transactions, interpreting key evidence, or identifying new and productive lines of inquiry;

(ii) The timeliness of the whistleblower's initial report to the Commission or to an internal compliance or reporting system of business organizations committing, or impacted by, the securities violations, where appropriate;

(iii) The resources conserved as a result of the whistleblower's assistance;

(iv) Whether the whistleblower appropriately encouraged or authorized others to assist the staff of the Commission who might otherwise not have participated in the investigation or related action;

(v) The efforts undertaken by the whistleblower to remediate the harm caused by the violations, including assisting the authorities in the recovery of the fruits and instrumentalities of the violations; and

(vi) Any unique hardships experienced by the whistleblower as a result of his or her reporting and assisting in the enforcement action.

(3) *Law enforcement interest.* The Commission will assess its programmatic interest in deterring violations of the securities laws by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws. In considering this factor, the Commission may take into account, among other things:

(i) The degree to which an award enhances the Commission's ability to enforce the Federal securities laws and protect investors; and

(ii) The degree to which an award encourages the submission of high quality information from whistleblowers by appropriately rewarding whistleblowers' submission of significant information and assistance, even in cases where the monetary sanctions available for collection are limited or potential monetary sanctions were reduced or eliminated by the Commission because an entity self-reported a securities violation following the whistleblower's related internal disclosure, report, or submission.

(iii) Whether the subject matter of the action is a Commission priority, whether the reported misconduct involves regulated entities or fiduciaries, whether the whistleblower exposed an industry-wide practice, the type and severity of the securities violations, the age and duration of misconduct, the number of violations, and the isolated, repetitive, or ongoing nature of the violations; and

(iv) The dangers to investors or others presented by the underlying violations involved in the enforcement action, including the amount of harm or potential harm caused by the underlying violations, the type of harm resulting from or threatened by the underlying violations, and the number of individuals or entities harmed.

(4) *Participation in internal compliance systems.* The Commission will assess whether, and the extent to which, the whistleblower and any legal representative of the whistleblower participated in internal compliance systems. In considering this factor, the Commission may take into account, among other things:

(i) Whether, and the extent to which, a whistleblower reported the possible securities violations through internal whistleblower, legal or compliance procedures before, or at the same time as, reporting them to the Commission; and

(ii) Whether, and the extent to which, a whistleblower assisted any internal investigation or inquiry concerning the reported securities violations.

(b) *Factors that may decrease the amount of a whistleblower's award.* In determining whether to decrease the amount of an award, the Commission will consider the following factors, which are not listed in order of importance.

(1) *Culpability.* The Commission will assess the culpability or involvement of the whistleblower in matters associated with the Commission's action or related actions. In considering this factor, the Commission may take into account, among other things:

(i) The whistleblower's role in the securities violations;

(ii) The whistleblower's education, training, experience, and position of responsibility at the time the violations occurred;

(iii) Whether the whistleblower acted with scienter, both generally and in relation to others who participated in the violations;

(iv) Whether the whistleblower financially benefitted from the violations;

(v) Whether the whistleblower is a recidivist;

(vi) The egregiousness of the underlying fraud committed by the whistleblower; and

(vii) Whether the whistleblower knowingly interfered with the Commission's investigation of the violations or related enforcement actions.

(2) *Unreasonable reporting delay.* The Commission will assess whether the whistleblower unreasonably delayed reporting the securities violations. In considering this factor, the Commission may take into account, among other things:

(i) Whether the whistleblower was aware of the relevant facts but failed to take reasonable steps to report or prevent the violations from occurring or continuing;

(ii) Whether the whistleblower was aware of the relevant facts but only reported them after learning about a related inquiry, investigation, or enforcement action; and

(iii) Whether there was a legitimate reason for the whistleblower to delay reporting the violations.

(3) *Interference with internal compliance and reporting systems.* The Commission will assess, in cases where the whistleblower interacted with his or her entity's internal compliance or reporting system, whether the whistleblower undermined the integrity of such system. In considering this factor, the Commission will take into account whether there is evidence provided to the Commission that the whistleblower knowingly:

(i) Interfered with an entity's established legal, compliance, or audit procedures to prevent or delay detection of the reported securities violation;

(ii) Made any material false, fictitious, or fraudulent statements or representations that hindered an entity's efforts to detect, investigate, or remediate the reported securities violations; and

(iii) Provided any false writing or document knowing the writing or document contained any false, fictitious or fraudulent statements or entries that hindered an entity's efforts to detect, investigate, or remediate the reported securities violations.

(c) *Additional considerations in connection with certain awards of \$5 million or less.* (1) This subpart applies when the Commission is considering any meritorious award application where:

(i) The statutory maximum award of 30 percent of the monetary sanctions collected in any covered and related action(s), in the aggregate, is \$5 million or less, and the Commission determines that it does not reasonably anticipate that future collections would cause the statutory maximum award to be paid to any whistleblower to exceed \$5 million in the aggregate;

(ii) None of the negative award factors specified in paragraphs §§240.21F-6(b)(1) or 240.21F-6(b)(3) were found present with respect to the claimant's award application, and the award claim does not trigger §240.21F-16 (concerning awards to whistleblowers who engage in culpable conduct);

(iii) The claimant did not engage in unreasonable reporting delay under §240.21F-(6)(b)(2) (although the Commission, in its sole discretion, may in certain limited circumstances determine to waive this criterion if the claimant can demonstrate that doing so based on the facts and

circumstances of the matter is consistent with the public interest, the promotion of investor protection, and the objectives of the whistleblower program); and

(iv) The Commission does not otherwise determine in its sole discretion that application of the enhancement afforded by this subpart would be inappropriate because either:

(A) The whistleblower's assistance in the covered action or related action (as assessed under §240.21F-6(a) of this section) was, under the relevant facts and circumstances, limited; or

(B) Providing the enhancement would be inconsistent with the public interest, the promotion of investor protection, or the objectives of the whistleblower program.

(2) If the Commission determines that the criteria in §240.21F-6(c)(1) are satisfied, the resulting payout to a claimant for the original information that the claimant provided that led to one or more successful covered or related action(s), collectively, will be the maximum allowed under the statute.

(3) Notwithstanding §240.21F-6(c)(2), if two or more claimants qualify for an award in connection with any covered action or related action and at least one of those claimant's award applications qualifies under §240.21F-6(c)(1), the aggregate amount awarded to all meritorious claimants will be the statutory maximum. In allocating that amount among the meritorious claimants, the Commission will consider whether an individual claimant's award application satisfies §§240.21F-6(c)(1)(ii) and 240.21F-6(c)(1)(iii).

[76 FR 34363, June 13, 2011, as amended at 85 FR 70943, Nov. 5, 2020]

#### **§240.21F-7 Confidentiality of submissions.**

(a) Pursuant to Section 21F(h)(2) of the Exchange Act (15 U.S.C. 78u-6(h)(2)) and §240.21F-2(c), the Commission will not disclose information that could reasonably be expected to reveal the identity of a whistleblower provided that the whistleblower has submitted information utilizing the processes specified in §240.21F-9(a), 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 (15 U.S.C. 78a) and to protect investors, it may provide your information to the Department of Justice, an appropriate regulatory authority, 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 will 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 to the Commission and your identity must be verified by the Commission as set forth in §240.21F-10 of this chapter.

[76 FR 34363, June 13, 2011, as amended at 85 FR 70944, Nov. 5, 2020]

### **§240.21F-8 Eligibility and forms.**

(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 through §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. 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 Office of the Whistleblower, covering any non-public information that the Commission provides to you, and including a provision that a violation of the agreement 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 are, or were at the time you acquired the original information provided to the Commission, a member, officer, or employee of the Commission, the Department of Justice, an appropriate regulatory agency, a self-regulatory organization, the Public Company Accounting Oversight Board, or any law enforcement organization;

(2) You are, or were at the time you acquired the original information provided to the Commission, 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));

(3) 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;

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

(5) 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;

(6) You acquired the original information you gave the Commission from a person:

(i) Who is subject to paragraph (c)(4) of this section, unless the information is not excluded from that person's use, or you are providing the Commission with information about possible violations involving that person; or

(ii) With the intent to evade any provision of these rules; or

(7) The Commission or a court of competent jurisdiction finds that, in your whistleblower submission, your other dealings with the Commission (including your dealings beyond the whistleblower program and covered action), or your dealings with another governmental/SRO entity (as specified in §240.21F-3(b)(1)) in connection with a related action, you knowingly and willfully made any materially false, fictitious, or fraudulent statement or representation, or used any false writing or document knowing that it contains any materially false, fictitious, or fraudulent statement or entry with intent to mislead or otherwise hinder the Commission or another governmental/SRO entity, provided that this provision should not apply if the Commission, in its discretion, finds it consistent with the public interest, the promotion of investor protection, and the objectives of the whistleblower program.

(d) The Commission may modify or revise Form TCR and Form WB-APP as provided below.

(1) The Commission will periodically designate on the Commission's web page a Form TCR (Tip, Complaint, or Referral) that individuals seeking to be eligible for an award through the process identified in §240.21F-9(a)(2) shall use.

(2) The Commission will also periodically designate on the Commission's web page a Form WB-APP for use by individuals seeking to apply for an award in connection with a Commission-covered judicial or administrative action (15 U.S.C. 21F(a)(1)), or a related action (§240.21F-3(b)(1)).

(e) The Commission shall have the authority to impose a permanent bar on a claimant as provided below.

(1) *Grounds for a permanent bar.* Submissions or applications that are frivolous or fraudulent, or that would otherwise hinder the effective and efficient operation of the Whistleblower Program

may result in the Commission issuing a permanent bar as part of a final order in the course of considering a whistleblower award application from you. If such a bar is issued, the Office of the Whistleblower will not accept or act on any other applications from you. A permanent bar may be issued in the following circumstances:

(i) If you make three or more award applications for Commission actions that the Commission finds to be frivolous or lacking a colorable connection between the tip (or tips) and the Commission actions for which you are seeking awards; or

(ii) If the Commission finds that you have violated paragraph (c)(7) of this section.

(2) *General procedures for issuance of a permanent bar.* The Commission will consider whether to issue a permanent bar in connection with an award application from you. In general, the Preliminary Determination or Preliminary Summary Disposition must state that a bar is being recommended, and you will then have an opportunity to respond in writing in accordance with the award processing procedures specified in §§240.21F-10(e)(2) and 240.21F-18(b)(3). If the basis for a bar arises or is discovered after the issuance of a Preliminary Determination or Preliminary Summary Disposition, the Office of the Whistleblower shall notify you and afford you an opportunity to submit a response before the Commission determines whether to issue a bar.

(3) *Notice and opportunity to withdraw frivolous applications.* (i) Except as provided in paragraph (e)(3)(ii) of this section, before any Preliminary Determination or Preliminary Summary Disposition is issued that may recommend a bar, the Office of the Whistleblower shall advise you of any assessment by that Office that your award application is frivolous (“frivolous application”) or based on a tip that lacks a colorable connection to the action for which you have sought an award (“noncolorable application”). If you withdraw your award application within 30 days of the notification from the Office of the Whistleblower, it will not be considered by the Commission in determining whether to exercise its authority under this paragraph (e).

(ii) The notification and opportunity to withdraw provided for by paragraph (e)(3)(i) are limited to the first three applications submitted by you that are reviewed by the Office of the Whistleblower and preliminarily deemed by that Office to be either a frivolous application or a noncolorable application. After these first three award applications, you will not be provided notice or an opportunity to withdraw any other frivolous or noncolorable applications.

(iii) For purposes of determining whether a bar should be imposed under section (e) of this rule, you will not be permitted to withdraw your application:

(A) After the 30-day period to withdraw has run following notice from the Office of the Whistleblower with respect to the initial three applications assessed by that Office to be frivolous or lacking a colorable connection to the action; or

(B) After a Preliminary Determination or Preliminary Summary Disposition has issued in connection with any other such application.

(4) *Award applications pending before the effective date of paragraph (e).* (i) Paragraph (e) of this section shall apply to all award applications pending as of the effective date of paragraph (e) of this section. But with respect to any such pending award applications, the Office of the Whistleblower shall advise you, before any Preliminary Determination or Preliminary Summary Disposition is issued that may recommend a bar, of any assessment by that Office that the conditions for issuing a bar are satisfied because either:

(A) You submitted an award application prior to the effective date of this section (e) and that application is frivolous or lacking a colorable connection between the tip and the action for which you have sought an award; or

(B) You made a materially false, fictitious, or fraudulent statement or representation or used a false writing or document in violation of paragraph (c)(7) of this section prior to the effective date of this section (e).

(ii) If, within 30 days of the Office of the Whistleblower providing the foregoing notification, you withdraw the relevant award application(s), the withdrawn award application(s) will not be considered by the Commission in determining whether to exercise its authority under paragraph (e). Further, the procedures specified in paragraph (e)(3)(i) through (iii) of this section shall apply to any award application that is pending as of the effective date of this rule that is determined to be a frivolous or noncolorable application.

[76 FR 34363, June 13, 2011, as amended at 85 FR 70944, Nov. 5, 2020]

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#### **§240.21F-9 Procedures for submitting original information.**

(a) To submit information in a manner that satisfies §240.21F-2(b) and §240.21F-2(c) of this chapter you must submit your information to the Commission by any of these methods:

(1) Online, through the Commission's website located at *www.sec.gov*, using the Commission's electronic TCR portal (Tip, Complaint, or Referral);

(2) Mailing or faxing a Form TCR to the SEC Office of the Whistleblower at the mailing address or fax number designated on the SEC's web page for making such submissions; or

(3) By any other such method that the Commission may expressly designate on its website as a mechanism that satisfies §§240.21F-2(b) and 240.21F-2(c) of this chapter. For a 30-day period following the Commission's designation of any new forms by placing them on the Commission's website, the Commission shall also continue to accept submissions made using the prior version of the forms.

(b) Further, to be eligible for an award, you must declare under penalty of perjury at the time you submit your information pursuant to paragraph (a)(1), (a)(2), or (a)(3) of this section that your information is true and correct to the best of your knowledge and belief.

(c) Notwithstanding paragraphs (a) and (b) of this section, if you are providing your original information to the Commission anonymously, then your attorney must submit your information on your behalf pursuant to the procedures specified in paragraph (a) of this section. Prior to your attorney's submission, you must provide your attorney with a completed Form TCR that you have signed under penalty of perjury. When your attorney makes her submission on your behalf, your attorney will be required to certify that he or she:

(1) Has verified your identity;



(2) Has reviewed your completed and signed Form TCR for completeness and accuracy and that the information contained therein is true, correct and complete to the best of the attorney's knowledge, information and belief;

(3) Has obtained your non-waivable consent to provide the Commission with your original completed and signed Form TCR in the event that the Commission requests it due to concerns that you may have knowingly and willfully made false, fictitious, or fraudulent statements or representations, or used any false writing or document knowing that the writing or document contains any false fictitious or fraudulent statement or entry; and

(4) Consents to be legally obligated to provide the signed Form TCR within seven (7) calendar days of receiving such request from the Commission.

(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, your submission will be deemed to satisfy the requirements set forth in paragraphs (a) and (b) of this section. If you were an anonymous whistleblower, however, you must provide your attorney with a completed and signed copy of Form TCR within 60 days of the effective date of these rules, your attorney must retain the signed form in his or her records, and you must provide of copy of the signed form to the Commission staff upon request by Commission staff prior to any payment of an award to you in connection with your submission. Notwithstanding the foregoing, you must follow the procedures and conditions for making a claim for a whistleblower award described in §§240.21F-10 and 240.21F-11 of this chapter.

(e) You must follow the procedures specified in paragraphs (a) and (b) of this section within 30 days of when you first provide the Commission with original 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 shall waive your noncompliance with paragraphs (a) and (b) of this section if:

(1) You demonstrate to the satisfaction of the Commission that you complied with the requirements of paragraphs (a) and (b) of this section within 30 days of first obtaining actual or constructive notice about those requirements (or 30 days from the date you retain counsel to represent you in connection with your submission of original information, whichever occurs first); and

(2) The Commission can readily develop an administrative record that unambiguously demonstrates that you would otherwise qualify for an award.

[76 FR 34363, June 13, 2011, as amended at 85 FR 70945, Nov. 5, 2020]

**§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 Office of the Whistleblower will cause to be published on the Commission's Web site 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 subsequent to 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 ninety (90) 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 (as specified in §240.21F-8(d)(2)). You must sign this form as the claimant and submit it to the Office of the Whistleblower by mail, email (as a PDF attachment), or fax (or any other manner that the Office permits).

(1) All claim forms, including any attachments, must be received by the Office of the Whistleblower within ninety (90) calendar days of the date of the Notice of Covered Action in order to be considered for an award.

(2) Notwithstanding paragraphs (a) and (b)(1) of this section, the time period to file an application for an award based on a Commission settlement agreement covered by §240.21F-4(d) of this chapter shall be governed exclusively by §240.21F-11(b)(1) of this chapter if the settlement agreement was entered into after July 21, 2010 but before the effective date of this section as amended in 2020.

(c) If you provided your original information to the Commission anonymously, you must disclose your identity on the Form WB-APP, and your identity must be verified in a form and manner that is acceptable to the Office of the Whistleblower 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, one or more staff members designated by the Director of the Division of Enforcement ("Claims Review Staff") will evaluate all timely whistleblower award claims submitted on Form WB-APP in accordance with the criteria set forth in these rules. In connection with this process, the Office of the Whistleblower 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 a determination by the Claims Review Staff (and an opportunity for the Commission to review that determination), the Office of the Whistleblower 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 dollar and percentage amount, and the grounds therefore.

(e) You may contest the Preliminary Determination made by the Claims Review Staff by submitting a written response to the Office of the Whistleblower setting forth the grounds for your objection to either the denial of an award or the proposed amount of an award. The response must be in the form and manner that the Office of the Whistleblower shall require. You may also include documentation or other evidentiary support for the grounds advanced in your response. In applying the award factors specified in §240.21F-6 of this chapter and determining the award dollar and percentage amounts set forth in the Preliminary Determination, the award factors may be considered by the SEC staff and the Commission in dollar terms, percentage terms or some combination thereof. Should you choose to contest a Preliminary Determination, you may set forth the reasons for your objection to the proposed amount of an award, including the grounds therefore, in dollar terms, percentage terms or some combination thereof.

(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 Office of the Whistleblower make available for your review the materials from among those set forth in

§240.21F-12(a) of this chapter that formed the basis of the Claims Review Staff's Preliminary Determination.

(ii) Within thirty (30) calendar days of the date of the Preliminary Determination, request a meeting with the Office of the Whistleblower; 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 sixty (60) 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 sixty (60) calendar days of the Office of the Whistleblower 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-13 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 Office of the Whistleblower 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 Office of the Whistleblower, and issue its Final Order.

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

[76 FR 34363, June 13, 2011, as amended at 85 FR 70945, Nov. 5, 2020]

#### **§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 (as specified in §240.21F-8(d)(2)) to submit a claim for an award in a potential related action. You must sign this form as the claimant and submit it to the Office of the Whistleblower by mail, email (as a PDF attachment), or fax (or any other manner that the Office permits) as follows:

(1) If a final order imposing monetary sanctions has been entered in a potential 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. For purposes of this paragraph and paragraph (b)(2) of this section, a final order imposing monetary sanctions is entered on the date of a court or administrative order imposing the monetary sanctions; however, with respect to any agreement covered by §240.21F-4(d) of this chapter (such as a deferred prosecution agreement or a nonprosecution agreement entered by the Department of Justice), the Commission will deem the date of the entry of the final order to be the later of either:

(i) The effective date of this section as amended in 2020; or

(ii) The date of the earliest public availability of the instrument reflecting the arrangement if evidenced by a press release or similar dated publication notice (or otherwise, the date of the last signature necessary for the agreement).

(2) If a final order imposing monetary sanctions in a potential 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 ninety (90) days of the issuance of a final order imposing sanctions in the potential related action.

(c) The Office of the Whistleblower 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/SRO entity (as specified in §240.21F-3(b)(1) of this chapter) 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. Further, the Office of the Whistleblower, in its discretion, may seek assistance and confirmation from the governmental/SRO entity in making an award determination.

(d) Once the time for filing any appeals of the final judgment or order in a potential related action has expired, or if an appeal has been filed, after all appeals in the action have been concluded, the Claims Review Staff (as specified in §240.21F-10(d) of this chapter) will evaluate all timely whistleblower award claims submitted on Form WB-APP 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 Office of the Whistleblower 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 a determination by the Claims Review Staff (and an opportunity for the Commission to review that determination), the Office of the Whistleblower 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 Office of the Whistleblower setting forth the grounds for your objection to either the denial of an award or the proposed amount of an award. The response must be in the form and manner that the Office of the Whistleblower shall require. You may also include documentation or other evidentiary support for the grounds advanced in your response. In applying the award factors specified in §240.21F-6 of this chapter and determining the award dollar and percentage amounts set forth in the Preliminary Determination, the award factors may be considered by the SEC staff and the Commission in dollar terms, percentage terms or some combination thereof. Should you choose to contest a Preliminary Determination, you may set forth the reasons for your objection to the proposed amount of an award, including the grounds therefore, in dollar terms, percentage terms or some combination thereof.

(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 Office of the Whistleblower make available for your review the materials from among those set forth in §240.21F-12(a) of this chapter that formed the basis of the Claims Review Staff's Preliminary Determination.

(ii) Within thirty (30) days of the date of the Preliminary Determination, request a meeting with the Office of the Whistleblower; 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 sixty (60) 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 sixty (60) calendar days of the Office of the Whistleblower 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-13 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 Office of the Whistleblower 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 Office of the Whistleblower, and issue its Final Order.

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

[76 FR 34363, June 13, 2011, as amended at 85 FR 70946, Nov. 5, 2020]

**§240.21F-12 Materials that may form the basis of an award determination and that may comprise the record on appeal.**

(a) The following items constitute the materials that the Commission, the Claims Review Staff (as specified in §240.21F-10(d) of this chapter), and the Office of the Whistleblower may rely upon to make an award determination pursuant to §§240.21F-10, 240.21F-11, and 240.21F-18 of this chapter:

(1) Any publicly available materials from the covered action or related action, including:

(i) The complaint, notice of hearing, answers and any amendments thereto;

(ii) The final judgment, consent order, or final administrative order;

(iii) Any transcripts of the proceedings, including any exhibits;

(iv) Any items that appear on the docket; and

(v) Any appellate decisions or orders.

(2) The whistleblower's Form TCR, including attachments, and other related materials provided by the whistleblower to assist the Commission with the investigation or examination;

(3) The whistleblower's Form WB-APP, including attachments, any supplemental materials submitted by the whistleblower before the deadline to file a claim for a whistleblower award for the relevant Notice of Covered Action, and any other materials timely submitted by the whistleblower in response either

(i) To a request from the Office of the Whistleblower or the Commission; or

(ii) To the Preliminary Determination or Preliminary Summary Disposition that was provided to the claimant;

(4) Sworn declarations (including attachments) from the Commission staff regarding any matters relevant to the award determination;

(5) With respect to an award claim involving a related action, any statements or other information that the entity provides or identifies in connection with an award determination, provided the entity has authorized the Commission to share the information with the claimant. (Neither the Commission nor the Claims Review Staff may rely upon information that the entity has not authorized the Commission to share with the claimant); and

(6) Any other documents or materials from third parties (including sworn declarations) that are received or obtained by the Office of the Whistleblower to resolve the claimant's award application, including information related to the claimant's eligibility. (The Commission, the Claims Review Staff, and the Office of the Whistleblower may not rely upon information that the third party has not authorized the Commission to share with the claimant.)

(b) These rules do not entitle claimants to obtain from the Commission any materials (including any pre-decisional or internal deliberative process materials that are prepared exclusively to assist the Commission in deciding the claim) other than those listed in paragraph (a) of this section. Moreover, the Office of the Whistleblower may make redactions as necessary to comply with any statutory restrictions, to protect the Commission's law enforcement and regulatory functions, and to comply with requests for confidential treatment from other law enforcement and regulatory authorities. The Office of the Whistleblower may also require you to sign a confidentiality agreement, as set forth in §240.21F-(8)(b)(4) of this chapter, before providing these materials.

[76 FR 34363, June 13, 2011, as amended at 85 FR 70947, Nov. 5, 2020]

### **§240.21F-13 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 makes an award based on the factors set forth in §240.21F-6 of this chapter of 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, and any factual findings, legal conclusions, policy judgments, or discretionary assessments involving the Commission's consideration of the factors in §240.21F-6 of this chapter) is not appealable.

(b) The record on appeal shall consist of the Final Order, any materials that were considered by the Commission in issuing the Final Order, and any materials that were part of the claims process leading from the Notice of Covered Action to the Final Order (including, but not limited to, the Notice of Covered Action, whistleblower award applications filed by the claimant, the Preliminary Determination or Preliminary Summary Disposition, materials that were considered by the Claims Review Staff in issuing the Preliminary Determination or that were provided to the claimant by the Office of the Whistleblower in connection with a Preliminary Summary Disposition, and materials that were timely submitted by the claimant in response to the Preliminary Determination or Preliminary Summary Disposition). The record on appeal shall not include any pre-decisional or internal deliberative process materials that are prepared exclusively to assist the Commission and the Claims Review Staff (as specified in §240.21F-10(d) of this chapter) in deciding the claim (including the staff's Proposed Final Determination or the Office of the Whistleblower's Proposed Final Summary Disposition, or any Draft Preliminary Determination or Draft Summary Disposition that were provided to the Commission for review). When more than one claimant has sought an award based on a single Notice of Covered Action, the Commission may exclude from the record on appeal any materials that do not relate directly to the claimant who is seeking judicial review.

[76 FR 34363, June 13, 2011, as amended at 85 FR 70947, Nov. 5, 2020]

#### **§240.21F-14 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-15 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 Investigations and Related Enforcement Actions (17 CFR 202.12).

#### **§240.21F-16 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-17 Staff communications with individuals reporting possible securities law violations.**

(a) No person may take any action to impede an individual from communicating directly with the Commission staff about a possible 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) and §240.21F-4(b)(4)(ii) of this chapter related to the legal representation of a client) with respect to such communications.

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



### **§240.21F-18 Summary disposition.**

(a) Notwithstanding the procedures specified in §240.21F-10(d) through (g) and in §240.21F-11(d) through (g) of this chapter, the Office of the Whistleblower may determine that an award application that meets any of the following conditions for denial shall be resolved through the summary disposition process described further in paragraph (b) of this section:

(1) You submitted an untimely award application;

(2) You did not comply with the requirements of §240.21F-9 of this chapter when submitting the tip upon which your award claim is based, and you otherwise are not eligible for a waiver under either §240.21F-9(e) or the Commission's other waiver authorities;

(3) The information that you submitted was never provided to or used by the staff handling the covered action or the underlying investigation (or examination), and those staff members otherwise had no contact with you;

(4) You did not comply with §240.21F-8(b) of this chapter;

(5) You failed to specify in the award application the submission pursuant to §240.21F-9(a) of this chapter upon which your claim to an award is based;

(6) Your application does not raise any novel or important legal or policy questions.

(b) The following procedures shall apply to any award application designated for summary disposition:

(1) The Office of the Whistleblower shall issue a Preliminary Summary Disposition that notifies you that your award application has been designated for resolution through the summary disposition process. The Preliminary Summary Disposition shall also state that the Office has preliminarily determined to recommend that the Commission deny the award application and identify the basis for the denial.

(2) Prior to issuing the Preliminary Summary Disposition, the Office of the Whistleblower shall prepare a staff declaration that sets forth any pertinent facts regarding the Office's recommendation to deny your application. At the same time that it provides you with the Preliminary Summary Disposition, the Office of the Whistleblower shall, in its sole discretion, either

(i) Provide you with the staff declaration; or

(ii) Notify you that a staff declaration has been prepared and advise you that you may obtain the declaration only if within fifteen (15) calendar days you sign and complete a confidentiality agreement in a form and manner acceptable to the Office of the Whistleblower pursuant to §240.21F-8(b)(4) of this chapter. If you fail to return the signed confidentiality agreement within fifteen (15) calendar days, you will be deemed to have waived your ability to receive the staff declaration.

(3) You may reply to the Preliminary Summary Disposition by submitting a response to the Office of the Whistleblower within thirty (30) calendar days of the later of:

(i) The date of the Preliminary Summary Disposition, or

(ii) The date that the Office of the Whistleblower sends the staff declaration to you following your timely return of a signed confidentiality agreement. The response must identify the grounds for your objection to the denial (or in the case of item (a)(5) of this section, correct the defect). The response must be in the form and manner that the Office of the Whistleblower shall require. You may include documentation or other evidentiary support for the grounds advanced in your response.

(4) If you fail to submit a timely response pursuant to paragraph (b)(3) of this section, the Preliminary Summary Disposition will become the Final Order of the Commission. Your failure to submit a timely written response will constitute a failure to exhaust administrative remedies.

(5) If you submit a timely response pursuant to paragraph (b)(3) of this section, the Office of the Whistleblower will consider the issues and grounds advanced in your response, along with any supporting documentation that you provided, and will prepare a Proposed Final Summary Disposition. The Office of the Whistleblower may supplement the administrative record as appropriate. (This provision does not prevent the Office of the Whistleblower from determining that, based on your written response, the award claim is no longer appropriate for summary disposition and that it should be resolved through the claims adjudication procedures specified in either §§240.21F-10 or 240.21F-11 of this chapter).

(6) The Office of the Whistleblower will then notify the Commission of the Proposed Final Summary Disposition. Within thirty (30) calendar days thereafter, any Commissioner may request that the Proposed Final Summary Disposition be reviewed by the Commission. If no Commissioner requests such a review within the 30-day period, then the Proposed Final Summary Disposition will become the Final Order of the Commission. In the event a Commissioner requests a review, the Commission will consider the award application and issue a Final Order.

(7) The Office of the Whistleblower will provide you with the Final Order of the Commission.

(c) In considering an award determination pursuant to this rule, the Office of the Whistleblower and the Commission may rely upon the items specified in §240.21F-12(a) of this chapter. Further, §240.21F-12(b) of this chapter shall apply to summary dispositions.